

Three Episodes in Military Legal History

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THE JUDGE ADVOCATE GENERAL'S CORPS, U.S. ARMY

MARCH 2, 2016



Roadmap

A Murder in Manila

The Military Judge in the Making

**The Birth of a Department and a
Corps**

The “Rule of Three”

So let's get started



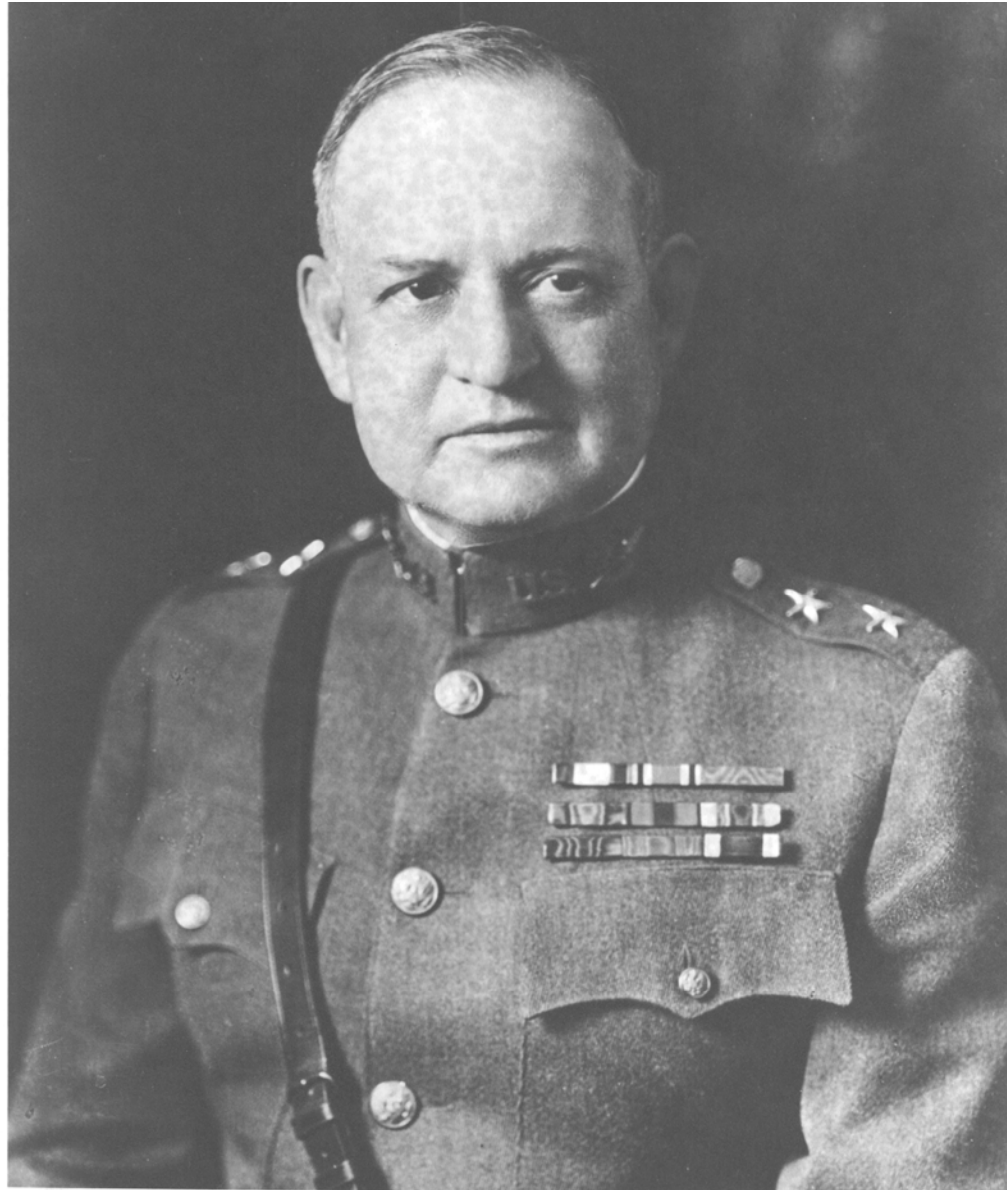




KEEP COOL WITH COOLIDGE

FOR PRESIDENT

Campaign Headquarters · Farrell's Ice Cream Parlour Restaurants









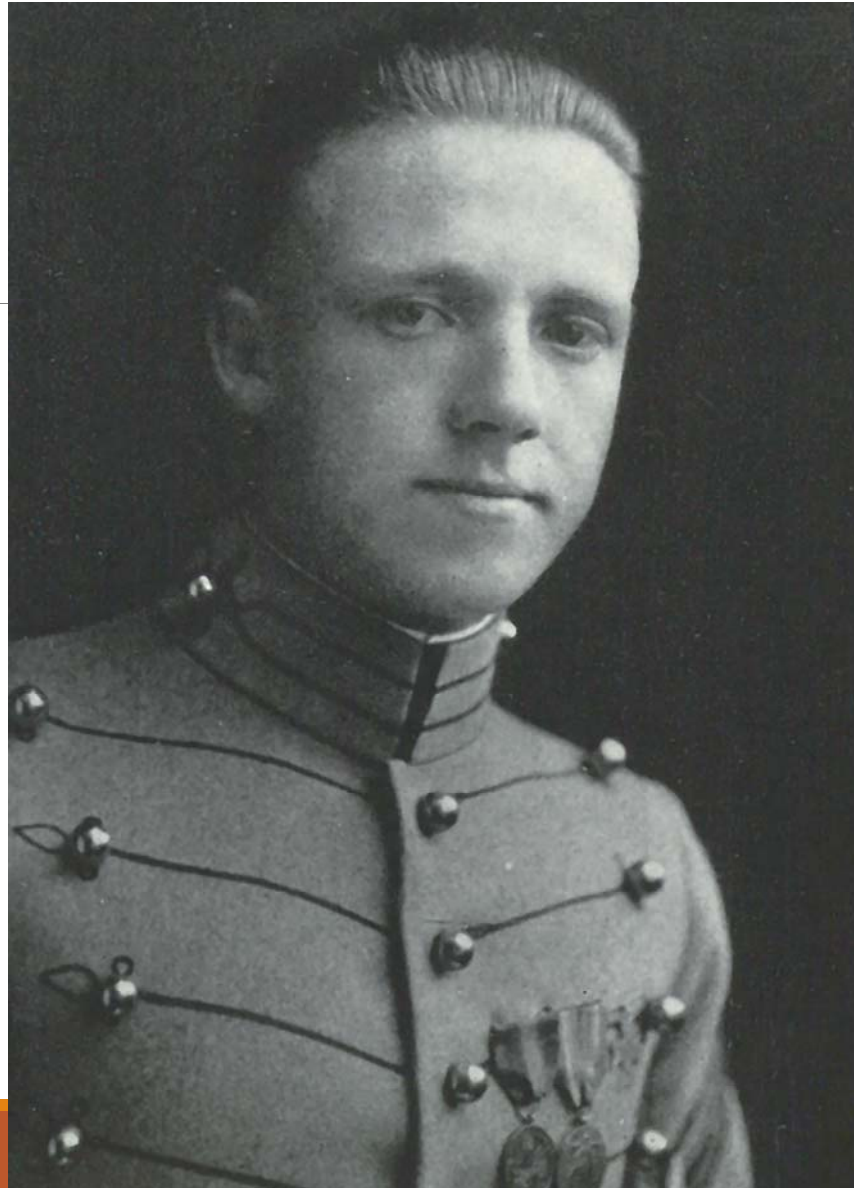




January-March 1925

**Second Lieutenant John “Tommy” Thompson,
USMA 1924, 25 years old**

**Miss Audrey Burleigh, step-daughter of Army
physician, 16 years old**

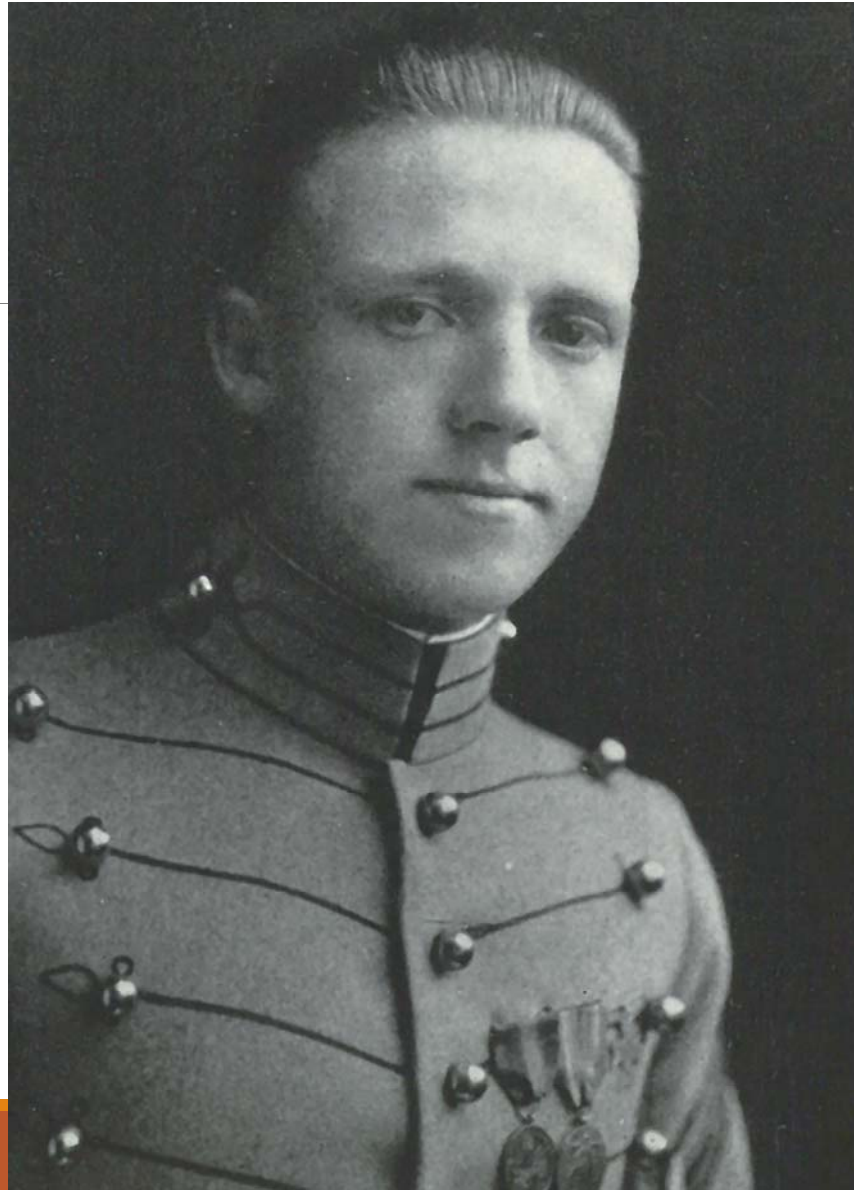


“the most wonderful girl I ever met”

“We went out night after night just by ourselves. It was wonderful with the tropical moonlight and Audrey’s eyes and lips which were more wonderful than any moon lit up for lovers.”

“We loved to perfection.”





**Mother to Audrey: “You are going home
at end of April.”**



“Let’s get married before you go home ... ”

April 4, 1925

Saturday evening in Manila

“I love you”

“Do you love me?”



“I am Lt. John S. Thompson, Quarters 54, self-confessed slayer of Miss Aubrey Burleigh. Lock me up, take her to the hospital.”



May 4, 1925

“... did, with malice aforethought, willfully, deliberately, feloniously, unlawfully and with premeditation kill one Audrey Burleigh, a human being, by shooting her with a pistol.”



Prosecution



Defense

“... suffers from mental defect or derangement ...”

But the problem client ...

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Well, how about he lacked premeditation because he was “in the grip of and because of passion or fear aroused by the thought of losing her.”



The Panel

**President: Brig. Gen. Charles J.
Symmonds**

**Manual for Courts-Martial, U.S. Army
1921**



**RECORD OF TRIAL BY GENERAL COURT-MARTIAL OF
SECOND LIEUTENANT JOHN S. THOMPSON, A. S. NO. 015589, SIGNAL CORPS.**

INDEX.

Arraignment.....	Page. 7
Plea.....	8
Statement by accused.....	
Address by counsel.....	328, 373
Reply by judge advocate.....	308, 354, 377
Findings.....	378
Previous convictions submitted.....	
Sentence (or acquittal).....	378
Proceedings in revision.....	

TESTIMONY.

Name of witness.	Direct	Cross	Redirect	Examination by court.	Recalled.
	Page.	Page.	Page.	Page.	Page.
PROSECUTION:					
Jordan, H.R., Lieut.	12				
Longacre, R.F., Major	14	16	30	32	
Tirona, Federico	34	48		51	
Mangum, W.M., Cpl.	52				
Zigmund, F.J., Cpl.	55				
Eskew, M.H., Capt.	61				
Alegre, R., St. Sgt.	122				
Shingle, E., Lieut.	127				
Cleaver, T.L., Capt.	130				
Straughn, H., Major	133	149			
Beattie, C.E., Lieut.	151	154			
Ready, J.O., Lieut.	154				
Malcolm, R., Capt.	162	168			
Conrad, C.H., Jr., Col.	202				
DEFENSE:					
Dismuke, J.T., Lieut.	238	240			

(Next page)

EXHIBITS.

168298

	Number.	Page where introduced.
Pistol,	Govt. 1	60
Report of autopsy,	" 2	66
Photographs and diagram accompanying report of autopsy,	" 2-A	80
Memorandum receipt signed by accused,	" 3	127
Photograph of interior of automobile,	" 4	150
" " and exterior of automobile,	" 4-A	150
Letter from accused to his sister,	" 5	150
Seat covers,	" 6 & 6-A	150
Signed confession of accused,	" 7	209
Report of physical examination of accused, Acc.	" A	184
Letter of resignation of accused,	" B	237
" to Mrs. Dobson,	" D	300
Report and supplementary report of medical board,	Court 1 & 2	122
Report 2nd Medical Board,	3	202

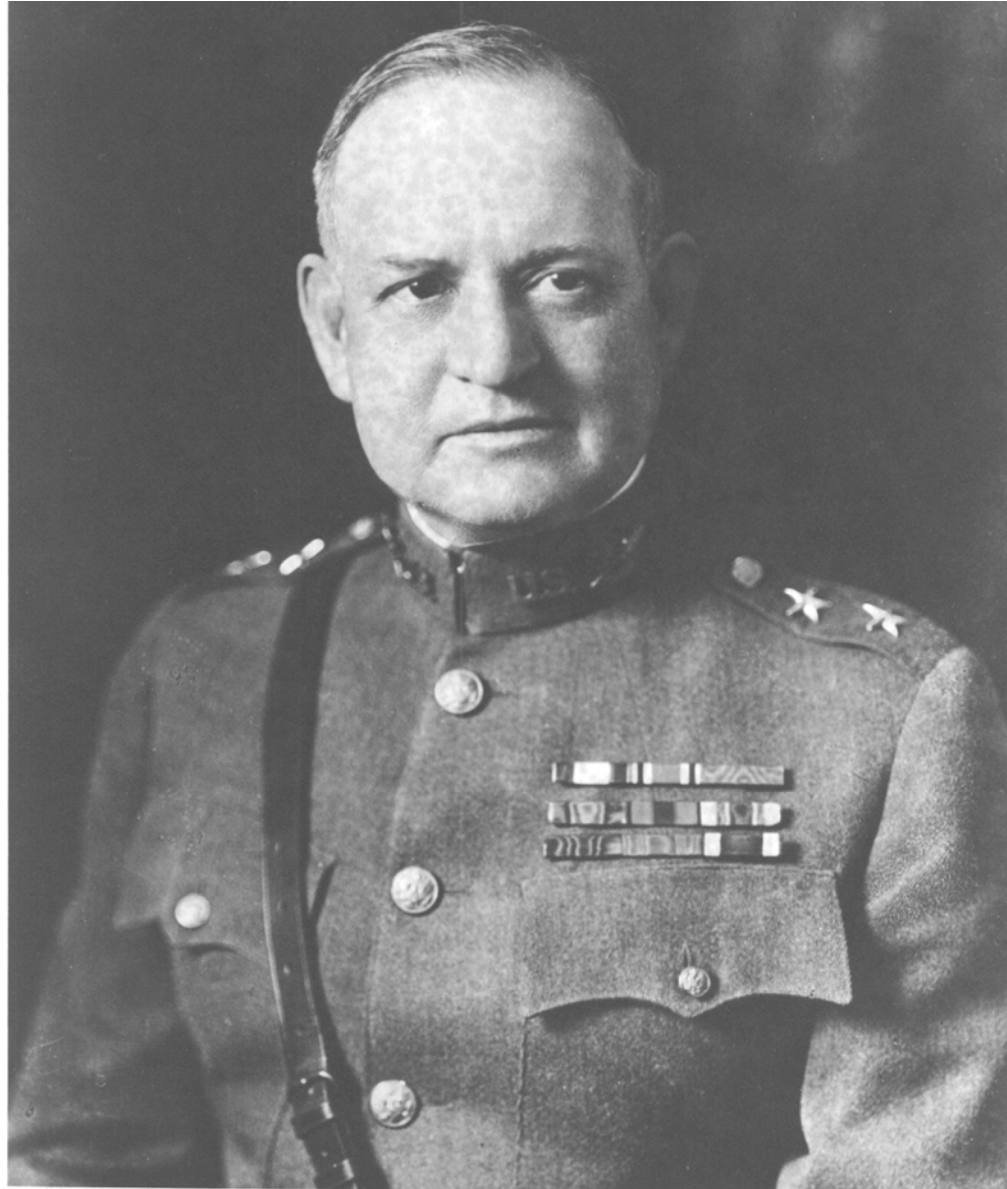
SEP 29 1925

Carbon copy of the record furnished the accused. Receipt (or Affidavit of delivery) Attached to record.

*Line out inappropriate words.

Appeal

Board of Review



Reverend Dr. J. Milton Thompson

George W. Wickersham

**“the murder was an uncontrollable
impulse arising out of an adolescent
complex...”**



But

Private William M. Johnson

Miss Marian Andrews



February 9, 1926

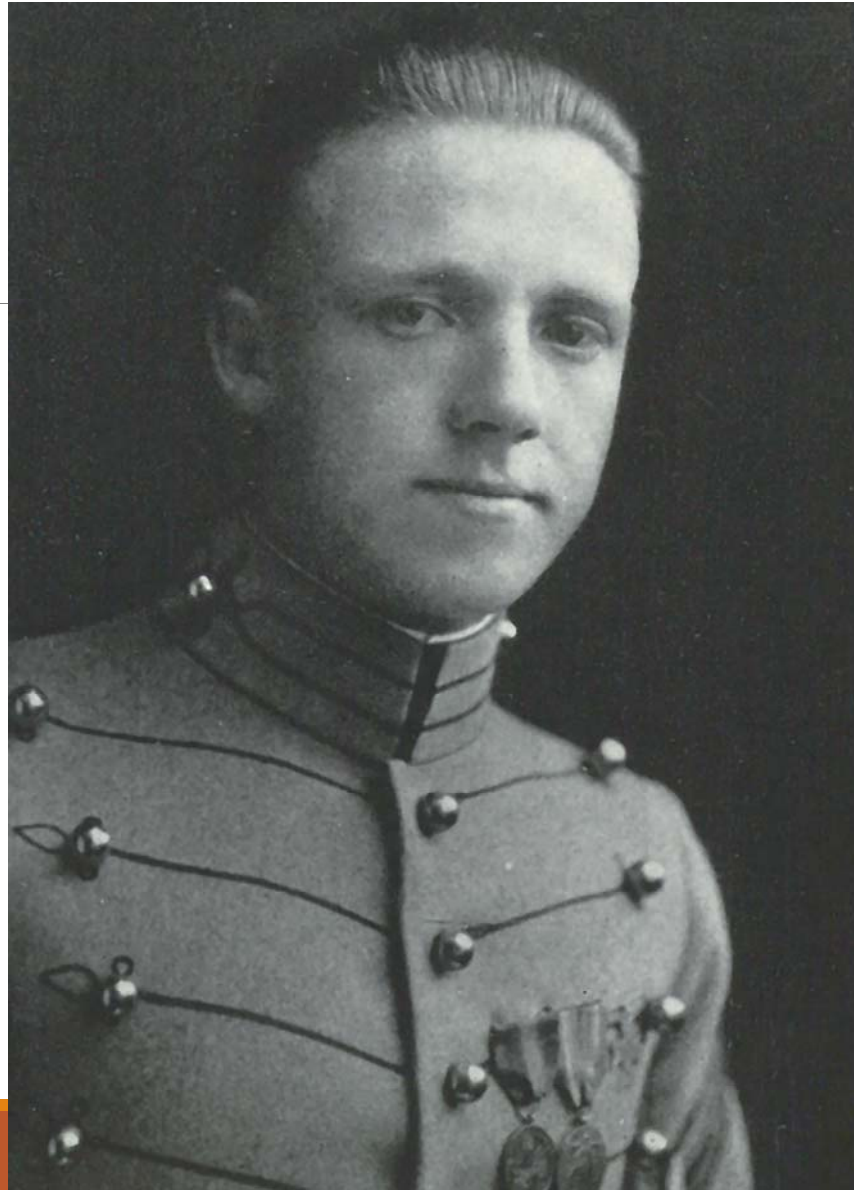


In the foregoing case of Second Lieutenant
John S. Thompson (O-15589), Signal Corps (C. M. No.
168298), the sentence to be hanged by the neck until
dead adjudged against him by the general court-martial
appointed by Paragraph 1, Special Orders No. 43, Head-
quarters Philippine Division, Fort William McKinley,
Rizal, Philippine Islands, April 8, 1925, and approved
by the Commanding Officer of the Philippine Division
is hereby confirmed and will be carried into execution
at a time and place to be designated by the Commanding
Officer of the Philippine Division.

The White House,
February 9
January 1926.

William C. Cady

March 18, 1926



-
- * First American officer to be executed in peacetime**
 - * Only USMA graduate to be hanged**
 - * And ... May 1925 – March 1926**
- 

Evolution of Military Judge

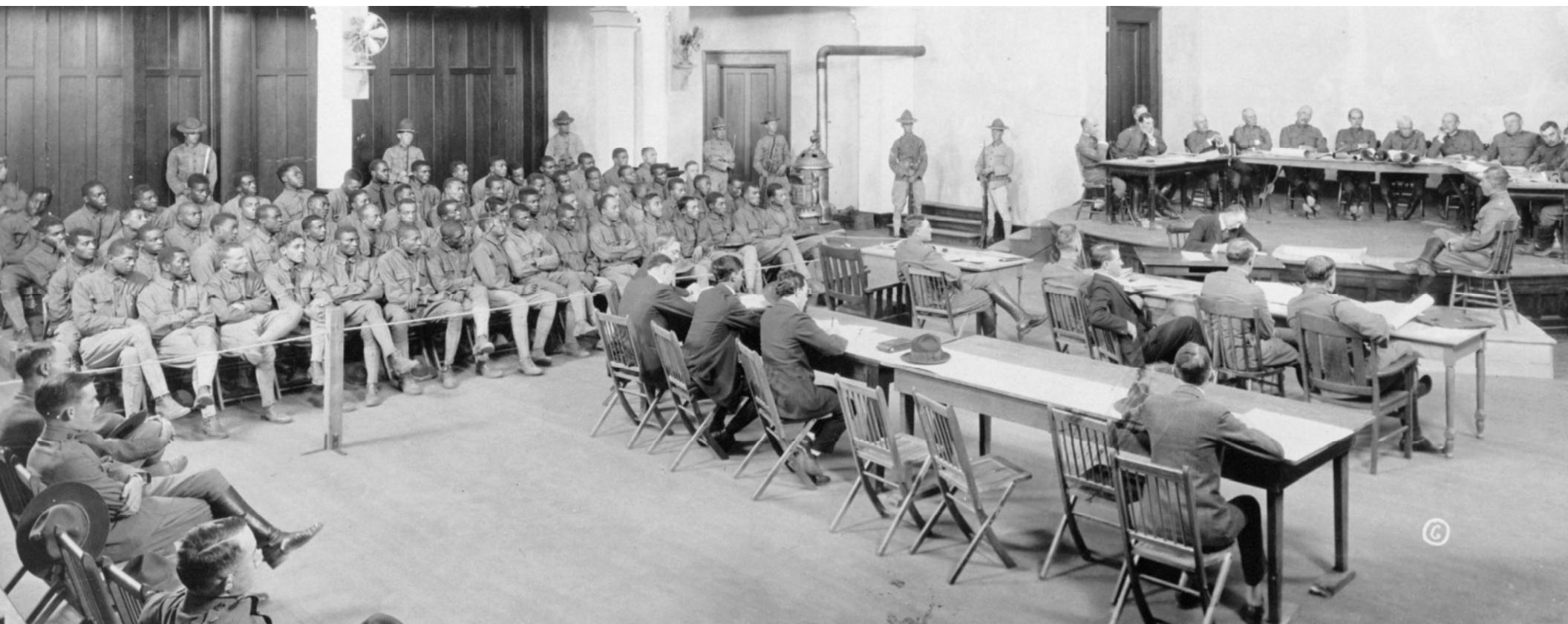
Background – World War I, Houston Riots, Ansell-Crowder Dispute

Law Member

Law Officer

Military Judge

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“Judicialization” – 1920 to 1969

“Civilianization” – 1950 to present



Law Member (1920-1951)

Appointing authority in GCM details JA as “law member”; not required to be lawyer or judge advocate

Rules on interlocutory questions and instructs court on presumption of innocence and burden of proof

**But rulings final ONLY as to evidence;
on all other decision, law officer may
be overruled by majority vote of
members**



**And: law member participates in
deliberation and votes**

**Article 31: “ ... an equal voice with
other members ...”**









Law Officer (1951-1969)

**Instructs court on elements of offense,
presumption of innocence, burden of
proof, rules on interlocutory questions
(but does not rule on challenges)**

No participation as member







1960s

War in Vietnam

**“Military Justice is to Justice as
Military Music is to Music”**

**Senator Sam J. Ervin (D-NC) &
Subcommittee on Constitutional Rights**



**(And what is happening at special
courts-martial?)**



October 24, 1968

The irony: *O'Callahan v. Parker* (1969)

- “service-connection” requirement
- Mr. Justice Douglas: “Courts-martial as an institution are singularly inept in dealing with the nice subtleties of constitutional law.”





Military Judge (1969-present)

Power to try case alone if requested by accused

Power to call court into session without members be present

Rules on all challenges



All decisions of judge are final (no government appeal until 1983)

Creation of “field judiciary” under TJAG rather than CA control

Now addressed as “Judge”

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Today ...







The Future

Rule of Three

- **Judge alone sentencing**
 - **Pre-referral authority**
 - **Role in plea agreements**
- 



Birth of a Department; Birth of a Corps

Judge Advocate General's Department, 1949

Judge Advocate General's Corps, 1967

Judge Advocate General's Department



Background:

Major Edgar Snodgrass; assigned to first Army Air Corps legal office in 1939

Then Colonel Snodgrass appointed “Air Judge Advocate” of the newly re-designated Army Air Forces in March 1942.

Numbers

- **12 million men and women in uniform in World War II**
 - **8 million in Army, of which 1.9 million in Army Air Forces**
- 

Birth of modern Air Force

- **Constitutional?**
- **September 1947 ...**

Staffing the Air Force JAGD

**Transfers began in November
1947**

Who wanted to transfer?

**Attitude of MG Tom Green,
Army TJAG?**



-
- **“traitorous”**
 - **“immoral”**
 - **“unpatriotic”**
- 



Air Judge Advocate was title until 1948, when Air Force Military Justice Act created “The Judge Advocate General of the Air Force”



Major General Reginald C. Harmon

- **First TJAG, promoted from 0-6 to 0-8**
 - **How long in office?**
- 

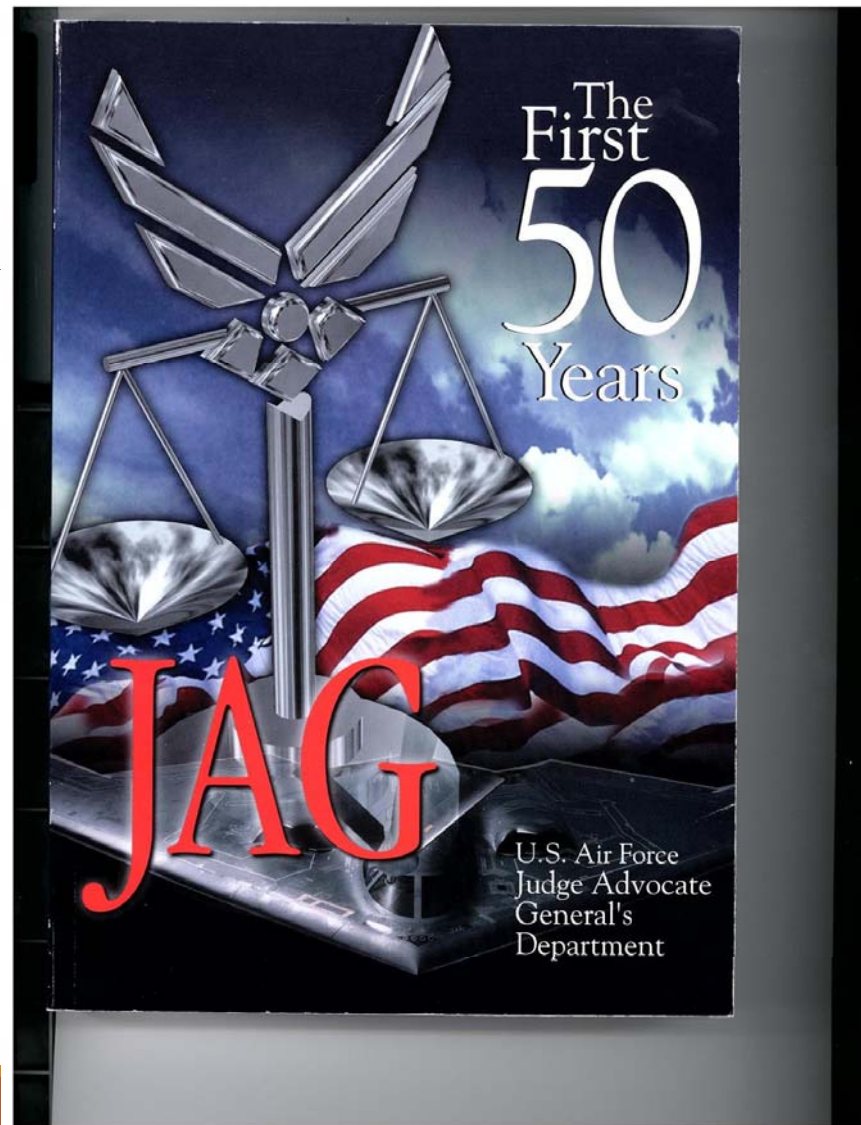


1949: Office of Air Force Judge Advocate General becomes “Judge Advocate General’s Department”

- **205 officers**

2003: Department to Corps





Judge Advocate General's Corps, Navy

December 8, 1967





Context

Commander's self-reliance and jealous protection of disciplinary authority = resistance to separate cadre of professional lawyers

Almost 200 years of sailing without legal corps. Why do we need one now?





Judge Advocate General, 1880

**But the culture:
“naval justice is the domain of the line”**



(And by the way, who is the first Judge Advocate General of the Navy?)







**First Navy JAG to hold a law degree
was Rear Adm Walter Browne
Woodson (1938); Navy JAG not
required to be lawyer until UCMJ
enacted (1950)**



“It is not believed that a separate Judge Advocate General’s Corps is ... desirable ... there never would be sufficient work to engage the full time of any considerable number of personnel.”

Memorandum to Navy TJAG, 1944



August 1947: Law Specialist Program

- **Special duty line officers**
- **Appointed from civilian life, but many Reserve officers applied and were appointed**

Uniform Code of Military Justice

- 1950, effective May 1951
 - Requirement for law officer
 - Legally qualified counsel at all GCMs
- 

April 1959

Chester Ward, Navy JAG:

“A separate JAG Corps best meets the needs of the Navy and is acceptable to the Congress and the people ...”





Why?

- We are staff officers, with a staff-type mission
 - Corps will make us staff officers (vice line officers)
 - Corps will be professional recognition of Navy lawyers as officer-lawyers
- 

January 1965

**Senator Sam J. Ervin, Jr. (D-NC)
introduces legislation creating Navy
JAG Corps**

Who is opposed?

- Navy line
- Marine Corps

Timing is everything

**December 8, 1967 – LBJ signs law
creating Navy JAG Corps**

**Military Justice Act of 1968, effective
August 1, 1969**

That's all, folks!

Questions?

Comments?