

Considering that I, in time and in form, proposed to take, by mutual consent, the depositions of departing witnesses, on both sides, to be read in evidence at the trial, under the 74th article of war, which proposition Major General Pillow thought proper to decline—see the correspondence herewith on the subject.

Considering, that this court would be obliged to adjourn to the United States, in order to have the least hope of obtaining the testimony of several of those important witnesses, now retired to civil life, and therefore not compellable to attend a military court, even at home, or to certify before a commission duly appointed by such court.

Considering that the season is near at hand, when the court and the parties will not be able to leave this country for home without great peril to life.

Considering that there is a near prospect of a peace between the United States and Mexico, which may be consummated in time to enable this whole army to return home in safety.

Considering that, immediately, on such consummation, Major General Pillow would, by the express terms of the law under which he holds his commission, be out of the army, and therefore no longer amenable for his acts before any military tribunal.

Considering, that in preferring the charges against that officer, I was moved solely by the desire to preserve the discipline and honor of the army—not ever having the slightest personal quarrel or difficulty with him, and that the time has probably gone by for benefiting the service by a conviction and punishment.

In view of all these considerations, I shall, Mr. President, decline prosecuting the charges and specifications against Major General Pillow, before this preliminary court, without its special orders, or the further instructions of the President of the United States.

Respectfully submitted,  
WINFIELD SCOTT.

MEXICO, *March 10, 1848.*

A 1.

HEAD-QUARTERS OF THE ARMY,  
*Mexico, November 30, 1847.*

SIR: I am instructed by the general-in-chief to enclose to you, herewith, certain charges and specifications which he has deemed it to be his duty to prefer against you. An imperfect copy of the same has been despatched to the Secretary of War, with a request that, under the act of May 29, 1830, section 1, a general court martial may be ordered for your trial on those charges and specifications.

I am also instructed by the general-in-chief to refer you to the 74th article of war, and in his name, as your commanding officer and prosecutor, to propose, with your written consent, and in your presence or that of your counsel, agent or representative, to pro-

ceed to take here, in some room of the national palace, on Thursday the second of December, 1847, beginning at 10 o'clock, a. m., before Captain S. C. Ridgeley, now special judge advocate of a general court martial in existence, and continuing from day to day, till completion, the depositions of two gentlemen "not in the line or staff of the army," who are about to return to the United States; the said depositions to be read in evidence, at your trial, on the said charges and specifications; and at the same time and place, or in succession, beginning as above, to take, in like manner and for the like purpose, the deposition of a general officer, who is also about to return to the United States, and who, probably, will have resigned his commission in the army, by the time of the meeting of the general court martial asked for, as above, for your trial.

The general-in-chief bids me to say further that the sole motive of the above proposition, in respect to depositions, is to save time. Persons "not in the line or staff of the army" cannot be legally compelled to attend general courts martial; hence the law, in "cases not capital," allows their depositions to be taken and read in evidence before such courts; but the compulsory course, as between the parties, is, when the particular court martial meets, for the party desiring the testimony of such witnesses, to move the court for a commission to take their deposition.

It is, therefore, to save the army and the accused the inconvenience of a delay of two or more months, after the meeting of the court asked for as above, in sending a commission home to take the depositions of the three witnesses alluded to, that the general-in-chief has directed me to address to you this communication. Consent of parties, in matters of evidence, cures all defects in matters of form.

On the other hand, the general-in-chief, the prosecutor in your case, will be willing, if you shall desire it, to consent that the depositions of any witnesses you may designate, who are about to leave the country, may be taken, in your behalf as above, and be read in evidence at the same trial.

I am instructed to request an early reply to this communication, and have the honor to remain,

Sir, very respectfully, your obedient servant,  
GEO. W. LAY,  
*Lieut. and military secretary.*

To Major General PILLOW,  
*U. S. army.*

The above is a correct copy of the original letter signed by me.  
GEO. W. LAY,  
*Lieutenant U. S. Army.*



A 2.

CITY OF MEXICO,  
December 1, 1847.

SIR: I acknowledge the reception of the copy of the charges preferred against me by the general-in-chief, together with his proposition, by agreement, to take at this time the testimony of certain witnesses (whose names are not mentioned) to be read as evidence on the trial of the cause. I certainly have every reason for desiring an early investigation of the case; but, as no court is yet ordered, and as it is wholly uncertain whether the court will be ordered to *convene* in this country, or in the United States, I regard it wholly premature now to commence taking proofs, and I therefore decline acceding to the general's proposal. I have other reasons for the adoption of this course, which, as they might not be deemed altogether respectful to the general, I do not think proper to here assign.

Very respectfully,

GIDEON J. PILLOW,  
Major General United States Army.

To Lieut. GEO. W. LAY,  
Military Secretary.

A 3.

CITY OF MEXICO,  
November 18, 1847.

SIR: Understanding that the general-in-chief has it in contemplation, at an early day, to order portions of the army to distant posts in the interior, and, supposing that the reorganization of the "regulars" has been ordered with that view, it becomes my duty, as my witnesses in the charges preferred against me by the general-in-chief are mostly embraced in the newly organized brigades, to inquire if it is probable any column will march before the arrival of the expected order of the government in regard to my trial; if so, I desire to be informed what action the general will take in regard to the witnesses, having in view the interests of the service, and my own right to a *speedy* and *impartial trial*, neither of which can be had, if my witnesses are ordered to distant parts of the country.

Very respectfully,

GIDEON J. PILLOW,  
Major General United States Army.

To Capt. H. L. SCOTT,  
A. A. A. G.

A 4.

HEAD-QUARTERS OF THE ARMY,  
Mexico, December 20, 1847.

SIR: I have laid your note, dated November 18, 1847, instead (by mistake) the 18th instant, before the general-in-chief, who instructs me to reply as follows:

He is well aware that the good of the service, and the convenience of parties, require that there should be no unavoidable delay, either in the commencement or completion of your trial. Hence, by the first opportunity, he asked the President, as the law obliged him as the prosecutor to do in the case, that a general court-martial might be ordered, and without presuming to name the place of meeting took it for granted it would be near the great body of officers who would be needed as members of the court and witnesses. Hence, also, he, the general-in-chief, in the letter he caused to be addressed to you on the 30th ultimo, proposed to you to take, by consent, the depositions of certain witnesses then here, but about to return to the United States, in order to save some two months in sending home, after the meeting of the court, a commission to take the depositions of the same witnesses. This proposition you declined, and seemed in the answer, dated the 1st instant, to entertain the hope or expectation that the court for your trial would be ordered to meet somewhere in the United States, which might, by taking away a great number of officers as members and witnesses from the army, stop all military operations for the time, against the public enemy. Whether you possess the influence so to embarrass the public service is best known to yourself.

In conclusion, I am instructed to say that, should a court be ordered for your trial in this country, officers who may be on detached service in the same, may be brought to the place of trial in a third of the time that will be needed to send home a commission for taking the depositions of the witnesses before alluded to.

Very respectfully, &c., &c.,

H. L. SCOTT, A. A. A. G.

Maj. Gen. PILLOW, &c., &c.

B.

Mr. President and gentlemen of the court:

In reply to the paper submitted by the prosecutor in this case, in which he, for reasons therein stated, declines to prosecute the charges preferred against me, I beg leave respectfully to say that I see, in the reasons assigned, none to justify this determination.

First, it is said by General Scott that "he is stricken down from high command—that one of the arrested generals is pre-acquitted and rewarded, and the other parties—the judge and his prisoners—the accuser and the accused—the innocent and *the guilty*—are,



with that strange exception, all thrown before you, to scramble for justice as we may."

How the release of General Worth, by government, should be thought to constitute any reason for abandoning the prosecution against myself, I am at a loss to understand.

I was aware from my *condemnation before trial*, in general orders, No. 349, that the prosecutor acted as a judge, and condemned, unheard, the victims of his displeasure; but I did not expect that he would avow before the court that he considered himself still my judge. I thought this court were the judges of the case, and that he was the prosecutor—and cannot understand how the fact that the government has ordered the charges preferred against him by General Worth to be investigated, can afford any reason why he should not prosecute his charges against me, if I am guilty.

It is true that Major General Scott has been suspended from command, but I presume that circumstance does not deprive him of his proof. I, too, was stricken down by the arm of power, wielded by himself—arrested and held a prisoner, confined to the limits of this city, nearly three months—and am not now restored to command. If a command be necessary to enable him to prosecute the case, it must be equally necessary to enable me to defend myself. Agreeably, however, to well established military usage, while under the charge of General Worth, he was properly suspended from command, and in this respect we stand upon equal footing.

The assertion "that the whole labor of the case must be gone over again," is made under the assumption that he can maintain his charges and prove that they are true. But in this I expect to show that he is mistaken. This assertion, based in error, can, therefore, afford no reason for abandoning the prosecution.

If any witnesses have gone to the United States, they went either by his orders, or by his permission, and without my having the power to detain them. The two witnesses (not in the line or staff of the army) whose depositions were proposed to be taken, are still within reach—both are in this city. General Pierce, the general officer, who I suppose is alluded to in the letter, is a material witness for myself. The very fact that he was known to the prosecutor to be a material witness, constituted a reason why he should not have permitted him to leave the country.

The general-in-chief knew that the effect of ordering my witnesses out of, or allowing them to leave the country, would be to deprive me of their testimony altogether, or greatly to delay the proceedings in the case.

No rule of law is better established in all courts, than that a party who voluntarily puts witnesses out of the way, or consents to their going, is not entitled to one moment's consideration or delay on that account. The other party, who is thus deprived of proof necessary for his defence, has a right to complain, and to ask for indulgence; but, in this case, I am the party injured by the prosecutor, who controlled the witnesses, permitting them to leave the country, pending his application for a court martial for my trial.

The prosecutor had no right to ask me to take proof, before any court was ordered for the investigation of his charges. The thing in itself is unheard of, either in civil or military courts. In declining what he had no right to ask, I deprive him of no right, no privilege, no proof; and he cannot, in that, find any excuse for failing to prosecute his charges, if, in fact, I am not known by him to be innocent of the charges preferred.

The great delay of one hundred and nine days has been excessively oppressive upon myself. The public prints show that the application for the court martial reached the city of Washington about the 26th December, 1847. The order for this court was issued on the 13th of January, 1848, and a supplementary order on the 17th of the same month, making about twenty, instead of fifty, days' delay at Washington. As this delay, however, has not affected the prosecutor, I do not see any reason for now abandoning what he once regarded as a duty.

The assumed objection to the adjournment of the court to the United States has no force. The case would be more promptly decided by this very course, and this, too, with the least detriment to the public service. General Scott pays a poor compliment to the honor and integrity of his own witnesses, when he assumes that they will decline to appear before the court, to testify to facts deeply affecting the purity of the service.

The sickly season, so justly dreaded, will not set in till after the business of the court in this city may be concluded.

The consideration that a speedy peace may remove the army at once from this country has nothing to do with the issues; it is impossible that peace can be concluded before the proceedings of the court.

The fact that my commission expires with the war, is an additional reason for prosecuting the charges, inasmuch as, if guilty, the interest of the service requires that I should be punished; and, if innocent, that I should have the benefit of an acquittal.

The consideration that the time has gone by for benefitting the service by a conviction and punishment, has no force—"it is never too late to do good." The general-in-chief has been pleased to say that "he has been moved solely by the desire to preserve the discipline and honor of the army; not ever having had the slightest personal quarrel or difficulty with him."

I refrain from making any comment on this passage of his paper, in the full confidence that, during the progress of this investigation, the facts will be made manifest whether personal or public considerations have most influenced the general-in-chief in this prosecution.

Some of the charges preferred against me by General Scott are of the gravest character, affecting, if true, my own honor, and, if false, his. His reasons for abandoning the prosecution have no force, singly or collectively. He objects that a court of inquiry has been substituted for a court martial. From the character of the parties concerned, as well as the nature of the offences charged, the surest punishment will be found in the judgment of



a just and enlightened public. That judgment will be founded on facts; and, to ascertain those facts, a court of inquiry is as competent as a court martial.

The prosecutor further says he will not prosecute this case, unless this court, or the President of the United States, shall order him to do so.

What right has he to expect either will make such order? Did either of them order him to arrest me, and prefer these charges? He (the prosecutor) professes to believe I am guilty. If so, it is his duty to the army, to the country, and to himself, to go on with the prosecution. As yet, all the presumptions of law are, that I am innocent. What right, then, has he to require the court or the President to make an order that he shall prosecute charges which he voluntarily preferred, and which he now has an opportunity of establishing, if, indeed, he can prove them at all.

Hence it will be seen that, if there was any reason for arresting me, and preferring the charges originally, these reasons still exist; and if the general-in-chief was actuated, as he says, by the sole desire to preserve discipline in the army, the same principle of duty would still make it proper for him to prosecute his charges, and prove me, if he can, guilty.

The conclusion that a conviction and punishment would be of no avail, is an assumption of the fact that he can procure my conviction; and, without producing the proof of my guilt, he endeavors to leave upon the mind of the court the impression that his failure to prosecute the charges does not proceed from any doubt in his mind as to my guilt; and while he would thus deprive me of an opportunity to investigate the facts, he wishes to fix upon the record of this court the impression that I am guilty, and that he can prove it; but, for the reasons assigned, he does not prosecute the case.

This court, having been ordered by the government to investigate and report the facts, I am now here, ready and anxious to go on with the proceedings, (should such be the pleasure of the court,) and to fully vindicate my conduct and defend my character against each and every charge which the general-in-chief has preferred against me.

I am not, however, willing to follow an example of doubtful propriety, by assuming an attitude of defiance before this court, but shall acquiesce in its decision, be it what it may.

I am accused, under many specifications, of numerous offences, several of which are, if proven true, sufficient to convict me before a court martial. Does General Scott mean to say that he has no witnesses present by whom he can prove any of these charges; or does he refuse to prosecute me on one or more of them, because the evidence is not at hand to convict me of all?

If the general-in-chief had withdrawn his charges, from the conviction that the impressions under which he originally acted were erroneous, and that, from subsequent information, he was satisfied he had done me injustice, it would have saved me the necessity of adopting the course which I am now bound, by my own honor, to pursue.

It has thus been shown that the reasons assigned by General Scott for abandoning the prosecution are insufficient. If he still persists in his determination, I shall hold myself acquitted of his accusations, and the world must so regard it. With this view of the case, I submit the whole matter to the consideration of the court, with the remark that I hope the court, by the action it may take, will protect me from the consequences resulting from the course on the side of the prosecution.

Respectfully submitted:

GIDEON J. PILLOW,

Major General, United States Army.

CITY OF MEXICO, March 17, 1848.

B 1.

MEXICO, March 20, 1848.

*Mr. President and gentlemen of the court:*

It will be seen in the paper presented to the court by General Scott, on the 16th instant, that he refuses to prosecute the charges preferred by him against me, but does not withdraw them.

In the reply to that paper, which I submitted upon the 17th instant, I endeavored to show that the reasons assigned by him were not those which determined his course, and I expressed my readiness and anxiety to proceed with this investigation.

General Scott still persists in his determination. In his paper, however, he recognizes the right of this court to order him to prosecute the case.

In order, therefore, that I may not be understood as assenting to his course—not as waiving even that mode of having his charges investigated, I now distinctly interpose my objection to his withdrawal from the prosecution, and respectfully ask the court to order him to prosecute the case. In making this application I hope I shall not be thought captious or considered troublesome.

I am aware that, under the circumstances of this case as now presented to the court, every presumption of law and every inference of fact, from General Scott's own conduct, is in my favor—and I should submit the case to the court, and the impartial judgment of a just public, without my present application, but for the great weight of character possessed by General Scott, and for his having substantially reiterated his charges in his communication to the court.

If the court shall decline to make the order upon General Scott, requiring him to prosecute the case, I beg to call the attention of the court to the position in which this case will then stand. The charges having been preferred by General Scott, were entertained, and their investigation ordered by the President.

This court having convened for their investigation, General