IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN F. KENNEDY, *et al.*,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 3:23-CV-2603-N-BT
	§	
EDDIE GARCIA, *et al.*,	§	
	§	
Defendants.	§	

PLAINTIFF JOHN FITZGERALD KENNEDY AND HILDA TOBIAS'S OPPOSITION TO DEFENDANT KIMBERLY CHEATLE, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE UNITED STATES SECRET SERVICE[1]

[1] By law, the Secret Service is authorized to protect:

- The president, the vice president, (or other individuals next in order of succession to the Office of the President), the president-elect and vice president-elect
- The immediate families of the above individuals
- Former presidents, their spouses, except when the spouse re-marries
- Children of former presidents until age 16
- Visiting heads of foreign states or governments and their spouses traveling with them, other distinguished foreign visitors to the United States, and official representatives of the United States performing special missions abroad
- Major presidential and vice presidential candidates, and their spouses within 120 days of a general presidential election
- Other individuals as designated per Executive Order of the President and
- National Special Security Events, when designated as such by the Secretary of the Department of Homeland Security

Dear Honorable Chief Federal District Judge David Charles Godbey of Texas:

The plaintiff, John Fitzgerald Kennedy ("John") and Hilda Tobias Kennedy ("Hilda", collectively, "the Kennedys", "the Plaintiffs") respectfully request this court please accept this informal brief in opposition to the motion to dismiss by defendant Kimberley Cheatle, in her official capacity as Director of the Secret Service (hereafter, "the Secret Service" or "Secret Service[2]").

BACKGROUND

On December 14, 2023 (delivered to the court on November 22, 2023), Plaintiffs filed their Verified Complaint for Declaratory Relief (the "Original Complaint.") ECF No. 3. On December 20, 2023, Defendant The Secret Service was served ECF No. 6. On January 2, 2024, the Plaintiffs filed their First Amended Verified Complaint for Declaratory Relief ECF No. 10. On February 20, 2024 the Secret Service filed a Motion to Dismiss for failure to state a claim upon where relief can be granted under FRCP 12 (b) 6. On March 11, 2024, the court granted an unopposed extension of time to answer a motion to dismiss by the Secret Service to March 28, 2024, ECF No. 22. This Opposition to the Secret Service Motion to Dismiss is respectfully submitted to the court by the Kennedys on Thursday, March 28, 2024.

[2] Nothing in any filing(s) by the Kennedys will ever be in any way shape or form; intended to dispariage or insult in any way, the good and Honorable people who serve the United States of America in any way but rather to honor them and all the people in the United States who voted to enact the laws that govern and regulate the rights of a free and just society, with justice for all in this and all courts.

IN SUMMARY FOR THE SECRET SEVICE

Plaintiff John F. Kennedy, the son of the 42nd President of the United States, John F Kennedy, and Activist/Actress Marilyn Monroe through direct evidence and testimony state that the Secret Service failed to protect, the plaintiff John, a member of a protected class privy to the mandate the U.S. Congress gave him and that duty being continuous ignored is discriminatory and his wife of 52 years suffered as an indirect result of this discriminatory negligence that will continue to deny the Kennedys future Constitutional rights, therefore, the plaintiffs here seek judgment, adjudication, declaratory and injunction relief as is their right under federal law(s) and precedent. This Opposition will show this truth. -The Kennedys are *pro se, pauperous*, disabled, and retired.

LEGAL STANDARD FOR MOTION TO DISMISS

When considering a motion to dismiss a complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), a court must accept all well-pleaded allegations in the complaint as true and view them in the light most favorable to the plaintiff. *Evancho v. Fisher*, 423 F.3d 347, 350 (3d Cir. 2005). A pleading is sufficient if it contains "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of [their] 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (first alteration added) (second alteration in original) (citation omitted).

To determine the sufficiency of a complaint, a court must take three steps: (1) the court must take note of the elements a plaintiff must plead to state a claim; (2) the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth; and (3) when there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief. *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 664, 675, 679 (2009) (alterations, quotations, and other citations omitted). A court in reviewing a Rule 12(b)(6) motion must only consider the facts alleged in the pleadings, the documents attached thereto as exhibits, and matters of judicial notice. *S. Cross Overseas Agencies, Inc. v. Kwong Shipping Grp. Ltd*., 181 F.3d 410, 426 (3d Cir. 1999).

"A motion to dismiss should be granted if the plaintiff is unable to plead 'enough facts to state a claim to relief that is plausible on its face.'" *Malleus*, 641 F.3d at 563 (quoting *Twombly*, 550 U.S. at 570).

POINT I:

THE SECRET SERVICE DOES NOT HAVE *ANY* SOVEREIGN IMMUNITY BY ACT(S) OF THE UNITED STATES CONGRESS

A. DOCTRINE OF SOVEIGN IMMUNITY.....

Sovereignty is a broad *term* that influences many modern concepts such as identity, individuality, and rationality (the use of reason). It comes from the French word *la souveraineté*, which in international law, means that a government possesses full control over affairs within a territorial or geographical area or limit. Simplified, Sovereign Immunity can act as French President Charles de Gaulle wrote, “Patriotism is when love of your own people comes first; nationalism, when hate for people other than your own comes first.”

Professor Vicki C. Jackson, in her analysis of the principled or prudential reasons for judicial recognition of the limitation on suits against the federal government, describes sovereign immunity as “a place of contest between important values of constitutionalism”: On the one hand, constitutionalism entails a commitment that government should be limited by law and accountable under law for the protection of fundamental rights; if the “essence of civil liberty” is that the law provide remedies for violations of rights, immunizing government from ordinary remedies is in considerable tension with all but the most formalist understandings of law and rights. On the other hand, a commitment to democratic decision-making may underlie judicial hesitation about applying the ordinary law of remedies to afford access to the public fisc to satisfy private claims, in the absence of clear legislative authorization.

Professor Kenneth Culp Davis was one of the nation's leading experts on administrative law — and a sharp critic of sovereign immunity. He characterized the concept as a medieval holdover from the English monarchy and said that the "strongest support for sovereign immunity is provided by that four-horse team so often encountered — historical accident, habit, a natural tendency to favor the familiar, and inertia." He contended that the doctrine of sovereign immunity is unnecessary as a "judicial tool," because we may trust the courts to refrain from interfering in crucial governmental activities, such as the execution of foreign affairs and military policies, by limiting themselves to matters appropriate for judicial determination and within the competence of the judiciary. Writing more recently, and similarly questioning the historical and constitutional justifications for federal sovereign immunity, Professor SusanRandall contends that sovereign immunity should henceforth be viewed as "a prudential rather than a jurisdictional doctrine," under which "courts attempt to balance the needs of the political branches to govern effectively."

The Fifth Circuit has made clear that questions of immunity are a threshold matter "to be resolved as early in the proceedings as possible." *Boyd v. Biggers*, 31 F.3d 279, 284 (5th Cir. 1994) (per curiam) (citing *Siegert v. Gilley*, 500 U.S. 226, 231-33 (1991) ("One of the purposes of immunity, absolute or qualified, is to spare a defendant not only unwarranted liability, but unwarranted demands customarily imposed upon those defending a long drawn out lawsuit.")); see also *Hulsey v. Owens*, 63 F.3d 354, 356 (5th Cir. 1995) (per curiam) (citing Boyd, 31 F.3d at 284); Brown v. Lyford, 243 F.3d 185, 191 (5th Cir. 2001) (citing Gibson v. Rich, 44 F.3d 274, 277 (5th Cir. 1995); *Spann v. Rainey*, 987 F.2d 1110, 1114 (5th Cir. 1993)). This is because absolute and qualified

immunity provide immunity not only from damages but from suit itself. See *Boyd*, 31 F.3d at 284; *Brown*, 243 F.3d at 191. Accordingly, the Court first addresses the issues of immunity.

"Qualified immunity attaches when an official's conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *White v. Pauly*, 137 S. Ct. 548, 551 (2017) (per curiam) (quoting *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (per curiam)). This "gives government officials breathing room to make reasonable but mistaken judgments, and protects all but the plainly incompetent or those who knowingly violate the law." *Stanton v. Sims*, 571 U.S. 3, 6 (2013) (per curiam) (internal quotation marks omitted) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (Scalia, J.)). "Once the defendant raises the qualified immunity defense, 'the burden shifts to the plaintiff to rebut this defense by establishing that the official's allegedly wrongful conduct violated clearly established law.'" *Harris v. Serpas*, 745 F.3d 767, 771 (5th Cir. 2014) (quoting *Brumfield v. Hollins*, 551 F.3d 322, 326 (5th Cir. 2008) (Haynes, J.)).

UNITED STATES CONGRESS PASSES PUBLIC LAW 82-79.....

In 1951 Triggered by the attack on President Truman[3], Congress enacted legislation that permanently authorized Secret Service protection of the President, his immediate family, the President-elect, and the Vice President (if he wished). (Congressional Public Law 82-79). *The Secret Service Website.*

Public laws are designed to affect the general public. Only public laws become part of the statutory code, the U.S. Code. Both will appear in separate series in the session laws, the U.S. Statutes at Large.

Public authorities, namely the local authorities or government departments exercise certain powers to serve the public as authorized by the state. The body of the law that governs such exercise of powers by public authorities is known as the Public law. If a resolution made by a public body acting in its capacity is unlawful, or if the decision-making procedure is discriminating, it can be challenged by using an accepted grievances/complaints process, or by judicial review.

Public law is concerned with the relationship between the state and individuals, and unlike private law, it doesn't remedy issues arising between private individuals or bodies. This mainly focuses on the separation of power within the state. To state simply, the public law seeks to regulate the abuse of the sovereign power.

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[3] Puerto Rican Nationalists; Griselio Torresola (died in the attack) and Oscar Collazo attempted to kill the President Truman but were stopped by the White House Police officer Leslie Coffelt.

President Truman and Secretary of State Dean Acheson asked Coffelt's widow, Cressie E. Coffelt, to go to Puerto Rico, where she received condolences from various Puerto Rican leaders and crowds. Cressie Coffelt responded with a speech absolving the island's people of blame for the acts of the attackers Collazo and Torresola. Oscar Collazo was convicted in federal court and sentenced to death, which Truman commuted to a life sentence. In 1979, President Jimmy Carter commuted the sentence of Collazo to the time served

Public law is imperative as a result of the unequal relationship between the government and the public. The government is the only body that can make decisions on the rights and privileges of the people and how they must act within the law. And when a public body seems to have violated such rights and privileges while performing their functions in the capacity of a public body, a citizen can resort to the mechanism of judicial review if he/she is not satisfied with the decisions an authoritative body.

Public authorities need to act according to the public law principles. This implies that they have to follow some of the few principles.

- Function legitimately – Public authorities must follow the law, they must not misuse their powers or do anything which they are not legally authorized to do.
- Act rationally/reasonably
- Follow just procedures

One of the most common remedies available under public law is the judicial review, *where the judges appraise the legality of the actions and resolutions of public bodies*. It is likewise feasible to indirectly challenge the legality of administrative acts and decisions regarding collateral damages in defense of civil or criminal proceedings. *DOJ website.*

This issue is about different grievances of individuals influenced by the government exercising statutory authority. The courts have created standards of administrative law for public bodies to avert misuse or abuse of power. Discretionary powers are not absolute but are liable to standards of reason and equity. Nevertheless, public authorities often act unlawfully.

EXAMPLES OF THE POWER OF PUBLIC LAW

a. Under public law, the United States Congress can take away sovereign immunity from the federal government. Public Law 280 not only did that but also took away sovereign immunity from countries in treaties such as Indian Nations referenced in Public Law 280 while leaving other tribes and nations with their sovereign immunity intact (please see attachment).

b. Public law 91-297 gives private class security 1-A-5, executive protective services individuals [like Officer Leslie Coffelt] selected for a grade GS-7 position a legal right against the Secret Service, for retroactive pay. This right gives private individuals judicial review without doing anything else if the obligations are not met with all the rights of a plaintiff standing in a federal civil action.

Only public laws become part of the statutory code, the U.S. Code. Both will appear in separate series in the session laws, the U.S. Statutes at Large.

c. Congressional Public law [82-79] gives children of the President in office as minors, a legal right to protection and a right to judicial review if the children of the president are not protected, like here, without a statute of limitations. (The crime is ongoing from the date the duty was withdrawn.)

Public Law 82-79 made no distinction of what a child or children means which is not an argument with the Secret Service or the U.S. Congress. It is not a realistic one to make anyway. Because the plaintiff John as a minor *is* privy to Public Law 82-79 by direct evidence (DNA, direct testimony, and circumstantial evidence). John is a member of three protected classes (race; Jewish), religion (mother is Jewish), and disability so he has a right to be adjudicated for that part alone.

The Secret Service does not advocate adjudicating John or investigating what happened to him as unlawful and discriminatory. John F. Kennedy has a right to declaratory judgment/adjudications/injunction relief. It is like Congress hired a force to do something but they don't want to do it. This is unacceptable and an area for judicial review.

Plaintiff as a child of President John F. Kennedy has a business relationship with the Secret Service by an act of the U.S. Congress. -As such it is a hostile work environment due to his protected class status and the Secret Service's actions.

SECTION 504

Section 504 of the Rehabilitation Act prohibits discrimination against qualified individuals with disabilities by federal agencies, or by programs or activities that receive federal financial assistance or are conducted by a federal agency.

AMERICANS WITH DISABILITIES (ADA)

Let's start with abrogation. The ADA provides that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter." 42 U.S.C. § 12202.

TITLE VI...

The Supreme Court has established "an implied private right of action" under Title VI, leaving it "beyond dispute that private individuals may sue" to address allegations of intentional discrimination. *Barnes v. Gorman*, 536 U.S. 181, 185 (2002) (quoting *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001)). The Court previously has stated that it

had "no doubt that Congress … understood Title VI as authorizing an implied private cause of action for victims of illegal discrimination." *Cannon v. Univ. of Chicago*, 441 U.S. 677, 703 (1979) (holding that an individual has a private right of action under Title IX). In *Sandoval*, 532 U.S. at 284-85, the Supreme Court explained that the private right of action under Title VI exists only under Section 601, for cases of intentional discrimination.

Section 601 -- This section states the general principle that no person in the United States shall be excluded from participation in or otherwise discriminated against on the ground of race, color, or national origin under any program or activity receiving Federal financial assistance.

Since John was orphaned after the death of his parents; the guardians of his safety as a minor fell to the Secret Service who became the ward of his safety but rather looked away while his property, such as his name was taken away without due process and he was abused in unthinkable ways. What mother or father or Congress would wish this for their child/the people's child as circumstantial evidence exists between Congress, President John F. Kennedy's Executive Order, and his Last Will and Testament of President John F. Kennedy

PLEASE ACCEPT THE PLAINTIFF'S ATTACHMENTS:
Public Laws, Affidavit of John and Hilda with exhibits.

IN BIXENS, AND PAUL LANDIS, AS SECRET SERVICE WHISTLEBLOWER:

In ***Bivens v. Six Unknown Named Agents***, 403 U.S. 388 (1971), was a case in which the US Supreme Court ruled that an implied cause of action existed for an individual whose Fourth Amendment protection against unreasonable search and seizures had been violated by the Federal Bureau of Narcotics. The victim of such a deprivation could sue for the violation of the Fourth Amendment itself despite the lack of any federal statute authorizing such a suit. The existence of a remedy for the violation was implied by the importance of the right violated.

The case was understood to create a cause of action against the federal government similar to the one in 42 U.S.C. § 1983 against the states. However, the Supreme Court has sharply limited new *Bivens* claims.

The Supreme Court has upheld *Bivens* claims only three times: in *Bivens* (1971), *Davis v. Passman* (1979), and *Carlson v. Green* (1980). Under *Ziglar v. Abbasi* (2017) and *Egbert v. Boule* (2022), any claim that is not highly similar to the facts in *Bivens* (excessive force during arrest), *Davis* (sex discrimination in federal employment), or *Carlson* (inadequate care in prison) is a "new context" to which *Bivens* will not be extended if "there is any reason to think that Congress might be better equipped to create a damages remedy."

In *Bixens*, The Supreme Court granted certiorari on that secondary issue of whether a plaintiff can bring a claim in federal court based solely on an alleged violation of his Fourth Amendment rights.

In Bixen, The Supreme Court, in an opinion by Justice Brennan, laid down a rule that it will infer a private right of action for monetary damages where no other federal remedy is provided for the vindication of a constitutional right, based on the principle that "for every wrong, there is a remedy". The court reasoned based upon a presumption that where there is a violation of a right, the plaintiff can recover whatever he could recover under any civil action unless Congress has expressly curtailed that right of recovery, or there exist some "special factors counseling hesitation".

Justice Harlan voted with the majority to reverse the lower court but also wrote a separate concurring opinion. For the reasons set forth below, I am of the opinion that federal courts do have the power to award damages for violation of 'constitutionally protected interests' and I agree with the Court that a traditional judicial remedy such as damages is appropriate to the vindication of the personal interests protected by the Fourth Amendment.

Harlan particularly emphasized the special importance of constitutional rights. He presented that it was well-settled, even undeniable, that a suit for injunction based on a constitutional right had been long recognized in the Federal courts. However, a suit for damages should be as or more acceptable.

Paul Landis, a former Secret Service and whistleblower wrote a book entitled, “Final Witness: A Kennedy Secret Service Agent Breaks His Silence After Sixty Years” in 2023 (just before the plaintiff's lawsuit) describing in great detail all the negligence in the investigation of President John F. Kennedy’s murder. He has been evading service by several process servers and the Travis County Constable of Texas, Precinct Five. The motion for Substituted Service is pending before this court at ECF No. 7.

Defendant Paul Landis makes it clear the Secret Service is negligent to John, and through him creates an alternate form of declaratory judgment and injunction relief to adjudicate John if the court grants the alternative service motion. It is hoped that this is explained correctly by the Kennedys.

AGAIN TITLE VI....

Title VI, 42 U.S.C. § 2000d et seq., was enacted as part of the landmark Civil Rights Act of 1964. It prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. As President John F. Kennedy said in 1963:

> *"Simple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination."*

If a recipient of federal assistance is found to have discriminated and voluntary compliance cannot be achieved, the federal agency providing the assistance should either initiate fund termination proceedings or refer the matter to the Department of Justice for appropriate legal action. Aggrieved individuals may file administrative complaints with the federal agency that provides funds to a recipient, or the individuals may file suit for appropriate relief in federal court. Title VI itself prohibits intentional discrimination. However, most funding agencies have regulations implementing Title VI that prohibit recipient practices that have the effect of discrimination on the basis of race, color, or national origin.

The Secret Service as explained even without using Paul Landis's book has engaged and continues to engage in interference against a John as a protected class, against his civil rights and legal rights: Broadly speaking, interference in a legal setting is wrongful conduct that prevents or disturbs another in the performance of their usual activities, in the conduct of their business or contractual relations, or in the enjoyment of their full legal rights. Interference can arise in a variety of legal fields including, but not necessarily limited to, tort law, property law, contract law, business law, election law, patent

law, family law, employment law, and criminal law. Many of the claims that arise out of interference are born from an intersection between tort law and some other field.

POINT II

***DNA*[4] IS UNEQUIVOCALLY DIRECT EVIDENCE FOR THE COURT TO DETERMINE PLAINTIFF JOHN F. KENNEDY'S PATERNITY TO HIS FATHER, THE UNITED STATES PRESIDENT:**

PRESIDENT WARREN HARDING *DAUGHTER*

Nan Britton first came forward publically with the claim that her daughter, Elizabeth Ann, was Harding's daughter in a 1927 autobiography "The President's Daughter." In her account, Britton detailed a steamy six-year-long affair with the 29th president, including one encounter in a White House closet, before his untimely death in 1923.

Harding historian James Robenalt compares Britton to the Monica Lewinsky of her time.

"Nan Britton was someone who had to live through a lot of attacks … and I think her story was a lot like Monica Lewinsky because there was a real shaming process," Robenalt said. "She was just picking up for her daughter, who we now know was Harding's daughter, and she was just viciously attacked for it."

In 2015, *The New York Times* reported that genetic testing by AncestryDNA, a division of Ancestry.com, confirmed that Harding was Blaesing's biological father.[5] Specifically, Dr. Peter Harding, the grandnephew of President Harding, and James Blaesing, son of Elizabeth Ann Blaesing, submitted DNA samples, which confirmed a relationship of second cousins, thus proving beyond a reasonable doubt that Elizabeth was the daughter of Harding.[1]

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[4] **The oldest DNA ever found is two miilion years old.** https://www.nature.com/articles/d41586-022-04421-w#:~:text=Two%2Dmillion%2Dyear%2Dold,any%20now%20found%20on%20Earth.

All his life, Peter Harding said, his family had maintained that Britton was a "delusional woman who believed in a fantasy." The family believed that President Harding, who had mumps as a child, was sterilized by the illness and could not have children.

PRESIDENT THOMAS JEFFERSON *CHILDREN*

Thomas Jefferson, author of the Declaration of Independence and the third president of the United States (1801-1809), was born on a large Virginia estate run on slave labor. His marriage to the wealthy young widow Martha Wayles Skelton in 1772 more than doubled his property in land and enslaved workers.

In his public life, Jefferson made statements describing Black people as biologically inferior and claiming that a biracial American society was impossible. Despite those public comments, strong evidence has led historians to conclude that Jefferson had a longstanding relationship with an enslaved woman named Sally Hemings, and the two had as many as six children together.

In January 2000, the Thomas Jefferson Memorial Foundation accepted the conclusion, supported by DNA evidence, that Jefferson and Sally Hemings had at least one and probably six offspring between 1790 and 1808. Though most historians now agree that Jefferson and Hemings had a sexual relationship, debate continues over the duration of that relationship and, especially, over its nature. Admirers of Jefferson are inclined to see his relationship with Hemings as a love affair, despite his public statements about race. Others view Jefferson's relationship with Hemings—who was enslaved by the Founding Father—as predatory and hypocritical, given Jefferson's writings on freedom and equality.

PRESIDENT JOHN F. KENNEDY'S *SON*

President Thomas Jefferson's children and President Warren Harding's daughter suffered from Fremdschämen which refers to vicarious or second-hand embarrassment: If someone does something so cringe or embarrassing that you feel embarrassed on their behalf, that is fremdschämen *but* DNA resolved the issue even two hundred years later as direct evidence so their fremdschämen is over.

The plaintiff, John is different because what happened to him is a crime, an offense against the people of the United States, and discriminatory, a crime in itself. Direct evidence by statements and DNA with unlimited circumstantial evidence point to this uncomfortable fact for them. The Secret Service suffers for what it did; fremdschämen which is why they are using sovereign immunity as a defense, otherwise why?

THE SECRET SERVICE MENTIONED THE SECOND CIRCUIT AND NINTH CIRCUIT CASES BUT DID NOTHING TO INQUIRE ABOUT THEIR LEGAL OBLIGATION TO THE CHILD OF THE PRESIDENT.

John was kidnapped from his beloved mother, Marilyn Monroe, and by default, his father President Kennedy, the Secret Service *must investigate* even at a lower standard as if a threat had just occurred but instead, it stood back stud by and did nothing when John was in the Second Circuit and Eleventh Circuit.

The Secret Service is not pleading estoppel or *res judicata* because **no** DNA has been done and it is direct evidence. To plead *res judicata*, a closure is on the merits of the case, instead the Secret Service, a premiere law enforcement agency that never explained paternity could not *be determined* points fingers and watch John fail in his constitutional right of due process. We hope this court sees this for what it is and not what it isn't because eventually, the facts like for Thomas Jefferson and Warren Harding will come out.

The Second Circuit in the enclosed Order did not allow John to seek DNA adjudication because he is not considered a child unless he is born of a legally married mother and father. The ninth circuit did not accept the case for review for lack of evidence as now, no DNA.

In civil procedure, collateral estoppel refers to the application of *res judicata* principles through **issue preclusion**. For issue preclusion, a party can utilize collateral estoppel to prevent another party from re-litigating any issue that has been validly, finally, and determined on the merits in a previous case; *Res judicata* is the principle that a cause of action may not be relitigated once it has been judged on the merits. "Finality" is the term that refers to when a court renders a final judgment on the merits. *Res judicata* is also frequently referred to as "claim preclusion,"

THE UNITED STATES CONGRESS;
THE SECRET SERVICE;
AND THE JUDICIARY.

All that belongs to John by way of my mother and father, at minimum, his identity, as monetary value; plus John was hurt, abused, and exploited in such a manner consistent with the sexual exploitation of a child because the Secret Service failed to act according to United States Congress Public Law 82-79 and protect their ward.

A federal agent acting under the color of his authority gives rise to a cause of action for damages consequent upon his unconstitutional conduct. Justice Brennan confirmed that an action for damages may be brought against federal agents acting under the color of their authority but acting unconstitutionally. As an example, in Bevins: "The Fourth Amendment [of the United States Constitution] provides that: '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated . . . .'" Therefore, those who have their rights violated under the Fourth Amendment by a federal agent require protection under the Constitution. **The Court has consistently ruled that "where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief."** The Fourth Amendment, however, does not provide any monetary damages for injuries suffered as a result of a federal agent acting unconstitutionally. However, when there is a general right to sue under a federal statute, a court "may use any available remedy to make good the wrong done." Petitioner is entitled to a cause of action and to recover monetary damages. The court of appeals is reversed and remanded.

HILDA IS IN THE CROSSFIRE OF THE SECRET SERVICE ABANDONMENT OF THEIR DUTY TO PROTECT THE CHILD OF PRESIDENT JOHN F. KENNEDY AND SUFFERED INDIRECTLY AS A RESULT AND IS ENTITLED TO INTENTIONAL EMOTIONAL DISTRESS AS IS JOHN DIRECTLY.

Claims for negligent infliction of emotional distress are characterized as either direct claims or indirect claims. In a direct claim for negligent infliction of emotional distress "a person who is the direct object of a tortfeasor's negligence experiences severe emotional trauma as a result of the tortfeasor's negligent act or omission." *Gendek v. Poblete*, 654 A.2d 970, 972 (N.J. 1995). In an indirect claim "a person, not otherwise a direct object of a tortfeasor's negligence, experiences severe emotional distress when another person suffers serious or fatal injuries as a result of that negligence."

PLAINTIFFS ARE ENTITLED TO PUNITIVE DAMAGES

The Supreme Court of the United States has not yet provided a test to determine when it is appropriate to award punitive damages. Nevertheless, the Court did indicate to the lower courts that they should look for reprehensibility and acceptable punitive-to-compensatory damages ratio in punitive damages consideration in *State Farm v. Campbell*, 538 U.S. 408 (2003). This can not happen again in the United States[5].

[5] The equivalent of the United States Secret Service is the Roman Patroian Guard: The Praetorians assassinated 13 Roman emperors and even auctioned the throne to the highest bidder. Either by volition or for a price, the Praetorian Guard would assassinate an emperor, bully the Praetorian prefects, or attack the Roman populace. In AD 41, conspirators from the senatorial class and from the Guard killed Emperor Caligula, his wife, and their daughter. Afterwards, the Praetorians installed Caligula's uncle Claudius upon the imperial throne of Rome, and challenged the Senate to oppose the Praetorian decision. The Praetorian guard It was responsible for the overthrow, abandonment, or murder of 15 out of the first 48 emperors who governed Rome between 27 bc and ad 305 A.D.. This is not what anyone wants the Secret Service to become therefore for the protection of the elected President Judical Review is required and consented by the United States Congree in Public Law 82 which extends to the children of the President. A natural course of action to avoid crisis such the Romans had.

CONCLUSION

Many people rely on Public Law, Civil Rights laws, and cases such as Bixens for protection against abuse. The precedent set by ignoring these hard-fought rights would bring about no defense for the defenseless, the most vulnerable, like children, immigrants, races, religions, and the disabled of all kinds, and scare them from coming forward for judicial review and give the false impression of a reversal of laws.

The plaintiffs will be the first to admit that they do not have access to any comparable legal help such as this court requires. It was impossible due to the negligence and discriminatory actions of the Secret Service in their entrusted duties given to them by the United States Congress which turned Plaintiff John F. Kennedy into a myth. This court is beyond the plaintiffs' legal knowledge by a thousand years[6]. It has been hard to get justice as John, a disabled orphaned child if not for God has given the plaintiffs the ability to present what happened to John's mother and father; the Kennedys feel blessed just to survive, and because of Pual Landis, Secret Service whistleblower, be able to air their grievances against the State.

However, when the Secret Service, a premiere law enforcement agency, only offers hearsay and name-calling to 100% direct evidence, with no end to circumstantial evidence: what hope does any citizen or non-citizen have to get Soloman Justice? The name-calling and hearsay must not be admissible because of provable means. The days of the man in the Iron Mask are gratefully over and past. The Secret Service is not allowed to proceed in this manner: *Rex non potest peccare* originated in English common law and is based on the idea that the king cannot commit a legal wrong. The doctrine of sovereign immunity developed from this principle prevents sovereigns, including the government or its branches, departments and agencies, from being sued without their consent[7].

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[6] The Kennedys saw the courts website and see that the court has a degree in mathamathics and a masters in electrical engining and are hopeful for that knowledge, as their son's former girlfriend sister told her mother that she tried to get a similar degree as her mom but a masters in electrical enginering from MIT was harder than her MIT chemical enginering degree.

[7] The Secret Service Counsel is very nice and has to write what he has available for justice, not personal: In its simplest terms, the United States, an adversary legal system resolves disputes by presenting conflicting views of fact and law to an impartial and relatively passive arbiter, who decides which side wins what.

As noted by the United States Supreme Court, "[t]he reasons for treating circumstantial and direct evidence alike is both clear and deep rooted: 'Circumstantial evidence is not only sufficient but may also be more certain, satisfying and persuasive than direct evidence.'" *Desert Palace, Inc. v. Costa*, 539 U.S. 90, (2003) (citation omitted) (emphasis added).

Similarly, the plaintiffs respectfully request for declaratory relief deals not only plead past constitutional violations but ongoing and future violations of constitutional violations, if the plaintiffs only plead past violations they are not entitled to declaratory relief. See *Brown v. Fauver*, 819 F.2d 395, 399-400 (3d Cir. 1987) (holding that a §1983 claim for prospective relief should be dismissed if it contains only allegations of "past exposure to unconstitutional state action."). A party seeking declaratory relief "must allege facts from which it appears there is a substantial likelihood that he will suffer injury in the future." *Blakeney v. Marsico*, 340 F. App'x 778, 780 (3d Cir. 2009) (quoting *Bauer v. Texas*, 341 F.3d 352, 358 (5th Cir. 2003)).

"The Supreme Court has mentioned in *dicta* in the criminal context that *pro se* status does not mean that a litigant is free to ignore relevant rules of procedural and substantive law.

This position is justifiable in criminal cases on constitutional grounds. It is not, however, justifiable in civil cases, where many litigants appear *pro se* not because they prefer to do so, but because they cannot afford counsel. Modern procedural due process jurisprudence requires, at the very least, that courts should give the *pro se* civil litigant a liberal construction of his pleadings. The court should then determine what further process is due, based on the individual facts and circumstances of the case. In short, in civil cases, there sometimes may be a "license not to comply" with procedural requirements." *Procedural Due Process Rights of Pro Se Civil Litigants, Julie M. Bradlow*

That said, Third Circuit precedent "supports the notion that in civil rights cases district courts must offer amendment- irrespective of whether it is requested—when dismissing a case for failure to state a claim unless doing so would be inequitable or futile." F*letcher—Harlee Corp. v. Pote Concrete Contractors, Inc.,* 482 F.3d 247, 251 (3d Cir. 2007).

PRAYER FOR RELIEF

The Plaintiffs, John F. Kenndy and Hilda T. Kennedy pray this court deny the United States Secret Service motion to dismiss their lawsuit for failure to state a claim and allow this case to move to discovery for ultimate determination and relief.

Respectfully submitted,

JOHN FITZGERALD KENNEDY 3.28.2024

HILDA TOBIAS KENNEDY 3.28.2024

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN F. KENNEDY, *et al.*,	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 3:23-CV-2603-N-BT
	§	
EDDIE GARCIA, *et al.*,	§	
Defendants.	§	

CERTIFICATE OF SERVICE

I, William Henry Kennedy, certify that on March 28, 2024, I electronically filed the foregoing document, affidavits with exhibits, and Public Laws with the clerk of court for the U.S. District Court, Northern District of Texas, using the CM/ECF electronic case filing system of the court. The electronic case filing system will send a "Notice of Electronic Filing" notification to all case participants registered for electronic notice, including all *pro se* parties and/or attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

WILLIAM HENRY KENNEDY 3.28.2024

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN F. KENNEDY, *et al.*,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 3:23-CV-2603-N-BT
	§	
EDDIE GARCIA, *et al.*,	§	
	§	
Defendants.	§	

AFFIDAVIT OF JOHN FITZGERALD KENNEDY IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS BY THE SECRET SERVICE

My given name by my parents is John Fitzgerald Kennedy. I am the first child of the persons people know and call President John F. Kennedy and Marilyn Monroe. To me, I refer to them as mother and father and subjectively as mom and dad. My mother called me Sugar mostly. My father called me son, Junior, Jack, or Little Jack. Others like my aunts and uncles called me Little Jack, John, or Little Kennedy. I am their firstborn. I love and honor my parents religiously. They were extraordinarily kind and righteous people. I could not say anything negative about them if I tried. I know they love me and I love them. I existed before my father's marriage to Jacqueline Bouvier [Onassis] and my sister and brother. I was kidnapped from my mother on Wilshire and Crescent. I was given a false identification. I was abused in a number of ways illegal ways that have no statute of limitations. I attempted to contact the authorities but was not able to do so for a multitude of reasons that are too hard to into detail here; I told people about what happened to me since I was taken going forward; I was disabled and a child; I wrote an autobiography to do so entitled *President John F. Kennedy and Marilyn Monroe's Son in his own words* and have done interviews. I was given my parents by God and I was blessed to get them; I loved them as a child; I love them now. I was blessed God gave me such a wonderful set of parents. I am part of them because they would want that of me. They would have killed me rather than have me with what happened but they wouldn't want that because they love life: They believed in survival for themselves and everyone. They would have rather suffered than have me suffer; this is not what they wanted for anyone else's child: why would they want injustice for me for what this court knows of them?

I saw Ted or Edward Moore Kennedy in Hyannis Port at a fundraiser in 1986 with my family and he told me he would deal with the problem and called me *Junior* without me explaining what I wanted but he did not: he is not as obligated as the United States Congress gave the Secret Service, he just benefited. Doughtery, my mother's first husband also called me Junior in Maine a few days later and told me the Kennedys would never admit to me. He knew me without me approaching him; he was a Los Angeles Police and in my mother's Aniversary Fan Club Meeting in 1990 that meeting was confirmed by my mother's foster sister out loud.

I came from a big family, with joy and love ..... without them until my family no. I was taken not adopted, and no legal process caused me to leave my parent's side even after their death. Everyone has a right to be with their family unless for a legal process under the constitution under amendment nine that is not enumerated such as to stay with my family until a court says not.

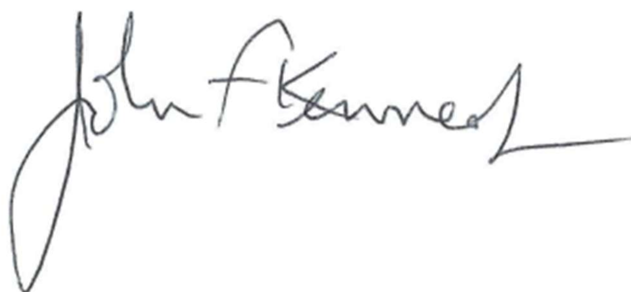
As I explained in my amended complaint I did a DNA test and it matched my father's DNA by an accredited and approved DNA company for federal adjudication for immigration as the experts know it is my father's by experts in genealogy in UCLA (amended complaint).

The Secret Service had and must protect me by an act of the U.S. Congress from harm since my father was at the time of my obduction and upon his death: the President of the United States. His title is forever paused as is the crime. I seek among other things declaratory judgment and injunction relief as right from both the Secret Service and Paul Landis acting by the color of law to deny me.

I have included some documents below.

Correction typo, the first family, after Thomas Procter, I was placed with the Sanchez family.

Respectfully submitted, under the penalty of perjury.



JOHN FITZGERALD KENNEDY 3.27.2024

MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645
14AM

Western Union Mailgram

4-0244015287002 10/14/85 ICS IPMMTZZ CSP JFKB
1 7184436641 MGM TDMT BROOKLYN NY 10-14 0306P EST

VICTOR SALVATIERRA
66 BLEECKER ST
BROOKLYN NY 11221

THIS IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

7184436641 MGMB TDMT BROOKLYN NY 121 10-14 0306P EST
ZIP
JOE KENNEDY
530 ATLANTIC AVE 4TH FLOOR
BOSTON MA 02110
AFTER TWO YEARS AND A TRIP TO YOUR OFFICE IN BOSTON AND COUNTLESS LETTERS I HAVE DECIDED TO SEND YOU A MAILGRAM, I WOULD LIKE TO TALK TO YOU I AM LITTLE JACK YOUR COUSIN SON OF MARILYN MONROE AND JOHN KENNEDY THE ONE DAVID WAS LOOKING FOR, IF YOU FEEL THIS DOES NOT DESERVE AN ANSWER REMEMBER I HAVE INVESTED TWO YEARS OF MY TIME AND MONEY TO SEE YOU, SO I HOPE YOU CAN GIVE ME FIVE MINUTES OF YOUR TIME EVEN IF IT IS TO SAY NO,

P.S. I WOULD LIKE TO SEE MY GRANDMOTHER TOO, PLEASE CALL 718-443-6641, ADDRESS 66 BLEECKER ST BROOKLYN NY 11221
JACK KENNEDY

15:06 EST

MGMCOMP

You'll be happy as a clam at the Kennedy Clambake.

Senator Edward Kennedy and his family hope you and your family will come to a clambake at the Compound, Hyannisport, Massachusetts. Swim. Play volleyball. Enjoy a harbor cruise. There'll be plenty of clams, lobsters, and corn. And, of course, bushels of fun.

Saturday, August 8, 1987
11 a.m. to 3:30 p.m.
R.S.V.P. Card Enclosed
Casual Attire
Donations: [illegible] for a family of four

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
X---X
Plaintiff,
John Fitzgerald Kennedy,

Case #: 08 CV 8889 (WHP)

-----against-----

Defendants,
The Trustees of the Testamentory Trust
Of the Last Will and Testament of
President John Fitzgerald Kennedy

The Honorable William H. Pauley III

X---X

From: Southern District Reporters (reporter@sdreporters.com)

Sent: Wed 2/18/09 11:17 AM

Page 1 9266kenc

1 UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

2 ------------------------------x

3 JOHN FITZGERALD KENNEDY,

4 Plaintiff,

5 v. 08 CV 8889(WHP)

6 THE TRUSTEES OF THE TESTAMENTORY TRUST OF THE LAST

7 WILL AND TESTAMENT OF PRESIDENT JOHN F. KENNEDY,

8 Defendant.

9 ------------------------------x

10 New York, N.Y., February 6, 2009

11 10:30 a.m.

12 Before:

13 HON. WILLIAM H. PAULEY III,

14 District Judge

15 APPEARANCES

16 PAUL BENJAMIN DALNOKY, ESQ. Attorney for Plaintiff

17 SHULTE ROTH Attorneys for Defendant

18 BY: MARCY HARRIS

19 YOCHEVED COHEN, MEGAN WHITTAKER

20

21

22

1 (In open court; case called)
2 THE DEPUTY CLERK: Counsel, for the plaintiff please
3 give your appearance.
4 MR. DALNOKY: Good morning, your Honor. Paul Dalnoky.
5 THE COURT: Good morning, Mr. Dalnoky.
6 THE DEPUTY CLERK: Counsel for defendant.
7 MS. HARRIS: Good morning. I am marcy Harris of
8 Shulte Roth.
9 THE COURT: Good morning, Ms. Harris.
10 Are you representing both trustees?
11 MS. HARRIS: Yes, your Honor.
12 THE COURT: This matter is on for an initial
13 conference. Why hasn't an affidavit of service been filed with
14 the clerk, Mr. Dalnoky?
15 MR. DALNOKY: We can do that, your Honor. I don't
16 have a reason why it hasn't been done. The rules don't require
17 it but it can be done if required by the Court.
18 THE COURT: It is required by the rules and the Court.
19 MR. DALNOKY: Very well. It will be done then.
20 THE COURT: Ms. Harris.
21 MS. HARRIS: Your Honor, neither trustee has been
22 served. So it is premature certainly to file a notice of
23 affidavit of service at this point.
24 THE COURT: Why are you here if no one has been
25 served?

1 MS. HARRIS: We are here because we were made aware of
2 the appearance today. We copy of the notice from the docket.
3 Their were attempts at service. There was a Fed Ex delivery to
4 each of the trustees. One was sent to the mailroom of the law
5 firm where the trustee is employed. There were attempts in
6 service but there was no proper service here. So our
7 appearance today is without leave for any jurisdictional
8 objection.
9 THE COURT: Mr. Dalnoky.
10 MR. DALNOKY: Yes. Those two Fed Exes were the notice
11 of this conference, your Honor. Martin Adelman, one of the
12 trustees, was served by substituted service at his law firm of
13 Paul Hastings. The affidavit of service incorrectly states
14 Paul Lancing and incorrectly states that the individual served
15 was authorized to accept service. In fact, there was a
16 substituted service upon a person given discretion who is
17 willing to accept service at Paul Hastings the law -- sorry,
18 the firm of Paul Hastings which Mr. Adelman is a partner, I
19 believe. We also are going to serve Mr. Adelman at his home in
20 Rhy, New York.
21 We have attemped to Mr. Serve Mr. Sloshberg at his
22 firm, an architectural firm, however, he has a concierge. My
23 processor was unable to access his office and the Court does
24 not allow service to the concierge. I am sure Mr. Sloshberg
25 has a concierge at his home, too. However, according to New

1 York law, you are only required to serve one trustee so we will
2 be serving Mr. Adelman again at his home and filing the
3 affidavits of service.
4 THE COURT: So up to this point in time no one has
5 been properly served?
6 MR. DALNOKY: I would disagree, your Honor. I would
7 say that Martin Adelman has been served through substituted
8 service, substituted service a month ago at his law firm. To
9 make sure that services -- there is good service and there is
10 bad service but to make sure service is even better we will be
11 serving it at his home as well. I think it is respectfully
12 submitted as substituted service upon Marc Adelman has been
13 made at his place of business pursuant to 308 of the CPLR.
14 MS. HARRIS: Your Honor, there is either service or
15 there is not service. In this case there has not been service.
16 MR. DALNOKY: We disagree.
17 THE COURT: Well, it sounds like there has not been
18 service, but I can't definitively rule on it until I see an
19 affidavit of service. But what you described about the
20 affidavit suggests a number of irregularities to me. In the
21 end this case was filed on October 16th. The trustees's
22 counsel is here. They have a right to contest service. We can
23 go through the various exercises with respect to motions.
24 I take it there is no agreement to accept service?
25 MS. HARRIS: Your Honor, the issue of service is only

1 one issue here, but I would like to look forward to the
2 ultimate relief that the plaintiff --
3 THE COURT: Right. It really is a peripheral.
4 MS. HARRIS: It is a peripheral issue, but I don't
5 think we need to get to service because he has not right to the
6 ultimate relief he is seeking as a matter of law. He is
7 seeking to take as a child of the late President Kennedy and
8 Marilyn Monroe a nonmarital child under a trust created under
9 the will of the late President. The will was executed in 1954
10 and the President died in 1963. The will was probated at that
11 time in Probate Court in Massachusetts. Massachusetts law in
12 1954, as well as 1963, did not include nonmarital children
13 within the definition of children entitled to inherent under a
14 will or trust.
15 There has been no acknowledge of paternity by the late
16 President. There has been no acknowledgment that the reported
17 mother had a child. There is no right as a matter of law that
18 this plaintiff could ever inherent or have any rights under the
19 will of the late President. Therefore, he has no claims
20 against the trustees who are administering or overseeing the
21 trust created under that will.
22 So whether there has been proper service or not or
23 whether there is any proper service, the entire lawsuit
24 ultimately has to be dismissed. And rather than spend more
25 time and money and burden people when there is no opportunity

1 to be recover anything whatsoever, I suggest that we just not
2 go forward even with the attempts of service at this point.
3 THE COURT: Mr. Dalnoky, why don't you briefly explain
4 what this case is about.
5 MR. DALNOKY: Yes, your Honor. My client is a child
6 of the late President. And under the late President's will a
7 trust was left to any child and the trustees are -- he has made
8 it known and we made a demand upon the trustees and the
9 trustees have not responded. I believe that is uncontested
10 that we haven't even received a response from the trustees to
11 our demand requesting more information or perhaps requesting
12 DNA so that my client can be tested to find out the bona fides
13 of his claim. Having failed to do that, we did the only thing
14 that was left to do was file a lawsuit and a diversity action.
15 Whether or not Massachusetts law of the 1950s would
16 govern, whether or not New York substantive law governs, it
17 would certainly be within the scope of the motion, maybe
18 perhaps a 12(b)(6) motion. Certainly for the attorney to
19 simply say this case shouldn't go forward because here are the
20 facts and the facts as I tell you, your Honor, I don't believe
21 gives proper due process -- gives due process to my client's
22 claims.
23 It is a fairly straightforward claim. It is a claim
24 for a breach of fiduciary duty against the trustees who -- at
25 this point the Court has to see if counsel is moving under

1 12(b)(6) right now, the Court would have to give my client the
2 benefit of all the facts and every doubt and would have to say
3 that duty was owed to my client from the trustees as
4 fiduciaries. If counsel was moving under 12(b)(6) presently,
5 as I said if she is moving under 12(b)(6), I believe the claim
6 in this action whether or not Massachusetts law would govern or
7 New York law would govern that would be the province of a
8 motion -- within the province of a motion and application to
9 the Court.
10 MS. HARRIS: Your Honor, for the record New York law
11 and Massachusetts law is the same on these points. We don't
12 believe there is any fiduciary duty nor can there be between
13 the trustees and the plaintiff because there is no possible
14 right of inheritance. Therefore, there is no connection
15 whatsoever. No duty was assumed and no duty can be owed.
16 There is also an issue of diversity. The complaint
17 that alleges diversity jurisdiction based on diversity because
18 of the residence of plaintiff in New Jersey, but attachments to
19 the complaint list his address as New York. So it is not even
20 clear that there is subject matter jurisdiction here to hear
21 the claim.
22 THE COURT: I don't see any reason why this Court
23 should upend all of the Federal Rules of Civil Procedure. I am
24 not going to entertain an oral application to dismiss a
25 complaint, but I am going to enter an order, Mr. Dalnoky, and I

1 am going to dismiss this complaint if it is not served within
2 30 days.
3 MR. DALNOKY: Very well.
4 THE COURT: So you either personally serve Mr. Adelman
5 and Mr. Sloshberg and file proper affidavits of service by
6 March 6 or I am dismissing this case.
7 MR. DALNOKY: May I speak, your Honor?
8 THE COURT: Yes.
9 MR. DALNOKY: If I can show the Court authority under
10 New York law, the state's power of trust law, that when there
11 is a cotrustee situation only one trustee must be served, would
12 you Honor still dismiss the claim if we are only able to serve
13 one trustee?
14 THE COURT: Look, now you are asking for an advisory
15 opinion. You come here with no law. I don't give advisory
16 opinion, Mr. Dalnoky. I stopped giving advice more than 10
17 years ago when I came on the bench. So you will just have to
18 figure it out for yourself.
19 MR. DALNOKY: Very well.
20 THE COURT: My order will be very clear. Personal
21 service on the trustees by March 6 with an appropriate
22 affidavit docketed or the case is dismissed.
23 MR. DALNOKY: Very well.
24 THE COURT: Ms. Harris, I don't know what else to say
25 to you and the other attorneys who you brought with you from

1 Shulte Roth. I had no idea whether anyone was going to be
2 showing up this morning in connection with this case.
3 MS. HARRIS: Your Honor, if the case is properly
4 served, we would ask that that the discovery conference that is
5 normally required be adjourned until after we can make a motion
6 to dismiss.
7 THE COURT: If the case is properly served, I will
8 schedule another conference and follow my rules of individual
9 practice, which require that you request a conference to make a
10 motion.
11 MS. HARRIS: Thank you.
12 THE COURT: Anything further?
13 MR. DALNOKY: No, your Honor.
14 THE COURT: Have a good afternoon.
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1 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK
2 ------------------------------x
3 JOHN FITZGERALD KENNEDY,
4 Plaintiff,
5 v. 08-CV-8889 (WHP)
6 THE TRUSTEES OF THE TESTAMENTORY TRUST OF THE LAST
7 WILL AND TESTAMENT OF PRESIDENT JOHN F. KENNEDY,
8 Defendant.
9 ------------------------------x
10 New York, N.Y. March 23, 2009
11 9:57 a.m.
12 Before:
13 HON. WILLIAM H. PAULEY III,
14 District Judge
15 APPEARANCES
16 PAUL B. DALNOKY, ESQ.
16 Attorney for Plaintiff
17 SCHULTE ROTH & ZABEL LLP
18 Attorneys for Defendant
18 BY: MARCY R. HARRIS, ESQ.
19 YOCHEVED COHEN, ESQ.
19 MEGAN H. WHITTAKER
20
21
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23
24
25

1 (In open court)
2 (Case called)
3 THE CLERK: Counsel for the plaintiff, please give
4 your appearance.
5 MR. DALNOKY: Yes. For the plaintiff, Paul Dalnoky,
6 D-A-L-N-O-K-Y. Good morning.
7 THE COURT: Good morning, Mr. Dalnoky.
8 THE CLERK: Counsel for the defendant, please give
9 your appearance.
10 MS. HARRIS: Good morning. Marcy Harris from Schulte
11 Roth & Zabel for the trustees.
12 THE COURT: Good morning, Ms. Harris.
13 All right. This is a premotion conference. I
14 received a letter from Ms. Harris outlining the arguments that
15 defendants propose to make to dismiss this action.
16 Mr. Dalnoky, I didn't get anything from you. Did you
17 submit anything?
18 MR. DALNOKY: No, I didn't, Judge. I just got this, I
19 believe on Thursday. I didn't have time.
20 THE COURT: Well, what countervailing arguments do you
21 have to offer?
22 MR. DALNOKY: I have several, Judge. Thank you for
23 letting me speak.
24 Looking at the first page, second paragraph, I don't
25 believe any of the grounds stated the proper 12(b)(6) grounds,

1 which I went through the last time I was here, won't go through
2 that again.
3 First paragraph, second page. We're claiming that
4 this is a New York breach of duty case, which has a statute of
5 limitations of three years. We wouldn't be looking to go back
6 further than three years to enforce the duty of the trustees.
7 Second paragraph, second page. I don't believe the
8 relief that we're seeking is extraordinary. I believe it's
9 fairly ordinary.
10 THE COURT: Genetic testing?
11 MR. DALNOKY: Genetic testing is fairly --
12 THE COURT: Do you have any caselaw to support your
13 application in a civil case for genetic testing?
14 MR. DALNOKY: I will certainly attempt to find some.
15 But to take a swab and swab a gum I don't believe is an
16 extraordinary act that we're asking for. It's ubiquitous.
17 Genetic tests is pretty ubiquitous.
18 THE COURT: When you say you'll attempt to find some
19 caselaw, does that mean that at the time you filed the
20 complaint in this action you didn't have any caselaw to support
21 such a request?
22 MR. DALNOKY: No, Judge. No, we didn't.
23 THE COURT: You did not have any caselaw.
24 MR. DALNOKY: No, Judge. Not when I filed.
25 THE COURT: All right.

1 MR. DALNOKY: May I continue?
2 THE COURT: Well, what was the good grounds that you
3 had to support such a claim for genetic testing?
4 MR. DALNOKY: Well, it would be the quickest way to
5 resolve the case on the merits and on the substance, it would
6 seem to me, and especially since we now have personal
7 jurisdiction over one of the trustees, who happens to be an
8 immediate family member of the family to which my client claims
9 membership, I believe that we can certainly -- certainly at a
10 trial, he would be compelled to produce witnesses under his
11 control, and the immediate family are witnesses under one's
12 control. Whether or not that would be so in discovery, that's
13 another issue I'm going to look into during the pendency of
14 this motion. But certainly at a trial I believe the trustee
15 Mr. Schlossberg, who is an immediate family member of the
16 family, would be compelled to bring his witnesses to trial.
17 That would be the personal jurisdiction over him, pursuant to
18 our --
19 THE COURT: The defendants are advancing some powerful
20 arguments for why there's no subject matter jurisdiction in
21 this case, aren't they?
22 MR. DALNOKY: I don't believe so, Judge.
23 Moving to that, moving to third paragraph, second
24 page, I believe a discussion of choice of law, certainly what I
25 studied with Professor Twerski, begins and often ends with a

1 discussion of lex locus delictus. We don't believe that the
2 place of the wrong was Massachusetts in 1953; indeed, we're not
3 seeking to challenge the probate, the execution of the will,
4 we're seeking in fact to enforce the will. We believe the
5 place of the wrong, of the delictus, is here in New York in
6 2008, when my client made his demand upon the trustees to
7 investigate his claim and they failed to do anything, which I
8 believe breached their duty.
9 Moving on to the fourth paragraph of paragraph -- of
10 page 2, my client in fact obtained a New Jersey residence after
11 the August '08 letter and he has maintained that residency.
12 And the second half of that fourth paragraph on
13 page 2, again, we're claiming this is a breach of duty case,
14 not a probate case. We're not seeking to challenge the probate
15 or the execution of the instrument, so I don't believe this
16 case falls under the -- any section to diversity jurisdiction.
17 I believe I've addressed the -- I believe I've addressed the
18 substantive claims.
19 THE COURT: Well, counsel for the defendant asserts at
20 the end of her letter --
21 MR. DALNOKY: Yes.
22 THE COURT: -- that you left certain voice mails for
23 her when she requested an extension of the defendant's time to
24 answer?
25 MR. DALNOKY: I believe it was the other -- I thought

1 it was fairly ironic that counsel for defendant, who gave my
2 client no courtesy, in fact caused my client to spend nearly a
3 thousand dollars in a household that had an income of under
4 $50,000, is now looking to me to extend a courtesy to her, and
5 in fact, I said to her that I'd spoken to my client's family
6 and they were of a mixed mind at that time. This was about two
7 weeks ago. I -- To be frank with you, your Honor, I was a
8 little bit upset that my clients, who are friends of mine, who
9 are very close friends of mine and who, in this economy, a
10 thousand dollars to people like my clients, two of whom are
11 on -- one is on his -- my client is on a disability pension,
12 his wife is on a Social Security income pension, and their son,
13 who is the big earner, makes about $25,000 a year as a flight
14 attendant for American Eagle, I thought it was totally
15 unnecessary for them to put my clients through the expenditure
16 of nearly a thousand dollars net. That's a lot of money in
17 this economy for them. So I was in fact a little bit upset.
18 However, as they show in this letter, they missed the
19 substance of my message and they're seeming to avoid the
20 substance of this case too, because I also indicated that I
21 wished we could reach the substance of this case, but somehow
22 they seem to try to do everything they can to assiduously avoid
23 reaching the merits, reaching the substance of this case.
24 THE COURT: Well, look, I'm simply going to say that I
25 think that lawyers should treat each other with courtesy and

1 respect in this court. Every lawyer has a job to do. I take a
2 dim view of lawyers who leave messages or hurl hyperbole at
3 their adversaries. That generally is a substitute for having a
4 meritorious case or a meritorious defense. I don't want to
5 receive further reports in this litigation of discourteous
6 treatment between counsel.
7 MR. DALNOKY: Very well.
8 THE COURT: And as for the notion that the defendants
9 arc somehow avoiding the merits of this case, subject matter
10 jurisdiction is the very first question on the merits that any
11 court needs to determine.
12 So I'm going to set a briefing schedule on this motion
13 and I am going to extend the defendant's time to answer the
14 complaint until after the motion is determined. I'm also going
15 to extend the time and stay discovery in this case until I
16 determine this motion because based upon the letter that's been
17 presented to me by Ms. Harris, it would appear that the
18 defendants have some very strong arguments to make, and I'll
19 look forward to receiving the plaintiff's brief in opposition
20 to explain to me why the defendants are wrong.
21 Ms. Harris, when do the defendants want to file their
22 motion?
23 MS. HARRIS: Your Honor, in about two weeks. Either
24 April 7th or, with the holidays, April 14th. Either one of
25 those is acceptable.

1 THE COURT: April 14th is fine with me.
2 MS. HARRIS: Thank you.
3 THE COURT: How much time would you like to oppose the
4 motion?
5 MR. DALNOKY: I'd like an equal amount of time; three
6 weeks, your Honor.
7 THE COURT: All right. Will May 5 be sufficient?
8 MR. DALNOKY: Yes, sir.
9 THE COURT: That's three weeks. Will that be enough
10 time?
11 MR. DALNOKY: Yes.
12 THE COURT: All right. May 5. Any reply by May 12.
13 And I'll hear oral argument in this case on May 22, Friday,
14 May 22, at 10:30. I'll enter a scheduling order to that
15 effect.
16 Are there any other matters that counsel want to raise
17 this morning?
18 MR. DALNOKY: No, Judge.
19 MS. HARRIS: No, your Honor.
20 THE COURT: All right. Have a good afternoon.
21 THE CLERK: All rise.
22 o0o
23
24
25

95M8KENC

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
2 ------------------------------x
2
3 JOHN FITZGERALD KENNEDY,
3
4 Plaintiff,
4
5 v. 08 Cv. 8889 (WHP)
5
6 THE TRUSTEES OF THE TESTAMENTARY
6 TRUST OF THE LAST WILL AND TESTAMENT
7 OF PRESIDENT JOHN F. KENNEDY,
7
8 Defendant.
8
9 ------------------------------x
9
10 May 22, 2009
10 10:40 a.m.
11
11 Before:
12
12 HON. WILLIAM H. PAULEY III
13
13 District Judge
14
14 APPEARANCES
15
15 PAUL B. DALNOKY
16 Attorney for Plaintiff
16
17 SCHULTE ROTH & ZABEL LLP
17 Attorneys for Defendant
18 MARCY R. HARRIS
18 YOCHEVED COHEN
19
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1 (Case called)
2 THE DEPUTY CLERK: Counsel for the plaintiff please
3 give your appearance.
4 MR. DALNOKY: For the plaintiff, Paul Dalnoky.
5 THE COURT: Good morning, Mr. Dalnoky.
6 THE DEPUTY CLERK: Counsel for defendant.
7 MR. HARRIS: Marcy Harris, Schulte Roth & Zabel.
8 THE COURT: Good morning, Ms. Harris. This is the
9 defendant's motion. Do you want to be heard?
10 MR. HARRIS: Yes, your Honor. I just want to
11 introduce my colleagues as well. I didn't finish doing that.
12 Yocheved Cohen and Megan Whittaker, also of Schulte Roth.
13 Your Honor, we have addressed in our motion to dismiss
14 and in our reply papers the reasons we believe that the
15 complaint should be dismissed.
16 First, the plaintiff has not adequately established
17 that there is jurisdiction for the Court to hear the case, and
18 if the Court were to find jurisdiction exists here, there is no
19 claim upon which the plaintiff can obtain relief. Plaintiff is
20 seeking bringing a breach of fiduciary duty claim, but he
21 hasn't identified a duty that exists between the trustees and
22 the plaintiff here.
23 The existence of a duty in this case would be based on
24 the trust. This is a case where the plaintiff claims he is a
25 non-marital child of the late President Kennedy and Marilyn

1 Monroe. He is seeking rights for distribution under a trust
2 created under the late president's will. The will was executed
3 in 1954. At that time, the president was domiciled in
4 Massachusetts. The president, as we know, died in 1963.
5 The operative law in this case, you don't look to tort
6 law, breach of fiduciary law, because there is only a breach of
7 a fiduciary duty if there is a duty. The source of the duty,
8 as I mentioned, has to be derivative of the trust instrument.
9 You have to look at the trust instrument. New York law says,
10 where you have a foreign trust, the EPTL says you look to the
11 jurisdiction of the domicile of the testator where the trust
12 was executed. That's Massachusetts.
13 Under Massachusetts law that existed at the time the
14 will was executed, the trust was created, in 1954, there was no
15 right to inherit for the non-marital children, unless there was
16 an express provision in the testamentary instrument, in this
17 case in the trust, that gave a right for a non-marital child to
18 inherit. There is no such right in the trust here, none is
19 claimed, but the law that was in effect in 1954 in
20 Massachusetts didn't permit inheritance by non-marital
21 children.
22 Therefore, you can't take today's law, whether it's
23 Massachusetts law or New York law, and I will get to New York
24 law, but you can't take today's law and apply it retroactively.
25 Under the statutes and under case law, that's not an

1 appropriate or permissible way to proceed.
2 Plaintiff claims that the appropriate law here is the
3 New York law, not Massachusetts law. Because there is no duty
4 here and this is not a fiduciary duty claim, the appropriate
5 law, as I articulated, is Massachusetts. But even if we were
6 to look at New York law, the result is the same. New York law
7 looks to the law that was in effect at the time the testator
8 died to determine what interpretation is given to the words
9 children in issue, whether they include non-marital children in
10 issue. And the law that was in effect in New York in 1963 at
11 the president's death did not provide for inheritance for
12 non-marital children in issue.
13 So whether you look at Massachusetts law or you look
14 at New York law, the result is the same. It was only as a
15 result of changes that were made to both laws many, many years
16 after the president executed his will and after he died that
17 there are now, under certain circumstances, inheritance rights
18 for non-marital children. But there is no retroactivity under
19 the EPTL. There are cases that have addressed that very issue
20 in New York and say it's prospective. You can't divest an
21 existing beneficiary of rights that have already vested by
22 applying a law that came into existence many years after the
23 testator created the testamentary instrument. After he died he
24 certainly wasn't aware that the law would change. Had he
25 wanted to be express and provide for rights for non-marital

1 children, he could and would have done so when he executed his
2 will.
3 THE COURT: Thank you.
4 Mr. Dalnoky.
5 MR. DALNOKY: Thank you, Judge.
6 Judge, on a 12(b)(6) motion or a motion attacking the
7 subject matter jurisdiction, it's clear that all well pleaded
8 allegations in the complaint are deemed true along with all the
9 favorable inferences which flow therefrom.
10 By the way, Judge, if the motion is granted, we would
11 request 30 days to replead. I believe that's often granted in
12 this situation where we do have an amendment coming and we do
13 plan to amend the complaint within a week or two.
14 Judge, the plaintiff's action, this action --
15 THE COURT: How would you amend the complaint?
16 MR. DALNOKY: First of all, we are going to take out
17 the request for DNA. We are going to make it more that this is
18 a case which calls for the defendants to investigate
19 plaintiff's claim in whatever manner they deem appropriate to a
20 conclusion, and we would state the jurisdiction, the domicile
21 with more operative facts than we have so far.
22 I believe that we have stated the diversity
23 jurisdiction of this Court with sufficient particularity, but
24 we will state it with greater particularity in an amended
25 complaint.

1 If the Court may make a facial analysis of the
2 complaint to see whether or not there is diversity
3 jurisdiction, as the Second Circuit did in Local Food Union --
4 THE COURT: Before you get to that, what would you
5 plead with greater specificity to demonstrate jurisdiction
6 here?
7 MR. DALNOKY: The fact that plaintiff has a residence
8 in New Jersey, has a lease in New Jersey, has an agreement to
9 renew the lease in New Jersey with the landlord upon its
10 expiration in October. The plaintiff has a New Jersey driver's
11 license. The plaintiff filed taxes for the most recent year as
12 a New Jersey resident, I believe, and is also in the process of
13 getting a voter registration in New Jersey. He does have a New
14 York residence, but it is his intention, as we show in his
15 housing court attorney's affirmation, that that residence is by
16 no means a permanent one, and he almost lost it about a year
17 ago, but it is by no means his permanent residence.
18 He would also plead even clearer that this case is
19 about the duty of the trustees to investigate the claim once
20 they were made aware of it. Apparently, they have been on
21 notice since 1994 and they have chosen to do nothing.
22 Therefore, since the demand was made in 2008, the claim was
23 filed in 2008, we use prospective law. We are not looking to
24 make a claim back to 1963 for back inheritance. We are just
25 looking to make a claim since 2008 when the demand was made,

1 when the claim was filed.
2 THE COURT: How have the defendants been on notice
3 since 1994?
4 MR. DALNOKY: They have included a copy of the name
5 change. And then the name change that the plaintiff filed in,
6 I believe, California, in Los Angeles, in 1994, I believe in
7 that name change the plaintiff said that he was changing his
8 name because he was a non-marital child of John Kennedy.
9 THE COURT: How does the fact that your client filed a
10 name change in California in 1994 put the defendants on notice?
11 MR. DALNOKY: I don't want to get bogged down on this
12 issue. Apparently, they had a copy of it.
13 THE COURT: We have got to get into the weeds at some
14 point. You have made the assertion that they were on notice
15 since 1994. I am calling you out on it. You have said it's a
16 name change. How is it that a name change in California put
17 them on notice?
18 MR. DALNOKY: When you make a name change, you have to
19 give the court a reason for making that name change, and the
20 reason the plaintiff gave to the court for the name change was
21 the fact that he believed that he was a non-marital child of
22 the late president. Apparently they have had that document.
23 They have included that document on this motion. So if that
24 doesn't give them notice of his plans, I don't know what does,
25 Judge. But we are not making a claim since 1994. Our claim is

1 in 2008 when he made the formal written demand.
2 THE COURT: Let's go back to this jurisdiction
3 question for a minute. What evidence in the form of affidavits
4 or documents have you presented that demonstrates plaintiff's
5 intent to make his New Jersey residence his home?
6 MR. DALNOKY: Judge, I was thinking about that, and we
7 could have provided a self-serving affidavit by the plaintiff
8 himself stating that I intend to make New Jersey my domicile.
9 Apparently, the defendants think that would have been better
10 than an affirmation by a third party attorney, with no stake in
11 the outcome of the action, in fact, not even Mr. Kennedy's
12 private attorney, an attorney who works for a legal services
13 corporation who doesn't do any business with Mr. Kennedy so has
14 no motive to make the facts favorable to him. And in that
15 affirmation by Ms. Woodson, it states the problems that
16 Mr. Kennedy has had with his landlord, with whom he has no
17 lease, with whom he was served monthly with 30-day termination
18 notices, by whom he was served with a holdover petition, and
19 which would have led to his ultimate eviction had not the
20 papers been served on the wrong individual.
21 So I believe that shows rather than a self-serving
22 affidavit by Mr. Kennedy saying, yes, I do intend to make New
23 Jersey my permanent residence, I am not sure if that would be a
24 stronger affidavit than the affirmation by the attorney that
25 states various particular facts regarding the residence in New

1 York.
2 THE COURT: How about his driver's license?
3 MR. DALNOKY: His driver's license is New Jersey.
4 THE COURT: When did he get a New Jersey driver's
5 license?
6 MR. KENNEDY: A while ago.
7 MR. DALNOKY: It must have been after October of '08.
8 11/06/08.
9 THE COURT: After he filed the complaint here.
10 MR. DALNOKY: Yes, Judge. I believe that reflects
11 back on his intent to make New Jersey his residence.
12 THE COURT: What about his voter registration?
13 MR. DALNOKY: He is obtaining that now.
14 THE COURT: When you say he is obtaining that now,
15 where is he registered to vote?
16 MR. DALNOKY: New York. Queens County.
17 THE COURT: What about his tax return?
18 MR. DALNOKY: That was filed in New Jersey for '08 as
19 a New Jersey resident.
20 If I may speak now to the law?
21 THE COURT: Do you think that after your client files
22 a lawsuit that he can try and create diversity jurisdiction?
23 MR. DALNOKY: Judge, I believe the documents and the
24 licenses and registrations and what have you reflect back on
25 his intent to domicile his residence and an attempt to make

1 that residence your home, or the intent to have no other
2 residence as your home, and how do we determine what is his
3 intent? His intent is determined by his actions and the
4 actions he has taken.
5 THE COURT: Does he own a car?
6 MR. DALNOKY: No, he doesn't own a car.
7 THE COURT: Does he have any vehicles registered?
8 MR. DALNOKY: No, he has no vehicle.
9 It's our position, Judge, again, that it is the
10 defendant's burden to plead facts, and we will plead more facts
11 in an amended complaint showing the diversity jurisdiction.
12 THE COURT: I want to cut to the chase. What are
13 those other facts, other than after he filed a lawsuit in this
14 case, he decided to get a driver's license in New Jersey? And
15 after he filed this case, and after he is confronted with a
16 motion to dismiss, it occurs to him that it might be a good
17 idea to try to change his voter registration, but he didn't do
18 that, right?
19 MR. DALNOKY: There has been no election.
20 THE COURT: There was a historic election in November
21 of 2008 after he filed this lawsuit, wasn't there?
22 MR. DALNOKY: Yes, Judge. I don't believe he voted in
23 New York though.
24 Again, Judge, if I may, it is the plaintiff's burden
25 to plead and to allege proper facts. If on the face of the

1 complaint it is clear, as in the Second Circuit case United
2 Food v. Centermark Properties, 30 F.3d 298. In this case, it
3 was on the face of the complaint that the plaintiff was a
4 union, was an unincorporated association. Therefore, it was
5 the members of that union that made up the plaintiff, and it
6 was incumbent upon the plaintiff to show that each one of them
7 had diversity jurisdiction as against the defendant of that
8 case. That was on the face of the complaint.
9 In this case, respectfully, the Court is looking past
10 the face of the complaint into the facts, further into facts,
11 which are not -- in other words, again, the Court has to deem
12 the well-pleaded allegations in the complaint as true unless
13 there is something on the face of the complaint that can show
14 that there is no diversity let's say.
15 THE COURT: But you started your presentation by
16 throwing a little bomb out to the Court that you're ready to
17 amend your complaint to plead with greater specificity, right?
18 MR. DALNOKY: That's not on the face of the complaint,
19 but yes, Judge.
20 THE COURT: Let's just assume, hypothetically, that
21 that seed is prompted by your notion that maybe your complaint
22 doesn't properly allege diversity jurisdiction.
23 MR. DALNOKY: That's been the allegation by the
24 defendants, correct.
25 THE COURT: I am just trying to look behind that at

1 the moment to find out what other allegations you would make.
2 MR. DALNOKY: Very well, Judge. I don't believe that
3 is the duty of the Court, though, on this motion, respectfully.
4 THE COURT: To exercise a little common sense and look
5 at a case?
6 MR. DALNOKY: To look beyond the allegations in the
7 complaint, again, Judge, I respectfully disagree.
8 THE COURT: Doesn't this Court have an obligation to
9 consider its jurisdiction at all times?
10 MR. DALNOKY: Of course.
11 THE COURT: Sua sponte even if the defendants didn't
12 raise it?
13 MR. DALNOKY: Not on this motion, not beyond the
14 well-pleaded facts, respectfully, not on this motion. Maybe
15 later in the case.
16 THE COURT: Or not so well-pleaded facts, right?
17 MR. DALNOKY: Saying the plaintiff is a domiciliary
18 may be a fact, may be a conclusion. We would like the
19 opportunity to plead further facts which reflect back on his
20 intention.
21 THE COURT: For the last time, what other further
22 facts would you plead?
23 MR. DALNOKY: His driver's license, his taxes, his
24 lease, the fact that he has no lease to any other premises
25 other than those premises, the fact that he has an oral

1 agreement to renew his lease. Those would be the facts as
2 opposed to the uncertain residency in the New York apartment,
3 which he has had for ten years, but which is very uncertain how
4 long he will be able to stay there. He did get the New Jersey
5 residence based on the uncertainty of the Queens residence.
6 If I can move on, Judge, if I may?
7 THE COURT: Very briefly.
8 Out of curiosity, where did your client come from to
9 arrive here in court today?
10 MR. DALNOKY: He came from New York.
11 THE COURT: So he spent last night in New York?
12 MR. DALNOKY: Correct.
13 THE COURT: In a hotel?
14 MR. DALNOKY: In his Queens residence.
15 THE COURT: All right. Anything further?
16 MR. DALNOKY: Yes, Judge, if I may.
17 THE COURT: Very briefly. You can turn to the other
18 branch of the motion if you want.
19 MR. DALNOKY: The State of New York law prior to 1981
20 when the EPTL was amended to allow non-marital children further
21 rights is not so certain as is alleged by the defendants. I
22 would cite the two cases that they provided in their reply
23 brief. One is the matter of Hoffman, 53 A.D.2d 55, First
24 Department 1976. That, again, is a 1976 case. I won't read
25 from these cases. There is a great deal in that First

1 Department case, and again, it is a 1976 case. And the matter
2 of Best, a Court of Appeals case, again, provided and cited by
3 the defendants, 66 N.Y.2d 151. In that case, the decedent died
4 in 1973, not 1981.
5 By the way, Judge, I don't believe the difference
6 between 1963 and 1981 is many, many years. It's 18 years.
7 And, again, the state of the law in New York prior to 1981 is
8 not so clear, and if the Court reviews those two cases, those
9 two cases provided in the reply brief of the defendant, you
10 will see it was not so clear that non-marital children were
11 presumed not to inherit.
12 Thank you very much.
13 THE COURT: Thank you, Mr. Dalnoky.
14 Anything further, Ms. Harris?
15 MR. HARRIS: I just want to note for the record that
16 the name change that was attached to our papers I believe we
17 got from the Internet in connection with this motion. It was
18 publicized in, apparently, a newspaper in California in 1994.
19 We did not have it previously and our clients didn't.
20 THE COURT: All right. Thank you for your arguments.
21 Decision reserved. Have a good weekend.
22 (Adjourned)
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X--X
Plaintiff,

John Fitzgerald Kennedy,

Case #: 08 CV 8889 (WHP)

-----against-----

Defendants,

The Honorable William H. Pauley III

The Trustees of the Testamentary Trust
Of the Last Will and Testament of
President John Fitzgerald Kennedy
X--X

PLAINTIFF'S MOTION FOR RECONSIDERATION

PURSUANT TO LOCAL RULE 6.3

PRELIMINARY STATEMENT

Plaintiff respectfully submits this memorandum of law in support of his motion, pursuant to Local Rule 6.3, for reconsideration of this Court's order docketed on February 17, 2009.

STATEMENT OF FACTS

On February 6, 2009, Defendants, by counsel moved to dismiss the complaint in this action due to lack of service and/or improper service. The colloquy is annexed at "A". Annexed at "B" is this Court's order arising out of that colloquy. The facts of this proceeding are contained therein. This Court ordered service of both trustees by personal service within 30 days[1].

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[1] At this time, I have also instructed my process server to serve both trustees by personal service ordered. it must not be possible.

POINT I

Service Is Governed By Article 4 of the Federal Rules and Does Not Require Personal Service Article 4(e) of the Federal Rules of Civil Procedures states:

> Article 4(E) Serving Individual Within a Judicial District of the United States. Unless federal law provides otherwise, an individual other than a minor, an incompetent person, or a person whose waiver has been filed- may be served in a judicial district of the United States by:
>
> (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
>
> (2) doing any of the following:
>
> (A) delivering a copy of the summons and of the complaint to the individual personally;
>
> (B) leaving a copy of the summons and of the complaint to the individual personally;
>
> (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Under New York law, service may be made "by delivering the summons within the state to a person of suitable age and discretion at the actual place of business... and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business...." CPLR 308 (2)

New York's Estates Powers and Trusts Law 11-4.4 states:

> 11 - 4.4 Commencement of action against personal representatives; rule when some of representatives not served.
>
> Where an action or proceeding is commenced against two or more personal representatives in their representative capacities, jurisdiction of all is obtained by service of process upon any one of them and any judgment recovered

may be entered and execution issued thereon against all of them, in their representative capacities, as if all had been served.

It is respectfully submitted that this Court erred by requiring more stringent service than is required by the Federal Rule and state law as personal service is not required under either no under District Court nor Second Circuit case law.

See, Terio v Great Western Bank, 166 BR 213, 214 (SDNY1994); *Allied Semi-Conductors v Pulsar Component Intern*, 907 Fsupp 618, 622-3 (EDNY 1995) ("Judge Jordan properly relied on the controlling law of the Second Circuit in concluding that actual receipt of the summons and complaint by the defendant satisfied the requirements of effective service and brought the defendant within the Court's jurisdiction"); *Morse v Elmira Country Club*, 752 F2d 35 (second circuit 1984)

See also, Smith v Kincaid 249 F2d 243, 245 (Sixth Circuit 1957) ("Service of process was made in accordance with the provisions of Rule 4(d)(1), which do not require that the papers be served on a defendant personally or showing that the papers were delivered to the defendant by the person with whom they were left")

In *Morse, supra* at 41 there is an interesting discussion of a change proposed by the Supreme Court which would have allowed service by registered or Certified Mail/Return Receipt Requested. If the defendant personally or a showing that the papers were delivered refused to accept the mailing, service could then be made by first class mail with a proper notice that unless the defendant appears judgment by default would be taken against him.

> "Congress rejected this system, at least in part because of difficulties in asserting whether the mail had been refused or merely went unclaimed. In the latter situation, if defendant changed addresses or was otherwise unreachable by mail, even subsequent delivery by first class mail might not adequately provide defendant with notice of the pending suit. [citations omitted].
>
> Congress substituted the current system, of mail delivery followed by acknowledgement or personal service, to insure that defendant would always received actual notice.
>
> Under the original version of the rule, effective service was complete upon the first mailing; all defendant needed to produce in order to obtain a default judgment was the returned envelope plus another mail delivery. When Congress changed the particulars of the initial mailing and substituted personal service and

> a follow-up, it gave no indication that it intended to change the prior view that mail service was effective where the recipient received the mail and accordingly obtained actual notice. That is our position in this case, a position consistent with the wording and legislative history of Rule 4." [footnote omitted]

In *Hanna v Plumer, Executor*, 380 US 460 (1995), the state law of Massachusetts required personal service upon the executor of an estate[2] In a diversity case, the District Court dismissed and the First Circuit affirmed. The Supreme Court reversed stating in part: "In the first place, it is doubtful that, even if there were no Federal Rule making it clear that in-hand service is not required in diversity actions, the Erie rule would have obligated the District Court to follow Massachusetts procedure" at 466.

In this case, this Court has ordered more stringent service than is required by either the federal Rule or State law. Even though the Defendants have received notice of this action, and are being sued in their representative capacity only (they are not personally named in the caption) this Court has ordered personal service upon both trustees. It is respectfully submitted that in doing so this Court has erred and the order should be modified by stating that service be made as required by the Federal Rules.

Dated: New York, New York
February 19, 2009

Respectfully submitted
Paul B. Dalnoky
(PD 6794)
Attorney for the Plaintiff

---

[2] Contrary to Defendant's assertions, this is not a case challenging the execution nor the probate of the instrument. Indeed, Plaintiff seeks to enforce said instrument against the Defendants, both of them New York domiciliaries. As such, the intent of the testator and New York law control, not Massachusetts's law of the 1954-1963

2/17/09

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

JOHN FITZGERALD KENNEDY.,

Plaintiff,

-against-

THE TRUSTEES OF THE TESTAMENTORY TRUST OF THE LAST WILL AND TESTAMENT OF PRESIDENT JOHN F. KENNEDY

Defendant.

- -X

08 Civ. 8889 (WHP)

SCHEDULING ORDER NO. 1

WILLIAM H. PAULEY III, District Judge:

Plaintiff is directed to personally serve Defendant with the complaint by March 6, 2009 and to docket an appropriate affidavit of service. Failure to comply with this Order, will result in dismissal of the complaint.

Dated: February 13, 2009
New York, New York

SO ORDERED:

WILLIAM H. PAULEY III
U.S.D.J.

Counsel of Record

Paul B. Dalnoky, Esq.
45 East 7th Street
#103
New York, NY 10003
Counsel for Plaintiff

Filed 8-1-00

(A.C 74)

COMMONWEALTH OF MASSACHUSETTS

To the Honorable the Judges of the Probate Court in and for the County of Suffolk:

RESPECTFULLY represents Eunice K. Shriver that it is inconvenient for her any longer to serve as trustee of the trust under Article FIFTH (B) for the benefit of Caroline B. Kennedy and others under the will of John F. Kennedy

she therefore respectfully resigns said trust, as trustee of the trust for the benefit of Caroline B. Kennedy under Article FIFTH (B) of the will of John F. Kennedy — late — of Boston in said County of Suffolk deceased —, and asks to have her resignation accepted.

Dated this 13 day of June 2000.

Eunice K. Shriver

Eunice K. Shriver

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Probate Court

At a Probate Court held at ~~Cambridge~~ Boston in and for said County of Suffolk, on the 1st day of August in the year of our Lord ~~one~~ two thousand ~~nine hundred and eighty~~

It appearing that Eunice K. Shriver has resigned her trust as trustee of the trust for the benefit of Caroline B. Kennedy and others under Article FIFTH (B) of the will of John F. Kennedy — late — of Boston in said County of Suffolk — deceased —.

It is ordered that said resignation be accepted.

Jeremy A. Stahlin

Judge of Probate Court

United States Senate

WASHINGTON, DC 20510-2101

February 14, 1996

Mr. John Kennedy
66 Bleecker Street
New York City, New York 11221-3806

Dear Mr. Kennedy:

Senator Kennedy has asked me to acknowledge and thank you for your correspondence.

As a United States Senator on the Judiciary committee, it would be inappropriate for him to intervene in matters before the courts or those pertaining to a State's judicial process.

You may wish to contact the Legal Aid Society nearest you and request information on lawyer referral services.

I hope this information will be of assistance to you.
The Senator extends his best wishes.

Sincerely,

Barbara Souliotis
State Administrative
Assistant

2400 JFK Federal Building
Boston, MA 02203

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN F. KENNEDY, *et al.*,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 3:23-CV-2603-N-BT
	§	
EDDIE GARCIA, *et al.*,	§	
	§	
Defendants.	§	

AFFIDAVIT OF HILDA TOBIAS KENNEDY IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS BY THE SECRET SERVICE

I went to the Federal Bureau of Investigation ("FBI") in Los Angeles in 1989[1].

[1] I went to the Miami FBI in 1981 too among other things. Later I received a letter which I still have that explained that only the Linburg baby was unsolved. This was before John Walsh worked and succeeded to make a national registry for missing children:

John Edward Walsh, Jr. (born December 26, 1945) is an American television presenter, criminologist, victims' rights activist, and the host/creator[1] of America's Most Wanted. He is known for his anti-crime activism, with which he became involved following the murder of his son, Adam, in 1981; in 2008, deceased serial killer Ottis Toole was officially named as Adam's killer.[2] Walsh was part-owner of the now defunct National Museum of Crime and Punishment in Washington, D.C. He also anchored an investigative documentary series, The Hunt with John Walsh, which debuted on CNN in 2014.

Following the crime, the Walsh family founded the Adam Walsh Child Resource Center, a non-profit organization dedicated to legislative reform.[14] The centers, originally located in West Palm Beach, Florida; Columbia, South Carolina; Orange County, California; and Rochester, New York; merged with the National Center for Missing and Exploited Children (NCMEC), where John Walsh serves on the board of directors.

The Walsh family organized a political campaign to help missing and exploited children. Despite bureaucratic and legislative problems, John's and Revé's efforts eventually led to the creation of the Missing Children Act of 1982 and the Missing Children's Assistance Act of 1984.

Today, Walsh continues to testify before Congress and state legislatures on crime, missing children and victims' rights issues. His latest efforts include lobbying for a Constitutional amendment for victims' rights.

The Adam Walsh Child Protection and Safety Act (Pub. L.Tooltip **Public Law** (United States) **109–248** (text) (PDF)) was signed into law by U.S. President George W. Bush on July 27, 2006, following a two-year journey through the United States Congress. It was intensely lobbied for by Walsh and the National Center for Missing and Exploited Children. Primarily, it focuses on a national sex offender registry, tough penalties for failing to register as a sex offender following release from prison, and civilian access to state websites that track sex offenders. Critics argue that the system amounts to making offenders wear a lifelong "Scarlet Letter," regardless of the circumstances of their cases.

I explained that my husband was kidnapped from President Kennedy and Marilyn Monroe and suffered a great deal from what happened to him and there should be an authority that would give him protection as a child. I was asked for my green card because I had not yet become a citizen.

If not for the Secret Service protection of the child[ren] of President Kennedy, this would have never happened to my husband. I suffered greatly from my husband's pain. I always feel bad because coming from Guatemala I always thought no crime existed in the United States and people were not like this here. I am sure you can see God calls on my husband to honor his parents no matter what the odds because we are blessed as if we are honoring God for it. One child is not more valuable than another for God and he let us get to this court because of Paul Landis.

I was crushed by a 14,000lb bus ten years ago, "hit by a bus" as people say is the worst thing that happens to someone; I was 82, my husband saw it, tried to help me but the driver left a gap that I was stuck to; he started to cry as you can hear in the video; I didn't get any justice but his crying was equal to what he did when he told me what happened to him and his parents not ten years after he lost his mother and a year later his father. I had my unlawful unjust unremedied punishment[2]. My husband doesn't need that with his proof.

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[2] Peine forte et dure (Law French for "forceful and hard punishment") was a method of torture formerly used in the common law legal system, in which a defendant who refused to plead ("stood mute") would be subjected to having heavier and heavier stones placed upon his or her chest until a plea was entered, or as the weight of the stones on the chest became too great for the condemned to breathe, fatal suffocation would occur.

The common law courts originally took a very limited view of their own jurisdiction. They considered themselves to lack jurisdiction over a defendant until he had voluntarily submitted to it by entering a plea seeking judgment from the court.[6] Since a criminal justice system that tried and punished only those who volunteered for trial and punishment was practically unworkable, this was the means chosen to coerce them.[7]

Many defendants charged with capital offences nonetheless refused to plead, since thereby they would escape forfeiture of property, and their heirs would still inherit their estate; but if the defendant pleaded guilty and was executed, their heirs would inherit nothing, their property escheating to the Crown. Peine forte et dure was abolished in Great Britain in 1772, and the last known use of the practice was in 1741.[8] In 1772, refusing to plead was deemed to be equivalent to pleading guilty. This was changed in 1827 to being deemed a plea of not guilty. Today, in all common law jurisdictions, standing mute is treated by the courts as equivalent to a plea of not guilty.

The elaborate procedure was recorded by a 15th-century witness in an oft-quoted description: "he will lie upon his back, with his head covered and his feet, and one arm will be drawn to one quarter of the house with a cord, and the other arm to another quarter, and in the same manner it will be done with his legs; and let there be laid upon his body iron and stone, as much as he can bear, or more ..."[9]

"Pressing to death" might take several days, and not necessarily with a continued increase in the load. The Frenchman Guy Miege, who from 1668 taught languages in London[10] says the following about the English practice:[11]

For such as stand Mute at their Trial, and refuse to answer Guilty, or Not Guilty, Pressing to Death is the proper Punishment. In such a Case the Prisoner is laid in a low dark Room in the Prison, all naked but his Privy Members, his Back upon the bare Ground his Arms and Legs stretched with Cords, and fasten'd to the several Quarters of the Room. This done, he has a great Weight of Iron and Stone laid upon him. His Diet, till he dies, is of three Morsels of Barley bread without Drink the next Day; and if he lives beyond it, he has nothing daily, but as much foul Water as he can drink three several Time, and that without any Bread: Which grievous Death some resolute Offenders have chosen, to save their Estates to their Children. But, in case of High Treason, the Criminal's Estate is forfeited to the Sovereign, as in all capital Crimes, notwithstanding his being pressed to Death.

Giles Corey was pressed to death during the Salem witch trials in the 1690s.

The most famous case in the United Kingdom was that of Roman Catholic martyr St Margaret Clitherow, who, in order to avoid a trial in which her own children would be obliged to give evidence, was pressed to death on March 25, 1586, after refusing to plead to the charge of having harboured Catholic priests in her house. She died within fifteen minutes under a weight of at least 700 pounds (320 kg). Several hardened criminals, including William Spigott (1721) and Edward Burnworth, lasted half an hour

My husband stayed with me for days without sleep. He and our son helped me get better and not think about the over fifty bones I broke and I am much better. This court must agree this is not right for him to feel every day, and this court must have jurisdiction, what country does not have jurisdiction over the President's son? I as a human believe he his right to return to his parents even now by the ninth amendment of the United States constitution. It is just one DNA away. I beg for the mercy of the court to help him. Let my husband get justice for him and his parents. It hurts me what happened to my husband too. I have seen and heard them: many people explain that they know my husband as son of Marilyn Monroe and President Kennedy. People that knew the facts: his Kennedy family and his mother's friends and ex-husband over the years and years. I have known the people that raised him to say he not of them many times over the years. "it is settled that *pro se* litigants should be afforded a certain degree of leniency, due to their unfamiliarity with the judicial process ." *Kongtcheu v Hosp. for Special Surgery,* No. 13-1854, 2015 WL 502071, at *2 (D.N.J. Feb. 5, 2015).

Respectfully submitted, under the penalty of perjury.

HILDA TOBIAS KENNEDY 3.27.2024

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under 400 pounds (180 kg) before pleading to the indictment. Others, such as Major Strangways (1658) and John Weekes (1731), refused to plead, even under 400 pounds (180 kg), and were killed when bystanders, out of mercy, sat on them.[12]

The only death by peine forte et dure in American history was that of Giles Corey, who was pressed to death on September 19, 1692, during the Salem witch trials, after he refused to enter a plea in the judicial proceeding. According to legend, his last words as he was being crushed were "More weight", and he was thought to be dead as the weight was applied.

In medieval Europe, the slow crushing of body parts in screw-operated "bone vises" of iron was a common method of torture[citation needed], and a tremendous variety of cruel instruments were used to savagely crush the head, knee, hand, and, most commonly, either the thumb or the naked foot. Such instruments were finely threaded and variously provided with spiked inner surfaces or heated red-hot before their application to the limb to be tortured.

PUBLIC LAWS MENTIONED IN THE OPPOSITION

B- 171026 (Comp.Gen.), 1970 WL 4087

COMPTROLLER GENERAL

TO MR. SECRETARY

NOV. 18, 1970

WHITE HOUSE POLICE - COMPENSATION - HIGHEST PREVIOUS RATE

***1** DECISION CONCERNING PROPRIETY OF PAYING RETROACTIVE SALARY INCREASES TO PERSONNEL OF THE EXECUTIVE PROTECTIVE SERVICE WHO WERE REASSIGNED TO GS-GRADES IN **SECRET SERVICE** DURING RETROACTIVE PERIOD OF **PUBLIC LAW** 91-297.

IN ABSENCE OF ANY STATUTORY PROVISION TO THE CONTRARY THE RETROACTIVE PROVISION OF THE SALARY INCREASE ACTS SHOULD BE APPLIED TO REFLECT SALARY STATUS OF EACH EMPLOYEE UNDER THE INCREASED RATES AS IF SUCH RATES HAD BEEN IN FORCE AND EFFECT AT THE TIME OF ANY CHANGE IN STATUS.

WE REFER TO THE LETTER OF OCTOBER 13, 1970, FROM THE ASSISTANT SECRETARY FOR ADMINISTRATION, CONCERNING THE PROPER RATE OF PAY FOR CERTAIN EMPLOYEES REASSIGNED FROM THE EXECUTIVE PROTECTIVE SERVICE (WHITE HOUSE POLICE) TO THE UNITED STATES **SECRET SERVICE**, IN LIGHT OF THE RETROACTIVE PAY INCREASE AUTHORIZED BY **PUBLIC LAW** 91-297, APPROVED JUNE 30, 1970, FOR PERSONNEL OF THE EXECUTIVE PROTECTIVE SERVICE. UNDER THE PROVISIONS OF 3 U.S.C. 204, THE SALARIES OF THE MEMBERS OF THE EXECUTIVE PROTECTIVE SERVICE ARE ASSIMILATED TO THE GRADES AND SALARIES OF MEMBERS OF THE METROPOLITAN POLICE FORCE OF THE DISTRICT OF COLUMBIA.

THE LETTER STATES THAT THREE EMPLOYEES NOW SERVING IN GENERAL SCHEDULE POSITIONS IN THE U.S. **SECRET SERVICE** WERE REASSIGNED FROM THE POSITION OF PRIVATE, EXECUTIVE PROTECTIVE SERVICE. THE REASSIGNMENTS ARE STATED TO BE EFFECTIVE FOR ONE EMPLOYEE ON APRIL 19, 1970, AND ON JUNE 28, 1970, FOR THE OTHER TWO. THE **SECRET SERVICE** IN EFFECTING THE REASSIGNMENTS FOLLOWED ITS NORMAL PRACTICE OF ESTABLISHING PAY IN ACCORDANCE WITH THE HIGHEST PREVIOUSLY EARNED RATE. **PUBLIC LAW** 91-297 WHICH WAS APPROVED ON JUNE 30, 1970, PROVIDED INCREASES RETROACTIVE TO JULY 1, 1969, FOR THE POSITIONS FROM WHICH THE EMPLOYEES WERE TRANSFERRED. A RULING IS SOUGHT ON THE EFFECT OF **PUBLIC LAW** 91-297 ON THE RATES AS SET.

SPECIFICALLY, THE LETTER SETS FORTH THE FOLLOWING CASE OF ONE EMPLOYEE BY WAY OF EXAMPLE. THE EMPLOYEE REASSIGNED ON APRIL 19, 1970, WAS EARNING $8,940 PER ANNUM AS A PRIVATE, CLASS 1-A-5, EXECUTIVE PROTECTIVE SERVICE. HE WAS SELECTED FOR A GRADE GS-7 POSITION AT $9,178 PER ANNUM. THE LETTER ASKS WHETHER THE RETROACTIVE PROVISION OF **PUBLIC LAW** 91-297 REQUIRES THE EMPLOYEE'S RATE WITH THE EXECUTIVE PROTECTIVE SERVICE TO BE ESTABLISHED AT $10,285 PER ANNUM. IF THIS IS DONE THEN THE **SECRET SERVICE** IN FOLLOWING ITS NORMAL PRACTICE OF RECOGNIZING THE HIGHEST PREVIOUS RATE WOULD SET THE RATE FOR THE EMPLOYEE AT $10,528 PER ANNUM, THE NEXT APPROPRIATE RATE WITHIN GRADE GS-7. IT IS STATED THAT OUR DETERMINATION WILL BE APPLIED TO THE OTHER TWO CASES.

IN THE ABSENCE OF STATUTORY PROVISION TO THE CONTRARY, WE HAVE HELD THAT THE RETROACTIVE PROVISIONS OF SALARY INCREASE ACTS SHOULD BE APPLIED TO REFLECT THE SALARY STATUS OF EACH EMPLOYEE UNDER THE INCREASED RATES AS IF SUCH RATES HAD BEEN IN FORCE AND EFFECT AT THE

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TIME OF ANY CHANGE IN STATUS. SEE 31 COMP. GEN. 166 (1955), 320 (1952); 34 ID 691 (1954); 38 ID 188 (1958); 44 ID 171 (1964). UNDER THOSE DECISIONS WE AGREE THAT THE RATE IN THE EXAMPLE ABOVE SHOULD BE ADJUSTED TO $10,528 PER ANNUM TO CONFORM TO THE RETROACTIVE EFFECT OF **PUBLIC LAW** 91-297.

B- 171026 (Comp.Gen.), 1970 WL 4087

End of Document

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Connecticut Law Review
May, 2006

Symposium

Indian Law at A Crossroads
Carole Goldberg, Duane Champagne[a1]

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IS PUBLIC LAW 280 FIT FOR THE TWENTY-FIRST CENTURY? SOME DATA AT LAST

I. Introduction

With the passage of Public Law 280 in 1953, Congress for the first time injected state criminal jurisdiction into Indian country on a large scale.[1] Public Law 280 structures law enforcement and criminal justice for 23% of the reservation-based tribal population and 52% of all tribes in the lower forty-eight states, and potentially affects all 239 Alaska Natives and their tribes or villages.[2]

***698** Although Public Law 280 was enacted just over fifty years ago, very little systematic, empirical research has been conducted to determine its effectiveness or its reception among the communities it addresses.[3] Indeed, tribes affected by Public Law 280 are routinely excluded from studies and government reports focusing on Indian country law enforcement and criminal justice.[4] Yet anecdotal evidence from congressional hearings, government reports, and tribal organizations suggests discontent with this law within Indian country and among some state and local law enforcement and criminal justice officials.[5] Themes evident in the statements of tribal officials include:

· Infringement of tribal sovereignty;

· Failure of state law enforcement to respond to Indian country crimes or to respond in a timely fashion;

· Failure of federal officials to support concurrent tribal law enforcement authority;

· A consequent absence of effective law enforcement altogether, leading to misbehavior and self-help remedies that jeopardize public safety;

· Discriminatory, harsh, and culturally insensitive treatment from ***699** state authorities when they do attend to Indian country crimes;

· Confusion about which government is responsible and should be contacted when criminal activity has occurred or presents a threat.

The statement of National Congress of American Indians (NCAI) President Wendell Chino in 1974 is characteristic of many tribal reactions: "On those reservations where states have assumed jurisdiction under the provisions of **Public Law** 280, lawlessness and crimes have substantially increased and [the reservations] have become known as no man's land."[6]

Tribal concerns about **Public Law** 280 parallel some criticisms leveled at the statute by state and local law enforcement agencies. Typically these charges focus on the absence of federal funding for state law enforcement services within Indian country or on difficulties in carrying out state law enforcement obligations because of uncertainty about the scope of state jurisdiction and officers' unfamiliarity with tribal communities.[7]

Amid federal concerns about rising crime rates in Indian country[8] and rising victimization rates among Indians,[9] the National Institute of Justice funded our research to advance understanding of this law and its impact, from the point of view of tribal members as well as state and local officials. The study also aims to develop recommendations for policy changes that would improve law enforcement and criminal justice on the reservations affected by **Public Law** 280. This Article presents some of the early findings of our research, which is still ongoing. A full report will be provided to the National Institute of Justice in 2006.

II. The Terms and Reach of Public Law 280

Before Congress adopted **Public Law** 280 in 1953, the arrangement of criminal jurisdiction in Indian country[10] was complex, but relatively uniform across reservations. Except for a few scattered reservations in the Midwest[11] and the reservations in New York state,[12] Indian country criminal jurisdiction was largely a matter for the federal government and the tribes themselves, with states limited to jurisdiction over crimes between non-Indians and victimless crimes by non-Indians.[13] Indeed, as ***700** early as 1832 the Supreme Court had pronounced that states lack criminal jurisdiction over criminal matters involving Indians within reservations unless Congress authorized such state authority,[14] and before 1953, Congress had taken no such action for reservations as a whole.[15]

In the pre-**Public Law** 280 era, the federal government's criminal jurisdiction fell into three main categories: (1) a wide range of federal and state-defined offenses, major and minor, committed by an Indian against a non-Indian, or vice versa; (2) specified major offenses committed by one Indian against another; and (3) designated crimes focused on the federal trust responsibility, including liquor control and hunting and fishing on tribal lands, whether committed by an Indian or non-Indian.[16] Tribal jurisdiction encompassed all criminal activity, and was exclusive as to less serious crimes committed by one Indian against another or crimes by Indians that were victimless.[17] Only later did federal law restrict tribal criminal jurisdiction by limiting the punishments that could be imposed and denying tribal criminal authority over non-Indians.[18]

Under this legal regime, the substantial exclusion of state criminal jurisdiction reflected constitutional and treaty-based principles establishing a special government-to-government trust relationship between the United States and the tribes.[19] These principles, in turn, reflected the reality that states' interests in governing power and resource control have often conflicted bitterly with tribes' claims to governance and territory.[20] Tribes have feared that state jurisdiction would prevent them from defining norms and administering justice in accordance with evolving tribal traditions, and would expose tribal members to indifferent or hostile law enforcement institutions.[21]

Disregarding those concerns, Public Law 280 authorized state criminal jurisdiction over Indians and non-Indians on reservations in six named states with significant numbers of federally recognized tribes: Alaska (added in 1958 when it became a state), California, Minnesota, Nebraska, Oregon, and Wisconsin.[22] A few tribes in these states were specifically ***701** excluded, as a result of their strong and effective lobbying.[23] The act also allowed all other states to opt for similar jurisdiction, and several did so.[24] At the same time, it withdrew the first two categories of federal criminal jurisdiction listed above-crimes between Indians and non-Indians, and major crimes involving only Indians.[25] Public Law 280 did not eliminate or limit tribal criminal jurisdiction, although the Department of the Interior often used it as a justification for denying funding support to tribes in the affected states for law enforcement and criminal justice.[26]

For tribes in those affected states, Public Law 280 meant that state or county law enforcement replaced the Bureau of Indian Affairs police, and state criminal trials largely replaced those carried out by the federal government. Perhaps even more important than this change of criminal jurisdiction "partners" from federal to state, however, was the fact that the reach of non-tribal law enforcement and criminal justice on reservations grew longer. Before Public Law 280-and for non-Public Law 280 tribes to this day-the more commonplace minor crimes committed by Indians, such as driving under the influence and misdemeanor assaults on other Indians, are exclusively the responsibility of the tribes.[27] With the adoption of Public Law 280, such offenses could be penalized under state as well as tribal criminal law.[28]

Congress engineered this significant shift and expansion of outside law ***702** enforcement responsibility on reservations for a variety of reasons.[29] Reducing the size of the federal budget was one of President Eisenhower's major priorities.[30] The Bureau of Indian Affairs (BIA) was seen as a good candidate for budget cuts because the ideology of the time favored assimilation and formal equality.[31] Transferring reservation populations from federal to state jurisdiction would foster cultural integration of Native people as individuals and eliminate special treatment.[32] Policymakers and legislators further justified Public Law 280 by pointing to what they called "lawlessness" on reservations in certain states, citing the need for a more pervasive police presence via state jurisdiction.[33] While additional federal law enforcement activity or support for strengthening tribal law enforcement might have accomplished the same goal, either of these alternative responses would have been more costly for the federal government.

Public Law 280 represents a particular set of solutions to two significant problems in law enforcement and criminal justice policy: what political body should direct the conduct of law enforcement and criminal justice (the control/accountability question), and what resources should be available to support those systems (the resource question). On the control/accountability question, Public Law 280 opted for greater control at the state and local government level, and less control at the tribal and federal level. The near elimination of exclusive tribal authority over a range of less serious offenses by tribal members is the most obvious manifestation of reduced tribal control. But the switch from BIA law enforcement to state law enforcement also meant that tribes traded a federal police force that included many Indian officers (due to the BIA's Indian preference laws),[34] for county police forces operating under local sheriffs and with fewer Indian officers. Shifting to state jurisdiction often opened the possibility for greater electoral control over law enforcement and criminal justice officials, as federal police and United States Attorneys are appointed, while local sheriffs, district attorneys, and even judges are typically elected officials. Effective political control at the county level has often eluded tribal communities, however, at least until the advent of tribal gaming for tribes in some Public Law 280 states opened the possibility of considerable campaign contributions.[35] Occasionally Indians ***703** comprise the majority of county populations in Public Law 280 states; more often, however, Indians are a minority in their county electorates, leaving them without effective political control over their sheriffs, district attorneys, and judges. The switch to state jurisdiction also meant a decline in potential tribal control over law enforcement because tribes under Public Law 280 could not take advantage of the 1975 Indian Self-Determination Act to contract with the BIA for the administration of their own law enforcement services.[36]

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Had tribes expressed a preference for the state jurisdiction system, it could be argued that the shift to increased outside authority at the state level was an indirect expression of tribal control. One of the striking features of Public Law 280, however, is the fact that affected tribes did not consent to its adoption and implementation.[37] In some instances, the introduction of state jurisdiction actually violated specific treaty promises.[38] Although President Eisenhower expressed "grave doubts" about the absence of a tribal consent provision when he signed the measure into law, his misgivings did not impel him to veto the legislation.[39] However, fifteen years later, in 1968, Congress amended Public Law 280 to require that any future assertion of state jurisdiction under its terms may ***704** occur only after a positive vote by the affected tribe.[40] State jurisdiction already in place was left undisturbed regardless of tribal preferences. Interestingly, not a single tribe has consented to state jurisdiction since that time.[41]

On the resource question, Public Law 280 did not supply an easy answer. A notable feature of the law is the absence of any federal funding support for the states' new law enforcement and criminal justice duties. Indeed, one could describe Public Law 280 as an early version of an unfunded federal mandate. While this failure to authorize or appropriate federal funds for Public Law 280 states is understandable given Congress's goal of reducing the federal budget, it left local governments in a difficult situation. Because reservation trust lands are exempt from state and local property taxes, and tribal members living and earning income on reservations are exempt from state taxes,[42] some of the most important sources of funding for local law enforcement and criminal justice on reservations were unavailable. Moreover, as noted above, the Department of the Interior largely failed to include tribes in Public Law 280 states in its growing support for tribal police and courts during the 1970s and 1980s, leaving Public Law 280 states unable to rely on tribal agencies to shoulder the financial responsibility.

We have attempted to measure the prevalence of tribal law enforcement agencies in Public Law 280 states, where such agencies have begun appearing since the 1980s.[43] According to the Bureau of Justice Statistics (BJS), there were 171 tribal law enforcement agencies in operation in 2000.[44] Of the top twenty agencies ranked by number of sworn personnel, only three were in Public Law 280 states.[45] Two of these tribal agencies were in Florida, an optional state. The third tribe was in Washington, another optional state, and was subject only to partial state jurisdiction under Public Law 280.[46] A more complete account of the presence of tribal law enforcement agencies where Public Law 280 ***705** applies can be gleaned from the census of tribal law enforcement agencies conducted by BJS in 2002.[47] With 92% of tribes in the lower forty-eight states responding, this report listed 165 tribes with at least one sworn officer, including fifty-four from Public Law 280 jurisdictions and twenty-five from the mandatory Public Law 280 states.[48] Focusing on the lower forty-eight states, we can arrive at a figure for the representation of tribes currently subject to state jurisdiction in mandatory Public Law 280 states among tribal police departments nationwide. The Public Law 280 tribes in mandatory states apart from Alaska account for 37% of all tribes in the survey, yet they represent only 15% of all tribal police departments.[49] Putting it another way, only 21.5% of Public Law 280 tribes in mandatory states outside Alaska have police departments. In contrast, 70% of all remaining tribes in the lower forty-eight states, including those in the optional Public Law 280 states, have tribal police departments. The Public Law 280 tribes in optional states, with 78% having tribal police departments,[50] are more like the non-Public Law 280 tribes in terms of having tribal law enforcement agencies, because most of the tribes in the optional states are not fully subject to state criminal jurisdiction.[51] In Alaska, only 18.5% of all tribes or Native villages have tribal police departments, but the limited nature of their criminal jurisdiction is likely a factor in this lower level of development.[52]

To keep these figures and comparisons in perspective, however, it is important to note that more than one-half of all California reservations, as well as a few in Oregon, Nebraska, and Minnesota, have total populations under 100, making them unlikely candidates for police agencies. Some of these tribes do nonetheless operate police departments because their ***706** gaming facilities draw in large numbers of outside customers.[53] And others might be able to mount police departments in collaboration with nearby tribes. Even excluding all reservations with populations under 100 from the calculations, however, tribes in mandatory Public Law 280 states are still underrepresented among tribal police forces. Tribes subject to mandatory Public Law 280 jurisdiction, apart from Alaska, constitute 32% of tribes with reservation populations over 100, but these tribes still

mount only 15% of all tribal police departments for reservations with populations over 100. Stated another way, 28% of all Public Law 280 tribes with reservation populations greater than 100 in mandatory states other than Alaska have tribal police departments. By comparison, 79% of all other tribes in the lower forty-eight states with reservation populations greater than 100 have tribal police departments.

Criminal justice capability among Public Law 280 tribes has grown more slowly than law enforcement, but is on the rise as well. As of 2002, based on responses to a Department of Justice survey and other sources, one reservation in Alaska had a tribal court, as did all ten Wisconsin Public Law 280 tribes, all seven Oregon Public Law 280 tribes, all nine Minnesota Public Law 280 tribes, both Nebraska Public Law 280 tribes, and seven of 107 tribes in California, along with several other California tribes that had formed an intertribal court.[54] Very few of these courts hear adult criminal matters;[55] and when they do, it is common for the courts to impose only monetary penalties or restitution, because these tribes rarely have detention facilities.[56] Traffic, hunting and fishing, liquor control, environmental control, and juvenile jurisdiction are more common, as in the case of the Hoopa Valley Tribe of California;[57] however, even these kinds of measures are not universal. Sometimes courts of Public Law 280 tribes in mandatory states, such as the Coos, Lower Umpqua, and Siuslaw Tribe of Oregon, are authorized to exercise civil penalty jurisdiction when ***707** enforcing the types of ordinances or codes listed above, and the consequences of violation are very similar to the pecuniary consequences for a criminal violation.[58]

Congress did provide some relief for states' resource problems in the 1968 amendments to the act, fifteen years after the passage of Public Law 280.[59] Under those amendments, a state (but not a tribe) could initiate the return, or retrocession, of its jurisdiction back to the federal government.[60] This return could be full or partial, as to geography or offenses; and the federal government could choose whether or not to accept the state's offer.[61] Since that time, retrocession has taken place in more than twenty-five tribes in both the mandatory Public Law 280 states and the optional states.[62] In at least some situations we have studied, resource concerns were significant factors in the state's decision to retrocede jurisdiction.

III. The Study

A. Areas of Investigation and Methodology

A major component of this study has been an investigation of the quality, availability, and sensitivity of law enforcement and criminal justice in Indian country, based upon both qualitative and quantitative data. Those data were elicited from interviews with tribal members and officials ("reservation residents"), county/state or federal law enforcement personnel ("law enforcement"), and county/state or federal criminal justice personnel ("criminal justice"). The reservation residents included tribal government leaders, tribal members with a special interest in and commitment to criminal justice issues, elders, any tribal police officers who were not enforcing tribal criminal law, tribal social service employees, and if there was a tribal court, tribal judges, prosecutors, and probation officers. Law enforcement personnel typically included the local sheriff or head of the BIA police department as well as individual officers and investigators. Tribal police were included here if they were enforcing tribal criminal law. For Public Law 280 jurisdictions, we also included ***708** state highway patrol officers where relevant. Criminal justice personnel who were interviewed included county judges, the local district attorney or United States Attorney, as well as probation and parole officers, juvenile justice officials, and public defenders. Three-person research teams conducted the week-long site visits at seventeen different reservations; their interviews were taped, transcribed, and coded for analysis using Hyperesearch software. Among the questions asked in the qualitative portion of the interviews were: "What are the most serious problem areas in law and order in the community?", "Is the availability of law enforcement satisfactory?", and "Does law enforcement respect the community's culture?" In addition, we asked interviewees to provide responses to some of the same questions using a rating scale of 1 to 5, and elicited numeric rankings of the most prevalent crimes on the reservation as well as the crimes that received the greatest attention from the responsible law enforcement authorities.[63]

The seventeen reservations we selected for the study fell into the following categories:

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· Mandatory Public Law 280 tribes (10)

· Optional Public Law 280 tribes (1)

· Retroceded tribes (2)

· Excluded tribes (initially excluded from mandatory states) (1)

· Pure non-Public Law 280 tribes (never included under Public Law 280) (2)

· "Straddler" tribe (a reservation that straddles a Public Law 280 state and a non Public Law 280 state) (1)

Selection of the reservations was determined by our research hypotheses, as well as our ability to secure consent from the tribal governments.

One of our research hypotheses was that levels of reservation residents' satisfaction with law enforcement and criminal justice, and ratings for the effectiveness of those systems, would be higher for non-Public Law 280 tribes than for Public Law 280 tribes. We derived that hypothesis from a body of literature on Indian country law enforcement that associates greater success and approval with greater accountability to tribal communities and more adequate resources.[64] Given that Public Law 280 arguably reduces both accountability and resources, we wanted to ***709** compare the results under non-Public Law 280 conditions (including initially excluded tribes in mandatory Public Law 280 states, retroceded tribes, straddler tribes, and tribes never affected by Public Law 280) with the results in both mandatory and optional Public Law 280 conditions. Although we attempted to break out each of the different non-Public Law 280 conditions for separate comparison, the samples were too small to allow for that.

Another research hypothesis that we developed, based on the same body of literature, was that we would find higher levels of community satisfaction and greater effectiveness of law enforcement and criminal justice on reservations where tribes have taken over more functions in Public Law 280 states (either through cooperative agreements with county law enforcement and prosecutors, or unilateral assertion of concurrent tribal jurisdiction), thereby increasing accountability to the local community. We also hypothesized that we would find higher levels of community satisfaction and greater effectiveness where Indian nations in Public Law 280 states have been able to assemble resources for tribal police and criminal courts. Thus we coded and analyzed interviews according to whether the reservation research site was one with a tribal police department and/or court system, whether there were cooperative agreements between tribal and county officials, and whether the tribe had gaming or other economic development revenue to support tribal law enforcement and criminal justice.[65]

Most interviews were conducted one-on-one, although sometimes we interviewed groups of reservation residents at elders' lunches. The demographic composition of the interviewees is reflected in the following tables.

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Category	Number	Percent (%)
Non PL 280 Pure	41	11.6
PL 280 Excluded	15	4.2
Retroceded	50	14.1
PL 280 Mandatory	233	65.8
PL 280 Optional	15	4.2
Total	354	100.0

Table 1. Respondents by Tribal Category

Respondent type	Number	Percent (%)
Reservation Resident	227	64.1
Law Enforcement	49	13.8
Criminal Justice	78	22.0
Total	354	100.0

Table 2. Respondents by Classification

Respondent Type	Reservation Resident		Law Enforcement		Criminal Justice	
Category	Number	Percent (%)	Number	Percent (%)	Number	Percent (%)
Non PL 280 Pure	23	10.1	6	12.2	12	15.4
PL 280 Excluded	8	3.5	2	4.1	5	6.4
Retroceded	33	14.5	10	20.4	7	9.0
PL 280 Mandatory	154	67.8	27	55.1	52	66.7
PL 280 Optional	9	4.0	4	8.2	2	2.6
Total	227	100.0	49	100.0	78	100.0

Table 3. Respondents by Tribal Category and Classification

Gender	Number	Percent (%)
Male	234	66.9
Female	116	33.1
Total	350	100.0

Table 4. Respondents by Gender

***710** As the tables indicate, 70% of the interviewees came from tribes subject to state jurisdiction under **Public Law** 280, with 96% of those coming from the mandatory states. The remaining 30% were divided between the pure, excluded, and retroceded non-**Public Law** 280 tribes, with most of those (47%) coming from non-**Public Law** 280 retroceded tribes, and the fewest (14%) coming from the one non-**Public Law** 280 excluded tribe included in the study. Nearly two-thirds of all the interviewees (64%) fell into the reservation resident category, with another 14% classified as state, local, tribal, and federal law enforcement officers, ***711** and the remaining 22% classified as state, local, tribal, and federal criminal justice personnel. Two-thirds (67%) of the interviewees were male, reflecting the greater representation ofmales in tribal, state, local, and federal law enforcement. The median number of interviewees per site was 21, with a range from 14 to 30.

B. Selected Findings

Striking patterns have emerged in our data analysis.[66] Two important ones are:

· Reservation residents on **Public Law** 280 reservations are significantly less satisfied with the availability and quality of law enforcement than reservation residents on non-**Public Law** 280 reservations.

· Law enforcement personnel serving **Public Law** 280 reservations have a significantly more favorable view of their performance than the reservation residents, while law enforcement personnel serving non-**Public Law** 280 reservations have a view of their performance that more closely coincides with that of the reservation residents.

1. Availability of Law Enforcement

Figure 1 depicts what percentage of reservation residents indicated satisfaction with the availability of law enforcement in their communities. The total number of respondents was 202 from the **Public Law** 280 jurisdictions and 98 from the non-**Public Law** 280 jurisdictions. "Availability" refers to the presence of police through patrols as well as the police response to calls for assistance. A one-way ANOVA (analysis of variance) of police availability yields a statically significantresult. As Figure 1 portrays, reservation residents in **Public Law** 280 and non-**Public Law** 280 jurisdictions tend to believe that tribal police are much more available than state, country, and federal police. Although further analysis is required to determine the reason for these differences, we speculate that tribal police in **Public Law** 280 states may be filling a vacuum because of the lack of county response. Interestingly, in **Public Law** 280 jurisdictions the reservation residents tend to focus more on poor community relations or lack of accountability as the cause for poor service from the county. In non-**Public Law** 280 jurisdictions, the reservation residents tend to emphasize lack of resources as the reason for unavailability of police.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
***712** Figure 1.

Reservation Resident Satisfaction with Availability of Police $F = 3.02$, $df = 3{,}286$, $N = 290$, $p < 0.03$

Reservation residents' quantitative ratings of the availability of law enforcement reinforce our analysis of the qualitative data. On a scale of 1 to 5, with 5 being best, reservation residents rated county police at 2.9 in **Public Law** 280 jurisdictions. In the non-**Public Law** 280 jurisdictions, the rating was a statistically significant 3.5. **Public Law** 280 reservation residents thus rate police availability significantly lower than non-**Public Law** 280 reservation residents.[67] The total number of respondents for these ratings was 212.

Two additional figures break down the concept of "availability" into its two component parts-timely response to calls for assistance and benefits from police patrols. Figure 2 compares how reservation residents experience the timeliness of tribal, state, and federal police response, with tribal police measured separately for **Public Law** 280 and non-**Public Law** 280 jurisdictions.

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***713** Figure 2.

Do Police Respond in a Timely Manner?

$F = 13.47$, $df = 3{,}313$, $N = 317$, $p < 0.0001$

A one-way ANOVA of these data yields significant differences in timeliness of police response among the four types of police departments. Reservation residents in **Public Law** 280 jurisdictions thought that tribal police responded in a timely manner at a rate about twice that of state or county police, 82.9% to 44.8%.[68] **Public Law** 280 reservation residents report that state or county police are significantly less responsive to calls than tribal police in non-**Public Law** 280 jurisdictions, as rated by non-**Public Law** 280 reservation residents.[69] Furthermore, **Public Law** 280 state police are viewed by reservation residents to be less responsive to calls than federal police in non-**Public Law** 280 jurisdictions.[70] Reservation residents in **Public Law** 280 jurisdictions say that state police are significantly less timely in answering calls for service than are **Public Law** 280 tribal police, non-**Public Law** 280 tribal police, and federal police. State or county police appear to have much greater difficulty

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responding in a timely manner to calls from reservation residents. On non-**Public Law** 280 reservations, federal and tribal police are rated about the same in terms of timeliness of response to calls from reservation residents.

Figure 3 compares the responses of reservation residents to a question inquiring whether the reservation benefits from police patrols, such as by ***714** crime deterrence and detection, traffic control, or quicker response time to calls for assistance. A one-way ANOVA indicates that there are significant differences among reservation residents about the existence of benefits from police patrols. State or county police in **Public Law** 280 jurisdictions are described as providing significantly fewer benefits from patrolling than non-**Public Law** 280 federal police and non-**Public Law** 280 tribal police.[71] About one-third of **Public Law** 280 reservation residents believe that state or county police patrols deliver solid patrol service benefits, while three-fourths of non-**Public Law** 280 reservation residents believe that tribal and BIA police deliver solid community benefits with patrolling. Indeed, the reservation resident respondents from **Public Law** 280 jurisdictions report that when state or county police do patrol, they come at the wrong times or at times that are too predictable to deter criminal activity or intercept criminals. The reservation residents complain that state or county police on patrol tend to use that time to harass tribal members and deliver warrants. Reservation residents definitely wish for greater patrols from more accountable police officers, for purposes of crime control, particularly control of drug manufacturing and sale. Only 54% of state or county police report that they are providing twenty-four-hour patrols on reservations subject to **Public Law** 280.

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Figure 3.

Does the Reservation Benefit from Police Patrols?

$F = 14.11$, $df = 2{,}149$, $N = 152$, $p < 0.0001$ <PN>715

***715 2. Quality of Law Enforcement**

Turning from the availability of law enforcement to its quality, we again find interesting disparities between **Public Law** 280 and non-**Public Law** 280 jurisdictions. Here the differences arise with respect to the extent of agreement between reservation residents and law enforcement personnel. These differences are illustrated by responses to our question regarding the thoroughness of crime investigation. Figure 4 presents the quantitative rating data supplied by interviewees.

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Figure 4.

Thoroughness of Crime Investigation

$N = 259$ (total all categories)[72]

As Figure 4 indicates, the difference between **Public Law** 280 jurisdictions and non-**Public Law** 280 jurisdictions is not significant, meaning that the involvement of state and county versus federal and tribal police does not significantly affect the thoroughness of crime investigations. ***716** However, the differences between the evaluations of reservation residents and law enforcement personnel are significant,[73] with law enforcement personnel giving significantly higher marks to police for effective and complete management of crime investigations than reservation residents. Police believe they are doing a better job investigating crimes than do reservation residents. Most important, the ANOVA analysis contains a statistically significant two-way interaction effect.[74] The interaction effect suggests an interpretation where jurisdiction and respondent type interact in their effect on assessments of thoroughness of crime investigations. In other words, the differences in thoroughness of crime

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investigation ratings between law enforcement personnel and reservation residents are significantly enhanced in **Public Law** 280 jurisdictions, but not in non-**Public Law** 280 jurisdictions. This finding suggests that reservation residents are not simply difficult to please when it comes to law enforcement services. In the non-**Public Law** 280 jurisdictions, their relatively negative assessments are matched by those of the law enforcement personnel themselves.

Figure 5, reflecting the qualitative data relating to thoroughness of crime investigation, confirms the relatively negative ratings that reservation residents give to county and state law enforcement in **Public Law** 280 jurisdictions, while demonstrating that tribal police in such jurisdictions are viewed as conducting much more thorough investigations despite their generally lower levels of funding. Reservation residents were asked whether different policing agencies delivered thorough investigations of crime. Testing for differences with a one-way ANOVA yields significant differences among the evaluations of police investigations. There are significant differences in how reservation residents evaluate the thoroughness of crime investigations among federal, tribal, and state and county police in **Public Law** 280 and non-**Public Law** 280 jurisdictions. Further analysis among the evaluation percentages yields three significant differences. Reservation residents in **Public Law** 280 jurisdictions believe that tribal police thoroughly investigate crimes significantly more often than reservation residents in non-**Public Law** 280 jurisdictions.[75] Within **Public Law** 280 jurisdictions, reservation residents say that tribal police are significantly more thorough at crime investigations than state or county police.[76] A significantly higher proportion of **Public Law** 280 reservation residents say that tribal police are thorough investigators than non-**Public Law** 280 reservation residents say about federal police.[77] All significant results are with the relatively high evaluation that tribal police receive in ***717** **Public Law** 280 jurisdictions, while other comparisons are not significant, or are relatively similar. **Public Law** 280 reservation residents have high opinions of the investigative skills of tribal police-significantly higher than federal, state, and tribal police in other jurisdictions. Why tribal police in **Public Law** 280 jurisdictions should be viewed as so much more effective in investigating crime than tribal police in non-**Public Law** 280 jurisdictions is not clear. It is possible, for example, that in the non-**Public Law** 280 jurisdictions, serious investigative work is normally undertaken by BIA police or turned over to the FBI, leaving tribal police with fewer opportunities to demonstrate their effectiveness.

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Figure 5.

Thoroughness of Crime Investigation

$F = 7.18$, $df = 3,311$, $N = 315$, $p < 0.0001$

3. Law Enforcement's Overstepping Authority

Another important measure of police effectiveness is the extent to which law enforcement adheres to the proper bounds of its authority. Police who routinely overstep their authority by using excessive force or arresting individuals for offenses over which the state lacks jurisdiction are not providing high-quality police services. Figure 6 presents the responses of reservation residents to the question whether police representing different types of government overstep their authority.

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***718** Figure 6.

Overstepping Authority by Police Force

$F = 6.66$, $df = 3,301$, $N = 305$, $p < 0.0002$

Reservation residents report that tribal, state and county, and federal police do not overstep authority at the same rate. **Public Law** 280 reservation residents believe that state and county police overstep authority more often than non-**Public Law** 280 reservation residents view federal police overstepping their authority.[78] Also, **Public Law** 280 reservation residents say that state and county police overstep authority significantly more often than non-**Public Law** 280 tribal police.[79] However, residents of **Public Law** 280 reservations report that state and county police do not overstep their authority significantly more often than **Public Law** 280 tribal police. There are no significant differences among **Public Law** 280 tribal and non-**Public Law** 280 tribal and federal police; they overstep authority about the same.

4. Quality of Communication Between Law Enforcement and Tribal Communities

The final figures presented here examine yet another aspect of quality of law enforcement-whether law enforcement personnel communicate well with tribal members and whether law enforcement personnel understand and respect tribal cultures. Again, the differences between **Public Law** 280 and non-**Public Law** 280 jurisdictions are striking. Figure 7 depicts the markedly divergent assessments of reservation residents and law enforcement personnel in **Public Law** 280 jurisdictions regarding police success in communicating with tribal members. As in Figure 4, the main effects of differences between **Public Law** 280 and non-**Public Law** 280 jurisdictions are not statistically significant. Differences in jurisdiction do not appear to have a direct effect on how well law enforcement communicates with tribal members. The main ***719** effects for the differences in the ratings between reservation residents and law enforcement are statistically significant.[80] Reservation residents rank the level of law enforcement's communication with tribal members significantly lower than law enforcement personnel. The interaction effect between type of respondent (reservation resident or law enforcement) and jurisdiction (**Public Law** 280 and non-**Public Law** 280) is statistically significant.[81] The strength of the communication between tribal members and police depends on jurisdiction. There is relative consensus about the level of police communication with tribal members in non-**Public Law** 280 jurisdictions, but disagreement in **Public Law** 280 jurisdictions. Law enforcement personnel in **Public Law** 280 jurisdictions believe they are communicating with tribal community members at a much higher level than reservation residents suggest. Again, the differences in assessments between reservation residents and law enforcement personnel in **Public Law** 280 and non-**Public Law** 280 jurisdictions suggest that something is in play other than a generally negative view of outside law enforcement by reservation residents.

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Figure 7.

How Well Law Enforcement Communicates with Tribal Members

N = 259

***720 5. Law Enforcement's Understanding and Respect of Tribal Culture**

The differences between **Public Law** 280 and non-**Public Law** 280 jurisdictions are significant at all levels on the question whether law enforcement personnel understand tribal culture. The results are presented in Figure 8.

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Figure 8.

Understanding of Indian Culture by Law Enforcement N = 259

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Here we have significant main effects as well as interaction effects. The main effect of jurisdiction is significant where **Public Law** 280 jurisdictions rank police knowledge of reservation cultures lower than non-**Public Law** 280 jurisdictions.[82] Police in **Public Law** 280 jurisdictions are perceived to have less understanding of reservation cultures than police in non-**Public Law** 280 jurisdictions. Reservation residents rank police knowledge of reservation cultures significantly lower than police rank their own understanding.[83] Police and reservation residents disagree about how well police understand reservation cultures. ***721** Police give themselves significantly higher marks for understanding reservation cultures than reservation residents. The interaction effect between jurisdiction and respondents is also statistically significant.[84] Reservation residents in **Public Law** 280 jurisdictions have significant disagreement with **Public Law** 280 police about how well law enforcement understands reservation cultures. However, non-**Public Law** 280 reservation residents and non-**Public Law** 280 police have relatively high agreement, both giving somewhat above average 3.2 rankings for how well non-**Public Law** 280 police understand tribal culture.

Our analysis of the qualitative data confirms the quantitative ratings depicted in Figure 8. Figure 9 reveals that there are significant differences between **Public Law** 280 reservation residents' evaluations of tribal and state police cultural knowledge and non-**Public Law** 280 reservation residents' evaluations of tribal and federal police knowledge of reservation cultures, as well as significant differences between reservation resident and law enforcement evaluations of state and county police. Tribal police in non-**Public Law** 280 jurisdictions are evaluated by reservation residents to have significantly greater cultural knowledge than state and county police in **Public Law** 280 jurisdictions,[85] but do not have significantly greater cultural knowledge than federal police in non-**Public Law** 280 jurisdictions and tribal police in **Public Law** 280 jurisdictions. The non-**Public Law** 280 tribal police evaluations by reservation residents are also not significantly different from state and county police self-evaluations. According to reservation residents, tribal police in **Public Law** 280 jurisdictions have significantly greater cultural knowledge than federal police in non-**Public Law** 280 jurisdictions[86] and **Public Law** 280 state and county police,[87] but are not significantly greater than state and county law enforcement personnel's self-evaluations. Reservation residents in non-**Public Law** 280 jurisdictions rate federal police knowledge of reservation cultures significantly higher than **Public Law** 280 reservation residents rate state and county police knowledge.[88] According to reservation residents, state and county police in **Public Law** 280 jurisdictions have significantly less knowledge about reservation cultures than all other federal and tribal police. The evaluations of state and county police by reservation residents in **Public Law** 280 jurisdictions also disagree significantly with state and county law enforcement personnel's self-evaluation of cultural understanding about reservation communities.[89] ***722** Reservation residents in **Public Law** 280 jurisdictions rank state and county police understanding of tribal cultures as very low, while there is otherwise a relative consensus among reservation residents and law enforcement personnel about the degree of knowledge police have about reservation cultures.

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Figure 9.

Police Understanding of Reservation Cultures $F = 35.15$, $df = 4{,}330$, $N = 335$, $p < 0.0001$

Our final figure examines the differences in law enforcement personnel's respect for tribal cultures, as reported by reservation residents from different types of jurisdictions. According to Figure 10, a one-way ANOVA yields statistically significant results.

A significantly smaller proportion of **Public Law** 280 reservation residents say that **Public Law** 280 state and county police are respectful toward tribal cultures compared with a similar evaluation of federal police[90] and tribal police[91] by non-**Public Law** 280 reservation residents. The differences between federal and tribal police in non-**Public Law** 280 jurisdictions are not statistically significant, with non-**Public Law** 280 reservation residents saying that tribal and federal police respect tribal cultures to similar degrees. These data suggest that state and county police in **Public Law** 280 jurisdictions show significantly less respect for tribal cultures than do police in non-**Public Law** 280 jurisdictions.

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***723** Figure 10.

Respect for Tribal Cultures $F = 12.39$, $df = 2{,}220$, $N = 223$, $p < 0.0001$

IV. Policy Implications

Distilling policy implications from our data requires a full analysis, including all the interview material we have gathered concerning the criminal justice systems operating in **Public Law** 280 jurisdictions. The data we have reviewed in this Article are only a small part of what we have collected, and focus entirely on law enforcement. Nonetheless, we are prepared to discuss some policy options in the contingent form. That is, if our hypotheses are borne out by the full array of data, how could policymakers at the tribal, state, and federal level act to improve community satisfaction and police effectiveness in jurisdictions currently subject to **Public Law** 280?

Our most important working hypothesis has been that greater community control and accountability, together with greater resources, produce greater community satisfaction with law enforcement and criminal justice, as well as greater effectiveness on the part of these institutions. Thus, our preliminary policy recommendations focus on aligning community priorities with those of police and criminal justice systems, and infusing **Public Law** 280 jurisdictions with additional crime control resources. Our proposed improvements fall into two categories: exit from state and county jurisdiction under **Public Law** 280 altogether, and ***724** accommodations to the **Public Law** 280 regime that increase tribal control. The exit option obviously points toward reinstituting the regime of law enforcement and criminal justice that operates in non-**Public Law** 280 jurisdictions. In making such recommendations, we do not intend an absolute endorsement of criminal jurisdiction in non-**Public Law** 280 states.[92] Our point is simply that under some conditions, the non-**Public Law** 280 regime may facilitate greater tribal community control and greater financial support for Indian country law enforcement and criminal justice than the **Public Law** 280 regime. Policymakers concerned about the non-**Public Law** 280 jurisdictional system should take this assessment into account in considering alternatives for improving Indian country law enforcement and criminal justice. At the very least, expanded state criminal jurisdiction should not be considered a desirable option.

A. Exit

Under current law, the only way for an Indian nation to exit from state and county jurisdiction under **Public Law** 280 is to prevail upon the state to retrocede some or all of its jurisdiction back to the federal government. Although more than thirty Indian nations have run this gauntlet and achieved full or partial retrocession, the political obstacles at the state level are formidable,[93] and the federal government has been making the process more difficult because it refuses to provide funding for the federal and tribal law enforcement responsibilities that would accompany retrocession.[94] Nonetheless, current economic and budgetary conditions within many states, combined with the inflow of gaming revenues for some tribes, have made retrocession a more achievable objective.

Not all of the tribal communities where we conducted interviews expressed an immediate interest in retrocession. Even where enthusiasm ***725** for the idea of retrocession was high, some communities thought they were not yet ready to mount their own police and criminal justice systems; still others were concerned that their small size or internal political conflicts made increased tribal criminal jurisdiction infeasible. Nonetheless, it was apparent to us that some communities would seize or work toward the opportunity for retrocession if the political hurdles at the state level could be removed and if federal funding comparable to that provided in non-**Public Law** 280 jurisdictions were made available.

Thus we do not recommend the wholesale repeal of **Public Law** 280.[95] Rather, we look to an existing federal model for the return of state jurisdiction to the federal government on a tribe-by-tribe basis, with the tribe rather than the state controlling the process.

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That model is embedded in the Indian Child Welfare Act of 1978 (ICWA),[96] which authorizes tribes to petition the United States Department of the Interior for what is called the "reassumption" of exclusive tribal jurisdiction over Indian child welfare proceedings, where states currently have concurrent jurisdiction under Public Law 280.[97] Under this provision of ICWA, the tribe's petition to the Secretary must include "a suitable plan to exercise such jurisdiction," and the Secretary is authorized to consider a variety of factors, including the size and population base of the tribe, in deciding whether to approve the petition.[98] If the Secretary disapproves a reassumption petition, the Secretary is legally obliged to provide "such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval."[99] Were Congress to enact a law of this type for criminal jurisdiction, tribes would need financial as well as technical assistance in order to assume exclusive misdemeanor jurisdiction over crimes between Indians and other concurrent jurisdiction over Indians. The federal government would also need to come forward and assume its trust responsibility, which would include funding for federal criminal jurisdiction and BIA police.

Our research has revealed the substantial benefits that retrocession can bring. One tribe we studied had long suffered from alcohol-related deaths of its members on the main roadway through the reservation. State law required that a marker be placed along the road at the site of such deaths, and this particular road displayed marker after marker. While the county was exercising state jurisdiction under Public Law 280, patrolling on this road was sporadic; when drivers were picked up for driving under the influence they were typically sent to the county jail for a short period and ***726** then returned to their vehicles. When the tribe finally persuaded the state to retrocede its jurisdiction, the tribe took over policing and created a tribal criminal court using revenues from gaming and other economic development enterprises. Among other things, the tribal police instituted twenty-four-hour patrols on the reservation road and the tribal criminal court began sending convicted DUI defendants to secure treatment facilities rather than to a jail cell. These new practices reflected the priority the tribe attached to maintaining safe roads and to restoring alcohol-addicted members to a well-functioning and healthy condition. As a consequence, tribal members developed greater confidence in the police, and began reporting offenses at a higher rate. The ultimate result has been a decline in highway deaths, even as the rate of reported criminal activity appears to have risen.

B. Accommodation

Even without retrocession, Indian nations can take measures that will increase their control over criminal matters within their territory, aligning law enforcement and criminal justice more fully with community priorities. Tribal options are constricted by the penalty limitations of the Indian Civil Rights Act (ICRA)[100] and the absence of tribal criminal jurisdiction over non-Indians. But these constraints exist for tribes in non-Public Law 280 jurisdictions as well, where the federal government has jurisdiction over the most serious offenses and over offenses committed by non-Indians against Indians.[101]

The most drastic way in which Public Law 280 tribes can gain control over law enforcement and criminal justice, at least with respect to Indians, is by enacting criminal codes and exercising their own concurrent criminal jurisdiction. The rewards can be substantial. Most significantly, Indian nations can often achieve the equivalent of exclusive jurisdiction over offenses if they are the first to prosecute. That is because the state laws in many Public Law 280 jurisdictions prohibit subsequent state prosecutions under principles of double jeopardy.[102] Unfortunately, federal funding for tribal concurrent jurisdiction initiatives is quitelimited in Public Law 280 jurisdictions. Thus, Congress should appropriate money for the exercise of such concurrent jurisdiction. Alternatively, tribes with independent ***727** funding sources can supply the law enforcement, prosecutorial, and judicial apparatus.

If Indian nations do not want or are unable to establish their own police and judicial institutions, they can attempt to gain greater control-at least over law enforcement-by contracting with the local county to supply law enforcement services on the reservation.[103] Such agreements can assure regular, round-the-clock patrolling, provide for officers to be trained in tribal culture or to practice community-based policing, establish a tribal advisory board to meet regularly with the policing staff, and maintain systems for police accountability for abuse of power or excessive use of force. This alternative has been adopted

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by several Public Law 280 tribes, most recently the Soboba Band of Luiseno Indians. While it has the virtue of linking county law enforcement officers more closely to the tribes, it has disadvantages as well. First, contracting for police services does not alter the underlying state criminal justice system. For example, if problems with state criminal jurisdiction include discrimination against tribal members by county juries, prosecutorial priorities that don't match the community's concerns, or culturally inappropriate dispositions, then making the police more accountable to the community will not provide a solution. Second, contracting with county law enforcement doesn't change the training or state requirements applicable to the police officers operating on the reservation. Thus, there are some limits on the extent to which the community can direct the methods and priorities of the police themselves. Third, such contracts essentially pay the county to provide services that the county was already obliged to provide under Public Law 280. Nonetheless, smaller tribes, particularly those with significant revenue from economic development, may prefer to contract for police services rather than use the money to fund their own police departments and criminal courts. Family connections may be so pervasive that it would be controversial to empower anyone within the tribe to exercise law enforcement or criminal justice authority.

A third form of accommodation to Public Law 280 is the establishment of deputization or cross-deputization agreements between tribal and county police.[104] Deputization agreements typically authorize tribal police to act in the capacity of county law enforcement officers, enabling them to arrest ***728** both Indians and non-Indians for violation of state law. Such agreements normally require that the deputized officers meet state training and certification requirements, and may also grant tribal officers access to state law enforcement telecommunication systems. A major benefit that tribes realize from such agreements is the empowerment of tribal police to arrest non-Indians, albeit for violations of state rather than tribal law. These agreements are also valuable to tribes that have no criminal codes of their own because they are too small, because the tribal culture is unreceptive to enactment of coercive laws, or for any other reason. Tribes may also gain greater patrolling coverage from the tribal police and greater coordination between the two forces with respect to focused crime control initiatives such as drug enforcement. Resource sharing and mutual assistance are other benefits. Cross-deputization agreements incorporate these features and add the reciprocal element of county officers being authorized to arrest on the reservation for violation of tribal law. This authority may be especially helpful for offenses committed by tribal members-such as traffic violations-that are outside the state's jurisdiction under Public Law 280 because they are deemed "regulatory" in nature.[105] Both deputization and cross-deputization agreements hold the promise of eliminating jurisdictional uncertainties at the arrest and investigation stages.

Preliminary analysis of our interview data suggests that some of the communities expressing greatest satisfaction with Public Law 280 are those with cross-deputization agreements. The state of Wisconsin has actually fostered such agreements by providing supplemental funding to counties and tribes that have been able to establish such cooperative relations.[106] However, cooperative law enforcement agreements are not a panacea for the problems afflicting tribes under Public Law 280. As with the contracts for law enforcement services, they do nothing to address any underlying difficulties tribes experience with the criminal justice system. Furthermore, they put tribes in the position of subsidizing their counties, as the tribes are supplying law enforcement officers who arrest individuals who will pay any resulting fines to the county, not to the tribe. Finally, the cooperative agreements require tribal police to conform to state policing standards, diminishing the tribes' ability to shape police functions in accordance with community standards and priorities.[107] Even where ***729** cooperative agreements prove, on balance, beneficial to tribes, it may be difficult to sustain them if state funding falters, liability issues strain relations, or mutual fear or mistrust make them politically controversial.

V. Conclusion

Public Law 280 is out of step with the prevailing federal policy of tribal self-determination and has garnered considerable criticism from tribal communities. The law's underlying rationale-that it is necessary to achieve effective law enforcement in tribal communities-has never been subjected to sustained empirical examination even though more than fifty years have passed since its enactment. Theoretical work in the field of Indian country law enforcement suggests that Public Law 280 should be a failure in terms of community satisfaction and effectiveness of crime control because it denies police accountability to the tribal community and complicates the provision of adequate resources to reservation law enforcement and criminal justice. Our

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