

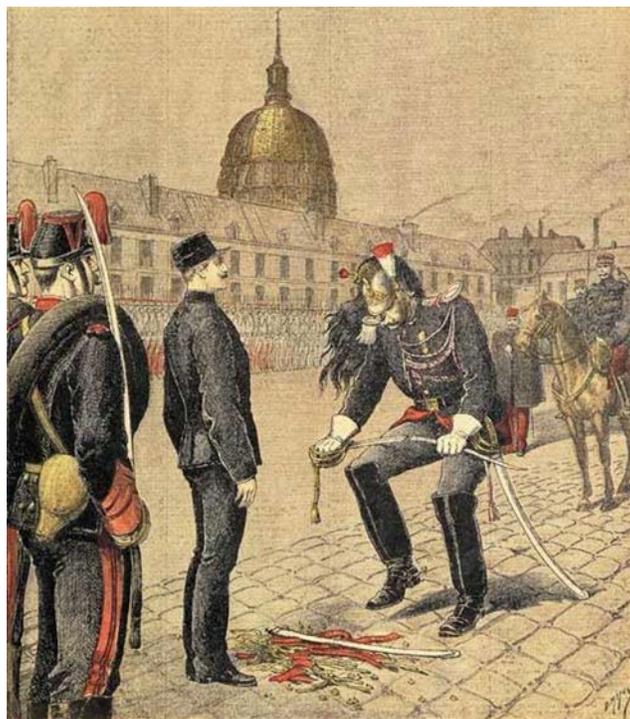


## Global Seminar on Military Justice Reform

October 18-19, 2013

Yale Law School

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## Summary Report

### Opening Remarks

During the pre-seminar reception, Professor Bruce Ackerman gave a brief talk about historical relations between the military and the various branches of government. Professor Ackerman spoke of the increasing politicization of the military, and argued that this politicization could lead to the loyalty of the military being divided between Congress and the President.

Brigadier General (ret) Jan Peter Spijk began the seminar on Saturday by discussing the state of military justice systems in Europe. Between 2001 and 2011, many of the European systems disappeared, including those in France, Czech Republic, and four or five other states. Those systems that did not disappear completely saw major reforms, including the UK's transition to an independent prosecutorial authority.

These changes were sparked in large measure by decisions of the European Court of Human Rights, including the *Findlay* case. These decisions, and the discussion they inspired, raised questions about why military justice systems are necessary at all. Gen. Spijk suggested that a good answer to this question might be related to situational awareness. That is, military justice systems might be uniquely situated to do justice to both military systems and military individuals in a way that civilian systems cannot, but the cognizant officials must remain alert to developments in the larger political environment.

### Session 1: Country Reports

#### a. United Kingdom

Participants from the UK explained that the process of reform was painful—after *Findlay*, the question of military justice reform became a protracted battle. One driving force in this fight was the desire of the military leadership to retain the power of the commander in the system. Parliament, on the other hand, sought justification for having a separate military justice system at all. The prevailing view in the end was that service members deserve a civilian-style system unless operational effectiveness dictates otherwise. Therefore, every difference from the civilian system must be justified in terms of operational effectiveness. Since some operational effectiveness concerns justify differences in a military justice system, such as sentencing differences and speedy resolution, a separate system is justified. However, there was insufficient justification for allowing charging decisions and post-conviction review to continue

to rest with commanders. Therefore, the Armed Forces Act of 2006 moved the UK to a system in which charging decisions are made by an independent prosecutor.

#### b. United States

The impetus for reforms that led to the current military justice system came in the wake of World War II. The US found itself with a vastly larger military in need of a more solid disciplinary framework. Since WWII, many changes have been driven by developments in other areas of law. Antidiscrimination law has had large effects on the way the military justice system functions with regard to race, gender, and, most recently, sexual orientation. Changes in personnel accession policy have also given rise to systemic changes—a conscript military poses different disciplinary challenges from an all-volunteer force. In addition, an all-volunteer force must account for the effects of military justice on recruitment. Finally, the rise of international human rights and international criminal courts has provided the US with a broader perspective on international concerns.

There is currently substantial interest in reforming the US military justice system. This interest results from an increasingly visible sexual assault problem and changing military demographics. The conversation about military justice reform should also include military commissions, which are also a form of military justice and are also subject to reform.

#### c. Canada

Reform in Canada was spurred by a combination of judicial decisions and critical reports. The Somalia investigation led by Justice Gilles Lévesque and the Dixon report led to the 1999 National Defence Act, which ended commanders' power to review court-martial convictions. The reform law included a provision for systemic review, pursuant to which two further reports (by Chief Justice of Canada Antonio Lamer and Justice LeSage) have been prepared with a total of 143 recommendations. Meanwhile, the *Trépanier* decision of the Court Martial Appeal Court of Canada held that a commander's authority to select which type of court-martial an offender would receive was unconstitutional.

The most recent reform bill, Bill C-15, reflects an impressive interest in reform for such a small military justice system. Bill C-15 reforms summary trials by giving more choice to those accused of minor offenses. It also mandates that most summary trial convictions no longer be reflected on defendants' criminal records. Seminar participants from Canada noted that the military nexus issue—jurisdiction of courts-martial depending on how closely the accused's offense is related to her military service—could be the next area of change.

#### d. India

India's military justice system closely resembles the old British system and, in some respects, the current US system. Indian courts-martial are *ad hoc* and convened by officers without legal training. Convening authorities conduct performance reviews of officers presiding over trials, and there is a general atmosphere of command influence pervading the system. Despite India's progressive civilian judiciary, the military justice system lags behind. As in the US system, convening authorities have power to make charging decisions and to review convictions and sentences.

India recently took a step toward reform by creating the Armed Forces Tribunal (AFT). The AFT consists of both civilian and military personnel, and deals with both military justice and other service-related legal matters. The AFT is a true appellate court with the power to examine evidence and review factual findings, as well as to review questions of law. However, it still resides within the Ministry of Defense, and so it is not completely independent of the military hierarchy. To the extent that litigants feel the AFT is shackled by the command, officers will refuse to implement its judgments and the system will lack legitimacy.

There is some prospect that the AFT will move to the Ministry of Justice, which may allay some concerns. Also, a High Court recently claimed the power of direct review over AFT decisions where certification is not made to the Supreme Court of India.

Accused facing summary courts-martial in India are not entitled to a lawyer. Those facing other types of court-martial receive appointed military counsel, but the quality of representation varies greatly depending on where the court-martial is convened. Some reformers are currently pushing to restrict summary courts-martial to wartime only.

#### e. Mexico

Unlike the other systems discussed, the Mexican military justice system is based on the Roman system and the Napoleonic Code. Criminal actions carry no possibility of pay or administrative sanctions—the only possible punishment is imprisonment. (There is an Honor Council that can alter designations, limit promotions, and effect discharges.) Commanding officers can arrest and detain an accused service member for between one and fifteen days, depending on the accused's rank. Criminal matters are tried by tribunals, which may hand down sentences of up to 60 years. If an accused receives a sentence of more than five years, the accused loses his or her pension and all benefits.

Three main forces are currently driving change in Mexico. One is the military's increasing role in domestic security. Another is the transition from a written to an oral system for criminal law generally. Finally, the Inter-American Court of Human Rights (IACHR) has issued a variety of decisions that require reform. The IACHR has highlighted an inconsistency in Mexican law where human rights cases must go to the civilian system, but the military justice statute grants jurisdiction over any member of the military to the military courts. The IACHR has ordered that at least two cases be transferred to the civilian system. In 2011 the Mexican Supreme Court showed interest in the issue, certifying the question of what Mexico's obligations are under the IACHR decisions and answering that it must comply. However, Mexico has still not complied.

One participant noted that the European trend to civilianize military justice may be misguided in Mexico, because the Mexican military justice system may better approximate justice than the civilian justice system, in which judges are often at the mercy of powerful criminal organizations. While that specific concern doesn't arise as strongly for the US, there is an analogous argument that US military prosecutors may be better suited to rigorous prosecution due to access to greater resources. After some discussion of whether US Department of Defense statistics support this contention, Professor Fidell noted that the entire discussion immediately raises the question of the proper spheres of the civilian and military justice systems, which is a question of basic political philosophy.

## **Session 2: The Role of the Commander in Military Justice**

The session opened with a discussion of the role of the commander in the UK. One participant recommended the UK's early guilty plea system as a way of ensuring speedy proceedings outside the chain of command. Commanders in the UK handle only a small number of military offenses, and service members have the right to choose courts-martial or to choose a complete rehearing before a JAG with full civilian rights. Civilian oversight of the office of service prosecutions adds a level of legitimacy or accountability that improves the process. At the same time, the role of the commander cannot be understated; experiencing military life first-hand serves as an important reminder that a commander overseeing soldiers doing an honest job and putting their lives on the line should not be second-guessed. This underscores the fact that there still remains a large difference between civilian and military systems of justice. Commanders retain disciplinary power for most acts and can have a role in changing military culture. The prosecuting authority in the UK has a relationship of trust with commanders that allows them to focus more of their energies on the day-to-day work of the military. Commanders have the power to sentence offenders to up to 90 days detention at summary trial. Though commanders objected at first to their loss of charging power, this antagonism largely disappeared within a few years, and commanders now favor the current process. The UK

now has about 450 courts-martial per year, and the paucity of rehearings is a sign of trust in the overall system.

An alternate view sees the commander as a check and balance on the prosecutor, someone who keeps the prosecutor honest by choosing not to follow the prosecutor's recommendations in a very small percentage of cases. Commanders in large militaries see questions of military justice all the time, and may be more experienced with the nuances of offenses and sentencing. A discussion ensued on whether the commander should take into account a soldier's good service as a determining factor when deciding which cases to prosecute. Some felt that there would be external factors relevant to the prosecution of soldiers, such as family situations, while others thought those factors should only be used to mitigate convictions after the threshold decision to prosecute has been made. Several participants agreed that the good soldier defense was a relic that should be abandoned. The good soldier defense is unlike other affirmative defenses because it does not directly negate an element of a particular crime; good soldiers may commit wrong acts.

One participant found the group's emphasis on speed of trial as an indicator of a strong system at odds with the desire for an appellate process, noting that in civil litigation, arbitration is well-liked for its speed precisely because there is no right to appeal. Participants noted that in most systems (Israel is an exception) there is no cause of action for victims or third parties to compel prosecutors to bring cases, but in certain systems like the UK a victim may ask for a second opinion at the discretion of the prosecuting authority. The IACHR does order states to investigate and prosecute perpetrators, but states are more likely to violate this provision and pay the monetary sanction.

In Canada, as in the UK, commanding officers were removed from the chain of prosecuting authority in 1999. Canada experienced some growing pains from this transition, but in general commanders have applauded the change because it lets them focus their energies more on operations rather than nuances of law. One participant asked what the service members themselves thought of the UK and Canada's changed policies, and the response was generally that it seems service members have accepted the new process as a more standardized form of justice without significant uproar. The lack of any significant public outcry indicates the broad acceptance of the new systems. One may view the system as an art rather than a science, in the way that mere statistics will not accurately convey the system's success or failure. In the US, however, participants noted that more proactive steps must be taken to convince Congress to make such a dramatic change; silence as proof will not suffice as a policy argument. US participants also noted that part of a justice system's success is willingness for a victim to come

forward and her harm. In the US, victims of military crimes remain hesitant to report for fear of retaliation, and this remains a problem so long as a commander has prosecuting authority.

### **Session 3: Appellate Review**

The Seminar's discussion of appellate review began with broad questions about what appellate review means. Does it mean review by a judge? May it include review within the chain of command? Must there be a transcript or record of the proceedings below? Does it matter who may appeal what question? For example, military prosecutors in Canada can appeal on mixed questions of fact and law, and on the sole ground that a finding of fact is unreasonable, whereas civilian prosecutors may only appeal findings of law.

One participant saw appellate review as striking a balance between discipline and the rights of individuals in the review process. These two goals are not completely independent—justice assists and is necessary for discipline. Soldiers don't cease to be citizens, and sentences must be proportionate to crimes. Maintaining discipline cannot mean that justice may be denied to an individual. More relevant questions are: What is the structure of the appellate process? Is appeal a matter of right? What is the composition of the appellate bench? Who appoints the judges and what are their qualifications? All of this must be seen from the viewpoint of the accused to test its legitimacy.

Seminar participants discussed a hole in appellate jurisdiction from US courts-martial. In the US system, the right to appellate review depends on the sentence the accused receives. There is a right of review for sentences that include a punitive discharge or a year's confinement, but there is no right to review for sentences of less than one year's confinement that do not include a punitive discharge. The original justification for this arrangement may have been that a court-martial conviction carrying a sentence of less than one year's confinement with no discharge would have little effect on a person's life outside the military. However, since convictions appear on criminal records, and criminal records are increasingly important for economic opportunity and benefits in civilian life, court-martial convictions falling outside the right to appellate review now have significant collateral consequences for convicted service members outside the military.

Another feature of the hole in US appellate review is the lack of direct review by the US Supreme Court in most cases. For those cases that carry a right to appellate review within the military system (i.e., those with sentences including confinement a year or more and/or a punitive discharge), the second tier of appellate review, which occurs at the Court of Appeals for the Armed Forces (CAAF), is discretionary. If CAAF declines to review a case, that case is

ineligible for review by the US Supreme Court. This makes crimes in the military justice context the only crimes in the US for which defendants are not always eligible to petition the US Supreme Court for direct review.

The group also discussed who may bring appeals, and what questions may be appealed. In the US military justice system, as in the civilian system, the prosecution may not appeal from an acquittal but may appeal pre-verdict certain questions of law. In the UK system, prosecutors may appeal from a pre-verdict terminating ruling or from an unduly lenient sentence.

It was noted that a defendant's right to appeal from a criminal conviction is an international human rights norm. The subtext of separate military justice systems is that they are meant to give special treatment to those who give their lives for their country. But the more a military justice system is adjusted to conform to human rights norms, the closer it comes to civilian systems. Contrary to the UN Special Rapporteur's August 7, 2013 Report on the Independence of Judges and Lawyers, military justice systems are not integral to civilian systems, but are instead parallel to them. When these parallel systems are brought into complete conformity with human rights, they go out of business.

The discussion turned to the role of the commander in the appellate process. One participant noted that fairness in the eyes of the convening authority is not the same as fairness in the eyes of the court-martial. Another participant noted that if the convening authority wishes to weigh in post-conviction, it should be in the form of a letter to the clemency and parole authority. A third participant noted that this is still a non-judicial interference with the judicial process. Despite inherent fears of a separate system, all crimes committed by military members occur within a service context, and this justifies a separate system.

The participants discussed different country contexts that might justify a separate military justice system or not. In either case, the existence of a separate system is distinguishable from the system's conformance with human rights standards, which demand a right of appeal. However, international human rights norms may sometimes lack clarity or authority. Various human rights courts' decisions are binding on some countries, but not on others, and interpretations vary. International law may demand an available appellate process, but not necessarily an appellate process outside the chain of command. If appeal within the command system does not violate domestic or international law, then one participant thought the burden should fall on those favoring reform to show why change is necessary. Others disagreed, arguing instead that the burden for justifying differences between the military and civilian systems should fall to defenders of the military system.

Some felt that a commander's power to control sentencing post-conviction is essential. There is a separate military justice system because military life is completely different from civilian life. A commanding officer with the power to send a soldier to his or her death should also have the power to weigh in on sentencing. Though the participants disagreed on how much power commanders should have over sentencing, they agreed that resistance is much stronger to removing commanders' charging powers than their post-conviction sentencing and review powers. In fact, restricting commanders' post-conviction and sentencing review power is accepted as somewhat inevitable for the current reforms of the US system.

Seminar participants disagreed on how directly analogies could be drawn between systems. Noting again different contexts in different countries, some felt that decisions about the operation of appeals in military justice and military justice generally are the sole prerogative of each country's government. Others felt that parallels are more appropriate, noting that systems with similar features might expect to see similar results from reforms. For example, the fact that generalist civilian judges in the UK hear military justice questions without difficulty suggests that generalist civilian judges in other systems could do so as well.

Systemic parallels, however, do not account for all context. Participants from Mexico noted that military judges in Mexico may often be less vulnerable than civilian judges. Some may say that the military justice system in Mexico seems more just due to corruption in the civilian system, which is an easy accusation to make if one is sitting in tranquil New England. In reality, civilian systems may be under pressure less from corruption than from vulnerability, and that vulnerability may not extend to the military system.

The discussion also touched on a possible false dichotomy between military and civilian populations. It's easy to divide the civilian from the military and then hold the view that the legislature is almost unanimously calling for change while the military feels differently. However, the legislators represent service members, too. To the extent that *the people* want reform (and *the people* includes service members), then the failure to either reform or argue successfully for the status quo will itself affect good order and discipline in the military.

#### **Session 4: Transparency**

The session on transparency began with a discussion of with the Manning case. Court documents in the Manning case, including pretrial filings, were all unclassified. Despite this, and despite the court sessions being open to the public, no pretrial filings or orders in the case were published. Rather, the judge read orders aloud in the courtroom, but there was no published transcript that reporters could use to check their notes for accuracy. The

government's position was that case documents could only be obtained through the Freedom of Information Act (FOIA) after the trial was over. This meant that access to documents in the *Manning* general court-martial was more restricted than in the military commissions, where redacted filings and orders must be posted online within 15 days of filing.

The lack of contemporaneous access to documents, but promise of future access, had the effect of driving away press coverage. If access had been denied completely, that would have been an interesting story in itself. But since there was theoretical access without actual access, reporters largely ignored the details of the case.

The Center for Constitutional Rights (CCR) petitioned CAAF for access to the documents, but CAAF found that it lacked jurisdiction. It suggested that it might have jurisdiction to order documents be made public where the accused petitions, but not on petition from the press alone. This can create situations where, if the prosecution and defense both want unclassified documents to remain secret, the press (and the public) can be denied access until after the trial is over. CCR responded to CAAF's decision by filing suit in US District Court, but the issue was mooted when the Manning trial began on the merits and the government released redacted documents from the pretrial proceedings.

The first casualty of this lack of transparency is public confidence in the military justice system. It also may hinder the system's ability to get at the truth, as the Supreme Court has recognized that open trials enhance accuracy in a number of ways, including by allowing the public to act a fact-check on the proceedings.

Military justice in the US faces transparency challenges beyond releasing documents. Judges often hear arguments in R.C.M. 802 conferences, which are closed to the public, and then only announce their decisions publicly. This is problematic for the media, and it was suggested that there should at least be a summary record released for these hearings.

Seminar participants noted that many countries have constitutional requirements for open trials. As with other aspects of military justice, the key question is whether there are justifications for different levels of openness found in civilian and military justice.

Differences in transparency in the US are stark. The US civilian system has an online system that gives the public access to any document filed in any federal court in the US (known as PACER, for *Public Access to Court Electronic Records*). There is no equivalent system for the military system, even at the appellate level, where there are standing courts.

In the UK, the difference is nonexistent. In both the civilian and military justice systems, the judge decides what is public and what is not. If the press is displeased with a judge's decision, it can appeal on its own without a concern about standing or jurisdiction. The R.C.M. 802-type problem also doesn't arise—where judges speak to counsel there is always a written record. In Indian courts-martial, the judge similarly controls the record and there is an Information Commissioner to whom anyone may appeal for access to unreleased documents.

The difference between the US and other systems may lie in the status of judges. In the UK, military judges (judge advocates) have largely the same authority as civilian judges. In the US, it's an open question whether military judges should be called judges at all; a military judge does not control the record and she does not decide whether to release the record. The fact that CAAF also lacks control over court-martial records is Congress's doing, and the judges themselves have no control over it. Complaints about redaction are similarly misplaced if directed at the military—over-redaction is an unfortunate consequence of the possibility that the entity releasing the documents could be held liable for privacy violations. Concern about this liability may lead redactors to remove information such as the judge's name (as in *Manning*), even though the trial is public.

The transparency issues may demonstrate who owns military justice. In the US, parties get relief from military "judges," but the convening authority exercises the most ownership. This does not mean that military judges do nothing—in fact they play a huge role and do extraordinarily important work in the system. But the transparency issue seems to be structural. Therefore, though reforms at the margins could improve transparency to the extent, a larger systemic reform may be required for any substantial improvement.

### **Session 5: Summary Trials**

This session began with a discussion of big issues with summary trials in the Canadian system: they have no rules of evidence, no right against self-incrimination, no right to counsel, no charter arguments, no right to appeal, no precedential effect, and they may establish a criminal record on the basis of minor offenses. One participant characterized the system as a "Victorian ordered system of justice." One out of thirty four service members go through summary trials annually, and the conviction rate is 97%. In Canada, summary trial may give a maximum of thirty days detention, although less than 2% of trials result in the maximum punishment. The UK's summary trial shares many of the Canadian system's features, with one notable exception: the maximum acceptable penalty imposed may be up to ninety days incarceration. Still, UK participants noted that they felt the UK's system seemed slightly more legalistic than the Canadian system. In the US, summary trials have a long history dating back to the early 1800s

and tied to the idea that military justice should be rough, speedy, and efficient. The US's concept of election is that a soldier may subject himself to summary trial or may elect to enter a system with more due process protections but the possibility of a harsher punishment. This differs from the UK system, where a court-martial cannot give a greater punishment for the same crime than a commander can give. Similarly, limitations on right to election in Canada are based on the nature of the offense, whereas in the US the limitations are based on venue (*e.g.*, under the so-called "vessel exception," in the US one cannot opt out of non-judicial punishments if one is attached to or embarked in a vessel).

Participants questioned whether Canada's disallowance of an opt-out for military related offenses was a positive reform. The following questions were posed to the group for discussion: 1. What limitations should there be on opt-out policies? and 2. Would it make sense to have an opt-out based on being in theater status? The "Burger King Theory of Military Justice" advocates that where a US military base is large enough to have a Burger King fast food restaurant, the military justice system works well. On smaller bases, the system is fraught with problems, including the opt-out election that for all intents and purposes requires soldiers to be brought back to the mainland for prosecution, diminishing troop capability and usually playing into a soldier's goals of being removed from the battlefield.

One extreme on the spectrum would be to disallow detention or any criminal penalty at all in the summary trial proceedings. The Netherlands has a system that most closely resembles this idea—any deprivation of liberty cannot be issued by a summary trial, and commanders may only punish up to 8 days confinement to the barracks. Based on the relatively small number of challenges after the fact, summary trials in the UK might be seen as fair. Similarly, the low rate of election of courts-martial in Canada may suggest that summary process is a fair, if not preferred, means of military justice. One participant analogized the opt-out system of summary trials to the plea bargain in civil litigation, asking whether the opt-in to summary discipline falls into a similar plea bargain type framework.

Some systems, *e.g.*, the UK, confer a right to counsel before the opt-in decision. However, the US does not grant counsel before the opt-in decision; an attorney may give advice but may not form an attorney-client relationship. Participants discussed a worry that the commander's discretion to grant minor penalties in summary trials may work to shield the military from revealing embarrassing events in cases where both the commanders and soldiers do not want an offense to be prosecuted in a formal trial. In the US, murder may still be tried in a summary trial. However, Article 15 of the UCMJ allows summary trial offenses to be subject to subsequent civilian or court-martial proceedings, which may protect against that concern. Courts-martial cannot retry minor offenses of non-judicial proceedings, and in some cases this

presents problems where an offense commonly considered to be 'major' is defined as a minor offense, exempting it from further review. In Canada, periodic review has recommended that administrative action not replace disciplinary actions because it carries so little process. In India, even major crimes continue to be punishable by summary trial with jeopardy attached. The panel ended with a consensus that summary trials remain effective yet highly contentious tools of military justice that may be tainted with discretionary abuses or produce inconsistent results.

## **Session 6: Reform Strategies**

The reform strategies discussion began with the notion that though there is a deep resistance to change in the military justice system and a lack of interest by the organized bar, at the same time there has been a good deal of change to the system in recent years. In some countries, rulings by international courts provoke this change. There are three primary structures of reform: standing, ad hoc, and other mechanisms. Standing mechanisms include periodic reviews as advocated by the 2006 draft Decaux Principles Governing Trials By Military Tribunals. Canada currently has a seven-year review period, the UK a five-year period, and the US has a joint service committee with a working group that reviews continually. A lingering question to ask is who performs the review and by what process? Ad hoc mechanisms include international court decisions, ECHR decisions such as the *Findlay* case, and reactions to individual cases. Two notable examples are the reaction in the US to the Wilkerson case, and the extreme reaction in Taiwan where the country repealed its military justice system after the death of a soldier in military detention. Other mechanisms of reform include national outreach and assistance efforts. For example, the Pentagon conducts the Defense International Institute of Legal Studies to work with developing countries' military courts, Commonwealth countries have the Commonwealth Association of Armed Forces Lawyers, and the UN maintains the Department of Peacekeeping Operations. Other countries are encouraged to begin their own National Institutes for Military Justice. NGOs, such as the International Commission of Jurists, also provide vectors for reform. Other outlets to promote discussion of military justice reform are found in blogs such as Major Navdeep Singh's Indian Military Justice Blog and CAAFlog in the US. Finally, professional academic literature remains a viable outlet for discussion of military justice reform.

While standing keeps many potential litigants out of US courts, in countries like India and Israel the courts are a good place to talk about changes in government policy. Most changes to military justice systems have until now been reactive, and it is more difficult to initiate proactive reform or suggestions for reform that do not elicit resistance from inside the military ranks. It may also be difficult to attract the support of enough legislators absent a definitive court ruling, particularly in the US where it seems at times that military interests have captured

Congress. It was generally agreed that above and beyond the questions of constitutionality, the legislature maintains wide discretion to implement reform policy. Military judges themselves may be struggling to understand their roles and interpret regulations in the most favorable light. One participant noted that the biggest changes may only arise as a result of a groundswell of public support, obtained when a major injustice occurs and the system does not respond effectively.

There was a general consensus at the conclusion of the seminar that the day's robust discussion should be continued and elaborated upon in future meetings.

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## Reading Room

### Global Seminar on Military Justice Reform

#### Yale Law School

#### Readings

##### I. Country Reports

[Military Justice: Adjudication of Sexual Offenses](#) — Australia, Canada, Germany, Israel, United Kingdom, Law Library of Congress (July 2013).

- **Mexico**

[Christina Cerna](#), Unconstitutionality of Article 57, Section II, Paragraph a) of the Code of Military Justice and Legitimation of the Injured Party and his Family to Present an Appeal for the Protection of Constitutional Rights (2013)

[Maureen Meyer and Clay Boggs](#), Why Mexico Should Reform its Military Code of Justice, Washington Office on Latin America (Sept. 24, 2013)

- **USA**

[United States Senate Committee on Armed Services](#) (webpage)

[Response Systems to Adult Sexual Assault Crimes Panel](#) (webpage)

- **Taiwan**

[Taiwan's Military Loses Right to Its Court-Martial System](#), United Press International (Aug. 16 2013)

[Memorandum on Military Reform in Taiwan](#) (Latest Updates) (Sept. 21, 2013)

- **India**

Eugene R. Fidell, [Reform of Indian Military Justice System](#), StratPost (June 2013)

[Quotes by Indian Courts on Availability of Adequate Judicial Remedy and a Balance Between Discipline and Rights of Individuals](#)

- **Tunisia**

[Tunisia: Flaws in the Landmark Ben Ali Verdict](#), Human Rights Watch (July 5, 2012)

[Tunisia: After the Military Trial to a Journalist Against the Backdrop of an Article, ANHRI](#)

[Demands an End to the Military Trials to the Civilians](#), Arabic Network for Human Rights Information (July 6, 2013).

- **Egypt**

[Egypt: New Law Keeps Military Trials of Civilians](#), Human Rights Watch (May 7, 2012)

- **Israel**

[The Public Commission to Examine the Maritime Incident of May 31, 2010 \(The Turkel](#)

[Commission\)](#) Second Report, Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law: Annex C

- **Indonesia**  
[Indonesia: Civilian Courts Should Try Abusive Soldiers](#), Human Rights Watch (April 24, 2013).
- **United Kingdom**  
[Lord Thomas of Gresford QC](#), Response Systems Panel Opening Remarks (Sept. 18, 2013)
- **Canada**  
[Gilles Létourneau](#), Two Fundamental Shortcomings of the Canadian Military Justice System, Global Seminar on Military Justice Reform (Oct. 18, 2013)  
[Michel William Drapeau](#), Canadian Military Justice System: At a Crossroads, The Global Seminar on Military Justice Reform (Oct. 18, 2013)  
[Michael Gibson](#), Canada's Military Justice System, 12 *Can. Mil. Journal* 61 (2012)  
[Peter MacKay](#), Statements on Strengthening Military Justice in the Defence of Canada Act, House of Commons (Apr. 30, 2013)
- **Liberia**  
[Danielle Skinner](#), Armed Forces of Liberia's Military Justice System Focuses on Human Rights and Discipline, U.S. Africa Command (May 16, 2011).

## II. Role of the Commander

- [Gillibrand Bill](#) on Proposed Military Justice Reform S.967 (113th Congress)
- [McCaskill Bill](#) on Proposed Military Justice Reform (113th Congress)
- [Victor Hansen](#), Changes in Modern Military Codes and the Role of the Military Commander: What Should the United States Learn from this Revolution?, 16 *Tul. J. Int'l & Comp. L.* 419 (2008)
- [Major Evan R. Seamone](#), Reclaiming the Rehabilitative Ethic in Military Justice: The Suspended Punitive Discharge as a Method to Treat Military Offenders with PTSD and TBI and Reduce Recidivism, 208 *Mil. L. Rev.* 1 (2011)
- [Quotes from August 26, 2013 FOIA Released Materials Relating to Lt. Col. Wilkerson's Sexual Assault Conviction](#), ProtectOurDefenders (Sept. 3, 2013)
- [LtGen Craig A. Franklin](#), Memorandum to Secretary of the Air Force Donley Explaining the Wilkerson Case (Mar. 12, 2013)
- [Protect Our Defenders, Point by Point Rebuttal of Lt. General Franklin's Memorandum](#) (2013)
- [Nancy Parrish, Protect Our Defenders Letter to Secretary Hagel Requesting Dismissal of Lt. General Franklin](#) (2013)
- [Senate Armed Services Committee Hearing Transcript](#) Excerpt 24-27(2013)
- [Law Professors' Statement on Reform of Military Justice](#) (June 7, 2013)
- [U.S. Commission on Civil Rights](#), Sexual Assault in the Military (Sept. 2013). See Commissioners Statements and Rebuttals, 127-228

### III. Sexual Assault

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