

1971

## Court Martial

L.F.E. Goldie

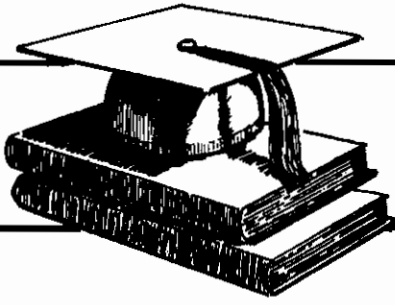
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## PROFESSIONAL READING

Mares, William. *The Marine Machine: the Making of the United States Marine*. Garden City, N.Y.: Doubleday, 1971. 143p.

The proverbial axiom that "the more you sweat in peace, the less you bleed in war" is still the ultimate maxim of the U.S. Marine Corps. The author has dramatically combined a series of photographs with a shocking, though eloquent, narrative to effectively portray the life of a recruit at "boot camp," Marine Corps Recruit Depot, Parris Island, S.C.

From the first trauma of arrival, the loss of individuality, reduction to the lowest of the low, this pictorial narrative traces the first 10 weeks in the making of the Marine. The reader cannot but question the raw brutality, the harshness, and then wonder why this system is so successful in creating one of the world's most elite military organizations.

Throughout the narrative the recruit is a nonentity, his existence and survival appear to hang on the whims of the DI's. The few examples of compassion on the part of the DI's are overwhelmed by their mask of indifference and cold objectivity. The program is designed to instill confidence in the recruit's own abilities and emphasize his vital part in the team, the Marine Corps.

This book is not for the fainthearted, but then neither is the Marine Corps.

A.A. NELSON, JR.  
Colonel, U.S. Marine Corps

Moore, Robin and Rothblatt, Henry. *Court Martial*. Garden City, N.Y.: Doubleday, 1971. 410p.

In his seminal book, *Modern Warfare*, Roger Trinquier tells us that, because weapons of mass destruction will create a standoff, the war of the future will be that of the guerrilla, the partisan, and the counterinsurgency operator. While agreeing that to regard this type of war as the sole mode of violent contest may be an overstatement, one should recognize the emerging truth that we must expect others who seek to impose their will on us or on communities not already under their heel to employ the leverages of vicarious and anonymous partisan warfare. In this type of fighting there is neither hierarchy in the traditional sense, accountability, membership of a unit as traditionally structured, neither the bearing of arms openly nor the wearing of badges or other insignia designating the partisan as a soldier. It is most important that the American public receive a timely warning of this emerging reality and of its moral and legal, as well as its strategic, implications.

Robin Moore and Henry Rothblatt have performed a double service in the novel under review. They have demonstrated the political complexities of modern partisan warfare. They also sought to grapple with the legal and moral problems that counterinsurgency warfare poses. The book's story centers on the legal and moral dilemmas of an American counterinsurgency fighter who finds that he has a traitor (a South

Vietnamese national) in the unit he leads. He can neither place the man on trial nor hand him to allied authorities because of the politically delicate nature of his treachery and of the knowledge he carries in his head. All would be revealed if the traitor were tried by court martial or handed to the South Vietnamese Government authorities for questioning. The issues that are raised also touch on the problem of war crimes. This alone should have been ample for the authors. They could have written a taut, terse, convincing book, if only they had stuck to their central theme.

Unfortunately, however, they clouded their central point by wandering off into two other matters. First of all, a large part of the novel becomes a courtroom drama. The authors were thus led to engage in such artifices as "flashbacks," skipped-time sequences, and montage effects. This particular genre belongs more with TV entertainment than serious writing. The pseudo-sophistication it reflects gave this reviewer the sense that the honesty of the main theme (i.e., the legal and moral problems created by guerrilla fighting) was being unnecessarily fogged over and that the writers' desire to pursue side issues prevented them from dealing as thoroughly and challengingly as they should have with it.

Second, and worse still, the authors clearly could not resist jumping on the "Catch-22" bandwagon. Their delineation of the commanding general in Vietnam, one "Tanker" Flint, who chomped his cigars into mush, was blatantly egomaniacal—even with the President of the United States—and who loathed elite troops, lacked the sharpness of satire or the mockery of caricature. It was simply burlesque. By their sheer overstatement, such unnecessary and shrill denunciations may have their usual effect of putting in jeopardy the important points the book does make.

Perhaps for novelists, even when one of the authors is a trial lawyer, accuracy about what the law says may not be important. But in a courtroom drama the authors have a special duty. Since they are telling a realistic story about the law in action, they have a duty to adhere to the truth about the law. When the authors have the civilian defense lawyer (the leader of the defense team and asserted to be a leading New York criminal lawyer—one of the "Perry Mason" mold) says "I will try to make use of what we civilian lawyers call *mens rea* defense, that there was no evil intent and therefore no crime," (page 301) they were committing a major solecism. A law student would be failed for such a statement! *Mens rea* is one of the elements of many crimes, including murder, and is merely a Latin tag indicating the mental element of crimes called *malum in se*. It is juxtaposed with the physical element—*actus reus*. The prosecution must prove (not the defense disprove) that the actor's "mind went with his hand" as the old common lawyers used to say.

A misunderstanding which the authors perpetuate should now be cleared up. *Mens rea* carries no connotation of motive but refers only to the requirement of proof that the defendant intended to do what he did. On the other hand, the defense may show that the defendant either lacked the capacity or the opportunity to form a specific intent. From what the authors tell us in the novel, however, the parties had both the capacity and the opportunity to kill their victim, and the defendant did indeed intend to do what he did. What the authors appear to be saying in the above quoted sentence is that since there was no evil motive for the killing, there was no crime. This approach is itself misleading in that "motive" is more properly used in setting up a general defense to the allegations against the defendant; i.e., that the defendant

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was not the perpetrator of the crime or an actor in it because he lacked a "motive." Yet this can hardly be what the authors wish to say since they have well established that the defendant had plenty of motive in the sense of incitement or inducement to act. After sifting through these concepts, it seems that what the authors should be saying through their "Perry Mason" is that a lack of evil motive will make for good extenuation and mitigation for the defendant during the presentencing portion of the court martial which follows a finding of guilty. In other words, this fact may well serve to lessen the punishment. Therefore, reference to a "*mens rea*" defense is misleading.

At the present time, when the Nation's conscience is being bitterly exercised over war crimes and soldiers' indiscipline toward civilians in Vietnam, to talk and write so as to confuse motives with specific intentions and thereby set up justifications unknown to the law dangerously misleads the public. For a lawyer to engage in these smokescreen tactics is especially reprehensible. To allow defendants to justify their killings on the basis of principle or "good motives" is to enshrine in the law the privilege of playing God—that is, the taking of a life for a good cause. In concentrating on intent and refusing to have regard to motive, the common law has studiously implemented the policy of rejecting this blasphemy.

Having uttered these warnings about the tendency of the writers to be overinfluenced by Perry Mason and Joseph Heller and underinfluenced by what the law is, I would recommend this book for reading, provided the

reader winnows the grain of awareness from the chaff of cheap writing.

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Page, Robert C. *How to Lick Executive Stress*. New York: Fessandess, 1967. 176p.

Written primarily for the business executive, this clear and informative little book, nonetheless, has a wealth of wisdom for anyone interested in a positive attitude toward health. On the premise that without health even the greatest of leaders cannot lead, the author, a longtime medical consultant to Government and industry, discusses such topics as overwork, obesity, alcohol, anxiety, "off" day, et cetera, and how ignorance of or indifference to them can upset psychologic and physiologic health.

In stressing the whole-man concept, Dr. Page investigates the typical non-business roles that men must play. The manner in which these roles are played will greatly influence the executive's mental health and attitudes and, in consequence, his ability to maintain his position as a leader. The book contains many helpful suggestions on how to best organize one's living patterns, tips on retirement planning, and how to recognize some of the potentially dangerous symptoms of anxiety.

Such a book should be high on the list of required reading for managers, executives, and military commanders. Self-management must certainly precede people management.

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