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Prior to World War II military justice as administered in the armed forces of the United States was a little known system of criminal law that had not attracted a text writer of note since the publication of Colonel William Winthrop's Military Law and Precedents in 1866. Studies following World War II led to a complete reappraisal of the operation of this system, culminating in the Uniform Code of Military Justice of 1951.1 This new code put the operation of military justice on much the same footing as the enforcement of civilian criminal law in the federal courts. The inevitable result was a series of works describing and interpreting the operation of military justice under the new code, of which the two books under review are the latest and by far the best.

Although both books deal with the subject of military justice, they have quite different foci. The work by Aycock and Wurfel, respectively a professor of law at the University of North Carolina and a colonel in the Army JAGC, has as its stated purpose the collection and consideration of the cases decided during the first three years of operation of the Court of Military Appeals, the three-judge civilian court placed by Congress at the summit of the military justice system. The material is therefore selective rather than comprehensive, and no attempt is made to discuss provisions of the uniform code not yet reviewed by that court. Mr. Everett, a former commissioner of the Court of Military Appeals, on the other hand, attempts a comprehensive treatment of all of the problems relating to the administration of military criminal law. He has deliberately sought to make his text as simple as possible, with a view to making the work useful not only to lawyers but also to laymen, both in and out of the military service. This difference in scope results in areas of strength and weakness in both books, but because of this very difference in approach each is stronger where gaps exist in the other; taken together they provide a sound and comprehensive picture of today's military justice system.

The book by Aycock and Wurfel grew out of a series of law review articles written while the authors were developing a course in military law, later taught in a number of southeastern law schools. It begins with a well-documented sketch of the historical antecedents of the Uniform Code of Military Justice, which provides the reader with a fund of information about the sources of military justice in England and the United States.

The historical introduction is followed by five chapters on jurisdiction of courts-martial, dealing with the appointment of the court, jurisdiction over the person, the offense, the sentence imposed, and the relationship between due process and jurisdiction. The treatment is thorough, and the authors' conclusions are carefully documented. It must be noted in passing, however, that these chapters were written before the landmark decision by the United States Supreme Court in Toth v. Quarles. In this case the Court held unconstitutional section 3a of the uniform code which provided for continuing military jurisdiction even after separation from the service over persons charged with offenses not triable in state or federal courts, such as the Korean murder allegedly committed by Toth. The jurisdictional hiatus that Tycock and Wurfel considered filled by section 3a has therefore been reopened. Fortunately this problem receives careful treatment in Everett's book.

In the concluding chapter, which deals with due process and jurisdiction, Aycock and Wurfel combine advocacy with analysis in their argument that the due process clause of the Fifth Amendment to the United States Constitution is inapplicable to military trials and therefore cannot be a basis for jurisdictional attack on such proceedings. The apparent distrust of military justice evidenced by the Supreme Court in the Toth case may lead others to conclude that the Court will withhold the application of the due process clause only so long as it is convinced that the military system, through its boards of review and the Court of Military Appeals, is providing those safeguards guaranteed in civilian trials by that clause.

The material on jurisdiction is followed by a chapter dealing with the law officer, including his obligations in connection with instructing the court prior to its findings. One of the major changes brought about by the uniform code was the removal of the law officer from closed

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sessions of general courts-martial. The exclusion of the law officer necessitated the giving of careful instructions on the nature and elements of the offense charged, in much the same fashion that a civilian judge instructs a jury prior to its deliberations. This problem of instructions was one of the first matters to which the Court of Military Appeals turned its attention. Erroneous instructions have led to the reversal of many convictions, sometimes on what seem to be quite picayune grounds. Although the jury studies currently being conducted at the University of Chicago seemingly indicate that the instructions given to a jury are not a major factor in influencing its deliberations, erroneous instructions are a ground for reversal; hence the importance of proper instructions cannot be over-emphasized. The authors have done a thorough job of analyzing the decisions in this area.

Following a brief chapter on trial and related matters, the book contains three chapters dealing with appellate review in the military system. The extent and thoroughness of this review may come as a surprise to some civilian lawyers. Every accused whose sentence includes a punitive discharge or confinement for one year or more is guaranteed that his case will be considered at least three times before execution of his sentence. To aid him on appeal, counsel is provided at no expense to him, both before the board of review of the office of the Judge Advocate General and before the Court of Military Appeals.

The book next analyzes the concept of military due process as developed by the Court of Military Appeals. Here the work seems overly critical of the court for enunciating a doctrine paralleling the protective doctrine of constitutional due process in the civilian system. The authors apparently regard the military due process concept as an unnecessary generalization designed to bolster reversals based on a more specific finding of prejudice by the court. But the proper application of the safeguards required by military due process may well be the key to preventing further encroachments by way of collateral civilian review of military trials. For there are indications by the Supreme Court in *Burns v. Wilson*\(^3\) that if the military should ever deny an accused these basic safeguards lack of due process might affect the jurisdiction of the military tribunal and thus become a ground for review by the civil courts. Such a possibility provides a further incentive for an absolutely impartial administration of justice by the military authorities.

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\(^3\)346 U.S. 137, 142-43 (1953).
The book concludes with a thoughtful analysis of habeas corpus as a method of testing the jurisdiction of military tribunals. This material, a reworking of Colonel Wurfel's doctor of jurisprudence dissertation, is undoubtedly the definitive work in the field. It re-emphasizes the theme of the book, that given a workable legal system the military can and should be allowed to handle its own criminal justice without direct supervision from civilian courts other than the Court of Military Appeals. But some civilian lawyers may question the conclusion that on petition for habeas corpus the civil courts may not properly inquire into the guilt, innocence, or sanity of a petitioner but only into the matter of jurisdiction, for such a conclusion begs the question of the meaning of jurisdiction. As pointed out above, one may perhaps predict that the exclusion of due process considerations from the issue of jurisdiction will continue to be supported by the Supreme Court only so long as military due process continues to provide the equivalent of constitutional due process.

There are helpful chapters dealing with the interpretation placed by the Court of Military Appeals on the rules of evidence set forth in the Manual for Courts-Martial and the punitive articles of the code. This material will be of particular value to the military lawyer for purposes of reference and interpretation; it makes the book a must for his practice.

The Everett Book

Everett's Military Justice in the Armed Forces has as one of its basic aims the enlightenment of the public, lawyer and layman alike, concerning the basic fairness and integrity of today's military justice system. The author hopes to dispel the prejudice that so often accompanies ignorance. This aim Mr. Everett accomplishes very well. Since he undertakes to encompass the whole of military justice in 323 pages, however, his treatment in many areas is necessarily cursory. Such problems as instruction of general courts-martial by the law officer and the availability of habeas corpus as a method of obtaining review of military convictions, both of which are treated so thoroughly by Aycock and Wurfel, receive little more than a bare mention by Everett. On the other hand, this volume contains a thorough treatment of the legal problems involved in apprehension and restraint, the imposition of nonjudicial punishment by commanding officers, and the operation of the military court system, including an explanation of the differences between summary, special, and general courts-martial.
The fifth chapter, dealing with criminal investigations under military law, is one of the most valuable in the book. There is a critical analysis of problems not covered adequately in other treatises on military law, such as the effect of the use of compulsion or trickery to obtain confessions or admissions, the rules governing search and seizure, and the use of electronic devices. This chapter alone should make the book required reading for all military police personnel, since its careful perusal can aid them to avoid the pitfalls that so often make evidence of this kind inadmissible. This chapter will also serve Everett's aim of dispelling prejudice against the military justice system. The average civilian reader will be surprised to learn of the safeguards now erected for the protection of an accused during the evidence-gathering process, and many readers will undoubtedly have to revise their concepts of the fairness of this phase of military justice.

In line with his attempt at complete coverage of trials within the military establishment, Everett also outlines briefly the right of the military to conduct trials under martial law when civilian law enforcement agencies break down, as well as military trials under the "law of war," a branch of international law under which spies and war criminals may be tried by military commissions or general courts-martial. His explanation of the relationship between military justice, martial law, and the law of war will enlighten many readers who perhaps have only hazy notions of the jurisdictional basis for such trials as that of the German spies who landed from submarines on the eastern coast of the United States during World War II and the war crimes trials that followed that cataclysm.

The book also contains a brief but objective discussion of the NATO Status of Forces Agreement, which has been the subject of so much recent comment and criticism. Everett's calm and lucid discussion of the operation of this agreement stands in sharp contrast to the emotional outbursts of some of its critics, and his statistical information on the conduct of trials under the treaty should go far toward calming their fears.

In succeeding chapters dealing with the operation of courts-martial the author sets forth the requirements for preparing court-martial charges and referring them to trial, trial procedure, and the process of military appellate review.

In a concluding chapter entitled Collateral Attack on Court-Martial Action, Everett points up a number of post-conviction remedies

4See Note, supra p. 82.
not discussed by Aycock and Wurfel. The civilian attorney consulted by an ex-serviceman with a court-martial record will be interested in information concerning the availability of administrative remedies before discharge review boards and boards for the correction of military records and the possibility of attack in the Court of Claims by way of an action for damages for unjust conviction.

The Books as Companion Pieces

The reader of these two volumes on military justice cannot fail to be impressed by the many additional safeguards erected by Congress and the Court of Military Appeals over the administration of the military legal system since World War II. Even under the system in force prior to the uniform code there were few documented cases of actual injustice or abuse of the broader discretion that existed under the Articles of War. Nevertheless, the innate American distrust of concentration of judicial power in the hands of the military led to the curbing of that power through the code. But even after its enactment fears still existed, and one of the principal architects of the code went so far as to state that Congress was providing a final opportunity to the military to prove that it could administer its own system of justice free from "command control," and that if the armed forces did not avail themselves of this opportunity they would be faced with the establishment of a complete set of courts under the exclusive control of civilians.  

It seems fair to state that the administration of military justice under the code as described in these two volumes will lead the reader to conclude that today's soldier does get a fair and impartial trial and an effective appellate review that goes far beyond the safeguards usually provided in our civilian system. Whether the framers of the code have gone so far in their desire to eliminate any vestiges of command control as to endanger effective discipline by weakening the sanctions behind military justice through the creation of opportunities for delaying punishment for military offenses is another matter.  

The student of military law will find these books interesting and effective aids in his study of the military justice system. The volume by

5Morgan, The Background of the Uniform Code of Military Justice, 6 Vand. L. Rev. 169, 184 (1953).

Aycock and Wurfel, with its detailed analysis and approximately 2000 footnote citations, provides an authoritative critique of the operation of the code and provides a basic research tool that fulfills a real need in the military justice field. Everett's work, with its readable style and objective analysis of the strengths and weaknesses of the present military justice system, makes an excellent companion piece for the other volume. Although Everett does not provide as complete an analysis of some problems as Aycock and Wurfel, he does provide a complete picture of the military court system in nontechnical language that will make his book useful not only to the military lawyer but also to the nonlegal general reader, whom it should convince that military justice today is far more than second-class justice.

Both books follow in the tradition of careful and critical analysis of military law begun by Colonel Winthrop some ninety years ago, and both are fitting works to occupy a place beside Winthrop's classic on the shelves of those vitally interested in the administration of military justice.

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For the lawyer who is starting into practice for himself or who has difficulty in keeping office procedure and management under control, the information included in this book will in many instances make the difference between a profitable practice and a bare living. The business side of the legal profession is frequently neglected because the practitioner has little or no experience or training in office management and knows little about the handling of personnel. Here will be found answers to most of the problems that arise in the business routine of the law office.

In practical terms and with understandable examples profusely illustrated by photographs, charts, plans and forms, the author discusses, often in detail, the business side of the legal profession. The reader will find the practical points of view that must be considered in the selection of an office location; a description of the type of furnishings, furniture, and equipment best suited to the law office; a