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Book Reviews

BOOK REVIEWS

MILITARY TRIAL TECHNIQUES. By Major James L. Spratt, GS (INF). Dallas-Texas: American Guild Press, 1957. Pp. 322. $4.98.

The *Uniform Code of Military Justice* was enacted by Congress on May 5, 1950, effective May 31, 1951, for the government of the armed forces of the United States.[1] By virtue of the authority vested in him by Article 36 of the Code, the President of the United States issued the *Manual for Courts-Martial, United States, 1951,* prescribing "the procedure, including modes of proof, in cases before courts-martial."[2]

The Code provides for the establishment of three types of trial courts of original jurisdiction, namely, summary, special and general courts-martial.[3] A summary court-martial consists of one commissioned officer. A special court-martial consists of any number of members not less than three. A general court-martial consists of a law officer and not less than five members.[4] In addition, for each general and special court-martial the authority convening the court details a trial counsel and a defense counsel, and such assistants as he considers appropriate.[5]

There is no requirement that the summary court officer, or the members of a special or general court-martial, be lawyers,[6] even though the summary court officer and the members of a special court-martial act as judges, as do New York City Magistrates and Justices of the New York City Court of Special Sessions. In fact, an enlisted member of an armed force is eligible to sit as a member of a special court-martial and act in a judicial capacity, even though the enlisted member is not a lawyer, provided the accused, if he is an enlisted man, personally has requested in writing that enlisted persons serve as members.[7] This situation, with regard to officers, has given birth to the statement, "Every ensign a judge."

Insofar as trial and defense counsel, assigned to special courts-martial, are concerned, they, too, are not required to be lawyers, except that, if trial counsel is a member of the bar, defense counsel appointed by the convening authority must be similarly qualified.[8]

To assist non-lawyers who may be assigned legal duties as advocates or "judges" with courts-martial, either as trial or defense counsel before a special court-martial, or as members of such a court, or as a summary court-officer, *Military Trial Techniques* was written. The author is an Army Infantry officer, who is not a lawyer, and, apparently, never attended a law school, although he has had a great deal of experience with Army courts-martial. Much credit is due Major Spratt for undertaking to write such a book to assist non-lawyer officers, many of whom are called upon from time to time to perform court-martial duties.

Most of the book deals with the problem of indoctrinating prospective counsel with his duties before a special court-martial. It discusses the advisability of preparing a good trial brief in advance of trial, the convening of the court, challenges, motions, arraignment, order of presentation of evidence, arguments, and voting by court

[1] 64 STAT. 108, 50 U. S. C. §§ 551-736 (1950); revised and modified, 70A STAT. 36, 10 U. S. C. §§ 801-940 (1956). Herein referred to as the "Code."

[2] 70A STAT. 50, 10 U. S. C. §§ 836 (1956); Executive Order 10214, of 8 February 1951. Herein referred to as the *Manual.*

[3] 70A STAT. 42, 10 U. S. C. § 816 (1956).

[4] *Ibid.*

[5] 70A STAT. 46, 10 U. S. C. § 827 (1956).

[6] 70A STAT. 45, 10 U. S. C. § 825 (1956).

[7] *Id.* § 825 (c) (1).

[8] 70A STAT. 47, 10 U. S. C. § 827 (c) (1956)

members on the findings and on the sentence. A single short chapter attempts to set forth important rules of evidence. More detailed chapters deal with the manner in which witnesses should be handled, both in a pre-trial interview and in the courtroom. A very helpful chapter is devoted to the summary court-martial. It sets forth verbatim what actually transpires at such a court session, including questions and answers. In the final chapter of the book, the author has compiled definitions of various legal terms.

Although a reading of the book will undoubtedly assist the non-lawyer in getting a better idea of the nature of the duties of the various personnel assigned to a court-martial, it would not be advisable for him to rely on the volume as a reference book or handbook. In the first place, the book has no index. Such a deficiency inevitably limits the usefulness of any text. Secondly, although the paper jacket speaks of "actual cases cited," and the Foreword states, "The principles of law stated herein are based on the latest available opinions of the United States Court of Military Appeals," there are only two cases cited in the entire volume, one opinion written by the Court of Military Appeals (p. 51), and one case decided by an intermediate Board of Review prior to the enactment of the Code (p. 54). Third, the book contains a number of inaccurate and incorrect statements, the more glaring of which will be referred to later. Fourth, there is at least one better text to instruct prospective counsel before a special court-martial. Reference is made to an excellent pamphlet issued jointly by the Department of the Army and the Department of the Air Force, entitled, *Military Justice Handbook, The Trial Counsel and The Defense Counsel* (October 1954). The Department of the Navy has issued a similar pamphlet, *Special Courts-Martial, Guide for Presidents and Members* (May 1956). An additional source of valuable information is another Army publication, *Military Justice Handbook, The Law Officer* (August 1954), as amended from time to time by the Office of the Judge Advocate General of the Army. Of course, there is no substitute for the *Manual* as a source of information. It has properly been called the "Bible" of the military lawyer.[9] In addition to the foregoing, the poor proof-reading job done on the book is somewhat disconcerting.

In the introductory chapter, while discussing appellate rights, the author states that in certain cases an accused "may petition the United States Court of Military Appeals to review his case. He is required to submit such a request within thirty days after approval of his case by the Judge Advocate General" (p. 25). Actually, the accused has thirty days from the time he is notified of the decision of a Board of Review to petition the highest court in the military judicial system for a grant of review.[10]

In the chapter, "The Military Court-Martial Trial," it is stated that, in a special court-martial, when it is necessary to close the court to vote on an objection made by counsel, "a majority vote carried, and a tie vote decided against the matter on which the vote is taken" (p. 56). The Code, however, provides that, with certain stated exceptions, a "tie vote . . . is a determination in favor of the accused."[11] It is also stated that the ruling of the president of a special court-martial on a motion raising a defense or objection[12] "is final except when the motion relates to the accused's sanity" (p. 63). The fact is that in a special court-martial the ruling of the president, as distinguished from the ruling of the law officer of a general court-martial,

[9] United States v. Kunak, 5 USCMA 346, 356, 17 CMR 346, 356 (1954).
[10] 79A STAT. 60, 10 U. S. C. § 867 (c) (1956); MCM, 1951, ¶ 100c.
[11] 70A STAT. 55, 10 U. S. C. § 852 (c) (1956); MCM, 1951, ¶ 57f.
[12] MCM, 1951, ¶ 67.

is subject to objection by any member of the court.[13] With reference to a motion made by the defense, at the end of the prosecution's case or at the end of the entire case, for a finding of not guilty (i. e., directed verdict), the text provides that "a two-thirds majority is required in cases of this nature to carry the motion" (p. 74). Such motions are decided by majority vote; a tie vote is a determination against the accused.[14]

This same chapter has a significant omission. After findings of guilty, the defense may offer evidence in extenuation and mitigation during the pre-sentencing procedure. The author fails to indicate, however, that the prosecution is given the opportunity to introduce evidence in aggravation, including evidence of previous convictions, to aid the members of the court in determining the punishment to be imposed (pp. 57, 81).[15]

A caveat is in order for the benefit of civilian lawyers who may be retained as defense counsel. If an exhibit is not admitted in evidence and is merely marked for identification, it will not become part of the record of trial, despite the impression given at page 93. Unlike a case tried in a civilian court, a document marked for identification will be appended to the record, and available for use upon review, only if counsel offering the document so requests. The court may also, on its own motion, direct that the document be appended.[16]

Very helpful chapters are those on "Cross-Examination" and "Objections." The novice will welcome the numerous samples of lines of interrogation which might be used by counsel. Equally praiseworthy are the chapters entitled, "Check List for All Trial Counsel," and "'Check List for the Defense Counsel". Counsel will find these lists helpful before, during, and after trial. At the conclusion of the latter chapter, Major Spratt gives a bit of excellent advice, which undoubtedly is the result of his wide experience, addressed to defense counsel. He says, "At sometime after the trial, make it a point to meet every accused whom you defend. A visit from you will serve to alleviate much of any bitterness and in the long run, create a healthy respect, not only for you as counsel but for the entire system of military justice" (p. 248).

An officer who has been appointed to act as summary court officer for the first time will be very happy to find available for his study the contents of the chapter, "The Summary Court-Martial," with its sample guide. In the sample form of the proceedings, the summary court officer advises the accused, after the prosecution has rested, that he may testify under oath or remain silent. In addition, he advises the accused improperly that he "may make an unsworn statement, if you choose" (p. 272). (Cf. p. 274). In the case in chief, the accused does not have the latter choice, although he does after findings of guilty, during the pre-sentencing procedure.[17]

The author undoubtedly intended to help the reader by presenting the material in his last chapter, "Definition of Legal Terms." Whether he succeeded is questionable. Here are a few of the definitions.

"*Blackmail*—Rents reserved, payable in work, grain, and the like. In common parlance, the term is equivalent to, and synonymous with, extortion." (p. 290).

"*Defendant*—A party sued in a personal action. The term does not in strictness apply to the person opposing or denying the allegations of the demandant in a real action, who is properly called the tenant." (p. 296).

"*Wound*—A solution of the natural continuity of any of the issues of the body." (p. 322).

[13] M.C.M., 1951, ¶ 57c and d.

[14] 70A STAT. 55, 10 U. S. C. § 852 (c) (1956); M.C.M., 1951,, ¶¶ 57f, and 71a.

[15] M.C.M., 1951, ¶ 75a and b; and appendix 8a, p. 520.

[16] M.C.M., 1951, ¶ 54d; and appendix 8a, p. 513.

[17] M.C.M., 1951, ¶¶ 53h, and 75c (2); and appendix 8a, pp. 516, 520-521.

There are a few instances where the principles set forth in the book have been overruled by subsequent decisions of the Court of Military Appeals disapproving or clarifying certain provisions of the *Manual*; e. g., the question of voting on challenges (pp. 42, 45),[18] and the propriety of having each member of the court in possession of the *Manual*, either in the courtroom or in closed session (pp. 53, 54, 80, 234).[19]

If the book should ever be revised, its value would be greatly enhanced if there were added to it an index, and also more cross-references to the Code, the *Manual*, and the reported opinions of the Boards of Review and the Court of Military Appeals. The need for proper indoctrination and training of non-lawyer officers assigned to special courts-martial as counsel or members has been commented upon by the Court of Military Appeals.[20]

It is the opinion of the reviewer that the present text should not be classified as an indispensable *vade mecum*.

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READY FOR THE PLAINTIFF (subtitle: A Story of Personal Injury Law). By Melvin M. Belli. New York: Henry Holt and Company. 1956. Pp. x, 311, 12 (notes) and 14 (index). Second Printing, 1958. $6.50.

IN a keen and forcible book, the author has analyzed one of the major problems in the professional pursuits of the lawyer. The problem is that of personal injury law. Mr. Belli is a prominent San Francisco lawyer whose extensive writings on the subject and outstanding career as a trial lawyer rank him as an authority of highest competence on the subject.

Two propositions are predominant in the volume under consideration: first, the use of demonstrative evidence; secondly, the adequate award as operative in the aforementioned field of tort law. Concerning the technique of demonstrative evidence, the author tells us that no jury, however well intentioned or instructed, can deliberate to a just and sensible conclusion if it does not understand the case. To accomplish this result, Mr. Belli advocates—and as the outcome of numerous cases of his own and other members of the bar testifies—the use of demonstrative evidence; specifically enlarged x-rays, skeletons, moving pictures, colored stills, infra-red pictures, wood models, and experiments in the courtroom. A copious supply of illustrative situations, drawn chiefly from the professional experiences of the author, form convincing proof of his thesis. And this, as the reader may sense, is an analogue to visual aids as a pedagogical device. Touching the adequate award in personal injury cases, the author, in robust fashion and in historical retrospection, shows how the award for personal injuries has come to represent a more just compensation in our day.

Mr. Belli not only treats of the pedestrian and motorist but has expertly written upon compensation for injuries to railroaders and seamen, under the title "The Torts of Casey Jones and Davy Jones." Airplane cases are dealt with under the heading "Stagecoach Verdicts Ride the Airlines." Other phases of tort law discussed include medical malpractice, animals involved in injuries, slander and libel, family immunities, insurance companies, liability of hospitals, false imprisonment, mental shock,

[18] United States v. Jones, 7 U.S.C.M.A. 283, 285, 22 C.M.R. 73, 75 (1956).

[19] United States v. Boswell, 8 U.S.C.M.A. 145, 148, 23 C.M.R. 369, 372 (1957); United States v. Rinehart, 8 U.S.C.M.A. 402, 406, 24 C.M.R. 212, 216 (1957).

[20] United States v. Fisher, 8 U.S.C.M.A. 396, 398, 24 C.M.R. 206, 208 (1957).

invasion of privacy, and many other kindred interests on the substantive side.

This reviewer was impressed by the informality, frankness, and sincerity of the author. The literary quality of the work is marked by an unmistakable conversational tone; accomplished, in the main, by the use of the first person singular. It is to be noted, however, that though the book is not written in stylized academic fashion, it is, most assuredly, a valuable addition to any shelf reserved for the law of torts. The language is colorful as attested by the chapter headings; illustratively: "You Faker, You!"; "Bismarck Said: It's All in a Day's Work"; and "Papers, Papers, Who gets the Papers." The foregoing characteristics of style may be rightly attributed to the circumstance that the book is for the use of layman and lawyer alike.

The book has special value to members of the bar in that it is well documented with case and statutory citations, and notes to legal periodicals. A bowing acquaintance is extended to the reader with respect to the formation, growth, function, and accomplishment of the National Association of Claimants' Compensation Attorneys, of which organization, the author is past president. For the layman, there is special interest in observing how a trial lawyer goes about the discharge of his professional tasks and responsibilities in and outside of the courtroom. It is to be highly recommended to the prospective juror as indoctrination material for use when called upon to fulfill this basic obligation of good citizenship.

Mr. Belli has probed deeply into the problems of personal injury law. Besides being an instructive and stimulating piece of writing, it constitutes a solid contribution to contemporary legal writing.

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