

PRE-TRIAL INVESTIGATION AND COURT MARTIAL PROCEDURES  
UNDER THE UNIFORM CODE OF MILITARY JUSTICE (UCMJ)

Upon receipt of evidence or charges of wrongdoing by any person under his command, the commanding officer of a unit takes immediate steps to determine the legitimacy of the allegations. If they are found to be true the commander may personally seek to correct the offender without sending the case to a court-martial. In more serious instances he may formally prefer charges against the individual concerned. The signed charges are then forwarded to the summary court-martial convening authority, normally a more senior commander, who then details a disinterested officer to investigate the charges under the provisions of Article 32, Uniform Code of Military Justice.

In cases that may involve a General Court Martial, an Article 32 investigation is required to "collect and examine all evidence that is essential to a determination of the guilt or innocence of the accused, as well as evidence in mitigation or extenuation." In an alleged offense that may involve either a General or Special Court Martial, an Article 32 investigation is conducted to determine what level of court martial, if any, should be employed. Only the most serious offenses are referred to General Courts Martial where the most severe punishments may be imposed. In fact, the law requires cases to be handled at the lowest level commensurate with justice.

The investigating officer (under Article 32) is required to conduct a thorough and impartial inquiry. It is similar to civilian grand jury proceedings except that under military procedures the accused and his counsel are present at all times. At the beginning of the investigation an accused is informed of the following:

- The offense(s) with which he is charged.
- His right to be represented by military lawyer counsel of his own choice or one appointed free of charge, and by civilian counsel at no expense to the government.
- The name of the accuser and the witnesses against him.
- The fact that charges are about to be investigated.
- His right to cross-examine, either personally or through his counsel, the witnesses against him, and to present anything he may desire in his own behalf, either in defense or mitigation.
- His right to have the investigating officer examine available witnesses requested by him, and his right to make or submit a statement in any form.
- That he is not required to make a statement at all concerning the offense(s) of which he is accused, and that any statement he may make may be used as evidence against him.

The report of the Article 32 investigation must include a recommendation as to the disposition of the charges. It may recommend trial at any level of court martial or that the charges be dropped. Whether the matter will be referred to trial by court martial is, however, within the discretion of the convening authority.

Assuming a decision is made to proceed with a trial, a court martial (in this sense the military equivalent of a civilian jury) is convened from a list of available mature and experienced officers. Such lists are normally established quarterly. A specially selected panel of officers is not convened (apart from the list of those available) to try a specific case. In a general court martial there must be at least 5 individuals on the court; in a special court martial at least 3. Enlisted accused may request enlisted representation on courts trying their cases which request will be honored in all but the most extraordinary situations.

When a case is referred to trial neither the convening authority nor any other commanding officer may seek directly or indirectly to influence the court members, judge or defense counsel in the presentation or decision in the case.

Once a court martial begins, it is very similar to a trial in a Federal Court, with a military judge presiding and the "jury" consisting of a military panel, except in cases where the accused elects to have his case heard by a military judge alone. The rules of evidence and cross-examination are also similar to those of a trial in a Federal Court. Both the defense and prosecution may challenge court members for cause, and may exercise a limited number of peremptory challenges.

If the accused is found guilty, the convening authority reviews the case with the advice of his Staff Judge Advocate. The trial record is then reviewed by higher authorities, the extent and level of review (amounting to an automatic appeal) being determined by the type of court martial concerned and the nature of the offense and the sentence imposed. At each level of review the sentence may be affirmed or reduced, but not increased. If the sentence as finally approved includes confinement, any time already served by the accused while awaiting judicial review is counted toward the total term of imprisonment.

NOTE: For additional background on military justice procedures, particularly in the light of changes in the Uniform Code of Military Justice which became effective in 1969, see the following inclosures:

1. "Is There Justice In the Military?" - reprint of article by Maj. Gen. Kenneth J. Hodson, The Judge Advocate General, U. S. Army.
2. Analysis of Trial Court Structures (Fact sheet).
3. Criminal Justice: Military Structure (Fact sheet).
4. Appellate Review (Fact sheet).

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