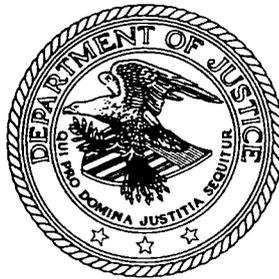


Library

# United States Attorneys Bulletin



*Published by Executive Office for United States Attorneys  
Department of Justice, Washington, D.C.*

Vol. 24

November 12, 1976

No. 23

UNITED STATES DEPARTMENT OF JUSTICE

## TABLE OF CONTENTS

	<u>Page</u>
COMMENDATIONS	969
POINTS TO REMEMBER	
FORM OF INDICTMENT UNDER 18 U.S.C. 1711	971
MISAPPROPRIATION OF POSTAL FUNDS	971
CASENOTES	
Executive Office for U.S. Attorneys	
Federal Tort Claims Act. State Sightsseer Statute	
<u>Douglas S. Gard v. U.S.</u>	973
Criminal Division	
Conversion of Postal Funds	
<u>U.S. v. Morrison</u>	974
Tax Division	
Willful failure to file Federal income tax returns	
<u>U.S. v. Peter Pomponio</u>	975
APPENDIX: FEDERAL RULES OF CRIMINAL PROCEDURE	977

COMMENDATIONS

Assistant United States Attorney Dennison Young, Jr., Southern District of New York, has been commended by Beate Bloch, Associate Solicitor, Department of Labor, for the success achieved through his untiring efforts in connection with Usery v. International Organization of Masters [etc.]

Assistant United States Attorney Richard Graham, District of District of Columbia, has been commended by Joel M. Mangel, Acting Assistant General for Public Health, Department of Health, Education and Welfare, for his excellent written and oral argument to the Court of Appeals in Nat'l Ass'n of Neighborhood Health Center, Inc. v. Mathews.

Assistant United States Attorney William Ballaine, Southern District of New York, has been commended by Richard A. Lavine, Deputy Assistant Attorney General, Civil Division, for his professional handling of Grove Press, Inc. v. CIA.

Assistant United States Attorney Robert D. Hiaring, District of South Dakota, has been commended by Clarence M. Kelley, Director Federal Bureau of Investigation, and R.W. Johnson, Postal Inspector, Sioux Falls, for his exemplary work.

POINTS TO REMEMBER

## FORM OF INDICTMENT UNDER 18 U.S.C. 1711

The indictment form for 18 U.S.C. 1711 (Misappropriation of postal funds) contained in the Guide to Drafting Indictments is being changed to include the term "intentionally" in the charging part. See the casenote in this Bulletin for United States v. Morrison, 536 F.2d 286 (C.A. 9, 1976), where the Court held that an indictment, following the current form, failed sufficiently to charge criminal intent.

## MISAPPROPRIATION OF POSTAL FUNDS

(18 U.S.C. 1711)

On or about the ..... day of ....., 19.., in the ..... District of ....., JOHN DOE, being a United States Postal Service employee, did intentionally convert to his own use, without authorization by law, the sum of ..... which had come into his hands and under his control in the execution of his employment and service as such employee.

(Criminal Division)

EXECUTIVE OFFICE FOR U. S. ATTORNEYS  
Director William B. Gray

Douglas S. Gard v. United States, \_\_\_\_\_ F. Supp. \_\_\_\_\_ (N.D. Calif.,  
No. C-74-1971-CBR, September 17, 1976). DJ 157-11-2078.

Federal Tort Claims Act. State Sightseer Statute.

Plaintiff was a college student who became a quadriplegic after falling down an abandoned mine shaft on government land in Nevada. In the suit filed under the Federal Tort Claims Act for more than \$5 million, the Government sought and was granted summary judgment against the plaintiff.

Forty-four states, including Nevada and California, have "sightseers" statutes which provide that a landowner has no duty to keep his land safe for entry or use by sightseers. In granting summary judgment, the District Court applied the Nevada statute. This appears to be the first case in which the United States has been able to obtain the benefit of such a statute.

Attorney: Paul J. Fitzpatrick (AUSA, N.D. Calif.)  
FTS 556-1126

## CRIMINAL DIVISION

Assistant Attorney General Richard L. Thornburgh

United States v. Morrison, 536 F.2d 286 (9th Cir. 1976).

Conversion of Postal Funds

Defendant was convicted of a misdemeanor violation under 18 U.S.C. 1711. The complaint, which tracked the language of the statute and the form indictment in the Criminal Division's Guides to Drafting Indictments, alleged that defendant "did convert... without authorization of law" certain postal funds. The court of appeals held that the failure of the complaint to allege the requisite criminal intent rendered it insufficient to charge an offense against the United States. The court noted cases which have held that an allegation of a common-law crime necessarily implied an allegation of criminal intent but distinguished this case because the term "convert" could describe merely a tort and does not indicate that criminal intent must be present.

A new indictment form for 18 U.S.C. 1711 has been prepared for inclusion in the Guide to Drafting Indictments. See POINTS TO REMEMBER in this Bulletin.

Staff: William B. Terry (D. Nevada) FTS 598-6336

TAX DIVISION  
Assistant Attorney General Scott P. Crampton

United States v. Peter Pomponio, et al., (Sup. Ct., No. 75-1667,  
October 12, 1976) D.J. No. 5-79-1561.

Willful failure to file Federal income tax returns.

Following a jury trial, the respondents were convicted of willfully filing false income tax returns. The Fourth Circuit, however, based on its reading of United States v. Bishop, 412 U.S. 346 (1973), held that the jury had been improperly instructed on the issue of willfulness. The court of appeals held that the jury must be instructed that "bad purpose or evil motive" is an element of the offense, a holding in conflict with decisions of the Eighth, Seventh, Third and Ninth Circuits. The Government petitioned for certiorari.

The Supreme Court granted the petition, and issued a brief per curiam opinion summarily reversing the court of appeals and remanding the case to that court for further proceedings. In so doing, the Supreme Court made it clear that the element of "willfulness" simply means a voluntary, intentional violation of a known legal duty, and that the defendant's motives are irrelevant. The Court thus rejected the holding of the court of appeals that an instruction as to good faith was required, and also found that in other respects the jury had been properly instructed.

Attorney: Robert E. Lindsay    FTS 739-2913