

Both Sides in Calley Trial Ask Songmy Publicity Ban

By E. W. KENWORTHY
Special to The New York Times

2 DEC 69

WASHINGTON, Dec. 1—The prosecution and the defense in the pending court-martial of First Lieut. William L. Calley Jr. asked the United States Court of Military Appeals today to ban all further pre-trial publication and broadcast of statements and photographs concerning the alleged massacre at Songmy, South Vietnam, on March 16, 1968.

The court took the petition under advisement.

In the opinion of lawyers interviewed here tonight, such a total nationwide ban on the pub-

lication of any statement concerning an alleged crime, by alleged eyewitnesses or any other person, would be without precedent.

Some lawyers expressed doubt that the court, if it is guided by recent rulings of the Supreme Court in relevant cases, would grant such a blanket injunction.

In their petition to the three-judge civilian court, Maj. Kenneth A. Raby, who is Lieutenant Calley's military defense counsel, and Capt. Aubrey M. Daniel 3d, who is the trial counsel, or prosecutor, asked that the requested injunction remain effective until the first witness testifies at the court-martial.

The decision to court-martial the lieutenant was announced a week ago by Maj. Gen. Orwin C. Talbott, commanding general at Fort Benning, Ga., where Lieutenant Calley is stationed. The lieutenant will be tried on six specifications charging him with the murder of 109 men, women and children "without justification or excuse." The date of the court-martial has not been set.

Major Raby and Captain Daniel asked that the injunc-

Continued on Page 12, Column 6

Continued From Page 1, Col. 7

tion sought against pretrial discussion of the case be extended "to all radio and television networks and stations, newswire services, newspapers and magazines operating or otherwise doing business in the United States."

But the two attorneys specifically asked the enjoining of the Columbia Broadcasting System, the National Broadcasting Company, the American Broadcasting Company, The New York Times, The Washington Post, The Atlanta Constitution, The Atlanta Journal, The Columbus (Ga.) Ledger, The Columbus Enquirer, the Time-Life Corporation, Newsweek magazine, United Press International, The Associated Press, and Dispatch News Service.

The last named, a small service handling freelance journalists, distributed one of the first stories of the alleged massacre.

Clippings and Transcripts

In support of their argument that such an injunction was necessary "to protect the constitutional rights" of Lieutenant Calley, the prosecution and defense attorneys submitted to the court two thick loose-leaf books in which had been pasted clippings from newspapers, transcripts of broadcasts and photographs from newspapers and magazines.

The lawyers read only one clipping to the court—from a Chicago paper. But they showed the judges copies of this week's Life magazine, which contains nine photographs—eight color and one black-and-white—allegedly taken at Songmy on March 16 by Ronald L. Haerberle, who had been a staff photographer attached to Company C, 1st Battalion, 20th Infantry, 11th Light Infantry Brigade.

Several of these photographs had been shown to the Senate and House Armed Services

Committees last Wednesday by Secretary of the Army Stanley R. Resor.

Included in the two books of clippings were nine articles and columns from The New York Times plus two articles by Times reporters and one by a Times columnist that appeared in other papers subscribing to The New York Times News Service.

The first article from The New York Times was a four-paragraph Associated Press dispatch from Fort Benning last September, quoting the announcement of post authorities that Lieutenant Calley had been charged with murder in the deaths of an unspecified number of persons. That report was based on a news release issued by the post information officer.

3 Orders Sought Earlier

Last Tuesday, Nov. 25, Major Raby and Captain Daniel asked Last Col. Earl W. Kennedy, the military judge at Fort Benning, for three orders.

The first would have prohibited all prospective witnesses from pretrial disclosure of their prospective testimony. The second would have directed the named military jurors not intentionally to read or listen to news accounts of the alleged murders. The third would have prohibited the news media from further publication of statements by any individual purportedly connected with the alleged massacre, or the reproduction of pictures of the alleged massacre.

The judge complied with the first two requests but held in abeyance the request for an order to the news media, saying that this raised constitutional questions of freedom of the press. The media, the colonel said, should be given a "reasonable" time to show that they could "act responsibly."

Last Friday, Nov. 28, the judge held a closed meeting with opposing counsel, at which time, according to their petition today, they again request-

ed an order to the news media. The lawyers buttressed their argument with "additional evidence," they said.

At that time, according to the two lawyers, Colonel Kennedy "concluded that the spirit of his order to potential witnesses was being wilfully violated by local and national news media," and entered certain findings.

The first of these, the lawyers said in their petition today, was that "the possibility of prejudice to the defendant's constitutional right of a fair trial is real and apparent."



United Press International

ATTENDING WOUNDED: Medic treating soldier with foot injury, the only reported casualty in the Songmy incident, according to The Chicago Tribune, which printed photograph. Capt. Ernest L. Medina was identified as calling for evacuation helicopter on field radio, rear. Newspaper said it obtained picture from former member of 11th Infantry Brigade.