

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

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

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United States Army,		)	
	Appellant	)	

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

**Granted Issue**

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 United States Army Court of Criminal Appeals (Army Court) reviewed this case pursuant to Article 66(b), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b) (2012).<sup>1</sup> This Honorable Court has jurisdiction in "all cases reviewed by a Court of Criminal Appeals in which, upon petition of the accused and on good cause shown, the Court of Appeals for the Armed Forces has granted a review."<sup>2</sup>

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<sup>1</sup> Joint Appendix (JA) 1-5.

<sup>2</sup> Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3) (2012).

### Statement of the Case

A military judge sitting as a general court-martial convicted appellant, pursuant to his plea, of drunken operation of a vehicle in violation of Article 111, UCMJ.<sup>3</sup> A panel composed of officer and enlisted members convicted appellant, contrary to his pleas, of causing injury by the drunken operation of a vehicle, two specifications of involuntary manslaughter, and aggravated assault with a means likely to produce death or grievous bodily harm in violation of Articles 111, 119, and 128, UCMJ.<sup>4</sup> The panel sentenced appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for ten years, and to be discharged from the service with a bad-conduct discharge.<sup>5</sup> The convening authority credited appellant with four days of confinement against the adjudged sentence to confinement, approved nine years and six months of the confinement, and approved the remainder of the sentence as adjudged.<sup>6</sup>

On October 28, 2013, the Army Court affirmed the findings and sentence.<sup>7</sup> On June 3, 2014, this Honorable Court granted review.

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<sup>3</sup> (JA 30); Supplemental Joint Appendix (SJA) 22.

<sup>4</sup> (JA 30, 174).

<sup>5</sup> (JA 187).

<sup>6</sup> (JA 188).

<sup>7</sup> (JA 4).

### **Summary of Argument**

The military judge properly denied the defense challenge for cause against Lieutenant Colonel (LTC) JC. The military judge considered implied bias, discussed the liberal grant mandate, and placed his reasoning on the record and should be afforded deference accordingly. The objective observer watching LTC JC's demeanor during voir dire would conclude, just as the military judge did, that LTC JC presented forthcoming and truthful answers. This allays any concerns with bias or implied bias based on LTC's professional relationships with the trial counsel, Special Court-Martial convening authority, and Article 32 investigating officer or his limited knowledge of the case prior to trial.

The grounds for challenge, both individually and cumulatively, do not present a compelling case for excusal of LTC JC. An objective observer knowledgeable in the military justice system, considering LTC JC's candor, truthful answers during voir dire, and affirmation of impartiality, would not find implied bias.

### **Statement of Facts**

After assembling the court, the military judge gave preliminary instructions to the panel members.<sup>8</sup> He specifically

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<sup>8</sup> (JA 33-43).

told the members that they "must determine whether the accused is guilty or not guilty based solely upon the evidence presented [] in court . . . ."9 He told them to keep an open mind until all the evidence had been presented and that they "must impartially hear t[hat] evidence."<sup>10</sup>

The military judge listed several grounds for challenge of a member.<sup>11</sup> He told the members that being excused from a case casts no adverse reflection on that individual.<sup>12</sup> Each member indicated, after reading the charges and specifications on the flyer, that he or she could give the accused a fair trial.<sup>13</sup>

Lieutenant Colonel JC indicated that he had some knowledge of the facts in the case but stated that he would look at the evidence presented at trial and make a recommendation based upon that evidence.<sup>14</sup> Lieutenant Colonel JC understood the seriousness of the court-martial and he thought that he was unbiased and totally impartial.<sup>15</sup>

Trial counsel, defense counsel, and the military judge conducted individual voir dire of LTC JC.<sup>16</sup> The Army Court found

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<sup>9</sup> (JA 34-35).

<sup>10</sup> (JA 35, 37).

<sup>11</sup> (JA 36-37).

<sup>12</sup> (JA 37).

<sup>13</sup> (JA 47-48).

<sup>14</sup> (JA 48, 91).

<sup>15</sup> (JA 91).

<sup>16</sup> (JA 2, 79-97)



that the "broad voir dire of LTC JC" resulted in "a fully developed record."<sup>17</sup>

#### **A. Trial Counsel**

In response to the trial counsel's inquiry, LTC JC explained the nature of his interactions with the trial counsel:

[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.<sup>18</sup>

Lieutenant Colonel JC disagreed with the defense counsel who characterized the extent of this work with the trial counsel as "at great length."<sup>19</sup> Lieutenant Colonel JC clarified that they "both served in the same brigade combat team for about a year . . . ."<sup>20</sup> The trial counsel advised LTC JC a dozen times or about once a month.<sup>21</sup> Lieutenant Colonel JC had a conversation with the trial counsel about another matter the night prior to trial.<sup>22</sup> The trial counsel and LTC JC never

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<sup>17</sup> (JA 4).

<sup>18</sup> (JA 80).

<sup>19</sup> (JA 84-85).

<sup>20</sup> (JA 85).

<sup>21</sup> (JA 85).

<sup>22</sup> (JA 85).

discussed appellant's case.<sup>23</sup> Lieutenant Colonel JC trusted the trial counsel's legal advice, found him "credible," and thought he did good work.<sup>24</sup>

Lieutenant Colonel JC stated that "[o]ur relationship will not affect my ability to be fair and impartial in this case."<sup>25</sup> He specifically affirmed that "[i]t will not bias me."<sup>26</sup>

#### **B. Brigade Commander**

Colonel K, the brigade commander, served as LTC JC's supervisor and rater.<sup>27</sup> When prompted by defense counsel, LTC JC recalled a situation where he had no apprehension in disagreeing with Colonel K's judgment.<sup>28</sup> Colonel K proposed releasing the unit's high risk soldier list to individuals working on Charge of Quarters, but LTC JC thought this would lead to the negative outcome of the list being publicized throughout the brigade.<sup>29</sup>

Lieutenant Colonel JC stated that his relationship with Colonel K would not affect his ability to be fair and impartial.<sup>30</sup> It would not bias him in any way.<sup>31</sup> Lieutenant

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<sup>23</sup> (JA 92, 94).

<sup>24</sup> (JA 86).

<sup>25</sup> (JA 80).

<sup>26</sup> (JA 80).

<sup>27</sup> (JA 80).

<sup>28</sup> (JA 87).

<sup>29</sup> (JA 87).

<sup>30</sup> (JA 81).

<sup>31</sup> (JA 81).

Colonel JC affirmed that he would look at the evidence and make a decision based on the evidence alone.<sup>32</sup>

### **C. Article 32 Investigating Officer**

Lieutenant Colonel JC volunteered that he supervised the Article 32 investigating officer.<sup>33</sup> He "wanted to be totally transparent . . ." with his relationship to Major (MAJ) PK.<sup>34</sup> He did not recall that MAJ PK served as the investigating officer until the trial counsel read MAJ PK's name.<sup>35</sup>

Lieutenant Colonel JC never learned the results or any other portion of the Article 32 investigation conducted by MAJ PK.<sup>36</sup> Lieutenant Colonel JC supervised MAJ PK to ensure that he made the investigation a top priority, completed it in a timely manner, and did not have other tasks getting in the way.<sup>37</sup>

### **D. Summary of incident on the blotter**

Lieutenant Colonel JC saw a blotter entry on the incident and may have seen a Serious Incident Report or heard about it in the news.<sup>38</sup> He explained that he did "not place a lot of credibility on the initial report . . ." because "they are not all inclusive and do not paint an accurate picture of all the

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<sup>32</sup> (JA 81).

<sup>33</sup> (JA 88-89).

<sup>34</sup> (JA 89).

<sup>35</sup> (JA 88, 94).

<sup>36</sup> (JA 88, 95).

<sup>37</sup> (JA 96).

<sup>38</sup> (JA 82, 84).

circumstances surrounding the incident."<sup>39</sup> He had "no actual knowledge of the evidence or of the witnesses or the victims . . . ." in appellant's case.<sup>40</sup> Lieutenant Colonel JC assured the court that his limited knowledge of the case would not affect his ability to be fair and impartial.<sup>41</sup>

**E. The military judge's ruling**

The military judge found that LTC JC "disagrees with [COL K] on occasion and is able to do so when necessary . . . ." <sup>42</sup> He also found that LTC JC probably understood that even though "Colonel K[] has referred charges to trial [it] doesn't mean that Colonel K[] has made a decision one way or the other about the accused's guilt or innocence...." <sup>43</sup>

The military judge noted that LTC JC "knows the trial counsel . . ." but that "a professional relationship which is common in courts-martial cases . . ." does not indicate bias.<sup>44</sup> The relationship had "no bearing" on LTC JC's service on the panel.<sup>45</sup>

As to the investigating officer, the military judge found that LTC JC never discussed the facts or recommendation with MAJ

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<sup>39</sup> (JA 82).

<sup>40</sup> (JA 83).

<sup>41</sup> (JA 83).

<sup>42</sup> (JA 3, 128).

<sup>43</sup> (JA 3, 128).

<sup>44</sup> (JA 128).

<sup>45</sup> (JA 3, 128-29).

K.<sup>46</sup> The information known by LTC JC prior to trial amounted to what other commanders in his position would generally know and it did not cause him to form an opinion about the case.<sup>47</sup>

The military judge found that LTC JC's hesitation in answering a question shows "serious reflection" and supports his "credibility with respect to his answer."<sup>48</sup> "He actually thought about that answer before answering the question."<sup>49</sup> The court's observations of LTC JC indicated "that he was being a very straight forward and forthcoming individual about what he knows about this case and about whether he can be an impartial panel member."<sup>50</sup> The military judge explained implied bias: it "exists if an objective observer would have a substantial doubt about the fairness of this court-martial proceeding."<sup>51</sup> The military judge then found "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."<sup>52</sup> In reaching this finding, the military judge considered the liberal grant mandate both for actual and implied bias.<sup>53</sup> The military judge reiterated that he could not "say enough about how [he] believe[s] that [LTC JC's] demeanor, his

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<sup>46</sup> (JA 3-4, 130-31).

<sup>47</sup> (JA 4, 131).

<sup>48</sup> (JA 4, 129).

<sup>49</sup> (JA 4, 129).

<sup>50</sup> (JA 129).

<sup>51</sup> (JA 130).

<sup>52</sup> (JA 130).

<sup>53</sup> (JA 2, 130).

thoughtful answer to the questions that were asked indicate . . . that he is truthful and that he can be an impartial panel member in this case."<sup>54</sup>

#### **F. The Army Court's ruling**

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."<sup>55</sup> Giving the military judge proper deference, the Army Court found "no basis to disturb the military judge's denial of the challenge for cause against LTC JC for implied bias."<sup>56</sup>

Those additional facts necessary for disposition of the specified issue are contained in the argument below.

#### **Standard of Review**

This court reviews challenges for cause based on implied bias "less deferential[ly] than abuse of discretion, but more deferential[ly] than de novo review."<sup>57</sup> When a military judge addresses the concept of implied bias on the record, he is entitled to greater deference than a military judge who does not.<sup>58</sup>

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<sup>54</sup> (JA 130).

<sup>55</sup> (JA 4).

<sup>56</sup> (JA 4).

<sup>57</sup> *United States v. Moreno*, 63 M.J. 129, 134 (C.A.A.F. 2006) (citing *United States v. Armstrong*, 54 M.J. 51, 54 (C.A.A.F. 2000)).

<sup>58</sup> *United States v. Hollings*, 65 M.J. 116, 119 (C.A.A.F. 2007).

## Law and Argument

Rule for Courts-Martial [hereinafter R.C.M.] 912(f)(1)(N) requires a panel member to be excused when it is "in the interest of having the court-martial free from substantial doubt as to legality, fairness, and impartiality." "This rule encompasses challenges based upon both actual and implied bias."<sup>59</sup>

### A. Standard for implied bias

Implied bias exists when, despite the panel member's disclaimer of actual bias, most people in the same position would nevertheless be biased.<sup>60</sup> Other than those duty positions specifically listed in R.C.M. 912(f)(1), a panel member is not per se disqualified because of his or her duty position or military specialty.<sup>61</sup> Instead, challenges for implied bias are evaluated based on the totality of the circumstances.<sup>62</sup>

The test for determining a challenge for implied bias is objective, viewed through the eyes of the public.<sup>63</sup> This inquiry takes into account that "[t]he hypothetical 'public' is assumed to be familiar with the military justice system."<sup>64</sup> The general

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<sup>59</sup> *United States v. Bagstad*, 68 M.J. 460, 462 (C.A.A.F. 2010) (quoting *United States v. Elfayoumi*, 66 M.J. 354, 356 (C.A.A.F. 2008)).

<sup>60</sup> *United States v. Napolitano*, 53 M.J. 162, 167 (C.A.A.F. 2000) (citing *United States v. Schlamer*, 52 M.J. 80, 93 (C.A.A.F. 1999)).

<sup>61</sup> *United States v. Daulton*, 45 M.J. 212, 217 (C.A.A.F. 1996).

<sup>62</sup> *United States v. Strand*, 59 M.J. 455, 459 (C.A.A.F. 2004).

<sup>63</sup> *United States v. Clay*, 64 M.J. 274, 276 (C.A.A.F. 2007).

<sup>64</sup> *Bagstad*, 68 M.J. at 462.

focus of the inquiry is "on the perception or appearance of fairness of the military justice system."<sup>65</sup>

When considering challenges for implied bias, "military judges are enjoined to be liberal in granting defense challenges for cause."<sup>66</sup> However, when there is no actual bias, "implied bias should be invoked rarely."<sup>67</sup> "[W]here a military judge considers a challenge based on implied bias, recognizes his duty to liberally grant defense challenges, and places his reasoning on the record, instances in which the military judge's exercise of discretion will be reversed will indeed be rare."<sup>68</sup>

The "tone, content, and sincerity of [a] member's responses" are important in making an informed ruling on an implied bias challenge.<sup>69</sup> "[W]hat might appear a close case on a cold appellate record, might not appear so close when presented from the vantage point of a military judge observing members in person . . . ."<sup>70</sup> The military judge "is in the best position to judge the sincerity and truthfulness of the challenged member's

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<sup>65</sup> *Schlamer*, 52 M.J. at 93 (quoting *United States v. Dale*, 42 M.J. 384, 386 (C.A.A.F. 1995)).

<sup>66</sup> *Clay*, 64 M.J. at 276 (citing *Moreno*, 63 M.J. at 134).

<sup>67</sup> *United States v. Warden*, 51 M.J. 78, 81-82 (C.A.A.F. 1999) (quoting *United States v. Rome*, 47 M.J. 467, 469 (C.A.A.F. 1998)).

<sup>68</sup> *Clay*, 64 M.J. at 277.

<sup>69</sup> *United States v. Townsend*, 65 M.J. 460, 467 (C.A.A.F. 2008) (Baker, J., dubitante). Appellate courts do not have the benefit of hearing tone and observing demeanor. *Id.*

<sup>70</sup> *Clay*, 64 M.J. at 277.



responses on *voir dire*.”<sup>71</sup> “[A] ‘member’s unequivocal statement of a lack of bias can . . . carry weight’ when considering the application of implied bias.”<sup>72</sup>

**B. An objective look at LTC JC shows that the military judge did not abuse his discretion in refusing to grant the defense challenge for cause.**

The military judge, sitting in the “best position” to evaluate the member, found no implied bias.<sup>73</sup> The military judge focused on LTC JC’s appearance in court.<sup>74</sup> His analysis provides the lens through which the objective observer would view LTC JC.<sup>75</sup> Any possible trepidation by the hypothetical objective observer would vanish in light of all the thoughtful answers given by LTC JC, his demeanor during *voir dire*, and candor with all parties.<sup>76</sup>

Lieutenant Colonel JC’s candor with the court and truthful answers shows to the knowledgeable and objective observer that no implied bias existed. An examination of each discrete ground for challenge, both individually and collectively, shows that

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<sup>71</sup> *United States v. Youngblood*, 47 M.J. 338, 341 (C.A.A.F. 1997) (emphasis in original); see *United States v. Downing*, 56 M.J. 419, 423 (C.A.A.F. 2002) (an observed look of incredulity was relevant to an objective observer’s consideration).

<sup>72</sup> *Strand*, 59 M.J. at 460 (quoting *Youngblood*, 47 M.J. at 341).

<sup>73</sup> *Youngblood*, 47 M.J. at 341; (JA 129-30).

<sup>74</sup> (JA 129-30); See also *United States v. Thompson*, 50 M.J. 257, 260-61 (C.A.A.F. 1999) (affirming the decision of the lower court that the military judge did not abuse his discretion in denying a defense challenge for cause where the military judge commented extensively on the honesty and candor of the challenged member).

<sup>75</sup> (JA 129-30).

<sup>76</sup> (JA 79-97).

the military judge properly denied the defense challenge for cause.

**1. Military justice is a close-knit system in which participants will have professional connections with panel members**

Situations in which trial attorneys have prior or current professional relationships with members of the panel may be unavoidable.<sup>77</sup> The fact that LTC JC expressed a generally favorable view of the trial counsel, with whom he worked, does not change the analysis, or somehow indicate that LTC JC unfairly aligned with the trial counsel.<sup>78</sup>

Lieutenant Colonel JC and the trial counsel never discussed appellant's case and, in fact, only spoke about once every month.<sup>79</sup> Some interactions dealt with rules of engagement or other topics unrelated to military justice.<sup>80</sup> Lieutenant Colonel JC specifically and unequivocally stated that his relationship with the trial counsel would not affect his ability to be fair and impartial.<sup>81</sup>

An objective observer, familiar with the military justice system, would understand that commanders like LTC JC often receive advice from attorneys, but ultimately must make their own decisions. Sometimes the decision goes against the advice

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<sup>77</sup> *United States v. Richardson*, 61 M.J. 113, 120 (C.A.A.F. 2005).

<sup>78</sup> See generally *United States v. Hamilton*, 41 M.J. 22 (C.M.A. 1994).

<sup>79</sup> (JA 85, 92, 94).

<sup>80</sup> (JA 80).

<sup>81</sup> (JA 80).

of counsel. A knowledgeable observer would also understand that a Lieutenant Colonel would feel no pressure to conform his opinions during deliberations with the desires of a Captain trial counsel, even if the trial counsel was well respected by LTC JC.

**2. Even though LTC JC had no qualms disagreeing with COL K, the act of referring charges makes no comment on the guilt of an accused**

Lieutenant Colonel JC provided the court a specific instant in which he disagreed with his brigade commander, possibly in front of the other battalion commanders.<sup>82</sup> Lieutenant Colonel JC had no reservations about serving as a fair and impartial member in appellant's court-martial in light of his relationship with appellant's brigade commander.<sup>83</sup> Each member, including LTC JC, indicated that he or she would not infer guilt based upon the forwarding of the charges to the Convening Authority and the case's referral to court-martial.<sup>84</sup>

The justice-savvy observer understands that all panel deliberations and votes are entirely confidential.<sup>85</sup> These procedures insulate LTC JC from any disagreement with Colonel K. The confidentiality of the panel also protects against any public perception issues connected to LTC JC's relationship with

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<sup>82</sup> (JA 87-88).

<sup>83</sup> (JA 80-81).

<sup>84</sup> (JA 51).

<sup>85</sup> R.C.M. 921(c)(1).

Colonel K. The objective observer also understands, as noted by the military judge that Colonel K's decision to refer charges to the convening authority makes no comment on Colonel K's personal belief as to guilt or innocence.<sup>86</sup>

**3. Lieutenant Colonel JC's involvement with the Article 32 investigating officer amounted to administrative oversight; LTC JC learned nothing of the case from MAJ PK**

Consistent with his overall candor with the court, LTC JC disclosed that the Article 32 investigating officer, MAJ PK, worked for LTC JC.<sup>87</sup> He learned nothing of the case from MAJ PK and had no knowledge about MAJ PK's recommendation.<sup>88</sup>

The mere fact that LTC JC's subordinate completed the investigation has no rational bearing on implied bias. Lieutenant Colonel JC did not even remember MAJ PK's role until the trial counsel read his name in court, which indicates the minuscule impact this had on LTC JC.<sup>89</sup> Furthermore, no aspects of the Article 32 investigation came into evidence for the panel to consider so LTC JC did not need to weigh the evidentiary value of MAJ PK's work.

A knowledgeable and objective observer, recalling the advisory nature of the pretrial investigative report, would find LTC JC's connection to MAJ PK inconsequential to LTC JC's

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<sup>86</sup> (JA 128).

<sup>87</sup> (JA 88-89, 94-96).

<sup>88</sup> (JA 88, 95).

<sup>89</sup> (JA 94).

ability to sit as a panel member.<sup>90</sup> Lieutenant Colonel JC's supervision of MAJ PK to ensure a timely delivery of the nonbinding and advisory report to the brigade commander does not implicate public perception of fairness to appellant.<sup>91</sup>

**4. Lieutenant Colonel JC's prior knowledge of a car accident involving alcohol came from an unreliable source and appellant's plea of guilty provided the same information**

Lieutenant Colonel JC's knowledge of appellant's case, prior to the presentation of evidence at trial, boiled down to "a traffic accident involving three service members . . ." which resulted in the death of two of the three, where the driver was under the influence of alcohol.<sup>92</sup> He had no information on fault or blame.<sup>93</sup> He had no knowledge of evidence, witnesses, or victims.<sup>94</sup>

Lieutenant Colonel JC concluded that initial reports, like the one he saw, usually lack credibility and do not paint an accurate picture of the true circumstances of the incident.<sup>95</sup> Not surprisingly, LTC JC provided that it would in no way affect his ability to be fair and impartial.<sup>96</sup>

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<sup>90</sup> R.C.M. 405(a) Discussion.

<sup>91</sup> (JA 96).

<sup>92</sup> (JA 89-90).

<sup>93</sup> (JA 90).

<sup>94</sup> (JA 83).

<sup>95</sup> (JA 82).

<sup>96</sup> (JA 83).

Appellant providently pled guilty to the drunken operation of a vehicle.<sup>97</sup> This plea satisfied the first two elements of the Article 111 charge: (1) that appellant was physically controlling a vehicle (2) while drunk.<sup>98</sup> The guilty plea alone provided LTC JC just as much information as he learned from the report.<sup>99</sup>

**5. The collective grounds for challenge do not support the challenge for cause**

Lieutenant Colonel JC allayed any concerns for each ground for challenge discussed above. Lieutenant Colonel JC gave thoughtful and truthful answers.<sup>100</sup> The military judge consequently found LTC JC "a very straight forward and forthcoming individual . . . ." <sup>101</sup> Because the military judge sits in the best position to evaluate the credibility of a panel member, LTC JC's unequivocal statement of impartiality should carry significant weight.<sup>102</sup> An objective observer, considering LTC JC's credibility and affirmation of impartiality, would not find implied bias even after combining all the grounds for challenge together.<sup>103</sup>

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<sup>97</sup> (JA 30, 139); (SJA 1-22).

<sup>98</sup> (SJA 23-30).

<sup>99</sup> (JA 89-90).

<sup>100</sup> (JA 4, 79-97, 129).

<sup>101</sup> (JA 129).


<sup>102</sup> *Clay*, 64 M.J. at 277; *Youngblood*, 47 M.J. at 341; *Strand*, 59 M.J. at 460.

<sup>103</sup> See e.g. *United States v. Bannwarth*, 36 M.J. 265 (C.M.A. 1993) (In a prosecution related to controlled substances, after considering all three grounds for challenge, individually and cumulatively, including (1) a comment that there is no room in the Air Force for illegal drug users, (2)

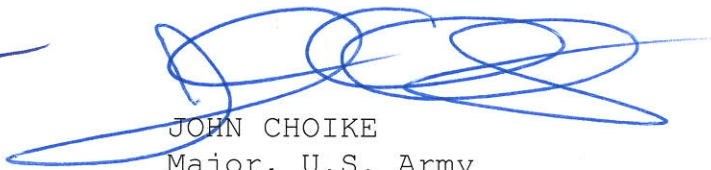
This case presents a situation where the military judge considered implied bias, discussed the liberal grant mandate, and placed his reasoning on the record and as such the military judge's exercise of discretion should not be reversed.<sup>104</sup>

**Conclusion**

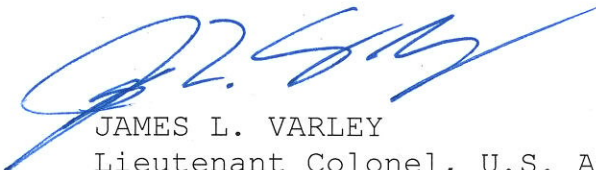
WHEREFORE, the Government respectfully requests that this Honorable Court affirm the decision of the Army Court and grant appellant no relief.




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supervisory relationship with other panel member, and (3) close relationship with the accuser, the court found no reason to reverse the military judge's denial of the defense challenge for cause).

<sup>104</sup> Clay, 64 M.J. at 277.

CERTIFICATE OF COMPLIANCE WITH RULE 24(d)

1. This brief complies with the type-volume limitation of Rule 24(c) because:

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CERTIFICATE OF SERVICE AND FILING

I certify that the foregoing was transmitted by electronic means to the court ([efiling@armfor.uscourts.gov](mailto:efiling@armfor.uscourts.gov)) and contemporaneously served electronically on appellate defense counsel, on August 4, 2014.



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