

The Burger Court Opinion Writing Database

United States v. Shearer

473 U.S. 52 (1985)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: The Chief Justice
MAY 13 1985

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-194

UNITED STATES, PETITIONER *v.* LOUISE SHEARER,
INDIVIDUALLY, AND AS ADMINISTRATRIX FOR THE ESTATE OF
VERNON SHEARER, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[May —, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to decide whether the survivor of a
serviceman, who was murdered by another serviceman, may
recover from the Government under the Federal Tort Claims
Act for negligently failing to prevent the murder.

I

Respondent is the mother and administratrix of Army Pri-
vate Vernon Shearer. While Private Shearer was off duty
at Fort Bliss and away from the base, he was kidnapped and
murdered by another serviceman, Private Andrew Heard.
A New Mexico court convicted Private Heard of Shearer's
murder and sentenced him to a term of 15 to 55 years'
imprisonment.

Respondent brought this action under the Federal Tort
Claims Act, 28 U. S. C. §§ 1346(b) and 2671 *et seq.*, claiming
that the Army's negligence caused Private Shearer's death.
Respondent alleged that Private Heard, while assigned to
an Army base in Germany in 1977, was convicted by a Ger-
man court of manslaughter and sentenced to a four-year
prison term. Upon his discharge from that confinement in
Germany, the Army transferred Private Heard to Fort Bliss.
Respondent alleged that, although the Army knew that Pri-

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

CHAMBERS OF
THE CHIEF JUSTICE

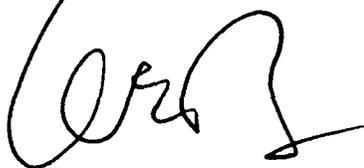
June 21, 1985

Re: No. 84-194 - United States v. Louise Shearer

MEMORANDUM TO THE CONFERENCE:

I contemplate staying with the opinion as circulated. Anticipating the views of some that we did not need alternative grounds of decision--as we often do--I put the two in separate parts so that a judgment can rest on limited grounds for some.

Regards,



62 JUN 21 6 10

HAB

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

June 26, 1985

CHAMBERS OF
THE CHIEF JUSTICE

Re: 84-636 - Brown v. United States, et al.

MEMORANDUM TO THE CONFERENCE:

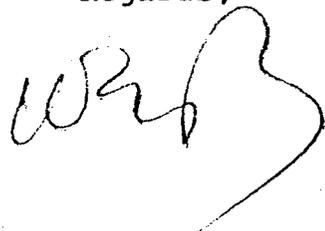
This case was held for United States v. Shearer, No. 84-194. Petitioner is the mother and conservator of Dan Briscoe, a former member of the Nebraska National Guard. Briscoe allegedly was the victim of a "mock lynching" carried out by National Guard enlisted men while they and Briscoe were being trained on a federal military base. Briscoe later became depressed and, in 1977, attempted suicide; this attempt left him seriously injured.

Petitioner then brought this suit in the United States District Court for the District of Nebraska. She sought damages from the United States under the Federal Tort Claims Act, alleging that federal military personnel negligently failed to prevent the mock lynching. Petitioner also sought damages from some of Briscoe's superiors in the National Guard under 42 U.S.C. §§1981 and 1983. She alleged that these National Guard officers negligently failed to prevent and investigate the incident.

The District Court granted summary judgment for respondents and the Eighth Circuit affirmed. The court held that petitioner's claim against the United States is barred by the Feres doctrine because "it calls into question the disciplinary decisions of Briscoe's superior officers." 739 F.2d, at 369. Similarly, the court held that petitioner could not recover against Briscoe's superiors under 42 U.S.C. §§1981 and 1983. The court noted that in Chappell v. Wallace, 462 U.S. 296 (1982), this Court held that a serviceman may not bring a Bivens action for damages against a superior officer. The court reasoned that the same rule should apply under Sections 1981 and 1983.

The Court's decision in United States v. Shearer clearly establishes that petitioner may not recover against the United States under the Federal Tort Claims Act. And the Eighth Circuit's construction of 42 U.S.C. §§1981 and 1983 is consistent with the decision of the only other court of appeals to consider the issue. See Mollnow v. Carlton, 716 F.2d 627 (CA9 1983). Thus, I WILL VOTE TO DENY THE PETITION.

Regards,



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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 16, 1985

No. 84-194

United States v. Shearer

Dear Chief,

I agree with John that the decision in this case should turn on Ferres without addressing the Federal Tort Claims Act question. Like him, if you could omit Part II-A, I too would be happy to join your opinion.

Sincerely,

Bill

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 24, 1985

No. '84-194

United States v. Shearer

Dear Chief,

I attach a brief statement that
I'll file in the above case.

Sincerely,

Bill

The Chief Justice
Copies to the Conference
Attachment

No. 84-194 -- United States v. Shearer

JUSTICE BRENNAN, concurring in part and concurring in the judgment.

I do not join Part II-A of the Court's opinion. I do, however, join Part II-B and therefore concur in the judgment.

Justice Marshall, concurring in the judgment.

While I am not a firm supporter of the Ferris case I can support Part II-B of the Court's opinion and concur in the judgment.

81:19 AS 706 61:18

To: The Chief Justice
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-194

UNITED STATES, PETITIONER *v.* LOUISE SHEARER,
INDIVIDUALLY, AND AS ADMINISTRATRIX FOR THE ESTATE OF
VERNON SHEARER, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[June —, 1985]

JUSTICE BRENNAN, concurring in part and concurring in
the judgment.

I do not join Part II-A of the Court's opinion. I do, how-
ever, join Part II-B and therefore concur in the judgment.

32 JUN 22 4 53 PM

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To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

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Recirculated: JUN 26 1985

SUPREME COURT OF THE UNITED STATES

No. 84-194

UNITED STATES, PETITIONER *v.* LOUISE SHEARER,
INDIVIDUALLY, AND AS ADMINISTRATRIX FOR THE ESTATE OF
VERNON SHEARER, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[June 27, 1985]

✓ | JUSTICE BRENNAN, with whom JUSTICE BLACKMUN and
JUSTICE STEVENS join, concurring in part and concurring in
the judgment.

I do not join Part II-A of THE CHIEF JUSTICE's opinion.
I do, however, join Part II-B and therefore concur in the
judgment.

.92 JUN 26 1985

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To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

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Recirculated: JUN 26 1985

SUPREME COURT OF THE UNITED STATES

No. 84-194

**UNITED STATES, PETITIONER *v.* LOUISE SHEARER,
INDIVIDUALLY, AND AS ADMINISTRATRIX FOR THE ESTATE OF
VERNON SHEARER, DECEASED**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT**

[June 27, 1985]

JUSTICE BRENNAN, with whom JUSTICE BLACKMUN and
JUSTICE STEVENS join, concurring in part and concurring in
the judgment.

I do not join Part II-A of the Court's opinion. I do, how-
ever, join Part II-B and therefore concur in the judgment.

92 JUN 28 1985

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 15, 1985

84-194 - United States v. Shearer

Dear Chief,

Please join me.

Sincerely,

Byron

The Chief Justice

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To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-194

UNITED STATES, PETITIONER *v.* LOUISE SHEARER,
INDIVIDUALLY, AND AS ADMINISTRATRIX FOR THE ESTATE OF
VERNON SHEARER, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[June —, 1985]

JUSTICE MARSHALL, concurring in the judgment.

While I am not a firm supporter of the *Feres* case, I can support Part II-B of the Court's opinion and concur in the judgment.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 17, 1985

Re: No. 84-194, United States v. Shearer

Dear Chief:

On reflection, I am persuaded that the proper approach to the resolution of this case is on the Feres doctrine, rather than on §2680(h). Thus, like John and Bill Brennan, I could go along, perferably, only with Parts I and IIB of your opinion. I think I see problems down the road with the other approach.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

84 MAY 15 10 08 AM '85

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 24, 1985

Re: No. 84-194, United States v. Shearer

Dear Chief:

I join Parts I and IIB of your opinion, but not
Part IIA.

Sincerely,



The Chief Justice

cc: The Conference 7/15/85 b140

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 25, 1985

Re: No. 84-194, United States v. Shearer

Dear Chief:

Inasmuch as Bill Brennan and Thurgood are filing separate statements, it is perhaps easier if I join Bill Brennan rather than to have you note me separately at the beginning of your opinion.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

82 7/32 6310

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 25, 1985

Re: No. 84-194, United States v. Shearer

Dear Bill:

Would you please add my name to your brief statement concurring in part and concurring in the judgment.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 13, 1985

84-194 United States v. Shearer

Dear Chief:

Please add at the end of the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

L. Lewis

The Chief Justice

lfp/ss

cc: The Conference



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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 14, 1985

Re: No. 84-194 United States v. Shearer

Dear Chief,

Please join me.

Sincerely,

The Chief Justice

cc: The Conference

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84 MAY 14 1985

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 15, 1985

Re: 84-194 - United States v. Shearer

Dear Chief:

It seems to me that your discussion of Feres in Part II-B of your opinion is sufficient to support the disposition, and therefore that the discussion in Part II-A is not necessary. If there is any possibility that you could omit Part II-A, I would be happy to join your opinion.

Respectfully,



The Chief Justice

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84 MAY 15 1985

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

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VERNON SHEARER, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[June —, 1985]

JUSTICE STEVENS, concurring in part and concurring in
the judgment.

Because the reasoning in Part II-B of the Court's opinion
supports its judgment, I do not join Part II-A. I do, how-
ever, agree with the Court, *ante*, at 4, that its analysis is con-
sistent with the opinion of then Judge Harlan that the 28
U. S. C. § 2680(h) exception is "limited to assaults committed
by government employees." *Panella v. United States*, 216
F. 2d 622, 625 (CA2 1954).

.82 JUN 24 1985

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 25, 1985

Re: 84-194 - United States v. Shearer

Dear Bill:

Would you please join me in your separate statement. I will withdraw mine so that we don't have too many one-liners.

Respectfully,



Justice Brennan

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 13, 1985

No. 84-194 United States v. Shearer

Dear Chief,

Please join me.

Sincerely,

Sandra

The Chief Justice

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54 MAY 13 1985