

v.

Fort McPherson, Georgia 30330

STATEMENT OF THE FACTS

The evidence presented by the defense reveals that on 28 October 1969 the accused, pursuant to prior direction of his company First Sergeant, proceeded to his unit orderly room at about 0830 hours and there met Mr. Robert B. Graham and Mr. Donald M. Hilt, who identified themselves as agents of the United States Army Criminal Investigation Division. The three individuals got in Mr. Graham's automobile and subsequent to dropping Mr. Hilt off at the Fort Benning Office of the Criminal Investigating Division, the accused and Mr. Graham proceeded to the Columbus, Georgia Holiday Inn. While in route the conduct assault on the South Vietnamese hamlet of My Lai (4) by the accused's former unit and the recent publicity given the criminal charges placed against Lieutenant William L. Calley were generally discussed. Upon arrival at the Holiday Inn they proceeded to Mr. Graham's room where Mr. Graham told the accused that he wished to inform him of his rights prior to asking any questions about the events at My Lai (4). At this time Mr. Graham explained to the accused that he had a right to remain silent, that any statement he did make could later be used against him at a trial, and as his rights to various types of counsel. At no time was the accused told that he was suspected of premeditated murder or any other offense. Subsequent to this warning that accused made an oral statement which was later reduced to writing.

Article 31, Uniform Code of Military Justice states that "No person... may interrogate or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected....". The Congressional inclusion of this requirement (that a suspect be informed of the nature of the accusation against him) seems clearly to have been designed so to orient an accused or suspect as to allow him intelligently to weigh the consequences of responding to an investigator's inquiries. See, generally, Hearings before House Armed Services Committee on HR 2498, 81ST Congress, 1ST Session, page 990. It has been judicially construed that it is not necessary to spell out the details of the suspect's alleged misconduct with technical nicety in order to inform him of the nature of the charges being investigated. United States v. Nitschke, 12 USCMA 489, 31 CMR 75 (1961); United States v. Rice, 11 USCMA 524, 29 CMR 340 (1960); United States v. Classen,

39 CMR 581 (ACMR 1968); pet. den 39 CMR 293(1968). This requirement is satisfied if the suspect is made aware of the general nature of the allegations involved. United States v. Reynolds, 16 USCMA 403, 37 CMR 23(1966); United States v. Davis,, 8 USCMA 196, 24 CMR 6 (1957); United States v. Dickenson, 6 USCMA 438, 20 CMR 154 (1955). A failure to fulfill this facet of the warnings required pursuant to Article 31, Uniform Code of Military Justice, will render any resultant statement, inadmissible in a court of law.

United States v. Reynolds, supra.