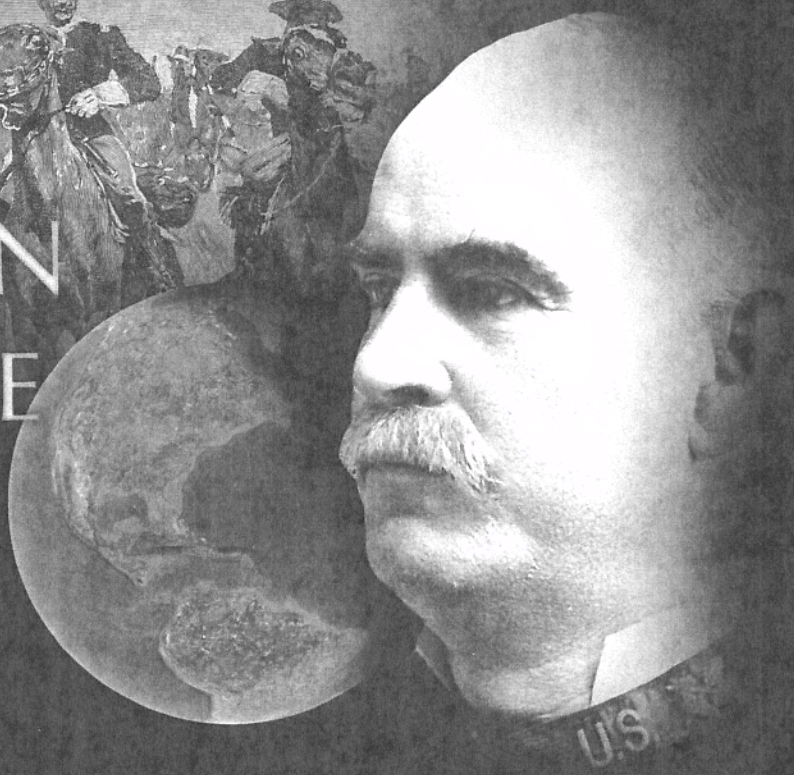

From Frontier Cavalryman to the World Stage

The Career of Army Judge Advocate General George B. Davis

By Frederic L. Borch

George Breckenridge Davis (1847–1914) was a remarkable man by any measure. An experienced soldier, he fought in more than twenty-five battles and engagements in the Civil War before obtaining a commission at West Point and serving as a cavalryman on the frontier in the 1870s and early 1880s. An intellectual and scholar, he taught history, geology, chemistry, mineralogy, Spanish, and French—and law—at West Point before earning his bachelor and master of laws degrees. Davis also authored a highly regarded treatise on international law and an authoritative text on military law. He finished his remarkable career in uniform as the Army's top lawyer, serving as the judge advocate general of the Army from 1901 to 1911. During this period, Davis not only provided legal advice and counsel to the Army's top military and civilian leaders but also played a major role in efforts to create a national military park system. His work as an official delegate to the international peace conference in The Hague in 1907 also influenced the evolution of the law of armed conflict. When Davis retired as a major general in 1911, he left a legacy of service that few could equal.

Early Life and Army Career

Davis was born in Ware, Massachusetts, on 14 February 1847 but spent most of his youth in nearby Springfield. The son of a railway mechanic, he had by the age of sixteen completed all but one term of the English and classical course at Springfield High School. He was working as a clerk when he enlisted as a private in a new battalion of the 1st Regiment, Massachusetts Volunteer Cavalry, on 8 September 1863. According to his enlistment papers, he was 5 foot 10 inches tall (above average for the time) and had "dark" eyes, "dark" hair, and a "light" complexion. These papers also show that Davis lied about his age when he signed up. Since the minimum age for enlistment with parental consent was eighteen and Davis was only sixteen, he claimed two extra years. This explains why both the December 1863 company muster-in roll, documenting its muster into federal service, and the June 1865 company muster-out roll show Davis to be eighteen years old.[1]

Despite his youth, Davis was a well-regarded cavalry trooper, becoming his company's quartermaster sergeant by December 1863 and gaining the same position in the regiment by November 1864. Davis experienced a fair amount of combat while his unit was part of the Army of the Potomac. He participated in some twenty-five engagements in Virginia, including the Battle of the Wilderness, where his unit engaged Confederate cavalry on 5 May 1864 and suffered forty-one casualties.[2]

After the surrender of Lee's forces at Appomattox in April 1865, Davis and his fellow Massachusetts cavalrymen busied themselves arresting deserters and stragglers in the area around Petersburg, Virginia, before moving to Washington, D.C., where they participated in the Grand Review on

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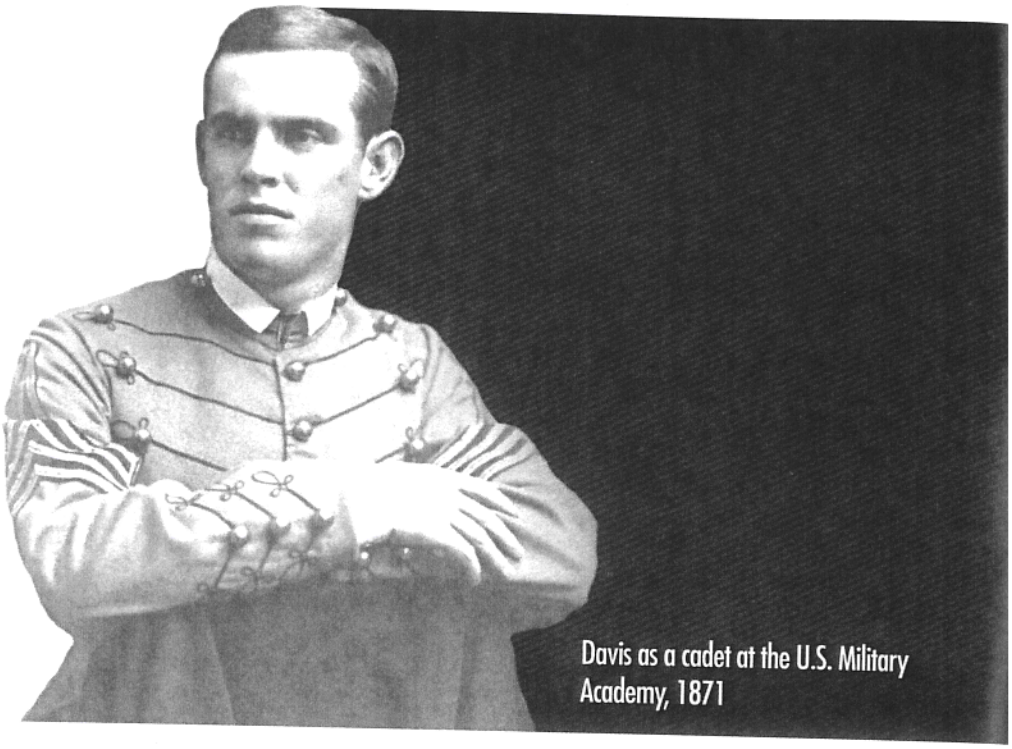
Soldiers of the 35th U.S. Volunteer Infantry demonstrate the water cure, c. 1900.

National Archives

23 May. On 17 June 1865, while still on duty in the nation's capital, Davis was honorably discharged from the ranks to accept a commission as a second lieutenant in Company F of his regiment. But the war was over, and his career as a volunteer officer was ephemeral; Davis was mustered out a little more than a week later, on 26 June. He and his unit then returned to Massachusetts.[3]

From July 1865 until March 1867, Davis "was engaged in business" and, at least some of the time, worked in Springfield, Massachusetts, as a mechanical draftsman for the Connecticut River Railroad. He evidently missed life in uniform, for on 18 May 1866 he wrote to President Andrew Johnson requesting an appointment to the U.S. Military Academy. Davis explained that he had wanted to attend West Point before he had enlisted and that while he had been with the 1st Massachusetts Volunteer Cavalry "the desire only strengthened."[4] A year later, Davis was a cadet at West Point.



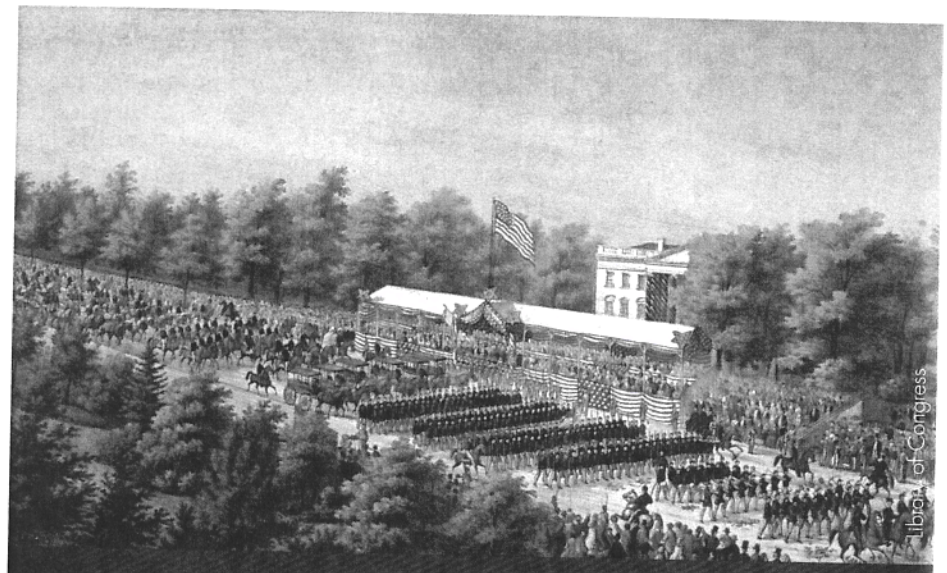
Davis as a cadet at the U.S. Military Academy, 1871

Davis began his studies at the U.S. Military Academy on 1 July 1867. "His long service in the Civil War, coupled with his quiet dignity and genial disposition" made him a popular cadet with his classmates, one member of the class later recalled.[5] He was also smart and applied himself to his studies. Davis' cadet record shows he did well academically, for he ranked tenth in his graduating class of forty-one; eighteen other cadets admitted with him in 1867 failed to graduate.[6]

Despite assigning him some demerits for offenses like "having his coat unbuttoned in the barracks hall," "sending the incorrect list to the laundry," and "smoking on the path near the cadet store," his superiors recognized Davis' talents and abilities as a leader. He served as a corporal and sergeant in the Corps of Cadets before receiving the high honor of first captain his last year at West Point.[7]

When Davis graduated on 12 June 1871, his prior military service in the Civil War made most logical his appointment as a second lieutenant of cavalry and his assignment to the 5th Cavalry. Before reporting for duty with his regiment at Fort D. A. Russell, Wyoming Territory, in September 1871, however, Davis returned to West Springfield, Massachusetts. There, on 6 July 1871 he married Ellen Isabella Prince. He was twenty-four years old; Ellen, known familiarly as Ella, was twenty-one.[8]

Life as a soldier on the frontier was tough. It was hot and dusty, and there were few comforts or pleasures. As Davis' classmate George F. Chase put it, "in those days on the frontier, our army was destined to constant occupation with only short rests between arduous campaigns." Soldiers often went for weeks without tents or bedding and frequently lacked sufficient food. After 2½ months at Fort D. A. Russell, young Davis rode with his regiment to



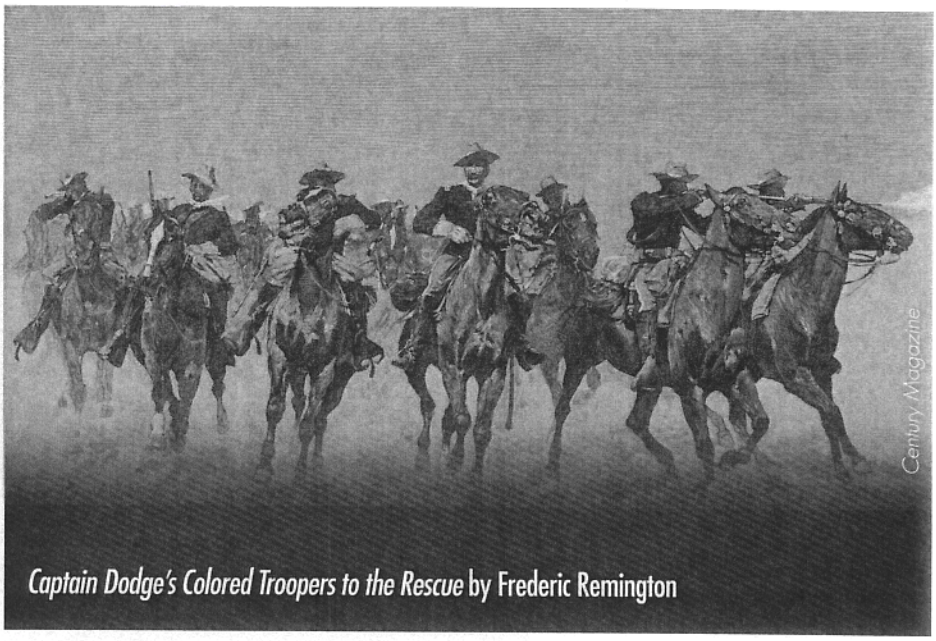
Troops from the Army of the Potomac march in the Grand Review in Washington, D.C., 23 May 1865, lithograph by E. Sachse and Company

Camp Bowie in southeastern Arizona Territory, from where in August 1872 he was "assigned to field service" for three months at Calabasas, a remote station on the Mexican frontier. The heat was certainly appalling: 110 degrees in the shade. While at Calabasas, he contracted malaria, from which he suffered greatly. But since there were insufficient officers to do the required work, Davis stayed on duty at the station. He saw combat against Apache warriors near Camp Bowie in July and August 1873.[9]

After this field assignment, Davis was transferred at the end of August 1873 to the faculty at West Point where, as an assistant professor in the Spanish Department, his chief duty was to teach that language. Apparently he did not have sufficient work, as he requested and was assigned duties in other departments. In 1876 he taught French, and the following year he instructed cadets in chemistry, geology, and mineralogy.[10]

His qualities as an instructor were superlative, and he was highly respected by both cadets and his fellow faculty members. As Professor Samuel E. Tillman remembered,

> When Davis returned to the Academy as Instructor . . . in 1873, two years after graduation, he was then twenty-six years old and had had three years' experience in the Civil War; thus, besides competent knowledge, he had a maturity and experience far beyond that of most other instructors of like post-graduate service. This fuller development, in part explains his ready versatility, and was impressive to his pupils, and accordingly increased their respect for him and for the Academy. He was thereby the better instructor from the very beginning of his teaching experience. This maturity and experience, of course increased with increased knowledge and with time.[11]



Captain Dodge's Colored Troopers to the Rescue by Frederic Remington

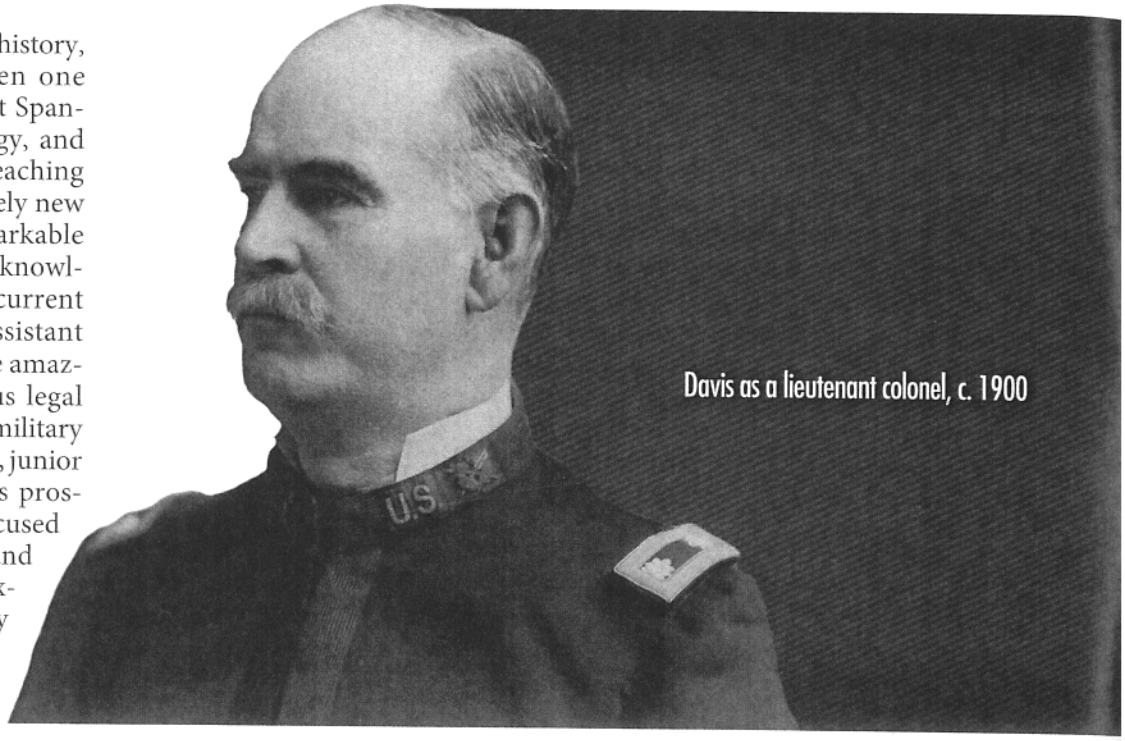
On 9 May 1877, after almost six years in grade—and nearly four years teaching at West Point—Davis was promoted to first lieutenant. In August 1878, after his assignment at the academy ended, he left New York to return to the 5th Cavalry and frontier duty in the Department of the Platte. During the next five years, which Davis spent at Fort D. A. Russell and at Fort Niobrara, Nebraska, he served as an assistant quartermaster, assistant commissary of subsistence, and an ordnance and signal officer. He also participated in the pursuit in Nebraska and Wyoming in September and October 1878 of three hundred Northern Cheyennes who had fled Indian Territory, in further military operations against the Northern Cheyennes in January and February 1879, and in the campaign against Ute warriors in Colorado from September to December 1879.[12]

On at least one occasion, Davis saw hard fighting. He was part of a column of cavalry led by Maj. Thomas T. Thornburgh that White River Utes attacked at Milk Creek, Colorado, on 29 September 1879, killing Thornburgh and ten others. Two officers, a surgeon, and forty-three soldiers were wounded before a siege of the contingent ended a week later. It was a close call; the enemy had encircled Thornburgh's 120-soldier force, and only the arrival on 2 October, after a 23-hour forced march, of 40 soldiers from Company D, 9th Cavalry, led by Capt. Francis S. Dodge, and on 5 October of nine companies under Col. Wesley Merritt, commander of the 5th Infantry, prevented a worse disaster.[13]

In August 1883, Davis, still a lieutenant, returned to West Point to be

White River Utes attacked at Milk Creek, Colorado, on 29 September 1879, killing Thornburgh and ten others. Two officers, a surgeon, and forty-three soldiers were wounded

principal assistant professor of history, geography, and ethics. When one remembers that he had taught Spanish, French, chemistry, geology, and mineralogy during his first teaching tour, his ability to tackle entirely new subjects shows both his remarkable intelligence and his breadth of knowledge. Consequently, the concurrent assignment of Davis as an assistant professor of law is all the more amazing. Whether he had previous legal experience is not shown in his military records, but, during this period, junior line officers routinely acted as prosecutors or counsel for the accused at regimental courts-martial, and thus Davis surely had some exposure to military law. In any event, Davis delved eagerly into the subject, and in 1887 he authored a 469-page text on international law geared to undergraduate and law students.[14] It was in the area of law that Davis was to make his greatest contribution to the Army as an officer.



Davis as a lieutenant colonel, c. 1900

Davis' book met with wide acclaim. James B. Angell, who was the president of the University of Michigan, a former minister to China, and a respected author on American diplomacy, lauded it as a "careful study . . . a skillful and orderly presentation of the main principles of the science, and the humane spirit of these writers who bring the highest ethical considerations to the discussion of its great questions." Another university president declared that he found "the work admirable as a college textbook. It is clear in both method and style, [and] free from all partisan or even national prejudices." A reviewer in the *Nation* lauded the book as "well and carefully written" and a work that "will meet the requirements of the legal student and the thoughtful general reader," while the *Boston Globe* declared that "Professor Davis has performed good service towards public education in undertaking such a needed, and in producing such a learned and well arranged, book."[15]

As Davis immersed himself in law, he realized that he wanted to serve the Army as a full-time judge advocate. Consequently, on 2 February 1885, Davis requested that he be appointed as a judge advocate "in the event of a vacancy occurring in the Bureau of Military Justice." His application was strongly endorsed by Col. Wesley Merritt, commander of Davis' regiment and then superintendent of the U.S. Military Academy, who had known Davis since 1876. Merritt wrote, "I know of no one who is as well fitted by habits of study, attainments in literature and law or experience, as he is, for a position in the Bureau of Military Justice." Lt. Gen. Philip Sheridan, the Army's commanding general, concurred in the recommendation.[16]

As Davis had no formal legal training and was not a licensed attorney, he sought to demonstrate his qualifications by gathering letters of recommendation from those who knew of his abilities. The letters show the high regard in which Davis was held by both his superiors and other prominent individuals with whom he came in contact.

Lt. Col. Henry C. Hasbrouck, an artillery officer who was then the commandant of cadets at the U.S. Military Academy, wrote to Davis that he was "particularly fit" for an appointment as judge advocate because of "your knowledge of military and civil law, and of the customs of service acquired during your service in the Civil War, and many years since in garrison and the field." Hasbrouck hoped that Davis would receive the appointment "for the good of the service."[17]

Similarly, Rev. William M. Postlethwaite, who since January 1882 had served as chaplain and professor of history, geography, and ethics at West Point, wrote that Davis had "superior natural abilities" that made him "most competent" to be appointed as a major in the Judge Advocate General's Department. Postlethwaite also wrote that "from his [Davis'] long and varied experience in courts-martial . . . and from his thorough knowledge (as a teacher) of the principles and practice of the Law, I am confident no mistake could be made in his appointment to this position which his friends ask for him."[18]

Davis also received recommendations from individuals holding prominent positions in civilian life. For example, Ohio Governor George Hoadly, an attorney, wrote on Davis' behalf to President Grover Cleveland's secretary of war, William C. Endicott. Hoadly was on the Board of Visitors at West Point, which Davis had been detailed to assist, and had seen Davis and the academy's professor of law,

Maj. Herbert Curtis, examine their law students. Hoadly wrote,

> I was delighted with what I heard and saw of their work and I was very much charmed with Lieut. Davis himself. He is a gentleman, a scholar, a Democrat, and while I do not know anything about the situation and therefore shall not be surprised or disappointed if some other gentlemen be preferred, it will be personally a gratification to me if I hear that Lieut. Davis be made Judge Advocate General [*sic*] with the rank of Major.[19]

In August 1888, Davis was promoted to captain and sent to Indian Territory, now Oklahoma, for duty. Davis still retained interest in the cavalry, and, while he was serving in Indian Territory, an article he wrote on "The Operations of the Cavalry in the Gettysburg Campaign" appeared in the new *Journal of the United States Cavalry Association*. But this tour was short-lived because in December 1888 Davis was appointed a major in the eight-officer Judge Advocate General's Department. He was then transferred to the Office of the Secretary of War in Washington, D.C., and in May 1889 he was appointed as the president and sole military member of the three-member board that Congress had placed in charge of the continued publication of the *The War of the Rebellion*, a compilation of official records of the Civil War begun in 1880 and completed in 1901. Davis took advantage of his time in Washington to earn his bachelor and master of laws degrees at Columbian (now George Washington University) law school.[20]

In August 1895, Davis was promoted to lieutenant colonel and became the most junior of the three officers with the title of deputy judge advocate general. Later that month he left Washington and his work on the *The War of the Rebellion* to return to West Point, having been appointed as professor of law and head of the Law Department by the Army's new judge advocate general, Brig. Gen. G. Norman Lieber. During this assignment at the U.S. Military Academy, which lasted until 1901, Davis had a marked impact on the teaching of law. He established the core curriculum in law for all cadets, which meant that in their final year, cadets took elementary and constitutional law in the first semester and international and military law in the second. This law curriculum, with only a few minor changes, remained in place for almost a century. After the death of Postlethwaite in January 1896, Davis' department assumed responsibility for instructing cadets in history as well as law.[21] Additionally, Davis found time to write two more books for use in teaching cadets. The Government Printing Office issued in 1896 his 113-page *Introduction to the Study of Constitutional and Military Law of the United States* and a private publisher in New York released two years later his bulky, 754-page *Treatise on the Military Laws of the United States: Together with the Practice and Procedure of Courts-Martial and Other Military Tribunals*.

Davis' treatises on criminal and constitutional law were a welcome addition to the library of professional soldiers throughout the Army. As one of his successors as professor of law at the U.S. Military Academy observed, Davis' work as an educator paid long-term dividends, as "West Point graduates, relying in large part on the law instruction they received as cadets, successfully administered martial law, organized and conducted civil affairs, and facilitated the establishment of civil governments in Cuba, Puerto Rico, and the Philippines." At the same time, Capt. Arthur L. Wagner, who was teaching at the Infantry and Cavalry School at Fort Leavenworth, Kansas, included a revised version of Davis' article on cavalry operations at Gettysburg in the compilation of studies on the use of cavalry in the Civil War and the Franco-Prussian War that Wagner edited for officers' professional development.[22]

Following the Spanish-American War, while still assigned to West Point as professor of law, Davis served as the recorder in a high profile court of inquiry appointed by President William McKinley. The court grew out of claims by Maj. Gen. Nelson A. Miles, then the Army's commanding general, that chemically treated or "embalmed" beef, as well as defective canned beef, had been supplied to U.S. troops in the Spanish-American War.

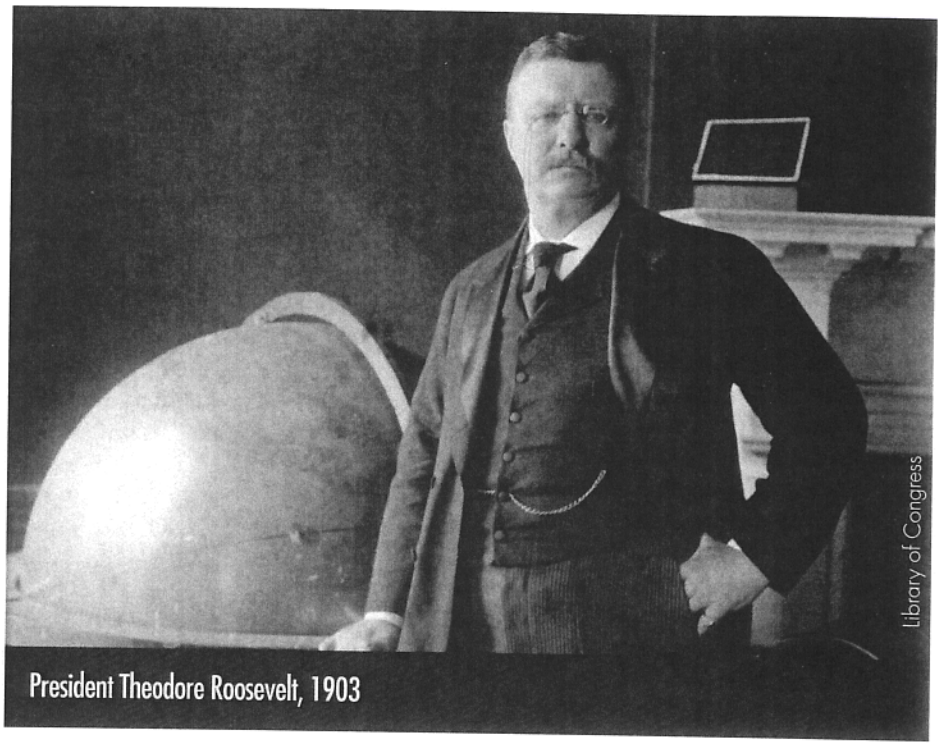
While it has long been forgotten, the "canned beef" controversy of 1898 and 1899 was part of a larger Army logistical fiasco that drew substantial media attention during and after the Spanish-American War. Troops landing in Cuba after "a disorderly voyage" had to contend with "unsuitable food, uniforms designed to meet the needs of service in North Dakota in winter, and a lack of adequate maps." While there also were complaints that volunteer units had obsolete Springfield rifles and black powder cartridges, the media firestorm of the day focused on the allegation by Dr. William H. Daly, a volunteer surgeon on Miles' staff, that "the fresh beef furnished by the contractors had been treated chemically" and that War Department

the "canned beef" controversy of 1898 and 1899 was part of a larger Army logistical fiasco that drew substantial media attention

officials (and therefore the McKinley administration) had been criminally negligent in allowing this "embalmed" meat to be canned, shipped, and fed to U.S. soldiers in Cuba. Miles aggressively seconded these charges.[23]

Given Miles' position as the top soldier in the Army, these were serious allegations, with potentially harmful political ramifications. After a detailed investigation by a presidential commission headed by Civil War Maj. Gen. Grenville Dodge failed to quiet the controversy, McKinley in February 1899 appointed an official court of inquiry headed by Maj. Gen. James F. Wade to address the charges. The court's report, which McKinley released to the public on 8 May 1899, rejected Miles' allegations and instead concluded that the canned beef supplied to soldiers in the field was pure and that complaints about the meat had more to do with the preparation than the quality of the beef.[24]

Miles, who had presidential ambitions, was discredited, as were any who had allied themselves with him against McKinley and the War Department. But Davis, whose participation in the court of inquiry was both professional and evenhanded, received the administration's gratitude.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President Theodore Roosevelt, 1903

Judge Advocate General Davis

Davis was promoted to colonel on 22 May 1901. Two days later President McKinley gave him a recess commission as judge advocate general of the Army with the rank of brigadier general. His appointment to this position followed those of Cols. Thomas F. Barr and John W. Clous, both of whom had previously agreed to retire as brigadier generals after holding the post only a day or two. Their quick departures cleared the way for Davis to become judge advocate general without the need to oversee men who had served longer than he had in the department. When the Senate reconvened in December 1901, President Theodore Roosevelt nominated Davis for a four-year term as the Army's top lawyer, and the Senate confirmed him the following April. Davis would be nominated for successive four-year terms in 1905 and 1909 by Presidents Roosevelt and William H. Taft, and he again subsequently won Senate confirmation.[25]

Davis spent the next ten years as the Army's top lawyer. While he provided hundreds if not thousands of legal opinions to the Army's civilian and military leadership, his legal acumen had the most lasting impact in four areas. First, Davis reviewed a number of high profile criminal cases arising out of the Philippine Insurrection and took a public stand against those U.S. officials who defended the use of torture during military operations. Second, Davis limited the opportunities of African Americans in the Army through his legal opinions on the lawfulness of enlisting black men in the coast artillery and in the state militias. Third, Davis' work with Congress was critical to the creation of a military national park system that preserved Civil War battlefields for future generations. Finally, Davis' work as an official delegate to the second international peace conference in The Hague had an influence on the development of the law of armed conflict.

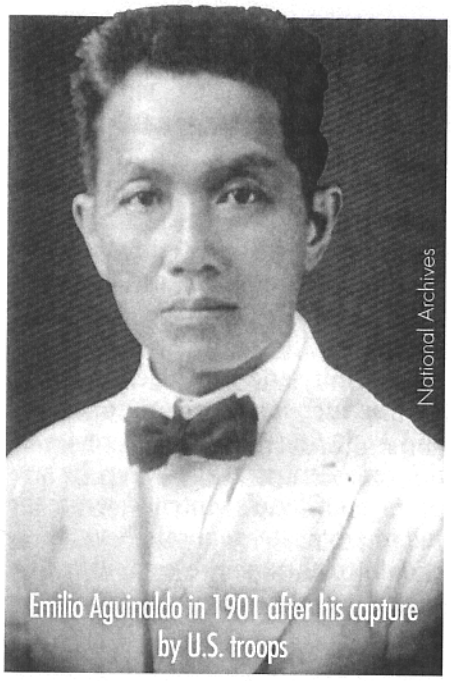
When Davis took his oath of office as the judge advocate general on 24 May 1901, the Army was entering a new period in its history. Victory in the recent war with Spain had suddenly meant the end of a small frontier constabulary and new military responsibilities in Cuba, Puerto Rico, and the Philippines. The recent acquisition of Hawaii also meant new tasks for the Army. As a result, at the turn of the century, almost three-quarters of the Army was serving overseas. Most were in the Philippines; in December 1900, there were 69,420 regulars and volunteers in that archipelago, and they were embroiled in fighting an increasingly violent insurgency.[26]

The fighting with Spain had ended in August 1898, although a formal peace treaty would not be signed in Paris until December. But a new conflict in the Philippines broke out in February 1899 when some of the more than seven million Filipinos, having joined in defeating the Spanish, now objected to the "benevolent assimilation" proposed by the Americans.

Filipino rebels led by Emilio Aguinaldo believed that they had been promised independence by the United States and conducted a vicious guerrilla war against the U.S. Army. Although the Americans secured most urban areas in 1899, the insurgents continued to ambush U.S. patrols venturing into the mountainous terrain or jungles, both on Luzon and

on the other islands in the chain. It was not until early 1901, when U.S. troops under the leadership of Brig. Gen. Frederick Funston captured Aguinaldo in his camp at Palanan, that large-scale resistance subsided, and even then guerrilla attacks continued for more than a year.

When in July 1902 President Roosevelt announced that the Philippine Insurrection was over, forty-one months of war had involved some 125,000 U.S. troops, of whom some 4,200 had died, 1,000 of them killed in combat, and some 2,900 had been wounded. An estimated 20,000 Filipino insurgents had also been killed.[27] The Army's legal machinery had played a significant role in quelling the insurrection, for military commissions were used to try Filipino insurgents for violations of the law of armed conflict. After the defeat of most of the regularly organized and outfitted insurgent units in 1899, many of the Filipinos who continued to fight for independence lacked traditional military discipline or uniforms. Deemed guerrillas, these irregular forces, in the view of the United States, violated the laws of war when they would ambush, attack, or otherwise harm U.S. soldiers. In consequence, insurgents who were not killed could be prosecuted at a military commission for violating the law of war. For example, in the summer of 1900 a commission convened at Batangas, Luzon, tried Albino Villareal, a native of the Philippines, on the charge of "being a guerrilla" in that "not being a member of any recognized military organization," he engaged "in unlawful warfare against the forces of the United States, and did lie in wait and fire upon a body of United States troops on the march." Although he faced death as a punishment, the court sentenced him to twenty years' confinement "at hard labor." Maj. Gen. Arthur MacArthur subsequently approved the findings and sentence.[28]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Emilio Aguinaldo in 1901 after his capture by U.S. troops

Others accused were not so fortunate. A commission convened at Dagupan, Luzon, tried Vicente Prado, also a native Filipino, for leading a band of some two hundred outlaws that at his orders "did willfully, feloniously and with malice aforethought kill and murder" four Filipinos and two Americans, one of whom was thought to be a Regular Army soldier. He also was charged with waging "guerrilla warfare, in violation of the laws of war" for dispatching "sporadic expeditions of un-uniformed armed outlaws" and particularly for ordering part of his band to "attack and burn San Jacinto, P.I.," an attack in which 103 houses were consumed by fire. Found guilty of the charges, he was sentenced to "be hanged by the neck till [*sic*] dead."[29]

Although the U.S. military ultimately triumphed against the insurgents, the struggle had a dark side; soldiers hit back hard at the guerrillas and their allies—too hard in some cases. By the end of the first year of fighting, soldiers writing home talked about using extreme violence, including torture, against the Filipino insurgents.

In a letter published in May 1900 in the *Omaha World-Herald,* a soldier in the 32d U.S. Volunteer Infantry 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."[30]

The Army's legal machinery also played a significant role in these war crimes because soldiers were court-martialed for torturing Filipino insur-

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.

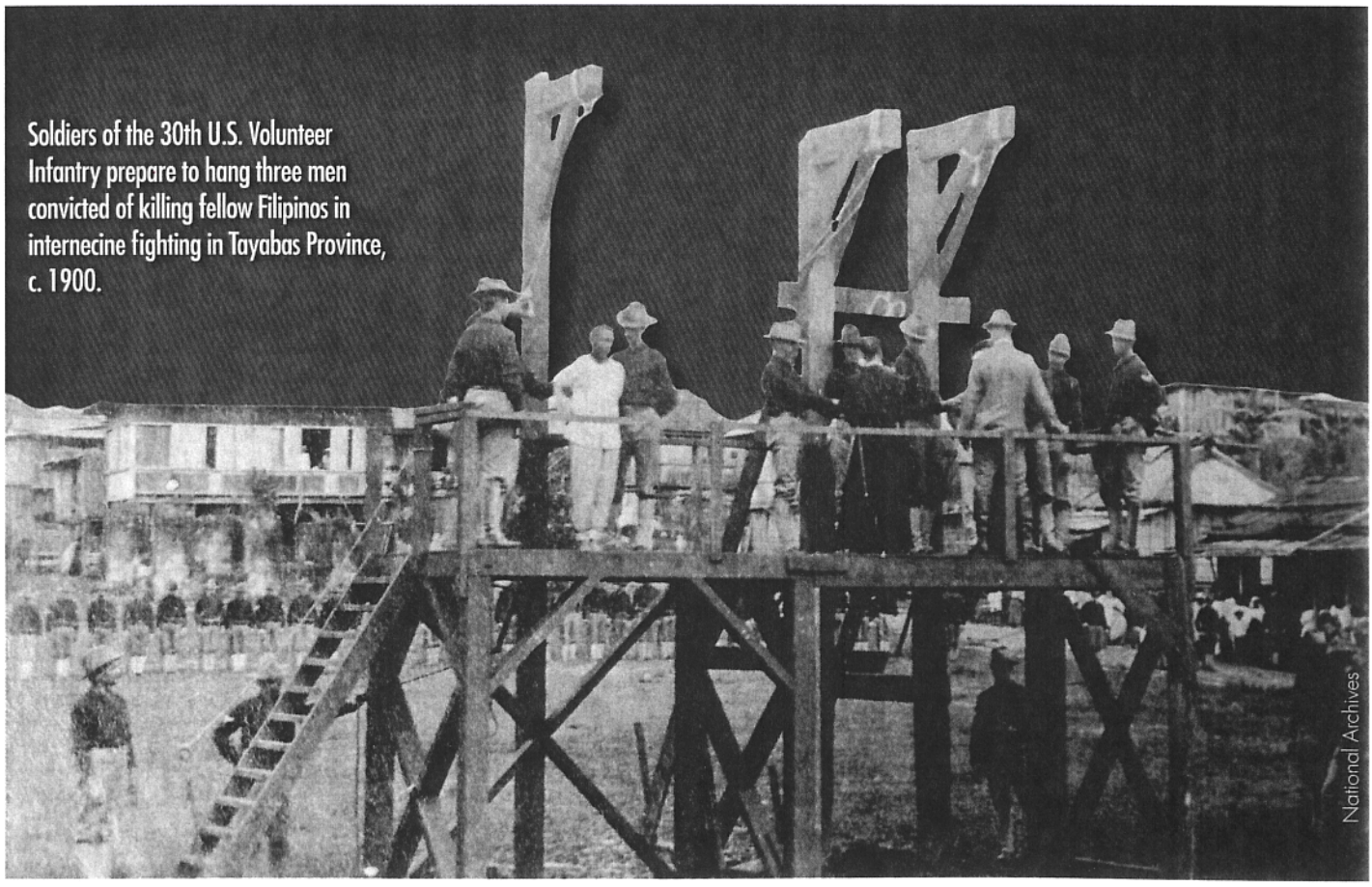
gents. Although most court-martial records were ordinarily not examined by the judge advocate general, Davis reviewed several of these cases in 1901 and 1902. In examining these courts-martial and offering his legal advice, Davis made a lasting contribution by insisting that military necessity could not trump the rule of law.[31]

The court-martial of Capt. Edwin Glenn is instructive of the problems faced by troops in the Philippines. On 27 November 1900, Glenn's unit had entered the town of Igbaras on Panay Island and seized its mayor, Tobeniano Ealdama. Glenn, aided by a contract surgeon, then supervised the water torture of Ealdama. According to testimony before a Senate committee by a former sergeant who had been present, the Filipino's throat had been "held so he could not 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 U.S. soldiers into the jungle to search for guerrillas, the sergeant related. Finding an insurgent outpost, the Americans burned it.[32]

Secretary of War Elihu Root ordered that Glenn be court-martialed in San Francisco for administering the water cure, but the trial was later moved to the Philippines. The proceedings, held in May 1902, lasted a week. Glenn was found guilty and 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 the judge advocate general, "was inadequate to the offense established by testimony of the witnesses and the admission of the accused." General Orders 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, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding, except in fight, nor of torture to extort a confession." Observing that the court sympathized with the defendant, however, Davis saw no benefit to rejecting the sentence, and he recommended its confirmation.[33]

Davis proposed the disapproval, however, of the court-martial verdict received by 1st Lt. Edwin Hickman of the 1st Cavalry on charges of immersing two Filipinos at Tayabas, Luzon, in November 1901 to obtain information. The court had determined that Hickman was guilty of the actions charged but attached no criminality to them and acquitted him. Davis objected that

> 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. If it does, where is the line to be drawn? If the 'water cure' is ineffective, what shall be the next step? Shall the victim be suspended, head down, over the smoke of a smouldering fire; shall he be tightly bound and dropped from a distance



Soldiers of the 30th U.S. Volunteer Infantry prepare to hang three men convicted of killing fellow Filipinos in internecine fighting in Tayabas Province, c. 1900.

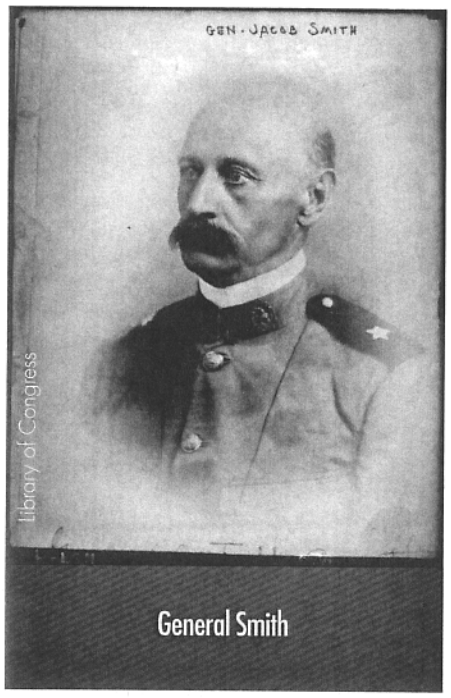
> of several feet; shall he be beaten with rods; shall his shins be rubbed with a broomstick until they bleed?[34]

Davis' indignant protests could not be ignored. Although President Theodore Roosevelt had previously written to a friend that U.S, soldiers, faced with a "very treacherous" enemy, had used a "mild torture, the water cure" and that "nobody was seriously damaged," he disapproved the findings and acquittal in the Hickman case in January 1903. Indeed, the president had already declared in a speech at Arlington National Cemetery eight months earlier that the use of torture was deplorable. "Determined and unswerving effort 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 minimize or prevent the occurrence of all such acts in the future."[35]

The highest profile court-martial for abuse in the Philippines was that of Army Brig. Gen. Jacob H. Smith, who had been placed in command of U.S. troops on the island of Samar in October 1901. The charges filed against Smith alleged that, after some U.S. soldiers had been killed and mutilated on the island, Smith had instructed his subordinates that "I want no prisoners" and "I wish you to kill and burn. The more you kill and burn, the better you will please me." Smith was also charged with saying to Marine Corps Maj. Littleton W. T. Waller, "The interior of Samar must be made a howling wilderness."[36]

Smith's court-martial determined that his subordinates did not execute his orders and, concluding that Smith "did not mean everything that his unexplained language implied," it sentenced him only to an admonishment. In his review of the court-martial, Davis observed that Smith's instructions do not appear to have been justified and that "their effect was to incite revengeful feelings in the minds of those who received them and to induce them to commit acts of cruelty." After receiving Davis' analysis of the case, President Roosevelt not only approved the court-martial's mild sentence but also directed that Smith be retired from the Army. Davis' principled stand against torture and abuse continues to inspire Army lawyers wrestling with similar issues today.[37]

The second area where Davis' legal work had a definite impact on the Army involved the status of African Americans in uniform. After more than 180,000 black soldiers served with distinction in the Union Army during the Civil War, Congress in 1866 created specific cavalry and infantry regiments for black enlisted personnel. During the remainder of the nineteenth century, more than 12,000 African-American soldiers served in four regiments on the frontier, where



General Smith

they participated in extensive military operations against Native Americans in the Plains and Southwest. These "buffalo soldiers" later served in Cuba in the Spanish-American War, where they fought bravely at San Juan Hill, and in the Philippines, where soldiers of two infantry regiments earned high praise in fighting against Filipino insurgents.[38]

In 1904 Brig. Gen. Thomas H. Barry, commander of the Department of the Gulf, proposed that "colored men" be enlisted to serve as artillerymen at southern seacoast posts, observing that the white enlisted men currently assigned there found that service "undesirable by reason of prolonged and excessive heat, isolation, mosquitoes, and bad water," rarely reenlisted, and were difficult to replace. The Army's chief of staff, Lt. Gen. Adna R. Chaffee, referred the suggestion to Davis, who provided a legal opinion on the question.[39]

In Davis' view, the issue was more properly framed as whether existing law permitted African Americans to join coast artillery units or whether the consent of Congress was required. In an eight-page memorandum, Davis concluded that when Congress reorganized the Regular Army in 1866 and created all-black cavalry and infantry regiments, this was "an expression of the will of Congress" that African-American men were restricted to these units. It followed, concluded Davis, that since the Constitution vests in Congress "the power 'to raise and support Armies,'" the Army could not permit "a material change in the composition of the companies of coast artillery" without prior congressional authorization. Because such authority did not exist, black men could enlist only in the four all-black regiments.[40]

Two years later, Davis again was called on to interpret the laws regulating the service of people of color. Several southern states had "mustered out" all African-American units so that their state militias were now all white. The issue before Davis was whether this was legal and whether such state action required the withholding of federal funding for the militia. Davis concluded that as Congress had not expressly stated that African Americans must be permitted to join a state's militia, the War Department lacked the power to direct otherwise or to withhold federal funding in response to possible "discrimination."[41]

Measured by today's standards, Davis' 1904 and 1906 legal opinions are disappointing. Unwilling to challenge the institutional racism that afflicted not only the Army but much of American society, Davis instead provided conservative legal advice that

supported the status quo. Of course, the Army's racially segregated units, and extremely limited opportunities for African Americans in uniform generally, reflected nothing more or less than the views of most whites in America during this period. Davis was probably comfortable with the Army's institutional racism, and his legal analysis indicates that comfort.[42]

Although Davis' efforts to preserve historic battlefields and other sites as national military parks or memorials were not directly related to his position as the judge advocate general, his contributions in this area had made a lasting impact on the Army and the nation. After Congress created national parks and national military parks to protect the battlefields at Chickamauga, Chattanooga, Shiloh, Gettysburg, and Vicksburg in the 1890s, it encountered increased public interest in preserving other battlefields. Between 1901 and 1904, Congress considered more than thirty legislative proposals to create an additional twenty-three historic military reservations in nine states and the District of Columbia.[43]

The Subcommittee on Parks of the House Committee on Military Affairs, chaired by Congressman Richard Wayne Parker of New Jersey, held hearings in April 1902 on the preservation of Civil War battlefields. Davis appeared as a key witness, and his testimony on the issue made a lasting contribution. Having served for six years as chairman of the commission supervising the publication of the documentary series *The War of the Rebellion*, Davis had visited the battlefields in question and consequently was considered an expert. He now proposed that Congress refrain from purchasing large tracts of land as had been done at Chickamauga and Gettysburg. Davis expressed the view, as National Park Service historian Ronald F. Lee summarized his testimony, "that small tracts and markers should be sufficient in almost every pending case."[44]

Davis based his approach on what he had experienced when working to preserve the Antietam battlefield in the early 1890s as chairman of the war records commission. He explained that if Congress wanted to preserve a field "in the condition in which it was when the battle was fought, it should undertake to perpetuate an agricultural community." At Antietam Davis had recommended that "narrow lanes" of land "should be obtained along the lines of battle, and that fences should be erected on either side, so as to preserve the farming lands intact." This was done, and, as a result, a minimum amount of money had been spent to purchase land. Yet, in Lee's view, the historical markers were "well located and accessible."[45]

The Binnenhof in The Hague, site of the 1907 international peace conference

According to Lee, Davis' proposal was enthusiastically received by Congress and came to be known as the "Antietam Plan." Thus, in 1927, when Congress authorized funding to preserve the battle sites at Fredericksburg, Spotsylvania Courthouse, Chancellorsville, and the Wilderness, the legislation cited the Antietam system as the model to be followed in preserving these areas.[46] At a time when almost all of the Civil War battlefield areas considered for preservation were agricultural, Davis' "Antietam Plan" made perfect sense.[47]

Davis' fourth and final major contribution as judge advocate general was his representation of the United States as a delegate plenipotentiary to the Hague Conference of 1907. This meeting, which President Roosevelt had called for in 1904, was attended by forty-four countries. Like the first Hague Conference of 1899, its chief goal was to negotiate international agreements that would codify the customary rules and laws of warfare on land and sea. One important focus of the 1907 meeting was arms limitation. Although this aim was largely unsatisfied, the 1907 conference did produce a number of important conventions regulating the conduct of hostilities.[48]

Elihu Root, who had become secretary of state, selected Davis as military delegate to this conference. Root had at least three reasons to pick Davis for the job. First, the Army's chief of ordnance, Brig. Gen. William R. Crozier, who had been the military delegate to the 1899 conference, recommended Davis to Root. Second, Davis had attended the 1906 conference held in Geneva, Switzerland, that adopted a new convention on the amelioration of the condition of the sick and wounded in armies in the field, and he was familiar with both

the major issues and the other players. Finally, Davis not only was the Army's top lawyer, but his "renown as a scholar," as a leading historian of the conference explained, gave him added credibility. "His textbook on international law was used in many colleges, and historians respected his work as editor of the *Official Records of the War of Rebellion*."[49]

After arriving in the Netherlands in May 1907, Davis submitted a proposal that would amend the 1899 Hague Conference's declaration forbidding bullets that could expand upon impact, which the United States had not accepted, to instead forbid the use of any bullet that would do more harm than necessary to place a man out of combat. The conference, however, did not act on this recommendation.[50]

The Russian and French delegations, meanwhile, insisted that there should be a "prohibition" on "beginning war without formalities." The Russians especially were sensitive about the recent Japanese surprise attack on Port Arthur, which Czar Nicholas II had denounced as treachery, and the French delegation was in agreement with this Russian view.[51] Davis and the other American delegates were worried by this proposal, which they interpreted as a thinly disguised attempt to embarrass the Japanese. More importantly, Davis was convinced from his own study of the subject that a surprise attack was not a violation of customary international law. Davis understood that the public might find attractive a requirement for a formal declaration prior to the opening of hostilities, but he concluded that prior declarations "should not be regarded with favor."[52]

Despite this conclusion and despite the fear of American delegates that the conference might produce an agreement that could conflict with the power of Congress to declare war, the United States did not object to the principles enunciated by the Russians and the French. The Second Hague Peace Conference proceeded to adopt the requirement that hostilities could not lawfully "commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war." These requirements subsequently became part of Article 1, Hague Convention III. Following the recommendations of Secretary Root, the Senate ratified this convention and ten others approved in The Hague but did not ratify the remaining three, two of which the U.S. conference delegates had not signed.[53]

After returning from The Hague in October 1907, Davis continued with his duties as judge advocate general. He also found time to complete a third edition of his *Elements of International Law*, which was published in 1908. This edition discussed the outcome of the 1907 Hague peace conference and included the texts of the first thirteen conventions approved there.[54]

On 14 February 1911, having reached the compulsory retirement age, Davis retired with a promotion to major general. On the occasion of his departure from active duty, Secretary of War Henry L. Stimson lauded Davis for "the fidelity and ability" with which he had served. After his military retirement, Davis remained a lecturer on international law and military law at National University Law School in Washington, D.C. He held this position until his death on 16 December 1914. He was then sixty-seven years old, and "his death was a surprise to his friends," as they thought he "had been in fine health."[55] A subsequent autopsy, however, indicated "chronic arterio-sclerosis" as the cause of death.[56]

Conclusion

Having worn an Army uniform almost continuously from 1863 until 1911, Davis left a legacy of service that few officers of any branch could equal. While he died some ninety-five years ago, Davis has not been forgotten; a recent *New Yorker* article lauded him for his principled stand against torture.[57] Uniformed lawyers in the Army today likewise remember Davis for his insistence that U.S. military operations must, at all times, comply with the law of armed conflict.

"hostilities could not lawfully commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war."

Notes

The author thanks Roger D. Cunningham for his helpful advice in preparing this article.

1. Ltr, George B. Davis to Andrew Johnson, 18 May 1866, doc. 47, roll 241, National Archives microfilm M688, U.S. Military Academy (USMA) Cadet Application Papers; Muster Rolls, Massachusetts Volunteer Units, 1861–1865, Office of the Adjutant General, Massachusetts, reel 60 (1st Cavalry), Massachu-

setts National Guard Museum and Archives, Worcester, Mass.

2. Annotated Statement of Volunteer Record during the Rebellion, updated 12 Aug 1879, folder 1, file 3184 ACP 1873, entry 297, Appointment, Commission, and Personnel Branch files, box 315, Record Group (RG) 94, Records of the Adjutant General's Office, National Archives (hereinafter cited as Davis personnel file); George F. Chase, "George Breckenridge Davis," *Forty-Sixth Annual Reunion of the Association of the Graduates of the United States Military Academy at West Point, New York, June 11th, 1915* (Saginaw, Mich.: Seemann & Peters, 1915), p. 129; Frederick H. Dyer, *A Compendium of the War of the Rebellion* (Des Moines: Dyer Publishing Co., 1908), pp. 1237–38; *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*, 128 vols. (Washington, D.C., 1880–1901), ser. 1, vol. 36, pt. 1, pp. 129, 853.

3. Adjutant General's Office, Massachusetts, *Massachusetts Soldiers, Sailors, and Marines in the Civil War*, 9 vols. (Norwood, Mass.: Norwood Press, 1931–35), 6: 131, 192; Dyer, *Compendium*, p. 1238.

4. Individual Service Rpt, Maj George B. Davis, fiscal year ending 30 Jun 1895, first quote, Davis personnel file; Ltr, Davis to Johnson, 18 May 1866, second quote.

5. Chase, "George Davis," p. 129.

6. George W. Cullum, *Biographical Register of the Officers and Graduates of the United States Military Academy*, 9 vols., 3d ed. (Boston, 1891–1950), 3: 170, 184; *Register of Graduates and Former Cadets of the United States Military Academy, 2000* (West Point, N.Y.: Association of Graduates, 1999), p. 4-49.

7. Register of Cadet Delinquencies, George B. Davis (31 May 1871), p. 113, quotes, USMA Library; Chase, "George Davis," p. 130.

8. Copy, Certificate of Marriage, George B. Davis and Ellen Isabella Prince, Town of West Springfield, Mass., 11 Aug 1915, file WC-796,983, Widow's Pension for Ella P. Davis, RG 15, Records of the Department of Veterans Affairs, National Archives (NA). The Davises' daughter Mary would marry artillerist William R. Smith, an 1892 USMA graduate who ultimately became superintendent of his alma mater, and it was in the superintendent's quarters at West Point that Ella would die in 1931. A second daughter married Charles M. Wesson, a 1900 USMA graduate. He would serve as chief of ordnance with the rank of major general from 1938 to 1942. George's and Ella's grandson William R. Smith Jr. (1908–1977) graduated from the U.S. Military Academy in 1932 and served for twenty-seven years as an officer in the Corps of Engineers. See Ltr, Maj Gen William R. Smith to the Veterans Administration, 31 Dec 1931, in file WC-796,983; Chase, "George Davis," p. 137; Cullum, *Biographical Register*, 8: 126, 9: 77; *Register of Graduates, 2000*, pp. 3-43, 4-68, 4-77, 4-159.

9. Chase, "George Davis," p. 130, quotes; Cullum, *Biographical Register*, 3: 171.

10. Chase, "George Davis," pp. 130–32; Cullum, *Biographical Register*, 3: 171.

11. Tillman is quoted in Chase, "George Davis," pp. 133–34.

12. Chase, "George Davis," pp. 130–31; Robert M. Utley, *Frontier Regulars: The United States Army and the Indian, 1866–1891* (New York: Macmillan, 1973), pp. 283–84.

13. Chase, "George Davis," p. 131; Utley, *Frontier Regulars*, pp. 336–37. Dodge received the Medal of Honor for his heroism in this fight. See Committee on Veterans' Affairs, U.S. Senate, *Medal of Honor Recipients, 1863–1978* (Washington, D.C.: Government Printing Office, 1979), p. 280.

14. Chase, "George Davis," pp. 131–32; George B. Davis, *Outlines of International Law, with an Account of Its Origin and Sources and of Its Historical Development* (New York: Harper & Brothers, 1887).

15. Sheet of Critical Notices, Outlines of International Law, enclosed with Ltr, Davis to Brig Gen R. C. Drum, 3 Jan 1888, Davis personnel file. The review in the *Nation* appeared on 9 June 1887.

16. Ltr, Davis to the Adjutant General, U.S. Army, 2 Feb 1885, first quote, with 1st End, Merritt to Sheridan, 2 Feb 1885, and 2d End, Sheridan to the Sec of War, 13 Feb 1885, Davis personnel file.

17. Ltr, Hasbrouck to Davis, 2 Jan 1886, in Davis personnel file.

18. Ltr, Postlethwaite to President Grover Cleveland, 4 Jan 1886, in Davis personnel file.

19. Ltr, Hoadly to Endicott, 2 Jan 1886, in Davis personnel file. Curtis, who was named a judge advocate in June 1865, had served as a lieutenant and captain in the 1st Massachusetts Cavalry while Davis was in the unit. See *Official Army Register for January 1886* (Washington, D.C.: Adjutant General's Office, 1886), pp. 10, 238. While Hoadly had been a Republican during the Civil War, he became disillusioned with the party, and in 1884 he was elected governor of Ohio as a Democrat.

20. Cullum, *Biographical Register*, 3: 191; George B. Davis, "The Operations of the Cavalry in the Gettysburg Campaign," *Journal of the United States Cavalry Association* 1 (November 1888): 325–48; *Official Army Register for January, 1889* (Washington, D.C.: Adjutant General's Office, 1889), p. 11; *War of the Rebellion: Official Records*, General Index, pp. x, xiii; Chase, "George Davis," p. 131.

21. Patrick Finnegan, "The Study of Law as a Foundation of Leadership and Command: The History of Law Instruction the United States Military Academy at West Point," *Military Law Review* 181 (Fall 2004): 117–18; *Official Army Register for 1897* (Washington, D.C.: Adjutant General's Office, 1896), pp. 251, 336.

22. Finnegan, "Study of Law," pp. 119, quote, 131; *Cavalry Studies from Two Great Wars*, ed. Arthur L. Wagner (Kansas City, Mo.: Hudson Kimberly Publishing Company, 1896), pp. 5, 227–67.

23. Edward Ranson, "Investigation of the War Department, 1898–99," *Historian* 34 (November 1971): 78–99, quotes, pp. 79, 93; Graham A. Cosmas, *An Army for Empire: The United States Army in the Spanish-American War* (Columbia: University of Missouri Press, 1971), pp. 287–94.

24. Ranson, "Investigation of the War Department," p. 94.

25. *Official Army Register for 1902* (Washington, D.C.: Adjutant General's Office, 1902), pp. 14, 349; Recess commission of George B. Davis, 24 May 1901, folder 3, Davis personnel file; *The Army Lawyer: A History of the Judge Advocate General's Corps, 1775–1975* (Washington, D.C.: Judge Advocate General's Corps, U.S. Army, 1975), p. 92; *Journal of the Executive Proceedings of the Senate of the United States*, 33: 13, 462; 36: 51, 183, 205, 227; 40: 73–74, 78–79.

26. Edward M. Coffman, *The Regulars: The American Army, 1898–1941* (Cambridge, Mass.: Harvard University Press, 2004), pp. 27–28.

27. Allan R. Millett and Peter Maslowski, *For the Common Defense: A Military History of the United States of America*, rev. ed. (New York: Free Press, 1994), pp. 313, 653.

28. GO 95, HQ, Division of the Philippines, 15 Oct 1900, Vol. 420-I, entry 44, RG 94, NA.

29. GO 108, HQ, Division of the Philippines, 2 Nov 1900, pp. 1–5, quotes, pp. 1–4, Vol. 420-I, entry 44, RG 94, NA .

30. Paul A. Kramer, "The Water Cure: Debating Torture and Counterinsurgency—A Century Ago," *New Yorker* 84 (25 February 2008): 38; Paul A. Kramer, *The Blood of Government: Race, Empire, the United States and the Philippines* (Chapel Hill: University of North

Carolina Press, 2006), p. 140.

31. Reports on cases reviewed by Davis are printed in *Trials or Courts-Martial in the Philippine Islands in Consequence of Certain Instructions. Letter from the Secretary of War*, 57th Cong., 2d sess., 1903, S. Doc. 213,. The reports on three of them are reprinted in Leon Friedman, ed., *The Law of War: A Documentary History*, 2 vols. (New York: Random House, 1972), 1: 799–829. Under the Articles of War as they then existed, the judge advocate general was required to review all general courts-martial of officers in which the punishment was death or dismissal. Review was also mandatory for all courts-martial involving an accused general officer. In these cases, Davis and his staff were required to review the records of trial for factual and legal sufficiency and to make a recommendation to the secretary of war regarding any action to be taken on the cases. Davis apparently reviewed the additional cases because of Secretary of War Elihu Root's interest in the proceedings. In any event, under Article 113, all general court-martial records were required to be sent to the judge advocate general for safekeeping, and this also afforded Davis the opportunity to review courts-martial proceedings arising out of the fighting in the Philippines. For information on required legal review of courts-martial under the Articles of War, see William Winthrop, *Military Law and Precedents*, 2d ed. (Washington, D.C.: Government Printing Office, 1920), p. 992.

32. Kramer, "Water Cure," pp. 39–41, quote, p. 41; Ltr, Davis to Sec of War, 18 Jul 1902, in Friedman, *Law of War*, 1: 817–18.

33. Kramer, "Water Cure," pp. 41–42; Ltr, Davis to Sec of War, 18 Jul 1902, in Friedman, *Law of War*, 1: 818–19, quotes.

34. Ltr, Davis to Sec of War, 17 Sep 1902, printed in *Courts-Martial in the Philippine Islands*, pp. 34–35, 42–43, quote, p. 42.

35. Kramer, "Water Cure," p. 43, quotes; Order of President Roosevelt, 16 Jan 1903, in *Courts-Martial in the Philippine Islands*, p. 34.

36. Ltr, Davis to the Sec of War, 19 Jun 1902, in Friedman, *Law of War*, 1: 800–801, quotes, p. 801.

37. Ibid., 1: 799–800, 812–13, quotes, pp. 813, 812.

38. Morris J. MacGregor and Bernard C. Nalty, *Blacks in the United States Armed Forces*, 13 vols. (Wilmington, Del.: Scholarly Resources, 1977), 3: 189–206.

39. Rpt, Dept of the Gulf, 1 Aug 1904, in *Annual Reports of the War Department for the Fiscal Year Ended June 30, 1904*, 14 vols. (Washington, D.C.: Government Printing Office, 1904), 3: 27, quotes; Roger D. Cunningham, "Black Artillerymen from the Civil War through World War I," *Army History*, no. 58 (Spring 2003), pp. 11–12.

40. MacGregor and Nalty, *Blacks in the Armed Forces*, 3: 207–15, quoted words, pp. 214, 215.

41. Ltr, Davis to Secretary of War, 10 Mar 1906, in MacGregor and Nalty, *Blacks in the Armed Forces*, 3: 329–33, quoted words, pp. 329, 333.

42. Davis also supported President Theodore Roosevelt's power to "discharge without honor" all 167 enlisted soldiers in Companies B, C, and D, 25th Infantry, all of them black, after none would confess or implicate any of their comrades in the shooting in Brownsville, Texas, on 13 August 1906 of two white men, one of whom died. Roosevelt imposed this unprecedented mass discharge without any court-martial or other legal proceedings. See John D. Weaver, *The Brownsville Raid* (New York: W. W. Norton, 1970), esp. pp. 15–16, 133–34, quote, p. 133.

43. Ronald F. Lee, *The Origin and Evolution of the National Military Park Idea* (Washington, D.C.: National Park Service, 1973), pp. 13–16, 22–38. This book is posted at http://www.nps.gov/history/history/online_books/history_military/nmpidea6.htm.

44. Ibid., p. 42; *National Military Park Commission*, 58th Cong., 2d sess., 1904, H. Rpt. 2325, pp. 4, 8–25.

45. *National Military Park Commission*, pp. 8–9, first three quotes, p. 9; Lee, *National Military Park Idea*, p. 42, fourth quote.

46. Lee, *National Military Park Idea*, pp. 38–42. The national military park system remained under the control of the War Department until 1933, when responsibility was transferred to the Department of the Interior.

47. Admittedly, the explosion of suburban growth at the end of the twentieth century put some of these battlefields in jeopardy.

48. Calvin DeArmond Davis, *The United States and the Second Hague Peace Conference: American Diplomacy and International Organization, 1899–1914* (Durham, N.C.: Duke University Press, 1975).

49. Ibid., pp. 128–32, quotes, p. 128; George B. Davis, *The Second Peace Conference (Paragraph 2 of the Programme), The Rules of War on Land: Working Memoranda* (Washington, D.C.: Government Printing Office, 1907).

50. Calvin Davis, *Second Hague Peace Conference*, p. 207; George B. Davis, *The Elements of International Law with an Account of Its Origin, Sources, and Historical Development* (New York: Harper & Brothers, 1908), pp. 547–50.

51. Calvin Davis, *Second Hague Peace Conference*, pp. 207–09, quotes, p. 209.

52. Ibid., p. 209, quoting Ltr, Davis to Asst Sec of State Robert Bacon, 1 Jul 1907.

53. Ibid., pp. 209–11, 299–301. The eleven conventions ratified by the Senate are printed in *U.S. Statutes at Large*, 36: 2199–2443. All fourteen conventions are printed in Friedman, *Law of War*, 1: 270–397. Conventions III, IV, and V are also printed in Department of the Army Pamphlet 27-1, *Treaties Governing Land Warfare*, December 1956, pp. 2–23, quote p. 2. Most historians believe that the Japanese were attempting to comply with this legal requirement for a formal declaration of war on 7 December 1941. The Japanese Embassy in Washington, D.C., however, did not decipher message traffic from Tokyo in time to warn the United States that hostilities were about to begin. The resulting surprise attack on Pearl Harbor was consequently a violation of the 1907 Hague Convention III.

54. George Davis, *Elements of International Law*, pp. 257–62, 552–622. The book summarized the fourteenth convention on p. 622.

55. Chase, "George Davis," pp. 136–37, first quote, p. 136; "General G.B. Davis Dies Suddenly," *Washington Herald*, 17 December 1914, second quote. National University merged with George Washington University in 1954 after an independent existence of eighty-five years, during which it produced many distinguished graduates in law. See Elmer Louis Kayser, *Bricks without Straw: The Evolution of George Washington University* (New York: Appleton-Century-Crofts, 1970), p. 290.

56. Ltr, Maj Deane C. Howard, Attending Surgeon, to Adjutant General, 16 Dec 1914, sub: Death of General George B. Davis, Davis personnel file.

57. Kramer, "Water Cure."