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SOME POSSIBLE NEW FIELDS IN A NARROWING ACT

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Both Congress and the courts, particularly the Supreme Court, have increasingly tended to narrow the scope of the Tort Claims Act, but within these confines there are certain classes of torts, well-recognized in the common law, which have been little used or totally neglected as the basis for suits. It is the purpose of this paper to suggest some of these and to consider their availability. Of course, such speculation may prove faulty in some cases and overlook others actually available. Prediction in law is a very risky business, so that some of these suggestions will very likely not stand. In addition, some mention will be made of those classes of persons who have now been excluded from the benefits of the Act by Congressional or judicial action.

Perhaps the most neglected classes are trespass, trover and conversion. In the case involving the greatest trespass of all, namely, the seizure by order of President Truman of the steel plants,[1] the steel companies obtained equitable relief rather than relief under the Tort Act. But one of the defenses relied on by the Government was that plaintiffs had an adequate legal remedy since if the seizure was improper, it was tortious and relief would thus be available under the Tort Act. The district court rejected this theory and held that the Tort Claims Act was not applicable.[2] Judge Pine reasoned that since the seizure was carried out under an executive order it was therefore within one of the exemptions of the Act[3] as an act of an employee of the Government in the execution of a regulation, whether or not it be valid. The cases cited by the court in reference to this proposition, *Old King Coal Co. v. United States*[4] and *Jones v. United States*,[5] involved no question of illegal seizure, so that the decision stands alone on this point.

It hardly seems reasonable that the impact of the Act could be so neatly avoided by a mere delegation of authority. Can an executive order made without reference to any Act of Congress be considered a "regulation" within the meaning of the Tort Claims Act to defeat the Act? Nearly every action could thus be delegated by "regula-

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1. Exec. Order No. 10340, 17 FED. REG. 3139 (1952).
2. Youngstown Sheet & Tube Co. v. Sawyer, 103 F. Supp. 569, 577 (D.D.C. 1952).
3. 28 U.S.C.A. § 2680(a) (1950).
4. 88 F. Supp. 124 (S.D. Iowa 1949).
5. 89 F. Supp. 980 (S.D. Iowa 1949).

tion" and the purpose of the Act stultified. Clearly the seizure was in every sense the act of the President, and if it was without authority it was tortious. Even under the ordinary principles of trespass or agency, a principal is liable in trespass if he directs his agent to commit the trespass even if the principal is not present when it occurs.[6] The action of the executive himself on behalf of the United States would therefore seem to have been plainly actionable in trespass under the Tort Claims Act. The question is not adverted to in the opinion of either the Court of Appeals[7] or the Supreme Court.[8]

The main reliance by the Government in the Supreme Court to avoid equitable relief in the Steel Seizure Cases was on the right of the steel companies to obtain compensation in the Court of Claims rather than under the Tort Claims Act, but the Court stated that "Prior cases in this Court have cast doubt on the right to recover in the Court of Claims on account of properties unlawfully taken by government officials for public use as these properties were alleged to have been. See *e.g., Hooe v. United States,* 218 U.S. 322, 335-336; *United States v. North American Co.* 235 U.S. 330, 333."[8a] The Government had pointed to *United States v. Pewee Coal Co.*[8b] to show that compensation was obtainable in the Court of Claims, but if the Supreme Court has doubts as to efficacy of such relief, it seems reasonable to suppose that a suit under the Tort Claims Act is an indicated remedy. This is not to question the propriety of the Supreme Court's decision, since it may well be that such an action would not be an *adequate* legal remedy, but only to suggest that it was an available one.

Another class of cases involving trespass which would not seem excluded by any specific exception in the Act is in the broad field of search and seizure. An illegal search and seizure when performed by federal agents appears actionable, and a search or seizure without a warrant[9] or on an invalid warrant[10] are clearly illegal. Of course, there is the exemption of actions based on "abuse of process" contained in Section 2680 (h)[11] but abuse of process usually means the malicious perversion of a regularly issued process whereby a result not lawfully or properly attainable under it is secured.[12]

6. Chirac v. Reinicker, 11 Wheat. 280, 6 L. Ed. 474 (U.S. 1826).
7. Sawyer v. United States Steel Co., 197 F.2d 582 (D.C. Cir. 1952).
8. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 72 Sup. Ct. 863, 96 L. Ed. 1153 (1952).
8a. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 585, 72 Sup. Ct. 863, 96 L. Ed. 1153 (1952).
8b. 341 U.S. 114, 71 Sup. Ct. 670, 95 L. Ed. 809 (1951).
9. McClurg v. Brenton, 123 Iowa 368, 98 N.W. 881 (1904); Smith v. McDuffee, 72 Ore. 276, 142 Pac. 558, *rehearing denied,* 143 Pac. 929 (1914).
10. State v. Griswold, 67 Conn. 290, 34 Atl. 1046 (1898); Fisher v. McGirr, 1 Gray 1, 61 Am. Dec. 381 (Mass. 1854).
11. 28 U.S.C.A. § 2680(h) (1950).
12. Italian Star Line v. United States Shipping Bd. Emergency Fleet Corp.,

A still further type of case which sounds in trespass and of which there seems to be a dearth under the Tort Claims Act is that involving the comparatively modern tort of invasion of privacy. Needless to say, most of the great invasion of the individual's privacy by the Federal Government in this day and age is pursuant to statute and accordingly not actionable. But there may be some areas where the invasion has not been authorized and would thus be tortious. An obvious example is wiretapping. There is little doubt that wiretapping, like eavesdropping,[13] is an actionable invasion of privacy,[14] even though this may not be a violation of the Fourth Amendment[15] or a violation of Section 605 of the Federal Communications Act.[16]

But although wiretapping may not be forbidden by the Constitution or any law, it is not permitted by any. Since the United States has not by act of Congress indicated any intention to limit its liability for this tort by permitting any government agents to indulge in wiretapping, it would seem that its responsibility would be the common-law liability of the individual. Surely in the *Goldman* and the *Coplon* cases[16a] the tort was committed with what appears to have been substantial damages. Perhaps the damages inherent in a jail sentence would be compensable as the result of a conviction obtained through leads obtained through wiretapping.

Although it has generally been held that photographing or finger printing arrested persons even where they are not found guilty or even charged is not an actionable invasion of privacy,[17] yet the publication of such pictures as in a wanted notice in a Post Office[18] might be so considered.

Similar to the liability in trespass that may arise from illegal search and seizure by law enforcement officers is the liability in trover that may result from negligent handling of property beyond the scope of the writ under which it is seized. Thus there is liability in trover for the wrongful seizure of the property of one person

53 F.2d 359, 80 A.L.R. 576 (2d Cir. 1931); Melton v. Rickman, 225 N.C. 700, 36 S.E.2d 276, 162 A.L.R. 793 (1945).

13. Pavesich v. New England Life Ins. Co., 122 Ga. 190, 50 S.E. 68, 69 L.R.A. 101 (1905); State v. Davis, 139 N.C. 547, 51 S.E. 897 (1905); Warren and Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890).

14. Rhodes v. Graham, 238 Ky. 225, 37 S.W.2d 46 (1931). And see cases cited in Notes, 138 A.L.R. 22, 94 (1942), 168 A.L.R. 446, 463 (1947), 14 A.L.R.2d. 750, 761, 770 (1950).

15. Goldman v. United States, 316 U.S. 129, 62 Sup. Ct. 993, 86 L. Ed. 1322 (1942).

16. 47 U.S.C.A. § 605 (Supp. 1953); Coplon v. United States, 191 F.2d 749 (D.C. Cir. 1949).

16a. Goldman v. United States, 316 U.S. 129, 62 Sup. Ct. 993, L. Ed. 1322 (1942); Coplon v. United States, 191 F.2d 749 (D.C. Cir. 1949).

17. Notes, 168 A.L.R. 446, 461 (1947), 14 A.L.R.2d 750, 761, 770 (1950).

18. Notes, 138 A.L.R. 22, 66 (1942), 168 A.L.R. 446, 456 (1947), 14 A.L.R.2d 750, 768 (1950).

under legal process directed to another, or in the seizure of property in excess of that called for by the writ.[19] The failure of a sheriff to file a return of his proceedings in a claim and delivery action within the number of days required by statute has been held to render him liable in conversion to the owners for the value of the property at the time of his seizure of it even though he applies the proceeds to the benefit of his creditor without his consent.[20]

Although liability on the part of the marshal and his surety no doubt still exists in such cases, there seems to have been no judicial determination of how much if any of this liability has been assumed by the United States under the Tort Claims Act. Section 2680(c)[21] exempts "any claim arising in respect of . . . the detention of any goods . . . by . . . any . . . law-enforcement officer," and Section 2680(h)[22] exempts "[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights," but "abuse of process" is not generally considered to mean negligent seizure of, or failure to seize property under a writ, and there are many instances where the complaint against the marshal is not merely for "the detention of goods." Trover will lie, for example where the marshal illegally sells the property of an execution debtor for the full value of the property although the marshal pays over to the execution creditor the proceeds of the sale.[23]

In the only case touching on these points decided under the Act[24] the complaint alleged that agents of the Alcohol Tax Unit of the Treasury Department seized liquor without a valid order, turned some of it over to a person claiming to be the owner, and that more of it was missing when the court ordered it returned to her. The court dismissed the complaint on the basis of both the exemptions in Section 2680(c) and (h) as arising out of "the detention of . . . goods or merchandise by . . . law-enforcement officer"[25] and also if plaintiff's theory was correct the agents were guilty of "abuse of process."[26] Presumably in this case the Treasury agents secured the search warrant from the United States Commissioner and also apparently *detained* and failed to return the goods, but where a marshal acted negligently under valid process and his negligence did not directly

19. Yockey v. Smith, 181 Ill. 564, 54 N.E. 1048 (1899); Woodbury v. Long, 8 Pick. 543 (Mass. 1829).
20. Shaffner v. Price, 63 S.D. 456, 260 N.W. 703, 98 A.L.R. 689 (1935).
21. 28 U.S.C.A. § 2680(c) (1950).
22. 28 U.S.C.A. § 2680(h) (1950).
23. Hall v. Ray, 40 Vt. 576, 94 Am. Dec. 440 (1868).
24. Chambers v. United States, 107 F. Supp. 601 (D. Kan. 1952).
25. 28 U.S.C.A. § 2680(c) (1950).
26. 28 U.S.C.A. § 2680(h) (1950).

involve the detention of goods, there might well be liability on the part of the United States.

Although there have been no definite cases of conversion or trover under the Tort Claims Act, one sounding in trover is to be found in *Aktiebolaget Bofors v. United States*.[27] The United States had been licensed by the Swedish owners to manufacture "for the United States' use" the famous Bofors 40 mm. anti-aircraft gun. Despite the protest of the owners, the United States manufactured it also for the use of its allies. Thereafter, the owners brought several simultaneous suits based on various theories, against the United States and officers thereof, including one suit under the Tort Claims Act, where, as Judge Holtzoff said: "Specifically the question presented is whether a person to whom a secret process is lawfully disclosed in connection with a license to use it, is guilty of a tortious act if he uses the process beyond the scope of the license."[28] The Court of Appeals held that "a licensee who uses the secret for purposes beyond the scope of the license granted by the owner is liable for breach of contract, but he commits no tort, because the only right of the owner which he thereby invades is one created by the agreement for disclosure."[29] Somewhat similar to this case is *Fulmer v. United States*[30] in which the court decided that no tort was involved in using an unpatented invention.

Since Section 1498 of the Judicial Code confers exclusive jurisdiction on the Court of Claims for suits alleging patent infringements by the United States, there can be no suits of this kind under the Tort Act. But there seems no reason why suits for the infringement of copyright may not lie under the Act. Furthermore, this may well be a very important field in this day when the Government is using such large quantities of literary and scientific material in its vast output of publications, foreign radio broadcasts, etc. A case now pending in the Court of Appeals for the Sixth Circuit, *Turton v. United States* (Civil No. 11979), involves the violation of a copyright by the United States. The district court denied the complaint for an injunction and damages sought under the Copyright Laws on the ground of lack of jurisdiction on the theory that the United States had not consented to be sued. That is the Government's position on appeal. But there seems to be no good reason why a suit for damages would not lie under the Tort Claims Act for a violation of copyright is undoubtedly a tort which it not covered by any of the exceptions in the Act.

Another possible source of claims under the Act would be in negligent handling of cases for private persons by United States

27. 194 F.2d 145 (D.C. Cir. 1951).
28. Aktiebolaget Bofors v. United States, 93 F. Supp. 131, 132 (D.D.C. 1950).
29. Aktiebolaget Bofors v. United States, 194 F.2d 145, 149 (D.C. Cir. 1951).
30. 83 F. Supp. 137 (N.D. Ala. 1949).

Attorneys where they are required (by statute) to act for an individual. There are many cases under the Act involving malpractice of government physicians and surgeons but apparently none involving the malpractice of a government attorney. Although this may reflect the high degree of care used by United States Attorneys in the handling of cases, one might expect eventually malpractice suits involving the representation of private individuals under the several statutes which require such representation. Some examples of these statutes are: (1) that requiring the representation upon request of persons sued "for or on account of anything done by him while an officer of either House of Congress in the discharge of his official duty, in executing any order of such House . . .";[31] (2) the representation of Indians in all suits at law and in equity "In all States and Territories where there are reservations or allotted Indians . . ."[32] and (3) the representation of veterans in claims against employees for reemployment.[33] It is also true that both before and after the Tort Act, United States Attorneys have acted on behalf of Government employees sued for torts committed in the course of their employment. An order of the Attorney General permits such representation. Even after the enactment of the Act, these persons are often sued either alone, for a tort which would be actionable under the Act, or as co-defendant with the United States.[34]

It is not necessary to point out the many possibilities of negligence once the attorney-clinent relationship is established. Ignorance of the law, neglect through press of official duties, etc., may all give rise to a cause of action which would appear to be cognizable under the Tort Claims Act.

The foregoing are some of the types of torts which have not yet been litigated under the Federal Tort Claims Act, but which nevertheless involve well-known classes of torts. Although some are so exceptional in nature that it is not surprising that no suits have yet arisen involving them, others are so much in the field of federal activity that it is difficult to account for the lack of any cases thereon more than nine years after the enactment of the Federal Tort Claims Act.

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31. 2 U.S.C.A. § 118 (1927).
32. 25 U.S.C.A. § 175 (1928).
33. 50 U.S.C.A. App. § 459(d) (1951).
34. The advantage of naming a driver of a Government vehicle involved in a collision is seen, for example, under Rule 43(b), FED. R. CIV. P. As an adverse party, the plaintiff can "interrogate him by leading questions and contradict and impeach him" which would otherwise be impossible since, as a Government employee, he is neither "an officer, director, or managing agent of a public or private corporation or a partnership or association which is an adverse party." An advantage of suing the driver alone is to avoid the often crowded federal courts and to obtain the more summary and often cheaper relief of state or municipal courts. If a judgment is obtained and not paid, the defendant's driver's license in many jurisdictions will be revoked.

While there may be some persons who have overlooked claims that would be cognizable under the Tort Act, there are certain other classes who have sought to assert claims only to have them rejected by the courts.

In the great class of cases where the United States has provided other means of compensation as for soldiers, federal employees and veterans, the courts have finally come to exclude recovery under the Tort Act. That the proposition may not be quite as simple as this appears in *Brooks v. United States*,[35] for the Court permitted recovery by a soldier who had been injured by a federal vehicle while he was on leave. Despite the fact of compensation and free hospitalization for his injuries, the Court held that since the injuries were not received as an incident to his army service he was not only not prevented from suing but not even required to elect his remedy. It did concede that in measuring damages the Court should take into account the compensation received.

Although *Feres v. United States*[36] paid lip service to *Brooks*, it was decided on a theory which would have precluded Brooks' recovery and therefore seems effectively to have overruled the prior decision. Although both Feres and the two other soldiers in the companion cases to it were on active duty at the time of their injuries, the rationale of the decision is that where the United States has provided an adequate system of compensation, Congress tacitly intended to exclude recovery under the Tort Claims Act.[37]

The later decision in *Johansen v. United States*,[38] although not involving the Tort Claims Act, is in keeping with this theory, for it held the remedies for seamen on vessels of the United States are to be found exclusively in the Federal Employees' Compensation Act of 1916,[39] and the remedies under the Public Vessels Act of 1925[40] are therefore not available.

This principle, once established, was extended to other areas. For example, veterans injured in veterans' hospitals who were thus entitled to compensation, were held not entitled to sue under the Tort Act. Prior to the *Feres* decision, the First Circuit in *Santana v. United States*,[41] in reliance on the *Brooks* case, held that the family of a veteran could recover under the Tort Act even though "already covered by a 'comprehensive system of special statutory benefits' "[42]

35. 337 U.S. 49, 69 Sup. Ct. 918, 93 L. Ed. 1200 (1949).
36. 340 U.S. 135, 71 Sup. Ct. 153, 95 L. Ed. 152 (1950).
37. See also Dalehite v. United States, 346 U.S. 15, 31 n.25, 73 Sup. Ct. 956, 97 L. Ed. 1427 (1953).
38. 343 U.S. 427, 72 Sup. Ct. 849, 96 L. Ed. 1051 (1952).
39. 5 U.S.C.A. §§ 751 *et seq.* (1927).
40. 46 U.S.C.A. §§ 781 *et seq.* (1944).
41. 175 F.2d 320 (1st Cir. 1949).
42. *Id.* at 322.

while after the *Feres* case, and in reliance thereon, the Court of Appeals for the District of Columbia held in *O'Neil v. United States*[43] that in identical circumstances, there could be no recovery. To the same effect is *Pettis v. United States.*[44]

Similarly, in *Wham v. United States*[45] the Court of Appeals for the District of Columbia, between the *Brooks* and *Feres* cases, and in reliance on *Brooks,* allowed recovery under the Tort Act to a member of the Metropolitan Police Force for the District of Columbia despite a system of compensation to which the United States contributed; whereas, in *Lewis v. United States,*[46] decided after the *Feres* decision, the same court denied the availability of the Act to a member of the U. S. Park Police of the same city, on the *Feres* theory, while attempting to distinguish their decision in the *Wham* case.

Originally, too, federal employees were held not to be excluded from the benefits of the Tort Act simply by reason of a system of compensation provided by the Federal Employees Compensation Act. So in *White v. United States,*[47] the court held that the Federal Employees' Compensation Act was not an exclusive remedy and permitted suit under the Tort Act. Whether this would have been changed by the doctrine of the *Feres* case alone cannot be told since Congress by its 1949 amendment to the FECA made the Compensation Act exclusive[48] and retroactive.[49] The defense of exclusiveness, however, was rejected in *Dishman v. United States*[50] on the ground that the particular injury to the plaintiff was not received "while in the performance of his duty." But in general, this great source of liability has now been removed from the Act.

Federal prisoners have also been held to be without redress by the several District Courts which have passed on the question.[51] In *Sigmon v. United States*[52] Judge Barksdale has discussed the whole problem in great detail. To some extent the rationale of the *Feres* case concerning other compensation is available, with respect to prisoners working under Federal Prison Industries[53] since the statute

43. 202 F.2d 366 (D.C. Cir. 1953).
44. 108 F. Supp. 500 (N.D. Cal. 1952).
45. 180 F.2d 38 (D.C. Cir. 1950).
46. 190 F.2d 22 (D.C. Cir. 1951).
47. 77 F. Supp. 316 (D.N.J. 1948).
48. 63 STAT. 861 (1949), 5 U.S.C.A. § 757(b) (Cum. Supp. 1950).
49. Act of October 14, 1949, § 303(g), 63 STAT. 867 (1949).
50. 93 F. Supp. 567 (D. Md. 1950).
51. Shew v. United States, 116 F. Supp. 1 (M.D.N.C. 1953); Sigmon v. United States, 110 F. Supp. 906 (W.D. Va. 1953); Dayton v. United States, D. Kan., Topeka, Oct. 13, 1950; Ellison v. United States, W.D.N.C. The last two cases cited are unreported, but are referred to in the *Sigmon* case, 110 F. Supp. 906, at 909.
52. 110 F. Supp. 906 (W.D. Va. 1953).
53. Federal Prison Industries is the Government corporation which administers the program under which inmates of federal penal and correctional

provides that funds shall be used for "compensation to inmates or their dependents for injuries suffered in any industry. In no event shall compensation be paid in greater amount than that provided in the Federal Employees' Compensation Act."[54]

In the 33 Federal penal and correctional institutions, there were, during 1952, an average of 18,176 inmates.[55] The guiding principle of the Bureau of Prisons is that "the most effective tool in the rehabilitation of prisoners is useful and constructive work."[56] The Bureau therefore reports that two thirds of the prisoners are employed at farm work, on road construction and forestry operations, on construction projects, and at the many bases incident to the operation and maintenance of the institutions. About 12% are unemployable for one reason or another. The remainder, 3,770 in 1952, are employed by Prison Industries.[57]

It is therefore apparent that the large majority of federal prisoners are not employed by Prison Industries and even those who are spend a large portion of their time in prison not engaged "in any industry" but subject to the risk of tortious injury.

Prisoners can hardly be presumed to have "assumed the risk" since that concept denotes voluntariness. Nor is there any indication that Congress intended to exclude such claims. Whatever light the legislative history throws on the subject indicates the contrary.[58]

In order to hold that injuries received outside the protection of Prison Industries are not actionable under the Tort Claims Act, Judge Barksdale resorted to that section of the Tort Claims Act which provides that "The United States shall be liable, . . . in the same manner and to the same extent as a private individual under like

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institutions may be employed in the production of commodities for consumption in the institutions or for sale to departments or agencies of the United States. 18 U.S.C.A. §§ 4121-28 (1951).

54. 18 U.S.C.A. § 4126 (1951).

55. FEDERAL PRISONS, 1952, 5 (Federal Bureau of Prisons, 1952).

56. *Id.* at 23.

57. *Ibid.* There is a high turnover among these employees so that many more persons are involved than the number indicates. The corporation suggests that at least double the cited number are employed during the year. ANNUAL REPORT OF BOARD OF DIRECTORS, FEDERAL PRISON INDUSTRIES, INC., FISCAL YEAR 1952, 1.

58. H.R. 17168, § 207, 71st Cong., 3d Sess. (1931), provided: "The provisions of this Title shall not apply to . . . (c) any claim by a prisoner while in a Federal penal institution." This bill was reported favorably to the House but no further action was taken. H.R. REP. No. 2800, 71st Cong., 3d Sess. (1931). H.R. 5065 and S. 211, 72d Cong., 1st Sess. (1932), both provided in § 206: "The provisions of this Act shall not apply to . . . (11) any claim for injury to or death of a prisoner." No action was taken on these bills, but S. 4567, 72d Cong., 1st Sess. (1932), which contained the same exception was reported favorably out of Committee, although no further action was taken. SEN. REP No. 658, 72d Cong., 1st Sess. (1932). In the 73d Congress three Tort Claims bills were introduced, but only S. 1833 contained the exclusion of

circumstances. . . ."[59] As the Supreme Court said in the *Feres* case: "One obvious shortcoming in these claims is that plaintiffs can point to no liability of a 'private individual' even remotely analogous to that which they are asserting against the United States."[60]

So Judge Barksdale concluded that "[a] private individual would never find himself 'under like circumstances' to those alleged in the complaint, because no private individual has the legal right to hold any other private individual in penal servitude."[61]

This brings the problem back to that fascinating and still undecided problem of the limits of the Federal Tort Claims Act which is beyond the scope of this paper. Obviously, that provision carried to its logical conclusion would exempt all torts committed in the performance of governmental functions and restrict recovery to those injuries incurred as a result of proprietary activities of government. It seems clear that such a rule appeals to the minority of the Supreme Court in the *Dalehite* case,[62] and their criticism of the opinion of the Court is that it restricts the limits of the Act beyond even this well-known scope. Much more elucidation will be necessary before anyone can say with confidence where the boundaries lie.[63]

Thus it is seen that although there has been a constant narrowing of the scope of the Act both by Congress and the Courts, there remain within those narrowing confines rich veins as yet unassayed. Some of those suggested by this paper may prove dross when subjected to the acid tests of the Courts, but a diligent prospector should be able to uncover rich and rewarding lodes.

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prisoner claims. In the 74th Congress, two Tort Claims bills were introduced, one of which, S. 1043, contained the exclusion. None of the Tort Claims bills introduced in subsequent sessions of Congress excluded prisoner claims.

59. 28 U.S.C.A. § 2674 (1950).

60. Feres v. United States, 340 U.S. 135, 141, 71 Sup. Ct. 153, 95 L. Ed. 152 (1950). This theory was reiterated with regard to the Coast Guard in Dalehite v. United States, 346 U.S. 15, 43-4, 73 Sup. Ct. 956, 97 L. Ed. 1427 (1953).

61. Sigmon v. United States, 110 F. Supp. 906, 910 (W.D. Va. 1953).

62. *See* Dalehite v. United States, 346 U.S. 15, 59-60, 73 Sup. Ct. 956, 97 L. Ed. 1427 (1953) (dissenting opinion).

63. Some lower court decisions still favor widening rather than restricting the scope of the Act. See *e.g.*, Union Trust Co. v. United States, 113 F. Supp. 80 (D.D.C. 1953) (opinion rendered before, but reargument had after the *Dalehite* decision).