

In The United States District Court
For The
Southern District of Florida, Miami Division.

Civil Action, File No. _____

HUTTO
SCHIEL

v.

United States of America;
Richard M. Nixon, President;
Melvin Laird, Secretary of Defense;
Stanley M. Resor, Secretary of the Army;
William C. Westmoreland, Chief of Staff
United States Army; Albert O. Connor,
Commanding General, Third United
States Army.

COMPLAINT
injunction
mandamus
dismissal

1. The petition of Charles E. Hutto respectfully shows the following:
That he is a citizen of the United States of America and a nonconsensual member of the United States Army holding the grade of Sergeant (E5); that he brings this action against the United States of America and the above named personal defendants purauant to the provisions of section 2282 of ²⁸ title ~~28~~ United States Code; ~~that~~ the relief sought is to enjoin and prohibit enforcement and application by the defendants of an Act of Congress (Chapter 47, title 10, United States Code), identified as the Uniform Code of Military Justice for the reason that the Act is being applied against plaintiff in violation of and contrary to the plaintiff's rights under the Constitution of the United States.
2. To subject plaintiff to a court-martial proceeding will cause monetary damage from loss of earning capacity, damage to reputation, loss of business opportunities, loss of opportunity for advancement within the Army, loss of retirement benefits and veterans benefits resulting from service in the Army all in excess of \$10,000.

3. Representatives of the named defendants reside within the District of Florida and are subject to the jurisdiction of the court.

4. On January 8, 1970 charges were preferred against Hutto at Fort Lewis Washington for violation of Articles 118 and 134, Uniform Code of Military Justice, specifically, murder, rape, assault with intent to commit murder.

On January 10, 1970 Hutto's term of enlistment expired under an enlistment agreement between Hutto and the United States Army. Hutto was involuntarily extended beyond the termination date for the sole purpose of investigation and prosecution by General Court-martial and as of this date is still a nonconsensual member of the United States Army awaiting discharge. In

(continued)
February of 1970 Hutto was involuntarily transferred from Fort Lewis, Washington to Fort McPherson, Georgia for the convenience of the United States

Army in order to facilitate his prosecution. On March, 1970 and additional charge of violation of Article 118, Uniform Code of Military Justice was preferred against Hutto. These charges allegedly took place in the hamlet of My Lai (40), village of Son My, Quang Ngai Province, Republic of Vietnam on or about 16 March 1968. The violation of Article 118, false statement made under oath, allegedly occurred in January, 1970 as a ~~product~~ of the investigation of the so-called My Lai incident.

5. On January 18, 1970 Lieutenant General Albert O. Connor, Commanding General, Third United States Army directed that Hutto be tried by general court-martial.

Plaintiff's grounds for relief are as follows:

1. A general court-martial to be convened at Fort McPherson, Georgia has no jurisdiction over plaintiff for the offenses charged. The Army relies on Article 2(1), UCMJ as its basis for jurisdiction over the person who has passed his enlistment date. Congress has enacted under section 505 title 10 United States Code, that enlistments are for periods of two, three, four, five, or six years whichever is agreed on by the enlisted and the U.S. Army. Nowhere does Congress authorize the enlistment of a citizen to be extended involuntarily except in section 506, title 10, United States Code where such extension must be in time of war and then only for six months after expiration of such war.
4. No jurisdiction over offense of (2) due to does not change at time of offense before UTS
2. To subject Hutto to trial by general court-martial violates the provisions of the Sixth Amendment to the United States Constitution which provides that each citizen shall have the right to a "speedy trial." Three of the offenses of which the plaintiff stands accused were allegedly committed on or about 16 March 1968. At that time the alleged incident was reported and known to the United States Army and those responsible to investigate and process such charges if warranted. There was no action towards investigation or prosecution of plaintiff at that time. Almost two years later plaintiff was charged with violation of the UCMJ. To now subject plaintiff to a court-martial deprives him of the basic rights afforded an accused. There is no way to reconstruct the scene of the alleged crime, to speak to all possible witnesses while their memory is fresh, to call certain critical witnesses vital to

the defense who have since been killed in action in Vietnam. To subject

plaintiff to trial deprives him of the right to prepare an adequate and

complete defense in his behalf. Therefore, such undue delay by the

Government cause irreparable damage to the accused *without any recourse other than* *dismissal of charges.*

3. To subject plaintiff to trial by general court-martial will violate both

the Fifth and Sixth Amendment to the Constitution which provides for the

right of "trial by an impartial jury" ~~without~~ in accordance with "due

process of law!" As applied to the military judicial system, to subject

plaintiff to trial will violate Article 37, UCMJ, which provides that

"...no person subject to this chapter may attempt to coerce or , by any

unauthorized means, influence the action of a court-martial or any other

military tribunal or any member thereof , in reaching the "findings or sentence

in any case, or the action of any convening, approving or reviewing authority

with respect to his judicial acts." Such violations of the Sixth amendment

and Article 37, UCMJ are founded on statements as to guilt of the plaintiff

by virtue of the following circumstances:

a. On December 8, 1969, the President and Commander in Chief of the

Armed Forces of the United States, in response to a question concerning

the My Lai incident propounded on a nationally televised press conference stated:

"...I would state first with this statement; what appears was certainly a massacre
and under no circumstances was it justified."

b. The statement of the President was reiterated in substance successively

by the Secretary of Defense, the Secretary of the Army, the Chief of Staff

of the Army and other individuals, including a detailed investigation by the

~~held non-judicial hearings~~

House Subcommittee on Armed Services hearings on the alleged My Lai incident

and

~~and~~ stating that a massacre of tragic and major proportion did in fact

take place. Such statements and investigations made ~~known~~ publicly deprive

plaintiff of the presumption of innocence by merely being an accused, the

right to a fair trial by a jury or court made up of impartial persons ~~and~~ is impossible

due to the

~~final~~

~~make~~ a pre-judgment as to his guilt. Also the ~~in~~ unprecedented news coverage

of all aspects of the My Lai incident ranging from shocking pictures of

alleged victims to constant press conferences held by other accused and their

counsel all causing direct association with the incident and the non-judicial

findings to the plaintiff. Plaintiff ~~is~~ in no way caused any such publicity

however will suffer irreparable damage by merely being associated with such

incidents thereby depriving plaintiff of his rights to due process of law

and to an impartial trier of facts.

Petitioner was inducted into the United States Army on 13 October 1966 pursuant to the Universal Military Training And Service Act, as amended (62Stat. 604(1948), as amended; 50 U.S.C. App. 451-73(1964)), and served on active duty from that date until 4 October 1968. Petitioner thereupon completed his active duty obligation under said law and was released from active duty and transferred to the reserve components pursuant to the provisions of section 651 of title 10, United States Code and was in an inactive status for

*AND NOT SUBJECT TO THE UCMJ DURING SAID PERIOD.
OVER SEVEN MONTHS.* Petitioner enlisted in the Regular Army on 21 May 1969

for a term of three (3) years pursuant to the provisions of section 505

of title 10, United States Code. Petitioner was awarded an Honorable

Discharge Certificate for his earlier service on 20 May 1969.

Petitioner was charged on 25 March 1970 with violating Article 118 (Murder),

Uniform Code of Military Justice (10 U.S.C. 918) in that he allegedly

"did at My Lai(4), Quang Ngai Province, Republic of Vietnam, on or about

16 March 1968, with premeditation, murder an unknown number of unidentified

Vietnamese persons, not less than nine, by means of shooting them with a rifle."

~~The Commanding General, Third~~

Lieutenant General Albert O. Connor, Commanding General, Third United States

Army, on _____ directed that a general court-martial be convened to

try petitioner for the offense alleged above.

Said court-martial lacks the requisite jurisdiction to try petitioner for the offense alleged for the following reasons:

(a) Petitioner was released from active duty and transferred to

the reserve components on 4 October 1968 and was in effect restored to a

civilian status which thereby severed jurisdiction of the aforesaid general court-martial over the person of petitioner as well as of the charges referred to above.

(b) The charges against petitioner which are alleged to have been committed prior to petitioner's release from active duty and preferred during his present enlistment did not survive the aforesaid release from active duty.

The aforesaid general court-martial if permitted to try petitioner without the requisite jurisdiction would deprive petitioner of due process of law, in that it would deprive him, if found guilty, of his liberty, in violation of his rights under the Fifth Amendment to the Constitution of the United States.

Petitioner further alleges that Article 3(a), Uniform Code of Military Justice (10 U.S.C. § 803(a)) is repugnant to the Constitution of the United States insofar as applied to petitioner.

Petitioner on his release from active duty became entitled to be tried in the courts of the United States, and thereby being afforded the constitutional guarantees given to those individuals tried in courts established pursuant to Article III of the Constitution of the United States and could not be divested of these rights by his subsequent enlistment in the United States Army on 21 May 1969, without being properly and adequately advised of the consequences of his enlistment in this respect and intelligently waiving his right to be tried in a court established pursuant to Article III of the Constitution.

Petitioner was inducted into the United States Army on 13 October 1966 pursuant to the Universal Military Training And Service Act, as amended (62Stat. 604(1948), as amended; 50 U.S.C. App. 451-73(1964)), and served on active duty from that date until 4 October 1968. Petitioner thereupon completed his active duty obligation under said law and was released from active duty and transferred to the reserve components pursuant to the provisions of section 651 of title 10, United States Code and was in an inactive status for *AND NOT SUBJECT TO THE UCMJ DURING SAID PERIOD OVER SEVEN MONTHS!* Petitioner enlisted in the Regular Army on 21 May 1969

for a term of three (3) years pursuant to the provisions of section 505

of title 10, United States Code. Petitioner was awarded an Honorable

Discharge Certificate for his earlier service on 20 May 1969.

Petitioner was not advised prior to his enlistment that he would be subject to court-martial jurisdiction for offenses committed during an earlier term of service.

Petitioner was charged on 25 March 1970 with violating Article 118 (Murder),

Uniform Code of Military Justice (10 U.S.C. 918) in that he allegedly

"did at My Lai(4), Quang Ngai Province, Republic of Vietnam, on or about

16 March 1968, with premeditation, murder an unknown number of unidentified

Vietnamese persons, not less than nine, by means of shooting them with a rifle."

The Commanding General, Third

Lieutenant General Albert O. Connor, Commanding General, Third United States

Army, on _____ directed that a general court-martial be convened to

try petitioner for the offense alleged above.

Said court-martial lacks the requisite jurisdiction to try petitioner for the offense alleged for the following reasons:

(a) Petitioner was released from active duty and transferred to the reserve components on 4 October 1968 and was in effect restored to a