



THE LAW OF ARMED CONFLICT: AN OPERATIONAL APPROACH

BY GEOFFREY S. CORN, VICTOR HANSEN, CHRIS JENKS, RICHARD B. JACKSON, ERIC TALBOT JENSEN, AND JAMES A. SCHOETTLER JR.

Wolters Kluwer Law & Business, New York, NY, 2012.
599 pages, \$184.00.

Reviewed by Anthony B. Cavender

Towards the end of his memoir, *Known and Unknown*, former Secretary of Defense Donald Rumsfeld paused to observe that:

As never before in history, today lawyers and legal considerations pervade every aspect of U.S. military operations. Besides contending with enemy bullets and bombs, the men and women in our nation's military and intelligence services must also navigate legal traps set by our enemies, by some of our fellow citizens, by some foreigners, and even by some members of Congress and officials at international institutions such as the United Nations. The rules, regulations, and consequences in legal venues have to be and are taken into account on every corner of the battlefield. American military personnel have found themselves named in

lawsuits across Europe and in the United States. The mere threats of lawsuits and legal charges effectively bullies American decision makers, alters their actions, intimidates our security forces, and limits our country's ability to gather intelligence and defend the American people. This is a new kind of asymmetric war waged by our enemies—"lawfare." ...

We cannot yet know what the full consequences of lawfare will be, but the trend is troubling. At home, judges—not elected representatives in Congress or in the executive branch—increasingly determine how a president can operate during wartime against our nation's enemies.

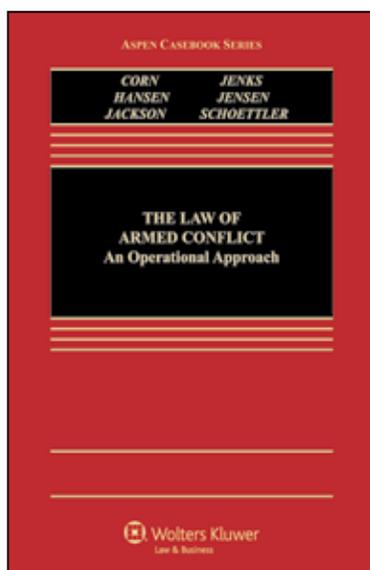
Secretary Rumsfeld has himself been the defendant in many lawsuits over the conduct of the wars in Afghanistan and Iraq, and *Hamdi v. Rumsfeld* (2004) and *Hamdan v. Rumsfeld* (2006) are landmark Supreme Court decisions. Most of this litigation was generated by the application of the law of war, which is now generally known in academic legal circles as the "law of armed conflict," a web of rights and obligations placed upon the United States by the U.S. Constitution, international treaties, customary international law, and statutes enacted by Congress. The law of armed conflict is complex and sophisticated, always evolving, and almost always controversial. For these reasons, the appearance of a new and comprehensive one-volume treatise, *The Law of Armed Conflict: An Operational Approach*, should be warmly welcomed by all who must implement this body of law as well as those who teach it. The authors have considerable experience in the theory and practice of the law of armed conflict, and the book is crisply and authoritatively written, with generous excerpts from the relevant legal materials, including many that are not well known, even to lawyers.

As its introduction notes, "this book strives to educate those who want to learn this law and how it is applied." The book is divided into 14 chapters covering, in depth, such topics as the legal bases of the use of force, the historical sources of the law of armed conflict, the

principles undergirding "conflict regulation," the status and protections of belligerents and combatants and civilians, the law of military targeting, legal and illegal weapons and tactics, the protections afforded the wounded and sick, the detention and permissible interrogation of detainees, the evolving concept of command responsibility, the termination of hostilities, and the identification and prosecution of war crimes. Each chapter is prefaced by a scenario based on U.S. military operations in Panama in 1989 and concludes with a set of questions that are intended to place the law of armed conflict in an actual operational context.

The law of war evolved slowly over the centuries, from ancient times, when Cicero could observe that *silent leges enim inter arma*—the laws fall mute in the times of war—to the present day when most nation-states are bound to one another in the observance of a legal regime that governs the use of military force. Starting with the Hague Conventions of 1899 and 1907 (which adopted a comprehensive set of rules to regulate the conducts of hostilities) and the Geneva Conventions of 1949 (which established rules for the amelioration of the condition of the wounded and sick in the field and at sea, and the protection of civilians and prisoners of war), the United States has ratified or entered into many law of war treaties, protocols, and other binding commitments. In addition, the United States is also a founding member of the United Nations, whose charter prohibits the use of force by individual states, subject only to the right of each state to defend itself against an armed attack. *The Law of Armed Conflict* discusses all these sources of the law and relates them to the problems that military commanders will face when hostilities begin.

And what of the U.S. Constitution and the role of Congress? Article I, Section 8 provides that the Congress shall have the power to define and punish "Offenses against the Law of Nations" and "to make Rules for the Government and Regulations of the land and naval Forces." Exercising these powers, the Congress has enacted several military codes, the most recent being the Uniform Code of Military Justice, 10 U.S.C. §§ 801 *et seq.*, whose punitive articles have been used



to prosecute and punish violations of the law of war, as well as recent legislation that prohibits the use of torture and sets forth the penalties that can be imposed for violating its restrictions “outside the United States” (18 U.S.C. § 2340). Indeed, “war crimes,” now defined as a “grave breach of The Hague and Geneva Conventions (including common Article 3),” have been a federal criminal offense since 1996 (18 U.S.C. § 2441).

Military courts-martial have jurisdiction over war crimes committed by members of the armed forces, and the federal courts have exercised war crimes jurisdiction over civilians and government contractors. War crimes have also been prosecuted by special courts established after World War I and World War II, and there are ongoing prosecutions in the International Criminal Tribunal for the former Yugoslavia. The controversy over war crimes allegedly committed by U.S. military forces in Vietnam shows no sign of abating, and, if the past is prologue, the debate over post-Sept. 11 military conflicts is just beginning.

To cope with this body of law, military commanders—and their lawyers—must include law of armed conflict principles and objectives in the planning of all military operations. In the absence of a long-anticipated Department of Defense *Law of War Manual*, which would have taken into account the many changes in the law that have taken place since the *Law of Land Warfare* was published in 1956, military commanders and their lawyers require a lucid and comprehensive description of the laws of armed conflict, and I believe that *The Law of Armed Conflict: An Operational Approach* will fill that need. ©

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THE PRESIDENTS CLUB: INSIDE THE WORLD'S MOST EXCLUSIVE FRATERNITY

BY NANCY GIBBS AND MICHAEL DUFFY

Simon & Schuster, New York, NY, 2012. 609 pages, \$32.50 (cloth), \$18.00 (paper).

Reviewed by John C. Holmes

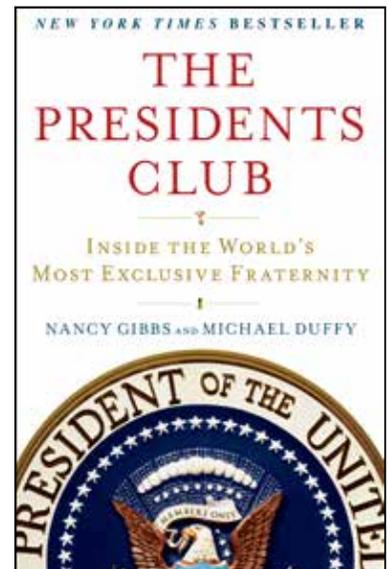
Virtually unknown to the public, the

Presidents Club was founded by Harry Truman and Herbert Hoover at Dwight Eisenhower's inauguration on Jan. 20, 1953. Its members consist entirely of former U.S. Presidents. Its purpose, not surprisingly, is to enable its members to offer confidential advice to incoming Presidents, based on the wisdom that the former Presidents gained from their experiences in office. How this wisdom has been presented and received varies considerably with the personalities and character of the people involved. It has been offered and taken in the spirit of genuine helpfulness, envy, one-upmanship, conspiracy, and friendship. In some cases, the advice is politely brushed off; in other cases, it leads to a continuing relationship between the past and current Presidents. The authors write, “For all of the club's self-serving habits and instincts, when it is functioning at its best, it can serve the president, help solve his problems, and the nation's, even save lives.”

Most of the 17 sections of *The Presidents Club* are titled with the names of two former Presidents, such as “Johnson and Nixon: Two Scorpions in a Bottle,” and “Bush and Bush: Father and Son.” The book reveals the evolving relationships of the Presidents in each pair, usually describing the assistance (or deceptiveness) of the former President to the one newly in office.

Harry Truman was suspicious of wealth and privilege, yet he forged a bond with the rich and remote Herbert Hoover. In 1945, when Roosevelt died and Truman suddenly found himself President, he approached his Republican predecessor as, the authors write, “the only man alive who knew what it was like to sit in the chair in a crisis.” Truman, knowing that Hoover would welcome the opportunity to attempt to change his legacy as a failed President, persuaded him to head the Hoover Commission. The result was “the greatest transformation of the presidency in history: a concentration of power that ultimately yielded the CIA, the National Security Council, the Council of Economic Advisors, the General Services Administration, a unified Defense Department, and much more.” Another result was a warm friendship that lasted beyond Truman's presidency.

John F. Kennedy was quick to call privately on Eisenhower for assistance in resolving conflicts, particularly in the aftermath of the Bay of Pigs fiasco. Upon becoming President, Kennedy had instituted radi-



cal changes in the presidential structure, relying informally on the people he most trusted rather than on the hierarchal, military-like system that Ike had established. Receiving Ike's honest opinions and full support, Kennedy nevertheless attempted to manipulate public opinion to blame Ike for setting the Bay of Pigs invasion in motion, while privately acknowledging that the mistakes that doomed the project were mainly his, and that he had more to learn about the presidency than his confident, aggressive campaign had suggested. With respect to Vietnam, the authors note that Kennedy foreign affairs advisor Clark Clifford wrote in his memoirs that “Kennedy's men didn't know enough about the situation in Southeast Asia to challenge Ike's assessment. In retrospect I believe that President Eisenhower, while sincere, did a disservice to the incoming administration. Having himself resisted getting drawn into a land war in Asia, Eisenhower now took a much harder line.”

Like most political analysts, the authors find Gerald Ford to be probably the nicest of the post-World War II Presidents, and the one with the most integrity. Nevertheless, these attributes did not serve him well in the role he was to assume as unelected President after President Nixon's resignation. Just a month after Ford became President, he pardoned Nixon and faced harsh criticism for it. Despite this magnanimous gesture, on the eve of Ford's entering the 1976 presidential primaries, Nixon arranged a trip to China that had the trappings of a presidential visit. A typical criticism was from reporter David Broder, who wrote of Nixon: “There is

nothing, absolutely nothing, he will not do in order to salvage for himself whatever scrap of significance he can find in the shambles of his life.” Republican Sen. Barry Goldwater went further, charging Nixon with violating the Logan Act, which bars private citizens from conducting unauthorized foreign policy. “If he wants to do this country a favor,” Goldwater added, “he might stay over there.”

From Ronald Reagan, Ford did not receive the deference usually accorded to a sitting President of the same party. Reagan saw Ford’s elevation to the White House as an inconvenience to Reagan’s quest to succeed Nixon as President, a quest that Reagan slyly hid under an “aw shucks” attitude that aimed to portray him as interested in the presidency only if called upon. Nixon, by contrast, was congenitally unable to prevent himself from behind-the-scenes scheming against all his successors, with the aim of keeping his hand in foreign policy, at which he perceived himself to be uniquely skilled. Yet, despite Nixon’s conniving, some of his presidential successors perceived him as brilliant and, in strict confidence, sought his advice, while shunning public appearances with him.

Bill Clinton and George W. Bush, though born only a month apart in 1946—the closest of any two American Presidents—could hardly have had more different backgrounds: one, from a patrician family of wealth, who seemed to have little purpose or direction prior to the age of 40; the other, from a hard-scrabble background, who never knew his father, but who began his political career while still in law school and became governor at the tender age of 32. Both left office under severe criticism for their actions in the presidency.

Clinton felt that George W. Bush never forgave him for beating his father in the latter’s reelection attempt. Nor was “Poppy” Bush happy with Clinton’s campaign against him, which he thought went beyond the usual nasty politics. Both Bushes felt that Clinton besmirched the office by his sexual escapades. Consequently, the relationships between Clinton and the two Bushes had nowhere to go but up. And that’s where they went. Upon greeting Clinton in the now-traditional transition meeting, George W. Bush requested assistance in giving effective speeches. Clinton was only too happy to give his usual long-winded explanation. Despite further rough patches, eventually the good nature of the three former Presidents enabled them, despite their differences, to

develop warm relationships that continue to this day, with the elder Bush and Clinton joining in numerous goodwill tours aimed at alleviating traumatic conditions resulting from events such as the earthquake in Haiti and the nuclear meltdown in Japan.

Although Eisenhower as past President was probably called upon most for his advice by his successors, Nixon was able to insert himself even more. Reagan, because of his poor health, was seldom consulted, and Kennedy died in office. The strangest actions, which most strained relationships, were, apart from Nixon’s, those of former President Carter, who seemed unable to resist setting his own agenda when called upon to assist the President. During Reagan’s second term, Carter “made a point of sitting down with tyrants to whom the United States was often actively opposed or sometimes covertly working to weaken, such as Hafez al-Assad in Syria in 1983 and Daniel Ortega in Nicaragua in 1986.” The authors add that Carter often treated conversations “like personal ministries, bringing up religion and spirituality in an effort to scratch out some common ground with despots.” With respect to the Clinton/Carter relationship the authors state: “Despite the fact—or maybe because—they both shared Southern roots, a Baptist’s faith, and bragging rights as the only Democrats to win the White House between 1964 and 2008, the two men quarreled as much as they got along. Each man would test the other’s ability to forgive.” Perhaps the epitome of their sour relationship occurred in 1994, when Clinton sent Carter to North Korea, the authors write, “to deliver a message and bring back intelligence about Kim Il Sung’s nuclear intentions. Instead he brokered a deal to forestall a crisis—which he announced on CNN. White House officials ... did not try to contain their fury.” And yet, the authors conclude, “for all the collateral damage, the trip was a success.”

This well-written book contains splendid revelations of the inner workings of the presidency, and of the many successes, as well as some miscues, that have occurred when members of the Presidents Club have given advice to their successors. *The Presidents Club* is objective, yet it expresses political judgments where warranted. It is a must-read for political junkies like me, and, even my wife, who is not a political junkie, found it a page-turner. ©

John C. Holmes was an administrative law judge with the U.S. Department of Labor for more than 25 years, and he retired as chief ALJ at the Department of Interior in 2004. He currently works part-time as an arbitrator and consultant; enjoys golf, travel, and bridge; and can be reached at jholmesalj@aol.com.

REBELS AT THE BAR: THE FASCINATING, FORGOTTEN STORIES OF AMERICA’S FIRST WOMEN LAWYERS

BY JILL NORGREN

New York University Press, New York, NY, 2013. 268 pages, \$29.95.

OUT OF ORDER: STORIES FROM THE HISTORY OF THE SUPREME COURT

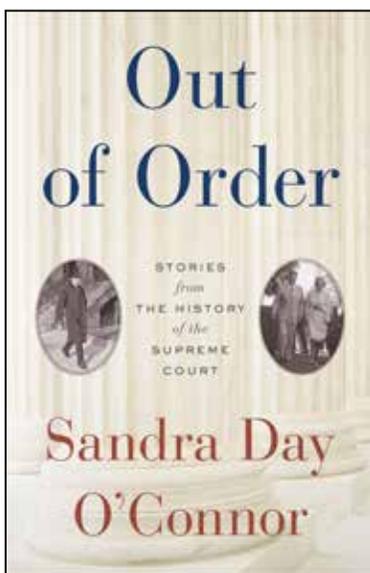
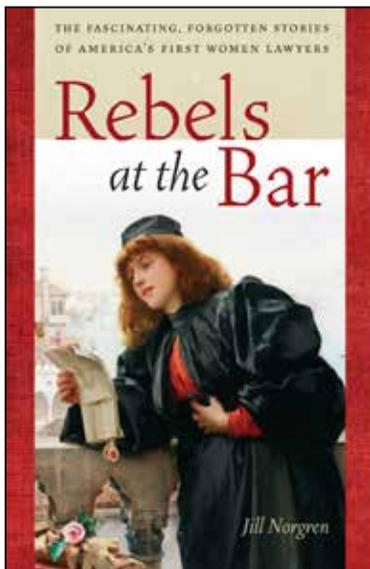
BY SANDRA DAY O’CONNOR

Random House, New York, NY, 2013. 233 pages, \$26.00.

Reviewed by Elizabeth Kelley

Last spring, when Sheryl Sandberg, the chief operating officer of Facebook, released her book, *Lean In: Women, Work, and the Will to Lead*, discussion raged over whether women have stalled in their pursuit of leadership in the workplace and whether women’s alleged lack of ambition has been the cause. Sandberg has been criticized because she makes her observations from a position of privilege and is viewed as having little in common with the average woman. She is Harvard educated, and, in 2012, she earned millions from her salary, bonus, and stocks. Moreover, critics charge that she ignores the fact that women have choices and that the decision to opt out of the workplace is now their own because legal barriers to advancement have been abolished. Whether or not you agree with Sandberg’s book, the fact is undeniable: *Lean In* has renewed the debate about women’s status in the business world.

Into this context come two new legal history books: *Rebels at the Bar: The Fascinating, Forgotten Stories of America’s First Women Lawyers* by Jill Norgren and *Out of Order: Stories from the History of the Supreme Court* by Sandra Day O’Connor, the first female justice on the U.S. Supreme Court. One book is almost entirely focused on 19th-century women lawyers. The other is by an impor-



tant recently retired justice who happens to be female. These books are not only both legal histories, but they share the same iconic photo of the four female Supreme Court justices: Sandra Day O'Connor, Ruth Bader Ginsburg, Sonia Sotomayor, and Elena Kagan.

Rebels at the Bar identifies Jill Norgren as “Professor Emerita of Political Science and Legal Studies at John Jay College Criminal Justice, and The Graduate Center of The City University of New York,” and her book is scholarly. It is also, however, straightforward and relatively brief—slightly more than 200 pages, excluding endnotes, bibliography, and index. It has little analysis, but the stories of the lives of this first generation of women lawyers are so rich that they speak for themselves.

Rebels at the Bar begins with two chapters devoted to the conditions that aspiring

women lawyers faced in the 19th-century United States. These are followed by profiles of legal pioneers such as Myra Bradwell (publisher and political activist), Belva Lockwood (the first woman admitted to the U.S. Supreme Court), and Clara Foltz (the first woman admitted to the California bar and one of the first proponents of a public defender system).

No history of women lawyers would be complete without a sampling of Victorian-era quotations about the suitability of women to practice. Some of the quotations in *Rebels at the Bar* are amusing, but others point to something more insidious. For example,

[A]t the end of lectures [at Hastings College of Law], the women received a “Dear Madam” letter from the registrar. Formally, no explanation was proffered; informally officials told the two women that “their presence, particularly their rustling skirts,” bothered the male scholars.

And, in 1875, when opposing Lavinia Goodell’s application to the Wisconsin bar, that state’s chief justice, Edward G. Ryan, wrote that he believed it would be “revolting” that

woman should be permitted to mix professionally in all the nastiness of the world which finds its way into courts of justice; all the unclean issues, all the collateral questions of sodomy, incest, rape, seduction, fornication, adultery, pregnancy, bastardy, illegitimacy, prostitution, lascivious cohabitation, abortion, infanticide, obscene publications, libel and slander of sex, impotence, divorce; all the nameless catalogue of indecencies ... with which the profession has to deal, and which go toward filling judicial reports which must be read for accurate knowledge of the law. ... [R]everence for all womanhood would suffer in the public spectacle of woman so instructed and so engaged.”

The lives of these women are instructive and inspirational. But *Rebels at the Bar* contains at least two messages. First, discrimination against women was condoned even as post-Civil War America was beginning to dismantle racial discrimination. Before the war, abolitionists and proponents of women’s equality worked side by side.

During and after the war, however, proponents of women’s equality took a back seat. Indeed, gender was supposed to be part of the Fifteenth Amendment, but was deleted for political reasons.

Another message in *Rebels at the Bar* is that 19th-century female lawyers knew that true equality could be achieved only if access for women was provided systemwide. It wasn’t enough to allow women to go to law school or be certified to practice. To be full participants in the legal system, they had to have all the rights and privileges that men did, from being eligible to run for office, to having role models and mentors, to being allowed to join professional clubs, and down to being able to ride bicycles to work and being free of encumbrances such as hats in the courtroom.

Justice Sandra Day O’Connor is the direct beneficiary of the struggles and victories of these women. But make no mistake: the world that she confronted when she graduated from Stanford Law School in 1952 was not an easy one for women lawyers. There is the oft-repeated story (she does not recount it in *Out of Order*) of how at least 40 law firms would not even interview her after graduation, even though she ranked near the top of her class.

In fact, in the introduction to *Out of Order*, Justice O’Connor tells about how, decades before she was appointed to the Court, she and her husband were climbing its front steps as tourists. It was a Saturday, and the building was closed. At the time, she mused that that was as close as she would ever get to the Court. Contrast this to Sonia Sotomayor’s laser-like focus on becoming a judge when, as a little girl, she was inspired by watching Perry Mason on television, or to Elena Kagan’s dressing up in a judicial robe for her high school yearbook photo. What a difference a generation or less makes!

But for Justice O’Connor, *Out of Order* is not the place for personal reflections. Indeed, she refrains from taking positions on legal questions as well:

On the other hand, because [the Constitution] appears to permit suspension [of habeas corpus] “in cases of rebellion” and it is the President who never takes a recess and must always safeguard the nation as commander in chief, others say that Lincoln did only what the Constitution permits. This is not the place for me to offer my own views in that debate.

By contrast, last April, at a meeting with the editorial board of the *Chicago Tribune*, Justice O'Connor stated that it may have been a mistake for the Court to hear *Bush v. Gore*. One wonders why she didn't say that in *Out of Order* and create more buzz around the book.

Instead, *Out of Order* is a history of the Supreme Court, and a history written by someone who truly reveres the institution. She takes us from the first days of the Court when justices rode circuit among the trial and appellate courts throughout the young country, when the Supreme Court did not have a permanent building, and when oral arguments could last for 10 days. She spotlights some of the giants in the Court's pantheon, including Oliver Wendell Holmes Jr. and William O. Douglas. And she sprinkles wonderful anecdotes throughout; for instance, that Chief Justice Roberts, when he appeared before the Court as a lawyer, would always touch the statue of Chief Justice John Marshall on the Court's ground floor. If you are looking for an easily digestible history of the U.S. Supreme Court, look no further than *Out of Order*.

When President Reagan appointed Sandra Day O'Connor in 1981, she made history. Serving 25 years as a justice, she shaped history. And now, as a former justice, she is expanding the definition of life after the Court by her advocacy of stronger civics education in our schools and of the profound need for judicial independence, especially as it relates to campaign finance.

The photo of the four women justices that appears in *Rebels at the Bar* and *Out of Order* echos themes raised by Sheryl Sandberg's *Lean In*: women at the top of their profession, women who have knocked down barriers, women who were openly ambitious and succeeded in reaching their goal. But the picture many of us are waiting for is a picture of nine sitting justices, four or five of whom are women. Books such as *Rebels at the Bar* and *Out of Order* remind us that it is possible. ☺

Elizabeth Kelley is a criminal defense lawyer based in Spokane, Wash. She has a special commitment to representing individuals with mental illness and developmental or intellectual disabilities who are accused of crimes. She has served two terms on the board of the National Association of Criminal Defense Lawyers, has served as the chair

of the Mental Health and Corrections Committees, and is currently the chair of the Membership Committee. She hosts two radio shows, "Celebrity Court" and "Celebrity Court: Author Chats."

SPEAK OF THE DEVIL

BY ALLISON LEOTTA

Touchstone, New York, NY, 2013. 276 pages, \$25.00.

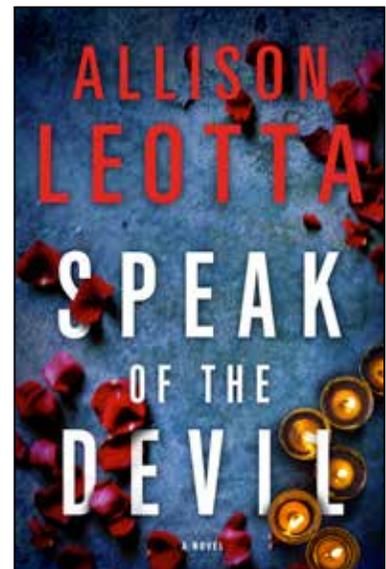
Reviewed by JoAnn Baca

With her third novel, *Speak of the Devil*, Allison Leotta has graduated from the hyphenated crowd of lawyer-novelists to become a full-fledged novelist. Her confident and mature style complements her impressive grasp of plotting and pacing. She is as skilled in ratcheting up tensions as she is in describing delicate moments of contemplation.

Detective Hector Ramos of the District of Columbia's Human Trafficking Task Force is conducting a brothel raid when he stumbles upon a much larger crime in progress. The brothel guard has been decapitated, men with machetes are carving up another man, and one of their compatriots is violently raping a prostitute. In the melee that follows, Ramos kills one perpetrator and captures another, but two others escape. The police know that the attackers are gang members, and their distinctive tattoos make it a simple matter to determine which gang is involved: the deeply feared Mara Salvatrucha, known as MS-13.

Ramos describes MS-13: "Other gangs try to make money, and they use violence to protect their drug business or fight over turf. For MS-13, the violence is the whole point of the gang. Their motto is 'Mata, Viola, Controla.' Kill, Rape, Control." Their leader in the Washington, D.C., area, and its fiercest and most notorious member, is one of the two men who escaped the brothel. His facial tattoos, filed-to-points teeth, and surgically implanted horns have earned him the sobriquet *El Diablo*, the devil. He appears so infrequently to gang members that many think he is a legend, and, for those who encounter him, death is often close at hand. As a gang member who knows him well reveals, "Diablo wanted, above all, to be feared. He enjoyed inflicting pain. And he was just as ruthless to homeboys as he was to [enemies], if the homeboys didn't obey orders."

The prosecution of those who attacked the brothel falls to Assistant U.S. Attorney



Anna Curtis. Leotta's earlier books (*Laws of Attraction* and *Discretion*, which I reviewed in the February 2011 and September 2012 issues of *The Federal Lawyer*, respectively), introduced us to Curtis as she investigated and prosecuted cases. In this third outing, Curtis is no longer the young lawyer gaining experience as a sex-crimes prosecutor in Washington, D.C., as in the first book, nor proving that she is up to the task of handling a case involving political pressure, as in the second. She is seasoned and exceptionally competent, and she needs to be at her sharpest in *Speak of the Devil*, for the stakes in this novel are high for Curtis on all fronts, personal and professional.

In developing her case against the thugs who attacked the brothel personnel, Curtis is without the assistance of Hector Ramos, the detective who would otherwise be her perfect witness. Ramos' shooting of one of the gang members removes him from participation in the case while the department determines if the shooting was justified. Proving who was involved using other witnesses and evidence collected requires all of Curtis' determination and ability, and her early successes earn her the ire of *El Diablo*, who "greenlights" her to be killed. "According to MS-13 rules, any member was bound to kill on sight a greenlighted person, using whatever weapon they had on them." However, rather than rely on the serendipity of a gang member's crossing the path of the lawyer, and to ensure that the hit is carried out as soon as possible, *El Diablo* assigns the task to Gato, one of his most trusted and senior MS-13 compadres. But Gato has private devils to contend

with, and the war between the devils within and the devils without creates another layer of tension and terror in the story.

On the personal front, Curtis' relationship with Jack Bailey, chief of the homicide section in the U.S. Attorney's Office, has developed significantly since *Discretion*; Curtis and Bailey have become engaged, and she is living with Bailey and his young daughter, Olivia. Thus, when Curtis is marked for death by MS-13, the risk is not to her alone. But Curtis is resolved to continue to live her life, even as precautions are taken to protect her. She carves out time to plan her wedding while she deals with the frustrations and dangers of her ever-more-complicated case, including a most puzzling coincidence: Nina Flores, Olivia's mother and Bailey's deceased wife, was killed by MS-13 while on an undercover assignment four years earlier, so why was her photo—taken from Bailey's wedding album—found in the pocket of a gang member captured in the brothel raid?

The plot is heavy with the threat to Curtis, but Leotta leavens the intensity with humor, and juxtaposes action scenes with domestic moments or with a character's blistering self-reflection. These quieter moments allow the reader to take a breath and contemplate what has transpired and how it is affecting the characters. Leotta deftly weaves the story between Curtis' private and work lives, reminding us that personal crises can be as fraught with consequence as the most terrifying professional quandary. Doubt and surprise creep in on both fronts, inspired by Leotta's trademark whipsawing plot twists. Characters on both sides of the law suffer from indecision and fatalism, from attacks of conscience and hardening of the heart. As in life, shades of grey predominate.

Leotta's mastery of the intricacies of the legal system gives the plot verisimilitude, and does not, as it might for a lesser writer, merely prove how clever she is. Similarly, her descriptions of the internal machinations of the MS-13 gang are not just believable but bear evidence of a deeper understanding than can be gleaned from news accounts. Because the MS-13 trademark is to leave a victim "decapitated and stabbed thirteen times," descriptions of victims meeting their fates are chillingly rendered. That the characters find credible ways to stay the course in the face of situations most people would find immobilizing is a tribute to Leotta's abilities as a writer.

It is difficult to find fault with *Speak of the Devil*, but it does have excessive product placement. This goes well beyond giving the reader a sense of place, such as mentioning by a particular gas station along a particular road or the name of a hospital in which a character is a patient, or even the repeated naming of a favorite store or restaurant setting (Tiny Jewel Box and Tabard Inn are Leotta favorites). The phone application Spotify is mentioned many times, for instance, and there is an extensive panegyric to the shop CakeLove, to which more than a page of the novel is dedicated, from a description of its location to the introduction of its owner to a loving homage to the variety of flavors of cupcakes it sells. Although Curtis' choosing a wedding cake is within the scope of the story, the number of words dedicated to CakeLove is unnecessary. To a lesser extent, the bridal shop Hitched in Georgetown gets this treatment. Thankfully, this type of indulgence does not impair the flow of the story, and as faults go, this one is excusable in an otherwise terrifically entertaining book. *Speak of the Devil* is ample proof that Allison Leotta is a formidable talent in the genre of legal thrillers. ☉

JoAnn Baca is retired from a career with the Federal Maritime Commission. Her husband, Lawrence Baca, is a past president of the Federal Bar Association.

THE LINCOLN DECEPTION

BY DAVID O. STEWART

Kensington Publishing Corp., New York, NY, 2013. 262 pages, \$15.00.

Reviewed by JoAnn Baca

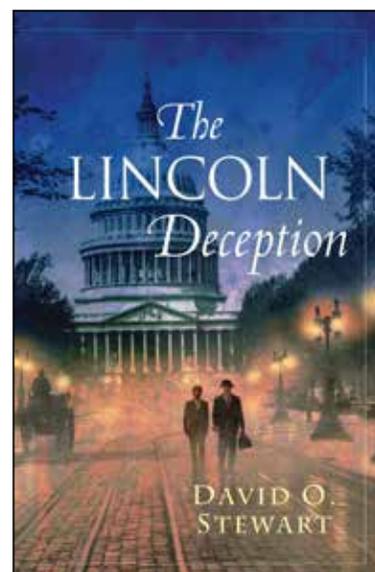
Lawyer and award-winning author David O. Stewart has written three nonfiction books—on Aaron Burr, Andrew Johnson's impeachment, and the men who drafted the Constitution. But what happens when a historian comes across a story that cannot be proven by any fact he can uncover, yet it sparks his imagination? For Stewart, the answer is to leave his comfort zone and write a novel, allowing him to theorize and extrapolate, far from established facts, about a part of our history that fascinates many as much today as it did in 1865: the assassination of Abraham Lincoln. *The Lincoln Deception* is the result of Stewart's need to

explore to his own satisfaction a vague suggestion of duplicity as yet undiscovered in the assassination of the President.

While doing research for one of his nonfiction books, Stewart came upon an obscure reminiscence in a biography of John Bingham, who served as an assistant judge advocate general in the trials of the conspirators involved in the Lincoln assassination. The descendants of Bingham's doctor revealed to the biographer that, in 1900, Bingham, on his deathbed, had told their forebear that Mary Surratt, one of the conspirators, had confided something in him about the conspiracy that was too terrible to speak of. This anecdote, hinting as it does of a larger plot but providing no actual information, became the inspiration for Stewart's new mystery novel, *The Lincoln Deception*.

In his author's note, Stewart acknowledges that this mysterious revelation, coming a century after the event, dovetails with his own belief, formed after extensive research, that John Wilkes Booth was not the mastermind of the plot to kill Lincoln. That may explain why Stewart seized this slim bit of family lore, for which he admits "the provenance ... is by no means sturdy," upon which to build his novel.

In order to examine the possibility of a wider conspiracy, one so large that "[t]o reveal it would be to risk the survival of the republic," Stewart introduces Dr. Jamie Fraser, a fictional doctor to whom Bingham in the novel confesses his secret, or rather, just enough of it to pique Fraser's interest. Fraser is recently widowed and searching for something to occupy his mind during the long



hours when he is not attending to his patients in and around Cadiz, Ohio. Fraser decides to investigate the tantalizing mystery of what Bingham mentioned but did not reveal.

Bingham has died 35 years after Lincoln's assassination, and most of the conspirators and those closely involved with them are elderly or dead. Fraser begins to read everything he can find about the assassination, starting in the Bingham family's library. He soon realizes that books and newspaper accounts can give him only widely known information. What he really needs to do is to interview those who might have insights that, for whatever reasons, were never written down, and he must do it soon, while those people are still alive to help him.

At about this time, he meets a "light-skinned Negro of middle years" named Speedwell Cook, an educated Cadiz man who, after a career playing baseball, is "planning to start a newspaper for colored people, one that would explain that they had choices, they had to stand up for their rights, no matter what the cost." Cook is as combative and opinionated as Fraser is mild-mannered and self-effacing. When Cook requests Fraser's medical assistance for a visiting relative, Fraser realizes that this relative had worked for Mary Surratt. Fraser discusses his investigative enterprise with Cook. Soon Cook joins him in an uneasy alliance, one that requires constant negotiation between a man who has not had to deal with racial restrictions that existed in the America of 1900 and one whose life has been circumscribed by such restrictions.

Their investigation leads the two men to New York City, Washington, D.C., and small towns in Indiana and Maryland, among other places, as they search out and contrive to speak with a variety of people, most of whom are figures from history even though the circumstances and conversations are fictional. Along the way, Fraser and Cook obtain assistance, but their attempts to gather information also bring them obfuscation and danger.

One problem they encounter is the inability to know which information is useful in constructing the elements of a plot that both made sense in 1865 and that could have created such a threat to political stability that Bingham went to his grave without revealing it. Fraser and Cook constantly discuss what they have learned to see how the new information fits with what they already know and how it helps to make the picture clearer. Their discussions are Stewart's way of introducing

multiple theories and testing them by having either Fraser or Cook play the devil's advocate.

As characters, Fraser and Cook are distinctive, but Cook is more vividly drawn than Fraser. Fraser is uncomfortably naïve and obtuse for a man of his age and education, so much so that it becomes difficult to care about him when he constantly gets into trouble, as it is obvious to the reader when the trouble is coming, and Fraser takes too long to learn from his mistakes. Cook is a more nuanced character, more wary and more worldly, as well as more capable, even if his physical feats during moments of danger are sometimes almost super-heroic. He is the more interesting character, but unfortunately the novel spends less time with him than with Fraser.

Stewart's prose for the most part is generic, serviceable but not memorable, pleasant but uninspired. He describes his first sight of one city this way: "New York was colossal, dazzling, thrilling. Also nightmarish." But when his characters get to Washington, D.C., something changes and Stewart is not afraid to let his wry wit show. A hotel lobby, for instance, is "a large space, but still provided intimate corners suitable for conversations that might later be denied." At a party, when Fraser tries to engage with others, he runs into a certain kind of reaction, which culminates in his observation that others' "eyes didn't look directly at him. They focused somewhere to his left. He began to wonder if the absence of direct eye contact was a condition brought on by the Washington climate." Unfortunately, descriptions such as these are more the exception than the rule.

Stewart seems more interested in the assassination plot than in the plot of his novel, which suffers from an uneven pace. For instance, there are a few moments when the excitement surges, but most of these are truncated by quick resolutions, although a few are protracted to the point of making the reader impatient to get on with the story. Further, for much of the book the reader is far ahead of Fraser in determining who should be trusted, and there are one or two red herrings that are introduced and not resolved but just dropped. *The Lincoln Deception* is not a tightly written mystery.

The novel reflects the prevailing racial attitudes of the era after slavery was abolished. When Fraser and Cook travel on a train together, for instance, "Fraser tried to ignore the stares and nervous glances. He and Cook were unsettling the train's

first-class car." Cook tells Fraser that they should work together because "I can go places you can't, just like you can go places I can't." But Stewart doesn't trust that readers will gain the appropriate awareness of the racial inequities of the period through such descriptive moments and conversations. He bogs the story down at various points by having characters express things to each other that both obviously already know. For example, in the middle of a conversation about who could have plotted to kill Lincoln, Cook advises Fraser that "[t]he Civil War's still going on, every day, getting worse, driving colored people out of jobs, off trains, out of restaurants, even out of the damned roller rink. ... Today, this ain't no country for the black man." Stewart illustrates these problems many times in the novel; the need to add such commentary to cement our awareness is unnecessary.

The Lincoln Deception is a foray into historical analysis by an author with a good grasp of the political and financial threads that tied North and South together even during the depths of the Civil War. Stewart makes a persuasive circumstantial case that Booth was a pawn in a large, dark, and complex plan of which Lincoln's assassination was but one piece. For someone with a keen desire to delve into conspiracy theories, Stewart provides much fodder for contemplation. Whatever conclusions one draws from reading the novel, it is disquieting to consider that there is no way of knowing whether Bingham truly had a dark secret and how close Stewart has come to uncovering what Bingham took to his grave. ©

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THE REAL ROMNEY

BY MICHAEL KRANISH AND SCOTT HELMAN

HarperCollins Publishers, New York, NY, 2012. 423 pages, \$27.99 (cloth), \$15.99 (paper).

Reviewed by John C. Holmes

It may seem unusual of me to recommend a biography of a losing presidential candidate. Call me unusual. For those who haven't had enough presidential politics and would like to explore the life of a distinguished

American—including his ancestors, background, religion, family, and earlier political campaigns—*The Real Romney* should be of compelling interest, read now in detachment from the heat of 2012 campaign.

Boston Globe journalists Michael Kranish and Scott Helman are thorough and objective in discussing Mitt Romney's life and the many influences that formed the man, as well as his strengths and weaknesses, and accomplishments and failures. As a result of his strong and mature character, Romney became a leader in his Mormon church—the Church of Jesus Christ of Latter-day Saints—at an early age. After his first year in college, the church required him to participate in a 2½ year mission to France. His efforts to convert French Catholics to Mormonism were not particularly successful, and he was seriously injured in an automobile accident caused by a French priest driving a Mercedes. Though pronounced dead by a police officer on the scene, Romney quickly recovered.

Two years before he went to France, at age 18, Romney proposed to the 16-year-old Ann Davies. Ann's father, a successful businessman, rejected organized religion and did not favor his daughter's marrying a Mormon. Nevertheless, as a result of Mitt's persuasiveness, Ann converted to Mormonism, as eventually did all three of her siblings. All were baptized by Mitt's father, George, and Mitt married Ann shortly after returning from his mission to France.

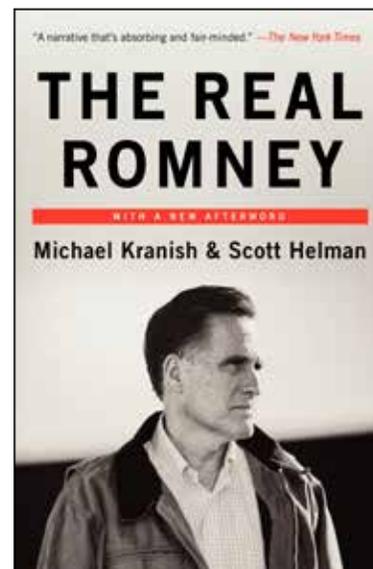
Mitt had much in common with his father. Strikingly similar in appearance, they were remarkably close, and their lives followed similar paths. From an early age, Mitt could

converse with his father on political matters, and he served his father in his three successful campaigns for governor of Michigan. Mitt was elected governor of Massachusetts at the same age, 55, that his father had first been elected governor of Michigan. Both unsuccessfully sought the presidency. Both were persistent in pursuit of their wives against tough obstacles, and remained loyal and devoted throughout their marriages. George tried to bring Lenore a single rose every day of their marriage; Mitt put his career on hold in order to serve his first priority, Ann, when she was struck by multiple sclerosis. Both men were tremendously successful in business, George as president of American Motors, and Mitt as owner of Bain Capital, a private investment firm. Both were keenly analytical in reaching decisions and forceful in implementing them, but frequently insensitive to others because of their self-confidence and stubbornness.

On the other hand, George and Mitt Romney's educations were entirely different. In part because his family was not wealthy, George did not complete college. Mitt, growing up in comfortable circumstances, earned a joint juris doctor and masters in business administration.

The Real Romney discusses many other interesting and lesser known aspects of Mitt Romney's life, delving extensively into his career at Bain and in politics, including, of course, the 2012 presidential campaign. It was published, however, before the 2012 election. ☺

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The Legal History Blog (legalthistoryblog.blogspot.com) features a “Sunday Book Review Round-up” each week, which links to book reviews in other publications. On Aug. 18, 2013, it linked to the book reviews in the August issue of *The Federal Lawyer*, and it plans to link to the book reviews in future issues of *The Federal Lawyer*.

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lien with the register of deeds in the county in which the property is located. A lien under this section *shall be superior to all other liens that are or have been filed against the property*, except that if the property is residential property, as defined in s. 895.52(1)(i), the lien may not affect any valid prior lien on that residential property.” Wis. Stat. § 292.81 (2011) (emphasis added).

⁸³*DNR's Superior Lien Authority*, *supra* note 81.

⁸⁴Stipulation and Agreed Order, *supra* note 56, at 6. Letter from Mark F. Giesfeldt, Director of Bureau for Remediation and Redevelopment Wisconsin Department of Natural Resources to Old Carco Liquidation Trust, Jones Day, and JP Morgan Chase Bank (Mar. 11, 2011); Letter from Mark F. Giesfeldt, Director of Bureau for Remediation and Redevelopment Wisconsin Department of Natural

Resources to Old Carco Liquidation Trust, Jones Day, and Simpson Thacher & Bartlett LLP; Email from Jeffrey B. Ellman, Partner at Jones Day, to Sean H. Lane, U.S. Bankruptcy Judge for the Southern District of New York (Apr. 19, 2010, 2:35 PM) (providing revised language to which parties agreed).

⁸⁵Stipulation and Agreed Order, *supra* note 56, at 7.

⁸⁶Telephone Interview with Arthur Harrington, Shareholder and Chair of Environmental and Energy Law Practice Group, Godfrey & Kahn S.C. (Apr. 3, 2012).

⁸⁷Jon Olson, *Officials celebrate Chrysler site agreement*, KENOSHANews, Oct. 20, 2012, www.kenoshanews.com/home/officials-celebrate-chrysler-site-agreement-256534332.html (last visited Apr. 21, 2012) (quoting Arthur Harrington).