

A F F I D A V I T

I, Neil C. Euren being sworn under oath do hereby depose and state:

That the following is provided in support of plaintiff's motion for a hearing before The Honorable Judge George H. Boldt, Federal District Judge, in the case now pending before him which was continued as an open matter before that court pending a determination by the Department of the Army on the matter of plaintiff's request that he not be sent to Georgia pending investigation of certain charges that have been alleged against him.

That the following information is provided after having read the Memorandum of Decision of Major General Willard Pearson, dated 3 February 1970 and having considered some of the conclusions and representations located therein.

That this affiant following the oral decision of the honorable court rendered on 29 January 1970 in which he directed that attorneys for the plaintiff make requests of the Army to consider the matter of transferring Sergeant Nutto and the matter of deprivation of counsel which was alleged to be the direct result of such impending transfer did make a written request to the Commanding General of Fort Lewis, Washington for a formal hearing with provision for verbatim recording so that a transcript might thereby be provided for further review. A copy of that written request was made a part of the Commanding General's Memorandum of Decision by Exhibit A. The Commanding General by his Memorandum of Decision denied the opportunity for any hearing and any opportunity to examine and explain the basis of plaintiff's request to remain at Fort Lewis or of his reasons why he would be denied counsel during the period prior to any future or pending Article 32 investigation or future court martial.

That it is the belief of this affiant that the Commanding General's decision not to have a fact hearing on the record was a denial of ordinary

fairness and due process contemplated by the court in order to make a record of any and all reasons, arguments, statements, or justifications which should be considered in arriving at a final decision and that his consideration of Sergeant Butto's written reasons and Colonel Chilcoat's written statement as honest and sincere statements is not questioned but that conclusion stops far short of approaching the extent and scope of inquiry that a full and unencumbered hearing could achieve under even the most rudimentary standards of fairness. The matter of the honesty and sincerity of these persons or any statements by them has never been in issue.

The affiant observes further that a part of the Commanding General's Memorandum of Decision refers to his careful consideration of the attached Exhibits and further that he would unhesitatingly request a change of any Department of the Army orders which might cause injustice to a member of his command and yet he refrains from mentioning or even touching upon any of the matters which were alleged by the plaintiff as serious matters of injustice. Indeed, dismissed out of hand are the contentions that the plaintiff has no funds to carry on any meaningful contact with any attorneys either military or civilian during the future period prior to any Article 32 investigation or other military judicial matter; dismissed out of hand with no consideration or comment being given was the contention that the transfer would be prejudicial because of pretrial publicity; dismissed out of hand without any comment by the Commanding General was the contention that the Army's transfer would be in violation of Article 37, UCMJ as a clear expression of command influence dismissed out of hand without any consideration or comment being given was the contention that Sergeant Butto has witnesses at Fort Lewis and that no communication with him or his representatives was made by any member of the military establishment and dismissed out of hand without any consideration or comment was the fact that the plaintiff had expended a substantial amount

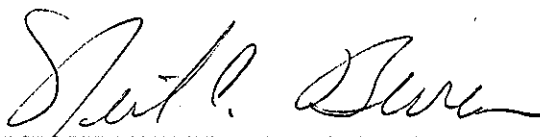
of time and effort in working with his attorneys on certain matters pertinent to his status in the military and matters relevant to his defense on the charges now pending against him. .

That affiant believes and therefore alleges that these above mentioned matters are of crucial importance to plaintiff's contention that he should remain at Fort Lewis and not be transferred to Headquarters, Third United States Army as is contemplated by the Department of the Army and that the Commanding General, Fort Lewis, Washington erred to the substantial prejudice of plaintiff by not making findings of fact with regard to the contentions raised by the plaintiff and further that the determination of Major General Pearson which asserts that Sergeant Rutto was adequately notified of a contemplated transfer and for him to have knowingly considered and ^{weighed} ~~weighed~~ ^{new} the advisability of selecting ⁱⁿ ~~selecting~~ and retaining civilian counsel in Seattle wholly begs the question for it is inferred that Sergeant Rutto should simply have laid back and not selected any counsel to commence an immediate and comprehensive examination of the charges against him and preparation of any and all defenses that he might have and this is believed and therefore alleged to be erroneous and poorly advised conclusion on the part of Major General Pearson. Indeed, the Commanding General's decision ignores the statement of affiant included as Exhibit C to his decision wherein it is clearly stated that only a possibility of some transfer was initially announced on 8 January 1970, whereas the plan of transfer, as denominated by Major General Pearson was not announced until 12 January 1970 and affiant believes and therefore contends that Major General Pearson's decision wrongfully concludes that this transfer plan was imparted to plaintiff on 8 January 1970.

And in conclusion affiant believes and therefore contends that Major General Pearson's final remarks in his Memorandum of Decision which assert that the legal question of deprivation of counsel can be litigated in the military judicial system once again begs the question for it assumes that

there will be some further court-martial but ignores entirely the question of whether during this intervening period preliminary to any final military investigation and trial during which Sergeant Hutto is to be in Georgia and will of necessity be 3,000 miles away from his civilian and military counsel. he will be deprived of effective use of counsel of his choice. That even assuming that the Department of the Army is fully justified in consolidating the investigations in Georgia Major General Pearson's decision in all respects fails to establish a basis for the immediate transfer of Sergeant Hutto to Georgia in that there has been absolutely no showing of the necessity for this whereas Sergeant Hutto has contended ^{and} ~~that~~ affiant believes established a clear basis for his remaining at Fort Lewis with counsel.

Further affiant sayeth not.



NEIL C. MUREN
Captain, JAGC

Sworn and subscribed to before me this 4th day of February 1970.

My commission expires:



Notary Public in and for the
State of Washington, residing
in Tacoma