

Military Justice in Turmoil: The Ansell-Crowder Controversy

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Roadmap

- Some context
- Crowder & Ansell
- Two events
- Ansell-Crowder controversy
 - Initial spark
 - Calls for Reform
- Aftermath

Why is this event
important?




Some context

America in 1916

- **World events**
 - **Europe & Africa**
 - **Where is the U.S. Army?**

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- **People**
 - **Wages & Work**
 - **Culture**
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- **Army JAG Department**
 - **(Navy JAG Corps)**
 - **(Air Force & Air Force JAG Department)**
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**By the way, it was 100 years ago
next month that America entered
World War I**



Maj Gen Enoch H. Crowder

Born 1859, USMA 1881 (Cavalry), transferred to JAGD in 1891

TJAG (1911-1923)

Selective Service Act May 1917

- (67 percent of Army was drafted in World War I, compared with 6 percent in Civil War)
- Finding officers was major problem: 5800 Regular Army/ 3200 NG officers but Army needed 200,000 officers
- 54 divisions; 28,000 men each; 42 deployed to France





Brig Gen Samuel T. Ansell

**Born 1875, USMA 1899 (Infantry), UNC law
1894**

**USMA 1904-1909; Prosecutor, Philippines
1909-1911; War Department 1911-1917**

Acting tJAG, 1917-1918

Two events

**Texas Mutiny Cases – Oct. 1917 /
Fort Bliss, Texas**

**Houston Riot Cases – Nov. 1917 /
Houston, Texas**



Texas Mutiny Cases

Fort Bliss, Texas; October 1917

Battery commander placed group of African-American NCOs under “arrest” for minor disciplinary infractions . . .

Battery commander orders NCOs to attend drill formation

But Army regulation provides that NCOs under arrest should not attend drill



Mutiny

Guilty

Dishonorable discharge

10-20 years confinement at hard labor



Houston Riot Cases

Houston, Texas

24th Infantry Regiment at Camp Logan

August 23, 1917 riot in Houston

**General court-martial, Fort Sam Houston,
November 1, 1917**

63 soldiers; mutiny and murder

How many defense counsel?



©
Largest Murder Trial in the History of the United States.
Scene during Court Martial of 64 members of 24th. Infantry U.S.A.
on trial for mutiny and murder of 17 people at Houston Tex. Aug 23, 1917
Trial Held in Gift Chapel. St Sam Houston.
Trial started --- Nov 1, 1917 - Brig. Genl. George K. Hunter, Presiding.
Col. J. A. Hull - Judge Advocate. Counsel for Defense.
Maj. D. V. Sulphin, Asst. Maj. Harry S. Grier.
Prisoners guarded by 14th. Infantry U.S.A.

Trial concludes early December 1917

13: death

41: confinement at hard labor for life

4: period of years

(5: not guilty)



What result?

**13 hanged the next day in a mass execution,
the first since 1847**


No opportunity to seek clemency

What about an appeal?


Ansell says:

Under section 1199 of the Revised Statutes of 1878:

“The Judge Advocate General has power to revise and review a court-martial after approval by appointing [convening] authority.”



As tJAG, I have authority to modify or set aside findings and sentence . . . If there existed a lack of jurisdiction or serious prejudicial error.



Crowder replies:


You are wrong. No authority exists for tJAG to interfere with decision of appointing [convening] authority. Only Secretary of War has power to take action.

What result?


November-December 1917

January 17, 1918: General Orders No. 7:

“Any case involving sentence to death or dismissal of officer *is suspended* pending review and a determination of legality by the Office of the Judge Advocate General.”



Boards of Review created (forerunner of)
But opinion of Board advisory only; convening authority free to disregard advice of tJAG




Reform??!!

Articles of War revised in 1916 . . . more reform??!!

(Articles of War, 1916:

- **Common law felonies are military offenses at all times, but murder and rape committed in U.S. in time of peace may not be tried by court-martial;**
- **Soldiers accused of civilian offenses must be turned over to civilian authorities upon request**
- **Special court-martial created (prior to 1916, only GCMs and SCMs), but no bad discharge as sentence at SPCM**

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- **Accused may be represented by counsel of own choice, if available**
 - **If no counsel, then prosecutor-judge advocate will assist accused “from time to time”**
 - **AA [CA] may return acquittal verdict to court for “reconsideration” &/or revision if sentence is “too lenient”)**
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Ansell-Crowder Controversy

What is the proper role of the commander in the military justice process?

Should courts-martial be more like civilian courts and, if so, to what extent?

Crowder's view

Disciplining troops is the commander's business . . .

If a commander is trusted to take 15,000 men into combat, then . . .

Other views


December 1918: Senator George Chamberlain, Oregon says there must be an appellate tribunal that will “formulate rules and equalize unjust sentences”


(CM results are arbitrary, capricious . . . no uniformity in results)


**January 1919: American Bar Association
Executive Committee say that**


**“our military law system of administering
military justice . . . probably [needs] some
reformation.”**


Ansell launches public
campaign & proposes:

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- **Statutory requirement (not just MCM) for PRELIMINARY investigation of the charge(s)**
 - **No trial unless JA certifies in writing that charges are LEGALLY SUFFICIENT and there is prima facie proof of guilt**
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- **GCM – Eight members**
 - **SPCM – Three members**
 - **Enlisted men on court (3 of 8 at GCM; 1 of 3 at SPCM)**
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- **“Court Judge Advocate” at all GCMs/SPCMs**
 - **Forerunner of Law Member (1920-1951); Law Officer (1951-1969); Military Judge (1969-present)**
 - **Rule on motions & questions of law, including challenges for cause**
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- **Summarize evidence & applicable law at conclusion of case**
 - **Review findings of guilt for legal sufficiency**
 - **Impose sentence**
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- **Defense counsel**
 - **Accused represented by military counsel of his choice**
 - **If accused desires civilian counsel, then JA will hire and pay for counsel (if accused found guilty, he must pay for civilian counsel)**
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Court of Military Appeals

- **Three civilian judges**
- **Lifetime tenure; pay & retirement of U.S. Court of Appeals judge**

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- **Jurisdiction over all GCMs where sentence of death, DD/dismissal, confinement more than 6 months**
 - **(no review of SPCMs or SCMs)**
 - **Power to disapprove finding of guilty, or approve lesser included offense**
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- **Power to disapprove sentence in whole or in part**
 - **Power to order new trial**
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Senator Chamberlain proposed Ansell's changes in legislation introduced in December 1918

But not voted out of Senate Committee on Military Affairs; War Department (and Crowder)



Revised Articles of War, 1920:

- Law member
 - Rulings final only on admissibility of evidence; could be overruled on all other matters by majority of court
 - Military defense counsel required (not legally qualified)
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- **No civilian court of appeals, but Art. 50 ½ required tJAG to establish Board of Review of three more or more officers to review records of trial**
 - **(first statutory basis for appellate review; forerunner of CsMR and CsCA)**
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Aftermath

Crowder 'wins'

Ansell reduced in rank; resigns

But in 1950 . . .

Uniform Code of Military Justice

Article 36

and







And in 1968







That's all, folks

Questions?

Comments?

