

## LAW PROFESSORS' STATEMENT ON MILITARY JUSTICE REFORM\*

August 27, 2021

In 2013, American and foreign law professors issued a [Statement on Reform of Military Justice](#). Several of its recommendations have since become law, while others remain needed. Since the issuance of that statement, public and congressional attention to military justice has persisted, fueled in large measure by concern over the armed forces' inability to reduce sexual assaults and harassment as well as, more recently, troubling indications of racial disparities in the administration of military justice. Numerous reports have been prepared on the scope of these problems and numerous suggestions—some of them mutually incompatible—have been made for their solution or at least alleviation.

Both houses of Congress have military justice reform measures under active consideration. Because this may be the rare moment in which such a measure can gain traction, we believe it is critical that Congress seize and make the most of the opportunity that circumstances have presented. We now affirm our belief that Congress should enact the remaining reforms proposed in the 2013 statement. The experience of the ensuing years has only bolstered the case for their passage.

First, Congress should ensure that charging decisions in all cases in which the permissible sentence exceeds one year are made by lawyers independent of the military chain of command, rather than by nonlawyer commanders. This reform will increase public and servicemember confidence in the impartiality, legality, and overall fairness of charging decisions. It will also work to address the problem of sexual assault in the military, which is currently exacerbated by the perception of survivors that commanders are apathetic to their concerns. While sexual assault is an especially vexing problem, it does not deserve its own separate justice system. No American jurisdiction has ever created an offense-specific adjudication process in criminal law, and the military should not be the first to so experiment.

Second, Congress should transfer the power to detail personnel to serve as court-martial members (jurors) from commanders to independent court-martial administrators. Undertaking a reform of the charging decision process without also undertaking this reform would be a half measure, as it would permit jury stacking and unlawful command influence to undermine the value added by the independent charging decision.

Third, Congress should establish a right to seek review by the Supreme Court of the United States of any final judgment of the United States Court of Appeals for the Armed Forces. At present, the overwhelming majority of court-martial convictions are statutorily excluded from Supreme Court review. This discrimination against military personnel is [indefensible](#).

---

[\*] Signers' affiliations are shown below for identification purposes only. Views expressed in this Statement are the signers' own and should not be imputed to any other person, organization, or institution of higher learning.

---

**Ian Ayres**, Professor of Law, Yale Law School

**Sahar Aziz**, Professor of Law and Chancellor's Social Justice Scholar, Rutgers Law School

**William Banks**, Board of Advisors & Distinguished Professor, Syracuse University

**John S. Beckerman**, former Associate Dean & Visiting Professor, Rutgers Law School

**John H. Blume**, Samuel F. Leibowitz Professor of Trial Techniques, Cornell Law School

**Beth Caldwell**, Associate Professor of Law, Southwestern Law School

**Erwin Chemerinsky**, Dean and Jesse H. Choper Distinguished Professor of Law, University of California, Berkeley School of Law

**John Dehn**, Associate Professor, Loyola University Chicago School of Law; U.S. Army (ret.), 1990-2013

**Laura Dickinson**, Professor, George Washington University Law School

**Colonel Michel W. Drapeau, OMM, CD, LL.L., LL.B.**, Professor of Law, University of Ottawa (Ontario, Canada); Canadian Army (ret.), 1959-93

**Stephen Dycus**, Professor Emeritus, Vermont Law School; Visiting Professor, U.S. Military Academy, 1991-92

**Stewart I. Edelstein**, Clinical Visiting Lecturer in Law, Yale Law School, 1994-2014

**Eugene R. Fidell**, Adjunct Professor of Law, NYU School of Law; Senior Research Scholar in Law, Yale Law School; Judge Advocate, U.S. Coast Guard, 1969-72

**Brenner M. Fissell**, Associate Professor of Law, Hofstra University

**Brian P. Flanagan**, Attorney at Law & Proctor in Admiralty; Adjunct Professor for Admiralty Law, Suffolk University Law School; U.S. Coast Guard, 1978-85

**Matthew Fletcher**, Professor of Law & Director of the Indigenous Law & Policy Center, Michigan State University

**Lawrence J. Fox**, Senior Research Scholar in Law, Yale Law School

**Eric M. Freedman**, Siggie B. Wilzig Distinguished Professor of Constitutional Rights, Hofstra Law School

**David Glazier**, Professor of Law, LMU Loyola Law School; Surface Warfare Officer, U.S. Navy, 1980-2001

**Robert K. Goldman**, Professor of Law & Louis C James Scholar, American University Washington College of Law

**Amos Guiora**, Professor of Law, University of Utah, SJ Quinney College of Law

**Jonathan Hafetz**, Professor of Law, Seton Hall University School of Law

**Elizabeth L. Hillman**, President, Mills College; Professor of Law, University of California, Hastings College of the Law (2008-2016); Professor of Law, Rutgers University School of Law, Camden (2000-2008); U.S. Air Force, 1989-1996

**Todd Huntley**, Director, National Security Law Program & Lecturer in Law, Georgetown University Law Center; Captain, U.S. Navy JAG Corps (ret.), 1997-2020

**Joshua Kastenber**, Associate Professor of Law, University of New Mexico School of Law; Lieutenant Colonel, U.S. Air Force (ret.), 1993-2016

**Jethro K. Lieberman**, Martin Professor of Law Emeritus, New York Law School; Lieutenant, JAG Corps, U.S. Navy, 1968-1971

**David A Logan**, Professor of Law, Roger Williams University School of Law

**Jonathan Lurie**, Professor of Law and History (emeritus), Rutgers University; Visiting Professor of Law, United States Military Academy, 1994-1995

**Peter Margulies**, Professor of Law, Roger Williams University School of Law

**Diane H. Mazur**, Legal Research Director, Palm Center; Professor of Law Emeritus at the University of Florida; U.S. Air Force, 1979-1983

**Diane Orentlicher**, Professor of Law, Washington College of Law

**Mark Osiel**, Professor of Law, University of Iowa, College of Law

**Deborah Pearlstein**, Professor of Law & Co-Director, Floersheimer Center for Constitutional Democracy, Cardozo School of Law, Yeshiva University

**Susan D. Rozelle**, Professor of Law, Stetson University College of Law

**Gabor Rona**, Professor of Practice, Cardozo Law School

**Franklin D. Rosenblatt**, Assistant Professor of Law, Mississippi College School of Law; U.S. Army, 1998-2018

**Edward F. Sherman**, former Dean, Tulane Law School; Professor of Law (emeritus); U.S. Army, 1965-1967 (active duty); U.S. Army, 1967-1987 (reserves); Lieutenant Colonel, (ret.)

**Norman I. Silber**, Professor of Law, Maurice A. Deane School of Law, Hofstra University

**Aviam Soifer**, Professor of Law, University of Hawai'i Richardson School of Law

**Gerald Torres**, Professor of Environmental Justice and Professor of Law, Yale Law School

**Rachel E. VanLandingham**, Professor of Law, Southwestern Law School; Lieutenant Colonel, U.S. Air Force (ret.)

**Stephen Wizner**, William O. Douglas Clinical Professor Emeritus of Law at Yale Law School; U.S. Army Reserves, 1960-66

**Gideon Yaffe**, Wesley Newcomb Hohfeld Professor of Jurisprudence, Yale Law School

**Donald N. Zillman**, Emeritus Professor of Law, University of Maine Law School; U.S. Army JAG Corps, Active Duty 1970-74; Individual Ready Reserve, 1974-86

**David F. Addlestone**, former Adjunct Instructor, Georgetown University School of Law; Judge Advocate, U.S. Air Force, 1966-68