

(The hearing reconvened at 1414 hours, 11 December 1969.)

IO: This hearing will come to order.

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

Sir, the hearing recalls Colonel Oran K. HENDERSON.

Colonel HENDERSON, sir, you are reminded that you remain under oath before this board.

A. Do you want to ask me questions or could I make a couple of comments on my testimony before--

IO: (Interposing) Not at this time.

A. All right, sir.

IO: Colonel HENDERSON, I would first like to reread to you the purpose of this investigation.

This investigation is directed jointly by the Secretary of the Army and the Chief of Staff, United States Army, for the purpose of determining facts and making recommendations concerning two matters:

(1) the adequacy of prior investigations and inquiries into, and the subsequent reviews and reports within the chain of command, of what is now commonly referred to as the My Lai (4) incident of 16 March 1968, and

(2) the possible suppression or withholding of information by any person who had a duty to report and to furnish information concerning this My Lai (4) incident.

Do you have any questions concerning these two purposes of this investigation?

A. No, sir.

Q. We have heard your testimony. Since that time we have heard the testimony of several other witnesses. Your testimony is at considerable variance with other evidence in

(HENDERSON)

115

APP T-1

several significant respects. This could be caused by lapse in memory on your part or on the part of others. It could be because you did not relate all the facts that were known to you upon which you were questioned, or maybe because you possibly falsified some of your testimony.

Prior to the time you testified, you were informed that as brigade commander you were one of the senior officers in the chain of command and that this inquiry might disclose facts tending to establish that you had failed to comply with applicable regulations concerning the investigation and reporting of war crimes or that you may have been derelict in the performance of your duties. Consequently, you were advised that you had a right to remain silent and anything that you said could be used against you in a criminal trial. You were also advised that you had a right to counsel, to consult with counsel, and to have counsel represent you and be with you during your interrogation. Thereafter you elected to testify without counsel. There is now some evidence tending to raise the suspicion that during and after the My Lai (4) incident, you were negligent or derelict, or even in direct violation in complying with orders and directives pertaining to the reporting and investigation of alleged mistreatment or wounding or killing of civilians, that is to say, war crimes, and that you may either have suppressed or contributed to the suppression of information pertaining to the possible unlawful killing of civilians at My Lai (4) on 16 March 1968.

Such acts would be in violation of orders and regulations and would constitute dereliction of duty. There is some evidence which indicates that your prior testimony before this investigation may have been incomplete in part or in part intentionally false.

I am calling this to your attention because I intend to recall you as a witness, but first I wish to give you sufficient time to think this over and see if you wish to seek qualified legal counsel, and decide if you are willing to give further testimony.

Colonel MILLER, do you have anything further in addition?

COL MILLER: Yes, sir.

(HENDERSON)

116

APP T-1

12158

I informed you of these matters the other day. I wish to do so again to make sure you are fully aware of your rights.

You still have, of course, the right to remain silent, and any statement you make could be used against you in evidence in a criminal trial. You have the right to consult with counsel, that is a qualified lawyer, and to have such counsel present with you here if you elect to testify further. You may retain counsel at your own expense or a military lawyer will be appointed for you. If you have a particular counsel you would like, if he is available he will be appointed. Otherwise, other counsel will be appointed. Even if you do decide to continue now without having counsel present, you may, of course, stop answering questions at any time, and you may request counsel at any time if you elect to answer questions at such time as they may be put to you, and if you do not have counsel. Do you understand all these rights?

A. I do.

COL MILLER: Would you like me to go into them further?

A. It's not necessary.

COL MILLER: Do you desire counsel?

A. I do not desire counsel.

IO: I don't want you to make this decision right now. I indicated I'm going to give you time to think this one over before you make a decision as to whether you want counsel or not. This is not a matter of something that can be a snap judgment. I would suggest and advise that you give it heavy consideration. It's not my intent that we get into it any further at this particular time. When we are ready to call you back for further questioning, we will notify you. At the present time we are contemplating tomorrow afternoon, but I can give you no absolute assurance.

A. Very well, sir.

IO: Do you have anything further?

COL MILLER: No, sir.

(HENDERSON)

117

APP T-1

A. Could I ask one question, regarding the letters I received from the trial counsel at Fort Benning regarding the submission of discussions? I understand this would be resolved and I could not--

COL MILLER: (Interposing) This is a quasi-judicial type proceeding which we determine to be within the limits of the order.

IO: The hearing will be recessed.

(The hearing recessed at 1421 hours, 11 December 1969.)

12160

(HENDERSON)

118

APP T-1