

UNITED STATES

GEALD A. SMITH
PRIVATE E-1
UNITED STATES ARMY

4
MOTION TO PREVAIL

In the above styled case, a General Court-Martial convened by Court-Martial Convening Order Number 27, Headquarters, Third United States Army, Fort Harrison, Georgia 30330, dated 22 June 1970, cause and the accused by and through counsel and none that this court take an order to compel the Secretary of the Army, the Honorable Stanley R. Resor, and the Chief of Staff of the United States Army, General W. C. Westmoreland, to produce Volume I, "Report of the Department of the Army Review of the Preliminary Investigation into the My Lai Incident," (Reno Inquiry).

I

The accused would be accorded a fair and impartial trial without the production of the above volume of the so-called Reno Inquiry, as it is essential to an adequate preparation of the accused's defense in this case.

II

A timely written request for the production of this document was made to the appropriate convening authority by the defense on 10 June 1970. Subsequent oral requests directed to those concerned with the production of this document were also made, and copies of the request were furnished the Secretary of the Army, the Honorable Stanley R. Resor, and the Chief of Staff of the United States Army, General W. C. Westmoreland, on the occasion to whom the document was dictated and who, to the best belief and knowledge of the defense, are the custodians of the said document.

III

On 11 August 1970, the commanding authority to whom the request for production of this document was addressed advised the defense in writing that it had been determined that the sought-after document was not to be

made available to the Defense. A copy of a letter to the Staff Judge Advocate, Third United States Army, dated 4 August 1970, from the Office of the Judge Advocate General, was directed to the Defense on 11 August 1970. The contents of this letter make it clear that the determination by Department of the Army that the requested document was not available "in no way should be interpreted to preclude the exercise of independent judgment by any judicial officers before whom the issue of discoverability might be raised."

IV

The requested document contains findings, conclusions, and recommendations of the so-called Peers Inquiry with respect to the My Lai Incident from which the charges against the accused evolved. Such constitutes evidentiary materials in the control of military authorities and falls within the scope of discovery under paragraph 115c, Manual for Courts-Martial, United States, 1969 (Revised Edition). It may be reasonably anticipated that the requested document contains exculpatory materials and other information fully relevant to and explanatory of the circumstances from which the charges against the accused arose.

WHEREFORE, the accused requests that this court take the necessary action to effect the production of Volume I, "Report of the Department of the Army Review of the Preliminary Investigation into the My Lai Incident" (Peers Inquiry), by issuing an order to compel the Secretary of the Army, the Honorable Stanley R. Resor, and the Chief of Staff of the United States Army, General W. C. Westmoreland, to produce such evidentiary materials required for the preparation of the accused's defense and essential to the maintenance of military due process in this case.

Respectfully submitted,

ROBERT K. BAUDERSON, CPT, JAGC
Detailed Defense Counsel

DELMER C. CONING, III, CPT, JAGC
Individual Defense Counsel