

UNITED STATES

V.

GERALD A. SMITH
PRIVATE
US ARMY

MOTION TO PRODUCE

In the above-styled case, a general court-martial convened by Court-Martial Convening Order Number 27, Headquarters Third United States Army, Fort McPherson, Georgia, dated 22 June 1970, comes now the accused by and through counsel and moves that this court issue an order to compel the Government and its agents to provide the following material to the defense.

I

A copy of all documents and correspondence pertaining to the organization, planning and implementation of Operation Phoenix, as carried out in Quang N'gai Province, Republic of South Vietnam, during the period of December 1967 to September 1968.

II

A copy of the list of suspected Viet Cong and Viet Cong sympathizers as of March 1968, in Quang N'gai Province, Republic of South Vietnam.

III

A copy of all documents showing the names and addresses of those persons "eliminated" as a result of their being placed on the "Black List" referred to in paragraph II.

IV

The names and addresses including designated code names of the CIA and United States Army operatives working in Quang N'gai Province, Republic of South Vietnam, in connection with "Operation Phoenix."

V

A written request for this material was made to the Director of the Central Intelligence Agency on 2 June 1970. A response, dated 15 June 1970, was

received from the General Counsel for the Central Intelligence Agency which stated that as a matter of policy, that Agency does not comment on inquiries or allegations concerning its activities, and in the event a judicial proceeding should result in a subpoena, appropriate response will be made at that time. On 4 August 1970, a request for this material was made to the Convening Authority and on 21 August 1970 a response was received advising that the request was being returned without consideration of the merits of the request as the case had been referred to a court-martial with a detailed military judge and the request should be presented to the military judge.

VI

The requested material is needed by the defense in order to prepare for an evidentiary hearing on the defense motion to dismiss because the prosecution of the accused constitutes a discriminatory and unequal application of the law in violation of the accused's right to equal protection. The defense is aware that there's a "blank slate" in evidence because of the reference made to such a document in memoranda for record which are attached to this motion. The requested material is relevant to the issue of whether the Government is in fact proceeding with a discriminatory prosecution as is set forth in the defense motion and brief and is a proper subject of discovery under paragraph 11b of the Manual for Courts-Martial, 1969 (Rev. ed.).

Respectfully submitted,

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