

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

UNITED STATES

Appellee

*Amicus Curiae* Brief

v.

Lieutenant Colonel

Norbert A. KING II

United States Air Force

Appellant

Crim. App. Dkt. No. 39583

USCA Dkt. No. 22-0008/AF

**Brief of the National Institute of Military Justice  
in Partial Support of Petitioner**

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December 3, 2021

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

**INTEREST OF AMICUS**

The National Institute of Military Justice® (NIMJ) is a private non-profit organization, founded in 1991, and dedicated to the fair administration of justice in the armed forces and improved public understanding of military justice. NIMJ's leadership includes former judge advocates, private practitioners, and legal scholars.

**ISSUES PRESENTED**

**Assigned Issue No. 1**

IN THIS CASE INVOLVING ALLEGATIONS OF SEXUAL ASSAULT AGAINST A MINOR, DID THE RESERVIST MILITARY JUDGE ERR IN REFUSING TO RECUSE HIMSELF DUE TO HIS SIMULTANEOUS EMPLOYMENT AS A DEPARTMENT OF JUSTICE ATTORNEY SPECIALIZING IN THE PROSECUTION OF SEX CRIMES AGAINST MINORS?

**RELEVANCE OF THE BRIEF**

Unless waived by an accused after full disclosure of the basis for disqualification, “a military judge shall disqualify himself or herself in any proceeding in which that military judge’s impartiality might reasonably be questioned.” Rule for Court-Martial (R.C.M.) 902(a), (e).

The reserve military judge who presided over a part of Petitioner's court-martial was a full-time employee of the U.S. Department of Justice, where he served as Chief of the Criminal Division's Child Exploitation and Obscenity Section. Petitioner timely objected to the reserve military judge's presiding over the court-martial, questioning the appearance of his impartiality in a case in which Petitioner was charged with, and later convicted of, sexually assaulting his daughter.

A. The Issue is worthy of a grant of Review

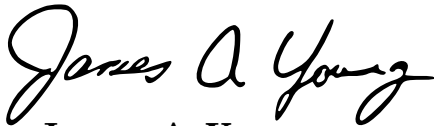
This Court should promptly rule on this issue of first impression. *See* C.A.A.F. R. 21(b)(5)(A). Detailing civilian prosecutors as reserve military judges to preside over courts-martial raises the issue as to the appearance of fairness and impartiality of the military judge and, thus, the military justice system. *Amicus* understands that there are additional civilian prosecutors who have been detailed to perform duties as reserve military judges, and that the assigned issue has been raised in at least one other case at the trial level. Prompt resolution of this issue will limit the number of cases that may be affected should the Court resolve the issue unfavorably to the Government.

## B. Petitioner's Case is an Appropriate Vehicle

Appellant timely raised the issue at trial. The facts present a worst-case scenario and provide the Court with the opportunity to supply necessary guidance on the application of R.C.M. 902(a) to reserve military judges who are civilian prosecutors.

### CONCLUSION

Wherefore, *Amicus* respectfully requests this Court grant review of Petitioner's assigned issue number 1.



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## CERTIFICATE OF COMPLIANCE

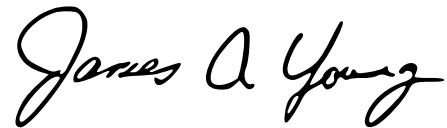
I certify that this brief complies with the maximum length authorized by Rule 26(d) because this brief contains 405 words not including front matter, the certificate of compliance, and the certificate of filing and service. This brief complies with the typeface and type style requirements of Rule 37 because it was prepared using Microsoft Word with Century Schoolbook 14-point font.

A handwritten signature in black ink that reads "James A. Young". The signature is written in a cursive, flowing style.

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**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was transmitted by electronic means on December 3, 2021, to the Clerk of the Court, Government Appellate Division, and Counsel for Appellant.

A handwritten signature in black ink that reads "James A. Young". The signature is written in a cursive, flowing style.

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