

IN THE V JUDICIAL CIRCUIT  
Fort Benning, Georgia 31905

UNITED STATES

vs.

WILLIAM L. CALLEY, JUNIOR  
FIRST LIEUTENANT, U. S. ARMY

MOTION TO DISMISS

Comes now the accused and moves the Court Martial to dismiss all charges and each specification alleged against him for the following reasons:

I

The accused cannot be accorded a fair and impartial trial in any United States Military Court for the reasons hereinafter set out.

II

His rights and privileges under the Constitution of the United States and the Uniform Code of Military Justice have been prejudicially and substantially impaired, and the injury to him cannot be cured by any subsequent action of Military Authorities.

III

Military Justice is at best a "rough form of justice," and Courts Martial have always been subject to varying degrees of influence. But in this case "Command" has so controlled, influenced and interfered with the military judicial processes to such an extent as to offend against the Constitution of the United States and the Uniform Code of Military Justice, and this influence has irreparably prejudiced the accused.

IV

The accused is charged with six specifications

8 Dec

Mot to Dismiss

alleging premeditated murder. The death penalty can be imposed on each specification. [ The President of the United States is the Commander in Chief of the Armed Services, and his words, suggestions and proposed actions are influential and coercive on all military officers including those who have been ordered to be members of the General Court Martial selected to try the accused. ] In addition, if the death penalty is imposed, under Article 71, Uniform Code of Military Justice, the President must approve the sentence before it can be executed. His powers as a Commander include that of convening a General Court Martial. In these three capacities the President is directly involved in the control and direction of military courts.

⊙ According to articles given nationwide and overseas coverage, his press secretary has announced that the President has expressed the view that: "Appropriate action is and will be taken to assure that the illegal and immoral conduct as alleged will be dealt with in accordance with the strict rules of military justice." As of the date of that release, only the accused and Staff Sergeant David Mitchell were the two members of the Army who were charged with any wrong doings; and their actions were characterized by the President as being "abhorrent" to the conscience of the American people.

V

Under Article 71 of the Uniform Code of Military Justice, the Secretary of the Army is an appellate authority in the Military Justice System, as he must approve or disapprove any sentence which extends to the dismissal of an officer; and the Secretary has been clothed with many other powers which can be exercised under the Code. [ Should the accused be convicted of any offense alleged, action by the Secretary will be required. ]

[ According to press reports which have been circulated throughout the world the Secretary has ~~already~~ appeared before a Congressional Committee and displayed colored pictures of the alleged atrocities which were then described by a member of the Committee as appalling "acts of brutality" that "cannot have been exceeded in Hitler's time." ] The impression from the press reports was that [ the Secretary so appeared in an effort to have Congress place its stamp of approval on the action taken by the Army. ] His efforts have succeeded, in part, as obviously he has influenced certain members of Congress against the accused and in favor of the prosecution and the presentation was persuasive enough to excite them to make many adverse comments which were circulated in the news media. This well-advertised performance and the statements flowing therefrom have inflamed the public against the accused, and will have the same impact on the officers of the military who, if the prosecution continues, will in effect be the jury selected to try the guilt or innocence of the accused. ]

## VI

\* [ In speaking about the alleged crimes, Secretary of State, William P. Rogers, has released to the press this statement: [ "Those responsible will be Court Martialed to show the world we do not condone this." ] [ The quote was extensively carried in the news media, and it adds an additional burden to be carried by the accused since it implies this trial is a vehicle being used by the Government to influence world opinion to reach a result in this case favorable to the prosecution. Should the Court Martial return a verdict of "not guilty", the hoped-for result would be frustrated, and certainly consideration by Court members would be given to that effect. ]

## VII

The Sixth Amendment to the Constitution of the United States provides for a trial by an impartial jury. ] In the military justice system the members of the Court Martial are triers of the facts, and can be equated to the jury in the civilian system. This Amendment is supplemented by Article 31 of the Uniform Code of Military Justice which proscribes influencing a Court Martial or the Reviewing Authorities. In this case the directions and desires of those occupying high offices in the Government before trial have been released to the public through the press. They are damaging and prejudicial to the accused, and they will have a direct, positive and harmful impact on any Court Martial member selected by the Army and the Reviewing Agencies within that service if the accused is convicted. Accordingly those officials who have spoken through the press have unnecessarily influenced the outcome of the present charges, and the accused has been substantially prejudiced thereby. ]

## VIII

The Fourteenth Amendment to the Constitution of the United States provides that no person shall be deprived of his life, liberty and property without due process of law. Members of the Armed Services of the United States of America are entitled by the Code and by the decisions of the United States Court of Military Appeals to that Constitutional right and privilege. [ Trial of the accused on the pending charges will offend against that privilege because of the overwhelming, uncontrolled and widespread articles and pictures carried worldwide in press, television and radio releases, which have inflamed and aroused the public against the accused for his participation in the My Lai operation. The coverage has in-

cluded the statements of a number of witnesses supposedly familiar with the incident. Much of it is hearsay and rumor. The witnesses have not been subjected to confrontation by the accused or cross-examined in a judicial proceeding but, nevertheless, their ex parte and unsworn statements have discredited and convicted him before the public of the offenses alleged before he has had his day in Court.

Skeletonizing part of this worldwide coverage, it consists of the publication of shocking, inflammatory, gruesome and extremely prejudicial pictures of dead Asiatic men, women and children. Time, Life and Newsweek and most daily newspapers published in the principal cities of the United States of America have joined in the pretrial crucifixion. The pictures have been reproduced on television stations with worldwide coverage. Interviews with witnesses, including Paul D. Meadlo, Charles Gruver, Charles A. West, Ronald L. Haeberle, Michael Terry, Michael A. Bernhardt, Do Chuc, Roger L. Alux, Varnado Simpson, Peter L. Leutik and others, have been treated as evidence received in Open Court. The totality of all such publications has created a wave of public passion against the accused.//

#### IX

Written articles in most major newspapers have included statements of prospective witnesses relating the facts which the Government seeks to use to support the allegations of murder of civilian women, children and aged non-combatants. In the military Court Martial, the accused has the right to exclude witnesses from hearing the testimony of other witnesses. But under the present trial news media, each witness has been furnished a preview of the testimony of other witnesses.

Some written inflammatory accounts have emphasized

that the accused is charged with murder of at least 109 persons while others have mentioned 567 civilians as casualties. In addition the press has reported the appointment by the Army of Lt. General William R. Peers to investigate an alleged suppression of the facts by an earlier Investigating Committee which made findings favorable to the accused. After that appointment, one of the investigating colonels stated through the press this comment: "Up until two weeks ago I would have sworn that it could not have happened without my knowing about it, but when I started seeing broadcasts and having soldiers speak about this subject who were eye witnesses, I began to wonder." This is a positive showing of the effects of exaggeration and the publication of evidence and its dissemination by the press. Certainly any hope for a fair trial is grounded on the rocks of unfair public advertising.

X

The appointed Trial Judge, Defense and Government Counsel, and also the Staff Judge Advocate at Fort Benning, Georgia, have sought to prevent the publication of the horrifying pictures and restrict pretrial publicity, but to no avail. The power and jurisdiction of a Judge of a General Court Martial does not equal that of a Judge in a Federal District Court, and, thus, over the protests of the parties to this criminal action articles prejudicial to a fair trial have been published over a lengthy period of time and the end is not in sight.

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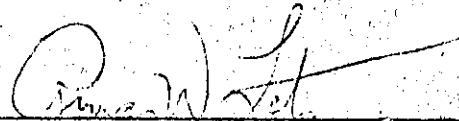
Some of the exhibits which support this Motion to Dismiss are attached to this motion. Others will be furnished to the Court Martial before a hearing on this motion. Demands will be made on the Military Judge to have subpoena duces tecum

issued to make available at the hearing all films and recorded interviews with all prospective witnesses who have had public exposure in any of the forms of media. Further, the presence of the alleged witnesses who have contributed evidence to the media will be demanded.

Dated this 20th day of December, 1969.



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