

APR 24 2008

Bollinger v. United States of America, No. 06-36098

REINHARDT, Circuit Judge, dissenting.

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

The Bollingers do not assert that the FAA inspector failed to perform the inspection required by Order 8130.2D. Nor do they assert that his inspection omitted parts of the aircraft critical to safe operation. In short, the Bollingers do not challenge any of the decisions made by the inspector that were susceptible to the exercise of discretion and policy analysis. Rather, they allege that “[t]he purge valve was inspected by the FAA inspector during the inspection, but the inspector failed to detect that the stop screw was not lock wired.” The care with which the inspector examined the valve is not susceptible to any exercise of policy judgment. *See Bear Medicine v. U.S. ex rel. Sec’y of Interior*, 241 F.3d 1208, 1215 (9th Cir. 2001); *Ariz. Maint. Co. v. United States*, 864 F.2d 1497, 1503-05 (9th Cir. 1989); *Huber v. United States*, 838 F.2d 398, 400-01 (9th Cir. 1988). For this reason I would conclude that the government may be held liable for the allegedly negligent inspection.