

Court Bars Publicity Ban In Songmy Massacre Case

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WASHINGTON, Dec. 2—The United States Court of Military Appeals declined today to issue an injunction directing the news media to cease publication of statements and photo-

graphs by witnesses to the alleged massacre of civilians at Songmy, South Vietnam, on March 16, 1968.

Yesterday, the military defense counsel and the military prosecutor in the pending court-martial of First Lieut. William L. Calley Jr. petitioned the three-judge civilian court to bar such publication to insure the defendant a fair trial.

The lieutenant is to be tried, at a date yet to be set, on six specifications charging him with the murder of 109 men, women and children.

In an unsigned, unanimous "memorandum opinion" today, the court denied the petition, saying, "There is no basis for the extraordinary relief of curtailing future publications and speech."

In reaching this decision, the court said that it did not need to explore its power "to impose prepublication limitations by injunction, or otherwise, upon the freedoms of speech and press."

Nor, the court added, was it required by the facts "to pro- pound rules for the resolution prior to trial, of anticipated conflicts between the individual's right to a fair trial and the rights of freedom of speech and of press."

"Determining the propriety

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and accuracy of the news stories they disseminate is the responsibility of the publishers," the court said.

"Insuring against the intrusion of news reports or other influences tending to prejudice the fair and orderly administration of justice is the primary responsibility of the Military Judge. Neither should be permitted to overwhelm the other, for both a responsible press and a fair trial are constitutionally protected."

The court noted that on Nov. 25, the military judge at Fort Benning, Ga., Lieut. Col. Reid W. Kennedy, ordered the members of the court-martial (that is, the military jurors) "not to discuss this case with anyone and to refrain from intentionally listening to, or reading, any news or other accounts of this or any other closely allied trial."

The court further noted that Colonel Kennedy had ordered every prospective witness "not to discuss with, or to disclose to anyone, any information or evidence he may possess" about the alleged killing of civilians at the village of Songmy by members of the 1st Platoon, Company C, 1st Battalion, 20th Infantry, 11th Light Infantry Brigade.

Colonel Kennedy had taken these steps at the request of Major Kenneth A. Raby, defense counsel, and Capt. Audrey M. Daniel 3d, the prosecutor.

These measures, the court continued, would "appear sufficient to insulate court members from outside influence and to guarantee Lieutenant Calley a fair trial."

If any members of the court fail to comply with Colonel Kennedy's orders, this can be ascertained upon the convening of the court-martial, and the military judge can thereupon exclude such members from participation in the trial, the court said.

Sheppard Case Cited

Turning to the question of the jury's being influenced by press accounts during the course of the trial, the court cited the opinion of the Supreme Court in 1966 when it overturned the murder conviction of Dr. Samuel H. Sheppard, the Cleveland osteopathic surgeon, on the ground that the jury might have been influenced by publicity before and during the trial.

The Supreme Court said then that the conviction might well have stood if the trial judge had taken such insulating measures as sequestering the jury, granting a change of venue and forbidding witnesses and counsel to be interviewed.

The judges of the Court of

Military Appeals are Chief Judge Robert E. Quinn, a former Governor of Rhode Island; Homer Ferguson, former Republican Senator from Michigan, and William H. Darden, for many years chief of staff of the Senate Armed Services Committee.

Judge Quinn said off the bench that telling what the media could cover was "beyond anything this court can do."

The court of three civilians came into existence in 1950 when Congress passed the new Uniform Code of Military Justice. The code limits the review power of the court to three kinds of cases:

1. All cases in which the sentence, as affirmed by the Board of Review, affects a general or flag officer or is a death sentence.
2. All cases reviewed by a board of review and that the Judge Advocate General of a service forwarded to the Court of Military Appeals for review.
3. All cases reviewed by a board of review in which, upon the accused's petition and on good cause shown, the

Court of Military Appeals has granted a review.

In any case that it reviews, the Court of Military Appeals acts only with respect to matters of law.

Senator Edward M. Kennedy, Democrat of Massachusetts, told reporters today that he was "deeply disturbed" by the alleged killings of civilians. Mr. Kennedy, who is chairman of the Judiciary Subcommittee on Refugees, said that there had been more than one million civilian casualties in South Vietnam, and that of that number 300,000 had been killed.

The majority of the casualties and deaths, he said, were the result of military action by United States and South Vietnamese forces.

Senator Peter H. Dominick, Republican of Colorado, intensified his attack on the news media today, charging them with conducting "a trial by press."

Senator Jacob K. Javits, Republican of New York, said that the alleged Songmy Massacre might force President Nixon to remove troops from South Vietnam more quickly than his speech Nov. 3 indicated he would.