

UNITED STATES )

V. )

) RESPONSE TO DEFENSE MOTION TO PRODUCE

) CHARLES E. HUTTO  
) SERGEANT  
) UNITED STATES ARMY  
)

Comes now the United States, through counsel, to respond to the Defense Motion to Produce filed with this court-martial on 18 November 1970.

I

THE DEFENSE REQUEST FOR DISCOVERY IS UNREASONABLE AND SHOULD BE DENIED.

A.

The defense motion to produce is totally defective in that there is no showing that the requested documents and information do in fact exist, where it is located, or whether it is in the exclusive possession of the prosecution. Further, the defense motion makes no showing that the requested documents and information are in any way relevant or material to the preparation and presentation of the defense case. Although discovery rules in military law are liberal, they are governed by the principles of reasonableness, relevancy, and materiality. United States v. Franchia, 13 USOMA 315, 32 CMR 315 (1962).

B.


Counsel for the defense have been provided with a copy of the Report of Investigation of the Inspector General containing the verbatim testimony of 36 witnesses; a copy of the Report of Investigation of the United States Army Criminal Investigation Division containing the statements of approximately 450-500 witnesses; the "Report of the Department of the Army Review of the Preliminary Investigation into the My Lai Incident" (Pears Report) containing the verbatim testimony of 401 witnesses, numerous maps, photographs, documents and regulations; and numerous other documents and photographs pertaining to the entire "My Lai Investigation."


C.

The defense motion makes no showing that the requested information is not contained in the materials already made available to the defense. Further, without a sufficient showing of relevancy, materiality, necessity, and discoverability as set forth in paragraph A, above, the defense motion is unreasonable and should be denied.

Oral argument is requested.

Respectfully submitted,

  
FRANKLIN R. WURTZEL  
Captain, JAGC  
Trial Counsel

  
for WILLIAM G. ECKHARDT  
Captain, JAGC  
Assistant Trial Counsel