

## GAO REPORT – MILITARY JURY SYSTEM NEEDS SAFEGUARDS FOUND IN CIVILIAN FEDERAL COURTS

The GAO report is the culmination of a two-year study comparing the jury selection process for criminal cases in military courts and for civilian Federal courts. It reviews the practices of convening authorities in selecting military jurors, and the composition of military courts, and evaluates the process of random jury selection.

Using the opinions of the U.S. Court of Military Appeals, defense counsels, and the military community generally, as well as feedback from an Army test of random jury selection, the GAO makes several recommendations to the Congress. GAO recommends that the Congress mandate random selection of jurors in military courts comparable to the process in civilian Federal courts. This change would require both establishing juror eligibility criteria and designating responsibility for the selection process. To effect this change, Congress would be required to amend Article 25 of the Uniform Code of Military Justice (UCMJ) “to either require the President to implement these changes within a specified period of time, or statutorily establish a random selection procedure based on specific juror eligibility criteria and designate who should be responsible for the random selection process.” In adopting a random selection process, GAO also recommends that Congress reexamine specific aspects of military court proceedings. Congress should consider whether “the minimum size of juries is large enough for general and special courts-martial; greater consistency and stability in jury size is needed; the number of peremptory challenges should more closely conform with Federal and State practice; military juries should be used to impose sentence; and the convening authority should be intimately involved in the judicial proceedings of the accused.”

In its comments on the GAO report, the Department of Defense (DOD) acknowledged that random selection of jurors was part of “one of the basic cornerstones of the UCMJ—freedom from improper command influence over all phases of the military justice system, including the selection of court members and the outcome of trials by courts-martial.” Although DOD “encouraged the application of random selection within the military society by any practical means consistent with its mission,” it also expressed concern “with the practical aspects of implementing a system of random selection, noting that the military is unique due to its complexity and by virtue of its combat role.” Prior to passage of the UCMJ, DOD had testified in opposition to a non-command-appointed jury selection system.