

MEDINA IS PLACED AT SLAYING SCENE

But Witness Doubts Whether
Captain Saw the Incident

By HOMER BIGART

Special to The New York Times

FORT MCPHERSON, Ga., Aug. 18—The alleged slaying of several Vietnamese children, one of them in the presence of Capt. Ernest L. Medina, was described today at the 34-year-old officer's court-martial.

But Captain Medina was talking on the radio when a member of his command group shot a badly wounded boy who was making no attempt to escape, John M. Smail, an assistant machine gunner at Mylai, testified.

"Captain Medina was talking with his head down and I don't even know whether he saw the incident," Mr. Smail said.

Other witnesses said that elsewhere in Mylai, two terror-stricken boys were shot down along a trail, as were three children who emerged from a hedgerow and approached some soldiers with hands held out pleadingly, as though asking for food.

Medina Not Present

Captain Medina was not present when these children were slain, the witnesses said.

After three days of testimony, Mr. Smail was the only one of 50 witnesses called by the Government who could trace Captain Medina at the scene of a killing.

F. Lee Bailey, the chief defense counsel, protested that the Government prosecutors were employing "overkill" in redundant testimony about slayings at Mylai with no direct attempt to implicate Captain Medina.

The defense contends that Captain Medina was unaware the killing of innocent civilians until late in the assault on Mylai 4, a hamlet in Sonmy, South Vietnam, on March 16, 1968, and that he gave a cease-fire order as soon as he saw that some civilians had been slain.

The Government, accusing Captain Medina of responsibility for "not less than 100" murders of South Vietnamese civilians and with personally killing a woman and a child, contends that he was aware of his soldiers' wanton conduct but decided not to intervene.

Yamashita Precedent

In his opening statement Monday, Maj. William G. Eckhardt, the prosecutor, seemed to imply that the Government's case would rely on the precedent of the Yamashita war crimes trial. Gen. Tomoyuki Yamashita, former Japanese commander in the Philippines, was ordered hanged by an American war crimes commission in 1946 because he failed to prevent atrocities in the Philippines during World War II.

The Yamashita case was upheld by the Supreme Court, but there was a strong dissenting opinion by Associate Justice Frank Murphy, who warned that the decision contained "boundless and dangerous implications" and that "the fate of some future President of the United States and his chiefs of staff and military advisers may well have been sealed" by the decision.

Justice Murphy felt that the prosecutors had failed to prove that the General Yamashita had any knowledge of the atrocities.

Expresses 'Outrage'

Mr. Bailey said today that it was an "outrage" that an American officer should be "tried like a Jap."

Mr. Bailey made his remark when the military judge, Col. Kenneth A. Howard, refused to limit the number of Government witnesses, accepting Major Eckhardt's plea that it was necessary to present laborious evidence that at least 100 persons were slain by Captain Medina's troops.

Colonel Howard said that he had not yet ruled on the application of the so-called "Yamashita doctrine" of command responsibility to this case.

Mr. Bailey told the judge, "If you have even the slightest idea that you are going to give a Yamashita instruction to this jury, then you'd better tell me right now, so I'll try to put a stop to it." He added:

"I don't think that what is done to a Jap hanged in the heat of vengeance after a world war can be done to an American on an imputed theory of responsibility."

Assured by Judge

Colonel Howard assured Mr. Bailey he would instruct the jury that Captain Medina could not be held criminally responsible for any killings at Mylai unless it was proven that he knew that innocent were being killed and did nothing to stop it.

Six prosecution witnesses left the impression today that civilians were being killed throughout Mylai and that Captain Medina must have been remarkably preoccupied and unobservant not to have been aware of the killings.

All the witnesses testified that the assault on Mylai was uncontested, yet the soldiers maintained a heavy volume of fire as they moved through Mylai, killing people and animals.