

The third session of the Article 32 Investigation being conducted by LTC Settle convened at 1045 hours, 17 April 1970. Present for this investigation were:

- a. Government's Representative - CPT Franklin Wurtzel
- b. Defense Counsel - CPT James W. Lane
- c. Civilian Defense Counsel - Mr. Edward L. Magill
- d. Accused - SCT Charles E. Hutto
- e. Clerical Assistant - SP4 Gary E. France.

The Investigating Officer opened the session by briefing the civilian defense counsel as to Articles 31 and 32, UCMJ, and briefing the civilian defense counsel as to what has transpired in previous sessions. The Investigating Officer explained that Captain Medina couldn't be here, but civilian counsel said CPT Medina probably wasn't planning to say anything anyway. Defense Counsel, therefore, could see no purpose for having Captain Medina here. Colonel Settle said we won't try further to get CPT Medina here, since there is no useful purpose. The Government's Representative concurred and also stated all requests made to the government have been answered. However, one request has been made of which the Investigating Officer wasn't aware. The response of the request in the letter of 25 March 1970 is now in draft stages. The request of 1 April 1970 for a copy of the polygraph (lie detector) test has received no response in answer to several requests. The Investigating Officer would like a copy of this correspondence. Defense presumed they have all documents that have already been made available to the Government's Representative. Then the Investigating Officer stated that all civilian witnesses for this investigation have been contacted and won't attend. All military witnesses were present with the exception of CPT Medina. The Investigating Officer stated that he would call witnesses in order of their rank if there were no objections. Neither the Defense nor the Government had any preferences. Captain Eugene Melvin Kotouc was called as the first witness, was sworn, and

testified in substance as follows. He was represented by his military defense counsel, Captain Cooper. The witness's first tour of duty in Vietnam was in 1962 for a period of one year working in the capacity of an advisor. At this time, VC, both male and female, dressed in civilian clothing, participated in actions against Allied Forces. He returned in 1968, on or about 3 February, and was assigned to the Americal Division approximately 12 or 13 February, then further assigned to the 11th Brigade as intelligence officer for Task Force Barker. CPT Kotouc declined to answer any questions involving himself and Captain Medina in relation to the My Lai (4) operation. He did, however, give a general intelligence picture at the time of the operation. The 48th Local Force VC Battalion was operating in that area, supposedly with a headquarters in My Lai (4), and a strength in the neighborhood of 300-350 men, as it had on his previous tour in 1962. Task Force Barker was placed there to neutralize this force. The intelligence information on the day of the operation established that the 48th VC Battalion was headquartered in My Lai (4).

Questions by the Government's Representative: The witness anticipated making contact with the 48th VC Battalion, but declined to answer any questions concerning C/1/ 20. He didn't know where the operation order was conceived for this operation because it was a very large operation. The witness was excused from this investigation.

The second witness, SGT Esequiel Torres, was sworn, and testified in substance as follows. He too was represented by his defense counsel, CPT Cooper. SGT Torres went to Vietnam the last of November of 1967 with C/1/20, having been assigned to that company the first of November of 1967 in Hawaii. His commanding officer was CPT Medina, Lieutenant Calley his platoon leader, and Sergeant Buchanon his platoon sergeant. His job was as a grenadier. The

witness's defense counsel, CPT Cooper, stated that they decline to discuss anything from 1 January 1968 on. The witness was not in the same squad with Sergeant Hutto, but he was in the same platoon. He was switched around to different squads and can't say for sure if they were in the same squad together as he worked in different jobs, that is as rifleman, RTO, and grenadier. Before 1 January 1968, they were based at Duc Pho, then moved to Chu Lai or Quang Ngai to receive troops. He did some patrolling there, but to the best of his knowledge, he received no hostile fire. Questions by the Government's Representative: the witness declined to answer any questions about training. He didn't know the specific job of Hutto in the weapons squad. The witness was excused.

The third witness, 1SG Jay A. Buchanon, was sworn, and testified in substance as follows. He was assigned to Hawaii in December 1966, to C/1/20 of the 11th Brigade. He was the second platoon sergeant and remained in that position in Vietnam. Sergeant Hutto was in his platoon in one of the machinegun sections about three months before they all went to Vietnam. Sergeant Hutto was very quiet and obedient, and was not a disciplinary problem. Simpson, on the other hand, needed constant counsel, resented authority, and got chewed out often, and clearly was not an asset to his platoon. Before the My Lai operation the company went on several search and clear missions near Duc Pho and LZ Uptight. Simpson always questioned orders and was often counseled. Captain Medina was their CO. The witness was in the My Lai operation. At the briefing held at LZ Dottie, all members of the company were present. Prior to the operation, the company had several casualties in the same area. He couldn't say who was firing, but they did receive hostile fire on these operations. At the briefing on 15 March 1968, they learned that My Lai (4) would be defended

by about 2 to 1 in the enemy's favor. 1SG Buchanon went in to My Lai (4) on the second lift of the day, but doesn't know when the accused went in. Wright, Hutson, and Hutto were all on machineguns, but he didn't know their exact jobs that day. Lieutenant Brooks was their platoon leader on the My Lai (4) operation. The platoon swept throught My Lai (4) and another village in less than half a day. The witness didn't recall seeing the accused specifically at My Lai (4), but did see him after they left and went on to the next hamlet. He couldn't, however, place any times of day. He didn't know exactly when they ate or what meal they had, nor does he recall eating near My Lai (4). He didn't see any of his men divulging in sexual intercourse or rape, or line anyone up and shoot them. He couldn't remember the exact distance to the next village, but it wasn't very far, and he couldn't estimate. 1SG Buchanon didn't see anyone conduct a body count in either area. The men took in with them as much ammo as they could carry, approximately 400 rounds apiece. During the entire operation, the witness saw no photographers. Back on the subject of Simpson, the witness couldn't put much faith in what Simpson says, even under oath.

Questions by the Government's Representative: the witness heard lots of firing upon landing, but didn't know whether or not they were receiving fire, as he couldn't relate the type of fire. They received no casualties, with the exception of Carter, but the witness didn't know any specifics of his wound. In his sweep through the hamlet of My Lai (4), the witness only saw eight to ten bodies, but couldn't remember any details as to sex and age. He received no complaints about the conduct of anyone in his platoon. Again he stated he couldn't recall specifically seeing any members of his platoon in the village, although he knew they were there. The witness had several occasions on which to base the conclusion that any statements made by Simpson

would not be trustworthy. Therefore, his integrity was questionable, along with the fact that Simpson constantly defied authority. On the other hand, Mower had never given ISG Buchanon any grounds to question his integrity, nor did he question authority. In reference to bodies, the witness saw no weapons lying by the bodies, and only knew of one weapon captured on the entire operation. He heard no order to stop the killing, but heard that they weren't to shoot anybody unless they were directly opposed to a weapon. No one had been so opposed. The witness was excused.

The Government's Representative requested that the Investigating Officer consider Simpson's and Mower's statements due to their unavailability. The defense concurred, but stated that he would prefer to hear live testimony.

The Defense Counsel had no further witnesses to be contacted, but he wants to see the polygraph test before determining whether or not and when to have another session. He also asserted that such a test is generally inadmissible in court. After a telephone call to the CID in Washington, the Government's Representative announced that the polygraph report will be sent here and made available to the Defense Counsel. However, since it is inadmissible, the Government's Representative stated that he would object to the Investigating Officer's considering it as evidence.

The fourth witness, PVT Hutson, was sworn, and testified in substance as follows. The witness's Defense Counsel, CPT Lanham, stated that PVT Hutson had nothing at all to say. The witness was excused.

The Defense Counsel had no objection to saving the polygraph results until last. The Investigating Officer asked the defense if Sergeant Hutto would answer any questions concerning his statements previously made. The Defense Counsel said he would, but wants to consider the polygraph results first.

The Government's Representative left briefly and returned saying that certain steps have to be taken to get this polygraph test. The Investigating Officer then asked the Defense Counsel if it were relevant, and the Defense Counsel said he needs to see it. The Investigating Officer asked if the accused would answer any questions. After a brief recess, the Defense Counsel stated that the accused wished to testify regarding one charge.

The accused, Sergeant Hutto, was sworn, and testified in substance as follows.

The Investigating Officer reviewed Article 31, UCMJ, to the accused. The Defense Counsel asked the accused if he had sexual intercourse or raped a girl on the operation into My Lai (4). The accused answered no. The Government's Representative had no questions. The Investigating Officer had no questions. The Investigating Officer asked the Government's Representative for argument. The Government's Representative asked the Investigating Officer to consider all statements, especially Simpson's to substantiate the truth of the charge. He also elaborated on previous sworn statements of the accused, which apparently conflict with each other, and statements of others. The Government's Representative summed up by requesting the Investigating Officer to recommend a General Court-Martial. The Defense Counsel's argument: Mr. Magill urged the Investigating Officer to weigh the facts and consider the gravity of the charge. He also urged that the Investigating Officer discredit the statement Simpson has made, and to consider the state of mind of the soldiers as well as orders given by superiors, specifically the company commander, to do his job--shoot people. He also brought up the instance of the mass killing of people in Hiroshima with the A-bomb near the end of World War II, and compared it to the killing of civilians at My Lai (4). He ended by declaring that the Government has failed miserably to show any evidence. Naturally, the Government's Representative retorted, saying that Sergeant Hutto should be charged because he

could have disobeyed orders, and the evidence was very clear.

The hearing recessed at 1355 hours, 17 April 1970.