

2003

Review Essay—A Long-Overdue Service

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Recommended Citation

Graham, David E. and Borch, Frederic L. (2003) "Review Essay—A Long-Overdue Service," *Naval War College Review*: Vol. 56 : No. 4 , Article 15.

Available at: <https://digital-commons.usnwc.edu/nwc-review/vol56/iss4/15>

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A LONG-OVERDUE SERVICE

David E. Graham

Borch, Frederic L., *Judge Advocates in Combat: Army Lawyers in Military Operations from Vietnam to Haiti*. Washington, D.C.: U.S. Army Center of Military History, 2001. 413pp. \$40

In the foreword, retired general Gordon R. Sullivan, a former chief of staff of the Army, notes, “Commanders and staff officers should read this book to see how the Army lawyer’s role has evolved. Judge advocates should read it because it offers a shortcut to knowledge that ordinarily is gained only through experience. Those interested in the Army’s history should read it because it provides details published in no other source.” To this list should be added all who deal with, teach, or are simply interested in the legal aspects of U.S. national security matters.

Military attorneys—judge advocates of all the armed forces—have become increasingly active participants in both operational planning and implementation. In clear and concise narrative, Borch offers the reader a comprehensive explanation of why and how this has occurred. Through his systematic discussion of the evolution of “operational law” (OPLAW) and his use of dozens of vignettes gleaned from over a hundred personal interviews, Borch offers an accurate picture of both the nature of OPLAW and the work of the OP lawyers. In doing so, he performs an important and long-overdue service to the national security community and the general public, who are still largely unfamiliar with this critically important aspect of military legal practice. This “educational” aspect of the book is also of particular contemporary relevance.

Recently, the question has been posed by some, both in and out of the government, whether the enhanced role that judge advocates now play in the opera-

tional arena has made war fighting excessively legalistic, thus impeding the successful conduct of operations. While the answer is probably best left to commanders, Borch—through his extensive examination of the manner in which OP lawyers identify and advise on legal issues affecting military activities conducted across the operational spectrum—does much to dispel any notion that judge advocates unduly place obstacles in the path of mission success. It is

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Naval War College Review, Autumn 2003, Vol. LVI, No. 4

now a certainty that the manner in which a U.S. military operation is conducted invariably will be subjected to intense media coverage (and second guessing); that any deployment of U.S. forces abroad will be highly politicized, both within the United States and internationally; and that, accordingly, all such operations necessarily have become legally intensive. Both commanders and their judge advocate advisors understand fully the environment in which they must operate and succeed. Also understood is the undisputed fact that “judge advocates advise; commanders decide.”

An Army judge advocate and an accomplished author of several books, as well as of numerous articles dealing with both criminal and international law subjects, Colonel Borch has made the task of reviewing *Judge Advocates in Combat* an easy one. In a well structured preface, he informs the reader of what his book is, and is not, about. It is a narrative history of the participation of Army lawyers in a broad range of military operations—from 1959, the beginning of Army judge advocate deployments to Vietnam, to 1996, when Army attorneys returned from a United Nations operation in Haiti. As noted, the book’s principal theme is the process through which Army judge advocates have, during this period, effected a transcension from their peacetime “garrison” mission, providing legal services only in the traditional areas of military justice, claims, legal assistance, and administrative law, to their current practice—a military legal discipline that encompasses all U.S. foreign and international law specifically affecting the conduct of military operations.

Borch addresses this theme in a very personal manner by detailing, through the use of meticulous research and personal interviews, the actions of individual judge advocates in both major and minor operations, at home and abroad. There are individual chapters on Vietnam, Grenada, Panama, the Persian Gulf, Somalia, and Haiti, while the final chapter deals with judge advocate participation in eleven operations other than war. The author asks: “Who was there? What did they do? How did they enhance the commanders’ ability to accomplish the assigned mission?” Borch answers these questions by focusing on the activities of numerous judge advocates over a thirty-year period. With the help of well crafted maps and photos from many of the operations examined, Borch describes the manner in which Army lawyers have dealt with increasingly complex legal issues in jungles and deserts around the world. Of particular importance to our understanding, he has organized these issues under the individual military legal discipline encompassed by this body of law.

When advising the reader what this book is not about, Borch emphasizes that it is neither a history of the Army’s Judge Advocate General’s Corps nor a history of wartime legal issues. This reviewer agrees with this assessment. Borch also gives notice that the book should not be viewed as a collection of legal lessons

learned. This, however, is only partially correct. While certainly not a comprehensive collection of such lessons discerned over the course of the thirty-plus years dealt with, *Judge Advocates in Combat* is, nevertheless, an exceptionally valuable resource for those whose work requires them to draw upon how legal issues commonly recurring in an operational environment have been dealt with by U.S. forces in the field. Indeed, this reviewer is personally aware of several occasions when legal offices within the Department of Defense have already turned to this book for information and guidance.

Colonel Borch has produced a work of enduring value. Absent his efforts, the stories and accomplishments of countless Army judge advocates would not have become an integral part of the history of the Army's Judge Advocate General's Corps. Just as importantly, however, he has chronicled the genesis and evolution of operational law within that corps—a legal discipline that has now become the doctrinal bedrock for judge advocates advising commanders on the wide range of legal issues that arise in operational environments around the world. This is a book that should be on the shelves of all who are practitioners or students of U.S. national security law.