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## ARMY JURY GETS HENDERSON CASE

Deliberations Set Today in  
Last of Mylai Trials

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FORT MEADE, Md., Dec. 16 — The case of Col. Oran K. Henderson went to a jury of two generals and five colonels this afternoon in the last court-martial to arise from the slaying of South Vietnamese civilians by American troops at Mylai 4.

The jury received the case at 2:25 P.M., following a 90-minute instruction on the law by the military judge, Col. Peter S. Wondolowski. Some two hours late, at 4:35, the jury been in three wars, is the highest ranking officer to resume its deliberations in the morning.

Colonel Henderson, a 51-year-old combat soldier who has is the highest ranking officer to be tried on charges emerging from the slaying of more than 100 old men, women and children on March 16, 1968, during a combat assault on the rural hamlet.

The colonel, who was an infantry brigade commander at the time, is accused of "willful dereliction of duty" in failing to conduct an adequate investigation of the carnage, of not reporting a war crime to his division commander as required by military regulations, and of false swearing before an Army board of inquiry in 1970.

The maximum penalty upon conviction of all three offenses is 39 months in prison, forfeiture of all pay and allowances and dismissal from the service.

In terms of penalty, the charge of failure to report a war crime is the most serious, carrying a possible two-year prison sentence. The false-swearing accusation has a maximum sentence of one year, while the dereliction of duty charge carries a possible three-month prison term.

Under military law, a two-third majority of the jury is required to convict Colonel Henderson on each of the three charges. Since the military counts a fraction as one, it would take five jurors to find the officer guilty.

In its deliberations, the jury is considering the testimony of 106 witnesses and 154 documents and transcripts that have been entered into evidence.

The Henderson court-martial will enter its 62d court day tomorrow, equaling in length the trial of First Lieut. William L. Calley Jr., who was convicted earlier this year of the murder of at least 22 of the Mylai civilians. Until now, the Calley trial was the longest court-martial in United States military history.

Colonel Wondolowski, in his instructions to the jury, reminded them of evidence presented in the case "to indicate that troops of the accused command deliberately and wantonly murdered Vietnamese civilians of all ages."

"You must keep in mind, in your deliberations, that the accused has not been charged with, and the prosecution is in no way suggesting, that the accused had any responsibility for ordering, knowingly permitting, condoning, or failing to prevent, any of these crimes.

"You must scrupulously avoid allowing any emotional reaction you may have to the commission of such crimes to influence your decision in this case," the judge said.

Colonel Wondolowski, in regard to the charge of "willful" dereliction of duty, also told the jurors that they might consider the lesser offenses of dereliction by "culpable inefficiency" or "negligence" if they ascertained that the defendant had not acted with "bad purpose and an evil motive."

The judge cautioned the jury that "the accused is not to be convicted of dereliction of duty if he made an honest and reasonably diligent effort to perform his duties, yet failed to measure up to an objective criterion of successful performance, such as the conduct of a 'proper and thorough investigation.'"

Regarding the charge of failure to report a war crime, Colonel Wondolowski said that to convict the defendant "you must find beyond a reasonable doubt that the accused personally and consciously thought that a war crime had occurred."

Colonel Henderson has consistently maintained that his men lied to him when he tried to find out whether civilians had been killed and that he had no knowledge that a massacre had taken place.

The judge instructed the jurors that they could give considerable weight to the defendant's reputation and character as set out in 18 affidavits from Army officers.

"Evidence of Colonel Henderson's good character," he said, "is admissible as tending to show that it is unlikely that he committed the offenses charged" unless such evidence is "more than offset by the other evidence in the case tending to establish guilt."