

Lawyer Says Capt. Medina Gave No Massacre Order

Bailey Asserts Officer Was Told Village Was Full of Vietcong

By PETER KIHSS

F. Lee Bailey, a civilian lawyer for Capt. Ernest L. Medina, said yesterday the officer had been told that Songmy village in South Vietnam was "stacked" with Vietcong soldiers and would be clear of women and children when his infantry company assaulted it.

A current Army investigation of the attack on March 16, 1968, has led to court-martial charges against a lieutenant in the captain's company for alleged premeditated murder of 109 civilians and preliminary allegations against a sergeant for assault with intent to murder 30.

Mr. Bailey, whose home is in Boston, was interviewed by telephone in Columbus, Ohio. He said that he had been retained to represent Captain Medina, who is not under any charges.

"The company commander," Mr. Bailey said, "received no orders to butcher anyone or to kill any women and children—and he issued none."

In response to questions, Mr. Bailey said:

¶ Captain Medina received a "caution order" by radio only after the attack started, informing him that women and children were in the area.

¶ Captain Medina shot someone when a helicopter pilot first radioed that this was a



Associated Press

Capt. Ernest L. Medina in a picture that appears in the latest issue of Life. The magazine does not say where the photograph was taken.

Vietcong soldier lying on the ground with a weapon. The person turned out to be a woman. She was killed.

The platoon led by First Lieut. William L. Calley Jr., who has been charged by the Army with murder, was "at the other end of the village" and not under Captain Medina's direct observation.

¶ After the attack, Captain Medina was asked to report

Continued on Page 12, Column 1

Continued From Page 1, Col. 7

on civilian casualties, and his checkup indicated there had been "25 to 28."

Captain Medina, who has been stationed since last December at Fort Benning, Ga., has repeatedly declined comment on newsmen's inquiries since the investigation became known, and so has his Army counsel, Capt. Edwin J. Richards.

Served in Army 13 Years

A native of Springer, N. M., Captain Medina is 33 years old and has served more than 13 years in the Army. He has won the Silver and Bronze Stars, the Army's third and fourth highest awards, for gallantry in action.

Mr. Bailey said that he conferred at length with Captain Medina last Friday. On Saturday night, Mr. Bailey said, he sent a telegram to President Nixon asking for a conference with White House staff members.

"I said I thought this case, and especially the case of Captain Medina," Mr. Bailey said, "had very broad implications far transcending any individual. The company commander gave a lawful order, and now they are threatening to punish him for it. This could completely destroy the efficacy of any ground force in Vietnam."

While witnesses under Army control have been enjoined from talking, Mr. Bailey said, "witnesses not under the control of the Army seem to be talking about Captain Medina, so that he has faced untrue charges denominating him as a butcher."

"The company commander received no orders to butcher anyone or to kill any women or children — and he issued none."

"He was told he was to go into this village, which was thought to be stacked only with the 48th Battalion of Vietcong. The assault was to be held off until 7:30 (A.M.) because women and children cleared the village at 7, to go to the market and the rice paddies."

Artillery Barrage Ordered

"An artillery barrage by 105-millimeter howitzers was to be laid into the village at 7:30, and to last 10 minutes. At 7:30, he was to take his company into the village, about 105 men."

"He was told he could expect to confront a battalion of 250 to 280 men in the Vietcong battalion—and they were expected to be the only ones in the village."



F. Lee Bailey

"This was to be a free-fire zone. After the artillery barrage, it was to be raked by suppressive fire from helicopter gunships."

Mr. Bailey said that Captain Medina had received these orders from Lieut. Col. Frank A. Barker Jr., commander of Task Force Barker. Colonel Barker was killed in an air accident in June, 1968.

The task force was a force of three rifle companies and an artillery battery, including Captain Medina's Company C, 1st Battalion, 20th Infantry, 11th Light Infantry Brigade. Its mission was to search and clear areas infiltrated by Vietcong and North Vietnamese Army soldiers still threatening cities after the previous month's Lunar New Year offensive.

In turn, Mr. Bailey said, Captain Medina briefed his company the night before the attack.

"He briefed the men," Mr. Bailey said, "to destroy the village and to destroy the buildings and to destroy their livestock, an unusual order but it

was given to him by Colonel Barker, and to expect to be outnumbered and to go in shooting like hell."

Company C had "suffered a disastrous encounter with a minefield and lost 18 men 20 days before," Mr. Bailey said. How many of these casualties died of their wounds the lawyer said that he did not know, but they were "gruesome casualties."

"On that basis," Mr. Bailey went on, "he [Captain Medina] tried to raise the morale of the men and told them he expected a very bloody battle. He at no time told anyone to kill women or children or shoot at any of them."

"As far as he knows, that was not done. There was no deliberate lineup of people. They went through with machine guns blazing. They were to sweep the village clean of people. It was an order in military fashion."

Captain Medina went in with the first wave of helicopter-borne troops, landing on the west side of the village complex, Mr. Bailey said. The helicopters got out in a matter of seconds and headed back to their landing zone a couple of miles away to bring in the second wave.

The lawyer said that Captain Medina stayed on the west side, while Lieutenant Calley's First Platoon advanced into Mylai 4, one of the six hamlets in the Songmy village complex. Another platoon, he said, went up another side, and a third stayed with the captain.

There was "plenty of fighting," Mr. Bailey said, but he had no estimate of the numbers shooting from the enemy side. Captain Medina had two radios, he said, one for talking to helicopters overhead and one for keeping in touch with Landing Zone Dottie.

How Woman Was Killed

The orders had been that "anything armed was to be shot, no matter who was holding the weapon," Mr. Bailey said. This, the lawyer said, led to one killing by Captain Medina.

"He did shoot someone that turned out to be a woman," Mr. Bailey said. "He didn't know it was a woman. He was being guided, told by a helicopter, that there was a Vietcong lying on the ground and moving with a weapon."

"As he proceeded, she lifted an arm. That was the only incident of which he has knowledge that anyone other than a Vietcong was shot within his view."

"The accusation that he shot a little boy is absolutely untrue. Nor did anyone shoot a little boy in his presence."

"He did not, of course, have everyone under view at the

time," the lawyer said. "If one platoon at the other end of the village was doing something, he did not know about it. He made an investigation two days later, and there was no evidence of a slaughter."

After heavy fighting had gone on for considerable time, perhaps an hour, Mr. Bailey said. Captain Medina received a radio call from the battalion operations officer, whom the lawyer could name only as a "Major Calhoun."

"Apparently, he had a report from a helicopter that there were women and children they didn't know about," Mr. Bailey said. "The order was that women and children had been observed in the area, something they didn't expect from the briefing, and to exercise caution."

Three Hours of Fighting

The order "wasn't to stop shooting," Mr. Bailey said, and the fighting went on for "a total of three hours" in Mylai. The company then went on to sweep "other villages in the area of Pinkville," the lawyer added.

While military reports that night said that 128 of the enemy had been killed during the assault, Mr. Bailey said that this figure had not come from Captain Medina — "he didn't make a count" and had no estimate.

The company, Mr. Bailey said, suffered perhaps six casualties. After the assault and the discovery that advance intelligence was incomplete and that women and children were involved, Mr. Bailey said, Captain Medina was asked for a report by higher officers on civilian casualties.

His report estimating there had been "25 to 28" was made to a major, who commented, according to Mr. Bailey, "That sounds about normal."

Mr. Bailey was defense counsel in the Green Berets case, in which the Army first charged six Special Forces soldiers with murder of a Vietnamese.

Secretary of the Army Stanley R. Resor announced Sept. 29 that that case was being dropped because the Central Intelligence Agency had refused

to provide witnesses. Mr. Bailey represented Capt. Robert F. Marasco.

Yesterday, Mr. Bailey said that he thought Secretary Resor's handling of the Songmy issue was, "just as in the Green Berets case, abominable, giving the guys short shrift." He attacked the showing of pictures of casualties to a Senate committee with "no effort to put out a proper story."

Captain Medina, he said, has "a sterling war record" and "the respect of all who served with him," but the Army has "ordered him to keep his mouth shut" while he has to "sit around and be painted some kind of villain."

He asserted that such a case would cause troops in Vietnam to "think twice about shooting anyone" if they might face charges at home in a "divided country."

Life magazine, in its issue dated Dec. 5, published nine photographs yesterday, eight in color, of the action at Songmy. They showed frightened, wounded or dead Vietnamese civilians, with American troops appearing in only a picture of a helicopter landing and burning a hut.

The magazine also published accounts by 10 Army men, including that of Ronald Haerberle, the photographer, and Jay Roberts, Army reporter, who had been on the scene.

One account was by Specialist 5 John Kinch, still on active duty in Vietnam, who said that Captain Medina had received a radio call from Colonel Barker, in a helicopter overhead, "saying he had got word from the medevac chopper there were bodies lying everywhere, and what was going on."

"I heard Captain Medina," Specialist Kinch said, "tell him, 'I don't know what they are doing. The First Platoon's in the lead. I am trying to stop it.' Just after that he called the First Platoon and said, 'That's enough shooting for today.'"

"Colonel Barker called down for a body count, and Medina got back on the horn and said, 'I have a body count of 310.'"