

# Medina's First Juror Is Tentatively

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FORT MCPHERSON, Ga., July 26—The trial of Capt. Ernest L. Medina, accused by the Army of responsibility for the Mylai massacre, opened today in a small stuffy courtroom at Third Army Headquarters.

Thin faced and solemn, Captain Medina, 34 years old, looked alert sitting at the defense table while two prospective members of the court-martial were questioned at length.

At the end of the day, only two officers had been examined. One, Col. William D. Procter, a combat veteran of World War II, Korea and Vietnam and now chief of the aviation division of the Third Army, was tentatively accepted.

The other, Col. Orlando Garcia, the Third Army's chief supply officer, was eliminated by a defense challenge supported by the military judge, Col. Kenneth Howard.

Like Captain Medina, Colonel Garcia is of Spanish extraction. The defense attorney, F. Lee Bailey, worried about a "subconscious prejudice" that he said might stem from a concern on the part of Colonel Garcia over possible post-trial criticism "for punching away for a Mexican-American boy" if he voted for acquittal.

This concern might cause Colonel Garcia to "lean the other way," Mr. Bailey said.

## Ground for Challenge

Mr. Bailey's challenge was based on other grounds, however. Colonel Garcia had said that he felt there "must be some substance" to the charges against Captain Medina because otherwise the commanding general of the Third Army would not have ordered him to face court-martial. Consequently, Colonel Garcia could not accord the presumption of innocence to which Captain Medina is entitled at the start of the trial, Mr. Bailey said.

Colonel Howard sustained the challenge for cause.

"I am satisfied that Colonel Garcia is conscientious," he said. "Nevertheless, I feel he has indicated a lack of sense of complete dedication to justice that this case, or any case, requires."

At the outset, Judge Howard apologized for comments he had made in an interview on Friday. The Associated Press quoted him as saying that he thought the Medina trial would be "the Yamashita case all over again."

Colonel Howard was referring to the controversial war crimes trial of the Japanese general Tomoyuki Yamashita, who was hanged by the Americans after being convicted for failing to halt atrocities committed by his troops in the Philippines on World War II.

Yamashita was found guilty although he had not been present at the atrocities and despite testimony to the effect that he had not even been aware of them. The Yamashita verdict was upheld by the

United States Supreme Court.

Like Yamashita, Captain Medina contends that he was not aware of any illegal killings until it was too late to intervene.

But unlike Yamashita, Captain Medina is not charged with dereliction of duty but with premeditated murder. He was in command of Company C, 11th brigade, Americal Division when the company swept through a Vietnamese hamlet called Mylai 4 on March 16, 1968. His troops allegedly shot

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down at least 100 unarmed women, children and old men. One of his subordinates, First Lieut. William L. Calley Jr., was convicted last month of the murder of 22 of these people, but Captain Medina, who testified at the Calley trial, swore that he had seen nothing.

He further denied Lieutenant Calley's testimony that he, Captain Medina, had given orders to shoot all the inhabitants. Captain Medina is charged with the premeditated murder of "not less than 100" Vietnamese.

He is charged also with the specific murders of a Vietnamese man and a woman.

If convicted, Captain Medina will face a maximum penalty of life imprisonment.

The trial scene is a tiny courtroom with seats for only 43 spectators, including newsmen. At the rear of the court are two small windows looking out on a parade ground.

Captain Medina looked thin and tired. In the front row of the spectators section sat his wife, Barbara, whom he mar-

ried in Heidelberg, Germany. Her parents were refugees from East Germany. The Medinas have three children, a 12-year-old daughter, Ingrid, and two sons, Greg, 10, and Cecil, 8.

The jury selection is expected to take all week. A minimum of five officers is required to complete the court-martial. Since this is not a capital case, Captain Medina may elect to be tried by Judge Howard without a jury if he does not like the composition of the military court.