UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
HARVEY, BARTO, and SCHENCK
Appellate Military Judges

UNITED STATES, Appellee
v.
Private E2 MICHAEL E. BODKINS
United States Army, Appellant

ARMY 20010107

1st Infantry Division
Donna L. Wilkins, Military Judge
Lieutenant Colonel Mark Cremin, Staff Judge Advocate (trial)
Lieutenant Colonel John W. Miller II, Staff Judge Advocate (post-trial)

For Appellant: Lieutenant Colonel Mark Tellitocci, JA; Captain Charles L. Pritchard, Jr., JA; Captain Amy S. Fitzgibbons, JA (on brief).

For Appellee: Colonel Steven T. Salata, JA; Lieutenant Colonel Mark L. Johnson, JA; Lieutenant Colonel Theresa A. Gallagher, JA; Captain Magdalena A. Przytulska, JA (on brief).

10 May 2005

MEMORANDUM OPINION ON REMAND

HARVEY, Senior Judge:

A military judge sitting as a special court-martial convicted appellant, in accordance with his pleas, of absence without leave (AWOL) (two specifications) in violation of Article 86, Uniform Code of Military Justice, 10 U.S.C. § 886 [hereinafter UCMJ]. The convening authority approved the adjudged sentence to a bad-conduct discharge, confinement for two months, forfeiture of $695.00 pay per month for two months, and reduction to Private E1. This case was initially submitted on its merits for our review pursuant to Article 66, UCMJ. Appellant did not request any relief pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

On 18 November 2003, this court reviewed appellant's case under Article 66, UCMJ, and affirmed the findings and sentence. *United States v. Bodkins*, 59 M.J. 634 (Army Ct. Crim. App. 2003). On 4 November 2004, the United States Court of Appeals for the Armed Forces affirmed the findings of guilty, set aside the sentence, and remanded the case to us "for further consideration of whether the sentence should

be approved in view of the court's determination on initial review that the post-trial processing of this case was unreasonable, unexplained, and dilatory." *United States v. Bodkins*, 60 M.J. 322, 324 (C.A.A.F. 2004). The case is again before the court for review under Article 66, UCMJ.

Appellate defense counsel now urge this court to disapprove appellant's "confinement with the direction that the credit be converted to a monetary payment to PVT Bodkins in an amount equal to two month's pay at the rank of Private E1" as a remedy for dilatory post-trial processing (Brief for Appellant at 10). Appellate government counsel argue that this court should affirm the findings and sentence because of the absence of prejudice and the evident diligence of the office of the staff judge advocate (SJA) in the post-trial processing of appellant's case. We agree with appellate defense counsel that relief is warranted, and will order a forfeiture credit in our decretal paragraph.

FACTS

The following chronology details the post-trial processing of appellant's case:

Date	Post-Trial Activity	Days Since Previous Activity	Cumulative Days After Sentence Adjudged
31 Jan. 2001	Sentence adjudged.	n/a	0
17 Apr. 2001	74-page record of trial (ROT) typed and delivered to trial counsel.	76	76
22 May 2001	Trial counsel completed errata.	35	111
23 May 2001	Trial defense counsel signed errata sheet.	1	112
15 Jul. 2001	No information in allied papers about when military judge served with unauthenticated ROT. Military judge signed authentication page on 15 July 2001.	53	165
23 Jul. 2001	SJA's post-trial recommendation (SJAR) signed.	8	173
23 Jul. 2001	SJAR served on defense counsel.	0	173
10 Oct. 2001	Trial defense counsel waived submission of R.C.M. 1105 matters.	79	252
19 Mar. 2002	SJA's addendum to SJAR signed and convening authority approved adjudged sentence.	160[1]	412
21 May 2002	ROT arrived at Army Court of Criminal Appeals.	63	475

[1] Without this 160-day delay, the processing of this case is reasonable.

After trial, appellant's trial defense counsel did not request speedy post-trial processing. Trial and appellate defense counsel did not seek any reduction in appellant's sentence as a result of the slow post-trial processing until his case was pending at the United States Court of Appeals for the Armed Forces. Appellate defense counsel now assert "Private Bodkins' trial defense counsel may have failed to raise the issue through oversight or incompetence. There is no evidence that he ever discussed the issue with PVT Bodkins." (Brief for Appellant at 7).

Appellate government counsel filed with this court an affidavit from the SJA explaining some of the delay in appellant's case (Appendix). The SJA's affidavit highlighted the shortage of court reporters and the impact of this shortage on post-trial processing. Appellant's 74-page ROT, however, was typed and delivered to the trial counsel seventy-six days after appellant's sentence was adjudged. Only three minor typographical errors were noted during the authentication process. The SJA's affidavit also describes an extremely heavy operational tempo with "significant legal assets deployed to Kosovo, Bosnia, Turkey, Iraq, Kuwait, Israel, North Africa, and the numerous Combat Training Center Mission Rehearsal Exercises." The SJA office also had to contend with a very heavy military justice workload.

We assume that appellant was released from confinement approximately fifty days after his sentence was adjudged.[2] Appellant's trial defense counsel waived submission of clemency matters to the convening authority, 252 days after trial and 79 days after being served with the SJAR. *See* Rule for Courts-Martial [hereinafter R.C.M.] 1105(d)(3). On 12 March 2001, appellant requested voluntary excess leave. Appellant was placed on involuntary excess leave shortly thereafter.[3]

DISCUSSION

Article 66, UCMJ, requires us "to determine what findings and sentence 'should be approved,' based on all the facts and circumstances reflected in the record, including the unexplained and unreasonable post-trial delay." *United States*

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[2] The record does not describe how much confinement appellant actually served, or what "good conduct time" credit or "extra good time" credit appellant earned while incarcerated. *See* Army Reg. 633-30, Apprehensions and Confinement: Military Sentences to Confinement, § III (28 Feb. 1989).

[3] *See* Army Reg. 600-8-10, Personnel Absences: Leaves and Passes, para. 5-19e and Table 5-11, Step 6, (31 Jul. 2003), and Interim Change 23-03, para. 010301.F.1, (which is available at http://www.dod.mil/ comptroller/fmr/07a/07AIC23-03.pdf) (both discussing payment of pay and allowances for accrued leave and the absence of pay and allowances while on excess leave).

v. Tardif, 57 M.J. 219, 224 (C.A.A.F. 2002) (stating that an accused has a right to timely review of findings and sentence), *remanded to* 58 M.J. 714 (Coast Guard Ct. Crim. App. 2003), *aff'd in part*, 59 M.J. 394 (C.A.A.F. 2004). "[F]undamental fairness dictates that the government proceed with due diligence to execute a soldier's regulatory and statutory post-trial processing rights and to secure the convening authority's action as expeditiously as possible, given the totality of the circumstances in that soldier's case." *United States v. Collazo*, 53 M.J. 721, 727 (Army Ct. Crim. App. 2000). In *United States v. Bauerbach,* we explained why timely post-trial processing is important:

> The Army, the chain of command, each victim, every person who knows about an offense, and most of all the accused, has an interest in the timely completion of courts-martial, to include the post-trial process . . . Not only is untimely post-trial processing unfair to the soldier concerned, but it also damages the confidence of both soldiers and the public in the fairness of military justice, thereby directly undermining the very purpose of military law.

55 M.J. 501, 506 (Army Ct. Crim. App. 2001).

We do not find specific or actual prejudice to appellant from this slow post-trial processing. A finding of specific or actual prejudice, however, is not a prerequisite for relief under Article 66, UCMJ. *See Tardif*, 57 M.J. at 224; *Collazo,* 53 M.J. at 727. Sentence relief may be appropriate for "unexplained and unreasonable post-trial delay," notwithstanding the absence of prejudice. *Tardif*, 57 M.J. at 224; *see* UCMJ art. 66(c).

Appellant and his counsel did not request speedy post-trial processing. We have, however, no reasonable basis for concluding that appellant wanted slow post-trial processing to retain important benefits available until execution of his discharge. *See Bodkins*, 60 M.J. at 324. The parties had ample opportunity to submit affidavits or other evidence with this court explaining the post-trial processing of this case. We also reject appellate defense counsel's speculation about what appellant and his trial defense counsel discussed because no supporting evidence has been provided to this court.

We have previously stated, "[t]he SJA office must frequently and systematically check on the status of their post-trial cases, and then act accordingly to facilitate expeditious post-trial processing, documenting their efforts and filing that documentation with the allied papers." *United States v. Scotchmer*, ARMY 20010889 at 4 (Army Ct. Crim. App. 27 Apr. 2004) (unpub.). If the military judge does not authenticate the record of trial in a timely manner, the SJA office should contact the Chief Circuit Judge or Chief Trial Judge for assistance. Similarly, "[i]f

the defense R.C.M. 1105 matters are not received in a timely manner, the SJA should promptly bring this problem to the attention of the Regional Defense Counsel or Chief, Trial Defense Service." *Id.*

Our superior court in *Bodkins* referred to *Toohey v. United States*, 60 M.J. 100, 102-03 (C.A.A.F. 2004), where the court listed four factors from *Barker v. Wingo*, 407 U.S. 514, 530 (1972), for determining when post-trial delay may warrant relief. *Bodkins*, 60 M.J. at 324. Those four factors are: "(1) length of the delay; (2) reasons for the delay; (3) the appellant's assertion of his right to a timely appeal; and (4) prejudice to the appellant." *Toohey*, 60 M.J. at 102. "The first factor's 'length of delay' calculation *includes* time caused by 'failures of []appointed counsel and delays by the court' itself (emphasis added)." *Id.* Accordingly, we need not determine fault for the extensive delays in this case, when we look to see if the first prong is met. Any delays caused by the military judge and defense counsel, as well as the absence of any defense request for expeditious processing, and the lack of prejudice to the appellant all weigh against granting relief.

We find that the operational and military justice workload the SJA describes did delay the post-trial processing of appellant's case, but it does not adequately explain the 160-day period of delay from appellant's waiver of the submission of his R.C.M. 1105 matters until the convening authority took initial action on appellant's case. We also recognize the difficulty in reconstructing the past post-trial processing of appellant's case more than three years later. Based on the totality of the circumstances in this case, and application of the four *Barker v. Wingo* factors, we hold that a forfeiture credit is warranted for the overall processing from trial to receipt of the record of trial at our court—475 days after appellant's sentence was announced.[4] All known circumstances of the post-trial processing in this case have rendered appellant's sentence inappropriate. *See Bauerbach*, 55 M.J. at 507; *Collazo*, 53 M.J. at 727. We will exercise our Article 66(c), UCMJ, authority and grant sentencing relief to "vindicate . . . appellant's right to timely post-trial processing and appellate review." *Tardif*, 57 M.J. at 225.

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[4] Appellate defense counsel do not request, nor would it be appropriate under the facts of this case, to set aside appellant's bad-conduct discharge. Immediately prior to argument, and as requested by trial defense counsel, the military judge provided appellant a detailed explanation of a bad-conduct discharge's ramifications. Despite being fully advised of these adverse consequences, appellant requested, and his trial defense counsel argued, for a bad-conduct discharge in lieu of confinement. *See United States v. Pineda*, 54 M.J. 298, 301 (C.A.A.F. 2001).

DECISION

The court affirms the findings of guilty and the sentence. Appellant, however, is entitled to a meaningful remedy for post-trial delay. In *Tardif*, the Court of appeals for the Armed Forces explained why our court may tailor the remedy to fit all the facts and circumstances of the particular case stating:

> In *United States v. Becker*, 53 M.J. 229, 232 [C.A.A.F.] (2000) this Court provided the following guidance concerning remedies for "speedy trial" violations in the context of sentence rehearings: "[T]he remedy should be tailored to the harm suffered, such as an appropriate sentence credit or, in a case where the delay has interfered with the defense's ability to receive a fair hearing, a sentence to no punishment at all."
>
> We conclude that the *Dunlap* "all-or-nothing" remedy for post-trial delays was laid to rest in *Banks*. We further conclude that appellate courts are not limited to either tolerating the intolerable or giving an appellant a windfall. The Courts of Criminal Appeals have authority under Article 66(c) to apply the [*United States v.*] *Timmons[*, 22 U.S.C.M.A. 226, 227, 46 C.M.R. 226, 227 (1973)] approach, recently repeated in *Becker*, to post-trial delays, and to tailor an appropriate remedy, if any is warranted, to the circumstances of the case.

As appellant completed his sentence to confinement more than four years ago, and setting aside the bad-conduct discharge would be an unwarranted windfall, we are left with ordering a sentence credit as to appellant's forfeitures or setting aside his reduction to Private E1. We will tailor our remedy and order a forfeiture credit of $500.00. This forfeiture credit only applies to pay forfeited by reason of appellant's court-martial sentence.[5] *See* UCMJ art. 75(a); *United States v. Sherman*, 56 M.J. 900, 903 (AF Ct. Crim. App.) (affirming sentence and awarding "5 days of E-1 pay to compensate" appellant for illegal government conduct).

Judge SCHENCK concurs.

[5] We note that appellant was released from confinement well before expiration of his term of service on 2 March 2002.

BARTO, Judge, concurring in part and dissenting in part.

I concur with my colleagues that the post-trial delay in this case is unreasonable and inadequately explained. I am particularly troubled by the 160-day delay between the time appellant waived submission of post-trial matters and the convening authority's initial action. However, I must part company with the majority's determination that the delay has somehow rendered appellant's sentence inappropriate and that "forfeiture credit is warranted" to "vindicate . . . appellant's right to timely post-trial processing." Our superior court has noted that this court has the authority "to tailor an appropriate remedy, if any is warranted, to the circumstances of the case." *United States v. Tardif*, 57 M.J. 219, 225 (C.A.A.F. 2002). However, I do not conclude that the relief ordered by the majority in this case is either lawful, appropriate, or warranted.

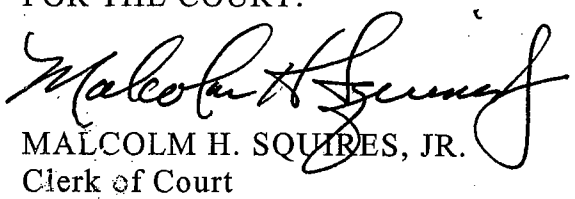
As a threshold matter, I am unpersuaded that we have the legal authority to order financial compensation of this sort for nonprejudicial post-trial delay while concurrently affirming the approved sentence as appropriate. *But cf. United States v. Sherman*, 56 M.J. 900, 902-03 (AF Ct. Crim. App. 2002) (ordering payment of "an amount equal to 5 days of E-1 pay to compensate" appellant for unlawful post-trial confinement). We may give appropriate sentence credit for such delay by affirming only "such part or amount of the sentence" as we determine to be appropriate "on the basis of the entire record." *See* UCMJ art. 66(c); *Tardif*, 57 M.J. at 224-25. As such, we could effect an appropriate monetary credit by disapproving some or all of the confinement and forfeitures in this matter, but the power to cause cash payments of the sort ordered by the majority is given to courts other than this one. *See, e.g.*, 28 U.S.C. § 1491(a) (describing jurisdiction and authority of Court of Federal Claims).

I also question whether financial compensation is an appropriate remedy for the post-trial delay in this case. My colleagues justify such relief by reference to the fact that appellant has already been released from confinement, but this rationalization begs the more fundamental question as to the relationship—if any—between nonprejudicial post-trial delay and the relief that we choose to grant in these sorts of cases. *See* Major Timothy C. MacDonnell, *United States v. Bauerbach*: *Has The Army Court Of Criminal Appeals Put "Collazo Relief" Beyond Review?*, 169 Mil. L. Rev. 154, 169-70 (2001). I believe that the citizenry of this nation deserves a more thorough and informative explanation when this court orders the disbursement of cash from the public fisc under these circumstances.

I am also unpersuaded that such relief is warranted. Appellant pleaded guilty to being absent without authority on two occasions for a total of more than seventy days, but he actually served less than sixty days in confinement. Appellant had also received nonjudicial punishment for another unauthorized absence and for making a false official statement. Appellant also did not demand speedy post-trial process.

Under these circumstances, and notwithstanding the delay in post-trial processing, I must conclude that appellant's approved sentence is entirely appropriate.

FOR THE COURT:



MALCOLM H. SQUIRES, JR.
Clerk of Court

APPENDIX

AFFIDAVIT OF LIEUTENANT COLONEL JOHN W. MILLER II

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES ARMY COURT OF CRIMIMINAL APPEALS:

I, Lieutenant Colonel John W. Miller II, after being sworn upon my oath make the following statement concerning my knowledge of the facts in the case of United States v. PV2 Michael Bodkins:

1. I am currently assigned to the Office of the Chief Legislative Liaison, Headquarters, Department of the Army. I was assigned as Staff Judge Advocate (SJA), 1st Infantry Division (1ID), Wuerzburg, Germany, and Army Forces-Turkey (OIF) from June 2001 through June 2003.

2. I do not specifically recall all the circumstances relating to the post trial processing of this case. I am confident that our handling of this case was reasonable when reviewed with a complete understanding of the extraordinary operational, organizational, and personnel constraints affecting the jurisdiction during the relevant period. These constraints compelled us to prioritize our post-trial efforts and resources to address those cases that had the most potential prejudice to an accused. That meant that some cases, when looked at through a vacuum, took longer than normal.

3. In this case, the accused was out of confinement prior to the beginning of my tenure as SJA and prior to authentication of the Record of Trial (ROT). Defense counsel waived submission of 1105 matters after due consideration for 78 days. I cannot account for the time taken by the Military Judge (MJ) to authenticate the ROT. Further, from the time the MJ was in receipt of the ROT for authentication (on or near 23 MAY) until 10 OCT (defense submission of 1105 waiver), the Government was, in reality, accountable for 8 days of post-trial processing. It is the time period from 10 OCT until Action that this affidavit will focus.

4. In general terms, my tenure as SJA of 1ID was characterized by three separate yet inexorably linked dynamics: (1) the Army's highest operational tempo—a situation in which operational missions routinely exceeded available assets and resources; (2) a serious personnel shortage of both uniformed and civilian court reporters combined with the busiest court-martial docket in the Army; (3) and an enormous post-trial backlog that was caused, in part, by inefficiencies by all concerned to include within the judiciary. A fair evaluation of the reasonableness of our post trial processing of this case must consider these three factors.

5. Operational Tempo.

At all times during my tenure as SJA of 1ID, our jurisdiction included at least 12 Special Courts-Martial Convening Authorities spread across nine separate communities and later included Kosovo and Turkey. Seven of those jurisdictions were non 1ID Brigades or Brigade equivalents—when the 1ID deployed, these units remained.

Throughout my two years, we were either preparing for deployment, deployed, or refitting from deployment and preparing for another. At the time that this case was in post trial, for example, nearly the entire western portion of our vast court-martial jurisdiction was preparing for and deploying to Kosovo. This deployment effectively reduced the division to one court-martial panel and cost the OSJA the presence of between 14 and 17 legal personnel. It did not, however, reduce the overall number of military justice actions. The rear detachment and the non-1ID units continued to generate a substantial number of military justice actions. Further, I remained responsible for all military justice actions in the Kosovo region. The deployed task force, under the command of a Brigadier General, was not a self-sustaining entity for military justice purposes. Cases referred to BCD Special or General Court-Martial had to be processed between Kosovo and Central Region. For this and other purposes, I routinely commuted between the Balkans and Central Region.

September 11, 2001. In the immediate aftermath of the 9/11 attacks, two operational missions took priority over all routine duties: 1) the protection of over 66,000 Soldiers, civilians, family members, and property on our military installations in Katterbach, Illesheim, Giebelstadt, Wuerzburg, Schweinfurt, Bamberg, Grafenwoeher, Vilseck, Hohenfels and the thousands of Americans living throughout Bavaria (the 1st Infantry Division Commander/Convening Authority and his staff were responsible for Force Protection for our entire footprint in Bavaria—the 1ID, Five separate V Corps or USAREUR Brigades, and two Area Support Groups); and 2) preparing for war or other contingency operations anticipated in the wake of the 9-11 attacks. These priority missions were added to existing tasks and required all leaders to implement extraordinary measures. It was not "business as usual" and I had to allocate precious resources and effort accordingly. Everything done outside of these two priorities got done right—most things just took longer. All aspects of legal support were affected, including legal assistance client waiting times, processing claims, service of process as the Land Liaison Authority, moving administrative law actions, continuing to try cases, or prioritizing post trial processing. Planning continued daily in support of force protection and war plans, coincided with the deployment of nearly the entire eastern portion of the jurisdiction to Kosovo, and continued until the 1ID footprint deployed to Turkey and Iraq in early 2003 for OIF. At any given time during my tenure as SJA, I had significant legal assets deployed to Kosovo, Bosnia, Turkey, Iraq, Kuwait, Israel, Northern Africa, and the numerous Combat Training Center Mission Rehearsal Exercises.

For our court reporters, officers, and enlisted engaged in post trial processing, these events placed a huge strain on them and the system. The attacks of 9/11 and its aftermath forced upon us unprecedented force protection and additional duty requirements. None of our OSJA personnel were excused from such requirements. Typically JAGC regulations or policies are solid authority for excusal from such duty requirements for court reporters. For at least four months after 9/11, however, the priority of force protection, the overall shortages of personnel (the number of Soldiers in Kosovo and the number of Soldiers preparing for other contingency operations placed a huge strain on the pool available for force protection), and the need for the OSJA to pull its weight as a staff section in the tactical unit, required teamwork and compromise. Our

few court reporting assets pulled extensive force protection guard duty just like every other Soldier. Typical duty days for our Soldiers exceeded 16 hours and, to my recollection, not one day for a period of time exceeding nine months failed to find several OSJA personnel (officer and enlisted) on divisional duty rosters.

6. Personnel Shortage. These operational pressures only exacerbated the effects of a profound shortage of both uniformed and civilian court reporters. Though our divisional MTOE and TDA authorized (at different times) five or more court reporters, we usually operated with four or fewer. During the time in question, our civilian Lead Court Reporter was diagnosed with a life-threatening illness and was gone for long periods of time. Shortly thereafter, one of our three remaining military court reporters was medically evacuated to Walter Reed Army Medical Center, accompanied by her husband who was also one of our stalwart court reporters. These events, in essence, eliminated 75% of our court reporter support. Our remaining two court reporters focused on producing ROTs for ongoing courts-martial. Obtaining additional court reporter support became an immediate concern but finding qualified and certified English-speaking reporters in Germany is a challenge. The only relief available in USAREUR was a court reporter at the hospital in Landstuhl, Germany (using the mail). Despite the fact that the 1ID had nearly exhausted scarce O&M funds on mission requirements, the Convening Authority authorized the emergency hiring of a certified court reporter provided we could find one in Germany. Fortunately, one of my civilian attorneys heard that a retired Army court reporter was working in a Shopette in Hohenfels, Germany. We hired him immediately. With his addition, we were able to keep up with our case requirements and focus, again, on post trial processing.

7. Post-trial backlog. The final, and ultimately one of the most significant hurdles to timely post-trial processing, was a post-trial backlog of about 100 cases (I don't have ready access to the actual numbers). Many of the reasons for this are stated above and the responsibility is shared. It is certain, however, that inefficiencies with our local judiciary shoulder a measure of that responsibility. Of most significance were the chronic delays for judicial authentication of ROTs. MJ authentication exceeded one year in many cases and virtually all ROTs were significantly delayed.

Of great significance, however, is what our military team did accomplish with post trial. Despite the enormity of the challenges articulated above, our military justice team, completely eradicated the entire post trial backlog while continuing to try well over 150 cases in the same time period. Judicial authentication was no longer an issue. We all adjusted to a different way of doing business as we settled into a new and different battle rhythm. I am fiercely proud of the tireless efforts of every single Soldier and Civilian on our military justice team—they made the system work and sacrificed much in so doing. By June of 2003, the 1ID GCMCA had zero cases in post trial.

8. For the reasons set forth above, I had to prioritize our precious resources and efforts in the administration of military justice. When forced to prioritize in post trial processing, we focused on many factors to include those records that were older and whether or not the accused was in confinement or was suffering some other immediate

personal prejudice. Our military justice and leadership team met every single week and went over every single case in pre-trial and post-trial and prioritized and moved cases as expeditiously and reasonably as possible. In prioritizing cases such as the one that is the subject of this Affidavit, our military justice team considered the potential for real prejudice to the accused. In this case, the accused was out of jail even before authentication of the record of trial by the MJ and even before I came on board as the SJA. The accused, together with the advice of counsel, waived his right to submit 1105 matters after so considering for several months.

9. I ask the Court to consider these extraordinary operational and organizational realities before labeling our efforts as "unreasonable" and "dilatory." While we understand that judgments may be formed on the "four corners of a document" -- a record of trial contains little, if any, of the rest of the story regarding what Convening Authorities, Judge Advocates, and the talented Soldiers and civilians in the field face. Reasonableness must be measured in terms of actual conditions in the field effecting the mission and resources of our legal organizations and the units they support.

JOHN W. MILLER II
LTC, JA

ACKNOWLEDGMENT

I, THE UNDERSIGNED, CERTIFY THAT I AM AN OFFICER HAVING THE General Powers of a Notary Public under the provisions of 10 USC 1044a, under which no seal is required, that the person whose name appears signed on the above instrument is within the class defined by that statute, as amended, who personally appeared before me and after the contents thereof had been read and explained, acknowledged that she had signed the said instruments freely and voluntarily for the uses, purposes, and considerations set forth therein.

In witness whereof, I set my hand on this 21st day of January 2005.

SIGNATURE

FREDDIE LEE OLIVER
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
OCTOBER 31, 2006