

1978

Military Law. 2nd ed.

Tim Murphy

Edward M. Byrne

Follow this and additional works at: <https://digital-commons.usnwc.edu/nwc-review>

Recommended Citation

Murphy, Tim and Byrne, Edward M. (1978) "Military Law. 2nd ed.," *Naval War College Review*: Vol. 31 : No. 2 , Article 16.
Available at: <https://digital-commons.usnwc.edu/nwc-review/vol31/iss2/16>

This Book Review is brought to you for free and open access by the Journals at U.S. Naval War College Digital Commons. It has been accepted for inclusion in Naval War College Review by an authorized editor of U.S. Naval War College Digital Commons. For more information, please contact repository.inquiries@usnwc.edu.

98 NAVAL WAR COLLEGE REVIEW

"The Failure to Resolve the Problem of Venereal Disease among the Troops in Britain during World War I" is a narrative essay lacking any imaginative insight. "German Air Power and the Munich Crisis," by Williamson Murray, is too short; but does show how unprepared the *Luftwaffe* was for war in 1938. "The Introduction of War Office Selection Boards in the British Army: A Personal Recollection," by Brigadier F.H. Vinden, is a chatty little memoir. Stephen Brooks' essay "Liddell Hart and His Papers" is informative about the material in the Liddell Hart archive, but makes no attempt to shed any light on the many controversies that surround this popular British military commentator. The rest of the volume is devoted to short reviews of recent works in military affairs.

In conclusion, this volume does possess several essays of merit; but, as a whole, it must be considered a disappointing failure. The editors Brian Bond and Ian Roy are probably correct in their view that "there is sufficiently wide interest and potential readership to justify" a yearbook of military history. They have not, however, produced a volume of sufficient quality, breadth or vision to satisfy the demands of this patient readership.

JOHN H. MAURER

The Fletcher School of Law and Diplomacy

Byrne, Edward M. *Military Law*. 2nd ed. Annapolis: Naval Institute Press, 1976. 745pp.

Books shipped in plain brown wrappers usually offer tantalizing text and enticing photographs. *Military Law* offers neither. With its "brown-side-out" exterior, fine print, and complete absence of graphics of any kind it has all the visual appeal of an issue of the *Federal Register*. In a society where it is said that the medium is the message, one would have to strive to produce a book less appetizing in appearance. At

least the first edition has gold seals on the cover.

In fairness to Commander Byrne, as a law text *Military Law* is not much more drab than traditional law books. However, this needn't be the case. Lawyers claim to be communicators, yet we are light years behind educators and industry in the use of graphic presentations. After 10 years' exposure as a trial judge to the dull presentations of the vast majority of lawyers I have to wonder whether lawyers are ever going to learn how to sell their product. While not advocating placing on the cover a photo of Cat Futch dancing aboard the U.S.S. *Finback*, surely the Naval Institute Press could have found something appropriate to liven up the book; perhaps an artist's sketch of the famous Brig O' War *Somers*, which is mentioned inside.

One should not judge a book by its cover; however, it is a shame that with today's visual communication techniques and the public's conditioning toward interesting learning displays, few potential readers will venture past this book's dreary exterior. This is unfortunate because in *Military Law* Byrne has combined some delightfully interesting case discussions with some well-analyzed information. The author's stated dual mission of text and reference book is unfortunately only partially successful. Because of rapid changes in the military law, the book is not functional as a practicing lawyer's reference work; but it would make a fine textbook for a college course on military law. It would also be good background reading for a line commander or civilian lawyer with his first military case. The book lacks sophistication for law school use, again largely because some areas of the book are already obsolete as a result of the "born again" changes in military law, courtesy of the current Court of Military Appeals. The book also lacks a table of cases, which is standard in legal texts.

Is the book practical? During a

PROFESSIONAL READING 99

recent 2-week tour of active duty, while training at a large military facility, I requested a number of enlisted legal clerks to examine *Military Law* with an eye toward its value as a reference work. All agreed that they did not need the textual materials and that the appendices were available in existing service manuals. One trial counsel borrowed the book to check a jurisdictional issue that had arisen in one of his cases. Unfortunately, and through no fault of the author, he found the book out of date on that issue. The book was not in the base law library, and, in fact, was unheard of among the lawyers. I did find the first edition in the base library but its checkout history was sparse.

In sum we have a book, dull in appearance, not current enough for the military trial lawyer, unnecessary for legal clerks, and only valuable as a college text or background reading for an inexperienced lawyer or a line officer. Even they read it at their peril (except for the value of its historical perspective) due to the dynamic state of military law in this country today, and the book's resulting obsolescence. Regretably, given the book's discouraging appearance, it will take a well-disciplined officer, or one on a very lonely watch to venture past the cover unless it is given as a classroom assignment.

At this point, although it is currently fashionable in reviewing a book to grind all one's pet axes without informing the reader just what the book is about, a brief summary of the contents of *Military Law* is in order. The book contains 443 pages of text and 278 pages of forms and self-quizzes. It begins with a chapter on the history and background of military law, from earlier civilizations to the present, concluding that, "The most recent alterations have resulted in what is probably the most liberal system of military justice in the world today" — a charming understatement. The

military justice, in sequence through the trial stage, in a logical and coherent fashion. Apprehension, investigation, types of offenses, alternative dispositions, counsel, court, evidence and trial procedures are all covered. Also, brief reference is made to administrative bodies and misconduct determinations—basically, information found in present military manuals. Textual materials are followed by discussion cases and self-quizzes, with answers in the back of the book. These quizzes suggest that the author is attempting to reach the barracks student, in that law-school case-books rarely contain answers in the same volume, but rather send them to the professor or sell them separately. I must admit to liking Byrne's all-in-one-book format because the questions were interesting and provocative and the answers not always apparent but easily checked. In addition to the usual indexes, the book contains a glossary of words and phrases which will be of value to the uninitiated.

The cases for discussion extracted by Byrne are gems. They comprise the most fascinating reading found in *Military Law*. Exemplary of this material is the discussion of the *Somers Mutiny*, in which, in 1842, the Navy hanged an aspiring pirate, who also happened to be the son of the Secretary of War. This hanging has affected the Navy's policy toward the death sentence ever since. Included also is a discussion of the famous Dreyfus case, which has secured the place of Emile Zola in history and reportedly inspired French Premier Clemenceau to utter the classic statement, "Military justice is to justice what military music is to music." Famous modern day military criminals such as Lieutenant Calley and Captain Levy receive attention in these discussions along with others less famous such as Private Wartsbough, who liked to wear silver bracelets, and Captain Cullins, who should have stayed on the bridge.

100 NAVAL WAR COLLEGE REVIEW

textbook and has an eye for interesting cases. He also knows what technical materials are needed by those working in the military justice system. In his next effort he would be better served eliminating altogether the idea of a handbook-deskbook, and splitting up his project into two separate books: one, a readable, fascinating and sometimes humorous book on military trials—with the appropriate graphics—and the other, a college textbook with reduced appendixes and perhaps a sketch of the *Somers*.

JUDGE TIM MURPHY
Superior Court, Washington, D.C.

Cave Brown, Anthony, ed. *The Secret War Report of the OSS*. New York: Berkley Medallion Books, 1976. 586pp.

"If foreign policy is the shield of the republic, as Walter Lippmann has called it," proposed Sherman Kent of Yale, "then strategic intelligence is the thing that gets the shield to the right place at the right time; it is also the thing that stands ready to guide the sword." *The Secret War Report of the OSS*—a condensation of the larger, recently declassified "Official War Report of the Office of Strategic Services," written in 1947—is the definitive account of United States participation in clandestine intelligence operations against the Axis powers in Europe, and of the OSS attempt to guide Kent's metaphorical sword.

While it lacks the literary style which characterizes the official history of one of its British counterparts, M.R.D. Foot's *Special Operations Executive in France*, the *Report's* description of OSS is candid and extensive. Part I recounts the origin and structure of the OSS, from the inception of the Office of the Coordinator of Information (COI), the forerunner of OSS, through the interminable political conflict that shaped both the centralized concept and

structure of the Office. Part II chronicles the nature and extent of OSS activity in the European and related theaters of operation. Cave Brown has arbitrarily excluded OSS involvement in the Far Eastern theater, but only, it would appear, to emphasize strategic operations in Europe, where OSS made its principal contributions in support of the French and Italian resistance and in the clandestine preparations for Operations TORCH, ANVIL, and OVERLORD.

The appearance of the *Secret War Report*, with only slight censoring and some 30 years after it was written, will inevitably revive a number of controversial issues. Preeminent among them will undoubtedly be the question: What does the book reveal concerning the significance and effectiveness of the OSS contribution to the clandestine war in Europe?

Perhaps what is most compelling about the *Report* is its remarkable objectivity. It does not contend that OSS won the secret war with Germany. Nor does it contend that it won the secret war in collaboration with the British. Rather, it awards full credit to the British intelligence services—the Secret Intelligence Service (SIS) and the Special Operations Executive (SOE)—and acknowledges the inestimable British contribution both to the establishment of OSS and to the success of Allied intelligence collection and special operations. The *Report* does show, however, that the United States, with the proper assistance and its own intellectual resources, created within 30 months an intelligence service that had taken other countries over 30 years to establish, and then, confronting those services, proved their equal. Moreover, it shows that in the closing months of the war in Europe the OSS began to surpass the British services in the agent penetration of Germany.

Concerning the founder and Director of OSS, Maj. Gen. William J. "Wild Bill"