A. US OBLIGATIONS UNDER THE LAW OF WAR

The conduct of war among civilized nations is regulated by certain well-established rules known as the rules or law of war. This law regulates warfare on both the land and the sea. That which pertains particularly to war on land is called the law of land warfare.

Much of the law of war has been set out in treaties or conventions to which the United States is a party. It is commonly called the written law of war.

Some of the law of war never has been incorporated in any treaty or convention to which the United States is a signatory. This law is commonly called the unwritten or customary law of war. For the most part it is well defined by recognized authorities on international law and is firmly established by the custom and usage of civilized nations.

The primary source of the written law of war as it applies to the United States is international conventions (lawmaking treaties to which the United States is a party). Some of the more important of these are:

(1) Hague Convention No. IV Respecting the Laws and Customs of War on Land and the Annex thereto which embodies the Regulations Respecting the Laws and Customs of War on Land.

(2) The four 1949 Geneva Conventions for the protection of the wounded and sick of armed forces in the field; wounded, sick, and shipwrecked members of armed forces at sea; prisoners of war; and civilian persons in times of war.

(3) The 1929 Geneva Conventions relative to the treatment
of prisoners of war and amelioration of the conditions of the wounded and sick of armies in the field.

The law of war, both written and customary, had the principal purpose of diminishing the evils of war by:

a. Protecting both noncombatants and combatants from unnecessary suffering;

b. Safeguarding certain fundamental human rights of persons who fall into the hands of the enemy, particularly prisoners of war, the wounded and sick, and civilians; and

c. Facilitating the restoration of the peace.

The United States recognizes the conflict in Vietnam as an international conflict to which both customary and written or conventional law of war apply, and the United States has declared its intent to observe this law.

The United States has an obligation to instruct its military personnel concerning the conventional law of war which the United States has recognized. This obligation is in part fulfilled by formal military instructions and directives. Further, the United States has affirmative responsibilities to investigate alleged violations of the pertinent conventions. Its obligations under the "grave breaches" article of each of the 1949 Geneva Conventions are quite specific:

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party had made out a prima facie case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to
the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defense, which shall not be less favorable than those provided by Article 105 and those following of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949.

Grave breaches to which the preceding Article relates shall be those involving the following acts, if committed against persons or property protected by present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, ... taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Most of the "grave breaches" listed above had been considered as violations of customary law or were denounced in other conventions prior to the 1949 Geneva Conventions.

Both US military law and international law place certain responsibilities upon military commanders to control their troops, to investigate alleged violations of the law of war, and to take appropriate action. Furthermore, many offenses against the law of war are violations of the Uniform Code of Military Justice.

The United States, as a civilized nation and as a signatory of Hague Convention No. IV (1907) and its Annex and the four Geneva Conventions of 1949, is obligated to observe the law of war, to investigate alleged war crimes, and, in appropriate cases, to bring alleged offenders to trial.

The term "war crime" is the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime.

B. UNITED STATES DIRECTIVES

1. Policy Guidance

a. General

The military departments within the Department of
Defense (DOD) have promulgated regulations providing guidance to military personnel on customary and treaty law applicable to the conduct of warfare. As noted previously, the law of land warfare regulates the conduct of armed hostiles and is inspired by the desire to diminish the evils of war.

Within the guidance established by DOD, each of the military services has published regulations pertaining to both sources of the law of war, as well as detailed instructions regarding the engagement, apprehension, and classification of individuals present in a hostile environment. Specifically, the Department of the Army (DA) has directed actions through the chain of command to insure that the US soldier knows his responsibilities in the conduct of war that are based on the rules of land warfare. This is accomplished through the publication system which spells out the individual's responsibilities.

To accomplish the requisite training, DA has defined two broad objectives:

(1) Definition of the US national policy in the conduct of land warfare to include the rules and law of war.

(2) Training required to insure that the individual soldier understands his specific duties and obligations in the pursuit of the US national policy.

b. Geneva Conventions Training

By Army Regulation (AR) 350-216, commanders are required to provide instruction that is adequate to insure that all members of their commands understand the principles and the provisions of the Geneva and Hague Conventions, which are binding on the United States.[6] This training is designed to be conducted in a manner that will provide each individual with an understanding of his responsibility under the provisions of these conventions to afford humane treatment both to prisoners of war and the enemy civilian population. As a first step, the soldier receives in Basic Combat Training (BCT) an hour of instruction based on Army Subject Schedule 21-18.[8] This subject schedule is published to provide uniformity in the familiarization of military personnel with the Geneva Conventions of 1949. The lesson outline, text and publication references, and training films are designed to provide the requisite background and supplemental instruction material. The scope of this instruction includes the specific provisions of the Geneva Conventions of 1949 and a discussion of individual duties, rights, and obligations thereunder.
AR 350-216 also directs that commanders will take action to ensure that each member of their command receives training in the conventions each 12-month period. Suitable entries will be made annually in the individual's personnel record indicating the date that such instruction was last completed. Qualified legal officers are required to conduct this annual instruction.

Therefore, the individual soldier receives the foundational instruction in basic training, and this training is continually updated on an annual basis using Field Manual (FM) 27-10, several DA pamphlets, and current training films.

As early as 1964, Military Assistance Command, Vietnam (MACV) directives and regulations had been published that pertained to the individual soldier's duties and obligations under the rules of warfare. Subsequently, these directives were expanded, updated, and clarified as subordinate headquarters were activated. By 1967-68, directives and regulations were in effect that pertained to all phases of military operations and training.

Army personnel normally arrived in the Republic of Vietnam (RVN) at a replacement unit where it was required by United States Army Vietnam (USARV) Regulation 612-1 that all military personnel would receive, among others, the following information cards:

(1) "The Enemy in Your Hands;"
(2) "Nine Rules;"
(3) "Code of Conduct;" and
(4) "Geneva Convention."

In addition, all commissioned officers would receive a card entitled "Guidance for Commanders in Vietnam." These cards were to be kept in the individual's possession at all times because of the usefulness of the information they contained.

These cards stressed humanitarian treatment and respect for the Vietnamese people and stipulated that each individual would comply with the Geneva Conventions of 1949. Individual methods of capture, care, and treatment were specifically included in the cards.

c. Rules of Engagement

The rules of engagement (ROE) for military operations in Vietnam are based on specific authority granted by the Joint
of Staff (JCS). In 1966, Commander, United States Military Assistance Command Vietnam (COMUSMACV) established a policy of republishing the ROE every 6 months to insure maximum visibility to all US personnel during their tour. These ROE provided the guidance for the conduct of combat operations within RVN and directed that all practicable means be employed to limit the risk to the lives and property of friendly forces and civilians.

The control of combat operations and application of the ROE pertaining to the individual soldier were vested in the commander at each subordinate level who, among other responsibilities, was directed to "use your firepower with care and discrimination, particularly in populated areas." The chain of command was to be utilized to the fullest extent to insure success in battle with the minimum expenditure of resources. The soldier was regarded as a member of a team responsive to his leader, yet responsible for his individual actions.

Early in the conflict, the magnitude of the firepower available for employment was recognized. The individual soldier's rifle fire was supplemented by huge quantities of direct and indirect firepower from a large variety of sources. All means of firepower had to be carefully controlled and coordinated to insure successful, yet proper, employment. Fire control and coordinating elements were organized at each level of command down to and including rifle companies. These elements had the capability to coordinate and control all available means and sources of supporting firepower. However, because the varied sources of firepower had different delivery means and accuracy, the rules of employment for each varied. It was clear at an early date that the means of control and the rules that governed the employment of the different types and sizes of ordnance were extremely important.

MACV Directives 95-4 and 525-18 were in effect in early 1968. These regulations dealt with combat operations and, more particularly, with the control of firepower delivered by artillery, mortar, air, and naval means.

MACV Directive 95-4 stipulated that airpower should be employed with the objective of eliminating "incidents involving friendly forces, noncombatants, and damage to civilian property." In operational planning of battalion-level operations, it was required that representatives of aviation units participate in the tactical ground planning to provide for the necessary coordination and control of the firepower available within the aviation units.

The specific restrictions and ROE for US aircraft in RVN
were amplified in Annex D to MACV Directive 95-4 which directed that "all pilots will endeavor to minimize noncombatant casualties and civilian property damage." This annex also stated that "if the target involves noncombatants, such as in a hamlet or village, whenever possible a Republic of Vietnam Air Force (RVNAF) observer will be aboard the helicopter and US-GVN-RVNAF approval of fire must be obtained unless the situation clearly presents an immediate threat to lives of the crew."

Certain areas in RVN were uninhabited or had been identified as such by Government of Vietnam (GVN) authorities. In 1966, certain of these areas were designated as cleared areas to all Free World Military Assistance Forces (FWMAF) by the GVN and became known as "free fire zones." Simply stated, a free fire zone was a specifically delineated geographic area, usually free of any known populace, that had been previously approved for use of all means of fire and maneuver. Such an area was cleared for employment of firepower unless notification to the contrary was given. In 1967 MACV replaced its use with the term "specified strike zone (SSZ)." An SSZ was defined as "those areas approved by a province chief where strikes may be conducted without additional political clearance."

The control of artillery/mortar and naval gunfire support was directed by MACV Directive 525-18. Restrictive controls were to be held to the minimum necessary to insure that civilians and their property were not destroyed or damaged. This directive stated, however, that fire missions directed against known or suspected VC/NVA targets in villages and hamlets occupied by noncombatants "will be" controlled by an observer and "executed only after Province Chief or District Chief approves as appropriate." Under certain specified conditions, however, this regulation did authorize striking areas known to be inhabited by noncombatants. It states: "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 would be jeopardized by such warning."

During the 1968 Tet offensive, Headquarters, MACV (Forward), issued temporary modifications to MACV Directive 525-18 for specific purposes in designated areas of I Corps Tactical Zone (ICTZ). Some commanders were authorized to attack inhabited areas with weapons and forces most appropriate to insure prompt restriction of the enemy. Even with these temporary modifications, however, commanders were enjoined to exercise prudent judgment to protect noncombatants and private property.

d. Treatment of Noncombatants and Private Property
MACV directives in effect at the time of the Son My operation dealt specifically with the subject of minimizing noncombatant casualties and the control of Vietnamese property, captured materiel, and food supplies. These directives were policy directives pertaining to combat operations in general.

MACV Directive 525-3 dealt with minimizing noncombatant casualties. Noncombatants were generally described as the "hapless rice farmer and the small town inhabitant, whether at any one time [he] lives in a VC or a GVN controlled hamlet" noting that where he lives depends "to a large extent upon factors and forces beyond his control." Commanders were directed to control force and not use "unnecessary force leading to noncombatant battle casualties in area temporarily controlled by the VC."

The exercise of restraint by soldiers to reduce to a minimum the casualties inflicted on the noncombatant populace was stressed. Commanders were directed to "maintain and conduct a thorough and continuing program to emphasize both the short- and long-range importance of minimizing noncombatant casualties." Troop indoctrination briefings were to be held before each operation. Each briefing was to include the location of noncombatants and other friendly forces, measures to prevent mutual interference, safety precautions for fire control support, rules of engagement, identification and recognition signals, emergency procedures, and other appropriate matters.

Several other significant points were covered in the directive:

(1) The VC fully exploit incidents of noncombatant casualties and destruction of property by US forces.

(2) Commanders will consider the psychological as well as the military objectives. Reconnaissance by fire and poorly selected harassing fires are counterproductive in the long run.

(3) Specified strike zones should be configured to exclude populated areas.

(4) Established rules of good military conduct and discipline must be enforced.

(5) Implementing instructions and SOP's concerning this directive, fire control support and safety precautions will be issued by major commanders. Commanders will insure distribution to the lowest echelons.
MACV Directive 525-9 established policies and procedures for control, disposition, and safeguarding of private property and food supplies as well as captured materiel and supplies during combat operations. Long-term US and GVN objectives were stressed and continuing command emphasis was directed to the preclusion of destruction. Specifically, this document directed that the disposition of private property and supplies is the responsibility of GVN officials and that civilian dwellings or private property, including livestock, will not be destroyed by US forces except as an unavoidable consequence of combat actions. If destruction is to be accomplished as a denial measure, such action will be left to GVN authorities or RVNAF units.

e. Detaining Individuals

In addition to the cards previously mentioned, policy and guidance for the apprehension, detention, and treatment of individuals suspected of hostile acts were covered in several MACV directives.

The Combined Campaign Plan for 1968 directed prompt, thorough and effective screening, segregation, and disposition of suspected enemy civilian personnel captured or detained by friendly forces. The screening process was to be accomplished in screening centers established jointly with US and Vietnamese military and civilian representation. Screening and segregation were to identify the detainees as either apparent prisoners of war (PW's), known VC identified by blacklists, suspected civil defendants, or innocents. Once an individual's status was determined, the Combined Tactical Screening Centers (CTSC) were to release those not under suspicion. Suspected civil defendants were to be released to Vietnamese civil authorities after interrogation by military intelligence (MI) and ARVN investigators. The specifics of the screening process were covered in MACV Directive 381-46. The value of human source intelligence was described in MACV Directive 381-11.

When an individual was classified as a PW in accordance with MACV Directive 381-46, certain specific handling procedures became effective. The MACV policy and guidance for these procedures were contained in MACV Directive 190-3. This document stated that "all personnel detained by US forces will be extended the full protection of the Geneva Convention of 12 August 1949."

MACV Directive 20-5 directed "policies and procedures for determining whether personnel in the custody of the United States who have committed belligerent acts are entitled to prisoners of war status." During this determination, however, and while
Article 5 of the Geneva Conventions "required that the protection of the Conventions be extended to a person who has committed a belligerent act and whose entitlement to Prisoner of War (PW) status is in doubt until such time as his status has been determined by a competent tribunal." Until such time as an individual's status has been determined, the Geneva Conventions and MACV Directives previously indicated protect the individual's rights.

f. War Crimes

Combat operations during the 1968 Tet offensive were reported in a sensational manner. At times, some reports and photographs purported to depict a flagrant disregard for human life, inhumane treatment, and brutality in the handling of detainees and PW's. Because of this situation, on 21 February 1968, GEN Westmoreland wrote a personal letter to GEN Cao Van Vien, Chief of Joint General Staff, RVNAF, reiterating the necessity for observing the Geneva Conventions and taking "appropriate action against those who offend against the law of war."

As an inclosure to this letter, GEN Westmoreland included a copy of a confidential message he had dispatched to all US forces concerning the mistreatment of detainees and PW's. This message, signed by MG Walter T. Kerwin, Jr., Chief of Staff MACV, directed vigorous and immediate command action "to insure that all personnel are familiar with and observe strictly FM 27-10, UCMJ [Uniform Code of Military Justice] Article 93, Geneva Conventions relative to treatment of PW (Articles 12 through 121), Geneva Conventions for amelioration of wounded and sick armed forces in the field, Articles 12, 17, and 50, and MACV Directives 20-4, 27-5, and 190-3." The message also reaffirmed that: "All known, suspected or alleged war crimes atrocities committed by or against US personnel will be investigated IAW [in accordance with] MACV Directive 20-4.

MACV Directive 20-4 has as a stated purpose: "To provide uniform procedures for the collection and perpetuation of evidence relative to war crimes incidents and to designate the agencies responsible for the conduct of investigations for alleged or apparent violations of the Geneva Conventions of 12 August 1949 For the Protection of War Victims."

War crimes were defined in this directive by reference to FM 27-10. Paragraph 499 of FM 27-10 states "the term war crime is the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime." (See also MACV Directive 20-3).
Directive 20-4 further elaborated on the definition of war crimes by stating in part that a 'grave breach' of the Geneva Conventions constitutes a war crime. Some examples of 'grave breaches' were explained (when committed against persons taking no active part in the hostilities, including members of armed forces who laid down their arms and those placed hors de combat by sickness, wounds, detention, or any cause) as wilful killing, torture, or inhumane treatment, or wilfully causing great suffering or serious injury to body or health.

The directive also provided detailed guidance to all personnel for investigating alleged or apparent war crimes against an individual who, in the context of the definition, was mistreated in any way subsequent to apprehension and/or detention. The directive further stated in part:

a. It is the responsibility of all military personnel having knowledge or receiving a report of an incident or an act thought to be a war crime to make such incident known to his commanding officer as soon as practicable. Personnel performing investigative, intelligence, police, photographic, grave registration, or medical functions, as well as those in contact with the enemy, will, in the normal course of their duty, make every effort to detect the commission of war crimes and will report the essential facts to their commanding officer. Persons discovering war crimes will take all reasonable action under the circumstances to preserve physical evidence, to note identity of witnesses present, and to record (by photograph, sketch, or descriptive notes) the circumstances and surroundings.

b. Commanders and MACV Staff sections receiving reports of probable war crimes will, in addition to any other required reports, report the fact as soon as practicable to the Staff Judge Advocate, USMACV, and will make pertinent collateral information available to the appointing authority and investigating officers.

c. Investigations of alleged or apparent war crimes will be coordinated with the Staff Judge Advocate, USMACV.

The appointing authority under the directive:

a. Will appoint an investigating officer
and, if appropriate, designate a qualified criminal investigator or CID agent as technical assistant. Upon receipt of notification of an alleged or apparent war crime concerning a member of his command, one of the following appointing authorities will, with all dispatch, appoint an investigating officer to prepare and transmit to him a report of investigation.

b. Officers who exercise General Court-martial jurisdiction (or their designees) are appointing authorities for cases involving personnel under their General Court-martial jurisdiction. The Commanding General, Headquarters Detachment, US Army Element, USMACV (or his designee) is the appointing authority for cases involving US Army personnel assigned to USMACV and any other person believed to be a US serviceman but not sufficiently identified or otherwise provided for by another appointing authority. Commanders of brigades (or their designees), who have Judge Advocate assigned to their staff, are appointing authorities for cases involving personnel of their brigades.

MACV Directive 27-5 reaffirmed the "prohibition against commission of war crimes and related acts" and defined, as well as illustrated, what constitutes a war crime. In part some of the examples indicated in this regulation included: Maltreatment of prisoners of war or detainees; killing without trial spies or other persons who have committed hostile acts; torture or inhuman treatment of a prisoner of war or detainee; and depriving POW's or detainees of the right to a fair trial. This directive was "applicable to all US military personnel and to civilian personnel serving with or accompanying the armed forces in the field." Continuing, it stated "Commission of any act enumerated...or constituting a war crime is prohibited. Violation of this directive will be punishable in accordance with the provisions of the Uniform Code of Military Justice."

The commission of a war crime or the knowledge of and failure to report an alleged war crime was thus a punishable offense. Reporting any incident that could be construed as a war crime was mandatory.

MACV Directive 335-1 directs the procedures for reporting all serious crimes or incidents occurring within RVN involving forces personnel." A serious incident is defined as "any incident which may result in damaging public confidence in the Armed Forces." A specific example of a reportable serious incident is one "involving detainees and prisoners of war for which the US has responsibility under the Geneva Conventions, including death, maltreatment, serious injury, riots, and successful escapes."

g. Reporting of Incidents.
The very nature of the conflict in RVN necessitated an increased awareness of the possibility of accidental injury to friendly military or civilian noncombatants. The frequent employment of massed firepower from a variety of sources increased the likelihood of misdirected ordnance incidents. The intermingling of the nonuniformed foe and the populace not only made positive identification of hostile forces difficult but also contributed to the possibility of accidental injury or death to the inhabitants of some areas. Early in the conflict, these factors and many others associated with this unique war caused great concern at the highest levels for the protection of the noncombatants and the minimization of casualties to those persons not directly involved. Further, when incidents involving either friendly military personnel or civilian nationals occurred, investigating and reporting procedures were mandatory so that proper corrective action could be initiated immediately.

In November 1966, MACV Directive 335-12 was first published and was subsequently modified in November 1967. This directive prescribed the format for reporting significant events without delay. Significant events include, but are not limited to:

1. All incidents, accidental or deliberate, including disasters resulting in major property destruction or loss to friendly personnel, or the killings, wounding, or mistreating of friendly personnel by US, RVN, or Free World Forces.

2. Incidents which could be detrimental to US/GVN relationship. Such incidents include, but are not limited to, the following when caused by Americans:

   a. Injury, death, or mistreating of noncombatants or significant damage to Vietnamese property in the course of tactical operations.

   b. Riots or disorders and involvement in criminal incidents of a serious nature.

   c. Incidents which, because of their nature or the personnel involved, reasonably may be expected to arouse public interest, or which are of sufficient importance to receive widespread publicity.

Initial reports were to be followed by detailed and complete reports in the directed format.

MACV Directive 335-1, as previously indicated, established reporting procedures for all serious incidents or crimes. Any incident which could arouse public interest or cause unfavorable
publicity required reporting under this directive and generally covered those incidents not specifically mentioned by MACV Directive 335-12.

h. Military Assistance Command, Vietnam (MACV) Emphasis

MACV published several other documents pertaining to US policy with regard to ROE, treatment of Vietnamese nationals, and the reporting of war crimes. Letters, memoranda, and messages emphasizing COMUSMACV's concern for these subjects, and reaffirmations of MACV policy were published on many occasions. In addition, the COMUSMACV command policy file emphasized these subjects. At his Commander's Conferences, COMUSMACV repeatedly discussed the necessity for proper treatment of Vietnamese nationals and proper control of firepower. For instance, on 28 August 1966, GEN Westmoreland emphasized the following:

I have five points to cover before we conclude. At your desks are rules of engagement and procedures on control of fires of all types. It is extremely important that we do all we can to use our fires with discrimination, and avoid noncombatant battle casualties. This is a very sensitive subject, both locally, and among our own press corps. Unfortunately, we've had a rash of incidents caused by everything from mechanical failure to human error. I would appreciate your reviewing now, and your continued review, of your safety precautions and procedures on control of fires. Make sure your commanders are thoroughly familiar with the appropriate documents. Henceforth my staff will republish these quarterly, to counter loss of familiarity through turnover of personnel. The percentage of incidents has been minuscule; nonetheless, every civilian killed is a calamity, and we must cut the percentage to the minimum possible.

On 3 December 1967, GEN Westmoreland closed his Commander's Conference by directing each commander to reduce firing accidents, report all accidents/incidents direct to MACV, and insure that all troops understand the "Nine Rules" that govern their conduct in RVN. Documentation of COMUSMACV policy and interest in these areas was and is plentiful.

The necessity for subordinate commanders to implement the MACV directives as well as the stated and implied policies was also emphasized. The chain of command within the MACV unified command afforded the means for the necessary delegation of authority to implement MACV policies. Within the chain of command, subordinate units usually published directives elaborating
upon the regulations of the higher headquarters and insuring that at their lower level of command the specifically directed responsibilities assigned to them were further implemented. Another factor used by subordinate headquarters in determining applicability or the requirement to implement the directives of a higher headquarters was the mission assigned to the subordinate unit.

In the case of USARV, for instance, the absence of an operational combat mission negated the need for combat operations orders, whereas III Marine Amphibious Force (MAF) had a requirement for operational combat missions as well as logistical and administrative support activities. For directives or regulations that were applicable to all personnel regardless of position or mission, the subordinate headquarters might elect not to publish a duplicate directive or regulation.

In such instances, as a general rule, the commander was then held responsible for insuring that individuals within his command were made aware of the provisions of the regulation or directive from higher headquarters which pertained to an individual's actions or inactions. The source of the regulation or directive was therefore not legally important, and the necessity for a subordinate unit to republish each directive of a higher headquarters was not absolute.

2. Implementing Directives

a. United States Army, Vietnam (USARV)

USARV, as the US Army component command headquarters, published directives not only implementing MACV policy, but also initiating internal policy.

Policy and guidance for all echelons of command in planning, conducting, and supervising the military training of individuals and units assigned to or attached to USARV are published in USARV Regulation 350-1, dated 10 November 1967. This regulation prescribed the policy and guidance for all echelons of command in planning, conducting, and supervising the military training of individuals and units assigned or attached to USARV. All units were directed, as a minimum, to schedule orientation and refresher training for all replacements and to strive to achieve the completion of DA mandatory training requirements. In this regard, the requirement for annual refresher training in the Geneva Conventions as prescribed by AR 350-216 was listed as mandatory training. Training in the rules of land war and the handling of PW's and detainees was required to be integrated in other training as the need for such training was ascertained.
The status of individual or unit proficiency dictated the frequency and amount of training to be given.

Procedures for the issuance of the guidance cards to individuals were found in USARV Regulation 612-1. This regulation also established policy with regard to the possession of information cards by all US Army personnel assigned to Vietnam. It specified that upon arrival at either of the replacement battalions, all incoming officer and enlisted personnel would receive the information cards entitled "The Enemy in Your Hands," "Tips on VC Mines and Booby Traps," "Nine Rules," "Standing Orders, Rogers' Rangers," "Tips on the M-16 Rifle," "Code of Conduct," and "Geneva Convention." These cards contain information useful in the performance of the duties assigned to the personnel assigned to USARV. Each individual was to keep these cards in his possession at all times.

USARV implemented the MACV Directive (335-12) pertaining to artillery incidents by publishing USARV Regulation 527-7. This regulation provided the same type information as the MACV 335-12 except that reports were to be immediately electronically transmitted direct to USARV, and followup investigations (either formal or informal) were to be submitted within 15 days to Headquarters, USARV. CG, Americal Division, was specifically cited as a recipient of this directive.

MACV policy with regard to serious incident reports (SIR) was implemented at USARV by Regulation 335-6. Major commanders subordinate to USARV were directed to report serious incidents (defined) direct to CG, USARV. Definitions of serious incidents contained in the MACV directive were provided, and initial reports, as well as interim and final reports, were required in a specific format.

USARV also published regulations that provided implementing policy for the evacuation, processing, and accounting for detained personnel (USARV Regulation 190-2). This regulation also directed that detained personnel would be provided humane treatment under the provisions of the Geneva Conventions.

USARV apparently did not publish an implementing directive to MACV Directive 20-4; however, this MACV regulation was applicable throughout the chain of command and did in fact establish the basis and requirement to inform each individual soldier within RVN of his specific responsibilities.

b. III Marine Amphibious Force (III MAF)

III MAF was an operational headquarters subordinate to
MACV. The Americal Division was assigned to USARV for administrative and logistical support, and, in April 1967, was directed to receive operational direction from III MAF. Formally, the Americal Division was under the operational control (OPCON) of III MAF. III MAF published an extensive set of force orders and I Corps coordinating instructions that provided guidance and policy to the US Marine forces, and other US forces in ICTZ including the Americal Division.

Directives published by III MAF covered training in the Geneva Conventions (Force Order 1570.1A) as well as operational/reporting matters. Instructions were published by III MAF that were designed both to prevent and to prescribe certain conduct which was inimical to the accomplishment of the mission of US forces in Vietnam. This directive referred to the "Nine Rules" for personnel in RVN stating that, in concise terms, this card was the standard of conduct required of all US personnel.

The control of firepower in ICTZ was directed by III MAF Force Order 3330.1 implementing and referencing MACV Directive 525-18. Definitions of a SSZ were included as well as the restrictions previously quoted (MACV 525-18) for the conduct of fire by artillery, mortar, or naval weapons. Inhabited areas could be fired upon "if, in the judgment of the ground commander, his mission would be jeopardized" by warning. This III MAF Force Order was to serve as the standing operating procedure (SOP) as well as have "the force of a USMACV Directive.

The ROE were specified in Force Order 3121.5 which recognized that the requirements for control of firepower were greater than ever before. It stated that, "on the other hand, maximum effectiveness must be achieved in operations against the VC; on the other hand, a conscientious effort must be made to minimize battle casualties among noncombatants and destruction of their property. III MAF stressed the need for individual responsibility and awareness at the lowest levels. The decisions made were recognized as requiring "keen, swift, decisive analysis of the factors involved and must be based on a thorough understanding of the legal and moral principles concerned" especially when dealing with both noncombatants and PW's. III MAF Force Order 3460.3 specifically directs that "No violence will be done to their life or person, no outrages of any kind committed upon them, and, pending delivery to higher headquarters, the wounded and sick will be cared for.

Processing, screening, classifying, accounting, and evacuating PW's are thoroughly discussed in Force Order 3451.2A which includes definitions of the classifications to be accorded individuals prior to determining that they are PW's.
War crimes investigations and the reporting requirements implementing MACV Directive 20-4 are published in Force Order 5820.1.

Serious incident reporting was directed by III MAF I Corps Coordinating Instruction 5830.1A. This document referred to MACV Directives 335-1 and 335-12, and reiterated the requirement for "immediate reports to higher headquarters of any incident that results in death or serious injury to friendly forces or noncombatants."

c. Americal Division

The Americal Division, initially TF Oregon, was responsive to III MAF regulations after being placed under the operational control of III MAF on 22 April 1967. Additionally, the Americal Division was administratively subordinate to USARV. Both III MAF and USARV were well organized, and, as previously indicated, had published many directives dealing with ROE, required reports, minimizing noncombatant casualties, artillery incident requirements, and war crimes investigative procedures. These directives were directly applicable to the Americal Division.

TF Oregon published Regulation 335-6 on 21 March 1967. This directive required immediate reports in a prescribed format for serious incidents, which were defined and illustrated in the same manner as in MACV Directive 335-1 and USARV Regulation 35-6. The TF Oregon directive served as division-level policy guidance for Americal Division troops at the time of the Son My incident.

Division policy with reference to the control of firepower was published as Americal Regulation 525-4 on 16 March 1968. This regulation referenced MACV Directives 95-4, 525-3, 525-9, and 525-18. Although the regulation was not published until 16 March 1968, testimony indicates that Americal Regulation 525-4 was written, staffed, and coordinated prior to the Son My incident; and the policies stipulated therein were well known within the division. This regulation contains no indication, however, that it was intended to supersede earlier regulations of either TF Oregon or the Americal Division. The specifics of Americal Regulation 525-4 include definitions of areas, e.g. SSZ, guidance concerning the conduct and control of firepower, the necessity for minimizing friendly and noncombatant casualties, and the requirement for subordinate units to develop SOP's and implementing instructions.

The TF Oregon SOP was the primary directive in effect throughout 1967 and early 1968 providing guidance and policy to subordinate units. The Americal Division apparently did not publish many regulatory directives during its early stages of formation and organization. The SOP is dated 21 March 1967 and
did provide, in one volume, specific procedures concerning operations, intelligence, personnel and administration, logistics, and other matters. Direct reference was made in this document to minimizing casualties (friendly and noncombatant) and handling of detainees. In addition, the requirement for spot reporting was covered in some detail and directed that spot reports be made expeditiously in a prescribed format.

As TF Oregon became the Americal Division, the SOP was augmented by directives that specifically covered the areas of interest involved in the III MAF, USARV, and MACV directives. On 1 December 1967, Americal Division Artillery published a SOP which provided routine and recurring field operational procedures within the artillery units assigned or attached to the Americal Division. Clearance for artillery fires in or near inhabited areas was in accordance with the ROE stipulated by III MAF and MACV directives, and specifically required spot reports to be rendered without delay in the event of heavy friendly or civilian casualties occurring in short period of time. Supplementing this SOP, the division artillery commander issued several directives further reiterating the requirement for reports of artillery incidents or misdirected ordnance.

Until 15 April 1968, the Americal Division operated under the TF Oregon SOP of March 1967. On 15 April 1968, the Americal Division published a SOP of their own. Thereafter, other directives, regulations, messages, and letters were issued supplementing those in effect and providing implementing instructions for those of higher headquarters. It was only by mid-1968 that the Americal Division achieved, to a reasonable degree, an adequate series of policy guidance directives.

d. 11th Brigade

The 11th Brigade developed a SOP during their organization phase in Hawaii. In September 1967, prior to their deployment to RVN, the brigade received a copy of the Americal SOP (presumably the TF Oregon SOP) and other pertinent regulations that provided the directives and documentation policies of the division. As previously indicated, the subordinate units of the 11th Brigade were subjected to an accelerated training program from late April until deployment on or about 4 December 1967, and, therefore, did not develop detailed regulations concerning operational activities in RVN.

Soon after deployment, however, the 11th Brigade was committed to combat operations. At this time, 11th Brigade operational directives were practically nonexistent except for the SOP developed during training. According to the testimony, this SOP was in effect during the Son My incident although the publication date was not indicated. The SOP was applicable to field combat
operations in a counterinsurgency environment.

The ROE indicated in the 11th Brigade SOP were generally in accordance with MACV guidance. The SOP stated:

b. Missions against known or suspected NVA/VC targets in hamlets and villages occupied by noncombatants will be conducted as follows:

(1) All fire missions on hamlets or villages will be controlled by an airborne or ground observer (FO) and will be executed only after the target has been declared hostile by GVN, Bde FSCC [Brigade Fire Support Coordination Center] and/or Bn Arty LNO [Liaison Officer].

(2) Hamlets or villages not associated with ground operations will not be attacked by gunfire without prior warning (by leaflets and/or speaker systems or other appropriate means) even though light fire is received from them.

(3) Hamlets and villages may be attacked without prior warning if the attack is in conjunction with a ground operation involving the movement of ground forces throughout the area, and if, in the judgment of the ground commander (Bn or higher), his mission would be jeopardized by such warnings.

c. All missions fired on targets or target areas that are in the coastal waters of RVN must be cleared by the Bde FSCC (clearance from GVN Sector US Advisor required).

d. Free-fire areas are coordinated with the sector/subsector US advisor and his VN counterpart, the province/district chief. The province/district chief will establish the restrictions on firing into these areas.

e. Temporary free-fire areas may be negotiated for a specific operation effective for the period of the operation, and are normally more restrictive.

Considerable emphasis was placed on minimizing noncombatant casualties. The SOP directed that "maximum effort will be made to minimize noncombatant casualties during tactical operations" and "troops will be informed of the importance of minimizing casualties and the destruction of property, including livestock."

The SOP further indicated that detainees were to be properly processed by stating that "all personnel captured by US forces as enemy or suspected enemy shall be referred to as a detainee until his status is determined by a brigade interrogator" as a PW, civil defendant, returnee, or doubtful case. The policy for handling of detainees was to be in accordance with MACV Directives 20-5 and 190-3.
Although no reference is made to reporting alleged or apparent war crimes, the requirement for spot reporting of incidents is directed by the SOP. Reporting of serious incidents was directed by the 11th Brigade Regulation 1-3, dated 31 March 1967. The incidents directed to be reported by this regulation included "deaths from other than natural cause to include deaths of foreign national personnel when US Army personnel or equipment are involved." These reports were to be submitted to the Brigade S1.

On 30 January 1968, the first operational directive was published establishing the "criteria for engaging targets by direct and indirect fire in combat operations." This 11th Brigade Regulation, 525-1, directed the ROE for the organic firepower available within the 11th Brigade. The ROE for artillery, mortar, naval gunfire, and aircraft, as directed by MACV and the 11th Brigade SOP, were reiterated. In addition, the individual soldier was provided definitive ROE by this regulation. It stated that, in the employment of small arms and automatic weapons, the utmost care must be exercised to minimize noncombatant casualties and property damage. Specifically, the soldier was directed by this regulation to identify the enemy before engaging:

Personnel who attempt to evade and are identified as members of NVA or VC Forces by the wearing of a uniform, web gear or pack and/or have possession of a weapon may be engaged. Every attempt will be made to halt these personnel by giving the command halt (Dung Lai) and firing warning shots overhead. If attempts to halt evading personnel fail they will then be engaged by fire with intent to wound by firing at lower extremities. The wounded captive will then be treated and evacuated as rapidly as possible for exploitation of intelligence he may possess.

The requirement to minimize casualties and property damage in the employment of all forms of firepower was adequately presented by this regulation. Following higher headquarters guidance, commanders were directed that:

Immediately following the attack of areas inhabited by noncombatants, the force commander will insure that an explanation is given to the populace of the need for firing, stressing the point that the enemy forced the action.

If noncombatant casualties occur regardless of safeguards, medical treatment and evacuation should be provided by the responsible commander, subject to tactical considerations and resources available. Every possible safeguard short of endangering
friendly lives will be used to avoid noncombatant casualties and indifference and indiscriminate destruction of private property when such action is being conducted in populated areas.

Individuals that appear to be attempting to escape or evade may be frightened, innocent civilians. The commander on the site must exercise judgment as to whether to engage these individuals or not. The commander must base his decisions on his overall knowledge of the area, situation, mission, and safety of his command.

This regulation, which had been published in late January 1968, provided the initial framework which guided the actions of subordinate elements of the 11th Brigade. During the early months of 1968, however, the brigade depended primarily upon the SOP for operational guidance, policy, and direction.

It is evident that on 16 March 1968, the personnel within the 11th Brigade were subject to and responsible for not only the provisions of the various directives and regulations published by MACV, USARV, III MAF, and the Americal Division but also those contained in their own SOP. Implementation of the broad SOP guidance which was later spelled out in 11th Brigade regulations was, at the time of the Son My operation, resting on the shoulders of the leaders within the brigade. The need for professional leadership, mature judgment, sound analytical decisions, and effective control of combat actions was clearly evident.

3. Analysis

a. Employment of Firepower and Safeguarding of Noncombatants

From the outset of US involvement, Headquarters MACV recognized that the application of military force in Vietnam must be carefully controlled at all times. The very nature of counter-insurgent warfare generally precluded the massing of firepower unless the target was well away from inhabited areas or positive target identification could be achieved. The US soon attained a vast superiority in firepower that could be properly exploited only when the elusive foe allowed himself to be caught in the open and away from the populace. However, the tactic generally used by the VC/NVA in their attempt to negate the US firepower advantage was to intermingle themselves with the Vietnamese civilian population.

Recognizing that a lack of positive control of firepower in such circumstances would not be in the best interests of the US efforts in Vietnam, MACV developed and promulgated extensive ROE
and command directives governing the employment of firepower by ground, naval, and air forces in Vietnam. By such directives, MACV established that the safeguarding of the lives and property of noncombatants was a matter of prime importance to all elements of the command. MACV directives governing the use of firepower were constantly updated, explained, and clarified; and from 1965 to the present the policy they set forth has been consistent in adhering to the humane standard of protecting the civilians within the combat zone. Other MACV directives in effect during the Son My incident provided guidance and policy with respect to serious incident reporting and spot reports that also were clearly adequate in quantity and scope. At the same time, MACV consistently recognized that correct application of these policies in the Vietnam environment required a high calibre of leadership and a special degree of judgment and discrimination.

MACV Directives 95-4 and 525-18, which were in force in March 1968, provided the ROE and reiterated in detail the objectives previously described. The necessity was clearly stated for all commanders to exercise prudent judgment and restraint in the application of firepower to insure the overall policies and missions of FWMAF. Subordinate headquarters, in some instances, implemented the MACV policies with definitive and specific rules more appropriate to their specific situations. In a few cases, the subordinate headquarters modified the MACV directives. Many of the MACV directives should not have been modified nor implementing regulations published by subordinate headquarters. MACV policy directives that establish the ROE, the procedures for handling of detainees and PW's, and the definitive need to minimize casualties were applicable without modification or amplifying instructions. The Inquiry, during its visit to South Vietnam, noted that several of the more recent MACV directives included instructions precluding any modification or implementing directives by subordinate commands.

It should be noted, however, that the exercise of judgment demanded by COMUSMACV during the time of the incident was retained in the directives of subordinate commands. All such directives emphasized that positive control and prudent judgment had to be exercised in the application of firepower. By regulation, local commanders were required to insure that their subordinates were trained in and controlled by the ROE as well as the MACV policy to minimize senseless destruction and needless casualties during all combat operations. The policies were clearly defined charging all commanders with the tasks of training, directing, and controlling their subordinates, and the responsibility for the orders and actions of their commands.

b. Reporting of War Crimes

The term war crime is a technical expression of a viol-
lation of the law of war by any individual -- every violation of the law of war is defined as a war crime. The soldier receives training in war crime definitions and illustrations initially in basic training and annually thereafter at unit level. He is taught that war crimes are not condoned and are a punishable offense. MACV Directive 20-4 directed that all war crimes -- or an incident or act thought to be a war crime -- were to be reported and investigated. This directive provided definitions and examples of war crimes in addition to specifically directing that any individual having knowledge of any act thought to be a war crime had the responsibility to report the act to his commanding officer. Investigative procedures were also indicated.

This MACV directive was implemented by III MAF, but not by USARV or the Americal Division. In the III MAF regulation, the commanding officer receiving the report of a suspected war crime was required to transmit this report to III MAF utilizing the spot report format. No other channel for reporting suspected crimes other than to his commanding officer was afforded the individual rifleman. If his commander participated in a war crime, the individual soldier's recourse was not specified, although it is apparent that an alternative is required. Channels for reporting over the chain of command are provided, and are available to the soldier, but their use needs to be strengthened. Regulations directing individuals to report incidents such as suspected war crimes should reiterate the use of not only the primary reporting channels but the alternate channels as well.

c. Illegal Orders

The term illegal order is not defined in the dictionary of Army terms. A soldier is taught that an order is lawful unless for some reason it is beyond the authority of the official issuing it. He is also taught as a part of the Geneva Conventions training that persons taking no active part in hostilities or who have laid down their arms shall be treated humanely.

It is apparent that directives and training are inadequate concerning an individual's responsibilities and actions concerning illegal orders. There is a dearth of written information concerning this subject. There is but little discussion of illegal orders in Army regulations or training manuals and even less at subordinate levels. What little discussion is included in any publication is cumbersome and indecisive, and presented in such a manner that it takes a legal officer to interpret it. Indeed, the average officer or enlisted man would have difficulty comprehending it.

Further, the directives and regulations are deficient in explaining that a soldier is a reasoning human being who is expected to exercise judgment in obeying the orders of a superior.
Also lacking is sufficient instruction providing guidance to the soldier that when an order is beyond the scope of the issuing authority and is so obviously illegal, he is expected to recognize that fact as a man of ordinary sense and average understanding. An individual is not expected to blindly obey all orders.

The actions an individual should take when he receives an unlawful order are not clearly defined in any publication. He is most often (and properly) told that disobedience of orders is at his own peril, and acts involved in the disobedience of an illegal order will normally result in a charge of insubordination with its attendant disciplinary action.

The Department of the Army needs to promulgate guidance that will more clearly define illegal orders and individual responsibilities and actions related thereto, yet continue to insure the proper balance between this guidance and the normal requirements of command and control and the traditions regarding discipline within the Army.

d. Directives Not a Substitute for Leadership

The early part of 1968 and especially the Tet offensive presented great difficulties for the units and commanders charged with implementing these policies. The enemy forces had infiltrated into the cities and villages and had become intermingled with the populace. Terrorism and acts of sabotage were rampant, and the individual soldier had become increasingly wary of the local population. The VC disregarded civilian lives in their wanton attacks and suicidal defenses, while FWMF were determined to rout the infiltrators from among the populace. Firepower was employed inside many inhabited areas by both friendly and enemy forces. The purposes may have been different but at times achieved the same results.

Adequate directives and publications that regulated the control of firepower, stipulated the ROE and directed the handling of detainees were in effect during this period, and many were re-emphasized. However, it is a fact that, although the published policies were clear, their application in the circumstances that existed in Vietnam at the time of the Son My incident required above all professional leadership, mature judgment, and sound decisions.

C. GOVERNMENT OF VIETNAM POLICY/DIRECTIVES AS TO SON MY

Son My Village was located within that section of Quang Ngai Province which had been designated as a priority area for military offensive operations and for pacification in 1968. The ARVN Corps/III MAF Combined Campaign Plan 1-68 specified that GVN pacification activities would be increased by 50 percent over the 1967 level within Quang Ngai Province. However, since Son My
Villages and the surrounding area were under VC control, and had been since 1964, the primary effort was devoted to conducting military offensive operations within that area to force the VC out so as to create conditions favorable to pacification. In early 1968, US and ARVN forces had separately assigned areas of operation in which they normally conducted independent operations. Coordination was required only if operations outside the normally assigned AO were planned and on matters of special interest. ARVN forces had the primary responsibility for the Son My area. However, since they lacked the capability to operate in the area, or at least were reluctant to, US forces frequently obtained an extension of their AO from the 2d ARVN Division in order to engage the 48th Local Force Battalion and other VC forces.

Son My, being VC controlled, had no GVN administrative authorities living there. The government had repeatedly encouraged all the residents to move into established secure areas, as many had done. The remaining residents of Son My were considered to be VC, or VC sympathizers at a minimum, by GVN authorities. For all practical purposes, the local GVN authorities considered the area a free fire zone (unrestricted) for artillery fires; they placed no restriction on the targets which could be engaged. However, the District Chief did retain the final authority for approving fires in the area to insure that Vietnamese forces (ARVN, RF/PF) were at a safe distance from proposed targets. An area's being considered a free fire zone did not negate the established ROE which should have been considered before engaging any target. The GVN officials recognized their responsibility for civilians remaining in the area but accepted the fact that these people would, by their own choice, be subjected to artillery fire and the results of any offensive action necessary to free the area of VC. According to the deputy Province Senior Advisor, Quang Ngai Province officials placed no restrictions on Vietnamese forces operating in this area. The District Senior Advisor stated that it was normal practice for the Vietnamese forces, if they were successful in penetrating the area, to burn the hootches and to destroy the bunkers and tunnels.

Even though an area might be VC controlled, specific rules, applicable to both US and RVN forces, were established for the safeguarding of Vietnamese property. The I ARVN Corps/III MAF Combined Campaign Plan 1-68 specified that:

In VC controlled areas, RVNAF, US and other PAVN/MAF must take all practicable measures to minimize the destruction of both public and private property and take appropriate measures as feasible to protect such property. It must be remembered that civilians who live in VC controlled areas may be under VC control against their will and may not
be sympathetic to the enemy. Treating such persons like enemies, destroying their property or depriv­ing them of their goods is incompatible with long range objectives of expanding the influence of the GVN throughout RVN.

Policy stated in the Combined Campaign Plan regarding private property and goods is as follows:

(1) Disposition of private property and sup­plies is the responsibility of GVN officials.

(2) Destruction of private property, homes, livestock, and goods is forbidden except in cases of overriding operational necessity.

(3) The destruction of dwellings and livestock as a denial measure, is the responsibility of GVN authorities for employment of US forces in the de­liberate destruction of noncombatants' property as a denial measure will be referred to Headquart­ers MACV for the personal decision of COMUSMACV.[69]

No specific GVN policy statements or directives pertaining solely to Son My were obtained by the Peers Inquiry. However, the policy regarding the protection of Vietnamese citizens and their property was clearly stated in the 1968 Combined Campaign Plan. It is equally clear that the GVN/ARVN authorities within Quang Ngai did not apply this policy to VC-controlled areas, especially Son My. Because Son My was a VC stronghold, and had been for many years, GVN officials had little interest in the area. They were primarily concerned with the reestablishment of GVN control in areas lost during Tet and the prevention of a sec­ond attack on Quang Ngai City which was believed to be imminent. As a practical matter, GVN authorities imposed no restrictions on operations conducted in the Son My area.
Chapter 10

REPORTS, INVESTIGATIONS, AND REVIEWS

A. THE IMMEDIATE REPORTS, INVESTIGATIONS, AND REVIEWS, MARCH-EARLY APRIL 1968

1. Operational and Intelligence Reports

Significant reports concerning Task Force (TF) Barker's operations on 16 March commenced shortly after the unopposed landing of the lead elements of C Company at 0730 hours. For this period there is no record of the operational reports submitted by the rifle companies of TF Barker to their control headquarters; such reports were normally submitted via radio to the TF Barker Tactical Operations Center (TOC), recorded in the Operations Journal there, and if deemed of significant importance, relayed to the 11th Light Infantry Brigade for recording and possible further transmittal to headquarters of the Americal Division.

a. Reports of Enemy Casualties

The first report from TF Barker to the 11th Brigade concerning enemy casualties came at 0735 hours and noted that two Viet Cong (VC) had been killed in the vicinity of the landing zone (LZ) by C Company. Within 25 minutes of the initial report, gunships supporting the helicopter lift had reported killing an additional six VC; four of these in an area 500 meters west of C Company's LZ, and the remaining two at a location approximately 2 kilometers south-southwest of the same LZ. At 0758 hours, 11 minutes after the last elements of C Company had landed on the LZ, the TF reported to 11th Brigade that C Company reported killing an additional 14 VC approximately 200-300 meters east of the LZ. The next report of casualties is recorded in an 0840 entry in the TF Barker Journal which states that C Company had counted 69 VC killed in action (KIA) at the same location where the previous 14 VC casualties were reported being killed. The journal entry also indicates that the 11th Brigade was notified.

Entries in both the 11th Brigade and Americal Division Journals identify 69 VC KIA in the C Company area; however, they cite the location as 600 meters northwest of that reported in
the TF Barker Journal and attribute the casualties to artillery fire. No explanation can be found for the discrepancy in these reports; however, since TF Barker in a subsequent report identifies 68 casualties as being killed by artillery fire, it is reasonable to conclude that this cause of death was specified by TF Barker during some communication with 11th Brigade. This discrepancy is examined in detail in a later section of this chapter.

No further enemy casualties were reported by C Company on 16 March although an entry in the TF Barker Journal at 1555 hours states that C Company had reported "10-11 women and children killed by artillery or gunships" and that this figure was not included in previous reports of VC casualties. This information is not reflected in journal entries for the 11th Brigade or the Americal Division although the TF Barker entry indicates the 11th Brigade was notified. This same TF Barker Journal entry also reports that none of the previously reported body count of B Company were women and children. A total of three enemy weapons was reported captured by C Company; these were the only weapons reported captured by TF Barker on this date.

In summary, TF Barker reported a total of 90 VC killed in C Company area of operations (AO) within a period of 70 minutes following the initial touchdown of its forces in the LZ; after 0840 hours, no additional VC casualties were recorded in the C Company area. Throughout the day C Company experienced only one US casualty, an apparent accident in which a soldier shot himself in the foot.

In the area to the east of C Company, B Company was reported by TF Barker to have killed 12 VC at 0955, 18 more killed at 1025, and an additional 8 killed at 1420 hours; all at a location approximately 700 meters east of the B Company LZ. This total of 38 VC KIA by B Company, when added to those reported by C Company, represented a VC body count of 128 and a total of three weapons captured which was reported to the 11th Brigade and Americal Division by the evening of 16 March. The Americal Division Journal initially reflected a total of six weapons captured; this was later changed to three. This discrepancy is not explained.

b. Reports of US Casualties

Total US casualties for TF Barker on 16 March were two killed, ten wounded, and one self-inflicted wound. Eleven of the casualties caused by enemy action were a result of mines and booby traps. Only one casualty, a man from A Company, was wounded by small arms fire. No casualties were caused by direct contact with the enemy in the C Company or B Company areas.
c. Reports of Civilian Casualties

First reports of possible casualties among noncombatants occurred as a result of COL Henderson's flight over the Son My area after C Company had landed in its LZ. COL Henderson stated that he descended to an altitude of 100-200 feet to examine the bodies of two armed and uniformed VC who had been killed earlier by gunships of the 174th Avn Co. During this maneuver he observed two separate groups of bodies which appeared to be noncombatants. One group consisting of an old man, a woman, and a child, was located about 150 meters south of My Lai (4), on a trail leading to Route 521. Approximately 150 meters farther south, lying in a small ravine near a trail, was another group consisting of two men and a woman. Neither the location nor the number of these casualties coincides with any casualty report submitted by elements of TF Barker.

COL Henderson further stated that at about 0930 hours, while at LZ Dottie, he met with MG Koster who had landed there to refuel, and advised the latter that he observed what he believed to be six to eight noncombatant casualties in the area of C Company's operation. COL Henderson recalls MG Koster's reaction to this as a directive to COL Henderson to determine how these casualties had been incurred. In his appearance before the Inquiry, MG Koster could not recall this specific incident but did say that on two separate occasions on 16 March, COL Henderson advised him of noncombatant casualties.

COL Henderson, in a prepared statement dated 27 November 1969 (exhibit S-3), stated that after speaking to MG Koster, he returned over the area of My Lai (4) and discovered that TF Barker was not submitting the "required reports" to the 11th Brigade TOC. Henderson stated that he then directed LTC Barker to bring the TF headquarters "up-to-date" and to insure that required reports were submitted to the brigade TOC. He stated that at that time he also told Barker to "determine how many civilians had been killed and whether they had been killed by artillery, air, or small arms fire." In this same statement, which is in conflict with testimony Henderson presented to this Inquiry, he also stated that he talked to Barker twice on the afternoon of the 16th, periodically over-flying the AO of the TF until 1900 hours that date. During these discussions, according to Henderson, Barker advised him that a total of 128 enemy and 24 civilians had been killed in the operation.
In contrast to his prepared statement (exhibit S-3), COL Henderson in his testimony before this Inquiry stated that he received a report from LTC Barker during the afternoon of 16 March that from 12 to 14 noncombatants had been killed thus far in the operation. He further stated that LTC Barker was unable to provide detailed information concerning these casualties, and that he directed Barker to obtain an exact count of noncombatant casualties and information concerning the age, sex, and apparent cause of death of each.

As a result of COL Henderson's interest in the matter, at about 1530 hours TF Barker operations section received a requirement from 11th Brigade to determine the number of civilian casualties and the manner in which they were killed or wounded. It is this request which probably resulted in the TF Barker Journal entries at 1555 hours on 16 March which state that B Company reports that none of the VC body count previously reported by that unit includes women or children and that C Company reports "approximately 10 to 11" women and children were killed by artillery or gunships.

The next incident concerning casualties is the subject of considerable conflict in the testimony of the principals involved. This matter concerns the issuance of an order by COL Henderson to TF Barker to have C Company reverse direction and sweep back through My Lai (4) to determine the exact count of civilian and/or VC casualties. Testimony confirms that such an order was issued, received by TF Barker, and relayed by MAJ Calhoun to CPT Medina between 1500 and 1530 hours on 16 March. The evidence further confirms that its issuance to CPT Medina via radio was monitored by MG Koster who countermanded the order shortly thereafter and directed that COL Henderson be so advised. Both COL Henderson and MG Koster contended in their testimony, however, that this action occurred at a later date; Henderson recalled it as an action resulting from his interview with a helicopter pilot and an 18 March order to investigate certain aspects of the Son My operation. MG Koster was less certain of his recollection but recalled it as occurring late in the afternoon on 17 or 18 March while he was returning to his command post at Chu Lai, and related it to the critical nature of helicopter airlift and the extraction of Company from the Son My area. In his testimony, MG Koster did not dismiss the possibility of the event's having occurred on 16 March.

All other personnel related to this incident, i.e., 11th Brigade S3, TF Barker S2 and S3, and the CO, C Company were certain the event transpired on 16 March. A review of all available evidence and analysis of events as they occurred during the period 16-18 March, leads to the conclusion that this action occurred on the afternoon of 16 March, about the time C Company had closed into its night defensive position.
During the course of the radio conversation between MG Koster and CPT Medina, in which the former countermanded COL Henderson's order, CPT Medina stated he advised his commanding general that C Company had observed 20-28 civilian casualties during the day. Later that same day, at about 1900 hours, COL Henderson stated he called MG Koster by telephone and advised him that his most recent report from LTC Barker revealed an increase in the civilian casualty toll from "12 to 14" to 20. He also stated he informed MG Koster that he had directed LTC Barker to obtain information concerning the age, sex, and cause of death of these casualties. According to COL Henderson, MG Koster replied that he was also interested in obtaining this information. MG Koster testified that he did not recall the details of this conversation. According to COL Henderson, LTC Barker subsequently provided a more detailed report of the 20 civilian casualties which identified the cause of death as artillery and gunship fire.

On 18 March, sometime prior to 1400 hours, COL Henderson visited C Company's location in the field to question CPT Medina about the allegations made by WO1 (now ILT) Thompson, which are discussed in detail in a later portion of this chapter. CPT Medina stated that at that time he reported to COL Henderson that he believed approximately 20 to 28 noncombatants had been killed during the operation—which compares with the 20-28 reported by CPT Medina on 16 March to MAJ Calhoun and MG Koster, and the 20 which had been reported to COL Henderson by LTC Barker on the 16th and 17th and relayed by him to MG Koster.

To this date there is no satisfactory explanation for the conflict in civilian casualty figures of "12 to 14" reported by Barker on 16 March and the "10 to 11" reported in TF Barker's Journal at that same time; of the figure 20 submitted by Barker on the evening of 16 March and the "20 to 28" reported by CPT Medina shortly before that period. It can only be concluded that neither commanders nor staff officers checked reports of noncombatant casualties or gave substantial attention in this instance to such matters.

Regardless of the discrepancies in figures, it is clear that LTC Barker, COL Henderson, and MG Koster all had knowledge, as early as the morning of 16 March, that a number of noncombatants had been killed in My Lai (4). It is equally clear that no action was taken to report such casualties to any headquarters outside of the Americal Division despite the fact that Military Assistance Command, Vietnam (MACV) and III Marine Amphibious Force (III MAF) directives required this action.

10-5
2. Information and Orders Transmitted on 16 March

During the operation of 16 March, information concerning irregularities in My Lai (4) was transmitted over the various command and control radio nets being used by units involved in the operation. Similarly, orders were issued over these same networks which reflected a knowledge by various command elements of these irregularities and an attempt to regain control over combat units. Fixing the exact times and sequence of such radio transmissions was made difficult because of the inability of some witnesses specifically to recall times and events and of the efforts of others to withhold information from the Inquiry. However, the principal significance of the following reconstruction of message traffic of 16 March does not lie in the time or the sequence of individual messages. Rather, the significance is the information these messages contain and the awareness of events in My Lai (4) which had been gained by persons who heard such traffic.

The first of these transmissions probably occurred around 0900 hours and was attributed by three witnesses to COL Henderson. In this transmission to elements of TF Barker, COL Henderson is quoted as saying, "I don't want any unnecessary killing down there." Such a report could have been a logical result of COL Henderson's earlier sightings of noncombatant casualties. This transmission may explain a subsequent action by CPT Medina at about 0915 hours when he issued an order to at least the 2d Platoon, to stop the shooting.

The next message which referred to casualties among noncombatants probably occurred around 1000 hours and was broadcast over the air-ground radio net and monitored by the operations sergeant of B Company, 123d Aviation Battalion, SP5 (now SSG) Kubert. The message came from an unidentified pilot who stated that "Shark" gunships (174th Avn Co) were making a gun run on civilians. SP5 Kubert stated that this message prompted a telephone call from either CPT Moe, the operations officer, or MAJ Watke, the company commander, to TF Barker, advising the TF of the message. The preponderance of the evidence available to the Inquiry indicates that such a gun run probably was not made and that the casualties observed in the vicinity of Route 521 were caused by ground troops.

Approximately 30 minutes later, at about 1030 hours, as the helicopter which was evacuating an accidentally wounded soldier from C Company was departing the area, the pilot broadcast a message to the effect that he had seen a large number of bodies at My Lai (4). CPT Medina stated that it was shortly after this that he received a call from MAJ Calhoun stating that a helicopter pilot had said he thought some noncombatants
had been shot and killed. CPT Medina stated that MAJ Calhoun advised that he wanted to make sure this was not being done. MAJ Calhoun denied knowledge of this event.

There is testimony from CPT Kotouc, that sometime during the morning of the 16th he heard a radio transmission from the aeroscout team of Company B, 123d Aviation Battalion, in which the sender reported that an unarmed person was being shot at by a machinegun. CPT Kotouc goes on to say that MAJ Calhoun then called both CPT Michles and CPT Medina and told them to be sure that they were not killing any civilians. In his testimony before the Inquiry, MAJ Calhoun confirmed the events as related by CPT Kotouc.

Also about midmorning another call came in to the TF Barker TOC from Company B, 123d Aviation Battalion advising MAJ Calhoun that noncombatants were being killed in My Lai (4). 5FC Stephens, the intelligence sergeant for TF Barker, overheard this message and a subsequent message by MAJ Calhoun to LTC Barker, advising him of the report. MAJ Calhoun denied knowledge of this event in his testimony.

A series of messages which were said to have been transmitted over the C Company command net are also of significance. The first of these probably occurred at about 1030 and was purportedly made by MAJ Calhoun to CPT Medina. The message was an instruction "not to kill women and children." MAJ Calhoun in his testimony denied knowledge of this transmission. The second message was purportedly from an unidentified helicopter pilot who, according to the witness, stated that "from up here it looks like a blood-bath. What the hell are you doing down there?" The witness could not recall the time of the message or to whom it was directed. The third in this series of messages was overheard by another soldier from C Company who testified that shortly after noon, LTC Barker called CPT Medina. Barker purportedly advised Medina that he had a report "from higher headquarters that there were some civilians being killed," to which Medina replied that he "was positive it wasn't his people." It is appropriate to note that one of the reasons why Barker and Calhoun may have used the C Company net rather than the TF net, was to preclude the transmissions being monitored by commanders and staff officers at higher headquarters.

A further message of significance was said to have been transmitted over the air-ground radio net and was monitored by CM Kirkpatrick, the 11th Brigade operations sergeant at Duc Pho. The message was not a report but apparently a conversation between two individuals, one of whom said, "If you shoot that man, I'm going to shoot you," or words to that effect. The nature of the transmission prompted CPT Henderson, Assistant S3,
11th Brigade, to call the TF Barker TOC by telephone and inquire as to the reason for that kind of radio traffic. In their testimony, TF Barker personnel who were in the TOC at the time, denied recollection of the incident.

Each of these radio transmissions reflected the existence of unusual circumstances concerning the event at Son My. To the commanders and staff officers monitoring the command nets, these messages should have acted to alert them that the operation of TF Barker was not a normal combat assault. No conclusions can be reached solely on the basis of these transmissions; however, when viewed in light of other actions and reports which occurred during this same time period, it would appear that commanders in the Son My area should have been alerted to the unusual nature of TF Barker operations during the morning hours of 16 March.

3. Report of WO1 Thompson and Other Aviation Personnel

As part of the combat support being provided TF Barker on 16 March, an aero-scout team consisting of one light observation helicopter, OH-23, and two UH-1B gunships from Company B, 123d Aviation Battalion, was providing aerial surveillance to locate and take under fire enemy forces in and around the area of Son My. As part of this team, the OH-23 performed the scouting or reconnaissance function, flying close to the ground to detect enemy locations and movements, while the two gunships flew at higher altitudes, protecting the OH-23 and providing firepower to engage the enemy. The pilot of the OH-23 was WO1 (now 1LT) Hugh C. Thompson. He was accompanied on this operation by his crew chief SP4 Glenn W. Anderotta and gunner, SP4 (now Mr.) Lawrence M. Colburn.

Because of the configuration of the aircraft, communications between the aero-scout team and the ground unit they were supporting, were limited to intermittent frequency modulated (FM) voice between the high gunship and the TF Barker command net. Neither the OH-23 scout nor the low gunship was in direct contact with the ground unit they were supporting. For WO1 Thompson to communicate with ground elements, it was necessary for him to transmit to the high gunship, which in turn would contact the ground unit. This information is useful in understanding the actions of the aero-scout team, which follow.

This aero-scout team arrived in the vicinity of My Lai (4) in time to observe the artillery preparation terminating at Company's LZ and commenced its reconnaissance at around 0730 hours in the area generally south of Route 521. It continued to operate south of Route 521 until such time as the helicopter
gunships supporting the combat assault of C Company had cleared the area, at which time it began reconnoitering north of the road in the vicinity of My Lai (4). From 0745 hours until approximately 0830 hours, the aero-scout team performed its mission without unusual incident. One enemy was taken under fire south of the hamlet, approximately 40 rounds of 60mm mortar ammunition were discovered southeast of My Lai (4) on Hill 85, and a number of dead and wounded civilians were noted along the road and in the rice paddy south of My Lai (4). Noting the absence of enemy fire, Thompson told the gunship that he would mark the location of the wounded with smoke grenades and that the infantry unit should send assistance to these personnel. Thompson proceeded to mark the location of the wounded during his reconnaissance south and west of My Lai (4) until approximately 0830 hours when he departed for LZ Dottie to refuel.

WOL Thompson and his aero-scout team returned to the My Lai (4) area at approximately 0900 hours and resumed their reconnaissance. From this point forward there is some contradiction in testimony concerning the exact time and sequence of events observed by WOL Thompson. These differences do not extend to any significant variance in the substance of testimony and are not considered critical to the investigation. The events related below follow the version reported by WOL Thompson and include only the major incidents experienced by him. The facts and their sequence are generally corroborated by other members of the aero-scout crew who were present in the area.

Upon resumption of the reconnaissance mission over My Lai (4), WOL Thompson and his crew noted that many of the wounded civilians previously identified to the ground elements, were now dead. At about 0915 hours, WOL Thompson noted the approach of US military personnel to a location Thompson had previously marked with a colored smoke grenade. Both Thompson and his gunner, SP4 Colburn, stated that they observed an individual wearing a captain's insignia of grade on his helmet approach a wounded girl who was lying on the ground. The captain walked up to the woman, according to Colburn, prodded her with his foot, and then stepped back several paces and fired into her body with his M-16 rifle. There is considerable testimony from other witnesses who reported this as an act of self-defense.

The OH-23 helicopter then moved eastward to an irrigation ditch which ran along a tree line approximately 100 meters east of My Lai (4) and 300 meters east of the location where TF Barker TOC had recorded 84 VC having been killed some 90 minutes earlier. As they approached this ditch, both WOL Thompson and his gunner noted that it con-
tained a number of bodies which they later reported as between 50 and 100 persons. Upon closer investigation, Thompson noted that some of the persons in the ditch were still alive. He stated he landed his helicopter in close proximity to the ditch and spoke to a "colored sergeant" who was standing nearby, advising him that there were wounded women and children in the ditch and asking if there were not some way in which the sergeant could help the wounded. The sergeant replied in words to the effect that "the only way he could help them was to kill them." Thompson considered the reply to have been made in jest and did not take the response seriously. Instead, he stated to the sergeant, "Why don't you see if you can help them," and returned to the helicopter to resume his reconnaissance.

As the helicopter was leaving the ground, the crew chief, SP4 Andreotta, who was sitting in an outside seat, reported over the intercom that a sergeant (not the one to whom Thompson had previously spoken) was shooting into the ditch. WO1 Thompson turned and saw the soldier holding a weapon which was pointed toward the ditch. Testimony of other witnesses before the Inquiry generally substantiated the facts as related by Thompson except that the sergeant to whom he originally spoke was identified by members of the platoon as an individual of Philippine ancestry who could not understand Thompson. Witnesses stated that the sergeant called to a lieutenant standing nearby and the conversation actually ensued between Thompson and this lieutenant--later indentified as 2LT (now 1LT) William Calley.

The series of events so far--the shooting of the wounded girl; the discovery that during the period of refueling, the wounded civilians had died; the large number of bodies in the ditch; the shooting into that ditch by the sergeant; and the number of bodies along Route 521 and in the village--all combined to cause great concern on the part of WO1 Thompson. In this frame of mind, Thompson flew east of My Lai (4) and observed in front of the advancing US forces a small bunker into which a group of Vietnamese--old men, women, and children--were moving. Having seen his previous efforts to save noncombatants frustrated, Thompson elected to land his helicopter between the advancing troops and the bunker containing the noncombatants. WO1 Thompson then directed his crew chief and gunner to take the M-60 machineguns which were mounted on their aircraft, and to cover his movements "real close." WO1 Thompson then walked from his helicopter toward the US lines and spoke to an individual whom he later indentified as LT Calley. It is possible that this identification has been confused by Thompson with the officer he previously spoke to at the ditch; there is some evidence that this officer probably was the platoon leader of C Company's 2d Platoon.
W01 Thompson stated that he advised the individual of the Vietnamese in the bunker and sought his assistance in getting them out of the bunker alive. According to Thompson, when this individual replied with words to the effect that "the only way to get them out is with a hand grenade". Thompson responded with the remark that the ground commander should "just stop his men and I'd get them out without killing them."

Witnesses agreed that Thompson then left the individual, walked forward of the friendly lines toward the bunker, and signalled for the bunker occupants to come forward. The occupants left the bunker; Thompson gathered them together and radioed for one of his gunships which landed and, in two trips, evacuated the civilians to the southwest near Route 521, without further incident.

Becoming airborne once again, W01 Thompson queried his crew to determine if they wished to return to the location of the ditch where they had seen the sergeant firing in order to determine if there were survivors. The crew responded affirmatively and so, once again, Thompson landed the OH-23. Thompson dismounted with the M-60 machinegun to provide security. His two crew members went into the ditch and removed a small child who had been shielded by the body of a young woman. Thompson was told by his crew that there were other survivors; however, the capacity of the helicopter precluded evacuating more than the one child. One of the crewmen then held the child on his lap while Thompson flew the helicopter to a Vietnamese hospital at Quang Ngai.

After this they once again returned to LZ Dottie to refuel the aircraft.

W01 Thompson arrived at LZ Dottie between 1100 and 1130 hours. He was greatly concerned over the "unnecessary killing" he had seen and determined that this matter would be reported through proper channels. On the flight-line at LZ Dottie he encountered other pilots and crew members from his company who were also concerned over similar incidents they had seen. In testimony before the Inquiry, witnesses stated that several of the air-crew members were voicing complaints and at least initially, joined with W01 Thompson in stating their protests.

Upon landing, W01 Thompson encountered his section leader, CPT (now Mr.) Barry C. Lloyd, and related to him his deep concern over the events he had observed that morning. Both Thompson and Lloyd, possibly in the company of other aviation company personnel, went to the B Company operations van where Thompson reported to his commanding officer, MAJ Frederic Parte.

Part of the ensuing conversation was heard by SP5 Lawrence Kubert who was on duty in the van at the time.
There is some discrepancy between what WO1 Thompson believed he told his commanding officer and that which MAJ Watke in his testimony claimed he received and subsequently reported through his chain of command. WO1 Thompson stated he believed he gave MAJ Watke the complete contents of what has been referred to as the Thompson Report. Watke on the other hand acknowledged that Thompson told him of lots of "unnecessary" and "needless" killing—"principally women, children, and older men"; of the confrontation between Thompson and the ground commander; the evacuation of civilians by gunship; and the evacuation of a child to the hospital. Watke claimed no recollection of a captain (or any individual) shooting a woman; of a ditch containing bodies; any grouping of more than 2 or 3 bodies; or of any person shooting into bodies. MAJ Watke stated he thought his subordinates were "over-dramatizing" what they saw, but nevertheless gained the impression that about 30 noncombatants had been killed.

Those personnel who were present for at least part of the time that Thompson reported to Watke—CPT Lloyd and SP5 Kubert—in their testimony generally agreed with what Watke stated was told him by Thompson. Both agree that Thompson was angered, but neither could recall Thompson's mentioning anyone shooting a wounded woman, anything about a ditch containing bodies, or anyone shooting into such a ditch. They also agreed that the allegation of needless killing was clearly stated (Kubert stated the term "murder" was used) and that after Thompson had completed his report, there was a clear understanding that a serious charge had been alleged against TF Barker. It is appropriate to note that much of what MAJ Watke received from WO1 Thompson was reinforced by the complaints of other members at the time Thompson made his report and later on during the day when, according to MAJ Watke, other people who were witnesses to the events at My Lai (4) "came to me (and said)....that there were people killed out there."

In succeeding parts of this report, references will be made to the Thompson Report—as such, the Thompson Report is considered an outline of the experiences of WO1 Thompson from the time he arrived over My Lai (4) at 0730 hours, 16 March, until he returned to LZ Dottie to refuel at approximately 1130 hours.

4. Command Response to the Thompson Report

At this point, there was a requirement for immediate and positive reaction to the Thompson Report. Instead, MAJ Watke stated he "thought the matter over" for 15 minutes and
then went to the TF Barker TOC to report the allegation to LTC Barker. Barker was reported by Watke to have evinced no surprise at the charge—probably because he had already gained a knowledge of some of the incidents through radio transmissions and telephone calls already discussed—and advised Watke that he would look into the matter. According to Watke, LTC Barker then made arrangements to depart the area and visit the unit involved in the allegation. Watke stated he was satisfied that the matter was now in the hands of someone who could take the necessary corrective action.

Watke's subsequent actions during the afternoon of 16 March are not clear since of the three principals involved—Barker, Calhoun, and Watke—LTC Barker is deceased and MAJ Calhoun refused to testify further on the grounds that such action might be self-incriminating. Watke stated that sometime during the afternoon of the 16th, he again saw LTC Barker who advised Watke that after visiting C Company's location and speaking to people on the ground, he could not locate the individual with whom Thompson had had the confrontation. MAJ Watke testified that Barker further advised him that while a small number of noncombatants had been killed in My Lai (4), it was "a result of justifiable situations" and that Barker had found nothing to indicate that a large number of people had been killed. In considering the adequacy of MAJ Watke's subsequent actions, it should be noted that he (Watke) "didn't believe Colonel Barker."

Watke's next known action relevant to this matter came at about 2200 hours 16 March, 10 hours after Thompson had made his report. At this time, MAJ Watke at last went to his immediate superior, LTC Holladay, commander of the 133rd Aviation Battalion.

It is difficult to understand why MAJ Watke, after receiving a report which he recognized as "very severe," would initially content himself with advising only the commander of the TF. While he had received considerable corroboration of Thompson's story from other personnel, it would have been a simple and logical step to have confirmed some of the allegations through low-level reconnaissance, using one of Watke's available aero-scout teams. The need for such action should have become even more apparent later in the afternoon of 16 March when LTC Barker told Watke that he had found no substance to the Thompson Report. It should have been clear to MAJ Watke, after receipt of LTC Barker's denial, that no further action could be taken unless Watke initiated it. Yet despite his belief that Barker was lying, Watke took no further action until late that night when he reported to LTC Holladay at the latter's quarters in Chu Lai.
Testimony concerning the details of the information which Watke passed to Holladay in their meeting contains some discrepancies. LTC Holladay's version of Watke's report to him on 16 March cited specific items of the Thompson Report which Watke did not recall providing him. Holladay stated that Watke informed him at that time of such things as the bodies in the ditch and the sergeant shooting into the ditch—items which Watke did not remember, but did not dispute hearing from Thompson or reporting to Holladay.

While puzzling, such discrepancies do not affect the conclusion that allegations of a major war crime were transmitted by Watke to Holladay. Both LTC Holladay and Watke agreed that Watke reported Thompson's charge that there had been lots of "unnecessary" and "needless" killing—"primarily women, children, and older men." LTC Holladay stated that he was greatly concerned over the seriousness of the matter, but after "agonizing" over the report for a long time, decided against awakening his superior, BG George Young, Assistant Division Commander.

It is difficult to understand why LTC Holladay took no steps to verify the allegations made or to obtain information first-hand from Thompson or any of the other pilots or crew members who were living at Chu Lai. This omission was to be repeated at the Assistant Division Commander and Division Commander levels and was a major reason why the full contents of the Thompson Report, and an appreciation of the enormity of the atrocity, apparently did not reach those levels of command. Until the Department of the Army investigation was initiated a year later, only MAJ Watke and COL Henderson (which will be explained in more detail later) had interviewed WO1 Thompson concerning his observations and actions on 16 March.

At 0800 the following morning, 17 March, LTC Holladay and MAJ Watke reported to the Assistant Division Commander, BG Young. MAJ Watke recounted for BG Young the allegations he had received from Thompson and other personnel of his unit. In his account of this meeting, BG Young stated that he was not apprised of any charges of indiscriminate or unnecessary killing of noncombatants; he gained the impression from MAJ Watke that the matter of major concern was the fact that there had been a confrontation between the ground forces and an aviation unit resulting from the fact that noncombatants had been caught in a cross-fire between US and VC forces. By BG Young's account, Watke made no mention of a large number of bodies in a ditch; of an individual firing into a ditch containing bodies; of a captain shooting a woman; of any reference
to noncombatant casualties; or of other aviation personnel confirming Thompson's Report. LTC Holladay was equally clear that at this meeting MAJ Watke told BG Young of the allegations concerning the bodies in the ditch, the sergeant firing into the ditch, the confrontation between Thompson and a ground commander, and the excessive killing of noncombatants by TF Barker. MAJ Watke testified that he repeated to BG Young the same account he had heard from his men and related to LTC Holladay the night before, including the fact that Thompson was not the only source of the allegations.

At about noon on the same day (Sunday, 17 March), BG Young advised MG Samuel Koster, the Commanding General of the Americal Division, of the allegations he had received from the Aviation Battalion. The testimony of both MG Koster and BG Young is in general agreement that only a very small part of the Thompson Report was given to the Division Commander. In his testimony before this Inquiry, MG Koster specifically denied receiving any report of a captain shooting a woman, of bodies in a ditch, of an individual shooting into a ditch, of unnecessary killing of noncombatants, or of the fact that other aviation personnel had confirmed Thompson's allegations. MG Koster testified that as a result of the meeting, his two primary concerns were that ground troops had endangered civilians by firing more than the circumstances required, and that there had been a confrontation between ground and aviation units. However, in a previous statement given to the Criminal Investigation Division (CID), MG Koster acknowledged that during this meeting with BG Young he was advised that there had been some "indiscriminate shooting of Vietnamese civilians." In any event, the meeting terminated with MG Koster's directing BG Young to instruct COL Henderson to investigate at least two matters, i.e., the confrontation and the allegations that troops fired more than was required.

The discrepancies in the testimony of BG Young and that of LTC Holladay and MAJ Watke as to what MAJ Watke reported to BG Young is of crucial significance in the evaluation of all that followed. In his testimony MG Koster confirmed parts of BG Young's account of their conversation on 17 March, which would tend to support BG Young's version of what MAJ Watke had reported to him that morning. On the other hand, it seems most unlikely that Holladay and Watke would have relayed a version of the Thompson Report which emphasized the confrontation between members of their unit and the ground forces and omitted mention of the indiscriminate killing of noncombatants that had caused the confrontation. Having every reason to expect that their report would initiate an immediate investigation, Holladay and Watke had no discernible reason for eliminating from the Thompson Report the allegations of indiscriminate killing of
noncombatants by TF Barker when they relayed it to BG Young. The testimony of LTC Holladay and MAJ Watke, supported by all considerations of logic and self-interest of the parties, compel the conclusions: (1) That BG Young was told about Thompson's charges of indiscriminate killing of noncombatants, and (2) that BG Young passed such information on to MG Koster.

It would appear that both general officers sought in their testimony to understate the complaint of WO1 Thompson as relayed to them and to rationalize in this way their subsequent lack of affirmative action. Such a conclusion suggests that these two individuals sought to suppress the true facts concerning the events surrounding the Son My operation. The evidence indicating such suppression of information is presented in Chapter II.

5. Indicators of Unusual Events

During the Son My operation of 16-18 March, there were many indicators of unusual events. These should have aided in making the chain of command aware of the unusual events which transpired on 16 March. Certain of these acts were identified previously as incidents which were cited in oral and written reports submitted through the normal chain of command. There were, however, additional incidents which, when observed by or brought to the attention of experienced personnel, should have been sufficient cause to alert commanders and/or staff officers of the existence of an unusual situation. The primary purpose of this section is to identify and discuss specific incidents relevant to the Son My operation which are not treated as special subjects in other sections of the report, and which are considered to be indications of the occurrence of an unusual event. The list of indicators is not all inclusive; only those incidents are discussed which, when considered in the context of the tactical situation which existed at the time, should have caused a reaction on the part of the commander and/or staff officer.

The reaction to each specific indicator should be considered in light of an awareness or knowledge of other events or indicators by the individual concerned. As an aid in making this judgment, the following is a list of incidents which have already been discussed in this chapter of the report and are considered to have been an indication that an unusual event had occurred during the Son My operation:

(1) Reports and/or Observations of Noncombatant Casualties

(2) Reports of Confrontation Between WO1 Thompson and a Ground Unit Commander

(3) Reports of a Captain Shooting a Wounded Woman
(4) Reports of Bodies Observed in a Ditch
(5) Reports of Indiscriminate/Unnecessary Firing
(6) Reports of a Soldier Firing into a Ditch Containing Bodies
(7) Reports of Helicopter Gunships and Scout Ship Landing in My Lai (4)
(8) Reports of Complaints by WO1 Thompson and other Aviation Personnel

In addition there were incidents not previously identified which indicate the occurrence of an unusual event in Son My. Such incidents or indicators are listed in chronological sequence and are followed by a discussion of each indicator to include information concerning the reaction of commanders and staff officers at each level of command:

(1) Artillery Planned and Fired on My Lai (4)
(2) Gunships and Liftships Fire on My Lai (4)
(3) The Exodus of Civilians
(4) Observation of Burning Buildings
(5) Initial Report of High VC Body Count
(6) Report of High VC Body Count Attributed to Artillery Fire
(7) Low Ratio of Weapons Captured to VC KIA
(8) Absence of Reports of Enemy Contact and Requests for Fire Support
(9) Report of Departure of VC from My Lai (4)
(10) Low Ratio of US Casualties to VC Casualties
(11) Commander's Order to Return to My Lai (4)
   a. Artillery Planned and Fired on My Lai (4)

One of the first indications that the Son My operation was to be conducted without regard to the welfare of noncombatants is in the planning of artillery support for the combat assault of C/1-20 Inf. From the outset, it was planned for artillery fire to fall on or alongside the inhabited hamlet of My Lai. LTC Luper, the artillery battalion commander; MAJ Calhoun,
TF Barker S3, CPT Vazquez, the artillery liaison officer with TF Barker; and CPT Medina, the C Company commander, all agreed that it was part of LTC Barker's plan for the artillery preparation for the combat assault to land on the edge of the hamlet. While such action was within the legal limits of the rules of engagement (ROE) in effect at that time, it was clearly in violation of the spirit of the policy and without regard for the lives of the inhabitants of My Lai (4).

The hamlet of My Lai (4) was located in an area identified as under VC domination and control. Clearance to fire was obtained from Vietnamese authorities after a check on their part revealed no Vietnamese military units operating in the area. No check was made or assurance given that noncombatants were not present in the area. For all practical purposes, Province and District authorities regarded Son My Village as a free-fire zone and would approve any request for fire if Army Republic of Vietnam (ARVN) units or personnel were not endangered. This was known by LTC Barker and his staff.

The inhabitants of VC-dominated areas, such as My Lai (4) were frequently encouraged through Government of Vietnam (GVN) and US efforts to evacuate these areas since they were subject to unannounced fires by artillery and air. It was known, however, that many persons elected or were forced to accept the risks attendant in remaining and thus there were villages and hamlets such as My Lai (4) where relatively large numbers of persons, both willingly and unwillingly, lived in VC-controlled areas. This principle was recognized in MACV Directive 525-3 (exhibit D-6) which states that personnel living in VC-controlled areas will not be considered VC solely on the basis of their presence in these areas.

While MG Koster and COL Henderson both stated it was not their policy to employ artillery on inhabited villages, the facts of 16 March reveal little in the way of controls to prevent such incidents. Even if one were to assume ignorance on the part of 11th Brigade personnel concerning knowledge that My Lai (4) was populated—an assumption not borne out in fact—such an assumption was clearly destroyed when, after the artillery preparation was completed, large groups of people were seen departing the village by all of the commanders directly concerned with the operation: CPT Medina, MAJ Watke, LTC Barker, LTC Luper, and COL Henderson. Concurrently, with the observation of civilian casualties on the ground by each of these same individuals, less MAJ Watke, who denied seeing civilian casualties, it should have been apparent