

DEC 11 1970

CALLEY'S LAWYER EXPLAINS ACTIONS

Says Officer Was Told to
'Kill Every Living Thing'

By HOMER BIGART

Special to The New York Times

FORT BENNING, Ga., Dec. 10—First Lieut. William L. Calley Jr. had orders to "kill every living theng" in Mylai, and the alleged "massacre" that followed was observed by superior officers who did nothing to halt it, the lieutenant's chief defense counsel said today.

In his opening statement for the defense, the council, George W. Latimer, a retired judge of the Military Court of Appeals, cited "superior orders" as one of several reasons why South Vietnam noncombatants were killed at Mylai.

Lieutenant Calley is being tried by an Army court-martial for the premeditated murder of 102 civilians, mostly women, children and old men, in an assault by his platoon on the hamlet of Mylai 4 on March 16, 1968.

There were other explanations, Mr. Latimer said, for Lieutenant Calley's conduct, he said the platoon had been poorly trained and was under strength, the men were enraged by atrocities committed against platoon members by Vietcong, they had expected to meet fierce resistance in Mylai, and they had been told that the residents had been warned to leave the hamlet and that any occupants who remained were either Vietcong or Vietcong sympathizers.

Order Traced to Medina

Mr. Latimer charged that Lieutenant Calley's commander, Capt. Ernest L. Medina, had told the men of Charlie Company that at long last they were going to fight an enemy battalion and "get even for the loss and ruination of buddies" who had been killed or maimed by mines, bobby traps and ambushes.

The lawyer said that Captain Medina had "ordered the village burned, the livestock killed, the wells contaminated and every living thing in the hamlet killed." There was no plan for the handling of non-combatants, Mr. Latimer added.

The men were frightened and confused, Mr. Latimer said. The result, he said, was that all the assault units—not only Lieutenant Calley's First Platoon but also the other platoons and the covering helicopter gunships—killed civilians "on the belief that anyone they encountered were Vietcong."

The whole episode, he said, was observed by higher commanders on the ground or in the air.

These higher commanders "knew or could see what was transpiring on the ground," Mr. Latimer said. The operation lasted four hours, he said, and "not until a lunch break were there any orders to cease firing."

Officers said to have observed the incident from helicopters included the late Lieut. Col. Frank A. Barker, the commander of Task Force Barker, to which Charlie Company belonged; and Maj. Gen. Samuel W. Koster, commander of the parent unit, the Americal Division.

An Army investigation is under way to determine whether General Koster, more recently the commandant of West Point, should face court-martial for "dereliction of duty" in connection with the Mylai affair. A preliminary inquiry is also under way regarding Captain Medina, who has been accused by the Army of being "responsible" for the killing of the civilians.

Calley to Take Stand

The opening statement for the defense lasted only nine minutes and 20 seconds. Mr. Latimer, a grave and courtly Mormon from Salt Lake City, explained the brevity: he intends to put his 27-year-old client on the stand. Only Lieutenant Calley can give a full account of his own actions, conduct and behavior, Mr. Latimer said, adding: "I don't want to have his words diluted by me at this time."

The first witness produced by the defense was a former Army chaplain, the Rev. Carl L. Creswell, an Episcopal clergyman from Emporia, Kan.

Father Creswell recalled that on the eve of Mylai he overheard a conversation between officers of the American Division.

The officers were discussing recent Vietcong outrages, he said, and he heard one officer remark that if American troops received any fire during the impending assault "they'd level the village."

Father Creswell said he reproached the officer: "I didn't think we made war that way."

He said the officer merely replied: "It's a tough war."

Capt. Aubrey M. Daniel 3d, the Government prosecutor, asked the witness: "They didn't mention anything about killing women and children, did they?" "No sir," said Father Creswell.

Testimony taken by deposition from Vietnamese officials in South Vietnam and from a former helicopter crewman at Billings, Mont., were put into the record.

One Vietnamese deponent, an interpreter attached to Charlie Company, testified that he approached Captain Medina during the incident to inquire why so many civilians, cows, water buffalo and chickens were being slaughtered.