

CALLEY'S LAWYERS DEFEND KILLINGS

—DEC—5 1972

They Say Victims Were Not
Clearly Noncombatants

NYTimes

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Special to The New York Times

FALLS CHURCH, Va., Dec. 4

—Attorneys for First Lieut. William L. Calley Jr. argued today that the slain villagers of Mylai 4 did not qualify for protection as prisoners of war under international law because they were not recognizable as noncombatants at a distance.

One of the attorneys, under questioning on this point, agreed with a suggestion that the villagers were thus "fair game" for American infantrymen.

A three-man defense for the lieutenant, arguing an appeal of his 1971 conviction, also contended that he failed to meet one of the basic requirements of his premeditated murder conviction because he "possessed no malice at all on the date of the alleged incident."

These two approaches highlighted the more than 20 specific errors charged by Lieutenant Calley's defense team, headed by former military Judge George W. Latimer of Salt Lake City, in a voluminous brief filed before the United States of Military Appeals here.

The three-man court heard more than six hours of oral arguments by the Government and defense attorneys in the first official review of the court-martial proceedings.

Issues Rejected Before

Many of the defense issues—such as the question of higher command influence on the verdict—were raised and rejected during the court-martial at Fort Benning, Ga., last year.

Lieutenant Calley was found guilty of the premeditated murder of 22 Vietnamese civilians and sentenced to life in prison. After a national furor over his conviction, President Nixon intervened and ordered the lieutenant released from an Army stockade and confined to quarters pending appeal. His sentence was later reduced to 20 years, and Lieutenant Calley recently initiated separate proceedings for a parole or clemency.

In his appeal today, he asked the court to set aside the sentence and dismiss the charges against him because of the errors in the lower court.

Mr. Latimer, in summarizing the defense argument, however, pleaded—at a minimum—for a reduction of sentence. "After this happened," he said of Lieutenant Calley "he was a model officer. He was never a source of trouble. His conduct is exemplary."

Mr. Latimer acknowledged that Lieutenant Calley had slain villagers at Mylai and added, "He's learned his lesson more severely than I believe is justified. As long as he lives, he's going to be the only person convicted of murder at Mylai 4."

Twenty-six officers and men were accused of murder or lesser crimes in connection with the slaughter at Mylai in March, 1968, and its subsequent cover-up. Twenty-five dismissals and acquittals followed. One Army estimate indicated that 347 civilians had been slain by the Americal Division soldiers.

Guerrilla War Rules

The unusual argument about international law was based on the defense attorneys' thesis that in a guerrilla war the burden is on the villagers to demonstrate that they are not combatants.

Capt. J. Houston Gordon, one of the Calley defense team lawyers, told the court that the villagers did not have the right to be treated as prisoners of war since they were not "recognizable" as noncombatants at a distance.

In his written brief, Captain Gordon argued that "the decision that these people were 'hostile' as opposed to 'peaceful' civilians is not unreasonable when the type of war being fought in Vietnam is considered."

"It seems unjustly harsh to place the burden on an accused to determine the status of a group of people during the horror and confusion of a combat assault," he said.

At another point, Captain Gordon argued that if the villagers "were entitled to treatment as prisoners of war," they "must meet" the legal definition of such prisoners.

Asked by one of judges whether the villagers, failing to meet the definitions of prisoners, would be "fair game" for the American soldiers, the captain said yes.

In rebutting this contention, Government lawyers merely recited some of agreed-upon facts in connection with the Mylai slayings, including the shooting of women and children by Lieutenant Calley.

"What intelligence does it take to know that you don't wantonly murder?" Capt. Robert C. Roth Jr., one of the Government attorneys asked. He added that Lieutenant Calley's order to his subordinates to "waste them" was an "act of blatant barbarism."

In arguing that Lieutenant Calley lacked the necessary ingredient of "malice aforethought" for a conviction of premeditated murder, the defense attorneys said that the lieutenant had "considered the people killed only as enemy to be wasted," in accordance with orders he believed he had received from his commanding officer, Capt. Ernest R. Medina.