

Conviction Of Calley Reinstated

By John P. MacKenzie
Washington Post Staff Writer

The court-martial conviction of former Army Lt. William L. Calley Jr., the Mylai murder defendant, was reinstated yesterday by a federal court of appeals ruling that he received a fair trial at the hands of a military jury.

Reversing a federal district judge's holding that massive publicity had made a fair trial "impossible," the Fifth U.S. Circuit Court of Appeals said in New Orleans that any harm to the accused had been offset by scrupulous care in choosing the jury and by other safeguards.

The decision, which Calley's lawyers said would be taken to the Supreme Court, was a major victory for the Defense Department's system of military justice, which was severely challenged by last year's decision by U.S. District Court Judge J. Robert Elliott in Columbus, Ga.

Calley's own status remained unclear last night as Pentagon officials declined to specify whether he was officially on parole as promised by former Secretary of the Army Howard H. Callaway, or merely free on bail approved by the federal courts a year ago.

In addition to his findings on prejudicial publicity Judge Elliott said last year that Calley's constitutional rights were violated when the military court that tried him in 1971 was unable to force release by a House Armed Services Committee of secret testimony taken during an investigation into the cover-up of the massacre that might have helped Calley's defense.

Eight of the 13 participating appellate judges said yesterday Judge Elliott was wrong on the publicity issue. The five remaining judges said they would not quarrel with that ruling, but they dissented on the question of evidence withheld by Congress.



WILLIAM L. CALLEY JR.
... new status unclear

Calley sought relief in the federal courts after his conviction was upheld throughout the military justice system and several levels of Defense Department review. Those appeals were partially successful for Calley, however, as officials lowered his sentence from a life term to 10 years in prison. Calley served one-third of the 10-year sentence.

All 13 judges of the appellate court said they agreed that civilian federal court review of court-martial verdicts was sharply restricted by law and that federal judges should not release military prisoners except in cases of serious vio-

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lations of fundamental constitutional rights.

Pentagon lawyers had said they feared this point had been obscured by Judge Elliott's 1974 decision and that clarification from a higher court had become more important than Calley's ultimate fate.

Judge Robert A. Ainsworth, writing for the appellate court, said Judge Elliott's conclusion that mere exposure to publicity disqualified any potential juror was "extremely unsettling."

"If in this age of instant mass communication we were to automatically disqualify persons who have heard about an alleged crime, the inevitable result would be that truly heinous or notorious acts would go unpunished," Ainsworth said. "In prominent cases of national concern, we cannot allow widespread publicity to paralyze our system of justice."

Despite the publicity, said Ainsworth, any harm to Calley was repaired by judicial safeguards, including scrupulous questioning of potential jurors by Lt. Col. Reid W. Kennedy, the presiding officer. The six-officer court-martial jury panel consisted of combat veterans, five of whom had seen Vietnam duty.

As for the withholding of evidence from the congressional investigation, Ainsworth said Calley's complaint did not rise to the level of a constitutional violation, especially in view of the wide-ranging pretrial collecting of evidence the defense was allowed.

Calley's attorneys sought the secret testimony of Mylai witnesses so that they could search for possible discrepancies between their congressional and trial testimony.

On this issue the five dissenting judges, led by J. Griffin Bell, disagreed emphatically, saying Calley was deprived of due process of law guaranteed by the Bill of Rights.

Calling the House committee "cavalier if not arbitrary" in ignoring military-court subpoenas, Judge Bell said, "The concept of due process is not satisfied by a trial that is 'mostly' fair."

The dissenters said a judge should at least have a chance to examine the secret testimony. If it proved helpful to the defense there should be a new trial at which those wit-

nesses would be allowed to testify only if the defense had access to the testimony, they said.

Judge Bell said the Supreme Court's 1974 ruling in the Nixon tapes case established that "no man is above the law" when it came to providing evidence needed for a trial and that Congress enjoyed no higher privilege than the President. The high court, however, specifically noted that it was deciding only the issue of executive privilege, not legislative privilege.

Calley, 32, was the only soldier ever to serve time in prison for the slaying of civilians in the Vietnam village on March 16, 1968. Defense attorney J. Houston Gordon said Calley is now working in the Columbus, Ga., area.