

# The Burger Court Opinion Writing Database

## *Mulloy v. United States*

398 U.S. 410 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

June 9, 1970

Re: No. 655 - Mulloy v. U. S.

Dear Potter:

Please join me.

Regards,

WEB

Mr. Justice Stewart

cc: The Conference

JUN 4 1970

Dear Potter,

Re: No. 655- Mulloy v. United States

I agree.

Sincerely,

Hugo

Mr. Justice Stewart

cc: Members of the Conference

June 3, 1970

Dear Potter:

In No. 655 - Mulloy v. U. S.,  
please join me in your opinion.

W. O. D.

Mr. Justice Stewart

June 3, 1970

Re: No. 655 - Mulloy v. United States

Dear Potter:

I think you have written an excellent opinion, and I am glad to join.

I do, however, have a minor suggestion, namely, that the word "credible" [allegations of facts] on pages six and eight be changed to something like "non-frivolous." "Credible" might be taken to connote some kind of an evaluative determination as to good faith or sincerity by the Board, which is the very thing you correctly hold cannot be done without a reopening. While I think it is plain from the full context of your opinion that "credible" is not used in any such sense, taken out of context it might be mischievous.

Sincerely,

J. M. H.

Mr. Justice Stewart

CC: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 4, 1970

RE: No. 655 - Mulloy v. United States

Dear Potter:

I think this is a splendid opinion and

I am happy to join it.

Sincerely,

  
W. J. B. Jr.

Mr. Justice Stewart

cc: The Conference

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

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From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Regulated: JUN 3 1970

Recirculated: \_\_\_\_\_

No. 655.—OCTOBER TERM, 1969

Joseph Thomas Mulloy,	}	On Writ of Certiorari to the United States Court of Ap- peals for the Sixth Circuit.
Petitioner,		
v. United States.		

[June —, 1970]

MR. JUSTICE STEWART delivered the opinion of the Court.

Following a jury trial in the United States District Court for the Western District of Kentucky, the petitioner was convicted for refusing to submit to induction into the Armed Forces in violation of 50 U. S. C. App. 462(a). He was sentenced to five years' imprisonment and fined \$10,000, and his conviction was affirmed by the Court of Appeals for the Sixth Circuit. 412 F. 2d 421. We granted certiorari, 396 U. S. 1036, to consider the petitioner's contention, raised both in the trial court and in the Court of Appeals, that the order to report was invalid because his local board had refused to reopen his I-A classification following his application for a I-O classification as a conscientious objector. The argument is that it was an abuse of discretion for the Board to reject his conscientious objector claim without reopening his classification, and by so doing to deprive him of his right to an administrative appeal.

I

On October 17, 1967, the petitioner, who was then 23 years old and classified I-A (available for military service), wrote to his local Selective Service Board that "after

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*Main changes  
pp 6, 8 as indicated*

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan ✓  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

From: Stewart, J.

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Circulated: \_\_\_\_\_

SUPREME COURT OF THE UNITED STATES

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No. 655.—OCTOBER TERM, 1969

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June 4, 1970

Re: No. 655 - Mulloy v. U.S.

Dear Potter:

Please join me in the opinion  
you have written for the Court in  
this case.

Sincerely,

B.R.W.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 10, 1970

Re: No. 655 - Mulloy v. United States

Dear Potter:

Please join me.

*TM*  
T.M.

Mr. Justice Stewart

cc: The Conference

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