

DIALOGUE

Winter 2010
VOL. 14, NO. 1

News and Perspectives from the ABA Division for Legal Services

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From the Chair...



By Donald J. Guter, RADM JAGC USN (Ret.)

Standing Committee on Legal Assistance for Military Personnel

The proposition that low-income American service men and women should be statutorily entitled to civil legal assistance services is bedrock ABA policy, reaffirmed by the House of Delegates in 2007 and adopted as a top ABA legislative priority in conjunction with ABA Day activities in 2009.

Underlying that policy is the association's recognition that in today's environment, adequate and reasonably available personal legal services, delivered by lawyers and backed by other legal resources, are as essential to a servicemember's well-being as routine medical or dental care or adequate housing. Our armed services have long observed the nexus between our fighting forces' morale and fitness to go to war undistracted by personal legal issues, on the one hand, and the availability of civil legal assistance to our warriors, on the other.

Yet, with the important recent exception of the Army legal leadership, the services remain reluctant to support new federal law that would elevate military legal assistance from a benefit left to the discretion of the service secretaries, to an entitlement mandated under an amended 10 U.S.C. § 1044. The services historically pointed to concern that an unfunded legal-assistance mandate would saddle them with the obligation to spend more on legal assistance staffing and programming without new funds necessary to do the job, thus forcing them to divert money from other essential services.

I would submit that, in the wake of seven years of draining military engagement in Iraq and Afghanistan, it is time for fresh thinking on the question of whether we as a nation can afford to guarantee that those whom we place in harm's way will have reasonable access to civil legal services, as a matter of right. The better question, in my view, is whether we can afford *not* to guarantee, in our laws, that these Americans serving and defending their country have reasonable access to civil justice. What

would it say about us, as a nation of laws and a nation deeply in debt to those who serve, if we do not take this minimal step toward ensuring access to civil legal services for our servicemembers?

Of late, a chorus of political observers of every stripe has noted that doing the right thing seems out of style -- if not out of sight -- on Capitol Hill, with partisan posturing trumping statesmanship. But I have faith that Congress can be persuaded to do the right thing by our service men and women in this area, if only we advocates can do our jobs by effectively framing the issue as a question of right – a question of entitlement. Cost concerns are palpable, as they must be in this time of out-of-control deficits. But I, as well as other former Judge Advocates General, do not believe that significant additional budget allocations need flow from enactment of a legal assistance entitlement statute. That said, a statutory entitlement would accomplish the critical mission of setting minimally adequate standards to ensure that our warriors have lawyers to help them through difficult personal legal challenges – from landlord disputes to dissolution of marriage and child support, to creditor disputes – while they carry the fight for the rest of us.

Significantly, the largest legal assistance provider, the Army, not only now supports legal assistance entitlement, and has done so for several years, it would not even limit that entitlement to lower-income enlisted personnel.

A statutory mandate would ensure some minimum level of consistency, in the quality and quantity of legal assistance across the services. The notion that a member of one service might have markedly better access to effective legal help than a member of another service defies reason and right, and is outdated. An entitlement statute would even the playing field in that respect.

While I have heard it suggested that legal assistance entitlement would create a significant cost burden by compelling the deployment of judge advocates to every remote military housing so much as a handful of service personnel, that is a lawyer's argument that rings hollow in this era of instant global communication. Modern technology allows remote, secure, confidential communications between lawyer and client whenever face-to-face consultations, though preferable, are unavailable due to distance. I cannot envision any re-shuffling of JAG assignments being necessitated by enactment of a military legal assistance entitlement statute.

The evidence is overwhelming that this generation of servicemembers is operating under enormous personal strain as a result of our interminable Middle East engagements. The accompanying article by my fellow LAMP Committee member David Bizar, on the problem of soldier suicide and what Judge Advocates might do to try to mitigate it, speaks to one terrible manifestation of that strain. For huge numbers of service women and men, the personal problems generated by long years away from home and job have become trying legal problems. The need to address those legal issues

is great, and not easily met. We as a nation owe it to our servicemembers to make minimally adequate legal services available to assist them with their civil legal challenges, which in so many instances exist as a direct consequence of their long, hard service to country.

The question is not and cannot be whether the minimal dollar outlay required by a statutory mandate is affordable. It is simply a question of codifying at long last what we who are in, or from, the military know to be right and true: Our service men and women are entitled to it, for they have earned it by their service, and it is integral to effective military performance in this era.

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Updated: 02/17/2010