

4-30-2011

# Law in War, Law as War: Brigadier General Joseph Holt and the Judge Advocate General's Department in the Civil War and Early Reconstruction, 1861-1865

Joshua E. Kastenberg

*University of New Mexico*, [joshua.kastenberg@law.unm.edu](mailto:joshua.kastenberg@law.unm.edu)

Follow this and additional works at: [http://digitalrepository.unm.edu/law\\_facbookdisplay](http://digitalrepository.unm.edu/law_facbookdisplay)

---

## Recommended Citation

Kastenberg, Joshua E.. "Law in War, Law as War: Brigadier General Joseph Holt and the Judge Advocate General's Department in the Civil War and Early Reconstruction, 1861-1865." (2011). [http://digitalrepository.unm.edu/law\\_facbookdisplay/55](http://digitalrepository.unm.edu/law_facbookdisplay/55)

This Book is brought to you for free and open access by the School of Law at UNM Digital Repository. It has been accepted for inclusion in Faculty Book Display Case by an authorized administrator of UNM Digital Repository. For more information, please contact [disc@unm.edu](mailto:disc@unm.edu).

# **Law in War, War as Law**

CAROLINA ACADEMIC PRESS  
*Legal History Series*  
H. Jefferson Powell, Series Editor



LAW IN WAR, WAR AS LAW  
*Brigadier General Joseph Holt and the Judge Advocate General's Department  
in the Civil War and Early Reconstruction, 1861–1865*

Joshua E. Kastenber

GENTLEMEN OF THE GRAND JURY  
*The Surviving Grand Jury Charges from Colonial, State,  
and Lower Federal Courts Before 1801*

Stanton D. Krauss, editor

A VIEW OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA  
*Second Edition*

William Rawle with Foreword, Introduction,  
and Notes by H. Jefferson Powell

COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES

Joseph Story with Introduction by  
Ronald D. Rotunda and John E. Nowak

OUR CHIEF MAGISTRATE AND HIS POWERS  
William Howard Taft with Foreword, Introduction,  
and Notes by H. Jefferson Powell

THE FETHA NAGAST  
*The Law of the Kings*  
Abba Paulos Tzadua, translator, and Peter L. Strauss

# Law in War, War as Law

---

**Brigadier General Joseph Holt and the  
Judge Advocate General's Department in  
the Civil War and Early Reconstruction,  
1861–1865**

**Joshua E. Kastenberg**

CAROLINA ACADEMIC PRESS  
Durham, North Carolina

Copyright © 2011  
Joshua E. Kastenberg  
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Kastenberg, Joshua E., 1967-

Law in war, war as law : Brigadier General Joseph Holt and the Judge Advocate General's department in the Civil War and early Reconstruction, 1861-1865 / Joshua E. Kastenberg.

p. cm.

Includes bibliographical references and index.

ISBN 978-1-59460-864-3 (alk. paper)

1. Holt, Joseph, 1807-1894.
2. United States. Army. Judge Advocate General's Dept.
3. Judges--United States--Biography I. Title.

KF368.H586K37 2011

347.73'14092--dc22

[B]

2010049128

Carolina Academic Press  
700 Kent Street  
Durham, North Carolina 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

# Contents

---

Preface	vii
Abbreviations	ix
1. Introduction	3
I	4
II	11
2. Joseph Holt: Judge Advocate General, 1862–1875	13
I	15
II	26
III	30
IV	41
3. The Literature and Law of Courts-Martial and Commissions in the Army of the Early Republic and Civil War	43
I	44
II	54
III	74
4. Opening Salvoes: The Military Trials of Fitz-John Porter, Don Carlos Buell, and Clement Vallandigham	77
I	78
II	94
III	102
IV	115
5. Ancestry, Education, Ideology, and the Experience of Combat: The Judge Advocates of the Class of 1862	117
I	118
II	126
III	135
IV	152
V	157
6. Generals and Judge Advocates: Relationships between Command and the Law	159
I	162
II	169
III	179
IV	181
V	185
VI	191

7. Judge Advocates in the Field: Courts Martial, Commissions, and Other Duties	193
I	194
II	197
III	206
IV	216
V	219
VI	228
8. Developing, Enforcing, and Prosecuting the Laws of War	229
I	231
II	243
III	247
IV	255
V	272
9. The Military Law on Colored Soldiers and Citizens, and Guerillas	275
I	277
II	281
III	294
IV	302
V	307
VI	312
10. Political Activity: The Judge Advocate General's Department and the Election of 1864	315
I	318
II	320
III	332
IV	338
V	343
VI	348
VII	354
11. Trial of a Conspiracy, and the Impeachment of a President	357
I	358
II	362
III	371
IV	374
V	378
VI	383
VII	389
Epilogue	391
Bibliography	395
Index	417

# Preface

---

Few authors successfully conclude a project without substantial help from their friends and this author is no exception. Cheryl Chasin a student of the Civil War par excellence, and two of my judge advocate brethren, Eric Merriam and Robert Preston provided their encouragement, insight, and proof-reading skills over a period of several years. In the aftermath of the attacks on September 11, 2001 the Civil War experiences of the Judge Advocate General's Department—now in the United States Air Force called the Judge Advocate General's Corps—were studied not for trivial interest or merely to capture heritage, but rather because many of the arguments in Congress and in the federal courts were made with the idea that much of what was lawful in the Civil War should be lawful today. Seldom, however, did those arguments detail or analyze what actually occurred, or did the people doing the debating and advising conduct significant historic research. Some diligent attorneys and scholars succeeded in doing this, but most did not. To the extent time permitted, several career judge advocates and civil service attorneys did try to uncover the historic record beyond the generalities often presented by political appointees. This book benefitted from hundreds of those discussions, as it did from my discussions with the then Deputy Judge Advocate General of the United States Air Force Judge Advocate General's Corps, Major General Charles Dunlap. It also could not have been completed without the extraordinary help of the staff at the Manuscripts Reading Room of the Library of Congress.

I have been lucky in my military career to have served alongside of conscientious professional officers and non-commissioned officers in each of the service Judge Advocate General's Corps, and in particular those who answered the call and deployed to Iraq and Afghanistan. I am thinking of six captains and non-commissioned officer paralegals in particular, who spent part of a year with me in Iraq. Each of them in their own way inspired me to complete this book. That said, the mistakes in this book are mine, and mine alone. And while I truly thank them, I dedicate this book to my daughter Elinor, who is now nearing three, for the simple reason that I love her.





# Abbreviations

---

JSMP	John McAlister Schofield
MDHS	Maryland Historical Society
MoHS	Missouri Historical Society
OR	The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies
PAL	Papers of Abraham Lincoln
PDWL	Papers of Daniel Webster Whittle
PEB	Papers of Edward Bates
PES	Papers of Edwin Stanton
PFJP	Papers of Fitz John Porter
PJH	Papers of Joseph Holt
PNPB	Papers of Nathaniel Prentiss Banks
PRJ	Papers of Reverdy Johnson
PWHS	Papers of William Henry Seward
PWTS	Papers of William T. Sherman