

# The Burger Court Opinion Writing Database

*United States v. Clarke*  
445 U.S. 253 (1980)

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



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

CHAMBERS OF  
THE CHIEF JUSTICE

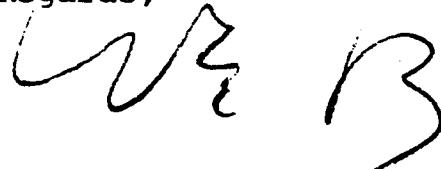
March 11, 1980

RE: 78-1693 - U.S. v. Clarke

Dear Bill:

I join.

Regards,

A handwritten signature in black ink, appearing to read "W. B." or "W. Rehnquist".

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

February 15, 1980

RE: No. 78-1693 United States v. Clarke

Dear Bill:

I agree.

Sincerely,

*Bill*

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 14, 1980

Re: No. 78-1693, United States v. Clarke

Dear Bill,

I am glad to join your opinion for the  
Court.

Sincerely yours,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 28, 1980

Re: No. 78-1693 - United States v. Clarke

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Dear Harry,

Please add my name to your dissent  
in this case.

Sincerely yours,



Mr. Justice Blackmun

cmc

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 21, 1980

Re: No. 78-1693 - United States v. Clarke

Dear Bill:

Please join me.

Sincerely,

*JM*  
T.M.

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 27, 1980

Re: No. 78-1693 - United States v. Clarke

Dear Bill:

I am attempting a brief dissent in this case. It should be around shortly.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

February 28, 1980

Re: No. 78-1693 - United States v. Clarke

Dear Byron:

Herewith, for your advance information, is a copy of a dissent in this case I am sending to the printer today.

Sincerely,

HAB

Mr. Justice White

To: The Chief Justice  
 Mr. Justice Blackmun  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Powell  
 Mr. Justice McHugh  
 Mr. Justice Stevens

From: Mr. Justice Blackmun

FEB 29 1980

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Drafted: \_\_\_\_\_

## SUPREME COURT OF THE UNITED STATES

No. 78-1693

United States, Petitioner, | On Writ of Certiorari to the  
 v. | United States Court of Appeals  
 Glen M. Clarke et al. | for the Ninth Circuit.

[March —, 1980]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE WHITE joins, dissenting.

Since the Court's opinion sets forth none of the facts of this case, it may be well to mention at least a few.

Bertha Mae Tabbytite, an American Indian, in 1954 settled on a 160-acre plot in the Chugach Mountains southeast of Anchorage, Alaska. She initially sought to perfect her claim to the land under the homestead laws and thereby to obtain an unrestricted fee title. Her applications for this were unsuccessful, however, and in 1966 Tabbytite agreed to accept a restricted trust patent to the land as an Indian allottee. As a result, the legal title remains in the United States, and Tabbytite's powers of alienation are restricted. See 25 U. S. C. § 348.

Meanwhile, in 1958 Glen Clarke and his wife applied for a homestead patent on 80 acres adjoining the Tabbytite allotment. Two months later, without obtaining an easement, they constructed a road across that land. The Clarkes repeatedly contested Tabbytite's homestead application and prevented her from perfecting her patent. After securing their own patent in 1961, the Clarkes subdivided their property into 40 parcels, most of which were sold to others before this litigation began. That subdivision and surrounding lands were incorporated as a third-class city called Glen Alps in June 1961. As a third-class city under Alaska law, Glen Alps did not possess the power of eminent domain.

In 1969, the United States filed the present action for

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 14, 1980

78-1693-United States v. Clarke

Dear Bill:

Please join me.

Sincerely,

*L. F. P.*

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: 14 FEB 1980

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 78-1693

United States, Petitioner, } On Writ of Certiorari to the  
 v. } United States Court of Appeals  
 Glen M. Clarke et al. } for the Ninth Circuit.

[February —, 1980]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

We granted the petition for certiorari of the United States in this case to decide the question "whether 25 U. S. C. § 357 authorizes a state or local government to 'condemn' allotted Indian trust lands by physical occupation." Pet. 2. That statute, in turn, provides in pertinent part:

"[L]ands allotted in severalty to Indians may be condemned for any public purpose under the laws of the State or Territory where located in the same manner as land owned in fee may be condemned, and the money awarded as damages shall be paid to the allottee."

We think this is a case in which the meaning of a statute may be determined by the admittedly old-fashioned but nonetheless still entirely appropriate "plain meaning" canon of statutory construction. We further believe that the word "condemned," at least as it was commonly used in 1901, when 25 U. S. C. § 357 was enacted, had reference to a judicial proceeding instituted for the purpose of acquiring title to private property and paying just compensation for it.

Both the factual and legal background of the case are complicated, but these complications lose their significance under our interpretation of § 357. For it is conceded that neither the city of Glen Alps nor the city of Anchorage, both Alaska municipal corporations, ever brought an action to condemn

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

February 14, 1980

Re: 78-1693 - United States v. Clarke

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Rehnquist

Copies to the Conference