

# The Burger Court Opinion Writing Database

## *Logue v. United States*

412 U.S. 521 (1973)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

May 30, 1973

112-9

Re: No. 72-656 - Orval C. Logue, et al v. U.S.

Dear Bill:

Please join me.

Regards,

WJB

Mr. Justice Rehnquist

Copies to the Conference

P.S. Should last sentence be "alleged negligence of" etc.?

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

May 10, 1973

Dear Bill:

Please join me in your opinion  
in 72-656, Logue v. United States.

*WDD*  
William O. Douglas

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 15, 1973

RE: No. 72-656 Logue v. United States

Dear Bill:

I fully agree with Potter that the  
addition suggested by him is essential.

If you see your way clear to adopting  
his suggestion, I too will join your  
opinion.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", likely referring to Justice William J. Brennan Jr.

Mr. Justice Rehnquist

cc: The Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 29, 1973

RE: No. 72-656 Logue v. United States

Dear Bill:

Please join me.

Sincerely,

*Bill*

Mr. Justice Rehnquist

cc: The Conference

7  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

May 14, 1973

Re: No. 72-656, Logue v. United States

Dear Bill,

I wonder if you would consider adding something along the following lines before the final paragraph of your opinion in this case:

Similarly, the Court of Appeals did not consider the possibility that, regardless of the arrangements made by the Deputy Marshal or his superior with the county sheriff, the Deputy Marshal may himself have been negligent in the particular circumstances of this case simply by transferring a federal prisoner with known suicidal tendencies to a facility over which federal officials had no control. That possibility, too, should be explored on remand.

With the addition of some such language as the above, I would be glad to join your opinion for the Court in this case.

Sincerely yours,

(1) S.

Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

May 29, 1973

Re: 72-656, Logue v. U.S.

Dear Bill,

I should appreciate your adding the following at the foot of your opinion in this case:

Mr. Justice Stewart joins the opinion of the Court upon the understanding that, upon remand, the Court of Appeals' consideration of Bowers' negligence will not be limited to his alleged failure to make "specific arrangements . . . for constant surveillance of the prisoner."

Sincerely yours,

P.S.  
1.

Mr. Justice Rehnquist

Copies to the Conference

9  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 11, 1973

Re: No. 72-656 - Logue v. United States

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 6, 1973

Re: No. 72-656 - Logue v. U. S.

Dear Bill:

Please add my name to Potter's  
statement at the end of your opinion for  
the Court.

Sincerely,



T.M.

Mr. Justice Rehnquist

cc: Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 14, 1973

Re: No. 72-656 - Logue v. U. S.

Dear Bill:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 15, 1973

Re: No. 72-656 - Logue v. United States

Dear Bill:

If an addition of the kind suggested by Potter, and now by Bill Brennan, is to be made, I would feel somewhat more comfortable if, prior to the word "facility" in the 9th line of the suggested addition, the word "non hospital" were inserted. I suspect that if the prisoner were placed in a hospital, the situation might be somewhat different.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 22, 1973

Re: No. 72-656 - Logue v. United States

Dear Bill:

I go along with the suggestion you make in your letter  
of May 21 to Bill Brennan and Potter.

Sincerely,

H.A.B.

Mr. Justice Rehnquist

Copies to the Conference

9

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 14, 1973

No. 72-656 Logue v. United States

Dear Bill:

Please join me.

Sincerely,

*L. Powell*

Mr. Justice Rehnquist

cc: The Conference

lfp/ss

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 24, 1973

No. 72-656 Logue v. United States

Dear Bill:

The addition to your opinion suggested in your letter of May 21 to Bill Brennan and Potter is agreeable with me.

Sincerely,

*Lewis*

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

3  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 29, 1973

No. 72-656 Logue v. U. S.

Dear Bill:

The changes in your 2nd draft are entirely satisfactory to me.

Sincerely,

L. F. P.

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 29, 1973

*[Handwritten signature]*

No. 72-656 Logue v. U. S.

Dear Bill:

The changes in your 2nd draft are entirely satisfactory to me.

Sincerely,

*Lewis*

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

Bill: In the 6th line of the new paragraph on page 11 I think the preposition "for" is omitted.

L. F. P., Jr.

HOOPER INSTITUTE  
ON WAR, REVOLUTION AND PEACE  
Sanford, California 94131-6010



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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 9, 1973

MEMORANDUM TO THE CONFERENCE

Re: No. 72-656 - Logue v. United States

Attached is a draft opinion for the Court in No. 72-656 - Logue v. United States. Though the result reached is in accordance with my notes of the Conference discussion, I have devoted more space than many thought at Conference would be necessary to the "contractor with the United States" question under the Federal Tort Claims Act. Herewith are my reasons for doing so.

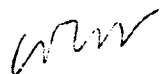
From what I can recall of the Conference discussion at the time certiorari was granted, the issue thought to be important in the case was the "contractor with the United States" part of the definition of federal agency as applied to agreements between the Bureau of Prisons and state and local jails. That issue is here for decision after argument: it was decided adversely to petitioners in the Court of Appeals, and they contest and the government defends the correctness of that decision. The fact that a determination of the issue does not completely dispose of the case does not, to my mind, alter the situation.

My own drafting efforts have convinced me that a much shorter, more or less ad hoc affirmance of the Court of Appeals' conclusion on the point cannot be written without some violation of what I conceive to be the standards which should guide our efforts. The issue is one of federal law

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which has been adequately briefed by the parties, and which we thought earlier in the year was of sufficient importance to warrant granting certiorari.

I do not think we can avoid treating the issue entirely just because the issue of the independent negligence of the deputy marshal, which is a separate ground upon which the judgment of the District Court might be sustained, is also in the case. It would be one thing if we were prepared to decide the latter issue ourselves, and thereby finally decide the case; but since the Court of Appeals did not deal with the issue at all, I gather that our past practice would indicate a preference that we not decide it in the first instance. That being the case, I don't think it is a good use of judicial resources to avoid the more important issue in the case, which was briefed, argued, and remains with us, in favor of a one paragraph per curiam remanding to the Court of Appeals for consideration of a finding of negligence on the part of a deputy marshal who had custody of a prisoner with suicidal tendencies -- a question of undoubted importance to the litigants, but certainly a "sport" if there ever was one in this general area of the law.

  
W.H.R.

Attachment

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Powell

1st DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

dated: 5/10/72

No. 72-656

Recirculated: \_\_\_\_\_

Orval C. Logue et al.,  
Petitioners,  
v.  
United States. } On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Fifth Circuit.

[May —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Reagan Logue, a federal prisoner confined in a county jail pending trial, fashioned a noose from a bandage covering a laceration on his left arm and hanged himself. His mother and adoptive father sued the United States for damages under the Federal Tort Claims Act, 28 U. S. C. § 1546 (b) (1970),<sup>1</sup> claiming that negligence on the part of Government agents and employees proximately caused the death of their son. The District Court determined that Logue's death was the result of negligence for which the United States was liable, and awarded damages. *Logue v. United States*, 334 F. Supp.

<sup>1</sup> "Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment under 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." 28 U. S. C. § 1346 (b) (1970).

9-  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 17, 1973

Re: 72-656 - Logue v. United States

Dear Bill and Potter:

My tentative inclination is not to include the language suggested by Potter in his letter to me of May 14th, which you endorsed in your letter of May 15th, Bill, but it may be that I am not focusing on the precise point you have in mind. My reasons for such a tentative conclusion follow.

The District Court, in its conclusions of law, found as follows:

"The decision of Deputy United States Marshal Bowers and his superiors to remove Reagan Edward Logue from the hospital to the Nueces County jail was a discretionary act within the purview of 28 USC § 2860 . . . (Appendix, page 610)"

In oral argument here, the following colloquy took place between court and counsel:

"Q. What did the District Court find with respect to the Marshal's decision to move him from the hospital to the local jail?"

"MR. DE ANDA: The court found that that was a discretionary function and we did not appeal from that finding, your Honor.

"Q. Discretionary function for which there could be no liability on the part of the United States.

"MR. DE ANDA: Under the Tort Claims Act.

"Yes, he found that.

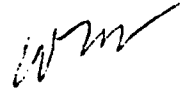
"But, he did find that the marshal, having made that discretionary decision, that then he had a duty to see that proper arrangements were made, wherever he took the man, to see that he was safely kept, in keeping -- that he had a duty of reasonable care, to see that the man was properly taken care of and the marshal admits in his testimony, the marshal that testified, the deputy marshal. The United States Marshal did not testify and had no actual knowledge of what transpired. But the people there admitted that it would have been wrong and unsafe to take this man and place him in jail without constant surveillance." Transcript, oral argument, page 10.

It seems to me that given this conclusion of the District Court, and the concession here, that it is not now open to petitioner to contend that liability can be imposed upon the government because of the decision to transfer Reagan Logue from the hospital to the Nueces County jail simply by reason of the fact that the government could not fully control those facilities. I think the argument remains open to the petitioner, as indicated in the language of page 11 of the present draft opinion, that the District Court judgment may be sustained on the grounds that the deputy marshal was negligent in not having made "specific arrangements . . . for constant surveillance of the prisoner . . ." But I think on the record as I understand it that the government's liability must be placed on this basis and not simply on the basis that it would have been negligent to place Logue in facilities over which the government did not have complete dominion, even though entirely reasonable arrangements had been made with the operator of those

facilities to maintain constant surveillance of Logue.

If I have misunderstood your point, I am sure you will not hesitate to let me know.

Sincerely,

A handwritten signature, likely of the sender, is written in dark ink. It appears to be a stylized name, possibly "Wm" or "Jm", followed by a long horizontal stroke.

Mr. Justice Brennan  
Mr. Justice Stewart

Copies to the Conference

9  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 21, 1973

Re: No. 72-656 - Logue v. United States

Dear Bill and Potter:

Following circulation of my note to you of May 17th, you and I talked on the phone, Bill, and you expressed the view that notwithstanding the statements made by counsel for petitioner in oral argument, you felt that petitioner had challenged the conclusion of law of the District Court relating to the discretionary function in his brief in this Court. I think you are probably correct, and I certainly wouldn't hold counsel to any purported concession in oral argument if it is even arguably contradicted in his brief.

I took the statement of counsel quoted on the first page of my May 17th letter, however, to be not a concession of a point otherwise available here, but a concession that he had not raised this issue on appeal to the Court of Appeals. We don't have the briefs in the Court of Appeals, nor do we know under what circumstances that court permits counsel to raise a point not contained in the "statement of issues" provided for by Rule 28, Rules of Appellate Procedure.

This being the case as I see it, if those who have already joined the opinion are agreeable, I would be glad to revise the last sentence of the penultimate paragraph of the opinion to read as follows:

"We believe that this contention, along with any other contentions properly open to the parties,

should be addressed in the first instance to the Court of Appeals. We therefore vacate the judgment of the Court of Appeals and remand the case for the consideration of such contentions.

"It is so ordered."

The last paragraph of the present opinion would then be eliminated.

Sincerely,

*Wm*

Mr. Justice Brennan  
Mr. Justice Stewart

Copies to the Conference



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pp. 11-12

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Powell

2nd DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

Recirculated: 5/29

No. 72-656

Orval C. Logue et al.,  
Petitioners,  
v.  
United States. } On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Fifth Circuit.

[May —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Reagan Logue, a federal prisoner confined in a county jail pending trial, fashioned a noose from a bandage covering a laceration on his left arm and hanged himself. His mother and adoptive father sued the United States for damages under the Federal Tort Claims Act, 28 U. S. C. § 1546 (b) (1970),<sup>1</sup> claiming that negligence on the part of Government agents and employees proximately caused the death of their son. The District Court determined that Logue's death was the result of negligence for which the United States was liable, and awarded damages. *Logue v. United States*, 334 F. Supp.

<sup>1</sup> "Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment under 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." 28 U. S. C. § 1346 (b) (1970).

ADD TO  
SUBMIT

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Mar  
Mr. Justice Bla  
Mr. Justice Pow

From: Rehnquist, J.

3rd DRAFT

Circulated: \_\_\_\_\_

**SUPREME COURT OF THE UNITED STATES**

Circulated: 5/30

No. 72-656

Orval C. Logue et al., Petitioners, v. United States.	} On Writ of Certiorari to the United States Court of Ap- peals for the Fifth Circuit.
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[May —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Reagan Logue, a federal prisoner confined in a county jail pending trial, fashioned a noose from a bandage covering a laceration on his left arm and hanged himself. His mother and adoptive father sued the United States for damages under the Federal Tort Claims Act, 28 U. S. C. § 1546 (b) (1970),<sup>1</sup> claiming that negligence on the part of Government agents and employees proximately caused the death of their son. The District Court determined that Logue's death was the result of negligence for which the United States was liable, and awarded damages. *Logue v. United States*, 334 F. Supp.

<sup>1</sup> "Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment under 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." 28 U. S. C. § 1346 (b) (1970).

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brandeis  
Mr. Justice Stewart  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Powell

4th DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

No. 72-658

Re-circulated: 6/71

Orval C. Logue et al.  
Petitioners.

On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Fifth Circuit

United States

May 1973

MR. JUSTICE REHNQUIST delivered the opinion of the  
Court.

Reagan Logue, a federal prisoner confined in a county  
jail pending trial, fashioned a noose from a bandage  
covering a laceration on his left arm and hanged himself.  
His mother and adoptive father sued the United States  
for damages under the Federal Tort Claims Act, 28  
U. S. C. § 1346 (b) (1970), claiming that negligence on  
the part of Government agents and employees proximi-  
tely caused the death of their son. The District  
Court determined that Logue's death was the result of  
negligence for which the United States was liable, and  
awarded damages. *Logue v. United States*, 334 F. Supp.

Subject to the provisions of chapter 171 of this title, the dis-  
trict courts, together with the United States District Court for the  
District of the Canal Zone and the District Court of the Virgin  
Islands, shall have exclusive jurisdiction of civil actions on claims  
against the United States, for money damages, accruing on and  
after January 1, 1945, for injury or loss of property, or personal  
injury or death caused by the negligent or wrongful act or omission  
of any employee of the Government while acting within the scope  
of his office or employment under circumstances where the United  
States, if a private person, would be liable to the claimant in accord-  
ance with the law of the place where the act or omission occurred.  
28 U. S. C. § 1346 (b) (1970)

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