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**MURDER CHARGES STILL STAND:** Capt. Ernest L. Medina with F. Lee Bailey, lawyer, at Fort McPherson, Ga., after motions to drop murder charges against him were denied.

## Medina Trial Set on Noncapital Basis

By HOMER BIGART

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FORT MCPHERSON, Ga., June 25—Capt. Ernest L. Medina was ordered today to stand trial for murders at Mylai but the possibility that he could get the death penalty was eliminated.

The trial was tentatively scheduled to begin July 26.

Maj. Gen. Albert O. Connor, commanding general of the Third Army, decided that the case against Captain Medina did not require the Government to seek the death sentence.

Captain Medina is charged with the premeditated murder of and the responsibility for the murder of 102 South Vietnamese civilians in the hamlet of Mylai 4 on March 16, 1968. Under General Connor's decision, the murder charges will stand but the maximum possible sentence confronting Cap-

tain Medina will be life imprisonment.

The decision to reclassify the case, announced at a hastily convened special hearing, was forced by an unusual dilemma for the prosecution.

### Issue of Depositions

The Army prosecutor, Maj. William G. Eckhardt, had just been refused permission by the military judge, Col. Kenneth A. Howard, to go to Southeast Asia and take depositions from two South Vietnamese sergeants who were with Captain Medina during the incident at Mylai. Colonel Howard explained that, in a capital case, military law prohibited the admission of depositions obtained by the prosecution.

The charges against Captain Medina were referred to the military court here as a capital case by General Connor last March.

Protesting that the testimony of the two sergeants was "essential," Major Eckhardt disclosed today that General Connor, in order to obtain the evidence, had agreed that the charges against Captain Medina would be tried as a non-capital case.

Judge Howard then granted permission for the prosecuting and defense attorneys, as well as Captain Medina, to travel to South Vietnam at Government expense and question the two sergeants, whose testimony was used by defense lawyers in the trial of Captain Medina's subordinate, First Lieut. William L. Calley Jr.

The sergeants' depositions in the Calley case quoted Captain Medina as saying that the killing of civilians had been "ordered," supporting Lieutenant Calley's defense that he had acted under orders. In that case, a military court decided

that Lieutenant Calley had murdered 22 Vietnamese and sentenced him to life imprisonment.

### Final Pretrial Session

Earlier today, at the final session of a pretrial hearing for Captain Medina, Colonel Howard denied defense motions for dismissal of the charges and set June 19 as the tentative trial date. Later, after granting the prosecution's motion for depositions, Colonel Howard set back the date one week, to June 26, to allow time for the trip to Vietnam.

After four days of argument, Colonel Howard refused the defense plea that the charges against Captain Medina should be dropped on the ground that command influence had played a role in bringing the 34-year-old officer to trial.

He also denied a defense motion that the case be dismissed because of alleged intimidation of a potential pro-Medina witness by military superiors.

A civilian defense lawyer, F. Lee Bailey, had charged that high officers in the Pentagon and in the Third Army command, at Fort McPherson, were determined to court-martial Captain Medina because they feared an adverse public reaction if only Lieutenant Calley, a subordinate, were punished for the Mylai killings.

But Colonel Howard said he saw no proof of any unfair treatment of Captain Medina.

"I do not find," he said, "an over-all policy to deny the accused a fair consideration of charges against him. I do not find the case pervaded by command influence."

### Medina Voices Confidence

Mr. Bailey said he was neither surprised nor disappointed by the rulings.

Captain Medina said he was glad a trial date had finally been set.

"I've been waiting two and a half years to get this thing over with," he said. "I'm confident the true facts will come out and I'll be acquitted."

A series of other defense motions denied by Judge Howard included the calling of polygraph experts who administered lie detector tests to Captain Medina.