

Prosecution Instruction No.

Assault Inflicting Grievous Bodily Harm

If you find the accused not guilty of the offense alleged, or of the lesser included offense of assault with intent to commit voluntary manslaughter, you should next turn to a consideration of the lesser included offense of assault inflicting grievous bodily harm in violation of Article 128. In order to find the accused guilty of this lesser included offense you must be satisfied by legal and competent evidence beyond reasonable doubt:

- (a) That, on or about 16 March 1968, between 0830 hours and 1230 hours, at or near a ditch in the eastern section of My Lai (4), Son My Village, Quang Ngai Province, Republic of Vietnam, the accused inflicted grievous bodily harm, that is, bullet wounds, upon thirty (30) Vietnamese Nationals, more or less;
- (b) That he did so by shooting at them with an M-16 rifle;
- (c) That the grievous bodily harm was done with unlawful force or violence; and
- (d) That the accused, at the time, had the specific intent to inflict grievous bodily harm.

The court is further advised that an "assault" is an attempt, with unlawful force or violence, to do bodily harm to another, whether or not the attempt is consummated. An act of force or violence is unlawful if done without legal justification or excuse. An "attempt to do bodily harm" is an overt act which amounts to more than mere preparation and is done with apparent present ability to do bodily harm to another. The act must be without the lawful consent of the persons affected.

"Bodily harm" means any physical injury to the person of another; however slight. However, by "grievous bodily harm" is meant serious bodily injury. "Grievous bodily harm" does not include minor injuries, such as a black eye or a bloody nose, but does include fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other serious bodily injuries.

An assault in which a means or force likely to produce death or grievous bodily harm is employed is an aggravated assault. A means or

or force is "likely" to produce death or grievous bodily harm when the natural and probable consequence of its particular use would be death or grievous bodily harm.

This offense requires the actual infliction of grievous bodily harm. Moreover, the grievous bodily harm must have been intentionally inflicted by the accused, that is, the accused must have had, at the time of the alleged assault, a specific intent to inflict serious bodily injury. When grievous bodily harm has been inflicted, by intentionally using force in a manner likely to achieve that result, it may justifiably be inferred that the grievous bodily harm was intended. Any such inference, however, is not mandatory. The weight, if any, to be given any such permissive inference depends upon the circumstances attending the proved facts giving rise to the inference as well as all the other evidence in the case. It is for you to determine whether to draw any such inference, and the weight, if any, to be given it.

The offense alleged and this lesser offense differ in that the offense alleged requires, as essential elements, that you be satisfied beyond a reasonable doubt that the accused attempted to do bodily harm; that, at the time, the accused intended to commit murder; and that, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces; whereas the lesser included offense does not include such elements, but it does require you to be satisfied beyond reasonable doubt that the accused inflicted grievous bodily harm; that the grievous bodily harm was done with unlawful force or violence; and that the accused, at the time, had the specific intent to inflict grievous bodily harm.

US v Shelton, 4 U.S.C.M. 116, 15 CMR 116 (1954)