

Friday, January 23, 2009

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United States v. Neal

Pursuant to Article 62, Uniform Code of Military Justice, the Government appeals the military judge's trial ruling dismissing the Article 120, UCMJ, offense as unconstitutional. In this case the military judge initial denied the trial defense counsel's pre-trial motion, but after introduction of evidence, reconsidered the motion and granted it. The issue to be argued before the court sitting *en banc* is:

WHETHER THE MILITARY JUDGE ERRED BY GRANTING THE
DEFENSE MOTION TO DISMISS THE SOLE CHARGE ALLEGING
A VIOLATION OF ARTICLE 120(e), UCMJ, AS
UNCONSTITUTIONAL.

In a footnote to the issue to be argued the court indicated that counsel should be prepared to discuss the applicable due process framework for analyzing the respective burdens of proof under Article 120(t)(16), UCMJ. See *Medina v. California*, 505 U.S. 437 (1992); *Cooper v. Oklahoma*, 517 U.S. 348 (1996); *Weiss v. United States*, 510 U.S. 163 (1994).