

SERGEANT'S TRIAL IS READY FOR JURY

Hutto Court-Martial to Hear Closing Arguments Today

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FORT McPHERSON, Ga., Jan. 13—The defense rested its case today in the court-martial of Sgt. Charles H. Hutto who is accused of assault with intent to murder at least six South Vietnamese in the hamlet of Mylai 4.

Both sides will offer their closing arguments tomorrow morning and the case is expected to go to the six-member panel of officers that will decide Sergeant Hutto's guilt or innocence.

The last bit of evidence offered by Edward L. Magill of Miami, the chief defense attorney, was a copy of the standard oath given to all enlisted men who enter the Army voluntarily, as did the defendant.

The oath includes a phrase sworn to by individual soldiers that they will "obey the orders of the President of the United States and orders by officers appointed over me according to regulations."

The defense has hammered away at the theme that Sergeant Hutto was obeying the order of a superior officer when he fired his rifle into a group of men, women and children and that he lacked the capability to know whether the order was legal or illegal.

An Issue of Legality

The military judge, Col. Kenneth A. Howard, told counsel for both sides, outside the presence of the jury, that his instructions to the panel would indicate that it was up to them to decide whether the order given the sergeant was "manifestly illegal" or was merely illegal.

"If I tell them that the order was manifestly illegal, then I'll have to say that there is no defense in this case," the judge said.

Colonel Howard indicated that it was open to debate whether Sergeant Hutto knew, either by education or training, that an order was illegal. Any "reasonable man," however, could be expected to recognize a manifestly illegal order, he said.

"I'm not aware that these instructions have ever been issued before," the judge commented to counsel.

The Uniform Code of Military Justice says that "an act performed manifestly beyond the scope of authority, or pursuant to an order that a man of ordinary sense and understanding would know to be illegal, or in a wanton manner in the discharge of a lawful duty, is not excusable."

'Reasonable Man Test'

Colonel Howard said he would include the "reasonable man test" in his instructions to the jury, meaning that the panel would have to decide how a "reasonable man in Atlanta" would differ from the same man in combat in Vietnam.

In presenting its case, the prosecution offered three witnesses who said they had seen unresisting civilians shot down at Mylai. Only one man testified that he had seen Sergeant Hutto standing with other soldiers near a group of civilians who were killed, but he could not say he had seen the defendant fire.

However, Sergeant Hutto, in a statement given to Army investigators and read to the jury, admitted that he had fired his M-16 rifle into the gathering of civilians, but only on orders from his superiors.

The defense has contended that the troops had been told that a strong enemy force was in the hamlet and that orders were given to kill all the inhabitants and livestock because everyone left in the village after having been warned to leave could be considered as the enemy.

The attorneys for Sergeant Hutto also contend that American soldiers are given no Army training that would enable them to recognize an illegal order.