

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,

Mr. Justice Blackmun

cc: The Conference

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,


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.

WW
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

February 11, 1971

Re: No. 98 - Rofford 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-concensus 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.

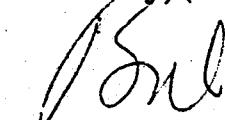
February 17, 1971

RE: No. 98 - Relford v. Commandant

Dear Harry:

I agree.

Sincerely,


W.J.B. Jr.

Mr. Justice Blackmun

cc: The Conference

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

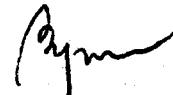
February 17, 1971

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

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

J. H. B.
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

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,
v.
Commandant, U. S. Disci- } On Writ of Certiorari to the
plinary Barracks, Ft. } United States Court of
Leavenworth, Kansas. } 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, 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.¹ Much of it character-

¹ 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

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.

pp. 1, 7, 9, 10, 11, 13
 SUPREME COURT OF THE UNITED STATES:

No. 98.—OCTOBER TERM, 1970

Recirculated: 2/19/71

Isiah Relford, Petitioner,
 v.
 Commandant, U. S. Disciplinary 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.¹ Much of it character-

¹ 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