

U.S. Drops Efforts to Try Ex-G.I.'s Over Mylai

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Special to The New York Times

WASHINGTON, April 8—The Defense and Justice Departments said today that they had given up attempts to prosecute 15 former servicemen linked to the Mylai killings by Army investigators.

The Defense Department explained and the Justice Department concurred that the two agencies had not been able to find a court with jurisdiction to try the men now that they had been discharged from military service.

The explanation, made by Jerry W. Friedheim, a Defense Department spokesman, followed the conviction of First Lieut. William L. Calley Jr. for the murder of 22 South Vietnamese civilians at Mylai in 1968. He was sentenced last week to life imprisonment by an Army court-martial panel.

Following widespread public protest against the sentence, President Nixon ordered Lieutenant Calley returned to his quarters at Fort Benning, Ga., pending appeal and said he would personally make a final review of the case.

Lieutenant Calley is the only

one of 31 men investigated in connection with Mylai who has been convicted. Of the rest, 15 have been discharged from the service. Thirteen who were still in the service were charged; of these, the charges against eight were dismissed for lack of evidence and five went to trial. Two of these men face trial and two have been acquitted.

The Pentagon's statement today concerning the 15 men who have returned to civilian life followed 18 months of efforts by legal experts to find a way to bring them to court.

"It has turned out to be, as a practical matter, an insoluble problem at this time," Mr. Friedheim said. "At the moment, nobody's trying any more."

However, he did not rule out future attempts at prosecution.

Defense Department legal experts explained that the former servicemen could not be court-martialed because the Supreme Court held in 1955 that the court-martial system would not safeguard all their rights as citizens. These rights include trial by jury, indictment by a grand jury and a trial presided over by an independent judge with lifetime tenure.

The Justice Department could not hale them into a Federal court because Federal courts can only punish crimes specifically set out in Federal statute. There is no Federal statute other than the military code that makes it a crime for a serviceman to kill a foreign national overseas.

Joint Commission Barred

Because of these problems, a proposal to form a joint civil-military commission to try the men was dropped.

Proposals to get Congress to pass a law under which a Federal court could prosecute the men was also dropped because laws made after the event of a crime cannot be applied to that crime.

However, the United States is a party to the 1949 Geneva Convention. Article 146 makes it incumbent on signatories to enact legislation "to provide effective penal sanction for persons committing or ordering to be committed any of the grave breaches defined."

The article continues with the statement that signatories must search for such persons and bring them, "regardless of their nationality, before its own courts."