

Retyped For Hollo's case.

UNITED STATES

11/20/69

V.
Charles E. Hu Ho
ARMED FORCES
SERGEANT E-5
UNITED STATES ARMY

) PROFFER OF EVIDENCE
) IN SUPPORT OF MOTION TO DISMISS

IN the above styled case, a General Court-Martial convened by Court-Martial Convening Order Number 26, Headquarters, Third United States Army, Fort McPherson, Georgia 30330, dated 22 June 1969, comes now the accused through counsel and in support of his motion to dismiss all charges and specifications moved before this Court on 18 August 1969, files and submits the following proffer of evidence consisting of certain examples of press coverage capable of proof and illustrative of evidence of pretrial publicity to which said motion is addressed; further, the accused proffers such evidentiary matters for examination by this Court as will be adduced at appropriate hearings hereafter:

I
COMMAND INFLUENCE

The following chronological circumstances of national newspaper coverage of the so-called My Lai incident are proffered as one measure of direct as well as subtle command influence pressures:

VIETNAMESE CIVILIANS ARE KILLED

"The Army knew it was going to get clobbered on this at some point," one military source said. "If they don't prosecute somebody...it would be even worse."
(Philadelphia Bulletin, 13 November 1969)

ARMY READY TO TRY MASSACRE SUSPECTS

General William C. Westmoreland says the Army is ready to announce the findings of its investigation into the alleged massacre of South Vietnamese civilians and will court-martial those found to be suspects.
(New York Post, 22 November 1969)

NIKON CALLS SLAUGHTER ABHORRENT TO NATION
(Washington News, 26 November 1969)

CAN'T ACCEPT SUCH ACTION: WHITE HOUSE
WARNING GIVEN TO MILITARY

(Chicago Tribune, 27 November 1969)

PRETRIAL PUBLICITY

NIXON DENOUNCES "AEGORRENT"
DEATHS IN VIETNAM VILLAGE

President Pledges Full Force of Military Justice
(Philadelphia Inquirer, 27 November 1969)

NIXON DEPLORES ALLEGED MASSACRE: Statement Terms
Viet Incident Abhorrent to Conscience

(Current News, 27-28 November 1969 -- "Published
by the Air Force (SAF-AA) as executive agent for the
DOD to bring to the key Defense Department personnel
matters within their official responsibilities.")

MAYBE IT DID HAPPEN, SAYS COLONEL IN CHARGE
(New York News, 28 November 1969)

MY LAI STORY HANDLED WELL, GENERAL SAYS
Lt. General Albert O. Connor, the man named to convene
any further trials in the alleged My Lai massacre, says
he thinks that in airing the story "the news media, on
the whole, have handled it very well."
(Philadelphia Inquirer, 15 January 1970)

'MASSACRE' IS ADMITTED
(Washington News, 18 March 1970)

MILITARY DISCIPLINE MENACED
"...as the My Lai incident in South Vietnam lengthens
its shadows..."
(San Diego Union, 3 April 1970)

THE 'UNFORTUNATE' MY LAI INCIDENT
"In an obvious but unstated reference to My Lai he
(General Ralph E. Harris, Jr., Commander in Chief,
United States Army in the Pacific) said a few of our
soldiers did engage in 'improper conduct'."
(San Francisco Chronicle, 6 June 1970)

II
SCOPE OF COVERAGE

The following chronological circumstances of national newspaper
coverage of the so-called My Lai incident are proffered as one measure
of the unparalleled pretrial publicity in the accused's case:

MASSACRE PROBE ENRAGED
"...Threatens to become international issue."
(Philadelphia Inquirer, 22 November 1969)

U.S. HITS BACK AGAINST PARIS

The American military decision to proceed with a court-martial against Major General William Calley Jr., will serve to relieve pressure on the British Labor Government.

(New York Times, 23 November 1969)

ARMY EXPLODES ATROCITIES

(New York Post, 27 November 1969)

ARMY, HELLER CALL FOR RIDE

(Los Angeles Times, 28 November 1969)

WORLD PREDATOR OVER MY LAI MASSACRE

(Galveston Sun, 28 November 1969)

CRIMES MAY BE YEAR'S BIGGEST

Report of massacre in Vietnamese village portends major impact on U. S. War Policy.

(Christian Science Monitor, 29 November 1969)

ARMY RECALLS MY LAI MASSACRE TO GENERAL PRESS

(New York Times, 29 November 1969)

YANKEE PREDATOR FEELS ANTI-U.S. FEELS IN CRISES

(Galveston Sun, 30 November 1969)

"The horror of My Lai refuses to fade."

(Louisville Courier Journal, 27 March 1970)

MILITARY DISCIPLINE MENACED

"...as the My Lai incident in South Vietnam lengthens its shadow..."

(San Diego Union, 3 April 1970)

MY LAI GATES

"The wide coverage...have printed My Lai indelibly on the mind and conscience of almost every American."

(New York Post, 24 July 1970)

• III
IMPACT OF COVERAGE

The following chronological circumstances of national newspaper coverage of the so-called My Lai incident are proffered as one measure of the impact of such coverage:

VIETNAMESE SAY C.I.'S SLAY 567 IN TOWN

(New York Times, 17 November 1969)

THE ULTIMATE TRAGEDY
There is no longer any serious dispute about the
fact that this massacre took place
(New York News, 21 November 1969)

REKIN MASSACRE PROBE: THE TOWN THAT WAS
"...An Asian Lidice, after the Czechoslovak town
leveld by the Nazis in a World War II massacre."
(New York News, 23 November 1969)

THE KILLERS
(New York Post, 24 November 1969)

MASSACRE AT VIETNAM VILLAGE
(Detroit News, 25 November 1969)

WHERE OUR CONSCIENCE DIED...
(Washington Star, 26 November 1969)

THE GUILTY
"...an account of an American war atrocity darker and
bloodier than any American might have been expected
to believe."
(Sunday, 28 November 1969)

MASSACRE BRINGS PSYCHIC NUMBNESS TO A NATION
(Washington Star, 29 November 1969)

MY LAI CIVILIAN CASUALTIES 'BETWEEN 350 and 400'
(Chicago Daily News, 1 December 1969)

'HOW DO YOU SHOT BABIES?' --- 'I DON'T KNOW...'!
(Los Angeles Times, 2 December 1969)

FEARS MY LAI REACTION MAY ENDANGER GIs
(Chicago Tribune, 3 December 1969)

MY LAI SPurs NEW CALL FOR WAR HEARINGS
(New York Post, 3 December)

SONG MY BOY PANTOMIMES SLAYING OF MOTHER
(New York Times, 4 December 1969)

HAVE AMERICAN SOLDIERS BECOME MURDERERS?
(Baltimore Sun, 14 December 1969)

"The Song My massacre has aroused public concern over
the commission of war crimes by US troops in Vietnam."
(Friday Review of Defense Literature, 13 February 1970)

MY LAI REPORTER PUBLISHES EVEN GRIMMER ACCOUNT
(Washington Star, 12 April 1970)

MY LAI 4 by Seymour Hersh
(The Friday Review of Defense Literature)

NOW I BROKE THE MY LAI STORY
(Saturday Review, 11 July 1970)

IV
DISTILLED PREJUDICE

The following chronological circumstances of national newspaper coverage of the so-called My Lai incident are proffered as one measure of prejudice to the accused because of related stories:

USE MASSACRE TO NUKE NIXON
(Chicago Tribune, 5 December 1969)

PANEL TO SEEK LINK OF POT WITH MY LAI
(Washington Star, 16 March 1970)

MY LAI COVERUP LAID TO ARMY, STATE DEPT.
(Los Angeles Times, 15 July 1970)

SONG MY EVIDENCE WAS SUPPRESSED BY ARMY...
(Wall Street Journal, 15 July 1970)

MY LAI HUSH-UP CHARGED
(Washington News, 15 July 1970)

PANEL SAYS THE ARMY HAMPERED INVESTIGATION
(New York Times, 16 July 1970)

MY LAI PROBERS WOULD ALLOW INSANITY PLEA ON WAR CRIMES
(Washington Post, 16 July 1970)

ADMIRAL RELATED MY LAI TO DRUGS
(Baltimore Sun, 21 August 1970)

V
WITNESSES AND PROFITS

The following chronological circumstances of national newspaper coverage of the so-called My Lai incident are proffered as one measure of the harm in accounts by potential witnesses appearing in the Press, as well as the profiteering therefrom:

GI SAYS HE SAW VIETNAM MASSACRE
(New York Times, 29 November 1969)

EX-GI RECALLS VILLAGE ATTACK;
Only Chicken Left Alive
"Everything and everybody was wiped out..."
(Washington Star, 24 November 1969)

ANOTHER PINEVILLE VET TALKS
(New York Post, 26 November 1969)

PICTURES AND QUESTIONS
Last week Life was in the bidding again and this time went all the way to a reported \$125,000 for eighteen color photos depicting the alleged massacre of scores, perhaps hundreds, of residents of the South Vietnamese village of Song My by American troops in March 1969."
(Newsweek, 1 December 1969)

MY LAI TURNS PROFIT FOR SOME
(Detroit News, 9 December 1969)

MY LAI 4: 'SHOOTING STARTED ALMOST AS CHAIN REACTION'

"Lt. Stephen Brooks and his men in the second platoon to the north had begun to systematically ransack the hamlet and slaughter the people, livestock and destroy the crops."
(Washington Post, 20 May 1970)

VI

The following chronological circumstances of national newspaper coverage of the so-called My Lai incident are proffered as one measure of a peculiar prejudice in this case inasmuch as the Army whose members are to try the accused is itself on trial and seeks to exculpate itself from adverse publicity:

'MASSACRE' PUTS ARMY ON TRIAL
(Washington Star, 2 December 1969)

SEARCH FOR MY LAI SCAPEROAT OBSCURES IMPORTANT QUESTIONS
(Philadelphia Inquirer, 6 December 1969)

SCAMMY 1: WILL A 'LYNCING' FOLLOW A 'MASSACRE'
(New York Times, 7 December 1969)

MY LAI PROBE MUST AVOID WHITEWASH TAG:
Army's Standing is in Danger; case is bigger than Army.
(New York Times, 10 December 1969)

MY LAI'S TWOFOLD TRAGEDY
"I always have observed that the military services tend to be especially severe toward anyone whose conduct jeopardizes their popular image. It is always difficult to obtain individual justice at times and places of inflamed public opinion and bitter controversy."
(Detroit News, 6 April 1970) (Lt. Gen. Ira C. Eaker)

MILITARY UNDER FIRE
",..the shame of the mad minutes at My Lai..."
(Washington Post, 12 July 1970)

VII OFFICIAL STATEMENTS

The following chronological circumstances of national newspaper coverage of the so-called My Lai incident are proffered as one measure of prejudice stemming from statements by Government officials appearing in newspaper accounts:

The statement of President Richard Nixon on December 8, 1969, at a nationally televised news conference as follows: "What appears was certainly a massacre and under no circumstances was it justified."

Statement of Ronald L. Ziegler, White House Press Secretary, speaking on behalf of the President on November 26, 1969, as follows:

"An incident such as that alleged in this case is in direct violation not only of United States military policy but is also abhorrent to the conscience of all American people. Appropriate action is and will be taken to assure that the illegal and immoral conduct as alleged will be dealt with in accordance with the strict rules of military justice."

The statement of Melvin R. Laird, Secretary of Defense, in a letter to the Senate Foreign Relations Committee on November 25, 1969, stating: "how shocked and sick I was when these allegations first came to my attention."

Stanley B. Resor, Secretary of the Army, stating on November 26, 1969, to the Congress:

"It is difficult to convey to you the feelings of shock and dismay which I and other civilian and military leaders of the Army have experienced as the tragedy of My Lai has gradually unfolded before us. I know you share these emotions and fully appreciate the gravity of this incident..."

"In addition, it is estimated that besides Lt. Calley and SSG Mitchell there are at least 24 former members of Company C, nine of whom are still on active duty, who must be deemed subjects of the continuing criminal investigation. The efforts of seven criminal investigators are currently focused upon the task of developing evidence concerning the actions of these men. It is estimated that several months may elapse before all of the allegations presently under investigation can be fully evaluated..."

"I have reviewed what we know of the incident at My Lai with a number of officers who have served in Vietnam. It is their judgment...a judgment which I personally endorse and share...that what apparently occurred at My Lai is wholly unrepresentative of the manner in which our forces conduct military operations in Vietnam. Our men in Vietnam operate under detailed directives from MACV and other higher headquarters which prohibit in unambiguous terms the killing of civilian noncombatants under circumstances such as those at My Lai. During the last few years hundreds of thousands of American soldiers have participated in similar operations in Vietnam. I am convinced that their overall record is one of decency, consideration and restraint towards the unfortunate civilians who find themselves in a zone of military operations. Against this record, the events at My Lai are all the more difficult to understand.

"Unfortunately, details concerning the matter did not come to our attention until a year after the events in question. Once we learned of the allegations, the Army immediately commenced an investigation which has already resulted in the filing of criminal charges against two individuals. In pursuing this investigation, and in referring the reports of investigation to responsible court-martial authorities, we fully appreciated that the disclosures which would inevitably follow would damage both the Army and the Government of the United States. Despite this, we pursued the only course of action which was consistent with our international obligations, our national policies, and the ethic of American military operations.

"I hope that the information which I have presented to you this morning has given each of you a greater understanding of this matter, and that it has renewed your confidence in the Army's willingness and ability to pursue the investigation and attendant prosecutions to a satisfactory conclusion. I assure you that however great may be your dismay and sense of outrage that such a thing could occur in our Armed Forces, it could be no greater than mine, nor than that experienced by the thousands of loyal and brave officers and men who have labored so long and sacrificed so magnificently in search of the just peace we all seek in Vietnam."

The statement of William P. Rogers, Secretary of State, in a taped educational television program prepared for release November 28, 1969, as follows: "If the allegations are true it is a shocking incident, and all we can do is to court-martial any responsible persons and to show the world that we don't condone this."

The statement of Lt. Gen. William R. Pours at a press conference attended by Secretary of the Army Bassett as follows:

"On several occasions I have been asked about what happened at Son My Village on 16 March 1968. I am not going to characterize what occurred there. I can say, however, and the public is entitled to know that our inquiry clearly established that a tragedy of major proportions occurred there on that day...I am most hopeful that our report, the review of it and the actions stemming from it, will prevent an incident such as this from ever occurring again."

VIII OTHER MEDIA

The following chronological circumstances of national radio and television coverage of the so-called My Lai incident are proffered as one measure of the publicity disseminated through such broadcasts:

(emphasis added)

"The General Counsel of the Army, Robert Jordan, is the first high defense official to express concern that US troops in Vietnam might have committed genocide."

(ABC Evening News, ABC-TV, 21 November 1969)

"There were more developments today in the alleged mass execution by American soldiers of South Vietnamese villagers in March of last year."

(CBS Evening News, CBS-TV, 21 November 1969)

"The national soul is wounded..." "Many, many people will see the Lieutenant (Calley) and his men as a convenient target on which to unload what should be a sense of national guilt." (Senator George McGovern, Face the Nation, CBS-TV, 30 November 1970)

"...Individuals who are deemed guilty will have charges preferred against them..."

(General William C. Mooreland, ABC Evening News, ABC-TV, 5 December 1969)

"But the Army believes the massacre may have taken place... in addition to Medina and Kotowc, 3 enlisted men were accused of murder today...Sergeant Esequiel Torres of Brownsville, Texas."

(Huntley-Brinkley Report, NBC-TV, 10 March 1970)

"Out of the men I was closely acquainted with out of Charlie Company, I would say about 60% that I know smoked marijuana."

(Ex-Sergeant Charles West, ABC Evening News, ABC-TV, 24 March 1970)

"...Sergeant Esequiel Torres, one of those charged with murder in the mass killing."

(CBS Evening News, CBS-TV, 2 July 1970)

"It says some civilians were deliberately killed by American ground troops..."

(ABC Evening News, ABC-TV, 14 July 1970)

"In a concluding statement the panel says what happened at My Lai was wrong."

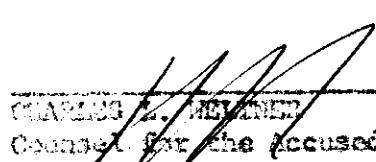
(Huntley-Brinkley Report, NBC-TV, 14 July 1970)

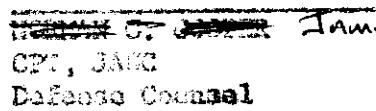
"My Lai is the name of the South Vietnamese village doomed to go down in history as the scene of an American tragedy."

(Big News, WTOP-TV, CBS-TV)

WHEREFORE, the accused prays that the Court consider the several examples of the pretrial publicity attendant this case hereinabove set forth in support of the motion to dismiss and further that its examination of such publicity not be limited thereto, but that the Defense be afforded an opportunity to adduce further evidence as will be related at an appropriate evidentiary hearing.

Respectfully submitted,


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CPT, JAGC
Defense Counsel

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