



1955

Book Reviews

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Recommended Citation

Charles O. Gavin, et al., *Book Reviews*, 9 Sw L.J. 495 (1955)
<https://scholar.smu.edu/smulr/vol9/iss4/7>

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BOOK REVIEWS

TEXAS MARITAL RIGHTS. By William O. Huie. St. Paul, Minnesota: West Publishing Company, 1955. Pp. i-xxi, 1-781. \$12.00.

The author of this latest casebook is Professor of Law at the University of Texas Law School. As he states in his preface, he has used as a starting point for the compilation of his work certain mimeographed materials which have been used at the University of Texas for some time in the course on marriage and divorce, community property, and homestead. Since the community property system and the homestead laws depend upon the existence of the marriage or family relationship, it has been customary for law schools in Texas to combine these subjects in a course which is offered elsewhere as one in domestic relations. For the instructor the 771 two-column pages of cases and materials in this new book will accommodate quite adequately and effectively a three semester hour course with an opportunity for some collateral reading. The cases selected are the usual stalwarts that have worn well in courses designed to explain the Texas law in this field.

Having taught the course in Texas marital rights at Southern Methodist University School of Law, the writer wonders whether the traditional approach to the subject as presented in Professor Huie's casebook is the best one after all. There is a tendency to spend the greater part of this course on the property problems and less time on the marriage and divorce materials. Of course, if these latter materials are treated from a purely legalistic approach, then only a minimum of time is necessary to explore the statutory provisions and cases with respect thereto. But is this adequate? In Dallas County for the past ten years the divorces granted have been about 7 for every 10 marriage licenses issued. Other Texas counties are experiencing similar statistics. This incidence of divorce is higher than the nationwide average which has itself been increasing steadily. Surely, the law schools have a responsibility to develop an awareness of this problem among their students.

The lawyer as a student of law knows that the sound and efficient administration of justice depends upon stability in the

social order. The disintegration of the family destroys this stability. The lawyer as a student of government and as a good citizen knows that the break-up of the family is not just of concern to two people and their offspring. It is of concern to the state not only to preserve the family system and the stability of the social system but also to prevent the myriad of problems resulting from divorce which will plague the state and its agencies—an increase in juvenile delinquency, dependent and neglected children, problems of enforcement of child support, and so forth. Finally, the lawyer as one cognizant of the effect of the moral law in this field knows the importance of religious and philosophical values which should be considered when discussing materials in this area. It is true that this new casebook has excerpts and footnote citations to works which point out the socio-legal problems and discuss some of the suggested reforms, but perhaps these should be emphasized to a greater extent.

So far as the community property materials are concerned one wonders whether it is wise to emphasize the Texas materials to the extent that is usually done in class and has been done in this book. The bar is encountering more frequently community property problems that cross state lines as more people migrate from common law states into community property states and from one community property state to another. Therefore, the law schools in Texas might offer to better practical advantage studies in community property which use the Texas statutes and decisions as a starting point and survey the similarities and differences in other community property states. To those who flinch at attempting such a large undertaking for three or four semester hours, consider the plight of the corporations instructor who must survey all the background cases leading to the adoption of the new corporation code in addition to a study of the statute itself, or the taxation instructor who worked at top speed in the course prior to 1954 to cover a sufficient amount of material and must now cover the same materials as a background for discussion of the new Internal Revenue Code. These are but illustrations of the fact that materials can be condensed when it is an overall advantage to do so. Until policy changes are effected in the Texas

law schools, however, Professor Huie's book will serve well the instructors in this field.

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MILITARY LAW UNDER THE UNIFORM CODE OF MILITARY JUSTICE.

By William B. Aycock and Seymour W. Wurfel. Chapel Hill: The University of North Carolina Press, 1955. Pp. xviii, 430. \$7.50.

Once a matter of concern to few outside the military establishment, the administration of military justice has touched and touches the lives of so many that it has become a matter of concern to all. Public concern has been evidenced in increasing Congressional activity. The Fifth Amendment to the Constitution cured the silence of the original document, by making it plain that matters of military justice lay outside the judicial power. Under this amendment the Congress continued to provide a system of military justice derived from the 1776 Articles of War of the Continental Congress, which in turn had been based on the British Articles of 1775. The early articles were of a general nature and the Congress was willing to leave administration to the military establishment under practices inherited from the late enemy.

Succeeding Congresses added considerable detail to the Articles but still were concerned principally with prescribing offenses and penalties, and only incidentally with procedures. There was a substantial revision in 1920, on the basis of experience gained in World War I, but these revisions indicated no wide-spread dissatisfaction with the system generally.

Following World War II, such dissatisfaction was evidenced. A good deal of this dissatisfaction was not too well founded, based as it was upon an uncritical acceptance of the stories and excuses of returning military offenders, and reflecting the chagrin of returning lawyers, quondam military defense counsel, who had found that time-tested defensive tactics from the civil courts often appeared to have little effect in the military tribunals. Nevertheless World War II had pointed up certain proper causes of concern. Notable were the difficulties of assuring the accused compe-

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tent military defense counsel; the problem of the handling of technical legal questions by members of courts martial without technical legal training; the inability of some few general officers, not too long before serving as company and battalion commanders, to discharge dispassionately their duties as convening and reviewing authorities of general courts martial; and the mysteries which were thought to envelop appellate procedures.

Post-war reaction was prompt, with the Secretary of War taking the lead in 1946 by requesting the appointment of a committee from the American Bar Association to study the problem. On the basis of the report of the "Vanderbilt Committee" so appointed, the Congress effected a partial revision in 1948. In 1950, on the basis of the recommendations of the "Morgan Committee" established at the suggestion of the Department of Defense, came the enactment of the Uniform Code of Military Justice, applicable to all departments of the armed services, and making substantial changes in the procedures of each, but particularly in those of the Navy and the related Marine Corps and Coast Guard. It is under this code that we now operate.

Many changes are found in the 1950 Uniform Code, but most might be called codifying or perfecting only. The few sore spots noted above were relieved by provisions designed to assure the accused the assistance of defense counsel certified as competent by the Judge Advocate General; to incorporate into the general court martial (to try serious offenses) a Law Officer, professionally trained to make rulings on interlocutory legal questions of the sort normally handled by the judge in a civil court, and to make these rulings final on all matters except a motion for acquittal or a matter involving the sanity of the accused; to strengthen the investigating procedures prior to referral for trial, and to assure reference of cases to the staff judge advocate of the convening authority for written opinion prior to approval of the sentence and to include this opinion in the record of the case; and to provide for a formal system of review by boards of review in each service, and a final review by a civilian Court of Military Appeals.

That the 1950 Uniform Code of Military Justice has improved the system is generally agreed, notwithstanding the dissent of some

armed services personnel who consider the act as embodying an unjustified slur upon a system of military justice of which they were justifiably proud. The two principal weaknesses which have appeared in the Code are an excessive use, or perhaps abuse, of the appellate processes, and an excessive attempt to identify the Law Officer with the civil judge and the Court with the civilian jury. Thus the Law Officer is barred from the deliberations of the court, at the very time when his professional legal skills may be most needed. While there is a danger of a civilian judge improperly swaying a jury, the idea that the members of a general court martial may be so in awe of the Law Officer as to be swayed from what they consider their duty appears absurd to one with any considerable military experience.

Obviously the key to the Uniform Code is to be found in the three-judge Court of Military Appeals, as it is here that the Code must receive its detailed and authoritative interpretation and application. The Court has been discharging this duty over a four-year period and has become the busiest of all federal appellate tribunals. It has done and is doing a good job of a creative sort, and a sizeable body of law is to be found in its published reports.

It is to the decisions of the Court of Military Appeals that Messrs. Aycock and Wurfel turned in writing the book under review. On the basis of these decisions and the Uniform Code, supplemented in slight degree by written opinions of the boards of review in the several services, the authors have been able to prepare the first really informative treatise on the new system. They are to be commended for their accomplishment.

The principal portion of the book proceeds in a chronological fashion. First to be considered are the procedural requirements for constituting the court. Then follows the matter of jurisdiction over the person of the accused—involving the problem of who, outside the categories of members of the armed services, are subject to military justice. Courts martial are of three types: summary, special and general, and the competency of a particular court to try a particular case is based both upon the nature of the offense and the type of punishment to be assessed. Accordingly, the authors treat separately of “jurisdiction” of the offense and “jurisdiction” of the sentence. Next follows a discussion of the

responsibilities of the Law Officer. The chapter on trial procedure gives a good perspective, and appellate practice is described adequately. The chapter on evidence reflects the ruling of the Court of Military Appeals on rules of evidence familiar to the profession and indicates some tightening of pre-1950 practices. Cases dealing with the sufficiency of evidence to sustain conviction are separately treated, with particular reference to the troublesome desertion cases. The chapter on offenses contains brief references to acts which are crimes in civil courts and more extended statements with respect to strictly military offenses.

The authors treat at length in several chapters a problem which is not entirely settled: the scope of review of court martial convictions by United States District Courts on habeas corpus. In theory this review was supposed to be limited to determining whether the accused was subject to military law, whether the particular court martial was lawfully constituted, and whether the court was competent to try the particular offense and to pronounce the sentence. Unfortunately the district judges did not stay entirely within the field as outlined by Supreme Court decisions, but tended to extend habeas corpus jurisdiction by labeling procedural steps as "jurisdictional" and equating procedural irregularities with a denial of due process of law. If a particular proceeding is so unfair as to come within the definition of denial of due process as the term is used in the review of state court proceedings, federal district court intervention might be proper, although our authors do not concede it. On the other hand, now that the Congress has provided an elaborate appellate system, headed up by the Court of Military Appeals, for the review and correction of procedural errors, there would appear to be little reason for civil courts to be concerned with them. Currently, inferior federal courts are evidencing a willingness to reconsider certain earlier cases, but the task remains to be completed. In this connection it is to be noted that section 29a of the Uniform Code specifically provides that proceedings shall not be set aside for errors of law unless such errors are materially prejudicial to the substantial rights of the accused. Not the least interesting of the author's chapters is that discussing whether the Court of Military Appeals is developing a new legal concept of "military due process." Over all hangs the

pronouncement of the Supreme Court that "To those in the military or naval service of the United States the military law is due process."

With the continued high numerical strength of the armed services and the further extension of court martial jurisdiction into the reserve, or civilian, components of the services there is an increasing probability of civilian law practice touching the field of military justice. The civilian lawyer who is armed with the latest United States Manual for Courts-Martial and with Aycock and Wurfel's treatise will not easily lose his way.

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