Why did Congress Create the UCMJ?

Fred L. Borch
Court of Appeals for the Armed Forces
May 15, 2025

But first – why did I miss last year?













Bottom Line Up Front

 World War II demonstrated that Articles of War were frequently arbitrary and capricious in their application Congress decided that postwar large standing Army of citizen-soldiers required military criminal legal system with more due process Creation of unified defense department required unified military criminal legal system And: "What about the Rules for the Government of the Navy?"

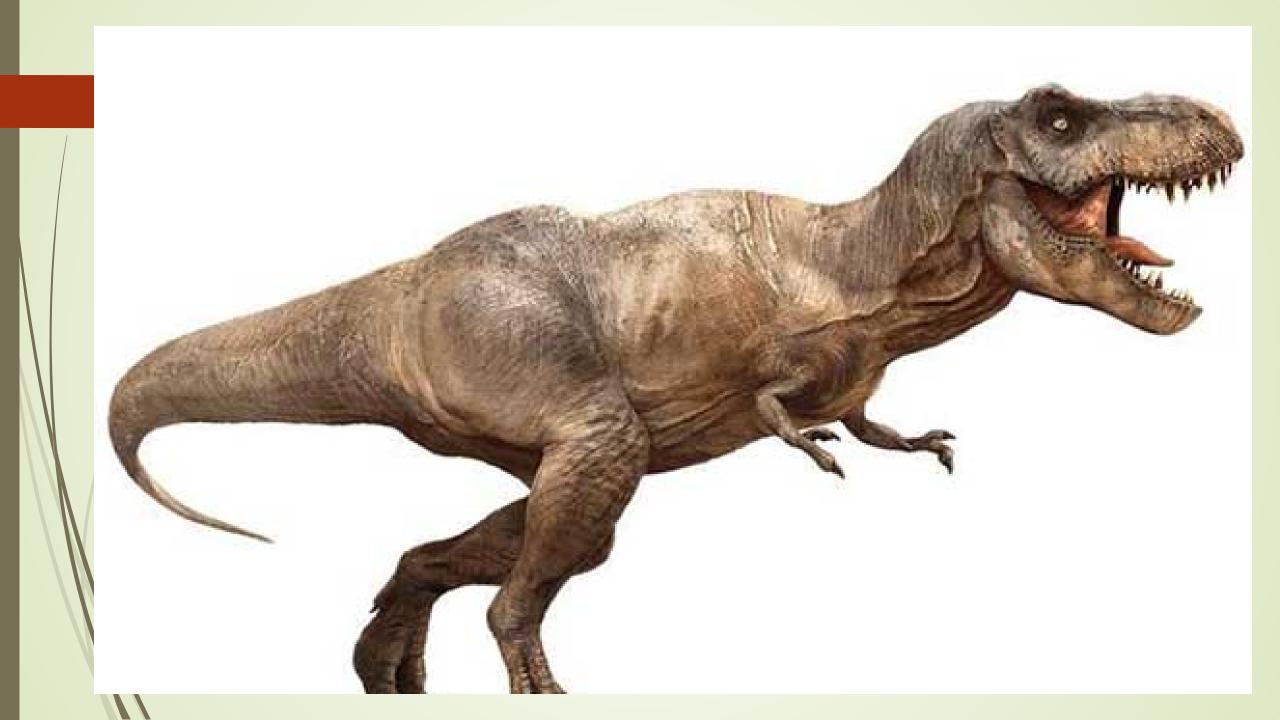
Roadmap

- -America in 1950
- World War I & the Ansell-Crowder Dispute
- World War II & the Citizen-Soldier Experience

- Doolittle & ABA Reports
- Reform
- Resistance
- **■UCMJ** of 1950
- Conclusion

America in 1950

- **■UCMJ** enacted in 1950
- A very different America -
 - ■48 states
 - World leader in industry, manufacturing after 1945; Marshall Plan
- ■Yet not that long ago—many Americans alive today were alive in 1950



America in 1950

- Population
- Life expectancy & Median age
- Minimum wage & Annual income

- Social Security:
 - Average monthly benefit --\$43.86

What about Social Security for military retirees?

- Military pay
 - ■E1 \$80 (2 years)
 - ►E7 \$265 (20 years)
 - **■**E8? E-9?

- -0-1 \$230 (2 years)
- -0-6 \$640 (22 years)

■ Korean War – 25 June 1950

World War I & the Ansell-Crowder Dispute



- Discipline? Justice?
- Role of commander . . .



HOME THE HOUSTON PRESS

For Them-Leader Is Killed-Negro

Troops To Be Moved From Houston

16 DEAD-22 INJURED FROM RI

Against Governor by Committee of Nine.

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More Accusations

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It is no time for further excitement.
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The necroes terrorized the city all night.

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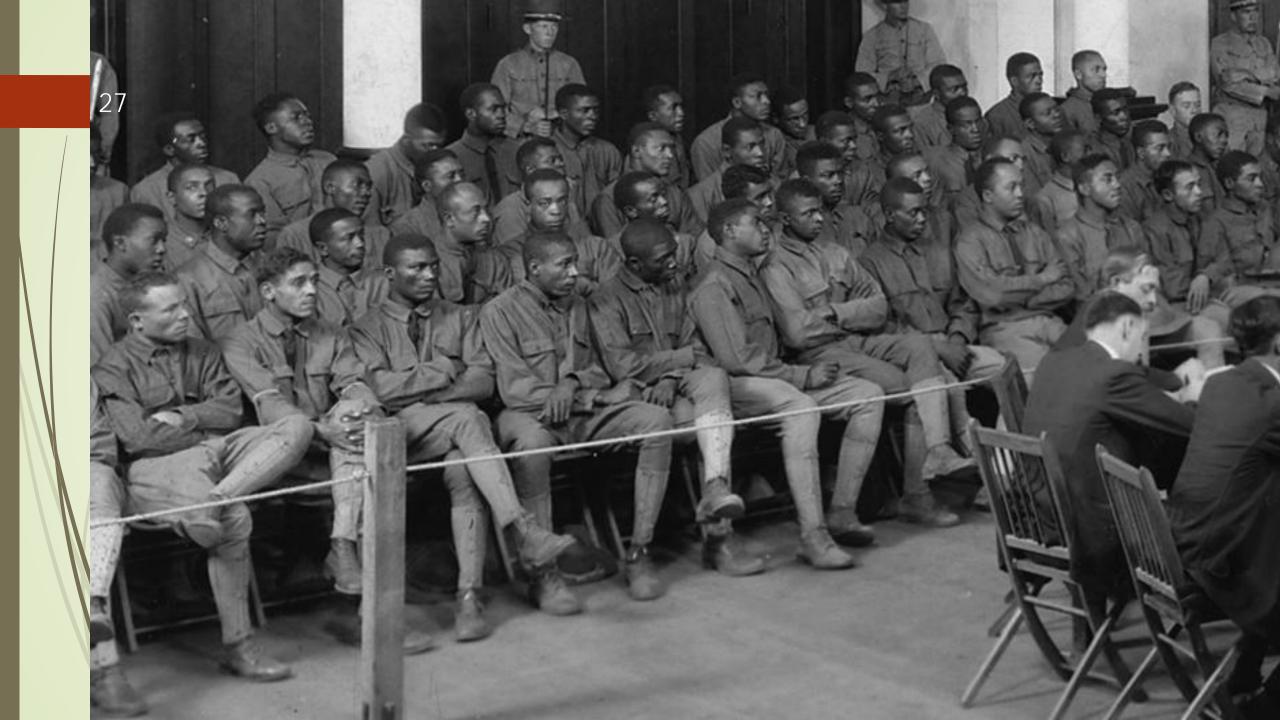
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- **■**Result?
 - Articles of War (1920)
 - Courts-martial more like courts; more due process; judicialization

World War II & the Citizen-Soldier Experience 1941-1945

- Command influence prevalent
- Minimal due process
 - No right to legally qualified defense counsel
 - Law member often unavailable for GCMs



Doolittle & ABA Reports

Articles of War are flawed; must be reformed

Unified Defense Department

- -AND new U.S. Air Force
- AND large standing (peacetime) armed forces

(12 million active duty in 1945;3.3 million active duty 1954)

Reform

- More due process? But how much?
- Half-step Elston Act & Articles of War 1948
- Edmund Morgan as catalyst

Resistance

- **■**Why?
- ■And who?



Uniform Code of Military Justice

- Truman signs 5 May 1950; effective 31 May 1951
- Uniformly applicable (but)
- Law Officer at GCMs
- Legally qualified defense counsel at GCM

- Pre-trial investigation (for GCMs)
- More formal non-judicial punishment
- Boards of Review; Article 66

- But the KEY features:
 - Court of Military Appeals
 - Article 36; civilianization

President shall . . . so far as practicable . . . apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts

- To be determined
 - How much due process at special courts-martial?
 - Military judge?
 - Government appeals?

Conclusion

UCMJ was radical departure from Articles of War / Rules for the Government of the Navy

- Three transformative aspects:
 - COMA (civilian oversight)
 - Boards of Review
 - Statutory requirement that military criminal law mirror
 U.S. District Court procedure

That's all, folk!

- Questions?
- Comments?