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By TJ NARA Date 11/6/92

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THIRD REGIONAL ASSISTANCE COMMAND
APO SAN FRANCISCO 98266

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MACTR-SCS

25 January 1972

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: FACT SHEET; Lieutenant Colonel Anthony B. Herbert

The enclosed fact sheet is provided for your use in a Command Information role. All officers and senior NCO's will be made aware of the contents of this fact sheet.

FOR THE COMMANDER:

Richard J. Tallman

RICHARD J. TALLMAN
Colonel, GS
Chief of Staff

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FACT SHEET: LIEUTENANT COLONEL ANTHONY B. HERBERT

10 January 1972

Army personnel continue to be concerned over the allegations and charges made against some members of the U.S. Army by LTC Anthony B. Herbert and his critical public statements about Army leadership. Questions from the field indicate the SPOTLIGHT published on 12 November on this subject has apparently received insufficient local distribution. This SPOTLIGHT is intended to relieve current concern within the Army by summarizing the entire case, to include developments not covered in the original SPOTLIGHT. Commanders are urged to make maximum internal distribution, especially to officers.

For easy reading, this SPOTLIGHT is divided into two parts: a brief synopsis of the case followed by a more detailed treatment supporting the synopsis.

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SYNOPSIS

On 14 Apr 69, LTC Anthony B. Herbert was relieved from command of a battalion in the 173d Airborne Brigade in Vietnam because of unsatisfactory performance. He received a low efficiency report for the 58-day period of command. His immediate appeal of the relief was turned down in Vietnam after an investigation involving 5 days of sworn testimony from 38 witnesses.

After returning to the U.S. in Jul 69, LTC Herbert appealed the low efficiency report twice to HQ, Department of the Army. Both appeals were turned down. On 4 Jun 71, he was told that he was not selected for the second time for promotion to Major, Regular Army. Therefore, he would have to retire on 1 Mar 72, as required by law.

In Sep 70, after LTC Herbert appealed his efficiency report the second time, he complained to the Inspector General, Third Army, that he knew about war crimes or serious incidents occurring in the 173d Brigade from about mid-1968 to mid-1969. The resulting Army CID investigation found that seven of some 21 allegations had substance, and only two of those require further investigation.

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SYNOPSIS

On 4 Apr 69, LTC Anthony B. Herbert was relieved from command of a battalion in the 173d Airborne Brigade in Vietnam because of unsatisfactory performance. He received a low efficiency report for the 58-day period of command. His immediate appeal of the relief was turned down in Vietnam after an investigation involving 5 days of sworn testimony from 38 witnesses.

After returning to the U.S. in Jul 69, LTC Herbert appealed the low efficiency report twice to HQ, Department of the Army. Both appeals were turned down. On 4 Jun 71, he was told that he was not selected for the second time for promotion to Major, Regular Army. Therefore, he would have to retire on 1 Mar 72, as required by law.

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After the CID finished their investigation, LTC Herbert charged MG John W. Barnes and COL J. Ross Franklin, his former brigade commander and deputy commander in Vietnam, both of whom had written the low efficiency report, with failing to report and investigate certain of the alleged war crimes. These charges were made in Mar 71 and were dismissed after official inquiries into the charges by the accused officers' commanders.

In Mar 71, LTC Herbert said publicly for the first time that MG Barnes and COL Franklin had relieved him because he had reported war crimes to them and they were unwilling to investigate. The Army, following the Attorney General's guidelines, could not comment publicly until the inquiries into the charges against MG Barnes and COL Franklin were finished.

Four separate Army investigations have shown LTC Herbert's charges of "cover-up" of war crimes to be groundless. There is no evidence, other than his recent statements, that he ever reported war crimes to higher authority until some 18 months after he was relieved from command. Neither does the evidence show any relation between his war crimes allegations and his low efficiency report and his appeals of that report. After a third review of LTC Herbert's file by the Department of the Army was directed by the Secretary of the Army and Chief of Staff, Army, the Secretary of the Army had the low efficiency report removed from LTC Herbert's file on 4 Oct 71. Since the report might have been an exception to what otherwise appeared to be a record of effective service, LTC Herbert was later promoted to Major, Regular Army.

At Fort McPherson, where LTC Herbert is now stationed, he has said publicly that he and his family have been harassed by the Army, that he has been muzzled from talking to newsmen, and that he has been forced to retire from the Army. These charges are untrue. LTC Herbert has been unwilling or unable to provide details concerning the alleged harassment. No tighter restrictions have been placed on LTC Herbert's TV appearances and press interviews than those which apply to every other soldier under Army regulations. LTC Herbert's application for retirement was approved on 7 Dec 71. With his recent promotion to Major, Regular Army, he could have remained on active duty beyond 1 Mar 72, his requested retirement date. His decision to retire is entirely his own.

* * * * *

DETAILED SUMMARY

1. RELIEF FROM COMMAND

LTC Herbert served in Vietnam from Sep 68 to Jun 69. While assigned to the 173d Airborne Brigade, he was the Acting Inspector General from Sep 68 to Feb 69, and the Commanding Officer, 2d Battalion, 303d Infantry, from 6 Feb 69 to 1 Mar 69. The Brigade Commander and Deputy Commander were Brigadier General John W. Barnes (now MG) and Colonel J. Ross Franklin, respectively.

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LTC Herbert was relieved from command of the 2d Battalion, 803d Infantry on 4 Apr 69 for unsatisfactory performance of duty. As required, MG Barnes and COL Franklin submitted an efficiency report on LTC Herbert's performance. After being relieved, LTC Herbert was assigned to the Capital Military Assistance Command (CMAC) in Saigon. CMAC was a subordinate command of II Field Force, which in turn was subordinate to MACV (Military Assistance Command, Vietnam).

Five days after his relief, LTC Herbert formally requested a "redress of wrongs." This action, permitted under Article 138 of the Uniform Code of Military Justice (UCMJ), is designed so that any soldier who believes he has been wronged by his commander can make an official complaint. The complainant (redress of wrongs) is investigated by the commander who has general court-martial jurisdiction over the commander of the soldier making the complaint.

LTC Charles A. Corcoran, the officer then exercising general court-martial authority over General Barnes and Colonel Franklin, appointed MG Joseph R. Russ to investigate. General Russ, after hearing the testimony of 38 witnesses over a 3-day period in formal hearings, concluded LTC Herbert's relief was warranted. There is no mention of war crimes in the nearly 200-page record of General Russ's investigation, and General Russ says that war crimes were not mentioned.

LTC Herbert submitted an appeal on the adverse efficiency report in Sep 69. He was notified in Dec 69 that a Department of the Army Board considered and denied his appeal. LTC Herbert appealed a second time in Sep 70. Again, a Department of the Army Board denied the appeal, and LTC Herbert was notified in May 71. In neither appeal was there any mention of war crimes.

With this unsatisfactory efficiency report in his file, LTC Herbert was twice considered but not selected for promotion to Major, Regular Army. He was removed from the list of students to attend the United States Army Command and General Staff College. He was informed he would have to retire on 1 Mar 72 because of the two promotion pass-overs.

In Oct 71, based on a detailed personal review by Lieutenant General Kerwin, Deputy Chief of Staff for Personnel, of LTC Herbert's file and the contested efficiency report, the Army Chief of Staff, General W. C. Westmoreland, accepted General Kerwin's findings and recommended to the Secretary of the Army that the adverse report be removed from LTC Herbert's file. The Secretary reviewed the file and directed that the efficiency report be removed. The Secretary said that this action was taken in fairness to LTC Herbert, whose adverse efficiency report, covering 58 days, might have reflected an exception to what otherwise appeared to be a record of effective service. The decision did not involve LTC Herbert's war crimes allegations, since there was no mention of them in any part of the record. A promotion board then reconsidered LTC Herbert's file--minus the adverse efficiency report--and recommended he be promoted to Major, Regular Army. By normal procedures, LTC Herbert was nominated for promotion, which was confirmed by the Senate on 12 Nov 71.

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II. WAR CRIMES ALLEGATIONS

On 28 Sep 70, about 13 months after his relief from command, LTC Herbert made his first war crimes complaint, of which there is any confirmation, to the Army in a sworn statement to the Third U.S. Army Inspector General at Fort McPherson, GA. These allegations were forwarded to the Department of the Army and in Oct 70 were sent to the U.S. Army Criminal Investigation Agency (USACIDA) for investigation.

LTC Herbert was interviewed by the USACIDA during 2-6 Nov 70, and 21 separate allegations were identified. Four involved criminal acts of which LTC Herbert claimed personal knowledge; 15 involved criminal acts which LTC Herbert said he had heard about; and two involved matters of morale and discipline. All had allegedly occurred from mid-1968 to mid-1969 in the area of operations of the 173d Airborne Brigade.

The USACIDA investigation used 48 investigators and administrative personnel, took 7 months, involved locating and interviewing some 333 persons in 30 of the 48 continental states, Hawaii, and seven foreign countries. Many of the witnesses had returned to civilian life.

Seven of the 21 allegations had sufficient substance to merit action or further investigation. Two of these had been investigated at the time they occurred by the 173d Brigade and resulted in a general court-martial in one case and Article 15 punishment in the other. The USACIDA investigation confirmed the results of the original Brigade investigations. Two other allegations turned out to be offenses involving Vietnamese and were not under U.S. jurisdiction. The other three cases alleged maltreatment of detainees--suspected Viet Cong and Viet Cong supporters--while they were being held for identification and questioning. No action was taken in one case because the alleged offenders had returned to civilian life. The other two cases are still open. Final decisions concerning these cases and the U.S. personnel involved will be made by the commanders who have court-martial jurisdiction over them.

Of the remaining 14 allegations, three could be neither proved nor disproved, and 11 were unsupported.

III. CHARGES AGAINST MG BARNES, COL FRANKLIN

LTC Herbert did not charge either MG Barnes or COL Franklin with war crimes. However, on 15 Mar 71, LTC Herbert preferred charges against MG Barnes and COL Franklin for failing to report and investigate some of these alleged violations of the law of land warfare and for dereliction of duty in failing to investigate them.

MG Barnes: LTC Herbert charged MG Barnes with failing to investigate and report three of the 21 allegations. The Commanding General, U.S. Army Military District of Washington (CG, USAMDW), who had general court-martial authority over General Barnes at the time of Herbert's

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charges, directed an official inquiry into the charges. After 6 months of investigation, and some 3,000 pages of testimony involving 52 witnesses and over 100 documents, the CG, USAMDW dismissed the charges against General Barnes, because they were not supported by the evidence. In fact, in Nov 70, LTC Herbert himself signed a statement under oath, which denied that he had ever directly reported any alleged war crimes to MG Barnes.

-- One of the allegations, involving the mistreatment of a detainee, had been investigated at the time of its occurrence at MG Barnes' direction, thus showing that no cover-up had taken place.

-- The other two allegations concerned incidents in which only Vietnamese were involved. In one case, the investigation showed MG Barnes was unaware of the incident. In the other case, he was aware of the incident, and despite the fact he was not required to investigate, he did so informally. The report of CID investigation supported the results of MG Barnes' earlier investigation.

In summary, LTC Herbert's charges against MG Barnes were not substantiated.

COL Franklin: The charges against COL Franklin alleged that he failed to investigate and report seven of the 21 war crimes allegations. The Commanding General, Delta Regional Assistance Command in Vietnam, the officer having general court-martial authority over COL Franklin, determined by official inquiry that LTC Herbert's charges were unsubstantiated. The CID investigation showed that two of the seven alleged incidents were investigated by the Brigade. There was no evidence to confirm LTC Herbert's claim that he, or anyone else, informed COL Franklin of the other five alleged war crimes.

-- In one case, LTC Herbert could not have informed COL Franklin at the time alleged, since COL Franklin was in Honolulu.

-- In one case, no evidence was found to support LTC Herbert's claim of having informed COL Franklin. The witness named by LTC Herbert as having heard him inform COL Franklin denied hearing any such report.

-- In the other three cases, no evidence confirmed the allegation that COL Franklin was aware of the alleged incidents.

Both COL Franklin and LTC Herbert passed lie detector tests. COL Franklin's test was conducted by the CID. LTC Herbert's test was conducted by a qualified civilian examiner after he refused to take a test given by the CID under the same conditions as that taken by COL Franklin.

In summary, LTC Herbert's charges against COL Franklin were not substantiated.

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51

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IV. LTC HERBERT'S ALLEGATIONS OF MISTREATMENT AT THIRD ARMY

Cancellation of Leave and the Dick Cavett Show. During Sep and Oct 71, LTC Herbert's commanding officer authorized a series of absences--ordinary leaves, administrative absences, and temporary duty--from Fort McPherson, GA, to help LTC Herbert attend to personal affairs. These absences permitted him to appear several times on radio and television, including the Dick Cavett show of 30 Sep 71.

When LTC Herbert's nomination to the Senate for promotion to Major, Regular Army, was announced in late Oct 71, his commanding officer concluded that the requirement for special absences to handle personal affairs had been met and that LTC Herbert should devote full time to his duties. Consequently, his request for 2 days' leave to appear on the Dick Cavett show in New York City on 2 Nov 71 was not considered justified, especially since he had been absent during 28-31 Oct 71, just 2 days before. However, he was given permission to appear at a television station in Atlanta for an advance video tape filming of a split-screen interview for use on the 2 Nov Dick Cavett show. This authorization was given orally to LTC Herbert at about 1700 hours, 2 Nov 71, in response to his written request submitted an hour earlier. LTC Herbert had ample time to reach the Atlanta television studio for the Cavett show.

General Westmoreland's Alleged Involvement. Comments that GEN Westmoreland had denied LTC Herbert leave to appear on the Dick Cavett show are completely false. GEN Westmoreland was not involved in this matter.

Muzzling. Claims that LTC Herbert was refused permission to speak to the press are false. His interviews with newsmen after he claimed he was muzzled clearly indicate that the Army did not restrict LTC Herbert's access to the press. He was and is under no more restrictive limitations than any other officer in the Army.

LTC Herbert's Assignment. Claims that LTC Herbert's current duty assignment at Fort McPherson is not a meaningful position are incorrect. LTC Herbert is assigned as the Assistant Director of Industrial Operations at that post, a job formerly known as Assistant G4. LTC Herbert's office has staff responsibility for logistical support of the post, including communications, housing, transportation, supply and maintenance, food service, and supporting facilities. At present, this office oversees the spending of \$16.5 million per year, and the work of over 180 personnel at Fort McPherson.

Complaints of Harassment. On 1 Nov 71, LTC Herbert failed to salute properly, and he was corrected. Correction of deficiencies in military courtesy is a normal procedure, not harassment.

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