

## Lore of the Corps

### TJAG for a Day and TJAG for Two Days: Brigadier Generals Thomas F. Barr and John W. Clous

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The large poster of drawings and photographs of The Judge Advocate Generals (TJAG) past and present—updated every four years and a ubiquitous presence in virtually all SJA offices—contains the portraits of two Army lawyers who served as TJAG for truly brief periods: Brigadier General (BG) Thomas F. Barr was TJAG for a day and BG John W. Clous for two days. This is the story of these two Soldiers, both of whom finished their military careers with amazingly short tenures as the top uniformed lawyer in the Army.

Born in West Cambridge, Massachusetts, in November 1837, Thomas Francis Barr studied law in Lowell, Massachusetts, and was admitted to the bar of that state in October 1859. Although one might have expected him to have enlisted in the Union Army at the outbreak of the Civil War—as did many men of his generation—Barr instead moved to Washington City (as Washington, D.C. was then called) in 1861 to join the Federal Government as a civil servant.

In October 1864, he resigned his civilian position and briefly engaged in the practice of law as a civilian. In February 1865, however, Barr donned an Army blue uniform for the first time when he accepted a direct appointment as a major and judge advocate.<sup>1</sup>

During the next thirty-six years, Barr served in a variety of important assignments. For example, he served as a judge advocate at the court of inquiry that investigated whether Major (MAJ) Marcus A. Reno had been guilty of cowardice at Little Big Horn in June 1876. Assigned as Judge Advocate, Department of Dakota, with duty in St. Paul, Minnesota,<sup>2</sup> then-MAJ Barr arranged for the appearance of witnesses and otherwise assisted court members at the inquiry, which was held in Chicago, Illinois, in early 1879. The members ultimately concluded that although MAJ Reno had had little respect for Lieutenant Colonel George A. Custer's ability as a Soldier, Reno was no coward. In fact, the court of inquiry cleared MAJ Reno of all wrongdoing at Little Big Horn.<sup>3</sup>

Although he was a judge advocate and did do legal work (like the Reno inquiry), Barr served over twenty-one years—from 1873 to 1894—in a non-lawyer job as Commissioner of the U.S. Disciplinary Barracks at Ft. Leavenworth, Kansas. Additionally, from 1879 until 1891, then-LTC Barr also served as “Military Secretary” to four different Secretaries of War: Alexander Ramsey, Robert Todd Lincoln (the son of the murdered president), William C. Endicott, and Redfield Proctor. In this capacity, he acted as personal advisor to these men on military matters.<sup>4</sup>

When LTC Barr returned to Washington permanently in 1895, he was promoted to colonel and appointed Assistant Judge Advocate General. On 21 May 1901, Colonel (COL) Barr traded his silver eagles for the stars of a BG and assumed duties as TJAG. The following day, 22 May, he retired. That same day, COL John W. Clous was promoted to BG and assumed duties as TJAG. While COL Clous lasted twice as long as Barr—he served two days as TJAG—he quickly retired as well, on 24 May 1901.

Born in Wurttemberg, Germany in June 1837, John Walter Clous immigrated to the United States as a teenager in 1855. Two years later, then 19-year-old Clous enlisted as a private and musician in Company K, 9th Infantry. He remained with this Regular Army unit until 1860, when then-Sergeant (SGT) Clous transferred to the 6th Infantry. After the Civil War broke out in April 1861, SGT Clous saw considerable combat and received a commission as a second lieutenant in November 1862. He was twice cited for gallant and meritorious service at the Battle of Gettysburg in July 1863 and finished the war as a first lieutenant.<sup>5</sup>

Sometimes called “The Dutchman” by his contemporaries (an epithet often used for those of German descent), Clous remained in the Regular Army after the war ended in 1865. In 1867, he obtained a promotion to captain by transferring to the 38th Infantry, one of the original all-African-American regiments created by Congress in 1866.<sup>6</sup> Two years later, Clous transferred again, this time to the all-black 24th Infantry. Major Clous subsequently served on the Frontier with that regiment and, during an 1872

<sup>1</sup> JOHN W. LEONARD & ALBERT N. MARQUIS, *WHO'S WHO IN AMERICA*, 1908–1909, at 98 (1908).

<sup>2</sup> BUREAU OF MILITARY JUSTICE, WAR DEPARTMENT, *A SKETCH OF THE HISTORY AND DUTIES OF THE JUDGE ADVOCATE GENERAL'S DEPARTMENT* 19 (1878).

<sup>3</sup> For more on the Reno court of inquiry, see RONALD H. NICHOLS, *IN CUSTER'S SHADOW: MAJOR MARCUS RENO* (1999).

<sup>4</sup> U.S. ARMY, *THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL'S CORPS, 1775–1975*, at 92 (1975) [hereinafter *THE ARMY LAWYER*].

<sup>5</sup> LEONARD & MARQUIS, *supra* note 1, at 366.

<sup>6</sup> LOUISE BARNETT, *UNGENTLEMANLY ACTS: THE ARMY'S NOTORIOUS INCEST TRIAL* 70 (2000).

engagement with Native American tribes, Clous was again cited for gallantry in combat.<sup>7</sup>

In 1881, while serving in the Department of Texas, Clous, who had previously studied law, was detailed as the judge advocate in the infamous court-martial of Lieutenant Henry O. Flipper, the first African-American graduate of the U.S. Military Academy. Flipper, who had been the acting commissary officer at Fort Davis, Texas, had been charged with embezzlement and conduct unbecoming an officer and gentlemen arising from a shortage of funds at Fort Davis. Major Clous prosecuted the case but failed to convince the court that Flipper was guilty of the first charge. However, the panel did find that Flipper had committed a crime by concealing the shortage of monies, and this conviction required that he be dismissed from the service. Secretary of War Lincoln and President Chester Arthur subsequently approved the verdict and sentence of the court.<sup>8</sup>

Amazingly, it was not until after the Flipper court-martial, when Clous had twenty-four years of service as a line officer, that he obtained an appointment as a major and judge advocate in 1886.

From 1890 to 1895, Clous served as a professor and the Head of the Law Department at the U.S. Military Academy at West Point. After the Spanish-American War began in 1898, then-COL Clous received an appointment as a brigadier general of Volunteers. He subsequently served on the staff of Major General Nelson A. Miles and as Secretary and Recorder of the Commission for the Evacuation of Cuba.<sup>9</sup> In 1899, COL Clous was back in Washington, D.C.—he had relinquished his appointment as a volunteer general officer—and was serving as Deputy Judge Advocate General when he was promoted to TJAG.

What explains the amazingly short tenures of Barr and Clous as TJAG? It all resulted from Secretary of War Elihu Root's decision to give old Civil War veterans a "farewell present of the next higher rank," provided they promised to retire the next day.<sup>10</sup> Barr and Clous were selected for this honor. This explains why Barr served a day as TJAG, and, while it does not explain why Clous managed to serve twice as long, both men did honor their promises to retire shortly after reaching general officer rank.

The practice of allowing Civil War veterans to be promoted to the next higher rank was not restricted to the Judge Advocate General Department. Various other departments of the Army General Staff also implemented Root's idea. Consequently, the list of retired generals became so long that Congress passed legislation in 1906 prohibiting the practice.<sup>11</sup>

The extraordinarily brief service of BG Barr and BG Clous as TJAG has earned them a unique place in our Regimental history as two individuals who were almost literally "king-for-a-day."

*More historical information can be found at*

The Judge Advocate General's Corps  
Regimental History Website

*Dedicated to the brave men and women who have served  
our Corps with honor, dedication, and distinction.*

<https://www.jagcnet.army.mil/8525736A005BE1BE>

<sup>7</sup> THE ARMY LAWYER, *supra* note 4, at 92.

<sup>8</sup> For more on the Flipper court-martial, see CHARLES M. ROBINSON, THE COURT MARTIAL OF LIEUTENANT HENRY FLIPPER (1994).

<sup>9</sup> LEONARD & MARQUIS, *supra* note 1, at 366.

<sup>10</sup> THE ARMY LAWYER, *supra* note 4, at 92.

<sup>11</sup> *Id.*

## An Introduction to the Disposal of DoD Property

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In the 2010 State of the Union Address, President Obama stated that “[the Department of Defense] will have all of our combat troops *out of Iraq by the end of August [2010].*”<sup>1</sup> The mission to retrograde, or redeploy, Department of Defense (DoD) combat units from Iraq<sup>2</sup> by August 2010 led to a flurry of planning at all levels of command. One of the most challenging implied tasks generated from the President’s retrograde order is the proper disposal of DoD property located in Iraq.<sup>3</sup> The DoD property that requires disposal includes not only property that is currently owned and managed by DoD units in theater, but also property that is owned by DoD but managed by DoD contractors in theater, like the Logistics Civil Augmentation Program (LOGCAP).<sup>4</sup> Under LOGCAP, for example, DoD must dispose of 3.1 million pieces of equipment worth over \$3.3 billion in Iraq alone.<sup>5</sup> As a result, the disposal of DoD property presents a monumental task for all units retrograding from Iraq, and their advising judge advocates (JA), in a constrained timeline. The fact that most JAs have a limited understanding of the legal framework for the disposal of DoD property complicates this monumental task further.

The two articles that follow—*Herding Cats I: Disposal of DoD Real Property and Contractor Inventory in Contingency Operations*, by Captain Lyndsey Olson,<sup>6</sup> and *Herding Cats II: Disposal of DoD Personal Property*, by Major Kathryn Navin<sup>7</sup>—seek to provide JAs with the legal framework related to the disposal of all DoD property overseas. Captain Olson created, and Major Navin adopted, the metaphor of “herding cats” to describe the legal

framework of property disposal. In effect, each disposal mechanism is like an “unruly cat” that JAs must fully understand, and simultaneously employ, in order to successfully execute the disposal of property mission in Iraq. To fully understand the disposal of property legal framework, JAs must read and understand both of the articles, since each focuses on different aspects of the disposal of property and their respective disposal mechanisms.

The availability of a property disposal mechanism ultimately depends on the classification of property. Department of Defense property overseas may be classified in one of three ways: (1) DoD real property, (2) DoD personal property, and (3) DoD contractor inventory (property owned by DoD but used by a contractor to execute its contract).<sup>8</sup> The chart on the following page summarizes the major property classifications and their sub-classifications.<sup>9</sup>

Ultimately, the classification of property determines the proper disposal mechanism. The different property disposal mechanisms include Foreign Excess Real Property (FERP) disposal,<sup>10</sup> or Contractor Inventory disposal,<sup>11</sup> which Captain Olson addresses in *Herding Cats I*. They also include Defense Reutilization and Marketing Service (DRMS) disposal,<sup>12</sup> Foreign Excess Personal Property (FEPP) disposal,<sup>13</sup> and the disposal of military-type property by transfer to the Government of Iraq (GoI) or the Government of the Islamic Republic of Afghanistan (GIROA),<sup>14</sup> which Major Navin addresses in *Herding Cats II*.

Together, the two articles provide a full understanding of the law and policy related to disposal of property in one location, providing an invaluable tool for deployed JAs advising their units and commanders on disposal of property matters. The Department hopes that they assist deployed JAs to provide technically competent legal advice to units retrograding—and disposing of property—in Iraq and Afghanistan.

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<sup>1</sup> President Barack Obama, State of the Union Address (Jan. 27, 2010), available at <http://www.whitehouse.gov/the-press-office/remarks-president-state-union-address> (emphasis added); see also Captain Lyndsey MD Olson, *Herding Cats I: Disposal of DoD Real Property and Contractor Inventory in Contingency Operations*, ARMY LAW., Apr. 2010, at 5.

<sup>2</sup> For a full discussion of retrograde, see Olson, *supra* note 1, at 5; see also Kathryn M. Navin, *Herding Cats II: Disposal of DoD Personal Property*, ARMY LAW., Apr. 2010, at 27.

<sup>3</sup> Although the current focus of retrograde operations is Iraq, DoD will also retrograde from Afghanistan at a future point in time. The law governing the disposal of property is currently the same in Iraq and Afghanistan, and will apply in a similar manner in Afghanistan when we begin to retrograde from Afghanistan.

<sup>4</sup> See Olson, *supra* note 1, at 13.

<sup>5</sup> *Id.* at 1, 13.

<sup>6</sup> *Id.*

<sup>7</sup> Navin, *supra* note 2, at 26.

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<sup>8</sup> Olson, *supra* note 1, at 8.

<sup>9</sup> See Olson, *supra* note 1, app. B; see also Navin, *supra* note 2, app. A.

<sup>10</sup> Olson, *supra* note 1, at 8–12.

<sup>11</sup> *Id.* at 12–15.

<sup>12</sup> Navin, *supra* note 2, at 21–29.

<sup>13</sup> *Id.* at 33–37.

<sup>14</sup> *Id.* at 37–38.