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MUtual 2-7666

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SOUTHERN DIVISION

SERGEANT E-5 CHARLES E. HUTTO,

Plaintiff-Petitioner,

vs.

MELVIN LAIRD, Secretary of
Defense, STANLEY RESOR,
Secretary of the Army, LIEUTENANT
GENERAL STANLEY LARSEN, Commanding
General of 6th United States Army,
MAJOR GENERAL WILLARD PEARSON,
Commanding General, United States
Army Training Center, Fort Lewis,
Washington, THE UNITED STATES
ARMY, and THE UNITED STATES OF
AMERICA,

Defendants-Respondents.

NO. 4 0 3 0

MOTION FOR RESTRAINING
ORDER IN COMPLIANCE
WITH THE COURT'S
WRITTEN DECISION DATED
JANUARY 30, 1970

COMES NOW the plaintiff above-named by and through his
attorneys, Barokas, Martin, Richey & Schaefer and respectfully
moves the court for an order restraining the above-named defendants
from transferring plaintiff from his duty station at Fort Lewis,
Washington to any other duty station pending a fact finding hear-
ing on the record to determine whether or not any of plaintiff's
constitutional rights to counsel will be deprived him if he is
transferred to another duty station at the present time.

THIS MOTION is based upon the records and files herein
and upon the affidavit of Stephen R. Schaefer attached hereto.

BAROKAS, MARTIN, RICHEY & SCHAEFER

By: Stephen R. Schaefer

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692-7666

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1 STATE OF WASHINGTON)
2 COUNTY OF KING) ss.

3 STEPHEN R. SCHAEFER, being first duly sworn upon oath
4 deposes and says:

5 That he is one of the attorneys representing the above-
6 named plaintiff and makes this affidavit in support of plaintiff's
7 motion for a restraining order restraining the above-named
8 defendants from transferring plaintiff from his duty station at
9 Fort Lewis, Washington at the present time.

10 That on the 29th day of January, 1970, an oral decision
11 was handed down by this court followed by a written order dated
12 January 30, 1970, wherein the court directed that the military
13 authorities hold a fact finding hearing to determine whether or
14 not based upon the facts and contentions raised in said hearing
15 that plaintiff should be transferred at the present time from his
16 duty station at Fort Lewis. That pursuant to the court's order,
17 plaintiff immediately directed a request for a fact finding hear-
18 ing to the Commanding General at Fort Lewis, Washington whereby
19 plaintiff advised said commander that he desired to be heard on
20 the record as to his contentions as why he should not be trans-
21 ferred at the present time.

22 That plaintiff was never given the opportunity to
23 present his contentions to said commander. However, plaintiff
24 has been informed that the Assistant United States Attorney along
25 with the Staff Judge Advocate had the privilege of conferring with
26 said commander prior to any decision being made concerning
27 plaintiff's request. That plaintiff has no knowledge as to what
28 representations, contentions, arguments or other information were
29 raised during said conference. However, it is contended that said
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1 exparte conference was contrary to the intentions of the court's
2 written order.

3 That subsequent to said conference a written memorandum
4 was issued on February 3, 1970 by the Commanding General of Fort
5 Lewis, Washington whereby he specifically denied plaintiff's
6 request for a hearing and further determined that there was no
7 good cause shown for recision of the transfer orders. That a copy
8 of said memorandum decision including all documents apparently
9 considered by said commander except those arguments raised during
10 the exparte hearing are attached to this motion and incorporated
11 by reference herein.

12 The commander determined that there was good cause for
13 ordering the sergeant to a new duty station, however, did not state
14 what said good cause was. Further, the commander determined that
15 the plaintiff was adequately notified of his contemplated transfer
16 in sufficient time for him to have knowingly considered and weigh-
17 ed the advisability of selecting and retaining civilian counsel in
18 Seattle. That this determination is wholly inaccurate and an
19 affidavit in support of said inaccuracy will be filed with the
20 court for the court's determination at the time of the hearing on
21 this motion. That the further determination of the commander that
22 the proper forum in which to raise the question of right to counsel
23 is the military judicial system is wholly false and inaccurate in
24 that the district court has jurisdiction to determine at this time
25 whether by being transferred immediately to Fort McPherson, Georgia
26 the plaintiff will be deprived of his constitutional right to
27 counsel.

28 The memorandum decision does not indicate any justifica-
29 tion for sending the plaintiff to another duty station at the
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1 present time. In this regard an Article 32 investigation into this
2 matter may not be held for several months. If such is the case
3 the plaintiff would be prematurely assigned to another post wherein
4 he would be without counsel or without effective assistance of
5 counsel for a period of several months prior to the investigation
6 and would not be in a position to confer with his attorneys con-
7 cerning such matters as discovery, witnesses, procedure or any and
8 all matters normally attendant to an investigation.

9 That the memorandum decision in no way shows any reason
10 or any good cause for sending the plaintiff to another duty station
11 more than one day prior to the commencement of any Article 32
12 investigation. That plaintiff requests the court to hold a fact
13 finding hearing on the record wherein all of his contentions may
14 be raised before the court and the court may review the memorandum
15 decision of the Commanding General to determine whether or not it
16 would be a deprivation of plaintiff's constitutional right to
17 counsel to send him to another duty station at the present time.

18
19 _____
20 Stephen R. Schaefer

21 SUBSCRIBED and SWORN to before me this ____ day of
22 February, 1970.

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24 _____
25 NOTARY PUBLIC in and for the State
26 of Washington, residing at _____.

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