

July 2021

The Lawyer's Job in Wartime

Dicta Editorial Board

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

The Lawyer's Job in Wartime, 19 Dicta 55 (1942).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

The Lawyer's Job in Wartime

With our country at war, the lawyer who has played a leading part in the peacetime affairs of his community is not content to remain a mere spectator of the efforts which must obsess all of us for an unpredictable time to come. Naturally his first thought is of military activities, and many of our younger lawyers, and some of the older ones too, have entered the armed forces. But the sense of frustration created by the denial of this privilege to most of us has but increased our desire to serve in other ways.

Aside from the many war related activities open to all civilians, there are, of course, certain obvious emergency duties for lawyers to perform. A partial enumeration would include the work of the committees on national defense of the various bar associations, national, state and local, and the speaker's bureaus organized and staffed by lawyers. We would also include the efforts of our members in the administration of the Selective Service Act, on the advisory boards, the local boards, boards of appeal and as government appeal agents. And in addition, great numbers of men within or about to enter the service have received free legal advice and assistance from members of the bar.

It is far from our purpose to minimize the importance of these activities nor to detract from the credit due those by whom they have been so loyally carried on. But after all, there is only so much of this work to be done, and not every member of the bar can be a public speaker or a government appeal agent. Surely there is some task for every lawyer, something he can do all the time.

There is. And although his efforts will be neither spectacular nor heroic, it is a job more important perhaps than all the others combined. It is a job to which every lawyer must direct the full measure of his wisdom and skill if the existence of the nation as we know it is to be preserved. And it is a job which the lawyer is eminently qualified to perform.

The lawyer's job in wartime is to maintain the home base—not the military or economic base: there are others equally able to do that—but the spiritual and moral base without which a sustained military effort can be neither possible nor profitable.

We are, we hope, in no immediate danger of an invasion of our home shores, but a pincer movement has already been launched against our emotional and political stability. We may expect the enemy to throw in steadily increasing reinforcements in the coming months.

The first line of assault is being directed by the saboteur of the public morale. In the first weeks following the sneak attack on Pearl Harbor when the nation's mind was filled with indignation, this enemy of democracy confined himself to occasional exploratory thrusts. But now that he feels we have been softened by reverses, reverses which every thinking person knew must be inevitable in the early stages, he is arming his forces for an all out assault. Discouraging reports are his weapons and a spirit of defeatism his goal. To him it matters not whether the reports are true or false so long as they are bad. He will seize upon every temporary military or naval set-back to further his cause; every rumor to support his charge. He will foster doubts, doubts in the ability of our armed forces, doubts in the sincerity of our leaders, doubts in the patriotism of our neighbors. He will wave the spectre of an interminable war, hoping to secure an inconclusive peace, a peace which can amount only to a totalitarian victory.

This is the first prong of the pincer and even now is well under way. Soon we may expect the second, which because so insidious is even more dangerous. It will be directed against our entire social and political philosophy.

The basic principle of our democratic ideal is the orderly, impartial and intelligent settlement of disputes—disputes between individuals, between the individual and his government and between governments. As between the democracies and the axis nations, that principle was discarded when war was declared. It had long since been cast aside by the totalitarian governments in their relations with their own peoples. And the racial and religious persecutions by one group against another, which have been encouraged and directed by these same governments, can be regarded only as a rejection of this principle by large groups of individuals in their relations with each other.

The basic ideal upon which our nation was founded has all but disappeared in many lands, and a real danger exists that it may be ultimately lost. There was a time when it was wholly lost, a time, located chronologically between two enlightened civilizations, when might was right in all relations between men and when the battle ax of every man was raised against his neighbor. That period, which we call the Dark Ages, was entirely destitute of art, of science and of learning, and its destitution resulted solely from its loss of the same ideal which the totalitarian nations are now attempting to destroy. And

yet even now there are those among us who are questioning the ability of the democratic processes to cope with the system directing the totalitarian attack. In order to protect our territory, they say, we shall be forced to embrace the savage ideology which we are determined to repel and which, if the world is to have peace and economic security, must be annihilated.

Here then is an opportunity for the bar—to assume leadership in the defense of the public morale and to preserve in our people a passionate devotion to the democratic faith.

We as lawyers have been trained to judge both the weight and credibility of evidence, and while we cannot be expected to accurately interpret conflicting reports of military actions, we can encourage others to apply to the inconsistent claims of belligerents the same rules which we expect the courts to apply in the trial of cases. We can discourage the circulation of unsupported rumors which, whether true or false, can benefit only the enemy. And we can assist others in retaining a proper perspective of events, realizing the seriousness of the hour, yet avoiding extremes of optimism and pessimism.

Above all we must preserve the confidence of our fellow citizens in their ability to govern themselves, nor must they ever forget the toil and blood which through the centuries have gone into the construction of our democratic institutions. We must preserve their confidence in each other. Religious and racial intolerance can have no place in our system. And we as lawyers can do much to prevent the persecution of the foreign-born, those who have fled the oppression of other lands. Regardless of what the evidence of subversive activities may be, it should be reported only to the authorities, lest the innocent suffer a serious wrong or the guilty be allowed to escape.

For more than a decade the democratic ideal has been openly attacked by a cancerous growth. We shall be profoundly affected even though the disease be not finally triumphant. Its revolting manifestations challenge every resource at our command, and its destruction will require the application of heroic remedies. These we are willing to give. Like the individual suffering a malady, until the disease is conquered, we must even give up a portion of that very liberty and freedom of action which the treatment is intended to regain. But we must never lose sight of our ultimate goal. Even though our armed forces were to win every battle, if we at home were to discard the ideal for which they are fighting, then the war must be lost. *“For what is a man profited, if he shall gain the whole world, and lose his own soul?”* The soul of the nation is the democratic ideal of its people, and the battle for the preservation of that ideal can be lost at home.