

## HOUSTON RIOT CASES.

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DECEMBER 9, 1921.—Ordered to be printed.

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Mr. KAHN, from the Committee on Military Affairs, submitted the following

### ADVERSE REPORT.

[To accompany H. Res. 226.]

The Committee on Military Affairs, to whom was referred the House resolution (H. Res. 226) requesting the Secretary of War to transmit information to the House of Representatives relative to soldiers of the United States alleged to have been implicated in the riot at Houston, Tex., on the 23d day of August, 1917, having considered the same, report thereon with a recommendation that it do not pass.

The Secretary of War has sent to your committee a long report in which he shows that these cases were repeatedly considered by the clemency board of the Judge Advocate General's office.

There does not seem to be any reason at this time why the cases, or any one of them, should be taken up de novo.

The letter of the Secretary of War is as follows:

DECEMBER 6, 1921.

Hon. JULIUS KAHN,  
*House of Representatives, Washington, D. C.*

MY DEAR CONGRESSMAN: I have the honor to acknowledge receipt of your letter of November 17, 1921, inclosing a copy of a resolution in regard to the Houston riot cases, introduced in the House of Representatives on the 16th instant by Hon. D. R. Anthony, and requesting that I give you a report relative thereto. By this resolution it is proposed that the Secretary of War be requested to transmit to the House of Representatives at the earliest possible moment the following information for the Members of the House:

"Whether the evidence before the court which tried those soldiers of the United States Army who were alleged to have been implicated in the riot at Houston, Tex., on the 23d day of August, 1917, as a result of which 19 were hanged, 62 sent to the United States penitentiary for life, and 5 given sentences of 15 years each, showed the direct participation of all of them in said riot; whether or not it is true that some of these soldiers now under confinement were found guilty merely because they were absent from roll call the evening of the riot; what steps, if any, the War Department has taken or is taking toward the investigation of the justice of the severe penalties inflicted upon these soldiers, together with information as to their conduct, discipline, and behavior during the years they have been in confinement; and what

steps have been taken by the War Department, in view of the large measure of clemency which has been extended in the cases of other military prisoners, to pardon or extend clemency to the men now undergoing severe punishment for alleged participation in said riot."

In reply to your request I beg to submit the following report which contains not only the specific information desired by Mr. Anthony but also a summary of the events leading up to and connected with the trials growing out of the riots at Houston, Tex.

On the night of August 23, 1917, Companies I, K, L, and M, of the Third Battalion, Twenty-fourth Infantry (colored troops), were stationed at Camp Logan, Tex., engaged in guarding the construction work then in progress at that camp. Between 8.30 and 9 o'clock on the date stated, a large number of soldiers, estimated at from 150 to 200, joined in a mutiny against the authority of their commanding officers, forcibly overpowered the guards, broke into the supply tents, and procured rifles and ammunition. They then broke out of camp, and in a column under First Sergt. Henry, of Company I, proceeded toward the city of Houston, murdering 14 persons and severely wounding 8 others. Following the riots an investigation was made by the military authorities, as a result of which 118 persons were held for trial, by general court-martial. These were tried in three groups of 63, 15, and 40 persons, on November 1, 1917, December 17, 1917, and February 18, 1918, respectively. At the first two trials the United States was represented by Col. John A. Hull, Judge Advocate General's Department, as judge advocate, and Maj. Dudley V. Sutphin, Judge Advocate General's Department, as assistant judge advocate, and at the third trial by Maj. Dudley V. Sutphin, as judge advocate, and Maj. Thomas Finley, Judge Advocate General's Department, as assistant judge advocate. In each of the three trials the defendants were represented by Maj. H. S. Grier, of Pennsylvania, inspector general of the Thirty-sixth Division, a lawyer of experience, specially assigned by the Government as counsel for the defendants. The defendants did not employ civilian counsel and did not request the appointment of any other officer to assist in their defense. In fact they voluntarily declined the services of some civilian lawyers tendered to them. Counsel for defendants was provided with clerical assistance in the preparation of the cases for trial and during the trial, and with a transcript of the evidence from day to day as the trials proceeded, without cost to the defendants, and the Government, at its expense, produced upon the trial as witnesses in behalf of the defendants such persons as were designated by them or their counsel.

As a result of the three trials mentioned 7 of the defendants were acquitted, 1 defendant was found, upon examination by a board of medical officers to be insane, and the charges against him were dropped, and each of the 110 other defendants was convicted of one or more of the following offenses: (1) Murder, (2) mutiny, (3) willful disobedience of orders to remain in camp and turn in his arms and ammunition, and (4) assault with intent to murder. The sentences as approved, and, when required by law or general orders, confirmed, were as follows:

To be hanged by the neck until dead, 19.

Dishonorable discharge, total forfeitures, and confinement for life at the United States Penitentiary, Leavenworth, Kans., 63.

Dishonorable discharge, total forfeitures, and confinement for 15 years at the United States penitentiary, Leavenworth, Kans., 5.

Dishonorable discharge, total forfeitures, and confinement for 10 years at the United States Disciplinary Barracks, Fort Leavenworth, Kans., 3.

Dishonorable discharge, total forfeitures, and confinement for 7 years at the United States Disciplinary Barracks, Fort Leavenworth, Kans., 7.

Dishonorable discharge, total forfeitures, and confinement for 2 years and 6 months at the United States Disciplinary Barracks, Fort Leavenworth, Kans., 1.

Dishonorable discharge, total forfeitures, and confinement for 2 years at the United States Disciplinary Barracks, Fort Leavenworth, Kans., 12.

The record of trial in the case of the 63 accused (first group) was examined in the office of the Judge Advocate General, and in a written review dated January 29, 1918, the record was held to be legally sufficient to support the sentences adjudged and approved.

After discussing in detail the evidence relating to the defendants it was stated in the review:

"The evidence of guilt (of those sentenced to death) was overwhelming and stands without explanation or contradiction. If in the commission of crimes so atrocious as the record discloses, if in the commission of cold-blooded wholesale murder, there can be degrees of guilt, these men were most guilty, as they encouraged and organized

the mutiny and raid that resulted in the murders, and were the active figures in the night of terror and bloodshed."

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 "That each of the defendants (those sentenced to life imprisonment) left camp with and as a willing member of the column of soldiers that marched upon the city \* \* \* was established by direct and convincing proof."  
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"The case was well and vigorously prepared and prosecuted and was defended with equal skill and vigor. The rules of procedure governing trials by courts-martial were carefully observed, and the record is singularly free from evidence that is irrelevant and of doubtful competency. The record is lengthy, comprising 2,172 pages, besides 67 exhibits and 63 charge sheets. It has been read and studied with much care and deliberation, because of the very great importance of the case, and the conclusion has been reached that the defendants had a fair and impartial trial; and that the convictions and sentences imposed were authorized by law and fully sustained by the evidence."

The record of trial in the case of the 15 accused (second group, not one of whom is now in confinement) was examined in the office of the Judge Advocate General and was held legally sufficient to support the findings of the court and the sentence adjudged and approved as to each defendant.

The record of trial in the case of the third group was examined in the office of the Judge Advocate General, and in a written review dated June —, 1918, was held legally sufficient to support the findings of the court, except as to one specification in the case of five accused, which finding was subsequently disapproved by the reviewing authority, and legally sufficient to support the sentences as approved. After discussing the evidence in detail the review stated:

"The case was ably tried by both sides. The rulings of the court are without trace of race prejudice or other bias. The legal rights of the accused were safeguarded by the court and counsel throughout the trial. A wise discrimination characterized both the findings and the sentences."

The reviews above mentioned, while considering and discussing the cases of the individuals concerned, nevertheless related to the trials of the defendants collectively. Thereafter during the early part of 1919 experienced law officers of the Judge Advocate General's Department were assigned to those cases; much time was given to the careful consideration of the testimony relating to each individual soldier tried, and a separate written review was made as to each accused. Those examinations confirmed the original conclusion that in the case of each accused the evidence justified the conviction and that no errors were committed at the trial which injuriously affected his substantial rights.

Of the 110 accused who were convicted and sentenced as a result of the trials above mentioned, 19 were executed; 1 was pardoned, apparently because following his conviction at the first trial he gave valuable testimony at a subsequent trial; 6 died in confinement; 15 were restored to duty at the United States Disciplinary Barracks; the sentences to confinement of 3 were remitted by my predecessor on the recommendation of the Judge Advocate General; the sentence to confinement of 1 was reduced from 7 years to 3 years, on the recommendation of the Judge Advocate General, and as reduced subsequently expired; and 2 others were also released upon the expiration of their terms of confinement of 2 years each, thus leaving in confinement at the present time 63 general prisoners, of whom 58 are serving sentences to confinement for life and 5 for 15 years each. These general prisoners, with the exception of 1 who has been transferred to St. Elizabeth's Hospital, Washington, D. C., on account of his mental condition, are confined at the United States penitentiary, Leavenworth, Kans.

Each general prisoner now serving sentence to confinement for life was convicted of the offenses of (1) murder, (2) mutiny, (3) assault with intent to murder, and each, except one, was also convicted of the offense of willful disobedience of the lawful command of his superior officer to remain in camp. Some were also found guilty of willful disobedience of an order to turn in their arms and ammunition. Each general prisoner now serving sentence to confinement for 15 years was convicted of the offenses of (a) willful disobedience of the lawful command of his superior officer to remain in camp, (b) joining in a mutiny against the authority of his commanding officer by disregarding and defying the lawful orders of his officers, and by seizing arms and ammunition, forcibly subverting and overriding military authority, and breaking out of camp with intent of marching upon the city of Houston, Tex., to the injury of persons and property. None of these men was found guilty merely because he was absent from roll call the evening of the riot.

These cases have also been reviewed and considered from the standpoint of clemency. Examinations of a number of cases were made during the year 1918, but no reasons were found which, in the opinion of this office, would justify the extension of clemency. In March, 1919, special officers of the Judge Advocate General's Department were assigned to make special reviews, from the standpoint of clemency, of the case of each man then in confinement as the result of the trials above mentioned. The cases were carefully and painstakingly examined and considered, the entire records of trial being carefully read and digested and a separate statement made as to the testimony relating to each accused. A separate clemency memorandum as to each accused was also made and submitted to the Secretary of War. As a result of these examinations, which required about three months, the conclusion was reached in the case of those who are still in confinement that in view of the gravity of the offenses of which they were convicted and the clear and convincing evidence of their guilt, mitigation of the sentences would not be justified, and pursuant to recommendations made to the Secretary of War clemency was denied.

In the spring of 1920, under the direction of the Judge Advocate General, a special investigation, covering the whole life, both civil and military, and the conduct in confinement of each individual, was made of the cases of the 63 general prisoners now in confinement by the department of psychiatry and sociology of the United States Disciplinary Barracks, Fort Leavenworth, Kans., with a view to determining whether or not any was entitled to clemency, and reports of the investigation were submitted through the commandant of that institution. In forwarding the reports the psychiatrist stated:

"The men have been carefully questioned, but nothing of value has been elicited except in confirmation of the evidence offered at the trials by general court-martial of these men. Nothing has been brought out which in our opinion affords any ground for reduction of sentence in any case. Practically all of these prisoners deny participation in the mutiny or events occurring in the city of Houston on August 23, 1917. It seems to us that the conspiracy continues among these men. It seems impossible that so many of them can be innocent, as they claim to be. No clemency is recommended at this time."

The commandant of the disciplinary barracks, when forwarding the psychiatrist's report stated:

"In view of the serious nature of the offenses of which these men were convicted \* \* \* it is believed that it would be distinctly prejudicial to discipline and the interest of the service to grant any clemency at this time."

Upon receipt of the above reports the cases were considered by the clemency section of the Judge Advocate General's Office under date of August 14, 1920, and in a review signed by the Judge Advocate General it was recommended that clemency be denied. In that connection it was stated:

"The occurrences at Houston on the night of August 23, 1917, are without parallel in the history of our Army. Without just provocation these men joined in a mutiny by overriding and subverting all military authority and restraint, and entered upon an expedition of disorder, riot, and wholesale murder. They murdered 14 innocent and unoffending persons, and seriously wounded 8 others. They instituted a reign of terror in the city of Houston, which merits the most severe condemnation and punishment. These men belonged to the military forces of the Government, upon whom the Government in an emergency must rely for the maintenance of order and the enforcement of law. As the result of fair and impartial trials, during which their every legal right was carefully safeguarded, they were convicted of participation in offenses which it was their special duty to prevent. These offenses include two most serious crimes of a civil nature, viz, murder and assault with intent to commit murder; also two of the most serious crimes of which a soldier can be guilty, viz, willful disobedience of lawful orders, and joining in a mutiny."

The views expressed by the Judge Advocate General were approved by my predecessor on August 21, 1920.

The cases of a number of the general prisoners have also been reconsidered by the clemency section within the last few months, but nothing has been found or presented that would warrant the extension of clemency. The card index of the clemency section shows that these cases have been in that section ninety times, and on each occasion were considered as to one or more of the accused.

It has been the policy of the War Department to make one examination from the standpoint of clemency of the case of each prisoner serving sentence adjudged by a general court martial regardless of whether or not an application therefor is made by him or by any other person in his behalf. In addition all applications for clemency made by or in behalf of the prisoners are considered subject to the rule of the War Department that such applications will not be considered more often than once in six

months unless new or material reasons are presented therefor. In view of the importance of the Houston riot cases, the gravity of the offenses of which the accused were convicted, they have received most careful and special consideration. The only reason clemency has not been extended and is not now recommended is that on account of the offenses of which these men were clearly guilty they are not entitled to any clemency. In this connection I may say that I am informally advised by The Adjutant General that the conduct of 60 of the general prisoners now in confinement at the penitentiary ranges from good to excellent and that the conduct of 2 is reported as bad. The other general prisoner, as above noted, is at St. Elizabeths Hospital, Washington, D. C.

In the light of what has been said above, it is apparent that these cases have received the most careful consideration of The Judge Advocate General of the Army and the law officers of his department, from the standpoint of the legality of the trials and convictions, and that they have also been considered with equal care and thoroughness from the standpoint of clemency.

Inclosed herewith are copies of the individual reviews relative to the accused now in confinement, also a copy of the review as to the legality of the first trial. We have only one copy of the review of the third trial, which is on file in the office of The Judge Advocate General, and may be examined by you at any time you may find it convenient to call at the department.

Sincerely, yours,

JOHN W. WEEKS,  
*Secretary of War.*

