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Accused Captain Linked to 20 Killings

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WASHINGTON, Feb. 13 — The attorney for Capt. Thomas K. Willingham, the ranking Army figure to be charged with crimes in the Vietnamese village of Songmy, said today that his client was accused of killing "20 Vietnamese civilians."

The attorney, Robert McKinley, a former Newark Municipal Court judge, said in a telephone interview that Captain Willingham had been ordered to conduct a search and destroy mission in the vicinity of Songmy on March 16, 1968. At the time, he was a first lieutenant in Company B, Fourth Battalion, Third Infantry.

While reluctant to discuss the movements and activities of the unit, which have not been made public, Mr. McKinley said that the company "sustained heavy fire from numerous rifles that day."

A spokesman for the Defense Department said that Army records disclosed that one soldier in the company had been killed in action and seven others wounded that day. None were in the platoon commanded by then Lieutenant Willingham.

5th Soldier Accused

Although the Army announced yesterday that Captain Willingham had become the fifth soldier to be charged with committing crimes in Songmy on March 16, 1968, the specific nature of the charges was not made public.

Mr. McKinley said today that the charges allege that Captain Willingham "did murder 20 Vietnamese civilians, residing within a zone of combat operations, whose names are unknown, by means of shooting them with a machine gun and rifle."

The attorney met with Captain Willingham at Fort Meade, Md., for the time yesterday. Mr. McKinley said that the 25-year-old officer "denies that he killed anyone."

The legal difficulties surrounding the Songmy incident, which involves at least one other infantry company and 36 more suspects, have been complicated by the involvement of Captain Willingham. In addition to being charged with unpremeditated murder under the Uniform Code of Military Justice, which is punishable by a maximum sentence of five imprisonment, he has also been

charged with murder "in violation of the Laws and Customs of War."

Violation of the Laws and Customs of War is a seldom-used charge that stems from international treaties signed by the United States. These include agreements made at the Hague Convention of 1907 and the Geneva Convention of 1949.

The treaties are intended to codify the rules and principles of international law governing the conduct of warring nations. The laws provided the legal basis for the Nuremberg trials of Nazis as war criminals.

The principal offenses under these laws include a number of criminal actions regarded as "conventional war crimes."

These involve the deliberate killing of unarmed civilians and the reckless destruction of property without military significance.

Although it could not be immediately determined when the charges were last invoked against a United States serviceman, Defense Department spokesmen said that several hours of research into the matter had not turned up any recent instance.

Four soldiers have been charged with committing crime

at Songmy, but none have been charged with breaking the Laws and Customs of War.

A ranking Pentagon officer said that the rationale behind the charge might involve the burden of proof that is involved. He said that such a charge might be easier to prove in a military trial than the charge of unpremeditated murder.

The official also indicated that the provision might offer a stronger assurance that the Army properly retains jurisdiction in the case.

Each Case Separate

Army spokesmen said that an individual convicted of war crimes might be sentenced to death if such a sentence was considered "proportionate to the gravity of the offense."

"The circumstances of each individual case will govern the particular punishment," Army regulations state.

The circumstances surrounding the referral of charges against Captain Willingham indicate that an effort was made to retain the officer in the Army when last-minute information regarding the Songmy incident became known.

The captain was notified of the charges Tuesday night at the home of his wife's parents in Eastchester, N. Y. Earlier, the captain has obtained his final Army pay at Fort Meade and signed out from active duty. Tuesday was his last day of service.

Signing out is normally considered to be the final official duty of a soldier, unless he is recalled into the service to perform duty stemming from a Reserve commitment. In Captain Willingham's case, a lieutenant colonel assigned as a military instructor at Pratt Institute was sent to notify the officer that he was being involuntarily retained in the service while the charges against him were being investigated.

Captain Willingham returned to Fort Meade and has been assigned to administrative duties with the Sixth Armored Cavalry Regiment.

A Defense Department official said that the information against Captain Willingham had been discovered "practically at the 11th hour."

The question of whether the Army retains legal jurisdiction over a soldier who has become a civilian is a subject of debate within the Defense Department and has not yet been resolved.