

# ARMY RESTS CASE IN MYLAI DEATHS; MOVE A SURPRISE

Total of 3 Witnesses Called  
in Mitchell Court-Martial  
—Defense Asks Delay

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FORT HOOD, Tex., Oct. 20—The prosecution in the court-martial of S. Sgt. David Mitchell for his role in the alleged massacre of civilians in the South Vietnamese hamlet of Mylai 4 unexpectedly rested its case today after calling only three witnesses to the stand.

The move caught the defense by surprise. Ossie B. Brown, Sergeant Mitchell's civilian attorney, immediately asked for a continuance until Thursday to allow time for the assembling of witnesses.

The military judge, Col. George R. Robinson, said that he would decide tomorrow morning whether there were enough defense witnesses on hand to resume the court-martial in the afternoon or whether to grant the delay.

Of the three prosecution witnesses, two testified they had seen Sergeant Mitchell and Lieut. William L. Calley Jr., the infantry platoon commander, fire their M-16 rifles into a ditch where old men, women and children had been herded. A third witness, who testified today, said that he had seen the sergeant aim his rifle into the ditch and apparently shoot wounded civilians.

## Announcement Dramatic

Only one of the three witnesses, Charles Sledge, who served as a radio man on the day of the incident—March 16, 1968—testified that he had seen people screaming and falling when the two men opened fire.

The announcement from Capt. Michael K. Swan, the chief prosecutor, that he was resting his case came with dramatic suddenness as the court reconvened at 1 P.M. following a break for lunch.

On his way out of the courtroom after making his announcement, Captain Swan was besieged by newsmen. He offered only a few terse comments on his action.

Asked why he had rested so quickly, the 28-year-old officer said, "I felt it advantageous to my case to do so."

"I feel I've proved my case," he said, adding that he would have the opportunity to call rebuttal witnesses if that proved necessary.

In response to a question on whether the refusal of a House subcommittee to release the previous testimony of four witnesses, thus effectively barring

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them from the court-martial, had affected his case, he said, "It's hard to say."

Asked if he had received instructions from Washington to rest his case, he replied, "Negative."

In talking to newsmen, Mr. Brown said that he had been informed by the prosecution that it planned to call 13 witnesses. When Colonel Robinson ruled that the four men whose testimony had not been released by the House subcommittee could not appear, that left nine witnesses, the attorney said.

Mr. Brown said that the nine potential witnesses were seven members of the infantry company and two helicopter pilots. Of the nine, only three members of the infantry company took the stand.

In his cross-examination of the prosecution witnesses, Mr. Brown found inconsistencies between the testimony of two men and statements they had given to agents of the Army's Criminal Investigation Division in the months of pretrial investigation.

The other witness admitted that he did not like Sergeant Mitchell.

Mr. Brown said that although he did not know why the prosecution had rested, he agreed with speculation that the Government had called its three best witnesses, and that the appearance of more men might complicate the case in the minds of the jury of seven officers, especially if there were more inconsistencies.

Today's prosecution witness was Gregory Olsen, a college student from Portland, Ore., who was a machine gunner with the company.

The defense attorney said that he had subpoenaed 48 witnesses, of whom eight were now at Fort Hood. He said that he had not decided whether to call all of them to the stand.

One of the four prosecution witnesses who were barred from testifying by Colonel Robinson's ruling that the defense was entitled to examine previous testimony before the House subcommittee was Lieut. Hugh Thompson, a helicopter pilot who saw the Mylai incident from the air.

In addition to any testimony about the alleged mass killing and his reported attempts to halt it, Lieutenant Thompson could have testified about his reporting the incident to ranking officers.

A number of officers, including Maj. Gen. Samuel W. Koster, who commanded the Americal Division in Vietnam at the time, have been accused of involvement in the suppression of information about the occurrence.

Additionally, Lieutenant Thompson would have been one of the few officers scheduled to testify for the prosecution. Most of the other potential prosecution witnesses were enlisted men in the infantry company. Two of the three men who did take the stand were men with limited educational backgrounds.

Mr. Olsen said that as he had crossed a ditch in the eastern sector of the hamlet he had seen from "12 to two dozen bodies," mostly those of women and children, lying at the bottom. "They appeared to have been shot," he said.

"Some appeared to be dead," he said. "Some were definitely alive, and they followed me with their eyes as I crossed."

After setting up his machine-gun position some 20 meters from the ditch, he related, he saw Sergeant Mitchell cross the ditch with other members of the platoon and disappear into a tree-line only a few yards from the edge of the ditch embankment.

"What happened next?" he was asked by Captain Swan.

"A helicopter landed a few minutes later, and . . . Lieutenant Calley came out of the tree-line, approached the helicopter and appeared to have a conversation with the pilot," Mr. Olsen answered. "The chopper took off, and Lieutenant Calley walked back toward the tree-line.

"Just before he got there, Sergeant Mitchell came out of the tree-line and appeared to talk to the lieutenant. Then the sergeant walked to the edge of the ditch where the bodies were, raised his M-16 to his shoulder and pointed it into the ditch.

"I heard 10 to 12 semi-automatic rounds fired. Te seemed to be varying his aim into the ditch."

Later, under cross-examination, Mr. Olsen said that he could not swear that Sergeant Mitchell had fired his rifle, since he had not seen any muzzle flashes nor had he seen the sergeant's body recoil from the firing. He also said that he could not see the sergeant's finger on the trigger because his view had been blocked by the sergeant's shoulder and arm. He also conceded that he had heard firing coming from the hamlet.

Under cross-examination by Mr. Brown, Mr. Olsen was confronted with a part of a statement that he had given to an Army investigator in September, 1969, in which he said that he had not seen Sergeant Mitchell cross the ditch but only became aware of him as he entered the tree-line.

Sergeant Mitchell, who is accused of assault with intent to commit murder of some 30 South Vietnamese civilians, faces a sentence of 20 years at hard labor, a dishonorable discharge, forfeiture of pay and reduction in rank to private if found guilty.