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Selective Training and Service--Exclusive Jurisdiction of Civil Courts Over Violations by Persons Selected But Not Yet Actually Inducted (Billings v. Truesdell, 321 U.S. 542 (1944))

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vided by the regents and has had long experience as a physical education instructor, no breach of statutory duty may be imputed to the Board of Education.[14] However, where the Board of Education has failed to perform a duty imposed on it by statute, it is liable for damages for injuries resulting from its negligence. The statute imposes a duty on the Board of Education to prescribe regulations and by-laws for the general management, control, maintenance and discipline of schools and other educational activities under its direction.[15] In the gunshot wound case, by failing to establish rules and regulations concerning the care, inspection and supervision to be exercised by a teacher in the position of Duffy, when and if students brought guns needing repairs, or other inherently dangerous instrumentalities into crowded classrooms, the Board of Education failed to perform a statutory duty and was guilty of negligence.

In view of the statutory liability placed upon a Board of Education to save harmless and indemnify by insurance or otherwise teachers on account of financial loss arising out of any suit,[16] there may be little practical reason for determining whether these verdicts should be reinstated as against the Board of Education.

M. D.

SELECTIVE TRAINING AND SERVICE—EXCLUSIVE JURISDICTION OF CIVIL COURTS OVER VIOLATIONS BY PERSONS SELECTED BUT NOT YET ACTUALLY INDUCTED.—Petitioner's claim that he is a conscientious objector was rejected by his local board. Pursuant to orders of the board, he joined the group selected for induction and was transported to Fort Leavenworth. Petitioner was given both the physical and mental examinations. He then informed the officers in charge at the induction office that he refused to serve in the army and that he wanted to turn himself over to the civil authorities. They said that he was already under the jurisdiction of the military. Thereupon an army officer read petitioner the oath of induction, which he refused to take. He was then ordered to submit to finger-printing; he refused to obey. Military charges were preferred against him for wilful disobedience of that order. *Held,* judgment of lower courts, that induction was completed when the oath was read to the petitioner, reversed. *Billings v. Truesdell,* 321 U. S. 542, 64 Sup. Ct. 737 (1944).

The civil courts have exclusive jurisdiction over persons who have been selected under the Selective Training and Service Act but who have not yet been actually inducted.[1] Section 11, read together

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[14] Lessin v. Board of Education, 247 N. Y. 503, 161 N. E. 160 (1928).
[15] EDUCATION LAW § 869, subd. 9
[16] *Id.* § 569-a.

[1] § 11 SELECTIVE TRAINING AND SERVICE ACT (1940) (54 STAT. 894, 50 U. S. C. APP. § 311): "Any person . . . who in any manner shall knowingly

with Section 3, which provides that "no man shall be inducted . . . unless and until he is found acceptable to the land or naval forces for such training and service and his physical and mental fitness for such training and service has been satisfactorily determined," indicates a purpose to vest in the civil courts exclusive jurisdiction over all violations of the Act prior to actual induction. Notwithstanding the provision in Article 2 of the Articles of War [2] which, standing alone, would subject persons to military law from the time when they are required by the local board to present themselves for induction, the measure of a selectee's rights and duties is to be found in the Act and not in the Articles of War. For 16(a) of the Act suspends all laws or parts thereof which are in conflict with its provisions. Induction does not consist in a selectee being found acceptable or in his being accepted.[3] Nor can he be said to become inducted when the oath is read to him and he is told that he is in the army. A selectee becomes "actually inducted" when in obedience to the order of his board and after the Army has found him acceptable for service he undergoes whatever ceremony or requirements of admission the War Department has prescribed.

Under the Selective Draft Act of 1917,[4] a selectee was subject to military law from the date when he was required by the local board to present himself for induction.[5] Section 2 of the 1917 Act provided, that "All persons drafted into the service of the United States . . . shall, from the date of said draft or acceptance, be subject to the laws and regulations governing the Regular Army . . ." [6] The regulations under the 1917 Act stated that when a registrant was ordered to report to a local board or a state adjutant-general for duty, he was "in the military service" from and after the day and hour thus specified.[7] But the present Act and the regulations promulgated

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fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act . . . shall upon conviction in the district court of the United States having jurisdiction thereof, be punished for imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted for the training and service prescribed under this Act or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act."

[2] Article 2 of the ARTICLES OF WAR (41 STAT. 787, 10 U. S. C. § 1473) subjects to military law all persons "lawfully called, drafted, or ordered into or to duty or for training in the said service from the dates they are required by the terms of the call, draft or order to obey the same."

[3] An inducted man as defined by SELECTIVE SERVICE REGULATIONS § 601.7 is one "who has become a member of the land or naval forces through the operation of the Selective Service System."

[4] 40 STAT. 76.

[5] Franke v. Murray, 248 Fed. 865 (C. C. A. 8th, 1918).

[6] 40 STAT. 78.

[7] §§ 133, 159D, 159E, 159F, 159G, 161.

under it are differently designed. The Selective Service Regulations provide that while a selectee is appealing or otherwise contesting his classification, his induction shall be stayed.[8] The Selective Service Regulations also draw a distinction between acceptance (or being found acceptable) by the Army and induction. An inducted man is "a man who has become a member of the land or naval forces through the operation of the Selective Service System." [9] At the induction station, the selected men found acceptable will be inducted into the land or naval forces.[10] These regulations suggest that induction follows acceptance and is a separate process. The court's interpretation of the Act is confirmed by recent amendments, both to the Army Regulations and to the Selective Service Regulations. The Army Regulations, as amended March 30, 1943, now state, respecting the "induction ceremony", that "The induction will be performed by an officer who prior to administering the oath, will give the men about to be inducted a short patriotic talk." Selectees are, therefore, inducted by the ceremony and not before it. Local boards in filling calls received, are authorized to allow twenty-one days before induction to those who "have been found to be acceptable to the Army." [11] This takes the place of the earlier system whereby selectees were first inducted and then given, if they desired, furloughs to attend to their personal affairs.[12] These recent regulations merely perpetuate the distinction between acceptance or being found acceptable and induction.

F. B.

[8] §§ 625.3, 626.14, 627.41, 628.7.
[9] § 601.8.
[10] § 633.9.
[11] § 6321.1 *et seq.*
[12] ARMY REG., 615-500, Sept. 1, 1942, § 2(16).