The Non-Commissioned Lawyer in Military Service

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The Non-Commissioned Lawyer in Military Service

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THE PERMANENCE AND SIZE of our peacetime military obligations have made military service a factor in the life of almost every American family. We can count on seeing most of our young men enter and for a year or two become subject to a relatively closed system. Whatever problems they may have are taken care of by persons and legal procedures to a great extent unknown to us. This unfamiliarity, coupled with vague, long-ago absorbed impressions of military justice, gives rise to a natural suspicion and apprehension concerning these procedures. At times when public airing is given to some difficult military case, this feeling may explode into resentment and vilification.

If there is justification for this attitude, our professional responsibilities as lawyers as well as our personal concern require investigation. Vague disclaimers of injustice based upon a supposed "need for discipline" should never lull us. Military service is governed by law and within this system there are specific groups of persons charged with its administration. Most of these are the members of the Judge Advocate General's Corps or department, and an exposition of the structure of these branches should help illuminate the services' methods of operation. The others, however, are the many young law graduates drafted into military service as enlisted men. It is their present and potential role in military justice that this article intends to explore. The law-trained enlisted men can and do play a vital role in the administration of military law and the maintenance of the proper balance between the rights of the individual and the demands of the military.

The "military lawyer" is found in the judge advocate's office of the appropriate headquarters. Basically, this will be with every unit large enough to have been awarded general court-martial jurisdiction over its members. In practice this is the division. Any other unit having this jurisdiction will also have a judge advocate's office. Occasionally the organization is smaller and does not have criminal jurisdiction but has a legal office because of the peculiar functions it performs, for instance, an Army procurement center. Finally, of course, all headquarters above division level; that is corps, armies and theaters, have a judge advocate's office.

While military justice occupies the public imagination, the judge advocate's office has other important duties. It is legal advisor to the commander and to the whole organization. The judge advocate supervises the legality of procurement activities, the processing and possibly determination of claims, and both operates and supervises the legal assistance bureaus within the unit. The office's structure reflects these functions. At any location the various attorneys will be given the legal assistance, claims, military affairs and military justice "portfolios."

The Army's table of distribution calls for an approximately five-man legal staff at division level: The judge advocate, his executive and three company-grade attorneys. The latter are usually reserve first lieutenants, young law-school graduates fulfilling their draft obligation by this three-year tour of active duty. Their senior, however, may be a career officer, usually a captain. The top two men are normally a lieutenant colonel and major. The junior three are the trial team; and the senior among them (if a captain) or the executive is the law officer, analogous to the civilian judge in a criminal case. One of them is also, of course, supervisor of legal assistance. Under him, however, are one or more enlisted attorneys who perform the legal assistance work at division level.

At the next lower level, each regiment has a "courts and boards" office, which runs the inferior court-martial system of this organization. These courts are the special court-martial, which can give a maximum sentence of six months' confinement and reduction and forfeitures of pay, but no dishonorable discharge; and the summary court-martial (at battalion or post level) which may impose a one month sentence and some reduction in grade. This office also, of course, is set up to dispense legal assistance to the unit it serves. It is manned by enlisted men, and they are almost always attorneys.

Since trial personnel before the special court-martial need not be attorneys, officers who perform such function may be more or less attached to this office on a rotating basis. Usually, however, the courts and boards office is under the absentee control of the adjutant or personnel officer of the unit.

The problem here is not that untrained personnel run these offices, it is trying to find spots for the surplus of enlisted attorneys or law school graduates. Everyone who
has been with a judge advocate's or courts and boards office knows the frequent amusing situations that arise here.

The rotation or discharge date of the incumbent is a precious secret of the aspiring attorney who at the moment is "only" battalion personnel clerk or company clerk; the "Phogg University" group gets one of its men in and he bends every effort to find or invent vacancies in his office; the young judge advocate officer at the division is visited by a steady stream of classmates or friends of classmates for whom he runs a private employment agency; the colonel is cornered weekly by his lieutenants who insist that the "library" or the claims file room should be run by law school graduates or who ask him to put out a technical directive requiring the typists in courts and boards offices to be attorneys.

The trite but true answer is of course that there are not enough positions formally requiring legal skills in the Army to take care of the thousands of young law school graduates serving their draft obligations.

Every effort is made to put these young men where their legal skills may be even remotely valuable and in fact these skills are appreciated. However, it is their peripheral, incidental abilities which often can be put to the best use. Most young attorneys or graduates can read and write; they can type well; they can go through long reports and digest them; they can handle paperwork expeditiously; they may even have enough educated common sense to be of help in personnel and boards offices.

As is obvious from this listing, such a person will be the delight of any unit commander who must deal daily with these administrative problems. It should be expected and it is the case that these commanders, especially at company and battalion level, wish to have a lawyer as company clerk if possible; not because of his title but because he can discharge these assignments well.

The difficulty lies in bringing the young enlisted attorney to an appreciation of his value in this type of work. It is not glamorous enough for anyone with dreams of unfolding latent powers as defense attorney during his two year stint. Consequently, a very real source of experience and judgment is often wasted and able young men find themselves filing papers in an army security or counter-intelligence office because the line of work sounded more exciting than did the company clerk position.

Nevertheless, a company clerk is the administrative assistant to the head of an organization of 150-250 men. With any kind of common sense, education and personal amenability, such a person can expand his job to that of counselor to the chief. He must, to be sure, know his own limits and the often arbitrary foibles of Army status relations. But given those, he may well be able to gain the complete confidence of the commander. Every business firm today operates with an attorney close to and checking almost every decision made; the Army is no exception.

It is a wise unit commander who goes over his proposed administrative actions with a legally trained assistant, and a good law school graduate can find no better place to develop his feeling for personal relationships and the art of giving good advice than in such a position. Even more important, no one else is better placed to temper arbitrary conduct and to remind those in a position to exercise power over others of the proper perspectives involved. If more enlisted law school graduates would enter service with the idea that this type of position—which will almost certainly be available to each one—is valuable, both they and the Army will be the gainers.

And finally, the United States will be the gainers. Where better can the public conscience stand watch over military control of our citizen-soldier than at the very level at which that day to day control is exercised? Discipline that asserts its own necessity against justice is not discipline.

No one can better exercise that attitude, fortunately not a common one, than a person schooled in the law and in the resolution of the conflicts implicit in the phrase "law and order." And when such persons are present on the very fields of these disputes each one individually is more valuable than any watchdog committee ever devised by the Congress.

About the author...

MR. BUXBAUM is presently associated with a Rochester, New York law firm, and is a member of the American Bar Association's Section of International and Comparative Law and the New York and California Bar Associations. He received his LL.B. from Cornell Law School in 1952 and after earning an LL.M. from the University of California served as an enlisted man in the United States Army Anti-Aircraft Artillery. Mr. Buxbaum was subsequently commissioned in the Judge Advocate General's Corps and served on the Headquarters staff of the United States Army--Europe, at Heidelberg, Germany from 1954 to 1957.

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