

Re: Pickerson case

3/7/57

Gen. Notes

Illustrative instances of Air Corps (Air Force), in World War II & Korean Conflict:

- ① Failing to support Army units on request.
- ② Attacking our own Army units by error.

Proof of inadequacy of:

- ① Air Force missile research organization
- ② " " " " personnel
- ③ " " " " approach (i.e. adherence to use of remote-controlled, conventional aircraft types, e.g. "Matador" recently lost on test flight from White Sands).
- ④ Poor performance & tardy development of the Air Force ballistic missile "Thor".

Advanced status of Russian missile development & critical necessity of preparedness to counter-attack with missiles. (Air Force was unable to intercept its own ~~Thor~~ "Matador" missile test fired from White Sands recently when control of it lost, although sizeable civilian populations were clearly endangered.) This deterrence is only effective defence against missiles armed with atomic devices. (Ability to counter-attack with ready long range missiles essential because: ① our critical target areas are more concentrated & exposed than Russia's & more vulnerable & ② possibility of intercepting conventional aircraft in counter-attack lessens their deterrent value greatly, as compare with missiles.)

Infinite value of deterrence of possible Russian attack far out-weighs any expense of possible duplication of research effort and combat-ready missile weapon arms.

(Secy. Wilson in statement last week on this very question said expense for defense preparedness is hoped to be "wasted" in sense that it is hoped that it will never be used, but that we cannot afford risk of unpreparedness at any cost.)

[Even civilian industry, facing cost & price competition, duplicates its own research & development operations and its production and sales control; because, in long-run economic battle, management is fearful of relying entirely on a single research & development program, a single product or a single organization to control sale of product: e.g. the several (5) parallel & duplicating (3 in same price class) automobile divisions of Gen. Motors. - National survival is far more vital and, \therefore , similar duplication of efforts by the 3 branches of service is far better justified.]

History of armament development shows very slow development. We can't afford to lose any measure of progress. Research beginnings are by nature slow and develop in snow-balling fashion - each discovery & development giving effect that spreads geometrically (3). Interruption or discontinuance of the Army's ballistic missile program will result in immeasurable loss of progress. Even if same personnel are retained

but merely shifted to another branch the
continuity of their effort is lost.

★ See Art. 32, re investigation & rights of accused
with relation to same.

Re: Nickerson case

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Postponement of Trial

MCM-1951 provisions applicable:

- ✓ Right to prepare; effect of unreasonable denial FP 58d, pg. 83
- ✓ Pres. of court sets time for FP 40b(1), pg. 57
- ✓ Trial counsel to have time to prepare for FP 44d, pg. 61
- ✓ Continuance may be granted by court for reasonable cause Art. 40
- ✓ 1a. FP 58, pg. 82

FP 40 b(1), pg. 57 - "The president of a general court-martial has . . . the following additional powers and duties:

(a) After consultation with the trial counsel (emphasis supplied) . . . he sets the time and place of trial . . .

(FP 42, pg. 40 "The term 'counsel' . . . will be interpreted to include . . . the appointed trial counsel and defense counsel . . . and their assistants, if any, and any individual counsel (civilian or military). . . . 'trial counsel' . . . will be understood to refer to the appointed trial counsel . . . and to include . . . assistant trial counsel . . . the terms 'defense counsel' or 'counsel for the accused' . . . include . . . the appointed defense counsel, appointed assistant defense counsel, if any, and any individual counsel. . . . 'individual counsel' shall . . . refer to military counsel selected by the accused or to civilian counsel provided by him.)

(d) "For good reason, he may recess or adjourn the court (e.g. 39d), subject to the right of the law officer to rule finally upon a motion or request of counsel . . . that a continuance be granted . . ."

¶ 44 d, pg. 61 "d. - The trial counsel . . . will be given ample opportunity to prepare properly the prosecution of each case."

¶ 58, pg. 82. "a. A court-martial may, for reasonable cause, grant a continuance to any party for such time and as often as may appear to be just. (Art. 40). There is no limit to the number of continuances which may be granted.

"b. The necessity for a formal continuance may often be avoided by requesting the president to postpone the assembling of the court (emphasis supplied) or by requesting the court to adjourn or to take a recess. As the law officer rules finally on any application for a continuance presented while the court is in session, (emphasis supplied) the president of a general court-martial properly should obtain the advice of the law officer with respect to the request of a party for the postponement of the time for the assembling of the court.

c. Grounds for continuance. (See Manual, but note, esp. "insufficient time to prepare for trial" and "failure by the trial counsel to cause a copy of the charges to be served as required by

Article 35 (emphasis supplied)

d. Effect of denying application for continuance
(See Manual.)

e) "Application should be made to the court if in session, otherwise to the convening authority - - -"

"Although the proper time for making an application to the court is after the accused is arraigned and before he pleads, the court may permit it to be made at any other time (emphasis supplied)."

8,314⁷¹ *negs*
 4800⁰⁰ Bal due
710⁴⁶ due J.K. Taylor
 4,089⁵⁵
5629
 4,033²⁶

7482
2853
 5629

2853

According to Press Report Release credited to Third
 Army Conference between Counsel in Dickson Case
 will be in order providing Continuance is granted.
 Defense will be happy to confer any date after Continuance
 if any.