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Military Dockets

Examining the public's right of access to the workings of military justice

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

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to the workings of military justice

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A White Paper by
The Reporters Committee for Freedom of the Press

with research assistance from

The Tully Center for Free Speech,
S.I. Newhouse School of Public Communications,
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The Tully Center study can be found at tully.syr.edu

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Executive Summary

The U.S. Supreme Court and the nation's highest military courts have said the American press and public have a First Amendment right of access to criminal proceedings. By refusing to provide reasonable and proper notice of such proceedings through timely, objective and detailed court dockets, the military justice system has severely undercut this foundational tenet of American democracy. Unlike civilian courts, which routinely supply the public with detailed dockets, most military courts release docketing information sporadically at their own self-interested discretion, if at all. This policy of secrecy has frustrated the press in its attempts to report on important military justice proceedings, while enabling some government officials to hide criminal cases that could be embarrassing or damaging to the military. Perhaps most alarmingly, the public has been left critically uninformed as to the competence and fairness of the military justice system.

The Reporters Committee for Freedom of the Press has produced a legal analysis of the military court docketing issue, relying on the prevailing case law, relevant statutes and regulations, and the opinions of military law experts as a basis for its conclusions. This "white paper" also includes interviews of journalists who have experienced firsthand the tremendous inadequacies of the docketing system. In completing this project, the Reporters Committee worked with the Tully Center for Free Speech at Syracuse University's S.I. Newhouse School of Public Communications, which conducted a random survey showing that significantly more than a third of the military bases contacted refused to provide docketing information for courts-martial or preliminary hearings.[1]

Finally, this white paper includes recommendations on how to create a military court docketing system that properly serves the public:

- All military courts should produce standardized scheduling dockets that are available to the general public on the Internet, through a hyperlink that is salient and easily recognizable on each installation's Web site;

- Officials from individual branches must have access to the docketing Web site, but the docketing Web site should be centralized through supervision by a Department of Defense official who is not directly affiliated with any one particular military base;

- Each and every military court proceeding should be listed on the docketing Web site, which should be organized by Judicial District, in a manner similar to the Army Trial Judiciary site;

- At a minimum, convening authorities for each military court should provide the docketing administrator with the following components: the time, date and location of the proceeding; the full names of all proceeding participants; and the specific charges and basic factual detail that lead to the charges;

- Dockets should be made publicly available online or through direct requests to military court officials at least two weeks before the proceeding is scheduled or as soon as reasonably possible. Dockets should be updated in real time, as new information is received by military court personnel;

- Dockets should be automatically available online regardless of whether a member of the public or press has made a request under the Freedom of Information Act; and

- Base personnel should be sufficiently trained to respond, with professionalism and courtesy, to the public's questions concerning upcoming military court proceedings.

1 The Tully Center report can be found at http://tully.syr.edu.

The case for public dockets

On December 6, 2007, the U.S. Marine Corps quietly concluded one of the more disturbing personnel scandals in the military's recent history. During his general court-martial on that date, Lt. Cmdr. John Thomas Matthew Lee pleaded guilty to sodomy, aggravated assault, and indecent assault, among other charges. The HIV-positive Navy chaplain admitted to sexual liaisons that included using alcohol and his superior rank to coerce a Navy midshipman into performing various sexual acts. In another instance, Lee had consensual sex with an Air Force officer but lied concerning his HIV-positive condition. Lee also admitted to having convinced a Marine corporal to photograph him nude during a counseling session.[2]

And if not for a tip received by a newspaper editor just two days before Lee's court-martial transpired, the public may have never heard a word about it.

For months after Lee was first charged in August 2007, the Marine Corps kept the case a secret. Like other military branches, the Marine Corps does not require its courts-martial schedules to be released through a publicly available case docketing system. Without such a mechanism in place, military court officials in Quantico, Va., were able to suppress public notice of the Lee case and thereby deny the public's First Amendment right of access to a criminal proceeding.

Lee's attorney, who helped secure the plea deal that ensures his client will likely spend just 19 months behind bars, praised the Marine Corps "because their primary interest here was to protect people."[3]

But was it really? While some victims in the case were reportedly notified that Lee is HIV-positive, it remains unclear if Lee actually indentified all of his victims preyed upon during his 12-year military career as an officer. Other victims who were not notified directly by the Marine Corps earlier in the investigation had to wait more than an additional month from the time the Corps formally announced Lee's HIV-related charges to the time the case was first publicized through a newspaper report. During that period, not only were potentially unidentified victims denied treatment for HIV exposure, but they may have unknowingly spread the lethal disease. As an editorial in the *Marines Corps Times* and *Navy Times* noted just after Lee's court-martial: "It might not sound like much, but ask the victims whether they would like that time back. More important, ask anyone who's had sex with the victims since then."[4]

The Lee court-martial illustrates the alarming consequences of denying journalists and the public at large access to military court information. But the issue is hardly a new one. Despite the fact that the highest military courts ruled more than a decade ago that the public has a First Amendment right of access to both military courts-martial and Article 32 preliminary hearings, military public affairs officers (PAOs) routinely reject reporters' requests for courtroom dockets. Even when dockets are released, the information is often so general and devoid of meaningful detail that the public is still left in the dark. When it comes to public access to military court proceedings, a constitutional key can be essentially useless if one cannot find the gate.

As discussed further below, past attempts to persuade military officials to create an online military courts docketing system that provides the public with basic information in a timely manner have failed. At a minimum, an adequate online docketing system would include the full names of a given criminal proceeding's participants, specific scheduling information for the proceeding, and detailed information concerning the criminal charges in the case. Alternatively, the Freedom of Information Act (FOIA)[5] would, at first glance, appear as a statutorily based tool the public could use to access military court dockets. But FOIA's exemptions and the relatively cumbersome process the statute offers for document access make FOIA of little use to military reporters on deadline who would need to make docket requests every day to ensure they did not miss an important new case. The Reporters Committee for Freedom of the Press believes this burden is far too great to ensure timely coverage of military court proceedings. Furthermore, given the public's First Amendment right of access to such proceedings and a defendant's Sixth Amendment right to a public trial,[6] this burden is wholly unnecessary and unjustified.

Using statistical information gathered by the Tully Center for Free Speech at Syracuse University's S.I. Newhouse School of Public Communications, the Reporters Committee advocates the institution of a standardized and centralized military courts docketing system that the press and public

2 Andrew Tilghman & Chris Amos, *Lawyer: HIV-positive Navy priest accused of sexual conduct*, Marine Corps Times, Dec. 4, 2007, *available at* http://www.marinecorpstimes.com/news/2007/12/marine_chaplain_hiv_071204w/; Andrew Tilghman & Chris Amos, *Lawyer: Priest will plead guilty to sex charges*, Marine Corps Times, Dec. 6, 2007, *available at* http://www.marinecorpstimes.com/news/2007/12/navy_chaplain_hiv_071204w/; Andrew Tilghman & Chris Amos, *HIV-positive Navy chaplain gets 2 years*, Marine Corps Times, Dec. 10, 2007, *available at* http://www.marinecorpstimes.com/news/2007/12/navy_leechaplain_guiltyplea_071206w/; *see also* Andrew Tilghman & Chris Amos, *"Predator" HIV-positive chaplain guilty in sex crimes displayed "sickening abuse of power,"* Marine Corps Times, Dec. 17, 2007, at 8.

3 Tilghman & Amos, *HIV-positive Navy chaplain gets 2 years*, *supra* note 2.

4 Editorial, *Corps put spin control ahead of victims' health*, Marine Corps Times, Dec. 17, 2007, *available at* http://www.marinecorpstimes.com/community/opinion/marine_editorial_gaychaplain_071217/.

5 5 U.S.C. § 552.

6 *See, e.g.*, *United States v. Travers*, 25 M.J. 61 (C.A.M. 1987); *United States v. Hershey*, 20 M.J. 433 (C.A.M. 1985); *United States v. Grunden*, 2 M.J. 116 (C.A.M. 1977).

can easily access. Through this analysis, the Reporters Committee makes the case for enacting statutory amendments and Department of Defense regulations that would compel courts serving each of the five military branches to issue comprehensive and timely dockets available to journalists and the public. These recommendations are supported by the Tully Center's survey, which shows that significantly more than a third of the military bases contacted refused to provide docketing information for courts-martial or preliminary hearings. Interviews with military reporters and attorneys specializing in military law offer further justification for these proposed regulations, which would help resolve a glaring deficiency in the military justice system.

Reporting on the military justice system

In performing their jobs day-to-day, military court reporters around the world often experience a tremendous sense of personal conflict. On the one hand, the institutional challenges that encumber military reporting at nearly every turn have the effect of testing journalistic skill and providing scenarios where reporters can prove their mettle: the old-school, pavement-pounding, Woodward-and-Bernstein kind of stuff. In short, the adversarial element within the military beat creates a heightened sense of purpose for reporters and beyond that, a thrill. On the other hand, these same reporters will acknowledge that the unusual obstacles they face inevitably hamper their performance as the public's eyes and ears. For every scoop ferreted out from a confidential source, there is the nagging feeling that perhaps another ten got away. In the end, after military reporters and base PAOs complete their jousting and the dust settles, the public remains underserved.

In deconstructing their frustrations with the military justice system, most reporters interviewed for this project articulated feelings of powerlessness, that reporters are "at the mercy" of base PAOs and commanders. In contrast to the civilian judicial system, in which court dockets routinely furnish detailed information available weeks in advance, the military system typically puts the burden on reporters to discover upcoming cases.

In practice, this means military reporters are often completely dependent on backchannel sources such as defense attorneys, relatives of the service member charged and "leakers" within the military itself — all of whom are, more often than not, speaking from biased perspectives that benefit their clients, family members, or other professional aspirations. While military reporters are usually aware of these sources' ulterior motives, they often have no other objective sources of information by which to ground their reports.

"If I could just walk into the local JAG office each week and look at the docket for myself, life would be a lot simpler," said *Stars and Stripes* reporter John Vandiver. "It works for the justice system in the civilian universe. I don't see why it should be any different in the military."

Interviews with more than a dozen reporters who cover courts on military bases worldwide indicated that the following deficiencies are most problematic:

- base officials' apparent discretion to withhold embarrassing or damaging information on a case-by-case basis without further justification;
- when docketing information is produced, it lacks basic, relevant details;
- a lack of timeliness of docketing information release;
- a patronizing or intimidating attitude expressed by base officials when reporters request information; and
- an apparent ignorance reflected by some base personnel in regard to their own base policies and available information.

Reporters' perspectives

In interviewing military reporters for this analysis, the Reporters Committee spoke to seasoned journalists who had covered high-profile courts-martial and Article 32 hearings during which military officials withheld information critical to the public's understanding of the story. The reporters' anecdotes below have been parsed into categories reflecting the most frequently received complaints.

Discretion to withhold embarrassing or damaging information

A paramount function performed by any journalist is oversight — often referred to as the "watchdog" role. While most investigative journalists depend upon backchannel sources operating independently of government public affairs offices, these journalists also rely on objective sources of public information typically obtained through the federal Freedom of Information Act (FOIA) or state open records laws.

Military court reporters often find it profoundly difficult to force military officials to produce information through written FOIA requests that would place the military in a bad light. Confronted with a request for court documents related to ongoing Article 32 hearings and courts-martial, military officials have frequently argued that that such documents are "pre-decisional" and therefore exempt from disclosure under FOIA until all appeals in the case have been exhausted. Journalists on deadline therefore find the Act to be an ineffective and impractical tool for obtaining military court dockets. [7]

7 *See supra* text accompanying note 5.

One of the more compelling military crime accounts of the past several years came to light in the summer of 2006 after Tim McGlone, a reporter for *The (Norfolk) Virginian-Pilot*, introduced himself to a uniformed Navy attorney he met in a public place shortly after having started the military beat. In a conversation McGlone believes the attorney later regretted, the attorney casually suggested there were pending espionage cases the newspaper had not yet discovered.

Following up on that general tip, McGlone said he called Navy officials at Norfolk Naval Station and elsewhere for about three months, desperately trying to learn more about any pending espionage cases. Eventually, after months of denying any such cases existed, Norfolk officials publicly released the name, rank, and charges of the officer involved.

After McGlone and fellow *Pilot* reporter Kate Wiltrout wrote stories critical of the base's disclosure policy, the Navy released more information about Petty Officer 3rd Class Ariel J. Weinmann and the espionage charges he faced. The reporters ultimately learned Weinmann had been secretly held in custody for an astounding four months before his Article 32 hearing was held and the Navy made the charges public.

"The bottom line is, they never would've released this, and we never would've found out about it if it wasn't for the tip — or at least not before it was all over," said McGlone, who is protecting the identity of his original military source so the attorney will not be reprimanded.

The Navy chaplain case was another high-profile case of great public interest that was only revealed after C. Mark Brinkley — managing editor of the Springfield, Va.-based *Marine Corps Times* — "bumped into" an old, reliable source who said, "Hey, I think you guys need to know about this," according to Brinkley.

Lt. Cmdr. Lee, the Navy chaplain, pleaded guilty to sexual misconduct, aggravated assault and other charges during a Dec. 6, 2007 court-martial after he admitted to having sex with sailors of inferior rank while the chaplain was HIV-positive. The Marine Corps only acknowledged the charges on Dec. 4 after the newspaper followed up on Brinkley's tip.

A subsequent editorial published Dec. 17 in the *Marine Corps Times* and *Navy Times* noted that some of Lee's victims during the chaplain's 12-year military career may not have known Lee was HIV-positive. Between the time Lee was first secretly charged with crimes related to his HIV-positive status and the court-martial — more than a month — those victims not only may have missed opportunities for treatment but also could have unknowingly spread the disease, the editorial asserted.

"I trust that the military is going to do the right thing most of the time, but it doesn't mean that we don't think that we shouldn't keep an eye on them," Brinkley said in an interview. "I think everyone is better off for the watchdog role of the press, and, in my mind, the only way to ensure that everything is done above board is to ensure they always have a fear that somebody is going to find out it wasn't."

Scarcity of relevant detail

Even reporters who have access to the best court dockets the military has to offer have reason to complain. The Marine Corps base at Camp Pendleton in Southern California, for example, has one of the most comprehensive docketing systems in the military. Along with the full name of the service member charged and the date, time, and location of the upcoming proceeding, the site includes details such as a service member's unit and the likely duration of the proceeding. Significantly, however, the sheet includes no factual detail relating to Uniform Code of Military Justice (UCMJ) provisions under which the service member has been charged.

Without those facts, reporters are often left clueless as to the severity of the charges, or — as in some cases in which the UCMJ provisions encompass a large assortment of infractions — even the most basic idea as to what type of crime the service member allegedly committed.

The Army is particularly unusual among the five branches in its docketing disclosure policies, as it offers an online site that allows the public to look up dockets by base and often discloses proceedings scheduled days and weeks in advance. However, the Army site tends to include less information than the Camp Pendleton site. Reporters attempting to prioritize their time between stories consistently struggle to determine which Army cases deserve their and the public's attention.

After the Weinmann case, Wiltrout said her newspaper published multiple stories criticizing the Navy's docketing procedures, accusing the Navy of intentionally withholding the information from the public to protect its image. As a result, Wiltrout said the Norfolk base temporarily instituted a new system for a few months that included remarkably comprehensive detail concerning upcoming court proceedings on the base. By January 2007, however, Wiltrout said the Norfolk base's policy abruptly changed with little explanation from Navy officials. Wiltrout said she now receives just "minimal information" and when she asks for court scheduling information, the base will only provide information up to five days in advance.

Lack of timeliness

Many military journalists interviewed for this analysis said that when military base officials disclose information to the press, the information is often released at the last minute or during off-hours. Even at bases where docketing systems are posted online, the calendars are sometimes only updated one or two business days before the proceeding is scheduled to be held, reporters said.

Given the potentially dire health issues at stake in the Navy chaplain case, few examples better illustrate the implications of allowing the military to release information only when it sees fit to do so. After the *Marine Corps Times* learned of the story through an independent source, military officials claimed they were preparing to alert the press to the chaplain case, Brinkley said. But that assurance was given to the paper just hours before the court-martial's start, he said. "Now, you had to give [Marine Corps officials] the benefit of the doubt, because we were out in front of it," Brinkley said. "But, in fact, if that was the plan, the plan would've been to give the press a minimal amount of notice."

Moni Basu, a reporter at the *Atlanta Journal-Constitution* for 18 years, has been covering the Iraq War since 2002. During the summer of 2007, Basu was assigned to the case of Army Spc. Christopher P. Shore, who was charged with murdering an Iraqi detainee in June 2007 during a raid in the northern Iraqi city of Kirkuk. Shore, a Georgia native who claimed his platoon sergeant ordered him to "finish" the wounded detainee, was tried by court-martial at Schofield Barracks in Hawaii.

In reporting the story beginning in July 2007, Basu said she was initially tipped off by a report from another newspaper rather than a military officials. After then contacting an Army PAO, Basu said she received a charge sheet that included no factual detail about the alleged crimes. In addition to the general charges filed against Shore, Basu said the PAO would only tell her that the soldier's Article 32 hearing was "sometime in October."

"As far as the details of the case, the Army wasn't about to tell us anything more than what was on that charge sheet," said Basu, who has been embedded with American military units in Iraq seven times since the war began. Basu said she became reliant on Shore's father and civilian defense attorney to learn any details of the case. Eventually Basu traveled from the *Journal-Constitution*'s bureau in Atlanta to Hawaii to cover Shore's Article 32 hearing in October. She missed the court-martial because she returned to a new embed assignment in Iraq when it was held.

When Basu returned from Iraq, she waited patiently for the military to release a decision in Shore's case, which was particularly important to the *Journal-Constitution*'s readership because Shore was the first Georgia-born soldier charged with murder during Operation Enduring Freedom. Despite the fact that Basu had written several stories about the Shore case before and after Shore's criminal proceedings and that she had alerted Army PAOs as to her interest, Basu only learned of the court's initial decision in the matter from the defense attorney, the day after the decision was released. In February 2008, Shore was found guilty of aggravated assault with a loaded firearm instead of murder.[8] "If I'd waited for [the base PAO] to send it to me, we would've been late with the story," Basu said.

Back on the West Coast, *North County Times* military reporter Teri Figueroa noted that even with Camp Pendleton's relatively comprehensive system, the base's docket is typically only updated the Thursday or Friday just before the following week's proceedings are scheduled. The short notice leaves Figueroa little time to adequately prepare for the complex criminal proceedings that often ensue just days after she is made aware of them. "It's a sliver of access. It's like a crack in the door," said Figueroa, in describing Camp Pendleton's docketing system. "I get a little bit of access, but I need more for it to be viable public access — credible, legitimate public access without having to beg."

Patronizing or intimidating attitude

Too often military officials exploit their secrecy prerogative and withhold non-classified information that affects civilians on American streets rather than soldiers on foreign battlefields. Military justice officials, in particular, frequently seem either oblivious to their disclosure responsibilities or downright hostile to such openness. "It's that attitude that bothers us a lot, which is something like, 'We let you be here, so that should be enough,'" said Wiltrout, of the *Virginian-Pilot*. "How dare we ask a question about what it all meant?"

In conducting their survey, Tully Center researchers reported that base officials often responded abruptly and dismissively, offering little help or guidance in regard to the researchers most basic questions. Upon being asked for Article 32 docketing information, an official at one Army base rudely told the researcher to "Google it." Several reporters interviewed by the Reporters Committee for this analysis said they have experienced similar treatment.

Seth Robson, a *Stars and Stripes* reporter who covers U.S. Army Garrison Grafenwoehr in Germany, recalled the belligerent resistance he encountered as he wrote a series of stories concerning an incident in 2006 during which American soldiers were charged with beating German civilians with retractable clubs in Amberg, Germany. "I received warnings from [Joint Multinational Training Command] public affairs

8 Shore's conviction was later reduced by the convening authority to simple assault.

officials that continued coverage of the case would affect my career," Robson recalled.

With his requests for court-martial information concerning the case essentially ignored by installation officials, Robson said he missed the courts-martial and did not learn any of the corresponding adjudicatory details until he traveled to Iraq and interviewed soldiers who were in the same Army unit as those who had been charged in the beatings case. With the interviewed soldiers' information in hand, Robson said he was eventually able to persuade military officials, after many additional months of requests, to release transcripts from some of the courts-martial that had occurred in the case. "In my opinion, the Army wanted the thing swept under the rug so they held the courts-martial in secret," Robson said.

Covering the U.S. Army Garrison in Baumholder, Germany, Vandiver has recently written stories for *Stars and Stripes* on the case of Army Capt. Robert Przybylski, who was charged in November 2007 with desertion. After Przybylski's subsequent Article 32 hearing was on hold for months with virtually no explanation from base officials for the delay, Vandiver wrote a story that quoted an official's curt response to the reporter's query: "The Article 32, it's still pending. It takes as long as it takes."

In covering Yokosuka Naval Base in Japan, *Stars and Stripes* reporter Allison Batdorff recalled arriving at the base to cover her new beat a few years ago and asking for base's court docket. She said the base PAO literally laughed in her face. "You *Stripes* reporters never learn," Batdorff remembers the PAO telling her. "If you want court information, I suggest you make friends with the lawyers. Take them out for a few drinks — that's the only way you'll get anything."

Ignorance

The Tully Center survey findings provided below demonstrate that some base officials appear unaware of their base's policies in regard to court docketing disclosures. In some cases, base personnel rejected Tully Center requests for information despite the fact that at least some of the information denied could be found on base or branch-wide Web site. In other cases, the base officials simply admitted that they did not know their base's policy in regard to disclosing such information.

Court access in civilian proceedings

The absence of publicly available court dockets within the military justice system appears oddly inconsistent with the public right of access to criminal trials recognized by the nation's highest civilian and military courts. Some federal courts have found that the scarcity of such dockets is in itself unconstitutional.[9]

In 1980, the U.S. Supreme Court declared that the public has a presumptive right to attend criminal trials in the absence of an overriding interest that should prevent such access.[10] In that landmark First Amendment case, the Supreme Court found in *Richmond Newspapers, Inc. v. Virginia* that the qualified right to attend criminal trials derives from centuries of American and English legal history, going back to before the Norman Conquest, through the British colonization of America and into the formative years of the United States.[11]

Legendary British legal minds of the 17th, 18th, and 19th centuries ranging from Matthew Hale to William Blackstone to Jeremy Bentham espoused the virtues of public access to criminal trials, the Supreme Court noted.[12] All three commentators recognized that a public presence during trials had the effect of assuring the general citizenry that its judicial system was operating fairly and proficiently. Public access has also served a unique oversight function. With members of the general populace in attendance, witnesses are less likely to perjure themselves. Trial participants in general are more likely to perform competently, without succumbing to personal biases and other corrupt influences. In short, public access to trials has long been an integral component to a fair trial, the Court noted.[13]

Hand-in-hand with fair trial objectives, First Amendment guarantees that protect the press, free expression and robust debate would also be short-changed in the absence of public access to criminal trials. As the Court acknowledged in *Richmond Newspapers*, few issues concern residents more than the enforcement and adjudication of crime in their local communities.[14] The adjudication of criminal matters has the effect of illustrating contemporary examples of society's most pressing conundrums. Furthermore, the discussion and analysis emanating from the courtroom often supplies the foundational background for debate over the effective means of deterring criminals as well as the controversial moral questions that inevitably arise.[15]

In addition to helping promote a perception of fairness,

9 *See, e.g., Hartford Courant v. Pelligrino*, 380 F.3d 83, 86 (2d Cir. 2004) (holding that "the press and public have a qualified First Amendment right of access to docket sheets"); *United States v. Valenti*, 987 F.2d 708, 715 (11th Cir. 1993) (holding that a court's dual public and secret docketing system for criminal cases "is an unconstitutional infringement on the public and press's qualified right of access to criminal proceedings").

10 *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980).

11 *Id.* at 565-69.

12 *Id.* at 569-70

13 *Id.*

14 *See id.* at 570-72.

15 *See id.*

an open courtroom has the added benefit of fostering a more informed and well-educated public. A citizenry exposed to a fair judicial system has witnessed a model for conflict resolution, rational reasoning and ethical balancing. As the marketplace of ideas theory of free expression teaches, a democracy is better served by more voices added to the debate rather than less.[16] When those voices originate from informed and educated speakers, the quality of the debate and the democracy it fuels is only enhanced. In *Richmond Newspapers*, the Court used these important policy principles as the basis for holding that a Virginia trial court judge could not deny the press and public access to a criminal trial without making specific findings showing there was an overriding interest mandating such a closure that was not achievable through less restrictive means.[17]

The Supreme Court followed up its holding in *Richmond Newspapers* by finding public rights of access to jury selection proceedings as well as preliminary hearings that precede criminal trials. Using much the same policy rationale as in *Richmond Newspapers*, the Court established a two-part test for determining whether the press and public have a First Amendment right of access to criminal trials. A court must first consider "whether the place and process have been historically open to the press and general public."[18] A court must also consider "whether public access plays a significant positive role in the functioning of the particular process in question."[19]

Public access to military proceedings

As outlined below, the nation's highest military court has ultimately adopted the Supreme Court's holdings regarding open criminal trials. But where civilian criminal courts have a clearly evident history of openness, military courts have a spottier record, reflecting the general proclivity toward secrecy that the military in general has often expressed in the name of national security concerns.

On the side of openness, one of American history's most famous military-oriented trials was conducted in the wake of the so-called "Boston Massacre" of 1770 with relative transparency, given the fact that the public and press were both permitted to observe the trial, albeit with periodic restrictions consistent with British law of the time.[20] Supreme Court Chief Justice Warren Burger cited the Boston Massacre case in his *Press Enterprise I* decision, which recognized a public right of access to jury selection proceedings, as a prime example of the British and American tradition of openness during criminal trials.[21] In the Boston Massacre case, Capt. Thomas Preston and other British soldiers under his command were tried after firing upon and killing five American colonists who had been protesting amid a hostile crowd. Despite the inflamed passions against British rule of the time, the trials were open to the public, who watched as future founding father John Adams successfully defended Preston and the British soldiers. While the press was not permitted to print an account while the trial was being conducted, newspapers actively covered the pre-trial depositions, allowing both sides of the story to be told.[22]

During the Civil War, the press was often unabashedly abused, as newspapers were shut down for sedition and newspaper editors were arrested for demonstrating alleged disloyalty to the federal government.[23] Secret military tribunals were summoned to punish civilian dissenters, a practice that went unchecked until the Supreme Court ruled in 1866 that military courts could not be used to try American civilians where civilian courts were available.[24]

Following John Wilkes Booth's assassination of President Abraham Lincoln and Booth's subsequent death at the hands of Union soldiers as he fled arrest, Booth's alleged accomplices were tried through military tribunals. The tribunals were initially closed to the press and public because Secretary of War Edwin Stanton believed the trials would be too "explosive" to share with the public. But after giving testimony during one of the tribunals, General Ulysses S. Grant was sufficiently persuaded by the public outcry against the closed-door policy to meet with President Andrew Johnson and convince him to open the tribunals to the press and public a day later.[25]

One of the more notorious examples of secret military proceedings occurred during World War II in 1942, after eight Germans were captured while landing submarines in Long Island, New York and on a beach near Jacksonville, Florida loaded with bombs, maps and cash.[26] All eight Germans were accused of being Nazi saboteurs, and President Franklin D. Roosevelt issued a military order so that the eight Germans could be tried in a specially formed military commission that was closed to the press and public. Sanctioned by the Supreme Court, the commission employed relaxed rules of evidence and a lower standard of guilt that

16 *See, e.g.*, Stephen M. Feldman, *Free Speech, World War I, and Republican Democracy: The Internal and External Holmes*, 6 First Amend. L. Rev. 192, 235-36 (2008) (recounting Justice Holmes' dissent in *Abrams v. United States*, 250 U.S. 616 (1919) (Holmes, J., dissenting) and noting that, "[f]rom the Holmesian standpoint, the government generally should allow speech and writing to flow into a marketplace of ideas. From this free exchange of ideas, the truth will emerge").

17 *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 581 (1980).

18 *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 8 (1986) ("Press-Enterprise II").

19 *Id.*

20 Edward J. Klaris, *The Press and the Public's First Amendment Right of Access to Terrorism on Trial: A Position Paper*, 22 Cardozo Arts & Ent. L.J. 767, 773 (2005).

21 *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 508 (1984) ("Press-Enterprise I").

22 *See* Klaris, *supra* note 20, at 773-78.

23 *Id.* at 778-82.

24 *Id.*

25 *Id.* at 781-82.

26 *Id.* at 782-83.

"was not beyond a reasonable doubt, but what a 'reasonable man' would determine.'"[27]

The trials of the eight men were held in early July 1942 in near-total secrecy. During the days leading up to the trial, the exact time, location and participants in the trial were withheld from reporters and the public. Twelve journalists were given a brief 15-minute "tour" of the room in which the trial was held, but otherwise virtually no substantive information concerning the trial was released to the public. Once the location of the proceedings was revealed, heavy black curtains were hung from the windows of the hearing room.[28]

Six of the eight alleged saboteurs were executed by electric chair within days of the trial's conclusion. Years later, it was revealed that two of the accused German saboteurs had actually been informants who had played an essential role in stopping the six who were ultimately put to death. Confidential files sealed during the trial revealed that the federal government had knowingly convicted the two innocent informants, in part, the files suggested, so that the government could take full credit for the capture of the other six saboteurs.[29] While the two informants were ultimately granted clemency in 1948, they still spent six years in prison and were eventually deported to Germany where at least one the informants was branded a traitor for turning in his countrymen.[30]

Relevant military court rulings regarding public access

With these historical events as prologue, military courts have since employed "strict scrutiny" to determine if a court-martial may be closed, deriving that test from the Supreme Court's *Richmond Newspapers* line of cases.[31] Even before *Richmond Newspapers*, however, military courts were already recognizing a constitutionally based mandate for open criminal trials.

In 1977, the U.S. Court of Military Appeals (USCMA) cited the Sixth Amendment right to a fair trial in justifying an Air Force airman's right to a public court-martial to adjudicate the espionage-related charges against him. In *United States v. Grunden*, the court ruled that simply citing "security" or "military necessity" concerns did not automatically authorize a military court to close its doors to the public. Rather, the court stated that "as a general rule, the public shall be permitted to attend open sessions of court martial."[32] Portions of a court-martial could be closed, the court said, "only to prevent the disclosure of classified information."[33]

In *United States v. Hershey* in 1985, the USCMA directly cited the *Richmond Newspapers* decision and its application of First Amendment guarantees in finding that strict scrutiny should have been applied before a military judge closed a court-martial to the public while a child testified about her father.[34] In noting that the most stringent constitutional test should have been applied, the military's high court also said the trial court could consider such factors as the age and psychological maturity of the witness, the nature of the crime, the desires of the victim, and the interests of parents and relatives.[35]

Two years later in *United States v. Travers*, the USCMA further emphasized that only an "overriding interest" could overcome the presumption of openness to courts-martial.[36] To close a court-martial, the military high court directed lower courts to make findings showing "that closure is essential to preserve higher values and is narrowly tailored to serve that interest."[37] In applying these standards, the *Travers* court upheld the denial of closure of a pre-sentencing hearing during which the defendant had claimed that opening the proceedings to the public would have embarrassingly revealed his role as an informant.[38]

The military's high court, which became the U.S. Court of Appeals for the Armed Forces by an act of Congress in 1994, further applied the presumption of openness to preliminary Article 32 hearings. In *ABC, Inc. v. Powell*, the court held that the preliminary hearing in the sexual misconduct case against Sgt. Mag. Gene McKinney had to remain open to the public unless the Army could show a specific and substantial need for secrecy.[39]

Civilian court docketing

Most civilian courts have long produced standardized and relatively ubiquitous docketing systems. Federal civilian courts offer the Public Access to Court Electronic Records system, commonly known as "PACER," to make a court's

27 *Id.* at 784.

28 Jack Goldsmith & Cass Sunstein, *Military Tribunals and Legal Culture: What a Difference Sixty Years Makes*, 19 Const. Comment 261, 266 (2002).

29 *Id.* at 787-88.

30 *Id.* at 788.

31 *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 581 (1980) (recognizing a First Amendment public right of access to criminal trials); *see also Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984) ("Press Enterprise I") (recognizing a First Amendment public right of access to criminal jury selection hearings); *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) ("Press Enterprise II") (recognizing a First Amendment public right of access to criminal preliminary hearings).

32 2 M.J. 116, 121 (C.M.A. 1977).

33 *Id.*

34 20 M.J. 433 (C.M.A. 1985).

35 *Id.*

36 25 M.J. 61, 62 (C.M.A. 1987).

37 *Id.* at 62.

38 *Id.* at 63.

39 47 M.J. 363 (C.A.A.F. 1997).

calendar and case document information publicly available.[40] In addition to scheduling information, PACER lists a case's participants and a compilation of case detail including causes of action, the legal subjects implicated and a chronology of previous case events entered into the case record.

Many state courts have docketing systems posted on each individual court's Web site with information similar to what is available from PACER.[41] While PACER charges a relatively small fee to use its services, the sites for individual state and federal courts, which typically do not supply as much detailed information as expeditiously as PACER, are often free to the public.

Because civilian courts dockets have been so prevalent, civilian litigation on the issue has been relatively infrequent.[42] While some federal circuit courts have ruled there is a qualified First Amendment right to view civilian court dockets,[43] the Supreme Court has yet to rule on the issue. While some commentators argue that a First Amendment right of access to criminal proceedings would be meaningless without a corresponding right to view criminal court dockets, that view has yet to be firmly solidified through case law.[44]

Military statutes and regulations

While the American military justice system must not offend the U.S. Constitution, federal treaties and federal statutes, military law is primarily bound by the UCMJ.[45] Enacted by Congress in 1950, the UCMJ resulted from "a great deal of criticism of the court-martial systems" of the armed forces.[46] According to one legal commentator and former general counsel to the Department of Defense, "[i]t was clear that many felt that the court-martial system was unfair and had been used more as an instrument of discipline than of justice."[47]

As "Article I" courts subject to congressional mandates such as the UCMJ,[48] which includes the military's criminal code, military courts are otherwise guided by the Manual for Courts-Martial (MCM). Created by an executive order in 1984, the MCM contains regulations — further divided into the Rules for Courts-Martial (RCM) and the Military Rules of Evidence (MRE) — that prescribe the day-to-day procedures for military courts.[49] While the MCM governs all five military branches covering virtually all aspects of military law, individual branches have further interpreted the MCM into their own branch-specific regulations.[50]

The military has jurisdiction over a given criminal matter when the accused is a member of the armed forces on active duty or when the accused fits into one of several other categories defined within the MCM. These other categories include certain retired members of regular and reserve components of the armed forces, enemy prisoners of war in military custody, certain federal agency personnel assigned to serve with the military and, in some cases, civilians accompanying the military during times of war.[51]

After being charged with an offense under the UCMJ, the accused is brought before his immediate commander, who presides over a preliminary examination of the charges. The commander has the option of dismissing the charges, initiating administrative action, imposing nonjudicial punishment, preferring the charges, or forwarding the matter to a higher or subordinate authority for disposition of the charges.[52] During preferral, the commander previews the charges and reads them to the accused from a charge sheet, which must be signed under oath by the commander.[53]

If the commander decides the matter should proceed, the commander forwards the charge sheet to another military officer known as the convening authority (CA). After reviewing the charges, the CA may initiate "summary" or "special" courts-martial proceedings, which carry limitations on the types and severity of punishment that may be imposed upon a defendant. The CA also has the option of appointing an investigating officer to hold a preliminary hearing, commonly referred to as an "Article 32 hearing," which is similar to a grand jury proceeding within the civilian justice system. Following the Article 32 hearing, the investigating officer prepares a nonbinding report for the CA, who may

40 Public Access to Court Electronic Records, *at* http://pacer.psc.uscourts.gov/pacerdesc.html.

41 *See, e.g.*, Web site of the Supreme Court of Georgia, *at* http://www.gasupreme.us/computer_docket.php.

42 Meliah Thomas, *The First Amendment Right of Access to Docket Sheets*, 94 Cal. L. Rev. 1537, 1560 (2006) (stating that "[r]elatively few courts have passed on the public's First Amendment right of access to docket sheets, but most of those addressing the issue found that such a right exists").

43 *See, e.g.*, *Hartford Courant v. Pelligrino*, 380 F.3d 83, 86 (2d Cir. 2004) (holding that "the press and public have a qualified First Amendment right of access to docket sheets"); *United States v. Valenti*, 987 F.2d 708, 715 (11th Cir. 1993) (holding that a court's dual public and secret docketing system for criminal cases "is an unconstitutional infringement on the public and press's qualified right of access to criminal proceedings").

44 Thomas, *supra* note 42.

45 Codified in 10 U.S.C. §§ 801-941.

46 Felix E. Larkin, *Professor Edmund M. Morgan and the Drafting of the Uniform Code*, 28 Mil. L. Rev. i, 7 (1965).

47 *Id.*

48 The contemporary military justice system derives from the Uniform Code of Military Justice, codified in 10 U.S.C. §§ 801-941, which was enacted by Congress in 1950 as authorized by Article I of the U.S. Constitution. "Article I courts" deriving from congressional statutes are distinguishable from "Article III courts," which form the federal judiciary as a separate and independent branch of the federal government.

49 Exec. Order No. 12,473, 49 Fed. Reg. 17,152 (April 13, 1984).

50 *See, e.g.*, Rules of Practice Before Army Courts-Martial (U.S. Army Trial Judiciary 2004).

51 Art. 2, Uniform Code of Military Justice, M.C.M. (2008); 10 U.S.C. § 802.

52 Manual for Courts-Martial, United States, R.C.M. 306(c) (2008). When charges are preferred, the presiding military official reads the charges to the defendant. During this process, a charge sheet is signed by both the military official and the accused. Manual for Courts-Martial, United States, R.C.M. 307 (2008).

53 Manual for Courts-Martial, United States, R.C.M. 307(b) (2008).

make recommendations to convene a general court-martial. A general court-martial, which is convened for more serious crimes, carries the potential for stiffer penalties and permits the accused to choose whether the case will be heard by a single military judge or a judge plus five other officers.[54]

There are no statutes or regulations mandating the production of publicly available docketing within the military court system. Generally speaking, the RCM provisions that could prospectively apply to docketing appear to be Rule 801, which generally outlines a military judge's responsibilities,[55] and Rule 806, which sets regulations for managing public attendance at courts-martial.[56]

In September 2006, the National Institute of Military Justice (NIMJ), working with American University's Washington College of Law, sent identical letters to the Judge Advocates General (JAGs) of each of the five military branches, requesting their assistance in creating a complete, cross-branch docketing system for military courts. In the letter, then-Executive Director Kathleen Duignan emphasized that the docketing system should be available online to the general public. "Any unwarranted lack of transparency only encourages the kind of misconceptions about military justice that all of us who have practiced in the field are familiar with," Duignan wrote.

Responding in a joint letter, the JAGs rejected the idea, arguing that "teaming" up with a private entity such as the NIMJ would be inappropriate for a government agency, and that such a docketing system would otherwise trigger privacy concerns.[57] "We recognize that this is not the response that you desired," the JAGs wrote. "We are committed to increasing the public's understanding and awareness of the military justice system in a manner consistent with our obligation to protect the privacy and dignity of our service members."

Contrary to the JAGs' joint response, the U.S. Army Trial Judiciary posted a branch-wide docketing system in early September 2007 after at least 10 months of deliberations on the subject, according to email messages obtained by the Reporters Committee through a FOIA request.[58] While the information disclosed within the Army system is elementary and lacks specific detail related to the charges against the defendant service member, it still offers dramatically more information than military courts within other branches — which, in many cases, is nothing.

The Tully Center's findings

The Reporters Committee has worked with the Tully Center in analyzing the need for a centralized and standardized military docketing system that is accessible to the public. For its part, the Tully Center contacted 99 military installations worldwide between October 2007 and March 2008 to determine each installation's court docketing policies. The number of installations contacted represents 27 percent of the non-National Guard installations worldwide. While this sample size is not statistically significant, the Reporters Committee and Tully Center believe contacting more than one-fourth of non-National Guard military installations still produces an illuminating snapshot of the military courts docketing issue.

An inability to actually speak to officials at certain bases further narrowed the survey's representative sample. Tully researchers made at least three attempts to contact each installation on different days and gained responses from 75 installations. The final response rate concerning the initial 99 bases contacted was therefore 76 percent.

The researchers' protocol included a set series of questions addressing public access to schedules for Article 32 hearings and courts-martial on the base contacted. Base officials were also asked if members of the general public could visit the base and, if applicable, what procedures were in place to assist those civilian visitors. During each call, the researchers initially asked for "military justice" or the "legal department." The callers explained that they were researchers from Syracuse University and that the installation contacted had been randomly selected to respond to a survey.

The survey results were coded on a four-point scale to determine: if the military court's full docket was available to the public; if partial court docketing information was available to the public (e.g., only a date or time and not the charged soldier's name or the charge); if no information was available to the public; and if the survey was not applicable. The latter category included the few bases that are designated as recreational facilities, that reported themselves as small installations at which court proceedings are not held, and that reported their facilities as rarely occupied.

Of the 75 bases with officials who responded to Tully Center callers:

- **45 percent** (34 bases) refused to provide any information for upcoming Article 32 hearings.
- **37 percent** (28 bases) declined to disclose courts-martial schedules.
- **Just 27 percent** (20 bases) provided a complete docket for upcoming Article 32 hearings.
- **Just 36 percent** (27 bases) provided a complete docket for upcoming courts-martial schedules.

54 In capital cases, the case must be heard by a judge and additional officers.

55 Manual for Courts-Martial, United States, R.C.M. 801 (2008).

56 Manual for Courts-Martial, United States, R.C.M. 806 (2008).

57 A Coast Guard representative did not sign the letter addressed to the NIMJ.

58 *See* Army Courts-Martial Docket, *available at* https://www.jagcnet.army.mil/85257345005031B1/(JAGCNETDocID)/HOME?OPENDOCUMENT

The Tully Center survey also shows that **just more than 20 percent** of the base officials who agreed to provide docketing information for Article 32 hearings and courts-martial nevertheless withheld basic details such as the defendant's name or the criminal charge at issue.

In denying Tully Center callers' requests, base personnel were often evasive, providing general, unsubstantiated reasons for withholding docketing information. For example, a Marine official at Camp Foster in Japan said the information about a court-martial probably could not be given out to the public for security reasons. The Camp Foster official said public knowledge of a court-martial could create a "potential target for something." A Navy official at a Hawaii base said that he could not give out information on a court proceeding over the phone, as he believed doing so would be a direct violation of the Privacy Act. The official directed the Tully Center caller to the Navy's public affairs officials at the Pentagon.

Additional reasons given by contacted base officials for withholding court docketing information:

- the base official did not have the information requested and could not provide guidance on where to obtain it;
- the base official stated that the installation did not conduct its own court proceedings;
- the base official stated that the installation's commanding officer or military judge would only distribute docketing information on a discretionary case-by-case basis; and
- the base official stated that members of the press and public must file a FOIA request to obtain docketing information.

The survey showed that the Navy was the least compliant in terms of granting Tully Center callers with the requested docketing information for base courts-martial. More than 57 percent of Navy survey respondents completely denied public access to the requested docketing information. The Coast Guard denied the callers' requests 22 percent of the time, the Army denied 25 percent of the requests, the Air Force denied 32 percent, and the Marines denied 43 percent.

Despite the relatively low compliance rates, some base officials offered partial information related to specific upcoming cases to Tully Center callers. For example, a legal department official at Andersen Air Force Base, Guam, said while the base did not comprehensively provide courts-martial information for public access, some details were published in the base newspaper. The Andersen official said if that was the case, he would readily give docketing information over the phone to a civilian. Officials at other bases directed Tully Center callers to file FOIA requests for court docketing information.

Several base officials inaccurately represented their own base's policies on disclosure. The U.S. Army Trial Judiciary, for example, posted a branch-wide docketing system in early September 2007. While the information disclosed within the Army system is elementary and lacks specific detail related to the charges against the defendant service member, it is a goldmine for reporters compared to what bases in some service branches offer.

And yet, the Army officials contacted at Redstone Arsenal in Alabama, Fort Carson in Colorado, Fort Campbell in Kentucky, Fort Meade in Maryland, and Fort Jackson in South Carolina all did not mention the docketing site to Tully Center callers. In some instances, the Tully Center survey shows, officials at the contacted Army bases either directly rejected callers' requests or otherwise admitted they did not know if the public was entitled to court docketing information.

Potential solutions

While amending the UCMJ to mandate military court docketing is an option, military law experts interviewed for this article said they believed the most effective way to implement a better cross-branch, standardized system may be for the Department of Defense to enact an administrative rule creating such a system. The rule could be incorporated into general Department of Defense regulations or otherwise added through executive order as an amendment to the MCM.

A docketing production effort would not be labor-intensive, because military judges and their staffs already produce internal dockets that are regularly distributed to attorneys involved in court proceedings, said Neal Puckett, a civilian defense attorney who once served as a military trial judge himself at a U.S. base in Okinawa, Japan. "It's a couple of keystrokes nowadays," Puckett said. "In other words, transmitting what they already do every week."

A pervasive complaint by military courts reporters is that current military docketing systems typically only include the UCMJ "article" provision in listing the charges in any given case. Because some provisions, such as Article 134, include a wide variety of offenses ranging from voluntary manslaughter to abusing a public animal, journalists and members of the public are often left clueless as to how significant a charge may be, Puckett said. As a remedy, complete charging sheets should be attached to docketed case listings, redacting components that implicate privacy concerns, said attorney Eugene Fidell, a partner at Feldesman Tucker Leifer Fidell LLP in Washington, D.C., and the president of the National Institute of Military Justice (NIMJ).

The most formidable impediment to change, however, may be the so-called military "culture" that is traditionally resistant to criticism outside the ordinary chain-of-command. "It may just be that [openness] doesn't come naturally" to

the military, Fidell said. "Maybe this is all an artifact of the fact that we have a command center system that is highly decentralized with a multitude of convening authorities, each of whom basically has its own jurisdiction." Puckett noted that the military court system was initiated as an in-house disciplinary process as opposed to a "justice" system operating to ensure the overall public welfare. With no regulations in place to force disclosure, military officials have little incentive to disclose criminal offenses that are potentially embarrassing, he said. Military leaders need to update their perceptions in this regard, Fidell said, to ensure public confidence in a military justice system that historically has been viewed as "second-rate" and prone to abuses stemming, in part, from the secret military commissions held during World War II. "This is not something that any military service is going to want to advertise," Fidell said. "You don't hire the Goodyear Blimp to talk about how many people you've court-martialed. But [transparency] is part of running an armed force in a democratic society committed to the rule of law."

Recommendations and Conclusions

Obstacles to public access to court docketing information effectively denies the press and public its First Amendment right of access to criminal trials, whether in the civilian or military system. The Tully Center survey findings combined with the anecdotal evidence accumulated through this study show that such obstacles exist within the military justice system.

In addressing the current system's shortcomings, the Reporters Committee recommends the following:[59]

1. All military courts should produce standardized scheduling dockets that are available to the general public on the Internet, through a hyperlink that is salient and easily recognizable on each installation's Web site.

2. Officials from individual branches must have access to the docketing Web site, but the docketing Web site should be centralized through supervision by a Department of Defense official who is not directly affiliated with any one particular military base.

3. Each and every military court proceeding should be listed on the docketing Web site, which should be organized by Judicial District, in a manner similar to the Army Trial Judiciary site.

4. At a minimum, convening authorities for each military court should provide the docketing administrator with the following components:
   a. the time, date and location of the proceeding;
   b. the full names of all proceeding participants; and
   c. the specific charges and basic factual detail that lead to the charges.

5. Dockets should be made publicly available online or through direct requests to military court officials at least two weeks before the proceeding is scheduled or as soon as reasonably possible. Dockets should be updated in real time, as new information is received by military court personnel.

6. Dockets should be automatically available online regardless of whether a member of the public or press has made a request under the Freedom of Information Act.

7. Base personnel should be sufficiently trained to respond, with professionalism and courtesy, to the public's questions concerning upcoming military court proceedings.

The most effective way to implement this military court docketing system would be by amending the UCMJ. Such amendments could be better implemented by legislators, rather than executive branch administrative officials, because members of Congress would be better insulated from political pressures connected to the military.

Alternatively, the docketing system recommended above could be implemented through amendments to the RCM. More specifically, the new system could be implemented by amending RCM Rule 801, which delineates a military judge's responsibilities in presiding over court-martial proceedings, or RCM Rule 806, which instructs a military judge as to the requirements inherent in presiding over a public trial.

Regardless of the precise legislative form by which these reforms occur, the most significant characteristic of the reforms must be their standardized, indelible nature. The current system appears to operate at the discretion of individual branch officials, and, in many cases, the discretion of individual military court judges. To provide the American public with a fair and competent military justice system, the new military court docketing system must be operated independently from the whim and motive of individuals and enforceable by law.

59 These recommendations derive from the Tully Center survey and interviews conducted as part of this study. The recommendations also reflect the influence of a recent statement released by Professor Philip Alston, the United Nations Human Rights Council Special Rapporteur on extrajudicial, summary, or arbitrary executions. Alston's statement, which included recommendations for a centralized docketing system for the American military justice system, was released on June 30, 2008.