

Thursday, 6 December 2012

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United States v. Boyer

Panel Three: M.D. Modzelewski, E.C. Price, J.R. Perlak
Appellate Military Judges

For Appellant: Capt Michael Berry, USMC

For Appellee: LCDR Keith Lofland, JAGC, USN

A panel of officer members, sitting as a general court-martial, convicted the Appellant, contrary to his pleas, of one specification of indecent liberties with a child and one specification of sodomy with a child under 12, in violation of Articles 120 and 125, Uniform Code of Military Justice, 10 U.S.C. §§ 920, 925. The members sentenced Appellant to forfeiture of all pay and allowances, reduction to pay grade E-1, confinement for eight years, and a dishonorable discharge. The convening authority approved the sentence as adjudged and, except for the punitive discharge, ordered it executed.

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

I. WHETHER TRIAL COUNSEL'S ARGUMENT ON FINDINGS WAS IMPROPER AND CONSTITUTED PROSECUTORIAL MISCONDUCT? BRIEFS MUST ADDRESS, BUT ARE NOT LIMITED TO, TRIAL COUNSEL'S INTERJECTION OF HIS PERSONAL OPINIONS AND BELIEFS, DISPARAGING COMMENTS ABOUT THE APPELLANT'S CREDIBILITY, DISPARAGING COMMENTS ABOUT THE DEFENSE CASE AND TRIAL DEFENSE COUNSEL, INTRODUCTION OF FACTS NOT IN EVIDENCE, CLAIMS THAT THE DEFENSE WAS ATTEMPTING TO "SILENCE" THE VICTIM, AND REQUEST THAT THE MEMBERS "PROTECT" THE VICTIM BY CONVICTING THE APPELLANT. *SEE UNITED STATES V. FLETCHER*, 62 M.J. 175 (C.A.A.F. 2005)

II. ASSUMING TRIAL COUNSEL'S ARGUMENT ON FINDINGS INCLUDED IMPROPER COMMENTS, TAKEN AS A WHOLE, WERE THOSE COMMENTS MATERIALLY PREJUDICIAL TO THE APPELLANT'S SUBSTANTIAL RIGHTS UNDER ARTICLE 59(A), UCMJ? *SEE FLETCHER*, 62 M.J. AT 184-85 (IMPACT INVOLVES A BALANCING OF THREE FACTORS).

III. ASSUMING MATERIAL PREJUDICE, WHAT IS THE PROPER REMEDY?