

Sunday, 16 June 57

Dear "Buster":

Your note came while I was out of the city. Perhaps you have searched the 23 Vols. of Reports of the Court of Military Appeals and are more up to date than I on this than I.

Under separate cover, I am sending copy of outline used here in "Pretrial Procedure". These instructors are very good. Maybe the Outline will lead you to the latest pronouncement on your problem. If you have located cases that you think are in point, we are studying such now and I shall get the latest thinking here on the subject - that is, if you have time to dictate the points you wish looked up.

As you know, the new Manual designedly set out to get rid of "Command Influence". Art. 22(b) and Par. 5 (a) (3) are basic provisions.

The case of U.S. vs. Archuleta, 17 CMR 772 fairly well sets out the principle that the test regarding command influence is "whether a reasonable person could conclude that the commander (or those advising him) had a personal ^{interest} influence", or as set out in Art 1 (11), an accuser is *****any other person who has an interest other than an official interest in the prosecution of the accused.

^{West}
U.S. vs. West, 16 CMR 772, indicates that an Inspector General who conducted an investigation at the direction of his Commanding General, who was the Convening Authority of the Court-Martial, and who testified that Commanding General did not direct that the charges be signed, was Not the accuser. It belabors the situation trying to show that the CG did not actually exert "command influence" in causing the charges to be filed. Although this case finds that the CG did not exert Command Influence, it is adequate authority to show that the CG cannot direct the filing of charges. The mere fact that the IG is under his direction seems to put the burden on the prosecution to negative command influence. You will note that the "Key No." is "Courts-Martial, Par. 4 and possibly "Trial, Par. 27". I haven't had opportunity to run these down as yet.

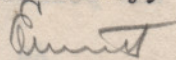
The following cases might be of interest:
Ross case, 16 CMR 579 "Command Influence"
Taylor case, 18 CMR 147 "Personal Influence"
Hammock case, 13 CMR 385 "Convening Authority
as Accuser"
Bergin case, 7 CMR 501 "CG's interest in welfare
fund allegedly embezzled
disqualifies him as Convening
Authority."

Buster, I don't know how much you have done on the research of these problems. If you have time to dictate the exact points, give me the cases you have already studied, I can get the best they have here and will be glad to do so.

Rest assured that I am interested academically and will not discuss your case or client.

Sorry that this is all I could do after getting your letter yesterday after I had returned. It will be a pleasure to make any research that would be of any help to you.

Yours sincerely,



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