

THIS OPINION IS ABRIDGED DUE TO SPACE LIMITATIONS ON WEB SITE

**UNITED STATES v First Lieutenant WILLIAM L. CALLEY, JR., 262-72-6405,
U.S. Army, Headquarters and Headquarters Company, The School Brigade, U.S.
Army Infantry School, Fort Benning, Georgia 31905**

CM 426402

UNITED STATES ARMY COURT OF MILITARY REVIEW

46 C.M.R. 1131; 1973 CMR LEXIS 843

February 16, 1973

PRIOR HISTORY: [**1] General Court-Martial Convened by Hq U.S. Army Infantry Center and Fort Benning. ACTION by Hq, Third United States Army (R. W. Kennedy, Military Judge).

Sentence adjudged 31 March 1971. Approved sentence: Dismissal, confinement at hard labor for twenty years and forfeiture of all pay and allowances.

COUNSEL: Appearances: Appellate counsel for the Accused: George W. Latimer, Esq., CPT J. Houston Gordon, JAGC, CPT Richard M. Evans, JAGC. Appellate Counsel for the United States: CPT Marvin D. Deitchler, JAGC, CPT Robert C. Roth, Jr., JAGC, CPT Merle F. Wilberding, JAGC, LTC Ronald H. Holdaway, JAGC.

JUDGES: ALLEY, Judge; Senior Judge VINET and Judge CLAUSE concur.

OPINION BY: ALLEY

OPINION

[*1138] OPINION AND ACTION ON PETITION FOR NEW TRIAL

ALLEY, Judge:

In much publicized proceedings, appellant was convicted by general court-martial of three specifications of premeditated murder and one of assault with intent to commit murder in violation of Articles 118 and 134, Uniform Code of Military Justice, 10 USC §§ 918 and 934, respectively. He was sentenced to dismissal, forfeiture of all pay and allowances, and confinement at hard labor for life. The convening authority approved dismissal [**2] and the forfeitures, but reduced the period of confinement to twenty years. The offenses were committed by First Lieutenant William L. Calley when

he was performing as a platoon leader during an air-mobile operation in the subhamlet of My Lai (4) in Song My village, Quang Ngai Province, Republic of South Vietnam, on 16 March 1968. Although all charges could have been laid as war crimes, they were prosecuted under the UCMJ. See paragraph 507b, Field Manual 27-10, The Law of Land Warfare (1956).

Appellate defense counsel have presented thirty-one assignments of error and a petition for new trial. For clarity our opinion will consolidate those assignments which warrant discussion under the broad headings of jurisdiction, publicity, command influence, composition of the court-martial, sufficiency of the evidence, discovery and subpoenas, and petition for new trial.

I -- JURISDICTION

Appellant's initial assignment of error is that the court-martial which tried and convicted him lacked jurisdiction over his person. Alternatively and conjunctively it is argued that Lieutenant Calley was not amenable to military jurisdiction on 25 November 1969, the date trial commenced, because: [**3] one, he was irregularly ordered to active duty without his consent; two, he was retained on active duty beyond 6 September 1969, his scheduled separation date, without his consent; and three, provisions in the Manual for Courts-Martial purporting to provide for continuing jurisdiction over him are invalid.

After completing officer candidate school appellant was appointed, under 10 USC §§ 591, 593, as a reserve second lieutenant for an indefinite term, effective 7 September 1967. Accordingly, he was ordered to active duty pursuant to 10 USC § 672(d), which provides:

"At any time, an authority designated by the Secretary concerned may order a member of a reserve component under his jurisdiction to active duty, or "retain him on active duty, with the consent of that member. How-

