

IN THE V JUDICIAL CIRCUIT
Fort Benning, Georgia 31905

UNITED STATES)

v.)

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

SPECIAL FINDINGS

1. On 25 November 1969 at Fort Benning, Georgia at a session of this Court, held pursuant to Article 39a, Uniform Code of Military Justice, counsel for the United States Government and counsel for the Defendant, first Lieutenant William L. Calley, Jr., jointly moved for an order to all prospective witnesses in the above captioned case which would prohibit the out of court disclosure of their prospective testimony and to prohibit the release of possible real evidence to news media.

2. Counsel for the defendant moved that the named military jurors be ordered not to intentionally read or to listen to any news accounts concerning the alleged murders which are charged as having occurred at My Lai, Vietnam on 16 March 1968.

3. Counsel jointly moved for issuance of a show cause order to the news media prohibiting the further public disclosure of statements by any individual allegedly connected with the incidents which are alleged to have occurred at My Lai on 16 March 1969 and the public dissemination of any pictorial representation of the alleged incidents. (Courts-martial Appellate Exhibit 2)

*Appendix 5
Special Findings*

4. This Court immediately issued an order to all prospective witnesses, civilian and military, prohibiting disclosure of their prospective testimony (Court-martial Appellate Exhibit 3a) and an order to all previously detailed military jurors (Court-martial Appellate Exhibit 3b-3j) as requested by counsel.

5. However, this Court, recognizing the delicate balance between the Constitutional rights conferred by the First and Sixth Amendments to the Constitution of the United States and this Court's limitations of enforcement of orders against civilian and/or civilian agencies, held in abeyance its ruling on the show cause motion and granted to the news media a reasonable time to impose its own restrictions against public disclosure or interviews with potential witnesses and against the public release of possible evidentiary matters.

6. This Court has now before it evidence of the following willful violations by the news media of the Order to witnesses. David DuBois of TIME Magazine contacted Anthony Broussard, a member of the Armed Forces of the United States, and a potential government witness, and, after Mr. Broussard first declined to discuss the matter, offered him a Corvette automobile in an attempt to obtain an exclusive interview concerning the events which are alleged to have occurred at the village of My Lai on 16 March 1968; Mr. McCombs of LIFE Magazine has attempted to secure an interview with this same witness; the National Broadcasting Company has announced its intention to present on Monday, December 1, 1969 an exclusive interview with Mr. Ronald Haeberle, a civilian Government witness, to include the color broadcasting of

photographs allegedly taken at the time of the alleged incidents. In addition to the above-described violations, the news media have occasioned other repeated and numerous violations, local and national, of this Court's order prohibiting such public disclosure by prospective witnesses and the release of possible evidence.

Wherefore, this Court finds:

1. The possibility of prejudice to this defendant's Constitutional right to a fair trial is real and apparent.
2. It is recognized, in a statutory sense, that the Courts-martial system is a Federal jurisdiction, but it is not a part of the Federal Judiciary system.
3. Thus, as a matter of law this Court does not possess the pretrial power of contempt or any other judicial remedy to enforce the mandates of the United States Supreme Court as that Court provided in Sheppard v. Maxwell, 384 US 333, 16 L. ed.2d 600, 86 S. Ct. 1507 (1967) at P. 619:

Under such circumstances, the judge should have at least warned the newspapers to check the accuracy of their accounts. And it is obvious that the judge should have further sought to alleviate this problem by imposing control over the statements made to the news media by counsel, witnesses, and especially the Coroner and the police officers. The prosecution repeatedly made evidence available to the news media which was never offered in the trial. Much of the 'evidence' disseminated in this fashion was clearly inadmissible. The exclusion of such evidence in court is rendered meaningless when news media make it available to the public.

4. This Court has complied with all of the mandates of the United States Supreme Court to protect the constitutional safeguards of this Defendant by all means within its power.

ACCORDINGLY, counsel are directed to seek appropriate relief from a court within the Federal Judicial system or elsewhere as deemed necessary.

s/s Reid Kennedy
REID KENNEDY
Military Judge