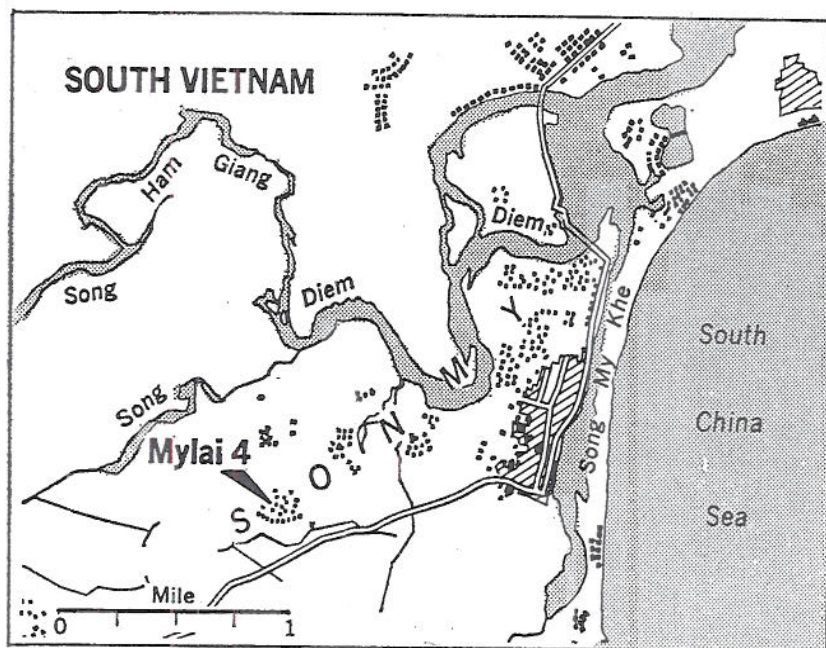


The Army and General Koster



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By SAMUEL S. STRATTON

WASHINGTON—The Army made a grave error last January in dropping all charges in connection with the Mylai massacre against Maj. Gen. Samuel W. Koster, former superintendent of West Point and commander of the Americal Division at the time its subordinate units participated in the original assault on March 16, 1968.

Dropping charges against the division's highest officer while courts-martial are still in progress against junior officers raises serious doubts about the fairness of military justice and the willingness of the Army to let the American people know the truth about Mylai.

My own interest stems from seven months as a member of the four-man Hébert subcommittee, which made an in-depth survey of Mylai and, in July, 1970, issued a report asserting that "a tragedy of major proportions" had occurred there and the details of this tragedy were deliberately covered up by a "conscious effort to suppress evidence" on the part of top Americal Division officers.

Mylai has become more than a strictly internal Army matter. It has caught the critical attention of the whole world, and its outcome will have an important bearing on the future respect which Americans have for their Army and the other services.

General Koster was originally charged with seven counts of failure to "obey lawful regulations and dereliction of

A 'Grave Error' Was Made, Raising Doubts About Military Justice

duty" in not reporting possible atrocities at Mylai up through the chain of command. These cover-up charges were dropped on Jan. 29 of this year, however, by Lieut. Gen. Jonathan O. Seaman, First Army commander, because they "were not supported by the available evidence."

Actually, General Seaman found evidence that Koster "did not report civilian casualties at Mylai 4" and "did not insure a proper and thorough initial investigation of the reported civilian casualties." But considering his "long and honorable career," General Seaman said, and because "the evidence did not show any intentional abrogation of responsibilities" on Koster's part, all seven charges were dropped.

Curiously, the day after the charges were dismissed, an Army "spokesman" admitted that Koster had received a "letter of censure" and indicated that further "adverse administrative action" might be taken against him "if warranted."

This letter of censure—which might never have surfaced had there been no public outcry over dropping the charges — has one clear advantage over a court-martial: it keeps the general's case out of the papers. As

its own investigation progressed, the Army obviously realized that a public airing of Koster's incredible mismanagement of his command would make the Army look bad. The massacre aspect of Mylai, they doubtless reasoned, would stand or fall on the outcome of the Calley trial. And as for the cover-up, if Col. Oran K. Henderson, the brigade commander, could be made the fall guy (as apparently he will be), then none of the tarnish would have to rub off on any generals. And let the public interest be damned!

Of course the excuse for dropping the Koster charges — a "long and honorable career" and no evidence of "intentional" failures—is absurd. After all, that's precisely what is at issue: whether Koster's career was honorable at Mylai. And whether his actions in concealing the facts were or were not "intentional" is something for a jury to decide. On this point the Hébert report is especially eloquent: eight of its twenty-five findings go directly to Koster's own culpability, including the following:

1. General Koster was in the air over Mylai on the day of the tragedy.
2. He was informed at the time about noncombatant casualties.
3. He personally countermanded a subordinate's order for an immediate and more thorough check of those casualties.
4. Subsequently he ordered three "investigations" into possible atrocities at Mylai, one of which was deliberately concealed from normal military channels, and a second which the subcommittee dismissed as "a figment of the imagination."

Nevertheless the steady progression of dropped charges makes the chances slim that the American people will ever get the full story of Mylai through ordinary court martial proceedings. As a result I recommend two alternatives. First, that we create, in view of the obvious inadequacies of Army justice in this case, some other tribunal, composed of civilian rather than military justices, and empowered to make a determination of all the public issues involved. Or, failing that, once the courts-martial are over, that the full records of the Army's own Mylai investigation and of the Hébert subcommittee be made public, and that General Koster be examined by the subcommittee, in open session and under oath.

Representative Samuel S. Stratton of New York serves on the House Armed Services Committee.