

June 2021

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Recommended Citation

Leon S. Forman, The Soldier as a Post-War Client, 24 Dicta 83 (1947).

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The Soldier As a Post-War Client†

LEON S. FORMAN *

The increasing rate of discharge of the eleven million average men and women in the armed forces as of V-J Day is rapidly releasing a substantial source of legal business which the legal profession could not adequately develop during the war years. Consequently, any program which has had the effect of creating in this large group of potential clients an awareness of the usefulness of legal counsel must be of paramount importance to all members of the bar. The military legal assistance program appears to have done just that, and an outline of its work should reveal some clues of the extent and nature of the legal business to be expected from the veterans of this war.

Prior to March 1943, legal service was not provided for soldiers by the military authorities except in a rather haphazard fashion. A soldier faced with a legal problem could, of course, consult the judge advocate office of his post. But, there was no prescribed plan for handling such matters. On March 16, 1943, the War Department jointly with the American Bar Association inaugurated the legal assistance program. On July 1, 1943, the Navy Department promulgated a similar program. Supervision of the army's plan was logically delegated to the Judge Advocate General of the Army and the Committee on War Work of the American Bar Association. Legal assistance offices were established at all army posts, and officers and enlisted men of the legal profession were assigned to such offices to render gratuitous legal service to all military personnel who might find themselves in need of a lawyer.

"Good legal practice" was the standard set by the sponsors of the program for the operation of these military law offices. All disclosures by military personnel seeking assistance were to be treated as confidential and privileged and the attorney-client relationship was to be strictly maintained. Legal assistance officers were authorized to correspond directly with "the legal assistance offices of other commands and other appropriate organizations and persons concerning legal assistance matters" to avoid the delays of military channels and to maintain privacy. Where civilian counsel was required or deemed desirable, the matter was to be referred to a civilian lawyer through the appropriate state bar association committee on war work, to a legal aid society or directly to an individual lawyer as the circumstances warrant. Each office received a list of the chairmen of the bar association committees on war work of all states, and the names and addresses of the various legal aid so-

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† The opinions expressed herein are those of the author and do not necessarily represent the views of the War Department or any other federal agency. Reprinted by permission from Commercial Law Journal, March 1946.

cieties. Distribution was also made of a series of pamphlets and other compendia containing information which might be helpful in solving the legal problems of the average soldier.

As long as he was stationed within the continental United States, the average soldier naturally tended to allow his legal problems to lie dormant or to handle them through his family. When he arrived at an overseas replacement depot, which was a staging area for overseas service, his difficulties assumed an added significance, which was attributable in no small measure to the orientation program of such posts, the purpose of which was to urge him to settle, and to assist him with, his personal affairs prior to overseas shipment. Upon his return from overseas, the soldier frequently passed through the same depot, now converted into a redistribution or separation center, and again his personal problems called for attention. The author has spent many months in the legal assistance office of such a post, and the observations which follow are drawn exclusively from his experience in that assignment. The material forming the basis of this article is, therefore, limited to one military installation within the continental United States and is not a complete survey of legal assistance in the entire army. However, there has been sufficient volume and variety to justify the conclusion that the statistics used and the problems discussed are representative of all the armed forces.

It is roughly estimated that about 20% of all personnel processed requested some form of legal assistance. This figure, of course, does not take into account men who had already received legal service at other posts or in civilian life prior to induction. However, there was a certain amount of overlapping since many men who previously obtained legal aid in settling their affairs, nevertheless, sought it again as a result of a change of circumstances or merely to confirm what had already been done. The conclusion is plain that soldiers have become more and more aware of the importance of legal counsel in settling their personal and legal problems.

Approximately 75% of all matters handled at a post of this nature where overseas shipment was imminent consisted of drawing wills and powers of attorney or consulting with soldiers regarding the need for such instruments. The general power of attorney which military personnel usually obtained granted extensive powers to the agent appointed therein and consequently should not be ignored after the grantor's discharge from military service. In the ordinary situation, where the document was drawn in favor of a close member of the family and little use of it has been made, few, if any, problems should be expected. However, it is vital in all cases that the power of attorney be revoked as soon as it is no longer necessary, and it may also be desirable that third parties with whom the agent has been dealing be notified of the revocation. Furthermore, although the authority delegated by the instrument was broad, it was never all-inclusive, and in certain situations questions as to whether such authority has been exceeded may arise.

Everyone who obtained a will at a military legal assistance office was advised to have the will redrawn at his first opportunity by an attorney of the State of his residence. There were two sound reasons for this advice. The witnesses to the execution of the will were normally residents of another State and therefore constitute potential impediments to its probate, which may lead to months of delay and additional expense. Secondly, the will was drafted in most cases by an attorney of a state other than the one in which it would normally be probated. Although the military lawyer is qualified to render legal service and is well supplied by the War Department and the American Bar Association with excellent material relating to testamentary dispositions of property, it seems advisable to have the will redrawn by an attorney who is more thoroughly familiar with the peculiarities of the law of the state of probate. Finally, a great many soldiers have made transfers of property in anticipation of their testamentary desires without the benefit of qualified counsel. These transactions should be carefully reviewed by their personal attorney after their discharge.

Of the remaining 25% of the items handled by the legal assistance office for men about to go overseas, the most usual problem (about one-half) pertained to some aspect of domestic relations—divorce, annulment, custody of children, adoption, military allotments, etc. It has already been pointed out by recent social studies that marital relationships in this country have been seriously affected by the war. The variety of domestic difficulties with which men and women in the armed forces have been faced can be measured by the number who have found themselves involved in this type of legal tangle. Each problem has been different, and a great many are remaining unsolved after the soldier is separated from service.

Numerous men who desired a divorce were unable to institute suit because of the lack of legal proof or the inability to satisfy residence requirements. Some were prevented from commencing legal action because military necessity would not permit them to attend the hearing. When the wife sought the dissolution of the marriage, she usually requested the soldier to execute a waiver of his rights under the Soldiers' and Sailors' Civil Relief Act. Some men signed such waivers in return for a stipulation that no alimony or counsel fees were to be requested. The validity of such agreements with respect to future alimony for support is certainly debatable. Others refused entirely to acquiesce in the action. In a few instances, the divorce was granted by the courts irrespective of the objection of the husband. Such decrees are subject to attack under the Soldiers' and Sailors' Civil Relief Act within three months of the soldier's discharge provided he has a meritorious defense and can show prejudice by reason of military service.

In some states, particularly Florida, Georgia, Nevada, and Arkansas, the courts granted divorces to servicemen and women stationed there even though domicile was not clearly established in accordance with normal standards.

Decrees entered in such cases will of course be subject to jurisdictional attack in other states. Marriages subsequently entered into will stand or fall insofar as the state of residence of the parties accords recognition to the decree of divorce previously obtained. Some servicemen have rushed into subsequent marriages upon the basis of a report that their first wife had obtained a divorce. Where such reports were untrue or where only an interlocutory decree has been entered, the second marriage of course has no legal status. Then, there were the usual number of eligible men and women who separated shortly after the marriage ceremony and never actually lived together. The availability of annulment proceedings to void such marriages will depend upon the law of the particular state involved.

Wherever the marital status of a soldier was confused, his military allotment account with the federal government was likely to be unbalanced. In some cases, women received checks to which they were not entitled under the law, and refunds may be sought by the government. On the other hand, some families have never received their full allotments. It was obviously impossible for the Office of Dependency Benefits to investigate the background of each claim with over 10,000,000 accounts on its books. Where all the facts were not of record with that agency, the burden rested upon parties involved to present acceptable proof of their legal relationship. Many cases will no doubt remain unsettled even after the soldier has been discharged.

When a soldier became involved in domestic difficulties, the custody of his children was rarely settled to his satisfaction. Where he accused his wife or ex-wife, as the case may be, of conduct which rendered her unfit to raise their children, he usually had neither the time nor sufficient proof to obtain legal custody. In some cases, it was impractical for the soldier to institute suit, even though he was prepared to support the charges, because no member of his family was available or willing to care for the children until his return from military service. Since custody of children is never a closed issue in our jurisprudence, a number of these cases will undoubtedly be litigated after the soldier's discharge. In addition, it is apparent that a substantial number of bastardly proceedings will be threatened as an inevitable result of the location over an extended period of time of large groups of young men in communities far from their homes.

The remaining group of matters presented to the legal assistance office encompassed a wide variety of legal problems. Some men had claims which could not be settled because of a disputed question of law or fact and suit was impractical while they were unavailable for trial. Others took advantage of the Soldiers' and Sailors' Civil Relief Act to defer payment of obligations incurred prior to military service. Since the act tolled the statute of limitations, these problems still retain their status as justiciable controversies. A few men had difficulties in connection with life insurance. As an example,

instances occurred where policies lapsed because the men were ineligible for, or did not know of, the premium deferment provisions in the act. Furthermore, a number of soldiers found it necessary to obtain a birth certificate in connection with some transaction in military service and discovered a discrepancy in the name they had been using since childhood. Generally, because of financial or legal obstacles, the institution of a proceeding to change the legal name to conform to past usage was postponed until the post-war period. Since this was a mechanized war, any number of inventions were developed by soldiers in the course of their military duties. Some the army found to be useful in the war effort and were patented through military channels. Others although valuable had no practical usage for the armed forces and the inventors were advised to proceed on their own if a patent was desired. In either event, a soldier-inventor seeking to take full advantage of his product after the war will undoubtedly find legal counsel necessary.

Upon their return from overseas, the chief personal concerns of military personnel, outside of domestic problems, have been income tax and veterans' benefits. Recent tax legislation has relieved enlisted men (including warrant and flight officers) of the burden of federal income taxes on all military pay. Commissioned officers, however, must still file returns and pay whatever tax is found to be due. But, such payment may be spread over a three-year period after their separation from military service. The simplified law of 1944 and 1945 has created few problems in calculating the tax due. However, the 1943 law, which inaugurated the pay-as-you-go plan by combining the 1942 and 1943 taxes and forgiving a portion thereof, caused a mass of confusion. This was augmented by the additional forgiveness granted to servicemen who were on active duty during any part of 1942 or 1943 and whose tax for 1942 was greater than their tax for 1943. Unquestionably, a great many returns will be found to be in error and corrections will have to be made. This will be particularly true in the case of the officer-taxpayer who in the past was accustomed to file joint returns with his wife. It is readily apparent that many officers will be subject to income tax repercussions upon discharge from service.

Just how much legal business will be created by the so-called G. I. Bill of Rights and other veterans' legislation is difficult to foresee. That servicemen are vitally interested in all veterans' benefits is manifest from the number of questions on this subject which they have asked of the legal assistance officer and other qualified personnel. The most popular law is the Servicemen's Readjustment Act of 1944—usually referred to as the G. I. Bill of Rights. It contains several important provisions relating to the overall administration of veterans' affairs with which all lawyers should become familiar. However, veterans will be concerned more particularly with the provisions relating to education, to loans for the purchase or construction of homes, farms and business properties, and to unemployment compensation. Legislation designed

to simplify these provisions of the act and to increase its benefits has been recently enacted into law by Congress. As a result, veterans seeking further education, or a loan to purchase a home should experience little difficulty requiring the assistance of legal counsel. However, where the veteran contemplates the purchase of business or farm property, in order to obtain the government guaranty and its accompanying benefits, he is required to show the necessity for such property in his business, the probability that he will be successful in view of his experience, ability, and the surrounding circumstances, and the reasonableness of the purchase price. Legal counsel will undoubtedly be valuable in the filing of applications for the guaranty of such loans. As the proposed operation for which the loan is sought becomes more elaborate so will the necessity for legal counsel increase.

In connection with unemployment compensation, it should be noted that a claimant will be disqualified if his unemployment is the result of "a stoppage of work which exists because of a labor dispute" at the establishment in which he is employed. However, he will retain his eligibility if he is not participating, or directly interested, in such labor dispute and no member of the class or grade of workers to which he belongs and who were employed at the premises immediately before the strike is participating, or directly interested, in the dispute. Since the strike problem appears to be a permanent fixture of the post-war era, this section is likely to become the source of a wide variety of legal disputes.

In addition, there are a host of other acts administered by the Veterans' Administration providing monetary benefits for veterans and their dependents in case of death or disability. It would serve no useful purpose to detail them here. However, lawyers who intend to represent veterans in the presentation of claims to the Veterans' Administration will have to comply with Section 201 of Public Law 844, 74th Congress, June 29th, 1936. Under this act, practice before the Veterans' Administration is subject to regulation by the Administrator of Veterans' Affairs and an attorney must be recognized by that official before he can represent a claimant. Fees are determined by the administrator and cannot exceed \$10.00 in any one claim.

Finally, lawyers who intend to make clients out of discharged soldiers should know the reemployment privileges granted by the Selective Service Act, under which a veteran meeting certain conditions is entitled to his old job. Disputes have already arisen under this act requiring the services of legal counsel and will no doubt continue to arise. There are three potential sources of conflict in the law. First, the veteran must still be qualified to perform the duties of his former position. Secondly, the employer is required to restore him to his former position or to a position of like seniority, status and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so. Finally, the veteran may not be discharged without cause for one year after he resumes his former employment.

Undoubtedly, the question of seniority, particularly where a labor union is involved, will constitute the principal obstacle to reemployment. However, the veteran may apply to the United States Attorney for his district in the event of a dispute under this act, and that official, if he is reasonably satisfied that the veteran is entitled to the benefits of the act, is required to act as his attorney, without fee, in the settlement of such dispute and, if necessary, in the institution of an action to obtain the employer's compliance.

It is evident that veterans of World War II are leaving military service with more than the usual number of personal problems unsolved. To what extent they will take their difficulties to members of the bar for assistance no one can predict accurately. As long as legal proceedings are not required, the returning soldier may be reluctant to pay a fee for other forms of legal service until he is satisfied that an attorney is likely to obtain the best results in the handling of his affairs. Politicians, bankers, real estate and insurance brokers, accountants, notaries public and similar agencies are still available. Also, in view of the services offered by the various veterans' organizations specializing in veterans' problems, the volume of work which lawyers will be called upon to perform solely in connection with veterans' benefits will probably be very small. Furthermore, regardless of the availability of such organizations, lawyers generally will not be inclined in the ordinary situation to charge more than nominal fees for this type of legal service. But, the legal profession should not overlook the veteran of this war as an immediate and continuing source of other forms of legal business—a source, however, which to a great degree will require orientation in the wisdom and comparative economy of legal counsel in conducting business and personal affairs. The goodwill which a legal practitioner will create in the immediate post-war period by the successful handling of a veteran's problem, whether it pertain to his personal or business affairs or merely to some benefit under a federal statute, will be immeasurable in determining whether such veteran and no doubt other veterans will consult legal counsel with regard to personal or business matters arising after they have once again become a part of the ebb and flow of normal civilian life.

The legal assistance program has served, and is continuing to serve, as an ever-widening background for the general practice of law in the future because by its work military personnel are becoming more and more aware of the usefulness of legal counsel. Although this survey is in no way intended as a detailed report of the operation of the complete program, it is believed to be sufficiently analytical to indicate the potential status of veterans of World War II as post-war clients and may well serve as a starting point for further studies along more specific lines. The legal practitioner will be better able to demonstrate his value as the most qualified counselor of veterans of this war if he knows in advance, and can thus prepare for, the type of problem with which this class of potential clients will be faced.