

VIETNAM STORIES: A JUDGE'S MEMOIR¹REVIEWED BY COLONEL FRED L. BORCH²

Vietnam Stories: A Judge's Memoir is the only published first-person account by an Army lawyer about his experiences in Vietnam, and judge advocates should read the book simply for this unique reason. The author, Jack Crouchet, who retired in 1977 as a colonel in the Judge Advocate General's (JAG) Corps, is to be commended for capturing for future generations a judge's view of courts-martial practice in combat. His narrative, which tells the story of his one-year tour of duty from July 1968 to July 1969, is well written, and certainly entertaining. Additionally, as a first-hand perspective of military justice prior to the revolutionary reforms enacted by the Military Justice Act of 1968, *Vietnam Stories* offers a view of a court-martial system that no longer exists. Finally, because Crouchet's discussion of specific court-martial cases ultimately is about the role played by law and lawyers in the American Army, judge advocates will find *Vietnam Stories* to be a thought-provoking read.

Despite these positive features, the book has a number of shortcomings that unfortunately diminish its value. First, Colonel Crouchet never explains fully the purpose and function of military justice in the Army, or the role played by commanders, convening authorities, and lawyers in the legal system. As the military criminal justice system is different from civilian criminal legal systems, and as *Vietnam Stories* is written primarily for a non-military audience, the author should have addressed these and related issues. Second, in discussing individual court-martial results, Jack Crouchet never addresses the larger question of whether military justice "worked" in the combat environment of Vietnam. As this continues to be a controversial point among Army lawyers who served in Southeast Asia, Colonel Crouchet's view on the matter belongs in his book. Finally, in writing *Vietnam Stories*, the author altered identities and disguised facts to such an extent that it is virtually impossible to check the accuracy of his narrative. Because the value of *Vietnam Stories* depends to a great extent upon it being a true account, Jack Crouchet's failure to provide any corroboration for his memoir means that a reader must accept his narrative at face

1. JACK CROUCHET, *VIETNAM STORIES: A JUDGE'S MEMOIR* (1997); 261 pages, \$27.50.

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value. But this will be hard for some to do, especially as parts of the book are about events in which Crouchet never participated. In short, while *Vietnam Stories* is worth reading, some judge advocates will be disappointed.

Vietnam Stories is written in chronological order; the first pages begin with Colonel Crouchet's arrival in Vietnam in July 1968, and the book ends twelve months later with his Date Eligible to Return from Overseas. Crouchet's assignment was to be one of three general court-martial "law officers" in Vietnam. At this time in history, judge advocates usually participated only in general courts-martial; special courts were the province of non-lawyer "line" officers, who prosecuted and defended the case before a panel of officers (and enlisted members, if an enlisted accused so requested). There was as yet no "military judge" in the military justice system but, at general courts-martial, a senior Army lawyer did act as a "law officer." As the law officer ruled on evidentiary matters, and instructed the jury on findings and sentencing, he was often referred to as the "judge," but his authority in court was not the same as today's military judge. Perhaps the most significant difference was that an accused had no option to request trial by military judge alone; every court-martial was a "trial-by-jury," and that jury determined guilt or innocence, and if necessary, an appropriate sentence.

Jack Crouchet entered the JAG Corps in 1951. With roughly seventeen years as an Army lawyer at the time he departed for Saigon, and with prior experience as a law officer at Fort Polk, Crouchet was ideally suited to be a judge in a war zone. Thus, while he heard some cases in relatively secure areas like Saigon and Long Binh, Crouchet also traveled from the Mekong to the Demilitarized Zone to try courts-martial. Each trip required him to carry a large briefcase filled with law books and a small suitcase for personal items. He also wore "a steel helmet, flak jacket, and a .45 caliber pistol, in addition to normal combat gear."³ He and his two fellow law officers were in combat zones "four or five days a week,"⁴ and slept in bunkers, ran to shelters during mortar attacks, and flew in small planes and helicopters over enemy-held territory. Each week, however, Jack Crouchet returned with the other judges to Saigon, where they had comfortable rooms in the Rex Hotel, and enjoyed the bars, restaurants, and other cul-

3. CROUCHET, *supra* note 1.

4. *Id.*

tural pleasures of city life. In short, no judge advocate could have had a broader look at the war in Vietnam than Jack Crouchet.

For more than 250 pages, Colonel Crouchet weaves a narrative that includes a number of interesting court-martial cases, and his own musings on the war in Vietnam. He concluded very early in his tour of duty that combat touched only a few. There were over 500,000 soldiers in Vietnam in 1968 and, while roughly 200 American soldiers were killed each week during the year that Crouchet was in Vietnam (with more than three times that number wounded), only twelve percent of U.S. troops were actually engaged in fighting the enemy on the ground. Eighty-eight percent were involved in supporting these warfighters; these men and women never fired a shot in anger. This was the nature of the war in Vietnam and the author does a great job in explaining how some Americans waged war while others enjoyed civilian luxuries.

In presenting a judge's view of military justice in Vietnam, Colonel Crouchet discusses more than twenty cases. Many involved military offenses. In one case, for example, a soldier refused to comply with a non-commissioned officer's (NCO's) order to "get out of bed." After the soldier subsequently refused identical orders from his platoon leader and company commander, and then, "in a fit of passion" threw a chair in the direction of his superiors, he was court-martialed. The accused was sentenced to one year's confinement, but no punitive discharge. In another general court-martial case, a soldier was charged with absenting himself from his unit to avoid hazardous duty. The accused soldier had, on three different occasions, gone away from his unit after having been assigned to night combat patrols. The accused returned to the unit shortly after the patrols had departed. The court panel found him guilty of all three charges and sentenced him to five years confinement and a dishonorable discharge.

Cases like *United States v. Stoss*⁵ fell into a different category, for these reflected badly on the American presence in Vietnam. While on patrol, Private First Class Stoss shot a Vietnamese man who ran away from him. The American then "finished him off" by striking him in the head with the butt of his rifle. This killing, however, had not gotten Stoss in trouble. Rather, he was being court-martialed because, having been previously dared by an NCO to prove his courage and bring back some "gook" ears, Stoss now cut off the ears and index finger of the dead man. In relating the facts and circumstances, Judge Crouchet writes that Stoss, who was

5. *Id.*

convicted of mutilating a corpse, should also have been prosecuted for murder, as the evidence indicated that he had killed the man without justification. *Vietnam Stories* contains a number of other cases similar to *Stoss*, and all make for fascinating reading.

Jack Crouchet does an excellent job in bringing to life the facts and circumstances of each court-martial in *Vietnam Stories*. One wishes, however, that he would have shared his views on the role of the military judge in the process, especially as, in many cases about which he writes, he disagreed with the convening authority's decision in referring the case to trial, or with the result reached by the court members. What was his "judicial philosophy" as a law officer? Did he, for example, believe that his role was merely to act as a referee between the trial counsel, defense counsel, and court members? Was his role simply to make rulings on evidence and instruct the panel? Or did he believe that his role as law officer also included a responsibility to see that justice was done? Did he think he had an obligation as a law officer to promote discipline? Did he believe that the law officer should speak with the convening authority about proceedings in which a sentence imposed was too harsh, or a manifest injustice had occurred? *Vietnam Stories* would be a better book if Colonel Crouchet had shared opinion on these and other related legal issues.

Vietnam Stories would also be better if the author had explained the philosophical foundation of the military justice system. Military criminal law does seek to do justice but, unlike civilian criminal legal systems, it also has a second purpose: enforcing good order and discipline. As Crouchet wrote his memoir for the non-military reader, he should have explained this unique aspect. He should have addressed the role of the convening authority in the Uniform Code of Military Justice (UCMJ), and the tremendous power of that authority. Looking at the role of the commander would have then permitted a brief examination of command influence in the court-martial process, and how the reforms enacted by the Military Justice Act of 1968 sought to alleviate unlawful command influence. *Vietnam Stories* also fails to explain that, unlike civilian criminal legal systems, charging starts with a commander, and not a prosecutor. It does not explain that court members who decide guilt or innocence also determine the appropriate sentence. Non-military readers would appreciate learning about these and other unique features of military justice, if for no other reason than it would help them better understand Crouchet's stories about courts-martial.

Crouchet also should have discussed whether the UCMJ worked while he was in Vietnam. This issue—whether the UCMJ functions in a combat environment—was hotly debated by Crouchet’s contemporaries. It remains a controversial issue today. Thus, it is disappointing that Crouchet, with his unique perspective as a trial judge, never answers these questions in *Vietnam Stories*: Was military justice fairly administered? Did the accused believe he received a fair hearing? Was justice done? Were commanders satisfied that courts-martial enhanced good order and discipline? Did convening authorities exercise their powers appropriately? Did Crouchet’s experiences as a law officer convince him that the changes enacted by Congress in 1968 were for the better? Was it a good idea to “civilianize” the UCMJ? Was it wise to insert judge advocates into special courts?

In the end, the author’s failure to discuss his judicial philosophy, to explain the nature of military justice, and to evaluate whether it worked in combat, may perhaps be excused. After all, *Vietnam Stories* is a memoir, and not a formal history. As Crouchet states in his preface, the book is “is not a scholarly report with statistical accuracy, but is written with the purpose of presenting to readers an interesting overview of the cases tried, and sharing with them my own unique experiences.”⁶ This disclaimer certainly permits Colonel Crouchet to write about events *as he remembers them*—and thus one should not quarrel if certain facts are “incorrect.” That is the nature of a memoir.

On the other hand, the value of *Vietnam Stories* depends almost exclusively on it being a true report of military justice as it existed at the height of the war in Southeast Asia. Unfortunately, the reader who wants to verify the truth of what he is reading will have great difficulty. Crouchet has provided no index and no footnotes or endnotes. Additionally, he has apparently altered the name of every court-martial case about which he writes, and so it is nearly impossible to obtain additional information about the cases. Moreover, even if a reader has access to trial records now in the custody of the Clerk of Court at the Army Court of Criminal Appeals, those records are filed by name and court-martial number. As Crouchet has disguised the identity of each accused, it will be impossible to retrieve any records using the existing filing system.

One example shows why it is important to be able to verify the accuracy of Colonel Crouchet’s narrative. In a chapter titled, “Rape and Mur-

6. *Id.*

der at the Americal,” the author writes about the prosecution of Captain Robert Cole. Two Vietnamese women were detained by men under Cole’s command, and then raped and killed. This led to Cole’s trial for failing to report a non-battle death of a female detainee who was killed while in the custody of his unit, and failing to enforce safeguards to protect female detainees in his unit’s custody.

As Crouchet quotes extensively from the record of trial, I looked for *United States v. Cole*⁷ in the Court Martial Reports (CMR). It is not listed; there is no record of a general court-martial of an officer with that surname. By thumbing page-by-page through CMR volumes published during this period, however, I discovered that the true name of the decision is *United States v. Goldman*.⁸ Captain Leonard G. Goldman was prosecuted and convicted in September 1968, and the facts related in *Vietnam Stories* as the case *United States v. Cole* appear to be accurate. But the judge who heard the case was Colonel Paul Tobin, not Colonel Crouchet. While Colonel Crouchet never states that he presided over this case, some readers will find it disingenuous for a judge’s memoir to be about a criminal trial in which he never participated. After all, a memoir is a history or narrative composed from personal experience and memory, and the *Goldman* case is a part of neither.

Finally, why change the name of the accused? That Leonard Goldman was tried and convicted is a matter of public record, and it makes no sense to alter his identity, particularly since such a change makes it much more difficult to check the accuracy of Crouchet’s “memory.” Similarly, the prosecution of “Private First Class Stoss,” discussed earlier in this review, appears to be *United States v. Williams*.⁹ Again, one wishes that Jack Crouchet had reported the accused’s true identity.

Then there are minor errors, which also detract from the book. Then Major Earle F. Lasseter is misidentified as “Earle Lassiter,” an important point since there was an ‘Ed Lassiter’ in the Corps during this time. And the dustjacket shows a photograph of Paul “Tovin,” when it should be Tobin.

7. The author discovered by thumbing page-by-page through CMR volumes published during that period that the true name of the decision is *United States v. Goldman*, 43 C.M.R. 711 (1970).

8. 43 C.M.R. 711 (1970).

9. CM 419872.

Veterans' memoirs are critical to understanding modern warfare, and Colonel Crouchet's book about his year as a judge in Vietnam is no exception. As a law officer, he had a unique view of military justice in combat. His wide-ranging travels also gave Crouchet a perspective seen by very few judge advocates. Read *Vietnam Stories*, but do not expect to come away completely satisfied.