

From the Regimental Historian & Archivist

“The Highest Principles at the Highest Levels”

More than one hundred years ago, Judge Advocate General George B. Davis took a principled stand against torture, despite claims from some military commanders and civilian politicians that military necessity required harsh methods.

George Breckenridge Davis was a remarkable man by any measure. Born in Massachusetts in February 1847, Davis finished high school at age 16 and then lied about his age to enlist in the 1st Massachusetts Volunteer Cavalry. He subsequently fought in more than 25 battles and engagements in the Civil War, including the hard fought Battles of Cold Harbor and the Wilderness in 1864.

In 1867, Davis entered the U.S. Military Academy at West Point and, after graduating in 1871, served as a cavalryman on the frontier in the 1870s and early 1880s. But he also was an intellectual and scholar, and consequently had two teaching tours at West Point. Davis taught history, geology, chemistry, mineralogy, Spanish and French. He also taught law as an Assistant Professor of Law and, while at West Point, published a book, *Outline of International Law*.

In 1885, having decided that he liked law more than serving as a cavalry officer, then 1st Lt. Davis applied for an appointment in the Judge Advocate General's Department (JAGD). He heard nothing for three years when, shortly after returning to the Western Territory for more duty with the 5th U.S. Cavalry, the Army informed then Capt. Davis that he was being appointed a Major in the JAGD.

Davis transferred to Washington, D.C. and began working in the Office of the Secretary of War. He took advantage of his time in Washington to earn his LL.B and LL.M degrees at Columbian (now George Washington Univ.) Law School. After another tour at West Point--this time as the Professor of Law--Davis returned to Washington. He was appointed The Judge Advocate General in 1901.

When Davis became the Army's top lawyer, the Philippine Insurrection was in full swing. Rebels led by Emilio Aguinaldo believed that they had been promised independence by the United States, and they were conducting a vicious guerilla war against the American Army. Although the Soldiers quickly secured most urban areas, the insurgents repeatedly ambushed U.S. patrols venturing into the mountainous terrain or jungles on Luzon. The Americans hit back hard at the guerillas and their allies--too hard in some cases. By the end of the first year, Soldiers writing home talked about using extreme violence against the

Filipino insurgents, including torture.

A letter written by a Soldier in the 32d Volunteer Infantry Regiment, published in May 1900 in the Omaha World-Herald, described how his unit had uncovered a hidden weapons cache by using the "water cure" on insurgents captured in the field. According to the Soldier, "we lay them on their backs, a man standing on each hand and each foot, then put a round stick in the mouth and pour a pail of water in the mouth and nose, and if they don't give up pour in another pail. They swell up like toads. I'll tell you it is a terrible torture."

Just how widespread the practice was will never be known, but it "was often, if not always, justified as a means of intelligence-gathering."

A number of Officers were court-martialed for permitting the use of the "water cure" during the questioning of insurgents, and TJAG Davis reviewed the records of trial in these cases in 1901 and 1902. In *United States v. Maj. Edwin Glenn*, which Davis reviewed in 1901, he made a lasting contribution to our history by insisting that military necessity could not trump the rule of law. Interestingly, Glenn certainly



MG George B. Davis served as TJAG from 1901 to 1911.

understood courts-martial practice and procedure better than most Soldiers. He was not a lawyer and had no formal legal education, but he had served as a Judge Advocate at courts-martial, a typical additional duty

for Army officers of the period.

On November 27, 1900, Glenn's unit entered the town of Igbaras and seized its mayor, Tobeniano Ealdama. Glenn, aided by a contract surgeon, then supervised the water torture of Ealdama. The Filipino's throat had been "held so that he could prevent swallowing the water, so that he had to allow the water to run into his stomach." The water was then forced out by stepping on his stomach.

The torture resulted in Ealdama confessing to being an insurgent leader, and he subsequently led the American Soldiers into the jungle to search for guerrillas. Later that evening, Glenn ordered that the town of Igbaras be destroyed, and the

Americans burned between four and five hundred houses.

Secretary of War Elihu Root ordered that Glenn be court-martialed in San Francisco, but the trial was later moved to the Philippines. The proceedings lasted a week. Glenn was found guilty, sentenced to a one-month suspension from command and a \$50 fine.

When Davis reviewed the record of trial, however, he was outraged. Glenn's sentence, wrote TJAG, was "inadequate to the offense established by testimony of the witnesses and the admission of the accused." General Order 100, which governed the conduct of U.S. troops in the field--and had been in place since the Civil War--was clear: "Military necessity does not admit of cruelty--that is, infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in a fight, nor of torture to extort a confession."

"No modern state, which is a party to international law, can sanction, either expressly or by a silence which imports consent, a resort to torture with a view to obtain confessions, as an incident to its military operations."

Otherwise, "where is the line to be drawn? Shall the victim be suspended, head down, over the smoke of a smoldering fire; shall he be tightly bound and dropped from a distance of several feet; shall he be beaten with rods; shall his shins be rubbed with a broomstick until they bleed?"

Davis' indignant protests could not be ignored. Although President Theodore Roosevelt had previously written to a friend that American Soldiers, faced with a "very treacherous" enemy, had used a "mild torture, the water cure ... but that nobody was seriously damaged," he declared in a 1902 speech at Arlington National Cemetery that the use of torture was deplorable. "Determined and unswerving efforts must be made," insisted Roosevelt, "to find out every instance of barbarity on the part of our troops, to punish those guilty of it, and to take ... measures ... to prevent the occurrence of all such acts in the future."

When Davis retired as a major general in 1911, he left a legacy of service that few could equal. And his insistence that there was no legal or moral justification for the "water cure" remains an inspiring example of a Judge Advocate insisting that U.S. forces comply with the law of armed conflict.

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