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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

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. Burton

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

Colonel Fredric I. Lederer

26 S.T. Research Corp., ASBCA No. 39600, 92-2 BCA ¶ 24,838.
27 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.
29 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).
30 Chancellor Professor of Law Designate, Marshall-Wythe School of Law, College of William & Mary in Virginia; Colonel, JA (USAR).