

# ESTABLISHMENT OF MILITARY JUSTICE—PROPOSED AMENDMENT OF THE ARTICLES OF WAR.

THURSDAY, OCTOBER 23, 1919.

UNITED STATES SENATE,  
SUBCOMMITTEE ON MILITARY AFFAIRS,  
*Washington, D. C.*

The subcommittee met, pursuant to the call of the chairman, in the room of the Committee on Appropriations, at 10.30 o'clock a. m., Senator Francis E. Warren, presiding.

Present, Senators Warren (chairman), Lenroot, and Chamberlain.

Senator WARREN. Gen. Chamberlain, Inspector General of the Army, is present this morning, and we will hear his statement.

## STATEMENT OF MAJ. GEN. JOHN L. CHAMBERLAIN, INSPECTOR GENERAL, UNITED STATES ARMY.

Senator WARREN. General, this committee has before it the result of some work and some examinations which you have had conducted with relation to courts-martial, so that all that we shall ask you to do is to add whatever you wish to say in addition to that.

Gen. CHAMBERLAIN. I have nothing to add to that report. In his testimony before this committee former Lieut. Col. S. T. Ansell has from time to time taken occasion to comment upon the Inspector General of the Army and the Inspector General's Department. With Gen. Ansell's opinions as to the Inspector General and the Inspector General's Department I am not concerned. However, certain concrete statements made by him appear to call for comment.

Referring to certain testimony given by Maj. Copp, of the Judge Advocate General's Department, before a committee of the American Bar Association, Lieut. Col. Ansell states:

Maj. Copp, speaking out of what he described as his experience as a judge advocate in a division during this war, said that it was customary for the Inspector General's Department to compel, by virtue of the power of office, a man to incriminate himself.

When the committee asked him time and time again, "Do you know this to be true?" he said, "Yes, because I not only observed it but the representative of the Inspector General's Department at the camp where I was stationed admitted that to be a fact."

Examination of the printed record of Maj. Copp's testimony before that committee fails to discover that upon any occasion he made a statement to the effect that these views were based upon personal knowledge. On the contrary one discovers the following statement, made by Maj. Copp:

This matter of compulsion probably is receiving more notice than I intended that it should. It never was under my observation, even in those investigations of the Inspector General, except as he related them to me. He said that he had that authority and it was his duty to compel witnesses to appear before him for investigation.

Again, in another place, appears the following:

I simply desire the committee to understand that I merely base my statement there upon what I have been told and not upon anything I personally observed or anything within my personal knowledge.

Lieut. Col. George W. England, on duty as senior camp inspector at Camp Sheridan, from August 30, 1918, to March 25, 1919, was the only officer of the Inspector General's Department who was on duty at that camp during the period that Maj. Copp was there, the other representatives of the Inspector General's Department being acting inspectors. Col. England in a letter to the Inspector General states:

The policy of requiring witnesses to give incriminating evidence against their protest did not exist in the office of the inspector, Camp Sheridan, nor was belief expressed or held that such procedure was proper. All of the testimony taken in the office of the inspector was taken under my immediate supervision, and in no case was this policy followed. \* \* \* In no case before the inspector for investigation was the plea of self-incrimination disregarded or was a witness forced to answer questions which would incriminate him.

There are issued from the office of the Inspector General certain instructions to the officers of that department. One of the instructions I quote as follows:

Prior to interrogating a witness:

(1) Make sure that witness understands his or her constitutional rights \* \* \*

Again referring to the same matter Lieut. Col. Ansell, in his testimony before this committee, stated:

There ought to be some law against permitting the Inspector General's Department of the Army to use these third-degree methods of menace and threats and taking advantage of the innocence or ignorance of the unhappy lot of the enlisted men.

It is a fact well known to officers and enlisted men of the Army that such methods are entirely foreign to the firmly established policy of the Inspector General's Department. It is also a fact that they are not resorted to.

It is also a fact that officers and enlisted men well understand that in the hands of the Inspector General's Department they get a square deal.

Referring to an investigation made by the Inspector General of certain controversies which had arisen in connection with the Judge Advocate General's Department, on page 209 of these hearings, Col. Ansell states:

And then the Inspector General, in my judgment forgetting whatever quasi-judicial character belongs to his position—and there ought to be a great deal to it—said, "You know, I am making a report on this subject by order of the Secretary of War. This thing is in Congress, and my report will go to Congress; and, Ansell, when it goes to Congress it will be very detrimental to you;" and I said, "Well, General, I would rather meet you in Congress than deal with you here."

Further on he states:

It was a menace, a threat that unless I played the department rôle the report was going in against me, would be published broadcast to the world, and would be very detrimental to me.

In regard to these statements I desire to state unconditionally and in language which will admit of no misinterpretation, I made no such statements, nor did I make any statements which admit of such interpretation.

That is all I have to say, gentlemen.

Senator LENROOT. In that connection, General, was there a conversation between you upon that subject?

Gen. CHAMBERLAIN. There was a conversation.

Senator LENROOT. Could you relate the conversation as you recollect it?

Gen. CHAMBERLAIN. I said to Lieut. Col. Ansell that I regretted very much that he had taken this view of the situation, as I was endeavoring to get at the facts of the case, and that I needed his statements in order to give me both sides of the controversy. That is the gist of what I said. Of course I do not recall the words.

I will add, in that connection, that because of the fact that Col. Ansell declined to make any statement, I had Col. Mayes brought home from France. Col. Mayes was Col. Ansell's—I might say—confidential assistant during most of the period involved. Col. Mayes came home, and his statements and testimony appear in my report.

In that connection I might state that Mr. Bennett, a stenographer in my office, who was present during this conversation, is now in the waiting room, if you care to call him in regard to this matter.

Senator LENROOT. What were the relations at that time between you and Col. Ansell?

Gen. CHAMBERLAIN. Perfectly friendly; always have been. They have never been otherwise.

Senator LENROOT. When did the controversy first arise between you?

Gen. CHAMBERLAIN. There never has been a controversy.

Senator LENROOT. There never has been?

Gen. CHAMBERLAIN. My relations with Gen. Ansell, he as acting judge advocate general, and I as inspector general, throughout the period of the war, were most friendly, and so far as I know there was full cooperation. I recall only one difference. That was in connection with an investigation of the conduct of an officer of the Judge Advocate General's Department. My office condemned severely the conduct of this officer and recommended disciplinary action. That action was not approved in Gen. Ansell's office, and the officer was not disciplined, but that was a matter to which I never gave a thought afterwards, and I do not believe that he did. That was purely official. So far as I can recall that is the only case where the two offices did not substantially agree in their recommendations.

Senator LENROOT. I just note in the testimony that you referred to in the record, it appears that whatever controversy there was in this conversation grew out of his refusal to make a statement in the investigation that you were charged with making.

Gen. CHAMBERLAIN. There was no controversy. Our conversation at that time was most friendly.

Senator LENROOT. Yes; but he put it in writing, and I have it here. He did refuse?

Gen. CHAMBERLAIN. Yes, he refused.

Senator LENROOT. And he gave as his reason, apparently, that you were charged with making an investigation upon a subject upon which, prior to that time, you had formed an opinion, and were therefore not an impartial investigator. That was the amount of it. That is stated on page 208.

Gen. CHAMBERLAIN. In that connection, Gen. Ansell must have referred to the fact that back in November, 1917, when the case which is now known as the El Paso——

Senator CHAMBERLAIN. Mutiny cases?

Gen. CHAMBERLAIN. Mutiny cases.

Senator WARREN. Do you care to have that record, General?

Gen. CHAMBERLAIN. No; the matter is perfectly clear in my mind. Upon that occasion, or in connection therewith, Col. Ansell submitted recommendations relative to the interpretation of section 1199 of the Revised Statutes of the United States. The court-martial proceedings in those cases were handed to me by the Assistant Chief of Staff to look over and to prepare a memorandum for him. This was done because of the fact that a short time before, I had been at Fort Bliss in connection with another matter, the Twenty-fourth Infantry trouble. I had made some inquiries as to this artillery case, and had some little knowledge of the conditions. The memorandum which I prepared had no direct reference whatsoever to the interpretation of section 1199, and to the best of my belief—although I could not state that positively, as it was some time ago—I had no knowledge at that time that a memorandum with respect to section 1199 had been submitted by Ansell. In other words, my memorandum regarding those specific cases had no bearing whatsoever upon the general question of section 1199. In my memorandum I stated my disapproval of smashing those proceedings, because I believed them to be legal, and because such action would be detrimental to discipline. But on account of the peculiar conditions I suggested that clemency be exercised, and that those men be restored to duty, and that the young officer who had shown bad judgment be relieved from his command.

Senator LENROOT. That is, your participation was upon the merits of the case and not upon the construction of the statute?

Gen. CHAMBERLAIN. Absolutely so. It had no connection whatsoever with the statute.

Senator LENROOT. You prepared a memorandum upon it?

Gen. CHAMBERLAIN. A short memorandum.

Senator LENROOT. Could that be produced and put in the record? That would help to clear this up, here.

Gen. CHAMBERLAIN. That memorandum is embodied in my report.

Senator LENROOT. It is already in this record?

Gen. CHAMBERLAIN. It is in my report, I think.

Senator WARREN. We have that.

Senator LENROOT. That will be all right, then.

Senator WARREN. I have not brought that report before the committee for examination, Senator, but it is here, when you get ready to look it over.

Senator LENROOT. I can refer to it.

Senator WARREN. When you were out of the room, I believe, Senator Chamberlain, there was something said by Gen. Chamberlain about something that Gen. Ansell said.

Senator CHAMBERLAIN. Yes; I have the record here.

Senator WARREN. Would you like to ask the witness any questions on that?

Senator CHAMBERLAIN. Of course this committee, as I understand it, is not interested in the personal controversy between you and

Gen. Ansell, but it is perfectly proper for you, General, to give your version of this particular statement of Ansell's.

Gen. CHAMBERLAIN. Mr. Senator, my only object in coming here was to correct a positive statement of fact which seriously reflected upon the Inspector General in the performance of his duties.

Senator CHAMBERLAIN. I say it is perfectly proper for you to do it; but the committee itself is not interested so much in the personal question as in the law itself.

Gen. CHAMBERLAIN. Certainly.

Senator CHAMBERLAIN. What were you investigating with reference to Ansell? Were your instructions to make the investigation, in writing?

Gen. CHAMBERLAIN. In writing?

Senator CHAMBERLAIN. Yes.

Gen. CHAMBERLAIN. Yes, sir.

Senator CHAMBERLAIN. From whom did you receive instructions to investigate Ansell?

Gen. CHAMBERLAIN. I never received instructions to investigate Ansell.

Senator CHAMBERLAIN. What was the subject—

Gen. CHAMBERLAIN. My orders are in writing, signed by the Secretary of War, and they are embodied in that report, fully. The Secretary of War told me, as I recall it, that a controversy involving questions of fact had arisen in the Judge Advocate General's Department; that he desired me to examine all the records and to fully investigate those matters. He specifically, in those written instructions, stated that the investigation would be conducted under the assumption, with every officer, that it was his duty—have you that report there?

Senator LENROOT. I have your memorandum here.

Gen. CHAMBERLAIN. I want to get the exact language. [Reading from report:]

In making the foregoing inquiry you will proceed on the fact that I recognize fully the right of any officer in the Military Establishment to testify frankly and fully upon any matter as to which he may be interrogated by the committees of the Congress, and do not desire any adverse inference to be drawn from the fact of such testimony, where it is frank and straightforward.

This investigation was directed with special reference to the question as to whether or not the controversy pertaining to the office of the Judge Advocate General had affected adversely the efficiency of that office.

Senator CHAMBERLAIN. That is in your order from the Secretary of War?

Gen. CHAMBERLAIN. That is in my order from the Secretary of War.

Senator CHAMBERLAIN. Who prepared that?

Gen. CHAMBERLAIN. The Secretary of War dictated it, in my presence.

Senator CHAMBERLAIN. Was it usual, in a controversy between two officers in the same department, to refer the whole question of fact involved between those officers to the Inspector General's office?

Gen. CHAMBERLAIN. Yes.

Senator CHAMBERLAIN. For investigation and report?

Gen. CHAMBERLAIN. Entirely so. That is one of the functions of the Inspector General's Department.

Senator CHAMBERLAIN. Is that your report?

Gen. CHAMBERLAIN. That is my report.

Senator CHAMBERLAIN. It covers maybe a thousand pages of typewritten matter, does it not?

Gen. CHAMBERLAIN. The report itself covers 60 pages.

Senator CHAMBERLAIN. Sixty pages?

Gen. CHAMBERLAIN. And these are copies of all correspondence [indicating].

Senator WARREN. Did you say 6 pages or 60 pages?

Gen. CHAMBERLAIN. Sixty pages. This report is long because we made a study in the office of 1,500 court-martial cases taken in blocks of 500 each, 500 taken during the period about January and February, 1918, 500 taken a few months later, and 500 again a few months later than that. We took those cases and made a careful analysis and study of them, the result of which study is set forth in this report.

Senator LENROOT. You studied all the cases within a given period?

Gen. CHAMBERLAIN. We took 500 in chronological order. That is, we took a block of 500 here and a block of 500 there, and then another block of 500, so that they included cases from every department; from the Philippine Islands, from Hawaii, from the A. E. F.; so that they were typical cases.

Senator WARREN. You also had some from here in the United States proper, I presume?

Gen. CHAMBERLAIN. Yes.

Senator CHAMBERLAIN. Did you take cases as they came, that is in the chronological order, the order in which they were filed in the Judge Advocate General's Office?

Gen. CHAMBERLAIN. Yes.

Senator CHAMBERLAIN. Did you receive any aid from the Judge Advocate General's Office or in any way, from Ansell or anybody else, in your selection of the 1,500 cases.

Gen. CHAMBERLAIN. None whatsoever. I called for 500 cases in a block. The Judge Advocate General's Department had nothing whatever to do, directly or indirectly, with the selection of those cases, or in the analysis of them, or in the examination of them.

Senator CHAMBERLAIN. How did you call for them? Did you say "I want 500 cases between January 1, and February 1," we will say, for illustration, or did you ask for 500 cases in the chronological order of filing? How did you get each block of 500? I think it is quite material that you should refresh your memory as to just how these cases were selected, because I can conceive of a situation—

Gen. CHAMBERLAIN. I can tell you upon what basis they were selected. There was a General Order, No. 7, which was published in the spring of 1918, which was the occasion of a great deal of controversy.

Senator CHAMBERLAIN. That was the four cases in France—

Gen. CHAMBERLAIN. No, no.

Senator CHAMBERLAIN. That order originated out of them?

Gen. CHAMBERLAIN. That order—

Senator CHAMBERLAIN. No; it originated out of the Texas cases.

Gen. CHAMBERLAIN. It originated out of the Texas cases.

Senator CHAMBERLAIN. Where the negroes were sentenced to be shot, and were shot?

Gen. CHAMBERLAIN. Yes. Now, my instructions were these: To get 500 cases before General Order No. 7 went into effect, 500 cases after it went into effect, and 500 cases after it had been in force a considerable time.

Senator WARREN. Here is what I want to know, and I think it is the same thing Senator Chamberlain wants to get—

Senator CHAMBERLAIN. Will you please let me continue while I have this in mind?

Senator WARREN. I wish you would put it this way: I want to know whether every court-martial case that occurred, chronologically, within a certain period of time was taken, was selected, or whether a certain number of cases were selected. Is that what you want to know?

Senator CHAMBERLAIN. Have him answer your question, and then I will put my question just as I want it.

Gen. CHAMBERLAIN. The 500 cases were chronological. Each block contained a certain number, taking in every number, as received in the Judge Advocate General's files. That is all brought out in the report.

Senator WARREN. That is all brought out. Excuse the interruption.

Senator CHAMBERLAIN. This may be very material for what I am trying to get at. It may be that there were 500 cases before General Order No. 7 was issued where there was absolutely no irregularity, either on the record or otherwise, but I can conceive that there might have been 500 cases prior to the issuance of General Order No. 7 where there were grave irregularities. I can conceive that the 500 cases that were submitted to you might have been the cases where there were no irregularities. I do not charge it, but I suggest that might have occurred.

Gen. CHAMBERLAIN. There were no cases submitted to me, Mr. Senator. I sent an officer who got the cases. I think if you will read the report your question will be fully answered.

Senator CHAMBERLAIN. Please understand, General, that I am not charging that there was any such course as that pursued.

Gen. CHAMBERLAIN. I understand.

Senator CHAMBERLAIN. But if you depended upon the Judge Advocate General's office, that might have been done?

Gen. CHAMBERLAIN. I did not. The Judge Advocate General's office had no more idea of what cases or blocks of cases we were going to take than you had.

Senator CHAMBERLAIN. I am glad to know that, because you could only get a cross section of the court-martial proceedings by taking them without respect to anybody's selection.

Gen. CHAMBERLAIN. My first idea was, and my first suggestion was, that we take 1,500 cases in a block; and then Col. Patterson, who was assisting me in this work, suggested that we would get more general results, or more satisfactory results, if, instead of taking the whole 1,500 together, we took 500 here and then 500 and then another 500.

Senator CHAMBERLAIN. And you think they were chronological?

Gen. CHAMBERLAIN. I know they were. The records show that Col. Patterson, from my office, went personally and took the records from the files of the Judge Advocate General's office.

On January 17, 1918, General Order No. 7 was issued, to become effective from and after February 1, 1918. These orders provided that not only the execution of all sentences of death, as provided in General Order 169, 1917, but also all sentences of dismissal and dishonorable discharge be stayed until the records of the trial could be reviewed in the office of the Judge Advocate General and their legality there determined.

Fifteen hundred records of trial by general court-martial were selected from the office of the Judge Advocate General for a twofold purpose: (a) Because it was believed that they would be representative of the 20,000 cases tried during the war, and that they would therefore indicate how military justice was actually being administered, and (b) by selecting the records from different periods an opportunity would be afforded to discover what results were being accomplished by the issuance of General Order No. 7.

Records of trial received in the office of the Judge Advocate General are given consecutive serial numbers; date of receipt is also stamped on each case.

Three periods were chosen as follows:

One beginning January 1, 1918. This was before the issuance of General Order No. 7. Five hundred records were chosen consecutively from that date forward. One beginning March 1, 1918. This was one month after General Order No. 7 became effective. Five hundred records were chosen consecutively from that date forward. One beginning May 1, 1918. By this time the object and purposes of General Order No. 7 were well understood throughout the Army. Five hundred records were chosen consecutively from that date forward.

Senator WARREN. Excuse me for the interruption. That is exactly what I was anxious to find out.

Senator CHAMBERLAIN. If Ansell did decline to appear before you, he was only exercising a right which was usual and in accordance with the rule which you have just announced?

Gen. CHAMBERLAIN. Certainly. I have never criticized Ansell for that. I simply told him at the time that I regretted it, because I wanted everyone to tell me what he knew. It was his privilege to decline to give testimony.

Senator CHAMBERLAIN. Had you, previously to this request upon Ansell, formed any opinion as to section 1199 of the Revised Statutes as to the appellate jurisdiction of the Judge Advocate General's office?

Senator WARREN. As to review and revisory power?

Senator CHAMBERLAIN. Yes.

Gen. CHAMBERLAIN. Do you mean as to the soundness—

Senator CHAMBERLAIN. Of Ansell's interpretation of the law and of the soundness of the Judge Advocate General's interpretation of that statute.

Gen. CHAMBERLAIN. I have never presumed to pass upon that, Mr. Senator. I am not a lawyer. That is purely a matter of law and I have never presumed to pass upon that.

Senator CHAMBERLAIN. You spoke of the case of these Texas mutineers. That controversy was primarily involved in the con-

struction of the law that those two gentlemen had placed upon that statute. Which view of the law had you taken? You had held, I believe you say, that the conviction was proper, and you had only recommended that the young officer be transferred from his command.

Gen. CHAMBERLAIN. As I stated, to the best of my belief a concrete question of the interpretation of that section, 1199, was not at that time brought to my attention, and to the best of my belief I had no knowledge whatsoever that any question of the interpretation of section 1199 was up until the question came up before the committees over a year later.

In my mind there is no connection whatsoever between the interpretation of section 1199 and the memorandum which I prepared on those cases. Of course, as you look back over the records they were connected, but I do not think at the time I knew it, nor do I think I knew it until last spring when these hearings began. As to whether that section gives to the Judge Advocate General the appellate view of jurisdiction which Col. Ansell claims, I do not presume to express an opinion.

The trial of those men appeared to be entirely legal. There is no question, and was no question, that those noncommissioned officers were guilty of the technical charge of mutiny. There is no question that those noncommissioned officers refused repeatedly in the presence of other members of the command to obey the orders of the commanding officer.

The attending circumstances were such, however, as to very materially mitigate the seriousness of the offense.

Senator CHAMBERLAIN. They were standing on their rights, and while they were under arrest on a former charge they could not be ordered to do a military duty.

Gen. CHAMBERLAIN. The first duty of a soldier, as I have always understood it, is to obey the orders of his commanding officer.

Senator CHAMBERLAIN. There is no question about that, General, as an ordinary proposition; but is it not a fact that when a man is under arrest on a charge of some kind for a violation of a military duty he can not then be ordered to perform some military service?

Gen. CHAMBERLAIN. I do not think so.

Senator CHAMBERLAIN. You think that if these men were charged with gambling and were under arrest for violation of that regulation they could nevertheless be ordered to perform a military service; to drill, for instance?

Gen. CHAMBERLAIN. I think it was improper to do so; but I do not think it was an occasion where a man, a noncommissioned officer, or an officer was justified in taking the law into his own hands and presuming to determine whether the commanding officer should order him to do it.

Senator CHAMBERLAIN. That was the controversy. These noncommissioned officers claimed that, under the rules and under the regulations and under the law, they being under arrest, they had no right to be required to perform military service; and, as you say, it was not proper.

Gen. CHAMBERLAIN. I say that it was not up to them to decide whether the orders of the commanding officers were legal or proper. It was up to them to obey those orders, and if the commanding officer had given an illegal order, it was up to his superior officers to disci-

pline him, which would have been done, probably, if it had been reported.

Senator CHAMBERLAIN. What I am getting at, General, is this: There the controversy arose between Ansell and the Judge Advocate General. Ansell held, evidently, as you hold, that it was improper to have ordered these men to do a military duty while they were under arrest.

Gen. CHAMBERLAIN. Yes.

Senator CHAMBERLAIN. And Ansell claimed that therefore, having been ordered to do a thing which was improper, the trial was irregular and ought to be—the sentence ought to be—set aside. On the other hand, the approving authorities held that that condition was proper.

Gen. CHAMBERLAIN. I think it was entirely proper.

Senator CHAMBERLAIN. There, you see, there is opportunity for a fair misunderstanding between two officers in the Judge Advocate General's Office about the facts.

Gen. CHAMBERLAIN. Yes.

Senator CHAMBERLAIN. So that you will agree, then, not with Ansell about the view of the law, but with Gen. Crowder's view of the law?

Gen. CHAMBERLAIN. Gen. Crowder up to that time had expressed no view at all. It had not then been put up to him.

Senator CHAMBERLAIN. Whether it had or not, you agreed with the view that he was maintaining?

Gen. CHAMBERLAIN. He had not expressed any view at all up to that time, so far as I know. The case had not at that time come before him.

Senator CHAMBERLAIN. Of these mutineers?

Gen. CHAMBERLAIN. Yes.

Senator CHAMBERLAIN. That had come before him when you were called upon to investigate Ansell, and that was one of the questions you were called upon to investigate, was it not?

Gen. CHAMBERLAIN. I was not directed to investigate Ansell.

Senator CHAMBERLAIN. The differences between Crowder and Ansell?

Gen. CHAMBERLAIN. Not at all. I was called upon to investigate statements of fact, where one had made certain statements of fact, certain charges, and where the other had made certain statements. I was not called upon to, nor did I in my investigation or in my report, touch upon the question of the interpretation of section 1199 or upon the merits of the action upon these or other court-martial cases.

Senator CHAMBERLAIN. I do not see how you could possibly separate the one from the other.

Gen. CHAMBERLAIN. Well, if you will read this report, you will find out. I believe that I have done so. I believe that I confined myself strictly to the spirit and letter of my instructions.

Senator CHAMBERLAIN. I want again to impress upon your mind, General, that I have no feeling upon this matter except to get the justice of the proposition.

Gen. CHAMBERLAIN. I appreciate that perfectly, Senator, and I have no feeling. I should not have taken the time of this committee, except for those concrete statements which were not true.

Senator CHAMBERLAIN. If I had been in Ansell's place, if I had felt that you had already espoused that view of the law, even if you were going to investigate only a question of fact, I would have hesitated to appear before you, because it is human to follow the bent of a man's decision in a former case.

Gen. CHAMBERLAIN. He was within his rights, and I never have criticized him for that; the only thing I take exception to is his statement that I threatened him.

Senator CHAMBERLAIN. In that controversy we have no particular interest. Both sides are interested.

Gen. CHAMBERLAIN. But the committee has accepted and has made of record his statements, which did charge me with having done that.

Senator CHAMBERLAIN. Yes.

Gen. CHAMBERLAIN. Therefore I consider that my statement in regard to the matter ought to be of record also.

Senator CHAMBERLAIN. That is perfectly proper, General.

Senator WARREN. Now, see if I understand you as to your construction of the duties of soldiers and officers. Here is a mutiny, as I get it, from what has been said. Certain noncommissioned officers, and perhaps privates, refused to obey an order of their superior officer because of their knowledge or supposed knowledge of the law, or what might be the end, the ruling, that an officer had no right to give them orders while they were in arrest. I think, from what you say, you must take the view that a soldier must obey the order of his officer and find out afterwards, or call the officer to account afterwards if he has done wrong; that is, when an order is given, *per se*, he must obey it. Is that your idea?

Gen. CHAMBERLAIN. That is the way that I have been brought up. If I receive an order from my superior officer I obey it, and I inquire as to the legality of it afterwards. The only occasion under which I would assume the responsibility of disobeying an order of my superior now, with my present rank and experience, would be if by obedience to that order I would commit an act which would have serious results which could not be remedied after the act had been committed.

Senator CHAMBERLAIN. Here is the question we are interested in—that is, that I am very much interested in, General. Here was an order given to these men, which you admit was wrong under the circumstances, and it led to your recommendation——

Senator WARREN. I did not hear that order read. What was it for them to do?

Senator CHAMBERLAIN. It was for them to perform a military duty while they were already under arrest, and they, acting together, refused and were then charged with being mutineers.

Senator WARREN. It was not an order to do something that could result in wrong to anybody else?

Senator CHAMBERLAIN. Oh, no.

Gen. CHAMBERLAIN. An order to go to drill.

Senator WARREN. An order in the technical application of the law?

Senator CHAMBERLAIN. Yes. Now, let me get that over again. Here is what I am particularly interested in. Here were these non-commissioned officers who were under arrest. They were ordered by the commanding officer to perform a military service. They refused to do that service because they said that, being under arrest, it was

violative of the regulations to order them to perform a military service. You say that order was wrong.

Gen. CHAMBERLAIN. I say that the commanding officer should not have given that order.

Senator CHAMBERLAIN. But he did give the order, and the approving authorities held that it was proper. Now, what I am interested in—

Gen. CHAMBERLAIN. No, they did not hold that it was proper, I think, Mr. Senator.

Senator CHAMBERLAIN. They approved the sentence.

Gen. CHAMBERLAIN. That is a very different thing.

Senator CHAMBERLAIN. The sentence was approved, and those men were dishonorably discharged from the service. If that had not been the case you would not have recommended clemency.

Gen. CHAMBERLAIN. If what had not been the case?

Senator CHAMBERLAIN. If the sentence had not been approved by the approving authority there would have been no clemency to be recommended.

Gen. CHAMBERLAIN. Certainly not.

Senator CHAMBERLAIN. Here is what I am interested in. There was under the ruling of the Judge Advocate General no relief for these men. There was no relief for them, except that if the Judge Advocate General's Office looked over the record and found, as you actually found, that the order was improper, and he then recommended to the approving authority that the sentence be set aside, or whatever recommendation he saw fit to make; but he had not authority to do that himself.

Gen. CHAMBERLAIN. The Judge Advocate General?

Senator CHAMBERLAIN. Yes.

Gen. CHAMBERLAIN. No, sir; certainly not.

Senator CHAMBERLAIN. So that you see there was really no relief for these men.

Gen. CHAMBERLAIN. Yes there was, and the relief actually came. The President exercised clemency.

Senator CHAMBERLAIN. What did he do?

Gen. CHAMBERLAIN. As I recall it, he remitted sentence and restored them to duty and relieved the officer from his command. That is my recollection.

Senator CHAMBERLAIN. But the record of conviction still stood against them.

Gen. CHAMBERLAIN. It stood.

Senator CHAMBERLAIN. It was simply a question of a person having exercised mercy toward men who were charged improperly.

Gen. CHAMBERLAIN. I did not say they were charged improperly. I do not think they were charged improperly. I think they should have been tried.

Senator CHAMBERLAIN. Well, that is where our difference is.

Gen. CHAMBERLAIN. That is where our difference is.

Senator CHAMBERLAIN. Which is perfectly proper.

Gen. CHAMBERLAIN. Yes.

Senator CHAMBERLAIN. Under my view of the law the Judge Advocate General had the power under section 1199 to have rejected and set aside the findings of the court.

Gen. CHAMBERLAIN. I could not pass upon that, as I say, because I am not a lawyer.

Senator WARREN. I can see right where the difference is. It is the difference between the practice in civil life and the regulations in the Army. That is where it comes in.

Senator CHAMBERLAIN. Probably.

Senator WARREN. In the Army the thing to do is to obey an officer. In civil life the proper thing is to stand a man off as long as possible.

Senator CHAMBERLAIN. But the difficulty is that he gets carried before the military authorities and does not get justice, frequently.

Senator WARREN. I understand that this is the fact. See if I am right: Their record was wiped out and they were restored to duty?

Gen. CHAMBERLAIN. The record was not wiped out, but I understand they were restored to duty. Of that, however, I am not certain.

Senator WARREN. In other words, they stood in the position that men would stand in who are apprehended and who undergo, possibly, a temporary imprisonment, and are then found to be innocent, and that is the end of it. Now, is that a fair simile?

Gen. CHAMBERLAIN. I do not think so. I think that the fair simile would be that of a man who had been tried and convicted upon a charge, and there was no question of his being guilty of the charge as placed, but that the circumstances and conditions were such as to justify the pardoning power to at once issue a pardon.

Senator WARREN. You did not get at just what I meant. I was getting at results only, and skipping all the other, if the results were similar.

Gen. CHAMBERLAIN. The results would be similar, yes.

Senator WARREN. I am not expressing my opinion either way, but trying to get the different facts to see where the end is, practically.

Senator CHAMBERLAIN. In practical effect, you state the rule; but the general states the rule more properly.

Senator WARREN. Oh, yes; I admit that.

Senator CHAMBERLAIN. Here is the case. I may be charged with murder and may be convicted of murder, and I may be sentenced to be hung or to be sent to the penitentiary. Now, I may be pardoned by the governor of a State, or by the President of the United States if it is a Federal charge. That is a question of mercy. The other question, that is more important to me, is, was I justly convicted? There ought to be some appellate tribunal to determine whether I was guilty in this instance, and the tribunal may have said that I was not guilty. Now then, I am a free man, without any shadow of guilt upon me. In the other case I am a pardoned man; mercy has been extended to me.

Senator WARREN. You state the case as it is in the books. I was jumping crosswise to get at what the condition of the man was afterwards.

Senator CHAMBERLAIN. Here is a case of a man who has been unjustly convicted, who has had mercy extended to him when he ought to have had justice shown him. That is unjust.

Your report is there in the Ansell case, in the investigation that was referred to you?

Gen. CHAMBERLAIN. Yes.

Senator CHAMBERLAIN. Your evidence is all there?

Gen. CHAMBERLAIN. Everything is here.

Senator CHAMBERLAIN. And your findings and conclusions are there?

Gen. CHAMBERLAIN. Many of the papers examined are there, and all the evidence taken.

Senator CHAMBERLAIN. So that that will show all that was done?

Gen. CHAMBERLAIN. Yes, sir.

Senator CHAMBERLAIN. Can you tell in concrete, and in a very few words, just what your conclusion was with reference to the controversy between Ansell and Crowder?

Gen. CHAMBERLAIN. The answer to that question covers many pages of the report. There were a good many different points at issue which were taken up individually.

Senator CHAMBERLAIN. In other words, in your findings do you sustain Ansell in some and Crowder in some?

Gen. CHAMBERLAIN. I do. In some I find that Ansell's claims were correct, and sometimes the other; and sometimes neither.

Senator CHAMBERLAIN. That would be very natural in findings on so many questions?

Gen. CHAMBERLAIN. Yes.

Senator CHAMBERLAIN. Is there a general recommendation that Gen. Ansell be brought to trial?

Gen. CHAMBERLAIN. No recommendation whatsoever as to disciplinary action.

Senator CHAMBERLAIN. Is it not usual for the Inspector General's department to recommend that a charge be preferred?

Gen. CHAMBERLAIN. Not necessarily, unless the Inspector General considers that a charge should be preferred or that disciplinary action should be taken.

Senator CHAMBERLAIN. Did you consider that disciplinary action should be taken?

Gen. CHAMBERLAIN. I made no such recommendation. I made no recommendation as to disciplinary action.

Senator CHAMBERLAIN. You just left it to the Secretary of War to do what he thought proper?

Gen. CHAMBERLAIN. I simply stated the facts as I found them, and the conclusions based upon those facts.

Senator CHAMBERLAIN. Was any disciplinary action taken, so far as you know?

Gen. CHAMBERLAIN. None, so far as I know.

Senator CHAMBERLAIN. Was your report filed before Ansell's resignation, or after?

Gen. CHAMBERLAIN. This report was filed—the report is dated May 8, 1919.

Senator CHAMBERLAIN. And he resigned afterwards?

Gen. CHAMBERLAIN. Yes; he resigned several months afterwards.

Senator CHAMBERLAIN. I believe that is all I care to ask the general.

Senator WARREN. I believe that I have nothing more. You understand, Senator Chamberlain, I have not even opened or examined that report at all. I assumed, though, just what he has stated last, that he was not given a duty and did not perform any duty as

to the controversy between the two men, but to get these cases that we have had up.

Senator CHAMBERLAIN. Yes.

Senator WARREN. I am right about that, am I not, General?

Gen. CHAMBERLAIN. Yes.

Senator WARREN. You were not instructed to entertain any charges against any members of the Judge Advocate General's corps?

Gen. CHAMBERLAIN. None at all; no charges were made against anyone.

Senator WARREN. Never have been, in fact?

Gen. CHAMBERLAIN. No charges were made at any time against anybody.

Senator CHAMBERLAIN. May I ask you this question, General: Do you feel, with your vast experience, that no revision of any kind of the Articles of War, or the appellate procedure, is necessary?

Gen. CHAMBERLAIN. I do not feel that; no, sir. I think that there are a number of things in connection with the Articles of War which should be changed.

Senator CHAMBERLAIN. Have you ever made any recommendations upon the subject?

Gen. CHAMBERLAIN. Some time ago I submitted to The Adjutant General a brief memorandum on the subject.

Senator CHAMBERLAIN. Have you them accurately in your mind so that you could, without very much difficulty, suggest those amendments?

Gen. CHAMBERLAIN. I have some of them in my mind; the principal ones?

Senator CHAMBERLAIN. You know, General, this committee is only anxious to get at the truth of this situation, and any suggestions from you would be very helpful. If you have in mind any amendments that ought to be made to the Articles of War or any particular one of them, your recommendations upon the subject might have controlling weight upon this committee.

Senator WARREN. I should like to have anything of that kind submitted so that we might have it in this report of this hearing. You might submit it at a later date in written form.

Gen. CHAMBERLAIN. I would prefer, Mr. Chairman, to have time to think that matter over, because I have never thought of it with a view of presenting my views to this committee. I have very decided views upon certain points.

Senator WARREN. You must have.

Gen. CHAMBERLAIN. And I would like to present them, but I would like to have an opportunity to prepare a memorandum for the committee.

Senator WARREN. What time could you present them; so that they could be printed with this?

Gen. CHAMBERLAIN. Any time you desire.

Senator CHAMBERLAIN. Could you not embody them as an appendix to your testimony?

Gen. CHAMBERLAIN. I could do that, if you desire.

Senator WARREN. He could let them come in at the end of this testimony. You could get them to us early next week?

Gen. CHAMBERLAIN. Yes.

Senator CHAMBERLAIN. Put in anything you can at the end of this testimony.

Senator WARREN. Yes. How would it do to have printed his testimony of this morning and then his recommendations, and then have this report, which is very voluminous, printed as an appendix?

Senator CHAMBERLAIN. Are you going to print that report?

Senator WARREN. I think so, if there is no objection?

Senator CHAMBERLAIN. I do not care.

Gen. CHAMBERLAIN. That report has never been given out, so far as I know.

Senator WARREN. I asked the Secretary of War to send it up here so that the committee might have the liberty of referring to it, and he made no objection and he has sent it.

(See report, printed as an appendix, following Gen. Chamberlain's testimony.)

Senator CHAMBERLAIN. One other question, General: The American Bar Association has held hearings, and has made some recommendations in regard to appellate procedure in regard to courts-martial, and has suggested changes in the present law.

The Kernan Board, appointed by the Secretary of War, have looked into the matter and they have made recommendations suggesting a change in the methods of appellate trials. I think Gen. Crowder himself feels that there ought to be some change in the appellate procedure, and Gen. Ansell recommends something of the same kind. All of these people, boards and committees and individuals, have recommended some change so that the appellate tribunal shall have more power than is now given to the Judge Advocate General, some insisting that this appellate tribunal should be partly civil and partly within the Military Establishment, and some insisting that it should be entirely within the Military Establishment. Have you any views upon that subject?

Gen. CHAMBERLAIN. Yes; I have very decided views.

Senator CHAMBERLAIN. What are your views about it?

Gen. CHAMBERLAIN. There should be an appellate jurisdiction. I think that all parties agree as to the necessity for appellate jurisdiction, the only question being as to where it should rest.

Senator CHAMBERLAIN. Yes.

Gen. CHAMBERLAIN. My own belief is that it should rest with the President and his subordinate military commanders—and that the action of the legal branch should be advisory. It is my belief that the presence of civilians on such a tribunal would in no degree contribute to improvement in the administration of justice.

The Commander in Chief of the Army and his military subordinates are responsible to the country for the Army, they are responsible for discipline, and you can not take away from them the instrumentalities for maintaining discipline and put them into the hands of somebody who has no responsibility whatever for discipline or for results, who knows nothing about command, or who has never exercised command.

Senator CHAMBERLAIN. Take this sort of a case: Here is a man charged with a high crime, and he is tried and evidence is admitted

in the trial which is wholly improper. He is convicted, however, on that testimony. For the purposes of the illustration we may say that all of the testimony is hearsay testimony. He is convicted by the court-martial, and the approving authority, though he may be ever so distinguished a military man, yet entirely ignorant of law, approves the findings. The man appeals to the Judge Advocate General for review. The Judge Advocate General has no power to reverse that for errors of law made on the trial. Do you not think there should be some appellate tribunal that could look at the record from the first inception of the case to its conclusion and say that the error there ought to reverse the case?

Gen. CHAMBERLAIN. I think there is such an agency. Final action should, in my opinion, not rest with the legal tribunal. As a matter of fact, Mr. Senator, as my report will show, in probably 97 cases out of 100 the commanding general, the reviewing authority acts upon the recommendation of his judge advocate, and the President or the Secretary of War acts upon the recommendation of the Judge Advocate General. In cases involving legal questions, I believe that they would so act in 99 out of 100 cases, and similarly the commanding general acts—upon the recommendation of his judge advocate. Questions may arise as to the amount of punishment a man should receive. The commanding general might think that his view as to the amount of punishment for a certain crime was better than that of his judge advocate. But when it comes to the regularity of proceedings and to legal questions involved, the commanding general will always follow his law officer.

Senator CHAMBERLAIN. You do know of cases where a man has been found not guilty of a crime, and the commanding officer ordered a reconvening of the court, and practically instructed the court to render a verdict of guilty against the man?

Gen. CHAMBERLAIN. That is wrong, Mr. Senator, and I think that the Articles of War should be changed in such a way as to prohibit the return of proceedings in case of an acquittal, or the return of proceedings for a revision of the sentence upward.

Senator CHAMBERLAIN. Yes; they have now undertaken to cure that by regulation.

Gen. CHAMBERLAIN. That has been cured by regulation.

Senator CHAMBERLAIN. What was that order, do you remember? Do you know, Col. Hull?

Col. HULL. No; I do not.

Gen. CHAMBERLAIN. I do not remember exactly, but it covers that point.

Senator CHAMBERLAIN. The President, the Commander in Chief, issued that order?

Gen. CHAMBERLAIN. Yes. I do not know whether you care to bother about calling that young man, my stenographer. He is waiting outside. I am entirely satisfied either way.

Senator CHAMBERLAIN. No; I do not think so.

Senator WARREN. We do not care to call him, and unless you have something more to offer, we shall excuse you, General.

Gen. CHAMBERLAIN. I have nothing further to offer. I will prepare the statement on Articles of War.

(The statement referred to was subsequently submitted by Gen. Chamberlain, and is here printed in full, as follows:)

**CHANGES IN COURT-MARTIAL PROCEDURE AND THE ADMINISTRATION OF MILITARY JUSTICE.**

1. Membership of courts-martial should be restricted to commissioned officers. These officers should be those best qualified for such duty by training and experience. The presence of civilians on the court would, by their lack of knowledge of military matters, hamper the administering of justice, and would seriously interfere with the maintaining of discipline. The presence of enlisted men on the court would serve no good purpose. They would have very little patience with slackers and unpopular men in the organization.

2. No change should be made in the present membership of general courts-martial with respect to the number of officers provided by law to be detailed on said courts.

Should the membership of a general court-martial be in excess of nine members for the trial of persons in capital cases, no conviction of an offense for which the death penalty is made mandatory by law and no sentence of death should stand unless concurred in by at least nine members of the court. Should the membership be nine members or less, no such conviction or sentence should stand unless unanimously concurred in by the members of the court.

3. Summary court officers should be selected from those best qualified by reason of rank, experience, and judicial temperament.

4. There should be detailed for each general and special court-martial a trial judge advocate, and a counsel for the defense. Neither of these officers should be, if same can be avoided, a member of the staff of the reviewing authority. Should it become necessary to select a member of the staff for either duty, the proceedings should be forwarded to a higher military authority for review.

It is not believed necessary to provide, for general and special courts-martial, officers of the Judge Advocate General's Department to rule upon questions of law or to perform other legal duties. With a judge advocate on the staff of the convening authority, and with an appellate review of all court-martial records, no error of law or procedure prejudicial to the accused will be permitted to stand.

Officers of experience should be assigned as counsel for the accused. The latter should be permitted to have civilian counsel at his own expense and, if practicable, of his own choosing. He should also be permitted to have military counsel of his own choosing if same is practicable, the question of practicability being one entirely within the judgment of the convening authority.

5. The jurisdiction and powers of special courts-martial should be materially broadened, so as to reduce the number of cases brought before general courts-martial.

6. Before charges are preferred the case should be thoroughly investigated by a disinterested officer of experience, who should recommend to the proper military authority whether or not the accused should be brought to trial. The staff judge advocate should indorse in writing on all charges whether or not an offense made punishable by the Articles of War is charged with legal sufficiency, and whether or not it has been made to appear to him that there is prima facie proof that the accused is guilty of the offense charged. The officer exercising court-martial jurisdiction should, however, be the sole judge as to whether or not an officer or soldier should be brought to trial.

7. The accused should not be given the right of preemptory challenge.

Care should be taken that each member of the court is free from bias and prejudice and that he has not formed an opinion in the case.

8. Procedure should be prescribed in cases of acquittal to forbid the appointing authority to return a record of acquittal to the court for reconsideration and to direct the immediate release of the accused from custody.

Procedure should also be prescribed in cases of conviction to forbid the convening authority to return record to the court for reconsideration, with a view to increasing a sentence originally imposed, except where a sentence of confinement of one year or more fails to carry a dishonorable discharge, in which event reconsideration should be limited to imposing a suspended dishonorable discharge.

9. Every court-martial record should be automatically and carefully reviewed in the office of the Judge Advocate General. For this purpose boards of review should be created and should be composed exclusively of officers of the Judge Advocate's Department. The presence of civilians on these boards would in no sense contribute to their efficiency, nor would they add in the slightest degree to insuring justice to the accused. These boards of review should determine and recommend in what cases the appellate power should be exercised by the Commander in Chief. Their action

and that of the Judge Advocate General should be advisory only, the Commander in Chief being the sole judge as to whether appellate power should be exercised.

10. There should be provided an appellate power over court-martial sentences. This appellate jurisdiction should be very broad and comprehensive in its scope. It should be lodged in the Commander in Chief of the Army, who should have power to correct, change, reverse, or set aside any sentence of court-martial found by him to have been erroneously adjudged, whether by error of law or of fact. The Judge Advocate General should have no appellate jurisdiction, his duties being confined in this respect to legal adviser to the Commander in Chief.

11. Clemency and restoration boards should be composed of officers of the Judge Advocate General's Department exclusively. They should consider appeals by prisoners, their relatives, or friends, for clemency or restoration to the colors. They should make their recommendations to the Judge Advocate General, who, in turn, should advise the Commander in Chief what cases warrant the exercise of Executive clemency.

12. The President should have power, by Executive order, to prescribe limits of punishment in time of war, as well as in time of peace.

13. An enlargement of the disciplinary powers now lodged in commanding officers under the provisions of the one hundred and fourth article of war would serve no good purpose.

Steps should be taken by Executive order to insure, so far as possible, prompt trial of accused persons. To this end it is believed that the commanding officers should be required on stated occasions to report to the next higher commander the names of all persons who have been in confinement or arrest for a greater period than 14 days, giving full information regarding the status of each. Such report on the 1st and 15th of each month would be effective.