

Public Judicial Notice
06Jun07
Challenge of Federal jurisdiction

Affiants upon the United States hereby serve judicial notice, and any other interested parties named within are hereby served. This public notice will be construed to comply with provisions necessary to establish presumed fact under the Federal Rules of Civil Procedure and attending State rules should interested parties fail to rebut any given allegation or matter of law addressed herein within 30 days. The position will be construed as adequate to meet requirements of judicial notice, thus preserving fundamental law. Matters addressed herein, if not rebutted, will be construed to have general application. This public notice addresses federal jurisdiction, federal authority jurisdiction and authority of federal agents, the Constitutionality and lawful character of the Forest Service Plan and the Travel Management Rule and the United States Forest Service, and other agencies of the United States government including but not limited to; the United States Forest Service. The United States Department of Agriculture, United States Department of the Interior, United States Fish and Wildlife Services, United States Department of Justice; and legal application of their codes.

M'Ilvaine v. Coxe's Lessee, 8 U.S. (4 Cranch) 209, 212 (1808), where it was held:

"This opinion is predicated upon a principle which is believed to be undeniable, that the several states which composed this Union, so far at least as regarded their municipal regulations, became entitled, from the time when they declared themselves independent, to all the rights and powers of sovereign states, and that they did not derive them from concessions made by the British king. The treaty of peace contains recognition of their independence, not a grant of it. From hence it results, that the laws of the several state governments were the laws of sovereign states, and as such were obligatory upon the people of such state, from the time they were enacted."

Harcourt v. Gaillard, 25 U.S. (12 Wheat.) 523, 526, 527 (1827), where the Supreme Court stated:

"There was no territory within the United States that was claimed in any other right than that of some one of the confederated states; therefore, there could be no acquisition of territory made by the United States distinct from, or independent of some one of the states.

"Each declared itself sovereign and independent, according to the limits of its territory.

"[T]he soil and sovereignty within their acknowledged limits were as much theirs at the declaration of independence as at this hour.

The essence of this retention of state jurisdiction was embodied in Art. I, § 8, cl. 17 of the U.S. Constitution, which defined federal jurisdiction as follows:

"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

It was United States v. Bevans, 16 U.S. (3 Wheat.) 336 (1818), which involved a federal prosecution for a murder committed on board the Warship, Independence, anchored in the harbor of Boston, Massachusetts. The defense complained that only the state had jurisdiction to prosecute this crime and argued that the federal circuit courts had no jurisdiction of this crime supposedly committed within the federal government's admiralty jurisdiction. In argument before the Supreme Court, counsel for the United States admitted as much:

"The exclusive jurisdiction which the United States have in forts and dock-yards ceded to them, is derived from the express assent of the states by whom the cessions are made. It could be derived in no other manner; because without it, the authority of the state would be supreme and exclusive therein," *Id.*, at 350-51.

In holding that the State of Massachusetts had jurisdiction over this crime, the Court held:

"What, then, is the extent of jurisdiction which a state possesses?"

"We answer, without hesitation, the jurisdiction of a state is co-extensive with its territory; co-extensive with its legislative power," *Id.*, at 386-87.

"The article which describes the judicial power of the United States is not intended for the cession of territory or of general jurisdiction... Congress has power to exercise exclusive jurisdiction over this district, and over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.

"It is observable that the power of exclusive legislation (which is jurisdiction) is united with cession of territory, which is to be the free act of the states. It is difficult to compare the two sections together, without feeling a conviction, not to be strengthened by any commentary on them, that, in describing the judicial power, the framers of our constitution had not in view any cession of territory; or, which is essentially the same, of general jurisdiction," *Id.*, at 388.

.In *Commonwealth v. Young*, Brightly, N.P. 302, 309 (Pa. 1818), the Supreme Court of Pennsylvania was presented with the issue of whether lands owned by the United States for which Pennsylvania had never ceded jurisdiction had to be sold pursuant to state law. In deciding that the law of Pennsylvania exclusively controlled this sale of federal land, the Court held:

"The legislation and authority of congress is confined to cessions by particular states for the seat of government, and purchases made by consent of the legislature of the state, for the purpose of erecting forts. The legislative power and exclusive jurisdiction remained in the several states, of all territory within their limits, not ceded to, or purchased by, congress, with the assent of the state legislature, to prevent the collision of legislation and authority between the United States and the several states."

A year later, the Supreme Court of New York was presented with the issue of whether the State of New York had jurisdiction over a murder committed at Fort Niagara, a federal fort. In *People v. Godfrey*, 17 Johns, 225, 233 (N.Y. 1819), that court held that the fort was subject to the jurisdiction of the State since the lands therefore had not been ceded to the United States:

"To oust this state of its jurisdiction to support and maintain its laws, and to punish crimes, it must be shown that an offense committed within the acknowledged limits of the state, is clearly and exclusively cognizable by the laws and courts of the United States. In the case already cited, Chief Justice Marshall observed, that to bring the offense within the jurisdiction of the courts of the union, it must have been committed out of the jurisdiction of any state; it is not (he says,) the offence committed, but the place in which it is committed, which must be out of the jurisdiction of the state."

The decisional authority upon which this court relied was *United States v. Bevans*, *supra*.

At about the same time that the New York Supreme Court rendered its opinion in *Godfrey*, a similar fact situation was before a federal court, the only difference

being that the murder was committed on land which had been ceded to the United States. In *United States v. Cornell*, 25 Fed.Cas. 646, 648, No. 14,867 (C.C.D.R.I. 1819), the court held that the case fell within federal jurisdiction:

"But although the United States may well purchase and hold lands for public purposes, within the territorial limits of a state, this does not of itself oust the jurisdiction or sovereignty of such State over the lands so purchased. It remains until the State has relinquished its authority over the land either expressly or by necessary implication.

"When therefore a purchase of land for any of these purposes is made by the national government, and the State Legislature has given its consent to the purchase, the land so purchased by the very terms of the constitution ipso facto falls within the exclusive legislation of Congress, and the State jurisdiction is completely ousted."

Almost 18 years later, the U.S. Supreme Court was again presented with a case involving the distinction between state and federal jurisdiction. In *New Orleans v. United States*, 35 U.S. (10 Pet.) 662, 737 (1836), the United States claimed title to property in New Orleans likewise claimed by the city. After holding that title to the subject lands was owned by the city, the Court addressed the question of federal jurisdiction:

"Special provision is made in the Constitution for the cession of jurisdiction from the States over places where the federal government shall establish forts or other military works. And it is only in these places, or in the territories of the United States, where it can exercise a general jurisdiction."

In *New York v. Miln*, 36 U.S. (11 Pet.) 102 (1837), the question before the Court involved an attempt by the City of New York to assess penalties against the master of a ship for his failure to make a report regarding the persons his ship brought to New York. As against the master's contention that the act was unconstitutional and that New York had no jurisdiction in the matter, the Court held:

"If we look at the place of its operation, we find it to be within the territory, and, therefore, within the jurisdiction of New York. If we look at the person on whom it operates, he is found within the same territory and jurisdiction," *Id.*, at 133.

"They are these: that a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation, where that jurisdiction is not surrendered or

restrained by the Constitution of the United States. That, by virtue of this, it is not only the right, but the bounden and solemn duty of a State, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation which it may deem to be conducive to these ends; where the power over the particular subject, or the manner of its exercise is not surrendered or restrained, in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that, consequently, in relation to these, the authority of a State is complete, unqualified and exclusive," *Id.*, at 139.

Some eight years later in Pollard v. Hagan, 44 U.S. (3 How.) 212 (1845), the question of federal jurisdiction was once again before the Court. This case involved a real property title dispute with one of the parties claiming a right to the contested property via a U.S. patent; the lands in question were situated in Mobile, Alabama, adjacent to Mobile Bay. In discussing the subject of federal jurisdiction, the Court held:

"We think a proper examination of this subject will show that the United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory, of which Alabama or any of the new States were formed," *Id.*, at 221.

"Because, the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a State or elsewhere, except in the cases in which it is expressly granted," *Id.*, at 223.

"Alabama is therefore entitled to the sovereignty and jurisdiction over all the territory within her limits, subject to the common law," *Id.*, at 228-29.

The single most important case regarding the subject of federal jurisdiction appears to be Fort Leavenworth R. Co. v. Lowe, 114 U.S. 525, 531, 5 S.Ct. 995 (1885), which sets forth the law on this point fully. Here, the railroad company property, which passed through the Fort Leavenworth federal enclave, was being subjected to taxation by Kansas, and the company claimed an exemption from state taxation because its property was within federal jurisdiction and outside that of the state. In holding that the railroad company's property could be taxed, the Court carefully explained federal jurisdiction within the States:

"The consent of the states to the purchase of lands within them for the special purposes named, is, however, essential, under the constitution, to the transfer to the general government, with the

title, of political jurisdiction and dominion. Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction is ceded to them in some other way, is simply that of an ordinary proprietor. The property in that case, unless used as a means to carry out the purposes of the government, is subject to the legislative authority and control of the states equally with the property of private individuals."

One of the first cases to acknowledge the proposition that a State could retain some jurisdiction over property ceded to the federal government was *Surplus Trading Co. v. Cook*, 281 U.S. 647, 50 S.Ct. 455 (1930). Here, a state attempt to assess an ad valorem tax on Army blankets located within a federal army camp was found invalid and beyond the state's jurisdiction. But in regards to the proposition that a State could make a qualified cession of jurisdiction to the federal government, the Court held:

"The state undoubtedly may cede her jurisdiction to the United States and may make the cession either absolute or qualified as to her may appear desirable, provided the qualification is consistent with the purposes for which the reservation is maintained and is accepted by the United States. And, where such a cession is made and accepted, it will be determinative of the jurisdiction of both the United States and the state within the reservation," *Id.*, at 651-52.

Two cases decided in 1937 by the U.S. Supreme Court further clarify the constitutionality of a reservation of partial state jurisdiction over lands ceded to the jurisdiction of the United States. In *James v. Dravo Contracting Company*, 302 U.S. 134, 58 S.Ct. 208 (1937), the State of West Virginia sought to impose a tax upon the gross receipts of the company arising from a contract which it had made with the United States to build some dams. One of the issues involved in this case was the validity of the state tax imposed on the receipts derived by the company from work performed on lands to which the State had ceded "concurrent" jurisdiction to the United States. The Court held that a State could reserve and qualify any cession of jurisdiction for lands owned by the United States; since the State had done so here, the Court upheld this part of the challenged tax notwithstanding a partial cession of jurisdiction to the U.S. A similar result occurred in *Silas Mason Co. v. Tax Commission of State of Washington*, 302 U.S. 186, 58 S.Ct. 233 (1937). Here, the United States was undertaking the construction of several dams on the Columbia River in Washington, and had purchased the lands necessary for the project. Silas Mason obtained a contract to build a part of the Grand Coulee Dam, but filed suit challenging the Washington income tax when that State sought to impose that tax on the contract proceeds. Mason's argument that the federal government had exclusive jurisdiction over both the lands and its contract was not upheld by either the Supreme Court of Washington or the U.S. Supreme Court. The latter Court held that none of the lands owned by the U.S. were within its jurisdiction and thus

Washington clearly had jurisdiction to impose the challenged tax; see also *Wilson v. Cook*, 327 U.S. 474, 66 S.Ct. 663 (1946).

Some few years later in 1943, the Supreme Court was again presented with similar taxation and jurisdiction issues; the facts in these two cases were identical with the exception that one clearly involved lands ceded to the jurisdiction of the United States. This single difference caused directly opposite results in both cases. In *Pacific Coast Dairy v. Department of Agriculture of California*, 318 U.S. 285, 63 S.Ct. 628 (1943), the question involved the applicability of state law to a contract entered into and performed on a federal enclave to which jurisdiction had been ceded to the United States. During World War II, California passed a law setting a minimum price for the sale of milk, and this law imposed penalties for sales made below the regulated price. Here, Pacific Coast Dairy consummated a contract on Moffett Field, a federal enclave within the exclusive jurisdiction of the United States, to sell milk to such federal facility at below the regulated price. When this occurred, California sought to impose a penalty for what it perceived as a violation of state law. But, the U.S. Supreme Court refused to permit the enforcement of the California law, holding that the contract was made and performed in a territory outside the jurisdiction of California and within the jurisdiction of the United States, a place where this law didn't apply. Thus in this case, the existence of federal jurisdiction was the foundation for the decision. However, in *Penn Dairies v. Milk Control Commission of Pennsylvania*, 318 U.S. 261, 63 S.Ct. 617 (1943), an opposite result was reached on almost identical facts. Here, Pennsylvania likewise had a law which regulated the price of milk and penalized milk sales below the regulated price. During World War II, the United States leased some land from Pennsylvania for the construction of a military camp; since the land was leased, Pennsylvania did not cede jurisdiction to the United States. When Penn Dairies sold milk to the military facility for a price below the regulated price, the Commission sought to impose the penalty. In this case, since there was no federal jurisdiction, the Supreme Court found that the state law applied and permitted the imposition of the penalty. These two cases clearly show the different results which can occur with the presence or absence of federal jurisdiction.

A final point regarding federal jurisdiction concerns the question of when such jurisdiction ends or ceases. This issue was considered in *S.R.A. v. Minnesota*, 327 U.S. 558, 563-64, 66 S.Ct. 749 (1946), which involved the power of a State to tax the real property interest of a purchaser of land sold by the United States. Here, a federal post office building was sold to S.R.A. pursuant to a real estates sale contract which provided that title would pass only after the purchase price had been paid. In refuting the argument of S.R.A. that the ad valorem tax on its equitable interest in the property was really an unlawful tax on U.S. property, the Court held:

"In the absence of some such provisions, a transfer of property held by the United States under state cessions pursuant to Article I,

Section 8, Clause 17, of the Constitution would leave numerous isolated islands of federal jurisdiction, unless the unrestricted transfer of the property to private hands is thought without more to re-vest sovereignty in the states. As the purpose of Clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would end with the reason for its existence and the disposition of the property. We shall treat this case as though the Government's unrestricted transfer of property to non-federal hands is a relinquishment of the exclusive legislative power."

Thus, when any property, within the exclusive jurisdiction of the United States is no longer utilized by that government, for governmental purposes, and the title or any interest therein is conveyed to private interests, the jurisdiction of the federal government ceases and jurisdiction once again reverts to the State.

The above principles regarding the distinction between State and federal jurisdiction continue today; see *Paul v. United States*, 371 U.S. 245, 83 S.Ct. 426 (1963), and *United States v. State Tax Commission of Mississippi*, 412 U.S. 363, 93 S.Ct. 2183 (1973). What was definitely decided in the beginning days of this Republic regarding the extent, scope, and reach of each of these two distinct jurisdictions remains unchanged and forms the foundation and basis for the smooth workings of state governmental systems in conjunction with the federal government. Without such jurisdictional principles, which form a clear boundary between the jurisdiction of the States and the United States, our federal governmental system would have surely met its demise long before now.

In summary, the jurisdiction of the States is essentially the same as they possessed when they were leagued together under the Articles of Confederation. The confederated States possessed absolute, complete and full jurisdiction over property and persons located within their borders. It is hypocritical to assume or argue that these States, which had banished the centralized power and jurisdiction of the English Parliament and Crown over them by the Declaration of Independence, would shortly thereafter cede comparable power and jurisdiction to the Confederation Congress. They did not and they closely and jealously guarded their own rights, powers and jurisdiction. When the Articles were replaced by the Constitution, the intent and purpose of the States was to retain their same powers and jurisdiction, with a small concession of jurisdiction to the United States of lands found essential for the operation of that government. However, even this provision did not operate to instantly change any aspect of state jurisdiction, it only permitted its future operation wherein any State, by its own volition, should choose to cede jurisdiction to the United States.

By the adoption of the Constitution, the States jointly surrendered some 17 specific and well defined powers to the federal Congress, which related almost

entirely to external affairs of the States. Any single delegated power, or even several powers combined, do not operate in a fashion so as to invade or divest a State of its jurisdiction. As against a single State, the remainder of the States under the Constitution, have no right to jurisdiction within the single State absent its consent.

The only provision in the Constitution which permits territorial jurisdiction to be vested in the United States, is found in Art. I, § 8, cl. 17, which provides the mechanism for a voluntary cession of jurisdiction from any State to the United States. When the Constitution was adopted, the United States had jurisdiction over no lands within the States, and it possessed jurisdiction only in the lands encompassed in the Northwest Territories. Shortly after formation of the Union, Maryland and Virginia ceded jurisdiction to the United States for Washington, D.C. Over time, the States have ceded jurisdiction to federal enclaves within the States. Today, the territorial jurisdiction of the United States is found only in such ceded areas, which encompass Washington, D.C., the federal enclaves within the States, and such territories and possessions, which may now be owned by the United States.

The above conclusion is buttressed by the opinion of the federal government itself. In June 1957, the United States government published a work entitled *Jurisdiction Over Federal Areas Within The States: Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, Part II*, and this report is the definitive study on this issue. Therein, the Committee stated:

"The Constitution gives express recognition to but one means of Federal acquisition of legislative jurisdiction -- by State consent under Article I, section 8, clause 17... Justice McLean suggested that the Constitution provided the sole mode for transfer of jurisdiction, and that if this mode is not pursued, no transfer of jurisdiction can take place," *Id.*, at 41.

"It scarcely needs to be said that unless there has been a transfer of jurisdiction (1) pursuant to clause 17 by a Federal acquisition of land with State consent, or (2) by cession from the State to the Federal Government, or unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal Government possesses no legislative jurisdiction over any area within a State, such jurisdiction being for exercise by the State, subject to non- interference by the State with Federal functions," *Id.*, at 45.

"The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State," *Id.*, at 46.

"On the other hand, while the Federal Government has power under various provisions of the Constitution to define, and prohibit as criminal, certain acts or omissions occurring anywhere in the United States, it has no power to punish for various other crimes, jurisdiction over which is retained by the States under our Federal-State system of government, unless such crime occurs on areas as to which legislative jurisdiction has been vested in the Federal Government," *Id.*, at 107.

Thus from a wealth of case law, in addition to this lengthy and definitive government treatise, the "jurisdiction of the United States" is identified as a very precise and carefully defined portion of America. The United States is one of the 51 jurisdictions existing on this continent, excluding Canada and its provinces.

FEDERAL JURISDICTION

It is a well established principle of law that all federal "legislation applies only within the territorial jurisdiction of the United States unless a contrary intent appears;"

see *Caha v. United States*, 152 U.S. 211, 215, 14 S.Ct. 513 (1894); *American Banana Company v. United Fruit Company*, 213 U.S. 347, 357, 29 S.Ct. 511 (1909); *United States v. Bowman*, 260 U.S. 94, 97, 98, 43 S.Ct. 39 (1922); *Blackmer v. United States*, 284 U.S. 421, 437, 52 S.Ct. 252 (1932); *Foley Bros. v. Filardo*, 336 U.S. 281, 285, 69 S.Ct. 575 (1949); *United States v. Spelar*, 338 U.S. 217, 222, 70 S.Ct. 10 (1949); and *United States v. First National City Bank*, 321 F.2d 14, 23 (2nd Cir. 1963). This particular principle of law is expressed in a number of cases from the federal appellate courts; see *McKeel v. Islamic Republic of Iran*, 722 F.2d 582, 589 (9th Cir. 1983) (holding the Foreign Sovereign Immunities Act as territorial); *Meredith v. United States*, 330 F.2d 9, 11 (9th Cir. 1964) (holding the Federal Torts Claims Act as territorial); *United States v. Cotroni*, 527 F.2d 708, 711 (2nd Cir. 1975) (holding federal wiretap laws as territorial); *Stowe v. Devoy*, 588 F.2d 336, 341 (2nd Cir. 1978); *Cleary v. United States Lines, Inc.*, 728 F.2d 607, 609 (3rd Cir. 1984) (holding federal age discrimination laws as territorial); *Thomas v. Brown & Root, Inc.*, 745 F.2d 279, 281 (4th Cir. 1984) (holding same as *Cleary*, supra); *United States v. Mitchell*, 553 F.2d 996, 1002 (5th Cir. 1977) (holding marine mammals protection act as territorial); *Pfeiffer v. William Wrigley, Jr., Co.*, 755 F.2d 554, 557 (7th Cir. 1985) (holding age discrimination laws as territorial); *Airline Stewards & Stewardesses Assn. v. Northwest Airlines, Inc.*, 267 F.2d 170, 175 (8th Cir. 1959) (holding Railway Labor Act as territorial); *Zahourek v. Arthur Young and Co.*, 750 F.2d 827, 829 (10th Cir. 1984) (holding age discrimination laws as territorial); *Commodities Futures Trading Comm. v. Nahas*, 738 F.2d 487, 493 (D.C.Cir. 1984) (holding commission's

subpoena power under federal law as territorial); *Reyes v. Secretary of H.E.W.*, 476 F.2d 910, 915 (D.C.Cir. 1973) (holding administration of Social Security Act as territorial); and *Schoenbaum v. Firstbrook*, 268 F.Supp. 385, 392 (S.D.N.Y. 1967) (holding securities act as territorial). This principle was perhaps best expressed in *Caha v. United States*, 152 U.S., at 215, where the Court declared:

"The laws of Congress in respect to those matters do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government."

But, because of treaties as well as express statutory language, the federal drug laws operate extra-territorially; see *United States v. King*, 552 F.2d 833, 851 (9th Cir. 1976). The United States has territorial jurisdiction only in Washington, D.C., the federal enclaves within the States, and in the territories and insular possessions of the United States. However, it has no territorial jurisdiction over non-federally owned areas inside the territorial jurisdiction of the States within the American Union, and this proposition of law is supported by literally hundreds of cases.

As a general rule, the power of the United States to criminally prosecute is, for the most part, confined to offenses committed within "its jurisdiction" in the absence of treaties. This is born out simply by examination of 18 U.S.C. §5, which defines the term "United States" in clear jurisdictional terms. [2] Further, §7 of that federal criminal code contains the fullest statutory definition of the "jurisdiction of the United States." The U.S. district courts have jurisdiction of offenses occurring within the "United States" pursuant to 18 U.S.C. §3231.

Examples of this proposition are numerous. In *Pothier v. Rodman*, 291 F. 311 (1st Cir. 1923), the question involved whether a murder committed at Camp Lewis Military Reservation in the State of Washington was a federal crime. Here, the murder was committed more than a year before the U.S. acquired a deed for the property, which was the scene of the crime. Pothier was arrested and incarcerated in Rhode Island and filed a habeas corpus petition seeking his release on the grounds that the federal courts had no jurisdiction over this offense not committed in U.S. jurisdiction. The First Circuit agreed that there was no federal jurisdiction and ordered his release. But, on appeal to the U.S. Supreme Court, in *Rodman v. Pothier*, 264 U.S. 399, 44 S.Ct. 360 (1924), that Court reversed; although agreeing with the jurisdictional principles enunciated by the First Circuit, it held that only the federal court in Washington State could decide that issue. In *United States v. Unzeuta*, 35 F.2d 750 (8th Cir. 1929), the Eighth Circuit held that the U.S. had no jurisdiction over a murder committed in a railroad car at Fort Robinson, the state cession statute being construed as not including railroad rights-of-way. This decision was reversed in *United States v. Unzeuta*, 281 U.S. 138, 50 S.Ct. 284 (1930), the Court holding that the U.S. did have jurisdiction over the railroad

rights-of-way in Fort Robinson. In Bowen v. Johnson, 97 F.2d 860 (9th Cir. 1938), the question presented was whether the lack of jurisdiction over an offense prosecuted in federal court could be raised in a habeas corpus petition. The denial of Bowen's petition was reversed in Bowen v. Johnston, 306 U.S. 19, 59 S.Ct. 442 (1939), the Court concluding that such a jurisdictional challenge could be raised via such a petition. But, the Court then addressed the issue, found that the U.S. both owned the property in question and had a state legislative grant ceding jurisdiction to the United States, thus there was jurisdiction in the United States to prosecute Bowen. But, if jurisdiction is not vested in the United States pursuant to statute, there is no jurisdiction; see Adams v. United States, 319 U.S. 312, 63 S.Ct. 1122 (1943).

The lower federal courts also require the presence of federal jurisdiction in criminal prosecutions. In Kelly v. United States, 27 F. 616 (D.Me. 1885), federal jurisdiction of a manslaughter committed at Fort Popham was upheld when it was shown that the U.S. owned the property where the offense occurred and the state had ceded jurisdiction. In United States v. Andem, 158 F. 996 (D.N.J. 1908), federal jurisdiction for a forgery offense was upheld on a showing that the United States owned the property where the offense was committed and the state had ceded jurisdiction of the property to the U.S. In United States v. Penn, 48 F. 669 (E.D.Va. 1880), since the U.S. did not have jurisdiction over Arlington National Cemetery, a federal larceny prosecution was dismissed. In United States v. Lovely, 319 F.2d 673 (4th Cir. 1963), federal jurisdiction was found to exist by U.S. ownership of the property and a state cession of jurisdiction. In United States v. Watson, 80 F.Supp. 649, 651 (E.D.Va. 1948), federal criminal charges were dismissed, the court stating:

"Without proof of the requisite ownership or possession of the United States, the crime has not been made out."

In Brown v. United States, 257 F. 46 (5th Cir. 1919), federal jurisdiction was upheld on the basis that the U.S. owned the post office site where a murder was committed and the state had ceded jurisdiction; see also England v. United States, 174 F.2d 466 (5th Cir. 1949); Hudspeth v. United States, 223 F.2d 848 (5th Cir. 1955); Krull v. United States, 240 F.2d 122 (5th Cir. 1957); and Gainey v. United States, 324 F.2d 731 (5th Cir. 1963). In United States v. Townsend, 474 F.2d 209 (5th Cir. 1973), a conviction for receiving stolen property was reversed when the court reviewed the record and learned that there was absolutely no evidence disclosing that the defendant had committed this offense within the jurisdiction of the United States. In United States v. Benson, 495 F.2d 475, 481 (5th Cir. 1974), in finding federal jurisdiction for a robbery committed at Fort Rucker, the court held:

"It is axiomatic that the prosecution must always prove territorial jurisdiction over a crime in order to sustain a conviction therefor."

In two Sixth Circuit cases, *United States v. Tucker*, 122 F. 518 (W.D.Ky. 1903), a case involving an assault committed at a federal dam, and *United States v. Blunt*, 558 F.2d 1245 (6th Cir. 1977), a case involving an assault within a federal penitentiary, jurisdiction was sustained by finding that the U.S. owned the property in question and the state involved had ceded jurisdiction. In *In re Kelly*, 71 F. 545 (E.D.Wis. 1895), a federal assault charge was dismissed when the court held that the state cession statute in question was not adequate to convey jurisdiction of the property in question to the United States. In *United States v. Johnson*, 426 F.2d 1112 (7th Cir. 1970), a case involving a federal burglary prosecution, federal jurisdiction was sustained upon the showing of U.S. ownership and a state cession. And cases from the Eighth and Tenth Circuits likewise require the same elements to be shown to demonstrate the presence of federal jurisdiction; see *United States v. Heard*, 270 F.Supp. 198 (W.D.Mo. 1967); *United States v. Redstone*, 488 F.2d 300 (8th Cir. 1973); *United States v. Goings*, 504 F.2d 809 (8th Cir. 1974) (demonstrating loss of jurisdiction); *Hayes v. United States*, 367 F.2d 216 (10th Cir. 1966); *Hall v. United States*, 404 F.2d 1367 (10th Cir. 1969); *United States v. Carter*, 430 F.2d 1278 (10th Cir. 1970); and *United States v. Cassidy*, 571 F.2d 534 (10th Cir. 1978).

Of all the circuits, the Ninth Circuit has addressed jurisdictional issues more than any of the rest. In *United States v. Bateman*, 34 F. 86 (N.D.Cal. 1888), it was determined that the United States did not have jurisdiction to prosecute for a murder committed at the Presidio because California had never ceded jurisdiction; see also *United States v. Tully*, 140 F. 899 (D.Mon. 1905). But later, California ceded jurisdiction for the Presidio to the United States, and it was held in *United States v. Watkins*, 22 F.2d 437 (N.D.Cal. 1927), that this enabled the U.S. to maintain a murder prosecution. See also *United States v. Holt*, 168 F. 141 (W.D.Wash. 1909), *United States v. Lewis*, 253 F. 469 (S.D.Cal. 1918), and *United States v. Wurtzbarger*, 276 F. 753 (D.Or. 1921). Because the U.S. owned and had a state cession of jurisdiction for Fort Douglas in Utah, it was held that the U.S. had jurisdiction for a rape prosecution in *Rogers v. Squier*, 157 F.2d 948 (9th Cir. 1946). But, without a cession, the U.S. has no jurisdiction; see *Arizona v. Manypenny*, 445 F.Supp. 1123 (D.Ariz. 1977).

The above cases from the U.S. Supreme Court and federal appellate courts set forth the rule that in criminal prosecutions, the government, as the party seeking to establish the existence of federal jurisdiction, must prove U.S. ownership of the property in question and a state cession of jurisdiction. This same rule manifests itself in state cases. State courts are courts of general jurisdiction and in a state criminal prosecution, the state must only prove that the offense was committed within the state and a county thereof. If a defendant contends that only the federal government has jurisdiction over the offense, he, as proponent for the existence of federal jurisdiction, must likewise prove U.S. ownership of the property where the crime was committed and state cession of jurisdiction.

Examples of the operation of this principle are numerous. In Arizona, the State has jurisdiction over federal lands in the public domain, the state not having ceded jurisdiction of that property to the U.S.; see *State v. Dykes*, 114 Ariz. 592, 562 P.2d 1090 (1977). In California, if it is not proved by a defendant in a state prosecution that the state has ceded jurisdiction, it is presumed the state does have jurisdiction over a criminal offense; see *People v. Brown*, 69 Cal. App.2d 602, 159 P.2d 686 (1945). If the cession exists, the state has no jurisdiction; see *People v. Mouse*, 203 Cal. 782, 265 P. 944 (1928). In Montana, the state has jurisdiction over property if it is not proved there is a state cession of jurisdiction to the U.S.; see *State ex rel Parker v. District Court*, 147 Mon. 151, 410 P.2d 459 (1966); the existence of a state cession of jurisdiction to the U.S. ousts the state of jurisdiction; see *State v. Tully*, 31 Mont. 365, 78 P. 760 (1904). The same applies in Nevada; see *State v. Mack*, 23 Nev. 359, 47 P. 763 (1897), and *Pendleton v. State*, 734 P.2d 693 (Nev. 1987); it applies in Oregon (see *State v. Chin Ping*, 91 Or. 593, 176 P. 188 (1918), and *State v. Aguilar*, 85 Or.App. 410, 736 P.2d 620 (1987)); and in Washington (see *State v. Williams*, 23 Wash.App. 694, 598 P.2d 731 (1979)).

In *People v. Hammond*, 1 Ill.2d 65, 115 N.E.2d 331 (1953), a burglary of an IRS office was held to be within state jurisdiction, the court holding that the defendant was required to prove existence of federal jurisdiction by U.S. ownership of the property and state cession of jurisdiction. In two cases from Michigan, larcenies committed at U.S. post offices which were rented were held to be within state jurisdiction; see *People v. Burke*, 161 Mich. 397, 126 N.W. 446 (1910), and *People v. Van Dyke*, 276 Mich. 32, 267 N.W. 778 (1936). See also *In re Kelly*, 311 Mich. 596, 19 N.W.2d 218 (1945). In *Kansas City v. Garner*, 430 S.W.2d 630 (Mo.App. 1968), state jurisdiction over a theft offense occurring in a federal building was upheld, and the court stated that a defendant had to show federal jurisdiction by proving U.S. ownership of the building and a cession of jurisdiction from the state to the United States. A similar holding was made for a theft at a U.S. missile site in *State v. Rindall*, 146 Mon. 64, 404 P.2d 327 (1965). In *Pendleton v. State*, 734 P.2d 693 (Nev. 1987), the state court was held to have jurisdiction over a D.U.I. committed on federal lands, the defendant having failed to show U.S. ownership and state cession of jurisdiction.

In *People v. Gerald*, 40 Misc.2d 819, 243 N.Y.S.2d 1001 (1963), the state was held to have jurisdiction of an assault at a U.S. post office since the defendant did not meet his burden of showing presence of federal jurisdiction; and because a defendant failed to prove title and jurisdiction in the United States for an offense committed at a customs station, state jurisdiction was upheld in *People v. Fisher*, 97 A.D.2d 651, 469 N.Y.S.2d 187 (A.D. 3 Dept. 1983). The proper method of showing federal jurisdiction in state court is demonstrated by the decision in *People v. Williams*, 136 Misc.2d 294, 518 N.Y.S.2d 751 (1987). This rule was likewise enunciated in *State v. Burger*, 33 Ohio App.3d 231, 515 N.E.2d 640 (1986), a case involving a D.U.I. offense committed on a road near a federal arsenal.

In *Kuerschner v. State*, 493 P.2d 1402 (Okl.Cr.App. 1972), the state was held to have jurisdiction of a drug sales offense occurring at an Air Force Base, the defendant not having attempted to prove federal jurisdiction by showing title and jurisdiction of the property in question in the United States; see also *Towry v. State*, 540 P.2d 597 (Okl.Cr.App. 1975). Similar holdings for murders committed at U.S. post offices were made in *State v. Chin Ping*, 91 Or. 593, 176 P. 188 (1918), and in *United States v. Pate*, 393 F.2d 44 (7th Cir. 1968). Another Oregon case, *State v. Aguilar*, 85 Or.App. 410, 736 P.2d 620 (1987), demonstrates this rule. Finally, in *Curry v. State*, 111 Tex. Cr. 264, 12 S.W.2d 796 (1928), it was held that, in the absence of proof that the state had ceded jurisdiction of a place to the United States, the state courts had jurisdiction over an offense.

Therefore, the government must prove the existence of federal jurisdiction by showing U.S. ownership of the place where the crime was committed and state cession of jurisdiction. If the government contends for the power to criminally prosecute for an offense committed outside "its jurisdiction," it must prove an extra-territorial application of the statute in question as well as a constitutional foundation supporting the same. Absent this showing, no federal prosecution can be commenced for offenses committed outside "its jurisdiction."

END NOTES:

[1] See *Fort Leavenworth R. Co. v. Lowe*, 114 U.S. 525, 529, 5 S.Ct. 995 (1885).

[2] The statutory definition of "United States" as expressed in this § 5 is identical to the constitutional definition of this term; see *Cunard S. S. Co. v. Mellon*, 262 U.S. 100, 43 S.Ct. 504 (1923), which deals with the definition of "United States" as used in the 18th Amendment.

Said affiants: