

## Lieut. Calley and Capt Levy: The 'Inexcusable' Equation

To the Editor:

One of the anachronisms of the Uniform Code of Military Justice is its failure to provide for release on bail while awaiting court-martial or while awaiting appeal from a court-martial conviction. The result is that a serviceman whose conviction is reversed on appeal has often served a major portion of his sentence.

Normal bail procedures become available only when the military appellate process is "exhausted" and review is sought in the Federal courts. It was therefore not at all surprising that Judge J. Robert Elliot admitted Lieut. William Calley to bail pending Federal court review, and it was certainly appropriate to cite as a precedent the bail granted to Capt. Howard Levy several years ago by another Federal court.

But there the comparison ends. Captain Levy was hustled out of the courtroom in manacles and immediately incarcerated, and he sat out most of the appellate process as a prisoner at the maximum-security United States Disciplinary Barracks at Fort Leavenworth, Kan. Lieutenant Calley, on the other hand, was allowed to abide his military appeals in a very relaxed "house arrest" in his own "bachelor" officer's quarters.

Captain Levy was convicted of disobeying an order to train Special Forces in paramedical techniques and

of the peculiar military crime, of dubious constitutionality, called "conduct unbecoming an officer and a gentleman." Lieutenant Calley was convicted of the murder of at least 22 unarmed, unresisting civilians, including women, children and old men. Captain Levy received a three-year sentence. Lieutenant Calley was sentenced to life imprisonment, and the sentence has been reduced (so far) to twenty years.

Yet the judge, in ordering Calley released, made the incredible comment that the only difference he saw between the two cases was that Levy did not do what he was told and Calley did.

Perhaps the judge was ignorant of the elementary principle of military law that there is a duty *not to obey* a clearly illegal order. This is not just a Nuremberg ideal. It is an established maxim of American military law, binding on all military personnel.

And perhaps he can be excused for not perceiving the difference between Levy's attempt—however unsuccessful—to test the lawfulness of the order and Calley's unquestioning performance of the illegal order to kill civilians—assuming that he received such an order.

But to equate mass murder with the offenses of which Levy was convicted is incomprehensible and inexcusable. We have a right to expect more from the Federal judiciary.

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New York, March 7, 1974