

JUDGE ADVOCATE GENERAL'S DEPARTMENT

The origin of the Judge Advocate General's Department of our Army is practically contemporaneous with the adoption of a Military Code. The Continental Congress of 1775 having, on 30 June, agreed upon and enacted Articles of War, proceeded, on 29 July following, to create the office of "JUDGE ADVOCATE OF THE ARMY," to which, on the same day, was "elected" WILLIAM TUDOR. Mr. Tudor was a leading counselor of Boston, who had been the law pupil of John Adams, and was subsequently a member of both branches of the Legislature, and Secretary of State, of Massachusetts.

Further, on 10 August, 1776, the designation of "JUDGE ADVOCATE GENERAL" and the rank of Lieutenant Colonel were attached to the office; and this designation appears also in Article 3 of Section XIV of the amended Articles of War of 1776, where, in treating of General Courts Martial, it is provided that: "*The Judge Advocate General, or some person deputed by him, shall prosecute in the name of the United States of America.*"

Later, the emoluments (pay and subsistence) of the office of Judge Advocate General were raised to those of Colonel. Meanwhile Colonel Tudor had resigned and been succeeded by JOHN LAWRENCE, a distinguished jurist, afterwards appointed, by President Washington, Judge of the United States District Court for the District of New York, and who was also a delegate to the Congress of the Confederation, a member of the House of Representatives of the first and of the second Congress under the Constitution, and later a member, and in 1798 the presiding officer, of the United States Senate. Prior to his appointment as Judge Advocate General, he had served with the army in the field, both as a regimental and as a staff officer. He continued at the head of the administration of military law for upwards of five years, and was the Judge Advocate of the Board of officers by which the case of André was investigated. His letter of resignation is dated 16 May, 1782. In the interim (and subsequently) certain Judge Advocates or deputy Judge Advocates seem to have been appointed by the authority of Congress for different portions of the military force—as, for the Northern Army, for the Southern Army, for the troops in Virginia, the troops in Georgia, &c.* For the Army at large two deputies appear to have been associated with the Judge Advocate General.†

Colonel Lawrence was succeeded by THOMAS EDWARDS, who had previously been his principal deputy. Colonel Edwards, so far as appears from the Journals of Congress, was the last incumbent of the office of "Judge Advocate," or "Judge Advocate General, of the Army," (as the same seems to have been indifferently designated,) prior to the adoption of the Constitution.

Not long after that event, the first Congress, in the Act of 3 March, 1797, by which the military establishment was re-organized, in making provision for a single Brigadier General, as the officer highest in rank in the army, provided also:

"That there shall be one Judge Advocate, who shall be taken from the commissioned officers of the line, and shall be entitled to receive two rations extra per day, and twenty-five dollars per month in addition to his pay in the line; and whenever forage shall not be furnished by the public, to ten dollars per month in lieu thereof."

Under this Act, Capt. CAMPBELL SMITH, 4th Infantry, was appointed Judge Advocate,‡ and continued to hold the office till the same ceased to exist by the force of the Act of 16 March, 1802.

*Of these, John Taylor, "appointed Judge Advocate to the continental troops in the colony of Virginia," is the only name given in the Journals. It does not appear if he accepted or served.

†Lieutenant Thomas Edwards and "Mr." Strong.

‡He had previously been appointed, in Orders by Major General Wayne, "Judge Marshal and Advocate General to the Legion of the United States," an organization of the army established by an order of the President of 27 December, 1792.

Next, by an Act of 11 January, 1812, it was provided as follows:

"That there shall be appointed to each division a Judge Advocate, who shall be entitled to the same pay and emoluments as a Major in the infantry, or if taken from the line of the army, shall be entitled to thirty dollars per month in addition to his pay, and the same allowance for forage as is allowed by law for a Major of infantry."

The Judge Advocates appointed under this and the succeeding Acts are indicated in the appended list.

Further, by the statute of 24 April, 1816, "for organizing the general staff," &c., it was enacted:

"That there shall be three Judge Advocates to each division. * * * * * who shall receive the pay and emoluments of Major as heretofore allowed."

This provision was repealed by the Act of 14 April, 1818, "regulating the staff of the army," in which it was declared, among other things:

"That there shall be one Judge Advocate, with the rank and pay of a Topographical Engineer, (fixed by the Act of 3 March, 1813, as 'the brevet rank, and the pay and emoluments of a Major of Cavalry,') 'to each division.'"

This statute remained in force till 1 June, 1821, when, by the operation of the Act of 2 March of that year, the office of Judge Advocate was discontinued.

No further specific legislation in regard to this branch of the service was had till 1849, when, by chapter 83 of 2 March of that year, it was enacted, in section 4, as follows:

"That the President be, and is hereby authorized, by, and with the advice and consent of the Senate, to appoint a suitable person as Judge Advocate for the army, to be taken from the Captains in the army, who shall have the brevet rank, pay, and emoluments of a Major of cavalry."

Under this Act Capt. JOHN F. LEE, of the Ordnance Department, was appointed Judge Advocate, and continued in office until the legislation of the war of the rebellion superseded the office of Judge Advocate and created that of Judge Advocate General.

The enactment on this subject—section 5, chapter 201, Act of 17 July, 1862—declares:

"That the President shall appoint, by and with the advice and consent of the Senate, a Judge Advocate General, with the rank, pay, and emoluments of a Colonel of cavalry, to whose office shall be returned, for revision, the records and proceedings of all courts martial and military commissions, and where a record shall be kept of all proceedings had thereon."

The department of the Judge Advocate General was completed by the succeeding section of the Act, by which it was provided:

"That there may be appointed by the President, by and with the advice and consent of the Senate, for each army in the field, a Judge Advocate, with the rank, pay, and emoluments, each, of a Major of cavalry, who shall perform the duties of Judge Advocate for the army to which they respectively belong, under the direction of the Judge Advocate General."

The importance of the office of Judge Advocate General, at this time, as estimated by the President, was shown by his selection to fill the same of JOSEPH HOLT, the eminent statesman and lawyer, who had but recently occupied the position of Secretary of War, having previously also held that of Postmaster General. General Holt remained Judge Advocate General until 1 December, 1875, when, at his own request, he was retired from active service, and the present incumbent of the office, who had meanwhile been appointed Assistant Judge Advocate General, under the Act of 20 June, 1864, was commissioned to succeed him. The Judge Advocates appointed under Sec. 6 of the Act of 17 July, 1862, are specified in the appended List.

The Act of 20 June, 1864, the next legislation in order, was that by which was established the present BUREAU OF MILITARY JUSTICE. The provisions relating to the same are as follows:

"SEC. 5. *And be it further enacted*, That there shall be attached to, and made a part of, the War Department, during the continuance of the present rebellion, a bureau, to be known as the Bureau of Military Justice, to which shall be returned for revision, the records and proceedings of all the courts martial, courts of inquiry, and military commissions of the armies of the United States, and in which a record shall be kept of all proceedings had thereupon.

"SEC. 6. *And be it further enacted*, That the President shall appoint, by and with the advice and consent of the Senate, as the head of said bureau, a Judge Advocate General, with the rank, pay, and allowances of a Brigadier General, and an Assistant Judge Advocate General, with the rank, pay, and allowances of a Colonel of cavalry. And the said Judge Advocate General and his Assistant shall receive, revise, and have recorded the proceedings of the courts martial, courts of inquiry, and military commissions of the armies of the United States, and perform such other duties as have heretofore been performed by the Judge Advocate General of the armies of the United States."

These provisions, (like many others relating to the staff and line of the army,) being limited to the period of the war, the branch of the service to which the Judge Advocate General is the head was continued in operation by a Section of the Act of 28 July, 1866, fixing the "Military Peace Establishment." In this section (Sec. 12) it was enacted:

"That the Bureau of Military Justice shall hereafter consist of one Judge Advocate General, with the rank, pay, and emoluments of a Brigadier General, and one Assistant Judge Advocate General, with the rank, pay, and emoluments of a Colonel of cavalry; and the said Judge Advocate General shall receive, revise, and have recorded the proceedings of all courts martial, courts of inquiry, and military commissions, and shall perform such other duties as have been heretofore performed by the Judge Advocate General of the army."

In regard to the Judge Advocates, the same section (as amended by the Act of 25 February, of the following year) provided as follows:

"Of the Judge Advocates now in office there may be retained a number not exceeding ten, to be selected by the Secretary of War, who shall perform their duties under the direction of the Judge Advocate General."

By the subsequent Act of 10 April, 1869, the number of Judge Advocates of the army was fixed at eight.

The last specific legislation (had since the publication of the Revised Statutes—see Secs. 1198 to 1201) relating to the Judge Advocate General's Department, is that contained in the Act of 23 June, 1874, ch. 458, "re-organizing the several staff corps of the army." Section 2 declares:

"That the Bureau of Military Justice shall hereafter consist of one Judge Advocate General, with the rank, pay, and emoluments of a Brigadier General, and the said Judge Advocate General shall receive, revise, and have recorded the proceedings of all courts martial, courts of inquiry, and military commissions, and shall perform such other duties as have been heretofore performed by the Judge Advocate General of the army. In the corps of Judge Advocates no appointments shall be made as vacancies occur until the number shall be reduced to four, which shall thereafter be the permanent number of the officers of that corps."

The effect of this statute was to discontinue, after the term of the then incumbent, the office of Assistant Judge Advocate General—leaving the Bureau of Military Justice to consist of the Judge Advocate General alone—and to provide for the gradual reduction, through the casualties of the service, of the corps of Judge Advocates, then and now consisting of eight members, to one-half that number.

The legal status and organization of the Judge Advocate General's Department being thus fixed, it remains to refer briefly to the province and duties of the Bureau and of the Corps of Judge Advocates.

I. The duties of the Judge Advocate General, as specified in the existing law, are:

1. "To receive, revise, and cause to be recorded the proceedings of all courts martial, courts of inquiry and military commissions, and to perform such other duties as have been performed heretofore by the Judge Advocate General of the army."

The extent of this business may be estimated from the following statement, by which it will be perceived that since September, 1862, when General Holt assumed the office of Judge Advocate General, up to 1 July, 1880, there have been received, revised, &c., at the Bureau 227,958 records of military trials and investigations; and that the total number of such records now on file in the Bureau is 297,652.

2. The "other" duties of the Judge Advocate General, indicated in the statute, consist mainly in the making of reports to the Secretary of War upon such cases tried by military courts as require the action of the President, as well as reports upon applications for clemency or other relief presented to the President or Secretary of War by

persons who have been convicted by military courts; in the preparation or revision of charges, and the direction of military prosecutions and investigations; and, further, in the rendering of *opinions* upon all such *questions of law* arising in the course of the administration of the War Department as may be referred to him for opinion by the Secretary of War. These questions are necessarily of the most varied character.

The number of reports and opinions thus prepared and furnished by the Judge Advocate General since September, 1862, to 1 July, 1880, is 37,197.

Important as is the duty of properly reviewing the proceedings of military courts, before which are often raised questions of law of considerable difficulty, and whose sentences may involve the most serious consequences to the parties tried, it is rather the other branch of the business of the Bureau which has given to the office of Judge Advocate General its principal consequence. He is in effect the Law Officer of the War Department, holding practically the same position of general advisory counsel to the Secretary of War as is held by the several solicitors or Assistant Attorneys General towards the Chiefs of the Executive Departments to which they are attached. Such was peculiarly the relation between General Holt and Secretary Stanton, and his successors, and this relation has not since been materially modified. Thus, the faithful and efficient performance of his duties by the Judge Advocate General properly requires, in connection with a familiarity with the principles and practice of the special and limited code known as the law military, that general expert knowledge of law as a science which can only be acquired by a professional education and experience. It is believed, it may be added, to be mainly a lack of information as to the nature and extent of the purely legal duties of the Bureau, devolved upon it by the custom and practice of fifteen years, which, in some instances, has induced its use and value in the administration of the War Department, to be misunderstood.

II. As to the duties of the Judge Advocates these officers, as already perceived, are required by the existing statute in general terms to "perform their duties under the direction of the Judge Advocate General."

The majority are on duty at military department headquarters, where they assist the department commanders in reviewing proceedings of courts martial and in general law business, and not as prosecuting officers on important trials. Two generally act as assistants to the Judge Advocate General in the Bureau of Military Justice. One is detailed as Professor of Law at the West Point Academy.

A LIST of the Officers who have been appointed to, and have served in, the Offices of Judge Advocate General and Judge Advocate in the United States Army.

Prior to the Constitution.

JUDGE ADVOCATE GENERAL, OR JUDGE ADVOCATE, OF THE ARMY.	RANK, &c.	DATE OF APPOINTMENT.	
William Tudor.....	Lieut. Colonel.....	July	29, 1775.
John Lawrance.....	Lieut. Colonel, (with pay and subsistence of Colonel.).....	May	17, 1777.
Thomas Edwards..... do	June	3, 1782.

Under the Act of March 3, 1797.

JUDGE ADVOCATE GENERAL, OR JUDGE ADVOCATE OF THE ARMY.	RANK, &c.	DATE OF APPOINTMENT.
Campbell Smith, (Capt. 4th Infy.)....	His lineal rank, with additional pay, &c., as above.....	June 2, 1797.

Under the Acts of January 11, 1812, and April 24, 1816.

Thomas Gales.....	Pay and emoluments of Major of Infantry,	September 26, 1812.
Everett A. Bancker.....	do	March 18, 1813.
Philip S. Parker*.....	do	April 2, 1813.
Robert Tillotson.....	do	April 12, 1813.
John S. Willis.....	do	May 7, 1813.
James T. Dent.....	do	July 19, 1813.
Stephen Lush.....	do	October 5, 1813.
Rider H. Winder.....	do	July 9, 1814.
Henry Wheaton†.....	do	August 6, 1814.
Leonard M. Parker.....	do	September 16, 1814.
Auguste Davezac‡.....	do	December 16, 1814.
Samuel Wilcox.....	do	December 19, 1814.
William O. Winston.....	do	April 29, 1816.
Thomas Hanson.....	do	April 29, 1816.
John L. Lieb.....	do	July 9, 1816.
Samuel A. Storow.....	do	July 9, 1816.

Under the Act of April 14, 1818.

Samuel A. Storow.....	Brevet rank, pay, &c., of a Maj. of Cavalry,	(Reappointed or retained date not known.) September 10, 1816.
Stockley D. Hays.....	do	

Under the Act of March 2, 1849.

John F. Lee.....	Brevet rank, pay, &c., of a Maj. of Cavalry,	March 2, 1849.
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* Subsequently Recorder of Albany, New York.

† The eminent publicist; Reporter to the United States Supreme Court, Minister to Denmark and Prussia. Professor of Law at Harvard University, and author of the "Elements of International Law."

‡ It is doubtful if this officer was regularly appointed under the Statute, but he acted as "Major and Judge Advocate" of the Army, under Major-General Jackson, at the defence of New Orleans. He was subsequently *Charge d'Affaires* to the Netherlands.

Under the Act of July 17, 1862, and Subsequent Legislation.

JUDGE ADVOCATE GENERAL.	RANK.	DATE OF APPOINTMENT.
Joseph Holt.....	Colonel.....	September 3, 1862.
	Brig. General.....	June 22, 1864.
ASSISTANT JUDGE ADVOCATE GENERAL.		
William M. Dunn.....	Colonel.....	June 22, 1864.
JUDGE ADVOCATES.		
Levi C. Turner.....	Major.....	July 31, 1862.
John A. Bolles*.....	do.....	September 3, 1862.
John C. Knox.....	do.....	September 7, 1862.
Theophilus Gaines.....	do.....	November 1, 1862.
Guido N. Lieber.....	do.....	November 13, 1862.
Ralston Skinner.....	do.....	November 19, 1862.
T. S. Bowers.....	do.....	February 19, 1863.
Wells H. Blodgett.....	do.....	March 10, 1863.
G. Irvin Whitehead.....	do.....	March 11, 1863.
William M. Dunn.....	do.....	March 13, 1863.
John Mendenhall.....	do.....	March 17, 1863.
J. L. Stackpole.....	do.....	July 17, 1863.
Henry L. Burnett.....	do.....	August 10, 1863.
Edward R. Platt.....	do.....	November 2, 1863.
Addison A. Hosmer.....	do.....	November 24, 1863.
John A. Bingham†.....	do.....	January 12, 1864.
John C. Henshaw.....	do.....	February 29, 1864.
John C. Campbell.....	do.....	February 29, 1864.
DeWitt Clinton.....	do.....	May 27, 1864.
Lucien Eaton.....	do.....	July 2, 1864.
John C. Gray.....	do.....	July 25, 1864.
E. Whittlesey.....	do.....	September 1, 1864.
Seth C. Farrington.....	do.....	September 3, 1864.
E. L. Joy.....	do.....	September 15, 1864.
William Winthrop.....	do.....	September 19, 1864.
Henry H. Bingham§.....	do.....	September 20, 1864.
James N. McElroy.....	do.....	September 26, 1864.
Horace B. Burnham.....	do.....	October 31, 1864.
Francis E. Wolcott.....	do.....	December 17, 1864.
Edgar W. Dennis.....	do.....	January 19, 1865.
William E. Furness.....	do.....	February 22, 1865.
Thomas F. Barr.....	do.....	February 26, 1865.
William M. Hall.....	do.....	March 1, 1865.
William H. Coyle.....	do.....	May 18, 1865.
John F. Slagle.....	do.....	June 12, 1865.
Herbert P. Curtis.....	do.....	June 21, 1865.
Birney B. Keeler.....	do.....	June 26, 1865.
Richard R. Montgomery.....	do.....	June 30, 1865.
Henry Goodfellow.....	do.....	November 28, 1865.
Jacob H. Smith 	do.....	May 25, 1869.
David G. Swaim.....	do.....	December 9, 1869.
Asa B. Gardner.....	do.....	August 18, 1873.

* Now "Naval Solicitor and Judge Advocate General."

† Now an Assistant Adjutant General (Major.)

‡ Member of the House of Representatives in the 34th, 25th, 26th, 37th, 39th, 40th, 41st and 42d Congress, and now Minister to Japan.

§ Member of 46th Congress.

| Now Captain 19th Infantry.