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The Army and the Lawyer

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The Army and the Lawyer[†]

BY MILTON J. BLAKE*

Mr. Chairman, honored guests, fellow members of the bar, it is an honor and a privilege to be here today, together with General McNeil, Assistant the Judge Advocate General, who is representing the Judge Advocate General and his department at this meeting. I have been asked to make a short statement on the subject, "The Army and the Lawyer," in line with the theme of the meeting—"The War Effort—What the Lawyer Can Do." This subject naturally is divided into two main parts—The Lawyer in the Army, and The Lawyer in Civilian Practice. At the outset, it must be understood that the views hereafter expressed are those of the speaker personally and are not necessarily those of the Army or the War Department.

What a lawyer in the Army can do in aid of the war effort depends, of course, upon his military assignment. Those of us who are fortunate enough to be members of the Judge Advocate General's Department are using our legal training in the handling of the legal problems of the Army. Inasmuch as this department is relatively small in numbers, many of the lawyers in the Army are serving in other fields where their legal knowledge has little if any direct application. However, a lawyer's training and experience usually fits him for many of the executive, administrative, and personnel functions of the Army. Thus it appears that the lawyer in the service can substantially further the war effort by using his legal knowledge and experience, either directly or indirectly, in the performance of his assigned duties.

On the other hand, the lawyer in civilian practice, not having his duties assigned to him as does his brother in the service, must seek opportunities to further the war effort.

[†]This address was delivered by Major Blake at the American Bar Association's Regional War meeting in New York City on December 7, 1942. It is printed with the approval of the War Department.

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FIELDS OF ACTIVITY

There are many fields in which the civilian lawyer can render service and assistance to the war effort. One, which I believe is sometimes overlooked or which does not receive the credit to which it is entitled, is the faithful and sustained performance of the every-day practice of the law. With many of the younger attorneys being called into military service, this function falls largely on the older attorneys, which means, among other things, that many of the older attorneys will be called upon more and more to handle minor, as well as major, legal matters, in order that no one shall go unrepresented. This is just one of many ways in which the lawyer can help maintain the home front, that is, the spiritual and moral foundation of the country without which the war effort could not be sustained. Above all, it is imperative that the democratic ideal and the four freedoms, for which we fight, are preserved and protected at home, a task for which no one is better fitted than the lawyer.

Another field of activity open to the lawyer is the doing of volunteer work for the American Red Cross, Army Emergency Relief, scrap collection drives, War Bond sales, and other similar war activities. There are many other fields for service, such as the Advisory Boards for Selective Service registrants and the bar committees on war work, with which you gentlemen are very familiar. As you know, one of the principal functions of the bar committees on war work is the furnishing of legal advice and assistance to military personnel and their dependents. It is concerning this activity that the following remarks are directed.

PROBLEM OF LEGAL SERVICE FOR
MILITARY PERSONNEL1. *Before Entry.*

The problem of furnishing adequate legal advice and assistance concerning the personal affairs of military personnel is very complex. Obviously, there is no one better prepared to do this than the serviceman's own personal attorney, if he has one. Likewise, such matters normally can best be arranged prior to entry on active military service. For these reasons any person who is about to be inducted or who expects to be inducted, should be advised and urged to arrange his personal affairs, with the assistance of an attorney of his own selection, prior to entry on active duty. The War Department has made provision for the granting of a short furlough for this purpose to selectees immediately after induction. However, as many matters require more than the allotted time to arrange, the arrangement thereof prior to induction is advisable.

The Advisory Boards for Selective Service registrants have been, and will continue to be, of material assistance in this regard. To aid the

boards in such matters, the committee on war work of the American Bar Association has provided them with a manual of law, the second edition of which has recently been published. The Office of the Judge Advocate General was pleased to cooperate with the committee in the preparation of parts of the second edition. I assume that you are familiar with this manual.

Accordingly, it appears that lawyers acting individually or as members of committees on war work or of Selective Service Advisory Boards, can render important service by urging their clients or persons with whom they come in contact to arrange their personal affairs prior to induction, and by otherwise publicizing the advisability of making such arrangements.

2. *After Entry.*

After a person has entered upon active military service the proper handling of his personal affairs, although essentially his own private business, becomes a matter of concern to the War Department in that his morale and efficiency as a soldier can be materially affected by such matters. To assist military personnel in arranging their personal affairs, the War Department has recently published and distributed throughout the Army a pamphlet entitled "Personal Affairs of Military Personnel and Their Dependents." This pamphlet was prepared after thorough study of the various problems had been made by the several branches of the service particularly concerned. For example, the section on allotments of pay was prepared in the Office of the Chief of Finance, and the section on wills was prepared in the Office of the Judge Advocate General. The several sections, similarly so prepared, treat with the following subjects among others:

Sec. III. Transportation of dependents and shipment of household goods.

Sec. V. Pay, allowances, and allotments of personnel reported missing in action or captured by the enemy.

Sec. VI. Six months' pay gratuity.

Sec. VIII. Joint bank accounts.

Sec. X. Powers of attorney.

Sec. XI. Estates.

Sec. XIV. Benefits administered by the Veterans Administration (pensions, government life insurance, national service life insurance, etc.).

Sec. XV. Benefits of Servicemen's Dependents Allowance Act of 1942.

Sec. XVI. Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

Sec. XIX. Medical attendance for dependents of Army personnel.

Sec. XX. Army emergency relief.

Sec. XXII. American Red Cross.

Sec. XXIII. Burial if death occurs in military service.

In the introductory paragraphs and throughout the pamphlet, it is pointed out that the advice of legal counsel, necessary to arrange personal affairs, may properly be sought from any of the following:

- (a) The soldier's personal attorney.
- (b) Any civilian attorney he may select.
- (c) A member of a Selective Service Advisory Board.
- (d) A member of a bar committee on war work.
- (e) A staff judge advocate or assistant staff judge advocate.
- (f) A member of the armed forces who is a licensed attorney.

It is evident that the lawyer, whether he is in the service or not, has been and will be called upon to render this very important service for military personnel and their dependents.

For the benefit of those who might wish to obtain a copy of this pamphlet, I repeat the title—"Personal Affairs of Military Personnel and Their Dependents." It can be obtained from the Superintendent of Documents, Washington, D. C., for ten cents a copy.

3. *Personal Affairs Problems.*

It is unnecessary to enumerate the many kinds of problems that arise in the handling of servicemen's personal affairs, as most of them are the same as those which arise in civil life. However, there are some problems that are peculiar to, or are affected by, military service. Probably the most troublesome problem is the many variances in the statutory and case law of the several states concerning the form, content, interpretation, execution, acknowledgment and witnessing of written instruments, particularly wills and powers of attorney. Because of these variances the Office of the Judge Advocate General has consistently adhered to the view that such instruments should be tailor-made to fit the jurisdictional requirements and the particular needs of the individual case, and that the use of standardized forms should be avoided, except with the advice of competent counsel. To illustrate this problem, it is not unusual for a soldier, a legal resident, let us say, of California, who is on duty at Fort Dix, New Jersey, and who owns real property in Louisiana, to request the preparation of a general power of attorney that will enable his wife to "step into his shoes" in regard to all his property, estate and affairs. In such a case it is usually necessary to consider the jurisdictional requirements of the three, or possibly more, states involved, and prepare the instrument accordingly.

An interesting phase of this problem concerns the taking of acknowledgments on written instruments at a foreign or overseas place. Most states require that the place where the acknowledgment is made be shown on the instrument. As such a showing might disclose the location or identity of armed forces or other secret military information, military intelligence officers are sometimes reluctant or unable to permit the delivery of such instruments. Thus we have legal necessity running head-on into military necessity. The cure for this situation appears to be the prompt adoption by the several states of a uniform law which would remove the requirement that the place of acknowledgment be shown on instruments executed by persons "serving in or with the armed forces of the United States." I understand that this matter is being studied by the Commission on Uniform State Laws and by the New York State Law Revision Commission, as well as the War Department. It appears that the bar can render a valuable service by working for the passage of such a uniform law in the several states.

The same is true as to the persons recognized by the various states as having authority to take acknowledgments in foreign places. Many states do not recognize the authority of Army and Navy officers, or certain classes thereof, to take acknowledgments for service personnel in foreign places, although the 114th Article of War¹ provides that:

"Any judge advocate or acting judge advocate, the president of a general or special court-martial, any summary court-martial, the trial judge advocate or any assistant trial judge advocate of a general or special court-martial, the president or the recorder of a court of inquiry or of a military board, any officer designated to take a deposition, any officer detailed to conduct an investigation, and the adjutant of any command * * * in foreign places where the army may be serving shall have the general powers of a notary public or of a consul of the United States in the administration of oaths, the execution and acknowledgment of legal instruments, the attestation of documents, and all other forms of notarial acts to be executed by persons subject to military law."

Similar powers were conferred on officers of the Navy and Marine Corps by the Act of April 25, 1935.²

An amendment to the 114th Article of War is now pending in the Congress, which proposes to extend such notarial powers to the designated Army officers, wherever they may be serving. However, it is doubtful that the passage of this amendment would materially alter the problem as the recognition of any authority so granted apparently still

¹41 Stat. 810; 10 U. S. C. 1586.

²49 Stat. 161.

would be, in all but federal transactions, a matter for determination by the states.

Another troublesome problem, which I am informed is being given attention by the American Red Cross, as well as other organizations, is the arrangement of marriages by written contract, radio, cable, and by proxy, between soldiers overseas and girls in this country who request such assistance. Many of these requests are for the purpose of avoiding the illegitimacy of an expected child. Here again the variances in state laws makes the arrangement of such matters very difficult, especially as to the question of the legality of so-called common-law marriages.

Other domestic problems frequently arise, such as divorce, alimony and support money questions, which are difficult of solution because one of the parties is in the military service. The War Department is frequently asked by the wife or her attorney to take action in such matters, but obviously it cannot do so directly, as that is a matter for the civil courts. In cases where it clearly appears that a person in the military service has not conducted himself honorably in such matters, disciplinary action may be taken, but such action normally does not result in direct benefit to the other party. One phase of this problem that should not be overlooked is the need to guard against the taking of undue advantage by the soldier, or by the other party, of his military service and the disabilities, restrictions, and benefits resulting therefrom in regard to his financial position, and his ability to appear and prosecute or defend civil court actions. In times like these it appears that both parties will sometimes be obliged unavoidably to make sacrifices or suffer prejudices in these matters. Just as we cannot conduct much of our business as usual, so also we cannot conduct many personal affairs as usual.

The protection and relief afforded the serviceman in these and many other matters by the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, is a subject upon which so much has been said and written as to make a discussion thereof unnecessary at this time. Suffice it to say that the law confers large discretionary powers on the civil courts which alone can determine whether the law applies in any given case. Consequently, the War Department has refused repeatedly to interpret the law or to express a view as to its applicability.

Time does not permit of a discussion of the many other problems that have arisen or may arise in the handling of servicemen's personal affairs.

SERVICEMEN'S LEGAL AID CLINICS

As indicated by the foregoing remarks, there is much to be done by the lawyers both in and out of the service for the American soldier and his dependents. The question that next arises is how this work can be

accomplished, that is, how can the lawyer and the soldier come in contact, so that the one can help the other?

Throughout the country, many plans and ideas have been suggested and developed concerning this problem. I believe that most of you have read or heard about the so-called legal aid clinic that has been in operation at Lowry Field, Colorado, since last spring. It is perhaps the most ambitious attempt that has been made so far to solve this problem; certainly it has provided a comprehensive experimental test. The reports from Lowry Field indicate that such a plan is practicable and has done and can do a large amount of good under competent and enthusiastic leadership. I personally had the good fortune to visit the Lowry Field clinic this fall to observe and study its plan of operation. Briefly, that plan provides for the reference of the legal problems of the serviceman to the local committee on war work or other civilian attorneys by lawyer-officers who have interviewed the soldier and determined his needs. Many minor matters can be disposed of by the lawyer-officers without reference to civilian lawyers, other matters require civilian handling, such as those involving court appearance. Periodically groups of volunteer civilian lawyers visit the post to interview and advise military personnel concerning their legal problems. Thus it can be seen that the plan provides a method of contact between the soldier, the lawyer in the service, and the civilian lawyer.

The committee on war work of the American Bar Association and the Office of the Judge Advocate General have been working in cooperation for some time in an attempt to evolve a legal aid clinic plan that can be established uniformly throughout the military establishment. A proposed plan, based on the many plans and suggestions that have been proposed, including the Lowry Field plan, has been prepared and submitted to the War Department for consideration. It is hoped that this or some other feasible plan will be adopted and put into effect at an early date. If and when that happens the civilian lawyers will have open to them a new way to be of service. In the meantime their present activities in this regard should be continued and increased.

In conclusion, I would like to express my personal appreciation for the splendid cooperation and assistance that has been extended to me and other members of the Judge Advocate General's Department during the past year, by your president, Mr. Morris, and by Mr. Gregory and Mr. Beckwith, the present and former chairmen of the committee on war work. The solution of many problems of mutual interest, such as those previously discussed, has been the objective of our collaboration. I hope I have given you a better understanding of the various problems involved, of what has been and is being done to solve them, and of how the lawyer, both in and out of the service, has been and can be of great service to the American soldier, the Army, and to the war effort in general.