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## SONMY JUDGE BARS C.I.A. SUBPOENAS

Sergeant's Lawyer Rebuffed  
—Panel Is Completed

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Special to The New York Times

FORT HOOD, Tex., Oct. 13—

The civilian defense attorney for S. Sgt. David Mitchell, who is being court-martialed here in connection with the alleged massacre at Sonmy, South Vietnam, lost a bid today to subpoena high officials of the Central Intelligence Agency.

The attorney, Ossie B. Brown, contended that the C.I.A. had been involved in a "systematic program of assassination of Vietcong and suspected Vietcong" in South Vietnam as part of Operation Phoenix, the American-planned rural pacification program.

Mr. Brown told Col. George R. Robinson, the military judge, that the United States Government condoned "this constant killing and systematic assassination," then turned around and "charged Sergeant Mitchell with assault to commit murder."

For this reason, he said, he requested the authority to subpoena Richard C. Helms, director of the C.I.A., and Evans J. Parker, whom he described as the C.I.A. official in charge of Operation Phoenix. Mr. Parker, he said, was the man who "signed documents, certain blacklists" of Vietnamese to be assassinated.

### 'Fishing Expedition'

For its part, the Government's counsel, Capt. Michael K. Swan, argued that the Sonmy operation, which took place in March, 1968, had been planned and carried out by the military who had designated the village to be part of a free-fire zone. The Central Intelligence Agency, he said, had nothing to do with the operation.

Captain Swan charged that the defense was embarking on a "fishing expedition" and that it was "trying to harass high ranking officials."

Colonel Robinson denied Mr. Brown's request to subpoena the C.I.A. officials, agreeing with the trial counsel, or prosecution, that no evidence had been offered to show that troops in a free-fire zone were authorized to disregard the rules of warfare that protect unarmed civilians.

Sergeant Mitchell is charged with assault to murder about 30 Vietnamese civilians.

Outside the courtroom an attorney for the C.I.A., John Creaney, told newsmen that the agency was "absolutely not" involved in the Sonmy operation. Asked if the agency had played a role in the Sonmy area before the incident, he replied: "I don't know."

During the day, Mr. Brown exercised the defense's sole peremptory challenge, which allows him to excuse a prospective court member for no reason. Col. Richard G. Trefry was dismissed.

### Court Completed

Under military law, a general court-martial requires a minimum of five court members to act as jurors, although the judge has discretion to allow any number in excess of five.

By the end of the court day, seven officers had been questioned and tentatively selected for the jury. Colonel Robinson then announced that the court had been formed and that the next open session of the court-martial would not be held before 1 P.M. tomorrow.

The jury is made up of two full colonels, three captains, and two first lieutenants. All but one officer have served in Vietnam. All are white. Sergeant Mitchell is black.

Evidentiary proceedings are not expected to start before Thursday morning. One defense attorney is still in Washington examining documents in the case. Tomorrow afternoon, the jury will probably be sworn in and Sergeant Mitchell may be formally arraigned on the assault charge.

### Calley Trial Date Set

FORT BENNING, Ga., Oct. 13 (AP)—Col. Reid W. Kennedy, the military judge who will preside at the trial of Lieut. William L. Calley Jr. on charges of mass murder at Sonmy, today set Nov. 16 as the date for the court-martial to begin.

At the final session of pre-trial hearings for the young Army lieutenant, Colonel Kennedy also denied a defense motion for a civilian trial and granted a defense motion to obtain secret testimony given before a subcommittee of the House Armed Services Committee.

Colonel Kennedy set Nov. 9 as the date for calling prospective members of the court-martial and for hearing other pre-trial matters.

Lieutenant Calley, 27, of Miami, is accused of slaying 102 Vietnamese civilians. He was in command of a platoon of the Americal Division that attacked the village of Sonmy.