

Why did Congress Create the UCMJ?



Fred L. Borch

Court of Appeals for the Armed Forces

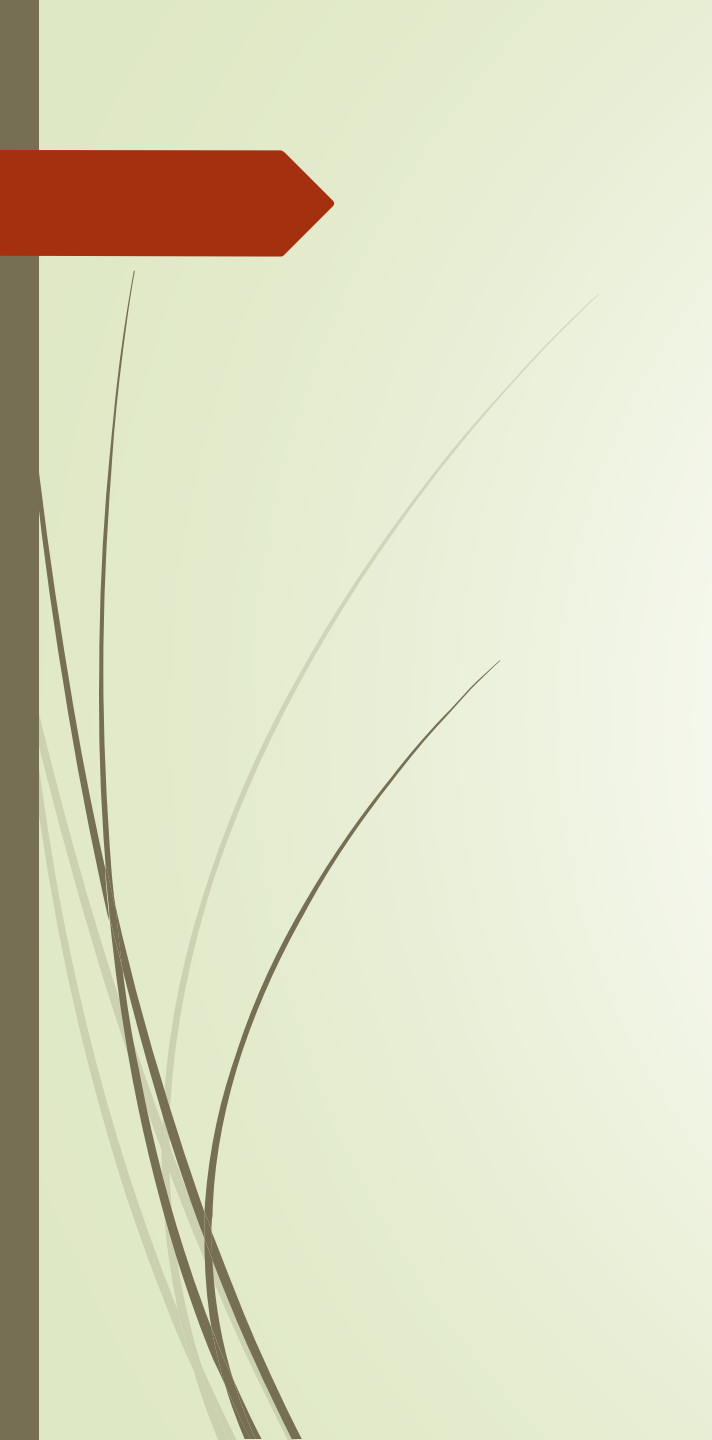
May 15, 2025

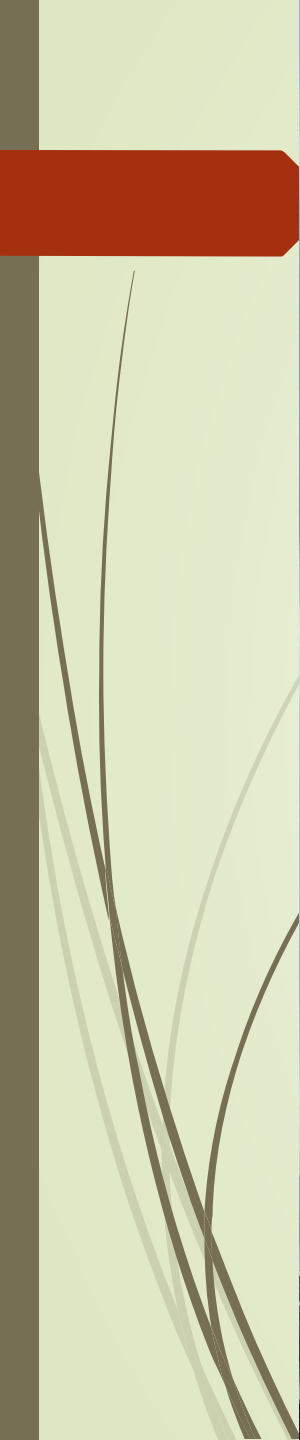


■ But first – why did I miss last year?




















Bottom Line Up Front

- ➡ World War II demonstrated that Articles of War were frequently *arbitrary and capricious* in their application
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- Congress decided that post-war 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

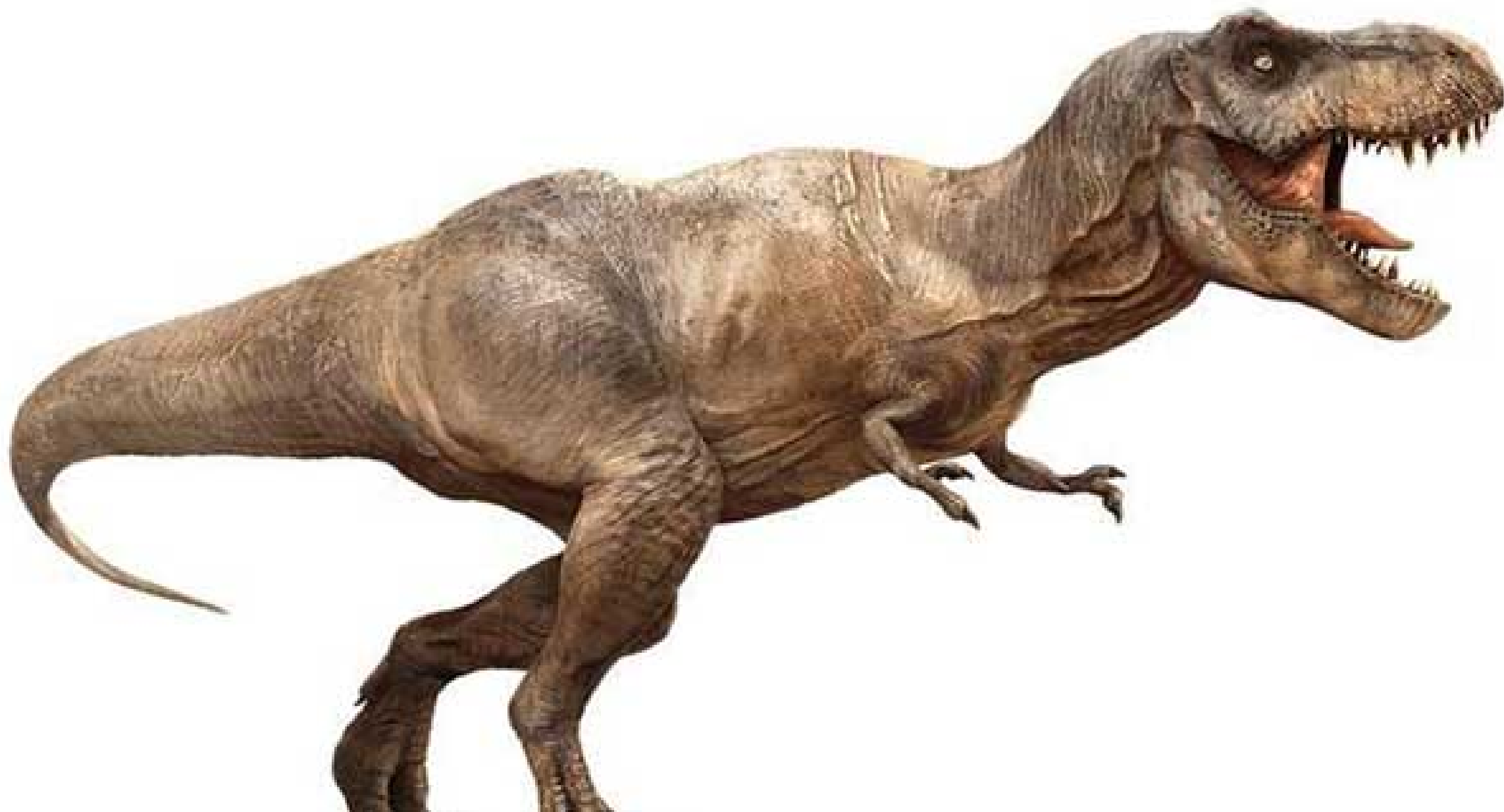
- ➡ America in 1950
 - ➡ World War I & the Ansell-Crowder Dispute
 - ➡ World War II & the Citizen-Soldier Experience
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- ➡ Doolittle & ABA Reports
 - ➡ Reform
 - ➡ Resistance
 - ➡ UCMJ of 1950
 - ➡ Conclusion




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
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America in 1950

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

➡ O-1 - \$230 (2 years)

➡ O-6 - \$640 (22 years)



■ Korean War – 25 June 1950





World War I & the Ansell-Crowder Dispute







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- ➡ Discipline? Justice?
 - ➡ Role of commander . . .
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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, Ft Sam Houston.
 Trial Started--- Nov 1, 1917- Brig Genl. George K. Hunter Presiding.
 Col. S. A. Hull- Judge Advocate. Counsel for Defense.
 Maj. D. V. Sulphur, Asst. Maj. Harry S. Grier.
 Prisoners guarded by 19th. Infantry Co "C" Capt. Carl J. Adler
 This photo Copyrighted by W. C. Lloyd, San Antonio Tex. Reproduction not allowed.













➤ Result?

➤ Articles of War (1920)

➤ Courts-martial more like
courts; more due process;
judicialization



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

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- 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

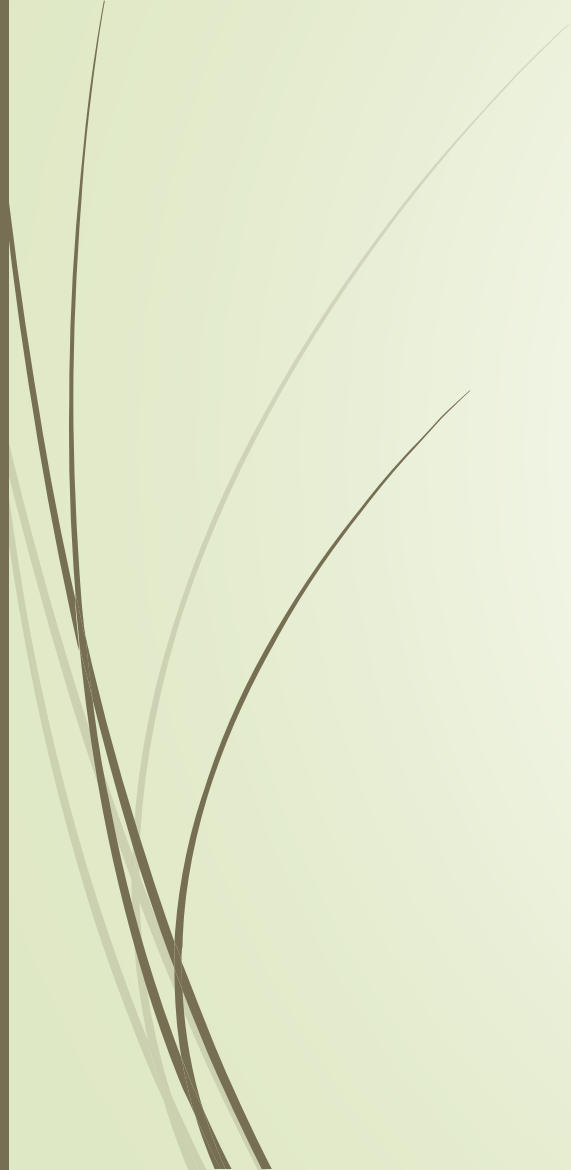


Resistance

➡ 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

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

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

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- 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
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- 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?

