An Absence of Accountability for the My Lai Massacre

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NOTE
AN ABSENCE OF ACCOUNTABILITY FOR
THE MY LAI MASSACRE

I. INTRODUCTION

The legacy of My Lai leaves behind many unanswered questions concerning accountability. For instance: Why in the aftermath of the massacre was there a failure to charge all those soldiers and high-ranking officials responsible for the carnage? Why was there a failure to convict those charged? Why were the sentences of the convicted not sustained? This article will discuss the breaking of the silence surrounding the massacre, the formal investigation led by Lieutenant General William R. Peers, the actual events that have become known as the "My Lai Massacre," the disposition of charges, the convictions, the apparent lack of United States accountability, the United States cover-up, as well as the United States government's disregard for the Nuremberg Principles.

II. THE BEGINNING

In the fall of 1969, war-weary America received a shock from the distant land of Vietnam.¹ On November 13, newspapers across the country printed accounts of a gruesome massacre that occurred eighteen months earlier in the Vietnamese hamlet of My Lai by the United States infantry unit known as "Charlie Company." The Charlie Company was a unit of the American Division's 11th Infantry Brigade. At the time of the massacre, the unit had been in Vietnam for just over three months.² The men of Charlie Company were young Americans with an average age of about twenty.³ An official U.S. Army report referred to the Charlie Company as "A

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3. Id.
typical cross section of American youth assigned to most combat units.”

The spring of 1998 marked the thirtieth anniversary of what has become known as the My Lai massacre, an event that disillu-
sioned most Americans. Across the nation, Americans read the newspapers and watched news programs in horror as the story unfolded of a 4½ hour assault on the unresisting and unarmed civil-
ian population by United States soldiers. This attack led to the deaths of over 500 Vietnamese men and women, young and old. The graphic pictures of mutilated babies and corpses piled en masse, reminiscent of Nazi brutality, appeared to Americans to be an aberration. How could the United States government, the great peacekeepers, behave like Nazis? The events at My Lai, unfortunately, lent credence to the allegation that the United States was committing war crimes in Vietnam.

Perhaps even more disillusioning than the massacre was the United States government’s delayed response to these acts as well as their subsequent failure to convict all those accountable, and to sustain the convictions of the guilty. For many Americans, the failure to convict and to sustain the convictions of the guilty was an admission by the United States government that it was condoning the behavior of those involved in the slaughter. Such apathy further soiled the military’s reputation and fueled opposition to an already unpopular war. In order to attempt to understand what really happened at My Lai, it is worthwhile to trace the history of the breaking of the wall of silence that surrounded the massacre.

4. Id. at 2.
5. Ronald Ridenhour, Perspective on My Lai: It was a Nazi Kind of Thing, America Still Has Not Come to Terms with the Implications of this Slaughter of Unarmed and Unresisting Civilians During the Vietnam War, THE LOS ANGELES TIMES, March 16, 1993, at B7. Shortly after 7 a.m. on March 16, 1968, the first platoon of Charlie Company landed just outside of a small village in central Vietnam and within hours had massacred an entire community of unarmed and unresisting civilians.
6. See LIEUTENANT GENERAL W.R. PEERS, THE MY LAI INQUIRY 18 (W.W. Norton & Company, Inc. 1979). A December 5, 1969, issue of Life magazine had a well-documented article of the My Lai incident. It included some color photographs taken during the My Lai operation by former Army photographer, Ronald L. Haeberle. The photographs were graphic and bloody, with several scenes of dead women and children. The Life article helped to focus the attention of many Americans on the events of My Lai and on the subsequent criminal trials.
A. Broken Silence

Toward the end of March, 1969, 11th Brigade GI, Ronald Ridenhour, then 22 years old, and just home from Vietnam, had spent months wondering what he should do with his knowledge of a dark and bloody event that had occurred a year earlier in a South Vietnamese village.8

Ridenhour had been a paratrooper in the 11th Infantry Brigade, which was disbanded at the end of November 1967, a week before the 11th Brigade went to Vietnam.9 Ridenhour had been reassigned to the brigade’s aviation section as a door gunner, while some of the other soldiers from the 11th Infantry had been reassigned to the Charlie Company, 1/20th Infantry.10 It was from these fellow brigade members from Charlie Company that Ridenhour learned of the mass killings at the Vietnamese hamlet called “Pinkville.”11 Ridenhour recalled the initial conversation that he had with his friend Gruver in early spring 1968, in which Gruver revealed the story of My Lai.12 The Charlie Company member explained, “We went in there and killed everybody... We shot 'em up and shot 'em down. Three hundred, four hundred - I don’t know how many.”13 For several months after that initial conversation, Ridenhour searched for the truth of what really happened at My Lai. He spoke to several enlisted men, each corroborating the prior depiction of mass killings and sheer brutality.

When Ridenhour spoke with Charlie Company enlistee, Michael Terry, Terry admitted that he, along with Billy Doherty, had taken part in the killings.14 He explained, “Billy and I started to get out our chow, but close to us were a bunch of Vietnamese in a heap and some were moaning. Calley’s platoon had been through before us, and all of them had been shot. But many weren’t dead. It was obvious that they weren’t going to get any medical attention, so Billy and I got up and went over to where they were. I guess we

8. BILTON & SIM, supra note 2, at 214.
9. Id.
10. Id. at 215.
11. Ridenhour, supra note 5, at B7. Task Force Barker’s GIs knew the South Vietnam hamlet as “Pinkville,” both for its color on military maps and for its reputation as the home base for a fierce Viet Cong battalion.
12. BILTON & SIM, supra note 2, at 215.
13. Id. at 214.
14. Id. at 216.
sort of finished them off.”  

Sergeant Larry La Croix told Ridenhour, “It was terrible. They were slaughtering villagers like so many sheep.”  

La Croix explained that when a machine gunner ceased fire, Lieutenant William Calley took over the M-60 and finished off the first group, and then continued to fire at random civilians.

Haunted by these stories, Ridenhour decided to break the year long wall of silence that surrounded the events at “Pinkville” and on April 2, 1969 posted a letter to Mo Udall and thirty other prominent men in Washington, DC, revealing all of the information he collected about the tragedy.

### B. The United States Government’s Response

Ronald Ridenhour’s letter provoked an instant reaction, beginning with Mo Udall’s office circulating the letter to members of the House Armed Services Committee, with Udall personally pressuring the committee chairman, Mendell Rivers, to request an investigation. Copies of the letter were also passed through the congressional liaison section of the Army, forwarded to the Chairman of the Joint Chiefs, General Earle “Bus” Wheeler, and to the

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15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 219. Mo Udall was Ridenhour’s local Democratic Congressman whose anti-war views received wide publicity in conservative Arizona. The letter was also sent to President Nixon, the Secretary of Defense, Melvin Laird, the Chairman of the Joint Chiefs of Staff, Edward Kennedy, Barry Goldwater, Eugene McCarthy, and William Fulbright. Ridenhour sent the letters registered mail, thinking that staff opening them would be bound to take the contents more seriously. It read:

**Gentlemen:**

It was in late April 1968 that I first heard of “Pinkville” and what allegedly happened there. I received that first report with some skepticism but in the following months I was to hear similar stories from such a wide variety of people that it became impossible for me to disbelieve that something rather dark and bloody did indeed occur sometime in March 1968 in a village called “Pinkville” in the Republic of Vietnam. . .Exactly what did in fact occur in the village of “Pinkville” in March 1968 I do not know for certain, but I am convinced that it was something very black indeed. I remain irrevocably persuaded that I do truly believe in the principles of justice and the equality of every man, however humble, before the law, that form the very backbone that this country is founded on. Then we must press forward a widespread and public investigation of this matter with all our combined efforts. *Id.* at 219.

19. BILTON & SIM, supra note 2, at 221.
office of the Army Chief of Staff. Subsequently, an urgent preliminary inquiry was ordered by the Office of the Inspector General. Soon thereafter, Colonel Howard Whitaker, Deputy Inspector General at Long Binh, Saigon, and head of the preliminary investigation, signaled Washington that a further inquiry was necessary. In Washington, Colonel William Wilson was ordered to head the investigation. The evidence that Wilson accrued through interviews with the members of Charlie Company, convinced him that a criminal investigation would have to follow.

Finally on November 24, 1969, nearly seven months after Ridenhour drafted his letter and twenty months after the massacre, an official criminal investigation into the events at Pinkville was ordered. The Army Chief of Staff named Lieutenant General William R. Peers to head the formal investigation. The formal criminal investigation was to become known as the “Peers Inquiry.”

The Peers Inquiry ascertained much of its information through the testimonies of key witnesses such as Colonel Henderson, Officer Thompson, Captain Medina and other division higher echelon testimony, military documentation on “Charlie Company,” as well as survivor interviews and cite trips. It was through the
efforts of Lieutenant William Peers and his investigative team, that Americans learned of what really happened at My Lai. 27

III. THE CRIMINAL INVESTIGATION AND WHAT REALLY HAPPENED AT MY LAI

The thorough Peers Inquiry investigation revealed that in March 1968, the United States objective was to engage and destroy the 48th Battalion of the North Vietnamese Army (NVA), which was reportedly headquartered in the Son My Village. 28 Previous efforts to pacify the area proved unsuccessful. The frustrated United States military determined that they would decimate the province, declaring it a “free fire zone.” 29 A “free fire zone” declaration empowered the United States military to freely attack all targets and suspected targets, without prior approval. 30 The Son intelligence officer with the 11th Infantry Brigade at the time of the My Lai incident; Major Robert W. McKnight, operations officer of the 11th Infantry Brigade; Major Charles C. Calhoun, Task Force operations officer and executive officer; Major Eugene M. Kotuoc, Task Force Barker’s intelligence officer; Captain Charles R. Lwollen, assistant operations officer for Task Force Barker who tape recorded the My Lai operation on the Task Force command radio net; Master Sergeant William J. Johnson, operations sergeant for Task Force Barker, who was responsible for handling all the reports coming in from Lt. Colonel Barker’s command helicopter and three rifle companies, as well as maintaining the operations log; Captain Dennis R. vasquez, Task Force artillery liaison officer; Captain Steven J. Gamble, the commander of the artillery battery that supported Task Force Barker; Captain William C. Riggs, commander of the Alpha Company at the time of the incident; Major Frederic W. Watke, commander of Company B (Aero Scout Company), 123rd Aviation Battalion; First Lt. Dennis Johnson, of the 52nd Military Intelligence Detachment; Sergeant Doung Minh, an interpreter who had accompanied Charlie Co. in its My Lai combat assault; Specialist-5, Jay Roberts, staff writer; Sergeant Ronald L. Haberle, photographer; Lt. Colonel Edwin D. Beers, commander of the 1st Battalion, 20th Infantry. Id. at 52, 66, 77, 85.

27. Id. at 12. The Inquiry panel initially consisted of: Lt. William R. Peers, Bland West, assistant general counsel of the Army; Colonel G.W. Everett of the Secretary of the General’s Staff’s office; Colonel William Wilson, who head the IG investigation, Colonel Robert Miller, chief of the international division of the Judge Advocate general’s office; Major E. F. Zychowski, an experienced investigator with the Office of the Provost Marshal General, Lt. Colonel James H. Breen, who was with the Office of the Deputy Chief of Staff for Operations; Major Clyde D. Lynn, who served as recorder; Lt. Colonel Dan Zink, with the Office of the Chief of Information; Robert MacCrate, senior partner in the NY law firm of Sullivan & Cromwell; Jerome Walsh, a young partner in the NY firm, Walsh & Frisch; Colonel Joseph R. (Ross) Franklin, who was with the Office of the Deputy Chief of Staff for Operations; Colonel Thomas F. Whalen, Lt. Colonel James H. Patterson and Major Joseph I. Apici. By the time the Inquiry was completed in March 1970, the overall panel and staff had reached a total of ninety-two. Id. at 12.

28. Lippman, supra note 7, at 308.

29. Id.

30. Id.
My subhamlet of My Lai was one of many provinces classified as a “free fire zone.” The classification was a direct response to military intelligence reports which claimed that the civilian population was actively sympathetic to the Viet Cong. On March 15, Captain Kotuoc, the task force intelligence officer, briefed the commanders and staff, stating that by 7:00 a.m., all inhabitants of the village would have departed for the markets in the area of Quang Ngai City. The Commanders were also instructed that Charlie Company would receive strong enemy resistance since the 48th Battalion of the North Vietnamese Army had its headquarters in My Lai.

In addition to the strong belief held by intelligence and operations officers that Charlie Company would encounter strong enemy resistance, Peers Inquiry testimony revealed that there was some confusion regarding the scheme of maneuver and instructions regarding the burning of dwellings, destroying crops and livestock and the handling of the civilians.

Contrasting testimonies were extracted from Charlie Company officers, Captain Calhoun and Captain Medina, with respect to the operating procedure at My Lai. Medina testified that Lieutenant Colonel Barker issued exact instructions regarding total annihilation, while Calhoun recalled no such instructions.

Notwithstanding the confusion, the operation commenced at 7:25 a.m. on March 16, with a three-to-five minute artillery barrage followed by the insertion of troops, supported by suppressive gunfire by helicopter. Despite the intelligence reports to the contrary, Charlie Company did not receive any incoming fire as they scrambled out of their helicopters and initiated a direct combat assault.

31. Id.
32. Peers, supra note 6, at 167.
33. Id. at 167. Peers stated that there were some questions concerning instructions given by the commanding officers to burn the village’s dwellings, kill livestock, and destroy crops and foodstuffs. In his testimony, Calhoun recalled no such instructions, whereas Kutouc remembered them vividly. Captain Medina testified that he had received specific orders from Barker to destroy My Lai. Peers states, “Apparently no instructions were given as to the handling of civilians.” Id. at 167.
34. Id. Testimonies before the Peers Inquiry revealed that Charlie Company had no written Standard Operating Procedure regarding the treatment of civilians, dwellings, and foodstuffs. At best the “free fire zone” declaration was an informal understanding. Id.
35. Lippman, supra note 7, at 303.
36. Id. “The third platoon, along with Medina’s command group formed a defensive perimeter... (around the village, while)... the first and second platoons aggressively moved
The American soldiers reportedly fired at anything that moved. Bunkers and huts were razed with grenades or raked with machine gunfire. Women, young and old, were raped. Some Vietnamese were shot as they stumbled out of their huts; most were executed in large assembled groups. Dennis Conti, a mine sweeper operator who was a participant and an eyewitness to the massacre, recalled that women and children were pushed into bunkers, and grenades were thrown in after them. At one point when Conti was alone, he forced a twenty-year-old Vietnamese woman with a four-year-old child to perform oral sex upon him, while he held a gun at the child's head, threatening to kill the child. In the end, over 567 Vietnamese civilian men, women and children were dead.

IV. THE TRIAL AND THE AFTERMATH

A. Disposition of Charges

Although twenty-five participants, both soldiers and officials, were charged with committing war crimes and related acts, only four soldiers were brought to trial and only one, First Lieutenant William Calley, was given a life sentence. However, Calley served only a few months of that sentence before being paroled.

Charges were prepared against twelve officers and soldiers for military-type offenses, such as the failure to obey lawful orders and the dereliction of duty by helping to cover-up. Of those twelve...
officers, the charges against eleven were dismissed, while Colonel Oran K. Henderson was tried by general court martial.\textsuperscript{46} Henderson's acquittal was handed down on December 17, 1971.\textsuperscript{47}

In addition to the twelve officers and soldiers charged with military-type offenses, thirteen officers and soldiers were charged with committing war crimes.\textsuperscript{48} Those war crimes included: premeditated murder, rape and assault with intent to murder.\textsuperscript{49} Of those officers and enlisted men charged with committing war crimes, the charges against seven were dismissed, three were found not guilty, two were barred from reenlistment and only one, First Lieutenant William Calley, was found guilty.\textsuperscript{50}

\section*{B. Absence of Accountability}

The restricted manner of the criminal investigations and the almost unanimous dismissals of charges provoked negative public reaction.\textsuperscript{51} Many of the dismissals were issued from the command-
ing generals, Seaman and Conner, after their own evaluation and upon the advice of their Staff Judge Advocates. Lieutenant Peers commented, "Had (the accused) undergone trial by court martial and been acquitted, there would have been no remaining doubts. However, for a single individual to make such decisions seems inappropriate."52

Lieutenant Peers remarked that he was especially disturbed by the dismissal of charges against the senior officers, most notably, General Samuel W. Koster.53 Peers noted that General Koster's Article 32 investigation was conducted by Brigadier General B. L. Evans, an engineer officer who had served in Vietnam, but who had not been involved in combat operations.54 General Koster was the commander of the 23d Infantry (American) division and was charged with the failure to conduct a prompt and proper investigation into the March 16, 1968 actions at My Lai.55 Evans' report justified Koster's actions and stressed the General's fine character and outstanding military career.56 As a result of Evans' report, a letter of censure was issued to General Koster; the Secretary of the Army reduced his rank to permanent grade of Brigadier General; and his Distinguished Service Medal was withdrawn.57 There was overwhelming evidence that Koster had knowledge of irregularities during the My Lai operation. The information available to Koster included: 1) a high body count and low weapons count, 2) agent's reports that several hundreds of civilians had been slaughtered, 3) Viet Cong communiqués and broadcasts, 4) allegations confirmed by American ground and air forces, and 5) reports of eavesdropped radio communications about a bloodbath.58 The Peers Inquiry report noted that "there was at least a tacit decision to withhold from higher headquarters any information concerning the incident."59 Furthermore, the Peers Inquiry also reported that

52. Peers, supra note 6, at 223.
53. Id.
54. Id.
56. Id., supra note 6, at 223. While Evans' report acknowledged that General Koster may have been remiss in not reporting the civilian casualties and in not ordering a proper investigation, it stressed General's Koster's fine character and his long career of outstanding service and recommended dismissal of all charges. Peers, supra note 6, at 223.
57. Id. at 221.
58. Bilton & Sm, supra note 2, at 188.
59. Lippman, supra note 7, at 102.
although Koster directed Colonel Oran Henderson to examine the My Lai matter, no effort was made to ensure that an "adequate investigation would be conducted." Despite this evidence, Koster merely received a censure for his part in the cover-up. Lieutenant Peers commented that Koster's dismissal was a travesty of justice which would establish a precedent that would be difficult for the Army to justify.

C. Public Response to the My Lai Trials

Attorney and Peers Inquiry panel member, Bob MacCrate and Congressman Samuel S. Stratton were also distressed by the Koster dismissal. MacCrate, in a New York Times article, stated, "I believe that the Commanding Officer of The First Army has effectively cut off the orderly progress of the inquiry up the chain of command in acting at this time as he has. . . What is involved is a failure to recognize the Army's responsibility to the public at large." MacCrate felt that Koster's dismissal, and subsequent dismissals, were a failure by the Army to recognize the importance of acting in accordance with the law of war. Congressman Stratton joined MacCrate by objecting to the Koster dismissal. On February 4, 1971, he made a long speech on the floor of the House in which he stated, "Dropping charges against the highest ranking officer involved, without any public trial or even discussion of the case against him. . . can only result in serious damage to the reputation of the United States Army, to the United States, and to the effectiveness of the processes and procedures of military justice in dealing with matters which involve profound national and international concerns." Criticism of the decision proliferated in the mainstream media. Numerous articles and editorials were published which expressed a general misunderstanding of the dismissals. The sentiments expressed by Lieutenant Peers, Bob MacCrate, Congressman Stratton, and much of the public at large, would forever

60. Id.
61. Peers, supra note 6, at 223. On January 28, 1971, almost three months to the day after receiving General Evans' report, General Seaman dismissed the charges and issued General Koster a letter of censure.
62. Id.
63. Id. at 224.
64. Id.
65. Id. at 225.
immortalize the My Lai prosecutions as a travesty of justice of mammoth proportions. In the end, of the twenty-five charged with committing war crimes and/or related acts, First Lieutenant William Calley was the only participant who was tried and found guilty by Court Martial.

D. 1st Lieutenant William Calley, a Scapegoat?

Calley’s highly publicized trial lasted seventy-seven days and involved over one-hundred witnesses. Calley became notorious and his participation in the My Lai massacre became the subject of conversation across the nation. Finally, after months of dismissals, and an apparent lack of accountability for the massacre, the public had someone to blame. But Calley was only one of many directly involved in the arbitrary destruction of an entire village. Was Calley merely a government scapegoat?

William Peers commented that, “I think it most unfortunate that of the twenty-five men who were charged... (Calley) was the only one tried by court martial and found guilty. On the other hand... he was in command of his platoon and was fully aware of what they were doing... he was convicted of killing at least twenty-two civilians, but his platoon may have killed as many as 150 to 200 innocent women, children and old men... So I don’t consider him a scapegoat.” America’s divisiveness over Calley’s guilt, as evidenced by William Peers statement, permeated the trial and subsequent appeal process, and may have resulted in the eventual reduction of his sentence.

Calley was convicted on three counts of premeditated murder and on one count of assault to commit murder. He was sentenced to dismissal, forfeiture of all pay and allowances, and confinement to hard labor for life. The court found that the evidence sug-

66. Lippman, supra note 7, at 140.
67. Manning, Lippman & Byrne, supra note 1, 7, and 44.
68. Peers, supra note 6, at 227-228.
70. Id.
suggested that Lieutenant Calley initiated much of the murder, acting both in an individual capacity and as an officer.71

Eyewitness testimony from soldiers in Calley’s platoon were particularly damaging. Enlistee Meadlo testified that he was guarding a group of villagers with enlistee Dennis Conti when Lieutenant Calley approached him and said, “You know what to do with them, Meadlo.” He assumed that this meant only to continue guarding them. However, Calley returned several minutes later and said, “How come they’re not dead?” and Meadlo replied, “I didn’t know we were suppose to kill them.”72 Lieutenant Calley then directed, “I want them dead.” Meadlo remembered that Calley backed away and began firing into the group before he did the same.73 Conti recounted that Calley told him and Meadlo, “To take care of the people . . . kill them.”74 Specialist Four Sledge corroborated Meadlo and Conti’s testimony when he remembered moving with Calley to the South side of the village where they found Meadlo and Conti with a group of thirty to forty Vietnamese. Sledge testified that he heard Calley tell Meadlo “to waste them” and that when he was walking away he heard gunshots and screaming. He glanced back and saw a few people fall, but did not see Calley firing.75 Calley defended himself on the grounds that he was following orders from Captain Medina “. . . to waste the Vietnamese people and to get my people out in line, out in the position where they were supposed to be.”76 The court held that there was no doubt that the defenseless Vietnamese were shot summary execution style by either Meadlo and Calley or by Meadlo, at the order of Calley. Foundation evidence was provided by the photographs taken by former Specialist Four Ronald Haeberle near the south side of the village. The court held that, “. . . foundation evidence satisfactorily authenticates the photograph as being of the same group of bodies as was the subject of . . . the testimonies of Meadlo,

72. See U.S. supra note 69, at 1169.
73. Id.
74. Id. at 1168.
75. Id. at 1169.
76. Id.
Conti and Sledge. 77 Testimonies elicited from other witnesses recalled similar incidents of mass murder by Calley and others. 78

Specialist Four Hall testified that he remembered collecting thirty or forty people, putting them into a ditch and then proceeding to a position farther away. He noticed that Calley and several others stayed behind, and then he heard fully automatic fire behind him coming from the area in the ditch. Hall later crossed the ditch and recalled, "They were dead. There was blood coming from them . . . They were very old people, very young children, and mothers . . . There was blood all over them." 79 The observations of the eyewitnesses in the supporting helicopters portrayed an equally ghastly overview of the massacre in the ditch. Aviator, Lieutenant Thompson, who succeeded in evacuating a few living Vietnamese, recalled Lieutenant Calley boasting to him, "I'm the boss here." 80

After the court considered all of the factors involved, including the mitigating circumstances such as the nature of the Vietnam war itself, the unknown enemy, and the physical surroundings, they unanimously found Calley guilty of the crimes charged. The three judge panel held, "[d]estructive as war is, war is not an occasion for the unrestrained satisfaction of an individual soldier's proclivity to kill." 81 The court reasoned that the approved sentence, twenty years of hard labor, was not too severe a consequence of Calley choosing to commit mass murder. 82

After the sentence was handed down, the public outcry supporting Calley intensified. 83 Many from politicians to soldiers to lawyers to American housewives, felt that Calley had become a government lamb that was sent to a very public slaughter. 84 In response to the verdict, a five-man draft board in Athens, Georgia resigned, and chairman George Pugh said, "Our conscience will not allow us to continue when our men are treated like that. I take the

77. Id.
78. Id. at 1170. Additional testimony was elicited from enlistees Hall, Olsen, Grzesik, Dursi and Turner.
79. Id.
80. Id. at 1172.
81. See U.S. supra note 69, at 1196.
82. Id.
83. ARTHUR EVERTT, KATHERINE JOHNSON & HARRY ROSENTHAL, CALLEY 269 (Sidney Moody et al. eds., 1971).
84. Id.
position that war is war." Senator Herman A. Talmadge was "saddened to think that one could fight for his flag and then be court-martialed for apparently carrying out his orders." Defense attorney William Kunstler said, "The real perpetrators of the crime pace the Oval Room of the White House. If the Nuremberg Principle means anything, who does it apply to—the Nazis and not the Nixons?" Citizens everywhere spoke out, sending telegrams to Ft. Benning where Calley was being held, and to the Judge, to the jurors, to the President, protesting the verdict and claiming injustice. Even Ronald Ridenhour, the soldier who wrote the initial letter and broke the wall of silence, felt that too much emphasis was placed on Calley and that, "...a strong case can be made against the chain of command."

E. Executive Intervention

In response to this overwhelming public outcry, President Nixon decided to personally review Calley's case before the sentence was finally put into operation at any level. John Ehrlichman, assistant to the President on domestic affairs, in a press conference, discussed Nixon's response. Ehrlichman explained, "[t]he Code of Military Justice does not provide for an appeal to the President of the United States, not for any mandatory review by the President of the United States in a case of this kind ... the President is saying before the sentence is finally put into operation at any level, he will personally review the case and make a final decision in the case." However, pursuant to Article II section 2 of the Constitution of the United States, "The President shall be Commander in Chief of the Army ... and he shall have the power to grant reprieves and pardons for offenses against the United States ... " Thus, acting within his power as Commander-in-Chief to voluntarily grant reprieves and pardons, Nixon ordered Calley out of the stockade

85. Id. at 272.
86. Id. at 273.
87. Id. at 279.
88. Id. at 273.
89. Id. at 275.
90. Id. at 289.
91. See U.S. CONST. art. II, section 2.
and put under house arrest at his apartment at Ft. Benning, while all of the appeals were being heard.  

In the end, Calley only served three years under house arrest for his participation in the deaths of noncombatant Vietnamese men, women and children. For many Americans and the world at large, Calley's three-year sentence was three years too long, for others the sentence was far too short.

V. THE MILITARY COVER-UP

The failure to convict all those platoon soldiers and/or high-ranking military officials responsible for the bloodshed and Calley's subsequent scapegoat status may be directly attributed to the cover-up perpetrated by the higher military echelon involved in the massacre. The facts of the massacre remained hidden for too long. In every command level from company to division, actions were taken either to conceal or omit the truth of the carnage from the appropriate authorities. The concealment or omissions ranged from the deliberate or negligent failure to report acts of murder and war crimes, false reports of combatant and noncombatant casualties, orders to suppress or conceal the incident issued directly from military superiors, as well as an apparent complacent attitude toward the My Lai prosecutions held by the Nixon Administration.

A. Failure to report acts of murder and war crimes

The Peers commission report established that members of Charlie Company, First Battalion, 20th Infantry, did not report the crimes perpetrated by that unit on March 16, 1968. It can be argued that the collective nature of the failure to report resulted from the fact that many of the members were directly implicated in the massacre. In order to avert their own demise, members avoided reporting or even talking about the tragedy. The Peers report comments on the deficiency by explaining that the collective reluctance to expose "... was facilitated by the nature of the operation which

92. EVERETT, supra note 83, at 280.
94. Id.
95. PEERS, supra note 6, at 253.
96. Id. at 300.
isolated (Charlie Company) . . . by the fact that the company was detached from its parent battalion at the time of the operation and remained so for some weeks thereafter, and by the fact that Son My village was located in a VC-controlled area." 97 In addition to the failure to fully report, the Peers Inquiry determined that when Captain Medina did observe and report noncombatant casualties, the number reported was far less than the actual death count. 98

B. False reports of non-combatant and combatant fatalities

The Peers Inquiry noted that it was clear from the testimonies given by Charlie Company members who were involved in the March 16 operation, that there was a far greater number of non-combatant casualties than the 20-28 reported and a far greater number of combatant casualties than the 38 reported by Captain Medina. 99 The Peers Inquiry concluded that false reports were issued by commanding officers in response to information requests. 100

Many of the reports reported noncombatant casualties as combatant casualties, arguably an effort by the commanding officers to conceal the atrocities. The Peers report revealed that " . . . at a minimum, such reports included women and children killed . . . there is evidence that First Lieutenant (now Captain) Willingham was aware that the majority (if not all) the persons reported as VC were women and children." 101 Furthermore, the Peers Inquiry discovered that on the eve of the massacre, Captain Michles, in a response for information concerning the number of casualties that were women and children, submitted a false report to Task Force Barker, the parent battalion, claiming that negative women and children were killed. Testimony from overflight eyewitnesses contradicted the submitted reports. These eyewitnesses testified that at an altitude of less than 1,000 feet, they were able to observe a large number of noncombatant casualties. Colonel Henderson testified that he observed 6-8 such bodies on March 16, while others in his aircraft admitted to seeing at least 15-20 such bodies. 102

97. Id.
98. GOLDSTEin, supra note 93, at 301.
99. Id.
100. Id.
101. Peers, supra note 6, at 301.
102. Id. at 302.
The Peers Inquiry further noted that one of the most obvious efforts to suppress information was the false report concerning the 68 VC purportedly killed by artillery.\textsuperscript{103} Reportedly, Lieutenant Barker received a radio message, while flying over My Lai, that Charlie Company's VC casualties had reached 84. When Barker returned to LZ Dottie, he met with Colonel Henderson, Lieutenant Luper, Major McKnight, and Major Calhoun. After that meeting, an entry was made in the Task Force Barker Journal stating that as of 8:40 a.m., 69 VC were killed in action at My Lai (4).\textsuperscript{104} No further reports were made after 8:40 a.m. concerning casualties of any type. According to the Peers Inquiry, "... recording and reporting of VC dead reported by Charlie Company was halted by Task Force Barker... in response to the order from Colonel Henderson... to avoid attracting undue attention to Charlie Company's operations at My Lai."\textsuperscript{105}

\textbf{C. Orders to suppress and/or conceal the incident issued by military superiors}

Upon the Charlie Company's return to LZ Dottie on March 18, the soldiers were advised by Captain Medina not to discuss the events that took place at My Lai on March 16.\textsuperscript{106} The Captain instructed the men that an investigation into the incident was underway and that they were not to discuss the events except in the course of the investigation.\textsuperscript{107} The company members were thus lead to believe that they were relieved of their duty to report the incident. It is conceivable that the many soldiers who withheld information surrounding My Lai were able to justify their silence by citing the apparent sanction given to the entire operation by company officers.

\textbf{D. The Nixon Administration's Complacency}

In addition to the blatant suppression of information concerning the bloodshed by military personnel, many Americans viewed the Nixon Administration's apparent lack of involvement in the

\textsuperscript{103} Id. at 303.
\textsuperscript{104} Id.
\textsuperscript{105} Id. at 302.
\textsuperscript{106} Peers, supra note 6, at 300.
\textsuperscript{107} Id. at 301.
inquiry and subsequent prosecutions as a further effort to disregard the massacre.\textsuperscript{108} William Peers noted that the President could have taken the opportunity to remind Americans and the world at large of the nation's obligation to punish those who commit war crimes.\textsuperscript{109} Such Presidential initiative, according to Peers, "...might have changed the atmosphere in which the subsequent court martial's were held. But it was not forthcoming."\textsuperscript{110}

Arguably, the failure of the military justice system to fully prosecute the crimes committed at My Lai and the absence of Presidential directive were directly attributed to the political environment of the times. The My Lai prosecutions and its discovery of the United States atrocities increased American and international antiwar and anti-government sentiment.\textsuperscript{111} William Peers commented that during the investigations, "Street marches, demonstrations . . . were in full swing . . . the Nixon Administration was trying to find ways to disengage from South Vietnam."\textsuperscript{112} In view of the turmoil, the Administration did not want to take any action that would fuel the flames of protest or alienate any of their supporters. The prosecutions were simply unwelcome publicity to an already unpopular war. Accordingly, the Nixon Administration said little and allowed the prosecutions to proceed. As Commander in Chief, Nixon was certainly entitled to review the prosecutions.\textsuperscript{113} Such a review would have either appeased those misguided people who either viewed Calley as an innocent scapegoat or opposed the entire idea of war crimes. It was not until Calley's conviction that the President finally spoke out. Many disgruntled citizens viewed the Administration's delayed response as a failure to remind the American people of their country's obligations to punish those who commit war crimes.\textsuperscript{114}

Nearly thirty years after the massacre, Americans and the world at large still do not fully know what transpired in that unfor-

\begin{enumerate}
\item[108.] Id. at 253. "The American people were still in the throes of the anti-Vietnam War turmoil. . . . The Nixon Administration was trying to find ways to disengage from South Vietnam and still leave a government and military establishment there capable of providing its own self-defense." Id. at 253.
\item[109.] Id.
\item[110.] Id. at 254.
\item[111.] Id. at 254.
\item[112.] Id.
\item[113.] \textit{See} U.S. CONST. art. II, section 2.
\item[114.] PEERS, supra note 6, at 254.
\end{enumerate}
tunate Vietnamese hamlet on March 16, 1968. Efforts to withhold information continue to this day. The Peers Inquiry noted that six officers who occupied key positions during the My Lai operation exercised their right to remain silent. Their testimonies were never heard and their knowledge is forever retained. Even more disturbing was the Inquiry's finding that even a larger number of witnesses either withheld valuable information or gave false testimony.\textsuperscript{115} Despite the obstacles to uncovering the facts, it seems clear that (in the words of Ronald Ridenhour) something rather dark and bloody did indeed occur sometime in March 1968 in a village called Pinkville.\textsuperscript{116}

VI. THE UNITED STATES DISREGARD FOR THE LAWS OF THE NUREMBERG TRIBUNAL

It can be argued that the lack of accountability for the My Lai massacre was a tacit acceptance by our government of violations of the laws of war, as set forth in the Nuremberg Principles. If such blatant violations of the laws of war, as evidenced by My Lai, are accepted, the integrity of our society is called into question.\textsuperscript{117} At what point does the massacre of innocent civilians cease being merely casualties of war and rise to the level of war crimes?\textsuperscript{118} The Nuremberg Principles were designed to answer that question and to end the destruction of civilian populations during war.\textsuperscript{119} The Principles were sponsored in the belief that we as a rational, intelligent, humane people can rise above the mistakes of the past.\textsuperscript{120} Sadly, the events at My Lai, twenty three years after the Nuremberg Tri-

\begin{itemize}
\item \textsuperscript{115}\textit{Goldstein}, \textit{supra} note 93, at 299.
\item \textsuperscript{116}\textit{Bilton & Sim}, \textit{supra} note 2, at 219. Ronald Ridenhour's letter broke the wall of silence surrounding the massacre.
\item \textsuperscript{117}\textit{War Crimes and the American Conscience}, xiii (Erwin Knoll et al. eds., Congressional Forum 1970).
\item \textsuperscript{118} \textit{Id.} at 183. As defined by Nuremberg Principle VI(b), "war crimes" are violations of the laws or customs of war which include... murder, ill-treatment or deportation to slave-labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity. \textit{See id.} at 183.
\item \textsuperscript{119} \textit{See} Charter of the International Military Tribunal (IMT), 82 U.N.T.S. 279 (August 8, 1945).
\item \textsuperscript{120} \textit{Id.}
\end{itemize}
bunal sat, proved that we cannot always rise above the mistakes of the past.

The tacit acceptance of violations of laws of war\textsuperscript{121} by the United States government in the aftermath of My Lai can be viewed as a blatant disregard of the Nuremberg Principles. The basic tenets of Nuremberg Principles involve the international use of the rule of law to punish crimes against peace, crime against humanity, and war crimes.\textsuperscript{122} According to the Nuremberg Charter, aggressive war was a crime.\textsuperscript{123}

In 1945, the United States, France, The United Kingdom, and the Soviet Union affirmed unanimously "the principles of international law recognized by the Charter of the Nuremberg Tribunal."\textsuperscript{124} The Nuremberg definitions consisted of seven principles which defined as punishable crimes under international law, crimes against peace, war crimes, and crimes against humanity.\textsuperscript{125}

\textbf{A. Requirement of Accountability for Professional Conduct on the Battlefield}

The most popularly understood aspect of the Nuremberg Principles is the requirement for and accountability for professional conduct on the battlefield.\textsuperscript{126} During this century, the United States disciplined soldiers for battlefield misconduct in the Philippine Insurrection, World War I, World War II, Korea and Vietnam.\textsuperscript{127} However, it was the Vietnam war that divided the country around politics and the manner in which the war was fought. A major perception of the Vietnam war was "war is war." Vietnam was a brutal war described by one theorist as "primitive savagery augmented by modern technology."\textsuperscript{128} War criminality was commonplace and tactics of terror had become an essential tactic of war. Proponents of the "war is war" school of thought argue that

\textsuperscript{121} Id.
\textsuperscript{123} See Charter of the International Military Tribunal (IMT), 82 U.N.T.S. 279 (Art. VI) (August 8, 1945).
\textsuperscript{124} Knoll et al., eds., supra note 117, at 182.
\textsuperscript{125} Id. at 183. Principle VI of the Nuremberg principles sets out and defines the punishable crimes.
\textsuperscript{126} Eckhardt, supra note 122, at 7.
\textsuperscript{127} Id. at 7.
\textsuperscript{128} Id.
atrocities in Vietnam were less common than those from other wars, but were better known.\textsuperscript{129} They explained that Vietnam was a war viewed nightly on American television which left an impression, not a reality, more brutal than other wars.\textsuperscript{130}

In the aftermath, opponents of the “war is war” school of thought desired reparations for the brutality that they witnessed. In a country so committed to the rule of law, accountability on the battlefield was expected. The atonement that many Americans desired would unfortunately not come in the form of discipline of soldiers for battlefield misconduct.

The My Lai atrocities that were war crimes under definition seven of the Nuremberg Principles included murder or ill-treatment of the civilian population, the plunder of public and private property, the wanton destruction of the village and devastation not justified by military necessity.\textsuperscript{131} For opponents of the “war is war” school of thought, the My Lai massacre and its abysmal prosecution record was a horrific reminder of the Holocaust. In 1944, a German minister in the Balkans protested to a German commanding general (who ordered the burning of the Greek town of Klissura and the killing of 223 inhabitants, including fifty who were under ten years old and 128 women and old men) in these terms, “It is sheer insanity to shoot babies, children, women and old people.”\textsuperscript{132} The evidence surrounding My Lai suggested that the lives of the inhabitants of Vietnam were held of as little value to the American troops as Klissura’s population was to the Nazis. The Nuremberg Principles were designed to prevent the reoccurrence of such dehumanization. According to Telford Taylor, the leaders in Vietnam were like the German leaders in World War II in that they lost sight of elementary truths. Telford Taylor wrote, “There is serious cause for concern that our leaders have become so immersed in the business of war that they are blind to the ends for which we went to Vietnam in the first place, and that our troops will come to be feared and hated perhaps more than the forces against whom they are supposed to be protecting the people.”\textsuperscript{133}

\textsuperscript{129} Id.
\textsuperscript{130} Id.
\textsuperscript{131} Knoll et al. eds., supra note 117, at 183,
\textsuperscript{132} Id. at 12.
\textsuperscript{133} Id. at 13.
B. Prohibition of Crimes Against Humanity

The United States in 1945 unanimously affirmed the Nuremberg Principles, thereby effectively signing onto the belief that military personnel should be held personally and criminally responsible for war crimes. The indiscriminate killing of the Vietnamese at My Lai and the subsequent lack of accountability for those killings was a direct violation of Principle VI's prohibition of crimes against humanity. Crimes against humanity committed at My Lai, which were done in connection with war crimes, included murder and inhuman acts done against the civilian population. These crimes against humanity reverberated back to Americans and throughout the world. Many Americans questioned, "How could our boys do this?" Theorist George Eckhardt commented that, "With My Lai, the United States lost its virginity. Yes, war crimes could happen to us. Never before would one have thought that someone must actually teach American soldiers that they are not to kill unarmed, unresisting non-combatants—women, children, and, yes, babies."\(^{135}\)

The Nuremberg Principles were, in effect, a collaborative, constitutional break on the use of force. The deterioration of the principles during Vietnam clearly undermined the value of the precedent worldwide. As Senator Taft, in a controversial speech at Kenyon College expressed, "[p]eace in the world can only come if a law is agreed to relating to international relations."\(^{136}\) Peace in the world will not come to fruition if nations, such as the United States, disregard basic moral and humane parameters and permit officers and soldiers to engage in a free reign of terror and justify terror in the name of warfare.

VII. Conclusion

General William Sherman's dictum that "war is hell" dates back to the civil war.\(^{137}\) According to historian Paul Fussell, frontline soldiers in World War II recognized the vast differences

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134. Id. at 183. Crimes against humanity: Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime. Id. at 183.
135. Eckhardt, supra note 122, at 8.
137. Bryne, supra note 44, at 15.
between the official version of the “clean” war and the numbing reality of the war they fought.\textsuperscript{138} Apologists have pointed to, and will continue to point to, the pressures upon soldiers during combat. However, does Sherman’s statement justify the United States leniency for soldiers who commit war crimes?

After the Peers Inquiry, a number of changes in the laws relating to the prosecutions of war crimes were suggested in response to the failure to adequately punish those responsible for the atrocities committed at My Lai. Peers noted that, “The House Armed Services Committee recommended turning over the cases of persons outside of military jurisdiction to the federal courts.”\textsuperscript{139} Other suggestions included the creation of a civilian tribunal to adjudicate cases. Another idea was to vest jurisdiction of all war crimes prosecutions in the U.S. District Court for the District of Columbia, with the Department of Justice being responsible for investigation and prosecution.\textsuperscript{140} In the aftermath, there was also an increased interest in the creation of an International Criminal Court. Despite the heightened interest, the dream of an International Criminal Court still has not reached fruition, nearly thirty years after the disgrace of the My Lai prosecutions. The \textit{ad hoc} international tribunals for Bosnia and Rwanda, with their recent successes, have the beginnings of what could become a recognized, enforceable and permanent response to war crime violations.

Those who commit war crimes must be held accountable. Attempts have been made in the past to sanction accountability for war crimes by reconciling military needs with the requirements of justice. Unfortunately, the expression of these reconciliations, as evidenced by the Nuremberg Principles,\textsuperscript{141} which imposed a duty upon the nations which wage war, has not been effective. The laws created by that document proved unenforceable in the My Lai trials. Despite the lack of accountability for My Lai, the fact does remain that the My Lai prosecutors secured one sole conviction, that of First Lieutenant Calley.

\begin{footnotes}
\footnote{138. \textit{Id}.}
\footnote{139. \textit{Peers}, \textit{supra} note 6, at 254.}
\footnote{140. \textit{Id}.}
\footnote{141. \textit{Knoll}, \textit{et al.}, eds., \textit{supra} note 117, at 1. For a discussion of the Nuremberg Principles.}
\end{footnotes}
War may be "hell," as Sherman wrote, but standards can and must be established which would enable the perpetrators to be brought to substantial justice.

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