

Cite as 827 F.2d 563 (9th Cir. 1987)

(1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously-expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness.

United States v. Arnett, 628 F.2d 1162, 1165 (9th Cir.1979) (quoting *United States v. Robin*, 553 F.2d 8, 10 (2d Cir.1977) (*en banc*)).

We find no evidence of any personal bias by the trial judge in this case. Nor do we believe he would have any difficulty in taking a fresh approach to the case on remand free from any "previously-expressed views or findings." We, therefore, reverse the order granting summary judgment and remand for further proceedings consistent with this opinion.



INUPIAT COMMUNITY OF THE ARCTIC SLOPE, a federally recognized Indian Tribe, and **Ukpeagvik Inupiat Corporation, et al.**, Plaintiffs-Appellants,

v.

UNITED STATES of America, et al., Defendants-Appellees.

No. 82-3678.

United States Court of Appeals,
Ninth Circuit.

Decided Sept. 4, 1987.

Ziontz, Pirtle, Morisset, Ernstoff & Chestnut, Mason D. Morisset, Seattle, Wash., for plaintiffs-appellants.

Kathryn A. Oberly, Asst. to the Sol. Gen., Brice M. Clagett, Covington & Bur-

* Honorable Edward C. Reed, Jr., United States District Judge, District of Nevada, sitting by

ling, Washington D.C., R. Collin Middleton, Baenen, Timme De Reitzes & Middletown, Anchorage, Alaska, for defendants-appellees.

Before BROWNING, Chief Judge,
HUG, Circuit Judge, and REED,*
District Judge.

ORDER

This court is required by *Federated Department Stores v. Moitie*, 452 U.S. 394, 101 S.Ct. 2424, 69 L.Ed.2d 103 (1981), to deny Appellant's motion to vacate judgment, recall mandate and consolidate with *Amoco Production Company v. Village of Gambell*, Nos. 83-3735, 83-3781 and 85-3877. Appellants' situation results from the Supreme Court's denial of their petition for a writ of certiorari, and their remedy must be sought in that court. See *Gondeck v. Pan Am. World Airways*, 382 U.S. 25, 86 S.Ct. 153, 15 L.Ed.2d 21 (1965) (*per curiam*).



Earl ALLEN; Donald Barkley,
Plaintiffs-Appellants,

v.

Thomas G. TOOMBS, individually and in his official capacity as Administrator of the Corrections Division of the State of Oregon; **J.C. Keeney**, individually and in his official capacity as Superintendent of Oregon State Penitentiary, Defendants-Appellees.

No. 86-3805.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted July 7, 1987.

Decided Sept. 8, 1987.

Prison inmates brought civil rights suit challenging prison policies regarding par-designation.