

Thursday, 25 June 2009

0900

United States v. Wuterich

The Government appeals, pursuant to Article 62, Uniform Code of Military Justice, 10 U.S.C. § 862, the military judge's ruling that the nonbroadcast audio-video "outtakes" of a CBS News interview of the appellee, although relevant and material, were not necessary to the Government's prosecution and protected from release by a "newsgathering privilege." The military judge's ruling quashing the Government subpoena followed an *in camera* review of the "outtakes" as directed by the Court of Appeals for the Armed Forces. *United States v. Wuterich*, 67 M.J. 63 (C.A.A.F. 2008). The appellee is charged with dereliction of duty, voluntary manslaughter, aggravated assault, reckless endangerment, and obstruction of justice, in violation of Articles 92, 119, 128, and 134, UCMJ, 10 U.S.C. §§ 892, 919, 928, and 934, in connection with military operations at or near Haditha, Iraq. The issues to be argued before the court are:

I. WHETHER A "REPORTER'S PRIVILEGE" APPLIES IN MILITARY COURTS-MARTIAL UNDER THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND MILITARY RULE OF EVIDENCE 501(a)(1).

II. WHETHER A "REPORTER'S PRIVILEGE" APPLIES IN MILITARY COURTS-MARTIAL UNDER MILITARY RULE OF EVIDENCE 501(a)(4) AS A PRINCIPAL OF COMMON LAW GENERALLY RECOGNIZED IN THE TRIAL OF CRIMINAL CASES IN THE UNITED STATES DISTRICT COURTS PURUSANT TO RULE 501 OF THE FEDERAL RULES OF EVIDENCE.

III. WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION IN APPLYING A "REPORTER'S PRIVILEGE" UNDER MILITARY RULE OF EVIDENCE 501(a)(4) AS THE BASIS FOR QUASHING A GOVERNMENT SUBPOENA FOR CBS NEWS NONBROADCAST AUDIO-VIDEO "OUTTAKES" OF AN INTERVIEW WITH THE ACCUSED THAT WERE OTHERWISE DISCOVERABLE UNDER RULE FOR COURTS-MARTIAL 703.