

Summation of George Latimer for the Defense

The court-martial of Lt. William Calley

If the prosecution in this case was necessary to prevent the image of the army from being tarnished, then in my humble judgment, conviction of one lieutenant for the ills and vices occurring in My Lai will sear the image beyond recognition. In excess of one hundred soldiers participated in this assault, and the pages of this record bear testimony of the fact that this was not a one-man carnage. Present indications are that eventually this tragedy, as such, will narrow to be a death race between Captain Medina and Lieutenant Calley, and I am here trying to stop that from happening to my client.... I am proud of the United States Army, and it grieves me to see it being pulled apart from within. Whether you consider it as such or not, I do not know, but this case is a vehicle which is hurrying along its destruction.... Someone called the wrong signals and something went wrong. Then, the second tragedy occurred. The incident was hushed up by the company commander who ordered it, and those superior to him, and the real truth was forever buried. It cannot be resurrected for memories have dulled. Self-interest has multiplied manyfold and the truth is too easy to avoid. Approximately one year later, the third tragedy occurred, and that involved this prosecution. By this time, many of the members of the company were discharged and insulated from prosecution. They, with the help of army investigators who led the way, pointed the finger of blame toward other members who remained loyal to the service, and were trying to make the army a career, some including the accused, who sought to extend his tour of duty in Vietnam

All of these people, or most of them, seek to avoid the charge of accomplices, that they were murderers at My Lai; because, let me suggest this to you, good gentlemen, that if Captain Medina shot any of these people or ordered them shot, he is a murderer. If Lieutenant Calley follows in his footsteps, then what about Meadlo? Where is he? He admits having murdered a number of people, and use the word "murder" advisedly, because he was ordered to do it. Does the buck passing stop at Lieutenant Calley or does it go down? In my judgment, every one man who participated if there was an offense committed here, as the government alleges and seeks to prove, there are many that should suffer the same as should those who were convicted. . . .

I believe most of the men have a feeling, that are in the infantry, that there is a certain refined distinction which should not be made, but somehow is made, and that distinction is that it's all right for the air force to bomb cities. It's all right for artillery to tear down buildings and wreck the lives of every inhabitant; but somehow or other it's wrong for an infantryman, when he is told to destroy and level a village, to use his mechanical weapons and, after all, you are mechanized, to use his weapons for the same purposes. Oh, surely it can be contended that some of the people like to contend, with their refinements, that the infantryman has a better opportunity to see what he is doing. Well, again, here comes the mental processes to work. Here comes your artillery, your mortars coming in on the village, and you go in with your guns a blazing, M-16s or automatic. You don't shoot them by looking through a peep sight, or you didn't. They are used for mass Killing and the philosophy of our war and the philosophy that is taught everybody is fire support and mow them down

Let's look at the experiences of C Company. These are the experiences just before they go in: a number of reconnaissance and sweep and destroy missions, without ever seeing an enemy; losses of buddies by mines and snipers; never any security from death for it always

came from unseen and unknown sources. Darkness, an inability to see, breathes fear. Now, in addition to that, the deaths that were being occasioned to the members of the platoon added to the fear because you never knew when your number was up, and you never knew when the next step might cost you a leg or your life. Always destroyed by a visionary fold, no one you could really see and take a bead on and end his chance to save your life and the life of your buddies. Women and children operating with your enemy, being used to help destroy your unit. That enemy was lethal, but it could not be seen. This is the type of warfare that fends hatred against any enemy and anyone who can aid the enemy, and when the fight starts, it is too late to reason why. It just seems to do or die and everything must go.

Now, let us point out what I have said and superimpose on that the feelings, emotions, and desires of the members of C Company on top of the exhortations given by the commander, and we may reach part of the underlying behavior of good American boys who were trained to kill, sent overseas to kill, ordered to kill, and they were exhorted to go in and level or destroy and they thought their mission must be that. They hadn't been in trouble before. The history of it doesn't show a group of associated murders. This was a one-time incident, and now are they to be tarred and labeled as murderers of My Lai or are they entitled to consideration from the fact that they were doing their job as they saw it? Perhaps too aggressively, perhaps trying too hard, undoubtedly not using good judgment, but do the facts entitle the young American officer to hang by his neck until dead because he was trying to do something there which he thought was required by his mission and by the orders given to him? . . .

Now, let's see just for a moment or two what we have in some of these instances. Witnesses like Sledge, Conti, Meadlo, Dursi, Turner, and others. Each one of them recounts substantially different details for the sixteenth of March. Now, who was telling the truth in that connection? Are the memories all dulled, or do any of them actually have a real impression as to what occurred? I would think it's fair to say that as they tried to reconstruct those things and the events of that day and, mind you, this incident was buried for quite a long while, and so, if it is mulled over in the minds of the persons --Captain Daniel said individuals have a tendency to, shall I say, oh, cut down on their estimates. . . .

That's not my experience in human nature. When I start telling my war stories, they start going up and up and up until I start telling them ---I embellish them a little bit more, and when a CI [*combat infantryman*] is telling his war experiences, I think the measuring rod for truth would be a little bit short, because I think they have a tendency to move up.

Let's take Mr. Conti, just by way of illustration. Mr. Conti testified he got off and got lost. He got lost. It was some time before he could find out where he was going. He seemed to be doing something besides fighting wars. If you believe the testimony in the record, his accounts of what happened are entirely different from others.

Mr. Meadlo, I think, sits in a category where trial counsel would like to take him as reliable at one time and shed his reliability at another. He's good for certain things, and he's bad for certain things. For my money, Mr. Meadlo would probably have the poorest impressions of anybody, if he was as emotionally upset as they claim he was. In addition to that, Mr. Meadlo found himself in a very peculiar situation. He found himself insulated by having been discharged, but worried about whether he could be prosecuted otherwise by some other forum than a court-martial. Now, his emotional state, as far as I am concerned, makes him one of the most unreliable witnesses. . . .

Everybody concurs on the fact that the intelligence information was fantastically wrong. Everybody had a major force in there, and from whence that information came I cannot imagine because they were making some aerial reconnaissance near that area and surely they expected to meet the enemy, to take extra ammunition. They were told to go in aggressively and so I bring myself down to the events with Captain Medina standing in the pit with his shovel, when he starts telling his men what to do tomorrow. "The briefing that I conducted for my company was that C Company had been selected to conduct a combat assault operation into the village of My Lai beginning with LZ time 0730 hours on the morning of 16 March 1968. I told them the VC Battalion was approximately numbered, approximately 250 to 280 men, and that we would be outnumbered approximately two to one and that we could expect a helluva good fight, and we would probably be heavily engaged.' The intelligence reports also indicated that innocent civilians or noncombatants would be gone to the market at 0700 hours in the morning, that this was one of the reasons why the artillery preparation was being placed on the village at 0720. What are innocent civilians? I wonder what Captain Medina had in mind that he repeatedly talks about innocent civilians. I 'ust have never been able to figure out how I, as a CI, or any other CI, would know whether a civilian was innocent or not, and you couldn't tell that merely because they weren't carrying a rifle, because the evidence showed that they have other means of aiding the enemy; but more importantly, he led them to believe that everyone that I might be in the village --- every civilian that might be in this village, was not innocent.

A young man, Sergeant Schiel, testified as follows: "Medina stressed we were to kill everything. Did he mean everything to be--- *Question:* Did he mean everything to be killed, men, women and children? *Answer:* Captain Medina answered the question. Captain Medina said, 'Everything was to be killed, men, women, and children, cats, dogs, everything that breathed.' "

Lamartina stated. "Medina said, 'Go into the village and kill everything that breathed.' On March 11, I obeyed that order as I killed everything that moved. I observed others obeying the order. We sprayed the village."

Fagan: "We were going into Pinkville. We were going on a search and destroy mission. All inhabitants of the village would be killed, livestock slaughtered, all houses burned down. My impression, after the briefing, was that anyone remaining in the village, regardless of whether they were men, women, and children, would be killed."

Alaux: "Anyone remaining in the village on that day would be VC or VCS and that village was supposed to be destroyed and everything in it destroyed. This includes inhabitants."

Meadlo: "We are going to have contact with a heavily armed regiment. He said, 'Everything there is considered VC or VCS and that everybody should be destroyed.'"

Now, when you put those items all in their proper perspective, it just seems to me that despite Captain Medina's denial that he used that language, that certainly it is fair to say that every member of his group that testified, that came here to testify, either said that he said "men, women, or children"; that he was asked whether his phrase included men, women, and children, that he used words from which they inferred that that was what they were supposed to do; and lastly, those that did not testify, testified in the negative that they did not remember whether Captain Medina made the comment about that or not. Now, so you have the positive evidence on one side, the negative evidence on the other, but most of all you have the activity

in connection with this extemporaneous construction by the people who heard it. They went in. They went in firing. Insofar as the evidence shows, in every sector of that village civilians were killed.

Now, that brings me then to the other question of orders, and that's the two orders Lieutenant Calley said he received from Captain Medina while he was in the center of the village, as to what to do with these civilians. Now, significantly, there are facts which I think tend to show and add considerable light to this question. Number one, my recollection is that Captain Medina said he did call Lieutenant Calley and tell him to hurry up which, in part, verifies what Lieutenant Calley said.

I think Captain Medina said he sat there for two and a half hours with his command post there. He didn't know where his platoons were. He didn't know how far they had gone. He didn't know whether they had reached the east side of the section. Gentlemen, I will tell you, if you look at that map, you will find that Captain Medina could never have been further than about five or six hundred yards away from his lead troops. Now, he sat there and did do nothing about what was going on except the possibility of sending one message down, and I believe that message was something about [how] he had been called by the major about what was happening in the village, and he sent a message down, something to the effect either, "Quit shooting innocent civilians, Eleven" or "Quit shooting innocent civilians," and with that, he let it go.

Captain Medina wasn't interested in going back because he found a lot of reasons for not doing so, but in my opinion those reasons were founded because he didn't want to go back. He'd seen what happened. He thought probably if he didn't go back that night, that somebody might come in and remove the evidence that might be available so that this tragedy could be looked at and investigated and determined right at that time. Now, mind you, had that been done, every living witness to that would have been available to interview. The whole story could have been unfolded long before anybody had any interest in anything but telling the truth and finding out what happened. You know there was a guilty conscience on the part of Captain Medina. He told somebody he was going to go to prison for twenty years. I wonder why. I wonder why if he didn't feel that he had done something wrong, that he had any culpability in the matter. I wonder why he didn't go back and want to clear it up there and then. Well, it's apparent now why he didn't. I think he said four reasons that he gave as to why he didn't want to go back and I'm sorry to have to say, gentlemen, that they ring very hollow to me. Number one, was because of his country. Number two, because he didn't want to degrade the army. Number three, because of his family, and lastly, because of himself. Now, mind you, he knew and if you will read his testimony, you will find out that he stated at that time that he was alarmed at the number of casualties that might have occurred. Yet, he didn't want to go back and in my judgment, if you reconstruct that whole thing, Captain Medina knew how his orders had been interpreted. He sat there for two and a half hours. And he must have been there about the time that the First Platoon hit the south side of the landing zone and watched it go through, and I do not believe there is an area in that village that he could not hear every round that was fired out of an M-16 or out of a machine gun because I do believe that you can hear them fired that far away.

Now, everybody that went through that village said there was shooting. A man could not sit back there with the command post in a place that is not over five hundred to three hundred yards away in area and not know what is going on. The evidence shows that Captain Medina had been a good company commander, but somehow or other self preservation got into Captain Medina's life at that time and it was necessary for him to take some defensive efforts

to protect that. So, when you start to measure the interest, and I will be frank to say that on behalf of both of them, it's terrific; but between he and Lieutenant Calley, because they are both running the last yards, probably to a life or death sentence, and when the stakes are that high, somebody has got to try to escape responsibility.

Medina used a phrase that he was guilty of misprision of a felony by not reporting. of course, Captain Medina can afford to make that sort of an admission now because he cannot be prosecuted on that charge, the statute of limitations having barred it. Now, gentlemen, for the life of me, I cannot understand why we could take a group of twenty or thirty men out of the United States Army, all good men, all good citizens, at the time they were picked up, put them over there, and have an incident like this happen unless it had been suggested, ordered, or commanded by somebody upstairs. I will leave that up to you good gentlemen to figure out. Why a lieutenant, the lowest man on the totem pole, would be issuing orders like that without having some directive or orders from on high. . . .

Captain Medina was a man, a disciplinarian. He wanted orders obeyed. He said that and he didn't brook any denial or disobedience of orders. It may well be that the niceties of the military require that if I have a question about an order, I go to my company commander and say, "Captain, I think this is an illegal order, and I don't think I should obey it," but the other philosophy is that they were saying here, "Obey it first and then go back and find out what about the legality of it," because if you take the former in this situation, your troops might be dead; and if you don't follow out a combat order, then you sacrifice your troops. What a horrid choice to place upon anybody.

The court is also going to instruct on the legality and illegality of orders. You will have it in written form so there is no point in my doing anything more or less than this; that he will define an illegal order and what is an illegal order and he may tell you, in this case, that the killing of civilians ---in certain situations, a given order to kill those might be an illegal order, but he also will tell you that that does not end the subject.

That is just a commencement. For, on top of it a man that is involved, whether he uses the subjective or objective test, it must be known to the individual involved that the order and the circumstances ---when, where, and why it was given and the facts that control that decision as to whether a person should know whether it's legal or illegal ---flow out of his environment, flow out of many things that you have heard in this case, including these things that were bothering this unit on 16 March 1968; and he will tell you that if an ordinary, reasonable person would have done what Lieutenant Calley did, in this case, and obeyed the order; if it was given to him, then, of course, you cannot find Lieutenant Calley guilty because the test that you apply and the measuring rod you use is colored by the facts and circumstances surrounding the giving of the order and if you adopt the philosophy, you obeyed first and asked after in this situation, no one would take that kind of an order and do that, because if they didn't and there was some kind of counterattack here, something happened, then it would be too late.

It may be the difference between winning and losing and so, as you look back on the situation--- I could hardly stand here and tell you in good conscience that people, like at Nuremberg, could be excused or justified--- but I think when you put untrained troops out in areas and they are told to do certain things, they have a right to rely on the judgment and the expertise, then you are bound to give credence in effect to orders from their company commander; and so when you take that background, the laws of war were tailored in certain

respects to meet this very situation, then you will understand that the Congress of the United States and other bodies feel that leeway and latitude should be given to people who were far from home and trying to save the United States of America.

I do not believe that history records another incident when the United States of America ever had a similar situation, nor do I believe that we have taken collectively a group of people who were engaged in a combat mission and what they believed to be a combat mission and put them up before a court for trial. So, you gentlemen are in a situation where you must chart a course for what should be done. You are in a situation where I believe that if ever a presumption of innocence, the personal rights and obligations that are available to protect the men of the armed services ought to be extended in favor of this accused.

They cannot be prosecuted. Sure, they can then come forward with witnesses. They can disclose anything that happened. It's too late to help them, but the man that is in the service, the man that stays in the service and tries to build the morale and efficiency of the United States Army, does not have that protection. To me, I think if I were ---if it were possible for me to do it, somehow or other I would give weight to the fact that a man who wanted to make the army a career, who was not told ---never a word said to Lieutenant Calley that I can recall, about any of his problems in this case until he had extended in Vietnam and was ordered back to the United States believing he was coming back to a new assignment. There was nothing said to him. All the time, apparently, the finger pointing to Captain Medina, who himself stated that he would probably get twenty years and all of a sudden, times change. Who becomes the pigeon ---Lieutenant Calley, the lowest offices. Now, I ask you good gentlemen to give, as I know you will, honest consideration (of) this kid that sits behind me and know there is a difference. There ought to be a difference, and you ought to make the difference between errors in judgment and criminality and so I ask your serious consideration and ask that you let this boy go free. Thank you very much.