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§ 822. Art. 22. Who may convene general courts-martial

(a) General courts-martial may be convened by—

- (1) the President of the United States;
 - (2) the Secretary of Defense;
 - (3) the commanding officer of a unified or specified combatant command;
 - (4) the Secretary concerned;
 - (5) the commanding officer of a Territorial Department, an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army or Marine Corps;
 - (6) the commander in chief of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the United States;
 - (7) the commanding officer of an air command, an air force, an air division, or a separate wing of the Air Force or Marine Corps;
 - (8) any other commanding officer designated by the Secretary concerned; or
 - (9) any other commanding officer in any of the armed forces when empowered by the President.
- (b) If any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered desirable by him.

§ 823. Art. 23. Who may convene special courts-martial

(a) Special courts-martial may be convened by—

- (1) any person who may convene a general court-martial;
- (2) the commanding officer of a district, garrison, fort, camp, station, Air Force base, auxiliary air field, or other place where members of the Army or the Air Force are on duty;
- (3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;
- (4) the commanding officer of a wing, group, or separate squadron of the Air Force;
- (5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; the commanding officer of any Marine brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing, group, separate squadron, station, base, auxiliary air field, or other place where members of the Marine Corps are on duty;
- (6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or

(7) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

§ 824. Art. 24. Who may convene summary courts-martial

(a) Summary courts-martial may be convened by—

- (1) any person who may convene a general or special court-martial;
 - (2) the commanding officer of a detached company or other detachment of the Army;
 - (3) the commanding officer of a detached squadron or other detachment of the Air Force; or
 - (4) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.
- (b) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

§ 825. Art. 25. Who may serve on courts-martial

(a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member of an armed force on active duty who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member of an armed force who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge under section 839(a) of this title (article 39(a)) prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested orally on the record or in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be assembled and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) In this article, "unit" means any regularly organized body as defined by the Secretary concerned, but in no case may it be a body larger than a company, squadron, ship's crew, or body corresponding to one of them.

(d)(1) When it can be avoided, no member of an armed force