

to oppose the application of Major General Scott to have the chiefs of the bureaus of the Department of War summoned, for the reasons—

First, that the prosecutor says he wishes to prove by them that private and unofficial letters of different members of his staff, four or five in number, written and published in the newspapers, in violation of the army regulations, were official documents, and authorized to be published by those chiefs. Those letters show upon their face that they are not official, are published without signatures, and have been already proven to have been signed by the writers (except one) in their private and individual capacities.

Independent of this view of the case, (which shows conclusively that the proofs are irrelevant and incompetent,) the court must know, as a matter of law, that the chiefs of bureaus have no power or right to dispense with the operation of an army regulation, adopted and published by order of the President of the United States.

The proofs, therefore, if produced, neither are an excuse or extenuation (much less a justification) of officers of the staff of the prosecutor in doing that which the prosecutor so strongly denounced in general order No. 349, and for which he has denounced paymaster Burns as *officially dishonored*.

Independent of these legal grounds of opposition to this application, (which under ordinary circumstances I would have no hesitation in waiving,) the court must perceive that the effect of summoning these witnesses now must necessarily be to prolong this investigation to a period when, by operation of law, the defence will be out of the service, and thus put an end to this investigation, without finally disposing of the case, thus working great and manifest injustice to the accused. The defendant cannot suppose the prosecutor would intentionally take a step to produce such a result, but he must nevertheless see that such will, in all human probability, be the case.

The defendant, five days ago, applied to this court to summon quite a number of witnesses on his behalf in this case, which motion has been rejected. Under these circumstances, Major General Pillow respectfully submits to the court, whether it ought (as the justice of the case does not call for it,) to prolong this case indefinitely, and virtually to throw the defendant out of court, without a final disposition of the charges against him, and that it should now close the case by an examination of those witnesses whose names the parties submitted to the court as material, in the city of Mexico, for the purpose of taking which the court adjourned to the United States; especially as the proof proposed to be taken by the prosecutor does not relate to the prosecutor's charges against the defendant, nor to any conduct of the defendant, but is desired solely for the purpose of excusing the prosecutor's staff officers for a violation of regulations, about which neither the prosecutor or his staff are accused or sought to be punished.

Respectfully submitted:

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

General Scott's reply:

Mr. President and gentlemen of the court:

This court, like the prosecutor, cannot say when the contingency, namely, the interchanges of ratification of peace will officially reach this court. In the mean time the parties, at least the prosecutor, is obliged to take his measures as if that official notice may not arrive in weeks or months. The defence some time early in this investigation, introduced certain officers of the general staff, attached to the general-in-chief in Mexico, to prove that letters written by those staff officers to the chiefs of their respective bureaus in Washington, had found their way into the public press, contrary to a general regulation of the army; and I now propose to send for those chiefs of bureaus, to show that they caused those letters to be published, although they were not strictly official, but intended by the writers as hasty substitutes, to some extent, of the official reports which were to be prepared and regularly forwarded in the first interval in the active operations of the field. The chiefs of bureaus at Washington, to whom those half official letters were respectively addressed, were respectively the superior and commander of the staff officers who addressed the particular bureaus; and the publication of such letters by those chiefs of bureaus was, therefore, the act of superior authority, with the express, implied, or well understood sanction of the War Department.

I propose, therefore, to summon those chiefs to establish that fact and principle.

If the witnesses arrive in time, they can be examined; nor is it intended that any witness for the defence present shall wait for absent witnesses on the part of the prosecution.

The testimony of the defence, respecting the authorship and publication of the letters in question, was either pertinent or not. It having, however, been admitted by the court, the court will certainly not allow it to stand uncontradicted and unexplained, to the injury of individuals and the violation of justice.

Respectfully submitted:

WINFIELD SCOTT.

In court, June 10, 1848.

The court decided that the witnesses should be summoned, and that, if they attended in time, they would be examined; but that the court would not delay its proceedings on account of them.

The court then adjourned until Monday at 12 o'clock, in consequence of the necessity of the members visiting Washington.

FREDERICK, June 12, 1848.

Court met: present, all the members and the judge advocate and recorder.

General Scott in attendance.

General Pillow before the court.

Surgeon L. W. Jordon, U. S. army, for defence, duly sworn:

Question by defence. Witness will state if he is a surgeon of the army; if he was upon the battle field of Churubusco; if so, on what occasion? And on what part of that field did he see General Pillow? And what he knows about a Mexican officer being shot by General Pillow on that day?

Answer. I am a surgeon in the army. I was on the battle field of Churubusco with the 14th infantry. I recollect of seeing General Pillow three different times: twice on the battle field, and once approaching the battle field. The first time I saw General Pillow, he was at the head of his column, crossing the ditches afoot. The second time, General Pillow was in the road. The regiment that I was with passed through a corn-field on the left of the road. I left General Pillow to my right. Then I did not see General Pillow until he passed me on the bridge head. I was at a halt at the time on the bridge head, being much fatigued. When the regiment, or part of it, (the 14th,) occupied the bridge head, the Mexicans were running from the church; and, during the time that they were there, the deserters came out pretty much as a body from the church; part of the men were firing upon them from the bridge head. Colonel Trousdale (I think) ordered them to cease firing. They had their flag. They were in a body. He sent the adjutant of his regiment to meet them and receive the flag. About that time, I saw some officers and men, (Mexican,) and there was some firing; and I saw some officer fall, and who shot him is unknown to me. After my regiment and the column left, I remained on the bridge head. General Pillow then passed me on the bridge head.

Question by defence. How many Mexican officers did the witness see? Where were they? Which way were they going, and from what direction was the firing upon these officers?

Answer. From where I was situated, and the distance that I was from those men, I could not distinguish but two. There were two that I recollect distinctly of seeing. I think several men on horseback; but whether they were Mexican officers or not I would not pretend to say. They appeared to be going towards the rear, or riding towards the road. They were in a corn-field. There was firing from the bridge head, and occasional promiscuous firing from the rear and along the road.

Question by defence. Witness will state what he knows of any American officer or officers, on the road in front of the bridge head, shooting at these Mexican officers, and who that American officer was, and what reasons he has for believing he knew who it was that shot from the road?

Answer. I did not recognize any American officer shooting from the road. General Pillow passed me on the bridge head shortly after the firing, with his pistol in his hand. This is the only evidence I have of any officer shooting from the road.

Question by defence. Did the witness see any one shoot, from the road, at the Mexican officer, immediately before General Pil-

low passed him; if so, was that shooting by the persons in the front of the persons coming up the road?

Answer. I could not say that I saw any person firing from the road at the Mexican officer; at that time there was occasional firing down the road, random shots; or it appeared to be in the corn-field, by the side of the road, near some buildings.

Captain Croghan Ker, 2d dragoons, for defence, duly sworn:

Question by defence. Witness will state if he was upon the mound overlooking the battle field of Contreras, on the 19th of August last, at the time General Scott arrived upon that field?

Answer. I was?

Question by defence. Did witness hear a conversation between General Scott and General Pillow, immediately after General Scott arrived, in regard to the orders and disposition of the forces then on the field; and if so, state that conversation?

Answer. I did hear a conversation between Generals Scott and Pillow, immediately after the arrival of General Scott upon the hill. General Scott asked General Pillow what was the plan of attack, or words to that effect. General Pillow replied that Twigg's command was sent to assault the enemy's front, and that Riley's brigade was sent to manœuvre on the left, and gain his rear, if possible. Those might not have been the very words, but that was the idea conveyed. That he had sent Pierce to support Twigg, Cadwalader to support Riley, and Colonel Morgan's regiment to support Cadwalader. General Scott replied: "Admirable! admirable!" That is all the conversation I heard. At that time General Scott was standing, with his arm through General Pillow's, on the hill?

Question by defence. State if, at the time General Scott arrived, Morgan's regiment had or not actually commenced the movement across the pedrigal?

Answer. Yes, it had. To the best of my recollection Morgan's regiment had got past the corn-field, in front of the position of General Pillow, and was among the rocks. I don't think the regiment could be seen at that time; from the nature of the ground, only occasional sights of the regiment could be caught. From the hill, the regiment could only be occasionally seen. Where I stood, I could see only the bayonets.

Question by defence. Did witness hear General Scott inquire what bayonets those were, pointing to troops in the pedrigal, or amongst the rocks; if so, what answer was made to this inquiry, and by whom?

Answer. I heard General Scott inquire what bayonets are those? I think there were three or four voices replied: "Morgan's regiment."

Question by defence. Did witness see General Pillow point out to General Scott the large reinforcements of the enemy coming up from the city, and advancing, at the time, rapidly towards the village of Ensalda?

Answer. No; I can't say that I saw General Pillow point them

out to him. There was a great deal of conversation on the hill about the reinforcements.

Question by defence. Were those reinforcements seen, and known to be advancing, before General Scott reached the mound?

Answer. I think so; yes, they had been seen before General Scott reached the mound.

Question by defence. How happened witness to be upon the mound when this conversation occurred?

Answer. I had been ordered, in the morning, to report, with a command of dragoons, about three companies, to General Pillow. I had been ordered to report, with my own company at first, and then two others were ordered to report to me on the field. I was ordered by General Pillow to remain until the other troops had advanced, and then take up my position at the foot of the hill. As soon as the infantry had moved off, I took the position designated by General Pillow. He then ordered me to send some one to find a road across the pedregal. I did so, and it was discovered that there was no practicable route across the pedregal for dragoons. I at that time dismounted my command, and walked up on the hill, so as to see the battle.

Court adjourned until to-morrow morning at 9 o'clock.

FREDERICK, June 13, 1848.

Court met: present, all the members, and the judge advocate and recorder.

Major General Scott in attendance.

Major General Pillow before the court.

General Pillow made the following motion:

Mr. President and gentlemen of the court:

Having procured the original record of the howitzer case, together with the opinions of the government, contained in general orders, revising the case, the defendant asks leave of the court to file the same as proof in this case. This record is, in any and every point of view, competent proof in this case, inasmuch as it was for the appeal of the defendant from the decision of the general-in-chief, in this case, that the defendant was arrested. If, however, there was any doubt upon this subject, the prosecutor himself having, on the day before yesterday, expressed a wish to have this record filed as proof in this case, it stands now as an agreed case, between the prosecutor and the defendant, to admit the proof.

Respectfully submitted:

GIDEON J. PILLOW;
Major General, United States Army.

The papers were admitted, marked V.

Answer. No; I can't say that I saw General Pillow point them

Captain Ker under examination:

Question by defence. Did the witness hear General Scott ask General Pillow why he had not advanced Captain Ker's command of dragoons; if so, what was the reply?

Answer. I did hear General Scott ask General Pillow why he had not advanced those dragoons; General Pillow replied that the road was impracticable.

Question by defence. Had the witness, in person, or had he caused an officer of his command, under orders from General Pillow, to reconnoitre the ground upon the side of the pedregal occupied by the dragoons, for some practicable route for dragoons to cross, and could find none; and was that fact made known to General Scott or not?

Answer. Yes. I asked General Pillow to advance my command, and he ordered me to send an officer to find a practicable route; when General Scott came upon the field he asked why the dragoons were not sent forward, and was told by General Pillow that there was no practicable route. He also sent an officer to reconnoitre, and see if he could find a road. I don't recollect now whether it was an officer of his staff or one of the dragoon officers, who returned and made the same report.

Question by defence. Has witness a knowledge of the fact that General Pillow once or twice sent a staff officer with orders to General Twiggs, and that officer returned and reported that he could not find General Twiggs?

Answer. Yes. I think Captain Hooker, of General Pillow's staff, was ordered to the front to communicate with General Twiggs. I think he was ordered to ask why General Twiggs had not assaulted the work in front. The staff officer returned and reported that he had searched the field but could not find General Twiggs; that he had found the second in command, General Persifer F. Smith; he said that the reason which General Smith gave why the work had not been assaulted was the same that prevented the cavalry from assaulting his command, namely, the intervening ravine.

Question by defence. Witness will reflect a moment, and say whether it was Captain Hooker or Lieutenant Ripley who was charged with the orders to General Twiggs.

Answer. I think Captain Hooker, though I may be mistaken.

Question by defence. Did witness leave Mexico, under written permission from General Scott?

Answer. Yes; I was ordered to New Orleans, and to report to the adjutant general by General Scott.

Question by prosecution. Has, or not, the credibility of the witness before some former court martial, or court of inquiry, been directly impeached by the evidence of one or more brother officers, specially called to impeach the witness's credibility?

Question. I have no objection to answer the question, but I think it is done to insult me. I answer no, never. It has never been attempted, and I defy General Scott, or any one else, to show a particle of evidence to impeach my testimony.