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ATTORNEYS AT LAW
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HUNTSVILLE, ALABAMA

ROBERT K. BELL
CARL A. MORRING, JR.
PATRICK W. RICHARDSON
JAMES R. CLEARY

PHONES: JE 2-2437
JE 2-2438
CABLE ADDRESS: "BELMON"

April 29, 1957

Commanding General
Third United States Army
Fort McPherson, Georgia

COPY

Attention: Major General Crump Garvin, President of the General
Court-Martial, and
Colonel C. F. Cordes, Acting Army Staff Judge Advocate

Dear Sir:

Subject: Continuance of trial of Colonel John C. Nickerson, Jr.,
charged with violating Articles 92 and 134, Uniform
Code of Military Justice, Redstone Arsenal, Alabama

We respectfully request a continuance of the trial in the above captioned
matter, which said trial is now set for 15 May 1957 at Redstone Arsenal,
and as grounds for our request we submit the following:

1. On 28 March 1957 we, the defense counsel for Colonel Nickerson,
requested in writing that we be cleared to receive top secret informa-
tion, which we positively and absolutely know will be materially rele-
vant to the issues and will be required and presented in the trial of
this case. Our request went forward four weeks ago last Thursday;
and to date we have not received any reply to this request, other than
one of the military counsel being told that the matter was being
considered. If this request were granted today, there is insufficient
time to examine and properly appraise the voluminous material and
data involved between now and 15 May 1957.
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that his instructions insofar as making available to the civilian
defense counsel documents of a classified nature be amended or
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the civilian counsel under a most difficult handicap; and we cannot
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3. The pre-trial investigations were not made available to the civilian defense counsel until on or about 15 March 1957, although the investigations were begun on New Year's Day 1957 and concluded within a matter of a few days. Both of the civilian defense counsel are very busy lawyers and had commitments at the time of being employed by Colonel Nickerson. Mr. Jenkins, one of the civilian defense counsel, only entered the case on the evening of 20 March 1957; and, due to prior commitments, has only been able to come to Huntsville for a two and one-half day visit. Not being able to take considerable material germane to the issues back to his home in Knoxville with him to study and appraise, due to instructions given the military counsel as to the limitations of availability of this material, he has not had sufficient time to properly examine this material. The same is true to a somewhat lesser degree in the case of Mr. Bell, the other civilian counsel.
4. On 17, 18 and 19 April 1957, the civilian defense counsel conferred in Washington with Army officers, both civilian and military, regarding vital issues involved in this case, at which time we invited considerations and made certain requests, to which we have not received an answer, other than to be officially advised that we would be informed when a determination was made. Unless such notification is received forthwith, it will place us within a matter of hours of the trial and thereby not allow us sufficient time to alter our strategy, should such alteration be necessary in the defense of this case.
5. As recently as 10:30 a.m., Central Standard Time, Saturday, April 27, we inquired of the Staff Judge Advocate, Third Army, through Captain Charles Taylor, JAGC Assistant Trial Counsel, as to whether any of these requests had been granted, and a negative answer was received.
6. It is utterly impossible to prepare an adequate defense without access to the top secret clearance and documents which we have requested. As a matter of fact, it is impossible under the present limitations now placed upon the civilian defense counsel to designate these documents by name, as the names themselves are classified; and our client has not told us the names of these documents. Please see affidavit attached hereto.
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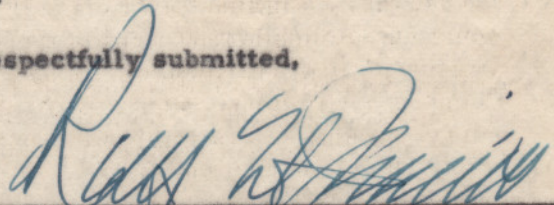
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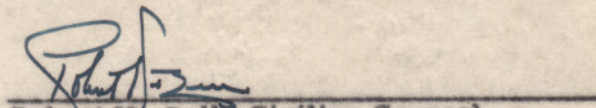
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In view of the foregoing, we therefore ask that you seriously consider a date not earlier than the last week in July or August of this year because of the seriousness of the charges in this case.

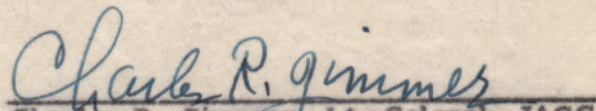
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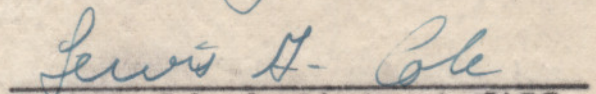
Ray H. Jenkins, Civilian Counsel



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Defense Counsel



Lewis G. Cole, 1st Lieutenant, JAGC
Assistant Defense Counsel

STATE OF ALABAMA
MADISON COUNTY

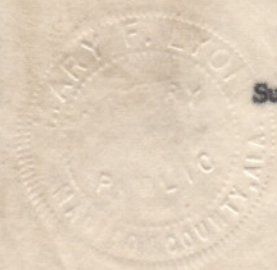
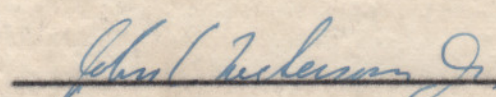
Before me, the undersigned authority in and for said county and state, personally appeared Colonel John C. Nickerson, Jr., who being by me first duly sworn, deposes and says:

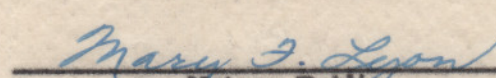
I am Colonel John C. Nickerson, Jr., 021170, Army Ballistic Missile Agency, Redstone Arsenal, Huntsville, Alabama, and the accused to be tried before a General Court-Martial named in Paragraph 10, Special Orders No. 43, Headquarters Third United States Army, dated 4 March 1957.

Upon being informed of the charges alleged against me, I employed Mr. Robert K. Bell, an attorney of Huntsville, Alabama, and Mr. Ray H. Jenkins, attorney of Knoxville, Tennessee, as my civilian counsel as soon after charges were preferred as I could secure an appointment with these gentlemen. In view of the fact that requests on the part of my defense counsel for additional security clearances have not been granted, I have not been able to date to inform my counsel of the essential components of the real issues in my defense without divulging information that is now classified as Top Secret. There is a large amount of Top Secret information in various offices in our Government which shows that information in this case was not properly labeled "Secret." As a matter of fact, I am unable to discuss or even divulge the subject matter to my counsel; and the result is that this part of the case has not been touched or explored. This material affects the entire case, and a proper defense cannot be prepared until this information and material are made available for the consideration of my counsel. In all probability it will require the time of my attorneys for some weeks to examine and research this material in order to make proper use of it. Some of the material involves Top Secret special intelligence, for which even my military counsel have not been cleared.

Because of the unavailability of this material to my defense counsel, I have reached a stalemate and am helpless, as I cannot even divulge the name in order to identify some of this material, as the name itself is Top Secret. Certain of this Top Secret material must be divulged to the Court and to my counsel in order to adequately present my defense. I am advised by my counsel that there is judicial precedent that all pertinent and relevant information connected with the case must be made available in a court proceeding, regardless of the classification of the evidence, based upon the case cited in 142 Fed. 2d, 503 at 506.

Respectfully submitted.



Subscribed and sworn to before me, this the 29th day of April, 1957.


Notary Public

MY COMMISSION EXPIRES JUNE 20, 1959

April 29, 1957

Commanding General
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Via "AIR" Mail

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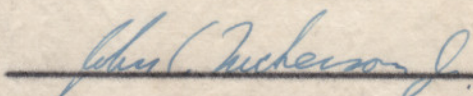
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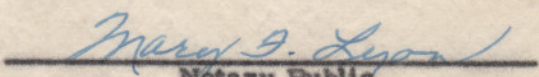
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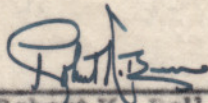
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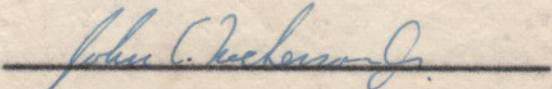
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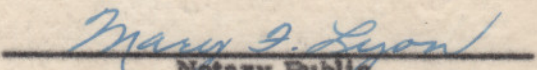
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