

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

First Lieutenant Ehren K. Watada,)	APPLICATION FOR IMMEDIATE
)	STAY OF TRIAL PROCEEDINGS
Petitioner,)	
)	SUBMITTED IN CONJUNCTION
)	WITH WRIT-APPEAL PETITION
The United States of America,)	
Lieutenant Col. John M. Head,)	USCA No. _____
Lieutenant Gen. Charles Jacoby,)	
)	ARMY MISC NO. 20070834
Respondents.)	

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

I. PREAMBLE

COME NOW the undersigned defense counsel on behalf of the Petitioner, 1LT Ehren K. Watada, pursuant to Rules 30(a) and 30(g) of this Court's Rules of Practice and Procedure, and move this Court for the following relief:

**Issuance of an immediate Stay of All Proceedings,
not only prohibiting the military trial court
from proceeding with the assembly of a court-
martial panel, now scheduled to commence on 9
October, 2007, but proceeding with any further
hearings.**

As will be discussed below, this Court should grant a Stay of Proceedings by viewing this situation as analogous to the rationale discussed in *Abney v. United States, infra*, which holds that under the circumstances, a similarly-situated

petitioner is entitled to appellate review as a matter of right before being subjected to a second prosecution.

Alternatively, this Court should grant a Stay of Proceedings pursuant to the discretionary authority it has to do so, such as was exercised in many other cases, such as, *inter alia*, *Burtt v. Schick*, 23 M.J. 140 (C.M.A. 1986). What occurred procedurally in *Burtt* is perfectly analogous to the instant case.

In *Burtt*, this Court entered an interlocutory order on September 19, 1986, staying appellant's pending court-martial while it considered his writ appeal petition. 23 M.J. 65 (C.M.A. 1986). Then, three months later, on December 22, 1986, this Court granted his writ appeal, reversed the lower court, and dismissed all charges and specifications on double jeopardy grounds. 23 M.J. 140.

A Stay of Proceedings in the instant case should remain in effect pending resolution by this Court of 1LT Watada's *Writ-Appeal Petition for Extraordinary Relief*, which seeks interlocutory review of the summary disposition of this matter contained in the Order entered by the United States Army Court of Criminal Appeals (hereinafter "ACCA") on August 28, 2007, denying Petitioner's motion for dismissal of all charges on Double Jeopardy grounds.

This Application for a Stay of Proceedings is contemplated

by Rules 30(a) and 30(g) of this Court's Rules of Practice and Procedure, and is supported by, *inter alia*, the reasoning of the United States Supreme Court's holding in *Abney v. United States*, 431 U.S. 651, 659-60 (1977), to the effect that an accused is entitled to immediate appellate review of a pretrial order denying a motion to dismiss on double jeopardy grounds, and that no trial proceedings may be had pending resolution of that appellate review.

II. PROCEEDINGS IN THE COURTS BELOW

Because jeopardy previously attached, and a mistrial was improvidently granted by virtue of an abuse of discretion, a second trial on the same charges is the very evil sought to be avoided. In light of the undeniably colorable argument on the merits of the motion for dismissal based on Double Jeopardy Petitioner presents with regard to his Writ-Appeal Petition, it is appropriate for this Court to grant Petitioner's Application for a Stay of Trial Proceedings until this matter has been decided with finality by this Court, just as it did 21 years ago in *Burtt*.

The accused previously filed in the ACCA a *Petition for Extraordinary Relief in the Nature of a Writ of Prohibition*, seeking dismissal of all charges pending against him on Double Jeopardy grounds. On May 18, 2007, the ACCA initially granted a temporary partial stay prohibiting the retrial (which was at

that time scheduled to commence on July 23, 2007) pending resolution of the *Petition* by that court. Then, on June 29, 2007, the ACCA dissolved the partial stay and denied the *Petition* in an Order which, in its entirety, read as follows:

Petitioner has filed a motion for extraordinary relief to enjoin his upcoming court-martial on former jeopardy grounds without first moving to dismiss under R.C.M. 907(b)(2)(C) and 915(c)(2). ***Under these circumstances***, we deny petitioner's motion for extraordinary relief. Our order of 18 May 2007 is vacated.

Order 6/29/07 (Army Misc. Dkt. No. 20070535) (emphasis added).

On July 2, 2007, three days after the ACCA issued the above-quoted order, and in accordance with the Order's statement that it was premised upon the then-existing circumstances that the Petitioner had not moved to dismiss on double jeopardy grounds in the trial court, Petitioner filed a motion with the trial judge in the Fourth Judicial Circuit, Fort Lewis, Washington, seeking dismissal of all pending charges against him on double jeopardy grounds.

That motion was argued before the Respondent, Lieutenant Colonel John M. Head, on July 6, 2007, at Ft. Lewis, Washington. The military judge orally denied that motion on the day of the hearing, indicating that a written decision explaining the oral ruling would be forthcoming in the following week.

Based upon the reasoning and rationale contained in the *Abney* decision, Petitioner's counsel argued that no new trial

date should be set, or that if one was set it should be automatically stayed. The military judge refused to delay the setting of a new trial date, and refused to stay the new trial date. The military judge directed counsel to supply him with dates when they were unavailable, and indicated he would set the new trial date at some time during the following week.

Petitioner's counsel asked the military judge if it would be helpful for Petitioner to file a brief addressing the *Abney* case in support of his motion for a stay of the court-martial proceedings. The military judge replied that he did not desire any briefing on the subject; that he did not consider the *Abney* case binding upon the military courts; and that accordingly he would not grant a stay. He directed counsel for the accused to submit any motion for a stay of the subsequent court-martial proceedings to the ACCA. ROT II, Transcript of July 6, 2007 motions hearing at 92-95; 186-87¹.

On July 11, 2007, the military judge issued a written order explaining the basis for his denial of Petitioner's motion to dismiss all charges on double jeopardy grounds.

¹ ROT I refers to the events culminating in the declaration of mistrial during the court-martial on February 7, 2007. ROT II refers to the Article 39(a) session on July 6, 2007.

The following day, in an e-mail message sent on July 12, 2007, the military judge advised all counsel that he was setting the new trial date for October 9-12, 2007.

On July 27, 2007, counsel for Petitioner submitted a *Renewed Petition for Extraordinary Relief* and an *Application for Stay* to the ACCA, noting that the double jeopardy claim had now been presented to the trial court in a motion for dismissal, and had been denied, this removing the procedural reason for the prior decision by ACCA not to make any ruling in the absence of a trial court ruling. One month later, on August 28, 2007, the ACCA denied the *Renewed Petition for Extraordinary Relief* and the *Application for Stay*.

III.

**UNDER ABNEY v. UNITED STATES, THE PRETRIAL DENIAL
OF A CLAIM OF FORMER JEOPARDY MUST BE REVIEWED IN THE
APPROPRIATE APPELLATE COURTS BEFORE ANY RETRIAL MAY OCCUR.**

Lest there be any doubt, jeopardy attached on February 5, 2007 when the panel members were sworn in at Petitioner's first trial. *Crist v. Betz*, 437 U.S. 28, 35 (1978). Since the decision in *Crist*, all courts, including this Court, have dutifully followed and applied that rule. See, e.g., *United States v. Hutchinson*, 49 M.J. 6, 7, n.4 (C.A.A.F. 1998); *United States v. Ragard*, 56 M.J. 852, 855 (A.C.C.A. 2002) ("In the case of a jury or members trial, jeopardy attaches when a jury or court-martial panel is empanelled and sworn."); *United States v. Browers*, 20

M.J. 542, 553 n.11 (A.C.M.R. Rev. 1985); *United States v. Olsen*, 24 M.J. 669, 670 (A.F.C.M.R. 1987).

The military judge declared a mistrial on February 7, 2007, and then immediately set a new date for commencement of the retrial. That date was subsequently continued several times, and the retrial is now scheduled to commence on October 9, 2007.

As previously argued in the Brief submitted to the ACCA in support of the accused's *Petition for Extraordinary Relief in the Nature of a Writ of Prohibition*, and reiterated in the Writ-Appeal Petition submitted to this Court, the granting of a mistrial over the objection of the accused was erroneous because there was neither manifest necessity to declare a mistrial nor a request from the defense for a mistrial; the military judge declared a mistrial over the explicit objection of the Petitioner without good reason and therefore a second prosecution is barred. Additionally, the military judge failed to consider any alternatives to the granting of a mistrial.

A second trial on the same charges is the very evil the Double Jeopardy Clause protects against. It is for this very reason that the United States Supreme Court recognized in *Abney* that the denial of a motion to dismiss on double jeopardy grounds by a trial court ***is immediately appealable***. Therefore, it is appropriate for this Court to stay all proceedings in this matter until this matter has been decided with finality by this

Court. Such a stay should remain in place **at least** until such time as this Court has addressed the merits of the double jeopardy issue.

Under the "collateral order" doctrine, the denial of such a motion is immediately appealable notwithstanding the lack of the usual type of "finality" required before a judgment or an order may be appealed:

Although it is true that a pretrial order denying a motion to dismiss an indictment on double jeopardy grounds lacks the finality traditionally considered indispensable to appellate review, **we conclude that such orders fall within the "small class of cases" that Cohen [v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949)] has placed beyond the confines of the final-judgment rule.** [FN omitted]. In the first place there can be no doubt that such orders constitute a complete, formal, and, in the trial court, final rejection of a criminal defendant's double jeopardy claim. There are simply no further steps to be taken in the [trial] [c]ourt to avoid the trial the defendant maintains is barred by the Fifth Amendment's guarantee. Hence Cohen's requirement of a fully consummated decision is satisfied.

Moreover, the very nature of a double jeopardy claim is such that it is collateral to, and separable from, the principle issue at the accused's impending criminal trial, i.e., whether or not the accused is guilty of the offense charged. In arguing that the Double Jeopardy Clause of the Fifth Amendment bars his prosecution, the defendant makes no challenge whatsoever to the merits of the charge against him. Nor does he seek suppression of evidence which the Government plans to use in obtaining a conviction. [Citation omitted]. Rather, he is contesting the very authority of the Government to hale him into court to face trial on the charge against him. [Citations omitted]. The elements of that claim are completely independent of his guilt or innocence. Indeed, we explicitly recognized that fact in *Harris v.*

Washington, 404 U.S. 55, 92 S.Ct. 183, 30 L.Ed.2d 212 (1971), where we held that a State Supreme Court's rejection of an accused's pretrial plea of former jeopardy constituted a "final" order for purposes of our appellate jurisdiction under 28 U.S.C. § 1257. [FN omitted].

Abney v. United States, supra, 431 U.S. at 659-660 (emphasis added).

The Supreme Court further recognized that unless the defendant could obtain immediate appellate review of the denial of a dismissal motion based on former jeopardy, the rights protected by the Double Jeopardy Clause would be rendered essentially meaningless. Without an avenue for immediate appellate relief, the defendant would be forced to endure the violation of his right not to be tried without being able to prevent the violation from occurring:

Finally, the rights conferred on a criminal accused by the Double Jeopardy Clause would be significantly undermined if appellate review of double jeopardy claims were postponed until after conviction and sentence. To be sure, the Double Jeopardy Clause protects an individual against being twice convicted for the same crime, and that aspect of the right can be fully vindicated on an appeal following final judgment, as the Government suggests. However, ***this court has long recognized that the Double Jeopardy Clause protects an individual against more than being subjected to double punishments. It is a guarantee against being twice put to trial for the same offense.*** [FN and citations omitted]. Because of this focus on the "risk" of conviction, the guarantee against double jeopardy assures an individual that, among other things, he will not be forced, with certain exceptions, to endure the personal strain, public embarrassment, and expense of a criminal trial more than once for the same offense. . .

[Citations omitted]. **Obviously, these aspects of the guarantee's protections would be lost if the accused were forced to "run the gauntlet" a second time before an appeal could be taken;** even if the accused is acquitted, or, if convicted, has his conviction ultimately reversed on double jeopardy grounds, he has still been forced to endure a trial that the Double jeopardy Clause was designed to prohibit. [FN omitted]. **Consequently, if a criminal defendant is to avoid exposure to double jeopardy and thereby enjoy the full protection of the Clause, his double jeopardy challenge to the indictment must be reviewable before that subsequent exposure occurs.**

Abney, *supra*, 431 U.S. at 660-62 (emphasis added).

Abney holds that a Double Jeopardy Clause challenge to the power of the government to subject the accused to a second trial "must be reviewable before that subsequent exposure occurs," 431 U.S. at 662. Therefore, by analogy to the situation posed in *Abney*, Petitioner is constitutionally entitled to have this Court review the denial of his pretrial motion to dismiss on double jeopardy clause.

By analogy to the "collateral order" doctrine, it must not be necessary for him "to endure the personal strain, public embarrassment, and expense of a criminal trial more than once for the same offense," without *first* obtaining full appellate review of his double jeopardy claim that the second trial is constitutionally prohibited. *Abney*, 431 U.S. at 661. The right to immediate interlocutory appellate review of the trial court's denial of a double jeopardy motion to dismiss serves to protect

the constitutional right not to be tried more than once.

A double jeopardy claim is not like any other pretrial issue. Unlike, for example, a motion to suppress evidence, a double jeopardy claim is completely separate from the question of guilt or innocence, and is not dependent for its resolution upon facts that might be developed at trial.

In *Pascascio v. Fischer*, 34 M.J. 996, 1001 (A.C.M.R. 1992), the Army Court of Military Review acknowledged that a double jeopardy claim is reviewable in an interlocutory posture because by its very nature, the claim cuts right to the heart of the accused's "right not to be tried."

Moreover, the *Pascascio* court cited with approval language from *United States v. MacDonald*, 435 U.S. 850 (1978), in which the Supreme Court noted:

Unlike the protection afforded by the Double Jeopardy Clause, the Speedy Trial Clause does not, either on its face or according to the decisions of this Court, encompass a **"right not be tried" which must be upheld prior to trial if it is to be enjoyed at all.**

435 U.S. at 860-61 (emphasis added); quoted in *Pascascio, supra*, 34 M.J. at 1001.

Finally, with reference to both *Abney* and *MacDonald*, from both of which the *Pascascio* court took guidance, the court noted:

We also see similarity between the policy considerations enumerated by the Supreme Court and those of concern to us in administering the military criminal justice system.

34 M.J. at 1002.

Thus, implicitly supporting the applicability of non-military cases, like *Abney*, to military proceedings, the Army Court recognized, at least fifteen years ago, that jurisprudence regarding the unique nature of double jeopardy claims, and the rationale for interlocutory review of those claims, apply with full force to the situation confronting Petitioner in the instant case.

IV.

NO COURT HAS EVER SUGGESTED THAT THE APPLICATION OF THE DOUBLE JEOPARDY CLAUSE TO MILITARY COURTS-MARTIAL DIFFERS FROM ITS APPLICATION TO CRIMINAL TRIALS IN CIVILIAN COURTS.

In *Wade v. Hunter*, 336 U.S. 684 (1949) the Supreme Court expressly *rejected* the contention that the "manifest necessity" test applicable to criminal cases in the civilian courts was somehow not applicable to cases of military courts-martial. The Supreme Court agreed that as of 1949 "[t]he interpretation and application of the Fifth Amendment's double jeopardy provision have been considered chiefly in civil rather than military court proceedings." *Wade*, 336 U.S. at 688.

The *Wade* Court further noted that "the guiding rule of federal courts" for determining whether the Government could proceed with a second trial for the same offense was "outlined by this Court in *United States v. Perez*, 9 Wheat 579, 6 L.Ed.

165 [(1824)]," and that "[t]he rule announced in the *Perez* case has been the basis for all later decisions of this Court on double jeopardy." *Wade*, 336 U.S. at 689, 690.

In response to the Government's suggestion that the *Perez* "manifest necessity" rule should not be applicable to military courts-martial, the Supreme Court brusquely rejected this contention:

Under the [*Perez*] rule a trial can be discontinued when particular circumstances manifest a necessity for so doing, and when failure to discontinue would defeat the ends of justice. ***We see no reason why the same broad test should not be applied in deciding whether a court-martial action runs counter to the Fifth Amendment's provision against double jeopardy.***

Wade v. Hunter, 336 U.S. at 690 (emphasis added).

To the best of the knowledge of Petitioner's attorneys, since the time *Wade* was decided, **no** appellate court has ever suggested that the application of the Fifth Amendment Double Jeopardy Clause to military courts-martial differs in any way from its application to criminal prosecutions brought in the civilian courts.

Several military courts have expressly acknowledged that the same Double Jeopardy principles applicable in civilian courts also apply in military courts. See, e.g., *United States v. Rex*, 3 M.J. 604, 609 (N.M.C.M.R. 1977) ("The concept of former jeopardy was held applicable to the military in *Wade v. Hunter* . . . The same manifest necessity rule used in federal

jurisdictions is thus required in a court-martial."). See, also, UCMJ 44.

Military courts routinely apply U.S. Supreme Court precedents in the area of double jeopardy to courts-martial prosecutions. See, e.g., *Burt v. Schick*, *supra* (holding retrial barred by Double Jeopardy and applying the rule of *Arizona v. Washington*, 434 U.S. 497 (1978); *United States v. Ghent*, 21 M.J. 546 (A.F.C.M.R. 1985) (same).

Moreover, there has been express recognition of the applicability of *Abney* to courts-martial, distinguishing between the denial of motions to dismiss on speedy trial grounds, which are not "collateral orders," and the denial of pretrial double jeopardy dismissal motions, which are immediately appealable. See, e.g., *Pascascio v. Fischer*, *supra*, 34 M.J. at 1001 ("The collateral order doctrine has been applied to permit interlocutory review of a trial judge's denial of a motion to reduce bail [citation omitted], and denial of a motion to dismiss for double jeopardy," *citing Abney*).

It is unclear, of course, how long the appellate process will last in this case. In the event the appellate process has not concluded in advance of the trial date (October 9, 2007), issuance of an appellate court stay of the scheduled retrial would become constitutionally necessary because the military judge presiding over the retrial has refused to acknowledge the

accused's right to a stay of the retrial pending appellate review of his double jeopardy claim, and, in fact, expressed his intention to proceed with trial unless an appellate court intervened. ROT II at 92-95; 186-87.

Moreover, if a Stay is not issued promptly, Petitioner and his counsel will be forced to go through what might be the completely unnecessary effort, strain, and expense of preparing for a trial that may never (and should never) occur.

If review of Petitioner's Writ-Appeal Petition has not been finally resolved by October 8, 2007, then the retrial would commence the next day, in the absence of a stay. Should this occur, as the Supreme Court noted in *Abney*, "the guarantee's protections would be lost" because "the accused [would be] forced to 'run the gauntlet' a second time before [his] appeal could be taken and resolved." 431 U.S. at 662.

At the July 6, 2007 pretrial hearing, as noted above, the military judge stated that he does not believe the holding and rationale in *Abney* applies to the military courts. Therefore, he stated that he intended to proceed with the assembly of a court-martial panel [on October 9, 2007], regardless of whether or not the appellate review process has been completed. ROT II at 92-95; 186-87.

While it is certainly true that the *Abney* decision arose in a civilian, and not a military context, and thus did not

construe Article 66 of the Uniform Code of Military Justice, the United States Supreme Court has never even suggested, much less held, that the Double Jeopardy Clause applies with any less force to military prosecutions than it does to civilian ones. On the contrary, it has held the exact opposite.

V.

FEDERAL COURTS HAVE RECOGNIZED THAT THE ABNEY RATIONALE COMPELS THEM TO STAY CRIMINAL TRIALS IN THE STATE COURTS IN ORDER TO REVIEW COLORABLE CLAIMS THAT THE STATE COURT TRIAL IS BARRED BY DOUBLE JEOPARDY.

Counsel for the accused are not aware of any reported case in which any federal trial judge ignored the rule of *Abney* and attempted to proceed with a second trial before an appeal of the trial judge's denial of a double jeopardy dismissal motion could be resolved.² There are a few cases, however, wherein a retrial was scheduled to proceed in a *State* court, and the *State* court trial judge refused to delay the retrial pending resolution of a double jeopardy challenge raised in a federal habeas corpus petition. In those cases, the federal judges presiding over the habeas corpus petition cases found it necessary to enjoin a state court from proceeding with a second trial pending the resolution of the habeas petition.

²It appears that in all such cases, the trial judge simply recognized that he or she was constitutionally obligated to delay the retrial until the appeal of his pretrial ruling had concluded, and thus there was no occasion to ask an appellate court to stay a retrial, because the retrial simply was not scheduled to occur until after the appeal had concluded.

As examples of cases wherein federal courts acted with regard to pending state court prosecutions, see, *inter alia*, *Harpster v. Ohio*, 128 F.3d 322, 325 (6th Cir. 1997) ("Respondent argues that the District Court should not have stayed the state court proceedings against petitioner to allow the litigation of his double jeopardy claim before his second trial. Because petitioner is entitled to have his double jeopardy claim litigated before being retried, we reject respondent's arguments"); *Hartley v. Neely*, 701 F.2d 780, 781 (9th Cir. 1983) ("a petitioner in state custody can only be assured freedom from double jeopardy by giving him access to habeas review prior to a second trial."); *Mannes v. Gillespie*, 967 F.2d 1310, 1312 (9th Cir. 1992), cert. denied, 506 U.S. 1048 (1993) ("Because full vindication of the right necessarily requires intervention before trial, federal courts will entertain *pretrial* habeas petitions that raise a colorable claim of double jeopardy"); *Wilson v. Czerniak*, 355 F.3d 1151, 1157 (9th Cir. 2004) ("double jeopardy claims presented an exception to the general rule requiring federal courts to abstain from interference with state court proceedings"); *Gilliam v. Foster*, 61 F.3d 1070, 1074 (4th Cir. 1995), ("given that Petitioners have asserted a strong double jeopardy claim, the only means by which their right not to be put to the burden, anxiety, and expense of enduring a second trial may be protected is to stay the state criminal

proceedings until the district court may rule on the merits of Petitioners' habeas petition");³ *Schillaci v. Peyton*, 328 F.Supp.2d 1103, 1105-06 (D. Hawaii 2004) ("the court agrees with Petitioner that if petitioner is convicted in the second state court proceeding, overturning the conviction would not be a complete remedy, as Petitioner would have already been placed in jeopardy twice...As a result, in the instant case, Petitioner will incur irreparable injury if the state proceedings are not enjoined.")

Even though those cases involved issues of federalism and comity between state and federal courts (which obviously are not present in this case), the federal courts did not hesitate to

³ In *Gilliam, supra*, 61 F.3d at 1081-82, the Fourth Circuit noted that "[T]he right conferred by the Double Jeopardy Clause cannot be fully vindicated by post-conviction relief because it is a prohibition not only of multiple punishments, but also of multiple trials...Consequently, a stay of the state criminal proceedings is the only means to protect Petitioner's constitutional right."

Gilliam has a long procedural history, but the habeas petitioner in that case ultimately prevailed, and won a decision that his retrial was in fact barred by the Double jeopardy Clause. The stay of the state court trial was affirmed in *Gilliam v. Foster*, 63 F.3d 287 (4th Cir. 1995), *modified in other respects in Foster v. Gilliam*, 515 U.S. 1301 (1995) (Rehnquist, C.J.). After the District Court granted a writ of habeas corpus that decision was affirmed by the Court of Appeals in *Gilliam v. Foster*, 75 F.3d 881 (4th Cir. 1996), and the Supreme Court denied the prosecution's petition for *certiorari*, *Foster v. Gilliam*, 517 U.S. 1220 (1996).

issue orders that prohibited the state courts from going ahead with the scheduled retrial until such time as the federal habeas corpus review was completed.

VI. CONCLUSION

In sum, because Petitioner has sought interlocutory appellate review in this Court of the denial of his double jeopardy dismissal motion, under the theory of the doctrine articulated in *Abney*, he is constitutionally entitled to have such interlocutory appellate review take place *before* any retrial occurs.

Therefore, since the military judge declined to delay the retrial until after the appellate review has concluded, and stated his intention to commence the assembly of a court-martial panel on October 9, 2007, and because the ACCA denied Petitioner's Application for a Stay on August 28, 2007, this Court should issue an order staying further trial proceedings pending resolution of Petitioner's Writ-Appeal Petition, thereby requiring the military judge to abide by the constitutional rule of *Abney*.

Petitioner respectfully submits that he has cured any procedural defect or obstacle there might have been to this Court's addressing the merits of his double jeopardy claim. He continues to respectfully assert that the military judge erred when he declared a mistrial over Petitioner's objection at the

first trial, because there was no manifest necessity for taking such a course of action. Petitioner respectfully urges this Court to rule that the United States is prohibited from retrying him, and asks this Court to so direct the trial court.

In the interim, and in the most immediate sense, Petitioner urges this Court to grant his Application for a Stay of Trial Proceedings pending resolution on the merits of his motion to dismiss all charges and specifications.

DATED this 17th day of September, 2007.

CARNEY BADLEY SPELLMAN, P.S.

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