

Thursday, 20 October 2016 (1000)

United States v. Gebert

**Before Panel 2 of the Court: Senior Judge Campbell
Judge Rugh
Judge Hutchison**

**For Appellant: Samuel Moore, Esq.
LT Rachel Weidemann, JAGC, USN**

For Appellee: LT Robert Miller, JAGC, USN

A military judge sitting as general court-martial convicted the appellant, contrary to his pleas, of one specification of communicating a bomb threat, in violation of Article 134, UCMJ, 10 U.S.C. § 934 (2012). The military judge sentenced the appellant to confinement for seven months, reduction to pay grade E-1, and a bad conduct discharge. The convening authority approved the sentence as adjudged and, except for the punitive discharge, ordered the sentence executed.

The issues to be argued before the Court are as follows:

- I. **COMMUNICATING A THREAT REQUIRES A PURPOSEFUL AND INTENTIONAL *MENS REA*. THE MILITARY JUDGE ONLY REQUIRED A *MENS REA* OF RECKLESSNESS. DID THE MILITARY JUDGE ERR BY APPLYING A LESSER *MENS REA* TO THE COMMUNICATING A THREAT SPECIFICATION?**

- II. **THE GOVERNMENT WAS REQUIRED TO PROVE A PURPOSEFUL AND INTENTIONAL *MENS REA* BEYOND A REASONABLE DOUBT. APPELLANT'S COMMUNICATION WAS OBJECTIVELY AND SUBJECTIVELY MADE IN JEST. WAS THE EVIDENCE FACTUALLY AND LEGALLY SUFFICIENT?**