Report of The Department of the Army Review of the Preliminary Investigations into The My Lai Incident (U)

Volume II
TESTIMONY

BOOK 3

FOR OFFICIAL USE ONLY

The "For Official Use Only" protective markings used herein are canceled at such time as the information is required for use in judicial proceedings E X C E P T for those pages specifically identified in the Table of Contents (Volume II, Book 1) as containing information excluded from automatic termination (para 13, AR 340-16).

REPORT OF THE DEPARTMENT OF THE ARMY REVIEW

OF THE

PRELIMINARY INVESTIGATIONS INTO THE MY LAI INCIDENT (U)

VOLUME II

TESTIMONY

BOOK 3

KELLEY
KOSTER
KUECHENMEISTER
LEWIS
LOFTIS
LOGAN
LUCAS, W.
LUPER

14 MARCH 1970

SUMMARY OF TESTIMONY

WITNESS: KELLEY, William D., LTC

DATE OF TESTIMONY: 23 December 1969

PLACE OF TESTIMONY: Pentagon

WITNESS SUSPECTED OF: N/A

COUNSEL: None

DUTY ASSIGNMENT ON 16 MARCH 1968: Acting G3, Americal Division.

1. PRIOR TRAINING IN THE RULES OF LAND WARFARE.

KELLEY was the action officer for the arrival of the 11th Brigade (pg. 16). He knew that training was planned for the brigade, but he did not know its content (pg. 16). The 11th Brigade went directly to Duc Pho and began training under the 3d Brigade of the 4th Infantry Division (pgs. 16, 17).

2. INQUIRIES CONCERNING THE ASSAULT.

Despite the fact that he was the acting operations officer and should have known, he did not recall being told about KOSTER's countermand of HENDERSON's order for C Company to resweep My Lai (pgs. 7,8). He did not know that between 20 and 28 civilians were killed in My Lai and saw no report containing this information (pgs. 8,10). He recalled notdiscussion concerning the disparity in either the weapons to body count ratio or the U.S. casualty to VC KIA ratio (pgs. 7,9). He heard no rumors from the Aviation Battalion concerning THOMPSON's confrontation with ground elements on the 16th (pg. 13). He saw no VC propaganda concerning the My Lai incident (pg. 12). He never heard of any reports submitted either orally or in writing to KOSTER, the chief of staff, or anyone else at headquarters (pg. 12).

3. REPORTS OF INVESTIGATION.

KELLEY had never seen the combat after action report of Task Force Barker dated 28 March (pg. 9). He agreed that this report should have indicated the following: (1) the number of civilian casualties (pg. 10); (2) that the livestock had been killed (pg. 10); and (3) that the hootches had been burned (pg. 11). He was not familiar with HENDERSON's report and could recall no VC propaganda directed at the My Lai incident (pg. 12).

4. OTHER INFORMATION.

a. KELLEY's estimation of CALLEY.

CALLEY became KELLEY's S5 around the middle of September 1968 during the time KELLEY had a battalion (pg. 19). CALLEY did a remarkably good job considering his lack of experience (pg. 18). He was energetic, followed instructions, and achieved good results (pg. 19). He had a good reputation with the Vietnamese officials with whom he worked (pg. 20).

b. Americal regulations.

KELLEY helped author Americal Regulation 525-4 (pg. 14). He believed that this document was in the hands of the 11th Brigade (pg. 14). Although it had not been published as an official document, the philosophy and policy of the document had been made known to the personnel of the division some time prior to its publication (pgs. 14, 15).

EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	NOTES	PAGES
D-5	Americal Reg 525-4	Wit had helped author document.	14
M-6	Americal log	Wit had no recollection of Items 28 or 94.	6
M-9	Americal letter, 24 Mar68	Wit had helped author document.	15
M-16	TF Barker log, 14-18 Mar	Wit asked to read item 39.	8
R-1	HENDERSON's report	Wit never saw before.	12
R-2	TF Barker Combat Action Report, 28 Mar	Wit had not seen before.	9

(The hearing reconvened at 1454 hours, 23 December 1969.)

IO: The hearing will come to order.

RCDR: The following named persons are present: LTG PEERS, MR WEST, MR MACCRATE, MR WALSH, COL MILLER, MAJ ZYCHOWSKI, and MAJ COOP.

Sir, the next witness is Lieutenant Colonel William D. KELLEY.

(LTC KELLEY was called as a witness, was sworn, and testified as follows:)

RCDR: Please state your full name, grade, Social Security number, branch of service, organization, and station.

A. I am William Douglas KELLEY, Lieutenant Colonel, U.S. Army, Infantry, 009-18-7109, DCSLOG, PEMA Execution Division, Washington, D.C.

(IO departed the hearing.)

MR WEST: Before we get into some questioning, Colonel MILLER will give you some information as to what this hearing is about.

COL MILLER: Colonel, this investigation was directed jointly by the Secretary of the Army and the Chief of Staff, United States Army, for the purpose of determining facts and making findings and recommendations in two major areas:

(1) the adequacy of prior investigations and prior inquiries into, and the subsequent reviews and reports within the chain of command, of what we now refer to commonly as the My Lai incident of 16 March 1968, and

(2) the possible suppression or withholding of information by any person who may have had a duty to report and to furnish information concerning this incident.

The investigation is not primarily for the purpose of investigating all the facts and all the circumstances of everything that happened at My Lai. It is directed to those two things that I mentioned.

Today your testimony will be under oath. A verbatim record will be made, and it is also being tape-recorded.

The general classification of the report is

confidential. However, it is certainly possible that at a later time some or all of the testimony may be made a matter of public knowledge.

We have had made available to us and we have read the statements made by many witnesses in prior official investigations into the My Lai incident.

You see a number of people here, and I want to explain to you briefly who they are. First, the vacant chair right now is for General PEERS, who will be back in a few minutes. He is the Investigating Officer in this case, and he has the final and sole responsibility to weigh all the evidence, and to make the findings and recommendations. The rest of us are here to assist him in various capacities.

To your immediate right front is Mr. MACCRATE, and to your left is Mr. WALSH, both of whom are civilian attorneys who are assisting as civilian legal advisors and counsel to General PEERS. To your left front is Mr. WEST, from the Office of General Counsel of the Department of the Army; Major ZYCHOWSKI; and myself, Colonel MILLER. Any one of us may be asking questions this afternoon.

I have one other thing, and that has to do with your testimony here and not repeating it. You are directed not to discuss your testimony before this investigation, except as you may be required so to do in the performance of some official duty, or as you may be required to testify before a competent administrative, or judicial, or legislative body. If you have questions, of course, you can seek instructions. I don't believe you have received any order or have been placed under the order of the military judge in the case of the United States v. Calley at this time. I have no record of it.

A. No contact whatsoever, sir.

Q. If you do, if you are placed under that order in due course, you should be notified. Your testimony here will have no effect on that order and, of course, you will comply with that order. Again, if you have any questions, you can seek guidance from the trial counsel or the military judge if necessary.

A. Could I ask one question at this time?

Q. Certainly.

A. What about character witness roles in the event I was not ordered, but I was appearing as character witness for such trial? Not that anything here would come out, but does the same rule apply? Am I free to discuss similar information or answers that I might be giving?

Q. If you are called as a witness in, let's say, the Calley case, you testify as to what the question is about there. Our caution here has to do with your discussing what you testify to here in this hearing. You are only to reveal that in accordance with conditions or at those times I mentioned. Certainly, if you are called as a witness in a court-martial case, you have an entirely different situation.

RCDR: Let the record reflect that Colonel MILLER has departed the hearing. In addition, let the record reflect that General PEERS is again present.

IO: Colonel KELLEY, what was your duty assignment on the 16th of March, 1968?

A. Sir, I cannot recall exactly. I was, at that time, assigned as the assistant deputy, special assistant to the chief of staff. I have been told by Major COOP that I was the acting G3 at the time. I wish I could verify it, but I cannot exactly verify that. Perhaps you--

Q. (Interposing) We can pretty well get this straightened out. When did you join the headquarters of the Americal Division?

A. Approximately the 28th of November, 1967.

Q. And what was your duty assignment?

A. I was initially assigned to the G3 section as an assistant G3, helping the G3 at that time, Colonel GRANGER. I then moved to the special assistant to the chief of staff, and then was a project officer taking on several different responsibilities, and I did serve as the acting G3 for approximately a week. That I can recall. It was in March, the early part of March.

Q. Yes. Is this during the time that Colonel BALMER

was departing and your new G3 was coming in, or that Colonel BALMER was on R&R?

A. Yes, sir. I researched--it was when Colonel Dean BALMER was going to Hong Kong, and my research--everything that I could hunt up--indicated that Colonel Dean BALMER was going to be gone for 3 days commencing on the 9th of March. That is the reason for my uncertainty here today as to whether I was on for a full week or not.

Q. Now that you recollect that, I remember Colonel BALMER discussing that, and I don't think that we have really pinned it down, the exact time of his return. But as I recall, he indicated that he came in from Hong Kong on the 17th.

We have a memorandum for record that indicates that he had departed Bien Hoa for the Americal Division on the 16th, but was held up and didn't get in for the evening briefing, and was briefed the morning of the 17th. So then, if you were acting in his absence on this particular day, you would have been the acting G3.

A. Yes, sir, that is entirely possible. I only take my information from a letter that my wife had that indicated that I wrote on the 6th of March. I state here that Colonel BALMER takes a trip to Hong Kong on Sunday which would have been the 9th, and I was assistant G3 during that period. But I believe it was longer than 3 days.

Q. Well I would think so. With coming and going and this, that, and the other, that wouldn't give you much time in Hong Kong. How long did you stay either in the G3 section or as a special assistant in the headquarters of the Americal Division?

A. I was assigned to battalion on the 1st of April, sir. So approximately 4 months, from the 1st of December through the 1st of April, 1968.

Q. What battalion did you take over?

A. I took over the 1/6, sir, the Regulars, from Colonel BAXLEY who came to the Americal Division as the G3.

Q. Yes, and I would assume that you stayed in command of that battalion until --

A. (Interposing) Until my departure, approximately seven and a half months, until the 13th of December, 1968.

Q. Right. Since the news of the so-called incident of My Lai of 16 March 1968, which hit the press and TV and radio about the end of September or early October, have you had any conversations with anybody connected with the Americal Division, the 11th Brigade, or Task Force Barker, concerning this incident?

A. No, sir. I have had one conversation with Colonel BALMER. I must say yes, sir. I talked to Colonel BALMER approximately 5 minutes on the 18th of December.

Q. 18 December?

A. Yes, sir.

Q. What was your conversation about?

A. He called me at 0930 in the morning, and I went to his office at 10. I had been notified that I would appear before General PEERS' investigating committee by Major COOP on the 15th of December. On the 18th of December, Colonel BALMER called me and said he was appearing before the committee and that he would like to see me for a short period and, if I could come up to his office, come ahead. I got up there approximately 10 o'clock and had just about got introductions over with--we'd been there about 5 minutes--and he was called down before the board.

Q. What did you talk about?

A. It was about two points. We never did get it completely clear as to whether I was the G3 at that particular time or not, but I took it for granted that I was. I could not recall the publicized 128 body count. I asked him if he could, and he said yes, that he could. I said it was strange that I couldn't if I was the G3 at the time because I knew that I left him quite a set of notes of the happenings of that week on his return, and then other members of the G3 had briefed him, too. So there is a question in my mind on that time, and I could not fill him in on anything. He wanted some details of what I could recall about anything that might involve the incident, and I could not recall anything for him.

Q. Did the situation at My Lai (4) on the 16th of March 1968, ever come to your attention in your capacity as the deput

G3, or the acting G3, or the special assistant?

A. Not in the least. Not while I was in the Americal. The first indication of the My Lai incident was on 13 November 1969 when I first saw it in the press.

Q. May I have the log of the Americal Division?

(Recorder hands document to IO.)

I have here the log of the Americal Division for this date, 16 March 1968, which is entered in the record as Exhibit M-6. I ask you to turn your attention to item number 28.

A. Yes, sir.

Q. Was this item called to your attention?

A. Not to my recollection, but it should have been called to my attention and possibly it was.

Q. I bring you down now to item number 94 which is the operation summary for that particular date, and then starting particularly on line 5, "In operation Muscatine."

A. Yes, sir.

Q. You will notice that for Task Force Barker, it gives 128 VC KIA with only 3 weapons captured. At the time, did this start any flags going up, or flags waving, or any questions to be asked?

A. I realize it's strange that I should not have some recollection of this. The answer is "no" to your question. The only logical explanation I can think of is that I did not see the daily summary that particular day. It is possible that I did not see that summary that day. It is highly unlikely that I did not attend the evening briefing because I attended the evening briefing for General KOSTER and also then went into his office on any problems that existed that day, unusual incidents that happened that day, and plans for the following day.

Q. After your normal staff briefing, you had a session in General KOSTER's office and then you had another one in the morning?

A. Yes, sir. The following morning there would be a quick briefing in the morning, in General KOSTER's office, on happenings that night. Now, this log, of course, was not typed up for the evening briefing. This entry was typed up during the night, and this log as I recall would have been presented to General KOSTER. The highlights would have been presented to General KOSTER the following morning. That would be on the 17th.

Q. Well, there is a possibility that all of this information wasn't presented on the night of the 16th. But all of this information was in, in sufficient time to be included in the evening briefing, which took place normally at about 5 or 5:30?

A. Yes, sir. It varied 15 or 20 minutes either way, whenever he got down. I don't know that it was back. I can't say that it was back in time for the evening briefing.

Q. Well, practically all the statistics came in quite early in the morning.

A. If something came in--a report came in within 2 minutes of the evening briefing. It was in there.

Q. Well, the point I'm getting at is whether or not anybody started raising a few eyebrows when a report such as this comes into the headquarters with a ratio of 43 enemy killed to 1 weapon captured?

A. There should have been some operation officer questions asked, and undoubtedly there must have been some questions asked back to the brigade who turned in this report. Now it might have been at the NCO level. It may have been explained by the number of artillery casualties, or the fact that the battlefield wasn't policed yet, or something to that effect. We frequently get answers from units on delayed reports that they hadn't made a full, detailed search yet. But I'm just thinking of an excuse now. I don't know any facts.

Q. Do you recall that either the evening of the 16th or the morning of the 17th--and remember now we are working on the 16th and 17th. One happens to be a Saturday, the 16th, and the 17th is a Sunday. Do you remember General KOSTER telling you, the operations officer, that he had rescinded the order of the 11th Brigade commander to send C/1/20 back into My Lai (4) to check a body count?

A. No, sir.

Q. Did you know that night that at least 20 civilians had been killed?

A. No, sir. And if this had been reported to the operations center, there would be no reason for me not to know. I did not stay in the operations center, but being present at all the briefings I --

Q. (Interposing) Let me see the log of Task Force Barker?

(Recorder handed IO Exhibit M-16.)

These are the logs of Task Force Barker, Colonel KELLEY, for the period 14 through 18 March. I would ask you to turn to the 16th, specifically to item number 39 on the fourth page. Can you read it?

A. Not too clearly, sir.

Q. I think it says B Company reports that none of the VC body count reported by his unit were women and children. Charlie Company reports that approximately 10 or 11 women and children were killed either by artillery or gunships. These were not included in the body count. And you will notice here that opposite the entry number 39 that this information was passed to the 11th Brigade. Would such information normally be relayed to the division?

A. Yes, it would. The brigade would be responsible for the primary action as a result of such an incident, but it certainly would be relayed to the Americal Division. And it would be relayed higher as standard procedure.

Q. And if this figure increased to something in excess of this, you would have expected that to have been reported too?

A. Yes, sir.

Q. All civilian casualties were reported?

A. Yes, sir. I'll say all civilian casualties were supposed to be reported.

Q. That was the intent of my statement. You also notice in item number 94 the ratio of VC killed to U.S. killed by hostil

action.

A. Yes, sir.

Q. Was this an unusual ratio of friendly to enemy?

A. Yes, sir, it was if this was a ground-force-to-ground-force action. If it was an artillery count, then obviously, if it was part artillery, then it could be considered normal. However, we were varying from 3 to 1, to 8 to 1 on the ground action.

Q. Yes, but this is about 64 to 1.

A. Yes, sir.

Q. Quite a sizeable ratio. To your recollection this disparity in this ratio never caused anybody to take a good, hard look at it?

A. I cannot recall this causing any impact at all that I was ever aware of. If it caused any discussion or any eyebrows raised, I was not aware of it, sir.

Q. Give me R-1 and R-2, will you?

(Recorder hands documents to IO.)

Colonel KELLEY, I have here a document which has been entered into the record as Exhibit R-2, dated 28 March, Combat Action Report of Task Force Barker. Have you seen this report?

A. No, sir. No, sir, I haven't seen this report.

Q. What period did you normally have after action reports prepared for?

A. All operations such as Muscatine, or a task force going out, a major combat action where it was a major success or a major failure, that was part of an operation--like there were many reports written on the one in the north, and that operation was continued over several months. Now these were directive reports, sir, that were called for either by the division commander or the brigade commander after, say, a week-long, heavy offensive. But for all division-directed operations, or task force or named operations, there were after action reports.

Q. This operation was designed to last for several days. We know, for example, that the operation continued with all three companies for at least 2 days. The one company which was in blocking position may have pulled out at the end of the second day. The other two companies remained in the operation for a third day before the second company was pulled out. And the other company remained in the operation for another 1 or 2 days. So, it covers quite a span in this particular operation that we are referring to into the Son My Village area. With that in mind, can you think of any reason why a report such as this would be prepared covering 1 day of the operation, actually less than 1 day--you will note in paragraph 2, covering from 0730 in the morning to 1800 that night?

A. Not as a straight, tactical activity, a combat activity, by a company or a battalion unless it was directed. I'm not thinking of that period now. I'm thinking of a period where I was in command, where my brigade commander asked me to write a report up on an attack that we had. I know of several of them. One was for 2 days, the other one was about a week, sir.

Q. Yes. Recognizing in this instance, if this was perhaps the most successful operation that Task Force Barker had ever been engaged in up to this time and, for that matter, the 11th Brigade up to this time, this could have some validity--what you are saying, that it covered just this period where you attained a huge success in a comparatively short period of time. But I would ask here, if in providing such a report, it should not have also indicated the number of civilian casualties which were effected in terms of the 20 that I indicated before--at least 20 and possibly as many as up to 28--irrespective of how they may have been killed, whether by artillery, artillery and gunships, by small arms fire, or any combination of them?

A. Yes, sir, I would have expected it to be included.

Q. If the animals in one of these areas had been killed, let's say in My Lai (4), would you have expected this to be reported? Not just an animal; I'm talking of the animals.

A. If the battlefield had been policed to that extent, yes. If they knew what the count was, yes, sir. This might not be a directed report, however. This might be a case where

the battalion commander--I'm referring to myself again. If I had a good operation, I would have it written up. If no one was around to see it and if I had combat examples in it, or lessons learned in it, we wrote out several reports on operations that were not directed that we write up.

Q. You would have included the facts though, would you not?

A. Yes, sir.

Q. You would have not excluded civilian casualties. You would not have excluded the animals, the water buffalo, the pigs, and chickens, and all the food being destroyed. Would you have reported if the village and its hootches had been burned?

A. Yes, sir.

Q. So you report the good, but you also report the bad?

A. The total effects of the operation. And these would be made up by reports that would be handwritten by the unit commanders that were involved, the company commanders, the platoon leaders.

Q. You have never seen this report, to the best of your knowledge?

A. No, sir. I'm sure at the time I was already gone by the time this report would have come in to division headquarters. It would have gone into one of the sections of the division G3 had I been there on the 28th of March. I was back--

Q. (Interposing) Yes. I'm not sure that this report went to division, at the moment. But I do have a copy of the report. It is addressed to the 11th Brigade.

I have here Exhibit R-2. After the subject, can you identify the symbols "RCS AVDF-GC1"?

A. No, sir. No, sir, I can't associate that as an Americal Division office symbol.

Q. The AVDF, if I'm not mistaken, that portion of it

was a symbol of the Americal Division, was it not?

A. It looks familiar, sir, but I can't be sure. We did have a standard format for combat action reports.

Q. I have here another paper, entered into the record as Exhibit R-1, and I would refer you to Inclosure 1. It's a one-page statement. While you were the acting G3 or a special assistant to the commanding general, did you ever see such a statement, or hear any of the information contained in it?

A. The answer is "no" to all your questions, sir.

Q. I'd refer you to the next page. Actually, it consists of two pages. This is an English translation of a VC propaganda leaflet or document. I'm not sure what form it came in. You will notice that the first page is somewhat the normal VC tirade, but when you get to the top of the second page, particularly paragraph 2, it changes rather abruptly from generalization to specifics.

A. Yes, sir.

Q. Do you recall ever seeing this document or ever hearing any VC propaganda directed at this specific instance?

A. No, sir, I haven't.

Q. When you were either the acting G3, the G3, or in your capacity as special assistant, did you hear of any reports being submitted, either orally or in writing, to the commanding general of the Americal Division or to the chief of staff or to any other individual in the headquarters?

A. With regard to the My Lai incident?

Q. Yes.

A. No, sir. None whatsoever.

Q. Did you ever have occasion to have an envelope given to you to be held for delivery to the commanding general from the commanding officer of the 11th Brigade?

A. No, sir, I didn't.

Q. Did you ever hear any rumors throughout the headquarters, or did you hear of any rumblings in the 123d Aviation Battalion or elsewhere concerning the confrontation which took place between members of that unit and certain ground elements on the 16th of March?

A. No, sir, I did not. I was in very close contact with just about every aviator in the 123d Aviation right after that, starting in April. We met nightly in the general's mess, and I was there after that time, eating in the general's mess every night until the last of March, about the 28th of March or so. Then I packed up and left.

Q. Did the warrant officers, the pilots of the aviation battalion, specifically the aero-scout company, did they eat in the mess as well?

A. No, sir. They had their own area, and I did not come in contact on the ground, if we had any conversation, with the aero-scout people for quite some time after that. They didn't work in my area, but the normal pilots of the 123d shifted areas almost daily on who they supported.

Q. Did either Colonel HOLLADAY or Major WATKE or other individuals of that outfit ever discuss this matter with you in any of the capacities which you held in the headquarters of the Americal Division?

A. No, sir. And again, I saw Colonel HOLLADAY nightly until about the 28th of March.

Q. Would you give me the documents of 16 March (Exhibit D-5) and of 24 March (Exhibit M-9), of the Americal Division?

A. I might make a correction: if Colonel HOLLADAY had moved to the aviation job, he was the aviation officer at division headquarters, that is when I saw him nightly. And when he moved to the unit commander slot, I didn't see him then.

Q. Did he not occupy both positions, as the commander of the 123d Aviation Battalion and at the same time division aviation officer?

A. That is correct, sir. But somewhere in that time frame he moved, relocated himself. I believe he set up a CP down at battalion. I don't think he remained billeted at division headquarters during the entire period.

Q. In his absence, though, you had another officer there representing him as the aviation officer, is that not correct?

A. Yes, sir, fulltime.

Q. I have here a document which has been entered into the record as Exhibit D-5, Headquarters, Americal Division, Regulation 525-4, dated 16 March. Have you seen this document?

A. Yes, sir. It has been a long time, but I recall seeing it. My recollection was that it was much longer than this.

Q. Who authored this document?

A. Primarily, sir, I have quite a bit of authorship in this. I worked on it off and on during the time from my arrival.

Q. Was this document put out for information or coordination purposes prior to its publication?

A. Yes, sir. It was put out for coordination purposes.

Q. How long before its publication was it put out?

A. I believe it was put out twice before its publication, and if I can just think a minute--I would have to say February, sir, that this was out for publication. And there were other times that I would send it to DIVARTY for coordination. I had trouble with the artillery force. I think it went to them about three times for coordination. About February, sir. I cannot recall the 11th Brigade. I was the sponsor for the brigade, Americal Division sponsor, when they came in. And I know they had the 4th Division rules of engagement down there, and they were briefed down there by the 4th Division. But I am very sure that they had this document, too, in draft form. I believe they put together a packet at division headquarters, and they also had copies of it.

Q. But, although it had not been published as an official document, the philosophy and the policy which the document propounds was, in fact, made known to the people

sometime before it was published. Is that your recollection?

A. Yes, sir.

Q. I'm not putting words in your mouth. That's not my intent.

A. Yes, I can recall making as much effort as I could to get this staffed by the brigades and asked that a selected few commanders, who had the experience of combat battalion staff, also review this.

Q. I have here another document dated 24 March, Headquarters, Americal Division, Office of the Commanding General, subject: "Safeguarding of Noncombatants," addressed to all of his commanders, which has been entered into the record as Exhibit M-9. Have you seen this document?

A. Sir, I remember working on a document myself on safeguarding noncombatants. I can't state that this is the one, and my recollection is that this was part of a whole package of annexes that I was putting together there. I can't recall it coming out separately like this.

Q. Well, this document, of course, is somewhat different from the other. It's not published as a regulation. It is published as a command letter. So it has a little different connotation than the other. But this document, at least as of this time, 24 March, roughly 8 days after the 16th of March--I would assume that it has been signed by the commanding general. The emphasis being placed on it is that this was division policy at that time.

A. Sir, I'm scanning this very quickly, but I don't see anything in here yet that wasn't pretty much considered and taken for granted as policy all the time, sir.

Q. "Taken for granted" would bother me a little bit.

A. That is a poor choice of words, I know. I rewrote something that was in effect from, I believe, the Task Force Oregon book and in other materials which the chief of staff had gotten from a trip. He picked up 4th Division copies, and 1st Division copies, and my job was to consolidate anything meaningful with existing regulations in effect.

I can't say that I wrote--I don't recall ever writing this.

Q. Now, I would like to shift for a minute to the indoctrination of the 11th Brigade when it came in. You indicated that you were responsible for their indoctrination. I believe you said, what was the term you used, "responsible for the brigade"?

A. My responsibility was to meet the brigade administratively, and I remained in Qui Nhon during their arrival to organize, as a key individual at Qui Nhon, their movement up into the Americal AO and to conduct such ceremonies as necessary on the pier.

Q. Yes. Well, you were the action officer. I believe that was the term you used before. You indicated you were the sponsor, but I really believe the term which more properly defines the way we use it in the military is action officer.

A. Yes, sir.

Q. Do you know about the training which had been provided, planned for and provided to the 11th Brigade at the time of their arrival and subsequent thereto.

A. I have general knowledge of it being planned, no intimate knowledge of it. I didn't review it at any time, and I was not working for the G3 at the time that this plan was developed.

Q. Do you know who conducted their in-country indoctrination? General KOSTER had first thought they had gone through the division school at Chu Lai, but subsequently indicated that they had not, that they had gone direct to Duc Pho and had received their indoctrination there.

A. I was trying to recall if we had sent any teams out, because I was also involved with in-country training of the 82d Airborne's 3d Brigade and also the 4th's companies and battalions when they came in. And that time, we had teams we sent out for phasing the companies through. I'm sure the 11th Brigade went directly into the Duc Pho area and took up a training program, and they used quite a few training assets, aircraft, and so forth for this training. I can recall it hampering some of the CA's that were planned

and I believe it was primarily conducted and controlled by the brigade that was at Duc Pho area at the time. And they were tasked with the responsibility of conducting the training.

Q. That was the 3d Brigade, 4th Infantry Division?

A. Third of the Fourth, sir.

Q. Mr. MACCRATE, do you have any questions that you would like to address to Lieutenant Colonel KELLEY?

MR MACCRATE: No, I do not.

IO: Mr. WEST?

MR WEST: Nothing.

IO: Major ZYCHOWSKI?

MAJ ZYCHOWSKI: No, sir.

IO: Mr. WALSH?

MR WALSH: No.

IO: Colonel KELLEY, before we conclude this particular session of the hearing, I'd like to give you an opportunity to make any statement, to ask any question, or to provide any information that you may have which would assist us in this investigation. This can be in oral form. You might also conceivably have some materials, directives, other memoranda, maps, photos, or anything else that could be of assistance.

A. Yes, sir. I realize you are concerned with just the two points that were discussed, and it bothered me when Major COOP gave me the call on the 15th of December, which was my first indication that I was the acting G3 at the time, because I had been following as well as I could in the newspapers what was going on about the incident. And it never had occurred to me prior to that time that I could have been the acting G3 at the time of the incident. It bothered me more that I could have been and not recall the 128 body count that was being publicized and not have any knowledge of anything topsy-turvy or any activity which would have certainly concerned the division commander, the ADC's, and mysel:

as the acting G3. The operations people in the operation center should have come to me with anything like this, any large count. It's possible to have a cumulative count over a 24-hour period that totals up to 128 at the end of the day, and you get it in little bits and pieces, and this is what I thought might have happened to me, as to why I didn't recall it. But there was no great discussion. My recollection of the week I was in the G3 was one of very smooth sailing, no particular problems. We were on the docket for a major briefing, and it went off okay. I don't ever recall having them with no major failures. Everything was smooth during the entire week I was in there.

I thought, perhaps, when I was called by Major COOP, that it was because of my knowledge and my association with Lieutenant CALLEY, who was infused to me, to my battalion, some 4 months after the incident, and whom I had assigned as an assistant S5. We had an area system in the S5 program dealing with the Vietnamese civilians and Vietnamese district chief, and we used the 1/46 S5. I used Lieutenant CALLEY to assist him. Then he eventually took over in about a month, and he took over as the S5 for the area, for both battalions, the 1/46 and 1/6. He was my S5. I don't recall rating him. I was given a picture that I dug up where I promoted him to first lieutenant. I believe my 3 rated him.

Q. The 3 rated the 5?

A. Well, he had the more direct dealings although I had a briefing nightly with my 5. I wanted all the staff I could have in the forward area. The 3 rated the 5 and the 2. No, I just don't recall rating him, and I think the 3 might have rated him since he had more direct dealings with him. The other thing --

Q. (Interposing) How did he perform as the S5, which is tantamount to saying a combination of your civil affairs and PSYOPS officer?

A. Surprisingly well, once he got his feet on the ground, for someone that had no schooling in it. Here he was a young second lieutenant with no schooling as a 5, thrown in to meet with the district chief daily, go down to the district headquarters, glean intelligence, deal with MEDCAPS and several other operations, schools, hospitals, and refugee centers. And he did remarkably well considering that he had

no experience. He was energetic. He did everything that I had told him to do. I kept after him for more results, and he seemed to get them. I can recall the number of MEDCAPS was particularly high. I know we reached a 2,500 mark, and I attribute about 1,500, I would say, when he was in the S5. I would say he was an average second lieutenant trying to do a job that he was unfamiliar with and doing it satisfactorily as far as I was concerned. We had a good program going prior to his taking over. He continued it. He didn't come up with anything startlingly new in the S5 program.

Q. In the back of your mind has anything come to light that he might have said or that anybody else might have said about anything he might have done in My Lai (4) on the 16th of March, 1968?

A. Not a single thing, sir. I had several meetings with him at night. He was concerned about the job, that he wasn't capable of doing as good a job as I wanted, because I think I might have chewed him out a few times over the fact that he didn't get enough sandbags filled by indigenous personnel, or that he didn't get enough protective wire around a certain village, or why he didn't have more food for a search and cordon that we had conducted. He came to me one night, I can recall, saying that I ought to find someone else for the S5 job, that he would like to volunteer to go back to the field. He wasn't very vehement about this. I talked to him for a while, and he went back and continued to do a satisfactory job. There was no indication of any previous problems at all.

MR MACCRATE: Colonel KELLEY, when did Lieutenant CALLEY become your S5?

A. I can't find anything that I have that would indicate this. I would have to back up dates and see. Probably the middle of September, around in there. That's just a guess.

Q. 1968?

A. 1968, that's correct.

Q. Did you have an opportunity to interview him before he came on to this post?

A. Yes, prior to assigning him I did. He was

assigned to my battalion without interview, in the infusion program. Seldom did you get a chance to interview and take your choice of who came to your battalion.

Q. This infusion program and his assignment to your battalion, when did that take place?

A. I would say about a month before the date I just mentioned--what was it, September--because I had him as an assistant to the other S5. I probably carried him on the rolls as my S5, but the man in charge of the area was another S5 from the other battalion, who later became a brigade S5.

Q. What area did he operate in as S5, what geographical area?

A. This was the Chu Lai complex, sir.

IO: That's about 25 kilometers away.

MR MACCRATE: Yes, I understand that.

A. The area of primary importance to us was Chu Lai and north almost to Baldy. There is a bridge before you get to Baldy.

Q. So it was entirely removed at all times from the area of operations with which we are concerned on 16 March?

A. Yes, but --

Q. (Interposing) He would not have been dealing with any of the local officials who had jurisdiction in the Son Tinh area?

A. Not those specific officials, sir, but here he was dealing with officials very close by, and their means of communication were very good. Highway 1 was open all the time except in the nights. And it's beyond me, if there was an atrocity or something down that close that could be associated with him, why it didn't follow up the line, because he got along good and had a good reputation with all the Vietnamese officials working for me. There was no --

Q. (Interposing) Do you have any information that

would in any way suggest that the local Vietnamese would know a particular member of the American forces that was involved in any such incident? Are you assuming that they would know something about it? I don't see anything that would suggest such information would become known to the local districts.

A. You are possibly correct. I'm sure it would come out that he had come to me from the 11th Brigade in his conversations with Vietnamese. I'm sure that they would know that much. Past that, I don't think that unless it came up in conversation, they would know what company. Discussions were quite open with the Vietnamese officials.

IO: Does anybody have anything else?

(No response.)

We would like to, in terminating this, just caution you again with some of the information you received in the beginning, Colonel KELLEY, about not discussing with other individuals your testimony in connection with this hearing, with the exception of what you might be required to do in official capacity or before appropriate judicial, legislative, or administrative bodies.

Do you have any other materials you want to inform us about?

A. Nothing pertinent, sir. I dug up all the newspapers that I could find at that time. Here's a note I wrote to my wife on the morning of 17 March, Sunday morning: "Things are fine. No news on the battalion." That was at the time I was taking at the time--

MR MACCRATE: (Interposing) Well, if there is anything in those materials that relates to the events of 16 March --

A. (Interposing) Only conspicuous by its absence, sir. I couldn't find a thing.

IO: All right. Thank you.

This hearing will recess at this time.

(The hearing recessed at 1602 hours, 23 December 1969.)

SUMMARY OF TESTIMONY

WITNESS: KOSTER, Samuel W., MG

DATES OF TESTIMONY: 15, 16 December 1969

PLACE OF TESTIMONY: Pentagon

WITNESS SUSPECTED OF: (1) Negligence in complying with, dereliction in complying with, or direct disobedience to orders and regulations pertaining to the reporting and investigating of "war crimes". (2) Suppression of or contribution to the suppression of information pertaining to the possible unlawful killing of civilians at My Lai (4) and vicinity on or about 16 March 1968.

COUNSEL: None

DUTY ASSIGNMENT ON 16 MARCH 1968: Commanding General of the Americal Division.

1. PRIOR TRAINING IN RULES OF LAND WARFARE.

a. Instructions in the rules of land warfare.

All the brigades in the division were given a five day orientation on the "musts" people had to have "in-country", (pg. 113). The orientation opened with a half hour address by General KOSTER stressing:

(1) that we were not only allies with the Vietnamese but really guests in their country;

(2) that the Vietnamese had certain laws and rights which we should respect;

(3) that the Vietnamese were a people who needed all the help and consideration which we could give them;

(4) that we had to be particularly careful when fighting in the built up areas which existed in the area of operations; and

(5) that part of our mission was to convert additional Vietnamese to the Government cause (pg. 113).

This was followed by an hour's instruction from a JAG officer detailing the treatment of combatants, noncombatants and PW's (pg. 113). In addition, personnel were given the following cards: "Nine Rules", "The Enemy in Your Hands", and "Guidance for Commanders in Vietnam" (pg. 114). This in-country training, coupled with the "great deal" of training in the rules of engagement given the brigade in Hawaii, made KOSTER believe that the brigade's personnel were well indoctrinated in the rules of land warfare (pg.115).

b. Division policies concerning noncombatants.

(1) Policies relative to the burning of villages.

There was a very strong policy against burning villages (pg. 15). Before a house could be burned, the approval of one of the generals of the division was needed (pg. 97). This was stressed at a meeting in January of 1968 (pg. 97). While Colonel HENDERSON might not have attended this meeting, KOSTER was certain that the former CO of the 11th Brigade, General LIPSCOMB, was there (pg.97). The burning of a village should have been reported (pg. 79).

(2) Policies concerning the use of artillery fire.

Normally, artillery fire could only be used to prep a landing zone (pg. 15). It could be used within a village, but this was to be avoided if at all possible (pgs. 15, 16). Even harassing fire was limited to those areas where there was a worthwhile target (pg. 16). There was no distinction in this policy between those areas considered GVN controlled and those areas considered VC controlled (pg. 16).

(3) Policies regarding the use of gunships.

The targets which gunships could engage were persons carrying arms,persons committing hostile acts, and persons wearing military equipment of any type (pg. 16). Military-age males attempting to escape in an area where there were few noncombatants could be taken under fire (pg. 16). Targets would not have included obvious non-combatants who were not committing hostile acts or who

were merely leaving the village (pg. 17).

(4) Types of destruction permissible.

Field fortifications, tunnel complexes, or strictly enemy camps could be summarily destroyed (pg.16).

(5) Violation of these policies at My Lai.

If instructions were issued to place artillery fire on the village or to burn it, this would have been in violation of KOSTER's instructions, policies, and orders (pg. 20). He did not know of any instances where hootches were burned or villages were razed (pg..108).

2. ASSAULT ON MY LAI.

a. Activities of KOSTER on the day of the assault.

(1) Meeting with HENDERSON at LZ Dottie.

KOSTER did not recall overflying the operation on the 16th (pg. 17). He did not remember a meeting with HENDERSON at 0930 at LZ Dottie where HENDERSON told KOSTER he had seen two VC KIA, as well as six to eight noncombatant casualties (pg. 18). He did not remember telling HENDERSON to stop unnecessary killing of civilians (pg. 18). Nor does he remember two RF/PF's who had been brought to Dottie as VC suspects (pg. 18). He did not recall speaking to HENDERSON on the night of the 16th but at some time HENDERSON did tell him that 20 noncombatant casualties had resulted from the operation. He expressed concern over this (pg. 38).

(2) Meeting with others.

KOSTER believed he saw either BARKER or CALHOUN at LZ Dottie. He was informed that civilian casualties had been inflicted during the course of the operation (pg. 31). However, he did not have any recollection of the events at LZ Dottie or with whom he met (pg. 31).

b. KOSTER's knowledge of the operation during the operation.

KOSTER never had the impression that C Company had much opposition in My Lai (pg. 133). However, he did not know the enemy situation prior to the arrival of the gunships (pg. 133). He did not recall hearing that the LZ was first cold and then hot (pg. 19). He was not sure of the unit from which the gunships came and doubted that it was recorded (pg. 14).

c. KOSTER's countermand of HENDERSON's order to MEDINA to sweep back through My Lai.

KOSTER did not recall whether he received the information that a resweep had been ordered from BARKER or from monitoring the net. He believed that the countermand order was given to BARKER (pg. 26). The lateness of the hour (approximately 1530) coupled with the facts that the troops would have to risk passing through a minefield and that they were not qualified to determine the cause of death of the noncombatant casualties were the considerations which caused KOSTER to countermand the order (pg. 25). He did give the matter some consideration before making this decision (pg. 28). While it was not normal for him to intercede in such a situation, he felt that taking on this mission on the spur of the moment would be dangerous (pg. 28). The countermand was not meant to preclude HENDERSON from sending troops back through My Lai at any time after the 16th (pg. 36). Aero-scout teams could have been used to gain the information (pg. 35).

3. INQUIRIES CONCERNING THE ASSAULT.

a. What KOSTER was told about the operation.

(1) THOMPSON's report.

KOSTER never spoke to Mr. THOMPSON and could not recall speaking to Major WATKE or Colonel HOLLADAY concerning the incident (pg. 42). However, KOSTER thought he got THOMPSON's report midday on the 17th (pg. 49), and this was what prompted the investigation (pg. 32). As KOSTER understood it, THOMPSON had complained that, considering the opposition on the ground, there was more shooting then was required (pg. 4). However, to KOSTER's knowledge, THOMPSON had not seen any civilians being killed (pg. 33). KOSTER

wondered how THOMPSON could determine from a helicopter that too much firepower was being used (pg. 33). He was also told that THOMPSON had landed and had argued with an officer on the ground as to whether or not the evacuation of non-combatant casualties was a proper mission for a gunship (Pg. 41). KOSTER did not know that THOMPSON had landed in front of U.S. troops (pg. 46). He knew that the gunship landed to evacuate an old man and some women and chidren (pg. 43). He thought that such a use of the gunship was unusual (pg. 47). He did not recall being told of THOMPSON's allegations that he had seen a captain shoot a Vietnamese woman (pg. 50), or that a gunship had fired into civilians (pg. 43), or that an individual had been seen shooting into a ditch containing bodies (pg. 43). It did not come up that U.S. forces had killed people marked by smoke for evacuation (pg. 43). It never occurred to KOSTER that Americal forces were shooting civilians (pg.42).

(2) Report of civilian casualties.

KOSTER knew of 20-30 noncombatant casualties on the day of the operation (pgs. 30, 55, 65). He did not recall who first told him about it (pg. 30). He was never aware of more casualties than this (pg. 65). He never got a three by five card from HENDERSON showing a break down of civilian casualties by age and sex (pgs. 55, 59). He did not recall that Colonel HOLLADAY ever mentioned 90-100 casualties (pg. 68).

(3) Discussion of body count to weapons ratio and body count to U.S. casualty ratio.

KOSTER did not specifically remember whether or not the body count to weapons ratio or body count to U.S. casualty ratio were ever discussed (pg. 23). The normal ratio was one weapon for three KIA's (pg. 23), thus, the My Lai ratio was considered different (pg. 24). He could not recall talking to General YOUNG about the ratio (pg.24). He did not remember receiving a report on the effect of the gunship fire or that 69 people had been killed by the artillery prep (pgs. 21, 57). He thought that the 20 civilians reported dead were in addition to the 128 body count (pg. 35).

(4) Information received from BARKER concerning the incident.

BARKER was asked about THOMPSON's allegations (pg. 53). He reported that either he or CALHOUN had been above the area all day and had not seen any unusual firing or incidents (pg. 53). BARKER made no mention of ordering a stop to the burning or the prevention of civilian casualties (pg. 53). BARKER gave every assurance that nothing had taken place (pg. 53).

(5) Information received from the G2.

KOSTER was never informed by the G2 that VC units had departed My Lai on the morning of the 15th (pg. 52). It would have taken at least two days for such information to reach him (pg. 52).

(6) Burning of hamlets.

It was never called to his attention that six hamlets were burned during the My Lai operation (pg. 20).

b. The after action report of Task Force Barker.

(1) Reason why noncombatant casualties were not reported.

The after action report of Task Force Barker made no mention of civilian casualties, because KOSTER's operations officer did not think there was a requirement to report them (pgs. 35, 36). KOSTER was told by his operations officer that there was no necessity to make such reports (pg. 37). He was slightly surprised that a requirement did not exist (pg. 37).

(2) KOSTER's familiarity with the report.

The first time KOSTER saw the after action report was at the CID investigation (pg. 86). As a matter of routine, such reports were not brought to his attention (pg. 86). The content of such reports was usually brought out at briefings (pg. 86). It was abnormal for the report to cover only one day of a three to four day operation (pg. 87).

4. REPORTS COVERING INVESTIGATION.

a. HENDERSON's oral report.

(1) Initiation of the report.

YOUNG gave KOSTER THOMPSON's report which YOUNG had received through WATKE and HOLLADAY (pg. 47). KOSTER directed that an interrogation of all those involved in or having knowledge of the My Lai action be made (pgs. 44, 45). He wanted an in-depth investigation to determine whether or not a formal inquiry was warranted (pg. 45). Written statements were not necessary at this point (pg. 45). The investigation was to begin immediately, but no completion date was set (pg. 45). KOSTER had two main concerns in ordering this investigation: (1) to determine whether or not excessive fire had been employed by the ground forces, the gunships, or the artillery; and (2) to look into the confrontation between the officer on the ground and THOMPSON (pg. 46). The unnecessary killing of noncombatants was not part of this investigation because KOSTER did not realize that this was an allegation (pg. 49).

(2) YOUNG's participation in the investigation.

YOUNG was asked to follow through on the investigation (pg. 67). KOSTER felt that YOUNG was involved in the investigation to the same extent he was (pg. 127). It was YOUNG's job to supervise the investigation (pg. 128).

(3) HENDERSON's interrogation of THOMPSON.

KOSTER was informed of THOMPSON's interview with HENDERSON by YOUNG (pgs. 39, 54). HENDERSON had found discrepancies in THOMPSON's story (pgs. 39, 54). THOMPSON had seen the troops firing and had seen 20 civilians casualties; from this he had drawn some unwarranted conclusions (pgs. 39, 54). HENDERSON did not place much credence in the story because THOMPSON was an excitable young man (pgs. 39, 54). On hearing that THOMPSON's story was entitled to less weight, KOSTER felt relieved because he had originally feared that there had been excess firing which had possibly caused civilian casualties (pg. 66).

(4) Presentation of the report.

KOSTER received HENDERSON's report piecemeal (pg. 56). Part of it was received from HENDERSON and part was relayed through YOUNG (pgs. 56, 57). KOSTER did not recall a formal wrap-up of the report (pg. 56).

(5) Thoroughness of the report.

In the course of making these periodic reports, HENDERSON indicated that he had interrogated all of the aviators who had been over the area that day (pgs. 55, 74), platoon leaders, platoon sergeants, some men in the company, BARKER and CALHOUN (pg. 55). KOSTER felt that HENDERSON interrogated the persons responsible for the operation and a cross-section of aviation and ground personnel (pg. 74). HENDERSON did not take any sworn statements (pg. 56). KOSTER was under the impression that HENDERSON had made an in-depth report (pg. 56). KOSTER felt that HENDERSON's investigation would have found things of even less magnitude than My Lai (pg. 74).

(6) Content of the report.

HENDERSON stated that nothing he had received would prove conclusively that there had been excessive firing (pgs. 56, 74). No further requirements were placed on HENDERSON (pg. 74). KOSTER did not recall HENDERSON reducing this report to writing (pg. 92).

b. HENDERSON's report of 24 April 1968.

HENDERSON was asked to put his oral report in writing to rebut VC allegations of an atrocity (See inclosures to Exhibit R-1) (pg. 84). KOSTER wanted to document everything that HENDERSON had found in the oral report (pg. 84). Because HENDERSON's report of 24 April 1968 dealt only with the VC propaganda pamphlet and did not review the evidence uncovered in his former investigation, it was deemed inadequate (pg. 83).

c. The formal report (BARKER's).

(1) Initiating the investigation.

Because of the inadequacy of the report of 24 April 1968, KOSTER ordered a formal investigation to be

conducted by HENDERSON (pg. 87). KOSTER thought HENDERSON could perform the investigation because he was not the immediate commander of the unit being investigated (BARKER's) (pg. 80). The order for the formal investigation was given about the 7th or 8th of May and was directed to either YOUNG or PARSON (pgs. 79, 80). KOSTER intended that orders be cut for the investigation, but does not believe this was done (pg. 79). He did not recall any response from HENDERSON to this order (pg. 81). KOSTER discovered that BARKER had done much of this investigation (pg. 87).

(2) Receipt of the report.

(a) Appearance of the report.

The report was received about the 14th or 15th of May (pg. 87). It contained statements by platoon leaders, platoon sergeants, company commanders, and some aviators (pg. 87). A statement by WATKE was possibly included (pg. 88). The bulk of the report was statements (pg. 88). It was about 20-25 pages long and had a clip at the top (pg. 91).

(b) Log entries of the report.

The report was not logged into the division (pg. 89). This would not be abnormal if it was hand delivered (pg. 89). If it had been hand delivered, it should have been entered in PARSON's log (pg. 89).

(c) Distribution of copies of the report.

KOSTER did not know how many copies of the report were submitted or where any copies might be filed (pg. 90). He did not forward a copy to higher headquarters (pg. 90).

(3) Content of the report.

The report agreed with the conclusions of HENDERSON's previous inquiry (pg. 88). It stated that there had not been excessive firing causing undue casualties to noncombatants (pg. 88). The report did not mention more than 20 noncombatant casualties (pg. 88). HENDERSON endorsed the document, stating that he agreed with its conclusions and recommendations (pg. 88).

(4) Discussions of the report.

KOSTER did not recall discussing the report with HENDERSON (pg. 89) and did not recall receiving any comment about it from the SJA or IG of the division (pg. 91). He discussed the report with YOUNG and PARSON who agreed that it was a sufficient investigation for the time being (pg. 89). KOSTER, YOUNG, and PARSON also discussed the fact that BARKER, whose unit was concerned, had made this report. It was concluded that this did not warrant another investigation (pg. 91). KOSTER reiterated these events several times during his testimony and did not believe he recalled them as a result of his telephone conversations with HENDERSON (pgs. 92, 124, 128, 130, 131).

d. Report to General CUSHMAN).

KOSTER believed he told General CUSHMAN, one of his deputies, or another visitor from III MAF that there had been VC propaganda which was being investigated (pg.38). He believed he discussed the allegation with CUSHMAN in a general manner (pg. 50).

e. Report to the Province Chief.

After receiving BARKER's report, KOSTER went to the province chief to inform him that the allegation had been investigated (pg. 93). The province chief looked upon it as VC propaganda and took no stock in the village chief's report because the latter did not live in the village (pg. 93). KOSTER also mentioned the report of the investigation to General LAM (pg. 94).

5. OTHER INFORMATION.

a. KOSTER's telephone communication with HENDERSON prior to this investigation.

KOSTER had three telephone conversations with HENDERSON prior to this investigation (pg. 5). They discussed:

(1) THOMPSON's report (pg. 5);

(2) The countermand of HENDERSON's order to sweep back through My Lai (pg. 6);

(3) the reports submitted by HENDERSON (pg. 7).

HENDERSON told KOSTER that, as he understood it, the report of 24 April was to encompass only the VC propaganda statement (pg. 8). HENDERSON also told him that BARKER had conducted the formal investigation (pg. 9).

b. KOSTER's assessment of HENDERSON and BARKER.

KOSTER thought HENDERSON was a brave and strong leader, although not necessarily the most intelligent of his brigade commanders (pg. 106). He thought BARKER had a good staff, did a good job and knew what was going on in the task force (pg. 117). He planned to give BARKER a battalion as soon as one became available (pg. 117).

c. Other problems confronting KOSTER at this time.

The division was in transition to a TOE unit (pg. 111). Operations Norfolk Victory and Burlington Trail, going on in the north, occupied a considerable amount of his time (pgs. 109, 110). The SJA and IG were new (pg. 111). He was training new battalions (pg. 109). He was getting an aviation unit started (pg. 112).

d. Reasons why KOSTER thought MACV Directive 20-4 did not apply.

KOSTER is now familiar with MACV Directive 20-4, but was not completely familiar with it previously (pg.100). At the time of the incident, he felt that the regulation did not apply since what had been alleged was not a war crime, but, instead, civilian casualties inflicted during a contested operation (pg. 100). He felt that the letter from the village chief did not allege a war crime for the following reasons:

(1) the information came from a VC area;

(2) it did not jibe with the information coming in from HENDERSON's investigation;

(3) the allegations concerned many more civilian casualties than the number of civilians reported living in the area; and

(4) the document was not given importance by the

District Chief (pgs. 101, 102).

He was not sure whether or not the village chief was ever questioned regarding the incident (pg. 101).

e. Document entitled "Safeguarding Noncombatants" put out by the Americal Division.

As a result of the My Lai action, a letter, entitled "The Safeguarding of Noncombatants" was addressed to all commanders (pg. 96). It went out over KOSTER's personal signature because he attached great importance to it (pg. 98). He was disturbed about the 20 civilian casualties he knew about and wanted emphasis placed on the subject of noncombatant casualties (pg. 96).

f. The disbanding of Task Force Barker.

The task force was disbanded in the middle of April (pg. 98). This was done because the 11th Brigade had received its fourth battalion (pg. 98). Tactical considerations were the only reason for disbanding it. (pg. 98).

EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	NOTES	PAGES
D-1	MACV Directive 20-4	Wit was not positive he was completely familiar with this. Wit was questioned from document.	100,104
D-6	MACV Directive 525-3	Wit recognized document.	100
M-2	MACV Card "Nine Rules"	Wit recognized card.	114
M-3	MACV Card "Enemy in Your Hands	Wit recognized card.	114
M-4	MACV Card "Guide for commanders"	Wit recognized exhibit.	114
M-6	Americal log	Wit questioned from log.	21, 22, 29
M-7	WESTMORELAND's letter to KOSTER	Wit questioned concerning document	99
R-1	HENDERSON's Report	Wit questioned from exhibit.	77-79, 83
R-2	BARKER's Report	Wit questioned from exhibit.	77-79

SUMMARY OF RECALL TESTIMONY

WITNESS: KOSTER, Samuel W. MG

DATE OF TESTIMONY: 18 February 1970

PLACE OF TESTIMONY: Pentagon

WITNESS SUSPECTED OF: (1) Failure to report alleged suspected or apparent war crimes in violation of MACV Regulation 20-4; (2) Dereliction of duty in failing to act on reports and information concerning the unlawful killing of civilians by American troops at My Lai; (3) Withholding of information and false swearing while before the Peers Committee on 15 and 16 December 1969; and (4) Suppression and conspiracy to suppress information and reports concerning the unlawful killing of civilians by American troops at My Lai.

COUNSEL: None

DUTY ASSIGNMENT ON 16 MARCH 1968: Commanding General of the Americal Division.

1. PREOPERATIONAL PLANS AND BRIEFINGS.

a. Division plans for residents of Pinkville.

There were never any plans to remove the population from the Pinkville area (pg. 206). The village was in an area of ARVN concern and the division would not have taken it upon itself to relocate these people (pg. 206). He doubted that he would have encouraged the ARVN's to move these people as it was difficult to place them (pg. 207).

b. Plans for the My Lai operation.

Although he never received written plans for the My Lai operation and was not briefed about the plan in detail, he was certain that General LIPSCOMB told him of the mission and the general tactical plan (pgs. 200, 201). Any battalion-size operation would have to be referred to KOSTER for the allocation of division resources (pg. 200).

He did not know the name of the village into which the operation was going and was never informed of an intention to burn hootches or destroy livestock and every living thing (pg. 203).

2. ASSAULT ON MY LAI.

a. Activities of KOSTER on the day of the assault.

Although KOSTER recalled an instance where VC suspects turned out to be PF's, he did not relate this to the My Lai operation (pg. 170). He did not recall HENDERSON telling him at LZ Dottie that civilians had been killed in an operation (pg. 170). He was not told a specific number of KIA's due to artillery (pg. 172). He did not know why he asked about civilian casualties other than his general concern for civilians in a populated area (pg. 172). He did not recall anything HENDERSON or anyone else might have told him about the operation on the occasion of his being at Dottie (pg. 172). He did not remember anything that transpired at LZ Dottie and could not recall BARKER returning to the LZ while he was there (pg. 171). He did not recall landing at My Lai during the operation, and he did not recall ever landing during an operation which was in progress (pgs. 174, 175). He did not recall talking to HENDERSON at LZ Bronco on the afternoon of the 16th or to General DOLEMAN on the 17th (pgs. 175, 181). KOSTER remembered no discussion with BARKER or anyone else at LZ Dottie at 1645 (pgs. 177, 178, 193). However, he did see Charlie Company return (pg. 193). He received word from HENDERSON that 20 civilians were killed sometime during the operation, but could not remember when it was (pg. 174). He did not recall overflying the area and seeing a village on fire either on the 16th, 17th, or 18th (pgs. 173, 194). He could not remember being at LZ Dottie on the afternoon of the 18th (pg. 192). The first thing he recalled being told about the operation was that someone had hit a boobytrap (pgs. 171, 172).

b. KOSTER's countermand of HENDERSON's order to resweep the village.

While he did not necessarily relate his countermand order to the My Lai operation, he did recall overhearing a discussion between a company commander and CALHOUN concerning a troop movement late in the day (pg. 176). At the time he was flying between Quang Ngai and Chu Lai (pg. 176). The troops were to move back into an area, not to make a body

count, but to ascertain how people had been killed (pg. 176). MEDINA was arguing that it would be impossible to go back to figure out how these people had been killed because their bodies were so mangled (pg. 177). MEDINA said that the 20 to 24 civilians involved were killed by artillery (pg.177). KOSTER did not think people should be moving at this time of day and thus countermanded the order (pgs. 175, 176). He issued instructions for the brigade commander to be informed of this (pg. 177). His countermand order only applied to that time period and not to the next day (pg. 219).

3. INQUIRIES AFTER THE ASSAULT.

a. What KOSTER was told about THOMPSON's report.

(1) Setting for receipt of the report.

KOSTER recalled that when he first heard about THOMPSON's report PARSON was with YOUNG (pg. 186). YOUNG told the story (pg. 186). It was approximately noontime on the 17th (pg. 181). YOUNG was relaying what he had been told by HOLLADAY and WATKE (pg. 140). KOSTER recalled being told of indiscriminate firing on the part of ground troops and of some difficulty between a pilot and a ground commander (pg. 182).

(2) The allegation of indiscriminate firing.

With respect to the report of indiscriminate firing there was no indication of unnecessary killing (pgs. 161, 183). He knew there were some civilian casualties, but he heard nothing on the magnitude of 120 casualties (pgs. 161, 162, 183, 184). At no time did he feel that civilians had been killed other than in the preparation or during the heat of battle (pg. 187). When he heard the report of indiscriminate firing KOSTER felt that the troops had seen some villagers within the area and that they were firing at targets as opposed to an identified enemy (pg.184). He thought that since their fire covered a wide range, they were bound to hit some civilians (pg. 184). He understood that there had been some initial contact, not a heavy or sustained contact, but sufficient to warrant continued firing (pg. 198). He had the impression that there had been some resistance someplace in the operation throughout the morning (pg. 191).

(3) Report of the confrontation.

As KOSTER understood the confrontation the helicopter pilot had wanted to bring in some gunships to evacuate personnel, but the ground commander was opposed because he felt it was an improper use of gunships and because he felt that the civilians should not have been evacuated at that time (pg. 182). The witness could not recall the detail in which he was told about the confrontation, but it could have included any of the following information: (1) civilians going into a hootch or a cave; (2) a helicopter pilot seeking to evacuate these people; (3) a ground commander responding, "The only way to get those people out is with grenades", or (4) a gunship used to evacuate civilians (pg. 182). Nothing was said about enemy fire during the helicopter pilot's landing or about civilians caught in a crossfire (pg. 191). KOSTER knew nothing about actual firing between the helicopter gunners and the ground forces and did not have the impression that there was even a likelihood of this (pgs. 182, 183). He was told none of the following: (1) that 10 to 15 civilians had been observed dead along the road; (2) that wounded persons the helicopter pilot had marked with smoke for evacuation were killed; (3) that a group of bodies were observed in the village; (4) that the helicopter pilot had landed next to a body-filled ditch and spoken with an American sergeant who was later observed pointing his weapon in the direction of the ditch; and (5) that the helicopter pilot had landed again at the ditch and had found a wounded boy whom he flew to Quang Ngai (pg. 189). He did not recall being told that THOMPSON's story was corroborated by other helicopter pilots (pg. 184).

b. Other indicators.

(1) Dispartiy in the weapons to body count ratio.

KOSTER did not recall discussing the disparity in the weapons to body count ratio with YOUNG (pgs. 178, 179). However, because of the wide variation in the ratio, the witness felt that this was something that could have been discussed (pg. 179). He did not recall issuing instructions to have this disparity investigated (pg. 179).

(2) Discussion with BARKER.

KOSTER was certain he spoke with BARKER concernin

civilian casualties, indiscriminate firing, and the confrontation (pgs. 192, 193). He thought he was reassured by BARKER that everything was normal (pg. 193). He did not recall the details of the conversation (pg. 193).

(3) Miscellaneous.

KOSTER never heard anything about the incident through chaplain's channels (pg. 195). The witness suggested that, since the burning of villages was not sanctioned by division, any order to burn the village or destroy livestock must have been given at the brigade level or lower (pgs. 205, 207).

4. REPORTS OF INVESTIGATION.

a. HENDERSON's oral report.

(1) Initiation of the report.

On hearing YOUNG's story KOSTER had the feeling that the incident reported by the helicopter pilot was not apt to have happened (pg. 186). However, he told YOUNG to make an investigation (pg. 186). KOSTER did not recall giving YOUNG instructions beyond this, but he had a "feeling" that he did so (pgs. 186, 187). He could not recall what he said,however (pg. 187). He thought that any investigation would have involved talking to the people who were on the ground and those who were on the helicopters (pg. 187).

(2) KOSTER's conception of YOUNG's responsibilities.

There was an understanding, not set out in the form of a directive, that YOUNG was to look after the southern sector of the Americal AO (pg. 190). After General LIPSCOMB left KOSTER told YOUNG that the brigade would require supervision on his part (pg. 190). Thus, he felt that any investigation of operations in the southern sector was to be supervised by YOUNG (pg. 187). KOSTER did not recall issuing instructions to HOLLADAY concerning the matter as he looked to YOUNG to handle it (pg. 212).

(3) HENDERSON's interrogation of THOMPSON.

Later, YOUNG informed KOSTER that HENDERSON had interrogated the pilot involved in the confrontation

for approximately 20 to 30 minutes (pg. 188). HENDERSON felt that the pilot was a young man who had been confused and over excited (pg. 188). HENDERSON stated that the pilot had probably imagined some things which did not in fact take place (pg. 188).

(4) HENDERSON's report to KOSTER.

HENDERSON never gave KOSTER a total wrap up of the information obtained in his investigation (pg. 195). KOSTER received the bulk of the report through a series of interviews (pg. 195). HENDERSON said he had spoken to ground commanders and aviators (pg. 195). HENDERSON also said he had spoken to many of the men as they returned to the landing zone (pgs. 195, 196). KOSTER had the impression that HENDERSON spoke to the men as individuals rather than as part of a large group (pg. 196). From this KOSTER felt that HENDERSON had spoken to a large number of people and had conducted quite a thorough investigation (pg. 196). KOSTER did not look on the oral report as formal, however, (pg. 198). He did not recall receiving from HENDERSON a document three quarters of a page long responsive to the helicopter pilot's allegations (pg. 156).

b. The district chief's report.

KOSTER saw the VC propaganda leaflet, but he did not recall the letter from the district chief to the province chief in which it was alleged that Americans had killed a large number of civilians northeast of Quang Ngai City (Exhibit M-34) (pgs. 215, 220). He was never shown such a document by GUINN or PARSON (pgs. 148, 220). However, from the statement in HENDERSON's report KOSTER learned that the the propaganda leaflet had come through the district chief (pgs. 217, 219). He did not recall seeing RODRIGUEZ's statement, Exhibit M-30, as an inclosure to HENDERSON's report and could not explain its lack of a signature (pgs. 162, 219, 220). He did not know that the district chief had a list of 400 names (pg. 220). KOSTER acknowledged however, that he would not have allowed HENDERSON to submit a report referring to a letter of 11 April without including the letter (pg. 220), nor would he allow the report to be submitted without knowing who was the author of the statement (Exhibit M-30) (pg. 220). He concurred further that the reference within the report to the inclosures should have made him ask where they were (pg. 221). He agreed that since he read the report he must have seen the district chief's letter (pgs. 219, 220). However, he only recalled the allegation in the VC leaflet (pg. 218). He passed the whole

thing off as VC propaganda (pg. 219). He discussed the leaflet with YOUNG and they talked about what would be the implications for Task Force Barker if the allegation were proven true (pgs. 220, 231). They did not dwell on the subject, but they thought about it (pg. 231).

c. HENDERSON's report.

As KOSTER recalled it he asked HENDERSON to formalize the oral report HENDERSON had already made in response to the helicopter pilot's allegations (pgs. 141, 166). He believed this request was triggered by receipt of the VC propaganda leaflet (pgs. 141, 166). He did not send any special instructions to HENDERSON asking him to look into the allegation of the district chief (pg. 160). KOSTER did not recall if he received the inclosures to HENDERSON's report prior to receiving the report (pg. 160). In fact, he did not remember receiving inclosures at any time (pg. 155). He did not recollect whether HENDERSON delivered the report personally (pg. 160). Exhibit R-5, which is the carbon of the original copy, was the document the witness recalled receiving (pg. 155).

d. KOSTER's recollection of a formal report.

KOSTER considered HENDERSON's 24 April report unsatisfactory because it was addressed only to the VC propaganda, whereas he wanted a written version of the oral report HENDERSON had submitted in relation to the helicopter pilot's allegations (pgs. 158, 161). KOSTER wanted a report with statements directed to the helicopter pilot's allegations (pgs. 159, 151). Word was delivered to HENDERSON to do this either through YOUNG or PARSON (pg.161). At that time he did not think about the possibility of turning this matter over to his IG or SJA (pg. 161). The witness claimed that a formal report with statements from HENDERSON was given to him (pgs. 151, 216, 228). He thought the report was delivered while he was on R&R (pg. 153). As he recalled it, the statements were received by him after the report had been submitted (pg. 156). He could not recall what the report said and, in fact, did not really remember the report, but only the statements (pg. 229). The report had the signature of HENDERSON, BARKER and others on it (pgs. 152, 228). While KOSTER conceded that the report he saw might have been from another investigation, he had always linked the formal report with the My Lai investigation (pg. 151). He could not explain why those who may have signed statements could not remember making them and why

there are no log entries of the document, destruction certificates for it, or other references to it in the files of the Americal Division or anywhere else (pgs. 152, 225). He was positive he gave PARSON a document to file in relation to this case and thought it was the formal report (pgs. 153, 224). This took place after his meeting with TOAN (pgs. 221, 222). While he conceded that the document he gave to PARSON to file might have been related to another case or was HENDERSON'S 24 April Report, he reiterated his belief that the document involved was the formal report (pgs. 153, 157). He did not think that the report was given to people in his outer office (pg. 156). He recalled HENDERSON saying that HENDERSON would recommend that the report be retained for a certain period of time (pg.226).

e. Discussion of the incident with ARVN officals.

(1) Setting and time of meeting.

KOSTER did not believe he went to see TOAN or KHIEN until after he had the 24 April report (pgs. 146, 147, 222). He also believed that he had received the formal report and that his visit to TOAN and KHIEN was the last step in his investigation (pgs. 146, 150, 216, 222). At the time of this visit he, at least, anticipated receipt of statements that would support the previous findings (pg. 222). He believed that the meeting was in late April or early May (pgs. 216, 222). As he recalled it, he spoke with TOAN and KHIEN on the same day (pgs. 157, 158). When he spoke to TOAN he believed that HUTTER was present (pgs. 231). When he spoke with KHIEN, there was an advisor present (pg. 231).

(2) Content of the discussions.

KOSTER went to see TOAN and KHIEN to determine whether or not further investigation was warranted (pg. 146). He wanted to know if the ARVN's had uncovered information beyond that of the Americans regarding the VC propaganda leaflet, and he wanted to get TOAN's assessment of the propaganda leaflet (pg. 147). TOAN said either that the matter had been investigated or was being investigated, that the figures in the leaflet were inaccurate, and that he would forward any additional information which was uncovered to the Americans (pgs. 147, 150). KOSTER indicated he wanted any additional information (pg. 234). KOSTER did not remember whether the discussion centered around the propaganda or the District Chief's letter (pg.147).

CONFIDENTIAL

because they were attempting to coordinate rice denial plans (pg. 167). This heavy flow was also caused by Mr. MAY's imminent departure and General ABRAMS' plan to make a visit (pg. 167). They were also preparing for the visit of President THIEU and were planning other joint operations together (pg. 168).

b. Denial of a coverup.

KOSTER did not intentionally keep word of the incident from his staff other than when he first heard about it (pg. 223). At that time he did not want word of the confrontation to get around until he knew what had happened (pg. 223). When YOUNG reported to him the next day these restrictions were lifted from the topic, and he believed he discussed the subject with the various commanders and staff officers (pg. 223). He was certain he discussed it with officers in the 11th Brigade (pg. 223). He thought the staff knew about the 20 civilian casualties, and he could not understand why YOUNG and PARSON did not know about it (pg. 224). He did not feel that he withheld any information from YOUNG or PARSON (pg. 224). He did not recall discussing civilian casualties with anyone from MACV or USARV headquarters (pg. 230). He issued no directive and did not participate in the destruction of the formal report or the 24 April report (pg. 225). KOSTER did not believe that political events in the United States had any effect on his handling of the incident (pg. 232). He recalled no discussion concerning the effect that the revelation of the My Lai incident might have on the American effort in Vietnam (pg. 232).

c. Confusion of Kham Duc formal report with My Lai formal report.

The witness did not believe he confused the formal report he saw in the My Lai incident with that which he received in the Kham Duc investigation because the statements inclosed in the Kham Duc report would have been from people other than those in Task Force Barker with whom he linked the formal report of My Lai (pgs. 151, 152).

d. KOSTER's main area of operational concern at the time of the My Lai operation.

KOSTER was mainly concerned with the planning and

development of the Burlington Trail and Norfolk victory Operations in the north at the time of the My Lai operation (pgs. 207, 208, 209).

e. Rules of engagement.

Aside from his 24 March 1968 memorandum concerning the Americal Division Rules of Engagement, KOSTER spoke with the various brigade commanders individually and by group concerning the attitude that should be taken toward civilians (pg. 217).

EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	NOTES	PAGES
D-14	Americal DIVARTY letter	Witness was referred to document.	180
M-13	HENDERSON's letter to WESTMORELAND	Witness had never seen before.	166
M-30	Statement of RODRIGUEZ	Witness did not know why stmt was made.	162
M-34	TAN's ltr to KHIEN, 11 Apr (trans) (Quang Ngai Prov)	Witness never saw before.	148, 149
M-36	Memo for DC, 2d ARVN Div, 12 Apr 68	Witness never saw before.	149
M-119	Chronological checklist of activities of General KOSTER.	Entered into evidence.	140
R-1	HENDERSON's report	Witness had received at time he spoke to TOAN.	147
S-7	Statement made by witness before Hebert subcommittee of House Armed Services Committee	Entered into evidence.	235

(The hearing reconvened at 0907 hours, 15 December 1969.)

IO: The hearing will come to order.

RCDR: The following named persons are present: LTG PEERS, MR WEST, MR MACCRATE, MR WALSH, COL MILLER, and MAJ LYNN.

Sir, the next witness is General Samuel W. KOSTER.

(MG KOSTER was called as a witness, was sworn, and testified as follows:)

General KOSTER, sir, would you please state your full name, grade, Social Security number, branch of service, organization, and station?

A. Samuel W. KOSTER, Major General, United States Army, 577-52-4806, presently stationed at West Point, New York.

IO: General KOSTER, before we proceed with any questions, I shall inform you of several matters.

This investigation was directed jointly by the Secretary of the Army and the Chief of Staff of the United States Army for the purpose of determining the facts and making findings and recommendations concerning:

(1) the adequacy of prior investigations and inquiries into, and subsequent reviews and reports within the chain of command, of what is now commonly referred to as the My Lai incident of 16 March 1968, and

(2) the possible suppression or withholding of information by any person who had a duty to report and to furnish information concerning this incident.

This investigation is not being conducted to investigate all the facts and circumstances as to what happened at My Lai. It is directed at those specific purposes which I have just stated. Do you have any questions on those two purposes?

A. No, sir.

Q. I have had made available to me and I have reviewed prior official statements obtained in other official investigations of the My Lai incident including your own statement.

A. Yes, sir.

Q. With the addendum to it.

A. Yes, sir.

IO: Your testimony will be taken under oath. A verbatim transcript will be prepared. A tape recording is being made in addition to the verbatim notes being taken by the reporter. Although the general classification of the report will be confidential, it is possible that testimony or parts of it may later become a matter of public knowledge.

There are several people in this room who may ask you questions. The second person on my right is Mr. WEST from the General Counsel's office. He has been designated as my deputy in this investigation. On my far right is Colonel MILLER who will stay here for a little while to provide some legal guidance. On my immediate right is Mr. MACCRATE and the third person is Mr. WALSH. In his capacity as deputy Mr. WEST has authority to ask questions in my behalf. Mr. MACCRATE and Mr. WALSH have volunteered to serve as legal counsel to me in which capacity they may address questions to you.

A. I understand.

IO: However, in the final analysis I have the responsibility of weighing the evidence and making the final findings and recommendations.

You are ordered not to discuss your testimony in this investigation with others including other witnesses for this investigation except in the performance of official duties or as you may be required to do before a competent judicial or administrative body. In addition, you are cautioned that if you are subject to the order issued by the military judge in the general court-martial case of United States v. Calley, your appearance here in no way changes the applicability and the effect of that order.

Do you have any questions about what I have said up to this point?

A. No, sir.

IO: I have just stated the scope and the purpose of this investigation. You, as the Americal or the 23d Division Commander, at the time and for some time after the My Lai incident, were senior officer in the chain of command. Furthermore, evidence received to date indicates that you were personally informed of several of the events which are of importance in this investigation and that you issued instructions and received some reports concerning alleged indiscriminate shooting, after action reports, and other information relevant and material to the matters under investigation. There is now some evidence which raises the suspicion that during and after the My Lai incident you were negligent or derelict in complying with or even in direct violation of orders and regulations pertaining to the reporting and investigating of alleged wounding and killing of civilians (war crimes). Further, that you may have either suppressed or contributed to the suppression of information pertaining to the possible unlawful killing of civilians at My Lai (4) and vicinity on or about 16 March 1968. Such acts would be in violation of orders or regulations and would also constitute dereliction of duty. I am calling this to your attention because you have been called as a witness. However, before questioning begins I wanted you to be informed as to my suspicions and to give you time to think over and determine in your mind whether you wish to seek legal counsel and to decide whether you are willing to give testimony in this investigation.

A. I'm willing to give testimony.

COL MILLER: General, before any questions are asked it is, of course, necessary that you understand completely your testimonial rights and your right to counsel, so I have additional information and some additional questions.

First of all, you have a right to remain silent.

Second, any statement that you do make may be used as evidence against you in a criminal trial.

You have the right to consult with counsel, which means the right to have qualified lawyer and to have such counsel present with you during questioning here. You may

retain counsel at your own expense or counsel will be appointed for you. Inasmuch as you are subject to the Uniform Code of Military Justice, the appointed counsel may be military counsel of your own choice if he is reasonably available. Even if you decide to proceed today without counsel present and answer questions, you may stop answering questions at any time. You may also request counsel at any time during these proceedings. You would have the right, in requesting counsel, to have him present with you in this hearing and to consult with him and him to consult with you at any time.

Do you understand these rights?

A. I understand.

Q. Do you want me to explain them any further?

A. No, sir.

Q. Do you wish to have counsel made available?

A. Not at this time.

Q. Are you now willing to proceed and to answer questions?

A. I am.

Q. Thank you, sir.

(COL MILLER departed the hearing room.)

IO: General KOSTER, what was your duty assignment on 16 March 1968?

A. I was commanding general of the Americal Division.

Q. Was the Americal also known as the 23d Division?

A. It was, sir.

Q. How long had you been in this assignment and how

long after that date did you remain in command of the division?

A. I took over the division in the early fall of 1967. At the time, it was designated as Task Force Oregon, and it was redesignated Americal, 23d Division during October. I remained in this capacity until I left Vietnam on the 3rd of June 1968.

Q. You took over Task Force Oregon, then, directly from General ROSSON?

A. No, General ROSSON was the first commander and then General KNOWLES had it for a short period of time. He became ill and was evacuated to the United States. General MATHESON who was commander of the 1st Brigade of the 101st took it over temporarily until I arrived.

Q. Before reporting to this hearing, General KOSTER, and subsequent to the breaking of the My Lai incident in the press and television and radio, have you talked to anybody from the division who had anything to do with this incident or the investigation and reporting of it?

A. Yes, sir. I talked to Colonel HENDERSON on the phone two or three, three times I believe, altogether.

Q. What did you talk about? I'd like to have the substance of each of these conversations and the dates, to the best of your recollection?

A. The first date was about the date that the CID came up to receive my first testimony. In that, I was wondering if he had been queried and I gathered that he had. He said that numerous other people had been interrogated that he was aware of, and several of them were being called to go to Benning for testimony of some type. I don't think we got into any detailed discussions of the operation as such, other than I'm sure I did question him, "Did you ever imagine that anything like this could come from this particular incident?" And, as I recall, he gave me an answer along the lines he could have sworn there was nothing like the allegations which were being made ever took place.

I called him again, I believe, after I talked to the CID, and, as I recall, I was a little confused in my own mind about the timing of when he had interrogated different people, in particular the aviator who made the report, and I asked him about that specifically.

During the course of one of these, either this conversation or if I had a third one and I--I'm sure I had a third one--at some time he brought up the fact that he had directed C Company to return to My Lai and after I had discussed it with BARKER sometime late in the day the company had not gone there. This was my only question: "Are you sure it was in connection with this particular action because although I specifically remember the conversation with BARKER doing such a thing, I'd not even recalled in my own mind that this incident was related to the action in question today." However, Colonel HENDERSON was quite firm in that regard.

I did call him again, I'm reasonably sure. At one time during this second conversation he also indicated that he had a complete recollection written out of how he determined the operation went, and he wanted to know if I thought it would be proper for him to send me such a thing? I said, "No." I didn't think it would be, and he agreed. I said: "I am, though, going to talk to the CID man again," because I was sending down this addendum. "I'll ask him what he thinks." Well, the criminal investigator really avoided answering the question. He said he'd get it for me the next day, but I never did push him further and I did not receive any such document from Colonel HENDERSON.

I believe that the last time I called him was possibly after he'd met with your board. Either that or after he'd made his press statement and I'm not positive which. But generally it was to see how things were going with him, and if people were pushing him hard and what his reaction was. I don't think we got into any specifics on anything at that time. One more thing, I do recall that sometime I did see him one other time when we gathered together to go over to the "Hill" the other morning, the day you were there. He came in and we said, "hello," briefly. Afterwards I saw him as they came back from the "Hill" and I was preparing to depart. The only thing we discussed of any substance that time--and we had mentioned something about the helicopter pilot before, he had said the helicopter pilot was a Huey pilot. I'd always been under the impression that it was an H-23 pilot, and I'm sure I told him so, and he told me that day, "Well, the pilot was an H-23 pilot." So those were really four occasions when I'd had discussions with him.

Q. At anytime during your conversations with him did you discuss investigations, inquiries, or anything relating to the reporting of this incident?

A. You mean as to what was done back at the time?

Q. Yes, how many reports or investigations were conducted, and the reports which were submitted, and anything having to do with the investigative or reporting process?

A. Yes, I think we might have touched on that briefly. I'm sure it wasn't the initial inquiry. We had some discussion about when he had brought them to the headquarters, and this I think was in the very first discussion, and he was a little indefinite when he brought it up. One of them he said he brought and handed to me directly. The other one, as I recall, he said he handed to me directly. The other one, as I recall, he said he handed to General YOUNG. One of them, and I'm not sure which one, he said he knew that he had been up there because he had a leg in a cast. But I was at that time really sorting out in my own mind why this thing had gone on as long as it did, and I was trying to fix some dates as to how it happened because when I saw his second investigation dated 24 April that was later than I had originally remembered. But I'm sure our discussion didn't go beyond those particular items.

MR MACCRATE: Do you recall how many times Colonel HENDERSON indicated that he had reported to you in connection with this incident?

A. Do you mean verbally or in--

Q. (Interposing) Either verbally or in writing?

A. No, I don't. I know verbally he reported some of this to me either directly or over the telephone. Much of it I got from General YOUNG, who I had more or less left to see that that particular portion of the division area was under control, so much of it was relayed from Colonel HENDERSON to me by way of General YOUNG. But this was over a period of time.

Q. But at this moment we are talking about what Colonel HENDERSON has said recently to you. We are seriously concerned as to the way in which his recollection of this matter has developed over the past weeks. It would therefore be helpful to us as we consider this to have your recollection of what Colonel HENDERSON said to you in each of these conversations with respect to the occasions on which he reported to you--to you, sir--orally or in written reports that ultimately came to you?

A. Well, I don't think we ever really discussed the oral ones. Insofar as the--one of the other two, and I'm not positive which, he said he brought up personally and handed to me. The other one, as best I recall, he said he had turned over to General YOUNG. And I'm not positive which is which. I do know during the course of these discussions as he was mentioning dates, and I think it possibly was the date of when he interrogated the helicopter pilot, it seemed to me that he had changed a date indicating it was one day as opposed to another day. But I noticed in discussing the investigations--and we did that only very briefly--I didn't notice anything inconsistent nor did I partcularly contest or question what he told me. I do recall the second investigation. I perhaps asked him why we hadn't included all the other evidence that had been developed. This one obviously didn't contain the details that he had brought out verbally, previously, and as I recall he said, "Well, as far as he was concerned the first written report was to be of the whole allegation as opposed to, say, just the VC propaganda which was about all it really covered." I don't think I told him personally to prepare that written report. I think it was done either by the staff or General YOUNG, and perhaps something was lost in the translation.

Q. Did he in any of these conversations refer to a formal investigation commencing in May or possibly the early part of May 1968?

A. Yes, sir.

Q. And did you discuss with him the circumstances of that formal investigation as distinguished from the earlier investigations of March and April?

A. I only--I mentioned it to him stating that I considered it his report and that he was responsible for it. He had said it would have been signed--he had transmitted it and the investigation had actually been done by Colonel BARKER. I said: "Well, as I remembered it, it was--I looked upon it as your investigation. You were the brigade commander and you had been charged with a formal investigation." Now, if he turned it over to somebody else I didn't recall that particularly, but he did make mention of that.

Q. Well, do I understand it was he who raised the fact of a subsequent formal investigation or was it something that you recalled that led to your discussing this with him?

A. I think I questioned the timing of it more than anything else--when it was, that's all.

Q. Well, he mentioned a formal investigation commencing in early May and you questioned that timing. Is that the point actually?

A. I can't say for sure who brought it up first. All I was doing, really, was getting in my own mind the timing of the--what I consider an inquiry and the two investigations that took place. The 24 April one obviously was the first one he turned in, which is now available. After looking at this one--I'm not sure when he was told to go back--I wanted a formal investigation which would include statements of witnesses. I'm sure that Colonel HENDERSON acknowledged in this conversation that, yes, such a formal investigation had taken place. I'm not sure I'm answering your question or not.

Q. Was it you or he who placed that formal investigation after April 24th rather than prior to April 24th?

A. Well, I'm--I can't say for sure, but I suspect that I did because I'm sure that was the sequence of events.

MR WEST: With regard to your conversations with Colonel HENDERSON, did he call you during this period; did he initiate a call to you, do you remember?

A. No, sir. He did not.

Q. All right. I believe you testified that your third conversation was after Colonel HENDERSON had come in to talk to us or before he gave a press statement. Now, he has actually made two appearances before General PEERS. Could this statement have been as late as--could this third conversation have been as late as this past weekend, Friday night or since?

MR MACCRATE: Not this past weekend. We are on a Monday.

MR WEST: Colonel HENDERSON last appeared before us last Friday afternoon.

What I'm asking is, when did your conversations take place with Colonel HENDERSON? Subsequent to Friday afternoon?

A. Not this last Friday, no, sir. I would say that it was at least a week before we gathered to go over to the "Hill," which was last Tuesday. This was my last conversation with him.

IO: Could it have been the 2nd? Last Tuesday I believe was the 9th. Could it have been on the 2nd or subsequent to the 2nd?

A. That I made the last conversation?

Q. Or that he talked to you whether he called you or you called him, but the conversation, whether it would have been Tuesday the 2nd--subsequent to Tuesday the 2nd of December?

A. I think--do we have a calendar?

RCDR: Yes, sir.

(Hands calendar to witness.)

IO: I will acquaint you with the facts, General KOSTER, that on 2 December you forwarded a memorandum to Mr. Robert N. ZAZA of the CID forwarding a supplement to your--

A. (Interposing) That was on 2 December?

Q. That was on 2 December.

A. Well, then, I think that was about the time I had my last conversation with him.

Q. In other words, you had talked to him prior to that time?

A. I'd talked to him once prior to that time and once after the CID, which was really why I sent in my addendum because he had mentioned the fact that I had this conversation about the return of C Company into My Lai.

Q. You first talked to the CID--

A. (Interposing) I had had one conversation with him before that.

Q. Your statement was given on 24 November, and you submitted your supplement to your statement on 2 December. So my question is, did you talk--have you talked to Colonel HENDERSON subsequent to 2 December or the date on which you changed or added to your previous statement?

A. I talked to him on the day we gathered for the hearings.

Q. Well, yes, I understand that. In your statement, your addendum to the CID, you allude to the fact, "in a recent discussion with Colonel HENDERSON."

A. Yes, sir. I did. That was the one which I made sometime after I had talked to the CID and the time I made this addendum.

Q. Well, the real question would be--

A. (Interposing) Was there one subsequent to that?

Q. After that time?

A. I can't pinpoint it specifically, but it is possible that I did. But again, and I think I would recall

these, and I believe I indicated I think I talked to him three times: one before the CID, one right after the CID, and then possibly a third time.

Q. General KOSTER, you indicated that which Colonel HENDERSON had told you about over the telephone was not inconsistent with your knowledge and so on. I would say that in this hearing take any conversation out of your mind and rely to the greatest extent on your memory of the situations as it existed.

A. Yes, sir.

Q. We say this--I say this because some of the evidence which we have gathered from Colonel HENDERSON is not consistent with the timing and association and things which have been reported by others, and as a consequence it could mislead you in your own recollection of the situation as it existed. For example, we have reference to reports of investigations. We have some of the investigations but others that have been cited have not been located. So, as a consequence, I must say that to use--to base your testimony this morning upon your own knowledge and not on that which anybody else may have put in your mind. Aside from Colonel HENDERSON, have you talked to anybody else relating or concerned with the My Lai incident of 16 March 1968?

A. I talked to Major TRINKLE who had appeared before somebody here, but he was not concerned with My Lai as such. I said hello the other day to Major CALHOUN and Mr. THOMPSON, the warrant officer, but did not discuss any of their conversation. To the best of my knowledge, those are the only ones I've talked to.

MR MACCRATE: What did you discuss in general with Major TRINKLE?

A. I knew Major TRINKLE had operated in that area, and I thought it might be interesting for him to give his views of what the area was like, and I asked the criminal investigators if they would like to talk with him. They said, "yes." He came over; he gave some evidence, and he has since then recounted some of his observation of the area to me.

IO: Major TRINKLE is on the faculty at the Military Academy?

A. He is, sir.

Q. General KOSTER, did you have a hand in the planning for the operation in the area of Son My Village on 16 March 1968?

A. I did not participate firsthand in the planning for the operation. As was common practice, I'm sure I was briefed on the plan. I'm sure I was told that coordination would be required with ARVN since it was outside of the area of operations. I'm sure I allocated the airlift that carried the troops in as was normal practice. We looked to see where operations were going to be and when they would take place and somebody got their airlift at certain periods of time.

Q. In allocating airlift, how did you do this?

A. The G3 would normally come in saying here are requests from brigades for the following day. He would recommend where we put--which ones we put in and when they would go in. In other words, if everybody wanted to go at 7 o'clock, somebody would have to go at 7 and somebody would have to go later on, and this was done normally the evening before so the orders could go out to get the aircraft to wherever they were required.

Q. This operation, General KOSTER, as you are well aware, included about nine or ten lift helicopters or slicks along with supporting guns, perhaps four or conceivably there could have been six for the combat assault. It also concerned some elements of the aero-scout unit. We are trying to develop information concerning where these lift helicopters and where the gunships escorting the lift helicopters, where they came from or who supplied them. We have some information that some of them came from the 174th. There has also been some alluding to the fact that some of them possibly came from the 176th. But we have never been able to pin this down. Could you give us any information where we might be able to locate the information as to who provided those aircraft for that operation?

A. All I know is the--our provisional air cav troop was involved in the operation. It would be reasonable that as the lift ships were provided--we would have pulled the guns, had they been available, from the company that normally worked out of Duc Pho. If those guns had not of been available, they would have been pulled from some other area in order to support the air assault. This would have been discussed the night before had we been stripping them out of another area, but I don't think it is a thing that goes down as a permanent record at all. It's--"This is what they do tomorrow morning," and that's it. I doubt that it would have been recorded.

Q. Would such data have been available in the office of your division aviation officer?

A. If it would have been available anyplace, because he is the one who came in and made the recommendations as to where we get the guns. If anybody recorded it, he would have been the one, I think.

Q. Your 174th Aviation Company and the 176th, they were assigned to what unit at that time?

A. I'm sure they were part of the 14th Aviation Battalion.

Q. Battalion. Was this battalion an organic part of your division?

A. No, sir. I had a supporting battalion as well as my organic battalion.

Q. Then the actual orders for provision of aircraft would have been issued from division headquarters through the 14th Aviation Battalion. Is that a logical assumption?

A. Yes, sir, unless for some reason the--if the 174th--whichever one was down in the Duc Pho area, and I don't recall which one, if they could have provided all the lift from their own resources as well as the guns, this might not have required very much action or coordination on the part of the aviation officer. Because we normally--if there is a company

in the area and we did have one in the Duc Pho area that supported that general area--if they could handle it within that area we let them run their own aviation.

Q. We have some impressions that the aviation unit at Duc Pho was pretty badly torn up during Tet as the result of mortaring and rockets, and that it took them quite a while to reconstitute the aircraft assets of that unit.

A. This is correct. I don't know about the timing of replacements. It seemed to me that we got replacements rather timely, but it did suffer damage to aircraft during Tet.

Q. Would you normally be the approving authority for the operation? Or had you delegated such approval to the brigade commander for operations within their AO's?

A. Very definitely operations within their AO, and, really, it came to division for allocation of resources for a turn down if we were using resources elsewhere. But other than that, if we could support the action we normally supplied the resources. I was told in the evening briefing or a subsequent planning discussion about such type operations. It was well within my power to say no or go or something.

Q. What was your policy in the Americal Division for the burning of structures, the burning of hamlets or villages, and also what was your policy concerning placing of artillery preps on hamlets or villages?

A. Well, we had, I thought, a very strong policy against burning and pillaging in villages. Granted, during an action where the enemy was in there, there would be some destruction. But I had spoken to brigade commanders frequently, both as a group and personally, about the fact that this type of thing would not be tolerated. I'm sure that in our rules of engagement it emphasized this very strongly. The second part of your question was--

Q. (Interposing) To do with artillery.

A. Artillery. I would say that our policy insofar as artillery was concerned was normally putting it into landing zones as a landing zone prep. If we had an observed target within an inhabited area we had to engage, we could have put it on there but we would have avoided it if at all

CONFIDENTIAL

A. They would not have included obvious noncombatants who were in no way doing a hostile act, who were merely leaving the village, as anytime you got into one of these villages normally there were plenty of people departing it.

Q. Then.

A. Well, my instructions would have been certainly that they would not fire on noncombatants at those times.

Q. Then they would engage only those that they could identify as armed hostile enemy.

A. Armed or hostile act or military equipment of some type, not necessarily a fire arm.

Q. Coming down to the date of the 16th, General KOSTER, what was your first knowledge of the operation?

A. I can't really recall positively that I was--witnessed an air assault in the My Lai area on that date. It was my practice that when we had one or several during the day I would go over and overfly some of them, not necessarily all of them. And this is, I might add, is one of the things Colonel HENDERSON did say. He said that I had landed to refuel at Dottie at 9 o'clock that day. I don't really recall whether I did or not, but it was my practice to go and observe air assaults usually until the troops were on the ground safely, and if they had not been taken under fire at that critical time of coming in on the ground I'd normally leave the area and go someplace else.

Q. There are some indications, General KOSTER, that you were at LZ Dottie that morning. This--

A. (Interposing) This is entirely possible.

Q. Let me refresh your memory, which may be helpful for you. One of the command and control helicopters had picked up southwest of My Lai what they thought were two VC prisoners, and these were flown to LZ Dottie for interrogation. There are indications that you were interested in what information these individuals might have been able to provide, and the instruction was issued to interrogate them immediately. And there are indications that they did not turn out to be VC but were something else. Does that refresh your memory?

A. Not to my physical presence there. It refreshes my memory to the fact that there were a couple of PF or RF or somebody had been picked up during the--from the civilians that were on the roads at the time.

Q. The indication was that you were interested in these individuals, and as a matter of fact, in quite a normal fashion rather pulled the leg of the individuals concerned that they were coming up with a couple of VC prisoners who had in fact turned out to be some PF's that had been captured, and when the people came out of the village they took this opportunity to escape.

A. It sounds entirely reasonable, but I don't specifically recall that type of action at Dottie. I would have--could, as I have said--come in to refuel, but to have stayed there that long, I don't recall that I became involved in this.

Q. This was comparatively early in the morning, in the time frame of 9:30 to 10 o'clock in the morning.

A. Could have been, I don't know.

Q. What first report do you recall receiving from the operation? Well, let me go back--let me rephrase this entirely. That morning did you have a discussion with Colonel HENDERSON in which, at Fire Support Base Dottie, in which he indicated that in flying over the village and around the village that he had seen what he had thought was two VC killed and had directed the weapons be picked up, but that he had also seen six to eight noncombatants which had been killed which he reported to you at that time?

A. I do not specifically remember a conversation like that.

Q. There are indications that at the time that you were most unhappy with the--maybe "most" is not exactly the adjective or adverb that should be used--but that you were considerably unhappy and issued instructions to the effect that if there was any killing of civilians that this would stop and so indicated to Colonel HENDERSON?

A. Well, I suspect that--I felt very strongly about killing of civilians, and if I had been told that there had been some, I would have reemphasized the fact that these

people had to be awfully careful when they were working around an inhabited village.

MR WEST: I would like to elaborate on this just a little more. Colonel HENDERSON testified that he met you at Landing Zone Dottie between 9 and 9:30 the morning of 16 March 1968; that he reported he had observed six to eight civilians dead in and around My Lai (4) during the action; that you were shocked and surprised and you instructed him to look into this matter and let you know the details of it. But I gather that you do not recall this particular conversation?

A. I don't recall that, no, sir. It doesn't sound unreasonable, but I wouldn't have said that I would have been necessarily shocked. I would have said that he should certainly caution his troops that this type of thing certainly wasn't tolerated, and any time they were in a built up area they had to do everything they could to prevent it.

IO: Either from your visit to Fire Support Base Dottie or by monitoring the radio or by reports from your headquarters, what was your impression at that time concerning the combat assault and the casualties which were inflicted on the enemy early in the operation?

A. As I say, I personally can't say positively that I was over the air assault. Those I did observe down there I don't recall that there was a--ever a determined stand against our initial landings or that they ran into great operation--opposition at the time I was over the area.

Q. Do you recall in this instance that the initial assault was unopposed, or what we might call a cold LZ?

A. No, sir.

Q. And subsequently it--at least it was reported to have changed to a hot LZ?

A. I do not recall, no, sir, one way or another.

Q. Within the guidance which you had issued--and we will come around to some written instructions later on--but in your interpretation of the guidance which had been issued to your command should the burning of a hamlet or village have been reported?

A. Yes, sir. It shouldn't have been done in the first place.

Q. Should it have been ordered?

A. No, sir. It should not have been ordered. It is conceivable that if this had been a real contested action that some of these huts might have burned. As I recall this whole general area there were few of the old permanent buildings still standing. Most of the things that people lived in were thatched roofed, thatched sides, the type of structure that would--that could be--that would be set afire by some of the munitions that we had been using, tracers and what have you.

Q. The term that is used quite frequently by the witnesses is the word "hootch." Is this generally what you are referring to when you say bamboo sides, thatched roofs and so forth, as temporary structure?

A. Yes, sir.

Q. Was it ever called to your attention that during the course of this operation that six hamlets were burned?

A. No, sir. Not to the best of my knowledge. I don't recall any report such as that being given to me.

Q. Was it ever called to your attention that the prep was placed, at least in part, on My Lai (4)?

A. No, sir. Our preps normally would have been on the LZ's. First artillery and then gunships, and then being capable of being shifted wherever needed once opposition was found.

Q. Then if instructions were issued to place artillery fire on a village or hamlet or to burn hamlets, these would be in violation of your instructions, policies, and orders?

A. Yes, sir.

MR WEST: General KOSTER, with reference to your going out and visiting an operation such as this, did you have a designated altitude at which you flew?

A. I usually flew above everybody else because I figured that all of them had more to do with the operation than I did.

Q. This was an SOP that you had certain reserved air space?

A. No, sir, not--you mean reserved in the sense that that was where I flew?

Q. Yes. For example at a certain altitude from 1,500 to 2,000 or something like this?

A. No, sir. I had nothing. I just flew above all the other planes that were there.

IO: General KOSTER, I have here the log of the Americal Division for 16 March 1968, which has been entered into the record as evidence. I refer this to you at this time. (IO hands Exhibit M-6 to the witness.) The first three pages are pertinent to our discussion at the moment.

(Witness examines first three pages of Exhibit M-6.)

This item, entered in the log as 0940?

A. Yes, sir.

Q. At this time, reported to division was a total of 69 killed as result of artillery fire. These are in addition to previous counts that are entered in the log.

A. Yes, sir.

Q. Was this information reported to you?

A. I'm sure that the results of the operation were reported to me. I'm not sure that this type of information would have been immediately relayed to me. I do not recall that it was.

Q. When you were away from your tactical operation center did you have constant communication with them?

A. Yes, sir.

Q. Did they make it, or you make it a practice of keeping you informed, in broad terms, concerning the progress of operations?

A. They did this occasionally, and more frequently I would call in and say what's significant.

Q. Yes. So it would be normal if you would be--for major activities--that you would be reasonably well abreast of it?

A. Yes, sir. I'm not sure I would have been told specifically how the casualties had come about, but I suspect I would have been given more an order of magnitude as to numbers of enemy found.

Q. I refer you now to the last item in the log.

A. On this page you mean?

Q. No, actually it is item number 94.

(Witness examines item 94 of Exhibit M-6.)

When would information such as this normally be called to your attention?

A. Normally it would have been at the--certainly at the evening briefing. Possibly, significant actions before then, either by the verbal transmissions or as I was in and around headquarters.

Q. But it certainly--

A. (Interposing) Certainly, by the evening briefing. I would have gotten it there if no place else.

Q. Do you recall this briefing, which included reporting a 128 VC KIA in this operation?

A. I believe I can say I recall a significant number such as this. I'm not sure of the number specifically but that there had been considerable enemy found.

Q. You will note that this report also indicates that there were three individual weapons which were captured?

A. Yes, sir.

Q. And also on the U.S. side there were two KIA's. Was this disparity in ratio of weapons captured to VC KIA discussed at the staff meeting or discussed with anybody subsequent?

A. I can't specifically say if and when it was discussed. I do know that we normally had a higher weapons ratio on operations. However, also included in here was a certain amount of web gear, a certain amount of grenades, some booby traps. Whether they were all implanted or not I do not know. We had known that in this area they were training sapper units. The sapper units had been most active along the highways as well as throughout the Muscatine area, particularly where they could go out and pick up the old Korean minefields and have lots of material to work with. I knew that they had just made an abortive attempt to bring arms into that area, which was during Tet when they landed right on the beach at Duc Pho instead of on further north which was where they attempted to land once when the Koreans were there and they captured their whole ship and arms and everything. We knew they were "cadreing" to bring young people in, to give them training. They would arm them with almost anything they had, as you well know, and as you went out and looked at the after result of an attack on an area you found that many of the people weren't carrying arms. Rather they were carrying grenades or satchel charges, or they just weren't armed with a weapon so to speak. Later, in an operation across the road we found that they were probably bringing arms in from over land because we uncovered a large arms cache in operation Norfolk Victory, I believe it was, early in April. I believe that either--generally these would have been some of the considerations that would have come to mind to understand the disparity in weapons, and as you well know, many of these VC units hid their weapons in the daytime, and they were frequently turned from one unit to another because there was a definite scarcity of arms in that area.

Q. What was your normal ratio of captured in an operation? I'm not referring to caches and so forth. I'm talking about in an operation--operational environment. What was the normal ratio that you might expect weapons captured to KIA?

A. Most of the statistics that we developed included the caches, and I suspect it would have been on the order of one for three. But that type of data should be available in some records in the division.

Q. Well, I'm just thinking about the order of magnitude and that is certainly--three to 128 is not consistent with the normal ratio.

A. Not exactly, but in this area, knowing how hard pressed these people were, for they had just gone through the Quang Ngai Tet Offensive. They had lost a lot of people and they had lost a lot of equipment, and we knew that they were recruiting and trying to build up in the area.

Q. Do you recall a conversation or conversations with General YOUNG or any other senior officer of your headquarters concerning the wide variation in this ratio or the huge ratio of enemy KIA to weapons?

A. I don't specifically recall any conversation, but this is the type of thing we would have discussed.

Q. General YOUNG indicated that subsequent to your staff briefing and in going to your quarters or your office, as the case may be, that you and he had walked out together and that you had discussed it because he was really questioning this and was quite concerned about this.

A. It would be something that we would take as different rather than ordinary.

Q. You will note in this report that was submitted, General KOSTER, it makes no reference to civilian casualties in any form.

A. Yes, sir.

Q. Going back now to the operation on the 16th. Evidently based on information which had come to him, Colonel HENDERSON issued instructions late in the afternoon, somewhere in the 1500 to 1600 time period, for C/1/20 to return to the village of My Lai. Let me show you on the map the operation as it had developed up to that time.

(IO orients witness on Exhibit MAP-1.)

C/1/20 had landed west of My Lai(4) and had proceeded through their initial objective area which was My Lai(4) and moved up to the general area to the west of My Lai(1). Subsequent to their assault, B/4/3 had landed an air assault 1,500 odd or perhaps 2,000 meters to the south of My Lai(4) about the time of 9 o'clock to 9:30, along in about that period. But in all this they had likewise proceeded to the north so that at about 1500 to 1530 the two of

them had consolidated here (indicating area on map near what is marked as OBJ 1) and had started to laager in this area. Colonel HENDERSON had issued instructions that C/1/20 was to return to My Lai(4). And it is reported that these instructions were issued to the company commander leaving no doubt, and also that they were to make a specific body count to identify them, women, children, anybody aside from the military casualties, to get a definite count of the casualties in that area of My Lai(4). It was indicated that about that time, having heard these instructions, and at the time having no visual indication of where you might have been, but that you interceded in the conversation and stated, "No I don't want them to go back in that area through that mess." Indicating possibly the minefields and getting back in that situation. Do you recall that conversation?

A. I recall a conversation with Colonel BARKER along these lines and there is enough--I would not have associated it with this operation necessarily, but there is enough that relates to the operation to cause me to say it probably more than likely was. I don't know whether I called BARKER and asked him for a report; whether I monitored his conversation and asked him what was going on--sometimes I did this. He indicated to me that the troops were to be sent back. Colonel HENDERSON had told him to send them back. He did not recommend it in view of the late hour. I would have--I still think that it was not the 16th, but the 17th, because it seemed to me there was the question, again, if this is the same operation, there was the question of helicopter lift being available, laid on, and the reason it had to be decided right now either the troops got on the helicopters or they were left to start this operation late in the afternoon. Now, the mission that I was told was not redo the casualties as a whole but to determine what had killed the 20 some civilian casualties that I had heard about at that stage of the game. To me, sending the infantry troops in to examine bodies such as that which--I have seen a lot of bodies and I can't tell what has killed them, most of the time--I didn't think it warranted the risk of putting people into minefields. To me there had been no report of, well, many civilian casualties. There had been a number which I would have considered might be more that we would ever like to have on an operation like this, but not more than could have happened from one artillery shell, one gunship run, hitting one booby trap by the Vietnamese themselves, or what could have taken place in the exchange of small arms. And now I don't recall using any terminology of mess. I don't think

I would have. I can visualize that during the course of this discussion I think I recall Colonel BARKER did talk to one of his company commanders as to what his status was, was he--did he have supplies or something like that. In other words, I think--I didn't talk to a company commander directly as far as I know, but I think during the course of this conversation BARKER did.

Q. Were you talking to him on the ground or--

A. (Interposing) No, sir, in the air.

Q. You could have been most any place?

A. I was going--returning to Chu Lai to go to the evening briefing is where I was going, and I had just left one of the LZ's or someplace down in that general area.

Q. Are you sure that you were talking to Colonel CALHOUN, I mean Colonel BARKER? Could you have been talking to the operations officer, Major CALHOUN?

A. I don't believe so. I believe I was talking to Colonel BARKER. I would say that the only conversation I remember, I was talking to BARKER. If he had answered BARKER's call sign and never identified himself, I think I would have spotted the difference in voice but I would have--it never crossed my mind that I was not talking to BARKER.

Q. You were talking, at least, to Task Force Barker.

A. Yes, sir.

Q. The individual who was issuing the instructions to Captain MEDINA?

A. To whomever he was issuing....

Q. Yes.

(Witness gives no response.)

You recall the statement made by Captain MEDINA

or the company commander arguing against going back to My Lai (4) that afternoon?

A. As I say, I thought that it was on a day when there were airlifts and this was one of the critical problems. I'm sure that the question of booby traps, mines, and enemy action must have been a part of this consideration. I don't specifically remember what a company commander said.

Q. The indications which we have are that he argued against returning because of the late hour in the day being here well beyond the objective, the village, maybe 1,500 to 2,000 meters, and that he would not have time to get this accomplished and get back to the laager area by dark?

A. It sounds very reasonable. I know the late time frame was of the prime consideration.

Q. At this time, let me go on with this operation as it evolved during the succeeding days. The night of the 16th, according to all the information which we have, the two units laagered in this area. On the 17th, C/1/20 moved to the south generally to the east of Hill 85 through the villages of My Khe (3), My Khe (1) and ended up generally, later on in the afternoon, down around My Khe (2) subsequent to which they again moved to the north and laagered somewhere generally in this area on the night of the 17th (pointing to an area in the vicinity of Hill 85). Bravo Company moved to the south paralleling Charlie Company, going across the bridge at this point, proceeding down this strip of land, the coastal area, through the villages of Co Lay (1), (2), and (3), and they returned to laager somewhere in this general area on the night of the 17th (indicating an area along the coast generally parallel to that of Charlie Company). On the 18th, Bravo Company proceeded back through My Lai (1) and subsequently operated over in the area of An Ky, over in this area on the 18th and the 19th. Charlie Company, on the 18th, moved to the north and secured a temporary LZ somewhere in this general area and then in the afternoon proceeded north generally across the river to somewhere in this area, where they were extracted from here, and were pulled out of the operation and returned to Fire Support Base Dottie. Those are the sequence of events that transpired in this operation as we have been able to piece them together.

IO: We will take about a 5-minute recess.

(The hearing recessed at 1045 hours, 15 December 1969.)

(The hearing reconvened at 1101 hours, 15 December 1969.)

IO: The hearing will come to order.

RCDR: All persons who were present when the hearing recessed are again present.

IO: General KOSTER, when we recessed we were talking about the instructions being issued to require Charlie Company to retrace their steps and go back into My Lai (4) and make a body count. Did you hear anything, in addition to determining how they were killed, to determine the number of casualties by sex, age as well?

A. No, sir. I did not, not that I recall.

Q. Is it normal that a division commander would intercede in the instructions that have been issued by the brigade commander?

A. It is not normal. However, in this regard I didn't think it was prudent to undertake an operation on the spur of the moment at this late date in an area that had caused innumerable casualties because of mines and booby traps, and for these people to push hastily to undertake a mission like this caused me to say, "Don't undertake it." I told them specifically to tell Colonel HENDERSON, and the best I recall, there has been some problem communicating with Colonel HENDERSON was one of the reasons that they were telling me all of this, but this again sticks in the back of my mind someway. I do know that I discussed it with General YOUNG shortly after I got back to the CP. I told him that I had stopped this. And with either General YOUNG or Colonel HENDERSON, I indicated that if we finally decide to go in and look at this place we can do so as a planned operation, either air assault back in or what have you.

Q. There are some indications that as this conversation was being carried on between the individual issuing instructions from Fire Support Base Dottie and C/1/20 that shortly after these instructions were issued that you issued the instructions not to go back in in a matter of seconds or at the most, a minute or two.

A. You mean a minute or two after I had heard--as I recall, I had a rather--well, more than a minute's conversation with an individual who I thought was Colonel BARKER, and it wasn't an off-the-top-of-head, "Don't go." This was a "Why are you going? What's the problem with going?" This sort of thing. It was not just a--to the best of my knowledge--something I said: "Don't do that." Although even before--I just know it was bad practice to move people at that time of day, particularly in that area.

MR MACCRATE: I would like to ask you, general, what is your recollection as to what Colonel BARKER said as to why the force was going? You indicate in your recollection that your question was: "Why are you going?" and "What was the problem in going?" as to why they were going, what is your best recollection?

A. My best recollection was that it was to determine what type of fire caused the civilian casualties, and at that stage of the game we were talking about 20 some civilian casualties.

Q. Well, you indicated a moment ago that if you concluded that a look was necessary, you could go back with an air assault. Would that have been a common step in the event of information of civilian casualties to go back with an air assault to determine what the casualties had been?

A. It wouldn't have been normal to go back to determine that. However, we knew we were investigating the entire incident. I don't know specifically why we would have directed any back, but I guess I can visualize that, yes, if we went back it could always be done. Again, somewhere I have developed in my mind that this was a question of the company leaving the area at the time which does not fit into the pattern of operation as you depicted it to me, but that's the way I remember.

Q. How long after the event could you go back and expect to find any information that would be helpful in answering the question of how the civilian noncombatants were killed?

A. I think it is something that would have had to have been done in 2 or 3 days.

Q. With reference to the log, M-6, I believe you still have it before you, when you come to the point of the summary entry such as number 94, how in your normal procedures would that entry be prepared? Who would be the individual or individuals that would provide the information that would appear in such a summary entry?

A. I'd say that it would come from the operations section of the task force to the brigade and then to the division headquarters.

Q. To the extent that there were purifying entries to eliminate inaccuracies or inconsistencies in earlier reports during the day, would such revision be the work at the task force level, or would it be by interchange between brigade and task force, or division and brigade? Just how would those things be worked out coming up to the time of the summary?

A. Well, I think you get your individual reports coming as they happen, and then at the end of a certain period a wrap up, again made by task force initially and forwarded on through brigade to division. If any of these duty officers along the way would note, would question something, they would have talked back and forth about it, but I think that the refinement and consolidation would have been down at the lower level.

Q. I believe, from the comment that you made a few minutes ago to General PEERS, you recognize the possibility that the late time frame being of prime consideration with respect to this countermanding of Colonel HENDERSON's order might not fit in to the time C/1/20 was being airlifted out of the area. Did this in any way help you to place on one day or another when this may have occurred?

A. Well, it seems to me that I had had some assurances from someone regarding the number of civilian casualties being 20 or thereabouts. Prior to the time this happened, now I'm fairly certain that I did talk to Colonel BARKER on the afternoon of the 16th, and as best I recall, he gave me such assurances indicating that either he or Major CALHOUN had been over the area most of the time. I'm not positive about Colonel HENDERSON at that point, although subsequently to the time he talked to the helicopter pilot which is again on the 17th as I recall to the best of my recollection. After he had that discussion, General YOUNG came and told me something of the gist of it, and here again was some assurance as to what the pilot had actually seen and done.

Q. Do you recall who first mentioned to you the possibility of there being 20 civilian casualties?

A. Well, it came from Colonel HENDERSON later on. I don't really know who the first one would have been.

Q. You do recall communicating with Colonel BARKER on the afternoon of 16 March?

A. I recall--I'm sure I went to LZ Dottie where I saw BARKER, CALHOUN, or somebody else at that stage of the game. I would have seen BARKER if he would have been there. Some assurance I feel was given me. Although we had killed some civilians, they were inflicted during the course of this operation, and as I say, the number we're talking about could have been inflicted through any number of means in a contested battle, I thought.

Q. How have you been able to place yourself in your recollection at LZ Dottie on the afternoon of 16 March?

A. After I heard of this and unless there had been something very pressing in another part of the area, that's where I'd have gone.

Q. You have no recollection, however, of any sequence of events at LZ Dottie, with whom you met, who was present?

A. No, sir. I don't.

Q. Was there any reference at that time, which you can recall, to the report of an aviator?

A. Yes, I--I'm sure there was because this would have been after the time I had the aviator's report and this is what--the only thing that triggered the whole thing as far as I was concerned was the aviator's report.

Q. So that when General YOUNG spoke to you about the aviator's report, it's your recollection that you had heard about it before?

A. No, sir, not--I'd heard of the--first of all, the aviator's report that I am talking about that triggered the whole thing was when they first gave me the information that an aviation officer had made certain statements. The report that I am speaking of from General YOUNG was the results of the interrogation of the aviator which was the second day.

Q. Well, it is our information or at least we have received some information that suggests that the aviator's report was brought in one way or another to the attention of Colonel BARKER the afternoon of 16 March; that it was brought to the attention of General YOUNG at a later time, and that General YOUNG would have spoken with you about it at a still later time, probably on the 17th. And we're therefore interested in putting the sequence of events together to try and determine

whether it was General YOUNG or possibly Colonel BARKER who might have been in communication with you on the afternoon of 16 March and brought this information to your attention.

A. Well, whenever I made this trip to BARKER it was after I had had the report of what the aviator had said. Somewhere I got the impression it was the first day of this operation, but I might be mistaken.

IO: As I indicated to you previously, General KOSTER, you had indicated that you had been there in the afternoon on one of your first statements. All the indications we have from other witnesses place you at LZ Dottie at about 9:30 in the morning.

A. Yes, sir. At that time we hadn't had--I'm talking about a subsequent--

Q. (Interposing) Yes.

A. Visit to Dottie which took place in the afternoon of the day that I received a helicopter pilot's report of what had happened.

Q. You may have in fact--this is twice--this is I think one of the things we're--

A. (Interposing) I don't know.

MR MACCRATE: Is it possible that you had two different reports, one with respect to the killing of 20 civilians, and the second, the aviator's report?

A. Yes, sir, that's conceivable, but it was the aviator's report that was really the first thing that caused us to say, "We need to have an inquiry into what went on." Before that I'm sure there was concern about the civilian casualties, but not an indication that these occurred in anything but a contested combat operation. As a matter of fact, even as I recall the helicopter pilot's report, it was--even though he talked about more firing than was required--it was not in the sense of it being a contested operation.

MR WEST: Well, what was the report of the helicopter pilot given to you at that time?

A. When it was given to me, it was given to me early afternoon and again I would have said the first day,

but--I don't know. It was the fact that he had observed the troops firing. He felt that they were employing more firepower than was necessary. He might have termed it indiscriminate firepower. However, I suspect that's the word we've come up with. He didn't indicate that he'd seen, to the best of my knowledge, civilians being killed. He was concerned about the evacuation of people and that he had reported this through his command channels. Now, whether in the initial report or at a later date I heard of the confrontation between the helicopter pilot and the ground commander, I'm not certain. But here was a case of a helicopter pilot coming in to bring this to the attention to the ground commander. I assumed it was. In the course of this he saw either wounded or noncombatants he wanted to evacuate. He called a gunship in which they were evacuated. There was some confrontation at that time with whomever was on the ground about whether the gunships should be used for this mission, and probably whether the troops were firing more than was required against the opposition that was being handled, but again, I got this all in one bundle, two separate things. I am not sure.

Q. But you don't recall this time that the report included an allegation of the killing of noncombatant civilians in large numbers?

A. I'd say very definitely it did not to the best of my recollection.

Q. And what was your concern as a result of this report?

A. Basically two concerns: one, that he did indicate the troops were firing more than he felt was needed, and I think I thought that was a little unusual that he could determine this from a helicopter; and I think the other concern--whether it was immediately at the time or later--was the concern that we had these two people having a confrontation about the landing of a chopper in this area.

Q. This may be repetitious, but it may be significant. Can you recall from whom you received this report?

A. You mean relaying the helicopter initial report?

Q. Yes.

A. I think initially I received it from General YOUNG. Colonel PARSON conceivably was there.

Q. Can you fix the time, General KOSTER?

A. I can fix the time and day, but I'm not--the day I thought was the 16th; the time I'd say was early afternoon.

Q. Early afternoon. All right. Moving back again to the question of C/1/20 going back to the hamlet to check the body count, it may possibly refresh your recollection to hear what Captain MEDINA had to say about that. He was interrogated here on the 4th of December, and he described the operation that day and with relation to--about the time frame of the afternoon of say, 1530 to 1600.

He was questioned on this matter with regards to a radio communication he had from Major CALHOUN on the subject of noncombatant casualties. The question was, "Do you remember the count of noncombatant casualties you reported?"

Captain MEDINA answered: "I reported--Major CALHOUN asked me for--he wanted to know how many civilian killed. I told him that I did not know exactly. He said, 'I want you to move back into the village and get a count; I want to know how many males, how many women, and how many children are dead in that village.' And I told him that due to the time and the distance I did not recommend moving back from my location to the village in an attempt to do this with the time that we had, because we were trying to prepare our night defense positions, digging in, getting in our resupply and whatnot.

(Question:) "What time did he direct you to return to the village?"

Captain MEDINA said again: "I would estimate the time to be 1530 to 1600 hours. Somewhere between that time--I'm not definite on the time, 'Saber'--I believe the call sign was 'Saber 6' for the division commander--he was somewhere in the vicinity in his helicopter. He broke in on the radio and he said, 'Negative, don't send them back there going through that mess; there is no need for them to go look at that mess, or words to that effect.'"

And then again he is quoting "Saber 6:" "How many did the captain say," or "how many does the 6 say he'd actually seen?"

Captain MEDINA said, "I gave him a figure of somewhere between 20 to 28," and "Saber 6" said, 'Well, that sounds about normal; that sounds about right.'"

This is the end of the pertinent testimony of Captain MEDINA. Does that refresh your memory at all about the conversation?

A. Counsel, it is not the way I remember the conversation.

Q. There was nothing said about this time about extraction by helicopter?

(Witness shakes head.)

MR WEST: I have no further questions. May we have a short recess?

(The hearing recessed at 1133 hours, 15 December 1969.)

(The hearing was reconvened at 1148 hours, 15 December 1969.)

IO: The hearing will come to order.

RCDR: All persons who were present when the hearing recessed are again present.

IO: Do you have any further questions, Mr. WEST?

MR WEST: I don't believe so.

IO: With respect to changing the order for C/1/20 that afternoon, was there anything said that would preclude C/1/20 going back to the area on the following day or in the immediate future?

A. No, sir, not to the best of my knowledge, and I told them specifically to inform Colonel HENDERSON that this is terminated. I feel certain--I know I talked to General YOUNG afterwards and told him why I had stopped it--late in the day, essentially. And since it wasn't common practice, I'm sure I discussed it with Colonel HENDERSON and told him the same thing, but not to preclude whatever further action he felt was necessary in the course of his investigation.

Q. Your action then was primarily based upon not subjecting the personnel in the unit to unnecessary casualties that late in the day?

A. This was absolutely the reason I took the action I did.

Q. Even having heard this while at Fire Support Base Dottie and with the assets which were available in terms of helicopters and specifically having in the aero-scout company, a part of them available there, was there anything which would have precluded utilizing this unit to either having visual observation or utilizing the ground elements to go in and check out the situation?

A. From LZ Dottie you mean?

Q. Yes, sir.

A. I'd say this could've been done, probably not at that stage in the afternoon, but it could've been mounted the next morning or such time as that.

Q. But even so, with a scout team which they had available, without landing, by getting visual observation, could have provided some results if they had been utilized.

A. Yes, sir, I agree.

Q. At this point in time, Colonel BARKER had been informed of the report of the helicopter pilot through Major WATKE, the commander of the aero-scout company. So, at that time he was aware of the helicopter pilot's report. Exactly what parts of it--we're not absolutely certain what he was aware of at that time, but we do know that he had been informed about the helicopter pilot, and we do know that there were some civilian casualties, and we do know that Charlie Company had been ordered back into the area at that time. General KOSTER, referring to the log of the Americal Division, specifically item number 94, which indicates 128 killed, but there is no indication of civilian casualties. According to your testimony this morning, you were aware of the civilian casualties at least to the extent of about 20, which I think you said sticks in your mind, and this was not reported at least to division. Was this matter questioned at the staff briefing whether these civilians and noncombatants might be in addition to the 128, or whether they were included in the 128?

A. I do not recall whether it was questioned. I would have said that they were in addition to the 128 in that there was no set requirement for reporting civilian casualties

or injuries and this type of thing. They were normally given to us, but as the reports went forward, as I recall, there was no requirement to list those specifically.

Q. The procedure which obtained in the Americal Division and in III MAF area was that you did not report civilian casualities?

A. To the best of my knowledge.

Q. Did you talk to--

A. (Interposing) Incidently, I asked one of my operation officers--this is not one involved in My Lai (4)--what requirements were there for reporting civilian casualties? And I must say, I'm guided by what he told me, that we didn't report them.

MR MACCRATE: Is this recent information, General?

A. Yes, this is something I received, and I guess this is one other person I did talk to although I don't believe he was involved in the My Lai (4), because he was not in the area at the time, although I guess I'm not sure. This was the G3 of the division, Dean BALMER.

Q. BALMER?

A. BALMER, because when I had seen the--

IO: (Interposing) We will take a recess for 1 minute.

(The hearing recessed at 1155 hours, 15 December 1969.)

(The hearing reconvened at 1204 hours, 15 December 1969.)

The hearing will come to order.

RCDR: All persons present when the hearing recessed are again present.

MR MACCRATE: General, just before the recess you were describing your conversation recently with the G3, Dean BALMER. Would you continue, please?

A. I called him to ask specifically about the rules of engagement that were in effect in the Americal. Having told the CID that we put them out in draft form, I wanted to confirm with him in fact that we did and there was something in being. At the same time, I also queried him about the requirement to report the civilian casualties on to higher headquarters, because I noted in the after action report of this operation there was no mention of civilian casualties, and he told me at that time that we did not report civilian casualties. There was no requirement to report these on to higher headquarters

Q. Did this accord with your recollection?

A. I don't know that I had a recollection. It surprised me a little bit that we hadn't reported that type of thing because we reported on so many other things that I thought we would probably have had the requirement to report that, sir.

Q. Did you cover with him, in this recent conversation, the requirements for reporting destruction of villages or burning of hamlets that might have taken place?

A. I don't believe that was mentioned. We had our own instructions out that precluded this.

Q. But if it occurred, what reporting requirements were in effect?

A. I would say there would have been a requirement for reporting that there had been wanton destruction as such. Something that happened during a contested operation, I don't believe there would have been any requirement for reporting.

Q. Did this conversation with your G3 take place before or after your interrogation by the CID on 24 November?

A. After, because I made a statement to them feeling that I was right, but I wanted to confirm with him that we had put this rules of engagement out in draft, pending formal publication.

IO: Coming back to the operation itself, General KOSTER, do you recall the conversation with Colonel HENDERSON on the telephone the night of the 16th concerning civilian casualties amongst other things?

A. I do not specifically recall that conversation.

Q. Do you recall him telling you that there had been 20 odd civilian casualties and--

A. (Interposing) I do recall receiving that type of information. I do not recall specifically when, but this would've been about the same time frame, and I am positive I talked with him that night.

Q. Do you recall expressing a great deal of concern over the number of civilian casualties that had been effected?

A. I'm sure I did. Anytime there were civilian casualties I know I expressed concern.

Q. In light of this number of civilian casualties that had been reported did you feel inclined to notify III MAF or any higher headquarters in this regard?

A. Not at that time, sir.

Q. At any time did you feel so inclined?

A. I feel that I mentioned at some time during the course of this that we had investigated this type of thing. There had been civilian casualties. There had been the VC propaganda and that we had examined it, we were continuing to examine it, and I feel that I had imparted that type of general information to somebody from III MAF during the course of one of their visits. This did not constitute a formal report. It was merely keeping them apprised of what was going on.

Q. Can you identify the individual or individuals in III MAF?

A. No, sir. I'd say it would've more than likely been General CUSHMAN or his deputy. It could've been--I think one of those two, although General FLANAGAN, General STILWELL were in the area occasionally. But someway I associate it more with either General CUSHMAN or his deputy.

Q. Who was his deputy at the time?

A. He was the individual who came over to straighten out the

support and I forgot his name. He made the big effort in setting up all the supply installations up in the north. He was the supply man primarily. I've forgotten his name.

Q. Marine officer?

A. Yes, sir.

Q. Would that have been General BUSE?

A. No, sir. No, sir, that's not the name.

Q. DRAKE?

A. No, sir.

Q. In your recollection, General KOSTER, what was the next thing that happened concerning the reporting or the investigating of this situation?

A. The thing that I recall best is General YOUNG coming back after he'd received a report from Colonel HENDERSON regarding the interrogation of the helicopter pilot, because this is the one that really caused us to say we should make an inquiry into this, and this was brought to me in the middle of the day by General YOUNG. And the gist of it was that after extensive interrogation Colonel HENDERSON had found that the helicopter pilot's testimony contained some discrepancies; that the helicopter pilot had had communications problems; that he thought the pilot had seen firing; had seen a few of these civilians, but saw no one actually shot, and no indication of any mass bodies or any such thing. In other words, still with the keeping of the number within the 20, and that he felt the pilot had made some unwarranted conclusions and that he didn't give the pilot's story the credence he might have been prone to do otherwise. He thought he was a very excitable young man.

Q. Is this General YOUNG giving his impression or relaying to you what information he had from Colonel HENDERSON?

A. I got the impression it was relaying what he had been given by Colonel HENDERSON.

Q. You've indicated, General KOSTER, that this information was provided you about noon, midday or thereabouts. Which day was this?

A. I've been considering it was the second day, but--

Q. (Interposing) General KOSTER, I think at this point what we have constructed, and there is a little bit of variance in time, but this information was first called to the attention of General YOUNG by Colonel HOLLADAY and Major WATKE. It was originated by Major WATKE reporting to Colonel HOLLADAY and being so inclined, they took it on to higher authority. There is some question whether this was reported that evening or whether in fact this was reported the following morning to General YOUNG.

A. But the 17th as opposed to--

Q. (Interposing) The evening of the 16th, or the morning of the 17th.

A. I'm fairly certain that it was about noontime when I was first told about it.

Q. And you were informed by General YOUNG? Is that correct?

A. I believe he brought the initial information in to me.

Q. Did he tell you where he--now that I have brought this out--did he indicate that he had received this information from Major WATKE and from Colonel HOLLADAY?

A. Yes, sir. I'm sure he indicated that, and I'm not positive, but what--at sometime during the course of --I'm sure at sometime HOLLADAY was there himself. I'm not sure that he came in at that time, but I'm sure I discussed at some time the problem of helicopter support and ground commanders, about how they should, if they see discrepancies, not argue with the lieutenant on the ground but to take it to a senior commander. But the basic facts I received from General YOUNG, as I recall.

Q. Now, I'd like for you to give as much of the information as you can that General YOUNG relayed to you concerning what had been reported by the helicopter pilot?

A. Well, here again, I'm not positive that I received all of the information at one time. I know there was the report that there was--the pilot thought there was more shooting than was required and this took into consideration the amount of opposition that he felt the ground people were having. There was an indication either at this time or some other time that he had had a confrontation with the ground commander about his evacuation of people and landing of the helicopter in the area when supposedly a ground commander hadn't called for it, which would've been customary if he thought this was the time for evacuation, something along these lines. At any rate, there was a question of excessive firing; there was a question of the confrontation with the ground commander.

Q. Was there any indication that there was unnecessary firing into the civilians?

A. To the best of my knowledge there wasn't an indication of excessive killing or injury to noncombatants. There was an indication that, as opposed to firing at a point target some place, they were covering the landscape.

Q. What was said concerning the confrontation?

A. That the aviator landed to bring his views to the attention of the ground commander; that the ground commander had argued with him about what he was supposed to be doing or not. The specific terms that I remember were that there had been some children or casualties or somebody there that the aviator wanted to take out. As I recall, he wanted to call in a gunship as opposed to medevac, possibly did call in a gunship; that the ground commander felt that this wasn't a mission for a gunship; and that there was a further argument between the two of them, but the people were evacuated. There was something said about--again I'm not sure whether or not I'm recalling this from then or from reading the papers or hearing the CID. Somebody manning the machinegun--or saying, "We're going to take them out and just stand off to the side, because that's what we're going to do."

Q. What was the purpose of taking them out?

A. If they were casualties, to evacuate them on to a hospital. If they were children to get them out of the way of the activity that was going on. Again, I'm not sure what was expressed by the aviator at the time, but that's what I would've imagine he would have said.

Q. You didn't see the aviator?

A. I did not see the aviator.

Q. Neither Colonel HOLLADAY nor Major WATKE or both of them reported this directly to you at the time. Your information from what you have indicated came to you through General YOUNG?

A. My first information did. Whether I got--I don't think I ever talked to Major WATKE. I'm sure I did at sometime talk to Colonel HOLLADAY.

Q. About this incident?

A. You mean specifically what happened there?

Q. Yes.

A. I can't positively say one way or another.

Q. For an aviator, for that matter, any subordinate command of let's say, a battalion level or a company level to bring forth such information to the division. This seems to me quite a serious allegation, well beyond the normal type of thing that you would have reported, and the question is, was this accepted as a major problem at that time?

A. I accepted it as a circumstance which came up, but I wanted all ground commanders and particularly aviators to be certain that a confrontation of this type never happened again.

Q. At that time did the thought come to mind what this aviator was doing was protecting these noncombatants from the American forces, from their firing?

A. Not in the sense that the American forces were going around just shooting them. It could've been in that this is a contested action and we shouldn't leave them in there.

Q. In the information that was relayed to you, was there any indication that the helicopter aero-scout unit was marking wounded civilians with smoke and that the ground forces were then moving in to grenade them or in other ways to kill them?

A. How was that once again?

Q. Well, first, was the matter brought up that the aero-scout unit was marking civilian casualities with smoke? Did that subject come up?

A. Not to the best of my knowledge.

Q. Was it brought up that after they marked them with smoke for the purposes of getting medical assistance that the U.S. forces in some instances had moved in and killed them?

A. No, sir. I never heard that.

Q. Was it ever relayed to you where a helicopter gunship had needlessly fired into a group of civilians?

A. No, sir. I don't recall that (inaudible).

Q. Was it relayed to you that an individual was seen to shoot into a ditch which contained a large number of bodies, some perhaps wounded and some dead civilians, noncombatants?

A. No, sir. That was never brought to my attention, not to my knowledge.

Q. Was it ever brought to your knowledge that the aero-scout pilot of the scout ship had landed alongside a ditch and had a discussion with a U.S. sergeant on the ground?

A. I knew--I was told that he landed and had a confrontation I thought with one of the officers of the company.

Q. Was it indicated that a gunship had in fact landed twice to evacuate an old man and some women and children in front of the U.S. combat forces?

A. I knew a gunship had landed once to evacuate. I'm not sure whether I was told it landed twice, and I don't believe

I was told that it was in front of the U.S. forces.

Q. Was it mentioned that the aero-scout ship subsequently landed and picked up a wounded child and took it to the civilian hospital in Quang Ngai?

A. Somewhere, I had the knowledge that somebody had been evacuated to Quang Ngai. I didn't realize it was a scout ship. I guess I would've assumed that it would've been a gunship.

Q. How long did your conversation with General YOUNG last?

A. I don't recall. I think we discussed it for some time, and I feel certain there was somebody else present besides General YOUNG.

Q. What makes you think that?

A. I feel that some of this information, what I got, was described by not only General YOUNG, but possibly somebody else.

Q. Do you recall who the individual was?

A. No, I think I--the ones I would've thought of first would've been the chief of staff, Colonel PARSON, or Colonel HOLLADAY.

Q. As a result of the information that had been given you, what was your action then?

A. This is when I directed that we have an inquiry made of this.

Q. In giving your direction, what did you specify?

A. As I recall, I specified that I wanted all those involved in the action--here I'm thinking of leaders primarily--interrogated as to what actually took place, anyone else who had knowledge of the operation that it might be appropriate to interrogate with that type of inquiry being made. I'm not positive whether I specified that the brigade commander do it, although it would appear likely at the time I did.

Q. By saying you wanted this matter investigated or an inquiry into it, was your intent for an in-depth kind of investigation?

A. Certainly in depth enough to establish what really went on, yes, sir.

Q. Would you have expected from this to have written statements, eye witness statements and--

A. (Interposing) Not necessarily at this stage of the game.

Q. What did you tell--

A. (Interposing) This would've been the basis for a formal investigation if the inquiry came back indicating such was warranted.

Q. What did you tell General YOUNG to do?

A. I can't remember in so many words, but it was generally: "Let's find out what went on down there; interrogate the people involved and the leaders concerned and let's have the facts."

Q. In other words, you told him to make certain that this matter was investigated?

A. Yes, sir. I did.

Q. Did you give any time period?

A. Right now, starting now. I didn't say it's got to be completed by such and such. I just said start looking into it, and was after that I personally went to Dottie and asked BARKER, as best I recall: "What's going on out there? Were you over the area and did you see things that shouldn't have been and were your people firing and this type of thing?"

Q. We will come back to that a little later. Mr. MACCRATE, do you have any questions.

MR MACCRATE: I believe, General, you stated that it was your recollection that in the report to you by General YOUNG and possibly by others that they did not tell you of the landing of the gunships in front of the ground forces.

A. To the best of my knowledge there was no mention of landing in front. There was the landing of a gunship brought to my attention at sometime. Whether it was the first time I heard about all this or a little later, I can't be sure, but I did know it landed--one at least--but if it was in front and that was brought to my attention, I do not recall.

Q. Well, did you understand that this was primarily an investigation of what the aviation unit had done or what the ground force had done?

A. What the ground forces had done in conjunction with the aviation. I felt that it was conceivable that the aviation had fired when they shouldn't have fired. Overall, I have more, I think, concern about the helicopter gunship firing at the wrong people than I did about the people on the ground, basically.

Q. That's what I understood you to say, that based upon the information that had been brought to you as of this time your concern was directed particularly as to the conduct of the aviation unit?

A. I believe I have two concerns, basically. One was the--what the ground--the individuals on the ground were actually doing. Were they firing excessively at suspected locations and whatnot? Whereas, in the inhabited areas they're supposed to fire at point targets if you can tell when you're being fired at, which is rather difficult to do at times. This was, I would say, the big concern: "Had there been excessive firing?" Secondly, and I'd say coupled in with that as far as firing was concerned: "Was there excessive firing by support elements of some type, either artillery, gunships, or what have you?" The second concern then was the fact that we'd had the confrontation between the aviator and the ground commander.

Q. So far as the confrontation between the aviator and the ground commander, was there any indication to you as to a justification for the aviator's landing or the gunship landing in that situation? Had the information furnished you indicated why they took what must be regarded as unusual actions when gunships come down in such a place in such apparent circumstance?

A. It was for the evacuation of either casualties or noncombatants who they thought should be removed from the area. This is as I recall it.

Q. Had you ever heard of a gunship coming down in such circumstances to evacuate casualties?

A. Not under circumstance quite like that, no, sir. But again, as I understood it, they were called down by this initial H-23 pilot who had the initial confrontation with the ground commander as I recalled.

Q. Somewhat earlier you stated that you thought that General YOUNG's report to you was based on Colonel HENDERSON's interrogation of the pilot. Is there anything that you associate with that conversation that would make it clear that it was Colonel HENDERSON and possibly not Colonel HOLLADAY and Major WATKE who was the source of General YOUNG's report to you? Is there anything that indentifies the information with Colonel HENDERSON rather than--

A. (Interposing) Are you talking about the first report?

Q. It's the report by--

A. (Interposing) The report--the place it happened?

Q. Yes, by General YOUNG?

A. No, sir. I would've said that it would've been from the aviation channels.

Q. And not as a result of General YOUNG receiving a report from Colonel HENDERSON?

A. I wouldn't have interpreted it that way.

Q. Well, I understood you earlier to say something different from that--

A. (Interposing) Well--

Q. (Interposing) This is why I did want to clarify it because as it appeared to us it was Major WATKE and Colonel HOLLADAY speaking to General YOUNG that in turn resulted in the report being made to you.

A. That was the initial report, sir. The other report I referred to that came from Colonel HENDERSON was after Colonel HENDERSON had interrogated the pilot--the aviator himself--and then gave the information to General YOUNG who in turn relayed it to me, the results of that interrogation.

Q. Now, you did indicate that you feel that at some time you had a conversation with Colonel HOLLADAY that bore upon the subject generally. When General PEERS asked you, "Well, did it relate to this incident," I sensed some hesitation that it isn't necessarily related to the incident. What I would be interested in, is what you do recall so that we might put that into the overall context which speaks--

A. (Interposing) I'm positive I talked to Colonel HOLLADAY about the overall incident. Whether I spoke to him specifically about what the aviator reported is what I was having some hesitancy about, and I can't confirm one or another.

Q. In any such conversation with Colonel HOLLADAY did either you or he allude to the actual turning of the arms of the gunships or the crew of the H-23 upon American forces?

A. This was brought to my attention in some manner I feel, and I'm not sure where it came from, and this was one of things that concerned me--that we had that type of confrontation amongst these people.

Q. How early in the development of information coming to you would this part of the story have been brought to your attention? Can you place that?

A. This is what I'm not able to say. Whether I got all of this when I first heard of it, or whether I got the one portion followed by the other portion later on.

Q. Very early in your testimony today you referred to an inquiry and two investigations as being your recollection of what followed here. I gather that what you have spoken of so far you would characterize as inquiries?

A. That's correct, sir.

Q. Perhaps command inquiries?

A. Yes, sir.

MR WEST: In your instructions to General YOUNG to conduct the investigation, I gather that you did not direct him to investigate allegations of the unnecessary killings of non-combatant civilians in the My Lai area?

A. At that stage of the game I did not realize that this was an allegation. The only allegation that I recall was that there was more firing out there than needed to be for the amount of opposition.

Q. For my information let me clear up one thing. You did say in your statement of 24 November that you heard about these allegations--I'll back up a little. You were asked a question, "Did you receive allegations that Vietnamese noncombatants were killed upon a combat assault at My Lai (4) which was conducted by elements of TF Barker?" And your answer, "Yes, I heard about these allegations about midday on the day of the operations," and that has in parenthesis "16 March 1968." Now, that may be put in there by the person typing the statement. And you went on, "I had returned to division headquarters and it was reported to me that a helicopter pilot had complained to the commander of the aviation battalion of the indiscriminate shooting of the Vietnamese civilians," and you went on to say you might have had this information through Colonel PARSON or through General YOUNG or might have heard it directly from Colonel HOLLADAY. "At the time I was at my headquarters in Chu Lai." You gave all this testimony here today and--would you now say this 16 March is correct? You heard about this on midday, 16 March?

A. I would say that in view of what you told me it is more apt to be the 17th of March, but I'd swear that it was midday.

Q. Now, among the things that were reported to you by General YOUNG, was any mention made of the report of the helicopter pilot that he observed a captain shoot a Vietnamese woman, a girl, the morning of 16 March 1968?

A. No, sir. I do not recall any allegations such as that.

Q. All right. In connection with the people who were taken out by a helicopter--out of the area--do you recall any reference being made to a cave, bunkers?

A. Not that I recall.

Q. On a little different subject now. You testified as I recall that you passed on to General CUSHMAN or his deputy some information about--if I remember--

A. (Interposing) I believe I did.

Q. Yes, and was this about the deaths of noncombatant civilian casualties during the operation?

A. This was probably after the district chief and the VC propaganda leaflet had appeared.

Q. We'll get to that soon. You said in your statement of 24 November that--well, you were asked this question: "While you were the commanding general of the Americal Division did you ever discuss the alleged incident at My Lai (4) with the authorities at USARV or MACV." Your answer: "As I told you, I discussed this matter with responsible ARVN authorities. I believe I also discussed the allegation, though in less detail, with General CUSHMAN, Commanding General III MAF, my immediate superior." So this alludes to the same thing I take it? If you recall, did you discuss with him reports, allegation or fact, that a number of noncombatant civilians were killed during the My Lai (4) operation on the morning of 16 March 1968?

A. Only in terms of this is what we had received from the Vietnamese sources. Not as something that I received--

Q. (Interposing) Not as something that had been reported to you by your own troops?

112C

A. No, sir.

Q. You also discussed or mentioned that General STILWELL and General FLANAGAN were in the area, and I understood that you might have mentioned it to them?

A. Well, in lieu of the other two, although it seems to me more that it was a Marine officer that I mentioned it to as opposed to an Army officer.

Q. What was General STILWELL's position at that time?

A. As I recall he was the--one of General CUSHMAN's deputies put on the staff because of the large influx of U.S. units in the northern area.

Q. Are you familiar with General STILWELL's present assignment?

A. Yes, sir.

Q. State that please?

A. Deputy Chief of Staff for Operations, Headquarters, United States Army.

Q. And what was General FLANAGAN's position at the time?

A. He had been placed in III MAF Operations, or the G3 Division, where he concentrated primarily on staff actions involving U.S. forces.

Q. So that if you had discussed this matter of the deaths of noncombatants, you would have been making a report or passing on information to either the commander or the staff of III MAF, not to another headquarters?

A. I thought that the III MAF undoubtedly had received the same--they received the same VC propaganda leaflets that we did, and that they probably were cognizant of this type of allegation that was made, and my mentioning it was the fact that we were checking it out.

Q. You made no report of this matter to other higher headquarters?

CONFIDENTIAL

114C

(The hearing reconvened at 1404 hours, 15 December 1969.)

IO: The hearing will come to order.

RCDR: All persons who were present when the hearing recessed are again present, with the exception of Mr. WALSH. General KOSTER, sir, you are reminded that you are still under oath.

IO: General KOSTER, when we recessed we had been, at that time, discussing the report from General YOUNG to you concerning what the helicopter pilot had reported to Major WATKE and Colonel HOLLADAY, and we had also discussed the instructions which you had issued concerning the investigation. What is the next knowledge that you have of the investigating or the reporting process?

A. I believe the same afternoon I queried Colonel BARKER about the actions of the ground forces and received no indication from him that there had been unusual firing or incidents that had come to his attention at least. The following day--

Q. (Interposing) Did he tell you at that time that he'd had this report from the helicopter pilot and from these other people?

A. I don't recall a discussion of what he'd had from the helicopter report. It seems to me he did indicate he or Major CALHOUN had been flying--overflying--the operation most of the time. That they had not witnessed nor heard things of this type being discussed or taking place. I recall nothing specifically about the allegations of the helicopter pilot at that time. As to what his response was when I asked about such, and again, I don't specifically recall, but I do--would have said that this would have prompted me to visit down there.

Q. Did he mention anything to you that he might have been suspicious of such actions because sometime toward the latter part of the morning of the 16th that he issued instructions to stop burning and stop the unnecessary killing of civilians?

A. To the best of my knowledge he made no mention of this action on his part. I felt he gave me every assurance that things of this type had not taken place and that there had been many civilians--and this is about the only clear

thing I think I can recall that both he and Colonel HENDERSON at some date had indicated there were many civilians moving out of this area.

Q. How high above an area would Colonel BARKER or one of the battalion commanders normally fly in controlling one of these operations?

A. That depends a little bit on the intensity of combat and what your gunships are doing--anyplace from 800 to 1,200 feet, something like that. This would be their normal flight. This wouldn't mean that they couldn't come in lower at times and probably would as they tried to specifically locate where a unit was.

Q. Did Colonel BARKER ever indicate to you that he landed on the ground to talk to anybody or see anything or have any immediate control over the operation?

A. The only thing I recall was that either he or CALHOUN were over the operation, but I do not recall any specifics about him being on the ground.

Q. What then is the next thing you remember of this specific investigation and reporting of the incident?

A. I believe the next thing that I recall was General YOUNG's coming in and giving me a run down of the interrogation of the helicopter pilot by Colonel HENDERSON.

Q. Did he come to you or did Colonel HENDERSON come direct to you?

A. I'm sure that I got the first report from General YOUNG.

MR MACCRATE: This was the 17th?

A. I would have said it was the 17th before, but if the first day is pushed back--if it is the 17th when we first got the report, then I'd say it was 24 hours later. Because again, it seems to me--it seems to me it was about noon, but....

IO: What did General YOUNG tell you then?

A. As best I recall, he indicated that the pilot had told Colonel HENDERSON of the action that transpired. That Colonel HENDERSON found some discrepancies in his story; that Colonel HENDERSON thought he was quite excitable; that he had probably seen some civilian casualties; had observed the troops firing and had made some--what he thought, Colonel HENDERSON had thought--were unwarranted conclusions. He--I would say the gist of it was that it caused the pilot's story to have less authenticity than might have been given it.

Q. Did he say anything about civilian casualties, numbers of them? How they had been killed?

A. There was certainly no indication to me there was any more than the numbers that we had been talking about.

Q. As a result of your directive to General YOUNG to have this matter checked into, did Colonel HENDERSON report to you within the next few days?

A. Yes, sir. I think I had probably several conversations with him. I received part of my information from him directly, part from--relayed by General YOUNG. I think generally what General YOUNG had passed to me was again told to me by Colonel HENDERSON at a later date.

Q. Did Colonel HENDERSON come to your headquarters to see you?

A. I know he did in connection with the, one of the subsequent investigations. I don't recall that he came up to give me a final wrap-up as such on this particular inquiry.

Q. Did he give you a 3-by-5 card at any time showing you a breakout of civilian casualties by age and sex?

A. Not that I recall.

Q. What was your next action taken in this regard?

A. I'm sure at some time I talked to both Colonel HENDERSON and Colonel HOLLADAY regarding relationships of pilots and the ground commanders. I feel that Colonel HENDERSON's report extended over several days as, I gather, he talked to more people who might have been concerned with this.

Q. Did Colonel HENDERSON tell you whom he talked to?

A. Yes, he indicated that he had talked, as I understood it, to almost all of the aviators who had been over the area that day. He had talked to platoon leaders, platoon sergeants, some of the men in the company, and I think BARKER and CALHOUN, certainly.

Q. Did he tell you whether or not he had obtained any sworn statements or any kind of definitive information?

A. At that stage of the game I do not think he had taken any sworn statements. He indicated that there was nothing that he had gathered from all of these people that would prove conclusively that there had been excessive firing.

Q. I take it, from what you have said, General KOSTER, you were of the impression at that time that he conducted at least an in-depth inquiry. He had talked to the people who were associated with it to the point where he knew what had transpired on the ground?

A. Yes, sir, I was--had that impression.

Q. When you talked to him was General YOUNG or anybody else present?

A. I would have said that somebody else was present, but I'm not sure whether it would have been some of Colonel HENDERSON's staff. Whether it could have been some of my--chief of staff or General YOUNG or--I don't think we were ever closeted off anyplace for him to give me this type of information.

Q. I'm not thinking so much of closeted off as in terms of--

A. (Interposing) Overhearing?

Q. Him calling upon you in your office to give you the results of his inquiry?

A. I felt that I got results of the inquiry primarily piecemeal, as the things were being accomplished, partly from Colonel HENDERSON and partly from General YOUNG. As I say, I know he came at a later date in connection with one of the other investigations, but I don't recall that he came for that type of a formal wrap-up.

Q. Colonel HENDERSON is of the impression that on or about the 20th that he did call upon you in your office and make such a report to you.

A. I don't recall such. I think that if he had I certainly would have wanted General YOUNG to be present because I was looking to General YOUNG to have full cognizance of what went on in that particular area.

MR MACCRATE: General KOSTER, you indicated that you queried Colonel BARKER about the conduct of the ground forces after you had received this report. Did you at that time query any of those involved with the aviation units or did you query Colonel BARKER as to the activities of the aviation units? Was your focus of inquiry at that time upon what the ground forces had done?

A. My inquiry at that time was about what the ground forces had done.

Q. Did you in any way, as you recall, have any reports as to the effect of artillery fire or of gunship activity and its impact upon those who had been killed in the area, whether military or civilian?

A. I don't recall. It is conceivable that I heard such a thing if some of these things from the general had been briefed, but I don't recall it specifically.

Q. Could you be mistaken as to General YOUNG giving you the report on Colonel HENDERSON's interrogation? It is General YOUNG's recollection that, while he gave your direction to Colonel HENDERSON for the initial inquiry, the report then came directly from Colonel HENDERSON to you, sir.

A. This is about one of the few things that I am very positive because I can see General YOUNG sitting right here (indicating close beside him) telling me about the interview of the helicopter pilot as conducted by Colonel HENDERSON.

Q. As conducted by Colonel HENDERSON?

A. Yes, sir.

Q. And what do you recall of that conversation with General YOUNG? Did this take place at Chu Lai?

A. Yes, sir.

Q. In your office?

A. Yes, sir.

Q. In Chu Lai?

A. Yes, sir.

Q. Was it in connection with the morning briefing?

A. No, sir. It was, again, I think about noontime. He came in to give me an interim report of, "This is where we stand." And he said, "I talked to HENDERSON. He talked to the pilot this morning, and he thinks this kid's telling some things that he kind of imagined." He downplayed the authenticity of what the pilot had initially said.

Q. Did he indicate that he had been that morning to fire base Dottie?

A. Well, he indicated to me that he got this first-hand from Colonel HENDERSON at some place, and I am not sure where.

Q. Did he indicate that he had been present during this interrogation?

A. I didn't gather that he had sat in on it, no, sir.

Q. Did he indicate where the interrogation had been conducted?

A. It seems to me that it was at Dottie, but again, I'm not as positive on that matter as I am of the fact that I talked to him and he told me these things.

Q. Incidentally, did someone in your behalf keep a record of your movements at that time? Someone on your staff who would make some log of your movements?

A. I always reported to the TOC where I was. I don't know that--they recorded it on a blackboard, and as soon as I left from there to another place they would erase this and put down another destination.

Q. Would there be any permanent record of these movements?

A. No, sir, I don't believe so.

IO: Did your battalions, General KOSTER, or brigades or task forces make a habit of when you came to the TOC to make a note of that in their log, arrived at such and such time and departed about such and such time?

A. I suspect some of them did and others didn't. There was no requirement from me for them to do it.

MR MACCRATE: General PEERS asked you about whether you were given a 3-by-5 card with a breakdown of casualties on it, and I think he related it to a particular point in time. Do you have any recollection of such a card being pro-

vided to you at any time in connection with the casualties at My Lai (4)?

A. No, sir. I don't. I don't recall.

Q. We have not found such a card, but we have heard of such a card and we are seeking some substantiation of the fact of whether or not there ever was such a card. You have no recollection of such a card?

A. I don't recollect it, but that doesn't mean there wasn't one. I just don't remember it.

Q. You also referred to having spoken to both HENDERSON and HOLLADAY regarding the relations between ground and air. Did you at any time speak to the two of them together that you recall?

A. No, sir, not that I recall.

Q. Now, you also indicated that you understood that HENDERSON had talked to all the aviators who were flying at that time, to Colonel BARKER and Major CALHOUN, to the officers and some of the men in the company involved at My Lai (4). Do you relate all of this information to General YOUNG when he was sitting in the chair beside your desk, or is this in fact accumulation of information?

A. This is an accumulation of information. The only thing I can specifically relate to General YOUNG is the story of the interrogation of the helicopter pilot. Now, I think he also said that there had been some interrogations. There was a little bit more that that, but I cannot say what the rest of it was because it really didn't make that much of an impression on me.

Q. Is there anything about that interrogation, the circumstances, the place, the timing, the coincidence of events, that might trigger the recollection of others as to what was being reported to you at that time? Is there something that stands out in what you recall General YOUNG saying that might be helpful to General YOUNG to stimulate his recollection of what occurred?

A. Only that he did come in and when he told it to me he was sitting in a chair right beside my desk where he normally sat when he came in for a conference of this type,

and it seemed to me we both expressed some relief that the helicopter pilot story perhaps exaggerated and imagined to a certain extent because at that time that was really the item that was causing us to investigate further.

Q. Do you have any recollection of speaking about Colonel HENDERSON's new command, that he had just on the 15th of March assumed the command of the brigade?

A. I don't recall this.

Q. Any discussion about the effect upon morale, or upon Task Force Barker and its effectiveness, of these reports that you had received and what might be the impact if they did turn out to have substance?

A. It is conceivable that we discussed this type of thing at sometime. I don't tie it in with a particular incident though.

Q. Do you have any recollection of speaking about the relationship between the Sharks, the 174th at Duc Pho, and the Warlords, the 123d at Dottie?

A. I don't recall any discussion of that type. I know there had been, what would you call it, ill feeling, or that's perhaps too strong a word. There has been some indication that the aviation battalions were jealous of each other's prerogatives. We had formed the new battalion from older units that had been having trouble. There had been some complaints about the way they had been living, this sort of thing. I'd made a considerable effort to build up their esprit. We had formed this air cavalry troop. The gunship pilots were experienced, but the H-23 pilots I really wasn't as confident that they were capable of undertaking this type of operation as I might have been since they had been pulled from artillery. They were volunteers. They wanted to join the operation but they had never been trained as cavalry scouts, so to speak, and this unit being somewhat a provisional unit, we had pulled the H-23's out of units that had objected to having the H-23's leave. It had been something of a problem but nothing critical.

Q. You don't recall this as being part of the conversation with General YOUNG on this day? Do you recall General YOUNG saying anything about Colonel HENDERSON going down to Bronco where the 174th was based and speaking with a Major GIBSON?

A. No, sir. I don't recall.

IO: General KOSTER, with respect to your discussion with General YOUNG, it is not exactly firmed up as to the exact date that General YOUNG relayed your instructions, but it is quite conclusive from the people that we have been able to talk to, that are still alive, and who were there as to generally how it was conducted. The best we have been able to piece it together, this took place sometime early in the morning on the 18th. Conceivably it could have been the 17th, but we have documentary evidence which would indicate, and the logic of the events would also so indicate, that it was on the 18th. At that time, he assembled four additional individuals: Colonel HENDERSON, Colonel BARKER, Colonel HOLLADAY, and Major WATKE; indicated that he had discussed this matter with you, and subsequent to that time, the story which had been relayed to him, or given to him, by Colonel HOLLADAY and Major WATKE was again presented to this assembled group. We have varying stories as to how long the meeting lasted.

A. Which story was this, the--

Q. (Interposing) The story which had been given to General YOUNG which prompted him--by Major WATKE and Colonel HOLLADAY--and which in turn had prompted him to come to you to tell you about it. So he then took the two participants that told him and met them at Fire Support Base Dottie with Colonel HENDERSON and Colonel BARKER and went over the situation. That's what it amounts to. And at this time an opportunity was presented to again tell the story as to what the helicopter pilot had reported and at this time, subsequent to this, General YOUNG, relaying your instructions, told Colonel HENDERSON that he wanted it checked into and he wanted it done and as soon as possible, ASAP. Some people have even put a time period on it to the extent, maybe this is a mental process, the fact that this was to be reported to you in not less than 72 hours.

A. I don't recall ever setting a time limit on the investigation.

Q. Subsequent to this time and in the general area, we know that Colonel HENDERSON did amongst his first moves

talk to Warrant Officer THOMPSON, who Major WATKE had sent up, along possibly with some other people, to talk to Colonel HENDERSON. Whether or not General YOUNG was there at the time of the interrogation, we are not sure. General YOUNG felt that he had departed. Colonel HENDERSON knew that it was only he who was in this, together with Warrant Officer THOMPSON, when this was conducted.

MR MACCRATE: Excuse me, possibly there was a Major WILSON who served with Major WATKE, conceivably.

IO: Yes. So my point here in asking now that you--in providing this information for you as background to this--did you recall whether General YOUNG said he was present when Colonel HENDERSON conducted the interrogation; whether he knew that such an interrogation was going on; or whether he knew that Colonel HENDERSON was going to talk to the pilot; or any of those three things as far as the pilot was concerned?

A. I have a distinct impression that General YOUNG was not present during the interrogation. He very specifically had talked to Colonel HENDERSON after Colonel HENDERSON had interrogated the pilot.

Q. Could there have been a possibility that in this meeting I'm talking about, which lasted somewhere between 15 and 45 minutes--40 minutes, that Colonel HENDERSON could have expressed this to you?

A. No, sir. This was very definitely the results of the interrogation.

Q. At that time did he say that he talked to any other pilots or any other crew members of not only other aircraft but of Warrant Officer THOMPSON's aircraft itself?

A. No, sir. I believe the only--his statement related to talking to--HENDERSON's discussion with THOMPSON. This is the only thing that I definitely remember. Now, these other things came up later, either directly from HENDERSON or from, through General YOUNG, that the other aviators had been interrogated and this sort of thing.

MR WEST: I was looking through some of the transcript of the testimony of Colonel HENDERSON. If we could go back to the 16th, Landing Zone Dottie, you recall the incident of Colonel HENDERSON bringing in two suspected VC that turned out to be PF's or RF's. On this point he testified:

> "As I stated, I took the two individuals into Fire Support Base Dottie and talked to General KOSTER. General KOSTER asked me about how many civilians had been killed and I reported to him

what might be termed--that I did not have a count. That I had observed five to seven or six to eight civilians killed and it appeared to me as a result of either artillery or gunship fire."

And then there is an aside that has no relevance, and then he's asked a question. "Did General KOSTER issue any instructions to you at that particular time, point of time?"

And HENDERSON said:

> "At that time General KOSTER, first of all, indicated an interest in these two VC suspects; he wanted to know how long it would be before we could confirm whether they were VC or not. I sent a staff officer down immediately to find out. While the staff officer was gone, General KOSTER asked me how many civilians had been killed in the area. I'm under the impression that General KOSTER had flown over the area at 2,000 feet which was his normal altitude; came back to Fire Support Base Dottie. I could be wrong on this. I am not positive of it. I informed him that at least six to eight civilians apparently had been killed, and he said to find out how they had been killed, or something like this. We then discussed the fact that the VC suspects were PF's or RF's.
>
> "Q. At the time you were talking to General KOSTER, were you aware of any additional civilians that might have been killed?"

Colonel HENDERSON:

> "No, sir.
>
> "Q. To your knowledge at that point in time, I'd like to verify the time that you talked to him, somewhere between five to seven, or six to eight civilians, to your knowledge, had been killed?"

Colonel HENDERSON:

> "Yes, sir.
>
> "Q. And this is approximately 9 to 9:30 in the morning. How long did that conversation last?
>
> "A. Not more than 10 to 15 minutes did we meet there on the ground.

130c

"Q. Did General KOSTER stay on LZ Dottie or what transpired then?"

And Colonel HENDERSON:

"General KOSTER departed. I don't know where he departed for. And I departed almost simultaneously back to the objective area."

Colonel HENDERSON then testified to the effect that he proceeded from there. A little later on in the morning, he made a call on Colonel TOAN of the 2d ARVN Division around 11 o'clock or so. Then, that afternoon, he talked to Colonel BARKER, and he was informed at that time that they had a count of 12 to 14 civilians who had been killed. Then Colonel HENDERSON went to say:

"At that time, he was uncertain how they had been killed, and I asked him or directed him to get me a count of bodies, male, female, woman, or child, and exactly how they had been killed.

"Q. Did he provide such a count to you?

"A. He did the next day.

"Q. What day is this?

"A. This is on the 16th, the same day of the operation.

"Q. The same day? He provided you the information on the same day?

"A. He provided me with a figure of 12 to 14, as I recall right now."

And sometime later in the interrogation, Colonel HENDERSON says:

"Sometime later in the evening after 1900, as I recall, I had a telephone call from Colonel BARKER in which he

increased the report to 20 civilians killed. His oral report was that they all had been killed by artillery and by gunships, but he did not have a breakout of male, female, and children.

"Q. Did he ever provide you with the detailed information which you had asked for?

"A. The next morning; this is still the 16th that I'm talking about.

"Q. He gave you a preliminary report?

"A. He gave me a preliminary report which I called to General KOSTER that night at division headquarters."

And this subject is taken up again a little later in his testimony:

"Q. Please proceed with your story."

Colonel HENDERSON:

"When I informed General KOSTER of this number of civilians that had been killed, he evidenced considerable surprise and shock at the number, as had I. And I told him that I had directed Colonel BARKER to look into this matter, to give me a breakout on how these people had been killed. General KOSTER said: 'I want to know that, too.' I then called Colonel BARKER back at his headquarters at Fire Support Base Dottie that evening as I wanted him to be aware of General KOSTER's personal concern and interest in this also.

"Q. At that time, you were evidently talking about the evening of the 16th?"

Colonel HENDERSON:

"Yes, sir.

"Q. And when you talked to General KOSTER. Did he direct you to conduct an investigation?

"A. No, sir.

"Q. I wish you would repeat, to the best of your knowledge, what instructions he gave you at that time?

"A. To the best of my knowledge, I informed General KOSTER of this: that I was having Colonel BARKER prepare a breakout on these deaths according to male, female, and children and as to whether they had been killed by small arms fire, artillery, or gunship, or if unknown, then unknown. To the best of my knowledge, General KOSTER said that, 'I want to know that information, also.' There were no instructions to investigate it. He was very unhappy that he--General KOSTER was very unhappy, as was I, over the abnormally high number of civilians having been reportedly killed. But there was no further instructions from the general to the best of my knowledge."

And they go on. A little later in the interrogation, they return to this matter of the evening of the 16th. And in answer to a question, Colonel HENDERSON stated:

"I also wanted more information regarding the alleged 20 civilians that had been killed. Now, these were the reasons that I directed BARKER to send the company back through the area."

Then he discusses the matter of his ordering the company to go through the area and how it didn't occur. He went on to say:

> "I wanted this body count reestablished, these 20 civilian dead reverified as to how they had been killed. He gave me a card that morning."

Referring to BARKER:

> "When I arrived up there, he gave me a 3-by-5 card, Colonel BARKER did, and stated how these 20 civilians had been killed and the breakout of men, women, and children.
>
> "Q. Do you know what happened to that card?
>
> "A. I gave that card to General KOSTER.
>
> "Q. To General KOSTER?
>
> "A. Yes, sir.
>
> "Q. At a subsequent date?
>
> "A. Yes, sir."

It goes on like that.

At a later time, he testified that he visited you in your office on the 20th of March and made a report concerning the allegation of noncombatants having been killed in the My Lai area and gave you this 3-by-5 card. Does that help in refreshing your memory at all as to these events?

A. I don't remember the events. I must say, there's not much in there that doesn't appear to be what I would've--that couldn't have been factual. The initial report of casualties, although I asked for a check of why and this sort of thing, I did not--that was not the inquiry and the first investigation so to speak that I directed. That came after I received the word from the helicopter pilot. So I could--but I was still asking him why and what and all the other things. The fact that he came back and told me and kept me informed, that sounds like something he would have accomplished. I don't remember the specifics.

Q. Of course, the import of his testimony is that on the 16th he spoke to you at least twice as to the matter of civilian deaths.

A. Yes, sir.

Q. This was noncombatant civilians, and you expressed great concern and you told him that you wanted to hear more about it. I had understood from your testimony that you had heard almost nothing about civilian casualties during this time. And if that is not the matter which we--

A. (Interposing) No, sir. I was fully aware of 20 some civilians having been casualties in this operation. I was never aware of any more than that.

Q. I think you can also appreciate that we are also trying to iron out parts of Colonel HENDERSON's testimony.

A. Yes, sir.

Q. I'm not just thinking about yours.

A. I wouldn't have tried to refute any of the statements that he made during this--the portions that you read to me. I do not remember the meetings or the calls specifically, nor the card but--

Q. (Interposing) It could well have happened?

A. It could have happened.

MR MACCRATE: General KOSTER, I would like to go back for a moment to the conversation with General YOUNG, and I believe you indicated that included in his report of Colonel HENDERSON's interrogation was the facts that there were discrepancies in the aviator's story. That he had appeared to Colonel HENDERSON to be an excitable young man and that Colonel HENDERSON had concluded that his story was thus entitled to less authenticity. And I believe you said that as a result of this report both you and General YOUNG felt relieved. Now, what I am interested in exploring is what was your concern which was relieved by virtue of such a report?

A. Well, that there had been excess firing; that the troops were firing indiscriminately in the area; that possibly some of the civilian casualties that we were aware of had resulted from this type of action.

Q. But at this point you had no information as to what had been the cause of the civilian casualties. It didn't in any way change the figure of civilian casualties, did it?

A. No, sir. It did not.

Q. And this in no way affected the report of the confrontation; the fact of the landing of the aircraft.

A. It didn't affect the landing. I would say it would have affected the confrontation. You had an excitable kid who came down here and got himself involved like this.

Q. Was it your understanding that a gunship was involved in the landing as well as this excitable young man who was flying the H-23?

A. At sometime I had been informed that a gunship--that he called a gunship down to come in and assist in the evacuation.

Q. So that there were still aspects of this to be resolved?

A. No question, this was just the start, sir.

IO: General KOSTER, you indicated that in your mind General YOUNG was following through on this, or words to that effect?

A. Yes, sir.

Q. Did you ever issue instructions to General YOUNG that you wanted him to follow through and to be completely informed on this and to report to you?

A. I believe I did in the words along the line of, "Will you ride herd on this thing?" Something on the order of that; not to the extent of, "You conduct the opera--you conduct the inquiry, you do this and so." But I'd always look to one of the assistant division commanders to look after the southern area primarily, and I was concerned to a greater extent with the north, and I'm sure I gave him a message that I felt he was to supervise this check.

Q. General YOUNG's discussion with you then, the following discussion, was more or less a fall out of Colonel HENDERSON's discussion with the warrant officer, was a part of this?

A. Yes, sir.

Q. Now, after you got this feeling, which you indicated was somewhat of a relief to you and General YOUNG, I believe as far as the ground element was concerned, did you take any action to get in touch with Colonel HOLLADAY or any-

body that was running the helicopters to find out right then and there what was going on? If a report had come to you that an excitable or inexperienced individual had done this to see if there was any follow up to effect this within the aviation unit?

A. I'm sure I discussed it with Colonel HOLLADAY at some time, the relationship, the overall relationship, particularly that. The pilots were supporting the ground operation. If they had a problem with the ground commanders they were supporting, they should go immediately to the next higher commander, and all of his pilots, recognizing that some of them were not particularly used to this type of operation, should be very firmly oriented on how to go about these things.

Q. Did you ever review with Colonel HOLLADAY the situation that had actually transpired at My Lai (4) between the pilot and the ground troops?

A. I'm not sure I reviewed the whole thing, but I would say we talked about portions of it at least.

Q. According to some of the testimony that we have, some from Colonel HOLLADAY and some from other individuals, Colonel HOLLADAY was considerably concerned because of the number of civilian casualties which were on the order of magnitude of 100 or more. A combination of this and the confrontation caused Colonel HOLLADAY and Major WATKE to report this situation to General YOUNG. It would appear to me that if Colonel HOLLADAY had felt that strongly about this situation, and if My Lai (4) was ever broached to him, that he would have had a good opening to discuss the situation with you at that time in detail?

A. Yes, sir, but I do not recall that he ever mentioned figures of that magnitude.

MR WEST: The point I would like to address is what you were told by General YOUNG as to the report he had received of Warrant Officer THOMPSON's story. This came to him from HENDERSON as I understand it?

A. Yes, sir.

Q. Now, HENDERSON testified on 2nd of December, he described Warrant Officer THOMPSON's story as follows: He said the young man was in tears, he was considerably--under some emotional strain evidently. But the facts he talked about--he told about seeing a lot of, what Colonel HENDERSON called, extremely wild shooting by troops on the ground and by helicopters in the air and it appeared to him that everything was out of control. Now, this is Colonel HENDERSON's story. He further stated that he had observed a dark complected captain, not a Negro, but a dark complected captain shoot a woman, a wounded woman. He stated, and this is THOMPSON he means, in the marking of positions of what he considered wounded civilians by smoke he observed then that the troops would advance on this smoke throwing hand grenades and shooting into the individuals who were wounded. He stated that this particular captain walked over to this body that Warrant Officer THOMPSON had marked, nudged her with his foot or with his weapon, and turned around and walked away. When he was approximately ten steps away from this woman, this wounded woman, the captain whirled and fired upon this wounded woman with his M-16 rifle. And at this point he went on and told how THOMPSON was in tears. They come back to the subject a little later. In a question to HENDERSON:

> "Q. I want to know as much as I can about what THOMPSON told you?
>
> "A. Yes, sir. THOMPSON told me that in flying overhead he observed a number of civilians on the ground. He gave me no number. I had a report that approximately 24 civilians had been killed in the operation. THOMPSON told me he had observed civilians on the ground wounded; that he was trying to get medical aid for them and that he was dropping smoke flares--smoke signals on the wounded; that small teams from the company would come over to investigate, but instead of investigating they would come firing and throwing hand grenades and firing M79 rounds. When I broached the subject to Captain MEDINA, the fact that there was a pilot marking wounded, Captain MEDINA said that he had no knowledge that this individual was marking wounded. That this signal was always reserved for marking

VC and that he directed all his elements as he dispatched them out to investigate these smoke signals to advance cautiously because he did not want to get people killed unnecessarily. As a consequence, when I reported this incident to General YOUNG I told him that this young officer, warrant officer, it appeared to me had been unknowingly marking people for death, not being in communication with the ground troops, which was a signal for the troops that there were VC and possibly armed VC. Naturally they were approaching each of these positions cautiously and with firepower."

And then we go into a discussion of the smoke signals.

HENDERSON stated in other testimony that after he had talked to THOMPSON he immediately went out and talked to MEDINA, and MEDINA had explained that, yes, he had noticed this young woman lying there on the ground, and as he walked away from her he detected a movement of an arm, he thought, and he assumed she was reaching for a grenade or something like that. He immediately whirled around and shot her, and Colonel HENDERSON stated this seemed logical to him and he accepted it.

Later in his testimony, he stated: "After I had talked to Captain MEDINA and Captain MICHLES, I returned to LZ Dottie and again talked to Colonel BARKER. General YOUNG arrived at Fire Support Base Dottie, and I related to him everything that I had gotten up to this point and told him:

> "Q. I would like to know specifically what you related to him, to the best of your recollection?"

Colonel HENDERSON: "To the best of my knowledge, I informed him of the allegations made by the Warrant Officer THOMPSON, that I had so far looked into one aspect of this and this was concerning Captain MEDINA's shooting the wounded woman; that I accepted Captain MEDINA's explanation of this and to me it appeared plausible. However, I was going to look into this matter further, and that I had directed Colonel--"

And then he is interrupted by a question:

> "Q. What matter were you going to look into further?"

Colonel HENDERSON: "His allegations, Warrant Officer THOMPSON's allegations, concerning the wild shooting."

And then he goes on to say that he directed Colonel BARKER to move--have his company go back through the area.

A. Which day was that then?

Q. This was the 17th, according to HENDERSON. The reason I went back over that was to give you Colonel HENDERSON's

account of what he had told to General YOUNG, and I get the impression that General YOUNG did not convey all that to you, but merely reported the allegation of the troops firing in the direction of civilians, possibly getting them in a cross-fire, and then the encounter or the confrontation, possibly, with the helicopter pilot. Did General YOUNG mention to you anything about THOMPSON's allegations concerning wild shooting, civilians lying on the ground, the captain shooting a woman?

A. I don't recall anything about the captain shooting the woman. The wild firing I gathered from somewhere. Yes, there had been some bodies seen, but not the fact that there had been numerous civilian casualties as part of this action.

Q. Another thing that is a little variance in Colonel HENDERSON's testimony. He states that he wasn't directed by General YOUNG to initiate an investigation. The investigation was his own idea, and that he had mentioned it to General YOUNG, who had approved it. Now, here a question put by General PEERS, this is on the 17th again, concerning the events of the 17th:

> "Q. Let me back up just a minute. You've indicated that you had not been directed to initiate an investigation. What is your interpretation as to who can initiate an investigation?
>
> "A. Well, I was initiating what I felt to be my own personal investigation of this matter as the brigade commander. Anybody above me could have directed me to conduct an investigation, or Colonel BARKER could have directed an investigation within his task force.
>
> "Q. Now, you have indicated you were looking at this from the commander's point of view, as a commander's inquiry, not a formal investigation. My question was what is your interpretation as to who can initiate a formal investigation in such a matter?
>
> "A. I discussed this with General YOUNG and told--I believe General YOUNG will verify this--I told him that I was initially going to take a look at this thing from a commander's viewpoint, but if there were any grounds or any evidence at all to substantiate the allegations of Warrant Officer THOMPSON, that I would then recommend that a formal investigation be conducted if any of these allegations proved true. That I differentiated here between a formal investigation by orders as opposed to what is the responsibility of the commander. I think I'm differentiating, at least in my own mind I am.
>
> "Q. Well, go on with your discussion with General YOUNG?

"A. Well, I had finished up going down to Major GIBSON at the aviation battalion.

"Q. One point going back to General YOUNG again: had he given you any specific instructions?

"A. No, sir.

"Q. At that time?

"A. No, sir.

"Q. So you told him the course of action you were following, and he at that time gave you no additional specific instructions?"

And this is the end of that part of the testimony.

Now, could you venture any--an explanation of--as I take it, this is in variance with your understanding of the matter. You had instructed General YOUNG to have an investigation made. I believe he had told you that he directed Colonel HENDERSON to conduct one.

A. Yes, sir.

Q. Colonel HENDERSON says: "No, it was my idea; General YOUNG just approved it."

A. The timing here may be what is confusing the issue. HENDERSON may have again--exactly when YOUNG relayed the directive to HENDERSON I'm not positive. I seem to be--

have all my thoughts shoved up in to the earlier time frame as opposed to--as spread out as the other evidence is. Maybe these things just took longer than I recall now.

Q. Colonel HENDERSON has this on the 17th. And it seems possible, very possible, from what you have told us, or heard otherwise, this might have been on the 18th.

A. Well, I feel that as soon as I heard the allegations of the helicopter pilot, that's when I directed the inquiry. When this was relayed on to Colonel HENDERSON, I am not certain, but I would have no reason to believe that it wasn't right away.

IO: This would in some respect tend to indicate that it was in fact on the 18th. The reason I say that is that you've indicated that General YOUNG brought this to you about noontime.

A. Yes, sir.

Q. On the 17th, the day following--

A. (Interposing) Probably, although initially I thought it was even the first day. As informed as I am now of the events, it could have been noontime of the second day just as well.

MR MACCRATE: The second day was a Sunday.

A. Time doesn't mean anything at all.

IO: Sometimes you do remember things because of church services and things which we normally attend and events and the normal timing of events. The meeting which was supposed to have taken place at task force--at Fire Support Base Dottie--everybody seems to have it fairly well fixed in mind that it happened comparatively early in the morning. But if you talked to him at noontime, it could not have been, for example, at 9 o'clock at Fire Support Base Dottie. One other thing which--

A. (Interposing) In order to get all these people together, that might have been the first word that he put out. Again, I'm just supposing now, but--

Q. (Interposing) Well, I assume this is what everybody assumes that's what General YOUNG had in mind when he called these people together, to initiate this and get together the key people that were involved in the thing.

A. Yes, sir.

Q. As was previously mentioned in Colonel HENDERSON's testimony, immediately following this meeting and his discussion with Warrant Officer THOMPSON he proceeded immediately to C/1/20 where he talked to Captain MEDINA, and we have this fairly well pinned down as to location and the timing, which would indicate that it could have only have happened on the third day in that particular location. It would have been about noontime or shortly after, 1 o'clock maybe, on the afternoon of the 18th.

A. Yes, sir.

Q. I think it is also fair to say that one of the reasons that I cautioned you this morning about not accepting some of the timing and so forth of the investigations from Colonel HENDERSON is the fact that we did get him back in here to go over his testimony, and there is no question in his mind that he did attend the meeting and who was there and generally what was said and what instructions were issued. So it is a little bit at variance as you will notice with his testimony, of what Mr. WEST had to say was certainly pertinent to the point that he was trying to bring out. Now then, General KOSTER, we have come up to the point now where we have gone through your instructions to General YOUNG. The instructions have been issued to Colonel HENDERSON, and we have also gone through the fact that you had gathered certain information concerning it and specifically that Colonel HENDERSON had given you an oral report in one form or another.

A. Yes, sir.

Q. What did you tell Colonel HENDERSON at that time?

A. You mean at such time as he finally said this is all I have or if he ever said it?

Q. He was reported to have come to you on or about the 20th to report the results of the inquiries which he had initiated. Perhaps it would be wise, instead of taking the question which I have just addressed to you, to ask you the question: what did Colonel HENDERSON tell you at that time orally?

A. As I indicated, I don't specifically remember him coming up and saying: "This is my report of the allegations." We got much of it by--as he finished interrogating certain people, he either apprised me at one place or another or informed me through General YOUNG. He could very well have been there and he outlined the individuals he had talked to. His conclusion based upon his inquiry, as I recall, was that there hadn't been casualties caused by needless firing, excessive firing. That he had interrogated the people he felt were primarily involved, and certainly with as many people as that on an operation, I felt that he would have uncovered anything of much less magnitude than is presently being alleged. In other words, I felt that he had interrogated the responsible people and a cross section of individuals, both aviation and ground personnel, and that as far as his initial inquiry was concerned there wasn't a basis to push a--have a formal investigation at that time.

Q. Did he tell you how he interrogated the ground troops?

A. No, sir. I don't think he ever told me how. I visualized he got them off to talk to them as individuals and said what did you do while you were there and what happened in your platoon, this type of thing. I don't know that it ever came up.

Q. Did he indicate specifically, aside from Mr. THOMPSON, whether he talked to anybody that was in the aerial assault or aerial-scout unit?

A. I got the general impression that he had talked to all the aviators who had flown that day.

Q. Having heard this now, what was your statement to Colonel HENDERSON? What additional requirements did you place on Colonel HENDERSON?

A. I don't know that I gave him any further requirements. Probably: "If anything else develops here, let me know about it."

MR MACCRATE: General KOSTER, it is in fact our information at this time that Colonel HENDERSON had interrogated very few people, very few. And that at this time, immediately after the event, he would have had virtually no progress to report to you that would have consumed any period of time. That such interrogation as he conducted was of a limited number of people, and that there would not have been steps of interrogating one group and then another group so that there would have been any occasion for a progress report. And I think it's terribly

important that you focus as well as you can, recognizing that we are talking about something a year and a half ago and we fully sympathize with this problem, but were there in fact progress reports at this time?

A. I have the general impression that I got this in stages. I didn't get it as all one wrap-up. When you give me the date of 20 March, I don't relate to that date at all. I just know eventually it appeared to me that he claimed to have interrogated responsible leaders, including platoon leaders, platoon sergeants, certain numbers within the company. I don't know that he ever gave me numbers, but a representative group and the aviators. Now, at such time as he came and told me, or we saw each other and he told me all of this, I felt that he had interrogated the people who were most concerned, and I believe throughout all of this that General YOUNG probably got as many facts as I did, some of this being relayed through him.

Q. You indicated that you had not, so far as you could recall, laid down any additional requirements. Can you help us in fixing the time when you reached that attitude in your own mind with respect to what Colonel HENDERSON was reporting to you?

A. No more than it was several days that we seemed to be interrogating people and--

Q. (Interposing) It would possibly be into April? This could be a 2-week period?

A. It could.

Q. I'm just trying to get the--

A. (Interposing) I wouldn't have anticipated that it would have been that long, but it could have gone several days towards the--I don't think it could have gone much into April. It would have gone through the remainder of March.

Q. Did you request him to put any part of it into writing?

A. Well, I did about the middle of April.

Q. Well, prior to the middle of April did you make any such request to him?

A. Not that I recall.

IO: You indicated that sometime in April you had directed him to put it in writing. Was this his formal report in writing, or was this new information upon which you had based your judgment to reopen the issue?

A. I wanted all the information that he had reported to me verbally, reported to General YOUNG verbally, and I wanted it taken into consideration that we now had the VC propaganda leaflet plus something from the district chief.

IO: May I have R-1 and R-2?

(The recorder handed the exhibits to the IO.)

Q. Prior to your issuing these instructions to him and sometime in April you had indicated you had received VC propaganda and some information from the district chief?

A. Yes, sir.

Q. Who provided this information to you--to your headquarters?

A. I'm not positive. It could have come directly from the province, 2d ARVN Division, 11th Brigade, I'd say those were the most likely sources.

Q. Do you recall Colonel HENDERSON giving it to you or hand-carrying such documents to division?

A. No, sir. I don't.

Q. How were your instructions issued to Colonel HENDERSON?

A. I'm not positive how the instructions were given him. Whether I gave them personally or whether they were again relayed through General YOUNG or perhaps it could have been the chief of staff although I--more likely, it was either General YOUNG or myself. It could have been by telephone.

Q. Did you publish any division order appointing anybody as investigating officer at this time?

A. To the best of my knowledge, we did not.

Q. Something must have picked your mind or--pinched your mind rather than picked--or at least aroused a degree of suspicion in your mind to reopen this issue?

A. I felt that if these allegations had been made that we should at least have what transpired bundled up as an investigation. I felt that the Vietnamese could very well come up with some new evidence that hadn't been available to us before. They have a way of having some nets out in these villages and whatnot that could come back and could have given a story of what had happened. I didn't accept on face value what was in the VC propaganda. It was normally blown out of all proportion. And I really didn't know whether the district chief was just putting something in that he had picked up from the VC propaganda or what, but I thought that we should certainly have, for purposes of retention in case something else--more evidence did develop, the data that we had resulted from our investigation.

Q. As you might recollect your own thought process at that time, did you ever put together the 20 some odd civilians killed, the report by the helicopter pilot, the report from the district chief, and also the VC propaganda?

A. The report from the helicopter pilot, the portion that I received, contained no indication of numbers. I certainly put together the fact that some--there had been some civilian casualties and a multiplication by 15 to 25 for propaganda purposes wouldn't have been something that probably hadn't happened before.

Q. Then 20 to 25 civilians being killed was sort of a normal thing in this area, an accepted thing?

A. No, sir. I don't--it was not accepted in any way. However, if you have a contested action, I think 20 to 25 can be killed through any one of a number of means, and it is unfortunate but it is not always avoidable. And this is really what we'd been running our investigation to find out.

Q. General KOSTER, I have here a confidential document, Report of Investigation, dated 24 April, signed by Colonel HENDERSON. I would ask that you look at this document and see if you have seen it before?

(IO hands document to witness, Exhibit R-1.)

A. Yes, sir, I've seen it before.

Q. I refer you specifically to the first inclosure.

(Witness examines the first inclosure.)

Had you seen this report prior to the submission of this report of investigation?

A. I'm not positive whether I'd seen this. I feel I'd seen this one.

Q. That's the second inclosure, the translation of the VC propaganda. But you did see both of these when the report was submitted, is that correct?

A. If they were appended to the report at that time, I believe I did. I don't remember specifically.

Q. When did you see this report dated 24 April? We have indications that it was submitted to your headquarters on the 25 of April and hand-carried to you.

A. I am a little uncertain whether I saw it before I departed on approximately 10 days in Hawaii or whether I saw it immediately upon my return. If I saw it, I do not believe I took any action on it but turned it over to General YOUNG for his consideration. It really is my feeling that I saw it after I came back from Hawaii, but I'm not positive.

Q. I made a statement before that indicated that it was hand-carried to you. There were some indications that perhaps it was hand-carried to you. There are also indications that it had been left with the chief of staff, and that he delivered it to you.

IO: At this point we will take a 5-minute break.

(The hearing recessed at 1545 hours, 15 December 1969.)

(The hearing reconvened at 1553 hours, 15 December 1969.)

The hearing will come to order.

RCDR: All persons present when the hearing recessed are again present.

IO: General KOSTER, who else in your headquarters saw that report?

A. I believe, as a minimum, General YOUNG and Colonel PARSON.

Q. Would your staff judge advocate or your IG have been privy to this kind of operational report?

A. Normally speaking, they would.

A. I'm not positive whether I'd seen this. I feel I'd seen this one.

Q. That's the second inclosure, the translation of the VC propaganda. But you did see both of these when the report was submitted, is that correct?

A. If they were appended to the report at that time, I believe I did. I don't remember specifically.

Q. When did you see this report dated 24 April? We have indications that it was submitted to your headquarters on the 25 of April and hand-carried to you.

A. I am a little uncertain whether I saw it before I departed on approximately 10 days in Hawaii or whether I saw it immediately upon my return. If I saw it, I do not believe I took any action on it but turned it over to General YOUNG for his consideration. It really is my feeling that I saw it after I came back from Hawaii, but I'm not positive.

Q. I made a statement before that indicated that it was hand-carried to you. There were some indications that perhaps it was hand-carried to you. There are also indications that it had been left with the chief of staff, and that he delivered it to you.

IO: At this point we will take a 5-minute break.

(The hearing recessed at 1545 hours, 15 December 1969.)

(The hearing reconvened at 1553 hours, 15 December 1969.)

The hearing will come to order.

RCDR: All persons present when the hearing recessed are again present.

IO: General KOSTER, who else in your headquarters saw that report?

A. I believe, as a minimum, General YOUNG and Colonel PARSON.

Q. Would your staff judge advocate or your IG have been privy to this kind of operational report?

A. Normally speaking, they would.

Q. Do you know whether or not they were familiar with this document?

A. I did not discuss it with them personally, but I don't know.

Q. Do you consider that document responsive to the request which had been laid upon Colonel HENDERSON?

A. No, sir. I do not.

Q. What did you do about that?

A. It was at that this stage that I directed a formal investigation.

Q. Who did you direct a formal investigation be made by?

A. I don't know that I specified. I anticipated, to the best of my belief, it was to be made by Colonel HENDERSON. He would conceivably have assistance from division. I don't believe I directed such. I visualized a division order directing this, but when the investigation came back I don't recall that there had been a division order. That was my intent.

Q. Who did you issue the instructions to to conduct a formal investigation?

A. I believe it was a--again, a question of instructing General YOUNG and Colonel PARSON, probably at the same time, that this is what I wanted done without further elaborating.

Q. Do you remember instructing specifically either General YOUNG or Colonel PARSON or both of them?

A. No question in my mind that I instructed one or both that I wanted a formal investigation.

Q. Did you tell them why you wanted a formal investigation?

A. I know General YOUNG was very in agreement that what we had here wasn't what we had in mind when we asked for a written investigation. He specifically said we want statements of witnesses, all these people that HENDERSON has talked to, and it should be incorporated into a formal investigation and we wanted the witness' testimony there to show what we had done in this case.

Q. Do you know whether or not, in fact, General YOUNG had seen that document?

A. Again, this is one of the things that I seem to have a better recollection of than many of the other things that transpired because I seem to tie it in with my return from Hawaii. The fact that we finally had what we had been waiting for, the HENDERSON report; and it didn't amount to much, and it would never do, and the recommendation was that we get a formal investigation; and I agreed completely and I seem to fasten this with General YOUNG.

Q. Do you recall any kind of a discussion to consider who was to conduct such an investigation? Here we have what is to be considered an unsatisfactory investigation, the Report of Investigation, and now we are talking about another investigation, a formalized investigation.

A. Well, I thought some place--this was not responsive to what I asked for in the first place and perhaps we lost something in giving the instructions to Colonel HENDERSON because he didn't produce all of the data that he had gathered as a result of his inquiry that he had made initially. I don't think--I visualized that Colonel HENDERSON would be the investigating officer. That is the way I visualized it at the time, I believe, but he conceivably assisted if required.

Q. Even though it in effect involves investigating something within his own unit?

A. Yes, sir. I felt that this was an echelon below him that he could investigate.

Q. Do you recall when you issued these instructions and by what means they were put out?

A. Well, as I say, I visualized an order as such, but there is nothing to indicate that's the way they went out. It was undoubtedly done verbally. It was a verbal directive, although my basis for saying that is I never saw the order.

Q. Do you recall the approximate date when you might have issued such instructions?

A. I think, probably, the 7th or 8th of May.

IO: Mr. MACCRATE, do you have any questions that you would like to address to General KOSTER at this time concerning this report and the directive that was issued for the subsequent formal report?

MR MACCRATE: You indicated, General KOSTER, that you visualized that Colonel HENDERSON might have assistance in the preparation of this formal report. Do you recall any conversation with Colonel HENDERSON about providing assistance for him?

A. No, sir. I do not.

Q. Do you recall any response of his to receiving this request? Either a response that he made to you when he heard of the request or a response that he made to General YOUNG or Colonel PARSON which was in turn relayed to you?

A. No, sir.

Q. Do you recall saying to him personally that what you turned in is inadequate, "This is not what I wanted. This is not responsive to my original direction"?

A. I don't recall whether I said it to him or whether it was something that we discussed at the headquarters, but this, I'm fairly certain, is what I've (inaudible) one of these places. General YOUNG, as I recall, made a recommendation such as that to me.

Q. Do you recall who was to give Colonel HENDERSON the word in this respect?

A. I don't know that I specified it. I believe, I visualized it would have been a formal written directive this time, probably coming from the chief of staff, but I suspect that it did not go that way.

Q. But you subsequently ascertained that no such formal written direction had been issued?

A. Yes, sir. That is correct. To the best of my knowledge, I don't ever remember having seen it.

Q. Now, would a report of this character be logged in in normal course when it was delivered to your command?

A. Unless it had been hand-carried to some element of the command group, and then it should have been logged in, but I can't swear that it was.

Q. Well, if it came in to some member of the command group and came in as you were departing or just after you departed and lodged temporarily awaiting your return within the command group, what would be the established procedure within the command group for the processing of such a report?

A. Normally, it would have been staffed with the division staff.

Q. And staffed with the staff in this case would include the staff judge advocate and what other elements?

A. The inspector general, probably.

Q. The inspector general?

A. Yes.

Q. Would such a report be duplicated and distributed, or would the same piece of paper move about?

A. Well, probably the way we were set up to operate over there it would have been the same piece of paper.

Q. And when it finally came to rest, where should it have gone? And to ask another way, where should we find that document today?

A. I would say you should find it in the files of the judge advocate general, the inspector general, or the SGS or the chief of staff.

Q. This particular copy that we have, you may have noticed, apparently comes from the S2 office of the 11th Brigade and not from the Americal headquarters.

(Witness studies document.)

Was there any discussion with General YOUNG or Colonel PARSON about the absence of any reference to Chief Warrant Officer THOMPSON's allegations in this report?

A. I have a feeling we discussed the adequacy of the report and that--I'm not sure whether it was THOMPSON's--whether THOMPSON's testimony was included. I do know there were a number of aviators whose testimony did appear.

Q. But we are now talking about the 24 April report and there you will notice--

A. (Interposing) I'm talking about the subsequent report, not this one.

Q. I was referring to R-1 and there it refers to interviews with Lieutenant Colonel BARKER, with the task force commander, with Major CALHOUN, with Captain MEDINA, and with Captain MICHLES, but there is no reference in that to any interrogation of Warrant Officer THOMPSON, and I'm just inquiring whether that was any part of your discussion, that this omitted even a reference to an interview with him.

A. That's correct, sir, I'm sure we discussed that. Not only wasn't he mentioned, but the--what these other people said wasn't included in the detail which was available or had been gone into at one time by HENDERSON in his initial inquiry.

Q. Well, this would hardly seem to be a report of the initial reports to you, would it?

A. Absolutely not. That's why I, as I say, I don't know whether something was lost in the translation of what I was looking for or whether this was HENDERSON's version of what it should look like, but it was the reason that we decided that this was not an adequate investigation and was the reason for having a formal investigation to the followup.

Q. Well, the starting point for the report is that an investigation is being conducted of the allegations cited in inclosure 1, which is a statement dated 14 April 1968, or it may be the VC propaganda. Which is inclosure 1 and which is inclosure 2 is not clear from the copy we have. Can you at this time help us in identifying what the allegations cited in inclosure 1 were, the subject /of the investigation reported upon? General PEERS points out that on the second page, inclosure two, is the translation of the VC propaganda message identified on the first and second lines of page two, which does suggest that the statement of 14 April is the first inclosure. My question is whether this investigation that is referred to in the 24 April report of investigation is not something entirely subsequent to the initial investigation or inquiry made by Colonel HENDERSON.

A. Well, as best I recall, it was not my intent that this should be limited to only some discussion of some VC

propaganda. It was my intent to document everything that we had found in the initial inquiry addressing as appropriate the contents of the VC propaganda, but the VC propaganda leaflet and district chief statement were what caused us to have this put into writing.

Q. So far as you can recall, is this document dated 24 April the first report that you received from Colonel HENDERSON, the first written report.

A. As best I can recall, yes, sir.

IO: General KOSTER, do you have any idea who prepared the statement, inclosure 1, dated the 14th of April?

A. No, sir. I don't know.

MR MACCRATE: And I understand that you were not able to identify at this time that that statement of 14 April is in fact the inclosure to this report as submitted to you?

A. No, sir. I don't in that detail.

Q. This is one of our difficulties. We are not sure that this statement is the inclosure.

A. I don't recall this document as such. I do recall the VC propaganda leaflet as generally what was said in a propaganda leaflet. Again, not the specifics, necessarily.

IO: As you can see, what we have is a document which was taken from the files of the S2 office of the 11th Brigade, with the two attachments. We can assume that these are the attachments, but we are not positive that these are the attachments. In the statement of April 14, you will notice that it says in the hamlets of Tu Cung and Co Lay. Do you have any idea what those are?

A. No, sir. Not just offhand. I would assume that they are other names for some of these villages, but I am not--

Q. (Interposing) Do you recall ever having this matter checked by province or at district or having it checked by S2 or the G2 or the G3 shop of your division?

A. No, sir. I don't recall ever--as I say, I don't ever recall really seeing this document.

Q. Tu Cung is the VC name for My Lai (4). Co Lay--there is a Co Luy south of the Song Tra Khuc River about where you see the word "junk base" written in the mouth of the river. That, however, is outside the area of operations. However, to the north of there you recall the area that I had indicated that B/4/3 had passed through, there are three villages, Co Lay (1), Co Lay (2), Co Lay (3), which conceivably, with the exception of the one letter, could be the area referred to. It implies that 400 civilians were killed at Tu Cung, and then moving to Co Lay hamlet at this location an additional 90 civilians were killed.

A. I think the mere figures here would cause one to question this, because from reports that I have had on previous operations there weren't that many civilians in any of these locales, from what I gather.

Q. Perhaps not from the village of My Lai (4) itself, but from the surrounding areas. We have indications that quite a large and sizeable body stretched over a long distance was moving down the road, Highway 521, from the area a little northeast of My Lai (4) and moving southwest toward Quang Ngai City. We have had descriptions of anywhere from 200 to something in excess of 400.

A. Civilian personnel?

Q. Yes. This is also one of the first things reported by Colonel HENDERSON when he flew over the area. One of the first things that he noticed was a large group of civilians moving down the road very orderly.

A. But from north to south into My Lai as opposed to--

Q. (Interposing) Mr. MACCRATE and Mr. WEST can confirm this. Here is Highway 521 (pointing to map). The village of My Lai (4) is just about 200 to 300 meters, roughly, north of the road. Generally, from this area to the northeast down here they had moved onto the road and were moving in a southwesterly direction.

A. I understood that there was considerable civilian traffic on this road. It was not coming into My Lai but from the general area and exiting on out.

IO: Okay, that is generally the way I visualized it.

Do you have any questions, Mr. WEST? I've got a few more. I want to come back to a couple of other things, General KOSTER. I have a couple of documents I would like to refer to you to see if you had seen them. One is a combat action report, 28 March, from Task Force Barker.

A. Yes, sir. I have seen it since the criminal investigators came and gave me a copy of it.

Q. Had a copy of this report been delivered to your headquarters?

A. I don't know that this report as such was ever brought to my attention. I would say as a matter of routine this type of after action report was not. The contents of it would have been brought out in briefings, generally speaking. Any recommendations would have been developed by the staff and an appropriate recommendation would have been made.

Q. I call your attention to the paragraph just before the one you were directing yourself to on the previous page.

(Witness studies report.)

You will notice in the statistics which, I believe, begin on the previous page, that there is no mention made concerning civilian casualties?

A. Yes, sir, this is what prompted my telephone calls to the division chief.

Q. Do you recall that you issued any instructions to have such a report prepared?

A. I'm sure that I did not issue instructions to have a report like this prepared, to the best of my knowledge.

Q. Are you aware of anybody else in your headquarters who may have issued such instructions?

A. It's conceivable that there were standard operating procedures, SOP's, which required after action reports which would have come from the headquarters.

Q. I call your attention now to this paragraph 2 where it cites the period covered by this report.

A. Yes, sir.

Q. Recognizing that this operation went on for all three companies involved in it for 3 days and the other companies stayed in for maybe a day or 2 longer, would it be normal to prepare a report on just one part of an operation such as this?

A. No, sir.

Q. You will notice that although this report is addressed to the commanding officer of the 11th Brigade, nobody in brigade--at least the ones that we have talked to thus far--recalled ever having seen the document.

A. Was this--where was it located, sir?

Q. I'm not sure. I have also here, General KOSTER, a letter dated 28 March from a Lieutenant Tan, district chief of Son Tinh District to the Quang Ngai Province chief. This is the English translation of the Vietnamese version which is attached to it. I ask if you have ever seen that one?

A. (Witness studying document) No, sir, not to the best of my knowledge.

Q. Now, General KOSTER, we have established from your testimony that you had directed a formal investigation be conducted. Who conducted that investigation and when was it submitted to your headquarters?

A. I considered it Colonel HENDERSON's investigation. However, as it turned out, he had designated Colonel BARKER, as I recall, to do much of it; and this may be another point that we did mention when I mentioned to him a second investigation and he served--the BARKER investigation. The best I recall, it was requested 7, 8 May; it was received probably a week later.

Q. Maybe along the 15th or 20th or thereabouts?

A. Yes, something like that.

Q. What did the investigation look like?

A. It had numerous inclosures which were statements by platoon leaders, platoon sergeants, company commanders, some aviators.

Q. Do you recall any of the individuals that provided signed statements?

A. Well, I think--I was quite positive that it included the company commanders, the platoon leaders, some platoon sergeants.

Q. Do you know them by name?

A. No, sir, other than the company commanders. I remember there was one from MEDINA and at that stage was the only name that I knew.

Q. Was there a statement there from Lieutenant CALLEY?

A. I can't say for sure.

Q. Was there a statement there from Warrant Officer THOMPSON?

A. I am not sure that I knew THOMPSON by name at that time. There were statements from aviators.

Q. Could these have been the aviators that participated in the combat assault as compared to the aviators who were associated with aero-scout units?

A. Again, I was rather certain that there was a statement by Major WATKE there. It seems to me that there was one there. I can't say positively, but it seems to me that that was one of the names.

Q. How many pages, aside from the testimony, in terms of signed statements and so on, the report proper, do you recall about how many pages this entailed?

A. No, sir. I do not. As I recall, the bulk of it consisted of statements.

Q. What was your recollection of the contents of the body of the investigation, the findings and the recommendation?

A. It generally agreed with the conclusions that Colonel HENDERSON had determined from his previous inquiry, that there had not been excessive firing causing undue casualties to noncombatants.

Q. Did this report cite the allegation or allegations which may have been made by Warrant Officer THOMPSON?

A. To the best of my knowledge there was no indication that we were dealing with more than the number of civilian casualties that had been indicated all along.

Q. How was this report delivered to you? Let me state another point first. What did Colonel HENDERSON's endorsement to the document state?

A. As best I recall he indicated that he agreed with the conclusions and recommendations.

Q. How was this report delivered to you?

A. I'm not positive, I don't know, sir. Colonel HENDERSON might have delivered it personally--possibly.

Q. Do you recall having discussed it with Colonel HENDERSON?

A. Not at time of delivery, no, sir.

Q. Or any time within that time frame, General KOSTER?

A. I feel that I probably did, but I don't remember specifically the conversation.

Q. Did you discuss this report with anybody else or did you show the report to anybody else?

A. Yes, sir. General YOUNG and Colonel PARSON, I'm sure, read it and looked at it.

Q. What were their comments?

A. As I recall it was the consensus of our opinion that this was sufficient investigation for the time being unless something was further developed and provided by the Vietnamese.

Q. Is this to say then that in your view at that time the report as rendered to you was acceptable?

A. I recognized that this had not been carried out quite the way I had visualized it. It had produced the statements of the individuals that I thought it was important to have filed away and kept, and having plowed this ground the way we had, I thought that there wasn't a requirement to go any further based upon the information.

Q. Was this report to your knowledge logged in to the division?

A. Not to my knowledge.

Q. Would it have been a normal practice for it to have been logged in to the division?

A. It would have if it came up through the message centers. If it was hand-delivered, not necessarily so.

Q. Well, even if it was hand-delivered, would it not be entered somewhere in the chief of staff's log or someplace where it could be a matter of official record?

A. This would have been normal practice.

Q. Did you forward a copy of this investigation to higher headquarters?

A. To the best of my knowledge, I did not.

Q. Do you know where the first copy of the report of investigation was filed?

A. No, sir. I don't.

Q. Do you know how many copies it was submitted in?

A. No, sir. To the best of my knowledge, I saw the original.

Q. From your knowledge of the contents of that investigation, where should it have been filed?

A. I say it should have been filed in either the judge advocate's office, the inspector general, or conceivably within the command echelon so that they could keep track of it.

Q. Could it have been filed in your own safe?

A. No. I don't think I had a safe as such.

Q. In the office of the chief of staff?

A. Yes, definitely there.

Q. Could it have been conceivably filed within the files of the G5 section?

A. I guess it could have been.

Q. To date we have not been able to locate a copy of that report, and it is highly important that we locate it. Would you have any additional suggestions as to where we might look to find either the report in its original form, some of the additional copies, or entries in the log to indicate that such a report had been submitted?

A. Colonel PARSON would be the best contact. I'm sure he's the one--when it left my office, he had it in his hand.

IO: Mr. WEST? Mr. MACCRATE?

MR MACCRATE: You held up your hands to indicate perhaps the physical size of this report.

A. No, sir. I didn't mean to do that.

Q. I was not clear that you were actually measuring its dimensions.

A. I was speaking with my hands, I guess. I would say it would have been a document of, with the testimonies, of at least 20, 25 pages.

Q. Do you recall anything else as to its physical characteristics? Bound on the side or top? The use of any unusual binding or handling in any way? The markings upon it for special handling?

A. No, sir. I don't remember anything of that type. I'm sure it was a sheaf of papers, probably with a clip at the top.

Q. Now, you indicated that you felt that Colonel HENDERSON was an appropriate investigating officer since he was one step removed at the brigade level from those who were actually involved in this operation. Now, when this report came to you and you found that rather than being the work of Colonel HENDERSON it was the work of Lieutenant Colonel BARKER, did you raise any question or challenge to dropping the investigation down right into the unit being investigated, in effect?

A. I feel I discussed this with General YOUNG and Colonel PARSON and evidenced disappointment that this is the way it had come about, but having the testimony in there I didn't feel that it warranted going through it again.

Q. Do you recall any staffing of this report when it came in? Any comments from the staff judge advocate or from the inspector general?

A. I felt that we had asked for--we had gotten their considerations, but I am not positive. I do not recall any reactions from them.

Q. My prior question did assume that Colonel BARKER was the author of this report. Now, actually, while we have had some testimony to this respect, in the absence of the report, we do not have anything before us that clearly fixes that, but I think that you earlier testified that this was your recollection. Now, is there anything in your recollection that helps to establish that it was Colonel BARKER who prepared the report rather than Colonel HENDERSON or someone else?

A. No. I don't believe that it was somebody else. I had a feeling that this was probably a--I regarded it as a HENDERSON report, really. I'm not sure at what stage of the game I became aware that BARKER had done the bulk of the examinations.

Q. Is this in your mind, today, something that you can relate back to events in 1968, or is this identification of BARKER as the author of the report something that may have sprung from your recent conversations with Colonel HENDERSON?

A. Well, I think my current recollection, it does spring from either a discussion with him or with the criminal investigators. I'm not sure.

Q. But so far as your recollection of the event, is it that the suggestion has recently been made to you and you recalled something from the past that identified it with BARKER, or is your present recollection no more than what people have recently said to you? I appreciate that is a pretty hard question.

A. That is pretty hard to sort out.

Q. I understand.

A. I believe that having been reminded of it, it does relate to the circumstances, in that BARKER did much of the examinations.

Q. And that you were aware of that in May 1968?

A. When it came up to me I was aware of it for the first time, but it's very difficult for me to say exactly how this did develop.

IO: There have been some indications that conceivably after Colonel HENDERSON reported to you, General KOSTER, on about the 20th of March that a written report was submitted putting in writing those things which had been reported to you orally on about the 20th of March. There are some indications that such a paper may have been delivered to you or to the headquarters of the Americal Division about the end of the first week of April or thereabouts. Do you have any knowledge of such a paper?

A. No, sir, I don't. I do not recall.

Q. In your previous testimony you'd indicated that you had talked with some representatives of ARVN and possibly the GVN. Would you relate your discussions with these individuals and also give an approximation of the dates that you spoke to them and, to the best of your recollection, the exchange of conversation with them?

A. Well, it was after I had received the final report or the second written report, as I call it. I went to the province chief. I wanted to be sure that he was aware of the situation and that we had investigated it. That our investigation hadn't revealed wrongdoing. That I wanted to see if he had further information; if he felt that further information would be developed; if he had any feeling one way or another as to whether such an event could have taken place as alleged in the VC propaganda and whatever else I might have seen, and as I recall, I had a negative response from Colonel KHIEN, who indicated he took no stock in the material that had forwarded from the village chief to the district and then in turn to him.

Q. Did he explain why he took no stock in the statement coming from the village chief of Son My?

A. Probably, since the village chief was--he felt that this emanated from the Viet Cong, not from anybody who was friendly to him.

Q. Do you know where the village chief was at that time?

A. The village chief probably was not in his village. He probably was along Highway 1 somewhere, and the village chief probably was reiterating information that had been related to him from VC sources. I can't say that this is positively the way Colonel KHIEN explained it but it was the gist of what I had gathered from him. I don't think that he felt that the village chief had been near his village.

MR MACCRATE: This was in the second half of May as you would place it?

A. As I recall, it was in the middle of May, yes, after I had received the final report.

IO: It was definitely after you received the final report?

A. Yes, sir. I went to Colonel TOAN. He dismissed it very abruptly as pure propaganda coming from that area. I am reasonably sure that I mentioned it to--sometime during the course of all this to General LAM. General LAM was in and out of the area many times. I saw him and he was probably acquainted with the allegations. This type of thing, propaganda, was provided up through his headquarters, and I indicated that we had made an investigation of these things, and wondered again if he felt there would be any further development of information that would contribute to further investigations.

Q. When you talked to Colonel TOAN, was his U.S. senior advisor with him?

A. Normally he was when I talked to him, yes, sir.

Q. Who was his senior advisor at that time?

A. Colonel ULSAKER had left and there was a new colonel who came in, and I don't recall his name right now.

Q. ULSAKER had been there?

A. ULSAKER had been there and I'm reasonably sure that he had gone by that time and there was a new senior advisor whose name I do not recall at this time.

Q. When you talked to Lieutenant Colonel KHIEN, the province chief, was the province senior advisor there?

A. To the best that I recall Colonel GUINN was there.

Q. The deputy province senior advisor then, or perhaps he was acting--

A. (Interposing) Well, Mr. MAY was not there. Mr. MAY was still around. I think he left some time in there, but Colonel GUINN I think was there.

Q. We haven't actually fixed it whether Mr. MAY was there; whether the new civilians that came in there were--

A. (Interposing) There was a transition, but it seemed to me that Colonel GUINN was there.

Q. He may in fact have been the acting province senior advisor. But to your recollection he was present during the discussions?

A. Somebody was in there with me. I was not in with Colonel KHIEN alone and never talked to him alone, to the best of my knowledge.

Q. Did you ever by chance talk to the Son Tinh District chief?

A. No, sir.

Q. Or his advisor who was then Lieutenant Colonel GAVIN?

A. No, sir. To the best of my knowledge I did not.

Q. General KOSTER, I have here Regulation 525-4, Headquarters, Americal Division, dated 16 March, subject: "Combat Operations," and in lower case letters, "Rules of Engagement" (Exhibit D-4).

A. Yes, sir. I'm familiar with it.

Q. I show that document to you. You are familiar with it?

A. Yes, sir.

Q. It is quite a coincidence that this document happened to be published on the same date as this operation. Was there ever any discussion concerning this document with your commanders or the contents of this document prior to publication?

A. I discussed almost every aspect in this document with my commanders at some time or another, and we had put this document out in draft form for their guidance pending formal publication. Also, within the division was the Task Force Oregon, "Rules of Engagement" which were still in effect. In addition to that, the 11th Brigade specifically had been provided rules of engagement while they were still in Hawaii for use in developing their own brigade rules of engagement, and I think both the Task Force Oregon and the draft Americal ones had been provided to them.

Q. So there was no question in your mind but what at least the brigade headquarters was aware of the intent of your headquarters on or prior to the 16th of March?

A. I'm positive that they were aware of it--the intent of the headquarters.

Q. I have also here a document, Headquarters, Americal Division, dated 24 March 1968, subject: "The Safeguarding of Noncombatants," addressed to all commanders and signed by you as the commanding general of the division (Exhibit M-9). Are you familiar with that?

A. I am.

Q. Would you indicate what prompted you to issue that document?

A. I believe it was probably as a result of the My Lai(4) operation which resulted in what I thought to be something in the order of 20 civilian casualties.

Q. Did you consider this an ordinary Americal Division staff memo, or was this a letter from you specifically addressed to your commanders as a matter for their personal attention?

A. Well, I felt that was something that would be regarded by commanders as a subject that continually required emphasis and that it would go from them right on down the chain of command to the man with the rifle.

Q. General KOSTER, early in your testimony today, I asked you of your policy within the Americal Division for the burning of villages and hamlets. How was this policy established? How was it disseminated?

A. It was included within our rules of engagement. It was also a subject of--

Q. (Interposing) Which rules of engagement?

A. I know it was in the rules of engagement of the Americal Division here, published the 16th and also put out in draft form. I'm rather certain that it was included in other written communications or electrically transmitted communications to commands. I know personally at one meeting where I had all commanders in, I made quite a point of the burning of buildings based upon the burning of a building or two in another area.

Q. Prior to 16 March?

A. Yes, sir. This was in January or late February, probably January.

Q. Would Colonel HENDERSON have attended that briefing?

A. I'm not positive whether Colonel HENDERSON was there. General LIPSCOMB was certainly in attendance. He frequently brought Colonel HENDERSON or brought a staff member with him. Normally the S3's came to these with the brigade commanders.

Q. What were your requirements?

A. Except for the base area, it was the heat of the battle or approval of one of the three generals in division.

Q. Before a village or hamlet was burned it would--should have had the approval of you or one of your assistants? Is that correct?

A. Yes, sir.

MR MACCRATE: The communication that you have before you, General KOSTER, 24 March 1968, is I believe signed by you personally?

A. Yes, sir.

Q. Is this a form of communication that you resorted to frequently or occasionally, or did most communications from your command come out signed on your behalf by the chief of staff or someone else rather than by you personally?

A. Directives of this nature that I attached significant importance to normally came out over my signature.

But I would say I don't think it was--I didn't normally sign all memos going out, but items where I did attach great importance to them would have gone out over my signature.

Q. This was a way in your practice of emphasizing the importance that you attached to communications?

A. Yes, sir.

Q. Do you recall when you spoke with Colonel TOAN any reference to the fact that Colonel HENDERSON had also visited him in connection with this matter at sometime?

A. I don't know whether it came up in my discussion with COLONEL TOAN, but I must say I had this impression that HENDERSON had talked with him about it, yes, sir.

Q. Well, in going both to Colonel TOAN and to Lieutenant Colonel KHIEN were you aware that you were returning to officials that had already been visited by Colonel HENDERSON in connection with this investigation?

A. No, sir, not specifically.

Q. It was during this period of April 1968 that Task Force Barker was disbanded, was it not?

A. Yes, sir. As I recall it was in April. They received their fourth battalion in the 11th Brigade, and this battalion arrived about the first week of April. It required an initial training period, a little break in, in a small area of operation, and then they took--were capable of taking over their own area of operations, and that negated the requirement to have a separate task force as such.

Q. Were there any considerations other than tactical and the arrival of this additional complement that led to the disbanding of Task Force Barker?

A. None that would relate to the action that we have under discussion. There were many difficulties in maintaining a task force like this where the companies were separated from their own battalions, and it was a situation that I wanted to eliminate as soon as we had adequate forces to cover our area.

Q. Within your command what was the practice with respect to sending commendations or congratulatory messages to units operating within your command?

A. We did this occasionally, when a unit appeared to have had a successful operation, few U.S. casualties, high enemy casualties, or an action of this type. It was--this was generally practiced throughout Vietnam I'd say.

Q. Where would such a congratulatory message originate within your command?

A. It would normally have been proposed by the operations personnel unless it was something that one of the command groups said: "This is great and I want to send a message out."

Q. We have had marked as Exhibit M-7, a congratulatory memorandum with respect to this operation on 16 March which is dated 19 March, and I wondered if you had any recollection with respect to the immediate circumstances under which that message came to be sent?

A. I would say that this apparently was a result of a message sent to us from General WESTMORELAND. It was our normal practice that when we received messages from General WESTMORELAND or General CUSHMAN that we would in turn pass it on down to the unit that had accomplished the action and put on something along the lines of the second paragraph.

Q. This was, however, within the time frame that the operation had already become the subject of inquiries, was it not?

A. Well, we had an inquiry regarding a limited number of civilians and whether all the troops had fired consistently with all the rules that had been established. There was that type of inquiry, yes.

Q. Do you have any recollection of the two things having been considered together in any way, the sending of the message and the going forward of the command inquiry?

A. I did not recall the message as such and what I thought, if and when I saw this, I apparently did not connect the two, at least not to the extent to say: "Well, we better not send it."

IO: General KOSTER, I have additional documents I would like to show you. I have here a document from Headquarters MACV, Directive 525-3, 14 October 1966, subject: "Combat Operations, Minimizing Noncombatants Battle Casualties." I show you this document and ask if you are familiar with it?

(IO hands Exhibit Number D-6 to witness.)

(Witness examines document.)

A. Yes, sir, I'm sure this is one of the documents that was the basis of our own rules of engagement.

Q. I have here a directive from Headquarters MACV, Number 20-4, dated 27 April 1967. I show you this document and ask if you are familiar with the contents of this directive?

(IO hands Exhibit Number D-1 to witness.)

(Witness examines the document.)

A. I am familiar with it now. I'm not positive that I was completely familiar with it previously. However, I did not consider what we had alleged was a war crime. I considered it to be civilian casualties that had been inflicted during a contested operation.

Q. Is that the initial feeling you had?

A. Yes, sir. I believe I felt that way throughout the investigation based on the information that was provided to me.

Q. You did not consider this report to be a direct allegation then of firing at or unnecessarily at civilians?

A. No, sir, not wilful killing of any civilians.

Q. With respect to the report which was received from the district chief reporting the information from the village chief, was this not an allegation that a war crime had been committed?

A. I looked upon this as information that had emanated from the Viet Cong. That our own investigation had established that the allegation even of indiscriminate and excessive firing had not been established that there was, and I took this as being VC propaganda as opposed to something that would fall into the category of a bona fide alleged war crime.

Q. Well, you had at that time two different bits of information in addition to all the other bits of information which had been made available to you. You had one which there was no question this was VC propaganda as was so indicated in the report that was forwarded to you. But, you also had that piece of paper which is attached to it which is a statement to the effect that the village chief of Son Tinh had reported the rounding up and killing of civilians to the extent of, he used the term in one place 450 and in other place he used 400 in one village and 90 in another. Would this not be an allegation of a war crime?

A. I still considered it having come from VC territory. The same people who generated the information on the VC propaganda undoubtedly generated a report in through this village chief as opposed to the village chief having determined it by any other means.

Q. Was there any attempt on your part or on your division to determine the validity, at that time, of the village chief's report.

A. Yes, sir, this was the reason for my visiting both Colonel KHIEN and Colonel TOAN.

Q. Yes. I'm not referring to them. I'm well aware that you talked with them, but did anybody visit the village chief or the district chief or people who had the information upon which this allegation was based?

A. I'm not positive whether this was part of the investigation made by Colonel HENDERSON and/or some of his people or not. I did not visit them.

Q. I will read again what this piece of paper says. It says that the Son Tinh District chief received a letter from the village chief of Son My Village and it contained the complaint of the killing of 450 civilians including children and women by American troops. The village chief alleged that an American unit operating in the area of 16 March 1968 gathered and killed these civilians with their own weapons. The incident took place in the hamlets of Tu Cung and Co Luy located in the eastern portion of Son Tinh District. According to the village chief, the American

unit gathered 400 civilians in Tu Cung and killed them, then moved to Co Luy Village. At this location the unit gathered 90 more civilians and killed them. The next paragraph says that the Son My Village chief feels that this action was taken in revenge for one American soldier being killed by sniper fire. It does go on to state that it was not given much importance by the district chief but it was sent to the Quang Ngai Province chief. It also indicates that later the Son Tinh District chief was called with the 2d Division commander, Colonel TOAN, to investigate the incident and prepare a report. The district chief proceeded to interview the Son My Village chief and got the same information that I have just discussed above. The district chief is not certain how the information was received and he had to depend on the word of village chief and other people in the area. The two hamlets where the incident is alleged to have happened are in VC-controlled areas since 1964.

IO: The hearing will recess.

(The hearing recessed at 1730 hours, 15 December 1969.)

(The hearing reconvened at 1742 hours, 15 December 1969.)

The hearing will come to order.

RCDR: All persons present when the hearing recessed are again present.

IO: The question I have, General KOSTER, having reviewed statements with the information in it which has been provided by the Son Tinh District chief from the letter which had been provided him by the village chief of Son My Village as to whether or not you treated this as an allegation of a war crime?

A. I'm not positive that this is the document that I saw attached as an inclosure. However, whatever was attached I did not associate it as an allegation of a war crime for several reasons. First, it emanated from a Viet Cong held area. It did not jive with the information that we had developed as a result of the brigade CO's inquiry, and the allegations concerned many more civilians than had been re-

CONFIDENTIAL

Q. In particular, General KOSTER, I refer you to paragraph 2 of MACV Directive 20-4. I believe you have it there.

(The witness reads paragraph 2 of MACV Directive 20-4.)

I would also refer you to paragraph 3d(1).

(The witness reads paragraph 3d(1) of MACV Directive 20-4.)

I also call your attention to paragraph 5a.

(The witness reads paragraph 5a of MACV Directive 20-4.)

And within that I would also call your attention to paragraph 5d(1).

(The witness reads paragraph 5d(1), MACV Directive 20-4.)

I also call your attention to paragraph 5d(3). The latter point indicating that, "When the completed report of investigation has been submitted to the appointing authority by the investigating officer, the appointing authority will receive, review, and approve the report. Two copies of the ROI and physical evidence will be transmitted to COMUSMACV."

Did you consider that the report that had been submitted to you covered a war crime and the report should have been forwarded through channels to COMUSMACV?

A. At no time did I consider it to be an investigation of a war crime, and with regard to the documents emanating from the Vietnamese that we discussed, I considered those to be emanating from a Viet Cong source and a propaganda type document.

Q. You even consider that this letter, which is attached as inclosure 1, and we're assuming that it was attached as inclosure 1, the body of the document as transmitted would so indicate that this is the proper attachment, that this is also VC propaganda?

A. For the reasons I gave and listed, I did not look upon that as a valid allegation of a war crime.

Q. Within the guidance which had been published by MACV and which had been disseminated through numerous media including COMUSMACV itself at the commanders conference, and with that background, you did not consider that this was a reportable incident of a war crime?

A. Within the circumstances described, that is correct.

Q. I have one other document, Exhibit M-8, that I would like to refer you to.

This is from Headquarters, III MAF, dated 3 June, subject, Force Order, 5820.1, subject: "War Crimes Investigation." I refer this document to you and ask you if you have ever seen this document?

(IO hands III MAF document to the witness.)

A. To the best of my knowledge, I have not.

Q. Would this document normally have been provided to the Americal Division as part of the instructions issued to the division when it was formed or when it was reorganized from the Task Force Oregon?

A. Yes, sir.

Q. General KOSTER, to your knowledge did you or did anybody ever inform Colonel HOLLADAY or Major WATKE that the allegations which had been made by them to you through General YOUNG had been investigated and could not be proven as facts?

A. I cannot say whether such conversation took place.

Q. I have a few more general questions which I would like to ask, but I wonder if you, Mr. MACCRATE or Mr. WEST, had any questions that you would like to address to General KOSTER before we go into another subject?

MR MACCRATE: General KOSTER, I understood you to say that within the circumstances you did not regard the information contained in that statement of 14 April as alleging a war crime and therefore it had not been reported, and I understood you to further indicate that you thought that the

allegation had been rebutted by Colonel HENDERSON's investigation and the oral report which he had made to you prior to receipt of the April 14 statement. Now, I would ask you to consider that in the light of your recollection that you had not heard any allegation as to mass killings up to the time of the 14 April statement, and if that were the case, I would have assumed that Colonel HENDERSON could not have anticipated that in the reports that he had made to you up to that time?

A. Well, if there had been no evidence produced of careless fire even, I certainly didn't feel that there had been any evidence introduced of mass killings, atrocities, or this type of thing. There certainly was none of that included, although the inquiry did not address that specifically. If anything like that had been uncovered, it certainly would have been brought to my attention.

Q. So, it was a negative inference from what Colonel HENDERSON was reporting with respect to the indiscriminate or excessive firing?

A. Yes, sir.

Q. We have found it helpful to have an evaluation of some of the officers that were involved in this. I feel it would be helpful if you might give us your own evaluation of Colonel HENDERSON and the way in which he discharged his responsibilities at this time. He, of course, had just assumed command on the 15th of March 1968, and this was the second day of his command when the incident occurred, and we have at least some indication that he may have been more concerned at that time with shoring up his relation with his new command than with other accompanying obligations, and did you at some time during this period ever get a similar sense of his position at the moment?

A. I don't recall that I did. He had commanded the brigade on previous occasions and usually on an interim basis. He was one of the original members of the command. He knew it well and I felt if there was anyone that would give an honest opinion or make an honest inquiry, it was Colonel HENDERSON. I knew him to be a brave individual and I thought a fairly strong leader. I wasn't sure that he was necessarily the most intelligent of the people I had commanding the brigades.

Q. With respect to Colonel HOLLADAY, it would appear that his efficiency report for the period ending March 14 or 15th of 1968 was delayed for some 15 to 16 months and it was not ultimately signed by General YOUNG as the rating officer or by yourself as the indorser until June of 1969. Recognizing such things can be simply administrative delays, do you have any knowledge of any particular fact in respect to Colonel HOLLADAY that might have had a bearing on the delay in preparation of that efficiency report and the forwarding of it in June of 1969 to General YOUNG and then General YOUNG very promptly forwarded it on to you? In fact, it was only a matter of a few days?

A. I never associated that with anything that might have taken place here and I see no reason why it might have been delayed. I do know that one time when the new unit was first formed we had some difficulty there and I had some complaints which came to the attention to the division headquarters. I know that Colonel HOLLADAY wrote me once after I departed Vietnam and indicated that he thought he should have received a decoration for some action or another and I was inclined to agree with him and I wrote a letter to Colonel PARSON indicating that I felt that what he had done on this occasion warranted some recognition. As I recall, Colonel PARSON replied to me that Colonel HOLLADAY had received certain things. I am not sure if he mentioned if it was for that particular incident or not, but he felt that Colonel HOLLADAY had received his recognition like most of the others.

Q. Do you personally have any familiarity with the circumstances under which Warrant Officer THOMPSON was recommended for the Distinguished Flying Cross?

A. No, sir. I don't know that I really knew that he received it until I saw it in the papers.

Q. What was the availability of judge advocates and inspector general representatives or chaplains within Task Force Barker, within that area of your command? One of the matters which has been referred to in the press is the question of the availability of persons to whom matters of concern might or might not have been brought, whether they were there to hear such things.

A. I feel certainly the chaplains were there. I can't speak specifically on Task Force Barker, but I do know

the division chaplain would have insured that Barker was covered just as all the others were and this entailed a chaplain visiting fire bases and being within the area a certain number of days a week. I think everybody was informed and knew the recourse they had to the inspector general.

Q. The inspector general would be found at Chu Lai?

A. Yes, sir.

Q. And similarly, any judge advocate would be at Chu Lai?

A. Yes, sir.

Q. But the chaplain, like a circuit preacher, would ride--

A. (Interposing) There was a certain number within the brigade and they would be the ones that would normally go out, unless they were lacking a certain denomination, and then that would be supplied from another source to cover that area.

Q. Another related item that appeared in the press--and I think it would be desirable that we inquire of you on this while you are with us--that it has been suggested that it was common activity within the Muscatine AO for the razing or burning of villages. Were there any operations on or about this time where this did become a common result due to the nature of the operation?

A. Not that came to my attention. Other than I knew of one time when we were in the larger--this is the only one that I ever referred to as Pinkville, but there were numerous tunnels and large cave complexes in there which they attempted to destroy. I don't think they did much of a thorough job because it was just too complex to be done away with without leaving the unit there for a very extended period of time. Where you destroy that type of complex and there is a hootch over it, sometimes the hootch would go because of the attempt to destroy these underground works that were so extensive in that area. Other than that specific area, I don't recall there ever being other instances.

MR MACCRATE: Thank you.

IO: General KOSTER, I have several more questions here. Earlier we talked about burning of villages, the authority to do so and placing artillery fire on a village or hamlet. Did you have any rules concerning the killing of livestock?

A. Yes, sir. There was to be none of this. I don't know that we had ever highlighted this as much as we did other things, but it was certainly included within our rules of engagement. It was stated therein that any "denial" type of engagement or operation would be done by the Vietnamese as opposed to us.

Q. Then, if such an order was issued it would be in direct violation of division policy?

A That is correct, sir.

Q. General KOSTER, do you know whether or not the 123d Aviation Battalion had a chaplain assigned to it?

A. No, sir. I do not.

Q. I do want to talk about in-country training for this type of activity, but before I do I would like to talk to you briefly, first, about other operations which the division had underway at that time which might have occupied your time as well as that of the assistant division commanders?

A. Well, we had the training of two new battalions which started the 1st of March. One battalion--we were supposed to get three battalions and one was diverted elsewhere. The other two came in. We had to insure that these people received the proper training and had an AO and then they were put out for appropriate operations. We went through a planning phase for two operations that we conducted more or less during the same time frame. One was called Norfolk Victor and was launched into the mountains just west of Quang Ngai, and took place early in April, and lasted approximately 2 weeks. It was moderately successful insofar as engagement with the enemy was concerned. It was a joint operation with ARVN participation. It was quite successful in that it uncovered a sizeable arms cache. This was terminated about

2 weeks after it started, this was in the early April time frame. The greatest concern or bigger effort was to open up the road from Highway 1 into the Tien Phuoc Special Forces Camp, this was called Burlington Trail. This operation was launched in early April as well, I believe. It was an area that there was considerable resistance in. We already had taken the Que Son Valley away from them, the NVA, and they didn't want us to take away this next valley south which led into Tien Phuoc and to reopen the channel into Tien Phuoc so that you could have a more or less normal communication back and forth. This operation lasted for a considerable amount of time and consisted of varying degrees of activity. There was quite a definite reaction of the North Vietnamese, not necessarily along the road, but throughout that area of operations. I would say from the time that it was launched until probably the time that I left that area and area contiguous thereto, that it occupied a considerable amount of my time. We had also--the 3d Brigade of the 4th Division had left us the latter part of February and we were spread over a sizeable area with commitments over into the Marine area to the north into what we called Antenna Valley and up near An Hoa. These were areas that we were reluctant to pull out of and let the VC and NVA come back into. However, it was straining our resources to cover them adequately and still insure enough troops back among the populated areas to do, what I considered as the primary mission, to provide a good security for these people who had recently joined the Government of Vietnam and were looking for security. If you didn't give it to them you would never keep them there. As I recall, this area due to the departure of people, the straining of our forces, the readjustment of a certain number of fire bases was the thing that I was more focussed on than anything else during this period of time.

184 C

Q. From previous witnesses, General KOSTER, we have been led to believe that because of this commitment in the north that this was, in fact, occupying a great deal of your time, and perhaps you would check on it at least every other day or so to get up there?

A. I went up there, I would say, every day except for a few exceptions. It either took all day or if I came back at noon, once a week or so I would go south because there had not been the sizeable forces in the south. There was always activity in the south, but it was activity that I did not feel would ever get out of hand, and it didn't take the supervision that

was required in the north.

Q. One other point, General KOSTER. I get the feeling at the point in time, let's say, of March or April that you were still in the process of the transition from independent brigades under the division headquarters to the standard TO&E type division?

A. This was part of it, but I think our biggest problems in this regard had been pretty well resolved by this time frame, and I didn't look upon that as taking a lot of my time. I think it was something that we needed refinement in and I think General GALLOWAY particularly, and General YOUNG before him, had spent considerable effort in this and it developed quite well. Another effort that did take considerable time and supervision was to keep all the engineer work going that had to be done. We had a long stretch of highway and we had numerous different types of engineers to do it and we had a certain number of primarily road openings. We had opened the road to Que Son and the Que Son Valley and we opened the Tien Phuoc Road. There weren't essentially, enough engineers to go around, so this did occupy some additional time.

Q. I am thinking of also the capability of your staff which was being pulled together at this time, some from the brigade and various places. I am under the impression that you just organized an AG section to control the personnel within the division which you pulled away from the brigades?

A. We had been consolidating this type activity. There is no question about this.

Q. The same thing was true of your SJA section and your IG section, where you were really getting them to pull together and getting accustomed to operating together?

A. As I recall, my SJA changed at this particular period of time. The IG had changed about a month before that. There was some readjustment. Most of the support units that had come up with Task Force Oregon had been understrength to start with, so we not only had to fill up with new people, but we had the old timers dropping out. Many of these units were practically reorganized from scratch sometime during these winter months.

Q. Was that also true of your aviation unit? I think you alluded to this earlier?

A. Yes, sir. Of course, the aviation unit wasn't really in being. It was activated from scratch and not only was a new unit there, but we put this provisional type unit together to get another air cav troop. I guess this probably contributed to--

Q. (Interposing) Was there some problem associated with the division artillery under the--

A. (Interposing) Not so much from the artillery. We just had a little disagreement. The brigades wanted to retain their battalions. The division artillery officer wanted to pull them in. I couldn't see that it made that much difference. They responded to the division direction. The only difference it made was that the brigade commanders made out their efficiency report and if that made them happy, that was fine with me. The support commands really made a bigger difference because by keeping the separate support commands and giving them a little more direction from the brigade commanders, we did retain a certain number of spaces. Had we merged them all into the typical division structure, which we did later on, we would have lost some spaces.

186

Q. Did you have any problems at this time with infusion?

A. How do you mean "problems"?

Q. Well, where you had to move an inordinate number of people from one area or one unit to put them into another, in order that you could attain what was desired and never to have more than 25 percent of the command leaving during a month, later this was reduced to 15 percent, it caused the wholesale movement of large numbers of people?

A. This was a problem at certain times. I do not recall the order of magnitude on this particular occasion.

Q. One other point which I wish you would discuss for us is your program for training in such matters as the rules of land warfare, the Geneva Convention the treatment and handling of noncombatants, the treatment, handling, and interrogation

of PW's, and matters relating to this general thing associated with the performance of U.S. troops in your division?

A. We set up our own combat center and this was probably late in 1967 or in January actually when it--it was functioning when the brigades arrived, because we put the 198th through it. We put the 11th Brigade through it. We later put the 82d Brigade through it. This consisted of the normal 5-day orientation on all of the "musts" that people had to have in country. I normally started it off. We did it even when the brigades came in and by the time they filtered in and got arranged with their equipment and ready to go with this training we took one or two companies at a time. I personally talked to them for the first half-hour or so. I stressed the importance of relations with the Vietnamese; the fact that we were not only allies but that we were really guests in their country; that they had certain laws and rights and we should very definitely respect them; that they were people that needed all of the help and consideration that we could give them. I mentioned the fact that we had to be particularly careful in fighting in built up areas, which we had some within our areas of operations. Again, the importance of not only for the people presently under government control, but doing whatever we could to get additional people to come in and join these particular individuals. This was a big part of our mission. I was followed, as a start to this, by an hour's instruction by a JAG officer who went into the rules of land warfare, the details of the handling, treating of combatants, noncombatants, PW's, et cetera. They were given the normal handouts that we gave them concerning the treatment of PW's, items that they were to carry around with them at all times. As far as the 11th Brigade was concerned, I think that I addressed all of the brigade when they arrived, and I would say that I addressed 98 percent of all replacements that came into the division as the kickoff.

Q. Your indoctrination of 4 or 5 days for the 11th Brigade, where was that held?

A. The initial portion of it was held at our combat center.

Q. The brigade came into Chu Lai to your combat center?

A. I believe the entire brigade was sent to the combat

center, maybe not for the entire 5-day period because we did set them up in Duc Pho, but I am reasonably sure that the entire brigade was given the initial orientation and the sights and subjects that I am speaking of there and then went to Duc Pho for more on mines, booby traps, patrolling, and the other things that were included in the in country indoctrination.

Q. Were they not also assisted by the 3d Brigade of the 4th Infantry Division, at least to a degree, who was responsible as a sister unit for part of their indoctrination?

A. Very much so. As a preliminary, all of the company commanders went out and joined companies of the 3d Brigade of the 4th. They spent several days with them.

Q. So, then, in your mind, the commanders, the senior noncommissioned officers, and personnel within the brigade were well indoctrinated in the rules of land warfare and all these other things that are associated with them?

A. Yes, sir. They got the same type of course which was given to the 198th and the 3d Brigade of the 82d.

Q. I show you three documents, General KOSTER. One is entitled, "Nine Rules," and another is entitled, "The Enemy in Your Hands." The third is, "Guidance for Commanders in Vietnam," by General W.C. WESTMORELAND, COMUSMACV.

(The IO hands Exhibits M-2, M-3, and M-4 to the witness.)

A. Yes, sir. I am sure that these were included in with some nine cards that were issued to everybody, and not only these but how to take care of the M-16 rifle and others.

Q. "Rogers Rangers"?

A. Yes.

Q. Do you know whether or not you had sufficient copies within the division to provide copies of these to all the men in the brigades?

188c

A. I feel reasonably certain that we always had sufficient numbers at our combat centers to give everybody their initial allocation. It became a little difficult to replace at times because they didn't last too long.

Q. Were you familiar with the training which the 11th Brigade had received in Hawaii?

A. I had heard they received some very fine training in the jungle atmosphere there, even worse jungles than they probably experienced in Vietnam.

Q. Do you know whether or not they had any material for training in the subject matter we are dealing with here this afternoon?

A. I've been told that we provided a great deal of material to them, including the rules of engagement and that sort of thing and that they had prepared their own prior to coming to Vietnam.

IO: Mr. MACCRATE, do you have any additional questions concerning training?

MR MACCRATE: I would like to ask, General KOSTER, if you can recall the dates that you were away on R&R in April, May of 1968?

A. I had my R&R starting within, I would say, the last 4 days of April, and then I had 3 days TDY which started on top of that about the 3rd or 4th of May, as I recall. I am not sure of my exact days of departure, within a day or 2 it would have been within that time frame.

Q. Did you keep any little informal record of movement or do you have any correspondence to which you could use to fix some of these dates?

A. The only thing that I have been able to uncover so far is my TDY orders which were dated for on or about 4 May, but the R&R had preceded that.

Q. We have found in one case that letters home were very helpful in fixing some dates. Has that possibility been examined?

A. No, sir. I have had my wife looking, but she hasn't been able to turn anything up. I don't know whether she saved letters or not. She had in previous wars, but I think she gave it up.

IO: Mr. WEST?

MR WEST: As I understand your testimony, General KOSTER, you, at no time, directed that an investigation be made into reports of civilian deaths in My Lai (4) on the morning of 16 March 1968?

A. Not unless you can say my verbal queries as to how these casualties were taken. I'd say that was an inquiry, not quite in the same sense that I asked for an inquiry of any type of firing that was alleged, but I would say, yes, I have pursued whether this was accomplished in the heat of battle and, if so, by whom. I think I made that much of an inquiry.

Q. Is it fair to say, then, that you did ask questions about it?

A. Yes, sir.

Q. Still, as I understand it, you did not direct an investigation?

A. No, sir.

IO: Do you have any more?

MR WEST: No.

IO: I have just one more additional question, which, again, General KOSTER, is an impression kind of question.

As I understand it, Task Force Barker's staff was pulled out of the brigade headquarters. How effective was the staff of Task Force Barker and what effect did the withdrawal of this number of officers and personnel from the brigade staff--how did it affect the functioning of the brigade staff itself?

A. The 11th Brigade came to us with all positions filled. They even had some excess people in grade over and above what the TO&E called for. We made some adjustments to move some of these out and put other people in, but they still, compared to the other brigades, were well off. I am sure that pulling these people had some effect, but I didn't notice that it detracted significantly from what they were to accomplish and, generally speaking, in that area it was a lower order of business than it was in other areas and they could carry on in this regard. Insofar as Task Force

190c

Barker was concerned, I thought that the staff that had been pooled together for him--he had been given fairly competent individuals to assist him, and there were probably some that he had selected personally when given this job. BARKER, in my estimation, seemed to have his finger in and was pretty well in tune with what was going on in the task force. His operations, overall, I thought were successful in that area. He, I thought, was accomplishing the mission. Based on his performance there I thought he should have a battalion when a battalion was freed up. I forget if this was accomplished when I was still there. I am sure it was accomplished later on.

Q. I believe the record would indicate that sometime toward the end of May Colonel BARKER took over the 1/20?

A. Right, sir.

Q. When Colonel HENDERSON was promoted in position from that of executive or deputy of the brigade on the departure of General LIPSCOMB, was any thought given to giving him an executive to assist him immediately?

A. He wouldn't have had a full colonel executive and he already had BARKER there. He had another lieutenant colonel who was an intelligence type, not one that you would necessarily put in as the executive.

Q. Were you referring to Colonel BLACKLEDGE?

A. Yes, sir. As I recall, Colonel HENDERSON wanted to pull or bring one of the battalion commanders in to be his executive, but also wanted the battalion commanders to remain for a 6-month tour with his battalion, which would have been accomplished in rather short order. I don't believe he was pushing, at the time, to receive another lieutenant colonel, and I am not sure that we had one to give him anyway. I believe he had it worked out so that he could have one of the battalion commanders to come in to do that.

Q. One problem, General KOSTER, that developed after Colonel HENDERSON took command of the brigade is the fact that he himself was wounded?

A. Yes, sir.

Q. And for quite a period his leg was in a cast, which restricted his ability to move around and, you might say, to perform the function of the brigade commander.

A. It certainly did affect his ability to perform during the first few days. After that, he seemed to get around with not too much difficulty.

Q. But you felt that even with this--I also understand that he had approached you on this problem--to retain the command even under these circumstances?

A. Yes.

IO: General KOSTER, we are going to recess at the present time. I would like to read you one statement before we recess. This is really a restatement of what we discussed this morning. This is a precautionary statement, which is that you should not directly or through others discuss the My Lai incident, including subsequent investigations or reports, with any person that may have been connected with the incident in any way. This does not apply, of course, if you are required to discuss the case with other administrative, competent judicial, or legislative proceedings or if you are required so to do in the course of your official duties.

A. I understand, sir.

IO: General KOSTER, we have some of the testimony that we took yesterday. We feel that it is going to be necessary to acquaint you with it to get your responses. We hoped to have it early in the morning, but we will not have it before 1330 tomorrow afternoon, so we would like you to come back at that time. Let us know where you will be so that we can get in touch with you. If we have any problems on this, where we will be delayed, we will certainly let you know.

We will recess until 0830 in the morning.

(The hearing recessed at 1846 hours, 15 December 1969.)

192c

(The hearing reconvened at 1450 hours, 16 December 1969.)

IO: The hearing will come to order.

RCDR: The following named persons are present: LTG PEERS, MR MACCRATE, MR WEST, MR WALSH, and MAJ LYNN.

Major General KOSTER is recalled.

(MG Samuel W. KOSTER, 577-52-4806, West Point, New York, United States Army, was recalled as a witness, advised that he was still under oath, and testified as follows:)

IO: General KOSTER, since we met yesterday, we received telephonically some information from the log of Task Force Barker concerning the arrival and departure of personnel, including yourself, on the dates we are concerned with here. I thought I would provide you this to refresh your memory. On the 16th, it is indicated that you arrived at 0935 hours. There is no time given for your departure. Also, on the afternoon of the 16th, you arrived at 1645 and departed at 1715. You were with Lieutenant General DOLEMAN, and the log indicates that you were briefed by Lieutenant Colonel BARKER. There is no indication that you were there on the 17th. There is an indication that you arrived at 1345 on the afternoon of the 18th and departed at 1405. Would these assist in refreshing your memory as to your visits to the fire base?

A. The 0935 time was undoubtedly stopping there for refueling and, as brought out by Colonel HENDERSON's testimony, I was undoubtedly there at that time for refueling. General DOLEMAN did visit about this time. I don't remember the specific dates and I did escort him around. He was primarily interested in seeing the 11th Brigade since he came from Hawaii and he knew most of the people there.

Q. You recall, General KOSTER, that yesterday we indicated that your knowledge of some of the reports, procedures, and times were somewhat different from those we had heard from other individuals. We asked that you come back so that we could discuss these. Specifically, we would like to discuss the oral report, the written report, and also the formal report.

First, with respect to the oral report. This is a question addressed to General YOUNG to determine to whom Colonel HENDERSON had submitted his report. The question was who did he report his findings to and in what form. His response:

> "A. I believe the form that he used initially was an oral report. He referred it orally to General KOSTER and then I believe he made a written report.
>
> "Q. Were you present when he gave his oral report to General KOSTER?
>
> "A. No, sir.
>
> "Q. What was reported to General KOSTER?
>
> "A. I asked General KOSTER had he received the report and he said he had. I believe, at that time, General KOSTER told me he had received the oral report and he had directed Colonel HENDERSON to submit it in writing.
>
> "Q. Did General KOSTER indicate what the findings or conclusions and recommendations were in the oral report?
>
> "A. I don't recall. It was in the oral report or when he got the written report, and I do think he got the written report. To the best of my knowledge, General PEERS, I did not see the written report either. I was not present at the oral report. I do not believe I saw the written report. General KOSTER had indicated to me, to the best of my memory, there was no or little of any grounds for the allegation that had been made. I do recall, I believe, that General KOSTER had indicated there had been some noncombatants killed by artillery fire."

We are addressing ourselves, General KOSTER, to the oral report. We provided this in order to provide you an opportunity to add additional testimony to that which you have provided previously.

A. As I indicated previously, I cannot specifically recall Colonel HENDERSON coming up to make a formal oral report, so to speak. I talked to him several times myself. I gathered much of the information that I specifically recall from discussions with General YOUNG where he brought back information that had been given to him. I felt that General YOUNG was as fully informed of the investigation and the results of the investigation as I was. As I recall, Colonel HENDERSON did give me details regarding his interview with leaders; the fact that he had talked to, as I indicated, all the aviators that had been there. This may have been his method of expressing it as opposed to each and every one; a number of the men involved, at least a cross-section of some type. The details of the interview with the helicopter pilot, I still consider, were given to

me by General YOUNG on the same day that the interview had taken place.

Q. Which, at the present time, appears to be the 18th or conceivably it could have been on the 17th, but I can hardly see how.

A. It certainly was the 17th or 18th in my opinion.

Q. Now then, General KOSTER, you've had a little time to think about some of these questions which we've put forth to you. Do you recall anything additional about this oral report, Colonel HENDERSON coming to you and telling you about his investigation and whether or not he gave you a 3-by-5 card to explain the casualties in terms of men, women, children, ages, sexes, and so on and any conclusions or findings he may have given you at that time?

A. The conclusions and findings, as best as I can recall, was the fact that his inquiry did not produce evidence that there had been excessive firing on the part of the troops; that there had been some civilian casualties that I recall in the number of 20 some at least; that the incident between the helicopter pilot and the ground commander, he felt, was caused by the helicopter pilot having seen some civilian casualties and firing by the troops and drew that type of conclusion that perhaps there was indiscriminate firing in the areas where civilians were located. Again, I relate this more to General YOUNG's initial telling me of this than I do to Colonel HENDERSON, but I would assume that would have been a portion of his discussion with me at the proper time, not having known that General YOUNG passed it on to me. But, this was my impression of the results of the interrogation of the helicopter pilot first obtained from General YOUNG. Nothing came up after that to change that.

Q. Were you satisfied with the report of Colonel HENDERSON?

A. At that particular time I felt that I was satisfied that General YOUNG knew as much about it as I did and he was satisfied as well, and this was after we had had a continuing report from Colonel HENDERSON.

Q. At that time did you direct Colonel HENDERSON or anybody to investigate or report further?

A. At that point I do not recall that I did. I don't recall. I am sure that sometime during the course of this there was some discussion of how were these civilians killed. I was probably given some answer since that is what I asked for at one time, but I do not specifically remember the 3-by-5 card with the data on it.

Q. With respect to the written report, was this report initiated by you or did that emanate from the fact that this information had been picked up by the brigade and copies of it had been forwarded and the report of the 24th was a logical followup to that information from the village chief which was passed to the district, and also the VC propaganda?

A. I have thought all along that I asked for a report because of this coming to my attention.

Q. Do you recall how the request was put out, by whom, or through what means?

A. No, sir, I don't.

Q. A report was eventually submitted on the 24th of April, which we've gone over in some detail?

A. Yes, sir.

Q. Again, we come back to the conversation with General YOUNG, and this starts from a discussion evidently with Colonel HENDERSON in your office, and the question which I put forward is:

> "Q. You were not made privy to the conversation?"

He indicated:

> "A. I merely spoke to them, sir, and departed. I was not engaged in the conversation."

Later on he said:

> "A. After discussing this matter with General KOSTER, I felt that he was satisfied. He didn't direct me to conduct a re-examination and that's

my memory on the matter. I can't recall him informing me that he was dissatisfied with what he had received, other than the fact that he had gotten an oral report and wanted it in writing."

Mr. MACCRATE went on to ask:

"Q. But, you had never received a copy of any written report made by Colonel HENDERSON with respect to the allegation that had been brought to you?

"A. Sir, to the best of my knowledge, this report was hand-carried to the division commander."

Mr. MACCRATE said:

"Q. I understand that, but at no

time thereafter did you ever receive a copy of any report from Colonel HENDERSON with respect to this matter?"

General YOUNG replied:

"A. No, sir. Not that I recall."

Mr. MACCRATE asked:

"Q. Are you aware of any such report being circulated to anyone else at the division headquarters other than General KOSTER?"

To which he replied:

"A. To the best of my knowledge, the report went directly from the brigade commander to the division commander and there were no other reports and the operational reports that I can remember being circulated within the division staff."

He went on to state in subsequent testimony:

"A. I felt that General KOSTER was satisfied. Evidently he was satisfied and I accepted his opinion on the matter because I felt he knew much more about it than I did. He had talked to Colonel HENDERSON about it. He was my commander and I accepted his evaluation."

Now, that is what we have generally heard from General YOUNG on the written report, which in brief would indicate that at no time did he ever see the written report?

A. As I indicated yesterday, I have very firmly in mind that he made a recommendation to me that what we had in this first written report was not adequate as covering all of the things that Colonel HENDERSON looked into and this type thing on a verbal basis. This which resulted in our then going back and asking for a formal investigation.

Q. How was this directive put out on a formal investigation?

A. I believe I informed Colonel PARSON and General YOUNG together that I wanted this done. It's conceivable

that I might have told Colonel HENDERSON directly, but that is not my recollection. As I indicated, I even visualize that it would be a written directive to have this accomplished.

Q. Here again, General KOSTER, I refer you first to some of the discussion with General YOUNG, and the question was:

> "Q. Did General KOSTER talk to you about having a formal report prepared?
>
> "A. The only thing that General KOSTER stated to me was that he had received the oral report and he had directed that it be put in writing. That's to the very best of my recollection. As to any subsequent reports, I cannot recall this being directed.
>
> "Q. Do you recall any directive which was issued in writing by the division so directing a formal report or appointing an investigating officer?
>
> "A. No, sir. I do not

200 e

recall a directive in writing from the Americal Division to that effect.

"Q. Did you, subsequent to the 10th of May, ever see a formal report submitted to the division headquarters covering the My Lai incident of 16 March 1968?

"A. Not to the best of my recollection. I did not, sir."

Colonel PARSON was also interrogated, in which we asked him:

"Q. Do you have any knowledge of the division commander indicating that he wanted a formal investigation made?

"A. No, sir.

"Q. If he had ordered such a formal investigation, would it have been normal to expect that he would have informed you?

"A. Yes, sir.

"Q. You do not recall ever having been so informed?

"A. No, sir.

"Q. Do you recall any additional investigation report ever having been submitted to the Headquarters of the Americal Division?

"A. No, sir.

"Q. This should have been sometime in early May?

"A. No, sir, I don't."

I'm sure you can appreciate the dilemma we are having in trying to fathom what did transpire at this time?

A. Yes, sir. I can appreciate it. I can't imagine both General YOUNG and Colonel PARSON not recalling this final submission, which, as I recall, the three of us

discussed after its submission and I know I handed it to Colonel PARSON and I am convinced--I know--I absolutely know there was a report such as this made. It did not take the form I anticipated that Colonel HENDERSON would make the report in, but it was BARKER, generally speaking, had contributed to it, but HENDERSON had signed some portion of it at least.

IO: You know this is the report, at least to this date, General KOSTER, we've been unable to locate or find any trace of it in the files or in the logs or any reference to it, thus far. We are going to continue our extensive efforts to locate that.

Mr. MACCRATE?

MR MACCRATE: Nothing.

IO: Mr. WEST?

MR WEST: General KOSTER, do you suppose that you could suggest anyone in the headquarters that might have seen it, processed it, handled it; your aides, assistant chief of staff, or some staff member we haven't talked to?

202e

A. I'm sure somebody did the typing and the recording of this from the 11th Brigade. This would have had to be done by somebody.

IO: At this point in time Task Force Barker had been disestablished, so that organization was no longer. I believe you are correct that if it were typed in a headquarters it would probably have been done at the headquarters of the 11th Brigade. Shortly thereafter, if my recollection fits me properly, Colonel BARKER then assumed command of the 1/20?

A. Yes, sir, he did.

MR WEST: Was he the exec of the brigade for awhile there?

IO: Yes.

A. He was the S3 and the executive officer. I am not sure if he held both positions or he was the executive officer until he took over the new battalion.

IO: It's my understanding from Colonel HENDERSON that he continued in the capacity or moved into the job of executive officer until such time that he took the battalion over and Major MCKNIGHT continued to be S3.

Q. General KOSTER, who was your aide at that time? Did you have one that normally travelled with you and did things with you?

A. Captain ROBERTS. Captain Daniel ROBERTS, who is stationed at Fort Lewis, Washington.

Q. What is his grade at the present time?

A. Captain.

Q. Would he have kept for you a log or a diary of your travels or where you have been which might be helpful in you reconstructing your travels, if we could obtain such a document or information from him?

A. He monitored all transmissions over the radio. He sometimes was where he could hear discussions or whatnot. He seldom was in the office when people came into the office and this sort of thing. I don't know if any log was kept

as to specifically where I had been and this sort of thing.

Q. Well, General KOSTER, as you know, the relationship between a general officer and his aide is quite an intimate one as a general rule. From your knowledge of your relationship with Captain ROBERTS, could he shed any light on this investigation that we are undertaking at the present time?

A. He might with respect to the message that I had from somebody at sometime regarding the return of the company into an area. He could possibly as to when or how frequently Colonel HENDERSON came to the office to report to me. Other than that, I doubt that he would add any significant information.

Q. General KOSTER, the entry that I read to you that we received over the phone from the log indicates on the afternoon of the 16th, from 1645 until 1715, you accompanied General DOLEMAN to Fire Support Base Dottie. Would this help you in any way to fix the time when you had a discussion concerning the return of C/1/20 through My Lai (4)?

A. As I recall, General DOLEMAN wanted to stay at the 11th Brigade overnight and not at my headquarters. I dropped him off there one night. This discussion could have been on the return from having dropped him off at Duc Pho. This would have been about the time, although I would have to estimate it would have been between Duc Pho and back again, unless he was carried from there by a 11th Brigade ship. I am positive General DOLEMAN was not in the aircraft if this was the occasion that the transmission took place.

Q. We know from Colonel HENDERSON's testimony that sometime in the afternoon he had to return to Duc Pho to meet General DOLEMAN. This was subsequent to his talking to the division commander in Quang Ngai City about noontime. It would appear logical that General DOLEMAN came to Fire Support Base Bronco and then proceeded to Fire Support Base Dottie. Did he ride on your helicopter?

A. I took him in some of the area, but I'm not positive whether I took him from Dottie--I don't know.

Q. Do you recall landing at Dottie with him or joining him there?

A. I don't specifically recall Dottie. I recall I

was with him part of the time, but I don't recall when.

MR MACCRATE: General KOSTER, another question asked General YOUNG was as follows: "Did you ever see the written report?" Now, this is referring back on the written report that followed on the oral report. "Answer: I don't recall seeing the written report, sir. I recall seeing Colonel HENDERSON in General KOSTER's office several days after I had been told that he made his oral report and he had some papers with him. That is the only time I can recall seeing the report. I don't recall--I am sure I didn't read the report because this was a matter between Colonel HENDERSON and General KOSTER." You had given instructions to General YOUNG with respect to this matter.

Did you regard this, sir, as something between you and Colonel HENDERSON? Does this accurately reflect the situation as you conceive of it at that time, insofar as the investigation or inquiry that was being conducted at that time was concerned?

A. No, sir. As far as I was concerned I felt that General YOUNG was involved in the investigation to the same extent I was.

MR MACCRATE: Thank you.

MR WEST: Did you have a regular helicopter pilot during that time?

A. Yes, sir, I did.

Q. Do you recall his name, sir?

A. As I recall, I changed helicopter pilots towards the end of my tour. I am sure this is something that the aide could give you. I don't recall.

Q. I suppose he would have been somebody out of the 14th Battalion?

A. Initially from the 14th, but he was in the 123d the bulk of the time.

Q. If I could find a list, do you suppose it would refresh your memory?

A. Yes, sir.

(MR WEST hands a roster to the witness.)

Q. Here is a roster which might refresh your memory, sir.

(No response.)

(The witness hands the roster back to MR WEST.)

I believe we can get it from another source, sir. Thank you.

IO: Do you have any additional statement that you would like to make, General KOSTER, or do you have anything that you would like to bring to the attention of anyone present in this room?

A. Only that I can't imagine why there isn't some recollection of one of these written reports as a minimum because I am very positive in my own mind that--a few of these discussions that I mentioned--I don't see how I could have built this up in my own mind to the extent--I feel that this is the sequence and this is the way it was. I don't feel that the written portion of the investigation, what I have been calling the second investigation, came before this subsequent one. I would say it's conceivable that I would have told Colonel HENDERSON, "You've given it to me orally. Now put it in writing and give me the statements of the people concerned." That isn't the way I remember it. I do recall a conversation with General YOUNG very specifically about a report that wasn't adequate. After seeing the one that we have on display here, I am sure that must have been the one we had discussed. I am sure that the final one we had or one with statements was one that I gave to Colonel PARSON. Those two things I am absolutely sure of. In my own mind I was convinced that the sequence was the way that I indicated it to you. It's possible that that sequence might have been a little different, but because of the way I remembered the two specific occasions I thought this was the way it had developed and still do. I was positive that there would be some recollection on the part of these individuals that would have confirmed portions of this at least.

Q. General KOSTER, just to break in for a moment, would it have been conceivable that you thought that General YOUNG was following through on this and General YOUNG, on the other hand, thought that you had picked up the ball and he

was therefore completely divorced from it and the whole thing, more or less, might have slipped through the crack and not received the attention that was due it?

A. That's not the way I remember it. I thought I had pretty firmly placed him in the position of looking into this or at least supervising the looking into it. I don't see how that would have happened. It would appear that, from his testimony, either he does not recall or perhaps it did.

Q. Do you have anything additional at this time that you would like to call to our attention, and there is no hurry?

A. I'm afraid I haven't anything that I can bring to your attention.

IO: In closing this session I would like you to know that we are not going to leave a single stone unturned in taking testimony, in locating documents, or any other matter which bears upon this investigation in order to try to piece together as accurate a picture of the situation and the circumstances that existed at the time as we possibly can.

You have been through one long session yesterday and a brief one today and I would be sure you'll be thinking about this. If anything comes to your mind which would assist us, we will be very happy for you to get in touch with us at this office and we can have you here in short order.

Additionally, as we collect additional testimony, additional evidence, and as we see things perhaps in a different light, we may get in touch with you again to provide you a different picture of the situation that we have developed at that time, so I think we will have to leave it at that for the moment.

A. There is no evidence on the part of any of these individuals that we had this type of a sequence?

Q. We have evidence, of course, as far as the oral report is concerned that would appear fairly consistent. As far as the one written report is concerned, we have that as a matter of record, so we know this was received. We have, thus far, not located anybody in your headquarters who recalls

receiving or seeing such a report or directing such a report.

Now, we have not talked to very many people in your headquarters. Thus far we have only talked to Colonel PARSON. We've talked to one of your ADC's, General YOUNG. We did not talk to your other ADC, but frankly, he could not shed any light on this. He had just joined, so he would logically not have much knowledge and if he did it would probably be hearsay. He gave us a fine picture of the situation that he stepped into as far as the division was concerned, but he could not shed any light on this.

We are going to talk to quite a few people in your headquarters before we finish.

A. You talked to the two, who, as far as I am concerned, were indicated--if they are at a loss to collaborate--corroborate what I have said here, I don't know of anyone else who would be because I thought they had been very much in the know on this.

Q. For your information, some of the people that we are going to talk to include the staff judge advocate, and I believe you had a change along this time, too.

A. Yes, sir, but if these two do not have knowledge of it, I am sure he would not.

Q. True, but I also plan to talk to the IG, G2, G3, and we are going to talk to assistants in the office of the chief of staff. I believe, at this time, you had a Major BEASLEY in there, if I am not mistaken.

A. I believe he moved before I left, but whether he was still here at this particular time, I don't know.

Q. There is some indication that he was. We are going to talk to him.

If you can think of any additional individuals that could shed light on this, I would very much appreciate it if you would get in touch with us, and I will also say for your information, we are, at a later date, going to talk again to General YOUNG. We are also going to talk to Colonel PARSON again.

A. Specifically, I'm sure he had the written report with the evidence that had been provided by Colonel

HENDERSON as the last time I ever saw it.

Q. Would you repeat again for our benefit, at this time, your description of this document that was supposed to have been submitted as the formal report?

A. It consisted of several statements, signed statements. Colonel BARKER had signed something and Colonel HENDERSON had signed whatever brought it to me at least.

Q. Probably a letter of transmittal or indorsement?

A. It could have been that. I don't remember specifically.

Q. Were there any overlays?

A. I do not recall.

Q. Do you recall about how many pages the body of the document consisted of?

A. I think I indicated yesterday there was as many as 20 and conceivably more.

Q. That's of testimony, but the document itself? Was it a thick document that went into detail, or was it a comparatively abbreviated document?

A. I don't think the document itself was more than a few pages.

Q. Who would you normally ask to review that kind of a document?

A. It would normally have been reviewed, if it was a question of legal sufficiency, by the judge advocate general, but I'm not sure at that stage we were or had a question of legal sufficiency as such. I would think that General YOUNG, who had heard much of the oral, at least he had relayed to me some of the oral testimony, would have read it over and I am sure that we discussed it.

One thing on the timing. I recall, I related it to the first written investigation as really being brought to my attention after I returned from Hawaii. It is conceivable that if I had seen it before I went to Hawaii I could have directed this subsequent investigation, and that's what they had waiting for me when I came back. But I recall as I came back, Colonel PARSON and General YOUNG were telling

me about what had transpired. They said, "We have the report from HENDERSON." I've been of the opinion that it was this first written one and that was the time the question of, "It's just not adequate," came up. That conversation conceivably could have taken place before I went on R&R and what was waiting for me when I came back was this thing that I recall as the formal investigation. I think that is conceivable.

I would not have thought that the sequence of these two reports could have been changed because it was the documented one that I felt included the investigation, so to speak. Perhaps it is conceivable that this other one followed as an after thought, but if so, I can't understand where I got the idea that General YOUNG and I agreed that there was something inadequate.

Q. The one thing that does stand out in your mind is the discussion with General YOUNG concerning what the helicopter pilot had told Colonel HENDERSON?

A. Yes, sir.

Q. As I recall your testimony yesterday?

A. Yes, sir. He came into my office and sat down and told me that very specifically.

Q. What was the impression that you gained from what General YOUNG had told you?

A. Generally, that Colonel HENDERSON had found this young man to be rather excitable; that the young man had not seen anybody massacre anybody or kill anyone, to the best that I can recall, but he had seen some bodies. He felt that the troops had been shooting more than was needed for the opposition being received, but that Colonel HENDERSON felt there were some discrepancies in his story. I think that was generally the gist of it.

Q. I think it may be wise to indicate to you, General KOSTER, we've asked you several questions along this line about whom Colonel HENDERSON talked to and the entire detail.

Now, we do not have the last report, so we have no basis of judgment at this time, but I will say that we have some pretty strong indications that Colonel HENDERSON's investigation was superficial at best. So this is where we are sitting at the present moment.

Is there anything that you feel might be added as far as General KOSTER is concerned at this time?

MR MACCRATE: There is one aspect of what was reported to you that I would be interested in having your recollection upon at this time and that is the opposition that was actually being received which you just referred at the time of this helicopter pilot's report that when the helicopter landed and the gunship landed, what was the report as to the opposition that the forces were then receiving? Was there reported to you a crossfire or was it essentially without opposition that the friendly forces were advancing?

A. As I recall, at that time, I would have said they were essentially without opposition, but I am not sure what it had been prior to the landing of the helicopters. I never got the impression that there was a great deal of firing at our ground troops. In other words, this wasn't in any sense a heavy action, but there could have been sporadic rounds coming at them.

Q. Or that the helicopters were landing in a crossfire?

A. I don't know that I ever had that impression.

IO: We will recess until 1630 hours.

(The hearing recessed at 1556 hours, 16 December 1969.)

(The hearing reconvened at 1017 hours, 18 February 1970.)

IO: The hearing will come to order.

RCDR: The following persons are present: LTG PEERS, MR WEST, MR MACCRATE, MR WALSH, COL MILLER, and MAJ LYNN.

The hearing recalls Major General KOSTER.

(MG KOSTER was recalled, reminded that he was still under oath, and testified as follows:)

IO: General KOSTER, I would like to be sure that you know everybody at this table. You know Mr. MACCRATE, Mr. WEST, and Mr. WALSH?

A. Yes, sir.

Q. Since we last talked to you, General KOSTER, along about the middle of December, we have gathered a tremendous amount of information indicating what may have happened at My Lai, concerning the reporting of the so-called incident, concerning the investigation or investigations of the incident, and also concerning the reviews and so forth of the investigations. All told up to the present date we've talked to about 360 people of various ranks, various job position, and so on. In addition, we have assembled a large number of documents relating to the incident which I just mentioned. We've had an opportunity to visit South Vietnam. There we talked to the people of Headquarters MACV, USARV, III MAF, and the Americal Division. In addition to that, we have also had them go through their files to see what papers they could provide relating to the incident or the reporting of it. In addition to that, we also had a team of our people who were familiar with what they should be looking for assist them going through the files to see if they could find any papers relating to this incident. I must say, particularly with respect to the Americal Division, that our efforts met with almost totally negative results. This is a point I wish to discuss with you a little later on.

A. Yes, sir.

Q. We also visited the 11th Brigade, and here again,

we found practically nothing. We talked to the people there about certain documents and so on. Above and beyond this, we also went to Headquarters, 2d ARVN Division, and talked to General TOAN whom you knew as a colonel when you were with him. Also we took some documentation from him. In a similar sense, we visited the province and talked to Colonel KHIEN, who was just being replaced as the province chief. We talked to him and also talked to his successor, Colonel BINH. We also talked to the province advisory people who were there at that time, and since then we've talked to a great number of the advisory people who were at the 2d ARVN Division and the advisory group in Quang Ngai Province. In a similar sense, we covered Son Tinh District including talking to now Captain TAN who is the intelligence officer at the present time in Quang Ngai Province headquarters. We have also talked to a large number of the people who are associated with the Son Tinh District headquarters. We did have an opportunity to visit LZ Dottie. We visited the village of My Lai (4), which we find in Vietnamese terminology is known as a Thuan Yen, a subhamlet of Tu Cung, a hamlet of Son My Village. And we got this whole matter straightened out about the actual organization of Son My Village. In the village we were able to pin down a few of the things that we had heard in testimony, pin them down as to location, and what had transpired, and so on. We also talked to some of the Vietnamese who had been there in the village at the time of the incident. Subsequent to that time, we were able to overfly the area and take a good look at not only My Lai (4), but the area to the east, to the south of My Lai (1), and generally the area of B/4/3. Also, we did overfly where A/3/1 was, but at that time it did not seem too important.

The thing I would like to say is that when we talked to you before, we logically were trying to reconstruct and to figure out what had happened. But at the present time, with the information that we have, we think that we have quite a bit of information. With this information we may be able to help you in clarifying some of the points with respect to your prior testimony.

A. Yes, sir.

Q. Before we get down to any questioning, I will ask Colonel MILLER to advise you of the necessary instructions, and I must also add that he will advise you as to the things

which we may suspect you of.

A. Yes, sir.

COL MILLER: General, when you appeared before General PEERS on 15 December, he informed you that you were suspect of having committed certain offenses in violation of the Uniform Code of Military Justice, and I then went over your rights to legal counsel and your testimonial rights accorded under Article 31, Uniform Code of Military Justice. To refresh your memory I will repeat what General PEERS said at that time. I am quoting now from the transcript:

> "I have just stated the scope and the purpose of this investigation. You, as the Americal or 23d Division commander, at the time and for some time after the My Lai incident, were senior officer in the chain of command. Furthermore, evidence received to date indicates that you were personally informed of several of the events which are of importance in this investigation and that you issued instructions and received some reports concerning alleged indiscriminate shooting, after action reports, and other information relevant and material to the matters under investigation. There is now some evidence which raises the suspicion that during and after the My Lai incident you were negligent or derelict in complying with, or even in direct violation of, orders and regulations pertaining to the reporting and investigating of alleged wounding and killing of civilians, that is war crimes."

Not that you were guilty, but these were the reports that came in.

> "Further, that you may have either suppressed or contributed to the suppression of information pertaining to the possible unlawful killing of civilians at My Lai (4) and vicinity on or about 16 March 1968. Such acts would be in violation of orders or regulations and would also constitute dereliction of duty. I am calling this to your attention because you have been called as a

witness. However, before questioning begins I wanted you tc be informed as to my suspicions and to give you time to think over and determine in your mind whether you wish to seek legal counsel and to decide whether you are willing to give testimony in this investigation."

After you had been advised of this and your testimonial rights and counsel, you recall that you elected to testify without counsel present, and you did so testify on the 15th and, I believe, the 16th of December.

Before we proceed further, I wish to inform you that you are now suspected of having committed the following offenses, which I shall relate in a moment. These do not constitute charges or formal allegations, but they are offenses of which you are suspected on the basis of all evidence which is now before General PEERS:

First is a failure to obey, or violation of, general regulations concerning the reporting of knowledge, information, and reports pertaining to alleged, suspected, or apparent war crimes. More specifically, you are referred to MACV Directive 20-4 which required this reporting.

Second is dereliction of duty with respect to your actions or failure to act on reports and information concerning the alleged unlawful killing of civilians by American troops in the Son My, or the My Lai, Tu Cung area of Vietnam on or about 16 to 18 March 1968. The suspected dereliction is not limited to those dates, but extends to the subsequent actions or failures to act contrary to what you may have been required to do in the proper performance of your duties.

Third, having appeared before General PEERS on the 15th and 16th of December and testified under oath to tell the whole truth, you are now suspected of having withheld relevant and material information about matters concerning which you were asked questions and of having testified falsely under oath. The giving of false testimony under oath constitutes false swearing in violation of Article 134, Uniform Code of Military Justice.

Fourth and finally, you are suspected of

suppression of and conspiracy to suppress information and reports concerning, and investigation of, unlawful acts allegedly committed by American troops, that is Task Force Barker, during the Task Force Barker operations in the Son My or My Lai area of Vietnam during the period 16 to 18 March 1968. The information and reports and the investigation which you are suspected of suppressing or conspiring to suppress concerned alleged, reported, serious offenses which are in violation of the laws of war and the Uniform Code of Military Justice. The acts referred to are unlawful acts which were allegedly committed by Task Force Barker personnel and include such offenses as murder, arson, and destruction of property.

I'd like to read next the explanation of your testimonial and your counsel rights.

First of all with respect to testimony, you have the right to remain silent and answer no questions at all.

Any statement you do make may be used in evidence against you in a criminal trial.

You have the right to consult with counsel. By counsel I mean a qualified lawyer. You have a right to have this counsel with you at all times before this hearing today. You have the right to retain a civilian counsel at your own expense, or military counsel will be appointed for you at no expense to you. Your appointed military counsel, if you wish one, may be military counsel of your choosing if he is reasonably available. If you wish to be represented by counsel, you would also have the right to have with you both civilian and appointed military counsel. If they were here you could consult with them at any time. You can ask for a recess anytime you feel it is necessary.

On the other hand, you may decide to answer questions now without having counsel present. If you do this, you may refuse to answer any question or stop answering questions at any time. You would also have the right to request, during such questioning, that counsel be made available to you or that you have time to seek civilian counsel.

General, would you like me to go over any of this material again?

A. No.

Q. Do you fully understand it?

216 C

A. Yes.

Q. Do you wish to have time to seek civilian counsel or would you like to have military counsel appointed for you?

A. Not at this time.

Q. You are, then, willing to make a statement and to answer questions at this time?

A. I am.

IO: General KOSTER, I'd first like to talk about your discussion on the phone with Colonel HENDERSON. We've had so many different versions of things presented by Colonel HENDERSON and also in reading your testimony, reviewing it, reviewing your testimony to the CID, and the alterations you made in your testimony to the CID, it leads me, and I'm sure that this can be confirmed the same with the other members of the investigation team who are here at the present time, to believe that to a degree some of your recollection of what happened may have been conditioned by what Colonel HENDERSON may have told you on the telephone. As a consequence, things may not fit in exactly the way they should, so to speak. And I think you recognize this.

A. I will acknowledge that, yes, sir.

Q. Because you were on a searching or fishing expedition at that time to try to reconstruct it in your own mind?

A. Yes, sir.

Q. So what I would like to say to you is to try, to the best of your ability, to put aside any of these things which Colonel HENDERSON may have told you. I know this is not any easy thing, because so much has appeared in the newspapers and on television. That confused with your own knowledge and also with what you may have had planted in your mind, it is not easy to sort all of these things out. But I do think it would be helpful for us if we'd just talk about your pure recollect of the things that you remember as the commander at that time. One of the most difficult tasks for us has been to try to reconstruct the sequence of events with respect to these reports and where people were at specific times.

I have here a check list which we have prepared, General KOSTER, which shows you where you were at certain times as indicated by the log or logs and also some of the other dates which are reasonably well fixed.

RCDR: The chronological checklist of activities of Major General KOSTER will be entered into the record and marked as Exhibit M-119.

(IO hands exhibit to witness.)

IO: Now, let's put this aside, but we will be referring to it. It would appear that there are two separate and rather distinct complaints or allegations that were made subject to reports?

A. That's correct, sir.

Q. One was the report which was given to you by General YOUNG probably on Sunday the 17th as a result of Colonel HOLLADAY and Major WATKE coming to him and relaying the story which Major WATKE had been given by Mr. THOMPSON.

A. Yes, sir.

Q. I think the testimony is fairly clear on this, that this was investigated, and you received an oral report.

(Witness nods his head in the affirmative.)

We have heard of instructions which were issued to have this put in writing, and we have been told that such a report was submitted explaining the THOMPSON allegations by Colonel HENDERSON, just to the THOMPSON allegation, not to anything else. Now, according to Colonel HENDERSON this would have been submitted sometime, the dates are sort of open, but to the best of his recollection along about 4 to 6 April. That is why we have it here. This is not firm, but in all events, this would have been the complaint or the allegation of the warrant officer.

A. Yes, sir.

Q. Now, subsequent to that time, along about the middle

of April, there was a letter written from the district chief of Son Tinh to the province chief which, of course, was delivered to the province chief. But a copy of it was also sent to General TOAN. This is the letter dated about 11 April in which the district chief supplies information which has been provided him by a letter he received from the village chief of Son My. In addition to General TOAN receiving this letter, Colonel GUINN of MACV--that's the way it's titled--of MACV Quang Ngai Sector received an information copy. Also, the subsector advisor at Son Tinh received a courtesy copy. That was about the middle of April. The next thing we know definitely is that there is a report of investigation dated the 24th which is tied directly to this letter of the district chief to the province chief and which was submitted to you sometime in about that time frame. I'm not sure exactly when you received it. You indicated to us the last time that you seemed to remember taking action on it when you returned from your R&R in Hawaii.

A. Sir, it seems to me there was something there at the time, but I'm not sure whether it was that report or I had fixed in my mind that it was the written statements that I saw at that time. I'm not positive.

Q. Well, it seems that sometime in here, in this time frame in mid-April, that you talked to Colonel TOAN?

A. Yes, sir, I did.

Q. Now, we also have indications that you drafted a letter to Colonel HENDERSON pointing out the fact--and now I'm repeating generally what we have heard--pointing out to Colonel HENDERSON the fact that you had received these allegations or information from Colonel TOAN covering the information reported by the district chief; that you directed Colonel HENDERSON to conduct an investigation and report; and that to this you may have appended a copy of the 11 April letter to the district chief.

A. It seems to me I directed him to do something about it. That's why I thought the next step then was the submission of the written document, but I don't specifically remember it being in writing or how it went or the sequence of it.

Q. Well, this sequence of events, frankly, is extremely

important, as far as we're concerned.

A. Yes, sir.

Q. So we have been going over this, as I have indicated. We did talk to TOAN. I do have copies of the letters, which I will refer to, to see if we can't rebuild this. We have even talked to the intelligence officer whom you may not even remember. The intelligence officer of General TOAN, then Colonel TOAN, was a chap by the name of Major PHO, P-H-O. He attended a meeting with you and with Colonel TOAN, and I believe the information is that Colonel HUTTER--

A. (Interposing) He could have been there.

Q. The 2d ARVN Division advisor was present when this matter was discussed. So it would be helpful to us if we could do this. And I think it might be helpful if Mr. MACCRATE would go over some of the testimony that we have concerning a Sergeant Major GERBERDING who is in the 11th Brigade and who perhaps gave the best story that we've heard as far as any instructions you may have issued to Colonel HENDERSON. I'm not saying that this is the way it happened. This is only one man's version.

MR MACCRATE: We have not seen such a document, General KOSTER, so that we read you this testimony as what Sergeant Major GERBERDING, who was the NCO in the S2 shop at brigade, recalls:

> "Q. Sergeant major, you told us a little bit ago that you had understood that you had gotten a report from I believe the district chief concerning the events in My Lai (4) on 16 March 1968, some kind of a report. Could you tell us about this?
>
> "A. No, sir, I did not say I received a report. I handled correspondence in which a report was made about My Lai (4). The report did not come to me or the S2 office. This was correspondence which was addressed to the Americal Division Commander which later on came down to the brigade headquarters.
>
> "Q. Can you tell us what you recall about this correspondence?
>
> "A. It was a letter from the division commander,

General KOSTER, to Colonel HENDERSON, a personal type correspondence which was answered by Colonel HENDERSON, and it was processed in my office. It was given to me to type and process as correspondence and get it out to division headquarters, to General KOSTER.

"Q. Do you remember about when this occurred?

"A. The day, I do not know exactly, sir, but I recall some time in April, I think.

"Q. Well, let's refer now to when Task Force Barker was dissolved, which I believe was on the 9th. I think it was the the 9th of April. Would you say it was before or after this?

"A. I'm sure it was well after Task Force Barker was dissolved, sir.

"Q. This occurred sometime after the 9th?

"A. I would say so.

"Q. Do you recall the contents of the letter from the general to Colonel HENDERSON?

"A. Am I authorized to discuss the contents of that letter with--

"Q. (Interposing) Yes, you are.

"A. Well, it was a personal letter from General KOSTER to Colonel HENDERSON. You might say a person-to-person letter, and it stated in there that the district chief of Son Tinh made a complaint to the province chief of Quang Ngai that during the operation in March by Task Force Barker that 450 civilians, innocent civilians, were killed by Task Force Barker. That correspondence, I presume, was relayed to the 2d ARVN Division Commander who in turn relayed it to General KOSTER of the Americal Division. General KOSTER wrote a personal letter to Colonel HENDERSON asking him to answer the allegations or statements made by this district chief, and Colonel HENDERSON formulated a reply that was typed and dispatched

CONFIDENTIAL

222 e

"A. The district chief of Son Tinh, yes, sir.

"Q. Yes, he was the district chief. Well, in any event, this was the inclosure to General KOSTER's letter?

"A. Yes, sir.

"Q. Now, I believe you said you prepared or processed the reply from Colonel HENDERSON to the General?

"A. It was given to me to have it typed. Since the letter was personal and of a confidential nature, I was to insure that it received no publicity and not too many people heard or knew about it."

Subsequently, the interrogation returned to the content of the letter from you, General KOSTER, to Colonel HENDERSON, as he seemed to recall it, and he was asked:

"Q. Can you recall the text of it?

"A. Sir, I remember vaguely by general terms it was the same allegation which you have seen in this. In other words, General KOSTER stated that allegations have been presented to him by his Vietnamese counterparts concerning a supposed massacre by U.S. forces and that he directed that Colonel HENDERSON conduct an immediate, detailed, and thorough investigation of the circumstances and any facts concerning these statements by the Vietnamese. That is, in essence, the instructions of General KOSTER.

"Q. You say, 'his Vietnamese counterparts.' Did he say who his Vietnamese counterpart was?

"A. Well, this was my terminology, sir. I do not remember the exact wording but what he was talking about, the information that he had received from Vietnamese channels which came from the division commander of the 2d ARVN Division, which you might call his Vietnamese counterpart, sir."

IO: This is the situation we have, General KOSTER. We have a very vivid talk with Sergeant Major GERBERDING who presented himself extremely well before this investigation. But this is the only one that we know of that has ever seen such a letter.

A. I do not recall such a letter nor do I really recall any discussion with Colonel TOAN or Colonel KHIEN or any of these people prior to the time after our investigations were pretty well completed when I went to see if they felt there was reason to pursue this any further. In other words, as I recall the way I learned about it was either seeing the propaganda leaflet or possibly the letter, but I don't recall obtaining any information from any of those Vietnamese authorities until, on my own instigation, I went around and talked to them.

Q. Well, let me read for you just a little bit of Colonel TOAN's testimony. Mr. MACCRATE and I talked to him in late December. He went on to say:

> "Q. This has been most helpful, General TOAN, to try to clear up some of these points. Did Colonel HENDERSON after this ever talk to you about My Lai (4) or Co Lay? Did Colonel HENDERSON ever come back to you after that time and talk to you about Tu Cung?"

His response was:

> "A. I don't remember, but I didn't hear anything from the U.S. side about that.
>
> "Q. Did General YOUNG or General KOSTER?
>
> "A. General KOSTER, at that time?
>
> "Q. Did he ever talk to you about it?
>
> "A. He came to see me. I told him my order."

And what he is referring to there is his order to the province chief to investigate.

> "Q. That you were investigating it?
>
> "A. I did.
>
> "Q. You told him you had ordered Colonel KHIEN to investigate it?
>
> "A. Yes, sir. I just let him know about the

propaganda from the VC so he could check if something had happened."

Now, of course, this is English from a Vietnamese. As I've indicated, Major PHO seems to think that your visit there took place a few days after he had sent this information to Colonel TOAN?

A. Well, as I recall, it was after we had really conducted our investigations, as I mentioned previously. This was before we did anything more. Because of what we'd found out in the investigation or before we just stopped investigating, I wanted to talk with both KHIEN and TOAN. This is one point I feel I do recall properly.

Q. Well, at that time did you have a copy of the 24 April report?

A. I would say I would have had it at that time, yes, sir.

IO: (Handing document to witness) This is Exhibit R-1 which you have seen previously, General KOSTER. Two inclosures: one, a statement of 14 April, and; two, the VC propaganda. You had received this at that time to your recollection?

A. To the best of my recollection, yes.

Q. Can you tell us about the conversation with Colonel TOAN?

A. I believe, to the best of my recollection, I really went there to see if he felt there was anything to this; if he was concerned about it; if he had a Vietnamese source that had been able to uncover anything that we hadn't or that U.S. investigators hadn't been able to check out. I don't recall whether he said he had investigated it or he was investigating, but at that stage of the game he did not. I don't think he took the figures that had been put in the propaganda as being accurate, and I think I left with the idea that if he did uncover--and gave him the idea--if he did uncover anything further, he should send it on to me.

Q. Well, was there any discussion about, not just the propaganda, but about the district chief's letter?

A. I don't recall specifically whether we were speaking of the district chief's letter or the propaganda.

Q. You see this is really the crux of the problem. If you look at inclosure 1 (to Exhibit R-1).

A. As I say, I can't specifically recall this as being the subject of discussion although it was the overall subject related to these documents.

Q. Did Colonel GUINN ever mention to you about a letter from the district chief to the province chief of which he had received a copy?

A. From the district to the province?

Q. To the province.

A. I can't say one way or the other. I know I talked to GUINN about it. I talked to him. I'm sure he was in attendance when I talked to Colonel KHIEN, but that's the only time I have absolute recollection of being involved in a conversation with GUINN.

Q. Did General YOUNG mention to you that he had talked to Colonel GUINN, and Colonel GUINN had told him--I'm not sure whether he had shown him a document or not--but at least, at a minimum he told him the district chief had written a letter to the province chief in which he alleged that the Americans had killed a large number of civilians northeast of Quang Ngai City?

A. This was the district chief making that allegation as opposed to relaying something from a village?

Q. Well, he was relaying it from a village chief, yes, but it was in the letter itself, it did not allude to a village chief, from the district chief to the province chief in which he makes a strong allegation that the Americans killed a large number of people northeast of Quang Ngai.

A. In other words, it's something other than this.

Q. Yes. We'll come around to this particular piece of paper later on.

A. I don't recall this.

Q. We have here Exhibit M-34, dated 11 April, from the district chief of Son Tinh to the province chief.

(IO hands Exhibit M-34 to the witness.)

A. I don't remember ever seeing this.

Q. Do you remember any reference to this by Colonel TOAN, Colonel KHIEN, or Colonel GUINN?

A. Not specifically.

Q. You see, this statement that you have (Exhibit R-1) says, "This statement is in reference to letter from the Son Tinh District chief to Quang Ngai Province chief, subject: 'Allied Forces Gathered People at Son My for Killing,'" dated 11 April 1968. This (indicating Exhibit M-34) is the letter they are referring to right here.

(MR WEST entered the hearing.)

A. I can't say that I didn't see it, but I don't recall, sir.

Q. We also have a copy of the village chief's letter to the district chief, and he is simply relaying information which he, the village chief, had provided him as the district chief. Did General TOAN, other than verbally, show you a copy of his directive to the province chief?

A. Not that I recall, sir.

Q. I have here, General KOSTER--well, first, going back to this document, if you will notice on Exhibit M-34, I have indicated to you the distribution on it. If you'll notice, General TOAN did receive a copy of it. You'll also notice the MACV Quang Ngai Sector received a copy of it and the U.S. advisor at Son Tinh received a copy of it.

I have here the material from the G2 of the 2d ARVN Division to General TOAN. It has been entered into the record as Exhibit M-36. That handwriting on the Vietnamese version is what appears in translated form on the bottom of the English version here.

A. I don't recall having seen this.

Q. Well, there would be no reason for you having seen this, but I show you this as antecedence for his directive which he sent to Quang Ngai Sector, to Colonel KHIEN.

A. Yes, sir.

Q. Other than verbally informing you about it, and

from what you've indicated, at the moment you do not recall having seen the letter of 11 April?

A. No, sir. I do not. I do not recall at any time that Colonel TOAN ever really put much credence in this other than to say that he had investigated it or he was still continuing to investigate. At that time I'm sure we reached an agreement that if his investigation turned something up, he would give it to us.

Q. Did he ask you to investigate or to check?

A. I think I told him I had made a check of this operation due to the helicopter pilot's report and that we hadn't been able to determine if there was any action such as this taking place. I am not positive on that. It just seems that this would have been part of the conversation that we entered into, because I did go to him to talk about this matter specifically.

Q. Did you take any action subsequent to that time?

A. As I recall, that was the last action that I took. That's why it seems to me it was after all these other things had transpired, because I wanted to see if he had anything that would cause us to say what we had done wasn't complete.

Q. Well, we keep hearing, General KOSTER, about a formal report. I say "keep hearing"; that is erroneous. I must rephrase that. I can say, except for Colonel HENDERSON and yourself, to my knowledge at the moment, I can't recall anybody else who used the term "formal report" as indicating a subsequent report. We have been able to turn up absolutely nothing concerning any formal report that was ever made.

A. When I used the word "formal report," it was formal in the sense that these were written statements by a number of the people who had been interrogated verbally prior to that time, and I know there was a sheaf of papers so big that included these reports. This is what I have termed a formal report.

Q. We have talked to some of the people in command positions that we have indicated statements were obtained from. They indicate that nobody ever talked to them. They made no signed statements. They gave no testimony under oath. We

have talked to--Mr. WEST in particular--his group has talked to well over 70 people out of Charlie Company alone, and we have yet to find one man who made a sworn statement or gave any testimony.

A. I couldn't say these were sworn. They were signed statements, and I'm sure they included the company commanders and Major WATKE.

Q. Major WATKE never made a sworn statement. Mr. THOMPSON never made a sworn statement. We know who talked to Colonel HENDERSON from the aviation company. We know that, but they made no sworn statements.

A. As I say, I'm not positive that the statements were sworn, but they were signed.

Q. They made no statements, and to further compound the problem, there is no record of such a report ever having arrived at Headquarters, Americal Division. There is no copy of the report available. There is no information whatsoever aside from that which you and Colonel HENDERSON have indicated.

A. Yes, sir. I can't explain that because I am positive that there was a stack of statements and that this was done, I thought, subsequent to this report. But the only thing it could have been is another action or another incident that would have resulted in this type of statement being taken, but I've always connected it up with this investigation.

Q. Well, we do know that there had been some activities going on that conceivably could have been this investigation that you are talking about. For example, perhaps the most critical activity that you were involved in during the month of May was the Kham Duc operation and the subsequent directive from MACV and possibly USARV to investigate the matter and conduct surveys of equipment losses. I believe I'm correct in this analysis.

A. Yes, sir.

Q. If I am not mistaken, you appointed General GALLOWAY as the investigating officer. There was another situation in which--

A. (Interposing) I wouldn't have been confusing that particular action with this one.

Q. But it did have numerous, I understand, signed statements, a rather voluminous document.

A. That's right, but this wouldn't have been the one with these same people. The people that I recall signing this were the people who were affiliated with that task force and this included a statement by BARKER. I'm not sure whether he was the one that conducted it or whether his was also included.

Q. You did have another such situation that took place in the latter part of May. Whether or not any reports of it arrived into the headquarters or whether the investigation was initiated by that time, I am not qualified to say, but I would doubt it. Here I'm referring to a situation in which some people were involved in the rape of a Vietnamese nurse and a few other incidents connected with it. I believe this happened in the latter part of May, but I believe it came to light subsequent to your departure.

230 C

A. Well, we had had an incident of something along those lines much earlier. The 196th Brigade.

Q. This one involved the appointment of an investigating officer. It was formally investigated, investigated properly, and resulted in trial by court-martial. This formal report, if it did arrive at your headquarters, we can find absolutely nobody who has any knowledge of this report whatsoever, including the people who may have signed it, the people who may have prepared it, or any witnesses. We have talked to practically every individual who had any typing or preparation responsibility in the headquarters of the 11th Brigade, and we can find absolutely no reference to it.

A. I can't explain that.

Q. So if you did receive such a report, the way the evidence would appear at the moment, it would have been a complete forgery.

A. I am positive I received such a report. I just can't see how there would be another incident within this area that would have resulted in an accomplishment of statements like this, but I also can't understand why General YOUNG or Colonel PARSON wouldn't recall something of this, too.

Q. Well, of course, this comes back to the other aspects of it, General KOSTER. We can find nobody in the

headquarters who has any knowledge of it: Colonel PARSON; his then SGS, Major BEASLEY; or Major POWELL, who took over from him; or from the individual who handled all the paper work, Sergeant SAIMON, at that time, followed by Sergeant LOFTIS. Now, we've talked to all of these individuals, and none of them have any knowledge of ever having seen such a document or having handled it, logged it, or having it in their files. We've also talked to the SJA, and we've talked to the IG, and they had no knowledge.

A. I don't know a reason why Colonel PARSON or General YOUNG would not have seen it. I'm not sure where it would have gone other than to them, but I would still swear that they would have seen that.

Q. Well, I would like to give you a favorable report. But even on that document, Exhibit R-1, which you have, Colonel PARSON, in view of the fact that he was chief of staff, says, "I must have seen it, but I don't remember seeing it." General YOUNG says he's never seen it. And again, I must say we cannot find that document at Headquarters, Americal Division. The only copy of that document that happened to remain alive was a copy retained by Sergeant Major GERBERDING in his desk in the S2 shop at the 11th Brigade.

A. As I pointed out, I think in my last testimony, one of the things that does stay with me is giving Colonel PARSON something for file. I thought it was the report with all the statements as being the last thing of the case. Certainly, when we compiled them, we would have filed them for any future reference there might have been. But that's one of--there are certain areas that I remember, and that's one of them. I guess it's conceivable that it could have been another matter, but it is very firmly in my mind that it was this matter.

Q. Thus far, we have not found anybody to confirm this. Do you recall, having received this, whether you possibly did anything with respect to having certain staff members look at it to review it?

A. Nobody other than the chief of staff or General YOUNG. I someway recall one of these documents--this is what I thought had become--perhaps when I was on R&R--had been there with them for some time before I saw it.

Q. That would be this document, dated 24 April (indicating Exhibit R-1).

A. It could have been, sir.

Q. You went on R&R on the 27th. General YOUNG took over from you, and you returned on the 7th and resumed command of the division.

A. Yes, sir.

Q. Your indication previously was you think you took action on that document after you returned from R&R.

A. I believe so, yes, sir.

Q. The problem that comes up here in my mind and one of the reasons that I have included it here on the checklist that I have given you is the fact that about this time--

A. (Interposing) Kham Duc came immediately after I got back from R&R.

Q. That's right. As a matter of fact, Kham Duc was already developing well before then, because the artillery base to the south, which was called--

A. (Interposing) The thing is, we didn't know anything about anything developing over there until they were overrun on the morning, 2 days prior to the day we pulled everybody out. So there wasn't any buildup to that. All of a sudden it was there.

Q. Well, we have looked on this as being something that conceivably could have interfered with any review or analysis or anything else of an investigation because of the intensity of this operation and the command emphasis that was being placed upon it.

A. That is certainly true. From the first day we got word of it and for about the next 2 to 3 days or 4 days.

MR MACCRATE: General KOSTER, just to bring this into as sharp focus as we can, I have here the physical paper that we have brought back from Duc Pho (Exhibit R-5). It was in the file maintained by Sergeant Major GERBERDING and then passed along in some way and was discovered in the spring, towards the end of May, in the 11th Brigade headquarters. This will, we

232C

believe, reflect whatever went forward at that time, being a carbon copy. It has two inclosures. The way in which the pages are arranged is the way that we found them. We have no idea if there was any change in between. Inclosure 2 is so labeled by a pencil notation and is stapled in on ahead of inclosure 1. You'll see there is different type on the statements. We're going to talk to you about the inclosures, but I think, from the point of view of visualizing what would come in to you, it may be helpful for you to look at that rather than the true copy, which is Exhibit R-1. We have designated this as Exhibit R-5.

A. The text, though, is the same I gather.

Q. Yes. Actually, the true copy didn't include some of the details. For example, you'll notice on the top of the front page, the first page, the heading of the division wasn't typed in on the true copy and also the initials of the file. Those happen to be the initials of the S2 at the brigade, Colonel BLACKLEDGE. Do you recall having received that document (Exhibit R-5)? As you look at it now, it would have been the ribbon copy, presumbly, of that document?

A. Yes, I believe I received this. I think this is one of the reports I received.

Q. Now, do you recall that inclosure 1, which is referred to in the very first paragraph, was the statement that is attached to the last sheet there. The retained copy, you can see it is a green onion skin.

A. No, sir. I don't recall what the inclosures would have been like, other than I do know that at some time or another the question of a VC leaflet came up. I didn't recall the letters and statements, so to speak, but I certainly wouldn't say they were not there either.

Q. Do you have any recollection of the disposition of this material when it arrived? We are told that it may have been placed in two envelopes and delivered to you with an "eyes only" notation. Does this in any way refresh your recollection of the actual receipt of the document?

A. No. One of these reports, there seemed to me some little confusion in the office because I think it came up marked that way and somebody else opened it up. There

was a little consternation about that; I'm not sure why. But that is the only thing I recall about receipt of either one of these two documents, and I still think there were two documents.

MR MACCRATE: Well, we have had some indication that there was an earlier document, as General PEERS has said. We have had it described possibly in preparation as three-quarters of a page in length as viewed by clerical personnel and by one of the assistant S3 officers at the brigade.

IO: But this particular piece of paper had to do with the warrant officer's allegations, not this particular allegation.

MR MACCRATE: It would have been earlier. It would have followed on the allegations of the warrant officer and whatever Colonel HENDERSON did with respect to them.

A. I don't remember that as a document that I can picture or recall.

IO: Well, certainly this couldn't be considered as being responsive to the warrant officer's allegations. It has no bearing on it.

A. No, sir.

Q. In the wildest imagination it would be hard to--

A. (Interposing) Where he cited these names, I'm sure one of the reasons that I felt the detailed statements were taken is because rather than stating "interviews with these people" it would have said "statements of these people as previously forwarded." That is why I thought and I'm sure that's why I developed the sequence in my own mind that we got the statements after this had been submitted.

MR MACCRATE: With such a document on your desk would this be something that Specialist HERRIS would keep in the file of yours?

A. No, sir, I don't think I had the people in the outer office keep anything. It was all, pretty much, kept with the chief of staff.

Q. We understand--and you can see from this we have

been going into it in some detail--that you had an in-basket and an out-basket which were taken from your desk every night, and very frequently by Specialist HERRIS or by Captain DICKENS later on, perhaps Captain ROBERTS earlier, and delivered to be locked up in the SGS safe. We've even had a description that it was usually the second drawer in the safe that these things were placed in. But we also have reference to a manila envelope that was included among the contents at times in the safe, which had an indication of being your personal file. We have been told by various of these people that they did not know the contents of that. Do any of these things in any way refresh any recollection of yours as to the possible disposition of such a report of investigation received?

A. No, I feel that I have discussed these documents with General YOUNG and Colonel PARSON. Although it might have been in one of these baskets for a period of time, my only clear recollection is giving Colonel PARSON something for file. It was one of the documents related to this case, I'm sure.

IO: Could it have been this paper?

A. I'm sure it could have been, but that's not the one I recall.

MR MACCRATE: Prior to your going down to speak with Colonel TOAN, do you have any recollection of discussing this whole subject with General YOUNG?

A. I think we had numerous discussions on it. I don't recall any discussion as such, but I think I probably indicated to him that I was going to make a visit to both of these individuals to see if they had anything that would contribute to the knowledge that we had of what had actually transpired.

Q. Do you have any recollection of his providing information as to what he had received?

A. I have recollections of him coming in and telling me different things, but not specifically what he ever told me.

Q. You have indicated that in addition to your speaking with Colonel TOAN you spoke with Colonel KHIEN. Was this on the same day that you went from one to another?

A. Yes, sir, I believe it was, sir. As I recall, I

went to the province first, and then I went to division.

IO: And neither of them mentioned, as I would understand it, the report from the district chief?

A. Not that I recall as such. We talked about--my most vivid recollection is the VC propaganda leaflet.

Q. With respect to that report, I asked you initially if you prepared a letter and I read you Sergeant GERBERDING's testimony. You indicated you didn't remember drafting a letter. Did you issue him any verbal instruction concerning the preparation of a report?

A. To Colonel HENDERSON?

Q. Yes.

A. Well, as I recall, this report was initiated upon our instigation. I'm not sure that I did it personally, but we had asked him to check on it.

Q. What was he to check on?

A. Again, as I recall, this was really a continuation. We had the verbal report of the incident, and what we desired at this stage of the game was more of a formal report or statements by the individuals. As I piece this together, when we received this, this wasn't what I had in mind as being a report. Here is where my sequence follows that pattern.

MR MACCRATE: Maybe we can help in your recollection here, if you will just turn to the first paragraph: "An investigation has been conducted of the allegations cited in inclosure 1." Now, if you were directing an investigation I would anticipate that the first paragraph would be a response to your direction. Now, the allegations in inclosure 1 would appear to be the allegations contained in the 11 April letter, referring to Son Tinh District chief and Son My Village chief.

A. Well, this would cause me to wonder if my sequence that I have drawn in my own mind is proper.

IO: Well, it doesn't seem quite logical to me either, General KOSTER, since Colonel HENDERSON reported to you on the 20th of March or thereabouts and had been told to put this oral report of his in writing, that you would have stood still for him

to have waited for over a month to give you a report in writing.

A. As I say, I'm not sure that I told him to put it in writing right at that time. I don't recall. My recollection, which again was not tied to very many specifics that I can grab a hold of, was that this was the first effort to put it in writing, but we really didn't start this effort until a later date.

Q. Again, going back to Colonel HENDERSON's testimony, he seems to recall that he had been directed to submit a written report and he had submitted a written report. He indicates that it may have been three to five pages long. We find nobody that knows of such a paper, but we found individuals who think they had seen a paper about three-quarters of a page long. This we can relate back to the 11th Brigade and can also relate it to possibly the chief of staff, his having received such a paper.

A. This isn't what I am referring to as another report at all. What I am referring to is a bundle of signed statements.

Q. Now, was this addressed to Warrant Officer THOMPSON's allegation, or was it addressed to the allegation made in inclosure 1?

A. I would say it was primarily based on the allegations of the warrant officer.

Q. When you received this statement--

A. (Interposing) I'm not sure that I ever saw this statement. I recall there was a VC propaganda leaflet. I don't recall the statement. I don't recall the letter from the district chief. I do recall a VC propaganda leaflet.

Q. Quite obviously something had to be in inclosure 1, knowing how meticulously people look at things such as this. When it says, "An investigation has been conducted of the allegations cited in inclosure 1," obviously there must have been something there to know what the allegation was to have it refuted along with the VC propaganda and come up with the recommendation that a counterpropaganda campaign be waged.

I would like to go back to my initial question,

as to whether or not you recall having issued instructions to Colonel HENDERSON which would have caused him to prepare this report based upon information you may have received through General YOUNG or through any source that would cause him to look into the allegation of the district chief?

A. It was my original thought that the investigation was instigated by division. I do not recall a personal letter. I was not inclined to write personal notes like that. If one had been sent, I would have said that it could have been prepared by either General YOUNG or Colonel PARSON.

Q. Neither of them know of such a letter. Prior to submitting this report, did Colonel HENDERSON provide you copies of the VC propaganda and the statement or any other materials?

A. I don't recall, sir.

IO: The hearing will recess.

(The hearing recessed at 1150 hours, 18 February 1970.)

(The hearing reconvened at 1152 hours, 18 February 1970.)

The hearing will come to order.

RCDR: All persons present when the hearing recessed are again present. Let the record show that Mr. MACCRATE has stepped out.

IO: Do you know when that document was delivered to you?

A. No, sir, not specifically.

Q. We've heard some testimony which would indicate that Colonel HENDERSON delivered it to you personally?

A. I do not recall specifically.

Q. You indicated in your previous testimony that you did not consider this report to be satisfactory?

A. Yes.

Q. Can you tell me what your judgment was based upon

238c

as far as this report was concerned?

A. Primarily, I had the idea, again recollecting it as best I could, that although this talked of the VC propaganda, what we asked for in the way of a written report would have been the testimony of these individuals, and that was what I was expecting to see. To me, the only one I can really recall directing HENDERSON to make was one that would incorporate all the statements that had been obtained verbally that he or somebody had briefed me on. I felt that those were the things we needed, not necessarily aimed at this, but aimed at the reports that we had through the helicopter pilot.

Q. As I recall your previous instructions, you had indicated that you wanted a formal investigation and you thought that part of your staff would have participated in it.

A. Sometime or another I had the feeling that here we had some statements, but they had been made and obtained by people in the 11th Brigade as opposed to somebody in the division level.

Q. Do you recall definitely whom you issued your instructions to or how the word was to be delivered to Colonel HENDERSON?

A. I would have said it would have been either General YOUNG or Colonel PARSON or perhaps by direct communication. I would have said one of those two.

Q. Have you entertained the idea at this time of turning the whole matter over to your staff judge advocate or your IG?

A. Not at that time.

Q. At this point you had two different and somewhat serious, I would say, allegations; one made by the warrant officer and this one as included in the document there at inclosure 1, that alleged that quite a few people were killed in Son My or Tu Cung and the Co Luy area?

A. Well, the warrant officer's statement, as best I recall what was relayed, didn't indicate that there was indiscriminate killing. It was indiscriminate firing. We had established the number of civilians that had been injured

in this incident. Any is too many, but it didn't border on what the allegations of now amounted to. I am sure, when I received this, this looked as if, yes, there had been some killed. It quickly multiplies from the ones who were killed up to a number like this. I guess I was prone to accept what had been uncovered by our own investigation of this incident earlier as pretty well substantiating what took place as opposed to what emanated from the VC sources.

Q. General KOSTER, were you familiar with Major GAVIN and his advisory element in the Son Tinh District?

A. Not as familiar as I was with many other districts.

Q. Were you familiar with a captain by the name of Angel M. RODRIGUEZ?

A. The name sounds familiar, but I didn't know him at that time, per se, I don't believe.

Q. I have here a document, Exhibit M-30, dated 14 April, which has the signature of Captain Angel M. RODRIGUEZ on it. This is rather hard to read. You will notice a true copy underneath. Basically, this is--

A. (Interposing) Is this the statement?

Q. This is the statement. Can you give us any insight as to why such a statement was prepared?

A. No, sir.

Q. Aside from having seen it in Exhibit R-1, did you ever see a copy of that statement? Did you see a copy of that statement in the province headquarters?

A. I can't say one way or the other, sir.

Q. Would you have any idea why, when the statement is forwarded to you as inclosure 1 to the report of investigation, that the signature and the signature block have been deleted?

A. I don't know why, sir.

Q. You receiving that paper and not knowing the author of it, this could be considered as an act of deception.

A. I guess it could be. I wondered whose statement that was. I have never really known.

Q. We had, too. Believe me.

Let me go over some other testimony that we received from Major EARLE, who was the intelligence advisor with Colonel HUTTER, and he also was with Colonel ULSACKER in the 2d ARVN Division. This is Mr. MACCRATE addressing Major EARLE:

> "Q. You have told us that you heard from Colonel GUINN about the VC propaganda leaflet, that you heard from Colonel GUINN something about the district chief's report, that you heard from Colonel GUINN that the province chief had someone looking into it, that you heard from Colonel GUINN that he was passing it up through his channels, and that you finally heard from Colonel GUINN that he was seeking additional information about this matter."

This is a summation of his prior testimony.

> "You said all these things to us this afternoon.
>
> "A. Yes, sir.
>
> "Q. I have noted them down as you said them. Now, have you any further recollection of what Colonel GUINN said to you other than these things that I have just listed to you?
>
> "A. No, sir. I don't have any additional information.
>
> "Q. Have you anything that you can tell us, having heard these five things of Colonel GUINN, as to what you did, anything you said to anyone, anything that you did about it, any indication that you did anything other than just put it in the back of your mind.

"A. I didn't put it out of my mind. As I said, I discussed it with Major PHO, and he said it was VC propaganda. I remember it being mentioned that morning about how ridiculous it was for that many people to be killed, 500 people. And I said it was an American unit operation and the 2d ARVN Division wasn't involved in the operation."

Colonel GUINN mentioned the VC propaganda, the district chief's report, and the province chief's investigation. He also mentioned that he was passing it up through channels. Did you know about this, or were you the recipient of any of this?

A. I can't say how all this first came to our attention, but I wouldn't have put myself in the channel of communication for Colonel GUINN to go through. I think he would have kept us informed of what was going on in the province. But when he was forwarding something through channels, I don't think I would have put myself in his channel of communication.

Q. His channel you would think would be what?

A. Well, I would assume that it would probably go through the advisor to the 2d ARVN Division, and from there it would go on to the advisory channels.

Q. Of course, Colonel GUINN is talking to Major EARLE of the 2d ARVN advisory element. He says that he was passing it up through his channels, meaning Colonel GUINN's channels. It could have been CORDS on the one hand? We have no indication it was passed up through CORDS.

A. I think he actually operated through the advisor channel, and he had a CORDS responsibility, too, that was a little apart from that. But I would assume that a matter such as this would have gone up through his advisory channel.

Q. Well, that is the advisory channel at that time. CORDS is the advisory channel if you recall. He was the deputy of province advisory, deputy PSA, which is the province

CONFIDENTIAL

Q. We have information that about the middle of April when the district chief's report would have reached province and also 2d ARVN Division, along in that time frame, there was quite a bit of communication between the headquarters of the Americal Division and the province and the 2d ARVN Division. The communication on the telephone sometimes reached two or three times a day. Also that Colonel PARSON made some trips down to Quang Ngai to visit some people and Mr. MAY and Colonel GUINN possibly were in the headquarters at that time. Can you give us any indication of what was going on at that time?

A. Sometime in there we were making a concerted effort on rice-denial plans, and we were trying to work up a scheme where the rice could be stored in safer locales. I know GUINN and MAY were both involved in that. We habitually did a great deal of liaison with them. I stopped in and saw them frequently myself and encouraged other members of the staff. So I'd say these trips weren't out of the ordinary. I do recall we had a meeting on rice denial where I had all the brigade commanders there sometime during April. We were tied in with the province, because as I recall, MAY and GUINN, although this was applicable to the whole division area, had done a little more thinking about it and had taken a little more interest in it than some of the other people. This could have caused it, but I don't think it was generated by any of this.

Q. Let me name a couple of other things that could have been transpiring at this time that might refresh your memory. Colonel ULSAKER had departed as the senior advisor to the 2d ARVN Division, and you had a new advisor in the form of Colonel HUTTER there. In addition, it was sometime along in here that the combined campaign plan, which is a joint U.S. ARVN document involving not only military activities but pacification activities as well, was published. Could those have had any bearing on what had been described as quite a radical increase in the tempo of coordination and activity between your headquarters and Quang Ngai City?

A. I say this could have resulted in it. Also, we had General ABRAMS come through there, and we layed on a visitation for him. As I recall, Mr. MAY was in the throes of leaving, too. So all of these things combined. I don't

know that the joint campaign plan generated that much although it might have at the G3-civil affairs level, I'm sure, must have. But I don't recall visiting them on that specifically. But I do think the ABRAMS visit could have caused us to check to co-ordinate what they were going to say as opposed to what we were going to show him and this sort of thing. And I do think MAY left some time in there, too.

Q. Do you remember any visit from President THIEU? I forget the name of the other general that headed Revolutionary Development under President THIEU?

A. The President's visit, I am not sure whether it was THIEU or someone else, but it was a grand operation as far as numbers involved and helicopters and so on.

Q. Did they ask you in your division to participate in their review of the pacification plan for each of the provinces within your area of operation?

A. In connection with the President's visit?

Q. Yes. Because the purpose of his visit was to personally go over the pacification plan for each of the provinces and have them report personally on what their plans were to achieve their goals.

A. We talked about this on many different occasions. I just don't tie it in with the President's visit.

Q. Another individual that probably visited at least once or twice for this purpose was General VY.

A. I don't recall him, sir.

Q. General KOSTER, where did Colonel ANISTRANSKI fit in this whole thing?

A. He was our civil affairs officer, a very aggressive one. He did a great deal insofar as assisting Quang Ngai and getting their CORDS supplies. Prior to the time he got in the act, they had been brought into Chu Lai and dropped and never got where they were supposed to go. He was instrumental

in seeing that it got out to its final destination and assisting them in any way possible. As I say, he was a very aggressive individual in doing it. Now, as far as these other things, I'm not sure that he had part of it.

Q. Well, particularly when we get down here to this VC propaganda and we're talking about district and village chiefs and so forth, was he brought into the picture at all at that time? I wish you would think about that.

A. Not to the best of my knowledge. Not in a village that would be this far out. Although he participated actively along the highway, I don't think he participated in some of the relocated villages.

Q. I'm thinking primarily of the Son Tinh District. We know that the village chief of Son My didn't live in Son My. He lived near the Son Tinh District and was in and out of the refugee camps all the time.

A. I'm not sure when he--he also left the division. I'm not sure he was here for this particular period of time or not. I know he had a very low opinion of these village chiefs who lived along the highway as opposed to having anything to do with their village. As a general impression, I would say he didn't have a very high opinion of who they were or what they were.

Q. Do you recall at all in relation to that paper or anything else that you may have been personally dealing with Colonel ANISTRANSKI or had the chief of staff work with him as it may relate to this paper or province or the districts?

A. Well, if we would have sent anybody to talk to the people in Son Tinh District, I would say that he would have been the best one to send because he knew the people down there. I don't recall that we did. It wouldn't have been illogical for me to have done something like that, though.

Q. I like to shift clear back to the 16th. According to the log, which I have a few extracts of, General KOSTER, you arrived at LZ Dottie at 0935 on the morning of the 16th.

Do you recall the discussion Colonel HENDERSON had with you at that time? He indicates that he advised you of six to eight civilians which he had seen and that had been killed, and also at that time, he had two VC suspects who he had picked up and later proved to be Popular Force.

A. I don't recall it as such. This is one of the things that he did tell me about at the time of our telephone conversation, and I have no reason to doubt it, but I don't remember it firsthand. I certainly do recall very definitely him having picked up two Popular Force individuals who he thought were VC suspects, but I don't connect it with that operation as opposed to some other operation.

Q. Let me read what he stated. In his testimony to the IG, Colonel HENDERSON stated:

> "General KOSTER asked me that morning, or I believe it was that morning at LZ Dottie when I saw him there, how many civilians had been hurt in this operation, and I reported to him that I had observed six to eight killed on the ground who I didn't know whether they were VC or not, but I had my suspicions they were civilian, and I can't right now say where I saw them, but I had observed six to seven people that were either women or children that appeared from the air to be dead. I did not know how long they had been killed, but I do recall that I told him that one woman and children and the two cows, which he too saw, appeared to be hit by artillery fire or gunships, because I could observe the cattle from the air, and the way the bodies of the cattle had been torn up, it must have been an artillery round to kill them, because there was quite a bit of blood and flesh."

Do you recall that?

A. No, sir, I don't recall it.

Q. When you arrived at LZ Dottie at 0935 Colonel HENDERSON had been there for some time, 30, 35, 40 minutes

that we know of. Colonel BARKER had been there and had departed. Do you recall when you landed that morning, were you taken to the TOC and briefed on this operation, or did you have a discussion with Colonel HENDERSON and other people either at the helipad or en route between the helipad and the TOC? Colonel HENDERSON that morning had with him these individuals: he had his S3, Major MCKNIGHT; he had his artillery officer, Colonel LUPER; and he also had an Air Force officer, Major MACLACHLAN.

A. I don't recall firsthand what transpired there. Colonel HENDERSON indicated that we had a discussion at the helipad. I don't recall it.

Q. Do you recall Colonel BARKER coming back in while you were there?

A. No, sir.

Q. Something about getting off his ship with some wounded and the aircraft continuing on to Chu Lai?

A. I remember having seen something like this sometime, but I don't know when it was.

Q. Can you recall what reports you were given concerning the progress of the operation at this time?

A. Not as relating to that time, but about the first thing that I do recall on that operation was having a report that somebody had hit a booby trap. That is about all I recall that I can positively identify to that operation.

Q. Yes, this is true. Bravo Company had one officer that hit a booby trap very soon after the combat assault.

A. Right on top of a hill, as I recall.

Q. No, it was pretty much on the flat, south of My Lai (1).

A. This may have been another booby trap at another time.

Q. Yes, this is true. It could have been the next

day, too. There was a booby trap situation on a hill where MEADLO, one of the specialists there, had a leg blown off.

A. That's one of the things that I do recall about this. Somehow I connected it with the air assault.

Q. Well, General KOSTER, up to the time that you were there we know that Charlie Company, for example, had reported 90 enemy KIA, and 69 of these came in in one entry in the log, which later showed up in the 11th Brigade log as 69 killed by artillery. Do you recall being briefed on those figures of 84 or 69, 90, anything of that category?

A. I don't recall receiving that information at that time, sir.

Q. Can you recall anything that Colonel HENDERSON or any of the people may have told you concerning the operation?

A. Not that I relate to that occasion.

Q. Colonel HENDERSON states that you said, "How many civilians have been hurt in this operation?" Can you give me any reasons you had to ask him a questions of this sort?

A. Nothing other than this was a populated area, and I would have had concern, because, assuming I had been flying over the area of operations and had just seen a lot of civilians moving along the road.

Q. Well, one question I wanted to ask you, General KOSTER, is whether or not you had overflown the area and had seen the evacuation of the civilians?

A. As I say, I can't tie it to this particular operation. I've flown over several of them, and this one doesn't distinguish itself from any other as far as this type of thing is concerned.

Q. Do you recall seeing this village of My Lai (4), or as it is better known by the Vietnamese, Thaun Yen Subhamlet, being pretty much up in smoke at at that time when you flew over?

A. No sir, I don't.

Q. Do you recall telling Colonel HENDERSON anything about these civilian casualties?

A. Sometime I asked him to give me an account of civilian casualties and what was the cause of the casualties. I don't know when.

A. Well, can you think of anything else that transpired that morning at LZ Dottie? We've gone through actually extreme pains to work out who was there and so forth during this period, because there are some very critical happenings about this time. The unique thing, General KOSTER, is the last report of anybody being killed in My Lai (4) Village was at 8:40 in the morning and up to that time or a little before it was 90.

A. You mean the last time from all sources? All this happened before that time?

Q. Yes, sir.

A. No. I would have said my primary reason for landing there at that time was probably for refueling the helicopter. We had a refueling point there, and I don't recall the specifics of the visit.

250c

MR WEST: Do you recall where General YOUNG was at this time?

A. No, sir. I don't.

Q. General PEERS indicated to you that Colonel HENDERSON had spoken to you and mentioned having seen six or eight civilians dead, and mentioned one or two cows, and indicated that you had seen them. We questioned him rather closely about this, because in your earlier testimony you certainly had no clear recollection at all as to whether you had been over the area, and Colonel HENDERSON said, well, he certainly had the impression that you had been. Now, we, as General PEERS indicated, talked to a lot of people, pilots and copilots, crew members of Charlie-Charlie ships involved. The pilot told us of an incident which I would like to tell you about and see if you can fix the time perhaps a little more closely than he did. He remembered the area--

A. (Interposing) On that particular day?

Q. No, this is what I'm getting at. He remembers overflying the area. He remembers that you sat on the right, so he orbited to the right in case anybody wanted to get a look on the ground. And he remembered landing near My Lai (4) and being on the ground about 3 minutes. The village was back off to his left rear, and the helicopter was more or less pointed toward My Lai (1). The troops were out moving off toward the east. He landed to the west of the road. About 200 meters on up the road and he could see a body lying on the road. He couldn't tell whether it was a man--

A. (Interposing) My helicopter pilot said this?

Q. Yes, sir. And that you got out of the helicopter, and talked to someone, and got right back in, and you took off. He cannot fix the date. I thought perhaps you could recall certain things.

A. I certainly don't recall it on that day nor do I recall it during the course of an operation quite like this. I recall having come in to the Missionary Hill there on numerous occasions--

IO: (Interposing) Monastery Hill?

A. Monastery Hill, right. And Uptight many times. When we were involved in relocating some of the civilians that had been left there by the Koreans, it seems that I could have landed at that time, but that would have been a little further north and out towards the Batangan.

MR WEST: Well, he seemed to remember the area, of course, this was--

A. (Interposing) Was this the pilot that flew for me regularly?

Q. WITHAM, a tall blond boy.

A. I guess he'd taken over from the one I considered to be my regular pilot. I don't recall. Of course, this would have been late in the tour, because he just flew for me about--

Q. (Interposing) The dates check out. He was

flying for you then. His flight records and whatnot.

Q. He wasn't what I considered my regular pilot. He was the copilot, and eventually, as I recall, took over for the last short period. Maybe he was there then, but I don't recall ever being on ground during any of those operations during the time they were in progress.

Q. Well, his testimony was a little surprising. We have the crew chief coming in and possibly he can help clarify this.

IO: Again referring to the log, General KOSTER, on that afternoon of the 16th you arrived at Bronco at 1510 and departed at 1535. Do you recall whether or not you saw Colonel HENDERSON there and talked to him at all?

A. I don't recall specifically.

Q. I would feel that you perhaps picked up General DOLEMAN at that time?

A. I knew he was in the area, but I haven't tracked his exact schedule, when I was with him and when I wasn't with him. His primary request was to see a lot of the 11th Brigade and I know I left him with them or at least showed him more of the 11th than any of the other areas because of his past affiliation.

Q. Well, you've noticed from that chart there that you evidently did take General DOLEMAN with you and proceeded to LZ Dottie where you were briefed by Colonel BARKER starting at 1645, and you stayed there until 1715. Then you will also notice the following morning--I remember the time being 8:25 in the morning--you were back again at LZ Bronco with General DOLEMAN. General DOLEMAN seems to recall that he stayed that evening with you.

A. I think he did, but I'm not positive.

Q. Sometime either just before you picked up General DOLEMAN or while you had General DOLEMAN with you, and immediately after you had departed from Bronco, you had this conversation with the Task Force Barker TOC and Captain MEDINA in which you had countermanded the order for Charlie Company

252 c

to return to My Lai (4) to make a body count. Can you recall where this took place as far as your movements that afternoon?

A. Well, I recall it was late in the day, and I haven't hooked this up necessarily with this operation. Neither would I say that it wasn't. I was flying someplace between Quang Ngai and Chu Lai, I think. I overheard this discussion of moving at this time of day which was going on between the company commander, whomever it was, and I thought BARKER--

Q. (Interposing) BARKER was there in the TOC, but his instructions were being passed on by Major CALHOUN to Captain MEDINA.

A. As I was told the mission, it was not necessarily the body count, but to ascertained how these people had been killed. I didn't think this was the time for somebody to be moving around.

Q. Well, we have your prior testimony on that, General KOSTER. What I'm trying to pin down if I can is when this transpired. It transpired before Charlie Company reached its laager site. They married up with Bravo Company along about 1530, and this took place just before they arrived there, which would put it now along about just a few minutes before or a few minutes after 3:00, so to speak.

A. I thought it was later in the day. I also got the impression that it had something to do with the helicopter lift, but that was the way I recalled it.

Q. At that moment, this had nothing to do with it.

A. It might have been resupply. Maybe that's it.

Q. True, they were planning on resupply at that time. So it could have been mixed up. There were a few aircraft that were scheduled to go in there to take in personnel, in terms of National Police, some ARVN going in with the National Police, some resupply ships, and so forth But at the moment, you don't recall where you were in the air when you received this information?

A. I would say I was flying someplace between Quang Ngai and Chu Lai and headed towards Chu Lai.

Q. Do you recall at this time that Captain MEDINA had indicated the number of civilian KIA that he had?

A. In that conversation?

Q. Yes.

A. No, sir.

Q. I am talking about the fact that he knew he had 20 or 24 civilian KIA and that these had been killed by artillery, and it would have been useless to go back and try to figure out how they were killed, because the bodies were so mangled.

A. I only vaguely remember in the course of this conversation that I was having that I do think that at sometime or another whoever I was talking to went to the company commander and asked a question. I didn't look upon it as a three-sided conversation, really, although I do feel that somebody gave someone some information on something, and I'm not sure what.

Q. Do you recall in your conversation that you had issued instructions to the effect that you wanted Rawhide 6, which is to say the brigade commander, informed of this?

A. Yes, sir.

Q. If this did happened at the time that I'm referring to, do you recall any discussion with Colonel BARKER or anybody about this when you arrived at LZ Dottie at 1645?

A. No, sir. I don't recall.

IO: Well, let's take a break until 2 o'clock.

(The hearing recessed at 1305 hours, 18 February 1970.)

(The hearing reconvened at 1404 hours, 18 February 1970.)

The hearing will come to order.

RCDR: All persons present when the hearing recessed are again present.

IO: General KOSTER, on the afternoon of the 16th you

picked up General DOLEMAN, and you proceeded to LZ Dottie. Do you recall the briefing given by the Task Force Barker personnel to you and General DOLEMAN at Dottie that afternoon or evening?

A. I don't remember any of the specifics. I'm sure I was with General DOLEMAN at Dottie, but I don't remember anything other than that.

Q. Well, I was wondering if you remember seeing Colonel HENDERSON there?

A. No, sir.

Q. I believe I asked you before about not letting Charlie Company go back into My Lai (4). Did you discuss this with Colonel BARKER or anybody else at LZ Dottie?

A. To the best of my knowledge I would say I hadn't gone back to Dottie after I had that conversation because I went back to Chu Lai, and it seems to me that was at the end of the afternoon.

Q. After that briefing at 5:15, would you have gone back to a staff briefing at this time?

A. We normally had them at 1700. If I was coming in late for some reason or another, they were normally delayed until I got there.

Q. You probably would have had a staff briefing sometime after 1730?

A. Yes, sir, particularly if General DOLEMAN was with me. I feel we would have had one. I'm not sure when he was with me, positively.

Q. We have some testimony from General YOUNG to the effect that after the evening briefing in walking back with you, you discussed the disparity between the body count and the number of weapons captured. Do you recall that conversation as you were walking back? Here I was wondering if General DOLEMAN was with you at the time.

A. He could have been, but I don't recall the conversation as such. I suspect that since there was the wide variation there, it was something we very well could have discussed.

Q. Do you recall any discussions concerning this 128 KIA versus 3 weapons captured at any time and issuing any instructions to have this checked into?

A. No, sir. I don't recall issuing any instructions with respect to that.

Q. That evening, on the night of the 16th, Colonel HENDERSON is reported to have called you on the telephone, and above and beyond the six to eight, he indicated to you the number of civilians that had been killed was on the order of 20. He reported to you, and talked to you about it that evening?

A. I received that type of information at sometime. I'm not positive when it was.

Q. When you received it, that 20 civilians were killed, General KOSTER, and irrespective of how they were killed, was there any kind of report filed at all with III MAF or USARV or anybody?

A. I wasn't positive until this question came up of reporting civilians, whether we reported them or not. I have subsequently learned that this wasn't part of the information that we normally reported.

Q. Of course, there is some discrepancy here. We have talked to Colonel TREXLER. Even though it did not appear in your reporting procedure, there is an area where it could be reported in the area of what is referred to as "others," and he was of the opinion that civilian casualties should be reported.

A. As far as I know, they were reported. I have only gone by what people told me that, "No, we didn't include them in our reports." I would have thought it quite proper and logical to report them.

Q. The thing that bothers me a little bit is the fact that you knew at least 20 civilians had been killed.

There is no indication of it in the log of the Americal Division that such information was reported. There is no indication that such information was passed to III MAF. It just passes out of the picture completely. Can you give us any explanation on this one at all, why this was not recorded some place and passed on to higher headquarters?

A. No, sir. I don't know. I'm sure I didn't take any action to cause it to be reported nor did I take any action that would have stopped it from being reported. I perhaps thought it was part of our routine report. I really don't know.

Q. As I recall, much of the information that was being passed on indicated these civilians had been killed as a result of artillery and gunships and so forth.

A. This is, as I understood it.

Q. Well, in this regard, this is Exhibit D-14, put out on 15 January 1968 while you were in command of the division. This is primarily for the artillery units as you will notice on the distribution. But it makes it very clear in the second paragraph: "All firing incidents involving injury or death to U.S., allied, or RVN military personnel, or Vietnamese civilians will be investigated."

A. Yes, sir, but I think this is unintentional firing as opposed to preparatory fires, which were allegedly the things involved here, as opposed to an error in firing data and the other things that I would have called a firing incident.

Q. Well, you can do this. I mean one might say this, General KOSTER. But if an American, for example, were injured at any time by artillery, this applies by our own artillery, this caused an incident report to be initiated whether it was in actual combat or what it was. The same thing is true of ARVN personnel having to do with their own artillery. So extending this, it comes right on to the Vietnamese civilians.

A. I certainly would agree and would say it did include Vietnamese civilians in many cases, but were they within the attack area, so to speak, and this is a prep going in there, I'm not sure that we rendered incident reports on something of that type.

Q. You are familiar with the serious incident report. Irrespective of how these people are killed, the fact remains we still have 20 dead civilians out there at a minimum, but yet we find nothing going forward in terms of the SITREP reports, in the INTSUM's, in terms of an artillery investigation, in terms of a serious incident report, which if this were uncovered could lead to quite a bit of attention in the press and so on. None of these things seemed to have happened.

A. Well, I'm sure in the course of other actions, although I hope that this number did not become involved, but in the course of fighting in other built-up areas we probably had civilian casualties in many of them. They weren't the subject of an incident report.

Q. Well, coming down to the morning of the 17th, do you recall taking General DOLEMAN down to LZ Bronco and getting there early in the morning?

A. No, sir. I don't specifically.

Q. Do you recall seeing Colonel HENDERSON there that morning? This would have been a Sunday morning, the 16th being a Saturday and Sunday being the 17th.

A. No, sir. I don't remember.

Q. According to the way we reconstruct this, General KOSTER, when you finally did depart from General DOLEMAN, you probably returned to Chu Lai sometime around the noon period. It was at that time that General YOUNG perhaps informed you concerning the report he received from Colonel HOLLADAY and Major WATKE; reference: the complaint registered by Warrant Officer THOMPSON?

A. It was about that time of day when I first heard about it.

Q. Would you repeat for us again your recollection of what General YOUNG told you about what the warrant officer told you or what had been reported to him?

A. Well, as best that I recall, it was a question of indiscriminate firing on the part of the ground troops, and it

was a case of there being some difficulty between the pilot and the ground commander. As I say, I'm not sure that I got all this at one time, but generally speaking, these are the two things.

Q. What specifically did they tell you was the problem between the pilot and the ground element?

A. The pilot had wanted to bring in some ships for evacuation of personnel, and I guess the ground commander at the time hadn't thought this was the time or the use of gunships for that mission. It revolved around these considerations, and it concerned the evacuation of some people that were in the area at the time.

Q. Just with respect to this confrontation now, see if these things fit back into your mind about perhaps some people having gone into a hootch or into a bunker or into a cave or into some kind of structure; and the helicopter pilot landing to discuss this with the ground troops. By discussing with the ground troops, he indicated he wanted to get the people out of there. The response was, "The only way to get those people out is with some grenades." The pilot said, "No, you just hold your forces back, hold your troops back, and I'll get them out." The fact is that at this time he had his gunners providing fire support if need be to protect him. Then he evacuated the individuals from the cave by bringing in a gunship to evacuate about 12 people in successive lifts.

A. I have heard something along these lines, but I'm not sure whether I recall it from something that was said then or something that I have read or heard during the course of these investigations. I don't think it was in all of that detail at the time I heard it, but some portions of it could have been included.

Q. Was there any reference to the fact that the helicopter had its guns trained on Americans? We've heard some talk about the major problem being that we don't want Americans firing on Americans.

A. I never had any thought that the situation was such that there was any likelihood of that happening. I knew there had been a confrontation, but as far as actually fire

between the two, I never got the impression that that was even a likelihood. Perhaps someway I've determined there might have been the threat of that, but again, I'm not sure if I got this from what I've read or something that transpired then.

Q. With respect to the indiscriminate firing, was there any indication of unnecessary killing?

A. No, sir, not to the best of my knowledge.

Q. Did you get any idea that anybody had been hurt down there by small arms fire, by the ground troops?

A. Well, I guess by that time I knew there had been some civilian casualties, so apparently they had been injured by some means.

Q. You are relating what you are hearing back to the 20 figure, then?

A. I suspect I was. I'm not sure whether I related to the 20 figure or the fact that there had been some casualties.

260c

Q. Well, we know pretty much what this warrant officer saw. We know from the testimony we have taken from others that he wasn't only unhappy about it, he was just out and out mad about it. This is what caused him to report initially to Major WATKE, his commander, when he first came in at about 11:30 on the morning of the 16th. There had been an awful lot of traffic on the air that morning concerning the killing of civilians, and the stopping of the killing of civilians, and and the stopping of burning of hootches, "Stop the killing." "Stop the burning that's going on." Some of the traffic was coming up from brigade wanting to know what does all this mean, traffic that they were hearing air-to-air and air-to-ground. So, Major WATKE got a pretty good earful when Warrant Officer THOMPSON finally unloaded on him. When he returned home that evening, Major WATKE thought about it for a long long time before he finally went over and reported to his commanding officer, which was Colonel HOLLADAY. And they agonized about this thing for 2 or 3 hours. Major WATKE was more concerned about the confrontation which his people may have had with the ground element. But this isn't what concerned Colonel HOLLADAY. Even Major WATKE agrees that when this story was told, Colonel HOLLADAY wasn't a damned bit interested in this confrontation. He said that's not the problem. The problem

is that we have got a lot of dead civilians that have been killed unnecessarily, and that was the big problem. And the figure that stuck in his mind that they were talking about that night was around 120 that had been seen. This is what they went to talk to General YOUNG about the following morning.

A. I don't recall any figure like that was ever given to me.

Q. Well, what was your interpretation of this indiscriminate firing that you have indicated?

A. I thought they saw some villagers in the village and that the troops were firing at targets as opposed to identified enemy which they were supposedly there to fire at. They were covering a wide range, and just by this type of coverage, they were bound to hit some of the civilians that were in the area. I guess this is my interpretation of what I recall now.

Q. Was it indicated that this was not just the report of Warrant Officer THOMPSON but in fact several of these aviators? He was the principal spokesman.

A. I don't believe it was ever indicated to me that there were a number of pilots reporting this.

Q. Can you recall any other thing that may have been passed to you by General YOUNG?

A. The first time he talked to me about it?

Q. Yes.

A. No, sir. I don't recall anything further than that.

Q. Well, since this was a confrontation, so to speak, between one of your elements, the 123d Aviation Battalion, and Task Force Barker of the 11th Brigade, what was your real purpose, then, in telling Colonel HENDERSON to investigate it?

A. Well, I can only say that he was the senior commander of the entire action. All the air elements were in support of that operation. He had overall responsibility.

Q. Did anybody ever go down to talk to Colonel HOLLADAY or Major WATKE or to Warrant Officer THOMPSON to find out what they had seen?

A. As far as I knew, this was part of the investigation. And I'm reasonably--

Q. (Interposing) Not an independent investigator, so to speak.

A. I'm reasonably certain I talked to Colonel HOLLADAY at some time or another.

Q. We have, frankly, no indicaton from Colonel HOLLADAY that he ever talked to you about it. As a matter of fact, I've asked Colonel HOLLADAY several times why he didn't go to see you about it after there was no satisfaction. He, for one, having seen either the report of the 24th or another piece of paper which may have said the same thing, expressed the opinion that it was a coverup.

A. Well, I'm reasonably sure that I did talk to Colonel HOLLADAY at some time or another.

Q. I would be sure that in the course of events you talked to Colonel HOLLADAY, but whether you talked to Colonel HOLLADAY about this situation? As a matter of fact, I'm sure you saw Colonel HOLLADAY practically every night.

A. I'm not talking about that. I'm talking about with respect to this incident.

Q. I don't find it.

MR MACCRATE: Can you recall the time and the circumstances of your speaking with Colonel HOLLADAY? Just what do you recall of any such discussion?

A. I don't recall the setting, and I'm not sure it was Colonel HOLLADAY. It seems to me that after General YOUNG brought me this information, we might have discussed it with somebody from the aviation division right then at the time, but I'm not sure it was Colonel HOLLADAY. But somebody I thought had given him the information, although I'm not positive on that. It could have been another incident.

IO: Colonel HOLLADAY, I take it, from the testimony of both Colonel HOLLADAY and Major WATKE, was very concerned. In this regard did your chief of staff, Colonel PARSON, tell you that Colonel HOLLADAY had informed him of the entire incident?

A. Yes, sir, I think he did. As I recall, he and General YOUNG were together when they told me this. I'm not positive on this, but--

Q. (Interposing) We just talked to Colonel PARSON here a couple days ago, and I recall asking specifically, "What did you do?" The answer is that he did nothing. I asked him if he reported this to you, and he said, "There was no use in me taking this up with General KOSTER; the generals were handling the situation." But there's no question that Colonel HOLLADAY that night of the 17th fully cut in Colonel PARSON. This story was not told by WATKE as it was previously, but by HOLLADAY, only by HOLLADAY.

A. Well, I would have said that when I received the information, both General YOUNG and Colonel PARSON were there and that we conceivably even asked for somebody to come over from the TOC, the aviation division. I don't know whether it was HOLLADAY or not, but I certainly have a feeling that YOUNG and PARSON were both there.

Q. Well, I recall asking General YOUNG if anybody was present when he reported it to you, and he indicated that there wasn't anyone there, that it was just a conversation between the two of you. Can you recall your conversation with General YOUNG, what you told him to do?

A. Well, some place along the line I'm sure I told him to make an investigation of this, and it also seems to me that I just didn't feel that an incident like this was apt to have happened. And that's why I tend to think that there was more than General YOUNG in the room at the time I made an observation like that. But I did, I'm sure, sometime tell him to make an investigation.

Q. What instructions did you give him about the investigation? Who was to conduct it? What were the parameters of the investigation?

A. I'm not positive that I did anything more than tell

him to investigate it. If I did, I don't recall. I certainly thought any investigation of it would have involved talking to the people on the ground and the people flying the helicopters.

Q. But your words, as you recall them, were just to have this matter investigated?

A. I have a feeling that there was more in detail than that, but I don't recall what.

Q. Well, at that time, General KOSTER, was your concern over the confrontation between the troops or the indiscriminate firing or unnecessary shooting at civilians, or what was your primary concern?

A. Well, I guess it would have had to have been a combination of all those things.

Q. I know this is redundant, but at no time did you ever get any feeling that any civilians had been killed?

A. Not other than in the course of the preparation or the heat of battle.

Q. What was your impression as to what instructions you had given to General YOUNG and what his responsibilities would be thereafter?

A. Well, I looked upon him as exercising primary operational control of the 11th Brigade or that sector of operations in the division area. I felt that anything that was investigated with respect to the operations down there, he would see that it was carried out and would certainly be privy to anything that I eventually saw and would really review it before I ever saw it.

Q. Well, can you tell us what you next heard about this incident and the investigation?

A. The first time I ever had any report from the investigation, I think, was the time General YOUNG came in slightly around noontime and told me the results of HENDERSON's interrogation of the helicopter pilot.

Q. Did he say pilot or pilots?

A. Well, there was only one pilot that I knew of that was really involved at that time. We were going to interrogate all of them, but the one that I was primarily interested in was the one that had had the confrontation and that had passed his observations along. That was the one that we focused on. Now, we knew there had been other pilots in the air, and I definitely had the impression that other pilots were talked to sometime during the course of this. But this discussion I have in mind concerned one pilot.

Q. Again, what did he tell you about what Colonel HENDERSON had concluded as result of his discussion with the pilot?

A. Well, it was generally to the effect that he felt the pilot had been confused and that he was a young man who had become overly excited and had probably imagined some things that hadn't really taken place. It was generally along this line.

Q. He didn't tell you that he talked to one of the gunners on the helicopter or that he had talked to another one of the gunship pilots?

A. Who, General YOUNG or Colonel HENDERSON?

Q. General YOUNG reporting who had talked to Colonel HENDERSON.

A. No, sir. To the best of my knowledge, he didn't pass any of that.

Q. Well, one of the problems we have here is that Colonel HENDERSON would indicate he talked to THOMPSON for about 5 or 10 minutes, and that was all. But Warrant Officer THOMPSON indicated it was a much longer time than this.

A. I recall that I had heard in terms of half an hour.

Q. Well, THOMPSON recalls 20 to 30 minutes.

A. I don't know where I get this. I just recall I thought it was an extended discussion.

Q. And subsequently, according to the testimony we have, he talked to Specialist COLBURN who is a doorgunner with Warrant Officer THOMPSON, and he talked to one of the pilots of the gunships who was flying about 50 feet off the rear of THOMPSON's H-23, a chap by the name of CULVERHOUSE. They both come through loud and clear about what they had to tell him.

A. To the best of my knowledge, that was only--

Q. (Interposing) And it's not a story of a wild, distorted aviator. It's the story of an aviator that that morning had observed 10 to 15 civilians killed on a road, and he also saw about 5 or more wounded civilians just north of the road which he marked with smoke and saw the ground troops come over and, when he got back into the area later, these people instead of being evacuated were dead. It's a story about seeing a group of bodies in the village, a story about landing along side of a ditch that was filled with bodies and talking to an American sergeant, perhaps colored, who, when he finally departed, was over at least pointing his rifle again in the direction of the ditch. It's the story of the confrontation I just told you about. It's also a story about returning to the ditch and the crew chief and the doorgunner going down into the ditch amongst all these bodies and pulling out a young boy that was still alive and flying him to Qui Nhon. It's a story about seeing 75 to 150 bodies.

A. I didn't receive any of that.

Q. So it's not a wild, distorted story from a helicopter pilot.

A. I appreciate that. Did General YOUNG recall what he told me on this occasion, because previously, as I recall, he hadn't remembered this?

Q. General YOUNG is strong on confrontation. He's strong on people being caught in a crossfire. He did not have the benefit, according to him, of at least 20 civilians having been killed. He did not know that.

A. But doesn't he recall relaying to me the gist of the HENDERSON interrogation?

Q. He does relay the fact that he had, of a recent date, told us that he had--

266e

A. (Interposing) That's one of my milestones. I could see it as if he were sitting here now. But he relayed none of the side that you told me about; that I have not heard.

MR MACCRATE: General KOSTER, you made one reference to special responsibilities of General YOUNG by area. What was the general division of area responsibility as assigned to him?

A. Well, he generally was responsible for the operations around Chu Lai, the defense of Chu Lai and to the south of there, not that this precluded or excluded him from going up and observing the operations and participating in whatever was going on to the north. But we had an understanding between General RYDER, before he was here, that I looked upon General RYDER to look after the southern sector primarily while I devoted most of my time to the northern area. And when General YOUNG succeeded General RYDER in this regard, I'm not sure I set it out in a directive as such, but that was our modus operandi, so to speak.

Q. Well, in this regard--

A. (Interposing) And I think this was particularly true, and I believe I did emphasize this to him at the time the 11th Brigade CG departed, that this would require a little closer supervision on his part.

Q. Well, in this regard, I would have expected, therefore, that he would have been the one in special contact with this operation on the 16th as it was going forward.

A. Very definitely.

Q. Do you have any recollection of his being in the area at all on 16 March while the operation was going forward?

A. No specific recollection, because I really don't have that much recollection about myself.

Q. Well, General YOUNG has told us that he was not in the operational area that day. He places himself up in the operational area to the north of Chu Lai.

IO: 196th and 198th area.

MR MACCRATE: In the Wheeler-Wallowa operational area.

A. This would have been entirely possible, particularly if he knew I was going to watch a portion of the CA. It's entirely possible he went the other direction to avoid having too many people overflying the area.

Q. Now, with respect to what you understood about the nature of the complaint, what was your understanding of the operation that day as to the contact that there had been with enemy forces?

A. Well, I understood that there had been some initial contact, that it hadn't been a heavy nor sustained hard contact, but there had been enemy in the area sufficient enough to warrant continued firing.

Q. Did anyone tell you that there had been actual enemy fire?

A. Yes, sir. I am sure I had that impression.

Q. Continuing for any period of time?

A. I'm not positive. I believe at some time during the course of this, I did have the impression that there had been some resistance someplace throughout the operation through most of the morning, anyway.

Q. Well, in this report of the helicopter pilot's complaint, was anything said about enemy fire?

A. No, sir. I don't remember that anything was said about it.

Q. Any suggestion that the helicopter pilot had braved enemy fire to put down?

A. I would have said if he would have landed his helicopter in that particular area, there wouldn't have been much enemy fire or he wouldn't have been there. I certainly got the impression that there wasn't any fire at the time he landed on the ground.

IO: Well, when General YOUNG was telling you the story about the warrant officer, was he referring to you about civilians getting caught in a crossfire?

A. I don't recall that that was part of the discussion

at the time. It was more the confrontation and the reliability of the helicopter pilot and how he saw the battle in being as opposed to how it would have been to the individual on the ground.

Q. At any time during this period from about the 16th, 17th, up to the 20th, was there any feeling that instead of looking into the helicopter pilot's allegation, to look into the helicopter pilot himself, that he may be the one that's creating this problem?

A. Well, I guess this could have been the connotation drawn from the results of HENDERSON's interrogation.

Q. We'll come around to HENDERSON's report to you in a little while again.

(The hearing recessed at 1456 hours, 18 February 1970.)

(The hearing reconvened at 1503 hours, 18 February 1970.)

IO: The hearing will come to order.

RCDR: All persons present when the hearing recessed are again present.

IO: Going back, General KOSTER, to the sheet which I have provided you (Exhibit M-119), you'll notice on the 18th you were at LZ Dottie. We have it from two different logs: one, that you arrived at 1345 and departed at 1405, and the other would have you arriving at LZ Dottie at 1410 and departing at 1450. That's on the 18th, which is a Monday. This is the day after you had talked to General YOUNG and had told him to issue instructions to have an investigation conducted. Do you recall your visiting LZ Dottie that afternoon?

A. Not specifically. It was my practice to get to these places every other day or so, and I don't particularly recall this.

Q. But at this time, General KOSTER, to bring it down to focus, you had some familiarity with the operation. You knew that some people had been killed. You also knew that you had received a report of some indiscriminate firing, and you'd also received a report that there had been a

confrontation between the air and ground element, and you're coming down here and, you're talking to Task Force Barker.

A. Yes, sir. I'm sure I talked to BARKER about the operation, about these discrepancies, and I think I was reassured by him that things had been normal.

Q. Did he tell you whether or not he had been on the ground or done anything that he could verify this from?

A. I don't recall the details of the conversation.

Q. Well, just about this time that you were there, they were starting to lift Charlie Company out of the field. This is on the afternoon of the 18th. Charlie Company was up in the area of My Lai (1), probably on the south side of the Diem Diem, although we have had some people say that it was on the north side. They would have to cross the bridge or causeway to get over there. They were starting to lift them back in. Did you see any of Charlie Company return?

A. Perhaps I saw them. I'm reasonably certain I didn't speak to any of them. And I do recall them coming in at the time I was there.

Q. Do you recall speaking to Colonel BARKER there or Colonel HENDERSON?

A. I don't recall it specifically, sir.

Q. Well, I would have imagined that at this point, having this information, you would have been quite concerned.

A. Yes, sir. I'm sure if there--

Q. (Interposing) For this reason, it would appear to me, very frankly, that you would remember these conversations, because you would be the one to address the issue.

A. The only one I can recall, and again I'm not sure whether it was on this occasion, but I remember talking to both of them on different occasions where they reassured me that the operation had been conducted the way it should have been conducted. I can't recall that it was at this time as opposed to other occasions when I was there or on the telephone possibly, but I'm sure that every time I saw them, we talked

270e

about this subject. I would agree with you there. But at no time did I get the feeling that they had misgivings about what had gone on.

Q. When you were there on the afternoon of the 18th, did you see any unusual smoke or burning off to the east down toward the coast, the area of Pinkville?

A. Not that I recall. No, sir.

Q. When you were, on the 17th, en route to Duc Pho in the morning or on your return from Duc Pho in the afternoon, did you look out to the east and see large volumes of smoke in the area of Son My Village?

A. Not to the best of my knowledge, I didn't. I don't recall that I did. I don't recall that I saw great burnings at any time in that area of the operation. I had seen them in other locales, but not in that particular locality.

Q. Well, I am sure that it will surprise you to learn that not only was the village of My Lai or Thuan Yen burned, but the lower part of this subhamlet to the north was burned, a subhamlet called Binh Tay. Another hamlet which on the map shows up as My Lai (5), which actually is Bing Dong, was likewise burned, at least the lower half of it south of the river, and perhaps the northern part of it.

A. And this was as late as the 18th?

Q. Still going on on the 18th. What I'm telling you about happened on the 16th. On the 16th also one subhamlet in the area of My Khe (4), on the coast where Bravo Company was in, a small subhamlet was burned there. And the following day three subhamlets, Co Lay (1), Co Lay (2), and Co Lay (3) were burned to the ground. And also My Khe (2) and My Khe (1), east of Hill 85, were burned to the ground. That was on the 17th. And on the 18th, another village or subhamlet generally east of My Lai (1) was also burned. And that's the reason I'm asking whether you saw any smoke or not.

A. No, sir, I did not. At no time in that area did I see fires that I wouldn't have determined originated probably because of some fighting going on.

Q. The only resistance they received over there was

a little bit in the area of My Khe (4) by the bridge, but aside from that there was nothing but a few mines, and that's about it. Charlie Company had one man wounded on the 16th; shot himself in the foot. Now, getting back to division headquarters, did Colonel PARSON ever tell you or advise you or inform you or question you in any way concerning a report which he'd received from Chaplain LEWIS?

A. Not that I recall, sir.

Q. Well, I told you this helicopter pilot was mad. He was real mad. He didn't think he was going to get proper treatment, so he went to the chaplain of DIVARTY and told him exactly what he saw. It was a sordid story. This chaplain in turn related it to your division chaplain.

A. I never got any information that came through the chaplain's channels.

Q. What would have been the proper channel for the chaplain?

A. To go to the chief of staff or come to me.

Q. And what about the DIVARTY chaplain?

A. I would say he could have gone to his commander and told him.

Q. Is there any reason to keep a thing like this, to investigate something like this, in chaplain's channels?

A. Absolutely not.

Q. On the 20th, what did Colonel HENDERSON tell you?

A. I'm not sure of the date. I'm not sure that he gave me a full wrap-up at one time. It seems to me the bulk of what he did tell me came at different times when I saw him or talked to him. I feel that he told me of interrogations of both the ground elements, commanders primarily, and many of the aviators.

Q. Did he tell you how he talked to personnel on the ground?

A. Well, he told me that he had met many of them

as they returned into a landing zone. He didn't specifically tell me at that time that he talked to them as a group. The information he had from the commanders would have caused me to judge that he talked to them as individuals as opposed to part of a larger group. I got the impression, though, very definitely, that he talked to a lot of people.

Q. Did you get the impression that he had conducted quite a thorough investigation?

A. Yes. It was my impression that he had talked to enough people so if something like this had in fact taken place it would have surfaced.

Q. Well, as I told you, Mr. WEST has talked to about 70 people in Charlie Company, and these men wanted to talk, but they never did. Let me read you what Colonel HENDERSON indicated. This is part of a response to one of the questions. He said:

> "It was about the 20th of March, when I had a meeting at the division to discuss the rice-denial operation scheme that was being presented, and all the brigade commanders were to be present. I even went up early or I stayed after the meeting. I do not recall at this time, but I went into General KOSTER's office and gave General KOSTER, first, all the cards that Colonel BARKER had provided to me 3 or 4 days before this, and explained to him that this was the civilian body count, and the civilians that had been killed in the area, and the way that it had been reported to me that they had been killed. I went into the warrant officer's allegations made to me, the fact that these could not be substantiated. I informed General KOSTER, whom I had spoken to about the allegations, that I just did not believe there was any truth to the allegations except on this one incident where MEDINA had killed a woman. MEDINA openly admitted it. His response was immediate and General KOSTER accepted my report or I wouldn't say chewed me out but he let me know in no uncertain terms that this number of civilians in an operation like this, regardless of the intensity of fire, was unacceptable. I was not directed to further my inquiry nor did I as commander feel that anything further was dictated by the information I had at this time. On or about

> the middle of April, the next thing I heard about this report I believe was this attachment (looking at Exhibit R-1). It was either this one or a letter. The letter is attached to my report of investigation dated 24 April."

And he obviously is referring to this statement. So on this point he is saying that he reported to you and the matter was dropped.

A. Yes, sir.

Q. At a later date, he indicated that he thought that he had prepared a written report, that he had been directed to prepare a written report and had submitted it.

A. I received a written report--

Q. (Interposing) About the THOMPSON allegation, not about this allegation, not about the 24th of April, but--

A. (Interposing) Well, it incorporated the statements of the individuals listed here, plus others.

Q. Yes. Well, that would have been the formal report, then?

A. Yes, sir.

Q. Subsequent to the 24th of April?

A. Yes, sir. Or if my timing is wrong, I could have told him at this stage to put it in writing, but I think it was subsequent to this one.

Q. Was anybody present during his report to you? Did anybody else know about this?

A. I don't recall. I do recall Colonel HENDERSON being in prior to this meeting he spoke of. I don't recall if anybody was there at the time. I don't recall that he really told me anything at that time that he hadn't been telling me during the course of the last few days, either from him or through General YOUNG, because it seems to me that General YOUNG kept me posted on this to a certain extent, too.

Q. So this wasn't a formalistic kind of oral report

or briefing to you?

A. I've never looked upon it as that. He stopped at the office. He had his foot in a cast. He had been hit some time, and I'm not sure whether he carried anything with him. He was coming up for that meeting and he wanted to see me, I'm pretty sure it was before the meeting, to discuss the results of his investigation.

Q. Are you sure he had his foot in a cast at that time?

A. It seems to me that he did, sir.

Q. If so, it wasn't on the 20th.

A. 20 April?

Q. No, he's talking about March.

A. Well, I don't relate it to that time. I relate it to when I thought we talked about rice-denial at the time he came up with his foot in a cast, which would have been at a later date.

Q. He wasn't injured until the 21st.

A. Right.

Q. And I think it was a couple of days before he had his leg put in a cast.

A. But the reason I thought we had the rice denial discussion, and we had a group picture taken, and HENDERSON's got his foot in a cast in that picture. It was on that occasion, I know he stopped in the office sometime before the meeting.

MR MACCRATE: Do you have a copy of that picture?

A. Yes, sir.

Q. Might there be a date on the picture?

A. We know exactly the date of it. I'm sure there are people who know the exact date that meeting took place. It may be on the back of the picture, too.

Q. Was he seated in the front row?

A. Yes, sir.

Q. We had this meeting described to us. Someone else recalled it, because he came in and the place had to be arranged for him, because his leg was sticking straight out in the cast, something of this sort.

A. This might have been in the meeting room. I don't recall. In the picture, he is in the front row.

IO: We'd like to have a copy of that picture, and if you can affix the date to it, it would be helpful.

A. Yes, sir, I think I can tell you the exact date.

MR WEST: With regard to General YOUNG's report to you of what WATKE and HOLLADAY had told him, I believe it was brought out, according to his testimony, he had not informed you of the report from the helicopter pilot of seeing numbers of dead civilians. I want to tell you that this is consistent with General YOUNG's testimony here. He's been before us three times, I think. With regard to the My Lai incident, his consistent testimony is that he was never informed of even one civilian having being killed during that day. Nobody ever mentioned it to him. So this would be consistent with his not--

A. (Interposing) Yes, sir.

Q. I want to move back to another subject, General KOSTER. When you were first here, it must have been the 15th of December, General PEERS asked you if you had a hand in the planning or the operation of the Son My operation which began on 16 March 1968. And you answered:

> "I did not participate firsthand in the planning of the operation. As was common practice, I'm sure I was briefed on the plan. I'm sure I was told that coordination would be required with ARVN since it was outside the area of operations. I'm sure I allocated the airlift to carry the troops in, because that was normal practice."

A little later in the questioning you were asked:

"Q. Would you normally be the approving authority for the operation, or had you delegated such approval to the brigade commanders for operations within their AO's?"

And your answer was:

"A. Very definitely operations within their AO, and really, it came to division for allocation of resources or for a turn-down if we were using the resources elsewhere. But other than that, if we could support the action, we normally supplied the resources. I was told in the evening briefing, or a subsequent planning discussion, about such types of operations. It was well within my power to say no, go, or something."

It's not entirely clear to me from this whether you had approved this Son My operation in advance. We had some testimony that the operation had been planned for some time and that in some stage General LIPSCOMB had briefed you on it and obtained your approval.

A. Yes, sir. I'm reasonably certain he had probably mentioned it to me, because it was somewhat different from the normal operation in that they were going into the ARVN AO and that required coordination there. General LIPSCOMB normally told me of the areas that he was looking forward to going into or was planning for.

Q. Well, as a matter of fact, could any operation of a battalion or larger size be launched without your explicit approval?

A. It would be pretty difficult for them to launch it without my knowledge, because we allocated the resources for them to do it.

Q. No, I don't mean that. I mean without your approval of the concept and planning.

A. Yes, sir. They could launch them without my looking at a plan in detail.

Q. In this particular instance, there was no written plan.

A. None that I ever saw.

Q. There was a map that was marked up and there may have been an overlay or two, but there was no plan in writing. Nothing had been submitted in writing to division or even to brigade. This is why he had inquired earlier about the approval and been informed that General LIPSCOMB had briefed you on that. Do you have any recollection of how much information you were given about this upcoming operation?

A. No, sir. I'm reasonably sure that he probably outlined the fact that there would be two blocking companies, one would get there over land, and the other two were air assaulted, and the general scheme of things. But I don't recall that I even focused as to exactly where it was on the map, one of these little villages as opposed to another one. The one that had been the primary target was the one on the coast, and the only time I really heard Pinkville used was for that one right on the coast as opposed to any of the others.

Q. Yes, it is marked on the map as My Lai (1). Well, there evidently was a practice among the troops in the brigade and Task Force Barker, at least we heard it from Charlie Company, to call this area Pinkville. But you don't recall anything in particular about the objective or the content of the operation?

A. No, sir, other than there was to be one company blocking and the other two were to be in more of a mobile role.

Q. Well, we have had considerable evidence on this. The operation had been in the planning stages for some time. It had been due to kick off a little bit earlier and was cancelled at the last minute because intelligence was received that the enemy had pulled out of the area. And they got it laid on again. There are some significant things about the planning and the orders that were given that I think should be brought to your attention. Perhaps you can give comment on these for us.

In the first place, there had been considerable discussion by Colonel BARKER about the fact that this area had quite a number of inhabited villages in it. The people there, the civilian population, had interfered with operations and were a hindrance. They had been in there before and had a rough time. The people had interfered with the operations. They had gone to the ARVN's and discussed the possibility

of some kind of a joint operation with cooperation so they could come in and move the inhabitants of the villages out. And they got no place with this. They were told that the relocation centers were full. So this handling of things was just dropped.

Just before the operation kicked off, and I assumed it was part of the planning, part of the instructions or guidance given to the company commanders, the intelligence was given out that the 48th Local Force Battalion was back at strength and they were holed up in this village that's marked as My Lai (4), which is actually the subhamlet of Thuan Yen, and that there would be 250 to 300 VC in there. Charlie Company was due for a hard fight.

Coupled with this was a statement that people of the village would be gone to market by 0700 hours, and nobody would be left in there but VC or VC sympathizers. Therefore, they planned a CA to insert a company about 0730. They would start out there at My Lai (4).

Now, this intelligence, we couldn't find any support for it. Your division's G2 information was that the 48th Local Force Battalion had been very badly mauled in the attack at Quang Ngai during the Tet and had pulled back into the mountains to regroup, to recover, and to recruit people. The most he could say is that there might have been in this AO, all up north through this general area, (indicating on Exhibit MAP-1)--that there might have been some elements of the 48th Local Force Battalion in there.

A. Well, I think this is the area where they would have gone to recruit over in here (indicating the coastline area on Exhibit MAP-1). Back in the mountains, there was nobody to recruit.

Q. Well, at any rate, we talked to Colonel TREXLER about this. The most he could put in that area at this time was possibly some elements of the battalion. He had no information that they would be in there in strength.

Secondly, no plans whatsoever were made for dealing with the civilian population in the hamlets of this AO in which they were operating, and there were quite a few inhabited hamlets. There were others that had been razed, and the people had just gone, and nobody lived there anymore.

No plan.

Thirdly, the artillery preparation, as far as the preparation for Charlie Company's insertion, was deliberately planned to be put on the hamlet Thuan Yen. Not on the landing zone, but on the hamlet. That's where it fell except for a few stray rounds that hit in the landing zone.

Another point is that Colonel BARKER issued the orders to the company commanders, and he, among other things, told the commanders that he wanted the buildings knocked down, the hootches burned, the defensive positions destroyed, and the livestock killed or run off. I won't go into details as to what MEDINA and MICHLES ordered their companies to do. As General PEERS indicated, I am very familiar with the orders that were given to Charlie Company, that in effect told them, and they got the word, that they wanted everything living killed. But even laying that aside, I wanted to ask if you were aware of the nature of the plan and the orders that were given?

A. Not of these particular things that you have just spoken. No, sir.

Q. Well, these are facts. This is the evidence. This is undisputed seriously. Some people don't remember hearing all the elements, but a good many people do. This is the evidence as to what happened.

A. Well, this was not sanctioned by anybody from division, I'm reasonably certain, nor at any time during the investigation did this type of directive surface.

Q. Well, I think you can see why I'm asking. Before we let the record stand, which has some indication that you approved the plan and, in effect, approved of what happened, I think you should know that this was the plan, and these are the orders, and this is what happened.

A. Well, to me, that was not the plan that was ever presented to me nor was it ever indicated that those would be the orders that the troops would have when they made their assault.

Q. I understand. I don't contradict you at all. However, this is a rather serious thing we're faced with. Somewhere, somebody up the line sanctioned burning, the

burning of these populated hamlets in this area, the killing of the livestock, not even discussing whether they sanctioned or directed the killing of the unresisting inhabitants, the Vietnamese people. Now, BARKER, in his briefing, with a lot of people around him,--HENDERSON opened the ballgame; he led it off. They're in a tent outside the TOC, quite a few around them. He openly issued orders to burn the houses, and this is what they did--methodically. The killing went on equally methodically for some time. Then the word came down to stop the killing. That was after the word had gotten out through the helicopter pilots and the gunship pilots and others who saw this taking place were outraged and talked about it over the air. But they didn't give the order--the great bulk of the evidence is that there was no order given to stop the burning, and that went on into the third day.

I think you can see why we have been asking you about it, what burning did you see. It is difficult to understand how you didn't see it. There is a question as to how much smoke there really was. There is no question about the fact that six, seven, eight hamlets were burned.

As far as Charlie Company is concerned, the first and second squads went through rapidly. They got through in an hour or less. They met no resistance. They met old men, women, and children, and babies. They methodically cut them down as they found them or rounded them up in groups and shot them. The 3d Platoon on this mission was to burn. They burned.

Now, a great deal of this was known back at the Task Force Barker TOC from about 0840 on, including the time that you were there. And this is the reason for putting some of the questions to you about what you were told. BARKER had been overflying the area, and HENDERSON and his passengers had been overflying the area, and they had all come back to the TOC. Two or three things happened about this time. One was that no more reports of VC KIA came in for that day. The second thing was that the word went out to stop the killing. Someone up the line either openly or tacitly approved of the operation in which the houses were systematically burned and the livestock killed. All against the division orders, I understand that.

A. Yes.

Q. Could you help us on that point? Do you have any idea who sanctioned such a practice against division

regulations?

A. It wasn't sanctioned by division. That's the only thing I can say.

Q. Have you had any problems of this nature or any trouble like this before or people taking things into their own hands, maybe thinking they knew how to run the operations better than you did or thinking the division policies were too restrictive?

A. No, I don't believe so. We had had some violations, one which had resulted in my having a meeting of the brigade commanders. This occurred up in the northern sector, and another along the coastline once where, in the course of an operation, there was a fire fight going on. But, nevertheless, it appeared that there had been some burning, and I stopped that one in the course of it. It was an operation by the 1/1 Cavalry.

Q. I don't question the division policy at all. I understand what it was. The question was in the practice. But here we have a plan or an order given.

A. Well, the plan, insofar as involving this sort of thing, was never presented, I'm positive. As far as how they were ordered to implement it, apparently you have researched this, and this is what they were told. But it didn't emanate from division headquarters.

Q. We have sworn testimony from several people that BARKER gave his orders to the company commanders and this was relayed, of course, by the company commanders to the troops. Had General YOUNG been made aware of such things going on in the brigades? He was the manuever ADC. He spent all his time with them, I assume, going around checking operations.

A. Well, I'm sure he was aware of the incident of the burning of the houses in the northern area. I would have thought he would have been aware of one in which I interceded to stop the action. And other than those two cases, I don't know of any other.

Q. Well, I think you can see my thought. Here is BARKER--

A. (Interposing) And I must say that General YOUNG

wasn't really in that position at that time. He was really working in the supply business then. That is, he was the ADC for support.

Q. I understand. Well, you see my inquiry: we have BARKER openly giving this order as if he were confident that this has the approval, expressed or tacit approval, of somebody above him. If he could do this openly in front of people, quite a group of people, somebody up the line, I would think--

IO: (Interposing) As one reviews the instructions that were issued, one gets the view of going in and completely neutralizing this 48th Local Force base center.

A. Well, the area I would have picked as the local force base area was clear out here along the coast (indicating the area generally of Pinkville on Exhibit MAP-1) as opposed to the hamlets on in further. Of course, that place was nothing but a bunch of rubble anyway. I know they had gone in there on many occasions and tried to blow the dugouts and tunnels, and I knew that this was a continuing thing. Every time we went through there, we tried to blow a few more of them. But there was certainly no indication that they ever stayed and fought in any of these other villages. They went in, and they recruited there, and they lived off the areas, but I wouldn't have said it was a base area to the extent that this place was up here and along the Batangan Peninsula itself.

MR WEST: Well, they were told that he is there and that they're going to have a hell of a fight in the morning. Move in shooting as you move and don't stop. Just blast right on through. And they blasted right on through. Only old men, women, and children were there. Now, General PEERS mentioned a moment ago the impressions left with us were that the plan was to neutralize the area. This is consistent with some of the testimony, about the population interfering with operations. Were there ever any plans to try to remove the population of the area?

A. Not in that area. I didn't really look upon that area as our primary concern. This was the primary concern of the 2d ARVN Division. And although we knew he jumped back and forth across what he knew was the boundary, too, and we encourage operations on both sides of the boundary, I wouldn't have said the division would have ever taken it upon itself to relocate these people. I don't know if I

would have even encouraged ARVN to undertake the relocation of people in those hamlets, because it's just an impossible task. You wouldn't have had any place to put them. You can move these people out, but there are so many villages back in here that you just don't have any place to put them and no place to keep them. I'd say that it wouldn't have been worthy of a proposal.

Q. Under the circumstances outlined, would you say then that any sanction given to burning and the destruction of livestock, that type of operation must have been the brigade's or lower level?

A. Absolutely.

IO: General KOSTER, on several occasions in the past you have indicated that your attention was focused to the north, and that you were spending a great deal of time up there, and that General YOUNG was looking primarily to the south. We have here a map (Exhibit MAP-9) which was prepared for us by the ODCS office to point out the operations that existed during the months of March, April, and May. I wonder if you could take just a few minutes for the record and review the operations that were being conducted and where you were focusing your primary attention during the various periods during the later part of March, April, and May?

284

A. Well, as I recall, we had some changes of disposition, and I forget when the last unit left us. And this all started really with the Tet Offensive which hit us in the Que Son Valley. This started in January. It really preceded Tet. The 1st Cavalry Division was there. Shortly after that battle was over and this would really be the most significant attack that occurred, they moved on north. First, the 3d Brigade of the 4th Division went up into that area. The 196th, elements of it, went to Danang and we had a small-size pincher movement in this general area. Before that, the 4/3 had gone into the what we call the Muscatine area, the area just north of Quang Ngai. And, when the Cav left we had to move them up there. I guess this is when BARKER originated, because we just needed to spread the forces a little thinner than they had been. They left only one battalion down at Quang Ngai in the area that not too long before that had had a whole brigade. There was one battalion there. There was one battalion west of the road in the Muscatine area, and Task Force Barker was on the other side of the road, and as I recall, one of the battalions of the 11th

was on up in the northern area. We needed to beef up the 196th.

Sometime during this same time, the 3d Brigade of the 82d came along, and we were responsible for training them. We put them through a training school in Chu Lai and tried to put them out at least on the perimeter of Chu Lai before they too went north.

Then the 3d Brigade of the 4th Division was then removed from us and went on back. This meant an expansion of the 196th. As I recall, I had two extra battalions. One from the 11th and one from the 198th. About this time, all three of our brigades were originally scheduled to get fourth battalions, and they diverted one down south and the other two new ones arrived.

This afforded some relief, but again you had to go through the initial training phase, and then they worked into an area of operation. So this was what the next training concerned.

We planned two operations after we recovered from all this shifting and occupying new territories. We generally had planned two operations. One was in the Burlington trail area, which was to open the road into Hip Duc; and the other was Norfolk Victory, which was to go into the hills along with the 2d ARVN Division. This was the normal route employed when they attacked Quang Ngai coming out of these hills. Again, we wanted to encourage the 2d ARVN Division to get out a bit more than they had.

This had been a very dry area down in here (indicating the lower portion of the map and to the coastline). There was the normal type of activity along the coast, but there were no real organized units of any significance. We felt that this was an area where they would organize. We thought it was an area that they used as a base area for resupply and the results of the operations there would indicate that they had brought in significant arms caches, although I wouldn't say this is the place they would come to make their attack from and be reequipped. When they're in the process of rebuilding and recruiting, I'd say they do most of that from the more heavily populated areas, and there is no population up in these hills here. We knew that all along Route 1 here, particularly south of Chu Lai, they were heavily engaged in training sapper units. The experience along Highway 1 would indicate that they were giving them some

firsthand experience, because that type of activity increased along that highway. This could account for many of the people not being armed with weapons, because when they carried the demolitions and worked with demolitions and when they're out recruiting and in some of their training, you find that they have some of their weapons stuck away someplace just to make them a little less obvious. But there was that type of activity in this area.

This was not a heavily contested area right there, although we did run into some units up here. And as I indicated, we found some rather significant arms caches (indicating on Exhibit MAP-9). There had been a supply ship during Tet that was destined, we think, for this area right in here (indicating north of Duc Pho), but actually made a landing at Duc Pho right on our beach, and they blew it. That would have been a thousand weapons or so that would have been available for reequipping up in here (indicating). Of course, that was the site of a previous landing when the Korean Marines took the cargo intact.

The Burlington Trail Operation: not a lot of activity and significant action at the time we opened the road and started repairing it. But I would say that there was much more of a reaction on the part of the enemy. I don't think he ever liked the fact that we kicked him out of the Que Son Valley and on into the Hip Duc Valley, because this was really his rice bowl and his area of recruiting, and so on and so forth. And when we moved into another valley very similar to the Que Son Valley going out to Hip Duc. Resistance quickened and he moved more units--not so many against the elements right along the road--but he increased the pressure on out in the Wheeler Wallowa area.

And again, at that time we were spread pretty thin, because we had the entire area there and had pushed out to Hip Duc. It was a question of beefing up that operation centered around the LZ, and it wasn't going nearly as well as I would have liked to have had it. There was a lot of resistance and a lot of shooting and a lot of mortaring, and we got troops out there and committed. They had one hell of a fight on their hands in terrain that wasn't particularly favorable for the attack and this sort of thing. We just couldn't get enough firepower in there to beat the enemy down.

So I would say this was the area that I considered

of prime importance at that particular time. In terms of the numbers of battalions being heavily engaged, I'd say there were probably only two. But we were still occupying the coastal area and in the Wheeler Wallowa area and we had jumped over into Antenna Valley, and had an operation from An Hoa on down into Antenna Valley. This actually started a little sooner than that. The 196th took that area over when the 3d of the 4th left. We retained that area mostly because we had gotten in that area and cleared it out, and we didn't want to walk off and leave it, because it was a tremendous place for the enemy to build up and launch an attack from. They're doing that right now. Now that area has reverted back to the Marines again. I'm sure they've got supply lines through Antenna Valley just like they had when we first went in there.

IO: What about the operations further up to the north.

A. Well, I lost the 196th Brigade first during Tet. Elements of it went to Danang and attacked south. Later, the entire brigade was pulled out and sent on up to Camp Evans, and they operated up there for I'd say 3 weeks to a month. At that time I still had the 3d Brigade of the 4th. At that time the Brigade of the 82d came through to which we gave about 10 days of indoctrinations.

Q. Did the Brigade of 82d ever get to operate down in Quang Ngai, or did it always remain in Quang Tin?

A. It never really left the Chu Lai perimeter. As a battalion was trained, we sent it out to the Chu Lai perimeter. As I recall, they didn't have any more than kind of a small AO on that perimeter before they left. They left in a hurry. We drew plans for them to take over, I guess, the area south of Chu Lai and on into the Muscatine area, but that was never implemented.

Q. When did the 196th Brigade go north to the area of Hue, and how long did they stay up there?

A. It must have been during the month--

Q. (Interposing) I think it might show on the board there (Exhibit MAP-9), General KOSTER. Are those correct?

A. I thought it would have been earlier than that, but I can't verify it. They did come back at the time of Kham Duc, the 1st Battalion did. So the return time must be correct. I actually thought they had gone up a little earlier than this. Before they went, though, they did take over all of this area in addition to the attack from Danang. As soon as the Danang situation cleared up, they relieved the 3d of the 4th. And that would have been, I guess, in late February. Maybe that's on here, too, I don't know.

Q. I think they started deploying down there in about, let's see, February or probably sometime in March. The 3d of the 4th started deploying down in Binh Dinh and the brigade of the 1st Cav started moving north.

A. That's right. They left just one brigade of the Cav down there, and that was the last one.

Q. Okay. I think that will be helpful.

General KOSTER, in your previous testimony, you indicated that the 123d had been organized only a short time before then, and that it was causing you some degree of a problem. We also know that a great part of the aero-scout element of the battalion worked with Task Force Barker. We also know that in this operation, there were some unusual things in terms of a high body count and a low weapons count and, also, we did have one report of 69 VC being killed by artillery, which is an unusual thing under the circumstances, knowing the amount of artillery that was fired. And we also have this complaint of this confrontation between the aviation and ground elements. I think you indicated that Colonel HENDERSON's report to you was that the statement of this pilot, who had made the report, couldn't be substantiated. There was no foundation for his allegations, so to speak. While it was true that some civilians had been killed, it was a result of artillery fire, gunships, and so forth. But there was no killing of civilians. The fact was that there had been a confrontation. Well, with all of this information, did you initiate any action to have somebody take a critical look at the aviation battalion to get that battalion straightened out?

A. Well, there were numerous actions that were taken with respect to the aviation battalion. I know I had discussions with Colonel HOLLADAY regarding it. I had discussions with, I'm sure, the assistant division commanders on different occasions about their difficulty. We recognize that it was a brand new unit formed by pulling people from various units throughout Vietnam. Recognizing that the individuals we got to come to it weren't the ones that were probably most needed in their own unit, we felt it was slow developing, but we were reassured, I guess, by Colonel HOLLADAY. He thought this was something that was within his capability of handling. And from an operational standpoint, they appeared to function quite well, even though they had been people who had been flying--particularly the provisional unit we had there, the aero-scouts--even though they hadn't been particularly trained for that type of activity. We thought that it was a unit well worth having. The others caused no operational problems as far as I know. They were functioning in missions that they had all functioned in before.

Q. Do you recall any specific instructions that you had issued to Colonel HOLLADAY subsequent to the time that Colonel HENDERSON had reported to you the fact that this aviator had jumped to some unwarranted conclusion?

A. I can't recall whether I discussed something like this with Colonel HOLLADAY, or General YOUNG, or with whom I had discussions. It occurs to me that I undoubtedly did have some discussions with somebody, but I don't recall them specifically.

Q. Well, we had received this allegation from the warrant officer, and I, frankly, would think that somebody would be concerned about a warrant officer making an allegation like this. But there is nobody going back to the warrant officer and telling the warrant officer: "No, that isn't the case. You may have thought you saw something, but it really wasn't that way." And to the other pilots that were part of the reporting system.

A. I guess I must say that I probably looked to General YOUNG to get this straightened out.

Q. Well, let me read just a little bit here. This has not so much to do with the report of Colonel HENDERSON, but I think it is a pretty good thing. This is reading something which you had written and released as a statement at the time that you appeared before the investigating subcommittee. You stated that:

> "During the next few days, Colonel HENDERSON, who is the commanding officer of the 11th Brigade, made several verbal reports either directly to me or through General YOUNG in which he indicated that he had talked to several men of the company including noncommissioned officers and officers and to many of the aviators who had flown over the area in support of the operation, including the helicopter pilot making the initial report. He found no evidence of unnecessary firing, but did report approximately 20 civilians casualties, which he conjectured had been inflicted either by artillery, detonation of booby traps, fire from helicopter gunships, or the firing of M-79 grenades, or rifles by ground elements at signs of movement as opposed to identifiable individuals. He also reported that civilians had left the area during the operation. The entire area of operations was normally heavily booby trapped, since there had been an almost unlimited supply of mines left in place upon the departure of the Korean Marines. General YOUNG spoke particularly of HENDERSON's interview with the helicopter pilot and, as I recall, indicated that there were discrepancies in the stories. HENDERSON felt that the aviator had undoubtedly seen some bodies, witnessed soldiers firing, and had jumped to an unwarranted conclusion. It was my belief that Colonel HENDERSON had interrogated all of the individuals concerned with the action who had positions of responsibility insofar as the U.S. forces were concerned."

And you went on to say:

> "About a month later, there appeared some Viet Cong

290 e

> propaganda leaflets which denounced the U.S. forces and their operations in the area. In addition, reports from the local district chief were received regarding civilian casualities in My Lai, which were passed through both Vietnamese and U.S: channels. It was not clear to me whether this report was based upon the Viet Cong propaganda leaflet or not. This type of accusation made in these leaflets was not particularly unusual, but when related to the helicopter pilot's report, further investigation appeared warranted to insure that firepower had not been over utilized by the attacking troops. About mid-April I directed Colonel HENDERSON to prepare a further report and to reduce his verbal report to writing."

I read this because, if you recall our initial discussion this morning had to do with the district chief's report, and here we come back to something that was said well before then.

It says:

> "About a month after then (which would put it in the time frame of about mid-April), there appeared some Viet Cong propaganda leaflets which denounced the U.S. forces and their operations in the area. In addition, reports from the local district chief were received regarding civilian casualties in My Lai, which were passed through both Vietnamese and U.S. channels."

A. Yes, sir.

Q. Can you explain that to me?

A. I can explain it in the fact that I saw the report of investigation, and that's what was appended thereto, or this report that HENDERSON sent with the attachments, and I assumed they were the same attachments that were on the original report. I have no reason to think they weren't there when probably I considered both of them, although what I firmly remember is the VC propaganda.

Q. Yes, well, this gave me the impression that there appeared some Viet Cong propaganda, and in addition, the local district chief's report. The way this is prepared, it appears as though these were received by you.

A. I don't know whether they were received by me or not, initially.

Q. Of course, you then go on to say, you see, "About mid-April I believe I directed Colonel HENDERSON to prepare a further report and to reduce his verbal report to writing."

A. Yes, sir. This is my sequence as I recall it, something along that line. The further report is really reducing the initial one to writing. It may not be stated quite that way there, but--

Q. (Interposing) Well, it certainly doesn't give that impression. It gives me the impression that you had the helicopter pilot's report, which you state: "But then when you take this, and when you take the leaflets, and when you take the district chief's report and add it to it, so to speak, then we issue instructions to Colonel HENDERSON to--

A. (Interposing) To reduce it to writing is what I suspect. And have it take the form of this so-called formal investigation.

Q. Well, this is really before he submitted this 24 April report.

A. Yes, sir.

Q. Because we're talking about mid-April, "I believe I directed Colonel HENDERSON to prepare a further report and reduce his verbal report to writing." The results of this, I would say, if this be so, is the 24 April report.

A. I think that's correct. And as I recall, I'm not positive that the 24th April report was done at my instigation. I have a feeling that it was. But at any rate, afterwards was when I recall we wanted it reduced to writing. Now, the exact sequence of these three, I'm not positive. That's the way I recall it.

292

Q. Well, is there any possibility at all, General KOSTER, that you could have talked to Colonel TOAN and Colonel KHIEN and directed this report to have been prepared, and the report was received, and even though you may have directed the preparation of another report or not, that a formal report was never submitted?

A. No, sir. I remember seeing it.

Q. And you're positive that the paper you saw could be related to this incident?

A. I just don't know any other incident that took place that would have resulted in HENDERSON and BARKER and MEDINA and a number of other people, plus, I'm sure, WATKE was on there, plus some other pilots, there just isn't any other incident that would have had all these people involved in it.

Q. Well, but if somebody had talked to them, WATKE, for example, or CALHOUN or MEDINA, certainly it would appear that these people would indicate that they made a statement.

A. I can't understand that.

Q. And if a statement had been prepared by THOMPSON or by any of the other pilots of the 123d, one would think that they would have indicated that they were interviewed and prepared a statement. But this is not the case.

A. I can't understand it. I'm not positive, I just don't recall whether there was a statement by THOMPSON incorporated or not.

Q. Just reading this, and if one assumes that you did talk to Colonel TOAN and Colonel KHIEN about mid-February, this would ring true and ring quite completely true.

A. I talked to them, you mean, in mid-April, or the latter part of April, or even May, because I visualize talking to them after I had all of these things. And before I say I'm not going to do anything more about this, I want to talk to KHIEN and TOAN. It's been a long time since this was done. They've had a chance to find out probably anything they're ever going to find out about it, and I wanted to make personal contact with them to see what their statements were. This is

one of the things I know I did. It was--

Q. (Interposing) Well, what about this statement here now? You seem pretty affirmative, General KOSTER. You say, "In addition, a report from a local district chief was received regarding civilian casualties in My Lai which was passed through both Vietnamese and U.S. channels."

A. I put that in there because I had this report that had been given to me by--

Q. (Interposing) That's a statement. That's not a report.

A. I must say that that's what I based that on; it was the fact it had not only been in the propaganda leaflet, but some way it had come through the district chief. I guess I got that from the statement as opposed to remembering it firsthand.

Q. Also in your previous testimony, General KOSTER, you have indicated that you had prepared a memo dated 24 March concerning the Americal Division rules of engagement. You indicated that this was the result of actually the casualties, the civilian casualties, coming from the operation of Task Force Barker.

A. I feel reasonably sure that's what I was talking about. Yes, sir.

Q. Above and beyond this particular memorandum, did you take any other positive action to insure the nonrecurrence of such an incident?

A. I'm sure I discussed it with the brigade commanders, both at times they were assembled as a group and as individuals as I went out to see them. I don't think they had any doubt as to what the division policy was.

Q. Did you also have any command conferences or anything of this nature at which this subject was emphasized?

A. I know there was one in January at which this was the primary topic of discussion, because it was after one of these other incidents further north. Probably it was discussed

294c

on at least one other occasion prior to the time of the incident with an assembled group. But I really made most of my contact with the brigade commanders at their locations as opposed to calling them in.

Q. Let me go through just a buildup of information that took place during this operation. According to what I know, on the day of the operation, Colonel HENDERSON informed you that he had seen six to eight noncombatant casualties, and although you probably didn't know it at the time you were at LZ Dottie, the body count was 90 in Charlie Company, including 69 killed by artillery. Also on that afternoon when you were talking to Captain MEDINA, the discussion was between 20 and 28 noncombatant casualties. Later that night you had a report that 128 VC had been killed and three weapons captured, two U.S. killed, and 11 wounded. Shortly thereafter you heard of the complaint by the warrant officer, which included a confrontation between a helicopter pilot and a ground commander and troops firing more than was required and also some indiscriminate shooting. Then on top of all this you had the report by Colonel HENDERSON and intermittent reports on the progress of it, and so forth, and perhaps those findings by General YOUNG. Then later on, added to all this, we have with the 24 April report, and we have a bit of VC propaganda coming out. We also have reference to the district chief's letter, which in the statement alone alleged that a total of 490 were killed.

Well, that's quite a bit of information it appears to me. Was this ever put together to have an independent impartial group or individual look at this, to investigate it?

A. No. I thought we investigated the 20 casualties rather thoroughly. The VC propaganda, although since ARVN was pursuing this further lacking any substantiation, I looked upon that as strictly propaganda and was on the order of magnitude of what you might expect them to put in as a factor if in fact you had 20 civilian casualties out there. And this is why I wanted the ARVN's to produce something that would at least cause us to think that there was any iota of significance in that report, which, to the best of my knowledge, they didn't do.

Q. Well, you see if you look at the situation, ARVN had very little capability to investigate.

A. They had some nets that were much more capable of infiltrating one of these places than anything which we in the U.S. had.

Q. But if you had been really anxious to find out what was going on in that area, it would have been no problem at all to put a battalion in there for a few days to find out what had transpired. As a matter of fact, during the course of this day, if anybody had ever been interested in it, in 5 minutes they could have found out what was going on simply by flying over the area. And another thing, even though you had told Colonel HENDERSON or Task Force Barker not to have Charlie Company go back to the area, that information or directive, I feel, was only restrictive as far as that time is concerned.

A. That's correct.

Q. Under no circumstances did it prevent them from going back the following day.

A. Very definitely not.

Q. As as matter of fact, the next day they were within 500 or 600 meters of the village when they moved south, and they could see parts of the village still smoldering when they were up on the side of Hill 85. But with all this, it still remained a small group and just VC propaganda, even though the district chief's report creeps into it here?

A. Well, the district chief passed it off as something he had obtained from the village chief out there, and he even stated he placed no particular credence in it.

Q. He didn't say that. That statement said that. But he didn't say that.

A. That is what I gathered from the statement. I guess, or at least I do now in reading it.

Q. But that's quite a serious allegation.

A. As I say, at the time, my recall is that it was a VC propaganda leaflet. Not until I examined the report do I see the statement and see that the district chief was involved

in it. I didn't recall at the time that he had made a statement or had been implicated, although apparently, having seen the report, I must have.

Q. Did Colonel PARSON, by chance, ever show you a copy of the district chief's letter to the province chief?

A. Not to the best of my knowledge. I don't recall that.

Q. How about General YOUNG? General YOUNG seems to remember quite vividly that Colonel GUINN had told him about this letter, that the province chief had received a letter from the district chief which alleged that northeast of Quang Ngai City a large number of Vietnamese had been killed by Americans. The only American unit that operated northeast of Quang Ngai, of course, at that time, was Task Force Barker. He seems to remember that he was given this information by Colonel GUINN and that he passed this information on to you.

A. I remember we discussed the fact that this had surfaced. Whether it was the VC propaganda leaflet or something else, I just don't recall. But under no conditions do I recall that it was the district chief who said this.

Q. Yes, well, the district chief was--it is true. He had received this information from the village chief, but he also had verified it with the village chief to the extent that he had approximately 400 names.

A. I had never heard that they had a list of 400 names. I'm sure I was never apprised of this.

Q. Yes. Looking back at Exhibit R-1 again, General KOSTER, I believe I know you as a senior officer. I don't think you'd let Colonel HENDERSON get away with submitting a paper like this dated 14 April without having a copy of that 11 April report available, or without knowing whose statement this was, or where it came from. I just don't think that that would have happened. I believe the first question you would have asked is, "Where did you get this statement? Whose is it? Where is this letter of 11 April? What does it say?"

A. I would have to agree with you, but I don't recall this portion of it. I do recall the VC propaganda. I do not

recall that the 11 April letter was ever shown to me. The first time I really remember seeing this statement as such was when I saw the R-1 exhibit. This is the only time I recall, sir.

Q. Well, of course, if you hadn't seen it, there had to be something else.

A. It's referred to in there, yes, sir.

Q. Because the very first paragraph says, "An investigation has been conducted of the allegations cited in Inclosure 1." Well, I would ask what is the allegation and where is Inclosure 1? Something had to be there.

A. Yes, sir.

Q. It has to be one of two things. It has to be either the statement as it's indicated or it has to be the 11 April letter from the district chief to the province chief. Mr. MACCRATE?

MR MACCRATE: General KOSTER, what was your practice as to action notes or memoranda that you gave to members of your staff? Did you write on the corner of the document the action you wanted taken? Did you have any regular practice?

A. Usually I would write on them, but I would say normally I would hand them to the chief of staff and tell him what I wanted done with them.

Q. I wondered if you had any such notation in mind when you told the CID back in November, "As I recall, I indicated on this report we would discontinue the U.S. portion of the investigation in accordance with the recommendation of Colonel HENDERSON and the staff."

A. This goes back to one of the things that I remember with Colonel PARSON in the room writing something on this document, and I don't know whether it said "close" or "discontinue" or "file" or what, but it seemed to me it was indicated that we weren't going to do anything more with this right now unless we got new evidence.

Q. Well, in the context in which you describe it, it would seem to be the notation that you were placing on this 24 April report after speaking with Colonel TOAN.

A. Well, in my recollection, it would have been the statements.

Q. I would also come back to the fact that Major PHO, who is assisting Colonel TOAN at the time, does place your meeting with Colonel TOAN several days following his memorandum to Colonel TOAN?

A. What would the time be?

Q. His memorandum was dated 12 April.

Q. Well, it is conceivable that we had the verbal report in writing, and this was an extra that came along later, although that's not the way I seem to recall it. I would have said my discussions with Colonel TOAN were at a later date.

Q. There is the further aspect that the document that is entitled "Statment" of 14 April, that we now know was prepared by Captain RODRIGUEZ, was prepared very quickly. It is only 3 days after the 11 April letter. So that, accepting the time schedule suggested by Major PHO, that statment had already been obtained by Colonel GUINN, and the contents would have been available to be transmitted to you at the time of any such meeting with Colonel TOAN, if Major PHO's information in this respect is accurate.

A. I don't recall that I got any new information when I visited both KHIEN and TOAN.

Q. Well, I'm suggesting that Colonel GUINN had already provided you with that information, possibly not directly, but through one of your staff. And, therefore, you were in a position, fully apprised of what was available, to speak with them as to the credence that they placed on the matter.

A. Well, I would be sure that my meeting was not before the 24th of April with KHIEN and TOAN, because I'm reasonably sure that this probably had been given to me. Then I really think that I had directed something more before I went and talked to them, and had received something, or at least anticipated that the statements would support the previous findings.

Q. Were these various matters handled at headquarters

on a close-hold basis?

A. I would say initially when we first got the reports. I indicated that I didn't think this was the confrontation bit until we found out about it, let's see what we're concerned about. But after I had the report the next day from General YOUNG, I put no restrictions on it after that.

Q. Well, did you give any instructions either to General YOUNG or to Colonel PARSON in this respect?

A. I feel that I--and I'm not positive--but I didn't think the confrontation was the type of thing that we would give at the evening briefing.

Q. Well, what about the morning briefing?

A. Well, we had no morning briefing for the group as a whole.

Q. But you did have your G1, your G2, and your general staff officers in every morning.

A. That's correct, sir.

Q. And we've spoken with your general staff. And we find no awareness of any aspect of this investigation with one possible exception.

A. Well, I didn't intentionally keep from it beyond that first briefing, which I conceivably did. And I feel that I discussed it with various commanders and staff officers certainly throughout the 11th Brigade and to a certain extent at the ARVN headquarters.

Q. Quite frankly, as you look at this, there's one of two explanations. Either this was on a close-hold basis and you personally were, in this instance, really taking it under your wing, or, on the other hand, a lot of people are leaving you in solitary at the far end and saying, "Oh, no, I had absolutely nothing to do with this." Now, this is the picture we get.

A. I don't think this is the case of the staff. I can see where the staff, I'm sure, knew about the 20 civilian casualties.

IO: No. I'm sorry. The 2 and the 3 didn't know it.

A. Well, I'm not sure where this would have surfaced other than in Colonel HENDERSON's reports to me or to General YOUNG. I feel certain that General YOUNG knew these things, and I'm sure that Colonel PARSON had an awareness of this. Now, other than that--

Q. (Interposing) Well, I remember talking to General YOUNG just yesterday, General KOSTER. He did indicate that he had provided you information concerning the progress of the investigation. But I asked him specifically about whether he knew whether you told him or whether he knew about any civilian casualties, specifically on the order of 20. He professed he knew nothing about it.

A. I can't understand that. I don't feel that I had any withholding of information from either General YOUNG or Colonel PARSON.

MR MACCRATE: Well, what would happen with a document such as this. Now, we've talked to the SGS, and he is clear that he had never seen it. He would be the natural depository if it actually is left in your hands.

A. It's a document that we would have obviously wanted to keep just to show what had happened, and, to the best of my recollection, this is the one that I gave to Colonel PARSON.

Q. Have you searched everything that came back to you, or had searched, to see if there's anything of this character among them? We have testimony as to the packaging of your personal effects and things for you as you were coming back and the fact that some papers were gathered together. No one seems to recall what was in them.

A. Mostly pictures that were taken and excerpts from the division newspaper and that sort of thing. I've looked through all of these things that I've been able to come across. I'm sure I wouldn't have taken this official document and packed it. And I don't see how it would have gotten tumbled in with something else.

Q. We understand that both Captain DICKENS and Specialist HERRIS helped gather these things together and that you personally wouldn't have gone through every piece of paper as the files were being cleaned out. The possibility suggests itself that if this were being held on a close-hold

basis among some papers in the safe it would have been packaged as something with your name on it. And this is why we're very anxious that this--

A. (Interposing) Well, I went through the documents that I have pulled out and put aside as being those from Vietnam. It's conceivable that there is something in some of my trunk lockers that I haven't been into for a long time, the one of two I had over there. I can look in them again, but I think all of that was cleaned out previously.

Q. We not only have searched everything in Vietnam, but all the file retentions from Okinawa and over here. And there isn't any trace of any papers from the division.

IO: It frankly gives the appearance that somebody went through and cleaned the file.

A. Yes, sir, I can't--

Q. (Interposing) Because there are no logs. These are supposed to be retained for 2 years, the classified documents. There are no documents. There are no destruction certificates. There is no nothing.

A. I have no explanation for it.

MR MACCRATE: The report of investigation of 24 April, there is at least the possibility that that was preserved just by mistake, by happenstance. It was in a location not expected. So far as the other things we've put together, they've all come from Vietnamese--not American--files. And this is true in Son Tinh District, Quang Ngai Province, and Duc Pho, as well as Chu Lai.

A. I can say that I had no part in issuing such a directive or participating in the destruction of these things.

Q. Well, have you any suspicion, given this information at this time, from anything that has come to you that would place an explanation upon it, anyone who had the motive for doing this?

A. Not the motive and the capability of getting documents like this from the numerous places they would have to be obtained.

Q. Unless it was done immediately following the event.

A. No such thing as this was ever directed by me, sir.

Q. Was there ever any indications that copies were not being held as communicated to you? Did Colonel HENDERSON, to your recollection, or any of the others who spoke with you, indicate that there was no file being kept on this?

A. No, sir. Colonel HENDERSON in some subsequent discussion said that he would recommend that on one of these--I guess it was the one with the sworn statement--that it be retained for a certain period of time. I am not sure what the period of time was, but he told me there was a comment like that on it, which I don't recall firsthand.

Q. As we have indicated, every aspect of his statement in that respect is entirely unsubstantiated by anything we have been able to locate or any of the witnesses we have spoken to.

(Witness shakes his head in the negative.)

IO: General KOSTER, on a different subject relating directly to this. In your previous testimony, you have stated, and I quote, you are "reasonably sure that you discussed all of this with General LAM." Well, both Mr. MACCRATE and I spoke to General LAM on the 31st of December, and I asked General LAM very specifically, "Did General KOSTER talk to you about this, the My Lai allegation at all?" His reply was, "No, never." Can you shed any light on this?

A. Well, what is now the My Lai allegation was considerably different than the action that had taken place at the time. So I would not expect him to recall it in these terms. But I do feel that General LAM knew the Vietnamese were investigating this, and I saw General LAM frequently. It seems to me that I would have and did tell him that we were looking into this from the U.S. standpoint. I don't think it would have been very much more than that, and it was not something that would have made a definite impression on him, I don't think.

Q. He was pretty familiar with it up to the time that we had talked to him. He had by this time been into the thing by at least 2 months due to the pressures that had been put on in Vietnam. So he knew specifically what we were talking about. To his recollection, the whole subject of Pinkville and My Lai and the operations that day, the thought was that it had

CONFIDENTIAL

304e

Q. Decision to evacuate?

A. Well, I am not positive where they were in attendance at the meetings. I may be confusing this with the Tet meetings, but there were two or three meetings, and a couple of meetings at Danang I know. I know the second day I flew from Kham Duc straight into Danang to attend the meeting.

Q. With this hitting you about the time you came off your R&R and with the pressures that were on for a few days, would this have had any bearing upon your analysis of this particular document which you had seen for the first time, that is, the report of 24 April?

A. I guess it is conceivable that it could happen. I didn't look at it during that period of time.

Q. Frankly, it's the documents that also flow out of this that it would seem to me might have with HENDERSON talking to you on the telephone and describing this document to you, it might be conceivable that there might be some confusion as to exactly what the document was that you saw, which was the formal report.

A. In my mind, I haven't any confusion on what I saw as a formal report. I saw it with the signature of HENDERSON on it and the signature of BARKER and a series of signatures from other people. But what I don't know is when I saw it exactly. I have fixed a sequence in my own mind.

Q. You had to see it within a few days there, because, you recall now, we are talking about the 7th or 8th of May, and then you get into Kham Duc, and then you get the investigation and the property survey of Kham Duc, and just about this time you receive notice that you are going to become the superintendent of the Military Academy.

A. That's right.

Q. So sometime in here, if you are going to receive a report such as this, it seems you would have received it. If it's a paper that I have been told, that is a three to five page document with all of these attachments, I would think you would recall what it was and what it said, because it was a formal report, a formal investigation, and it had been directed after this. It, therefore, should have involved: one,

an analysis of the allegations made by Warrant Officer THOMPSON; and two, the allegation which was included in the VC propaganda and in the district chief's allegation.

A. I don't believe it included that within the scope of it. I can't say for sure, but all I really recall are the statements.

Q. Well, see, what makes it very difficult to understand here--

A. (Interposing) If I had never seen this document, I could not have described this to you in any detail whatsoever. I wouldn't have known what was hooked on to it. It would have meant nothing to me if you had not given it to me.

Q. Well, when Colonel HENDERSON first started talking to Colonel WILSON, he talked in terms of an oral report and another report. Well, now that is pretty easy. There is the other report (indicating Exhibit R-5), and the oral report of a copy. You don't have a copy of that anyhow. But then later on we come down to, "Oh, there was a formal report," but we have not been able to find it or find anybody that knows anything about it. Well, the formal report was actually, according to Colonel HENDERSON, based upon this, and there is another report which he submitted; which is putting his own oral report in writing and which he says he prepared between 4 and 6 April.

A. And did this have statements from people?

Q. No. At one time he sort of said it did. Then he got away from it and said that this is a three to five-page document. We have had other people who, frankly, think they have seen a paper that alludes to the allegations or the complaints registered by Warrant Officer THOMPSON. We have had reference to several of them, and this has been done unintentionally without any prompting, talking about a three-quarters of a page memorandum.

A. This sounds familiar, but I couldn't say that I have seen it.

Q. So, that is the way we stand today. We can assume there was an oral report given maybe in bits and pieces. We have a mythical report, putting the oral report in writing as of about 4 to 6 April or thereabouts.

We have the report of 24 April which is based upon the allegations of inclosure 1, which, in turn, is the allegation of the district chief. We have that, but we don't have any follow-on report of a formal nature nor do we find anybody who knows anything about it besides you and Colonel HENDERSON?

A. I can't understand this, because I am sure I generated this through General YOUNG after we had a discussion about one of these reports. We had agreed this did not meet the bill and that is why I thought it was this one; that what we needed were statements from the witnesses so we would have these available in case the ARVN did turn up something at a future date.

MR MACCRATE: Well, in some respects Colonel PARSON and General YOUNG have been, quite frankly, fuzzy and very unclear, but on this question of a formal report they have come through loud and clear. They know absolutely nothing about such a formal report.

A. Maybe when you call it formal, you cause them to think of too much of a stateside type of investigation as opposed to the statements of the individuals which I have called formal.

Q. Well, your testimony has been given to them, and they are clear that they have not seen nor heard of anything that meets that description.

A. Well, I would have said that it would have been General YOUNG who would have carried the requirement to Colonel HENDERSON.

MR WALSH: With respect to any advice or reports you may have made with respect to casualties, do you recall ever discussing this incident or any of these casualties with anybody from USARV or MACV at any time after 16 March?

A. No, sir. Do you mean the civilian casualties?

Q. The civilian casualties, the allegations of the warrant officer, the VC propaganda, any aspect of this matter that had been discussed?

A. Not from the MACV headquarters. Now, if you consider advisors are MACV, yes. But if you are talking about USARV or MACV headquarters, no.

Q. In the advisory group, who did you recall specifically?

A. I don't think I talked to them as individuals, although this is possible. I saw them occasionally. I am sure that there was an advisor present when I talked to KHIEN and probably HUTTER was present when I talked with TOAN.

A. At any time, do you recall discussing any of these matters with anybody from any of these headquarters who may have been visiting you at your headquarters?

A. I do not recall discussing it with anybody.

MR MACCRATE: General KOSTER, in connection with the consideration of the allegations either by the warrant officer or with respect to the VC propaganda, was there any discussion of the implications for Task Force Barker, if they were well founded or if the information was given currency or any discussions about what a difficult thing this would be if this were to be in any way confirmed?

A. I believe General YOUNG and I speculated on this and if the Vietnamese investigation should come up with something that would cause us to reopen the case. I don't think we dwelt on it, but I do think we thought about it.

Q. Had the two New Yorker articles reached Chu Lai by that time?

A. I don't know if I had seen them yet.

Q. I will tell you a very strange coincidence. The second issue of New Yorker, with the stories largely directed to the area of operation of the Americal Division, and discussing members of your staff, and interviews with Colonel DIONNE are quoted, and with Mr. MAY down in Quang Ngai, but the second of the two is dated March 16, 1968, and I just wonder if this was a part of the milieu in which this problem was being considered at that time.

(Witness looks at a copy of New Yorker magazine, dated March 16, 1968, handed him by Mr. MACCRATE.)

It is in fact a very lengthy article, and if you have not read it or if it had not been brought to your attention at that time, I think that answers my question.

A. I don't think I heard about it at the time, and I am not even sure that I have ever seen it, as a matter of fact.

Q. It's an extremely long article, and it's in two issues of the New Yorker in March of 1968, based primarily upon background work that had been done in the fall of 1967.

Another aspect of background, to what extent was there a consciousness and discussion of the political developments back in the United States at this time? This, of course, is the spring 1968. When we tried to put ourselves into the atmosphere of a number of months ago, it's easy to forget the things that were happening at the same time. But if we go back, we recognize that the presidential primaries in the early spring were going forward. There was unexpected occurrences with the withdrawal of the President from contention for the nomination. This was the very atmosphere with growing criticism of the Vietnam war activity and against that attitude that these events were taking place, and this may be a very difficult question, but--

A. (Interposing) I would not think it would have had too much of an impact on the actions by these troops. I think you found some thought being given to this by people back in the rear area, and you found some thought being given by the troops sitting on a fire base. But when the troops were involved in an action such as this, they had other things to think about.

Q. To what extent was it given consideration by those who were faced with the question of what to do with an incident when it was brought to their attention?

A. I don't think it would have had any impact on me whatsoever.

Q. Do you recall any discussion with any of the senior staff or with any of those with whom you may have discussed this with, the possible impact upon the United States effort in Vietnam?

A. I don't recall as a discussion per se, but I can see where an incident of that type happening at that time would have been--not realizing that it's turned out to be what it's

turned out to be--but any incident would perhaps have had a more significant impact then than at any other time. But I don't remember discussing this question with anyone.

IO: General KOSTER, I hate to keep coming back to this discussion of yours with Colonel TOAN, but I have just reread the statement of Major PHO in which he makes one statement in which he said he was told to, "fetch his memo," and here he would be reporting or referring to his memorandum to Colonel TOAN," and the report," and the report he is referring to is the report of 11 April, "and the propaganda which it concerned." He went on to say, this he did and those persons assembled discussed the matter for about 5 minutes and then went on to other things. This Major PHO remembers as having happened 2 to 3 days after he wrote his memo to Colonel TOAN.

A. And this is on an occasion when I was there?

Q. Yes.

A. I don't relate this as the time that I went to see Colonel TOAN about this as what was happening now. I am not sure that I didn't discuss it with Colonel TOAN on other occasions, too. I would have said it would have been much later than this, because to me that was the final wrap up, this last visit. I didn't really want to infer that I never discussed it with him before, because I suspected that I have. Colonel TOAN--

Q. (Interposing) I got the impression from talking to Colonel TOAN that he was concerned about this, and he directed the province to investigate it. But at the same time, he recognized that it was in VC territory and that he had limited capabilities to get into the area. So from the way he told the story to me, he wanted you to know so that at the same time that he was trying to check into it through province that you would be investigating it through your own capabilities or means and facilities. That, I think, is a pretty clear picture of what I interpret of what Colonel TOAN was trying to tell me. We were talking about that time frame because everything seems to have been pushed into this mid-April time frame.

A. Well, I undoubtedly had some discussion with him at that time, but I also know that there was a final discussion which--

Q. (Interposing) And whatever it was at that time, I take it, in your mind, whether it had to do with the 11 April memo or anything else, that it stuck out as being VC propaganda.

A. That is all they had been able to conclude at the time. I don't know whether they indicated they were still investigating or had completed the investigation, or what the status of it was, but they had nothing more than we had been exposed to already. And I gave him assurances if they uncovered some more, we wanted to get it.

Q. Did you offer, by chance, to assist them in their investigation or the conduct of an operation into that area to ascertain the facts?

A. I don't know that I did, sir. I was thinking, the way these people travel about and the number of people they have that get into these areas perhaps on both sides, that they would have someone reliable that they could get that type of information from. That is what I was thinking.

Q. Knowing what we know now--of course, hindsight is much easier than foresight--it would have been no great shakes at all to have gone into My Lai (4). As a matter of fact, we talked to one fellow that was in there, and he didn't know where he was.

A. I'm sure we could have gone into it any day of the week.

MR WEST: Going back to the subject of Colonel BARKER's orders to the company commanders, he evidently issued orders in violation of instructions with some feeling that somebody above him would tolerate this. Now, this planning had been done while General LIPSCOMB was still the commander of the brigade. I want to ask you if you had any problems when General LIPSCOMB tolerating the burning of hamlets or killing of livestock, or with regard to Vietnamese lives?

A. I don't think there had been any previous incidents of this type on the part of the 11th Brigade. I recall none.

IO: General KOSTER, we very much appreciate your coming

in. I am sure that we have told you today and showed you things today that you had not known before.

A. Yes, sir.

Q. I would like to be able to tell you the whole story as we know it. With what we have told you and what we have shown you and also based upon our line of inquiry, if any of these things that we have been talking about--i.e., when you met with Colonel TOÀN, when you met with Colonel KHIEN, and what Colonel GUINN might have said to you or what he may have told you, or what he may have given you--things such as this would be germane to our findings and our recommendations. We would very much like to have you let us know. It probably won't be necessary for you to come here. We can probably do it by another means or have somebody come up to see you. And I would appreciate, frankly, if you would look through the remaining footlockers or other containers which you may have.

A. I think I have cleaned all that out, and I have gone through the material that has been cleaned out. But I will search all of the containers that came back just to be sure.

Q. We will appreciate that, because we are looking for every single thread. And you may rest well assured that of necessity and by our own desires as an investigation team, we are not going to, at least, try to leave a stone unturned in putting together this picture. At this time if you have any question you would like to ask or if you have any statement you would like to enter into the record, this would be the time to do it.

A. Thank you for your consideration.

Q. The hearing will recess at this time.

(At this time, the statement made by MG KOSTER before the HEBERT Subcommittee of the House Armed Services Committee on 17 December 1969 was entered into the record and marked as Exhibit S-7.)

(The hearing recessed at 1736 hours, 18 February 1970.)

SUMMARY OF TESTIMONY

WITNESS: KUECHENMEISTER, George P. MAJ

DATE OF TESTIMONY: 28 January 1970

PLACE OF TESTIMONY: Pentagon

WITNESS SUSPECTED OF: N/A

COUNSEL: None

DUTY ASSIGNMENT ON 16 MARCH 1968: G3, Night Duty Officer, Tactical Operations Center, Americal Division.

The witness explained his job in the TOC (pg. 35). He recalled Task Force Barker working out of two LZ's, Dottie and Uptight (pgs. 6, 7), but did not recall the 16 March operation (pg. 7), or the 128 VC KIA (pg. 8). He did recall a low weapon count (pgs. 8, 9). He explained how the six hour SITREP worked (pg. 9). The witness recalled the visit of Lieutenant General DOLMAN on 17 March 1968 (pg. 11). He did not recall any mention of an aviation officer (pg. 13), any questions from Chaplain LEWIS (pg. 14), or an investigation being conducted by division or brigade (pg. 14). He did not recollect briefing any aviation units (pg. 15). He never saw or heard of Exhibit R-1, HENDERSON's report (pgs. 15, 16). Captain MEDINA was his replacement (pg. 16), but he never spoke with him about My Lai (pg. 17).

EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	NOTES	PAGES
R-6	SITREP to III MAF, 16 Mar 68	Shown to witness.	10
R-10	SITREP Muscatine, 162400 Mar	Shown to witness.	9

(The hearing reconvened at 1720 hours, 28 January 1970.)

IO: The hearing will come to order.

RCDR: The following persons are present: LTG PEERS, MR MACCRATE, COL ARMSTRONG, and MAJ LYNN.

The next witness is Major George P. KUECHENMEISTER.

(MAJ KUECHENMEISTER was called as a witness, was sworn, and testified as follows:)

Major KUECHENMEISTER, for the record, will you please state your full name, grade, Social Security number, organization, and station?

A. George P. KUECHENMEISTER, Major, Armor, 308-36-1530. I'm presently at Headquarters and Headquarters Company, 194th Armor Brigade at Fort Knox, Kentucky.

IO: Major KUECHENMEISTER, have you read the instructions (Exhibit M-57)?

A. Yes, I have.

Q. Do you understand them or have any questions concerning them?

A. I understand them fully.

Q. Fine. On my left is Mr. Robert MACCRATE who has volunteered his services to Secretary RESOR to assist in this investigation. He also provides legal counsel to me and other members of the investigation team. On my right is Colonel ARMSTRONG, an Army colonel, who has been designated as an assistant in the investigation by the Office of the Chief of Staff, General WESTMORELAND. We have other groups that are taking testimony from other individuals. I will have the job of putting together the report, weighing the evidence, and making findings and recommendations.

As a military officer, you are ordered not to discuss your testimony in this investigation with others, including other witnesses for this investigation, except as it may be

necessary in the performance of official duties or as you may be required to do so before competent administrative, judicial, or legislative body. I use the term legislative and I may explain that for you. You may be required to appear before one of the Congressional committees. The one which would have the greatest likelihood would be the investigative subcommittee of the House Armed Services Committee. If you are so requested, your appearance here would in no way preclude your testifying before such a legislative body. I do not believe you have been cited or cautioned by the military judge in the court-martial case of United States v. Calley. Is that correct?

A. Yes, sir.

Q. Well, I don't think you will be, but in the event you are, I would only like to say that your appearance here would in no way change either the effect or the applicability of any instructions issued by such a military judge. Do you have any questions at this time?

A. No, sir.

Q. Major KUECHENMEISTER, would you indicate your assignment within the Americal Division in the spring of 1968, indicating when you joined the division, what your assignments were, and when you finally terminated your service there?

A. Sir, I went to what was then Task Force Oregon. That was on about the first part of September. I forget the exact date, and then I was assigned to the G3 and, more specifically, tactical operations center. That's where I did my work initially. I was just more or less liaison officer for a couple weeks, then I started working as the tactical operations night duty officer and worked at that job from then until 15 August 1968 when I left.

Q. Practically a whole year, then?

A. Right, sir.

Q. Well, this so called My Lai incident on 16 March 1968 became a matter of public knowledge in September or October of last year, about 4 or 5 months ago. Since that time have you had any conversations with anybody from the Americal Division concerning what may have transpired at My Lai

or Son My or the reports that were rendered on it or the investigation of any such incident?

A. The only thing I did--Major LOGAN, who worked with me during the Americal and so forth, one night--He's also presently at Fort Knox--I asked him something about it or what he knew about it or something to this nature, because I did not remember anything in regards to this thing at all. He indicated something to the effect that something did occur on that day, and this was about it. I didn't particularly see getting involved with him over the thing at that time, because I don't think he or I had any particular knowledge or information at the time.

Q. Specifically, what did he say had taken place?

A. He did not say anything as to what had taken place. He seemed to indicate to me that something had occurred on that day.

Q. Well, do you just leave something like that hanging at a time like that? I mean, you and LOGAN got together to discuss it, so you got down to the discussion point and then you dropped it. Is that right?

A. Well, I didn't really want to get too involved with what he knew or what I knew at that time because I didn't know anything about it.

Q. I thought you asked him?

A. Well, I asked him if he was aware of anything about it, and he said that he had had some knowledge on it or something that had occurred and that the thing had gotten dropped, I believe, at the afternoon briefing, and that was about it.

Q. All right. I may have some more questions on that later. Now, I think it would be important to know just exactly where you fit into this picture within the G3 shop of the Americal Division. So, would you explain what your functions and responsibilities and your relationship to the other people in the TOC and within the G3 shop and, also, your relationship to the G2?

A. Well, my duty generally consisted of, I came to work around 7:30--I came to work earlier--I went on duty at 7:30. I normally got briefed in by the day crew, and then I went to work at 7:30. At that time, I was in more of a semi-control of the tactical operations center there. In this capacity, I worked for the G3 and receiving reports and writing up, in some cases supervising the writing up, of the 24 hour SITREP, the daily SITREP, to III MAF. I normally worked real close with whoever the G2 representative was and of course by experience worked with him.

Q. Did they have somebody that stayed on to provide the same degree of continuity that you did?

A. Yes, sir. They had, normally, a captain.

Q. Who was the captain that was on the night shift with you?

A. I'm not real positive, sir. I think possibly that Seth ORELL, Captain Seth ORELL, was on at that time or it was during this period. I was looking over a letter which I had written to my wife which was the only thing I could nail down in this time frame. He was working nights at that time, or he was getting ready to go to days.

Q. They shifted around then, but you just stayed right on as head of the night shift?

A. I was more or less stabilized in there because of the work that I had done and so on and so forth, and I was pretty well what you might say, locked in based on I knew what was going on a lot of times; I knew what the general wanted to know. My normal chain of command when something occurred was I would call up the G3 and inform him and if it was necessary call General YOUNG, General RYDER, or General KOSTER and inform them of the activities. I'm not positive if Captain ORELL was there or on duty at that particular time. He was within this time frame. He came in there along in January, too. He and Major LOGAN, after working with me at night, had shifted to days; and for a while Major LOGAN worked days, and I believe went back to nights.

Q. Were you a captain or a major at the time?

A. I was a captain.

Q. You were a captain. When were you promoted?

A. October 1968.

Q. October 1968. Had you had duty in South Vietnam before then, Major KUECHENMEISTER?

A. No, sir.

Q. Did you stay on in South Vietnam after you terminated your duty in the Americal Division?

A. No, sir. I just spent the 1 year there.

MR MACCRATE: Were you familiar with the formation and the area of operation of Task Force Barker?

A. Yes, sir. I'm trying to reconstruct, and I don't know if this is in or out of order, but we had been glancing at who had been there, more or less old home week type of thing, who we knew and who we didn't. I was reconstructing, and I remember the two units and I can't remember the third company that was down there in Task Force Barker. I am familiar with the area, what they were doing down there.

Q. Do you remember that there was three companies that were taken from three different battalions. There was A/3/1, B/4/3, and C/1/20. Was that--

A. (Interposing) It was A/3/1 that I had forgot.

Q. Well, I know it's taking you back some 22 months now, but we would like to go back to that time and see if we can recall with you some of the things that you were hearing at that time and some of the information that may have come to your attention as night duty officer in the TOC. Let me tell you that we do know that Captain ORELL was the evening briefer on 16 March. This may be helpful to you in putting this into its proper frame of reference. I understand that you would attend the evening briefing which was given before you went on duty, or would you have your own separate briefing?

A. It was our own separate briefing. Normally, the day briefing was at 1700. This was normally when I was on the way to work, so to speak. I forget if supper was at 1730 or when. We would eat supper and come on back, and we would go into the briefing room, and they would go over their notes and give me basically the same briefing as far as the S2, S3 portion of the briefing on what had occurred that day and what were the general plans for the next day.

Q. Would they also pass along to you any questions that may have arisen during the course of the evening briefing that they had given to the general and staff?

A. I would say normally if they came up with any type of question, they would pass that on to me and let me know what was going on, because they did try to keep me informed because a lot of times General KOSTER or RYDER would call up, "What do you have on such and such?" just right off the bat.

322c

Q. Had you also the responsibility sometimes for putting together the 24-hour SITREP's during the course of the evening?

A. Yes, sir.

Q. Now, going back to the operation of Task Force Barker in the middle of March, do you have any recollection at the present time of that operation and its objectives and how the forces were deployed?

A. Well, right off the cuff, I just remember generally they worked out of, I think it was two LZ's down there, and worked around the area, this type of thing. They had the three companies. They normally kept one back and the other two were out. They were working out of LZ Dottie, which I believe was on the right, and there was another one on the left, which I can't think of the name of right now.

Q. Task Force Barker was headquartered at LZ Dottie, and then there was LZ Uptight where there was an artillery battery.

A. Uptight. It was on the right, also, wasn't it?

Q. If you look on the map (Exhibit MAP-1) behind you, it may help refresh you as to the locations within the AO of Task Force Barker. You see in the upper left-hand corner LZ Dottie and then LZ Uptight with your artillery battery, and the area of the operation was down in the orange area. You'll note you quite correctly recall two landing zones, C/1/20 coming in at LZ 1 and B/4/3 coming in at LZ 2.

A. This was your combat assault, I assume. I was thinking they were generally, just from what I remember of the overall operation, they were at Dottie and worked back and forth from Uptight. There is another fire base, I thought, further over on the other side.

Q. And that these three companies rotated around the three fire bases. But in this particular operation, the deployment of the companies, you had two combat assaults. Then the third company was in that yellow area engaged in a blocking action to the north. Now, this gives you the general frame of reference. Do you have any recollection of the report of this operation that you were given that evening on the 16th of March after the combat assault by Charlie Company and Bravo Company?

A. No, sir.

Q. Do you remember anything unusual about the information you received that evening as to the nature of this operation?

A. In truth right now, I don't remember this particular operation. When my mind goes back to this, I keep coming up with what I'm pretty sure is much later actions with the 198th, at that time that involved down in this area later on, much later, I believe.

Q. Well, back in this time frame, do you remember that there was an operation in which Task Force Barker had the most successful engagement that it had since the 11th Brigade arrived in country, or at least it was so reported?

A. No, sir. I was trying to think back, and this goes from reading, now, that they claimed a body count of what was 128 or something of that nature.

Q. That was the information that came into your TOC that day.

A. In truth I was trying to think back. Normally, when anything got up over 30 or 40 or something of this nature at various times--, but this area and the 128 have not added up to me at all.

Q. You have no recollection of what you were told about that body count of 128 VC KIA on the evening of 16 March as you were taking over your duties that night?

A. No, sir, I don't. Do you all have our little SITREPS--

Q. (Interposing) We have your SITREP's, and I'll go through those with you. We have your log and we have the various background material, but I want to find out first what you can recall as to any of the circumstances in the TOC at that time when the ball was passed to you for the evening. As of this moment you have no recollection of anything being said about body counts, about weapons? Do you have any recollection of the figures with respect to weapons taken?

A. Your bringing this weapons thing up strikes a bell, but this is about all. I'm not pinned down on this action or to this thing, but I seem to remember something over weapons and body count and a discussion. Now, if it's this particular action or not, I'm not positive.

Q. Let's add another ingredient at this time. Do you remember the time of the change of command of the 11th Brigade, when Colonel HENDERSON assumed command from Genreal LIPSCOMB?

A. No, sir.

Q. Just to give you the time frame, again. That took place on 15 March 1968. This operation was the very next day, on 16 March, or it began on 16 of March. The actual figures for that day were 128 VC KIA, 2 U.S. KIA, 11 U.S. wounded, and 3 weapons captured. Do those figures begin to strike cords of recollection?

A. The 128 does not strike a bell with me, and for some reason, when we got into weapons, I was thinking of four. Now, if this was all within the same discussion, I am not sure.

Q. Do you remember any discussion of substantial disparity between the VC KIA and weapons that were taken?

A. Not at this time.

Q. We have had considerable testimony from people who were there with you at the time about this and the discussions that took place. Do you have any recollection of these discussions, what people said to you or what you overheard them discussing at that time?

A. No, sir, not right now.

Q. Now, what was the proceedure for the preparation of the 6-hour SITREP?

A. Well, they were set up for 0600, 1200, 1800, and 2400. The 1800 was normally dispatched prior to me coming on duty. That's the 1800 one, and I dispatched the 2400 and the 0600.

Q. Well, I show you Exhibit R-10, which is the SITREP for 16 March 1801 to 2400 (handing exhibits to witness).

Do they refresh your recollection of anything that was told you at the evening briefing on that day?

A. These bring back just a little bit. For example, the SITREP for 1800 to 2400. This, of course, is definitely one that I did, and I had to have gotten my information from the people and from their SITREP and have no doubt that I argued with somebody over this statement, but I could not improve data. This really jogs my memory as to what I was told that evening.

Q. What did you argue about with respect to these figures.

A. Well, I would say that I no doubt did, but when people started deleting or adding things, you know, I normally got on the line and found out what the problem was and why they couldn't get the report right the first time and things of this nature.

Q. Do you have any recollection that evening of any talk of 69 VC KIA by artillery? Any report of a whopping figure of kills by artillery?

A. I seem to remember it as I read here, but things have not really fallen into place as far as that particular date goes, as to what basically occurred on that date. Different little pieces, you know, fall in, but an overall picture...

Q. I'm looking for the little pieces at this time. So far as the overall picture, that comes later.

A. I don't know if you are aware but I used to talk to my friends at III MAF, the night TOC duty officers up there. Now, something of this nature, the reason these weapons and the number of kills come into view is that they might have harassed me. You know, you go out and kill 128 people and you only come up with 3 weapons, you know, "What are you guys doing down there?" and this type of thing.

Q, This is just the kind of question you get. This kind of question gets passed down. If you're the fellow who has to answer the question, you're going to get on someone's back in turn. This is precisely what we're after. What do you recall as coming out of that?

A. I really don't remember anything.

Q. Let me show you Exhibit R-6, which also bears your signature, the 24-hour SITREP.

Do you remember anything you took to the morning briefing the next morning on the 17th as a result of anything that transpired on the night of the 16th while you were on duty?

A. Well, I went back to my wife and pulled out a

letter which I had written, and the only thing I could really say of either the 16th or the 17th is I think a General DOLEMAN, lieutenant general, a three-star general. came into the TOC that evening.

Q. We are very interested in this. We had almost begun to think that he was an imaginary visitor. We had information that General DOLEMAN did come as you report on the 17th but we've had various people that we expected he would see that did not recall this. This is very interesting.

A. Well, I normally sent little notes to my wife. I think my letter was dated the 17th but I indicated that General DOLEMAN had come into the TOC that night and we briefed him on the situation.

Q. That would be the evening of the 17th. Now, what can you recall of the morning briefing on the 17th?

A. Well, let me finish glancing through here and I will tell you (referring to Exhibit R-6).

I think one thing, I got LZ Sue. I think that's the one on the other side that I was thinking of, and I know this may sound a little weird, but it's not really falling in. There's one thing that I was curious about. I don't know how long or if they kept them, but we had a semi-system of filing our note cards for briefings. Did they get these at all, or were they still around?

Q. Well, quite frankly, our experience in finding older file materials at the division was very disappointing, and I am not aware that we did locate the briefing notes. These were note cards, 3-by-5 cards? How did you prepare the notes?

A. The day crew used 3-by-5 cards, and the night crew used 4-by-6.

Q. And you did have a system for filing those cards for a period?

A. Well, we did. I had set mine in one particular spot. Normally, we took the day crew's which helped us keep

up on what they had briefed and what I would brief on that morning, and they knew what I had briefed in the morning and what they were going to brief that evening, is what it amounted to.

Q. Did you use these in the preparation of the SITREP's?

A. Yes, sir. Those helped me and it helped us more or less to stay together.

Q. I gather at this time you have no recollection of your briefing on the morning of the 17th?

A. No, sir, I don't.

Q. What can you tell us about General DOLEMAN's visit? By whom was he accompanied?

A. I don't remember, sir. The only reason that I can tell you that he was there is because I found it in a letter which I had written my wife, after we looked it up for a specific date.

Q. You have no recollection of him coming into the TOC or anyone that was with him or anything that occurred during his visit?

A. No, sir. I don't.

Q. Did your letter to your wife indicate any of the surrounding circumstances of his visit?

A. No, sir, other than the fact I told my wife he came in; we briefed him on the situation; and he left.

Q. Was there a TOC night duty officer from the aviation unit in the TOC?

A. Yes, sir. We did have an aviation officer who was in the TOC.

Q. Do you recall who it was who would have the night duty or was that rotated?

A. I believe they rotated during night duty a little bit, and I'm not really positive when and if. I think when we got off the ground with Task Force Oregon. For a while I know I had some terrific problems in dealing with the aviation outfit because they didn't have a night duty officer in some cases, then they started a night duty officer and he normally stayed there until 2400, but I can't remember if this was a particular individual. I think I seem to remember they broke sometimes around 2000, 2100, and cut it down to one or two down there. They might have rotated this around. I'm not too sure.

Q. Do you have any recollection of hearing about a report that an aviator had brought back to Chu Lai about some unusual happenings on this operation, Task Force Barker?

A. Not until after this thing came to light, I mean by that from what I read.

Q. You have no recollection of being asked about this by some of the other younger officers at the division, coming in and talking to you about it?

A. No, sir, I don't.

Q. You have no recollection of any discussion in the TOC or any questions being raised in the TOC about a pilot or his crew in a confrontation with American forces on the ground?

A. No, sir. I tried when this thing came about, came to light so to speak. I tried to go back because I felt when things occurred, they don't get fully reported. A lot of times the night people, which I called myself, would get a rumbling of what went on and things of this nature.

Q. This is what we understand.

A. And when this thing came up, I tried to go back to then, and it doesn't really come to mind.

Q. It's a quiet time in the TOC and it gives you an opportunity sometimes to get a little added information.

A. Yes, sir, I would like to add one thing: sometimes it was a quiet time. Sometimes it was very hectic.

Q. But there are times when the airwaves are not quite as filled as they are during the daytime. It may be more important information that you're getting, but hopefully, not from as many places.

A. I don't know. This is one reason I possibly don't know. In a lot of cases where we would certainly get pressed, if you got something going on every 5 or 10 minutes, and you're trying to write--I'm pretty sure they had Wheeler-Wallowa going on--

Q. (Interposing) Well, you're just explaining you don't recall at this point. Let's get on to some other things here. Do you have recollection of the chaplain, any of the chaplains, speaking with you about indiscriminate shooting or an unusual event down in the Task Force Barker area?

A. No, sir, not particularly.

Q. Do you know who the division chaplain was at that time?

A. I'm not sure if Chaplain LEWIS was still there or not.

Q. You don't remember Chaplain LEWIS raising any question about this?

A. No, sir, not particularly.

Q. Do you remember the DIVARTY chaplain?

A. No, sir.

Q. Chaplain CRESWELL?

A. No.

Q. Did you ever hear that an investigation was being conducted by the division or at the 11th Brigade with respect to the operations of Task Force BARKER?

A. This does not strike anything. No, sir, I don't remember anything about that.

Q. And from what you have told us, you usually used the 4-by-6 cards for your report. Did you at times use 3-by-5

cards, or was this a clear mark between the night and day shift? You always used 4-by-6 and they always used 3-by-5?

A. I would say I used 4-by-6 unless I didn't have any. I got forced into 3-by-5's a few times I remember, but normally it was 4-by-6. I can't remember exactly because when I got there and started working, for a little while there was a definite lack of communication between the day and the night shift and more or less among us, we worked out this system of day and night and getting briefed beforehand. I couldn't tell you the exact date that this started, but I do know I was using 3-by-5.

Q. Did you ever pass information of this sort to Major BEASLEY on 3-by-5 or 4-by-6 cards, where he would want some information from the TOC and you passed it to him on a card with such status?

A. I don't remember any real written communications between Major BEASLEY and the TOC, so to speak, and I would say by the time I went to work, if they wanted to know something they called me or I wanted to tell them something I called them. This is from the higher up.

Q. Did you ever brief any of the aviation units; let's say, give them a special briefing on operations in the division area?

A. No, sir, not that I can recollect.

Q. We understand that these briefings were given to the aviation units from time to time, that some of the duty officers in the TOC would give such briefings.

A. It seems to remind me that maybe Major LOGAN said something about going down once, something of that nature, but specifically myself, I don't remember going down to the aviation unit at all and briefing.

Q. I would like to show you Exhibit R-1 and ask you to look at the first two pages of that exhibit (handing Exhibit R-1 to witness). Did you ever see that report before or anything like it?

A. No, sir.

Q. Did you ever hear about such a report?

A. No, sir, I did not.

Q. You were never asked any questions relating to such an investigation? Turn to the third page, if you will, which is a statement of 14 April 1968. I would like to ask you the same question about that statement, if you have ever seen it before or ever heard anything about it.

A. No, sir, I don't remember seeing this at all.

Q. You never heard anything about it. Now, if you will look at the next two pages you'll see that it's some VC propaganda, and the first page is just a bit of generality, and at the top of the second page you'll find it becomes a little more specific. We would like to know whether you have ever seen that or similar pieces of VC propaganda?

A. No, sir.

Q. Did you ever hear of an investigation being conducted by the ARVN or by the GVN, any indication of anything unusual that had happened down in Task Force Barker that was a concern to the province officials or district officials of Son Tinh?

A. No, sir.

Q. Did you ever hear any gossip from the personnel in the TOC or other enlisted men or officers around the base at Chu Lai that something a little unusual had gone on down in Task Force Barker along about the middle of March?

A. No, sir. I'm trying to think back, and it just doesn't come out at all.

Q. What was your reaction when these matters first came to public attention in the fall of 1969?

A. Well, at that time, I tried to think back to remember--

Q. (Interposing) I'm not asking what you did, but what was your reaction? Were you surprised?

A. Yes, sir. I was and for two reasons. I don't know if you're particularly aware, but my replacement at the division TOC when I left in August was Captain MEDINA. I worked with him for at least 2 weeks prior to my leaving and

him assuming my duties up there. So we had sat there for 2 weeks at night. During this period it was quiet. I had no idea--

Q. (Interposing) You have no recollection today of the operations of Task Force Barker despite the fact that you sat there for 2 weeks with war stories, with the company commander out of Task Force Barker?

A. Yes, sir. To the best of my knowledge, he never mentioned anything about either My Lai or the incident down there or anything of that nature.

Q. Did you ever talk with him about his experience in Task Force Barker?

A. I'm not really positive. I assume that we had discussion back and forth--

Q. (Interposing) What did you talk about with him? First you tell me that you got some information from him which made you the more surprised when this came out. At least, that's what I got to be the gist of what you were telling me. Why did your conversations with Captain MEDINA during that period of time, how did they bear upon your knowledge with respect to the operation in Task Force Barker?

A. Well, really what I meant by this statement is the simple fact we were there for a period together, and nothing of this nature ever came out or was spoken about, as far as any incident occurring, while he was in that area that I remember at all or while he was with us.

Q. Did he ever mention there had been a complaint about anything he had done while he was company commander of C/1/20 which had been investigated at the direction of the division commander?

A. Not that I remember at all. This time frame was quiet during this period when he came in and I turned the duties over to him. This is one reason I say I was a little surprised with this thing coming up and the fact he had never said anything in relation or even brought it up, and I never, as far as I can remember, got a hint of anything going amiss down there that comes back to light.

COL ARMSTRONG: He's a young officer who has just come up from combat, a rifle company commander in the G3 section of the division. He's talking to another young officer, then a captain, armor officer, and he didn't tell you war stories?

A. He might have told me something, but--

Q. (Interposing) I don't mean necessarily that he had a slaughter or anything like this. I'm not talking about this. He must have been bubbling over with war stories. I've been a young officer. I know doggone well you guys do this.

A. Yes, sir, I'm sure we talked about something and things of this nature, but then again, if you'll pardon me, I had another captain was in there at the time, Captain CAMPBELL, I think, was up there at that time, and he was out of the 4/3, I believe, and he talked about some incident, and the only thing I particularly remember him talking about was stepping on a "four-deuce" mortar that didn't go off, on a booby trap.

Q. You mean he didn't tell you about all the medals he should have gotten for all his glorious deeds he didn't get recognized for? I know you only had 2 weeks to go. Did General KOSTER or any of the general officers have a habit of dropping in on the TOC late in the evening or in the evening with the G3 perhaps.

A. I wouldn't say a true habit, except during Tet, and in this early, basically during January, February period, they dropped in pretty regularly and also called in during the night. But other than that, I don't think they came in there very often.

Q. You don't recall anything happening?

A. No, sir.

MR MACCRATE: You have no recollection of General KOSTER accompanying General DOLEMAN when he visited the TOC that evening?

A. Not as such, however, normally when a three-star general comes around people stay with him. I have no real recollection, other than reading the letter, that this individual was there.

MR MACCRATE: Well, Major KUECHENMEISTER, we thank you for coming, and if from anything we have raised with you today

your recollection is further refreshed as to what you heard at that time, if anything comes to your mind that you feel would be helpful to us, we would appreciate it if you would get in touch with us. Do you have any questions you would like to address to us at this time or any statement you would like to make for the record?

A. No, sir.

MR MACCRATE: The hearing will recess.

(The hearing recessed at 1830 hours, 28 January 1970.)

SUMMARY OF TESTIMONY

WITNESS: LEWIS, Francis Chaplain (LTC)

DATE OF TESTIMONY: 12 January 1970

PLACE OF TESTIMONY: Pentagon

WITNESS SUSPECTED OF: N/A

COUNSEL: None

DUTY ASSIGNMENT ON 16 MARCH 1968: Americal Division Chaplain, August 1967-August 1968.

1. PRIOR TRAINING IN RULES OF LAND WARFARE.

Initially, Chaplain LEWIS stated that he vividly recalled meeting Captain MEDINA and Lieutenant CALLEY when they went through the Americal Division's six day orientation at the combat center (pg. 30). However, on being informed that the evidence indicated that CALLEY and MEDINA never went through the course, LEWIS altered his position. He then stated that he had met them somewhere in the AO (pgs. 33, 34). The witness was familiar with the material information contained in MACV Directive 20-4 (pgs. 45, 46).

2. DIVISION BRIEFING ON 16 MARCH.

LEWIS first heard of the My Lai operation at the 16 March 1968 Americal Division evening briefing (pgs. 4, 18). Initially, the witness recalled that Lieutenant Colonel ANISTRANSKI, the G5, murmured under his breath that 124 of the VC KIA were women and children (pgs. 4, 18). The room subsequently buzzed with conversation (pgs. 8, 18). General KOSTER was present, but could not have heard ANISTRANSKI's comment (pg. 18). The body count to weapons ratio also caused buzzing when announced (pg. 50). The number of 124 women and children killed and three weapons captured stuck in LEWIS' mind (pg. 18). Late in his testimony LEWIS stated that ANISTRANSKI's comment may have been made at another time and place (pg. 50). However, it was common knowledge that something had gone wrong, i.e., a combat mistake (pg. 8).

3. CRESWELL'S MEETING WITH LEWIS.

a. On 17 March Chaplain CRESWELL reported to LEWIS a conversation that he had had with a pilot, Warrant Officer THOMPSON (pg. 4). CRESWELL was very upset. He felt that a great number of innocent people had been killed and that some of the troops fired indiscriminately (pgs. 7, 23). The witness recalled an allegation that a sergeant fired on civilians (pg. 42). However, LEWIS denied that CRESWELL told him about the shooting of people in the ditch, the evacuation of people from the bunker, flying the wounded boy out, and a captain firing at a woman on the ground (pgs. 23, 24, 42, 43).

b. LEWIS also saw THOMPSON one evening very briefly (pg. 43). His conversation with THOMPSON reinforced the feeling that something had happened (pg. 4). Other than informing THOMPSON that there was an investigation being conducted, the extent of the conversation was THOMPSON's allegation that innocent people had been killed (pg.11). LEWIS did not talk to any of the other pilots (pg. 17).

4. INQUIRIES CONCERNING THE ASSAULT.

a. Division investigation.

The fact that an investigation was being conducted regarding THOMPSON's allegations was common knowledge among the division staff members (pgs. 27, 29). However, there appeared to be an unwarranted quietness in the division regarding the investigation (pg. 28). CRESWELL continued to query and even needle LEWIS about the results of the purported investigation (pgs. 5, 31). LEWIS continued to make inquiries of the staff due to CRESWELL's continued questioning (pg. 31). CRESWELL was more incensed over THOMPSON's allegations than LEWIS was (pg. 31). From his inquiries, LEWIS had no reason to believe the report was not being properly handled (pg. 6). LEWIS felt that embarrassment over the civilian deaths might have been the reason the division hierarchy did not want to discuss the allegations (pg. 37). He never knew of an investigating officer being appointed and orders being cut (pgs. 51,52). LEWIS never received any official word from the chief of staff, any of the generals, or from other staff officers as to the outcome of the investigation (pg. 16).

b. Persons knowledgeable of the investigation.

(1) General YOUNG.

LEWIS thought that THOMPSON had seen General YOUNG and stated that he refused to kill women and children anymore, and refused to fly again. The witness was positive that YOUNG was aware of the shocking allegations (pg. 14).

(2) Lieutenant Colonel BALMER.

Lieutenant Colonel BALMER, the G3, was aware of the seriousness of the allegations (pg. 14). LEWIS talked with BALMER a number of times about what allegedly occurred (pg. 8). Their first conversation was within two days of LEWIS' meeting with CRESWELL (pg. 4). BALMER emphatically assured LEWIS that this was being thoroughly investigated (pgs. 5, 9). On another occasion BALMER and his replacement, Lieutenant Colonel BAXLEY, guaranteed LEWIS that this was being wrapped up (pg. 5). BALMER knew that there was a possibility that the troops had "gone a little wild" (pgs. 10, 23). BALMER was aware of an allegation of a sergeant firing at women and children (pg. 14). BALMER was supposed to inform the witness of the investigation's result. It is possible that on one occasion BALMER told LEWIS to keep quiet about the matter (pg. 48).

(3) Colonel PARSON.

Ten days subsequent to his first discussion with BALMER, LEWIS discussed the matter with the chief of staff, Colonel PARSON (pg. 9). LEWIS waited this length of time because of BALMER's emphatic assurances (pg. 9). PARSON likewise told LEWIS that the investigation was under way (pgs. 4, 5, 9). At a later time he queried PARSON again as to the progress of the investigation and asked to see General KOSTER about it. PARSON said, "Well, it's being investigated and we're not to talk about it." LEWIS described the comment as PARSON "putting him off" on his request to discuss the matter with the CG (pgs. 26, 48). LEWIS discussed the matter several times with PARSON (pg. 8).

(4) Lieutenant Colonel QUALLS.

The division G1, Lieutenant Colonel QUALLS, also informed LEWIS that the allegations were being thoroughly investigated and whatever occurred would be brought to light (pg. 5). However, on a subsequent

occasion LEWIS asked QUALLS about the findings of the investigation. QUALLS informed him that the report was not for their eyes (pg. 9), and that they were not to discuss it (pgs.11, 12, 48). LEWIS opined that QUALLS was under orders or he would not have made such statements (pg. 21).

(5) Lieutenant Colonel TREXLER.

Although the witness did not recall his conversation with the G2, Lieutenant Colonel TREXLER (pg. 13), TREXLER was present when BALMER assured him that the large number of women and children killed as a result of the operation would be investigated (pg. 19).

5. REPORTS OF INVESTIGATIONS.

a. BARKER's report.

Sometime around 6 or 7 April, LEWIS approached Lieutenant Colonel BARKER and questioned him about the allegations (pgs. 5, 10, 33, 36, 38, 39). BARKER indicated that he had investigated what had occurred on the ground. BARKER did not dispute the allegation that a large number of civilians had been killed (pg. 36). BARKER said he had talked with the people who had been at My Lai (4) on the ground including the CO, Captain MEDINA, the platoon leaders, NCO's, and lower ranking enlisted personnel (pgs. 38, 39). LEWIS assumed there had been a fire fight in which civilians were killed. He admitted that he failed to ask BARKER about the fact that there were very few enemy bodies in comparison with the noncombatants reported killed (pg. 39). BARKER told LEWIS, "Well, LEWIS, as far as I'm concerned, it was combat....It was tragic that we killed these women and children, but it was in a combat operation. This will be what I report back to Colonel HENDERSON" (pg. 5). BARKER stated that after talking with MEDINA and CALLEY he was satisfied that the casualties were inflicted in an operational manner. He said they were killed by artillery, gunships, and ground fire. LEWIS felt that BARKER was leveling with him (pgs. 10, 24). LEWIS assumed that BARKER's report would be made to HENDERSON (pg. 25). LEWIS never saw an official report (pg. 13). He never talked with HENDERSON about the incident (pg. 30).

b. Reports made by Chaplains.

After his conversation with CRESWELL, in which THOMPSON's complaints were communicated to LEWIS, LEWIS related that he was looking for indicators to corroborate THOMPSON's report (pgs. 3, 5, 11, 36, 41). He queried Dick SHANNON, the Task Force Barker Catholic priest, Harry KISSINGER, Chaplain of 1/20, Woody STEMPLE, a civilian missionary in Quang Ngai, and Father CAREY, the 11th Brigade Catholic priest, and Chaplain JOHNSTON of the MACV compound in Quang Ngai. None of the above men had heard any report which would have tended to corroborate THOMPSON's allegations (pgs. 3, 5, 11, 16, 30, 36). LEWIS also maintained close liaison with the ARVN Division Buddhist chaplain in Quang Ngai. There was no report from that source of any atrocities (pg. 15).

c. LEWIS' reaction from the reports of BARKER and the Chaplains.

LEWIS' impression was that an intelligence mistake had been made and innocent people killed as a result (pg. 15). Even though he felt that he may have been put off by PARSON and other staff officers, BARKER's findings coupled with the lack of reports from his chaplains satisfied LEWIS. THOMPSON's allegations just did not appear to be substantiated. The witness stated that he had a tremendous amount of confidence in BARKER's integrity (pgs. 11, 12, 36, 41).

6. OTHER INFORMATION.

a. LEWIS was not aware of the awards given to ANDREOTTA, COLBURN, or THOMPSON (pg. 24).

b. The witness admitted that he did not follow through with further inquiries to ANISTRNSKI regarding G5 sources of information (pg. 29).

c. LEWIS talked with Sergeant Major ROGERS in November of 1969. ROGERS reported that the first sergeant of C/1/20 did not know anything about anything unusual occurring in My Lai (4). Since the incident broke in the news media, LEWIS had talked with SHANNON, KISSINGER and CAREY (pgs. 44, 45).

EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	NOTES	PAGES
D-1	MACV Directive 20-4	Wit was familiar with the substance of the directive.	45,46
M-23	Americal News Sheet, 17 Mar 68	Entered into evidence.	35

(The hearing reconvened at 1000 hours, 12 January 1970.)

IO: The hearing will come to order.

RCDR: The following named persons are present: LTG PEERS, MR MACCRATE, MR WALSH and MAJ LYNN.

Sir, the next witness is Chaplain Francis LEWIS.

(The witness, Chaplain (LTC) LEWIS was called as a witness, was sworn, and testified as follows:)

RCDR: Chaplain LEWIS for the record will you please state your full name, grade, Social Security number, branch of service, organization, and station?

A. Francis Russell LEWIS, Chaplain, Lieutenant Colonel, 532-03-3136. Military Ocean Terminal, Bayonne, New Jersey.

IO: Colonel LEWIS, before we proceed with any questions I shall inform you concerning certain matters. This investigation was directed jointly by the Secretary of the Army and the Chief of Staff, United States Army for the purpose of determining the facts and making findings and recommendations concerning:

(1) the adequacy of prior investigations and inquiries into, and the subsequent reviews and reports within the chain of command of what is now commonly referred to as the My Lai incident of 16 March 1968, and

(2) possible suppression or withholding of information by any person who had a duty to report and to furnish information concerning this incident.

This investigation is not being conducted to investigate all the facts and circumstances concerning what happened at My Lai. It is directed at those two specific purposes which I have just stated. Do you have any questions on those two matters?

A. No, sir.

Q. I have had made available to me and have reviewed prior official statements obtained in other official investigations of the My Lai incident including the statement which you had previously made to the CID.

Your testimony this morning will be taken under oath. A verbatim transcript is also being prepared. A tape recording is also being made in addition to the verbatim notes which are being taken by the reporter.

Although the general classification of the report will confidential, it is possible that the testimony, or parts of it, may at a later date become a matter of public knowledge.

In addition to myself there are two other individuals here at the table. On my left is Mr. MACCRATE, and on my right is Mr. WALSH. These two gentlemen are civilian lawyers who have volunteered their services at the invitation of the Secretary of the Army, to assist me in this investigation, and also to provide me legal counsel. They too may address questions to you this morning.

A. Right, sir.

Q. You are ordered not to discuss your testimony in this investigation with others, including other witnesses for this investigation, except in the performance of official duty or as you may be required to do so before a competent judicial, legislative, or administrative body. I cite as legislative, a possible appearance by yourself before one of the committees, or subcommittees of the Congress. In addition, you are cautioned that, if you are subject to the order issued by the military judge in general court-martial case of the United States v. Calley your appearance here in no way changes the applicability and the effect of that order. Do you have any questions concerning the instructions which I have provided?

A. No, sir.

Q. Colonel LEWIS, what was your duty on 16 March 1968?

A. I was the division chaplain of the Americal.

Q. And how long had you been the division chaplain?

A. Since August of that year, 1968. Excuse me August of 1968, right.

Q. 1968? Or 1967?

A. Excuse me 1967. Right, 1967.

Q. And how long did you stay in that capacity?

A. I was there until August 1968.

Q. You stayed until August of 1968?

A. Right.

Q. Since the My Lai incident has become a matter of public knowledge, which came to light generally in the months of September and October, via newspapers, radio, and television, have you had any conversations with personnel who may have been associated with the incident, or other individuals of the Americal Division?

A. Yes, I've talked to a few. I've talked to some of the chaplains that I had in that area, but as far as talking to any of the other people on the staff, no. Just chaplains that were in my division, that served with me. I haven't talked to any of the staff officers since this word broke.

Q. Was there anything of substance in your conversations you had with the chaplains?

A. I talked with both Father SHANNON, and Harry KISSINGER, who was with the 20th Battalion for the whole period, and also the 3 months subsequent to the period. Father SHANNON, Dick SHANNON, of the 198th covered Task Force Barker during the time that it was up there in that area. I had talked to both of them before, when we were in Vietnam, but again they reiterated no knowledge of any incident such as has been reported. This is what I wanted to refresh my memory on because this is what was true when I was there. We had talked about it since it had come out, when I was the division chaplain, or at least there was something untoward that had been reported. I wanted to refresh my memory, so therefore I called both SHANNON and KISSINGER, and also one other priest from the 11th Brigade, Father CAREY, but he had not covered Task Force Barker.

Q. Did you have any conversations with Father CRESWELL?

A. At the time of this--

Q. (Inteposing) No.

A. I haven't talked to him since.

Q. When did you first hear of the operation of Task Force Barker into the Son My area on 16 March 1968?

A. That night they had a briefing on it. I have a copy of the briefing here, or the news sheet the division puts out. We were told 128 VC were killed in the incident, and I heard either the G5, I think it was Colonel ANISTRANSKI say, "Ha ha, they were all women and children." This was in the briefing that night. So immediately after the briefing was over, I went and saw the G3, and he said yes, there was something that they were going to investigate.

Q. Who was the G3 at that time?

A. Well, actually Dean BALMER was on leave, but he was the one that I talked to about this. I've forgotten who was in the G3 shop at the time. It was his deputy. I think it was Major SAINT, but I could be wrong on that. But he referred me to BALMER. BALMER came back from R&R shortly, I think in the next couple of days, and he assured me that this was going to be investigated. So that was my first official move to find out what the story was.

Then of course, Chaplain CRESWELL came in to see me the next day, and reported to me his conversation with THOMPSON, the helicopter pilot, and the fact that he had heard that not only was there women and children killed but there may be more to it than this. Again, this time I went to Colonel PARSON, Nels PARSON, and he again assured me that whatever the matter was, whatever occurred, was going to be investigated and that he would report back to me. He would let me know what occurred.

Periodically CRESWELL kept needling me, and I saw THOMPSON over in the club one night, and he reinforced this feeling that there was something that happened that was wrong. CRESWELL particularly kept needling me and saying,

"Well now, what happened at the investigation?" So, I would go back and see mostly BALMER, and then it was BAXLEY, Colonel BAXLEY that took over. Both of them assured me that this was being wrapped up. I also saw the G1 a number of times. The G5 of course was so teed off that he went back home and got out of the Army. Now whether he knew something else, I don't know. My contacts with the staff particularly with the chief of staff, the G1, and the G3 was that this was being thoroughly investigated and that whatever happened would be found out.

I did happen to see Colonel BARKER before he was killed, in the division headquarters, about 2 or 3 weeks after this happened before he was shot down. I hailed him and talked to him about it. He said, "Well, LEWIS, as far as I'm concerned, it was combat. These occurred. It was tragic that we killed these women and children, but it was in a combat operation." This is what he told me. "This will be what I report back to Colonel HENDERSON." With all of this information I had many times thought to take the little Buddhist chaplain I work with and have him follow through on it. Everybody told me this is what's being done. Then my chaplains reported nothing of the nature of what THOMPSON evidently reported to CRESWELL of innocent people being shot. So I assumed that it was in the proper hands, that the right thing was being done, investigative-wise.

Then I talked to Woody STEMPLE, a civilian missionary who lived in Quang Ngai. He and I many times were in that vicinity. I helped him with a lot of his missionary work, and he didn't have any report from the people. I don't know whether he actually talked with anybody Son My or not. Nothing from that source came out. I talked to Chaplain JOHNSON at the MACV compound at Quang Ngai about it, and he had nothing that came from the province chief headquarters.

With all of this information I felt assured that the investigation was proper and it was going forward as they said it was. This is why I didn't personally make any further overtures as far as taking it upon my shoulders to see the CID or IG or anybody else. In fact this was not only my feeling, but in talking to some of the other staff officers, not the general staff officers, the special staff officers,

this is what they also came to believe, at least the ones that I talked to, the division surgeon, the IG.

Q. The IG?

A. Well the IG at the time. You see, in other words we were all told essentially the same thing. In my conversations with the AG, and the IG, and the division surgeon, some of the rest they revealed to me about the same kinds of information, namely that it was in proper investigative hands. So, in other words, from the stand point of the staff of the division, I had no reason to believe that this wasn't being properly taken care of.

RCDR: Excuse me, Chaplain LEWIS, would you give me the name of the civilian missionary again?

A. His name was Reverend Woody STEMPLE, S-T-E-M-P-L-E, STEMPLE.

Q. Thank you.

A. Christian Missionary Alliance, and I think he's home back now. I think he came back about the same time I did, August of 1968 and then was on a year sabbatical. So he probably is in Quang Ngai again. He was in this area. This was his responsibility, coverage-wise. He didn't report he'd heard about something I'm sure.

Of course the thing that did worry me was the fact that I felt, and I told either the G1, or Colonel PARSON that this should be discussed in some sort of chief of staff meeting, that we should get this aired out. There was the fact, and I can't deny it, that there seemed to be an unwarranted quietness about it. In other words, you'd talk to someone they'd say, "Now, well, we're not supposed to talk about it, we are not to say anything about it, but it is being investigated." I didn't particularly buy this, but I thought there must be good reasons for this, a combat situation. I felt constrained to abide by this feeling, this direction.

IO: You indicated that after the briefing you had talked to somebody in the G3 shop, could that have been

Lieutenant Colonel KELLEY at the time?

A. It might have been because he didn't go over and take over the battalion until Colonel BAXLEY became the G3. It might well have been. Memory mostly was conversations with BALMER, and sometimes with BALMER and Colonel TREXLER, the G2. That's the most vivid memory I have. If it was KELLEY, it was just that he would say "Take it up with BALMER, take it up with the G3 when he gets back." So it might have been KELLEY, but I couldn't be sure.

Q. What did Chaplain CRESWELL tell you?

A. Chaplain CRESWELL told me that THOMPSON, the flyer, had come to him and was very distressed, and told him that women and children had been killed. I'm not sure whether CRESWELL told me how this was done, but I assumed that THOMPSON had been either told or witnessed the shooting of women and children. I also assumed that it was done by gunship because he was a flyer. But the impact of what CRESWELL told me was that he felt that this should be investigated because THOMPSON had passed on to him some bad news, namely that women and children had been killed.

Q. Did he give you any order of magnitude that fixed in you mind?

A. Well--

Q. (Interposing) Was he talking about one or two? Was he talking about 10 or 20? Was he talking about 100? What was he talking about?

A. Well I heard this figure. I'm not sure whether I heard it from him or at the briefing, or from where, but I heard that out of the 128 that had been reported, 124 were women and children. This is what stuck in my memory.

Q. Did this stick in your memory because of the conversation you had with the G5, ANISTRANSKI, to the effect that all but 4 of them were--

A. (Interposing) The report I got when the briefing was going on I heard this as 124 of them were women and children. I think it was 124 of them were women and children. I think it was Colonel ANISTRANSKI that made that statement, but I could be wrong. I know I heard that at the briefing, and this is what worried me. Immediately I went in to see the G3.

Q. Do you remember the contents of the briefing?

A. It was essentially what I have in this little news sheet that they give out in division, which I have. I kept all of these and this is really about what they reported that night. This is the night of the briefing, and of course, they gave us a little more. Some of the briefing wouldn't be on that because it was secret. They gave our casualties and so forth, but this is essentially what was reported on the board that night. These were disseminated throughout the division headquarters, anyway. Of course some of the briefing would have been secret so they couldn't put it on the sheet. The other thing that stirred up a storm was when the briefer did say that only 3 weapons had been seized. This caused a lot of murmuring but anyway it was pretty well common knowledge that something had gone wrong. But as I say the wrong was a combat mistake. In other words I was satisfied with it at the time. Because of all my contacts. I felt that it was being properly investigated.

Q. Do you remember in this briefing if they indicated that 69 of these had been killed by the artillery prep?

A. I don't recall the figure, but I know that between the artillery and the gunships it was a figure around that. I couldn't recall the exact figure at the briefing.

Q. After you had this discussion with Chaplain CRESWELL you indicated you went to either Colonel BALMER, or Colonel PARSON?

A. I went to Colonel BALMER a number of times. I also talked to Colonel PARSON a number of times.

Q. (Interposing) When did you first talk to Colonel PARSON?

A. It was before I talked to BARKER, and that was about 2 or 3 weeks after this happened. I would say within about 10 days, because BALMER assured me enough so I let it lay for a while. Actually it wasn't an official visit. I think it was more informal. I was up on some other matter and I just asked him about it. Then subsequent to that time, I asked him two or three times. It was mostly Colonel PARSON as I recall, that put a lid on this as far as discussing it. BALMER was willing to sit down and go over this, as much as he knew, and of course BARKER did the same when I talked to him.

Q. Now, I'd like to go into a little depth with each of these discussions with these individuals.

A. Right.

Q. PARSON, BALMER, and BARKER. Did you tell Colonel PARSON that this matter required an in depth investigation?

A. Well I did when I talked to BALMER. I told BALMER that I had heard some pretty bad things, and he said he had too and that this was going to be thoroughly investigated. Now when I talked to Colonel PARSON, it was on the nature of how is the investigation going, and he assured me that it was going.

Q. What did he tell you at that time? You said you didn't talk to him until 2 or 3 weeks had elapsed.

A. Yes, about that, around 2 weeks. He told me again it was being investigated. Now, I never did get a definitive word, before I left the division, from Colonel PARSON on the nature of the investigation. In fact, BALMER had left and BAXLEY had come in. I asked the G1 about this and he said that it was not for our eyes, or words to this effect, but again, I was assured. Most of my assurance, and the reason I didn't go into it any further before I left, was from BARKER, who was the task force commander. He assured me what he had found out pretty definitively.

Q. Now, specifically, what did he tell you?

A. BARKER said that he had talked to MEDINA, he talked to CALLEY, he talked to those involved, and he was satisfied that it was operational, that the casualties occurred in an operational manner.

Q. How did he describe an operational manner?

A. Well, the artillery prep, the gunships, and the ground forces firing. He said they didn't kill civilians but this was done because they thought the VC were holed up, and they had killed some civilians by ground fire.

Q. Did he indicate how many civilians he thought were killed?

A. He didn't indicate that to me, no. He was satisfied this was what had happened. When he told me this being the battalion commander and knowing him quite well because he had come over on the advance party, and trusting his judgment pretty much, I felt he was leveling with me. So that plus what BALMER and the others said that surely satisfied me. If I had one other note from anybody I think that would have changed it, but you see all my impressions officially or informally were of the nature that this was being properly handled. I didn't know the CID had gotten into it. This I didn't know.

Q. Let's go back to your discussions with Colonel BALMER. You indicated you had talked to him on several occasions. What did you talk to him about and what were the circumstances?

A. Well I told him, I asked him, I said, "I had heard civilians had been killed. I had heard, maybe, that some of the troops had gone a little wild, and done things they ought not to do." He said, "Chaplain, that's what I've heard. We're having an investigation made, and when this investigation is over we'll know what actually did happen." Now this was the summation of what he revealed to me. Not just once, but a number of times.

As I say, BALMER was the principal one who assured me of this. BLAXLEY didn't really--I didn't really talk too much to him about it. Before BALMER left, I talked to BARKER, and I talked to Colonel PARSON again after that. About that time things began to get quieter. In other words I talked to the G1 and I said, "What's the story on this now? Has it been finalized?" He said, "We're not to talk about it." So there did seem to be a gradual closing up of even conversation about it. But the principal reason I didn't think that there was anything untoward was because of my assurance by BARKER. This is what I fall back on. I felt that he being the task force commander on the spot, if anybody would know, he would. Also, I would have my chaplain meetings and I talked to the 11th Brigade chaplains who were involved, nothing there. Dick SHANNON is a real fine priest. If anybody would find out anything through the grapevine, he would, but not a word. So all of these impressions that came to me were of that kind. I had no other reason to believe that such a thing as reported by these four or five fellows occurred in My Lai.

Q. You indicated you talked with THOMPSON. Was that an official talk or what?

A. No. It was just very informal. CRESWELL revealed to me mostly what THOMPSON told to him. I only saw him in passing at the club one night, at a party up there. I went up and he repeated essentially just what CRESWELL had told me. He was disgruntled, and he wanted to know whether the investigation was going on. I said just that yes it was, or words to that effect.

Q. Did he, did the discussion go into any depth as to what he had seen?

A. No I didn't talk to THOMPSON in depth about this. Whatever he revealed was principally what I got through CRESWELL. He did say that he felt that some innocent people were killed. I didn't really sit down with him and go over the whole thing, because I had gotten most of this information from him through CRESWELL. I didn't feel that it was necessary

unless he wanted to talk about it. Evidently he explored it pretty well with CRESWELL so that satisfied me.

Q. Recognizing the importance and magnitude of this allegation that was being made, did you ever suggest to THOMPSON that he put this down on paper?

A. I never did. I don't know whether CRESWELL ever did or not, but it didn't occur to me. Again, I was waiting. If something had broken from the staff point of view in regard to the more serious allegations, then I certainly would have moved heaven and earth to do this. Since most of the allegations came to me through CRESWELL and did not seem to be substantiated in my mind, through talking to the various people I did then I didn't feel it necessary to talk to them. I thought that maybe in the excitement he might have heard or seen things that didn't occur. I had fellows report to me things like that. You'd see them in a hospital and you'd ask a fellow, "What happened?" He'd say, "All our guns were wiped out. All my friends were killed." We'd find out that his was the only gun killed in his artillery position, and maybe only one or two of his friends.

So I felt that maybe in a combat situation THOMPSON, being a part of it, might not really have seen what he had reported. Frankly, that is why you have an official investigation. I trusted the people who were doing this to make the proper investigation on it and report.

Q. You have indicated that you have talked to the chief of staff, that you talked to Colonel BALMER, and you also talked to Colonel ANISTRANSKI. You also alluded to the fact that you discussed this with the G1. Who was the G1 at that time?

A. Colonel QUALLS, Corbin F. QUALLS, Q-U-A-L-L-S. I didn't get much satisfaction from QUALLS. Everytime I'd bring it up he'd say, "Oh, no, we can't talk about that." He didn't satisfy me. He did say that it was being investigated.

Q. Who did he say was investigating? Can you recall?

A. Well, I didn't get who it was from him.

Q. Yes.

A. But I did know that BARKER had made the investigation because he told me in the conversation I had with him at division. I didn't officially know who was making it from QUALLS or from any of the staff. The only way I got that was when I happened to intercept BARKER one day at the division. I wouldn't have known who officially had been designated, but I was assured it was being properly investigated. That was all. But, it was not QUALLS who said. He was very secretive about it.

BALMER wasn't. BALMER was willing to admit that maybe there was something here, and we ought to get it. I don't know what happened to BALMER in regard to conversations with the chief of staff or others, because he didn't reveal this to me.

Q. Do you recall your conversations with Colonel TREXLER?

A. No. Mostly it was in the presence of BALMER. I think, as my memory recalls he repeated about the same thing that BALMER did. I don't have any other memory that he said anything else other than the fact that it was being investigated.

Q. You also indicated that you yourself either discussed or mentioned this matter to the IG.

A. Well, put it this way. I didn't actually go to the IG on this. But in our daily interchange and at dinner we would informally talk about it. My recollection is that the IG, and the AG, division surgeon, and some of the other special staff officers were about in the same boat as I was in regard to what had happened. This is my memory of it. They felt about the same way I did as far as an investigation, and they got the same kind of report from those they talked to who were in on the know.

Then as I look back it, I don't know who was in on the know because I never saw an official report. I never got an official answer from anybody except the informal one from BARKER and it was strictly informal. If I hadn't gotten that in the conversation with BARKER, I'd have gone in to see General KOSTER before I left division. Since I did talk to him, I didn't feel

it was necessary. I felt if the general or the chief of staff wanted to reveal it to me, if it was worth being revealed, then they would have done so. This was my feeling.

Q. This was quite a sweeping allegation that THOMPSON had given to CRESWELL. Did anybody give THOMPSON the courtesy of going back and talking to him about it and telling him that an investigation is being conducted?

A. I don't know. I got the report, and I assumed it was THOMPSON, that THOMPSON had gone in to see General YOUNG, and I don't know whether he had actually taken his wings and told him he wasn't going to fly again. I don't know whether this was THOMPSON, but I heard that some warrant officer, and I assumed it was THOMPSON, had done so. If it was THOMPSON, he did have a conversation with General YOUNG on this matter and I'm sure he would have reported the same thing he did to CRESWELL. I'm not sure whether it was THOMPSON that did this, but I'm sure that General YOUNG knew the allegation, the strong allegation.

Q. How are you so sure about that?

A. Well because some flyer did go in to see General YOUNG and tell him pointedly that he was not going to kill women and children anymore and that he was not going to fly anymore. This is what I got from CRESWELL. I think it was CRESWELL. I may be wrong on that, but somebody reported to me that this had happened, and I assumed that it was THOMPSON. I know this: I know that BALMER knew the seriousness of it because in our conversation he mentioned some of these things.

Q. What did he really mention?

A. I remember one thing. He said that there was a sergeant that fired into women and children. I remember that. This was an allegation, specific. Therefore he said there was some hanky-panky reported to him and that it was going to be investigated, that if it was true they would find out the nature of what had happened.

Q. Was this a passing conversation or was this you going over to Colonel BALMER in the TOC and talking to him there, or in his office?

A. I talked in his office. I went in the G3 shop,

and I think that the first time I went in TREXLER was there too. Both of them together said that they'd heard some of these things. I remember that specifically. I didn't get the full impact of atrocity, but I did get the impact of women and children being killed. But the sergeant firing was one thing that I heard that was more on the nature of what had lately been reported. I didn't hear anything further than that.

Q. Aside from this figure of 124, your discussions with CRESWELL, and your discussion with THOMPSON did you have any kind of visualization or magnitude of what had transpired?

A. Well, from other actions that the division had participated in and other atrocities I had seen, busses blown up and all, I had a vision maybe an intelligence mistake had been made and a lot of people had been killed. The thing is that I witnessed some of these operations and with the firepower we had, I assumed that a lot of people in My Lai might have been killed. You throw in all that artillery and all those gunships, and land a couple platoons who fire into a village and you're going to kill a lot of people. The fact that 124 women and children had been killed really shook me up, but I didn't have any idea of any other kinds of ways they had been killed, other than in an operational combat situation.

I also had a conversation with the division Buddhist chaplain, who was in Quang Ngai. We had a conversation one time. Again, if anything like this had come from the villagers, I'm sure that since he was a highly respected person in that whole Quang Ngai area he certainly would have reported to me. I made a couple of courtesy calls on him and had lunch with him down there, but nothing. I asked him, "Are there any problems, anything that we can do for you?", and he didn't report anything at the time. So again, as I go back in my memory, all of these seem to reinforce what little I did get officially from division.

Q. Were you aware of the fact that this was in an area that was controlled by the Viet Cong?

A. Oh yes, yes.

Q. That as a consequence there would be little social communication?

A. Yes, definitely. In fact, many times the division covered the CAP units in that area. There were two or three of the CAP units which were the Marine platoons that were working in the villages. A couple of those, two or three, had been wiped out completely. This was in the general vicinity, just a little north of the My Lai area, so we knew that this whole area was infested with VC.

It's a tragic kind of a situation in fighting a war like that, but if I had one GI or anybody mention some of these things that have now come out or if this had come out to any of the senior staff officers, this thing would have gone much further, much deeper than it was.

But I was nonplussed when I heard this. I really was. Immediately, I recalled my own memory and I went and called SHANNON and Harry KISSINGER, who was a Baptist chaplain, on the spot. He stayed with that battalion until June of that year and had a service with CALLEY's platoon shortly after this action. I don't know how shortly, maybe 2 or 3 days. He knew some of the boys personally, knew MEDINA quite well and CALLEY. But I didn't get a thing from any of them. I asked them specifically, knowing that this was under investigation.

Q. You never were given the results of any investigation, other than the fact that BARKER told you that he had looked into it?

A. That's right. I never saw any report. I was never told by any of the senior men, the general staff, the chief, or any of the generals anything of official nature, no.

Q. Well you've indicated this morning here, Colonel LEWIS, that this thing seemed to be pretty much general knowledge in the headquarters. I'll be very honest with you, this is the first indication we've ever had of this.

A. Is that right?

Q. And we have talked to many of the people that you mentioned.

A. Yes.

Q. Dean BALMER for example.

A. Yes.

Q. He professes no knowledge of it.

A. About the atrocity?

Q. Or the investigation.

A. Or the investigation?

Q. Absolutely.

A. Well, that's interesting.

Q. And it certainly doesn't stand out in Colonel PARSON's mind.

A. Yes.

Q. He alludes to the fact that there was something being done.

A. Yes. Well now this is what they told me. I don't know what. Of course this is speculative but they assured me that the investigation would be made and was being made. So I can't speak for them. I can only say what they passed on to me. If I'd had any idea that there wasn't an investigation, I'd have gone right in to see General KOSTER, but when I was assured by the chief and the G3 that there was going to be an investigation I felt that--

Q. (Interposing) You indicated that you talked to Warrant Officer THOMPSON, which indicates that you, in the course of events, would visit the aviation clubs and so forth.

A. Right, right.

Q. Did you talk to any of these other pilots?

A. Never did.

Q. Like Mr. MILLIANS?

A. Never did.

Q. Captain LIVINGSTON?

A. No.

Q. Mr. CULVERHOUSE?

A. No.

Q. Mr. BAKER, Mr. BROWN?

A. No.

Q. Did the thought ever occur to you to make a check out on what Warrant Officer THOMPSON had reported?

A. Well, I was relying on the staff and the accuracy of what they would report back to me. That was my information. As I say, the conversation that summed it up for me was BARKER because I didn't always get a cold shoulder, but I didn't get what I felt was a satisfactory answer from these people. Maybe they didn't have the answers to give me.

Q. Did they know, for example that what you were talking about was this allegation that THOMPSON had passed on to you through CRESWELL?

A. I assumed so.

Q. Or they may in fact have been thinking of this ratio of 128 to 3, or something of this nature?

A. Well, they were in the briefing, and the fact of the 124 women and children was pretty much common knowledge because either ANISTRANSKI, I'm sure it was ANISTRANSKI, but somebody called this right out. It was 124 women and children in the briefing.

Q. In the briefing?

A. Yes. In fact we were talking about it, were buzzing about it, on the way out of the room.

Q. Was General KOSTER at that briefing?

A. He was at the briefing, right.

Q. General YOUNG?

A. I'm sure that he was, but I know that KOSTER was

there. I'm not sure about YOUNG, but I assume he was because unless he was out on a special mission he was always there. I'm sure he was.

Q. This 124 women and children, that was the thing that really stuck in your mind then?

A. 124 women and children and also 3 weapons. This was another item that was buzzed about. We were sitting in the back, I was about in the middle row, and somebody said "124 women and children," and somebody else said "Geez, there were only 3 weapons."

Q. I mean, was it sort of a quiet comment, or did somebody--

A. (Interposing) It was under the breath.

Q. It wasn't something then that everybody in the room would have known?

A. No, I'm sure that the general's didn't hear it. The guy didn't stand up and say, "124 women and children." But I heard it and a number of us around heard it. So immediately after the briefing we buzzed about this on the way out and I went down immediately to the G3 shop.

Then CRESWELL came in the next morning early, and I went back as soon as BALMER showed up. I can see BALMER and TREXLER sitting there, and I said, "Boy, I'm upset. What about this 124 women and children we killed down there? What are we going to do about this?" He said, "It's going to be investigated."

I kept the feelers out with my chaplains and talked to BARKER. I mean I was down in Quang Ngai, but I didn't get any of this other data, other than what CRESWELL told me of THOMPSON. Therefore I didn't feel constrained to go beyond this for the reasons that I have stated.

MR MACCRATE: I've been very interested Chaplain LEWIS, in what you've said about Colonel QUALLS and the fact that he was being secretive about it. He said not to talk about it. And then when a report was received, it was not for "our eyes." What did you make of all this?

A. Well, if my conversations about this had only

been with the G1 I would have been very, very alarmed. The thing is he was only one out of the group that I got the impression from. The impression he gave me was more that this was to be forgotten.

Q. Weren't the others being equally secretive? Weren't they were telling you nothing, other than saying, "Oh yes, it's being investigated," and giving you the brush off? It seems to me that it's a common strain. You used the words when you speak of the G1, but the others were giving you the same sort of a brush off.

A. I guess you're right, I guess you're right. I was relying on their judgment. As I say, I had other sources. These were the only contacts officially about the alleged incident. If these were my only contacts then I would have gone other places, I'm sure. But the fact is while I didn't have my chaplains in the area, I did have this friend, this missionary who was in the Quang Ngai area.

Q. With respect to the missionary in the Quang Ngai area, I gather that Mr. STEMPLE was with the Christian Missionary Alliance, is that what you indicated?

A. Correct.

Q. Did you also know any of the people in the American Friends Service Committee operations there?

A. Yes, but I just met the ones in Quang Ngai. I know the ones up north better. Quang Ngai was our southernmost point, but in Tam Ky we did more work together.

Q. Did you have any contact with the ones at Quang Ngai?

A. Just met them, that's all. But Woody and I had been fairly active because we gave him funds and money, I mean supplies. He came up quite regularly.

Q. Did he have dealings with them, do you know?

A. Oh, yes, he met with them regularly, I remember. They had meetings together and social times and I'm not sure what else.

Q. Then you also referred to Chaplain JOHNSTON?

A. Yes, he was the MACV chaplain, and I didn't specifically ever talk to him about the incident. What I'm saying is that he knew that area, probably better than any of us. If anything had come from the province headquarters, or from the 2d ARVN Division, he would have known. He and I were on good terms. In fact he sat in on all of our division chaplain meetings. He didn't say anything, and his name is on this roster. Phillip C. JOHNSTON, J-O-H-N-S-T-O-N. He was an Episcopalian. He was stationed with the Advisory Team One in Quang Ngai.

IO: That's near the Tropo helipad?

A. Yes, right.

Q. I forget the name of the compound, Cramer compound?

A. That sounds right. I could be wrong. It was right in Quang Ngai.

MR MACCRATE: Now you referred to the fact that the IG felt the same way as you did. Did you ever hear a suggestion from him that he would conduct an investigation?

A. No. When I say the IG, I lump these pretty well together because in our informal conversations I didn't hear from any of them including the surgeon, the IG, and the AG, anything more than I'd heard from anybody else. Nor did they question me or talk to me in any way other than what I have revealed of some of the other staff officers. I think one of the reasons was because we were all told essentially the same thing, particularly by the G1. We didn't really talk about it very much in general conversation.

IO: Why did the G1 make a statement like that?

A. I'm not sure whether he told me this, but I'm sure he was told either by the chief of staff or by one of the generals. I mean, I don't see any other reason why he would tell me that. He had to be directed, you know. I don't think he'd take it upon himself to tell me that.

MR MACCRATE: In discussing the briefing and the reference

to all the firepower that was used, did you or do you remember whether anything was said about the extent of the artillery preparations?

A. At the briefing itself, no. Of course subsequently we heard what the prep was. I know there was preparation and then of course the gunships. But I don't know. I couldn't really say.

Q. When you say subsequently we've heard what it was, do you mean newspaper accounts of the papers?

A. Correct, and what other people have reported, mainly MEDINA, in the papers.

Q. What was said at the time?

A. I don't recall.

Q. You made reference to the fact that you accepted all this as being quite reasonable because of the firepower?

A. Yes.

Q. Was there any suggestion that there had been a very substantial artillery prep on this village before the landing?

A. Well, knowing how they conducted some of these operations when they said there was an artillery prep and gunships used, and having witnessed some of this, I just assumed it was pretty thorough before they landed the troops. I never did question how much, or to what extent, or with a time element, or anything like that, no.

Q. Pretty thorough?

A. Pretty thorough, right.

Q. But pretty thorough upon what, upon the landing zone, or all over the surrounding territory?

A. This I couldn't say. Being an operational order very seldom did I ever get into the detail of how they were going to conduct it. This part I really couldn't say, no.

Q. Now with respect to the report to you, that you had

on the morning of the 17th from Chaplain CRESWELL, I'd like you to really search your recollection as to what he told you on that day. How much of the detail that he gave you. You have stated you remember a sergeant firing on women and children. Is there anything else you recall from that conversation?

A. As I remember, CRESWELL was very upset. He said that he felt that a lot of innocent people had been killed in the operation and that some of the troops had done things they ought not to have done. I don't want to use the word atrocity or massacre or any of these words, but the impact of what he said, plus what I had heard at the briefing, was enough for me to realize that maybe something had gone wrong, and maybe some of these things had been done that ought not to have been done.

Q. Well, when did Colonel BALMER say to you that he thought our troops had gone a little wild?

A. Well, not in our informal conversation. He also gave the impression that this is what he had heard, that there had been firing and so forth. But again this was 2 or 3 days after he returned. I'm not sure when he returned, but it was within a week of that period that I had this conversation with him, that he had heard these things that I was reporting to him.

Q. Did Chaplain CRESWELL mention to you anything about the evacuation of civilians by any of the helicopters from the operational area?

A. To the best of my memory he didn't.

Q. Did he say anything about a child being taken to a hospital in Quang Ngai?

A. If he did, I don't recall.

Q. Did you usually attend ceremonies at which awards were presented to members of the division?

A. I did at division headquarters, and sometimes out at the battalions, but not always. It all depended on where I was at the time and if other things were in conflict.

Q. Were you aware that awards were made to ANDREOTTA,

and COLBURN, two members of Mr. THOMPSON's crew?

A. No, I wasn't, not at the time.

Q. Were you aware that an award was made to Mr. THOMPSON?

A. No. When the aviation battalion would have these ceremonies, sometimes we would go and sometimes we wouldn't. If you didn't go, and if you didn't hear from the grapevine what had happened, you wouldn't know. I just didn't know. I had read about it recently, but I didn't know that they had gotten medals for the My Lai operation.

Q. What did you understand was the result of this investigation that was taking place?

A. I was satisfied before I left division, particularly talking with BARKER, that this had been a sad thing, but it had been done in combat operations through artillery, gunships, and ground action. I was satisfied in my own mind about this, and this is what I passed on to CRESWELL. But this is how I was satisfied before I left.

I didn't see any report. I didn't get this officially. It was unofficially told me by BARKER. Actually, I don't think any of the other staff officers satisfied me at all about the investigation.

Q. In your statement to the CID in December you stated, "I later learned that Colonel HENDERSON had made a verbal report of the investigation to General KOSTER and that HENDERSON had been told to make the report formally in writing."

A. Yes.

Q. When did you learn that?

A. I didn't learn that until this thing all broke.

Q. Well when did you learn it? And from whom did you learn it after this all broke?

A. I think this was reported over television, if I'm not mistaken. In fact, I don't remember.

Q. In other words you're just basing it upon public

report. It's not anything you ever learned from any of the principals involved?

A. Except I knew that BARKER told me that this was what he was going to say. He didn't say he was going to write this down, but I'm not sure he said he was going to or had already reported this to HENDERSON.

Q. Well, I'm talking now about a verbal report to General KOSTER, and HENDERSON had been told to make the report formally in writing. Did Colonel BARKER say anything about this to you?

A. All he said was, "Chaplain this is the report I am going to make."

Q. And did he indicate to whom he was making the report?

A. Well, if he did, I have forgotten, but I assumed it would be Colonel HENDERSON, because this was his next higher authority. If he did say, I've forgotten. So put it this way, I don't remember who he said he was going to give it to. He said this is what I'm going to say in my report.

Q. Did you regularly take your meals at the division mess?

A. Yes.

Q. So you would see General KOSTER, General YOUNG, and General GALLOWAY?

A. Everyday.

Q. Everyday?

A. Right.

Q. Do you have any recollection of any conversation when the operation of 16 March was discussed in your presence by or with General YOUNG?

A. No, I didn't have any conversations regarding My Lai with any of the generals as far as my memory is concerned.

One time I remember I was going to go in and see General KOSTER about it, but I was intercepted, was told that this was not to be discussed, that the investigation was being made.

Q. Tell us about that one time. How did this come about?

A. Well, I was up to see the chief of staff on another matter, and I said, "I wonder what's the situation on My Lai and I'd like to talk to General KOSTER about it," or words to this effect. He said, "Well it's being investigated and we're not to talk about it." In other words, he put me off in seeing the general on this. I was satisfied from what he told me, so I didn't go in.

Q. How was this operation referred to at that time? Was it known as My Lai operation or Pinkville operation or Task Force Barker's operation, or Muscatine operation? Which of these?

A. It was used in a number of ways. Muscatine was the overall operation in the area. Task Force Barker was assisting in Muscatine with a specific mission. But I don't ever recall it being referred to in briefings as being Pinkville. I remember Task Force Barker and Muscatine, but I don't recall in the general's briefings it being referred to in any other way but Muscatine or Task Force Barker.

Q. When you went to communicate to Colonel PARSON that you wanted to speak to General KOSTER about this, what words would you use to mean to him--?

A. (Interposing) The incident, the incident that happened at My Lai.

Q. Was it discussed at that time? Think carefully about this. In talking about in April 1968 would you refer to it as the incident at My Lai? How would you identify what you were talking about to Colonel PARSON?

A. I don't think that any of them needed it to be identified. I mean it was common knowledge what we were talking about. In other words something had happened there that was being investigated, because this is what was being investigated. So I said, "How is the investigation coming along?" Now I don't know whether I referred to the specific

area or not, but he knew what I was talking about. This was common understanding, and he said, "That this was not to be talked about, we're not saying anything about this." Again it's hard to pin down the words to use because the impression that I got from all of them was that this was being taken care of. I didn't really feel that there was anything untoward other than what THOMPSON had said to CRESWELL. When that wasn't substantiated, even by BARKER, in my own mind I was satisfied.

Q. Well, what do you mean that it wasn't even substantiated by BARKER? That would be an admission by BARKER that his unit conducted an atrocious operation?

A. I agree, but I had enough confidence in his integrity. For example, he was there for about a month before the 11th came over. I saw him everyday, and he came to chapel, which was unusual. I got to know him and had enough confidence in his integrity that I felt that what he had told me was valid because no other information filtered to me that would give me the impression of what now seems to be the evidence.

Q. It seems to me that a great deal had filtered to you when you heard the reaction of people at division headquarters and the kind of comment--

A. (Interposing) Well, we had another one up north that happened about the same time. We did bring to trial these people, and the lieutenant got something like 30 to 40 years for murder. Even that was fairly well hushed up, so I felt that there were sound reasons for this not being routed about the area.

Q. But you did hear Colonel ANISTRANSKI say 124 women and children? Now that wasn't anything that came from Mr. THOMPSON?

A. Right.

Q. And what was being said by your fellow officers at the division mess seems to me to be far away from anything that Mr. THOMPSON was bringing in.

A. Well, maybe I'm naive, and maybe there was a coverup, but if so, then it really was a good one because

CONFIDENTIAL

reported to me except when I talked to BARKER. This really was the colonel around which I sort of judged everything else. If I had not had that conversation, I'm sure I would have asked to see an official report.

Q. At one point you said that the G5 was teed off?

A. He was teed off about a lot of things, but whether or not this was the culminating teeing off I'm not sure. Shortly after this he went back to the States and got out of the service. He was a Regular Army officer. The main reason he was teed off was because first of all, his G5 shop was not being given the support it should be and secondly, he was a very straight fellow and he would see his rice being peddled in the black market and that sort of thing. It was a culmination of things that teed him off. I never did actually ask him specifically whether this entered into it, but I assume it might have, part of it. He told me he was going to leave the service. He was fed up--

Q. (Interposing) After the briefing on 16 March, did you at any time thereafter talk with the G5 about this?

A. Not formally, not in any official way.

Q. He had some sources out in the community?

A. I know he did. I'm sure we did informally. I'm trying to jog my memory on this, but I don't really recall anything specific coming from the G5 shop or if I did make any specific inquiries. I felt that in our informal conversations Gus was the kind of a guy that if something had come up, he'd generally tell me. If from his sources there had been something, I'm sure he would have passed it on to me, but he didn't. So there wasn't any specific reason for me to go in to see him on this matter unless I had gotten other information from him or from other sources. No, I didn't really follow through with the G5 on the matter, particularly when I satisfied myself that it was primarily a combat operation that these people were killed in. That seemed to satisfy me enough.

Q. What did you know at that time about the Geneva Conventions and the obligations under them? Had you ever been instructed in this?

A. Oh yes, definitely, right. In fact in my orientation with the troops I usually did that myself, or my

deputy. I would go down to the Combat Center. That's where I remember seeing CALLEY once, and I saw MEDINA a number of times. They were usually in attendance in that orientation. Of course the legal people were the ones that hit this hard, but I would usually say something to this effect, too.

Q. Did you know Lieutenant LACROSS?

A. LACROSS? No, not by name.

Q. How do you happen to recall Lieutenant CALLEY?

A. When the 11th Brigade came in, we had a 6-day orientation through the combat center. When MEDINA's company came through both MEDINA and CALLEY were in the orientation session. Now I didn't specifically talk to CALLEY or MEDINA, but I recall them being present at that 6-day orientation. That was actually my only personal contact with them. I saw MEDINA once or twice down in the Duc Pho area, but I don't recall meeting CALLEY ever again except that once or twice down at the combat center.

Q. Did you have any personal aquaintance with Colonel HENDERSON?

A. Yes, I knew Colonel HENDERSON quite well, right.

Q. Did you ever talk to him about this incident?

A. Never did, never did. Again maybe I should have, but the 11th Brigade had their own chaplains. I asked them specifically about whether they heard anything from Colonel HENDERSON or BARKER and they said no. One of the things about the chaplains situation is that we have access to certain information that we can't reveal, you see. SHANNON said, "I couldn't tell you if anybody did come to confession and reveal anything, but I could tell you if I heard anything." You see even in confessions there was nothing reported to him. KISSINGER said the same thing. Sometimes I would rely on them before I would rely on staff information because many times you'd get a snow job. But you wouldn't get a snow job from a chaplain out in the field. This is why perhaps I was wrong in not exploring this more fully at the staff level. Maybe I was delinquent.

Q. You say you knew Colonel HENDERSON quite well. What kind of experience had you had with him?

A. Well he was on the advance party that came over, and they stayed at division for a number of weeks. I got to know him there, and of course I would visit Duc Pho periodically and have lunch and conversations with him. So I knew him probably as well as any of the brigade commanders that we had. I built up most of that relationship when he was on the advance party. He came over prior to the main body of the 11th Brigade and I got to know him quite well then.

Q. Did you attend the change of command ceremonies when he assumed command of the 11th Brigade?

A. No, I didn't. I think I might have been on R&R then.

Q. Well actually it was on 15 March, the day before this operation.

A. Was it the 15th? Well, I must have had something else on. Generally I did, but I don't know what the conflict was because I didn't go.

IO: You have indicated, Colonel LEWIS, that the thing that really prompted you to continue your action was Chaplain CRESWELL?

A. Yes, he was needling. He really did needle me, properly so from where he stood. He felt that this was not fully explored and so he came to me naturally, being the division chaplain. Sometimes I gave very little to satisfy him because I'm sure that he was much more incensed over the situation than I was. In fact I know he was. I don't know what kind of conversations he had with THOMPSON other than what he referred to me.

Q. Well, you were his link with the division staff.

A. Exactly right.

Q. And the division commander?

A. Correct.

Q. He had to rely upon you unless he wanted to take it in his own hands.

A. Correct, right.

Q. You indicated in your testimony that you knew that Warrant Officer THOMPSON had reported to General YOUNG. How did you get this information?

A. This is an assumption. I tried to remember something that CRESWELL told me that some warrant officer threw his wings down, I think it was. I could be wrong on that. I did get this information I know, I remember this, that somebody had done this. I can't recall anybody else saying this. I think it was CRESWELL that told me. I could be wrong on that. I know I heard this from some source in the division area which would include the artillery, but I wouldn't want to swear to it that it was CRESWELL. But I know that someone told me that a flyer had gone into General YOUNG's office, and threw his wings down and said he wasn't going to fly anymore to kill women and children. The source of that I'm not absolutely sure.

Q. To our knowledge Warrant Officer THOMPSON never spoke to General YOUNG.

A. Well, then it probably wasn't. Of course it couldn't have been THOMPSON.

Q. This is not to say that his report was not delivered to General YOUNG.

A. Yes.

Q. But he himself, to the best that we have been able to uncover, has never talked to General YOUNG.

A. Well I don't know the name. I never got the name, I just assumed this later on. I don't know who it was, and maybe the story is not true. But this is what I heard.

Q. Yes. You might also be putting two stories together because there is another instance where THOMPSON is reported to have made such a statement within a group of flyers.

A. I see.

Q. This is vastly different than--

A. (Interposing) Well, I got it second hand. I

really can't substantiate the story. This is what came to me, and this is all I know.

Q. When did you talk to Colonel BARKER? This incident took place on 16 March.

A. I'm trying to remember. It was just casually. He was up at division on some business and I saw him coming out of operations center. We walked down to the pad. I think it was around 6 or 7 April. As I said it was around in that period, the first part of April, but I couldn't say an exact date on that.

Q. To your knowledge was Task Force Barker still in existence?

A. I think it was still in operation, yes. I think it was still. I don't know when it broke up actually.

Q. Well, it's a matter of record that Task Force Barker was disestablished on 9 April. My question is then: could this have been some time in May that you talked to BARKER?

A. No, I don't think it was. I think it was the first part of April, because it was such an informal thing. He was up in division, and he was coming out of operations center. I remember walking down the road with him. He was going to the pad and it was in conversation with him on the way down. The date just escapes me because I'm trying to remember in relation to other events. But other events were more routine so I couldn't really give you a date on that, but I remember specifically asking him about this, and this is what he reported to me.

Q. You indicated quite vividly your recollection of MEDINA and CALLEY in the division indoctrination center.

A. Well, now, I remember them. My memory was jogged on who they were, but I've seen subsequent pictures. I remember CALLEY was a little guy, and I saw his picture again and said, "I remember him from the combat center." MEDINA I had seen not only there but also at Duc Pho, down in the 120th area, never to talk to but just as a company commander and so forth. I never really had any personal contact with them in conversation or anything like that. I just remember their faces.

Q. It is my understanding that when the 11th Brigade came in country, and C/1/20 was the lead element to come in country, they did not go to the indoctrination center. Their indoctrination was provided by the 3d Brigade, 4th Infantry Division at Duc Pho.

A. Well, as far as I recall they ran everybody through at the combat center.

Q. (Interposing) Could you have been down there with the 9th?

A. I knew MEDINA, and it could have been that I saw CALLEY in Duc Pho, but it seems to me as I recall it wasn't in any conversation with him, either he or MEDINA but was just in passing. I could be mistaken.

Q. I understand--

A. (Interposing) Because I saw that picture again. I know I saw him somewhere. Now maybe it wasn't the combat center, but I know I'd seen him, maybe in Duc Pho. I could be wrong.

Q. Well, as I would understand it the division commander made it a practice himself of taking along the staff judge advocate and talking to all the troops when they arrived. He gave the initial part of their indoctrination to welcome them to the division and also to give the staff judge advocate an opportunity to acquaint them with the requirements under the rules of land warfare and under MACV regulations.

A. I always followed the judge advocate. He would be first and I would follow, right.

Q. Now, coming back to this division headquarters and this is a matter of opinion I would say, or interpretation. Could you in fact be misinterpreting this feeling of indifference and this hush-hush attitude at division for a lack of information on their part?

A. Oh, yes, surely. All I know is the impressions that were given to me. That could be the reason. Maybe they were in the dark too.

Q. Did the thought ever occur to you that the real people to investigate these things are the inspector general, and the staff judge advocate? Certainly when you address

something to the command, this is one of the places that the division of responsibilities is supposed to be focused. It's their responsibility to assign it to the appropriate staff section. Even so, it would appear to me that the appropriate place to check on how an investigation was being conducted would be with the inspector general or the staff judge advocate.

A. Well, since this was an operational combat situation I assumed that it would be handled through the G3 shop, or at least I would be able to find out from them more than anybody else what really happened since it was from there they knew the operation and they had handled it direct and so forth. This is why I went to the G3 more than anybody else.

IO: I have here an Americal Newssheet dated March 17th, 1968. I'd like to have this entered into the record as an official exhibit.

RCDR: Americal Newssheet Volume 1, Number 332, dated 17 March 1968 is entered into the record and will be marked as Exhibit M-23.

MR WALSH: Colonel, when you had your discussion with Colonel BARKER, I take it that he conceded that a large number of civilians had been killed on 16 March, and he attributed it to operational errors, artillery, gunships, and troops on the ground.

A. (Interposing) Well, I wouldn't use the word errors. I would say that he attributed it to operational procedures, the artillery, gunships, and ground action. But I understand that the company or the battalion thought the VC were holed up in the village. But anyway I know he didn't use the word error. He used the word combat operations, right.

Q. But the result of his investigation as you understood was not to dispute the fact that a large number of civilians were killed that day?

A. From what he said, I assumed that what he was told was to investigate anything untoward that might have happened, namely in the nature of an atrocity. This is what he implied. In fact we assumed this in our conversation because he knew enough. We didn't actually get into what had been reported,

but when I said how's the investigation going or what's happening then he did report what I have already said. But we didn't get into the whether or not, what information he had, as against what I had, and all this.

Q. What I'm curious about is if he was investigating, as you understood it, the question whether there had been atrocities committed by the troops on the ground?

A. No. The word atrocity did not come up. He was investigating what actually did happen on the ground.

Q. All right. And you understood from him that his comclusion was that no atrocities had been committed?

A. That's right.

Q. But that a large number of civilians had been killed as a result of the operation?

A. Right. And he didn't actually give a figure. He didn't actually give a figure.

Q. Now, I take it that you were satisfied by this explanation, and this is the primary reason why you didn't carry things further?

A. That and some of the other things I reported satisfied me as to the fact of what had happened. Other alleged things that happened did not appear on the horizon other than through CRESWELL talking to THOMPSON. So I had no other way to judge it other than my own reports from the chaplains and what BARKER told me. If I'd had any feeling of something else I would have gone in and asked for the report, but this satisfied me. It really did.

Q. Did you have any feeling that operations which resulted in such a hideous toll of civilian casualties might not be the kind on operations that ought to be conducted?

A. Oh, yes, definitely. In fact, I think it was

BALMER we were talking about that one night and I said "Gee, who in the world goofed on this? Who in the world goofed?" He said, "Well we can't always know exactly what gives." In fact I remember watching some other combat assaults. Many times you'd see them go into an area and move down through a village and think that the people had gotten out, but they had come back in. Fortunately, in some of these instances you were able to evacuate and get them out of the way. But, in other words, from the kind of fighting they do in Vietnam, it was to be expected that civilians are going to be caught in the crossfire because this happened in every division. It was unfortunate and was sad and somebody probably did goof. Maybe there was an intelligence mistake. 128 women and children is not a nice thing to kill, but there were other combat operations where a lot of innocent people were killed. We had them in the 2d Surgical Hospital all the time. Little kids with holes in their back, legs off and everything else. They were caught in a village. Supposedly it was a free-fire zone and they had evacuated it. Then they'd sneak back in, things like this.

Q. Did you have any feeling after this time, that the inclination of staff officers to talk about this was maybe caused by embarassment over this incident? Or was there a feeling as you have just described? Was this just to be expected, and there is nothing to be ashamed about? There is nothing to hide, in any way?

A. Embarrassment probably would be the thing that came to my mind because a combat soldier doesn't like to think that anybody from a PFC or a private on up that that's what he's doing, killing women and children. I really felt as I look back at it, there were probably good reasons why. Maybe embarrassment would have been the big one, but there were good reasons we were in on it. They were involved with other forces, Koreans and ARVN. It was touch and go with all these liaison situations. I felt there probably was good reasons for this. I was satisfied that they were going to go ahead and make the investigation anyway so I didn't question the reason. Maybe I should have. At the time, looking at it from all the resources I had, I didn't feel called to question. If I had one little fellow like MEADLO, anybody, I would have changed that. But we didn't have anybody like that.

Q. But you didn't have any doubt in your mind that the approximately 125 women and children had been killed?

A. This is what I was told. This is what I was told. I had a momentary desire to go down and see, but I didn't. I was very close to another little chaplain, Chaplain ZOO, in the area. I'm sure he would have escorted me down, but I didn't. I didn't have any business there. It's sad. Some of my chaplains would even give services for some of these innocent people that were killed. But it wasn't my business to investigate. I'm not an investigating officer, and I was trusting the judgment of my division.

Q. That's all I have.

MR MACCRATE: Did Colonel BARKER indicate to you, when you spoke to him about this operation that it was a contested operation?

A. You mean there was opposition?

Q. Yes.

A. I don't recall that we got into that aspect. All I was trying to satisfy was my interest in what happened, and he knew this. He revealed that he was satisfied in talking to the platoons involved and the company commander and the people on the ground, that he was satisfied that these things occurred in the combat operation. Words to this effect. We didn't get into whether there were people firing at them when they landed and this sort of thing. You see, that wasn't my main interest. My main interest was whether or not anything untoward had happened as rumored.

Q. But if you knew that 124 women and children had been killed, and if you were aware that it was an operation essentially without opposition, would not those facts in and of themselves suggest that something untoward had happened?

A. Well this is what I think raised the ire of those who were in the briefing that night, who heard this 124 figure.

Q. (Interposing) That it had been essentially unopposed?

A. Now the unopposed part, I don't recall ever came up. The fact is the figure we got was 128 VC, and we heard 124 were women and children. But we didn't hear what else was involved. My assumption was that there had been a fight.

Q. Where had they all gone to Had they been that successful in clearing out? There was a fight, but they just weren't left behind?

A. Good question, but this--

Q. (Interposing) You didn't speak with Colonel BARKER about this when you were satisfying yourself in talking with him?

A. Well, no, I didn't. I merely was interested in what he had found out. He told me that he had talked to these people on the ground, his own company commanders, his platoon leaders, sergeants and so forth and that he was satisfied that nothing untoward, nothing other than what was directed, had been done.

Q. Did he mention any of his company personnel by name?

A. He mentioned MEDINA.

Q. MEDINA?

A. He mentioned MEDINA, but he didn't mention CALLEY. He mentioned MEDINA, and he mentioned one other company commander whose name escapes me. But he mentioned that one other company commander, MEDINA, the platoon leaders, the sergeants, platoon sergeants, and some of the other enlisted personnel that he had talked to.

Q. And he said that he had talked to all of these people?

A. He said that he had talked to them, that he had conversations with them, and that the reports we had heard at division of something happening that ought not was not true.

Q. Do you know Major CALHOUN?

A. CALHOUN? That rings a bell. Was he at the S3 shop?

Q. Yes, he was BARKER's S3--

IO: (Interposing) And executive officer.

MR MACCRATE: And also the executive officer of Task Force Barker.

A. Of Task Force Barker?

Q. Yes.

IO: He had subsequently been the S3 of the brigade.

A. Brigade? Yes, right.

Q. Previously.

A. Previously.

MR MACCRATE: Prior.

A. And then he joined Task Force Barker?

Q. Yes.

A. I had met him, but I didn't know him as well as BARKER who was on the advanced party. I knew BARKER primarily, not when he was in Duc Pho, but when he was over on the advance party for about a month or two.

Q. Do you remember whether Major CALHOUN was present during this conversation?

A. No, he wasn't. If he had, he might have been on some other mission and was to meet him down there. BARKER was by himself when I walked down by the division chaplain's office with him. I was going to see him again, and then I kept putting that off and he was killed. I forgot the date,

but I saw what was left of his body at the graves registration. I had meant to go back and see him and carry through on some of this. Because after this CRESWELL came in, and it was not a definite conversation. It did satisfy me as to some of the things that had come up from other sources, namely THOMPSON's report, and some of the other things I had heard satisfied me enough. So with other conversation and with lack of other information I felt that this was what had happened.

Q. Did you ever hear a story coming out of this operation about the cutting off of a finger or fingers of a prisoner?

A. No. I'd heard a lot of stories, you know, division chaplain. All kinds of things filtered into me.

Q. Well this is what I assumed. This is what I was interested in, whether you heard this story eminating from this operation?

A. No, I didn't hear that at all.

Q. You didn't hear that a prisoner had his hand placed on a rock, or on a board and with a Bowie knife, had a piece of a finger, or fingers cut off?

A. Never heard that. The only thing I heard in the nature of atrocity was that some sergeant had fired into civilians.

IO: Well, let's hear a little bit more about this sergeant firing into civilians. Who were the civilians, and how many of them were there?

A. Well, as I recall it when this thing broke, that was as much as I heard from any source as to anything that was untoward that might have been in the nature of an atrocity. I'm not sure what the source was, but I recall that I heard this.

MR MACCRATE: You seem to be merging two parts of what occurred. You talk about the child moving, and the sergeant killing that child. What we have been told by those who witnessed and were

a part of it was that the sergeant was firing into a ditch where there were many civilians. When the child was found to be moving after that event the pilot went down and his crew took the moving child out of the ditch and took it aboard the aircraft to carry it back to Quang Ngai. It suggests to me, Colonel LEWIS, that your are not recalling all that you did hear at that time, that you heard something more, that you have taken these two incidents; the sergeant firing, and the rescued child, and tended to merge them together.

A. Now the rescued child, I don't recall that.

Q. But the fact that there was a child moving and then a child dead is what you said you remembered.

A. No, I don't remember that. I didn't, no. The only thing that I came near to hearing in regard to these things was the fact that there had been women and children killed, 124 or 128 and that there had been a sergeant firing on civilians. Now these are the only two things that spurred my doing anything at all.

Q. Where was the sergeant firing on civilians?

A. This I don't know. This was given to me to reinforce what might have been a bad show.

Q. Well, what did Mr. CRESWELL tell you?

A. I think that's where I got it, you see. That's where I think I got it. Wherever I got it, I did move to try to find out what was being done to investigate this. But as far as some of these other things that have come out, I didn't hear a word.

IO: Well, you talked to Mr. CRESWELL and he indicates that he pretty well told you the story that THOMPSON had told him. This is an all inclusive story, which includes: shooting the people in the ditch, the sergeant firing into the ditch, the rescuing of people from the bunker, flying this wounded youngster out, a captain or an individual firing at a woman on the ground. It includes seeing a large number of dead civilians in the village itself.

A. No, if he had told me all of this. To the best of my recollection CRESWELL only revealed that what I had heard at the briefing. If I'd heard that, I'd have flown down there myself.

Q. You were pretty insistent on following this up as you have described it to us.

A. True, I know it. I did.

Q. You are still confident that he didn't fill you in more detail than you recall today?

A. No, when I read this account, MEADLO and some of the others, this was the first time I had heard it, that kind of activity. Now CRESWELL, if he had this information didn't tell me to that extent.

IO: You talked to THOMPSON subsequently, according to your testimony?

A. Yes, but only briefly, and only to the effect of the fact it is being investigated. I didn't get into the nitty-gritty with THOMPSON due to the fact that he was upset and wanted to know how the investigation was going.

Q. What seems so unusual to me very frankly is here we have CRESWELL and THOMPSON. THOMPSON you know is upset. For the same reason CRESWELL, who received the report, is upset. Yet nobody went back to them and said what you alleged to be the case is not so, to refute the statement that they had made. Nobody had the courtesy to even go back and do this, including yourself.

A. Well, I'm sure that when I would report back to CRESWELL, it was the fact the investigation showed essentially what I have reported. This is what I passed on to him. I could be wrong there. Maybe I didn't give him the satisfaction in these particulars, but I assumed I did. I don't recall ever having CRESSWELL tell me about these children being fired on and that sort of thing. If I'd of heard that, I'd have gone in to see KOSTER right off the bat. I wouldn't have waited around.

To the best of my recollection I only got just a fringe about that, about the nature of the firing. Then

you find that the battalion chaplain of the 20th never heard a report on this, not one by anybody, nor the priest, nor the first sergeant, or any of these people as far as I recall.

MR MACCRATE: Who is the first sergeant?

A. I don't know, but I was talking to Sergeant Major ROGERS, and I asked Sergeant Major ROGERS. He said that the sergeant major didn't know. The first sergeant was back in the rear I guess. I don't know whether he was there with him or not, but then you find out that these key people in the company didn't know from the reports we got at the time and later.

Q. (Interposing) When did you talk to Sergeant Major ROGERS?

A. I talked to Sergeant Major Rogers, I was down at a conference in November, and had lunch with him. This was before, I think, the thing broke wide open. He said an investigation is coming up on the My Lai thing and that General KOSTER will be called in and so forth. We talked about it. He gave me what from the sergeant major's point of view he had heard, and he mentioned the fact that the first sergeant didn't know anything about it.

Q. This is the division sergeant major?

A. This would be the company first sergeant.

IO: Company first sergeant, or the brigade sergeant major?

A. I assumed, now I may be wrong in this, but I assumed it was the first sergeant of the company, MEDINA'S company.

MR MACCRATE: Where did you see him?

A. I saw him down at the club in Fort Meade, Maryland. We had lunch together.

Q. This was as recently as 2 or 3 months ago?

A. About November 5th, right. When I heard that, this thing was starting to boil, he was one of the first that told me that this thing is going to --

IO: (Interposing) What other people have you talked to now, since --

A. (Interposing) Since then, just the two, well, the three chaplains, Father SHANNON who was the priest who covered Task Force Barker, Chaplain KISSINGER who was the chaplain of the 1/20, and Chaplain CARREY who was the 11th Brigade Catholic chaplain. Then I had forgotten about the sergeant major, but I did talk to Sergeant Major ROGERS about it.

MR MACCRATE: How about Chaplain HOFFMAN?

A. NO, no I talked to him at the time, but I haven't talked to him lately. I talked to him at the time back in Vietnam, but I never did talk to him since this thing happened. But I know that HOFFMAN didn't hear anything. He didn't reveal anything. He was quite close to HENDERSON.

IO: Colonel LEWIS, I have here Exhibit D-6 which is MACV Directive 525-3, and I would ask you if you are familiar with the contents of that directive. I would call your attention specifically to paragraph 2, 2b in particular.

A. Yes, I remember this.

Q. And paragraph 2c as well.

A. Right, I remember reading this.

Q. And then I would call your attention to paragraph 3, specifically 3a(2) and (3).

(The witness read the paragraphs indicated.)

Q. I have here two other documents, MACV Directive 20-4, which is entered into the record as Exhibit D-1 which I will show you. I would ask if you have seen this document.

I would call your attention primarily to paragraph 5, paragraph 5a and 5b.

A. I don't remember reading this one. But I knew the contents of it pretty well, because I taught at chaplain school, and I taught some of this same information.

Q. Well the primary point is, it is to be reported.

A. Right, I agree. And as I say, I moved immediately to the G3 shop on this, and then testified to the effect of what ensued in my relation to it.

Q. I also call your attention to another exhibit, which is M-8, having to do with the same subject of reporting of war crimes, and I would call your attention here to paragraphs 3, 4, and 5. (The witness read paragraphs to which the IO referred.)

A. Now you see, maybe this was a bad assumption on my part, but I felt that when they talked about investigation and reports that these kinds of things were being done by those people properly designated to do it. Once the individual has made it known that perhaps these things had happened, I assumed it was being put into proper hands. This is what I reported back to CRESWELL. I said "Now, CRESWELL, okay, but I've been assured that this is being investigated." Where I made my mistake, as I look at it now, I should have asked for a final report on this, and I didn't.

Q. Well, here is the way I see this from the information that you have provided here this morning. You have indicated that you went back and talked to a lot of people, but you also indicated to me that you knew really very little about what transpired.

A. That's right.

Q. Although there are indications that this information had been passed on, based upon what little you knew about it and upon the fact there had been some discussion in this meeting about the ration of VC KIA versus weapons, it

could appear that you were just getting the brush-off.

A. I felt this. I felt this from the chief of staff and the G1 particularly. Now the G3 was very, very fine about it. But of course BALMER wasn't there too long and of course -- but again, my own sources of information and also the decisive thing was talking to BARKER. But again maybe I was getting the brush-off. Maybe I was told this just to keep me quiet.

Q. Very frankly, you didn't have really enough to make an allegation from what you've indicated.

A. That's right.

Q. The information was there, but you were just, in my judgment, doing some loose talking.

A. Well, yes, that's what I felt. And looking at it now, maybe there was something else that I didn't read into it, that maybe this was the reason for the hush-hush. These were rumors and not substantiated, and until the investigation was over, we ought not to be talking about things that maybe weren't true. All kinds of rumors would go around the division, you know, about all kinds of things. Some such and such rape a girl down in the village, and you'd find out maybe some guy went down and had a beer with her. So it seemed to me that I was relying on the judgment of those who knew more of how to handle this thing than I would. I'm only the chaplain, and I'm not there to make investigations. I'm only there to pass on information.

Q. Well, yes, but you have a very specific obligation, as do all of us, whenever you hear of a war crime. Certainly even a sergeant firing into a group of women and children, this in itself is a war crime.

A. That's right, right. Exactly what I told the G3, I said, "Look, this has got to be looked into. This is terrible, this happening." "Chaplain, I assure you," this is what BALMER said, in the presence I'm sure of TREXLER, "I

assure you, that this thing will be investigated." That was the kind of assurance particularly, I got from BALMER. Now I had high judgment of BALMER. BALMER was a very sensitive officer, and when he told me this, I felt that coming from the number 3 or 4 man in the division that is was going to happen. The thing is you've got to go on the judgment of those you're working with. Otherwise you're not going to be able to work with them.

This is what I passed on to CRESWELL. I said, "Look, the G3 assured me, and whatever the information will come out of this." I probably didn't really pound it in enough to CRESWELL that this is what had come to me, not necessarily through official channels, but in unofficial as well, because I never read any report and never was told by anybody that this was wrapped up and therefore the case was closed. I assumed it was, because I didn't have any other information. I assumed it was closed.

Q. Were you ever cautioned specifically about not discussing this operation?

A. Oh, yes, definitely, correct.

Q. As I recall your testimony the one that cautioned you was the G1?

A. The G1.

Q. Colonel QUALLS?

A. And Colonel PARSON.

Q. Colonel PARSON?

A. Right.

Q. No one else cautioned you about not discussing this operation?

A. As I recall. I'm not sure, I'm not sure if BALMER said this, but BALMER was more open and he was more willing to discuss it then the others. He probably did too,

but my more vivid memories of putting the damper on it was the G1 and the chief of staff.

Q. Let's think about this whole situation now in putting it all together. Would it be your opinion that there was a deliberate attempt to coverup within the division?

A. Well, it depends on what you mean by coverup. At the time I was frustrated when they would tell me this, but my feeling was that if it was being hushed up, it was a sound reason because of many factors that I may not have my hands on. If I had felt that there was a coverup because this had actually happened and nobody wanted this to get out, then I would not have been satisfied even with BARKER'S account. I never did get that impression. I was frustrated by the fact that they didn't want to talk about this, but the reason I felt it was coveredup was because maybe they had factors there, or maybe they got information from higher headquarters, that I wouldn't be privy to, unless it's a need to know basis. I did not think of it as a coverup or something that we did wrong, and therefore we don't want anybody to know. I never felt that way. If I had felt that way I would not have been satisfied.

Q. You were frustrated, but you were not frustrated or irked enough that you went to talk to anybody in command position, or in an investigative capacity?

A. No.

Q. Except the chief of staff?

A. The chief of staff, yes, correct. Now the thing is, if I hadn't had these other, if I'd only had the G1, the G3, the chief of staff, if these are the people, the only people I had contact with on this incident, then I probably would not have left that division without moving in and seeing General KOSTER. But since I did have this other information, since I didn't think there was a coverup, there didn't seem to be any reason for any sort of thing like that.

Q. Later in your testimony you indicated that this ratio of weapons versus the number of VC KIA that was reported was the thing that raised the ire of all the people in

the briefing that night.

A. Put it this way. There were a few that were buzzing about it. The 124 was not revealed at the briefing. That was brought out by I think ANISTRANSKI. I could be wrong. It might have been some other voice, but it was in that area where I was sitting. But the 3 weapons out of 128 VC raised a furor or raised a buzzing.

Q. It wasn't necessarily an ire?

A. Just a buzzing. I know BALMER was teed off at it, and so was ANISTRANSKI --

Q. (Interposing) Well BALMER wasn't even there that night.

A. Well, no. When he heard about it. No BALMER was not there. He was on leave. But I know when he did hear about the reported 124, he was teed off, but I don't recall when you say ire. I know ANISTRANSKI showed ire and so forth. But I think there was a general feeling that this was a bad show, that something should be investigated. I think this was general knowledge in the staff. It should be investigated. It wasn't just my feeling.

I don't know what these other officers did except in conversation with them, whether they asked about it. In fact, I don't recall any specific times at any of our chief of staff briefings or anything when anyone brought this up because the principal staff officers, the general staff officers, evidently revealed enough to the rest of us that we were not to talk about it. It never was brought up, so that sort of irked me. I didn't feel constrained to bring it up in the chief of staff briefing because of the fact that I was told not to. Maybe I should have opened it up.

Q. Do you have any additional documents aside from the one you had spoken from which would be of assistance to us in the conduct of this investigation?

A. I have the division chaplain's roster with the names and serial numbers of all the chaplains who were there,

and then I have just some of the principal general staff officers. We had the roster. I just clipped out the AG and information officers who were assigned to the division as of April of that year. You probably have all that, but I just brought these along because some of them like JOHNSTON and some of those I didn't --

Q. (Interposing) You indicated that subsequent to this operation there had been some atrocities in the Que Son Valley area?

A. Well now, this was under investigation for quite a few weeks, and it was with, I think the 1/46.

Q. Is this a battalion of the Americal Division?

A. Yes.

Q. Is this the June instance involving a rape, or rapes?

A. That's the one, right sir. And one of the things that entered into my mind was the fact that since this thing was hot on the fire and being investigated, and the subsequent trial that maybe this usurped some of the investigation of the other incident. In other words, I thought maybe that this was so involved that they didn't have the time or maybe they were going to put off making more of a thorough investigation of the My Lai incident as a result of this. I don't know, but this was one of the things that entered into my mind about the fact that this is being hushed up.

Q. Well, here you had a proper investigation being conducted.

A. That's right.

Q. An investigating officer was designated. Do you remember an investigating officer being designated by division orders or by any orders for the My Lai incident?

A. No. I never did. No. I assumed it was being

done. Maybe this was a rank assumption on my part because when these officers tell you that the investigation is going to be made you figure that's what's going to happen. And the fact that you didn't see these papers -- they would have been -- they would have probably -- if they're going to keep this quiet until the investigation is going to be made, they're not going to publish general orders and have everybody look at them. So I imagine I felt that it was being handled, but it was being handled so that it wasn't brooded all over the territory before the investigation was made.

MR MACCRATE: Do you recall who gave the briefing on the evening of the 16th?

A. It was a regular G2-3 briefing, plus I think the G1 and the G5. The G2-3 briefing was generally done by subordinate officers, a captain or two captains maybe. I don't know who they were. G5 ANISTRANSKI gave his own, and the G1, Colonel QUALLS, generally gave his own, but the G2-3 briefing was generally some of the people in his shop.

Q. Was there any over-questioning of the briefers that night?

A. I don't recall that there was, no. I don't believe anything was raised at the briefing. I don't recall that there was, I'm sure that there wasn't.

IO: We are about to recess this part of the hearing, Colonel LEWIS. Before we do so, I would ask that if you have any additional documents, photos, maps, memos, or any other materials which would be helpful to the purpose of this investigation, that you make these available to the invesgation. Moreover, I would also ask that with the additional information which may have been imparted to you here this morning, that if some of these bits and pieces start coming together to refresh your memory, that if you do have any additional information which does come to mind at a later date, that you get in touch with us so that we can make this information a matter of record.

A. Right, sir.

Q. I will give you this opportunity to make any additional statements or to ask any questions which you may so desire to ask.

A. Well the only thing I'd like to add is that most of my impressions of the situation were in default of any other information. In other words, I felt that as the division chaplain, that if things did happen that might be of a nature that would not fall within proper army regulations or the code of military justice that we had enough chaplains that someone, somewhere was going to get this information. I just am nonplussed that outside of the facts that CRESWELL reported, that not one of the brigade chaplains, people on the spot or that no individual other than THOMPSON and CRESWELL even said anything to anybody. Then 18 months later we hear all these stories.

For example, this boy HAEBERLE said that these pictures were taken and were given to the Army. Well, I never saw any pictures. The question I'd like to ask HAEBERLE was that if he was so incensed with what was happening, why didn't he take a picture of the guy firing? The negative part also enters into this. I did not get from the missionaries, from the Buddhist chaplains in the division, of the 2d ARVN Division, from any of my battalion chaplains, or any other information other than what I have reported. So I'm really nonplussed. Of course things happen even on platoon level that don't reach the top, but it's amazing that this thing happened the way it's revealed, that something didn't filter through from some of these sources that I have mentioned. I really can't believe it, can't believe it, except second hand, someone reporting that he was there and so forth and so forth.

Q. Before closing I'd like to reinforce what I indicated to you in the very beginning. You are directed that you should not either directly or indirectly, or through others, discuss the My Lai incident, including the subsequent investigation and report, with any person who may have been connected with the incident in any way, or the testimony, which has been given in this investigation this morning. This does not apply, of course, if you are required to discuss the case before other administrative, quasi-judicial,

judicial proceedings, or legislative proceedings, or as you may be required to do in the performance of official duties. In that instance the meaning of official duties would mean that you would be directed to testify at one of these types of hearings.

A. Yes, sir.

Q. The hearing will recess at this time.

(The hearing recessed 1225 hours, 12 January 1970.)

SUMMARY OF TESTIMONY

WITNESS: LOFTIS, Robert W. SSG

DATE OF TESTIMONY: 5 February 1970

PLACE OF TESTIMONY: Pentagon

WITNESS SUSPECTED OF: N/A

COUNSEL: None

DUTY ASSIGNMENT: 10 June - September 1968, he was stenographer for one of the ADC's: September - 12 May 1969 he was division administrative NCO.

1. KNOWLEDGE OF REPORTS OF THE MY LAI INCIDENT.

The witness had never before seen HENDERSON's report or any of its attachments (pgs. 11, 12). He had never seen TAN's 11 April 1968 report (pg. 12). He had never seen the VC propaganda leaflet nor heard any VC propaganda seeking revenge for what had happened at My Lai (pgs. 13, 26). He saw no complaint by a helicopter pilot alleging the unnecessary killing of civilians or a response to such a complaint (pgs. 14, 18). He saw no document discussing a confrontation between air and ground personnel, and he never heard anything about such a confrontation (pgs. 14, 26). He saw no document and heard no discussion about the killing of a Vietnamese woman by an Army captain (pg. 14). There was no report of investigation prepared by any commander or complaint about unnecessary killing among the documents he recommended for destruction (pgs. 14, 15). He was not asked to search for such a document in April of 1969 (pg.44). He could not remember seeing a report which consisted of five pages and from 15 to 25 statements and which came into headquarters around the middle of May (pg. 19). Had such a document been in the files he thought he would have remembered it (pgs. 19, 20). He never heard anything about Task Force Barker or Lieutenant Colonel BARKER (pgs. 22, 27). He never heard anything about the unnecessary killing of

women and children which took place on an operation in mid-March (pg. 25). He knew nothing about a dead woman who was spread eagled along the side of the road with an 11th Brigade patch in her crotch (pg. 26).

2. OTHER INFORMATION.

a. Duties as administrative NCO.

LOFTIS received, proofread, and insured the completeness of correspondence and documents (pg. 3). He then delivered them to the secretary of the general staff (pg. 3). While secret documents were logged, confidential documents were not because it was not required (pg. 4).

b. Inventory of file.

All classified documents were accounted for at the time the witness took over from Sergeant SAIMONS (pg. 4). There were approximately 110 such documents (pgs. 9, 31). At this time the witness acquainted himself with the contents of the file (pg. 4). There were no top secret documents (pg. 10). He did not read the classified documents, but looked through the titles and made certain all the pages were there (pg. 5). He did read the unclassified documents (pg. 5). The second drawer of the file cabinet was frozen shut the entire period LOFTIS was there (pgs. 34, 36). He heard that it only contained a flight helmet (pg. 34). No one ever asked for anything from the second drawer (pg. 35). All secret and confidential matter was put into the first drawer by the witness (pg.38) Some material was kept in the third drawer (pg. 38). There was a personal envelope in the third drawer for General GETTYS (pgs. 38, 39). He kept up the logs SAIMONS had used to maintain the files (pg. 5). However, LOFTIS changed the system somewhat because he felt the files needed more work (pgs. 5, 31, 32). Some outdated documents were destroyed, but certificates of destruction were prepared beforehand for the secret documents (pg. 6). No destruction certificates were prepared for the confidential documents which were destroyed (pg. 9). However, he cleared the destruction of these documents with the secretary of the general staff before destroying them (pg. 9). About 50

documents were destroyed (pg. 10). The destruction certificates were kept in a filing cabinet in LOFTIS' office (pg. 40). SAIMON's destruction certificates were kept there also (pg. 41). These certificates of destruction were still there when Sergeant DROSDICK took over the files (pgs. 7, 20). At the time of this turn over all confidential material was properly accounted for (pg. 7). He told DROSDICK that the second drawer was frozen and contained a flight helmet (pg. 39). SAIMONS stated that there could have been no documents in the frozen drawer because he had seen that it was empty (pg. 40). Classified documents were stored in a safe in the office of the secretary of the general staff (pg. 8).

EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	NOTES	PAGES
M-30	RODRIGUEZ' statement	Wit had never seen before.	11
M-35	VC propaganda leaflet	Wit had never seen before.	13
M-36	Memo for DC, 2d ARVN Div, 12 Apr 68	Wit had never seen before.	12
M-44	Papers for award to THOMPSON	Wit thought he had seen before but had no recollection of any discussion about it.	16
R-1	True copy of HENDERSON's Report	Wit had never seen before.	11

(The hearing reconvened at 1440 hours, 5 February 1970.)

IO: The hearing will come to order.

RCDR: The following named persons are present: LTG PEERS, MR MACCRATE, COL ARMSTRONG, and MAJ LYNN.

Sir, the next witness is Staff Sergeant Robert W. LOFTIS.

(SSG LOFTIS was called as a witness, was sworn, and testified as follows:)

Please state your full name, grade, Social Security number, organization, and station.

A. Robert W. LOFTIS, Staff Sergeant, 250-74-0667, Headquarters and Headquarters Company, U.S. Army Training Center, Infantry, Fort Jackson, South Carolina.

IO: Sergeant LOFTIS, on my left is Mr. Robert MACCRATE, a civilian lawyer who has volunteered his services to Secretary RESOR to assist us in the conduct of this investigation. He also provides legal counsel to me and other members of the investigation team. On my right is Colonel ARMSTRONG who has been designated by General WESTMORELAND, the Chief of Staff, as an assistant in this investigation. Besides me, both Mr. MACCRATE and Colonel ARMSTRONG may address questions to you this afternoon. We have other groups such as this that are taking testimony from other witnesses. In the final analysis it will be my responsibility to put together a report, to weigh the evidence, and to determine the findings and recommendations. Have you had an opportunity to read the instructions?

A. Yes, sir. I have.

Q. Do you understand them or have any questions?

A. I understand them.

Q. Sergeant LOFTIS, would you indicated your duty assignment within the Americal Division, any change of assignment you may have had, and the approximate dates and, of course,

indicate when you joined the division and when you terminated your service.

A. Yes, sir. I initially joined the Americal Division with a unit deployment, which was the 4th Battalion, 21st Infantry. My duty at that time was squad leader with D/4/21. I later was transferred to division headquarters to work as the administrative supervisor in the office of the chief of staff at Americal Division headquarters. I took this duty and change of assignment on or about 10 June 1968. However, initially, I went to work as a steno for one of the assistant division commanders and later, on or about 15 September, I became the administrative NCO and replaced Sergeant First Class SAIMONS. I remained in that duty until May 1969. I returned from Vietnam on 12 May 1969.

Q. So from 10 June until September, when you replaced Sergeant SAIMONS, you were serving in the capacity of steno for one of the ADC's?

A. Yes, sir.

Q. Do you recall which ADC it was?

A. It was Brigadier General Howard COOKSEY.

Q. Sergeant LOFTIS, the matter we're investigating, the so-called My Lai incident of 16 March 1968, became a matter of public knowledge about 4 or 5 months ago; that is, say, became a matter of public knowledge through radio, television, newspapers, magazines, and so forth. Since that time, have you had any discussion with anybody from the Americal Division concerning either the incident itself, the reporting of the incident, or the investigation of the incident, or any related activity?

A. No, sir. I have not.

Q. When you left in May 1969, who replaced you?

A. Sergeant First Class DROSDICK, sir.

Q. Do you know his first name?

A. His first name was William.

Q. DROSDICK?

A. D-R-O-S-D-I-C-K.

Q. What's his grade?

A. Sergeant First Class, sir.

Q. Do you know where he is?

A. To my knowledge, he is presently still in the job of administrative supervisor of the Americal Division.

Q. Would you indicate, in broad terms, what your duties were as the administrative noncommissioned officer in the command building?

A. Yes, sir. My duty was to receive correspondence and documents and to proofread the correspondence, make sure it was complete, and then begin its routing through the command group. I delivered it to the secretary of the general staff.

Q. When you took over, who was secretary of the general staff?

A. Initially, when I took over, Major HALLMAN was, Major Robert E. HALLMAN. He remained there also until the time I left. I was also the custodian of classified documents. On occasion I wrote certain DF's and headquarters type correspondence. I maintained both unclassified and classified files, and generally I was over all the other enlisted men that worked in the command group, being senior NCO. I advised the secretary of general staff on administrative matters.

Q. When you talk about other enlisted personnel, you did have at that time Command Sergeant Major ROGERS. Was he still there?

A. Yes, sir.

Q. He was succeeded by somebody else, but I would imagine he had a great deal of influence over the noncoms in the headquarters?

A. Well, yes, sir, he had a lot of influence. However, all the enlisted persons working in the command group were specialists except the few sergeant E-5's, and they came under me directly for supervision and making sure a job was done. Those are the responsibilities I had, sir.

Q. You said you maintained classified documents. Did you maintain logs?

A. Yes, sir. For secret documents we logged in.

Q. Did you log in confidential documents?

A. No, sir.

Q. If a confidential document pertained to a subject that was considered extremely important, would there be a log or any control of any kind put on it?

A. Yes, sir. If it were confidential, special handling was required. If it did require receipt from hand to hand, then it was controlled. But I never had occasion, as I can recall, to handle anything confidential, other than the routine type of confidential documents. It doesn't require a log; however it is permitted. I didn't use a log control because it wasn't necessary.

Q. Now, when you took over from Sergeant SAIMONS, did you have an inventory of documents?

A. Yes, sir. We did.

Q. I take it that you were able to find all the documents that were secret which Sergeant SAIMONS was responsible for?

A. All accountable documents were accounted for at that time.

Q. Did you at that time also go through the other files to acquaint yourself with the contents of them?

A. Yes, sir. I did.

Q. Including the confidential and any of the personnel files and so on?

A. I didn't read the documents as such, sir. I just looked at titles and saw what I had and accounted for the pages of those that were logged or controlled. I briefly went through the documents to see that all pages were there. I did orient myself on the unclassified files by reading through them, but at no time did I ever, unless it was absolutely necessary, read the classified documents. I didn't feel that I really had the need to know.

Q. Now, Sergeant SAIMONS indicated that when he departed he left with you the log which he had used to maintain his file.

A. Yes, sir. He did.

Q. Did you continue to maintain those logs?

A. I continued to maintain the logs, sir. However, I did remake the log in a different manner, just transferring forward any documents. I didn't like the system that was being used. There's a couple different systems. They all come out to the same thing. But I prefer to use a one-sheet method, one sheet per document on the log entries. I did transfer the active log entries to other active sheets and put in a page per document, one document per page.

Q. Now, what happened to the old logs?

A. They were filed, sir. I attached them, filed them with a memorandum that this action had been taken by me and it was filed in the appropriate functional files area, under the 500 series. I don't recall the exact number, but I believe it's document inventory files. I filed them in there and I believe they are to be retained for a period of a year or two years. I don't recall the exact disposition on them, sir.

Q. Now, when you went through those files, did you retire any of the files or did you destroy any of the files? We're talking first about the classified and then we'll get down to the ones which were confidential and lower.

A. Yes, sir. I don't think I destroyed any files immediately, sir. I did prepare several destruction certificates during my tenure on that job. I don't recall though, immediately after inventory. I think I waited a month or 2 months before I destroyed them. But I did destroy some documents, those that were no longer necessary, of no further use.

Q. Did you take this action yourself or did you simply make recommendations to the secretary of the general staff and prepare a destruction certificate for him?

A. I made the recommendation and prepared the destruction certificates for the secretary of the general staff.

Q. What did you do with your destruction certificates?

A. They were filed also with the file designated for destruction certificates, sir. It's in the 500 series; again I'm not sure of the exact number.

Q. Did you also go through the confidential and the unclassified files at the same time and take action to eliminate those which had been outdated?

A. Yes, sir. I did.

Q. What did you do with the ones that you took out of there? Is there anything to indicate which one you destroyed or had destroyed?

A. Yes, sir. Most of the files, the majority of the files in that office were just reference files. There were very few record type documents. Most of them can be just discarded after a period of a year. You cut them off at the end of a cutoff period, which is usually the last day of a calendar year, and then you hold them for another year. Then you destroy them. Files of this nature I did destroy, just reference type files. Any other type file, I believe there's two or three that are required to be transferred to the records holding area and destroyed at a later date, but not by me personally.

Q. Well, were you the one that made the decision concerning whether these unclassified and for-official-use-only and confidential papers would be destroyed?

A. Normally I took the action, sir, but I always consulted with the secretary of the general staff prior to just throwing something away or transferring it, other than normal, routine, administrative matters. What I mean is, if the file indicator says that you hold it for a year and then you transfer it, then I went ahead and took the action. I believe that the form that you use to transfer a file requires an officer's signature, so these I would have sent to the secretary of the general staff, and the transfer would have been over his signature and approval.

Q. The logs been filed, and the certificates of destruction; would they have all been filed together in that inventory of files and so forth?

A. Not under the same file identification, sir. The destruction certificates have a specific file number and so do the documents, logs, and registers. They have a specific file number.

Q. To the best of your knowledge, when you left there, were those logs still there?

A. Yes, sir.

Q. Were the destruction certificates still there?

A. Yes, sir, to the best of my knowledge.

Q. And you turned them over to DROSDICK?

A. Yes, sir.

Q. Did you have any problems in turning your documents over to him?

A. No problem whatsoever, sir. We inventoried the documents and they were signed for by him. They were all accounted for at the time that I turned them over to him.

MR MACCRATE: When you took over the tasks from Sergeant SAIMONS, was there a general reference file in which this kind of material to which you yourself referred was retained? In what condition would that be found, where would it be?

A. I'm not sure I understand the question, sir.

Q. You indicated that there were miscellaneous papers?

A. Yes, sir.

Q. Confidential, for-official-use-only types of papers in the office for reference purposes, not for record purposes. Where would that type of material be stored in the headquarters, the rooms, and the location of various personnel? If you could just relate the place where such material was retained.

A. The classified documents, sir, and confidential and above, and any FOUO that needed to be protected were stored in the classified documents container, which was a GSA approved safe in the secretary of the general staff's office, by his desk. I did have a locked file cabinet in which for official use only and unclassified files were kept. All documents and files were maintained under the functional filing system, under the Army Regulation 345-210.

Q. When a reference is made to the general reference file, this could include materials that were kept in a safe, confidential papers, or papers kept in your locked file cabinet?

A. Yes, sir. It would include that. However, unclassified files would not be in the safe unless they directly related to the document itself.

Q. Then when you disposed of documents which you describe as the reference-type file, you would be taking papers both from the safe and from the file cabinet?

A. Well, not normally at the same time, sir. I destroyed my classified documents exclusively, mixed no unclassified with it. When I did destroy them, I went through them page by page and they were accounted for on a destruction certificate. I destroyed them by means of burning in the incinerator.

Q. Would this have been true of confidential documents?

A. Yes, it would.

Q. These were all accounted for page by page?

A. No. Let me correct that last statement, sir.

Confidential documents would not be accounted for by means of destruction certificates. They would be accounted for as far as going through the pages and making sure all the pages were there. However, they were not required to be recorded unless you had them logged in on the control register.

Q. Did you personally go through, page by page, the confidential documents that you destroyed, or did you assign that task to one of those working for you?

A. Sir, I went through them with a disinterested person. You are required to have a witness who is completely disinterested from the documents.

Q. I'm talking about the confidential documents as distinguished from the secret documents.

A. Yes, sir, I used the same procedure for destroying confidential as I did for secret with the exception that I didn't type out a destruction certificate.

IO: But even so, if what you say is correct, Sergeant LOFTIS, after you had gone through them, you would have still called them to the attention of the secretary of the general staff so he would have an opportunity to look at them?

A. Yes, sir, before I destroyed any documents, sir, I would show them to the secretary of the general staff and say, "Sir, this is what I propose we get rid of." I didn't just arbitrarily burn them without his approval.

Q. Now let me come again to the secret documents. Just give us an order of magnitude, how many secret documents did you have?

A. I'd say roughly 100, 110.

Q. Maybe about half a drawer full?

A. Yes, sir, about half a drawer full because I didn't even use the other drawers in our safe.

Q. How about your confidential, how much of the safe did they occupy?

A. Very little, sir. Actually all documents didn't fill up more that one drawer.

Q. Is this before you cleaned them out? I understand from Sergeant SAIMONS that he had the top drawer with secret registered documents in the top drawer and he had the confidential and lower documents in the second drawer and below.

A. Well, this was true when I first signed for them. However, I don't believe both of the drawers were full. After I cleaned them out, I went under the concept of filing all the classified material together. I marked the labels appropriately. If the entire folder itself contained confidential only then it was marked confidential. If it was secret, anything in the folder was secret, then the whole folder was marked secret. However, the regulation permits you to file all your classified together and that's the way I did it, sir.

Q. You had confidential and secret. You had no top secret?

A. No top secret, sir.

Q. They were filed according to subject matter or functional area?

A. Yes, sir. The folder was marked in accordance with the overall classification within that file folder.

Q. Can you give us an order of magnitude of how many of the classified documents you may have destroyed when you went through and organized the files?

A. Sir, that one would really be hard to answer because I'm not sure. I would say around 50 or so, but it wasn't very many, I know, because there wasn't that many documents there. I'd say normally we maintained about 100 documents.

Q. You're only talking about 100 documents for secret and confidential in your file system?

A. Well, no, sir. I would say approximately 100 documents were secret. There were some confidential, but very few.

Q. I have here Exhibit R-1, dated 24 April 1968, subject: "Report of Investigation," from Commanding Officer,

Q. Is this before you cleaned them out? I understand from Sergeant SAIMONS that he had the top drawer with secret registered documents in the top drawer and he had the confidential and lower documents in the second drawer and below.

A. Well, this was true when I first signed for them. However, I don't believe both of the drawers were full. After I cleaned them out, I went under the concept of filing all the classified material together. I marked the labels appropriately. If the entire folder itself contained confidential only then it was marked confidential. If it was secret, anything in the folder was secret, then the whole folder was marked secret. However, the regulation permits you to file all your classified together and that's the way I did it, sir.

Q. You had confidential and secret. You had no top secret?

A. No top secret, sir.

Q. They were filed according to subject matter or functional area?

A. Yes, sir. The folder was marked in accordance with the overall classification within that file folder.

Q. Can you give us an order of magnitude of how many of the classified documents you may have destroyed when you went through and organized the files?

A. Sir, that one would really be hard to answer because I'm not sure. I would say around 50 or so, but it wasn't very many, I know, because there wasn't that many documents there. I'd say normally we maintained about 100 documents.

Q. You're only talking about 100 documents for secret and confidential in your file system?

A. Well, no, sir. I would say approximately 100 documents were secret. There were some confidential, but very few.

Q. I have here Exhibit R-1, dated 24 April 1968, subject: "Report of Investigation," from Commanding Officer,

11th Infantry Brigade, to Commanding General, Americal Division. I would like to refer that document to you, Sergeant LOFTIS, and ask you to look at that document, and tell me whether you have ever seen that document in the files which you took over and which you controlled. Now look at that first page first. I just want you to look at the first two pages. That would not have been in the true copy form. It would have been comparable to that without the true copy and the signed copy.

A. Sir, I don't recall having this document in my files. To the best of my knowledge I would say no, I didn't have that document in my files.

Q. Read on to the first inclosure which takes an odd form, doubled spaced on a single page. This is a statement dated 14 April 1968. Have you ever seen that?

A. No, sir.

Q. Have you ever seen the same paper, which is indicated here by Exhibit M-30, a signed copy, signed by Captain Angel M. RODRIGUEZ? You see a clean copy of it on the back which is made into a certified true copy. It's an identical paper with the signature of Captain RODRIGUEZ.

A. I don't recall seeing this paper either, sir.

Q. Either alone or as an attachment to another paper?

A. No, sir.

Q. Would you turn on to the next page, and indicate whether you've ever seen this document, either separately or as an attachment to a document?

A. No, sir.

Q. You may have seen something like this, the front page is rather general in nature. You might turn to the second page. If you had read the second page I think it would have attracted your attention. Do you recall seeing that paper?

A. No, sir.

Q. You've seen none of these pieces of paper in the files which you took over?

A. To the best of my knowledge I have not, sir. As I say, I didn't read the contents of the majority of my files other than just the titles. I don't recall having the papers in my files.

Q. On the front page, you'll notice it is addressed to the Commanding General, Americal Division and you'll notice that it is confidential. Where else in the headquarters could it have been retained?

A. I would say it may have been retained by the G3 or the AG section, sir. It's a possibility. However, this document I feel wasn't present at the time I took over the files, because I don't remember seeing it.

Q. You don't recall having seen this?

A. No, sir.

Q. It was certainly dated well before your take over as the administrative noncommissioned officer.

A. Yes, sir.

Q. I have here Exhibit M-36. Specifically, I would like to call your attention to one of the inclosures. This is a Vietnamese version. Immediately in front of it is the English translation, two pages. I would ask you to look at that document in Vietnamese and then the English version and see if you have seen either one or both of those documents in your headquarters, in your file.

(Witness refers to the first inclosure entitled, "Broadcast: American Evil Appears.")

A. I have not seen this, sir, to the best of my knowledge.

Q. Now turn to the second inclosure which is the last two pages, the Vietnamese being the last page. You'll notice it's a Vietnamese report, signed by Lieutenant TAN. It is dated 11 April, and the English version on the preceding page you will note is dated 11 April 1968. It's through the district chief, Son Tinh to the province chief, Quang Ngai, signed by Lieutenant TAN.

A. I don't recall seeing this either, sir.

Q. Thus far we have talked about Exhibit R-1, with its first inclosure, an unsigned copy of Exhibit M-30, and it also has as a second inclosure a Viet Cong propaganda statement. We've also talked about inclosures 1 and 2 of Exhibit M-36.

I have here, now, Exhibit M-35 which is a notice issued by the Quang Ngai National Liberation Front Committee dated 28 March 1968. The Vietnamese version is to the back, the English translation is to the front. I would ask you to look at that, Sergeant LOFTIS, and indicate whether or not you have ever seen this document?

A. No, sir. I have never seen this.

Q. Now let me go back just a bit. Do you recall, I showed you first the R-1, what we call the report of 24 April?

A. Yes, sir.

Q. Included with it was a statement and also a piece of Viet Cong propaganda. We know that individually the headquarters had in it a copy of the piece of propaganda. We also know, as you remember, the letter which I subsequently showed you of 11 April from the district chief to the province chief. We know also that a copy of that was in the headquarters. They were there individually, whether or not they were together in a report form, I'm not sure. We know that at least a piece of propaganda was included in the report which you saw. We have talked to Sergeant SAIMONS concerning this piece of paper. He recalls having seen this particular paper. To his knowledge, he did not destroy it. I must say that he does not state that it was in the file. He saw the paper, he is familiar with the contents.

A. I don't recall seeing it, sir, and I don't believe it was in my files. However, it may have been. It may have been a document that I just glanced through. However, I think I would have remembered the appearance of the paper itself and not necessarily the contents. I don't recall seeing it, sir.

Q. He recalls this document because as you'll notice in the first main paragraph at about three-fourths of the way

down, it states, "These American troops belonged to the 3d Brigade of the 82d Division," and yet they're referring to Quang Ngai Province which is not within the operational area of the 82d.

A. Yes, sir. That don't mean anything to me, sir. Other than just now reading it, I don't recall ever reading it before.

Q. Now there is one other piece of paper which at the moment we do not have, but I'd like to describe it for you and see if you remember seeing this kind of a piece of paper in the files. This is a piece of paper which is probably only one sheet, maybe as little as three-quarters of a page, which states the fact that an allegation or the complaint was made by a helicopter pilot to the effect that there was some unnecessary or indiscriminate killing of some civilians. Also, that an American Army captain had killed a Vietnamese woman and the fact that there had been a confrontation or a violent argument and disagreement between some U.S. Army aviation elements and some ground forces. It goes on further to state that this matter has been thoroughly investigated and named some people that had served as witnesses. It goes on further to state that they can find no substantiation to support this allegation. This is keyed to an allegation or complaint of an aviator.

A. Sir, I don't recall seeing any document at all on something like that. I'm sure that I didn't see anything of this nature.

MR MACCRATE: Sergeant LOFTIS, among the documents that you examined, recommended their destruction, and thereafter destroyed, were there included any reports of investigation or any papers relating to any investigation that may have been conducted either by the division itself or by the brigade commander, or task force commander, or other unit commanders in the division?

A. Sir, I can remember some reports. As pertains to this, though, I don't recall anything. I can remember one report, for instance, where a mortar round in the 11th Brigade was accidentally fired into friendly troops. I recall reading an investigation of that or was aware of the investigation.

Q. Was that among the reports that were destroyed in your cleansing the files?

A. No, sir, I'm sure that wasn't. That was after I had been there for a while. I don't recall, sir, any reports as such being in the destroyed material. Normally my destruction material consisted of messages and one document we received on a weekly basis from DA.

IO: You are referring to the Chief of Staff's weekly summary?

A. Yes, sir. But mainly that was what our documents consisted of, sir.

MR MACCRATE: Do you remember any complaints that were among these papers that you examined and destroyed?

A. No, sir, to the best of my knowledge, I don't remember any complaints.

Q. Do you remember any papers among them relating to the 123d Aviation Battalion?

A. Vaguely, sir, it seems like I do remember something. However, I can't be specific. I remember something on the 123d Aviation, but I don't recall exactly what it was.

Q. Did it have to do with their aero-scout company?

A. Yes, sir. That sounds familiar, but like I say, sir, I don't remember specifically. I don't know. If I saw the paper now, I could tell you whether or not I've ever seen it before, but just from memory I don't remember any specifics. I remember having something from the 123d, regarding the 123d Aviation, but--

Q. (Interposing) Was it Major or Colonel BRANDENBURG who was the commander of the battalion?

A. Yes.

Q. And you associate this paper with him or with his predecessor Colonel HOLLADAY?

A. I would associate it with Colonel BRANDENBURG, as I remember, sir. I don't recall if it was a complaint or anything. I just remember it seemed like I had something from the 123d Aviation at that time.

Q. Do you recall if it related to some administrative problems that they might be having?

A. I really couldn't say, sir, because I'm having trouble just remembering people's names. I don't really remember.

Q. I'm going to show you a paper from the AG's files at Americal Division, Exhibit M-44, with the idea that this may refresh your recollection as to the subject of the paper that you recall. This would not be the paper, but maybe, from reading it and examining it, it will refresh your recollection as to something that you may have seen relating to the 123d Aviation Battalion.

A. Sir, this order looks familiar to me, it seems that I recall seeing this order because reading the citation, it sounds very familiar, as if I read it before.

Q. What responsibilities did you have with respect to citations, as of 1 July?

A. Normally, sir, the award elements would come up, the order would already be cut by AG and it was just a matter of the commanding general signing the certificate. Normally on something of valor and things like this I liked to read them and did read them and look at them for administrative correctness, just to read what the man had done, and this one looks very familiar. I think I've read it before.

Q. Did you see it just in the course of reviewing valor citations and your general interest in that, or did you come across it in connection with the discharging of your duties?

A. I think I saw it just in the nature of an award citation with an award certificate, sir.

IO: May I ask you something here? General COOKSEY was the ADC for operations, is that right?

A. We were under the AB concept on assistant division commanders, sir. It wasn't a maneuver or support as such.

Q. What was General COOKSEY responsible for?

A. General COOKSEY had the 11th Brigade, the 198th Brigade, and the 123d Aviation I believe was also under him, and the other support units and the 196th Brigade was under the other assistant division commander.

Q. Now did General COOKSEY have anything to do with awards for valor?

A. Yes, sir. General COOKSEY had authority to approve awards of Bronze Star and of lesser degree.

Q. Would he approve a DFC?

A. No, sir.

Q. Would he probably not note it or give his recommendation to the commanding general before he looked at it?

A. Yes, sir. I would say that he would, sir.

Q. Might not that be the time when he saw this citation and the papers related to it?

A. Yes, sir. I would say that would have been the time.

MR MACCRATE: Do you have any recollection of any discussion with anyone of M-44, this particular citation?

A. No, sir.

Q. Does this in any way refresh your recollection as to what it was that you recall in the files that you disposed of in connection with the 123d Aviation Battalion?

A. No, sir, not really.

IO: Would it help any on that single piece of paper that I mentioned to tell you that this was a pilot, a warrant officer pilot by the name of THOMPSON from the 123d Aviation Battalion?

A. No, sir. I don't recall seeing any report.

Q. It might have been in a letter form, Sergeant LOFTIS. We're not sure exactly what form it is in. We know the general contents, that it was reported to have come from the commanding officer of the 11th Infantry Brigade to the commanding general

of the Americal Division. We know that it should have been dated about the end of March or the first part of April. We know that it concerned an allegation or a complaint being made by this warrant officer against individuals in Task Force Barker, for an operation conducted about the middle of March 1968. We know that it contains that much information.

A. I don't recall seeing anything, sir. The order here looks very familiar; I don't recall seeing any other type of paper concerning a warrant officer of the 123d.

MR MACCRATE: Would you turn, Sergeant LOFTIS, to the fifth sheet and tell us if you can identify the "OK DM" notation in the upper right hand corner. We realize this would not ordinarily be anything in your office, but it might be that you had seen such a write up in preparation and recognize who had done the editing here.

A. Sir, I don't recognize the initials.

IO: Do you remember having seen that piece of paper which edits and amends the draft citation?

A. No, sir. I don't. I would say offhand that this looks like an AG type edit that would be done in the award section by the writers prior to finalizing the citation. I don't recognize the printing on it or the initials.

Q. Would you recall the name of your administrative officer in charge of that award section?

A. I don't recall the name. I remember he was a lieutenant. I'd know him when I see him, but I don't recall his name, sir.

MR MACCRATE: Could it have been Captain DAMATO?

A. No, sir. I remember Major DAMATO, who was in charge of the AG personnel section.

Q. Well, you'll note that in May 1968, on an indorsement, several pages after that page which you are looking at, he was then a captain, he did sign as assistant adjutant general.

A. Yes, sir.

Q. But he was not the one in charge of the unit at the time you were working with him later on?

A. He was there for a period of time. I knew him as a major, sir, and he departed prior to my departure. He must have been promoted during the period that I was a stenographer for General COOKSEY, because when I first knew him he was a major and was in charge of the personnel section, I believe. This is the lieutenant I'm thinking about, John K. SAMMET. Lieutenant SAMMET was the awards officer in the AG section.

Q. It's a little indistinct on this copy. How many M's are there in SAMMET?

A. Two M's as I recall.

IO: We understand that there were several investigations that were conducted along about this time. One had to do with an incident involving a couple of nurses in Quang Ngai City which probably you remembered as one of the situations being investigated, people finally being brought to trial and so on?

A. Yes, sir. I'm familiar with that.

Q. You're probably familiar with the Kham Duc investigation?

A. Yes, sir.

Q. Conducted, as I understand, by General GALLOWAY?

A. Yes, sir.

Q. Now above and beyond those, do you ever remember seeing any other investigation which may have consisted of about 5 pages which had perhaps 15 to 20 or maybe even 25 statements by individuals attached to it, the report being prepared by Lieutenant Colonel BARKER and indorsed, that would probably be the cover sheet, indorsed or transmitted to the Americal Division over the signature of Colonel HENDERSON, commanding officer of the 11th Brigade. This document should have come into headquarters about the time, 15, 17, 20 May, about that period in 1968. Do you recall ever seeing a document like that?

A. No, sir.

Q. If it had been in there, would it be in your files? In your judgment would you have recognized it?

A. Yes, sir, I think so.

Q. Would you remember it?

A. Yes, I think so.

MR MACCRATE: Do you recall, Sergeant LOFTIS, shortly after you joined the headquarters, in June 1968, actually 3 days after you joined, if you joined on the 10 June, that Colonel BARKER was killed. He was, at that time, the commander of the 4th of the 3d?

A. I recall hearing about a battalion commander being killed, sir. The name BARKER doesn't mean anything to me because I didn't know him, but I did hear about a battalion commander being killed.

Q. Do you recall in that context anything being said regarding any papers that you had in the files at division headquarters relating to this battalion commander having been killed?

A. No, sir.

Q. When you transferred the files to Sergeant DROSDICK, which you probably did some time in May, 1969, did you conduct an inventory with him?

A. Yes, sir. I did.

Q. I would like you to again restate whether or not, to the best of your recollection the logs which you had turned over to you by Sergeant SAIMONS, and the destruction certificates were in the files at that time?

A. Yes, sir. They were to the best of my knowledge.

Q. With reference to the battalion commander that was killed; this was a rather unusual circumstance in which a helicopter and an O-2 aircraft had a mid-air collision.

A. Yes, sir.

424C

Q. Not only was Colonel BARKER killed, but also the company commander was killed. Do you recall that now?

A. Yes, sir. I recall hearing of it.

Q. You were in the headquarters starting on 10 June working for General COOKSEY?

A. Yes, sir.

Q. Had the investigation of Kham Duc started before you arrived or was it subsequent thereto?

A. Sir, as I recall, it had already started prior to my arrival.

Q. Were they quite deeply engrossed in it?

A. Yes, sir. As I recall, they were.

Q. By the time you had taken over as the administrative NCO, Major HALLMAN was already secretary of the general staff, is that right?

A. Yes, sir, he was. He came in the latter part of August and I actually took over around the middle of September. There was an overlap there between myself and Sergeant SAIMONS. He was still around it seemed like a couple of weeks after I had taken over.

Q. Do you recall any files or papers being picked up by Major POWELL?

A. No, sir.

COL ARMSTRONG: What time period did you pick up your Purple Heart?

A. That was while I was still in the infantry unit, sir, in May 1968.

Q. Were you evacuated?

A. No, sir.

Q. While you were down there as a squad leader in your battalion, did you hear much about Task Force Barker?

A. No, sir.

Q. Have you ever heard of Colonel BARKER, the brigade executive officer?

A. No, sir. I don't remember his name.

Q. Have you ever seen Colonel HENDERSON?

A. Yes, sir.

Q. Did he come around to visit the company a lot?

A. No, sir, not visiting the company. I knew Colonel HENDERSON in Hawaii, and I knew him over there. I knew he was the brigade commander. However, I never saw him come out to visit the company.

IO: What was your position in the 4th of the 21st?

A. Squad leader. I was a squad leader in Deltaa Company, sir.

MR MACCRATE: Did you by any chance, Sergeant LOFTIS, assist Sergeant Major ROGERS or Specilaist HERRIS in collecting papers for General KOSTER right after you arrived and help package them and send them on their way?

A. No, sir. General KOSTER had already departed when I arrived there.

Q. Had his office been cleaned out by that time?

A. Yes, sir. To my knowledge it had, because I don't recall anybody being in there to get anything to ship to him or anything.

Q. Was Specialist HERRIS still there at that time?

A. Yes, sir.

Q. Do you remember his first name?

A. No, sir. I don't.

Q. Did he depart shortly thereafter?

A. As I recall, he was around for a while, sir. I'm trying to picture in my mind who he is. As I recall he was there with the new sergeant major that came in.

Q. We understand that Specialist HERRIS was General KOSTER's secretary, was the steno right outside his office. Now it may be that he had left that position before you arrived later in June.

A. Well, if he had held that position, sir, he would have had to, because the HERRIS I'm thinking about was one of the orderlies. As I recall he was General GALLOWAY's orderly. The man that was in the job as the commanding general's steno was VAN ABLE.

Q. We know that VAN ABLE was there at a later time. The man who occupied the desk prior to VAN ABLE is the one whom I was referring to.

A. I thought that VAN ABLE had been there the whole time, because I know he had been around already about a year or so when I got up there. That was my understanding. I thought he was there when they originated the division under the task force, before it was designated the Americal Division.

IO: Task Force Oregon?

A. Yes, sir.

MR MACCRATE: We understand that he was in the headquarters, but it has been indicated to us that he only moved into the particular position of being steno for the commanding general after General KOSTER departed. You don't recall?

A. That's probably right, sir. I remember now talking

PAGE NOT USED

to him. I believe he said he worked as a legal clerk in the signal battalion or something, so maybe he hadn't been up there long. I never knew the other man prior to him.

IO: Did VAN ABLE take shorthand?

A. Yes, sir.

Q. This man who we understand preceded VAN ABLE did not take shorthand.

A. Yes, sir. I didn't know him at all. He wasn't present up there when I was assigned to the headquarters.

Q. Now you were there in 1968, you were undoubtedly around and knew a lot of the oldtimers and so forth around the division. Did you ever hear any reports or talking or anything by comment, by statement, by overhearing somebody, to the effect that a warrant officer had reported the unnecessary killing of some women and children, an action that took place around the middle of March?

A. No, sir. I never heard any mention of it. My first knowledge of it in any way was when it appeared in the news.

Q. Did you ever hear, while you were around the headquarters, anybody talking about Pinkville?

A. No, sir.

Q. Did you ever hear anybody talking about My Lai?

A. I've heard My Lai mentioned previously, but I don't recall anything as it relates to this incident, sir.

Q. Did you ever hear anything about Son My or Tu Cung?

A. No, sir. Son My sounds familiar, but I never heard anything about it, other than knowing it was part of the AO.

Q. Did you ever hear while talking to some of your aviator friends, maybe some of the doorgunners or crew chiefs,

you probably know more than a few of them, a situation in which one of the helicopters had his machinegun trained on some of the ground troops?

A. No, sir.

Q. Did you know Captain MEDINA, one of the briefing officers in G3 section?

A. Yes.

Q. Did you ever hear any discussion about him having killed a woman?

A. No, sir.

Q. Did you ever hear anything about any VC propaganda, something that may have been broadcast, in leaflet form, in slogans, in arm bands, posters, or any other thing that would have been focused more or less on Son My, to revenge something that may have occurred there in that area, around the middle of March 1968?

A. No, sir. There's one thing I might mention, I don't know if it's of any significance or not that I heard about. One of the sister companies in my unit when I was in the field, had a man come up missing one night. They said he stayed back to give kids some candy or something, and they were unable to locate him. He was found the following day in a village. From what I heard he was all slashed up and just made a mockery out of, hung up in the village for people to see. I don't know the location of this incident, other than it was around Duc Pho area where we were operating. That could have been something because I know that's the first sort of thing I had heard of like that, other than either just capturing or killing.

Q. When you were in that outfit, in D/4/21, did you ever hear of the VC taking a woman who had been killed and spreadeagling her alongside of a road and putting an 11th Brigade patch in her crotch?

A. No, sir.

Q. You never heard that?

A. Never heard that.

Q. When you were in the 4th of the 21st, did you ever hear any kind of rumors at all that would have made you think something unusual might have happened with Task Force Barker or the 11th Brigade, prior to your arrival?

A. No, sir.

Q. Sergeant LOFTIS, I am going to want you to stay here for a day or two longer, I'm not sure how long we'll have you stay in. We are going to recess and we may want to call you back. We'll advise you on that. Before we do recess, I would give you an opportunity to ask any questions you may care to ask, or if you would like to enter a statement into the record.

A. I don't know of any questions or any statements I would like to make. This one incident that I mentioned, as I recall, the man's name was EISENHOWER. There again, I don't know if it has any bearing on this, but I know I felt kind of strange and I thought this was VC tactics so to speak. I knew I didn't like it in my own mind, this seemed a little immoral.

Q. Was this to the southwest of Duc Pho?

A. I would say more probably to the north, but it was around the Duc Pho area.

Q. Before we do recess, I would like to again caution you that the written instructions which you read indicate that you are not to talk with others concerning your testimony here, including other people that have or may appear before us as witnesses.

A. Yes, sir.

Q. It is conceivable that you may be called before one of the congressional committees, more specifically, if you are called it would probably be the investigative subcommittee of the House Armed Services Committee, which event your testimony here would in no way preclude or prevent you

from testifying before such a body.

A. Yes, sir.

Q. Before we recess, do you have any other questions?

A. No, sir.

Q. We'll recess at this time.

(The hearing recessed at 1600 hours, 5 February 1970.)

(The hearing reconvened at 1150 hours, 7 February 1970.)

LTG PEERS: The hearing will come to order.

RCDR: The following persons are present: LTG PEERS, MR MACCRATE, and MAJ LYNN.

The hearing recalls Sergeant LOFTIS and Sergeant SAIMONS.

(SFC SAIMONS and SSG LOFTIS were recalled as witnesses and testified as follows:)

Sergeant SAIMONS, Sergeant LOFTIS, I remind you that you remain under oath before this hearing.

IO: We thought it would be advisable to get the two of you together here and just talk about the files and transfer of the responsibility for maintaining the files from you, Sergeant SAIMONS, to Sergeant LOFTIS and to discuss what the files looked like under you and what the files looked like under Sergeant LOFTIS and what you, Sergeant SAIMONS, had done to sanitize the files and what you had done, Sergeant LOFTIS, in the same sense. We also want to get another little statement from you and information as to the condition that you left the files and so forth when you turned them over to DROSDICK.

Q. We'll start with you, Sergeant SAIMONS. Just tell us in brief what you had done with the files and what they looked like when you turned them over to Sergeant LOFTIS.

SFC SAIMONS: When I took over the files from Sergeant RITCHIE, we'll say that they weren't in too good of shape. I established what files we had there under the Army functional filing system. I'll go into the structure of the files a little bit. The top drawer of the safe held the secret documents and the files that pertain to the destruction certificates of the documents, the log, classified document log. The second drawer of the safe contained miscellaneous papers, not too many. The third drawer of the safe had some operations plans and things like that that were placed in the safe with acco fasteners loose in the back of the safe. The fourth

drawer had a briefcase and a flight helmet.

Q. Were the confidential documents in the top drawer, or were they in with the second drawer?

SFC SAIMONS: I'm pretty sure they were in the top drawer also.

Q. What kind of file system were you using?

SFC SAIMONS: The Army Functional Filing System.

Q. But you had it applied individually to the secret documents and to the confidential documents?

SFC SAIMONS: Yes.

Q. Did you have a log of any kind for the confidential documents or for particular unclassified papers?

SFC SAIMONS: No, I did not have one.

Q. During your period there, as far as the files were concerned, I think you indicated you organized them after you had taken over from Sergeant RITCHIE, and then you continued to review them periodically to destroy those which were outdated, so to speak.

SFC SAIMONS: Yes.

Q. Although you had very few.

SFC SAIMONS: Yes, this is true. However, as far as I can remember, I don't believe we destroyed any classified documents. In fact I'm sure we didn't. I don't really remember whether we did or not. There were quite a few papers when I initially established the functional filing system that were gotten rid of, taken out and burned. Just exactly what these were, I don't know, papers that were of no significant value whatsoever. During my period there, nothing was transferred to the record holding area. That's about it.

MR MACCRATE: Well, I think I'd like to hear Sergeant LOFTIS

give us his recollection of what he first saw when he went to this safe.

SSG LOFTIS: Well, sir, when I first took over from Sergeant SAIMONS, the files were under the functional filing system. He had set them up. However, I thought they needed a little more working on, which he hadn't had the time to do. Prior to signing for the documents, I believe I'm correct in saying that we did destroy some at that time prior to me signing for them, with the SGS's approval. Again, papers that were of no significance or didn't seem to be of any importance and when I--

Q. (Interposing) Which one of you reviewed the documents at that time, or did you both review the documents that were--

SSG LOFTIS: Well, prior to me signing for them, Sergeant SAIMONS made a review of the documents. After I signed for them, then it was my responsibility along with the security control officer to review them and to determine what was essential and nonessential.

SFC SAIMONS: Our biggest problem was trying to come up with all these documents so Bob could sign for them.

SSG LOFTIS: We did have an accountable record though. They were all accounted for that I signed for. Immediately after I signed for them, I implemented my own system. There was nothing wrong with the present system except I had just been accustomed to doing it a different way. I think I mentioned this the other day. You have two systems of logging and controlling documents, one where you use the multiple document entry per page, one following the other continuously per log sheet. I prefer to use the singly entry system, one document per log sheet page. What I did then was transfer the active entries. I actually typed them out on new log sheets and put one document per page. I'm speaking of secret documents only. We had no confidential logs. I made a notation of this on the remarks section of the log sheet, the log sheets where the entries were recorded under the system that Sergeant SAIMONS was utilizing, that of a multiple type entry. I lined through those and indicated in the remarks

that the entries or the documents had been transferred to new log sheets under the same control number. I didn't assign it a new number. I then took those sheets, which were now inactive, and placed them in the inactive file.

Q. How was the inactive file designated?

SSG LOFTIS: This, if I'm not mistaken, would have been the classified documents inventory file. It would have been in 504.10, I believe. I'm not sure of the last digit. I know it was 504. And this file, the disposition of it, was to hold it in the current files area for a period of 2 years. These inactive log sheets should be in the files today because I don't believe the 2 year period has expired.

Q. Can you tell us where in the four drawers of the filing cabinet you left such material?

SSG LOFTIS: Well these log sheets, sir, are unclassified. We never logged any classified titles, and they would have been filed in the unclassified filing cabinet in the admin office. It was a four-drawer, lock-type, regular filing cabinet. And they would have been filed in the functional files area in that cabinet, since no classified information was involved on those log sheets. The active register, however, was maintained in the classified document safe by regulation. It was kept with the secret, and it was first priority for evacuation in the event of emergency destruction. I did a little reorganizing of the classified documents container at that time, because as I say, every admin NCO has his own particular system he is used to operating with and to provide a better control of documents. I prefer to use this system. So therefore I reorganized the documents, brought my confidential and secret together. There may have been some unclassified papers with documents that would have directly related to the documents in the classified documents container. I marked each folder, that being either secret or confidential. I affixed new labels to the folders with a little more detailed disposition. That was one of the areas that Sergeant SAIMONS hadn't had the opportunity to work on. I just went by the book and put new labels on them. I established my bottom drawer as a destruction holding area for any classified waste material, such as typewriter ribbons, carbon paper, et cetera. Periodically, when I got a few papers in this drawer, I would take them and

destroy them under the procedure prescribed, using a disinterested person as a witness, who was appointed on orders. We would destroy this classified material that was waste. I did make a review of the files after I had been in the job for a while and determined that some of them were unnecessary, after talking with the SGS. I did make destruction certificates, I think at least three or four during the period I was there. These destruction certificates again contained no classified information and were filed in the unclassified file cabinet in the admin office under, I believe that file control number is 504.09, if I'm not mistaken. It's an unregistered destruction certificate file, and I believe the disposition on this file is a holding of 2 years in the current files area. So it should still be there. I believe that under the system Sergeant SAIMONS was using, they were destroying the documents by making an entry on the back of the log sheet and not preparing a separate destruction certificate. This is permissible in Vietnam. It's an accepted system, and I believe that's the system that you were using. I hadn't been used to doing this. It meant a little more work, but I preferred to prepare the regular destruction certificate forms, that being, I believe, a DA 546. This form can prepare up to ten pages, cut off the bottom of all pages except the last one, which has to be authenticated by the destruction official and the witnessing official, and all of the pages would have to be initialled, of course. And this is the manner in which I prepared my destruction certificates. Once I destroyed documents, I brought the destruction certificate back and got out my log book and went through and posted all certificates that I had destroyed, made the appropriate remarks, removed these log sheets which now would become inactive, and placed them in the inactive file, again in the 504 series. I then made annotation on my destruction certificate that it had been posted and the date and my initials and placed that in the file. This is the entire procedure that was used. The log sheets were posted, after a physical destruction was made, by me, being the destruction official and the witness, the disinterested person. One point that I believe Sergeant SAIMONS may have forgotten, and I didn't mention it the other day, was that the second drawer in this documents container was locked and you were unable to open it at the time I took over. I understood from conversation with Sergeant SAIMONS that the only thing in there was a flight helmet.

IO: The second drawer, or the bottom drawer?

SSG LOFTIS: The second drawer, sir. It was--

SFC SAIMONS: (Interposing) You might clarify that a little bit too. The second--the helmet was in the fourth drawer. I can't remember whether the helmet was taken from the fourth drawer because that--remember when you came up to go to work there, we decided we'd use that bottom drawer for a disposal to keep our classified waste? This helmet was put in the second drawer--third drawer? Second or third drawer. I--

SSG LOFTIS: (Interposing) It was the second that was frozen, I'm positive of that.

SFC SAIMONS: And then we couldn't get the--

MR MACCRATE: (Interposing) Frozen?

SFC SAIMONS: We couldn't get the drawer open.

SSG LOFITS: Well, I believe this happened while you were there. You closed the drawer one day and it locked. The gadget that falls in place, the locking device should click down and allow it to open. However, these things were locked in place and they would never open, jerking on it or anything. So, due to the limited number of safes in Vietnam and the ability to get one, it was almost impossible--there was no security danger involved in this because it was locked and it couldn't be opened without a blow torch or some other means. Well, the fact that there was nothing in there but this flight helmet, it was just left that way and we used the other three drawers of the safe.

SFC SAIMONS: I think I might add here that that drawer, if I remember correctly, was eventually opened, and the flight helme was taken out. The flight helmet--I remember the flight helmet being laid--set in a chair for a long time there by Lieutenant CAMPBELL's desk.

SSF LOFTIS: Well, I don't know this. It would have either been taken out during your time or after my time, because I

know during my entire period there that the thing was locked. I never got into that second drawer. All my filing was in the top drawer with my documents register. The third drawer, I believe I had a MACV SOP loose-leaf binder type thing that was too bulky to stand up and fit in the normal file. I may have had some loose papers in there for official use only. I had a few of those in there. I believe it was PM type reports that were in there for a period of time that were just being held. They were not in a file. They were just information type things that the chief of staff was interested in, and I held them just in the drawer. My bottom drawer was used as a destruction material drawer. I kept a laundry bag in there which I used to crumple the papers up and put in when I did make destruction, and the destruction waste, classified waste, was the only things I had in that drawer.

IO: Well, didn't somebody at about this time sort of blow through the roof wanting to get a paper and somebody said that it's in the second drawer and we can't get the drawer open?

SSG LOFTIS: No, not to my knowledge, sir. It was never a necessity to open that second drawer at anytime. And I just--

Q. (Interposing) I take it you never knew what was in the second drawer?

SSG LOFTIS: No, sir. I never once saw in that second drawer. I just went by word that there was nothing in there.

MR MACCRATE: Now I think your recollections have not completely squared here. You've each listened to the other, and what we're going to do is to see if we can trace this through once again. Now, have you finished Sergeant LOFTIS?

A. Yes, sir.

Q. I would like Sergeant SAIMONS now to think back in the light of Sergeant LOFTIS' recollection.

SFC SAIMONS: At one time, that drawer was locked and unopened. We couldn't get into that drawer. However, I don't recall when, we were able to get that drawer open, and we took that flight helmet out and that flight helmet kept ending up in the fourth drawer. Everytime I'd turn around it would be down in

the fourth drawer where Lieutenant CAMPBELL would put it. I used that second drawer for miscellaneous papers and things.

IO: What's a miscellaneous paper?

SFC SAIMONS: Just all the things that were held for reference, papers, papers of interest to the chief of staff, to the general. Also in that second drawer I maintained the DAC's folders that I had in there for them and the folder for Colonel PARSON.

MR MACCRATE: Well was this before it was frozen shut?

SFC SAIMONS: No, this was after we opened it, after we were able to open the drawer.

Q. But now Sergeant LOFTIS was there after you were.

SFC SAIMONS: Yes, sir.

Q. And he says he never saw in that drawer. Now one of your recollections is incorrect.

SSG LOFTIS: I'm positive I didn't, sir. When I signed for the safe, the drawer was locked and Sergeant SAIMONS had told me that when he closed it one day that the latches had flipped and it wouldn't open anymore. I never saw in the drawer. I debated on whether or not to have it cut into, but again due to the shortages in classified document containers, it just wasn't feasible at the time.

Q. Your recollection, Sergeant LOFTIS, is that this second drawer was sealed when you arrived.

SSG LOFTIS: Yes, sir.

Q. And sealed when you left.

SSG LOFTIS: Right, sir.

Q. It never used for your entire period? So whatever was in there when you arrived should have been there when you left?

SSG LOFTIS: Right, sir.

Q. And you had been told that it just contained a flight helmet.

SSG LOFTIS: Right, sir.

Q. But as far as you know, that was just what someone told you.

SSG LOFTIS: Yes, sir. If you remember when I signed over for the documents, Sergeant SAIMONS, we took that top drawer out and I said, "Well, there must be a way we can open it," and we looked at every possible way, and there was just no way to get into it because the second drawer is covered with an asbestos block in there or something that you just have to cut into it. There's no way to get into the latches by taking out the top drawer or the third drawer down.

IO: Did you ever contact your CID people to ask them to open it for you?

SSG LOFTIS: I didn't, sir.

SFC SAIMONS: No.

SSG LOFTIS: I pointed this out to the CID people when I was given a security inspection at one time. I don't remember the officer's name, but I know he was a warrant officer. At that time, I also pointed out other things. I felt the building in itself needed some work done on it in the way of security because the physical appearance of the building itself. It really wasn't the best security type building, I felt. But there again, we were limited in resources and things available to make the building more secure. The report of the inspection was filed by me, and there were numerous things in there that were pointed out, such as adding a lock to doors, doing something to the windows where they wouldn't be able to gain access, and this sort of thing. There was no action other than work orders put in, and to the best of my knowledge, some of the work was done, but not all of it in the way of correcting these deficiencies in the building itself. The headquarters commandant did take action on some of the deficiencies, I remember, that were designated in the report.

MR MACCRATE: Do you ever remember seeing, Sergeant LOFTIS, a flight helmet and a brief case anywhere in the SGS safe?

SSG LOFTIS: I never saw the flight helmet, sir. The brief case I couldn't say yes or no if I did see one. There was probably one in there.

Q. You don't remember the drawer it was in?

SSG LOFTIS: No, sir, I don't. When I accepted the responsibility for the safe and the documents, et cetera, I removed any material which was not documents because the regulation requires that you have no extraneous material on the safe or in the safe. I believe that's since been changed. You're allowed to store sensitive material in the safe, other than classified files in the event that you're not utilizing all the space in the safe. The only thing that I left on top of the safe was a box containing grenades for the purpose of destruction in the event of an emergency destruction.

Q. Let me ask about the top drawer again. I understood Sergeant SAIMONS to say that it contained both secret documents and confidential documents. I understood you to say, Sergeant LOFTIS, that you had been the one to bring confidential and secret documents together. Is there a difference in your recollection?

SFC SAIMONS: No, I might clarify that a little bit. My confidential documents were kept in separate folders from the secret folders, and I think probably what Bob did was take out the confidential folders and marry the confidential matter with the secret matter. Am I right?

SSG LOFTIS: That's correct. I think there was some confidential in this top drawer. I won't say that there wasn't any. Some of the confidential I believe was in the third drawer. What I did was, if it should be under the same file designator, even though the folder itself contained secret material, if the confidential should have been in that file, then I placed it in that file.

Q. Were there any folders that you ever saw for the ADC or for the commanding general?

SSG LOFTIS: To the best of my memory, there was an envelope in there that had "Personal, for the commanding general" on it.

Q. This would have been for General GETTYS?

SSG LOFTIS: Yes, sir, I believe so. There again I don't know exactly what the envelope contained.

Q. And which drawer was that in?

SSG LOFTIS: This was in the third drawer, to the best of my knowledge, sir.

SFC SAIMONS: I think I might be able to clear that up a little bit. If I remember correctly, the second drawer to the safe, where I maintained the miscellaneous matter, became stuck one day. Major POWELL and I discussed that drawer being stuck because he had difficulty one time getting it open, and then I had difficulty getting it open. And I'm pretty sure we took that stuff out of there and put it in the third drawer. We took the flight helmet and the brief case and, if I remember correctly, I don't remember ever looking in that brief case, put it inside that second drawer and closed it. At one time or the other, I know we got that drawer open. Because we managed to get the flight helmet out of there. The drawer was stuck. I remember that, the drawer being stuck. But I also remember getting it open one time and getting that flight helmet and the brief case out of there. And we laid them in the chair right next to Lieutenant CAMPBELL's desk. The flight helmet, not the brief case, the flight helmet kept ending up in the fourth drawer down in the bottom drawer. And I kept taking it out and putting it back. This apparently must have been at the time, right around the time that Sergeant LOFTIS took over that stuff, or during the time that he was there.

IO: What did DROSDICK say when you turned over to him the safe that you couldn't tell him what was in the second drawer?

SSG LOFTIS: Well he did the same thing as I did, sir. He just accepted it at my word. I thought the flight helmet was still in there, and this is what I told him. I said the second drawer's stuck. We can't get it open. There's only a flight helmet in there, and no documents were missing in accordance with our inventory, and he signed for it just as I did.

Q. Would not the possibility remain though, that there were some confidential or other documents that might be in there that--

SFC SAIMONS: (Interposing) No, sir, because I can remember having that drawer open. That drawer was open at one time.

Q. But do you remember taking everything out of it though?

SFC SAIMONS: Yes, sir. Oh, yes, yes. In fact I moved everything. I know we moved everything out of that drawer.

Q. At one time, you know, you told me that you had your secret in the top drawer.

SFC SAIMONS: Yes, sir.

Q. And that was all. And you kept your confidential and other documents that you didn't log in in the second drawer.

SFC SAIMONS: Yes, sir. I may have told you that before our IG inspection I put all the classified in one drawer along with the logs and all of the other papers. I think Sergeant LOFTIS is the one that established taking out the destruction certificates and putting them in the other filing cabinet out in the other office. To my recollection there was some confidential matter. Most of it, however, was non-classified in the other drawer.

Q. Now where is this other safe, Sergeant LOFTIS, that you kept your logs and your destruction certificates in?

SSG LOFTIS: Sir, this is just a regular filing cabinet that's in the admin office adjacent to the SGS office.

Q. In your office?

SSG LOFTIS: In my office, right, sir. It sat to the left of my desk by the wall.

Q. Yes. So there was one safe then--

SSG LOFTIS: (Interposing) One safe.

Q. That was in the SGS office.

SSG LOFTIS: Yes, sir.

Q. And that was a lock safe.

SSG LOFTIS: This was a combination lock safe.

Q. You had another just plain old drawer filing cabinet.

SSG LOFTIS: Yes, sir.

Q. In your office.

SSG LOFTIS: Yes, sir.

Q. And in that office you also kept your old logs and your old certificates of destruction.

SSG LOFTIS: Right, sir.

Q. And to the best of your knowledge, that second drawer of that safe was not open when you departed?

SSG LOFTIS: That's correct, sir.

MR MACCRATE: Now, Sergeant SAIMONS, where would your certificates of destruction be that were placed on the back of the log? Where were they when you turned them over to Sergeant LOFTIS? Where would they be physically?

SFC SAIMONS: In the safe. I'm pretty sure I had them in the top drawer, to the back, behind the confidential documents.

Q. Do you have any recollection of ever seeing those, Sergeant LOFTIS?

SSG LOFTIS: Yes, sir, I did see them. We made an inventory of which these were included in the inventory.

Q. And where would you have put those?

SSG LOFTIS: I would have filed those in the cabinet, the unclassified filing cabinet in my office with the destruction certificate folder.

Q. I had understood you to say, Sergeant SAIMONS, that you used classified descriptive information, and therefore that you had kept these pages in the safe because of that?

SFC SAIMONS: Yes, sir, that's on the log. That's the active log, and I also kept the inactive log in there too. The active log itself must be maintained in the safe, sir.

Q. But do I understand that when the material becomes inactive that it is immediately declassified?

SFC SAIMONS: No, not necessarily.

Q. This is what I don't understand. If this is information that is classified and then deactivated, it would still be classified information and it still should belong in the safe, I would suppose.

SFC SAIMONS: Yes, sir.

SSG LOFTIS: To the best of my knowledge, sir, there was no classified information on these destruction certificates that Sergeant SAIMONS had prepared previously. If there had been, I don't think I would have put them in unclassified filing cabinet. If I did, it's a security error on my part that I didn't see it.

IO: So when you changed your entire filing system, the old logs would have become antiquated, would they not?

SSG LOFTIS: Well the old log sheets, once I transferred the active entries to new log sheets, would have become inactive, sir, because I lined through the entries, made a notation that they were transferred. If I remember correctly, when I did transfer them, I believe some of the entires did contain classified titles. At this time, I made a short title out of the classified titles, which is permissible. You can take the first letter of each word and run it continuously in all caps, and it becomes an unclassified short title. This is what I would have done on any entry that might have been classified from the old log sheets. I can't remember distinctly if there was some classified entries on the log sheets. It seems that there were, but I feel sure that if they were, I'd file those log sheets in the classified documents container. Any unclassified ones would have been filed in the unclassified filing cabinet.

Q. So the real thrust of the problem is whether or not the title of the document is classified.

SSG LOFTIS: Yes, sir.

Q. And even if it had been classified confidential, it would have still had to have been filed in the safe, and all of your active logs have to be in the safe with the material itself.

SSG LOFTIS: Yes, sir.

Q. They don't necessarily have to be locked in that same safe. You don't necessarily have to keep it in that safe, but it has to be under security conditions. It could be in an adjacent safe, could it not?

SSG LOFTIS: Yes, sir, but being as we only had the one safe, it should have been with the classified material.

Q. Well, I think that what would be important to know right now is whether or not you're sure that when you turned that safe over that drawer was locked, and two, that it was empty.

SFC SAIMONS: I know it was empty. May I ask a question? When you were there, were you able to get into that second drawer of that safe?

Q. I did not try to get into the second drawer of that safe.

SFC SAIMONS: I see.

Q. So I cannot answer your question, but I can tell you that it's one thing that I'm going to find out.

SFC SAIMONS: As far as I can remember, that drawer was empty.

Q. Well, I'm just trying to rationalize what you've been telling us because you told us very specifically at one time that you kept your confidential papers in the second drawer. That was one thing. You also indicated that in the lower drawer was a briefcase and a helmet.

SFC SAIMONS: That's right.

Q. Frankly I think one could put this altogether.

SFC SAIMONS: I think what I forgot was that the drawer was locked. That's what I forgot.

Q. If your confidential documents at that point in time were in the second drawer, you would have had a problem.

SFC SAIMONS: They were not.

Q. So when the drawer started sticking, did you remove the contents from the safe and put them in with the classified material up in the top drawer? At that time also, it could have been a fallout with the brief case and the flight helmet going to the lower drawer. When did you leave, again Sergeant LOFTIS?

SSG LOFTIS: I left the headquarters, sir, 12 May 1969.

Q. May 1969.

SSG LOFTIS: I turned over the documents, as I remember, on or about the end of April to Sergeant DROSDICK, because at that time I went on a 7 day leave to Hawaii. When I returned I had 12 days remaining in country. And at that time I was free of the responsibilities of being custodian of the documents, supplies, and other duties, in which I had to sign over to him. We did this prior to my departure for leave.

MR MACCRATE: Sergeant LOFTIS, what were the days that you were away on R&R?

SSG LOFTIS: I departed the headquarters on Christmas day as I remember.

Q. No, I'm talking about in May, 1969.

SSG LOFTIS: When I left that time, it was the week that went from April to May. I think, as I remember I was gone 2 or 3 days in April and 2 or 3 days in May. It was for a period of seven days.

Q. Were you in April 1969 ever asked to search for a report of investigation?

SSG LOFTIS: No, sir, I was not.

Q. But at this time, the second drawer of the safe would have been sealed shut.

SSG LOFTIS: Yes, sir.

Q. And if anyone did make a search at anytime, they wouldn't have been able to look in that particular drawer.

SSG LOFTIS: Not without it being forced open in some manner, sir.

Q. As far as you know, that was never done as long as you were there.

SSG LOFTIS: That's correct, sir.

IO: Do you recall when you got back from Hawaii, was it still inoperable?

SSG LOFTIS: To the best of my knowledge, it was, sir.

Q. You had already turned this over to DROSDICK?

SSG LOFTIS: Yes, sir, I had. When I got back, he was doing the job and doing it well. I did give him a little more assistance in some questions he had, which were routine. When I returned from this leave, sir, my capacity from then until the time I left was just a matter of advising Sergeant DROSDICK on any questions he had and clearing my unit for departure.

Q. The hearing will recess at this time.

(The hearing recessed at 1245 hours, 7 February 1970.)

SUMMARY OF TESTIMONY

WITNESS: LOGAN, James A. MAJ

DATE OF TESTIMONY: 27, 28 January 1970

PLACE OF TESTIMONY: Pentagon

WITNESS SUSPECTED OF: N/A

COUNSEL: None

DUTY ASSIGNMENT ON 16 MARCH 1968: G3 Shift Officer in Americal Division TOC.

1. DUTIES OF THE WITNESS.

The duties of the witness as G3 shift officer in the Americal TOC were generally to maintain the logs, to inform III MAF of action in the Americal Divison's area of operations, to insure that the G3 and the CG were kept informed, and to aid in briefing the staff (pg. 4).

2. KNOWLEDGE OF THE INCIDENT.

The witness stated that he had an impression from some source that there was a problem within the 123d Aviation Battalion where some gunship pilots had threatened to cease flying because of the events on the ground(pgs. 3, 8-10, 16, 17). He asserted that he was sure that he had been questioned by General YOUNG about this issue (pg. 10). He further recalled checking with the 11th Brigade TOC asking for information concerning weapons on the day of the operation (pg. 6). He added that at the end of the day there were no enemy weapons reported to him (pg. 7). He appeared to recall the large body count (pg. 6). He could not recall any particular questions at the evening briefing of 16 March concerning the weapons to body count disparity (pg. 7). He stated that he was not particularly surprised when the My Lai story broke in the press, since he recalled that "something had happened there" (pg. 22).

3. KNOWLEDGE OF REPORTS AND INVESTIGATIONS.

The witness stated that he had no remembrance of HENDERSON's report (Exhibit R-1) (pg. 14), although the second paragraph seemed familiar (pgs. 16, 17, 20). He did not recall its inclosures (pg. 15). Concerning Lieutenant Colonel BARKER's combat action report for 16 March, the witness testified he had a vague recollection of it (pg.15). He related that for any action resulting in a body count of 50 or 100, a report was required for that period by division in a specified number of days (pgs. 15, 16). The witness recalled that he had heard that there was an investigation of the dispute in the aviation unit, but recalled no other investigation (pg. 17). He stated further that he recalled nothing concerning a Vietnamese report about the Pinkville operation (pg. 20).

EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	NOTES	PAGES
M-6	Americal log	Witness examined.	5
R-1	HENDERSON's report	Witness had never seen, seemed to be	14,15
		familiar with second paragraph.	20
R-2	BARKER's report	Witness recalled having seen.	15
R-7	OPN SITREP Muscatine 160600 Mar	Witness examined.	6
R-8	OPN SITREP Muscatine 161200 Mar	Witness examined.	6
R-9	OPN SITREP Muscatine 161800 Mar	Witness examined.	6
R-10	OPN SITREP Muscatine 162400 Mar	Witness examined.	6
R-13	Request for Combat Action Report, Americal	Familiar with type of request.	
	19 Mar		16

(The hearing reconvened at 0910 hours, 27 January 1970.)

IO: The hearing will come to order.

RCDR: The following persons are present: LTG PEERS, MR MACCRATE, COL ARMSTRONG, and MAJ LYNN.

Sir, the next witness is Major James A. LOGAN.

(Whereupon the witness was sworn and testified as follows:)

Major LOGAN, for the record, will you state your full name, grade, Social Security number, organization, and station?

A. James Arthur LOGAN, Major, 329-32-2087, C Company, 3d Battalion, School Brigade, Fort Knox, Kentucky.

IO: Major LOGAN, have you had an opportunity to read the instructions?

A. Yes, sir. I have.

Q. Do you understand or have any questions?

A. No, sir.

Q. On my left, Major LOGAN, is Mr. MACCRATE. He's a civilian lawyer who has volunteered his services to Secretary RESOR to assist in this investigation and he also provides legal counsel to me and to the other members of the inquiry team. On my right is Colonel ARMSTRONG who has been designated by the office of the Chief of Staff as an assistant in this investigation. Either Mr. MACCRATE or Colonel ARMSTRONG may also address questions to you here this morning. We also have other teams that are taking testimony from other witnesses. I will have the responsibility of putting together the report, weighing the evidence, and making the findings and recommendations. As a military officer you are ordered not to discuss your testimony in this investigation with others, including other witnesses in this investigation, except as may be necessary in the performance of official duty or as you may be required or requested

to do so before a competent, administrative, judicial or legislative body. In this latter instance, a legislative body, there is a possibility you may be called to testify before one of the congressional committees, more specifically, the investigations subcommittee of the House Armed Services Committee, in which event your testimony here or your appearance here would in no way preclude you testifying or appearing before such a body. I do not believe that you have either been cited or cautioned by the military judge in the general court-martial case of the United States v. Calley.

A. That's correct, sir.

Q. I would doubt that you would be, but in the event that you are, your appearance here in no way would change either the affect or the applicability of that order. Do you have any questions at this time?

A. No, sir.

Q. Major LOGAN, will you indicate what your duty assignment was with the Americal Division and when you joined, and when you departed?

A. Yes, sir. I joined the division on 7 January 1968 and was assigned as a G3 shift officer in the TOC. I worked in that job until 1 August. I worked both day shifts and night shifts in the G3 TOC. On 1 August I was reassigned as operations officer of the 1/1 Cavalry and served in that capacity until I left Vietnam about 31 December, when I left the Americal Division.

Q. When you say you were assigned as operations officer, you mean you were assigned as the S3?

A. S3 of the 1/1 Cavalry.

Q. The My Lai incident became a matter of public knowledge about 4 to 5 months ago in the latter part of September, October of last year. Have you had any discussions with anybody from the Americal Division concerning what may have transpired at My Lai on the 16th, concerning any of the reports of it or any of the investigations concerning this incident?

A. Yes, sir. I have. Do you want me to--

Q. (Interposing) Yes, I do.

A. I discussed this with Major George KUECHENMEISTER who is also stationed at Fort Knox. He and I worked together in the G3 section of the TOC and we tried to put together what we understood the situation to be during that particular operation. We tried to recall if we had heard of anything that might have taken place. He's about the only one. At Fort Knox there are a good number of Americal people. Most of these are 1/1 Cavalry people. I'd say without exception, they had no knowledge of the incident. The ones that I knew came in-country after the incident took place. I have discussed it with them, but they really had no knowledge of it.

Q. Did you discuss anything with KUECHENMEISTER concerning the situation or concerning anything that the two of you may have been involved in?

A. I worked day shift, and he worked night shifts. What we tried to recall was did I brief him in on any specific happening that he should know about in the event he was questioned by higher headquarters. The only thing that came to mind, and this is really in the back of my mind, was some kind of a flap going on during the day about the 123d Aviation people, specifically the gunship pilots, saying that they were not going to fly any more that day because of what was going on on the ground. It's in my mind, but I really don't know how I heard this, or if somebody came up and told me this, or if I just overheard it, or what. Nothing specific with regard to that.

Q. In this regard, do you remember ever talking to the aviation officer or the aviation staff officer who was there?

A. I'm trying to recall the names of people. The DTOC was set up with the division aviation officer's section to the rear of the TOC. We had more or less continuous contact with these people. I don't recall speaking directly to any of them about this particular situation. As I said, it's just something that is in my mind. I heard this, but I don't know how.

Q. We're generally familiar with what people do in the G3 shop, but I think it would be of interest to us to know specifically what responsibilities you had within the G3 organization.

A. All right, sir. I had actually two major responsibilities. One was to receive and pass on spot reports or any reports of contact with enemy forces to higher headquarters. And to keep the division G3 and division commander informed of what was going on in the division AO. In this regard I also was responsible for preparing the 6-hour SITREP's that went forward from Americal Division to III MAF headquarters. I was also the G3 briefing officer to the division, but this was an alternating situation where I would brief one night and then the G2 briefing officer would brief on alternate nights. This is something else I have been trying to go over in my mind, to recall if Captain STEVENSON, who is now out of the service, or if Captain ORELL was the G2 officer at that time, because we switched off and on from nights to days. I can't really recall who was on duty at G2 that day, or if he briefed or if I briefed. I don't recall briefing that particular day.

Q. Generally speaking it was your responsibility to maintain the logs and to keep higher headquarters informed telephonically. I would imagine also by your 6-hour SITREP's it was your responsibility to keep General KOSTER and the G3 informed of any particular action that was going on requiring their attention?

A. That is correct.

Q. And in addition, you also served as alternate briefing officer?

A. That is correct, sir.

Q. All right. Were you familiar with Task Force Barker and their operation?

A. Yes, sir, very much, sir.

Q. Yes. Were you familiar with their operation into the Son My Village in the eastern part of Son Tinh District, which was initiated on 16 March?

A. Well, I would say I was familiar with the operation to the extent that I knew it was going to take place, how it was to take place, that is by combat assault, that they would have gunship cover and this sort of thing, but the real particulars of the operation, I can't say that I was.

Q. You were familiar with the fact that they had obtained a separate AO or AO extention from the 2d ARVN Division and from Quang Ngai Province headquarters?

A. Right, sir.

Q. Well, I am going to ask you about this briefing which was presented at your 1700 briefing that night.

A. Yes, sir.

Q. The statistics which had come in up to that time were pretty much complete throughout the day. I have here the log of the Americal Division for the 16th, which has been entered into the record as Exhibit M-6. I'll call this to your attention to see if you recall working on this throughout the day.

(The witness reviewed Exhibit M-6.)

A. Yes, sir.

Q. As a matter of interest, whose initials are these on the side?

A. The ones that I can read appear to be Major BENN, Clark BENN, now a Lieutenant Colonel. Further on back are mine beginning with item number 72. This other B here, I don't believe is Colonel BENN's, the one like item 63 and 64. It may be, but I don't believe that's his.

Q. It seems almost like a dollar sign, doesn't it?

A. Yes, sir. I don't recognize those initials.

Q. Well, you're familiar with this document though?

A. Yes, sir.

Q. I have here copies of the 6-hour reports which were submitted on the 16th from the Americal Division to III MAF and ask if you will review these?

(The witness reviewed Exhibits R-7, R-8, R-9, and R-10.)

A. Yes, sir.

Q. These are a few hours of interest here. First thing, if you will look at the first one you will see that the enemy total at midnight on the night of the 15-16th, 785 KIA. And then the second one, from 0600 to 1200, you notice that the major operational entries were made during this period?

A. Yes, sir.

Q. These are just brief transmissions of what had come into you at TOC?

A. Yes, sir.

Q. And there is another entry in the afternoon at 1420 from B/4/3 which indicates eight VC KIA. Then of course in the wrapup you will notice that the midnight of 16-17, the total changed to 913. We could make comparable analysis of the weapons. In the Americal log it becomes quite apparent that the results are 128 VC KIA, 2 U.S. KIA, 11 U.S. WIA, and 3 weapons captured.

A. Yes, sir.

Q. Now do you remember anything being done, or any statements being made, or anything, concerning this disparity between VC KIA and a small number of weapons captured?

A. I can vaguely in that we queried the 11th Brigade TOC throughout the day about when were they going to start getting weapons and things like that? And the answer came back as soon as they could get into the bunkered area.

At the end of the day there just weren't any weapons. But as far as any kind of questions from outside of my own area there, I don't recall any questions or investigation being made about this particular matter.

Q. Yes. Now as far as during the day, would you have any knowledge of that? It looks to me from looking at the America Log that you probably came on duty on the night shift of that particular day.

A. No, sir, because the log was typed up the following morning. It was a pencil log during the day and then typed up the following morning at which time either the G3 operations officer Colonel BENN, or myself would go through and verify those items that were of a G3 nature and initial at that time. Actually this log would have been typed in the early morning hours of the 17th and then initialed at that time. To the best of my knowledge this was the way it would have been done. And the reason--

Q. (Interposing) You do recall that there was quite some discussion going on then, concerning this disparity or tremendous ratio of weapons to VC KIA, about 43 to 1 as a matter of fact.

A. The only thing that I am personally aware of, there were questions that came from the TOC, either from myself or from the G2 representative to the 11th Brigade, asking them when were they going to start checking weapons and equipment.

Q. We would understand that when that item was briefed that night that either General KOSTER or General YOUNG asked a question, "Where are all the weapons?" Do you remember this?

A. Sir, as I said, I can't even remember if I briefed that particular night. I honestly don't remember. I don't remember.

Q. I think we can understand that, we know we are taking you back 22 months and we are leaning pretty heavily on your memory. You living so intimately with it, and so forth, and doing this day in and day out it's pretty hard sometimes to separate the wheat from the chaff. We know that.

Before I go on, Mr. MACCRATE?

MR MACCRATE: You indicated that you had a recollection during the day there was a flap about the 123d Aviation Battalion, members of it not wanting to fly any more because of what they were observing on the ground. Can you tell us what you can recall of that, where you got the information, who was doing the talking?

A. Sir, I wish I could. I have been trying ever since I first saw this in the newspaper to bring that incident back, and I just can't. I don't know if it was in direct conversation between myself and another officer, if it was something that one of the NCO's in the TOC may have picked up by way of their own particular information service, or just how it was that I got that impression. I guess "impression" is a better word than something that I heard.

I got the impression that this is what had happened during the day, that somehow or another it's in my mind that the pilots in the aero-scouts, 123d Aviation Battalion, were not going to fly anymore, that there was some kind of a flap going back and forth over this. I just can't remember how it is that I heard this.

Q. Do you remember any of the personnel of the aviation unit at that time whom you can identify in your recollection?

A. The only outstanding personality from the 123d that is in my mind is Colonel HOLLADAY, who was the battalion commander and also the DAO. The other people who work back in there: there were majors who came in there later on that I can remember and there were some captains who worked back in there, but their names just don't come back to my mind. There was a Major JESSUP, but I don't believe Major JESSUP worked in there at the time of this incident. I believe he was later.

Q. Did Colonel HOLLADAY spend any time around the TOC?

A. A good deal of time, yes, sir. He worked out of the TOC, as a matter of fact, up until about midyear when they

moved the DAO. Except for one representative, they moved him into another building. But Colonel HOLLADAY spent a good deal of time in the TOC itself because this is where he operated out of.

Q. Would it in any way refresh your recollection to know that Colonel HOLLADAY shortly after this event, possibly that evening, fairly late in the evening, had a lengthy conversation about this matter? Did he seek any information from you in connection with what had gone on that day? Do you have any recollection of him coming to you to get information?

A. No, sir. I do not.

Q. Do you have any recollection of the next morning, at the time these entries in the log were being verified, of either Colonel HOLLADAY or General YOUNG raising any questions with you about this?

A. I have no recollection. No sir. It is possible they did, but I don't remember.

Q. Do you remember a Major WATKE from the 123d Aviation Battalion?

A. The name does not ring a bell with me. No, sir.

Q. Did you know any of the pilots in the battalion?

A. Not at that time. No, sir. Later on I came to know them after I moved up to the other job. We worked with them up there.

Q. Which ones did you come to know?

A. Well, the ones that I came to know were not in the aero-scouts. They were C&C pilots who flew for myself and my squadron commander in our position in the 1/1 Cavalry. Warrant Officer DEWINE, LONG, and there were probably a couple of others that I would remember. I don't know that they would know anything about this.

Q. Do you have any recollection of any member of the aviation battalion, anyone in the TOC talking to you about this flap at any later time, any discussion that took place subsequently

A. No, sir. I don't.

Q. Do you have any recollection of being quizzed by General YOUNG with respect to this?

A. I don't have any recollection, but I know General YOUNG and I'm sure that I was quizzed by him, myself and some of the other people in the TOC. As you pointed out, sir, the disparity of weapons and body count, but I don't recall it.

COL ARMSTRONG: Let's go back to your briefing sessions. Would it have been normal or not normal to have anybody, when you came up with the enemies knocked off, 128 VC KIA, 3 WCA--somebody commenting to the general, General KOSTER, General YOUNG, Chief of Staff, or G3, somebody saying, "That's strange!"?

A. Yes, sir. This would be a normal circumstance. Actually, it would be more the general commenting to the staff officers and to the assembled group that this didn't seem right to him.

Q. So comments during the briefing from the general or the general's various members of staff were not unusual?

A. Oh, no, sir. Not at all.

Q. They would interrupt the briefing while it was going on and say, "Look into this and look into that."?

A. Yes, sir.

IO: These would not be addressed to you, even though you were the briefing officer?

A. Normally, they would be addressed to the general staff officer concerned.

Q. On that particular day, do you remember who was the G3?

A. Sir, I believe it was still Colonel BALMER, Jesman BALMER. He was the G3. He left sometime at the end of March, I believe. I think that he was still G3.

Q. Do you remember that Colonel BALMER took some R&R in Hong Kong?

A. Yes, sir. This is what I know, that he took R&R. Then he took a 30-day leave as a part of an extention in country and was reassigned as a commander of an artillery group. It was around this period that all this took place. It was between March and April that he was gone.

Q. The best we have been able to reconstruct, Colonel BALMER came back in either the night of the 16th or early on the 17th, somewhat immaterial at this point, because you did have an acting G3.

A. Let me see, we had a Lieutenant Colonel GOLDEN, and there was another lieutenant colonel whose name escape me, and I don't believe GOLDEN was there at that time. I believe he had been wounded in a rocket attack previously and evacuated out of country. I don't recall the name. I can bring his face to mind but I can't recall the name of the man who took over as acting G3.

Q. Does the name KELLEY mean anything?

A. Yes, sir. That is right.

Q. In your capacity, you are in touch with everything that goes on in the division. Did you hear that day that one of the aviators had reported to his commanding officer and to other individuals what he saw, one of the aviators from the 123d Aviation Battalion or one of the aero-scout pilots?

A. I did not hear anything specific that day, sir. This may have something to do with what I recall hearing about, but I did not hear any specific thing that a pilot had come in and said, "That's it," or anything like this.

Q. I'm not talking about coming in and saying, "That's it". I'm talking about somebody coming in and saying that he saw some unnecessary killing of civilians, and also that there was a head to head confrontation between some members of the aero-scout unit and some of the troops on the ground to the point where it got pretty rough, people training guns on one another and so on?

A. Sir, I read this in the newspaper.

Q. Did you hear anything about one of these people picking up a wounded child and flying it to the hospital in Quang Ngai City?

A. I can recall aero-scouts and other helicopters flying dustoff for civilians on many occasions. I don't know if I can specifically recall any on that day or not. I would have to say no.

Q. All right. Do you remember the division chaplain at that time, Colonel LEWIS?

A. Vaguely, yes, sir.

Q. Do you remember ever talking to him about anything that had been reported to him concerning some unnecessary killing of noncombatants?

A. No, sir.

Q. Did you ever go over in the latter part of March or early April and brief the personnel of the 123d Aviation Battalion?

A. I did, yes. We had a little program set up to where the--somebody from the TOC was supposed to have been on a monthly basis, and it was never really too successful as far as us being able to get somebody away. Normally this was a G2 man that took care of this and he really gave them an intelligence summary of what was going on in the division AO with particular emphasis on any aircraft installations and places where we had encountered fire and so forth. I did go over sometime in the spring, and I did brief the 123d at their headquarters.

(Note: Later, corrected statement showed that this was not the 123d, but a reconnaissance airplane company.)

Q. I understand this was generally in their messhall?

A. Yes, sir.

Q. Do you remember coming down to talk about Task Force Barker and when you referred to the figure of 128 and so forth, as being really the biggest day that they had had, there was quite a bit of rumpus raised by some of the members, "That isn't so at all," to the point where the commander had to get up and tell them, "Well, let's just quiet this down, everything is being held properly and so on, Let's not have any more rumors passed around this place!"

A. I only briefed them one time, sir, and I honestly can't recall anything like that happening. It was common. Part of the briefing did include an update on what was going on in each of division's AO, to include the body count and any significant actions that had occurred, but I don't recall that happening. That's not to say it didn't happen, but I don't recall.

Q. We have heard some people--

A. (Interposing) It may be. I just didn't recognize that. Aviators are pretty boisterous, loud anyway. Maybe they were being loud and it didn't affect me. But I don't specifically recall anybody getting up like that and saying, "Knock it off."

MR MACCRATE: Do you remember the chaplain of the division artillery?

A. Division artillery chaplain?

Q. Yes.

A. The only chaplain that I really really knew was our squadron chaplain. I attended services because most of the time I worked the night shift. I attended church services at odd hours, and I don't really remember any of the chaplains except the one we had at 1/1 Cavalry. That would have been later on in the year. The answer to your question is no, I don't. I may have talked to him.

Q. Does Chaplain CRESWELL ring a bell?

A. Not really, no.

Q. He also spent some time with some of the members of the 123d Aviation Battalion. I was interested in whether you had any contact with him or had any recollection of speaking to him?

A. As I said, no. They might have known me by the fact that I was a division briefer and that the people had representatives at the briefing. But the names of chaplains just don't ring any bells.

IO: I have here, Major LOGAN, an attachment to an exhibit which we have entitled R-1. This is a piece of Viet Cong propaganda which was either put out by the VC in this form or put out in a broadcast form, taken down and subsequently translated. This consists of two pages. I'd ask you to take a look at that and ask you if you have ever seen that or anything comparable to it, just two pages.

(The witness reviewed R-1.)

A. I have never seen this specific document, sir.

Q. Did anybody in the TOC ever mention having received a piece of paper like this or show it to you?

A. No, sir.

Q. We know, for example, that this did come into the division.

A. Yes, sir.

Q. In about this form.

A. The setup on intelligence matters was such that we were not really kept that well advised of this type of thing coming in.

Q. Were you familiar with any kind of propaganda that the Viet Cong may have been using in terms of special slogans, arm bands, uniform patches and posters? Anything of this nature which would cause them to aim more or less at getting revenge for what the Americans may have done down in the Son My area?

A. No, sir.

Q. I wish you'd turn back now one page and you'll see a statement. Turn back toward the front. That's it. Now I wish you would take a look at the statement made on 14 April and determine if you've ever seen this piece of paper or heard anything about it.

A. I don't recall ever seeing this, sir. No, sir.

Q. If you had seen it, you would probably remember it?

A. I think so. I don't honestly recall ever seeing it.

Q. I have here a combat action report from Task Force Barker, dated 28 March, which has been entered into the record as Exhibit R-2. We would ask you to look at this and ask you if you have ever seen it. Now recognize the fact that in this reproduction this is on legal paper but the actual document itself was on standard typing paper.

(The witness reviewed R-2.)

A. I vaguely recall seeing this at one time or another. Yes, sir. We had documents like this which went into our quarterly report of operations. I can vaguely recall seeing this or a copy of this.

Q. This wouldn't have been an unusual report then, even though it concerned only one day's activity. You notice in paragraph 2 on the first page it only runs for a period of about 9 or 10 hours.

A. No, sir. It was not. Are you referring to the body count itself or just to the fact that a report would be forwarded based on a 1-day action?

Q. Yes.

A. As best I recall, and this is more from my experiences later on with the 1/1 Cavalry, we had a requirement--anytime you had an action that resulted in say 50 or 100 body count, then you had to submit a report of this nature to

divison. I've submitted them myself.

Q. In other words, any significant operation was a requirement for an immediate report?

A. Yes, sir. I think you had about 90 days in which to prepare it and it may not have been quite that long, but there was a time period in which a report had to be forwarded to division.

Q. I have here another document which is "Combat Action Report", dated 19 March, and has been entered into the record as R-13. It's from Headquarters, Americal Division to the 11th Infantry Brigade. Do you recall this piece of paper or copies of this piece of paper?

A. I don't recall this particular piece of paper, no, sir, but I have received things like that myself as a squadron S3 fron division.

Q. You will notice here this does call for the specific reports, 3/1 Infantry, CIDG, and 1/20 Infantry and so on.

A. Yes, sir.

Q. Now turning back to the front of this document. To the front, that's it. I'd like you to review that quickly and tell me if you have ever seen that or anything relating to it, whether you have seen it or heard it?

(The witness reviewed R-1.)

A. I can't honestly say whether I have seen this or not, sir. It appears to be familiar to me but after I read this part of it, it looks familiar to me but I can't honestly say if I saw it or what.

Q. Did you ever receive in the TOC any kind of a report about the number of civilians that may have been killed in this area?

A. There was no correction that I can recall of having been submitted on the body count figures as far as this particular operation.

Q. That wasn't my question. Did you ever receive a report of the numbers of civilians or noncombatants which may have been killed in this operation on the 16th?

A. I don't recall receiving such a report. No, sir.

Q. Some of this you think you have either seen or heard but you're not sure?

A. I can't positively say that I have read this document. No, sir. But it appears to be familiar to me. We normally did not receive any classified documents of this nature with the exception of plans and things like that that were classified. But it does look familiar to me.

Q. Did you ever hear of an investigation being conducted into this matter?

A. The point that I made earlier that I had heard about that. I had this impression that there was a flap. It seems to me that I also heard that it was being investigated at that time. But that's really the only investigation that I would have been aware of.

Q. You're talking about an impression?

A. Yes, sir. This is not by any means positive knowledge that I have. This was an impression that I had.

Q. Well, aside from this one, did you hear of any other reports of investigation that may have been conducted?

A. Concerning the My Lai incident?

Q. Well, not only My Lai, you see, Son Tinh and sometimes we hear other words come out. One that Americans use most frequently is Pinkville which they use to describe this general area here, but there are other names as well. My Lai is used sometimes, sometimes Tu Cung, sometimes Co Luy and sometimes they use the village name Son My.

A. No, sir. I did not hear of any other investigation.

Q. Did you ever hear of any discussions that were, or did anybody ever mention it to you? I know that you don't have intimate contact with the commanding general and the ADC's and chief of staff, but did any of them by chance ever mention this to you?

A. No, sir.

Q. Did you ever hear anything from the G1, G2, G3, or G5, any of the personnel from those offices?

A. No, sir.

Q. Did you ever hear any comments from any of the officers around the headquarters about an investigation about this situation or about the civilians being killed or a confrontation with the aviators with the ground forces and so on?

A. Not that I recall.

Q. Aside from this one impression that you gained someplace, which you can't put your finger on?

A. No, sir, not that I can recall.

Q. Well, based upon your intimate knowledge of operations and work on them, and I know that today is a new day and you sort of forget the events in order to keep up with operations which is basically your task. But did you ever have any case to suspect that something unusual may have taken place in terms of some comment somebody made or in reference to who or anything else of this nature?

A. Only that I have already pointed out, sir.

MR MACCRATE: You were the evening briefing officer, were you? When you did the briefing did you also attend the morning briefings?

A. I worked, as I said, days and nights and I alternated both. If I was working the day shift I would be the alternate evening briefer, and if I was working the night shift I would be the alternate morning briefer.

Q. The evening briefing was of a larger group than the morning?

A. Yes, sir. It was attended by all the primary

474C

staff and special staff. It was pretty much a formal briefing, whereas the morning briefing was informal and just consisted of the G1, G2, G3, G4, and G5, and the general, and the two ADC's. It was conducted in the general's office.

Q. And the chief of staff?

A. Yes, sir.

Q. And this was conducted in the general's office?

A. Morning briefing was, yes, sir.

Q. So you would go over to the general's office each morning, each morning that you were participating in the briefing. Generally, however, you were in the TOC?

A. That's correct, sir.

Q. What degree of contact did you have with the chief of staff at that time?

A. I'm trying to think of what the chief of staff's name was. Colonel PARSON had not come up.

Q. It was Colonel PARSON.

A. Was it Colonel PARSON at that time?

Q. Yes.

A. At that time, because of the TO&E positions, I was actually assigned to the chief of staff, but the duty position that I held was G3. But I was assigned to the chief of staff as liaison officer, but I don't think at that time that you'd say I had close contact with the chief of staff.

Q. Did it develop, as time went on, into closer contact?

A. Yes, sir. I got to know him and he helped me quite a bit, I believe, in being able to get the job that I subsequently got with the 1/1 Cavalry.

Q. Do you have any recollection along about the middle of April of his talking about a report that had been received or a letter written by a Vietnamese official regarding the American operation and the Pinkville, My Lai, Son My area, or anything relating to Task Force Barker?

A. No, sir. I don't recall anything any conversation that I had with Colonel PARSON about that.

Q. You indicated that Exhibit R-1, which is still before you, appears familiar, that it seems to be familiar. Do you recall if what you are trying to think back upon appeared on one or two sheets of paper?

A. I couldn't answer that, sir. I don't know if it did or not.

Q. Did you have a recollection that what you here recall had some things in it that you don't find in that sheet?

A. Well, it's this paragraph 2 that appears to be familiar to me. The other part does not necessarily ring a bell, but the second paragraph in this exhibit appears to be familiar to me.

Q. Can you recall any specific thing that you would expect to find in the piece of paper that you don't find in this particular piece of paper, and we've been trying to reconstruct recollections as to what was in that piece of paper. It may be that that's what you have in mind, and we are very anxious to see if we can put that together.

A. Well, it was very seldom that I read anything typewritten. Most of what I read either had been prepared to go out over teletype or had come in over teletype. And that may be what it is, is that parts of this paragraph may have been on a message form going up to III MAF or something of that nature. And that may have been where I read it. They were cleared. A message like this would have been cleared either by the G3, or by Colonel BENN if the G3 was not there, for transmission, and that may be where I've seen something like this.

Q. Do you have any recollection of such a paper that had a reference to a report by Captain MEDINA or interview of Captain MEDINA?

A. No, sir.

Q. Were you still at the division when Captain MEDINA came to division?

A. Yes, sir. He came in I believe it was in July sometime, and I left about a week or 2 or 3 after he came in. I don't know if he actually took my place in the DTOC or if he just took a job, but he came into DTOC shortly before I left.

Q. Did you ever, at that time, have any reference back to the operations of Task Force Barker, any discussion about that, any incident that occurred?

A. No, sir. Captain MEDINA and I had served together at Fort Benning in 1966, I guess, 1965, 1966, and about the only thing we ever talked about were times in the Infantry School in Fort Benning. I don't ever recall speaking to him about any particular operation.

IO: Do you remember who Colonel PARSON's assistant was? The assistant was sometimes referred to as secretary.

A. There was a Major BEASLEY who was in that position, and he went out to become S3 of the 1/6 Infantry. I don't really recall who took his place, and I don't know if Major BEASLEY was in that job at this time or not.

Q. Do you recall either Colonel PARSON or, particularly Major BEASLEY showing you a paper such as this?

A. I don't really recall it. No, sir. I couldn't say that that happened.

Q. Something to the effect you know, you're standing around to go in to the briefing, here you might want to take a look at this?

A. It is possible, but I don't recall that happening. I talked with Major BEASLEY in the morning.

Q. I don't want to put words in your mouth or thoughts in your head.

A. I talked with Major BEASLEY every morning so he would be prepared in case the chief asked him something, and it is possible.

Q. This is the kind of interworking that basically prompted me to ask the question, because I know how division headquarters run, and I know what goes on, what the vocal intercourse is between the various staff officers in the headquarters, so this wouldn't necessarily be an unusual kind of circumstance.

Do you have anything further Mr. MACCRATE?

MR MACCRATE: No.

COL ARMSTRONG: When this hit the news media about 4 or 5 months ago, what was your reaction?

A. My reaction to that particular area, anything that happened in that particular area to me--I think that the people in the Americal--it had always been a VC stronghold and I did not react with any--I was not shocked or anything like that by anything happening.

Q. Was your reaction to yourself, "Well boy, it hit the fan", or more less expecting something like that, not being surprised by it?

A. I wasn't particularly surprised about it, but this may go back to the business that I have this impression that I can recall that something had happened there. To me something had happened there all the time, and when this came to light it didn't necessarily surprise me.

Q. I have nothing else, sir.

IO: You have been quite helpful to us major. We appreciate you coming in. I'm sure, based on your discussion here, you will do some more thinking.

A. Yes, sir.

Q. And some of the things that have been discussed here this morning may cause some of these bits and pieces to fall into place in your memory. If this be the case and you do remember some facts and details that were not brought out there this morning, we would like very much for you to get in touch with us so we can take advantage of it. If you think any documents, maps, aerial photos or anything of this matter which would be of assistance to us, we would like to know about those. At this time I would give you an opportunity to ask any questions you may like and if you would like to enter a statement into the record.

A. No, sir. I don't have any questions nor do I want to enter a statement.

IO: The hearing will recess at this time.

(The hearing recessed at 1015 hours, 27 January 1970.)

(The hearing reconvened at 0810 hours, 28 January 1970.)

COL ARMSTRONG: The hearing will come to order.

RCDR: The following persons are present: COL ARMSTRONG and MAJ LYNN.

(MAJ James A. LOGAN appeared before the board to make a correction in his previous testimony on the 27th of January 1970.)

Major LOGAN, you are reminded you remain under oath before this hearing.

COL ARMSTRONG: Major LOGAN, will you state what you said a few minutes ago?

A. With regard to my testimony of yesterday, concerning the briefings that we gave to aviation personnel in the Americal Division. I stated that occasionally or periodically we went out and briefed the 123d Aviation Battalion on operations and what had been done, so on and so forth, in the division area. On giving this more thought last night, it occured to me that it was not the 123d Aviation that we briefed. It was the 21st Recon Airplane Company.

It was the 21st RAC that we would go out and brief. These were the people that flew 0-1's, observation planes, in support of division missions. They were satellited to the Americal Division, and it was a courtesy thing we did for the 21st RAC. At no time did I go out to the 123d and brief those people.

Q. Is that all?

A. Yes, sir. That's the substance of it right there.

Q. Thank you very much, we appreciate you coming in and volunteering this information.

(The hearing recessed at 0813 hours, 28 January 1970.)

SUMMARY OF TESTIMONY

WITNESS: LUCAS, Warren J. LTC

DATE OF TESTIMONY: 15 January 1970

PLACE OF TESTIMONY: Pentagon

WITNESS SUSPECTED OF: N/A

COUNSEL: None

DUTY ASSIGNMENT ON 16 MARCH 1968: Provost Marshal, Americal Division.

1. KNOWLEDGE OF THE MY LAI OPERATION.

a. From informant net.

Lieutenant Colonel LUCAS had set up an informant net to obtain information concerning criminal activity from lower command echelons (pgs. 8, 9). However, he never heard anything about the My Lai operation from this net (pgs. 8, 9). The policy was that he had carte blanche to investigate an incident unless a commander determined it to be combat related (pgs. 9-11, 13). If the incident was determined by the commander involved to have been a result of combat activity LUCAS would investigate only if told to go ahead by the Chief of Staff (pgs. 9, 11, 13). He admitted that MACV Regulation 20-4 made it his responsibility to investigate war crimes, and he did not justify the distinction between combat related and non-combat related incidents in the face of the regulation's requirement to investigate all war crimes (pgs. 9, 10). He assumed that his investigators or MP's would have reported any incident involving a war crime to him, even one that was combat-related (pgs. 13, 16). However, he heard nothing concerning the My Lai operation (pg. 16).

b. From other sources.

Although he normally attended staff briefings, he did not recall a briefing concerning an exceptionally high body count (pgs. 5, 6). Neither the chaplains, nor

Sergeant WARREN nor Lieutenant Colonel ANASTRANSKI said anything about a large number of women and children being killed in an operation in mid-March (pgs. 6, 7, 14). Although he ate many meals in the general's mess and had a close working relationship with Vietnamese province and police officials, LUCAS never heard any report or VC propaganda about indiscriminate killing or helicopters firing into people along a road or a large number of civilians killed by artillery (pgs. 4, 6, 7). Had he heard of such a thing he would have investigated (pg. 6). He never saw HENDERSON's Report of 24 April 1968 and was not aware of any investigation of the incident (pgs. 6, 17).

2. OTHER INFORMATION.

The 11th Brigade provided its own MP support to Task Force Barker (pg. 5). He did not know HOLLADAY too well (pg. 11).

EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	NOTES	PAGES
R-1	HENDERSON's Report	Witness had not seen before.	17

(The hearing reconvened at 1015 hours, 15 January 1970.)

IO: The hearing will come to order.

RCDR: The following persons are present: LTG PEERS, MR MACCRATE, LTC NOLL and MAJ LYNN.

Sir, the next witness is Lieutenant Colonel Warren J. LUCAS.

(LTC LUCAS was called as a witness, was sworn, and testified as follows:)

Colonel LUCAS, for the record, will you please state your full name, grade, Social Security number, branch of service, organization, and station?

A. Lieutenant Colonel Warren J. LUCAS, 397-20-0845, Commanding Officer, 100th MP Battalion, Correctional Officer, Fort Bragg, U.S. Army.

RCDR: Thank you, sir. Colonel LUCAS, this investigation was directed jointly by the Secretary of the Army and the Chief of Staff, United States Army for the purpose of determining facts and making findings and recommendations concerning:

(1) the adequacy of prior investigations and inquiries into, and subsequent reviews and reports within the chain of command, of what is now commonly referred to as the My Lai (4) incident of 16 March 1968, and

(2) possible suppression or withholding of information by any person who had a duty to report and to furnish information concerning this incident.

This investigation is not being conducted to investigate all facts and circumstances of what happened at My Lai (4). It is directed to those specific purposes which I have just stated.

General PEERS has had made available to him and has reviewed prior official statements obtained in other official investigations of the My Lai incident.

Your testimony will be taken under oath. A verbatim transcript will be prepared. A tape recording is being made in addition to the verbatim notes being taken by the reporter.

Although the general classification of the report will be confidential, it is possible that testimony or parts of it may later become a matter of public knowledge.

IO: Colonel LUCAS, in addition to myself, here at the table this morning I have on my left Mr. Robert MACCRATE, who is a civilian attorney who has volunteered his services to Secretary RESOR to assist me in the conduct of this investigation and also to provide legal counsel and guidance to me. He may also address questions to you at this point. I have on my right Lieutenant Colonel NOLL, who will sit in on this hearing this morning. You should know that besides this particular group, we have other officers and other individuals who are likewise taking testimony, but in the final analysis it's going to be up to me to put the report together and to make the findings and recommendations.

A. Yes, sir.

Q. You are ordered not to discuss your testimony in this investigation with others, including other witnesses for this investigation, except in the performance of official duty or as you may be required to do before a competent judicial, administrative, or legislative bodies. In addition, you are cautioned that if you are subject to the order issued by the military judge in the general court-martial case of the United States v. Calley, your appearance here in no way changes either the effect or the applicability of that order. To the best of my knowledge, Colonel LUCAS, you have not been cited in that case. Is that correct?

A. That's correct, sir.

Q. Would you state what your duty assignment was on 16 March 1968?

A. I was provost marshal of the Americal Division.

Q. How long had you been provost marshal?

A. I assumed the duties of provost marshal of the Americal, I believe, on 12 April 1967.

Q. How long did you remain as provost marshal after the middle of March?

A. I departed there, Vietnam, on 10 May 1968, sir.

Q. Did you remain with Task Force Oregon and then with the Americal Division for a little over a year?

A. Yes, sir.

Q. From the time that the My Lai incident became a matter of public knowledge toward the latter part of September or early October in 1969, have you had any conversations with anybody from the Americal Division or from the 11th Brigade or Task Force Barker concerning anything that may have transpired there or concerning any of the investigative process?

A. No, sir, I have not. I have just talked to Colonel QUALLS, who will be your next witness, who was the G1, of course, and I've talked to no other person from the Americal about this incident.

Q. Did you have any conversation with Colonel QUALLS?

A. We talked about old friends who we'd seen and this type of thing, no specifics as to this particular hearing.

Q. Would you, for the benefit of Mr. MACCRATE and myself, describe your duties within the Americal Division? Now, I recognize that in this questioning this morning we're taking you back almost 2 years and that some of these things might not fit readily into place, so if some of your responses have to be general in nature or if you remember them, this will satisfy our requirements.

A. All right, sir. To begin with, I did all the military police provost marshal planning for TFO under the direction of Colonel WALBY, who was the G1 at the time, and Colonel POOLE, the chief of staff, and of course, General ROSSON. I went up in April at that time to set up--

Q. (Interposing) For the record, would you indicate what TFO is?

A. It's Task Force Oregon. At that time, I began setting up a complete provost marshal operation which I continued until I left. Among my duties, of course, were establishing division control of convoys and providing the military police for this. I established liaison with the local province, both provinces, Quang Ngai, and Quang Tinh officials and Danang, the PF's and the people up there in USAID; also with State Department officials. I had staff supervision at one time over five brigade military police operations. This was when the Americal was at its zenith. This included the old 3d Brigade, 75th Division; 3d Brigade, 4th Division; 1st Brigade, 101st Division, and 11th, which is a rather large MP operation, plus my own MPs at division headquarters. Established convoy control, the TCP's and traffic control on Highway 1; went into black market raids in the whole vicinity to cut that down; went into VD control; went into check point operations, river patrol operations, route reconnaissance. We did the normal things you do on a base camp, particularly when you have Air Force, Marines, and Army mixed. We had the normal trials and tribulations that come from that type of a mixture in a combat zone, particularly when you're using Chu Lai as a rest area. They pulled a battalion out of combat for rest, and came up with the troops that came out to wine, women, and songs, you might say. Of course, we handled security of the division CP when it moved out and this type of thing. A major operation was the PW operation which was unusual in the I Corps area in the fact that we picked up all PW's from the brigades and then in turn transported them to Danang where normally the higher headquarters, of course, picks them up. This is a good sized operation. Also, the entrance and exit between 2,000 to 3,000 Vietnamese laborers per day was under my supervision; the searches, the checks, this type of thing.

Q. All right. Well, I think the important points brought out in what you've just indicated are your close working relationships with the province officials, police officials, and also your relationships with, and staff supervisory functions over, the provost marshal activity of the assigned or attached units, primarily the brigades and so on. Were you familiar with Task Force Barker?

A. I had met Colonel BARKER. I knew it was going on. Task Force Barker was in the area of responsibility of the 11th Brigade. As such, I did not provide my military police force, and discussed this with Major PITTMAN, who was the brigade provost marshal, and the 196th Brigade provost marshal who is now Lieutenant Colonel WHITE. It

was determined that the 11th Brigade would provide its own MP's to support Task Force Barker. I stopped in there because it was right off Highway 1. I used to ride the thing all the time. I stopped in there a couple of times just to see what was going on, to see what the MP's looked like and that sort of thing. I met Colonel BARKER, but other than that, I had no other official capacity there.

Q. Do you recall the police contingent that you had there?

A. As I remember, the 11th put 11 or 12 MP's at task force headquarters.

Q. Do you recall who headed this contingent?

A. No, sir, I do not.

Q. Would the name WARREN, Sergeant First Class WARREN bring anything to mind?

A. That may have been it, sir. It doesn't ring a bell with me, sir. I basically dealt with Major PITTMAN. He said, "I'll send the people, the NCO's," and I don't remember meeting Sergeant WARREN there. He rings a bell as having met him at Duc Pho, not at Task Force Barker headquarters. This wouldn't be unusual, because he may have been out with one of the battalions or many other things he could be doing.

Q. Do you recall a staff briefing on the evening of 16 March in which the results of the operation of Task Force Barker into the Son My area were given?

A. No.

Q. Part of Operation Muscatine?

A. I don't remember any outstanding briefing mentioning My Lai (4) or any Task Force Barker exceptional body counts, which would be the thing that would ring a bell with me if I heard something very, very high.

Q. Did you normally attend the staff briefings?

A. Yes, sir.

Q. Would the figures 128 enemy KIA, 2 U.S. KIA, and 3 weapons captured bring anything to mind?

A. It doesn't bring any particular briefing to mind. It just seems that it would be an exceptionally high ratio of North Vietnamese, or Viet Cong, versus our own loss rate.

Q. Now that you've been given those figures, do you recall anything that was said in the briefing by either the briefer or anybody addressing questions to the briefer? Were any discussions going on in the room at the time?

A. No, sir. I don't remember anything about that particular briefing.

Q. Did you ever hear of a helicopter pilot that reported that fact that some women and children had been killed indiscriminately down there that day?

A. No, sir. The reason I say no so emphatically, if I heard that, I had carte blanche from, I was going to say the headshed, but from the chief of staff on up. If I heard something that I thought would even smell as being criminal, I should get in the act and start initial investigations on this. This had been my standing instructions since I took over as provost marshal, and these were never reversed.

Q. Do you know if your people at the PW cage and the G2 interrogators sat in on any of the interrogation of prisoners that were delivered up there on the 16th or the 17th?

A. I assume they would, sir, because we took the prisoners out of Task Force Barker rather than taking them all the way to Duc Pho. I set up the arrangements. Why take them down there? Then we'd have to release them back in an area much closer, bring them up to division collecting point for whatever interrogation was necessary.

Q. Were you ever aware that an investigation was underway of something that may have happened in the Son My area on 16 March by the Americal Division?

A. I was not. I was not.

Q. Did the chaplains ever discuss anything unusual happening down there with you, the fact that they had heard

that somebody fired into some women and children?

A. No, sir.

Q. Do you recall who your division chaplain was at that time?

A. If you told me his name, I'm sure I could remember him, but at the moment I cannot recall it.

Q. Well, at that time your division chaplain was Lieutenant Colonel LEWIS. Do you remember him ever talking to you?

A. Negative, sir.

Q. Did you ever see any VC propaganda which might have pinpointed the fact that something unusual had taken place in this area about the middle of March?

A. No, sir. The only VC propaganda I ever saw that was picked up was north of Chu Lai. That was given to me, or my MP's picked it up; that, I can remember.

Q. Did Sergeant WARREN ever talk to you about what he had heard concerning what had gone on in My Lai (4) or Son My on 16 March?

A. No, sir.

Q. Did you ever hear anybody, either the officers or the enlisted personnel, talking about the number of people, women and children, that were killed in this area on that day? Or the fact that some helicopters fired into some people on the road or elsewhere? Or the large number of civilians killed by artillery?

A. No, sir.

Q. How much time did you normally spend at division headquarters or in the generals' mess?

A. I always ate the evening meal unless I was out. So you could say I generally ate at least five nights a week, if I was there at noontime. Depending on what was going on, I'd say I ate the noon meal five or six, depending on what was going on. The breakfast, never.

Q. Did you ever hear any of your enlisted personnel in the provost marshal office or in the provost marshal organization talking about this?

A. No, sir. The reason I say this is my CI as we were starting up a brand new program up there, Mr. BRANDT had instructions from me to set up an informant net throughout all the brigades, so if we heard some of this, it would be brought--our informants would inform my chief of CI. He was making his contacts with all the brigade CI trying to get the brigades to set up these informant nets so that we could get wind of these rumors. If they were worth checking out we'd get into them. And I never heard anything of the nature we're discussing here today.

Q. When did you set this informant net up?

A. When I came up to Chu Lai we started working on it with the CI people I had. Of course, there was a turnover there, but Mr. BRANDT was there at this time, I believe. Or if Mr. BRANDT wasn't, it was right about this time. I'm not sure if he left in March or not. He was a CW2 with the CI program.

Q. This is very strange. You had an informant net setup. We've talked to many witnesses who indicated that--especially within the enlisted personnel at division headquarters and certain other units within the division headquarters itself, the headquarters area at Chu Lai. It was pretty much a matter of common knowledge and much talk and gossip in the bars and everyplace else. And we--

A. (Interposing) To my knowledge, sir, I was never told of anything like this because I would have done something about it. I've investigated too many things in Vietnam in my official position, either as deputy provost marshal with the 1st Division or for the Americal, to the point where at times I had gone to USARV and asked for additional help to investigate similar type things. I was never informed nor did I ever get any good rumors on such an incident.

Q. Well, I think, then, that you were relying on that investigative or informant net pretty heavily, because, as I say, from our indications, this was well known and well talked about, so an informant net must not have been very effective.

A. Well, it depends on what you're talking on an informant net. First of all, this is for criminal activities, black marketeering, things that go on at the base camps. If at the moment, a combat commander in the Americal or even with the 1st Division, when I was with it, determined that it was a combat action, then the criminal investigative effort was ceased or never started, and it was not brought into provost marshal channels. This was a commander's decision. In other words, if the action that took place, no matter what it was, where there was a death involved seemingly of an innocent civilian or whatever it may be, and it was determined at the brigade level that it was a combat action, then I as division provost marshal was never brought into it.

Q. Well, do you think that's in accordance with the directive put out by COMUSMACV?

A. I won't question whether it's in accordance with COMUSMACV direction. The point about it is, it was never brought to me at all. I never would hear about it even. It may have been brought up through other command channels but not through my provost marshal staff channel.

Q. I have here Exhibit D-1, which is MACV Directive 20-4, titled, "Inspection Investigation of War Crimes," and I would ask you to read paragraph 5a.

A. In the context you put it, yes, sir. All I'm saying is that it was never brought to my attention.

Q. Yes, well, what you were saying to me was that you were not responsible for that; that that was the brigade commander. And this says everybody's responsible, and particularly people such as yourself. Isn't that right?

A. In the context you put it, yes, sir.

Q. In the context I put it½ I'm saying that's what this piece of paper says. That isn't the context. It's what it says.

A. I agree with what you said, but I don't follow what you're driving at. My point is, how can I do anything about something I know nothing about?

Q. Well, my point is that you may have had an informant net set up that could have provided you information of this, but if you were going to tell them that they are not responsible for reporting this sort of thing, that they're responsible--

A. (Interposing) No, sir, the net was primarily set up, as I said, on the police side of things. If this thing didn't come up through the channels to me, then I wouldn't have investigated it, because I did investigate other war crimes over there.

Q. Mr. MACCRATE?

MR MACCRATE: What other war crimes did you investigate, Colonel LUCAS?

A. Rapes, murders, robberies.

Q. Could you be a little more specific than that, as to instances of investigation, when they occurred and the nature of the--

A. (Interposing) I would be very hesitant to do so, because this is all a matter of record, and all the CI cases that came out of the Americal are available and could be procured. I can't give you--after 22 months of this in Vietnam--I can't give you specific dates and times, sir. I wouldn't attempt it.

Q. Do you have any specific recollection of the kind of war crime investigation that you've referred to as having conducted?

A. Rapes in PW collection points, robberies out in the field where on a sweep, a platoon would go through--or a squad, whatever the size may be--go through and rob people of their "P's" (Vietnamese piasters) with the threat of a grenade in the hut, and they keep the "P's" and then use them for their own laundry and things like this. A small squad, half a squad, out on a bridge in the middle of nowhere, protecting the bridge, molesting women and this type of thing.

Q. But the minute this was classified as combat action, you said, "Hands off, this is not for me"?

A. I didn't do the classification, sir. I made no classification. If it came through in a case like this, I would have been told by General KOSTER or the chief of staff. I always made an investigation then, and put the information in, if I got enough facts--many times it's very difficult, as you know. If you try to get investigators out in to a village that's in the middle of a combat action, it was almost impossible at times, and then you might wait a week to get hold of the witnesses for the suspect, and then they may be dead in the meantime because of combat action. It's very difficult. I made no such decision. If I gave that impression, I did not. I say, if what happened, many times this decision was made at the brigade level and I knew nothing about it. It was determined there it was combat and was never reported through military police channels.

Q. Well, I think this bears further examination. I'm not at all satisfied as to this distinction between that which is combat action and that which is not. Apparently there was a great deal of talk at Chu Lai during this period about what we are presently investigating, and it's quite true that anything that occurred, occurred in the course of the combat action. No doub that this was all part of an operation that extended over several days. But if information as to what took place during such an operation was circulated at the base and came to your attention, what did you understand your responsibilities to be at that point?

A. The moment I thought it was criminal in nature, and this type of thing were involved, a task force in operation, I would have gone immediately to my chief of staff; and said here's the facts and here's the rumors I'm getting, and I think it should be investigated.

Q. Thinking back to this time, do you recall who was the commanding officer of the aviation battalion, the 123d?

A. No, sir.

Q. Do you remember Colonel HOLLADAY?

A. I had met him a couple of times.

IO: Wait just a minute. You said you'd met him a couple times. He was on the division staff? He was the aviation officer, and you're saying you met him a couple

times½ He was at the staff briefing everyday, which you say you attended½ Now, how can you say that?

A. I would have to see the man's face because we had a couple of aviations officers. We had two battalion commanders working there also, sir. All I'm saying is, I believe I met him. That's the best of my recollection. If I'm wrong and see the man, I can tell you right off the bat whether I knew him. I did not know him well.

MR MACCRATE: You say that if reports reached you that in the course of a combat operation something of a criminal character had occurred, you would have brought that to the attention of the chief of staff. You would not have--

A. (Interposing) I would also have gone to Major PITTMAN down at the 11th MP--11th Brigade and said, "What do you know about this?" so I can--because the first thing the chief would have asked me is what kind of facts do you have to substantiate this?

Q. Well, what would you expect to find from Major PITTMAN?

A. Well, he had the MP's down there, sir.

Q. But this was out on an operation. Would the MP's have been out on an operation?

A. They very easily could have been.

Q. If the MP's were not out on the operation, you wouldn't get very much information from them, would you?

A. No, sir.

Q. If the kind of report that was circulated was as to what had occurred in the course of the combat operation, you weren't going to get very much information from Major PITTMAN. Where else would you turn? Would that be the limit of your investigation at that point in your investigative responsibilities, as you understood them?

A. If there was a rumor, and the chief said, "Go ahead," I would send investigators down to task force headquarters to start the investigation.

Q. But you would have done nothing unless the chief of staff told you to go ahead and do something at that point. Your general carte blance instructions with respect to criminal investigation you felt were no longer applicable if a combat operation were involved?

A. Well, many rumors are flying around in combat. Which do you believe? Which don't you believe?

Q. No, I'm not talking about that. I want your understanding of what your standing instructions were, Colonel LUCAS. You said you had carte blanche to investigate any criminal activity that came to your attention, but you say, apparently, that it was involved in combat action, then you only made an investigation after getting an express directive from the chief of staff. Is that the distinction you draw?

A. Yes, sir. If it was declared a combat action, I did not move into it at all with my investigators.

IO: Well, the real question is whether your investigators, if they heard something about an incident that was involved in a combat action, would report it to you so the matter could be checked into?

A. I assume they would. I had a great deal--I had complete faith in them.

Q. Well, for example now, if you had in the division area, you had two aviation battalions, you had the 14th, you had the 123d.

A. Yes, sir.

Q. Did you have any of your informants in either of these battalions?

A. I cannot remember, sir.

Q. Did you have any in DIVARTY?

A. I think so. We had some DIVARTY people close by. I know we checked out some allegations, which didn't have to

do with this one, but of allegations of aviators indiscriminately shooting at people on the rivers, yes, sir. The so-called "blue zones."

Q. Was it understood in the training of your MP's that if they heard anything that would've smelled of a war crime that they were to make sure that it was reported?

A. Anything that is criminal in nature, the MP's were trained to report. I don't remember if it specifically was in the training that we conducted because it came up there with MP's that had already been in country. Of course, we had replacements come in.

MR MACCRATE: What division was made between your investigative responsibilities and those of the G5 with respect to the killing of civilians or the destruction of civilian property? When would you get into such an investigation, and when would it be regarded as the responsibility of the G5?

A. Any official investigation I would have to make. The G5 may have looked at it from his aspects. He would get in and take the statements and this type of thing in performing the official Army investigation. The CI normally would have done it if it was a criminal act or an alleged criminal act.

Q. Well, were your services available to--

A. (Interposing) Yes, available to the G5? I knew him very well.

Q. And did you from time to time assist Colonel ANISTRANSKI in connection with such investigations?

A. Not so much with investigating. More with the movement of people and helping. If he wanted an investigator, I'd just turn an investigator over to him. I don't remember any particular incidents where Gus asked for anybody in particular.

Q. Do you remember any comments of Colonel ANISTRANSKI with respect to this operation in the middle of March of 1968 during the evening briefing session?

A. Nothing in particular, because he was having all kinds of problems with this G5 business. He used to talk about the movement of civilians and providing supplies and

trucks and this sort of thing, what a huge task it was to get the civilians moved out of these combat areas.

Q. Do you remember him raising any question about the moving of civilians out of the Son My Village area?

A. In that Batangan Peninsula, and you can correct me, he was trying for a long time to get them into refugee centers. It had been sort of a sore spot for a long time, trying to get these people moved out, like he had done in other areas. I'd like to point out one of the things that I think is relatively important. Not too many people came to me with allegations of crimes and so on. I may have heard vague rumors and so on, and it may, as you state, have been common knowledge around division headquarters. But as the so-called "top policeman," not too many people came and told me about things like this, and this is true anyplace in the Army.

IO: Well, this is one of the purposes of your informant net too, isn't it?

A. That's correct, sir. This is one of the reasons why you try to set it up.

Q. And what baffles me, very frankly, is that if you had an informant net that was anywhere near effective, why didn't it pick up this persistent talk that went on for as long as 2 weeks?

A. I cannot answer that, sir. The same thing--

Q. (Interposing) Well, this is a real important point to me, not necessarily because of what was discovered there or what was reported, but it is important to me that we get our MP's instructed properly in the future so that they know that anytime they hear of a war crime being committed they're to report it. I get the impression here, very frankly, that if a war crime took place in a combat situation your informants wouldn't report it. As a consequence, you probably wouldn't hear about it, which is not in accordance with the directive that is, was, put out by MACV, by III MAF or by the intent of all the regulations which we have. So it would appear to me that some more specific instructions are necessary for the MP's.

A. The point is, that if the MP's had heard about it, I'm sure I would have heard about it. The people that were in the action would talk, there would have been the rumors floating around, my MP's would pick it up and then report up through the chain of command or the staff supervision chain.

Q. Some of your MP's had a reasonably good knowledge that something unusual took place. They didn't have the details, but they had enough upon which they could have reported to you so that an investigative process could have been set in order.

A. I can't disagree with that because I don't know. All I can say, and I'm saying it under oath again, it never, in any way, came to my attention.

Q. Well, I understand that, and I'm accepting what you say. Therefore, the question arising in my mind is as to whether or not there might not have been some confusion as far as what is to be reported and under what circumstances.

A. Well, we certainly investigated enough murders over there of this same type, where a troop could be standing around a perimeter and a soldier just indiscriminately or for no good reason takes a shot and kills one, two, three, four, five, six people, or goes out and does this, so I fail to--I think my MP's at that time knew more--or knew they should be reporting this.

Q. Well, if it was reported through the MP channel, that would be one thing, but were those all reported through the MP channel?

A. I got them right out of the brigade MP people; went down and did the investigations for them.

Q. I understand that, but that doesn't necessarily mean that they were the ones to pick up and initially pass it on. It may have been that somebody filed an official report with them.

A. I certainly agree with that possibility.

Q. Do you have any more questions, Mr. MACCRATE?

MR MACCRATE: If any of these examples that you have recalled today relate to an actual movement of forces within the course of an operation--you talked about a perimeter and I understand that a perimeter is maintained around any base operation, but what examples do you have--

A. (Interposing) The specific one I can give you that I mentioned was the one where a platoon was out on a sweep and went into a village and robbed the people of their "P's" with the threat of holding a grenade near the hut and things like this. That was a specific one, the other--

IO: (Interposing) When did that take place?

A. I can't tell you that, sir. I don't remember. It was a CI investigation, and it can be determined.

Q. Was it a formal IG inspection accompanied by--

A. (Interposing) No, sir. It was a provost marshal investigation, CI type.

Q. Colonel LUCAS, if in the future any of this starts fitting into place, and you recall having heard something from within the staff or from within your information net, from within the enlisted personnel of division headquarters, or in the division, we'd like you to get in touch with us to let us know so we can have the benefit of this information. Before we terminate the hearing, I have here a document that has been entered into the record as Exhibit R-1, dated 24 April 1968, subject: "Report of Investigation," to the Commanding General, Americal Division. I ask if prior to your departure from the division you had seen this report?

A. No, sir. I did not.

Q. I wish you'd look at all parts of the document.

A. No, sir.

MR MACCRATE: Did you ever hear that such a report had been made?

A. No, sir.

Q. Did you ever hear any caution expressed as to a discussion of the operations of Task Force Barker?

A. The only thing I remember is they were very concerned over the amount of American losses to the mines, booby traps, and so on they were getting down there. The great concern at division headquarters was this, the continual loss after loss of life, one man here, another man there. Of course, a great deal of criticism was made of the 2d ROC Marine Brigade for having left--allowed this to go on and then we picked it up at this point. I believe it was their area of operation.

Q. In conclusion, I would like to remind you that you've been directed to not, either directly or indirectly, discuss this incident, the investigation process of it, or your testimony in this investigation. Do you have anything that you would like to add for the record, or do you have any questions to ask?

A. No, sir. Am I permanently dismissed?

IO: The hearing will recess at this time.

(The hearing recessed at 1100 hours, 15 January 1970.)

504C

SUMMARY OF TESTIMONY

WITNESS: LUPER, Robert B., LTC

DATE OF TESTIMONY: 10 December 1969

PLACE OF TESTIMONY: Pentagon

WITNESS SUSPECTED OF: N/A

COUNSEL: None

DUTY ASSIGNMENT ON 16 MARCH 1968: Commander of the 6th Battalion, 11th Artillery, in support of the 11th Infantry Brigade

1. PREOPERATIONAL PLANS AND BRIEFINGS.

a. Requested support.

The witness was present during the planning stages of the assault on My Lai (pg. 4). He stated that Lieutenant Colonel BARKER requested a five minute artillery prep fired on the south end of My Lai (4) not on the landing zone (pgs. 5, 7), which was some 1000 meters southwest of the hamlet (pg. 6).

b. Clearance for artillery.

The witness stated that when he had a request for artillery fire, he fired it (pgs. 32, 45, 46). He noted that there was no reason for him to question the request of the ground commander (pg. 32). Captain VAZQUEZ, his liaison officer with Task Force Barker, would normally clear the fire for any operation (pgs. 7, 8). He thought that the area in issue was a free fire area, but was not certain (pg. 8). The fire would be cleared through the Son Tinh District (pg. 8). The witness admitted that he could not recall any time when a request for clearance to fire in a VC controlled area was refused by political people when there were no ARVN's, PF's, or RF's in the area (pgs. 32, 46). He noted that generally artillery preparatory fire would have been observed and he thought that VAZQUEZ observed this one (pg. 28).

c. Civilian situation.

The witness stated that he did not know how populated the area of operation was nor did he conduct any personal air view of the scene prior to the operation (pgs. 8, 9). He did note that the area was mostly bombed out (pg. 24).

3. ASSAULT ON MY LAI.

a. Landing.

The witness accompanied the 11th Brigade Commander, Colonel HENDERSON, in his helicopter on the morning of the operation (pg. 11). The first lift of troops went in at around 0730 hours and was completed by 0750 hours (pg. 19). He saw smoke in the area and noted that it was more than normal for that usually seen in an operation in the open, but not necessarily more than normal for that in a village area (pgs. 25, 30).

b. Persons observed.

When the witness arrived over the area, he observed about fifty people moving out of the village area towards Highway 521 (pg. 12) from the area of the artillery fire (pg. 29). The command helicopter saw two other people who were suspected of being VC's and went down and picked them up. They turned out, upon interrogation, to be PF's who had been held captive in the village (pg. 12). There were no U.S. troops in the area where these were picked up (pg.33).

c. Bodies observed in the area.

The witness noted that when flying over the area he saw what appeared to be women and children killed (pg. 17). He emphasized that he did not state that these were civilians, however (pg. 23). There were about fifteen to twenty bodies seen about 0800 hours (pgs. 18, 19). He did not know whether or not HENDERSON saw these bodies (pg. 20). The witness stated that in his opinion that the position of the U.S. troops in regard to the bodies indicated that the troops did not kill them (pg. 30). The witness reiterated that he did not see a massive group of bodies, but only the group mentioned here (pg. 43). The casualties seen on the road could have been caused by fire from gunships (pg. 29). During the morning there was a report received that there were 69 killed as a result of artillery fire (pg. 15). These

were assumed by the witness to be VC (pg. 16).

3. INQUIRIES CONCERNING THE ASSAULT.

a. Indications that inquiries should be conducted.

(1) The witness testified that he had heard nothing that made him suspect that anything out of the ordinary had happened (pg. 27). He was not familiar with any accusatory propaganda (pg. 27). He stated that he was not certain that innocents were killed that day, and that he did not feel that the known facts warranted an artillery incident investigation (pg. 48). However, he noted that he had made no particular efforts to see if his artillery had killed innocent civilians that day (pg. 51).

(2) The testimony further indicated that, although the body count to weapons ratio was 128 to three, no one was particularly surprised (pg. 17). The witness noted that it was thought that the 128 to two kill ratio was unusual (pg. 18). Of course, it was thought that there were 69 VC killed by artillery fire (pgs. 15, 16). The witness stated that there had been no report made to him that civilians had been killed by his artillery fire (pg. 44). Further, he stated that no one was particularly concerned about the reports that some noncombatants had been killed by either gunship or artillery fire (pg. 31).

b. Investigations conducted.

(1) The witness stated that he had never seen HENDERSON's report (Exhibit R-1) nor any of its inclosures (pgs. 26, 27). Further, he had no knowledge of anything similar to it having been submitted to the Americal Division commander (pg. 26). He asserted that he was not aware of any subsequent investigation of the 16 March operation (pg. 24). He was never directed personally to investigate any such incident (pg. 31), and he queried no one specifically about it (pg. 42). He added that he never heard any instructions to suppress information of the 16 March operation (pg. 31). The witness testified that he was never questioned about this operation by YOUNG, BARKER, or HENDERSON (pgs. 42, 43).

(2) The witness did recall hearing HENDERSON speak with Captain MEDINA about the killing of a woman (pg. 22), but that incident was the only matter that he thought was being investigated (pgs. 30, 52).

4. REPORTS OF INVESTIGATIONS.

a. Knowledge of reports.

The witness stated that he had never heard of any reports or investigations being conducted, save for that of the incident involving MEDINA (supra, par, 3.b.). He was not familiar with Exhibit R-1, the report of HENDERSON, or any of its inclosures (pg. 26). He noted that he was not familiar with the report to the Americal Division that over twenty civilians had been killed in My Lai (pgs. 43, 44).

b. Reports of artillery incidents.

(1) The witness explained that in instances where artillery fire was misdirected, there would be a report. He noted that these "incidents" to which he referred were only in cases of misdirected fire. However, he did state that where there was a report of noncombatant deaths an investigation would normally have been conducted (pg. 36).

(2) The witness stated that there was a USARV requirement that all cases of artillery "incidents" would be reported to the next higher headquarters (pg. 47). He added that on the day in question he was never made aware of any civilian deaths due to artillery fire (pg. 44). Thus, he submitted no report. Although he was aware that some deaths were due probably to either artillery fire or gunship fire, he was not told by the division to submit a report (pg. 50), nor was he informed that division had submitted any report to its higher headquarters (pg. 48). He stated that as long as there was an alternative possible cause of death, in this instance gunship fire, he felt no responsibility to initiate a report himself (pg. 50).

EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	NOTES	PAGES
R-1	HENDERSON's Report	Never seen.	26
D-3	MACV Directive 525-18	Familiar with this.	27

SUMMARY OF RECALL TESTIMONY

WITNESS: LUPER, Robert B. COL

DATES OF TESTIMONY: 11 and 12 February 1970

PLACE OF TESTIMONY: Pentagon

WITNESS SUSPECTED OF: Failure to obey a general order and dereliction of duty.

COUNSEL: Bryan A. MARMESH, CPT. JAGC, stationed with the Office of the Judge Advocate General, Washington, D.C.

DUTY ASSIGNMENT ON 16 MARCH 1968: Commander of the 6th Battalion, 11th Artillery, in support of the 11th Infantry Brigade.

1. FLYOVER OF THE SON MY AREA DURING THE OPERATION.

a. Personnel in the helicopter.

The witness stated that to the best of his recollection Colonel HENDERSON, Major MCKNIGHT, and himself were the only persons in the helicopter except for the pilots. He noted that it was possible that Sergeant ADCOCK was there, operating the console for HENDERSON (pgs. 61, 62).

b. Observations from the helicopter.

The witness stated,as he earlier testified, that he saw 15 to 20 bodies on the ground, some of which could have been women and children. He did not recall seeing any ditch, although he noted there could have been one (pg. 63). He stated further that he recalled the helicopter flying at 1500 feet most of the time (pgs. 62, 63). He then recounted the command and control helicopter going down and picking up two Viet Cong suspects. He recalled that they were picked up on the road near a bend in Highway 521; he saw no bodies at this time (pgs. 62, 63, 65, 66). The witness pointed out to the committee that he was not in the helicopter as an observer, therefore MCKNIGHT and HENDERSON might have seen something that he did

not notice. He added that he did not have a clear view of the ground from his vantage point in the helicopter (pgs. 64, 85).

c. Communications of the witness.

The witness testified that when he flew with HENDERSON on the morning of the operation, he used a portable PRC-25 radio (pg. 81). He realized that this was not the best form of communication, but stated that it was the best he could get from brigade (pg. 82). The witness stated that normally he would have continued to stay on the artillery net as long as artillery had been needed in the area, and although he may have listened to the ground console from time to time, he did not recall listening to the Task Force Barker net (pgs. 82, 83, 87). The witness stated that he very seldom got on the tactical radio during an operation, and when he did it was primarily to find out if something had gone wrong. He did not recall getting on the tactical radio that morning (pgs. 86, 87).

d. Conversation with Colonel HENDERSON.

The witness related that he could not recall having a conversation with HENDERSON that morning, wherein HENDERSON stated he was concerned about the killing of civilians and that he had put a call into Task Force Barker to tell them to stop shooting and burning (pg. 98).

2. EVENTS UPON RETURN TO LANDING ZONE DOTTIE.

The witness testified that the C&C helicopter returned to LZ Dottie and military police picked up the two Viet Cong suspects. He further recalled that he went to the Task Force Barker TOC where General KOSTER met and spoke with Colonel HENDERSON. He did not recall the substance of that conversation (pgs. 70, 74). He noted that he could not specifically recall anything about KOSTER's arrival nor any briefing of KOSTER (pgs. 91, 92). He could not recall any radio transmissions coming into the TOC nor could he recall having a conversation with Captain GAMBLE or Major CALHOUN there (pgs. 70, 74, 75). He did not recall seeing Colonel BARKER in the TOC (pg. 70).

3. OBSERVATIONS DURING THE SECOND FLYOVER OF THE AREA.

After leaving Landing Zone Dottie, the witness stated they flew back over the operational area. He testified that

the only thing that he could recall seeing was about the normal amount of smoke, or somewhat more than normal for that type operation (pg. 77). He could not remember flying down low over My Lai at that time to look for bodies killed by artillery, nor having seen any bodies on the ground during this second flyover (pgs. 77, 78). He declared that he could not recall any radio transmission by either himself or Colonel HENDERSON during this fly-over (pgs. 78, 92). The witness told his interrogators that he had no desire, during this flight over My Lai, to fly low in order to look at bodies, nor did he think that HENDERSON had such a desire (pgs. 92, 93). He added that it did appear unusual to him that HENDERSON did not fly low to see how his troops were operating (pg. 94). He reiterated that during this flyover he did not see any more bodies (pg. 95).

4. USE OF ARTILLERY AND ITS CONSEQUENCES.

a. The preparatory fire.

The witness testified that he did not personally see the artillery prep and, therefore, he could only assume that the artillery prep went where Lieutenant Colonel BARKER had directed (pgs. 62, 68). It was indicated to the witness that the artillery fire did not land on the landing zone, but landed partly on the landing zone and partly on the western portion of the village. The witness asserted that the artillery prep must have landed where it was directed by the liaison officer who was flying with BARKER at that time (pg. 67). The witness noted that it would not be unusual for him to have landed at Landing Zone Uptight prior to the operation, and to check with the battery commander to be sure that the artillery attack would be coordinated with the ground attack (pg. 69).

b. Artillery support of B/4/3.

The witness stated he could not recall the fact that artillery in support of Bravo Company failed to lift on time and he did not recall ever having spoken to Colonel HENDERSON or Captain GAMBLE about this (pgs. 75, 76). He noted that he had never before heard this allegation until the present time (pg. 76).

c. Body count.

The witness testified that he was aware of the report

of 69 Viet Cong killed by artillery fire, although he emphatically stated he could not recall the source of that information (pgs. 71, 72, 90). He related that he realized it was an unusual body count in the light of the number of weapons recovered; however, he added if they had cornered a battalion, as they thought, it was certainly conceivable (pgs. 72, 95). He recalled that people talked of this high body count in the TOC at LZ Dottie, but he could not recall any specific comment. He related that he was happy about the large number of killed by his artillery, but was not particularly impressed (pgs. 91, 92).

d. Artillery incident and regulations.

The witness declared that he was familiar with MACV Directive 525-18 which required clearance with the district and village chief before fire could be directed into VC controlled territory (pg. 68). He noted further, however, that a village could be attacked without warning with artillery, if the attack were in conjunction with a ground operation. The ground commander had the discretion over the use of the artillery in that circumstance (pg.69). Concerning the case at hand, the witness was certain that artillery fire was not misdirected, because of the standard operating procedure which assured that the firing data would have been checked out by the battalion FDC (pg. 99). The witness admitted that he did not discuss with Colonel HENDERSON the desirability of making an artillery incident report, in spite of the fact that civilians had been killed (pgs. 106, 107). He asserted that he did not ever investigate and report to HENDERSON on the possibility that artillery rounds fell into the village (pg. 100). He added that if he ever assured anyone of anything, it was that the firing data was correctly computed and fired where the task force commander directed. It was possible according to the witness, that rounds might have gone into the village (pg. 100). He declared that he did not consider this an artillery incident; and he did not believe that personnel at either brigade or division considered it an artillery incident, since they had received the report that civilians were killed by artillery fire and never directed an artillery incident report (pg. 107).

5. KNOWLEDGE OF ANY INVESTIGATION.

The witness allowed that he recalled the mention at the evening briefing of from 10 to 15 noncombatants

possibly killed by artillery (pgs. 97, 98). However, he asserted he did not recall ever hearing a report that the VC had departed the Son My area prior to the landing of the U.S. troops (pg. 72). He asserted that he had no recollection of any conversation with Colonel HENDERSON, wherein he assured Colonel HENDERSON that artillery fire did not fall upon the village. He could recall no discussion with HENDERSON on this subject (pg. 101). He stated further that he could not recall any discussion of women and children being killed, nor had he heard of any investigation being conducted at Duc Pho (pg. 97). He stated that HENDERSON never mentioned any allegations of helicopter pilots to him (pgs. 101, 102). He mentioned that the only indication he had of any investigation being conducted was from a conversation between HENDERSON and Captain MEDINA which he witnessed. He did not hear what was said, however (pg. 105). The witness emphatically testified that Sergeant Major KIRKPATRICK was totally in error, if he stated that the witness was the investigating officer for the My Lai incident. The witness added he did not consider KIRKPATRICK very bright (pgs. 102, 103). He knew of no other investigation, nor of any report, except for the indication he received from HENDERSON's conversation with MEDINA (pgs. 100, 104, 105).

6. OTHER INFORMATION.

a. Opinion of body count.

The witness stated that he had been in three wars, and he believed that taking a body count is the most ridiculous thing to have come out of Vietnam (pg. 91).

b. Discrepancies in various logs.

The witness stated he could not account for the fact that the 16 March 1968 entry was found missing from the log of the supporting artillery unit (pgs.111, 112). The witness testified that he had no idea why the Task Force Barker log and the 11th Brigade log did not coincide on the entries concerning artillery kills (pg. 98). Further, he could not account for the incorrect coordinates given for the artillery kills in the 11th Brigade log, and he recalled no comment about this evident discrepancy (pgs. 73. 97).

c. Awards.

The witness stated that he was not aware that there were no medals or awards given for action in this particular

operation (pg. 96).

d. HENDERSON's assumption of command.

The witness indicated to his interrogators that the fact that Colonel HENDERSON had just taken command of the 11th Brigade, and that this was his first operation, held no particular significance for him. He noted that Colonel HENDERSON had been his rating officer for some months and so the fact that HENDERSON had taken command did not particularly impress him (pg. 80).

e. Knowledge of exhibits.

Knowledge of exhibits will be noted on the Exhibit List, infra.

EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	NOTES	PAGES
D-3	MACV Dir 525-18	Wit mentioned his knowledge. Referred to.	68,69
D-14	Americal Divarty letter	Read to witness.	107,108
M-16	TF Barker log	Shown and read to the witness.	71,72, 98
M-20	Transcript of TF Barker TOC tape	Read to witness.	87,88
M-23	Americal News Sheet, 17 Mar 68	Shown to witness.	105
M-29	TAN's ltr to KHIEN, 11 Apr (trans) (Son Tinh Dist)	Witness had not seen.	109
M-30	Statement of RODRIGUEZ	Wit had not seen.	110
M-33	Transcript of VC propaganda tape	Wit had not seen.	110
M-35	VC propaganda leaflet	Wit had not seen.	110,111
M-46	11tn Bde log	Read to witness.	72,73
P-1	Aerial photo	Shown to witness.	83,84
P-47	Aerial photo	Shown to wit who marked photo.	64,65
R-1	HENDERSON's report	Shown to wit. Wit had not seen prior to his testimony.	104,109
MAP-1	Wall map	Wit oriented.	72,73

(The hearing reconvened at 1005 hours, 10 December 1969.)

IO: This hearing will come to order.

RCDR: The following named persons are present; LTG PEERS, MR WEST, MR MACCRATE, MR WALSH, COL MILLER, COL FRANKLIN, and MAJ LYNN.

Sir, the next witness will be Colonel Robert B. LUPER.

(COL LUPER, 430-30-4484, United States Army, Command and General Staff College, Fort Leavenworth, Kansas, was sworn, and testified as follows:)

IO: Colonel LUPER, before we proceed with any questions, I shall inform you of several matters. This investigation was directed jointly by the Secretary of the Army and the Chief of Staff, United States Army for the purpose of determining the facts and making findings and recommendations concerning two matters:

(1) the adequacy of prior investigations and inquiries into, and subsequent reviews and reports within the chain of command, of what is now commonly referred to as the My Lai incident of 16 March 1968, and

(2) possible suppression and withholding of information by any person who had a duty to report or to furnish information concerning this incident.

Do you have any questions concerning those two points?

A. No, sir.

IO: This investigation is not being conducted to investigate all the facts or circumstances as to what happened at My Lai. It is directed toward those two specific purposes which I have just stated.

I have had made available to me and have reviewed prior official statements obtained in other official investigations of the My Lai incident. Your testimony today

will be taken under oath. A verbatim transcript will be prepared. A tape recording is being made in addition to the verbatim notes being taken by the reporter.

Although the general classification of the report will be confidential, it is possible that the testimony, or parts of it, may later become a matter of public knowledge.

There are several people in this room who may ask you questions. Mr. West on my right, Colonel MILLER, and Colonel FRANKLIN are my assistants in this investigation, and they are authorized, in my behalf, to ask questions. In addition, I have on my left Mr. MACCRATE and on your left Mr. WALSH, who have been designated by the Secretary of the Army as civilian legal counsels to assist me in this investigation. They too, are authorized to ask questions. However, I would like you to know that I have the responsibility of weighing all the evidence and making findings and recommendations.

You are ordered not to discuss your testimony given here with others, including other witnesses for this investigation, except in the performance of official duty or as you may be required to do so before competent judicial or administrative bodies. In addition, you are cautioned that if you are subject to the order issued by the military judge in the general court-martial case of the United States v. Calley, your appearance here in no way changes the effect of that order.

Do you have any questions at this time?

A. I do not, sir.

IO: Colonel MILLER, do you have any guidance you would like to give Colonel LUPER?

COL MILLER: No, sir.

IO: Colonel LUPER, what was your duty assignment on the 16th of March 1968?

A. I commanded the 6th Battalion, 11th Artillery, which is a direct support battalion assigned to the 11th Brigade.

Q. How long had you been in that capacity?

A. Since the 1st of May 1967.

Q. You came to South Vietnam, then, with your battalion and with the 11th Brigade?

A. Yes, sir.

Q. As the direct support artillery battalion commander what was your responsibility?

A. To furnish direct support artillery to the 11th Brigade, the 11th Infantry, and fulfill any fire request that I could for them.

Q. During the course of the operation into the Son My area which was initiated on 16 March, I believe this operation was supported by one of your batteries at Uptight?

A. That's right, sir.

Q. Would you explain this battery and how it functioned?

A. Yes, sir. This was my Delta Battery, which was actually a provisional battery that I organized from within the battalion, when Task Force Barker was activated, by taking two gun sections from one of my regular batteries and one gun section each from the other two. It was a four-gun battery, four Howitzers. They were actually assigned to furnish direct support to Task Force Barker and were positioned at Uptight. The battery commander was a Captain GAMBLE who had been in country a relatively short time, but just came from Fort Sill and the Artillery School.

Q. You considered him a competent commander?

A. Yes, sir.

Q. Did the battery at Uptight normally support the operations of Task Force Barker?

A. Yes, sir.

Q. How did the battery at Uptight coordinate its artillery fire with Task Force Barker?

A. I had a liaison officer assigned to Task Force Barker. He would function just as a liaison officer does with a normal infantry battalion, and he, with his team, were actually set up right in Task Force Barker's headquarters at LZ

Dottie.

Q. And what was his name?

A. Captain VAZQUEZ. I do not recall his first name.

Q. And you would normally expect, then, that the battery and Captain GAMBLE and Captain VAZQUEZ would know what was going on with respect to the artillery support for Task Force Barker at all times?

A. Yes, sir.

Q. Were you present when the orders were issued for the operation into the Son My area on 16 March?

A. No, sir. I was present during some of the planning. As direct support artillery commander, it was quite common for me to accompany the brigade commander, and I was present when he and Colonel BARKER discussed part of the operation. I wouldn't say that this was when the order was given to go in there.

Q. When you say "he," who are you referring to as "he"?

A. I am referring, actually, to Colonel HENDERSON and Colonel BARKER, conversation between them. I was present at some of these.

Q. Now, did Colonel HENDERSON lay this operation on before he became brigade commander?

A. Sir, I--as I recall--I'll just have to give you the best I remember. It may or may not be exactly as things happened. This was an operation planned by Colonel BARKER and approved by brigade. I am a little hazy as to exactly when Colonel HENDERSON took command. It was within, I'd say, a few days between the time that General LIPSCOMB left and Colonel HENDERSON assumed command. The 15th of March sticks in my mind. I am not positive.

Q. Were you present at the change of command ceremonies?

A. Yes, sir, I was.

Q. Were you aware that an operation was going to be conducted?

A. Yes, sir.

Q. Were you present with the task force, with the brigade commander, when he visited Task Force Barker late in the afternoon of the 15th to talk to the staff and to talk to the commanders?

A. As I recall, I was, sir. As I say, I normally was with him. I know I was with him the morning of the 16th, but it seems to me that it was the afternoon of the 15th that I went up with him. I'd been to Task Force Barker's CP several times with the brigade commander. I believe I was there that afternoon.

Q. Do you recall his conversation with the staff and commanders?

A. I do not, sir.

Q. You do not?

A. I recall talking to Colonel BARKER myself. I'm sure it was the 15th. But as to what type of artillery support he wanted for this operation, I do not recall any instructions given to him by Colonel HENDERSON.

Q. What did he indicate to you as to what type of artillery support he desired?

A. He wanted preparation fire, but not on his landing zone. This is a little different than we would normally expect, because he felt that the area that he was going to make his combat assault into was open enough that he could see if there was going to be any problem. He wanted the preparation fired north of his landing zone, which would have put it on My Lai, the village of My Lai.

Q. The entire prep was to be put right on the village?

A. It was. Well, the difficult part of it is that when you look at a map and it shows a village area, it really did not exist as the map showed it. Now, this evidently at one time was a very populated area, but at the time this operation took place most of those houses and buildings had been blown up, and it was a fairly small area compared to what the map showed. And in looking at it, what he had

requested, I was to be firing at about the south end of the village.

Q. Let me have that aerial photo.

RCDR: Yes, sir.

(The recorder handed Exhibit P-1 to the IO. The IO hands photo to witness.)

IO: Would you indicate to the best of your recollection where the LZ was to be? To orient you, this is an aerial photo of My Lai. This is a dry river bed, which as you will notice in many places has been taken up in farming, this is Highway 521, Hill 85, the village of My Lai, the road leading in to it. This one leads down to the pagoda area, and here is another road leading out, this being north, this going east and west. (IO indicates areas in aerial photo.)

A. As I recall it, the CA was in this general area, just south of the village.

Q. Could this LZ have been west of the village?

A. Yes, sir, it could have been. If it was west of the village I feel sure it was southwest. It seems to me that his plan was to go in--now let's see, south or southwest of the area. That would be somewhere in here.

Q. On this photo, incidently, 1 inch would be approximately 100 yards or 100 meters.

A. I still feel that it would be southwest. This one was too close. I feel that it was down in this area.

MR WEST: Would you indicate some distances, please, for the record?

A. The distance I feel the LZ was from the village?

Q. Yes.

A. I would say 1,000 meters.

IO: Colonel LUPER, I'd like for you to draw on this photo, which will be included as an exhibit, as an attachment to your testimony, the approximate location of the LZ. (Photo later received in evidence as Exhibit P-47.)

(The witness did as directed.)

A. I would say in this area, sir.

Q. Would you identify it?

(The witness marked the area with the letters LZ.)

Would you now identify the location where the prep was to be fired?

(The witness marked the area with the word Prep.)

Do you mind writing "artillery" above that?

(The witness did as directed.)

How large a prep was this to be?

A. As I recall, sir, it was a 5-minute prep. Now we fired preps for combat assaults almost daily, and I'm trying to go back and remember now after quite a few months. Some of the preps were 3 minutes, some were 5 minutes and some were 10 minutes. The length of the prep and the location and adjustment of it was normally done by the liaison officer who is flying with either the battalion commander or, in this case, the task force commander. He started and stopped the prep, made any adjustments that the task force commander or battalion commander wanted to make.

Q. That would be Captain VAZQUEZ?

A. Yes, sir.

Q. You discussed this matter, as far as the LZ and the prep is concerned, with Colonel BARKER sometime in the afternoon of the 15th?

A. Yes, sir.

Q. Were you present when Colonel BARKER and his S2 and S3 issued the orders to the company commanders and other personnel involved in the operation?

CONFIDENTIAL

A. I can only tell you as I supposed it happened. He apparently had good information that the Local Force Battalion, the 48th, was in this area, and I figure he put the prep in there to the best of his judgment that he needed it to move into that area.

Q. In such a situation within your brigade then, from what you're telling me, the approval for placing fires did not have to go to the brigade commander or did not have to come to you in order that you might refer it to the brigade commander?

A. The brigade commander would have been aware of his complete plan which would have included the prep. I can only assume that the brigade commander approved this thing. In fact, I'm sure the brigade commander approved this plan.

Q. What makes you so sure?

A. Because it was just a routine within the brigade that any operation which a battalion or task force went on, that plan was presented to the brigade commander. He made any changes that he desired and approved or disapproved the plan.

Q. Do you have any direct knowledge that he did?

A. I do not.

Q. You are talking about a procedure that is normal?

A. I am talking about a procedure, sir.

Q. But you do not know specifically whether or not the brigade commander approved that prep being placed on that village?

A. I do not.

Q. Or that hamlet?

A. I do not.

Q. You indicated that the prep would last about 5 minutes. How many rounds would that include?

A. A hundred rounds, sir.

Q. About 100 rounds with four tubes, about 25 rounds per tube?

A. Yes, sir.

Q. What was the composition of the prep?

A. Probably HE, this would be normal. It would be fired with HE.

Q. That would be normal?

A. Yes, sir.

Q. Do you know what was fired here?

A. No, sir.

Q. Were you with Colonel BARKER the morning of the 16th when the operation was initiated?

A. I was with Colonel HENDERSON that morning in his helicopter.

Q. Would you relate to the best of your knowledge what happened during the morning of the 16th while you were with Colonel HENDERSON.

A. We arrived in the area, as I recall, just after the prep and the troops were landing down in the LZ about that time. This is the road that runs down to the beach, the highway.

Q. That goes to Quang Ngai. If you will look at this map (indicating the map, Exhibit MAP-1), this will orient you a little better. That road is Highway 521. Let me show you specifically what I mean. This will help you here for a minute (handing witness a map, Exhibit MAP-2.) You are probably more familiar with looking at maps. Here is My Lai (4), the village. Here is the road that runs out to My Lai (1) to the beach, then runs down to Quang Ngai City and to

Highway 1. Now, if you will look at this very closely, you will see that all of these areas are identified on the map. You will notice for example this road (indicating). You will notice this road with the houses along here (indicating). You will notice this road coming out of the village on the corner. You will notice this road to the east and this road to the north coming from the point across here in this fashion. Now, has that helped you in your orientation?

A. Yes, sir.

Q. You can just keep the map here to assist you.

A. We were flying over the area here at the time the operation was going on, and there was quite a number of people moving out down this road and on out this road.

MR WEST: Would you please identify the places for the record?

IO: You can do it very verbally. They were moving out of the village toward 521?

A. Toward 521, and this would be back to the southwest, the road running southwest.

Q. How many people would you estimate that you saw coming out of the village and fields and so forth that were on the road at that time?

A. Fifty.

Q. Only 50?

A. I'd say about 50. They were strung out. There were two people running real fast, and they continued to run. They were dressed in black, and we watched them for a while. It was obvious they were not going to run into our troops that had landed. So Colonel HENDERSON ordered his pilot to go down and to pick them up. We swung around, and as we started to hover there, they threw up their hands and came over and got into the helicopter. We, at that time, were positive that we had two VC. However, later, after we had returned them to LZ Dottie and they had been questioned, it

turned out that they had been prisoners of the 48th and had had a chance to escape during all the firing and everything, and were escaping. They were PF's, Popular Forces.

Q. Would you indicate with your pen the approximate location where you saw the two individuals and so identify it?

(The witness did as directed.)

After they were picked up, what did you do then?

A. We left the area.

Q. You left the area?

A. In a few minutes we went back to LZ Dottie and turned these over to the military police there.

Q. What time of morning was that? Do you remember the time the troops landed in the LZ?

A. Not exactly. It seems to me that it was around 0800.

Q. Yes?

A. And we were back at LZ Dottie at sometime between 0900 and 1000.

Q. I have here an extract from the log of the Americal Division for 16 March 1968 (Exhibit M-6). I call your attention to item number 5. See if this refreshes your memory concerning the time.

A. This very well is the correct time, sir. As I stated earlier, with a combat assualt almost daily it's difficult to go back and identify the exact time of one particular day, for at that time this meant no more to me than some other CA.

Q. We understand that, Colonel LUPER, and we recognize that we are also trying to get information from you about a situation that occurred 18 months or more ago. We are not expecting any miracle from you. For this reason we will from time to time show you things to attempt to refresh

your memory on this. But at the same time, we do not want in any way to distort your testimony. Prior to picking up the two individuals, were there any other situations that you recall in which Colonel HENDERSON's C&C helicopter was involved. For example, do you recall anything of some people outside the village who had been VC who may have been hit and some activity directed toward picking up their weapons?

A. I do not. I do not recall, at least, our helicopter doing any of this. Now, he may have been involved on his console. Very often I was not on his console. That is, he may have been involved on his radio. I carried a separate radio on the artillery net and he may have been involved in giving directions. I do not recall our helicopter being directly involved in going in to anything like this.

Q. Do you recall flying at a considerable altitude and then dropping down to treetop level?

A. We were, in fact, down even with--when we picked these up, we were right on the ground. We flew at various levels. Colonel HENDERSON often directed his pilot to drop down if he wanted to see something better and couldn't see from where he was.

Q. That morning, did you see the landing of B/4/3? Their LZ was supposed to have been approximately 3 kilometers to the east of--generally east of My Lai(4).

A. I don't specifically recall seeing them, no, sir.

Q. When you returned the two suspected PW's to LZ Dottie, will you tell us then what transpired?

A. General KOSTER visited LZ Dottie at about this time while we were there. I recall Colonel HENDERSON telling him that we had just picked up two VC. Why I recall this is that at a later time it was discovered that these were PF's, and General KOSTER was needling Colonel HENDERSON somewhat about thinking that he had two VC who turned out to be two friendly. We were there probably 20 to 30 minutes. Then, as I recall, we flew him back over the general area.

We got a situation report. I heard him asking for it and then we flew as I recall directly to, after that, back to Duc Pho. We arrived back at Duc Pho before noon, as I recall.

Q. Did you hear these reports that were coming in?

A. No, sir. I was not wearing a headset to his console at that time. I was still just using my artillery net.

Q. Had it been called to your attention at that time that the artillery prep was reported to have killed 69?

A. I won't say that it was at that time. Sometime during that morning it was reported, sir.

Q. I refer you again to the log and item number 28 (Exhibit M-6).

(The witness examines the entry.)

A. As I say, it was reported to me that morning. The exact time that it was I do not know, sir.

Q. You were back at the TOC? You were at least back at LZ Dottie. When you were back at LZ Dottie with Colonel HENDERSON, did you go into the TOC?

A. Yes, sir.

Q. And about what time would you have been there?

A. I would say that that would have been about 0930 or around that time, sir.

Q. At that time was it called to your attention that you were getting an artillery report, a report of 69 killed by artillery?

A. It was reported to me that morning. Whether that was the time that I received it or not, I do not recall. It probably was at that time, sir.

Q. How did this strike you?

A. At the time it struck me as being real fine, because at the time I assumed they were all VC, which I still hope they were.

Q. Even firing into a village, you were hoping they were VC?

A. That's right, sir.

Q. Did you discuss this, the matter of this quite large body count from a comparatively small number of artillery rounds, with Colonel HENDERSON, Colonel BARKER, or General KOSTER at that time?

A. No, sir.

Q. Do you recall accompanying Colonel BARKER to Quang Ngai City prior to going to Duc Pho?

A. I do not. Very possibly we did. We landed often at Quang Ngai, at the division, and went in. But this particular day, no, sir, I do not remember.

Q. Can you relate any other thing which concerns this particular incident either with respect to the artillery or with respect to the casualty reports?

A. No, sir.

Q. Were you familiar with the casualty reports that were submitted later in the day?

A. Well, I know I was at least at the evening briefing. I know I received it that day, yes, sir.

Q. Do you recall the figure?

A. I don't think I would if I hadn't read an article in a recent newspaper. As I recall, it was 128.

IO: (To recorder) Let me have Colonel BARKER's report, please. (Recorder hands Exhibit R-2 to IO.)

Q. When you were with Colonel HENDERSON that morning, were you aware that some civilians had been killed?

A. Yes, sir. We could see along the road leading out of the village some bodies alongside the road, sir. And although at the altitude we were at it was difficult to really tell exactly what they were, it appeared that there were some women and children there, sir.

Q. Do you recall any effort that was made to get down and investigate this situation, to look into it, or to direct people to the area?

A. Not at that time, sir. I do not because, of course, the troops were moving up into that area at that time, and what investigation was made, I do not know. I did not make an investigation.

Q. Colonel LUPER, I have here a document which has been entered into the record as Exhibit R-2. It is a combat action report submitted by Task Force Barker on the 28th of March. I would like to refer this document to you.

(The IO handed Exhibit R-2 to the witness.)

Have you ever seen that document?

A. No, sir, I have not.

Q. Does it seem unusual to you that they would have a body count of 128 KIA with 3 weapons captured, under the circumstances that you saw?

A. Not necessarily under these circumstances because there could have been more weapons that were not found that could very easily have been stashed away in the village.

Q. But these are the figures which had been submitted previously to the Americal Division. That didn't strike you as being peculiar?

A. I don't recall another operation that was of this ratio. However, I could see how this could possibly happen in this type operation--of village. It was very likely that many weapons were stashed away and not found.

Q. You will also note that in the report there were only two U.S. killed. Did this ratio of 128 to 2 seem unusual?

A. This is somewhat unusual in my opinion.

Q. Did you attend the staff meetings each night with the brigade?

A. Yes, sir.

Q. In the presentation of the action reports, were they presented by company or were they simply presented in the gross of the battalion reports and--

A. (Interposing) As a rule, the briefing covered any actions that day and were mentioned by company if it could be identified as one company. In this case it might have been identified as Task Force Barker, but it is generally identified by company. For an operation such as this where there are two or three companies involved, two companies involved, it might have been identified only as Task Force Barker.

Q. You don't recall this particular briefing or anything about the briefing which may have given an overly high body count for C/1/20 as compared to, let's say, B/4/3?

A. I do not, sir.

Q. I want to go back again to seeing the bodies, some of which appeared to be women and children. I would like for you to mark on that map and so identify it, the locations where you saw bodies and possibly the number you think you saw?

(The witness did as directed.)

A. I would say 15 to 20 along here, sir, where I have marked. The number of these that would be women or children, I would not even attempt to guess how many.

Q. What made you think they were women and children? Were you flying low enough that you could view the bodies?

A. Enough that it was more from size and dress than it would be from anything else.

Q. Did you see any additional bodies?

A. I did not, sir.

Q. At that time, about where were the combat forces as you recall?

A. Moving up to the village. I don't know exactly where they were at that time, but they were moving from the LZ which is apparently over this way instead of here, after reading the report.

Q. Would you draw an arrow showing, as you recall it now, where the troops were advancing from at that time you saw the 15 or 20 bodies on the road?

(The witness did as directed.)

Q. Would you indicate for the record what you are identifying?

A. The advance of troops.

Q. Do you recall about what time you saw those bodies on the road?

A. This was shortly after the operation started. And, as I stated earlier, I guessed this to be about 0800. However, after reading the report, apparently the first landing was around 0715. This I would say was some 30 minutes later.

Q. I will refresh your memory as to what this paper said. The exhibit I have shown you (Exhibit M-6) indicated that the first lift went in at 0730, and the second lift went in at 0747, and the lift was completed at 0750.

A. Then this would have been about 0800.

Q. Would you so indicate that on the map?

(The witness did as directed.)

Q. Colonel HENDERSON was in the aircraft with you. Did he see those bodies?

A. I don't know. I don't recall discussing it with him. I'm sure he did, sir. But as I say, I didn't discuss it with him at that time.

Q. Would it have been logical to assume that these individuals could have been killed by artillery fire?

A. Yes, sir.

Q. Did you see any bodies on Highway 521, along the road, or in this neighborhood? Did you see any bodies in the field adjacent to any of these roads?

A. Not that I recall. I do not recall seeing any bodies on this road.

Q. Let me have the Life magazine, please?

(The recorder handed the Life magazine, Exhibit M-1, to the IO.)

I have here copies of the color photos which were reputed to have been taken by a photographer by the name of HAEBERLE who accompanied the operation that day. This has been entered into the record. We have the black and white photos taken from the negative. This is Exhibit P-41. Does this look about like the scene which you saw on the road to the south of My Lai(4) at about 0800?

A. Looking at it from the air, no, sir. As I recall what I saw, they were scattered out more than this is, and naturally I would not have seen any detail such as this from my position in the air. I can't say that I even saw this particular scene at all.

MR WEST: Let the record show that he has been shown the photo P-41.

IO: They were on or near a road, is that correct?

A. That is correct.

Q. Were there rice paddies on either side of the road?

A. That's correct.

Q. All right. I see the difficulty of trying to correlate a ground photo, to compare it to a vertical photo, the vertical picture which you have in your mind.

During the remainder of this operation which went on for an additional 2 days for C/1/20 and at least 3 days for B/4/3, do you recall any additional artillery support being provided?

A. I do not simply recall any. Very likely there was, sir, but the request would have gone directly to my Delta Battery, and, of course, have been handled by that battery and the liaison officer through Colonel BARKER.

Q. But you have no direct knowledge of any direct support or what contact was established?

A. I do not. Naturally, the record will show, but I do not have it.

Q. Were you aware that an investigation was under way concerning the incident at My Lai (4) on the 16th of March 1968, and that it had been initiated not necessarily on the 16th but within that immediate time frame?

A. I am aware that the brigade commander was requested to look into this. I am only aware of it because I happened to accompany him. I believe it was the next day, the 17th, when we landed out where Captain MEDINA'S company was operating which was -- I don't even recall the area. It was still somewhere within this area, and Colonel HENDERSON talked to Captain MEDINA. Colonel HENDERSON did not indicate to me what type of, or why he was making, an investigation.

Q. Let me refresh your memory, generally, about what we have gained from the individuals who have participated in this concerning the time and approximate place where this may have happened. (IO briefs on Exhibit MAP-1.) The information we have is C/1/20 landed in the general My Lai area and by 1530 hours in the afternoon, or thereabouts, had laagered with B/4/3, generally in the My Lai(1) area. B/4/3 had landed to the south and had moved to the north into this objective area. The following day Bravo conducted an operation down in this area.

Charlie Company in the meantime, on the 17th, had swung alongside of Hill 85 down to the area of My Khe(2), and they were back in this area, generally in this area, where they laagered the second night. The next day they moved to the north and were generally in this area to the north of My Lai(1), and were in the process of moving toward this area. Bravo Company meanwhile had moved up and

had started moving through this area and moving on over into the peninsula area. This would bring it down to about the 18th, so the question is whether it was on the 17th when they were down in this area to the south of My Lai(1), or whether it was in this area on the 18th when Colonel HENDERSON flew in to see him.

A. I feel that it was on the 17th when they were down in this area, sir (indicating).

Q. Who was with you and Colonel HENDERSON?

A. I don't recall any others with us at that time. Very often the S3, a Major MCKNIGHT, accompanied us. I don't recall whether he was with us that day. It seems that only Colonel HENDERSON and I got out of the helicopter and went over to where Captain MEDINA was.

Q. Would you explain the circumstances of talking to Captain MEDINA?

A. I am only aware of this situation from overhearing the conversation. It seems that one of the helicopter pilots had reported that a woman had been shot and Captain MEDINA readily admitted at that time that he did shoot a woman that day. While he was moving up through the area, he had received reports from helicopters supporting the operation, from one of the pilots, that there was a VC with a weapon. He said that he saw a movement to his left and he spun and fired, and he said that after he had fired he saw that it was a woman, that he assumed that it was the one that was armed, and that he did it as a reflex. That's about all that I remember of the conversation with Captain MEDINA. Then we went back to LZ Dottie and landed.

Q. Before we get to that. Only C/1/20 was there? Bravo Company was not present, Captain MICHLES' company?

A. Not at that time, sir, no. Because they were--it was during the operation, and we had landed right where Captain MEDINA was with his company.

Q. Do you recall the instructions that were issued to him to pick an LZ or how to do it?

A. I don't--I can only assume that it was the normal method. He was asked to throw smoke.

Q. All right. Were there any questions directed at Captain MEDINA concerning additional civilians who may have been killed?

A. Not as I recall, no, sir.

Q. For example, we have from your recollection a group of 15 to 20 civilians that had been killed, but there were no queries to your knowledge addressed to Captain MEDINA at that time?

A. Sir, to make the record clear, I did not say 15 to 20 civilians. I said 15 to 20 bodies of which I felt, from size and dress, some were women and some were children.

Q. Yes.

A. That is, I'm not sure whether it was civilians or whether they were VC or local forces or whatever. I do not recall any other discussion about additional bodies at that time with Captain MEDINA.

Q. And what happened when you departed from this area?

A. We went from this area to LZ Dottie and Colonel HENDERSON talked to, as I recall, two helicopter pilots. I was not present. Colonel BARKER was using a trailer to live in up there, and it had a bunk in it and a desk. Colonel HENDERSON had these people come into the trailer and he talked to them. I was not present.

Q. This was after he returned to LZ Dottie?

A. Yes, sir, after he had talked to MEDINA.

Q. Had you accompanied him to LZ Dottie in the morning to meet with General YOUNG and others?

A. I accompanied him to LZ Dottie that morning, however I was not present when he talked to General YOUNG. As I say, my only knowledge that there was any semblance of an investigation going on was the fact that I happened to accompany him when he talked to MEDINA.

Q. Did you go to LZ Dottie with him on the morning of the 17th?

A. I went with him to LZ Dottie on the day of the 17th. Yes, sir.

Q. Did he mention to you, say, en route to C/1/20, that he had been instructed to conduct an investigation?

A. He did not, sir. He did not.

Q. Were you aware of any subsequent investigation which may have been made of the incident at My Lai on 16 March 1968?

A. I am not, sir.

MR MACCRATE: Colonel LUPER, I'd like to go back to your description of the difference between the appearance of My Lai on 16 March 1968 and how it appeared on the map which you were familiar with at that time. Do you have the map that you used at that time? Do you have your old combat map that you might have carried with you?

A. No, sir. I didn't bring any maps home with me.

Q. Well, is it possible for you to indicate to us the difference in the shape or the contour of the village as you observed it on the 16th of March and as it appeared on the map by reference to the aerial photograph that's before you?

A. No, I cannot. The difference to me is that in looking at the map you would assume that this is a fairly built-up area. If you fly over this area, you find that most of the buildings had been destroyed long before we ever went into this area. That it was a--looked like an area that had been bombed and shelled many times.

Q. Well, were the buildings destroyed on one side of the village?

A. Generally throughout the My Lai area there had been, it looked like, many, many artillery shells or bombs dropped through the past 2 or 3 years. This is pretty well the case up and down the coast in that area on down by Duc Pho. You will see parts of a building or a building standing that has been gutted for I don't know how many years. They have been actually destroyed.

Q. Now, you have identified the place where you went down on the ground that day to pick up the two suspects, VC prisoners. Where is that place?

A. This is on the highway, I believe 521 is the designation of this highway, sir. This is down south of the village.

Q. That is the only time that you were down on the ground that day at My Lai (4)?

A. That is correct, sir.

Q. The balance of the time, at about what altitude would you have been flying?

A. Generally, I would say up about 1,500 feet. Usually we tried to--if you are going to get 1,000 feet or below, it is safer to get down right on the deck. It is just asking for trouble to fly between from, say, 100 feet to 1,000 feet. So, as a general rule, we would be at 1,500. I assume that was what we were. I was not looking at the altimeter.

Q. But you did have an opportunity, in flying over the area at that time, to observe the village and the number of structures of one sort or another, in any event, that were standing?

A. To some degree. You have to realize that there is a heck of a lot of smoke from the artillery prep, the gunships firing in the area, our own troops shooting. It's not a clear picture that you'd get of this flying at 1,500 feet.

Q. Was there a great deal of smoke from burning structures?

A. Quite a lot of smoke.

Q. So there were a number of structures that were available to be burned at that time?

A. Well all the smoke is not coming from structures. There are trees, grass or--I never saw any flaming structure like you would think of a fire, but there was a great deal of smoke in the area.

MR MACCRATE: I don't have any further questions.

IO: You were with Colonel HENDERSON in and out of this area and, also, you were evidently south of My Lai (1). Were you aware that any other villages were burned?

A. I was not, sir.

Q. You did not see any additional villages?

A. No, I don't recall seeing any additional villages. No, sir.

(MR MACCRATE departed from the hearing room.)

Q. I refer here to a document, Exhibit R-1, which has been entered into the record, a report of investigation signed by Colonel HENDERSON, dated 24 April. I would ask that you review this document at this time.

(The witness did as directed.)

Q. Colonel LUPER, I ask you concerning this document, have you ever seen this document before?

A. I have not, sir.

Q. Were you aware that such a document had been submitted to the commanding general of the Americal Division?

A. I am not, was not, aware.

Q. Had you ever seen the first inclosure?

A. I had not, sir.

Q. The second inclosure is an English translation of some VC propaganda reportedly used in this area. Had you ever seen such a translation?

A. I had not, sir.

Q. Were you aware of any VC propaganda, either written propaganda or slogans used verbally, or signs or otherwise which would indicate that something unusual took place

in My Lai (4) or the My Lai area on 16 March or that time period?

A. I was not aware of it, sir.

Q. Were you aware of any intelligence which may have come into Task Force Barker, your battalion, or to the 11th Brigade which indicated that there had been some unnecessary killing of civilians in My Lai (4) on 16 March 1968?

A. I was not, sir.

Q. Did you ever hear any rumors--

A. (Interposing) I did not.

Q. Among the troops concerning such happenings?

A. No, sir.

Q. Did you ever have anything happen or did you ever hear of anything which might have aroused your suspicions?

A. None whatsoever, sir.

Q. Let me have the artillery rules of engagement.

(The recorder hands Exhibit D-3 to the IO.)

IO: I have here, Colonel LUPER, MACV Directive 528-18 which has been entered into the record as Exhibit D-3, "Conduct of Artillery, Mortar, and Naval Gunfire." I ask you if you have seen this document?

(Hands document to witness.)

A. I am sure I have. I don't recall just where, but I--in fact, I'm sure I have seen this document.

Q. Have you seen the additional implementing instructions which were issued prior to the 16th of March by the Americal Division or by the brigade or by your battalion?

A. Well, there was a division SOP and, of course, I had a battalion SOP which went along with the division SOP.

Q. Would yours have been consistent with the division or would it have been consistent with the brigade?

A. As far as the artillery, it would be consistent with the division, sir.

Q. And it spelled out the rules of engagement for the application of artillery fire?

A. Yes, sir.

Q. Mr. WEST, do you have any questions you would like to direct to Colonel LUPER?

MR WEST: Yes, sir. Colonel LUPER, with reference to the artillery preparation on 16th of March 1968, how was the fire adjusted?

A. I don't know as I can say definitely. I can tell you what the general procedures were. The general procedures were that the unit making the combat assault would give the information to the artillery the day before, or as soon as they could, where they wanted their prep fired. The battery would prepare to fire at the time which had been requested. The liaison officer with the task force commander or battalion or whichever it should be--the commander at the time they wanted the prep would have them fire usually one round of smoke. Then he would adjust the prep from that point on. I don't know whether or not this was the case that day. If it was just a preplanned prep that they fired with no adjustment, it may have been unobserved. But the general rule is it would be an observed prep, and I can only assume that this one was also.

Q. Then it would be possible that Captain VAZQUEZ, who was the liaison officer, did observe the firing and made the corrections?

A. It is very likely that this is the case.

Q. This would have been from a helicopter, the observation?

A. Yes, sir. He would have been with the task force commander, because the liaison officer puts it where he is requested to put it.

Q. With reference to the bodies on the road that you observed, the 15 or 20, did you observe a gunship preparation which we understand followed the artillery preparation?

A. I did not, sir. As a general rule, we would be well out of the area so that we would not interfere with the actual assault and the gunships going in.

Q. In your opinion, knowing that there was a--assuming there was a gunship preparation, is it possible that the persons that you saw on the road, the evident casualties there, could have been caused by gunship fire.

A. Certainly. It was impossible to tell how they were killed. It could have been artillery. It could have been gunships.

Q. Did you see General YOUNG anywhere on the 16th of March 1968?

A. I don't recall exactly, sir. I--undoubtedly I did. He was always out when there was an operation going on, and I'm sure that when we were at Dottie he probably landed there. He was always running in and out; we would see him almost daily.

MR WEST: I have nothing further.

IO: Colonel MILLER?

COL MILLER: If you were able to observe it, did it appear to you that the artillery preparation landed in the part of the village where these villagers were coming from, these people that you saw?

A. From that general area.

Q. Did the artillery hit approximately the place or the area that was planned?

A. The answer to that is always yes.

IO: Don't come out with that kind of answer.

A. I'm sorry, sir.

COL MILLER: Generally this is the area where, from your recollection, they were intending to put it?

A. Where they initially wanted it, that was where it was adjusted to.

Q. You mentioned before where the bodies were and where the troops were at about the same time. In your estimation, do you think that the troops were in such a position at that time that the people that you saw could reasonably have been killed by small arms fire from the ground troops?

A. I do not think so.

Q. You mentioned earlier that you knew the brigade commander had been requested, and these were your words, "to look into this," referring to some incident. Do you recall more precisely what the "this" was?

A. I do not. My statement was that the only reason I was aware of it was that I happened to accompany him when he talked to Captain MEDINA and I overheard part of their conversation. As to Colonel HENDERSON, he never at any time told me what his instructions were.

Q. I wonder if you got an impression that it may have referred to a body count, or this one killing, or that you do not--

A. (Interposing) At that time I got the impression that it was to a single incident.

Q. And finally you mentioned that you saw a considerable amount of smoke which could have come from many sources, but no open fires. Did you see more, or less, or about the same amount of smoke that you would observe normally on an operation of this type?

A. I would say there was more than you would normally observe. However, when you say "this type operation," are you speaking of an operation right on to a village?

Q. Yes.

A. And when I say "more," then, I would normally see more, since most operations were in wide-open country.

Q. It would be grass and trees more than anything else?

A. Yes.

CONFIDENTIAL

MR WALSH: I have some questions for you, Colonel. In the area that you have designated, to the best of your recollection as to where the LZ was, it is immediately adjacent to the area marked by your X in the photograph (Exhibit P-47) where you dropped down to pick up the two suspects. Now, can you recall when you put down to get those two suspects, were there troops at the LZ?

A. I don't recall. By that time we had troops. They were well spread out and moving generally through all this area, and I--there were no troops close to where these two individuals were running. This was the reason that Colonel HENDERSON elected to go in and pick them up, because it looked like they were going to bypass our troops. As I say, it looked very suspicious at that time, the way these people were running and were dressed.

Q. Do you recall any discussion the day prior to the operation as to the necessity for a preparatory fire to be made in the area because of the task force commander's desire to put the troops down quite close to the village?

A. The feeling was that based on intelligence evidently available to Colonel BARKER at that time, the 48th Local Force Battalion was in that area. Now they had moved around quite a bit in the general area that BARKER was responsible for, and we were continually trying to find these people, locate them through intelligence reports. At this time BARKER had reason to believe that the Local Force Battalion was in there, and he planned the operation to try to get to these people.

Q. My question was, do you recall any discussion about the location of the landing zone and the need to have it closely adjacent to the village?

A. I don't recall this. No, sir.

Q. I have nothing further, sir.

MR WEST: With regard to the landing zone, you have indicated on the aerial photograph which has been marked exhibit--

RCDR: It has not been introduced yet.

IO: It will be. It is included as part of his testimony and will become an exhibit.

RCDR: That would come up to be 47, P-47.

MR WEST: All right. You have marked on Exhibit P-47 the area which you recall as having been the landing zone for C/1/20. Is that correct?

A. I don't recall which company went there. I couldn't say.

Q. But you did mark an area generally southwest of the hamlet of My Lai (4), and mark that as a landing zone?

A. As a landing zone for the troops, yes, sir.

Q. I got the impression from your later testimony that you are not now sure that that was the exact location of the landing zone. Could you clear that up? Did you indicate that it might have been farther to the north?

A. I indicated that to the best of my knowledge this is where it was. After reading some of the operations reports, apparently it was more to the north from where I'm saying it was, which would have made it almost west-southwest, actually, of My Lai.

Q. I see. No further questions.

IO: Colonel LUPER, did you ever hear any instructions issued to anybody or any intimation given to anybody that they were not to talk concerning the situation in My Lai?

A. None whatsoever, sir.

Q. Do you know of any attempt to cover up any information or to suppress any information which may have dealt with a possible mass atrocity in My Lai?

A. I do not, sir.

Q. Did you ever talk with anybody subsequent to the general period of 16 to 20 March concerning My Lai (4) and the activities that took place therein?

A. I did not, sir.

Q. Since this matter has been called to the attention of the public, have you talked to anybody that belonged to the task force or to the brigade or to your battalion concerning the events in My Lai on 16 March 1968?

A. I talked to the S3, Major MCKNIGHT, who happens to be a student at the Command and General Staff College at this time.

Q. What was your discussion with Major MCKNIGHT?

A. We were amazed at this because apparently he had the same reaction as I had. I had never heard of any atrocity like this and never--this was really a shock when this came out in the news. Really, neither one of us could explain any of this, and the conversation was quite brief, a matter of, I guess, 5 minutes.

Q. Did you make any attempt with Major MCKNIGHT to straighten out the sequence of events or anything concerning the operation?

A. No. We did discuss who had the brigade, when the change of command of the brigade was, and we could neither one be real sure. He thought it was about a week prior to this and I--it seemed to me that it was the 15th that stuck in my mind. So we were within a week of each other.

Q. But you did not discuss anything substantive with him concerning the operation, what took place, the results, or anything of that nature?

A. No, sir. I did not.

Q. Since this investigation has been called by the Secretary of the Army and the Chief of Staff, have you talked to anyone concerning the operation or has anyone talked to you concerning it other than in an official capacity?

A. My conversation with Major MCKNIGHT took place just before he left to come here, sir. He came down to my office and asked if I had any calls or anything, to which I said, "No, I haven't."

Q. Have you talked to anyone other than Major MCKNIGHT?

A. No, sir, I have not.

Q. Anybody else have any questions?

(IO departed hearing at 1146 hours.)

COL FRANKLIN: Sir, did you, as the commanding officer--also involving your LO's, did you have a responsibility to advise commanders when they were going to fire that they were endangering friendly troops or civilians, and did you have the authority to refuse fire in cases that you thought they were too close to either one of these?

A. I had the authority to refuse fire, sir, to the extent that I could say that I don't want to fire. Of course, Colonel HENDERSON, my boss, could overrule this. And I can remember that this case never came up. It was general procedure that we just don't fire on noncombatants, and I don't know if the infantry ever asked us to fire on noncombatants. I never had an occasion to refuse to fire where I felt that I was actually endangering noncombatants.

Q. Under the Army regulations that govern you when a noncombatant is killed by artillery fire, what were you required to give?

A. If a noncombatant was killed, what we call "killed in an artillery incident," this normally came up because the fire didn't go where it was supposed to. I had to report it to Division Artillery and then Division Artillery would appoint a field grade officer to investigate. I'm trying to think if I had a case of a noncombatant. We had a case where some of our own people were killed. I don't recall having a case in the battalion that required any investigation for injuring civilians.

Q. Let's get back now. Were you informed of what you saw? Did you have any reason to believe that noncombatants had been killed by artillery fire in this operation?

A. This would not be reported as an artillery incident. This is in connection with an operation and the fires were fired where they were requested, and this would not have been considered an artillery incident.

Q. When noncombatants, in the Americal Division, were killed in conjunction with a military operation, this did not require, then, any kind of investigation?

A. If noncombatants were killed, it would as a result require an investigation. Yes, it would. In this case all reports went to division as to what happened and no investigation was made as to an artillery incident investigation.

Q. Do you think that your battalion SOP would be available to us somewhere and the regulations governing the artillery at that time? I'm curious about your battalion SOP and the DIVARTY rules of engagement, documents that--were there documents from DIVARTY governing these things that would be fairly accessible to us?

A. I would imagine there has been a little change in either the battalion or DIVARTY SOP. I'm sure there have been minor changes, but I imagine that they would be pretty much intact.

COL FRANKLIN: Okay. Thank you very much, sir.

MR WEST: Colonel LUPER, to your knowledge, did anyone in the brigade, task force, division, or anyone you know of go back into My Lai (4) after the operation on 16 March 1968?

A. Not to my knowledge. I left the brigade about 2 months after this date.

Q. Well, actually, I'm thinking of a time immediately after the infantrymen went through the hamlet. Our evidence indicates that the operation was--Charlie Company into the hamlet--was concluded during the morning and they proceeded on through the hamlets to the east, joined up with B/4/3 during the afternoon. Thus far in our proceedings, we have been unable to determine that anyone went back into the hamlet on the ground, and this is basically my question. Do you know of anyone who did?

A. I do not know of anyone who went back in there, sir.

Q. Do you know anything about Charlie Company or any of their troops or individuals that were ordered to go back in?

A. I do not, sir.

Q. All right. I think this concludes our questioning.

I remind you of General PEERS' order not to discuss the proceedings with anyone after this. We appreciate your appearing here and your testimony has been very helpful.

You are released as far as the inquiry is concerned. You can go back to your duty station. Thank you, very much.

Before we recess, I would like to make sure that the aerial photograph that has been marked by Colonel LUPER has been introduced as an exhibit.

RCDR: Yes, sir, this is entered at Exhibit P-47 and will be entered into the official record.

MR WEST: This hearing is recessed.

(The hearing recessed at 1156 hours, 10 December 1969.)

(NOT USED)

(The hearing reconvened at 0911 hours, 22 December 1969.)

IO: The hearing will come to order.

RCDR: The following persons are present: LTG PEERS, MR WEST, MR MACCRATE, MR WALSH, COL MILLER, COL WILSON, COL FRANKLIN, LTC PATTERSON, and MAJ LYNN.

(MAJ Harold L. COOP, Jr., was sworn as a recorder for this hearing.)

These photographs of the My Lai operation are entered into the record and are marked as Exhibits P-56 through P-70.

(COL Robert B. LUPER was recalled as a witness, reminded that he was still under oath, and testified as follows:)

IO: Colonel LUPER, we had Captain GAMBLE in a few days ago and we talked to Captain GAMBLE, and one of the things he said we felt required clarification from you. That is the reason we asked you to come back in today. I can read you about three versions but they all read about the same. So, I will read one, perhaps the best one. The questions go along this line:

"Q. Who was your division artillery commander?

"A. Colonel YOUNG, at that time, sir.

"Q. Do you remember his first name?

"A. No, sir. I do not remember his first name because he left almost immediately. About a week later he returned to CONUS. He approached me and asked me generally how things were going and I mentioned to him that we had participated in the My Lai operation and that we had been credited along with the airstrike that had occurred as having a body count of 69. To the best of my memory, sir, he was accompanied by my battalion commander.

"Q. Who was your battalion commander at that time?

> "A. Colonel LUPER, sir. When I mentioned this, Colonel LUPER, to the best of my recollection said: 'We are not sure that those were all enemy.' That was all that was mentioned to me at the time I was in country. That was all that I was ever asked or that I know of."

And there are comparable statements that we have that say about the same thing, to the effect: "We are not sure that those were all enemy." So, using that as a base point, I would like to get from you an explanation of what you meant and what was the background for all this?

A. Sir, I do not recall making any such statement, and I also do not recall visiting his battery with Colonel YOUNG. I don't remember more than once or twice, in country, actually flying with Colonel YOUNG. It is very seldom that I had anything directly to do with the DIVARTY commander. As you probably realize, we were in a rather unique situation at that time. The artillery battalion actually belonged to the brigade, although we followed the Division Artillery SOP's. You might say that the Division Artillery commander had staff supervision if you want to call it that. But the direct support units actually belonged to the brigade and as a rule I stayed with the brigade commander, not the DIVARTY commander. I certainly do not recall making any such statements to Captain GAMBLE.

Q. We want you to think about that for a little while because Captain GAMBLE remembers it quite vividly, and he volunteered this information in the IG interrogation and when he came to our session, at which he appeared, he mentioned the same thing quite incidentally, as you can see. We asked him if he ever saw the DIVARTY commander. So he brings out this. The thing I want to know is if you were under the impression that all those weren't VC.

A. No, sir. As I testified the last time I was here, I did see some bodies on the ground. I did from the dress, from the size, see that some of these might have been women and children. I know some of these possibly could have been killed by artillery and gunships. As for using the term VC, I thought that everything in that area was VC.

Q. But when I use the term VC as it was employed here, you didn't really use the term VC according to this statement: "We are not sure those were all enemy."

A. As I say again, what I saw was possibly women and children. One group that I saw near the road, that I testified last time, I don't say that I didn't make that statement to Captain GAMBLE. I say I do not recall making any such statement.

Q. Did you, after this incident, ever sit down and talk in detail with GAMBLE?

A. No, sir. I visited GAMBLE quite often. I did not speak to him in detail about this particular operation any more than I would have of any other operation.

Q. How about VAZQUEZ?

A. I visited VAZQUEZ quite often at LZ Dottie. I don't recall any detailed discussion about this operation. Each time I visited him I checked how things were going, any problems, that type of thing.

Q. But you never queried him at all about what he knew about this operation and whether or not the artillery had killed some civilians?

A. No, sir.

Q. Did you ever conduct similar questioning of the FO on the ground, whose name I believe is Lieutenant ALAUX?

A. No, sir. I did not.

Q. Did you talk to any of the people who had association with the incident?

A. I made no check into this incident, sir. In fact, I did not consider this any incident at that time. I considered it a normal operation.

Q. Were you ever questioned by General YOUNG concerning this operation?

A. No, sir, I was not.

Q. By Colonel HENDERSON?

A. No, sir.

Q. By Colonel BARKER?

A. No, sir.

Q. Well, I will get into this artillery incident a little while later. At this time we are talking about Uptight.

MR MACCRATE: Colonel LUPER, do you have any recollection of discussing this with Colonel YOUNG at any time?

A. No, sir, I don't. Very likely, sir, he may have asked me questions about it. That is, talked about

the operation there at Uptight. There was considerable concern about that battery because it had been formed in country and very quickly by using pieces of the other three batteries. I do not recall speaking with Colonel YOUNG specifically about this operation. No, sir.

Q. Artillery KIA is 69. With a rather limited artillery prep that you had here, that was rather fantastic in itself, wasn't it?

A. You might say it is unusual for that type of war, sir. No, sir, I don't think that it is fantastic. If you are fortunate enough to catch the enemy in the open, it is not unusual at all.

Q. Did you see any in the open?

A. No, sir. I was not concerned with the prep directly.

Q. Did you see any large number of bodies in the area where the artillery prep was supposed to go?

A. No, sir. But I was not directly in the area at low altitude. I only saw this one group of people.

IO: (Requested log of 11th Brigade, Exhibit M-46.)

Colonel LUPER, at 1555 Task Force Barker reported to the 11th Brigade that Bravo Company reported that none of the VC body count reported by the unit were women and children. Charlie Company reports that approximately 10 to 11 women and children were killed either by artillery or gunships. These were not included in the body count. Were you aware of that?

A. I don't recall that specific report, sir. I am sure that I was made aware of it during our evening briefing or sometime. I must have been aware that the report came in.

Q. It was also subsequently indicated that something in excess of 20 civilians, noncombatants, had been killed by artillery, gunships, and possibly small arms, and they were subsequently reported to the division commander. Were you aware of this?

A. I wasn't aware of the report to the division commander, sir.

Q. Were you aware of something in excess--

A. (Interposing) Again, I must say that this must have been mentioned at the briefing. I just don't recall this separate report.

Q. Well, forgetting about this specific report, and coming back to your recollection, do you remember that women and children had been killed in this operation? This is the important thing.

A. Yes, sir. I am sure it was, but as I say, I just don't recall it being brought to my attention. But I am sure that it was, sir.

Q. That is to the best of your recollection?

A. Yes, sir.

Q. Did you ever discuss with Colonel YOUNG or anybody else in the division the requirements for making an artillery incident report of this?

A. This particular incident?

Q. Yes.

A. No, sir.

Q. Why didn't you initiate any artillery incident report?

A. There was no report made to me that artillery had definitely killed any innocent civilians.

Q. Do you have to have a definite report before you make an artillery incident report?

A. Unless somebody accuses the artillery of killing innocent civilians, I know of no requirement that I have to, sir. The DIVARTY SOP even permitted firing upon villages, if the ground commander requested it.

Q. Would your artillery just accept any target that the ground commander requested? Who could submit such a

CONFIDENTIAL

A. No, sir, I am not saying that I could care less. But, I am saying that if a ground commander requests fire--that it is somewhat hard perhaps to make this clear, sir, but I think--I know of no case that we fired on a village other than perhaps in this case. I think that I have a responsibility to question it if I know it is on a populated area, yes, sir, but if the commander on the ground still insists that he needs it, it is my responsibility to fire.

Q. Even if it is in a populated area?

A. After I feel that I should question it, yes, sir.

Q. Who are you going to question? Are you going to question some infantry company commander or are you going to take the subject up with Colonel HENDERSON, for example, with whom you work?

A. This would have to be questioned through the battalion commander on the ground. If Colonel HENDERSON was available, I might mention it to him. If he is not, I am not going to hold up the fire to get hold of Colonel HENDERSON. I would not if the man on the ground feels that he needs it.

Q. The intent of this document is quite obviously to protect noncombatants, to avoid giving the advantage to the VC.

A. Yes, sir, but also in this document, may I read the paragraph in it, where it says, "Villages and hamlets may be attacked without prior warning if the attack is in conjunction with a ground operation involving the maneuver of ground forces through the area, if in the judgment of the ground commander the mission would be jeopardized by such a warning as specified in (b) above."

Q. Now, let us go on further and read, if you will, paragraphs 6a and b.

A. Yes, sir.

Q. And perhaps one of the most important statements in the entire document, paragraph 4f(2) which is changed by a revision dated 9 February 1968, which says: "Commanders will insure utmost care to insure minimum noncombatant casualties and property damage." Do you recall USARV requirements for initiating an artillery incident report?

A. I don't recall exactly as it is written, sir. I know what the requirement was.

Q. What was your interpretation of the requirement?

A. Through the fire artillery, that if innocent people or property was damaged a report was made to the next higher headquarters. In such a case they appointed an

investigating officer who came down to investigate the incident. Then a report went to MACV.

Q. And this also included friendly forces, did it not?

A. Yes, sir.

Q. Any death or injury to friendly combat forces or noncombatants, unarmed women, children, old men, et cetera. Then there was a requirement to initiate an artillery incident report?

A. Yes, sir.

Q. I can't understand why in this case one was not initiated.

A. As I say, sir, I do not know that any innocent civilians or noncombatants were killed by artillery. I still do not know it to this day, sir.

Q. Even if it is an allegation, doesn't it require--

A. (Interposing) I was not accused of it, sir.

Q. I am not saying that you were accused of it. I am only saying that it was reported back that at least 20 civilians were killed by artillery and/or gunships or other means.

A. Yes, sir.

Q. And this, therefore, would have, in my judgment, required an incident report to have been initiated, and one was not initiated, and I cannot understand why one was not initiated.

A. I do not feel that under these circumstances, with the reports that came out, that I was required to submit an incident report to division. At a later date the reports went to division, this same report went, and they did not initiate an investigation of the artillery.

Q. What was the requirement to initiate an artillery report?

A. As soon as I knew about it, sir.

Q. ASAP?

A. Yes, sir.

Q. That is correct. As a matter of fact, as I recall, any time you suspected that something was going on, the troops stopped firing right then and all the data was retained right on the guns so that the incident could be checked, so as to find out where the fault lay.

A. Yes, sir. If the observer reported that rounds were landing where they shouldn't, immediately a check-fire was given and the people would fall into the rear so their guns could be checked.

MR MACCRATE: Colonel LUPER, what do you regard as an accusation, as distinguished from intelligence that comes to you? Some third party has to complain before you have any obligation to act?

A. I consider that I was required to act by--taking the case in point--had the liaison officer or one of the FO's reported back that the rounds were not landing where we requested them, I would have reported this. If they had come back to me and said: "Your artillery is falling on noncombatants," I would have check-fired and investigated. We are talking about something here, sir, well, after the fact. When somebody said there might have been civilians killed by artillery or gunships, I felt no obligation to report this as an artillery incident. Obviously, the reports got all the way to division and nobody initiated any investigation. I feel no responsibility that I needed to report the incident.

Q. How long after the event? Do you regard 6 hours as being so far after the event that you don't have to worry about it?

A. No, sir. It is not a matter of time, sir. If somebody told me at any time that artillery did this, I would have reported. But as I still say, I still do not know that there was an incident, sir.

Q. At 1555 in the afternoon, the log indicates

that the task force received the information and passed on to brigade that 10 or 11 civilians had been killed by artillery or gunships. As long as there is an alternative there is no obligation on the artillery--

A. (Interposing) This report goes on to division. If they want me to initiate an investigation, that is fine. I do not feel obligated in this case to report an artillery incident, I do not.

Q. As long as the responsibility is indefinite.

A. That is right.

Q. As long as someone else might have shared it, there is no obligation on the artillery.

A. I do not feel any, sir. If I had the same thing happen today, I would not report it as an incident.

IO: Let's take another case. Let's say that Tuesday sometime, you received a report from Son Tinh District or from any Vietnamese source that, in one of the villages located a kilometer or two from QL 1, artillery had fallen in there and two women were killed and an old man was seriously injured. Would this require a report?

A. I would in that case have called DIVARTY and said that there is a report from a district that artillery fell into the village. Of course, I would have immediately started checking my own fire missions to see if I was firing in that area that particular time. And division, I am sure, would do the same thing. Then they would appoint some field grade officer to go down to the district and see what the complaint really was as far as possible--to see if this was the case.

Q. Well, now in this case, although we have ground troops involved in it, you did not feel the same compulsion to discuss the matter with DIVARTY?

A. No, sir, I did not.

Q. Even though you basically knew that 20 or more civilian noncombatants had been killed by artillery and possibly by gunships and other means?

A. Yes, sir.

MR MACCRATE: Could it have been that you did not believe the reports that it had been done by artillery in view of all the information that you had?

A. Sir, with the amount of fire going into the area by gunships and artillery and the ground operation, I just do not feel, sir, that it was any requirement on my part to report an artillery incident.

IO: No obligation on your part to insure that your artillery was not killing unarmed noncombatants?

A. I don't know that it did, sir.

Q. Did you make any effort to check to find out?

A. No, sir.

Q. Did you ever discuss it with Colonel HENDERSON?

A. I don't believe that I did, sir.

Q. I am going to bring you back, now, to the day that you accompanied Colonel HENDERSON. Colonel BLACKLEDGE was with you when you accompanied Colonel HENDERSON to visit Captain MEDINA in the field. Do you recall that?

A. Yes, sir.

Q. Now, I would like you to restate everything that you heard in the discussion between Colonel HENDERSON and Captain MEDINA?

A. As I recall, it went something like this, sir. Colonel HENDERSON told Captain MEDINA that some of the helicopter pilots had reported that the ground troops had shot a woman, they had observed a man shooting a woman. Captain MEDINA said: "Yes, sir, I did. I had been told that there was a VC armed in the area that I was moving towards. I saw a movement to the side of the road, to my left." And I recall him saying: "I spun and I fired, and it was a woman." That is, to the best of my knowledge, the way the conversation went.

Q. Well, you heard that pretty much loud and clear,

didn't you? How about the rest of the conversation, now, that is what I am interested in?

A. I recall very little else. It was a real short meeting, sir. We were there on the ground but a very few minutes with him.

Q. How long?

A. Maybe 5 minutes, 10, a fairly short time, and I wasn't right with them all the time. I walked over to talk to some of the other men that were with him. I really--this was the first that I knew that there even had been such reports. I really was in the dark landing there with Colonel HENDERSON. He had not discussed with me prior to this as to why he was going, but I did overhear part of the conversation, which went as I said.

Q. As I would understand the situation, in the environment which you were in, you were out in VC-controlled territory and there were just a few of the Charlie Company command group around providing the security for the area, and there wasn't any walking around in there. As a matter of fact, the helicopter landed and took off immediately until he was called back in.

A. That is correct, sir.

Q. As I would recall, Captain MEDINA, Colonel BLACKLEDGE, Colonel HENDERSON, and yourself were all pretty well hugging the ground on this conversation, and keeping your fanny down so you didn't get it shot off, too.

A. Fairly close area, that is correct, sir.

Q. So, did you hear anything about questioning concerning the number of the body count and the number of women and children that were killed?

A. I don't recall their talking about that.

Q. Do you recall their talking about a ditch with a soldier firing into the ditch?

A. No, sir. I told you basically what I remember, and to the best of my knowledge that is it.

Q. I am following you very closely and I am also trying to give you some things that might refresh your memory a little bit, because to the best of our understanding these things were discussed and you were there. So we are trying to find out, from you what you heard, what stuck in your mind.

A. What stuck in my mind was the fact of the shooting of the woman.

Q. You say Colonel HENDERSON did not discuss this matter with you at all, or anything concerning this?

A. Sir, I do not recall any discussion between Colonel HENDERSON and myself concerning this matter.

Q. In your C&C ship, did you have intercoms where you were talking back and forth to Colonel HENDERSON?

A. Not as a general rule, sir. I usually stayed on a separate radio on the artillery net and unless he motioned for me to get on the intercom with him I usually was not on it, sir.

MR WALSH: I would like to ask you a question, Colonel LUPER. You went to Quang Ngai City with Colonel HENDERSON on the morning of this operation, and then back to Duc Pho to lunch. I believe this is what you have testified?

A. As I recall that was the schedule, sir.

Q. Can you recall whether you were with Colonel HENDERSON that afternoon?

A. I don't believe I was, sir. As a general rule, I did not fly with him in the afternoons. I usually tried to visit other batteries that I had. As a rule, DIVARTY gave me a helicopter each day for one-half day. So, I accepted that in the afternoon and rode with Colonel HENDERSON in the morning.

Q. Do you have any recollection at all, after you returned to Duc Pho, of anything else that day involving this operation or Colonel HENDERSON?

A. I do not.

IO: Before we conclude this particular session, I would like to give you a chance to add any statement or points that you would like to add, or anything in your judgment that would be of assistance to us in this investigation.

A. Sir, I have nothing else to add. I am sorry that my memory is not any better than it is. I am giving it to you the best I remember it and I do reiterate that I -- do not -- still do not feel any obligation that I should have reported an artillery incident.

IO: If any of this does come to mind, or if you can locate any additional documentation, photos, materials of any kind which would be of assistance to us, we would appreciate very much having them.

A. I certainly will.

IO: The hearing will recess at this time.

(The hearing recessed at 0952 hours, 22 December 1969.)

(The hearing reconvened at 1823 hours, 11 February 1970.)

IO: The hearing will come to order.

RCDR: The following persons are present: LTG PEERS, MR WEST, MR MACCRATE, MR WALSH, COL FRANKLIN, COL MILLER, COL ARMSTRONG, LTC ROGERS, and MAJ LYNN.

Sir, the hearing recalls Colonel Robert B. LUPER.

(COL LUPER was recalled as a witness, reminded that he was still under oath, and testified as follows:)

IO: Since you last appeared before this investigation we have assembled a large amount of information concerning the so-called My Lai incident of 16 March 1968, including the incident itself, the reporting of the incident, and the investigations of the incident. In addition to talking to approximately a total of 350 witnesses to date, including some of them that we have talked to on several occasions, we've assembled quite a large number of documents relating to the incident, the investigation, and the reporting of it.

In addition, we've had an opportunity to visit South Vietnam and see the situation there firsthand, including Headquarters MACV, I Corps, III MAF, the Americal Division, where we talked to all the people there at the present time who were there at that time, or many of them, not all of them. We've also had an opportunity to visit the 11th Brigade at LZ Bronco, at Duc Pho, and we have likewise gone to the 2d ARVN Division and talked to now General TOAN, then Colonel TOAN as you would know him, and some of his people and the U.S. advisory staff, some present and quite a few of them in the past. In the same sense, we talked to Colonel KHIEN, who was province chief for Quang Ngai Province, and his successor Colonel BINH and a large number of Vietnamese associated with the headquarters. And, of course, we've also talked to quite a few of the advisors who were present at that time.

And we have done the same thing for the Son Tinh District headquarters and we visited LZ Dottie and we have overflown the operational area of generally the Son My Village area and we've had an opportunity to visit My Lai (4), as it is shown on the U.S. maps, but it is known by the Vietnamese as the Thuan Yen Subhamlet, in order to get a firsthand appreciation of what really transpired there.

So we do know much, much, much more now than we knew when we last talked to you. I think we are in a position to ask some intelligent questions based upon the information and the situation that we have developed. We want to fill in some of the gaps in your instance. In addition, we want to try to expand upon some of your previous testimony. Before we get down to any questioning of any sort, I want Colonel MILLER to advise you of your legal rights and also inform you of what we may suspect you of.

COL MILLER: On the basis of information that has come in the form of testimony and many documents received since your last appearance here, you are now suspected of having committed several offenses under the Uniform Code of Military Justice. You were not suspected of any offenses when you last appeared. All of these have to do with either your action or failure to act on information that came to your attention concerning the activities of Task Force Barker and the military operation in the Son My area on or about 16 to 18 March 1968, and the reports with the respect to alleged reports of killing a significant number of Vietnamese civilians.

More specifically, you are suspected of the failure to obey a lawful general regulation concerning the reporting of knowledge and information pertaining to alleged or suspected or apparent war crimes.

And secondly, with dereliction of duty with respect to your actions and your failure to act on reports and information concerning the alleged unlawful killing of civilians by American troops in the Son My area during the period from about 16 to 18 March of 1968; more specifically, information that had come to your attention and on which you had a duty to take official action. You are suspected of not having taken necessary action, either to inquire into or to pass this information on.

Under the circumstances, you have certain testimonial rights and right to counsel, which I shall cover next.

First of all, you have a right to remain silent and answer no questions whatsoever that would be put to you by this inquiry concerning these matters.

Any statement that you do make could be used as evidence against you in a criminal trial.

You have a right to consult with counsel and have counsel present with you and to consult with him here in the hearing. By counsel I mean a qualified lawyer. This can either be a civilian lawyer employed at your own expense or it can be a military lawyer who would be made available to you, or both. A military lawyer will be made available, and if you have one of your choice who is reasonably available, we will seek to make him available. Otherwise, we will appoint another lawyer. You have that choice.

You may decide that you wish to answer questions without having counsel or without consulting any counsel. This is your right. If you elect to proceed without counsel, you may nevertheless refuse to answer any question or series of questions or questions in a particular area. You may request that the questioning stop at anytime, and you may, in addition, ask for the appointment of counsel at any time.

Do you understand the matters I've covered so far?

A. Yes, I do.

Q. Do you wish to have me cover any of them again?

A. No.

Q. You don't wish any further explanation?

A. No.

Q. Do you at this point wish either the appointment of military counsel or the opportunity to seek civilian counsel?

A. Well, this comes as somewhat of a shock to be honest about it. I've done my best to cooperate with the board to this point, told them everything that I could remember and answered the questions to the best of my ability. At this point I have a feeling that I have nothing I can do now that would do anything but be a detriment to me. I would like to at least discuss it with the counsel before I answer any questions.

Q. All right. Do you have any particular counsel of choice?

A. No, I don't know any.

Q. All right. We will make counsel available to you and also provide you with a copy of your testimony that you gave at your prior appearance here. And any question as to whether you wish to answer questions or testify will certainly be deferred until you have had a chance to talk to your counsel.

IO: The hearing will recess at this time.

(The hearing recessed at 1832 hours, 11 February 1970.)

(The hearing reconvened at 1208 hours, 12 February 1970.)

IO: The hearing will come to order.

RCDR: The following persons are present: LTG PEERS, MR WEST, MR WALSH, COL MILLER, LTC PATTERSON, and MAJ LYNN.

Sir, the hearing recalls Colonel LUPER.

(COL LUPER was recalled as a witness, reminded that he was still under oath, and testified as follows:)

Colonel LUPER, are you represented by counsel?

A. Yes.

Q. Counsel, will you please state your name, rank, Social Security number, organization, and station?

IC: Bryan Anthony MARMESH. My rank is captain. My Social Security number is 475-44-6439, United States Army, Department of the Army, Office of The Judge Advocate General.

COL MILLER: For the record, how do you spell your first name?

IC: B-R-Y-A-N.

IO: You recall when we recessed yesterday, Colonel LUPER, you indicated that you wanted counsel. Before we proceed, I'll ask Colonel MILLER to discuss the matter of counsel or any additional guidance that may be necessary.

COL MILLER: Captain MARMESH, are you a lawyer and are you admitted to practice law before a highest state court?

IC: Yes, sir.

Q. Are you a member of the Judge Advocate General Corps?

A. Yes, sir.

Q. Yesterday, after we closed, and pursuant to your request, Captain MARMESH was made available to you as counsel, Colonel LUPER. Have you had sufficient opportunity to talk to him at this time?

A. I have.

Q. Are you satisfied to have him represent you and be your counsel before this hearing?

A. I am.

Q. Yesterday, I advised you concerning the offenses of which you are suspected and of your rights with respect to your testifying or not testifying and to counsel. Would you like to have me explain those to you again?

A. I understand them.

Q. My next question is whether you are now willing to answer questions and to give testimony before this hearing?

A. I am.

Q. Before we proceed, captain, do you have any questions?

IC: Yes, sir. Just one. I discussed this with you earlier. With regard to Army Regulation 15-6, which provides and prescribes various procedures in guidance as far as investigating committees. Under paragraph 14 it says, in effect, that if prejudicial allegations are made against a witness, then he is considered a party and has certain

rights, one of which is to present witnesses on his own behalf and have access to other prior evidence and written charges and allegations. We have the written charges and allegations. But just purely for the purposes of procedure, it says here that failure to afford any of the above rights will be fully explained in the record of preceedings. I was just wondering. You explained it to me. I understand why witnesses are not made available and why there is no cross-examination and why we are not allowed to review prior testimony, evidence, but just for purposes of the record, could we have an explanation?

COL MILLER: AR 15-6 is referred to in the charge to General PEERS as a document that he can use as a general guide. Insofar as it is appropriate, it is being used. His purpose is to determine certain facts. I explained this to Colonel LUPER in the past. The purpose of the investigation is to inquire into the adequacy of, or lack of adequacy of, investigations and reports made within the chain of command of the My Lai incident and to determine whether there was any suppression or withholding of information by people who were required to or should have given information concerning the My Lai incident of March 1968. The rules that have been adopted for this hearing are that any person who appears, appears as a witness, not as a respondent, that if there are any suspicions that he may have committed an offense, he is advised of that, but he is not made a respondent. Under those circumstances, he may, of course, exercise his privilege against self-incrimination, may appear with counsel, and may elect not to present evidence. This is the procedure that has been adopted for this hearing.

IC: Thank you.

COL MILLER: You will be permitted to consult with Colonel LUPER, and he with you, at any time. If for any reason you wish to take a recess to consult, feel free to ask for that. I think I have covered all the other matters unless you have any further questions.

IC: No further questions, sir.

IO: Colonel LUPER, I'll ask Mr. WALSH on my left to direct the questions. Anybody sitting at the table here may also address questions to you. I think you are familiar with the rules under which we operate.

A. Yes.

MR WALSH: Colonel LUPER, going to the early morning flight over the operational area that you took with Colonel HENDERSON in the C&C ship, we have pretty good evidence as to the seating arrangements in the helicopter. I would like to confirm your recollection. Colonel HENDERSON sat on the left side next to the door. Next to him on his right was yourself. Next to you, in the center was Sergeant ADCOCK. Next to him was Lieutenant Colonel MACLACHLAN. Opposite Colonel HENDERSON, in the jump seat on the left side of the aircraft, was Major MCKNIGHT--

IO: (Interposing) He was sitting right in front of you.

A. I am familiar with it, correct.

MR WALSH: Then in the opposite jump seat was Sergeant Major WALSH. Is that consistent with your recollection?

A. Sir, you named at least three people that I don't recall being in the aircraft. I only recall Colonel HENDERSON, Major MCKNIGHT, and myself.

MR WALSH: Were they sitting in places other than--

A. (Interposing) I don't know, sir. This was normal for Major MCKNIGHT to sit in the jump seat. It was also normal for me to sit on the right-hand side of the aircraft, next to the other door. Now, the arrangements you have named off is somewhat unusual of our normal seating.

Q. With respect to this particular flight, we have had considerable testimony that you were setting immediately to the right Colonel HENDERSON. Is that something that you have a different recollection of?

A. I do not recall it that way.

Q. Do you recall Sergeant ADCOCK?

A. I do not.

Q. Do you recall anyone other than Major MCKNIGHT, Colonel HENDERSON, and yourself being in the aircraft?

A. I do not recall this specifically. I do know that it was common for Sergeant ADCOCK to sit in front of the console and operate it for Colonel HENDERSON, which would have put him in the center. Very likely, he was. As I say, I don't specifically remember it this way. This was not always this way, and I flew with the colonel daily, and to tell you how we sat on a particular day almost years ago, to me, is ridiculous.

IO: You just might remember, because this is the first time you flew with Colonel HENDERSON as the brigade commander.

A. Yes, as the brigade commander, yes, sir. I have flown with him previously as the deputy brigade commander. And quite often, the previous brigade commander, General LIPSCOMB would always sit on the left side, and in fact, they have a special seat in the helicopter for the commander.

MR WALSH: When you arrived that morning over the operational area, and do you recall seeing the artillery prep?

A. I believe I did from a distance. We kept well out of the operational area at this time, because it's just an additional helicopter, and it can get in the way of the artillery prep or the flight of the aircraft coming in, and the man controlling the operations at that time is the task force commander.

Q. Do you recall, from a distance, seeing where the artillery prep was impacting?

A. I could not tell you within three or four grid squares. I definitely could not tell you where it impacted.

Q. In your previous testimony, I understand that you believe the aircraft remained at an altitude of approximately 1,500 feet during the entire time you were over the operational area, except for one occasion, when you dropped down to pick up two VC suspects southwest of the village.

Now, we have considerable testimony that the command and control ship was down to tree top level during a considerable portion of the initial flight over the operational area. Major MCKNIGHT recalls being at tree top level at approximately half of the time before going to Dottie at approximately 0840. I wonder if this might refresh your recollection at all?

A. No, sir, it doesn't. My original testimony is the way I remember it, and it is the way I still remember it.

Q. Do you recall orbiting at low altitude north of village--

A. (Interposing) I do not.

Q. Over two VC with weapons?

A. I do not.

Q. In your previous testimony, you indicated that you had seen one group of bodies south of the village on a trail, 15 to 20, which included some women and children, and that you saw no other bodies during your flight over the operational area.

A. As I recall my testimony, I said, "I saw 15 to 20 bodies, and some could have been women and children."

Q. I'll accept that.

Now, Sergeant ADCOCK, who was in the center of the aircraft, remembers seeing 12 or 15 bodies lying along side an L-shaped ditch. Did you see those bodies?

A. It very well could have been those same bodies.

Q. There was no mention of any ditch in your earlier testimony.

A. I gave my testimony as to where I best remembered seeing these people. In fact, as I recall, I marked it on a map, but I did this to the best of my memory, and this could have been a ditch.

Q. I show you Exhibit P-47 which is the aerial photo to which you just made reference. I believe in your previous testimony you indicated that the bodies you had seen were lying just south of the village on a trail leading out of the village.

A. That is where I think I saw them.

Q. But you don't recall seeing an L-shaped ditch?

A. I do not, sir.

Q. Now, Major MCKNIGHT observed some bodies along Highway 521 and some further bodies north of Highway 521 in the rice paddies southwest of the village. Did you observe those bodies?

A. I do not recall observing those bodies, no, sir.

Q. Do you have any recollection of any reason why these bodies that were observed by Sergeant ADCOCK and Major MCKNIGHT you did not see them?

A. They very well could have been. I was carrying a separate radio in this plane and very often--it's with a hand receiver--and very often leaning down trying to find out what is going on the artillery net. I am not in the aircraft as an observer.. That is, to be continually trying to observe things on the ground. I am primarily in there to keep up with the artillery and to keep Colonel HENDERSON informed if there is artillery firing in the area we're in. I am not continually looking out, as maybe he or Major MCKNIGHT might be.

Q. You're very clear, then, that other than the group of 15 to 20 bodies that you saw on the trail leading south of the village, you saw no other bodies on the ground during your flight over the village.

A. I do not recall seeing any other bodies.

Q. Do you recall observing the troops landing in the Bravo Company Area?

A. No, sir, I do not.

Q. Going to the incident where the two VC were picked up on Highway 521, will you recall that incident for us again, as best you can.

A. As I stated earlier, there were a number of people going south on the road. This road really leads southwest, Highway 521. Two people were running and by-passing everyone else, and I don't know if I saw these initially, but evidently Colonel HENDERSON had, or MCKNIGHT, and the plane had somewhat been following it. Then apparently Colonel HENDERSON ordered his pilot to go down and cut these people off. This was some distance south of the village. As I recall, I identified to you the best I can remember, it was somewhat near a bend in the highway. As the helicopter went down into a hover, these two people threw up their hands, and Colonel HENDERSON or someone in the aircraft motioned them to come over, and they came and got into the aircraft.

Q. Where did they sit? Do you recall?

A. No, sir, I don't.

Q. Now, in that area which you marked with an X on the aerial photo--

A. (Interposing) It's someplace in that area (marking Exhibit P-47).

Q. Now, we have considerable testimony from any number of people that at that time and in this location, just a little bit further up 521, there were a number of bodies right along Highway 521. In addition to that, there were further bodies north of there in the rice paddies.

IO: And two or three to the south of there, just off of the road.

MR WALSH: You do understand the difficulty we have in trying to understand how, when you actually landed the helicopter so close by those, where other people in the helicopter observed those, and you didn't.

A. So help me God, I didn't see any bodies there. We did not land. We hovered on this side of the road, and the helicopter did not actually set its skids down and--

IO: (Interposing) You have indicated that Colonel HENDERSON's C&C cut these people out. Do you remember seeing an H-23 that actually did the cutting out job and had them immobilized in the field and had them stripped down to the waist before your C&C landed to pick them up?

A. It's my recollection, they were still on the road when he hovered.

Q. Well, you may have landed on the road, I am not sure--

A. (Interposing) I believe they were still on the road. We hovered to the side of the road, and they were still on it, as I recall.

Q. With all indications, and we have this from quite a few witnesses that indicated that the H-23 of the 123d Aviation Battalion, aero-scouts, actually cut these individuals out and immobilized them so that the C&C ship could come down and pick them up.

A. I can only tell it to you the way that I remember it.

Q. Where did they sit in the aircraft?

A. As I said a few minutes ago, I could not recall exactly where they sat.

Q. We have indications that on the other side of ADCOCK was Colonel MACLACHLAN, then Major MACLACHLAN, your Air Force ALO, and he remembers it very vividly, that they sat right along side him, because a not too thorough of a search had been made of them, and he was concerned about them having explosives on them.

I would like to come back to this artillery prep. This is very unusual: one, the LZ was very unusual, and; two, the prep was very unusual. I cannot understand why you, as the artillery battalion commander, would not know this.

A. I'm not sure what you're getting at, sir.

Q. Well, I'm getting at this. You have indicated that the LZ was over here (indicating on Exhibit P-47).

A. Yes, sir.

Q. And you have indicated that the artillery prep was here.

A. That's right.

Q. Well, in the first place, the LZ wasn't here.

A. That's what I understand now, sir.

Q. The LZ was here, just to the west of the village, and the artillery prep was planned on the village. Not much of it actually went on the village. In fact, it was the poorest artillery procedure that I have heard of: fired one round, which hit 1,000 meters to the north; the adjustment made at the battery, and the signal given to fire for effect; and instead of hitting in the village where it was planned, it hit part of it in the LZ and part of it on the western portion of the village, like so (indicating). So if it had been planned on the village and with this LZ so close to this, this is a most unusual kind of an operation, and I would wonder why you as the artillery battalion commander in a situation like this would not know of this.

A. Sir, I stated in earlier testimony that it was an unusual artillery prep, but I had talked to Colonel BARKER the day before and he had planned to put this, as I recall, practically on the village, right in this area (indicating) or this one. I thought it was more to the south. But, sir, the location where that prep was adjusted to was on the basis of where Colonel BARKER wanted it at that time, by an adjustment, by a liaison officer with him, sir. And this was the procedure throughout the brigade, that the adjustment of the artillery prep would be made with the liaison officer, who was with the ground commander who was in charge of the operation.

Q. Well, yes and no. I'll be very honest with you. I can accept that, and I can't accept that. For this reason: one, when you're listening on that radio, so you're tuned in with the battery, and you're tuned in with Captain VAZQUEZ, who's riding with Colonel BARKER, and you can't help but see the smoke rounds go in about 1,000 yards to the north.

A. All I would hear on this radio would be the correction that came back: left, right, add, drop; and if he gave fire for effect, I don't know his conversation with Colonel BARKER. I can only assume this is what Colonel

CONFIDENTIAL

A. Yes, sir.

Q. When you know exactly what is going on down there as far as district is concerned, you had a liaison sergeant down there at Son Tinh, and he knew what was going on, and they understood what was going on up there. Anytime they would ask any RF/PF, it was go.

A. Yes, sir. I know at no time that we fired into a village other than this, if we fired in at this time, and I have to assume that we did.

This is definitely in connection with ground operations, and if I may refer to the MACV directive (Exhibit D-3), it is very explicit. The brigade SOP follows it word for word practically. It says, "Villages and hamlets may be attacked without prior warning if the attack is in conjunction with a ground operation involving maneuver of ground forces through the area and if in the judgment of the ground commander, his mission will be jeopardized by warning." In my opinion, this case falls completely within the parameters of that guidance.

Q. Well, it was something that you knew, and you considered very carefully, and what I can't understand is, having gone over this and so forth, you not knowing where the LZ was or where the artillery prep was planning to go.

A. I believe, sir, I stated in my earlier testimony that I did talk to BARKER on this and that this was unusual, and the prep was to be not in his LZ. As to me recalling the exact location of the LZ, no, sir, I looked at the plans daily on combat assaults, and to go back and give you the exact location of those LZ's is just beyond my memory, sir.

COL FRANKLIN: We had testimony that prior to this combat assault you stopped at LZ Uptight; the C&C ships stopped there because you wanted to talk to the battery commander. Do you have any recollection of this?

A. I don't. It would not be unusual. I always liked to talk to them to make sure they knew what was coming; that they would be ready to fire when it was requested. As I stated earlier, this was a provisional battery, newly organized, and there had been an case previous to this, once, when they were not ready to fire when a preparation was asked for. And, needless to say, my brigade commander, General LIPSCOMB at that time, was quite unhappy about it. The main reason I would want to talk to the battery is to make sure they were prepared; the ammunition was out and available; that they had already coordinated with Captain VAZQUEZ on initial coordinates where he wanted the initial round; that they were just ready on time to fire.

Q. But you don't recall specifically this time, though?

A. I don't at this time. As I say, I have a number of times talked to Captain GAMBLE along this line.

MR WALSH: After this initial flight over the operational area, Colonel LUPER, we know that the C&C ship went to LZ Dottie, and arrived there sometime at 8:35 or 8:40. You stayed there at LZ Dottie until about 9:55 or 10 o'clock. I would like you to give us an account of everything you can remember that transpired that hour and 20 minutes you were at LZ Dottie.

A. I do not recall the time that you have given me or the length of time we were there. I recall the MP's meeting us up on the helipad and taking the two suspected VC. We went on down to the headquarters or the bunker where Barker's headquarters was in. As I recall, General KOSTER was in there at that time, and I recall Colonel HENDERSON talking to him about," We just picked up two VC if I ever saw two VC," or something like that. And then General KOSTER looking at the map, and he and Colonel HENDERSON talked. I don't know what about, generally about the map. I didn't stay right with them. I probably wandered around the bunker and had a cup of coffee. I just don't recall anything startling or anything that would make me remember it happening at this time, other than the fact that the colonel reported the two VC. I think I probably remember that as well, because at a later time, General KOSTER was joking to him about thinking these were VC when they turned out to be friendly.

Q. Do you remember talking to Colonel BARKER?

A. I don't. In fact, I wasn't even sure in my mind, now, that BARKER was even there. I know that he was there for part of the operation. I don't know if he was even there or not.

Q. He was there part of the time; Not the entire time you were there. How about Major CALHOUN? Did you talk to him?

A. Not that I recall. I know that CALHOUN was there. He was the S3, exec, worked with the Task Force Barker, and was normally found in the TOC.

Q. The Task Force Barker log would indicate that General KOSTER arrived about 0935, about an hour after you and Colonel HENDERSON arrived there. It seems unlikely he was there when you initially came there.

A. If I said he was there when we landed, I didn't mean it that way. I mean at sometime during the period we were there, he was there. I recall Colonel HENDERSON reporting to him about the two VC.

Q. At this time, there had been a great number of transmissions from the operational area, which we have knowledge of, and some of these transmissions indicate, first, there was virtually no contact. There were no requests for fire support. By this time, by 0840, C Company had reported killing 84 VC in the hamlet. Do you have any recollection of the discussions of the operations that went on in the TOC when you got there?

A. Nothing at all specific. I'm sure I was aware of some of the reports coming in. I don't recall anything specific about any of the discussions at that time.

Q. Do you recall anything, generally?

A. No, sir.

Q. Where did you learn that C Company had reported 69 VC killed by artillery fire?

A. I don't recall where I first learned it. It could have been while I was at Task Force Barker or when I got back to brigade.

Q. Do you recall from whom you learned it?

A. No, I don't.

Q. Let me show you a couple of log entries on the Task Force Barker log, which has been entered into the record as Exhibit M-16, for 16 March, item 22, at 0840 hours reads, "Company C counted 69 VC KIA in the vicinity

716788, 11th Brigade notified." Would you take a look at that?

(The witness did as instructed.)

When you got to the Task Force Barker TOC at or about the time that entry was made, do you recall hearing that or any discussion about it?

A. As I said earlier, I don't know whether I got the information there or back at our own headquarters at the brigade. If it came in that early, in all likelihood, I would have heard it at Task Force Barker. But to tell you exactly when I heard it or from whom, I do not know.

Q. That is a lot of VC in any operation, isn't it, colonel?

A. It is, but if the intelligence was correct, that we cornered a local force battalion, I don't think it's unreasonable.

Q. Let me show you another entry. It was entered on the 11th Brigade log at 0915, item 50, 11th Brigade log, and entered into the evidence as Exhibit M-46. At 0915, the entry reads, "Task Force Barker TOC C/1/20 0900 hours, coordinates 716788, a VC informed the interpreter that approximately 30 or 40 VC departed the area at 0700 hours, going east. C/1/20 will move eastward." Now, do you recall hearing that piece of intelligence while you were at LZ Dottie?

A. I do not, sir.

Q. Would you take a look at the map (Exhibit MAP-1) behind you, colonel, at the location of the coordinates 716788?

(The witness did as directed.)

A. All right, sir.

Q. Those are the coordinates given for the 69 VC reported killed by Charlie Company, in the Task Force Barker log at 0840. At 0930, item 52 of the 11th Brigade log (Exhibit M-46), entry number 53 at 0935, Task Force Barker TOC on 0930 hours, C/1/20; coordinates 714794,counted 69 VC KIA as a result of artillery fire. Now, if you would take a look at those coordinates, 714794.

(Witness did as directed on Exhibit MAP-1.)

Do you have any explanation how that entry came to be made in the 11th Brigade log at 0935?

A. None whatsoever, sir.

Q. You will appreciate the problem that General PEERS faces.

A. I certainly do, sir.

Q. You recall no discussion whatsoever at LZ Dottie with respect to this 69 VC reported by Charlie Company?

A. I do not, sir, recall it. I again say that I probably was made aware of it. I was that day, and if it came in that early, I was probably made aware of it at Task Force Barker.

Q. Were you present when General KOSTER was in the TOC?

A. As I stated earlier, I recall Colonel HENDERSON telling him about picking up the two VC.

Q. Do you recall whether that conversation took place in the TOC, or did it take place somewhere else at Dottie?

A. I think it was at the TOC, sir.

Q. Was anybody else there at the time?

A. No, sir. If they were in to TOC, I am sure Major CALHOUN was there since he, as a rule, was there. But to say he was there, I couldn't swear he was.

Q. Do you recall Colonel HENDERSON telling General KOSTER about the two VC?

A. Yes, sir.

Q. And at that time, he reported to him that he thought that he had a couple of good suspects?

A. Yes, sir.

Q. Do you recall whether he got any interrogation reports on those suspects before General KOSTER left or not?

A. I don't, sir. I recall it was later determined that they were friendly, but I don't remember just when. I do remember at some later time, that day or some other day, General KOSTER needling him about saying that he had two VC, If he ever saw two VC, or words to that effect.

Q. It seems very remarkable, colonel, that on this operation, having been over the area, and back at Dottie, with these reports of these very large numbers of VC having been killed, coupled with no requests for fire support, no other indications over the radios enemy contact, and coupled also with intelligence reports being received at that time that the VC had left the village before the combat assault went in. Yet, you have absolutely no recollection of any of these things.

A. I'm telling it the way that I remember it, sir.

Q. Do you recall any instructions or transmissions being made by Colonel HENDERSON or by Colonel BARKER to the ground troops to stop killing people?

A. I do not, sir.

Q. Do you recall any conversations with Captain GAMBLE during this period? Were you in communications with him?

A. No, I do not recall any conversations with him during this period.

IO: Let me ask you something. There is one thing that should stand out pretty damn clear in your mind, frankly. It's your artillery, and you don't remember anything about artillery in support of Bravo Company.

A. The question to me, sir, if I had conversations with Captain GAMBLE during this period, I don't recall it.

Q. You were asked previously if you recall Bravo and then you were asked if you had any conversations with GAMBLE, and I would like to relate a little incident to you where more than a few words that were exchanged, according to several people that were in the helicopter that have told us about this. When Bravo Company was going to go in south of My Lai (1), and your artillery didn't lift, and the helicopters had to make a complete go-around out over the ocean and delay their landing about 5 minutes, Colonel HENDERSON was reported to have more than a few unkind words with you about this particular situation.

A. Sir, I do not recall this.

Q. Yes. Isn't that somewhat strange?

A. It does seem strange.

Q. You being a battalion commander and your artillery, to put it mildly, performed in this instance quite unsatisfactorily. Because the timing on a combat assault has to be a minute-to-minute timing, so you give the final round, and your ships are in, and yet this didn't cut off, and the choppers had to go around. You have a new brigade commander. You are flying around with him, and you don't remember? You didn't talk to GAMBLE?

A. Sir, this is the first time that I have heard that artillery did not lift on signal, and it amazes me, and I do not believe that I was talked to about this, sir.

Q. We know that the helicopters had to go around. We know they had to go around because the artillery didn't lift, and we were told by other occupants of the helicopter that it was a little warm in there for a while.

A. The signal to lift the fire is given by the man flying with the task force commander. If they gave them a check fire, I don't understand why they didn't lift. It's possible that they gave the check fire after the helicopters were a little closer than they should have been.

Q. There are many reasons--

A. (Interposing) It was not brought to my attention that my unit did not function properly on that operation, sir.

IO: We'll recess until 2:00.

(The hearing recessed at 1300 hours, 12 February 1970.)

(The hearing reconvened at 1357 hours, 12 February 1970.)

IO: The hearing will come to order.

RCDR: The following named persons are present: LTG PEERS, MR WEST, MR MACCRATE, MR WALSH, COL FRANKLIN, COL ARMSTRONG, and MAJ LYNN.
Sir, the hearing recalls Colonel LUPER.

RCDR: Colonel LUPER, you are reminded that you remain under oath for this hearing.

A. Yes.

MR WALSH: Colonel LUPER, have we in our questioning exhausted your recollection of everything that took place at LZ Dottie during the period you were there on the morning of 16 March? Is there anything else that you remember about that time frame that we haven't asked you about?

A. No, sir. I believe that I have exhausted my knowledge of what took place at Dottie.

Q. Now, you took off from Dottie about 0955. You went back over the operational area. You were over the operational area for something between 30 to 45 minutes before going to Quang Ngai. Now, what did you see on that flight?

A. I don't recall seeing anything other than just smoke and operations going on. I don't recall seeing anything.

Q. All right, tell us about the smoke that you saw?

A. Smoke caused from gunships and, I assume, artillery and from the infantry firing. About the normal smoke you see in any area that is in an operation like this is going on, maybe somewhat more than normal.

Q. Now, this is two and one-half hours after the artillery preparation and the gunships activity.

A. Well, I think I remember seeing smoke at this time. I may have the two times confused, but as I recall, I did see smoke at that time, sir.

Q. Well, it would be very surprising if you didn't, because this entire village was burned by this time, and you would have seen a great deal of smoke. Did you go down low over My Lai (4)?

A. I do not recall going down low over My Lai (4).

Q. Do you remember going in to take a look at the 69 VC, supposedly killed by your guns?

A. No, sir.

Q. Do you recall seeing any bodies on the ground?

A. No, sir.

Q. What did you do for 30 to 45 minutes?

A. I assume I rode in a helicopter, sir. I must have looked out some, but I'm telling you that I don't recall anything, sir.

Q. Do you recall any transmission being sent in by Colonel HENDERSON at that time, sir?

A. No, sir, I do not.

Q. Did you make any transmissions at that time?

A. Not that I recall, sir.

Q. Well, I take it, then, that you just have absolutely no recollection of having done anything on this 30 to 45 minute flight over the My Lai (4) area?

A. I don't recall making that long of a flight over the My Lai area, sir.

Q. Well, we have very considerable testimony that that is where you spent the time between your departure from LZ Dottie at 0955 or 1000 and your arrival at Quang Ngai at perhaps 1045. Do you remember going to Quang Ngai at 1045?

A. Not specifically, no, sir, I do not. I stated up here earlier in the testimony that we stopped at Quang Ngai many times en route from Dottie to Duc Pho, and very likely we stopped that day. But to say that we stopped at Quang Ngai on the 16th of March, no, sir, I do not.

Q. Well, it seems fantastic to me, colonel, that having had word that your artillery had killed 69 people, and if you were over the area and made no effort, apparently, to see where those bodies were or to see how these VC had been killed--

A. (Interposing) I'm sure that I did try to look out, to the best of my ability. I just don't remember seeing any, sir.

COL FRANKLIN: I want to start off at the beginning and just sort of go through these things to really explain why we don't understand some of your testimony. And if I say anything or come to any conclusions that are unclear, I just wish that you'd speak up. I think we've got a situation here that is beyond understanding by people with military experience.

Now, I explain. This is on 15 March, now, we start. You've got a new brigade commander. You will see more of this brigade commander than any other lieutenant colonel, other than the exec in the brigade probably. You're his fire support coordinator. You have known him before, but you have a totally new ball game and a totally new relationship right now. And you're working for a new man. You're a professional artilleryman. And like any officer, you want to make an impression on your boss. I think we all remember when we first start out with new bosses.

So on 15 March you fly out to Dottie. You're briefed on this mission. Colonel HENDERSON speaks. You're talking about a VC battalion, the 48th. The brigade has fought it twice with, at best, inconclusive results. The battlion, Task Force Barker, and this is from the brigade, a company from each of the battalions. It has taken a lot of casualties. Colonel HENDERSON states, and I'm sure you knew this, that he wants to wipe out that 48th VC Battalion. Okay, you're the fire support coordinator. You've got an obligation to Colonel HENDERSON.

You've got Captain VAZQUEZ down there who is the LNO with the battalion. VAZQUEZ is perhaps an average officer at best. You have a provisional battery which has obvious weaknesses. You haven't any TAC air support planned for this mission. You're going to have two gunships, so that artillery is going to be the key fire support weapons. And you've got a great interest in how this artillery is going to be employed, and how much, particularly if the battle develops as the intelligence in Task Force Barker seemed to think it's going to develop.

And it would appear that you would question Captain VAZQUEZ on his projected employment of artillery. You've got a couple of batteries up there on Dottie, 155 and 175, and you're going to maybe want to make sure there is some provisions for tying them in.

But they're going in against a fortified position in that village. They have been in two fights. They're expecting heavy casualties. And you're briefed on the 3-minute prep, maybe 5-minute prep. So this is not just an ordinary average day, that, combined with your new commander and the rest of this business. Now, do you recall talking to VAZQUEZ about the fire support planned for Task Force Barker? Did you consider it adequate?

A. I am sure that I talked to Captain VAZQUEZ that day. I don't recall the exact conversation or anything. I do know that as far as the other artillery at Dottie, there was already an agreement that they would fire or give us any additional support that we needed. This is true any time with them. The agreement had already been made sometime back. I had visited that battery and also talked with division. I discussed with VAZQUEZ the prep. But, you talk about a new brigade commander. Now, we are not talking about someone who just came in and took over the brigade. We're talking about someone who has been in the brigade longer than I have and who has been in it all of my time, somebody who I well know. I don't think that I would make any particular effort to impress him on one particular day. I'm sure that after 7, 8, by this time, 8 of 9 months, Colonel HENDERSON knew me as well as he was going to know me, and knew my operations.

Q. Well, as far as an effort to impress him on one day, I won't argue that. But I think you have a totally new relationship.

A. I have a different relationship, but he has still been my rating officer all this time as the deputy brigade commander.

Q. Again, this is a normal thing, and I think you will agree, this is going to be the first time as the brigade commander that he is going to see your artillery fire in what can be a very critical situation.

You're going to have a big battle the next day. That's what all the intelligence is; that's what the briefing is; Colonel HENDERSON says, "I want you to get in and destroy the 48th." And all of these things that I've said are pointing only toward that fact that, there ought to be a memory of this, this is no ordinary day. Okay, the next day, you take off in the C&C, and this would be Colonel HENDERSON's first fight as brigade commander. Now, Colonel HENDERSON had a console in his C&C. What was your communications? How did you communicate in the C&C?

A. I had a portable radio.

Q. They didn't give one of the radios on your artillery push? You had to use a PRC-25?

A. Yes, sir. That console was not on my artillery push.

Q. How many radios were on that console?

A. I don't know how many channels there were on it. At least two I would say. It's a regular console in a C&C ship.

Q. Well, did you wear earphones off the console and just go to your artillery from time to time?

A. I had headphones which I did not wear all the time unless somebody punched me to get on it, because I was more interested in staying with my PRC-25, and it's pretty hard to listen in all the time and with all the static going on.

Q. You didn't have earphones with your PRC-25?

A. No, I did not. I had a handset.

Q. Did it ever strike you that it was pretty strange communications for an artillery battalion commander as far as adequacy?

A. This happened to be the best I got from the brigade, sir.

Q. Okay, you take off and you fly over My Lai (4). A prep comes in, and General PEERS has mentioned, I assume that your SOP--you are monitoring artillery in at this time. And I would assume that you would hear and observe, you would be off out of the way, as you stated, where you could see the LZ. You don't happen to remember where you were, in the south, perhaps?

A. I frankly don't remember.

Q. But you see this one smoke round go off, and you hear correction like, "Drop 1,000 and fire for effect." That's the correction that we get from Captain VAZQUEZ. You see this preparation coming in. I'm sure you've seen a lot bigger preparation, maybe 100 rounds or probably less. This was only 3-minutes with four tubes. What would you guess the size of the preparation with four tubes--

A. (Interposing) If it were three minutes, I guess it would be about 70 or 75 rounds.

Q. And then the combat assault landing and the troops begin to move. Now, do you recall at that time whether you continued to monitor or if you picked the earphones off the console--

A. (Interposing) I don't. I would have continued to stay on the artillery net. I may have listened off and on, on the other earphones, but I would have stayed on that artillery net as long as we were in that area. One thing on observing the prep: if I was flying with the brigade commander, I don't necessarily observe the prep as it goes in. When you're adjusting fire from the air, the aircraft must stay so that the observer is able to observe the area to adjust. Since I am not adjusting it and am not controlling the pilot, I'm not always necessarily always in a position when I hear them say what they have observed. I may, at that time, have my back to it. So, I'm not actually sitting up there observing as normally an air observer does.

Q. No, you're not observing it normally as an air observer although I've never known a brigade commander that didn't get himself in a position, and I'm talking both geographically and timing, so that when that prep starts, he is going to be able to watch it.

A. Well, he may have it turned just right at that time and he may not, but it is between he and the pilot.

Q. Well, yes, there is coordination involved in doing this thing, but the brigade commander is very interested in the timing of the prep and the ground assault. And he is very interested in the placing of the prep. Where is it landing? Is it landing in the right place? For example, he may want to intervene and get more fire in it, but if he is going to watch a combat assault, he knows what time it is coming. He's got you as an artilleryman to tell him when this thing is going to start, to tell him where it is coming from, to tell him the best position to get into; and in all probability, the brigade commander is going to be in a position where he can observe the entire prep, or at least where most of the rounds land. And if you're sitting next to him, you're going to be able to see the same thing. There's no sense of the brigade commander being there if he is going to be facing away from the landing zone where the fire is coming in, because he can not do his job then. This is the normal way. It is not always the way, but that's why the brigade commander is there, to see the prep. I'd like to give you the aerial photo again.

(COL FRANKLIN handed Exhibit P-1 to the witness.)

Now, Colonel LUPER, we have the tape of the Task Force Barker command net while you were airborne, at least the initial part of this operation. We know who was talking and what they were saying, and we know the times. We also have talked to just about every gunship pilot and copilot. We have talked to about every man in C Company. So we've been able to figure out pretty well what was going on and when. I tell you this because it is a little hard to understand some of the things that you didn't see on your first flight over in the morning.

Now, again, is it fair to say that you'd be sort of keyed up about this operation, or is this just an ordinary day for you, just flying around in a helicopter?

A. I was as keyed up about this as I would be in any operation. I am not particularily an emotional man.

Q. Well, I won't say keyed up, but I will say acutely interested.

A. I was interested.

Q. It may not be emotion. You are fighting a war, and you give fire support, and there were guys down there living and dying on fire support. You don't have to be emotional to get keyed up about something like this. Particularly when that artillery is a primary support that these guys are going to have if they really tangle with the 48th. So I'd think you'd be very interested in this operation. If you'll look down on your aerial photo there, there is a north-south trail, coming out of My Lai (4) and intersects Highway 521. I think you're familiar with that. At the time you're going down to pick up those VC, we know from Major MCKNIGHT's transmissions that you've got the bubble top, the Skeeter from the Warlords, the aero-scout company. You've asked them to go down and segregate some of these military-age males. They've rogered this, MCKNIGHT's transmission, and you're circling. You're sort of circling at an altitude you claim is pretty high over Highway 521, not too far away, over the village and over the hightway.

Now, at the time that you go down to pick up those VC, or those VC suspects, which you thought were VC, we know there was a tremendous amount of firing going, from the two assault platoons, into the village. Now, you're circling around, and you hear all this firing. You're talking about machineguns and grenade launchers and M-16 rifles with most of it on automatic. This is something that arouses curiosity and draws a lot of interest. We know that gunships were making passes right down the road that you were going down to pick up these VC.

We know that at least one infantry squad is moving down very rapidly toward--we're talking a couple hundred meters away from where you landed--and you're circling over this. We know that there is a squad that has moved down there in just about in the same time frame--we're talking about just a few minutes--that has opened up and fired on civilians on this road.

So here, while you're circling around, you've got two platoons of infantry doing an awful lot of firing. We know that people ran from the villages. There are people along the outskirts of the village that have been killed already, by 0805 or 0810 when you are going down. You've got this squad that's moving down real fast that has opened up on a road; you've got gunships going up and down this road; and at least one minigun is firing. This is all at the same time. One of those gunships might even have been hovering. Now, it's normal of somebody, when all these things are going on, to be looking around and very, very interested in what's going on. And yet you say that you noticed nothing at this time except the bodies that you indicated coming out of that north-south road? Is that correct?

A. The only bodies that I noticed. I realized that there were a number of helicopters flying around, and gunships, all this. There had been all during the operation. As to seeing whether they were firing or something, I didn't. Now, sitting on the inside on a Huey, your vision of what's on the ground is limited except when that helicopter is tipped to the left. If I was sitting where they said I was sitting, it would be the only time I would have a very good view of the ground. Because I have a commander sitting there in a special chair that sits up pretty well, I do not have the view that he has.

Q. That's true. That is true, you don't have as good a view as he's got. There is no question about it. However, there are certain things. You are not totally blocked, and with a lot of neck craning or getting up or sitting on the floor or just leaning forward, you can improve. You're not going to get it as good as the brigade commander, but you can still improve. There are quite a few things going on. This isn't one of the two isolated events.

(IO left the hearing room.)

Did you hear the firing?

A. I must have. I don't recall.

Q. Okay, when you've got a situation like this, say at best, a confused combat situation, normally, if you were out on operations like this, how would you acquaint yourself with what was going on? What was the best way you had to acquaint yourself with what was going on?

A. From what little I could see out, one of the main things that I was interested in, regardless of what's going on below, is anybody asking for artillery net.

Q. What were they talking about on that artillery net? What was going on on the artillery net?

A. At that time, I don't know if anything was.

Q. You are very interested in monitoring the artillery. The artillery net is the mechanical means for requesting fire. You also have a big interest in that tactical net, because you could anticipate fire requests and also make recommendations. Did you ever get on those fire direct control nets and just call an FO or call the liaison officer and just ask him what's going on? What are you guys doing down there? What's all the firing about? Are you receiving any fire?

A. I never have contacted an FO on it. I have called the liaison, or called back to his station back at the TOC. But, as a general rule, I did not get on the net unless I thought something was going wrong or something was slow about firing or something of this nature. Or if we were going into a new area, I would ask if anyone has fired in the area.

But, no, I didn't. I feel that I should not be needling that FO at the time he is down there with that company commander. If he is asking for fire, I am going to find out about it by staying on his net.

Q. I agree with you in theory 100 percent. You are perfectly right. You don't get on nets when you don't have to. Forward observer is being asked for fire by his company commander. You're sure as heck not going to get on that net and tie it up. Again, I'm talking about the situation--a tremendous amount of fire going on. There is a hell of a lot going on. And, again, did you call VAZQUEZ at all, or call anybody, to ask what was going on?

A. I don't recall calling.

(IO entered the hearing room.)

Q. Okay. Now, these bodies that you reported seeing south of the road, they probably weren't there until about 0845 on that north-south road. You took off; you go up in the air. Now, you haven't heard any firing requests to listen to the Task Force Barker net?

A. No, I don't recall that.

Q. Well, on that net, which Colonel HENDERSON is certainly monitoring, Dolphin Lead, which is the lift leader, calls and wants to know why the artillery is not cut off. He says that they are going to have to make another go around. General PEERS has already spoken to you about that, and you don't remember it?

A. That strikes me as rather unusual. That is the first time I had heard it. I find it hard to believe that there was a real problem at the time.

MR WEST: Let me read to you the tape. This is at 0812:

(Reading from Exhibit M-20A:)

"Dolphin Lead, this is Lead. I had to make a go around because the artillery was still shooting while I was on my approach. I didn't want to land on it there when it was going."

A few minutes later, this is about 0827:

"Coyote 6, this is Dolphin Lead."

"This is Coyote 6, over."

"This is Dolphin Lead. This completes your lift for this first morning. We only had one problem, and that was that the artillery didn't shut off in time."

"This is Coyote 6, that's affirmative. They were about a minute late in cutting off. Try to do better next time. Over."

"This is Dolphin Lead, roger. Other than that, it was a good lift."

This is the tape of the Task Force Barker monitor.

(Counsel examined the transcript of the tape, marked as Exhibit M-20A.)

That entire transmission would have been monitored through the console. You may not have been listening on it.

COL FRANKLIN: Okay, Colonel LUPER, just to continue walking through here, you picked up these two VC suspects, and had them on your aircraft now about 30 minutes. Your last act before taking off to go to Dottie is to sort of circle around where the gunships are marking two VC with weapons. Colonel HENDERSON is on that net, or MCKNIGHT or somebody, and trying to get C Company to hurry up and get somebody up there, because you've lost a lot of weapons in the 11th brigade by not getting to the people fast enough. Women or kids or other guerillas or somebody comes down and take these weapons.

Now, about this time, on the Task Force Barker net--which would be known by Colonel HENDERSON for certain, and we've got this tape right here--Colonel BARKER is informed of the 84 KIA by Charlie Company. Now, this is logged in on the Task Force Barker log at 0840. Colonel BARKER calls his TOC and tells them he'll be in to straighten them up on this thing. This transmission would have been monitored there's no question, in the C&C. Now, this is rather a stupifying transmission. I think you can see this. There has been about 15 reported by gunships and Charlie Company by this time. You have seen some of these. You have been over two VC that were knocked down. And, suddenly, there's lots of firing going on, and gunships are making passes, and 15 is a very reasonable number. Not a particularily unusual type. All of a sudden, here's this transmission of 84. And there had been no request for fire. There had been no request for gunships. There has been no request for dustoffs. There has been nothing. There had been no reports of enemy contact. And boom, we've got 69 additional bodies. And about this time that you now take off to go back to Dottie. A new commander; 84 killed; it's 0840 in the morning, and the first operation, the first crack out of the box, and you've killed 84. This is aside from that which is coming in from B Company. You get also B Company reports in of VC KIA.

Now, I think it is reasonable to assume that when you land on Dottie you go to the TOC, this is something that is going to remain in your mind. There's going to be a lot of excitement. And here are the people talking to them, and there is going to be a big interchange of information at this time. The biggest body count the 11th Brigade ever had since they have been in the country, and yet, I think you made the statement that, "There is nothing in this to fix my mind."

Well, sometime between 0840 and 0935 this 69--well, at 0840 there were 69, in the Task Force Barker log killed by Charlie Company which doesn't exclude them being reported killed by Charlie's artillery.

They have been entered in the log, reported as killed. About an hour later, or less than an hour later, in the Task Force Barker log--or the 11th Brigade log, as being killed by artillery. You are still on the ground, and you are still at Dottie.

Now, this is an incredible thing. I don't know how much service you've got, but I would be willing to bet that never before, in one prep like you've seen, or anything considerably more, have you ever gotten 69 body count. And that's why the repeated questions on this as to don't you remember something.

A. I have stated many times, I remember I got a report of 69 killed. My statement was, I'm not sure whether I got it at Dottie or after I got back to brigade. Certainly, I got the word that 69 were killed by artillery. I never denied not remembering this. What I said is, I don't recall when I got it.

Q. You can't recall. I mean, the significance of this thing, again, it is just BOOM! It's not a series of numbers. It's just 69 people killed by artillery. Did your artillery ever kill that many people in your entire tour as battalion commander?

A. No.

Q. And yet you can't remember the first man that told you this, or who told you this?

A. I certainly cannot. No matter how incredible is sounds, I cannot remember who told me.

Q. Can you remember your feelings at the time?

A. As I stated once earlier, I felt quite good about it.

Q. Was there a lot of exuberance going on? Were people congratulating you? Did you call VAZQUEZ and GAMBLE and ALAUX, the FO, and whip out there to see them and congratulate them?

A. No. This is my third war, and body count, to me, I think is one of the most ridiculous things that has come out of Vietnam. I have never been impressed with it.

Q. Well, I certainly wouldn't argue your feeling toward body count, but I say, when you go into a fight with a battalion, that your battalion commander wants to wipe out, that has hurt you twice before. There is a good possibility that your artillery fire killed 69 of them that weren't around to fight that infantry. I would say that would make you feel pretty good. It would make you want to talk to some of the people responsible?

A. I felt good about it. But again, a body count doesn't impress me one iota.

Q. Well, it may not have impressed you, Colonel LUPER, but that figure, again, certainly would have impressed a lot of people because of it's magnitude. Now, in this CP at Dottie, again, you landed there probably about 0840, shut down, and the chopper is gassing up. About an hour later General KOSTER comes in. There has been a 90 body count reported in Charlie Company. It seems like there would have been a lot of discussion going back and forth in the TOC.

A. I'm sure there was. All I'm saying is that I don't recall it, any specific words. Sure, there were people talking, but I don't recall any conversations or any comment that anyone made.

Q. Okay, General KOSTER shows up. Can you recall how he was met, with great excitement or pride, or did people around really want to brief him about what transpired there? I mean, normally in a successful battle, I think you've said that you have been in three wars, there is a certain camaraderie, regardless of rank. If things go well in battle, this is the ultimate in a soldier's life. There is a flavor or something that happens that one doesn't see.

A. Well, everybody was happy about it.

Q. Well, can you recall any specifics about it?

A. I just told you, sir, I cannot recall anything that anyone said.

Q. Okay, so General KOSTER is briefed and ready to take off.

IO: Well, before we leave that, let me ask you something. You might not remember what was said, but do you recall yourself, Colonel MCKNIGHT, and Colonel MACLACHLAN standing around the board, the place where they mark up everything, and just talking in general about the operation? How were things going? And off on the side, Colonel BARKER and Colonel HENDERSON are talking together.

A. I recall looking at the board, sir. I don't recall exactly who I was talking to. I do recall looking at the board.

Q. Do you recall Colonel HENDERSON and Colonel BARKER leaving the group and going off and discussing matters?

A. No, sir. They very well could have done this without me even noticing them. I do not.

COL FRANKLIN: After leaving and going back out to My Lai, you've forgotten now, that you have killed 90 enemy. You probably had had it reported to you that these enemy casualties were caused by artillery. Do you recall asking Colonel HENDERSON, saying, "Sir, I'd sure like to look at that village, and go out there and fly down low."

A. That's as much unlike me as anyone could be.

Q. Well, how about Colonel HENDERSON, was he the kind of commander that normally, in a big battle, would not want to get down and see what was going on? Or want to go somewhere else? What kind of a commander was he? What was his normal action?

(The witness and counsel conferred.)

A. Colonel HENDERSON is, in my opinion, a pretty closed-mouthed commander. I don't feel there was a real close relationship between he and I. He was an old soldier that saw one heck of a lot of action himself. Yes, he may be the type that would want to go out and look at this close. I don't think he's the gung ho type that likes to go out and look down to see how many people he had killed. I don't know. Except for Vietnam, I don't ever recall hearing the term body count used in World War II or in Korea, at least not to this extent. I get no thrill out of going out and looking at it.

Q. Well, let's not change it around, Colonel LUPER, I agree with you on that. I'm not going to argue with you on the body count. But carrying that argument there its extreme, it means that no commander would visit any battlefield. Now, there are a lot more things that you can do other than fly around and look at bodies. For example, you can fly down and get on the ground and talk to commanders, and you can look, and you can talk to soldiers, and you could offer assistance. These are just a few of the things. You might also decide at that time to exploit this great success. And there's no better way to do it than to be on the ground looking. So there's a lot more to going out there than and just flying around and counting bodies. This is not what I had in mind.

A. Well, that's the way you put the question to me, and that's the way I understood it.

Q. Well, then I'll just rephrase the question. You think you've already answered. You didn't ask Colonel HENDERSON, "Sir, I'd like to go out there to My Lai (4) now and visit the FO." My artillery battalion commander used to come around to me all the time and asked, "Can I go out with you to visit my FO." This is very normal for an artillery battalion commander because the brigade commander visits with his rifle company. This would have been a normal request.

But, apparently, this was not done. Did it seem surprising to you that the helicopter didn't descend to a lower altitude and fly around to observe the battlefield and/or land on the ground and talk to the company commander?

A. Well, you're asking me now for an opinion?

Q. Yes.

A. If I would have been the brigade commander, I am sure I would have landed on the ground. Colonel HENDERSON made his own decisions. He can answer for it, I don't.

Q. Yes. In other words, it did appear a little unusual--

A. (Interposing) To me personally, yes.

Q. Well, in your flight, and you have already said, Colonel LUPER, going back over, there was nothing unusual that you saw?

A. No, sir.

Q. We know that there was, even with your three wars, that there were probably more bodies than you had ever seen before. If you would have gone down low, I won't go into how many you have seen, but--

A. Interposing) I would challenge that, any day.

Q. Well, there was an awful lot, but too many of the wrong kind, at the wrong time, I'll put it that way. There was just an awful lot that it could have been seen. I won't go through and show you on your photo (aerial photo Exhibit P-1), where they were at this time, but there was just too many. We know the village was in flames. We know that there were women and children and livestock and everything just mixed in together; in the courtyards, along the paths, on the outskirts, in the ditch to the east, to the south of the little hamlet, up to the north, right along in the southern part of it. They were just all over, not all,

but certainly most could have been easily discernable by someone flying at any reasonable altitude just making an effort to look. And yet, you recall seeing no bodies. Not seeing anything other than normal smoke (inaudible) a battle.

(The witness nods in the affirmative.)

Now, let me ask you another question, Colonel LUPER. You knew the body count on this operation was reported as 128 and 3 weapons. What did you think about this? At the end of the day, and you'd been out on this operation now, what did you really think? You went to the evening briefing. What did you think about this operation?

A. I thought this was an unusual body count for this number of weapons. However, the type enemy that we're fighting, the VC, a guerilla type thing, I'm sure not all the people in the 48th Local Force Battalion have a weapon. I'm sure that many, many weapons were in that village that were stashed away that were not found. It does seem like an unusual count against the weapon count, I have to agree. But, I do also say that it is conceivable.

Q. Well, there several things that are almost inconceivable. First of all, the battle itself. You say you've been in three wars. You never saw a battle where there was nobody wounded? Where there wasn't anybody that asked for any fire support, and you know all those radios available to you. You have an FO down there. There is a certain excitement. There is just something that just strikes a professional soldier. When there is a battle going on, he knows it. It's the way people talk, the way events develop. It's an experience that you can't fake it. It's either there or not there. People are either fighting, or they are not fighting. And particularly now, when we have the choppers when you can fly over. From what you can see and what you can hear, there's just something here. We've got the tape.

It didn't ring true. And then after something like this, it is very normal, we discuss this before, where people come down and to congratulate. Battles, successful battles, draw commanders from all levels. And there is a certain spirit that goes on in this thing, and a certain amount of pride. There's no question that we have pride in a successful battle. And yet, all of these things seem to be strangely missing. One gets the impression throughout this thing that people didn't even want to talk about it, any way. They just wanted to forget it. None of the normal things that usually go with a successful battle in Vietnam seem to have gone with this one. There were no awards, for example. There were no awards that we know of, with the exception of one aircraft crew from your 123d Battalion. And C Company, which reported 90 casualties, had no casualties of their own. But none of these things particularly struck you one way or the other?

A. Well, much of this I didn't even know until you just now told me. I didn't know there weren't any awards. I thought I remembered reading in a log that there were a few people wounded. I don't recall exactly the reason.

IO: Charlie had one man wounded. He shot himself in the foot.

A. This I had never heard until recently, with all of the publicity.

Q. Bravo had ten men wounded, and they had two killed.

MR WALSH: Colonel LUPER, after visiting at Quang Ngai with the province chief for a while, you went to Duc Pho. Do you recall any discussions about the operation back at Duc Pho?

A. No. If I followed the normal--what I normally did in this type thing, the first thing I would have done would have been to visit the brigade TOC. I'm sure there was discussion going on in there. I don't recall personally discussing the operation with anyone. I would've probably checked the board to see if anything else had been called in, and then gone on to my own headquarters which was located across the air strip from the brigade.

Q. Do you remember checking the coordinates reported for the 69 killed by artillery?

A. I don't know as I checked the coordinates. They would have been posted, the location. There would have been on a sheet that says, "Report from Task Force Barker, 69 killed," and this number would correspond with the location on the map.

Q. Would there be a marking on the map?

A. Yes, sir.

Q. Well, you would've noticed that marking to have been several hundred meters north of the LZ rather than the village itself, if that marking corresponded to the coordinates given in the 11th Brigade log? Do you remember anybody raising any questions about that?

A. I remember you raising the question. This is the first time I realized there was two reports, and the discrepancy in the--of almost 1,000 meters. I may or may not have looked at it that close on the map. That's about 1,000 meters, the two coordinates you gave me.

Q. But you don't recall noticing that when you looked at it posted on the board?

A. I don't. And the posting on the maps are not always that accurate. Some SP4 goes up and makes a chalk mark and writes a number down by it, or grease a pencil.

Q. Do you remember any discussion of women and children being killed, any investigation to that that afternoon at Duc Pho?

A. I do not, sir. As I recall, one of the reports that came in to the brigade, and would have come up at the evening briefing, there was 10 to 20, 10 to 15, some such figure, of possibly noncombatants or civilians killed inadvertantly by artillery or gunships, something to this effect. I don't know the exact words.

Q. You got this in the evening briefing?

A. As I recall, it came up in the evening briefing.

IO: Just before that, while you were riding around with Colonel HENDERSON, and anytime during the morning, did he discuss with you the fact that he was quite concerned about the killing of civilians?

A. No, sir.

Q. And the fact that he put a call into Task Force Barker to tell them to stop any killing and burning?

A. No, sir, I do not recall this. In fact, I was not aware that day that I recall at all, or morning, that there was any indication of unnecessary killing or killing of civilians.

Q. It was all over the air.

A. It very well may of been, sir, but I must not have been on the air at that time.

MR WALSH: Well, I show you an entry in the Task Force Barker log, entry number 39, at 1555, which reads, "Company B reports that none of the VC body count reported by his unit were women and children. Company C reports that approximately 10 to 11 women and children were killed either by artillery or gunships. These were not included in the body count." Is that similar to what you recall being covered in the evening briefing at Duc Pho?

A. Yes, sir.

Q. There is no comparable entry in the 11th Brigade log for 16 March. Have you any idea why that might be?

A. I do not.

Q. Colonel HENDERSON has testified that you investigated where the artillery landed and assured him that none of it landed on the edge of the village. Would you describe this investigation?

A. This is complete news to me. Now, I'm sure that my fire direction center checked the firing data of the battery. It's SOP.

Q. Why are you sure of that?

A. Because it is Army SOP, you just do it. In my mind, they have never missed. Whether I asked them, if it checked out, or whether I didn't, I don't recall. Very likely, I did. Had it not checked out, there is no doubt in my mind they would have told me.

Q. Now, just what is it that you are checking out? Would you explain that a little to me?

A. Any time the firing battery fired a mission, they compute their firing data up at, well, in this case it would have been Uptight. This information is also fed to my battalion headquarters, probably from the battery relay, because they wouldn't hear it made, the initial request. The battalion FDC also computed that firing data.

Q. All right. Now, what I want to know is what these checks were investigating?

A. Whether or not the firing data that the battery fired was correct.

Q. By correct, what do you mean?

A. I mean, they actually had computed the data that went on the howitzer correctly. I do not recall ever assuring anyone that none of those rounds landed in that village.

Q. Well, what did you assure of?

A. If I assured him of anything, and this is news to me that I assured him of anything. If I did, it was that the firing data was computed correctly and was put where the task force commander wanted it. But for me to tell him that none of those rounds landed in that village, I'd have to be a genius. I couldn't assure anyone that a round didn't land in that village when they're firing a prep that close.

Q. Well, is it your impression that they did fire rounds into the village?

A. I'm saying that it is very possible they went into that village.

Q. Is it your testimony that you did not investigate whether rounds fell into the village for Colonel HENDERSON and report that fact to him?

A. I am saying that this is the first time I've heard it.

Q. Now, Colonel LUPER, do you have any recollection of Colonel HENDERSON making any request to you to investigate anything with respect to this incident?

A. I have none whatsoever. And this, sir, if I may say so, bothers me that I am apparently being questioned about things that other people have said about me without benefit of the doubt of having a chance to clarify it with them.

Q. Colonel HENDERSON, in a rather long answer to a question, included the following, "I had reports that some of the artillery had landed in the village, but Colonel LUPER investigated this and assured me that no artillery landed on the edge of that village, which Colonel BARKER later acknowledged that he had seen the artillery rounds, but he thought he saw a building or two burning on the edge of the village, which led him to believe that the artillery had perhaps hit the village. But he could not later substantiate this. But the artillery commander and the battery commander, who had visual observation, claimed this was not true and all of his rounds impacted in the LZ which was several meters away."

622C

A. He states the battery commander had observation?

Q. That is what he said.

A. The battery commander is sitting on Uptight, and if he can have observed whether or not a round landed in that village, he's got terrific vision.

Q. I really was more interested in his comments on what you had assured and what investigation you made before giving him that information?

A. I could not have given him an assurance like that without landing and taking shell rep's in that village. I could not possibly have given him that kind of assurance.

Q. Did you give him any assurance with respect to any aspect of the artillery preparation?

A. I do not recall giving him any assurances.

Q. Do you remember any discussion with Colonel HENDERSON pertaining to this subject?

A. I do not, sir. I do not.

Q. Now, do you remember hearing some allegations made by a warrant officer from the 123d Aviation Company with respect to the activities of the ground forces in My Lai (4)?

A. I do not. I do recall, due to my visit to MEDINA with Colonel HENDERSON, that he was questioning MEDINA. I gathered from the conversation that some helicopter pilots had made a report. I was at LZ Dottie on the, as I recall, the 17th, when Colonel HENDERSON talked to two pilots, one of them being THOMPSON, but not in my presence. Now, I did not know what their allegations were other than what I guessed from his conversation with MEDINA.

Q. He did not speak to you at any time with respect to what he had heard from the helicopter pilots?

A. He did not, sir.

Q. Did he ever direct you to make an investigation of the allegations made by the helicopter pilots?

A. He did not, sir.

Q. Did he ever ask you to participate in any way in the preparation of a report with respect to the allegations of the helicopter pilot?

A. None whatsoever, sir, and the only time I ever saw the report made by Colonel HENDERSON was later when you showed it to me at this board.

Q. Do you know Command Sergeant Major KIRKPATRICK?

A. He was in the S3 section, as I recall.

Q. Of the 11th Brigade?

A. Yes.

Q. Sergeant Major KIRKPATRICK testified before us. He believes that you were the principal investigating officer in the investigation of the allegations of needless killing of civilians by troops of Task Force Barker?

A. He is completely mistaken. I was not in any way charged with an investigation.

Q. Let me read you what he had to say.

A. That only confirms about how bright I thought he was.

Q. The question:

> "Q. Sergeant major, you have told us that there was, after the operation, an investigation conducted.

We would like for you to tell us all that you can recall of when this question was first raised of having an investigation, by whom, and what are the conversations and steps taken that you recall?

"A. Sir, I'm very much in the dark on this investigation exactly. I know that Colonel LUPER was the principal investigating officer, assisted by Major MCKNIGHT, as I recall. I did not see the report. It was kept very much under wraps. I had knowledge the report went out; it was hand-carried to division. The report itself covered, and this is from conversation with the S3, Major MCKNIGHT, who at times, well, by essentialities, my being his operation sergeant, principle NCO underneath him, discussed this with me, but only briefly, that the report indicated that a helicopter pilot, Mr. THOMPSON, had challenged the body count, the fact that we were haphazardly--the soldiers of the 11th were haphazardly shooting civilians for the sake of body count. And this is basically what he explained to me, that the investigation was, and that they had investigated it, and that they found, to the best of my knowledge, the report to be not true. And the report was hand-carried to division. Who in division actually received the report, I have no knowledge of."

He also said, in answer to the next question:

"Q. Did you ever see the paper that appointed Colonel LUPER as investigating officer?

"A. No, sir."

A. I'm sure he didn't. There never was one.

Q. So it is your testimony that Sergeant Major KIRKPATRICK is totally in error--

A. (Interposing) Completely in error. I never even saw the investigation, I say again, until this board showed it to me. It was the first time I ever saw the report.

Q. Now, just a moment. You have reference to a report that you were shown by this board. May I have R-1, please?

(Recorder did as he was requested.)

I show you a copy of the document that you were shown when you were here before, in December, and which you indicated that you had never seen before. If you will look at that, you will notice that that makes no reference to any allegations by Warrant Officer THOMPSON.

(MR WALSH handed Exhibit R-1 to the witness.)

(The witness examined the document.)

IO: It shows up in the first three lines on the first page.

MR WALSH: The point being, Colonel LUPER, that Sergeant Major KIRKPATRICK is talking about a report dealing with Warrant Officer THOMPSON's allegations of needlessly shooting civilians for the sake of body count.

A. Is there another report? I've never seen one.

Q. You know of any such report?

A. That's the reason I'm asking you, sir. I have never seen one. This is the only one that I saw, and I saw it here at this board.

Q. Do you have any knowledge of any letter, report, communication made by Colonel HENDERSON or any other officer with respect to the allegations, either made by the warrant officer or matters which you over heard being discussed in the field between Captain MEDINA and Colonel HENDERSON?

A. I know of no report other than this one, sir. Or any investigation other than the one Colonel HENDERSON evidently conducted, and the only part of that I heard was a part of his conversation with MEDINA. There was no other talk to me about any investigation, about any allegations by this warrant officer or anyone else. The first time I ever heard of any war crimes, or anything that looked like a war crime, was when I read it in the newspaper a few months ago when this thing broke.

Q. How about violation of regulations?

A. I know of no violation of regulations either, sir.

Q. I take it, then, that your testimony is as you gave us in December, that you had no knowledge, except what you overheard, and surmised from what you overheard, between Colonel HENDERSON and Captain MEDINA with respect to any investigation, any irregularities or violations of regulations or war crimes or anything else that may have taken place on March 16th? In other words, nothing has occurred to you in the meantime to change your testimony in that respect?

A. Sir, I've gone over this in my mind a hundred times. I probably slept 2 hours last night, going back through this thing. I have told you everything I honestly know about it.

IO: Do you make it a habit of reading the Americal News Sheet?

A. Yes, sir, I probably read it almost every day.

Q. Let me refer this one to you. This is Exhibit M-23, dated 17 March.

(IO handed exhibit to witness.)

Now, I would just ask you to look at the third paragraph in the right column and you get down 69 killed by artillery.

(The witnesses examined the document.)

A. Yes, sir.

Q. And just to show you a few more problems with respect to getting down to what the real situation is, if you will look at the last couple of lines in the paragraph above it.

A. Above it?

Q. Above it.

(The witness did as directed.)

Do you see that?

(The witness nods in the affirmative.)

I was just using that to point out, that this has nothing to do with you, but I point this out to you. This particular article has 35 coming into the village; the log reported 35 going out. There's quite a bit of difference, you see?

A. Yes.

Q. Now I will show you the paper of the 11th Brigade and referring to this same subject, about the 69. Look in the right column at the bottom paragraph (referring to Exhibit M-59, the TRIDENT).

(The witness did as directed.)

Can you explain--give any logical explanation of that?

A. I cannot, sir. I agree, they do not jibe.

Q. How many people was it, again, that you said that you heard were civilians that were killed by artillery and or gunships?

A. It seems to me, sir, the figure was something like 10 to 20, 10 to 15, 10 to 20, I don't remember.

Q. Did you ever talk over with Colonel HENDERSON the desirability of making an artillery incident report?

A. I did not, sir.

Q. You knew you killed some civilians, not you, but your artillery killed some civilians?

A. Well, I--

Q. (Interposing) You weren't sure, but at least you'd received this report?

A. Yes, sir.

Q. Do you recall the Americal Division regulation in this regard?

A. Yes, sir. It was my judgment that this was not an artillery incident, and I feel that my judgment was concurred in by division since a report did go to division--

Q. (Interposing) No report went to division.

A. I said the report that came to brigade, I feel certainly would have gone to division.

Q. It didn't come to brigade. That's one of those things we wanted to ask you about. It isn't in the brigade log; it isn't in the division log.

A. Then, there is one other place that it had to get there, and that's in this report (indicating Exhibit R-1).

Q. That was over a month later.

A. Yes, sir. But even at this time, no one at division raised the question of an artillery incident, and I feel that they must have made the same judgment I did, sir.

Q. I refer you here to the Americal Division letter, Subject: "Investigations of Artillery Incidents," dated 15 January 68, and I call your attention to paragraph 2. This is Exhibit D-14.

(The witness examines the document.)

A. Yes, sir.

Q. You will note that it says, "All artillery fire incidents that involve injury or death to U.S., allied, or RVN military personnel, or Vietnamese civilians, will be investigated in accordance with the above references." It leaves no doubt that if you have a Vietnamese civilian injured or dead that it is an artillery incident.

A. There is a doubt in my mind that artillery did this.

Q. This is why we have these things, to find out what happened. You have talked about 10 to possibly 20 killed by artillery or some other means. You're not sure in your own mind. That's why you have investigations. If an American had been killed by artillery down there, you'd be obligated to conduct an investigation, if an allied, RVN personnel, or Vietnamese civilian. That's what it says.

(The witness conferred with his counsel.)

A. In my judgment this was not an artillery incident.

Q. When you arrived back at the TOC that afternoon, I take it you did undoubtedly walk into the TOC with Colonel HENDERSON?

A. The brigade TOC?

Q. Yes. Do you remember going in?

A. I don't remember going in, but I'm sure I did. It was normal procedure to go up there as soon as we returned.

Q. There was evidently quite a bit of excitement there. You know, very frankly, from what we can gather, there were people over there talking to the TOC officer. You remember was Captain HENDERSON. We have talked to him; I'm sure you know him?

A. I know him, but I don't recall that he was the duty man at that time, though.

Q. Also, Sergeant Major GERBERDING had been there earlier that morning, and KIRKPATRICK had been there, and there was a lot of conversation that went on between brigade and the task force, to try to get some things straightened out. And these people were all keyed up, from every indication that we can get, and I just wonder what you appreciation was when you walked in.

A. I recall there was a lot of conversation between the task force and them, as there would be in an operation. And the people seemed a little bit excited about body count. I don't recall how long I stayed there. As a rule, I depart from there quite shortly, and go back to my own headquarters. But as to any particular conversation, I do not recall it, sir.

Q. I have here a letter. I'd like to ask you if you saw this at any time, or if anybody discussed the contents of this with you. This could be Colonel HENDERSON; it could be one of the other senior staff officers. This is a paper, dated 11 April 68, from the district chief of Son Tinh to the province chief, Exhibit M-29. The Vietnamese version is attached to it. You will notice that it is a true copy of the translation.

(The witness was handed the document and examined it.)

A. No, sir.

Q. We have information that at least a copy of that was in the headquarters of the 11th Brigade. I don't know the veracity of it, but there are indications from witnesses that it was there. My question I wish to ask you is, who was aware of it?

A. I was not aware of it, sir.

Q. I show you another document. I have here a document. If you recall, R-2 had a so-called statement in it of 14 April. Do you recall that? Give me R-2, R-1 I'm sorry. Remember seeing that paper?

(The IO handed the exhibit to the witness.)

It's just one page, that's all.

A. No, sir.

Q. You were shown that paper the last time you were in here.

A. I don't recall any figures such as that.

Q. Now, closely related to that paper, I have here a paper that is very closely akin to it. This is a true copy of this paper, basically the same paper with a signature on it. This is Exhibit M-30.

(The witness was handed the document and examined it.)

That's pretty hard to read. You just look at the signature block, and then go to the next page, and then you will notice that it's identical to the other one that you've seen.

A. No sir, I have not seen this.

Q. I have here Exhibit M-33, basically the same piece of propaganda that is attached to R-1, which you have seen some time ago. I would like you again to look at it, look at the Vietnamese version. This is an intercept, and we know, for example, that this intercept was picked up by the Vietnamese, put in Vietnamese, and was subsequently translated into English. And we also know that copies of it were in the brigade, and also we know that copies of it were in the Americal Division headquarters. We also know that some of the Vietnamese in your own headquarters had heard the broadcast. Would you look at that, then look at the English translation? You might look at it very quickly. The English translation is on top of it instead of in back of it.

632C

A. I see.

(The witness examined the document.)

Q. Now, that first page is rather bland. It's the same old tirade that you've heard many times, but if you look at the second page, it starts to change its tone.

A. I've never seen this before, sir. Other than--

Q. (Interposing) Again, I know that more than one copy, at least one copy of this, was in the brigade headquarters. I have here another notice from the Quang Ngai National Liberation Front Committee, dated 28 March 1968. This has been entered into the record as M-35. If you will look at the back one,

you will see the Vietnamese version. It takes an odd format, with the English translation on top.

(The witness was handed the document and examined it.)

You ever seen anything comparable to that?

A. No, sir.

Q. I have one other question I would like to ask you, and I think that's about the end of my questioning. When we were in South Vietnam, we looked over all the headquarters, and uniquely enough, the only place where we could find anything is in the Vietnamese headquarters. So we pick up Vietnamese documents, and periodically, we stumble on a document in an American headquarters.

We have very little success in the Americal Division, except picking up SOP's and regulations and things such as that. The logs were gone. The destruction slips were gone. We have the same sort of situation at the 11th Brigade. Nobody knows for sure where they went, what time they went, how they went; but the fact remains, they're gone. We also looked over the log of the 11th Artillery, and uniquely enough, the date of 16 March was absent. I wonder if you can tell my why?

A. I have no idea, sir. I took no documents whatsoever from that unit, including an SOP; I have absolutely nothing from it. And I had absolutely no reason to do away with any records.

Q. The logs are there. One page is gone; one date, the 16th. They're jerked out.

A. No reason in the world do I have for that, sir.

Q. Well, now you can start to understand some of the dilemma.

A. I certainly do, sir.

Q. Colonel, we appreciate you coming in. If you care to make a statement of any variety, or to ask any questions, we will try to answer them for you.

A. No sir, I have no statement. Again, I guess my memory hasn't impressed anyone, but I have been as honest as I can. Am I released to my duty station, sir?

Q. Yes. I do want to caution you, again, that you have been ordered that you are not to discuss your testimony here with others. I think you have already appeared before the investigative subcommittee of the House Armed Services Committee?

A. I have, sir.

IO. Well, in the event they call you again, or any other comparable legislative body calls you, your appearance here will in no way preclude or prevent you from testifying.

The hearing will recess at this time.

(The hearing recessed at 1523 hours, 12 February 1970.)