

# The Burger Court Opinion Writing Database

## *Relford v. Commandant, U.S. Disciplinary Barracks, Fort Leavenworth*

401 U.S. 355 (1971)

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

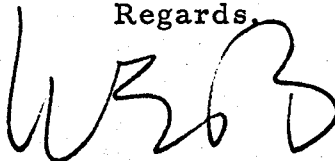
February 19, 1971

Re: No. 98 - Relford v. Commandant

Dear Harry:

Please join me.

Regards,

A handwritten signature in dark ink, appearing to be 'W.B.B.', written in a cursive style.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE HUGO L. BLACK

February 17, 1971

Re: No. 98 - Relford v. Commandant, etc.

Dear Harry,

I agree to your opinion in this  
case.

Sincerely,

*HLB*  
H. L. B.

Mr. Justice Blackmun

cc: Members of the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

February 12, 1971

Dear Harry:

You have written a  
splendid opinion in No. 98 -- Relford  
v. Commandant.

Please join me.

*W*  
William O. Douglas

Mr. Justice Blackmun

CC: The Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan ✓  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall

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February 11, 1971

Re: No. 98 - Relford v. Commandant

Dear Harry:

I agree with your opinion, and am glad to join. I further agree with your covering memorandum that we should not fan out the opinion to embrace the areas urged on us by the parties. Indeed my recollection, like yours, is that this was the final majority-consensus at the Conference.

Sincerely,

J.M.H.

Mr. Justice Blackmun

CC: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 17, 1971

RE: No. 98 - Relford v. Commandant

Dear Harry:

I agree.

Sincerely,



W.J.B. Jr.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 17, 1971

No. 98 -- Relford v. Commandant

Dear Harry,

I am glad to join your opinion for  
the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

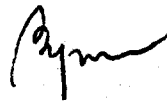
February 17, 1971

Re: No. 98 - Relford v. Commandant

Dear Harry:

Please join me in your opinion  
in this case.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 18, 1971

Re: No. 98 - Relford v. Commandant

Dear Harry:

Please join me.

Sincerely,

  
T.M.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 11, 1971

MEMORANDUM TO THE CONFERENCE

Herewith is a draft of an opinion proposed for No. 98 -  
Relford v. Commandant.

In line with what I believe was our understanding, I have not reached the issue of retrospectivity of O'Callahan v. Parker. This means, of course, that this decision takes us just as far as the facts of the present case and no farther.

Both sides, of course, urge that we decide the retroactivity issue, and further urge that we establish wide-ranging guidelines for the court-martial area. Questions are raised as to the petty offense; the offense by one serviceman against another committed off-base; the off-base offense in uniform; the off-base offense while AWOL; the offense committed by some use of military status off-base; the offense committed abroad off-base; the existence of a right not to be tried in a civilian court; and the like. If we were to answer these, we would be doing so largely by dictum. I am disinclined to do this. As you will see, such guidelines as I have tried to set forth here are those which are called for by the Relford facts.

I personally am entirely content to stay with this ad hoc approach here. Incidentally, there are many cases, particularly in the United States Court of Military Appeals, in which these factual variations are being presented. I think it is well that they percolate there for a time. That court is divided 2 to 1 on many of the issues, but at least some consistency of decision is becoming apparent. We cannot cure everything or give

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answers to all questions in the Relford case. We probably shall have to face the retrospectivity issue before long.

You might let me know if your own thoughts about expanding the holding of this case beyond its actual decisional needs are contrary to mine.

H. A. B.

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

1st DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 2/11/71

No. 98.—OCTOBER TERM, 1970 Recirculated: \_\_\_\_\_

Isiah Relford, Petitioner,	} On Writ of Certiorari to the	
v.		United States Court of
Commandant, U. S. Disci-		Appeals for the Tenth
plinary Barracks, Ft.		Circuit.
Leavenworth, Kansas.		

[February —, 1971]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

In *O'Callahan v. Parker*, 395 U. S. 258, decided June 2, 1969, the Court, by a five-to-three vote, held that a court-martial may not try a member of our armed forces charged with attempted rape of a civilian, with housebreaking, and with assault with intent to rape, when the alleged offenses were committed off-post on American territory and the charges could have been prosecuted in a civilian court. What is necessary for a court-martial, the Court said, is that the crime be "service connected." 395 U. S., at 272.

O'Callahan's military trial, of course, was without grand jury indictment and without trial by jury. *Kahn v. Anderson*, 255 U. S. 1, 8 (1921). He would have been entitled to those benefits if he had been prosecuted in a federal civilian court.

O'Callahan already has occasioned a substantial amount of scholarly comment.<sup>1</sup> Much of it character-

<sup>1</sup> Everett, *O'Callahan v. Parker*—Milestone or Millstone in Military Justice?, 1969 Duke L. J. 853; McCoy, Equal Justice for Servicemen: The Situation Before and Since *O'Callahan v. Parker*, 16 N. Y. L. Forum 1 (1970); Nelson and Westbrook, Court-Martial

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

2nd DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

No. 98.—OCTOBER TERM, 1970

Recirculated: 2/19/71

Isiah Relford, Petitioner,  
v.  
Commandant, U. S. Disci-  
plinary Barracks, Ft.  
Leavenworth, Kansas. } On Writ of Certiorari to the  
United States Court of  
Appeals for the Tenth  
Circuit.

[February —, 1971]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

In *O'Callahan v. Parker*, 395 U. S. 258, decided June 2, 1969, by a five-to-three vote, the Court held that a court-martial may not try a member of our armed forces charged with attempted rape of a civilian, with housebreaking, and with assault with intent to rape, when the alleged offenses were committed off-post on American territory, when the soldier was on leave, and when the charges could have been prosecuted in a civilian court. What is necessary for a court-martial, the Court said, is the the crime be "service connected." 395 U. S., at 272.

O'Callahan's military trial, of course, was without those constitutional guarantees, including trial by jury, to which he would have been entitled had he been prosecuted in a federal civilian court in the then Territory of Hawaii where the alleged crimes were committed.

*O'Callahan* already has occasioned a substantial amount of scholarly comment.<sup>1</sup> Much of it character-

<sup>1</sup> Everett, *O'Callahan v. Parker*—Milestone or Millstone in Military Justice?, 1969 Duke L. J. 853; McCoy, Equal Justice for Servicemen: The Situation Before and Since *O'Callahan v. Parker*, 16 N. Y. L. Forum 1 (1970); Nelson and Westbrook, Court-Martial