

Judge Howard's summary of the evidence surrounding the crucial question of knowledge in United States v. Captain Ernest L. Medina is as follows:

A. For the Prosecution:

The following statements are prosecution representations and not my conclusions as to the state of the evidence but the prosecution alleges that Captain Medina was the company commander of Charlie Company, 1st Battalion, 20th Infantry of the 11th Brigade. As company commander Captain Medina had briefed the men of his company, assigned them specific missions, dispatched them on a combat assault described as a search-and-destroy mission, into the village of My Lai (4) at about 0730 hours on 6 March 1968.

The prosecution alleges that the accused was on the ground in and about the village of My Lai (4) from shortly after 0730 hours, 16 March 1968, until after Charlie Company moved from the village of My Lai (4) into a night laager position in the afternoon of 16 March 1968, as well as thereafter. The prosecution also alleges that Captain Medina was in radio contact throughout the operation with his platoons.

It is contended that the accused was aware almost from the beginning of the operation that the units of his company were receiving no hostile fire and in fact early in the morning ordered his men to conserve ammunition. The prosecution also contends that some time during the morning hours of 16 March 1968, the accused became aware that his men were improperly killing noncombatants. It is contended that this awareness arose because of the accused's observations, both by sight and hearing, and because of the conversation between Sergeant Minh and the accused. The prosecution contends this time of awareness on the part of the accused was at least at some time between 0930-1030 hours, 16 March 1968, if not earlier.

The contention is further made that the accused, as Company Commander, had a continuing duty to control the activities of his subordinates where such activities were being carried out as part of an assigned military mission, and this became particularly true when he became aware that the military duties were being carried out by his men in an unlawful manner. The prosecution contends that Captain Medina, after becoming aware of the killing of noncombatants by his troops, declined to exercise his command responsibility by not taking necessary and reasonable steps to cause his troops to cease the killing of noncombatants.

It is further contended by the prosecution that after the accused became aware of these acts of his subordinates and before he issued an order to cease fire, that a number of unidentified Vietnamese civilians were killed by his troops. The contention is made that Captain Medina did not issue a cease fire order until late in the morning and that when a cease fire order was in fact given, that the troops did cease their fire.

It is the prosecution's contention that the accused was capable of controlling his troops throughout the operations but that once learning he had lost control of his unit, he declined to regain control for a substantial period of time during which the deaths of unidentified Vietnamese civilians occurred. It is finally the prosecution's contention that as a commander the accused, after actual awareness, had a duty to interfere (and) he may be held personally responsible because his unlawful inaction was the proximate cause of unlawful homicides by his men.

B. For the Defense:

Contrary to the theory of the prosecution, the defense alleges that Captain Medina never became aware of the misconduct of his men until too late and immediately upon

suspecting that his orders were being misunderstood and improper acts occurring, he ordered his men to cease fire.

The accused contends that even though he was on the ground he stayed with his command post west of the village for tactical reasons and never saw any evidence of suspicious or unnecessary deaths until immediately prior to the cease fire order. He contends that he was aware of an artillery prep and double coverage of helicopter gunships, and that it was likely that some noncombatants might be killed by such protective fires.

He believed that noncombatants, and particularly the women and children, would not be in the village on that particular morning. He contends that though he saw a few bodies near the vicinity of the village of My Lai (4), he believed these to be the results of the artillery and gunship fire.

The accused contends that though he became aware that his troops were out of control, by the time of this awareness, the deaths had all occurred and it was too late to prevent what had occurred; but as soon as he became aware he did issue a cease fire order. He asserts that though there was some degree of volume of fire throughout the morning, he was aware that his men were under orders to kill the livestock in My Lai (4) and in the initial stages of the operation his men were advancing toward and through what he believed to be an area heavily infested with a well-armed enemy and his men were laying down a suppressive fire.