

Final Witness Testifies at Henderson Court-Martial;

Special to The New York Times

FORT MEADE, Md., Dec. 6—The 106th and final witness testified today at the court-martial of Col. Oran K. Henderson, and both the defense and the prosecution began to prepare arguments for the military judge's instructions on the law to the seven-man jury.

At the conclusion of testimony, the judge, Col. Peter S. Wondolowski, dismissed the jury until next Monday, when they will hear the closing ar-

guments, and will then meet in seclusion to decide a verdict.

Colonel Henderson, a former infantry brigade commander, is charged with having covered up the slayings of South Vietnamese civilians in the hamlet of Mylai 4 by failing to conduct an adequate investigation, of not reporting a war crime to Army headquarters and of lying before an Army board of inquiry.

If convicted, the 51-year-old officer could receive a sentence of 39 months in prison, for-

feiture of all pay and dismissal from the service.

The final witness was Fred Blakey Jr. of DeKalb, Ill., the former clerk-driver for the late Lieut. Cal. Frank A. Barker, the commander of the infantry task force that swept through Mylai on March 16, 1968.

Questions About Report

Mr. Blakey was one of three witnesses called by the jury of two generals and five colonels after the defense and prosecution had rested their cases. He was asked if he knew any

of the particulars about a report of the Mylai incident written by Colonel Barker, a document that has vanished from Army files.

Under questioning Mr. Blakey was unable to recall assisting Colonel Barker with the report either in the interviewing of participants or in typing the final product. Neither could he remember ever having heard that something had gone awry in the assault on Mylai.

He testified, however, that if he had flown in the colonel's

TUESDAY, DECEMBER 7, 1971

c

11

Jury Will Hear the Closing Arguments Next Monday

helicopter to the field to obtain depositions, he certainly would have remembered it.

After the jury had been dismissed, arguments were heard on a defense motion to dismiss the charge that Colonel Henderson had "wilfully failed" to conduct an adequate investigation of the slayings on the ground that the Government had been unable to produce the Barker report.

The defense argued that the Government had not made an exhaustive search for the document and that it was respon-

sible for the loss in that the report apparently was in the hands of Army officers before it disappeared. The officers, the defense contended, were acting as agents for the Government.

Lie Detector Tests Sought

In his argument, the chief military defense attorney, Lieut. Col. Frank J. Dorsey, disclosed that three high-ranking officers who had testified about the missing report here had also been asked to undergo lie detector tests on the matter.

One of the officers, Lieut. Col. Barney Brannen, who testified that he had seen the report in the possession of Lieut. Col. Henry I. Lowder, passed the test, the lawyer said. Colonel Lowder, who testified that he could not remember searching for or finding the report, "flunked" the test, Colonel Dorsey said.

The third officer, Brig. Gen. John W. Donaldson, who testified that he could not remember ordering a search for the document or having seen it at all, declined to take the

test, Colonel Dorsey related.

"I can't but feel that Colonel Lowder is untruthful in at least some degree of his recollection," Colonel Dorsey said.

The military judge, after hearing the prosecution argue that an intensive search had been made for the missing report, and its contention that those who had possession of the report were not Government investigative agents, deferred a ruling until tomorrow. Argument on the judge's instructions to the jury will be heard during the next three days.