

Colonel on Mylai Panel Declares Killing P.O.W. Might Be Proper

By DOUGLAS ROBINSON JAN 7, 1971

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FORT McPHERSON, Ga., Jan. 6 — An Army colonel who said it might be proper to execute a prisoner of war in an "unconventional" conflict such as the Vietnam war was tentatively seated today as head of a jury that will decide a Mylai case.

The officer, Col. Robert A. Koob, was approved as president, or foreman, of the court-martial panel despite the strenuous objections of Capt. Franklin R. Wurtzel, the chief Government prosecutor.

So far, five officers have been tentatively seated on the panel that will hear the case of Sgt. Charles E. Hutto, of Tallulah, La., who is accused of assault with intent to murder at least six South Vietnamese civilians in the hamlet of Mylai 4 in the Sonmy village complex on March 16, 1968.

Although military law calls for a minimum of five officers to hear a general court-martial, the military judge, Col. Kenneth A. Howard, said he would continue to question prospective court members tomorrow.

These Are Excused

Both the prosecution and the defense in the Hutto case have one peremptory challenge each, meaning that two jurors may be excused without any reason being given.

At the session today, three colonels, a captain and a lieutenant appeared. Only Colonel Koob and the captain were chosen for the jury. The others were excused for cause.

Under questioning, Colonel Koob, who is the controller at Fort Campbell, Ky., said that the news media reports of a

massacre at Mylai were "incredible."

"It is hard for me to believe that any of our troops would go in and murder people without having a reason," he said.

Asked by Captain Wurtzel if an enlisted man should be prosecuted if he shot an unresisting prisoner of war at the order of an officer, Colonel Koob said, "Since the time I entered the service I was taught that a soldier was trained to shoot and kill. Haven't we trained soldiers to be responsive to orders?"

Calls War Unconventional

He then went on to say that he could understand an order to execute a prisoner of war in Vietnam. "This is not a conventional war," he said. "We have to forget propriety."

Reminded by the judge that the rules of warfare prohibit the summary execution of a prisoner of war, Colonel Koob said that in that case the officer should be prosecuted for giving the order but the enlisted man should not be held responsible.

Later, the colonel told the court that, despite his personal feelings on the matter, he would "try" to uphold the law that a soldier bears the legal responsibility for carrying out an unlawful order.

Although the prosecution objected to the seating of Colonel Koob, the chief defense counsel, Edward L. Magill of Miami, urged that he be accepted because he had said he would be able to overcome his personal opinions.

The judge overruled the prosecution's motion and Colonel Koob was accepted.