

## Prosecution Says That Medina 'Chose Not to Intervene' a Mylai

By HOMER BIGART

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FORT McPHERSON, Ga., Aug. 16—Capt. Ernest L. Medina did not order the mass killings at Mylai but he “calculatingly chose not to intervene” while his troops were killing unarmed civilians, the military prosecutor said today in opening the Government’s case against the 34-year-old Mexican-American officer.

The prosecutor, Maj. William G. Eckhardt, made it clear that the Government’s strategy in seeking Captain Medina’s conviction on a charge of premeditated murder would rely heavily for precedence on the World War II trial of Gen. Tomoyuki Yamashita.

General Yamashita, who commanded Japanese troops in the Phillipines, was hanged because he failed to prevent atrocities against prisoners of war and civilians although there was no evidence that he ordered the atrocities or even knew of them.

Major Eckhardt said the Government would prove that Captain Medina knew that non-combatants were being rounded up and killed and did nothing to halt the “carnage.” By failing to intervene, Captain Medina intended to give “protection and encouragement to his men in the perpetration of murder,” the prosecutor charged.

### No Tension

The long-delayed start of evidence in the trial of Captain Medina, the second officer to face court-martial in the Mylai killings, was lacking in tension and drama. Major Eckhardt devoted only 11 minutes to his

opening statement; F. Lee Bailey, the chief defense counsel, used 16 minutes to reply, and the testimony of the first three witnesses called by the Government failed even to place Captain Medina at the scene of the shootings.

Spectators in the tiny courtroom on this dark and humid day fought off drowsiness as the interrogation dragged on with barely a mention of the defendant. As court recessed, Mr. Bailey remarked with glee that today’s witnesses might just as well have been called by the defense.

“This is the first criminal case I’ve seen where the defense witnesses go on first,” he said.

Besides being charged with responsibility for the slaying of “not less than 100” civilians in the South Vietnamese village of Mylai on March 16, 1968, Captain Medina is also charged with the premeditated murder of a woman and a small boy, and with assault upon a prisoner.

### Reports Cease-Fire Order

Replying to the Government, Mr. Bailey told the five-man military court that the captain issued a cease-fire order as soon as he heard that civilians were being shot and that the order was issued “in language that will turn this courtroom blue.”

He defended the shooting of the woman. Captain Medina had stern orders from his brigade commander to round up enemy weapons, Mr. Bailey said, so when a helicopter





Associated Press

**DURING COURT-MARTIAL RECESS: Capt. Ernest L. Medina at Fort McPherson yesterday**

dropped a smoke signal to indicate the location of an armed suspect, the captain hurried to the scene. He saw a Vietnamese in black pajamas, the lawyer said, and it turned out to be a woman. There was no weapon, he said. Captain Medina was turning back when he saw "what he believed to be movement" by the woman, so he "instinctively turned and shot," Mr. Bailey went on.

Captain Medina immediately notified the brigade commander, Col. Oran K. Henderson, of the incident, Mr. Bailey said, and Colonel Henderson radioed back: "I understand; these things happen."

#### Countermanded Order

Captain Medina was also acting on instinct, Mr. Bailey said, when he ordered his men to shoot at a Vietnamese figure moving in the grass. He countermanded the order and lowered his rifle when he saw that the target was a child, Mr. Bailey said. But it was too late and someone else shot the boy.

As for assaulting the prisoner, Captain Medina merely fired twice over the head of the man to frighten him and extract intelligence, Mr. Bailey asserted. He said the Captain had been told by a Vietnamese interpreter that the prisoner was "a ranking member of the Vietcong" who might know the whereabouts of the 48th Vietcong battalion, which had eluded Captain Medina's men at Mylai.

The Captain never intended actual harm, according to Mr.

Bailey, and as an expert rifleman he "placed the shots exactly where he wanted." Then he put his rifle on safety and "set it on the ground so the suspect was looking straight into the snout of it," a trick that inspired the prisoner to talk, Mr. Bailey said.

#### Photographer Testifies

The first Government witness was Ronald Haeberle, the former combat photographer whose pictures of the Mylai victims shocked the nation. He said he had witnessed some of the shootings but could not place Captain Medina on the scenes when the killings occurred.

The other witnesses, James J. Dursi of Brooklyn and Gregory T. Olsen of Portland, Ore.,

were also unable to recall the captain's presence at the mass shootings.

None had heard Captain Medina give any order to shoot women and children. First Lieut. William L. Calley, a platoon leader under the captain who was convicted in March of the murder of 22 persons at Mylai, said he had acted on orders from Captain Medina.

All the witnesses were hazy over the exact timing of the mass killings and of Captain Medina's cease-fire order. This was important to the defense, for Col. Kenneth A. Howard, the military judge, said the captain could not be held criminally liable for killings that were committed by his men before he was aware of what was going on.