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Torts--Negligence Actions by Federal Prisoners Allowed Under the Federal Tort Claims Act (United States v. Muniz, 374 U.S. 150 (1963))

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TORTS — NEGLIGENCE ACTIONS BY FEDERAL PRISONERS ALLOWED UNDER THE FEDERAL TORT CLAIMS ACT. — Two separate suits for personal injuries were brought by federal prisoners under the Federal Tort Claims Act.[1] Respondent Winston alleged the negligence of prison medical employees in failing to diagnose a brain tumor, thereby delaying its removal and causing his eventual blindness. Likewise, respondent Muniz alleged that the failure of prison officials to prevent twelve inmates from assaulting him, fracturing his skull and causing blindness in one eye constituted negligence on their part. The district courts' dismissals of the actions on the ground of sovereign immunity were reversed by the Court of Appeals for the Second Circuit.[2] The Supreme Court affirmed, *holding* that a person under confinement in a federal prison can sue the United States Government under the Federal Tort Claims Act to recover damages for personal injuries, sustained during confinement, by reason of the negligence of a government employee. *United States v. Muniz,* 374 U.S. 150 (1963).

The common-law concept of sovereign immunity prevented a private person from suing federal and state governments without their consent.[3] Whether this concept had its basis in the "divine right of Kings" theory or was a result of feudalism is a matter of scholarly contention.[4] Blackstone's rule, that the Crown was immune from suits because no court can have jurisdiction over the King,[5] was the "universally received opinion" in the United States by 1821.[6]

However, with the expansion of the federal government's activities, the number of remediless wrongs multiplied. To cope with this situation congress provided some relief by enacting private bills.[7] As time progressed, congress found itself sorely burdened with investigating and passing upon substantial numbers of these private claim bills.[8] Such preoccupation was criticized as an inefficient use of congressional time and money. Coupled with

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[1] 28 U.S.C. §§ 1346(b), 2671-80 (1958).

[2] Muniz v. United States, 305 F.2d 285 (2d Cir. 1962) (panel opinion, 2-1 decision; rehearing en banc, per curiam, 5-4 decision); Winston v. United States, 305 F.2d 253 (2d Cir. 1962) (panel opinion, 2-1 decision; rehearing en banc, 5-4 decision).

[3] Kawananakoa v. Polyblank, 205 U.S. 349, 353 (1907). See generally PROSSER, TORTS 770-72 (2d ed. 1955), and WRIGHT, THE FEDERAL TORT CLAIMS ACT 1-2 (1957).

[4] Woody, *Recovery By Federal Prisoners Under The Federal Tort Claims Act,* 36 WASH. L. REV. 338, 345 (1961).

[5] WRIGHT, *op. cit. supra* note 3, at 2.

[6] Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 411-12 (1821) (dictum).

[7] WRIGHT, *op. cit. supra* note 3, at 2-3.

[8] United States v. Muniz, 374 U.S. 150, 154 (1963). The Court found that between the Sixty-eighth and Seventy-eighth Congresses 2,000 or more private claim bills were introduced per Congress.

a resultant desire for organizational improvement was a desire to avoid injustice to those having meritorious claims previously barred by sovereign immunity.[9] The problem was met in 1946 with the passage of the Federal Tort Claims Act[10] [hereinafter referred to as the FTCA] a culmination of "nearly thirty years of congressional consideration."[11]

Primarily, the FTCA granted to the district courts the exclusive jurisdiction to hear suits based upon the negligence of government employees in "circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."[12] The government was to be liable for torts in the same manner and to the same extent as a private individual "under like circumstances."[13] Congress expressly excluded thirteen types of claims from the operation of the FTCA,[14] thereby protecting the government from liability that might seriously handicap efficient government operations.[15]

The FTCA does not specifically state whether or not suits by federal prisoners are allowed. Therefore, by application of the maxim *expressio unius*[16] the exclusion of prisoners from the list of exceptions would seem to mean that they are included within the scope of the Act.[17] However, this reasoning was, in effect, rejected by the Supreme Court in *Feres v. United States*,[18] where it was held that a member of the armed forces could not sue under the FTCA for injuries which "arise out of or are in the course of activity incident to service."[19] Among the principal reasons for so holding were the absence of an analogous or parallel liability on the part of either an individual or a state;[20] the presence of a

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[9] Gelhorn & Lauer, *Federal Liability For Personal And Property Damage*, 29 N.Y.U.L. REV. 1325, 1329-30 (1954).

[10] 28 U.S.C. §§ 1346(b), 2671-80 (1958).

[11] Dalehite v. United States, 346 U.S. 15, 24 (1953).

[12] 28 U.S.C. § 1346(b) (1958).

[13] 28 U.S.C. § 2674 (1958).

[14] 28 U.S.C. § 2680 (1958), as amended, 28 U.S.C. § 2680 (Supp. IV, 1963).

[15] United States v. Muniz, 374 U.S. 150, 163 (1963).

[16] *Expressio unius est exclusio alterius.* "The expression of one thing is the exclusion of another."

[17] WRIGHT, THE FEDERAL TORT CLAIMS ACT 30 (1957). See also Note, *Denial Of Prisoners' Claims Under The Federal Tort Claims Act*, 63 YALE L.J. 418, 420 (1954).

[18] 340 U.S. 135 (1950). Subsequent prisoner cases relying on the *Feres* rationale also refused to apply this doctrine of statutory construction. See, *e.g.*, Lack v. United States, 262 F.2d 167 (8th Cir. 1958); Jones v. United States, 249 F.2d 864 (7th Cir. 1957).

[19] Feres v. United States, 340 U.S. 135, 146 (1950).

[20] *Id.* at 141-42. Since no individual has the power to mobilize a private army, there is no liability "under like circumstances," as called for by the FTCA in 28 U.S.C. § 2674 (1958).

comprehensive compensation system for service personnel;[21] and the distinctively federal relationship of the soldier to his superiors and the government, which should not be disturbed by state laws.[22]

The great majority of lower federal courts have denied recovery to prisoners, reasoning that the *Feres* case was sufficiently analogous to the prisoner-jailer situation to be controlling.[23] It was stated that the relationship of the soldier and federal prisoner to the government were both "governed exclusively by federal law."[24] Similarly, it was determined that allowing prisoners to sue under the FTCA would hamper the government policy of operating federal penal institutions uniformly, since the local law would then have to be applied.[25] It was further reasoned that permission for prisoners to sue under the FTCA would establish a new and novel liability, which *Feres* expressly refused to do.[26] Just as there was no analogous civil liability in the case of a soldier,[27] the phrase "under like circumstances" could not apply to a federal prisoner because no private individual has the legal right to hold another in penal servitude.[28] Allowing such recoveries was seen as a threat to the maintenance of prison discipline,[29] and the presence of a statutory compensation fund for prisoners working in prison industries[30] was regarded as analogous to the presence of a compensation scheme for the military in *Feres*.[31]

Utilizing the *Feres* rationale, the lower federal courts almost uniformly denied prisoner tort claims.[32] Nor did this tendency

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[21] *Id.* at 145.

[22] *Id.* at 142-44.

Under the FTCA the law of the place where the act or omission occurred governs consequent liability. Therefore, allowing a soldier to sue under the FTCA would subject him, involuntarily, to variations in state law and would disturb a relationship which was distinctively federal in character, since a soldier's relationship to the government is derived from federal sources and governed by federal authority.

[23] Lack v. United States, *supra* note 18; Jones v. United States, *supra* note 18. Sigmon v. United States, 110 F. Supp. 906 (W.D. Va. 1953).

[24] Lack v. United States, *supra* note 18, at 169.

[25] Jones v. United States, *supra* note 18, at 866. This was regarded as substantially similar to the *Feres* reasoning set forth in note 22, *supra*. See also Sigmon v. United States, *supra* note 23, at 908-11.

[26] Jones v. United States, *supra* note 18, at 866.

[27] See note 22, *supra*.

[28] Sigmon v. United States, *supra* note 23, at 910.

[29] *Ibid.*

[30] 18 U.S.C. § 4126 (1958), as amended, 18 U.S.C. § 4126 (Supp. IV 1963).

[31] Sigmon v. United States, *supra* note 23, at 908.

[32] In Lawrence v. United States, 193 F. Supp. 243 (N.D. Ala. 1961), the court allowed recovery to a prisoner suing under the FTCA but distinguished the case from the ordinary prisoner suit. The prisoner was being

abate when the Supreme Court seemingly limited the *Feres* impact in two subsequent cases.[33] In *Indian Towing Co. v. United States*,[34] the Court allowed recovery under the FTCA for damages suffered when a barge and tug ran aground due to the negligent operation of a lighthouse by the Coast Guard. Limiting *Feres* to its factual situation, the Court reasoned that employees of the United States Government should exercise due care when they cause reliance on their activities "in the same manner and to the same extent as a private individual. . . ." [35] This was considered as being within the "broad and just purpose" [36] of the FTCA.

In *Rayonier, Inc. v. United States*,[37] the Court held the United States liable under the FTCA for the negligence of its Forest Service employees while fighting a fire. The Court stated that the test of governmental liability under the Act was "whether a private person would be responsible for similar negligence under the laws of the state where the acts occurred." [38] The Court also decided it should not read exceptions into the FTCA beyond those provided by congress.[39]

Although the federal courts, generally, held *Feres* controlling even after these cases,[40] a liberalizing trend was established.[41] This apparent divergence between the Supreme Court and the lower courts ripened the issue for the Court's consideration of the principal case.[42]

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transported in a government truck driven by a civilian employee of the United States Air Force. The court reasoned that the prisoner's claim was against government employees who were completely disassociated from the plaintiff's prisoner status.

However in an earlier suit for damages where a prisoner was injured while under treatment for narcotics addiction in a federal hospital, the court denied recovery since the prisoner was injured in a situation only incidentally related to being a prisoner. Berman v. United States, 170 F. Supp. 107 (E.D.N.Y. 1959).

[33] Rayonier, Inc. v. United States, 352 U.S. 315 (1957); Indian Towing Co. v. United States, 350 U.S. 61 (1955).

[34] Indian Towing Co. v. United States, *supra* note 33.

[35] *Id.* at 64-65 (quoting from 28 U.S.C. § 2674 (1958)).

[36] *Id.* at 68-69.

[37] Rayonier, Inc. v. United States, *supra* note 33.

[38] *Id.* at 319.

[39] *Id.* at 320. It seems here that the Court again reverts to the *expressio unius* maxim.

[40] The two circuit court decisions, Lack v. United States, 262 F.2d 167 (8th Cir. 1958) and Jones v. United States, 249 F.2d 864 (7th Cir. 1957), were rendered subsequent to the *Indian Towing Co.* and *Rayonier* cases. Both decisions considered *Feres* controlling since the federal prisoner situation was regarded as more closely related to the military than to the situations in *Indian Towing Co.* or *Rayonier.*

[41] Woody, *Recovery By Federal Prisoners Under The Federal Tort Claims Act*, 36 WASH. L. REV. 338, 350 n. 65 (1961).

[42] United States v. Muniz, 374 U.S. 150 (1963).

Because of the important question in construction presented, the Supreme Court scrutinized the legislative history of the FTCA and found that congress intended to eliminate the burden imposed by the substantial numbers of private claim bills.[43] Since claims by federal prisoners were among those private bills, congress appeared well aware of the problem presented by such claims.[44] Therefore, failure to include federal prisoners in the list of exceptions to the FTCA was regarded as evidence of a deliberate intent by congress to allow prisoners' actions.[45]

The Court had recourse to the plain import of statutory language which it coupled with a study of those bills proposing tort claims legislation from 1925 through 1946. It was found that six bills were introduced to bar suits of prisoners. None of these bills were passed or included in the FTCA.[46] It was also noted that reference was made by congress to the law of New York, which had relaxed the rule of sovereign immunity and had long allowed prisoner suits without detrimental or undesirable effects on the prison system.[47] In concluding that congress intended to allow prisoner suits under the FTCA, the Court limited *Feres* to its factual situation.[48]

Among the reasons set forth for not following *Feres* was the existence here of an analogous form of liability, which was absent in *Feres*.[49] This analogous form of liability to the prisoner existed because most states have allowed prisoners to recover from their jailors, individually, for negligently caused injuries.[50] Such liability also existed in some states which have allowed prisoners' suits under a waiver of sovereignty.[51] Moreover, since *Indian Towing Co.* and *Rayonier* had extended the government's responsibility to novel and unprecedented forms of liability, the

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[43] *Id.* at 154.

[44] *Ibid.* The Court found that between 1935 and 1946 congress passed twenty-one private claim bills for federal prisoners. Thus, the much larger number of these bills that must have been originally introduced added the legislative burden.

[45] *Id.* at 156.

[46] *Ibid.*

[47] *Id.* at 157 n. 12.

By 1946 it was well established that prisoner suits against New York State were allowed. Paige v. New York, 269 N.Y. 352, 199 N.E. 617 (1936); White v. New York, 260 App. Div. 413, 23 N.Y.S.2d 526 (3d Dep't 1940), *aff'd mem.*, 285 N.Y. 728, 34 N.E.2d 896 (1941).

The remedy was limited, somewhat, by the existence of a "civil death" statute which precluded suit while still in prison. N.Y. PENAL LAW § 510; Lipschultz v. New York, 192 Misc. 70, 78 N.Y.S.2d 731 (Ct. Cl. 1948).

See generally Leflar & Kantrowitz, *Tort Liability Of The States*, 29 N.Y.U.L. REV. 1363 (1954).

[48] United States v. Muniz, 374 U.S. 150, 158-62 (1963).

[49] *Id.* at 159-60.

[50] *Ibid.*; Woody, *supra* note 41, at 353 n. 83.

[51] United States v. Muniz, *supra* note 48, at 160.

argument against such an extension was rejected.[52] Likewise, the presence of a compensation fund for prisoners was held not necessarily to preclude prisoner suits under the FTCA.[53] The Court found the compensation scheme to be non-comprehensive.[54] The government's contention that variations in state laws might hamper uniform administration of federal prisons, as it was feared they would with the military, was rejected. Admitting that prisoner recoveries might be prejudiced to some extent by variations in state law, the Court regarded no recovery at all as a more serious prejudice to the prisoner's rights.[55] In this connection, it is interesting to consider the desirability of spreading tort liability in the governmental area.[56]

The impact of the principal case is, in some respects, clear. It sets to rest a controversy that has been present in the federal courts since the passage of the FTCA in 1946. It strengthens the prospects of compliance with the standards of care owed by the Bureau of Prisons to federal prisoners,[57] and provides them with much needed relief.[58]

The holding that prisoners can sue the government may, indeed, prove to be the catalyst necessary for added waivers of sovereign immunity on the part of the state. Finally, the unanimity of the Court's decision indicates its firm determination to liberally construe the FTCA, a trend begun by the *Indian Towing Co.* and *Rayonier* cases.

WILLS — DECEASED RESIDUARY LEGATEE'S SHARE HELD NOT TO PASS BY WAY OF INTESTACY WHERE IT IS CLEARLY MANIFESTED THAT SURVIVING RESIDUARY LEGATEES SHOULD SHARE IN THE RESIDUUM — In this proceeding the petitioner requested the Court

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[52] United States v. Muniz, *supra* note 48, at 159.

[53] *Id.* at 160.

[54] *Ibid.* Only those federal prisoners engaged in Federal Prison Industries (18% of all federal prisoners) were covered by this prison compensation scheme. Woody, *Recovery by Federal Prisoners Under The Federal Tort Claims Act*, 36 WASH. L. REV. 338, 351 (1961).

[55] United States v. Muniz, *supra* note 48, at 162. Looking to New York's experience in allowing prisoner suits, the Court found no adverse effects on either prison regulation or prison discipline.

[56] McNiece & Thornton, *The Federal Tort Claims Act And Its Application To Military Personnel*, 5 VAND. L. REV. 57, 66-67 (1951-52).

[57] 18 U.S.C. § 4042 (1958).

[58] *Supra* note 48. From a sociological viewpoint the relief is important since "a permanently disabled prisoner with no financial resources cannot be expected to return to society as a useful and well-behaved person. On the contrary, he may well revert to crime in an attempt to survive. . . ." Note, *Denial Of Prisoners' Claims Under The Federal Tort Claims Act*, 63 YALE L.J. 418, 425 (1954).