IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

U N I T E D S T A T E S, Appellee	)	FINAL BRIEF ON BEHALF OF APPELLANT
v.	)	Crim. App. No. 20110057
Specialist (E-4) **JORDAN M. PETERS,** United States Army, Appellant	)	USCA Dkt. No. 14-0289/AR

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TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES:

Issue Granted

WHETHER THE MILITARY JUDGE ERRED IN DENYING THE IMPLIED BIAS CHALLENGE AGAINST LTC JC, IN LIGHT OF LTC JC'S PROFESSIONAL RELATIONSHIPS WITH THE TRIAL COUNSEL, SPECIAL COURT-MARTIAL CONVENING AUTHORITY, AND THE INVESTIGATING OFFICER.

Statement of Statutory Jurisdiction

The Army Court of Criminal Appeals (Army Court) had jurisdiction over this matter pursuant to Article 66, Uniform Code of Military Justice, 10 U.S.C. § 866 (2012) [hereinafter UCMJ]. This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3) (2012).

Statement of the Case

On September 23 and October 14, 2010, and January 12, 24, and 26-30, 2011, a military judge sitting as a general court-martial convicted Specialist (SPC) Jordan M. Peters, pursuant to his plea, of drunken operation of a vehicle in violation of

Article 111, UCMJ, 10 U.S.C. § 911 (2006). An enlisted panel sitting as a general court-martial convicted SPC Peters, contrary to his pleas, of causing injury by the drunken operation of a vehicle, involuntary manslaughter (two specifications), and aggravated assault, in violation of Articles 111, 119, and 128, UCMJ, 10 U.S.C. §§ 911, 919, 928 (2006). The panel sentenced SPC Peters to reduction to the grade of E-1, forfeiture of all pay and allowances, ten years confinement, and a bad-conduct discharge. The military judge credited SPC Peters with four days of confinement against the sentence of confinement. The convening authority approved confinement for nine years and six months and the remainder of the adjudged sentence. The convening authority credited SPC Peters with four days of confinement against the sentence to confinement.

On October 28, 2013, the Army Court affirmed the findings of guilty and the sentence. (JA 4). On June 3, 2014, this Honorable Court granted SPC Peters' petition for review.

Statement of Facts

Voir Dire of Lieutenant Colonel JC

Lieutenant Colonel (LTC) JC was a battalion commander with the 2nd Brigade Combat Team, 4th Infantry Division (Mechanized)[hereinafter 2-4 BCT]. (JA 79). As a battalion commander with 2-4 BCT, LTC JC had ongoing professional

relationships with the trial counsel, the special court-martial convening authority, and the Article 32(b), UCMJ, investigating officer in this case. 10 U.S.C. § 832(b) (2006); (JA 79-80, 88-89).

First, during voir dire, LTC JC described the working relationship with the trial counsel, who also served as the brigade judge advocate, as follows:

> [W]e've worked together for about a year and you have either come down and trained troop commanders on the brigade's legal SOP. You've come out and worked with the squadron to teach rules of engagement before we have -- while conducting platoon and troop lanes and then, you have also advised me, as a commander, on cases specific to this squadron as I consider legal action and options when dealing with issues internal to 1/10 CAV.

(JA 28-29, 80).

Furthermore, LTC JC told the defense counsel during voir dire, that he (1) trusted the trial counsel's legal advice, (2) thought the trial counsel was credible, and (3) thought that the trial counsel did good work. (JA 86). In addition, LTC JC stated that he sought the trial counsel's legal advice on a regular basis and had been advised by the trial counsel twice in the week leading up to the court-martial. (JA 85, 92-93). In fact, the night prior to voir dire, LTC JC contacted the trial counsel to discuss a military justice action with him. (JA 92-93). After discussing this unrelated military justice action,

LTC JC "probably closed off the conversation with 'I'll see you tomorrow.'" (JA 92-93).

Second, LTC JC described the special court-martial convening authority, Colonel (COL) John S. Kolasheski, as "[his] rater and boss." (JA 80). Despite this direct rating relationship, and the knowledge that his rater recommended that the appellant be court-martialed, LTC JC said it would "not affect [his] ability to be fair and impartial in this case." (JA 81). Also, as a commander in 2-4 BCT, LTC JC also had prior knowledge of the case because he had received a blotter report of the incident. (JA 24[1], 81-83).

Third, when the military judge asked if "any member was aware of any matter that might raise [a] substantial question concerning [his or her] participation in this trial as a court member," LTC JC raised his hand because the investigating officer was assigned to his unit. (JA 60, 88) In fact, the investigating officer was LTC JC's squadron executive officer. (JA 94). Lieutenant Colonel JC described the relationship with his investigating officer as follows:

> [E]very investigation I take seriously, sir. I -- you know, my responsibility, when the field grades are appointed by brigade is to make sure that they complete the

[1] While the blotter report was not entered into evidence at trial, it was attached to the record of trial as a pretrial allied document and is contained in the Joint Appendix for this Court's reference.

> investigat[ion] within a timely manner as directed by the brigade commander. And, sir, that's -- I'm sure that that was my level of involvement back then; was making sure that he met the expectations of his senior rater, my rater, and that -- and he is once again -- he is another . . . you know, he is investigating another case right now and again, that is my level of involvement; to make sure that he is not over tasked and that has properly prioritized his duties as directed by Colonel Kolosheski.

(JA 96).

Defense counsel's challenge for cause of LTC JC

Specialist Peters' counsel made a causal challenge against LTC JC, arguing that he was "clearly too connected and too related to this case." (JA 124). In support of this argument, trial defense counsel cited to the fact that LTC JC's boss forwarded the charges in this case and his executive officer was the investigating officer. (JA 124). The defense counsel also noted LTC JC's ten-second-hesitation in responding to the question, "[d]id you form any opinions, or have you formed any opinions, before coming to this court about who is at fault for that accident?" (JA 90, 125). This hesitation, the defense argued, was evidence that LTC JC struggled with the distinction between being a commander and being a panel member. (JA 125). Lieutenant Colonel JC admitted during voir dire that the question itself was difficult for him to answer, presumably given his position as commander. (JA 91).

The military judge denied the challenge against LTC JC, stating that he had considered actual bias, implied bias, and the liberal grant mandate. (JA 128-131). As to implied bias, the military judge held as follows:

> Concerning implied bias, implied bias exists if an objective observer would have a substantial doubt about the fairness of this court-martial proceeding. And I think that an objective observer who heard Colonel [JC] and saw Colonel [JC] responding to the questions of counsel would not have any reason to doubt his impartiality in this case. So, I don't believe that there's been actual or implied bias established in this case. And I am considering the liberal grant mandate that the Appellate Courts have asked me to consider in deciding whether or not to grant these challenges. I have considered actual and implied bias with respect to that. And again, I find no reason to grant a challenge for cause against Lieutenant Colonel [JC]. I can't say enough about how I believe that his demeanor, his thoughtful answer to the questions that were asked indicate to me that he is truthful and that he can be an impartial panel member in this case.

(JA at 130).

The Army Court's Decision

On appeal before the Army Court, SPC Peters argued that the military judge erred in denying his challenge for cause of LTC JC on grounds of implied bias. (JA 2). The Army Court found that, "[t]he military judge made extensive findings of fact, applied the liberal grant mandate, and employed the proper test for determining whether LTC JC should be challenged for cause

based on implied bias." (JA 4). In finding that the military judge did not abuse his discretion, the Army Court gave deference to the military judge. The Army Court held, "[w]e apply the deference afforded to the military judge and find no basis to disturb the military judge's denial of the challenge for cause against LTC JC for implied bias." (JA 4).

Any additional facts necessary for the assignment of error are set forth below.

Summary of the Argument

The military erred when he denied the defense challenge for cause of LTC JC. The cumulative effect of (1) LTC JC's ongoing professional relationship with the trial counsel, his principal legal advisor and brigade judge advocate; (2) LTC JC's direct supervisor and rater being the special court martial convening authority; (3) LTC JC's supervisory position over the Article 32, UCMJ, investigating officer; (4) LTC JC's prior knowledge of the facts in this case; and (5) LTC JC's long hesitation in answering a key question designed to determine his impartiality leads an objective observer to question the fairness of SPC Peters' court-martial panel. The military judge allowed his own subjective opinion of LTC JC's responses to predominate and stand in place of the objective standard that is required in an implied bias challenge. Further, the Army Court gave too much

deference to the military judge's findings without analyzing whether the liberal grant mandate had been properly applied.

Law

Courts review rulings on implied bias challenges under a standard less deferential than abuse of discretion, but more deferential than de novo review. *United States v. Moreno*, 63 M.J. 129, 134 (C.A.A.F. 2006); *United States v. Armstrong*, 54 M.J. 51, 54 (C.A.A.F. 2000); *United States v. Napoleon*, 46 M.J. 279, 283 (C.A.A.F. 1997).

Impartial court-members are a *sine qua non* for a fair court-martial. *United States v. Modesto*, 43 M.J. 315, 318 (C.A.A.F. 1995); *See also Smith v. Phillips*, 455 U.S. 209 (1982); *Remmer v. United States*, 347 U.S. 227 (1954). Rule for Courts-Martial [hereinafter R.C.M.] 912(f)(1)(N) provides that a court member "shall be excused for cause whenever it appears that the member . . . [s]hould not sit as a member in the interest of having the court-martial free from substantial doubt as to legality, fairness, and impartiality." This rule encompasses challenges based on both actual and implied bias. *Napoleon*, 46 M.J. at 283.

Military judges must test the impartiality of potential panel members for both actual and implied bias. *United States v. Richardson*, 61 M.J. 113, 118 (C.A.A.F. 2005). Implied bias exists when, regardless of an individual member's disclaimer of

bias, "most people in the same position would be biased." *United States v. Wiesen*, 56 M.J. 172, 175, 174 (C.A.A.F. 2002). Unlike actual bias, this Court reviews an allegation of implied bias objectively through the eyes of the public with a focus upon the appearance of fairness. *Id.* (citation omitted).[2] "The hypothetical 'public' is assumed to be familiar with the military justice system." *United States v. Bagstad*, 68 M.J. 460, 462 (C.A.A.F. 2010) (citations omitted). Because implied bias is an objective standard, a military judge's ruling is afforded less deference. *United States v. Strand*, 59 M.J. 455, 458 (C.A.A.F. 2004);[3] *see also United States v. Lavender*, 46 M.J. 485, 488 (C.A.A.F. 1997). This Court evaluates challenges for implied bias based upon the totality of circumstances. *Richardson*, 61 M.J. at 119.

In evaluating challenges for cause, military judges must consider the liberal grant mandate. *United States v. Clay*, 64 M.J. 274, 277 (C.A.A.F. 2007). The liberal grant mandate exists to address the convening authority's role in selecting panel

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[2] In applying this standard, this Court determines "whether the risk that the public will perceive that the accused received something less than a court of fair, impartial members is too high." *See United States v. Townsend*, 65 M.J. 460, 463 (C.A.A.F. 2008).

[3] *Cf. Napoleon*, 46 M.J. at 283 (when addressing actual bias, this court must give deference because the military judge "observed the demeanor of the participants in the voir dire and challenge process.'")(quoting *United States v. White*, 36 M.J. 284, 287 (C.M.A. 1993)).

members and the provision of only one peremptory challenge to the accused. *Id.* at 276. Military judges are required to liberally grant challenges for cause in close cases. *Id.* at 277.

In *Clay*, this Court emphasized that the liberal grant mandate best serves the interests of justice by addressing member issues before trial instead of after years of appellate litigation. *Id.* Liberally granting defense challenges spares alleged victims from returning to the stand, spares the government the cumbersome process of reconvening a court-martial, and avoids the risk that evidence will be lost or degraded over time. *See id.*

Argument

1. The military judge erred in denying the defense's challenge for cause against LTC JC.

Rule for Courts-Martial 912(f)(1)(N) provides that a court member "should not sit" where his service would raise "substantial doubt" on the "legality, fairness, and impartiality" of the proceedings. The focus of this rule is on the perception or appearance of fairness of the military justice system. *United States v. Dale*, 42 M.J. 384, 386 (C.A.A.F. 1995).

As this Court stated in *Richardson*, "[i]mplied bias review is more than . . . a question as to whether the members were

honest when they said they would be fair." 61 M.J. at 120. Thus, the question "is *not* about the members' integrity." *Id.* (emphasis added). Instead, "the question is would the public nonetheless perceive the trial as being less than fair given the nature of the prior and existing relationships between trial counsel and certain panel members?" *Id.*

Here, the question before this Court has nothing to do with LTC JC's integrity. The question is whether the public would perceive this trial as being less than fair given LTC JC's professional relationships with the key players in this court-martial, especially the trial counsel. Presumably, this is the reason why the Military Judge's Benchbook includes standard voir dire questions regarding any dealings the members may have with counsel. Dep't of the Army, Pam. 27-9, Legal Services, Military Judges' Benchbook ch. 2 § V, para. 2-5-1 (1 Jan. 2010); *see also Bagstad*, 68 M.J. at 463 (Baker, C.J. and Erdmann, J. dissenting); R.C.M. 912(f) Discussion ("Examples of matters which may be grounds for challenge [include when] the member: . . . is closely related to the accused, a counsel, or a witness in the case; . . . [or] has a decidedly friendly or hostile attitude toward a party . . . ."); *United States v. Polichemi*, 201 F.3d 858, 863-64 (7th Cir. 2000) (finding the trial judge erred by denying defendant's implied bias challenge of a Department of Justice secretary assigned to the same U.S.

Attorney's office as the prosecutor even though the secretary worked in the Civil Division and not directly with the Assistant U.S. Attorney).[4]

In *Richardson,* this Court described the "continuum" of relationships that can exist between trial counsel and commanders:

> We recognize that in military practice, the qualitative nature of the relationships between trial attorneys and officers in the commands those attorneys advise will cover a wide range of experiences. Some officers, including commanders, and the attorneys will establish a close personal and professional bond based on shared experience, for example, combat service, or regular garrison contact. In other contexts, the contact may be singular or passing; formal and

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[4] This Court should also consider *Polichemi*'s observation that federal common law has long recognized that the mere existence certain types of relationships between counsel and prospective jurors implicate presumptive bias even if the relationship otherwise has no direct connection to the trial. 201 F.3d at 863-64. Under this analysis, an *ongoing* relationship between a commander and his/her *current* organizational trial counsel would result in presumptive bias. While a trial counsel's client is the service, commanders act as the representative of their service. As such, commanders rely on their trial counsel not only to explain UCMJ options, but also to provide counsel regarding which option is appropriate in a given context. Moreover, commanders have a right to expect conversations with trial counsel will remain confidential unless disclosure is necessary for an official purpose. These factors create a quasi-attorney-client relationship between commanders and their organizational trial counsel unlike other personal or professional relationships counsel may have with potential members. Therefore, regardless of any other facts, this Court should hold such relationships necessarily imply bias because "in general persons in a similar situation would feel prejudice." *Id.* at 864 (quoting *United States v. Burr,* 25 Fed. Cas. 49, 50 (C.C. Va. 1807)).

> professional, but not indicative of special deference or bonding.

Id. at 119. In evaluating where on this continuum the relationship between the trial counsel and panel member lie, *Richardson* noted a panel member's agreement that the trial counsel was "a good legal advisor" and "a trusted legal advisor" suggested a pre-existing and favorable bond to a public observer.[5] *Id.*

Here, LTC JC's statements expose a closer bond with trial counsel than at issue in *Richardson*. When asked by defense counsel on voir dire, LTC JC agreed that he (1) "trusts Captain K[]'s legal advice," (2) "thinks he's credible," and (3) "think[s] he does good work." (JA 86). Given LTC JC's apparent overall satisfaction with *his* trial counsel and the assertion that he knew the trial counsel well enough to find him to be credible, these answers alone reveal a pre-existing and favorable bond to a public observer. Furthermore, LTC JC testified that he regularly sought legal guidance from the trial counsel, meeting with him one week prior to the court-martial to discuss legal matters and calling him in the evening before the

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[5] This Court ultimately did not decide whether the military judge erred in denying the causal challenge for the member that agreed to these statements because it held that the military judge erred in not conducting further inquiry into the trial counsel's professional relationships with two other panel members. 61 M.J. at 119. Consequently, *Richardson* set aside the findings of guilt and the sentence.

court-martial to discuss another military justice matter before ending the conversation with "see you tomorrow." (JA 85-86, 92-93).

The fact that LTC JC was speaking to the trial counsel on a military justice matter is significant. *Richardson* explained that "[t]he potential for concern is magnified" when the trial counsel has previously rendered advice in the area of criminal law. *Id.* at 119. Such prior advice "raises the possibility that the trial counsel may have already established a rapport on criminal matters or sentencing issues that may have arisen at [the] court-martial." *Id.* at 119.

The extent of the relationship between trial counsel and LTC JC was further revealed during trial counsel's detailed personal assessment of LTC JC on the record. (JA 125-127). In opposing defense's challenge for cause, the trial counsel stated:

> Colonel [JC] is one of the most conscientious and thoughtful commanders within the brigade. His hesitation for any question over the past -- more -- almost 17 months that I have been a part of that brigade -- is nothing more than his wanting to provide you with well thought out and heartfelt answers to your questions as well as ours. He takes this incredibly seriously as evidenced by his answers. He has had no improper nor could be perceived improper communications or actions or knowledge about this case.

(JA 125-126). In addressing LTC JC's relationship with the special court-martial convening authority, the trial counsel volunteered his personal observation that "there have been many times that the [LTC JC] has disagreed with the brigade commander on different issues . . . *I've been privy to those conversations, and in confidence he's told me quite a few things.*" (JA 127) (emphasis added). These personal assertions from the trial counsel about LTC JC further expose a close relationship between the two.

Moreover, the relationship between LTC JC and the trial counsel is not the only relationship that should cause this Court concern. There are two senior-subordinate issues in this case as well: (1) LTC JC and the special court-martial convening authority, and (2) LTC JC and the investigating officer. In *United States v. Wiesen*, this Court examined issues created by senior-subordinate relationships. 56 M.J. 172 (C.A.A.F. 2001); *See also Bagstad*, 68 M.J. at 463-464 (Baker, C.J. and Erdmann, J. dissenting). In *Wiesen*, the issue involved senior-subordinate relationships amongst the members of the panel as opposed to senior-subordinate relationships between a panel member and other key participants in prosecuting SPC Peters' case. Nevertheless, this Court's analysis in *Wiesen* is informative regarding the inherent concerns with senior-subordinate relationships at trial.

In *Wiesen*, this Court explained "[t]he American public should and does have great confidence in the integrity of the men and women who serve in uniform, including their integrity in the jury room." 56 M.J. at 176. But, this Court also noted that "public perception of the military justice system may nonetheless be affected by more subtle aspects of military life. An objective public might ask to what extent, if any, does deference (a.k.a. respect) for senior officers come into play?" *Id.*

In this case, the subtle aspects of military life are also at issue. An objective member of the public may ask to what extent, does LTC JC's deference to his boss, the special court-martial convening authority, come into play? Would an objective member of the public reasonably believe that LTC JC might be inclined to support his rater, the person who forwarded these charges with a recommendation to try them at a general court-martial, by finding SPC Peters guilty? Further, LTC JC appeared concerned when he received the summons for a case originating in his brigade and raised the issue to the trial counsel. (JA 93-94).

Along the same lines, although he was not personally involved in conduct of the Article 32(b), UCMJ, investigation, LTC JC admitted that he played an active role in ensuring that the investigating officer, his direct subordinate, completed the

investigation to the standards of LTC JC's direct supervisor, the special court-martial convening authority.

The combination of these three professional relationships should lead this Court to find that the military judge erred by denying the causal challenge against LTC JC.[6] In *Richardson*, this Court opined that the implied bias issue regarding the panel member who agreed that the trial counsel was a "good legal advisor" presented "a closer question of implied bias." 61 M.J. at 119. In this case, this Court has evidence on the record of a closer relationship between trial counsel and a panel member than present in *Richardson*, as well as LTC JC's rating relationship with the special court-martial convening authority and the investigating officer. Further, LTC JC possessed outside information regarding the facts surrounding the accident at issue in court-martial through receiving a blotter report. (JA 24, 81-83). Finally, and perhaps most telling, LTC JC struggled to answer the simple question of whether he had already formulated an opinion of SPC Peters' guilt or innocence in this case. (JA 90-91). Lieutenant Colonel JC's ten second hesitation provides further basis for an objective member of the public to question the impartiality of this panel member and the

[6] Although the military judge addressed each relationship individually in denying the causal challenge, he failed to address whether the cumulative effect of the multiple bases supported the causal challenge. *See Townsend*, 65 M.J. at 467.

fairness of this court-martial. Given these additional facts, to uphold the military judge's denial of the causal challenge against LTC JC would "place[] an intolerable strain on public perception of the military justice system." *Wiesen*, 56 M.J. at 175. Accordingly, under the totality of the circumstances, this Court should find that the military judge abused his discretion in denying the defense's challenge for cause.

2. The military judge's ruling focused extensively on actual bias but failed to appropriately address serious implied bias concerns.

In rendering his ruling on defense's challenge for cause, the military judge first addressed actual bias and agreed with trial counsel's personal assessment of LTC JC, to include why LTC JC hesitated in answering a key question. (JA 128-129). After finding no actual bias, the military judge addressed implied bias. (JA 130). According to the military judge, an "objective observer who heard Colonel [JC] and saw Colonel [JC] responding to the questions of counsel would not have any reason to doubt his impartiality in this case." (JA 130). In coming to a determination on implied bias, the military judge concluded that any objective observer would reach the same credibility determination of that he did regarding LTC JC. The military judge even added, "I can't say enough about how I believe that his demeanor, his thoughtful answers to the questions that were asked indicate to me that he is truthful and that he can be an

impartial panel member in this case." (JA 130). As a result, the military judge dispensed with any implied bias concerns by substituting his subjective opinion of LTC JC rather than considering the matter objectively through the eyes of a member of the public.

In ruling on implied bias, the military judge inappropriately emphasized his own credibility determination of LTC JC. In *Daulton*, this Court explained the varying importance of credibility determinations in actual and implied bias cases. *United States v. Daulton*, 45 M.J. 212, 217-218 (C.A.A.F. 1996). "A challenge for cause based on actual bias is 'essentially one of credibility.'" *Id.* at 217 (quoting *Patton v. Yount*, 467 U.S. 1025, 1038 (1984)). However, the military judge's credibility determination "is not dispositive on the issue of implied bias." *Id.* at 218. *Daulton* held that "[i]mplied bias exists 'when most people in the same position would be prejudiced.'" *Id.* (quoting *United States v. Smart*, 21 M.J. 15 (C.M.A. 1985)); see also *United States v. Strand*, 59 M.J. 455, 459 (C.A.A.F. 2004) (explaining that "prejudiced" in this context is synonymous with "biased.")

Thus, the proper question was *not* whether a member of the public would find LTC JC's answers to the questions of voir dire to be credible. Instead, the military judge should have considered whether the public would think that most people in

LTC JC's position would be biased given the multiple professional relationships LTC JC had with key players in SPC Peters' court-martial. By failing to analyze this question, the military judge's implied bias analysis should not be entitled to deference.

Furthermore, merely stating that the liberal grant mandate was considered does not mean that the military judge applied it correctly. In *Moreno*, this Court held that it would "overturn a military judge's ruling on an accused's challenge for cause where he clearly abuses his discretion in applying the liberal grant mandate." 63 M.J. at 134. Here, although the military judge stated that he had considered the liberal grant mandate, he failed to apply it properly in this case. (JA 130). At a minimum, given the totality of the circumstances, LTC JC's presence on the panel made this a "close case," requiring that the defense's causal challenge be granted if the liberal grant mandate were properly applied.

3. The Army Court gave too much deference to the military judge's decision.

In considering the military judge's decision to deny defense's challenge for cause on appeal, the Army Court acknowledged that the standard of review for implied bias is less deferential than abuse of discretion, but more than de novo. (JA 3). However, the Army Court erred by giving too much

deference to the military judge's findings of fact and assessment of LTC JC's credibility in deciding not to disturb the military judge's decision. (JA 2-4). Further, the Army Court neglected to conduct its own analysis of implied bias. While the standard of review is more deferential to a military judge who states on the record that he has considered the liberal grant mandate, it is not so deferential as to render the standard of review meaningless. *Clay*, 64 M.J. at 277. By failing to conduct its own analysis of the issue, including whether the cumulative effect of the multiple bases supported the causal challenge, and failing to articulate the level of deference it afforded the military judge, the Army Court erred in affirming the findings and sentence.

The military judge improperly denied SPC Peters' causal challenge of LTC JC for implied bias. The cumulative effect of: (1) LTC JC's ongoing relationship with the trial counsel; (2) LTC JC's supervisory position over the investigating officer and subordinate position to the special court-martial convening authority; (3) prior knowledge of the case; and (4) LTC JC's ten second hesitation when answering an key question created the appearance to an objective observer of the public that SPC Peters' court-martial lacked fairness. At a minimum, this created a "close case," requiring that the military judge liberally grant defense's challenge for cause.

Conclusion

WHEREFORE, SPC Peters respectfully requests that this Honorable Court set aside the findings and the sentence.

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CERTIFICATE OF COMPLIANCE WITH RULE 24(d)

1. This brief complies with the type-volume limitation of Rule 21(b) because this brief contains 4,930 words.

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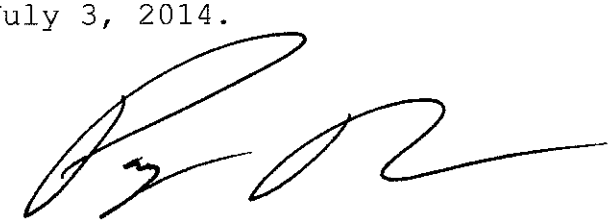
CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of United States v. Peters, Crim.App.Dkt.No. 20110057, USCA Dkt. 14-0289/AR, was electronically filed with both the Court and Government Appellate Division on July 3, 2014.



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