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I surrendered my revolver, and no sooner had I done so than the soldiers rushed into my bedroom, where my wife and the three children were terribly frightened. The officers and men broke open a wardrobe and jewelry box and took the contents, as well as a wallet containing £50. They subjected my wife and the children to brutal, insulting treatment, even snatching my oldest child's (8 years) earrings with such violence as to wound the ear.

They then went to another wing of the house, where my sons' families lived, and meted out the same treatment to them, the officers looking on and even taking part, with astounding coolness, notwithstanding the pleading of the women and children. They found a safe in my son's apartments and they threatened to kill me if I did not instantly open it; they found 950 sovereigns and my wife's and sons' wives' jewelry, which they took.

They then ordered me to direct them to the homes of the neighboring sheikhs. These homes and those of other inhabitants which looked prosperous were subjected to the same treatment as mine, with varying degrees of violence.

The interpreter informed the people that the British were going to burn the village and ordered the inhabitants to evacuate as soon as possible. Men, women, and children hurried away, carrying what they could.

The village was surrounded by soldiers, who took everything from these unfortunates while leaving the village. They subjected the women to the most brutal treatment; but the fellaheen (peasants) hide these details for the sake of their women's reputation. Cases of rape have been signalled.

From a neighboring sheikh's house I saw the flame rising from my roof, and I learnt that the troops had set fire to it. Every quarter of the village met with the same fate. A sacred banner embroidered with the Moslem formula of faith was desecrated. All the sheikhs were arrested and brought to where I was. The assistant sheikh ghafir (head night watchman) was also arrested, his house plundered, and his wife grossly insulted.

A procession was formed to proceed to Hawamdieh, and whenever the troops found our pace too slow (we were mostly elderly men) they urged us on with the points of their bayonets. We were not allowed to ride, and, as the sun had by now reached its zenith, our sufferings were terrible, and one soldier took pleasure in photographing us in this pitiful condition.

We arrived at Hawamdieh police station about noon, and there found the mayor of Bedreshin and one of his sheikhs. They informed us the terrible treatment which their village and inhabitants had received. We remained for some time under the burning sun with dust blowing, facing the British cannon and surrounded by armed troops.

We were all taken to an inn belonging to the sugar factory, where we found 30 officers and a president. Abdul Medjid Effendi Tharwat, the mulahez (police officer with rank of lieutenant), brought us before them. The senior officer spoke and said, "I am about to inform you of the crime with which you are charged. Azizia is guilty in so much as a British officer has been beaten by some of its inhabitants. This officer was on his way to the Pyramids of Saccara, whither he was bound with other officers; and the joint crime of both villages is, as I learnt at Cairo, the participation of the inhabitants in the burning of the Hawamdieh and Bedreshin railway stations."

I told the officer that I, with my family, the mulahez mustafa effendi, and the people of the village, were guarding the factory during the recent outbreak. I was risking my life in this task. The mulahez by whose side I was standing was wounded by a bullet. I also told the officer that he could make inquiries through the district governor, the manager, and the employees of the factory; but the senior officer would not accept my statement. In truth, these two villages took no part in the destruction of the railway lines, and as far as could be ascertained this destruction was the work of strangers. The burning of the stations of Giza took place several days before the proclamation of the general commanding officer. From our village I can assure that no one molested an officer.

The senior officer then ordered us to collect all arms in the village or he would burn it, and we should share the same fate. He furthermore informed us that henceforth disobedience meant capital punishment. He wrote the following in English and ordered the mulahez to translate in Arabic, and which read: "We, the omdehs and sheikhs of Azizia and Bedreshin, express our regret at the destruction of railways and the attack made on the soldiers of the British Empire, and we admit that the fate which befell our villages is just and proper, and we are prepared to offer any number of men necessary, and refusal will mean court-martial."

The mulahez assured us that if we did not comply and sign this document we should be instantly shot; and we realized that from previous atrocities we had witnessed this would be our fate. As we were in front of the guns and surrounded by armed troops, we signed. The mulahez assured us that he was forcibly obliged also to attach his signature to this document.

We then started for the mudiriah of Giza (provincial governor), where we entered a verbal complaint to his excellency the mudir. From there we went to Cairo and complained to the mustachar (the English adviser to the ministry.)

The next day the mamour el dabt (head officer for public security) took our evidence officially in his report of investigation. He interrogated the Egyptian corporal who accompanied the forces which attacked Azizia and his evidence corroborated mine. He furthermore stated that he had seen British soldiers with the jewelry and who were offering it to the passers-by for sale.

On returning to my home village I found about 180 houses burned and most of the inhabitants left. I found my sister grievously ill as result of the torture she had undergone. All that remained of my home was a few burned mats. I then took my family away to different distant villages.

It is impossible for me to recount all the atrocities and chain of horrors from which unfortunate Azizia suffered, but I will mention the case of the Chafir Abdulla Mahammed, whose house the soldiers entered, took the little money there was and also his wife's jewelry. They undressed his wife and touched her indecently, and in spite of her cries for mercy they beat her with the butts of their rifles. They finished by setting fire to the house.

The Chafir Mahmoud Abdel Aal stated that 10 soldiers took away his rifle, ransacked his house, took all the money and his wife's jewelry. His wife had luckily run away and hid in the cornfields, otherwise she would have been grossly insulted, as were all other women who passed through the British soldiers' hands. His house was completely burned down; they gave him back his rifle, but, adding insult to injury, they tied some dead fowl to it and made him carry it thus to the police station.

I have been an eye-witness to what has been done to the homes of the sheikhs and other inhabitants. They entered the house of Sheikha Mahmoud Okby (I was with them under guard), took his money and all jewelry they could set hands on; the sheikh valued all at about £500. They burned his, his wife's, and the children's clothing, and they are at present wearing borrowed garments. He was then arrested and with me taken to Hawamdieh.

I am suffering from nervous shock in consequence of the treatment to which I was subjected and am extremely weak. I am now staying at Cairo, after having sent my resignation to the mudira.

IBRAHIM DESOUKY RASHDAN.

—

REPORT OF THE MAYOR OF GIZA.

On Sunday evening, the 30th of March, 1919, an armed train arrived in the village of Eli Chobak, carrying British soldiers in charge of repairing the railway lines. Immediately on leaving the train the soldiers commenced seizing fowl, sheep, and other property of the inhabitants. Nobody opposed them. Afterwards they began to grossly insult the women. One woman, whose husband tried to protect her from their revolting behavior, had a quarrel with them. For this they encircled the village and set fire to it on every side. Those who tried to escape from the conflagration were shot. The soldiers then invited the sheikh and four notables of the villages to follow and explain to the commander of the train.

These men were then strangled and buried upright and their heads were covered over by grass. This carnage and burning was continued from Sunday at 3 o'clock p. m. until next morning at 10 a. m. They then drove the inhabitants to the armed train; the mayor was among the number.

The mulahez (police officer) came to intercede in favor of the women. He entered the village and was struck by the cries of a woman, who implored him to help her. He perceived three British soldiers violating her. He stated that the number of killed was 31, the wounded 12; 144 houses were burned. The number of dead animals was 55, besides a large number of stolen ones.

These acts are certainly not of a nature to give satisfaction to humanity nor to civilized peoples. We transmit the lamentations of our widows, orphans, the old, and infirm to every heart which contains a sentiment of pity. We, the inhabitants of the village of Chobak, cry to the world against the atrocious crimes of which we have been victims.

If there is no one to render us justice and to protect us, if this reign of terror continues, we shall be obliged to leave Egypt, which is becoming a center of anarchy from which no power can protect the innocent from their oppressors. We shall trust in God alone.

(Follows 20 signatures, with stamps, of the villagers.)

LEASING OF OIL LANDS.

During the delivery of Mr. BORAH's speech,

The VICE PRESIDENT. The hour of 2 o'clock having arrived, the Chair lays before the Senate the unfinished business, which will be stated.

The SECRETARY. A bill (S. 2775) to promote the mining of coal, phosphate, oil, gas, and sodium on the public domain.

Mr. SMOOT. I ask unanimous consent that the unfinished business may be temporarily laid aside.

The VICE PRESIDENT. Is there any objection? The Chair hears none, and the Senator from Idaho will proceed.

After the conclusion of Mr. BORAH's speech,

Mr. CHAMBERLAIN. Mr. President, some time during the latter part of December last I addressed the Senate, and amongst other things called attention to the severe sentences that were being pronounced by courts-martial both here and in France; and, to illustrate the points I was desiring to make, I cited a number of individual cases where extreme sentences had been passed upon young men in the Army of the United States for very slight offenses. I believe it was the first time that public attention was drawn to these severe sentences, and it seems to have opened up a veritable Pandora's box. The exposure led to an investigation by the Military Affairs Committee of the Senate of the convictions under courts-martial here and in Europe, and hearings were had in February, 1919, at which Gen. Ansell, who was Acting Judge Advocate General, and a number of other witnesses were called in reference to the whole subject.

Mr. President, I shall not undertake at this time to enter into a lengthy discussion of the matter. I intend to do that a little later. The testimony at the hearings showed that there was a difference of opinion between the Judge Advocate General, Gen. Crowder, and the Acting Judge Advocate General, Gen. Ansell, as to the power of the Judge Advocate General over these records of conviction, and these differences were very marked, the Judge Advocate General taking one view of his power under the law to revise or modify or reverse the sentences of court-martial, claiming that where the court had jurisdiction and its judgment is once approved by the proper commander, however erroneous it might be by reason of flaw in the proceedings, there is no power of correction in the Judge Advocate General or elsewhere, and that the Judge Advocate General had no further power than an advisory one, looking to mere clemency, based on the illegality of the proceedings, while the Acting Judge Advocate General, Gen. Ansell, claimed that under section 1199 of the Revised Statutes the Judge Advocate General had the power to "revise" these sentences. This latter, it seems to me, is the sensible view. The War Department sustained the contention of Gen. Crowder. It is

around these conflicting views that the war on the subject has waged for some time.

In the course of the hearings before the Military Affairs Committee—I then had the honor of being chairman of that committee—I requested Gen. Ansell, on behalf of the committee, to prepare a bill which would so amend the Articles of War as to give the power to some tribunal to revise or to modify or to reverse the sentences of courts-martial. That bill has been prepared, was introduced in the Senate by me, and is now before a subcommittee of the Military Affairs Committee, and hearings are being had upon it.

I do not intend to address myself to that measure at this time, but shall do so later, when I hope to be able to cover the whole subject. But, Mr. President, I feel it proper to say here and now that the War Department has been entirely unfair to anyone who has undertaken to present a view which differs from the view of the Judge Advocate General. That department has in most unusual ways put its whole power behind an effort to sustain the present military court-martial system and the Articles of War. I feel that the methods which have been pursued are wrong. I have since the war began felt that the system and its enforcement were inherently wrong for this enlightened day and generation and that a modification of it ought to be made, although I insist that the Judge Advocate General had the power, if he had seen fit to exercise it, without any additional legislation, to modify or to revise sentences of courts-martial, notwithstanding his present opinion to the contrary.

Mr. President, Gen. Crowder rendered the country a most distinguished service in the matter of the selective-service law and the efforts which he made to put it into effect, and I commend the work he did, and the country has commended it, but in that law as originally prepared the hand of the military autocrat was in evidence, and the committees of the House and Senate gave to it its touch with the civil population of the country; and while Gen. Crowder is entitled to credit for its enforcement, he is not entitled to any credit for having deprived the original measure of its Prussian tendency and spirit. He is at heart a military autocrat. To him the enlisted man is a mere pawn upon the chess board.

Mr. President, I have had many conferences with Gen. Crowder during the period of this war, and I have told him and other men connected with the Military Establishment more than once that he and they did not get the civilian viewpoint of matters which affect the nonmilitary population. Now, when anyone dares indulge in criticism of this system of military justice—or shall I say injustice—Gen. Crowder shows the same Prussian bent of mind. I dared criticize and drew upon my innocent head his unreasoning wrath. A short while ago I happened to pass him engaged in conversation with a distinguished member of the Military Affairs Committee of the House. The latter stepped up and greeted me cordially. The former did not even turn in acknowledgment of an introduction to me, thus proving both his entire lack of good manners and his resentment of criticism of what he stood for. I stated then, at the suggested introduction, that although I knew the gentleman, he did not seem to know me, and that I had no regrets over the incident. Nor had I. It simply illustrated—and I tell of the incident for that purpose—the character of the man who might, if he had seen fit, have alleviated the suffering and humiliation that fell to the lot of thousands of American boys. He brooks no criticism. He allows no differences with him. He must be supreme.

This incident is not going to deter me from following the path that I had mapped out a good while ago, and that is to get to the bottom of and, if possible, cure this vicious military system. Some time ago, Mr. President, I showed from authentic sources that there have been more than 322,000 trials by inferior courts in the Army since this war began and up to the armistice and over 22,000 general court-martial trials for the same period, and that the average general court-martial sentence of confinement alone, including the most trivial offenses, reaches a period of seven years. This, of course, excludes sentences of life imprisonment and death. I shall call attention to some of those cases later in the session and before I get through with the discussion of the subject to show how unjust they are. Although the system is perfect, as is claimed by the Secretary of War and the Judge Advocate General, although according to them there are no injustices in the system, although they have undertaken to assure the parents of the young men of the Army that everything was all right, yet some 4,000 of these court-martial sentences have been reduced by a board created by the Secretary of War from an aggregate of 28,000 years to a present aggregate of something like 6,700 years! There is still room for improvement, Mr. President; and what is even worse than all these sentences is the fact that after they have been imposed the most shameful brutality has been practiced against military prisoners, no matter how splendid their records may have been nor how slight their breaches of discipline.

All this is preliminary to this proposition: After these hearings began and the gentlemen who were responsible for these unjust sentences began to sit up and take notice of the conditions, after the lid had been lifted, and the people were beginning to give some attention to conditions, the War Department immediately rushed to the defense of the system. The Judge Advocate General prepared a letter for the Secretary of War some time in March, and the Secretary of War signed it. It was largely devoted to upholding the system, showing that there were no injustices in it and it apotheosized the Judge Advocate General. Then the Judge Advocate General proceeded to reply to that letter in order to show further that there were no injustices in the system. Then under Col. Wigmore, of the Judge Advocate General's department, the subject was still further pursued. The gentleman was a colonel in the office of the Judge Advocate General. He was placed at the head of the propaganda system, and he enlarged upon the defense which the Secretary of War and the Judge Advocate General had made, and there were franked out under his supervision over 70,000 of these so-called justifications and defenses of the court-martial system.

Mr. President, when these letters of the Secretary of War, the Judge Advocate General, and Col. Wigmore were given to the public I appealed to the Secretary of War, who was absent at the time inspecting the cantonments and camps of the country, that Gen. Ansell's view of the system might be presented at the same time to the public. That request was declined. Gen. Ansell's mouth was closed, and he was demoted and practically driven out of the service because he dared to attack this pernicious and vicious system as it was practiced in the Army. He is out of the Army now, Mr. President, and he is permitted to speak. Although he remained in the service for four or five months after he had made his statement before the Senate Military Committee and developed the true state of affairs with respect to court-martial injustices, and was thereafter placed at the head of a clemency board, the War Department has not dared to proceed against him under the very arbitrary system which in season and out of season he has denounced.

I have had a number of conferences with Gen. Ansell, and I recently asked him to address me a letter, answering a number of questions I put to him, and giving me his views of the whole subject of the court-martial system and the attitude of the War Department to it. He has complied with my request, and I ask unanimous consent to print the letter in the RECORD without reading.

The PRESIDING OFFICER (Mr. EDGE in the chair). Is there objection to printing in the RECORD the letter without reading? The Chair hears none.

The matter referred to is as follows:

MILITARY JUSTICE.

RIGGS BUILDING,
Washington, August 16, 1919.

Hon. GEORGE E. CHAMBERLAIN,
United States Senate, Washington, D. C.

SENATOR: At a recent interview you referred to the defense made by the Judge Advocate General of the Army and the Secretary of War on "Military Justice During this War," as contained in the document so entitled, consisting of a letter from the Secretary of War to the Judge Advocate General, and of a letter from the Judge Advocate General in reply, published and distributed throughout the country at public expense as official business.

You expressed yourself at the time as of the opinion that the presentation made by these public officials was not helpful to the true interests of the public or of the Army. I said to you then that that presentation could be shown to be of such character that it could but misinform and mislead the public mind. I shall endeavor to show you now that such is its real character.

In the very beginning we are made to see that

THE SECRETARY OF WAR BLINDLY SUPPORTS THE EXISTING SYSTEM.

Military justice is a subject in which the people should have deepest interest and the Secretary of War keenest concern. It involves in a very direct way our national safety. It affects the morale of our soldiery, and influences the attitude of our people toward military service. Like all matters of justice, it should be the object of sustained solicitude upon the part of the people and a highly sensitive regard upon the part of their officials who have immediately to do with its administration. Thereby alone may imperfections in justice be seasonably revealed and remedial action taken. Hardly could it be denied that the maintenance of justice in the Army requires that the

Secretary of War be receptive to all complaints of injustice to our soldiery, alert to discover imperfections in the system of its administration, quick to take or recommend the amplest remedies. Throughout the war his attitude has been the very opposite.

At the beginning of the war, in the actual absence of Gen. Crowder, who had been appointed Provost Marshal General, I, by virtue of seniority, came to be the acting head of the office of the Judge Advocate General, which includes the Bureau of Military Justice, just when the mobilization of the National Army began. The instances of palpable and unquestioned injustice through courts-martial soon became so numerous, so gross, and of such a tendency to aggravation as to seem to me to call imperatively for legal check. More than ever before it was becoming apparent to me, and to my office associates as well, that we could not apply the existing system of military justice to the new Army, as it had been applied to the old, without doing great injustice to the soldiery. Some of the gravest deficiencies of our system, as applied to the old Regular Army, became perfectly apparent. It was more clearly revealed than ever before that that system belonged to other institutions and to another age. It is one in which military justice is to be achieved, as it was achieved in England and on the Continent 150 or more years ago, through the arbitrary power of military command rather than through the application of principles of law; a system governed by man—and a military commander at that—instead of by law. Designed to govern a medieval army of mercenaries, it is utterly unsuited to a national army composed of our citizens called to the performance of the highest duty of citizenship. Designed to govern military serfs obligated by personal fealty and impelled by fear, it is utterly unsuited to American freemen serving the State as soldiers, acting under the impulse and inspiration of patriotism. All this was borne in upon us and impelled us to contemplate remedial methods. It is regrettable that it should not have been seen and appreciated by our professional officers charged with the making of this new Army, whom, unfortunately, the department insisted upon chaining to the medieval system under which they had been trained.

Confronted immediately by a case of shocking injustice, conceded to be such by the department, and still conceded to be such by the Judge Advocate General in his defense (p. 50), in which eight or ten old and experienced noncommissioned officers of the Army had been arbitrarily and unlawfully charged with and tried and convicted of mutiny, we in the office of the Judge Advocate General set to work to reexamine our authority to review the judgment of a court-martial for errors of law, with a view to setting this judgment aside by reason of its illegality. In a unanimous opinion, having for the moment the concurrence of the Judge Advocate General himself, we found this power conferred by section 1199, Revised Statutes, which in terms enjoins the Judge Advocate General of the Army to "revise" the proceedings of courts-martial, a Civil War statute designed, in our judgment, for the very purpose. We conceived that this power of revision of the judgments of courts-martial would largely answer the necessity for the legal supervision of the procedure and judgments of courts-martial, for the establishment of legal principles and appreciations in the administration of military justice, and for giving legal guidance to the power of military command over such judicial functions. That necessity was thus early apparent to the office of the Judge Advocate General, the office that was in daily contact with the administration of military justice and charged with such legal supervision over it as War Department administration would permit; but it was not apparent to the military officials of the War Department insistent upon the view that a military commander must be absolute and unrestrained by law. In control of the Secretary of War, they, led by the Judge Advocate General, who had been induced to change his views, won and had their way throughout the war. The old system, applied without legal restraint, was maintained in its full flower throughout the war. The commanding officer was to have full and final power beyond all review. Thereafter the best we could do was to appeal to the natural sense of justice of those who wielded the power of military command.

Throughout the war, upon every proper occasion, I strove with all the power within me, with such reason, argument, and persuasion as I could command, first, to establish legal regulation of the power of military command in its relation to the administration of military justice, and, when I had failed in that, to induce military authority of its own accord to act justly. The records of the War Department will show that this was my insistent attitude throughout, an attitude with which the department disagreed consistently, except when coerced by expediency into the adoption of some administrative palliative. The department would not stand for the legal supervision of court-martial procedure, but insisted that it should be controlled from beginning to end, and finally, by the power of military command. Surely beyond departmental circles and departmental influence, fair-minded men who know aught of this subject know that the administration of military justice during this war has resulted in injustice, tyranny, and terrorization. The evidence is on every hand. Tens of thousands of our men have been unjustly tried and unjustly punished by courts-martial, and large numbers of them, not tried, have been arbitrarily placed in prison pens and subjected therein to barbarous cruelty, physical violence, and torture. If there be those not willing yet to concede so much, they will be overwhelmed by evidence later on. With our system of military justice as it was considered and decided upon by the Secretary of War and the military authorites the results could not have been otherwise. Those who are responsible for that decision, namely, the Secretary of War, the Judge Advocate General of the Army, the Acting Chief of Staff, and the Inspector General of the Army, must assume the responsibility for the gross injustice done.

Such injustices can not be concealed, however, even during war. Members of Congress became apprised of them from many sources. They became, and properly they ought to have become, a matter of congressional consideration. Bills were introduced for their correction. You were the leader in this remedial movement. In the middle of February last I was summoned before the Senate Military Committee, of which you then were the chairman, and, without having had any previous conference with you upon the subject, to testify out of my experience as Acting Judge Advocate General during the war, and I did testify to the effect that our existing system and the administration of it had resulted in the most cruel injustices. I should have been false to my duty and to my oath had I done otherwise. There had been outcries against the system while war was flagrant. Complaints were everywhere to be heard by all who had not closed their ears. To the extent of my ability I lost no opportunity to acquaint both the Secretary of War and the Judge Advocate General of the Army with them. But the Secretary, as many another stronger man has done, exhibited unusual strength in adhering to his original commitment.

WAR DEPARTMENT METHODS OF DEFENSE.

The matter was now before the public, and the department had to act. The Secretary immediately set about not to inquire, not to investigate, but to make a defense. Therein he was guided, as upon this subject he has ever been guided, by his Judge Advocate General. They appreciated and acknowledged that they were responsible for the injustice, if injustice there had been. They denied that there had been any injustice, and prepared to support and make plausible that denial. Within 10 days after I had testified before the Senate Military Committee the Judge Advocate General and the chief exponent of his view had a conference with the Secretary of War, at which they formulated a plan for the defense of the existing system and their administration under it. The system was to be maintained at all costs. The authority of the department was to be used to reassure the people as to the merits of the existing system, to deny or condone its results, and to destroy the force of all criticism or condemnation of it. Power of government was to be liberally used to this end. Bureaus of the department were set to work to prepare a defense, public funds generously used, and a campaign of propaganda initiated. Officers of high rank, under Col. John H. Wigmore, in charge, and an adequate clerical force were assigned to the task. Much since then has been said and done in the execution of the plan. The methods employed were such as when employed in private affairs habitually receive the condemnation of honest men and discredit any cause; public funds have been improperly used; official favors have been lavishly bestowed upon those in the office of the Judge Advocate General who would actively support the system, and official power has been used to suppress, discredit, menace, demote, and discipline those who oppose it; clemency boards have been "packed" with friends of the system, and simplest mercy denied in order to vindicate the system and those involved in its defense.

Speaking now to the document under discussion: First, the chief of the propaganda section prepared for the signature of the Secretary of War the letter standing first in the document discussed, in which the Secretary of War was made to convey to the Judge Advocate General an assurance of his entire faith in the system and of his confidence in the Judge Advocate General, and to declare that injustice had not been done during this war. And especially did he call upon the Judge Advocate General to prepare for publication a statement, to the end that the public mind should receive ample reassurance on the subject. The chief propagandist then prepared a responsive statement for

the signature of the Judge Advocate General, under date of March 8, which consisted of a general defense of the system and largely of a personal attack upon me. The Secretary of War gave this statement to the press, having arranged in the meantime for the fullest publicity. With all possible patience I prepared a statement pointing out the deficiencies of the system and my own attitude toward it, and asked the Secretary of War to give my communication the same publicity he had given his and that of the Judge Advocate General. This he declined to do, though this communication of mine afterwards appeared in the New York Times, but without any knowledge or connivance upon my part. In that communication I pointed out conduct upon the part of the Secretary of War and the Judge Advocate General in their relation to this subject that was clearly inconsistent with official or personal integrity, notwithstanding which both have ever since kept silent and taken no action, although I remained in the Army for nearly four months thereafter in order that I might continue amenable to such disciplinary action as they might choose to take. However, there was not one word in the communication that I had not previously spoken to the Secretary of War in person, and without denial from him, on the last night of February last.

Not content with this first statement which was given to the press, the chief of the propaganda section prepared the far more comprehensive defense contained in the letter signed by the Judge Advocate General in the document under discussion, between seventy and one hundred thousand copies of which were published and distributed to the lawyers and others throughout the country at public expense. The circumstances attending the publication of this document, when contrasted with contemporaneous representations of the Secretary of War, will mildly illustrate the character of the official methods employed throughout this controversy. This communication, though bearing date of March 10, was not authorized by the Secretary of War until March 26, and was not given to the public until April 9. In the meantime, on April 5, the Secretary of War had assured me in writing that he deprecated the public controversy and that it ought to stop on both sides, and cordially invited my cooperation in remedying the existing system. This assurance I accepted in good faith, only to find four days later this comprehensive publication launched against me and sent broadcast throughout the country.

An artful incident of the common authorship of the three communications is to be found in the fact that the author has the Secretary, in his letter of March 1, give strong and unqualified approval to the system of military justice and its results. But after reflection he has the Judge Advocate General, in his defense, concede many deficiencies and admit much injustice. He might also have taken the Secretary from such an exposed position. This letter, or defense, of the Judge Advocate General is designed to be the last word, the final avouchment, upon the subject, the complete vindication of the system, its supporters, and the department, and to bring about the utter discomfiture of those who have criticized the existing system and have sought and are still seeking a better one.

The system can scarcely be stronger than this skillful representation of it would have it appear. If this representation is weak, the system may be presumed to be weaker still. I would have you first look into the strength of that representation for the moment, not as though it were factitious, but regarding it as of face value and indulging the presumption that it is an expression honestly arrived at and honestly entertained.

THE SECRETARY'S LETTER.

Please look at it. It is from the highest authority, from the chief guardian of the soldier's rights, who should have been watchful for any weaknesses in the system and sympathetic for all who suffered by them. It was his supreme duty to discover its deficiencies and to exert his power for progress and improvement. His letter, saved of its inconsistencies, consists entirely of prejudgment and expressions of satisfaction. This was his state of mind toward the code and the criticism made of it, and he would so express himself without making the slightest investigation. In his letter he first affects surprise at the complaints and resolutely expresses the "firmest determination that justice shall be done." But at once he says he does not believe the complaints and is convinced that injustice has not been done. He arrives at this conviction, he confesses, through the confidence he has in his Judge Advocate General and the faith that he has in the system. Then, observing that, though entirely satisfied himself, "it is highly important that the public mind should receive ample reassurance on the subject," he directs the Judge Advocate General to prepare a statement for that purpose. He does not withhold judgment upon the specific complaints and have them investigated; he does not direct an inquiry; he resents the complaints, sees in them an attack upon "the department and its representatives, who have not been in a position to make any public defense or explanation and have refrained from doing so." His proclaimed purpose is not to determine the facts, but to assume them to be what he wants to believe them to be, and he calls for a statement, based upon that assumption, in order "to reassure the families of all these young men who had a place in our magnificent Army." You can understand his predicament, the necessity for loud asseveration to impress public opinion by assuring it and himself that all was well. It was necessary that he continue to repeat the unreasoned assertions that led to his commitment to the system in the early days of the war. Having committed himself to the views of those intent upon maintaining that system, it was necessary that ever afterwards he soothe his conscience by closing his ears to the cries of justice. Never thereafter would he hear me, an officer of rank, experience, and some repute, with a responsibility that placed me in immediate contact with the unjust results of that system. Holding their hands, he had taken the plunge, and to them he must look for safety. They told him that the department as a matter of law did not have, and as a matter of policy ought not to have, general supervisory power over courts-martial in questions of law, but that the views of the commander in the field should be final. When he denied the department that supervisory power he shut his eyes to his responsibility, he denied himself the opportunity to keep in touch with the administration of justice in the Army, and, relying upon a mere convention which had no basis in law, he turned his back upon the demands of justice and screened himself from its sufferings. He stands or falls with the system.

THE JUDGE ADVOCATE GENERAL'S DEFENSE.

His defense consists of blind professions of faith in the system, unreasonable assertions of its excellence, and a sympathetic appeal that they be believed in even as you would believe in him. It does him less than justice; it would have you believe that sheer cruelty of the system made him happier than Caligula's minion, whereas he is only blind to its cruelty. The statement does reveal his immovable mental attitude upon the subject, which was not to be unexpected. Trained to the line of the Army and not to the law, finding the work of his own department uncongenial, ever ambitious for a line command, orthodox in every military appreciation, he has, throughout his long years of service, taken not the judicial but the professional soldier's "rough-and-ready justice" point of view. He regards the system as so organically perfect and vital to military efficiency that even its form is to be touched only lightly. His mind has repelled all criticism of the system and is incapable of contemplating that it might be fundamentally and structurally wrong. This fixed mental attitude obtrudes throughout the statement. So addicted to regard the system with blind veneration he can never perceive its wretched incongruity as an American institution. He refers to his "firm belief in the merits and high standards of our system of military law." He asserts his vital interest "in vindicating the honor of the Army and War Department as involved in the maintenance of that system." At every point he declares the inherent superiority of courts-martial to the civil system. He resents even those criticisms based upon specific instances of injustice, since "they are calculated to undermine unjustly and needlessly the public confidence in that system." He would have the people "know confidently and take pride in the fact that we possess a genuine and adequate system of military justice." He takes "consolation in believing that if the public at large and particularly the families of those men who have been subjected to military discipline during the past two years could realize the thoroughness of this system they would feel entirely satisfied that the system is calculated in its methods to secure ultimate justice for every man." He refers to some futile proposals of his affecting military justice as tending to show that his attitude "has been an advanced one, at least in comparison to others whose authority was superior to mine at the time." He refers to his own career as Judge Advocate General "as demonstrating that it is inherently improbable that any state of things, even remotely justifying some of the extreme epithets recently used in public criticism, could have existed in our Army during the last two years." These expressions alone reflect a stagnant mental pool.

HIS STANDARDS OF JUSTICE.

The Judge Advocate General asserts that he was actuated by the spirit of justice throughout this war, and that he has not been satisfied with anything less than the highest standards of justice. Doubtless swayed by the demands of discipline as he understood them, he did not deliberately do what he knew to be unjust. It is simply a matter of standard of appreciation. He insisted, however, upon maintaining the system unmodified, and the system has led, was leading, and might have been expected to lead to the grossest injustice. Let us examine his standards as illustrated by the very cases used by him.

(a) The case of the Texas "mutineers." In that case certain old noncommissioned officers of the Regular Army had been subjected to the tyrannous and lawless conduct of a superior officer. Their innocence is conceded. They acted well within their rights in quietly refusing to submit to a palpably unlawful command, and for that refusal they were tried and found guilty of mutiny and sentenced to dishonorable discharge and imprisonment for terms from 10 to 25 years. In this case officers, not men, should have been tried. The trial in its entirety was illegal; the substantial rights of the men were at no point protected; and yet this procedure received the approval of the entire military hierarchy, capped by a major general who approved the sentence and dismissed the men. The Judge Advocate General protected the officers over my protest and denied justice to the men. That was the first case of gross injustice to come to the office after I became its head in August, 1917. I and my associates in the office knew that there would be many like it during the war. The Judge Advocate General admits that this was a "genuine case of injustice" and that it "illustrates the occasional possibility of the military spirit of discipline overshadowing the sense of law and justice." The military minds of the War Department conceded the injustice, conceded the illegality of the proceeding if it could be reviewed for error, but contended that the approval of the major general in command was final and placed the judgment of the court, whether legal or illegal, beyond all power of review. This case presents the crux of the entire difficulty and reveals the fundamental deficiency of the entire system. Courts-martial are controlled not by law but by the power of military command. I held that this could not be, and deduced the authority to review the judgments of courts-martial for errors of law out of existing statutes enacted during the Civil War for the very purpose, statutes which the War Department and compliant Judge Advocate Generals had permitted to become obsolete. The present Judge Advocate General, though he had relinquished all control of his office to become Provost Marshal General, returned to the department and filed an overruling opinion, which the Secretary of War was induced to approve. That opinion established the law for the department that the judgments of courts-martial once approved by the convening authority, however erroneous they may be when tested by legal principles, are beyond all power of legal review and correction. This case presented no more illegality than thousands of others that have since been tried. Clemency was resorted to in that case and the unexecuted punishment remitted, though the men themselves, excellent soldiers of long service, had been branded as mutineers and expelled from the Army in disgrace. Clemency has been resorted to in all such cases as a means of curing, as best it can, the injustice resulting from illegal trials that must go uncorrected. Mercy is given for offenses never committed, and pardon is used where judgments are illegal and should be reversed. This accounts for the wholesale clemency in which the department is indulging. The Judge Advocate General, in order to protect the power of military command, opened the gates to all the injustice of this war. His view was injected into the question. He overruled the opinion of the entire department, consisting of 12 eminent lawyers from civil life, but he succeeded in maintaining supreme the power of military command over military judicial functions. It was under such ruling that the same commanding general in Texas was permitted to hang a half score of negro soldiers immediately upon the completion of the trial and before the records had been reviewed or had even been dispatched from his headquarters to the Judge Advocate General of the Army for whatever revision the statute might be thought by him to require. In those cases the Judge Advocate General, as a result of his construction, engaged in the futile task of "reviewing" the proceedings four months after the accused men had been hanged.

(b) "Burglary" case, No. 110595. This is another case used to illustrate the beneficence of the system. This accused was charged with burglary, and at the end of the trial the court acquitted him. But the commanding general disagreed. He ordered the court to reconvene, and told it that the evidence, to say the least, looked "very incriminatory." The court upon reconsideration as ordered found the accused guilty and sentenced him to be dishonorably discharged and to confinement at hard labor for five years. The Judge Advocate General, in his statement, says: "His (the accused) story was disbelieved and he was found guilty." This is not true; his story was believed and he was acquitted, and it was not until the camp commander ordered a reconsideration that the court convicted him. The Judge Advocate General further says:

This office reached the opinion that though there was sufficient evidence to sustain the finding, the evidence did not go so far as to show his guilt beyond a reasonable doubt.

A lawyer would be expected to suppose that in a criminal case the evidence in order to be sufficient must be such as to convince the court beyond a reasonable doubt of the guilt of the accused. However, the record shows that the office of the Judge Advocate General said in the review of this case:

After careful consideration of the evidence, this office is firmly convinced of the absolute innocence of the accused.

As indicating a lack of power in the Judge Advocate General's office to give effect to a conclusion of this sort, a copy of the review was addressed to the camp commander "in order that the reviewing authority may have the benefit of the *study* referred to."

The Judge Advocate General's report also says:

In such a situation no supreme court in the United States would interfere and set aside a jury's verdict. Nevertheless this office recommended a reconsideration of the verdict by the reviewing authority.

The great fact to be noted is that such a case as this would never have come to any appellate court, because the original acquittal could never have been set aside. And if the case could have gone to any appellate court upon evidence as weak as this, after a fair jury had once found an acquittal, there could never be any doubt about what action the court would take. However, the office of the Judge Advocate General did not recommend the reconsideration of the verdict by the reviewing authority. It only expressed its own serious doubt and referred its "study" to the reviewing authority "for such consideration as he may deem advisable to give it." This case well represents the whole difficulty due to the lack of authority in the office of the Judge Advocate General to do more than present "studies."

Gen. Crowder's defense says:

It (the verdict) was, in fact, reconsidered; but the court adhered to its finding.

This is not true. After the Judge Advocate General's office had "studied" the case it never went back to the court. The "study" was simply sent to the reviewing authority and the court never had any opportunity to see that "study."

The Judge Advocate General's report says:

But the feature for emphatic notice is that reconsideration was given, not by exercising the "arbitrary discretion of a military commander" but by referring the case to the judge advocate of the command as legal adviser.

The judge advocate wrote an elaborate review of the evidence, disagreeing with the view of the Judge Advocate General. This illustrates the necessity for final power in the office of the Judge Advocate General. It is to be noted here (1) that the judge advocate who made the elaborate review was the same judge advocate that recommended trial in the first instance; (2) he was the officer on the staff of the camp commander who ordered the trial and who insisted on a conviction instead of an acquittal; (3) to show his bias, he undertakes to say in his review that the court could not have been influenced by the camp commander when it was instructed by him to change its findings from not guilty to guilty; (4) he himself says that he believed that the court was impressed with the "ring of sincerity" of the case when it first voted his acquittal of the charges, and added that he himself was so impressed when he first preliminarily examined the case; (5) the judge advocate's review consists of a belabored argument of 18 pages and is supplemented by a semipersonal note to the Judge Advocate General insisting upon the guilt of the accused. This is a good example of the fact that under the present law judge advocates do not consider themselves as judicial officers at all, but simply as staff officers supporting the views of the camp commander; nor do they consider the office of the Judge Advocate General as a judicial office, for such a relation would bar such semipersonal correspondence. Moreover, this review speaks many times, in what amounts to a slurring manner, of the "study" made by the Judge Advocate General.

The Judge Advocate General's report further says that this reconsideration on the point of proof beyond a reasonable doubt "was a measure of protection which the law does not provide in any civil court for the control of a jury's verdict." As indicated before, the verdict of the jury would have promptly acquitted this man. There would have been no occasion to review it. If a case should get to an appellate court in which the evidence was so weak as to result first in an acquittal, and then required military direction to change it to a conviction, and then two superior reviewing judge advocates pronounced the evidence insufficient to sustain the finding, nobody can have any doubt what a court of appeals would do.

The Judge Advocate General's defense says:

The case is a good illustration of the feature in which the system of military justice sometimes does even more for the accused than a system of civil justice.

This should be admitted. It does do more. It does it hard and a plenty.

It may be well to add that since the Chamberlain speech was made the justice of the sentence in this case has been reexamined in the office of the Judge Advocate General upon an application for clemency, and as a result Gen. Crowder, on February 12, 1919, recommended that the unexecuted portion of the sentence be remitted and that the prisoner be released and restored to duty. This recommendation contains the ironical statement that the accused had served nearly one year of his sentence. Here is also a strange admission in the general's memorandum:

This office is strongly of the opinion that injustice may have been done to this man, and that it should be righted now so far as possible.

It is a remarkable coincidence that Gen. Crowder signed this memorandum on the same day that he signed his defense in which he vigorously contends for the rightful results of the case.

(c) The four death cases from France: The next cases cited by the Judge Advocate General as illustrating the justice with which the system meets "the stern necessities of war discipline" were four death sentences from France in the cases of four 18-year-old boys, who had volunteered at the beginning of the war—Nos. 110753, 110754, and the companion cases, 110751 and 110752. These were the first death sentences received from France. In the first two the death penalty was awarded for a charge of sleeping upon post, and in the last two for refusal to go to drill. The trials were legal farces, as any lawyer who will look at the records will see. In each of two of the cases the trial consumed about three-quarters of an hour, and the record occupies less than four loosely typewritten pages. The other two consumed slightly more time, and resulted in a slightly larger record. The courts were not properly composed and in two of the cases were clearly disqualified. The accused were virtually denied the assistance of counsel and the right of defense. A second lieutenant as counsel made no effort to assist. That they were hindered rather than helped in their defense by counsel is demonstrated by the fact that in the case where a plea of guilty was entered the sole effort of counsel consisted of his calling a witness and asking him this question:

Q. Was the accused's record good up to this time?—A. It was not. It is one of the worst in the company.

Two pleaded guilty to a capital offense and the other two made not the slightest fight for their lives. Even if the men had been properly tried and convicted, no just judge could have awarded the death penalty. These young soldiers had been driven to the point of extreme exhaustion. At the time of commission of the offenses, the military authorities evidently regarded them lightly. The two who were charged with sleeping on post were not relieved from post nor were they arrested or accused for 10 days thereafter, and the two who were charged with refusal to go to drill were not arrested or charged for a month thereafter. But at this juncture the authorities abruptly changed their policy, and decided to make an example of these men. Gen. Pershing, who under the law had nothing whatever to do with these cases, injected his power and authority into the course of justice, clamored for the death penalty, and asked that the cable be used to transmit to him the mandate of death.

According to the Judge Advocate General, Gen. Pershing urged the adoption of the inexorable policy of awarding the death penalty in all cases of sleeping on post, and he insists that no one should be criticized for agreeing with this policy or acceding to Gen. Pershing's urgent request. And then the Judge Advocate General makes this surprising statement:

I myself, as you know, was at first disposed to defer to the urgent recommendation of Gen. Pershing, but continued reflection caused me to withdraw from that extreme view, and some days before the case was presented for your final action the record contained a recommendation from me pointing in the direction of clemency.

The record shows an entirely different attitude. It shows that on March 29 to April 4 Gen. Crowder wrote the reviews in these cases, but did not as yet conclude them with his recommendation. On April 5 he sent them to Gen. March in this unfinished state, accompanied by a letter in which, while indicating that by right and justice these boys ought not to die, he suggested, nevertheless, that since Gen. Pershing insisted upon the death penalty the department should uphold him and present a united front to the President. He asked for a conference with the Chief of Staff in order that there might be unanimity in the department to that end. Here is his language:

You will notice that I have not finished the review by embodying a definite recommendation.

It would be unfortunate indeed if the War Department did not have one mind about these cases. There is no question that the records were legally sufficient to sustain the findings and sentence. There is a very large question in my mind as to whether clemency should be extended. Undoubtedly Gen. Pershing will think if we extend clemency that we have not sustained him in a matter in which he has made a very explicit recommendation.

May we have a conference at an early date?

He did confer with Gen. March, and they agreed to present the united front, to uphold the hands of Gen. Pershing, and to recommend the execution of the sentence of death. On April 6 Gen. Crowder brought back from his conference with the Chief of Staff the unfinished reviews and immediately concluded them by adding to them the following recommendation:

I recommend that the sentences be confirmed and carried into execution. With this in view there is herewith inclosed for your signature a letter transmitting the record to the President for his action thereon, together with an Executive order designed to carry this recommendation into effect should such action meet with your approval.

(Signed) E. H. CROWDER,
Judge Advocate General.

Gen. Crowder says that he was "disposed to defer" to the urgent recommendation of Gen. Pershing, but the record shows that he did defer.

The record also contradicts his statement that—

continued reflection caused me to withdraw from that extreme view, and some days before the case was presented for your final action the record contained a recommendation from me pointing in the direction of clemency.

And the record also disproves his statement that after an examination by several of the most experienced judge advocates of his staff "no reversible error was found, and there was no doubt of the facts in either case, the only issue in the cases being the severity of the sentences." The record shows that on April 15 I, accidentally hearing about these cases, filed a memorandum in which I pointed out with all the power within me not only reversible error, but annihilating error, and urged that these sentences be set aside and these young soldiers be not executed. And three other judge advocates expressed full concurrence in my views. The record further shows that on April 10 still another judge advocate of high rank, whom Gen. Crowder esteems as a splendid lawyer and who supports the general's views on military justice, filed with him a long memorandum to the effect that these trials were a tragic farce and concluded that—

it will be difficult to defend or justify the execution of these death sentences by way of punishment or upon any ground other than that as a matter of pure military expediency some one should be executed for the moral effect such action shall have upon the other soldiers.

These memoranda the general did not forward to superior authority, but the record shows that upon reading them and "upon continued reflection" the next day, April 16, he addressed a memorandum to Gen. March, which began as follows:

Since our interview on the four cases from France, involving the death sentences, at which interview we agreed that we would submit the cases with the recommendation that the sentences be carried into execution, my attention has been invited to certain facts of which I had no knowledge at the time of the interview and to which I think your attention should have been invited.

He then sets out some, but by no means all, of the facts of these memoranda, simply passing them on to the Chief of Staff "for his information." He did not deem them sufficient to modify his own conclusion or his agreement with the Chief of Staff, for near the close of the memorandum he expressly declared that he submits them without any desire "to reopen the case," and he then concludes as follows:

It will not have escaped your notice that Gen. Pershing has no office of review in these cases. He seems to have required that these cases be sent to him for the purpose of putting on the record an expression of his views that all four men should be placed before the firing squad. I do not make this statement for the purpose of criticizing his action—indeed, I sympathize with it—but it is fair in the consideration of the action to be taken here to bear in mind the fact that Gen. Pershing was not functioning as a reviewing officer with any official relation to the prosecution, but as commanding general, anxious to maintain the discipline of his command.

(Signed) E. H. CROWDER,
Judge Advocate General.

No case could furnish better evidence of what happens when the chief judicial officer of the Army is subject to the power of military command, is "supervised" by it, and must rely upon it for his appointment to and retention in office; and the fact that these men did not die, as the military hierarchy would have had them die, was not due to the Judge Advocate General of the Army; and the fact that they came perilously close to an unlawful death and were deprived of protection for themselves, and have been unlawfully subjected to penitentiary servitude, was due to the Judge Advocate General of the Army.

When Gen. Crowder first replied to the Chamberlain criticism and my own, he made reference to other cases, which he deemed to be beyond criticism and illustrative of the justice of the system, which he now significantly omits. I will supply them:

(d) John Schroeder, Machine Gun Company, One hundred and fifty-sixth Infantry, was convicted of absenting himself without

leave from May 9 to 15, when his command was about to embark for overseas service. The gravamen of this offense is obviously the intention to avoid overseas service, as pointed out in the Crowder report, by the division judge advocate, and by Gen. Hodges, who, in his review of June 19, 1918, congratulated the court "in adjudging an adequate sentence and thereby demonstrating its disapproval of an act of a soldier's absenting himself" without permission immediately following his designation for overseas service. This, of course, is one of the most serious offenses, notwithstanding which the accused, represented by an inexperienced first lieutenant as counsel, pleaded guilty; and it is also shown that while without counsel he was approached by an investigating officer, who reported that "the accused declines to make a statement, but says that he will plead guilty," indicating that there was some inducement for the plea. The accused, however, at the trial and after his plea of guilty, stated under oath that he went home for the purpose of seeing a sick mother, and, besides, that he did not know that the company was going abroad and had never been informed of that fact. This statement, absolutely inconsistent with his plea, required the entry of a plea of "not guilty" and a trial of the general issue. There being no evidence whatever to show that the accused was informed that his company was going abroad, the court should have taken the statement of the accused as true and acquitted him. This is an excellent example of a meaningless trial. The accused had no counsel worthy of the name; he did not appreciate nor was he advised of the gist of the offense; he made an ill-advised and uncomprehending plea of guilty, and then made statements absolutely inconsistent with his plea, all of which went unnoticed and resulted in his being sentenced to be dishonorably discharged and to be confined at hard labor for 25 years.

(e) No. 106800 is a sort of companion case to the immediately preceding one. The gist of the offense, here as there, is to be found in the intention to escape overseas service. This accused was also defended by worse than no counsel. The whole proceeding is invalid for the reason that the court disposed of it as though the accused had entered a plea of guilty, whereas he pleaded "to the specification, not guilty; to the charge, guilty." The important part of the plea is, of course, the plea to the specification, the plea to the charge being mere form and may be ignored.

This being a plea of not guilty, the accused should have been tried accordingly. As showing the lax method of the court, even on an assumption of a valid plea of guilty, the accused made a sworn statement absolutely inconsistent with his plea, saying that he did not know and had not been informed that he was ordered to overseas service. He was sentenced to 15 years confinement, and the court was commended, as in the previous case.

(f) No. 114717 was a charge of sleeping on post, in this country, and a plea of guilty. The accused, referred to as "but a little kid," was said to have been found asleep by a lieutenant. This was a capital crime in which the accused, but 17 years old, was permitted by inexperienced counsel to plead guilty, for which he was sentenced to 10 years. The whole proceeding occupies seven pages of loosely twpewritten matter double spaced. The court submitted a recommendation for clemency, asking for a reduction of the sentence on the ground that inasmuch as the accused had pleaded guilty they had been reluctant but compelled to give him a sentence commensurate with the offense, and also on the ground of his youth.

(g) No. 113076. This is a case in which Gen. Crowder contended that the sentinel had been drinking whisky before going on guard and that, having been found asleep thereafter, the case was plainly one for severest exemplary punishment. It is passing strange how justice can hurdle the salient point that an example ought to have been made not so much of the man as of an officer who in violation of regulations and common sense will post as a sentinel a man who had obviously been drinking.

These cases—and there are thousands like them in point of illegality and injustice—are sufficient to show what the Judge Advocate General terms "the general state of things in the administration of military justice."

HIS SPECIFIC CONTENTIONS.

(1) He contends that courts-martial procedure is in accordance with the "rigid limitations of the criminal code" and not according to the arbitrary discretion of the commanding officer.

There are no "rigid limitations" of the code. That is the trouble. The military code is worthy of the name of law only in the sense that any absolute and unregulated power established by law is worthy of it. Congress has authorized military power to do as it pleases in the exercise of this highly penal jurisdiction. Look at the articles from first to last. Is there a word to regulate the preferring of the charge, the arrest, the sufficiency of the charge, the rights of the accused before, at, and after trial? Is there any standard of law to which the court-martial procedure must conform? Is there a single provision for the legal ascertainment of errors and the correction of them? None. All this is committed not to law but to the power of military command. The power of military command determines whether or not there is reasonable ground to believe that the offense has been committed and that the accused committed it. Military power determines whether there is a prima facie case. Military power selects the judges. Military power selects such counsel as the accused may have. Military power determines the legal sufficiency of the charge. Military power determines the kind and competency and sufficiency of proof. Military power passes finally upon every question of law that can arise in the progress of the trial. And military power finally passes upon the legality of the judgment and the entire proceedings. This is one code, criminal in character, that does not recognize principles of law and does not contemplate the services of a single man skilled in the law. Thus there is no standard by which error may be determined except the view of the commanding general. Whatever he determines is right is right, and whatever he determines is wrong is wrong, by virtue of his determination alone. Under such a system, of course, there can be no such thing as error of law; there can only be a variation from whatever the commanding general believes to be right. And from his decision there is no appeal. There is no power on earth to review his decision with authority to say that it is wrong as a matter of law.

And should not a criminal code define the offenses and prescribe the penalties, if it is worthy of the name of law? Look at the code. There are 29 punitive articles. Not one of them defines any offense. The definition is to be found in the common law military, or what military men conceive to be the customs of the service. Not one of them prescribes the penalty.

The court-martial is authorized to award any punishment it pleases. Twenty-nine of these articles conclude by each declaring that the offense punishable therein shall be punished "as the court-martial may direct," which means any punishment less than death. Eleven of them authorize any punishment "that a court-martial may direct, including death," and two of them mandatorily prescribe death. Why should there not have been shocking punishments, shocking both because of their harshness and because of their senseless variations, when courts-martial have unlimited authority to punish as they please? I myself can not conceive that lawyers believe in such delegations of legislative power, either on principle or as a matter of policy. True it is that in times of peace Congress has authorized the President, if he sees fit, to prescribe certain maximum punishments, thus limiting the discretion of courts-martial. This is, nevertheless, an unwise if not an unlawful delegation, inasmuch as a matter of practical administration the military authorities, and not the President, prescribe such limits. Its only effect is to transfer the unlimited power of prescribing the punishment from the several courts-martial to a single military authority of the War Department. It is equally an abdication by Congress itself to prescribe the offense and the punishment.

Does the code contemplate the participation of a single lawyer? Of course lawyers are used in the system. During this war we had a large corps of judge advocates. But they are without authority. They were upon the staff of the commanding general, and like all other staff officers are to do his bidding and be governed by him. No distinction is made between the legal staff and the purely military or administrative staff. It is presumed that the commanding general is as competent in the field of law as he is in the field of tactics, and as a general rule the word of his legal staff officer means little to him. The authority is the authority of the commanding general. Congress has conferred it upon him, and we may expect a military man, of all men, to exercise it. Lawyers are like other ordinary human beings. They are dependent upon the commanding general for advancement and recognition and professional success in the Army. Having no power and authority of his own, a lawyer may not be expected to do other than support the view of his commanding general as best he can, whether right or wrong. Indeed, that he should do so is one of the tenets of the military profession. There is but one will—that is the will of the commanding general. I have seen lawyers placed in this position abase themselves in the face of military authority to the point where one would incline to doubt whether they had not abandoned their professional principles altogether. A member of

the Board of Review appearing before the committee of the American Bar Association recently made the following statement:

While in many cases the trials of enlisted men are not so elaborate as the trials of officers, and in many cases the rules of evidence are not observed and counsel is obviously inadequate, while in a considerable percentage of cases we find that the decision is not sustained by the fact, still I do not recall a single case in which morally we were not convinced that the accused was guilty.

And in this statement other judge advocates concurred. Verily they have received their reward. Such a statement shows to what extent subjection to the power of military command deflects legal judgments, imposes itself upon professional appreciations, and obscures those first principles which are normally regarded as the foundation stones of the temple of justice. The last man in the world to be expected to prefer his personal impression of moral guilt to guilt duly adjudged, his own judgment to the judgment of a court of law, should be the lawyer. Think a moment what it means for a lawyer sitting in a judicial capacity to say:

We find the soldier has not been well tried; we find that the rules of evidence were transgressed in his case; we find that he had not the substantial assistance of counsel; we even find that the decision was not sustained by the facts of record; yet we are morally convinced that the accused was guilty, so let him be punished.

That means something worse than injustice to the accused; that is the argument of the mob; that is the road to anarchy. I myself prefer the statement made by Warren, in answering the same contention in the British Army nearly 90 years ago:

It concerns the safety of all citizens alike that legal guilt should be made the sole condition for legal punishment; for legal guilt rightly understood is nothing but moral guilt ascertained according to those rules of trial which experience and regulation have combined to suggest for the security of the State at large. * * * They (these fundamental principles of our law) have, nevertheless, been lost sight of and with a disastrous effect by the military authorities conducting and supporting the validity of the proceedings about to be brought before your majesty.

And the chief of all judge advocates, the Judge Advocate General himself, is also subject to this military power at its very height. He himself has not one particle of authority; he also may advise and recommend to the Chief of Staff, the highest exponent of military authority. By statute the Judge Advocate General is placed under the "supervision" of the Chief of Staff; by the statute also the Judge Advocate General will hold office for a term of four years unless sooner relieved or unless reappointed. He is subject to the supervision, power, and control of the Chief of Staff just as is the chief of the department that issues the rations, supplies, and matériel, or makes a military plan. His retention of office depends upon the approving judgment of the Chief of Staff. Such a man can not be independent, and in the end must be influenced by what the military authorities would have him do. That this is so is observable daily.

From top to bottom the administration of military justice is not governed by the rigid limitations of the code, but by the rigid powers of military command.

It is to be noted that throughout his defense the Judge Advocate General claims that the punishments have been comparatively light, since the code imposed no limit. The code should limit punishment. The difficulty is it does not.

(2) He contends that the code is modern and enlightened.

He admits that prior to his "revision" of 1916, it was the British code of 1774, and I say that his "revision" did not revise, and that we still have the British code of 1774, itself of even more ancient origin. The best proof that our present articles are organically the British articles of 1774 is to be found by comparing the two. The next best evidence is to be had out of the mouths of the highest officials who proposed the so-called revision of 1916, now relied upon as a complete modernization of the old British code. The British code was adopted under the exigency of the Revolution, and John Adams, the chief instrument in securing the adoption, attributed his surprising success to that emergent situation. There were few minor changes made during the Revolution, and up to the so-called code of 1806. In his statement to the Military Committee, the Judge Advocate General on May 14, 1912, said:

As our code existed, it was substantially the same as the code of 1806.

And he also showed that the code of 1806 was substantially the code of 1774. Of this code of 1806, he said:

The 1806 code was a reenactment of the articles in force during the Revolutionary War period, with only such modifications as were necessary to adapt them to the Constitution of the United States.

The modifications that were deemed necessary were simply such modifications as were necessary to make the articles fit into the mere machinery of our Government, and introduced the requisite terminology therefor. Speaking of his so-called revision of 1916, the Judge Advocate General said:

It is thus accurate to say that during the long interval between 1806 and 1912—106 years—our military code has undergone no change except that which has been accomplished by piecemeal amendment. Of the 101 articles which made up the code of 1806, 87 survive in the present code unchanged, and most of the remainder without substantial change. Meanwhile, the British articles from which, as we have seen, these articles were largely taken, has been, mainly through the medium of the army annual act, revised almost out of recognition, indicating that the Government with which it originated has recognized its inadaptability to modern service conditions.

The so-called revision of 1916 was only a verbal one and not an organic revision. This a comparison with the code as it previously existed will demonstrate. The proponents of the revision themselves so stated; they did not contemplate the making of a single fundamental change. This was clearly shown in the letter of the Secretary of War to the Committee on Military Affairs under date of May 18, 1912, and it is equally clearly shown by the letter of the Judge Advocate General submitting the project, in which he described "the more important changes sought to be made" as those of "arrangement and classification." Nobody, either the Judge Advocate General, the Secretary of War, or either committee of Congress, has ever regarded the project of 1916 as a substantial revision. The Judge Advocate General took occasion to deny that it was anything but a restatement of existing law for the sake of convenience and clarity. He himself pledged the committee—

If Congress enacts this revision, the service will not be cognizant of any material changes in the procedure, and courts will function much the same as heretofore.

Such revision as was made made the structure rest even more firmly upon the principles that courts-martial are absolutely subject to the power of military command.

(3) He contends that the commanding officer may not put a man on trial without a preliminary hearing into the probability of the charge.

Notice, he does not say the code requires such hearing, but that regulations and orders of the War Department do. Therein lies the deficiency. Law is a rule established by a common superior, and as between the man to be tried and the officer ordering his trial such a regulation is not law. It establishes no right. Its only sanction is in the authority that issued it. It may be inadequate, ignored, disobeyed, modified, revoked, or its violation waived without involving the rights of the man to be tried. As a matter of fact well known in the Army, such preliminary investigation as is prescribed is as a rule perfunctorily made. It must not be presumed to be very thorough when 96 per cent of all charges drawn are ordered for trial. The failure to provide for an investigation whereby it shall be legally determined that there is a prima facie case is at the origin of the great number of trials and is therefore the source of much of the injustice.

Any officer can prefer charges against any enlisted man by virtue of his official status alone. The Judge Advocate General says that the Army follows the Anglo-American system of filing an information by a prosecuting officer. Of course not. Any officer may prefer charges. He acts under no special requirement or sense of obligation. The Judge Advocate General naively says that "this protection is invariable." Would you call it a protection if every man under the sun standing one degree above you in wealth or social position or official position had the power to indict you or inform against you and subject you to a criminal trial? Would you agree that even every civil officer in the land should have such a power over a civilian? And yet, every Army officer has that power by virtue of his office alone.

(4) He insists that there have not been too many trials; indeed, that there have been comparatively few.

He admits that in the year preceding the armistice there were 28,000 general courts-martial and 340,000 inferior courts. He uses 4,000,000 as the size of the Army during the period, whereas the average for the period was, of course, less than 2,000,000. Applying the ratio of Army trials to the population of the United States, you would have 1,500,000 felonies and 19,000,000 misdemeanors tried annually. Comparison will also show that we tried seven times as many men per thousand per year as either France or England. He takes great consolation in the fact that the percentage of trials was smaller in the war Army than in the old Regular Army. That is true, but a cause for shame, not consolation. The system as applied to the Army in peace was intolerable. General courts-martial in the Regular Army averaged six per hundred men per annum. Applying the Regular Army ratio of trials to the National Army, the result would have been for the year mentioned 120,000 general courts-martial

and 1,500,000 inferior courts-martial, surely a number that would have destroyed any army.

The Judge Advocate General and the War Department now say that the injustices revealed during the war have been due largely to the new officer. Quite the contrary. The records show that the new officer, bringing into the Army his civilian sense of justice, has preferred and ordered fewer courts-martial than the regular. It must be remembered also that the old experienced Regular Army officers have been the officers with the authority to convene general courts-martial and approve the punishments awarded by them. They are therefore responsible.

In any event, inasmuch as our wars are to be fought by citizen soldiers, no system ought to be maintained that must inevitably result in injustice by reason of the inexperience of the men.

(5) He contends that our officers are sufficiently grounded in the law to be military judges.

This, again, is a matter of standards. It may be informative to point out the inconsistency between the statement that the new officers are responsible for the deficiencies of the administration of military justice developed during the war and the contention that they are competent military judges. Of course, they are not competent as judges. A case before a court-martial involves the entire criminal law. Courts-martial are judge as well as jury. His regard for the judicial requisites can be properly appreciated in view of his argument that the study of the brief course in the elements of law at West Point or of the course, by the new officers, in the three months' training camp is sufficient "to insure an acquaintance with the law by the members of a court-martial."

In any event, he says, the deficiencies of the trial court will find their corrective supplement in the reviewing judge advocate—one system of legal mechanics that stands the pyramid on its pinnacle.

(6) He contends that the judge advocate does not combine the incompatible function of prosecutor, adviser of the court, and defender of the accused.

The law and universal practice are otherwise. The judge advocate shall prosecute in the name of the United States (art. 17). If accused is not represented, the judge advocate shall, throughout the proceedings, advise him of his legal rights (art. 17). This is defined to be the substantial duty of counsel (par. 96, M. C. M.). The judge advocate is the legal adviser of the court (par. 99, M. C. M.). There are cases in which a single officer set a trap for the accused, was the prosecuting witness, was appointed judge advocate to prosecute the case, and, besides, was also specially detailed as counsel for the accused, and performed all functions. For such an instance, see case of Pvt. Claud Bates, in which, when I pointed out these inconsistencies, the commanding general complained I was "trying to break up our court-martial system."

(7) He resents the criticism that second lieutenants, knowing nothing of law and less of court-martial procedure, are assigned to the defense of enlisted men charged with capital or other serious offenses.

He admits, however, that in an examination of 20 cases a lieutenant appeared as counsel in 13 of them. I can go further and say that in an examination of 5,000 cases lieutenants of but few months' experience appeared in 3,871, or 77 per cent of them. This was perfectly natural; under the system of administration the duty of counsel is an irksome one, imposed upon those who have not enough rank and standing to avoid it. He also contends that all officers are properly equipped to perform the duties of counsel, by reason of the fact, already stated, "that graduates of every training camp have studied and passed an examination upon the Manual for Courts-Martial, and therefore the above criticism is upon its face unfounded." He also finds that after officers of rank and experience have been assigned as members of the court and as judge advocate it is not feasible to find legally qualified officers to act as counsel. "No one," he says, "who has any acquaintance at all with conditions in the theater of war would suppose for a moment that this is practicable." He then dismisses the whole subject by saying that, no matter how incompetent is counsel, he finds in the scrutiny subsequently given the cases "the most satisfactory assurance that such deficiencies as may from time to time occur through the inexperience of officers assigned for the defense have been adequately cured." It might be remarked that it is a rather sad criticism of any judicial system that it regards military rank as the main assurance of efficiency.

(8) He is inclined to resist the view that improvident pleas of guilty are received from those charged with capital crimes.

He says the percentage of such pleas is a small one; and so it should be hoped, although such pleas are known to be surprisingly frequent. As an argument to offset the inference of resultant injustice, he relies upon "the common instincts of fairness and justice of the officers taken recently from civilian life to sit upon the courts as judges." It is interesting to note that shortly before this, in a public address before the bar of Chicago, the Judge Advocate General attributed the harshness of the system to the inexperience of the new officers, as follows:

> Undoubtedly there are things wrong with the administration of military justice. We have brought over 100,000 officers into the Military Establishment of the United States within the brief space of a year. Their commissions are their credentials to sit in the courts and administer justice, and it would be strange, indeed, if there were not a number of cases in which a disproportionate punishment is given.

(9) He admits that commanding generals return acquittals to the courts with directions to reconsider them.

He thinks, however, that "the very object of this institution is to secure the due application of the law," and he adds: "My own experience in the field can recall more than one case in which the verdict of acquittal was notoriously unsound, and in which the action of the commanding general in returning the case furnished a needed opportunity for doing full justice in the case." He finds "that this power is a useful one, and that it is not in fact in any appreciable number of cases so exercised as to amount to abuse of the commanding general's military prestige." He finds that out of 1,000 cases there are only 95 acquittals, anyway, and he says:

> Of these 95 acquittals 39 were returned only for formal correction; of the remaining 56 the court adhered to its original judgment in 38 cases, and in only 18 cases was the judgment of acquittal revoked upon reconsideration and the accused found guilty of any offense.

Though of every 95 acquittals 18 are changed into convictions by the direction of the commanding general, this he considers negligible. This leaves only 77 acquittals out of a thousand tried. Out of deference to unreasonable public opinion, however, he would recommend a change to accord with "the British practice," which he regards as the limit of liberality.

(10) He contends that under all the circumstances the sentences imposed by courts-martial are not, as a rule, excessively severe.

He indicates clearly that we would have profited by "keeping in mind the solemn and terrible warning recorded expressly for our benefit by Brig. Gen. Oakes," in the Civil War, that the inexorable attitude of shooting all deserters would prove merciful in the end, and argues that inasmuch as we did not adopt that policy we should not be "reproached for severity." Dealing with the offense of absence without leave, he would have us believe that "this offense is in many cases virtually the offense of an actual desertion," whereas exactly the opposite is true. The records will show that absence without leave is more frequently than otherwise charged as desertion, since in cases of "doubt" the higher offense is always charged; besides, several commanding officers ordered that all absences even for a few days be charged and tried as desertion. There has been no greater source of injustice than the indiscriminate treatment of absence without leave as desertion and the procurement of convictions accordingly. Along the same line the Judge Advocate General argues that disobedience of orders is always to be punished most severely without regard to the kind or materiality of the order, and he asserts that the disintegration of the Russian Army was due not to age-long tyranny or oppression or reaction, or any other like cause, but entirely to a failure to treat "disobedience in small things and great alike."

Finally, however, after much argument, he concedes that these sentences were long, but justifies them on the ground that "the code prescribes no minimum" and on the further ground "that probably none of these officers (who pronounce sentences) supposed for a moment that these long terms would actually be served"; and he reminds us that there has already been a 90 per cent reduction. He ignores the fact that whether such sentences were or were not intended to be served, they greatly outraged justice. If intended to be served, they abused justice; if not so intended, they mocked it. He says "nobody intended they should be served," which, as one writer has recently put it, is "like hanging up a scarecrow to frighten the birds, that does not scare them as soon as they learn that it is a sham, and then use it to rest on."

(12) He admits that the sentences of courts-martial are very variable for the same offense.

He delights in the fact, however, that "this very matter of variation in sentences is one of the triumphs of modern criminal law," and finds virtue in a situation that gives courts-martial "full play for the adaptation of the sentences to the individual case." A court should have sufficient latitude to make the sentence fit the offense, but I had not supposed that this "modern triumph" would authorize any court—not even a court-martial possessing the virtue of being untrained, unlettered, and unskilled in the administration of justice—to punish an offense.

however trivial, "as it may direct," with life imprisonment or death, if it pleases.

(13) He denies that the Judge Advocate General's office partakes in the attitude of severity.

His defense speaks rather loudly for itself. I must be permitted to say this: Every organ of that office designed to secure correctness of court-martial procedure or moderation of sentences—which now he calls so effectively to his aid—was instituted by me and by me alone. Without any authority from or help of the War Department or of the Judge Advocate General I organized the several divisions of the office; the board of review and the first and second divisions thereof; and the clemency board; and it was my effort, taken in his absence, that showed the necessity for the special clemency board, which, though restricted in every covert way by the department and the office of the Judge Advocate General, has done so much recently to reduce sentences. The Judge Advocate General's attitude has been one of absolute reaction. He has not approved of such organization; he has not approved of my efforts to secure correctness of court-martial judgments or moderation of them. Twice have I been relieved by him from all participation in matters of military justice and superseded by officers who shared his views. He says:

On the 20th of January you (the Secretary) approved a recommendation of mine, dated January 18, opposing the institution of a system of review for the purpose of equalizing punishment through recommendations for clemency.

He does not say, however, that this was done at my insistence, not his; that when he returned to the office last January he published a written office order relieving me from all connection with administration of military justice.

He does not say that on or about January 8 I went to him and urged that something be done to modify courts-martial sentences, and that he declined to take any action, as "to do so would impeach the military judicial machinery."

He does not say that while he was absent from the office a few days thereafter I filed with the Secretary of War a memorandum, dated January 11, 1919, in which I depicted the shocking severity of courts-martial sentences, and that I was driven to take advantage of Gen. Crowder's absence to bring this to the attention of the Secretary of War. He does not point out that he had me demoted because I did not share his views upon the subject of military justice and had me superseded by an officer who did. He does not point out that notwithstanding he kept me as president of the clemency board, as an assurance to the public that clemency would be granted, he "packed" that board with the officer who wrote this defense of the Judge Advocate General, the chief propagandist for the maintenance of the system, and with other friends of his who shared his reactionary views. He does not point out that the clemency board was given no jurisdiction to recommend clemency for the prisoners in France, since "the people at home were not so interested in the men who had committed offenses in the theater of operations"; that is, the prisoners in France were not in a position to become politically articulate or embarrasing to the department. He does not point out that the dissolution of the clemency board had been determined upon, and I had been notified accordingly, without its having passed upon any of the cases in France, and that those cases were not taken up until recently, and would never have been taken up, except for my written official insistence. He does not point out that a special board of review, composed of men sharing his own views, was constituted, with the sole function of reexamining and revising all findings made by the clemency board wherever clemency was to be based on inadequate trial.

(14) He contends that the action taken in the Judge Advocate General's office has been effectual for justice.

He reaches this conclusion on the ground that seldom or never is the Judge Advocate General's office overruled. Of course, so long as the Judge Advocate General of the Army does what the military authorities want him to do he will not be overruled. When the Judge Advocate General of the Army does, as he did in the death cases from France and as he habitually does, seek an agreement with the Chief of Staff as to what his decision ought to be, when he regards himself not as a judge but as an advocate to uphold the hands of the military authorities, he is not likely to be overruled. I as Acting Judge Advocate General was overruled. I was told by the highest military authorities, in a certain case in which a half score of men were sentenced to be hanged, and in which the military authorities insisted on the execution, notwithstanding the fact that they had not been lawfully tried, that I was disqualifying myself ever to be Judge Advocate General by my insistence upon their rights. Through my insistence, however, these men were not hanged.

You can not expect the Judge Advocate General of the Army to be a judicial officer when the law does not make him one. He himself is subject to the power of military command. By section 4, act of February 14, 1903 (32 Stat., 831), the Judge Advocate General is placed under the "supervision" of the Chief of Staff in the same way that the Subsistence, Quartermaster, Engineer, Medical, Ordnance, and other departments are. He is appointed for four years, he may be relieved if he incurs the displeasure of the department, and he will not be reappointed except with the recommendation and approval of the department. He holds his office, in effect, at the will of the Chief of Staff, under whose supervision he is. If the highest law officer of the Army is subject to such military "supervision," how much more effective must the same "supervision" be over the subordinate officers of the Judge Advocate General's department assigned to the staff of a military commander?

HIS REMEDIES.

The Judge Advocate General now says he favors vesting the President with power to review courts-martial judgments for errors of law, and therefore recommends the enactment of the bill submitted by him last year—section 3692, H. R. 9164. Please look at that bill. If enacted it would (a) effectually place the power in the hands of the Chief of Staff, the head of the military hierarchy; (b) authorize the reversal of an acquittal; (c) authorize increasing the punishment; (d) authorize increasing the degree of guilt determined by the court.

The truth is, the Judge Advocate General does not believe in revisory power. He has ever insisted that military law is the kind of law that "finds its fittest field of application in the camp," and that such revision would militate against the requisite promptness of punishment. He has not acted in good faith. In correspondence with the senior officer of his department on duty with Gen. Pershing's staff, shortly after his submission of the above bill, he expressed his real views and purposes. In that letter, of April 5, he said something had to be done to head off a "threatened congressional investigation," "to silence criticism," "to prevent talk about the establishment of courts of appeal," and "prove that an accused does get some kind of revision of his proceedings other than the revision at field headquarters."

The other remedies proposed, consisting of a few more orders and changes of the manual and empowering the department to prescribe maximum limits of punishment in peace and war, I deemed unworthy of comment.

The Judge Advocate General assumes that he has reached the limit of liberality when he approaches in a few respects what he conceives to be the British system, not appreciating that, though that system is far more liberal than our own, it, too, has become the subject of criticism throughout Britain. The British Government has appointed a committee of inquiry of civilian barristers to examine "the whole system under which justice is administered in the Army." Differing from our own War Department, that Government gives evidence of a desire to know the facts and to find a remedy.

HIS CRITICISMS OF MY PERSONAL CONDUCT.

1. He claims that my efforts to establish a revisory power within the department through the office opinion of November 10 to that end was without his knowledge.

Assuming this to be true, it was well known in the department at that time that he had authorized me to manage the office in my own way and without further reference to him, except for certain appointments having political significance. But, as I heretofore said to the Secretary of War in the paper published in the New York Times, I did take occasion to consult Gen. Crowder upon the subject, and he replied:

I approve heartily of your effort. Go ahead and put it over. I suspect, however, that you may have some difficulty with the military men arising out of article 37.

I knew of no change of attitude in him until I was advised shortly thereafter that he had prepared a brief in opposition, and two or three days later he resumed charge of the office and filed the brief. When I found this to be so, I went to Gen. Crowder and accosted him about his change of attitude. In explanation thereof he said:

Ansell, I had to go back on you. I am sorry, but it was necessary to do it in order to save my official reputation.

He then added that he was nearing the end of his service; that he could not afford to be held responsible for the injustice that had gone on, if the existing law could be construed to have prevented it, and adverted to the fact that fixing such responsibility upon him would injure his career in this war. He then told me that the Secretary of War held him personally responsible and had "upbraided" him at the Army and Navy Club for sitting by and permitting this injustice to go uncor-

rected. The general then said that, humiliated at such imputation, he had gone back to the Provost Marshal General's office and consulted some of his friends there and they decided that it was necessary for his self-protection to oppose the opinion the office had prepared, and that two of the officers there helped him prepare the countermemorandum.

2. He says that I surreptitiously obtained an order appointing me as Acting Judge Advocate General in his absence.

Please look at his defense, pages 54 and 55. He admits that he said:

It will be entirely agreeable to me to have you take up directly and in your own way with the Secretary of War the subject matter of your letter of yesterday.

I did take it up in a formal memorandum addressed to the Chief of Staff, the channel of communication prescribed by orders. I never spoke to the Chief of Staff on the subject, and never endeavored in any way to obtain favorable action upon the memorandum. I let it takes its course. Under 1132, Revised Statutes, it was necessary that I be designated as Acting Judge Advocate General if I was to be charged with the policies and responsibilities of the office. Otherwise the policies and responsibilities were Gen. Crowder's, who was not in a position to assume them. In furtherance of his ambitions he held three and sometimes four positions during this war, and he was in no position to perform the duties of Judge Advocate General or prescribe the policies of that office. Therein lies the difficulty. I was held responsible for the output, but for means and power was kept dependent upon an officer who was absent, absorbed in other tasks, and who differed with me on the policy of military justice.

The general bases his charge of surreptition solely on the ground that his approval of my designation as Acting Judge Advocate General was conditioned upon my taking it up "directly" with the Secretary of War. I had assumed that his language was frank and candid and not governed by the quibbling construction he now places upon it.

His other charge of surreptitious method is likewise based solely upon the fact that I made a recommendation on the subject of military justice in France to the Chief of Staff in a written memorandum which spoke for itself and which was never supplemented by any word or action of mine in support of it to secure favorable action. It is quibbling to say, as he does say (p. 58), that my statement to the effect that the commanding general of the American Expeditionary Forces was opposing means for a better supervision of military justice was untrue for the reason that the opposition was officially voiced to the department not by Gen. Pershing in person, but by his senior judge advocate and staff officer, Gen. Bethel; the staff officer, of course, representing the views of his chief.

3. He says that I myself had at first approved the death penalty in the cases from France. If I had done so, the record would show it. The record is to the contrary. Neither is it to be expected that I should have once approved them and then have written a strong memorandum against approval without reference to my former position. The truth is, at the time the cases were being studied by Gen. Crowder, so far as he did study them, and his assistants, I was away from the office in Canada. Col. Mayes, senior officer in my absence, has recently called my attention to this fact and informs me further that he has recently testified before the Inspector General that he had looked over the cases, but that I had not.

CONCLUSION.

The War Department has indeed undertaken to maintain this vicious system at all costs and by methods which reveal the weakness of both the system and the department.

Very truly, yours,

S. T. ANSELL.

Mr. CHAMBERLAIN. Mr. President, my reason for having the foregoing letter printed in the RECORD is that the country may have the views of Gen. Ansell on the subject of military justice, with which many lawyers agree, in opposition to the views of the Judge Advocate General. While he was in the Army and connected with the office of the Judge Advocate General his lips were sealed and he could only speak by permission of his superior officers, who differed from him, although he was himself for a while Acting Judge Advocate General of the Army. That permission was refused him. Gen. Ansell is himself a graduate of West Point, a distinguished lawyer, as well as a patriotic and gallant soldier. He is a man who has been able to see the humane and the civilian side of these controversies and has fearlessly done all in his power to correct a vicious system of the administration of military justice and to alleviate the punishments which that system has inflicted upon the young men of America who sacrificed all for the protection of their country and the preservation of civilization. His reward for the efforts he has made along these lines has been in practical effect demotion by those in authority, although such men are badly needed to tell the truth in order that a vicious system may be corrected. He voluntarily resigned from the Army, Mr. President, and he can now address himself to the American people in any way he sees fit in order to correct abuses which he knows exist and which all are now beginning to understand have been in vogue during the whole of the World War.

HIGH COST OF LIVING.

Mr. WALSH of Massachusetts. Mr. President, I should like to discuss very briefly a phase of the high cost of living which I believe has not been touched upon in this body.

The remarks of the Senator from Tennessee [Mr. MCKELLAR] the other day impressed me very forcibly when he asked for action. I sometimes think we do not appreciate the depth of feeling in America to-day on this question. On a visit recently to my home State I was met with one inquiry at every turn. It was not, "What are you going to do with the league of nations?" It was not, "When are you going to ratify the treaty?" It was, "What are you going to do in Congress about the high cost of living?" It is the main cause of all the unrest, of all the discontent, of all the strikes, of all the business uncertainty in this country to-day. It is more than that; it is causing distrust of our Government itself. It is giving force and strength to un-Americanisms. The people are asking themselves, "Have we a Government capable of grappling with a great problem like this and able to find a solution for it?" I appeal to the Senate to appreciate that the people want immediate action on this subject. The people of America expect us to meet this problem and to find a solution.

Extracts from two letters among many that have come to me sound this note to which I have tried to give expression; one, from the pastor of a Methodist church in the central part of Massachusetts, reads as follows:

Have we men in public life who are aware of the grievous wrong which has been done the public with regard to the price of necessary household commodities?

I am not a prophet, but this Nation is facing either a revolution or a revival of its moral and religious conscience. You are probably aware of the intense feeling there is in the hearts of laboring men to-day, and I hope God will most graciously sustain you and the other Members of Congress in this the most critical period our Nation has ever experienced. We do not want a soviet republic. We do want a continuation of the Republic which existed here up to about 1900.

The other reads:

We are living in a strenuous period economically, and the average man is not giving much thought to parties nor to platforms. Labor to-day is in the saddle, not only here in America but in Europe as well. Apparently the extreme demands that labor is making cause no surprise to the average student of conditions. * * * The present structure of society, with all that is good as well as bad, may disappear overnight if care is not taken. * * * Now, this tremendous sentiment of unrest is not going to abate; it is going to increase; and in the opinion of an humble, observing citizen, whether we like it or not, labor is going to get just about what it starts after, and that includes Government ownership of things like railroads, coal mines, etc., unless the Government deals effectively with the present evils.

Mr. President, the point I wish to emphasize to-day is that it is high time for action. Ten days have elapsed since the President publicly called this question to our attention. What have we done? What are we going to do? I ask these questions fully realizing that this is a very difficult and serious problem, but, nevertheless, its solution is the way to stop this wave of unrest; it is the way to insure the safety of the Government itself; it is the way to protect democracy in America. What can the Senate do? For after all we want practical suggestions. This Congress can at once restore confidence by showing that it is awake to the situation and proposes to act at once. One of these letters is from a clergyman, who complains about the high cost of living and of having received the same small salary for years; and this is largely true of all the salaried class. Telegrams are also pouring in from postal clerks and many other public employees. Policemen in the capital city of Massachusetts are threatening to strike. All this is due to what? It is because they can not, with their present wage, meet the present cost of living.

I ask again, what can we do? I suggest an answer. One thing we can do that would do more to restore confidence and reassure the people of this country would be an announcement in this Chamber and in the other branch of Congress that the steering committee of the Republican Party and the steering committee of the Democratic Party had met and jointly decided to seek an immediate solution. Joint, immediate, nonpartisan action is what the American people have a right to demand.

It seems to me that if such a course were taken and agreement reached that we would act harmoniously and speedily and construct some legislation it would do very much to restore confidence in our system of government and we would be doing

Congressional Record

PROCEEDINGS AND DEBATES

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The matter referred to is as follows:

AMHERST GRANGE, No. 16,
Amherst, Mass., September 5, 1919.

At its regular meeting, September 5, Amherst Grange, No. 16, passed the following resolution:

"*Resolved*, That we are in favor of a league of nations to conserve peace and the establishment of a court of arbitration and the establishment of an international police force under such rules and regulations as the peace envoys shall determine.

H. M. THOMSON,
LORIN A. SHAW,
MRS. CARRIE HAWLEY,
Resolution Committee.
FRED KENTFIELD, *Master.*
RUTH S. RUDER, *Secretary.*

LOAN OF TENTS.

The PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the joint resolution (S. J. Res. 95) authorizing the Secretary of War to loan to the city of Atlanta, Ga., tents, cots, horses, and saddle equipments for the use of United Confederate Veterans in their convention from October 7 to 10, 1919, which was to amend the title to read as follows: "Joint resolution authorizing the Secretary of War to loan to the city of Atlanta, Ga., tents, cots, blankets, and other camp equipment for the use of United Confederate Veterans in their convention from October 7 to 10, 1919."

Mr. SMITH of Georgia. I move that the Senate concur in the amendment of the House.

The motion was agreed to.

BILLS OF EXCHANGE.

The PRESIDENT pro tempore. Morning business is closed.

Mr. SMITH of Georgia. I ask unanimous consent that the Senate proceed to the consideration of House bill 7478, being the bill which we had before the Senate on Friday and which went over then with the understanding of those present that it should be taken up this morning.

The PRESIDENT pro tempore. Is there objection?

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 7478) to amend section 5200 of the Revised Statutes of the United States as amended by acts of June 22, 1906, and September 24, 1918.

MILITARY JUSTICE.

Mr. CHAMBERLAIN. Mr. President, I desire to make a few observations in answer to a communication or rather to one of the syndicated articles of ex-President Taft which appears in the Washington Post this morning, and which, I assume, likewise appears in many other publications throughout the country. The heading of the article in question is as follows:

Taft defends courts-martial and opposes Chamberlain plan for a review by a civil tribunal—Declares administration of military justice has been vindicated—Errors few in number—Army must control trial to insure discipline or it will become a "mob."

Strange, Mr. President, as it may seem, in the very next column of the Post of this morning, paralleling Mr. Taft's, is an article prepared by a distinguished Member of Congress, Maj. ROYAL C. JOHNSON, now in Paris. He was an officer in the American Expeditionary Force, made a splendid record, and gave a good account of himself. The article is as follows:

BRUTAL TO A. E. F. MEN—PARIS PRISON OFFICIALS ACCUSED BY CHAIRMAN JOHNSON—BLAMES COL. E. P. GRINSTEAD—FINDS NO REASON FOR REDUCING "HARD-BOILED" SMITH'S SENTENCE—SOUTH DAKOTA REPRESENTATIVE SAYS MEDICAL OFFICER FOUND GUILTY OF MOST BRUTAL TREATMENT WAS RESTORED TO DUTY BY ORDER OF GENERAL HEADQUARTERS—DISPOSITION TO CONDONE OUTRAGES, HE SAYS.

[By ROYAL C. JOHNSON, United States Representative from South Dakota and chairman of committee investigating War Department expenditures.]

PARIS, *September 14.*

The treatment of military prisoners in and around Paris during the summer and fall of 1918 was undoubtedly brutal in the extreme, and no punishment could be too severe for those responsible for the conditions.

Men were robbed, starved, beaten, and abused, and apparently no officer above the rank of first lieutenant has been held responsible. I am not prepared to say at this time where the responsibility lies, but Col. Winship, of the judge advocate's office, in his testimony, and Gen. Donaldson in his report, clearly and specifically state that, in their opinion, Col. Edgar P. Grinstead, of the One hundred and fifty-eighth Infantry, was not free from blame. He was tried before an efficiency board in France, the board apparently consisting of three reputable colonels, and cleared.

REJECTS BOARD'S FINDINGS.

Upon testimony produced before the committee this seems unbelievable, but the Judge Advocate General refused to accept the findings of the board and ordered Grinstead to be returned to the United States for immediate demobilization. Further investigation will be necessary to determine all the facts and the ultimate responsibility.

The outstanding feature of the present investigation is the fact that the general headquarters of the American Expeditionary Forces reduced sentences of "Hard-Boiled" Smith without any apparent reason for the action.

The testimony showed conclusively that the medical officer at prison farm No. 2 was guilty of most brutal treatment to prisoners, had refused them medical treatment, exposed the men to the most vicious forms of infection, and yet when he was tried and found guilty by general court-martial and sentenced to be dishonorably dismissed from service the general headquarters again stepped in and restored him to duty and allowed him again to resume charge of the lives of American soldiers. The responsibility for this action has not been definitely fixed.

HEARS REVOLTING TESTIMONY.

There is not an American, however, who could believe that an American of any type could commit the acts of brutality which numberless witnesses testified had been committed by this so-called physician. The testimony is so revolting that it can not be published, and I feel no hesitancy in stating that an outrage was committed when this particular individual was restored to duty as an officer in the American Army. Much wonderful work has been done by our doctors in the American Army, but one blot on the record should not be allowed to condemn the entire organization.

There have been officers in the American Army who seemed to desire to condone the acts of brutality committed in American military prisons. Maj. Bennett, of the Inspector General's Department, has submitted report after report showing the most brutal acts, but his recommendations have universally been that no action should be taken and that the cases be dropped. I believe that the committee will be able to submit a unanimous report as to the prison conditions in the American Expeditionary Forces.

That article is by the chairman of the subcommittee of the Committee on War Expenditures of the House of Representatives, who is over in France examining the charges of brutality and other charges which have been made from time to time against Army officials as affecting the enlisted personnel of the Army.

I do not intend at this time to address the Senate at any great length, Mr. President. I want to go into the subject later more fully than it is possible to do at this moment, and I merely wish to direct attention to some of the statements made by ex-President Taft in the article referred to. May I say that I am very fond of the ex-President, and in criticizing his position I do so without other than the most cordial good feeling and in the interest of substantial justice to our fighting men? One of his Republican friends, in a speech a few days ago, said that ex-President Taft has more friends in the United States than almost any other man, but fewer followers, and I do not know but that that is true. As one of my colleagues suggests as he passes me now, all respect him, but few follow him, which is another way of expressing the same sentiment. I am wondering how many followers he will have in his present contention.

Mr. President, from the reading of the article prepared by Mr. Taft it is evident that he has not given this subject any more than a one-sided consideration and has evidently read and relies upon the views expressed by the very department of the Government that has subjected itself to severe criticism. In it, amongst other things, he says:

In a letter under date of March 10, 1919, Gen. Crowder, at the invitation of the Secretary of War, took up the chief criticisms of Col. Ansell and his congressional supporters, and his suggestions for changes, and answered them. His letter is a very able document. It is a complete refutation of the attacks by statistical tables and a most overwhelming disclosure, by reference to the War Department records, of Col. Ansell's disingenuous methods, his inconsistency, and his lack of loyalty to his chief and generous friend. He makes it clear that the relieving of Col. Ansell from duty was due to his secret and devious course in securing the order of his appointment. The Crowder letter is a strong vindication of the administration of military justice in this war. When we consider the increase of our Army from less than 100,000 men to 4,000,000 and the necessity of adapting the machinery of justice to that enormous swelling of the number to be brought within military discipline, we may well feel satisfied with the results.

Mr. President, Mr. Taft may feel satisfied with the results, but I say to you without fear of contradiction that the American people are not satisfied with the results, nor is the Expeditionary Force nor the Army that remained in the United States satisfied with the results. He says further—and I am not going to read all of his article into the RECORD—that there were a very small number of errors committed by military tribunals in the war just closed. He continues:

Col. Ansell charged that the present system is an archaic one, with the abuses of centuries past. The truth is that the Articles of War were revised in 1916 by Congress, under the recommendations of Gen. Crowder, and were brought up to date after a full consideration of all the systems in vogue in all countries. Col. Ansell charged that courts-martial were completely under the control of the commanding generals and that they were in the habit of ignoring the action and recommendations of the Judge Advocate General as to errors and injustices in the record. Gen. Crowder shows that the percentage of cases in which the commanding generals failed to act upon the recommendations of the Judge Advocate General was so small as to be negligible.

I may say, parenthetically, that the reason they were so small as to be negligible was because they were not considered at all, many of them, by the office of the Judge Advocate General. Continuing:

Col. Ansell charged that the statute gave to the Judge Advocate General the right to revise and reverse the decision of the commanding general, but that the Secretary of War and Gen. Crowder refused so to construe the statute and to exercise the needed power. Gen.

Crowder shows that the statute had been held not to confer such power by the Judge Advocate Generals of the past, including Judge Advocate General Holt, and that this view had been sustained by the Federal court. He points out, moreover, that Col. Ansell's position in this regard, which Ansell seeks to have embodied in the new statute, would make the Judge Advocate General the supervisory officer of the action of the President, who created him and who is the Commander in Chief of the Army and Navy.

Mr. President, the Secretary of War about the 10th of March last published a letter in vindication of the present system; and although I requested that the other side of the controversy might be published at the same time and given the same publicity as the letter which he was issuing to the public, that opportunity was denied by the Secretary of War. I know that, because the Secretary of War was visiting some of the cantonments in the country in company with the Chief of Staff, and the subject was one of such great importance to the people of this country that I wired him myself and asked that Gen. Ansell's version of the matter might be submitted with the letter which the Secretary had given to the public. That request was refused. So ex-President Taft is making the same mistake, and he is giving the same one-sided statement and view of the subject, based entirely, I fear, upon the letter of Gen. Crowder.

Mr. President, Mr. Taft has permitted his generous friendship for the Judge Advocate General to lead him into great error. He has taken the statement of his friend without question or inquiry, thereby doing himself little credit and an innocent man gross wrong. It is unfortunate that he did not look at the record. The record neither shows nor suggests the slightest disingenuous conduct upon the part of Gen. Ansell. On the other hand, it shows that his conduct in these matters was characteristically frank and candid. So much, I regret, can not be said for others. Mr. Taft should have observed that Gen. Ansell could not have been relieved for any such reason as he assigns. The conduct of Gen. Ansell referred to was in November, 1917. He was kept on duty as Acting Judge Advocate General throughout the war, and at the end of the war received the highest honor that can come to a soldier—the distinguished-service medal, which was awarded him by the Secretary of War upon the recommendation of the Judge Advocate General. Nobody saw fit to call his conduct disingenuous until nearly two years afterwards, and not until he had criticized this system of military justice. Mr. Taft should have read the statement of Gen. Ansell, which the Secretary of War suppressed. It has since appeared in the CONGRESSIONAL RECORD, and in pertinent portion is as follows:

HIS (GEN. CROWDER'S) CRITICISMS OF MY PERSONAL CONDUCT.

1. He claims that my efforts to establish a revisory power within the department through the office opinion of November 10 to that end was without his knowledge.

Assuming this to be true, it was well known in the department at that time that he had authorized me to manage the office in my own way and without further reference to him, except for certain appointments having political significance. But, as I heretofore said to the Secretary of War in the paper published in the New York Times, I did take occasion to consult Gen. Crowder upon the subject, and he replied:

"I *approve heartily of your effort. Go ahead and put it over.* I suspect, however, that you may have some difficulty with the military men arising out of article 37."

I knew of no change of attitude in him until I was advised shortly thereafter that he had prepared a brief in opposition, and two or three days later he resumed charge of the office and filed the brief. When I found this to be so, I went to Gen. Crowder *and accosted him about his* change of attitude. In explanation thereof he said:

"Ansell, I had to go back on you. I am sorry, but it was necessary to do it in order to save my official reputation."

He then added that he was nearing the end of his service; that he could not afford to be held responsible for the injustice that had gone on, if the existing law *could be construed to have prevented it,* and adverted to the fact that fixing such responsibility upon him would injure his career in this war. He then told me that the Secretary of War held him personally responsible and had "upbraided" him at the Army and Navy Club for sitting by and permitting this injustice to go uncorrected. The general then said that, humiliated at such imputation, he had gone back *to the Provost Marshal General's office and consulted* some of his friends there, and they decided that it was necessary for his self-protection to oppose the opinion the office had prepared and that two of the officers there helped him prepare the counter memorandum.

2. He says that I surreptitiously obtained an order appointing me as Acting Judge Advocate General in his absence.

Please look at his *defense, pages 54 and 55. He admits that he said:*

"It will be entirely agreeable to me to have you take up directly and in your own way with the Secretary of War the subject matter of your letter of yesterday."

I did take it up in a formal memorandum addressed to the Chief of Staff, the channel of communication prescribed by orders. I never spoke to the Chief of Staff *on the subject* and never endeavored in any way to obtain favorable action upon the memorandum. I let it take its course. Under 1132 Revised Statutes it was necessary that I be designated as Acting Judge Advocate General if I was to be charged with the policies and responsibilities of the office. Otherwise, the policies and responsibilities were Gen. Crowder's, who was not in a position to assume them. In furtherance of his ambitions he held three and sometimes four positions during this war, and he was in no position to perform the duties of Judge Advocate General or prescribe the policies of that office. Therein lies the difficulty. I was held responsible for the output, but for means and power was kept dependent upon an officer who was absent, absorbed in other tasks, and who differed with me on the policy of military justice.

The general bases his charge of surreptition solely on the ground that his approval of my designation as Acting Judge Advocate General was conditioned upon my taking it up "directly" with the Secretary of War. I had assumed that his language was frank and candid and not governed by the quibbling construction he now places upon it.

His other charge of surreptitious method is likewise based solely upon the fact that I made a recommendation on the subject of military justice in France to the Chief of Staff in a written memorandum which spoke for itself and which was never supplemented by any word or action of mine in support of it to secure favorable action. It is quibbling to say, as he does say (p. 58), that my statement to the effect that the commanding general of the American Expeditionary Forces was opposing means for a better supervision of military justice was untrue for the reason that the opposition was officially voiced to the department not by Gen. Pershing in person, but by his senior judge advocate and staff officer, Gen. Bethel, the staff officer, of course, representing the views of his chief.

3. He says that I myself had at first approved the death penalty in the cases from France. If I had done so the record would show it. The record is to the contrary. Neither is it to be expected that I should have once approved them and then have written a strong memorandum against approval without reference to my former position. The truth is, at the time the cases were being studied by Gen. Crowder, so far as he did study them, and his assistants I was away from the office in Canada. Col. Mayes, senior officer in my absence, has recently called my attention to this fact and informs me further that he has recently testified before the Inspector General that he had looked over the cases, but that I had not.

The War Department has indeed undertaken to maintain this vicious system at all costs and by methods which reveal the weakness of both the system and the department.

If ex-President Taft will take up this controversy as a lawyer and as a judge—and I may say that I do not know why this article was given to the public at this particular time, when a subcommittee of the Military Affairs Committee of the Senate is investigating the whole subject—and read the evidence that has been offered, he will completely change his view. He has changed his views occasionally. I think he was in favor of the covenant of the league of nations as it was printed the first time, but later suggested some amendments to it. He was in favor of the covenant of the league of nations as published the second time, and later thought some amendments or reservations ought to be made to it. I am satisfied, Mr. President, that if he will only hear this matter impartially and know of the injustices that have been done to the American youth, he will change his mind and espouse the side of the controversy championed by Gen. Ansell and other distinguished lawyers, both civil and military.

Mr. President, the controversy is largely a legal one. Mr. Taft does not mention that. Section 1199 of the Revised Statutes provides:

The Judge Advocate General shall receive, revise, and cause to be recorded the proceedings of all courts-martial, courts of inquiry, and military commissions, and perform such other duties as have been performed heretofore by the Judge Advocate General of the Army.

It is the construction of that statute which makes the line of demarcation between the contention of the Judge Advocate General upon the one side and Gen. Ansell and those who agree with him upon the other, the Judge Advocate General and the War Department insisting that the power to revise does not give any power to do more than to suggest to the commanding officer, who has entire jurisdiction, a course which he ought to pursue, and that the Judge Advocate General, where the court below had jurisdiction and the proceedings were regular, has no other than this advisory power, while I insist, and many lawyers insist, and Gen. Ansell, who is a very distinguished officer and lawyer as well, insists that the power to revise gives to the Judge Advocate General not only an advisory power but the power to revise, modify if need be, and to change the judgment of the court below.

Mr. President, the revising power has not been exercised, with the result that innumerable cases have been tried before summary and general courts-martial, and terrible injustices have been perpetrated against the young men of the Army without any power of revision or modification or reversal lodged anywhere; and the only power asserted by the Judge Advocate General, and the War Department, through Mr. Baker, as well, is a power to examine these proceedings, which is sometimes done in a cursory way, and advise the commanding general as to whether or not the judgment ought to be approved.

In proof of that I am going to call attention to a few cases here, and to only a few. I am going to address myself to these and other cases in detail some time, and I will show the outrages that have been perpetrated against these men. This Army is not the ordinary peace-time Army, when many men who went into it went into it as professionals; men frequently who were out of a job, and who had in many cases no higher ambition than to live without very hard work; men who were used as roustabouts in the garrisons and camps, by the commanding officers as chauffeurs and gardeners and lawn keepers and stable keepers, and such things as that. The Army to-day is composed of the flower and chivalry of America. The millionaire and the laboring man, the man in the higher walks of social life and the man in the

humblest stations, are working in this Army side by side and shoulder to shoulder, without any distinctions of wealth or caste, or anything else. To say that these young men who have come from the factory and the farm shall be treated as criminals and as serfs is an outrage against American citizenship, and I propose at some future time to endeavor to show it up in such a way that I think even Mr. Taft may be induced to change his view.

Mr. Taft says that in the increase of the Army from less than 100,000 to 4,000,000 there were some injustices, but he does not say how many cases there were. It appears from authentic sources that there were 322,000 trials by inferior courts in the Army since this war began and up to the armistice, and over 22,000 general court-martial trials for the same period, and that the average general court-martial sentence of confinement alone, including the most trivial offenses, reaches the period of seven years. This excludes sentences of life imprisonment and of death.

Now, notwithstanding the assertion of ex-President Taft that there were few injustices, there were 28,000 aggregate years of sentence imposed upon 4,000 of those who were tried by general court-martial for the period named, and since the armistice this aggregate of sentences has been reduced from 28,000 years to 6,700 years, and the work is still progressing; and it is progressing because a courageous man like Gen. Ansell and some distinguished lawyers who did not hesitate to tell conditions in the War Department have been insisting, in season and out of season, that these outrages against American citizenship ought to be corrected. They are being corrected, but they are being corrected in a way that does not render complete justice. The young men against whom these injustices have been perpetrated, instead of being able to have a court of last resort pass upon their cases and say whether or not they were guilty in the first instance, are compelled to come to the President of the United States begging for clemency, and then are pardoned for crimes which they never would have been adjudged to have committed if their cases had been properly tried and reviewed.

Mr. President, Mr. Taft in his article blames Gen. Ansell for speaking of this system as an archaic system. It is archaic. As evidence of that, Mr. President, let me call attention to the fact that the Articles of War that we now have were the British articles of war of 1774. These articles of war had been in force since feudal days without very much, if any, change. They were in force at a time when the King was the commander of the army, and moved it as pawns on a chessboard at his sweet will and pleasure. The enlisted men of his army had no other rights than were permitted them by the bounty and generosity of the King himself. Those articles of war were adopted with little change by the Continental Congress, and it is a remarkable fact of authentic history that Adams and Jefferson themselves expressed wonder that the articles could have been adopted by the Continental Congress without having been critically examined and without any opposition. It was emergency legislation of the Revolutionary period, and we all know what that means.

Mr. HITCHCOCK. Mr. President, I ask the Senator to clarify a little the point he is making. Does he maintain that the present system results in unjust convictions or in excessive punishments?

Mr. CHAMBERLAIN. Both.

Mr. HITCHCOCK. As far as excessive punishments are concerned, the present method seems to have worked satisfactorily by reducing the excesses, according to the figures which the Senator gives, the sentences having been reduced from many thousand to a very few thousand. Am I correct in that?

Mr. CHAMBERLAIN. No; the Senator is not correct, and I will state why.

Mr. HITCHCOCK. I had the impression from conversations with Gen. Ansell that most of the abuse consisted in excessive punishments, and it seems to me that the figures given by the Senator indicate that that evil has been eliminated by the clemency board, as I understand it is called. If there is also an evil of unjust convictions, I have not understood it to be very great. I thought it was chiefly a question of excessive punishments. I thought that possibly the Senator could clarify that.

Mr. CHAMBERLAIN. I will try to do it. Suppose the Senator's son was a member of the American Expeditionary Forces, a volunteer, or a man drafted into the service, for they stand on the same footing. A charge is made against him, we will say, of sleeping on his post, and he is tried. He is not given an opportunity to call the necessary witnesses. The environment of this young man at the time of the commission of the crime is not taken into consideration, as it ought always to be. The evidence might have been wholly insufficient, and yet this young man, we will say the Senator's son, is convicted of a crime which involves death or imprisonment in the penitentiary. His case goes up to the commanding officer, who approves the sentence of the court. From that conviction there is absolutely no appeal anywhere, provided only that the court had jurisdiction and the proceedings were regular. The sufficiency and character of the evidence do not enter into it at all. If the court had jurisdiction and the trial was regular, this young man is sent to the penitentiary or ordered to be shot, and the Judge Advocate General has no power to revise the judgment. He can, under his view of the law, only advise the commanding officer, who can entirely ignore such advice.

Assuming that it was a case where a young man in a civil tribunal had been convicted in an inferior court. He has the right of appeal to the supreme court; the supreme court looks over the record and finds that improper evidence was admitted, or that prejudicial error was committed, or that there was irregularity in the trial that warranted a reversal; the case is reversed and goes back to the lower court, with possibly instructions to dismiss or for a retrial, it makes no difference which; but in any event the young man is not a convict in the eyes of the law until he is finally convicted by the court of last resort, and the stigma of conviction does not attach to him. He is not turned loose upon the world branded as a convict. Suppose the soldier, in the illustration I have taken, undertakes to appeal to the Judge Advocate General. The Judge Advocate General looks over the record and says, "The court had jurisdiction. There may have been improper evidence admitted or insufficient evidence to warrant conviction; there may have been prejudicial error or gross irregularities in the trial; the court did not go into the case as fully as it ought; and yet I have no power, the War Department has no power, to revise." The only power the Judge Advocate General has, under his construction of the law, is to send it back, with his advice, to the commanding officer.

Mr. NORRIS. Mr. President, will the Senator yield for a question?

Mr. CHAMBERLAIN. In just a moment I shall be glad to yield.

The difference between the two cases is here: In the case of the young soldier he is convicted and he has the stigma of a convict upon his brow which he can not get away from. The evidence before the subcommittee shows that that verdict follows that young man wherever he goes. He is pursued by the Army itself, and wherever he applies for employment, no matter where he goes in this country, he is always a convict; while in the other case the stigma of conviction does not attach. The young soldier is compelled to go to the President of the United States as a suppliant and ask for a pardon for a crime that he did not commit and to have restored to him the rights of citizenship. That is the difference.

Mr. LENROOT. Mr. President, if the Senator will yield, with reference to the query of the Senator from Nebraska [Mr. HITCHCOCK], as to whether the complaints or cases cited by Gen. Ansell were not almost wholly those of excessive punishments, the Senator from Oregon will remember that in every case, I think, that he brought before the subcommittee it involved prejudicial error in the admission of evidence or irregularity in procedure and not excessive punishments.

Mr. CHAMBERLAIN. Entirely so. It was admitted by the witnesses before our subcommittee, and some who sustain the present system, that the court-martial system is a system of terrorism. There is no question about that, is there, I will ask the Senator from Wisconsin?

Mr. LENROOT. I agree with the Senator.

Mr. CHAMBERLAIN. It is a system of terrorism rather than of doing justice to the individual.

Now I yield to the Senator from Nebraska.

Mr. NORRIS. It may be that the Senator will bring out what I want to ask him, but from some of my information and conversations, not only with Gen. Ansell but other officers in the Army, I formed the conclusion, and I wanted to know from the Senator whether there is any justification for it, that one of the great wrongs perpetrated is just what the Senator has referred to, that the young man, a private, let us say, is arrested for some charge, and whether he is innocent or guilty all agree that he ought to have a fair trial; the man selected as his attorney is selected by the same official who selects the prosecutor—the commanding general—and invariably, if it is a private soldier, it is the lowest commissioned officer who is selected. He is not selected because he is, in fact, an attorney. He may know nothing about legal procedure or nothing about procedure before a court-martial. One of the evils, as I understood it, is that all the men, not only the members of the court but the prosecuting officer as well as the attorney for the defense, are selected by the man who makes the charge

in reality, and from whom every one of these officials, if they get a promotion, must secure it. Is that right?

Mr. CHAMBERLAIN. Absolutely.

Mr. NORRIS. Of course, that surrounds the young man with an air of injustice to begin with.

Mr. CHAMBERLAIN. There is no question about that. The commanding officer appoints the court, he appoints the prosecutor, he appoints the counsel for the defendant, he decides upon the admissibility of evidence, he approves or disapproves the sentence when it is rendered. He either says, "I disapprove the sentence because you have not punished him enough," or "I disapprove the sentence because you have punished him too much." So the commanding officer has charge of the whole business from beginning to finish. The cases are not infrequent where the commanding officer disapproves of the sentence because the man was not punished severely enough or not punished at all. He orders the court to reconvene and retry the man and convict him of a higher crime, with a severer punishment.

Mr. NORRIS. Is it not a fact that in that kind of a trial all the persons connected with the trial, both of the prosecution and the defense, being officers under the commanding officer, if they know the kind of sentence he wants will be rather inclined, at least, not to bring any other judgment than that which the commanding officer expects, and that particularly the man who is called an attorney and who is not an attorney, unless he just happens to be one, who is defending the man, does not, in the first place, know anything about procedure and in the next place he would not want to go contrary to the wishes of the commanding officer, on whom he must depend if he ever gets a promotion or anything of that kind?

Mr. CHAMBERLAIN. I would not want to impeach so generally the officers of the Army, but that is true in a great many cases.

Mr. NORRIS. That is perfectly natural, it seems to me.

Mr. CHAMBERLAIN. If I may digress for a moment, I will say that all the distinguished Senator has to do is to sit in the Military Committee room some time and listen to testimony of witnesses on the subject of Army reorganization. Many of them, I do not care how brave they may be, or what great soldiers they have been, or what records they have made, hesitate to tell what they think about these things in opposition to higher authority, and sometimes, I am sorry to say—if it was necessary I could call attention to individual cases—there are cases where men have dared to come before the committee and tell the truth, and they have been demoted for it. I will refer to only one, Gen. Ansell, who was practically demoted and put in a position on this clemency board of innocuous desuetude, where he could not do anything he wanted to do in the way of reforming a vicious system, surrounded, as he was, by men who were against him, and while he was not driven from the Army he occupied a position in it that no honorable man would want to occupy, where he had stood for years for rectifying the wrongs that had been perpetrated against these young men, and then was turned down by his chief and not even permitted to give publicity to his views, except as it is permitted to be done through the Congress of the United States.

But, Mr. President, I have digressed from what I had in mind. Mr. Taft denies that this is an archaic system. I say that both Jefferson and Adams expressed wonder that the Articles of War of 1774 were engrafted into laws of this country, with only some slight changes in them.

There are men in the Army who claim, Mr. President, that the President of the United States—they put a question mark after it—inherited some of the prerogatives of the king, and that Congress could not interfere with his prerogatives. Think of claiming, in this day and generation, that the President of the United States had such prerogatives! I call attention to the so-called Kernan report. I want Senators to read it, because in that the question is asked, Has Congress the power to interfere with this inherited kingly prerogative and power? I say that Congress can wipe out the Articles of War entirely if it sees fit to do so, or can change them so radically that injustice shall not and can not be done to the American youth.

The articles of 1774, the British articles, were verbally revised in 1806, again verbally revised two or three times, and finally revised in 1916. I know something about that, because I happened to be a member of the Military Affairs Committee at the time. But no radical changes have been made in them, simply changes in verbiage and in phraseology. The best thing that was put in the revised articles of 1916 was the power vested in The Adjutant General to take these young men who had been convicted of crimes, and, in due course, restore them to the colors if they behaved themselves well; and many young men took advantage of it and restored themselves to the colors by good conduct, showing that they were not criminals at heart.

The articles of 1774 have not been changed in system and but little in substance. The revision of 1916 was not such a revision, yet we find that the articles of Great Britain have been radically changed since those early days for use in the British Army.

The articles of war of France have been changed so as to give them a civilian touch.

Mr. Taft speaks of the necessity for keeping the administration of justice within military control in order to maintain discipline by a sort of terrorism and by instilling fear in the hearts of the young men in the Army, so that they will do their duty. Mr. President, under the British system the Judge Advocate General of the Army is not a soldier; he is independent of the Army; and he has appellate and revisory power and jurisdiction. The Senator from Nebraska [Mr. NORRIS] asked me if the commanding officer here and under our system appointed the prosecutor and the defender. I answered in the affirmative. Under the British system the Judge Advocate General has a law officer even on the field court to advise, not to prosecute a man, not to defend a man, but he is there as a friend of the Government of Great Britain as a judge, to see to it that justice is done to every young man who comes before the court. He is independent of military authority, except in so far as he may be influenced, as in this country sometimes, by social or other influence. But he is supposed to be independent of the Army.

Mr. REED. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Oregon yield to the Senator from Missouri?

Mr. CHAMBERLAIN. Certainly.

Mr. REED. I wish to ask the Senator, in view of the fact that we are just inaugurating a general world millennium and all harshness and cruelty are to come to end, if he does not think we might possibly mitigate the treatment of our own boys in our own Army, particularly when they are going to serve in the field of peace where there is to be no more war?

Mr. CHAMBERLAIN. I think charity ought to begin at home.

Mr. REED. Now, asking a question in a serious vein, the Senator has spoken about the origin of this code of military procedure and has traced it back to the Middle Ages. Is it not a fact that at that time it was the common thing to impress men into the military service, even to impress inhabitants of other countries that had been conquered, to take them and put them in the army and force them to serve, and I ask the Senator if he does not think that the cruelties of this system of law can be directly attributed to the fact that it was written at a time when they were forcing men to serve by the processes of which I have spoken?

Mr. CHAMBERLAIN. I do not know the original inception of it, but it is said that the British articles of 1774, which met the approval of Gustavus Adolphus, were a part of the old Roman military code, so that America, of all these powers, has not kept pace with advancing civilization in amending the Articles of War to meet changed and changing conditions.

Mr. REED. There is no doubt about the fact that in the fourteenth, fifteenth, sixteenth, and seventeenth centuries, and early in the eighteenth century it was very common for a country to be invaded and for the people to be put into the army and compelled to serve. Men back of them had the power to try and convict them if they did not serve, and when that service was given it was entirely involuntary.

Mr. CHAMBERLAIN. There is no question about that.

Mr. REED. Under those circumstances, of course, one can understand that the soldier was serving as a result of force and that brutality was essential to compulsion.

It seems to me, if the Senator will pardon the interruption, that in this day of education, in this day when the Government rests upon the consent of the governed, a different system of dealing with our young men is necessary; that the boy who leaves his home to-day, voluntarily or under the draft, is entitled in the Army to be regarded not only as a human being, but as an American citizen, and that any failure to have regard for that fact will put the Army in disrepute and will ultimately result in such a feeling against an army as to greatly injure the country.

Mr. CHAMBERLAIN. I am in thorough accord with the views of the Senator. I might give innumerable instances of hardships that have been perpetrated against them. Why, Mr. President, without going into lengthy details, take the case of the negro soldiers convicted down in Texas a few years ago. Those men were convicted by court-martial and the sentences approved by the commanding officer and the men shot within

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attention of the Senate to the text of the provision of the law about which all the storm has raged about the court-martial system, and incidentally the harshness of the sentences and the cruelties practiced against American troops.

Section 1199 of the Revised Statutes provides as follows:

The Judge Advocate General shall receive, revise, and cause to be recorded the proceedings of all courts-martial, courts of inquiry, and military commissions, and perform such other duties as have been performed heretofore by the Judge Advocate General of the Army.

The construction placed upon that statute by the Judge Advocate General was that the power to revise gave no other or greater power than to advise the commanding officer who appointed the court in all cases where the court had jurisdiction and the trial was regular. While those who differed from him held that the power to revise gave power to the Judge Advocate General as an appellate tribunal to reverse and to modify and to change the decisions in cases where prejudicial error was disclosed by the record.

Mr. President, this matter was first brought to the attention of the department of military justice by a flagrant case or flagrant cases that happened in the administration of military law in Texas prior to November, 1917. That was where 12 or 15 noncommissioned officers of Battery A, of the Eighteenth Field Artillery, who were charged with mutiny, were tried and sentenced to dishonorable discharge and long terms of imprisonment. Those cases came up to the office of the Judge Advocate General, and it was conceded by everybody—there was not any difference of opinion, I believe, upon the subject—that those men ought not to have been convicted of mutiny. But it seemed that the court had jurisdiction and the trial was regular, and in that view there was no appellate relief for the accused except clemency.

Here were 12 or 15 honorable men, who had been faithfully serving their country, charged with a crime, of which they were not guilty under the law. In view of that, on the 10th day of November, 1917, the Acting Judge Advocate General prepared a memorandum of great length and of distinguished ability urging upon the Secretary of War for his personal consideration that the authority vested in the Judge Advocate General of the Army by section 1199 of the Revised Statutes to "receive, revise, and cause to be recorded the proceedings of all courts-martial, courts of inquiry, and military commissions, and perform such other duties as have been performed heretofore by the Judge Advocate General of the Army" carried with it the power to modify and to change the decisions.

Gen. Ansell, in the brief which he presented for the consideration of the Secretary of War and the Judge Advocate General, reasoned it out, showing by analogous decisions in connection with other legislative acts where courts had been called upon to determine the meaning of the word "revise" that the word meant more than simply the power to take up a record by the four corners, look at it, and send it back to the commanding officer and say that he was the reviewing and revising authority and alone had the power to revoke, modify, or set aside the sentence of a court-martial. I am not going to read that brief, but I hope that some of the Senators at least will read it.

It will be found in the hearings, part 2, on the Establishment of Military Justice, held by the Committee on Military Affairs, United States Senate, on S. 64, at page 57. I do not think, Mr. President, that any impartial lawyer can read that opinion and come to any other conclusion than that the power to revise meant more than the mere power to look over the papers and to say that the only power granted under the statute was the power to send a case back to the commanding officer who appointed the court.

Let us see who agreed with the opinion of Gen. Ansell when the memorandum was prepared by him and presented to the Secretary of War for his personal consideration. Gen. Ansell expressed the preference and hope that each one of the distinguished officers in his department would read the record and express their concurrence or dissent. These are the men who read it, assented to it, and concurred with Gen. Ansell: James J. Mays, lieutenant colonel, judge advocate; George S. Wallace, major, judge advocate, Officers' Reserve Corps; Guy D. Goff, major, judge advocate, Officers' Reserve Corps; William O. Gilbert, major, judge advocate, Officers' Reserve Corps; Lewis W. Call, major, judge advocate, United States Army; Edward S. Bailey, major, judge advocate, Officers' Reserve Corps; William B. Pistole, major, judge advocate, Officers' Reserve Corps; E. M. Morgan, major, judge advocate, Officers' Reserve Corps; Eugene Wambaugh, major, judge advocate, Officers' Reserve Corps; E. G. Davis, major, judge advocate, Officers' Reserve Corps; Maj., later Lieut. Col. Alfred E. Clark, judge advocate, Officers' Reserve Corps; R. K. Spiller, whose rank is not given, judge advocate, Officers' Reserve Corps; Herbert A. White, lieutenant colonel, judge advocate.

These men all concurred in that opinion; and on the 27th day of November—just 17 days afterwards—Gen. Crowder prepared for the Secretary of War a memorandum in opposition to the contention that a revisory power was reposed in the Judge Advocate General.

There is no question that the opposition brief of Gen. Crowder was ably written, but he harks back to the days of the Civil War and undertakes to extract—and I think rather unsuccessfully—opinions of former Judge Advocates General and of the courts, if you please, that sustain his view of the proposition that the power to revise only means the power to look over a record and, where the court had jurisdiction, only to advise the commanding officer who appointed the court.

On the 11th day of December, 1917, Gen. Ansell prepared another brief on the subject. The incident which brought the matter to the attention of these men was the cruelty that had been practiced against the 12 or 15 sergeants in Texas. Oh, say some of them, there is only an occasional injustice, just as there is in the civil courts. Mr. President, if it is possible because of the system that any injustice may be done, something ought to be done to remedy the situation.

Mr. OWEN. They are not rare exceptions, either.

Mr. CHAMBERLAIN. They are not rare exceptions. I may say to the Senator that, although I have not done so, I have been threatening to place in the RECORD, and I am going to put in the RECORD, the cases to show that instances of injustice are not of infrequent occurrence. Without going into the subject, take the case of the negro soldiers in Houston who were convicted and sentenced to be shot. Without discussing the question of their guilt or innocence—for I assume that they were guilty—these men were executed, Mr. President, without anybody ever having seen the record except the commanding officer and those connected directly with the trial.

Mr. WATSON. Mr. President, may I ask the Senator a question?

The PRESIDING OFFICER (Mr. GERRY in the chair). Does the Senator from Oregon yield to the Senator from Indiana?

Mr. CHAMBERLAIN. Yes, sir.

Mr. WATSON. Does the Senator claim that Gen. Crowder had knowledge of all of these cases, or that they were all brought to his attention?

Mr. CHAMBERLAIN. Of course, for they happened during his term as Judge Advocate General.

Mr. WATSON. Yes; but I was wondering whether or not in the midst of the many burdens he was bearing and the many difficulties there were to encounter he had personal knowledge of the various transactions of which the Senator speaks.

Mr. CHAMBERLAIN. He had the time to prevent any reform of conditions. He had the time to write a very able brief in order to sustain the position he was taking, and I am referring to one right now. If he could not take care of both jobs he ought to have gotten out of one. I say that if he was responsible for organizing our huge Army—and he is given credit for it—he was responsible for these cruelties as long as he held the other position.

The execution of those colored men in Texas led to the adoption of a regulation—not a law but a regulation—that in cases where the death sentence was imposed the sentence should not be carried into effect until the reviewing authorities had an opportunity to pass upon it; but the cases of these men did not reach the reviewing authority until the daisies were growing over the graves of the convicted men. Anything permitting such a thing in America is outrageous. It makes no difference what the color of an American soldier's skin is, he is an American citizen just the same, fighting for his country, and he is entitled to have the benefit of a fair, honest, and impartial trial.

Gen. Crowder wrote a brief, as I have said, in opposition to the views of Gen. Ansell. That was perfectly proper; I make no objection to that—and he presented the subject ably. I am merely calling attention to these matters, Mr. President, to show you that the subject has been a storm center.

Again Gen. Ansell prepared a memorandum in answer to the latter brief, which was concurred in by the distinguished officers associated with him. Maj. Wambaugh prepared a separate brief suggesting regulations that would measurably protect the soldier. Then Gen. Ansell prepared a special brief to show that the Judge Advocate General had reviewing and appellate power. Then, on the 17th day of December, 1919, Gen. Crowder presented another brief, and, without calling attention to the number of them, I ask Senators who are interested in the subject—and they will become interested in it because their hearts will become involved—to read the arguments pro and con by these distinguished Army officers and civilian officers temporarily in the Judge Advocate General's department.

Mr. President, to get down to a concrete proposition everybody in the Army recognized, Gen. Crowder amongst the rest,

that there ought to be some appellate jurisdiction somewhere in somebody to cure the radical wrongs which all conceded to exist. Now, let us see whether or not I state the fact when I make that statement. I am going to dwell on it just a little while, because I have been criticized somewhat in connection with it, and I think I can justify the position which the Committee on Military Affairs of the Senate took in reference to it.

The Secretary of War, after all these discussions had been had that I have been calling attention to about the power of the Judge Advocate General's office, sent up a letter to the Military Affairs Committee of the Senate, on the 19th day of January, 1918, just a month after the last brief had been submitted to him on the subject, and inclosed to me, as the chairman of the Military Affairs Committee, a bill that was to do what—to vest in some authority the power to revise and to reverse and to modify these unjust sentences. Now, I am going to read that letter to the Senate. It is very short. It shows, first, a recognition of the necessity of vesting appellate jurisdiction in some forum somewhere, with power to relieve these men; but it does more than that, Mr. President. It retains in the Military Establishment, which was responsible for these cruelties, instead of in some civilian or partly civilian tribunal, a power it ought not to have.

Now, let us see if I am stating it correctly. It was a proposed amendment to section 1199 of the Revised Statutes. It is as follows:

The Judge Advocate General shall receive, revise, and cause to be recorded the proceedings of all courts-martial, courts of inquiry, and military commissions—

That is an exact copy, so far, of section 1199, as it is to-day. Then it goes on:

And report thereon to the President, who shall have power to disapprove, vacate, or set aside any finding, in whole or in part, to modify, vacate, or set aside any sentence, in whole or in part, and to direct the execution of such part only of any sentence as has not been vacated or set aside. The President may suspend the execution of sentences in such classes of cases as may be designated by him until acted upon as herein provided, and may return any record through the reviewing authority to the court for reconsideration or correction. In addition to the duties herein enumerated to be performed by the Judge Advocate General he shall perform such other duties as have been heretofore performed by the Judge Advocate General of the Army.

Mr. President, there is provided an appeal from Philip drunk to Philip sober. On the face of it, it is an appeal to the President of the United States. As a matter of fact, it is an appeal from the Judge Advocate General and through the Judge Advocate General to the Chief of Staff. It was keeping the control of military justice within the power of a military autocracy.

Mr. President, that bill was introduced in the Senate by me at the request of the Secretary of War. The distinguished chairman of the committee will agree with me when I say that we usually introduce these bills in the Senate at his request, whether they meet our approval or not. Then the bill goes to the committee for discussion. That bill was introduced in the House by the then chairman of the House committee, Mr. DENT, and was then referred to the committee. The House held some hearings on it, and never reported it out. The Military Affairs Committee of the Senate did not act on it, for the simple reason that it was not necessary. It not only did not relieve the situation that then existed, about which there was so much complaint, but it made the situation actually worse.

I want to call attention to the fact that the proposed amendment sustains me in charging that the Judge Advocate General was turning over the subject of military justice to the Chief of Staff. Now, the Chief of Staff might on occasion be a very just, a very learned, and a very tender-hearted man, but there may be occasions when he may be a very hard-hearted man, wholly unskilled in the law. Let us see what the power of the Chief of Staff is under the General Staff act of 1903. It provides:

The Chief of Staff, under the direction of the President, or of the Secretary of War under the direction of the President, shall have supervision of all troops of the line and of The Adjutant General's, Inspector General's, Judge Advocate's, Quartermaster, Subsistence, Medical, Pay, and Ordnance Departments, the Corps of Engineers, and the Signal Corps, and shall perform such other military duties not otherwise assigned by law as may be assigned to him by the President.

In other words, Mr. President, the Chief of Staff, in the last analysis, has jurisdiction and power over the Judge Advocate General. So that the addition which was intended to be put on section 1199 of the Revised Statutes made the last condition of the soldier worse than the first condition. It simply meant that these appeals that professed to be taken to the President of the United States went from the Judge Advocate General to the Chief of Staff, and never reached the President at all; and, in the very nature of things, we know that it is a physical impossibility for the President of the United States to consider or to revise these hundreds of thousands of court-martial cases—a physically, humanly impossible thing to be done. It proposed to place the jurisdiction over the life, liberty, and limb of the private soldier in the hands of the Chief of Staff, and practically gave him, as the military adviser of the President and the Secretary of War, the right to say whether or not these cases should be even considered by the President of the United States.

Mr. President, if anybody doubts the effect of this in practical life, I call his attention to the fact that the Chief of Staff now is practically the only man who can reach the Secretary of War, while men who come here with honorable and honored service can not reach him. The thing must go through military channels or it does not go there at all. So these poor, unfortunate fellows against whom harsh sentences have been rendered can only reach the President through the Judge Advocate General first, and then through the Chief of Staff; but even if they all reached the President, as the Secretary of War said in one of his letters the other day in referring to his own position, it is impossible for him to look over all of these cases.

But this is not all. Look again at that bill and you will see that in other respects it perpetuates the very worst features of the existing system. It expressly authorizes the Chief of Staff, acting for the President, (a) to set aside an acquittal and have the accused, though acquitted, tried again; (b) to substitute a conviction of a more serious offense for a less serious one; (c) to increase the punishment; and (d) to return the proceedings to the court, with directions to reconsider, for the purpose of doing all these things. Of this Gen. Crowder expressly approved in his statement before the House committee.

Now, Mr. President, if the Judge Advocate General and the Secretary of War, when they proposed that amendment to the Congress in 1918, really wanted a revisory power that meant something, all in the world they had to do was to construe the law as the Acting Judge Advocate General and his corps of assistants construed it, and say that the power to revise gave the power to modify and to change the sentence in the court below. In order to sustain his position, the Judge Advocate General had to go down into dusty tomes and shelves and dig out dicta of courts and dicta of Judge Holt and others who had acted in the distinguished capacity of Judge Advocate General.

That was all he needed to do, Mr. President. In view of the fact that he saw fit to place a harsher construction upon the statute, in view of the fact that he has constantly held, and the Secretary of War has stood by him, that where the court had jurisdiction the Judge Advocate General could only send the record back to the commanding officer with his advice upon it, which the commanding officer could pay some attention to or disregard, as suited his own sweet will, I make the suggestion, and sustain my position by the record, that that proposed amendment was not offered in good faith. Now, I am going to show you why, and I appeal to the record to sustain the suggestion I now make.

That proposed amendment came to the Military Affairs Committees of the House and Senate at a time when this storm had not only brewed but was raging around the cruelties that were being practiced against American troops in France, and not only in France but in the United States. About the time that that proposed amendment was presented to Congress by the Secretary of War, Gen. Kreger was sent over to France as the representative of the Judge Advocate General, and was later appointed acting judge advocate there, so that he could be on the ground as the representative of the Judge Advocate General and hear these cases, and, may I say, revise the sentences in France, and advise the commanding officers appointing the courts. The only effect that appointment had was to save the time necessary to send records of courts-martial from France to the United States. It meant no change in the court-martial system, and no change of policy in the course of the Judge Advocate General with regard to the law.

In other words, it quickened action, whether it was just or unjust. It did not help the soldier who had been unjustly convicted or who had been harshly sentenced.

The suggestion I make is that that acting judge advocate general was sent to France as the representative of Gen. Crowder as a piece of camouflage, because trouble was brewing here, both in and out of Congress, as to the views and course of the Judge Advocate General, and an investigation of the system was threatened, and therefore something had to be done and that, too, promptly, to allay the feeling that was being engendered, because these boys, notwithstanding the strict censorship, were writing to their homes; and this was done to act as oil upon the troubled waters in the discussion which was taking place within the department itself, and discussion which were suggested by the very cruelties themselves.

Now, here is what happened: It seems, from the correspondence which followed, that Gen. Pershing did not like this new

policy very well. As a good soldier—and he was a good soldier—he did not say, "I will not have it," but he rather disliked the idea of having a man come over there to practically supplant a man like Gen. Bethel, who was the chief judge advocate on his staff. That is what it amounted to. Crowder then wrote a letter to Gen. Bethel, the judge advocate over in France on Gen. Pershing's staff, and that letter leads me to make the suggestion that this proposed amendment was not made in good faith, and I am going to read it.

It is not very long, Mr. President; but on the 5th day of April, 1918, shortly after this proposed amendment to section 1199 had been submitted to Congress, Gen. Crowder wrote the letter referred to to Gen. Bethel. It is as follows:

APRIL 5, 1918.

Brig. Gen. WALTER A. BETHEL,
American Expeditionary Forces, France.

MY DEAR BETHEL: I am going to spend the necessary time out of a very busy day in an attempt to clear up the situation in respect to the establishment in France of a branch of the Judge Advocate General's office, regarding which matter there seems to have been more or less misapprehension at your headquarters. You are, of course, familiar with the cable correspondence which has passed on the subject.

I would like to see that cable correspondence. We have never had it.

For your convenience in reference, however, I inclose a copy of a memorandum that I have had prepared for the Chief of Staff—

Reporting always to the Chief of Staff, which was proper in his view of the matter—

in which that correspondence is reviewed and set out in sequence.

First, let me say that it is difficult for me to understand why, upon receipt of the two cablegrams of January 20, 1918—

Bear that in mind, Senators. The proposed amendment was sent to the House and Senate on the 18th day of January, 1918, and the cablegrams having reference to sending over a representative of Gen. Crowder were sent over to France on the 20th day of January, 1918—

one cabling Gen. Pershing the contents of General Order No. 7, and the other designating you as Acting Judge Advocate General, the branch office of the Judge Advocate General was not immediately established. I assume that it was in operation from that time, and continued of this view until the receipt of Gen. Pershing's cablegram of February 25, 1918, wherein he says:

"Brig. Gen Walter A. Bethel has not established branch office and will not do so pending further instructions."

You see, Gen. Pershing did not want it. He had a good man over there as his staff judge advocate.

This leads me to comment upon the situation which is presented by Gen. Pershing's cablegram No. 779, which seems to imply some dissent from the action here taken in establishing the branch office. He appears to view it as a possible obstruction to the administration of military justice and as a mistake of judgment.

I do not blame Gen. Pershing for not wanting to have the affairs of this chaotic office here transferred to his command.

I wish you would assure Gen. Pershing (whom I would address directly but for the reason that I know he has no time to read letters) that every thought of this office, and I believe every thought of the War Department, is directed toward the discovery of ways and means to help him in his enormous task; that our idea was to expedite and not delay, and that he will understand better the occasion for this order if he will consider the following:

This is what I call the attention of the Senate to, and this is what makes me suggest that the proposed amendment in January, 1918, was not made to Congress in good faith. I continue reading:

Prior to the issue of General Order No. 7 it had become apparent that, due to the large increase in commissioned personnel, which included many officers with little or no experience in court-martial practice, *a large number of proceedings were coming in which exhibited fatal defects. A congressional investigation was threatened and there was talk of the establishment of courts of appeal.*

Think of it!

The remedy for the situation was immediate executive action which would make it clearly apparent that an accused did get some kind of revision of his court-martial proceedings other than the revision at field headquarters, where these prejudicial errors were occurring. At this point permit me to say that very few errors have been discovered in cases coming up from your headquarters. It was primarily with reference to errors occurring at field headquarters other than in France that this step was taken.

Accordingly we formulated the scheme of General Order No. 7. The Secretary of War gave personal consideration to the matter, and on three or four occasions discussed it exhaustively with this office. He finally approved the order and contemplated, as I did, the establishment of the branch office promptly upon the receipt of our two cables of January 20. I may say here that at other headquarters the scheme has worked beautifully. It has silenced all criticism, and I believe that no invalid sentences are now beyond the reach of remedial action.

Your own intimate knowledge of court-martial procedure makes it quite unnecessary for me to enter upon a lengthy discussion of the merit of the new system which, I feel quite sure, will not fail to commend itself to you as a substantial step in the right direction. As stated in my memorandum to the Chief of Staff, it is believed that had Gen. Pershing fully understood the purpose and operation of General Order No. 7 his cablegram No. 779 of March 24, 1918, would not have been sent. I trust that the cablegram which I have recommended be sent him in reply, a draft of which is contained in the concluding paragraph of the inclosed memorandum, will serve to convince him of the wisdom and propriety of the issue of this order and that the procedure it contemplates will materially aid rather than obstruct the prompt and efficient administration of military justice in the American Expeditionary Forces.

With best wishes, I am,
Very truly, yours,

E. H. CROWDER,
Judge Advocate General.

The italics are mine.

Think of the Judge Advocate General of the Army sending a letter the information contained in which was to be communicated to Gen. Pershing, giving as a reason for his proposal to create a branch of his office in France that an investigation was being threatened, that there was talk of the establishment of a tribunal of appeal, and that it was necessary, in this state of the public mind, to make it appear that an accused should get some kind of a revision of his court-martial sentence.

Mr. President, was there ever committed to paper a more outrageous proposition than that to mislead and to deceive the mothers and the fathers of the young men who were serving in France and the young men themselves who were suffering under the sentences of these courts-martial? That is the reason I say that when these investigations were being threatened, and this storm was raging about the power of the Judge Advocate General to review and to reverse these sentences, the proposition for an amendment to the existing statute was not made in good faith, but was intended to deceive the American youths, half a million of them, if you please, who had undergone sentence of court-martial, summary and general, and make them feel and believe that they were getting some sort of revision of court-martial sentences. It is not stated that they would get it, but to make it appear that they were getting it. But the American youths were not deceived by any such pretense as that, and the American people are not being deceived by any such pretense as that, and there are those in the Senate and in the House of Representatives who will undertake to undeceive those few who have been deceived by it.

That condition in the administration of so-called military justice from April 5, 1918, to and through the latter part of the year, both in France and here, continued, and the cases of injustice were so numerous and so flagrant that reports of them continued to come to me and to many other Members of Congress. I am frank to say that the whole situation touched my heart very deeply. I felt that there ought to be some way to correct them. I felt that I ought to call the attention of the Senate to the situation. On the 31st day of December, 1918, the situation had become so acute and the complaints so numerous of these injustices that I addressed the Senate on the subject, calling attention to the situation. That was only supplementing what Gen. Ansell and other men in the establishment had called attention to, only they were limited in their criticisms by restrictive rules of the Military Establishment. But I was not restrained by any such rules, and I gave a few cases, and only a few, of extremely arbitrary action of and severe sentences imposed by courts-martial.

The Secretary of War immediately took up the cudgels and inclosed me a letter written to him by Gen. Crowder criticizing my statements as to the cases that I had cited, and the letter was so full of misstatements that I did not undertake to make it public. I did not want even to place Gen. Crowder or the Secretary of War in a position where they would be embarrassed by statements contained in that letter; and before the ink was dry on the letter of the Judge Advocate General he was sending letters through the Secretary of War to me, correcting criticisms that he had indulged in, both as to form and substance.

But Gen. Crowder was evidently not satisfied with my course. He gave to the press either the letter or the substance of it. I thereupon issued a public statement, Mr. President, which I ask may be inserted in the RECORD.

There being no objection, the matter referred to was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR CHAMBERLAIN.

Gen. Crowder, Judge Advocate General, has seen fit in the press to attack me concerning my position on the present court-martial system in the Army, to criticize statements made by me concerning that system in my speech to the Senate on December 31, 1918, and at the same time to defend the system.

Gen. Crowder's reply to my charges was also contained in a memorandum from the Secretary of War to me, which I received several weeks ago. His reply contained so many misstatements of fact that I hesitated to make it public, because I did not care to embarrass the Secretary by having him stand sponsor and be responsible for such erroneous and false statements in an official communication from the War Department to the Senate of the United States.

Since Gen. Crowder himself has made his reply public, apparently with the Secretary's consent, I no longer have this feeling of hesitancy. I therefore propose to show his misstatements, and, further, the insincerity of the entire defense of the present court-martial system.

In my speech I called attention to certain specific cases which illustrated the unfairness of the court-martial trials and the excessive sentences imposed by these courts. I based my criticism of the present system and my constructive suggestions as to the changes that should be made in it on the strength of those cases.

Gen. Crowder now says that had I asked him for the facts and circumstances of these cases before making my speech he would have supplied me with the "authentic data that would throw light on the correctness of my complaints." He attempts to furnish such data in his published statement. This data is wholly incorrect and misleading and is furnished by the general either with an astounding lack of knowledge of the facts or with a deliberate intention to mislead the public.

The first case cited by me in my speech was the following:

"A soldier doing military police duty who entered a shop during the night, because, according to his own story, he heard a noise which he thought was made by a burglar, was found in the shop and himself accused of burglary. The court-martial which tried him found him not guilty. The commanding officer who had appointed the court disapproved the verdict and 'recommended' that the court reconsider the case. The court did 'reconsider,' and found the man guilty and imposed a long term of imprisonment. The evidence was wholly circumstantial. On final review of the record in this case it was recommended that the verdict of guilty be set aside and the man discharged. The commanding officer, disapproving of this recommendation, has allowed the verdict to stand, and the man is now serving his sentence. This case, while not typical, illustrates the control which the military commander exercises over the administration of military justice."

Gen. Crowder in his endeavor to furnish me "authentic data" in this case says nothing about the court-martial first acquitting this soldier at his trial, and then subsequently, at the direction of the commanding officer who appointed the court, reversing itself and finding the soldier guilty and imposing a long term of imprisonment. He simply states "that the accused soldier's story was disbelieved, and he was found guilty." This statement is wholly inaccurate; I have read the record and he apparently has not.

The story told by the accused boy in this case was believed by the court which heard his testimony and that of the other witnesses—and mark this very important fact in these proceedings which is omitted from Gen. Crowder's statement of the case—that court did not find him guilty; it found him not guilty, and did "therefore acquit the accused." It was what happened after the court-martial had rendered a verdict of not guilty that aroused my particular objections to the handling of this case by the military authorities. There followed the exercise of an arbitrary personal individual control over the proceedings of the court the like of which can not be found in any other criminal tribunal in our jurisprudence. The camp commander, seated in his office away from the trial, without contact with the witnesses or the accused, disapproved the verdict of not guilty returned by the court and ordered the court to reconvene and reconsider. In his indorsement ordering reconsideration and practically conviction Brig. Gen. Burnham, the camp commander, stated that the facts raised a presumption which he declared to be very incriminatory.

The next criticism I made of the court-martial system, as the result of this case, was that the Judge Advocate General's office had no power to revise the finding made by a court and approved by a commanding officer, even though the record contained serious irregularities and insufficient evidence on which to base a conviction.

Gen. Crowder now states, in regard to the review of this case by his office: "On revision of the record no legal error could be found; this office reached the opinion that there was sufficient evidence to sustain the finding."

That is not an accurate statement of what the record in the case clearly shows. The Judge Advocate General's review, written by Maj. Millar, concluded with this emphatic statement: "After a careful consideration of the evidence, this office is firmly convinced of the absolute innocence of the accused." In the face of this declaration of the innocence of the accused Gen. Crowder's report says that his office reached the conclusion that "there was sufficient evidence to sustain the finding of guilty." This action may be negligent statement, but it looks like misrepresentation. This case throws an interesting light on the nature of the review which the Judge Advocate General's office makes of a record of this sort. Despite the fact that the reviewing officer states that the evidence convinced the officer of the "absolute innocence" of the accused, the Judge Advocate General made no recommendation to the camp commander. Col. Mayes was then acting judge advocate. He but performed the function of his office as laid down by Gen. Crowder when he addressed the following note to the camp commander:

"At this stage of this case the matter of the sufficiency of the evidence to sustain a conviction is wholly within the discretion of the reviewing authority, the court having already passed thereon. However, since, in examining the case as to its legality, one of the assistants in this office has made a study of the sufficiency of the evidence, it is deemed to be in the sphere of propriety to say that this office entertains grave doubts whether the guilt of the accused is established by the evidence. This doubt seems to have been shared by the court in its first finding and acquittal. The guilt of the accused must, of course, be established beyond a reasonable doubt. In order that the reviewing authority may have the benefit of the study referred to, a copy thereof is inclosed herewith for such consideration as the court may deem advisable to give it."

It should be noted that the Acting Judge Advocate General himself refers to the result of his review, not as a decision, not as a recommendation, but as a "study," and in the subsequent papers filed in the record in this case there are many contemptuous references by the military authorities at the camp to this "study."

Continuing the statement of what happened in this case, Gen. Crowder's report says: "In such a situation no supreme court in the United States would interfere and set aside a jury's verdict." It is a fortunate fact that we are able to say for our civil jurisprudence at least that no supreme court ever gets a chance to pass upon a verdict of not guilty. Aside from this, however, I think it fair to say that no court would permit a finding of guilty to stand in the face of its conclusion from a review of the evidence that it was "firmly convinced of the absolute innocence of the accused."

It would seem difficult for anyone, in the brief statement of the facts of this case which is contained in Gen. Crowder's report, to make more misstatements of the important steps which were taken in the railroading of this soldier to the penitentiary than those which have already been outlined. But this is not all. That report says: "It (the verdict) was in fact reconsidered; but the court adhered to its finding." This can not be other than a deliberate misrepresentation. After the Acting Judge Advocate General had finished his "study" of the case it never went back to the court. That "study" was simply sent to the camp commander. The court which had tried and acquitted and then, under instructions from the commander, had convicted, never saw or considered this case or the record. What really happened was that the Acting Judge Advocate General's "study" went to the camp commander, who declined to be influenced by it and who eventually sustained and ordered executed the sentence which had been imposed. It is true, as Gen. Crowder's report states, that the judge advocate on the staff of the camp commander wrote a memorandum sustaining the conviction, but he was the same judge advocate who had recommended the trial, who had advised the camp commander to disapprove the verdict of not guilty, and of course the subordinate officer of the camp commander. Even in this review, however, the camp judge advocate refers to the fact that the court-martial was impressed "with the air of sincerity" in the accused soldier's story when it voted for his acquittal, and he added that he himself had been similarly impressed when he first examined the accused.

As if determined to miss no opportunity for misrepresentation in the circumstances of this extraordinary case, Gen. Crowder's report proceeds to say that this judge advocate on the camp commander's staff who wrote this memorandum endeavoring to justify the conviction is a judge advocate "not commissioned in the Regular Army" but "experienced lawyer fresh from civil practice." It is hard to believe that Gen. Crowder could have known the contents of this report when he attached his signature to it. The evident purpose of this description of this judge advocate was to indicate that he still retained the judicial views that characterize lawyers who have recently come from civil life. The facts are these: That judge advocate on the staff of the camp commander was commissioned in the Army from civil life in 1898. He served as a line officer from that time until 1901. Indeed, he was a typical line officer, a graduate of military school at Leavenworth, where he was taught the military view that a camp commander absolutely controls his staff. Upon the opinion of this line officer, transferred to the staff as a camp judge advocate, Gen. Crowder relies for his statement that "the case is a good illustration of a feature in which the system of military justice sometimes errs even more for the accused than a system of civil justice." Such it may be admitted that in some cases military justice does more for the accused than does civil justice. It does it hard and a plenty.

But the most remarkable part of the effort made by Gen. Crowder in report to becloud and belittle the criticisms which I had made in this case and the conclusions which I had drawn from it lies in the fact that on the very day on which he signed that report he also signed a memorandum directed to The Adjutant General in which he recommended that the victim of this miscarriage of military justice should be released from the penitentiary and restored to his previous status in the Army. When I brought this case to the attention of the Senate this boy was in the penitentiary. He was there despite the court-martial's verdict acquitting him of the charge against him. He was there despite the Acting Judge Advocate General's emphatic declaration that he believed him absolutely innocent. He remained there until a few days ago, when as the result of my criticism the circumstances of his case were again reviewed, and as the result of the unenforced review he has to-day been recommended by Gen. Crowder for restoration to his previous status. In his memorandum, which I have said, he signed on the same day he signed the report in which he attempts to justify the sentence in this case, Gen. Crowder says: "This office is strongly of the opinion that an injustice may have been done to this man and that it should be righted as far as possible." Think of it. Arguing on the one hand, against my criticism that there was no injustice in this case and at the very moment entering this solemn declaration in another document that he believes injustice was done. It is a terrible indictment of so-called military justice that this man, whom everyone now seems to believe was the victim of rank injustice, served for nearly a year his penitentiary sentence. Such things happen in civil punishment, but only after a jury has acquitted the accused and not after a careful review has held the facts insufficient to sustain the verdict of guilty. These were the very features of this case which had impressed themselves on my mind and which seemed to me so forcibly to illustrate the defects and the dangers of our court-martial methods. At no point in the procedure in this case did the law intervene to assert the majesty for the protection of the accused. At no point was there a responsible law officer who had the power to break the purpose of the camp commander to send this boy to the penitentiary.

I have gone at length into the misstatements of Gen. Crowder concerning this case, so as to show conclusively how unworthy of acceptance his reply to me is. In regard to other cases cited by me, it is sufficient to state that the same false answers are made. If Gen. Crowder pursues his attack, I shall have more to say concerning these fabrications.

But there is one point in his reply which I must not overlook. He states with great emphasis that one of the virtues of the present court-martial system, as compared with the system of civil courts, is that it costs the accused nothing to be tried by these courts. Certainly this statement shows the utter incomprehension of the military mind and the spirit which prompts the present attack on the court-martial system—the blindness of that mind to all the considerations of humanity of administering real justice by which our soldiers shall be tried fairly and convicted according to their deserts. Certainly no mind which is not blind to the human side of military justice could in all seriousness make the statement that it costs the accused nothing to be convicted and sentenced to years of confinement in the military prison.

In making my original attack on the present court-martial system I said that I did not regard the injustices done by courts-martial as directly chargeable to the Secretary of War, because I realized that he inherited the present system and did not himself create it. He came to the department heralded as a humanitarian, and I believed that when the facts of this system were made known to him he would without delay change the system. I have been much disappointed that he has permitted himself to be guided by the reactionary elements of the Army and that he seems to be so completely under their domination that he can not acquaint himself with conditions as they really exist. Acting on their advice, he has placed himself in opposition to this most important and necessary reformation. But he has done more, according by his reply to Congressman GOULD'S letter in reference to the demotion of Gen. Ansell. He is determined to demote Gen. Ansell by recalling Gen. Bethel, so that Gen. Anselı can not act as the Judge Advocate General during Gen. Crowder's absence in Cuba. The next step will be to reduce the rank of Gen. Ansell. No man who is not willfully impervious to the inhumanity of the court-martial system and to the opinion of the country could not only refuse to change the conditions but also punish the man who is responsible more than anyone else for the conditions being made known and for such steps as have been taken by the military authorities to change and correct them.

Mr. CHAMBERLAIN. There is not a word or a sentence in that public statement that I desire to retrace or retract.

I have been charged with inconsistency in criticizing the court-martial system, because I opposed adopting the amendment suggested in 1918 by the War Department. The man who could have approved of such an amendment, Mr. President, with the knowledge I had of conditions in France and in America, would have been false to the interests of our soldiers at home and abroad. Notwithstanding the views of the Secretary of War and of Gen. Crowder, the purpose of that amendment was to deceive the American people and to confer upon the military authorities absolute and unconditional jurisdiction over the men composing the Army of the United States. Of course I did not stand for it; neither did the House stand for it; nor was it ever insisted upon again, because the people had come to understand just what it meant.

That did not end the controversy. No question is ever settled in law or in morals until it is settled right. This question has not been settled right, and the American people are not going to be satisfied until it is settled right.

The matter dragged along during the year 1918, and it is being considered and discussed in both branches of Congress still. It will continue to be discussed until it is finally and properly adjusted.

Now, I am going to call the attention of the Senate to the unusual methods adopted both by the Secretary of War and by the Judge Advocate General as well. It was determined by them that by fair means or by foul they were going to keep in force a system that was concededly unjust to the American soldier. I make that as a charge, and I think I can convict the gentlemen whose names I mention out of their own mouths and by the most convincing testimony that any man can offer, and that is the evidence of their own handwriting and over their own signatures.

Mr. President, I am going to call, as my first witness to sustain the charge that the War Department intended, by fair or by foul means, to maintain and sustain the system of military injustice, Mr. Baker himself. The Secretary of War addressed a letter to Gen. Crowder under date of March 1, 1919, couched in language that would indicate that the Secretary of War had not been in touch with the situation and did not know what was going on in the War Department when it had been under discussion for more than a year.

He starts out not by investigating but by prejudging the situation and by saying:

I have been deeply concerned, as you know, over the harsh criticism recently uttered under our system of military justice. During the times of peace, prior to the war, I do not recall that our system of military law ever became the subject of public attack on the ground of its structural defects. Nor during the entire war period of 1917 and 1918, while the camps and cantonments were full of men and the strain of preparation was at its highest tension, do I remember noticing any complaints, either in the public press or in Congress or in the general mail arriving at this office.

The recent outburst of criticism and complaint, voiced in public by a few individuals whose position entitled them to credit, and carried throughout the country by the press, has been to me a matter of surprise and sorrow. I have had most deeply at heart the interests of the Army and the welfare of the individual soldier, and I have the firmest determination that justice shall be done under military law.

How beautifully that is expressed! The whole letter is couched in tenderest language!

The criticisms referred to came from my humble self in the Senate, and from some Members of the House, and from the daily press. I have no apologies to make for those criticisms. I shall show that they compelled the reluctant War Department to loose the chains and tear off the manacles from the hands and feet of a splendid body of young men both in France and in America.

I ask that the letter may be printed in the RECORD without reading, Mr. President.

The PRESIDING OFFICER (Mr. GERRY in the chair). Without objection, it is so ordered.

The letter referred to is as follows:

WAR DEPARTMENT,
Washington March 1, 1919.

MY DEAR GEN. CROWDER: I have been deeply concerned, as you know, over the harsh criticisms recently uttered upon our system of military justice. During the times of peace, prior to the war, I do not recall that our system of military law ever became the subject of public attack on the ground of its structural defects. Nor during the entire war period of 1917 and 1918, while the camps and cantonments were full of men and the strain of preparation was at its highest tension, do I remember noticing any complaints either in the public press or in Congress or in the general mail arriving at this office. The recent outburst of criticism and complaint, voiced in public by a few individuals whose position entitled them to credit and carried throughout the country by the press, has been to me a matter of surprise and sorrow. I have had most deeply at heart the interests of the Army and the welfare of the individual soldier, and I have the firmest determination that justice shall be done under military law.

I have not been made to believe by the perusal of these complaints that justice is not done to-day under the military law, or has not been done during the war period. And my own acquaintance with the course of military justice (gathered, as it is, from the large number of cases which in the regular routine come to me for final action) convinces me that the conditions implied by these recent complaints do not exist and had not existed. My own personal knowledge of yourself and many of the officers in your department and in the field corroborates that conviction and makes me absolutely confident that the public apprehensions which have been created are groundless. I wish to convey to you here the assurance of my entire faith that the system of military justice, both in its structure as organized by the statutes of Congress and the President's regulations, and in its operation as administered during the war, is essentially sound.

But it is not enough for me to possess this faith and this conviction. It is highly important that the public mind should receive ample reassurance on the subject. And such reassurance has become necessary, because all that the public has thus far received is the highly colored press reports of certain extreme statements, and the congressional speeches placing on record certain supposed instances of harsh and illegal treatment. The War Department and its representatives have not been in a position to make any public defense or explanation and have refrained from doing so. The opportunity recently afforded the members of your staff to appear before the Senate Committee on Military Affairs has been an ample one, and it has furnished, I hope, entire satisfaction to the members of that committee. But of the proceedings of that committee I perceived no general public notice; the testimony, when published, will be somewhat voluminous, and its publication will not take place for some time yet, and it will certainly not reach the thousands of intelligent men and women who read the original accounts. And yet it is essential that the families of all those young men who had a place in our magnificent Army should be reassured. They must not be left to believe that their men were subjected to a system that did not fully deserve the terms law and justice. And this need of reassurance on the part of the people at large is equally felt, I am sure, by the Members of Congress in both Houses, who have, of course, not yet become acquainted with the proceedings before the Senate committee. It is both right and necessary that the facts should be furnished. It is indeed a simple question of furnishing the facts; for when they are furnished I am positive that they will contain the most ample reassurance.

Those facts are virtually all in your possession, on record in your office. I am aware that they are voluminous, and that a complete explanation and answer to every specific complaint is impracticable. But I believe that you are in a position to make a concise survey of the entire field and to furnish the main facts in a form which will permit ready perusal by the intelligent men and women who are so deeply interested in this subject.

I have been asked by a Member of the House of Representatives to furnish him with such a statement. And I am now calling upon you to supply it to me at your early convenience.

Faithfully, yours,

(Signed) NEWTON D. BAKER,
Secretary of War.

To Maj. Gen. E. H. CROWDER,
Judge Advocate General,
War Department, Washington, D. C.

Mr. CHAMBERLAIN. Note this language in the body of the letter:

I wish to convey to you here the assurance of my entire faith that the system of military justice, both in its structure as organized by the statutes of Congress and the President's regulations and in its operation as administered during the war, is essentially sound.

But it is not enough for me to possess this faith and this conviction. It is highly important that the public mind should receive ample reassurance on the subject. And such reassurance has become necessary, because all that the public has thus far received is the highly colored press reports of certain extreme statements and the congressional speeches placing on record certain supposed instances of harsh and illegal treatment. The War Department and its representatives have not been in a position to make any public defense or explanation, and have refrained from doing so.

How innocently does the Secretary get around the situation! And no opportunity to make any public defense in explanation! And yet every once in a while and as often as they expressed a desire to come before any committee of the House or Senate they had an opportunity to do so.

On the 8th day of March, 1919, Gen. Crowder answered the letter of the Secretary of War. In that letter he undertook again to criticize those who complained of the system and to insist again that everything was lovely in his department and even and exact justice done to all. I ask that that letter be printed in the RECORD without reading.

The PRESIDING OFFICER. Without objection, it is so ordered.

The letter referred to is as follows:

WAR DEPARTMENT,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, March 8, 1919.

MY DEAR MR. SECRETARY: I was very glad to receive your letter of March 1, calling upon me for a brief statement of the facts concerning the organization for and the practice of the administration of military justice during the war. I agree heartily with you that there has been no opportunity for our people to hear through the press more than reports of fragmentary and inflamed criticisms based on sensationalized allegations, and that they are entitled to a statement of the case as it is recorded in and viewed by the department.

The circumstances that have most amazed me in my following of the press reports are that the public interest has been carried and sustained by a supposed controversy between myself and an officer of my department, Gen. Ansell, and yet that the exceedingly small margin of actual controversy is entirely lost to sight in a murk of supposed instances of harsh or unjust treatment of soldiers which bears little or no relation to Gen. Ansell's lack of concurrence with the views of the War Department. I think, therefore, that a clear statement of the organic basis of that difference of opinion will go far to clear the atmosphere and

leave us in a position to discuss separately the allegations of harshness or injustice.

Gen. Ansell contends that there is a fault in the organic structure of the court-martial system in the fact that after a man has been tried by court-martial and the record of trial has been reviewed by the authority that appointed the court (usually a military officer of high rank) and by him finally approved and carried into execution there is no further appellate body or officer who can review the appointing officer's review and modify, affirm, or reverse his action.

With this I agree, and there is no controversy about it. I submitted and you approved in January, 1918, a draft of legislation vesting such a further appellate or reviewing power in the President. The draft was introduced, and died in the Senate Military Committee, which no doubt considered it of less actual importance than other pressing business of the war. If this were the only alleged difference of opinion within the department, therefore, it vanishes with this simple statement, and it is difficult to perceive a cause for unusual interest.

The storm centers, however, about three briefs—two from Gen. Ansell and one from myself—to you. Strange to say, these briefs were not addressed primarily to the desirability of such a power of review. That is conceded. They were addressed solely to the question of whether that power had not actually been granted by section 1199, Revised Statutes—a law that had been on the statute books for 55 years, with but a single attempt to deduce from it the grant of so broad a power in any officer of the Government. That single attempt was made in a desperate effort to obtain the release of a convicted soldier by habeas corpus. The precise question on which Gen. Ansell and I do not agree was carried into a circuit court of the United States and there decided once for all in a manner binding on all administrative officers sworn to execute the law as they find it. I shall not prolong this statement by discussion of that question. That any administrative officer would be justified in finding in the unequivocal language of a statute so old, against the reasoned judgment of a Federal court and the administrative practice of 55 years, a hidden meaning revolutionizing the entire system of military justice is simply preposterous. Gen. Ansell's argument was an eager, earnest plea for a forbidden short cut based on expediency rather than on reason. With the desirability of such an appellate power in the President you agreed, and forthwith requested it of Congress, which alone could grant it. Countenance of a plan to play ducks and drakes with a statute of the United States you refused. The briefs are in the CONGRESSIONAL RECORD or in the reports of committee hearings, and they may confidently be left to the reading of any fair-minded man—lawyer or layman. That thread of the story is at an end.

But if the controversy is not over the advisability of such an appellate power and not in a substantial sense in the famous briefs, where is it? It lies in this: First, that Gen. Ansell believes that the power, when granted, should be vested in the Judge Advocate General, and that a complete judicial system with faithful analogies to the organization and procedure of civil courts should be substituted for the present simple and direct system of Army discipline, while the department believes that the power should be vested in the President; that with such a grant of power the faults of the existing system will be completely removed with the exercise of those powers and with the improvements that have been instituted in the last two years.

These are the real issues and the only ones.

The case is one of technical ramifications, and I am sorry that limitations of space will not carry to the American people the wealth of fact and argument to be found in the files of the department. Each of the points of controversy must be discussed briefly and without avoidable technicality.

What is proposed is to carry the principles of the civil code and civil court principles of procedure into our military system. Appeal is made to the Anglo-Saxon conviction of the net desirability for the guarded procedure, the technicalities of indictment and pleading, and the stays, delays, and rights of appeal, which characterize our criminal courts. The real effect of such a change has not been examined, but it is, in fact, a divorcement of the power to control discipline from the power to command armies. Indeed, an analogy has been suggested between an army and a government, and it is urged that our governmental distinction and separation between the executive and judicial system must be carried into the Army, and that no commanding officer should be permitted to appeal to the disciplinary measure of trial by court-martial without the concurrence of his law officer or judge advocate, who should be, and usually is, a man learned in the technicalities of civil practice. Thus, if a division commander intrusted with a major part of the Argonne offensive had contumaciously declined to carry out his part of the general plan, he could not be brought to trial by Gen. Pershing unless the judge advocate of the American Expeditionary Forces concurred.

Our civil code is good. It protects our most sacred liberties, but gentlemen who contend that it should be substituted for our military code—which is also good—forget that the purposes of the two systems are diametrically opposed. The civil code is designed to encourage, permit, and protect the very widest limit of individual action consistent with the minimum necessities of organized government. The military code, and especially our military code, is designed to operate on men hurriedly drawn from the liberal operation of the civil code, and to concentrate their strength, their thought, their individual action, on one common purpose—the purpose of victory.

The common purpose is the plan of action. The plan of action can not be, as we have heard it is in the Bolshevik army, the debated sense of the Army. The plan of action is and must be the plan of the commander. Therefore individual liberty of action inconsistent with that common purpose must be restricted. The military code is designed to accomplish that purpose.

The truth is—and our people have lately seen it demonstrated in a thousand ways—that peace and war both demand sacrifices of individual liberty to a common purpose, but such sacrifices in war are infinitely greater in number and degree than they are in peace. The soldier, from the day he dons his uniform, must be prepared to sacrifice much of his old freedom of action, and, indeed, he swears to do so in his oath to obey the orders of his commander.

What is the essence of all this? It is that for the purposes of peace we demand an intricate legal system, even at the cost of technicalities, delays, and abstruse rules of law; we demand the admirable system of checks and balances that is illustrated by the divorce of our executive from our judicial system. We intrust ourselves to these devices rather than to the fairness and justice in the hearts of men. The very nature of war is such that men forget the sordid views that made those checks and balances necessary. They give the Nation, willingly and eagerly, their fortunes and their lives, and in such a time of patriotic exaltation we willingly give over, and the peril is such that we must give over, this adherence to artificial safeguard of complex rules and trust our individual rights more and more to the principles of humanity, honor, and justice in the breasts of our fellow citizens who are offering their lives and fortunes, as we are offering ours, to the perpetuation of our institutions and for the common good. On this theory the soldier is remitted to the simple and direct procedure for the enforcement of discipline in the Army. His court has its inception in the old courts of chivalry and honor and the essential principle remains. His conduct is taken before his comrades who determine whether it is the conduct of a soldier or no.

In this lies the difference between the systems for civil and military justice. The War Department naturally adheres to the latter system. It repels the thought of an army in the field with two commanders—one in charge of its discipline and one in charge of its strategical and tactical maneuver. The picture is, to the student of war or to the man with the slightest familiarity with things military, nothing less than ridiculous.

I should be willing to rest with this statement were it not that it has been said that without such a radical change as is proposed, we have witnessed atrocities of injustice, and that they are traceable to faults in the existing system of military justice. I have said that there is one such fault. That fault is imposed by a statute of the United States. I presented it to Congress for correction and it was not corrected. The fault lies not in the lack of a civil judicial system, but in the lack of a power to reverse, modify, or affirm the action of a military commander on the findings and sentence of a court-martial. I think we have disposed of the contention that the power should lie in the Judge Advocate General. It should lie in the President.

But what actual harm has resulted from this fault? I have covered the facts in my letter to you of February 13. I can not repeat them here. It is only the executed portion of a sentence that the present power of the President does not reach. In order that such power as he now has may reach every case of injustice, excessive sentence, and illegality appearing in a trial by general court-martial, a mechanism has been created in the office of the Judge Advocate General that gives, I venture to say, a scrutiny more far-reaching and exacting than is possible under any civil system under the sun. I shall not repeat its description or its record as shown in my letter to you of February 13, but I shall content myself with an assertion that I stand upon its record and that its record is complete and open to the public.

That mechanism added to the power of final review in the President asked for over a year ago will make the system such that I am willing to stand or fall by it.

So much for the controversy that has been magnified in the press and on the floor of Congress. This statement would not be complete, however, without reference to the allegations that have shocked the Nation and in respect of which the Nation is entitled, most of all, to assurance. It is asserted and attempted to be established by example that the sentences of courts-martial during the war have been atrociously severe.

Let me say, first of all, that the criticism that they are severe is not a criticism of the system of military justice, it is not a criticism of my administration of that system. It is a criticism of the officers who imposed, for instance, sentences of death for sentinels convicted of sleeping on post, for soldiers willfully and contumaciously refusing to obey the direct orders of their commanding officers, and for desertion in time of war, and it is a criticism of the Congress which authorized a death penalty, in plain statutory terms to be assessed on convictions for these offenses. I do not mean to say that if criticism in the connection is due I am immune. I am not. I agree with the statute and shall defend it, but I am not responsible for it.

Considering the charges from the standpoint of the officers who assessed the sentences, let us see who they are. Are they military zealots—men ground in an iron and heartless system until the liberal views of civil practice are ironed out of their souls? They are not. They are men taken in a general dragnet through the Nation so lately that the civilian clothes they left behind them are not yet out of style. They come from every walk of life. There are 200,000 of them. They comprise a faithful cross section of our whole people and our national life.

What is this charge of severity by them? We have seen that it can not be an indictment of the system. It is simply a difference between the opinions of well-meaning and humane critics far removed from the scene of the offenses punished and with only a partisan, inadequate, and highly colored statement of that case to guide them, and the opinions of men who considered the facts under the solemn obligations of an oath to be honest, impartial, and fair, who lived in the environment of the offense and were steeped in the reasons making it grave, and who assessed the sentence in the performance of the highest civic duty of man—the defense of home and country.

These men can not merit the indictment and diatribe that has been heaped upon their action. As Burke has said, you can indict a few individuals but you can not indict a nation. These men are a portion of the Nation—the portion that has been dedicated to death, if need be, to save the Nation from destruction. Their expression, and not that of men 3,000 miles from the field of action, is certainly the voice of the Nation on the punishments that should be meted out to men who imperil its honor and its safety.

Why should the offenses by a soldier of sleeping on a post of the guard, desertion, disobedience of orders, be punishable by death? Because cities and fortifications and armies have been lost through the drowsiness of sentinels; because armies have been disintegrated and nations humbled by desertion; because battles have been lost and peoples sold into captivity by the disobedience of soldiers.

I can not enter this discussion further. To us at home, in comfort and in present peace, it is next to impossible to reconcile the almost unanimous view of soldiers in the field or theater of war on the gravity of these and many other lesser offenses by their comrades. Therefore the execution of not one sentence of death for these things has been approved by me, and not one such sentence has been executed. Also, as I showed you in my letter of February 13, heavy sentences have been reduced comprehensively and uniformly. But even with that said, I can neither condemn the 100,000 officers who assessed the sentences, nor the law of Congress nor the system under that law that made them possible.

There, Mr. Secretary, are the main issues of principle. I shall discuss at this place neither individual cases nor minor principles that have been put in issue. They all come back to the essential bases that are here stated. I am willing at the proper time to take up either subject or any variation under either. I can defend them all to the satisfaction of any fair-minded citizen.

Hostile critics will undoubtedly assert that the observations I have submitted commit me to a support of excessive sentences, which, of course, is not true. I only speak the probable viewpoint of the officers who have assessed these sentences. But it may be said with entire accuracy that on the day the armistice was signed, November 11, 1918, no person was serving the sentence of a general court-martial who had

on that date entered upon the execution of the excessive portion of his sentence. As you are aware, shortly after my resumption of full charge of the office of the Judge Advocate General I recommended the convening of a board of clemency to undertake with the greatest expedition the adjustment of war-time punishments to peace-time standards, and that an admonition was issued, upon my recommendation, to courts-martial and reviewing authorities, both at home and abroad, to conform, unless special reasons influenced them to a contrary course, to the limits of punishment observed in time of peace.

I come now, with the utmost reluctance, to a few distasteful paragraphs of personal vindication. My motives and my actions have been attacked, and I have been advertised as having hampered the efforts of Gen. Ansell. I have been set off against him as reactionary.

It has been said that the present military code is archaic. I merely say that I began what proved a tedious and heart-breaking task of years to obtain a complete revision of the old military code early in my service, personally conducted that task beginning with my appointment as Judge Advocate General, and at the end of four annual disappointments obtained its complete revision in 1916.

During much of this time Gen. Ansell was one of the most promising and trusted officers in my office. During all the time that the code was in revision he never suggested to me, nor, so far as I can learn, to anyone else, any of the changes he is suggesting now. He participated in preparing the manual for courts-martial which was based upon the new code, but he advanced none of these new views.

Indeed, the first time that I was advised of such a view was in November, 1917, on the occasion of his presenting to you—not through me and entirely without consulting me—the first of the elaborate briefs about which so much has been made.

It has been charged that, as a result of that brief an order designating him as Acting Judge Advocate General was revoked, and further that he was relieved from his duties of supervising the administration of military justice. Nothing could be farther from the truth. He was never relieved from his duties supervising the administration of military justice except to take a trip to France, which he was eager to do, and this was considerably after the submission of the brief, and after the revocation of the order appointing him Acting Judge Advocate General and relieving me of my functions. That order was killed before I knew anything about the brief. It had never been published. It had been obtained by him from the Chief of Staff without consulting you and without your knowledge, and it was revoked by you because it was contrary to your wishes.

Gen. Ansell asked me in a formal written memorandum to help him secure an order appointing him Acting Judge Advocate General in charge of my functions. I did not wish to be relieved, but did not wish to embarrass you. I therefore replied in writing that he could take the matter up directly with the Secretary of War in his own way. He did not take the matter up with the Secretary of War at all. He took it up with the Acting Chief of Staff, with the remark that I concurred. Upon this showing the Chief of Staff marked the draft of an order that Gen. Ansell had prepared for suspended publication. By accident I learned of this order. This was before I had any intimation from any source of the preparation of the first brief, or any intimation that Gen. Ansell had reached a conclusion as to the desirability of an appellate power in the Judge Advocate General. I called your attention to the circumstance, and you directed that the order be not published.

While it is true that Gen. Ansell's attempt to secure an order giving him my functions as Judge Advocate General was concurrent with his preparation of a brief urging a revolution in the military system and his circulation of a document of such grave consequence among every officer in my office without giving me the slightest information of his efforts, it is not true that I knew of the brief until after you directed the rescinding of the unpublished order appointing him Acting Judge Advocate General. But I deem it unnecessary to enter this field of accusation further and discuss the many issues of fact which have been raised, as I am informed that the Inspector General of the Army has been designated to conduct a thorough investigation and make all the ascertainments of fact that are necessary to elucidate the administration of military justice during the war period.

(Signed) E. H. CROWDER,
Judge Advocate General.

Mr. CHAMBERLAIN. Notwithstanding the statement of the Secretary of War that they had no opportunity to come before the public with their views, while impulsive and uninformed Congressmen were indulging in criticisms which were not just, that letter of Mr. Baker to the Judge Advocate General and the letter of the Judge Advocate General to Mr. Baker were released on the 10th day of March, 1919, and printed in full in all the newspapers of the country. I have no objection to that, Mr. President. I do not consider it lese majesty to criticize either Gen. Crowder or Mr. Baker, and they have the same right to criticize their critics. It is the right of every American citizen to criticize the acts of a public servant, even if he wears a uniform.

The remarkable thing about this letter was this: Immediately upon its publication, and on the 11th day of March, 1919, Gen. Ansell, who was largely responsible for calling attention of the right of these soldiers to a fair and just trial, addressed a letter to the Secretary of War giving his views of the law and his version of the controversy and asking that it might be given the same publicity that Gen. Crowder's letter was given.

Now, Mr. President, if the Secretary of War had intended to be fair, he would have given it the same publicity as he did the Crowder letter, because as a great public servant administering the War Department he ought to have been interested only in getting the truth before the American people. Now, it happened that the Secretary of War, with his Chief of Staff, was visiting the cantonments throughout the country, a very laudable thing to do. I wish he might have visited the prisons here and in France; maybe he did; I hope that he did, but I have not heard of it if he did. I immediately indited a letter to the Secretary of War and asked that I might be furnished with a copy of Gen. Ansell's letter. The Assistant Secretary of War, Mr. Crowell, courteous at all times, sent me a copy of the Gen. Ansell letter, but stated he was not at liberty to publish it or to act on Gen. Ansell's request that it be given the same publicity as Gen. Crowder's letter. It was a complete answer, it seemed to me, to the letter of the Secretary of War and of the Judge Advocate General.

Then, in the hope that the Secretary of War might be induced to let this go to the public, so that the public might have an opportunity to hear both sides of the controversy, I wired to him on March 16 making the same request at San Francisco, Calif. Mr. President, Gen. Ansell's request was refused, my telegram to the Secretary of War was refused, and here is what he said in his answer to my telegram:

> Your telegram received. More than a year ago I asked of the Military Committees, both Senate and House, legislation to correct the evils in present court-martial system. I shall renew request when Congress reassembles. There would seem to be, therefore, no controversy on the merits of the subject. Have not seen letter in question and can not imagine any reason why my consideration of it on my return will not be time enough.

In the meantime the Judge Advocate General had revised and much amplified his letter, and the Secretary of War was giving the greatest publicity to the Judge Advocate General's letter and his own view of the matter, and prejudicing the minds of the American people by stories in the press and by circular letters prepared by a coterie of officers of Gen. Crowder's selection, headed by a civilian lawyer in uniform at work at the Government expense, sending out over the country hundreds of thousands of these so-called Crowder and Baker defenses of the court-martial system. The Government was footing the bills for the work and for sending the matter through the mails in envelopes, in part at least, bearing the frank of a bureau which had gone out of existence with the ending of the war. I have no idea how much it cost the Government of the United States.

But we find the Secretary claiming that the military authorities had no way to get to the public, while he was expending public money maintaining a bureau in the War Department giving the people one side of this very much controverted question and paying no attention to the other side which had been submitted to him with equal force as had the side of Gen. Crowder.

His reason for not giving any other than one side of the controversy is the proposed amendment of January, 1918, which the Military Affairs Committees of the House and Senate declined to report out or to ask Congress to pass. He could see no reason, therefore, in view of the fact that over a year ago he had sent his famous amendment to Congress, why this letter of Gen. Ansell's should receive any consideration at his hands.

On the 19th day of March, 1919, after I got that telegram from Mr. Baker, I wrote him a letter, which I ask may be printed in the RECORD without reading.

The PRESIDING OFFICER. Without objection, it is so ordered.

The letter referred to is as follows:

MARCH 19, 1919.

Hon. NEWTON D. BAKER,
Secretary of War.

SIR: On the 16th instant I addressed you a telegram in which I asked that you give to the public a statement made by Lieut. Col. (formerly Gen.) Samuel T. Ansell, in reply to statements made by you yourself and by Gen. Crowder, the Judge Advocate General of the Army, in which you both gave warm support and approval to the present court-martial system, and in which Gen. Crowder besides indulged in severe personal criticism and accusation against Gen. Ansell, who in testimony recently given before the Senate Committee on Military Affairs had condemned the existing system of military justice and the administration under it. I asked you to make the statement public, primarily because it was a clarifying contribution to the subject now agitating the people, to which the people are entitled, and, secondarily, because it was only fair and just to this officer that you should do so. I believed that you would make this statement public, and do so immediately, in order that the people might have the opportunity of considering it as nearly contemporaneously as possible with the opposing views publicly expressed by you and the Judge Advocate General. In that I am disappointed.

I have just received from you the following telegram:

"Your telegram received. More than a year ago I asked of the Military Committees of both the Senate and House legislation to correct the evils in the present court-martial system. I shall renew the request when Congress reassembles. There would seem to be, therefore, no controversy on the merits of the subject. Have not yet seen the letter in question, and can not imagine any reason why my consideration of it on my return will not be time enough.

"(Signed) NEWTON D. BAKER,
"*Secretary of War.*"

It is painful to me, Mr. Secretary, to find you fencing upon a question which means so much to the tens of thousands of enlisted men who have suffered injustice under the present system, a question which means so much to you, the Army, the Nation. In the instant telegram you say that more than a year ago you recognized the evils of the present court-martial system and requested legislation to correct them, and that inasmuch as you intend to renew that request, there can be no controversy on the merits of the subject.

Your present recognition of existing evils of the court-martial system is strangely irreconcilable with your published statement no more remote than March 10. In that statement of warm approval of the existing system, you seemed blind to any deficiency. You say therein:

"I have not been made to believe by a perusal of these complaints that justice is not done to-day under the present law, or has not been done during the war period, and my acquaintance with the course of military justice—gathered as it is from the large number of cases which in the regular routine come to me for final action—convinces me that the conditions implied by these recent complaints do not exist and had not existed."

You further say that you are "absolutely confident that the public apprehensions which have been created are groundless." And then you put the capstone upon your monumental confidence in the system by further saying:

"I wish to convey to you here the assurance of my entire faith that the system of military justice, both in its structure as organized by the statutes of Congress and the President's regulations and in its operation as administered during the war, is essentially sound."

And finally you call upon the Judge Advocate General to make a statement for the purpose of reassuring the people who "must not be left to believe that their men were subjected to a system that did not fully deserve the terms of law and justice"; and then you conclude, rather lightly, that after all it is but "a simple question of furnishing the facts, for when they are furnished I am positive that they will contain the most ample reassurances." On March 10 you were blind to any deficiencies in the existing system, as, indeed, the evidence abundantly shows you have been deaf throughout the war to complaints about the injustice of this system, complaints which should at least have challenged your earnest attention rather than provoked your undisguised irritation.

But, as you say, you did propose certain legislation to the committees which they did not see fit to recommend for enactment and which, very fortunately, did not become law. I can hardly believe that that bill, prepared by the Judge Advocate General of the Army and submitted by you, was a bona fide effort to reform the existing system, and the slightest consideration of the bill will show that had it been enacted into law it would have made the system even more reactionary, if possible, than it is now. I can hardly believe that this was a bona fide effort at reform, because you already had had an opportunity to establish in your department a legitimate and necessary revisory power over and supervision of courts-martial procedure. Gen. Ansell was at that time Acting Judge Advocate General of the Army, and his opinions were entitled to be respected as such, and in all other matters they were so respected.

In order to keep courts-martial procedure within just and legal limitations he wrote an office opinion, in which he clearly demonstrated that this power of supervision was to be found in existing law, and in that opinion all the officers of the department, among whom were many most distinguished lawyers from civil life, concurred. And yet, in order that that opinion might be overruled and that you might rely upon the theory that you were entirely without power, you either ordered or permitted Gen. Crowder himself, who was not at that time connected with the office, to return thereto and write for you an overruling opinion, which you approved, and in doing so voluntarily denied that it was your right and duty under existing law to supervise the system. You approved the opinion of the Judge Advocate General, which was to the effect that this supervisory power did not exist, and, furthermore, ought not to exist, inasmuch as the law military is the kind of law that should be left to be executed at the will of the camp commander. If you had really desired to establish a legitimate legal supervision of courts-martial you could have done so simply by approving the opinion of the Acting Judge Advocate General, which was not a personal opinion, but was an office opinion, which in ordinary course of administration would have been adopted. Advised to do the proper thing by your chief law officer and having been shown by him the way to do it, you declined to do so upon some slight legal technicality. This is evidence to me that you did not desire to do so.

You supplanted the officer who had seen fit to call to your attention at the beginning of the war the necessity of keeping the strictest supervision over courts-martial procedure, by an officer who contended that such supervision was not necessary, and that such supervision would derogate from the power of the commanding officer and destroy discipline. You elbowed aside the one officer who even then had the courage to condemn the system and the prevision to point out its terrible results, Gen. Ansell, and took into the bosom of your confidence a trio of men who are pronounced reactionaries—Gen. Crowder, the then Acting Chief of Staff, and the Inspector General—the last named of whom is even this day engaged, by your order, in a so-called "investigation" designed, in my judgment, to destroy the man who exposed the injustice of the present system. You accepted those views. But, in order that any future responsibility might be shifted from your shoulders to Congress, you presented a bill which, even if you did not, your advisers did, know could not be passed. Your advisers did not wish any modification of the existing system. They and you declined to accept the views of the Acting Judge Advocate General that would have gone far toward alleviating the situation on the ground that those views were not fully justified by the letter of the statute. You were thus solicitous that your power be found in the letter of the statute. And yet in the very bill proposed you asked for the power of suspension of sentences, when you were already suspending sentences by administrative order without one word of legal authority therefor.

There is another evidentiary circumstance that indicates the effort was not made in good faith, but was simply designed to allay public apprehension and inquiry by the appearance of doing something. It is shown by the records of your department that the Judge Advocate General of the Army, in correspondence with the senior officer of his department in France shortly thereafter, said, with respect to an administrative makeshift which he had proposed for adoption, and which you did adopt, that it was necessary to do something to head off a threatened congressional investigation, to silence criticism, to prevent talk about the establishment of courts of appeal, and to make it appear to the soldier that he did get some kind of revision of his proceedings other than the revision at field headquarters. How can it be said that such an attitude of mind is consistent with an honest desire to alleviate the situation? It is significant also that your interest upon this subject was not such as to produce that active participation of the department which characerizes its efforts when it desires to secure legislation.

The bill to which you refer and the nonenactment of which you plead as shifting the responsibility for the maladministration of military justice from you to Congress, if honestly submitted, is conclusive evidence that you yourself are entirely reactionary or that you have been imposed upon and deceived by advisers who are. That bill is Senate 3692, and provides, so far as immediately pertinent to this discussion, that section 1199, Revised Statutes, be amended to read as follows:

"The Judge Advocate General shall receive, revise, and cause to be recorded the proceedings of all courts-martial, courts of inquiry, and military commissions, and report thereon to the President, who shall have power to disapprove, vacate, or set aside any finding, in whole or in part, to modify, vacate, or set aside any sentence, in whole or in part, and to direct the execution of such part only of any sentence as has not been vacated or set aside."

Do you really know, Mr. Secretary, the purpose and legal effect of that bill? In the first place, it would have to be construed together with that statute which makes the Chief of Staff the trusted military adviser of the President and Secretary of War, whose authority he habitually exercises, on the one hand, and places him in supervision and control of all bureau officers, including the Judge Advocate General of the Army, upon the other hand. The President's power, therefore, as a matter of law, over the control of courts-martial cases would under that bill be habitually exercised by the Chief of Staff, an ultramilitary official, without the slightest competency to pass upon those errors of law which prejudice the rights of the accused and thereby render it necessary to modify the judgment and with a disposition to disregard such rights. And also, the Chief of Staff, and not the President, would be the one to exercise this power, in fact. There were some 350,000 courts-martial from the time we raised the new Army until July 1 last. Nobody would expect the President to review such a number or any appreciable part of them. Nobody, indeed, could expect the Chief of Staff himself to do so. The work would have to be intrusted to some military minion, inexperienced in law and the administration of justice, and whose training had disqualified him for such functions.

The Judge Advocate General, when he appeared representing you before the Military Committee, admitted that this would be the course of administration and contended that the Chief of Staff ought to have that power. He said that that was necessary in order to maintain discipline.

But worse than this, that bill would authorize the Chief of Staff to disapprove, vacate, and set aside a finding of "not guilty" and substitute upon his review of the evidence a finding of his own. Notice the language is that he shall have the power to disapprove, vacate, or set aside "any finding" and also to modify, vacate, or set aside "any sentence." This is a power which ought not to be granted to any man, and I feel safe in saying will never be granted by Congress. This alone was sufficient not only to condemn the bill in the mind of Congress, but to show the attitude of those who proposed it. Do you believe, Mr. Secretary, that the President of the United States, the Secretary of War, the Chief of Staff, or any other official, should have the power to set aside an acquittal and substitute for it a conviction, or to set aside one sentence and substitute for it a harsher one, or to set aside a finding of guilty of a greater one? That is what the bill which you proposed authorizes.

But the bill further provides "that the President may return any record through the reviewing authority to the court for consideration and correction." This power is on a par with and supplemental to the absolute power which I have just referred to. If the Chief of Staff were not satisfied with a finding of "not guilty," he could return the record to the court-martial with instructions to make a finding of guilty. If not satisfied with a light sentence he could instruct the court to award a heavier one. If not satisfied with a finding of guilty of a minor offense, he could instruct the court to find the accused guilty of a more serious one. Do you believe that the President, the Secretary of War, or the Chief of Staff, or any other official, should have such power? If you stand for that bill you evidently do.

The Judge Advocate General, who appeared before the committee in representation of your views, testified:

"I want the President authorized to return the record which we get here, back through the convening authority to the trial court, and ask a reconsideration of their action, so that he may proceed, if he desires, upon the revised findings of the court, and thus make the court participate with him in the final judgment."

When asked the question whether a commanding general could disapprove a finding of not guilty and send it back, he said:

"Yes; when in his opinion the finding is not sustained by the evidence"; and he argued that that power was necessary to the maintenance of discipline, was now possessed by all commanding officers, and ought to be possessed by the President and Chief of Staff. In further argument sustaining that view he said with respect to cases in which very small sentences had been awarded:

"I do not know anything that could attack discipline more if the commanding general, who is also the reviewing authority, or the Secretary of War, or the President, who will become the reviewing authority of that class of cases under this legislation, could not invite the attention of the court to the effect of such a sentence upon the discipline of the Army generally. I do not think this power would have survived throughout the centuries if it were intrinsically wrong."

Obviously he was unaware that this is one of the few countries in which such a barbaric practice has survived. These views you doubtless approved, inasmuch as in your letter to the committee you invited it to hear the views of the Judge Advocate General in explanation and support of the proposed legislation.

For the moment, at least, you now conceive that there should be a power of revision. That, to use your language, is "structural," "organic." The lack of a proper revisory power is a lack of legal control at the top. There are many other deficiencies of the same character. There is an absolute lack of legal control at the bottom and throughout the proceedings. You have said that the cases that come to you in regular routine convince you that the complaints against the system are groundless. Unfortunately, Mr. Secretary, you are not in touch, and apparently do not desire to get in touch, with the administration of military justice. You must know that under the existing system the Secretary of War sees and takes action only upon that relatively insignificant number of cases which are required under existing law to go to the President for confirmation. He sees none others. These few cases consist in the far greater part of a few sentences of dismissal of commissioned officers. These are not the class of cases in which appears the injustice of which I have complained. The courts-martial system is such, and the regard for rank in the Army is such, that a commissioned officer appears before a court-martial to far better advantage than does a private soldier. You do not see the system in operation. You do not see its tragic results. When you denied the department the revisory power over all courts-martial cases you denied yourself the opportunity to keep in touch with the administration of justice throughout the Army. Your knowledge is obtained from this insignificant number of cases of commissioned officers and from those persons surrounding you who are interested in supporting the existing reactionary system.

The existing system does injustice—gross, terrible, spirit-crushing injustice. Evidence of it is on every hand. The records of the Judge Advocate General's Department reek with it, and upon proper occasion

I shall show the people that this is true. The organization of the Clemency Board, now sitting daily and grinding out thousands of cases, is a confession of it. Clemency, however, can never correct the injustice done.

You have, of course, adopted the statement of the Judge Advocate General, which you invited and published. That statement is involved in as inextricable confusion and patent inconsistencies as your own pronunciamentos upon this subject. In one and the same breath it declares the system unusually excellent, and then blames Congress because it has failed to enact the bill which you proposed and has heretofore been referred to; it declares that military law can best be administered finally in the field, but at the same time argues that the system would be much improved by the establishment of a departmental appellate power; it contends that courts-martial should be subject, not to legal control, but only to the power of military command, and at the same time objects to assuming responsibility for the outrageously excessive sentences awarded when courts and commanding officers go wrong, without legal restraint. It admits that our soldiery must be hurriedly drawn from civilian life and from the operations of the more liberal civil code, but assumes that for that very reason the military law ought to be more harshly applied in order to obtain discipline. It argues that courts-martial are not courts of justice, but "courts of chivalry and honor," and concludes that since the soldier must on occasion yield up his life on the battle field, he should not be heard to complain if it be taken away by these courts of chivalry; it places courts-martial in high esteem, though admitting that they apply not the modern rules of right, but medieval principles that govern over lord and armed retainer. It says that the officers who sit in judgment upon the private soldier can not be military zealots, because it was only yesterday that they got out of their civilian clothes, but in the next paragraph asserts that they are most competent to award military punishments because of their military appreciations. It argues that the primary purpose of a court-martial is to maintain discipline, as though discipline in any real sense could be maintained in our Army without doing justice.

I beg to assure you that there is controversy on the merits of the subject. There is great difference between you and me. That would be relatively unimportant. But there is great difference between you and Congress, and there is great difference between you and the American people. I do not believe that a court-martial should be controlled from beginning to end by the fiat of military command. I do not believe that a commanding officer should order the trial of an enlisted man on a charge that is legally insufficient. I do not believe that he should order a court to overrule pleas made in behalf of an accused which upon established principles of law would bar the trial. I do not believe that the court and the commanding officer can cast established rules of evidence to the winds and insist upon the conviction of a man upon evidence that no court for a moment would entertain. I do not believe that the court and the commanding officer should be permitted to deprive an accused of the substantial right of counsel and railroad him, unheard and unrepresented, to a conviction. It was only yesterday that I was shown a record in which the counsel for the accused was intimidated from examining his superior officer as a witness by a threat made in open court by the superior officer that any question asked him, reflecting upon his credibility, would promptly bring charges against the youthful counsel. I do not believe that the conduct of a court should be controlled by a commanding officer. I do not believe that a court should be directed or instructed to reverse its finding of innocence or to impose a harsher punishment than that originally awarded. On the other hand, I believe, and I insist that the courts-martial having in their care and keeping the lives and liberties of every single one of our soldiers shall be courts of justice, acting as judges, controlled by and responsible to no man controlled by and responsible to their own oaths, and to the great principles of law which have been established by our civilization to protect an accused wherever he is placed on trial.

Surely you have been misled. Officers of your department who have supported the iniquitous system and who have imposed upon you, or most unfortunately persuaded you, have been busy preparing their defense. You have been presented lengthy reports designed to controvert the speech which I made in the Senate on this subject, which reports I have shown you to be misleading and utterly unreliable. Volumes of statistics are being prepared to show that, after all, the system is not so bad. Whether you do or not, the American people see and have the evidence; Members of Congress have the evidence. You have taken a terrible stand upon a subject which lies close to a thousand American hearthstones. The American people will not be deceived by such self-serving, misleading reports and statistics. Too many American families have made a Pentecostal sacrifice of their sons upon the altar of organized injustice.

Very sincerely, GEO. E. CHAMBERLAIN.

Mr. CHAMBERLAIN. Mr. President, it is not a pleasant duty that I have undertaken to assume. It is unfortunate that in times of war Congress is so engrossed with the forward movement of troops and the preparations for their successful advancement that they forget or do not have time to take up the things that so intimately touch the homes and hearts of the American people. I have no criticism about that, but the thing that distresses me most is the fact that with the thousands of letters coming to us all Congress can not lend an attentive ear to the suggestions which are being made to reform the military code, which has been in force and effect practically since 1806, so that there may be less of injustice done to our fighting men.

But they say, "Why, as chairman of the Committee on Military Affairs in 1916, did you not suggest some of these remedies?" Mr. President, these things had not then been done; and besides the Military Affairs Committee was listening to suggestions of Gen. Crowder. That revision was, in the main, a recodification of the laws that were scattered through the statute books involving changes of phraseology and the collating of the laws upon the subject. There were only two things inserted in that recodification that really have been of great benefit to the morale of the Army, and they were the suspended-sentence law and the establishment of the disciplinary barracks, where these young soldiers can be sent instead of being sent to the penitentiary, and can restore themselves to the colors. Those changes have been of great benefit, but aside from those and one or two other minor changes there was very little done in the revision of the Articles of War in 1916.

Mr. President, I have trespassed too long upon the time of the Senate, but I want to call attention to the statement that has been made by the Secretary of War, by Gen. Crowder, and by many of those who sustain their views that there is no inherent imperfection in the system, and that no injustice is perpetrated against the soldier by the system. With at least the knowledge and indorsement of the Secretary of War, a committee of the American Bar Association was appointed to hold hearings and to make suggestions with reference to creating an appellate tribunal and to suggest proper amendments to the Articles of War. There evidently seemed to be some little fear on his part that that committee would not do its duty strictly from the military viewpoint, and so a little later on the Secretary of War, for some reason which I have not had explained to me—and I did not expect to have it explained to me—appointed a strictly military tribunal on the subject and for the same purpose. There was not so much danger from them, apparently, in the minds of the authorities as there was in the committee of the bar association. Both of those committees recommended some sort of an appellate tribunal. It is true they differed as to the constitution of that appellate tribunal, but they both recommended it, and even Gen. Crowder favored an appellate tribunal of some kind. So the very appointment and the recommendations of these distinguished men are admissions that there are defects in the system. If there are no defects in the system, structurally or otherwise, and if no injustices are perpetrated under it, why change the law at all? Why not let the system go on just as it is, with the power of life and death in the commanding officer?

Why, Mr. President, there is no stronger admission of the fact that there were and are injustices in the court-martial system than that made by Gen. Crowder when he testified before the Military Affairs Committee in February, 1919, in substance, that there would be practically a jail delivery made by him in 60 days. Why a jail delivery if there were no injustices, Mr. President? That is not done even in the case of State courts or the Federal courts; there is no general jail delivery, because there can be no assumption that the men are not being fairly punished. If these men were properly punished, there could be no need of a general jail delivery.

I commend the War Department for what it has done in releasing these young men. I commend them for having had a prison delivery. They could not let them out too quickly for me. Why, Mr. President, this Army of ours of 4,000,000 men was a cross section of the citizenship of America. It was no ordinary army. The American people are not going to stand for any system that will make possible these acts of injustice in the years to come.

Mr. President, some may say that the discussion upon which I have entered is not germane to the subject of retiring Gen. Crowder as a lieutenant general. I say if he is entitled to the credit of having made this Army possible, in view of the fact that he had the power to correct the evils and did not do it, he is responsible for the injustices that have been perpetrated against this Army, and any man from the highest to the lowest who is responsible for such things as have been done ought not to be recognized by the Congress of the United States over and above men who have performed gallant service at the front and equally with Gen. Crowder have performed gallant service in making it possible to win the war by their efforts on this side of the water.

So I conclude, Mr. President, with this summarization: First, I oppose this bill unless the amendment which I have suggested is placed on it that recognizes other distinguished soldiers. I think even then it is not a proper measure to be passed by the Congress until some committee or somebody somewhere has had an opporunity to weigh the records which have been made by the men in the Army and selections made for advancement either to the grade of lieutenant general or some other high rank. Second, I oppose the bill giving Gen. Crowder credit to the exclusion of the 192,000 civilians who stood behind him and helped him in the work of organizing our Army and making it possible. Furthermore, because he had it in his power to have adopted a system of hearing appeals and remedying the cruelties that were being practiced against the young men constituting the Army and did not do it, I oppose this measure with all the power that is within me.

Mr. McKELLAR. Mr. President, I regret very much to differ with the distinguished Senator from Oregon. For nearly three years I have served on the Military Affairs Committee