1942

The War Manpower Program and the Lawyer

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Recommended Citation

Gavit, Bernard C., "The War Manpower Program and the Lawyer" (1942). Articles by Maurer Faculty. Paper 1100.

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The War Manpower Program
and the Lawyer*

The practice of law is not a war industry. It is a governmental service, because the ultimate function of government is the formulation and administration of law. In time of war emphasis shifts from the ultimate to the immediate. Lawyers will be called upon to exercise their powers of leadership and utilize their abilities to assist in a fair administration of this program.

By the Hon. Bernard C. Gavit
General Counsel of War Manpower Commission

On April 18, 1942, the President, under Executive Order No. 9139, established the War Manpower Commission with the Administrator of the Federal Security Agency as Chairman. The other members of the Commission consist of a representative of each of the following: The Department of War, the Department of Navy, the Department of Agriculture, the Department of Labor, the War Production Board, the Labor Production Division of the War Production Board, the Selective Service System, and the United States Civil Service Commission. On June 22 the President added two representatives to the Commission, one from the National Housing Agency, the other a joint representative of the War Shipping Administration and the Office of Defense Transportation.

The Commission acts in an advisory capacity to the Chairman, who has power, after consultation with the Commission, acting for the President under his executive powers, within the limits of those powers, to deal with the manpower problems of the Government and the Nation. The Chairman may issue directives to all governmental agencies which perform functions relating to the recruitment or utilization of manpower. He may thus formulate the manpower policies, and direct their acceptance, both so far as Government as an employer is concerned, and so far as its various agencies contract with and deal with private employers. He has, for example, some power over the allocation of war production contracts, insofar as labor supply is a pertinent factor. Otherwise, in the field of private employment, the Chairman may only issue policy statements for the guidance of employers and employees. Concededly the President has no executive power in that field which would sustain compulsory action.

In the field of medical and dental personnel the Chairman, through the Office of Procurement and Assignment, which was transferred to the War Manpower Commission, has some control over the problems in that field. The Office has the dual and difficult function of protecting civilian needs and assisting in fulfilling the needs of the armed forces. It is a cooperative venture between Government, the medical and dental professions, and the armed forces.

The Chairman also has been directed by the President to prepare and recommend, with the approval of the President, appropriate legislation in the manpower field.

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At an early date the Chairman organized a Management-Labor Policy Committee, whose function it is to act in an advisory capacity to him. The Commission itself is composed of representatives of Government. The Committee is non-governmental in its personnel being composed of seven representatives of management and seven representatives of organized labor.

This group considers all matters of policy involved in the program and the operations of the War Manpower Commission either on its own initiative or by reference from the Chairman. No step has been taken which has not received a favorable recommendation from this Committee, and in practically all instances the Committee has been unanimous. The result is that the policies of the War Manpower Commission are subject to the democratic process, where there is the fullest opportunity for expression of opinion and action by those most directly concerned with its operations.

In the field the Commission proposes to operate through twelve regional and an undetermined number of area offices. The first will parallel the War Production Board and Social Security Board regional offices. The latter are to be set up in those localities where critical problems in the manpower field exist, or develop. At both the regional and area levels a Management-Labor Policy Committee, organized along lines similar to the national committee, will function in an advisory and appeal capacity. A field office has been established in Baltimore for several weeks. The experience of this office will determine the future organization and operation of the Commission throughout the country.

*The address of the Hon. Bernard C. Gavit before the 48th annual convention of the Commercial Law League of America, at French Lick, Indiana.
The matter of governmental employment has received considerable attention and is being regulated by several directives issued to the Civil Service Commission and the various agencies of the Government. There has been the same pirating of employees in Government service as has existed in industry, but that subject will soon be effectively regulated. Government recruiting for the civilian auxiliaries of the armed services has been the subject of criticism, and that matter is receiving attention.

In the field an attempt has been made to persuade all private employers to use the United States Employment Service as an exclusive means of recruiting workers. The Employment Service has been directed to give preference to industries engaged in essential war work, and has received further orders designed to carry out an orderly process of recruitment, under which workers will be placed in those positions where they will contribute the most. In this manner, and through the cooperation of the War Production Board and the Procurement Agencies of the Army and Navy, some control and solution of the manpower problem has been effected. Through cooperation with the Selective Service System, a rather effective protection of workers, who are subject to the Selective Service Act but who are also engaged in essential activities, has been accomplished.

The so-called "Anti-Pirating" Policy Statement was issued on July 16, 1942. It undertakes to provide for a scheme of cooperation and agreement between employers in critical areas whereby they agree to employ only through the United States Employment Service and not to solicit workers from their competitors. The scheme is designed to protect employers engaged in essential activities as between themselves and as against employers in less essential activities. It will be under the control of the regional and area directors.

The program is in recognition of the fact that there exists in certain areas a critical shortage of skilled workers. The present war production program is so extensive that existing skilled personnel is wholly inadequate. This has been accentuated by the conversion of industry from peacetime production to the production of war materials, where new and different skills are required. The only possible solution of this problem includes the fullest utilization of all workers in essential as against less essential work, and a comprehensive program of training within and without industry. Under the training divisions of the War Manpower Commission intensive training programs have been organized and have been carried on for some time. They have been most successful, and are being greatly expanded.

On the college and university level there has been serious competition between the armed forces and the skilled professions. The colleges and universities deal with a most important portion of our population so far as officer material and technical and professional skills are concerned. There is a growing realization of the fact that this reservoir of material must be preserved and utilized to the fullest. There is now under consideration a complete revision of the present programs in this field. It is hoped that some time soon an integrated and common program can be established which will adequately meet the problem.

The more pressing manpower problems at the present time and for the immediate future appear to be as follows:

1. A proper balancing of the needs of the armed forces and the needs of war industries, civilian maintenance and defense health and welfare. As previously suggested, the closest cooperation has existed between the Selective Service System and the War Manpower Commission and much has been accomplished on this subject. It is within the power of the Selective Service System, through its scheme of occupational classification and the deferment of men employed in essential occupations, to protect the personnel of employers engaged in war production and other essential activities. The situation, however, is complicated by the fact that the Selective Service System is designed primarily to serve the needs of the armed services and must fill any orders for men received from those services. The situation is further complicated by the voluntary enlistment programs. That problem is receiving serious consideration.

2. The conversion from civilian to war industry has created many problems. Some of the problems have occasioned the Anti-Pirating Policy Statement, which after careful consideration was determined to be the most effective method of dealing with the situation within the limits of the powers available to the Chairman of the War Manpower Commission. For various reasons war contracts have not, and cannot be assigned, solely in the light of the available labor supply. Among other things war industries must be located in those areas which are least accessible to bombing. Large areas, as a result, suffer from unemployment, which is being accentuated by an inevitable curtailment of less essential production because of a lack of materials and workers. Government is called upon to decide on many fronts between that which is critical, that which is essential, and that which is less essential. Businesses and occupations are eliminated overnight. Many maladjustments develop.

The War Manpower Commission, in close cooperation with the other agencies of the Government, is struggling for a solution of those problems. The manpower aspect of the problems is becoming increasingly important and critical, and is being given increasing consideration and weight.

3. In many areas a critical shortage of workers, skilled and unskilled, exists. All of the existing sanctions for effecting a transfer of workers from less essential to essential employment are indirect. Transportation, housing, health and community problems complicate the picture. Skilled workers are reluctant to move at their own
expense into boom communities and at a sacrifice of their seniority rights, and future security. Workers cannot be asked to move at their own expense, and at too great a sacrifice of existing rights.

4. More or less violent prejudices exist, and are exercised, against the employment of large groups of persons. Many persons capable of contributing to the war effort are prevented from doing so. We must face the unpleasant paradox that while we fight abroad against an ungodly personification of prejudice and discrimination, and for the essence of democracy, on the home front we must also battle for a realistic acceptance of the basic principles on this subject stated in our own constitution and for the very foundations of a democratic society. I have difficulty in understanding racial prejudice. It is an observable fact, but I am sure it is not understandable. It is, of course, a matter of emotion, and prejudice. I have been tempted many times to suggest that those who refuse to accept the principles of the 5th, 13th and 14th Amendments propose an amendment striking them from our Constitution, in order to determine again whether or not they constitute the supreme law of the land. And I am also tempted to suggest that those who cherish their racial prejudices may well consider the necessity of giving them up, as they give up many another luxury or necessity, in order that they may have some assurance of being able to exercise them in later years, rather than they themselves being the object of a more bitter and completely effective prejudice.

5. There is the problem of a breakdown of the prejudices against the employment of women; their training for industry; and their placement in government, industry, and agriculture, to secure maximum production and a maximum release of men capable of military service. This necessity includes adequate protection to women employees, their homes and children.

I am sure you recognize the difficulties those problems suggest, when you consider in particular that the American people are accustomed to an extreme freedom of action. Fortunately there is every indication that those most affected by an effective solution of the problems are more than willing to make the necessary sacrifices. Members of this group may later be called upon, as lawyers in England have been called upon, to work in industry and other non-legal occupations, and I am confident that the response will be one of complete cooperation.

It must be clear to everyone that ultimately any governmental program in the manpower field cannot operate as effectively as the present emergency demands on a cooperative basis supported only by indirect sanctions. An effective solution of the problems presented cannot be accomplished unless the difficulties suggested above can be met by some governmental agency having complete compulsory power over the manpower situation and all affected by or dealing with it.

The inevitable conflicts cannot properly be solved in any other manner. We must, therefore, anticipate legislation in this field. The British have had such legislation for some time and have found that the power of compulsion has inspired cooperation with the result that little actual compulsion has been necessary.

Compulsory employment will be unique in the history of the United States. As the White House announced a short time ago, consideration has been given to this matter for some time. No one can safely predict when legislation in this field will be necessary or desirable. You recognize, of course, that the 13th Amendment prohibiting involuntary servitude and the 5th Amendment protecting the life, liberty and property of persons, constitute constitutional limitations which must be met in any legislation on this subject. There is, of course, no judicial precedent directly in point. We are convinced, however, that under the war power of the Federal Government an act can be drafted which will meet those limitations.

Clearly, such an act must carefully guard the rights and interests of employers and employees and must go no further than the absolute necessities of the situation appear to require. An Act which is no more than a draft of labor, as such, cannot be sustained under accepted constitutional and common standards of due process and fair dealing. The act must most certainly provide for a comprehensive regulation of all employment and contain definite assurances of fair dealing and effective review and appeal. One cannot under the power of eminent domain take a person's house from him because it is necessary to take his plant. Nor can one take a worker's privileges and rights in their entirety when the only necessity is a restriction on his freedom of contract. I can assure you that the Chairman of the War Manpower Commission will not recommend any legislation in this field which goes beyond the actual necessity of the situation and which does not contain complete and adequate safeguards as to the rights of all parties who will be affected by the act.

VI

The practice of law is not a war industry. It is a governmental service, because the ultimate function of government is the formulation and administration of law. In time of war emphasis shifts from the ultimate to the immediate. Many normally essential occupations become less essential, to the very end that they be preserved.

Lawyers are concerned and disturbed because of their failure to find a ready and significant place in the war program. For the time being the need for lawyers in government service to a large extent has been filled. The abilities of lawyers, as such, in other fields of work do not meet a serious need, because the manpower needs are largely for skilled and unskilled workers, and the other professions.

I am suggesting that the inability of lawyers to find an immediate place in the war program should not be ground for disappointment, but rather a ground for some pride and
satisfaction. War is the antithesis of law. In time of war law and the need for legal services do not expand; they are seriously restricted. Preparation for, and the practice of, law require such a high degree of training and specialization that the other occupational skills of lawyers are very limited. In time of war most lawyers find themselves ill equipped to fit into war work as such, and are required to mark time until there is need for their conversion to other occupations.

Lawyers are prepared to render a great and, from the governmental point of view, the most essential of peacetime services. In the nature of things they cannot convert their training and abilities into war service as such. We should take pride in the fact that that is so. Lawyer services as such must be limited. Lawyer participation in the war program as citizen and leader, however, is practically unlimited. We must be content to contribute what we can, much in an indirect manner, and mark time until the supremacy of law as a personification of the enduring traditions and ideals of a democratic society is re-established.

In the meantime I am suggesting the following possibilities:

The organized bar can continue to make its influence felt on all matters of public interest. It can continue to render, through its local committees, voluntary services to persons affected by the military and manpower programs. On the local levels the manpower program must be administered by local personnel. Lawyers will be called upon to exercise their powers of leadership and utilize their abilities to assist in a fair administration of this program.

There will be a continued demand for lawyers in Government service, both in a legal capacity and in an administrative capacity. Younger men are being withdrawn from Government service into military service and ultimately many of these positions must be filled by older men. It may mean some substantial sacrifices. Recruitment for those services is made through the various agencies in Washington and in the field. The Civil Service Commission is actively engaged in recruiting lawyers for administrative positions. Those interested in such a possibility should communicate with the Commission.

There will be some use of lawyers in the Army Specialist Corps. There is immediate need for persons who have any scientific skills or knowledge and certainly a number of lawyers have been trained not only as lawyers but as engineers, chemists, economists and in other similar fields. Many lawyers should consider the possibility of additional training which will qualify them for work in those fields.

In conclusion may I suggest that while we can have every confidence in ultimate victory we cannot afford to discount the need for a complete regulation of civilian employment which will infringe upon the very liberties we are fighting to preserve, and call for sacrifices beyond anything you now contemplate. This group can contribute much. It can prepare itself for that which is inevitably necessary. It can meet the issue with courage and vision.

Annual Baseball Game

French Lick Springs, Indiana
Sunday, August 16, 1942
Score: West 29 East 7

The West resumed their winning ways this day. The chagrin of its defeat at the hands of the East last year ranked in the breasts of the Western men for a whole year, but satisfaction was their—and at what a score!

Great power at the bat, coupled with excellent fielding proved too much for the Eastern boys, who were all in a weakened condition from mixing the water which makes this spa famous with beverages of various proofs. Next year the East promises to stick to Barleycorn and spurn Pluto. Perhaps the result of the 1943 game will be otherwise.

Manager Ed. Kessling of the West was the victorious General. Manager Harry Dick of the East took his defeat with good grace. There were no casualties this year although the men tried just as hard, but the old legs wouldn't respond when called upon, and the eyes were slightly stigmatic.

The crowd of spectators were unanimous in saying that it was one of the most enjoyable games they witnessed in many a year. It is the hope of all that this series can be continued for many years in the future.

George J. Drobnis, Scorekeeper and Reporter.

IN AND OUT OF COURT


In this book, Francis X. Busch gives a wealth of experiences and reminiscences out of a background of over forty years in the courts of Illinois and the Midwest. During these years, he has been a court reporter, Master in Chancery of the Circuit Court of Cook County, Corporation Counsel for the city of Chicago, instructor in the Illinois Law College, and Dean of the De Paul University Evening Law School. He has also served on the Chicago Civil Service Commission, and has been Dean Emeritus of the De Paul University Law School since 1923, and is the author of several well-known law text books.

The twenty-seven chapters of this book are full of human interest, drama, tragedy and humor, with interesting personalities crowding its pages. A few of the chapter subjects are, "A Worm's Eye View," "A Colorful Judge of Law and Baseball," "Recollections of Clarence Darrow," "Murder by Burning," "When the Dead Came Back," and "A Modern Jean ValJean."

Throughout the various chapters are intimate sidelights on many famous legal personalities such as judges Kenesaw Mountain Landis, Frank Baker, Elbridge Haney, Joseph E. Gary, and Richard S. Tuthill, and at the Bar, Clarence Darrow and John P. Altgeld.