

Thursday, 26 May 2011

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United States v. Nash

A general court-martial consisting of members with enlisted representation convicted the appellant, contrary to his pleas, of two specifications of taking indecent liberties with a child under the age of 16; five specifications of taking indecent liberties with another child under the age of 16; and one specification of knowingly and wrongfully possessing visual depictions of persons under the age of 16 engaging in sexually explicit conduct to the prejudice of good order and discipline and of a nature to bring discredit upon the armed forces, all in violation of Article 134, UCMJ. The members sentenced the appellant to 18 years of confinement, reduction to pay grade E-1, and to be dishonorably discharged. The issue to be argued before the court is:

Did the military judge abuse his discretion in denying the Appellant's challenge for cause against one of the members, creating serious doubt as to whether the Appellant had a fair and impartial panel when that member questioned a defense witness during the findings phase of the court-martial about whether the witness believed that a pedophile could be rehabilitated.

Friday, 20 May 2011

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United States v. Magnan

In March 2010, contrary to his pleas, the appellant was found guilty by members with enlisted representation of orders violations, sexual contact, sodomy, assault, and drunk and disorderly conduct in violation of Articles 92, 120, 125, 128 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 920, 928 and 934. The appellant was sentenced to 3 years confinement, reduction to pay grade E-1, total forfeitures and a dishonorable discharge. The convening authority approved the findings and sentence as adjudged.

During the course of trial, two government witnesses were granted transactional immunity by the convening authority. The appellant argues that the convening authority who granted the immunity and his staff judge advocate should have been precluded from post-trial action. The appellant also alleges that trial counsel made improper arguments in his closing by vouching for a government witness' credibility and commenting on the

believability of the defense's case and that such action amounted to prosecutorial misconduct.

The issues to be argued before the Court are the following:

I. A. WHETHER THE STAFF JUDGE ADVOCATE WAS DISQUALIFIED FROM PROVIDING THE RECOMMENDATION OF STAFF JUDGE ADVOCATE UNDER PROVISIONS OF RULES FOR COURTS-MARTIAL 1106.

B. WHETHER THE CONVENING AUTHORITY WAS DISQUALIFIED FROM TAKING ACTION UNDER PROVISION OF RULES FOR COURTS-MARTIAL 1107.

II. TRIAL COUNSEL'S ACTIONS CONSTITUTED PROSECUTORIAL MISCONDUCT BY REPEATEDLY MAKING IMPROPER INFLAMMATORY CLOSING ARGUMENTS AND IMPROPERLY COACHING A GOVERNMENT WITNESS BETWEEN DIRECT AND CROSS-EXAMINATION.