

notice should be given to General Burnside, that there might be a hearing on the application.

Mr. Pugh objected, and insisted on the prompt issue of the writ, and that the hearing could be had when the body of the prisoner should be brought into Court.

The Court took the matter under advisement, and in the afternoon decided to hear the argument on the application, and directed the Clerk to notify Major-General Burnside that the hearing would be had on Monday, May 11.

On the opening of the Court, May 11, Hon. Aaron F. Perry and District-Attorney Ball appeared for General Burnside, and Hon. George E. Pugh appeared for Mr. Vallandigham.

The District-Attorney presented to the Court the following :

#### STATEMENT OF MAJOR-GENERAL BURNSIDE.

HEAD-QUARTERS DEPARTMENT OF THE OHIO,  
*Cincinnati, O., May 11, 1863.*

*To the Honorable the Circuit Court of the United States within  
and for the Southern District of Ohio :*

The undersigned, commanding the Department of the Ohio, having received notice from the Clerk of said Court that an application for the allowance of a writ of Habeas Corpus will be made this morning before your Honors, on behalf of Clement L. Vallandigham, now a prisoner in my custody, asks leave to submit to the Court the following

#### STATEMENT.

If I were to indulge in wholesale criticisms of the policy of the Government, it would demoralize the army under my command, and every friend of his country would call me a traitor. If the officers or soldiers were to indulge in such criticisms, it would weaken the army to the extent of their influence; and if this criticism were universal in the army, it would cause it to be broken to pieces, the Government to be divided, our homes

to be invaded, and anarchy to reign. My duty to my Government forbids me to indulge in such criticisms; officers and soldiers are not allowed so to indulge, and this course will be sustained by all honest men.

Now, I will go further. We are in a state of civil war. One of the States of this Department is at this moment invaded, and three others have been threatened. I command the Department, and it is my duty to my country, and to this army, to keep it in the best possible condition; to see that it is fed, clad, armed, and, as far as possible, to see that it is encouraged. If it is my duty and the duty of the troops to avoid saying any thing that would weaken the army, by preventing a single recruit from joining the ranks, by bringing the laws of Congress into disrepute, or by causing dissatisfaction in the ranks, it is equally the duty of every citizen in the Department to avoid the same evil. If it is my duty to prevent the propagation of this evil in the army, or in a portion of my Department, it is equally my duty in all portions of it; and it is my duty to use all the force in my power to stop it.

If I were to find a man from the enemy's country distributing in my camps speeches of their public men that tended to demoralize the troops or to destroy their confidence in the constituted authorities of the Government, I would have him tried, and hung if found guilty, and all the rules of modern warfare would sustain me. Why should such speeches from our own public men be allowed?

The press and public men, in a great emergency like the present, should avoid the use of party epithets and bitter invectives, and discourage the organization of secret political societies, which are always undignified and disgraceful to a free people, but now they are absolutely wrong and injurious; they create dissensions and discord, which just now amount to treason. The simple names "Patriot" and "Traitor" are comprehensive enough.

As I before said, we are in a state of civil war, and an emergency is upon us which requires the operations of some power that moves more quickly than the civil.

There never was a war carried on successfully without the exercise of that power.

It is said that the speeches which are condemned have been made in the presence of large bodies of citizens, who, if they thought them wrong, would have then and there condemned them. That is no argument. These citizens do not realize the effect upon the army of our country, who are its defenders. They have never been in the field; never faced the enemies of their country; never undergone the privations of our soldiers in the field; and, besides, they have been in the habit of hearing their public men speak, and, as a general thing, of approving of what they say; therefore, the greater responsibility rests upon the public men and upon the public press, and it behooves them to be careful as to what they say. They must not use license and plead that they are exercising liberty. In this Department it can not be done. I shall use all the power I have to break down such license, and I am sure I will be sustained in this course by all honest men. At all events, I will have the consciousness, before God, of having done my duty to my country, and when I am swerved from the performance of that duty by any pressure, public or private, or by any prejudice, I will no longer be a man or a patriot.

I again assert, that every power I possess on earth, or that is given me from above, will be used in defense of my Government, on all occasions, at all times, and in all places within this Department. There is no party—no community—no State government—no State legislative body—no corporation or body of men that have the power to inaugurate a war policy that has the validity of law and power, but the constituted authorities of the Government of the United States; and I am determined to support their policy. If the people do not approve that policy, they can change the constitutional authorities of that Government, at the proper time and by the proper method. Let them freely discuss the policy in a proper tone; but my duty requires me to stop license and intemperate discussion, which tends to weaken the authority of the Government and army: whilst the latter is in the presence of the enemy, it is cowardly so to

weaken it. This license could not be used in our camps—the man would be torn in pieces who would attempt it. There is no fear of the people losing their liberties; we all know that to be the cry of demagogues, and none but the ignorant will listen to it; all intelligent men know that our people are too far advanced in the scale of religion, civilization, education, and freedom, to allow any power on earth to interfere with their liberties; but this same advancement in these great characteristics of our people teaches them to make all necessary sacrifices for their country when an emergency requires. They will support the constituted authorities of the Government, whether they agree with them or not. Indeed, the army itself is a part of the people, and is so thoroughly educated in the love of civil liberty, which is the best guarantee for the permanence of our republican institutions, that it would itself be the first to oppose any attempt to continue the exercise of military authority after the establishment of peace by the overthrow of the rebellion. No man on earth can lead our citizen soldiery to the establishment of a military despotism, and no man living would have the folly to attempt it. To do so would be to seal his own doom. On this point there can be no ground for apprehension on the part of the people.

It is said that we can have peace if we lay down our arms. All sensible men know this to be untrue. Were it so, ought we to be so cowardly as to lay them down until the authority of the Government is acknowledged?

I beg to call upon the fathers, mothers, brothers, sisters, sons, daughters, relatives, friends, and neighbors of the soldiers in the field to aid me in stopping this license and intemperate discussion, which is discouraging our armies, weakening the hands of the Government, and thereby strengthening the enemy. If we use our honest efforts, God will bless us with a glorious peace and a united country. Men of every shade of opinion have the same vital interest in the suppression of this rebellion; for, should we fail in the task, the dread horrors of a ruined and distracted nation will fall alike on all, whether patriots or traitors.

These are substantially my reasons for issuing "General Order No. 38;" my reasons for the determination to enforce it, and also my reasons for the arrest of Hon. C. L. Vallandigham for a supposed violation of that order, for which he has been tried. The result of that trial is now in my hands.

In enforcing this order I can be unanimously sustained by the people, or I can be opposed by factious, bad men. In the former event, quietness will prevail; in the latter event, the responsibility and retribution will attach to the men who resist the authority, and the neighborhoods that allow it.

All of which is respectfully submitted.

A. E. BURNSIDE, MAJOR-GENERAL,  
*Commanding Department of the Ohio.*

## OPENING ARGUMENT

OF

HON. GEORGE E. PUGH.

MAY IT PLEASE YOUR HONOR:

I INSIST on my motion for a writ of Habeas Corpus, notwithstanding the defense attempted by General Burnside. And here I must be allowed to complain of the hardship to which Mr. Vallandigham has been subjected by the Court on this occasion. The statement we have just heard is, in effect, a return to the writ: it avows the caption and detention of the petitioner in manner and form as alleged by the petition; it proclaims the fact that he has been tried by a Military Commission, and for an offense unknown to the laws of the land; and yet, without having the body of the petitioner in Court, so as to prevent the execution, possibly, of an illegal sentence, without any writ or order compelling General Burnside to stay the execution of such a sentence until your Honor can determine this application, I am now required to proceed in the discharge of my duty as an advocate.

[Here Judge Leavitt observed that it was the settled practice of the Court to give notice to the defendant, in cases of military arrest, before issuing a writ of Habeas Corpus; and that Judge Swayne had so announced, in a case from Champaign County, at the last term.]

MR. PUGH—His Honor may have intended that as a rule in future; but, inasmuch as the question was not then argued at