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BOOK REVIEWS

Military Justice in the Armed Forces of the United States. By Robinson O. Everett. Harrisburg: Military Service Publishing Company. 1956. Pp. 323. \$5.00.

In the Foreword of this commendable book on military law, the late Paul W. Brosman, Judge of the United States Court of Military Appeals, weighs the value of Mr. Everett's work on the scales of timeliness, contribution, and need. Judge Brosman concludes that Mr. Everett has made an important and helpful contribution to the "criminal law of the military establishment." This reviewer concurs in the decision of Judge Brosman.

The author, who has had experience as a legal officer in the military service, as a commissioner of the United States Court of Military Appeals, and as a practicing civilian attorney handling military justice matters for military clients, has ably accomplished his basic objective: presentation of an accurate and understandable picture of military law administration as it exists today.

World War II will undoubtedly be remembered by the citizen-soldier as culminating in more than a battlefield victory. At least one of its by-products was the overhaul of our system of military law administration. Unable to ignore the chorus of complaints concerning the administration of military justice, many of which were well-founded and some of which were probably not, Congress in 1950 enacted the Uniform Code of Military Justice, which became effective on May 31, 1951. The Uniform Code and its operation over a period of approximately five years constitute the main theme of this book.

The volume begins with a background discussion of military law, emphasizing those problems of law administration which are peculiar to any military establishment. There are certain standards of behavior which are of necessity imposed in any military organization, which are not required nor are necessary or desirable in civilian life. For example, the maintenance of discipline is highly essential to the very existence of a military force, but individual discipline and unquestioned obedience to the commands of those "higher up" is, happily, not a part of civilian life. These differences in standards of behavior give rise to two systems of law, one for the military and one for the civilian. The author gives an adequate and convincing explanation for a system of military jurisprudence, as distinct from the civil. In fact, one of the notable and praiseworthy features of this book is that throughout one finds comparisons

and analogies between the rule of military law and the corresponding rule of civil law.

One of the early chapters deals with those persons who are subject to military law and who can therefore be tried by a military court. The scope of military jurisdiction is much broader than most of us realize. The Uniform Code itself is expressly made applicable to civilians "serving with, employed by, or accompanying the Armed Forces without the continental limits of the United States" and is also applicable to civilians in "time of war" who serve with or accompany an "Armed Force in the field." What is a "time of war?" The Korean "police action" is not so far in the past as not to suggest the reality of serious questions of interpretation. And in this age of intercontinental bomber and intercontinental missile, when an entire nation can become a battlefield in a matter of hours, when might civilians be accompanying an "Armed Force in the field?" A declaration of martial law means that civilian laws and civil courts are replaced to some extent by military authority. The author suggests that under martial law a civilian could become subject to trial by a military commission without any of the protective features now spelled out in the present Uniform Code.

These and other related questions are discussed, and under today's somber cloud of "cold war," marked by a fitful and often fearful flame of hot war here and there on the face of the earth, they are perhaps not entirely academic questions.

Other chapters deal with investigations, apprehension and restraint, preparation of charges, kinds of court-martial, procedures in courts-martial, evidence, sentence and punishment, and appellate review. There is a separate chapter concerning the United States Court of Military Appeals, the procedures incident to review in that court, the scope of its jurisdiction, and the problems which have thus far confronted what the author terms the "GI's Supreme Court." In commenting upon its accomplishments, Mr. Everett leaves no doubt that it is his view that this court has earned its place in our system of military jurisprudence.

Reference might be made to one minor style characteristic, which with some readers may strike a slightly discordant note. That is, the author's reference to imaginary service personnel such as "Corporal Culprit," "Albert Airman," "Ed Enlistee," and "Virgil Victim." This effort at a bit of levity seems, most of the time, to miss the mark. Admittedly, however, this is not a matter of substance but a matter of taste, as to which even reviewers might disagree.

The practical value of this book is enhanced by the inclusion of a short summary at the end of each chapter. Throughout, the author has done well in his organization and presentation of material so that the

nonlawyer should have no difficulty in reading, and in knowing what was read.

While this volume will be useful as a case reference for the lawyer, especially as it covers that period when many of the landmark decisions under the Uniform Code were decided, its greatest value will lie in its presentation of the main currents of military jurisprudence in such a way as to instruct in the total picture, as well as its parts, and at the same time stimulate thought on the basic whys and wherefores of the rules of law. This book will be useful in the classroom, in the lawyer's office, and on the desk of the commanding officer (whether lieutenant, captain, major, or general).

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The Law of Trusts. By Austin Wakeman Scott. Boston: Little, Brown and Company. Second Edition, 1956. Five Volumes. Pp. lii, 4056. \$100.00.

It was my pleasure to review the first edition of this splendid treatise in 1939.¹ In that review I stressed the vigor, the clarity and the easy understandability of the author's style; the usefulness of the book's being keyed to the *Restatement of the Law of Trusts*; the highly practical discussions given on problems in trust administration; and the general excellence of the treatise as a whole. I then expressed regret at the author's minimal citation to the vast body of relevant American statutes; and at the author's obvious hesitation in invading the inevitably related aspects of the law of future interests, and of the law of taxation.

The second edition continues to deserve all of the good things which were said by many persons with respect to the first edition. In addition it has adequately undertaken to supply the lacks, which this writer at least, believed to be present in that edition. In the fifth volume is a Table of Statutes which lists well over four thousand statutes cited in the text and footnotes. Many of the newly inserted sections develop the statutory aspects of the topic under discussion.² In a usual trust, the strictly trust provisions are the envelope, enclosed in which is the disposition. The disposition is commonly a series of successive interests, as to which the law of future interests provides the framework. The second

¹ 39 COL. L. REV. 1453 (1939).

² See, for example, § 1.11, on legislation; § 16B, on tax problems in the creation of trusts; § 227.9A, on investment trusts as fiduciary investments; § 241A, on the Uniform Principal and Income Act and its adoptions.

Other sections have been rewritten so as to incorporate important statutory material in usable detail, as for example §§ 57.5, n. 6; 190.9A, n. 6; 226.1, n. 10; 324.5.

edition goes far in the desirable direction of discussing aspects of the law of future interests at the places where their earlier omission left a feeling of incompleteness.³

The second edition bulks in pages a trifle more than one-third larger than the first.⁴ Its cited cases are approximately doubled in number.⁵ This addition of some fourteen thousand cases in sixteen years justifies the last sentence of Professor Scott's Epilogue: "The law of trusts is living law."

The increase in pages is not wholly absorbed in extra citations and helpful additions of statutes, and expositions of parts of the laws of future interests and taxation. There are twenty-six wholly new sections, and only nine of these⁶ serve these special purposes. The other seventeen develop aspects of trust law which have acquired new importances in the past decade and a half.⁷ Amplifications and enrichments have also been made in the rewritten texts of many of the former sections.

In fact this second edition fulfills the best possible expectations as to a book which was already good in its first edition. The author has taken his good beginning not as a justification for resting on his laurels, but as a point of departure for a still more mature, more comprehensive and genuinely helpful treatise for law students, law practitioners, law teachers and judges. For a good service well performed, the profession owes gratitude to Austin Wakeman Scott.

There are, of course, aspects of this treatise, in which any other

³ See, for example, § 58.4A, as to when a Totten trust arises; § 127.4, as to the persons entitled under a class gift; § 128.8, as to when the beneficiary's interest is subject to a requirement of survival; § 147.3, as to the power of a creditor of the donee of a power of appointment to reach the appointive assets for the payment of his claim; § 241.3A, on defaulted mortgages as illustrations of delayed income.

⁴ Regrettably the one-third increase in number of pages is accompanied by nearly a three-fold increase in price (from \$35.00 for the four volumes of the first edition in 1939, to \$100.00 for the five volumes of the second edition). The writing law professor expresses to the distinguished author his fervent hope that this will bring a three-fold increase in the author's royalties and not be completely absorbed in the publisher's office.

⁵ From about 14,000 to 28,000.

⁶ See notes 2 and 3 *supra*.

⁷ Section 16A, other relations analogous to a trust; § 56.5A, whether a contract is testamentary; §§ 65A and 65B, impossibility and indefiniteness as factors in trust creation; § 128.7, a gem essay on the power of a beneficiary to invade the principal; § 146A, dealing with the statutory distributive share of a surviving spouse; § 190.9A, the power of a trustee to exchange property for shares of a corporation; § 205.2, the power of a court to excuse a breach of trust; § 208.6, the liability of a trustee for breach, by selling in a case where the trustee has a power of sale; § 212A, the effect of a general increase or decrease in market values; § 226.1, the liability of a trustee for payments or conveyances made under an invalid trust; § 235A, disposition of income on death of a life beneficiary; § 257A, duty of a beneficiary to his cobeneficiaries; § 367A, termination of a charitable trust; § 374.6A, promotion of sports as a charity; § 385A, power of trustee of a charitable trust to form, and convey the trust assets to, a charitable corporation; § 441.4, rebutting a resulting trust where land has been purchased in the name of the payor and another.

person would have handled the matter differently.⁸ These differences do not deserve stress in this review. Their development could only serve to illustrate a desire, not infrequently found in book reviewers but not shared by this Reviewer, to attempt the impossible task of proving the Reviewer more learned (or more something!) than the author.

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⁸ On this point the Reviewer can speak feelingly as it was only two years ago that he finished a six hundred page treatment of the same general subject matter, in *The Law of Real Property*, Vol. IV, pp. 1-594.