IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, Appellee v. Michael Z. PABELONA, Chief Hospital Corpsman (E-7) U.S. Navy, Appellant	BRIEF ON BEHALF OF APPELLANT USCA Dkt. No. 16-0214/NA Crim.App. Dkt. No. 201400244

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

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PROSECUTORS MUST ACT WITHIN THE BOUNDS OF PROPRIETY. HERE, IN FRONT OF MEMBERS, THE PROSECUTOR EXPRESSED HIS OPINION OF APPELLANT INCLUDING, "I THINK HE'S AN IDIOT," OPINED ON DEFENSE-FRIENDLY EVIDENCE, CHARACTERIZED APPELLANT'S STATEMENTS AS "RIDICULOUS," VOUCHED FOR GOVERNMENT-FRIENDLY EVIDENCE, DIAGNOSED APPELLANT AS SCHIZOPHRENIC, ASKED MEMBERS TO DISREGARD DEFENSE ARGUMENTS, AND TOLD MEMBERS THAT APPELLANT "SLEEPS IN A BED OF LIES." WAS THIS PLAIN ERROR?

Statement of Statutory Jurisdiction

Because the convening authority approved a sentence that included contingent confinement of sixteen months in addition to the sixty days' confinement to which he was sentenced, the United States Navy-Marine Corps Court of Criminal Appeals (NMCCA) had jurisdiction under Article 66(b)(1), Uniform Code of Military Justice (UCMJ).[1] This Court, therefore, has jurisdiction under Article 67, UCMJ.[2]

Statement of the Case

A general court-martial, consisting of officer and enlisted members, found Chief Hospital Corpsman (HMC) Michael Pabelona, U.S. Navy, contrary to his pleas, guilty of a single specification each of larceny and signing a false official

[1] 10 U.S.C. §866 (b)(1).
[2] *Id.* §867.

statement in violation of Articles 107 and 121, UCMJ, respectively.[3] The members acquitted HMC Pabelona of conspiracy to commit marriage fraud and obstruction of justice, charged in violation of Articles 81 and 134, UCMJ, respectively.[4] The members sentenced HMC Pabelona to reduction to pay-grade E-5, sixty days' restriction, sixty days' confinement, and a $60,000 fine that included a fine-enforcement provision of sixteen additional months of contingent confinement.[5]

The Convening Authority (CA) approved the sentence as adjudged, and ordered it executed.[6] On October 15, 2015, the NMCCA affirmed the findings and sentence.[7] On April 21, 2016, this Court granted HMC Pabelona's petition for review.

Statement of Facts

1. Chief Pabelona married his wife in 2011.

On February 3, 2011, HMC Pabelona married Yadira Nohemi.[8] Shortly thereafter, he completed the necessary steps to enroll his wife into the Defense Enrollment Eligibility Reporting System (DEERS) and updated his personnel

[3] *See id.* §§ 907, 921; J.A. at 151.
[4] *See* 10 U.S.C. §§ 881, 934; J.A. at 151.
[5] J.A. at 177.
[6] General Court-Martial Order No. 1-13.
[7] *See United States v. Pabelona*, No. 201400244, 2015 CCA LEXIS 424 (N-M. Ct. Crim. App. Oct. 15, 2016).
[8] J.A. at 38.

records to reflect his new marriage.[9] In May 2011, HMC Pabelona submitted a written request to change his BAH rate to reflect his new status.[10] The Government charged HMC Pabelona with larceny of military property under a theory that he received BAH at the "with dependents" rate from May 2011 until April 2013 by virtue of a sham marriage and other offenses to effectuate the larceny.[11] The trial focused on the legitimacy of HMC Pabelona's marriage and whether he and Yadira ever intended to establish a life together.[12]

2. The Trial Counsel inserted his personal opinions to characterize defense-friendly evidence.

Throughout his closing argument, rebuttal, and later sentencing argument, the prosecutor inserted his personal opinion about defense-friendly evidence on twenty-five distinct occasions:

Trial Counsel's Statement to the Members	Cite
"That's a ridiculous story."	J.A. at 100.
"Common sense tells you that's ridiculous."	J.A. at 100.
"that is hogwash"	J.A. at 103.
"she's full of it"	J.A. at 104.
"She tells ridiculous stories."	J.A. at 104.
"this is a ridiculous story"	J.A. at 104.
"It's --- it's --- it's hogwash, members."	J.A. at 105.

[9] J.A. at 213.
[10] J.A. at 197.
[11] J.A. at 7-9.
[12] J.A. at 97-104.

Trial Counsel's Statement to the Members (cont'd)	Cite
"He lies . . . and clumsily at that."	J.A. at 109.
"that's rubbish"	J.A. at 111.
"He tells ridiculous stories about his mother's fortune, ridiculous stories about his own personal fortune."	J.A. at 112.
"pathetic excuses"	J.A. at 113.
"That's absurd."	J.A. at 113.
"That love seems to have sprung out of the middle of nowhere"	J.A. at 114.
"Just doesn't make sense."	J.A. at 114.
"these stories are not believable"	J.A. at 115.
"They're not reasonable."	J.A. at 115.
"that doesn't sound cooperative to me"	J.A. at 139.
"I mean the defense seems to be at odds with itself"	J.A. at 140.
"it's ridiculous to think that"	J.A. at 140.
"these ridiculous statements"	J.A. at 141.
"I heard a lot of fanciful suggestions."	J.A. at 143.
"I heard a lot of conjecture."	J.A. at 143.
"I didn't hear any reasonable doubts."	J.A. at 143.
"It's remarkable, but it's absurd."	J.A. at 144.
"but I think it's pretty obvious that, you know, that that's not, you know, here's the deal. He goes to a psychologist right? I mean honestly do you think that if he had PTSD he wouldn't have gotten a diagnosis by now"	J.A. at 175.

3. The Trial Counsel vouched for Government-friendly evidence.

Besides inserting his personal opinion regarding defense-friendly evidence, the prosecutor personally vouched for Government-friendly evidence:

Trial Counsel's Statement to the Members	Cite
"it's obvious that he didn't help her at all"	J.A. at 107.
"It's obvious, it's obvious he doesn't intend to give these funds back."	J.A. at 107.
"This makes sense."	J.A. at 107.
"He made it very clear"	J.A. at 110.
"He made it very clear"	J.A. at 110.
"That makes it inescapably clear."	J.A. at 112.
"It makes sense."	J.A. at 117.
"it's clear that's what he's up to"	J.A. at 117.
"unavoidably clear"	J.A. at 117.
"makes it very clear"	J.A. at 117.
"and it is absolutely clear"	J.A. at 117.
"It's clear what he's up to."	J.A. at 140.
"it's clear that that was intended to impede this investigation"	J.A. at 140.
"His intent is clear."	J.A. at 141.
"I think this is important."	J.A. at 141.
"I mean you know it's --- the evidence is clear that the accused was trying to obstruct justice."	J.A. at 143.
"He actually tells the truth, not the truth according to the accused, but the actual truth."	J.A. at 143.
"He doesn't appear to care"	J.A. at 144.
"there's a couple of things I guarantee you'll hear . . . 'The government is inhuman.' 'They're just monsters,' right? We're just monsters. Well, look, this is me. Right? Not a monster."	J.A. at 171.

4. The trial counsel personally attacked Chief Pabelona in his statements to the members.

In addition to his personal opinions on the evidence, the prosecutor made personal attacks on HMC Pabelona:

Trial Counsel's Statement to the Members	Cite
"he's a deadbeat"	J.A. at 102.
"He's a liar."	J.A. at 113.
"He sleeps in a bed of lies."	J.A. at 113.
"pathetic excuse for a husband he that he was"	J.A. at 114.
"He's a second rate con artist."	J.A. at 115.
"This man is a manipulator and a user."	J.A. at 143.
"He is a con artist."	J.A. at 143.
"I think he's an idiot . . . and he's also a con artist."	J.A. at 144.

5. The Trial Counsel argued facts not in evidence.

During his closing and sentencing arguments, the prosecutor reached beyond the evidence introduced at trial and argued facts that were not in evidence:

Trial Counsel's Statement to the Members	Cite
"That's something you generally see when people intend to establish a life together"	J.A. at 102.
Reference to "these $500 trips to a strip club"	J.A. at 107.
"You talk about PTSD, there's another diagnosis called schizophrenia where two different personalities exist in the same person, and you see this a lot with common criminals, because you meet them, and they're nice people. They're friendly people, and you go, "Man, how in the world did this person get from this point to this point,' and you see this really a lot with con men, because con men are successful, because they can get close to people and	J.A. at 155-56.

they can gain the trust of people. They're friendly. They're charismatic. They have leadership skills, but for some reason, they cross that line over into criminality and it's a thin line, but this man crossed it"	
"think about the con he ran on her. He got her to think that he was in love with her, got her to marry him, told her he was going to take care of her, and then just disappeared and started spending the money. I mean that's just down, down, just low down."	J.A. at 168.
"Let me tell you one other person that got hurt by this, Yadira Pabelona."	J.A. at 173.
"it's not PTSD. He doesn't have PTSD and PTSD doesn't make you act like that."	J.A. at 169.

Following the arguments, the members deliberated on the merits for approximately three hours, then notified the military judge they were going to reconsider findings.[13]

Summary of Argument

In a case where Chief Pabelona was charged with BAH fraud by entering into a sham marriage, the Government's case necessarily focused on Chief Pabelona and Mrs. Pabelona's motives for marrying. The Government's case therefore consisted primarily of circumstantial evidence. Though convicting Chief Pabelona of BAH fraud and a false official statement to effect the fraud, the members acquitted Chief Pabelona of marriage fraud—the alleged basis for why his marriage was a sham.

[13] J.A. at 11, 146-48.

To overcome weaknesses in the evidence, the prosecutor resorted to colorful rhetoric calculated to inflame the passions of the members in an otherwise dull case. As if demonstrating a script of what not to do during argument, Chief Pabelona's prosecutor engaged in each of the types of misconduct this Court discussed and admonished against in the seminal case, *United States v. Fletcher*.

The prosecutor's improper comments permeated his entire merits argument, rebuttal, and sentencing argument. Without any curative measure taken by the military judge, this Court cannot be confident that the members convicted and sentenced Chief Pabelona on the evidence alone.

Argument

PROSECUTORS MUST ACT WITHIN THE BOUNDS OF PROPRIETY. HERE, IN FRONT OF MEMBERS, THE PROSECUTOR EXPRESSED HIS OPINION OF APPELLANT INCLUDING, "I THINK HE'S AN IDIOT," OPINED ON DEFENSE-FRIENDLY EVIDENCE, CHARACTERIZED APPELLANT'S STATEMENTS AS "RIDICULOUS," VOUCHED FOR GOVERNMENT-FRIENDLY EVIDENCE, DIAGNOSED APPELLANT AS SCHIZOPHRENIC, ASKED MEMBERS TO DISREGARD DEFENSE ARGUMENTS, AND TOLD MEMBERS THAT APPELLANT "SLEEPS IN A BED OF LIES." THIS WAS PLAIN ERROR.

Standard of Review

Absent objection prior to instructions, improper argument is reviewed for plain error.[14] "Plain error occurs when (1) there is error, (2) the error is plain or obvious, and (3) the error results in material prejudice to a substantial right of the accused."[15]

Discussion

Among the last things heard by the jurors before they retired to deliberate were the final words of the prosecutor:

> I want to make one thing perfectly clear for the record, I don't think the accused is a mastermind at all. I think he's an idiot, and that's why he got caught, and he's also a con artist and this is his last con."[16]

By themselves, these words constitute improper argument. But they are merely one example of the nearly sixty instances where the prosecutor interjected his personal beliefs and opinions, disparaged HMC Pabelona, made disparaging comments about defense counsel, introduced facts not in evidence, and invited the members to disregard the Defense argument.

"[P]rosecutorial misconduct occurs when a 'prosecuting attorney oversteps the bounds of propriety and fairness which should characterize the conduct of such

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[14] *United States v. Fletcher*, 62 M.J. 175, 179 (C.A.A.F. 2005) (citing *United States v. Rodriguez*, 60 M.J. 87, 88 (C.A.A.F. 2004)).
[15] *Rodriguez*, 60 M.J. at 88-89.
[16] J.A. at 144.

an officer in the prosecution of a criminal offense.'"[17] "While prosecutorial misconduct does not automatically require a new trial or the dismissal of the charges against the accused, relief will be granted if the trial counsel's misconduct 'actually impacted on a substantial right of an accused (i.e., resulted in prejudice).'"[18]

A. Expressing a personal opinion about the veracity of Defense evidence is prohibited.

In *United States v. Fletcher*, this Court discussed many ways the prosecutor argued improperly and found that each of them independently constituted prosecutorial misconduct. First, this Court observed that it "is improper for a trial counsel to interject herself into the proceedings by expressing a 'personal belief or opinion as to the truth or falsity of any testimony or evidence.'"[19] The Court found the trial counsel acted improperly by characterizing the defense as "nonsense," "unbelievable," and "ridiculous."[20]

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[17] *Berger v. United States*, 295 U.S. 78, 84 (1935).
[18] *Fletcher*, 62 M.J. at 178 (quoting *United States v. Meek*, 44 M.J. 1, 5 (C.A.A.F. 1996)).
[19] *Fletcher*, 62 M.J. at 179 (quoting *United States v. Horn*, 9 M.J. 429, 430 (C.M.A. 1980)).
[20] *Id.* at 180.

Here, the prosecutor inserted his personal opinions to characterize defense-friendly evidence as "ridiculous," "hogwash," or "rubbish" at least nine times during his merits argument and rebuttal.[21]

B. Vouching for Government-friendly evidence is prohibited.

A second way the *Fletcher* Court identified prosecutorial misconduct was when a trial counsel vouches for Government-friendly evidence. Improper vouching includes using words and phrases like "It's very apparent," or "I think it's clear."[22] Additionally, this Court noted the trial counsel's characterization of the Government's evidence as "unassailable," "fabulous," and "clear."[23]

Here, like *Fletcher*, the prosecutor inserted himself and his personal opinion to vouch for government-friendly evidence during his argument on the merits, characterizing it as "clear," "very clear," "inescapably clear," "unavoidably clear," or "absolutely clear" on at least eleven occasions.[24]

However, the trial counsel here went far beyond simply *characterizing* the evidence. He testified as a human lie detector: "[The Government witness] actually tells the truth, not the truth according to the accused, but the actual truth."[25]

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[21] J.A. at 100, 103-05, 111-12, 140-41.
[22] *Fletcher*, 62 M.J. at 180.
[23] *Id*.
[24] J.A. at 110, 112, 117, 140-41, 143.
[25] J.A. at 143.

During the sentencing argument, the prosecutor went even further and *personally* advocated the Government's arguments, stating, ". . . there's a couple of things I guarantee you'll hear . . . The government is inhuman. They're just monsters, right? We're just monsters. Well, look, this is me. Right? Not a monster."[26]

C. Disparaging the Accused is prohibited.

A third practice this Court warned against in *Fletcher* is disparaging the accused, noting, "calling the accused a liar is a 'dangerous practice that should be avoided.'"[27] Even where the record in *Fletcher* demonstrated the accused provided inconsistent statements, or may have lied, this Court distinguished proper comments on conflicting testimony from the trial counsel's comments. "It was improper, however, for the trial counsel to use the language that she did, language that was more of a personal attack . . . than a commentary on the evidence."[28]

Here, the prosecutor expressed similar personal opinions of HMC Pabelona using character attacks more often found in modern political campaigns than our military justice system. Throughout his argument on the merits, the prosecutor called HMC Pabelona:

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[26] J.A. at 171 (internal quotations removed). Chief Pabelona never argued that the trial counsel, or anyone else in the Government, was a monster.
[27] *Fletcher*, 62 M.J. at 182 (quoting *United States v. Clifton*, 15 M.J. 26, 30 n.5 (C.M.A. 1983)).
[28] *Id.* at 183.

- "deadbeat"
- "liar"
- "pathetic excuse for a husband"
- "second rate con artist"
- "manipulator"
- "user." [29]

Not to be outdone by the *Fletcher* prosecutor, who merely called the accused a liar, the prosecutor here emphasized his character attack on HMC Pabelona by appearing to borrow a comical line from popular culture, "He sleeps in a bed of lies."[30]

D. Disparaging opposing counsel is prohibited.

Fourth, this Court has denounced attacks on opposing counsel, noting "[d]isparaging remarks directed at defense counsel are reprehensible."[31] The American Bar Association (ABA) took a similar stance over forty-five years ago when it developed the *Standards of Criminal Justice*, which continue to be relied on by courts across the country with respect to evaluating a prosecutor's conduct. Standard 3-5.2 states:

> As an officer of the court, the prosecutor should support the authority of the court and the dignity of the trial courtroom by strict adherence to codes of professionalism and by manifesting a professional attitude

[29] J.A. at 102, 113-15, 143.
[30] J.A. at 113. *Cf.* ELF (Guy Walks Into a Bar Productions 2003) (Buddy the Elf confronts mall Santa, "You sit on a throne of lies!").
[31] *United States v. Xiong*, 262 F.3d 672, 675 (7th Cir. 2001).

> toward the judge, opposing counsel, witnesses, defendants, jurors, and others in the courtroom.[32]

Here, during his merits argument, the prosecutor disparaged the trial defense counsel, likening him to a clown in a circus act: "If the defense counsel gets up here and lights his hair on fire, juggles on a unicycle or does and says any number of things that have nothing to do with this . . . ."[33]

E. Arguing facts not in evidence is prohibited.

Fifth, this Court in *Fletcher* reminded practitioners that it is improper to argue facts not in evidence.[34] This prohibition is also echoed by the ABA Standards: "The prosecutor should not intentionally refer to or argue on the basis of facts outside the record . . . ."[35] Here, the prosecutor referenced facts outside the record in both his merits and sentencing arguments.[36] These arguments are particularly harmful.

The prosecutor's reference during his merits argument to "these $500 trips to a strip club" is not supported by any evidence admitted at trial. No witness testified that HMC Pabelona spent a single dollar at a strip club. This statement is misleading and highly prejudicial.

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[32] ABA CRIMINAL JUSTICE STANDARDS FOR THE PROSECUTION FUNCTION 3-5.2 (3rd ed. 1993) (found at J.A. at 214.).
[33] J.A. at 118.
[34] *Fletcher*, 62 M.J. at 183.
[35] ABA CRIMINAL JUSTICE STANDARDS FOR THE PROSECUTION FUNCTION 3-5.9 (3rd ed. 1993) (found at J.A. at 214.).
[36] *See infra* at 6-7.

It is misleading because there was no evidence that HMC Pabelona went to a strip club.[37]

It is prejudicial because it implies HMC Pabelona frequented and spent money at unsavory places. The risk of unfair prejudice is very high because some members are likely to have strong opinions about the morality of visiting strip clubs. This is especially dangerous in this case because HMC Pabelona's guilt or innocence rested on the members' belief in the validity of his marriage. Moreover, had HMC Pabelona known this was going to be presented at trial, he might have questioned the members about their feelings on this subject during *voir dire*.

In his sentencing argument, the prosecutor diagnosed HMC Pabelona with schizophrenia.[38] But no witness testified about schizophrenia, its manifestations, its relevance, or that HMC Pabelona may suffer from it.

Also during his sentencing argument, the trial counsel offered, for the first time, evidence of victim impact allegedly suffered by Mrs. Pabelona. The problem is that she did not testify or have any other statement of any kind presented to the members. Nonetheless, the trial counsel told the members, "He got her to think that he was in love with her, got her to marry him, told her he was going to take

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[37] Based on the prosecutor's 39(a) discussion with the military judge, even the prosecutor believed HMC Pabelona went to a strip club only once. J.A. at 23-30. Yet he exaggerated his belief in argument by referencing more than one trip.

[38] *See infra* at 6; J.A. at 155-56 ("You talk about PTSD, there's another diagnosis called schizophrenia . . . .").

care of her, and then just disappeared. . . . Let me tell you one other person that got hurt by this, Yadira Pabelona."[39]

The trial counsel then asked the members to violate the "Golden Rule"[40] and imagine the impact to her as immigration officials learn of her status, that a court determined her marriage was a sham, and she is deported.[41] But there was no evidence or testimony to establish this or any other impact to Mrs. Pabelona.

The prosecutor then authoritatively concluded HMC Pabelona "doesn't have PTSD and PTSD doesn't make you act like that."[42] This is particularly troubling because the defense requested a medical consultant to evaluate HMC Pabelona for PTSD. Their request was denied by the Government and by the military judge, who told the defense that HMC Pabelona could simply go to medical himself and get checked out.[43] He attempted to do just that.

Absent a court order that may have provided Naval healthcare providers a sense of urgency, he entered himself into the long process of making appointments and follow-up appointments. At the time of trial, he had not yet been diagnosed.[44] In this sense, he was precluded from any diagnosis. But the trial counsel's remarks

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[39] J.A. at 168.
[40] *See United States v. Baer*, 53 M.J. 235, 238 (C.A.A.F. 2000) ("[W]e hold that Golden Rule arguments asking the members to put themselves in the victim's place are improper and impermissible in the military justice system.").
[41] J.A. at 173.
[42] J.A. at 169.
[43] J.A. at 12-15.
[44] J.A. at 18-22.

to the members suggested he knew about evidence not in front of the members, and that it was conclusive.

The above comments invited "the members to accept new and inflammatory information as factual based solely on [his] authority as trial counsel."[45]

Finally, the prosecutor went so far as to ask the members to preemptively disregard any defense argument. He stated, ". . . if you hear them start minimizing it like that, just think in the back of your head, inoculate yourself a little bit to say, 'No, no, no, no, no, no, no, no.'"[46]

F. The prosecutor's misconduct prejudiced Chief Pabelona.

This Court uses a three-part balancing test to determine the impact of a prosecutor's misconduct on a trial.[47] First, the Court analyzes the severity of the misconduct. As in *Fletcher*, "the trial counsel's improper comments permeated [his] entire findings argument."[48] In *Fletcher*, the prosecutor made "several dozen" comments at the conclusion of a trial lasting less than three days in which members deliberated for less than four hours.[49] Here, there were nearly sixty improper statements at the conclusion of a trial that lasted less than four days, and

[45] *Fletcher*, 62 M.J. at 184.
[46] J.A. at 175.
[47] *Fletcher*, 62 M.J. at 184.
[48] *Id*.
[49] *Id.* at 185.

the members deliberated on findings for three hours before notifying the court they were reconsidering their verdict.[50]

Second, the Court weighs any curative measures taken by the military judge. Here, the military judge took no curative measures whatsoever. Even without objection from the trial defense counsel, the military judge "should have interrupted trial counsel before [he] ran the full course of [the] impermissible argument."[51]

Third, the Court evaluates the strength of the evidence. In cases where this Court declined to find prejudice, it found instead that this "factor weighed so heavily in favor of the government that it could be fully confident the appellant was sentenced on the basis of the evidence alone" and that the "weight of the evidence *amply* supports the sentence imposed by the panel."[52]

Here, the evidence was far from overwhelming. The lower court characterized the Government's case as merely "reasonably strong."[53] The Government's evidence was almost entirely circumstantial, focusing on the motivations behind HMC Pabelona's marriage. The members acquitted HMC Pabelona of marriage fraud, which was the Government's theory of why his receipt

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[50] J.A. at 146-47.
[51] *Fletcher*, 62 M.J. at 185 (quoting *United States v. Knickerbocker*, 2 M.J. 128, 129-30 (C.M.A. 1977)).
[52] *United States v. Frey*, 73 M.J. 245, 251 (C.A.A.F. 2014) (quoting *United States v. Halpin*, 71 M.J. 477, 480 (C.A.A.F. 2013)) (emphasis added).
[53] *Pabelona*, 2015 CCA LEXIS 424, *9.

of BAH constituted larceny and that his statements were untruthful. Additionally, the members, after deliberating for three hours, asked to reconsider a finding. If anything, this reflects that the members were on the fence about whether the Government met its burden at all and increases the likelihood that the prosecutor's improper arguments had an impact.

The balance of the above factors weighs firmly in favor of HMC Pabelona.

Conclusion

HMC Pabelona's trial was deeply tainted during both findings and sentencing by the prosecutor's misconduct. The severity of his misconduct, coupled with the total absence of curative measures by the military judge, leaves no room for confidence that the members convicted and sentenced HMC Pabelona on the evidence alone. This Court should apply the black-letter law of *Fletcher* and set aside the findings and sentence.

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Certificate of Filing and Service

I certify that the foregoing was electronically delivered to this Court, and that a copy was electronically delivered to Deputy Director, Appellate Government Division, and to Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity, on June 17, 2016.

Certificate of Compliance

This brief complies with the page limitations of Rule 24(b). This brief complies with the typeface and type style requirements of Rule 37 because it has been prepared in a proportional typeface using Microsoft Word version 2010 with 14-point Times New Roman font. It contains fewer than 14,000words.

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