

Military Law and Defense Legislation. By A. Arthur Schiller.* St. Paul: West Publishing Co., 1941. Pp. xxxiv, 647. \$5.00.

Military Law, since the nation is in arms, is propitiously being adopted as an additional course in many law schools. Columbia University, for example, has included a course on "American military law and those phases of the present defense legislation that relate to the rights, duties, privileges, and immunities of the individual soldier." Professor Schiller is using his book as the teaching vehicle for this course. As stated in the preface, the book is intended for use in a one-semester course meeting three hours a week. The topics selected by the author include the constitutional extent of military power; the organization of the Army of the United States with emphasis on the army personnel and conscription; military law proper, with treatment of military and civil jurisdiction, court-martial organization and procedure, and offenses; and the civil rights afforded the soldier and sailor.

Professor Schiller's book is organized along the lines of the new type of course book¹ resembling, for instance, Michael and Wechsler's recent *Criminal Law and Its Administration*. In his admirable work Professor Schiller has incorporated copious materials in the form of statutes, departmental regulations, and annotations. Law review material is freely cited. The book has a special value because of the related arrangement of its subject matter and the inclusion of material not readily available elsewhere.

In the arrangement of his cases, which are judiciously selected both for the questions discussed and for their illuminating background of facts, the author has not lost sight of the value of observing the historical development of concepts, a value often lost in striving for the modern or the current. For example, in Chapter 1, covering the Constitutional Extent of Military Power, the holding in the leading case of *Houston v. Moore*,² decided in 1820, is highly illuminated by the author's inclusion of the views of Mr. Justice Story and Mr. Justice Johnson, in dissent. Further, for the convenience of the student in search of information on the organization and development of the militia, the author has cited in a footnote the excellent study by one of the reviewer's colleagues in the Judge Advocate General's Department, Major Frederick Bernays Weiner, *The Militia Clause of the Constitution*.³ The author has even cited⁴ an article in the January, 1941, issue of *Fortune* magazine describing the organization of the War Department. In a similar manner, footnotes and annotations are copiously used throughout the book, indicating material shedding a new and different light on the topics to which the footnotes relate. The bench and bar should find in these footnotes valuable reference aids in a field not adequately covered elsewhere.

In Chapter 2, Army of the United States, the author has incorporated considerable extra-legal material, including opinions of the Judge Advocate General of the Army, opinions of the Attorney General of the United States, and Army Regulations. Among the variety of topics in this chapter is one concerning the status of officers and soldiers: their appointment, enlistment and discharge. The author has given rather limited space to "Class B" proceedings, the procedure required for removing from the active list of the army those officers unable to maintain the strenuous pace demanded in a

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¹ Llewellyn, On the Problem of Teaching "Private Law," 54 Harv. L. Rev. 775 (1941).

² 5 Wheat. (U.S.) 1 (1820).

³ 54 Harv. L. Rev. 181 (1940).

⁴ P. 98.

modern army. This is fortunate since Congress has recently provided a more expeditious procedure to vitalize the active list of the army.⁵ Considerable space has been allotted to the topic of conscription. Necessarily most of the cases under this topic arose during World War I or earlier, but the author has included several cases which have arisen under the Selective Training and Service Act of 1940. Excerpts from the Selective Service Regulations and News Releases of the Selective Service System have been inserted under appropriate topic headnotes such as Occupational Deferment, Skilled Workers in Defense Industries, Deferment of Lawyers, and Dependency Deferment.

Chapter 3 covers Military Law Proper, a term which describes the legal system that regulates the military establishment of a state and the discipline of its armed forces. Consideration is given to the sources of military law proper: the Articles of War, Army Regulations and other military publications, and the unwritten military law. Numerous cases delineating the limits of military and civil jurisdiction are included. These are followed by cases and materials descriptive of the army court-martial system. The more essential extra-legal materials in this chapter are excerpts from the Army Manual for Courts-Martial and opinions of the Judge Advocate General. References in the annotations to pertinent paragraphs of the Manual for Courts-Martial, in the nature of cross-references, are well chosen. Take the following footnote:⁶

The disciplinary power of commanding officers for minor offenses, without the intervention of a court-martial, is regulated by AW 104; see also Manual 105-109. The chief problem arising thereunder is whether such disciplinary action does or does not bar court-martial, cf. 1918 Dig. Op. JAG 217; 1924 Dig. Op. JAG 8; 1912-30 Dig. Op. JAG 1433, 1926.

From this concise pointed reference the student is directed to the chief problem arising in the administration of military justice from the exercise of this disciplinary authority by commanding officers. Such careful analysis and thoughtful marshaling of essential material provides a useful reference and guide book for the benefit and convenience of practitioners, students, and teachers.

The fourth and final chapter includes carefully selected cases and materials appropriate to its title, The Soldier's Civil Rights. These cases and materials are illustrative of the soldier's rights under the Soldiers' and Sailors' Civil Relief Act of 1940 which is set forth in its entirety as Appendix III. Appendix I contains the one hundred and twenty one Articles of War, and the Selective Training and Service Act of 1940 is in Appendix II. The index is very complete. There is also a table of the statutes referred to in the book.

Although the book is designed primarily for law class use and effectively fulfills a genuine need for a course-book on Military Law, it should be in the "field kit" of every Army Judge Advocate, within ready reach, for use as a reference book. It represents singularly thorough research and imagination, and, so far as this reviewer knows, there is no comparable book in the field.

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⁵ S.J. Res. 88, 77th Cong. 1st Sess. (Pub. L. No. 190, July 29, 1941).

⁶ P. 469 n. 66.

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