

A Civilian Review in My Lai Case

Atlanta

A Federal judge ruled yesterday that a soldier accused of atrocities at My Lai could not be tried by court-martial until a three-man civilian judicial panel has decided on the legality of the Vietnam war and the constitutionality of the Army's Uniform Code of Military justice.

District Judge Albert Henderson made permanent a temporary restraining order obtained last week by civilian and military lawyers representing Sergeant Esequiel Torres, 22, of Brownsville, Tex. The order marked the first intervention by the civilian judiciary in the pretrial stages of a court-martial.

Torres is charged with murdering at least three Vietnamese with a machine gun during the alleged massacre of more than 100 civilians, including women and children, at the My Lai 4 hamlet of Song My by men of Company C, First Battalion, 20th Infantry, Americal Division, on March 16, 1968.

HANGING

Torres is also charged with premeditated murder in the hanging of a Vietnamese man just before the My Lai incident.

Earlier yesterday, Private First Class Gerald Anthony Smith, accused of murder and "indecent assault" on a woman during the My Lai incident, was granted an indefinite delay of proceedings at a pretrial hearing at Third Army Headquarters, Fort McPherson.



AP Wirephoto

ESEQUIEL TORRES
Petition granted

judge and two district court judges has ruled on the constitutional issues. The panel is expected to convene in August. Meanwhile, the Army may go ahead with its pretrial preparations, the judge said.

Besides challenging the legality of the war, Weltner charged that systematic killing of noncombatants in Vietnam is the official policy of the United States government. He argued that the Army has failed to prosecute all those responsible for indiscriminate destruction of human life and that Torres is being singled out as a scapegoat and is thus being threatened with cruel and unusual punishment in violation of the Eighth Amendment.

RESEARCH

To support his charge, Weltner offered as a potential witness Dr. Peter G. Bourne, a former director of psychiatric research for the Army in Vietnam.

In his book, "Men, Stress and Vietnam," Bourne has charged that noncombatants, including women and children, have been systematically included in the Army's "body count" of slain Viet Cong.

It is official policy, Weltner said, to "approve and commend units reporting high body counts." He cited a telegram from General William C. Westmoreland, who was then commander of united forces in Vietnam, praising Torres for the body count at My Lai.

New York Times

In a petition, Charles L. Weltner, a former congressman who is the chief counsel for Torres, contended that U.S. military involvement in Vietnam has been conducted "without constitutional or other lawful authority," on command of President Nixon without a lawful declaration of war by Congress.

INJUNCTION

Counsel for the Army told the judge that the granting of a permanent injunction would encourage a flood of similar petitions and "hamstring the whole system of military justice."

But Henderson said he would ban a military trial until a federal tribunal consisting of one appeals court