

Sergeantâ€™s Trial Starts Tuesday

National Guardsman Alberto Martinez could face death penalty if convicted in killing of 2 officers

The next U.S president could decide the fate of Staff Sgt. Alberto Martinez of Schaghticoke.

The 40-year-old National Guardsman from Rensselaer County will go on trial Tuesday in Fort Bragg, N.C. He is charged with murdering two superior officers in Tikrit, Iraq, in June 2005.

If convicted of setting off explosions that killed Capt. Phillip Esposito, 30, of Suffern, and 1st Lt. Louis Allen, 34, of Milford, Pa., he faces possible execution by lethal injection.

Unlike a nonmilitary trial, that decision would ultimately need approval by the president, who would actually sign the death warrant, according to the Uniform Code of Military Justice.

And that is just one of many differences between a military case and trials in state and federal courts.

For starters, military cases are called court martial proceedings, not trials. The jury is called a "court member panel" and is filled not with civilians, but "court martial members" who serve in the military. Depending on the topic, panelists can ask questions of witnesses, something unseen in New York state courtrooms.

In most military trials, the jury need not reach a unanimous verdict; a two-thirds vote is enough. But because Martinez's trial is a death penalty case, the panel jury would need to reach a unanimous verdict, both on the allegations and also on a death penalty.

Once it cleared appeals court hurdles, a decision on capital punishment would eventually reach the president.

A local expert on military law predicted a likely death sentence if Martinez is convicted.

"It goes to the very heart of good order and discipline," said Gregory Rinckey, an Albany defense lawyer, former Army captain and one-time judge advocate general (JAG) and federal prosecutor.

Todd Monahan, an Albany lawyer and former Marine JAG, said it might be tough to get a dispassionate and objective jury, given the charges. But he said the military tends to "bend over backwards" to ensure a nonbiased atmosphere.

"Once you get into the courtroom in the military," he said, "it's a very fair system."