

# The Burger Court Opinion Writing Database

*Laird v. Nelms*

406 U.S. 797 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



B

*PS will dissent.*

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

CHAMBERS OF  
THE CHIEF JUSTICE

May 8, 1972

No. 71-573 - Laird v. Nelms

Dear Bill:

Please join me.

Regards,

*WBJ*

Mr. Justice Rehnquist

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U.S. SUPREME COURT RECORDS

May 2, 1972

Dear 3411:

In No. 71-573 - Laird v. Nelms, please  
be good enough to note at the end of your opinion  
that I took no part in the consideration or decision  
of the case.

W. O. D.

Mr. Justice Rehnquist

Wm. J. Miller

Miller

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 6, 1972

RE: No. 71-573 - Laird v. Nelms, et al.

Dear Potter:

Please join me in your dissent in the  
above.

Sincerely,

*Bill*

Mr. Justice Stewart

cc: The Conference

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MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

3  
M

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

CHAMBERS OF  
JUSTICE POTTER STEWART

one of  
Joins  
C. &  
B. &  
HAB

May 3, 1972

71-573 -- Laird v. Nelms

Dear Bill,

I have in mind preparing a dissent  
in this case in due course.

Sincerely yours,

P.S. /

Mr. Justice Rehnquist

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U.S. DEPARTMENT OF JUSTICE

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall ✓  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES Stewart, J.

No. 71-573

Circulated: JUN 5

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

Melvin Laird, Secretary of  
Defense, et al.,  
Petitioners,  
v.  
Jim Nick Nelms et al. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Fourth  
Circuit.

[June —, 1972]

MR. JUSTICE STEWART, dissenting.

Under the Federal Tort Claims Act, the United States is liable for injuries to persons or property

“caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.” 28 U. S. C. 1346 (b).

The Court of Appeals in this case found that the law of North Carolina renders a person who creates a sonic boom absolutely liable for any injuries caused thereby, and that finding is not challenged here.<sup>1</sup> And while the petitioner argues that the conduct involved falls within one of the numerous express exceptions to the coverage of the Act contained in § 2680,<sup>2</sup> the Court today does

<sup>1</sup> The question whether damage caused by sonic booms is recoverable on a theory of absolute liability has received considerable attention from commentators, most of whom have concluded that there should be such recovery, at least under certain conditions. See, e. g., Note, 32 J. Air Law & Commerce 596, 602-605 (1966); Note, 39 Tulane L. Rev. 145 (1964); Comment, 31 So. Cal. L. Rev. 259, 266-274 (1958); Prosser, Handbook of the Law of Torts 516 (4th ed. 1971).

<sup>2</sup> See n. 5, *infra*.

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IN THE MANUSCRIPT DIVISION

U. S. DEPT. OF COMMERCE

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 3, 1972

Re: No. 71-573 - Laird v. Nelms

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

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OFFICE OF THE CLERK OF THE SUPREME COURT

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 6, 1972

Re: No. 71-573 - Laird v. Nelms

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Rehnquist

cc: Conference



3  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 4, 1972

Re: No. 71-573 - Laird v. Nelms

Dear Bill:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

cc: The Conference

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U.S. SUPREME COURT

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 25, 1972

Re: No. 71-573 Laird v. Nelms

Dear Bill:

Please join me in your opinion for the Court.

Sincerely,

*Lewis*

Mr. Justice Rehnquist

cc: The Conference

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SECTION OF ADVISORY

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
~~Mr. Justice Marshall~~  
Mr. Justice Blackmun  
Mr. Justice Powell

Wait for  
PS, dissent

1st DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 5-2-72

No. 71-573

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

Melvin Laird, Secretary of Defense, et al., Petitioners, v. Jim Nick Nelms et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.
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[May —, 1972]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent brought this action in the United States District Court under the Federal Tort Claims Act, 28 U. S. C. §§ 1346 (b), 2671-2680. He sought recovery of property damages allegedly resulting from a sonic boom caused by California-based United States military planes flying over North Carolina on a training mission. The District Court entered summary judgment for petitioner, but on respondent's appeal the United States Court of Appeals for the Fourth Circuit reversed. That court held that although respondent had been unable to show negligence "either in the planning or operation of the flight," he was nonetheless entitled to proceed on a theory of strict or absolute liability for ultrahazardous activities conducted by petitioner in his capacity as Secretary of Defense. That court relied on its earlier opinion in *United States v. Praylou*, 208 F. 2d 291 (1953), which in turn had distinguished this Court's holding in *Dalehite v. United States*, 346 U. S. 15, 45 (1953). We granted certiorari. — U. S. —.

*Dalehite* held that the Government was not liable for the extensive damage resulting from the explosion of two

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OFFICE OF THE CLERK OF THE SUPREME COURT

Handwritten initials and numbers: 22, 1, 7, 8

Handwritten note: Please find me M

- To: The Chief Justice
- Mr. Justice Douglas
- Mr. Justice Brennan
- Mr. Justice Stewart
- Mr. Justice White
- Mr. Justice Marshall
- Mr. Justice Blackmun
- Mr. Justice Powell

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

Rehnquist, J.

# SUPREME COURT OF THE UNITED STATES

Circulated:

Recirculated:

6-6-72

No. 71-573

Melvin Laird, Secretary of  
 Defense, et al.,  
 Petitioners,  
 v.  
 Jim Nick Nelms et al.

On Writ of Certiorari to  
 the United States Court  
 of Appeals for the Fourth  
 Circuit.

[June 7, 1972]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

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*Dalehite* held that the Government was not liable for the extensive damage resulting from the explosion of two