

UNITED STATES

Daniel
MOTION TO DISMISS

3 Dec '70

CHARLES E. HUTTO
Sergeant, U.S. Army

In the above-styled case a General Court-Martial convened by Court-Martial Convening Order Number 37, Headquarters, Third United States Army, Fort McPherson, Georgia 30330, dated 17 September 1970, the defendant, Charles E. Hutto, moves the Court to dismiss all charges and specifications alleged against him hereto, on the following grounds:

1. His Constitutional right to a speedy trial has been violated due to the unreasonable delay in the investigation, reference to trial and disposition of charges alleged against him.
2. The defendant is charged with assault with intent to commit murder in violation of Article 134 and false swearing in violation of Article 134, Uniform Code of Military Justice. The original charge and specification arose out of a combat assault mission on the village of My Lai (4), Republic of Vietnam, on 16 March 1968, while accused was a member of Company "C", 1st Battalion, 20th Infantry, Americal Division. The additional charge arises from an investigation of the facts and circumstances surrounding the operation in November, 1969. The original charges were preferred in January 1970. An additional charge was preferred in March, 1970. Two of the three original charges were dismissed on 4 September 1970. The remaining charges against accused were not referred to trial until 4 September 1970. Initial pre-trial hearing was not held until 2 October 1970.
3. To subject the defendant to trial on the original charge and the additional charge will place a burden that directly contravenes Constitutional and Uniform Code of Military Justice' guarantees of procedural due process. As was publicly concluded by independent investigation of the My Lai Incident Subcommittee "...the My Lai matter was covered up within the Americal Division and by the District and Province Advisory Teams," and

"responsible officers . . . failed to make adequate, timely investigation and report of the My Lai allegations." (Investigation of the My Lai Incident, Report of the Armed Services Investigating Subcommittee of the Committee on Armed Services, House of Representatives, Ninety-First Congress, Second Session, Under Authority of H. R. Res. 105, dated 15 July 1970, at pages 4-5). It was not until November of 1969 that defendant was approached by Army CID Investigators and allegedly advised of possible misconduct by his previous unit, the Americal Division. The proper mode of preferring charges as set out in the UCMJ and the MCW was not followed. To the contrary, the persons responsible for investigation and referral of charges, if merited, were themselves involved in alleged misconduct. The disposition of the case should have taken place immediately after the alleged commission of the offense involved on 16 March 1968. As has been publicly revealed by both the Army's official investigation into the My Lai incident (referred to as Peers Inquiry) and the independent Congressional inquiry (supra), the responsible Army officers concerned were aware of the incident at My Lai (4), on 16 March 1968, but took no action in regard to it as is required by the Uniform Code of Military Justice, the Manual for Courts-Martial, 1951 or the appropriate Army regulations. As a direct result of this inaction, almost two years elapsed before the defendant was informed that he was suspected of any criminal offenses allegedly committed at My Lai (4). This delay created by these Army officials has resulted in prejudice to the defendant, in that:

- a. He has been unable to obtain certain witnesses to the incident due to their combat deaths. (i.e., the defendant's platoon leader and the task force commander)
- b. Numerous witnesses fail to recollect critical circumstances surrounding the subject operation or have been influenced in their recollection by vast publicity surrounding the incident since it was made public.
- c. It is impossible to recreate or reconstruct all of the events surrounding the operation or the scene of the alleged incident.

670 date of 13 January 1970.

d. Involuntarily retaining the accused past his original

4. The Government, no doubt, will argue that the chargeable to the Government in a speedy trial motion does not begin to run until the accused is either restricted to his activities in some meaningful manner or charged, whichever comes first. This should not apply to this case. This Court may take judicial notice of the fact that this case is unique in its development and import. Where it is amply demonstrated that a purposeful, intentional and oppressive delay was occasioned in the investigation and resulting disposition of possible criminal charges arising out of the NY 1st (4) incident, by the responsible officers concerned, due process requirements, as well as the State Amendment to the Constitution, demand that the time for which the Government is chargeable, for the purpose of this motion, begin to run immediately after the incident at NY 1st (4) occurred when the authorities within the Medical Division began their investigation (cover up).
5. The defendant has been subjected to unreasonable and oppressive delay in the disposition of the charges against him, such delay being the product of the failure of those responsible within the Government for investigation and disposition of the charges alleged against him, and such delay adversely and prejudicially affecting the preparation of his defense. Accused contends that the consequence of this delay should not be placed as an additional burden on the defense, but, to the contrary, is the responsibility of the Government and its agents in the Medical Division. Moreover, the defendant urges the Court to dismiss all charges and specifications alleged against his behalf.

Respectfully submitted,

James W. Dugan, Jr.
CR. JAC

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