

[COMMITTEE PRINT]

INVESTIGATION OF THE MY LAI INCIDENT

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REPORT

OF THE

ARMED SERVICES INVESTIGATING  
SUBCOMMITTEE

OF THE

COMMITTEE ON ARMED SERVICES  
HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

SECOND SESSION

UNDER AUTHORITY OF

H. Res. 105



JULY 15, 1970

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1970

47-4040

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Washington, D.C. 20402 - Price 50 cents

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# INVESTIGATION OF THE MY LAI INCIDENT

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## INTRODUCTION

On Friday, April 4, 1969, Chairman L. Mendel Rivers, House Armed Services Committee, received a mimeographed letter from Mr. Ron Ridenhour of Phoenix, Arizona. In that letter Mr. Ridenhour detailed various conversations he had with individuals formerly assigned to 11th Infantry Brigade, which indicated that a large number of the inhabitants of a Vietnamese village, known as Pinkville, had been killed by troops from "C" Company, 1st Battalion, 20th Infantry, on March 16, 1968. In view of the specific details provided by Mr. Ridenhour, including map coordinates of the village, names of individuals involved, and names of witnesses, a copy of the letter was sent to the Department of the Army on Monday, April 7, 1969, with a request that the allegations be investigated. A second copy of the Ridenhour letter was received at the Committee office on April 7th from Representative Morris K. Udall of Arizona.

On April 10th a letter from the Army acknowledged receipt of the Committee request and advised that a report had been requested from the Commanding General, U.S. Army, Vietnam. The copy of the Ridenhour letter, received from Mr. Udall, was referred to the Department of the Army, on April 14th. On April 24th the Department of the Army advised that the investigation was being transferred to the Inspector General for action. It further advised that, because of the time which would be required to investigate the allegation, a final reply could not be expected for some time.

By a letter dated September 5th, the Department of the Army advised that, while its investigation was continuing, charges would be preferred against Lt. William L. Calley not later than September 6th. On September 8th the Committee Chief Counsel and Assistant Chief Counsel were briefed by Army representatives on the progress of the investigation. By a letter dated November 12, 1969, the Committee was advised that the Article 32 investigation of Lt. Calley was nearing completion, but that investigation of others involved was continuing. Then, on November 14th, the Army advised that S. Sgt. David Mitchell had been charged with "assault with intent to commit murder".

Chairman Rivers, on November 24, 1969, announced from the House Floor that the Armed Services Investigating Subcommittee had requested that Department of the Army furnish the Subcommittee with all information it had on the alleged incident at Pinkville. He said the Subcommittee would examine the matter and determine whether further inquiry was warranted. Also on November 24, Secretary Resor and Gen. Westmoreland announced the appointment of Lt. Gen. William R. Peers "to explore the nature and scope of the original Army investigation of the so-called My Lai incident."



The Investigating Subcommittee heard testimony from Secretary of the Army Stanley Resor on November 26th. Further hearings were delayed because of the failure of the Army to supply all the information requested by Chairman Rivers, and also because of the Army's reluctance to make witnesses available to the Subcommittee until after they had testified before the Peers Inquiry. After hearing Lt. Hugh C. Thompson, Capt. Ernest Medina, and Lt. Gen. Peers, Chairman Rivers announced on December 12th that, as a result of the hearings conducted by the Investigating Subcommittee, it had been concluded that it would be "necessary that the Subcommittee go into this matter of the My Lai incident in depth." He therefore announced the appointment of a special subcommittee composed of the following members: Hon. F. Edward Hébert (D-La.), Chairman; Hon. Samuel S. Stratton (D-N.Y.); Hon. Charles S. Gubser (R-Calif.); and Hon. William L. Dickinson (R-Ala.).

On December 19th Chairman Rivers addressed the following letter to Congressman Hébert:

HON. F. EDWARD HÉBERT,  
*House of Representatives,*  
*Washington, D.C.*

DEAR MR. HÉBERT: As you will recall, on December 12, 1969, I announced that I had directed the Investigating Subcommittee to make a preliminary examination of the March 16, 1968 My Lai incident in order that a determination could be made as to what further action might be indicated.

As a result of that examination, a decision was reached that an in-depth investigation of the matter should be carried out. In making this decision I was motivated in part by the fact that the only investigation being made of the allegations was that of the Department of the Army. This should not be interpreted as an impugning of that investigation in any way, but because of the seriousness of the charges, I believe it imperative that a completely independent assessment of the case should be made by the Armed Services Committee. Therefore, pursuant to Committee Resolution No. 4, I have appointed the following Subcommittee composed of you as Chairman and Congressmen Stratton, Gubser, and Dickinson. I am also appointing former Congressmen Porter Hardy, Jr. and Charles E. Halleck as special consultants to the Subcommittee.

Your Subcommittee will examine all pertinent documents and take the testimony of such witnesses as might be necessary to permit you to make a full report to me as soon as possible. Such report should cover the following:

- (1) What was the nature of the military action on March 16, 1968 at My Lai, South Vietnam, conducted by Company C, Task Force Barker, of the Americal Division?
- (2) What were the orders under which the said Company was operating on that day?
- (3) What was the result of the Company's action?
- (4) Did such action result in the deliberate killing of innocent South Vietnamese civilians by U.S. forces, or the unnecessary destruction of private property?

(5) What investigation of the allegations was made by the Army?

(6) To what level of command can knowledge of the allegations be traced?

(7) Did the investigation conform to the rules and regulations in effect at that time? If not, in what respect was it deficient?

(8) At the time of the alleged incident, what were the Rules of Engagement and MACV Directives and Orders with respect to the protection of Vietnamese civilians and property?

(9) How and to what extent were the aforesaid Rules and Directives usually enforced during the period of the alleged incident?

Sincerely,

L. MENDEL RIVERS,  
*Chairman.*

Staff interviews of witnesses were immediately begun. Near the conclusion of those staff interviews, Subcommittee Chairman Hébert, in a letter dated March 3, 1970, advised Chairman Rivers that the Subcommittee was ready to commence formal hearings. In that letter he outlined the areas which the Subcommittee intended to address in the hearings and in its report, as follows:

Because of the pendency of certain criminal proceedings in the military courts and because some of the testimony expected before our Subcommittee may come within the purview of House Rule XI, we expect to hear all of our witnesses in executive session. And in a further effort to avoid prejudicing the rights of any present or potential defendant in any criminal case growing out of the alleged My Lai incident, the Subcommittee report will not seek to fix criminal responsibility. We feel that judgments in this area are within the purview of the courts. We, therefore, intend to address our report primarily to the following questions:

(1) As of March 16, 1968, what were the established U.S. military policies and procedures relating to the treatment of civilians and the investigation of alleged civilian casualties?

(2) Did the Task Force Barker operation in the Son My area on March 16, 1968 result in a substantial allegation of civilian casualties?

(3) Was any such allegation brought to the attention of appropriate officers of the Americal Division, the 11th Brigade, or Task Force Barker?

(4) If so, what action was taken by the aforesaid Army Command?

(5) Was such action in accordance with existing policies, orders and directives?

Sincerely,

F. EDWARD HÉBERT,  
*Chairman, My Lai Incident Subcommittee.*

Although lack of cooperation on the part of the Department of the Army seriously impeded and delayed the work of the Subcommittee, its investigation has now been completed. However, the transcript of testimony is classified and will not be released until final disposition has been made of all criminal cases now pending or which may arise from the My Lai affair. This impounding is deemed necessary since the record contains matter which, if published, might be considered by the Government or the defendants to be prejudicial.

However, because of the sensational manner in which a significant portion of the news media reported the My Lai incident, the Subcommittee feels obliged to attempt to put material events in a proper perspective in a public report.

During its investigation the Subcommittee interviewed 152 witnesses, held 16 days of hearings, took 1812 pages of sworn testimony, and reviewed hundreds of documents. In addition, the Subcommittee staff took 3,045 pages of statements from witnesses. The Subcommittee also conducted a field investigation in Vietnam.

## FINDINGS AND CONCLUSIONS

1. There is no question but that a tragedy of major proportions involving unarmed Vietnamese, not in uniform, occurred at My Lai 4 on March 16, 1968, as a result of military operations of units of the Americal Division.

2. This matter was promptly reported, at least in part, to the Task Force Commander, the Commander of the 11th Brigade, the Commander of "B" Company, 123rd Aero Scouts, the Commander of the 123rd Aviation Battalion, the Division Artillery Chaplain, the Division Chaplain, the Division S-5, the Division Chief of Staff, an Assistant Division Commander, and the Commander of the Americal Division. There is also testimony that the Third Marine Amphibious Force (III MAF) received sufficient information about this incident to have reported it to the Military Assistance Command Vietnam (MACV).

3. The matter was also reported to the U.S. Intelligence Community, composed of civilian and military advisors, to the South Vietnamese Son Tinh District Chief, and to the Province Chief of Quang Ngai Province.

4. Although there were three reporting channels that should have brought the My Lai allegations to the attention of III MAF, there is no evidence that two of these channels did so, and the third channel functioned inadequately.

5. There is no evidence that the My Lai allegations were reported to MACV, although directives in effect at that time made such reporting mandatory on the part of all military and staff personnel having knowledge of, or receiving a report of, such an incident. Commanders and MACV staff sections had a special obligation in this respect.

6. It could reasonably be concluded that responsible officers of the Americal Division and 11th Brigade failed to make adequate, timely investigation and report of the My Lai allegations.

7. An Army photographer and an Army reporter, both assigned to the Brigade Public Information Office, were designated to accompany the Task Force Barker operation at My Lai on March 16, 1968. Al-

though both men have been quoted extensively on the My Lai incident since leaving the service, the Subcommittee has found no evidence that either man, while serving in uniform, made any report of atrocities, or that the photographer turned in to the Army any pictures of atrocities.

8. The photographer claims to have taken pictures of dead Vietnamese civilians with his personal camera, but the Subcommittee has found no corroboration of his statement that they were taken at My Lai 4. However, the Subcommittee takes special note of the fact that the photographer sought to sell the publication rights to the pictures for \$125,000, and that to date he has received in excess of \$35,000 from the sale of those rights to news media around the world.

9. On the afternoon of March 16, 1968, an order was given by radio to the Commander of "C" Company of Task Force Barker to return to My Lai 4 that day to determine the sex, age and cause of death of those civilians killed. That order was immediately countermanded by the Commander of the Americal Division, who was monitoring the frequency on which the order was transmitted. He testified that he did so for tactical reasons. However, there is no evidence that American troops ever returned to My Lai 4 for the above purpose, although the Situation Reports for March 17, 1968, indicate that elements of both "A" and "C" Companies were in the immediate vicinity of My Lai 4 on that date and apparently could have easily made such an investigation.

10. It can reasonably be concluded that the My Lai matter was "covered up" within the Americal Division and by the District and Province Advisory Teams.

11. To keep the My Lai matter bottled up within the Americal Division and the District and Province Advisory teams required the concerted action or inaction on the part of so many individuals that it would be unreasonable to conclude that this dereliction of duty was without plan or direction.

12. A number of witnesses testified under oath with respect to the existence of investigative reports, statements, affidavits, correspondence and other documents relative to the My Lai incident. If they ever existed, virtually all such records have now disappeared. Only one copy of the so-called "Henderson Report" has been found. It had not been kept in the files, but was hidden in the desk drawer of the Brigade Intelligence Sergeant on instructions of his immediate superior.

13. There is evidence that officers and enlisted men of the Americal Division and 11th Brigade were informed, directly or indirectly, that the My Lai operation was being investigated, and, therefore, were instructed that they should not speculate on, or discuss the matter, pending completion of that investigation. While normally this might be considered proper procedure, this warning, coupled with the failure of the Division or Brigade to conduct any meaningful investigation, tends to substantiate the charge of "cover up."

14. Although the Intelligence community at all times during 1968-69 had numerous individuals, both civilian and military, stationed in close proximity to My Lai 4, they deny having learned anything in more than a year and a half which would have caused them

to believe that anything untoward had happened in that hamlet on March 16, 1968. Documentary evidence, however, established that one organization attached to an intelligence agency had a report as early as March 18th, alleging the killing of civilians at Son My.

15. Our Intelligence personnel, whom one might reasonably expect to be able to detect or verify an incident of such magnitude, apparently saw fit to dismiss all allegations concerning it as communist propaganda, although most of these allegations, which came to them through the South Vietnamese officials, were specific as to time, place and units involved. Failure to fully investigate and report these allegations to higher authority raises a serious question as to the reliability and usefulness of our intelligence activities in this area.

16. There was a surprising and almost unbelievable lack of recollection on the part of many of the Subcommittee witnesses whose responsibility to investigate the original My Lai allegations should have caused a more lasting impression on their minds as to the incidents and events involved.

17. The ground troops involved in the action at My Lai 4 had been in Vietnam less than four months, but during that time had received many casualties as a result of mines, booby traps and sniper fire. "C" Company had suffered 42 casualties since it had been assigned to Task Force Barker on January 26, 1968, thereby reducing its strength by about one-fourth.

18. In an action in the My Lai area in mid-February 1968, one of the Task Force Barker units had been pinned down by heavy mortar, rocket and small arms fire from fighting bunkers. Fire was so intense that concentrated artillery fire was required in order to extract the unit. In a subsequent action in February, heavy opposition was encountered at My Lai 5 and My Lai 6. After an all-day fight, the Commander of "A" Company was severely wounded and numerous other American casualties resulted. It was necessary to call in gunships and artillery fire on the hamlets in order to prevent the possible annihilation of the American troops.

19. The units involved in the My Lai operation had minimal training with respect to the handling of civilians under the Rules of Engagement and the Geneva Conventions.

20. At the company briefing the day prior to the My Lai 4 action, the troops were advised that all civilians were expected to be gone from the hamlet at the time set for the assault. The troops were advised that they were to destroy the hamlet and make it unusable as a base camp for the Viet Cong 48th Battalion. No specific instructions were given as to the handling of civilians in the event any were encountered.

21. The Subcommittee finds that, based upon the testimony it has received, it would be unfair to attribute misconduct to all members of Task Force Barker. Those who may have violated the Rules of Engagement were the exception.

22. As a part of the March 16th operation, the actual insertion of troops was to be preceded by artillery fire. Although this was to be directed at the western side and edge of the hamlet, some of the shells impacted within the hamlet itself. Gunships were also used in connec-

tion with the operation. It appears that the artillery and gunships accounted for some civilian casualties. At the conclusion of the artillery fire, several hundred villagers left the area and proceeded down the road to Quang Ngai unharmed. Later that day, approximately 80 residents of the Son My area were directed by troops of "C" Company to leave the combat area and to go to a refugee camp.

23. The helicopter pilot who first reported on civilian casualties at My Lai 4 and his two crew members were given military decorations for actions on March 16, 1968 at My Lai 4 on the basis of statements which were at substantial variance with the truth.

24. According to the aforesaid helicopter pilot, there was no "armed confrontation" between the U.S. helicopter crew and U.S. ground forces at My Lai 4, as widely reported by the news media. The sworn testimony of the pilot categorically denies that such an incident ever took place.

25. The Army overreacted by recommending charges in several cases where there was insufficient evidence to warrant such action.

## RECOMMENDATIONS

1. Consideration should be given to the amending of the Uniform Code of Military Justice to provide:

(a) that no person subject to the Code shall make public release of any information respecting any investigation or the pendency of any charge until after the convening authority has referred such charge to trial by court-martial; and

(b) that no charge involving an alleged capital offense, committed during a military action against an enemy, shall be referred to trial by court-martial until a duly appointed competent authority has determined the mental responsibility of the prospective accused at the time of the alleged crime.

2. Consideration should be given to amending Section 803(a), Title 10 of United States Code to provide for trial in the United States District Courts, of persons charged with having committed offenses while on active military duty, who are no longer subject to military jurisdiction as a result of having been discharged.

3. The Secretary of the Army should:

(a) require all commanders to submit reports at specified regular intervals attesting that all personnel have had adequate refresher training with respect to the Geneva Conventions and the Rules of Engagements, with particular reference to war crimes;

(b) issue or cause to be issued such regulations as may be necessary to insure that all investigations of allegations of possible war crimes be conducted by competent, trained investigators who shall be independent of the immediate command involved in the alleged incident. The record of all such investigations shall be maintained in writing and copies forwarded to the Secretary of the Army;

(c) require official Army photographers to submit to their superiors all photographs taken while on assignment whether taken with personal equipment or that issued by the Army;

(d) require all Army photographers to receive such training as may be necessary to insure that the Army obtains the most complete pictorial coverage possible of all military operations to which photographers are assigned; and

(e) review the practices and procedures in awarding medals and decorations with particular reference to: (1) requiring that all supporting statements be dated and be in affidavit form, and (2) requiring special scrutiny of reciprocal recommendations for awards.

4. The Secretary of Defense should apply the recommendations directed to the Secretary of the Army, *supra*, to all military departments.

## BACKGROUND

### U.S. Units and the Area of Operation

#### *Americal Division*

In September 1967, the Americal Division was organized, and in October it was formally activated. At that time only one of the Brigades assigned to the Division, the 196th Infantry, was in Vietnam. A second Brigade, the 198th Infantry, arrived later in October. And in December the 11th Light Infantry Brigade, the last of those assigned to Americal Division at that time, arrived in Vietnam.

The division was assigned a tactical area of operation (AO) along the South China Sea coast from Quang Ngai Province north into Quang Nam Province. That area, approximately 150 kilometers from north to south, was assigned among the three Brigades, with 11th Brigade receiving the southernmost portion. With the exception of the area in the vicinity of Quang Ngai City, which had been assigned to 2nd Army Republic of Vietnam (ARVN) Division, the 11th Brigade area of operation ran from Duc Pho District north to Binh Son District and inland for approximately 30 kilometers.

#### *Task Force Barker*

Since the fourth Battalion of 11th Brigade had not yet been deployed to Vietnam, some temporary arrangements were required in order to establish sufficient maneuver elements to adequately cover the Brigade's area of operation. To fill the void, a task force was organized by the Commanding General of Americal Division in January 1968. A rifle company was detached from each of the three operational Battalions of 11th Brigade and assigned to the task force. Alfa Company from 3rd Battalion, 1st Infantry; Bravo Company from 4th Battalion, 3rd Infantry; and Charlie Company from 1st Battalion, 20th Infantry were the companies chosen by the Brigade Commander for the assignment. In similar fashion a field artillery battery was organized from the assets of the three existing firing batteries of the Brigade organic field artillery battalion. Lt. Col. Frank Barker<sup>1</sup> was designated as Task Force Commander. Task Force Barker Headquarters was established at a fire support base known as Landing Zone Dottie, or LZ Dottie.

<sup>1</sup> Lt. Col. Barker was killed in a helicopter crash in June 1968.

### *Muscatine Area of Operation*

The area of operation assigned Task Force Barker was designated Muscatine, and was located north of the Song Diem Diem River (also known as the Song Ham Giang) and east of Highway 1, and ran northward for approximately 12 kilometers to Binh Son. This area had been occupied previously by a Korean marine unit. It was an area notorious for mines and booby traps. It has been estimated that half the casualties suffered by Task Force Barker were the result of booby traps and mines.

Late in January the rifle companies of Task Force Barker began offensive operations in their area of operation (AO). Those operations were conducted from two fire support bases, Uptight and Dottie, located near the eastern and western boundaries of the AO and approximately midway between its northern and southern extremities.

During patrols in the southern portion of their AO, the units of Task Force Barker frequently received fire from Viet Cong forces which would then withdraw south of the Song Diem Diem River into the AO assigned to 2nd ARVN Division.

Intelligence reports indicated that the 48th Viet Cong Local Force Battalion maintained its base camp in the My Lai 1 area of Son My Village. My Lai 1 was called Pinkville because of its shading on military maps which designated a heavily-populated area. It was the intelligence estimate that, in addition to that Battalion, two local force VC companies were also located in the area. The 48th Battalion had an excellent reputation as a fighting force, having destroyed several ARVN units in combat actions. It was credited with regular incursions into the secure area along Highway 1, during which the road would be cut for a day or two. It was believed by U.S. authorities that the purpose of those raids was to transport food and supplies from the sea coast area back to the Viet Cong forces located in the mountains to the west.

### *Son My Village (See map, Appendix 1)*

Son My Village is composed of four hamlets, My Lai, Co Luy, Tu Cong (in which the subhamlet of My Lai 4, also known as Thuan Yen, is located), and My Khe. Each of those hamlets contained a number of subhamlets. It is located on a peninsula bounded by the Song Tra Khuc River on the south, the South China Sea on the east, and the Song Diem Diem River on the north. Son My Village is approximately four kilometers square and contains rich agricultural land in which good rice crops are grown. The sea coast provides a point for landing food, ammunition and supplies which have been transported by trawler from North Vietnam. Because of those logistical advantages, the Viet Cong had vigorously contested previous efforts by ARVN, Korean and U.S. forces to enter the area.

The whole Son My area has been described as a Viet Cong base camp. It reportedly has been controlled by the Viet Cong for 20 years or more. Each of the hamlets is fortified with fighting bunkers, tunnels and trenches, and each of them is surrounded by mines and booby traps.



The Tet offensive<sup>2</sup> in early February 1968, during which the 48th VC Battalion had moved west to participate in the attack on Quang Ngai City and the surrounding area, resulted in a request from the Vietnamese that U.S. forces move against the 48th Battalion. Authority was obtained for Task Force Barker to temporarily extend its area of operation (AO) into the 2nd ARVN Division area of operation in order to attack and destroy that unit and its base camps.

*Task Force Barker Operations in Son My*

In mid-February the first AO extension was obtained for Task Force Barker to conduct an operation into Son My. A joint operation with 2nd ARVN Division was planned. The plan called for Alfa and Bravo Companies, reinforced by armored personnel carriers, to move north of Highway 521, and for ARVN forces to sweep eastward south of that road. The objective of the operation was My Lai 1, Pinkville. Soon after commencement of the operation on February 13th, heavy enemy resistance was encountered in the vicinity of My Lai 4, approximately two kilometers west of My Lai 1. Task Force Barker Journal entries reflect that the enemy was armed with 60 and 81mm mortars, 50 caliber machine guns, and possibly antitank weapons, in addition to rifles and carbines. One platoon of Bravo Company, which had been pinned down north of My Lai 4 by enemy fire, was extracted only with the aid of armored personnel carriers and concentrated artillery fire. During this action a large number of enemy weapons was observed by one of the platoons of Bravo Company, but bypassed due to operational necessity. When the platoon returned to that same area a short time later to recover the abandoned weapons, they found that all had been recovered by the enemy. The hamlet of My Lai 4 was described by an officer who went through it that day as a fortified hamlet surrounded by waist-deep fighting trenches. He said that tunnels led from the fighting trenches to bunkers located in the houses. He said he saw a dozen houses in the village, all of which were partially damaged. According to his testimony, there were only about 20 noncombatants in the hamlet of My Lai 4 that day.

Task Force Barker units continued the sweep eastward on the following three days. Heavy enemy resistance was encountered at My Lai 6, about 1,000 meters northeast of My Lai 4. Upon reaching Pinkville, My Lai 1, they found it to be a village with subterranean brick-lined tunnels tall enough for a man to stand erect. Each of the tunnels was booby-trapped with a 500 lb. bomb with as many as five trip wires. They found a three-ton ammunition cache in the tunnels. They also discovered a Viet Cong hospital complex on the peninsula north of My Lai 1. After the tunnels and supplies had been destroyed, the U.S. troops were extracted from the area. U.S. losses during that operation were three killed and 15 wounded. The VC body count was 80. No enemy weapons were captured.

Since the main enemy force had eluded U.S. troops during that operation, another effort was planned for February 23rd. The assault this time was made by Alfa Company, reinforced by armored personnel carriers, and supported by gunships and air strikes. The objective of the operation was the enemy base camp at My Lai 1. Bravo Company formed a blocking screen to the north and northeast. Heavy enemy opposition, including rockets, mortars and recoilless rifles, was

<sup>2</sup> During this offensive, in the city of Hue alone, the Communist forces slaughtered almost 8000 innocent civilians.

encountered in the vicinity of My Lai 5 and My Lai 6. Artillery fire and air strikes were called in on those hamlets to aid the attack. The fight lasted all afternoon before the enemy was outflanked and withdrew eastward. On the following day U.S. troops again moved into My Lai 1. There they found that the tunnels, which had been destroyed in the previous operation, were already being rebuilt. Sixty-eight VC were reported killed during the first day of this operation and five weapons captured. Total U.S. casualties were three killed and 28 wounded.

#### *Prior Operations of "C" Company*

On January 27th "C" Company, 1st Battalion, 20th Infantry, was officially attached to Task Force Barker. It immediately began patrolling actions in the area of operation assigned to the Task Force. During the Tet offensive in early February, it occupied a blocking position along the Song Ham Giang River on the southern boundary of the Task Force area of operation. While occupying that position, Capt. Medina observed a column of about 200 VC with weapons and packs withdrawing from their Tet attack on Quang Ngai City and moving toward My Lai 4 and Pinkville in the 2nd ARVN Division area of operation. Women and children were observed in the column carrying weapons and assisting in carrying the dead. Before permission could be obtained to fire into the 2nd ARVN Division AO, the column had disappeared from view.

"C" Company had not engaged in any major combat action during January and February. Its operations consisted mainly in assignments which did not offer a real possibility of closing with the enemy. Yet, despite its limited enemy contact, the company lost one-fourth of its authorized strength due to mines, booby traps and sniper fire, suffering 42 casualties while assigned to Task Force Barker prior to the March 16th operation. For example, on February 25th, while moving into a blocking position, "C" Company became entrapped in a VC mine field. The Task Force Journal for that date reflects there were seven mine explosions resulting in one killed and 15 wounded. On that occasion one platoon became so enmeshed in the mine field that it had to be extracted by helicopter. Then on March 14th a platoon sergeant was killed and four members of the company wounded by a booby trap.

#### *Psychological Effects of Viet Cong Tactics*

In a war such as that in Vietnam, our forces in the field must live for extended periods of time in the shadow of violent death and in constant fear of being crippled or maimed by booby traps and mines. And added to this is the fact that this is not war in the conventional sense. The enemy is often not in uniform. A farmer or a housewife or a child by day may well be the enemy by night, fashioning or setting mines and booby traps, or giving aid, comfort and assistance to the uniformed enemy troops. Under such circumstances, one can understand how it might become increasingly difficult for our troops to accept the idea that many of those who kill them by night somehow become "innocent civilians" by day. Understandably, such conditions can warp attitudes and mental processes causing temporary deviation from normality of action, reason, or sense of values. And the degree of deviation may vary with each individual.

## Planning for the March 16th Operation

### *Task Force Briefing*

Since the previous operations had failed to clear the enemy from the Son My area, Lt. Col. Barker planned another operation in which he would utilize all his resources in a coordinated assault against the VC base camp.

On March 15th, Lt. Col. Barker assembled his company commanders and representatives of the air and artillery support units to brief them on the operation scheduled for the following day. During that briefing Col. Oran Henderson, who had assumed command of the 11th Brigade earlier that day, addressed the commanders and urged them to be aggressive and to close with the enemy, noting that their failure to do so in their earlier operations in the area had permitted the enemy to escape.

During the intelligence portion of the briefing, the group was told that most of the noncombatants would have left the hamlet of My Lai 4 to go to market prior to the assault. Although there is some conflict among the witnesses, there was also testimony that, during the intelligence briefing, the group was told that the headquarters of the 48th VC Battalion, and at least two of its companies, would be found in My Lai 4.

There is also some conflict among the witnesses concerning an instruction that houses and property of the inhabitants of the area should be destroyed. While the executive officer of the Task Force testified that no such instruction was ever given, two of the officers who participated in the briefing clearly recall that Lt. Col. Barker told them that physical facilities, buildings, hootches, bunkers, tunnel complexes and livestock were to be destroyed.

Capt. Medina testified that Lt. Col. Barker had given him that instruction while they were conducting an aerial reconnaissance in his helicopter. Capt. Kotouc testified that he also had received such an instruction, but could not recall that it included the filling of wells. Other officers had no recollection concerning such an order. A possible explanation for this discrepancy was the practice of Lt. Col. Barker of separately briefing each of his company commanders on the details of his mission rather than conducting a general briefing for the group.

Since there was no formal briefing on the plan of maneuver for the operation, the details must be pieced together from the testimony of the participants. Generally, the plan called for two air assaults, the first by "C" Company, immediately west of My Lai 4 at 0730 hours, and the second by "B" Company at 0820 hours, in a landing zone 500 meters south of My Lai 1 and about two kilometers east of My Lai 4. Each of the assaults was to be preceded by an artillery preparation and also was to be supported by suppressive fire from helicopter gunships. The plan then called for "C" Company to sweep through My Lai 4 and to move approximately 1,000 meters northeast of My Lai 4 to the vicinity of My Lai 6, and then eastward to the night defensive position. "B" Company, meanwhile, was to move northward through My Lai 1 and join "C" Company at the night defensive position, about 300 meters west of My Lai 1. "A" Company was assigned a blocking role north of the Song Diem Diem River where it could intercept any enemy moving northward to avoid the thrusts of "B" and "C" Companies.

There does not appear to have been any instruction given concerning the handling of civilians who might be encountered during the operation. According to Gen. Westmoreland, an outline of those procedures was required to be included in the briefing for each combat operation.

At the conclusion of the briefing, Lt. Col. Barker took the commanding officers of the rifle companies in his helicopter and pointed out to each of them the areas assigned to their companies and the course of their movements the following day.

#### *"C" Company Briefing*

Capt. Medina testified that, on the evening of March 15, he told the troops that intelligence reports reflected the 48th VC Battalion was located in My Lai 4, and that the Viet Cong would probably outnumber them about two to one. He told them they could expect to find a well-fortified enemy. He also told the troops the assault had been scheduled at 0730 hours rather than the normal daybreak time in order to allow the women and children time to depart the hamlet for their morning marketing. He then told the troops that the hamlet was to be destroyed. He said they had been authorized to burn buildings, destroy food, kill livestock, and close the wells. He told the assembled troops they would have an opportunity to get even with the 48th VC Battalion for the casualties they had suffered from mines, booby traps and sniper fire. He did not give the troops any instruction on the handling of noncombatants who might be found in the hamlet.

Capt. Medina then described the details of the "C" Company assault. The first platoon would sweep the southern sector of the hamlet while the second platoon would move through the northern part. A "clear" element from each platoon would go through and push everybody out of the village as rapidly as possible to an open area east of the village. A "search" element from each platoon would then search houses, bunkers, tunnels, etc. Finally, a "destroy" element would move through, burning the buildings and killing the livestock.

#### **Operation of March 16, 1968**

During the early morning hours of March 16th, "A" Company moved southward, on foot, into its blocking positions on the north bank of the Song Diem Diem River. The Company suffered one killed and two wounded in taking up its positions.

The artillery preparation for the assault by "C" company lasted approximately five minutes. Testimony established that the plan called for the artillery to impact on the landing zone and in the tree line west of the hamlet. Eye witnesses testified that some of the rounds impacted within the hamlet itself.

At 0730 hours, after the artillery preparation had terminated, the first lift of Company "C" was inserted into a landing zone west of My Lai 4. Capt. Medina reported the landing zone as "cold", i.e., he was not receiving fire. Shortly thereafter, however, a helicopter pilot contradicted and said the landing zone was "hot". Gunships delivered suppressive fire into the tree line and the village beyond. The second lift brought in the remaining elements of the Company at 0747 hours and the movement through the village began.

While the troops were landing and moving into the hamlet of My Lai 4, there were several aircraft in the locality. The Command and Control Ship of Lt. Col. Barker was circling the area at about 1,000 feet. Col. Henderson, the Brigade Commander, was circling the area in his Command and Control Helicopter at 1,500 feet. Maj. Gen. Samuel Koster, Commanding General of Americal Division at that time, testified that he probably flew over the assault area at about 0930 hours. In addition, there was a team of three helicopters from the Aero Scout Company, one observation helicopter and two gunships cruising the area to support the ground troops, and to pursue any escaping enemy and to take them under fire if necessary.

A large number of persons, estimated by various witnesses at between 100 and 400, were observed proceeding westward along Route 521 away from the area of My Lai 4 and the surrounding hamlets shortly after the artillery preparation ceased. Col. Henderson's Command and Control Helicopter picked up two military-aged males from this group and took them to LZ Dottie for questioning.

#### *Indications of Noncombatant Casualties*

Testimony established that some of the artillery rounds impacted within My Lai 4 and caused noncombatant casualties. One of the first soldiers to enter the hamlet testified that, in going through the hamlet to the open area to the east, he had observed three bodies which appeared to have been hit by artillery. There was also a statement from a helicopter pilot that gunships at some time before 0830 hours, had made a gun run along Highway 521. He said that when he returned to that locality, he saw approximately 20 to 25 bodies in the area which he believed were killed by the gunships. He further stated that no ground troops had reached that area at the time he had observed the bodies.

The radio operator aboard Col. Henderson's aircraft testified that at some time after 0900 hours he had observed a group of bodies, which appeared to be noncombatants, in a ditch east of My Lai 4. He estimated there were between 12 and 15 bodies at that location, and thought they were peculiar in that they all appeared to be facing in the same direction. He also observed a group of bodies in the paddies south of the hamlet near the road. Another passenger in that helicopter testified that he saw 15 to 20 bodies in the road south of the hamlet.

Col. Henderson stated that he had seen two different groups of bodies, in total about eight, which appeared to be noncombatants in the locality of My Lai 4. He said that he had reported his observation to Gen. Koster at about 0930 hours.

Lt. Hugh C. Thompson (who was a Warrant Officer in March 1968), the pilot of the observation helicopter, testified that he saw approximately 50 bodies in a ditch east of My Lai 4. Lt. Thompson stated that the only person he actually saw killed by a U.S. soldier was a woman who was shot by an American captain.<sup>3</sup>

Other helicopter pilots also observed what they believed to be an unusual number of bodies in and around My Lai 4. One testified that upon his arrival about 1000 hours, he observed a total of about 150

<sup>3</sup> Capt. Medina, both in testimony before this subcommittee and in public statements, has admitted that he was the officer who shot the woman in the scene observed by Lt. Thompson. His explanation of the circumstances surrounding that shooting suggests that it was not a wanton act, but rather a reflexive, self-defensive action by a soldier under the pressures of a combat situation.

bodies, most of which appeared to be women and children, at several locations near the hamlet. The largest group he observed, approximately 75, was in a ditch on the east side. Another pilot testified that he had observed about 25 bodies scattered along the road to the south and another 5 to 10 bodies in a ditch east of the hamlet.

The pilot of Lt. Col. Barker's Command and Control Helicopter landed on the trail south of the hamlet to evacuate a wounded man from "C" Company. He testified that he saw a group of 15 to 20 bodies on the road that borders the southern edge of My Lai 4. He also saw a few bodies north of the village.

Capt. Ernest Medina testified that he observed a total of 20 to 28 bodies in the area south of My Lai 4 at about 1000 hours. Shortly after that observation, Capt. Medina received a radio message from the Task Force Operations Officer directing him to instruct his men that no civilians were to be killed. He testified that he immediately passed that instruction to his platoon leaders and received an acknowledgment from each of them.

It appears that word of civilian casualties reached the Tactical Operations Center (TOC) of Task Force Barker some time before 1000 hours. The sergeant in charge of communications for Task Force Barker testified that he heard a report from a pilot, either in person or by radio, that there were women and children out there, and possibly civilians were being shot. The Intelligence Sergeant, who was also at the TOC, recalls a transmission from Maj. Watke, Commanding Officer of the Aero Scout Company, that the Task Force troops were killing civilians. He believed that the message was relayed to Lt. Col. Barker, who stated that he had heard it. He further recalled that Maj. Watke personally came to the TOC a short time later and talked to the Task Force Barker Operations Officer. One of the Task Force staff officers recalled a report from a pilot about somebody being shot near the road. Each of those witnesses remembers that the operations officer initiated an instruction, by radio, directing the troops to look out for women and children. This apparently was the message received by Capt. Medina, *supra*, and relayed to his subordinates.

#### *Evacuation of Vietnamese Noncombatants by Helicopter*

At some time about 1030 hours, WO Thompson landed his helicopter east of My Lai 4 in the vicinity of U.S. troops. His stated purpose in landing at that place was to induce some Vietnamese women and children to leave a bunker in which he had seen them hiding.

The first soldier who met WO Thompson testified that he was unable to understand him due to the noise of the helicopter. Thompson then approached the lieutenant in charge of the ground troops and asked him if there was any way he could get the people out of the bunker. According to Thompson, his reply "was to the effect 'the only way I could get them out is with a hand grenade', or something of that order." He testified that he couldn't specifically recall his conversation with the lieutenant. He further testified that nobody attempted to prevent him from getting the Vietnamese to come out of the bunker, nor did they attempt to interfere with the helicopter evacuation of those people. The Vietnamese were induced by Thompson to leave the place in which they had been hiding. One of the gunships accompanying him landed, and in two trips evacuated the Vietnamese to a location a few miles away.

Since there have been newspaper stories that Mr. Thompson had ordered his gunner and crew chief to fire on the American troops if they should attempt to interfere with him, he was examined in some detail on that question. He stated that his crew trained the helicopter guns so "they were just covering us on the ground. I didn't want to get caught in a crossfire. I didn't want Charlie to sneak up behind our people and shoot."

Because of several substantial inconsistencies in Thompson's story, and because of his apparent inability to be responsive to certain questions, which sought to elicit clarifying information, the subcommittee found his testimony difficult to evaluate. For example, in an effort to determine the nature of certain instructions allegedly given by Thompson to his crew, and the circumstances under which they were given, the following colloquy took place:

Mr. REDDAN. On that particular occasion, did you have any conversation with your gunner or crew chief prior to setting down?

Lt. THOMPSON. Yes, sir, but I can't remember the exact words of what I said.

Mr. REDDAN. What were they about?

Capt. JOHNSON (Thompson's legal counsel). May we have a moment?

Mr. REDDAN. Yes.

Lt. THOMPSON. I remember telling them to cover me when I got off of the aircraft.

Mr. REDDAN. You told your gunner and crew chief to cover you?

Lt. THOMPSON. Yes.

Mr. REDDAN. For what purpose?

Lt. THOMPSON. If I started getting shot at.

Mr. REDDAN. Who was going to shoot at you? Had you been shot at that morning, at any time?

Lt. THOMPSON. No, sir, I don't believe so, but I hadn't been walking around on the ground either, sir.

Mr. REDDAN. Had you been flying around at shoestring level for sometime before you put down at that particular time?

Lt. THOMPSON. I would say it was about an hour and—I would say yes, sir, I had been flying around for some time.

Mr. REDDAN. Do you know whether anyone had shot at you?

Lt. THOMPSON. I don't think I had been shot at, sir.

\* \* \* \* \*

Mr. REDDAN. All right. Now, coming back to this time you told your gunners to cover you, what is your best recollection of what you told them? Who did you expect to receive fire from, if you expected it at all?

Lt. THOMPSON. I wasn't caring about who was going to shoot, sir.

Mr. REDDAN. Well, you hadn't seen any VC around lately. You had been flying around there at grasstop level all morning, and as far as you know, nobody had shot at you. And



now you were going to put down in that area, and you told your gunner and your crew chief to cover you. Now, I am just trying to understand why you did that?

Lt. THOMPSON. Any time you get out of the aircraft, you want to be covered, sir, over there. Any place you are, in my opinion, is Vietcong's area.

\* \* \* \* \*

Mr. REDDAN. This is three times you have told us this. Now, I want to know if you had any reason to suspect that you required cover because of the presence of enemy forces.

\* \* \* \* \*

Lt. THOMPSON. Yes, sir, Mr. Chairman. I didn't want to be shot by anybody that day, sir.

Mr. REDDAN. That is right.

Lt. THOMPSON. I cannot actually make a statement to the question that you are asking, after reading so much in the newspapers and the magazines, and wondering whether what I would be saying actually came from memory of two years, sir, or whether I had been picking up parts of it out of what I have read, sir.

Mr. REDDAN. Very well. I will ask you specifically. Did you tell your crew, your gunner and your crew chief, to fire on American soldiers if they fired at you.

Lt. THOMPSON. To the best of my memory, I did not tell them that, sir.

\* \* \* \* \*

Mr. REDDAN. Did you expect American troops to fire at you?

Lt. THOMPSON. From where the Americans were and where the enemy was, if there was enemy there, I had been right in the middle of a crossfire, sir.

Mr. HÉBERT. That is not replying to the question Mr. Thompson. Mr. Reddan asked you, did you expect American troops to fire on you.

Lt. THOMPSON. I didn't.

Mr. HÉBERT. You did not expect Americans to fire on you?

Lt. THOMPSON. That's right.

Mr. GUBSER. Did you consider it a possibility?

Mr. HÉBERT. Why would they want to fire on you? You wore their uniform.

Lt. THOMPSON. That is why I don't think an American would shoot another American, sir, in war.

\* \* \* \* \*

Mr. REDDAN. As I understand your testimony, and if I am wrong, please correct me, your testimony is that you had no intention to convey to your gunner and crew chief that you were in fear of harm from American troops, or that in covering you, if necessary, they should shoot Americans?

Lt. THOMPSON. Wait a minute. I didn't follow all of that, sir. I am sorry.



Mr. REDDAN. What I am saying is, as I understand your testimony, you are saying that you did not tell your crew chief and your gunner that they should cover you, and if any American shot at you, they should shoot the Americans?

Lt. THOMPSON. No, sir. I am not saying that I said that.

Mr. REDDAN. And you didn't suggest that?

Lt. THOMPSON. I don't remember what was said, sir.

\* \* \* \* \*

Mr. REDDAN. So was there any reason for you to think that there was a possibility that they might shoot at you now? This is what I am trying to find out. Or whether you said something which has, with the passage of time, gotten out of context and been misconstrued. I am just trying to get back to what you expected your gunner and your crew chief to do that day.

Lt. THOMPSON. I expected them to cover me when I got out of the aircraft.

Mr. REDDAN. Would you have expected them to shoot any American troops?

Lt. THOMPSON. No sir.

Mr. GUBSER. Can I ask one question. You did not order your crew to cover you against Americans?

Lt. THOMPSON. Not to the best of my knowledge, sir.

\* \* \* \* \*

Mr. GUBSER. I concede that there could be a big difference between a statement which might have been misinterpreted, and an order, but I asked you did you give an order, and I think you ought to remember whether you did or not?

Lt. THOMPSON. I did not give an order to shoot Americans, no sir.

\* \* \* \* \*

Mr. GUBSER. Did you specifically give an order to cover you against Americans?

Lt. THOMPSON. To the best of my knowledge I did not, sir.

Mr. Lawrence Colburn, who had been the door gunner on Thompson's helicopter on March 16, 1968, also testified that it was his belief that Thompson wanted to be covered against enemy fire, and that he was not asking to be protected from American troops. His pertinent testimony was as follows:

Mr. REDDAN. What conversations, if any, did you have with Thompson prior to your landing there?

Mr. COLBURN. Well, he told us that he was going to set down the ship and he was going to go over and try to get the people out of the bunker.

Mr. REDDAN. Yes.

Mr. COLBURN. And the crew chief and I stayed around the ship and covered him.

Mr. REDDAN. You stayed on this ship?

Mr. COLBURN. No, we got out of the ship, we took our guns down, and took them out of the ship with us.

Mr. REDDAN. Yes.

Mr. COLBURN. And just stayed within 15 meters of the ship.

Mr. REDDAN. Well, now, you say you covered him. What did you mean by that?

Mr. COLBURN. I covered the pilot. I covered Mr. Thompson.

Mr. REDDAN. What were you protecting him from? You hadn't seen any VC that morning except the one fellow that you missed.

Mr. COLBURN. Well, a lot of times you don't see them. There was a tree line right here, right next to us, and it was a likely area to receive fire from.

Mr. REDDAN. Yes. You were there then to protect the ship and Thompson from the VC?

Mr. COLBURN. Yes.

Mr. REDDAN. Did he tell you to do that? Was that standard operating procedure?

Mr. COLBURN. Yes.

Mr. REDDAN. Standard operating procedure.

Mr. COLBURN. Yes.

Mr. REDDAN. Did he give you any instructions as to what to do?

Mr. COLBURN. He said that if any of the American soldiers opened up on the civilians while he was getting them out of the bunker, that we should shoot them.

Mr. REDDAN. Shoot the Americans?

Mr. COLBURN. Yes, that we should.

Mr. REDDAN. There is no question in your mind now, this is what he told you? He told you to shoot American soldiers?

Mr. COLBURN. He didn't tell us to shoot them. He said we should shoot them. It was understood that what he said, he knew we wouldn't. It wasn't an order.

Mr. REDDAN. What was it?

Mr. COLBURN. He was just expressing that—he was awfully upset, and—he knew that we wouldn't shoot the American soldiers.

Mr. HÉBERT. How do you know he knew that?

Mr. COLBURN. I know Mr. Thompson pretty well, and the crew chief knew him pretty well.

Mr. GUBSER. Is it your impression that he gave you instructions—let's not call it an order.

Mr. COLBURN. No, not even instructions. It was, he was just showing us how he felt about what he thought they had been doing to the civilians.

Mr. GUBSER. Well, obviously two years later you can't directly quote him, but would you paraphrase something which would convey the impression that he gave to you?

Mr. COLBURN. I find that pretty hard to do. I can't.

Mr. GUBSER. Well, in your own mind, what was your impression of what he wanted you to do?

Mr. COLBURN. Cover him.

Mr. GUBSER. Cover him against what?

Mr. COLBURN. Enemy fire.

Mr. GUBSER. Enemy fire. VC fire?

Mr. COLBURN. Yes.

Mr. GUBSER. It was not your impression, then, that he was asking you to protect him from American soldiers?

Mr. COLBURN. No.

Mr. HÉBERT. And any statement made by anybody that Mr. Thompson gave orders to shoot American soldiers would be false?

Mr. COLBURN. Yes.

Mr. HÉBERT. And that your gunner, the chief, the crew chief, I understand is a casualty. He is dead, I understand.

Mr. COLBURN. Yes.

Mr. HÉBERT. You were the only two men that had guns on?

Mr. COLBURN. Yes.

Mr. HÉBERT. And you got out, you and your crew chief got out to cover Mr. Thompson, not against American soldiers, not pointing your guns at the American soldiers on the ground?

Mr. COLBURN. No.

Mr. HÉBERT. You got out to cover him from Viet Cong fire, and not from American fire?

Mr. COLBURN. Yes.

Mr. HÉBERT. Yes, what?

Mr. COLBURN. Yes, we covered him from enemy fire.

Mr. HÉBERT. From enemy fire and not from American fire?

Mr. COLBURN. Not from American fire.

Mr. HÉBERT. And that was never your intention. However, he did say to you, in a general conversation, if an American shoots while I am getting those people out, shoot him?

Mr. COLBURN. He said they should be shot.

Mr. HÉBERT. They should be shot.

Mr. COLBURN. Yes. Just for what they were trying—

Mr. HÉBERT. We are just trying to find out what he said. They should be shot.

Mr. COLBURN. Yes, for what he thought they were doing.

Mr. GUBSER. You are presenting that as a paraphrase?

Mr. COLBURN. Yes.

Mr. REDDAN. What you are saying is like someone says he should be hung for doing that?

Mr. COLBURN. Yes.

Mr. REDDAN. And he said to you "If they shoot these fellas while I am getting them out, they should be shot?"

Mr. COLBURN. Yes.

Mr. REDDAN. Is that what you mean?

Mr. COLBURN. Yes.

Mr. REDDAN. And he wasn't directing you or your crew chief to shoot at them?

Mr. COLBURN. No. And both the crew chief and myself understood that.

Mr. REDDAN. Yes. Did you have any reason to fear that you might be shot by American troops?

Mr. COLBURN. No.

*Report of WO Thompson*

WO Thompson testified that when he returned to LZ Dottie about Noon on March 16, he reported his observations of civilian casualties to his Company Commander, Maj. Frederick Watke. No memorandum was made of that report and the memories of the principals differ as to its details. The details of the report and of Thompson's subsequent interview by Col. Henderson are of critical importance since each of the persons who subsequently received the report has a different recollection of what he was told.

In testimony before the Investigating Subcommittee, Committee on Armed Services, in December 1969, Mr. Thompson did not attempt to give the details of that report. He stated that, "My CO either called me, or I went to see him, I don't remember which it was. I told him to the best of my knowledge basically what I told the General, this was a lot more clear in my mind at that time".

Later in that same testimony he elaborated on his report to this extent:

Mr. HÉBERT. Now you reported to your superior in your own line of duty that you saw those bodies?

Mr. THOMPSON. Yes, sir. I reported that and also the one that I saw the Captain shoot.

Subsequently during that same hearing Mr. Thompson was interrogated about his later report to Col. Henderson. His testimony regarding that interview was no more definite. He testified as follows:

Mr. LENNON. In your mind, the person you learned was Col. Henderson the next day, did you tell him what you told the Subcommittee about seeing someone you identified as a Captain shoot a woman?

Mr. THOMPSON. Yes.

Mr. LENNON. Did you tell him also you saw people, riflemen, shoot men, civilian men? Think carefully about that.

Mr. THOMPSON. Not that I remember, sir.

Mr. LENNON. You don't recall having told the man you subsequently learned was Col. Henderson that you, the helicopter pilot, complained to Col. Henderson about U.S. rifleman shooting Vietnamese men? You don't recall that?

Lt. THOMPSON. I don't remember saying it, sir.

Mr. LENNON. Did you tell him about your apprehension regarding the bodies you saw in a ditch?

Lt. THOMPSON. I can't remember what I told Col. Henderson.

Mr. LENNON. All you can specifically and definitely remember is the incident related allegedly to the injured woman?

Lt. THOMPSON. Yes, sir.

\* \* \* \* \*

In an effort to clarify the substance of the report, the matter was further pursued during Lt. Thompson's testimony before the Special Subcommittee in April 1969. That testimony is as follows:

Mr. REDDAN. When did you first report what you had seen that day to Maj. Watke?

Lt. THOMPSON. I believe it was after we got back off the mission. After I got back from Quang Ngai Hospital, sir.

Mr. REDDAN. Did you make any transmissions in an effort to stop what you thought was wrong out there that day?

Lt. THOMPSON. I am pretty sure I—I don't remember if I called back to any, you know, higher headquarters at the time, because I didn't see anything done that was wrong. I saw the aftermath of what appeared to have been wrong.

Mr. REDDAN. Did you see what has been described as indiscriminate firing?

Lt. THOMPSON. No, sir. \* \* \*

Mr. REDDAN. But you made no complaints that you had observed indiscriminate firing or unnecessary firing?

Lt. THOMPSON. To the best of my knowledge, I didn't, sir.

Mr. LALLY. As best you recall, Mr. Thompson, what did you report to Maj. Watke?

Lt. THOMPSON. I feel that I have, you know, said the same thing, just like, you know, talking to you all, about the ditch, about the bunker.

Mr. LALLY. As well as you recall it, just tell us what you told him?

Lt. THOMPSON. Just told him that I thought something was wrong out there, because I couldn't foresee any way of how the bodies got in the ditch. And it seems like I might have said something like, you know, if it was from, say the artillery, the Vietnamese, you know, have been fighting that way a long time, they are not going to hide in an open, you know, an open ditch.

If they had gotten killed by the artillery, when the GI's come through, we usually don't pile the bodies up and put them in a ditch. We let the Vietnamese, you know, or somebody else, come back in and do that.

And I was just wondering how the bodies got in the ditch. And I feel that I told him, you know, just about like that, sir. But I can't—

Mr. LALLY. Well, Maj. Watke didn't know anything about a ditch. You didn't go in and start talking about a ditch to him. What detail did you give him on what you had seen out there?

Lt. THOMPSON. This is strictly from memory, sir. I don't remember exactly what I told him. The ditch—

Mr. LALLY. As well as you recall?

Lt. THOMPSON. The ditch stands out in my mind. I would believe, and this is strictly from memory that I told him about seeing a captain shoot the woman. The ditch. And the bunker. Getting the people out.

Mr. LALLY. And did you tell him about any infantry officer, or any conversation with an infantry officer?

Lt. THOMPSON. Yes, sir. I say yes. Now, this is something that I can't remember. I mean, I could ask you all, you know, what you said to somebody two years ago and—I can't remember what I told him, sir.

\* \* \* \* \*

MR. LALLY. Mr. Thompson, going back to your complaint to Maj. Watke, did you complain to him about the troops firing indiscriminately?

LT. THOMPSON. At that particular time, sir, if you're saying indiscriminate firing as was—as has been later identified as Capt. Medina, \* \* \* if that's what you're calling indiscriminate—

MR. LALLY. I'm asking you if you complained of indiscriminate firing. Did you use those words, "indiscriminate firing"?

LT. THOMPSON. No, sir, I didn't use those words, because I stay away from big words.

MR. LALLY. What precisely was your complaint? Was it about civilians being killed or was it about indiscriminate firing of troops?

LT. THOMPSON. I'd say it had to be civilians being killed, sir.

MR. LALLY. All right. Now, when you were interviewed by Col. Henderson, what was your statement to Col. Henderson?

LT. THOMPSON. I don't remember my statement to Col. Henderson.

MR. LALLY. As well as you can recall, tell us what you told Col. Henderson.

LT. THOMPSON. More than likely, I told him about seeing the captain shoot, having the conversation on the ground with what I thought, at the time, was a lieutenant, and the ditch, sir.

\* \* \* \* \*

MR. LALLY. But what was it that you complained of to him? Was it indiscriminate firing?

LT. THOMPSON. I didn't use that word, sir.

MR. LALLY. Wild firing?

LT. THOMPSON. I don't believe I—I don't believe I was speaking so much of the firing that went on, because now I can't remember seeing that much firing.

\* \* \* \* \*

MR. LALLY. So that so far as you can recall, you didn't complain to either Maj. Watke or Col. Henderson about indiscriminate firing or wild firing?

LT. THOMPSON. I don't believe I did, sir.

MR. LALLY. Did you ever recall telling Col. Henderson that his troops were like wild men on the ground?

LT. THOMPSON. No, sir.

Maj. Watke's recollection of the report differs from that of Mr. Thompson. He remembered that Thompson was upset over the ground troops "reconning by fire", while, in Thompson's opinion, "the enemy was not firing at the ground troops with any intensity whatsoever. He said that Thompson told him "he was not knowingly receiving hostile fire". He stated that Thompson told him he had observed a group of women and children in front of the advancing American troops and he landed and "He asked them to cease the firing in that area so that they would no longer endanger these people". Thompson

told him the ground commander refused to alter his method of advancing. Whereupon Thompson told the ground officer he would move the people to safety himself and that if he was fired upon while doing so, he would instruct his guns to shoot back. Thompson told him that he then proceeded to bring the Vietnamese from their place of hiding and had one of his gunships land to evacuate them to a safer location. Maj. Watke also recalled that Thompson reported having seen many bodies of civilians, which he believed had been killed by small arms fire, and that he had landed and taken a child from that group of bodies to the hospital. He said that Thompson did not have any great concern about VC in that area. During the time Thompson was relating those observations, the aircraft commanders of his gunships were present and confirmed what Thompson had done, according to Maj. Watke.

### *Reports of Noncombatant Casualties*

Col. Henderson's oral report to Maj. Gen. Koster, Commanding General of the Americal Division, at about 0930 hours on March 16th, appears to have been the first official notification that some non-combatants had been killed in the operation. At that time Col. Henderson reported having seen six or eight civilian dead.

Maj. Watke stated that shortly after receiving the complaint from Thompson, he went to Lt. Col. Barker and repeated the story to him. He said his primary concern was the confrontation between Thompson and the ground troops, and that he wanted to apprise Lt. Col. Barker of that confrontation. He said Lt. Col. Barker issued a radio order to the Task Force Operations Officer, who was in a helicopter over the troops, to have the troops cease their firing. He said Lt. Col. Barker left the TOC, boarded a helicopter, and went into the field. Within a reasonable period of time, either that day or the next, Lt. Col. Barker told Maj. Watke that he had been unable to identify the officer or troops whom Thompson had talked to in the assault area.

Col. Henderson said that, on the afternoon of March 16th, he visited Lt. Col. Barker and told him of the report he had made to the Division Commander of six or eight civilians killed, and asked what reports had been received from the companies on civilian dead. He said Lt. Col. Barker then ordered the companies to report on civilian casualties.

At about 1600 hours on March 16th, Capt. Medina received a call from the Task Force Operations officer asking for a report on the number of civilians killed in My Lai 4. He said he reported approximately 20 to 28. He was then ordered to return to the village to make a thorough check on the number of civilians killed. Medina objected to the order because of the lateness of the hour and the need to establish a night defensive position. His objections were overruled by the Operations Officer who repeated the order. At that point "Sabre-6", the radio code of Gen. Koster, who was airborne, in a helicopter, cut into the radio transmission and asked how many killed the company was reporting. When told 28, Sabre-6 said that sounded about right and countermanded the order for a return of "C" Company to the hamlet.<sup>4</sup> There was testimony which indicated that the order to return to My Lai 4

<sup>4</sup> If an examination of the bodies in the hamlet had been desired, elements of both "C" Company and "A" Company came close to the hamlet on March 17 and could have made an inspection. Neither Company was ordered to go into the hamlet on that day.

originated with Col. Henderson and was being relayed by Task Force Headquarters to Medina. Col. Henderson, however, denied that he gave the order on March 16th. He believed that he had issued the order two days later. Gen. Koster recalled countermanding the order, but could not specifically fix the event as having occurred on March 16th. Because of the number of witnesses who either overheard the transmission or had participated in it, it appears conclusively established that the transmission did, in fact, occur on March 16th rather than some later date.

The Daily Journal of Task Force Barker for March 16, 1968, entry #39 at 1555 hours, reflects that "Co. 'B' reported that none of VC body count reported by his unit were women and children. Co. 'C' reports that approximately 10 to 11 women and children were killed either by arty. or gunships. These were not included in the body count." It is noted that this figure differs substantially from the 20 to 28 which Capt. Medina testified he had reported to Task Force Headquarters. This number is also at variance with the report of 20 which Col. Henderson claims to have received from the Task Force later that evening. The Task Force Journal contained a further notation that 11th Brigade had been notified of this item. The 11th Brigade Daily Journal, however, does not contain any notation of that report, nor of the report which Col. Henderson said he had received.

Col. Henderson stated that, at some time during the evening of the 16th, he received the report of 20 civilian casualties from Task Force Barker. He said he then ordered Lt. Col. Barker to determine how those people had been killed. Immediately after receiving the report from Task Force Barker, Col. Henderson said he called Gen. Koster and gave him the revised figure. Col. Henderson stated that Gen. Koster demanded a report on the manner in which those people had been killed.

At about 2200 hours on March 16th, Maj. Watke located Lt. Col. John Holladay, Commanding Officer of the 123rd Aviation Battalion and reported Thompson's allegation to him. As Lt. Col. Holladay remembers it, it was a story of "a great many civilians being killed by the ground troops that day." He also recalled Thompson's evacuation of 12 civilians from a cave in the path of the advance of an American force. He also recalled that, according to Maj. Watke, Thompson had threatened the advancing American forces that "he was going to shoot them . . . if they didn't stop their advance towards those 12 people. They elected to advance no further."

On the morning of March 17th at about 0730 hours, Lt. Col. Holladay and Maj. Watke called on Brig. Gen. George Young, the Assistant Division Commander for Maneuver, in his office at Division Headquarters at Chu Lai. Gen. Young recalls Maj. Watke's report as:

(He) told me that he had received a report from a helicopter pilot—wherein this pilot had observed noncombatant civilians caught in a crossfire as friendly forces engaged a small enemy force. And this pilot had taken two actions. First, he had landed his helicopter in the vicinity of those noncombatants, and he had attempted to protect them to the very best of his ability. Secondly, he had departed from that area to the area where the ground forces were advancing and—he had



explained to the commander of the friendly ground forces the exact location of these noncombatants, and he had further told the commander that, if he continued to fire in the direction where these noncombatants were in the crossfire, that he was going to keep his own weapons on those friendly ground forces and, if necessary, he would have his people firing on the ground forces.—I was not advised that there had been any noncombatants killed or wounded. I was advised that they were in danger.

According to Lt. Col. Holladay, the report furnished to Gen. Young was substantially the same as Maj. Watke had given him the previous evening. He said that there was mention that a large number of civilians had been killed by ground forces. According to Lt. Col. Holladay, the General remarked about the killing of civilians, "That's murder". Gen. Young in sworn testimony denied having made such a comment. The General, according to Lt. Col. Holladay, was more concerned with the confrontation between American forces than about the killing of civilians. According to Lt. Col. Holladay, later that same day, or possibly on the following day, Gen. Young told him that he had told Gen. Koster about "that business".

Lt. Col. Holladay, on the afternoon of the 17th, called on the Division Chief of Staff, Col. Parson. He told him of his meeting with Gen. Young and of the substance of the allegations. It was Lt. Col. Holladay's belief that this was the first time Col. Parson had heard the allegation, as he was very much shaken by the news. According to Lt. Col. Holladay, Col. Parson also reacted by saying "That is murder".

Gen. Koster testified that, about noon on March 17th, Gen. Young reported to him that a helicopter pilot had reported "indiscriminate firing". He said the pilot had landed in order to evacuate some civilians who he believed were in danger because they were in the field of fire of U.S. troops who were doing some unnecessary firing. As a result of his evacuation effort, there had been a confrontation between the pilot and an individual on the ground.

Gen. Koster stated "there was absolutely nothing, to the best of my recollection, about indiscriminate killing". He said there were two features to the allegations, the confrontation, and the unnecessary firing which endangered civilians. He denied that there was any mention of civilian casualties. Gen. Koster said that, as a result of the allegation, he directed Gen. Young to have the matter investigated.

Gen. Koster further testified that about that same time he received a report from Col. Henderson of approximately 20 civilian casualties during the My Lai 4 operation. He said he requested a breakdown of those casualties and a determination of what had caused them.

On the morning of March 18, in accordance with instructions issued by Gen. Young, a meeting was held in Lt. Col. Barker's trailer at LZ Dottie. That meeting was attended by Gen. Young, Col. Henderson, Lt. Cols. Holladay and Barker, and Maj. Watke. There is conflict in the testimony of the participants as to the length of the meeting and the substance of the discussion. Lt. Col. Holladay and Maj. Watke stated that Watke related the complete story, including the pilot's report of seeing bodies and of his confrontation with the ground officer. Lt. Col. Holladay estimated that the meeting lasted about 45

minutes and that, at its conclusion, Gen. Young directed Col. Henderson to investigate the report. Gen. Young, on the other hand, recalls that he left the meeting after only 5 or 10 minutes, and that there was no mention of civilians having been killed at My Lai 4. He did corroborate the recollections of Lt. Col. Holladay and Maj. Watke about directing Col. Henderson to conduct an investigation. Col. Henderson's version of the meeting differs from that of the other participants. According to his testimony, he talked to WO Thompson before meeting with the other officers. He said Thompson told him that the ground troops "were like a bunch of wild men"; that he had seen a captain shoot a wounded woman; and that he had seen U.S. troops firing into "houses, trees and bunkers in which there was a group of civilians. He said Thompson did not say anything about any large group of people. Henderson said Thompson did not mention anything about a "confrontation" with a ground officer. After talking with Thompson for about 5 to 10 minutes, Henderson said he then met with Gen. Young, Lt. Cols. Holladay and Barker, and "maybe Maj. Watke". His recollection of the substance of the conversation at that meeting is vague, except there was a discussion of "this machine gun confrontation, to where a pilot had had one of his gunners point his machine gun at some of the troops on the ground to keep them from shooting into the area that had some civilians in it". He failed to associate that confrontation incident with Thompson. Henderson's recollection differs from that of the other participants with respect to his being instructed to investigate the incident. While all others agree he was directed to investigate, he stated he wasn't sure whether he initiated it on his own volition or whether Gen. Young had told him to do so. He appears to believe that he initiated the inquiry without suggestion.

#### *Report through Chaplain Channels*

Concurrent with the report of the incident which was moving through command channels, the Thompson allegation was being reported to chaplains assigned to Americal Division.

On the afternoon of March 16th, WO Thompson called on Capt. Carl Creswell, the Division Artillery Chaplain, and told him of the mission he had flown that day. According to Creswell, Thompson was upset. He said there had been a lot of civilian casualties which he believed were caused by small arms fire. He also told of having evacuated several civilians from the fire zone, and of his confrontation with an infantry officer on the ground, during which he had ordered his gunner to tell the officer to stand back while he evacuated people. Chaplain Creswell said he advised Thompson to advise his commander of his observations and to request an investigation.

Chaplain Creswell immediately passed Thompson's allegation to Col. Francis Lewis, the Division Chaplain. Chaplain Lewis testified that Creswell told him of a report from an aviator that there had been unnecessary firing in a village, and that women and children had been killed unnecessarily as a result of it.

Shortly after receiving the report from Chaplain Creswell, Chaplain Lewis testified that he related the allegation to Col. Trexler, the Division G-2, and probably Col. Balmer, the Division G-3, and told them he believed it should be investigated. Chaplain Lewis said

he also reported the allegation to Col. Qualls, the Division G-1, but believes that officer confused the incident with another matter which was being investigated by the Division at that time. He also reported Thompson's allegation to Col. Parson, the Division Chief of Staff. He said Col. Parson told him, on a couple of occasions, that an investigation of the allegation was proceeding.

## THE ALLEGATION AND THE ARMY'S INVESTIGATION

### Col. Henderson's Inquiry

Col. Henderson recalled that he interviewed WO Thompson *before* his meeting with Gen. Young and the other officers on March 18th, and learned of his allegation at that time. Maj. Watke said that it was *after* the meeting at which he related to Gen. Young, Col. Henderson and Lt. Col. Barker the allegations of Thompson, that Col. Henderson asked to see Thompson.

Thompson and Henderson agree on only one item discussed during their meeting, that is the incident of the captain shooting the woman. Thompson testified that he also told Henderson of seeing the bodies of civilians in the ditch and questioning how they got there, and about the incident at the bunker where civilians were hiding, and his conversation with the ground officer at that point. Col. Henderson, on the other hand, recalled that Thompson told him the ground troops were like wild men and that a leader of the ground troops was having his squad fire into houses, trees and bushes which concealed civilians.

Immediately after interviewing Thompson, Col. Henderson, together with some of his staff officers, helicoptered to Capt. Medina's command post. Henderson and Medina agree that Henderson first asked about the woman that Medina had shot, and then asked whether the troops of "C" Company were firing wildly and whether they possibly had killed civilians. They also agree that Medina explained the circumstances surrounding the first charge and denied the second. There was some discussion regarding the number of civilians killed during the operation. According to Medina, the interview then terminated and the command group recalled their helicopter and left. Col. Henderson said that he ordered Medina to return to My Lai 4 and examine the bodies to determine how many had been killed and what the cause of their death had been. Medina denies that he was given such an order at that time. Lt. Col. Blackledge, the 11th Brigade Intelligence Officer who accompanied Col. Henderson to Medina's command post, had no recollection of such an order. All testimony indicated that the order to return to the village, and the countermanding of the order, occurred on March 16th, rather than on March 18th.

At LZ Dottie, on March 18th, Col. Henderson addressed a group of "C" Company soldiers as they left their helicopter after having been extracted from their field position. He asked whether any of them participated in, or observed any shooting of civilians. When he received no response, he addressed his question specifically to several individuals in the group. When all answers were negative, he dismissed the group.

Col. Henderson said that he had asked Maj. Glen Gibson, the Commanding Officer of the 174th Aviation Battalion, who had supplied the gunships, to ask his pilots whether any of them had observed any

wild shooting. He said that on the following day he received a negative report from Maj. Gibson. Maj. Gibson, however, in testimony before the Subcommittee, denied that he had received any inquiry from Col. Henderson or that he had furnished any report to him.

Col. Henderson stated that on March 19th, he orally reported to Gen. Young the results of his inquiries, and his belief that they failed to support the allegation of wild or indiscriminate firing. He said Gen. Young then directed him to make his report to Gen. Koster. Gen. Young testified that it was not until about March 28th that he learned the results of Col. Henderson's inquiry.

On March 20th, Col. Henderson reported the results of his inquiry to Gen. Koster. He stated that at that time, he furnished the General with a 3 x 5 card, prepared by Lt. Col. Barker, which reported how each of the 20 civilians had been killed. That report reflected that about 12 were killed by artillery and the balance by gunship fire. He recalled that Gen. Koster said the number of civilian casualties was "unacceptable". Col. Henderson said he told the General he believed that some of the civilians had been killed by small arms fire when caught in a cross-fire. He told Gen. Koster that the only allegation which could be substantiated was Medina shooting the woman, but he believed that in the circumstances no further action was warranted in that case. He reported that he believed no formal investigation of the allegation was required. He said that the General told him he wished to discuss the matter further with Gen. Young.

#### *Report of Investigation*

Col. Henderson stated that about two weeks later he was advised by Gen. Young that Gen. Koster wanted him to reduce his report to writing. He said that, as a result of that instruction, he prepared a four or five-page written report and submitted it to Col. Parson, the Division Chief of Staff.

No copy of the written report of investigation described by Col. Henderson could be found either at Brigade or Division headquarters during searches in 1969 and 1970. There is, however, some evidence which tends to support his claim that such a report was prepared. Capt. James Henderson stated that he had seen a letter from Col. Henderson to Division concerning the Thompson report. Capt. Henderson further recalled that the April 24, 1968 Henderson report was not the item he had seen in Vietnam. He estimated that he had seen that letter about 10 days after the operations. Sgt. Ray Kirkpatrick, the Brigade Operations Sergeant, testified that he had been requested, about April 1, 1968, to furnish a typist to type a report of the My Lai incident which he believed had been prepared by Col. Robert B. Luper, Commanding Officer, 6th Battalion, 11th Artillery, and Maj. Robert W. McKnight, the 11th Brigade S3 Operations Officer. While he didn't read the body of the report, he did look at its cover sheet. He testified that the April 24th report prepared by Col. Henderson did not appear to be the same one that had been prepared by his typist.

#### *Vietnamese Reports of Civilian Casualties*

Within a few days of the assault on My Lai 4, agencies of the Government of the Republic of Vietnam began receiving reports which indicated atrocities against residents of the Son My Village.

The Census Grievance Committee<sup>5</sup> Chief at Quang Ngai received a report from one of his cadremen, dated March 18th. That report alleged that on March 15 (sic) allied forces conducted an operation against Tu Cong Hamlet (the hamlet containing the subhamlet My Lai 4). It further alleged that 320 people were killed at Thuan Yen (My Lai 4) and Binh Dong (My Lai 5) subhamlets.

The Chief of Son My Village<sup>6</sup> submitted a report to the Chief of Son Tinh District on March 22nd. That report alleged that an operation on March 16th at Tu Cong and Co Luy Hamlets of Son My Village resulted in 570 civilian casualties, 480 at Tu Cong, and that 90 percent of the houses, animals and property were destroyed in those hamlets.

On March 28th, the Chief of Son Tinh District advised the Chief of Quang Ngai Province that on March 19th (sic) an element of U.S. forces conducted an operation at Tu Cong Hamlet (coordinates 721795, Son My Village). He continued that, in responding to VC fire, U.S. troops used intensive firepower and inflicted injuries on a number of hamlet residents. In his observations he noted that the casualties were unavoidable, but that the incident offered the enemy a propaganda opportunity to undermine the prestige of Republic of Vietnam Armed Forces and to frustrate the Government's rural pacification effort.

The Son Tinh District Chief submitted another report to the Quang Ngai Province Chief, dated April 11, 1968. In this report he stated that, during an American Army operation at Tu Cong and Co Luy Hamlets on March 16th, 490 people were assembled, shot and killed. In his comments he stated that:

Although the VC cannot be held blameless for their actions in the 16 March 1968 operation, the Americans in anger killed too many civilians. \* \* \* Really an atrocious attitude if it cannot be called an act of insane violence. Request you intervene on behalf of the people.

The Intelligence Officer of the 2nd ARVN Division, in a memorandum to the Commanding General of that Division, dated 12 April, described a VC propaganda leaflet which alleged that an American unit assembled, shot and killed 500 people at Son My (Son Tinh) on March 15th (sic). He stated that the Son Tinh District Chief confirmed that on March 16th a U.S. unit, after assaulting the hamlet, assembled, shot and killed over 400 people at Tu Cong hamlet and 90 people at Co Luy. A handwritten marginal notation of the Commanding General directed "Quang Ngai Sector review this investigation. If there is nothing to it, have the District rectify report—if it is true, linkup with the American Division to have this stopped."

The Vietnamese officials who prepared those reports stated that the reports were based upon hearsay obtained from Son My villagers rather than upon investigation. Despite the specific allegations of the 1968 reports, those officials in 1970 tended to dismiss the allegation as largely VC propaganda.

<sup>5</sup> A Vietnamese Government Agency which compiled census data and received citizen complaints concerning government operations.

<sup>6</sup> A village is the lowest administrative unit in the Vietnamese Government being subordinate to a district, which, in turn, is subordinate to a province.

*Knowledge of U.S. Advisory Teams and Their Reactions*

U.S. Advisory teams, composed of civilian and military personnel, were collocated with the Vietnamese District Headquarters at Son Tinh and the Province Headquarters at Quang Ngai City. There was also an advisory team collocated with the Headquarters of 2nd ARVN Division at Quang Ngai. Those advisory teams were independent of the U.S. military units, which were located in the area and had separate reporting channels to MACV headquarters at Saigon.

There is considerable evidence that members of the advisory teams were officially notified by their Vietnamese counterparts of the atrocity allegations resulting from the Task Force Barker operation of March 16, 1968.

The April 11th report of the Son Tinh District Chief to the Quang Ngai Province Chief, in its distribution notation, reflected that a copy had been forwarded to "MACV, Quang Ngai Sector", and that a courtesy copy was forwarded to "the Major, U.S. Advisor, Son Tinh District". An examination of the files of those advisory teams in early 1970 failed to disclose any copies of the report or any reference to it. This Subcommittee, however, heard testimony and examined documentary evidence which established that both advisory teams had knowledge of that report, had copies of it, and had taken some limited action as a result of it.

In testimony before this Subcommittee, Mr. Angel Rodriguez, who had been a captain, U.S. Army and Assistant District Advisor at Son Tinh in April 1968, stated that he had received a letter from the Province Advisory Team Headquarters, which enclosed a copy of the April 11th report of the Son Tinh District Chief, and which requested him to look into the matter. He discussed the allegation with the District Chief and asked what action he desired. He said that, since troops would be required to go back into the locality, and since the Chief had more important matters at the time, it was agreed that nothing should be done. He typed and signed a document, captioned "Statement", dated April 14, 1968, which incorporates the allegations and the Chief's views. He said that he then sent his statement to the Province Advisory Headquarters. He further testified that, upon the return of Maj. David Gavin, the Senior District Advisor, from leave, he discussed the matter with him. The District Chief also claimed to have discussed both his reports, of March 28th and April 11th, with Maj. Gavin, and to have furnished him a copy of the April 11th report. Lt. Col. Gavin,<sup>7</sup> during an interview by the Subcommittee staff, stated that he didn't know anything about a report from the District Chief in which it was alleged that Americans caused civilian casualties at My Lai. He also denied that he, or any of his staff, had submitted any reports on those allegations.

The Senior Province Advisor, Mr. James May, a State Department Foreign Service Officer, testified that he had never heard of any alleged atrocity involving American forces at My Lai. He specifically denied that his deputy told him of the allegations received through Census Grievance channels, and he denied having been informed that Americal Division was conducting an investigation of such allegations.

<sup>7</sup> Maj. Gavin had been promoted to Lt. Col. in the intervening period.

Col. Khien, the Vietnamese Chief of Quang Ngai Province, stated that he had discussed the April 11th report from the District Chief with Mr. May and his deputy, Lt. Col. William Guinn. He also said that in June 1968, he had directed an operation into Son My to investigate the allegation of atrocities at My Lai 4. He said that operation was diverted on June 13th due to the crash of Lt. Col. Barker's helicopter. He said that he had notified both Mr. May and Lt. Col. Guinn of the purpose of that operation.

Lt. Col. Guinn, who was Deputy Province Advisor in 1968, testified that some time in March 1968, Mr. May's secretary furnished him with a translation of a Census Grievance report which stated that 1,200 to 1,500 people had been killed by American forces, artillery and bombing. He said the report identified the village and included its map coordinates. After discussing that report with his superior, Mr. May, he visited Col. Henderson and told him of the report and asked whether he had any troops operating in the area. He stated that Col. Henderson answered in the negative, but said he would look into it.

Shortly thereafter, in late March or early April, Lt. Col. Guinn learned that Americal Division was conducting an investigation of the operation of Task Force Barker. That information was furnished by Lt. Col. Anistranski, the G-5 Civil Affairs Staff Officer of Americal Division. Lt. Col. Guinn believed that Mr. May was present at the time he learned of the investigation.

Lt. Col. Guinn denied that he had seen the April 11th report of the District Chief, or any of the other Vietnamese reports. He also said that the Census Grievance report he had received was not identical with the March 18th document in evidence before the Subcommittee.

There was testimony that Lt. Col. Guinn, at a briefing for the U.S. Advisory Team for 2nd ARVN Division, reported that Americans had allegedly killed 500 civilians in the March 16th operation. The witness recalled that Lt. Col. Guinn was reading from Capt. Rodriguez's statement at that briefing. One of the advisors to 2nd ARVN Division testified that, after the briefing, he discussed the allegation with Lt. Col. Guinn, who said that he was going to obtain additional information on the subject and would report the matter.

Another member of the Advisory Team attached to 2nd ARVN Division testified that Lt. Col. Guinn told him of an allegation that American soldiers had killed Vietnamese civilians. He said Lt. Col. Guinn said he had received the information either from a subordinate in his advisory chain or from a Vietnamese counterpart. That same advisor saw a script of a VC radio broadcast which contained similar allegations.

Brig. Gen. Young, Assistant Division Commander, also identified Lt. Col. Guinn as a source of information about American soldiers committing war crimes in the My Lai area. He said Guinn told him the information had come either from the Village or the District Chief.

#### *Colonel Henderson's Report of April 24, 1968*

Mr. Robert Blackledge, a retired Lt. Col. who had been 11th Brigade Intelligence Officer, testified that, about mid-April 1968, he had received two reports from intelligence sources that VC propaganda was claiming that American troops had killed hundreds of people in



the Son My area on March 16th. He testified that, since the time and place of the alleged incident coincided with the Task Force Barker operation, he brought the documents to the attention of Col. Henderson. He said he was told by the Colonel that Division was aware of the allegation and was looking into it, and that Vietnamese authorities were being asked to look into it.

At about that same time, according to Col. Henderson, he met with the Commanding General of the 2nd ARVN Division, members of his staff and members of the U.S. Advisory Team, to discuss the allegation that U.S. troops had killed Vietnamese civilians during the March 16th operation. According to one of the participants in that meeting, the allegation was treated as VC propaganda or rumor. During a Subcommittee staff interview, Col. Henderson stated that he also discussed that allegation with Col. Khien, the Chief of Quang Ngai Province, and that either Mr. May or Col. Guinn was present during that discussion. At neither of these meetings did Col. Henderson make mention of his earlier investigation into Thompson's report on the March 16th operation.

It appears that Americal Division Headquarters had also received copies of the April 11th report of the Son Tinh District Chief and of the April 14th statement of Capt. Rogriguez, the Assistant District Advisor.<sup>8</sup> The 11th Brigade Intelligence Sergeant testified that he was given a letter addressed to Col. Henderson from Gen. Koster which enclosed copies of those documents. The letter directed Col. Henderson to conduct an investigation of the allegation contained therein. The sergeant further testified that he was given a longhand draft reply prepared by Col. Henderson, and instructed to have the reply typed. He identified the two-page report, dated April 24th, as the reply which was typed by one of his clerks.

The report, after referring to its Enclosure 1 (the April 14 Rodriguez statement), briefly described the action of March 16th. It reported that 20 noncombatants were killed and concluded that their deaths resulted when they were inadvertently caught in preparatory fire and crossfires. It further concluded that no civilians were assembled and shot by U.S. troops. The report does not mention the allegations of WO Thompson, nor does it mention Col. Henderson's prior investigation of that allegation.

After the report was typed, it was placed in a double envelope and addressed "For Eyes of Commanding General Only". The sergeant was instructed to treat the report as sensitive correspondence. There is some question whether he was told to conceal the Brigade copy or whether he did so voluntarily. In any event, he kept the copy in a folder in his desk drawer rather than in the classified files of the Brigade since "I wanted to keep it out of the files where anybody could see it".

In 1969 a search of Division and Brigade files failed to disclose any copy of Col. Henderson's report. Subsequently, the only copy known to exist was found in the desk of the Brigade Intelligence Sergeant who had received it from his predecessor, under whose direction it had been typed.

<sup>8</sup> In 1969 and 1970 searchers of Americal Division files failed to disclose a trace of either of those documents.



Gen. Koster testified that he discussed the report with Gen. Young, Col. Parson and Col. Henderson. Lt. Col. Holladay testified that the report had been shown to him by Col. Parson, Division Chief of Staff. Lt. Col. Holladay testified that, after reading it, he muttered an obscenity as an indication of his belief that the report did not address the allegations.

#### *Report of "Formal Investigation"*

Col. Henderson stated that, about two weeks after he submitted the April 24th report, Gen. Young told him that Gen. Koster desired a formal investigation of the allegation. Henderson said that he nominated Lt. Col. Frank Barker, who at the time was Executive Officer, 11th Brigade, to conduct the investigation. He further testified that he saw a completed report of the investigation, about three or four pages in length with about 15 or 20 statements of witnesses attached.

Gen. Koster corroborated Col. Henderson concerning the order for a formal investigation and the report of Lt. Col. Barker. His account of the size of the report and its enclosures is strikingly similar to the description furnished by Col. Henderson.

Except for the statements of Gen. Koster and Col. Henderson, there is not a shred of evidence to support the claim that an investigation was conducted by Lt. Col. Barker. Each of the witnesses identified by Koster and Henderson as having furnished signed statements, which they claim were attached to the report, has denied that he was ever interviewed by Lt. Col. Barker or that he supplied a signed or sworn statement to any person. None of the persons who was interviewed by the Subcommittee staff, or who testified at the Subcommittee's formal hearings, ever suspected that Lt. Col. Barker had conducted an investigation. No trace of such a report could be found in the Brigade or Division files. According to Col. Henderson, an order appointing Lt. Col. Barker as investigating officer should have been issued by Division Headquarters. No such order has ever been located. On the basis of the evidence, the Barker investigation and his report appear to be a figment of the imagination of those officers. Inadequate though it might have been, the only written report of investigation, which has ever been located, was the April 24th report of Col. Henderson. Even Col. Henderson admitted that the April 24th report could not be considered as an adequate report of investigation.

There is not even a suggestion that any further attention was given the matter after April 1968. It appears that no further action was taken until after the Department of the Army's investigation began in April 1969.

#### **The Unexplainable Failure of the Reporting Procedures**

Headquarters, Military Assistance Command, Vietnam (MACV), had taken elaborate precautions to insure that military personnel assigned to duty in the area would comply with the rules of land warfare; the Geneva Conventions, concerning the handling of prisoners and noncombatants; and the Rules of Engagement. Its principal directive, concerning war crimes, was MACV Directive 20-4, which provided, in pertinent part, that "It is the responsibility of all military personnel having knowledge or receiving a report of an incident or an act thought to be a war crime to make such incident known to his commanding officer as soon as practicable". It further

required commanders receiving reports of probable war crimes to report the fact to the MACV Staff Judge Advocate as soon as practicable. That Directive was reinforced by another, #27-5, defining war crimes and furnishing examples of conduct constituting war crimes. In addition to those, and numerous other directives on the subject, Gen. Westmoreland frequently reiterated his concern for the avoidance of civilian casualties. During his testimony before the Subcommittee, he furnished copies of statements he had made at a press conference in 1966 and at a Commanders' conference in December 1967. As late as February 1968, a message from Gen. Kerwin, Chief of Staff, MACV, directed that "all known, suspected or alleged war crimes or atrocities committed by or against U.S. personnel will be investigated in accordance with MACV Directive #20-4".

Gen. Westmoreland testified that the intent of those directives and instructions was that any allegation or evidence should be reported through the chain of command. He further stated that it was intended that intermediate commanders and headquarters should not have any discretion in reporting allegations to MACV. Despite the number and clarity of the Directives and the intent to remove all discretion in reporting allegations to MACV, the testimony disclosed an incredible breakdown in the reporting of the allegation of a possible war crime in this situation.

There were three different entities which had received, from independent sources, allegations of atrocities committed by U.S. troops in Son My on March 16th. Americal Division was alerted to the possibility of an atrocity by the allegations of WO Thompson on March 16, 1968. The record reflects that his allegations were reported through his Company and Battalion Commanders to the Division Chief of Staff, an Assistant Division Commander and the Commanding General of the Division. It had also been reported to the Task Force Commander and the Commander of 11th Brigade. To that point, the allegation had been transmitted in accordance with the Directive. Concurrently, the allegation had been reported to the Chaplain for Division Artillery and the Division Chaplain, who also reported the allegation to the Division Chief of Staff, as well as the G-3 (Operations) Staff Officer, and possibly the G-2 (Intelligence) Staff Officer. The G-5 (Civil Affairs) Staff Officer, in his dealing with several persons, clearly demonstrated that he too had official knowledge that Americal Division was conducting an investigation of the allegation. Testimony established that the Division Staff Judge Advocate, an officer who should have been consulted, was never informed of the allegation or its investigation.

A conspicuous and intriguing fact in all of the above-described reports is that none of them was reduced to writing or, if they were, no evidence of written reports could be located in searches of unit files conducted during 1969 and 1970.

Maj. Gen. Koster, the Commanding General of Americal Division, should have reported the allegation to Third Marine Amphibious Force Headquarters and to Headquarters, U.S. Army Vietnam. There is no evidence to indicate that he formally reported to either of these Headquarters. He testified, however, that he had informed Gen. Cushman, the Commanding General at III MAF, or his Deputy, or mem-

bers of his staff that he had an allegation under investigation. Gen. Cushman testified that the matter had never come to his attention. When interrogated about his failure to report the incident, Gen. Koster said that he believed that, since the investigation demonstrated his troops were not at fault, he had no obligation to report the allegation to higher headquarters.

Testimony established that, by April 11th at the latest, the U.S. Advisory Teams at both District and Province Headquarters were aware of a complaint by the Son Tinh District Chief that a U.S. unit, on March 16th, had assembled and shot more than 400 persons at Tu Cong Hamlet (which includes the subhamlet Thuan Yen or My Lai 4), and 90 persons at Co Luy Hamlet. Testimony further disclosed that there was correspondence between the teams relative to the report and that the District Advisor was directed by the Province Advisory Team to interview the complainant. It further established that the Assistant District Advisor conducted such an interview and prepared a statement. In addition to that complaint of the District Chief, the Province Advisory Team had received another similar allegation from an independent source.

If prescribed reporting procedures had been followed, those allegations should have been reported by the Advisory Teams to the Civil Operations and Revolutionary Development Staff (COARDS) Deputy, and to Gen. Cushman at Third Marine Amphibious Headquarters. Searches of the files of those units in 1969 and 1970 failed to locate any evidence to establish that the report had ever gone beyond the Province Advisory Team Headquarters.

Testimony of several of the officers assigned to the Advisory Team at 2nd ARVN Division Headquarters established that allegations of civilian killings during the March 16th operation had come to their attention in April 1968. They had received reports from both 2nd ARVN Division Staff and the U.S. Province Advisory Team. This unit had a third independent reporting channel to MACV. Apparently that channel failed also, since no evidence could be located which would establish that any atrocity report ever surfaced at I Corps Headquarters or at MACV.

The Subcommittee was unable to understand how all of those channels could have failed to surface any report of the allegations. An explanation was sought from Gen. Westmoreland; but, as the following testimony reflects, he was unable to furnish an answer:

Mr. HÉBERT. Thank you very much, General. There are four areas I would like to ask you about before we proceed with the questions by the other members of the Committee.

Number one, of course, is a very obvious question. You were in Vietnam in command of our troops there, wearing three hats as you have testified here, and you never heard anything at all about anything untoward at My Lai 4 during your time in-country?

Gen. WESTMORELAND. I heard nothing suggesting any irregularities. The only report that I received was the operational report that I made reference to in my prepared statement.

\* \* \* \* \*

Mr. HÉBERT. Now, when is the first time you heard about these allegations?

Gen. WESTMORELAND. After the Ridenhour letter, which is in my prepared statement—the date of his letter was 29 March, and I received a verbal report that such a letter had been received several weeks later from a member of my staff, Gen. Milton, my secretary of the general staff.

He told me that a letter had come in referring to Pinkville. I had never heard of Pinkville. And we finally discovered that Pinkville was the nickname that soldiers had given because of the color on the map of the My Lai village, or I think it was specifically My Lai 4.

That was the first I heard of it, which was almost a year later.

Mr. HÉBERT. Again it becomes the concern of the Committee and it is hard for us to realize that something of this nature did not surface itself, when so many people apparently knew so much about it, but yet nobody knew anything about it.

Gen. WESTMORELAND. Well, this is absolutely unexplainable to me.

Mr. HÉBERT. It is fantastic, I will say that much.

Gen. WESTMORELAND. It is absolutely unexplainable, and it is incomprehensible to me, particularly in view of all the orders that were issued. I mean the policy was very clear as I have tried to point out in the statement.

### *A Blanket of Silence*

While Gen. Westmoreland might find it impossible to explain the failure of his chain of command to surface the report of the alleged atrocity, the Subcommittee believes that the explanation lies in a concerted action among military and State Department officers to suppress all evidence of the allegation and its investigation. During staff interviews of witnesses and, subsequently, during the Subcommittee hearings, several items were developed which support that theory.

It appears that the allegation was advanced through Americal Division channels properly, albeit slowly and informally. Its informal character is reflected by the fact that no written memorandum of the allegation was ever made, and also by the apparent disinterest of officers in obtaining a firsthand account of the incident from WO Thompson. The investigation was also characterized by the "close-hold" attitude of all persons involved. According to a witness before the Subcommittee, when Gen. Young convened the March 18th meeting, he prefaced his remarks by saying, "Nobody knows about this except the five people in this room". And when Lt. Col. Blackledge assigned the Henderson report for typing, he instructed that the contents were not to be discussed. The report was transmitted to Division in an envelope addressed "For Eyes of Commanding General Only". The Brigade copy of the report was then filed in a desk drawer of the Intelligence Sergeant so that it would not be seen by other individuals who had access to the regular files. Troops of the units involved were cautioned not to discuss the matter, since it was being investigated.

No documentary evidence could be located which would indicate that the report ever advanced beyond Americal Division Headquarters. Maj. Gen. Koster's testimony that he had informally advised Lt. Gen. Cushman, or some member of his Third Marine Amphibious Headquarters, that Division had the matter under inquiry was the only suggestion that the matter had ever been reported to a higher headquarters.

The manner in which most of the Americal Division officers, in both command and staff capacities, testified before the Subcommittee suggested an extreme reluctance on their part to discuss the allegation and its investigation with any real specificity. Two outstanding examples were the Chief of Staff and G-5, Civilian Affairs Staff Officer. Two witnesses testified that they had independently reported the allegation to the Chief of Staff. One of them, Lt. Col. Holladay, quoted him as remarking "That's murder". That same witness testified that, subsequently, he was shown a copy of the April 24th report of Col. Henderson by the Chief of Staff. Chaplain Lewis testified that he also had informed the Chief of Staff of the allegation and had been told that it would be investigated. Despite that testimony, which established his knowledge of the allegation and his concern over it, Col. Parson, during a staff interview, claimed to have no recollection of the events. When called to testify before the Subcommittee, Col. Parson invoked his Fifth Amendment privilege in response to all questions. In the other instance, Lt. Col. Anistranski, the G-5, had told two witnesses, on separate occasions, that Americal Division was investigating the complaint. Yet he testified that he had no formal knowledge of the incident, and that his only familiarity with it was a result of having overheard the conversation of soldiers.

The Subcommittee recognizes that memory is dimmed with the passage of time, and does not expect that witnesses should have total recall of events which occurred 18 months or two years before the time of their testimony. On the other hand, we believe that the magnitude of the allegation, and the concern that it caused among the officers involved, should have made more of an impression than routine events. So many of the witnesses who claimed to have little or no recollection of the My Lai allegation and its investigation had vivid recollections of an investigation, in June 1968, of the rape-murder of some North Vietnamese nurses. A possible explanation for that contrast in their recollection of the two incidents is that in the latter they were able to point with pride to a well-conducted investigation, while in the former, they were unable to explain why a competent investigation had not been conducted.

If the Americal Division Commander had control over all of the reporting channels, it would be a simple matter to fix responsibility for the breakdown in communications. However, two of the channels were not under the control of the Division Commander. The Senior Province Advisor, Mr. James May, was a State Department Foreign Service Officer free of any responsibility to Americal Division or its commander. The testimony clearly established that his headquarters was apprised of atrocity allegations by Vietnamese Government sources. It further established that members of his staff had discussed the allegation and its investigation with representatives of Americal Division, and with others from the Advisory Team attached to 2nd

ARVN Division. It further demonstrated that he had personally been informed of the allegation at several times during the investigation. Despite the evidence that his unit had demonstrated concern over the admittedly unusual allegation and its investigation, Mr. May claimed to have no recollection of the incident.

The Senior Advisors to 2nd ARVN Division, during that period, also claim to have no recollection of the incident. There is considerable testimony, however, that the possibility of an atrocity was a matter of concern to the subordinate officers of that team, and also to the Commanding Officer and the Staff of 2nd ARVN Division.

The concurrent failure of those two reporting channels, each of which was free from Americal Division control, raised the question about where the decision was made to suppress any reporting of the allegation. The Subcommittee was unable to determine when, and by whom, that decision was made and, consequently, is unable to describe the scope of the agreement.

The most damning evidence that there was a conscious effort to suppress evidence was the disappearance of documents from the files of U.S. organizations between early 1968 and mid-1969. Army investigators were unable to find any correspondence or reports of investigations at Americal Division Headquarters. They also were unable to locate any such documents in the files of the 11th Brigade. Subsequently, however, a copy of the April 24th report of Col. Henderson was found in a drawer in the desk where it had been retained ever since the time the report had been prepared. As previously stated, testimony disclosed that the Intelligence Sergeant had been instructed to treat the report as sensitive correspondence, and keep it from files so other people wouldn't see it.

That copy of the Henderson report was the only document, relating to the allegation or its investigation, found in the files of any U.S. unit. Had it not been for the unusual place of retention of that copy, a question arises whether it would have survived. Testimony from several witnesses established that, in 1968, there were at least five other typewritten documents relating to the investigation. Those documents were: (1) a letter from Maj. Gen. Koster in which he directed Col. Henderson to investigate atrocity allegations contained in its enclosures—a report of the Son Tinh District Chief and a statement of Capt. Rodriguez; (2) a report of investigation of an alleged atrocity typed for Maj. McKnight at the Brigade Operations Office in April 1969; (3) a letter from the Province Advisory Team to the District Advisor requesting an inquiry into the allegation of the Son Tinh District Chief; (4) a reply from the District Advisor to Province Advisor transmitting Capt. Rodriguez's April 14th "Statement"; (5) copies of the Son Tinh District Chief's April 11th report which had been directed to the Province Advisor and the District Advisor. Diligent examination of the files of all U.S. units involved failed to turn up originals or copies of any of those documents. The unexplained disappearance of so many documents from the files of so many different U.S. units can hardly be attributed to coincidence.

Were it not for the assistance of the Quang Ngai Province Chief in 1970, some of the documentary evidence would still be lacking or unexplained. It was he who furnished Army investigators with the Son Tinh District Chief's report of April 11th. He also furnished a copy

of the April 14th Statement, containing the signature line which identified it as a document of the District Advisory Team. Had it not been for that identification, the origin of the document probably would not have been established during the investigation, and it probably would have been considered a VC propaganda release as was the other enclosure.

### Questionable Practices in Awarding Decorations

As a result of the circumstances surrounding the award of a Distinguished Flying Cross to Mr. Thompson and Bronze Stars to his crew members for their action on March 16, 1968, the Subcommittee questions the Americal Division's practice of awarding medals.

In early April 1968, the crew members were recommended for Bronze Star decorations. Each recommendation was supported by a statement from WO Thompson. In each of those statements, Mr. Thompson said, in pertinent part:

While flying over the village of My Lai, Sp/4 Andreotta spotted fifteen children hiding in a bunker located between friendly forces and hostile forces engaged in a heavy fire fight.

Since that statement appeared to contradict Mr. Thompson's report of March 16, 1968, and his sworn testimony before this Subcommittee, he was interrogated about the statement, as follows:

Mr. REDDAN. Where did you get that? Did you dictate it, write it out longhand and get somebody to type it for you?

Lt. THOMPSON. Yes, sir, I guess it was typed in the orderly room.

Mr. REDDAN. Well, I have a copy here that I would just like to read to you a moment, telling of this incident. I won't read the whole thing.

"While flying over the village of My Lai, Sp/4 Andreotta spotted fifteen children hiding in a bunker located between friendly forces and hostile forces engaged in a heavy fire fight."

Is that correct?

Lt. THOMPSON. Fifth Amendment, sir.

Mr. HÉBERT. What is that? What did you reply?

Capt. JOHNSON (Lt. Thompson's appointed counsel). He respectfully declines to answer questions about that citation.

\* \* \* \* \*

Mr. REDDAN. Is the part I read to him correct with respect to a "heavy fire fight." It said "The bunker was located between friendly forces and hostile forces engaged in a heavy fire fight," and I said, is that correct?

Lt. THOMPSON. I will just stay with that.

Mr. HÉBERT. You will stay with the Fifth?

Lt. THOMPSON. Yes.

\* \* \* \* \*

Mr. REDDAN. I want to make sure I have an answer to this question. I will direct your attention again to that portion about the friendly forces and hostile forces engaged in a heavy fire fight, and ask you whether or not at any time that day, did you observe any heavy fire fight between friendly and hostile forces in My Lai 4?



Lt. THOMPSON. No, sir, I don't recall any heavy fire fight.

Mr. REDDAN. Now, did you also write up a justification for a citation for Specialist Colburn?

Lt. THOMPSON. Yes, sir, I believe I did.

Mr. HÉBERT. Well, now, you must know that, whether you did or didn't. You don't go around writing citations up every day.

Lt. THOMPSON. O.K., I will say I did.

\* \* \* \* \*

Mr. REDDAN. This one, you can look at the entire thing if you want. I will just read the part of it here. It says "While flying over the village of My Lai, Sp/4 Andreotta, the aircraft crew chief, spotted fifteen children hiding in a bunker located between friendly forces and hostile forces engaged in a heavy fire fight." Did you write that?

Capt. JOHNSON. Could we see that one, too?

Mr. REDDAN. Surely.

Lt. THOMPSON. That's the same thing, isn't it?

Mr. REDDAN. Regardless of whether he signed this, did he write that, is what I am asking.

Lt. THOMPSON. This is the same one you mentioned, sir, isn't it?

Mr. REDDAN. You will notice that's written up for Colburn.

Lt. THOMPSON. Oh, yes. That's what threw me. You mentioned Andreotta's name.

Mr. REDDAN. Andreotta is in there, you see.

Lt. THOMPSON. Yes.

Capt. JOHNSON. May we have another minute on this one?

Mr. HÉBERT. Yes.

(Discussion off the record.)

Mr. REDDAN. Read the question.

Lt. THOMPSON. It is the same question.

Mr. REDDAN. Would you read the question back, please?  
(Question read.)

Lt. THOMPSON. Fifth Amendment, sir.

Mr. REDDAN. You are refusing to answer on the basis that your testimony would incriminate you? I mean, this is the Fifth Amendment.

Capt. JOHNSON. It might tend to, sir.

Mr. REDDAN. That is right.

Lt. THOMPSON. Yes, sir.

Mr. REDDAN. And that is the basis for your—

Lt. THOMPSON. I am also saying I don't believe that is my signature on that citation.

Mr. REDDAN. That was the next question I was going to ask you. You have examined this document. Is this your signature which appears on it?

Lt. THOMPSON. It does not look like my signature, sir.

In examining the recommendations for the awards to the crew members, it was noted that Maj. Frederick Watke, Company Commander, "B" Company, 123rd Aviation Battalion, had initiated the citations; they had then been recommended by the Battalion Commander, Lt. Col. John Holladay; and, finally, were approved by Col.



Nels Parson, Chief of Staff, Americal Division. Each of those officers had learned, on either March 16th or March 17, of Thompson's allegation with respect to conditions at My Lai 4 on March 16. Therefore, they should have questioned Thompson's supporting statement about the "heavy fire fight," since that statement contradicted his original report.

During a staff interview Maj. Watke admitted that, if Thompson's allegations of March 16th were correct, he would not have been entitled to any decoration for that operation.

In early May 1968, a recommendation for award of the Distinguished Flying Cross to WO Thompson was forwarded to Americal Division by 123rd Aviation Battalion. That recommendation was supported by a statement of Sp/4 Colburn in which he said, in pertinent part, that "sniper fire had been received forward of friendly units and, while flying towards it, WO Thompson noticed a number of children trying to hide in an old bunker between the friendly and enemy forces \* \* \* Without hesitation or regard for Viet Cong fire, he landed and picked up the child."

In sworn testimony before the Subcommittee, Mr. Colburn testified that there was no sniper fire near the bunker, and that he hadn't seen any enemy forces in that area. He further testified there was no Viet Cong fire at the time of the evacuation of the other child. He said he had observed only one Viet Cong earlier that morning, at a point some distance from either point of evacuation.

The Department of the Army publication "Awards" provides that an award must be timely and that "undue delay in submitting a recommendation may preclude its consideration". In the case of the crew members, however, the recommendations were not initiated until more than three weeks after the operation, while the recommendation of award for Thompson was not initiated until seven weeks after the event. It does not appear that any question was raised with respect to the awards for the crew members, but the Thompson recommendation was returned by Americal Division with a request that the delay in submission be explained. The explanation, submitted by the Battalion Adjutant, stated that "WO Thompson's role in the action was not known until a much later date". Testimony before the Subcommittee has demonstrated that statement is completely at variance with the facts.

It may be significant that recommendations for the awards were made during that period of time during which complaints were being received through Vietnamese Government channels concerning the My Lai operation of March 16th. It was also during that period that the Commanding General of 2nd ARVN Division directed that the District Chief's allegation of widespread killing of civilians be checked out with Americal Division. Those factors suggest that the awards might have been part of an effort to cast the best light upon an operation of Americal Division which had resulted in serious criticism of the action of its troops.

If medals are to retain their significance as a reward for heroic action, they should not be dispensed under such questionable circumstances.

### *Army Overreaction in Preferring Charges*

Because of the appalling failure of the chain of command to report the allegations of atrocities occurring at My Lai 4 on March 16, 1968, and the inadequate investigation conducted at that time, the allegations remained buried until brought to light by the complaint of a former soldier more than a year later. It was only then that the Army, with the benefit of some Congressional prodding, saw fit to give those allegations a thorough examination.

When criminal charges which resulted from that investigation precipitated a spate of interest from the news media, and after this Committee evinced an interest in the failure of the chain of command, the Department of the Army organized an investigation to determine how that failure had occurred.

That investigation, designated the Peers Inquiry, conducted a very thorough examination of the events of March 16, 1968, and those immediately preceding and subsequent thereto. Its classified report, which has not yet been published, is an excellent report of the action, the allegations of atrocities, the cursory investigation of those allegations, and the failures to report the incident to higher authorities. It paralleled much of the investigation conducted by this Subcommittee. In general, the actions of the Peers Inquiry must be praised. In one respect, however, it is believed that the Peers Inquiry overreacted in attempting to compensate for the Army's original failure to act. That overreaction is noted in the broad recommendation of charges against officers connected with the operation or its investigation. As a result of that recommendation, charges have been preferred against some officers where there appears to be little possibility of a trial.

The Subcommittee hearings established that a panel of officers from the Office of the Judge Advocate General was selected to review the evidence developed by the Peers Inquiry and to determine whether its recommendation of charges against several officers could be supported by that evidence. Our hearings established that, while the recommendations of that panel were followed in most instances, there were four cases where the Peers Inquiry overrode the opinion of the professional legal officers and persisted in its recommendation of charges. In one case, the recommendation was rejected by the Secretary of the Army, while in the other three cases charges were preferred against the officers. The charges against two of them have subsequently been dismissed with an explanation that the charges were unsupported by the evidence. Two other individuals who were charged by the Peers Inquiry have also had the charges against them dismissed.

Since the Department of the Army had taken the unusual step of having the sufficiency of the evidence reviewed by legal officers in anticipation of the filing of charges, it is unfortunate that their findings were not accepted. The recent dismissal of charges in two cases in which they had recommended against the filing confirmed their assessment of the evidence. If the investigators had acted in accordance with the advice of the professional legal officers, several officers could have been spared the agony of a public announcement of charges which were subsequently dismissed.

Despite this defect, we must conclude that the classified Peers Report is an outstanding and scholarly piece of work and a credit to all who participated in its preparation.

### *Disclosure of Pending Charges*

In its report, the Peers Committee recommended that information developed during its inquiry be referred to court-martial authorities for possible disciplinary or administrative action against several individuals who had been involved in the incident, or in its investigation. Upon the submission of the Peers Report, the Department of the Army issued a press release announcing that the Inquiry had preferred charges against 14 officers. The release then identified each of the officers and detailed the offenses with which each was charged.

That disclosure, occurring as it did before it had been determined whether the charges had sufficient merit to warrant court-martial proceedings, is difficult to reconcile with Secretary Resor's stated concern for the rights of accused expressed in a letter to Chairman Hébert, dated January 6, 1970, in which he said :

In pursuing our military justice action, in addition to conforming them to the decisions of the Court of Military Appeals and other relevant courts, we are principally concerned that all accused persons be dealt with in a fair and just manner, including protecting them from premature public comment on matters which will be an issue in any court-martial.

Article 32, Uniform Code of Military Justice, provides that a thorough and impartial investigation of the initial charges is required before any of those charges may be referred to a general court-martial for trial. If the evidence should be found insufficient after investigation, the officers would not be required to stand trial. Thus, the officers "charged" stand in approximately the same position as a civilian whose conduct is being investigated by a grand jury.

The effect of the disclosure of the charges, before the thorough and impartial investigation, is, that for all intents and purposes, the professional military careers of those officers are ended regardless of the outcome of the investigations. For that reason the practice of publicly disclosing a pending investigation, or charges, before it has been determined that sufficient evidence exists for prosecution, should be prohibited.

Under Rule 6, Federal Rules of Criminal Procedure, the disclosure of matters occurring before a grand jury is prohibited except when directed by a court. One of the principal reasons for that rule of secrecy is the protection of an individual who is under investigation. Thus, the civilian suspect is protected from the damage to his reputation that an investigation can bring. There does not appear to be any reason why the military suspect should be accorded any less protection than that given his civilian brother. An amendment to the Uniform Code of Military Justice, to provide for secrecy during investigations, is recommended in order to guarantee that the military suspect be protected from the damage that disclosure of the fact of investigation can cause.

### *Regulation of Officially Assigned Photographers*

The Public Information Office of 11th Brigade assigned a photographer, Sgt. Ronald Haeberle, and a correspondent, Sp/5 Jay Roberts, to accompany "C" Company in its assault on My Lai 4. Haeberle testified that he carried three cameras with him on that day—two cameras issued by the Army, containing black and white film also issued by the

Army, and his personal camera, containing color film which he said he had purchased in Hong Kong. He also stated that his assignment was to obtain pictures of the troops in action for home town news releases, and of newsworthy events.

Haeberle testified that he was not sure how many black and white pictures he shot at My Lai, but thought it might have been as many as 50. He said that whatever number he took he turned into the Brigade Public Information Office. He also testified that he took approximately 18 color pictures which he retained for his own use. An examination of all the black and white prints found in the files of the 11th Brigade Public Information Office disclosed 40 photographs taken by Haeberle at My Lai 4. All but one of these could be called routine pictures of GI's or My Lai 4 residents, the type of pictures one might see in home town newspapers. Although one picture showed the feet of two dead adults, it could not be determined whether they were noncombatants, or how they had been killed. The content and subject matter of these pictures are in sharp contrast to those sensational color photographs which he claims he took with his personal camera and retained for his own use.

Mr. Haeberle's failure to report his observations and photographs to his superiors is difficult to understand. He testified that he was disgusted by what he had seen and photographed that day, yet he never made any complaint about the conduct of the troops, and never advised any military superior that he had photographs of the victims of an atrocity. He was discharged from the Army March 27, 1968, only 11 days after the March 16th operation; but even after his discharge, he took no action to advise Army officials that conduct which he considered "not at all real proper" had occurred at My Lai 4. In this connection it should be noted that Haeberle had previously photographed the scene of a crime at the request of the Provost Marshal and, therefore, should have understood the value of photographic evidence in a criminal investigation.

After his discharge, Haeberle used his color photographs in a series of lectures he gave to civic groups. It was only after he had been located by Army investigators in the summer of 1969 that he concluded that the pictures had been taken at My Lai 4 on March 16, 1968. Those investigators asked him for the pictures and he declined, although he did make copies of the pictures for them. He was subsequently requested not to publish the pictures while the investigation was going on, but despite this request he immediately thereafter released his pictures to a local newspaper and they were published. With the assistance of a friend, who was a reporter for a local newspaper, Haeberle also began negotiating the sale of publication rights to the color pictures.

It appears that Haeberle was more concerned with profit than he was in aiding the disclosure of an atrocity. That was demonstrated by the following testimony on the negotiation of the sale of the publication rights:

Mr. HÉBERT. All right, then. Let's find out how it ended up. You sold the pictures to Life, did you?

Mr. HAEBERLE. That is right.

Mr. HÉBERT. How much did you receive from Life for those pictures?

Mr. HAEBERLE. Life, \$17,500.

Mr. HÉBERT. They gave you \$17,500.

Mr. HAEBERLE. Yes.

Mr. HÉBERT. Did you ask for more, and was that a compromise price?

Mr. HAEBERLE. I could have had more. I could have had a hundred—

Mr. HÉBERT. I didn't ask you what you could have had. I asked did you ask for more?

Mr. HAEBERLE. I settled for that. I was satisfied with that.

Mr. HÉBERT. Did you ask for more and compromise at \$17,500?

Mr. HAEBERLE. At first, yes.

Mr. HÉBERT. What did you ask for?

Mr. HAEBERLE. We asked for \$125,000.

Mr. HÉBERT. "You" asked, now, not "we". What did you ask Life for, \$125,000?

Mr. HAEBERLE. That is right.

Mr. HÉBERT. And you finally came down and settled for \$17,500?

Mr. HAEBERLE. With Life Magazine.

His financial records disclosed that he received \$19,550 in total from Time-Life, Inc., for publication rights. He subsequently negotiated sales of the publication rights to foreign publications. Those publications and the amounts he received were as follows: London Times, \$5,400; Stern Magazine, Germany, \$6,300; International Magazine Service, Sweden, \$799; Toronto Telegram News Service, \$700; a publication in Melbourne, Australia, \$1,000; Vokkskas, Ltd., Durban, S. Africa, \$750; RAI Television, Italy, \$100. He also received an honorarium of \$500 from the Cleveland Plain Dealer. In total, he has received to date \$35,099 from the sale of publication rights.

While Mr. Haeberle attempted to convey an attitude of disinterest in the financial rewards of his venture, the following testimony demonstrates that he has acted to obtain the maximum advantage from those sales:

Mr. HÉBERT. You have never taken the time to total the total amount of money you got from these pictures?

Mr. HAEBERLE. No, because it was split between two years, '69 and '70.

Mr. HÉBERT. What do you mean, split?

Mr. HAEBERLE. I received some in '69 and received some in '70.

Mr. HÉBERT. Why did you make a split of it?

Mr. HAEBERLE. Income tax purposes.

Mr. HÉBERT. Income tax purposes. Who was advising you?

Mr. HAEBERLE. I have a person figuring my income tax.

It was Haeberle's contention that since the pictures were taken with his personal camera and film, they were his property and he had no obligation to show them to his superiors or turn them in to the Public Information Office. That testimony conflicts with the statement of Sgt. Stonich, who was the non-commissioned officer in charge of the Brigade Public Information Office in March 1968. Sgt. Stonich stated that a

Standing Operating Procedure had been issued which required that pictures taken by Brigade photographers with privately-owned cameras were official pictures and should be turned in to the office. Haeberle testified that he never heard of such a requirement.

During the Subcommittee's visit to Americal Division Headquarters, the Division Public Information Officer stated that Haeberle's feat could not be repeated today. He said that, since August 1969, regulations required that all pictures taken by photographers, or information specialists, be turned in for processing at the conclusion of the assignment. The Subcommittee had also been furnished with a March 1970, Department of the Army policy and procedural statement for photographers. That directive provided that Army photographers on official assignment are not permitted to engage in photography for personal retention. Apparently, those regulations and directives had not been passed on to subordinate units as late as May 13, 1970, since the 11th Brigade Commander told Subcommittee members, on that date, that no effort was being made to control photographers. He said there were no restrictions upon photographers insofar as taking personal pictures was concerned.

The Army's very loose supervision of its information specialists and photographers is a matter of grave concern to the Subcommittee. Those persons, when assigned to cover an operation, should be acting for the benefit of the United States rather than for their personal enrichment. If Haeberle had been properly supervised, the Army would have known if he took photographs at My Lai 4 on March 16, 1968, and could have used such photographs to assist in determining the truth or falsity of allegations of atrocities at My Lai 4 which they subsequently received.

In order to prevent a repetition of that failure and also to preclude military personnel from profiting at the expense of the United States, the Subcommittee recommends that all military departments, particularly the Army, review their policies concerning information specialists. That review should include the training of those individuals in their obligation to command authority to report any wrongdoing observed during operations they are covering. Their training should emphasize the duty to report possible atrocities or war crimes. The review should also include the dissemination of clear directives to all information specialists that their work product is the property of the United States and is not for sale to the highest bidder. Finally, those directives should be disseminated to all echelons of command so that there can be no future misunderstanding of the policy.

Lest there be any confusion regarding the intent of the recommendations, it is directed only at information specialists and official photographers. It is not intended that any limitation, other than security, be placed on the personal use of cameras by military personnel in assignments other than public information or combat photography.

### Immunity From Prosecution

Former servicemen, who have been discharged, cannot be tried by court-martial for offenses committed while they were on military duty, according to the decision in *Toth v. Quarles* 350 US 11 (1955). As a result of that decision, it appears that several former members of "C" Company, who were discharged before investigation disclosed their

involvement in the My Lai 4 incident, cannot be court-martialed. Since apparently there is no jurisdiction in state or federal courts in the United States to try those individuals, they need not fear prosecution in those forums. Finally, they cannot be tried in South Vietnam since there is no treaty under which they could be extradited to that country. Those individuals appear to be free from prosecution in any jurisdiction, while their associates who remained in military service may be brought to trial by courts-martial. This is manifestly unjust.

Some of those immune individuals have publicly admitted killing several persons at My Lai 4. Perhaps the most widely published was a TV interview in which Paul Meadlo, a former member of "C" Company, admitted killing 10 or 15 men, women and children. There are others such as Mr. Haerberle and Mr Roberts, the photographer and correspondent who accompanied "C" Company on the assault, who are guilty of lesser offense of dereliction of duty in not reporting what they observed at My Lai 4. Haerberle has profited handsomely from the sale of his story.

Where immunity from prosecution obtains, there is always the possibility that this status might be used by an individual to achieve notoriety or seek monetary gain. In such a case sensationalism might prevail over truth.

However, of greater concern to the Subcommittee is the potential for vindictiveness inherent in those cases where one with immunity is a witness in a related criminal prosecution. Should he harbor any ill will against the defendant for real or imagined wrongs, knowledge that he himself cannot be prosecuted might cause him to be more concerned with redress than with justice.

The Subcommittee feels that the above possibilities should be eliminated. This can be done by enlarging the jurisdiction of the United States District Courts to provide for prosecution of discharged servicemen for those crimes committed while they were on military duty which are not barred by the statute of limitation.

#### *Inadequate Instruction on Handling Noncombatants*

As discussed in an earlier section of this report, MACV was greatly concerned with minimizing casualties among noncombatants and in protecting their property during engagements in Vietnam. To this end, numerous directives and instructions on the Geneva Conventions, the Rules of Engagement, and the reporting of war crimes were issued. Nevertheless, there is disturbing evidence that the training of enlisted personnel in those subjects was minimal.

Gen. Westmoreland testified that he required that every briefing in preparation for an operation contain procedures for safeguarding noncombatants and their property. Notwithstanding that requirement, it appears that the subject was not covered, either at the Task Force Barker briefing or at the briefing for "C" Company members, prior to the March 16th operation. This could be due to the negligence of the particular officers involved, or it could mean that the MACV directives were merely regarded as window dressing by subordinate units. Issuance of directives, alone, is insufficient; those directives must be followed through and implemented in order to convince subordinate commanders that they are to be observed.



It has been noted that Army regulations require training of all members in the Geneva Conventions. That training consists of a one-hour instruction during basic training, as well as required supplemental instruction conducted by qualified legal officers during each subsequent 12-month period. In addition, Army personnel arriving in Vietnam were furnished several instruction cards on Code of Conduct, Geneva Convention, The Enemy In Your Hands, and Nine Rules, which stressed humanitarian treatment and respect for the Vietnamese people.

As was mentioned earlier, Mr. Haeberle retained a number of color photographs he had taken on March 16th. Among them were several which showed human bodies, which Haeberle, in his testimony, identified as bodies of noncombatants, some of whom he had seen killed by U.S. troops. He testified that he retained the pictures and failed to report the incident since he was unaware of any requirement to report war crimes to his superiors. He further testified that he had never received any training on Geneva Conventions or in reporting war crimes. He also stated he had never seen nor heard of MACV Directive 20-4 regarding the reporting of war crimes. Since that Directive specifically mentioned photographic personnel, among others, there should have been some special training given to the Public Information Office personnel concerning their duty to report possible war crimes. Failure of Haeberle's superiors to provide such training, if such be the fact, would be further indication that concern over reporting war crimes had not filtered down to the lower echelons of command. If Haeberle's alleged lack of general and specific instruction in the war crime reporting area is any indication, the Army should devote more attention to this subject to insure that all troops are made aware of their duties.

#### *Inspector General's Failure to Discover Atrocity Allegations*

The Inspector General of MACV testified that, during the first week of May 1968, one of his teams conducted an inspection in the 2nd ARVN Division area. He said that inspection did not uncover any evidence of the atrocity allegation. He further testified that, in July 1968, an inspection team from U.S. Army Vietnam conducted an inspection of Americal Division and failed to learn of the atrocity allegations.

The Subcommittee was particularly interested in whether the Inspector General's team endeavored to determine whether the February 21, 1968 message of Maj. Gen. Kerwin, Chief of Staff, MACV, concerning mistreatment of detainees and prisoners of war, was being observed. That message stated, in pertinent part:

Extensive press coverage of recent combat operations in Vietnam has afforded a fertile field for sensational photographs and war stories. Reports and photographs show flagrant disregard for human life, inhumane treatment and brutality in handling of detainees and PW. These press stories have served to focus unfavorable world attention on the treatment of detainees and prisoners of war by both ARVN and FWMAF.

These actions will not be condoned.



All known, suspected or alleged war crimes or atrocities committed by or against US personnel will be investigated IAW MACV Directive 20-4.

The Inspector General was asked whether his team made any specific effort to inquire into such incident. He replied "We did not make any investigation related to that type of message at that particular time. We were not directed to do so."

The failure of the Inspector General's team to pursue a matter which appears to have greatly concerned the command authorities at MACV, is difficult to understand.

#### *Lack of Army Cooperation*

From its inception, the Subcommittee's investigation has been hampered by a generally uncooperative attitude of the Department of the Army. As previously noted, Chairman Rivers, on November 24, 1969, announced that the Investigating Subcommittee requested the Department of the Army to send "all the information they have on the alleged atrocities at Pinkville which is up in the Son My Province of Vietnam". The specific oral request from the Subcommittee was for all reports, affidavits, photographs, the names and addresses of all American persons at My Lai 4 at the time, and all other pertinent documents and material which might have any probative value in the inquiry. It was on that same day, November 24th, that Secretary Resor announced that the Department of the Army would initiate its own investigation directed by Lt. Gen. Peers.

On November 26th, Secretary Resor testified "what I would like to do is take these requests and review them with our General Counsel, in the light of Mr. Laird's position that he has taken with respect to furnishing files in the case of open matters". He later stated that he would like to review the requests and the documents, and thought that he could report his preliminary conclusions by the end of the week. This was not done. Deputy General Counsel Webster advised the Subcommittee Counsel, on December 3rd, that no action had been taken on the request for documents.

By a letter dated December 17th, Subcommittee Chairman Hébert made a further request of Chief of Staff General Westmoreland for Army witnesses and documents. The General promised to discuss the matter immediately with Secretary Laird. On the following day, a request for a witness was denied on the ground that he had not yet testified before the Peers Inquiry.

In a letter dated December 19th, Secretary Resor notified the Chairman that his request for the statements of witnesses, obtained by the Criminal Investigation Division, was denied since "in accordance with long-standing policy recently reaffirmed, it would be inappropriate to release this information at this time".

Chairman Hébert, by letter of December 23rd, informed Secretary Resor of the need for the prompt appearance of witnesses when requested, even though they might not have appeared before the Peers Inquiry, and the Subcommittee's continuing need for documents relating to the My Lai incident. He requested a categorical answer to those requests by the close of business on that day. Secretary Resor replied the same day, but rather than answer the request, he suggested a meeting with the Chairman. In another letter of that same date, Chairman

Hébert stated that, while he would be happy to meet and discuss the entire matter with Secretary Resor, he required, as a prerequisite, a categorical answer to his questions by the following day. There was no answer to that letter.

On December 30th, the Subcommittee requested that Sgt. David Mitchell and another witness be made available to testify on December 31st. The Army's reaction was to announce on December 31st that Sergeant Mitchell was to be tried by a general court-martial. Then on January 6th Secretary Resor informed the Chairman that "I have concluded that the Army should defer furnishing witnesses in presently scheduled and potential court-martial cases until trials in the cases have been held". That decision was amplified in a letter from Maj. Gen. Becker, dated January 14th, in which he stated that included in the witnesses who would not be furnished to the Subcommittee were "all those who, by their own admission or the statements of others, were in a position to observe personally the events which transpired at My Lai on March 16, 1968".

On January 8th, the Department of the Army was requested to furnish the Subcommittee with directives and regulations relating to processing international claims, as well as the documentary material obtained by the Peers group during its trip to Vietnam. When that request had not been complied with by January 20th, another letter renewing the request was directed to Secretary Resor.

On April 9th, the Subcommittee scheduled its formal hearings, beginning on April 15th, furnished the Department of the Army with the names of witnesses it intended to call, and requested that they be made available as scheduled. By letter dated April 14th, Secretary Resor replied as follows:

HON. F. EDWARD HÉBERT,

*Chairman, Special Subcommittee on Son My, Committee on Armed Services, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: I am deeply concerned to learn of your Subcommittee's plan to call potential witnesses in presently scheduled or potential military justice proceedings during your formal Executive Hearings, commencing on April 15, 1970, regarding the alleged suppression of information pertaining to the Son My incident.

As I have emphasized on previous occasions, we fully appreciate your interest in obtaining sufficient information to discharge your constitutional responsibilities. At the same time, however, I have attempted—particularly in my letters of December 19, 1969 and January 6, 1970—to convey my belief that discharge of our own responsibility to execute the laws will be imperiled by such actions as your Subcommittee now contemplates.

While I shall not reiterate here the considerations underlying this conviction, I am compelled to urge once again that the discharge of our respective responsibilities can be reconciled only if interviews by the Congress of witnesses in pending court-martial cases are deferred until they can be conducted without prejudice to the defendants. In the meantime, I have already furnished you with the findings and recommendations of the Peers-MacCrate Inquiry. The record of the testimony which you have requested is being provided to you as

rapidly as it becomes available and should constitute an adequate basis for your independent review of these conclusions.

With these factors in mind, I have carefully considered your request, forwarded to OCLL on April 9 by Mr. Reddan, that the Army arrange for the appearance before your Subcommittee of some 39 civilian and military personnel. The vast majority—if not all—of these individuals are material witnesses to offenses under the Uniform Code of Military Justice alleged to have been committed either at Son My or during the course of the subsequent inquiry conducted within the Americal Division. Thirteen of these men, furthermore, have been formally charged and may ultimately be tried by court-martial.

I have concluded, therefore, in light of the factors discussed above and the problems outlined in my letter of January 6, 1970, that it would be inappropriate for the Army to voluntarily make available the witnesses requested by Mr. Reddan. As I stated in that earlier letter, furthermore, I would hope that you would carefully consider the matters I have raised before you pursue further a form of investigation which involves compelling the attendance of potential witnesses and defendants in military justice proceedings.

We remain anxious to cooperate with your Subcommittee, provided only that the Army's ability to discharge its own responsibilities is not impaired.

Sincerely,

STANLEY R. RESOR,  
*Secretary of the Army.*

Col. Robert Cook, MACV Inspector General, during his testimony on June 22nd, referred to the report submitted by his team after its inspection at Quang Ngai in May 1963. The Subcommittee asked for a copy of the report and Col. Cook replied that he was required to obtain the permission of the Department of the Army superiors before he could furnish it to the Subcommittee. A staff member contacted the Department of the Army on June 24th to inquire when the report would be furnished. He was informed that the Inspector General of the Army decided the Subcommittee could not have the complete report, but that a digest would be prepared and submitted within a few days. A summary of the report was not transmitted to the Subcommittee until July 6, 1970.

Although the Subcommittee succeeded in obtaining enough documents and witnesses to complete its investigation, it could have been accomplished much more expeditiously if the Army had been more cooperative.

### SUMMARY OBSERVATIONS

Competent testimony established conclusively that a large number of unarmed Vietnamese, not in uniform, were deliberately killed at My Lai 4 on March 16, 1968, as a result of Task Force Barker's operation on that date. Some of those killed undoubtedly could be described as civilians. Precisely how each of these persons was killed cannot be determined. However, there is convincing evidence that some were killed by artillery, some by gunships, and the remainder by small arms fire. Some were killed inadvertently under circumstances which would preclude the assignment of blame. Some were deliberately killed, and

that cannot be condoned. The evidence indicates that a relatively few U.S. troops actually committed any of these latter acts. But in passing judgment on those few men responsible for those acts, all pertinent factors must be considered. The acts themselves should not be viewed in isolation.

Based upon events which took place in the weeks preceding March 16, 1968, it is reasonable to conclude that those "civilians" present in the hamlet of My Lai 4, except those too young to do so, were there to aid the enemy or his cause. They had been previously removed from that village to the safety of a refugee camp but subsequently returned. They had been repeatedly warned to leave the area because of the likelihood of military action which could endanger them. On two occasions during February, they had been forced to evacuate the hamlet during combat action. However, they chose to return and remain. It is true that for most of them this was home. But it was more than that. The village of Son My, of which the hamlet of My Lai 4 was a part, was a hard core Viet Cong area and had been so for more than 20 years. The hamlets were fortified by camouflaged fighting bunkers and used as base and supply camps for the Viet Cong and North Vietnamese Army units. It was from this area that the 48th Viet Cong Battalion launched this attack on the city of Quang Ngai during the January 1968 Tet offensive.

This then was the political and military climate in the area where Task Force Barker of the Americal Division was conducting its operations early in 1968. And at this late date, who can judge the cumulative effects of the horrors, fears and frustrations which the men of "C" Company had been forced to endure just prior to their action at My Lai on March 16, of that year? The orders and objectives for that day were apparently far from clear, and such confusion could only compound the problem.

The Subcommittee is well aware of that line of cases which holds, in effect, that an unlawful order must be resisted. This presupposes that the accused has the requisite judgment capability under the circumstances obtaining at the particular moment. Undoubtedly, the correctness of a man's decision can be measured with academic precision in the quiet comfort and safety of the Pentagon, or a courtroom. But such decisions on the battlefield must be made in haste and woe betide the man who wrongly refuses to carry out an order. Under these latter conditions, a man could reasonably be expected to place more reliance on his commander than on his conscience, and from the reported actions of some of the men at My Lai, one might conclude that this is exactly what happened.

What obviously happened at My Lai was wrong. It was contrary to the Geneva Conventions, the Rules of Engagement, and the MACV Directives. In fact, it was so wrong and so foreign to the normal character and actions of our military forces as to immediately raise a question as to the legal sanity at the time of those men involved.

Those men who stand accused for their actions at My Lai have, in the minds of many, already been "convicted" without trial. By the same token, the U.S. also stands "convicted" in the eyes of many around the world. These two tragic consequences might have been avoided had the My Lai incident been promptly and adequately investigated and reported by the Army.

**Map - Appendix I (QUANG NGAI)**