**POSTPONED**

**United States v. Dominique**

A military judge sitting as a general court-martial convicted the appellant, pursuant to his pleas, of an orders violation, false official statement, conspiracy to commit larceny, and of wrongful appropriation. The convening authority approved a sentence of 8 months confinement, reduction in rate to E-1, and a bad conduct discharge from the United States Marine Corps. The specified issue before the Court is the following:

I. WHETHER AN ACCUSED MAY BE CONVICTED OF AN "IMPLICIT" CONSPIRACY WHERE THERE IS NO EVIDENCE OF EITHER A WRITTEN OR ORAL MEETING OF THE MINDS, BUT RATHER WHERE APPELLANT'S PARTICIPATION IN THE CONSPIRACY IS LIMITED TO KNOWLEDGE THAT HIS "CO-CONSPIRATORS" ARE BREAKING THE LAW AND HIS OMISSION OF ACTION IN PREVENTING THEIR ILLEGAL ACTIVITIES.

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**Monday, 22 August 2011**

**1300**

**United States v. Parker**

In July 1993, the appellant was convicted by a general courtmartial of two specifications of conspiracy, two specifications of violating an order, two specifications of murder, one specification of robbery, and two specifications of kidnapping in violation of Articles 81, 92, 118, 122, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 881, 892, 918, 922, and 934. The appellant was sentenced to death, forfeiture of all pay and allowances, and reduction to pay grade E-1. The convening authority approved the findings and sentence as adjudged. In February 2007, this Court issued an opinion determining that the penalty of death was still available in the appellant's case.

In June 2007, this Court returned the record of trial in this capital case to the Judge Advocate General for return to an appropriate convening authority for the purpose of conducting a mental health examination and a hearing in accordance with

*United States v. Dubay*, on the issue of mental retardation. In August 2010, this Court returned the record of *DuBay* hearing in this case to the Judge Advocate General for remand to an appropriate convening authority to order a new *DuBay* hearing for the limited purpose of establishing the nature and extent of the personal contact between the military judge and the Government expert in this case.

In September 2010, the Government filed a joint Motion for En Banc Reconsideration and Motion to Stay, which this Court denied.

In October 2010, the Court of Appeals for the Armed Forces (CAAF) granted a Motion filed by the Government requesting a stay of this Court's orders of August and September 2010. In November 2010, the CAAF denied the Government's Petition for a Writ of Mandamus and lifted the previously imposed stay.
In November 2010, this Court returned the record of trial to the Judge Advocate General for remand to an appropriate convening authority for proceedings consistent with this court's original August 2010 order. The Court ordered that the record of hearing, to include the *DuBay* judge's findings of fact and conclusions of law, be delivered to the Court on or before 20 January 2011.

In January 2011 the Government filed a motion for an enlargement of the 20 January 2011 due date imposed by this Court. This Court denied the Government's motion.
The complete record with findings and transcripts from all subsequent *DuBay* hearings was received by this Court in March 2011. The appellant now comes before this Court in the normal course of Art. 66 review.

The issue to be argued before the Court is as follows:

I. WHETHER THIS COURT SHOULD GRANT THE APPELLANT'S FOURTH MOTION FOR ENLARGMENT OF TIME (NON-CONSENT) BEYOND 22 AUGUST 2011.

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**Tuesday, 16 August 2011**

**1000**

**United States v. Caldwell**

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of orders violations, larceny, and wrongful self-injury, in violation of Articles 92, 121, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 921, and 934. Contrary to the appellant's pleas, the military judge convicted him of an orders violation. The appellant was sentenced to 180 days confinement and a bad conduct discharge from the United States Marine Corps. The convening authority approved the findings and sentence as adjudged.

Pvt Caldwell, the appellant, slit his wrists shortly after being notified that he was going to be placed into pre-trial confinement because he was suspected of committing larceny. The appellant was then charged with intentional self injury under Article 134 of the Uniform Code of Military Justice. The appellant pled guilty to that charge at trial. The appellant argues that his plea was improvident because the elements of Article 134 cannot be met when an appellant makes a *bona fide* suicide attempt.

The issue to be argued before the Court is the following:

I. APPELLANT WAS CONVICTED OF INTENTIONAL SELF-INJURY FOR ATTEMPTING SUICIDE. CAN INTENTIONAL SELF-INJURY BE USED AS A VEHICLE FOR CRIMINALIZING BONA FIDE SUICIDE ATTEMPTS INDUCED BY DEPRESSION, PTSD, OR OTHER MENTAL ILLNESS?

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**Monday, 8 August 2011**

**1100**

***Wuterich v. United States***

The underlying facts of the Petitioner's court-martial arise out of events that occurred while the Petitioner was on a combat patrol in Haditha, Iraq in November 2005. The Government referred charges against the Petitioner to a general courtmartial in December 2007, alleging dereliction of duty, voluntary manslaughter, aggravated assault, reckless

endangerment, and obstruction of justice in violation of Articles 92, 119, 128, and 134 of the Uniform Code of Military Justice (UCMJ).

The Petitioner was initially represented at the trial level by Lieutenant Colonel (LtCol) Colby Vokey, USMC (Ret.). LtCol Vokey retired from active duty in November 2008 yet still made several appearances as counsel for the Petitioner until September 2010 when the attorney-client relationship ended due to a conflict of interest on LtCol Vokey's part.

The Petitioner filed a writ petition with this Court in October 2010, seeking a stay so that he could file an extraordinary writ to protect his attorney-client relationship with LtCol Vokey. This Court denied the petition. The Petitioner then filed a petition for a writ of mandamus with this Court, seeking a declaration that his attorney-client relationship with LtCol Vokey was improperly severed. This Court denied that petition as well without prejudice to raise the matter during the ordinary course of appellate review. The Petitioner then sought relief from the Court of Appeals for the Armed Forces (CAAF). The CAAF vacated this Court's decision and remanded the case to this Court to determine whether the Military Judge abused his discretion in finding good cause to sever the attorney-client relationship between the Petitioner and LtCol Vokey. On remand, this Court found that the Military Judge did not abuse his discretion by granting Mr. Vokey's request to withdraw for a conflict of interest. The Petitioner once again petitioned the CAAF, which denied the Petitioner's writ appeal claiming that it raised new issues on appeal not presented to the trial judge. The Petitioner then petitioned the trial court to abate the courtmartialproceedings until LtCol Vokey is restored as the Petitioner's detailed defense counsel. The Military Judge denied the Petitioner's motion.

The matter is currently before the Court on a Petition for Extraordinary Relief in the Nature of a Writ of Mandamus. The Petitioner is seeking a writ of mandamus to secure his right to continued representation by LtCol Vokey. He has petitioned this Court to abate his court-martial proceedings until the United States restores his attorney-client relationship with LtCol Vokey.

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

I. WHETHER THE PETITIONER MEETS THE THRESHOLD REQUIREMENTS FOR MANDAMUS RELIEF BASED UPON HIS CLAIM THAT LTCOL

VOKEY, HIS FORMER DETAILED DEFENSE COUNSEL AND CIVILIAN DEFENSE COUNSEL, SHOULD BE RESTORED TO HIS DEFENSE TEAM BEFORE PETITIONER'S COURT-MARTIAL PROCEEDS.

II. WHETHER LTCOL VOKEY VOLUNTARILY TERMINATED HIS REPRESENTATION OF THE PETITIONER WHEN HE ALERTED THE TRIAL JUDGE TO A CONFLICT OF INTEREST AND MOVED TO WITHDRAW HIMSELF AS CIVILIAN DEFENSE COUNSEL IN SEPTEMBER 2010.

III. IF LTCOL VOKEY VOLUNTARILY RETIRED FROM ACTIVE DUTY AND THEN ASSUMED THE MANTLE OF CIVILIAN DEFENSE COUNSEL IN REPRESENTING THE PETITIONER IS RESTORATION TO ACTIVE DUTY A VIABLE OPTION FOR REMEDY