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Calley Defense Wins Key Ruling

Associated Press

Fort Benning, Ga.

First Lieutenant William L. Calley Jr. won the right at a preliminary court-martial hearing yesterday to argue that any massacre at My Lai was the result of orders from superior officers. It is expected to be a key issue in his defense.

The hearing then was recessed until Thursday, when selection of the jury is expected to begin.

The prosecution asked that the defense be barred from citing any orders Calley might have received in advance from his company commander, Captain Ernest L. Medina. Calley faces trial on charges of premeditated murder of 102 unarmed Vietnamese civilians at My Lai March 16, 1968.

"Our evidence," said Captain Aubrey Daniel, the prosecutor, "will show that the defendant rounded up unarmed, unresisting old men, women and children and by his own acts and the acts of his subordinates summarily executed them . . . whatever orders there were, they were irrelevant."

"We might just as well go home, if the court grants this motion," replied George L. Latimer, sandy-haired civil-

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an defense attorney. "Why can't we go into the facts and circumstances under which this man was operating?"

" . . . Somewhere along the line, somebody's got to realize these men were given orders to search and destroy . . . It means to destroy everything there. If these boys were given orders to kill everything, including women and children, I think that's relevant.

In ruling with the defense, the trail judge, Colonel Reid Kennedy, told Latimer: "Judging by what you've said, I'd be cutting to the heart of your defense add that I don't propose to do."

Calley, 27, of Miami, Fla., led Charley Company's First Platoon through the hamlet of My Lai on a sweep that the government says developed into a blood bath involving unarmed Vietnamese civilians. His court-martial follows that of one of his squad leaders, Staff Sergeant David Mitchell, which is now in recess at Fort Hood, Tex.

COMMANDER

Medina, the company commander, has been charged in the case but as yet no court-martial has been scheduled for him.

The recess for the Veterans Day holiday came after Kennedy disposed of the last batch of dozens of pretrial motions.

RULINGS

At Fort Hood, the court-martial judge ruled the prosecution could not call four of its intended witnesses be-

cause their testimony before a House subcommittee in Washington had not been made available to Mitchell's defense attorney.

Kennedy ruled exactly the opposite. He held that the Calley prosecution could call whom it wished from among those who testified before the subcommittee headed by Representative Edward Hebert (Dem-La.). Hebert refused to release the testimony, saying he had promised secrecy to his witnesses.

TRANSCRIPT

Both here and at Fort Hood, the defense argued it needed the subcommittee transcript to determine as the court-martial proceeds whether the Washington testimony was consistent with the trial testimony.