

they may be answered. He deems them important as showing the habits of close intimacy and personal relations existing between the witness, Freaner, and prosecutor, so as to enable the court properly to estimate the testimony of that witness. The defence also deems the proof material, as sustaining and justifying the conduct of the defence, in himself furnishing the information asked for by Freaner, which is now the subject matter of a distinct specification, in the charges against the defendant, viz: the paper marked No. 1. The defendant admits he caused it to be furnished said Freaner, and the defendant has proved that that paper was furnished upon the application of the said Freaner. The facts in that paper the defendant has proved to be substantially true, he believes. If the prosecutor was, himself, through a confidential staff officer, furnishing the same kind of information to the same correspondent, it is a justification of the very act which the prosecutor condemns in the defendant, by doing the very thing condemned in the defendant.

This view of the case is greatly *strengthened* by the practice, already proved, of the general staff of the prosecutor having, in five different instances, written letters which have appeared in the public press, giving very partial and inaccurate accounts of the operations of the army in this valley, two of which, it is proven, were known to the prosecutor himself, and parts thereof read to him: one, grossly and scandalously false and abusive of the defendant, misrepresenting the conduct of the defendant, and discussing the very matters which this court is now considering, and intended and calculated, as the defence believes, to *poison the public mind* against the defence, and to cause it to prejudge the very matters at issue while the defendant was held under arrest, awaiting the application of the prosecutor to the government for a court martial for the trial of the defendant. Surely, under the circumstances, it is *legal* testimony, and proper to go before this court, as showing the motives of this prosecution, as well as justifying the act of defendant in furnishing the paper No. 1, already referred to; and in both points of view it is offered.

The defendant does not consider the proof sought to be made by the two questions above as calling for proof of conduct, which is in violation of regulations, or wrong. If *right* in the prosecutor, it cannot be *wrong* in the defendant. But as the prosecutor considers it wrong in the defendant, he, the defendant, has a right to show the prosecutor did the same thing.

GID. J. PILLOW,
Major General, U. S. A.

General Scott read the following in reply:

Mr. President and gentlemen of the court:

The question to the witness has not been objected to by him nor by the prosecutor; but if the court allow it to be answered, the prosecutor will ask to be permitted to inquire what papers or notes connected with this investigation the defendant and his staff have

furnished to the reporters for the public press. And the court will recollect that reporters openly copy evidence and documents belonging to the case from its records in open court.

In reply to the paper of the defendant, I will merely add that it has assumed, as proven, a great number of assertions which have not been proven, and which are entirely unsupported by facts.

Respectfully submitted:

WINFIELD SCOTT.

In court, April 21, 1848.

The court decided that the question should not be put.

Lieutenant J. R. Bennet, 15th infantry, recalled for defence:

Question by defence. Is the witness acquainted with the general character for *veracity* of Private Ayres, of company H, 15th infantry? If so, he will say if he would give said Ayres credit upon his oath in court?

Answer. I have been acquainted with his character for about ten months, and would give credit to his testimony under oath.

Question by defence. Where is the 15th infantry now stationed?

Answer. At Cuernavaca.

Question by defence. Does witness know the gambler, Miller, a witness for the prosecutor in this case? If so, he will state what he has heard him say, within the last few days, about General Pillow?

Answer. I have known him for about nine months. I think it was about three evenings ago last evening that I saw him in the Gran Sociedad. I heard some person abusing General Pillow. I stepped up close to the crowd. There were four, I believe, together. Miller remarked that General Pillow ought to be taken out of the city and shot. Nothing more, I believe.

General Scott read the following paper to the court:

Mr. President and gentlemen of the court:

Under the rule you have established, I briefly reduce to writing the remarks which I yesterday submitted verbally.

I have not had time to consult the mass of evidence which has been spread upon the record of the court, and, therefore, can only here speak from memory. Among the side issues the defence has been allowed, in the progress of this investigation, to raise, by cross-examination and direct testimony, are the following:

1. The merits of the attack upon the Molino del Rey, the 8th of September last, whereas that battle is only alluded to in one of the specifications, (the fourth, charge second,) to introduce an assertion of the defendant, which the specification alleges to be false.

2. The relative merits of the attack, commenced September 12, on the castle of Chapultepec, compared with an attack that might have been made, about the same time, upon the gate of San Antonio, one of the southern entrances of the city, whereas the latter attack is only alluded to, in the same specification, to introduce declarations of the defendant, which are alleged to be false.

3. The merits of the temporary armistice agreed upon at Tacubaya, in August last, whereas the armistice is only alluded to, in the sixth specification, same charge, to introduce the alleged fact that the defendant was not opposed to an armistice, until he knew that he would not be a commissioner, on the part of the American army, to negotiate one.

All the testimony introduced by the defendant, touching those matters, is entirely irrelevant and inapplicable to the merits of any specification under the inquiry of the court, and has served to overlay the true merits of the case, and, by partial views, to misrepresent the events of the campaign, the motives and conduct of several commanders, and particularly those of the then general-in-chief of the American army in Mexico.

The prosecutor repeatedly admonished the court, in the progress of the investigation, of the irregularities in question, without following by testimony, except incidentally and very partially, the defendant in those side issues. It is now asked, will the court permit the prosecution to go fully, by evidence, into the matters recited above, so as to rebut and contradict the partial testimony complained of?

Respectfully submitted:

WINFIELD SCOTT.

MEXICO, April 21, 1848.

General Pillow read the following:

Major General Pillow respectfully submits to the court that he has gone into side issues no further than was necessary to meet the several points set forth by the prosecutor in his charges and specifications, to make such explanations as might put the court in possession of the facts and circumstances immediately connected with the charges preferred, and to shield his reputation from the imputations and insinuations, (whether true or false remains for this court, on the evidence, to determine,) cast upon it by the prosecutor, Major General Scott. Major General Pillow expressed his willingness and anxiety to go into proof of his conduct, before this investigation commenced, in relation to the voluminous charges and specifications preferred against him. This matter, (so far as the witnesses in this country are at hand,) is now disposed of; he now expresses an equal willingness and anxiety to proceed to the investigation of *any other matter* the court may think proper to enter upon, in the shape of charges or accusations preferred by General Scott, or any body else, *against himself*; but if *new issues* are to be made, not connected with charges against himself, he claims the position of a witness, and no longer that of defendant.

Respectfully submitted:

GID. J. PILLOW,
Major General, U. S. A.

The court then closed, and came to the following decision:

The court not having admitted collateral evidence irregularly, nor gone into any collateral evidence when objected to by the prosecutor,

in the form prescribed by the court, decides not to enter upon the inquiries now proposed, as it will be seen by the record that neither the merits of the attack on Molino del Rey, nor the relative merits of an attack upon Chapultepec and San Antonio garita, nor the merits of the armistice of August last, are before the court.

General Pillow presented the papers marked S, being the printed reports of Santa Anna on the battle of 20th August.

The evidence now closed, as all the witnesses in Mexico had been examined.

The court then, in pursuance of its intentions previously made known to the parties before it, determined to adjourn to the United States, for the purpose of obtaining the testimony of witnesses in the United States, and whose presence could not be easily procured in Mexico.

The court then announced to the parties before it, that the court would stand adjourned until such time and place as the president thereof might direct, and that the court would take the testimony of Colonel Morgan, at such place as he might be met on the road, and then proceed to New Orleans to take the testimony of the witnesses in that city, and would there fix upon the place of its sessions in the United States.

Major General Scott said that he would furnish the judge advocate with interrogatories for Colonel Morgan, and for the witnesses in New Orleans, and proceed at once to New York, by sea; and that a communication addressed to him at Elizabethtown, New Jersey, would reach him.

The court then adjourned.

TEPEYAHUALCO, MEXICO, April 28, 1848.

The court met pursuant to the call of the president. Present: All the members and the judge advocate and recorder.

Major General Pillow in attendance.

Colonel G. W. Morgan, 15th infantry, duly sworn:

Question by prosecution. Were you, with the 15th infantry, in the afternoon of August 19th last, halted near the mound that overlooks the hamlets of Ensalda, on the opposite side of the pedregal; and, if so, how often was the regiment halted at or in front of that mound; by whose orders, and who brought the several orders?

Answer. I was in command of the 15th infantry at the place designated in the question on that day. I think, but cannot be positive, as it did not impress itself upon my mind, that I was halted by General Pillow in person. My regiment was on the left of the line, and about 250 yards in front of the line of battle, I think. I cannot now recollect whether I received orders or not; but, finding

my regiment in front of the line of battle, I formed into line, faced to the rear on the line of battle. The regiment was halted twice. I think that Lieutenant Ripley brought me the order once, but I cannot be positive; and I think General Pillow gave the order in person once. I recollect that Mr. Ripley brought me an order, and, I think, to halt the regiment; but I cannot be certain about it.

Question by prosecution. On coming up with the said mound, or later, were you told, by or from Major General Pillow, to hold your regiment in reserve; at what time were you so told; was it at or near the foot of the said mound; was it at the first, second, or other place of halt near that mound, that you were told to hold the regiment in reserve, and from which place of halt was the regiment finally ordered to march across the pedrigal?

Answer. After the troops on the right of the line had gone into action, I put my regiment in march in the rear of General Pierce's brigade, and had advanced about 200 yards in front of the base of the mound, when I received orders from General Pillow, either in person or through one of his staff, I don't recollect which, to hold my regiment in reserve. The time of the day was, I should suppose, about 2 o'clock; I took no note of the time. It was the last time my regiment was halted before going to the support of General Cadwalader; as to which halt I cannot say, for I do not recollect them.

Question by prosecution. If you were told to hold your regiment in reserve, at what halt were you so told; and, if so told, was any future purpose assigned or intimated?

Answer. I received a simple order to hold my regiment in reserve; the time I have stated.

Question by prosecution. At about what time in the afternoon, August 19th last, was the regiment finally put in march, to cross the pedrigal towards Ensalda, and who brought the order for that march?

Answer. It was about 30 minutes after the action commenced, after the right of the line had gone forward. It might have been more; I could not exactly tell. The order was brought by Captain Hooker, as coming from General Pillow.

Question by prosecution. Did you chance to observe the arrival of Major General Scott on the said mound; and had, or not, your regiment then commenced its march from a point near the corn-field in front of the said mound, in order to cross the pedrigal?

Answer. I did observe the arrival of General Scott on the mound. I recollect it from this circumstance, that I observed to Lieutenant Colonel Howard, yonder comes old Winfield! General Scott, I think, with his staff, took a position just behind General Pillow. He came up as my regiment was moving off, or perhaps a few minutes before, as nearly as I can recollect.

Question by prosecution. Did you chance to hear Colonel Harney's dragoons, near the foot of the said mound, cheer Major General Scott, and where were you and regiment when you heard that cheering?

Answer. I don't recollect hearing any cheering from the dragoons.

Question by prosecution. If your regiment were still at a halt, when the said Scott came in sight, where was the regiment at that moment, and how long was it before the regiment commenced the march from that halt, in order to cross the pedrigal?

Answer. It was about the time of General Scott's arrival that my regiment moved; I cannot say whether it was moving or just about to move, or moved a few minutes after he arrived.

Question by prosecution. Did any staff officer bring an order for your regiment to march across the pedrigal, after or before the said Scott came in view of your position, and how long was it, after or before the final march of your regiment, from the halt near the corn-field?

Answer. About the time of General Scott's arrival—I can't say whether it was before or after, but it appears to me to have been about that exact time—Captain Hooker came to me and said it was General Pillow's order that I should move rapidly to the support of General Cadwalader and Colonel Riley, whose positions were threatened by a large reinforcement of the enemy from the city. It is my present impression that while my regiment was moving, I saw Mr. Lay galloping by. I will not be positive as to the officer, but whoever he was, he inquired the position of General Twiggs.

Question by defence. After receiving the order to move forward from Captain Hooker, do you recollect to have inquired the route; whether or not Captain Hooker conducted your regiment to the edge of the pedrigal?

Answer. I did ask the route, and Captain Hooker conducted me as far as he could proceed on horseback.

Question by defence. From the position your regiment occupied, and from the character of the ground for half a mile back, over which General Scott would approach, witness will state if he could have distinctly seen General Scott, as far back as he could distinguish his person?

Answer. I could have observed General Scott from a greater distance than I saw him. I don't think I could have seen further, in the direction from which General Scott came, than a quarter of a mile. I was at the foot of a slight declivity, and the ground rose towards the place where I saw General Scott, and fell, I think, on the opposite side.

Question by defence. Witness has said he was ordered to cross the pedrigal as rapidly as possible, and to support Cadwalader and Riley. Is he confident and clear that he was ordered to the support of one of these officers?

Answer. I am most certainly.

The court then adjourned, subject to the call of the president thereof.

NEW ORLEANS, May 8, 1848.

The court met, pursuant to the call of the president.

Present, all the members and the judge advocate and recorder.

The judge advocate informed the court that he had the witnesses, who were unable to attend before to-morrow.

The court then, after consideration, decided that they would meet in Frederick, Maryland, on the 29th of May, 1848, and directed the judge advocate to give notice to the parties, and to summon the witnesses to meet the court in that city.

The court then adjourned until to-morrow morning at 10 o'clock.

NEW ORLEANS, May 9, 1848.

The court met pursuant to adjournment.

Present, all the members and the judge advocate and recorder.

Major General Pillow before the court.

Mr. John McGinness, of New Orleans, duly sworn, says:

Question by prosecution. Look at the paper signed Leonidas, and state what you know in relation to that paper?

Answer. It was on the night of the seventh, or morning of the eighth of September last, about one or two o'clock in the morning, perhaps, I was awakened by the foreman of the Delta office, with the news that the Mexican mail had arrived; I would state further, that it was my business to make up the Mexican news, as the other editors were absent; among the letters or papers in the package or packages was this letter which I have in my hand, (No. 3.) as near as I can identify any document that was in my possession. I afterwards gave this letter to Mr. J. L. Freaner.

Question by prosecution. Do you know in what package that letter came?

Answer. To the best of my recollection, it came in a package with some letters and documents from Mr. Freaner with some Mexican news.

Question by prosecution. Why was the letter given to Mr. Freaner?

Answer. At Mr. Freaner's request; it was made in writing twice; the dates I cannot specify; and verbally once, that is when he asked me to hand it to him in the office.

Question by prosecution. Did he give any reason for this request, or give any opinion about the letter.

Answer. He always spoke of it as a very ridiculous production, and asked for it for his own security.

Question by prosecution. Have any attempts been made to influence the course of the "Delta" towards certain general officers of the United States army; was any undue influence used to this end, and if so, through whom, and in respect to what general officers?

Answer. I would answer, that our correspondents have frequently given their opinions of the merits and demerits of several officers, but no attempt, that I am aware of, has ever been made to influence the course of the "Delta," and I don't believe any officer would be fool enough to make the attempt.

Question by prosecution. Was any indication given to those interested in the "Delta," that it would be to the advantage of said newspaper to change its course in reference to certain general officers of the United States army; and if so, in respect to what general officers and by whom?

Answer. I know of no particular indication given by any one; I have heard opinions expressed by the masses, and advice volunteered by the friends of the "Delta," which is done every day.

Question by prosecution. Do you consider Mr. James L. Freaner as your authorized agent for correct reports of what transpires in or about the army in Mexico, wherever he may be; and if so, would the letter signed "Leonidas" have been published in your paper, if it had not come to you enclosed in your package of correspondence?

Answer. I consider Mr. Freaner as an authorized agent for correct reports of what transpires in Mexico. I believe the letter signed Leonidas would not have been published in the Delta, had it not come in Mr. Freaner's package, or supposed to have come in his package, with his sanction. The packages were all broken open, and the contents mixed together, when I was called. I believed, then, it came in Mr. Freaner's package, and I believe so now.

Question by defence. Witness will state if the Delta had defended General Pillow from the assaults of other presses, up to the time the American army entered the capital of Mexico; state, also, if this course, on the part of the Delta, was entirely voluntary, and unsolicited by General Pillow, and was adopted before General Pillow was personally known to any of its editors?

Answer. With regard to dates, I cannot state, definitely, how long it defended General Pillow; and, as far as my knowledge extends, this defence was voluntary and unsolicited, and was before he was known to the editors of the Delta. My position in the office being principally in the business department, I cannot answer that question with the accuracy that I could were I the editor, and controlled its columns.

Question by defence. Has not the Delta published many letters and communications from Mexico, in regard to the movements of the army, which did not come in Mr. Freaner's packages; and is there not another one, besides the Leonidas letter, in the very number containing that letter?

Answer. It has. There is another letter in the same number, as I see by the paper.

The Hon. Alexander Walker, duly sworn, says:

Question by prosecution. Look at paper No. 3, the letter of Leonidas, and state your knowledge of that paper?

Answer. I am the editor of the Delta—having general charge of