

# ***Judge Refuses to Dismiss Case Against Medina in Mylai Deaths***

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FORT McPHERSON, Ga., Sept. 10—The military judge in the trial of Capt. Ernest L. Medina denied today defense motions to dismiss the case. He said that the Government had produced “some substantial evidence” in support of all the charges against the captain in the Mylai killings.

The judge, Col. Kenneth A. Howard, also refused to direct the five-man court-martial to return a verdict of not guilty.

F. Lee Bailey, representing Captain Medina, said he was ready to open the defense case on Monday. He has asked the Government to produce as defense witnesses First Lieut. William L. Calley Jr., one of Captain Medina's platoon leaders, who was convicted last March of the premeditated murder of 22 South Vietnamese civilians at Mylai, and Col. Oran K. Henderson, former commander of the 11th Brigade, American Division, now on trial at Fort. Meade, Md., for attempting to cover up the mass slaying of March 16, 1968.

Lieutenant Calley, whose sentence has been reduced to 20 years, will be brought here Monday morning from Fort Benning, Ga., where he is confined pending appeals.

Colonel Henderson will not be available until late next week.

## **Arguments for Dismissal**

In his arguments for dismissal, Mr. Bailey contended that the Government had failed to support its charge that Captain Medina committed premeditated murder when he shot a Vietnamese woman lying in a rice paddy outside Mylai. There was a difference, he said, between a “battlefield homicide” and murder in the street.”

There was no dispute, he said, that Captain Medina shot the woman. But the Government failed to prove that the shooting was without justification, he said. Captain Medina fired instinctively, Mr. Bailey went on, when he saw the woman move after he had been ordered to check the “Vietcong suspect” for arms.

Captain Medina felt bad after shooting the woman and reported the incident by telephone to Colonel Henderson, who told him not to worry, according to Mr. Bailey.

As for the charge that Captain Medina shot a small boy, no witness contended that Captain Medina discharged his rifle, Mr. Bailey said. It was conceded that the captain, reacting to a "sudden movement," had shouted something and that a member of his command group had shot the child, but there was "only rankest speculation" that Captain Medina intended that the boy be shot, Mr. Bailey said.

### **Over-All Responsibility**

Similarly, the Government failed to prove Captain Medina had over-all responsibility for the mass slaying, Mr. Bailey said. There was no proof, he said, that the captain was aware of excessive killings until he saw a large number of bodies on a trail sometime between 10 A.M. and 10:30 A.M. and he then ordered a cease fire.

For the Government, Maj. William G. Eckhardt argued that the evidence submitted by 31 witnesses "clearly showed Captain Medina had knowledge of the killings and calculatingly chose to ignore what was happening." By his inaction, Captain Medina "aided and abetted" in the slayings, Major Eckhardt said.

Frederick J. Widmer, a 23-year-old welder of Lower Burrell, Pa., will continue his refusal to testify as a Government witness in the Medina case despite a contempt citation, his Army attorney, Capt. Gary Myers, said today.

Mr. Widmer was cited for contempt Aug. 25 when, despite a grant of immunity, he invoked the Constitutional privilege against self-incrimination. He obtained a temporary order restraining the Government from prosecuting him on the contempt charge. The order was dissolved this morning by a Federal judge.

Mr. Widmer was a member of Captain Medina's company at Mylai. A witness testified two weeks ago that Mr. Widmer shot a small boy during the attack.