

DEPARTMENT OF THE ARMY
HEADQUARTERS, U. S. ARMY TRAINING CENTER, INFANTRY AND FORT LEWIS
Fort Lewis, Washington 98433

3 February 1970

MEMORANDUM OF DECISION

1. Pursuant to the Order of the U. S. District Court for the Western District of Washington, Southern Division, in the case of Sergeant E-S Charles H. Hutto, Plaintiff-Petitioner vs. Melvin Laird, et al, Defendants-Respondents, Nos. 4030 and 4031, dated 30 January 1970, I requested Sergeant Hutto--through his counsel--to submit to me in writing any and all matters which he desired considered to show why his pending transfer was improper, unfair or unjust. In accordance with that request, the following documents were considered:
 - a. Letter dated 23 January 1970 from CPT Neil C. Buren, marked as Exhibit A.
 - b. Undated letter from Terokas, Martin, Rickey & Schaefer, by Stephen R. Schaefer, attorneys for Sergeant Hutto, marked Exhibit B.
 - c. Letter dated 30 January 1970 from CPT Neil C. Buren, marked Exhibit C. Although not in response to my request I have also considered Sergeant Hutto's letter dated 23 January 1970 with indorsements requesting rescission of his Permanent Change of Station orders. It is marked Exhibit D. I also considered a request by Sergeant Hutto for actions, with indorsements, dated 21 January 1970 (Exhibit E), and a statement of Sergeant Hutto dated 14 January 1970 (Exhibit F).
2. I have caused my Staff Judge Advocate to submit a copy of the letter dated 26 January 1970 to the United States Attorney from the Chief, Personnel Affairs Branch, Litigation Division, in The Judge Advocate General's Office, which inclosed an Affidavit from Colonel William Chilcoat. A copy of these two documents were furnished to CPT Buren on 30 January 1970 and are marked Exhibit G.
3. I did not accede to the request for an oral hearing, examination and cross examination of witnesses, and oral arguments with a verbatim trans-

and Colonel Chilcoat's statement of the reasons for consolidating the matters concerned in the My Lai (4) incident at Headquarters, Third U. S. Army, as honest and sincere statements, and I can see no useful purpose of submitting either Sergeant Nutto or a representative of the Department of the Army to further examination, even if I had the authority to order such examination under military law. In my judgment, I have complied with the above mentioned Order of the Court in the stated procedure.

4. While I do not have the legal authority to countermand Department of the Army orders, I do have authority to request a change in such orders where obedience thereto by a member of my command would cause an injustice to such member, particularly as to matters which were brought to my attention and as to which Department of the Army was not aware of at the time the orders were issued. I would not hesitate to request a change of orders under such circumstances.

5. After having carefully considered the attached exhibits referred to above, I make the following findings and determinations.

Findings

I find that Sergeant Nutto has been directed by Headquarters, Department of the Army to make a permanent change of station from Fort Lewis, Washington, to Fort McPherson, Georgia, where Headquarters, Third U. S. Army is located.

I find that Sergeant Nutto has submitted the following reasons for opposing his transfer to Headquarters, Third U. S. Army: (1) there is no precedent for such transfer; (2) the transfer will cause irreparable injury to him by separating him from his counsel; (3) the convenience of Sergeant Nutto and his counsel were not considered nor was the need for possible witnesses which Sergeant Nutto has or may acquire in the future; (4) the transfer to the State of Georgia where there had been massive pretrial publicity, would be prejudicial, and (5) the transfer would be a clear expression of command influence in violation of Article 37, Uniform Code of Military Justice.

I find that Headquarters, Department of the Army directed consolidation of the cases concerning the incidents arising at My Lai (4) at Headquarters, Third U. S. Army, and that among the considerations for that consolidation were (1) the desirability of having one commander make decisions based on familiarity with the entire incident; (2) the desirability of having one commander make decisions of the possibility of joint trials; (3) the desirability of having the investigative material available at one place to enhance greater access by both defense and Government counsel, and (4) the desirability of avoiding a conflict between several commanders concerning the appearances of witnesses. Also, more suspects were located in the Third Army area and since that headquarters had a larger legal staff to handle the matter, it was considered appropriate to consolidate the cases at Headquarters, Third U. S. Army.

I find that Sergeant Nutto was given an opportunity by the gaining command, Headquarters, Third U. S. Army, to submit his requests for departure date, leave desired, and reporting date.

I find that military counsel of Sergeant Nutto was notified simultaneously with his being made available as counsel on 8 January 1970 of the plan of Department of the Army to transfer Sergeant Nutto to Headquarters Third U. S. Army for the disposition of the court-martial charges against him and that Sergeant Nutto's civilian attorneys were likewise informed of this plan when they were retained on 8 January 1970.

Determinations

There is good cause shown for ordering Sergeant Nutto to Headquarters, Third U. S. Army at Fort McPherson, Georgia, and there is no good cause shown for the rescission of his transfer orders.

Sergeant Nutto was adequately notified of his contemplated transfer in sufficient time for him to have knowingly considered and weighed the advisability of selecting and retaining civilian counsel in Seattle, Washington, to represent him at Headquarters, Third U. S. Army with respect to the court-martial charges against him.

No determination can be made at this time as to whether CPT Neil C. Scree will represent Sergeant Hutto at any future proceedings on the court-martial charges, since Sergeant Hutto's right under the Uniform Code of Military Justice to an individual military counsel of his own selection, if reasonably available, is a right next to be exercised at an Article 32 Investigation if and when one is held within the gaining command.

Under the Uniform Code of Military Justice and the Manual for Courts-Martial 1969 (Rev.), the legal question of whether Sergeant Hutto has been or will be deprived of the assistance of any particular counsel or the securing of witnesses in defense of the court-martial charges against him can be litigated in the military judicial system.

SIGNED

WILLARD PEARSON
Major General, USA
Commanding