

Court Orders Calley Freed But the Army Will Appeal



William L. Calley Jr.



Judge J. Robert Elliott

Associated Press

NYTimes

By WAYNE KING SEP 26 1974

Special to The New York Times

COLUMBUS, Ga., Sept. 25—hamlet of Mylai in 1968, the United States District Judge J. Robert Elliott overturned today the murder conviction of former Lieut. William L. Calley Jr. and ordered him released "forthwith" from incarceration at Fort Leavenworth in Kansas.

[The Associated Press reported from Washington that the Army announced it would move to appeal the judge's decision and that Mr. Calley would not be released pending a ruling on its motion.]

In reversing the conviction of the former officer, the only man found guilty in the slayings of a large number of civilians in the South Vietnamese

judge cited what he called three major defects in Lieutenant Calley's prosecution under military law. Most prominently, he cited "massive adverse pretrial publicity."

Also cited were the denial of Lieutenant Calley's request to call certain witnesses and charges that Judge Elliott described as "improperly drawn and illegally used."

The judge's order for the release of Mr. Calley "forthwith" appeared to be subject to different interpretations — from immediately to within reason-

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able time.

The judge retained the jurisdiction over the case, a step that would allow his re-entry if either Mr. Calley or the Army decided on further action.

Judge Elliott's order to release Mr. Calley, a sizable document of 132 pages, amounted to a strong indictment of the military, the press, Congress and the executive branch in its treatment of Lieutenant Calley.

Most of the criticism, 85 of the 132 pages, was directed at the news media coverage of the Mylai case and the failure of either the Army or the civilian judiciary to stop it.

"Never in the history of the military justice system, and perhaps in the history of American courts," the judge said, "has any accused ever encountered such intense and continuous prejudicial publicity."

Words and Phrases

The court noted the use of such words and phrases as "atrocious," "slaughter of non-combatants," "wanton killing," "barbaric act" and the like in media accounts of the Mylai killings of unarmed civilians, including women and children, in the attack on the hamlet in March, 1968. The judge also noted that Lieutenant Calley had been referred to in allegations as "a mass murderer" and a "ghoul."

The judge was particularly critical of reporting of eyewitness accounts by others who were at Mylai and of what he considered prejudicial news media treatment among a long catalogue of transgressions, he mentioned a television network's use of bloody blotches on a map of Vietnam to identify the site of the killings. The judge referred to this as "blood-horror visual technique."

He was also pointed in his criticism of the selling of photographs of the bloody victims of the massacre to news media, notably Life Magazine, by a former military photographer. The pictures were later used in the lieutenant's trial.

The military's judicial system made it impossible to stop such things, even after charges were brought, the judge said, because no judge was given immediate jurisdiction. Moreover, he said, later efforts to forestall prejudicial publicity prove ineffective because of the military's inability to control actions of civilians.

On the question of the Army's refusal to subpoena witnesses the Calley defense had requested — among them Melvin R. Laird, who was the Secretary of MMM Defense,

he and the Army Chief of Staff, Gen. William C. Westmoreland — the judge suggested that war crime precedence at Nuremberg "set the stage for an argument that the petitioners' superior could well have been worried about their own possible criminal responsibility as a result of the Mylai incident."

The judge did not conclude that this was the case, but said, "It is only necessary that one be able to draw an inference that there was reason to believe the superiors had cause for concern as to their own status."

On the third point in the reversal, denial of due process, the judge found the Army's failure to be specific in its charges against Lieutenant Calley — not identifying the exact number of victims or their identity — a raised the possibility of double jeopardy in that the same victims might be cited in different charges.

The judge also ruled that the defense had the right of access to testimony about Mylai before the House of Representatives that it was refused on grounds of confidentiality. The judge used as a precedent the court order to the White House to divulge tapes and documents requested by defendants in the Watergate trials.

Alliterative Condemnation

At the end of the order, the judge indulged in a kind of alliterative peroration in condemning the general treatment of Lieutenant Calley.

He wrote:

"He was pummelled and pilloried by the press.

"He was taunted and tainted by television.

"He was reproached and ridiculed by radio.

"He was criticized and condemned by commentators.

"His commander-in-chief publicly aligned himself with the prosecution.

"His government denied him access to evidence.

"His pleas to the Department of Justice were unanswered.

"His conviction was to be a cathartic to cleanse the national conscience and the impellant to improve the Army's image."

The judge concluded: "His country not only denied him a fair trial—it even denied him a fair chance for a fair trial."