

Wednesday, 3 December 2014 (1000)

United States v. Henderson

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

For Appellant: Capt M. Brian MaGee, USMC

**For Appellee: CDR Christopher Van Brackel, JAGC, USN
LT Ann Dingle, JAGC, USN**

A military judge, sitting as a general court-martial, convicted the appellant, contrary to his pleas, of one specification of adultery, in violation of Articles 134, UCMJ, 10 U.S.C. §§ 934. The military judge sentenced the appellant to reduction to paygrade E-3 and a bad-conduct discharge. The convening authority approved the sentence as adjudged.

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

THE GOVERNMENT MUST PROVE EACH ELEMENT OF AN OFFENSE BEYOND A REASONABLE DOUBT. HERE, THE GOVERNMENT FAILED TO INTRODUCE ANY EVIDENCE TO PROVE THAT SGT HENDERSON'S ALLEGED ADULTERY WAS PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OR HAD A TENDENCY TO BRING THE ARMED SERVICES INTO DISREPUTE OR LOWER IT IN THE PUBLIC ESTEEM. IS THE ADULTERY CONVICTION LEGALLY AND FACTUALLY INSUFFICIENT?