

COURT-MARTIAL OF
WILLIAM L. CALLEY, JR.
Fort Benning, Georgia, March, 1971

**INSTRUCTIONS FROM THE MILITARY JUDGE TO THE
COURT MEMBERS IN
UNITED STATES vs. FIRST LIEUTENANT WILLIAM L.
CALLEY, JR.**

You have now heard all the evidence and listened to the argument of counsel. Following these instructions, this court will recess and you will retire to the deliberation room where you will deliberate and vote separately on each specification to determine whether LT. Calley is guilty as charged, guilty of one of the lesser offenses, or not guilty. Each of you must resolve the ultimate issue of guilt or innocence of each specification in accordance with the law and the evidence admitted in court. As I told you initially, it is my duty to instruct you on the law. It is your duty to determine the facts, apply the law to those facts and determine the guilt or innocence of LT. Calley.

You must bear in mind that under the law LT. Calley is presumed to be innocent of the charges against him. The fact that someone may have preferred charges against him, or the fact that charges have been referred to this court for trial is not evidence, and may not be considered by you for any purpose whatsoever. The burden of proof is and always remains upon the government to prove each and every element of the offenses charged beyond a reasonable doubt. . . .

LT. Calley is charged with four specifications alleging premeditated murder in violation of Article 118 of the Uniform Code of Military Justice. These offenses are alleged to have occurred on the same date in the village of My Lai (4), but each specification alleges a separate offense, and proof that LT. Calley committed one offense may not be considered as proof that LT. Calley committed any other alleged offense. Each offense is separate and distinct from all of the other alleged offenses, and you must be satisfied beyond a reasonable doubt separately as to the elements of each offense. . . .

The elements of Specification 1 of the Charge are:

1. That an unknown number, but not less than thirty oriental human beings, males and females of various ages, whose names are unknown, occupants of the village of My Lai (4), are dead.
2. That their death resulted from the act of the accused, by means of shooting them with a rifle, on or about 16 March 1968, in the village of My Lai (4), Quang Ngai Province, Republic of Vietnam.
3. That the killing of the not less than thirty oriental human beings as I described them in the first element, by LT. Calley, was unlawful; and
4. That, at the time of the killings, LT. Calley had a premeditated design to kill.

The elements of Specification 2 of the Charge are:

1. That an unknown number but not less than seventy oriental human beings, males and females of various ages, whose names are unknown, occupants of the village of My Lai (4), are dead.
2. That their death resulted from the act of the accused by means of shooting them with a rifle, on or about 16 March 1968, in the village of My Lai (4), Quang Ngai Province, Republic of Vietnam.
3. That the killing of not less than seventy oriental human beings, as I have described them in the first element, by LT. Calley was unlawful; and
4. That, at the time of the killings, LT. Calley had a premeditated design to kill.

With regard to these two specifications only, you note that not less than thirty and not less than seventy oriental human beings are alleged as having been killed. The following instruction applies to both specifications under Charge 1 and to all lesser offenses of these two specifications that I will later instruct you upon:

In all instances where multiple deaths are alleged, two-thirds of you must be convinced beyond a reasonable doubt that the same oriental human beings are dead. For example, in connection with the alleged killings in the eastern portion of My Lai (4), three of you must be satisfied that oriental human beings in the north portion of the ditch were killed by LT. Calley but other dead human beings in the south portion were not, and three of you might be satisfied that human beings in the south portion were killed by LT. Calley but that individuals in the north portion were not. Thus two-thirds of you would not be agreed as to the same deaths. Therefore, I reiterate, that two-thirds of you must be satisfied beyond a reasonable doubt that the same identical oriental human beings are dead, and that they were killed by LT. Calley. Additionally, if you are satisfied beyond a reasonable doubt that LT. Calley is guilty of killing at least one, but not all of the oriental human beings as alleged, then you must modify your findings so that each accurately reflects the number of oriental human beings killed by LT. Calley as to which two-thirds of you have no reasonable doubt. The rule as to identity of victims remains the same, of course.

You will note that the elements of both Specifications 1 and 2 of the Charge require you to find, in order to convict, that the deaths, if any, resulted from the act of the accused; you are advised that a person who actually commits an offense---here, causing death by shooting another person, with the intent which the law deems culpable---is called a principal. Likewise any person who counsels, commands, or procures another to commit an offense that is subsequently perpetrated in consequence of such counseling, command, or procuring is also a principal and is just as guilty of the offense as he would have been had he actually perpetrated the offense himself. His presence at the scene where the offense is committed is not essential.

The term "counsel" means to advise, recommend, or encourage. The term "command" imports an order given by one person to another, who, because of the relationship of the parties, is under an obligation or sense of duty to obey the order. The term "procure" means to bring about, cause, effect, contrive, or induce. When the act counseled, commanded or procured by a person is actually done, the person who counseled, commanded, or procured is chargeable as a principal with all results that could have been expected to flow as a probable consequence from the act.

In this case the Government has introduced evidence that LT. Calley ordered Mr. Meadlo to "waste" a group of Vietnamese that Mr. Meadlo has testified he was guarding, and that LT. Calley and Mr. Meadlo thereafter shot the people. This is the offense charged as Specification I of the Charge. LT. Calley admits giving an order somewhat similar to the one to which Mr. Meadlo has testified, but denies personal participation in the shooting described by Mr. Meadlo and others. LT. Calley also testified that he gave the order at a location different from that where the Government has sought to place it, and that he has no knowledge of whether the group of people that he testified he ordered moved or "wasted" were actually killed. There are other conflicts in the evidence as to whether this event occurred at all and if so, where; and I will instruct you in a few moments on the role that location must play in your deliberation on this Specification. In accordance with my instructions on principals, however, I advise you that only if two-thirds of you are satisfied beyond reasonable doubt that charged victims died as the result of the same act or acts by LT. Calley---as a result of the alleged conversation with Mr. Meadlo, or by his own actions, or a combination of both, and that these acts made him a principal, may you consider the other elements of the offense charged in Specification 1 to determine guilt or innocence.

Similarly, in connection with Specification 2 of the Charge, you have heard conflicting evidence concerning LT. Calley's role in the killing of Vietnamese that allegedly were shot in a ditch on the eastern side of My Lai (4). In order to convict LT. Calley of all or a portion of the deaths as charged, two-thirds of you must be convinced beyond reasonable doubt that the victims included in any finding of guilty died as a result of the same act or acts by LT. Calley, and that these acts made him a principal as I have defined that term.

You must also find beyond reasonable doubt that, at the time of any act which you find to have made LT. Calley a principal, he had the intent required by law, as stated in the elements of the offense and defined in these instructions. If you do not find that, beyond a reasonable doubt, then the act is not counseling, commanding, or procuring as required by law.

Both specifications of the Additional Charge require the personal action by LT. Calley as charged.

The elements of Specification I of the Additional Charge are:

1. That one oriental male human being, whose age and name is unknown, an occupant of the village of My Lai (4), is dead.
2. That his death resulted from the act of the accused by means of shooting him with a rifle on or about 16 March 1968, in the village of My Lai (4), Quang Ngai Province, Republic of Vietnam.
3. That the killing of the unknown male oriental human being, as I have described him in the first element, by LT. Calley, was unlawful; and
4. That at the time of the killing, LT. Calley had a premeditated design to kill.

The elements of Specification 2 of the Additional Charge are:

1. That one oriental human being, approximately two years of age, whose name and sex is unknown, an occupant of the village of My Lai (4), is dead.

2. That the death of this oriental human being resulted from the act of the accused by means of shooting that oriental human being with a rifle, on or about 16 March 1968, in the village of My Lai (4), Quang Ngai Province, Republic of Vietnam.

3. That the killing of this oriental human being, as I have described that person in the first element, by LT. Calley, was unlawful; and

4. That at the time of the killing LT. Calley had a premeditated design to kill.

Those are the elements that the Government must prove to your satisfaction beyond a reasonable doubt in order for you to convict LT. Calley of premeditated murder. . . .

You have heard the testimony that the village of My Lai (4) was under combat assault when it was initially entered, and you have heard testimony concerning the history of Company C, 1/20th Inf, Americal Division, and its other combat operations against the enemy. You have heard about the combat losses sustained by Task Force Barker and their inability to actually find and fix the enemy. You have also heard testimony concerning LT. Calley's role in these operations. These facts standing alone, or in conjunction with other facts, may reduce one or more of the charged offenses to that of voluntary manslaughter if you find, under the standards set out herein, that the killings occurred, but that LT. Calley was at the time of the killings in a state of fear, rage or passion and that this state was caused by adequate provocation. However, you are further instructed that if a sufficient cooling time elapses between the provocation and the killing to permit a reasonable man to collect his wits and regain self control so as not to kill, the provocation will not reduce murder to voluntary manslaughter, even if the passion of the accused persisted throughout the killing.

Even if you find a sufficient cooling time, any passion found should still be considered in connection with those offenses as I have told you requires a "premeditated design to kill," which phrase was defined previously. At the time of the alleged killings, LT. Calley must have possessed sufficient mental capacity to entertain a "premeditated design to kill." An accused may not be found guilty of premeditated murder if, at the time of the killing, his mind was so befuddled by fear, rage, passion or any other condition that he could not or did not premeditate. The fact that the accused's mind may have been befuddled by rage, fear, passion or any other condition at the time of the alleged killings does not necessarily show that he was deprived of his ability to premeditate or that he in fact did not premeditate, but this, like all other issues, is a question that must be resolved by you. I will cover the matter of capacity to premeditate in greater detail subsequently. I call your attention to it now to acquaint you with the connection between a provoked passion and "premeditated design." If you find provoked passion in this case, but are satisfied beyond a reasonable doubt that a sufficient cooling off time had elapsed between the provocation and killing to permit a reasonable man time to collect his wits and regain self control so as not to kill, then the question presented for your determination is whether in light of the evidence of the accused's passion, he in fact entertained a premeditated design to kill at the time of the killing. Unless you are satisfied beyond a reasonable doubt that the accused entertained a premeditated design to kill as charged in each of the four specifications, you must find him not guilty of each specification to which such reasonable doubt exists; however, you may in this situation find him guilty of unpremeditated murder, provided you are satisfied beyond a reasonable doubt as to the elements of that offense. . . .

As I previously instructed you, you must find the facts, and apply the law, as I give it, to the facts found. I now want to set out some of the questions which you must resolve in this case.

The government contends that the first killing occurred in the southernly portion of the village, in the vicinity of the intersection of the North-South trail. The government has offered direct and circumstantial evidence that LT. Calley ordered killed, and himself killed people at that time and place. Prosecution Exhibit 12A was offered in evidence as the picture of the persons killed by Mr. Meadlo and LT. Calley, acting personally or through directions given his subordinates, at that location. On the other hand, Mr. Meadlo states that these killings did occur prior to the killings at the ditch, but he does not know exactly where, in relation to the intersection of the North-South trail and he did not identify Prosecution Exhibit 12A. Messrs. Conti, Dursi, and Sledge place this incident in the southern portion of the village, on or near a main trail, but are not in complete agreement on the details of the incident, and none identified 12A as a photograph of the scene. Mr. Haberle, who testified that he took the photo, said that he observed a group alive in that general location from a distance, but that all he found in the area photographed were the bodies shown in 12A. LT. Calley denies personally shooting anyone in conjunction with Mr. Meadlo prior to the incident at the ditch, although he does admit seeing Mr. Meadlo with a group of Vietnamese at the Southeasterly portion of the village and admits telling Mr. Meadlo to get rid of them. Here is the problem confronting you: First, you must determine whether the killings charged in Specification I of the Charge occurred prior to the incident at the ditch as the government alleges. Then if you decide that they did occur, you must determine if they occurred at the time and place as alleged by the government. In short, if you are not satisfied beyond a reasonable doubt that the killings occurred in the southern portion or near the southern edge of the village, in the vicinity of the North-South trail intersection, but instead conclude that they occurred elsewhere in the village, LT. Calley cannot be found guilty of Specification I of the Charge. However, in this case you might still consider this evidence in connection with LT. Calley's state of mind and intent to kill the persons at the ditch, if you are satisfied beyond a reasonable doubt that the ditch offense, Specification 2 of the Charge, occurred. As to the offense allegedly involving the male oriental human being, Specification I of the Additional Charge, the government has offered evidence, both direct and circumstantial, that LT. Calley butt stroked and then shot this man in the head, blowing part of his head away. LT. Calley admits the butt stroking an individual of similar description but denies the shooting. If you are not satisfied beyond a reasonable doubt that LT. Calley shot and killed this man, he must be acquitted of this specification. . . .

An element of each of the offenses charged which the government must prove beyond a reasonable doubt is the fact of death of the victims. Like other elements of the offenses, it may be proved both by direct and circumstantial evidence. You have heard testimony from various individuals that the people they saw appeared dead. You have heard other testimony about the nature of the wounds. Dr. Lane, a pathologist, testified concerning the effects of the M-16 projectile on the human body, indicating that it fragments under certain conditions and may not pass through the victim in such instances. Again, each of you must determine what inferences may logically be drawn from the evidence, applying your common sense and experience.

You have heard the testimony of Dr. Crane and Dr. Hamman, witnesses for the defense, and Dr. Edwards, Dr. Jones, Dr. Johnson, Dr. Lane, and Capt. Horne, witnesses for the government, on psychiatry, pathology, and surveying. These persons are known in law as expert witnesses because they are more qualified in their respective fields of psychiatry,

pathology, and surveying than ordinary men. You are advised that there is no rule of law that requires you to give controlling significance to their testimony merely because of their qualifications as expert witnesses. In fact, with regard to the testimony of the psychiatrists, the testimony of the expert witnesses for the defense may be in conflict with the expert witnesses for the government. You should, however, consider, with due regard for their qualifications, the testimony of each of these witnesses and give such weight thereto as in your fair judgment it reasonably deserves in the light of all the circumstances, including your own common knowledge and observations. . . .

Following this testimony I told you that you would ultimately have to decide the question of mental capacity, and I also admitted some additional evidence for the limited purpose of assisting you in arriving at your decision on this issue. Testimony was admitted concerning the shooting of a woman, allegedly shot by LT. Calley while she was walking along a paddy dike near the ditch at My Lai (4), and there was also testimony about the shooting of a man by a well several weeks prior to the 16 of March. Both of these matters, if you are convinced that they occurred, may be considered by you on the issue of mental capacity. You have also heard considerable testimony concerning LT. Calley's background. The law recognizes that an Accused may be sane and yet, because of some underlying mental impairment or condition, be mentally incapable of entertaining a premeditated design to kill. You should therefore consider, in connection with all other relevant facts and circumstances, all evidence tending to show that LT. Calley may have been suffering from a mental impairment or condition of such consequence and degree that it deprived him of the ability to entertain the premeditated design to kill required in the offense of premeditated murder. The burden of proof is upon the government to establish the guilt of LT. Calley beyond a reasonable doubt. Unless, in light of all the evidence, you are satisfied beyond a reasonable doubt that LT. Calley, on 16 March 1968, in the village of My Lai (4), at the time of each of these alleged offenses, was mentally capable of entertaining, and did in fact entertain, the premeditated design to kill required by law, you must find him not guilty of each premeditated murder offense for which you do not find premeditated design. You may, however, find LT. Calley guilty of any of the lesser offenses in issue, provided you are convinced beyond a reasonable doubt as to the elements of the lesser offense to which you reach a guilty finding, bearing in mind all these instructions. . . .

The final determination as to the weight of the evidence and credibility of the witnesses in this case rests solely with you. In determining the weight and value to be given to the testimony which you have heard, you should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate the witness' intelligence, the acuteness of his memory, his apparent candor, his appearance and deportment, his demeanor on the witness stand, his friendships and prejudices and his character as to truth and veracity. For example, there is some evidence before you that Mr. Conti has a bad reputation for truth and veracity, some evidence that Mr. Conti used marijuana immediately before the assault on My Lai (4), and some evidence of misconduct by him at My Lai (4), allegedly terminated by LT. Calley. Mr. Conti denied using marijuana and denied the misconduct. Other witnesses were also questioned about these matters. All this testimony should be considered in connection with Mr. Conti's credibility. Mr. Sledge testified that he was convicted of a Peeping Tom offense and given a two year sentence when he was seventeen. Sentences exceeding one year are normally felonies. In any event, this is a matter that may affect his credibility. Captain Medina has testified that he is under charges for offenses allegedly occurring about the same time and place as the alleged offenses we are trying here. Moreover, Captain Medina has testified that

he is charged with some of the same offenses as LT. Calley. These are matters that may affect his credibility, Mr. Meadlo, Captain Kotouc, Mr. Boyce, and Sgt Shields received testimonial immunity before they testified at this trial. The Grant of testimonial immunity, to a witness means that nothing contained in that witness' testimony before this court can be used against him, nor may any evidence discovered as a result of his testimony here be used against him should he be tried subsequently for a similar offense. False testimony given under a grant of immunity is still the proper subject of perjury charges, however. The involvement of these individuals in the events at My Lai (4), necessitating a grant of immunity to compel their testimony, may be a matter affecting credibility, and may be considered by you. . . .

We next come to the area of acts done in accordance with the orders of a superior. If under my previous instructions, you find that people died at My Lai (4) on 16 March 1968, as charged--- which would include a finding that LT. Calley caused their deaths---you must then consider whether LT. Calley's actions causing death were done pursuant to orders received by him. There is considerable evidence in the record on this point.

Captain Medina, you will recall, testified that he told his assembled officers and men that C Company had been selected to conduct a combat assault on My Lai (4), which intelligence indicated was the current location of the 48th VC Battalion; that they would probably be outnumbered two to one; that they could expect heavy resistance; that they would finally get an opportunity to engage and destroy the battalion which they had been chasing unsuccessfully, and which was responsible for all the mines, booby-traps and sniper fire they had received. He recalled telling his personnel that "innocent civilians or non-combatants" would be out of the village at market by the time of the assault; and that they had permission to, and were ordered to destroy the village of My Lai (4) by burning the hootches, killing the livestock, destroying the food crops, and closing the wells. He testified that he recalled being asked whether women and children could be killed, and that in response to that question he instructed his troops to use common sense, and that engagement of women and children was permissible if women or children engaged or tried to harm the American troops. He denied saying that everything in the village was to be killed.

LT. Calley testified that he attended the company briefing and that Captain Medina instructed the company to unite, fight together, and become extremely aggressive; that the people in the area in which they had been operating were the enemy and had to be treated like enemy; that My Lai (4) was to be neutralized completely; that the area had been prepped by "psy war" methods; that all civilians had left the area and that anyone found there would be considered to be enemy; that everything in the village was to be destroyed during a high speed combat assault; and that no one was to be allowed to get in behind the advancing troops. Subsequent villages, through which they would be maneuvering enroute to the primary assault on the 48th VC Battalion at Pinkville or My Lai (1), were to be treated in the same manner. He testified that at a platoon leaders' briefing after the company briefing, Captain Medina reemphasized that under no circumstances would they allow anyone to get behind them, and that nothing was to be left standing in these villages. LT. Calley also testified that while he was in the village of My Lai (4). on the eastern side, he twice received orders from Captain Medina: first to "hurry and get rid of the people and get into position that [he] was supposed to be in;" an thereafter, to stop searching the bunkers, to "waste the people..."

As I have mentioned a number of times, I am only calling your attention to some of the evidence to give you an indication of the variety of matters you might consider in resolving these questions. The evidence, as we are all aware, is voluminous; and you must decide what portions of it are relevant and credible to determine the issues presented to you. In determining what order, if any, LT. Calley acted under, if you find him to have acted, you should consider all the matters which he has testified reached him and which you can infer from other evidence that he saw and heard. Then, unless you find beyond a reasonable doubt that he was not acting under orders directing him in substance and effect to kill unresisting occupants of My Lai (4), you must determine whether LT. Calley actually knew those orders to be unlawful.

Knowledge on the part of any accused, like any other fact in issue, may be proved by circumstantial evidence, that is by evidence of facts from which it may justifiably be inferred that LT. Calley had knowledge of the unlawfulness of the order which he has testified he followed. In determining whether or not LT. Calley had knowledge of the unlawfulness of any order found by you to have been given, you may consider all relevant facts and circumstances, including LT. Calley's rank; educational background; OCS schooling; other training while in the Army., including Basic Training, and his training in Hawaii and Vietnam. his experience on prior operations involving contact with hostile and friendly Vietnamese; his age, and any other evidence tending to prove or disprove that on 16 March 1968, LT. Calley knew the order was unlawful. If you find beyond reasonable doubt, on the basis of all the evidence, that LT. Calley actually knew the order under which he asserts he operated was unlawful, the fact that the order was given operates as no defense.

Unless you find beyond reasonable doubt that the accused acted with actual knowledge that the order was unlawful, you must proceed to determine whether, under the circumstances, a man of ordinary sense and understanding would have known the order was unlawful. Your deliberations on this question do not focus solely on LT. Calley and the manner in which he perceived the legality of the order found to have been given him. The standard is that of a man of ordinary sense and understanding under the circumstances.

Think back to the events of 15 and 16 March 1968. Consider all the information which you find to have been given LT. Calley at the company briefing, at the platoon leaders' briefing, and during his conversation with Captain Medina before lift-off. Consider the gunship "prep" and any artillery he may have observed. Consider all the evidence which you find indicated what he could have heard and observed as he entered and made his way through the village to the point where you find him to have first acted causing the deaths of occupants, if you find him to have so acted. Consider the situation which you find facing him at that point. Then determine, in light of all the surrounding circumstances, whether the order, which to reach this point you will have found him to be operating in accordance with, is one which a man of ordinary sense and understanding would know to be unlawful. Apply this to each charged act which you have found LT. Calley to have committed. Unless you are satisfied from the evidence, beyond reasonable doubt, that a man of ordinary sense and understanding would have known the order to be unlawful, you must acquit LT. Calley for committing acts done in accordance with the order.

In weighing the evidence you are expected to utilize your common sense and your knowledge, gained during your civilian and military experience, of human nature and the ways of the world.

I have told you this repeatedly and I want to reemphasize it: The final determination as to the weight of the evidence and the credibility of the witnesses in this case rests solely with you. I don't believe that I have done this, but if I have made any comment or in any manner seemed to indicate my opinion as to the guilt or innocence of LT. Calley, you must disregard it, as you and you alone have the independent responsibility of deciding the ultimate issue as to the guilt or innocence of LT. Calley in accordance with the law as I have given it in these instructions, the evidence admitted in court, and your own conscience.

I will now cover the procedural rules that will be followed in your voting on the findings. . . .

As to the actual voting, each of you have an equal voice and vote in deliberating upon and deciding all questions pertaining to the guilt or innocence of LT. Calley. Needless to say, seniority of rank may not be employed in any manner. Judging from my observations of you gentlemen there is no danger of that occurring, but I do want to clearly point out that you each individually represents a separate, independent vote.

Additionally, you should have a full and free discussion among yourselves before any ballot is cast.

Voting on the findings must be accomplished by secret written ballot and each of you is required to vote. The order in which the several charges and specifications are to be voted on should be determined by the president, Colonel Ford, subject to objection by a majority of the court. Voting on the specifications under each charge must precede voting on that charge. Captain Salem is the junior member, and as such, it will be his function to collect and count the votes. This count will be checked by the president, Colonel Ford, who I will immediately announce the results of the ballot to the rest of you. At no time will you be permitted to say how you or any other member of this military jury has voted.

It takes the concurrence of two-thirds of you to find LT. Calley guilty of any offense charged. Since there are six members, in order to convict LT. Calley of any offense, four of you would have to vote guilty.