

22 April 1971

This tape includes copies of testimony of Captain Eugene Kotouc at different dates during Lieutenant William L. Calley's court-martial. It includes all of Captain Kotouc's testimony. Recorded by Mr. Frank C. Kavalek.

This is a copy of the portion of tape recorded 3 March 1971 a.m. containing testimony of Captain Eugene Kotouc. This copy made 9 April 1971.

Oath administered to Captain Kotouc.

TC. Will you state your full name?

A. Eugene Melton Kotouc.

TC. And your grade?

A. Captain.

TC. Organization?

A. Headquarters, Fort McPherson, Georgia.

TC. Captain Kotouc, did you have occasion to serve in Vietnam in March 1968?

A. Your honor?

MJ. No, eventually he's going to come up to 15-16 March of 1968, I assume. Is that right?

TC. That's right.

MJ. And if he asks you any questions concerning 15 or 16 March 1968, what is, are you going to answer those questions or not?

A. No, sir, your honor. I am going to respectfully request and decline to answer any questions on the grounds they intend to incriminate me and also under Article 31 in as much as I am now facing general court-martial proceedings myself.

MJ. For offenses allegedly occurring in or about My Lai (4)?

A. That's correct, sir.

TC. Questions will relate specifically to the 15th. Nothing of My Lai (4). The questions that will be posed to him by the Government will relate only to the 15th to Captain Medina's briefing.

MJ. Captain Medina's briefing or the briefing in which Captain Medina was a--Task Force briefing or?

TC. He was present at both.

MJ. Captain Medina's briefing to his platoon leaders and also the briefing--

TC. The company briefing and to the Barker briefing.

MJ. Okay. What would your position be with regard to those two matters? Would you still--if you are asked questions concerning your attendance at the briefings on 16, excuse me, 15 March 1968 both the Task Force briefing and the company commander briefing? Do you understand what we--would you still claim your privilege?

A. Yes, sir, I'd have to on advice of counsel.

MJ. Obviously, I am not going to order Captain Kotouc to testify.

TC. Do you think he is \_\_\_\_\_?

MJ. Yes, I do.

TC. Okay.

MJ. Thank you, Captain Kotouc.

A. Thank you, your honor.

The following is a copy of the portion of tape recorded 3 March 1971 p.m. containing testimony of Captain Eugene Kotouc. This copy made 9 April 1971.

Call Captain Kotouc.

MJ. Will you come up here again, Captain Kotouc, please. I'll remind you you are still under oath.

A. Yes, sir.

MJ. In case you have any problem hearing me, you let me know now, will you?

A. Yes, sir, I will. Thank you.

TC. Will it please the court, I have here a grant of testimonial immunity dated today signed by General Talbott with respect to Captain Kotouc.

MJ. Have you seen this?

A. No, sir, I have not. May I ask counsel?

MJ. He's already seen it, I think. (pause) Do you have any questions about this?

A. I have no questions about what I just read, sir. I would ask the court's indulgence for a moment so I could read a prepared statement.

MJ. All right.

A. Thank you.

MJ. You can go ahead and Captain Lane you've been here so many times before, you have something you want to say for Captain Kotouc?

Lane. Yes, sir, I do. As Captain Kotouc's military lawyer, I would like to get a commitment from the government, through Captain Daniel, that this grant of testimonial immunity also includes any testimony that he gives on cross-examination. This grant speaks for itself. Any testimony that he gives in court can't be used against him.

MJ. Well, does this mean now that nothing that he says here can be used against him at his pending trial at Fort McPherson?

Lane. It seems to me that your honor has been interpreting it that way from the previous case say Sergeant Shields.

MJ. Yeah, but Sergeant Shields, of course, had all the charges against him dismissed and Captain Kotouc does not.

TC. Well, as to the legal effect of that the status of the witness seems to me to be immaterial as to the import that your honor places upon that and the legal effect as to the grant itself on the basis that the court has already ruled the legal effect of that testimonial grant, regardless of the status of the witness whether the charges are or not. It seems to me the grant speaks for itself on its face of what it says. Any testimony he gives makes no distinction. It would be my view--of course the court must decide that now. I would assume that it had decided that fact when ruling such a grant were binding.

MJ. Yes, that's true, but I do know that Captain Kotouc is currently under charges. Isn't that not right, Captain Kotouc?

A. Yes, sir. I understand that I have been referred, sir.

MJ. You think you have been referred to trial?

A. Yes, sir, that's my understanding.

MJ. You are charged with events that occurred on the 16th of March at My Lai (4), right?

A. Yes, sir.

TC. Please the court was not, I understand the charges were not at My Lai (4) itself, not the day of the operation against Captain Kotouc. Again, it seems to me that that's irrelevant after the legal sufficiency of the grant, that status of the witness either constitutes valid and this court has previously ruled or it isn't.

MJ. Well, I want to be sure that I do absolutely nothing to prejudice Captain Kotouc in his case. Now, I think the, as I said before, the grant is valid.

TC. You previously ruled the case of Meadlo it's valid, the case of Shields it's valid?

MJ. There is two big differences in both of those two instances . . .

TC. The problem is it can incriminate the man in either instance. It's immaterial as to whether charges have in fact been referred against the witness or not to protect him from incrimination protects him from incrimination in any proceeding at any time no matter which day the witness happens to be then its constitutionally valid.

MJ. I understand what you are saying all right, but there is a big difference factually between Captain Kotouc and either Mr. Meadlo or Sergeant Shield.

TC. Sir, as I view the law on immunity, the question is, you know, is the immunity valid? If it's valid, the witness will be forced to testify. There is no condition in the law about the current

status. If your honor does not, if you take the view which would be inconsistent with the view that you have previously taken that this can in any way incriminate Captain Kotouc that's inconsistent with the previous rulings.

MJ. We are not talking about whether it can incriminate him or not

TC. (interjection) Whether his testimony can be used against him.

MJ. That's right. It's a question whether his testimony can be used against him. Yes, but I am faced with one other problem here that I've got in Captain Kotouc's case that I didn't have in either of the other two cases and that is the--assuming he is ultimately tried, the testimony given here is publicized in the news media, then there is a question in my mind as to an effect that might have on his trial and as I say, I personally don't want to prejudice him. But that has nothing to do with what you are talking about, your position is the law is clear that he must testify.

TC. I would assume that was your position.

MJ. No, it's my position as well.

TC. I mean you ordered several people to testify \_\_\_\_\_

MJ. My position hasn't changed in that regard.

Raby. Your honor, on behalf of Lieutenant Calley, may I say something concerning his constitutional rights.

TC. We've been through this before. . .

MJ. I don't want to go through that anymore. Defense has no standing to complain at all about the grant of immunity to a government witness, none at all. If you want to write it out and attach it to the record, you can go ahead and do that but I am not going to listen.

Raby. Very well, sir, however--

MJ. Captain Lane, have you explained all of this now to Captain Kotouc?

Lane. Well, yes, sir, I guess I have attempted to explain it. I'd actually like somebody explain it to me, I think.

MJ. Well, let me explain it to you, Captain Kotouc. There is nothing that you can say in these proceedings about the events of 15 or 16 March 1968 in or about or near My Lai (4) both before the operation and after the operation that can be used against you in any proceedings that you personally become involved in. Do you understand that?

A. Yes, sir, I understand what you are saying.

MJ. Now, also, if you refuse to testify after being ordered to testify or if you do not testify truthfully, then of course you understand that you could be prosecuted for those two things?

A. Oh, yes, sir. I don't have any intention of testifying untruthfully.

MJ. With that in mind then, what areas are you specifically going to inquire about?

TC. I'm only going to inquire as to his knowledge of the two briefings that he was present at on the 15th of March.

MJ. In view of that, Captain Kotouc, and in view of this grant of immunity that you have from General Talbott, are you going to testify?

A. If I may now, sir, I'd like to read that statement.

MJ. All right.

A. Thank you. Sir, I have been advised by my lawyers that the testimonial grant of immunity offered me today does not protect my constitutional rights under the Fifth Amendment and Article 31, Uniform Code of Military Justice. Since this grant is an unconstitutional grant, I request to remain silent. I wish to point out to the court that the prosecutor in my case is present in this courtroom. However, sir, I will testify if you, as Military Judge, so order me to for fear of being prosecuted by the Army for failure to testify.

MJ. Well, I'm not going to order you to testify today, Captain Kotouc, I'll tell you that. I am going to give this more thought. (pause) I think that's as far as we can go today on this subject. As I understand your position, you will testify if ordered to testify because you are afraid that you will be prosecuted for disobeying the orders that you would get from me to testify?

A. That's correct, sir.

MJ. But you feel that any testimony that you would give would prejudice you in your trial?

A. Most emphatically, sir.

Raby. Defense, sir, will cross-examine Captain Kotouc. One thing I would like to clear up.

MJ. I know you will.

Raby. We may not restrict to such areas as government entered and one thing--(interruption by MJ) that we will probably go into is the fact that the Peers testimony after Captain Kotouc testified he was recalled at the Peers hearing and was then informed of certain charges of which he was suspected including the one charge that he was suspected of planning a certain incident that he thereafter claimed and refused to testify further.

TC. That is impermissible.

Raby. That is only as to the accused but not as a third party witness and . . .

(interchange between MJ and TC illegible)

MJ. Just a minute. What I am really interested in is-- Let me ask you this Captain Daniel. The evidence that you're attempting to adduce from Captain Kotouc contained in that Peers testimony?

TC. Yes it is, your honor.

MJ. Anything else? Is there a CID statement or anything of that order?

TC. No. Not that I know of.

MJ. And if I were to read the his testimony before the Peers Committee that in effect would be your offer to prove that what he would say if he were directed to testify?

TC. Right. Of course my position remains the same. We've got an order here signed by the convening authority which this court has held to be constitutionally valid that he be directed to testify. This court has held that it is sufficient protection.

It seems to be a totally inconsistent position to take at this point in time from the previous ruling of this court.

MJ. And as I say, there's a factual difference. Well, I want to recess and a . . .

TC. We should also look at Captain Kotouc's interpreter's statement, Sergeant Hein that's found in classified volume 33 of Peers.

MJ. Well, I'll do that, I'll go over both of those two portions of Peers tonight. Can I get those from you, Captain Daniel?

TC. Yes, sir.

MJ. Well, all right, I'll pick those up then later on I'll go over them tonight and we'll have you back in the morning tomorrow morning, Captain Kotouc, and I'll rule at that time.

A. Very well, sir. Thank you for your consideration.

MJ. Thank you.

The following is a copy of the portion of the tape recorded 4 March 1971 a.m. containing testimony of Captain Eugene Kotouc. This copy made 9 April 1971.

Please call Captain Kotouc.

MJ. I'll remind you you are still under oath.

A. Yes, sir.

MJ. Would you mind telling me what the status of your trial is?

A. Sir, to my knowledge I haven't been getting any really formal thing. I got a PIO release when I was told I was referred to trial. That's all I know, sir. You might ask my prosecutor, he's over here.

MJ. Captain Lane, do you know what the status is?

Lane. It's my understanding that it's been directed to trial but not referred as yet. The General has directed trial.

MJ. Well--with the information available to me, I believe that the, at least the judge has been appointed in your case. In any event, I had a conversation with him this morning to inquire whether or

not a protective order had been issued by him to the members of the military jurors who would be sitting on your case and such has not yet been done. In order to avoid any, or to insure I should say, that within the limits of the power that I have that you are not, that your case is not prejudiced by your testimony hereby any undue pretrial publicity, I've discussed the matter with the judge who will be sitting on your case and he is going to issue a protective order to all the military jurors that will be sitting in your case. I think in the interest of fairness that I will not direct you to testify until after that protective order has been served upon each one of those people, which I would assume be either sometime later today or tomorrow. I think, if you, Captain Daniel, can have other witnesses I think probably Monday would be the best time to have Captain Kotouc back because and by that time all of the, it should be clear that the order is in fact out at that time. I'm satisfied that the order directing you to testify is a valid order.

TC. I'm assuming, sir, that it can be accomplished today.

MJ. Well if it can be accomplished today, as soon as it is out and served upon the jurors in Captain Kotouc's case, then we will have him back here and then you will have to make your election then whether you will testify or not.

A. Yes, sir, I understand.

MJ. So you will be temporarily excused and we'll notify you as soon as we are familiar with what the facts are as far as your case goes, whether this order has in fact been served upon each one of the people who will be sitting in your case.

A. Yes, sir. May I ask a question? Sir, do you have any objections if I return to my home in Atlanta and wait there?

MJ. No, I have none, but the only point being that if that order is going to be issued this morning. Oh, you can talk to your counsel, he in turn can contact the person who will be prosecuting

your case, and they can give you time frame. There's no point of your sitting here waiting until this issue if there is going to be a delay.

A. Yes, sir.

MJ. You don't expect any great delay, is that right Captain Daniel?

TC. I don't expect so, sir.

MJ. I think the earliest that you would be probably back on the stand would be tomorrow.

TC. Yes, sir.

MJ. You will be notified when to come back.

A. Yes, sir. Thank you very much, sir.

The following is a copy of the portion of the tape recorded 5 March 1971 a.m. containing testimony of Captain Eugene Kotouc. This copy made 9 April 1971.

Someone call Captain Kotouc.

Oath administered to Captain Kotouc.

TC. Captain Kotouc will you state your full name?

A. Eugene Melton Kotouc.

TC. And your grade?

A. Captain.

TC. And your present assignment?

A. Headquarters, Fort McPherson, Georgia.

TC. Captain, did you have occasion to serve in Vietnam in March 1968?

MJ. I guess I neglected to do this yesterday, Captain Kotouc. I am ordering you to testify.

A. Yes, sir. I would like to make one request of the court at this time. Because its been since Wednesday of this week when I started here, I would like now to once again read into the record, for preservation of the record, my statement.

MJ. Okay.

A. Thank you. It states as follows. Sir, I have been advised by my lawyers that the testimonial grant of immunity offered me in this court does not protect my constitutional rights under the Fifth Amendment and Article 31, Uniform Code of Military Justice. Since this grant is an unconstitutional grant, I request to remain silent. I wish to point out to the court that the prosecutor in my case is present in this courtroom. However, sir, I will testify if you, as Military Judge, so order me to do from fear of being prosecuted by the Army for failure to testify.

MJ. Captain Kotouc, I will order you to testify.

A. Yes, sir, I will testify on your order.

TC. Captain Kotouc, did you have occasion to serve in Vietnam in March 1968?

A. Yes, sir, I did.

TC. In what capacity?

A. In March of 1968, I was the S-2 Intelligence Officer for Task Force Barker of the 11th Infantry Brigade. My assignment was Headquarters Company of the Brigade.

TC. When did you become the S-2 for Task Force Barker?

A. The exact date I am not completely sure of. It was in the latter part of February, probably the last week as I recall.

TC. And who was the commanding officer of the Task Force?

A. Of the Task Force was Colonel Frank Barker.

TC. Can you recall who the operations officer was and the executive officer was of the Task Force?

A. Yes, I do. It was Major Charles Calhoun.

TC. Can you recall about 16 March 1968 an operation conducted by the Task Force in the area of Pinkville or My Lai (4)?

A. Yes, I do, I recall that.

TC. Did you give and attend briefings on the 15th of March in connection for the preparations of that operation?

A. Yes, sir.

TC. And where were these briefings held?

A. The briefings were held in a bunker which housed our TOC, our Tactical Operations Center at LZ Dottie. The briefings were held somewhat, sometimes outside the TOC at LZ Dottie.

TC. Do you recall who was present on this date for these briefings?

A. I don't recall everyone that was there, but I do recall being there myself. I recall Colonel Barker being there; I recall Major Calhoun being there, and anything else would be guesswork on my part.

TC. Do you recall if company commanders for the various companies in the Task Force were there?

A. Yes, I'm sure they were there.

TC. Now, would you relate, did you-- Let me first of all rephrase the question. Did you yourself give a particular portion of this briefing?

A. I have to explain that somewhat.

TC. Okay.

A. The orders that Colonel Barker gave in my association with that organization were fragmentary orders. They were not what we call given as they're given here at the school. Sometimes the briefing, if you want to call it that, might last all day in segments as people came and went and new information was developed and so forth. I did present intelligence information to the people there and also to the Colonel.

TC. What was that intelligence information?

A. What was my intelligence information?

TC. Yes.

A. My intelligence information based on as a reliable information as we could get and an analysis of the information was that in the area of My Lai (4) the 48th VC Battalion had its headquarters and perhaps one maneuver unit. Also the battalion was located in that proximity along with a local VC company.

TC. Do you recall what the mission was given as given by Colonel Barker for this operation?

A. The mission? The mission was a CA, combat assault, of one company by helicopter and I can't remember the other--I can't remember

what B Company--B Company was in a blocking position. I can't recall just how to be in that blocking position right now. I really just can't remember anyway they were being in a blocking position also and I think that Alfa Company of the 1/3 was to be in around LZ Uptight, which was not too far from that area and they were going to blocking position or relief position so to speak.

TC. What was the concept of the mission that was given? Do you recall that?

A. The concept of the mission--

Latimer. Just a minute. I am going to object to that unless this is part of the conversation or explained to somebody. I don't want to know what his concept is.

MJ. The only answer that you can give, Captain Kotouc, is what was said at that briefing not what you think that it may have been.

A. Yes, sir. It was three years ago and I'm doing my best.

MJ. Well, the point is that in your answers here, I don't want you to tell us what you think the concept of the operation was and what you think the intelligence was. We want you to only relate is what you told other people there at the briefing as to the intelligence portion of the briefing.

A. Yes, sir, I understand what you are saying.

MJ. All right, and the same thing would be true of the concept. This would be what Colonel Barker said at the briefing.

A. Yes, sir.

MJ. And that is, this is the way you're answering? Is this what you are telling us?

A. Yes, sir, that's what I am saying. That's what I am attempting to do, sir.

MJ. All right.

TC. In light of the concept of the mission.

A. It was a search and destroy operation for the purpose of engaging the 48th VC Battalion and whatever other VC elements would be in the area.

TC. Can you recall any mention of artillery and the purpose for which it would be utilized?

A. Yes. There was some discussion as to whether or not artillery prep would be fired. After considerations that I was present at, it was decided that an artillery prep was most necessary.

TC. Now--did you have any intelligence information regarding any civilians who would be in the area or would not be in the area on that day? Can you relate that information?

A. Yes, sir. It was the final analysis and consideration that the civilian populace, if you want to use the word civilian populace here--I use your words, not mine--would be off to market.

TC. And to whom did you relate that information?

A. This came about from previous overflights of the area of the AO and that section of the ARVN AO which My Lai (4) laid in.

TC. While you were at this briefing, did you hear any orders given that all women and children if found would be killed?

A. I did not hear such an order.

TC. Did you hear any order given that no prisoners would be taken on this operation?

A. I heard no such orders.

TC. Do you know if any such order was given?

A. I heard no such order so I don't know if there was any order.

TC. Did you hear any orders given to save only enough people to take through the minefields?

A. No, sir.

TC. Did you have any discussions with Captain Medina that day?

A. Are we still on the 15th?

TC. Still on the 15th.

A. Yes, I did.

TC. What was the nature of those discussions?

A. The nature of those discussions, Captain Medina had asked me--

Latimer. Wait just a minute. If this is a private conversation between he and Captain Medina, I object to it on the grounds that it's hearsay, incompetent, irrelevant, and immaterial.

MJ. I am inclined to agree with the defense. Is this the briefing we are talking about now or just a private conversation?

TC. I'll rephrase the question. Did you give additional instructions to Captain Medina outside the presence of other persons regarding this operation?

A. I did not give instructions to Captain Medina the staff officer. That's not my position.

TC. Did you later have occasion to attend a briefing given by Captain Medina to his company?

A. I did.

TC. And do you recall what time this took place? Do you recall what time this took place?

A. It was around the supper meal of the 15th.

TC. And where was it held?

A. It was held at LZ Dottie in the vicinity of a tent used by Captain Medina as his CP when he was on LZ Dottie.

TC. And where were you at that time?

A. I had been eating supper with Captain Medina that evening and I was right there.

TC. Where were you in relationship to Captain Medina at the time this briefing was given?

A. The company was in a half-moon type affair sitting on the ground on bunkers and sandbags and such. I was sitting at the end of the moon on a corner. Captain Medina was standing in front of his company giving his briefing.

TC. Would you relate the substance of that briefing that you now recall?

A. I recall that the company for the most part was there to attend the briefing. I recall that Captain Medina notified his company that the next morning that they would be going on a combat assault mission into the Pinkville area. He went through, I recall, going through the normal procedures of ammunition, signal, command, and so forth, and he explained to them what the concept of the operation was to be; explained to them that they would undoubtedly and most emphatically face a main force of Vietcong battalion which was well-trained and very well equipped and that they could expect extremely hard fight.

TC. Do you recall anything else that he said at that briefing?

A. Yes. He instructed the company that buildings, animals, poultry, bunkers, trenches, anything of a nature that would give aid or comfort to the enemy should be destroyed.

TC. Did he make any mention of women and children and civilians in his briefing?

A. I didn't hear it, sir.

TC. Did you hear any question asked regarding women and children?

A. No, sir, I did not.

TC. Did you hear him issue any order to kill any women and children that would be found?

A. No, sir, I heard no orders like that.

TC. Do you recall any questions being asked?

A. Yes, I recall a question that dealt with the number of hand grenades. That's all I know.

TC. Was there any consideration given for any civilians that might be in the area?

A. Consideration was given.

Latimer. That's all inclusive. I don't know what he is talking about considerations.

MJ. You object?

Latimer. Yes, I do and I move to strike it.

MJ. I guess there is \_\_\_\_\_. The objection is sustained and the motion to strike it is sustained and the answer of Captain Kotouc as far as he got is stricken. The court is cautioned to disregard that. You can rephrase.

TC. In the briefing, was there any consideration given to civilians in the area?

Latimer. Well, now, just a minute. I object to that . . .

MJ. Sustain to that objection to that question as well.

TC. Did you ever raise the question concerning a release point for civilians in the briefing?

Latimer. Just a minute. If he's going to be--the language--that's probably permissible but I think the rest calls for--

MJ. This is what he said at the briefing now is what you are asking?

TC. I'm asking did he?

MJ. Did you say anything at the briefing?

A. Are you talking about Colonel Barker's briefing?

TC. Yes.

MJ. Now wait a minute. I thought we were talking about Captain Medina's briefing?

TC. Well, either briefing.

Latimer. Well, I think it should be made specific.

MJ. I agree.

MJ. Did you say anything at Captain Medina's briefing?

A. No, I didn't say anything at that briefing.

TC. Did you say anything at the earlier briefing?

A. Yes.

TC. And what did you say at that time?

A. What did I say concerning what, Captain Daniel?

TC. Concerning a, raising a question concerning a release point for civilians?

A. Fine. Yes, I did. I asked Colonel Barker, I spoke to Colonel Barker concerning this matter of release points and control

measures of any civilians--again, I use your word--that might be in the area.

TC. And what was the resolution to that?

A. Colonel Barker said we would use the, what we had been doing in the past and that when the assault came in while anyone that was in the area didn't want to be in the area took off down the road towards Quang Ngai city.

TC. Were you familiar with what was asked in your position as S-2?

Were you familiar with what was customarily done with women and children who would be encountered during the course of military operations in the Task Force?

Latimer. I am going to object to that unless it is placed in some similarity with missions and what's involved and circumstances such as that.

MJ. I think that's close enough.

TC. I feel that I am entitled to lay a predicate and I don't know of any way to do it.

MJ. You can answer that. The question is are you familiar with. This requires only a yes or no answer.

A. Yes.

TC. And what was customarily done in that situation?

Latimer. If the court please. May I ask him one question of voir dire examination?

MJ. What do you mean. You lay a foundation to make an objection?

Latimer. That's correct, your honor.

MJ. Yes, I will permit that.

Latimer. Captain, in what you are going to testify, is that the subject of the order or a memorandum or some written document put out by one of the headquarters in which you were serving, under which you served?

A. To my knowledge at this time it was not--it was not a written document to my knowledge.

Latimer. To your knowledge then there was no written document published by any headquarters above you or your headquarters having to do with the treatment of civilians or prisoners of war or civilians?

TC. I object to that. That's not the question. I'm clearly not trying to lay a predicate whether documents exist or don't exist. I'm trying to lay a predicate for custom of usage within the area within the Task Force.

MJ. Well, I think that what Mr. Latimer is getting at is that what is the basis of the custom and usage. I think though that you got as far as I am going to let you go, Mr. Latimer. I think this is a matter that you are going to have to develop prior to the time I am going to let his answer come in as to what this policy or custom and usage was within the Task Force.

TC. That's what I asked him. To tell us the custom and usage was.

MJ. But what it's based upon, that in effect is what the objection is.

TC. Well, sir, custom and usage is different. It could be . . .

MJ. Yeah, I understand that.

TC. Prescribed by regulation or it could be just a custom and usage that's prescribed by the people in the past, which is customarily done.

MJ. Why don't you ask him first.

TC. What was the custom, do you have knowledge of what the standard procedures were within the Task Force for when women or children or civilians were being encountered during the course of military operations in that area?

A. Yes, I had that knowledge.

TC. And how did you gain that knowledge?

A. Word of mouth.

TC. What was customarily, how were these customarily handled?

Latimer. Wait just a minute.

MJ. Was that knowledge passed out to any of the company commanders or any of the platoon leaders, or do you know?

A. I don't know, sir.

MJ. Well, I am going to admit the answer for what it's worth. You gentlemen can put any value you want to--you can give the answer any weight that you think it deserves. All right, go ahead.

Latimer. May I just ask is that based on just commonly gossip that he acts on?

MJ. You can cross-examine on that point later on. As I say to show what weight that you have given is evidence. I think it's admissible. I'm ruling it that it's admissible. All right, go ahead, go ahead Captain Kotouc.

TC. What was normally done with women and children who were being encountered in a combat area?

MJ. No, no, no, no, no, not in a combat area. This is what is the custom within the Task Force Barker. Within Task Force Barker what was done with women and children?

A. Within Task Force Barker, if I understand the question correctly, sir, there weren't any women and children.

MJ. If Task Force Barker in an operation ran across women and children, was there a custom and usage with as to how you handle women and children?

A. Yes, sir.

MJ. Well, that the question \_\_\_\_\_.

(?) . . . Now?

(?) We'll get there.

(?) We're there.

A. The custom was to take them away from the fire area if we could without endangering the mission at hand, segregate, search and question.

TC. No further questions.

Latimer. Captain Kotouc, I notice in court that when the Judge makes some comment that you have to turn your head. Are you hard of hearing?

A. Yes, sir, I have a distinct hearing loss in both ears.

Latimer. And was that problem--did that condition exist in 1968?

A. Yes, sir.

Latimer. Let me ask you, Captain, you are presently under charges are you not?

A. That's correct, sir.

Latimer. And as a result of operations coming out of My Lai this very operation, is that correct?

A. My charge is related to alleged acts that took place after late in the evening of March 16th at a point some distance from My Lai (4).

Latimer. In other words, the acts that you are charged with happened that evening after this assault operation and so forth?

A. Yes, sir, that's correct.

Latimer. And, without going into specifics did one of those charges involve maiming?

A. It does, sir.

Latimer. Now let me ask you this, Captain, the area that you indicated here in court, you're testifying under a grant of immunity are you not?

A. That's correct, sir.

Latimer. Now let me have a third question I might ask you. Are you very, very closely and, is there a close relationship between you and Captain Medina and your families?

A. I'm sorry, I didn't hear all of your question, sir.

Latimer. Also is there a close relationship between you and Captain Medina and your families?

A. There is.

Latimer. And you have not discussed this in particular discussed your testimony with Captain Medina now until the time you went to the Peers Committee hearing?

A. I did not.

Latimer: Did you testify, did you consult with him after the Peers hearing?

A. On my testimony?

Latimer. Yes, anything you might say in connection with this My Lai operation.

A. After the hearing?

Latimer. Yes.

A. Yes, there's been some discussion.

Latimer. All right. Let me now go to the instant itself, Captain. I'll try to keep my voice up, I'm sorry. I want to go to the instant itself and the two briefings. As a matter of fact, I understood you are under direct examination to say that what we've catalogued here is a briefing, it might have been an assembly of some people for one specific purpose, but normally that Colonel Barker acted on the basis of issuing fragmentary orders. Is that correct?

A. I agree, sir.

Latimer. And did he give some part of the order to you and some part maybe to Major Calhoun, maybe go over and talk with company commanders and in that way deliver personally to you, the staff officers, and to the commanders personally his ideas on a mission?

A. That's correct. That's the way he operated.

Latimer. All right. Now, in this case that you're talking about a briefing--and I'm talking now at the Task Force level--were you in and out of that briefing quite often? Did you go in and out of the meeting?

A. Yes, sir.

Latimer. And the time that you were in the meeting did you give the assembled people the information as best you had on the enemy information?

A. Yes, I did.

Latimer. Now, as I understand it, you have a rather vague recollection as actually who was there at that time. Is that a fair statement?

A. That's a fair statement, sir.

Latimer. And I assume that during the course of operation of Task Force Barker you had had other operations in which you had to deal with this same subject on a number of occasions?

A. Yes, sir, that's correct.

Latimer. And do you have some difficulty in isolating in which operation was which and what was said at each of the operations?

A. Absolutely, sir, it was three years ago.

Latimer. All right. Now let me ask you in connection with this intelligence information which you gave at that time did you not say in substance and effect that in My Lai (4) the enemy or the 48th VC had at least a headquarters and two companies?

A. Yes, I did.

Latimer. That was your belief at that time and you conveyed that on to whoever was assembled there?

A. I assume I did.

Latimer. Now did you not assume or did you not state at that time that there would be other possible troops that might assist those that were at My Lai (4)?

A. Yes, sir, I stated that and--

Latimer. All right. And was the statement generally made that this would be a, that they would run into severe opposition?

A. Most severe opposition was our opinion at that time, sir.

Latimer. You made some comment about the policy, should we say, of the matter of operation with civilians. Now this was as I understand it was discussed at the Task Force level. Is that correct?

A. I didn't hear the first part, sir, I'm sorry.

Latimer. The discussion that took place in connection with the civilians, well you said there was none, but you said there was a policy in Task Force Barker on how to handle civilians and that was to collect them if you could and if it didn't interfere with your mission and then take them up to safety and have them interrogated?

A. Yes, sir, that's correct.

Latimer. All right now, that was the policy then that was practiced for C Company and the two companies on the flanks with the blocking situation?

A. That's correct, sir.

Latimer. What was your understanding of what would be done with civilians if they interfered with the mission?

A. Well, I'm not too sure I gave it a whole lot of thought.

Latimer. You were no doubt front line troops were you?

A. Well, not very often-occasionally.

Latimer. Well, at Colonel Barker's briefing was anything said about burning hootches?

A. Yes, sir, it was.

Latimer. Was that an unusual order?

A. I didn't think so, sir.

Latimer. You thought it was just normal operation to burn all the huts in the villages, did you?

A. Yes, sir.

Latimer. Did the Task Force operate under that procedure?

A. Well, on more than one occasion, sir.

Latimer. Well, it was--when the occasion arose did they burn the villages?

A. When Colonel Barker gave the order we considered it a valid order.

Latimer. All right. Did you have it more than once? Was that a policy of his would you say?

A. I'd say it would happen more than once, sir.

Latimer. I believe that you said that there was some information at one of the briefings that was held, that the artillery preparation was discussed. Were you present at that time?

A. Well, I was present when it was discussed, yes, sir.

Latimer. All right now. Was there some discussion that artillery preparation about putting it so close to the village that it might be dangerous to anybody that would be in there?

A. I don't recall that being mentioned.

Latimer. Would you say that it was not mentioned?

A. Well, I wouldn't want to be definite. I would say that I didn't hear it mentioned.

Latimer. Well, I'll ask you if it wasn't said in there and some comment made about it and an answer was made that it was better to fire the preparatory fires and a hope to kill elements of the 48th Battalion and take the risk of losing a large number of American lives. Was that said?

A. Yes, sir.

Latimer. And that was said at one of these meetings?

A. Yes, sir, that was said. I recall--I can't say it verbatim--but that was the substance of what was said.

Latimer. Let me ask you if you set the time of Captain Medina's meeting at seven fifteen in the evening?

A. No, sir, I didn't set the time of seven fifteen, sir. I said the time was supper time.

Latimer. Well I have my notes I think seven fifteen and that would be wrong? You did not mention the time?

A. I can't remember what time it was. It was supper time.

Latimer. All right then my notes wrong. It was anyway after you had eaten supper?

A. I think I finished my meal, I'm not sure but I think I had, sir.

Latimer. Well then we are talking about--I'll get the meal straight. It was the evening meal, we'll put it that way.

A. Evening meal, yes, sir.

Latimer. All right, it was sometime after that. However, was this bearing which you attended--did a Chaplain come in--a funeral service of some kind was being held?

A. I wasn't present at any memorial service that day or evening, sir.

Latimer. So that the one that you attended to was not the same group was not there if you were there at the time a Chaplain held some service?

A. I don't have any recollection of a Chaplain being there that day, sir.

Latimer. In connection with Captain Medina's orders, did he order the hootches burned?

A. Did I order it, sir?

Latimer. No, no, I'm sorry. You're a staff officer, you don't issue orders. I know that much, you told me that. I said that Captain Medina order the hootches burned?

A. He did, sir.

Latimer. Did he give an order which in effect said destroy everything in the village?

A. Destroy everything in the village that gave aid and comfort to the enemy and he talked about hootches, bunkers, trenches, animals, and poultry.

Latimer. Said to burn all the hootches and kill all the animals and the poultry and every living thing in the village. Is that right?

A. I didn't hear him say kill every living thing in the village, sir.

Latimer. Did you hear him say to kill the hootch, I mean kill the animals?

A. Yes, I did.

Latimer. Chickens?

A. Yes, sir.

Latimer. Did he enumerate everything and including the burning of the hootches?

A. Yes, sir.

Latimer. Did you hear him say anything about at this briefing that there was a chance to get some revenge and pay back the losses that the United States that this unit had lost in this area?

A. I can't give you the exact testimony or the exact words, but that I think is a fair substance, sir.

Latimer. I believe in your summary of the enemy situation that you also said something about some reserve troops in addition to the two companies and the headquarters that was at My Lai (4), you anticipated and expected some other enemy troops in that situation?

A. We had a local force VC force company plotted in that vicinity.

Latimer. And generally, where would that be with respect--generally, where would that be with respect to My Lai (4)?

A. Well, I couldn't say at this time, sir. I don't have my maps and so forth.

Latimer. All right. Again, back to the briefing of Captain Medina's. You say you were sitting on the end, the point of the moon, is that the way you described it?

A. Yes, sir.

Latimer. About how far away were you from Captain Medina?

A. Probably not in excess of fifteen feet.

Latimer. Did you hear everything that Captain Medina would said?

A. Well, the best that I can answer that, I heard everything I heard. If he said something I didn't hear, I couldn't, I wouldn't know if he said it or not, sir.

Latimer. I guess that's rationalization but I'm trying to find out if you had a tough time some difficulty in hearing Captain Medina or anybody else talk from that distance?

A. Yes, sir, I did have difficulty.

Latimer. All right. Did Captain Medina use any, shall I say training aids, to help him in presenting this picture to his assembled troops?

A. Yes, sir, I think you might call it a training aid, it was a shovel-- a "long-handled" shovel that he marked positions on the ground, reference points, tried to familiarize his men on which, when they got to their helicopters, which way they would be facing, saying here's, draw a little circle, this is it and this is it, and so forth, for orientation purposes.

Latimer. And when you're talking about a briefing of Medina, I'm using the word briefing as distinguished from conversations you might have had with other officers, you follow me on that?

A. Yes, sir.

Latimer. The briefing, this was when Medina used the shovel and marked it in the sand or in the dirt or whatever might have been down there.

A. Yes, sir.

Latimer. I want to ask you, no I won't it's outside--I was going to ask you a question but it's outside the direct so I'll pass it by. That's all.

MJ. Any redirect?

TC. Captain Kotoue, can you read lips?

A. Pretty good, sir.

TC. What discussions have you had with Captain Medina concerning \_\_\_\_\_? What discussions have you had with Captain Medina?

A. What discussions have I had with Captain Medina?

TC. After this case. The question was raised by Mr. Latimer?

A. Would you care to enlighten me on what we are getting at here?

TC. Well, you were questioned by Mr. Latimer concerning any discussions you have had with Captain Medina and your relationship with Captain Medina since the Peers investigation about your testimony. Did you have any discussions with him as to what you testified to?

A. Well, Captain Medina has read my testimony. I've read everybody else's and we just discussed it.

TC. Has this grant of immunity had any effect upon what you have said here today?

A. I consider this grant of immunity unconstitutional.

TC. Has it had any effect on the truthfulness for what you said here today?

A. No.

TC. No further questions.

MJ. Let me start out with this question, Captain Kotouc. What provision was made for the handling of any prisoners that would be captured during the assault on My Lai (4)? This is an S-2 function is it not?

A. Yes, it is, sir. The discussions--there was a discussion with Colonel Barker and myself on the subject of control and handling of prisoners. Colonel Barker said we'll just have to get to that when the time comes and see what happens.

MJ. All right. Well, what I'm--I'll take that answer, but what I'm interested in is do you know whether or not anything was disseminated to the company commanders about the taking and handling of prisoners?

A. I don't know of any.

MJ. Well now you heard Captain Medina's briefing. Do you recall anything said by him at that time as to how prisoners would be handled?

A. No, sir, I don't recall anything being said.

MJ. Did he say anything about taking any prisoners?

A. I don't believe the subject arose.

MJ. Now, in the intelligence briefing that was given by you for the Task Force, did you have any psywar material? Did you have any?

A. Did I have any psywar material, sir?

MJ. Right.

A. Pamphlets and such as this? No, sir, I didn't have anything like that.

MJ. Did you have any psywar material at all?

A. No, sir.

MJ. Did you know whether there had been any psywar and psyops material that had been disseminated to any of the villagers at My Lai (4)?

A. Yes, sir. They had leaflet drops as they had in the past.

MJ. Well was this matter discussed at the Task Force Barker briefing prior to the assault?

A. No, sir, I don't recall it being discussed.

MJ. You talked about the discussion of having villagers exit the village. I believe that what you said was that Colonel Barker said that anyone who didn't want to be in the city would leave to go to Quang Ngai city.

A. Yes, sir, I did.

MJ. Well, are those the words that Colonel Barker used?

A. Well, I'm going to answer and elaborate just a little here to make it make any sense.

MJ. Well go ahead.

A. In previous operations that we conducted in that area there was a road or trail that ran from Highway 1, ran east into the Pinkville area, and it had been the experience in the past from my observations that the people would exit the combat zone itself when the combat was taking place they moved down this road towards Quang Ngai city and Son Tinh. And this was what Colonel Barker was referring to. He said let's let them go on down the road, get on with the mission.

MJ. Well what about the people that would stay behind that wouldn't go? What was said about them?

A. I guess that anyone that stayed behind wasn't particularly friendly to our forces. That's who we would do battle with.

MJ. Was that the gest of the briefing?

A. Yes, sir.

MJ. That anyone that stayed behind was enemy and you were expecting to do battle with them?

A. Sir, we all worked together for awhile and I don't know if all these points were brought up.

MJ. Well was that the understanding?

A. Yes, sir, that's my understanding.

MJ. Well was that the understanding that was relayed to the company commanders at the briefing?

A. I don't know if it was relayed but I think it was the company commanders understanding.

MJ. Now there's been some testimony by you and by others concerning the designation of the enemy forces in that area. Some have referred to them as NVA, some have referred to them as VC. What was your intelligence briefing?

A. That they were not NVA, they were VC of the 48th Battalion.

We designate the 48th, I don't know what the VC called it.

We designate My Lai (4) My Lai (4) but that's not what the VC called it.

MJ. Well, you designated the enemy forces in that area as the 48th VC Battalion?

A. VC Battalion, yes, sir.

MJ. Were there any other enemy forces in that area that you included within your intelligence briefing?

A. Yes, sir, there was a local company.

MJ. Local VC company?

A. Local VC company, yes, sir.

MJ. Did that have any designation that you recall?

A. It did. It was a numerical designation but I don't recall the number sir.

MJ. Well now referring to the composition of the VC units that were in that area, were they mixed male and female?

A. All the intelligence reports I had from very good sources would indicate that, yes, sir, mixed, male and female.

MJ. And was this relayed to the, to the, by you in your intelligence briefing to the company commanders?

A. I don't think I related it. I think it was a matter we all understood.

MJ. Now in your intelligence briefing did you designate this to the company commanders as a free fire zone?

A. I did not, no, sir.

MJ. Did the S-3 do this in your presence?

A. It was posted right there on the top wall on the map as a free fire zone and it had been a free fire zone for some time and I don't know if Major Calhoun said it or not that day. If they didn't know it I'd be greatly surprised.

MJ. Now this AO, it included My Lai (4), as I understand it, came into the, it came under the control or became the AO of Task Force Barker from the RVN forces. Is that right?

A. What?

MJ. The My Lai (4) area as I understand the testimony belonged initially to the RVN forces as an AO.

A. It was. Our AO did not include My Lai (4). We asked for an AO extension for a temporary period of time and that did include the My Lai (4) area. It reverted back to the 2d RVN Division after--I don't know how many days we had it--but it was a few days.

MJ. You had the AO extension of My Lai (4) specifically for this operation?

A. Yes, sir, that's correct.

MJ. All right now, do you know whether or not there was any political clearance given to Task Force Barker as to how this AO extension would be handled?

A. Well I know of the SOP and how we had to go about getting it, sir--I wasn't there when they requested it. I know it was requested and I know that it was granted. And I know that there was political discussions between the Province and the 2d RVN Division and Task Force Barker and the 11th Brigade to receive this extension.

MJ. Then you know you had the clearance?

A. I know that.

MJ. Who coordinated with the National Police, the Vietnamese National Police to be in on this operation, if anyone did?

A. I don't know exactly, sir. It wasn't me so I assume it was someone of my superior and there were only two people superior to me in rank there, one was Major Calhoun and one was Colonel Barker.

MJ. Well would this clearance have been only through Task Force Barker or might it be up the chain of command to the 11th Brigade or the division or higher?

A. I think it could have been either one, sir, I think.

MJ. Well you don't know--

A. I don't know.

MJ. You don't know who coordinated it?

A. No, sir, I don't.

MJ. When were you first initially notified that this operation would commence in the My Lai (4) area in relation to let's say 15 March?

A. Well, that's kind of hard to answer because Colonel Barker had been planning and working up an operation for quite sometime in the past. It was a continuence thing with our Task Force. Our Task Force was nothing more than a maneuver unit--we didn't have any administration or anything like that and that's what he was up there to do was to maneuver constantly. And when he conceived the idea of this operation I don't know. I think probably intelligence reports and other reports probably had a bearing on this in his mind.

MJ. Well, when were you first consulted, a month before?

A. Oh, no, sir. Well, as an intelligence officer, it was my duty every day to brief Colonel Barker and bring him up-to-date and as I recall no more than no earlier probably then the 14th of March that he gave any indication. It's awfully hard to state this, sir.

MJ. I understand. But would it have been just shortly before the operation that the actual plan was conceived within the Task Force headquarters?

A. That's correct, sir, it was.

MJ. Now with regard to the RVN forces, do you know whether or not they had conducted combat operations in this My Lai (4) area before that area was placed in your AO extension?

A. I don't think they ever went out there, sir, the 2d ARVN Division.

MJ. Who had the final responsibility for turning in the Task Force body count to the 11th Brigade?

A. To the 11th Brigade?

MJ. Right.

A. The--well the way it was done was body counts along with other information would be received at the TOC. They would be logged in our daily log and any evening, normally Major Calhoun in his position as Operations Officer would call it in to Brigade headquarters, sir. Or he might even call in a running account which depended on the situation.

MJ. Were any of the pilots that flew the Sharks, were they present at any briefing where you were?

A. I can't remember them, sir. I didn't have a whole lot to do with those folks. I can't remember them being there. I'm not saying they weren't, I just say I can't remember them being there.

MJ. Did you give any particular detailed intelligence briefing to the company commanders concerning the composition of the enemy forces in that Pinkville area on the 15th of March?

A. Yes, I did.

MJ. What particularly did you tell them about the composition of the enemy within the My Lai (4) area?

A. I don't recall if I talked to Captain Michles that day or not and the other company commander whose name escapes me. I did talk to Captain Medina on the composition and the armament that he could expect to meet. His company hadn't been there but I had in our last engagement.

MJ. Now wait a minute, okay. Captain Michles was not going into My Lai (4).

A. Well, sir, My Lai (4), it wasn't my concept of My Lai (4) operations was going to be several days operation and that was the LZ and that was where the LZ area was picked there because battalion headquarters was located in that area and it was going to be a pincher and sweep operation all the way to the sea.

MJ. That's what I am getting at. Now what was the composition of the enemy forces within My Lai proper?

A. All right, sir. We had the battalion headquarters pinned there with a maneuver element and we thought that maneuver element was somewhere around company size.

MJ. Now on the 16th of March were you at anytime over the air of My Lai (4)?

A. When I left Son Tinh with the National Police and flew to the night laager position, I undoubtedly flew within a very short distance of My Lai (4), however, I don't recall.

MJ. This would have been late in the day?

A. Yes, sir. I didn't leave the LZ Dottie until late in the afternoon.

MJ. And you really have no recollection of flying over My Lai (4)?

A. No, sir, I don't.

MJ. I take it you were never on the ground at My Lai (4) on 16 March?

A. That's correct. I was not on the ground at My Lai (4) on 16 March.

MJ. Do you know anything specifically about this leaflet drop over the Pinkville area?

A. No, sir, I don't know anything specifically about it, it was just--they had psywar teams in the area, I know that because I saw those people, and Colonel Barker related it to me because I hadn't been with the group all that long that this had been going on in the past.

MJ. Did you ever see any of the leaflets?

A. Yes, I did. The troops would pick them up when they were manuevering in our AO and then I'd get them--they would send them back and sometimes they'd pick them up for souvenirs and I saw the leaflets. Both sides leaflets. The other side had a psywar team too.

MJ. Well did you see any leaflets that specifically came from the My Lai (4) area?

A. Sir, I couldn't say that with any definite answer.

MJ. Have you told us now to the best of your recollection what was said at the briefing when you were present concerning the entire concept of the operation, length of the operation, and the mission? Have you told us everything that you recall being said on that subject?

A. Yes, sir, on the length of the operation.

MJ. What was said on it?

A. It wasn't just a day. It was going to be several days and then there was another operation that was going to be tied in with it at the end and it was going into what we call the Golden Fleece operation that's where we were supposed to assist in the cultivation or the harvesting rather of the rice crop that year in that area. And so it was just constant operations. Task Force Barker you could say was in constant operational status the whole time I was with it. And I don't know if I could

distinguish between one operation and the end of one and the beginning of the other, frankly. It may help if I would say this that Colonel Barker planned operations somewhat like people artillery people talk about targets of opportunity. Colonel Barker would plan operations that quick if he thought the opportunity was there (snap of fingers).

MJ. And if you know, is that was what occurred at My Lai (4)?

A. Well, not that quick, no, but it sure wasn't planned anything like D Day.

MJ. We know that. I think that's about as much as Captain Kotouc can answer to those questions. Anything else?

TC. I have no questions.

Latimer. I have just two or three short questions. Captain in answer to one of the questions asked by the Judge you said that your concept was of battalion headquarters and one company in My Lai and another operational company. Did I understand you correctly in that you answered his question that way?

MJ. He's talking about VC composition at My Lai (4).

A. I hate to keep saying it, sir, but I am having a terrible time hearing you with that mike right in front of your mouth.

Latimer. Well, I'll tell you I'll get on your good ear over here and talk for there. How will that be?

A. All right, thank you.

Latimer. I am going to try and clarify if I can what appeared to me-- I'm not saying it is--a little inconsistency in the Vietcong forces. I understood you to say originally that in My Lai (4) there was a battalion headquarters and two companies.

A. I said maneuver elements, sir, and one or two companies of maneuver elements. I can't remember exactly, but it was maneuver elements . . .

Court I can't hear you.  
Reporter.

A. I'm sorry. It will happen. I'll repeat. I said we had maneuver elements, yes, sir, and it was either one or two companies. That's not abnormal, they will protect your battalion headquarters if possible, I think.

Latimer. And in addition to what was had in My Lai (4), was this maneuver force somewhere out there to the rear toward My Lai (5) situated along there?

A. Yes, sir, they scattered it out quite a bit. They didn't bivouac like a conventional force because they were very unconventional.

Latimer. Did you or the S-3 people keep a joint operational journal?

A. The log, if I may say, the log was joint--S2, S3 log. I would like to state to you, sir.

Latimer. You'll have to talk a little bit louder.

A. I'd like to state to you, sir, that the administration maintaining of log records, reports, and histories and so forth was extremely lax in that command because we had no clerical personnel.

Latimer. No clerical personnel and you were most of the time engaged in some kind of an operation. Is that correct?

A. That's correct, sir. That is.

Latimer. All right, now I'll ask you did you have an opinion or an appreciation that you picked up there from official sources as to the relative body counts between the organizations and the 11th Brigade?

A. Yes, sir. There was conversation between all battalions.

Latimer. Do you know where the Task Force Barker would stand in relating as to whether it was the highest or lowest as to where it would rate?

A. My . . .

TC. I object to that question as irrelevant beyond the scope of this examination.

MJ. I think it is beyond the scope. It would seem to me that his answer would only have to be based on hearsay. I think if you are going to establish where Task Force Barker rated throughout the body count wise throughout the Americal Division, you are going to have to get it from some other source. You really don't know do you Captain Kotouc except what other people have told you?

A. No, sir, don't know unless what Colonel Barker said.

Latimer. Well did it come through S-2 sources?

A. Oh, no, sir. We didn't have an official tally sheet, you might call it. Not to my knowledge, we didn't.

Latimer. Is it not a fact that you were chided quite often about the high ratio in the 11th or in the Task Force Barker?

TC. I object to the question as being beyond the scope . . .

MJ. Well I don't think I'm--I'll have to sustain the objection.

Latimer. I conceded it's beyond the scope but I thought some of the court members asked about the reports and it will be coming later anyway.

MJ. You can get this information from some other source but I don't see how you can get it from Captain Kotouc because he doesn't know. You don't know, do you?

A. I don't know, sir.

TC. Seems to me, sir, that what \_\_\_\_\_.

MJ. I can see some \_\_\_\_\_ similar \_\_\_\_\_.

TC. Well I thought \_\_\_\_\_ that's not the real problem, sir.

Latimer. Well I think if the court look at one of the questions that the court asked I think it may be relative but if the court thinks I'm . . .

MJ. You can't ask it of Captain Kotouc because obviously he doesn't know and any answer he gives would be pure speculation on his part.