

MYLAI

# Judge Overturns Calley Conviction

## Pretrial Publicity Cited

Columbus, Ga.

The conviction of former First Lieutenant William L. Calley Jr. for mass murder in South Vietnam was overturned yesterday by U.S. District Judge J. Robert Elliott, who ordered Calley released "forthwith" from incarceration at Ft. Leavenworth, Kan.

In reversing the conviction of the former officer, who is the only man ever found guilty in the slayings of a large number of civilians in the hamlet of My Lai, South Vietnam, in 1968, the judge cited three major defects in Calley's prosecution under military law. Most prominently, he cited "massive adverse pretrial publicity."

He also cited the denial of the ex-lieutenant's right to call desired witnesses and charges that the judge contended were "improperly drawn and illegally used."



AP Wirephoto

DISTRICT JUDGE J. ROBERT ELLIOTT.  
**'Simple justice demands that he be treated fairly'**

Army officials decided last night in Washington to seek an appeal of the decision.

However, the Solicitor General of the United States, Robert H. Bork must first approve the Army's wish to take the case to the appeals court.

An Army spokesman said the Army also wished to seek a stay of execution of Judge Elliott's order directing that Calley be released "forthwith" from the military prison at Leavenworth.

A spokesman said, "Calley will not be released from confinement pending a decision on those recommendations."

The 31-year-old Calley is

*Back Page Col. 1*

# CALLEY CONVICTION

From Page 1

...serving a ten-year-prison term at Ft. Leavenworth for slaughtering 22 civilians when his platoon swept through the Vietnamese village of My Lai on March 16, 1968.

Calley was first sentenced to life imprisonment, but the sentence was reduced to ten years through the military appeals process. The appeals took 34 months, during which time Calley was confined to his bachelor officer quarters here at Ft. Benning.

When he exhausted the military appeals route, Calley turned to the civilian courts and Elliott, at one point, set him free on bond. The U.S. Court of Appeals for the Fifth Circuit later reversed Elliott on this matter, however, and Calley was sent to Ft. Leavenworth.

The judge retained jurisdiction over the case, a step that would allow his re-entry if Calley or the Army decided on further action.

Aside from an appeal by the Army, it is possible that attorneys for Calley might seek a reversal of his sentence from the Army with what amounted to a dishonorable discharge.

Elliott's order, a 132-page document, was strongly critical of the military, the press, the Congress and the



UPI Telephoto

## WILLIAM CALLEY The Army plans appeal

...executive branch in their treatment of Calley.

Most of the criticism, in 85 pages, was directed at the intensive coverage of the My Lai case by the news media and at the failure of the Army or the civilian judiciary to stop it.

"Never in the history of the military justice system, and perhaps in the history of American courts," the judge said, "has any accused ever encountered such intense and continuous prejudicial publicity . . ."

The judge noted the use of such words and phrases as "atrocities," "slaughter of non-combatants," "wanton

...killing" and "barbaric act," in news media accounts of the My Lai killings. His order also said that Calley had been referred to in allegations as "a mass murderer" and a "ghoul."

Elliott was particularly critical of the reporting of accounts by eyewitnesses at My Lai and of what he considered prejudicial news treatment. He mentioned, for example, a television network's use of bloody blotches on a map of Vietnam to identify the site of the killings, and called this a "blood-horror visual technique."

The judge also criticized the selling of photographs of the massacre victims to news media, notable Life magazine, by a former army photographer. The pictures were later used in Calley's trial.

The military's judicial system made it impossible to stop such things, even after charges were brought, Elliott said, because no judge was given immediate jurisdiction. Moreover, he said, later efforts to forestall prejudicial publicity proved ineffective because of the military's inability to control actions of civilians.

On the matter of the Army's refusal to subpoena witnesses the Calley defense had requested—including Melvin R. Laird, who was then Secretary of Defense, and General William C. Westmoreland, then the Army chief of staff—the

judge suggested that precedents at the Nuremberg war crimes trial had "set the stage for an argument that the petitioners' superiors could well have been worried about their own possible criminal responsibility as a result of the My Lai incident."

Elliott did not conclude that this was the case, but said, "it is only necessary that one be able to draw an inference that there was reason to believe the superiors had cause for concern as to their own status."

On the third point in the reversal order, the denial of due process, the judge found that the Army's failure to be specific in its charges against Calley — by not stating the exact number of victims or their identities — had raised the possibility of double jeopardy, in that the same victims might be cited in different charges.

Elliott also ruled that the defense had a right to access to testimony given about My Lai before the House of Representatives but that it was refused on the ground of confidentiality. As a precedent, he noted the court order to the White House to divulge tapes and documents requested by defendants in the Watergate trials.

The judge summed up by using the following alliterative peroration to condemn the treatment received by Calley:

He was pummelled and pillored by the press.

He was taunted and tainted by television.

He was reproached and ridiculed by radio.

He was criticized and condemned by commentators.

His commander-in-chief publicly aligned himself with the prosecution.

His government denied him access to evidence.

His pleas to the Department of Justice were unanswered.

His conviction was to be a catharsis to cleanse.

The judge also noted, "the point is that (General William T.) Sherman was absolutely right, not about what he did, but about the nature of war.

"War is hell and when we take a young man into the Army and train him to kill and train him to take orders and send him into a strange foreign land to follow the flag, and he then in the wild confusion of combat commits an act which, after the event, is made the basis of a capital criminal charge, simple justice demands that he be treated fairly by the press, by his government and by the branch of the service in which he served."

*New York Times*