

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Pro Publica, Inc. v. Butler

ProPublica · No. 22-cv-1455-BTM-KSC · Decided September 12, 2025

SUMMARY

The United States District Court for the Southern District of California considers ProPublica’s challenge to the Navy’s policies restricting public access to filings in Article 32 hearings and court-martial proceedings. The court rejects the political-question and mootness arguments, holds that the First Amendment right of access generally applies to such papers subject to statutory, national-security, and other compelling exceptions, and requires public notice of Article 32 proceedings. The court declines to issue a writ of mandamus because the Secretary of Defense’s duties under Article 140a are discretionary.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Barry Ted Moskowitz
JURISDICTION	United States District Court for the Southern District of California
DECIDED	September 12, 2025
DOCKET	22-cv-1455-BTM-KSC
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff sought declaratory judgment, a permanent injunction, and mandamus relief concerning public access to filings in naval Article 32 hearings and court-martial proceedings. The parties moved for summary judgment, and the Government moved to dismiss under the political question doctrine.
STANDARD OF REVIEW	Summary judgment is appropriate where no genuine dispute of material fact exists and the moving party is entitled to judgment as a matter of law. The political-question issue was reviewed for justiciability. Mandamus requires a clear and certain claim, a plainly prescribed ministerial duty, and no other adequate remedy, and remains within the court's discretion.
PRECEDENTIAL VALUE	persuasive

PARTIES

Pro Publica, Inc. v. Major General David J. Bligh, John Phelan, Earl G. Matthews, Pete Hegseth

TOPICS

first amendment

court martial

constitutional law

declaratory judgment

equitable relief

PRACTICE AREAS

constitutional law

military law

civil rights

criminal procedure

remedies

QUESTIONS PRESENTED

1. Whether the dispute over public access to filings in naval prosecutions presented a nonjusticiable political question.
2. Whether the Government's changed access policies and limited disclosures rendered ProPublica's claims moot.
3. Whether the First Amendment public right of access extends to Article 32 hearing papers, documentary evidence, transcripts, and related filings in court-martial proceedings.
4. Whether that right of access requires contemporaneous disclosure or permits review, redaction, and withholding based on statutory grounds, bona fide national-security concerns, and other valid and compelling reasons.
5. Whether the Government may categorically withhold records from court-martial cases ending in acquittal.
6. Whether ProPublica was entitled to a writ of mandamus compelling the Secretary to prescribe particular access standards under Article 140a.

HOLDINGS

1. The political-question doctrine does not bar adjudication of constitutional and statutory challenges to the Navy's public-access policies because determining the extent of constitutional and congressional limits on executive authority is a legal question committed to the judiciary.
2. The claims were not moot because the Government failed to show that the challenged denial of access could not or would not recur, and it continued to deny the existence of the asserted access rights.
3. The First Amendment public right of access extends to Article 32 hearings and to filings, documentary evidence, transcripts, and related papers in Article 32 and court-martial proceedings.
4. The right of access to papers from Article 32 and court-martial proceedings is not contemporaneous; the Government may review, redact, or withhold materials on statutory grounds, for bona fide national-security concerns, or for other valid and compelling reasons, but papers must generally be released within 30 days after certification of the trial record.
5. The Government may not categorically withdraw acquittal cases from public access, and it must provide at least ten days' public notice of an Article 32 proceeding.

6. Mandamus was unavailable because Article 140a leaves the Secretary's duties imprecise and discretionary, and ProPublica had other adequate relief through declaratory and equitable remedies.

KEY QUOTATIONS

“The extent to which the Constitution or Congress properly limits that power—for the public to access filings in naval prosecutions—is a legal question for courts and is not committed in the Constitution to Congress or the Executive Branch.” (at 5)

“For documentary evidence, transcripts, or related papers and filings from Article 32 and court-martial proceedings, the public right of access is not contemporaneous and is subject to withholding or redaction on statutory bases, for bona fide national security concerns, and for other valid and compelling reasons.” (at 12)

“However, the Court does reject the Government’s policy of withdrawing acquitted cases as a class from the public right of access.” (at 14)

“The Court holds that the public right of access applies to filings, documentary evidence, and related papers in Article 32 hearings and court-martial proceedings.” (at 16)

FACTUAL BACKGROUND

The Navy prosecuted Seaman Ryan Mays for the 2020 fire that severely damaged the Bonhomme Richard, a naval warship, and Mays was ultimately acquitted. ProPublica sought filings and papers from the prosecution, including materials concerning an Article 32 preliminary hearing and evidence regarding alleged Navy safety failures. The Navy denied access, including access to the full Article 32 report and transcript. During the litigation, the Government adopted new access standards and provided limited access to some filings but continued to deny a general right of access, particularly in acquittal cases.

PROCEDURAL HISTORY

ProPublica sought access to records from the court-martial prosecution of Seaman Ryan Mays after the Navy denied requests for filings, including the Article 32 hearing report and transcript. ProPublica sued federal officials in their official capacities. During the litigation, the Government adopted standards providing greater access and provided limited access to some filings, but continued to dispute the asserted right of access. The court denied dismissal, granted ProPublica partial summary judgment on declaratory and permanent-injunction relief, denied mandamus relief, and granted the Government summary judgment on the mandamus count.

DISPOSITION

other

CASES CITED

- Baker v. Carr, 369 U.S. 186, 217 (1963)
- Japan Whaling Ass’n v. Am. Cetacean Soc’y, 478 U.S. 221, 230 (1986)
- Vieth v. Jubelirer, 541 U.S. 267, 277 (2004)

- *Gilligan v. Morgan*, 413 U.S. 1, 5-12 (1973)
- *Nixon v. United States*, 506 U.S. 224 (1993)
- *Zivotofsky v. Clinton*, 566 U.S. 189, 196 (2012)
- *INS v. Chadha*, 462 U.S. 919, 942 (1983)
- *Morrison v. Olson*, 487 U.S. 654, 693 (1988)
- *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)
- *Newsom v. Trump*, 141 F.4th 1032, 1039, 1045 (9th Cir. 2025) (per curiam)
- *United States v. W. T. Grant Co.*, 345 U.S. 629, 632 (1953)
- *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 457 n.1 (2017)
- *Waller v. Georgia*, 467 U.S. 39, 44 (1984)
- *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 8-15 (1986)
- *Richmond Newspapers v. Virginia*, 448 U.S. 555, 564, 593 (1980)
- *Duncan v. Louisiana*, 391 U.S. 145, 155 (1968)
- *United States v. Castleman*, 11 M.J. 562, 564 (A.F.C.M.R. 1981)
- *United States v. Davis*, 62 M.J. 645, 647 (A.F.C.C.A. 2006)
- *ABC, Inc. v. Powell*, 47 M.J. 363, 365 (C.A.A.F. 1997)
- *United States v. Davis*, 64 M.J. 445, 446-47 (C.A.A.F. 2007)
- *United States v. Miro*, 22 M.J. 509, 511 (A.F.C.M.R. 1986)
- *Ortiz v. United States*, 585 U.S. 427, 437-38 (2018)
- *Solorio v. United States*, 483 U.S. 435, 436 (1987)
- *Nixon v. Warner Communications*, 435 U.S. 589, 597-98 (1978)
- *Oregonian Publishing Co. v. United States District Court*, 920 F.2d 1462, 1466 (9th Cir. 1990)
- *Seattle Times Co. v. United States District Court*, 845 F.2d 1513, 1517 (9th Cir. 1988)
- *Courthouse News Serv. v. Planet*, 947 F.3d 581, 592, 594 (9th Cir. 2020)
- *United States v. Antar*, 38 F.3d 1348, 1360 (3d Cir. 1994)
- *Dhiab v. Trump*, 852 F.3d 1087, 1094 (D.C. Cir. 2017)
- *N.Y. Times Co. v. United States DOJ*, 806 F.3d 682 (2d Cir. 2015)
- *United States v. Vinas*, No. 08-CR-823 (NGG), 2017 U.S. Dist. LEXIS 86724 (E.D.N.Y. June 6, 2017)
- *In re Gabapentin Patent Litig.*, 312 F. Supp. 2d 653, 664 (D.N.J. 2004)
- *ACLU v. United States DOJ*, 750 F.3d 927 (D.C. Cir. 2014)
- *Barron v. Reich*, 13 F.3d 1370, 1374 (9th Cir. 1994)
- *Fallini v. Hodel*, 783 F.2d 1343, 1345 (9th Cir. 1986)
- *Oregon Natural Resources Council v. Harrell*, 52 F.3d 1499, 1508 (9th Cir. 1995)
- *Interstate Commerce Commission v. New York, N.H. & H.R. Co.*, 287 U.S. 178, 204 (1932)
- *Wilbur v. United States*, 281 U.S. 206, 218 (1930)
- *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007)
- *Galvez v. Jaddou*, 52 F.4th 821, 831 (9th Cir. 2022)

- Marbury v. Madison, 5 U.S. 137, 1 Cranch 137, 177 (1803)
- Mesabi Metallics Co. LLC v. Cleveland-Cliffs, Inc. (In re ESML Holdings Inc.), 135 F.4th 80, 94 (3d Cir. 2025)
- United States v. Denedo, 556 U.S. 904, 918 (2009) (Roberts, C.J., concurring in part and dissenting in part)

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