

GENERAL SAMUEL T. ANSELL

(By Colonel Edmund M. Morgan, Law Professor at Yale.)

As one who knows him well, it is my pleasure to present to the readers of this publication—and it would be a correspondingly greater pleasure to present to the country at large—a brief sketch of the lawyer, soldier, citizen, whose name is at the heading of this contribution. By reason of the magnificent measure of lasting achievement in each of these capacities, he well deserves to be called distinguished. Like every strong man whose efforts result in revolutionizing an institution of government—especially when that institution is an archaic military establishment—he has, or has had, his traducers. Their clamor at times has seemed to overreach and mar the merit of this courageous man who, conscious of his own rectitude, could never stoop to such a contest. They are growing fewer, their voices weaker, while his accomplishments in behalf of the country, the war-time citizen army, and the legal profession, have scarcely begun to take on their rightful perspective. I deem it my duty that the country, and above all the profession, should now know something more of those accomplishments.

Those who served under him and labored with him by day and by night during the war, who saw his masterly power in action, who momentarily saw his energizing influence, know him and his work. One such, a lawyer of the West who is known to the profession east as well as west of the Mississippi, recently wired me this statement: "The finest thing the war did for the United States was to give it Ansell." And no less a figure than Rome Brown, shrewd and conservative judge of matters and men, recently declared in a public letter: "In the history of American civil and military affairs, General Ansell will ever stand a most heroic figure."

Such a man, representative of the best in civil, military and professional life, should be known to the public and the profession, for their good rather than his. Lawyers who are devoted to those fundamental principles which should control personal and professional conduct as well as government, and with the courage to adhere to and publicly practice those principles, are, it is regrettable to say, all too few. A distinguished American jurist has recently said:

"No feature of public life at this moment is so disquieting as the tendency to absolutely disregard truth, justice and law in the pursuit of somebody who has become unfashionable for the moment. It is good to know that there is still a remnant at the bar who are willing to incur odium in order to stand for elementary Anglo-American fair play."

General Ansell's example is a call to lawyers to get back to safe legal moorings.

Born of sturdy English southern stock, he has the independence of forebears who have done their own thinking and acting. In his youth in the school of Ezekiel Gilman (Harvard '39), at Law School, and at West Point, he displayed not only intellectual capacity but intellectual independence. His record of service to the nation demonstrates that he

has never permitted the influence of environment to control his judgment nor the emotions of the moment to shape his course. Practices of an institution—even of that to which he belonged—were not necessarily to be regarded as hallowed principles nor even as the most efficient practices. With him general acclaim does not make or modify a constitution. This devotion to principle has marked all his activity. In the Philippines the stronger the provocation, the need for greater patience in the exercise of superior power; as a military subaltern, a fine appreciation upon the part of the officer of the place of the private soldier; as counsel for the Philippine and Porto Rican Governments under our guardianship, an accentuation of the dignity and local sovereignty of those peoples; as a judge-advocate, full recognition of the subordinate constitutional place of the Army and of the natural military tendency to arbitrary conduct; as law officer for the civil jurisdiction of the War Department, care that department power be not used to disadvantage to the ordinary citizen coming into contact with it.

When the war came to us, it found this government lawyer prepared. He had kept abreast of the emergency legislation of Great Britain and France, novel and extensive administration machinery created by them, and the practical business expedients adopted for their war purposes; and, as well, was familiar with the measures and methods obtaining in their armies for maintaining morale.

As in 1913 Congress specially created a place for him in a higher grade, to which there was no normal vacancy, so in 1917, he was specially promoted from the junior grade to the grade of brigadier general and assigned as acting Judge Advocate General of the Army, head of probably the largest law office in the world. He knew the Department was as unprepared for war as the country was. His numerous recommendations made at the beginning of the war, upon the purely military side, for unifying and energizing the military establishment within while keeping it strictly confined to its constitutional sphere, and, upon the administrative side, for the establishment of business machinery and methods, were not pulled from the pigeon-holes and acted upon until late in the war. One example: at one time there were five different kinds of United States armies, and as many kinds of officers and men in one office or command, all having some difference of tenure and authority, and, of course, varying degrees of jealousy. General Ansell himself wrote an opinion, justly regarded as a classic by reason of its soundness of constitutional doctrine and clarity of reasoning, which swept away these disturbing distinctions, placed all upon the same footing in the service, and made possible the absolute essential of unity of command. After untold trouble, that opinion was resurrected and adopted and applied to the letter. In his own office, he had more than a hundred lawyers assisting him, and to them came a thousand questions daily. Throughout it all, when other officers and departments were professing to see exigencies and were manifesting a disposition to disregard fundamental law and right, the office of the Judge Advocate General never

lost its head, but kept constantly in view our Constitution and our traditional principles. In no place in the Government could there be found less disposition to tolerate a resort to arbitrary military power affecting a citizen of the United States.

Before the end of the war, this officer's clear vision had come to commend itself to all. He was one of the first few to be granted by the President the Distinguished Service Medal, with the following citation:

"For especially meritorious and conspicuous service as Acting Judge Advocate General of the Army, whose broad and constructive interpretation of law and regulations have greatly facilitated the conduct of the war and military administration."

When General Ansell graduated from West Point, he entered an institution whose laws were utterly un-American and belonged to a land and an age in which the common soldier was but a serf and not a citizen serving the state. A court-martial was not a court, but simply an agency of the commanding officer. It was said to be his right hand to help him maintain discipline, and was controlled not by law but by his will. Every phase of the trial—the preliminary investigation, the question of counsel, the membership of the court, the validity of the charge, the sufficiency of the evidence, the correctness of the procedure, the validity of the verdict and sentence, were determined not by law, but by the judgment of a commanding general. Even the ultimate conclusion of guilt or innocence was subject to his control. And the will of the commanding general was not subjected to legal review or supervision. There being no legal standard, there could be no legal error. General Ansell insisted on subjecting courts-martial to law and on a judicial review within the Department. The military authorities opposed. The results were, as might be expected when one man is left to be judged at the will of another, shockingly harsh and unjust.

Notwithstanding the military view, he provided within his office machinery to curb, so far as possible in an extra-legal way, the exercise of arbitrary military power. When the armistice came, he resolved to reform the Military Code. He spoke out frankly before the Senate Military Committee and gave great offense to the War Department. He resigned and went before the country and before Congress. The opposition of the administration was such that the reformation of the barbarous system was not brought about until the Act of Congress of June 4, 1920. Without this officer, we should still have the cruel and archaic system.

In July, 1919, he resigned (not retired) from the Army—a severance that freed him from all departmental control. Out of the army, as within it, he has insisted upon the observance of fundamental principles. With him, the law is law, for the Government as well as the individual. It was his firm that brought the successful suit of **Hearst vs. The Shipping Board**, restraining the *ultra vires* acts of the Board, though authorized by the President, in attempting to dispose of the ex-German ships; it was his firm that also brought the suit to restrain the Secretary of the Treasury from continuing to make illegal loans to the

Allied nations after the armistice; it was his firm that successfully brought the mandamus compelling the War Department to observe the requirements of due process of law and grant a full and fair hearing in discharging hundreds of officers of the Army for specific cause; it was his firm that has required the Government, in several classes of cases, to recognize its contracts as binding obligations when it would seek to denounce them because of some technicality.

The firm of Ansell and Bailey has, besides its active court work, considerable departmental practice. Here, too, he stands for straight legal, as opposed to "pussyfoot, methods." Recently addressing the Federal Bar Association, composed mainly of lawyers in the Government service, he took occasion to say:

"We cannot be loyal to the law if we link its administration with political consideration. I know of nothing worse—worse for the client, for the profession, for the public—than this kind of political lawyer. He gives his client to understand that by reason of political affiliation he has the key to some official's back door—a claim that, fortunately, has no little or no basis of truth. *..* * This kind of practice should be stamped out immediately."

A demagogic Congressman recently criticised Ansell for taking cases against the Government, apparently ignoring the distinguished examples of ex-Justice Hughes and scores of others. Ansell replied to this clap-trap as follows:

"I wish to make a general statement to you, and I am going to live or die by this statement. I am not going to let public opinion dictate to me what cases I take, whether they are against the government or for the government. We may as well understand that now." a reply that is worthy of being placed by the side of similar sentiments expressed by James A. Garfield, Luther Martin, Josiah Quincy, John Adams and Erskine.