

SEP 9 1971

NYTimes

CALLEY TO APPEAR AT MEDINA'S TRIAL

Defense Calls for Lieutenant at Mylai Court-Martial

By HOMER BIGART

Special to The New York Times

FORT McPHERSON, Ga., Sept. 8—First Lieut. William L. Calley Jr. has been called as a defense witness in the court-martial of Capt. Ernest L. Medina. He will be brought here Friday or next week from Fort Benning, Ga., where he has been confined to his bachelor apartment pending final appeal of his conviction for murdering civilians at Mylai.

The defense, in a surprise move, named Lieutenant Calley and Col. Oran K. Henderson among witnesses whose testimony could be helpful to Captain Medina, who is on trial here charged with the responsibility in the murder of at least 102 unarmed civilians in the South Vietnamese hamlet of Mylai 4 on March 16, 1968.

The Army agreed to produce Lieutenant Calley, who was convicted last March of the murder of 22 civilians at Mylai. After his conviction, the White House ordered him removed from confinement in the stockade pending an ultimate decision by Mr. Nixon.

The Army said it would also produce Colonel Henderson if the colonel could be made available. He is facing a court-martial at Fort Meade, Md., for allegedly covering up the details of what took place at Mylai.

The request for Lieutenant Calley to appear as a witness startled the prosecution. In his trial at Fort Benning, Lieutenant Calley had tried to shift the blame for the killings at Mylai onto his company commander. He testified that the civilians had been shot under orders from Captain Medina.

Captain Medina, appearing as a witness for that court, contradicted Lieutenant Calley. The captain said he had never wanted indiscriminate killing and that he ordered a cease-fire as soon as he became aware that "innocent civilians" were being slain.

F. Lee Bailey, the Medina defense counsel, said he wanted to put Lieutenant Calley on the stand because he had learned "through fortunate happenstance" that Lieutenant Calley had "changed his story."

These "contradictions," he added, might cause Lieutenant Calley to refuse to testify by pleading the Fifth Amendment guarantee against self-incrimination. "If Calley contradicts himself he could be tried for perjury in his own case," Mr. Bailey said.

Since Captain Medina is no longer charged with giving orders that resulted in the killings of Mylai, Mr. Bailey apparently hoped to secure from Lieutenant Calley testimony that would support the defense's contention that Captain Medina was unaware of the killings until it was too late.

"I wouldn't be calling him [Calley] if [the contradictions] weren't more favorable than the story he published," Mr. Bailey said. The lawyer was referring to Lieutenant Calley's "confessions" in Esquire magazine, a series of articles that, Mr. Bailey noted, were "pretty consistent with what he testified to."

Mr. Bailey did not say how he learned of the alleged changes in Lieutenant Calley's story. Mr. Calley's lawyer, George W. Latimer, said in Salt Lake City that he was unaware of any contradictions.

"This is the first I ever heard of it," Mr. Latimer said. "It may be that Mr. Bailey thinks he has something."

Other Subpoenas Requested

Mr. Bailey also asked the Government to subpoena Maj. Gen. Kenneth J. Hudson, former Judge Advocate General of the Army who is chief judge of the United States Army Court of Military Review; Lieut. Gen. Albert O. Connor, commanding general of the Third Army, who convened the Medina court-martial, and Col. Wilson Freeman, who recently retired as staff judge advocate of the Third Army.

be asked to testify in connection with a lie detector test administered to Captain Medina last November by Robert A. Brisentine Jr., a polygraph expert of the Army's Criminal Investigation Division.

Mr. Bailey's efforts to put the results of the test in evidence have been frustrated by the Courts-Martial Manual, which says that conclusions based on lie detector tests are inadmissible.

Maj. Charles C. Calhoun, who was operating officer of Task Force Barker, the Americal Division unit involved in the Mylai assault, said that sometime between 11:50 A.M. and 12:15 P.M. on the day of the incident he transmitted an order to Captain Medina asking him to insure that no civilians were hurt unnecessarily.

What was Captain Medina's response, Major Calhoun was asked.

"He rogered my message."