

Tuesday, 31 October 2017 (1030)
Georgetown University Law Center
Supreme Court Institute Moot Courtroom
600 New Jersey Ave NW, Washington, DC 20001

United States v. Gomez, NMCCA No. 201600331

**Before Panel 2 of the Court: Senior Judge Hutchison
Judge Price
Judge Fulton**

For Appellant: LCDR William Geraty, JAGC, USN

For Appellee: Capt Brian Farrell, USMC

A panel comprised of officer and enlisted members sitting as a general court-martial convicted the appellant, contrary to his pleas, of one specification of violating a lawful general order, three specifications of sexual assault, and one specification of abusive sexual contact, in violation of Articles 92 and 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 892 and 920 (2012). The members sentenced the appellant to five years' confinement, reduction to pay grade E-1, forfeiture of all pay and allowances, and a dishonorable discharge. The convening authority approved the sentence as adjudged and, except for the punitive discharge, ordered the sentence executed.

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

- I. WHETHER THE GOVERNMENT VIOLATED LCPL GOMEZ'S DUE PROCESS RIGHTS WHEN IT CHARGED HIM WITH VIOLATING ARTICLES 120(b)(1)(B) AND 120(d), UCMJ, UNDER A BODILY HARM THEORY, BUT PROSECUTED AND CONVICTED HIM UNDER AN INCAPABLE OF CONSENTING DUE TO IMPAIRMENT BY ALCOHOL THEORY.**
- II. WHETHER THE TERM "INCOMPETENT," AS APPLIED AT TRIAL, WAS UNCONSTITUTIONALLY VAGUE.**
- III. WHETHER THE MILITARY JUDGE'S DENIAL OF THE DEFENSE COUNSEL'S REQUEST FOR AN INSTRUCTION ADDRESSING THE VICTIM'S CAPACITY TO CONSENT AND THE RELEVANCE OF HER INTOXICATION DEPRIVED LCPL GOMEZ OF A DEFENSE OR SERIOUSLY IMPAIRED HIS ABILITY TO PRESENT A DEFENSE.**