

Answer. I have glanced over the letter sufficiently to believe that it is a private letter of mine to Colonel Talcott, the chief of the ordnance. It was marked and endorsed private inside and out.

Question by defence. Were you, at the time the letter was written, a member of General Scott's general staff?

Answer. Yes, chief of the ordnance.

Question by prosecution. Did the witness ever show me the letter in question before or since it was printed, or, in any way, make me acquainted with the fact that such letter had been written or printed?

Answer. Never.

Question by prosecution. Was the printed letter the witness recognizes as written by him addressed to the chief of his, the ordnance, department of the general staff at Washington, and, although marked private, intended in part, or in whole, to give to that chief, and, through him, the War Department, important information relative to the ordnance department?

Answer. As I could not send on the regular reports, as noticed in the first of the letter, I sent this private abstract, giving information concerning that department, for the information of the chief at Washington.

Question by prosecution. Is not the ordnance department or the chief at Washington a part of the War Department, and are not the official acts of that chief considered the official acts of the Secretary of War; and would that chief, according to witness's knowledge of him and the manner of doing business in his branch of the War Department, have published the letter in question without, at least, the implied approbation of the Secretary of War?

Answer. The duties of the chief are as stated in the question, and his official acts are considered as those of the Secretary of War; they are done by his authority. If this letter was published by Colonel Talcott, I have no doubt it was done with the sanction of the Secretary of War; but this is merely an opinion.

Question by defence. Witness will state whether he considered the letter a private or official document or letter; if official, why did he mark it private both on the *outside* and *inside*?

Answer. It was a private letter giving official information. As I could not send on the papers in regular form I preferred making the letter private which gave this information, so that it should not go on the files of the department. I did not wish that letter to go on the files, and it was not in regular form. The regular returns would be sent on afterwards.

The court then adjourned until to-morrow morning at 9 o'clock.

MEXICO, March 28, 1848.

The court met pursuant to adjournment. Present all the members and the judge advocate and recorder.

Major General Pillow before the court.

Major General Scott recalled.

Question by defence. Do you consider a publication of the nature of the introductory letter, viz: a substantial account of the operations of the army in this valley, published without the permission of the War Department, an official act?

Answer. I borrowed last night and read with difficulty in bed the introduction to that pamphlet. It is a statement made in conformity with the proposition or plan submitted by Lieutenant Colonel Hitchcock, acting inspector general to me at Tacubaya, pending the armistice. It has no mark in the printed form of officiality, though distinctly authorized by me before it was written. It is not a letter nor what is usually called a report, but what it professes upon its face, an explanatory introduction of intercepted Mexican letters, deemed by me, as well as by Colonel Hitchcock, highly interesting to the army, and therefore worthy of publication. Consider that publication, thus authorized in advance, to be virtually my own act and under the regulation in question, and, in the language of that regulation, that I was, as general-in-chief of the army in Mexico, the proper authority to give special permission for its publication. I proceed to say that I examined last evening and find that the publication was not paid for out of any public money in my hands, but the expense of printing, &c., was met on the part of the publisher by sales of copies. Such I learn to be the manner in which the printer was indemnified.

Question by defence. Had the manuscript copy any marks of officiality, and is not the printed copy a substantial account of the operations in this valley?

Answer. Mr. President, strange as it may seem, I never saw the original manuscript. I never saw the printed copy until yesterday. I confounded yesterday this pamphlet with another, prepared by the same officer at Puebla, which was a plain practical talk to the Mexican people, and did not enter at all into the movements of the army, as well as I recollect. The printed introduction gives a general account of the principal movements in this basin, or an account of the movements, so far as is necessary to explain the letters, as the writer seemed to have deemed necessary, for the purpose I have just stated.

Question by defence. Does not the introductory letter commence with the movements of the army from Puebla, and go through the entire operations of the valley, going greatly beyond the necessity of giving explanatory matter to the intercepted letters, and does it not even come to the entrance of the army into the city, embracing the battle of Molino del Rey, and the final assault upon the capitol, after these letters had already been intercepted?

Answer. I think it does, in general terms, go through the operations of the basin. Whether it gives particulars more than were absolutely necessary to explain the intercepted Mexican letters, I cannot say, without a minute study of the pamphlet.

Question by defence. Is it within your knowledge, or have you good reason to believe that *very many* letters, written by officers under your command, have found their way into the public prints, in violation of the President's regulation on that subject?

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Answer. I have not read, or had newspapers in my hand, since I entered Mexico, with the exception of newspapers of this city, Spanish and American, in all for fifty, I am certain, not seventy-five minutes. I have seen some seven or eight scraps of newspapers or parts of letters, which, from internal evidence, must have been written by officers of this army, but have not been able to form even a satisfactory conjecture as to the authors of the particular scraps or extracts to which I have alluded.

Question by defence. Does the witness regularly receive the two daily American newspapers, the Star and North American, published in this city?

Answer. Pretty regularly. I pay for them, and they come not uniformly, but they generally are left.

Question by defence. Have you ever seen or heard of a letter, written in violation of regulations, by General Shields to the editors of the Union, relating to army surgeons, his Cerro Gordo wound, and the operations of the army in this valley?

Answer. This letter has been pointed out to me, within a few weeks now past, by some one, either in this paper or some other. I did not read the letter, except perhaps a very few lines. I beg to add that I have not considered General Shields responsible to me since he left the country, although he would be undoubtedly responsible for acts committed here. This letter is dated September 27th; General Shields left here for home on the 1st of November, and the reprint of the letter is dated 19th of November.

Question by defence. Have you ever seen or heard of a letter, also written in violation of regulations, by General Pierce, in relation to military operations in this valley?

Answer. I have heard of such a letter. If I saw it, I am very confident I did not read it, beyond possibly a few lines. I do not know that I read one. Some one possible might have put his finger upon a particular part, and called my attention to it.

Question by defence. Would it be just to attribute to yourself the *authorship of the laudatory* letter of Colonel Hitchcock, published with your approbation?

Answer. I have stated that the official acts of my staff are my own acts; I have stated also that Colonel Hitchcock had my express permission to publish the intercepted Mexican letters, with an explanatory introduction, which whether laudatory or condemnatory, I must now, under the principle already stated, be held responsible for. Though I did not dream, until last night, that there was a syllable of laudation to myself in the pamphlet.

Question by defence. Please read order 349, and say if General Pillow is alluded to by you in that order, as one of the "principal heroes?"

Answer. The court will perceive by the order, that no person whatever is mentioned, nor is any newspaper specified. Allusion is made to a New Orleans and Tampico paper, but neither is specified. The allusion to the newspapers was merely made as a text for the remarks which follow in the same order. In other respects the order and proceedings of this court will speak for themselves.

General Pillow here said that the question was not answered.

The witness continued:

I will add, that I had a fear upon my mind, a mere apprehension, at the time of writing the order, that Major General Pillow might come under the animadversions contained in a subsequent part of the order. I did not then feel any confidence in the justness of that apprehension. Subsequent information lead to the charges and specifications now before the court. At the time of writing those charges and specifications, I had a moral conviction on my mind, that he either wrote or caused to be written, the Leonidas letter, and the paper No. 1, now before the court.

General Pillow said, he wished the question answered directly.

General Scott said, in reply, that he had, he believed, answered the question fully.

The court closed and decided, that in the opinion of the court, the question had been answered.

Question by defence. Was not the order intended to designate, and so shaped, as to be understood to designate the letter, signed Leonidas, and was not that order intended to charge the authorship of that letter upon General Pillow?

Answer. I did not specify Leonidas in the order, although at the date of the order I had seen the Leonidas letter. I avoided the specification or the naming of any particular newspaper, with title and date, to avoid personality. So that the animadversions might be entirely general and not specific as to persons. And I had more hope than fear, that the parties against whom charges were subsequently laid by me, might be found by subsequent inquiry, and subsequent information, without special inquiry, unconnected with the unnamed New Orleans and Tampico newspapers. The order, also looked to the future, as well as the past.

Question by defence. Have you not, in an official letter, stated that order 349 was intended to designate the Leonidas letter?

Answer. At a subsequent time, I think it is quite likely I did, in a letter addressed to an individual, not to the public; it was addressed to Brevet Major General Worth.

Question by defence. As so many letters from the army have been published, giving an account of the operations of the army in this valley—many of which have come under the eye of the witness, and some of which have been signed by the proper names of the writers—can the witness state why he felt himself called upon to denounce the said Pillow in the general orders, the "author and hero" of this scandalous letter, "as puffing himself, &c," while he permits the many which have come under his own eye to be passed over, without any attempt to enforce the President's orders?

Answer. This question begs the question, that many letters have been published, each an infraction of the general order in question, which the witness cannot admit without arrogating to himself the right of trying grave charges against brother officers who are



absent. In respect to three letters, one admitted by Captain Huger to have been written by himself, which I never saw, and to the best of my knowledge, never heard of until yesterday, that was disposed of in the testimony that was recorded at the time of the introduction of the letters, as far as I as witness was prosecutor in this particular case, before this court could have anything to do with that particular letter. In respect to the introduction to the pamphlet before the court, I have already put upon the record what I know of that introduction, and have, even at the request of the defence, added my poor opinion, as to the character of the letters, and the legal responsibility of the writer and myself. The printed letters, bearing the signatures of Brigadier Generals Shields and Pierce, have been, I think, to-day called to my attention, by the defence, and I have already said that those letters, very particularly read by me, not exceeded in the case of the Shields's letter one, possibly two, sentences, which were pointed out to and read by me, within some few weeks last past, after both general officers had ceased to be under my immediate orders and control. I am not sure that I ever saw in print, or otherwise, the letter of Brigadier General Pierce, but am certain, that though I have heard it spoken of, I have not read it in whole, and as I verily believe, in no part whatever.

Question by defence. Witness will examine the letter here presented, which appears to have been written by one of his staff, and say, if he knows, or has reason to believe he knows, the author, and say what officers were sent, in the passage designated in the letter marked J?

Answer. I hold in my hand, presented by Major General Pillow, a letter contained in a part of the New York Courier and Enquirer, of date September 18th, and headed "Extract of a very interesting letter, received in Washington." The question appears to refer to the following sentences: "After a few minutes, we passed on to a village called Coyoacan, where we heard firing on our right, about two miles off, in the direction of San Antonio." "The general immediately sent me with Captain Kearny's troop to ascertain the state of affairs." I have not the remotest knowledge of the letter; but I will state, as far as I can, what officers I sent. I first despatched Captain Kearny's troop, which was a part of my habitual escort, frequently the whole, and perhaps and another troop of horse, Captain Lee, engineers, and I think another staff officer, general or personal. If he were a personal staff officer, I think it was Lieutenant Lay. Next, the battalion of riflemen for reconnoissance, and also to fire at the enemy, or into the air, without the presence of an enemy, to give notice to Brevet Major General Worth, according to concert with him, that the main body of our army was approaching the rear of San Antonio. It is possible that Major Gaines, of the Kentucky volunteers, accompanied this same reconnoitring party. All these detachments and officers were sent by me from Coyoacan, on this side of San Antonio. I have no other knowledge, whatever, of this letter, which I am confident

I never before saw, either in manuscript or print, or never heard of before.

Captain R. Lee, engineers, duly sworn:

Question by defence. Please read carefully the letters handed to you, and say if you know, or have reason to believe you know who are the authors of them; if aye, whether or not the author, or authors, were members of the personal or general staff of Major General Scott, at the time the letters were written, or if not, who the authors were?—papers marked I and K.

Answer. Of this letter, dated August 22d, Tacubaya, I am, I believe the author. I judge so, by looking over it. I was in the general staff of the general-in-chief, at the time; I know nothing of the other letters.

Question by defence. Is the letter dated August 22, Tacubaya, written by you, minutely descriptive of the operations of the army from the time it left Puebla, up to the time the letter was written?

Answer. That letter was written to a member of Colonel Totten's family, and was not intended to be made public, but was to advise him of the substance of our operations; there being no opportunity of forwarding the regular monthly reports, required by the regulation. I have since understood, that when the letter arrived, Colonel Totten being absent, it was sent to the office to Captain Welcher, the assistant of Colonel Totten, who, I have understood, furnished a copy to the Union. Captain Welcher acts as chief of the bureau in the absence of Colonel Totten.

Question by defence. To whom was the letter written; and did you, at the time, consider it public or private?

Answer. It was written to Mrs. Totten, and I considered it a private letter.

Question by prosecution. Had Major General Scott, at the time witness wrote the letter, any knowledge of the fact, or has the said Scott, as far as the witness knows, been since made acquainted with the fact?

Answer. Not that I am aware of. He has never been informed by me, before or since.

Question by prosecution. State the relationship of the engineer bureau to the Secretary of War, or is not that bureau part of the War Department?

Answer. The engineer bureau is a part of the War Department. The chief engineer transacts business in the name, or, certainly, under the authority of the Secretary of War.

Lieutenant G. W. Lay, duly sworn:

Question by defence. Please examine, carefully, the printed letter dated August 24, 1847, and state, if you know, or have reason to believe you know the author; if aye, was he, at the time the letter was written, a member of the personal or general staff of Major General Scott?

Answer. I do not recognize the letter. I may have, sometime, seen it in print. After an examination of the letter, I have reason



to believe that I can form a conjecture as to the author. I have no other materials for judging than any other officer of the army, in my position, might have. I should think it was written by Major Turnbull, late chief of the topographical engineers, with this army. It is much such a letter as would have been written by me, but I think there are internal evidences in the letter which show it could not have been written by me. Letter marked J.

Question by defence. Does witness know the fact that Major Turnbull was sent by General Scott's orders from Coyoacan, with Captain Kearny's dragoons, to reconnoitre the work at San Antonio, referred to in said letter shown him?

Answer. I know that Captain Lee was so sent, and I was sent with him, to return and report. I do not recollect that Major Turnbull was of the party. Were it not for other parts of this letter, I should think the passage upon that subject was written by myself. My impression is that Major Turnbull was not of the party, unless he accompanied it of his own accord.

Question by defence. Were you in front of San Antonio when Captain Thornton was killed?

Answer. Not at the time that he was killed. His body had been brought to the rear before I went to the front. The passage of the letter which refers to the reconnoissance of San Antonio, convinces me that the letter cannot be mine. The date of the letter, also, convinces me that it cannot be mine, because I always deferred writing detailed letters to my friends until it would be too late to put them into the newspapers as the earliest news.

Question by prosecution. Is the witness aware that Major General Scott had at the time, or has had, any knowledge of the letter in question, or of its authorship?

Answer. I am not aware of ever having had myself, or ever having known that General Scott had any knowledge of the authorship.

Captain H. W. Merrill, 2d dragoons, duly sworn:

Question by prosecution. Has the witness ever heard paymaster Burns make any declaration, before the meeting of this court, concerning the authorship of a certain printed letter signed Leonidas? If so, state what declaration said Burns made on that point, and at about what time.

Answer. I have heard paymaster Burns, and it was about the middle of October, or at the time the Leonidas letter was creating the greatest excitement here. I had heard that he was the author of it, and by accident happened in his house. I had called to see him, being up town. The subject of the Leonidas letter arose. I don't recollect which introduced the subject, when I remarked to him, I believe, in these words: "Major, do you know that you are accused of writing this letter? He asked by whom. I replied, by every body. He said, "that is a mistake, I did not write it." I believe I then added, "well you are accused of it." The subject then dropped, and I firmly believed from that time out, that he did not write it; and on all subsequent occasions, and in the presence of the officers of my own regiment, and also of many other persons

in this city, on hearing that he was accused of being the author of it, I have at once refuted the assertion, and said that he was not the author of it; that I had his own positive statement to the contrary. I also always believed firmly that he did not write it, until I heard that he had written and acknowledged it.

Question by defence. Was the conversation in which Major Burns denied the authorship of the Leonidas letter a casual conversation, or did you go to his private room for the purpose of ascertaining whether or not he was the author of the letter; and was it before or after General Pillow's arrest?

Answer. As I before stated, our meeting was casual, and it must have been a week or more before General Pillow's arrest. I will add that our meeting was a friendly one and accidental.

Question by defence. Have you seen any other printed copy of the "Leonidas" letter than that published as the *entire letter* in the Picayune of the 16th of September, and subsequently copied from that paper in the Star and North American of this city; and was this the letter alluded to by Major Burns?

Answer. I do not recollect to have seen any other printed copies, and this was the letter referred to by us.

Question by prosecution. Was, or was not, the denial of the authorship of the letter in question general, or did Paymaster Burns deny the authorship of the Leonidas letter in part or parts?

Answer. The subject of the letter was introduced, and he denied the whole of it, (he did not except to any part,) and in the language which I before stated.

The court then adjourned until to-morrow morning, at 9 o'clock.

MEXICO, March 29, 1848.

The court met pursuant to adjournment.

Present: All the members and the judge advocate and recorder.

Major General Pillow before the court.

Major General Scott present.

Lieutenant S. B. Davis, 14th infantry, duly sworn:

Question by prosecution. Has the witness ever heard Paymaster Burns make any declaration, before the meeting of this court, concerning the authorship of a certain printed letter, signed Leonidas? If so, state what declaration said Burns made on that point, and at about what time?

Answer. I happened to meet Major Burns shortly after the publication of the Leonidas letter in the city of Mexico; and, after some conversation with him, he inquired of me whether I had found out the author of the Leonidas letter. I answered I had not. I asked him whether he knew. He said he did not. This is the only conversation I had with him on the subject.

Question by defence. Witness will state if he has seen any other



copy of the letter than that which appeared in the New Orleans Picayune, and the American Star and North American, published in this city?

Answer. I have not.

Question by defence. Did witness understand Major Burns as referring to this printed copy?

Answer. I understood him as referring to the letter that had been published over that signature.

Colonel Gladden, South Carolina volunteers, duly sworn:

Question by prosecution. About what hour did the late Colonel Butler leave San Augustin the 19th of August last with his regiment, the South Carolina volunteers, and does the witness chance to know whether the colonel dined at San Augustin that day, and at about what hour, and what the witness knows of another meal—breakfast—taken by the late colonel, at San Angel, the morning of the following day?

Answer. I think the regiment left San Augustin between three and four o'clock, p. m., of the 19th. I am not positive as to the hour. I did not examine my watch. I do not know, of my own knowledge, that he did dine at San Augustin that day. On the morning of the 20th, while that portion of the army that had been engaged at Contreras was halted at San Angel, I received a message from Colonel Butler that he had found a house where something could be had to eat, and requested me to join him. I did so; but, before the coffee or chocolate was prepared, a signal was given for the troops to fall in, and he went out to join them. He then informed me that he would return with General Shields and Captain Blanding, of the South Carolina volunteers, and get something to eat; and that, if the regiment should march in the meantime, I would proceed in command of it. Colonel Butler informed me, when he joined me, that he had obtained coffee and something to eat.

General Pillow called the attention of the court to a publication of a paper handed to the court a few days since, and not entertained by them.

General Scott said the paper had not been furnished for publication by *him*, but that he had not prohibited its publication.

The court said that when the doors were next closed, the subject would be considered.

Mr. James L. Freaner recalled:

Question by prosecution. Has the witness, at Puebla or elsewhere, ever received, open or unsealed, a letter or letters from the hands of Major General Pillow, written by Paymaster Burns for the New Orleans Delta, other than the letter signed *Leonidas*, and dated August 27, 1847?

Major General Pillow objected to the question as irrelevant.

Major General Scott sustained the legality of the question.

The court closed and decided to *sustain* the objection.

The court then decided the question in reference to the publication in a morning paper, as follows: The court has seen with regret the publication in the newspapers of this city of certain papers read to the court and rejected or not permitted to be entered on its record. At the same time, that the court cannot prevent such publication, the parties publishing are warned that they are calculated to prejudice the cause, and the course of the publisher, in the opinion of the court, is indelicate and highly improper.

The decision being announced, General Scott said, in substance, that he would always conform to the rules of the court when he knew them. That he regretted that the court had passed over in silence, a few days since, a somewhat graver case of the same character, which he had brought to their notice.

The president informed General Scott that both publications were included in the remarks of the court.

General Scott then requested to be allowed to place upon the record, as an appeal to the revising authority against the rejection of the last question, the following paper:

*Mr. President and gentlemen of the court:*

The foregoing question having been propounded by the judge advocate, and Major General Pillow having objected to the same, with remarks in support of the objection, Major General Scott present, as prosecutor in the case before the court, made a brief reply, stating substantially that the evidence sought for was intended further to impugn and discredit that part of Paymaster Burns's testimony for the defence, in which the said Burns swore that, after enveloping, addressing, and sealing the Leonidas letter for transmission to the New Orleans Delta, that he, the said Burns, did not deliver said letter to Major General Pillow, all of which he well remembers—yet remembers not to *whom* he delivered the said letter for transmission according to its address; whereas the answer to the said question and the answer to another that would have been put to the same witness (Mr. Freaner) would, as the said Scott is informed and believes, go to show the habit of the said Burns to pass his letters for the public press, laudatory of the said Pillow, open or unsealed, through the latter. And the said Scott reminded the court that the same information heretofore sought, while he was under cross examination, had been on the hesitation of the said Burns, supported by the said Pillow, cut off by the decision of the court, on the ground taken by the said Burns that his answer might criminate him, said witness.

The said Scott believing that the two decisions of the court to be against law, the rights of the prosecution and the ends of justice, asks leave that this his solemn protest may be entered upon the records of the court.

Respectfully submitted:

WINFIELD SCOTT.

MEXICO, March 29, 1848.

Mr. W. C. Tobey, for defence, duly sworn: