

LAWYERS AND MORALE

JOHN S. BRADWAY †

Traditionally, the lawyer has been a leader in national emergencies. By stirring public addresses and personal example he has directed his attention and his abilities as a leader in his community largely to the problems of civilian morale. The present world war crisis offers him a wider opportunity. Among the causes which tend to lower the morale of service men, some may be corrected by the application of resources from the field of law.¹ The lawyer may place himself in a position to contribute his skill and knowledge directly to the war effort.

TYPES OF LEGAL PROBLEMS AFFECTING MORALE OF SERVICE MEN

Legal difficulties which become more obvious during a national emergency and which tend to lower the morale of the service man and his family may be classified in a variety of ways. The following brief list is illustrative rather than all-inclusive:

- a. Unfinished civilian problems arising before the induction of the service man and which he brings with him.
- b. Matters connected with the induction process and covered by the Selective Service Act of 1940.
- c. Difficulties from civil life arising after induction.
- d. Disciplinary crises in the service.

The problems relating to the induction process and to military discipline have long been recognized and are of considerable variety.² The nature and extent of the other difficulties are becoming clear.

† A. B., 1911, A. M., 1915, Haverford College; LL. B., 1914, University of Pennsylvania; member of the Pennsylvania, California, and North Carolina bars; Professor of Law at Duke University School of Law; contributor to various periodicals.

1. The Soldiers' and Sailors' Civil Relief Act of 1940 anticipates that such difficulties arise in connection with rent, installment contracts, mortgages (Article III), insurance (Article IV), taxes and public lands (Article V). See also Cabaniss, *New Soldiers' and Sailors' Civil Relief Act Suspends State Court Civil Actions* (1940) 15 CALIF. S. B. J. 353; Cockrill, *Soldiers' and Sailors' Civil Relief Act of 1940* (1941) 27 A. B. A. J. 23; Stewart, *The Assignment of Claims Act of 1940* (1941) 29 GEO. L. J. 486; Announcement under the National Defense Act of 1940, 3 COMP. L. SER. 454; Note (1941) 9 GEO. WASH. L. REV. 687.

2. Soldiers' and Sailors' Civil Relief Act, 1940, 54 STAT. 1178 (1940), 50 U. S. C. A. App. §§ 501-585, as amended by Pub. Law No. 732, 77th Cong., 2d Sess. (October 6, 1942). See also Skilton, *The Soldiers' and Sailors' Civil Relief Act of 1940 and the Amendments of 1942*, *supra*, this issue, at page 177.

For a history of such legislation in the United States, see Cabaniss, *New Soldiers' and Sailors' Civil Relief Act Suspends State Court Civil Actions* (1940) 15 CALIF. S. B. J. 353; Cockrill, *Soldiers' and Sailors' Civil Relief Act of 1940* (1941) 27 A. B. A. J. 23. The English wartime legislation is more embracing and puts greater discretion

Available information is obtainable largely from the records of the National Association of Legal Aid Organizations. For over sixty years legal aid societies³ have acted as observation posts inspecting the stream of legal difficulties affecting the common man in the United States and gathering unique data on the subject. The types of cases cover a wide range of fields of law, for example:

Contractual problems, such as: wage claims, small loans, small insurance policies; purchase of goods on the installment plan, small debts.

Tort matters, such as: workmen's compensation, slander and negligence.

Domestic relations cases, including legal difficulties between husband and wife, and between parent and child.

There is no need to spell out the entire list. Since the civilian is afflicted with problems which require relief by law, it does not require much imagination to picture him as having similar troubles after his induction.

The service man with respect to his civilian problems in the field of law has the right, depending upon his means, to secure the services of a lawyer⁴ or to appeal to a legal aid society just as he might do in civilian life. The Soldiers' and Sailors' Civil Relief Act of 1940⁵ makes further provision, largely by creating a moratorium in his favor as to certain of his obligations.

One desirable step is to improve the law. Such improvement is being made;⁶ and the files of the legal aid societies are sources of reliable information on points which need remedying.⁷ But changes in the

in the courts; see Carr, *Crisis Legislation in Britain* (1940) 40 COL. L. REV. 1309; *The Courts (Emergency Powers) Act, 1939 and 1940* (1940) 5 CONVEYANCER AND PROPERTY LAWYER 4. For an index to English Emergency Legislation and Regulations, see (1940) 5 CONVEYANCER AND PROPERTY LAWYER 96. See also, *Australian War Service Moratorium Regulations* (1941) 15 AUST. L. J. 70, 71, 42, 1, 101. As to Canada, see Francis, *War Measures Act* (1941) 19 CAN. BAR REV. 452. As to Ireland, see *Emergency Powers Acts, 1939-1940* (1940) 74 IR. L. T. 301. Hilder, *Military Justice*, Jr. Bar Conference of the A. B. A., Aug. 1941; Cray, *The Soldier's Day in Court* (1941) 17 LOS ANGELES BAR BULL. 36; Betts, *Constitutional Powers and Limitations Respecting the Military* (1941) 8 D. C. B. A. J. 407.

3. SMITH, JUSTICE AND THE POOR (1919) 133-249; MAGUIRE, THE LANCE OF JUSTICE (1928) 218 *et seq.*

4. Smith, *War, National Defense, and the Organized Bar*, N. A. L. A. O. Bulletin No. 129.

5. Soldiers' and Sailors' Civil Relief Act, 1940, § 100: "In order to provide for, strengthen, and expedite the national defense under the emergent conditions . . . provision is hereby made to suspend enforcement of civil liabilities, in certain cases, . . . in order to enable such persons to devote their entire energy to the defense needs of the Nation. . . ."

6. See *Hearings before Committee on Military Affairs on H. R. 7029, 77th Cong., 2d Sess.* (1942) 65-75. Note also the recently enacted amendments to the Soldiers' and Sailors' Civil Relief Act, Pub. Law No. 732, 77th Cong., 2d Sess. (October 6, 1942).

7. TENTATIVE BIBLIOGRAPHY OF MATERIAL ON LEGAL AID WORK (N. A. L. A. O., 1940) 65-68, 79-98; REPORTS OF COMMITTEES, N. A. L. A. O., 1937-1938, 72-74; PROCEEDINGS OF THE N. A. L. A. O., *Discussion of Reports of Committee on Installment Contracts* (1938); ADVANCE PROGRAM OF THE 64TH ANNUAL MEETING, A. B. A.

law are only a part of the problem. Another task is to bring together the client, the problem and the lawyer or legal aid society so that individual remedial or preventive work may be begun. The lawyer, as a social engineer, may assume that a realistic approach involves a series of organizational steps of which four are mentioned here:

a. Existing facilities, such as legal aid societies, bar associations and patriotically-minded members of the bar are being mobilized to meet the emergency.⁸

b. The committees or other agencies thus established are being supplied with adequate ammunition in the form of general and specific information.

c. A supervising system might well be provided to insure minimum standards of quality and some uniformity in the administration of legal services rendered.

d. Special arrangements may be made to acquaint the service man with the existence of, and to facilitate his efforts to make use of, the remedy.

It appears that substantial progress has been made in the organizational aspects of the program. In carrying out the task of distributing information to the legal aid societies and bar association committees, further cooperative steps have been taken.⁹ But, too little has been done

(1941) 87; REPORT OF COMMITTEE ON LEGAL AID WORK OF THE A. B. A. (1941); REPORT OF THE COMMITTEE ON NATIONAL DEFENSE OF THE N. A. L. A. O. (1941) 42 *et seq.*

8. Report of the Special Committee on National Defense, ADVANCE PROGRAM OF THE 64TH ANNUAL MEETING, A. B. A. (1941) 160 *et seq.*; Resolution on Appointment of Committee on National Defense (1940) 26 A. B. A. J. 759; Proceedings of the N. A. L. A. O. at Baltimore, 1941, unpublished address by E. R. Beckwith; (1941) 43 N. C. BAR ASSOC. REP. 22-30; (1940) 12 PENNA. B. Q. 332, 351; REPORT OF THE COMMITTEE ON NATIONAL DEFENSE OF THE N. A. L. A. O., presented to the Executive Committee, January 5, 1942, and included as appendix "B" to the Secretary's Report to the mid-winter meeting of the Executive Committee. For a recent report on the development, see War Letter, Vol. 1, No. 1, July 1942, published monthly by the American Bar Association Committee on Coordination and Direction of War Effort.

9. Selective Service Regulations, Vols. I-IV; Manual of Law for Use by Advisory Boards for Registrants, A. B. A.; see also, Selective Service Circular No. 182; Anthony, *Martial Law in Hawaii* (1942) 30 CALIF. L. REV. 371; Fairman, *The Law of Martial Rule and the National Emergency* (1942) 55 HARV. L. REV. 1253; King, *Legal Education in the Army* (1942) 22 BOSTON L. REV. 266; King, *The Army Court-Martial System* (1942) 3 ALA. LAWYER 277; Moulton, *Post-War Administration of Criminal Justice* (1942) 22 BOSTON L. REV. 232; Smith, *Martial Law and the Writ of Habeas Corpus* (1942) 30 GEO. L. REV. 697; Taintor and Butts, *Protection of Individuals and of the Nation Under the Selective Service Acts of 1917 and 1940* (1942) 14 MISS. L. J. 445; *Organization of the Bar for War Activity* (May, 1942) 2 LAWYERS' GUILD REV. 33.

The C. I. O. during the summer of 1942 issued *Service Man's Manual*, which contains among other information a list of the names and addresses of the various legal aid societies. In 1939 the Boston Better Business Bureau issued a pamphlet *Facts You Should Know About a Few Legal Problems*. Cf. HANDBOOK OF LEGAL SUGGESTIONS FOR SOLDIERS AND SAILORS AND THEIR DEPENDENTS (Boston Legal Aid Society, 1918).

in the matter of setting up and maintaining standards of service and some degree of uniformity of administration.¹⁰

Even more important is the creation and maintenance of a national information service by which local court or other rulings in one community on particular classes of cases may be quickly available to other interested local groups elsewhere confronted with similar problems. The effectiveness of the remedies provided from the standpoint of the service man himself is impaired by distance. Geographically, the prospective client may be stationed hundreds or thousands of miles from his home. From time to time, on short notice, he may be transferred to a different location even further away. There is difficulty in communicating with him. Another sort of "distance" is psychological. He may not realize that the problem which is worrying him has legal implications. He may not know lawyers are ready and willing to aid him. He may not know any particular lawyer. He may hesitate to ask for help from his superior officer. Since the service man cannot readily come to the remedy, it is reasonable to attempt to discover whether the remedy may be brought to the service man.

The creation of enormous training centers for hundreds of thousands of men has resulted in a sudden substantial regrouping of population. A training camp is a city in itself, and as such, requires and is reasonably entitled to many of the conveniences of civilian cities. A training camp with 100,000 soldiers is comparable, in some respects, to a civilian city of perhaps twice the size because in the latter will be found women, children and aged persons, while in the former, though these elements are absent, their problems as affecting a service man are no less present. It is the experience of legal aid societies that one client per year for each one hundred of the population is within the limits of reasonable expectation.¹¹ This figure provides a rough measure to be checked against experience.

Legal aid service is now in operation at several camps, of which Fort Bragg, North Carolina, is an illustration. The idea was developed at a conference in the fall of 1941 in which representatives of the Legal Aid Committee of the North Carolina Bar Association and the Duke University Legal Aid Clinic appeared on behalf of interested and active legal agencies in North Carolina. The State Office of Selective Service and the Judge Advocate's Office at Fort Bragg represented the military forces.

10. The rules relative to charging fees for such legal services as considered by the American Bar Association are referred to in *Memorandum for State and Local Bar Associations from the Committee on National Defense of the American Bar Association No. 3*, issued March 25, 1941.

11. REPORT OF COMMITTEE ON LEGAL AID WORK OF THE A. B. A. (1941) Appendix; ADVANCE PROGRAM OF THE 64TH ANNUAL MEETING, A. B. A. (1941) 87.

No written document testifying to the details agreed upon was prepared. Rather, the conference favored a simple flexible experiment to which various contributions could be made as a need therefor was demonstrated. The main points of agreement were that civilian lawyers would be available on a regular schedule, that quarters would be supplied where the work might be carried on, and that information of the availability of the service would be brought to the attention of the service man. Office space was secured. The rooms were open for this service one afternoon each week between the hours of one and five. Office equipment in the form of tables and chairs was supplied. Lawyers and stenographic service were contributed during the experimental period by the Duke University Legal Aid Clinic.

In due course the arrangements were changed. The "office" which at first was in the Court Martial Room of Post Headquarters was moved to the Parish House and later to the Red Cross Building. The afternoon hours appeared to be inconvenient for the soldiers, so the time was changed to early evening when there was a lull in the training program. A committee of lawyers from Fayetteville, North Carolina, took over the service when transportation problems became serious. But the cases were still handled with a minimum of red tape.

On this simple foundation the work has been inaugurated. It cannot be reasonably expected that a service of this sort will function perfectly and comprehensively overnight. But a beginning has been made. The present data indicate as of the time of writing a fair number of requests for aid with every reason to expect a considerable increase when the idea becomes more completely a part of the thinking of the man in the training camp. This is heartening.

The types of services which the lawyers who volunteer have been asked by the soldier to render are the following: appearances in courts-martial, cases involving soldiers on leave from the military reservation, civilian matters requiring advice only, civilian matters requiring a procedure to put the soldier in touch with a competent lawyer elsewhere.

There is little or no justification for the lawyers of the legal aid service to appear on behalf of defendants in courts-martial, or applicants for discharge from the service. These problems are disciplinary or within the area of exclusive military judgment and are better handled by the orthodox machinery set up by regulations. Cases arising out of situations when the soldier is on leave represent an interesting but complicated situation. The soldier who finds himself in trouble away from the camp may present a matter for discipline either by the civil or military authorities. For a civilian lawyer to attempt to intrude into the picture may be confusing rather than useful. On the other

hand, if the soldier has been a victim of some local "racket", he may need protection. If the military regulations provide no such protection, civilian aid may be quite effective.

It is too soon to lay down categorical rules as to how such matters should be handled or even considered by the agency. All legal aid societies are available as sources of information on such matters and in due course conclusions will be available.

The bulk of requests for aid received to date fall into the groupings of (1) civilian problems which need advice only, and (2) those which call for correspondence to put the soldier in touch with a competent and willing lawyer in the home community or the locale where the legal problem must be resolved. It is here that the relationship between the soldier and the established bar association committees and legal aid societies is perfected and the gap closed.

The following analysis of the first one hundred applications at Fort Bragg may be of interest as a matter of illustration.

The cases had to be worked out in many states: Alabama 1, Georgia 2, Michigan 1, Missouri 1, New Jersey 5, New York 8, North Carolina 58, Pennsylvania 9, Virginia 2, Ohio 2, Texas 2, Tennessee 2, Maine 1, Connecticut 1, Illinois 1, Florida 1, Indiana 1, Canada 1, Panama Canal Zone 1.

The type of problem showed also considerable variation: real estate 6, landlord and tenant 3, purchase of automobile 7, negligence case 7, domestic 12, tax returns 28, installment contract 2, small loan 3, complaint vs. attorney 1, foreclosure of mortgages 3, documents drawn 11, insurance 1, miscellaneous 16.

In the matter of disposition the grouping is limited: prepared documents 12, advice 37, secured lawyer to handle 9, information obtained 36, declined 5, desired results obtained 1.

CONCLUSION

It is too soon to draw final conclusions but it is clear that a need for the service exists; that the experience of legal aid societies may be utilized effectively in military camps; that the service should be extended as rapidly as may be done with due regard to quality. There is reason to believe that such a program of expansion will be undertaken. But the subject has a broader aspect than might be imagined if we are inclined to regard lightly the cases in which advice was given. And even if no applicant ever appears, the fact that the service is available is a demonstration that the bar is prepared in fact as well as in theory to make good the constitutional promises of "equal protection of the laws".