

May 27, 1957

Commanding General
Third United States Army
Fort McPherson, Georgia

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

Dear Sir:

Subject: United States vs. Colonel John C. Nickerson, Jr.

As civilian defense counsel for Colonel John C. Nickerson, Jr., scheduled for trial by General Court-Martial on 25 June 1957 at Redstone Arsenal, Huntsville, Alabama, we feel it imperative that we bring some very vital issues involved in this case to your attention.

As correspondence in this case will disclose, on 28 March 1957 we requested in writing that we be cleared to receive Top Secret information, which was absolutely necessary in order to properly defend the accused. To date no such clearance has been received from Third Army Headquarters.

On 17, 18 and 19 April 1957 civilian defense counsel made a special trip to Washington and requested of Defense and Army officials that certain modification of the charges be considered in order to avoid the necessity of requiring highly sensitive material that would be needed if the charges remained as originally drafted. On 24 April 1957 a Captain was flown from Washington in order to hand the writer a letter from the Acting Judge Advocate General saying that the matters presented on our trip to Washington were being given immediate consideration and, to quote from his letter, "As soon as the decision has been made by the proper authorities you will be advised by the convening authority, Lt. General Thomas F. Hickey, Commanding General, Third United States Army." This is the last word we have received as to these requests.

On 16 May 1957 the two civilian counsel were briefed by a Colonel from the office of the Deputy Chief of Staff for Intelligence and the General Counsel of the Central Intelligence Agency, both from Washington, on certain classified material at Redstone Arsenal. We were told at the end of the briefing that the Assistant Military Defense Counsel had not been cleared for this information and, therefore, we could not discuss it with him under any circumstances.

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We were further told by the Colonel heretofore mentioned, namely, Colonel Pratt, that since we had not received Top Secret clearance from Third Army that we could not discuss or request in writing any of the material that he and his associate had briefed us on, as it would likely involve a security violation, since we had not received the Top Secret clearance from Third Army. Colonel Pratt further assured us that he would call Third Army Headquarters that day requesting immediate clearance and told us that he felt reasonably confident that the clearance would be forthcoming by Monday morning, 20 May 1957. He re-stated and confirmed this after completing his call to Third Army. It should be quite easy to see that the limited material given us during this briefing is of no value to us, not only if we cannot discuss it with the entire defense staff present, but if there are other limitations that make it illegal, illogical and virtually impossible for us to discuss or consider the matter and the possible benefit it might be to us.

We would like to know if and when we might expect a clearance for First Lieutenant Lewis Cole, Assistant Defense Counsel, as to the data partially made available to us on 16 May 1957. We would also like to know if and when we might expect Top Secret clearance so as to examine and consider certain pertinent highly sensitive material that will require some weeks to examine and appraise and that will be necessary in the trial of this case. If we cannot receive this in sufficient time for it to be of some value to us this will be most unfortunate and unfair to the accused.

We feel that there has been unpardonable and unjust procrastination on the part of the Government in affording equal access to the defense of material that has been available to the prosecution since January 1957. In reality, three of the four defense counsel have not as yet received the proper clearance, all of which has been requested. It should be quite apparent that this has made for an impossible situation and one that we wish at this time to point out as being very unsatisfactory from our standpoint.

It is not our desire, nor has it been our desire at any time during our representation of Colonel Nickerson, to delay these proceedings; and it is not our intention at this time to request any other delay; but if we are continued to be placed in the virtually impossible and most unreasonable and ridiculous position of not having available to us material that is very germane and pertinent to the charges as alleged, it is highly conceivable that if we have not been allowed time to properly examine this material we might have to seek a continuance on the morning the case is called for trial by first appealing to the Law Officer and calling to his attention the facts herein stated, and if denied relief there take the steps we deem necessary to other tribunals.

Yours very truly,

ROBERT K. BELL and
RAY H. JENKINS

By

RKB:mfl

*cc: Commanding General
Barwin
Cortez
Jenkins
Nickerson*

DRAFT - RKB:mfl - May 27, 1957

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