

Wednesday, 21 February 2018 (1205)  
George Washington University Law School  
2000 H Street NW, Washington, DC 20052

*United States v. Hoffmann*, NMCCA No. 201400067

**Before Panel 2 of the Court:** Chief Judge Glaser-Allen  
Senior Judge Hutchison  
Judge Sayegh

**For Appellant:** CDR Donald Ostrom, JAGC, USN

**For Appellee:** Capt Brian Farrell, USMC

In 2013, a general court-martial comprised of officer and enlisted members convicted the appellant of multiple charges involving a child, and for possessing child pornography. We affirmed the conviction the following year. In 2016, the Court of Appeals for the Armed Forces (CAAF) set aside the findings and sentence, dismissing the child pornography charges with prejudice and authorized a rehearing on the remaining charges.

At his rehearing, a general court-martial comprised of officer members convicted the appellant, contrary to his pleas, of two charges involving a child. The appellant was sentenced to reduction to pay grade E-1, 10 years' confinement, forfeiture of all pay and allowances, and a dishonorable discharge. The convening authority approved the adjudged sentence and, except for the punitive discharge, ordered it executed.

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

- I. WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION WHEN HE ADMITTED PROPENSITY EVIDENCE UNDER MILITARY RULE OF EVIDENCE 414 AND FAILED TO CONDUCT A PROPER MILITARY RULE OF EVIDENCE 403 BALANCING TEST.**
- II. WHETHER THE MILITARY JUDGE ERRED WHEN HE DID NOT EXTEND HIS RULING THAT COLONEL WOODARD WAS DISQUALIFIED FROM PROVIDING INPUT ON THE ARTICLE 34, UCMJ, LETTER AS STAFF JUDGE ADVOCATE TO INCLUDE OTHER AREAS OF PRETRIAL ADVICE.**
- III. WHETHER THE MILITARY JUDGE SHOULD HAVE RECUSED HIMSELF AS HE HAD BEEN THE REPORTING SENIOR TO THE MILITARY JUSTICE OFFICER DURING THE INITIAL INVESTIGATION AND WAS INFORMED BY NCIS ON MATTERS RELATED TO THE APPELLANT'S CASE.**