

IN THE NATION

Mylai: Has Justice Been Served?

By TOM WICKER

Earlier this year, following the conviction of Lieut. William Calley for murdering 22 civilians during the massacre at Mylai, I was asked to uphold in a television debate the position that Calley was being made a scapegoat for the guilt of many others, and should therefore be freed.

I declined, on ground that I was not certain of the scapegoat charge and that, in any event, Calley's particular guilt seemed to have been proven beyond any doubt. The latter point still seems true to me, although one reviewing officer has reduced Calley's sentence from life to twenty years, his conviction is being appealed, and President Nixon has promised a final Presidential review of the case.

But it can hardly be denied any longer that Calley has been singularly penalized for the atrocity at Mylai. The acquittal of Col. Oran K. Henderson last week means that three officers and two enlisted men have been tried and found not guilty; charges against twelve officers and seven enlisted men have been dropped; and only Calley—if he loses his appeal—will pay a criminal penalty for that terrible morning of carnage.

This is a sorry record, quite possibly a shameful one. Perhaps little should be said about the five acquittals, and the prosecuting officer in Colonel Henderson's case said he had no fault to find with the verdict; but it is remarkable, even extraordinary, that with all its resources and manpower the Government could neither bring anyone else to trial nor make its case against any of those charged but Calley.

This is all the more true in that there were so many eyewitnesses to the events at Mylai, and that there have been so many investigations of those events, both by the Army and

by newspapermen—who first brought the matter into the open. It is hard not to conclude that a major reason for the Army's ultimate performance was a lack of zeal for prosecuting its own.

The Army displayed no such lack of zeal when it deployed its snoopers across the country to spy on politicians, students, newspapermen and anyone else its brass hats decided was subversive or suspect. The Justice Department did not hesitate to pounce on every newspaper that dared to print the Pentagon Papers, the First Amendment notwithstanding, and even now is pouring untold manpower and resources into an effort to bring criminal prosecutions for that publication. The F.B.I. wants subversives to think there is a G-man behind every mailbox and the Government is wiretapping, bugging and beeping up the armaments of your local police, all in the name of law and order; but the best anybody can do about Mylai is to pin a murder rap on a lone lieutenant.

It may be protested that General Koster was demoted, that he and General Young lost their Distinguished Service Medals and that the Army says it is still considering such administrative actions against some of the others whose criminal cases were dismissed. All that means is that even the Army found that some responsibility for the atrocity, before, during or after the fact, ought to be charged to these men. But none is to face a jury or any form of criminal charge.

But if the Army is the prime culprit for this dereliction of duty, it still does not operate entirely independently of the Department of Defense and the White House. Whatever might have been said about thorough investigations and doing justice, the record does not suggest that anyone higher up was urging the Army onward. In the end, therefore, Colonel Henderson could say with entire justification, if with unintended irony, that his acquittal "reaffirms the confidence any Army can have in the military system."

Except, of course, for William Calley. The fact that a military court found him guilty of 22 murders confirms that, at Mylai, there did occur what Gen. William Peers later called "a tragedy of major proportions" and what Mr. Nixon once referred to as "certainly a massacre." No one has suggested that Calley did all the shooting that day; there is much doubt as to what—if any—orders, general or specific, he was—or believed himself—acting under; and it is certain that there was much lying and covering up after the incident (although Colonel Henderson was acquitted of such charges).

That no one else is to suffer criminal sanction or to pay more than a token price for any of this does not eliminate the guilt of William Calley. It does raise the question—which Mr. Nixon ought to consider in his final review of the case—whether Calley alone should be made to bear the burden for us all. When so little else has been done to face the stain of Mylai on American honor, what is the good of jailing one man and calling it justice?