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Readers of the MIAMI LAW QUARTERLY's new section dealing with questions of military law, *The Synopsis of the Decisions of the Court of Military Appeals,* will doubtless be interested in knowing something of the composition and work of the United States Court of Military Appeals, recently established — together with he Uniform Code of Military Justice — through the Act of May 5, 1950.[1]

Originally known in the thinking of the Act's draftsmen as "The Judicial Council," the Court's creation required but a small portion of the Code's total verbiage. Established and invested with jurisdiction in a single Article, the new tribunal consists of three members appointed from civil — not military — life by the President by and with the advice and consent of the Senate. Judges receive the compensation of judges of the United States Court of Appeals, and in general are assimilated to members of that bench. However, unlike them, and most — but not all — other Federal judges, the judges of the Court of Military Apeals do not hold life tenure, but rather are appointed for terms of fifteen years.[2] Unlike most other federal courts also, it is not under the Administrative Office for United States Courts for housekeeping purposes, but rather — and for this purpose only — under the Department of Defense. Finally, unlike the federal judicial situation elsewhere, political affiliation enters the scene — in that under the Act not more than two of the three judges may be appointed from the same political party. Perhaps it should be said here that as originally proposed by the drafting commitee, the Court's members were given life tenure and party affiliation was not in the picture. The present provisions on these subjects developed later, and first saw the light of day in the course of Congressional consideration. The Court sits only in Washington, and has taken over the building, at 5th and E Streets, recently outgrown by the United States Court of Appeals for the District of Columbia.

The Court of Military Appeals takes action only with respect to matters of law, and derives its business from three sources: a mandatory jurisdiction, a certificate jurisdiction, and a certiorari jurisdiction. First, it *must* consider all cases in which the sentence, as affirmed by an Armed Service Board of Review, affects a general or flag officer, or extends to death. These records

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1. 64 STAT. 108, 50 U.S.C. §§ 551-736 (1950).

2. Members of the first, or present, Court hold staggered terms of fifteen, ten and five years.

of trial must come to it for review, regardless of the wishes of the Service concerned, or even of the accused. Second, it *must* review all cases passed on by a Service Board of Review which The Judge Advocate General of the Service concerned forwards to the Court for appellate handling. It will be observed that, although discretionary with the several Judge Advocates General, this jurisdiction is mandatory so far as the Court is concerned. Finally, it *may* review any case passed on by a Board of Review of any of the Armed Services in which the accused has by petition invoked its jurisdiction. This last jurisdiction is, of course, discretionary with the Court and is certiorari-like in character. It is understood that the MIAMI LAW QUARTERLY's new military justice section will regularly carry abstracts of a selection of the more important opinions in all three categories.

It is manifest, of course, that this court cannot expect much business from the first source. Even in wartime the death sentence is not frequent in the military service, and only rarely do generals and admirals become personally involved in court-martial proceedings. The second source will also not burden its members unduly so far as numbers are concerned — although cases within this jurisdiction will tend to involve extremely close questions, or to have to do with sharp Service or Board of Review differences in matters of substance and practice. The bulk of the Court's work, it is obvious, will come from the third category — and experience has certainly shown this to be the case. This is particularly true because in this Court's situation the normal deterrent to appellate review — financial cost to the apellant — is not present. What is sought to be expressed here is the fact that the Uniform Code of Military Justice provides that the costs of an accused as regards briefs and counsel shall be paid by the Government. Because of this, each Service has established in the office of its Judge Advocate General an elaborate parquet of Government and defense appellate counsel, and the services of the latter group are being made available to accused persons whose cases in one way or another come before the Court of Military Appeals. Of course, private counsel may be employed and compensated by appellants, and increasingly such persons are appearing in behalf of convicted accused.

At the close of business on December 27, 1952, 2067 cases had been docketed with the Clerk of the Court. It should be remembered that this is a work load which has accumulated during a period of slightly more than one year. Although the Court has had a *de jure* existence spanning a somewhat longer time — since late June 1951, in fact — some months were required for court-martial records to reach it in any quantity. For practical purposes, therefore, the tribunal regards itself as having been in business since September 1951. Of these 2067 cases, 1965 came up on petition for review, 106 by way of certificate, and 12 were mandatory death sentence cases.[3] No mandatory case involving a general or flag officer has yet reached

3. These figures reflect some slight duplication, in that petitions for review were also granted in 16 cases certified by one or other of the several Judge Advocates General.

the Court. Naturally, the bulk of the case-load has come from the Army. It is, of course, the largest force, and in overseas areas — and particularly under combat conditions — its people are necessarily more often found in situations conducive to the commission of certain sorts of offenses, at least. The Navy has been next most productive of records for the Court's consideration, with the Air Force and the Coast Guard following in that order. Marine Corps cases are, of course, included within the Navy total. As of December 27, 1952, final action had been completed on 1616 of the 2067 docket items reported.

Speaking for myself — and, I am sure, for both of my brethren as well — I welcome warmly the QUARTERLY's new program in military justice. Although individual cases have earlier been the subject of comment in university legal periodicals, *The American Bar Association Journal*, and elsewhere, so far as I know, the present one is the first attempt on the part of a civilian professional journal regularly to bring the product of the Court of Military Appeals to the attention of the Bar. I venture to suggest that this effort constitutes a distinct public and professional service, and one of special importance at the present time. I hope that the program may continue and expand, and I trust — even suspect — that it will meet with a ready response from alert and enlightened lawyers everywhere, and particularly from among members of the Junior Bar. To the members of the Board of the MIAMI LAW QUARTERLY I send greetings, good wishes and congratulations on an editorial innovation of significance.