

Friday, 20 May 2011

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United States v. Magnan

In March 2010, contrary to his pleas, the appellant was found guilty by members with enlisted representation of orders violations, sexual contact, sodomy, assault, and drunk and disorderly conduct in violation of Articles 92, 120, 125, 128 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 920, 928 and 934. The appellant was sentenced to 3 years confinement, reduction to pay grade E-1, total forfeitures and a dishonorable discharge. The convening authority approved the findings and sentence as adjudged.

During the course of trial, two government witnesses were granted transactional immunity by the convening authority. The appellant argues that the convening authority who granted the immunity and his staff judge advocate should have been precluded from post-trial action. The appellant also alleges that trial counsel made improper arguments in his closing by vouching for a government witness' credibility and commenting on the believability of the defense's case and that such action amounted to prosecutorial misconduct.

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

I. A. WHETHER THE STAFF JUDGE ADVOCATE WAS DISQUALIFIED FROM PROVIDING THE RECOMMENDATION OF STAFF JUDGE ADVOCATE UNDER PROVISIONS OF RULES FOR COURTS-MARTIAL 1106.

B. WHETHER THE CONVENING AUTHORITY WAS DISQUALIFIED FROM TAKING ACTION UNDER PROVISION OF RULES FOR COURTS-MARTIAL 1107.

II. TRIAL COUNSEL'S ACTIONS CONSTITUTED PROSECUTORIAL MISCONDUCT BY REPEATEDLY MAKING IMPROPER INFLAMMATORY CLOSING ARGUMENTS AND IMPROPERLY COACHING A GOVERNMENT WITNESS BETWEEN DIRECT AND CROSS-EXAMINATION.