

Professor Howard Levie and the Law of War

Professor Richard J. Grunawalt

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. Soldier and scholar, patriot and humanitarian, Professor Levie has compiled a most remarkable record of achievement in furthering the understanding of, and compliance with, the law of war over the past six decades.

Born in Wolverine, Michigan on 19 December 1907, Professor Levie moved to Baltimore, Maryland in 1912. Five years later, his family moved to New York City, where Howard graduated from Dewitt Clinton High School in 1924. Matriculating at Cornell University that year, Professor Levie was selected to participate in the "Junior Year in France" program (sponsored by the University of Delaware) and, in Paris, attended both the *Cours de Civilisation* at the Sorbonne and the *École Libre des Sciences Politiques* during academic year 1926-27. (Howard was later to recount that among his instructors at the latter was Professor Pierre Laval, who became Premier of the Vichy Government during World War II and who was tried, convicted and executed by the French following the war for collaborating with the Nazis. Howard describes Professor Laval as, "an excellent teacher.") Returning to Ithaca, New York in 1927, Professor Levie entered Cornell Law School under a program that allowed him to combine his senior year as an undergraduate with his first year of law school. He was elected to Phi Beta Kappa that year and received a Bachelor of Arts degree the following Spring. In June 1930, he was awarded a Juris Doctor degree from Cornell Law School.

The young attorney was admitted to the practice of law in New York State in June 1931 following a brief (six months) mandatory clerkship. He was engaged in the private practice of law in New York City from 1931 until he entered the United States Army through the Volunteer Officer Candidate program in September 1942. It was during that period that he met and married the lovely Blanche Krim in 1934. Shortly after Howard joined the Army, Blanche did the same, enlisting in the Women's Army Corps.

Howard underwent basic training at Fort Eustis, Virginia, where, aged 35, he was 15 to 18 years older than most of his fellow soldiers. In December 1942, Private Levie reported to the Anti-Aircraft Artillery Officer Candidate School at Camp Davis, North Carolina. Commissioned a Second Lieutenant in March 1943, he was assigned to Battery K of the 701st Coast Artillery Regiment at Camp Miles Standish, Taunton, Massachusetts, but soon relocated to Newport,

Rhode Island where Battery K was tasked to provide anti-aircraft protection to the Navy torpedo factory on Goat Island. Although his war-time sojourn in Newport was short-lived, this assignment marked the beginning of what was to become in later years a close and enduring affinity to this lovely city by the sea.

Having completed a course of instruction for “Triple A” battery officers at Fort Totten, New York, and one in photo-interpretation at Camp Richie, Maryland, Howard was directed to Camp Stoneman, Pittsburgh, California, for further transport to a “permanent station outside the continental limits of the United States, tropical climate.” And “tropical climate” it turned out to be. Arriving in New Guinea in March 1944, Professor Levie was assigned to Staff Headquarters, Intermediate Section (responsible for all New Guinea). Promoted to First Lieutenant in November, he was subsequently reassigned to Headquarters, Army Forces, Western Pacific (AFWESTPAC) in Manila in July 1945. On 2 September 1945, the Japanese surrendered in a ceremony aboard USS MISSOURI in Tokyo Bay.

Following cessation of hostilities, AFWESTPAC became heavily involved in supervising the repatriation of British and American prisoners of war from China, Korea and Japan. It was this experience that helped prompt Howard’s interest in the law applicable to prisoners of war; an interest that led to a life-time study of that discipline, to include the writing of two books and innumerable law review articles (many of which are reprinted in this collection). It was also this assignment that initiated Howard’s long involvement in war crimes issues. Present at the arraignment of Japanese General Tomoyuki Yamashita before a U.S. Military Commission in Manila on 8 October 1945, Professor Levie became in later years, an internationally recognized authority on war crimes. Indeed, his book *Terrorism in War: The Law of War Crimes* (1993) is widely regarded as one of the best of the genre.

In November 1945, Professor Levie was awarded the Bronze Star Medal for his service in the Southwest Pacific area and, more importantly (at least from Blanche’s point of view), returned to the United States (terminating a 22-month separation). Blanche having recently been discharged from active duty, joined Howard in Washington, DC where he was assigned to the War Department General Staff as Executive Officer, Supply Control Branch, Requirements Division, Army Service Forces. A collateral duty as Recorder of the Board for a joint Army-Navy review of Alaskan defenses took Howard throughout the length and breadth of Alaska in June of 1946.

In September 1946, Howard accepted a Regular Army commission in the Judge Advocate General’s Corps with a date of commissioning backdated to 19 December 1932 and in the rank of Captain backdated to 19 December 1942. The following January he was promoted to Major.

Major Levie began his service in the Judge Advocate General's Corps in March 1947 in the Legislative Branch of the Claims Division of the Office of the Judge Advocate General. In February 1949, he entered the Master of Law program at George Washington University School of Law. However, that effort was interrupted by his selection to attend the Army Command and General Staff College at Fort Leavenworth, Kansas. Following graduation in June 1950, Major Levie received orders to the Far East Command. The North Korean invasion of South Korea on the 25th of June 1950, and the re-designation of the Far East Command as the United Nations and Far East Command, was to have a substantial impact on Professor Levie's career. Promoted to Lieutenant Colonel in September 1950 while assigned to the Judge Advocate Division at General Headquarters in Tokyo, Howard became involved with the legal review for General MacArthur of several Japanese war crimes trials in which death sentences had been adjudged. It was in this period that he also became involved in the issue of the status of North Koreans captured by United Nations Command Forces. In March 1951, he was detailed to Korea to serve as Law Member of a General Court-Martial convened by General Mathew Ridgway, which tried several U.S. Army members for offenses involving the killing of North Korean soldiers and, in one case, North Korean civilians.

In July 1951, Lieutenant Colonel Levie was reassigned to the staff of the United Nations Command Armistice Delegation. That delegation initially included Vice Admiral Turner Joy, U.S. Navy (Senior Delegate); Major General Henry Hodes, U.S. Army; Rear Admiral Arleigh Burke, U.S. Navy; Major General Lawrence Craigie, U.S. Air Force and Major General Paik Sun Yup, ROK Army. As detailed in Chapter IV of this volume, Howard played a major role in the drafting of the Korean Armistice Agreement. He completed his Korean assignment in June 1952 and returned to Japan. Thereafter, Howard served as Liaison Officer between the Judge Advocate Division at Command Headquarters (which had relocated to Yokohama) and other command elements that remained in Tokyo. He also participated in several important courts-martial cases, including that of Dorothy Krueger Smith, who was convicted of murdering her Army Colonel husband; the case reached the Supreme Court of the United States where it was overturned on jurisdictional grounds.

Lieutenant Colonel Levie's next assignment was as Staff Judge Advocate at the Command and General Staff College at Fort Leavenworth, Kansas. While there, he and Blanche renewed many old acquaintances and Howard pursued further his interests in the law of war. That tour of duty commenced in March 1953, but was cut short in September of the following year to permit Howard to assume the reins of the newly-established International Affairs Division of the Office of the Judge Advocate General in Washington as its first Chief. Shortly thereafter, he was promoted to the rank of Colonel. It was during this tour that

Howard first met with such future international law luminaries as Richard Baxter (then in the Office of General Counsel, Department of Defense, and in later years a Judge of the International Court of Justice), Lou Henkin (then a foreign affairs officer at the State Department and subsequently a Professor of Law at Columbia Law School and President of the American Society of International Law) and Monroe Leigh (then in the office of the General Counsel, Department of Defense, and later Counselor of the Department of State). Now firmly immersed in the practice of public international law, Howard was instrumental in building the International Affairs Division, with its International Law and War Crimes branches, into a front line authority on the law of war. It was also during this assignment that he first visited the Naval War College in Newport, Rhode Island, beginning a lifetime association with this institution. Another memorable event was his participation in the presentation of the four 1949 Geneva Conventions for the Protection of Victims of War to the United States Senate for its advice and consent to their ratification.

In July 1955, Colonel Levie had occasion to make a lengthy visit to Europe to assess various status of forces agreement (SOFA) issues with several NATO nations. While in Europe, he also attended the Academy of International Law at the Hague for which he received a *Certificat d'Assiduité*. In November 1955, Howard was again in Europe, this time to participate in NATO meetings regarding prisoner of war matters.

Colonel Levie's Washington assignment also allowed him to renew his determination to obtain a Master of Law degree from George Washington Law School (with a specialization in international law). While studying under Professor Tom Mallison during that process, Howard authored a paper entitled "The Nature and Scope of the Armistice Agreement." Subsequently published in the *American Journal of International Law* (and included in this present work as Chapter I), that paper launched Professor Levie's life-long career as an articulate spokesman for, and commentator on, the law of war. Despite his frequent trips abroad and heavy work schedule as Chief, International Affairs Division, Howard earned his LL.M. degree in 1957. He also had occasion during this period to lecture on SOFA matters at a variety of fora, including the Washington Foreign Law Society, the Federal Bar Association, the National War College and the Judge Advocate General's School in Charlottesville, Virginia.

In April 1958, Colonel Levie was transferred to the Southern European Task Force headquarters in Verona, Italy, as Staff Judge Advocate. During that tour of duty, he often was additionally tasked to support the U.S. Sending State Office for Italy in a variety of NATO SOFA matters. He also began a long and fruitful association with the International Society of Military Law and the Law of War, attending its first Congress in Brussels in May 1959.

The next stop on Howard's distinguished military career was as Military Legal Advisor at the U.S. European Command (USEUCOM) Headquarters, then located in Paris, France. Arriving in Paris in December 1959, he was soon intensively involved in operational law matters for USEUOM, a number of which necessitated multiple visits to both NATO and non-NATO nations. Throughout this period, Howard further honed his law of war credentials.

In June 1961, the Levies returned to the United States where Howard was assigned to Sixth Army Headquarters at the Presidio of San Francisco, California, as Staff Judge Advocate. He was to hold that position until January 1963, when, having reached the age of 55, he was required by law to retire from active service. On 31 January 1963, Howard retired in the rank of Colonel, United States Army. Awarded the Legion of Merit by an appreciative Army and a grateful nation, he returned to civilian life after 21 years of active military service.

Professor Levie's retirement from the Army signaled not the end, but the renewal of his journey toward international renown as a law of war scholar. In September 1963, he joined the faculty of Saint Louis University Law School as an Associate Professor of Law (he was to become a full Professor with tenure just two years later). Although his first teaching assignment at the Law School was Commercial Transactions, he soon assumed responsibility for instruction of International Law. From September 1963, until his retirement from Saint Louis University in June 1976 at age 69 (pursuant to mandatory rules then in force at that institution), Howard wrote over 20 scholarly articles pertaining to the law of war (seven of which are reprinted in this present volume). While much of Howard's writings during his tenure at Saint Louis concerned prisoner of war and war crimes matters, he also had occasion to address a broad spectrum of law of war issues. It was also during this period that Howard and Blanche returned to Newport to spend a sabbatical year (academic year 1971-72) at the Naval War College where he was the Charles H. Stockton Professor of International Law.

As the Stockton Chairholder, Professor Levie filled a Chair which had been held by some of the preeminent international legal scholars in the world. His predecessors included the legendary John Bassett Moore, one of the first judges on the Permanent Court of International Justice; Professor Manley O. Hudson, then of Harvard Law School, and later a judge on the International Court of Justice; Professor Hans Kelsen of the University of California at Berkeley; Professor Leo Gross of the Fletcher School of Law and Diplomacy; and Professor Oliver J. Lissitzyn of Columbia Law School.

Professor Levie's retirement from Saint Louis University in 1977, and attainment of Professor Emeritus of Law status, once again marked both an end and a beginning. Indeed, 21 years of active military service and 14 years of law school teaching were but the prologue to this illustrious career. As we shall see,

Howard's most prolific and influential writing has occurred since 1977; some 20 years later, Professor Levie continues to contribute to the development and articulation of the law of war.

In 1977, the Levies established their permanent home in Newport. Howard resumed his teaching of international law within the Naval War College as lecturer in the International Law and Oceans Affairs program of the Naval Staff College (a role he continued, *pro bono*, for 20 years, teaching 40 consecutive classes, until voluntarily withdrawing from the program in July 1997 at age 89 - much to the regret of the College); as the Lowry Professor in 1982-83; and as an Adjunct Professor of International Law from 1991 to the present. He continues to lecture in the Naval War College elective course on the Law of Combat Operations. For over a decade he provided instruction in the Geneva Conventions to military attorneys of all the services at the Naval Justice School. During 1984-1988, he was also lecturer in International Law at Salve Regina College. In addition, Howard has been an honored participant in various conferences and symposia on the law of naval warfare within the Naval War College. His enormous contribution to the Naval War College was formally recognized in October 1994 when Rear Admiral Joseph Strasser, President of the College, announced the establishment of the Professor Howard S. Levie Military Chair of Operational Law in the Joint Military Operations Department. Through this singular honor, Howard joined an elite listing of distinguished Americans for whom such Chairs have been established at the College, including Admirals Chester Nimitz, William Halsey, Arleigh Burke and Raymond Spruce, and Generals Tasker Howard Bliss and Colin Powell. As many readers of this volume can personally attest, Howard has also been a major contributor throughout these past two decades to the work of a wide variety of international and domestic organizations and societies concerned with the law of war.

Levie on the Law of War is a compilation of 25 articles written by Howard over the course of his distinguished career. Selected by the editors to reflect the broad range of topics which he has addressed with great incisiveness, they represent some of the most influential of his works. However, it must be remembered that he is also the author or editor of an impressive array of books. His first was written during his tenure as the Stockton Professor of International Law at the Naval War College. Perhaps the finest treatise ever written on the law governing prisoners of war, *Prisoners of War in International Armed Conflict*, was published as volume 59 of the Naval War College International Law Studies (the "Blue Book") series. The book won international acclaim for its scholarship, including the 1982 Triennial Ciardi Prize of the International Society of Military Law and the Law of War. That monumental effort was supported by an exhaustive compilation of source materials (which he edited) entitled *Documents on Prisoners*

of War. Published as volume 60 of the “Blue Book” series, *Documents* remains an essential resource for law of war scholars.

The year 1979 also witnessed publication of the first of a multi-volume set edited by Howard recording the proceedings of the 1974–77 Geneva Diplomatic Conference which drafted the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I). Entitled *Protection of War Victims*, the fourth and final volume of which was published in 1981, this work was described by Ambassador George Aldrich, head of the U.S. Delegation to the Conference, as “an invaluable tool in interpreting and applying the new law developed by means of the Geneva Protocol.”

The second book authored by Howard was published in 1983. Entitled *The Status of Gibraltar*, this work examines the historical background and status of the dispute between Great Britain and Spain over that strategically situated British Crown Colony, making extensive use of documents not previously analyzed in depth. As with all of his writings, *Gibraltar* reflects close attention to thoroughly researched sources and a balanced and honest appraisal of the issues.

Just three years later (1986), Professor Levie’s third book was published. A two-volume work entitled *The Code of International Armed Conflict*, it constitutes a comprehensive presentation of the entire law of war, both conventional and customary. Presented in the form of a code of that body of law, the book sets forth each rule, identifies its source(s) and presents cogent commentary on its meaning and application. A superb research tool, *The Code of International Armed Conflict* remains an essential part of any law of war collection.

Howard next turned his attention to the critically important and intellectually challenging arena of non-international armed conflict. In 1987, he edited *The Law of Non-International Armed Conflict*, which complements his earlier work *Protection of War Victims*, and which utilizes the same effective format. Providing the negotiating history of the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to Non-International Armed Conflicts (Protocol II), this volume provides the reader with a clear understanding of, and appreciation for the complexities of law and policy inherent in the regulation of non-international conflict.

1988 witnessed the publication of Howard’s seventh book. Entitled *The Law of War and Neutrality: A Selective English-Language Bibliography*, this work is remarkable for both its thoroughness and its organizational clarity. Once again, his attention to detail, coupled with his mastery of the subject, enabled Howard to produce a volume that no law of war research scholar should be without.

Professor Levie’s long association with the Naval War College and his study of the law of naval warfare kindled his interest in the legal aspects of mine warfare at sea, a subject that had not previously been comprehensively addressed in the

literature. His book *Mine Warfare at Sea*, published in 1992, superbly fills that gap. Written in non-technical language, this very readable work provides an overall study of the military, legal, operational and technical history of mine warfare at sea. Rich with illustrations drawn from four hundred years of practice, *Mine Warfare* recounts how naval mines have been employed in warfare, how nations have attempted to regulate their use, and how such mines will likely be employed in the future. Complete with an exhaustive bibliography and extensive index, this book is also a “must have” volume on the law of war research scholar’s shelf.

Howard’s incomparable book on violations of the law of war was published in 1993. Entitled *Terrorism in War: The Law of War Crimes*, it draws upon Howard’s extensive experience in war crimes trials and his unequaled expertise in all matters pertaining to breaches of the Geneva Conventions and to other violations of the law of war. In the view of many scholars and practitioners in this field, *Terrorism in War* is the quintessential treatment of this subject in the literature, providing the reader, whether scholar or layman, with a comprehensive analysis of law of war crimes issues—past, present and future. Presented chronologically, the book examines the early history of war crimes and war crimes trials through the Gulf Crisis of 1990-91. It then focuses on procedural matters including jurisdiction, asylum and extradition, and trial procedures, before turning to the analysis of conventional war crimes, crimes against peace and crimes against humanity. The book concludes with an examination of the accused, their victims and their defenses. Of particular utility for research scholars is the inclusion in the appendices of key provisions of all relevant documents, from the Lieber Code of 1863 through the 1977 Additional Protocol I. It is in this magnificent work that one sees most convincingly the enormous contribution of Howard’s scholarship to the articulation and enforcement of the law of war.

In 1995, Howard took on yet another major tasking, the editing of volumes 7 through 12 of *Terrorism, Documents of International and Local Control*. For those serious readers not familiar with this superb series, I commend it to you. Volume 12, the last to be edited by Howard, is a veritable well-spring of information pertaining to contemporary practice and problems relating to terrorism, from the sentencing judgment of the International Tribunal for the Former Yugoslavia in the Erdemovic case to the report of the Secretary of Defense concerning the bombing of Khobar Towers. Here again we see Howard’s thoroughness and objectivity at work.

Not one to rest on his many laurels, Howard Levie continues in his unrelenting quest to advance the cause of respect for the rule of law in armed conflict. Indeed, as this volume goes to press, Howard is nearing completion of yet another important treatise on the law of war. That book, entitled *Capitalist*

and Communist Prisoners of War in Korea, draws on his extensive personal experience in the Korean War and its aftermath as a member of the Staff of the United Nations and Far East Command and legal advisor to the United Nations Command Armistice Delegation, and on his peerless expertise in the law applicable to prisoners of war. This eagerly awaited work will add to the enormous contribution of this incomparable scholar.

I would certainly be remiss if I failed to mention what is perhaps the most significant achievement of Howard's long and illustrious career—his genius and great good fortune in marrying Blanche. From that date to this, Blanche has been an integral part of Howard's life work. Indeed, those of us who have had the privilege and pleasure of knowing the Levies over the years have come to appreciate that Howard is but one-half of an extraordinary team. Sixty three years following their exchange of marriage vows, Blanche remains the vivacious spirit of this incomparable duo.

In the end, recounting selected highlights of Howard Levie's illustrious career as a lawyer, soldier and scholar does not do justice to either the man or his work. To those of us privileged to work with and learn from him, Howard is far more. He is the embodiment of knowledge and commitment in all matters pertaining to the law of war. Always open and objective, he nonetheless retains the enviable perspective of the long view. Indeed, this sense of perspective pervades his writing. All too acquainted with the brutal realities of war, Howard is a man of compassion—of resolute commitment to the development and enforcement of rules of normative behavior that mitigate, as much as possible, the suffering which war inevitably entails. Those acquainted with the Levies will surely appreciate the enormous influence of Blanche's humanity on Howard's profound compassion for the victims of war. Yet, he remains a realist, fully appreciative of the equation of military necessity and of the dictates of national security during conflict. He understands the plight of the victims of war and the hardship of the individual soldier engaged in its execution. The writings compiled in this volume reflect Howard's abiding sense of balance, of fairness, of reality.

I will conclude these remarks with an anecdote that, to me, is the essence of Howard Levie. Upon completion of a typically erudite lecture on the 1949 Geneva Conventions and the 1977 Protocols to a class of some thirty-five international naval officers attending the Naval War College, Howard was approached by an Eastern European officer who appeared to be somewhat distressed by what he had heard. That officer commented that he fully endorsed all that Howard had said, but was concerned that in the heat of battle he might not remember all that he had learned. The officer asked Howard what he should do in such a circumstance. Howard replied, "Commander, just do what you know is the right thing to do and you will not go wrong." That is also the

xxiv Levie on the Law of War

underlying message in all of Howard's writings on the law of war: whether national political leader or individual soldier—do what is right and hold accountable those that do not.