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Interview of Article 32 Witnesses (My Lai)

Chief
Special Actions Division
(My Lai)

Chief, Defense Branch
Special Actions Division
(My Lai)

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1. Pursuant to an earlier oral request, the Defense respectfully requests that all witnesses called to appear at Article 32 Investigations involving the My Lai cases be made available first to all the defense counsels concerned, with the case in which the witness is scheduled to appear being given priority. Any subsequent interviews of such witnesses by Government representation should be arranged strictly as a matter of convenience.

2. It is the Defense position that witnesses called to appear at these Article 32 Investigations are "to be examined in the presence of the accused" (Paragraph 34d, MCM (1969), Rev.), and that while the Government may be represented at the investigation by counsel (Paragraph 34c, MCM (1969), Rev.), the Government counsel has no right to interview such witnesses except as a convenience outside the investigation itself. An Article 32 Investigation is clearly a means of discovery by the accused (United States v. Samuels, 10 USCMA 206, 27 CMR 280 (1959)) and its function is not to "perfect a case against the accused" (Paragraph 34a MCM (1969), Rev.). In these cases all the witnesses have been interviewed by CID Agents at least once, not to mention being queried by representatives of the Inspector General, Peers Committee, and in some instances these witnesses have sold stories to the Press; thus, the dangers that these witnesses have been frozen into inaccurate or coerced statements are apparent. It is therefore imperative that the Defense be given first access to these witnesses in order to realistically test their stories and to prepare for a proper cross-examination at the Article 32 Investigation.

3. The Defense would strenuously object to any command or staff direction shunting off these witnesses initially from the Defense, thereby negating its right of fresh discovery and opportunity to prepare a proper cross-examination.

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NORMAN G. COOPER
CPT, JAGC
Chief, Defense Branch
Special Actions Division
(My Lai)