Our history: A Gettysburg Campaign Medal of Honor Recipient in the Corps

With the recent award of the Medal of Honor (MoH) to Staff Sergeant (SSG) Salvatore Giunta and Sergeant First Class (SFC) Leroy Petry---the first living Soldier recipients since Vietnam---it is worth remembering that The Judge Advocate General's Corps has also had Medal of Honor recipients in its ranks.

The best known is Asa Bird Gardiner, who served as a Judge Advocate from 1873 until 1888, and who received the MoH under rather dubious circumstances for "conspicuous bravery and distinguished conduct" during the Gettysburg campaign in 1863. In fact, Gardiner's entitlement to the medal ultimately provoked considerable argument---and the controversy was not resolved until shortly before the United States entered World War I.

Born in New York City in 1839, Gardiner graduated from the College of the City of New York as a teenager, earned a law degree from the University of the City of New York (today's NYU) and was a lawyer at 21 years of age.

When the Civil War began in 1861, he gave up his law practice and assisted in raising a regiment of Volunteers. Commissioned as a First Lieutenant in H Company, 31st New York Volunteer Infantry, Gardiner fought in northern Virginia at Fairfax Court House and at the Battle of Bull Run in July 1861.

Health and family problems caused him to resign his commission and return to New York, but in June 1863, Gardiner was back in service in response to Confederate General Robert E. Lee's invasion of Pennsylvania. Now Captain Gardiner (Company I, 22d Regiment, New York National Guard) was "slightly wounded" on July 1 near Carlisle, Pennsylvania, during the bombardment of that town by Rebel troops under the command of General J.E.B. Stuart. While he did not participate in the actual Battle of Gettysburg, Gardiner's conduct at Carlisle (and Sporting Hill, Pennsylvania) would later be the basis for him to receive the MoH.

At the end of the Civil War, Gardiner wrote a letter to Secretary of State Edwin Stanton in which he requested a commission in the Regular Army. Stanton concurred, and Gardiner now assumed duties as a Second Lieutenant in the 9th Infantry. He served Army assignments in Kentucky and New York City before attempting, in early 1868, to obtain an appointment as a Judge Advocate in the Bureau of Military Justice. That attempt failed, but Gardiner tried again, and, in 1873, President Ulysses S. Grant appointed him a Major in the Judge Advocate General's Department (JAGD).

When he entered the JAGD, Gardiner became the first MoH recipient to serve as a Judge Advocate. But the circumstances surrounding the decoration's award were highly unusual. The year before, on September 18, 1872, Gardiner had written to Secretary of War William K. Belknap. After explaining in his letter that he had seen combat in both Maryland and Pennsylvania, Gardiner said: "I understand there are a number of bronze medals for distribution to soldiers of the late war, and request that I may be allowed one as a souvenir of memorable times now past." Since Gardiner had done some legal work for Secretary Belknap in the past, this may explain why Belknap approved Gardiner's request for an MoH. In any event, the Army issued a Medal of Honor to Gardiner five days later, and he subsequently wore it proudly on his uniform.

Gardiner had a high-profile career as a Judge Advocate from 1873 to 1888. In 1878, he represented the government in the re-trial of Major General Fitz-John Porter, who had been charged with disloyalty, disobedience, and misconduct in the face of the enemy at the Second Battle of Bull Run. Porter, who had been court-martialed on these same charges in 1863, and dismissed from the Army, hoped this re-trial would clear his name. Gardiner was convinced that Porter was guilty, but the other members of the panel disagreed, and Porter was restored to the army list as a Colonel in 1886.

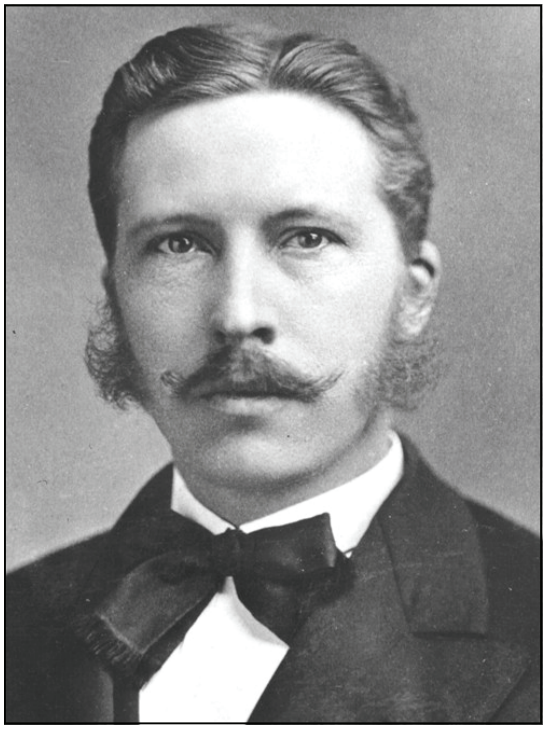
In 1881, Gardiner served as Judge Advocate in the court-martial of West Point cadet Johnson C. Whittaker. Born into slavery in South Carolina, Whittaker had been admitted to the U.S. Military Academy in 1876 and suffered hazing and mistreatment from his classmates. In April 1880, Whittaker was found unconscious on the floor of his room. He alleged that three masked men had assaulted him. The Commandant of Cadets did not believe him and Whittaker was court-martialed for allegedly faking the assault. Gardiner won this case, though President Chester Arthur would later set aside the verdict and sentence, and President William J. Clinton posthumously awarded Whittaker a commission in 1995.

The original Army Medal of Honor, in the style as awarded to Gardiner. This version was used between 1863 and 1896; today's familiar Medal of Honor with its distinctive blue neck ribbon did not come into existence until 1944.

Gardiner's biggest case, however, involved the court-martial of his superior, Brigadier General David G. Swaim, the Judge Advocate General. Some dubious financial transactions caused Swaim to be charged with conduct unbecoming an officer, and, in January 1885, Swaim was convicted at a court-martial. It was another high profile victory for Gardiner.

Gardiner retired from active duty as a Major in December 1888, and returned to New York City and the practice of law. He also entered politics and, in 1897, was elected District Attorney (DA) of New York City. He served as DA until 1900, when he resumed his private law practice.

As for Gardiner's Medal of Honor? As military historian Roger Cunningham wrote in *Always a Storm Center: The Trials and Tribulations of Lt. Col. Asa Bird Gardiner*, the Army decided in 1916 to "take a drastic step to correct what some regarded as unwarranted past awards" of the MoH. This meant a review of all 2,695 Medals of Honor awarded for heroism during the Civil War. Those that the board did not consider to have been legitimately awarded were to be struck from the list of approved awards. When the board discovered that Gardiner's MoH did "not appear to have been formally granted" and that there was insufficient evidence of heroism during the Gettysburg campaign, the board concluded that his MoH was not legitimately awarded and recommended to the Army that the decoration be officially revoked.



Asa Bird Gardiner, Judge Advocate (1873-1888).

The Adjutant General gave Gardiner the bad news in February 1917, and the 77-year old retired Judge Advocate was furious. He insisted that it was "a scandalous act" for the Army to revoke his MoH and refused to agree to the decision. Gardiner also refused the Army's request that he return his MoH. Interestingly, the *Boston Globe* reported that the Army might court-martial Gardiner for refusing to return the medal (as he was on the retired list, there was court-martial jurisdiction over Gardiner), but with World War I on the horizon, nothing was done. Gardiner continued to insist that he was a legitimate MoH recipient, and the award was still in his possession when he died in May 1919. But justice was done: the Army revoked Gardiner's MoH, and his award no longer appears on the Center of Military History's list of officially awarded MoHs at http://www.history.army.mil/html/moh/civwaral.html.

Part of the reason that Gardiner was able to obtain his MoH from Secretary Belknap was that no fixed award criteria existed governing the decoration during the Civil War era. There was, for example, no requirement for combat heroism: the famous William F. "Buffalo Bill" Cody, for example, was awarded the decoration for his service to the Army as a scout. Additionally, as the MoH was the *only* Army decoration until World War I, the lack of other awards meant that acts of combat valor that today would receive a Silver Star or Bronze Star Medal were recognized with the MoH---because it was the only medal that could be awarded to a Soldier.

By World War II, the award criteria for the MoH had been tightened considerably, and, today, the Soldier who receives the decoration is truly remarkable. This is because, to justify the award of the MoH, a Soldier must have performed an act "of personal bravery or self-sacrifice so conspicuous as to clearly distinguish the individual above his comrades and must have involved risk of life. There must be "incontestable proof" of the act of heroism, and "eyewitness statements in the form of certificates, affidavits, or sworn statements" are required.

Finally, the nomination packet of any Soldier recommended for the MoH must contain a recommendation from: the Combatant Commander concerned; the Chief of Staff of the Army; the Secretary of the Army; and the Chairman, Joint Chiefs of Staff. These recommendations are made a part of a Soldier's Medal of Honor nomination packet, it goes to the Secretary of Defense. He then takes the nomination to the President, who approves (or disapproves) the award under his authority as the Commander-in-Chief. No wonder that so few Medals of Honor have been awarded for combat valor in Afghanistan and Iraq.

For more on SSG Giunta, see http://www.army.mil/medalofhonor/giunta/

For more on SFC Petry, see http://www.army.mil/medalofhonor/petry/

For more on Gardiner, see Roger D. Cunningham, *Always a Storm Centre: The Trials and Tribulations of Lt. Col. Asa Bird Gardiner*, Journal of America's Military Past (Fall 2006): 5-28.

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