

## ARMY WITHDRAWS MEDINA WITNESS

Acts After He Says That  
He Is Willing to Tell Lie

By HOMER BIGART

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FORT McPHERSON, Ga., Aug. 25 — The Government's case against Capt. Ernest L. Medina suffered a series of major blows today.

A key prosecution witness was withdrawn after he said that he would willingly commit perjury if it served his conception of justice. Another witness invoked the Fifth Amendment and refused to testify despite a grant of immunity.

A third had his credibility impugned by the disclosure of prior conflicting testimony plus an admission that he drank four quarts of wine a day and would happily take drugs if that would help him to forget the Mylai killings.

Also, a member of the five-man jury said that he was unaware that the defense counsel, F. Lee Bailey, stipulated in opening remarks Aug. 16 that Captain Medina had in fact fired at a Vietnamese woman who was lying in a rice paddy outside Mylai.

"I must have been dozing or something," Lieut. Col. Bobby G. Berryhill told the military judge.

### Spoke With Defense Aides

The witness who said that he might give false testimony was Michael Bernhardt, who spent three hours last night chatting with two of Mr. Bailey's aides, Capt. Mark J. Kadish of Brooklyn and John Albert Johnson of Hingham, Mass.

What Mr. Bernhardt told Captain Kadish and Mr. Johnson was disclosed by Mr. Bailey with such effect that the Army prosecutor, Maj. William G. Eckhardt, announced after a 15-minute recess, "We desire to withdraw the witness."

Mr. Bernhardt had testified at the trial of Lieut. William L. Calley Jr. that Captain Medina had tried to cover up the Mylai massacre. He said that two days after Mylai, Captain Medina had warned his men not to discuss the Mylai incident with Army investigators and specifically cautioned Mr. Bernhardt not to write to his Congressman about the affair.

The Government had hoped that he would repeat this testimony today.

But as soon as he was called to the witness stand, Mr. Bailey asked for an examination outside the hearing of the jurors. The military judge, Col. Kenneth A. Howard, sent the jury from the court room.

### Belongs to Peace Group

Mr. Bailey quickly established that Mr. Bernhardt was not religious, that he belonged to a group that opposed the Vietnam war and that he admitted he had knowingly withheld information from an Inspector General's hearing on Mylai.

"Didn't you say last night, 'I don't know whether I'll tell the truth tomorrow?'" Mr. Bailey demanded.

"I don't remember," Mr. Bernhardt replied.

"Didn't you say you'd knowingly tell an untruth to preserve a principle—namely, justice?"

"I don't remember."

"Would you lie if you thought it would serve the ends of justice?"

"Okay. In answer to your question, yes, I could."

"When Captain Kadish asked you if you intended to exercise your prerogative today about telling or not telling the truth, did you reply: 'Be surprised,?'"

"Yes."

Mr. Bailey said that Captain Kadish had asked if Mr. Bernhardt's peace organization was "subversive" and that Mr. Bernhardt replied: "I'll take the Fifth on that." The organization was not identified.

"Are your ideas as to your prerogative about when to tell

the truth connected in any way with a subversive group?" the lawyer asked.

"No."

After Mr. Bernhardt had been dismissed, the Government called Frederick Joseph Widmer of Lower Burrell, Pa., who invoked the constitutional privilege against self-incrimination and declined to testify.

Last week, John M. Smail, an assistant machine gunner at Mylai, testified that Mr. Widmer one of Captain Medina's radio men, had shot a small boy at Mylai.

Captain Medina is accused of murdering this boy. He is also charged with being responsible for the killing of "no less than 100" civilians at Mylai during an assault on the undefended village March 16, 1968, and for the murder of a woman.

At the Calley trial, Captain Medina admitted that he had given an order to shoot but countermanded it and lowered his rifle when he said that the figure was a child. Mr. Widmer was accompanied by a legal officer, Capt. Gary Myers, who protested that a grant of immunity signed by Lieut. Gen. Albert O. Connor, the Third Army commander, would not protect Mr. Widmer from prosecution for perjury if his testimony here conflicted with his previous testimony at closed Mylai hearings.

Judge Howard said that he would decide tomorrow whether Mr. Widmer should be ordered to testify.