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## REEMPLOYMENT AND READJUSTMENT RIGHTS OF VETERANS†

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One of the gravest problems this country has ever faced in peace time will be the problem of the reintegration of ten or twelve million returning soldiers and sailors into our economic life. The magnitude of this task will be manifest when it is remembered that today we are breaking all known production records in industry and agriculture without any help at all from half of the men of the country between the ages of 18 and 38. These men are in the armed forces and their services, therefore, are not and have not been available in this period of our greatest expansion of production. To make a place in industry, agriculture, and business for twice as many men as are now so engaged, between 18 and 38, without seriously disrupting the employment of those presently at work and without creating undisposable surpluses of all kinds of goods with an inevitable aftermath of depression and economic ruin, will be an undertaking of transcendent proportions.

The blueprint designed for the Government's attack upon this problem will be found in Section 8 of the Selective Service Act,<sup>1</sup> in the "GI Bill of Rights,"<sup>2</sup> in other federal legislation relating to returning servicemen, and in the "George" Bill which deals with the problems of converting industry from a war-time to a peace-time basis. These acts are all related and deal with the general problem which will confront our country in the crucial days ahead; but the scope of the present article will be restricted to a discussion of the veteran's reemployment rights under the Selective Service Act and his readjustment rights under the "GI Bill of Rights."

† This article was rewritten from a speech given by the author before the North Carolina State Bar at its annual meeting in Raleigh, October 17, 1944.

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<sup>1</sup> SELECTIVE TRAINING AND SERVICE ACT OF 1940, as amended; Pub. L. No. 783, 76th Cong. (Sept. 16, 1940); 54 STAT. 885 (1940); 50 U. S. C. A. §308 (Supp. 1944).

Section 8 is affected by Sections 4 and 7 of the SERVICE EXTENSION ACT OF 1941; Pub. L. No. 213, 77th Cong. (Aug. 18, 1941); 55 STAT. 627 (1941); 50 U. S. C. A. §357 (Supp. 1944).

<sup>2</sup> SERVICEMEN'S READJUSTMENT ACT OF 1944; Pub. L. No. 346, 78th Cong. (June 22, 1944); 58 STAT. 284 (1944); 38 U. S. C. A., c. 14 (1944).

## I. REEMPLOYMENT

The Selective Service Act<sup>3</sup> provides that, under certain conditions, every returning veteran who worked for the Federal Government or for a private employer before he entered service may have his old job back if he wants it, and may not be discharged without cause for one year thereafter. If he was employed by a state or political sub-division thereof, he may not demand his old job back and necessarily get it, but the Act declares it to be the sense of the Congress that such person should be restored to any such position if he seeks it or to a position of like seniority, status, and pay.

The Act<sup>4</sup> requires the Director of Selective Service to organize a Personnel Division with adequate facilities to render aid (1) in the replacement of veterans in their former jobs and (2) in securing new positions for returning veterans. This division has been established and is now functioning at high speed. Responsibility has been delegated by the Director to the various state directors to organize and supervise the program within their states.<sup>5</sup> The State Director for North Carolina has been very active in this field and the State is fairly well organized now in this effort.

This responsibility in the field of replacement and placement has been passed along to local Selective Service boards, and all of the boards in North Carolina have been so advised and understand their duties in this respect.<sup>6</sup> All of the facilities of the local board offices have been made available for use in the program. In addition, a Reemployment Committeeman has been appointed to work in each local board area. Upon separation from service, every serviceman is instructed to report to his local Selective Service board and to the Reemployment Committeeman for information and assistance. Close liaison is being maintained and will continue to be maintained in the prosecution of this effort between the Selective Service System and other departments and agencies of the Federal, State and local governments.

The President, by executive order,<sup>7</sup> has placed additional responsibilities on the Selective Service System in connection with the re-employment of veterans. By this order there has been created in the Office of War Mobilization a Retraining and Reemployment Administration. In addition, a Retraining and Reemployment Policy Board has been established.<sup>8</sup> This board is composed of representatives of the

<sup>3</sup> *Supra*, note 1.

<sup>4</sup> *Supra*, note 1, at sect. 8(g).

<sup>5</sup> *Local Board Memorandum No. 190*, National Headquarters, Selective Service System, issued March 1, 1944, amended June 30, 1944.

<sup>6</sup> State Director's Circular Letters to North Carolina Local Boards: Nos. 291, issued June 22, 1943; 389, issued January 1, 1944; 459, issued July 15, 1944; 465, issued July 28, 1944; 472, issued August 26, 1944; 484, issued September 29, 1944.

<sup>7</sup> *Executive Order No. 9427*, issued February 24, 1944, 9 FED. REG. 2199 (1944).

<sup>8</sup> *Ibid.*

following Federal agencies: Department of Labor, Federal Security Agency, War Manpower Commission, Selective Service System, Veterans' Administration, Civil Service Commission, War Department, Navy Department, and War Production Board.

The Retraining and Reemployment Administration has directed the establishment in each state of a State Veterans' Service Committee to represent the Selective Service System, the War Manpower Commission, and the Veterans' Administration in making available to veterans full information relative to their employment and reemployment rights.<sup>9</sup> It has also provided for the establishment in each community of a Local Veterans' Service Committee to carry out at the local level instructions issued by the State Veterans' Service Committee and by the Retraining and Reemployment Administration, and to act as a central point in the local community for mobilization of the efforts of volunteer and other groups in furnishing information relative to their employment rights to returning veterans.<sup>10</sup>

Thus it will be seen that definite plans have been made by the agencies of the Federal Government charged with responsibility in this field to render the necessary aid and assistance to veterans who seek reinstatement in their former positions or new positions. The problem does not present serious difficulties today while there are more jobs than men to fill them. But as the rate of discharges increases the problems involved will necessarily increase. It is well to know that the Government is making long-range plans and adopting procedures in an effort to be prepared to handle the problem effectively when it bursts upon us in full tide.

It was stated in the beginning that, under certain conditions, every returning veteran who worked for the Federal Government or for a private employer before he entered service may have his old job back if he wants it. There are six of these conditions, as follows:

1. The first condition is that the veteran must have entered upon active military or naval service of the United States subsequent to May 1, 1940. This includes any man or woman who served in the Army, Navy, Marine Corps or Coast Guard.<sup>11</sup> No distinction is made between volunteers and men drafted or between enlisted men and officers; all are included.

<sup>9</sup> By *Order No. 1*, issued May 17, 1944.

<sup>10</sup> *Ibid.*

<sup>11</sup> Section 7 of the SERVICE EXTENSION ACT OF 1941; Pub. L. No. 213, 77th Cong. (Aug. 18, 1941); 55 STAT. 627 (1941); 50 U. S. C. A. §357 (Supp. 1944), provides that the reemployment provisions of the SELECTIVE TRAINING AND SERVICE ACT OF 1940 (*Supra*, note 1) shall be applicable to "any person who, subsequent to May 1, 1940, . . . shall have entered upon active military or naval service in the land or naval forces of the United States . . .". Right to reinstatement in former position was extended to members of Merchant Marine by Act of June 23, 1943; 57 STAT. 162 (1943); 50 U. S. C. A. §1472 (Supp. 1944).

2. The second condition is that the veteran must have satisfactorily completed his service. Therefore, discharge or release from service must have been under honorable conditions.

3. The third condition is that the veteran must apply for his old job within forty days<sup>12</sup> after his separation from service. This provision seems clear and uncontroversial yet questions may arise under it. For example, suppose a returned veteran applies for reinstatement within the period required by the Act but wishes to defer reporting for work for a while longer, for reasons that may be satisfactory to himself. The employer is anxious for him to begin work as soon as possible because he needs him then and may not need him at all later. The veteran contends that all he has to do is apply for his job within the period designated by the Act and that he does not necessarily have to begin work within said period. The employer, however, contends that, in addition to making application for reinstatement, the veteran must report for work within said period or forfeit the protection afforded him by the Act. It is submitted that the Act would have been clearer if it had stated that the veteran must report for work within the period he is required to apply for reinstatement, if such was the intent of the Congress. The Act simply provides that one of the conditions of reinstatement is that the veteran "makes application for reemployment within forty days<sup>13</sup> after he is relieved from such training and service."<sup>14</sup>

The Director of Selective Service has stated it as his opinion that, while the employer cannot, strictly speaking, extend the period, he can voluntarily reemploy the veteran thereafter; and he may, as a part of the reemployment contract, agree that the veteran shall be entitled to the benefits of Section 8 of the Act.<sup>15</sup> Such an agreement, to be enforceable, would have to be clear and explicit, otherwise it is the Director's opinion that, even though the veteran may be employed it is doubtful if he can force the additional benefits conferred by the Act as to seniority, pay, and tenure for one year.<sup>16</sup>

<sup>12</sup> Legislation amending Section 8(b) of the SELECTIVE SERVICE ACT (*Supra*, note 1) by extending this period from forty to ninety days became law December 8, 1944. The amendment provides that application for reinstatement may be made within ninety days following release from hospitalization provided such hospitalization follows immediately after separation from service and extends for a period of not more than one year from date of separation. National Headquarters, Selective Service System, takes the position that a veteran separated from service prior to enactment of the amendment is entitled to the ninety day period provided the ninety day period, measured from date of discharge or release from hospital, has not expired by December 8, 1944. This change will go a long way toward meeting the objection that enough time is not allowed the veteran to make his adjustment from military service to civilian employment.

<sup>13</sup> Now ninety (*Supra*, note 12).

<sup>14</sup> *Supra*, note 1, at sect. 8(b) (3).

<sup>15</sup> Paragraph 2 of Part III of *Local Board Memorandum No. 190-A*, National Headquarters, Selective Service System, issued May 20, 1944.

<sup>16</sup> *Supra*, note 15.

4. The fourth condition is that the veteran must be "qualified to perform the duties of such position." Here is where we may expect trouble. Whether the veteran is "qualified" will be a question of fact which, in case of dispute, will have to be decided by the courts and may well be a source of much litigation. Without undertaking to say how the courts may be expected to interpret this particular language, it seems safe to speculate that they will say that employers may not require veterans seeking their old jobs to meet higher standards than were in effect when the jobs were vacated; that they may not establish higher standards for returning veterans than they demand of non-veterans; that they may not require veterans to meet higher standards which the employer may have established since the veteran entered military service; and that they may not, during the veteran's absence, upgrade the position he formerly held so as to exclude him on the ground that he is not qualified to perform the work.

5. The fifth condition is that the job which the veteran seeks to be reinstated in must have been "other than a temporary position." Here again we face trouble, perhaps serious trouble. What is a "temporary position"? Every case will of course have to stand on its own bottom and the courts will have to decide unless the parties can agree.

The Director of Selective Service has stated it as his opinion that, generally speaking, one who is employed to fill a place made vacant by a person who enters service occupies a "temporary" status and has no reemployment rights in that position even though he subsequently enters service.<sup>17</sup> That seems a reasonable and fair construction. Obviously an ordinary employer will not be able to reinstate five men who might have held one job successively unless he has a tremendous increase in business or discharges employees on "other" jobs.

A very practical aspect of this particular problem will be apparent from the following illustration:

John Smith, prior to entering service, was employed by X Company. Bill Jones was employed to take Smith's place and later Jones himself was drafted and Henry Johnson replaced him. When Smith and Jones come home, Smith will get his job back but Jones will not unless it is held that his position was "other than a temporary" one or unless X Company voluntarily makes a place for him. But if the company can use only one man on the particular job, Jones and Johnson will have to seek employment elsewhere. This may turn out to be hard on Bill Jones because he served his country in time of war just as faithfully and sacrificed perhaps as much as Smith did. We shall have to satisfy Jones in some other way. Perhaps the various agencies that are being organized to look after returning veterans will be able to place him in

<sup>17</sup> Paragraph 4(b) of Part III of *Local Board Memorandum No. 190-A*, National Headquarters, Selective Service System, issued May 20, 1944.

a new job, or he may be able to qualify for vocational training or the educational advantages or receive a loan of money to go into business for himself as provided for under the "GI Bill of Rights."<sup>18</sup> At least the Government is going to be vitally interested in him and will do everything possible to see that he finds employment. But what about Henry Johnson? Maybe he is a veteran of the first World War and was induced to take the place first vacated by Smith and later by Jones because he was persuaded that the job was vital on the production front; and, since he could not shoulder a rifle and fight with the Army, he felt that he should do everything possible to support the war effort, so he gave up his job in a non-essential industry and took the one with X Company. Unless X Company can make another place for him, he will have to go out and seek another job and will not have any of the advantages or benefits provided by the "GI Bill of Rights" but will be left more or less to shuffle for himself. Individuals such as Henry Johnson are liable to be the forgotten men in the future.

Many of the cases which we may expect to arise under this condition will be ones involving new jobs created because of war expansion. Prior to the war, X Company may have had 100 employees but due to expansion of business as a direct result of the war, the company found it necessary to double the number of employees; and, before the war ends, it has given up a substantial number of these new employees, as well as some of its original group, to the services. Will these so-called "new" employees be entitled to their jobs back as well as the original 100? This is a problem which will have to be faced and solved perhaps in every community in the country.

The Act<sup>19</sup> simply provides that the veteran shall have his job back if it was "other than a temporary position." But what is a "temporary position"? We may speculate about it at will and make various interpretations and constructions of the language used in the Act, but in the last analysis it will be for the courts to decide. The facts and circumstances in each individual case will determine the answer. Of course, the foresighted employer could have taken care of the situation by having it definitely understood with the "new" employees that they were being hired for the duration, but how many employers were foresighted enough to think of this?

It seems that it would be most unreasonable to hold that a person who was employed on a "new" job which was created to take care of expanded production as a direct result of the war and which, at the time of employment, might reasonably be expected to be discontinued after the emergency has passed, had "other than a temporary" position within the meaning of the Act. Such a holding would impose im-

<sup>18</sup> *Supra*, note 2.

<sup>19</sup> *Supra*, note 1, at sect. 8(b).

possible conditions upon employers in the "war baby" industries such as the manufacturing of aeroplanes, ships, guns, tanks, etc., in which vast expansion in employment has taken place.

6. The sixth condition is that an employer is not required to reinstate the veteran if the employer's circumstances have so changed as to make it "unreasonable or impossible to do so." This is probably the most controversial language in the act.

Suppose X Company was wholly engaged in the manufacture of civilian goods when John Smith left. As the production of war goods became critical, X Company was moved to convert to war work. The war ends suddenly, and war contracts are cancelled. At that time John Smith and a good many others seek to reclaim their jobs. But it takes time for X Company to reconvert from a war to a peace-time basis. Perhaps new machinery and tools will have to be procured with the result that the company cannot resume full civilian production for months. Must the company rehire John Smith and the others immediately, or may it wait until reconversion is complete? Probably not until the plant reopens. But suppose the plant does not completely close down but goes on a curtailed basis or is forced into a seasonal shut-down during the year, and the particular job that John Smith formerly held is one of those discontinued temporarily. Does Smith step aside, or is he entitled to one of the few jobs that do continue to run? Undoubtedly he will be entitled to one of the jobs that continue. But what if there are not enough of these jobs to go around? Who gets the ones that are available? Probably the first ones to apply.

All of the foregoing are preliminary questions that naturally lead to the main one, which is this: What constitutes such a change in an employer's circumstances as to make a veteran's reinstatement "unreasonable or impossible"? That is the "sixty-four dollar" question, and the lawyer who discovers the correct answer to it will probably find that management will make a beaten path to his door.

The Act further provides that the returning veteran shall be restored to his former position without any loss of seniority, status, and pay.<sup>20</sup> In fact, the Act specifically provides that the veteran shall be considered as having been on furlough or leave of absence during his period of service, and all of the natural accumulated advantages of continuous service accrue to him during his absence. It is under this feature of the Act that we may run into some difficulties with labor unions. What if X Company has entered into a contract with a union since Smith left, and suppose the terms of the union contract provide certain standards for employment. Suppose John Smith does not meet those standards, or suppose he declines to join the union.<sup>21</sup> Perhaps there will not be

<sup>20</sup> *Supra*, note 1, at sect. 8(c).

<sup>21</sup> See testimony of Col. F. V. Keesling, Jr., Chief Liaison and Legislative



much difficulty in either of these suppositions, but it is reasonable to speculate what may happen in some cases if Smith should decline to join the union; and a loyal dues-paying member of the union, with more seniority than Smith, is discharged in order to make a place for Smith. Certainly the future holds many vexatious problems which will arise, calculated to tax the patience and judgment of all concerned.

The Act also provides that if an employer refuses to comply with the reemployment provisions, the United States Court for the district in which the employer maintains a place of business shall have power to require specific compliance and to compensate the veteran for any loss of wages or benefits suffered by reason of the employer's refusal.<sup>22</sup> Such cases shall be advanced on the calendar for speedy trial; and the United States Attorney, if he is reasonably satisfied that the veteran is entitled to relief, is required by law to bring the action without any cost to the veteran and no fees or court costs shall be taxed against him, even if he loses.<sup>23</sup>

Not much jurisprudence has yet been developed on the subject but one recent case is worthy of note. It is the case of *Hall v. Union Light, Heat and Power Company*.<sup>24</sup>

In this case plaintiff was defendant's regular employee when he was inducted April 25, 1942. He was honorably discharged June 4, 1942, and on June 7, 1942, applied for his old job. He was not put back to work until September 28, 1942, and sued for \$512.00 which was the amount he would have been entitled to from June 7, 1942 to September 28, 1942.

The defendant argued that the Act was unconstitutional as repugnant to the Fifth Amendment and took the further position that the terms "unreasonable" and "impossible" are so vague and uncertain as to render the statute unenforceable because the Act fixed no immutable standard, but left the standard to the variant views of the different courts and juries which may be called upon to enforce it. He cited *United States v. Cohen Grocery Company*,<sup>25</sup> which declared an Act of Congress unconstitutional because the term used therein, "unjust or unreasonable," were held to be too vague, indefinite and uncertain to be enforceable.

The District Court, however, made the distinction that the Cohen case was a criminal prosecution under an indictment whereas the instant

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Officer, Selective Service System, before the House Committee on Military Affairs, September 12, 1944, for a statement of the view of the Director of Selective Service that a veteran should not be required to join the union to be reinstated in his former position even though the shop or plant had become union organized while he was away.

<sup>22</sup> *Supra*, note 1, at sect. 8(c).

<sup>23</sup> *Ibid.*

<sup>24</sup> 52 F. Supp. 817 (E. D. Ky. 1944).

<sup>25</sup> 255 U. S. 81, 41 Sup. Ct. 298, 65 L. ed. 516 (1921).

case was a civil suit. The court specifically held the Act to be constitutional but did not so hold on the merits of the case supporting its decision by relying on the well-recognized principles that "public statutes dealing with the welfare of the whole people are to have a liberal interpretation" and that "every reasonable doubt must be resolved in favor of the constitutionality of the statute" and "that it should not be adjudged invalid unless its unconstitutionality is clear, complete and unmistakable."

Another recent case is that of *Kay v. General Cable Corporation*<sup>26</sup> in which the Third Circuit Court of Appeals in a decision handed down September 12, 1944, held that a company doctor, officially designated as "medical director" held a position "in the employ" of the company within the meaning of the Act and that he was entitled to reinstatement even though it was considered that his employment would result in some loss of efficiency and some additional expense. The court said that the term "unreasonable" as used in the Act means more than inconvenience and undesirable.

Herein lie several illustrations to show some of the problems that we may expect to arise under this Act. Other illustrations will no doubt occur to the reader, but the ones used are sufficient to demonstrate the manifold ramifications of the problems which industry and business will have to face "when Johnny comes marching home again." It seems fairly clear that the role of the employer in the days that lie ahead is not going to be an untroubled one. He shall find himself greatly in need of sound advice and counsel from his lawyer.

## II. READJUSTMENT

The Servicemen's Readjustment Act of 1944,<sup>27</sup> popularly known as the "GI Bill of Rights," became law on June 22, 1944. Anyone interested in the subject will of course wish to read and study the act for himself. This article shall cite briefly some of the uncontroversial provisions of the act and proposes to undertake an analysis of three of its most important features which deal with education, loans, and unemployment benefits.

### TITLE I: HOSPITALIZATION, CLAIMS AND PROCEDURES

The principal provisions of this title are the following:

1. The Veterans' Administration is declared to be an essential war agency and entitled, second only to the War and Navy Departments, to priorities in personnel, equipment, supplies and material in its administration of the benefits provided by the Act.<sup>28</sup>

<sup>26</sup> 144 F. (2d) 653 (1944).

<sup>27</sup> Pub. L. No. 346, 78th Cong. (June 22, 1944); 58 STAT. 284 (1944); 38 U. S. C. A. c. 14 (Supp. 1944). See also Chapter 12.

<sup>28</sup> *Id.* at sect. 100.

2. Five hundred million dollars are authorized to be appropriated for the construction of additional hospital facilities.<sup>29</sup>

3. No person shall be discharged or released from active duty in the armed forces unless he is given a discharge certificate and final pay or unless arrangements are made to deliver same to his next of kin or legal representative.<sup>30</sup>

4. No person shall be discharged or released from active service on account of disability unless or until he has executed a claim for compensation, pension or hospitalization, or has signed a statement that he has had explained to him his right to do so. His refusal or failure to file such claim shall be without prejudice to any right he may subsequently assert.<sup>31</sup>

5. No person in the armed forces shall be required to sign any statement relating to the origin or nature of any disease or injury he may have, and any such statement signed against his own interest is declared to be null and void and of no force and effect.<sup>32</sup>

6. The services are authorized and directed to permit the functioning in discharge centers of authorized representatives of the American Red Cross, national veterans' organizations and the Veterans' Administration for the purpose of assisting discharged veterans with their problems under the Act and otherwise.<sup>33</sup>

7. The discharge or dismissal by sentence of a general court martial of any person from service, or the discharge of any person on the ground that he is a conscientious objector who refused to perform military duty, wear the uniform or otherwise comply with lawful orders, or as a deserter, or of an officer by the acceptance of his resignation for the good of the service, shall bar all rights of such person under this or any other law administered by the Veterans' Administration.<sup>34</sup> This provision would not apply if the person at the time of the offense was insane or to any War Risk or National Service Life Insurance policy.<sup>35</sup>

8. The Secretaries of War and Navy are directed to set up special boards to review, upon their own motion or upon request of a former officer or enlisted man or woman or, if deceased, of his surviving spouse, next of kin or legal representative, the type and nature of discharge or dismissal except those made as the result of a sentence of general court martial; and such special boards are given power to change the type of discharge given. Request for such review must be made within fifteen years after such discharge or dismissal.<sup>36</sup>

<sup>29</sup> *Id.* at sect. 103.

<sup>30</sup> *Id.* at sect. 104.

<sup>31</sup> *Id.* at sect. 104.

<sup>32</sup> *Id.* at sect. 105.

<sup>33</sup> *Id.* at sect. 200(a).

<sup>34</sup> *Id.* at sect. 300.

<sup>35</sup> *Id.* at sect. 300.

<sup>36</sup> *Id.* at sect. 301.

## TITLE II: EDUCATIONAL PROVISIONS OF THE ACT

The provisions of this title may be summarized as follows:

1. Any honorably discharged veteran who served in the armed forces on or after September 16, 1940, and whose education or training was impeded, delayed, interrupted or interfered with by reason of such service, or who desires a refresher or retraining course, and who shall have served ninety days or more, or shall have been discharged from service by reason of a service-connected injury or disability, shall be eligible for and entitled to receive the education or training provided by the Act.<sup>37</sup>

2. Any person who was not over 25 years of age at the time he entered service shall be deemed to have had his education or training impeded, delayed, interrupted or interfered with. This provision makes all honorably discharged veterans who were not over 25 years of age when they entered service eligible for these educational benefits.<sup>38</sup>

3. Application for the benefits must be made not later than two years after the date of discharge or the termination of the present war, whichever is the later.<sup>39</sup>

4. The education provided for by the Act shall not be available after seven years following the close of the present war.<sup>40</sup>

5. In no event shall the total period of the education provided for under the Act exceed four years unless a period of instruction ends in the midst of a quarter or a semester, in which event it shall be extended to the end thereof.<sup>41</sup>

6. Any eligible person shall be entitled to education for a period of one year, or the equivalent thereof in part-time study, or for such lesser time as may be required for the course of instruction chosen by him.

7. Upon satisfactory completion of the one year of education, such person shall be entitled to an additional period of education not to exceed the time such person was in the active service on or after September 16, 1940, and before the termination of the war, exclusive of the time he was assigned for a course in the ASTP Program or the Naval College Training Program, which course was a continuation of his civilian course and was continued to completion, or as a cadet or midshipman at one of the service academies. This means that ninety days of service would entitle a veteran, otherwise qualified, to one year of education; a year of service would entitle him to two years of education;

<sup>37</sup> *Id.* at sect. 400(b). These provisions appear as Title II, §400(b), Pub. L. No. 346; but the legislation amounts to the addition of a new Part VIII by way of amendment to VETERANS REGULATION numbered 1(a). See 58 STAT. 291 (1944); 38 U. S. C. A. c. 268, Title II, sect. 403 (1944).

<sup>38</sup> *Id.* at sect. 400(b)1.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> See note 37, *supra* at sect. 400(b)2.

two years of service would entitle him to three years of education; and three years of service would entitle him to four years of education.

8. The Veterans' Administration shall secure from time to time a list of the educational and training institutions in each state from the appropriate state agency and institutions so listed shall be approved under this program. Any person eligible for education under the Act shall have the right to elect any approved institution, whether located in the state of his residence or not, and may take his training there if the institution will accept him as a student.<sup>42</sup>

9. For reasons that must be satisfactory to the Veterans' Administration, the veteran may change his course of instruction at any time, and the Veterans' Administration may discontinue the payment for such education at any time if the veteran's conduct or progress is unsatisfactory.<sup>43</sup>

For such persons as are eligible for the educational benefits provided by this Act, according to the rules of eligibility, the Act provides:<sup>44</sup>

(a) for payment by the Government of all tuition and other fees, cost of books, supplies, equipment and other necessary expenses, not to exceed a maximum of \$500.00 per year;

(b) for payment by the Government of a subsistence allowance to the veteran while he pursues such education in the amount of \$50.00 per month if he is without dependents or \$75.00 per month if he has dependents, including regular holidays and leave, sick and otherwise, not exceeding thirty days in a calendar year;

(c) for the retention by the veteran as his personal property of all books and equipment furnished if he satisfactorily completes the course.

Applications for these educational benefits should be filed by the veteran with a regional office of the Veterans' Administration or with the approved educational institution which he wishes to attend. The regional office of the Veterans' Administration in North Carolina is located at Fayetteville and veterans residing in this State or those who wish to go to school in the State should file their applications there. Applications will be processed as rapidly as possible by the Veterans' Administration; and a veteran's notice of eligibility, including statement of the exact period of his approved education, will be furnished him in duplicate. One copy should be filed by him with the institution which he wishes to attend. That is all that will be required of him. Thereafter such details as the payment of tuition, etc., will be handled direct between the institution and the Veterans' Administration.<sup>45</sup>

<sup>42</sup> *Id.* at sect. 400(b)3.

<sup>43</sup> *Id.* at sect. 400(b)3.

<sup>44</sup> *Id.* at sect. 400(b)5.

<sup>45</sup> *Veterans' Administration Service Letter*, dated July 1, 1944.

TITLE III: LOANS FOR THE PURCHASE OR CONSTRUCTION OF  
HOMES, FARMS AND BUSINESS PROPERTIES

The pertinent provisions of this title are as follows:

1. The Government will guarantee the repayment of a loan not to exceed \$2,000, or 50% of the amount of the loan,<sup>46</sup> made to any eligible veteran for the purchase or construction of a home;<sup>47</sup> for the purchase of any business, land, buildings, supplies, equipment, machinery, or tools to be used by the veteran in pursuing a gainful occupation other than farming;<sup>48</sup> or for the purchase of any land, buildings, livestock, equipment, machinery or implements, or in repairing, altering or improving any buildings or equipment, to be used in farming operations.<sup>49</sup>

2. To be eligible for such guaranty, the following conditions must be met:<sup>50</sup>

(a) the veteran must have served in active military or naval service for a minimum of ninety days after September 16, 1940, or he must have been discharged by reason of a service-connected disability;

(b) the veteran must have been discharged under conditions other than dishonorable;

(c) application for the guaranty must be made within two years of discharge or within two years of the termination of the war, whichever is the later date, but in no event later than five years following the termination of the war;

(d) the guaranty must not exceed 50% of the loan or loans and may not exceed \$2,000 in the aggregate;

(e) interest on the loans guaranteed by the Government shall not exceed 4% per annum;

(f) loans guaranteed must be payable within twenty years;

(g) loans guaranteed may be made by any person, firm or corporation, governmental or private, either state or federal.

3. In addition to guaranteeing the repayment of not to exceed 50% of such a loan, the Government will pay outright the full amount of interest for the first year on that part of the loan guaranteed by the Government.<sup>51</sup>

4. No security for the guarantee by the Government shall be required "except the right to be subrogated to the lien rights of the holder of the obligation which is guaranteed"; and the mortgagor and mortgagee are required to agree that before foreclosure proceedings are begun, the Veterans' Administrator shall be given thirty days notice of default. The Administrator shall have the option of bidding in the property at the foreclosure sale or refinancing the loan.<sup>52</sup>

<sup>46</sup> See note 27, *supra* at sect. 500(a).

<sup>47</sup> *Id.* at sect. 501(a).

<sup>48</sup> *Id.* at sect. 502.

<sup>49</sup> *Id.* at sect. 500(b).

<sup>48</sup> *Id.* at sect. 503.

<sup>50</sup> *Id.* at sect. 500(a), (b), (c).

<sup>52</sup> *Id.* at sect. 500(b).

5. Liability under the guaranty shall decrease or increase pro rata with any increase or decrease of the amount of the unpaid portion of the obligation.<sup>53</sup>

6. Before making such guaranty the Veterans' Administrator is required to satisfy himself that the loan is practicable<sup>54</sup>—that is, that it is sound from the standpoint of appraised value of the property and that the ability and experience of the veteran are such that he may be expected to keep up the payments.

7. After making provision for the guarantee of loans under the foregoing terms and conditions, the Act<sup>55</sup> provides that if the original loan is made by a Federal agency or guaranteed or insured by such agency, and the veteran finds himself in need of a second loan to cover the remainder of the purchase price or cost, or a part thereof, the Veterans' Administrator may guarantee the full amount of the second loan, provided the guarantee in the aggregate shall not exceed \$2,000 and the second loan shall not exceed 20% of the purchase price or cost and that the rate of interest on the second loan shall not exceed that on the principal loan by more than 1%.

An interesting question arises under the subrogation provision above referred to in the event of default. It is this:

Will the Government, upon payment of the part it guaranteed and upon foreclosure by the mortgagee, share pro rata with the mortgagee in the net proceeds of the sale or will the position of the Government be analogous to that of a second mortgagee? Remember the language of the Act itself: "No security for the guaranty of a loan shall be required except the right to be subrogated to the lien rights of the holder of the obligation which is guaranteed."<sup>56</sup>

Arguments may be advanced in support of the view that the Government, by payment of its guaranty, becomes subrogated to the lien rights of the holder of the obligation as a legal incident of the loan itself and that the mortgagee who lent his money with the knowledge of the law must have understood that if he demands payment of the Government's guaranty that the latter, upon payment, takes an assignment of all his lien rights to the extent of the payment under the guaranty. This position is supported by the further argument that the words of the Act "to be subrogated to the lien rights of the holder of the obligation"<sup>57</sup> contemplates an agreement between the mortgagor and mortgagee and the Government that, upon the payment by the Government of its guaranty, it shall be subrogated to *all* the legal rights of the mortgagee, and that thus a conventional subrogation rather than a legal subrogation was intended. If this view should prevail it would mean

<sup>53</sup> *Id.* at sect. 500(c).

<sup>56</sup> *Id.* at sect. 505.

<sup>57</sup> *Ibid.*

<sup>54</sup> *Id.* at sect. 500(a).

<sup>55</sup> *Id.* at sect. 500(b).

that the Government would have the right to recoup the full amount it pays under the guaranty before any of the funds received in liquidation of the security would be available to the mortgagee.

This does not seem to be a sound position for several reasons:

1. Such a holding would go a long way toward defeating the very purpose of the Act. That purpose was clearly expressed by the language itself which refers to the Government as an absolute guarantor of a part of the loan. Obviously the purpose of the Government guaranteeing the payment of a part of the loan was to induce private lenders to put their money to work in such a way as would benefit veterans. If the Government is, upon default and liquidation of the security, to recoup its payment under the guaranty before the mortgagee begins to participate in the funds received from liquidation, the mortgagee might just as well lend the entire amount itself. And if the loan is a sound one from the standpoint of banking or money-lending, private interests would, of course, be willing and anxious to make the loan without relying on the Government's guaranty. But this part of the Act, at least, seems to contemplate that loans will be made which are not sound enough for private institutions or individuals; and it is for this reason that the Government, as a benefit to the veteran, agrees to guarantee a part of the loan. If it is the purpose of the Government to cause loans to be made which private interests would not make on their own responsibility, this purpose must not be defeated by such an interpretation of the language used.

2. The facts do not seem to bring this contemplated transaction within the rule applicable to subrogation by convention. In the first place, conventional subrogation can take effect only by agreement between the parties.<sup>58</sup> Such agreement must, like other agreements, be supported by a consideration.<sup>59</sup> While it is true, in some jurisdictions at least, that an express agreement is not required,<sup>60</sup> unless one exists the facts and circumstances must be such that an agreement may be implied.<sup>61</sup> It is doubtful, to say the least, that such an inference could be proper from the existing circumstances and facts. It seems to be the better view that Congress had in mind legal subrogation rather than conventional subrogation; and in legal subrogation, which is a doctrine founded in equity,<sup>62</sup> the right of a surety or guarantor, who pays part

<sup>58</sup> STORY, EQUITY JURISPRUDENCE (14th ed., 1918) 706; SHELDON, THE LAW OF SUBROGATION (2d ed.) 372; 60 C. J. §704(13); *Wallace v. Benner*, 200 N. C. 124, 156 S. E. 795 (1931).

<sup>59</sup> 60 C. J. §704(14); *Publishing Company v. Barber*, 165 N. C. 478, 81 S. E. 694 (1914).

<sup>60</sup> 60 C. J. §704(14).

<sup>61</sup> 60 C. J. §704(15).

<sup>62</sup> STORY, EQUITY JURISPRUDENCE (14th ed., 1918) 706; SHELDON, THE LAW OF SUBROGATION (2d ed.) §1; 60 C. J. §696(3), *Powell v. Wake Water Company*, 171 N. C. 290, 88 S. E. 426 (1916).



only of a debt, to be subrogated to the lien of the creditor does not arise until the debt has been fully paid.<sup>63</sup>

In conformity with this view, the Administrator of Veterans' Affairs has held that the right of the Government to be subrogated to the lien rights of the holder of the obligation gives the Government, upon the payment of its guaranty, lien rights against the property serving as security for the loan, which are secondary to the lien rights of the holder of the obligation.<sup>64</sup> This interpretation should make loans made under the Act very attractive to private individuals and lending institutions.

Another interesting question which will arise in the interpretation of the Act is this:

Is the Government, as guarantor, obligated to pay, at the time of any default and upon demand being made by the mortgagee, the full amount of the sum guaranteed, subject only to pro rata adjustment covering any decrease in the amount of the unpaid balance, or does the proviso "that the liability under the guaranty shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the obligation"<sup>65</sup> change the position of the Government from that of absolute guarantor to that of indemnitor as to a percentage of any ultimate loss?

To put it in concrete form, assume a loan of \$4,000, of which 50% or \$2,000 is guaranteed by the Government; assume further that the loan was curtailed in the usual way by \$1,000, leaving a balance of \$3,000 when default occurs. Must the Government thereupon promptly pay its part of the balance—and will that part be the full \$2,000 guaranteed or will it be 50% of the \$3,000 balance, \$1,500; or must the mortgagee foreclose and may the Government satisfy its guaranty by paying 50% of the deficiency?

These are questions that assuredly will arise and for light on the subject let us turn to the language of the Act itself. Giving the words of the section their ordinary meaning, it seems clear that the purpose of the proviso above quoted was to reduce the Government's liability on its guaranty as payments were made on the principal. If the proviso had not been inserted, the Government's liability in the illustration just used would be to pay \$2,000 of the \$3,000 in default; but the inclusion of the proviso would seem to provide a constant percentage of liability for the unpaid portion of the debt, which would reduce the Government's liability to \$1,500 or 50% of the balance due. If at foreclosure sale the property brings \$1,500, the mortgagee will get it all. If it

<sup>63</sup> 60 C. J. §719(28). *SHELDON, THE LAW OF SUBROGATION* (2d ed.) §7; *RESTATEMENT, RESTITUTION* (1937) §162(c).

<sup>64</sup> *Administrator's Decision No. 590*, dated September 29, 1944.

<sup>65</sup> See note 27, *supra* at sect. 500(c).

brings \$2,000, the mortgagee will take the first \$1,500 and the Government will recoup \$500.00 on its \$1,500 payment under the guaranty.

It also seems to be the best view that the liability of the Government to make good on its guarantee becomes absolute at the time of default. To hold otherwise would destroy much of the purpose and spirit of the Act. In specific terms the Act speaks of the Government as guarantor, and there is a well recognized difference between a guarantee of payment and a contract of indemnity against loss.<sup>66</sup> The general rule is clear that the liability of an absolute guarantor attaches immediately upon default by the principal.<sup>67</sup>

The Act provides that: "Loans guaranteed by the Administrator under this title shall be payable under such terms and conditions as may be approved by the Administrator."<sup>68</sup> Under this authority the Administrator has promulgated regulations which provide that upon receipt of a claim under the guaranty he shall have the following options:<sup>69</sup>

1. Pay to the creditor not later than one month after receipt of notice of any default, as a partial payment of any actual or potential claim under the guaranty, the amount of principal, interest, taxes, advances, or other items in default; and in consideration of such payment the lender shall be deemed to have agreed to refrain from giving effect to any acceleration provisions by reason of defaults prior to the date of notice of default theretofore given; provided, however, that unless the creditor consents, the Administrator may exercise this option once only, and in an amount not exceeding an amount equivalent to the aggregate of principal and interest payable in one year, or not exceeding ten per centum of the original amount of the guaranty, whichever sum is less.

2. Pay the creditor within one month after receipt of claim the full amount payable under the guaranty without requiring foreclosure, or personal action.

3. Pay to the creditor promptly after receipt of claim any amount agreed upon, not exceeding the amount due under the guaranty; and notify him to institute appropriate foreclosure proceedings, with, or without, legal action to reduce the debt to judgment, against all or any of the parties liable thereon, and whose names are stated in such notice to the creditor.

4. If the creditor does not begin appropriate action within two months after receipt of notice to institute action as provided in option 3 above, the Administrator shall be entitled to begin and prosecute the same to completion in the name of the creditor, or of the Administrator on behalf of the United States, as may be appropriate under applicable laws and rules of procedure; provided, however, that in such event the

<sup>66</sup> 38 C. J. S., p. 1134, §5; 28 C. J. §892(8).

<sup>67</sup> 38 C. J. S., p. 1227, §66; 28 C. J. §990(149).

<sup>68</sup> See note 27, *supra* at sect. 500(c).

<sup>69</sup> *Regulations of the Veterans' Administration*, Part 36, Title 38, CODE OF FEDERAL REGULATIONS.

Administrator shall pay, (in advance if required under the practice in the jurisdiction) all court costs, and other expenses, and provide the legal services required.

Another practical question which may be expected to arise may be illustrated by the following example:

Suppose John Smith, who is a veteran, decides to buy a house. He finds one that suits him and the owner offers it to him for \$3,800. It later develops that there are additional charges amounting to \$200.00 for searching the title, surveyor's fees, service charges and other expenses which will run the gross cost to \$4,000. Under these circumstances, will the Government guarantee 50% of \$4,000, which would be \$2,000, or 50% of only \$3,800, which would be \$1,900?

The Administrator of Veterans' Affairs has held that the Government will guarantee 50% of the gross loan of \$4,000 or, to put it another way, will permit the inclusion of incidental expenses, such as attorneys' fees, etc., as part of the principal sum to be guaranteed by the Government.<sup>70</sup> The Administrator based his ruling on a finding that such incidental expenses are usually borne by the purchaser and become, in point of practice, a part of the purchase price.

#### TITLE IV: EMPLOYMENT OF VETERANS

Briefly, this title provides for the creation of a Veterans' Placement Service Board to consist of the Administrator of Veterans' Affairs, the Director of Selective Service, and the Administrator of the Federal Security Agency. The board is given authority to determine all matters of policy relating to the administration of the Veterans' Employment Service of the United States Employment Service. The policies adopted by the board will be carried out through the instrumentality of the Veterans' Employment Representative in the states or through the Director of Selective Service and persons engaged in the activities authorized under Section 8 of the Selective Training and Service Act of 1940, as amended.

#### TITLE V: READJUSTMENT ALLOWANCES FOR VETERANS WHO ARE UNEMPLOYED

1. To be eligible for such an allowance a person must:<sup>71</sup>

(a) have served in some branch of the armed forces for ninety days after September 16, 1940, and prior to the termination of the war;

(b) have been discharged or released under conditions other than dishonorable, or have been discharged as a result of a service-connected disability;

<sup>70</sup> *Administrator's Decision No. 591*, dated September 29, 1944.

<sup>71</sup> See note 27, *supra* at sect. 700(a).

(c) not be receiving a subsistence allowance for education under Title II or increased pension for vocational training;

(d) be residing in the United States at the time of filing a claim;

(e) be completely unemployed or, if partially employed, at wages less than \$23.00 per week;

(f) be registered with and continue to report to a public employment office in accordance with its regulations;

(g) be able to work and be available for any "suitable work." Inability to work due to sickness or disability which occurs after the commencement of the period of unemployment will not be considered as a bar.

2. A person otherwise eligible for an allowance shall be ineligible if:<sup>72</sup>

(a) he leaves suitable work voluntarily, without good cause, or is suspended or discharged for misconduct in the course of employment;

(b) he fails, without good cause, to apply for "suitable work" to which he has been referred by a public employment office, or to accept "suitable work" when offered to him;

(c) he fails, without good cause, to attend an available free training course as may be required by regulations which shall be issued pursuant to the provisions of this title;

(d) he participates in or is directly interested in a labor dispute which causes a stoppage of work.

3. The amount of allowance shall be \$20.00 per week, less that part of wages payable to the veteran for part-time work performed during the week which is in excess of \$3.00 per week.<sup>73</sup>

4. A limit of fifty-two weeks is provided as a total period during which allowances may be paid<sup>74</sup> and the period of unemployment for which allowances may be paid must occur not later than two years after discharge.<sup>75</sup> No allowance shall be payable for any period of unemployment which occurs more than five years after the end of the war.<sup>76</sup>

5. Eight weeks of allowances shall be paid for each of the veteran's first three months of service and four weeks of allowances shall be paid for each additional month of service.<sup>77</sup>

6. Any person eligible under the foregoing provisions, and subject to the conditions and limitations aforesaid, who is self-employed for profit in an independent establishment, trade, profession or any other vocation shall be entitled to a readjustment allowance in an amount equal to the difference between his "net earnings" less than \$100.00 per month and the sum of \$100.00 per month.<sup>78</sup>

<sup>72</sup> *Id.* at sect. 800(a).

<sup>73</sup> *Id.* at sect. 700(a).

<sup>74</sup> *Id.* at sect. 700(a).

<sup>75</sup> *Id.* at sect. 902(a) (b).

<sup>76</sup> *Id.* at sect. 900(a).

<sup>77</sup> *Id.* at sect. 700(a).

<sup>78</sup> *Id.* at sect. 900(b).

The question will immediately arise as to what will constitute "net earnings" within the meaning of the Act. The term appears in the Act without any elaboration or definition. We may therefore assume that the Congress did not intend to subject the term to a precise technical definition as is required in tax returns, but intended for the language to be given its ordinary meaning. Reduced to the briefest terms possible, "net earnings" would seem to mean the net amount a veteran actually realizes from his earnings in any given month.

It will not be very difficult to determine a veteran's net income during a given month if he keeps an approved set of books or if he receives income during every month in the year. But what about a farmer who works many months during the year without any, or very little, monthly income and usually realizes his income for the entire year during the fall when crops are harvested? Will such individuals be entitled to a readjustment allowance during the months when they have no income?

A variation of the problem might be the case of a farmer, or even a manufacturer or other producer who holds his product from the market in the hope of receiving a better price later on.

Of course, there has developed no jurisprudence on the subject, and we shall have to await rulings on particular cases and use them as precedents before we can have any assurance of what the final decisions will be in such cases. The Administrator of Veterans' Affairs, however, has issued a decision which discusses this subject; and the following significant quotations are taken from it:<sup>70</sup>

"A veteran, for instance a farmer, who works several months and, as the result of his effort, had at the end thereof an investment in his growing crops or who in the following months harvested his crop but had not yet sold it or otherwise realized thereon, may nevertheless be without 'net earnings' within the contemplation of that term as used in the statute under our present consideration. It will be borne in mind that a purpose of the law is to provide readjustment allowances covering the time the veteran has insufficient earnings for livelihood covering a transition period as provided for in the statute from his war service to peace-time pursuit.

"The fact that in some cases the fruit of a veteran's labor might be held from month to month for a better market would not be determinative, as under existing conditions he might realize therefrom sufficient earnings for his living. As to his work, the veteran should not be required to dispose of his production out of the ordinary course at a disadvantage to him. The customs, incidents, and advantages of any line of business or endeavor should be permitted in its regular course and

<sup>70</sup> *Administrator's Decision No. 592*, dated October 12, 1944.

the benefits of the statute should not be dependent upon changes or curtailment therein.

"Take for instance, the self-employed veteran who works without receiving any returns for six months and then on the last day of the sixth month sells his crop for a substantial sum and puts the money in the bank. Then he proposes to start this process over again. It is possible that under such procedure, if permitted, he could receive the unemployment allowance for several months in all, notwithstanding the fact that he had been gainfully self-employed, had realized on the fruits of his labor and by virtue thereof possessed sufficient funds for his livelihood. It would appear that in such circumstances the purpose of the statute had been served by carrying him to the point of normal return."

It appears from this decision that the Administrator of Veterans' Affairs is disposed to give a liberal interpretation to the language used in the Act. This no doubt is based upon the apparent intent of the Congress to make provision that the veteran have sufficient earnings for his livelihood as he undertakes to readjust himself to civilian life following the completion of his military or naval service.

#### TITLE VI: GENERAL ADMINISTRATION AND PENAL PROVISIONS

While the provisions of this title are important, they are not complicated and will not be discussed here. There are, however, certain administrative provisions which appear throughout the Act which are worthy of citation. They are as follows:

1. The Administrator of Veterans' Affairs is authorized to administer the Act and is authorized to utilize existing facilities and services of federal and state departments or agencies on the basis of mutual agreements with such departments or agencies.<sup>80</sup> He shall, consistent with the provisions of the Act, prescribe such rules and regulations and require such records and reports as he may find necessary to carry out such purposes.<sup>81</sup> And he shall transmit to the Congress annually a report of operations under the Act.<sup>82</sup>

2. The authority to issue subpoenas and provisions for invoking aid of the courts of the United States, to make investigations, and to administer oaths, as contained in 49 STAT. 2033-3A, 38 U. S. C., §§131-133, shall be applicable in the administration of the title.<sup>83</sup>

3. Any claimant who knowingly accepts an allowance to which he is not entitled shall be ineligible to accept any further allowance under

<sup>80</sup> See note 27, *supra* at sect. 1100(a).

<sup>81</sup> *Id.* at sect. 1100(b).

<sup>82</sup> *Id.* at sect. 1504.

<sup>83</sup> *Id.* at sect. 1200.

the title, and whoever, for the purpose of causing an increase in any allowance authorized under the title, or for the purpose of causing an allowance to be paid when none is authorized under the title, or whoever makes or causes to be made any false statement of a material fact in any claim for an allowance, or any false statement, representation, affidavit, or document in connection with a claim shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.<sup>84</sup>

4. Any veteran whose claim for allowance is denied by the local office may appeal. The appeal will be heard by the Readjustment Allowance Agent, a representative of the Administrator of Veterans' Affairs. The decision of this agent, if adverse, may then be appealed to the Administrator of Veterans' Affairs, whose decision will be final.<sup>85</sup>

In conclusion, I should like for it to be understood that I am discussing this Act and Section 8 of the Selective Service Act as an individual. My comments and conclusions should not be considered as having any official significance whatever. I have no authority to speak for the Selective Service System or the Veterans' Administration. Every case which may arise under either of the acts under consideration will have to stand on its own bottom and the facts and circumstances in each individual case will have to be considered separately until precedents are established. Although all of us have the right to "sound off" from time to time and express our personal views as to the meaning of the language used in the acts, it should be remembered that none of us can be sure that his interpretation is correct until the courts have spoken.

<sup>84</sup> *Id.* at sect. 1300, 1301(a).

<sup>85</sup> *Id.* at sect. 1102.