

Wednesday, 24 February 2016 (1000)

United States v. Hackler

Before the Court *En Banc*

For Appellant: Maj Benjamin A. Robles, USMC

For Appellee: LT James M. Belforti, JAGC, USN

A panel of members with enlisted representation sitting as a general court-martial convicted Appellant contrary to his pleas, of one specification of assault consummated by battery and one specification of adultery, in violation of Articles 128 and 134, UCMJ, 10 USC §§ 928 and 934 (2012). The members sentenced Appellant to reduction to pay grade E-1, ninety days hard labor without confinement, and a bad-conduct discharge. The convening authority approved the sentence as adjudged, and, except for the bad-conduct discharge, ordered the sentence executed.

The Court granted oral argument on Appellant's Supplemental Assignment of Error:

EQUAL PROTECTION REQUIRES THE LAW TO TREAT SIMILARLY-SITUATED INDIVIDUALS ALIKE. THE OFFENSE OF ADULTERY TREATS HETEROSEXUAL AND HOMOSEXUAL SERVICEMEMBERS DISPARATELY IN TWO WAYS: 1) ADULTERY APPLIES ONLY TO HETEROSEXUALS BY REQUIRING SEXUAL INTERCOURSE FOR CRIMINAL LIABILITY AND PUNISHMENT TO ATTACH; 2) ADULTERY DENIES HOMOSEXUALS THE SAME MARRIAGE-FOSTERING ENFORCEMENT OF FIDELITY AFFORDED HETEROSEXUAL SERVICEMEMBERS. THE UCMJ HAS NO EQUIVALENT OFFENSE FOR SAME-SEX SEXUAL RELATIONS. DOES EQUAL PROTECTION REQUIRE SETTING ASIDE APPELLANT'S CONVICTION FOR ADULTERY?