

From the Regimental Historian and Archivist: The “3 C’s” and Civil War Judge Advocate, Henry Burnett



There have always been judge advocates, legal administrators, paralegals and civilians in the history of our Corps who followed the leadership principles called the “3 Cs” – character, competence, and commitment--- although they might not have called them that. One example from our history is Civil War era Judge Advocate Henry Burnett (1838-1916), whose competency and commitment as a lawyer was unrivaled, and who demonstrated outstanding character as a cavalry officer in the Union Army.

Born on the day after Christmas, 1838, in Youngstown, Ohio, Henry Lawrence Burnett left home at the age of fifteen, with two books, some clothing, and forty-six dollars in his pocket. In 1860---six years later---Burnett was a law school graduate (Ohio State and National Law School) and practicing law in Warren, Ohio.

When President Lincoln called for volunteers to defend the Union after the Confederate attack on Fort Sumter in April 1861, Burnett was one of the first men to enlist. He joined Company C, 2d Ohio Cavalry Regiment, and brought his own horse with him, as the War Department had promised that

it would pay any man who enlisted—and brought his horse with him—for the value of that horse. But, when Burnett and other potential enlistees gathered in Warren, Ohio, they were “astounded” to learn that the government did not intend to pay cash for their mounts. On the contrary, the men were told that they were going to get “certificates” or “receipts” in lieu of cash; actual payment would be sometime in the future, and at the discretion of the government.

Character

The men were outraged. Many of them had decided to enlist because they believed that the cash they would receive for their horses would allow them to leave behind some money to support their families while they were serving in Union blue uniforms. Apparently, many of the men now decided to refuse to enlist and return home. At this point, demonstrating incredible character and commitment, 22-year old Henry Burnett “mounted a fence and shouted: ‘Those who go to this war to fight for the cause, and not to sell their horses, follow me into this yard.’” Apparently, the men hesitated, “and then, amid cheers, one after another guided their horses” into a corral, and mustered into service. Shortly thereafter, Burnett was elected by his men to be their captain.

Burnett and the 2d Ohio Cavalry subsequently deployed to Missouri, and Burnett saw combat at the battles of Carthage and Fort Wayne. He also accompanied the 2d Ohio on an expedition through Arkansas and Indian Territory (today’s Oklahoma). Burnett had been promoted to major and was

an experienced “shooting-officer” when he was trampled by a horse and seriously injured.

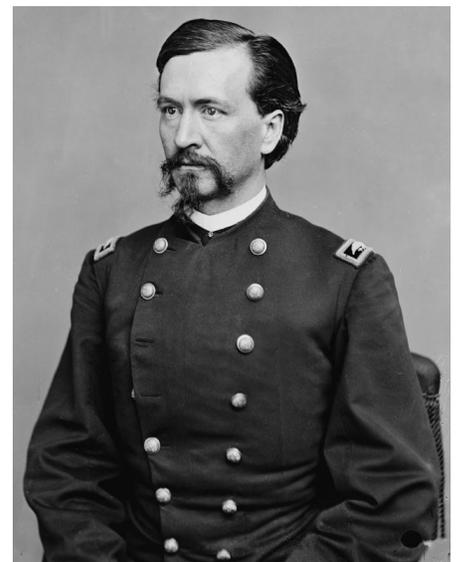
Commitment

With his cavalry days over, Burnett could have mustered out of active service and returned home to Ohio. Committed to the Union cause, however, he now put his skills as a lawyer to use: in July 1863, Major Burnett was appointed “Judge Advocate for the Department of the Ohio.” This “Department” (obviously) covered Ohio, but it also included the states of Kentucky, Tennessee and West Virginia, and Burnett was responsible for handling all military legal matters arising in those jurisdictions. Later, Burnett’s jurisdiction also included the Northern Department, which meant he had responsibility for Indiana as well.

Competence

One of his most important cases as an Army lawyer involved the so-called

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“Indiana conspirators.” At the request of Ohio Governor Oliver Morton, Burnett investigated a group of Confederate sympathizers called the “Sons of Liberty”—men who were conspiring to free Confederate prisoners of war held in camps near Indianapolis. Burnett successfully prosecuted these conspirators at a military commission, and his “reputation soared” when he convicted Clement L. Vallandigham. Vallandigham, an Ohio politician and anti-war Democrat, was convicted of making disloyal statements and otherwise undermining the Union war effort.

Among other pronouncements, Vallandigham declared that the on-going war was “a wicked, cruel and unnecessary war” being waged “for the purpose of crushing out liberty and erecting a despotism” and that “King Lincoln” was fighting “a war for the freedom of blacks and the enslavement of the whites.” When Vallandigham subsequently fought his conviction by petitioning the U.S. Supreme Court for a writ of habeas corpus, that Court held that it had no jurisdiction, as an Article III tribunal, to review the operations of a military commission. (It was not until *Ex parte Milligan* in 1866 that the Supreme Court reversed course and ruled that it could, in fact, review the operations of military commissions).

With a national reputation as an Army lawyer, it was no surprise that



Henry L. Burnett (right), with John A. Bingham (left) and then TJAG, Joseph Holt (middle), at the 1865 Lincoln assassination trial.

Secretary of War Edwin Stanton invited Burnett to travel to Washington to join Brigadier General Joseph Holt, the Army Judge Advocate General, and Representative John A. Bingham, in prosecuting the seven men and one woman who had conspired to assassinate President Abraham Lincoln. Burnett, Holt and Bingham---working in concert---obtained convictions of all eight conspirators in a military commission that heard evidence in May and June, 1865. Four were later hanged, while four were imprisoned. For his extraordinary service as a cavalry officer and judge advocate during the Civil War, Burnett was given a brevet promotion to brigadier general.

In December 1865, Burnett resigned from the Army and returned to the practice of law in Ohio. In 1872, however, Burnett moved to New York and worked as counsel to the Buffalo and Erie Railroad. His character, competence and commitment to excellence were well known, and this certainly explains why President William McKinley appointed Burnett as the U.S. Attorney for the Southern District of New York in 1898. He was reappointed as U.S. Attorney by President Theodore Roosevelt in 1902.

When Burnett died in Goshen, New York in January 1916, he had lived the “3 Cs” for many years.

-Mr. Fred Borch

A Competent and Committed attorney, Henry Burnett also demonstrated outstanding Character on the battlefield.