

Tuesday, 14 April 2015 (1000)

United States v. Montalvo

**Before Panel 2 of the Court: Senior Judge Fischer
Judge McDonald
Judge King**

**For Appellant: Mr. James S. Trieschmann, Jr.
LT Christopher C. McMahon, JAGC, USN**

**For Appellee: LT James M. Belforti, JAGC, USN
Capt Cory A. Carver, USMC**

A panel of officer and enlisted members, sitting as a general court-martial, convicted the appellant, contrary to his pleas, of two specifications of rape in violation of Article 120, UCMJ, 10 U.S.C. § 920. The members sentenced the appellant to reduction to paygrade E-1, confinement for nine years, and a dishonorable discharge. The convening authority approved the sentence as adjudged and, except for the dishonorable discharge, ordered the sentence executed.

The sole issue to be argued before this Court is as follows:

**DID THE MILITARY JUDGE ABUSE HIS DISCRETION IN DENYING THE
DEFENSE'S CONTINUANCE REQUEST AND IS APPELLANT ENTITLED TO RELIEF
ONLY IF THE COURT ALSO FINDS THE ERROR MATERIALLY PREJUDICED A
SUBSTANTIAL RIGHT OF THE APPELLANT'S?**