

UNITED STATES)
v.)
WILLIAM L. CALLEY, JR.)
FIRST LIEUTENANT)
U. S. ARMY)

MOTION

Comes now the Government through counsel and moves the court to obtain from the members of the court, appointed by Court-Martial Convening Order Number 70, this Headquarters, dated 24 November 1969, to hear the above styled case, prior to 9 February 1969, a list of the newspapers and periodicals regularly accessible to them for the following reasons:

1. The defense has filed before this court a Motion to Dismiss all charges and specifications alleging that the accused cannot receive a fair trial as a result 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..." Upon agreement of counsel, 9 February 1970, has been set as the date on which a hearing will begin during which evidence will be presented and arguments heard on this motion.

2. The Government concedes that the newscoverage of this case has been widespread, having been reported throughout the United States and the rest of the world in all major newspapers, periodicals, and on television and radio. However, the mere existence of published stories about an offense, or a trial, without more, will not establish that a court-martial has been influenced by them or that the accused cannot receive a fair trial.

See U. S. v. Vigneault, 3 USCMA 247, 12 CMR 3 (1953); U. S. v. Doyle, ACM 8768, 17 CMR 615 (1954); U. S. v. Svenson, CM 411935, 35 CMR 645 (1965);

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U. S. v. Thomas, CM 412871, 37 CMR 519, affmd 17 USCMA 103, 37 CMR 367 (1966); Holt v. United States, 218 U. S. 245, 54 L. ed. 1021, 31 S. Ct. 2 (1910); Irwin v. Dowd, 366 U. S. 717, 722-23, 6 L. ed. 2d 751, 81 S. Ct 1639 (1961).

3. Unlike the trial of criminal cases in civilian courts, where the jury who will decide the case is not determined until long after the grand jury returns its indictment, a named military jury has been designated by the convening authority to try this case. Absent death, transfer, retirement, a challenge for cause, which can only be determined after the voir dire proceeding, or a peremptory challenge, those members so designated will ultimately sit as the jury in this case. Accordingly the only newspaper and periodical coverage which would be relevant to the Motion to Dismiss filed by the defense would be those newspapers and periodicals which are read by the members of the court. By obtaining said information, the Government and the court will be enabled to analyze and evaluate only that portion of the publicity which could possibly influence the court members.

CONCLUSION

On 25 November 1969, this court issued an order to its members to refrain from intentionally listening to, or reading any news or other accounts of this or any closely allied trial. On 20 January 1970, the court issued an order reiterating the order of 25 November 1969. Nothing contained in this request is to be considered as an implication on the part of the Government that any members of the court have violated in any way the terms of those orders. Should this request be denied, the Government requests that the court be assembled and a limited voir dire conducted to elicit this information prior to the presentation of evidence and oral argument on the motion.

Respectfully submitted,

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