

AJAJA-SA (10 Sep 70) 1st Ind

SUBJECT: Request to Appear in Federal Court as Counsel for Sergeant
Charles E. Hutto

HQ Third US Army, Ft McPherson, Ga. 30330

14 SEP 1970

TO: The Judge Advocate General, ATTN: Chief, Litigation Division,
Department of the Army, Washington, D. C. 20310

1. Forwarded in compliance with instructions contained in electrical message TJAG to AIG 7401, subject: Appearance of Military Counsel, dated 17 August 1970.
2. There is no apparent necessity for military counsel to appear in the civil court in the named case for the purposes described. Granting of this request may well establish a burdensome and unjustifiable precedent. It is recognized that the defense views collateral attacks in civil courts upon the court-martial proceedings now in process as being essential to protect the interests of the accused. Military procedures are considered adequate to provide the accused the extraordinary relief and remedies to which he is entitled under the UCMJ and administrative regulations. The availability of JAGC counsel for accused is predicated upon providing counsel before military tribunals, etc. Authorization to appear before tribunals other than those in the court-martial system, before the remedies of that system are exhausted, is tantamount to an admission of the system's inadequacy, and could be cited in support of legal challenges attacking the validity of the UCMJ. Moreover, justification to support military counsel's appearance in civil court as requested is considered insufficient.
3. SGT Hutto has retained civilian counsel, Mr. Edward L. Magill, 720 Biscayne Building, 19 West Flagler Street, Miami, Florida, who should be capable of making any desired appearances in federal courts in Florida.
4. Accordingly, it is recommended that the request contained in the basic communication be not favorably considered.

For: Wiley J. Hutto Col

WILSON FREEMAN
Colonel, JAGC
Army Staff Judge Advocate