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PHONES: JE 2-2437
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CABLE ADDRESS: "BELMON"

April 12, 1957

Deputy Chief of Staff for Intelligence
Department of the Army
Pentagon
Washington 25, D. C.

Dear Sir:

As you probably already know, Mr. Ray Jenkins and I are attorneys for Col. J. C. Nickerson. Both of us are convinced that Col. Nickerson acted for the best interest of the United States in fighting for Army operational use of the 1500 mile ballistic missile. In order to insure a proper defense in ~~this~~ ^{his} case, certain highly classified information available to Washington intelligence agencies ~~must~~ ^{and if necessary to} be made available to the Court, the reviewing authority, the board of review, the Military Court of Appeals and perhaps the Supreme Court of the United States.

It is noted that once the Government chooses to try a case it waives any right to suppress otherwise privileged material. (See U. S. vs. Andolschek, 194 F 2d 503 at 506). This case is cited as follows: "So far as they directly touch the criminal dealings the prosecution necessarily ends any confidential character the documents possess . . . The government must choose; either it must leave the transactions in the obscurity from which a trial will draw them, or it must expose them fully. Nor does it seem to us possible to draw any line between documents whose contents bear directly upon the criminal transaction and those which may be only indirectly relevant." Colonel Nickerson is charged with transmitting information to unauthorized persons, knowing that the information could be used to the detriment of the United States. (~~Obviously if he knew that the Soviet missile program was backward and in trouble, certain information might be very helpful. If, on the other hand, the Soviet program was more active and more advanced than ours, it is obvious that much information now classified could not be helpful. Col. Nickerson's knowledge of the Soviet missile program must be made available to the Court regardless of its classification.~~)

It is well known that much information officially classified "Secret" could be reviewed and declassified. Since Col. Nickerson is charged with not properly safe-guarding secret defense information, and otherwise mishandling secret defense information, it is essential to determine whether the information in question actually was secret defense information or that it was information retaining the security classification due only to administrative inertia, error, or lack of knowledge on the classifier's part. ~~This new goes outside Col. Nickerson's personal knowledge and encompasses~~ ?

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Page 2

the entire knowledge of the United States Government of Soviet missile development. This knowledge is ^{not} necessarily limited to knowledge available to the United States as of the date of the alleged offenses, because recent intelligence information may show that as of December Soviet missile capabilities had reached a point wherein certain pertinent information would not be useful.)

The fact that U. S. doppler tracking and our own telemetry systems are unclassified and broadcast in the clear and that Soviet stations probably intercept these signals must be brought out. In addition, we know that Col. Nickerson was cleared for a very special category of Top Secret information which provides cogent information with regard to Col. Nickerson's defense. From the above it is noted that Federal law requires that this and other pertinent classified information be made available to the Court, the defense, the prosecution and to all reviewing authorities, boards and, ^{if necessary} in the event of conviction, to the Military Court of Appeals and its secretariat. It is up to the Army to make this information available or to drop the charges against Col. Nickerson.

The "Manual for Courts-Martial" is quoted as follows:

Page 287, §151b(3): "In certain cases, it may become necessary to introduce evidence of a highly confidential or secret nature, as when an accused is on trial for having unlawfully communicated information of such a nature to persons not entitled thereto. In a case of this type, the court should take adequate precautions to insure that no greater dissemination of such evidence occurs than the necessities of the trial require. The courtroom should be cleared of spectators while such evidence is being received or commented upon, and all persons whose duties require them to remain should be warned that they are not to communicate such confidential or secret information. But see 33f as to cases which, because of the security risks involved, should not be brought to trial."

Page 41, §33f: "If the officer exercising summary court-martial jurisdiction finds that trial of a particular case would be warranted except for the fact that it would probably be detrimental to the prosecution of a war or inimical to the national security, he will, without dismissing any charges that may have been preferred, forward the case to the officer exercising general court-martial jurisdiction over the command who, if he concurs in such finding, will forward the case through the chain of command to the Secretary of the appropriate Department. In this connection, see Article 43e. Any officer exercising general court-martial jurisdiction who

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Page 3

receives the charges in such a case is authorized to determine whether trial of the accused is warranted under the circumstances and, if so, whether the security considerations involved are paramount to trial. In an appropriate case, such a commander may, instead of forwarding the charges, dismiss them or authorize their trial."

As Col. Nickerson's legal counsel and having full access to the various investigations conducted, we feel strongly that the serious charges against Col. Nickerson are groundless. A court might possibly convict him of a violation of security regulations which amount only to cutting red tape. There has been no divulgence of information which actually should be classified to any unauthorized person. There is no violation of the Espionage Act, nor has there been any false swearing. See Inclosure I for charges and partial defense against these charges. It should be noted that the investigating officer recommended dropping the Espionage charge and the charges relating to Drew Pearson, including the associated false swearing charge. These were the only charges seriously defended in the pre-trial investigation.

Keep in Gen
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Very truly yours,

Robert K. Bell

BC: Col. J. C. Nickerson

April 12, 1957

Mr. Ray Jenkins
Jenkins & Jenkins
Knoxville Bank Building
Knoxville, Tennessee

Dear Ray:

Attached hereto is a draft of the proposed letter which John Nickerson thinks that we should send or possibly carry with us to the Deputy Chief of Staff for Intelligence on our trip to Washington. I am sending this along to you in order that you can read it and give it some thought prior to the call I will make to you at about three o'clock your time on Monday.

John Nickerson has an appointment through the editor of his hometown paper in Kentucky with Governor Happy Chandler Monday morning at nine o'clock in Governor Chandler's office. At this conference he is going to solicit the active support of the Governor to contact the senators from Kentucky by telephone and urge them to assist us in every way possible if and when we call on them in Washington. John is to call me back immediately after he concludes his conference with the Governor, and I should be able to report to you the results in our conversation Monday afternoon.

We possibly should plan to go to Washington next week, and I offer this for your consideration for us to discuss further Monday afternoon. I could leave here Wednesday morning, April 17, and arrive in Knoxville 10:46 a.m. You and I could depart from Knoxville some twenty-five minutes later at 11:15 a.m., flying one stop to Washington and arriving at 1:50 p.m. This will give us Wednesday afternoon, Thursday and Friday, to undertake our mission in Washington. We could return by leaving Washington at 6:45 p.m. Friday, April 19, arrive in Knoxville shortly after nine p.m., and I could arrive here at 10:47 p.m. Please give this your consideration and we will discuss it further in our telephone conversation Monday. As a matter of fact, I have asked John Higdon of Capital Airlines to make these tentative reservations for us, with the understanding that I might cancel them Monday afternoon after talking to you.

Yours very truly,

RKB by msl

Robert K. Bell

RKB:mfl
Enclosure

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It is noted that once the Government chooses to try a case it waives any right to suppress otherwise privileged material. (See U. S. vs. Andolschek, 194 F 2d 503 at 506). This case is cited as follows: "So far as they directly touch the criminal dealings the prosecution necessarily ends any confidential character the documents possess . . . The government must choose; either it must leave the transactions in the obscurity from which a trial will draw them, or it must expose them fully. Nor does it seem to us possible to draw any line between documents whose contents bear directly upon the criminal transaction and those which may be only indirectly relevant." Colonel Nickerson is charged with transmitting information to unauthorized persons, knowing that the information could be used to the detriment of the United States. Obviously if he knew that the Soviet missile program was backward and in trouble, certain information might be very helpful. If, on the other hand, the Soviet program was more active and more advanced than ours, it is obvious that much information now classified could not be helpful. Col. Nickerson's knowledge of the Soviet missile program must be made available to the Court regardless of its classification.

It is well known that much information officially classified "Secret" could be reviewed and declassified. Since Col. Nickerson is charged with not properly safe-guarding secret defense information, and otherwise mishandling secret defense information, it is essential to determine whether the information in question actually was secret defense information or that it was information retaining the security classification due only to administrative inertia, error, or lack of knowledge on the classifier's part. This now goes outside Col. Nickerson's personal knowledge and encompasses

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