

United States, United States v. William L. Calley, Jr.

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: Levie, H.S. (ed.), *International Law Studies, Documents on Prisoners of War*, Naval War College, R.I., Naval War College, vol. 60, Document No. 171, 1979, pp. 804-811]

UNITED STATES v. WILLIAM L. CALLEY, JR.

(U.S. Court of Military Appeals, 21 December 1973)

SOURCES

22 USCMA 534 (1973)

48 CMR 19 (1973)

(*Habeas corpus* granted sub. nomine CALLEY v. CALLOWAY, 382 F. Supp.

650 (1974); rev'd 519 F 2d. 184 (1975); cert. den. sub. nomine CALLEY v.

HOFFMAN, 425 U.S. 911 (1976))

[...]

EXTRACTS

OPINION

QUINN, Judge:

First Lieutenant Calley stands convicted of the premeditated murder of 22 infants, children, women, and old men, and of assault with intent to murder a child of about 2 years of age. All the killings and the assault took place on March 16, 1968 in the area of the village of My Lai in the Republic of South Vietnam. The Army Court of Military Review affirmed the findings of guilty and the sentence, which, as reduced by the convening authority, includes dismissal and confinement at hard labor for 20 years. The accused petitioned this Court for further review, alleging 30 assignments of error. We granted three of these assignments.

Lieutenant Calley was a platoon leader in C Company, a unit that was part of an organization known as Task

Force Barker, whose mission was to subdue and drive out the enemy in an area in the Republic of Vietnam known popularly as Pinkville. Before March 16, 1968, this area, which included the village of My Lai 4, was a Viet Cong stronghold. C Company had operated in the area several times. Each time the unit had entered the area it suffered casualties by sniper fire, machine gun fire, mines, and other forms of attack. Lieutenant Calley had accompanied his platoon on some of the incursions.

On March 15, 1968, a memorial service for members of the company killed in the area during the preceding weeks was held. After the service Captain Ernest L. Medina, the commanding officer of C Company, briefed the company on a mission in the Pinkville area set for the next day. C Company was to serve as the main attack formation for Task Force Barker. [...] Intelligence reports indicated that the unit would be opposed by a veteran enemy battalion, and that all civilians would be absent from the area. The objective was to destroy the enemy. Disagreement exists as to the instructions on the specifics of destruction.

Captain Medina testified that he instructed his troops that they were to destroy My Lai 4 by “burning the hootches, to kill the livestock, to close the wells and to destroy the food crops.” Asked if women and children were to be killed, Medina said he replied in the negative, adding that, “You must use common sense. If they have a weapon and are trying to engage you, then you can shoot back, but you must use common sense.” However, Lieutenant Calley testified that Captain Medina informed the troops they were to kill every living thing – men, women, children, and animals – and under no circumstances were they to leave any Vietnamese behind them as they passed through the villages enroute to their final objective. Other witnesses gave more or less support to both versions of the briefing.

On March 16, 1968, the operation began with interdicting fire. C Company was then brought to the area by helicopters. Lieutenant Calley’s platoon was on the first lift. [...] The unit received no hostile fire from the village.

Calley’s platoon passed the approaches to the village with his men firing heavily. Entering the village, the platoon encountered only unarmed, unresisting men, women, and children. The villagers, including infants held in their mother’s arms, were assembled and moved in separate groups to collection points. Calley testified that during this time he was radioed twice by Captain Medina, who demanded to know what was delaying the platoon. On being told a large number of villagers had been detained, Calley said Medina ordered him to “waste them.” Calley further testified that he obeyed the orders because he had been taught the doctrine of obedience throughout his military career. Medina denied that he gave any such order.

One of the collection points for the villagers was in the southern part of the village. There, Private First Class Paul D. Meadlo guarded a group of between 30 to 40 old men, women, and children. Lieutenant Calley approached Meadlo and told him, ““You know what to do,”” and left. He returned shortly and asked Meadlo why the people were not yet dead. Meadlo replied he did not know that Calley had meant that they should be killed. Calley declared that he wanted them dead. He and Meadlo then opened fire on the group, until all but a few children fell. Calley then personally shot these children. He expended 4 or 5 magazines from his M-16

rifle in the incident.

Lieutenant Calley and Meadlo moved from this point to an irrigation ditch on the east side of My Lai 4. There, they encountered another group of civilians being held by several soldiers. Meadlo estimated that this group contained from 75 to 100 persons. Calley stated, "We got another job to do, Meadlo," and he ordered the group into the ditch. When all were in the ditch, Calley and Meadlo opened fire on them. Although ordered by Calley to shoot, Private First Class James J. Dursi refused to join in the killings, and Specialist Four Robert E. Maples refused to give his machine gun to Calley for use in the killings. Lieutenant Calley admitted that he fired into the ditch, with the muzzle of his weapon within 5 feet of people in it. He expended between 10 to 15 magazines of ammunition on this occasion.

With the radio operator, Private Charles Sledge, Calley moved to the north end of the ditch. There, he found an elderly Vietnamese monk, whom he interrogated. Calley struck the man with his rifle butt and then shot him in the head. Other testimony indicates that immediately afterwards a young child was observed running toward the village. Calley seized him by the arm, threw him into the ditch, and fired at him. Calley admitted interrogating and striking the monk, but denied shooting him. He also denied the incident involving the child.

Appellate defense counsel contend that the evidence is insufficient to establish the accused's guilt. They do not dispute Calley's participation in the homicides, but they argue that he did not act with the malice of *mens rea* essential to a conviction of murder; that the orders he received to kill everyone in the village were not palpably illegal; that he was acting in ignorance of the laws of war; that since he was told that only "the enemy" would be in the village, his honest belief that there were no innocent civilians in the village exonerates him of criminal responsibility for their deaths; and, finally, that his actions were in the heat of passion caused by reasonable provocation.

* * * * *

The testimony of Meadlo and others provided the court members with ample evidence from which to find that Lieutenant Calley directed and personally participated in the intentional killing of men, women, and children, who were unarmed and in the custody of armed soldiers of C Company. If the prosecution's witnesses are believed, there is also ample evidence to support a finding that the accused deliberately shot the Vietnamese monk whom he interrogated, and that he seized, threw into a ditch, and fired on a child with the intent to kill.

Enemy prisoners are not subject to summary execution by their captors. Military law has long held that the killing of an unresisting prisoner is murder. [...]

Conceding for the purposes of this assignment of error that Calley believed the villagers were part of "the enemy," the uncontradicted evidence is that they were under the control of armed soldiers and were offering no resistance. In his testimony, Calley admitted he was aware of the requirement that prisoners be treated

with respect. He also admitted he knew that the normal practice was to interrogate villagers, release those who could satisfactorily account for themselves, and evacuate the suspect among them for further examination. Instead of proceeding in the usual way, Calley executed all, without regard to age, condition, or possibility of suspicion. On the evidence, the court-martial could reasonably find Calley guilty of the offences before us.

At the trial, Calley's principal defense was that he acted in execution of Captain Medina's order to kill everyone in My Lai 4. [...] Captain Medina denied that he issued any such order [...]. Resolution of the conflict between his testimony and that of the accused was for the triers of the facts. [...]

* * * * *

We turn to the contention that the judge erred in his submission of the defense of superior orders to court. After fairly summarizing the evidence, the judge gave the following instructions pertinent to the issue: [...]

I [...] instruct you, as a matter of law, that if unresisting human beings were killed at My Lai (4) while within the effective custody and control of our military forces, their deaths cannot be considered justified, and any order to kill such people would be, as a matter of law, an illegal order. Thus, if you find that Lieutenant Calley received an order directing him to kill unresisting Vietnamese within his control or within the control of his troops, *that order would be an illegal order.*

A determination that an order is illegal does not, of itself, assign criminal responsibility to the person following the order for acts done in compliance with it. Soldiers are taught to follow orders, and special attention is given to obedience of orders on the battlefield. Military effectiveness depends upon obedience to orders. On the order [sic] hand, the obedience of a soldier is not the obedience of an automaton. A soldier is a reasoning agent, obliged to respond, not as a machine, but as a person. The law takes these factors into account in assessing criminal responsibility for acts done in compliance with illegal orders.

The acts of a subordinate done in compliance with an unlawful order given him by his superior are excused and impose no criminal liability upon him unless the superior's order is one which a man of *ordinary sense and understanding* would, under the circumstances, know to be unlawful, or if the order in question is actually known to the accused to be unlawful.

* * * * *

[...]

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 on*

Lieutenant 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.

[...]

Appellate defense counsel contend that these instructions are prejudicially erroneous [...]. They urge us to adopt as the governing test whether the order is so palpably or manifestly illegal that a person of “the commonest understanding” would be aware of its illegality. They maintain the standard stated by the judge is too strict and unjust; that it confronts members of the armed forces who are not persons of ordinary sense and understanding with the dilemma of choosing between the penalty of death for disobedience of an order in time of war on the one hand and the equally serious punishment for obedience on the other. Some thoughtful commentators on military law have presented much the same argument. [...]

In the stress of combat, a member of the armed forces cannot reasonably be expected to make a refined legal judgment and be held criminally responsible if he guesses wrong on a question as to which there may be considerable disagreement. But there is no disagreement as to the illegality of the order to kill in this case. For 100 years, it has been a settled rule of American law that even in war the summary killing of an enemy, who has submitted to, and is under, effective physical control, is murder. Appellate defense counsel [...] say that Lieutenant Calley should not be held accountable for the men, women and children he killed because the court-martial could have found that he was a person of “commonest understanding” and such a person might not know what our law provides; that his captain had ordered him to kill these unarmed and submissive people and he only carried out that order as a good disciplined soldier should.

Whether Lieutenant Calley was the most ignorant person in the United States Army in Vietnam, or the most intelligent, he must be presumed to know that he could not kill the people involved here. [...]

Consequently, the decision of the Court of Military Review is affirmed. [...]

Discussion

1.
 - a. Which law applies in this case? The IHL of international or non-international armed conflicts?
 - b. Does the determination of whether the IHL of international or non-international armed conflicts applies have a great impact on this case? Are not the actions of Lieutenant Calley prohibited under both bodies of law? Does it matter whether the victims were innocent villagers, had previously supported the Vietcong, or were (lawful or unlawful) Vietcong fighters before they fell into the hands of Calley and his soldiers? (HR, Art. 23(c)-(d); GC I-IV, Art. 3 and GC I-IV, Arts 50/51/130/147 respectively; P I, Arts 11, 40, 41, 51, 75, 77 and 85; P II, Arts 4, 6(2) and 13)
2.
 - a. When may a superior order provide a defence against charges of a violation of IHL? When does a superior order prevent punishment for such a violation? When does it reduce punishment for such a violation?
 - b. Was the standard which the Court instructed the jury to use in determining when a superior order

provides a defence for a violation of IHL consistent with IHL? If not, was the standard suggested by the defence? Neither of them?

- c. With which standard should the Court instruct the jury? Which standard, an objective standard or a more subjective standard, provides the fairest outcome? Which standard more effectively restrains violations of IHL? Are these the same?
- d. Does the fact that soldiers are indoctrinated to obey orders and are aware that disobedience carries a grave punishment support the application of a more subjective standard? Also when assessing blatantly illegal orders?
- e. If a private, such as Private First Class James J. Dursi, grasps the unlawfulness of an order and chooses to disobey, should not a lieutenant certainly do likewise? Is a lieutenant an unsophisticated soldier? Does ignorance of the laws of war provide an excuse? Even for a lieutenant? If soldiers are ignorant of the laws of war, is not the State then also responsible for not having properly instructed its combatants? (P I, Arts 82, 83 and 87(2); CIHL, Rules 139, 141-142, 153)
- f. What strength does the argument have that if every subordinate questioned the legality of the commander's orders and each decided whether to obey or not, the structure of the armed forces would be undermined and all crucial moments for action in conflict would be missed while they debate the issue? Are there no manifestly clear cases when an order should be disobeyed? Was the above situation not such a case? Or is it much easier to judge with hindsight? Can an intense combat situation really be fairly assessed in retrospect?