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House Panel on Songmy Proposes Widening

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WASHINGTON, July 14—A House panel that investigated the alleged killing of Vietnamese civilians at Songmy recommended today that the jurisdiction of the Federal courts be expanded to deal with military offenders who have become civilians.

It also called for regulations to "insure that all investigations of allegations of possible war crimes be conducted by competent, trained investigators who shall be independent of the immediate command involved in the alleged incident."

The recommendation reflected the four-man panel's disenchantment with Army procedures for investigating and reporting alleged war crimes.

A major portion of the panel's 53-page report to the House Armed Services Investigating Subcommittee was devoted to the scrutiny and subsequent criticism of the Army's original investigation. Much of it appears in a section called "The Unexplainable Failure of the Reporting Procedures."

Finds Incident 'Covered Up'

Generally, the report found that a "tragedy of major proportions involving unarmed Vietnamese, not in uniform, occurred at Mylai 4 on March 16, 1968, as a result of the military operations of units of the American Division." Mylai 4 is a hamlet in the Songmy village complex.

Another major conclusion was that the "Mylai matter was 'covered up' within the American Division and by the district and province advisory teams."

The two conclusions are much the same as those arrived at last March by an Army investigating panel. That inquiry resulted in charges against 14 officers, but two of these charges were subsequently dismissed and the others are still under investigation. Much of the Army report is still secret.

The House report discloses a number of details about the original Army field investigation.

The panel named five witnesses who reported they had seen varying numbers of Vietnamese casualties, many of them women and children. It said in its summary observations, "The evidence indicates that a relatively few United States troops actually committed any of these latter acts."

Judgement Is Declined

The report also displayed an apparent reluctance to brand the alleged deaths as crimes or to judge the individuals responsible for them.

It said, for example, "Based upon events which took place in the weeks preceding March 16, 1968, it is reasonable to conclude that those 'civilians'

present in the hamlet of Mylai 4, except for those too young to do so, were there to aid the enemy or his cause."

In this connection, the panel recommended that no charge involving an alleged capital offense committed in a military action against the enemy should be referred to court-martial unless the accused soldier undergoes an investigation to determine mental responsibility.

The report elaborated on this point in its closing sentences by observing that what took place at Songmy "was wrong" and contrary to the Geneva Convention and other regulations.

Question of Sanity

"In fact," the report went on, "it was so wrong and so foreign to the normal character and action of our military forces as to immediately raise a question as to the legal sanity at the time of those men involved."

The panel was named last spring by Representative L. Mendel Rivers, the South Carolina Democrat who heads the House Armed Services Committee. Hearings began April 15.

Mr. Rivers has publicly criticized the Army for pressing charges, allegedly with too much haste, against individuals involved in the Songmy case, but he did not include himself on the investigating subcom-

mittee.

Instead, he named a senior Democrat on the committee, F. Edward Hebert of Louisiana, as chairman. The other Democrat on the panel is Samuel S. Stratton of upstate New York. The two Republican members are Charles S. Gubser of California and William L. Dickinson of Alabama.

The four-man group is officially titled the Mylai Incident Subcommittee. The report was issued under the imprimatur of the parent Armed Services Investigating Subcommittee.

In recommending that Federal District Courts be empowered to deal with former servicemen who cannot now be prosecuted in any established court, the subcommittee said:

"Those individuals appear to be free from prosecution in any jurisdiction, while their associates who remained in the military service may be brought to trial by court-martial. This is manifestly unjust.

Lack of Jurisdiction

Army spokesmen said that 22 civilians were under investigation for alleged involvement in the Songmy incident. No charges have been brought because of the apparent lack of jurisdiction by a competent court.

Twelve members of the military face charges for alleged direct involvement in the Songmy incident. In addition, nine officers have been implicated

in the alleged "cover-up," not counting those against whom the charges were dropped.

Of the total of 21 officers and enlisted men who have been charged, five have been ordered to stand trial. The others are being investigated under a procedure similar to a grand jury inquiry.

In detailing the allegations of a cover-up, the House panel said that because of the number of individuals involved, "it would be unreasonable to conclude that this dereliction of duty was without plan or direction."

However, none of the figures involved was accused by name of taking part in "bottling up" the incident.

The panel disclosed that Maj.

Gen. Samuel W. Koster, commander of the Americal Division, the parent organization of the outfit that swept into Songmy, countermanded an order that troops return to Mylai 4 on March 16, 1968, to make a thorough check of the number of civilians killed.

"He said he did so for tactical reasons," the report said.

Some of the principal figures in the Americal Division Hierarchy, including General Koster and Col. Oran K. Henderson, commander of an Americal brigade, testified that a more substantial investigation had been carried out by Lieut. Col. Frank Barker. But the panel said, "On the basis of the evidence, the Barker investigation and his report appear to b a

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figment of the imagination of those officers."

Colonel Barker was the commander of the task force that was involved in the Songmy operation. He was later killed in a separate operation.

Another portion of the report said, "The manner in which most of the Americal Division officers, in both command and staff capacities, testified before the subcommittee suggested an extreme reluctance on their part to discuss the allegation and its investigation with any real specificity."

The panel said that the "most damning evidence that there was a conscious effort to suppress evidence was the disappearance of documents from the files of U.S. organizations

between early 1968 and mid-1969."

Judge Urged to Block Trial

AUSTIN, Tex., July 14 (AP) — Federal District Judge Jack Roberts studied today a petition asking him to block the first scheduled court-martial of an American accused in the alleged Songmy massacre.

Courthouse employes familiar with such cases doubted that a decision would be made this week.

Attorneys for S. Sgt. David Mitchell, 30 years old, have asked Judge Roberts for a temporary restraining order against Sergeant Mitchell's court-martial at Fort Hood, Tex. His lawyers challenge the Army's

constitutional right to try him under the circumstances.

A three-judge Federal court in Atlanta is considering similar constitutional issues raised by another Songmy defendant, Sgt. Esequiel Torres. A third petition for an injunction against a trial was filed yesterday in Atlanta by Special 4 Robert W. T'Souvas, 21.