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## Funeral Oration in Honor of United States v. Burton

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## Criminal Law Notes

### Funeral Oration in Honor of *United States v. Burton*<sup>29</sup>

*With apologies to William Shakespeare and in appreciation of the good humor of the judges of the United States Court of Military Appeals before whom this was delivered as part of the Court's 1994 judicial conference.*

Friends, honorable judges, countrymen and women, lend me your ears;

I come to bury *United States v. Burton*, not to praise it.  
The evil that bright line rules do lives after them; the good is oft interred with their textual bones;  
So let it be with *Burton*.

The honorable Judge Cox Hath told you that *Burton* was "something of a crude stopgap"

If it were so, it was a grievous fault;  
and grievously hath *Burton* answered for it.  
Here, under leave of Judges Cox, Crawford, and Gierke,  
for they are all honorable judges,  
Come I to speak at *Burton's* funeral.

*Burton* was my friend, a bastion of our treatise  
But Judge Cox says the landscape of speedy trial has changed dramatically since *Burton* and *Driver*  
and Judge Cox is an eminent and learned judge

Many cases did *Burton* overturn at first

all for the cost of enforcing Article 10 and sparing from  
durance vile, the accused  
You all did love *Burton* once, not without cause;  
What cause withholds you, then to mourn for it?  
But yesterday, the rule of *Burton* might  
Have stood against the world; now lies it here, overruled

It is not meet that you know how well *Burton* bolstered the  
Code

And *Henderson*, at 38 M.J. 260, note 1;  
This was the most unkindest cut of all;  
For when the Court ordered those murder charges dismissed  
whose fault indeed was it; dear *Burton's*, or those who  
ignored the commands of the court and code?

For *Burton's* legacy is Rule 707.  
Our service member's rights remain  
protected by discretion without guide

They that have done this deed are honorable  
What private griefs they have, alas, I know not,  
That made them do it;—they are wise and honorable  
And have in their opinion with reasons answered  
I come not, friends, to steal away your reason,  
albeit *Kossman* will steal away our lawyers.  
For unavailability of counsel is now an excuse  
as speedy trial no longer mandates their need  
Indeed Judge Cox has said so, and Judge Cox is an honorable  
jurist

For I have neither wit, nor words, nor worth  
as have Judges Wiss and Sullivan, whose dissents  
stir men's blood.  
Were I Sullivan, Chaos I would predict  
Were I Wiss, of the results of Dunlap's overruling, might I  
warn

I tell you that which you yourselves do know;  
Show you sweet *Burton's* wounds, poor dumb, dead, case  
and cast the auguries for the future without it  
Here is the will and legacy of overruled *United States v. Bur-*  
*ton*

Litigation yet again;  
for double, double toil and trouble  
the legal caldron bubbles.

Colonel Fredric I. Lederer<sup>30</sup>

<sup>26</sup> S.T. Research Corp., ASBCA No. 39600, 92-2 BCA ¶ 24,838.

<sup>27</sup> See *Lanzen Fabricating, Inc.*, ASBCA No. 40328, 93-3 BCA ¶ 26,079. The contracting officer may establish a new completion date by either (1) reaching agreement with the contractor, or (2) notifying the contractor of a reasonable completion date.

<sup>28</sup> *Pipe Tech, Inc.*, ENG BCA No. 5959, (Dec. 20, 1993), 94-\_\_\_ BCA ¶ \_\_\_, 1993 Eng. BCA LEXIS 30, at \*16.

<sup>29</sup> As subsequently modified, *United States v. Burton*, 44 C.M.R. 166 (C.M.A. 1971), announced the 90-day speedy trial rule requiring dismissal of charges if the accused has been in pretrial confinement for more than 90 days after subtracting defense delays. *Burton* was overruled in *United States v. Kossman*, 38 M.J. 258, 261 (C.M.A. 1993).

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