

**The Military Court Martial versus  
The Civilian Court Trial**

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The Military has created their own guidelines, which is somewhat similar to the civilian community, to handle and punish criminals. Most of the differences between the two court systems derive from the difference between the way of life between civilians and military. Since there is such a significant difference between the two, the military has created a criminal justice system different from the civilian community in order to parallel the differences found within the military.

Probably one of the most significant differences between the military and civilian workforce is the role of the commander, or supervisor to the civilians. A commander in the military is given much more authority than a supervisor in the civilian community. A commander can punish a service member to the extent of affecting their life after work; something a supervisor has no control over. Take for instance Article 92, Uniform Code of Military Justice (UCMJ), which states it is a crime for a service member to disobey an order on or off duty. There is no civilian law that makes it a crime for an employee to disobey an employer.

Another significant difference is the procedure used by the two systems to determine if an investigation will go to trial. The civilian court system uses a grand jury hearing, where jury members decide if there is probable cause that the accused committed the offenses. The military uses an Article 32 hearing. This hearing is not composed of jury member, but an investigating officer who makes a decision. "The major difference between the grand jury and an Article 32 is that the defense is allowed to be present in an Article 32 hearing, therefore they have a better opportunity of defending the accused" explained CPT Bockin. Mr. McGlothin believed have both parties present was by far more fair since a one-sided story can not be told during an Article 32 hearing.

Although both systems have the same purpose, to punish those in society who failed to abide by the laws, the two systems do not always impose as harsh punishments as the other one would. When asked who imposed harsher sentences, CPT Bockin stated, "The federal court system, as a matter of course, imposes worse sentences due to the letter of sentences. More

punishment is available under the military system, but judges normally does not use it.” Mr. McGlothlin and CPT Craddock also felt the civilian community punished criminal more harsher than the military would due to mandatory sentencing guidelines.

The civilian court system sometimes uses citizens within the community to determine one’s guilt in an accusation of a crime. These citizens are referred to as a jury. The military uses the same principle, however these people are referred to as a panel and only military members will be within the panel. Since members on a panel have met certain requirements to be in the military, there is a difference between the two. A jury can consist of citizens who would not be qualified to enter into active duty service. “I prefer to prosecute cases in military court since the panel members are more prone to think more intelligently about their verdict versus the jury members are more prone to a conviction” related CPT Bockin. Mr. McGlothlin also would rather defend a client in military court for the same reason, however he sees a problem with the panel. Since the panel members are military, each member will have his/her given rank. The panel may be influenced by another member because of their rank. This sometimes happen in a jury when jury members respect a member because of their job, however they are not as prone to be influenced to the extent of the panel members. CPT Craddock also believed the military panel is more intelligent, therefore more likely to follow the judge’s instruction.

A major problem within all court systems is the backlog of cases. Both the military and civilian courts battle the number of growing cases that wait to go before the court. This is probably due to the number of growing crimes committed by our fellow citizens. The crime rate constantly rises, but unfortunately it is much harder to raise the number of cases that can be processed through a court. When this occurs the court system shows a longer delay form the time of preferring charges and the case actually going to trial. CPT Bockin recalled the fastest he has ever waited to go to trial on a case, in federal court, was six months versus the one-month he had to wait in the military court system. Mr. McGlothlin explained the normal waiting period for state court was about 90 days.

One important question to rise between the two systems is whether an accused offender has any disadvantages in one system versus the other. One issue that I have personally noticed is that when an accused pleads guilty to a crime in civilian court, the accused is not afforded the opportunity to fully understand the crime nor to explain what he did. The accused simply says guilty. In a court martial the military judge will go over the crime with the offender. Then the offender will have to explain why he is guilty. In turn, the military judge assures himself that the accused is truly guilty. Take for instance the difference between the crime of wrongful appropriation and larceny. The average citizen normally would not know that larceny has to be with the intent to permanently deprive. The two have a significant difference in the maximum punishment allowed. If someone actually committed the offense of wrongful appropriation but was charged with larceny, they may plead guilty to the wrong crime without the knowingly doing so. This is probably a result to the civilian courts being backlogged more than the military courts. Mr. McGlothlin also raised another disadvantage the accused in the military system has that the accused in the civilian system does not have. This disadvantage is there are no physician-client confidential privileges. A doctor in the armed forces could be called to testify against the accused in a court martial. CPT Craddock felt the accused in the civilian system has disadvantages when compared to the military. This is because the defense has more discovery rights in the military system, mandatory sentencing guidelines, and lastly because the accused in the military is given a lot of credit because of his military service.

In closing, no matter the differences between the two systems, both have been in place for quite sometime. We rely on the system to punish those around us who commit a crime. Although neither system is perfect, both systems have worked, even with the growing number of changes society has gone through. As stated in the opening, quite a few of the differences derive from the difference in the lifestyle differences found between the service member and the civilian.

Captain Gregory Bockin. At the time of the interview CPT Bockin was serving as a Special Assistant to the U.S. Attorney, however now he is serving as Defense Counsel for 18<sup>th</sup> Airborne Corps and Fort Bragg. He has also served as a Trial Counsel for the Office of the Staff Judge Advocate. CPT Bockin may be reached at 910-396-4912 during normal business hours.

Attorney Larry McGlothin. At the time of the interview Mr. McGlothin was serving as a civilian public attorney. Mr. McGlothin as defended clients in court martial proceedings and as also served as a Staff Judge Advocate for the U.S. Army. Mr. McGlothin may be reached at 910-323-2731 during normal business hours.

Captain John Craddock. At the time of the interview CPT Craddock was serving as a Trial Counsel for 18<sup>th</sup> Airborne Corps and Fort Bragg. CPT Craddock can be reached at 910-396-1505, extension 120 during normal business hours.