

Summation of Aubrey Daniels for the Prosecution

The Court Martial of William L. Calley, Jr.

Fort Benning, Georgia, August 27, 1971

If it please the court, counsel of the accused, president, and gentlemen of the jury: First of all, I'd like to take this opportunity to thank you on behalf the United States government, Captain Partin, myself, and I'm sure for the court, and counsel for the defense for the patience which you've shown us throughout this long trial.

You have a job, gentlemen, a job which you took an oath to do, to take all this evidence and judge the credibility of each one of those witnesses, and then make a determination in your own mind as to what happened in the village of My Lai on 16 March, 1968.

At the beginning of this case, I outlined for you what we expected to prove, to give you the government's theory under which we expected and intended and have in fact established that the accused is guilty of the offenses with which he was charged. At that time, I related to you that we would show that with respect to specification one of the charge that on 16 March 1968, when Charlie Company landed in My Lai on the western side of the village, they didn't receive any fire; they only found unresisting, unarmed men, women, children and babies. And I told you at that time with respect to specification one that Paul Meadlo and Dennis Conti and other members of the accused's platoon gathered up a group of not less than thirty individuals on the south side of the village, and that the accused came to Paul Meadlo and Dennis Conti and said, "Take care of them." And he left and he returned a few minutes later and he said, "Why haven't you taken care of them?" In the meantime, Dennis Conti and Paul Meadlo had that group of people, unarmed, unresisting men, women, children and babies, squatting there on that trail, and when Calley came back, they hadn't taken care of them, and he ordered Paul Meadlo to kill those people on that trail, and he in fact participated in the murder of those people. This was the first offense.

We told you that they then moved to an irrigation ditch on the eastern side of the village of My Lai, and there, the accused, along with members of his platoon did as the accused directed, gathered up more people, this time unarmed men, women, children, and babies, and put them in that irrigation ditch and shot them, and that he (*indicating defendant*) participated; and he caused their death and that they died.

After the accused, along with other members of his platoon, had killed the people in the ditch, he moved north and he came to a man that was dressed in white, a man that was described as a monk. The accused began to question this individual, and then the accused but t-stroked this man in the mouth, and then he blew half of his head off.

Shortly thereafter, the accused heard someone yell, "A child is getting away!" He ran back to that area, picked the child up, approximately two years old, threw the child in the ditch, shot, and killed him.

Those were the time sequences which I told you we would prove, those are the facts upon which these charges and specifications are based, and now you must resolve whether or not we have in fact established what we told you that we would prove to you when this trial began.

First of all, I would like to give you in summary form what the government submits that we have proved happened in the village of My Lai on 16 March 1968. Keep in mind that it is not

your function to resolve the guilt or innocence of any other person who may have committed any other offense in the village of My Lai on 16 March 1968. Your function is solely to judge the guilt or innocence of the accused with respect to specific charges and specifications for which he is being tried.

Now, we have shown that when C Company landed on 16 March 1968, they did in fact land on the western side of the village of My Lai. All of the testimony is in agreement on that fact. We have also shown that the accused was in the platoon, a headquarters group, and a mortar platoon. We showed that when they landed, the accused's platoon assumed the position on the south side of the village. He had two squads and a platoon and a headquarters element for this operation. One squad was commanded by Sergeant Bacon. The first lift arrived at 0730 hours and it carried, as you will recall, after the first lift landed, elements of the First Platoon then secured portions of the LZ (*landing zone*) for the second lift to come in. Before the second lift landed, the First Platoon moved into the village. They received no fire from that village. None. The witnesses are in agreement on that fact.

Now the accused's platoon had Sergeant Mitchell's squad on the south side of the village, and it had Sergeant Bacon's squad on the north side of the village. And when they entered the village, the platoon, as you will recall, found no armed VC (*Vietcong*). All they found were old men, women, children, and babies. They began to gather up these thirty to forty unarmed, unresisting men, women, children, and babies, because they weren't receiving any fire. Meadlo and Conti moved them out on the trail, and they made them squat down on the north-south trail.

Lieutenant Calley returned fifteen minutes later and said to Meadlo, "Why haven't you taken care of this group?" "Waste them." "I want them dead." "Kill them." The versions differ here slightly between the testimony of Sledge, Conti, and Meadlo regarding the actual words that Lieutenant Calley spoke. But, nonetheless, Lieutenant Calley then issued an order to Meadlo, and in fact Calley and Meadlo shot those people on the north-south trail.

Jim Dursi had gathered another group of people and he moved this other group of civilians along the southern edge of the village until he came to an irrigation ditch. And when he arrived at the irrigation ditch with his people, he was joined by Lieutenant Calley. And what happened there? Lieutenant Calley directed that those individuals, those groups of people, be placed into that irrigation ditch, and that they all would be shot by Meadlo and Dursi.

You recall the testimony of Paul Meadlo to Jim Dursi, "Why don't you shoot?" "Why don't you fire?" "I can't." "I won't." Dennis Conti approached from the south and came up and observed Calley and Meadlo and Mitchell firing into that ditch and killing those people. And Conti moved north and set up a position. Robert Maples was in the area. He observed ten to fifteen people being put in that irrigation ditch by Lieutenant Calley. He observed Lieutenant Calley and Meadlo place the people in the irrigation ditch and fire into the people, but he didn't see the people come out.

Thomas Turner, you recall, testified that he, while he assumed the position to the north of the ditch, observed over a hundred people placed in that ditch during an hour to an hour-and-a-half period. These people were screaming and crying and that he passed Meadlo and Calley firing into that ditch as he moved forward. And then you recall the testimony of Charles Sledge, that after that they moved north of the ditch where there was a man dressed in white, a fact which the accused admits, that Calley

interrogated this individual; when the man refused to speak, Calley butt-stroked him with his rifle and then shot him. And then Charles Sledge testified that when he returned someone yelled out, "There's a child getting away, a child getting away!" Lieutenant Calley returned to that area, picked up the child, threw the child in the ditch, and shot him.

Many of the facts which we have related to you as having been proved by this evidence beyond any reasonable doubt have not in fact been disputed by the defense and were in many cases supported by the defense's own evidence, including the testimony of the accused. . . .

We must prove that each of the victims died as a result of the act of the accused on 16 March 1968, and that they died pursuant to his ally having shot and killed them, or someone else at his direction ally having shot and killed these individuals.

We must prove that with respect to each of the specifications that the killings were in fact unlawful and committed without justification or excuse. We must prove that he not only had the specific intent to kill these individuals, but that he had a premeditated design to kill the individuals prior to the time he in fact killed them. This means under the law that he formulated the idea in his mind to take the life before he in fact killed the human being.

First of all, let's take specification one of the charge. Let's look at the specific evidence with respect to that specification.

Judge Kennedy will explain to you that the government has two methods by which it can establish any fact. We can prove a fact beyond a reasonable doubt by presenting to you direct evidence of the fact, or we can prove it by circumstantial evidence. Direct evidence, of course, with respect to a killing would be where an individual actually sees one person shooting another, such as the testimony of Dennis Conti and Paul Meadlo; both testified that they saw the accused shoot the people. We can also prove it by circumstantial evidence, the circumstances involved. For example, in this case, the location of the bodies in relationship to where the accused was seen to those bodies, the fact that they were in his area of operation. We could prove the fact of death of a human being by circumstantial evidence from the nature of the wounds themselves without having a doctor perform an autopsy. So we had available to us both types of evidence, and we have presented both types of evidence to you.

First of all, let's review the direct evidence which we have presented to support specification one of the charge. You will recall the testimony of Dennis Conti---Dennis Conti, truck driver from Rhode Island. was a PFC [Private First Class) at the time of this operation. He was a member of the platoon. Dennis Conti testified that when he got off the helicopter he got separated from the command group, Lieutenant Calley and Charles Sledge, and that he entered the village and ran into Sergeant Bacon who told him that he'd better catch up and get with the command group and get with Lieutenant Calley. That he reached the intersection of the north-south trail and located the command group. He began gathering up people from the hooches in that area at the direction of Lieutenant Calley. They gathered up at least thirty to forty unarmed men, women, and children at the north-south trail intersection. Conti testified that Lieutenant Calley came up and he told Meadlo, "Push the people out in the paddies," and so he and Paul Meadlo pushed the people out in the paddies and put them on the north-south trail and they guarded them like they thought they were supposed to do.

You recall that Dennis Conti said that he assumed a position on the south side of those people, and that Paul Meadlo was on the north side, and he put the people in a squatting position and that while they were waiting, he heard something in the hooches, to the south of where he was, and that he left and went down there and found an old woman and child. He gathered these people up, came back and put them in with the group of people on the trail who were still waiting there, who weren't resisting, and who weren't armed. He then testified that Calley returned a few minutes later, and said, "Take care of these people," and Calley left. Calley returned shortly and said, "I thought I told you to take care of them." Calley said, "I meant kill them." Then you recall Conti testified that he assumed the position to the rear of Meadlo and Calley, and watched as Calley and Meadlo fired into the group of people as he covered the treeline with his M-79 grenade launcher, not wanting to participate. You recall he testified that Paul Meadlo during the midst of this broke down and started crying, that Meadlo in fact attempted to push his weapon into Conti's hand, but Conti refused to take it, and that Calley and Meadlo shot and killed all of the people on the north-south trail.

Then we have the testimony of Paul Meadlo who also supports the charge, specification one. And what did Paul Meadlo say? He corroborates Dennis Conti, although not identically, sufficiently to show what actually transpired. He also testified that he gathered up thirty to forty people in the same location, at the same spot, and he was told to take these people to a designated area in a clearing. He said substantially the same thing that Dennis Conti said, 'Calley came up to me and he said, 'You know what to do with them.'" So the two of them corroborate each other's testimony. Meadlo also assumed, as did Conti, that Calley just meant for him and Conti to guard those people, but then Paul Meadlo says that about ten to fifteen minutes later, Calley returned and said, 'How come they're not dead yet?' Meadlo said, 'I didn't know we were supposed to kill them.' Calley said, 'I want them dead.'" And Calley, according to Meadlo, backed off twenty to thirty feet and fired into this group of people on full automatic, and that he directed Paul Meadlo to join him and Meadlo joined him. You recall that Meadlo said he was very emotionally upset at this time. He became hysterical. He started crying. But Conti didn't fire. . . .

Now, we have alleged in the specification that the accused killed not less than thirty human beings on the north-south trail. We went to great lengths at the early part of this trial to establish [that] the people shown in prosecution exhibit 12A [photograph of bodies] were in fact the people that Calley and Meadlo shot on the north-south trail. And we presented to you members from all sections of the company, from the mortar platoon and the headquarters element, from the Third platoon, who came to this area by various routes, and they all were able to identify that photograph and place it at that location.

The defense raised the question. "Why can't Dennis Conti identify prosecution exhibit 12 as in fact being the group?" Dennis Conti would not say that it was not the group. Why can't Paul Meadlo say that it is in fact the group? What about Paul Meadlo's emotional state at the time he killed those people? Do you think that he was going to look at that photograph and tell you, "That's the people that I killed?" Do you think that he could look at that photograph and admit to himself that that's the people that he killed? How about Dennis Conti? That's not pleasant for those men, gentlemen, and perhaps they have blocked that out of their minds, as you heard one psychiatrist say that an individual could do. And so we wanted to prove it to you by circumstantial evidence, that that is in fact the group of people that were shot there by people who were detached from this event, that Dennis Conti's verification of the location is well substantiated because Dennis Conti, as you will recall, testified that he has since returned

to the village of My Lai, went into the village of My Lai on the ground, and in fact located the spot where these people were killed on the north-south trail.

Do you think that Lieutenant Calley would tell you that that was the group of people? Do you think that he would tell you that that was the enemy that he shot? Do you think that he could justify that to you? Do you expect him to admit that that was the enemy he killed?

A lot of people testified concerning their estimates of how many people died and the bodies. Some would say five, some would say ten, some would say fifteen to twenty. But what's the best evidence that you have as to how many people died? The best evidence you have, gentlemen, is prosecution exhibit 12A of the numbers. Look at that photograph when you go back into your deliberation. How many people are shown in that photograph? If you count the number of people in that photograph, you will find not less than twenty-five actually shown in the photograph, nine of which are clearly identified as children, and three of which are clearly identified as infants. Can there be any question about the fact that photograph has been well identified? You've heard twenty people testify, before you that they saw that group of bodies on the north-south trail. Twenty out of that company. There can be no doubt about the fact that those people were on the north-south trail and they were in fact dead. Would they be there that long and observed by that many people over that period of time with the wounds that they had and be alive? There is no doubt at all gentlemen, about the fact that Lieutenant Calley shot the people in prosecution exhibit 12A and that they are in fact dead and died as a result of his acts on 16 March 1968.

Let's turn to specification two, the shooting at the ditch. This occurred after the shooting on the north-south trail. Again, we have established this beyond any shadow of a doubt by both the direct and circumstantial evidence. . . .

What is the evidence relating to specification two of the additional charge? Charles Sledge testified that as they were leaving the ditch area, someone yelled out. "A child is getting away!" Sledge testified the accused went back, picked up the child, threw it in the ditch, and without hesitation, gentlemen, without hesitation, he raised his weapon and he looked down, and he fired. Sledge couldn't see where the baby was, but he threw it out in front of him, out in front of him in the ditch by the arm. Do you think he missed? Do you think he wanted to miss? He didn't hesitate. He just pulled that weapon up and squeezed that trigger, and that baby was at the end of that barrel.

We submit that with respect to all of the specifications, we have clearly established the fact of death of the victims, and that the accused either killed them or he directed that they be killed. We have established those elements beyond any doubt.

Now, we have an additional element that we must satisfy as to all of the specifications: did the accused have the required criminal state of mind at the time he killed these individuals. To be guilty of premeditated murder, gentlemen, you have to intend to kill the victim. You have to intend that he die, and you have to form this intent just prior to the time that you accomplish that act. That's what the law requires. A split second. just so long as it's before you pull the trigger. If you make up your mind before you fire that the people that you are going to fire into are going to die, that is premeditation. You're going to be given an instruction on what constitutes premeditation, what constitutes premeditated design to kill, and you must find in this case that the accused did in fact premeditate with respect to each of the offenses with which he is charged.

How does the government perceive what a man is thinking? What Lieutenant Calley was thinking on the day in question? How do we show you that? First of all, we rely upon your own common sense and understanding and recognition of the way the human mind functions, recognition of the way people think and act. We rely upon the fact that you can take these facts, you can take his acts, his conduct, the observations of others, and find what he was thinking. We can prove it to you. We have proved it to you, because what is the evidence of a man's intent, what he intends to do? A man's actions [are] the mirror of a man's mind. You can prove intent two ways, just as you can any other element of an offense, or any other fact. You can prove it by direct evidence, and what is that? When a man tells you what he is thinking, that is direct evidence of what he's thinking. You can prove it by circumstantial evidence; even though he doesn't tell you, you know by what he does what he intended.

Now, the defense in this case raised an issue regarding the accused's mental capacity to entertain the required criminal state of mind for these offenses. And you recall how they raised that issue. They raised it with the introduction of psychiatric testimony. They gave you the testimony of Dr. Crane and Dr. Hamman in an attempt to show that the accused's mind, his mental ability, was such that on the date in question and while he was in the village of My Lai he did not have the mental capacity to be able to premeditate, that is, to be able to get an idea in his mind he was going to kill somebody and then kill them after he got the idea. They presented the testimony of these two doctors. The military judge is going to instruct you that under the law, a man can be sane and yet still be suffering from a mental condition which would deprive him of the mental ability to premeditate, and that if you were to find that if there was a mental condition and then if it did in fact deprive the accused totally of his ability to premeditate, then he could not be found guilty of the offense of premeditated murder.

Dr. Crane, as you will recall, testified on the basis of a hypothetical question, which was read to him by Mr. Latimer and at the conclusion of that hypothetical question, he was asked to render an opinion regarding the accused's mental condition on the date of 16 March 1968. Dr. Crane was willing to give you a medical opinion on the basis of a hypothetical question without ever having interviewed the accused, without having the benefit that you've had of observing him, listening to his testimony, without the benefit you've had of listening to what the witnesses who were actually there had to say about what transpired. I point this out to you in this regard as we go through this discussion of the testimony of the experts who testified medical opinions to assist you, gentlemen, in arriving at a medical diagnosis; in effect, a diagnosis of the accused's mental condition on the date in question. The law permits them, because they have expertise, to give you the benefit of their knowledge, but it does not relieve you of the ultimate responsibility of making the ultimate diagnosis, and you're not bound to accept the opinion of any doctor. You must make your diagnosis on the basis of all the facts.

Now, Dr. Crane stated under cross-examination that the accused did in fact have the mental ability to premeditate at the time of the offenses. He said Lieutenant Calley couldn't make a complex decision. We asked him for an example of a complex decision. He said, "Like going to the moon." You don't have to be a genius, gentlemen, to commit the offense of premeditated murder. You don't have to have above-average intelligence to be able to commit the offense of premeditated murder. You don't have to have a college degree. You've just got to have the ability to think and form that intent to kill somebody and form that intent in your mind before you kill them. And Dr. Crane said, "Well, if you're going to give me that literal definition" --and that literal definition, gentlemen, is the legal definition you must make

your findings on --Calley had the mental ability to do it on the date in question. Dr. Crane in fact admitted that the accused could form the intent to kill before he pulled the trigger. Then Dr. Crane said that he didn't have the ability to form the specific intent to kill. Does that appear to be inconsistent to you? What is "specific intent to kill"? it's no more than specific intent to kill as opposed to, say, specific intent to wound, as opposed to specific intent to just scaring, as opposed to specific intent just to take away someone's property. That's all it is. It means to take a human being's life. Specific intent to kill as opposed to specific intent to do something else.

They would die, and that he intended their death. He knew when he fired into that ditch that those people were going to die, that he was in fact killing them. Dr. Crane's opinion supports the government's position that he had the mental capacity. He had the mental capacity. He found that the accused was mentally healthy.

Then Dr. Hamman testified. I tell you, gentlemen, that the opinion that is given to you by any man is only as good as the facts upon which it is based, and the facts don't support the opinion of Dr. Hamman. Dr. Hamman, you will also recall, was not a combat psychiatrist. In fact, he said he hadn't read anything about combat psychiatry in two years. He didn't keep up in the field, he hadn't studied in the area. Doesn't Dr. Hamman's testimony indicate that Calley could think? Doesn't it indicate that he was thinking all sorts of things? Just consider all the factors in the accused's own testimony which demonstrate clearly that he not only had the mental ability to think, but that he was thinking on the date in question. He was thinking more complex things than just getting the idea to kill somebody and killing them. Look at the accused's testimony. No evidence that he was in a delusional state at the time. No evidence that he was not aware of what was transpiring around him. He knew where he was that day. He was able to tell you that. He was able to recognize his own men. He was able to give you their names. He was able to recognize what they were doing. He was able to give you an estimate that the helicopter was fifteen feet off the ground, and that he jumped out at five feet. He was able to recognize the subordinate relationships and the relationships of his men to himself, and himself to Captain Medina. He could receive and transmit telephone calls, he could relay information to his men. He was oriented that day as to his direction of travel. He knew where he was going. He was able to communicate, to carry on conversations with others. He positioned his men. You recall him testifying he was positioning the machine guns, directing Sergeant Mitchell to position the machine guns. It was a tactical operation. He recognized there were helicopters in the area. He was able to recognize that there was a man brought to him for interrogation. He was able to rely upon his training in Vietnamese language. He was relying on his training. Anything wrong there with his mental processes?

As the psychiatric testimony of the government's witnesses shows, in some situations stress can make a man react more efficiently. Did that happen here? Lieutenant Calley testified that while he was there that day, he was thinking about "the logistics of my men, throwing down the volume of fire or picking it up, breaking out into the open, keeping my men down, checking out the bunkers, keeping moving, keeping pre planned artillery plots at hand. I had two radios that I was working with, the air-to-ground push." He was thinking about all those things, gentlemen. They're complex. Is there any question about the fact that his mind was functioning as a normal human being on the date in question? Do those facts demonstrate someone who was befuddled? They show that he was thinking. If he could think about all those things, he had the mental ability to formulate the attitude that when he pulled the trigger

on his weapon, he intended to kill who he shot at, or when he gave the order to Meadlo that he intended for the people to die.

Now, on the issue of mental capacity, you heard from expert witnesses, Dr. Edwards, Dr. Jones, and Dr. Johnson. All of these men were members of the military, all of them were doctors from Walter Reed Army Hospital. You recall what their qualifications were. They were familiar with combat psychiatry. Dr. Johnson had been charged with the responsibility for the mental health program in Vietnam. They were aware of the studies in the area. Dr. Jones had served in Vietnam. He had written in the qualifications of those men with the qualifications of Dr. Hamman and Dr. Crane. I ask you to consider the circumstances under which they were brought here to testify. They didn't volunteer their services, gentlemen; they were directed to conduct an examination, an evaluation of the accused for this court, pursuant to its directive, and operated accordingly. In fact, you recall Dr. Johnson testifying, he wanted to be sure that this was done fairly and impartially, so much so that he disqualified one of his few board-certified psychiatrists from testifying, from sitting on this board, because he in fact had communication with me as trial counsel. You also recall that he testified that I concurred in that man not sitting. They gave you three good medical opinions regarding this man's mental condition, locally and reasonably arrived at. They conducted extensive evaluations of the accused in which the defense participated at Walter Reed. They had available to them the testimony that you heard, and before they rendered their opinions in court, they had available to them the observations of the accused as he testified from the witness stand, which is something which you also saw. And those three doctors' qualifications cannot be contested. They are of the unanimous opinion that the accused did in fact have the mental capacity to premeditate on 16 March 1968, and was not suffering from any mental disease or defects. And you, gentlemen, yourself posed questions to these doctors regarding what factors they had taken into consideration in arriving at their opinion; did they consider the situation in which Lieutenant Calley was in possible stresses of combat upon him. They did. They considered all those facts. They relied upon their experience as soldiers and their knowledge of the military, their knowledge of commanders, their knowledge of the situation, and they gave you three opinions, all of which were the same. But you're not bound by any of that expert testimony, gentlemen. You reject it, as you can the testimony of any witness who has testified in this case. It's offered to help you in making your judgment as to the man's mental ability.

And perhaps the strongest testimony of all is what other people had to say about his actions on 16 March 1968, and what their opinions were of his mental condition at that time in relationship to days that they had observed him before this operation. That perhaps is the strongest evidence, because they were there and they had seen the accused before this operation. The law permits a lay person to give his opinion to you regarding a mental condition. You don't have to be a doctor to know that something is wrong with somebody. You, as a human being, can look around and determine what a man's mental state is, and the law recognizes that a lay witness can make such an observation, permits him to give you his testimony and his opinion regarding the man's mental condition.

It's interesting to note that when Paul Meadlo testified in this case, he was asked by Mr. Latimer, "Lieutenant Calley wasn't raving around that day, was he? ... He wasn't acting crazy?" Meadlo said, "No."

Dennis Conti also had been serving under the accused, (and] had seen him on a daily basis for four to five months prior to this operation, testified that Calley seemed pretty calm, didn't appear to be upset, just like it was an everyday thing.

In addition to this evidence, the court has also permitted us to present to you evidence which showed that several weeks prior to this operation, a man was captured and interrogated by the accused for over twenty minutes. The accused beat the man during this interrogation, and at the end of the interrogation, shot him. You can also consider that in determining whether or not the accused had the mental ability to form the intent to kill before he killed.

Now, gentlemen, we have proved beyond any shadow of a doubt that the accused had the mental ability to think, to premeditate, and that he did in fact premeditate, and at the time he killed.

With respect to specification one, when you stand up to a group of people with an M-16 and pull that trigger, can you have any other intent? Let's analyze the evidence which demonstrates that the accused not only had the ability but he was in fact premeditating.

First of all, let's take Dennis Conti's version of what transpired. Dennis Conti said that Calley said to Meadlo, "Take care of them," and that when he returned he said that he meant to kill them. This was before any of them were ever killed. He formed the intent to kill them the first time he told Meadlo. He had that same intent fifteen minutes later when he returned. There can't be any clearer case than that. He only had to have the intent a split second. We've got the accused's own statement. We've got direct evidence of what he intended when he made that statement.

Jim Dursi also heard him make the same statement, "Why haven't you wasted them yet?" Paul Meadlo, same statements. Charles Sledge said Calley ordered them to "Waste them." When he gave that order he intended for them to die, and that idea was in his mind before they died, before he pulled the trigger, or before Meadlo pulled the trigger. And that's all the law requires with respect to premeditation.

How about specification two? Don't the facts again clearly show what he intended? He ordered them shot. That means he had to get the idea before the shooting started.

And what about Thomas Turner's testimony that this took place over an hour and a half and they were separate groups?

There's testimony through Paul Meadlo and Jim Dursi, "We've got another job to do." What does that show? And he made that statement before the people were ever placed in the ditch. Fifteen seconds before? One second is enough. How about the fact that he was observed changing magazines?

Gentlemen, the evidence that he in fact premeditated with respect to the people on the north-south trail and at the ditch is just overwhelming. There can be no doubt under those circumstances of what he intended when he started firing, and when he gave those orders. He intended for those people to die, and he formed that intent before he ever killed them, or ordered his men to kill them.

How about specification two of the additional charge? The man in white at the end of the ditch. You don't put that weapon up to somebody's head and pull the trigger. While he was putting it up to that man's head, he had to know that he was going to pull that trigger. He premeditated.

And when he threw that child in the ditch and he raised that rifle, he was premeditating again, and he was premeditating to kill.

And that's what the law requires that we prove. That's what we have proved beyond any doubt. . . .

Now, the military 'judge is going to instruct you that in addition to the major offenses with which the accused is charged, that is, the offenses of premeditated murder, that if the government had failed in some way to establish one of the elements of those offenses, the accused could be found guilty of some lesser included offenses.

However, we have clearly shown in this case, and all the facts show that with respect to all of the specifications, that the accused acted with premeditation. And so I say to you that, having established this fact of premeditation with respect to all of these offenses, that the lesser included offenses are not in issue.

The judge instructed you regarding the offense of unpremeditated murder, which contains the same elements as the offense of premeditated murder with the exception that when the act of killing is committed, the intent to kill is simultaneous with the act of killing. There was no premeditation. He didn't think about it before he did it. It was a spontaneous thing on his part. He formulated the idea of killing simultaneously with the act of killing, a sudden act.

I submit to you that the facts in this case, which establish clearly that the accused premeditated, would show that he in fact intended for these people to die before they were killed, negate any finding on your part of unpremeditated murder. We have established beyond a reasonable doubt that there was premeditation. How can a man give an order to someone to kill someone and not premeditate? The mere fact that he makes the statement before the deaths result show the premeditation. He had to think about it. He had to come up with the idea of killing' when he made the statement, which is the direct evidence of the intent, and we don't have to rely upon circumstantial evidence, even though that is abundant.

The judge will also instruct you that another possible, lesser included offense is the offense of voluntary manslaughter. The government submits again that we've shown premeditation. There is no need for you to consider ' the offense of voluntary manslaughter. If a person acts in a heat of sudden passion, caused by adequate provocation, the law recognizes that a man can be provoked to such an extent by the circumstances that he may kill before he has time to gain control of himself Again, a spontaneous reaction on his part. The facts negate spontaneous action, the descriptions of those people who were with the accused that he was calm, that he acted like he did on every other day, the time period over which these killings took place. The provocation is not there. His own testimony does not reflect that he was in a rage, that his mind was befuddled by rage, that he acted spontaneously. It shows that he was thinking. It shows that he was premeditating. And where we have shown premeditation beyond any reasonable doubt, there can be no justification for rendering a finding showing any other state of mind than what the facts show.

We also have to establish with respect to each of these offenses that they were committed unlawfully without justification or excuse. In this regard, the accused while denying that he in fact committed the acts which we have alleged in specification one at the trial, he in fact has attempted to justify all of his acts that day under the theory that he was doing his duty, that he was following orders, orders that he had received from his company commander, Captain Medina. This was a combat operation, gentlemen, and the military judge will instruct you that the conduct of warfare is not wholly unregulated by law, and that nations, including this nation, have agreed to treaties which attempt to maintain certain basic fundamental humanitarian principles applicable in the conduct of warfare. And over a period of time these practices have dealt with the circumstances and the law concerning when human life may be justifiably taken as an act of war. The killing of [an] armed enemy in combat is certainly a justifiable act of war. It's the mission of the soldier to meet and close with and destroy the enemy. However, the law attempts to protect those persons who are noncombatants. Even those individuals who may have actually engaged in warfare, once they have surrendered. They are entitled to be treated humanely. They are entitled not to be summarily executed.

The military judge will instruct you that as a matter of law regardless of the loyalties, political views, or prior acts, people had the right to be treated as prisoners once captured until they are released, confined, or executed, but executed only in accordance with the law and the established procedures by competent authority sitting in judgment of the detained or captured individual. A trial, gentlemen, a trial, like the accused has had in this case, a trial at which the guilt or innocence of these individuals can be determined.

He will instruct you that as a matter of law, summary execution is forbidden. He will also tell you that as a matter of law that under the evidence which we have presented in this case, that any hostile acts, or any support which the inhabitants of the village of My Lai may have given to the Vietcong or to the NVA at some time prior to 16 March, would not justify their summary execution. Nor would hostile acts even that day committed by an armed enemy unit have justified their summary execution, as a matter of law, if those individuals laid down their weapons, held up their arms, and surrendered themselves to the American forces.

He will tell you that as a matter of law, that if unresisting human beings were killed at My Lai while within the effective custody and control of our military forces, their deaths cannot be considered justified, and that any order to kill such people would be, as a matter of law, an illegal order.

We presented in our case in chief no evidence regarding what the orders were for this operation. We wanted to present to you the facts surrounding these deaths. We wanted to present to you, and show to you, show you clearly that the people that were killed in My Lai were unarmed, were unresisting, and offered no resistance to the accused on the date in question, and that they were summarily executed by him. There can be no justification for that. There is none under the law, the law which you have sworn to apply in this case, even despite what your own personal feelings may be regarding this law.

You will be told as a matter of law that the obedience of a soldier is not the obedience of an automaton. When he puts on the American uniform, he still is under an obligation to think, to reason, and he is obliged to respond not as a machine but as a person and as a reasonable human being with a proper regard for human life, with the obligation to make moral decisions, with the obligation to know what is right and what is wrong under the circumstances with

which he is faced and to act accordingly.

We submit to you in this case that the accused received in fact no order to have done what he did in My Lai on 16 March 1968. He cannot rely upon an order in the first instance, because there was no order to round up all those men, women, and children and summarily execute them. There was an order, yes, to meet and engage the Forty-eighth VC Battalion in My Lai. We submitted to you all the evidence regarding the pre operational planning for this operation. You heard what the mission of this operation was to meet and engage the armed enemy unit that they expected to be there. Is there anything unlawful about that order? On the night of 15 March, do you think that they anticipated or intended when they got to the village the next day there would be no one there with weapons, and all they would find would be old men, women, children, and babies, and that the mission was to go in and gather those people up and take them out on that trail and that ditch and shoot them? Do, you think that those were the orders on the night of 15 March? Do you think that that was the order that emanated in those task force briefings? There is no evidence to show that any order was given to summarily execute. There is no evidence to show that there was an order given not to take prisoners. There was an order given to meet and engage an armed enemy unit, and this is the order that Captain Medina relayed to his men, to meet and engage the forty-eighth VC Battalion, and the defense's own witnesses testified to this, as have the government's.

The accused testified that he thought they would come in on a high speed combat assault, clear My Lai, and make a primary assault on Pinkville and go in there and neutralize Pinkville once and for all. Does that indicate summary execution of men, women, and children? Do you think that was the order issued on the fifteenth of March? Calley said after he received the platoon leaders' briefing that 'We were going to go in there and do sustained battle with the enemy and that we would stay with the enemy as long as we could maintain contact with him, and we would try to roll him up.' That's what he thought on the night of 15 March.

Was Captain Medina justified in trying to arouse his men to engage the enemy the next day? Shouldn't he have told them, shouldn't he have made them aware of what they could expect? And they expected to meet an armed enemy unit.

And so I say to you that the evidence clearly shows that the accused cannot rely upon any order emanating out of any briefing on the fifteenth of March, 1968, to justify his acts, because no such order was given. Nor can the accused rely upon an order having been given to him the day of the operation. He has testified that he received an order from Captain Medina to 'waste' the group of Vietnamese that was detained, and he, gentlemen, alone has testified to that fact.

We have produced both RTOs who were members of that command group; neither one of them heard such an order given. You had the RTO from the Third Platoon, Steven Glimpse, who was on his radio that day. He heard no such order given. You had Jeffrey LaCross, who was the Third Platoon leader, who had no knowledge of such an order being given. You had Charles Sledge who was Lieutenant Calley's RTO; he had no such knowledge of an order being given. The accused and the accused alone said he received that order. You had Captain Medina testify before you under oath that he did not give that order. Do you think that the accused would have called Captain Medina and told him that "I have fifty, a hundred Vietnamese --men, women, and children-- none of whom have any weapons." And then would have received an order from his company commander to waste that many. Do you

think that he called Captain Medina and told him what he had found in the village and how many people he had under his control, or what type of people they were, or what the circumstances were. He doesn't tell you that. He doesn't tell you, because he didn't do it. He didn't check, and perhaps his conduct is typified by his own statements to Charles Sledge after he talked to Lieutenant Thompson: "He don't like the way I'm running the show here, but I'm the boss." He was running that show, gentlemen, on his own initiative, why did the members of the First Platoon begin to round those people up? Even defense's own witness, Elmer Hanwood, testified that he started gathering them up, because he wasn't receiving any resistance from these people. "I wasn't going to shoot them," Hanwood said. "They weren't doing anything to me."

And so, gentlemen, the acts are unjustifiable as a matter of law, the accused did not receive any order of any kind which directed him to summarily execute the people on the north-south trail, the over seventy people in that irrigation ditch, the man in white out there at that irrigation ditch, or that child. Let's assume for the sake of argument that he had.

Let's assume that he got an order to waste unarmed, unresisting people in the village of My Lai on the sixteenth of March. The military judge will instruct you that even that is not a justification for his acts, if the accused knew that that order was unlawful. For one to follow such an order, [one] has adopted the same criminal intent of the man who issued it. You're not absolved of your responsibility by the order. There are just two men guilty as opposed to one. The responsibility is joint. He joins in the same criminal purpose when he accepts and follows an illegal order. He has the same criminal intent of the man who gave the order.

The accused testified that this was the second largest military operation he was ever on, that he did his duty that day, that he met and closed with the enemy. His testimony regarding the body count, the great emphasis that was placed on body count within the command, within his company. I ask you, gentlemen, if this was the great battle for the accused, if this was his great day in which he had an opportunity to meet and close with the enemy, wouldn't he have wanted to give a big body count, actual body count of the armed enemy soldiers that he had killed? But he doesn't. He can't even give you an estimate. If they were the enemy, he engaged in honorable combat that day. Do you believe that? And even if you were to find subjectively that the accused believed the order to be lawful, it is still not a defense, if a reasonable man under the same or similar circumstances would have known and should have known that any such order would have been unlawful-- a reasonable man, gentlemen, not Lieutenant Calley. A reasonable man is the average man, the average lieutenant, the average platoon leader, with average training knowledge. Would he know that that order was illegal?

The reasonable man, gentlemen, is an objective standard. You represent the reasonable men under the law. The reasonable man charged with knowledge of the law to apply in a given situation. The reasonable man would know and should know, without any doubt, that under the circumstances in which he found himself on the sixteenth of March, 1968, that any order to gather up over thirty people on that north-south trail, and to summarily execute those people is unlawful. It can't be justified. A reasonable man would know that to put over seventy people in that irrigation ditch, like a bunch of cattle --men, women, children, and babies-- that to do that is unlawful. A reasonable man not only would know it, he should know it, and he could not rely upon any order to commit that, to absolve himself of criminal responsibility for that conduct.

There can be no justification, gentlemen, and there is none under the law, or under the facts of this case. We have established beyond reasonable doubt every element of every offense that we have charged, and the facts clearly demonstrate that those acts were unjustifiable and without excuse. We have carried our burden, and it now becomes your duty to render the only appropriate sentence, punishments, and adjudications you can make in this case, and that is to return findings of guilty of all of the charges and specifications. Thank you.