1/24/75

Anatomy of an Inquest

With this issue we conclude our three-part presentation of excerpts from the suppressed Volume II of the Peers Review Panel Report into the 1968 My Lai massacre and coverup. The volume remains secret and classified "for official use only" by the Pentagon. It consists solely of testimony given before the panel between December 1969 and March 1970.

We have presented these excerpts not to imply individual guilt or complicity in connection with My Lai, but to demonstrate how the bureaucracy of the Armed Forces functioned and still functions to hide its own errors. The testimony we've printed is a mere fraction of the more than 15,000 pages that the Pentagon insists on keeping secret, even though, by now, all prosecutions stemming from the investigation have been carried out and the one man convicted of a crime in connection with My Lai—Lt. William Calley—has been set free.

This selection of excerpts includes testimony given before the Peers Panel by General Robert E. Cushman. In 1968, Cushman was commander of the III Marine Amphibious Force in Vietnam and had direct operational responsibility over the Americal Division whose Task Force Barker sent its men into My Lai. Cushman, who went on to become Deputy Director of the CIA and is currently Commandant of the Marine Corps, has never before been connected to the Peers inquiry. He has refused to give us any comments on his testimony.

If the specter of Vietnam is ever to be lifted from the American psyche, the reality of our participation in the war must be faced squarely. It is our feeling that making the facts public and confronting the modes of operation of the American military can help to avert a repetition of the horror of Vietnam.

Col. Nels A. Parson, Jr.

Colonel Nels A. Parson was chief-of-staff of the Americal Division and had the job of overseeing all staff functions within the division. As such he had responsibility for carrying any word of suspected war crimes to General Koster. He testified on December 12, 1969 and was recalled to testify on February 13, 1970. This selection is taken from his recall testimony. As a result of the Peers inquiry, Parson suffered the withdrawal of his Legion of Merit and was issued a letter of censure.

Q. Colonel Parson, since you last appeared before this investigation in December, we have gathered a considerable amount of information primarily through having interviewed from the start of the inquiry up to the present time something now in excess of 350 individuals . . . . Before we proceed, I would ask Colonel Miller of The Judge Advocate General's Office to advise you concerning your rights, and I would also ask him to warn you of some of the things of which we may suspect you.

Q. You may suspect me of, sir?

A. That is right.

Col. Miller. When you appeared before on 12 December, you were not suspected of any offense and no warning was given . . . . On the basis of the information that is in now, there is some reason to suspect you may have committed one or more of a number of offenses. I mention the word "suspect" rather than "charged" or "alleged." There are no charges and there are no allegations but there is some suspicion that you may have committed some of the offenses that I shall list in just a moment. After I have done that I will advise you of your right to counsel and your right to either testify or not to testify.

You are suspected of the failure to obey, or a violation of, the general regulations concerning the reporting of knowledge or information or reports pertaining to alleged or suspected or apparent war crimes. I'm referring specifically to offenses or alleged offenses committed by Task Force Barker in the Son My area on about 16 to 18 March of 1968.

A. Am I permitted to query at this time or do you prefer that I remain—

Q. (Interposing) If you have a question and I can answer it, I will.

A. I just don't understand what is meant by that.

* * *

A. These are incredible. Would you mind reading that again.

Col. Miller. You are suspected of being an accessory after the fact to possible offenses that were committed by these personnel in that this information came to your attention after the fact and you thereafter, after you had this information, assisted these offenders in order to prevent their apprehension, trial or punishment.

A. I assisted the offenders?

Col. Miller. That is right. This could be done in a number of ways, such as suppressing information, failure to act, or assisting in any way to avoid detection as related to the offense of suppression of information.

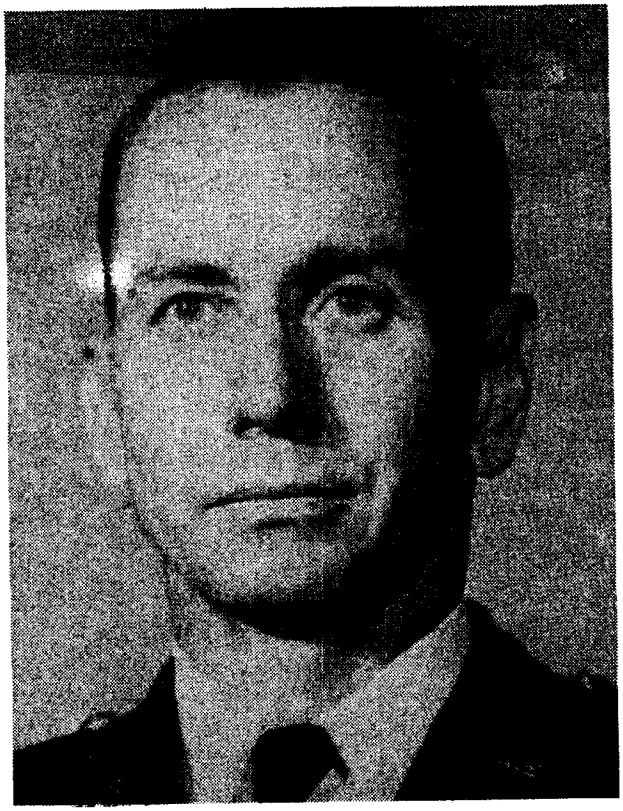
[. . .]

A. No, and they wouldn't shoot anything they . . .

A. I'm just flabbergasted. To say that I want counsel almost implies in my own mind I'm guilty of these things, and that I've just never experienced anything remotely approaching this, the accusation that I have falsely testified.

Q. This is not an accusation. This is a suspicion as was indicated to you by Colonel Miller. These are not charges. These are the things which we suspect you of having committed, and we would be greatly remiss if we did not tell you of these before we questioned you further.

A. I'm really in a state of shock over it because I have been very proud of my honorable record and along with a cadet prayer which I have learned many years ago, "harder right instead of the easier wrong." And it has been so long ago and details are so lacking in my mind that it's difficult to discuss these. It's one thing that occurs to me. I have had the disadvantage of not being able to improve upon my knowledge of this at all. Your investigation has been very thorough and it is obvious



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Colonel Nels Parson

you now have all the pieces. My blinders remain as narrow as before. I really agonized over this to try to remember anything else that I could contribute to this.

Q. We shall help you remember.

A. Lack of testimony, lack of specificity when I first appeared before you was for lack of recalling. I have no sensation in my own heart of, you know, wrongdoing or guilt or any sensation of hiding anything. This doesn't exist in my being. It is very easy for me to confidently come before you the first time and now and to try to cooperate, and I hardly know what to say. I'm not afraid to talk about it. I'm not aware of, certainly no conscious effort to do any of these things. There would be no incentive for me to do so, no purpose, nothing to be gained. The iron integrity of the Army is at stake, and of our own nation, and this is not the time for me to be evasive or withhold anything.

Q. We understand this better than you do, Colonel Parson, very frankly. [. . .]

* * *

Q. When you made your statement on the 14th of January to CID you were asked, "Is there anything you would like to add to this statement?"

You said: "Yes, it was either before Colonel Henderson turned in his report or after, I'm not sure which. I saw a letter that had been written by a Vietnamese official about this incident. Here again I'm not sure what it said, and I am sure that I gave it to the division commanding general."

A. Well, I must have, I must have given it to him.

Q. Well my question, then, is, where did you get it?

A. I just don't recall, sir. The thing is very vague to me. That may be an inadvertent overstatement. I must have given it to him. It seems rather likely that I would have. I don't recall any more about it, than that.

Q. But see, these are the things that are so incomprehensible. In your previous testimony you had indicated that—and to the CID the fact that you were knowledgeable of the fact that a helicopter pilot had reported that many civilians had been killed unnecessarily. Here we see another paper in which the Vietnamese are alleging 490 civilians were killed. Nobody gets excited about it. Nobody does anything about it. It just doesn't seem logical.

A. I know in my own heart, sir, because of my code of living, I would have told my division commander about any thing that came to my attention of this nature.

Q. It all sounds very good to me, Colonel Parson, but the fact remains that you know and I know that MACV regulations said that any time there was any killing of civilians that it would be reported through incident reports. It also says very clearly in your own division regulations that if any civilians were killed, by artillery for example, that aside from U.S. troops who were killed or wounded, or ARVN soldiers, or Vietnamese civilians, that an artillery incident report would be initiated. I find nothing of this happening. You are the division chief of staff. This is what I find almost totally incomprehensible, that people can have such a callous attitude with respect to the Vietnamese. Yet it's the very thing which the division commander has been talking about.

A. Sir, may I comment on callous attitude. Sir, I couldn't possibly have a callous attitude about this. When I first came into the country and saw our boys dead, this was even worse, more depressing than the dead that I saw in World War II. When I first began to hear briefings with the use of these atrocious words, "body count," "kill ratio," bragging about the number killed, the measurement of success in all of Vietnam being in terms of number killed, I was sickened by it. I always have been. I cannot possibly be callous about this. It's repugnant to me.

Q. Well the fact remains that despite what you state, there was not too much action by the Americal Division headquarters with respect to this particular situation. This is exactly what we're trying to determine.

A. Yes, sir.

Q. Now, do you remember any action at all, irrespective of whether you gave this paper to the commanding general or whether he had the paper, or whether it was associated with anything? Do you remember, this would be along about maybe the middle of April, do you remember him taking any action whatsoever on this paper?

A. No, sir, I can't recall. That's not saying there wasn't some action, but I don't recall any action.

Q. Do you recall that about this time General Koster drafted a letter to Colonel Henderson, commanding officer of the 11th Brigade, stating that these allegations of the village chief had been passed through the district chief to the commanding officer of the 2nd ARVN Division and with General Koster indicating that he wanted Colonel Henderson to conduct an investigation of these allegations and to submit a report?

A. All I recall now, sir, is that General Koster directed Colonel Henderson to make an investigation. I don't recall the manner in which this was done.

Q. Well, now, which one are we talking about? You see, I think, Colonel Parson, we're really talking about two different investigations and although they may be addressed to the same general subject, they are quite separate and distinct that there are separate allegations. For example, the first allegation, which you are quite well familiar with, had to do with the complaint of the helicopter pilot which was received in the headquarters on the morning of 17 March. The operation itself had taken place on the 16th. There was an investigation of that allegation. The situation fairly well died down until about the middle of April when the 11 April letter of Lieutenant Tan came to light. Which makes an entirely separate allegation. Now, coming back to the second one. What did General Koster say to Colonel Henderson, and what did he write to him concerning the allegation which he received from Colonel Toan?

A. I cannot recall any, sir.

Q. We are led to believe that along in about the middle of April something in the headquarters of the Americal Division created quite a stir and everybody was pretty well stirred up in the headquarters. I say everybody, maybe not everybody, but more than a few people were stirred up. In addition, it has been reported that you made several trips to Quang Ngai City about this time. You received several telephone calls from people in the Quang Ngai Province advisory staff.

A. On this subject?

Q. I'm not saying what the subject is. I'm saying you received these calls. Also, on at least one and maybe more occasions, Mr. May and/or Lieutenant Colonel Guinn came up and conferred with you.

A. On this subject?

Q. It would appear that if you were going down to Quang Ngai City about this time, you are going down for some reason. We have indications that people made arrangements for you to visit the division and also to visit province, and also that you were on the phone two or three times a day for certain periods, and that people came up to see you from province?

A. I can't recall this, sir. I have, of course, visited Quang Ngai Province from time to time, especially after I had been there awhile and I had an opportunity to get away once in awhile.

Q. But at this time you indicated to us before that you were up to your eyeballs in all this work around there, Colonel Parson?

A. Yes, sir.

Q. So, this wouldn't seem an opportune time to go out and visit the provinces just for the sake of going out and visiting provinces?

A. I see what your—

Q. (Interposing) Now, just think it over a moment. Don't give me a hasty answer. You may have had some business down there that was locical business. I don't know. But, I'll tell you, it appears that you were going down to talk about this business because this was the general subject of quite a bit of consternation by General Koster at that time.

A. I'm unable to account for it, sir. It appears that I'll be obliged to somehow or other reconstruct why I went down there and who I talked to and what about, which will be very difficult, but, I can't recall it. [. . .]

Brigadier General Andy A. Lipscomb

Brigadier General Andy A. Lipscomb was the commander of the 11th Light Infantry Brigade of the Americal Division until March 15, 1968, the day before My Lai took place. He was responsible for training his troops in conformity with the Geneva Convention and the Army's law of land warfare. He testified on January 23, 1970. No charges were brought against him.

Q. Did you ever have any question in your mind about the body count and so forth that all these people were VC?

A. I took all body counts with a grain of salt.

Q. On the operations that you conducted during February, one you had a KIA count in the neighborhood of 60 and another one 70. What was your weapons count?

A. I can't answer that, but I would say low, very low. I questioned; I never stopped questioning any body counts that would be reported to my headquarters. I think there were many, many estimations on these body counts. A lot of these body counts were estimates from the air, frequently.

Q. Did you ever have any suspicion at all that some of these people counted as VC might have been women and children or old men?

A. Had a suspicion? Yes, I'd say I had a suspicion. I think that the general feeling over there was that anything that was shot was a VC. I'm speaking bluntly here now, but I think that generally was the accepted modus operandi over there.

Q. Well, now would that mean that anything they did see out there would be a VC?

A. No, and they wouldn't shoot anything they'd see out there. But I think where there had been preparatory fire or gunship supporting fires, and there were bodies lying about as a result of these fires, these bodies were in black peasant pajamas and were counted as VC.

Q. That is irrespective of whether they were men or women?

A. I don't think that they went to a great deal of trouble to distinguish between men and women. I don't think there was any deliberate firing on women, but I think in preparatory fire and supporting fires, suppressive fires, peasants in black pajamas that were hit were considered VC, particularly if they were in a free-fire area, an area that was considered a free-fire zone, where they shouldn't have been. [. . .]

Q. What was the policy with respect to burning houses, or hootches, as many of them refer to them?

A. There certainly was no order that we would burn down houses, just indiscriminately burn. I would say that the general trend of my guidance or of the battalion commanders' guidance was that if a house became a stronghold we eliminated the house. Where a booby trap was set in the front yard of a house I would say that the people in that house knew something about it and that that house should possibly be eliminated. I won't say that I put that out, but that certainly would have been accepted. But we didn't go around burning up villages.

Q. Do you recall an order by General Koster and a procedure established by division headquarters which indicated . . . that no house would be burned down without the explicit approval of the division commander or one of the ADCs?

"I think that the general feeling over there was that anything that was shot was a VC."

A. Was that in writing?

Q. No. I understand that sometime in the January time period, General Koster at his commanders conferences discussed this at considerable length for the protection of property and lives and so forth.

A. I can't specifically recall that, but I would say that's probably correct in that that was the general trend. I believe that on more than one occasion I discussed with General Koster this matter of not overshooting, not overkill, overfire, too much massive American firepower. We had to use it wisely. This was discussed with General Koster, and the matter of burning houses would be consistent with that. [. . .]

Q. This may be a tough one, but I think it would be helpful to us if you have any insight into the frame of mind of Colonel Henderson at the time he took over command on 15 March. As he was stepping up to this command, can you give us a little feel of anything that was reflected to you at that time?

A. Well, of course, I had tremendous respect for Colonel Henderson . . . Henderson was my XO all the way through. He was a fine, strong exec as far as I was concerned, and I always felt that even though I had taken the position from him that he was completely loyal to me. When I left, and I made out an efficiency report on Colonel Henderson, I recommended him for promotion to brigadier general, which I didn't do to too many colonels along the way. As far as I was concerned, Henderson took the brigade over. He thought it was in good shape. He and I worked right together, and he had as much a hand in forming the brigade as I had in the character of the brigade. He took it over, and I thought it was rightfully his. I was real pleased . . . .

Q. General Lipscomb, I want to put a question to you. With your knowledge of this brigade up to this time and your knowledge of Task Force Barker, I would ask you why this thing happened, and let me tell you some of the things that happened. I'm not going to tell you all, but I can tell you enough of it so that you can understand that something happened. One, an artillery preparation was planned to be put on the village. Two, gunships went in and shot up everything on either side of the LZ. Three, all of the slicks when they came in, went in with their doorguns wide open. Four, there were numerous instances where small children, women, old men were killed; in some cases rounded up just like cattle and mowed down, not only in Charlie Company but we're finding at the present time that Bravo Company also did this in the process of this operation. There were seven hamlets or subhamlets that were burned to the ground. I'm telling you as a professional officer with the thought that this will go only as far as you, at the moment, to try to get an insight into this thing as to why under these circumstances with you leaving one day, Colonel Henderson taking over, this thing happened the next day?

A. Well, this is extremely difficult for me to believe. Apparently I failed some way to indoctrinate these troops if this type of thing happened. As far as relating it to the assumption of command of Colonel Henderson, I repeat that brigade's part in these operations, the normal operation, was minimal. These things were decided down at the battalion and frequently the company. The battalion would tell them to go in there, but the company would work out the details. Now, I'm not passing the buck. The battalion commander had to approve these things and theoretically the brigade and all the way up the chain of command. I can understand certain parts of the first few statements you made, the preparatory fires, artillery fires in an area that had been a constant thorn in their side, that caused them trouble, that they'd lost people in there, mines and booby traps. They're going to do this. That I can understand, the preparatory fire, the gunships shooting going in. But in the wildest stretch of my imagination I cannot understand Americans, and certainly not officers and non-commissioned officers, participating in, permitting, or condoning the rounding up and shooting of people. This is beyond my belief almost that this could happen.

Q. I could make it worse.

A. And the element you add in about rape and this sort of thing just shocks me. I don't even remember back before we actually got into combat any problems about Vietnamese girls, when they had more time for this sort of thing. There was no problem there as far as I knew. This surprises me. If this did happen, I can't tell you why it happened. I don't know whether there was a complete breakdown in command, in humaneness, or what. This is a big surprise, shock, to me if it happened this way . . .

LIST OF WITNESSES WHOSE TESTIMONY IS EXCERPTED

Jan 24 Lt. General (USMC) Robert E. Cushman, Commanding General, 3 MAF, Commander of all Marine and other combat units in I Corps tactical region, including the Americal Division.
Major General Samuel W. Koster, Commanding General, Americal Division.
Brigadier General Andy A. Lipscomb, Commander, 11th Brigade, Americal Division, until March 5, 1968.
Col. Nels A. Parson, Jr., Chief of Staff, Americal Division.

Jan 17 Lt. General Bruce Palmer, Deputy Commander USARV, Assistant to Gen. William Westmoreland.
Lt. Col. Charles Anistranski, G5, Americal Division (Civil Affairs Commander).
Lt. Col. Francis R. Lewis, Chaplain, Americal Division.
Lt. Col. Warren J. Lucas, Provost Marshal, Americal Division.
Capt. Carl E. Creswell, Episcopal Chaplain at Chu Lai.

Jan. 10 Maj. Frederick W. Watke, Company Commander, 123rd Aviation Battalion.
WO2 Hugh C. Thompson, Helicopter Pilot, 123rd Aviation Battalion.
Sgt. Ronald L. Ridenhour, Rifleman, 11th Brigade.
Sgt. Michael A. Bernhardt, Automatic Rifleman, C Company, 1st Battalion, 20th Infantry, 11th Brigade.

Maj. General Samuel W. Koster

Major General Samuel W. Koster was commanding general of Americal Division. He held responsibility both for ordering a division level investigation into My Lai and for informing Westmoreland's Saigon headquarters of the facts. Testifying on December 15 and 16, 1969, he faced suspicion of negligence, dereliction, or direct disobedience to orders and regulations on reporting war crimes; also, suspicion of suppression or contributing to the suppression of information pertaining to possible unlawful killing of civilians at My Lai. Koster was eventually demoted to Brigadier General, his Distinguished Service Medal was withdrawn and a letter of censure was placed in his file. He has since retired from the Army.

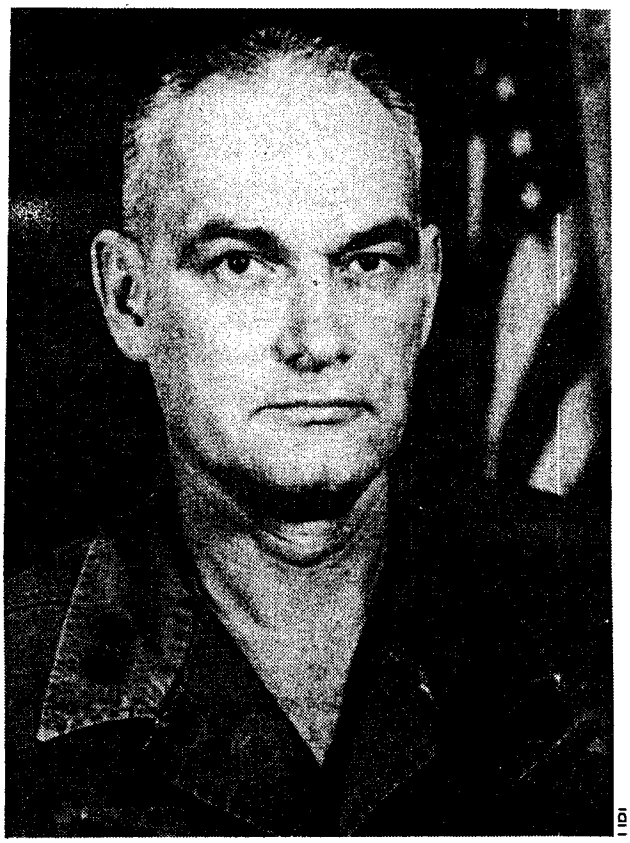
Q. That morning did you have a discussion with Colonel Henderson in which, at Fire Support Base Dottie, in which he indicated that in flying over the village and around the village that he had seen what he had thought was two VC killed and had directed the weapons be picked up, but that he had also seen 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 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.

Q. 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



General Samuel Koster

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.

Q. 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. 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.

Q. 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.

Q. 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. The first three pages are pertinent to our discussion at the moment.

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. 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 . . . .

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?

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

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.

Lt. General Robert E. Cushman

Lieutenant General Robert E. Cushman, Jr. was the commander of the Third Marine Amphibious Force in Vietnam. As such he had command and responsibility for all combat operations including Marines and Army in the I Corps tactical zone, which included My Lai. He testified on December 22, 1969. No charges were brought against him. He later became Deputy Director of the CIA and is currently commandant of the Marine Corps.

Q. General Cushman, I show you a copy of the log for the Americal Division, covering the period 16 March 1968. If you will look at the end, entry 94, at 2400 hours, at the bottom of the page, I wish you would read the latter part of this having to do with Operation Muscatine.

A. Yes.

Q. The question that I have here, General Cushman, is in reading the statistics which came out of Operation Muscatine, where it indicates 128 VC KIA, 3 individual weapons captured, and 2 U.S. killed by hostile action. I would wonder if a report such as that would raise a few flags in headquarters of III MAF due to the ratio of approximately 64 to 1 enemy killed and 43 to 1 in weapons?

A. Not necessarily. When artillery and gunships were employed, in many cases the ratio of VC to U.S. was very high. Army troops were, as a matter of fact, quite expert in continuing coverage of ground patrols with their helicopter gunships and, of course, this is where the casualties would occur to the enemy, without our having suffered casualties such as you get into with heavy ground fighting. On the relationship of VC to individual weapons, which is quite large here—this happened many times with VC. In other words, I would not expect that this would be civilians but VC armed with grenades, dynamite sticks, and this sort of thing. I would say that it happened frequently enough. This type of ratio wouldn't necessarily raise a flag.

"Of course, their concern for human life is not our concern, it doesn't match ours."

Q. That is the point. The report in itself, unless you knew the details, the report itself, which would be forwarded to your headquarters, would not necessarily raise any doubts or questions in your mind?

A. No, it would not, and in combination with seeing General Lam, as I say, every day, if he had nothing in relation to this type thing, I would never go back to it again.

Q. Do you recall any of your staff members, such as your deputy or your chief of staff or anybody mentioning to you the fact that General Koster or somebody from the Americal Division had mentioned the operation in My Lai (4) on the 16th of March, and some inquiry into it?

A. No. It was not brought to my attention if they knew of it. Of course, I can't—

Q. (Interposing) Did General Lam ever mention this to you while you were there?

A. No, he did not, and I saw him every day.

Q. Would the same thing be true of Colonel Toan, who was then the commanding officer of the 2nd ARVN Division?

A. He did not. However, I was not seeing Sam Koster or General Toan as often in the days of March as I would have ordinarily, because of my preoccupation with the northern two provinces at the time.

Q. General Cushman, I show you a one-page enclosure to a report of investigation and I ask you to read just that one page, a statement dated 14 April 1968. I would ask you now, within the regulations under which you operated in III MAF, and your policy in III MAF for protection and treatment of noncombatants, prisoners of war and the like, if you knew that such a paper had arrived at headquarters of the Americal Division—what would you expect to happen?

A. I would expect to have it investigated, and if it came to me I would probably have to communicate with USARV in Saigon to see whether it would have to be done in Army administrative channels or through command channels, meaning that my headquarters would get it.

Q. Would it—I am not putting words or thoughts into your mind, this is not my intention—but would it be your impression that if an allegation such as this did come in, whether it might be considered unfounded or otherwise, that it should have been reported to you or Headquarters, III MAF?

A. I would say, yes, that it should have been, by terms of the directive which III MAF had in effect. It is very important to keep a clean slate on this sort of thing and check it out as being true or not. [. . .]

Q. Now, I ask you to turn back to the front part of the report, General Cushman, dated 24 April 1968, a report of investigation to the Commanding General, Americal Division, signed by Colonel Henderson, the commanding officer of the 11th Brigade, and ask if you have ever seen this document?

A. No, I can't say that I have. Although, of course, it is possible, but I don't think that I have. [. . .]

Q. If you, General Cushman, within your area, and in a VC controlled area—if it became necessary to put a prep upon a village, that was a populated village, would it have been necessary to have notified the people to move out or would it be acceptable to put part or all of the prep on the village without any notification?

A. As I recall the rules, they were that this was up to the Vietnamese. Ordinarily all fires are to be checked out with the district chief, but I can't remember how high they had to go in the Vietnamese chain of command. I know General Lam could do it, and I imagine the province chief could do it. I am not sure whether the district chief could do it. An area could be classed as a free-fire zone meaning it was so hostile, and fire came from there at all times when you went near it, that prep fires could be put in there without prior consultation. My understanding is that the Vietnamese passed the word to the village concerned and they took their choice. Either they stayed there and were VC or they moved out to a refugee village and joined the GVN.

Q. We find a very strange thing here, General Cushman, and I found practically no variation from it in any testimony. Generally, through this area (pointing to Exhibit MAP-1) to the east of here, it was considered VC-controlled area.

A. Yes. It was a tough area. No question about it.

Q. It was tough. That line over to about Highway 1 was what they called a controlled-fire area. Generally along Highway 1, they considered a no-fire area. But what I found is that we would go through the process of checking with the district chief. It was automatic with the district chief. He did one thing and that is all. He checked his records to see if there were any ARVN or RF/PF [GVN Paramilitary Units] in there and if they weren't there it was automatic.

A. This may have happened, this I don't know. Although, of course, there concern for human life is not our concern, it doesn't match ours.

Q. That is my point. Was it the policy of just taking an easy approval or would it, of necessity, require judgment by the district chief in firing upon a populated area?

A. It was supposed to require judgment by the district chief, unless it were a free-fire zone. Now, personally, I can not say how he exercised that judgment, I am sure it varied with the chiefs. I know of cases where we were not allowed to fire, for example, and there are other cases, I am sure, where the chief is more callous—leans more on the side of fire if there are none of my troops in there. But, a free-fire zone—this was such hostile territory that you were allowed to fire. The people were supposed to get out of there, if they did not want to be subjected to this. They were supposed to move out.

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Q. Well, the village in this incident had not been notified that they were going to receive this fire. It was assumed that the people would be gone to market by 7 o'clock, and with the preparation coming on at 7:30 there wouldn't be any civilians there. It does seem that we do have here a rather populated area and really callous handling by the district chief. All he was interested in was whether ARVN were there. They could put fire any place that they wanted, artillery fire, air strikes, anything. It made no difference. ARVN personnel were checked through on this—getting this clearance and in having direct fire in accordance with the regulations, but not to the intent of the regulation which is to protect human life, particularly of noncombatants, unarmed noncombatants, women, children, old men.

* * *

Q. This report, we are led to understand, was considered unacceptable and a formal investigation was directed. We have some problems with the formal investigation, I admit, at the moment. But getting back to this piece of paper, this is a report of an investigation of an allegation which is contained in the first statement, of the

killing of non-combatants—a goodly number of them. Would you have expected a report such as this, even in the form that it is in, to have been called to your attention or to your headquarters?

A. If it is up at my headquarters, it should have been called to the attention of the chief of staff and thus to myself. I have to refresh my mind on that III MAF order. It would seem that the division should conduct the investigation. I would think that they would probably let me know if it even looked like it was going to be serious. The fact remains that I didn't know, and I am pretty sure that I am correct in saying that I didn't know that there was an investigation going on.

Q. My question was really rather a theoretical one, as to whether or not, in view of the severity of the allegation that was made here, that as a matter of interest this should not have been called to your immediate attention, or certainly to the attention of your headquarters, with the object in mind that this is going to be thoroughly investigated?

A. Well, it is hard to say. Let's assume that General Koster knew it. This would be somewhat a matter of his judgment as to how much he believed that it was propaganda—how much he believed the substance in this, as to whether he waited until the investigation was underway and he had gotten some sort of a handle, or whether he'd say "My gosh, I've got this report, so we will investigate it and then let you know." I would say that he should let me know as soon as he might have realized that there was some substance to it. But charges of killing some civilians were made fairly frequently, and we would often check them out and find sometimes, usually, it was a stray round of artillery, and it would be true. It was not an atrocity. It was a regretable accident, and we would make payment to the families. This sort of thing.

Q. . . . There is one point that you brought out—the fact that although units were under your operational control, administratively it had many strings tied to Headquarters, USARV. So, the actual chain of command in certain instances wasn't always too clear, and we are going to have to clarify that, too.

A. . . . I never had any trouble with the Army commanding generals letting me know, even when I wasn't responsible, for major things that were going on administratively. Most of these things do affect to some extent the combat readiness. So, I really didn't have any trouble that way. I mean that there were no artificial fences put up, no personality problems or anything of that sort, and if Sam Koster didn't report it to me, I would assume that he hadn't found substance in it. If he had found substance in it, I would have expected him to do it. I don't know whether I could have required him to do it, but I think he would have. He is that kind of officer that he would have let me know.

Q. Just for the record, General Cushman, I have here another letter which is from Lieutenant Tan, who is the district chief of Son Tinh district, in a report to the province chief. The date of this report is 28 March 1968. The exhibit itself is the English version. Attached to it is the Vietnamese version. I ask if by chance you have ever seen that document?

A. No, I have not seen this document. But I would say the first paragraph exactly describes a large number of combat incidents in Vietnam. Fire opened up on a village which contains not only VC but also civilians, and fire delivered against the village, and there you are. Some civilians do get killed. Most houses in Vietnam do have holes dug in the floor in which, no matter who was firing, the villagers would generally take cover, and this saved many civilian lives by their own efforts. But inevitably, as in this first paragraph if you read it closely, it is just the way many combat actions occurred in Vietnam.

Q. General Cushman, we would like to thank you for appearing before us and clearing up a few points. I would like to say that as time goes on, if by chance any of these things do come to mind, or if you can think of anything which has a bearing on this, we would be very happy to hear from you.

A. Thank you. I tried to, of course, from the time I saw it break in the papers. You say you are investigating the investigation. The facts, I suppose, are rather hard to come by. Regrettably, as you know, during the year that the Marines landed up there, we had several murder cases against Marines. It has been known to happen. People go over the edge when little kids are throwing grenades at them.

Q. We recognize the problem that exists in this area as a little separate and distinct from many other parts of South Vietnam.