

Henderson Trial: More Is Involved Than a Colonel

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FORT MEADE, Md., Nov. 28 —The court-martial of Col. Oran K. Henderson, the highest-ranking officer to face judgment in the aftermath of the mass slayings at Mylai 4, is drawing to a close here in a red-carpeted courtroom about a world and a half away from the dreary battlefields of Vietnam.

Sometime in the next few days, once the last-minute legal wrangling is done, a military jury of

two generals and five colonels will retire to decide whether the former infantry brigade commander did or did not willfully cover up the slaying of more than 100 unarmed civilians by American troops.

It is an important verdict, despite the apathy that has set in after the more dramatic trials of those accused of the actual slayings, if only because it is the last court-martial that will arise from the ashes and the blood-soaked soil of Mylai.

Once there were 13 officers accused by the Army of having assisted in a cover-up of Mylai. The charges against all but Colonel Henderson were dismissed and now the statute of limitations—two years in the case of dereliction of duty—has run out. Only a murder charge now could be prosecuted and since most of the men who joined in shooting civilians are out of the Army, it seems that Colonel Henderson is the end of the line.

The Orders Before the Raid

The jury's decision, however, involves more than just the fate of an obscure combat colonel. Throughout the three-month-old case, it has become clear that the command structure of the Army has also been on trial, although both the prosecution and the defense have tended to skirt that theme with skill and legal grace.

From the testimony here and in other Mylai trials, it has been learned that the men of Charlie Company, First Battalion, 20th Infantry, 11th Brigade of the Americal Division were ordered, even before the first bullet struck the first civilian, to commit a war crime. They were told, at a pre-assault briefing, to destroy the houses, kill the livestock, poison the wells and burn the foodstuffs in the hamlet because it was a long-time fortress of the Vietcong.

The infantrymen, according to testimony, received the order from Capt. Ernest L. Medina, the company commander who was later to win acquittal at his court-martial on charges of murder and manslaughter. Who, if anyone, gave him the order is not clear. Colonel Henderson denies knowing about it and one man who might know, Lieut. Col. Frank A. Barker, the task force commander, was killed in a helicopter crash three months after the assault.

Geneva Rules Cited

But the instructions — no matter who gave them—and the response are direct violations of the Geneva Conventions of Aug. 12, 1949, a set of rules aimed at protecting civilians. The order was even a violation of M.A.C.V. (Military Assistance Command, Vietnam) Directive 20-4, which defines such activities as war crimes. Any breach of the directive was to be reported to M.A.C.V., even if it meant bypassing the usual chain of command.

The destruction of Mylai was not reported to M.A.C.V. headquarters in Saigon. And Colonel Henderson's eventual report that 20 civilians had been inadvertently killed by artillery and helicopter gunship fire was likewise never passed on to higher headquarters, though "serious incident" reports were required whenever civilians were killed by misdirected fire.

The evidence seems to show that while there was command emphasis on seeking to avoid the commission of war crimes, not much attention was paid in the field or at M.A.C.V. as to how commanders were to deal with them once they had taken place. There was no system set up to police the order. Thus, a Mylai episode could lie hidden until someone blew the whistle.

One of the nagging questions of the Henderson trial is why 20 civilian deaths was acceptable to field commanders while reports of higher numbers

made them uneasy. What was the cutoff number that separates the routine from the atrocity? Apparently the figure of 20 was small enough to insure that the report stayed in division files.

Captain Medina, now a civilian, testified that he told Colonel Henderson that 20 to 28 civilians had been killed. He testified he had lied—that he already knew that at least 106 civilians had been slain. But the colonel, he testified, was irritated by the 28 figure. He had already been told by Colonel Barker that the figure was 20. Where had the other eight come from?

Colonel Henderson testified that once Captain Medina explained that he had simply added eight bodies reported having been sighted by the colonel himself—from his helicopter in the vicinity of Mylai—to his previous figure of 20, the colonel was satisfied with the report.

Another nagging matter is

the question of lying. Those who have listened to the testimony of more than 100 witnesses believe that a number of high-ranking officers have not told the truth under oath, either to protect themselves or to avoid embarrassing the Army. There have been too many contradictions, too many claims of "I can't recall" for anyone to believe that the truth has been told by all called to the stand.

The laws of libel prohibit the use of the names of those who might have violated the Army oaths they once took. The Army, however, like a parent distraught with the antics of ungrateful offspring, may presumably seek to punish by administrative fiat. This could mean demotion or letters of censure that mean the end of a military career.

The testimony here also pointed up another command problem in the constant shifting of officers into and out of the

field. Under Army policy, career officers spent about six months in the field, then were moved to staff jobs about the time they had managed to learn counterinsurgency tactics, the geography and the habits of the enemy. Their replacements then had to learn from the beginning at the cost of more casualties to Americans and South Vietnamese civilians.

The main issue that has not been grappled with at the Henderson court-martial is why the troops ran amok in the first place—whether it was simple savagery, misunderstood orders or the frustration of men constantly harassed by land mines, booby traps and a hostile population. Apparently no one yet knows the answer.

Colonel Henderson probably put his finger on the problem outside the courtroom last week when he said that an answer to the question of why Mylai "is going to take either historians or psychologists" to resolve.