

Lore of the Corps
From Cowboy and Tribal Lawyer to Judge Advocate and Secretary of War:

The Remarkable Career of Patrick J. Hurley

Fred L. Borch
Regimental Historian & Archivist

One of the most interesting judge advocates in history was Patrick J. Hurley, who worked as a coal miner, mule driver, and cowboy before becoming a lawyer and entering the Judge Advocate General's Department (JAGD) in 1917. After serving with great distinction in Europe in World War I, Hurley left active duty. He remained in the Army Reserve and, during World War II, attained the rank of major general. But Hurley also served in our Army as Secretary of War under President Herbert Hoover and served as U.S. Ambassador to China in the administrations of Presidents Franklin D. Roosevelt and Harry S. Truman. What follows is the story of a truly remarkable Army lawyer.

Born in the Choctaw Nation, Indian Territory (now Oklahoma), in January 1883, Patrick J. Hurley grew up in poverty. His father worked in the coal fields as a day laborer for \$2.10 a day; young Pat joined his father in the mines when he was eleven years old. For a nine-and-one-half hour day, the boy received seventy-five cents.¹

Later, when the coal mines closed for a time and young Hurley was without work, he spent his days in the company of Native American members of the Choctaw Nation who, along with the Creeks and Cherokees, were the most prominent Indian tribes in the territory. His friendship with Choctaw Victor Locke would open professional doors after Hurley became a lawyer. But first the teenager returned to the coal mines, where he worked as a mule skinner, "driving the animals as they hauled cars full of coal out of the pits."² Hurley subsequently left the mines to work as a cowboy, "herding and feeding cattle belonging to a local butcher."³ While punching cattle, Hurley teamed up with a cowboy named Will Rogers—the same Will Rogers who would achieve national fame as an actor and humorist.⁴ The two men formed a lifelong friendship that only ended with Rogers' untimely death.

¹ DON LOHBECK, PATRICK J. HURLEY 28 (1956).

² *Id.* at 30.

³ *Id.*

⁴ Williams Penn Adair "Will" Rogers (1879–1935) was one of America's best known celebrities in the 1920s and 1930s. He was a vaudeville performer, humorist, social commentator, and film actor. He had a newspaper column that was read daily by forty million people. He is still remembered today for his timeless and entertaining quotes ("I don't make jokes. I just watch the government and report the facts."). For more on Rogers, see BEN YAGODA, WILL ROGERS: A BIOGRAPHY (2000).

Hurley was still working as a cowhand—sometimes for as little as \$1.00 a day⁵—when a ranch owner who had taken a liking to him arranged for Hurley to attend Indian University (today's Bacone College). He excelled as a student and obtained his A.B. in 1905. Hurley then took a job as an office clerk and began studying law in his spare time. His intent was to sit for the Indian Territory bar examination when he felt he had studied enough law to pass. In 1907, however, friends in Muskogee convinced Hurley that he should obtain a law degree. As a result, Pat Hurley journeyed to Washington, D.C., enrolled in National University, and obtained his LL.B. in 1908. He was just twenty-five years old.

Returning to Oklahoma, he passed the Oklahoma bar and built a successful practice in Tulsa (oil had been discovered there in 1901). In 1911, President William H. Taft appointed Hurley's boyhood friend, Victor Locke, as the Principal Chief of the Choctaws. The new chief now appointed Patrick J. Hurley, then serving as president of the Tulsa Bar Association, as the new National Attorney for the Choctaw Nation of Indians, at an annual salary of \$6,000.⁶ Since the average American earned \$750 a year during this era, this was a huge amount of money for a twenty-eight year old Oklahoma lawyer.⁷

At the time, there were about 28,000 men, women, and children in the Choctaw Nation, and real estate held communally by the tribe was worth as much as \$160 million. Since the most valuable item in that tribal property was coal and asphalt lands, Hurley's job was to ensure that any contracts involving the lease or sale of those lands were fair to the Choctaw and that any proceeds were fairly distributed to members of the Choctaw Nation. Unscrupulous businessmen and politicians had engaged in "systematic, planned fraud" against the tribe for years, mostly by making contracts with individual Indians that purported to dispose of property held communally by the tribe.⁸ Once Hurley became the Choctaw's attorney, however, he successfully fought against these and other fraudulent contracts in court. He also protected the rights of the Choctaws under various treaties with the United States, insisting that the government

⁵ LOHBECK, *supra* note 1, at 33.

⁶ *Id.* at 45.

⁷ Meryl Baer, *The History of American Income*, http://www.ehow.com/info_7769323_history-american-income.html (last visited Oct. 15, 2013).

⁸ LOHBECK, *supra* note 1, at 56, 60.

had a legal responsibility to protect Indian resources.⁹ Hurley was so successful that he could have remained as the Choctaw Attorney for as long as he desired.

In May 1917, however, one month after Congress declared war on Germany and the Central Powers, Hurley resigned and travelled to Washington, D.C., where he accepted a commission as a captain (CPT) in the JAGD. Hurley was no stranger to soldiering, having served as a private, corporal, sergeant, lieutenant and captain in the Muskogee (Oklahoma) Militia from 1903 to 1916 and in the Oklahoma National Guard from 1916 to 1917; in this last position, Hurley served on the U.S.-Mexican border with Guard personnel who were tasked with preventing Mexican warlord Pancho Villa from conducting raids into the United States.¹⁰ Now, however, Hurley was going to soldier as an Army lawyer.

After arriving in Washington, D.C., CPT Hurley initially helped in the preparation of administration of the Selective Service Act of 1917. After some months, he tired of working in “a small office in the grim War, State & Navy Building,”¹¹ and pestered Judge Advocate General Enoch Crowder to permit him to transfer to combat duty. Finally, in April 1918, now Major (MAJ) Hurley “went overseas with the first detachment of American artillery to go to France.”¹² He subsequently served as the Judge Advocate, Army Artillery, First Army, where he not only prosecuted a number of courts-martial,¹³ but also found time to assume the duties of the Army Artillery’s Acting Adjutant General and Acting Inspector General.

While wearing crossed-pen-and-sword insignia, Hurley took part in the battles of Aisne-Marne, St. Mihiel, and Meuse-Argonne. During the last battle, the newly promoted lieutenant colonel (LTC) was cited “for distinguished and exceptional gallantry at Forest de Woevre on 10 November 1918.”¹⁴ The following day—the last day of World War I—LTC Hurley was commended for his gallantry in action while conducting a reconnaissance under heavy enemy fire near Louppy, France.¹⁵ This meant that Hurley was issued

the Silver Star medal when that decoration was created by the Army in 1932.¹⁶

After the Armistice, LTC Hurley was appointed by General John J. Pershing to be the Judge Advocate, 6th Army Corps. In this position, he successfully negotiated an agreement with the Grand Duchy of Luxemburg for the use of its roads and railroads by U.S. troops as they marched across that country on their way to occupy Germany. Originally, General John J. Pershing had planned to simply requisition the necessary trains, and use Luxemburg roads as if Luxemburg were occupied enemy territory on the theory that, as Germany had marched into Luxemburg and occupied it from 1914 to 1918, the Grand Duchy could be treated as if it were conquered enemy territory. Hurley pointed out, however, that regardless of Germany’s actions, Luxemburg still had a neutral status under the 1907 Hague Convention and that Pershing’s proposed course of action would violate international law. After Brigadier General Walter A. Bethel,¹⁷ the senior judge advocate on Pershing’s staff, admitted that Hurley was correct, General Pershing tasked LTC Hurley with arriving at a diplomatic solution. The result was an agreement in which the Americans agreed to pay for the use of railroad cars and pay for the upkeep of roads used by U.S. troops. They also agreed to pay rent for property used for military purposes, including housing used to billet American Soldiers.¹⁸ At the end of his service in Luxemburg, LTC Hurley was awarded the Distinguished Service Medal, with the following citation:

Assigned as Judge Advocate, Army Artillery, First Army, he rendered services of marked ability, performing, in addition to his manifold duties, the duties of adjutant general and inspector general. Later, as Judge Advocate General (sic) of the Sixth Army Corps, he ably conducted the negotiations arising between the American Expeditionary Forces and the Grand Duchy of Luxemburg wherein he displayed sound judgment, marked zeal and a keen perception of existing conditions. He has rendered services of material worth to the American Expeditionary Forces.¹⁹

After leaving active duty in May 1919, Hurley entered private practice, but returned in March 1929 to be Assistant Secretary of War under President Herbert Hoover. When the sitting Secretary of War died in November, Hoover

⁹ *Id.* at 57.

¹⁰ *Id.* at 66, 69.

¹¹ *Id.* at 70. Known today as the “Executive Office Building;” it is located near the White House in Washington, D.C. *Id.*

¹² *Id.* at 71.

¹³ As a major, Hurley served as the prosecutor in *United States v. Buckner*, in which an African-American Soldier was prosecuted for raping a French civilian. See Fred L. Borch, *Anatomy of a Court-Martial: The Trial and Execution of Private William Buckner in World War I*, ARMY LAW., Oct. 2011, at 1.

¹⁴ LOHBECK, *supra* note 1, at 72.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Bethel would later be promoted to major general and serve as the Judge Advocate General from 1923 to 1924.

¹⁸ LOHBECK, *supra* note 1, at 72–74.

¹⁹ Headquarters, War Dep’t, Gen. Orders No. 68 (2 Sept. 1920).

nominated Hurley to replace him. The U.S. Senate unanimously confirmed him to the office the following month, “making Pat Hurley, now forty-six years old, the first cabinet officer from the State of Oklahoma, and the only Secretary of War to have served in the armed forces with the rank of private.”²⁰ Hurley was also the first Secretary of War to have previously served as an Army judge advocate.²¹

Hurley left office with the election of Franklin D. Roosevelt, but returned to public service with the start of World War II. Promoted to brigadier general in 1942 (Hurley had remained in the Army Reserve and was a colonel at the start of the conflict), he was ordered to the Southwest Pacific and placed in charge of “efforts to run the Japanese blockade of the Philippines with supplies for General MacArthur’s beleaguered forces on Bataan peninsula.”²²

While Hurley was able to assemble ships and crews in Australia, only a few vessels managed to breach the Japanese blockade; for every ship that arrived, two were lost. But Hurley’s efforts did ensure that the American defenders of the Philippines were never short of ammunition.²³ As for Brigadier General Hurley, he experienced Japanese aggression first-hand when he was wounded in the head by shrapnel in a Japanese bombing attack on Port Darwin, Australia.²⁴

After a quick recovery from this injury, Hurley was appointed U.S. Minister to New Zealand. On 1 April 1942, he assumed duties in Wellington as the top American diplomat in the country. But Hurley was unhappy being in a civilian suit instead of serving alongside Soldiers and, when President Roosevelt asked him if he would like to visit Moscow as a special emissary, Brigadier General Hurley readily agreed. After arriving in the Soviet Union and meeting with Stalin, Hurley and his entourage spent ten days with the Red Army in combat operations, including time

with front-line troops then encircling the German army at Stalingrad.²⁵

Later, Brigadier General Hurley participated in both the Cairo and Tehran conferences where he held the rank of ambassador. After being promoted to major general in December 1943, Hurley went to Chungking as U.S. Ambassador to China in the summer of 1944. In addition to his diplomatic duties, Hurley also served as Roosevelt’s (and later President Harry S. Truman’s) “personal representative on military matters” until he left China in September 1945.²⁶

After the war, Hurley moved to New Mexico, where he was active in both business and politics. He ran unsuccessfully for U.S. Senate as a Republican (1946, 1948, and 1952). Hurley died in Santa Fe, New Mexico, in July 1963. He was eighty years old.

Major General Hurley’s remarkable achievements as an Army lawyer and public servant have not been forgotten by the Corps: the courtroom at Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, Oklahoma, is named in his honor.

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/History>

²⁰ LOHBECK, *supra* note 1, at 86.

²¹ Though Hurley was a judge advocate *before* serving as Secretary of War, he was not the first Secretary of War who also served as a judge advocate; that first belongs to Joseph Holt, who became a judge advocate *after* serving as Secretary of War. Holt served briefly as Secretary of War in the administration of President James Buchanan. President Abraham Lincoln then appointed Holt, who had no military experience, as Judge Advocate General of the Army. In the modern era, the only judge advocate to have served in the Army’s most senior civilian position is Togo D. West, Jr. West served as a captain in our Corps from 1969 to 1973 and then entered private practice in Washington, D.C. He returned to public service as Secretary of the Army from 1993 to 1997. For more on West, see CATHERINE REEF, *AFRICAN AMERICANS IN THE MILITARY* 241–43 (2010).

²² JUDGE ADVOCATE GENERAL’S CORPS, U.S. ARMY, *THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL’S CORPS, 1775–1975*, at 121 (1975).

²³ LOHBECK, *supra* note 1, at 164.

²⁴ *Id.* at 163.

²⁵ *Id.* at 174–83.

²⁶ *Id.* at 386, 417.