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The University of Dayton

News Release

Oct. 9, 1992
Contact: Pam Huber

UD LAW STUDENTS ARGUE SUCCESSFULLY FOR CHANGE IN U.S. MILITARY LAW

DAYTON, Ohio — The legal work of two University of Dayton law students has changed U.S. military law.

Brian O'Connell and Brent Curtis, both 1992 graduates of the UD School of Law, in April presented a brief before a U.S. Military Court of Appeals as part of a Law Day program sponsored by Wright-Patterson Air Force Base. The students submitted an "amicus" brief, or "friend of the court" brief, in a court-martial case, representing the public interest in the issue of testimony by an alleged accomplice.

"The court has adopted the reasoning of the amicus brief in its entirety," said Dennis Turner, professor of law at UD. "The law has been changed due to the persuasive powers of two UD students." Turner said the decision will make military trials more fair for defendants as the decision is binding on trial courts in the military jurisdiction. He expects the decision to serve as precedent and also influence civilian law. The appeals court, which did not overturn the initial verdict, announced its decision Sept. 30.

Although they weren't representing anyone in the military case, the students raised an issue that others had bypassed. In military court, as in civilian court, some witnesses are more credible than others. Testimony that comes from accomplices may be regarded as suspect, and judges have routinely told juries when a witness is an accomplice in the charges so they can weigh that information as they consider the testimony.

The case involved an appeal of a court-martial of an Air Force captain found guilty on cocaine charges. Some of the testimony in the initial trial came from a witness the judge

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ruled an accomplice. The judge told the military review panel (that serves as a jury in military court) that the witness was an "accomplice as a matter of law."

O'Connell and Curtis pointed out to the five-judge panel that heard the appeal that these routine instructions imply that the defendant is guilty because the witness has been deemed his accomplice in criminal activities. They suggested alternative wording:

"The testimony of any person who claims to be an accomplice, or who from other evidence may appear to be an accomplice, is of questionable integrity and should be viewed with great caution, even though apparently corroborated and apparently credible. A defendant may not be convicted on the uncorroborated testimony of one who claims to be an accomplice, or who from other evidence may appear to be an accomplice, if his testimony is self-contradictory, uncertain or improbable."

"I can't remember which one of us had the light bulb go off in his head," said O'Connell of the idea for the amicus brief. "Both of us were leaning toward the defense because that looked like the tougher side." Preparation of the brief took a semester, and the students received independent study course credit for their work.

O'Connell, a resident of Miamisburg and an associate with Thompson, Hine and Flory in Dayton, said the court decision was not unexpected. "We had a feeling things would go this way after we did the oral arguments," he said. "Ninety percent of the questions the judges asked the prosecution and defense were about our brief. We got the impression that they were very impressed with our argument." Curtis, an Air Force captain, is stationed in St. Louis.

"They saw an issue nobody else saw, raised it and changed the law," said Turner, who has arranged for UD School of Law students to present amicus briefs this year before the Ohio 2nd District Court of Appeals.

For media interviews, call Brian O'Connell at (513) 443-6654 and Dennis Turner at (513) 229-2529.