BLACK HAWK DOWN[1]

REVIEWED BY MAJOR TYLER J. HARDER[2]

> *By midnight the rescue convoy was getting close. The men pinned down listened to the low rumble of nearly one hundred vehicles, tanks, APC's (armored personnel carriers), and Humvees. The thunderclap of its guns edged ever closer. . . . It was the wrathful approach of the United States of America, footsteps of the great god of red, white, and blue.*[3]

Black Hawk Down is a riveting account of the "biggest firefight involving American soldiers since Vietnam."[4] This book recreates the relatively obscure conflict known as the Battle of the Black Sea.[5] The short but intense clash between Task Force Ranger and Somali militia (clansmen) in Mogadishu, Somalia, on 3 October 1993, took the lives of eighteen American soldiers. The passage quoted above refers to the pinned down soldiers of Task Force Ranger awaiting rescue by the Quick Reactionary Force (QRF) convoy (made up of Malaysian, Pakistani, and 10th Mountain Division personnel) on 4 October 1993.[6] Mark Bowden successfully places the reader in the African city of Mogadishu and in the midst of authentic guerrilla warfare. Bowden's work is an excellent job of investigative journalism, and although this book reads like fiction, he has arguably written the most accurate accounting of this event to date.

The mission for Task Force Ranger on 3 October 1993 was to capture several senior leaders of warlord Mohamed Farrah Aidid's clan. The Rangers were to air assault into a crowded downtown area of Mogadishu (the Bakara Market or Black Sea area) in the middle of the afternoon, set

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1. MARK BOWDEN, BLACK HAWK DOWN (1999).

2. United States Army. Written while assigned as a student, 48th Judge Advocate Officer Graduate Course, The Judge Advocate General's School, United States Army, Charlottesville, Virginia.

3. BOWDEN, *supra* note 1, at 258.

4. *Id.* at 331.

5. This battle derives its name from the area in which it was fought, a downtown area of Mogadishu known as the Black Sea. It has also been referred to as the Battle of Bakara Market. *See* Donna Miles, *Farewell to Somalia*, SOLDIERS, May 1994, at 24.

6. The U.S. military's presence in Somalia was part of a United Nations effort to provide food to starving Somalis during a time of civil war. The effort, Operation Provide Hope, began in December 1992 and ended in March 1994.

up a perimeter, and secure a city block. Delta Force soldiers would then storm the building on the secured block that, according to intelligence sources, contained the senior leaders. Once Aidid's clansmen were captured, an awaiting convoy of trucks and Humvees would retrieve the entire assault force and return to base.

The Black Hawk helicopters, considered by the Americans to be all but invincible in this third-world environment, were suddenly proven vulnerable as the Somali militia successfully shot the Black Hawks out of the sky with rocket propelled grenades (RPGs). The first helicopter to be hit by an RPG crashed only three blocks from the initial assault, and the members of the assault force and a combat search and rescue team were able to get to the crash site and quickly secure it. Soon after, however, a second Black Hawk (piloted by Chief Warrant Officer Michael Durant[7]) was struck with an RPG and crashed several blocks further away in the opposite direction from the first crash site. The task force was unable to reach the second crash site and the original plan disintegrated as thousands of angry Somali civilians and armed Somali clansmen converged on the assault force, the convoy, and Durant's downed helicopter.

The book presents, with vivid description, the horrors of combat. The task force convoy was exposed to heavy Somali gunfire throughout its failed attempts to retrieve the assault force from the first crash site and was eventually forced to return to base. The assault force found itself pinned down at the first crash site fighting through the night, waiting for the QRF rescue convoy to reach them, while two Delta Force soldiers[8] died at the second crash site courageously trying to save Durant and the other survivors of his crew.

In his epilogue, the author states that he wrote this book for the American soldiers that fought in Mogadishu. When he initially began working on the book in 1996, he wanted "simply to write a dramatic account of the battle."[9] He started the project because the story of ninety-nine American soldiers pinned down overnight in an ancient African city fighting for their lives fascinated him. He states, "I wanted to combine the authority of a

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7. The infamous videotape showing Chief Warrant Officer Michael Durant's swollen and battered face was seen on CNN soon after the American pilot was taken hostage by Somali clansmen.

8. Master Sergeant Gary Gordon and Sergeant First Class Randy Shughart, received posthumous Medals of Honor for their failed attempt to keep the Somali crowds from reaching Chief Warrant Officer Durant and his crew.

9. BOWDEN, *supra* note 1, at 331.

historical narrative with the emotion of the memoir, and write a story that read like fiction but was true."[10] Once he started this project, however, another purpose inspired its completion.

During his investigative research, Bowden expected to find an official history and after action review of the battle, but he instead discovered that the military had not shown any such interest in analyzing and critiquing the operation. It was as though the Army sought to forget the entire experience; possibly because the battle, although arguably successful from a military perspective, was perceived by most as a failure. The overall failure of the United Nations operation may have contributed somewhat, but certainly the eighteen U.S. fatalities and the disturbing images of dead American soldiers being dragged through the streets of Mogadishu must have served an even greater part in creating this perception of failure. Bowden became driven by a desire to explain that, while the battle may be viewed as a failure, the soldiers did not fail in their mission. The task force *did* accomplish its mission; they successfully captured Aidid's senior leaders. And in terms of pure numbers, the American death toll of eighteen was minute when compared to the Somali death toll of over five hundred.

The author's desire to address this common perception of failure certainly contributes to a quality product. His account appears to be an extremely accurate and lucid description of events. The news of the battle as reported by many sources merely provided the audience with snapshots of the entire story. *Black Hawk Down* provides a complete version of what happened. It also provides a convincingly correct version.

Although this book is inconsistent with other reports in certain details, even with reputable military magazines like *Soldiers* (the official U.S. Army magazine) and *The NCO Journal* (published by the U.S. Army Sergeants Major Academy), Bowden's account of events seems more persuasive because of his thorough research. For example, the sequence of events leading up to Durant's capture is significantly different. Delta Force snipers Master Sergeant Gary Gordon and Sergeant First Class Randy Shughart volunteered to drop into the crash site to try and protect Durant and his crew until ground troops could arrive. They were both killed by Somali gunfire. *Soldiers* magazine and *The NCO Journal* both indicate SFC Shughart was shot and killed first and MSG Gordon returned to Durant's side to hand him a weapon and to wish him luck before he

10. *Id.*

(MSG Gordon) too was killed.[11] Based upon his research, Bowden concludes the roles of the two NCOs were incorrectly reversed.

Bowden's investigative research is what makes *Black Hawk Down* so persuasive. His research includes extensive interviews of approximately 100 participants, both Americans and Somalis. Relying on this first-hand information, the actual videotape and recorded radio conversation of the battle,[12] and dozens of books and articles, he pieces together the events of the battle in convincing detail. By the end of the book, little doubt is left in the reader's mind that his version is the most credible.

Arguably, the greatest strength of this book is the inclusion of the personal observations and perspectives of the Somalis. Bowden tells the story one piece at a time, moving the reader from scene to scene, often retelling an event two and three times from different participants' recollection. Because the story is told through the eyes of both Americans and Somalis, the reader is forced to empathize with everyone, to include the clansmen. The reader is placed in an objective role as an observer and is given the opportunity to evaluate the Somali perspective and better understand their situation. He writes about one Somali citizen and his experience with a Black Hawk loudly hovering above his house one night while he lay in bed with his pregnant wife. She asks him to feel her stomach; "[h]e felt his son kicking in her womb, as if thrashing with fright."[13] He also relates how a baby was blown out of its mother's arms and down the street by a Black Hawk's rotors. These powerful images force the reader to understand why the Somalis came to despise the Americans.

The author's writing enables the reader to visualize the scenes. He describes events in vivid detail to give the reader clear, searing images of the gruesome chaos and extreme emotion experienced by all participants, Americans and Somalis alike. For instance, he describes an RPG striking a truck in the convoy by writing:

> It rocketed in from the left, severing Kowalewski's left arm and entering his chest. It didn't explode. The two-foot-long missile embedded itself in Kowalewski, the fins sticking out his left side

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11. *See* Heike Hasenauer, *Medals of Honor,* SOLDIERS, July 1994, at 4; *Medal of Honor Awarded to Two NCO Heroes,* NCO J., Fall 1994, at 3.

12. The entire fifteen-hour battle was videotaped from surveillance aircraft in the air over Mogadishu. The author was able to view this video as well as the recorded and transcribed radio messages that took place during the battle.

13. BOWDEN, *supra* note 1, at 76.

> under his missing arm, the point sticking out the right side. . . . The cab was black from smoke and Othic could see the rocket fuse glowing from what looked like inside [Kowalewski]."[14]

The one aspect of this book that possibly detracts from its accuracy is the limited contribution of the Delta Force participants. As Bowden acknowledges, it was difficult for him to get information from the highly-covert special operations unit. He relies almost exclusively on MSG Paul Howe, the only Delta Force operator that agreed to be interviewed, as his source of information regarding the elite unit and its views. He spends considerable time encasing Delta Force in an aura of mystique, and while his portrayal of Delta Force soldiers as highly experienced, fearless, confident, "super soldiers" may be accurate, some of the author's conclusions about Delta Force are questionable. Referring to Delta Force, he writes, "[t]he army would not even speak the word 'Delta.' If you had to refer to them, they were 'operators,' or 'The Dreaded D.' The Rangers, who worshiped them, called them D-boys."[15] Based upon the way Bowden presents the two perspectives, the Deltas' and the Rangers', a reader lacking in military experience would likely conclude the Delta perspective to be more accurate. Careful reading, however, lends to the conclusion that MSG Howe was critical of everyone and somewhat bitter about many aspects of the operation. This colored his perspective, and may explain why he chose to discuss his experiences with the author in the first place.

Black Hawk Down is an invaluable tool for commanders at all levels. While this book was not intended to be a military guide on leadership, it does provide plenty of fodder from which one can extract and develop important leadership lessons. As previously mentioned, Bowden's purpose was to write about the Battle of the Black Sea in an interesting, yet accurate, fashion. He admittedly knows very little about the military and has no military experience of his own to draw upon, so he deliberately chooses not to participate in a critical analysis of the military leadership involved, at any level. He has no political or military agenda to advance; he simply chooses to write about the battle. However, it is from his brilliant illumination of the battle itself that the reader is able to establish useful leadership and management principles for all levels of command. A

14. *Id.* at 127.
15. *Id.* at 33.

few examples at the small unit, the task force, and the high command authority levels follow.

At the small unit level, this book is a testament to the fact that war is truly chaotic, and chaotic situations demand leadership. And where leadership is lacking, others will be required to come forward to provide it. In this battle, there is little doubt the Special Forces unit provided an important stabilizing factor for the less experienced and younger Ranger soldiers. During the fight one of the Delta soldiers, noticing the fear of a young Ranger noncommissioned officer, winked at him and said: "'It's all right. We're coming out of this thing, man.' It calmed [the Ranger]. He believed [the Delta soldier]."[16] The book also provides examples of how combat stress can affect various military relationships. One such example is how the Ranger commander, Captain Steele, was unwilling to communicate with the Delta commander, Captain Miller. It was never intended that the Delta soldiers and the Rangers fight together as one unit, so no clear chain of command had been established between the two elements. When the situation required one fighting force, the two officers failed to work together.[17]

The book also raises numerous issues crucial to military leadership at the task force level. The inability of the observation helicopters to direct the ground convoy to the crash site; the tremendous amount of time it took the QRF to assemble and coordinate with the Pakistani and Malaysian forces; the lack of American armor in Somalia; the lack of riot control agent authorization; the unbelievable helplessness of superior American forces when it came to rescuing the downed pilots; these are all examples of the troubling issues raised by this battle. The failure of the leadership to anticipate and address these issues, and the underlying reasons for that failure, can unquestionably provide invaluable leadership lessons to future task force commanders.

A last example of leadership lessons presented by this book is the political strategy employed by the Americans in attempting to end the civil unrest in Somalia. The strategy was to capture the clan warlord, Aidid. Many felt his removal would stop the fighting and allow the establishment of a legitimate democratic government, while others felt such a plan was

16. *Id.* at 176.

17. At least in this case, the lack of communication between the captains did not appear to have any substantial effect on the soldiers or the situation; nonetheless, the leadership value of this situation remains.

destined for failure. There is much evidence from the author's interviews of the Somalis to support this latter view. The Americans went to Somalia to provide protection and to help starving people. As it turned out, the very people Americans went to help, the Somalis, hated the Americans for being there. The history of the warring clans runs deep within all Somalis and it was unlikely that removing Aidid from the picture would have brought stability and peace to Somalia. Indeed, the author notes that Aidid has since been killed by the continued fighting and Somalia is still engaged in civil war. As Bowden convincingly states, "[i]n the end, the Battle of the Black Sea is another lesson in the limits of what force can accomplish."[18]

Early in the book the author refers to a prophetic memo written by the Task Force Ranger commander, Major General William Garrison, wherein he states, "if we go into the vicinity of the Bakara Market, there's no question we'll win the gunfight, but we might lose the war."[19] It appears that is what happened. After the firefight, President Clinton beefed up the American military presence in Somalia for several months; but obviously recognizing the unpopular feeling most Americans had towards this United Nations operation, he completely pulled the American military out of Somalia within six months. As Bowden concludes in his epilogue, "Mogadishu has had a profound cautionary influence on U.S. military policy ever since."[20] The author believes the Battle of the Black Sea is directly responsible for the abrupt end to the United Nations effort to bring stability to Somalia, the resignation of the Secretary of Defense, Les Aspin, and the destruction of the promising career of the task force commander, General Garrison. Although some of these conclusions may be debatable, one can hardly argue that the Battle of the Black Sea was a watershed event in U.S. foreign policy.

This book is a must read for everyone. A truly fascinating account of modern war, this book may very well prove incorrect Bowden's conclusion that "[t]heir fight was neither triumph nor defeat; it just didn't matter."[21] *Black Hawk Down* not only provides a gripping and entertaining account of American soldiers in combat, but it also presents the basis for an excellent study of the "biggest firefight involving American soldiers since Vietnam."[22]

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18. BOWDEN, *supra* note 1, at 342.
19. *Id.* at 21.
20. *Id.* at 334.
21. *Id.* at 346.
22. *Id.* at 331.

EMBRACING DEFEAT: JAPAN IN THE WAKE OF WORLD WAR II[1]

REVIEWED BY COLONEL FRED L. BORCH III[2]

What impact did the U.S. occupation of Japan have on the Japanese? Was it a positive experience? Did the Japanese affect their American occupiers in any way? *Embracing Defeat: Japan in the Wake of World War II* offers answers to these questions, and this makes it a "must read" for judge advocates interested in World War II and its aftermath. Additionally, author John W. Dower's balanced perspective and insightful analysis make his award-winning book[3] just as important reading for contemporary military leaders, diplomats, and political decision-makers with an interest in Asia and the Pacific. This is because the nature of today's Japan—and its role on the Pacific Rim—cannot be understood without examining the U.S. occupation of that island nation from 1945 to 1952.

The war between Japan and America lasted three years and eight months; the occupation of the defeated country lasted almost twice as long. Consequently, at least from the Japanese perspective, World War II did not really end until 1952. Moreover, during the six years and eight months from August 1945 to April 1952, no major political, administrative, or economic decisions were made without United States approval. No public criticism of the American occupation force was allowed. Finally, because Japan had no sovereignty and thus no diplomatic relations, no Japanese were allowed to travel overseas until the occupation was almost over. Consequently, there is a strong argument that the occupation had a greater impact on Japanese life and society than the war itself.

Unlike post-war Germany and Austria, divided as they were between the United States, France, Britain, and the Soviet Union, the "focused intensity that came with America's unilateral control of Japan" permitted

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1. JOHN W. DOWER, EMBRACING DEFEAT: JAPAN IN THE WAKE OF WORLD WAR II (1999).

2. Judge Advocate General's Corps, U.S. Army. Currently a student at the Naval War College, Newport, Rhode Island.

3. *Embracing Defeat* has won the Pulitzer Prize, National Book Award for Non-Fiction, the *L.A. Times* Book Prize in History, the Bancroft Prize, the John K. Fairbank Prize of the American Historical Association, the PEN/New England L. L. Winship Award, and the Mark Lynton History Prize.

the United States to impose a truly remarkable "root-and-branch" program of demilitarization and democratization. As *Embracing Defeat* explains, this truly all-encompassing program brought revolutionary change to Japanese culture and society.

Future peace and stability required that the imperial Japanese forces be disarmed and demilitarized. Only democratization, however, could prevent the reemergence of militarization. At the same time, instilling democratic thinking in the Japanese people would counteract the rising influence of communism. While the Potsdam Declaration had sketched the overall goals of the occupation, the details of this demilitarization and democratization were left to General Douglas MacArthur as Supreme Commander for the Allied Powers. This resulted from both the "Europe-first" focus of policymakers in Washington and MacArthur's imperial personality. In any event, MacArthur was the "indisputable overlord of occupied Japan,"[4] and his monopoly on policy and power gave him—and the roughly 1500 military and civilian bureaucrats who worked for him—virtually unbridled discretion to remake Japan. They alone decided the form and substance of the remarkable political, economic, and spiritual changes that would be called a "democratic revolution from above."[5]

As Dower shows, MacArthur and his underlings determined the shape that "stern justice" for war criminals would take. Similarly, he and this cadre of reformers determined the extent of "just reparations" for the destruction wrought by the Japanese against their now victorious enemies, and the form that demilitarization of the economy would take. Perhaps most importantly, the ideas of MacArthur and his staff shaped a key component of the American occupation agenda: the removal of all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. This included the establishment of freedom of speech, religion, and thought, as well as respect for fundamental human rights. To a very real extent, the occupation would end when MacArthur decided that a "peacefully inclined and responsible government" existed in accordance with the "freely expressed will of the Japanese people."[6]

Central to molding the Japanese people into good American-style democrats was establishing a democratic form of government. As MacArthur and his reformers decided that the existing Meiji Constitution of

4. *Id.* at 205.
5. *Id.* at 69.
6. *Id.* at 75.

1890 was "incompatible with the healthy development of responsible democratic government,"[7] a new document was drafted. The resulting constitution, written in six days, was truly a remarkable instrument. Filled with Anglo-American and European democratic ideals, it even included a provision affirming the "essential equality of the sexes"—a right not explicitly found in the U.S. Constitution.[8] But the truly revolutionary provision was Article 9, in which Japan forever renounced belligerency as a sovereign right of the state.[9] While some modifications would be made before the new constitution came into effect on 3 May 1947, the "renunciation of war" provision remained. It is unique in the history of national constitutions. As *Embracing Defeat* shows, however, the great irony of the way in which democratization, including the constitution, was imposed upon the Japanese is that the process was so undemocratic. While the victors preached democracy, they ruled by fiat. Their reformist agenda rested on the assumption that Western culture and its values were superior to those of Asia and Japan.

While the United States did impose sweeping change upon Japanese culture and society, not all changed for the Japanese. In fact, to some extent the occupation reinforced rather than altered some aspects of Japanese life. For example, unlike the practice of direct military government adopted in Germany, the American occupation of Japan was conducted indirectly through existing organs of government. That is, as they lacked the linguistic and technocratic capacity to govern the Japanese directly, MacArthur and his staff were forced to implement their revolution from above through two of the most undemocratic institutions of imperial Japan: the bureaucracy and the throne. Consequently, whether supervising developments in finance, labor, economics, and science, or revising the constitution, electoral system, courts, and civil service, the Americans exercised their authority through Japanese agencies and administrators. Not surprisingly, this had the long-term effect of strengthening the civilian bureaucracy and the power of the technocratic elite. As a result, long after the Americans had ceased to rule and the Japanese were regularly electing their leaders, government bureaucrats exercised a power unusual in a democracy.

Judge advocates will be particularly interested in *Embracing Defeat*'s critical examination of General MacArthur's involvement in the Interna-

7. *Id.* at 346.
8. *Id.* at 369.
9. *Id.* at 347.

tional Military Tribunal for the Far East. While some criminal proceedings involving so-called Class B and C defendants were held outside Japan, the "Tokyo War Crimes Trials" of the Class A defendants—Japanese policymakers charged with "crimes against peace" and "crimes against humanity"—were the most important, and best known. Dower convincingly shows that MacArthur's decision that the emperor would not be charged—or even linked to the war crimes charged against high ranking Japanese politicians and military leaders—irreparably damaged the proceedings themselves. After all, if Emperor Hirohito were not even *morally* responsible for the repression and violence carried out in his name and with his endorsement, how could the Japanese people be made to accept moral responsibility for the death and destruction wrought by the imperial Japanese forces? The War Crimes Trials had the unintended affect of strengthening the feelings of victimization, and retarding the Japanese willingness to accept responsibility. This was one unintended consequence of the "embrace" between the occupied and the occupier.

The great strength of *Embracing Defeat* is its extensive use of Japanese language sources. Whereas other English language accounts of the U.S. occupation from 1945 to 1952 rely almost exclusively on American documentary material, Professor Dower's intimate knowledge of Japanese politics, society, and culture allow him to examine Japan's transformation from an empire to a democracy as no historian has done previously. Some of his sources are unexpected. In one section, for example, he examines games played by Japanese children. He then explains that, in early 1946, the most popular activities among small boys and girls were make-believe games in which children held a mock black market and played prostitute and customer.[10] These games were a barometer of the obsessions of Japanese adults; a reflection of the life faced by their fathers and mothers. In another section of *Embracing Defeat*, Professor Dower reveals how the Japanese government, through loans and police support, encouraged businessmen to open "Recreation and Amusement Associations" (RAA). These were houses of prostitution, and were believed to be necessary as a buffer to protect the chastity of the "good" women of Japan from the sexual appetites of the American victors.[11] While the RAA lasted only a few months before being abolished by occupation authorities as "undemocratic," this experiment in formal public prostitution is fascinating, as is Dower's discussion of the Japanese perspective on the ubiquitous fraternization of the victors with Japanese women. In discussing this and other

10. *Id.* at 111.
11. *Id.* at 127.

issues, the author also frequently uses Japanese cartoon art to illustrate his points and support his analysis, which provides a unique window into the psychology of the Japanese people.

All in all, Professor Dower concludes in *Embracing Defeat* that the political and cultural revolution ushered in by the American occupation was a positive event. Nearly fifty years later, democratization and demilitarization remain firmly rooted in Japan, and the Japanese people are better for it. But not all old ideas and beliefs were swept away, and the value of Professor Dower's book is that it explains just how this could happen. Consequently, those who read *Embracing Defeat* will understand how Emperor Hirohito could claim in a 1975 interview that, looking at Japanese values "from a broad perspective," there had been no change between prewar and postwar Japan.[12] That same reader will also better appreciate why, only a few months ago, Japanese Prime Minister Yoshiro Mori said that "Japan is a divine nation with the emperor at its core, and we want the [Japanese] people to recognize this."[13]

A final point: in discussing the comprehensive political, economic, social, and cultural ramifications of the U.S. occupation of Japan, Professor Dower never allows his book to gloss over the effect the occupation had on the men, women, and children who lived though it. He captures "a sense of what it meant to start over in a ruined world by recovering the voices of people at all levels of society."[14] This reveals the Japanese perspective on life under the victors which, in turn, tells us something about ourselves as Americans. This is because, in embracing the Japanese and trying to re-create them in our own image and likeness, we Americans necessarily revealed—to the Japanese and the world—what we thought America and being American was all about.

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12. *Id.* at 556.

13. Howard W. French, *Japan Ruling Party Wary of Prime Minister's Gaffes*, INT'L HERALD TRIB., May 27-28, 2000, at 1.

14. DOWER, *supra* note 1, at 25.

LINCOLN'S MEN:

HOW PRESIDENT LINCOLN BECAME FATHER TO AN ARMY AND A NATION[1]

REVIEWED BY MAJOR MARY J. BRADLEY[2]

> *His riding I can compare to nothing else than a pair of tongs on a chair back, but notwithstanding his grotesque appearance, he has the respect of the army.*[3]

This quote from a soldier in the 83rd Pennsylvania Regiment demonstrates the strength of William C. Davis's *Lincoln's Men*. In this engaging narrative, the author uses primary sources as the foundation for examining the growth of the image of Lincoln as "Father Abraham"[4] among Union soldiers during the Civil War. Never in the plethora of works on Lincoln has an author so fully explored the spiritual bond between Lincoln and the Union soldier.[5] Davis brings his skills as an expert Civil War historian[6] to this unique and unexamined area of history. Davis's narrow scope, combined with the well-developed theme, makes *Lincoln's Men* an innovative and compelling study that is worthwhile reading for any Civil War enthusiast or Lincoln aficionado. Despite the book's strengths, however, its nar-

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1. WILLIAM C. DAVIS, LINCOLN'S MEN: HOW PRESIDENT LINCOLN BECAME FATHER TO AN ARMY AND A NATION (2000).

2. United States Army. Written while assigned as a student, 49th Judge Advocate Officer Graduate Course, The Judge Advocate General's School, United States Army, Charlottesville, Virginia.

3. DAVIS, *supra* note 1, at 68. This review contains many quotes from Union soldiers that appeared in *Lincoln's Men.* Many of the quotes contain spelling and grammatical errors. Following Davis's lead, "[a]s long as the soldier's meaning is clear, no attempt has been made to correct his spelling and capitalization or to intrude pedantic paraphernalia like '[sic]'." *Id.* at xii. Davis left the errors "to share [the soldiers'] wonderfully inventive means of expressing themselves." *Id.* Reading the original quote without correction or distraction will assist the reader to understand the colloquial phrases and level of education of the soldier.

4. *Id*. *passim.* Davis adopts the name "Father Abraham" to signify the relationship between Lincoln and the Union soldier. It first appeared during the Civil War as a favorable nickname for President Lincoln, and can be found in many of the quotes throughout *Lincoln's Men*.

5. *Id.* at 293 (bibliography).

6. Davis is a two-time Pulitzer Prize nominee and the author of more than twenty-five books on the Civil War.

row scope results in limited usefulness to the casual reader looking for a history lesson.

This review first commends Davis on the strength of his primary theme, but criticizes him on the weakness of the secondary theme, which analogizes Lincoln to the Biblical Abraham. Second, this review explores the positive and negative aspects of using primary sources as a foundation for historical exploration. Third, it discusses the benefits and detriments of the book's limited scope. Finally, this review explores the leadership lessons derived from *Lincoln's Men*.

Davis introduces the primary theme of *Lincoln's Men* in the subtitle of the book—*How President Lincoln Became Father to an Army and a Nation*. Davis develops his theme by presenting Lincoln in various roles throughout his presidency: reviewing official, skillful politician, comforter of wounded, merciful protector of the unjustly condemned, emancipator of slaves, inspirational leader, and deified legend. With each successive role, Lincoln is further transformed in the eyes of the soldier from "Old Abe"[7] to "Father Abraham." Davis discusses Lincoln's various roles by logically organizing *Lincoln's Men* into chapters that reflect each of these roles. Davis finds support for his theme in various sources, but primarily relies upon quotes from the Union soldiers themselves: "I am getting to regard Old Abe almost as a Father—to almost venerate him—so earnestly do I believe in his earnestness, fidelity, honesty & Patriotism."[8]

Davis suggests that the image of Lincoln as "Father Abraham" develops with each Union soldier for different reasons at different times. For some, Lincoln became "Father Abraham" the first time he reviewed their regiment after they reported in response to his initial call for volunteers before the Civil War began. The transformation did not occur for others until Lincoln emancipated the slaves. By the end of the Civil War, all soldiers who recognized Lincoln's genuine care and concern for the soldiers and the Union referred to him as "Father Abraham." Upon his assassination, the love of the soldiers for their "Father" was apparent: "No man, not

7. DAVIS, *supra* note 1, at 57 (explaining that "Old Abe" was a less than favorable nickname for Lincoln that the Union soldiers used in the beginning of the Civil War).

8. *Id.* at 226 (quoting a Union soldier).

even Grant himself, possesses the entire love of the army as did President Lincoln."[9]

Davis presents a balanced discussion of the familial theme, however; he did not neglect those letters and diaries that present an unfavorable view of Lincoln. Some soldiers could not forgive Lincoln for removing McClellan as their general. Other soldiers felt that Lincoln had turned the conflict into a war over the slavery issue: "If I had known, I would never have joined. The Emancipation Proclamation is unconstitutional."[10] Some soldiers even used the Emancipation Proclamation as an excuse for deserting. Even upon his assassination, some soldiers felt his death was justified. "Old Abe is killed and I do not care a damn . . . . He was an abolitionist and he had been the cause of thousands of innocent men being killed."[11]

While Davis supports his primary theme, he does not effectively present his secondary one, which analogizes Lincoln to the Biblical Abraham. Seemingly as an afterthought, Davis begins each chapter with a biblical quote about Abraham. Through these quotes, Davis implies that Lincoln is worthy of comparison to Abraham. Davis wishes the reader to analogize Lincoln and Abraham by equating their experiences and their paternal roles. Rather than developing and supporting this theme, Davis merely confuses the reader by failing to expand on these introductory quotes. He does not develop or test the theme that Lincoln was to the Union what Abraham was to the people of Israel. This concept could be the theme of an entirely separate book on Lincoln. The reader could skip these quotes without losing the strength of the primary theme in *Lincoln's Men*.

Secondary theme aside, Davis uses primary sources to support the familial metaphor. His extensive list of primary sources includes: diaries, collections of letters, published and unpublished memoirs, presidential orders, congressional notes, newspaper articles, biographies, monographs, and special studies. Davis admits that despite the overwhelming available sources, the average Union soldier only referred to Lincoln occasionally. Their references to Lincoln were primarily about the command and review, the Emancipation Proclamation, the enlistment of black

9. *Id.* at 243.

10. *Id.* at 101 (quoting an Ohio lieutenant who was court-martialed and sentenced to a dismissal for making this statement).

11. *Id.* at 240 (quoting a quartermaster).

soldiers, the 1864 presidential election campaign, and the draft. The typical soldier was more likely to write about the weather and the food. From the numerous sources, however, Davis manages to capture the essence of the soldiers' feelings about their President, and their President's feelings about them.

Davis's skill as a historian is evident in his ability to turn the occasional references to Lincoln into a cohesive narrative. His finest skill is his ability to interweave poignant quotes to support his theme. While a historian can report that the soldiers often found humor in Lincoln's appearance on horseback, the truly gifted historian can pull from countless sources the perfect quote to exemplify a fact or paint a picture. For example, Davis discovered this descriptive quote written by a soldier from the 5th Wisconsin Regiment: "Lincoln was an excellent rider, but upon this occasion he seemed utterly to disregard his horse, looking intently, kindly at the men, waving his hat as he rode along."[12]

Davis depicts the soldiers' faith in Lincoln by using their own words. "What a depth of devotion, sympathy, and reassurance were conveyed through his smile."[13] "No *one* man in this Country has so many supporters as Old Abe . . . Let Abraham Lincoln say the *Word*, then let *every man* wither Abolishonist, Proslaverites, Fanatics, Radicals, Moderates or Conservatives of what ever Party or Distinction, hold up both hands and with one unanimous voice say *Amen.*"[14] Davis's skillful use of soldiers' quotes highlights the narrative of *Lincoln's Men.*

Davis did not limit himself to primary sources from soldiers. He read Lincoln's official and personal documents to capture his thoughts and feelings about the Union soldiers. Additionally, Davis read letters and documents written by Lincoln's friends, advisors, and critics. Using these sources as a foundation for the historical exploration gives the reader the confidence in Davis's logical conclusions about the relationship between Lincoln and the Union soldiers during the Civil War.[15]

Using primary sources alone cannot definitively support the theme, however. While Davis captures the thoughts and feelings of some soldiers, his research is necessarily limited to the literate soldier[16] who wrote and preserved these documents. Many of the soldiers did not write diaries or

12. *Id.* at 68.
13. *Id.* at 69.
14. *Id.*

letters home; rather, they "vented their opinions around the campfire."[17] The sampling of primary sources that is available and practical to use represents the opinions of a very small percentage of Union soldiers.

Civil War historians have also questioned the completeness and truthfulness of many primary sources.[18] Many soldiers voiced adoration for Lincoln in their postwar memoirs not included in their wartime correspondence. Davis suggests that many soldiers edited their diaries, letters, and memoirs to remove any negative opinions they expressed. Because of the passage of time and change in attitudes following Lincoln's death, no historian can identify the exact impressions of all of the soldiers during the Civil War.

While Davis captures the Union soldiers' relationship with Lincoln using all available sources, the actual scope of the analysis is very narrow and does not provide details of the war outside the scope of the defined theme. When reading *Lincoln's Men*, the reader should not expect to learn

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15. Despite the use of primary sources, one reviewer noted errors within the book. Michael Burlingame, *Book Review: Lincoln's Men: How President Lincoln Became Father to an Army and a Nation*, CIVIL WAR HISTORY, Sept. 1, 1999, at 275.

> Davis's discussion of the soldiers is far stronger than his treatment of their commander in chief. His treatment of Lincoln's prepresidential years is riddled with errors (e.g., "His opposition to the [Mexican] war cost him reelection in 1849." His "grandfather had not been a soldier of the Revolution." He had "two years of intermittent schooling." In 1832 he reenlisted in the militia because "he had missed his chance to continue running for the legislative seat.").
>
> More serious errors occur in chapters on Lincoln's presidency. Amazingly, Davis ignores Lincoln's last public address, in which he explicitly endorsed suffrage for black Union veterans. He accepts as genuine the letter to Gen. James S. Wadsworth endorsing universal suffrage, a document that most Lincoln authorities regard as spurious. He fails to note that the famous letter of condolence to the Widow Bixby was almost certainly written by Lincoln's secretary John Hay and not by the president.

Id. (citations omitted). While this reviewer felt the errors were substantial, unless the reader is a true scholar of Lincoln, the errors will not be noticed. These errors reinforce the conclusion that *Lincoln's Men* should not be used as a primary biography of Lincoln.

16. DAVIS, *supra* note 1, at x. Davis notes that approximately seventy percent of the soldiers were literate.

17. *Id.* at xi.

18. *See generally id.* at x-xii (providing information and criticism of the Civil War period primary sources).

the history of Civil War battles, generals, politics, or logistics. Relying solely on *Lincoln's Men* for biographical information on Lincoln, the reader would think that Lincoln spent his entire presidency reviewing troops, signing court-martial clemency orders, and visiting hospitals. In defense of Davis, he does not state or imply that *Lincoln's Men* will be anything more than an examination of the relationship between Lincoln and the Union soldier.

Without a previous understanding of the Civil War, the reader cannot fully appreciate the significance of certain battles such as Gettysburg and Antietam. While it is not necessary for every book on the Civil War to explain fully the military aspects, the reader will not understand the significance of Lincoln's actions without this background.

Davis limits his discussion of Civil War battles to their role in Lincoln's political decisions. For example, Davis mentions the battle of Antietam as a qualified victory for the Union. Davis did not explore the battle itself—the movement of the troops, the decision-making process of the generals, and the bloody nature of the conflict. Instead, Davis mentions Antietam as the Union victory that would give Lincoln the political support of the Union he needed to announce the preliminary Emancipation Proclamation.[19]

The narrow focus on the relationship between Lincoln and the Union soldier, however, has the positive effect of focusing the reader squarely on Lincoln's skill as a leader. Early in the war, Lincoln discovered that his true leadership role was not to manage the battles or the troops, but to inspire and motivate—to focus the soldiers on the reason for the fight and to instill the confidence of the importance of the individual soldier. Leaders know that the state of their subordinates' morale can affect mission accomplishment. Lincoln's leadership ability contributed significantly to the "sustaining resolve" that maintained the heroic morale of the Union soldier during the Civil War.

Lincoln's success as an inspirational and motivational leader is most evident in the folklore developed by citizens and soldiers, even while the Civil War was raging and Lincoln had not yet been assassinated. Upon

19. *Id.* at 92 ("Only the authority of a battlefield triumph there could back his proclamation with the moral authority it needed.").

hearing of Lincoln's call for volunteers, a soldier wrote a poem that describes the citizens and soldier's support of Lincoln:

> We are coming Father Abraham, three hundred thousand more,
> From Mississippi's winding stream and from New England's shore,
> We leave our plows and workshops, our wives and children dear,
> With hearts too full for utterance, with but a silent tear;
> We dare not look behind us, but steadfastly before,
> We are coming, Father Abraham, three hundred thousand more.[20]

Upon his death, soldiers remembered Lincoln with Christ-like sentiment. "They succeeded in killing the Son but the father liveth."[21]

The Christ-like image manifested itself in the stories that likened Lincoln's acts to miracles. Of note was the poem *The Sleeping Sentinel*, which turned the real-life grant of clemency to William Scott into a fictional account. Lincoln did grant clemency to a soldier who faced death for sleeping while on watch; that soldier was later killed in action. The truth became the basis for embellished and romanticized books, plays, and movies.

The qualities that soldiers and citizens saw as saintliness derive from Lincoln's genuine compassion for the soldiers' welfare combined with his immense skill as a politician, who understood the nature of leadership with exceptional acuity. Lincoln became "Father Abraham" not by sitting in Washington behind closed doors. Rather, Lincoln met with the soldiers in their camps, in his office, in the hospitals, and on the campaign trail. Stories of Lincoln's mercy and charity reached his soldiers through stories in newspapers and magazines, not to promote his political interests but to strengthen the morale of his army and its commitment to the Union cause. Lincoln's personal and apparent concern for the soldiers motivated and inspired them to continue the fight. The reader discovers, through insight into the Union soldiers' opinions, that Lincoln is a stronger, more effective *military* leader than previously discerned.

Davis supports his conclusions about Lincoln's skill as a leader and the strength of the relationship between Lincoln and the Union soldiers by weaving insightful quotes into a well-written narrative. While casual readers will not find *Lincoln's Men* difficult to read or uninteresting, they

20. *Id.* at 73.
21. *Id.* at 244.

should not rely on it as their primary history of the Civil War or complete biography of President Lincoln. Despite its limits, *Lincoln's Men* is recommended to the reader with a background on the Civil War who is looking to develop a more complete understanding of Lincoln and his role in the war. Foremost, *Lincoln's Men* fills a void in Civil War scholarship with its fresh perspective into the relationship between Lincoln and the Union soldier.

ON KILLING[1]

REVIEWED BY MAJOR ROBERT BOWERS[2]

You run swiftly across a muddy field with rifle in hand, bayonet fixed. Before you runs another man in a different uniform. He abruptly wheels to face you and your eyes meet at the moment you forcefully thrust the bayonet into him. With wide eyes fixed upon yours, he gurgles words in a foreign tongue through blood as he sinks to his knees to die. At this moment, you think that he is old enough to be a father.

What did you think as you pursued him? How did you feel as you impaled him? What effect will this have on your mental state tomorrow, and years from now? Multiplied by all the other combatants experiencing similar stimuli, how will this impact the entire force? If you have never contemplated the psychology of the act of killing, you will after reading this book.

For an institution whose livelihood revolves heavily around killing, the military seems to devote scant attention to how this act impacts those who do it. However, in *On Killing*, author Lieutenant Colonel Dave Grossman takes great strides to focus readers on the impact of killing. He describes his work as "[a]n attempt to conduct a scientific study of the act of killing within the Western way of war and of the psychological and sociological processes and prices exacted when men kill each other in combat."[3]

In an ambitious undertaking of momentous significance, the author deftly moves through diverse chapters, each warranting a book of its own. The overall effect is a smooth, riveting, and thought-provoking commentary on the act of killing. This review provides a synopsis of *On Killing*, discusses its strengths and weaknesses, criticizes the book's final chapter, and raises leadership lessons imparted by Grossman's commentary.

Grossman begins his exploration with S. L. A. Marshall's World War II study found in *Men Against Fire*, which revealed remarkably that a mere

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1. DAVE GROSSMAN, ON KILLING (1995).

2. United States Army. Written while assigned as a student, 49th Judge Advocate Officer Graduate Course, The Judge Advocate General's School, United States Army, Charlottesville, Virginia.

3. GROSSMAN, *supra* note 1, at xxix.

15% of line infantry who saw targets in combat actually fired their weapons at them. Grossman observes an intraspecies reluctance to kill your fellow man if you are among the 98% nonsociopaths that perceives a resistance to the act of killing. The resistance occurs between the human forebrain, where reasoning and the conscience occur, and the midbrain, which is impulsive, reactive, and indistinguishable from animals. Without negative connotation, the 2% sociopaths ("natural soldiers") are described as men well in control of their faculties who simply do not experience the normal resistance to killing or the resultant psychiatric trauma associated with extended periods of combat. The reactions imbedded in the midbrain through repetitive training kick in when one becomes literally "scared out of their wits," causing the reasoning process in the forebrain to stop. Grossman provides startling examples that seem to support the notion that man will avoid killing when possible: for instance, he uses the rigorously trained Prussians of the 1700s who had a 60% hit rate for targets seventy-five yards away during training but who performed miserably against live targets a mere thirty yards away in the Battle of Belgrade; he also recounts the Vicksburg night battles where companies exchanged repeated volleys from fifteen steps apart without a single casualty. Grossman attributes the increase in the number of U.S. soldiers firing their weapons from Marshall's 15% to Vietnam's 90% to the change from use of known distance targets to the instant gratification of pop up targets, hence conditioning soldiers akin to Pavlov's conditioning of laboratory dogs.

From the above general topic Grossman next introduces the concept that all men possess a finite well of fortitude. The well of fortitude diminishes depending on the weight of: the burden of the duty to kill; the actual killing event; and the stress of being a target to be killed. The rate at which the well is drawn from depends on the impact of the emotional stimuli. Those who receive the most stimuli, usually line infantry, deplete their wells the soonest. At some point unknown, each man will drain his well dry and become a psychiatric casualty. At times during World War II, the U.S. Army could not replace fast enough those soldiers evacuated as psychiatric casualties. Various factors impact the degree to which the stimuli are felt. Generally, the more dehumanized the target and less personal the situation is, then less impact will result from the killing. Factors include cultural distance (for example, the belief that the only good Indian is a dead Indian), mechanical distance (for example, a green blob on a night vision scope versus a plainly visible man), and physical distance (for example, the difference between hand-to-hand knife fighting and dropping bombs from a mile above). The more personal or intimate the emotional impact,

the more draining it is upon the well of fortitude. Numerous studies revealing that men in combat fight out of a desire to be held in esteem by their comrades and leaders, to participate in the group accomplishments, and to avoid the shame and guilt of not supporting the group are also discussed.

From the topic of fortitude, the author proceeds to describe the mechanisms that enable atrocity and techniques that some militaries have adopted to increase the killing efficiency of their servicemen. For most killers, there is a series of emotional responses associated with the act. One feels trepidation and perhaps reluctance beforehand; exhilaration at the time of the kill; guilt or remorse afterwards; and rationalization over time. The nature and circumstances of the act may affect the intensity and duration of each of these responses. As mentioned earlier, there were many psychiatric casualties during World War II, but the incidence of Post Traumatic Stress Disorder afterwards was de minimis. Vietnam was the opposite. The author attributes that to a rationalization and acceptance phase manifested through such acts as the praise of society, the conducting of parades, and the awarding of medals after World War II but not after Vietnam. Convincingly, the author proposes that crew-served weapons are the greatest casualty producers on the battlefield because there is a mutual surveillance process that overcomes the individual's innate reluctance to kill, and because of the diffusion of responsibility and group absolution after the killing.

Grossman's last and culminating point is to take what he has established in the previous chapters and extrapolate that violent media and interactive video games are conditioning the youth of society to be less resistant to killing in much the same way that military training practices have conditioned soldiers. His point is that popular culture's adoption of desensitizing techniques is behind the increased homicide rates among the young, and that society may expect more unless they understand how this has occurred and work to reverse it.

With little fanfare, the author is endearing as a humble yet competent pioneer in an understudied subject. Proclaiming at the book's beginning that, "[t]o neglect it is to indulge it,"[4] he launches into this novel study. He provides his credentials as a present Professor of Military Science at Arkansas State University, a former instructor of psychology at West Point, and as a lieutenant colonel of Infantry qualified as an airborne

4. *Id.*

ranger. While this indicates some background relevant to the topic, he acknowledges he has no personal experience in killing. But if not this author, then whom?

The greatest strengths of the book are the convincingly articulated theories put forth by the author and supported by extensive research as evidenced by the bibliography. Some works, such as S. L. A. Marshall's *Men Against Fire*, are renown in military circles while other works are obscure. Much of the book's success is the simple consolidation of these disparate but related matters into one source. In each chapter the author supports his thesis with pertinent anecdotes. Most of these anecdotes draw from secondary sources, the works of other authors who have touched upon the nature of war but not specifically upon the psychology of the individual doing the killing.

Less satisfying and perhaps the greatest weakness of the book is the dearth of primary sources. While this book was written on the heels of United States involvement in Grenada, Panama, the Gulf War, and Mogadishu, none of these sources are tapped. There is no shortage of service members with killing experience. Admittedly, these conflicts were of short duration. While that limited combat exposure and resultant mental state wouldn't qualify them for some parts of the book, their killing experiences more than qualifies them for other parts of the book. The author instead cryptically relies on "hundreds" of veterans "who have shared secrets with me."[5] He imparts that they must remain anonymous. For a book that started off purporting to be a "scientific study,"[6] this methodology does not appear sound. The author refers throughout the book to conversations he had with audience members after speaking engagements, discussions over a beer at a Veterans of Foreign Wars bar, or other similar circumstances. Furthermore, he relies heavily on the "experiences" of alleged veterans contributing to a forum-style column in bygone issues of *Soldier of Fortune* Magazine. The inability to measure the credibility of

5. *Id*. at xi. It is sometimes impossible to distinguish whether a source is first hand or second hand. For example, on page 256 the author discusses a source named Bill Jordan. Jordan's opinion is important in supporting the author's opinion, but it is unclear what Jordan's status is. I found eighteen sources clearly identifiable as first hand throughout the book.

6. *Id*. at xxix.

the sources detracts from reader confidence in theories that otherwise seem sound.

Despite the lack of faith engendered by unverifiable sources of dubious credibility, the technique of putting forth theories supported by well-researched anecdotes works through the beginning chapters. The merit of the ideas outweighs the credibility problem of the sources. However, the final chapter's thesis that popular culture's adoption of military desensitizing techniques is behind the increase in the rising rate of violent behavior among youth may be a step too far. Where the previous chapters were sound theories supported by secondary sources, the final chapter comes off as merely unsupported speculation.

Theories on the underlying causes of escalating youth violence abound and while this book was written in 1995, the issue remains current and controversial. To the detriment of this last chapter, it is apparent that there is precious little support for these conclusions. The author puts forth the basic premise that the gratuitous violence prevalent in media today conditions youth to overcome what once was a natural resistance to killing, in much the same way that pop-up targets conditioned soldiers. Sitting with sodas and snacks on the sofa with the movie or videogame before them, the youth of today associate the pain and suffering of others with their own immediate gratification. While the author does put forth a good case that this dynamic is certainly a factor, his lack of credible sources and neglect of other dynamics[7] make his final point of a cause and effect relationship unpersuasive.

Recalling next that the author's purpose statement provided that this was a study of the act of killing within the Western way of war, he nowhere qualifies that phrase. On the contrary, he incorporates anecdotes from a wide range of differing and distinctly non-Western conflicts, from Japanese bayonet practice with live Chinese prisoners to the Tutsi victims of Hutus begging to be shot by a bullet as opposed to being hacked to pieces by a machete. Do legions of Japanese suffer Post Traumatic Stress Disorder? Do the machete wielding Hutu butchers lie awake at night with

7. Both presidential candidates in the 2000 election raised media violence marketed to underage audiences as an issue on the heels of the 11 September 2000 Federal Trade Commission release of a report finding that the entertainment industry ignores its own rating schemes to sell to this group. However, no report has conclusively demonstrated the degree, if any, to which this dynamic is a cause of youth violence. The breakdown of the nuclear family and the lack of a sense of community in contemporary society are examples of other plausible contributing dynamics.

heavy consciences? Are these episodes fairly encompassed in the "Western way of war?" The author's own adherence to his defined scope or, alternatively, expanding to embrace these types of events would enhance the book.

Inaccuracies also exist in the book. While discussing the depersonalizing rationalizations that enable killing, the author uses a sniper's statement as a supporting anecdote: "You don't like to hit ordinary troops, because they're usually scared draftees or worse. . . . The guys to shoot are the big brass."[8] This passage implies that target selection is arbitrary rather than doctrinal, which for trained snipers it is not.[9] In another instance, the author described how superior training could overcome one's innate reluctance to kill, offering as a supporting anecdote that the Mogadishu battle produced eighteen U.S. soldiers killed versus an estimated 364 Somalis.[10] He neglected to mention that most Somali casualties were attributable not to the better-trained U.S. dismounts, but to helicopter gunship fire, and that many of those Somali casualties were noncombatant collateral damage.[11]

Alarmingly for a judge advocate, the law of war is mentioned only twice, and then only briefly and with questionable accuracy.[12] These eas-

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8. GROSSMAN, *supra* note 1, at 109.

9. U.S. DEP'T OF ARMY, FIELD MANUAL 23-10, SNIPER TRAINING (17 Aug. 1994), and its ancestry consistently prescribe a doctrinal target selection process with little room for discretion as suggested by the source. Factors in descending order are: threat to sniper team; probability of first round hit; certainty of target identification; and target effect on enemy. Accordingly, target priorities in descending order are: enemy snipers; dog tracking teams; scouts; officers; noncommissioned officers; vehicle commanders and drivers; and communications personnel.

10. *Id*. at 258.

11. MARK BOWDEN, BLACK HAWK DOWN (1999) (describing how the less-than-discriminate close air support of electric gun equipped AH 6 "Little Bird" helicopters inflicted the preponderance of Somali casualties).

12. *Id.* at 203, 263. The author discusses a Geneva Convention prohibition on targeting personnel with white phosphorous, when this prohibition actually comes from the Hague Convention. He also confuses the issue of how prisoners must be treated with the requirement to take them, which are two entirely distinct issues. *Id.* at 203. The author also states that the Geneva Conventions (plural) were established in 1864. *Id*. at 263. While some discussion on the wounded and sick in the field was initiated at the first Geneva Convention (singular) in 1864, the four Conventions (plural) commonly referred to as the Geneva Conventions were not "established" until 12 August 1949. *See* U.S. DEP'T OF ARMY PAM. 27-1, TREATIES GOVERNING LAND WARFARE (December 1956).

ily correctible inaccuracies inspire one to wonder what other inaccuracies slipped in.

Assuming that the theories put forth are correct, the military has much work to do. Trainers must understand how their curriculum, from pugil sticks to stress cards, affect the psychology of those they aspire to train to fight. Tacticians and personnel managers must plan soldier use with an appreciation that they are psychologically perishable. To preserve this resource, troop strengths must be maintained so that forces with the greatest stimuli exposure can rotate in such a manner that they are best able to stave off depletion of their wells of fortitude. Failure to do so in times of war may have catastrophic consequences. If the killing occurs at the intimate ranges where the psychological impact is greatest, such as in cities, that is a planning factor. Weapon systems that give the greatest standoff minimize the psychological impact of killing, and a military should maximize such weapon use accordingly. This is especially true in an ethnically-mixed military where it is not permissible to dehumanize the enemy by fostering cultural distance (another viable way of minimizing impact). Psychological testing should be implemented to identify the two percent sociopathic "natural soldiers" and place them where they may best be used. For all defense counsel representing soldiers affected by the stresses of combat, an individual's stimuli exposure and resultant psychological state would be crucial evidence in mitigation and extenuation.

By any fair sense of proportion, this book's merits vastly outweigh its deficiencies. One is left with the aftertaste that this was an overdue broach in an area of momentous significance. It offers much to an array of readers. *On Killing* offers a fascinating breach into a taboo and uncomfortable, yet central and overlooked subject. The reader will be profoundly moved upon completion and will undoubtedly contemplate the book's import long thereafter.

RATTLING THE CAGE: TOWARD LEGAL RIGHTS FOR ANIMALS[1]

REVIEWED BY LIEUTENANT COMMANDER R. A. CONRAD[2]

> *Jerom died on February 13, 1996, ten days shy of his fourteenth birthday. The teenager was dull, bloated, depressed, sapped, anemic, and plagued by diarrhea. He had not played in fresh air for eleven years. As a thirty-month-old infant, he had been intentionally infected with HIV . . . .*[3]

Rattling the Cage begins with the story of Jerom, a chimpanzee. By introducing Jerom, author Steven Wise encourages readers to find the chimpanzee akin to an abused, tortured child who has been criminally infected with the Human Immunodeficiency Virus (HIV). However, this compelling introduction is the last significant glimpse the reader has of the "stars"(and heart) of the book until chapters nine and ten. Disappointingly, Wise chooses the wrong road to his destination and attempts to cross a wide chasm without any plans for first building a bridge, or at least using the one already constructed—current animal welfare laws—to help him get there.

The author's thesis is stated simply and clearly on page four: "This book demands legal personhood for chimpanzees and bonobos."[4] His proposal for "legal personhood" for chimpanzees and bonobos[5] is a mere starting point in his quest to secure fundamental civil rights, on a piece-

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1. STEVEN M. WISE, RATTLING THE CAGE: TOWARD LEGAL RIGHTS FOR ANIMALS (2000).

2. United States Navy. Written while assigned as a student, 49th Judge Advocate Officer Graduate Course, The Judge Advocate General's School, United States Army, Charlottesville, Virginia.

3. WISE, *supra* note 1, at 1.

4. *Id.* at 4.

5. Bonobos are pygmy chimpanzees.

meal basis, for a variety of animals[6] on the basis of "autonomy," meaning exhibiting some evidence of a "mind."[7]

Wise focuses, oddly, on these changes springing forth from common law decisions, rather than through the more logical legislative process.

> The decision to extend common law personhood to chimpanzees and bonobos will arise from a great common law case. Great common law cases are produced when great common law judges radically restructure existing precedent in ways that reaffirm bedrock principles and policies.[8]

He fails to devote even a single chapter to the success or failure of existing animal protection laws, which have provided the substance of his law practice and constituted his area of expertise for the last twenty years,[9] to justify the need for such a radical change. Further, his conviction in his own thesis becomes suspect when he refers to his own proposal as an "experiment."[10]

To support his thesis, Wise embarks on a meandering journey through history and multiple disciplines. His impressive research[11] delves into the law, history, medicine, religion, literature, and several scientific disciplines. He analogizes the development of animal rights to similar developments in the areas of slavery, unborn fetuses, the mentally ill, humans in vegetative states, periods of human genocide, and normal child development.[12] He even makes a comparison to an artificial intelligence robot named COG.[13]

Wise expends considerable effort trying to establish the intelligence and "humanity" of chimpanzees and bonobos—their "qualifications," if you will, for legal personhood. While the result makes fascinating read-

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6. Specifically, he lists other primates, dolphins, whales, elephants, parrots, and dogs. WISE, *supra* note 1, at 268-69.

7. *Id.* at 268.

8. *Id.* at 270.

9. In addition to practicing animal protection law, Steven Wise teaches "Animal Rights Law" at Harvard Law School, Vermont Law School, John Marshall Law School and at Tufts University School of Veterinary Medicine. *Id.* at Book Jacket.

10. *Id.* at 118.

11. The book contains 1325 footnotes.

12. WISE, *supra* note 1, at 239-66.

13. *Id.* at 268.

ing, the effort is largely wasted given his radical thesis. These chapters comprise the best segment of the book and would provide the most convincing argument for strengthening animal welfare laws, if that were his focus. Indeed, he makes an extremely convincing case for the striking similarities between primates and humans, highlighting the impressive capability of chimpanzees and bonobos to actually communicate intelligently and meaningfully with humans.[14] Despite this evidence, however, Wise admits that there is substantial disagreement even among the scientists who work with chimpanzees, bonobos and other animals, as to their "consciousness" and thus any claim to humanity.[15]

More significantly, the people most likely to read this book—animal lovers—do not need the hard sell approach. Animal lovers throughout the world already think of their pets as integral parts of their families and know from experience how very special they are.[16] Animal lovers will tell anyone who listens that their pets have personalities; that they can think and reason; that they are capable of pure, unconditional love; and that to abuse, neglect, or treat them inhumanely is criminal behavior. The scientists who work with primates and other animals, who recognize their special intelligence and qualities, likewise do not need convincing. Those who disagree will not be convinced no matter how many pages of passionate argument Wise sets before them. What this group of readers does need, however, is

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14. *Id.* at 239-66.

15. *Id.* at 179-237.

16. Meet Kayla and Molly. Kayla is eight years old, has beautiful blue eyes, and is petite in every way except personality. She can be the sweetest little girl you have ever met, endlessly entertaining with her athletic, if less than graceful, acrobatics. Yet she has a temper and, when angry, she assaults your eardrums with bloodcurdling screams. She suffers from asthma. Her spells can come at any time, unbidden, but are generally triggered when she gets upset or scared, and will break your heart every time. Kayla cries when I leave for work each day and runs to greet me at the door each night.

Brown-eyed Molly is six, stunningly beautiful, extremely smart, sensitive, and adores bunny rabbits. She loves long walks, a wide variety of games, any activity in the water, and sleeping late. She is outgoing and makes friends easily. She, too, hates it when I leave in the morning, but her mourning is quiet and solitary, as she tucks herself away in her room. When I get home, she meets me at the door with unbridled enthusiasm, barely able to contain herself until I can empty my arms and embrace her in a hug.

Kayla is a sealpoint Siamese cat and Molly is a Dalmatian. They are two of my three pets and, for all intents and purposes, my "children."

a comprehensive survey of the success or failure of current animal welfare legislation.

Finally, by advocating such sweeping changes by means of inspired common law judges willing to make radical changes in the law, Wise ignores the reality of the modern legal system. Today, most laws are made by legislatures, not courts. He also ignores the obvious: no matter how great their "human-like" qualities, animals simply are not human. Even most animal lovers, who fight steadfastly for the strongest animal welfare laws and for harsh criminal penalties for those who abuse animals, will not buy into the notion of instant legal personhood for animals. There is substantial intermediate legal ground that must be covered first.

Curiously, Wise devotes no meaningful arguments, positive or negative, to the success or failure of existing animal welfare laws. He states, "[w]ithout legal personhood, one is invisible to civil law. One has no civil rights. One might as well be dead."[17] Yet he offers no arguments, no data, no facts, no succession of legal failures, to support this statement. He also argues, "until humans learn to fight for them or write for them, nonhuman animals will never have any rights."[18] Yet he and others, as well as organizations like the American Humane Society, American Society for the Prevention of Cruelty to Animals, People for the Ethical Treatment of Animals, and many others, are doing just that. Wise does not adequately recognize these efforts.

It is beyond the scope of this review to comment on all of the animal welfare laws in existence, but a quick search on the Internet reveals the sheer breadth of coverage.[19] News stories substantiate the high level of interest in animal rights and welfare, as well as the effects of legal and public pressure where abuses are found.[20] Recent congressional hearings specifically target the ethical use of chimpanzees in biomedical research.[21] In

17. *Id.* at 4.

18. *Id.* at 14.

19. *See, e.g., Animal Law: Subject Matter Index*, Northwestern School of Law of Lewis and Clark College, *at* http://www.lclark.edu/~alj/table-subjects.html (last visited Nov. 8, 2000).

20. Examples include finding homes for the Air Force "Space Chimps" and Navy bottlenose dolphins specially trained for important military missions. Again, there are numerous stories available online on both of these subjects, such as *Space Chimps: The Forgotten Veterans*, MSNBC, *available at* http://www.msnbc.com/news/167403.asp (last visited Nov. 8, 2000). Several news stories on United States and Russian use of bottlenose dolphins for military exercises and missions can be found at numerous online sources, dating from 1989 through 2000.

fact, these very laws and processes comprise the bedrock that Wise has relied upon in his practice over the past twenty years in defending animal rights.[22] Yet, throughout 270 pages, there is no significant discussion of these laws.[23]

Though not plainly stated, the catalyst for Wise's plea for legal personhood for chimpanzees and bonobos is an attempt to thwart their lawful use—like Jerom's—in biomedical research. The abusive conditions to which such animals are subjected are a mere sidelight, beyond functioning as an effective "grabber" for his book. While there is no excuse for keeping any animal in an inhumane environment, there are valid arguments for using animals in biomedical research. Such research has resulted in cures for horrible diseases, vaccines to save human lives, and many other medical benefits. Wise fails miserably to explore (and refute) this legitimate subject area.[24]

Wise leaves open the extension of legal personhood beyond chimpanzees and bonobos.[25] Except for establishing the criteria that other animals granted such status should have "minds," he provides no guidelines for making such future extensions.[26] He also concedes that not all animals have "minds," and thus not all animals have a right to legal personhood.[27] Yet, in this concession, he is guilty of discrimination and hypocrisy that highlight the primary fallacy of his argument: where to draw the line. In effect, he is stating that some animals really are animals and deserve to be treated as animals, with no rights, while other animals are essentially human, or at least deserving of human-like status and rights.

Wise fails to discuss two additional key points: (1) the long and short-term implications of endowing various species of animals with legal personhood; and (2) how conferring legal personhood to any animal is magically going to solve the underlying problems. At one extreme, armed with fundamental civil rights, it is conceivable that animals might eventually "sue" their owners (through advocates, of course) for all kinds of triv-

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21. *Chimpanzees and Biomedical Research: Hearing of the Health and Environment Subcommittee of the House Commerce Committee*, 106th Cong. (2000), *available at* http://www.lexis.com.

22. WISE, *supra* note 1, at Book Jacket.

23. He gives a brief, dismissive discourse on anti-cruelty statutes. *Id.* at 43-45.

24. *Id.* at 239-66.

25. *Id.* at 267-70.

26. *Id.*

27. *Id.*

ial indiscretions beyond serious abuse or neglect addressed by existing laws. Finally, if the current animal welfare laws are inadequate, the solution is not to create instant fundamental rights, but to strengthen the current laws by more vigorously pursuing violations and increasing punishments. Legal personhood is not going to work a miraculous change in how certain animals are viewed and treated. The process needs to be incremental, buttressed by education and public support through legislation. It is then the province of the courts to see that the laws are enforced fairly.

We need animal welfare legislation. We need to ensure the humane treatment of animals. We especially need to ensure adequate habitability and humane treatment for those animals sacrificed in biomedical and other experiments deemed necessary for studying, curing, and preventing diseases. These issues are well settled and no longer in dispute. Much of our legislation appropriately provides for criminal penalties for violation of animal welfare laws. We need to enforce existing laws better and we need to improve on those laws where they are deficient. But until we have taken these steps and they have failed, until we have built the bridge over the chasm, we cannot simply leap to the other side without concern for the long and short-term consequences. If, and when, the time comes for sweeping change, it must be through the democratic, legislative process, if it is to have any broad application or meaning. Wise quotes with disapproval a long-standing principle of sound jurisprudence from an 1890's case in Ireland:

> The law is, in some respects, a stream that gathers accretions, with time, from new relations and conditions. But it is also a landmark that forbids advancement on defined rights and engagements; if these are to be altered—if new rights and engagements are to be created—that is the province of legislation and not decision.[28]

Yet, this long-standing principle is precisely how most legal change comes to be and how such change earns widespread legitimacy.

As a final observation, the book is littered with distracting spelling and grammatical errors. The more glaring examples follow:

- "the U.S. Supreme Court agreed that *a women* has an immunity. . ."[29]

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28. *Id.* at 108 (citation omitted).
29. *Id.* at 58 (emphasis added).

- "automattically"[30]
- "capicity"[31]
- "legal rules that even a . . . Judge could mechanically."[32] (mechanically what?)
- "Mine *can only experienced by me*, yours by you."[33]
- "Siena will start to understand *that that* her toy dog will appear differently. . ."[34]
- "There is little evidence that we humans think in the language *they* know."[35]
- "But if Michael beats me *by scores* 100 points. . ."[36]
- "Chimpanzees who learn abstract symbols can engage in a kind of mathematics *that is advance upon* the primitive ability of human infants to add and subtract small integers."[37]
- "All learned the words they wanted to learn*ed*. . ."[38]
- "the difficulty of the *tast* is not widely understood. . ."[39]

The book is simply too ambitious and premature. Wise has done an amazing job of cataloguing the historical treatment of animals, from Biblical times through the present, with one glaring exception: glossing over the current status and effectiveness of animal welfare legislation. This is a critical foundational underpinning that cannot simply be cast aside with minimal comment. If the current laws are not working, or do not go far enough, then the reasons need to be explored so that the problems can be addressed. Wise has the experience and knowledge to take this step, yet for reasons unexplained he chooses not to. The result is an incomplete journey, unfulfilled expectations, and an unsupported conclusion.

Wise's greatest contribution through the book is his summary of the phenomenal gains made with primates. He shows how, through human enculturation, their intelligence and capabilities thrive. Their lives—and ours—are enriched because of the experience. Not only can primates be taught to communicate with humans, they can also teach their young what

30. *Id.*
31. *Id.* at 61.
32. *Id.* at 117.
33. *Id.* at 126 (emphasis added).
34. *Id.* at 152 (emphasis added).
35. *Id.* at 158 (emphasis added).
36. *Id.* at 178 (emphasis added).
37. *Id.* at 188 (emphasis added).
38. *Id.* at 227 (emphasis added).
39. *Id.* at 229 (emphasis added).

they have learned. Primates clearly have a lot to teach us, but not yet as our equals.

SON THANG: AN AMERICAN WAR CRIME[1]

REVIEWED BY MAJOR DAVID D. VELLONEY[2]

> *[H]e told them to go out and get some, to pay the motherf—rs back, to pay them back good. To shoot everything that moved. To shoot first and ask questions later and to give them no slack. . . . If the killer team . . . saw anyone moving along the trail, . . . if they saw anyone cutting across a rice paddy, . . . they were to shoot these people.*[3]

First Lieutenant Ron Ambort exhorted five of his company's marines to "Get Some" before they left on patrol for Son Thang on the night of 19 February 1970. The young B Company commander's choice of words, "get some," echoed the motto of the 1st Battalion, 7th Marines, and fit in with the battalion's "body count mentality." Immediately following Ambort's pep talk, Lance Corporal Randy Herrod led the five-man patrol, known as a "killer team," toward the small hamlet. The patrol encountered neither enemy soldiers nor hostile fire that evening. Yet, less than an hour after receiving Ambort's briefing, Herrod gave the order: "Shoot them! Kill them all! Kill all of them bitches!"[4] Upon hearing the order, the killer team opened fire on six noncombatant Vietnamese women and children. The murderous scene repeated itself twice in the next few minutes, leaving sixteen women and children dead.

Four general courts-martial resulted from the incident. A panel of officers convicted Private Michael A. Schwarz of premeditated murder and sentenced him to confinement for life. A panel of officer and enlisted members convicted Private First Class Samuel G. Green, Jr., of unpremeditated murder and sentenced him to five years in confinement. Another officer panel acquitted Lance Corporal Randy Herrod, and a military judge acquitted Private First Class Thomas R. Boyd. The government granted Private First Class Michael S. Krichten immunity in exchange for his tes-

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1. GARY SOLIS, SON THANG: AN AMERICAN WAR CRIME (1997).

2. United States Army. Written while assigned as a student, 49th Judge Advocate Officer Graduate Course, The Judge Advocate General's School, United States Army, Charlottesville, Virginia.

3. SOLIS, *supra* note 1, at 94 (quoting Article 32 testimony of Captain Charles E. Brown, Jr.).

4. *Id*. at 47.

timony against the other members of the killer team and declined to court-martial Lieutenant Ambort following his Article 32 pretrial investigation.

Gary Solis's fast-paced narrative and detailed case study of the Son Thang killings describe the challenges faced by Marine Corps commanders and judge advocates as they attempted to apply the reformed 1969 version of the Uniform Code of Military Justice (UCMJ) in the wartime environment of Vietnam. The author concludes that the Son Thang courts-martial were a failure. Solis combines master story-telling skills with extensive experience as a Marine Corps commander, accomplished historian, and legal scholar to chronicle what can best be described as the Marine Corps' equivalent of the My Lai massacre. Interestingly, Army Lieutenant William L. Calley was charged with murdering 109 noncombatant Vietnamese civilians only three months before the Son Thang killings. Calley's crimes occurred less than twenty-five miles from Son Thang, and the worldwide publicity regarding the My Lai case made it well known to the marines involved in the Son Thang incident. By reading *Son Thang*, students of international and criminal law, military lawyers, and small unit commanders will gain vast insight into the leadership and legal challenges faced during Vietnam when commanders attempted to enforce the law of war and punish alleged war crimes using the UCMJ. Although Solis approaches the incident with somewhat of a prosecutorial bias, this easy to read and historically informative book should find its way onto all judge advocates' and junior officers' reading lists.

This book review first addresses the author's qualifications and writing style. Second, the review examines the book's strengths, including its organization and flow, use of maps and pictures, character development, and documentation and use of sources. Third, the review identifies the author's pervading prosecutorial bias. Last, the review discusses the book's weaknesses, including its inconsistent conclusion regarding inexperienced counsel and its tendency to raise issues without completing any meaningful analysis.

Solis's background, including his experience as a military officer and as a professor, makes him uniquely qualified to write about the Son Thang killings. Solis entered the Marine Corps in 1963 and served as an amphibian tractor company commander in Vietnam starting in 1966. Following law school, he served as a judge advocate in the Marine Corps. Before retiring in 1989, he participated in more than 750 courts-martial either as prosecutor or as military judge. His last few years in the military were spent at the Marine Corps Historical Center writing a history of the Marine

Corps' military law experience in Vietnam. After retiring, Solis moved to London, England, where he earned a doctorate in the law of war at the London School of Economics. He taught British criminal law in London for three years and then joined the Department of Law at the United States Military Academy at West Point in 1996.[5] Solis's résumé indicates why *Son Thang* so effectively combines historical documentation and research with blunt and militant organization and reasoning. Because Solis occasionally approaches his audience as a professor would a student, the reader often feels like he is learning yet never able to grasp exactly what questions will show up on the exam. His collegial approach does, however, foster a desire to learn more about the command climate, combat environment, and political atmosphere surrounding the Son Thang killings, as well as the legal landscape involved in handling the tragedy.

Son Thang's greatest strength is its organization and flow. Solis effectively uses chapter breakdowns and section headings to keep the reader focused as he weaves through complex fact patterns, background information, political considerations, and analyses from different legal disciplines. The historical background and introduction of the commanders he provides in Chapter 1 assists the reader in understanding the nature of the environment in which the young Americans found themselves before leaving on patrol to Son Thang. In Chapter 2, Solis starts to develop the book's main characters, the members of the killer team. Separate chapters dealing with the patrol, investigation, pretrial proceedings, individual trials, and post-trial process aid the reader in keeping information straight. However, Solis is not content to write a dry book heavy on organization and recitation of facts. He effectively weaves in scenes from the various courts-martial throughout the book. In fact, *Son Thang* starts in the courtroom, emphasizing Solis's ultimate purpose of evaluating the military justice system's failure to achieve just results. He also adds an element of suspense by refraining from discussing the results of the trials until he chronologically reaches the point in the story where the panel or judge announces the verdict.

Other tools used by Solis that add to the book's organizational strength include maps and pictures. He effectively uses maps to assist in setting the geographical scene and military areas of operation at the time of the killings.[6] Solis's use of pictures and captions helps the reader understand the characters that he so capably develops throughout the

5. *Id*. at xiv.
6. *Id*. at 7, 10, 32, 111.

book.[7] The pictures also assist his explanation of some of the interesting dynamics between various actors in the theater of operations. For instance, he demonstrates the unique dynamic of the prosecutors and defense attorneys living and working in close proximity in the combat environment by including a picture showing all the key military attorneys being sworn in together as special court-martial judges.[8] Pictures depicting Herrod with his defense attorneys, the press, and First Lieutenant Oliver North also demonstrate visually the circumstances surrounding his court-martial.[9] When telling and analyzing this compelling true story, Solis effectively combines his legal acumen, impeccable organizational skills, and obvious ability to spin a yarn.

The masterful story-telling aspect of *Son Thang* is best exhibited through the well-developed characters. All the major participants in the drama come to life as Solis describes their family histories, educational experiences, and military careers. He intersperses the development of the killer team members throughout the story, climaxing with each marine's interaction with his defense attorney at trial and testimony on the stand. Though he often leaves policy questions unanswered throughout the book, Solis never leaves a character hanging. He concludes each patrol member's individual saga with intricate details regarding his return to family and civilian life following his discharge from the Marine Corps. Solis quickly establishes Lance Corporal Herrod as the story's primary antagonist. He even makes use of Herrod's own book, *Blue's Bastards*, to develop the patrol leader's critical attitude toward the military justice system. Interestingly, First Lieutenant Oliver North was a key defense witness for Herrod, and Solis indicates that North paints a very different picture of Herrod in his book, *Under Fire*.[10] Solis generally describes the members of the killer team as "young, uneducated, battle-weary Marines with troubled pasts."[11] He uses their backgrounds and haphazard selection for the killer team to identify leadership failures that may have led to the unfortunate killings.[12]

The minor characters are also well developed. In fact, the cast of characters as a whole resembles one that might be chosen for a fictional

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7. *Id*. *passim.*

8. *Id*. at 79.

9. *Id*. at 220, 242, 257.

10. *Id*. at 200, 228.

11. John P. Marley, *SON THANG: An American War Crime*, 44 NAVAL L. REV. 301 (1997) (book review).

12. SOLIS, *supra* note 1, at 24-28.

Hollywood Vietnam War movie.[13] As mentioned above, the now famous Lieutenant Colonel Oliver North testified at Herrod's trial regarding his good character and heroic actions in saving North's life. Also playing a supporting role was eventual Secretary of the Navy James Webb.[14] While in law school, Secretary Webb took a personal interest in Green's case and was instrumental in helping to upgrade Green's dishonorable discharge to a general discharge. Solis introduces the military judge for three of the trials, Lieutenant Colonel Paul St. Amour, in the opening pages of the book. By developing the personality of the "irascible but practical"[15] marine early on, Solis identifies one of the most important sources he used to reach his eventual conclusions regarding deficiencies in the military justice system. Solis thanks St. Amour in his preface, and the numerous quotes used in the book from letters St. Amour wrote to Solis indicate how much the author relied on the judge's impressions. In Chapter 1, Solis also introduces Major Richard E. Theer, the battalion operations officer and investigator who uncovered the war crimes. The sheer number of endnotes in *Son Thang* attributing credit to letters or conversations with Theer indicates the importance Solis placed on his opinions. Lieutenant Colonel Charles G. Cooper, the hard-charging battalion commander, who eventually reached the rank of Lieutenant General in the Marine Corps and testified for the defense at all four trials, is developed in a negative light right from the start. Perhaps this treatment results from over-reliance on Theer's account.[16] Whether the negative persona for Cooper is justified or not, his role as a secondary antagonist, along with the popular and aggressive Lieutenant Louis R. Ambort, make for an intriguing story. Their role as commanders also leads to a compelling discussion by Solis of command responsibility and the "obedience to orders" defense under the law of war.[17]

Solis's research, documentation, and use of available sources are excellent. Most quotations and descriptions come directly from one of three verbatim records: the joint killer team Article 32 pretrial investigation and the written sworn statements considered by the Article 32 investigating officer, the Ambort Article 32 pretrial investigation, or the record of trial from *United States v. Schwarz*.[18] Although the *Green* record of trial

13. *Id*. at x.

14. *Id*. at 283-91.

15. *Id*. at 109.

16. *Id*. at 239. In a letter to the author, Theer expressed that he was "incensed" at Cooper's participation in the trials. Solis does not address whether he thinks this might have influenced Theer's recollection of the events.

17. *Id*. at 57-59, 94-101, 154-58, 172-75, 207-09, 267-75.

18. *Id.* at 301.

was lost and the Herrod and Boyd acquittals were not transcribed, Solis makes effective use of press reports and letters from St. Amour, Theer, and other first-hand witnesses to piece together his facts. He also uses secondary sources, but he tempers his reliance on them by either directly or indirectly discussing their potential biases. The use of actual court-martial and pretrial investigation testimony adds significant credibility to the narrative. Solis's style and ability to clearly communicate the story, by integrating the documented facts, make what would otherwise be dry legal hearings come alive as realistic courtroom and investigative drama.

Although Solis is perhaps the most qualified person to write a narrative and analysis of the Son Thang killings, an honest review of the book must point out that he bases his ultimate conclusion that the trials were a failure on a somewhat biased assumption. From the very beginning, he assumes that justice demanded guilty verdicts and stiff sentences for Herrod and the other marines on the killer team. The very name of the book includes the phrase "*An American War Crime*." Also, when discussing the defense case in Herrod's court-martial, Solis entitles the section "Defending the Indefensible."[19] If one assumes that the marines were guilty, then Solis's conclusions about the system logically follow from the fact that the courts acquitted Herrod and Boyd. However, given that the purpose of the trials was to determine guilt or innocence, Solis reaches his conclusions too easily. He contends that the "results betray" that the military justice system carried out its prosecutorial function "deficiently."[20] Although, the four Son Thang cases resulted in widely different verdicts and seemingly inequitable findings of guilt, the reader will find that Solis's prosecutorial bias and assumption of guilt tend to color his perspective as he develops his thesis. Brigadier General Edwin H. Simmons's comments in the foreword are the first indication of a potential bias: "Solis decided that he liked criminal law and liked being a prosecutor. He never defended an accused then or later."[21] Solis bases his conclusion that the Son Thang trials were a failure more on his belief that Herrod and Boyd should have been convicted than a belief that the four results should have been similar. Solis likely would have reached the same conclusion if all four trials resulted in findings of not guilty because of his assumption that the soldiers were in fact guilty. He gives little credence to any defense arguments regarding the difficulty of the young marines' situation and the established norms within the unit. As a strict matter of international law, Solis may be

19. *Id.* at 235.
20. *Id*. at 294.
21. *Id*. at xiv.

right, but a more objective analysis from the defense perspective would have added to the book's value. Perhaps justice in the wartime confusion of Vietnam demanded the acquittals and the clemency reducing Green's and Schwarz's sentences to one year. There is no question that the varied results demand analysis and explanation. From the defenseless noncombatants' perspective, the facts are heinous and inexcusable. Solis offers a number of well-reasoned and logical conclusions, but an overarching assumption of guilt clouds his methodology. His conclusions are best understood if one realizes from the beginning that he approaches the trials and his analysis of the killings with a prosecutorial bias.

One of Solis's conclusions is inconsistent with his pervading assumption throughout the book that justice demanded guilty verdicts. He concludes that one "deficiency" of the justice system that led to the results was the relative inexperience of the prosecutors who handled the Son Thang cases. He then also fixes responsibility for the Schwarz and Green convictions on their military defense attorneys. Inexperience may have, and probably did, affect the outcomes of the trials to some extent. However, to label all four trials as failures based on the inexperienced counsel does not appear logical, given his assumption that all the defendants deserved to be found guilty. Solis attempts to correct the inconsistency in the third to last paragraph of the book by stating, "The loss of the Herrod and Boyd cases and, for that matter, the convictions of Schwarz and Green, cannot fairly be laid at the doorstep of the 'losing' lawyers."[22] However, the book has already articulated conclusions that cannot be explained away by the last minute caveat.

Solis's strength as an experienced educator in raising issues for consideration and discussion also leads to another weakness in the book. He opens discussions on a number of topics in the midst of his narrative and fails to complete any meaningful or comprehensive analysis to substantiate his conclusions. Examples include his editorial comments regarding racial inequities in the Marine Corps,[23] his discussion of the dual supervisory role of staff judge advocates over both prosecutors and defense attorneys,[24] the folly of and problems with the replacement system in Vietnam,[25] the lack of sentencing guidelines in the UCMJ,[26] and the problems with Project 100,000 and the enlistment of Category IV personnel

22. *Id.* at 299.
23. *Id.* at 210.
24. *Id.* at 112, 216.
25. *Id.* at 202.
26. *Id.* at 209.

(individuals with very low general classification test scores).[27] Perhaps the most telling example of Solis's penchant for opening a discussion without completing the analysis or fully developing a suggestion comes at a critical juncture in the book's conclusion. He spends one paragraph giving a general description of "field general courts-martial" under British military law and suggests that such a system would eliminate some of the difficulties of applying the UCMJ in a wartime scenario.[28] However, without any further analysis or developed comparison, he moves on to his suggestion that the military implement multi-service war crime teams. With Solis's experience teaching criminal law in Britain, he certainly could have more fully developed the suggestion for field general courts-martial.

Son Thang is at its best when Solis is narrating the story. There are valuable lessons to be learned from reading the book. Junior officers and judge advocates would do well to consider the actions of their counterparts in the Son Thang tragedy and attempt to avoid their mistakes. Ever the professor, Gary Solis provides readers with not only a detailed history, but also a tool for instructing and discussing how best to enforce the law of war within the parameters of the military justice system.

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27. *Id.* at 116-17.
28. *Id.* at 297.