



COURTS MARTIAL

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GENERAL OVERVIEW

Courts-martial in the United States are criminal trials conducted by the Military of the United States. Most commonly, courts-martial are convened to try members of the U.S. military for violations of the Uniform Code of Military Justice, which is the U.S. military's criminal code. However, they can also be convened for other purposes, including military tribunals and the enforcement of martial law in an occupied territory. Courts-martial are governed by the rules of procedure and evidence laid out in the Manual for Courts-Martial and Military Rules of Evidence, respectively.

Courts-martial are adversarial proceedings, as are all United States criminal courts. That is, lawyers representing the government and lawyers representing the accused present the facts, legal aspects, and arguments most favorably to their own respective side; a military judge determines questions of law, and the members of the panel (or military judge in a judge-alone case) determine questions of fact.

COURT MARTIAL TYPES

There are three types of courts-martial—**summary**, **special** and **general**. A conviction at a general court-martial is equivalent to a civilian conviction in a federal district court. Special court-martials are considered "federal misdemeanor courts" because they cannot impose confinement longer than one year. Summary court-martials have no civilian equivalent.

Summary Court-Martial

Trial by summary court-martial provides a simple procedure for resolution of charges of relatively minor misconduct committed by enlisted members of the military. The summary court-martial consists of one individual, typically a judge advocate. That one officer acts both as prosecuting attorney and defense counsel. The maximum punishment at a summary court martial varies with the accused's paygrade. If the accused is in the pay grade of E-4 or below, he or she can be sentenced to 30 days of confinement, reduction to pay grade E-1, or restriction for 60 days. Punishments for servicemembers in paygrades E-5 and higher are similar, except that they can only be reduced one paygrade and cannot be confined.

Military members who refuse Article 15 nonjudicial punishment can be referred for summary court-martial. Usually this decision is made after the commanding officer consults with the local JAG commander. The accused must consent to trial by summary court-martial before the court can commence.

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Special Court-Martial

A special court-martial is the intermediate court level. It consists of a military judge, trial counsel (prosecutor), defense counsel, and a minimum of three officers sitting as a panel of court members or jury. An enlisted accused may request a court composed of at least one-third enlisted personnel. An accused may also request trial by judge alone. Regardless of the offenses involved, a special court-martial sentence is limited to no more than one year confinement (or a lesser amount if the offenses have a lower maximum), forfeiture of two-third's basic pay per month for one year, a bad-conduct discharge (for enlisted personnel), and certain lesser punishments. An officer accused in a special court-martial cannot be dismissed from the service or confined.

General Court-Martial

In a general court-martial, the maximum punishment is that set for each offense under the Manual for Courts-Martial (MCM), and may include death (for certain offenses), confinement, a dishonorable or bad conduct discharge for enlisted personnel, a dismissal for officers, or a number of other forms of punishment. Before a case goes to a general court-martial, a pretrial investigation under Article 32 of the Uniform Code of Military Justice must be conducted, unless waived by the accused. An accused before any court-martial is entitled to free legal representation by military defense counsel (ADC-area defense counsel), and can also retain civilian counsel at his or her expense.

There are procedures for post-trial review in every case, although the extent of those appellate rights depends upon the punishment imposed by the court and approved by the convening authority. Cases involving a punitive discharge, dismissal, confinement for one year or more, or death will undergo automatic review by the appropriate military (Army, Navy, Air Force or Coast Guard) court of criminal appeals, unless the accused waives such review (although death sentences cannot be waived). The Court of Criminal Appeals can correct any legal error it may find, and it can reduce an excessive sentence. The accused will be assigned an appellate defense counsel to represent him or her at no cost before the Court. Civilian counsel may be retained at the accused's own expense. Beyond the Court of Criminal Appeals, the accused can petition the United States Court of Appeals for the Armed Forces for further review (review is automatic for death sentences). That court consists of 5 civilian judges, appointed for a fifteen year term, and it can correct any legal error it may find. Appellate defense counsel will also be available to assist the accused at no charge. Again, the accused can also be represented by civilian counsel, but at his or her own expense. Beyond that court, it is possible to petition the United States Supreme Court to review the case, although such petitions are rarely granted.

JURY TRIAL RIGHT IN GENERAL COURTS-MARTIAL

While the Framers guaranteed American citizens the right of a jury trial both in the text of the Constitution and in the Bill of Rights, they denied it to those serving in the armed forces. And Congress, from the beginning, has retained the long-standing practice of a convening authority personally selecting the members of a court-martial panel.

A court-martial has always been an ad hoc tribunal created and appointed by the order of a commander, called a convening authority, for the express purpose of considering a set of charges that the commander has referred to the court. The convening authority considers the statutory prescription offered by the United States Congress, those "best qualified," in selecting the panel for the court-martial. In turn, the members of the court-martial, who are generally under the command of the convening authority, take an oath to "faithfully and impartially try, according to the evidence, their conscience, and the laws applicable to trial by court-martial, the case of the accused." By their oath, the panel members expressly agree to leave behind any influence from the commander who appointed them.

The current practice in the United States Armed Forces is to appoint a number of officers to a standing panel of members.

The appointed or retained defense attorney may challenge both the military judge and members of the panel for cause. However, the military judge determines the relevance and validity of any challenge. The prosecution and defense initially possess one peremptory challenge to members of the court-martial. The accused may also challenge a member of the panel for cause "at any other time during trial when it becomes apparent that a ground for challenge exists." The Uniform Code of Military Justice (UCMJ) prohibits a convening authority from unlawfully influencing the court. A defense attorney may bring a motion to challenge the validity of the court-martial where it appears that a convening authority has unlawfully influenced court-martial members. A convicted defendant may have his case reviewed *de novo* by an intermediate military criminal court of appeal, such as the Air Force Court of Criminal Appeals, and then possible further review by the United States Court of Appeals for the Armed Forces (CAAF).