

**Wednesday, 13 April 2011**

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***United States v. Fletcher***

A general court-martial with enlisted representation convicted the appellant, contrary to his pleas, of one specification each of false official statement, aggravated sexual contact, unlawful entry as a lesser included offense of burglary, and impersonating a noncommissioned officer, in violation of Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 807, 920 and 934. The appellant was sentenced to confinement for six months, reduction in pay grade to E-1, and a bad-conduct discharge. The convening authority approved the sentence but, as clemency, suspended one month of confinement for 12 months. The issues to be argued before the court are:

I. THE RIGHT TO A FAIR TRIAL GUARANTEED AN ACCUSED PRECLUDES THE GOVERNMENT'S INTRODUCTION OF MISLEADING EVIDENCE AND UNDISCLOSED PRETRIAL STATEMENTS MADE BY THE ACCUSED. IN APPELLANT'S COURT-MARTIAL, THE TRIAL COUNSEL KNOWINGLY INTRODUCED AN UNDISCLOSED PRETRIAL STATEMENT AND MISLEADING TESTIMONY REGARDING ANOTHER STATEMENT, BOTH OF WHICH PREJUDICED APPELLANT. THE MILITARY JUDGE ABUSED HIS DISCRETION AND DENIED APPELLANT HIS RIGHT TO A FAIR TRIAL IN FAILING TO GRANT APPELLANT'S MOTION FOR MISTRIAL.

II. A MILITARY TRIAL COUNSEL HAS A RESPONSIBILITY TO TRY CASES FAIRLY AND MUST NOT MISLEAD THE MEMBERS NOR VIOLATE EVIDENCE DISCLOSURE REQUIREMENTS. THE TRIAL COUNSEL IN APPELLANT'S CASE INTENTIONALLY MISLED THE MEMBERS REGARDING A PRETRIAL STATEMENT BY APPELLANT AND ALSO INTRODUCED A SEPARATE PRETRIAL STATEMENT BY APPELLANT THAT HAD NEVER BEEN DISCLOSED TO DEFENSE COUNSEL. THE TRIAL COUNSEL'S CONDUCT CONSTITUTED PROSECUTORIAL MISCONDUCT AND DEPRIVED APPELLANT OF HIS RIGHT TO A FAIR TRIAL.