

THE NEW YORK TIMES, SATURDAY, MAY 11, 1971

Judge Who Will Give the Ruling Thinks Calley Will Win Appeal

Special to The Times

COLUMBUS, Ga., May 10—The Federal judge who has agreed to hear the challenge of former First Lieut. William L. Calley Jr. of his conviction for the murder of civilians at My Lai said today that he believed Mr. Calley would win.

Judge J. Robert Elliott of United States District Court for the Middle District of Georgia, who freed Mr. Calley on his own recognizance Feb. 27, made the comment as he denied an Army motion to revoke bail.

While he insisted he was not "prejudging the matter in any respect," the judge said, "It now appears to me that the petitioner will prevail. It may be that he will not, but, as stated, it now appears to me that he will."

Judge Elliott said that he voiced his opinion only because United States Attorneys "insist that before denying their motion to revoke bail the court should first make some observation concerning the likelihood of petitioner's success." He has set a court date of June 24 to hear arguments on the issue of whether Mr. Calley's conviction by general court-martial violated his constitutional rights.

A rapid sequence of events in the last several weeks have led the former Army officer to the brink of freedom.

Commanded a Platoon

Mr. Calley was convicted of the murders of "at least" 22 South Vietnamese civilians at the hamlet of My Lai, which grew from his command of a platoon that swept through the area on March 16, 1968. He was given a life sentence by a court-martial on March 31, 1971.

The exact number of civilians who died at My Lai has never been determined. Estimates were between 300 and 400.

Mr. Calley was accused of either personally killing or directing the killing of 102 civilians. He was the only military man convicted among 25 officers and enlisted men charged with offenses ranging from murder to covering up the incident.

Capt. Ernest L. Medina, who was Mr. Calley's superior at the time, was among those acquitted. Mr. Calley contended that Captain Medina had ordered him to kill everyone in the village. Captain Medina denied it.

The commander of the Third Army, Gen. Bruce Connor, later reduced the sentence to 20 years.

President Nixon intervened and ordered Mr. Calley confined to quarters at Fort Benning instead of the military prison at Fort Leavenworth.

Army Decision

But in late February, the Army decided that the case was finished, and tried to transfer Mr. Calley to Leavenworth.

Mr. Calley's lawyer, who was an Army captain at the time, fought the move of his superiors in the Judge Advocate General's Office, and got Judge Elliott to issue a writ of habeas corpus requiring the Army to bring the lieutenant before him to hear his arguments for freedom.

Judge Elliott granted Mr. Calley bail Feb. 27. The United States Attorneys filed a motion for reconsideration before they decided whether to appeal the decision to the United

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States Court of Appeals for the Circuit, at New Orleans.

Today's action let Mr. Calley stay free at least until June 24. It is nearly assured that the Government will take the case all the way to the United States Supreme Court should judge Elliott overturn his conviction.

Army Secretary Howard H. Callaway viewed the case and reduced the sentence to 10 years.

In doing so, he said, "The acts of murder and assault against unarmed civilians are so abhorrent to those who accept the fundamental legal and moral basis for this Republic that they cannot be condoned or forgotten."

But he said there were "mitigating circumstances" that indicated the former officer sincerely believed that he was not aware of his responsibility when he gunned down the undetermined number of civilians—mostly women, children and old men.

Last week President Nixon let Mr. Callaway's decision stand, and Mr. Calley was promptly dismissed from the Army on what amounted to a dishonorable discharge.