MARTIAL LAW

AND

ITS ADMINISTRATION

COMPILED BY

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To the Officers and Soldiers of the Fifty-Sixth Cavalry Brigade, and of the units it succeeded when organized in December, 1920, who served during days and nights that were hot, cold, dry, dusty, wet and muddy, dealing with people, gentle and good, rough and vicious, in districts under Martial Law, this volume is affectionately dedicated.

ACKNOWLEDGMENT

I avail myself of this opportunity to record my appreciation for the support and cooperation I received during tours of duty in various Military districts under Martial Law from able and willing lawyers, both in and out of the Military Service: Judge C. M. Cureton, now Chief Justice of the Supreme Court of Texas; E. F. Smith; W. A. Keeling; Chester H. Machen; Clifford L. Stone; John M. Mathis, Sr.; W. J. Holt; Paul D. Page, Jr.; Oscar E. Roberts; Clem Calhoun; Henry Meyers and Robert Lee Bobbitt.

PREFACE

With the thought in mind that a coordinated compilation of the law relating to an apparently little understood, if not generally misunderstood, part of the Civil Law may be of service to my brethren of the Bench and Bar and my comrades of all components of the Military Service, I have prepared this work on "Martial Law and Its Administration."

The work presented is merely a compilation of that which eminent lawyers and Federal and State courts have said upon the subject, and under which I have administered Martial Law on various occasions under different conditions.

No attempt is made to deal with Martial Law as it was sought to be, or in fact imposed by military commanders during the Civil War in states of the North, nor as it was imposed on states of the South during the so-called Reconstruction Period after the War. Nor is the subject dealt with in relation to foreign wars. Military law which governs those persons who are in the Military Service in time of war and/or peace we are not concerned with. The subject is wholly dealt with as a part of the Civil Law of the land, in times of general peace, and when it has been resorted to on such occasions during domestic disturbances within restricted areas in communities of States.

Houston, Texas
December, 1929.

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CHAPTER 1.
MARTIAL LAW
SECTON I.
FEDERAL AID TO THE CIVIL POWER

1. The duty of the President to use the Military and Naval forces under his command to aid the civil power is prescribed by the Federal Constitution and Statutes. It will be found in Article II, Sections 2 and 3, and Article IV, Section 8, of the Federal Constitution and Acts of Congress dealing with "Insurrection," in Sections 5297, 5298 and 5300 of the Revised Statutes of the United States. These sections of the Statutes are quoted:

> *"5297. In case of insurrection in any State against the government thereof, it shall be lawful for the President, on application of the Legislature of such State, or of the Executive, when the Legislature can not be convened to call forth such number of the militia of any other State or States, which may be applied for, as he deems sufficient to suppress such insurrection; or, in like application, to employ for the same purposes, such part of the land or naval forces of the United States as he deems necessary."*
>
> *"5298. Whenever, by reason of unlawful obstructions, combinations or assemblages of persons, or rebellion against the authority of the United States, it shall become impracticable, in the judgment of the President, to enforce, by ordinary course of judicial proceedings, the laws of the United States within any State or Territory, it shall be lawful for the President to call forth the militia of any or all of the States, and to employ such parts of the land or naval forces of the United States as he may deem necessary to enforce the faithful execution of*

the laws of the United States, or to suppress such rebellion, in whatever State or Territory thereof the laws of the United States may be forcibly opposed, or the execution thereof forcibly obstructed."

"5300. Whenever, in the judgment of the President, it becomes necessary to use the military forces under this title, the President shall forthwith, by proclamation, command the insurgents to disperse and retire peaceably to their respective abodes, within a limited time."

The President will only send troops into a State to aid the civil power if and when the Legislature or the Governor applies for such aid. He may even over the protest of the Legislature and/or Governor send troops into a State to prevent interference with the civil authority of the United States or to protect property of the United States.

2. Since the adoption of the National Defense Act of May, 1920, as amended from time to time since then, and under plans prescribed by the War Department, the National Guard of the several states has developed to such a degree of efficiency, that the occasion will rarely arise when either the Legislature or the Governor of a State will find it necessary to call upon the President for troops to quell domestic disturbances in any community within the State. Of course, a State of insurrection might arise within a State of such proportions as to make the aid of the Federal troops necessary. Those in the Military Service who may be particularly interested in this phase of the subject are referred to "Military Aid to the Civil Power," published by the General Service Schools, Fort Leavenworth, Kansas, 1925, and prepared by Major Cassius M. Dowell, Infantry, United States Army, while a member of the Judge Advocate General's Department.

3. The law as set forth in this volume will control military commanders in the administration of Martial Law, whether they are in the Federal or State service. However, when in the Federal service, only Federal Courts, will have jurisdiction to deal with the military authorities, if and when courts will have jurisdiction to do so at all, while those serving as State military authorities, that is to say, the National Guard, under call by the Legislature or Governor of the State, will be subject to the jurisdiction of either the Federal or State courts, subject to the usual jurisdictional powers of the Federal Court, if and when the courts have jurisdiction to deal with them at all.

SECTION II
GENERAL PRINCIPLES OF LAW

The rules of law laid down in the succeeding paragraphs are supported by all of the authorities on the subject.

1. Constitutions and Statutes of the several states may contain, and in fact do contain, various provisions on the subject of the power and the duty of the Governor to use the military forces under his command to aid the civil power. But, however, worded, the authority and duty of the Governor, when necessity demands to use the military forces and declare Martial Law to suppress domestic disturbances beyond the control of the civil authorities, whether by reason of their refusal or inability, arises expressly or impliedly from the Constitution of the State. Therefore, the law as set forth in this and succeeding sections is applicable to one State as well as another, unless indeed the Constitution of a particular State contains restrictions that expressly do not make these rules of law applicable.

2. “When the Civil Law is administered by military forces under the direction of the Chief Civil Executive it is termed Martial Law.

3. “And yet the principles of Martial Law are necessarily as much a part of the Constitution and the law of the land, both Federal and State, as are the rules that clothe the judge with civil authority, and the citizen with his civil rights and immunities.”—Frazer Arnold.

4. “The Governor of the State has authority to order the militia into active service whenever or wherever he may deem it necessary to secure the safety or welfare of the commonwealth, or to preserve peace, or lives or property of citizens of the State.”—C. M. Cureton, and E. F. Smith.

5. “He (the Governor) is made the sole judge of the necessity that may seem to demand the aid and assistance of the military forces of the State in suppressing disorder and restoring obedience to the law.”—Supreme Court of Kentucky.

6. “Such action (Martial Law) is not in violation of the Constitution, but in harmony with it being necessary for the preservation of government.”—Supreme Court of Idaho.

7. “It is exercised precisely upon the principle on which self-defense justifies the use of force by individuals.”—Supreme Court of Indiana.

8. “The power is essential to the existence of every government, essential to the preservation of order and free institution, and it is as necessary to the States of this Union as to any other government.”—United States Supreme Court.

9. “But if the situation goes beyond county control and requires the full power of the State, the Governor intervenes as the supreme Executive, and he or his military representative becomes the superior and commanding officer.”—Supreme Court of Pennsylvania.

10. It follows that if the courts are without jurisdiction to interfere with the Governor in declaring Martial Law they are likewise without jurisdiction to interfere with the administration thereof by the military commander who represents the Governor.

11. "The militia, in suppressing an insurrection, preserving the peace and executing the laws under the Governor's orders, may without turning them over to the civil authorities, seize and detain insurrectionists and those guilty of disorderly conduct and disobedience, and those aiding and abetting them, until disorderly conduct has been suppressed and obedience to law restored."—C. M. Cureton, and E. F. Smith.

12. Where local authorities in a district under Martial Law do not enforce the law, suppress the insurrection and disorderly conduct, and compel obedience to law, or where they aid and encourage the lawless element, the Governor as the Chief Civil Magistrate, has the power, if in his judgment it is necessary in order "to execute the law of the State" and to "cause the law to be faithfully executed" to suspend such officers from office during the period that Martial Law is in force in the district.

13. The local officers having been suspended the military authorities, under the direction of the Governor as the Chief Civil Magistrate of the State, may enforce the Civil Law in the district declared to be under Martial Law.

14. The writ of habeas corpus is a writ of inquiry to determine whether a person is legally or illegally restrained of his liberty.

15. The Governor of the State is not vested with the power to suspend the writ of habeas corpus nor any other provision of the Constitution or Statutes, and by declaring Martial Law he does not attempt to do this.

16. “When, under the Constitution and the laws of the State, Martial Law is operative in a defined district, the courts are without jurisdiction to release from custody persons restrained of their liberty by the military authorities commanding that district, and especially is this true where the applicant is restrained, not as a punishment for offenses but to prevent him from taking part or aiding in a continuance of the conditions which the military forces have been called upon to suppress.”—Assistant Attorney General Paul D. Page, Jr.

17. In Section V of Chapter I of this volume will be found the proceedings in *Ex Parte* Louis Crim including the proper answer made by military commander to a writ of habeas corpus issued on behalf of an applicant who was arrested and, detained “to prevent him from taking part or aiding in a continuance of the conditions which the military forces have been called upon to suppress.”

18. “Martial law and the detention under it of those who make necessary its employment, constitute the State’s last weapon of defense against an enemy which cannot be dealt with otherwise. Rare, indeed, are the occasions when it must be used, but when such an occasion does arise, I am confident the courts will neither blunt the weapon nor paralyze the arm which wields it.”—Assistant Attorney General Paul D. Page, Jr.

19. When the Governor of a State abuses any power vested in him the only recourse is his impeachment and removal from office or the Legislature.

20. Even as civil authorities are liable to criminal prosecution or civil actions for gross, willful, wanton abuse of official power, so are the military authorities after Martial Law has been lifted.

SECTION III
MARTIAL LAW DEFINED

1. Probably the clearest exposition of the principles of law relating to Martial Law will be found in an article entitled, "The Rationale of Martial Law," prepared by Mr. Frazer Arnold, a member of the Denver (Colorado) Bar, and published in the *American Bar Association Journal*, September, 1929, issue. Mr. Arnold's article is reproduced in full, but subdivided into paragraphs to make reference convenient:

2. "A period of tranquility like the present is no doubt more timely for considering the above subject than would be an occasion of civil turmoil attendant upon industrial strife in one or more of the states; because, in the latter event, the conditions that lend interest to the topic often hamper any endeavor at scientific analysis.

3. "From consideration of brevity, the writer has avoided quotations and citations of authority; and, from the same consideration, the article which follows contemplates mainly the situations of martial rule which continually arise in some of the states and does not attempt to deal with Federal legislative enactments and the war powers of the Federal Executive although these are naturally and closely akin in theory with the more limited war powers of governors.

4. The basic principles involved are, as a rule, more clearly understood by persons in the Military Service of Federal or State governments than they are by citizens generally, including many practicing attorneys and an occasional judge. And yet the principles of Martial Law are necessarily as much a part of the Constitution and law of the land, both Federal and State, as are the rules that clothe the judge with his civil authority and the citizen with his civil rights and immunities.

MILITARY JURISDICTION

5. “In American law, three kinds of military jurisdiction exist:

“First is Military Law, governing persons in the Military Service and camp followers. It is found in the Acts of Congress, Army Regulations, Articles of War, General Orders and Customs of the Service. It does not apply to civilians, either in peace or war; and its characteristic tribunal is the Court Martial, General, Special and Summary. It is part of our domestic or municipal law.

6. “Second is Military Government, sometimes called the law of hostile occupation, covering invaded territory. This supersedes, so far as the commander of the invading forces deems expedient, the local law in force before the invasion took place; and the sanction or basis for that part of the local law which is allowed to govern is not the displaced sovereignty of the invaded country, but the will of the military commander of the invader; in short, the commanding general decrees that the hostile population will be governed by its usual laws and customs except as they interfere with his operations or conflict with his orders and policies. Examples of this were the military government set up in Mexico by General Scott in 1847; that of the belligerent Confederate States when invaded in the 60s; that enforced, with unnecessary vigor, by the German forces in Belgium (during the World War; and that of the occupied zone in Germany from 1918 to 1920. Its sanction is the will of the military commander under the direction of the President. Its legal foundation is International Law. Its practices and precedents are the customs and usages of war. Its characteristic tribunals are the Military Commission and the Provost Court, superior and inferior.

7. “The third is Martial Law. A more logical descriptive term is martial rule. It relates to domestic Territory in a condition of insurrection or invasion, when the Constitution and its civil authorities, State or Federal, as the case may be, have been rendered inoperative or powerless by the insurrectionary or invading forces. It is part of our domestic or municipal law. In the Federal Constitution its foundations are Section 5 of Article IV, wherein the United States guarantees to every State a republican form of government and protection against invasion, and, on application of the Legislature or of the Governor when the Legislature cannot be convened, against domestic violence; and Sections II and III of Article II which make the President the commander-in-chief of the army and navy of the United States and of the militia of the several states when called into actual Federal service, and make it his duty to ‘take care that the laws be faithfully executed.” In the various State Constitutions, its foundation is in those sections which vest in the Governor the supreme Executive power of the State, which make him commander-in-chief of its military forces, when not in actual Federal service, and give him power to use those forces to suppress insurrection or repel invasion. The practices and precedents of Martial Law are borrowed from International Law, and the usages and customs of war. Its characteristic tribunals are the Military Commission and the Provost Court. Superficially, therefore, it resembles military government or hostile occupation.

EARLY CONFUSION

8. “The foregoing classification is important to remember, as much confusion of thought and language was formerly caused in this country, and is still in England, by applying the term ‘Martial Law’ indiscriminately to hostile occupation as well as to domestic Territory in a State of insurrection or invasion. It was not until Chief Justice Chase wrote his specially

concurring opinion in *Ex Parte* Mulligan that the classification was clearly suggested in this country. The Duke of Wellington once made a celebrated statement in the House of Lords that 'Martial Law is no law at all, but is simply the will of the military commander;' but he was speaking of military government, and drawing upon his experience as commander-in-chief on the Spanish Peninsula. Even so, Wellington's epigram is inadequate and likely to mislead the uninformed, as the commander in military government is liable in various ways for wanton abuse of power. His assertion is partially true, even as to Martial Law, but is there also subject to important qualifications, as the commanding officer is liable to be called to account in the civil courts, upon the restoration of civil authority, for any willful abuse of power, and liable also to sentence of a court martial or other military punishment at the hands of the Chief Executive.

Right of Free Speech, Assembly, Etc.

9. "It is a matter of very recent history that much misunderstanding has arisen, also, because of the civil guaranties, particularly the clauses assuring to every citizen the right of free speech, trial by: jury, bail (in most cases), the so-called right of assembly, the privilege of the writ of habeas corpus, and due process of law. It was supposed that the Governor, in ordering his troops into the insurrectionary zone to operate according to the customs and usages of war was himself assuming to set aside, abrogate and suspend those Constitutional guaranties. It was argued that the Governor was himself a mere creature of the Constitution, and that his action must necessarily be limited by these other provisions of the Constitution which were of equal dignity with those defining his own powers. Hence, if he undertook to disregard those guaranties, he and his troops were simply usurping powers and overstepping limits clearly defined in the Constitution. These arguments can be found in the unsuccessful

briefs of many a bewildered attorney, and in a few that were not unsuccessful in dissenting opinions of many judges not only of the past century, but of the present time, and even in the majority opinions of a few courts who failed to grasp the correct principles involved and who undertook to say that it was the Governor who has suspended the Constitutional guaranties and that, in restoring order, the Governor must act according to civil procedure. Nevertheless, we know that our leading executives and statesmen have acted otherwise and that Washington, Jefferson, Madison, Lincoln. Cleveland, Wilson, Harding, Coolidge, and several others, representing both schools of political doctrine in this country, have each invoked martial rule, either as President or as Governor of a State, or both. Certainly these men were not usurpers. What is the explanation, in logic and sound theory?

INSURRECTION WIPES OUT CIVIL GUARANTIES DE FACTO

10. "The explanation is that, in theory and in fact, the civil guaranties and indeed every form of Constitutional protection and safety in the district, have been, in cases of insurrection or invasion, already wiped out and abrogated by the mob or other riotous or invading forces. It is mere mockery to assert that a Constitution and its civil guaranties are in force in a district where a mob and its leaders hold the life and property of the citizen in the hollow of their hands. The Constitution does have a theoretical or potential existence there, but it is, for the time being, a mere shadow; otherwise, the civil authorities would be in actual control. It has not been the Governor, or the Adjutant General, or any other member of the Executive department, who has abrogated or suspended Constitutional guaranties. If the insurrection broke suddenly, all Constitutional protection may have disappeared while these State officers were still asleep in their beds. Constitutional protection has been taken away by the mob or

other riotous forces and by nothing else. Legally and Constitutionally, the district has become a vacuum.

11. “Into this vacuum the Governor, if he does his duty, will promptly send the military forces of the State to restore the dethroned civil authority and its officials. This necessary process of restoration is known as Martial Law.

12. “It is usually true that many, if not most, of the citizens and industries in an insurrectionary zone may be unmolested, and that the mob may confine its hostility to some particular class, business or industry, or to some locally unpopular race or the devotees of a form of worship of which the mob does not approve. Others may be left in quiet, but it is because the mob has its attention and fury focused in another direction. Yet, as to that class, race, or industry which the civil authorities have shown their impotency to protect, its Constitutional rights have clearly been torn away from it by the riotous forces and not by the State Executive; and, as for the unmolested classes or industries, they continue to enjoy quiet and safety by sufferance of the insurrectionary forces and not by any inherent charm or virtue in the civil guaranties.

13. “As indicated by Mr. Justice Holmes speaking for the Supreme Court of the United States in Moyer vs. Peabody, martial rule is a form of ‘Executive process,’ and he mentions the analogy of the master of a ship. The Executive process of Martial Law is made necessary by the practical disappearance and breakdown of civil and judicial process in the emergency of civil strife. It is analogous to other forms of Executive process which are universally accepted as necessary; for example, the rules that not only allow but compel the peace officer and the private citizen to do their utmost to prevent a felony and to capture a fleeing felon by killing

him if necessary; the rules which justify the razing of buildings to prevent the spread of conflagration and the like. The reason is the necessity of the case. The action, though summary, is still due process of law. In the nature of things, a judicial proceeding in condemnation is impossible, nor, in the other case, can the assailant or murderer be served with a warrant, or given a trial by jury on the spot, or allowed time for free speech, or the exercise of any other normal civil privilege, for such delay would allow him to accomplish the crime or make good his escape. The civil guaranties were never intended to paralyze the fire fighting agencies of the Executive branch, or to abet crime, nor were they ever designed or intended to apply to the even greater exigency of civil insurrection, in tying the hands of the State Executive in his military capacity, whose Constitutional duty it is to 'suppress insurrection.' As the term implies, the civil guaranties are intended to rule in conditions of civil peace, but not in a State of war or insurrection.

THE MILITARY VS. THE MOB

14. "A point which is often misunderstood is that Martial Law is brought about by sending in the troops, and not by being 'declared' or 'proclaimed.' As is sometimes said, it proclaims itself. When a Governor finds as a fact that an insurrection exists, it becomes his duty under the Constitution to suppress it. This is ordinarily done:

(a). "By ordering the armed forces of the State into the field in such numbers as may seem best to subdue the turbulent elements and protect the citizens and industries of the district; and

(b). "By simultaneously issuing a proclamation of Martial Law, defining the zone or district where civil authority has been overthrown, and publishing, for the information of

everyone, the measures he finds needful to enforce while the civil authority is in process of reestablishment.

15. “The first of these is necessary, as there can be no Martial Law unless a military force has been called out. The second is not necessary, although usual and advisable. If the Governor himself issues no proclamation (and from political motives he sometimes avoids it), the commander of the troops may; or there may be fragmentary and supplemental proclamations from either. In any event, the will of the Governor, and of the commander of the troops (with the Governor’s approval, expressed or implied), is the law of the district during the emergency. When the Governor has found that an insurrection exists, for the suppression of which he sends all or a portion of the National Guard into the field, the resultant legal status is one of Martial Law in the district, regardless of whether mild or strict measures of repression are put into effect, or whether it is called Martial Law or something else. The commander’s powers are limited by the orders and instructions given him by the Governor and by the extent and nature of the exigency rather than by the phraseology of his own or the Governor’s proclamations. So long as he acts in good faith, and not from any improper motives of hatred, arrogance or oppression, he has nothing to fear from a proper application of the principles of the civil courts.

16. “Experience throughout the country tends to show that many times more lives and property are likely to be lost if governors fail to act with vigor, promptness and decision, than will ever be sacrificed through any exercise of poor judgment in the contrary direction.

Civil Protection Gone, The Military Is The Only Law

17. “The troops enter a district where no actual civil guaranty or protection exists, for the purpose of revivifying the civil regime as soon as possible and of then withdrawing; they do not enter the district to carry on or administer the civil functions of Constitutional government, but merely, and as promptly as possible, to clear the way for the civil officers of the Constitution to resume those functions. Hence it is against common reason to say that they must or can act and proceed as those civil officers do under the conditions of Constitutional peace. By the very terms of the Constitution they are military forces, and they are trained, organized, equipped and tactically employed as military forces and not otherwise. We have seen that, in suppressing insurrection, the troops act in accordance with the usages and customs of war. This is necessarily true, because the customs and usages of war, as recognized in International Law, supply the only practices and precedents that exist for the employment of troops. They could not, if they tried, function with any success as sheriffs, constables, coroners, civil magistrates or county officials. Such an idea is so palpably unsound that I do not know that it has been seriously urged; but it has been continually claimed that the Governor and this troops cannot carry martial rule to its logical conclusions and operate under the usages and customs of war to the extent of holding rioters as military prisoners, interdicting assemblages, suppressing inflammatory newspapers, and the like, but must merely deal with offenders, if at all, by turning them over to civil courts to be tried according to civil practice. Of course, if that were done, when the civil courts released them on bail, or a jury acquitted them, the rioters and other offenders could resume their trouble-making activities once more, the military would have to seize them again, and operations would move in a vicious circle and accomplish nothing.

18. “Accordingly the civil courts have held that the Governor and his officers can legally carry the usages of war to their logical conclusion, can seize and hold persons whom they believe are contributing to a continuance of the civil war or disorder, can suppress inflammatory newspapers, pamphlets and manifestos and inflammatory ‘free speech,’ and that the civil courts cannot properly interfere. They hold that it is the Constitutional role of the Governor to say whether the condition is one of civil war or insurrection on the one hand, or of civil peace on the other hand, and that the coordinate branch of government, the Judiciary, has no jurisdiction to question or overrule his findings; and that, if the Governor acts wrongfully in pre-civil war or insurrection the only remedy is the political remedy of impeachment, i.e., a trail of the Governor before the State Senate with the Chief Justice of the State presiding, upon charges voted by the House of Representatives.

19. “Thus, all provisions of the Constitution are harmonized, and the State is given the power to preserve its authority and existence and to insure that its Constitution is kept effective everywhere within its borders.

20. “As soon as the Governor finds that civil authority is firmly reestablished, he withdraws the troops, martial rule ends, and the civil officers assume full control once more.

The Military And The Judiciary Not Co-Existent

21. “While martial rule was in force, many civil officers and courts had probably continued with those duties which were not impeded by the riotous forces, but it should not be forgotten that they did so because the Governor or his military commander found it expedient, and that the Governor or commander could have removed those officers or handled the situation otherwise, if found necessary or advisable.

22. “The close analogy and practical likeness between Military Government on the one hand and Martial Law on the other, will here serve civil courts in avoiding the hopeless confusion, both in theory and practice, that would result form an effort to enforce a distinction between Martial Law and ‘Qualified Martial Law,’ as attempted in the written dicta of some judges. It is a first principle in hostile occupation to disturb the non-combatant population no more than the military mission demands. For the commander of an invading force wantonly to paralyze civilian activities, laws and customs would be the height of military inefficiency, as would immeasurably increase his own problems of administration , supply and even combat; and the practice and doctrine are fixed in International Law. Therefore, the invading general not only allows, but encourages and requires the civil officials, magistrates and judges to carry on their normal activities in every principle is exactly the same in Martial Law, although the Territory is domestic instead of foreign. Thus every Martial Law situation is as ‘qualified’ as the Governor can make it, in view of his primary war mission of destroying the insurrectionary force. So long as the insurrection exists it is a State of war, whether the district be an active front or a quiet sector; the Executive’s authority is paramount; and the civil courts have no right to impede him and his officers, in their Constitutional military mission, by writes of habeas corpus and the like, upon a theory that the surface indicia of a quiet sector have made the Martial Law jurisdiction merely ‘qualified.’ The whole situation might shift in an hour to one of active combat, and the situation becomes so unqualified that the entire court would have to flee before its orders could be reduced to writing. The tendency to theorize as to ‘Qualified Martial Law’ recalls the horse-trader who was unable to discern whether his prospective buyer wanted a mare in foal or one without foal, and, upon being finally asked the direct question, compromised and said, ‘Well,

partially. Partially.' Either the condition is one of peace or one of insurrection or invasion. There is no sound or practicable middle ground. The Governor alone has the right to decide what the condition is and to define its territorial extent; and his decision is final, the only appeal on that point being political. The Executive—not the Judiciary—is responsible for putting down the insurrection; and being responsible for the results, he must be free to control the operations necessary to accomplish the results. Any agency that interferes prolongs his task and delays the real restoration of the civil regime. If the commander bows to such outside interference, he violates sound procedure, both military and Constitutional. While the contest is officially going on between the military and the mob, all other parties and all civil officials, including the Judiciary, would, in the nature of things, stand aside.

23. "Summarizing, the following points seem of most importance:

(1) "That the civil guaranties are not suspended by the Executive, but, in theory and in fact, by the mob, insurrection or invasion that temporarily wipes out Constitutional protection.

(2) "That, in restoring the civil regime, the Governor and his officers use the armed forces of the State in accordance with the customs and usages of war, with or without formal proclamation, and any measures they in good faith adopt are due process of law.

(3) "That, when civil authority has been restored they can be held liable in the civil courts only for wanton or willful abuse of power in carrying out their functions."

Section IV

Quotations from a notable brief

1. In 1920 a suit was filed to enjoin Governor William P Hobby, the Commanding General and all members of the Texas National Guard, from maintaining Martial Law in the City

of Galveston. The suit is Number 36,257, in the District Court of Galveston County, Texas, 56th Judicial District, Honorable Robert G. Street, Judge, and is styled—A. P. Norman et al vs. W. P. Hobby, Governor, et al.

Honorable C. M. Cureton, then Attorney General of Texas, now the Chief Justice of the Supreme Court of Texas, and Honorable E. F. Smith, Assistant Attorney General, in this cause, filed a brief in support of the defendant's plea to the jurisdiction, insisting that the court was without jurisdiction to grant the relief complainants prayed for.

The quotations that apply directly to provisions contained in the Constitution of Texas are applicable to any State.

After a full hearing of the legal argument for the complainants and the defendants, Judge Street, now deceased, recognized by the Bench and Bar of Texas as an able jurist, sustained the plea to the jurisdiction and dismissed complainants' petition. While notice of appeal was given the appeal was never perfected.

2. . . . "Martial law is justified upon the fact of existing or immediately impending forces at a given place and time against legal authority, and the decisions of the courts which we have already considered and the decisions of other courts which we shall hereafter consider all hold that it is the duty of the Governor to determine whether such facts actually exist or not, and his determination of these facts is conclusive, and the courts cannot institute an inquiry to ascertain whether the facts exist which justify the Governor in declaring Martial Law, but they must accept the facts as found by him as true."

3. "The Governor has stronger authority for calling out the militia in order to execute the laws than any statute can give. His power is conferred directly by the people through the organic

law of the State. Section 7 of Article 4 of the Constitution of Texas says that the Governor shall be commander-in-chief of the military forces of the State, except when they are called into actual service of the United States, and that 'he shall have the power to call forth the militia to execute the laws of the State to suppress insurrections, repel invasions,' etc. Then, again, in Section 10 of the same article of the Constitution, it is said, 'he shall cause the laws to be faithfully executed,' and when the Governor is advised that the laws are not being faithfully executed, either because local officers are unable or unwilling to execute them, it becomes more than a discretionary power with the Governor—it is made his duty to cause the laws to be faithfully executed, and the Constitution speaks not in a directory manner but in terms that are mandatory, and he has no discretion in the matter, but must under his oath of office as Governor of the State of Texas cause the laws to be faithfully executed, and when this cannot be done by the civil authority, he is given the power to call forth the militia to execute the laws of this State."

4. "The Governor states in his proclamation of Ju1y 14, 1920, that these complainants and 'each of them have by their acts and conversation interfered with and obstructed the enforcement of the law in the city of Galveston, and have by their acts and words aided and encouraged the lawless element of such city.' It follows, then, that these complainants were not suspended from office as a measure of punishment, but were suspended 'by way of precaution to prevent the exercise of hostile power.' In other words, the Governor believed, as a matter of fact, that if these complainants were permitted to continue to exercise the power which he deprived them of, that it would materially hinder and interfere with his accomplishing the purpose which caused him to send the troops to Galveston, and so long as the Governor acted in good faith, and in the honest belief that it was necessary in order to suppress and prevent insurrection, riot and lawlessness in

Galveston that these men be suspended as they were suspended in his proclamation of July 14th, the Governor is the final judge."

5. "The Constitution of the State authorizes and empowers the Governor "to call forth the militia to execute the laws of the State." Section 7, Article 4, State Constitution. It is made the duty of the Governor to "cause the laws to be faithfully executed." Section 10, Article 4, State Constitution.

6. "The power given to the Governor to execute the laws of State must be exercised in a Constitutional manner, but no authority exists that can Constitutionally interfere with or prevent the Governor from exercising this power given him by the Constitution. As previously stated, the Governor is the sole and only judge as to when and where the necessity exists for calling forth the militia to execute the laws of the State. When the law in a certain county or district is not being faithfully executed, either because of inability or unwillingness on the part of local officers to faithfully execute the laws, it then becomes the Constitutional duty of the Governor to cause the laws to be faithfully executed, and as an aid in performing its duty, he has the power to call forth the militia to execute the laws of the State. In the exercise of the power given him by the Constitution, and in the discharge of his duty under the Constitution, he has the power to do any and everything necessary to be done in order that the laws of the State may be faithfully executed, except as he may be restrained by other provisions in the State Constitution. It follows, then, that in the event the Governor should decide, as a matter of fact, that in order for him to exercise the power given him by the Constitution, and to discharge the duty laid upon him by the Constitution with reference to enforcing and executing the laws of this State, that certain local officers in the district in which Martial Law has been declared were not only failing and

neglecting to execute the law or to attempt to have the law executed themselves, but instead were engaged by acts and conversation in interfering with and preventing the Governor himself, with the aid of the military forces, to faithfully execute the law, the Governor may in pursuance of his duty and under the authority given him by the Constitution, suspend such officers from the discharge of their official duty, pending the termination of Martial Law."

7. "It being the duty of the Governor to cause the laws to be faithfully executed, and in order that he may be able to perform this duty efficiently, he is given the power to call forth the militia for that purpose. Someone must determine when the laws are not being faithfully executed. Are the courts or the Governor to determine this question? A mandatory injunction or writ of mandamus issued by any court against the Governor to compel him to rescind his action in declaring Martial Law and to remove the troops from the district under Martial Law will have the effect of making the courts the judge of when the law is not being faithfully executed, and will deprive the Governor of his Constitutional prerogative in such matters. As we have seen, the authorities hold that the Governor and not the courts must determine this question. "He," that is the Governor, "is the sole judge" of such questions, and the authorities are in agreement that his judgment is final and cannot be controverted. For the purpose of illustration, we will suppose a condition existed which some people might think necessitated the calling forth of the militia and the institution of Martial Law in order that the laws might be faithfully executed, but the Governor thought otherwise. Could it be successfully contended that a district court or any court would have jurisdiction to entertain a suit seeking to compel the Governor to call forth the militia and declare Martial Law? No respectable court would entertain such motion for a moment. Reverse the proposition, and we have the case at bar—the Governor has exercised his judgment

and has officially declared that in Galveston the law is not being faithfully executed, has called forth the militia to the end that the law may be enforced and has declared Martial Law. The question is now before this court as to whether or not it can make an investigation of the facts and in the event the court comes to a conclusion different from that of the Governor, the judgment of the Judiciary will be set up against that of the Executive, and plaintiffs seek to secure from this court a judgment or order compelling the Governor to rescind his action in declaring Martial Law and to remove the troops from the district under Martial Law. If this can be done, then we respectfully submit that the Governor has no power and our coordinate form of government is destroyed."

"Continuing our illustration, we will assume that a case is being tried before this court, can the Executive department compel this court to enter a certain judgment, or if the judgment is already entered, can the Executive compel the court to rescind its judgment and enter a judgment in accordance with the views of the Executive? To ask the question is to repudiate it. Yet the Executive has just as much power and the same right under our form of government to dictate the judgments of the courts as the courts have to dictate the judgments to be reached and acted upon by the Governor."

8. "If the courts cannot enjoin the Governor from calling forth the militia and declaring Martial Law, and in suspending complainant from discharging their official duties with reference to enforcing the penal laws of the State of Texas and the city of Galveston, then the court cannot enjoin the inferior military officers, who, under the Constitution and laws of Texas, are compelled to accept from and obey the orders of the Governor, the commander in chief of the military forces, from executing the orders of the Governor and commander in chief. To hold

otherwise, the courts would be compelled to do something indirectly and by evasion that they could not do directly. To enjoin General Wolters and the men under his command from executing the orders of the Governor would, to all intents and purposes, be an injunction against the Governor."

9. "If the courts can substitute their judgment in cases of this kind for the judgment of the chief Executive, then the Executive department is shorn of power and can only act as the agent of the courts in carrying out the will and wishes of the courts. If the courts can set up their judgment in lieu of that of the Executive, they have the power to do the same in legislative matters. Questions of State policy, such as the building, equipping and maintaining of various eleemosynary institutions, all matters concerning public lands, all appropriations and in fact all other matters the policy of which has not been fixed by the Constitution are supposed, under our form of government, to be determined by the Legislature. That is to say, the judgment of the Legislature controls, but if courts can determine questions supposed and intended by the Constitution to be left to the judgment and discretion of the chief Executive, they can do the same thing with reference to questions of policy and can substitute their judgment for that of the Legislature. If the courts, a coordinate branch of the government, can do this, then the legislative and Executive branches of the government can do the same with respect to each other, and both can interfere with the Judiciary. If such conditions existed, the Executive branch of the government would dominate the other two departments, because it has the physical force and power to compel which neither the legislative nor the judicial branches possess.

Such deplorable conditions will never occur, for the reason that neither the judicial, Executive nor legislative departments will attempt to control the other, and for the all compelling

reason that the people in whom in the last and final analysis is vested all power will not for one moment permit it."

SECTION V
THE WRIT OF HABEAS CORPUS

1. September 28, 1929, Governor Dan Moody of Texas, issued a proclamation (Chapter II, Section VII), declaring Martial Law in Borger and Hutchinson County and sent a detachment of the 56th Cavalry Brigade (TNG) into the affected area.

2. In due course of the administration of Martial Law in the Military District of Hutchinson County, the commanding general issued General Order, No. 6, (Chapter II, Section VII), to the effect that persons who are part of the "organized and entrenched criminal ring," who are arrested on charges filed in the civil courts for the violation of the law, will be detained in custody until the "organized and entrenched criminal ring" has been suppressed and obedience to law has been restored.

3. A number of persons were arrested and were charged before the county judge, acting as a Magistrate, with felony offenses. The Magistrate fixed the amount of bail in each case and the persons so charged tendered bail bond in the required amount, properly executed. The Provost Marshal pursuant to special orders issued in each instance by the commanding general, held such persons under the provisions of General Order No. 6.

4. A number of these persons thus held in jail by the Provost Marshal applied to the Honorable E. J. Pickens, judge of the 84th Judicial District of Texas, which included Hutchinson County, for writs of habeas corpus, alleging that they were charged in the County Court of Hutchinson County, presided over by the Honorable H. M. Hood, sitting as Magistrate, with felony offenses, bailable under the Constitution and Statutes of Texas, the amount of which bonds

had been set by the Magistrate and that bail bonds, had been executed and tendered to the Provost Marshal, but that not withstanding this, the relators were illegally restrained of their liberty and held in custody by the respondents, named to be, the commanding general, the Provost Marshal and the Executive officer of the Military District of Hutchinson County. Judge Pickens granted the writs and ordered the respondents to bring the relators before the court at the court house of Hutchinson County and show cause why they should not be released.

5. At the named timed and place the respondents appeared before Judge Pickens with the relators and under oath submitted the following answer in each case:

IN RE: LEWIS CRIM:
To the Honorable E. J. Pickens,
Judge of the *District Court for the 84th*

Come now Brigadier General Jacob F. Wolters, commanding general of the Military District of Hutchinson County, Colonel Louis S. Davidson, Provost Marshal of the Military District of Hutchinson County, and Captain John W. Naylor, Executive Officer to the commanding general of the Military District of Hutchinson County, hereinafter referred to as respondents, and responding to Your Honor's writ of habeas corpus respectfully State that it is true that they have in their custody and under their restraint the said Lewis Crim, and that the said Lewis Crim has been confined in the county jail of Hutchinson County as alleged in his application, and they now bring before Your Honor, in obedience to your order, the person of the said Lewis Crim.

These respondents further represent and allege:

I.

That heretofore, to-wit, on September 28th, A. D. 1929, and prior to the arrest and detention of the said Lewis Crim, his Excellency, Dan Moody, Governor of Texas, executed his Proclamation No. 5267, a certified copy of which is hereto attached, marked Exhibit "A" and made a part of this return; that by said proclamation the Governor declared the county of Hutchinson to be in a State of insurrection, declared Martial Law in said county effective at 3:00 o'clock p.m. the 29th day of September, A. D. 1929, and directed Jacob F. Wolters, Brigadier General, Texas National Guard, to assume supreme command of the situation in said county.

II.

That pursuant to said proclamation order and direction respondent Brigadier General Jacob F. Wolters, with officers and troops of the militia of the State of Texas under his command proceeded to Hutchinson County, and ever since has been and now is actively engaged in quelling the disturbance which called forth the proclamation and order aforesaid.

III

That in discharging his duty under said proclamation and order respondent Brigadier General Jacob F. Wolters issued his General Order Number 6, a copy of which is hereto attached, marked Exhibit "B," and made a part of this return directing that persons part of the "organized and entrenched criminal ring" declared by the Governor of Texas in his proclamation of September 28th, 1929, to exist in the city of Borger, and in Hutchinson County,

arrested on charges filed in the civil courts for violation of law be detained in custody until said "organized and entrenched ring" has been suppressed and obedience to law mastered.

IV.

That in so discharging his said duties respondent Brigadier General Jacob F. Wolters became convinced, and is now convinced, that the said Lewis Crim was and is a member of said "criminal ring" and that if not arrested, or if discharged from arrest, he would and will continue so to be and to foment and keep alive the condition of insurrection and lawlessness existing in Hutchinson County to suppress which the militia of the State of Texas has been requisitioned and called into action.

V.

For the reasons set out in the above Paragraph IV said respondent Brigadier General Jacob F. Wolters ordered and caused the arrest of the said Lewis Crim, in Hutchinson County, Martial Law being then and there and now effective in said county, and does now restrain, detain and imprison him for the reasons above set forth.

VI.

That it is the purpose and intention of said respondent Brigadier General Jacob F. Wolters to release and discharge the said Lewis Crim from military arrest as soon as the same can be safely done with relation to the suppression of the existing State of insurrection and lawlessness in Hutchinson county, and at

such time surrender the said Lewis Crim to the civil authorities to be dealt with in the ordinary course of justice.

VII.

That respondents Colonel Louis S. Davidson, Texas National Guard, and Captain John W. Naylor, Texas National Guard, are subordinate military officers under the direct command of the respondent Brigadier General Jacob F. Wolters, and that all acts performed by either or both of said respondents with reference to the arrest and detention of said Lewis Crim have been done by virtue of express commands issued to them by said respondent Brigadier General Jacob F. Wolters, their superior and commanding officer.

WHEREFORE, premises considered these respondents respectfully suggest that Your Honor is without jurisdiction to take any action herein save and except to deny to the said Lewis Crim the relief sought by him, and to remand the said Lewis Crim to the custody of these respondents, and they accordingly pray that said relief be denied and said Lewis Crim be so remanded.

Jacob F. Wolters, Brigadier General Texas National Guard,

Commanding General, Military District of Hutchinson County, Texas.

Subscribed and sworn to before me this ____ day of October, A. D. 1929.

Notary Public, Hutchinson County, Texas

Louis S. Davidson, Colonel, Texas National Guard,

Provost Marshal, Military District of Hutchinson County, Texas.

Subscribed and sworn to before me this ____ day of October, A. D. 1929.

Notary Public, Hutchinson County, Texas

John W. Naylor, Captain, Texas National Guard,

Executive Officer to the Commanding General,

Military District of Hutchinson County, Texas.

Subscribed and sworn to before me this ____ day of October, A. D. 1929.

Notary Public, Hutchinson County, Texas

By: _____

Robert Lee Bobbit

Attorney General of Texas

Paul D. Page, Jr.

Assistant Attorney General of Texas

O. E. Roberts

Colonel, 143rd Infantry, Texas National Guard, Judge Advocate

Military District of Hutchinson County, Texas

Clem Calhoun, District Attorney

84th Judicial District of Texas

Attorneys for Respondents

6. The case of *Ex Parte* Crim was agreed upon as a test case.

7. Attorneys for relators were Messrs. G. C. Harney and John T. Buckley, who argued that the act of the commanding general was in effect the suspension of the writ of habeas corpus and the denial of bail in a bailable case, neither of which the Governor had attempted to authorize the commanding general to do and could not under the Constitution do, and that the commanding general was assuming an authority not warranted under the Constitution and laws.

8 Attorneys for the respondents were Honorable Robert Lee Bobbitt, Attorney General of Texas, Honorable Paul D. Page, Jr., Assistant Attorney General, Colonel O. E. Roberts, Commanding Officer, 143rd Infantry, acting Judge Advocate, and Honorable Clem Calhoun, District Attorney, 84th Judicial District of Texas.

9. The argument for respondents was made by Assistant Attorney General Paul D. Page, Jr., and because it so clearly presents the law of the case, is set forth in full. The argument is divided into paragraphs for convenient reference.

ARGUMENT OF MR. PAGE

1. The annotations which counsel has read to your Honor are taken from various cases totally without application to the case at bar. These cases; the facts, the opinions, the briefs and the

arguments of counsel, I have not only read, but many times have considered earnestly and with profound and sincere admiration. They are great cases. They were argued by great lawyers and the opinions written by great judges. *Ex Parte* Merryman standing alone is an indestructible monument to the courage and independence of the Federal Judiciary and an imperishable epitaph for Justice Taney. They are great cases—and I repeat they are without application here. *Ex Parte* Merryman and the celebrated case of *Ex Parte* Milligan are the cases upon which applicants here rely. In the opinion filed in *Ex Parte* Milligan; in the briefs of counsel; in the eloquent arguments of Garfield, Field and Jeremiah Black, we find crystallized the reason why the Court believed that the applicants should be released from custody. It is this: *There did not exist in the district over which the military tribunal asserted jurisdiction any State of insurrection, tumult, riot or breach of the peace.* Had such a State existed in the district, then the opinion in these cases must have been written otherwise. They are based upon the premise that the community was peaceful, quiet, law-abiding and that no situation existed requiring the government to employ its military forces there. In the jurisdictions under consideration in these cases, *Martial Law had never been declared,* and I repeat that had this been the case—had Martial Law been declared—then these decisions must have been written otherwise.

2. And because in Hutchinson County today Martial Law is operative under proper authority, these cases are removed from the scope of the opinion in the Merryman and Milligan cases. I shall proceed to show your Honor how Martial Law came into existence in Hutchinson County, under what authority, by what mechanical means, and that it is now properly operating in this jurisdiction.

3. When, under the Constitution and laws of the State, Martial Law is operative in a defined district, the courts are without jurisdiction to release from custody persons restrained of their liberty by the military authority commanding that district, and especially is this true where the applicant is restrained not as a punishment for offense but to prevent him from taking part or aiding in a continuation of the conditions which the military forces have been called upon to suppress.

4. It is not denied that Martial Law is operative in Hutchinson County. Nor can it be denied. Section 7, Article IV of our Constitution, provides that the Governor shall have power to call forth the militia to execute the laws of the State and to suppress insurrection. By Section 10 of the same article, it is made his duty to "cause the laws to be faithfully executed." These provisions standing alone amply justify the declaration of Martial Law. More, any statute denying or obstructing the declaration would fall as unconstitutional for it would deny to the Governor the power granted by Section 7; it would prevent him from performing the duty imposed on him by Section 10. No Legislature has ever undertaken so to attack the organic law of this commonwealth but, on the other hand, we have Statutes passed in aid of these provisions of the Constitution.

5. Article 5778 of the Revised Civil Statutes provides that the Governor shall have power, in case of insurrection, invasion, tumult, riot, breach of peace or imminent danger thereof to order the militia of the State into active service.

6. By Article 5889, the Governor is authorized to declare districts to be in a State of insurrection.

7. Thus, by Constitution and by statute, the action of the Governor is justified.

8. Nor is this proposition novel to the courts. In no uncertain terms they have said that the declaration of Martial Law is conclusive; that it cannot be questioned by the courts; that the recitals in the Governor's proclamation declaring Martial Law cannot be controverted; that the Governor is the sole judge of the necessity demanding the employment of the armed forces of the State to suppress disorder and restore obedience to law.

9. In State vs. Brown, 77 S. E. 243, the Supreme Court of West Virginia, in considering applications similar to these, stated that the function of declaring Martial Law "belongs to the Executive and legislative departments of the government and is beyond the jurisdiction and the power of the courts."

10. In the case of United States against Fischer, 280 Federal, 208, Judge Munger said that under similar Constitutional and statutory provisions "the Governor may make the ordinary use of soldiers to suppress insurrection and his declaration of the existence of a State of insurrection is conclusive." And concerning the declaration, Judge Munger further said although the proclamation did not use the word "insurrection" that "the condition described of lawlessness and disorder beyond the control of the civil authority, and the declaration of Martial Law are equivalent to a declaration of the existence of that organized resistance to authority known as insurrection."

11. When, in 1920, Governor Hobby, by similar proclamation, declared Martial Law in the city of Galveston, the declaration was questioned on application for habeas corpus and the distinguished Judge Rufus Foster of the Federal bench said:

"There is no doubt that under the Constitution and laws of Texas, the Governor is charged with the duty of enforcing the laws of the State and has

authority to call out the militia to enforce the laws in case of riot, or breach of the peace or imminent danger thereof. The question as to whether there is riot or insurrection or breach of the peace or danger thereof is one solely for the Governor. The courts will not interfere with his discretion in that and will not inquire as to whether or not the facts justify the Governor."

This case found in 268 Federal, at page 69, is styled United States vs. Wolters.

12. The great Justice Holmes of the Supreme Court of the United States, in Moyer vs. Peabody, 212 U. S. 78, said that "it is admitted as it must be that the Governor's declaration that a State of insurrection existed is conclusive of the fact."

13. Upon this point I say no more. The existence of Martial Law is proved and justified by the Executive Proclamation of the Governor; by the Constitution and Statutes of Texas and the decisions of the courts. Let there be no talk here of Qualified Martial Law. When, on September 28, Dan Moody, in my presence, signed Proclamation No. 5267, he signed no weak-kneed document. He did not say "I declare Qualified Martial Law." He did not say "I declare Martial Law subject to the following qualifications." He did say "I do declare Martial Law" complete, unqualified, subject to no restrictions. And no amount of legal ingenuity can torture a qualification out of those five short words. More—the respondent Wolters was not hedged about with suggestions, orders or the like. He was given "supreme command of the situation." Could anything be more unqualified? We stand upon no middle ground. The Governor of this State, in terse language, capable of no interpretation other than its plain import, has declared Martial Law, and he has placed the respondent Wolters in "supreme command of the situation," and, as Jackson was the right arm of Lee, so, in Hutchinson County, is Wolters the right arm of Moody.

14. Now, consider the situation which confronts him. He has a definite mission to accomplish. Broadly expressed, it is to restore peace and good order to the defined district, to enforce obedience to the Constitution and laws of the State and thus cause to cease the existence of that condition, which, by its existence, has brought the district under Martial Law. The principal mission of troops engaged in the enforcement of Martial Law must, in each instance, involve subordinate enterprises. In this case the mission is to be accomplished by rooting out (I quote from the Governor's Proclamation) "an organized and entrenched criminal ring." In attempting to root out and destroy this organized opposition to the Constitution and laws, as his duty required, he became convinced that this applicant was a member of this "ring." He found that if this applicant should be permitted to go at large he would continue as a member of this ring to foment and keep alive the condition of lawlessness which has brought about this situation and by his words and actions militate against the success of the mission and the speedy lifting of Martial Law, which these respondents desire as earnestly as any citizen of Hutchinson County. How then, may he proceed against this walking menace? The obvious solution is that this applicant should not be permitted to go at large—he must be restrained of his liberty. Here lies the very heart of the case. Under these facts, may the respondent Wolters *legally* restrain the applicant of his liberty? If so, neither this court nor any other court has jurisdiction to order him released from custody. Let us then see if this applicant is *legally* restrained.

15. It is fundamental that while the powers of the Governor must be exercised agreeably to the Constitution, no authority exists which can Constitutionally interfere with him or prevent him from exercising the power confided to him by the Constitution. It has been shown that the Governor is the sole and only judge as to when and where the necessity exists for calling out the

militia and declaring Martial Law. When the law in any locality is not being faithfully executed, either because of inability or unwillingness upon the part of local officers, it becomes the duty of the Governor, under the Constitution, to cause the laws to be so executed and to put down and suppress the State of lawlessness which such a condition necessarily creates, in performing which duty he is empowered to employ the armed forces of the State. And in discharging this duty, he has power to perform all acts necessary to be done—and into this necessity no court may properly inquire—unless he be restrained by some Constitutional provision. It follows inexorably that acting through his commander, he may arrest and hold those hostile to the restoration of peace and order to the district where Martial Law exists.

16. When, in 1904, General Bell was engaged in dealing with a lawless situation in Colorado, he arrested and held one Moyer, concerning whom his convictions were the same as those entertained by the respondent Wolters toward this applicant. Concerning the arrest and detention of Moyer, the Supreme Court, speaking through Justice Holmes, declared that "such arrests are not necessarily for punishment but are by way of precaution to prevent the exercise of hostile power. So long as such arrests are made in good faith and in the honest belief that they are necessary to head the insurrection off, the Governor is the final judge."

17. In our own State this question was decided by the Federal Court. In Galveston, in 1920, one William McMaster was under order of this respondent tried and imprisoned by a military court. And by the decision in United States vs. Wolters, McMaster was remanded to the custody of this respondent.

18. So was it in Nebraska when, in United States vs. Fischer, Judge Munger remanded the applicant to the respondent.

19. In remanding Moyer to the custody of General Bell, the Supreme Court of Colorado, said, at page 193, of the 85th Pacific:

> *"The crucial question, then, is simply this: Are the arrest and detention of petitioner under the facts narrated illegal? When an express power is conferred, all necessary means may be employed to exercise it, which are not expressly or impliedly prohibited. Laws must be given a reasonable construction, which, so far as possible, will enable the end thereby sought to be attained. So with the Constitution. It must be given that construction of which it is susceptible which will tend to maintain and preserve the government of which it is the foundation, and protect the citizens of the State in the enjoyment of their inalienable rights. In suppressing an insurrection it has been many times determined that the military may resort to extreme force as against armed and riotous resistance, even to the extent of taking the life of rioters. Without such authority, the presence of the military in a district under the control of the insurrectionists would be a mere idle parade, unable to accomplish anything in the way of restoring order or suppressing riotous conduct. If, then, the military may resort to the extreme of taking human life in order to suppress insurrection, it is impossible to imagine upon what hypothesis it can be successfully claimed that the milder means of seizing the persons of those participating in the insurrection or aiding and abetting it may not be resorted to. This is but a lawful means to the end to be accomplished. The power and authority of the militia in such circumstances are not unlike that of the police of a city, or the*

sheriff of a county, aided by his deputies or posse comitatus *in suppressing a riot. Certainly such officials would be justified in arresting the rioters and placing them in jail without warrant, and detaining them there until the riot was suppressed. If, as contended by counsel for petitioner, the military, as soon as a rioter or insurrectionist is arrested, must turn him over to the civil authorities of the county, the arrest might, and in many instances would, amount to a mere farce. He could be released on bail and left free to again join the rioters or engage in aiding and abetting their action, and if again arrested the same process would have to be repeated, and thus the action of the military would be rendered a nullity."*

20. Here let me again emphasize these all important facts. This applicant is not held as a punishment for crime. He is confined—to use the words of the Supreme Court—by way of precaution to prevent him from exercising hostile power. He is not detained for trial by any court either military or civil. Respondent has stated upon oath that as soon as it may be safely done, he will release and discharge the applicant from military arrest, and will surrender him to the civil authorities to be dealt with according to the ordinary course of justice. The fact that the applicant is charged with felony is of no importance here. It is not the reason why he is restrained of his liberty by this respondent. The reason for his detention has been shown abundantly.

21. With these facts in mind, I restate the proposition of law. Where the arrest and detention is *legal*, the court lacks jurisdiction to set the applicant free. It has been suggested that if freedom be denied to this applicant, it follows that the writ of habeas corpus has, in some mysterious manner, by some agency unnamed, been suddenly "suspended." The proposition is so

utterly without foundation, that it shocks the legal mind. Those who assert it confuse the refusal of the court to liberate the applicant with the suspension of a writ which can never be suspended. How can that writ be suspended, which your Honor has issued and which writ has been obeyed by this respondent, and when the applicants have been produced in open court and now stand before your Honor? It would be equally logical to say that in every case where the court has refused to discharge the applicant, the writ of habeas corpus has been suspended—a manifest absurdity which this court cannot entertain. (At this point the Honorable E. J. Pickens, District Judge, stated that he was fully convinced as to the correctness of the legal proposition here asserted, and that further argument upon this point would be unnecessary.)

22. Again, it is reported that one of applicant's counsel said yesterday that he relied upon the authority of the Constitution which says "that Civil Law shall take precedence over military concerning personal freedom." I am sure, however, that counsel made no such statement, for the Constitution says nothing of the sort. Section 24, of the Bill of Rights (and it is to this section, of course, that the gentleman referred) says that "the military shall at all times be subordinate to the civil authority"—a sound governmental principle with which I heartily agree. And it means just this—that the military forces shall be commanded by civil authority. And here, the military forces are commanded by the Chief Civil Magistrate of the State. Need I say more than a force commanded by civil authority is most certainly subordinate to that authority. Considering the identical question in the Moyer case, Judge Gabbert said:

> *"Nor do these views conflict with Section 22, Art. 2, of the Bill of Rights, which provides that the military shall always be in strict subordination to the civil power. The Governor, in employing the militia to suppress an insurrection,*

is merely acting in his capacity as the Chief Civil Magistrate of the State, and, although exercising his authority conferred by the law through the aid of the military under his command, he is but acting in a civil capacity. In other words, he is but exercising the civil power vested in him by law through a particular means which the State has provided for the protection of its citizens."

And in State vs. Brown, the Supreme Court of West Virginia specially so held.

23. To quote again from the Moyer case, the arrest and the detention of this applicant "violates none of his Constitutional rights. He is not tried by any military court, or denied the right of trial by jury; neither is he punished for violation of the law, nor held without due process of law. His arrest and detention in such circumstances are merely to prevent him from taking part or aiding in a continuation of the conditions which the Governor, in the discharge of his official duties and in the exercise of the authority conferred by law, is endeavoring to suppress. When this end is reached, he could no longer be restrained of his liberty by the military, but must be just as respondents have indicated in their return to the writ, turned over to the usual civil authorities of the county, to be dealt with in the ordinary course of justice, and tried for such offense against the law as he may have committed. It is true that petitioner is not held by virtue of any warrant, but, if his arrest and detention are authorized, by law, he cannot complain because those steps have not been taken which are ordinarily required before a citizen can be arrested and detained."

24. So it appears clearly that no right secured to the applicant by the Constitution of Texas has been denied and, accordingly, it follows logically that he is legally restrained of his liberty and must be remanded to the custody of those who legally restrain him.

25. There is yet another reason why your Honor should so hold, for otherwise the Judiciary would be interfering with the Executive, something specifically forbidden by Section I, Article II, of our Constitution.

As stated in the Moyer case:

> *"The Constitution has clothed the Governor with the power to take the steps he did, and he cannot be called to account by the judicial department for this action, nor can the latter inquire into or determine whether or not the conditions existed upon which he based his action. That is a matter which, in the circumstances of the case, the chief Executive must determine for himself, and his subordinates, acting in obedience to his orders, must determine for themselves, and, when so determined, is conclusive."*

26. As was said in the case of In Re Boyle, 6 Idaho, 609, "It is not the province of the courts to hinder, delay or place obstructions in the path of duty prescribed by law for the Executive, but rather to render to him all the aid and assistance in their power in his efforts to bring about the consummation most devoutly prayed for by every good and law-abiding citizen in the State."

27. Martial law, and the detention under it of those who make necessary its employment, constitute the State's last weapon of defense against an enemy which cannot be dealt with otherwise. Rare, indeed, are the occasions when it must be used, but when such an occasion does arise, I am confident that the courts will neither blunt the weapon nor paralyze the arm which wields it.

28. The history of Texas attests that Martial Law has never been declared in a normal, peaceful, quiet spot. But when organized criminals flout the law; when those officers sworn to uphold and enforce the law become members of a criminal ring; when citizens fear to testify in open court but live in terror of the assassin's cowardly bullet that flies by night, Martial Law must be declared and enforced, and when these conditions do exist then—*then* (and if your Honor please my then is now) I say that the courts of Texas will not deny to Texas her right of self-defense.

29. Agreeably to the Constitution and laws, I now pray your Honor to remand these applicants to the custody of the respondents who legally restrain them of their liberty.

30. The Court held that the respondents had the authority to hold and detain the relator, as contemplated under General Order No. 6, and remanded him back to the custody of the respondents. The Order entered by Judge Pickens is as follows:

"IN RE: LEWIS CRIM.

10th Day of October, A. D. 1929.

On this day came on to be heard before me the application of Lewis Crim for the writ of habeas corpus against Jacob F. Wolters, Brigadier General Texas National Guard, Louis S. Davidson, Colonel Texas National Guard, and John W. Naylor, Captain Texas National Guard, and said respondents Jacob F. Wolters, Louis S. Davidson and John W. Naylor having made due return of the said writ of habeas corpus herein served upon them, and having produced before me the person of said Lewis Crim, I proceeded to hear the application of the said Lewis Crim, and having examined the writ and the return of the

respondents Jacob F. Wolters, Louis S. Davidson and John W. Naylor and all papers and documents thereto attached, and having heard the evidence and argument of counsel upon both sides, I am of the opinion that the said Lewis Crim is legally held in custody under restraint of his liberty by the said respondents Jacob F. Wolters, Louis S. Davidson and John W. Naylor.

It is therefore ordered and decreed that the application of the said Lewis Crim herein be denied, and that the said Lewis Crim be, and he is here now, hereby remanded to the custody of the said respondents Jacob F. Wolters, Louis S. Davidson and John W. Naylor.

E. J. PICKENS,

Judge District Court, 84th Judicial District, Hutchinson County, Texas."

31. Notice of appeal to the Criminal Court of Appeals was given but was not perfected.

SECTION VI
QUOTATIONS FROM OPINIONS OF FEDERAL AND STATE COURTS

Reference has already been made to Martial Law at Galveston in 1920, in Section III. On that occasion, Attorney General C. M. Cureton, now the Chief Justice of the Supreme Court of Texas, and Assistant Attorney General E. F. Smith, now a distinguished member of the Austin (Texas) Bar, prepared an opinion covering the subject of Martial Law. This opinion is in fact a compilation of the important judicial opinions on the subject and is here reproduced. In reproducing same, the opinion is divided into paragraphs, for practical purposes for references:

2. "The Governor of the State has authority to order the militia into active service whenever or wherever he may deem it necessary to secure the safety or welfare of the commonwealth, or to preserve the peace, or lives, or property of citizens of the State.

3. “The power to declare Martial Law is primarily a legislative one, which the Legislature may exercise whenever in its discretion the public affairs demand this extreme measure. Despan vs. Olney, 1 Curt. 306; 7 Fed. Cases No. 3822. In most jurisdictions the power has by general statute been delegated to the Executive.

4. “In Franks vs. Smith, 142 Ky. 232, 134 S. W. 484, the court, after reviewing the Statutes conferring on the Governor the power to use the militia for the maintenance of law and order, said:

> ‘*We find from these sections of the Constitution and statute that the Governor is the Chief Civil officer of the Commonwealth and is charged with the duty of taking care that the laws of the State are faithfully executed. That he has authority to order the militia into active service whenever and wherever he may deem it necessary to secure the safety or welfare of the commonwealth, or to preserve the peace or lives or property of citizens of the State. That the militia can only be ordered into active service by him, but that it shall be at all times in strict subordination to the civil authorities. It will be observed that there is no limitation either in the Constitution or Statute upon the power vested in the Governor to order into active service the militia of the State or to direct into what locality they shall go or operate. He is made the sole judge of the necessity that may seem to demand the aid and assistance of the military forces of the State in suppressing disorder and restoring obedience to the law. The presumption of course is that he will not exercise this high power unless it becomes necessary to maintain peace and quiet and protect the life or property*

of the citizen, after the local civil authorities have shown themselves unable to cope with or control the situation. But to his good judgment and sound discretion the law has left the final decision as to whether the military arm of the State shall be ordered into active service. If he acts wisely and prudently, well and good. If he acts hastily or unwisely or imprudently, there is no power in the courts to control or restrain his acts.... He may act independently of any other civil authority if he desires to do so, or he may act in continuation with the other civil authorities. He may on his own initiative order out the State militia, or he may wait until requested so to do by the local authorities in the community in which they are needed. He may place the militia at the disposal of the civil authorities, or he may through military channels control and direct, within lawful bonds, their movements and operations. Which of these courses he will pursue, he alone is to judge.'

5. "In case of a local disturbance or insurrection which the local authorities are unable or unwilling to cope with, the Governor of a State may act of his own motion. In the case of In Re Boyle, 6 Idaho, 609, 45 L. R. A. 832, the Court said:

'The action of the Governor in declaring Shoshone County to be in a State of insurrection and rebellion, and his action in calling to his aid the military forces of the United States for the purpose of restoring good order and the supremacy of the law, has the effect to put into force, to a limited extent, Martial Law in said county. Such action is not in violation of the Constitution, but in harmony with it, being necessary for the preservation of government. In

such case the government may like an individual acting in self-defense, take those steps necessary to preserve its existence. If hundreds of men can arm themselves and destroy vast properties, and kill and injure citizens, thus defeating the ends of the government, and the government be unable to take all needful and necessary steps to restore law and maintain order, the State will then be impotent, if not entirely destroyed, and anarchy placed in its stead. It is no argument to say that the Executive was not applied to by any county officer of Shoshone County to proclaim said county to be in a State of insurrection, and for this reason the proclamation was without authority. The recitals in the proclamation show the existence of one of two conditions, viz., that the county officers of said county, whose duty it was to make said application, were either in league with the insurrectionists, or else, through fear of the latter, said officers refrained from doing their duty. Under the circumstances, it was the duty of the Executive to act without any application from any county officer of Shoshone County. This conclusion is based upon what we deem a correct construction of the provisions of our Constitution and Statutes in force, construed in par materia. *It having been demonstrated to the satisfaction of the Governor after some six or seven years experience, that the execution of the laws in Shoshone County, through the ordinary and established means and methods, was rendered practically impossible, it became his duty to adopt the means prescribed by the statute for establishing in said county the supremacy of the law, and insure the punishment of those by whose unlawful and criminal acts*

such a condition of things has been brought about; and it is not the province of the courts to hinder, delay, or place obstructions in the path of duty prescribed by law for the Executive, but rather to render to him all the aid and assistance in their power in his efforts to bring about the consummation most devoutly prayed for by every good and law-abiding citizen in the State.'

6. "The power is one based on necessity, finding its justification in civic self-defense. Griffin vs. Wilcox, 21 Ind. 370, wherein it was said:

'The right, in the military officer, to govern by Martial Law, as we have said, arises upon the fact of existing, or immediately impending force at a given place and time, against legal authority, which the civil authority is incompetent to overcome; and it is exercised precisely upon the principle on which self-defense justifies the use of force by individuals, robbers and burglars, and, in some cases rioters may be resisted and even slain, in self-defense by private individuals. That is, there are cases where force must be resisted by force, instead of waiting for the civil authorities.'

Similarly it was said in Luther V. Borden, 7 How. 1, 12 U.S.

'Unquestionably, a State may use its military power to put down an armed insurrection, too strong to be controlled by the civil authority. The power is essential to the existence of every government, essential to the preservation of order and free institutions, and it is as necessary to the State of this Union as to any other government.'

7. The circumstances justifying the declaration of Martial Law in case of a domestic insurrection were stated in Commonwealth vs. Shortall, 206 Pa. St. 165, 98 Am. St. Rep. 759, 55 Htl. Rep. 952, 65 L. R. A. 193, wherein it was said:

> *'It is not unfrequently said that the community must be either in a State of peace or war, as there is no intermediate State. But from the point of view now under consideration this is an error. There may be peace for all the ordinary purposes of life and yet a State of disorder, violence and danger in special directions, which though not technically war has in its limited field the same effect, and if important enough to call for Martial Law for suppression, is not distinguishable, so far as the powers of the commanding officer are concerned, from actual war. The condition in fact exists, and the law must recognize it, no matter how opinions may differ as to what it should be most correctly called. When the civil authority, though in existence and operation for some purposes, is yet unable to preserve the public order and resorts to military aid, this necessarily means the supremacy of actual force, and demonstration of the strong hand usually held in reserve and operation only by its moral influence, but now brought into active exercise, just as the ordinary criminal tendency in the community is held in check by the knowledge and fear of the law, but the overt law breaker must be taken into actual custody. When the mayor or burgess of a municipality finds himself unable to preserve the public order and security and calls upon the sheriff with the* posse comitatus, *the latter becomes the responsible officer and therefore the higher authority. So if in turn*

the sheriff finds his power inadequate, he calls upon the larger power of the State to aid with the military. The sheriff may retain the command, for he is the highest Executive officer of the county, and if he does so, ordinarily the military must act in subordination to him. But if the situation goes beyond county control, and requires the full power of the State, the Governor intervenes as the supreme Executive and he or his military representative becomes the superior and commanding officer. So too if the sheriff relinquishes the command to the military, the latter has all the sheriff's authority added to his own powers as to military methods.'

8. "The recitals in the Governor's proclamation establishing Martial Law cannot be controverted, for as was said in the case of Franks vs. Smith, supra: 'He,' that is the Governor, 'is made the sole judge of the necessity that may seem to demand the aid and assistance of the military forces of the State in suppressing disorder and restoring obedience to the law,' and as said in the case of In Re Moyer, 35 Colo. 159, 85 Pac. 190:

'By the reply it is alleged that, notwithstanding the proclamation and determination of the Governor that a State of insurrection existed in the county of San Miguel, that, as a matter of fact, these conditions did not exist at the time of such proclamation or the arrest of the petitioner, or at any other time. By Sec. 5, Art. 4, of our Constitution, the Governor is the commander in chief of the military forces of the State, except when they are called into actual service of the United States; and he is thereby empowered to call out the militia to suppress insurrection. It must therefore become his duty to determine as a fact

when conditions exist in a given locality which demand that, in the discharge of his duties as chief Executive of the State, he shall employ the militia to suppress. This being true, the recitals in the proclamation to the effect that a State of insurrection existed in the county of San Miguel cannot be controverted. Otherwise, the legality of the orders of the Executive would not depend upon his judgment, but the judgment of another coordinate branch of the State government. Re Boyle, 6 Idaho, 609, 45 L. R. A. 832, 96 Am. Et. Rep. 286, 57 Pac. 706; Luther vs. Borden, 7 How. 1, 12, L. ed. 581; Ex Parte Moore, 64 N. C. 802; Martin vs. Mott, 12 Wheat. 19, 6 L. ed. 537.

In Luther vs. Borden, supra, the Supreme Court of the United States said:

'It is true that in this case the militia were not called out by the President. But upon the application of the Governor under the charter government, the President recognized him as the Executive power of the State, and took measures to call out the militia to support his authority, if it should be found necessary for the general government to interfere; and it is admitted in the argument that it was the knowledge of this decision that put an end to the armed opposition government, and prevented any further efforts to establish by force the proposed Constitution. The interference by the President, therefore, by announcing his determination, was as effectual as if the militia had been assembled under his orders. And it should be equally authoritative. For certainly no court of the United States, with a knowledge of this decision, would have been justified in recognizing the opposing party as the lawful government,

or in treating as wrong-doers or insurgents the officers of the government which the President had recognized, and was prepared to support by an armed force. In the case of foreign nations, the government acknowledged by the President is always recognized in the courts of justice. And this principle has been applied by the act of congress to the sovereign States of the Union.

'It is said that this power in the President is dangerous to liberty, and may be abused. All power may be abused if placed in unworthy hands. But it would be difficult, we think, to point out any other hands in which this power would be more safe, and at the same time equally effectual. When citizens of the same State are in arms against each other, and the constituted authorities unable to execute the laws, the interposition of the United States must be prompt, or it is of little value. The ordinary course of proceedings in courts of justice would be utterly what hypothesis it can be successfully claimed that the milder means of he is by the people of the United States, and the high responsibility he could not fail to feel when acting in a case of so much moment, appear to furnish as strong safeguards against a willful abuse of power as human prudence and foresight could well provide. At all events, it is conferred upon him by the Constitution and laws of the United States, and must, therefore be respected and enforced in its judicial tribunals.'

And again in the case of Matin vs. Mott, 12 Wheat 29, the Supreme Court of the United States said:

'Whenever a statute gives a discretionary power to any person, to be

exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts.'

The case above mentioned arose out of a call made by the President, by virtue of the power conferred upon him to call out the militia to repel invasion.

9. "The acts of the Governor in exercising his Constitutional powers to suppress insurrection, preserve the peace, and execute the laws of the State cannot be interfered with by the courts so long as he does not exceed the power conferred upon him. In Re Moyer, supra, it was said:

'By the Constitution, the supreme Executive power of the State is vested in the Governor, and he is required to take care that the laws be faithfully executed. Sec. 2, Art. 4. To this end, he is made commander in chief of the military forces of the State, and vested with authority to call out the militia to execute the laws and suppress insurrection. Sec. 5, supra. This authority is supplemented by Laws 1897, p. 204, chap. 65, sec. 2, whereby it is provided that, when an insurrection in State exists or is threatened, the Governor shall order out the National Guard to suppress it. These are wise provisions, for the people in their sovereign capacity, in framing the Constitution, as well as the general assembly, recognized that an insurrection might be of such proportions that the usual civil authorities of the county and the such proportions that the usual civil authorities of the county and the judicial department would be unable to cope with. Through the latter, parties engaged in such insurrection might be

punished, but its prompt suppression could only be secured through the intervention of the militia. Being vested with authority to employ the militia for a specific purpose, and it appearing from the return to the writ that the Governor has called it into requisition for that purpose, his action through his subordinates cannot be interfered with, so long as he does not exceed the power which, under the fundamental law of the State and the acts of the Legislature in conformity therewith, he is authorized to exercise. People ex rel. Alexander vs. District Court, 29 Colo. 182, 205, 68 Pac. 242.'

10. "The militia, in suppressing an insurrection, preserving the peace and executing the laws under the Governor's orders, may, without turning them over to the civil authorities, seize and detain insurrectionists and those guilty of disorderly conduct and disobedience to the law, and those aiding and abetting them, until the insurrection and disorderly conduct has been suppressed, and obedience to the law has been restored.

In Re Moyer, supra, it was said:

'If, then, the military may resort to the extreme of taking human life in order to suppress insurrection, it is impossible to imagine upon unfit for the crisis. And the elevated office of the President, chosen as seizing the persons of those participating in the insurrection or aiding and abetting it may not be resorted to. This is but a lawful means to the end to be accomplished. The power and authority of the militia in such circumstances are not unlike that of the police of a city, or the sheriff of a county, aided by his deputies or posse comitatus in suppressing a riot. Certainly such officials would be justified in

arresting the rioters and placing them in jail without warrant, and detaining them there until the riot was suppressed. Hallatt, J., In Re Application of Sherman Parker (no opinion for publication). If, as contended by counsel for petitioner, the military, as soon as a rioter or insurrectionist is arrested, must turn him over to the civil authorities of the county, the arrest might, and in many instances would, amount to a mere farce. He could be released on bail, and left free to again join the rioters or engage in aiding and abetting their action, and, if again arrested, the same process would have to be repeated, and thus the action of the military would be rendered a nullity. Again, if it be conceded that, on the arrest of a rioter by the military he must at once be turned over to the custody of the civil officers of the county, then the military, in seizing armed insurrectionists and depriving them of their arms, would be required to forthwith return them to the hands of those who were employing them in acts of violence, or be subject to an action of replevin for their recovery, whereby immediate possession of such arms would be obtained by the rioters, who would thus again be equipped to continue their lawless conduct. To deny the right of the militia to detain those whom they arrest while engaged in suppressing acts of violence and until order is restored would lead to the most absurd results. The arrest and detention of an insurrectionist, either actually engaged in acts of violence or in aiding and abetting others to commit such acts, violates none of his Constitutional rights. He is not tried by any military court, or denied the right of trial by jury; neither is he punished for violation of the law, nor held

without due process of law. His arrest and detention in such circumstances are merely to prevent him from taking part or aiding in a continuation of the conditions which the Governor, in the discharge of his official duties and in the exercise of the authority conferred by law, is endeavoring to suppress. When this end is reached, he could no longer be restrained of his liberty by the military, but must be, just as respondents have indicated in their return to the writ, turned over to the usual civil authorities of the county, to be dealt with in the ordinary course of justice, and tried for such offense against the law as he may have committed.'

In the case of Luther vs. Borden, supra, the Supreme Court of the United States said:

'It was a State of war; and the established government resorted to the rights and usages of war to maintain itself, and to overcome the unlawful opposition. And in that state of things the officers engaged in its Military Service might lawfully arrest any one, who, from the information before them, they had reasonable grounds to believe was engaged in the insurrection; and might order a house to be forcibly entered and searched, when there were reasonable grounds for supposing he might be there conceded. Without the power to do this, Martial Law and the military array of the government would be mere parade, and rather encourage attack than repeal it.'

11. "Thus in the suppression of an insurrection the military authorities may arrest and hold in military custody persons who are active in fomenting or participating in a disturbance of the

peace. In the case of Moyer vs. Peabody, 212 U. S. 78, the Supreme Court of the United States said:

> *`It would seem to be admitted by the plaintiff that he was President of the Western Federation of Miners, and that, whoever was to blame, trouble was apprehended with the members of that organization. We mention these facts not as material, but simply to put in more definite form the nature of the occasion on which the Governor felt called upon to act. In such a situation we must assume that he had a right under the State Constitution and laws to call out troops, as was held by the supreme court of the State. The Constitution is supplemented by an act providing that "when an invasion of or insurrection in the State is made or threatened the Governor shall order the National Guard to repel or suppress the same." Laws of 1897, c, 63, Art. 7, Sec. 2, p. 204. That means that he shall make the ordinary use of the soldiers to that end; that he may kill persons who resist and, of course, that he may use the milder measure of seizing the bodies of those whom he considers to stand in the way of restoring peace. Such arrests are not necessarily for punishment, but are by way of precaution to prevent the exercise of hostile power. So long as such arrests are made in good faith and in the honest belief that they are needed in order to head the insurrection off, the Governor is the final judge and cannot be subjected to an action after he is out of office on the ground that he had not reasonable ground for his belief.'*

12. “In the case of In Re Jones, 71 W. Va. 567, 77 S. E. 1029, a State of war having been declared to exist by the Governor in a certain portion of the State of West Virginia, it was held in that case that the Governor may have caused to be apprehended, in or out of the military zone, all persons who shall willfully give aid, support, or information to the insurgents, and detain or imprison them, pending the suppression of the insurrection.

Again, in the case of Commonwealth vs. Shortall, supra, it was said:

‘The effect of Martial Law, therefore, is to put into operation the powers and methods vested in the commanding officer by military law. So far as his powers for the preservation of order and security of life and property are concerned, there is no limit, but the necessities and exigency of the situation. And in this respect there is no difference between a public war and domestic insurrection. What has been called the paramount law of self-defense, common to all countries, has established the rule that whatever force is necessary is also lawful. Whatever force is necessary for self-defense is also lawful. This law, applied nationally, is the Martial Law, which is an off-shoot of the common law, and although ordinarily dormant in peace, may be called forth by insurrection or invasion. War has exigencies, that cannot readily be enumerated or described, which may render it necessary for a commanding officer to subject legal citizens, or persons who though believed to be disloyal have not acted overtly against the government, to deprivations that would under ordinary circumstances be illegal; and he must then depend for his justification, not on the laws of war, but on the necessity which, as has been here seen, may warrant

the taking of life, and will therefore excuse any minor deprivation.'

13. "The Governor, in employing the militia to suppress an insurrection, or when he calls forth the militia to execute the laws of the State, is merely acting in his capacity as the Chief Civil Magistrate of the State, and, although exercising his authority conferred by law through the aid of the militia under his command, he is but acting in a civil capacity. Thus In Re Moyer, supra, it was said:

> '*Nor do these views conflict with Sec. 22, Art. 2, of the Bill of Rights, which provides that the military shall always be in strict subordination to the civil power. The Governor, in employing the militia to suppress an insurrection, is merely acting in his capacity as the Chief Civil Magistrate of the State, and, although exercising his authority conferred by law through the aid of the military under his command, he is but acting in a civil capacity. In other words, he is but exercising the civil power vested in him by law through a particular means which the State has provided for the protection of its citizens. No case has been cited where the precise question under consideration was directly involved and determined, but, in cases where the courts have had occasion to speak of the authority of the military to suppress insurrection and the means which may be employed to that end, it has been stated that parties engaged in riotous conduct render themselves liable to arrest by those engaged in quelling it. Re Kemp, 16 Wis. 382; Luther vs. Borden, supra; Johnson vs. Jones, 44 Ill. 142, 92 Am. Dec. 159.'*

14. “The arrest of insurrectionists are those engaged in disorderly conduct, or those acting in disobedience to the law, or those aiding or abetting them, by the militia acting under orders of the Governor to suppress an insurrection and to execute the law does not violate the Constitutional provision that the militia shall be subordinate to the civil power since the act of the Governor is in his civil capacity. In addition to the last quotation taken from the Moyer case, the court in that case continuing said:

> *‘The same rule necessarily applies to those found in the zone of the disaffected district who are aiding and abetting the insurrectionists; for such conduct, unless repressed, would result in the continuation of the insurrection, or at least render it more difficult to suppress. We therefore reach the conclusion that, independent of the questions of the authority of the Governor to declare Martial Law, or suspend the privilege of the writ of habeas corpus, that the petitioner, on the showing made by the return, is not illegally restrained of his liberty. In reaching this conclusion we are not unmindful of the argument that a great power is recognized as being lodged with the chief Executive, which might be unlawfully exercised. That such power may be abused is no good reason why it should be denied. The question simply is: Does it exist? If so, then the Governor cannot be deprived of its exercise. The prime idea of the government is that power must be lodged somewhere for the protection of the commonwealth. For this purpose laws are enacted and the authority to execute them must exist, for there are of no effect unless they are enforced. Neither is power of any avail unless it is exercised. Appeals of a possible abuse of power*

are often made in public debate. They are addressed to popular fears and prejudices and often give weight in the public mind to which they are not entitled. Every government necessarily includes a grant of power lodged somewhere. It would be imbecile without it. 1 Story, Const. Sec. 425; 1 Bailey, Jurisdiction, Sec. 296, p. 309.'

15. "The Governor as the Chief Executive, nor as Commander-in-Chief of the military forces of the State, does not have the authority to suspend the laws, this power being vested solely in the Legislature.

16. "The Governor, as the Chief Civil Magistrate of the State, has the authority under the Constitution `to call forth the militia to execute the laws of the State. And it is made the duty of the Governor to `cause the laws to be faithfully executed.'

17. "Where the local civil officers in a district declared to be under Martial Law make no attempt to enforce the law, or to apprehend those guilty of insurrection, or disorderly conduct, and make no attempt to cause the laws of the State or the municipality to be obeyed, but by their acts and conversation aid and encourage the lawless element in their unlawful acts, the Governor, as the Chief Civil Magistrate, has the power, if in his judgment it is necessary in order to execute the laws of the State and in order that the laws of the State may 'be faithfully executed,' to suspend such officers from office during the period that Martial Law is in force in the district.

In the case of Moyer vs. Peabody, supra, the Supreme Court of the United States said:

'When it comes to a decision by the head of the State upon a matter involving its life, the ordinary rights of individuals must yield to what he deems

the necessities of the moment. Public danger warrants the substitution of Executive process for judicial process. See Kelly vs. Sanders, 99 U. S. 441, 446. This was admitted with regard to killing men in the actual clash of arms, and we think it obvious, although it was disputed, that the same is true of temporary detention to prevent apprehended harm. As no one would deny that there was immunity for ordering a company to fire upon a mob in insurrection, and that a State law authorizing the Governor to deprive citizens of life under such circumstances was consistent with the Fourteenth Amendment, we are of the opinion that the same is true of a law authorizing by implication what was done in this case.'

It seems to our mind to be self-evident that if the Governor, as the Chief Civil Magistrate of the State, in enforcing the laws of the State by aid of the militia has the right in order that the laws of the State may be enforced and properly executed to take human life, that he would certainly have the lesser power of suspending from office minor officials who by their acts are interfering with and delaying the proper execution and enforcement of the law.

18. "The existence of Martial Law depends fundamentally on necessity. It does not supersede the civil authority, but finding that authority destroyed by insurrection it established a martial government to avoid the anarchy which would otherwise be inevitable. The powerlessness of the civil arm of government is therefore a condition precedent to the exercise of military authority. As was said in the case of In Re Egan, 5 Blatchf. 319, 8 Fed. Cas. No. 4303:

'This being the nature and extraordinary character of Martial Law, which, as observed by Sir Matthew Hale, is not law, but something indulged

rather than allowed as law, all authorities agree that it can be indulged only in cases of necessity, and that when the necessity ceases, Martial Law ceases. When a government or country is disorganized by war, and the courts of justice are broken up and dispersed, or are disabled, through the prevalence of disorder and anarchy, from exercising their functions, there is an end of all law; and the military power becomes a necessity, which is exercised under the form, and according to the practice and usage, of Martial Law. As has been said by a distinguished civilian, "when foreign invasion or civil war renders it impossible for courts of law to sit, or to enforce the execution of their judgments, it becomes necessary to find some rude substitute for them, and to employ for that purpose the military, which is the only remaining force in the community; and, while the laws are silenced by the noise of arms, the rulers of the armed force must punish, as equitably as they can, those crimes which threaten their own safety and that of society; but no longer." This necessity must be shown affirmatively by the party assuming to exercise this extraordinary and irregular power over the life, liberty and property of the citizens, whenever it is called in question.'

19. "It follows that where the courts are open and their process unobstructed the arrest and trial of persons by military authority is unauthorized.

In Re Egan, 5 Blatchf. 319, 8 Fed. Cas. No. 4,303; *Ex parte* Merryman, Taney 246, 17 Fed. Cas. No. 9,487; *Ex parte* Milligan, 4 Wall 2, 18 U. S. (L. ed.) 281; Bean vs. Beckwith, 18 Wall. 510, 21 U. S. (L. ed.) 849; Johnson vs. Jones, 44 Ill. 142, 92 Am. Dec. 159; Sheehan vs.

Jones, 44 III. 167; Carver vs. Jones, 45 Ill. 334; Griffin vs. Wilcox, 21 Ind. 370; McLaughlin vs. Green, 50 Miss. 453; Jones vs. Seward, 40 Barb. (N. Y.) 563; Matter of Egan, 6 Park, Crim. (N. Y.) 675; *Ex parte* Benedict, 4 West L. Month (Ohio) 449, 3 Fed. Cas. No. 1,292; In Re Kemp, 16 Wis. 359.

20. "In *ex parte* Vallandigham, 5 West, L. Month 37, 28 Fed. Cases No. 16816, however, the arrest of a citizen and his trial by military commission for disloyal utterances in the State of Ohio during the Civil War was sustained on the ground that the scene of actual war was so close and disloyalty so prevalent that the mere fact that the courts were open and unobstructed did not exclude the military government. In the leading case of *ex parte* Milligan, 4 Well. 2, 18 U. S. (L. Ed.) 281, it is laid down as the test whether a civil government exists, precluding Martial Law, that the courts must be open and their process unobstructed. In Commonwealth vs. Shortall, supra, it was denied that Martial Law can exist only where the courts are closed; that case however involving no question of military arrest or trial but only the guarding of threatened property in a time of insurrection.

21. "In the case of State vs. Brown, 71 W. Va. 519, 77 S. E. 243, the court held that Martial Law may be maintained and offenders arrested and tried by military commission in a district which is in a State of insurrection though courts having jurisdiction over offenders in such district are in undisturbed session elsewhere.

(NOTE BY COMPILER: See United States vs. Wolters, and United States vs. Fisher, Section VI.)

22. "The power given to the Governor to execute the laws of the State must be exercised in a Constitutional manner, but no authority exists that can Constitutionally interfere

with or prevent the Governor from exercising this power given him by the Constitution. As previously stated, the Governor is the sole and only judge as to when and where the necessity exists for calling forth the militia to execute the laws of the State.

23. "When the law in a certain county or district is not being faithfully executed either because of inability or unwillingness on the part of local officers to faithfully execute the laws, it then becomes the Constitutional duty of the Governor to 'cause the laws to be faithfully executed, and as an aid in performing this duty, he has the power to call forth the militia to execute the laws of the State.' In the exercise of the power given him by the Constitution and in the discharge of his duty under the Constitution, he had the power to do any and everything necessary to be done in order that the laws of the State may be faithfully executed except as he may be restricted by other provisions in the State Constitution.

24. "It follows then that in the event the Governor should decide as a matter of fact that in order for him to exercise the power given him by the Constitution, and to discharge the duty laid upon him by the Constitution with reference to enforcing and executing the laws of this State, that certain local officers in the district in which Martial Law had been declared were not only failing and neglecting to execute the law or to attempt to have the law executed themselves, but instead were engaged by acts and conversation in interfering with and preventing the Governor himself, with the aid of the military forces, to faithfully execute the laws, that the Governor may, in pursuance of his duty as laid upon him by the Constitution and under the authority given him by the Constitution, suspend such officers from the discharge of their official duties, pending the existence of Martial Law.

25. “This exact question on the right of the Governor to suspend local officials who fail and neglect to execute the laws themselves and who aid and assist the lawless elements in their attempt to disobey the law, has never been, so far as we have been able to find, before the courts. However, the textbook writers have stated unqualifiedly that the Governor has this authority Birkhimer, Military Government and Martial Law, 496; Bargar Law of Riot Duty, 143. The latter writer has this to say:

> *‘As, however, a civil officer apparently trying to properly perform his duty cannot be arrested, the occasions when it will be necessary to arrest him in order to oust will be extremely rare and on these occasions the Governor might simply treat the civil officer as a lawless private person. He will then remove him and may at once appoint a successor:*

26. “When the local officials have been suspended, the militia, under instructions from the Governor, the Chief Civil Magistrate of the State, may proceed to enforce the Civil Law in the district, declared to be under Martial Law.

27. “The case of State vs. Brown, discusses several phases of Martial Law and the power and authority of the Governor in enforcing the law with the aid of the militia. We quote the opinion in full:

> *‘L. A. Mays and S. F. Nance, in the custody of M. L. Brown, warden of the penitentiary of this State, under sentence of a military commission, appointed by the Governor to sit in a Territory corresponding in area and boundaries with the magisterial district of Cabin Creek, in the county of Kanawha, in which the said Governor had declared a State of war to exist, by*

proclamation duly issued and published, seek discharges and liberation upon writs of habeas corpus duly issued by this court. Upon these writs, lack of authority in the Governor to institute, in cases of insurrection, invasion, and riot, Martial Law is denied in argument. A further contention is that the power to do so extends only to the inauguration or establishment of a limited or qualified form of such law, subordinate to the civil jurisdiction and power to a certain extent; and certain provisions of the State Constitution are relied upon as working this restraint upon the Executive power, among them the provisions of section 4, of article 3, saying, "The privilege of the writ of habeas corpus shall not be suspended," and the provision of section 12 of the same article saying, "The military shall be subordinate to the civil power; and no citizen, unless engaged in the Military Service of the State, shall be tried or punished by any military court, for any offense that is cognizable by the civil courts of the State." A minor question is whether offenses committed immediately before the proclamation of Martial Law, but connected with the insurrection and operative therein, may be punished by a military commission, acting within the period of martial occupation and rule.

'All agree as to the character and scope of Martial Law, unrestrained by Constitutional or other limitations. The will of the military chief, in this instance the Governor of the State, acting as commander in chief of the army, is, subject to slight limitations, the law of the military zone or theatre of war. It is sometimes spoken of as a substitute for the Civil Law. It is said, also, that the

proclamation of Martial Law ousts or suspends the civil jurisdiction. These expressions are hardly accurate. The invasion or insurrection sets aside, suspends, and nullifies the actual operation of the Constitution and laws. The guaranties of the Constitution, as well as the common law and Statutes, and the functions and powers of the courts and officers, become inoperative by virtue of the disturbance. The proclamation of Martial Law simply recognizes the status or condition of things resulting from the invasion or insurrection, and declares it. In sending the army into such Territory to occupy it and execute the will of the military chief for the time being, as a means of restoring peace and order, the Executive merely adopts a method of restoring and making effective the Constitution and laws within that Territory, in obedience to his sworn duty to support the Constitution, and execute the laws.

(1) 'This power is a necessary incident of sovereignty. It is necessary to the preservation of the State. Subject to the jurisdiction and powers of the Federal government, as delegated or surrendered up by the provisions of the Federal Constitution, this State is sovereign and has the powers of a sovereign State. Like all others, it must have the power to preserve itself. Where that power resides, and how it is to be exercised, are questions about which there has been some difference of opinion among jurists and statesmen. Whether the Executive, without legislative authority, may exercise it need not be discussed. Section 92 of chapter 18 of the Code confers upon the Governor authority to declare a State of war in towns, cities, districts and counties in which there are

disturbances by invasion, insurrection, rebellion, or riot. Moreover, section 12 of article 7 of the Constitution itself seems to confer such authority upon the Governor, saying he "may call out" the military forces "to execute the laws, suppress insurrection, and repel invasion." Hence we may say the inauguration of Martial Law in any portion of this State, by proclamation of the Governor, has both Constitutional and legislative sanction in express terms.

(2) 'The provisions against the suspension of the writ of habeas corpus and trial of citizens, by military courts, for offenses cognizable by the civil courts cannot, in the nature of things, be actually operative in any section in which the Constitution itself and the functions of the courts have been ousted, set aside, or obstructed in their operation by an invasion, insurrection, rebellion, or riot. In such cases, the Constitutional guaranties of life, liberty and property have ceased to be operative and efficacious. The lives, liberty and property of the people are at the mercy of the invading, insurrectionary, rebellious, or riotous element in control. Their will and desires, not the Constitution and laws, rule and govern. There is no court with power to grant or enforce the writ of habeas corpus within the limits of such Territory. There is no court in which a citizen can be tried, nor any whose process can be made effective for any purpose. No doubt the Constitution and laws of the State are theoretically or potentially operative; but they are certainly not in actual and effective operation. The exercise of the military power, disregarding, for the time being, the Constitutional provisions relied upon, is obviously necessary to

the restoration of the effectiveness of all the provisions of the Constitution, including those which are said to limit and restrain that power.

'To ascertain the extent and purpose of the incorporation of these restrictive provisions of the Constitution, they must be read in the light of principles developed by governmental experience in all ages and countries, and universally recognized at the date of the adoption of the Constitution, and not expressly abolished or precluded from operation by any terms found in the instrument. In the interpretation of contracts, Statutes and Constitutional provisions, words are often limited and restrained to a scope and effect somewhat narrower than their literal import, upon a presumption against intent to interfere with, or innovate upon, well-established and generally recognized rules and principles of public policy not expressly abolished. Railway Co. vs. Conley & Avis, 67 W. Va. 129, 165, 67 S. P. 613; Reeves vs. Ross, 62 W. Va. 7, 57 S. E. 284; Brown vs. Gates, 15 W. Va. 131; Cope vs. Doherty, 2 Deg. & J. 614; Dillon vs. County Court, 60 W. Va. 339, 55 S. E. 382. Nothing can be higher in character or more indispensable than this power of self-preservation. The experience of all civilization has demonstrated its necessity as an incident of sovereignty. In the organization of the State, its citizens likely did not intend to omit or dispense with a power vital to its very existence or the maintenance and efficiency of its powers, under circumstances which inevitably arise in the life of every State. Hence there is strong ground for a presumption in favor of the retention of the power in question, which finds support in other

Constitutional provisions, authorizing the maintenance of a military organization, and the use of it by the Executive in the repulsion and invasion and suppression of insurrections and riots. Art. 7, Sec. 12. No rebuttal of the presumption nor abolition of this sovereign power is found in any express terms of the Constitution.

'The guaranties of supremacy of the Civil Law, trial by the civil courts, and the operation of the writ of habeas corpus should be read and interpreted so as to harmonize with the retention in the Executive and legislative departments of power necessary to maintain the existence of such guaranties themselves. It is unreasonable and logical. Otherwise, the whole scheme of government may fail. So interpreted, they have wide scope and accomplish their obvious purpose. The attempt to extend them further would be futile and result in their own destruction. The interruption is of short duration. It is only while military government is used as an instrument of warfare that the commanders' will is law. New Orleans vs. Steamship Co. 20 Wall. 387, 22 L. Ed. 354; Ex parte *Milligan, 4 Wall. 2, 127. 18 L. Ed. 281. That a military occupation of a Territory, in a State of peace and order, differs radically from the prosecution of a war in the same Territory is well established. In e*x parte *Milligan, cited in the former case, the military is subordinate to the civil power, no matter whether the occupancy under tranquil condition precedes or follows the military operations. Martial law is operative only in such portions of the country as are actually in a State of war, and continues only until pacification. Ordinarily the*

entire country is in a State of peace, and, on extraordinary occasions calling for military operations, only small portions thereof become theaters of actual war. In these disturbed areas, the paralyzed civil authority can neither enforce nor suspend the writ of habeas corpus, nor try citizens for offenses nor sustain a relation of either supremacy or subordination to the military power, for in a practical sense it has ceased. But, in all the undisturbed, peaceable, and orderly sections, the Constitutional guaranties are in actual operation and cannot be set aside. Ex parte *Milligan, cited. In most, if not all, of the instances in which the civil courts have treated sentences of military commissions as void, the commissions acted, and the sentences were pronounced, in tranquil Territory, not covered by any proclamation of Martial Law, in which there was no actual war, and in which the Constitution and laws were in full and unobstructed operation. An insurrection in a given portion of a State, or an invasion thereof by a foreign force, does not produce a State of war outside of the disturbed area. A nation may be at war with a foreign power, and yet have no occasion to institute Martial Law anywhere within its own boundaries, as in the case of the United States in the war with Spain. So, during the Civil War, there were vast areas and whole states in which there was no actual war.*

(3) 'It seems to be conceded that, if the Governor has the power to declare a State of war, his action in doing so is not reviewable by the courts. Of the correctness of this view, we have no doubt. The function belongs to the Executive and legislative departments of the government, and is beyond the

jurisdiction and powers of the courts. There is room for speculation, of course, as to the consequences of an arbitrary exercise of this high sovereign power; but the people, in the adoption of their Constitution, may well be supposed to have proceeded upon a well-grounded presumption against any such action, and assumed that the evil likely to flow from an attempt to hamper and restrain the sovereign power in this respect might largely outweigh such advantages as could be obtained therefrom. We are not to be understood as saying there would be a lack of remedy in such case. The sovereign power rests in the people, and may be exerted through the Legislature to the extent of the impeachment and removal from office of a Governor for acts of usurpation and other abuses of power.

(4) 'Power to establish a military commission for the punishment of offenses committed within the military zone is challenged in argument; but we think such a commission is a recognized and necessary incident and instrumentality of martial government. A mere power of detention of offenders may be wholly inadequate to the exigencies and effectiveness of such government. How long an insurrection or a war may last depends upon its character. Such insurrections as are likely to occur in a State like this are mild and of short duration. But no man can foresee and foretell the possibilities, and a government must be strong enough to cope with great insurrections and rebellions, as well as mild ones.

(5) 'That the courts of Kanawha County sit within the limits of that

county and outside of the military zone does not preclude the exercise of the powers here recognized as vested in the Executive of the State. These petitioners were arrested within the limits of the martial zone. There the process of the courts did not and could not run during the period of military occupation, and presumptively the State of affairs in that district, at the time of the military occupation and immediately before, was such as to preclude the free course and effectiveness of the Civil Law and the proceeds of the court, however effective they may have been in other sections of Kanawha County. The Constitution and laws themselves admit the obvious inadequacy and insufficiency of ordinary process and penalties, in cases of insurrection, by authorizing military suppression thereof. Participants therein, arrested and committed to the civil authorities, could easily find means of delaying trial, and, liberated on bail, return to the insurrectionary camp and continue to render aid and give encouragement by unlawful acts; and demonstration of their ability to do so would itself contribute to the maintenance of the uprising. The civil tribunals, officers and processes are designed for vindication of rights and redress of wrongs in times of peace. They are wholly inadequate to the exigencies of a State of war, incident to an invasion or insurrection. So the Legislature evidently regards them, since it expressly authorizes the Governor, "in his discretion," to "declare a State of war in towns, cities, districts and counties." He is not required, by any principle of international or Martial Law, the Constitution, or statute, to institute it, when proper by counties. On the

contrary, the statute authorizes it as to a town, a city, or a district, and he is not limited to towns, cities, and districts in which the courts sit in times of peace, nor forbidden to put a town, city, or district of a county under Martial Law rule by the sitting of courts elsewhere in the county. Section 2 of chapter 17 of the Virginia Code of 1860 was the same in principle, authorizing the Governor to call forth the militia to suppress combinations for dismembering the State or establishing a separate government in any part of it, or for any other purpose, powerful enough to obstruct, in any part of the State, the due execution of the laws thereof, in the ordinary course of proceeding. The Virginia Constitutional guaranties were then about the same as ours. "There was a provision against suspension of the writ of habeas corpus in any case." Article 4, Sec. 15. In these Statutes are found legislative constructions of Constitutions, harmonizing with the conclusions here stated as to the relation and purposes of the Constitutional provisions, and also the power to place a part of a county under martial rule, notwithstanding the courts may be open in some other part thereof.

(6) 'The offenses for which the petitioners were punished were committed in an interim between two successive periods of martial government. The first proclamation was raised about the middle of October, and the disturbances which has occasioned it immediately broke out again, and these offenses were of the kind and character which had made the occupation necessary. About the middle of November there was a second proclamation of a State of war. Just a few days before this second declaration, these offenses were

committed, and the offenders were found within the military zone, and were arrested, tried and convicted. If the offenses had been wholly disconnected with the insurrection and not in furtherance thereof, there might be doubt as to the authority of the military commission to take cognizance of them, although there are authorities for each jurisdiction and power as to any sort of offense committed within the Territory over which Martial Law has been declared, and remaining unpunished at the time of the declaration thereof.

'We are not reviewing the sentences complained of, nor ascertaining or declaring their legal limits. Our present inquiry goes only to the question of legality of the custody of the respondent at the present time and under the existing conditions. The Territory in which the offenses were committed is still under martial rule. It suffices here to say whether the imprisonment is, under present conditions, authorized by law, and we think it is. We are not called upon to say whether the end of the reign of Martial Law in the Territory in question will terminate the sentences, and upon that question we express no opinion.'

28. "The law of civil government under military occupation, prepared by Chas. E. Magoon, Law Officer, Bureau of Insular Affairs, War Department, and which was submitted to Honorable Elihu Root, Secretary of War, and prepared for publication at the request of Mr. Root, on page 29, says:

'It is important to ascertain whether or not the head of the military government of Porto Rico may now exercise the power of legislation. In time of war and in Territory affected by military operations undoubtedly the head of a

military government may exercise this power. War no longer exists in Porto Rico. The sovereignty of the United States has attached permanently to the island, and the government of the United States is in peaceable possession of the Territory. The right to legislate therefore now belongs to congress, and I see no reason for asserting that the jurisdiction of congress has been suspended or congress in any way incapacitated for exercising this right. It is the inability of the duly authorized agency of government to perform its proper function which authorizes the performance of that function by martial rule. As to legislation for Porto Rico, this justification cannot be asserted.

'Notwithstanding this want of authority to legislate, the head of the military government of civil affairs in Porto Rico is at liberty to issue military orders which the inhabitants are bound to obey. His warrant therefore is the vix major at his command and constitutes an authority akin to the police power of a State. Therefore such orders should relate exclusively to the internal or domestic affairs of the island. These orders differ from legislation in that they lack abiding force or permanency, since their force would cease upon the military government being withdrawn, unless congress, by appropriate action, should continue them in force and effect.

'In respect to the exercise of this authority, it is necessary for those charged with the high duty of administering military government to bear in mind that a military government in time of peace is not only a lawful government, but also a government of law, and that law is—to quote Blackstone "a rule of civil

conduct prescribed by the supreme power of the State;... not a transient, sudden order from a superior to or concerning a particular person, but something permanent, uniform and universal.'

29. "This would not mean that the Governor, or the commanding officer, would have the authority to annul or set aside the decree of the civil court which might be in session in the district under Martial Law, for in Raymond vs. Thomas, 91 U. S. 712, the court held void an order of General Canby, issued May 28, 1868, whereby he undertook to annul the decree of the Court of Chancery of South Carolina. The court said:

'It was an arbitrary stretch of authority needful to no good end that can be imagined. Whether congress could have conferred the power to do such an act is a question we are not called upon to consider. It is an unbending rule of law, that the exercise of military power where the rights of the citizens are concerned shall never be pushed beyond what the exigency requires. Citing Mitchell vs. Harmony, 13 How., 115; Worden vs. Bailey, 4 Taunt, 67; Fabriges vs. Moyston, 1 Cowp. 161.'

30. "In Johnson vs. Johnson, 92 Am. Dec. 181, it is said:

'The opinion of the minority (In Re Milligan) was to the effect that Martial Law was not necessarily limited to time of war, but might be exercised at other periods of "public danger," and that the fact that the civil courts are open is not controlling against its exercise, since they "might be open and undisturbed in the execution of their functions, and yet wholly incompetent to avert threatened danger, or to punish with adequate promptitude and certainty

the guilty." This opinion of the minority has been considered the sounder and more reasonable one; 2 Winthrop or Military Law, 38. And the opinion of the majority has been otherwise criticized as confusing Martial Law with military government: Pomeroy's Constitutional Law, sec. 714; 2 Winthrop on Military Law, 39.'

31. "That Martial Law is not inconsistent with the administration of justice by the citizens in civil courts, such courts being authorized by the military power to exercise their functions is held in Kimball vs. Taylor, 2 Woods, 37, Federal Cases Number 7775:

In Johnson vs. Duncan, 3 Mart. (La.) 530, 6 Am. Dec. 675, it is said:

`Under the Constitution and laws of the United States, the President has a right to call, or cause to be called, into the service of the United States, even the whole militia of any part of the Union, in case of invasion. This power exercised here by his delegate has placed all the citizens subject to militia duty under military authority and under military law. That I conceive to be the extent of the Martial Law, beyond which all is usurpation of power. In that State of things, the course of judicial proceedings is certainly much shackled, but the judicial authority exists and ought to be exercised whenever it is practicable. Even where circumstances have made it necessary to suspend the privilege of the writ of habeas corpus, and such suspension has been pronounced by the competent authority, there is no reason why the administration of justice generally should be stopped; for, because the citizens are deprived temporarily of the protection of the tribunals as to the safety of their persons, it does by no

means follow that they cannot have recourse to them in all other cases.'

32. "There is a well-defined and recognized distinction between military law and Martial Law. The former applies to those rules enacted by the legislative power of the government and regulation of the army and navy and the militia when called into the active service of the United States, while the latter applies to that government and control which military commanders may lawfully exercise over the persons and property of citizens and individuals not engaged in the land or naval service. Johnson vs. Jones, 44 Ill. 142. 92 Am. Dec. 159. In Re Kemp 16 Wis. 359.

33. "The commanding officer in a district declared to be under Martial Law is charged with the execution of both the military law which applies to the troops under his command, and to the execution of the Martial Law which applies to all persons and property within the district declared to be under Martial Law."

SECTION VII
POWER TO CREATE PROVOST COURTS

During Martial Law at Galveston, the power of the military commander to create a Provost Court was attacked in the Federal Court. The judge for the Southern District of Texas was holding court in another State and Judge Rufus Foster, then a Federal district judge, of a district in Louisiana, now a member of the United States Circuit Court of Appeals, was applied to for a writ of habeas corpus. He entered a rule requiring the commanding general, the Provost Marshal and provost judge to show cause why a writ should not issue. (For copy G. O. No. 12 and G. O. No. 13, see Chapter II, Section IV.)

The case is United States vs. Wolters, 268 Fed. Reporter, page 69:

"FOSTER, District Judge. This is a petition for a writ of habeas corpus by William McMaster, a civilian resident of Galveston, wherein it is charged

that Brigadier General Jacob F. Wolters, Colonel A. W. Bloor, and Captain O'Brien Stevens, all officers of the Texas militia, and respectively the commanding officer of the district, the Provost Marshal, and the provost judge, are unlawfully restraining his liberty and detaining him in custody, in violation of his rights guaranteed by the Constitution of the United States.

"The case, as made out by the pleadings and argument of counsel, and admissions in argument, is this: Governor Hobby, of Texas, issued a proclamation on June 7, 1920, declaring there had been acts of violence in Galveston and danger of insurrection, riot, and breach of the peace, and declaring Martial Law in Galveston. By the same proclamation General Wolters was directed to assume command of a district embracing the city of Galveston, which he did. That was followed by a proclamation on July 14, 1920, declaring that the mayor, four city commissioners, the city attorney, the judge of the city court, chief of police, the chief of detectives, and all members of the police and detective departments had failed, refused, and neglected to maintain order and preserve peace, and suspended the city officials, and directing the commanding general to enforce order and cause the Civil Law to be faithfully executed. On that General Wolters issued his General Order No. 12, of July 15, 1920, directing the Provost Marshal to take charge of the police station, city hall, office of the city judge, and all records, and directing that all persons charged with violations of city ordinances be tried by the Provost Marshal. This order was supplemented on the same day by General Order 13, detailing Captain

O'Brien Stevens as provost judge, with full authority to try such cases as might come before him under the provisions of General Order No. 12.

"With these proclamations and general orders in force, the militia on the scene and in charge of the city of Galveston, the relator was arrested on a complaint by a civilian, charging him with exceeding the speed limit for automobiles in violation of the traffic ordinances of Galveston, and tried before Captain Stevens. He objected to the jurisdiction of the court and asked for a trial by jury. A trial by jury was denied, and his exception to the jurisdiction disregarded. He was found guilty, sentenced to pay a fine of $50, and committed to jail in default of payment.

"The only question before this court is the jurisdiction of the Provost Court. I have examined the authorities cited by both sides; some of them are more or less persuasive, none of them in point are controlling on this court, and I think the case can be decided on fundamental principles.

(1) "There is no doubt that under the Constitution and laws of Texas the Governor is charged with the duty of enforcing the laws of the State, and has authority to call out the militia to enforce the laws, in case of riot, or breach of the peace, or imminent danger thereof. Const. Tex. art. 4, par. 7, 10; Acts 1905, c. 104, par. 13. See Vernon Sayles' Civil Stat. Texas (Ed. 1914) art. 5776. The question as to whether there is a riot, or insurrection, or breach of the peace, or danger thereof, is one solely for the decision of the Governor. The courts will not interfere with his discretion in that, and will not inquire as to whether or not

the facts justify the Governor. Luther vs. Borden, 7 How. 1, 12 L. Ed. 581, so, I must conclude that the Governor had complete authority to institute Martial Law in the city of Galveston. That is conceded by the relator. Since he had the authority to institute Martial Law, notwithstanding there is no statute of the State of Texas authorizing him to do so, he could do anything necessary to make his proclamation effective. If the civil officers of Galveston were not perfuming their duties, and not aiding in the enforcement of the law, the Governor would be authorized to suspend them. He did that, and in my opinion the suspension was legal.

(2) "The question then comes up as to the appointment of this military court. The order of General Wolters directs the Provost Marshal to enforce the Civil Law, and jurisdiction is given to the Provost Court to enforce the ordinances of the city of Galveston. The justices of the peace of the State courts are not superseded or suspended; but it is elemental that, where the same State of facts may constitute a violation of a State statute and also constitute a violation of the city ordinances, the offender may be proceeded against under either law; one does not prevent the other being may in enforced, so it is a mere incident that in this case the offense with which the relator was charged might also have been an offense under the State law, and would not deprive the city court of Galveston of jurisdiction to try him. The city court of Galveston was suspended, and a military officer had been appointed to sit in place and stead of the judge, and to enforce the ordinances of the city. That is not without

precedent in history. When General Butler was in command of New Orleans, he did this very thing. He appointed the Provost Marshal and gave him jurisdiction to try civil cases. Subsequently President Lincoln created a provisional court by proclamation for the same district. The jurisdiction of this court was upheld. The Grapeshot vs. Wallerstein, 9 Wall. 129, 19 L. Ed. 651.

"The point is also made by relator that only the Legislature can suspend a law. Const. Texas, art. 1, par. 28. Suspending a judge is not suspending a law. On the contrary, in this case the military was directed to enforce existing laws, and the Provost Court was created for that very purpose.

(3) "It seems to me it was necessary and proper that this court should have been instituted. It is conceded in argument there are other ordinances of the city of Galveston, a violation of which would not also be a violation of any State statute. Some court would have to be instituted to try these cases. So, if a court of jurisdiction tried the offender, and did not lose jurisdiction during the course of the trial, then this court cannot inquire into any irregularities arising in the course of that trial. That would apply particularly to the statements made in argument that an appeal was denied the relator. That would be a mere irregularity; if he was entitled to an appeal, that right could be enforced by mandamus or some other remedy. Kohl vs. Lohlback, 160 U. S. 293, 16 Sup. Ct. 304, 40 L. Ed. 432.

"In regard to the denial of the trial by jury, it is well settled the Federal Constitution does not guarantee a trial by jury in the State courts. It applies

only to trials in the Federal Courts, and if some other due process of law and some other method is provided by the State Statutes it is sufficient. Manifestly, in a community under Martial Law, a trial by jury would be impracticable.

"So, on the whole, I must conclude this military court was properly constituted, and had jurisdiction for the trial of this offense, and that proceedings have been had there, and relator convicted and sentenced, his imprisonment cannot be inquired into in this court on a writ of habeas corpus.

"The petition is denied."

36. United States vs. Fischer, 280 Fed. Reporter, page 208:

"MUNGER, District Judge. These are applications for writs of habeas corpus by two persons who have been committed to a term of imprisonment in a county jail of this State. The facts leading up to the imprisonment are as follows:

"The Governor of the State had issued a proclamation declaring the existence at Nebraska City of a State of lawlessness and disorder beyond the control of the civil authorities, and that the local officers had applied for military assistance to be placed in control of that Territory for the restoration and maintenance of law and order. The proclamation therefore declared the Territory to be subject to Martial Law, and ordered the National Guard of the State to occupy the Territory for the purpose of restoring law and order. After the troops were in possession of the Territory, the Governor authorized the appointment of military commissions to try offenses against the public peace and violations of any military rules and regulations.

Each of the petitioners was charged with violation of some of these regulations, one in retaining in his possession arms, equipment, and munitions of war, and the other in keeping open a prohibited place of business, and each was found guilty and sentenced, and the commitments are in pursuance of these sentences. The petitioners were not employed in the Military Service and were citizens of Nebraska City. The State courts at Nebraska City were open during all the time of military occupation. After the petitioners had served a portion of their sentences, the Governor issued a proclamation reciting that violence and disorder had ceased at Nebraska City, and he therefore terminated Martial Law and withdrew the troops.

"The chief claim of the petitioners is that their imprisonment violates the due process of law guaranteed to them by the Fourteenth Amendment to the Constitution of the United States: (1) Because Martial Law did not exist at the time of their alleged offenses; (2) because military commission had no power to try them; and (3) because sentence by the commission could not outlast the period of military occupancy.

(1) "Due process of law depends upon circumstances, and varies with the subject-matter and the necessities of the situation, and imprisonment of citizens by the military commander may be lawful in some cases. Moyer vs. Peabody, 212 U. S. 78, 29 Sup. Ct. 234, 53 L. Ed. 410. (Article 5, par. 14, of the Nebraska Constitution makes the Governor commander of the military forces of the State, and authorizes him to call out the militia to execute the laws and

suppress insurrection." Section 3904 of the Revised Statutes of Nebraska (1913) authorizes the Governor, as commander-in-chief of the militia, to employ it in the defense or relief of the State, or any part of its inhabitants or territories, and gives him all the powers necessary to carry into effect the provisions of that chapter of the Statutes.

"Section 3913 of the same chapter provides that the militia may be called into service in time of war, invasion, riot, rebellion, insurrection, or reasonable apprehension thereof, and section 3916 authorizes the Governor to proclaim any portion of the State in a State of insurrection when in his judgment the maintenance of law and order will be promoted thereby, and the militia are employed to aid the civil authority.

(2) "Under such powers the Governor may make the ordinary use of soldiers to suppress insurrection and his declaration of the existence of a State of insurrection is conclusive. Moyer vs. Peabody. 212 U. S. 78, 29 Sup. Ct. 235, 53 L. Ed. 410; Luther vs. Borden et al.*, 7 How. 1, 12 L. Ed. 581; United States vs. Wolters (D. C.) 268 Fed. 69; In Re Moyer, 35 Colo. 159, 85 Pac. 190, 12 L. R. A. (N. S.) 979, 117 Am. St. Rep. 189; State vs. Brown, 71 W. Va. 519, 77 S. E. 243, 45 L. R. A. (N. S.) 996, Ann. Cas. 1914C, 1;* Ex parte *McDonald, 49 Mont. 454, 143 Pac. 947, L. R. A. 1915B 988, Ann. Cas. 1916A, 116.*

(3) "Was the proclamation of the Governor the declaration of a State of insurrection, or were the military forces called into service merely as aids to the civil officers for the purpose of assisting them in enforcing the laws? The

proclamations do not use the word 'insurrection,' but the condition described of lawlessness and disorder beyond the control of the civil authorities, and the declaration of Martial Law, are equivalent to a declaration of the existence of that organized resistance to authority known as insurrection. In Re Charge to Grand Jury (D. C.) 62 Fed. 828; Alleghany County vs. Gibson, 90 Pa. 397, 35 Am. Rep. 670.

(4) "When a State of war or insurrection exists, and the Governor has legally called into action the military forces of the State, the will of the commander becomes the controlling authority of the occupied Territory, so far as he chooses to exert it, subject to the laws and usages of war. New Orleans Steamship Co., 20 Wall. 387, 22 L. Ed. 354; United States vs. Diekelman, 92 U. S. 520, 23 L. Ed. 742; Luther vs. Borden et al., 7 How. 1, 12 L. Ed. 581; United States vs. McDonald (D. C.) 265 Fed. 754; In Re Egan, 5 Blatchf. 319, Fed. Cas. No. 4,303; Commonwealth vs. Shortall, 206 Pa. 165, 55 Atl. 952, 65 L. R. A. 193, 98 Am. St. Rep. 759; 40 Cyc. 383, 390. As said by the Supreme Court of the United States in the case of Moyer vs. Peabody, 212 U. S. 78, 29 Sup. Ct. 235, 53 L. Ed. 410, of the powers vested in the Governor to suppress insurrection:

"That means that he shall make the ordinary use of the soldiers to that end, that he may kill persons who resist and, of course, that he may use the milder measure of seizing the bodies of those whom he considers to stand in the way of restoring peace. Such arrests are not necessarily for punishment, but are

by way of precaution to prevent the exercise of hostile power.'

(5) "Does the military power in the occupied Territory which is declared under Martial Law extend to the trial and punishment of offending against regulations made by the military commander? Some cases are cited in support of the proposition that the military forces can do no more than arrest and detain offenders against the laws of the State until they can be delivered to the civil authorities for trial, upon the restoration of peace and order. Franks vs. Smith, 142 Ky. 232, 134 S. W. 484, L. R. A. 1915A, 1141, Ann. Cas. 1912D. 319; Ex parte McDonald, 49 Mont. 454, 143 Pac. 947, L. R. A. 1915B, 988, Ann. Cas. 1916A, 1166. No doubt the commander may avail himself of the courts as a means of trial, but he may also institute tribunals during the emergency to deal with offenders in the district. The Grapeshot, 9 Wall. 129, 19 L. Ed. 651; New Orleans vs. Steamship Co., 20 Wall. 387, 22 L. Ed. 354; United States vs. Wolters (D. C.) 268 Fed. 69; Winthrop on Mil. Law (2d Ed.) 1295, 1301; Davis on Mil. Law, 308; State vs. Brown, 71 W. Va. 519, 77 S. E. 243, 45 L. R. A. (N. S.) 996, Ann. Cas. 1914C, 1; Ex parte *Jones, 71 W. Va. 567, 77 S. E. 1029, 45 L. R. A. (N. S.) 1030, Ann. Cas. 1914C, 31. This is especially true of offenses against the military regulations, such as these petitioners committed, acts which are not offenses against the laws of the State.*

"In cases of military occupancy during war or insurrection, the passing of the military lines by persons without permission, the possession of arms and ammunition, the sale of intoxicating liquors, may cause the commander the loss

of a battle, and yet these acts may not offend against the local laws. The usage in time of war has been to make regulations covering offenses in violation of the laws of war or of military discipline. Winthrop on Mil. Law (2d Ed.) 1310, 1311.

(6) "Can the sentence of imprisonment by such military tribunal be continued after peace is declared? This question has not been the subject of many reported decisions. The power to punish serious offenses by imposition of the death penalty is well understood, and the lesser punishment of imprisonment for life has been sustained. Ex parte *Ortiz (C. C.) 100 Fed. 955. It is stated that during the Civil War such military commissions acting under the authority of the United States held trials and entered judgment in more than two thousand cases (Winthrop, Mil. Law (2d Ed.) 1302), and that sentences of imprisonment for terms of years and for life were imposed (Id. 1913). See, also, Davis on Mil. Law, 313. In case of serious offenses, it is not doubted that the sentence of imprisonment may continue during the war or insurrection. If the punishment is inflicted but a few days before the establishment of peace, it would seem absurd that sentences, otherwise just, should at once expire. While the necessity for crushing of further resistance may have passed, the reason for continuance of sentences therefore given has not ceased. The power of the military commander to make a lease of enemy city property extending beyond the termination of the war was sustained in New Orleans vs. Steamship Co., 20 Wall. 387, 22 L. Ed. 354.*

"The conclusion is that, assuming the acts of the military court to have

been done in accordance with the laws of the State, there is nothing in the exertion of this power which contravenes the right of due process of law guaranteed by the Constitution of the United States. The rule on the defendants to show cause why the writ of habeas corpus should not be issued will be discharged."

SECTION VIII
CALL OF NATIONAL GUARD BY CIVIL OFFICIALS OTHER THAN GOVRNOR

1. In many states Judges of certain courts, the sheriff of the county, and the mayor of a city or town, are by statute authorized to call National Guard units located within their jurisdictions to aid the civil authorities to execute the law.

2. Under such conditions, the determination of the civil officer concerned, that the emergency requires the aid of the National Guard is conclusive.

3. Generally Statutes authorizing such local civil authorities to call out the National Guard to aid the civil authorities in an emergency, provide that the calling authority and/or the National Guard commander shall immediately notify the Governor. Whether so provided by statute or not, it is clearly the implied duty of the National Guard commander to promptly by telephone notify the Governor through the Adjutant General that his command has been called to aid the civil authorities by the judge, sheriff, or mayor, as the case may be, and at the same time submit such information as the commander may have relating to the situation that prompted the call. It is always better to have the Governor through the Adjutant General ratify such call and order the National Guard to report to the calling civil authority for duty. If, however, the Governor decides to keep hands off, but does not countermand the order of the local civil

authority, then the National Guard unit under its proper commander will report for duty to the calling civil authority.

4. The orders of the calling civil authority will be obeyed. Such orders should be in writing. The civil authority should not be permitted to control the action of the military commander in carrying out such orders. For instance, the usual occasions for such a call is a mob attempting to lynch a prisoner in jail; or a riot growing out of labor strikes or political factions. The commander should procure a written order from the civil Authority to protect the prisoner from lynching, suppress the mob and execute the law; or, an order to suppress a riot, arrest persons violating the law and restore order. Then the military commander with this order would proceed to resort to such tactics as seem to him under the conditions that exist the best way to carry out the order.

5. The military commander and those serving under his command are when performing such duty controlled by the same Civil Law that relates to the sheriff, constable, and policemen in the performance of their duties. The military force will have the right to use such force as is necessary to protect the prisoner from the mob, to suppress the riot and arrest violators of the law. The right of self-defense, including the right to defend other persons from infliction of death or serious bodily injury, always exists. Likewise, the right to protect property from destruction by a mob or rioters. In exercising the right of personal self defense or defense of other persons or defense of property from destruction, all force necessary as viewed from the standpoint of the commander will be used.

6. If and when, whether under actual existence of Martial Law or the rendering of aid to civil authorities when Martial Law has not been declared, persons are killed or injured, it is

always necessary for the commander without delay to create a military board and procure written sworn statements of persons present.

7. All officers of the National Guard should familiarize themselves with the Statutes and court decisions of their respective states relating to the performance of such duties as are referred to in the preceding paragraphs of this section.

8. Circumstances justifying homicide committed by a soldier on duty in a military district under Martial Law are fully set out in Commonwealth vs. Shortall, 206 Pa. St. 165; 98 Am. St. Rep. 759; 55 Atl. Rep. 952, 65 L. R. A. 193.

A private was posted as sentry in the front yard of a house with orders to halt all persons prowling around or approaching the house, and if the person so challenged failed to respond to the challenge, after due warning, to "shoot and shoot to kill." During the night the sentry discovered a man approaching the house and called "halt" repeatedly. The man continued to advance towards the gate of the yard in which the house was located. When the man opened the gate and was coming into the yard, the private, in accordance with his orders, fired and the man fell to the ground dead. Upon the lifting of Martial Law the private was charged with murder. He applied for a writ of habeas corpus to the Supreme Court of Pennsylvania, and that court in a lengthy opinion released the relator. The opinion, portions of which are quoted from in Section VI, Chapter I, of this work, includes a full discussion of Martial Law. The references above given will enable any military officer to find this opinion in full in almost any good law library. The same rule laid down in this case will apply to those on duty in merely rendering military aid to the civil authorities.

9. During Martial Law at Galveston in 1920, an almost similar incident occurred. In that instance the Governor convened a general court martial, and the private was tried before that court and acquitted. He was then indicted by the grand jury of Galveston County and charged with manslaughter. The venue in the case was changed to the District Court of Fort Bend County, Texas, and there a plea of formal acquittal was interposed and sustained by the district judge, the Honorable M. S. Munson.

10. So far as the military commander is concerned, he is always safe when in good faith he issues a lawful order. The subordinate is safe when he obeys a lawful order. The military commander should be so well informed relating to the laws of his State that he will not issue an unlawful order.

CHAPTER II
THE ADMINISTRATION OF MARTIAL LAW
SECTION I.
FOREWORD

In Chapter I, the subject of Martial Law and the various legal problems that involve it are dealt with. In this chapter it is the purpose to deal with the administration of Martial Law. It is of the utmost importance that the military commander understand the law he is administering, therefore Chapter I will not only be of interest and profit to the bench and bar, but should be to all military officers, any one of whom may at a most unexpected day be called upon to command or to serve under Martial Law. It is not only important that the commander, but those officers who serve under him in a military district created by a proclamation declaring Martial Law, understand the extent and the limitations of the powers vested in them. It is important that the military commander be accompanied by a member of the Attorney General's Department of his State, who should be assigned the duty of representing the military commander and his subordinates in any and all civil court proceedings. In addition, he should have on duty a military officer who is a lawyer, experienced in the practice of criminal law. This officer should be detailed as the judge advocate. It is not important that he be familiar with the technique of military law. The average military officer is familiar with the law that governs those in the Military Service, but the services of a real lawyer who understands the civil and the criminal law and is familiar with rules of evidence and methods of procedure in criminal cases, are essential.

Every situation that brings on Martial Law differs in detail from every other that has preceded it. Different conditions exist and different people are to be dealt with.

The commander, under Martial Law, must bear in mind that the vast majority of the people in the community upon which Martial Law has been imposed are good citizens. He must have an eye single to the accomplishment of his mission, which is to effectively, speedily, suppress the State of lawlessness and rebuild and restore to the community civil rule. Citizens do not like the idea of having their community under Martial Law. It offends their civic pride. They do not like the publicity that their town and community get from martial rule. Martial law is one thing; the administration another thing. Always the duty of the commander is to accomplish the mission assigned to him, yet he may go about the accomplishment of that mission in a way that will not inconvenience the law abiding citizens of the community; that will not interfere with legitimate business and the ordinary social affairs of the people of the community. In this regard, he must be controlled by the nature and character of the situation that confronts him.

The efficiency, the integrity, the character, the sobriety, of the officers and soldiers assigned to duty in an area under Martial Law are of paramount importance. One soldier who is a bad actor can bring the commander and his entire force into disrepute by some act of misconduct, and such a one usually pulls something somewhere, sometime, somehow.

It is said, and no doubt correctly so, that experience is the greatest of teachers. At the risk of appearing immodest, but with only the sincere thought in mind that perhaps it may be profitable to service officers and men of the present and future, I undertake to recite in narrative form my experiences in the administration of Martial Law at various times and places in Texas during the past ten years. Each situation was different from the other. I think my experiences include all phases of the problem that always confronts the commander on such duty.

SECTION III
MILITARY DISTRICT OF GREGG COUNTY

In June, 1919, trouble arose between members of the white and negro races in Longview, Gregg County, Texas. Governor W. P. Hobby declared Martial Law and sent a detachment of the Texas National Guard under the command of Brigadier General Robert H. McDill to take charge. I was ordered to Longview as the legal adviser to General McDill. A detachment of Texas Rangers, under Captain Joe Brooks, was also sent to Longview, and these were placed under my immediate command. In that instance, General McDill, without formal order from the Governor, suspended the sheriff, city marshal and constable from their offices, took charge of the jail and required all citizens of Gregg County to bring all arms to military headquarters. The town was thoroughly policed by soldiers and a 9:00 p.m. curfew put in effect. Persons who had business keeping them out after that hour were issued special permits. Under the conditions that existed, this was justified, although it was a great inconvenience to the citizen. The burning of negro residences was fully investigated, and white members of the mob constituting the rioters were arrested, turned over to the civil authorities and the evidence, consisting of written statements, turned over to the county attorney. The negroes involved in the trouble were likewise arrested, and only as a matter of protection to them were held by the military authorities. Rangers were ordered to subpoena witnesses and to make arrests. After the investigation was completes, General McDill ordered all citizens of the county, white and black, to assemble in the court house square at Longview, where I narrated the facts that had developed by the investigation, demonstrating the gross misconduct and negligence of official duty on the part of certain officers. The result was that the substantial citizens of Longview and Gregg County at once took charge of the situation, and all further trouble was eradicated. Some negroes who were afraid to remain

were taken by the military detachment and State Rangers, through an arrangement with the Commissioners' Court of Gregg County, and held for a period of time in Travis County. This was done with the willing assent of the negroes concerned and the approval of the Governor. The entire mission was accomplished within ten days and Martial Law lifted. In this instance, only twenty-six white men, aside from certain peace officers, were involved in the trouble. When the law abiding citizens, white and black, were fully informed as to the true conditions, all concerned readily and harmoniously aided in the suppression of further misunderstandings and troubles, with the result that Gregg County has during the subsequent ten years given no further occasion for concern as to any differences between the races.

SECTION II
MILITARY DISTRICT OF ARANSAS, SAN PATRCIO COUNTIES AND PORT ARANSAS

In September, 1919, a hurricane destroyed much property at Corpus Christi, Aransas Pass, Rockport and Port Aransas. Governor Hobby, at the solicitations of local authorities, declared Martial Law and sent both infantry and cavalry troops to the affected area, to aid in the protection of property and relief to the communities. Adjutant General W. D. Cope, himself, took command at Corpus Christi, and I was placed in command in a district designated as Aransas and San Patricio Counties and Port Aransas, the latter on Mustang Island, a part of Nueces County. The main duties of the military authorities were to guard property that had been exposed by the storm; to aid in the recovery of bodies of the dead; to recover property which had been carried by the storm waters to various sections of the low lying shore along Nueces and Aransas Bays; to help rebuild bridges, public roads, railroad lines, and telephone and telegraph lines; to direct the burning of dead carcasses of cattle, horses mules, hogs, of snakes, and to kill rattlesnakes that

had been brought by the waters from St. Joe Island; to direct the clearing away of debris, consisting of destroyed business houses and dwellings, of trunks of trees and other material that had washed ashore; to supervise the receipt and distribution of supplies for relief purposes. To the area commanded by me Major General Joseph T. Dickman, Eighth Corps Area Commander, sent a complete trainload of tents, cots, blankets, field ranges and supplies in charge of a captain of the regular army, and a small detachment of soldiers. General Dickman also sent to aid me a motor transport detachment of the regular army, which contributed largely to the reconstruction of roads and the streets of Rockport and Aransas Pass.

The civil authorities in this instance cooperated fully with the military authorities. In due time the Disaster Section of the American Red Cross came into the affected areas and took over the administration of the relief work and the distribution of funds and supplies.

We remained thirty days. It was hard, disagreeable work for soldiers.

The important lesson taught by this tour of duty was: On an occasion of public disaster send for the Red Cross and let that organization handle the relief work rather than local committees. The latter are not trained for the work. Local political, religious and school factions become involved. If for any reason the Red Cross cannot be on the ground, have the military authorities handle it. This applies to a situation where the disaster involves a great area and where numerous people are involved.

SECTION IV.
Military DISTRICT OF GALVESTON

On March 19, 1920, the employees on the Mallory and Morgan Line docks, all members of the local International Longshoremen's Association, went on strike. The personnel at the Mallory docks consisted of white men, the majority of whom were of foreign birth, though

naturalized citizens. The workers at the Morgan docks were negroes. The total number of strikers involved were 1,600. Without much consideration as to the merits or demerits involved, the members of labor unions generally in Galveston were in sympathy with the strikers. The Mallory and Morgan docks served the coastwise shipping. The Longshoremen, known as "Deep-Sea" Longshoremen, did not go on strike. But they were in sympathy with those who did strike. Galveston had at the time probably 7,000 union men. While it is inconceivable that the majority of these men sympathized with the lawless acts of violence that were committed by the strikers, nevertheless they were sympathetic as a whole.

As soon as the strike took place "pickets" were organized, who, armed with clubs, prevented any person from approaching the Mallory or Morgan docks. The records are filled with assaults committed by negroes and white strikers on white men. Nor were these confined to men who sought employment at the docks, but included visitors to Galveston who innocently and without knowledge of the situation wandered to the Mallory docks to look at the shipping and at the port. Open rioting on several occasions took place, during which shots were fired, rocks and other missiles thrown. Various and divers people were more or less seriously injured. The police were sympathetic with the strikers and did not interfere with these assaults. When they did make arrests, it was invariably the assaulted victim who found himself arrested and charged with vagrancy. It was a real organized, armed insurrection. From the 19th of March until Martial Law went into effect on June 7, 1920, tens of thousands of tons of freight consigned to merchants throughout all Texas and to the states outside of Texas, reaching all along to the Pacific Coast, as far as Washington and to Montana and Minnesota accumulated. This merchandise had been

ordered to be resold in retail stores. The dock companies were helpless. They could not move a pound of freight because of the interference by violence of the strikers and their sympathizers.

The record of the testimony was published in the *Legislative Journals*. It is voluminous.

Finally businessmen from Galveston, various sections of Texas and the other states appealed to Governor W. P. Hobby for relief. On June 2, 1920, Governor Hobby called Adjutant General W. D. Cope and me to his office. The Governor in very terse language explained the situation. He ordered the Adjutant General to proceed to Galveston and make an investigation of the situation to determine whether it was possible to prevail upon the local authorities to afford adequate protection to those who wished to work on the docks without interference by the strikers and their sympathizers to the end that the channels of transportation be opened and kept permanently open. At the same time the Governor announced that if the Adjutant General could not accomplish this mission he proposed to declare Martial Law and send National Guard troops into Galveston with me in command. As a matter of preparedness, he instructed the Adjutant General to order such units as I might determine I would require for the service, to mobilize in their respective armories. The Adjutant General gave me a free hand in the selection of units. At that time I commanded the 1st Brigade, Cavalry, Texas National Guard. It was the old war time brigade, composed of three regiments, with fifteen troops to the regiment. The regiments were respectively second, third, and seventh. I selected those units from each of the three regiments that in my opinion were most efficient for such service. On the same day, that is June 2, the commanding officer of each unit selected, was wired, to mobilize at the armory at 9:00 a.m., June 4th, prepared with full field equipment to entrain upon further instructions to an unnamed destination. The selection included eighty officers and 1,020 men. The mobilization was carried

into execution promptly and without publicity. In the meantime, the Adjutant General held various conferences with officials in Galveston in a sincere and earnest effort to solve the problems without aid of military authority. I sent Colonel A. W. Bloor, who during the World War, organized, trained and commanded in combat and brought back and mustered out the 142nd Infantry, a regiment of the 71st Infantry Brigade, 36th Division, Lieutenant Colonel J. H. Zachery, who had commanded in the A. E. F., the 111th Supply Train of the 36th Division, both of whom had joined up with the cavalry, in civilian clothes to Galveston to reconnoiter the situation, locate prospective camp sites and obtain all information that might be necessary. By the way—Colonel Bloor is a major of infantry in the regular army, while Colonel Zachery, a prominent banker in Laredo, is serving on the division staff of the 36th Division. These gentlemen performed their mission. Finally the Adjutant General called Major General John A. Hulen and me to Galveston to join the conference with local officials. The local officials finally flatly stated that they could not afford the protection necessary to open the channels of transportation and keep them open. At the same time, they expressed the opinion that all soldiers in Texas would not be able to accomplish that. The effort to adjust the troubles having failed, the Governor at 10:35 a.m., June 7th, issued the following proclamation:

> "*WHEREAS the congestion in the movement of commerce through the port of Galveston is preventing the receipt of goods by Texas merchants and threatening the outward shipment of Texas crops almost ready for market, and this condition has reached proportions affecting the business interests and material welfare of Texas and the property rights of citizens; and*
>
> "*WHEREAS this condition has heretofore caused acts of violence on*

citizens of the State and there is now imminent danger of insurrection, tumult, riot and breach of the peace, and serious danger to the inhabitants and property of citizens in the Territory hereafter described; and

"WHEREAS Section 19 of Article 1 of the Constitution of Texas, provides in part, that: `No citizen of this State shall be deprived of life, liberty, property,.... except by the due course of the law of the land'; and

"WHEREAS Section 19 of Article 4 of the Constitution charges the Governor with the faithful execution of the laws of the State; and

"WHEREAS, Section 7 of Article 4 of the Constitution of the State declares the Governor shall call forth the militia to execute the laws of the State and suppress insurrections:

"Now, THEREFORE, I, W. P. HOBBY, Governor of Texas and Commander-in-Chief of the Military forces of the State, do, by virtue of the authority vested in me under the Constitution and laws of the State, declare that the conditions above described are clearly violative of the Constitution and laws of this State, and that by reason of which the conditions contemplated in Article 5892 of the Revised Civil Statutes of Texas 1911 exists in the following described Territory, to wit: —

"The City of Galveston, the port of Galveston, and all waterfronts and bays including the causeway and Virginia Point of the mainland, of Galveston, Pelican Island, and such portions of Boliver Peninsula as is situated in Galveston County, and all waterfronts and bays adjacent thereto, and I do

declare Martial Law in said Territory, effective at 12 o'clock p.m., 7th day of June, A. D. 1920; and I hereby direct Brigadier General Jacob F. Wolters to assume supreme command of the situation in the Territory affected, subject to orders of the Governor of Texas, the Commander-in-Chief of the military forces of this State as given through the Adjutant General.

"IN TESTIMONY WHEREOF, I have hereunto signed my name and caused the seal of State to be hereto affixed at my office at Austin, Texas, this 7th day of June, A. D. 1920, at 10:35 o'clock, a.m.

"W. P. HOBBY,

"Governor of Texas.

"BY THE GOVERNOR:

"C. D. MIMS,

"Secretary of State."

The Adjutant General's Department had arranged with various railroads for the transportation of troops on short notice. With my staff and four troops, I reached Galveston at 1:00 p.m. Immediately upon detraining, patrols previously selected were detailed and sent along the waterfront at the port and took possession of the Mallory and Morgan docks. During the afternoon and night of June 7th, the other troops arrived, a canvas camp was prepared fronting the boulevard, on the Gulf in an area just east of Fort Crockett. Outposts were established along the waterfront and the streets of the city of Galveston patrolled.

Immediately upon arrival at Galveston, the following General Order No. 1, was published:

“HEADQUARTERS MILITARY DISTRICT OF GALVESTON
“GENERAL ORDER NO. 1.

“Galveston, Texas, June 7, 1920.

“Pursuant to the orders of the Governor of Texas contained in his official proclamation dated June 7, 1920, I hereby assume command of the Territory affected by said proclamation and of all State troops therein situated.

“The following rules and regulations will be in force until further orders are promulgated:

“1. The carrying of arms of any character is prohibited.

“2. No firearms, ammunition or explosives of any character will be sold, bartered, exchanged or given away within the affected Territory, nor will any such be transported into the Territory affected except under the direction and control of the military authorities.

“3. Interference with persons in the pursuit of their occupations will not be permitted, and any person who does interfere or who attempts to interfere with any person in the pursuit of his or her occupation will be placed under arrest.

“4. Loitering or loafing upon the streets is prohibited.

“5. Crowds will not be permitted to congregate upon the streets. Two or more persons constitute a crowd.

“6. All assemblages in streets, parks or commons, either by day or by night, are prohibited. It is not, however, the intention of this order to prohibit the usual and customary use of the beach for pleasure purposes.

"7. Any person found on the streets who appears to be habitually idle and without visible means of support will be placed under arrest.

"8. All rights of property of whatever kind will be held inviolate and will not be disturbed, except as the exigencies of the public welfare may necessitate, by direct command of the commanding general.

"9. All shops and places of business, except as may from time to time be provided, will be kept open as usual in times of peace, and all persons are enjoined to continue their customary peaceful occupations.

"10. Lieutenant Colonel J. H. Zachery, Quartermaster, Finance and Disbursing Officer is the only person authorized to contract obligations for or on behalf of the State of Texas and any and all contracts or obligations incurred by or through any other individual connected with the military authorities will not be recognized.

"11. While it is the desire of the authorities to exercise the powers of Martial Law mildly, it must not be supposed it will not be vigorously and firmly enforced as occasion arises.

"JACOB F. WOLTERS,

"Brigadier General, TNG,

"Commanding Military District of Galveston."

Immediately thereafter the commanding general issued General Order No. 2, which announced the appointment of his staff. General Order No. 3 contained the calls. General Order No. 4, announced the boundaries of the camp and it was named "Camp Hutchings," in memory

of Major Edwin Hutchings, 141st Infantry, who made the supreme sacrifice at St. Etienne-Arnes, France, October 8th, 1918. General Order No. 5 restricted officers and men from leaving camp between retreat and reveille, without permission of their regimental commander. One field officer and one officer of each unit was required to remain in camp at all times. Passes to men were restricted to 20% of each unit, and all passes to officers and men were restricted in time to 11:30 p.m. Officers on pass were required to register at Camp Headquarters. The camp guard was provided by regiments.

The Provost Marshal established his headquarters in the National Guard armory located in Galveston. In the meantime, the headquarters of the Provost Marshal and headquarters of the various outposts on the waterfront were connected with camp headquarters by telephone. Fifty men from various units were assigned to duty by the Provost Marshal as military police. Three officers and fifty men were assigned to each outpost, remaining on duty for forty-eight hours. In addition a detachment of machine gunners with two guns were assigned to each outpost.

One hundred and twenty-eight horses having been shipped to Galveston a mounted patrol covered portions of the city during the night and at intervals as emergencies appeared necessary during the day.

Men who were not on active duty with the Provost Marshal or outpost were given intensive training, including riot problems.

The strikers and their sympathizers appeared to he under control, but there was a spirit of restlessness, especially among the negro strikers and their friends. Incipient manifestations of trouble were speedily suppressed by prompt arrests.

A "bull pen" consisting of a double wire fence was constructed and within this area tents erected and a latrine established. Here persons arrested at various times were confined:

A provisional combat squadron was formed. The Field Orders and Annexes covering this subject are lengthy but as the purpose is to make this a "Hand Book" for those who may be called upon to perform similar service, it is deemed worth while to reproduce same in full:

"HEADQUARTERS MILITARY DISTRICT OF GALVESTON
"Camp Hutchings, Galveston, Texas, 1920.
"FIELD ORDER NO. 1.

"Visitor's map, city of Galveston, 1915.

"TROOPS: 1: On 'D; day, 'H' hour, crowds will gather, mobs will form, rioting will take place in 'Z' zone of the city of Galveston, which is divided into sixteen (16) zones for military purposes. Concentration points and routes thereto for troops from Camp Hutchings are designated in each zone. (See Par. 1, ANNEX). Our forces consist of one provisional combat squadron, composed of four (4) detachments; each detachment consisting of one (1) WEDGE PLATOON, one officer and 16 men; one (1) machine gun squad with escort; TOTAL: one officer, 3 non-commissioned officers and 19 privates; one SUPPORT PLATOON of 1 officer and 16 men; one RESERVE PLATOON of one officer with 16 men.

"In addition, the Provost Marshal has at the police station the POLICE RESERVE of mounted patrol of one officer and 10 men and one officer and 16 men dismounted. (See ANNEX, par. 2.)

"PROV. COMBAT 2, SQUADRON: PLAN OF OPERATIONS. (See

ANNEX.)

3. a. Advance guard, mounted, one officer and 8 men, will precede main body from Camp Hutchings one block in advance. (Route, See ANNEX.)

"MAIN BODY: b. Main body in trucks form column on Seawall Blvd., and proceed to concentration point (Route, See ANNEX.)

"RIGHT AND LEFT" FLANK GUARD: Officer and 16 men, mounted, will form right and left flank guard, marching parallel streets to right and left main body. (See ANNEX.)

"SIGNAL, C. O., MAJOR WALTER F. WOODUL: d. Officer of Day, Camp Hutchings, will take post at phone No. 1327, brigade headquarters:

Officer of Day, military police, will take post at phone No. 4750, police station:

Brigade adjutant, will locate nearest phone to concentration point and take post, communicating without delay with police station, Camp Hutchings, and Outpost No. 3:

Provost marshal will report to commanding general at concentration point.

"OUTPOST NO. 3, C. O. OUTPOSE NO. 3. e. Commanding officer, Outpost No. 3, will be in readiness to report with all available men, less camp guard.

4. Ammunition train and medical detachment will accompany main body in rear of column to concentration point.

5. The commanding general will be at concentration point.

"JACOB F. WOLTERS, Brigadier General, Texas National Guard."

"HEADQUARTERS, MILITARY DISTRICT OF GALVESTON,

"Camp Hutchings, Galveston, Texas, 1929.

"ANNEX FIELD ORDER NO. 1.

"Visitor's Map, City of Galveston, 1915.

"1. ESTIMATE OF SITUATION: The city of Galveston has been divided into sixteen (16) zones. A concentration point has been designated in each zone. From the troops at Camp Hutchings, including the First Provisional Cavalry Regiment and the military police, has been organized a provisional combat squadron with four (4) detachments. In the event of a riot call, the combat squadron, plus ammunition train and medical detachment, will proceed by trucks along the designated route to concentration point. The police reserve will form and await orders, ready to move at a moment's notice. If it is impracticable to proceed along the route defined, then the squadron will proceed to the concentration point along the most practicable route.

"The zones, concentration points, and routes from Camp Hutchings, are defined as follows:

"a. ZONE 1: Ave. J (Broadway) and 13th to waterfront, east to Seawall, south to Ave. J, west to 13th.

"CONCENTRATION POINT: Ave. J and 10th Street.

"b. ZONE 2: Ave. J and 19th St., to waterfront, east to 13th, south to

Ave. J, west to 19th.

"CONCENTRATION POINT: Ave. J and 16th Street.

"ROUTE: Seawall to 19th, to Ave. J, to intersection Ave. J and 16th.

c. ZONE 3: Ave. J and 25th to waterfront, east to 19th, south to Ave. J, west to 25th.

"CONCENTRATION POINT: Ave. C (Mechanic) 7 20th-Police Station.

ROUTE: Seawall to 23rd, to Ave. J, to 19th, to Mechanic to Police Station.

"d. ZONE 4: Ave. J and 31st to waterfront, east to 25th, south to Ave. J, west to 37th.

CONCENTRATION POINT: Ave. J and 37th Street.

ROUTE: Seawall to 37th, to Ave. J, to intersection Ave. J and 28th.

"e. ZONE 5: Ave. J and 37th to waterfront, east to 31s, south to Ave. J, west to 37th.

CONCENTRATION POINT: Ave. J. and 34th Street.

ROUTE: Seawall to 37, to Ave. J, to intersection Ave. J and 34th.

"f. ZONE 6. Ave. J and 43rd, to waterfront, east to 37th, south to Ave. J, west to 43rd.

CONCENTRATION POINT: Ave. J and 37th Street.

ROUTE: Seawall to 37th, to intersection Ave. J and 37th.

"g. ZONE 7. Ave. J and 49th, to waterfront, east to 43rd, south to Ave. J, east to 49th.

"CONCENTRATON POINT: Ave. J and 46th Street.

"ROUTE Seawall to 37th, to Ave. J, to intersection Ave. J and 23rd.

"h. ZONE 8: Ave. J and 37th to waterfront, east to 49th, south to Ave. Q, west to 57th.

"CONCEENTRATION POINT: Ave. J and 53td street.

"ROUTE: Seawall to 23td, to Ave. J to intersection Ave. J and 16th.

"i. ZONE 9: Seawall to 19th, to Ave. J. east to intersection Ave. J and 33rd.

"CONCENTRATION POINT: Ave. J and 16th Street.

"ROUTE: Seawall to 23rd, to Ave J to intersection Ave. J and 16th.

"j. ZONE 10: Seawall to 25th St., to Ave. J, east to 19th, south to Seawall, along Seawall to 25th.

"CONCENRATON POINT: Ave. J and 22nd Street.

"ROUTE: Seawall to 37th, to Ave. J. to intersection Ave. J and 22nd.

"k. ZONE 11: Seawall and 31st, to Ave. J, east to 25th, south to Seawall, west along Seawall to 31st.

"CONCENTRATION POINT: Ave. J and 28th Street.

"ROUTE: Seawall to Menard Park at 28th at Seawall Bldg.

"l. ZONE 12: Ave. S and 37th to Ave. J, east to 31st, south to Ave. S, west to 37th.

"CONCENTRATION POINT: Ave. L and 33rd Street.

"ROUTE: Seawall to 33rd, to intersection Ave S and 33rd.

"m. ZONE 13: Ave. S and 34th to Ave. J, east to 37th, south to Ave. S,

west to 34th.

"CONCENTRATION POINT: Ave. Q and 40th Street.

"ROUTE: Seawall to 39th, to Ave. Q, to 40th and Ave. Q.

"n. ZONE 14: Ave. S and 49th, to Ave J, east to 43rd, south to Ave. S, west to 49th.

"CONCENTRATION POINT: Ave. Q and 46th.

"ROUTE: Seawall to 37th to Ave. Q to 46th and Ave. Q.

"o. ZONE 15: Ave. S and 37th, to Ave. J, east to 49th, south to Ave. S, west to 57th Street.

"COCENTRATION POINT: Ave. S and 53rd Street.

"ROUTE: Seawall to 39th, to Ave. S, to Ave. S and 53rd Street.

"p. ZONE 16; 56 St. to Ave. S, east to Seawall, west on Seawall to 39th, west on Ave. U to 53rd, south to Gulf on 53rd, west to 56th Street.

"CONCENTRATION POINT: Brigade Headquarters, Camp Hutchings, Seawall in front of Brigade Headquarters

"q. PUBLIC UTILITIES: Causeway connecting Galveston Island to Mainland; City Waterworks at 715 30th Street; Galveston Electric Co.'s Powerhouse at 21st St. and Ave. I; Brush Electric Co.'s Powerhouse, 2424 Ave. D; Waterworks at Alta Loma on Galveston-Alvin shell road.

2. PLAN OF OPERATIONS:

"a. In the event of a riot call, all forces will be under the command of the commanding general, who will direct operations in accordance with the plans

herein outlined. Commanding Officer, 1st Provisional Cavalry Regiment will send detachment 2 non-commissioned officers and 8 men to Galveston Causeway to the mainland and prevent any passing over either direction; and one non-commissioned officer and three men to each of the three public utilities listed above in paragraph 1, sub-division q; i.e. City Waterworks, Galveston Electric Co.'s Powerhouse, and Brush Electric Co.'s Powerhouse, and Waterworks at Alta Loma on Galveston-Alvin shell road.

"b. The camp quartermaster will without delay furnish trucks to the commanding officer, provisional combat squadron.

"c The advance guard, consisting of one officer and eight men, mounted, will be formed, preceding the main body one block. One-half of the right and left flank guard respectively, will proceed on between the parallel streets at the right and left of main body, waiting at the respective right and left intersections until the main body shall have entered the street leading from the Seawall Blvd., which constitutes the route of the main body. The Advance Right and Left Flank Guard will take precautions to prevent sniping from adjacent buildings, or attacks from intersecting streets or avenues. Persons along the route of march, on the streets, and in exposed position in buildings, will be warned to keep under cover.

"d. In the event of a riot, military police on duty will be informed from the police station at once. Those on duty in the affected zone will gather such information as is available, also to the number of men in the crowd or mob, as

to their temperament—whether they are in an ugly mood, whether they are armed and character of arms, and all the details that can possibly be obtained and report with such information to the commanding general at the concentration point. Those on duty in other zones will be alert. They will order all persons on the streets and in exposed positions to seek cover. They will prevent persons from going into or in the direction of the affected zone. They will disarm any armed civilians. If the civilian resists the effort to disarm, the M. P. will use such force as will be necessary to accomplish the disarming, even to shooting the civilian. He will not permit such persons to enter the affected zone armed. Under no conditions will an M. P. surrender himself or arms to any civilian. He will fight, and, if necessary, die at his post.

"e. All lines of communication will be established by runners. The runners will be selected from the mounted men. The mounted men not used for runners will be disposed of as the circumstances may require. They may be used as right or left flank guards along the affected zone.

"f. To clear a zone of a crowd or a mob, each combat detachment, as far as practicable will take a street. The advance will begin at the concentration point. The wedge platoon will precede the machine gun squad one block. The escort squad accompanying the machine gun squad will remain on the truck, protecting the machine gun squad from snipers. The other two squads, composed of one commissioned officer and four men each, will march to the right and left flank of the truck and prevent sniping from opposite sides of the streets from

roofs, windows and doorways of houses. The support will follow the machine gun squad at a distance of 100 yards. The reserve platoons will remain at concentration point. If the people assembled constitute merely a crowd, that is to say 'as a gathering of any size, inclined to violence which as yet has not lost its collective sense of fear of the law' or 'a similar gathering which has, however, for the time being lost its sense of fear,' and yet is not armed with firearms, then the wedge platoon, having formed the wedge, will make the attack, the machine gun squad with its escort following. If the crowd or mob begins to fire, then the wedge platoon will fall back, firing as it does so, until it shall have uncovered the space between the machine gun squad and the mob, taking position to the right and left of the truck containing the machine gun, so as to not to come within the field of fire of the machine gun. If the situation then demands action on the part of the machine gun, the commanding officer of the detachment will order the machine gun to open fire. The machine gun will be on the truck or, if it is deemed expedient, by the commanding officer, of the machine gun squad to do so, it may be dismounted. It will be loaded and locked. The gunner will not fire without direct orders from the officer in command of the machine gun squad, or, in the event he becomes a casualty, from the senior officer, non-commissioned officer or private present. The machine gun commander, whether he be officer, non-commissioned officer or private, will not order the gunner to fire until he has received explicit orders to that effect from the commanding officer of the detachment.

"g. In Zones Numbers 1, 2, 4, 5 and 8, the above plan can and will be followed uniformly.

"h. In Zone Number 3, where concentration point will be the police station and zone covering entire business district this plan will not be followed, but the combat groups will be sent out as the situation may require.

"i. In Zone 6, should the riot take place south of Ave. F (Church) the advance will be in accordance with the plans herein outlined, but should the riot take place in the railroad yards or on the waterfront the advance will be as the situation may require.

"j. In Zone 7, the advance will be in accordance with plans outlined but OUTPOST NO. 3 will render necessary assistance from its post, acting as the flank guard and will take care of any situation that may arise within the Southern Pacific Stockade.

"k. In Zones Numbers 9, 10, 11, 12, 13, 14 and 15, the plans herein outlined will be carried out.

"l. In Zone 16, the advance will be made as the situation may require.

"m. In any advance should the combat groups find the way obstructed by a closed street and there is no other practical route, nor detour to take, it should unload from its motor transportation and continue advance dismounted.

"n. In all zones the reserve forces shall be held in readiness with the head of the column resting on the concentration point, the column lying along the route by which they have come. The reserve troops to be ready at any time to

reinforce the combat groups, the ammunition train to be ready with a supply of reserve ammunition, the medical detachment to be ready to give aid to all causalities.

"o. Officers must bear in mind the difference between a crowd and a mob. A crowd is more or less timid and cowardly. It has not yet developed leadership and is without cohesion and usually howls, shouts and hurrahs. It is not desirable to fire on such a group. The wedge formation properly and efficiently executed will scatter it. This must be accompanied by arrests of those who attempt to resist. Those who resist the onward drive of the wedge must be dealt with roughly. The butt of a rifle in the hands of a trained man is very effective and will crack ribs and put out of commission men, with whose stomachs it comes into contact. There must be no stopping when the wedge drives. The work must be done swiftly. There must be no argument. A crowd, however, frequently develops into a mob. A mob is a crowd grown frenzied. A mob forgets all sense of obedience to law or respect therefore. It shoots, throws rocks, takes life, destroys property, and tears to pieces everything in front of it. When a mob does that, the wedge must be converted into a firing platoon. The machine gun must enter into the game. One thing must be always remembered: WHEN IT BECOMES NECESSARY TO FIRE, DO NOT FIRE OVER THE HEADS OF THE MOB. DIRECT THE FIRE SO THAT IT WILL BE EFFECTIVE. To discharge fire arms non-effectively, only encourages the mob to greater violence and endangers the lives of soldiers, and civilians as well.

Keep cool, don't fire until it is necessary, and then shoot to hit.

"p. Officers not assigned to combat groups will remain at police station and at Camp Hutchings. Prepare however to respond at a moment's call. The Officer of Day at Camp Hutchings will call out the entire camp guard and protect the camp. He will remain at phone number 1327, brigade headquarters, or, if it becomes necessary for him to leave, will place an intelligent non-commissioned officer or private at the telephone with a runner keeping the man on such duty informed where he may be found at any moment. The officer of the day of the military police will remain at phone 4750 and will be governed as provided for the Officer of Day in Camp Hutchings. The provost adjutant will remain at the police station at phone 39. A sufficient number of men will be retained at the police station to protect it. The commanding officer of Outpost No. 3 will have every available man in readiness, fully equipped. He will remain at the telephone and will not move his command unless the Stockade or the Southern Pacific Wharves or adjacent wharves are attacked. In any event, before moving he will communicate with the brigade adjutant by phone.

"q. The field order and the contents of this annex are strictly confidential and secret. Each officer is furnished one copy. On any instructions that it is necessary to give or any training, the field order and the contents of this annex will not be revealed.

"JACOB F. WOLTERS,

"Brigadier General, TNG"

As a part of the training, at various times during the late hours of the night, the Call to Arms was sounded. The promptness with which this call was responded to gave evidence of the efficiency of the units on duty. The motor transport detachment on each occasion was in position within 10 minutes after the call was sounded, ready to take the troops to their destination. The machine gun detachments were in position and ready to load on truck within 11 minutes. The longest time required for any unit to form on the Boulevard, count fours and be inspected was 17 minutes. During the tour of duty an actual call from Provost Marshal headquarters for twenty-five men to meet an emergency and quell an incipient negro riot at 12:20 a.m. resulted in the detail reporting by truck at the police station, a distance of a mile and one-half, at 12:45 a.m. and by 1:05 a.m. this detail had rounded up and arrested and had at the police station thirty negroes found in the vicinity where the trouble existed.

Within a period of three days after our arrival in Galveston a sufficient number of men had been employed by the dock companies to begin the moving of freight that had been accumulating and congesting since March 19th and by the end of the first week both companies had a full complement of men at work. Within three weeks after the arrival of troops, the last piece of freight had reached its farthest destination. The military authorities received daily reports from the dock companies of each individual consignment loaded on freight cars that day and during the hours of the night, military headquarters advised the consignee by letter of the shipment and requested acknowledgment if and when received. In every instance acknowledgement was made. Thus the congestion at the docks and their warehouses was relieved and the merchants throughout Texas, New Mexico, Arizona, Colorado, Utah, California, Oregon, Washington, Wyoming, Minnesota, Montana, and in the Republic of Mexico, received their long

delayed shipments. Thereafter the mission was to keep the docks open and functioning and maintain at all times the regular channels of transportation through them. This was accomplished aside from providing guards at the wharves and protection to the men at work in going to and from their work and on the streets. The military authorities took no part in the movement of the freight. All of this was done by the laborers employed by the dock companies.

It having come to the attention of the commanding general that certain persons in Galveston were disposed to discriminate against laborers who did not belong to the unions and that attempts at intimidation of laborers were being made through various means other than violence, that is to say by spoken words, by written words, by warnings over the telephone, etc., General Order No. 6 was published as follows:

"GENERAL ORDER NO. 6

"Camp Hutchings, Texas, June 14, 1920.

"1. No corporation, individual, firm or association and no manager, agent or employee of any corporation, individual, firm or association, in the Territory under Martial Law as declared by the Governor of Texas in his proclamation dated June 7, 1920, engaged in the business of transportation of passengers, renting of houses, apartments or rooms, or in the sale of goods, wares and merchandise of any kind or description, including food supplies, or in the sale and service of prepared meals or articles of food and drink, shall refuse or fail to sell, rent, or serve at the same price charged the general public, any person because such person does or does not affiliate with any labor, trade or other union, association, organization or club incorporated or unincorporated.

"2. Any person who by words spoken or written, or by any act, token or sign, attempts to intimidate, or place in fear or terror of any bodily harm, or injury to the business of any person in the Territory affected by Martial Law as proclaimed by the Governor of Texas by his proclamation dated June 7, 1920, will be arrested by the military authorities.

"3. The Provost Marshal will enforce this order."

Thereafter there were several persons arrested for the violation of this order and detained by the military authorities until the commanding general was satisfied that such persons would be good.

It will be recalled that the Eighteenth Amendment went into effect in January, 1920. Texas had adopted shortly before, State wide prohibition. Now and then some of the strikers, particularly among the negroes, would become intoxicated and trouble some. It became evident to the commanding general that out of this there was danger of serious clash. The commanding general having satisfied himself that liquor was being imported and from some of the ships entering the Port of Galveston and that the drunkenness now and then prevalent along the waterfront was due to this fact, the commanding general procured the assistance of the prohibition enforcement officers who obtained a search warrant from the United States Commissioner, and sent a detail of soldiers, under the command of an officer accompanied by a prohibition agent aboard one of the vessels belonging to the United States Shipping Board. A large quantity of liquor was seized and turned over to the Federal authorities and several persons arrested who likewise were turned over to the Federal authorities. It is believed that this was the first time that a ship had been searched and liquors seized and persons arrested on board a ship

for the violation of the Volstead Act. During the tour of duty on numerous occasions other ships were searched, always in company with the Federal officers, with a search warrant from the United States Commissioner.

A foreign ship was searched and a large quantity of liquor not on the ship's manifest was found and officers and men of the ship were arrested and turned over to the Federal authorities. The consul at Galveston, representing the government to which the ship owed allegiance, protested to the ambassador of his country at Washington. The ambassador communicated with the secretary of State who in turn wrote rather a sharp letter to the Governor of Texas. The Governor in turn forwarded the letter to the commanding general. The commanding general by endorsement, explained the facts and the Governor of Texas by endorsement, advised the secretary of State that Texas proposed to enforce the law and that ships of a foreign country coming within its jurisdiction and the jurisdiction of the United States would not be permitted to violate the laws of the State of Texas or of the United States. That ended that, although during the entire period ships of various countries, including our own, were searched and liquor taken and persons arrested and filed upon in the Federal Courts.

It must be remembered that during the period, as far as we have progressed in this narrative, the police department of Galveston were permitted to function and this continued until July 14th. We will reach that period later. However, in the meantime, the military authorities were arresting persons charged with the violation of Civil Laws and turning them over to the authorities of Galveston County. Immediately upon the occupation of Galveston an "Intelligence Department" under the Provost Marshal had been created. This department was composed of officers and enlisted men. Several of the officers who belonged to this department, had at all

times remained in civilian clothes. They were not generally known or identified as part of the military forces. This department reported that gambling was more or less openly carried on in Galveston; therefore, General Order No. 7 was issued on June 17th, providing that any persons violating any of the provisions of Title 11, Chapter Four (Vernon's) unlawfully sold Criminal Statutes of the State of Texas, relating to gambling will be arrested, and charges will be filed against such persons in the court of competent jurisdiction in Galveston County. That all persons found to be present when such law is violated will be detained as witnesses and presented to the court as such. The publication of this order resulted in many gamblers leaving the city. However, they did not all leave and during the administration of Martial Law in the city, many arrests for gambling were made by the military authorities.

It likewise coming to the attention of the commanding general that bawdy houses has been permitted to operate unmolested, General Order No. 8 was issued, to the effect that—persons violating any provision of Title 10, Chapter Four (Vernon's) Criminal Statutes of the State of Texas, relating to the keeping of bawdy houses, shall be arrested and charged by complaint with the particular provision of the statute violated, in the court of competent jurisdiction in Galveston County. All persons, male and female, found in such bawdy houses will be detained as witnesses, and as such presented to the court. Immediately after the publication of this general order, an exodus of prostitutes followed. But, from time to time investigation resulted in discovering bawdy houses and the inmates thereof were arrested and in each instance the owner of the property sent for and instructed that unless he at once converted the property to some other purpose the attorney general of Texas would be requested to bring suit for an injunction. No so-called respectable property owner, who rented his property for such purpose

wanted such publicity. He was told that if during the pendency of Martial Law his property was again found to be used for that purpose, he would be arrested as well as the inmates. This had the desired effect, and the "Red-Light" district faded at last, during the administration of the military authorities in Galveston, much to the joy of good citizens who owned their homes in the proximity where such houses were located.

The city commissioners of the city of Galveston for political reasons strenuously opposed Martial Law and while they committed no overt act, they were interfering. On June 19th, the city commissioners published and caused to be published in the newspapers of Galveston, a call for a mass meeting to be held on June 21st, 8:00 p.m., in the City Auditorium for the purpose of condemning the action of the Governor in declaring Martial Law and for the purpose of having the troops removed from Galveston. Recognizing that such a meeting would, in the due course of things, under conditions then existing, precipitate trouble, the commanding general on June 19th issued General Order No. 9, reading as follows:

"GENERAL ORDER NO. 9

"Camp Hutchings, Texas, June 19th, 1920.

"1. No mass meeting will be permitted within the Territory affected by Martial Law under the proclamation issued by the Governor of Texas, 7th, June, 1920, except with the permission of the commanding general embodied in a Special Order.

"2. The mass meeting called by the city commissioners for Monday, June 21st, 1920, 8:00 p.m. will not be held.

"3. The Provost Marshal will enforce this order."

Before this order could be printed in the newspaper, and immediately before the publication of the call for the mass meeting by the city commissioners, newspaper reporters advised the commanding general that such a call would appear and asked what his attitude was. The commanding general replied, “There will be no mass meeting.” The same papers that contained the call for the city commissioners contained this statement from the commanding general. This was Sunday, June 20th. On the afternoon of Sunday, June 20th, the commanding general received a letter, by special messenger, from the city commissioners, calling attention to this statement published in the papers of that date and requested information as to whether the commanding general was correctly quoted and that he reply by letter to be transmitted by special messenger. The commanding general simply enclosed four copies of General Order No. 9, in an envelope addressed to the commissioners and transmitted same by the special messenger. Thereupon, the city commissioners, again acting under the direction of the city attorney, published a recall of the mass meeting saying that they yielded to a superior force. Notwithstanding the recall, the Provost Marshal placed a detail of officers and men at the City Auditorium to prevent any possible meeting. None was attempted. The Provost Marshal had been instructed to arrest the city commissioners and all leaders who undertook to hold the mass meeting. Fortunately, the commissioners recognized the power of a “superior force.”

It having appeared evident from June 7th continuously, due to the attitude of city commissioners, city attorney, and the police department that no cooperation could be hoped for upon the part of these authorities in the endeavor to enforce the law, whereby laborers on the Mallory and Morgan dock might work without interference, after a conference between the

Governor, attorney general, the Adjutant General, and the commanding general, the Governor on July 14th issued the following proclamation:

"Austin, Texas, July 14, 1920.

"Subsequent to the nineteenth day of March, A. D. 1920, and prior to the seventh day of June, A. D. 1920, the mayor, H. O. Sappington; the four city commissioners of the city of Galveston, namely: A. P. Norman, George E. Robinson, J. E. Purcell and John H. Gernand; the City Attorney, Frank S. Anderson; the judge of the city court, Henry Odell; the chief of police, the chief of detectives and all members of the police and detective departments of said city failed, refused and neglected to enforce the law in the said city of Galveston, in this that they failed, refused and neglected to maintain order and preserve the peace, nor would they make any attempt to prevent and suppress the riots that occurred in said city, or to arrest and apprehend the persons who engaged and participated therein; neither did they put down the insurrection that existed, nor would they attempt to do so; and said officials and each of them failed, refused and neglected to protect the citizens of this State in their Constitutional right to engage in a lawful occupation, namely, the loading and unloading of vessels at the docks in said city, and thus it was made impossible for vessels to be loaded at the docks in said city, though plenty of men were ready and willing to work, provided they were protected from physical violence, and thereby creating a congestion in the movement of commerce through the port of Galveston and preventing the receipt of goods by Texas merchants, and

preventing the outward movement of the products of the farms of Texas; and

"WHEREAS, on said seventh day of June, A. D. 1920, the Governor of Texas issued his proclamation declaring Martial Law in the Territory described in said proclamation, which included the city of Galveston, and directed Brigadier General Jacob F. Wolters to assume command of the situation in the Territory affected, subject to the orders of the Governor of Texas; and

"WHEREAS, since said seventh day of June, Brigadier General Wolters and the forces under his command have been in said city for the purpose of suppressing and preventing insurrection, riot, and disorder and for the purpose of protecting citizens of this State in their Constitutional right to engage in a lawful occupation without interference and to keep the Port of Galveston open, to the end that the farmers of this State may be enabled to ship the products of their farms and that merchants may receive their merchandise for distribution to the people of this State; and

"WHEREAS, since the said seventh day of June, the above named officials of the city of Galveston have rendered no aid nor assistance to the commanding general in command of said district declared to be under Martial Law, and the forces under his command, instead, said officials, and each of them, have by their acts and conversation interfered with and obstructed the enforcement of the law in the city of Galveston, and have by their acts and words aided and encouraged the lawless element of said city; and

"WHEREAS, Section 10, of Article 4, of the Constitution of the State of

Texas, makes it the duty of the Governor, the Chief Civil Magistrate of the State of Texas, to 'cause the laws to be faithfully executed,' and Section 7, of Article 4, of the Constitution of the State of Texas, authorizes and empowers the Governor, 'to call forth the militia to execute the laws of the State; and

"WHEREAS, the laws of this State are not being faithfully executed in the city of Galveston, nor can they be by the Governor of the State so long as the above named city officials are permitted to remain in their respective offices and use the power and influence of their official position in aiding and encouraging the lawless element of said city;

"Now, THEREFORE, I, W. P. HOBBY, Governor of the State of Texas, and commander-in-chief of the military forces of the State of Texas, by virtue of the power vested in me as such to execute the laws of the State and in pursuance of my duty under the Constitution to "cause the laws to be faithfully executed," do suspend the officers hereinbefore from office during the pendency of Martial Law in the Territory named and described in my proclamation of June seventh, 1920, and the said mayor, city commissioners and city attorney, and each of them, are hereby suspended and restrained from performing or discharging any duty appertaining to their respective offices, with respect to enforcing the penal laws of the State of Texas and the city of Galveston, during the pendency of Martial Law.

"The commanding general of the Military District of Galveston, under the proclamation of June seventh, 1920, will enforce this order and will cause

to be faithfully executed the Civil Law in the Territory affected by Martial Law, subject to the orders of the Governor of Texas, the commander-in-chief, of the military forces of this State, as given

"IN TESTIMONY WHEREOF, I have hereunto signed my name and caused the seal of State to be hereto affixed in my office, at Austin, Texas, this the fourteenth day of July, A. D. 1920, at 11:30 o'clock a.m.

"W. P. HOBBY, "

Governor of Texas.

"By the Governor:

"C. D. MIMS,

"Secretary of State."

Immediately the commanding general issued and caused to be published on July 15th, General Order No. 12:

"GENERAL ORDER NO. 12.

"Camp Hutchings, Galveston, Texas, June 15th, 1920.

"1. (Here was set out in full the Proclamation last hereinbefore set out.")

"2. In pursuance of said proclamation and the orders of the Governor of Texas and commander-in-chief of the military forces of the State of Texas, the commanding general assumes the administration and the enforcement of the Civil Law in the Territory by Martial Law.

"3. The Provost Marshal will take charge of the police station, the city

jail, the office of the city judge and all personal property thereto appertaining with all prisoners in said city jail, including all records, books and papers, making and preserving a careful inventory thereof

"4. The Provost Marshal will police the city and direct the enforcement of all laws. Persons charged with violation of State laws will be complained against and submitted for trial in the civil court of competent jurisdiction, and all persons charged with the violation of ordinances not coming within the State laws will be tried by the Provost Marshal. All fines collected by the Provost Marshal will be strictly accounted for and deposited each day in a special account in a bank in the city of Galveston. All police officers and detectives will be disarmed and not be permitted on the streets or in public places in uniform. The marine police on duty at the wharves will be retained in service and on duty subject to the further orders of the commanding general. This said marine police will receive and obey the orders of the Provost Marshal.

"5. The Provost Marshal will serve a copy of this general order on the mayor and each of the city commissioners, the city attorney, the city judge, the chief of police, and the chief of detectives, and will without delay proceed to enforce same."

Refer to the Section of this work covering Martial Law in Hutchinson County and Borger for similar order where the Governor's proclamation was made an annex to the order.

Immediately the Provost Marshal executed the order contained in paragraph five, took possession of the police department and took over all books, records, etc. named, except the

mayor, four city commissioners and city attorney, The city judge having been suspended, it appeared necessary that a provost judge be appointed, and accordingly the commanding general issued and caused to be published General Order No. 13, as follows:

"GENERAL ORDER NO. 13.

Camp Hutchings, Galveston, Texas.

"1. Captain O'Brien Stevens, 7th Cavalry, in addition to his present duties is detailed as provost judge, with full authority to try such cases as may legally come before him under the provisions of paragraph 4, General Order No. 12, these headquarters, C. S."

Full reference has been made to General Order No. 12, in Chapter I, out of which grew the case of United States vs. Wolters, 268, Federal Reporter, page 69.

However, immediately after the officers were suspended from office a suit was filed by the city of Galveston and A. P. Norman, J. C. Purcell, J. H. Gernand, and George E. Robinson, individually as citizens and residents of the city of Galveston, Galveston County, Texas, in their capacity as police and fire commissioner, commissioner of finance and revenue, commissioner of streets and public property, and waterworks and sewerage commissioner, city of Galveston, and others versus W. P. Hobby individually, and as Governor of the State and as commander-in-chief, Jacob F. Wolters, individually and as brigadier general, and others, in the district court for the 56th Judicial District of Galveston, same being number 26,257. To this suit, the defendants, through the attorney general, Honorable C. M. Cureton, and assistant attorney general, Honorable E. F. Smith and Honorable Clifford Stone interposed a plea to the jurisdiction of the

court and upon a hearing before the Honorable Robert G. Street, such pleas was sustained and the suit ordered dismissed.

In Chapter I, appear numerous quotations from the printed brief, filed by the attorneys for the defendants and it is not necessary here to deal further with this suit

Experience has demonstrated that in all situations requiring a resort to Martial Law and the use of troops, there arises a contest for control between the leaders of the insurrectionists, or leaders of those who support the conditions that have brought about the insurrection and the commander. There is a matter of psychology involved. The officers and men and particularly the latter soon learn and understand this situation. They are wondering whether the smart fellows on the other side are going to put it over on the "old man." This, of course, also affects the good law abiding citizens, who having been terrorized by the lawless element, shrink from showing their colors. They remain silent. They comply with the military orders. They continue in their usual daily ways, but they fear that the military authorities may not accomplish their mission and in such an event they would become prey for persecution by the other crowd. Thus it was in Galveston. The city commissioners counseled by a city attorney, who in fact was the political power in Galveston at the time, had resorted to every effort except force to prevent the accomplishment of the mission of the military authorities.

Then they resorted to the Federal Court in an effort to destroy the effective means of the military authorities enforcing city ordinances through the provost judge. When Judge Rufus Foster in United States vs. Wolters upheld General Order No. 12 (See Section VII, Chapter I), the fight was over. Officers and soldiers constituting the command realized it. It was immediately reflected in the esprit. This had been good all along but there was just a little more

elasticity in the soldiers' step; a little more sparkle in his eye; a little more snap in his salute; a little more radiance in his smile. The "old man" had won. The military authorities of which he was a part, had through the able Attorney General's Department of Texas, demonstrated that they were performing within the law. It made a difference. So it was with the good citizens, as both State and Federal Courts had held with the military authorities and now they believed that the conditions that existed in Galveston for so long would be controlled and a change permanently affected. From that time on our duties were much increased. We were citizen soldiers, each in civilian life pursuing his profession and occupation. We were not trained police officers. It is no small job to undertake to control conditions such as existed in Galveston at that time and at the same time properly police a city of 45,000 population, which during weekends was visited by tens of thousands of people from over the State, seeking the pleasures that may be found on Galveston's wonderful beach. Never-the-less, it was done. As an illustration of the problems that confront a military commander under such conditions, it may be interesting to mention civilian aviators who frequently visited Galveston in their ships. They habitually performed stunts in the air at an elevation so low that experienced aviators of the Military Service advised the commanding general that they endangered the lives of people. Galveston is a beach resort. They would fly sometimes as low as twenty-five or thirty feet above the heads of the bathers. In order to protect the public, General Order No. 17 was issued and published as follows:

"GENERAL ORDER NO. 17.

"Camp Hutchings, Texas, August 23, 1920.

"1. Military regulations control the flight of aeroplanes in the flight service over cities. Civilian flyers have been flying over the city of Galveston

and over bathers on the beach at an elevation so low as to constitute, in the event of an accident, a menace to the persons and lives of citizens and visitors.

"2. Civilian flyers are prohibited from flying over the city of Galveston at a height less than one thousand (1,000) feet, and over and along the Beach Boulevard and bathers in the Gulf and over the wharves and bay front at a height less than three hundred (300) feet.

"3. Persons violating this general order will be arrested and detained as persons whose actions constitute a menace to the safety of the persons and lives of citizens and visitors.

"4. The Provost Marshal will enforce this order."

Soon after this order was published in the newspapers, a young gentleman, an aviator, called on the commanding general, and with a smile on his face, asked just how the Provost Marshal would proceed to catch him if he flew over the city in violation of this order and did not land in Galveston. Galveston, be it understood, is located on Galveston Island, and connected with the main land only by a causeway. He was quietly informed that a machine gun would probably be an effective weapon with which to cause his ship to make a forced landing if he could not be arrested otherwise. No violations of this general order were observed.

During the entire administration of Martial Law, and particularly after the military authorities took over the police department, the suppression of liquor law violations was extremely difficult. The Federal authorities cooperated absolutely. The State authorities were not interested in the subject. Men would be arrested, make bond, and resume their illegal occupation.

The bootleggers constituted a part of the insurrectionary forces. Therefore, General Order No. 18 was issued as follows:

"GENERAL ORDER NO. 18.

"Camp Hutchings, Texas, August 29, 1920.

The manufacture and sale of intoxicating liquors in Galveston is not only a violation of the Federal and State prohibition laws but constitutes, under existing conditions a serious menace to peace and order. Men are detected and arrested for the violation of the prohibition laws almost daily by the military police. They, and the evidence of their guilt, are turned over to the Federal civil authorities. They are admitted to bail, pending convening of the Federal Court. In the meantime, these men are at liberty to resume their illegal occupation. Even if the manufacture and sale of intoxicating liquors was not prohibited under existing conditions in Galveston with Martial Law in force, no military commander would think of permitting liquors to be sold. While the military authorities are charged with the duties of enforcing all civil penal laws, the primary object in view is to prevent disorder, tumult and riot. The best way to prevent disorder, tumult, and riot, is to effectually eradicate the causes that may bring such conditions about. Men under the influence of liquor are more likely to create disturbances, indulge in inflammatory speeches, and encourage tumult and riot than when sober. Every day the military police find it necessary to arrest men who are under the influence of intoxicants. On several occasions, serious trouble between men drunk and military police seeking to arrest them,

has been averted only by the exercise of good judgment on the part of the military police. The time has come when the manufacture and sale of intoxicating liquors must cease in Galveston. It cannot be stopped as long as the men who engage in it remain at liberty. Accordingly the measures provided in the succeeding paragraphs of this general order will be adopted to end this menace.

"2. All persons detected by the military police in the manufacture and sale of intoxicating liquors will be arrested and confined in the prison corral during the period of Martial Law and at the termination thereof will then be delivered to the Federal civil authorities for trial.

"3. All evidence, including stills, vats, or other paraphernalia of any kind or character used in the manufacture of liquors of any kind, and also all liquors, will be delivered to the Federal civil authorities immediately when an arrest is made just as has been the practice, followed heretofore; but the prisoners will be delivered to the commanding officer of the 1st Provisional Cavalry Regiment at Camp Hutchings, for confinement.

"4. The Provost Marshal and all other officers will comply with this order."

General Order No. 18 spelled "finis." A few illiterates who had not heard of the order were detected in the violation of liquor laws, were confined in accordance with General Order No. 18. The smart bootlegger quit. For the remainder of the tour of Martial Law, we had no

further trouble with bootleggers in pleasure in extending to them my sincerest thanks for their splendid Galveston.

The administration of Martial Law moved along with many notable incidents, which would be of no benefit here.

On September 21st, the Weather Bureau reported the probability of a hurricane striking Galveston. Recognizing that such an emergency might arise during the summer months it had been arranged with the commanding officer at Fort Crockett, with the approval of the secretary of war, that in such an event, the National Guard troops might temporarily move into Camp Crockett for their security. The weather conditions on September 21st, and the Weather Bureau indicated that a hurricane would probably strike during the night. The entire command was moved into Fort Crockett. For the security of the city from vandals, in the event of a hurricane, practically the entire command was kept on duty guarding the city. But, the hurricane passed by, and aside from a thirty-five mile wind and rains, nothing resulted. This incident is merely mentioned as one of the things that in one form or another may confront a military commander.

At 1:51 a.m. September 29th, the warehouses at Pier 35 were discovered on fire. The pier was piled high with sulphur awaiting exportation. The entire command was ordered to the scene of the fire, less the camp guard and kitchen police. The military police at once threw a line about the fire to keep the large crowd, which had gathered, back. Officers and men aided the firemen in fighting the fire. The fire continued to require the attention of the fire department until the night of October 1st—2nd. The fumes from the sulphur incapacitated many of the firemen. The soldiers manned the lines and performed the duties of firemen. Absolutely exhausted, the fire department were confronted with another fire. This time sisal on Pier 41. The chief of the fire department

appealed to the commanding general and this fire was taken charge of by the military force. It also proved to be a long drawn out fight, but the pier and warehouse itself were finally saved. It is not claiming too much credit to say that if it had not been for the presence of the troops, these two fires, even as destructive as they were, would probably have destroyed all of the wharves and docks on Galveston‘s waterfront, involving many millions of dollars of property and interfered with shipping for an indefinite period. Although the military authorities conducted a very thorough investigation, as did various insurance companies, the origin of the fire could not be discovered.

In connection with these fires the chief of the fire department, J. J. Ryan, addressed the following letter to the commanding general:

“Galveston, Texas, October 4th, 1920.

“Brigadier General Jacob F. Wolters,

“Camp Hutchings, City.

“Dear Sir:

“In appreciation of the valuable services rendered by officers and members of the Texas National Guard in assisting the Galveston Fire Department in combating the recent fires at Pier 35 and Pier 41, I take efficiency and co-operation in helping to extinguish two of the worst conflagrations which have visited our city in many a year.

“Very truly yours,

“(Signed) J. J. RYAN,

“Chief of Fire Department, Galveston, Texas.”

In the meantime, on September 18th, a citizens committee, composed of the Bishop of the Diocese of the Catholic Church in which Galveston is located, a prominent Jewish rabbi, an Episcopalian minister, a Baptist minister, a Methodist minister, three labor leaders, and several prominent businessmen had been formed with the view of reaching an agreement with the Governor of Texas, whereby Martial Law might be lifted and still the Governor be assured of the permanent and uninterrupted flow of merchandise through the channels of transportation, provided by the Port of Galveston. An agreement was finally reached whereby Ranger Captain J. B. Brooks and his State Ranger force would be stationed at Galveston to advise the police department. The Governor, however, desired that the military authorities remain in Galveston a sufficient length of time after this arrangement went into effect to determine that this arrangement would prove satisfactory. Accordingly the Governor announced that Martial Law would be lifted not earlier than October 5th, and not later than October 10th. At midnight, September 30th, the commanding general turned over the police department to Captain Brooks and all troops were removed from the street and outposts and were returned to Camp Hutchings. Accordingly the Governor issued the following proclamation:

"PROCLAMATION BY THE GOVERNOR OF THE STATE OF TEXAS

"*WHEREAS, conditions existing in the city of Galveston and portions of Galveston County, were such as to make it necessary for the Governor, on June 7, to proclaim Martial Law, in order to carry out the obligations imposed upon him by the Constitution and laws of this State, with respect to the enforcement of the laws thereof, and under which proclamation the National Guard, under the command of Brigadier General Jacob F. Wolters, were detailed to the Territory*

affected, for the purpose of enforcing said laws, and,

"WHEREAS, it became necessary on July 14th, to issue a supplemental proclamation, having the effect of suspending the mayor and the four city commissioners of Galveston, the city attorney and the judge of the city court of said city, the chief of police, the chief of detectives and all members of the police and detective departments, from performing or discharging any duty appertaining to their respective offices, with respect to enforcing the penal laws of the State of Texas, and the city of Galveston, in order that the officers and men sent there under Martial Law might enforce said laws unhampered, unmolested and without interference upon the part of said officials, and

"WHEREAS, on the 18th day of September, 1920, a citizens committee of the city of Galveston, together with the board of city commissioners, entered into an agreement with the Governor, whereby the Texas Rangers were to replace the military authorities in the enforcement of such law, and,

"Accordingly under date of September 21st, orders were directed to the Adjutant General, to the effect that Captain J. B. Brooks, Headquarters Company, Texas Rangers, be detailed to perform the duties described in the agreement, and Captain Brooks directed to proceed to Galveston with a sufficient number of officers and men as would be necessary to enforce the laws of the State without partiality, and to keep open those arteries of trade which are essential to the prosperity and uninterrupted conduct of business in Texas.

"THEREFORE, in order that the military authorities may have authority

to turn over the enforcement of all laws to Captain Brooks, and in order that the moral agreement entered into by the citizens committee, the board of city commissioners of Galveston and myself may become operative, I hereby revoke my proclamation of July 14th, 1920, in so far as the same applies to the suspension of the officers above named, from performing or discharging any duty appertaining to their respective offices, with respect to enforcing the penal laws of the State of Texas, and the city of Galveston, this revocation to be effective at twelve o'clock midnight, Thursday, September 30th, A. D. 1920.

"IN TESTIMONY WHEREOF, I have hereunto signed my name, officially, and caused the seal of State to be hereon impressed, at the city of Austin, Texas, this the 29th day of September, A. D. 1920.

"W. P. HOBBY, "Governor of Texas. "By the Governor:

"C. D. MIMS,

"Secretary of State."

Now we come to some interesting and pleasant incidents. The businessmen of Galveston did not like to see their wonderful fine old city under Martial Law. They did not like to see it occupied by an armed military force. As is usual, they feared it would interfere with business. The fact is that probably more people visited Galveston and enjoyed its surf bathing and the attraction on the beach than had during any previous summer, up to that time. Business went merrily along. But, when we came to Galveston the attitude of the citizens was rather chilly. But the end had come, the mission had been accomplished. Law and order were once more supreme

in Galveston. The channels of transportation were open and everybody believed that they were permanently open.

Then the citizens of Galveston tendered the officers of the command a banquet at the Galvez Hotel. That over, they insisted on giving a banquet to the enlisted men. It is doubtful if ever in the history of Military Service, just such a thing was accomplished, as was on this occasion. Every enlisted man attended that banquet, plus the commanding general, his adjutant, Major F. Woodul, now a State senator, and a prominent lawyer in Houston, and Lieutenant Colonel J. H. Zachery. The other officers remained in camp and performed the duties of camp guard. Prominent businessmen of Galveston in evening clothes waited on the enlisted personnel at a unique and wonderful banquet. A sergeant presided as toastmaster.

The citizens presented the commanding general with a silver loving cup, with the inscription: "AN UNPLEASANT DUTY WELL PERFORMED." They presented another silver loving cup with the same inscription on it to be awarded each year to the best cavalry troop all things considered. That cup is the main competitive prize of the troops of the 56th Cavalry Brigade. They went further. They had a medal struck displaying soldiers fighting fire and on it the inscription: "GALVESTON DEFENDERS—June 7th October 8th, 1920." The Adjutant General issued an order authorizing the wearing of this medal on the uniform of the officers and men, in accordance with prescribed regulations and a ribbon to be worn designating service on this occasion.

It soon developed that the arrangement herein before referred to was proving entirely satisfactory and on the morning of October 8th, the military troops withdrew from Galveston, participated in the parade of United Confederate Veterans, held on that day in Houston, departed

to their respective home stations and on October 10th demobilized at their respective armories. Thus ended the longest and probably the most important tour of duty under Martial Law any part of the Texas National Guard has ever engaged in up to this time.

It is impossible to narrate all of the thousands of minor details that arose during this tour of duty. Nor would they be of particular interest, though many of them might be of profit to National Guardsmen of today and the future.

Immediately upon occupying Galveston the commanding general created a "Bureau of Investigation," and assigned Major Chester H. Machen, a lawyer particularly experienced in the prosecution of law violators and Lieutenant W. J. Holt as his assistant. This bureau was authorized to call upon the Provost Marshal for the details of officers and men from time to time to assist in the investigation of law violations. Sworn statements were always taken from witnesses and the original furnished to the State or Federal authorities to whom a particular case was referred, copy being retained in the military file. In some form or other the detail of an officer to such duty is always important. Circumstances and conditions may vary the extent of the investigation, but the services of such officers as Major Machen and Lieutenant Holt are important. We shall meet Major Machen when we come to Mexia. Lieutenant Holt at the time, a very young lawyer, has developed into one of the successful members of the Waco Bar. The subsequent career of Major Machen will be mentioned later on.

It may be of interest to add that at the succeeding municipal election the administration with which we had to deal in Galveston was retired by the voters of Galveston. The city attorney who had been the potential political power put up a ticket and made a fight but it was defeated. Thus the result of Martial Law in Galveston was not only the accomplishment of the mission but

the channels of transportation have been open and undisturbed since. The Rangers, after a few months, entirely withdrew. Captain Joe Brooks became the chief of the marine police department and is still functioning as such. During this period of Martial Law 954 arrests were made. The provost judge tried 590 cases. Seventy-five cases were turned over to the State authorities of Galveston County, three to the juvenile authorities and three cases to the County Court of Galveston County.

A word as to the officers and men who served in Galveston: They were not especially selected except in so far as they were members of units that were specially selected because of their hitherto demonstrated efficiency. The 1,020 men were gradually reduced to 620. From time to time individual officers and men were compelled to return to their civil duties and replaced by others. This was the case in rare instances, so far as the officers were concerned. Troops coming from farming sections were relieved so that its members could help to gather crops. In that respect matters were handled without trouble.

Before any man was placed on duty as a member of the military police he received special training under the direction of Lieutenant Harry H. Johnson, now a major in the 124th Cavalry. It was always impressed upon the men, whether they were on duty as traffic police or ordinary police duty where they came in contact with the public, to smile—smile—smile. It is wonderful how a smile on the face of a uniformed, armed soldier, performing the duties ordinarily performed by the municipal policemen, will dispel resentment of the great American public. On all tours of duty under Martial Law, the writer has insisted on the use of a smile—it is more potent towards prompt compliance and observance of orders than the arm the soldier may carry in his hand or in his holster.

It may be that in closing this narrative as to Martial Law in Galveston, the National Guardsmen can best get a picture of such a situation by quoting paragraph 7 of Bulletin No. 6, issued by command of the commanding general, on October 7, 1920, on the eve of the departure of the military forces from Galveston:

> *"7. No greater honor could come to any man who loves the service than the privilege that is mine to serve as Commander of such soldiers that served in Galveston. If, sometimes, you thought the commanding general severe by insisting at all times on the maintenance of discipline, then, by this time, with success crowning your efforts, you must realize that the fundamental principle of all military accomplishments is discipline—the discipline that does not make of a man a servile, but that discipline of the heart and mind that makes instantaneous compliance with all commands and orders possible, without even a mental interrogation as to the reason why, executing automatically, promptly and efficiently, leaving the responsibility for the wisdom of the command or order to the authority from which it came."*

SECTION V
MEXIA
LIMESTONE AND FREESTONE COUNTIES (Mexia)

Mexia, in Limestone County, two miles or less from the county line of Freestone County, was an average, quiet, morally clean town of approximately 2,500 inhabitants, when suddenly in the fall of 1921, a great oil pool was opened in its vicinity. From all sections of the country, thousands of men rushed to Mexia. The village grew into a great camp with an estimated population of 30,000.

The sheriff made the mistake of employing deputies "who had had experience" in other oil fields. The town marshal likewise fell for the employment of the same class of people, as policemen. Murder, highway robbery, gambling, bootlegging, prostitution, and every conceivable crime became the order of the day and the night. A large frame building arranged as a combination restaurant, gambling house and dance hall was built within 200 yards of the Mexia highway, in Freestone County, four miles from Mexia. This place was called Winter Garden. A large sign with Winter Garden painted on it was erected on the highway with a hand pointing towards the building, and this was the invitation to the public. Near Wortham in Freestone County, but not far from Mexia, was a similar place called the Chicken Farm. In these places open bars were conducted, gambling outfits consisting of roulette wheel, crap tables, blackjack tables, poker tables, and chuck-a-luck were running. The Chicken Farm was built on land sold to the operator by a deputy sheriff and within 200 yards of the deputy sheriff's residence. The Adjutant General's report contains the following with reference to the Winter Garden:

*" * * * Sunday, January 8th, Assistant Attorney General Stone called a meeting of the district judge, district attorney, the county judge, sheriffs, county*

attorney of both Freestone and Limestone Counties. This meeting was held in the "Winter Garden." All of these officials, claimed ignorance of any such resorts and seemed amazed that such could have been running."

The Adjutant General undertook to control the situation by the use of twenty Rangers, aided by six prohibition enforcement officers. According to his report—"It was soon evident that the local officials were hindering rather than helping us on these operations and it was decided that nothing short of Martial Law would aid in clearing up the community."

Consequently upon the recommendation of Assistant Attorney General Clifford Stone, and the Adjutant General Thomas D. Barton, Governor Pat M. Neff, proclaimed Martial Law on January 11, 1922, designating the writer as supreme commander.

The commanding general in the performance of this duty had under his command certain National Guard officers, including a medical and quartermaster officer. Major Chester H. Machen, who has been referred to as the chief investigating officer at Galveston was again on his old job as the criminal investigator. Lieutenant Harry H. Johnson had been by this time promoted to the grade of Captain. Captain E. A. Gajeske, who commanded the troop of cavalry (dismounted) and Major Julius Dorenfield, quartermaster and Captain W. E. Huddleston, medical corps, had all served at Galveston. In addition to the troop of cavalry, State Ranger Captains Frank Hamer and Tom Hickman, reported to the commanding general with their respective companies, constituting in all 13 Texas Rangers. The Federal authorities cooperated by sending prohibition and narcotic agents who cooperated with the militia authorities. The condition of lawlessness that existed on January 12th, the date of the occupation and that had existed for several months amounted to anarchy. The

proclamation declaring Martial Law, covered Justice Precinct No. 4, Limestone County, and Justice Precincts Nos. 5 and 6, Freestone County. The mayor and city commissioners of Mexia cooperated fully with the military authorities. Local officers were not suspended from office because the municipal authorities in Mexia promptly discharged all police officers whose dismissal was requested. The sheriff of Limestone County was requested to revoke the commissions of certain deputy sheriffs, which request was complied with.

Military headquarters were established at the city hall at Mexia. The troops were quartered in the "Winter Garden" and one of the very large rooms of this commodious building was used as a prison. A squad of soldiers was retained at the military headquarters in Mexia for emergency purposes. This squad habitually attended fires and kept the crowds under control. Again the smile while performing certain duties was very effective. The soldiers acquired the sobriquet of "smiling boys with frowning guns." No Provost Marshal was detailed. The entire work being done under the direct command of the commanding general. Arrests were made by the Rangers; the arrested persons were brought to military headquarters, and then transported by the soldiers in trucks to the Winter Garden, and there guarded by the soldiers. We remained in Mexia 47 days and nights. We held as prisoners from time to time, some of the most dangerous men in the country. With only 42 enlisted men on guard duty it was strenuous, for during the entire period it was two hours on, four hours off, without a pass. Persons arrested were turned over to the civil authorities, city, State, or Federal, as the case might be. Many thousands of persons, including, of course, a large percentage of vagabonds and criminals left immediately upon the arrival of the troops. We acted as enforcing and arresting officers. Hundreds of vagabonds, both male and female,

were given verbal Sun Down orders. A Sun Down order was created by the commanding general was simply this: A person with no particular criminal record, but who under the definition of Civil Laws, was a vagrant, was arrested and brought before the commanding general. The person that he or she, as the case might be, could make choice of appearing before the city judge or justice of the peace, be tried for vagrancy and if found guilty and unable to pay the fine, work it out on the public streets, or, leave Limestone and Freestone County by sundown. The exodus of those who carried Sun Down orders was very great and no record of their arrest was kept. The Houston Police Department graciously furnished Mr. George Lacy, its then Bertillon expert, and all crooks arrested were "mugged"—photographed and fingerprints taken. These were then sent to the Houston Police Department who classified them and distributed the information to the various police departments throughout the country. This was the first time that oilfield crooks had been mugged and fingerprints taken. This resulted in the arrest, by military authorities, of criminals under indictment in other counties in Texas and in other states. Such persons were delivered to the proper authorities. Thirteen automobiles were turned over to and taken possession of by the Federal authorities in which whisky was illegally transported. Fifty-three stolen automobiles were recovered, identified and returned to the, owners. Twelve peddlers of narcotics were arrested turned over to the Federal authorities and sent to Federal prisons. Among the number were five who had a national reputation in the underworld, as narcotic peddlers. These were not addicts, but purely cold-blooded sellers of dope. More than four thousand dollars worth of narcotics were taken from the possession of these peddlers and destroyed. Six hundred and two persons were arrested within the

military district, of which 81 were sundry minor charges. The crimes with which these persons were charged included murder, assault to murder, operating gambling houses, desertion from the United States Army, safe blowing, violation of the National Prohibition Act, resisting an officer, possession of stolen property, theft, gaming, carrying pistols or knucks, building stills, vagrancy, highway robbery with firearms, violation of Harrison Narcotic Act, held for other states and counties, various felony offenses, already under indictment, (16), sundry minor charges, burglary, aggravated assault, disorderly conduct, passing fire trucks, adultery, violation of Mann Act, disturbing the peace, arson, assaults, swindling, forgery, perjury, selling mortgaged property, assault with intent to rape.

Each case was investigated by Major Machen. The evidence reduced to writing and sworn to by witnesses, original delivered to the civil officers and copy retained. A large quantity of gambling paraphernalia of the approximate value of $5,000 was taken and in accordance with Texas law, destroyed.

Immediately on assuming command the commanding general began to receive information that in the community of Young in Freestone County distilling liquor was carried on, on an extensive scale and being transported to Mexia and other places. Not unnaturally the moonshiners ceased operations when they learned of the proximity of soldiers and Rangers operating under Martial Law. Again and again persons came to tell the commanding general of the existence of this situation in Freestone County. These people, it was clearly evident to the mind of the commanding general, were merely agents to ascertain what the attitude of the military authorities was towards settlements beyond the military district. Hence, each was told that that situation must be handled by local officers,

and that the military authorities were too busy cleaning up Mexia and vicinity to bother moonshiners in the farther end of Freestone County. However, arrangements were made with a citizen who owned an airplane and a former aviator was employed, who proceeded to make flights over the alleged moonshine district. The area was located in a wooded country, but the trees were barren of foliage—it was winter. The young aviator not only succeeded in locating many stills but in taking photographs of their locations and these photographs showed trails leading to the stills. In addition, undercover Rangers were sent into the community and the entire area, with the information thus attained and with the photographs, mapped. It developed that the community in which this was being carried on was a compact ring involving the local officers. That portion of the community not actively in the violation of the law had knowledge of the operations and were in sympathy with the methods by which their neighbors made money. Finally Governor Pat K. Neff, who had been kept informed of the situation by Adjutant General Barton, on February 2nd, issued another proclamation, putting Martial Law in effect in the entire county of Freestone. The commanding general at once assumed command in this extended area and simultaneously an expedition under the immediate command of the Adjutant General Barton, State Rangers, and Federal prohibition enforcement officers, proceeded to the community of Young, in Freestone County. As a result of this raid, many stills ranging in capacity from 40 to 300 gallons, were taken and a large number of persons arrested, charged with violating the National Prohibition Act, and others detained for investigation and as witnesses. A large quantity of whisky was destroyed, Federal officers retaining sufficient quantity for evidence.

During the entire tour many places were visited where evidences of stills having been located were found, but the stills had been removed.

During this tour of duty, weather conditions were very bad. It rained incessantly. Aside from one highway, the roads were in a deplorable condition. The streets at Mexia were muddy and boggy. The tour of duty was full of hardships, but was carried on day and night. There was very little time for rest.

One incident may be of especial mention. Early one evening a fire originating in a restaurant spread and ultimately destroyed two business city blocks in the town of Mexia. Almost instantly it was discovered that thieves were busy. The Rangers at once were detailed into alleys and other adjacent places where theft could be prevented. A crowd aggregating fully 15,000 people congregated. The majority of them, of course, law abiding citizens, but many of them roughnecks and toughs. It looked like a wild night. The crowds were congregated on all four sides of the fire. Three of them on streets in the town proper and the other Little Juarez, an addition that had been built south of the railroad tracks, consisting all together of shacks and where the tough element prevailed. The commanding general had at his disposition, Major Dorenfield, Quartermaster, Captain Harry H. Johnson, Adjutant, Captain W. E. Huddleston, Medical Officer, and eleven soldiers. He divided this detachment into three parts and ordered them to move the crowds from the streets. An officer went with each detail. The soldiers carrying the rifles at the port and a smile on their faces, hopped to it. Now and then it was necessary to kick a tough under the chin or in the pit of the stomach with the butt end of the rifle, but the crowds moved and moved until the streets were clear. Then with the entire detail the crowds were likewise moved on the south side, that is, in Little Juarez. Only one “bully” out of the

hundreds of toughs congregated there showed resistance. A jolt on the head with the handle end of a strong crop disposed of him and the rest moved with only a murmur. Fifteen thousand people, many of them ill disposed towards the military authorities, had been moved by eleven men and three officers and made to go to their quarters without any serious clashes. The purpose of mentioning this incident is that it shows that a small force of uniformed and armed men with a smile on their faces can accomplish things which would appear ordinarily as impossible.

Towards the latter part of our tour of duty at Mexia, things became very quiet and dull. Quoting from the commanding general's official report to the Adjutant General upon completion of the tour:

"So scarce did liquor become in Mexia, that during the last week of our stay habitual drunkards were arrested and found in possession of bottles of denatured alcohol labeled in red print 'Poisonous,' with the warning that internal use will result in blindness, paralysis and death. These unfortunates, unable to get either whisky or Jamaica Ginger, mixed this stuff with coca-cola and drank it."

One of the first things that happens in a new oil field town is the establishment of "Package Drug Stores." These are invariably whisky establishments and carry on hand a large quantity of Jamaica Ginger, commonly known as Jake, in the underworld. It is cheaper than whiskey and more potent. It is difficult to make a legal case against the seller because it must be shown that the seller either had actual knowledge or reasonable grounds for knowing that the purchase of Jake is made for beverage purposes. At Mexia the commanding general, by military orders, locked up a number of these Package Drug Stores and confiscated the Jamaica Ginger found. Many kegs were located and destroyed. Any military officer called on such duty will be

confronted with this problem. We met it again at Borger. The simplest and best method of detection is to procure a local underworld character whose chief vice is loafing and drinking and send him to these places and have him drink some of the stuff in the presence of the seller, and have conveniently located intelligence men who can observe and thus become competent to testify to the facts. Thus, after the man has drank some of the stuff, have him purchase an additional bottle, and then the seller will know that the stuff is being purchased for beverage purposes, within the sight of witnesses. Then, raid the place and take charge of all Jake found in kegs, bottles, and jugs and, of course, arrest the offending party and file against him in the Federal or State courts.

It will be noted that at Mexia all liquor cases were filed in the Federal Court. This was true in Galveston. In each instance, this was done because the local authorities were not strong on prosecution at that time for liquor violations. But the other reason is that the military authorities search on a Special Order issued either by the commander or the Provost Marshal. The laws of the State of Texas with reference to search warrants are very strict. So are the laws of the Federal government. But after the military authorities find the liquor and the person in possession they deliver the liquor and the arrested parties to the Federal enforcement officers who are available, and they file the charges before a United States Commissioner. The Federal Courts do not go any further than to ascertain how the Federal officers came into the possession of the evidence. Hence, even if the military authorities by their direct and effective methods procure the evidence not in accordance with the Civil Law regulating searches and seizures, the Federal Court does not concern itself about that just so long as the Federal authorities obtained

the evidence in a lawful manner, and the receipt of the evidence from a State authority is sufficient.

However, referring to searches and seizures frequently the person found in charge of the premises to be searched will on request grant permission to the officer to conduct the search. Any evidence thus found and seized constitutes a legal search and seizure. Such persons usually give such consent because they expect to and in fact do always deny any knowledge of whisky found on their premises.

Automobiles may be searched without a search warrant on probable cause and whisky or narcotics or other evidence of law violation will be admitted in evidence.

It has been for years the common belief in Texas that soldiers and Rangers could not work together in harmony. No finer spirit of harmonious cooperation between men charged with the performance of difficult and unpleasant duties could possibly have prevailed than that which existed the forty-seven days and forty-seven nights between National Guardsmen and Texas Rangers on duty in the Military District of Mexia. The writer's experience and observation has been, dating back to 1898 during the Spanish-American War, when as a young and junior officer of cavalry, serving in the Army of the United States, on duty on the Mexican border, no finer gentlemen, using that word in its broadest sense, ever served their State than the Texas Rangers. Courageous and impersonal in the performance of duty, those who served at Mexia exemplified on every occasion the highest ideals and the best traditions of the Ranger force that constitutes so great a part of the glorious history of Texas, in the establishment of our independence, the development of our civilization and in the suppression of lawlessness.

For the small National Guard detachment and the Rangers as well as the Federal prohibition enforcement officers, and narcotic agents, January and February, 1922, was a hard winter but all things come to an end. Our mission in the military district at Mexia, came to an end with the close of February. The city commission of Mexia, however, decided that it must have some help. They had quickly observed the sterling character and legal ability of Major Machen and retained him as city attorney. Later he became the district attorney and made an enviable record. He still resides in Mexia, an honored, respected and busy lawyer.

But the city commission asked for more. They decided they needed a more experienced officer as chief of police and a new police department. Over in Lampasas County lived Albert Mace. He had made an enviable record as sheriff of his county. He had served with credit as a Texas Ranger. Upon our invitation, he came to Mexia. He first preferred to go on the police force as a detective, organizing that department. After a week or two, he accepted the position of chief of police. At the next election a new county attorney was installed; a new sheriff was elected; Albert Mace held down the situation at Mexia. The town grew and developed into a first rate little city, with paved streets and all modern conveniences. The military authorities, including always the Texas Rangers, cleaned Mexia and vicinity of those lawless elements and turned the town over to the civil authorities. Albert Mace did not permit the lawless element to come back. The new sheriff, active and experienced, did his share.

The city government of Mexia did not ask Governor Neff to declare Martial Law, but when it was done and the military authorities took hold, they cooperated in every way possible. The good citizens, most of whom were the sons and daughters of parents who had first “broken dirt” in Mexia, cooperated with us. Of course, heads of responsible oil companies helped us all

they could. But, there was a feeling of restraint when we came. It is always thus and always will be. People do not understand Martial Law. They are afraid of it. They dread it. But, we left with their good wishes. The grand jury of Freestone County in a report presented to the district judge, classified the conditions that had been permitted by their local officers and said:

" . . . We wish to say after the Governor declared Martial Law and sent to our midst the military forces under the command of Brigadier General Jacob F. Wolters, that we find the work under his command has been done vigorously and impartially, and we feel that had it not been for the services rendered by these officers, many of these undesirable conditions would still exist. Realizing the help that this campaign has been to the county, we wish to express our gratefulness to General Wolters, his officers, soldiers and Rangers for the work they have done.

"And, in conclusion, we wish to urge on the good citizens of Freestone County the necessity of concerted action towards the enforcement of law, and urge that a sentiment so strong against lawlessness be created that the hijacker, thief, gambler, and other law violators will henceforth find other locations to ply their trade, and the development of the wonderful resources of our county may encourage and be made safe, and that we at once return to our normal condition, which can only be done by every good citizen assuming his part of responsibility for the maintaining of law and order in our midst."

The grand jury of Limestone County in its report severely criticized the local officers. In part they said:

"We deplore the condition that existed in the county, and especially as existed in the oilfields at Mexia; that such conditions was brought about by the inefficient and illegal manner of the assessment of fines in the county and city of Mexia. These fines were assessed by police of Mexia and the sheriff and his deputies, and not by courts of the county, and the city recorder, who is acting police judge of Mexia, as required by law. We condemn this method as illegal and frought with great danger, and open to graft, as is abundantly shown to us, and amounts to the license in effect of the open gambling houses and the houses of prostitutes, and all kinds of criminals, and has defeated the efforts of your grand jury to get evidence to bill these people, because we do not know who paid fines and who did not, nor in fact was guilty or not, as they pleaded guilty to the officers under an assumed name in a large number of cases."

" . . . But we do say that our sheriff and chief of police have been most unfortunate in the selection of some of their deputies."

Again the report reads:

"In conclusion, we want to thank Brigadier General Jacob F. Wolters, Adjutant General Barton, and Assistant Attorney General Stone and Major C. H. Machen, and the Rangers for their efforts in helping the grand jury to clean out our county of the criminal class, and we say without their help our efforts would have been of much less value."

So far the writer has presented entirely different situations, in which each instance a lawless condition existed amounting to an insurrection. Yet each was different from the

other. The first grew out of a labor strike. Professional criminals and crooks and crimes were not involved. It could only have arisen and in fact did arise and assume the proportions that required the imposition of Martial Law and the intervention of the military forces of the State because the municipal authorities as well as the sheriff's department and constables, were under the domination of political power of the strikers. In Mexia the lawless condition arose because of the inexperience of local officers. The community became overwhelmed by criminals and crooks of all kinds, because the local officers were weak and fell readily for the easy money collected through fines and fees as indicated by the grand jury report of Limestone County. There were groups or gangs of criminals to deal with, but there was no organized criminal ring. No great danger was involved to the enforcing officers. The lawless, the criminal element, merely got control and as heretofore stated, a State of anarchy came about.

But, we shall soon pass over seven years of comparative peace and quietude, so far as the writer and the National Guard are concerned to meet quite another situation in Borger and in Hutchinson County.

SECTION V I
DENISON
Martial Law at Denison, July 26th-October 21st, 1922

On July 26th, 1922, Governor Pat M. Neff, declared Martial Law at Denison, covering Precinct No. 2, Grayson County. The writer was not on duty in the Military District of Denison. Colonel Charles W. Nimon, a veteran officer of the Texas National Guard, who had served as a colonel during the World War, including service with the AEF, and who is now in command of the 142nd Infantry, 36th Division, was in command. In this instance it was the Federated Shop Craft Union strike that brought about the conditions that impelled Governor Neff to declare Martial Law. According to the report of the Adjutant General, local officers did not attempt to prevent strikers or their sympathizers from flogging and ordering persons who came to Denison to take the strikers' places, into Oklahoma. With the details of the administration of Martial Law on this occasion, the writer is not familiar and may not speak except in passing to say that the situation was efficiently and effectively handled by Colonel Nimon and those under his command and that the State of lawlessness that brought about the declaration of Martial Law was effectively suppressed.

SECTION VII
BORGER AND HUTCHINSQN COUNTY

Hutchinson County is located in the northeastern portion of the Panhandle of Texas. On the north, it is one county, and on the east two counties removed from Oklahoma. On the west, two counties away, lies New Mexico. Its location is nearer to the capitols of the states of Colorado, New Mexico, Nebraska, Kansas, and Oklahoma than it is to Austin, the capitol of Texas. The county is intersected by the south fork of the Canadian River running from the northwestern to the southeastern portion of the county. The south and central portions are broken by hills and canyons; the northern portion is a level plain.

Within the border of Hutchinson County, on the north side of the south fork of the Canadian was fought, on June 27, 1874, one of the last battles between white men and Indians in Texas. it is known as the Battle of Adobe Walls.

The county was created in 1876, and organized in 1901. The census of 1920 gave its population as 156 families. The poll tax records disclose that 304 poll taxes were paid in 1924, and 350 in 1926.

Ranching was the principal industry, with here and there a wheat farmer. There was no railroad in the county, and the highways consisted of trails established by the ranch owners.

Plemmons, a straggling village on the north side of the south fork of the Canadian was the county seat, and the center of such population as there was.

This was Hutchinson County, March 1, 1926.

In the breaks along the south banks of the Canadian the drill of the wildcatter had for months sought oil. During March, 1926, the wildcatter scored. One of the greatest oil and natural gas fields ever discovered in the history of the world was developed.

The news of the great oil and gas strike flashed over the country, and to the south side of the south fork of the Canadian, in Hutchinson County, came the oil producers with their equipment and their organizations of men. Came also, hundreds and hundreds of young men, clear eyed, level headed, trained in various lines of honorable and useful endeavor, seeking as young men ever have, virgin fields in which to establish themselves. Men representing every conceivable line of legitimate industry and commerce, professions and occupation came to establish themselves in a new community. Came also thousands of human parasites that throughout all of the generations followed the pioneer winners and developers of the west. They were the gamblers, the bootleggers, the prostitutes, the hijackers, the thieves, the burglars, crooks of every kind and character, including the murderer.

Came also a group of men who had followed oilfield developments throughout southern Kansas, Oklahoma, and earlier oilfields of western Texas, as townsite promoters. They acquired, in the midst of the oilfield, a tract of land one and a half miles long, and a mile wide, subdivided it into blocks, lots, streets and avenues, and incorporated the town of Borger. Almost overnight a city arose within the limits of this townsite, while within a radius of three to five miles surrounding it oil and gas camps were established. It is estimated that more than 50,000 people gathered within that area. Within the townsite, and in canyons adjacent thereto, in addition to the establishment of buildings used for legitimate business purposes were established package drug stores—drug stores where no

prescriptions were handled—but where bootleg whisky, beer, and Jamaica Ginger, commonly called Jake was sold. Rooming houses, where the smiling girls established themselves by the hundreds. Saloons on ground floors and in cellars; openly conducted. Gambling houses, such as were known in centers of population throughout the land during the 1870s and 1880s.

A city government was established with three commissioners, one of whom was made the mayor. A famous two-gun man was brought from Oklahoma and made chief of police. He had been sentenced for a term of ninety-nine years in Oklahoma, and at the time, was out on parole. He was symbolical of the gang in action. He was the representative of the law. He was cruel to the weak, and commanded tribute from the strong in the underworld. The town became known as Little Oklahoma. The town itself developed. Shacks were replaced with more substantial frame and brick buildings. The oil and gas fields developed. Pipelines bisected the Territory, and oil camps became settled and established. Casing head gasoline, refineries and carbon black plants were built. The Santa Fe Railroad built a branch from Panhandle City to Borger, and the Rock Island built from Amarillo through the county into Kansas. A county seat election was called but it was not moved to Borger. Instead, the same townsite promoters established the town of Stinnett on the north side of the Canadian, and with the votes at their command the county seat was moved from Plemmons to Stinnett. Again lots were sold. The commissioners' court built a $500,000 court house at Stinnett. They built an expensive highway through the county. In Borger, the city administration built a concrete street one and a half miles long and ninety-two feet wide, at a cost of $365,000, one-third of which was paid for by the county. A sewerage plant, a city hall, and public utilities, with a

liberal franchise granted by the city commission supplied power, light, water, and gas, were constructed. The town of Borger was loaded down with public debts represented by warrants. These works were accomplished during 1927-28.

In the meantime, legitimate businessmen prospered. They were busy in their various affairs. They gave little if any heed to the operations of the ring. The whisky and beer line flourished. Crime, including murder, stalked almost unrestrained. Thus it ran through 1926 and 1927. During 1927 the city grew so bad that Governor Dan Moody sent a force of Texas Rangers into Borger and they cleaned it up. They closed the gambling houses and the open saloons. Thousands of undesirables living in the area left. The mayor and city commissioners were prevailed upon, on the demand of the Governor, to resign, but they installed members of the same ring. The Rangers left, but the ring carried on. Having had a touch of Ranger law much of the lurid part of Borger faded into history. But Borger was still Little Oklahoma. The two-gun chief of police, out of office, located at another oil town. The Rangers interfered with him there until he moved across the Texas line into New Mexico. Here he opened a road house with a large lettered sign: "EIGHT MILES FROM TEXAS RANGERS." Captain Wright, of the Texas Rangers, had himself and company commissioned as One Dollar a Year Federal Officers, and crossed the line and raided his place, "Eight Miles from Texas Rangers."

During 1927 friction arose between the county and city officials. One night, about 1:30 o'clock, Coke Buchanan, one of the city force, was killed on Dickson Street. The next night two deputy sheriffs named Terry and Cannon were killed. All three were assassinations.

One of the features of this situation was a very smart intelligent comely woman, said to have been a divorcee who had occupied a high social standing in her community. She came to

Borger and opened a palace where “wine, women, and song” were the attractions. It was a night club. Her name was never known to the general public. She was called Sis Pantex, and under this cognomen she became one of the master minds of the political-criminal ring that ruled Borger.

With the advent of the discovery of oil in Hutchinson County, among those who came to establish himself in the new community, was a young lawyer from Mississippi, by the name of H. M. Hood. He was appointed justice of the peace of the precinct that included aside from many miles of barren hills and canyons, the town of Borger and its environs Under the fee system then prevalent it was a lucrative position. But young Hood refused to play the game with the ring. He was straight when he came to Hutchinson County and straight he was determined to remain. He refused to dismiss a complaint filed by a citizen against the mayor without a full hearing. Refusing to obey the ring, the commissioners court during a called session, resolved that the population had increased so greatly that it was necessary to have an additional justice precinct in Hutchinson County, and proceeded to gerrymander the precincts so as to leave Judge Hood many miles of barren unpopulated hills and canyons, and a few inhabitants Thus the young judge was practically deprived of the emoluments of his office. A member of the ring became the new justice of the peace.

At the time oil was discovered in Hutchinson County John A. Holmes resided in Miami, Roberts County. He was the district attorney for the old 31st District which then included Hutchinson County. In 1927 Holmes resigned and moved to Borger where he entered the private practice of the law. He not only bore the reputation of being straight, but was. Clifford Braley of Dallas County was appointed to fill the vacancy caused by Holmes’

resignation. When the Legislature created the 84th Judicial District, Braley remained District Attorney in the old district. The creation of the 84th District required the appointment of a district judge and a district attorney. Hutchinson County was included in the new 84th District. Governor Moody appointed Honorable Newton P. Willis of Canadian district judge. He resigned his office during the summer of 1929, and the Governor appointed Honorable E. J. Pickens.

Governor Moody appointed to the vacant district attorney-ship a brilliant young man, a graduate of the University of Texas, and the Governor's classmate. The Governor exacted from his friend a pledge that he would not drink liquor during his incumbency in office. The young man made the promise and agreed that if and when he took a drink he would resign. The young man's reputation was good. He returned to his district with the commission of the Governor in his pocket. He went to Borger. He took not only one but many drinks. The ring laughed at the law.

Governor Moody asked for his resignation but the request was declined.

By this time 1928 had rolled around. The sheriff's department and the city ring of Borger had apparently made up.

In Texas, one of the necessary qualifications to vote is the payment of a poll tax. It is Texas' way of registering its voters. In order to vote in 1928 poll taxes must have been paid on or before shows January 31, 1928, for the preceding year. The record shows that for 1928 there were 3,500 qualified voters.

The law abiding citizens in the county were insistent on a new deal. A county ticket was organized and young Hood was prevailed upon to head it as a candidate for county judge.

With him four substantial citizens in the respective commissioners precincts became candidates. John A. Holmes consented to become a candidate for district attorney. He entered the contest as a call to duty. Henry Meyers, a young lawyer who had moved from Colorado to Borger became the candidate for county attorney, and a hot campaign ensued. The entire Hood-Holmes ticket except their candidate for sheriff was elected The county committee refused to canvass the returns in those places where the reform ticket had polled heavily, and court action was necessary to bring about a count. The defeated district attorney then resigned and Governor Dan Moody appointed John A. Holmes in his place.

In the November election the Democratic ticket was elected without opposition. This was the reform ticket except the old sheriff. Holmes had hoped that the sheriff would cooperate with him, but by this time the Borger ring apparently had gotten full control of the sheriff's department. From July, 1928, to the date of his assassination, Holmes worked indefatigably to restore law and order.

In the meantime, in order for persons to vote at any election during 1929, including the city election of Borger, a new poll tax must be procured. As so often is the case, the law abiding citizens of Borger defaulted in the payment of their poll taxes, but the ring saw to it that the underworld, including the prostitutes, qualified. In April, 1929, came on the city election. The law abiding element realized that it was hopeless to undertake to defeat the city ring, and the election practically went by default. The mayor and commissioners were reelected.

Meanwhile, as heretofore indicated, much of the wild western features of crime disappeared; but in its place developed a strongly entrenched criminal ring that gave to Borger a real racketeering underworld.

Between March, 1926, and September, 1929, thirty-two murders had been committed in Borger, and only one friendless girl was convicted. Many suicides were reported, some of which later investigation showed had all the ear-marks of murder. In one case of reported suicide the October grand jury, 1929, brought in an indictment charging a well known underworld character with the murder.

But back to Holmes. Grand juries failed to indict, and if they did, petit juries acquitted; but Holmes continued to work.

At the April term 1929, the district judge appointed a jury commission composed of three outstanding, law respecting citizens. Part of the duties of this commission was to select the grand jury for the succeeding October, 1929, term. This list, in duplicate, was sealed in envelopes and turned over to the district clerk. One of the lists thus sealed under the law, was delivered by the district clerk to the county clerk. It was well known that Holmes, the district attorney, was conducting investigations on his own account and in connection with Federal authorities regarding the operations of the ring. He received no aid, no support, from the sheriff's department and interference from the constable and police departments of Borger. The Federal grand jury was scheduled to convene at Amarillo on Monday, September 16. On September 11 Holmes received a telegram from the United States District Attorney's office at Fort Worth requesting him to be before the Federal grand jury at Amarillo on the morning of September 16. It later developed that even before Holmes read this telegram its contents were known to his

enemies. The ring's ramifications lead everywhere. It knew what was going on concerning itself all the time. On that night, September 11, 1929, a window pane was broken out of the garage owned by Holmes, through which an assassin could easily fire upon and kill the driver of a car driven into the garage. Holmes and his wife came in that night, but Mrs. Holmes was the driver. She was next to the broken window pane. Friday night, September 13, Holmes drove from his office to his home. His wife and mother-in-law were with him. He stopped the car in the back yard of his little cottage home and the ladies left the car and entered the cottage by the rear door. He drove the car into the garage, stepped out and was in the act of closing the door when he was shot down by an assassin. Five shots were fired from.38 caliber Smith and Wesson Special, three of the shots taking effect in the back of his head and back.

It later developed that the grand jury list heretofore referred to had been stolen out of the district clerk's office. There is no suspicion that the district clerk had any culpable connection with this. It is evident that someone was interested in the personnel of this grand jury. When the copy from the county clerk's office was obtained and opened at the proper time provided by law, it developed that the entire personnel consisted of substantial, outstanding law enforcement citizens. It was just such a grand jury that would make law violators realize that with an informed, intelligent and honest district attorney in possession of the facts to present, that indictments must inevitably follow. The ring would not be able to reach this grand jury. Holmes would be in Amarillo on the following Monday to present facts to a Federal grand jury. A month later he would be working with the Hutchinson County grand jury composed of honest God-fearing, law abiding citizens. Holmes had the facts upon which indictments by the Federal grand

jury, and also by the State grand jury could be based. He was murdered on the night of September 13.

Immediately, Governor Dan Moody sent to Borger, Captain Frank A. Hamer, and Captain Tom Hickman, with their Texas State Ranger companies. It is the proud boast of the Texas Rangers, running back to the time of the Texas Republic in 1836 that they always accomplish their mission. They did not ask for help at Mexia. The attorney general and Adjutant General asked the Governor for Martial Law on that occasion. But for once in the ninety-three years operations of the Texas Rangers, they found themselves baffled. The sheriff's department, the constable department, and the police department of Borger did not render aid. Those persons who might be in possession of any leads or facts were afraid to talk; witnesses were told by members of the police department and constable department to leave, and leave they did. And thus, for the first time in the history of the Texas Rangers, did they turn to their Governor and appeal to him for Martial Law, and the aid of the National Guard in their efforts to ferret out this foul assassination, and to restore law and order. Captain Frank Hamer openly charged that in his twenty-three years of service as a Texas Ranger, Borger and Hutchinson County presented the worst conditions he had ever met; that an entrenched criminal ring existed, and that the Rangers were helpless.

Immediately upon receipt of this report from Ranger Captain Hamer; Governor Dan Moody, on September 24, ordered me to proceed to Borger and investigate the conditions and to report without delay the facts.

In the meantime the Governor had requested Honorable Clem Calhoun, district attorney of the Abilene district, to proceed to Borger and aid the Rangers in their investigation. On the

morning of September 25 I arrived at Amarillo and was met by Ranger Captain Tom Hickman and District Attorney Calhoun. After conferring with these officials I proceeded by automobile to Borger, fifty-six miles northeast of Amarillo. I conferred with numerous citizens, good, indifferent, and bad. No one wanted Martial Law, but everybody consulted, stated that there was no hope of restoring law and order so long as the then city administration, the sheriff, and the constable and justice of the peace remained in office. I never before met with just such a situation, where the strongest and best men were afraid to talk. The entire community was in a grip of frozen terror. During a conference with a group of citizens, politically friendly to the city administration, I was asked if the sheriff, justice of the peace, constables, mayor and city commissioners resigned and new officials installed, approved by the Governor, Martial Law could be avoided. I called the Governor over the phone and he left this to my discretion. I told the citizens on those terms Martial Law could be avoided. They then invited the mayor into the conference. I told him what had been asked, and the answer. He refused to consider it.

That evening Clem Calhoun and I proceeded by automobile to Austin, covering a distance of 625 miles, and on the evening of September 26, reported to Governor Moody. Calhoun, who had been in Borger some ten days carrying on the investigation, was thoroughly convinced that nothing short of Martial Law, and the suspension from office of the mayor, commissioners, police department of Borger, the sheriff and the constable and justice of the peace of the Borger precinct would induce the people in possession of facts to talk. The people were in terror of their lives. They remembered that Terry and Cannon, deputy sheriffs, who, in 1927 had dared to interfere with tie whisky ring, were assassinated. They still saw that prostrate, bloody body of John A. Holmes, their district attorney, carried from the backyard of his home to

the morgue. Very naturally the Governor was loath to resort to the last and extreme measure of the civil power to restore law and order. We discussed it in all of its phases, and finally the Governor stated to me:

"You have given me the facts, but you have not volunteered any recommendation. I shall ask you the direct question: If you, having investigated the situation, were Governor of Texas, would you declare Martial Law?" My answer was, "I would."

The Governor immediately announced his decision, and instructed me to be ready to proceed with such troops as I might require, to Borger on the following Sunday, September 29, [1929].

I shall always be glad that I was present when the following occurred. Clem Calhoun said to the Governor: "Governor, I am district attorney in the Abilene district. I am happily situated. The office of district attorney in Hutchinson County pays no more than the one I now hold. My wife and I live happily in Abilene among our friends, but since you have decided to declare Martial Law, I now offer to resign my present place and accept appointment to the office left vacant by the death of Holmes." Without a second's hesitation the Governor replied:

"Clem, your resignation has been accepted, and you are appointed district attorney for the 84th district."

Here was a young man thirty-three years of age. He graduated from the law department of the University of Texas, and with the ink on his diploma scarcely dry, entered an officers training camp in 1917, was commissioned a lieutenant of cavalry, transferred to the field artillery, served during the period of the World War, and then, at the age of twenty-three, moved to El Paso, became an assistant district attorney, removed to the Pecos country and became a Pecos County

attorney. Moved again, and became a district attorney. He had spent the ten years intervening between his discharge from the army and this time prosecuting criminals, sending to the electric chair five murderers and bank robbers, not to speak of numerous other bank robbers and murderers who were sent, as the result of his prosecution, from life to a term of years. Happily situated in a district where he enjoyed the confidence and friendship of the people, he voluntarily resigned to take upon himself the arduous, not to speak of the dangerous, job of endeavoring to break up one of the most dangerous rings of racketeers and murderers that ever disgraced the annals of the Southwest.

Back a moment. After the April term, 1929, the district judge resigned, and Governor Moody appointed Honorable E. J. Pickens.

The preceding is but an outline of the picture of the situation as it relates to Borger and Hutchinson County. It has been set out in order that the reader may better understand the subsequent administration of Martial Law in that area.

A few days after Holmes was murdered, Governor Moody was in Houston, and he then warned me that it might become necessary to declare Martial Law in Hutchinson County, and if he did, he would expect me to assume command.

On that date I wrote, under confidential cover, to Colonels L. E. McGee and Louis S. Davidson, respectively, the commanding officers of the 112th and the 124th Cavalry, the two regiments of the 56th Cavalry Brigade, which I command. I briefly outlined to them the situation, and then instructed them to select 12 officers, which was to include Colonel Davidson, and 80 enlisted men from Headquarters Troop, Troops A, B, and E, 112th Cavalry and Troops A, and B, 124th Cavalry and an officer and four men from the Medical Det. 112th Cavalry. My

instructions were to select officers whose efficiency were well established, and who could afford to leave their avocations or jobs for an indefinite period, and enlisted men who had served not less than eighteen months with their unit; who were unmarried, who had no dependents, and who were dependable young men both in military and civil life. I further instructed them to select a greater percent of non-commissioned officers than would ordinarily be used in a military organization of so small a detachment. They were cautioned that whatever was done must be carried on so secretly that no inkling of it would break to the public. Here is what the colonels did: They canvassed the roster of their officers, they selected those they decided should go on this duty. They called these officers and troop commanders into conference, and confidentially conveyed to them the information and instructions they had received from the brigade commander. With the advice and cooperation of these chosen officers, the colonels selected the enlisted personnel from each troop. The captains who commanded the troops sent for the individual enlisted men selected, and told them that there was to be a competitive mobilization test of detachments selected from the Dallas and Fort Worth troops respectively, and that the Dallas detachment would be moved by bus to the armory of Troop A, 12th Cavalry. at Fort Worth, where there would be additional competition in the way of drills and military problems. That the captains were not informed as to the time this would take place, that it might take place in the middle of the day, or the middle of the night. Each man was instructed by his captain what equipment to have with him which consisted of the regulation field equipment. The colonels then reported to me in writing, a list of the officers and men selected by name. Thereupon I forwarded, on September 21, this list to the Adjutant General, together with further plans for mobilization, so that as, if and when the emergency arose requiring the declaration of Martial

Law at Borger and Hutchinson County, and the movement of troops into that area, the Adjutant General would be prepared at a moment's notice to issue the necessary orders. This plan included a request for motor transport consisting of two automobiles, two trucks, and two ambulances to be taken overland to Fort Worth during the night preceding M Day. I also requested a truck located at Camp Wolters, at Mineral Wells, with 100 cots and other equipment to be carried on the night preceding M Day from Mineral Wells to Fort Worth.

On the morning of September 27, I telephoned from the Adjutant General's office to Colonel Louis S. Davidson that M Day was Sunday, September 29, 9:00 a.m. That was all the conversation between Colonel Davidson and myself on the subject. Added to the list of officers heretofore selected was a quartermaster from the State staff corps, and Colonel O. E. Roberts, C. O. 143d Inf., to serve on my staff as judge advocate. Colonel Roberts, in civil life, is a very competent lawyer. The assistant Adjutant General, Lieutenant Colonel Taylor Nichols became QM later succeeded by Major H. H. Carmichael.

On the night of September 27-28 I proceeded to Houston, my home and headquarters. On the morning of September 28, on my return home, I went into conference with my brigade adjutant, Captain Fred W. Edmiston, who was included as one of the officers who was to accompany me on the mission, and during that morning were prepared General Orders Nos. 1, 2, and 3, and mimeographed copies made thereof. During the day of September 28 the newspapers were anxiously seeking information as to whether there would be Martial Law or not. The Governor desired, if possible, to send the troops to Borger without advance information reaching there. The newspapers all knew that the matter of declaring Martial Law was under consideration by the Governor. They knew that I had visited Borger on September 25 to investigate, but they

could not ascertain what the Governor's decision was, and when the troops would move. I referred all newspaper men to the Governor, and went about my affairs at home as usual.

In the meantime, the Governor and Assistant Attorney General Paul D. Page, Jr., at Austin, were preparing the proclamations.

Saturday night, with my adjutant, I left for Fort Worth dressed in civilian clothes. On our arrival at Fort Worth on Sunday morning we were met at the station by some of my officers likewise dressed in civilian clothes, and we drove directly to the armory of Troop A, 124th Cavalry. In the meantime, on Saturday, at 6:00 p.m., the selected men at Dallas were told to mobilize at their respective armories and to be equipped for the mobilization test at 7:00 p.m. At that hour the bus picked up these men and carried them to the armory at Fort Worth, reaching there at 9:00 p.m. At the same time, the Fort Worth detachment was mobilized at the armory. They were told that the brigade commander would arrive in the morning to judge the various competitions. They were not told that they were going anywhere else. All of the officers, except the lieutenant who was in charge of the detachment were in civilian clothes. This was done to avoid attracting the attention of newspapermen to such an unusual gathering of officers.

The forenoon was devoted to competitive drills and minor problems. Mess was served at the noon hour. At 2 p.m. a train consisting of baggage car and three Pullmans moved into a track near the armory. Immediately thereafter the detachment was formed and I announced to them that they were to entrain on the cars parked in their sight; that they were going to an unnamed destination for an indefinite tour of duty; that their families and employers would, on the following morning, be notified. Of course, most, if not all, of the soldiers knew it meant Borger. They loaded equipment in the baggage car, and in an orderly, soldierly way, entrained;

each man having been previously assigned his berth. The train moved around Fort Worth to the railways yards where the freight cars with the motor transport which had in the meantime been brought from Austin were picked up, and at 3:00 p.m. the train started on its long trip to Borger, a distance of over 400 miles. We apparently escaped the attention of any part of the curious public, or the newspapermen until we reached Wichita Falls very late in the afternoon, where an energetic newspaper reporter picked us up and the wires soon hummed that the soldiers were enroute west. The newspaper reporter was heard to ask a number of men where they were going. They always answered they did not know. Somewhat exasperated, the newspaper reporter asked, "Are you fellows all dummies?" and with one voice the soldiers all cried out, "We sure are!" The train arrived at Amarillo at 4:00 a.m., Monday, September 30, and was transferred to the Santa Fe station where it was parked until after breakfast was served. At this time all officers were in uniform. At 8:30 a.m. the train reached Borger.

With the knowledge that ten Texas Rangers were in Borger, I did not hesitate to have the train move direct to the depot at Borger. I did not anticipate any hostile demonstrations and while a crowd of people had gathered at the station there was no demonstration one way or the other. The soldiers were detrained in an orderly manner on the side of each car, without word of command, with the rifle at port arms. Twenty-five paces in advance of each platoon were two selected men with riot shotguns at port arms.

In every situation where military authority is used to aid the civil power things occur that have either a good or a bad psychological effect. They are, in common parlance, the breaks of the game. We had just such a break at Borger. Within one minute after the troops had detrained a

drunk man approached one of the guards. He was promptly put under arrest. This occurrence, in the presence of the spectators, had a good psychological effect, however minor the incident was.

The General Orders Nos. 1, 2, and 3 had been issued, so far as the command was concerned, thirty minutes before the arrival of the train at Borger. The Provost Marshal had made all of his details. The detachment of officers and men proceeded at once to the city hall where they immediately disarmed the constables and members of the police department, and took possession of the various offices and city jail. Another detachment by motor transport proceeded immediately to Stinnett, the county seat, twelve miles away, disarmed the sheriff and his deputies, took charge of his offices and the jail. A copy of the General Order No. 2, with the photostatic copy of the proclamation of the Governor suspending the officers was served on each officer concerned. Within thirty minutes after the arrival of the troops at Borger the first mission had been performed. While this was being done the Provost Marshal was sending a military patrol out over the town of Borger. The streets and their intersections were patrolled. See: P. M. S. O. No. 1, Sept. 30, 1929.

Quoting a staff correspondent of one of the daily newspapers of Texas: "Within slightly more than a half hour after issuing the proclamation, the National Guard had taken over the combination city hall, police and fire station. All officers were disarmed, and two officers of this three-year old oil town were arrested. . . . While the Borger city hall was being occupied, another detachment of guardsmen and Texas Rangers hurried to Stinnett, the county seat, 12 miles away. At 10 o'clock it was announced that Martial Law had been declared at Stinnett, . . . Occupation of the town was accomplished quietly and quickly. There were no demonstrations, although hundreds of curious tramped about, following the moving center of activities. They gathered at

the depot, at the police station, and then at the American Legion Hall, which is to barrack the Guardsmen. Guards were stationed at vantage points and patrolled the streets."

The local American Legion post had very generously tendered to the commander their hall to be used as quarters for officers and men. The quarters were very comfortable, and the hall was equipped with a complete kitchen.

Immediately upon arriving at Borger, photostatic copies of the proclamation issued by the Governor, and Generals Orders Nos. 1, 2, and 3 were handed to the representatives of the local press, the United Press, and the Associated Press. Within a very short time the *Borger Daily Herald* was on the streets with screaming headlines setting out these proclamations and general orders. In passing it may be said that Assistant Attorney General Paul D. Page, Jr., brought the original and photostatic copies of the proclamations from Austin to the commanding general at Fort Worth.

This is the proper place to include these proclamations and the general orders referred to.

Proclamation
by the
Governor of the State of Texas

TO ALL WHOM THESE PRESENTS SHALL COME:

WHEREAS, persons sent to Borger and Hutchinson County, Texas, to investigate the situation regarding law enforcement have reported to me that:

there exists an organized and entrenched criminal ring in the city of Borger and in Hutchinson County; and that

the law in said city and county is not being effectively enforced by the existing law enforcing agencies, which is the fault not of the Judiciary of the

county, but of the peace officers of said city and county; and the

said peace officers are, for some reason, failing to suppress crime and bring criminals to justice; and that

at the present time without the presence of protecting authority, the responsible citizens of the community are intimidated and living under a menace which prevents them from informing on law violators; and that

at least one ex-convict is a peace officer in the county, and other peace officers have been charged with offenses of the grade of felony; and that

those who have been in said locality and reported to me have reported, first that there is a conspiracy between the officers and the law violators and that affidavits have been secured to the passing of money to peace officers for protection from the enforcement of the law; and second, that witnesses who have been questioned concerning law violations, including the assassination of the district attorney, have been threatened and driven from the county; and

WHEREAS, this condition has heretofore caused acts of violence on citizens of this State, and there is now imminent danger of insurrection, tumult, riot and breach of the peace, and serious danger to the inhabitants and property of citizens in the Territory heretofore described; and

WHEREAS, Section 10 of Article 4 of the Constitution of Texas makes it the duty of the Governor of this State to "cause the laws to be faithfully executed"; and

WHEREAS, Section 7 of Article 4 of the Constitution of Texas makes the

Governor of this State the commander-in-chief of the military forces of this State, and gives him the "power to call forth the militia to execute the laws of the State"

Now THEREFORE, I, DAN MOODY, Governor of Texas, and commander-in-chief of the military forces of this State, do by virtue of the authority vested in me under the Constitution and laws of this State, declare that the conditions above described do exist and are clearly violative of the Constitution and laws of this State, and that by reason of this the conditions contemplated in Article 5889 of the Revised Civil Statutes of Texas, of 1925, exist in the following described Territory, to-wit:

The County of Hutchinson in the State of Texas.

And I declare Martial Law in said Territory, effective at three o'clock p.m. the twenty-ninth day of September, A.D. 1929, and I hereby direct Brigadier General Jacob F. Wolters to assume supreme command of the situation in the Territory affected, subject to the orders of the Governor of Texas, the commander-in-chief of the military forces of this State as given through the Adjutant General.

IN TESTIMONY WHEREOF, I have hereunto signed my name and caused the seal of the State of Texas to be hereunto affixed at my office at Austin Texas, this twenty-eighth day of September, A. D. 1929, at 3:30 o'clock p.m.

(Signed) DAN MOODY

Governor of Texas

(Seal)

By the Governor:

(Signed) JANE Y. McCALLUM, Secretary of State.

GENERAL ORDER NO. 1.

To ALL TO WHOM THESE PRESENTS SHALL COME:

1. Pursuant to the orders of the Governor of Texas and commander-in-chief of the military forces of the State of Texas contained in his official proclamation, Austin, Texas, September 28, 1929, declaring Martial Law in the Territory defined as Hutchinson County, Texas, I hereby assume command of the Territory affected by said proclamation and of all National Guard troops and State Rangers therein situated.

2. In pursuance of the proclamation and the orders of the Governor of Texas and commander-in-chief of the military forces of the State of Texas, suspending certain officers therein named, I assume the administration and the enforcement of the Civil Laws in the Territory affected by Martial Law.

3. The following assignments of officers for duty in the Military District of Hutchinson County are announced:

Captain John W. Naylor, TNG, 124th Cavalry.,—Executive Officer.

Captain Fred W. Edmiston, TNG, S-1, Headquarters, 56th Cavalry. Brig.,—Adjutant.

Colonel Louis S. Davidson, TNG, C. O. 124th Cavalry,—Provost Marshal.

Major Clarence E. Parker, TNG, C. 0., 2nd Sq., 112th Cavalry, Assistant

Provost Marshal.

Major Harry H. Johnson, TNG, C. O., 2nd Sq., 124th Cavalry, Assistant Provost Marshal.

Captain McCord McIntire, TNG, S-1, Headquarters, 112th Cavalry,—Adjutant to Provost Marshal.

Lieutenant Colonel Taylor Nichols, TNG, AG's Department,—Quartermaster and Finance Officer.

4. All other officers are assigned to duty with the Provost Marshal.

5. All Captains of State Ranger Companies on duty in the military district will report to the commanding general at once.

6. Colonel Oscar E. Roberts, 143rd Infantry, TNG,—Judge Advocate. Colonel Roberts will report to the commanding general for instructions.

JACOB F. WOLTERS

Brigadier General, T.N.G.

GENERAL ORDER NO. 2.

1. The Governor of Texas and commander-in-chief of the military forces of the State of Texas, has issued the proclamation and orders:

2. The Provost Marshal will take charge of the sheriff's office and the jail of Hutchinson County; the police department; the constable's office, the city jail and the office of the city judge and all personal property thereto appertaining with all prisoners in said city jail, including all records, books and papers, making and preserving a careful inventory thereof, of the city of Borger.

3. The Provost Marshal will police the County of Hutchinson and the city of Borger and direct the enforcement of all laws. Persons charged with the violation of State laws will be complained against, and submitted for trial in the civil court of competent jurisdiction and all persons charged with the violation of ordinances of the city of Borger will be tried by the Provost Marshal. All fines collected by the Provost Marshal will be strictly accounted for and deposited each day in a special account in a bank in the city of Borger. The sheriff, all deputy sheriffs, constable and his deputies, the commissioner and or chief of police and all police officers and or detectives of the city of Borger will be disarmed, and will not be permitted on the places in uniform or wearing any insignia or symbol of office.

4. The Provost Marshal will serve a copy of this order on Joe Ownbey, sheriff of Hutchinson County; on Walter Broomhall, justice of the peace; Mr. Mitchell, constable; on the mayor and each of the city commissioners; on the commissioner of police and or chief of police J. W. Crabtree, the city attorney; on Glen R. Pace, who by virtue of his office of mayor performs the duty of city judge. The Provost Marshal will disarm each and every one of said officers and each and every deputy sheriff and each and every deputy constable of Constable Mitchell and each and every police officer and other persons claiming the right to carry arms under any commission or authority whatsoever under the city authorities of the city of Borger. The Provost Marshal will without delay proceed to enforce same, calling on the commanding general for the assistance

of such State Rangers as he may deem necessary.

By Command of Brigadier General WOLTERS.

JOHN W. NAYLOR,

Captain, Cavalry., TNG, Executive Officer.

OFFICIAL:

FRED W. EDMISTON,

Captain, Cavalry., TNG, Adjutant.

GENERAL ORDER NO. 3.

1. The proclamation of the Governor of Texas in declaring Martial Law in Hutchinson County and ordering National Guard troops into said county does not supersede or suspend the Constitution and or the statute laws of Texas, but does recognize that the enforcement of the laws of the State of Texas by the peace officers of Hutchinson County and the city of Borger have been inoperative or powerless by existing conditions. The purpose of declaring the Martial Law and the suspension of all officers of the county of Hutchinson and the city of Borger who have any relation with the enforcement of the criminal laws of this State and in placing the control of said Hutchinson County and city of Borger in the hands of National Guard troops is to reestablish the Constitutional and civil government and to reestablish law and order in said county and city. The mission of the military authorities acting under the civil authority, that is to say the Governor of Texas, who under the Constitution is the chief Magistrate charged with the responsibility of law, maintaining the

sovereignty of the State and the majesty of the Civil Law, to arrest all persons who prior to the date of the issuance of the proclamation by the Governor declaring Martial Law and during the occupancy of the affected Territory, under Martial Law and present such law violators to the civil courts for trial. In the accomplishment of this mission it is not the purpose of the military authorities to any way interfere with the orderly procedure of commerce and industry. All places of business except as may from time to time be provided, will be kept open as usual and all persons are enjoined to continue their customary occupation. The cooperation of all law abiding and law respecting citizens of Hutchinson County and of the city of Borger is requested to the end that the military authorities may without unnecessary delay successfully accomplish their mission and restore Hutchinson County to civil authorities, who will faithfully and conscientiously enforce the criminal laws of the State.

2. The carrying of arms of any character is prohibited.

3. No firearms, ammunition or explosives of any character will be sold, bartered, exchanged or given away within the affected Territory, nor will any such be transported into the Territory affected, except with the permission and under the direction and control of the military authorities.

4. No interference of any kind or character with the military authorities, and this includes the State Rangers, the district attorney and or any person cooperating with and under the direction of the military authorities, and or any person who is ordered to appear before a Military Court of Inquiry or any other

military tribunal or authority, either before or after having given testimony, is prohibited and persons thus offending will be arrested and detained, subject to the orders of the commanding general.

5. All persons coming within the statutory definition—vagrancy—will be arrested and presented to the civil court of competent jurisdiction, and or Military Provost Court for trial.

6. All right of property, of whatever kind, will be held inviolate and will not be disturbed, except as the exigencies of the public welfare may necessitate by direct command of the commanding general, but all houses or buildings where the manufacture and or sale of intoxicating liquors is carried on or permitted to be carried on, and where gambling is carried on, and or permitted to be carried on or where prostitutes habitually reside will be closed by the command of the commanding general. All persons detected in the violation of the laws relating to the subjects referred to herein will be arrested and submitted for trial to the civil court and or military Provost Court of competent jurisdiction and the attorney general of the State of Texas will be furnished with the name of the owner or owners of such buildings with the request to forthwith institute injunction proceedings in the name of the State of Texas against the further use of such buildings, places and or premises for such unlawful purpose.

7. All military officers, soldiers, State Rangers, and other persons on duty with the military authorities will be treated with respect and their orders promptly complied with. Complaints of any alleged misconduct on the part of

any officer, soldier, State Ranger or person under control of military authorities will be promptly reported to the Provost Marshal who will investigate same and the offender, if the complaint is found sustained, be reported to the commanding general for such disciplinary action as circumstances may warrant.

8. Any person who by word spoken, in person and or over the telephone or written or by any act, token or sign, attempts to intimidate, or place in fear or terror of any bodily harm, or injury to the business of any person in the Territory affected by Martial Law will be arrested by military authorities.

9. No officer, soldier, State Ranger or other person under the control of the military authorities is authorized to contract any debt or obligation for and in behalf of the State of Texas, except Lieutenant Colonel Taylor Nichols, Quartermaster and Finance Officer, who is authorized and empowered to make purchases and to contract obligations for and in behalf of the State of Texas.

10. The Provost Marshal will enforce this general order.

By Command of Brigadier General WOLTERS.

JOHN W. NAYLOR,

Captain, Cavalry., TNG, Executive Officer.

OFFICIAL:

FRED W. EDMISTON,

Captain, Cavalry, TNG, Adjutant.

The city judge having been suspended, General Orders No. 4 the city of Borger is requested to the end that the military authorities was issued.

GENERAL ORDER NO. 4.

1. Captain McCord McIntire, S-1, Headquarters, 112th Cavalry., TNG, in addition to his other duties is detailed as provost judge of the city of Borger, Texas, with full authority to try such cases as may legally come before him under the provisions of paragraph 3, General Orders No. 2, these headquarters, c. s.

By Command of Brigadier General WOLTERS.

N. W. NAYLOR,

Captain, Cavalry., TNG, Executive Officer.

OFFICIAL

FRED W. EDMISTON,

Captain, Cavalry, TNG, Adjutant.

After arriving at Borger it was discovered that two constable's precincts covered the town. This was not known to the Governor at the time he issued his proclamation suspending the constable, and therefore, as commanding general, I issued General Order No. 5, suspending the other constable.

GENERAL ORDER NO. 5.

1. Acting under the Governor's proclamation, Constable Cummings, and all his deputies are hereby suspended and will not appear upon the streets or in public places in uniform or wearing any insignia or symbol of office.

2. Provost marshal will take charge of the office of Constable

Cummings and all personal property thereto appertaining including all records, books and papers, making and preserving a careful inventory thereof.

3. The Provost Marshal will enforce this order.

By Command of Brigadier General WOLTERS.

JOHN W. NAYLOR,

Captain, Cavalry., TNG, Executive Officer.

OFFICIAL:

FRED W. EDMISTON,

Captain, Cavalry, TNG, Adjutant.

Immediately after reaching Borger, and having established headquarters at the city hall, by special order, a military board of inquiry was created consisting of Colonel O. E. Roberts, C. O. 143d Infantry, as President, Colonel Louis S. Davidson, and Major H. H. Johnson, as members. This board of inquiry was directed to inquire into the law violations in Hutchinson County. Assistant Attorney General Paul D. Page, Jr., Judge H. M. Hood, District Attorney Clem Calhoun, County Attorney Henry Meyers, Ranger Captains Hamer and Hickman were requested to sit with this board. The court employed competent court reporters to record the testimony. Rangers were detailed to serve subpoenas on witnesses issued by the Provost Marshal, at the request of the President of the board.

The oath prescribed by a Texas statute to be administered to a witness appearing before a civil court of inquiry was administered to each witness. Aside from providing that the witness

was to tell the truth and nothing but the truth, is also bound the witness not to reveal anything that transpired before the board of inquiry.

Before this court during the entire period of Martial Law many witnesses were brought, and all of their testimony recorded in answer and question form, transcribed by the reporter and a copy furnished the district attorney, and copies retained by the military commander and for the Adjutant General's archives. Many witnesses were heard. The court sat during long hours, the first session lasting fourteen hours without interruption. Many interesting facts were developed. However, notwithstanding that the county of Hutchinson and the city of Borger were under Martial Law it soon became evident that persons good, bad, or indifferent, still were afraid to talk. I began to realize what the trouble was. The sheriff, the mayor, and the suspended commissioner of police were not appearing in public. In fact, after testifying before the board of inquiry during its first and second session they were out of the county; but the principal law violators, well known characters in the town, were still walking the streets. The investigation, as far as it had progressed October 4, resulted in the filing of complaints before the civil authorities charging a number of these persons with the violations of State laws, and in some instances, Federal laws. These complaints were filed and then I caused to be issued the following General Order No. 6.

> *1. Persons who are part of organized and entrenched criminal "ring" declared by the Governor of Texas in his proclamation of September 28, 1929, to exist in the city of Borger and in Hutchinson County, who are arrested on charges filed in the civil courts of the violation of the law, will be detained in custody until the "organized and entrenched criminal ring" has been*

suppressed and obedience to law has been restored.

2. The Provost Marshal will enforce this order.

By Command of Brigadier General WOLTERS.

JOHN W. NAYLOR,

Captain, Cavalry, TNG, Executive Officer,

OFFICIAL:

FRED W. EDMISTON,

Captain, Cavalry, TNG, Adjutant.

Between the date of the issuance of General Order No. 6, and October 10, seventeen persons, men and women, were confined and detained in jail under the provision of General Order No. 6.

A number of these persons applied for a writ of habeas corpus as is fully set out in Section V of Chapter I of this volume to which reference is here made for the proceedings that followed.

I have since learned that after District Judge E. J. Pickens remanded the relators in the habeas corpus proceedings on October 10 to my custody, the United States District Judge of the district was approached but he declined to take any action that would tend to interfere with the administration of Martial Law.

On Saturday, October 5, I was called upon by a committee composed of three citizens asking what was necessary to lift Martial Law. I promptly replied, “The resignation of the sheriff and all of his deputies, the resignation of the two constables and their deputies, the resignation of

the mayor, and the commission, and of all members of the police department, and the replacement of these officers by men satisfactory to District Attorney Clem Calhoun."

This was the day after General Order No. 6 had been issued. The Sunday following the habeas corpus proceedings before Judge Pickens, attorneys for the sheriff and the mayor sought a conference with District Attorney Calhoun with reference to these officers and the others involved, resigning. The conference did not result in definite action because Calhoun declined to accept any terms except unconditional resignation, and the carrying out, on the part of the city commission of the plan which will be later related. On the next morning, however, Monday, October 14, the district court convened at Stinnett with Judge Pickens presiding. The grand jury heretofore referred to convened and was organized by the court. Judge Pickens submitted to the grand jury a charge fully covering the situation in Borger and Hutchinson County. It was a clear ringing demand for the investigation of law violations and the presentment of all persons whether of high or humble station, whether in official position, or in private life. I regret that the judge did not have the court reporter take this charge, for it was worth preserving. The grand jury retired to their quarters in the Stinnett court house. Immediately thereafter, attorneys for the sheriff and mayor asked for a conference. The conference was held in the private chambers of District Judge E. J. Pickens. Present, aside from myself: Judge E. S. Pickens, District Attorney Clem Calhoun, County Judge Hood, Colonel 0. E. Roberts, Colonel Louis S. Davidson, Captain, now Major, John W. Naylor, the sheriff, the mayor, and their attorney, Major Simpson, of Amarillo. The mayor inquired if the sheriff, he, and the commissioners and the constables resigned, how long thereafter until Martial Law would be lifted. My reply was that such a decision must be made by the Governor of Texas. The sheriff then asked if he resigned whether I

would undertake to hold him under General Order No. 6. I told him that I would not undertake to hold him or any of the other officers who resigned under General Order No. 6, as being out of office I would regard them harmless unless by overt acts they undertook to interfere with the administration of Martial Law. Thereupon the sheriff promptly handed his resignation to Mr. Calhoun who passed it on to Judge Hood who presided over the commissioners' court, to whom the sheriff, under the law, must resign. The mayor then offered his resignation. In the city charter there is a provision that if the mayor and/or a commissioner resigned, the two remaining members of the council can fill the vacancy. It was decided that the city council meet, that the mayor tender his resignation; that thereupon the two remaining commissioners fill first the vacancy thus caused, by electing a citizen to be named by Calhoun, as commissioner and that then the two remaining old commissioners would elect this new commissioner the mayor. That then the other commissioners, each in turn, would resign, and the remaining one, with the new mayor and commissioners fill that vacancy, and that then the last remaining one would resign and his vacancy would be filled by the new mayor and commissioner. The mayor readily agreed to this, but he found that one of his commissioners was out of Hutchinson County, some 200 miles away. He immediately went after this commissioner, and on Wednesday, October 17, the city council met with the city secretary present. The mayor tendered his resignation as mayor and commissioner. This resignation was accepted and recorded on the minutes. Thereupon Calhoun presented to the two remaining commissioners, Mr. W. A. Henderson, a citizen of Borger, to fill the vacancy caused in the office of commissioner by the resignation of the mayor-commissioner. This was accomplished. Thereupon Mr. Henderson took the oath of office of commissioner. On

the recommendation of Mr. Calhoun, Mr. Henderson was then elected mayor. This action was duly recorded on the minutes and he took the oath of mayor.

Thereupon, the police commissioner tendered his resignation which was accepted by the vote of the new mayor-commissioner and the remaining commissioner. This proceeding was duly recorded on the minutes and then, on recommendation of Mr. Calhoun, Mr. Dyke Cullum, a citizen of Borger, was elected commissioner. This action being recorded, Mr. Cullum took the oath of office, and then the remaining member of the old commission tendered his resignation which was accepted, and the fact recorded. In selecting citizens to take the office of mayor and commissioner, Calhoun and I had numerous conferences with substantial, law-abiding citizens who lived in the town of Borger, and others who lived in its vicinity and who had interest in the town. We were concerned about the procurement of real honest-to-God he-men who were clean, capable and honest. We had drafted—and that term is right—Messrs. Henderson and Cullum, both of whom were highly connected by family tradition and in business circles in Texas. We kept open the third place until the following day when finally Calhoun decided on Mr. Moe Steinberg, a merchant; and he was elected to fill the third place.

In the meantime we were in conference with Judge Hood and the commissioners court with reference to the election of a sheriff and tax collector, for the two offices in Hutchinson County are combined. As sheriff, a bond of $5,000 was required, and as tax collector, a bond of $175,000. We finally decided on State Ranger C. O. Moore. This gentleman has served six years as sheriff of Falls County, Texas, and made an enviable record: After that he had enlisted in the Ranger force, and as a State Ranger had gained a reputation for probity, intelligence, and courage. The State Statutes seem to provide that the sheriff must have resided in a county for six

months before he is eligible to hold office. However, the Constitution of the State merely specifies that he must reside in the county. Colonel Roberts, after investigating the question rendered an opinion that the Constitution controlled, and not the statute, and that the Legislature had no power to take from or add to, the qualifications of a sheriff. The commissioners' court had on retainer a well known law firm at Amarillo, and they submitted the question to them. This firm concurred in Colonel Roberts' view, and added that no one could bring suit to remove the sheriff on the ground of disqualification except the attorney general, district attorney, or county attorney, and that it was in their respective discretion whether such suit be brought. It was certain that none of these officials would take such a step. The commission elected Ranger Moore, his wife immediately joining him at Stinnett. The newly appointed sheriff then announced to the court that he would not be a candidate for election and would retire upon the expiration of the unexpired term for which the court had elected him. He made this statement in order that he might remain entirely free from any political alliances. The Governor agreed Ranger Moore be granted a leave from the Ranger force for the period of time he served as sheriff.

We had now placed the sheriff's office into competent hands. We had taken the city government out of the hands of the ring and restored it to the law respecting people. The next problem was the procurement of a chief of police. It was not deemed desirable to select any man, no matter how good his record might be, who resided in Borger, Hutchinson County, or anywhere in the Panhandle of Texas.

You who have read this chapter so far, will recall that when we left Mexia in 1922, the city council of that city had appointed Albert Mace, the former sheriff of Lampasas County, and an ex-Ranger, chief of police. Captain Hamer suggested that probably Mr. Mace was fed up on

being chief of police of so quiet and orderly a city as Mexia had developed into. Then occurred one of those things which I want to relate as nearly as I can because I think it is worth while. Remember that Borger is approximately 500 miles northwest of Mexia. To Albert Mace, chief of police at Mexia, Borger might as well have been in a distant State, so far has having any interest in it. I called Mr. Mace over the telephone. Then the following conversation took place as near as I can recall it:

"Mr. Mace, Texas needs you as chief of police of Borger. I want you to come up and take the job."

"Where is Borger?" came back Mace's voice over the 500 miles of wire.

"It is fifty-six miles northeast of Amarillo," I replied.

"How do I get there?" queried Mr. Mace.

I gave him the necessary instructions, and the next morning he showed up at military headquarters in Borger. We proceeded to discuss the situation. I asked him how Mrs. Mace felt about moving to Borger. He said that she of course would regret leaving friends in Mexia, but she realized that he had made law enforcement his career, and that wherever he could best serve, there she was willing to go. In a few minutes the new city council convened. I presented Mr. Mace to them. The mayor told them they wished him to take the place of chief of police. He asked but two questions. One was, "How many policemen will we have in the department?" He was told by the mayor that was left to his judgment. He asked who would select the policemen. He was told that he would, and that there would be no interference in that respect, and that the council would hold him responsible for the security of the city and enforcement of the law. He lifted up his right hand and said, "I am ready to take the oath." The mayor administered it; he

signed the printed form presented to him, and Borger had for the first time during its hectic career, a real law-abiding, law-loving chief of police. After further consideration he decided that he would need five policemen. He selected one, a special agent for an oil company but who had never been officially connected with Hutchinson County or Borger. His probity and ability were vouched for by good citizens as well as Texas Rangers. The four others he had selected from distant points over Texas; one 760 miles away, in Houston. During all this time Mace had said nothing about compensation. When finally the mayor asked what about that, his reply was, "You gentlemen will fix that, and I will be satisfied."

In the meantime the newly appointed sheriff telephoned to two ex-Rangers, each living far away from Borger, and who had positions with good salaries with industrial concerns. On the sheriff's appeal, each of these men promptly resigned and became deputies under Sheriff Moore. In the meantime the constable had resigned. The justice of the peace had resigned within twenty-four hours after our arrival at Borger. The commissioners' court filled these offices with competent and good citizens.

Going back now to the administration of Martial Law. Many things were going on while these things which I have heretofore discussed were moving across the stage. The Texas Rangers and the military officers and soldiers were busy. Raid after raid brought to the surface evidence of the places that had been used as liquor dives. Stills and whiskey and beer were captured. Men and women were arrested, charged with vagrancy and misdemeanors and offenses. During the first six hours of our stay in Borger the military police, that is, the soldiers patrolling the streets arrested ten drunk persons. On the third day, after diligent search, not a drunk could be found by the Rangers and soldiers in Borger. The provost judge was functioning. Prostitutes who appeared

before him were fined $100 as vagrants. Hundreds of these had left Borger since the assassination of Mr. Holmes and the arrival of the Rangers in the town. Many others left when it became apparent that Martial Law would follow. Quoting again from a staff correspondent of one of the leading dailies of Texas: “All of the riff-raff of former days will not be arrested, however. Many are wise enough to keep a step ahead of military rule, and they deserted Borger over the weekend like rats running from a sinking ship.” . . . “The exodus continued throughout Sunday night. Caravans of cars loaded with household effects and personal belongings are reported to have passed at the south end of Main Street as late as two or three o’clock Monday morning.” . . . “Many left during Sunday. Cars traveling in the direction of Panhandle were loaded with whatever the deserters could take with them, and some of the cars pulled loaded trailers. A few families are said to have left Stinnett.” . . . “Hotels and rooming houses at Pampa, Panhandle, Plemmons, LeFors, Pantex, and other towns in this vicinity were said to be overflowing and many had taken tents and set them up on the prairies in the vicinity of some of these places, being unable to find living quarters.” News items appearing in the daily papers of Texas on Monday, September 30, from Amarillo, were to the effect that a series of filling station robberies and hijacking the previous night, in the brief space of thirty minutes between 9 and 9:30 o’clock gave Amarillo police the busiest night they had in years.

General Order No. 1, and Special Order No.1 issued by the Provost Marshal will furnish interesting instruction as to the mechanical set-up of a military force operating under Martial Law:

HEADQUARTERS PROVOST MARSHAL
MILITARY DISTRICT, HUTCHINSON COUNTY
Borger, Texas, September 30, 1929.
GENERAL ORDER NO. 1.

1. Complying with instructions from Headquarters Military District, Hutchinson County, Texas, the office of the Provost Marshal is hereby established: the following orders and regulations will be complied with:

1. ADMINISTRATION.

a. (1) 1st Sergeant R. E. Cohn, Medical Department Det. 112th Cavalry, is designated Sergeant Major, Office of the Adjutant.

(2) 1st. Sergeant Walter Moore, Troop "A" 112th Cavalry, is assigned personnel sergeant, and in addition 3 enlisted men will be assigned to detail as clerks in the office of the adjutant.

2. PROVOST GUARD.

(1) Sergeant G. W. Hughes, Troop "E" 112th Cavalry, is hereby designated provost sergeant.

(2) Staff Sergeant Wilkins, Headquarters Troop 112th Cavalry, and Staff Sergeant Welch, Headquarters Troop 112th Cavalry, are hereby designated assistant provost sergeants.

b. The Commanding Officer of the 1st Provs. Troop will furnish for patrol duty two details of nine and sixteen men each, known as the morning and night shifts, respectively, to patrol the streets of Borger, in pairs, armed with pistol and night sticks.

(1) These shifts shall report at provost headquarters at 8 a.m. and 8 p.m. respectively and will be organized into patrol shifts.

3. REPORTS.

a. Morning reports of the 1st Provs. Troop and the Medical Department Det. M. D. will be submitted to these headquarters at 8 a.m. daily.

b. Daily sanitary reports will be submitted to these headquarters not later than noon each day by the station surgeon.

4. UNIFORM.

a. The following uniform will be worn by this command:

(1) Woolen 0 D shirt—Service Hat and Woolen breeches.

(2) Woolen 0 D coat—Service Hat—Woolen breeches and Garrison belt.

(3) Cravats will habitually be worn. The ends of the cravat shall be tucked under the shirt between the collar and the next lower button.

5. EQUIPMENT.

a. All enlisted men, when appearing on the street will wear their cartridge belts, magazine pockets, etc., complete.

6. VISITS TO PRISONERS.

a. (1) Visitors will be allowed, upon presentation of proper authority to visit relatives confined in the county jail, Stinnett, Texas, on Mondays and Thursdays of each week between the hours of 9 a.m. to 12 noon and 2 p.m. to 4 p.m.

7. FRATERNIZING.

a. All members of this command are prohibited from fraternizing with citizens of Borger. The men will at all times be courteous, polite, and considerate of the sentiments of the citizenry of Borger, but will always abstain from social contacts or obligations except as will or may be authorized by the commanding officer of the 1st Provisional Troop.

By Order of Colonel L. S. DAVIDSON.

McCORD McINTIRE,

Captain, 112th Cavalry, Adjutant.

OFFICIAL:

McCORD McINTIRE,

Captain, 112th Cavalry, Adjutant.

HEADQUARTERS PROVOST MARSHAL
MILITARY DISTRICT, HUTCHINSON COUNTY
Borger, Texas, September 30, 1929.
EXHIBIT E
SPECIAL ORDER NO. 1.
SPECIAL INSTRUCTIONS OFFICER OF THE DAY AND PROVOST GUARD

1. a. Provost guard will be under the command of the officer of the day. He will be responsible to the commanding officer for the control and conduct of the provost guard, all prisoners, enforcement of all rules and regulations relative to jail records, sanitation and regulation of the jail.

b. The officer of the day will inspect the shifts coming on at 8 a.m. and 4 p.m., being careful. at all times that patrolmen are properly uniformed, clean, and of good appearance. He will instruct all patrolmen and sentries of the

provost guard in their respective duties and will check each relief as to its knowledge of any special orders or instructions for that particular beat.

c. The officer of the day will make personal check of the prisoners at 6 a.m. and 6 p.m. daily and will verify the count against the blotter. He will personally inspect the jail once daily as to cleanliness and sanitation.

2. a. The provost sergeant will be in charge of the records kept at the desk; he will be responsible that all entries made on the blotter are complete; that the prisoners shown on the blotter are released only by the proper authority, which authority is the Provost Marshal's. He is responsible for the control of cars assigned to these headquarters and the conduct of drivers of these cars. These cars will be kept in the provost motor pool and an accurate check will be kept at all times of the whereabouts and usage of all motor vehicles assigned to the pool.

b. The provost sergeant will be responsible to the officer of the day for the proper functioning of the provost guard and the enforcement of all regulations and instructions for the guard.

3. Instructions and regulations for the provost guard.

a. The guard will be responsible for all guard property carried on the Guard Book.

b. Patrolmen equipped with night sticks will also be equipped with pistols, belts, magazine pockets, and lanyards, and will carry the pistol in the holster with the flap buttoned down.

c. Patrolmen carrying shotguns will habitually carry them with the chamber empty, but with the magazine loaded so that the gun can be properly used with one operation of the slide.

d. One turnkey will be detailed from each provost guard relief, and he will at all times be in charge of the jail door. He will allow no one to enter the jail nor interview any prisoner without proper authority. He will allow no one to enter the jail armed, but will disarm all persons before allowing them to enter the jail.

e. In case of fire in the city of Borger, three members of the provost guard will accompany the fire department, and upon reaching the scene of the fire, will enforce police regulations, establish fire lanes, regulate traffic, and by controlling crowds, facilitate the work of the fire department.

f. One sentry will guard the rear of the city hall from 8 a.m. to 8 p.m., and from 8 p.m. to 8 a.m., two sentries will be detailed to this post. Special Orders of this post will be: "To allow no one to communicate with the prisoners in the city jail nor to loiter in the vicinity."

g. During sessions of court members of the provost guard not actually on duty in the court room will remain in the provost guard quarters.

h. The Guard Book will be kept posted up to date by the provost sergeant and will be signed by the old officer of the day and the provost sergeant, and be turned over to the new officer of the day upon the changing of the guard. All guard property will be checked personally by the old and new officers of the

day.

i. The commanding officer of the First Provisional Troop will furnish for patrol duty two details of nine and sixteen men each, known as the morning and night shifts, respectively. These shifts will report at provost headquarters at 8 a.m. and 8 p.m., respectively. Patrol shifts will be organized as follows:

No. 1 Shift (8 A M. to 12 a.m.) 1 patrol—2 men each.

No. 2 Shift (12 Noon to 6 p.m.) 1 patrol—2 men each.

No. 3 Shift (6 p.m. to 8 p.m.) 1 patrol—2 men each.

NIGHT SHIFT

No. 1 Shift (8 p.m. to 12 p.m.) 3 patrols—2 men each.

No. 2 Shift (12 p.m. to 6 a.m.) 2 patrols—2 men each.

No. 3 Shift (6 a.m. to 8 a.m.) 2 patrols—2 men each.

j. The jail will be swept daily, creosote will be sprinkled after each sweeping and a small quantity poured into the commode. The jail will be mopped three times per week. Drains will be kept open at all times.

4. Prisoners.

a. Prisoners will be permitted to bathe in the cook's quarters in the jail while under guard under the direction of the Provost Sergeant.

b. Work will be assigned to prisoners in the following priority:

[1] General police, removal of trash, garbage.

[2] Sanitation, area First Provs. Troop.

[3] General vicinity of city hall.

[4] City of Borger.

c. Prisoners on fatigue will be fed at 7:30 a.m., 12 Noon, and 5:30 p.m.

d. Prisoners on fatigue will work from 8 a.m. to 12 Noon, from 1 p.m. to 5 p.m.

By Order of Colonel L. S. DAVIDSON.

McCORD McINTIRE,

Captain, 112th Cavalry, Adjutant.

OFFICIAL:

McCORD McINTIRE,

Captain, 112th, Cavalry, TNG, Adjutant.

SPECIAL ORDER NO. 3

1. Captain Frank Hamer and/or Captain Tom R. Hickman and/or any Ranger on duty in the Military District of Hutchinson County are hereby ordered to close all premises operated as pool halls in the military district, and to arrest persons owning and operating said pool halls and all persons found on the premises.

By Order of Colonel L. S. DAVIDSON

McCORD McINTIRE

Captain, 112th, Cavalry, TNG, Adjutant

OFFICIAL:

McCORD McINTIRE

Captain, 112th Cavalry, TNG, Adjutant

Special Order No. 4, Provost Marshal, is one of a hundred and more orders issued for the search of premises:

HEADQUARTERS PROVOST MARSHAL
MILITARY DISTRICT, HUTCHINSON COUNTY
Borger, Texas, October 2, 1929.
SPECIAL ORDER NO. 4.

1. Captain Frank Hamer and/or Captain Tom R. Hickman and/or any Ranger on duty in the Military District of Hutchinson County are hereby ordered to search the premises belonging or occupied by _____ and/or located at _____ for evidence of violation of law and of existing military orders, reporting the result of their search to the Provost Marshal.

By Order of Colonel L. S. DAVIDSON.

McCORD McINTIRE,

Captain, 112th, Cavalry, TNG, Adjutant.

OFFICIAL:

McCORD McINTIRE,

Captain, 112th Cavalry, TNG, Adjutant.

Special Order No. 7, Provost Marshal, is one of more than a hundred such orders issued summoning persons to appear as witnesses before the Board of Inquiry.

HEADQUARTERS PROVOST MARSHAL
MILITARY DISTRICT, HUTCHINSON COUNTY
Borger, Texas, October 2, 1929.
SPECIAL ORDER NO. 7.

1. Captain Frank Hamer and/or Captain Tom R. Hickman and/or any Ranger on duty in the Military District of Hutchinson County are hereby ordered to summon _____ wherever she may be found in this district and cause her to appear instanter before a Board of Inquiry now in session at the Black Hotel, Borger, Texas, also to make return on this process.

By Order of Colonel L. S. DAVIDSON.

McCORD McINTIRE,

Captain, 112th Cavalry, Adjutant.

OFFICIAL:

McCORD McINTIRE,

Captain, 112th Cavalry, Adjutant.

The sanitary conditions at Borger were not good. Although there was a city health department, and a garbage department, rather expensively operated, neither paid much attention to their respective duties. Sanitary laws were not generally complied with. The Provost Marshal, who was responsible for the enforcement of all laws, detailed the medical officer to this duty. The following report speaks for itself:

MILITARY DISTRICT, HUTCHINSON COUNTY
Borger, Texas, October 17, 1929.
SANITARY REPORT
EXHIBIT D

SUBJECT: Consolidated Final Report, Period Ending Oct. 17, 1929.

TO: Provost Marshal.

1. General sanitary condition of quarters at Borger and Stinnett have been good during Martial Law occupation. In both places there has been continued improvement since arrival of troops. Barracks at Legion Hall have been completely screened and the area around hall has been cleaned of trash and rubbish. The hall has been completely renovated too. Both the inside and outside of Legion Hall was in bad condition when taken over as barracks by the troops.

2. County jail at Stinnett has been in excellent condition at all times. Jail at Borger in fair condition. Drainage in city jail, Borger, is poor.

3. A daily sanitary inspection has been made of all cafes on Main and nearby streets. In many instances these cafes, especially the kitchens were found to be in very bad sanitary conditions. Inspection has caused continued improvement since arrival of troops. Nearly all cafes in excellent condition at present.

4. Streets and alleys have been inspected daily with much progress and improvement being noted.

a. Many outhouses have been condemned and locked up. Some have been

moved off old cesspools to new locations, old cesspools being filled up and limed.

b. Garbage which in many instances stood in barrels or GI cans for several days is now being hauled daily.

c. Generally, all garbage cans were uncovered, causing many flies. All garbage cans are now being covered.

d. While dry trash and rubbish has not been stressed as being unsanitary on vacant lots, many of these lots have been cleaned up and show much improvement.

5. Inspection of kitchen and food has been made daily. All fresh meat has been inspected.

6. Rations have been well balanced with one or two exceptions. Food has been well prepared and wholesome.

7. Report from State laboratories, Austin, on water from both Borger and Stinnett sent in for analysis has been received and shows as satisfactory.

8. General health of command. Light flu and colds predominated conditions. Few hospital cases and not many men quartered.

a. Sick Book shows men quartered during period. 14

b. Sick Book shows men hospitalized during period. 1

c. Sick Book shows officers hospitalized during period. 1

d. One enlisted man, Sergeant Cadena, released from duty and returned to home station on account of physical condition.

e. One enlisted man in hospital this date with improved condition prevailing, probable dismissal today. Will be able to travel to home station with troops.

9. Cooperation and general attitude of citizens of city as to sanitary work and cleaning up has been excellent. Many complaints as to unsanitary conditions have been telephoned in with requests to make investigation. All such requests have been complied with. Most businessmen seem well pleased with sanitary work which has been done in city and many complimentary statements have been received by sanitary inspector while on tour of duty.

CHARLES R. WILLIAMS, Captain, M. C.,

Medical Department Det. 112th Cavalry

In the meantime many of the minor characters in the underworld and including some members of the city administration were given sundown orders. Sundown orders are issued in this manner. As a result of raids headquarters is filled with underworld characters. In the course of the investigation it develops that certain persons, male and female, are merely the touts, pimps, and petty larceny types of the underworld. They are undesirable. They are parasites on the decent community. Racketeers and real criminals use them as a part of their gangs. Such characters were told that they could take a choice between going before the provost judge on a charge of vagrancy or leaving Texas. When they took the choice to leave, which they always did, this constituted a Sun Down order. They left Texas on the next bus or train out. Among those to whom I handed a Sun Down order was a notorious gunmen by the name of John Northcutt. He was in Borger pursuing no occupation. He was merely hanging around. He was a bad man to

have around. I gave him his choice of a trial for vagrancy before the provost judge or a sundown order. He took the latter. Two weeks later he was killed at Wink, another oilfield town, by a man whose life it was said he had threatened.

Persons who were brought before the provost judge who were tried and found guilty, and could not pay their fines were worked, under soldier guards on public works such as cleaning streets, gutter, etc., for a period of eight hours each day. We treated all prisoners humanely. We fed them plenty of good wholesome food. Those who were still serving time when we left were released, but with sun down orders.

As heretofore stated, we took charge of the county jail where there were confined a number of prisoners charged with various offenses against the criminal laws of the State. We took over these prisoners. Ranger Sergeant J. B. Wheatley was placed on duty at the jail to aid the military detachment maintained there. In this jail were also confined prisoners detained under General Order No. 6. Before our departure the regular prisoners, as well as the General Orders No. 6 prisoners made it manifest that they had been well treated by the soldiers on duty at the jail.

The manufacture of moonshine liquor, from the physical evidences found, was a thriving industry conducted in the various canyons in Hutchinson County, particularly in the vicinity of Borger. These operations were usually carried on underground. What appeared to be a storm-cellar showed on the surface. A close investigation developed that a tight-fitting door in the walls of these cellars lead into tunnels and excavated chambers. They all showed evidence of having been used for the purpose of distilling liquor. In some instances, stills and liquor were found and the operators arrested; but in most instances the operators had fled. These underground chambers

were well constructed and sometimes located under gardens. A vent permitted the gas fumes to escape and while not in use these were covered by turf. The method of discovery used was information developed through the court of inquiry, or through an informant, that such a plant existed at such and such premises. The soldiers, equipped with sharp pointed iron rods, would punch the ground, and finally would strike the sheet iron roof; or they would lead to the underground chambers through the storm cellars.

Notwithstanding the existence of Martial Law and the presence of Rangers and troops, several bootleggers, men and women, were hardy enough to carry on their vocations on the main streets of Borger. Those detected were arrested, since indicted, and are now in the penitentiary. The arrest of one of these characters, in a building on the main street of Borger, while serving liquor to a guest lead to the investigation of an alleged suicide, in the same place sometime prior to the advent of Martial Law, and the resultant indictment of this man for the murder of the alleged suicide victim. This man is one of those referred to as already convicted and in the penitentiary on the liquor charge.

Of course I have only touched the highlights of those things that occurred during the administration of Martial Law in Hutchinson County. It was a strenuous job with plenty of variations to make it interesting.

But back to October 17. The entrenched criminal ring that had prompted the Governor to issue the proclamation hereinbefore set out, and send us to Borger and to Hutchinson County, had been destroyed. In the place of those who have misused official responsibility and power there are now installed capable, honest officials. The leading offenders were in jail; the grand jury was in session investigating the charges against them; the civil power was once

more restored through Martial Law administered by the Governor, the Chief Civil Magistrate of the State, through his military arm, and our mission, accomplished, was at an end.

Late on the afternoon of October 18, [1929] after a stay of nineteen days in Hutchinson County, the military detachment departed and its members were returned to their respective home stations on October 19, and on the following Monday each individual officer and soldier resumed his civilian job.

The grand jury, before we left, submitted the following special report to the district judge:

IN THE DISTRICT COURT OF HUTCHINSON COUNTY, TEXAS

October, 1929.

State of Texas, County of Hutchinson.

To THE HONORABLE E. J. PICKENS, JUDGE OF SAID COURT:

We, the grand jury, in and for Hutchinson County now in session, submit the following special report:

We approve the action of Governor Dan Moody in declaring Martial Law in Hutchinson County.

We commend the work of the National Guardsmen and officers.

If the detachment of officers and soldiers on duty in Hutchinson County is fairly representative of the officers and soldiers of the Texas National Guard, then in our opinion the people of Texas have a right to be proud of its National Guard.

More particularly do we approve and wish to commend the manner in

which Brigadier General Jacob F. Wolters has administered Martial Law in this county.

We extend to the Governor of Texas, the National Guard officers who have been in charge, our thanks.

(Signed) L. E. BRAIN, Foreman of the Grand Jury.

The Governor expressed his satisfaction at the result.

District Attorney Clem Calhoun, the grand jury, the court, and the petit juries in Hutchinson County have been functioning. Ninety-five felony indictments were returned. Twenty-four persons indicted for various grades of felony, at this term of the court, including fifteen arrests by the military authorities during Martial Law, have been tried, convicted, sentenced and delivered to the State penitentiary. From July, 1927, to October 16, 1929, one murder conviction—a girl—and three liquor convictions wad the record.

Two men concerning whom facts were developed by the court of inquiry have been indicted, charged with the murder of John A. Holmes; numerous others are under indictment and will be tried as speedily as possible so I am informed.

All criminals have not left Borger and Hutchinson County. Since we left, several crimes have been committed including a bank robbery at Stinnet, but the gratifying part of it is that the new sheriff, constable, and police departments have not only made arrests, but in some instances those culprits are already under conviction and sentences.

I think it is due the worth while people of Borger and of Hutchinson County to say something about their town and community. Within a radius of three to five miles around Borger are located twenty-two casinghead gas plants, and two refineries with a daily output of 500,000

gallons of gasoline. After the gasoline is extracted from the natural gas it is converted by carbon black plants into carbon black, the production being 249,000 pounds per day. Natural gas from Borger and vicinity is being piped to the cities of ten states. As this is written pipelines are entering the gates of Chicago to carry Borger natural gas for industrial and domestic use in that city. The people employed in the production department, pipeline department, in the casinghead plants, and refineries, as well as related industries, are as fine a lot of upstanding, hard working Americans as may be found anywhere. There are thousands of fine law abiding men and women in Borger engaged in honest and respectable endeavors. Borger, unlike many other oilfield towns, has a future—a place in the industrial and commercial life of the Panhandle of Texas. Rescued from the grasp of a conscienceless group that at all times composed an organized minority, though burdened with public debts and numerous municipal problems, the least of which are not fiscal, it has become a secure and safe place within which to live. If I may be permitted to indulge in prophecy, then I do prophesy that within the near future citizens of Borger may say with Saul of old, "I am a citizen of no mean city."

IN CONCLUSION

In the administration of Martial Law I have been most fortunate in that Governor W. P. Hobby and his Adjutant General, Brigadier General W. D. Cope, and the assistant Adjutant General, Lieutenant Colonel H. C. Smith, Governor Pat M. Neff and his Adjutant General, Brigadier General Thomas D. Barton, and his assistant Adjutant General, Lieutenant Colonel C. M. Crawford, and Governor Dan Moody and his Adjutant General, Brigadier General Robert L. Robertson, and during the latter's absence from the State attending the National Guard association convention, Lieutenant Colonel Taylor Nichols, assistant and acting Adjutant

General, respectively, supported me whole heartedly. I was assigned a mission and was never at any time told how to perform it. Under such conditions the service, while always unpleasant, is relieved of what might otherwise become an added annoyance.

Like all other military missions, the administration of Martial Law is a one-man job, and the Governor should select an officer in whom he has confidence, and then neither himself interfere with him, nor permit his Adjutant General to do so.

I learned among other things, one valuable lesson at Borger. The members of the underworld are not confined to males alone. Of course there has always been a certain class of women who moved in that realm. But in latter days, women crooks have developed who are chaste and do not belong to the demimonde. Many of them are dangerous. It is important that such women, when arrested, be thoroughly searched for concealed weapons as well as for jail breaking implements, narcotics, etc. Two or more capable women should be employed to make just exactly such searches of women who are arrested by the military authorities.

A careful record must be made of all articles including moneys taken from prisoners, and properly conserved. These should be turned over to the proper civil authorities when the military authorities turn back the district, and receipts obtained.

When stills, liquor, and narcotics are destroyed it should be done in the presence of Federal authorities and civilian witnesses, preferably a district or county attorney, and written statements then and there executed by said witnesses to the effect that they witnessed the destruction. The character of the articles destroyed should be clearly set out and fully described. This of course is done after specimens, required for testimony are retained and turned over to the

proper civil authorities. Unless this is done the military authorities will later hear that they used some of these articles for their own personal use.

Let the military officer assigned to such a duty always remember that he is engaged in a war with insurrectionary forces who are not without support from good but misguided or misinformed citizens. His Governor will have political enemies who will seek to make capital of anything and everything that the military authorities do. There are always in such communities some respectable businessmen who profit greatly from selling to the manufacturer of illicit liquors, beers and wines the commodities out of which the stuff is made, and jars, jugs, and bottles in which it is stored, as well as highly respectable citizens in the community who rent property to rooming house keepers who conduct questionable places, and package drug stores where liquor and Jake is sold. The military authorities must always keep their records accurate and straight so that they may meet any issue that may be raised concerning their conduct during the administration.

My policy has always been to take into my confidence representatives of reputable newspapers and news gathering associations. At fixed hours during each day and night these gentlemen gathered at my headquarters where they were told news and where questions were answered. I always found that when I asked them in the interest of the public service to withhold for the time being any information they may have run into, they have done so. Of course, when the public interest could no longer suffer by publicity they published their stories. I have never had a newspaper reporter betray a confidence I have imposed in him.

The military commander who understands his mission who will follow the law, and who in the performance of acts to accomplish his mission, acts in good faith need not bother himself

about being annoyed by any charges or suits brought against him when Martial Law has been lifted. Follow Davy Crockett's motto: "Be sure you are right; then go ahead."

BY THE PUBLISHER

The 41st Legislature of Texas, at its 4th Called Session, by a unanimous vote, adopted the following concurrent resolution:

"WHEREAS, Military service in time of war when the emotion of patriotism are fully aroused, has always been heralded in song and story, and

"WHEREAS, Military service in times of peace, is no less necessary and difficult, but is often devoid of glory and praise, and

"WHEREAS, Jacob F. Wolters, a veteran of the Spanish-American War, 1918, after the National Guard of Texas had been drafted into the army of the United States for service in the World War, gave his service patriotically and without stint to the organization and training of a brigade of Texas cavalry with the expectancy that such organization would also be drafted into Federal service, and since the signing of the Armistice, has continued to command and to maintain the training and efficiency of this brigade, and

"WHEREAS, Brigadier General Wolters has been called into the Military Service of the State of Texas on several occasions, when such service was both burdensome and unpopular: namely, ordered by Governor W. P. Hobby, in 1919, to Corpus Christi following the great flood there; and again, in 1920, ordered by Governor Hobby to Galveston to maintain peace and order during the Longshoremen's strike; and again, in 1922, ordered by Governor Pat M. Neff to Mexia to combat the lawlessness and disorder which came in the wake of oil discovery in that area; and again, in 1929, ordered by Governor Dan Moody to Borger when the condition of lawlessness and disorder in that city made Martial Law imperative, as viewed by our Governor, and

"WHEREAS, On each of these occasions not only did Brigadier General Wolters restore law and order in these areas, but he employed such tact and diplomacy that peace and harmony prevailed and the citizenship thanked him, and

"WHEREAS, Brigadier General Wolters is in civil life one of the outstanding attorneys of Texas with a large and lucrative practice which has suffered on the occasions of these tours of Military Service, now, therefore,

"BE IT RESOLVED, That the House of Representatives, the Senate concurring, express the gratitude of the State of Texas for the excellent and patriotic service rendered by Brigadier General Wolters on the occasions enumerated above, and that the Chief Clerk of the House of Representatives send Brigadier General Wolters a copy of this resolution.

"BE IT FURTHER RESOLVED that the Adjutant General of the State of Texas be hereby directed to designate and cause to be manufactured an appropriate gold medal, to be paid for from the general fund of that department, and to be presented to Brigadier General Wolters as an expression of the gratitude of this State for such faithful peace time Military Service.

"W. S. BARRON,

"Speaker of the House.

"BARRY MILLER,

"President of the Senate."

I hereby certify that H. C. R. No. 12 was adopted by the House on January 27, 1930, by a viva voce vote.

LOUISE SNOW PHINNEY,
Chief Clerk of the House.

I hereby certify that H. C. R. No. 12 was adopted by the House on January 28, 1930, by a viva voce vote.

BOB BARKER,

Secretary of the Senate.

Received in the Executive Office this 29th day of January A. D. 1930 at 3 o'clock and ___ minutes p.m.

M. L. WIGINTON,

Secretary to the Governor. 1/29/30.

This is deserved and I approve it with much pleasure.

DAN MOODY.