

EUGENE R. FIDELL

Senior Research Scholar and Florence Rogatz Visiting Lecturer in Law
Yale Law School, New Haven, Connecticut

Courses Military Justice, Federal Indian Law, American Indian Tribal Law,
Guantánamo, Admiralty, Law of the Sea, Disasters

Education B.A. (Philosophy), cum laude, 1965, Queens College
Phi Beta Kappa

LL.B., Harvard Law School, 1968
Notes Editor, *Harvard Journal on Legislation*

U.S. Naval Justice School, Newport, Rhode Island
Graduated with Honor, 1969

Military Service United States Coast Guard
Judge Advocate, 1969-72 (Coast Guard Commendation Medal)

Bar New York, 1968

Admissions Massachusetts 1972 (retired status, 1999)
District of Columbia, 1972
Maryland 1987 (inactive status, 2010)
Connecticut, 2010

Employment Feldesman Tucker Leifer Fidell LLP (Washington)
Partner, 1984-2008, Of Counsel, 2009-

Lecturer on Law (Military Justice)
Harvard Law School, 2004

Adjunct Professor of Law, Scholar in Residence
Washington College of Law, American University, 2006-09

LeBoeuf, Lamb, Leiby & MacRae (Washington)
1968-69, 1972-84 (Partner, 1977-84)

Vera Institute of Justice, New York, Summers 1966-67

Public Interest American Law Institute, Life Member, elected 1982

Activities American Bar Foundation, Life Fellow, elected 2000

National Institute of Military Justice, President, 1991-2011
International Society for Military Law and Law of War
Board of Directors, 2006-
President, Committee for Military Justice, 2012-

Defense Legal Policy Board, 2012-
Subcommittee on Military Justice in Combat Zones, 2012-

Code Committee on Military Justice, Public Member, 1996-99

Advisory Board on the Investigative Capability of the
Department of Defense, 1994

Rules of Evidence Committee, Department of Labor, 1987-89

Advisory Committee on Law of the Sea
U.S. Department of State, 1979-83

Advisory Committee to U.S. Commissioners, 1979-83
International Commission for the Conservation of Atlantic Tunas

Advisory Committee on *Pro Se* Litigation
U.S. District Court for the District of Columbia
Chairman, 1998-2001, Member, 1995-2001

Indigent Civil Litigation Fund, Inc.
Board of Directors [ex officio], 1998-2001

Rules Advisory Committee
U.S. Court of Appeals for the Armed Forces
Chairman, 1993-96, Member, 1981-96
Judicial Award for Public Service, 1997

Moderator, Military Law Forum, 1995-98
America Online Legal Information Network

National Veterans Legal Services Program
(Legal Services Corporation-funded national backup center)
Chairman of the Board, 1986-95, Member of Board, 1985-95

Committee on Military and Veterans Rights
The District of Columbia Bar
Section V (Criminal Law and Individual Rights)
Chairman, 1980-84, 1991-93

American Bar Association
Co-Chair, Military Justice Committee, Criminal Justice Section,
2008-2011
Task Force on Treatment of Enemy Combatants, 2002-2010
Standing Committee on Law and National Security, 2004-08
Standing Committee on Lawyers in the Armed Forces, 1981-82

Committee on Military Justice and Military Affairs
Association of the Bar of the City of New York, 1978-80

Administrative Conference of the United States, Consultant, 1986-89

Food and Agriculture Organization of the United Nations
Consultant in Fisheries Legislation, 1978-89
(Missions to Sierra Leone, Liberia,
Cayman Islands, Dominica, Bahamas)

American Civil Liberties Union of the National Capital Area
Cooperating Attorney, 1973-
Member, Advisory Board, 1993-96
Alan Barth Service Award, 1993

Harvard Law School Association, Member, National Council, 1988-92

Board of Editors, *Journal of Maritime Law and Commerce*, 1978-90

Editorial Advisory Board, *Fisheries Research* (Netherlands), 1981-91

Editorial Board, *Journal of National Security Law and Policy*, 2004-

Board of Advisors, *Green Bag Reader*, 2005-

Editorial Board, *Connecticut Law Tribune*, 2012-

Publications

Military Law

GUIDE TO THE RULES OF PRACTICE AND PROCEDURE FOR THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES, 1978, Supp. 1980, 2d ed. 131 Mil. L. Rev. 169 (1991), 3d ed. 1992, 4th ed. 1993, 5th ed. 1994, 6th ed. 1995, 7th ed. 1996, 8th ed. 1997, 9th ed. 2000, 10th ed. 2001, 11th ed. 2003, 12th ed. 2006, 13th ed. 2010, 14th ed. 2014 (with Dwight H. Sullivan) (forthcoming)

Military Justice Gazette, 1992-2001

Is There a Common-Law of Footnote 5?, 24 JAG J. 157 (1970)

The Summary Court-Martial: A Proposal, 8 Harv. J. Legis. 571 (1971)

The Annotated Coast Guard Rules, 27 JAG J. 23 (1972)

Service-Wide Rules of Court-Martial Procedure: Ex Uno Plures, 3 Mil. L. Rptr. 6001 (1975) (with Michael T. Leibig and Richard M. Rogers)

Judicial Review of Presidential Rulemaking Under Article 36: The Sleeping Giant Stirs, 4 Mil. L. Rptr. 6049 (1976)

The Specification of Appellate Issues by the United States Court of Military Appeals, 31 JAG J. 99 (1980)

Military Justice: Same Target, But Different Steps and Tactics, N.Y. Times, Week in Review, Mar. 30, 1980

Board for Correction of Military Records, 42 U.S. Coast Guard Acad. Alum. Bull. 30 (Nov.-Dec. 1980)

A Look at [U.S. Court of Military Appeals] Chief Judge Robinson O. Everett, 5 Dist. Law. No. 6, 31 (July-Aug. 1981)

Military Justice: The Bar's Concern, 67 A.B.A.J. 1280 (1981)

"If a Tree Falls in the Forest . . .": Publication and Digesting Policies and the Potential Contribution of Military Courts to American Law, 32 JAG J. 1 (1982)

The Board for Correction of Military Records: An Update, 45 U.S. Coast Guard Acad. Alum. Bull. 36 (May-June 1983)

The Correction of Military Records: Notes from Washington, 46 U.S. Coast Guard Acad. Alum. Bull. 32 (Sept.-Oct. 1984)

Judicial Tenure Under the Uniform Code of Military Justice, 31 Fed. B. News & J. 327 (1984)

Military Rights of Appeal, 8 Dist. Law. No. 62, 42 (July-Aug. 1984)

The Supreme Court's New Military Role, 6 Nat'l L.J. No. 51, at 13 (Aug. 27, 1984)

Military Justice in 1984, 110 Nav. Inst. Proc. 156 (Dec. 1984)

Blazing Military Trails in Civilian Prisons, Army Times, 1986

Pursuing Legal Claims Can Spell Relief, Army Times, Mar. 10, 1986

Military Cases on "Supreme" Hold, Army Times, Mar. 17, 1986, at 59

Giving Service Lawyers Their Due, Navy Times, Mar. 30, 1987, at 61

Promotions and Skin Color, 49 U.S. Coast Guard Acad. Alum. Bull. No. 4, at 3 (1987)

Write Your Congressman, Navy Times, Mar. 14, 1988, at 77, and Mar. 21, 1988, at 59

Review of Decisions of the United States Court of Military Appeals by the Supreme Court of the United States, 16 Mil. L. Rptr. 6001 (1988)

A Roving Commission: Specified Issues and the Function of the United States Court of Military Appeals, 122 Mil. L. Rev. 117 (1988) (with Linda Greenhouse)

The Culture of Change in Military Law, 126 Mil. L. Rev. 125 (1989)
Nobody Asked Me, Either, But: Junior Year in Another Culture, 115 Nav. Inst. Proc. 87 (Dec. 1989)

Correction of Military Records: A SITREP, 51 U.S. Coast Guard Acad. Alum. Bull. No. 7, at 24 (Dec. 1989-Jan. 1990)

Military Justice and Military Judges: The Path to Judicial Independence, 74 Judicature 14, 37 Fed. B. News & J. 346 (1990)

Don't Believe All You Hear About Justice System, Army Times, Nov. 4, 1991, at 23

Current Military Personnel Issues, 54 U.S. Coast Guard Acad. Alum. Bull. No. 1, at 8 (Apr. 1992)

Book Review, 40 Fed. B. News & J. 470 (1993)

Remarks on the Renaming of the United States Court of Military Appeals as the United States Court of Appeals for the Armed Forces, 41 M.J. LIV (1994), 5 Mil. Advocate No. 3, at 1, col. 3 (Fall 1994)

Going on 50: Evolution and Devolution in Military Justice, 32 Wake Forest L. Rev. 1213 (1997)

The National Institute of Military Justice: A Status Report, 124 Nav. Inst. Proc. 75 (Aug. 1998)

Free Speech v. Article 88, 124 Nav. Inst. Proc. 2 (Dec. 1998)

A World-Wide Perspective on Change in Military Justice, 48 A.F. L. Rev. 195 (2000)

Military Law Cases Present Diverse Array of Vital Issues for Individuals and the Government, 73 N.Y.S.B.J. 44 (2001) (with David P. Sheldon)

Loss of Numbers Was a Punishment, 127 Nav. Inst. Proc. 72 (Aug. 2001) (with Jay M. Fidell)

Loss of Numbers, 48 Naval L. Rev. 194, 40 Mil. L. & L. of War Rev. 147 (2001) (with Jay M. Fidell)

Military Justice: Fix the System Now, 24 Nat'l L.J. No. 8, Oct. 15, 2001, at A24 (with Dwight H. Sullivan)

EVOLVING MILITARY JUSTICE (Naval Institute Press 2002) (with Dwight H. Sullivan)

DOT and Your Career: What's Up at the BCMR?, 64 U.S.C.G. Acad. Alum. Bull., No. 4, at 31 (Aug. 2002)

Think Again Before Relaxing Posse Act, Boston Globe, Aug. 3, 2002, at A15

ANNOTATED GUIDE TO PROCEDURES FOR TRIALS BY MILITARY COMMISSIONS (Lexis-Nexis/Matthew Bender 2002) (editor)

Teaching the Art of War, Legal Times, Sept. 9, 2002, at 30 (with Elizabeth Lutes Hillman)

Conviction by Special Court-Martial: A Felony Conviction Under State Law?, 15 Fed. Sentencing Rptr. 220 (Feb. 2003) (with Matthew S. Freedus)

MILITARY COMMISSION INSTRUCTIONS SOURCEBOOK (2003) (editor)

Military Commissions & Administrative Law, 6 Green Bag 2d 389 (2003)

RULES OF PRACTICE AND PROCEDURE AND CITATION—UNITED STATES ARMED SERVICES COURTS OF CRIMINAL APPEALS—UNITED STATES COURTS-MARTIAL (2003) (with Todd A. Wynkoop & Matthew S. Freedus)

Removal from a Promotion List—The Unkindest Cut, 129 Nav. Inst. Proc. 96 (Dec. 2003)

MILITARY COMMISSION INSTRUCTIONS SOURCEBOOK 2D (2004) (editor)

Martial Law, 2004-Style, 130 Nav. Inst. Proc. 26 (Apr. 2004)

A Surprising Year, 27 Legal Times, No. 51 (Dec. 20, 2004)

Uphold the Geneva Conventions and the Convention Against Torture, in *Restoring American Leadership: Cooperative Steps to Advance Global Progress* (Open Society Inst. 2005)

Where is the Courage to Walk Away?, Navy Times, Aug. 22, 2005, at 46

The First Amendment and Military Courts, 23 Communications Law. 10 (Fall 2005) (with Steven D. Zansberg and Matthew S. Freedus)

Military Commission Law, Army Law., Dec. 2005, at 47 (with Dwight H. Sullivan and Detlev F. Vagts)

Guantánamo and All That, 53 Fed. Law. 45 (Feb. 2006)

Accountability, Transparency, and Public Confidence in the Administration of Military Justice, 9 Green Bag 2d 361 (2006)

Disorder in Military Courts, in *Liberty Under Attack: Reclaiming Our Freedoms in an Age of Terror* (Century Foundation 2007)

Zen and the Jurisprudence of the United States Court of Appeals for the

Armed Forces, Fed. Law., May 2007, at 28, [3-4] 2007 Rev. of Mil. L. & the L. of War 393

Watchdogs and Lapdogs: National Security Journalism, in 1 Ann. Symposium on Emerging Issues in Nat'l & Int'l Sec'y 64 (2007)

Book Review, Peter Rowe, The Impact of Human Rights Law on Armed Forces, 101 Am. J. Int'l L. 252 (2007), [3-4] 2007 Rev. of Mil. L. & the L. of War 462

Is There a Crisis in Military Appellate Justice?, 12 Roger Williams U. L. Rev. 820 (2007)

New Life Members Luncheon Address to the American Law Institute, Remarks and Addresses at the 84th Annual Meeting, ALI, May 14-16, 2007, at 25

MILITARY JUSTICE CASES AND MATERIALS (LexisNexis 2007, 2d ed. 2012) (with Elizabeth Lutes Hillman and Dwight H. Sullivan)

How to (Mis) Handle a Defection, Nav. Inst. Proc. 42 (Aug. 2008)

The Trouble with Tribunals, N.Y. Times, Week in Review, June 14, 2009, at 8, col. 2

Criminal Prosecution of Civilian Contractors by Military Courts, 50 S. Tex. L. Rev. 845 (2009)

Reforming Interrogation Practices: Alexis St. Martin and the Post-9/11 Era Opportunity, 16 Hum. Rgts. Br. No. 4, 26 (Spring 2009)

Kenneth C. Royall, in YALE BIOGRAPHICAL DICTIONARY OF AMERICAN LAW 470 (Roger K. Newman ed. 2009)

Justice John Paul Stevens and Judicial Deference in Military Matters, 43 U.C. Davis L. Rev. 999 (2010)

Why Did the Cambodia Bombing Continue?, 13 Green Bag 2d 321 (2010)

Answering the Call: From Civilian Lawyer in Uniform to Military Lawyer in Civvies, 136 Nav. Inst. Proc. 12 (July 2010)

Military Justice Instruction in Civilian Law Schools, 60 J. Legal Ed. 1 (2011)

The Next Judge, 5 J. Nat'l Sec. L. & Pol'y 303 (2011)

The Fonseka Courts-Martial: An Opportunity for Law Reform, 21 L. & Soc'y Trust Rev. 1 (May 2011)

Ten Years On: Military Justice and Civil Liberties in the Post-9/11 Era, 56 N.Y.L.S. L. Rev. 103 (2011-12)

Military Law, in *The Modern American Military*, 140 Daedalus, No. 3, 165 (Summer 2011)

National Institute of Military Justice, Forces L. Gaz. No. 2, at 12 (Mar. 2012)

Charm Offensive in Lilliput: Military Commissions 3.1, 56 St. Louis U. L.J. 1177 (2012)

Book Review, Gilles Létourneau & Michel Drapeau, *Military Justice in Action: Annotated National Defence Legislation*, Fed. Law., July 2012, at 74

MILITARY COURT RULES OF THE UNITED STATES (LexisNexis 2012)

The Gunner's Case, [1] 51 Mil. L. & L. of War Rev. 221 (2012)

International Developments in Military Law, 17 Can. Crim. L. Rev. 83 (2013)

Recent Revisions of Military Justice Systems, in MILITARY JURISDICTION (2013)

The Boards for Correction of Military and Naval Records: An Administrative Law Perspective, 64 Admin. L. Rev. ___ (2013)

MILITARY JUSTICE: A VERY SHORT INTRODUCTION (Oxford 2014) (forthcoming)

Judicial Administration

Befriending the Court: A Few Words on Amicus Briefs, 6 Legal Times 14, at 8 (Sept. 5, 1983)

Book Review (Stern, Judgment in Berlin), N.Y. Times, Mar. 25, 1984, § 7, at 17

The Strange Case of John Doe: Getting Anonymity in Federal Court, 6

Nat'l L.J. No. 26, at 20 (1984)

Judicial Recantation: Homage to Baron Bramwell, 71 *Judicature* 259 (1988), reprinted as *Admitting Error: A Proud Judicial Heritage*, 16 *Legal Times*, No. 51, at 28 (May 9, 1994), *The [San Francisco] Recorder*, No. 101, at 9 (May 25, 1994)

Hearings on Motions: A Modest Proposal, Nat'l L.J., Dec. 22, 2008

A Pronouncing Dictionary of the Supreme Court of the United States, 15 *Green Bag 2d* 433 (2012), <http://documents.law.yale.edu/pronouncing-dictionary> (with Sally Pei, Alice K. Hadley, Daniel Jang, Megan E. Corrarino, Brigid M. Davis, Usha B. Chilukuri, Jason A. Zentz, and Diallo I. Spears)

Legislation *How Federal Statutes are Named*, 105 *L. Lib. J.* 7 (2013) (with Renata E. Strause, Allyson R. Bennett, Caitlin B. Tully, M. Douglass Bellis, and Jason Eiseman)

Maritime, Natural Resources, and Energy Law *Ten Years Under the Bartlett Act: A Status Report on the Prohibition on Foreign Fishing*, 54 *B.U.L. Rev.* 703 (1974)

The Law and Fishery Enforcement on the High Seas, 101 *Nav. Inst. Proc.* 95 (1975)

Federal, State and Local Relations in the Environmental Area: A Test of the New Federalism, Proceedings of 4th National Conference on Energy and Environment (1976)

Fisheries Legislation: Naval Enforcement, 7 *J. Mar. L. & Com.* 351 (1976), 122 *Cong. Rec.* 20490 (1976)

The Case of the Incidental Lobster: United States Regulation of Foreign Harvesting of Continental Shelf Fisheries Resources, 10 *Int'l Law.* 135 (1976)

International Relations and Nuclear Commerce: Developments in United States Policy, 8 *L. & Pol. in Int'l Bus.* 913 (1976) (with William O. Doub)

The Coast Guard and Fisheries Law Enforcement, 102 *Nav. Inst. Proc.* 70 (1976)

Hot Pursuit from a Fisheries Zone, 70 *Am. J. Int'l L.* 95 (1976)

Enforcement of the Fishery Conservation and Management Act: The Policeman's Lot, 52 Wash. L. Rev. 513 (1977)

Liability for Oil Pollution: United States Law, 10 J. Mar. L. & Com. 476 (1979), 125 Cong. Rec. 27854 (1979) (with Allan I. Mendelsohn)

Legal and Institutional Aspects of Fisheries Management in the Republic of Sierra Leone (FAO 1978)

Legal and Institutional Aspects of Fisheries Management in the Republic of Liberia (FAO 1978)

The Assessment of Pollution Damage to Aquatic Resources: Alternatives to the Trial Model, 19 Santa Clara L. Rev. 641 (1979) (with Richard A. DuBey)

Flag State Measures to Ensure Compliance with Coastal State Fisheries Regulations: The United States Experience (FAO 1986)

Book Review, 17 J. Mar. L. & Com. 615 (1986)

International Law and the Transportation of Plutonium and Spent Nuclear Fuel by Sea, 31 Int'l Law. 757 (1997)

International Self-Help and the Transportation of Plutonium and Irradiated Nuclear Fuel by Sea <<http://axil.whatswhat.com/nuke/html/selfhelp.html>> (Washington Nuclear Corp. 1997)

Labor Law *Improving Competence in the Merchant Marine: Suspension and Revocation Proceedings*, 45 Mo. L. Rev. 1 (1980)

The Nuclear Industry: Employee Protection Provisions of Federal Law, 110 Pub. Utils. Fortnightly No. 10 (1982) (with William C. Marcoux)

Employment Law: The Department of Labor Grapples with Growing Number of Whistleblowers, 5 Nat'l L.J. No. 30 (1983) (with William C. Marcoux)

Whistleblowing, Individual Rights and Employer Responsibilities 349 (BNA 1987)

Federal Protection of Private Sector Health and Safety Whistleblowers, 2 Ad. L.J. 1 (1988), 134 Cong. Rec. S1451 (daily ed. Feb. 23, 1988)

Op-Ed Pieces , Essays and Blog Posts *Let Us Now Praise Unfamous Men*, N.Y. Times Op-Ed Page, May 4, 1985

Duvaliers and Marcoses Need an Elba, N.Y. Times Op-Ed Page, Feb. 15, 1986

Goodbye \$, Hello “B”, N.Y. Times Op-Ed Page, July 15, 1991

Legis-flation, N.Y. Times Op-Ed Page, June 1, 1995

Essay, *Ex-New Yorker ISO CB/RYE*, N.Y.L.J., Mar. 25, 1996, at 2

A Tribute to Jay Flanagan, 58 U.S. Coast Guard Acad. Alum. Bull., No. 2, at 61 (Apr. 1996)

Not by Corned Beef Alone: The Law of Salami, Pastrami and Chopped Liver, 19 Legal Times No. 2, at 22 (May 27, 1996)

Rethinking the Concept of Congressional Districts, The Hill, June 26, 1996, at 24

Victims Victimized by VRA, The Hill, July 10, 1996, at 19

Bush v. Gore Could Spur Electoral Reform, The Hill, Jan. 10, 2001, at 21

Assessments and Reality: A Modest Proposal, Montgomery Gaz., Feb. 16, 2001, at A10, col. 2

Department of Homeland Security: It Must Lead, Inspire, and Excite, 128 Nav. Inst. Proc. 36 (July 2002)

Book Review, The Rights Stuff: Aryeh Neier Looks Back on a Lifetime of Fighting for Civil Liberties (Aryeh Neier, Taking Liberties), N.Y. Times Book Rev., May 11, 2003, at 25, col. 2

Congress Should Amend USERRA, 80 The Officer 11 (Apr. 2004) (with Matthew S. Freedus)

Sorry, 71 FED. REG. 1 (2006), 8 Green Bag 2d 155 (2005)

Judge Crater’s New York (Book Review), 8 Green Bag 2d 321 (2005)

Tribunal Rules Made Secretly, The Hill, Jan. 15, 2007 (with Kathleen A. Duignan)

What Should the U.S. Do About Gitmo?, Wash. Times, Dec. 7, 2008

Armed Forces Day, 2009, Balkinization, May 4, 2009

Picking Justices, Balkinization, May 6, 2009

Appellate Review of Military Commissions, Balkinization, Oct. 8, 2009

Presidential Salutes and Presidential Precedents, Balkinization, Nov. 15, 2009

Same-Day Service: Editorializing on Argument Days, Balkinization, Nov. 29, 2009

Transparency, 2009, 61 Hastings L.J. 457 (2010)

John Adams Meets Joe McCarthy, Balkinization, Mar. 6, 2010

United States v. Ghailani (S.D.N.Y.), Balkinization, Nov. 20, 2010

Election Likely to Tip Supreme Court Balance, Hartford Courant, Sept. 7, 2012

The Petraeus Case: Legal Exposure of Military Retirees, Balkinization, Nov. 14, 2012

Aviano II, Balkinization, Mar. 9, 2013

No Sanctuary for Dictators, 38 Yale J. Int'l L. Online 46 (2013)

Send Civilian Judges to Guantánamo, then Shut it, N.Y. Times, May 3, 2013 (web) (with Bruce Ackerman)

How “Robust” is Appellate Review of Courts-Martial?, Balkinization, May 8, 2013 (with Elizabeth L. Hillman, Dwight H. Sullivan, Stephen A. Saltzburg, Kate Stith & Judith Resnik)

Ensuring Justice in the Military: Broad Changes are Needed, Room for Debate, N.Y. Times, May 28, 2013 (web)

Reform of Indian Military Justice, StratPost, June 2, 2013