

Reconsider Calley Case, Court Asked

By Eugene L. Meyer
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Lawyers for Lt. William L. Calley Jr. asked the civilian military appeals court yesterday to reconsider its ruling upholding the army officer's conviction and sentencing to 30 years at hard labor for his role in the March 16, 1968, My Lai massacre.

The motion included an unusual request that the three-judge U.S. Court of Military Appeals delay its reconsideration until a replacement is named for former Chief Judge William H. Darden, the lone dissenter in the Dec. 21 ruling. Darden resigned Dec. 28.

The majority held that a "reasonable man," one of "ordinary sense and understanding," could comprehend the illegality of an order to kill, an order that Calley's superior, Capt. Ernest Medina, denied making.

Darden's dissent—that a man of Calley's limited intelligence could not be expected to understand the subtle difference in wartime between justified killing and murder—was stressed by the defense lawyers yesterday.

"The rule of this case, in short, provides justice, or more, for the intellectually astute but none of the slow-witted. Such an approach resulting in intellectual elitism is anathema to our concept of criminal justice," Calley's lawyers said.

Judge Robert M. Duncan, in concurring with the majority opinion by Judge Robert E. Quinn, offered another reed to Calley's lawyers. Duncan found the standard by which Calley was measured to be "less than perfect" with a "certain potential for injustice," but said it is up to the legislature to define a new one.

Calley's lawyers also complained that the Army officer had been denied the traditional presumption of innocence. Instead, they said, Calley faced a presumption of guilt before his March 29, 1971, conviction for the murder of 22 Vietnamese civilians and assault with intent to murder a child.

This presumption, the lawyers said, carried over to the appeals court, where Judge Quinn wrote that Calley "must be presumed to know he could not kill the people involved here."

On the matter of prejudicial pretrial publicity, Calley's lawyers rejected the court's argument that "favorable" stories countered the unfavorable. To take such a position, the lawyers said, "is equivalent to allowing guilt to be determined by popular election with the concomitant influence of the press."

President Nixon has promised to review Calley's case after all appeals are exhausted. Meanwhile, Calley remains under house arrest at Ft. Benning, Ga.