

Sommy Trial Is Snarled as House Panel Refuses to Divulge 4 Men's Testimony

By DOUGLAS ROBINSON

Special to The New York Times
 FORT HOOD, Tex., Oct. 15 —An unexpected snarl developed today in the court-martial of S. Sgt. David Mitchell.

The situation resulted from a House subcommittee's refusal to divulge the testimony of four men who appeared before it earlier this year during an investigation of the alleged massacre at the Mylai 4 hamlet of the village of Sonmy, South Vietnam.

Col. George R. Robinson, the military judge, ruled today that the four men, scheduled to be Government witnesses in the court-martial, would not be allowed to testify unless their testimony before the subcommittee was released.

Delay Is Granted

After this ruling, the Government requested a continuance to "reorganize" its initial argument and to renew its efforts to obtain the testimony from the House panel, the Investigating Subcommittee of the Armed Services Committee.

Colonel Robinson granted a delay. He postponed until Monday the opening arguments and the start of testimony.

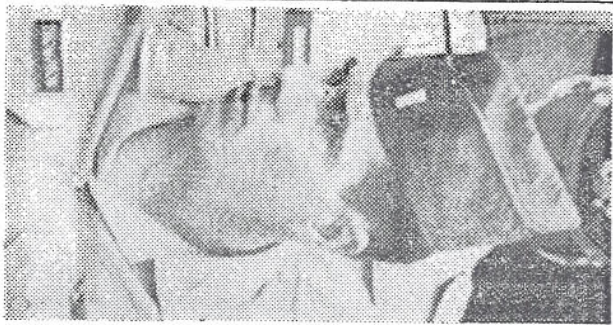
Sergeant Mitchell is charged with assault with intent to commit murder of at least 30 unarmed civilians at Mylai 4 in March of 1968.

Colonel Robinson, in his ruling, expressed his "surprise" at the "attitude of the subcommittee," saying "The Secretary of the Army informed the committee most plainly that, unless certain testimony was made available to the Army to eventually turn over to the defense counsel, the charges against those involved in the Mylai incident may be dismissed."

"Yet the subcommittee remains firm in its effort to resist discovery of a mere four witnesses who testified before them who will also testify here," the judge said. He also said that the subcommittee had allowed excerpts from testimony to appear in a Government publication available to the public for 50 cents.

Colonel Robinson said that repeated efforts to obtain the testimony had been made by Secretary of the Army Stanley R. Resor as well as by the prosecution and defense in the Mitchell case.

If the defense was not permitted to examine previous testimony of Government witnesses



Associated Press
Lt. Hugh C. Thompson leaving court yesterday.

nesses relating to the Mylai events, a mistrial could result, the judge said.

Accordingly, to guard against a mistrial, he ruled that the four men — Lt. Hugh C.

Thompson, a helicopter pilot who observed the Mylai events; Lawrence Colburn, a gunner on the helicopter; and Jerry R. Culverhouse and Lenny B. Lagunoy, both former members of the infantry company that entered Mylai—could not appear in the case until their previous testimony was released.

A total of 117 witnesses appeared before the subcommittee, headed by Representative F. Edward Hebert, Democrat of Louisiana. Of these, only the four were scheduled to appear as witnesses in the Mitchell case.

The subcommittee's report, published by the Government Printing Office, included excerpts from testimony by both Lieutenant Thompson and Mr. Colburn relating to the events at Sonmy.

The chairman of the parent Armed Services Committee, L. Mendel Rivers, Democrat of South Carolina, has been critical of the Army's procedures for investigating and reporting al-

War Casualties

WASHINGTON, Oct. 15 (UPI)

—The Defense Department announced today that the following servicemen from the New York area had been killed in Southeast Asia:

- FORMICA, Gary P., Specialist 4, Bloomfield, N. J.
- SMITH, Michael, Specialist 4, Richmond Hill, N. Y.
- SORCI, Mark T., Pvt., Niagara Falls.

mentioned because of his reference to a "massacre" at Mylai during a news conference last Dec. 8.

Hebert Explains Stand

Special to The New York Times

WASHINGTON, Oct. 15 — Representative Hebert said today that he would not release the testimony unless he was ordered to do so by Congress. Reached by telephone in New Orleans, Mr. Hebert said that the subcommittee "committed itself at the beginning" and told the witnesses whom it summoned that it would not release their testimony.

"We do not want to prejudice the case of the Government or the defendants," he said.

Mr. Hebert said he plans to release all the testimony after the Sonmy trials are completed — "after the decks are cleared." He cited the fact that Congress is "a coequal branch" as his authority to withhold the testimony.