

**THE VIETNAM WAR ON TRIAL: THE MY LAI MASSACRE
AND THE COURT-MARTIAL OF LIEUTENANT CALLEY¹**

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His court-martial was about much more than whether Lieutenant Calley had committed murder. He had, and professional soldiers, horrified by the unprofessional way he had conducted himself at My Lai[], did their duty as jurors and convicted him. Americans could not accept their verdict, however, because it seemed to them like a condemnation of all the young men they had sent to fight in Vietnam and ultimately of themselves for sending them there.³

Ask a thousand different people what they think of when they hear the words “Vietnam War” and you will probably hear a thousand different answers. Ask an Army judge advocate what they think of when they hear those words and there is a good possibility they will refer to the trial of First Lieutenant (1LT) William L. Calley, Jr. The Army court-martialed 1LT Calley after a former U.S. Soldier brought to light the horrific tale of the slaughter of hundreds of Vietnamese citizens in a village called My Lai.⁴ It is from the relatively untapped perspective of a former military officer that Michal Belknap’s book, *The Vietnam War on Trial: The My Lai Massacre and the Court-Martial of Lieutenant Calley*, delves into an exhaustively reported subject: America’s war in Vietnam. In this highly critical literary work, Belknap puts the U.S. military, U.S. government, military justice system, and American public on trial in relation to the media circus that surrounded 1LT Calley’s case.⁵ *The Vietnam War on Trial* is a step-by-step journey into the massacre at My Lai, the trial that resulted from those events, and the politics surrounding the trial. In the midst of these interdependent situations, the author poses

¹ MICHAL R. BELKNAP, *THE VIETNAM WAR ON TRIAL: THE MY LAI MASSACRE AND THE COURT-MARTIAL OF LIEUTENANT CALLEY* (2002).

² U.S. Army. Written while assigned as a student, 53d Judge Advocate Officer Graduate Course, The Judge Advocate General’s Legal Center and School, U.S. Army, Charlottesville, Virginia.

³ BELKNAP, *supra* note 1, at 256.

⁴ *See id.* at 103.

⁵ *See id.* at 1-5.

the following questions: Who is responsible for crimes committed on the battlefield and who should be held accountable for them?⁶

This book serves as an eye-opening portal into a military justice system often described as cumbersome and self-serving.⁷ The author ventures deep into the realities of the struggles involved in a court-martial; that fact alone makes Belknap's book a must read for those who practice in military courtrooms. At the beginning of 2004, the world again was exposed to atrocities committed by members of the U.S. military during combat operations. The discovery of countless incidents of prisoner abuse at the Abu Ghraib detention facility in Iraq shocked the conscience of people around the world and elicited outrage much in the same vein as the My Lai massacre.⁸ Service members should read *The Vietnam War on Trial* to learn of the atrocities and their consequences in an effort to help train others to avoid similar problems in the future. Surely, reading one book could never serve as an immovable roadblock to prevent such atrocities, however, revisiting the issues addressed in *The Vietnam War on Trial* certainly serve as a reminder to keep ones moral compass pointed in the right direction.

Belknap graduated from the Army Reserve Officer's Training Program at UCLA. After entering onto active duty, the early stages of his military career virtually mirrored that of 1LT Calley.⁹ Although both men were in different sections, 1LT Calley and Belknap completed infantry officer's basic training at Fort Benning, Georgia, on the very same day and served as U.S. Army infantry officers during the Vietnam War.¹⁰ As someone who completed the same military training as 1LT

⁶ See *id.* at 2.

⁷ See KEVIN J. BARRY, *EVOLVING MILITARY JUSTICE* 117-18 (Eugene R. Fidell & Dwight H. Sullivan eds., 2002) (explaining that the military justice system remains susceptible to criticism based on grounds of fairness as a result of the Tailhook incident and the court-martial of Command Sergeant Major Eugene McKinney); see also LUTHER C. WEST, *THEY CALL IT JUSTICE* xii (1977) (commenting on "the darker side of military justice," which the author claims includes "command-rigged verdicts and sentences and other legal atrocities committed in the name of military necessity").

⁸ See Richard A. Serrano, *The Conflict in Iraq: Interrogation Center Chief Created 'Chaotic Situation'*, L.A. TIMES, Aug. 27, 2004, at A10; see also Col. David Hackworth, *Fry the Big Fish, Too*, Feb. 1, 2005, at http://worldnetdaily.com/news/article.asp?ARTICLE_ID=42644 (contending that the Soldiers who committed the atrocities at Abu Ghraib disgraced the military on a scale that shames the United States equal to the massacre at My Lai).

⁹ See BELKNAP, *supra* note 1, at 2.

¹⁰ See *id.*

Calley, yet did not end up in the same predicament, Belknap's perspective adds legitimacy to his analysis of 1LT Calley's plight. By the time Belknap authored *The Vietnam War on Trial*, he was a professor at California Western School of Law,¹¹ and had published a book on political trials.¹² Accordingly, it is easy to understand why *The Vietnam War on Trial* has more references to comments made by presidents and congressmen than attorneys. Belknap's experience as a professor further explains why the premise of *The Vietnam War on Trial* is more akin to a question on a law school final exam than a literary thesis.

In addition to providing a vivid account of the Vietnam War itself, the author does a tremendous job of providing the reader with a comprehensive biography on the life and times of William "Rusty" Calley.¹³ Beginning with 1LT Calley's early childhood, proceeding all the way through his tour of duty as an Army officer in Vietnam, the author chronicles every step of 1LT Calley's educational and professional development, or lack thereof.¹⁴ In an effort to lend credence to his assertion that "Rusty Calley should never have been a [L]ieutenant[.]"¹⁵ Belknap pays a tremendous amount of attention to 1LT Calley's sub-par academic performance and how educational failures resulted in 1LT Calley erroneously being selected as an Army infantry officer.¹⁶ In *Lieutenant Calley: His Own Story*, by John Sack, 1LT Calley is quoted as follows: "[w]e did just about everything wrong in those days On our first operation out we even forgot the hand grenades."¹⁷ Such examples of ineptitude, from 1LT Calley himself, tend to validate Belknap's assertion that 1LT Calley was unqualified to serve as an infantry officer.

Belknap also contends that "education was the key" to avoiding combat-related jobs and, as 1LT Calley's educational record was so poor,

¹¹ See *id.* at outside cover. Belknap explains that a political trial occurs when the crime allegedly committed is "the product of political controversy," "was committed for political reasons," or is a trial that has a "major impact on the politics of its time." *Id.* at 3.

¹² MICHAL R. BELKNAP, *AMERICAN POLITICAL TRIALS* (1994).

¹³ See BELKNAP, *supra* note 1, at 27 (noting that 1LT Calley earned his nickname due to the reddish-brown color of his hair).

¹⁴ See *id.* at 27-36.

¹⁵ *Id.* at 23.

¹⁶ See *id.*

¹⁷ JOHN SACK, *LIEUTENANT CALLEY: HIS OWN STORY* 40 (1971) (referring to 1LT Calley's first missions when he arrived in Vietnam).

he was unable to escape that fate.¹⁸ The author claims that 1LT Calley's educational shortfalls similarly warrant titling him as a "loser."¹⁹ This negative characterization of America's fighting force is disconcerting and, though Belknap makes a valiant statistical effort at validation, not well supported.²⁰

The author's innate ability to take information from multiple sources and accurately piece it together into a sensible story is but one of the things that makes this book so compelling. Though there are times when Belknap repeats facts, his writing style actually adds emphasis to certain issues. One such instance is when the author discusses the intricate correlation between the incidents in Vietnam, to include the massacre at My Lai and the U.S. political climate of the 1950's, 60's, and 70's.²¹ In fact, *The Vietnam War on Trial* had much more to do with how members of the executive branch wedged themselves into what should have been a purely judicial process than 1LT Calley's actual court-martial itself.²²

Throughout the book, Belknap methodically outlines the struggle between hawks, those who saw the war in Vietnam as an "essential part of the global struggle against communism," and doves, anti-war activists strongly opposed to any enhanced war effort, and the manner in which 1LT Calley's case served as a soundstage for both groups.²³ Belknap

¹⁸ See BELKNAP, *supra* note 1, at 27.

¹⁹ See *id.* at 28. Unfortunately, by labeling 1LT Calley in this manner, the author effectively characterizes most every other draftee during the Vietnam era with the same title—notably those Soldiers in the infantry. See *id.* The author's negative characterization of America's fighting force, though backed by certain statistical data, is not well-supported due to the fact that Belknap fails to discuss whether other factors affected job placement. See *id.* at 23-27. Interestingly, Belknap also served as an infantry officer during the Vietnam conflict, forcing the reader to ponder whether the author is also a "loser" and, if so, does such a characterization detract from his credibility. See *id.* at 3.

²⁰ See *id.* at 23-27 (discussing the different ways education factored into why a person was selected for combat related positions, yet failing to mention whether any other factors, such as physical acumen or personal preference, were used to determine who would be assigned to those positions).

²¹ See *id.* at 3 (noting that 1LT Calley's court-martial became "one of the major political issues of 1970"), 7-22 (discussing the political considerations leading up to major U.S. offenses in Vietnam between 1952 and 1967), 122 (providing an overview of how the Pentagon dealt with the massacre at My Lai and the "public relations disaster" it threatened to become in 1969), 214-15 (citing President Nixon's unproductive effort to "exploit the powerful emotions unleashed by the court-martial of Lieutenant Calley").

²² See *id.* at 3.

²³ *Id.* at 21.

reports how America's military presence in Vietnam gradually increased from small groups of special forces Soldiers and political advisors in the mid-to-late 1950's, up to more than 500,000 troops in the late 1960's.²⁴ The author does an excellent job describing the event that led to congressional approval of the Vietnam War: the attack on the *U.S. Destroyer Maddox*.²⁵ Though based heavily on his personal opinion, Belknap's contention that President Lyndon B. Johnson inappropriately used the *Maddox* tragedy to further his war policy is downright chilling.²⁶

Belknap asks, "[s]hould those who go 'too far' in battle and violate the international law of war be placed on trial for their actions? Or should they be excused because they were simply doing their duty?"²⁷ The author leads readers down the path to answering this question using 1LT Calley's trial as a roadmap. Save the rather offensive reference to men who served their country on Vietnamese battlefields as "losers" and the fact that this opinion is sometimes given more deference than historical facts, Belknap's book is a wealth of information on both the Vietnam War and the military justice system. The author gives the reader a tremendous amount of background information in a clear and concise manner. Without one iota of prior knowledge of the Vietnam War or the political wrangling surrounding the conflict, Belknap provides readers more than enough information to ensure they

²⁴ See *id.* at 8-11.

²⁵ See *id.* at 11-12. In August of 1964, Vietnamese PT boats attacked the *U.S. Destroyer Maddox* as it patrolled the Gulf of Tonkin off the coast of North Vietnam. See *id.* at 11. Belknap highlights that the *Maddox* was patrolling in an area the United States knew the North Vietnamese considered to be a part of their territorial waters. *Id.* Moreover, the United States conducted its patrols in support of South Vietnamese commando raids as opposed to U.S. operations. *Id.* Approximately two days after the initial attack, the North Vietnamese allegedly attacked another U.S. ship, the *C. Turner Joy*. *Id.* President Lyndon B. Johnson used these incidents as a basis for retaliatory strikes against North Vietnamese military bases; however, he failed to tell Congress that the *Maddox* was in the Gulf of Tonkin supporting South Vietnamese commando raids and he failed to tell them that there was a territorial water issue that could have caused the North Vietnamese PT boats to attack. *Id.*

²⁶ See *id.* (surmising that President Johnson used the Gulf of Tonkin incident to obtain congressional approval of a resolution commissioned by the executive branch several months prior to the *Maddox* incident; alleging that President Johnson refused to present the resolution to Congress at an earlier date because "the time was not ripe to send it to Capitol Hill").

²⁷ See *id.* at 5.

comprehend the war itself, the mindset of Soldiers fighting the war, and the unfortunate culmination of events that led to the incident at My Lai.²⁸

The most stirring thing about *The Vietnam War on Trial* is the way the author traces the thin strand that ties the competing interests of political agendas to 1LT Calley's fight for freedom. It is a thread interwoven throughout every seam of the book. Belknap writes, "[t]he Nixon administration had no desire to upset the people by punishing Calley. Its principle concern was ensuring that reaction to the My Lai massacre did not erode public support for its Vietnam policy."²⁹ Another strength of the book is that Belknap is supremely apt at using information from President Nixon's political advisors and press releases to highlight the pawn-like manner in which everyone, from the President to the press, used 1LT Calley's plight to validate their political desires.³⁰

Belknap's book is a must read for judge advocates because of the author's innate ability to capture the turmoil that revolved around the trial and the attorneys involved in the proceedings.³¹ For judge advocates who have served as assistant defense counsel in a criminal trial, with a civilian attorney as lead counsel, the setting might be eerily familiar. Calley's detailed military defense counsel served as third-chair on a defense team with two civilian attorneys. One of those civilian attorneys had never appeared in front of a military panel and knew nothing about military law.³² Belknap explained that the ineptitude of that civilian attorney "proved surprisingly representative of [1LT] Calley's legal team."³³ The author goes on to discuss numerous rifts between the members of the defense team pertaining to strategy, tactics, and witness testimony.³⁴ The issues Belknap addresses in relation to the defense team are situations from which any trial defense counsel could learn.

²⁸ See *id.* at 257-68. The author augments the text with a user-friendly, twelve-page chronology that clarifies any lingering questions one might have concerning the timeline.

²⁹ *Id.* at 132.

³⁰ See *id.* at 210-11 (contending that Nixon was sure his intervention in the 1LT Calley case would "unite Americans behind his policies[;]" what resulted was an outcry from those who were advocating an immediate end to the war in Vietnam). *But see id.* at 243 (noting that the White House ceased responding to 1LT Calley's attorneys by the spring of 1974).

³¹ See *id.* at 149-50.

³² See *id.* at 148.

³³ *Id.* at 149.

³⁴ See generally *id.* at 168-85.

The author also outlines situations that may sound familiar to those who have served as trial counsel. For example, as is true in every case, the prosecutor is required to ensure that court-martial charges are filed in a timely manner. In 1LT Calley's case, the Army's Criminal Investigation Division completed their investigation of the My Lai incident on 4 August 1969.³⁵ At that point, the assigned trial counsel had the daunting task of insuring that any charges initiated against 1LT Calley were served on him in less than thirty-two days.³⁶ Increasing the pressure on the trial counsel was the fact that 1LT Calley's scheduled released date from active duty was 6 September 1969, after which time the Army would forfeit jurisdiction over the Soldier.³⁷ The author also provides riveting commentary on dialogue contained in a letter from the trial counsel to President Nixon, sent in response to the President's decision to intercede on 1LT Calley's behalf and allow him to remain in officer's quarters pending the outcome of his appeals, as opposed to being immediately placed in confinement.³⁸ The aforementioned commentary lends additional support to the author's contention that 1LT Calley's court-martial was, in fact, a political trial.

More than thirty-five years have passed since the massacre at My Lai.³⁹ However, *The Massacre at My Lai* was published in 2002. What caused the author to reopen a wound that should have healed many years ago? Belknap suggests:

³⁵ See *id.* at 261.

³⁶ See *id.* at 112 (evaluating the fact that the alleged victims were a world away and the case was more than a year old).

³⁷ See *id.* Belknap references the case of *Toth v. Quarles*, 350 U.S. 11 (1955). In *Toth*, the Court found the 1950 version of Article 3(a) of the Uniform Code of Military Justice invalid. See *id.* at 13. The article gave the military the ability to recall former service members back onto active duty to be prosecuted for offenses committed during a period of prior service. *Id.* Article 3(a) has since been revised and is now noted as a constitutionally valid exercise of power. See MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 3(a) (2002).

³⁸ See BELKNAP, *supra* note 1, at 203-06. After President Johnson directly intervened in the court-martial process and allowed 1LT Calley to remain in quarters pending his appeal, the trial counsel wrote to the President and explained that he was appalled that many of the political leaders in the United States were willing to compromise on moral issues for political purposes. See *id.* at 204. He went on to state that he was shocked at the President's intervention in the case and how the President's actions had damaged the military justice system and opened the American justice system up for criticism. *Id.* The author also notes that the trial counsel was in the process of leaving military service when he wrote his very condemnatory letter to the President, possibly explaining the boldness of the content and nature of the writing. See *id.* at 203-04.

³⁹ See *id.* at 60 (dating the My Lai massacre as 16 March 1968).

As the United States undertakes a war against the terrorists who slaughtered thousands of innocent civilians on 11 September 2001, it must address again the issue of who is responsible for such atrocities. Is it the individuals who look the victims in the eye and brutally take their lives? Is it the leaders who order their actions? Or is it the nation-states, or political or religious movements, for whom the killers fight?⁴⁰

In a similarly retrospective fashion, Major (MAJ) Jeffery F. Addicott and MAJ William Hudson, Jr. expressed similar sentiments more than a decade ago in an article recognizing the twenty-fifth anniversary of the My Lai massacre.⁴¹ The main premise espoused in *A Time to Inculcate the Lessons* is as follows:

Future My Lai's cannot be prevented unless the answers to the "why?" of My Lai are repeated over and over—that is, until they are inculcated into every warfighter in uniform On the other hand, precisely because of its horror and repulsiveness, My Lai is suited uniquely to serve as *the* primary vehicle to address the entire issue of adherence to the law of war, as well as the necessity for effective leadership in the modern era characterized by low intensity conflict environments.⁴²

The aforementioned authors' thought-provoking analysis of how 1LT Calley's troubled past has the potential to shed insight into the future proves more prophetic than imagined when viewed in light of the incidents at Abu Ghraib prison. Both *The Vietnam War on Trial* and *A Time to Inculcate the Lessons* mandate looking back at the My Lai incident to avoid future mishaps. Unfortunately, the similarities between My Lai and Abu Ghraib tend to show that American Soldiers still have a great deal to learn.⁴³

⁴⁰ *Id.* at 4.

⁴¹ Major Jeffrey F. Addicott & Major William A. Hudson, Jr., *The Twenty-Fifth Anniversary of My Lai: A Time to Inculcate the Lessons*, 139 MIL. L. REV. 153 (1993).

⁴² *Id.* at 185.

⁴³ That is not to say that the cases of My Lai and Abu Ghraib are exactly the same. Clearly, the incident at My Lai involved hundreds of deaths while those at Abu Ghraib did not. Nonetheless, the incidents have elicited similar criticisms. See generally Hackworth, *supra* note 8; Serrano, *supra* note 8, at A10.

Lieutenant Colonel (LTC) Steven L. Jordan, former commander of Abu Ghraib prison, has been described as both “a victim and a perpetrator,” just as Belknap described 1LT Calley.⁴⁴ Allegations exist that LTC Jordan was untrained, inexperienced, and ill-suited for the position in which he was placed—again, Belknap made similar statements concerning 1LT Calley.⁴⁵ Much like the situation with My Lai, many of those who are critical of the Abu Ghraib investigations attempt to point the finger of culpability at officials seated in high positions within the U.S. government.⁴⁶ More commonalities abound in the criminal justice arena. While investigations concerning the Abu Ghraib offenses are ongoing,⁴⁷ it is possible that the only Soldiers who will face criminal charges are the ones who actually worked in the prison. If so, the predicament of these Soldiers would be substantially similar to the plight of the select Soldiers who were prosecuted for My Lai. The My Lai cases that were brought to trial were predominantly those of Soldiers who actually walked in that village.⁴⁸ Obviously, there are countless reasons why one person is prosecuted while another is not. That fact notwithstanding, such an observation does little to diminish the aforementioned situational similarities.

The answer to the question of whether 1LT Calley is a victim, criminal, or permutation of both is debated throughout, and unresolved within, *The Vietnam War on Trial*.⁴⁹ The failure to formulate a definitive answer to the question is exactly what Belknap intended. Belknap’s premise is not as much to get the reader to comprehend the military justice process 1LT Calley endured as it is to get the reader to acknowledge the concept that whether a service member who kills during combat operations is a Soldier, warrior, murderer, or martyr is in the eye of the beholder. The same can be said concerning whether it is the actor or the person who gives the orders that should be held accountable for the end results. Quite frankly, the answer could be that both should be held liable. In the end, maybe that is the most equitable way to assess responsibility.

⁴⁴ See Serrano, *supra* note 8, at A10; see also BELKNAP, *supra* note 1, at 34-36.

⁴⁵ See Serrano, *supra* note 8, at A10; see also BELKNAP, *supra* note 1, at 34-36.

⁴⁶ See generally Hackworth, *supra* note 8; Serrano, *supra* note 8, at A10.

⁴⁷ *The Washington Post* has reported that approximately forty-five people have been identified as being involved in the abuse issues surrounds Abu Ghraib. See [washingtonpost.com: Abuse at Abu Ghraib, available at http://www.washingtonpost.com/wp-srv/nation/daily/graphics/prison_082604.html](http://www.washingtonpost.com/wp-srv/nation/daily/graphics/prison_082604.html) (last visited June 13, 2005).

⁴⁸ See BELKNAP, *supra* note 1, at 217.

⁴⁹ See *id.* at 255.

Service members would be well-served to use the following self-analysis Belknap poses to his law students:

For years, I wondered whether, if put in the same situation in which [1LT] Calley found himself, I would have done what he did. I don't think so, but it is something I ask my students to ponder. I also prod them to think about how they would have reacted had they found themselves in [1LT] Calley's combat boots.⁵⁰

Such reflection may provide insight as to "why good people do bad things,"⁵¹ and how some people react when placed in positions for which they are ill-prepared. What is also abundantly clear is that if society does not continue to reinforce the lessons learned from the My Lai massacre, future generations of troops could be doomed to repeat the failures of our ancestors, destined to commit offenses such as those that have been committed at Abu Ghraib, and are likely to have their fates decided by the military justice system.

⁵⁰ *Id.* at 2.

⁵¹ *Id.*