

LIEBER NOTES

Quarterly Newsletter of the Lieber Society on the Law of Armed Conflict
Interest Group of the American Society of International Law

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Lieber Notes is the quarterly newsletter of the Lieber Society. Any views expressed in this newsletter are those of the authors in their private capacities and do not purport to represent the official view of the Society or any government or organisation.

Lieber Society Executive Committee

Dennis Mandsager (Chair)
Eric Myles (Vice Chair)
Dick Jackson (Secretary)
Kenneth Anderson (Treasurer)
Sherrod Lewis Bumgardner
David Crane
Chris Griggs
Rob McLaughlin
Michael Newton
James Orr
Jordan Paust
Gary Solis



Another busy year

By Chris Griggs

I feel that it is my duty to begin this issue with a sincere apology as editor; yet again I have failed in my aim to provide you with four issues of *Lieber Notes* for the year. As a wise petty officer once advised me, I will not attempt to excuse this by reference to my other commitments... better to exclaim "no excuse, sir!" and strive to do better in future.

Since you last read *Lieber Notes*, there have of course been momentous developments of relevance to us all in the United States and elsewhere. On 20 January 2009 Barack Obama was inaugurated as the 44th President of the United States. Sitting now in my autumnal English study, I pause to reflect on the official British reaction to this event. BBC News reported:

Prime Minister Gordon Brown described President Obama's arrival as a "new chapter in both American history and the world's history".

He praised Mr Obama as a "man of great vision and moral purpose" who would tackle the global financial crisis and other problems such as the environment.

"He's not only the first black American president, but he sets out with the determination to solve the world's problems," he added.

I am acutely conscious that many readers of *Lieber Notes* may not be as effusive in their praise of America's new Commander-in-Chief. However, there can be little doubt that President Obama represents a change of approach in respect of many issues of



direct concern to this Society, including U.S. policy on Iraq and Afghanistan and a range of other security issues, with their concomitant legal considerations. Already there are signs that there may be some form of accountability for legal advisors responsible for advice in respect of the treatment of detainees which was controversial in the international legal community.

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Against this background, ASIL held its 103rd Annual Meeting at the Fairmont Hotel in Washington, D.C. from 25 to 28 March. The theme of the meeting was "International Law as Law". Regrettably our Society's

bids for one or more panels were not successful this year. However, there was much of interest despite this. Unfortunately, I was not able to attend myself. Our Chair, Professor Dennis Mandsager's report follows.

Chair's update

By Dennis Mandsager

The terms of five members of our Executive Committee expired this year:

- Louise Doswald-Beck
- Chris Greenwood
- Iain Scobbie
- Michael Schmitt, and
- Andru Wall

We thank them for their service to the Lieber Society and ASIL.

We welcome aboard five new members of our leadership team. They are: David Crane, Rob McLaughlin, Mike Newton, Jaimie Orr, and Gary Solis. A complete list of officers and committee members, with their contact information, is included in the panel to the right.

The Lieber Society's annual business meeting took place during the 3 to 5.30pm time slot on Wednesday, 25 March. We are grateful to ASIL for giving us a slot during normal working hours as opposed to the early morning and late evening slots previously available. Our meeting commenced with a panel discussion entitled "Whither the Law of War for the U.S.?" This topic was proposed to the annual meeting organizers as a panel for the plenary session, but it was rejected. The panel discussion was open to all attendees at the annual meeting. The good news is

that we had a full house of attendees. The bad news is that we had to turn away 30+ folks who wanted to participate, but could not be in the room due to fire marshal rules.

We will ask ASIL to give us a larger room next year... if we do not get our proposed panel on the ASIL agenda.

Special thanks are due to our panel participants:

- Dick Jackson, Secretary of the Society
- Ashley Deeks, Legal Advisor for Political-Military Affairs in the Department of State, and
- Professor Emeritus Yoram Dinstein.

The panel discussion was followed by our business meeting. The main point of discussion was future activities for our Interest Group and how we should use our portal on the Lieber Society web site. Eric Myles consented to chair our Activities Committee. Please contact him or any member of our leadership team regarding suggestions for the road ahead for the Lieber Society.

Please contact me by e-mail or phone if you have any recommendations, comments, or questions regarding the Lieber Society. I can be reached at dennis.mandsager@usnwc.edu or at +1 (401) 841-6585.

Our new Activities Committee is:

Dr Eric Myles (Chair)
Professor David Crane
Professor James Orr
Captain Rob McLaughlin
Professor Gary Solis

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AALS Section on National Security Law - Call for Papers

By Michael Kelly

After engaging in the Global War on Terror for almost a decade, the United States has detained and/or prosecuted numerous foreign and domestic terrorist suspects in varied venues and under disjointed trial processes, depending upon the national status or foreign allegiance of the individual suspect, circumstances of capture, or applicability of the Geneva Conventions. The Obama Administration is determined to bring order to the delivery of justice for those who find themselves detained and to regularize their treatment.

The National Security Law Section of the Association of American Law Schools (AALS) will sponsor a panel at the 2010

AALS Annual Meeting in New Orleans, Louisiana, under the theme: "Barbarians at the Gate (or Within?): New Developments in the Detention and Prosecution of Terrorist Suspects".

The panel will take place on Friday, 8 January 2010 from 10.30 am -12.15 pm.

This panel will explore such progress and consider alternatives and new proposals. At least one panel member will be selected from this Call for Papers. The subject can focus on any related topic, and submissions from junior scholars, minorities and women are particularly encouraged. The Selection Committee will be composed of the Section's Chair-elect, Secretary and Treasurer, and the selected

paper will be published in the Section's peer-reviewed journal, the *Journal of National Security Law & Policy*.

The deadline for submission of papers and/or abstracts of at least 750 words was Friday, 25 September 2009. (Ed: My apologies for the delay in forwarding this call for papers. It is hoped that late submissions may still be considered.) Please email the submission in PDF or Word format to Professor Mary-Rose Papanandrea of Boston College at: maryrose.papanandrea@bc.edu. Please direct any questions to the Chair, Professor Michael Kelly of Creighton University at: MichaelKelly@creighton.edu.

New publications

Daniel Joyner, Associate Professor of Law at the University of Alabama announces the recent publication of his new book, *International Law and the Proliferation of Weapons of Mass Destruction* (Oxford University Press, 2009). Oxford University Press claims that the book "provides a comprehensive analysis of international law and organisations in the area of WMD proliferation. It will serve both as a reference for understanding the law as it currently exists in its political and economic context, as well as an analysis of areas in which amendments to existing law and organisations are needed." The book can be ordered direct from Oxford University Press via www.oup.co.uk/law and members can avail themselves of a 20% discount by quoting the following code: ALAUTH09.

James Cockayne, Senior Associate at the International Peace Institute in New York City, alerts members to the publication in (2008) 13 *Journal of Conflict and Security Law* 401-428 of his article,

"Regulating Private Military and Security Companies: The Content, Negotiation, Weaknesses and Promise of the Montreux Document". James also led a research team at the Institute from 2008 to 2009 which examined models of state and market-based regulation in 30 global industries in order to assess their relevance for the global security industry.

The results of this study are now available in *Beyond Market Forces: Regulating the Global Security Industry*, a new book published by the Institute in July 2009.

Jann Kleffner, of the Amsterdam Center for International Law in the Netherlands, draws members' attention to:

- Volume 10 (2007) of the Yearbook of International Humanitarian Law, co-edited by Jann and Tim McCormack of the University of Melbourne, and published by TMC Asser Press and Cambridge University Press earlier this year

- Jann's new book, *Complementarity in the Rome Statute and National Criminal Jurisdictions* (Oxford University Press, December 2008). Jann reports that this book provides an in-depth examination of the principle of complementarity in the Rome Statute of the International Criminal Court and the implications of that principle for the suppression of genocide, crimes against humanity and war crimes at the domestic level. Amongst other matters, the book provides a critical and comprehensive analysis of the provisions in the Rome Statute and the Rules of Procedure and Evidence relevant to complementarity. In so doing, it addresses both substantive and procedural aspects of admissibility, while taking account of the early practice of the ICC. The book also examines the potential of the complementary regime to function as a catalyst for States to conduct domestic criminal proceedings vis-à-vis core crimes.

Lieber Military Prize

The Lieber Society extends its heartfelt gratitude to Colonel (Rtd) Charles Keever for the fantastic work he has done with the Lieber Society Military Prize over the last three years. His work has not only produced recognition for a number of excellent papers concerning the law of war, but has also raised the awareness of the need for academic writing in the area by members of uniformed services.

Colonel Keever has been replaced by Lieutenant Colonel Eric Jensen. Please help the Society in publicizing this valuable initiative.

The Prize. The winner will receive a certificate confirming that he or she has won the 2010 Lieber Society Military Prize, \$500.00, and a one-year membership to the American Society of International Law (ASIL). The judges may also select two additional persons to receive Lieber Society Certificates of Merit.

Request for Assistance. Any person receiving this Call for Papers who is aware of an exceptional writing that meets the qualifications of this competition is requested to nominate the paper directly to the Lieber Society and forward this Call to the author of that paper.

Definition of the Law of War. For this competition, the Law of War is that part of international law that regulates the

conduct of armed hostilities. Papers may address any aspect of the law of war, including, but not limited to: the use of force in international law, the conduct of hostilities during international and non-international armed conflicts, protected persons and protected objects, the law of weapons, rules of engagement, treatment of detainees, to include interrogation procedures, and occupation law. Papers addressing practical problems confronting members of armed forces are preferred.

Qualifications for entering the competition. Persons submitting papers do not have to be ASIL members. They may be citizens of any nation, but they must be a member of their nation's regular or reserve armed forces.

Papers that may be entered. Papers submitted in this competition must be in English (or translated into English if written in another language) and not more than 35 pages long if printed with single line spacing or 70 pages if written with double line spacing. Both papers that have been published and papers that have not been published will be considered for the Prize.

Required Contact Data. All submissions must contain the following data on the author of the paper: full name and rank or rating, current postal and e-mail addresses, current telephone and fax

numbers. If a person other than the author is making the submission, it must also contain the above data for the person submitting the paper.

Deadline for submitting papers. Papers for the 2010 competition must be received no later than Friday, 2 January 2010.

Use of email to submit papers. Electronic submissions in Adobe format (.pdf) or Microsoft Word (.doc) will be accepted. They should be sent to ejensen3@law.fordham.edu

Use of the postal system to submit papers. Submissions by postal mail must be sent to:

Eric Talbot Jensen
6322 Hillsborough Drive
Falls Church, VA 22044

If the postal system is used, two copies of the paper must be submitted.

Acknowledgement of submissions. All submissions will be acknowledged by e-mail.

Announcement of winner. The winner and any persons receiving Certificates of Merit will be announced at the 2010 Annual Meeting of the American Society of International Law in Washington, DC, March 2010.

Member news

Professor Michael Kelly of Creighton University School of Law in Omaha NE published *Ghosts of Halabja: Saddam Hussein and the Kurdish Genocide* with Praeger Security International at the end of 2008. This led to a tour of the Kurdistan region of northern Iraq in March 2009 that included extensive interviews with survivors of the 1988 Anfal campaigns and two days of consulting with the Kurdish regional parliament on their new draft constitution.



Islam-International Humanitarian Law Initiative

Williams Banks, Director of the Institute for National Security and Counterterrorism at Syracuse University, NY, draws members' attention to his Institute's *Islam-International Humanitarian Law initiative*, which is an effort to direct global attention to an issue now gathering energy and focus: bridging the gap between Islamic and humanitarian law in pursuit of a comprehensive and modern set of international laws of armed conflict. Issues of human shielding ('perfidy' under Article 147 of the Fourth Geneva Convention), deliberate and direct attacks against civilians, forced displacement,

mistreatment of persons detained in an armed conflict, as well as lack of political will by belligerents to respect and prevent violations of IHL are increasingly common

areas of concern. The Islam-IHL initiative examines, from multiple perspectives, the ongoing role of Islam and Islamic leaders in international humanitarian law and the potential of that contribution for contending with these and other new tactics and forms of warfare and the changing nature of international conflicts.

More information about this important initiative is available at <http://www.insct.syr.edu/Projects/islam-ihl/initiative.htm>.



Passing of Professor Howard S. Levie

The Lieber Society was saddened to hear of the passing of Howard S. Levie earlier this year. Our Chair provided the following tribute.

Professor Howard S. Levie, one of the nation's foremost legal experts on the law of war and the key draftsman of the Korean War Armistice Agreement, died on 19 April 2009 at his home in Portsmouth, Rhode Island. He was 101.

Soldier and scholar, Professor Levie leaves a legacy of scholarly excellence in the development and study of the law of war. Having authored 10 books (several of them multi-volume works) and over 80 articles, he was internationally recognized as an authority on matters ranging from the treatment of prisoners of war to the legality of conventional and nuclear/chemical/biological weapons; from war crimes and terrorism to the protection of the victims of armed conflict. Among the books he

authored are *Prisoners of War in International Armed Conflict*, *The Code of International Armed Conflict*, and *Terrorism in War: The Law of War Crimes*. He also served as the editor of six volumes of the series *Terrorism: Documents of International and Local Control*. The last volume was published in 1997 when he was 88.

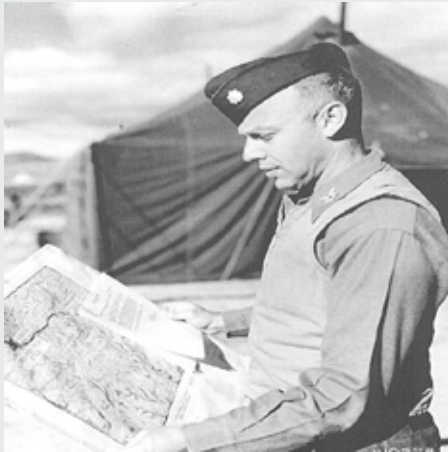
In 1998, the U.S. Naval War College in Newport, Rhode Island published *Levie on the Law of War* to honor Professor Levie and to recognize the enormous impact of his writings on the law applicable during armed conflict. In the book's foreword, Professor Emeritus Richard J. Grunawalt of the Naval War College observed:

Once in a great while, someone comes along who makes a significant and lasting contribution to his or her chosen profession, a contribution that comes to define the paradigm of that calling. With respect

to the development and articulation of the law of war, Professor Howard Levie is just such an individual.

A veteran of World War II and the Korean Conflict, Professor Levie served in New Guinea and the Philippines, in post-war Japan, and in Korea. He provided legal reviews of Japanese war crime trials for General Douglas MacArthur. He was assigned to the Staff of the United Nations Command Armistice Delegation when he drafted the Korean Armistice Agreement. A member of the U.S. Army Judge Advocate General's Corps, Professor Levie was the first Chief of the Army JAG Corps' International Affairs Division at the Pentagon. Other assignments included postings in Italy, France, Fort Leavenworth, Kansas and the Presidio of San Francisco. He retired in 1963 in the rank of Colonel.

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In September of 1963 Professor Levie joined the faculty of Saint Louis University School of Law. While there, he authored over 20 articles on a broad spectrum of law of war topics. It was also during this tenure that he spent a sabbatical year at the Naval War College as the Charles H. Stockton Professor of International Law. He retired from Saint Louis University in 1977 having attained Professor Emeritus of Law status, and returned to Rhode Island where he resumed his association with the Naval War

College as a lecturer on the 1949 Geneva Conventions and the laws of war. In October 1994, his enormous contribution to the College was formally recognized with the establishment of the Howard S. Levie Military Chair of Operational Law.

On the occasion of his 100th birthday, Professor Levie was awarded the prestigious Morris I. Leibman Award by the American Bar Association's Standing Committee on National Security Law. The award citation noted that his career as a soldier and a scholar spanned more than six decades and was marked by distinction throughout. It concluded, "The impact of [his] enormous body of work on the thinking of domestic and international policy makers, military commanders and scholars cannot be overstated."

Howard S. Levie was born on December 19, 1907 in Wolverine, Michigan and grew up in Baltimore and New York City. He earned Bachelor of

Arts and Juris Doctor degrees from Cornell University and a Master of Laws degree from George Washington University. He also studied at the Sorbonne in Paris and the Academy of International Law at The Hague.

Professor Levie was married to the late Blanche Krim Levie, an artist and WAC during World War II. Together in their 90s, they worked on writing an autobiography *Memories of an Ordinary Couple*. Professor Levie is survived by his brother-in-law Norman Krim of Newton, MA, and three nephews, Donald Krim of New York City, Dr. Robert Krim of Newton, MA, and Dr. Arthur Krim of Cambridge, MA. A Memorial Service was held on Friday, 24 April 2009, which was attended by our Chair. If you would like to make a donation to support the Naval War College's international law programs in memory of Professor Levie, such donations may be made to the Naval War College Foundation, Inc., 686 Cushing Road, Newport, RI 02841-1207.

Tell us your news . . .

Lieber Notes is only as useful and interesting as the contributions from you, the members of the Lieber Society. Having begun this issue with an apology for the late arrival of this edition, I hope that you will support me in providing the Society with a timely and informative Fall 2009 edition at

the end of November. Please send me all your news of members, recent or up-coming relevant publications and events, short opinion pieces of matters of interest to the Society . . . whatever you think may be of interest to your fellow members.

Contributions with accompanying images are particularly welcome!

Please send contributions to me, Chris Griggs, at cj.griggs@gmail.com or cjg57@cam.ac.uk.