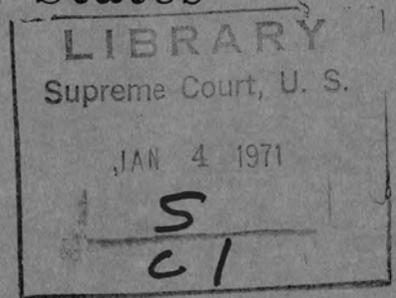


Supreme Court of the United States

OCTOBER TERM, 1970



In the Matter of:

Docket No. 98

pt. 1.

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 ISIAH BELFORD, :
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 : Petitioner, :
 :
 : vs. :
 :
 : COMMANDANT, U. S. DISCIPLINARY :
 : BARRACKS, FT. LEAVENWORTH, KANSAS, :
 :
 : Respondent. :
 :
 :
 ----- X

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Place Washington, D. C.

Date December 15, 1970

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ORAL ARGUMENT OF:

P A G E

Judson W. Detrick, Esq., on behalf
of Petitioner

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

ISIAH RELFORD,)	
)	
Petitioner,)	
)	
vs)	No. 98
)	
COMMANDANT, U. S. DISCIPLINARY)	
BARRACKS, FT. LEAVENWORTH, KANSAS,)	
)	
Respondent.)	

The above-entitled matter came on for hearing at 3:35 o'clock p.m. on Tuesday, December 15, 1970.

BEFORE:

- WARREN E. BURGER, Chief Justice
- HUGO L. BLACK, Associate Justice
- WILLIAM O. DOUGLAS, Associate Justice
- JOHN M. HARLAN, Associate Justice
- WILLIAM J. BRENNAN, JR., Associate Justice
- POTTER STEWART, Associate Justice
- BYRON R. WHITE, Associate Justice
- THURGOOD MARSHALL, Associate Justice
- HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

- JUDSON W. DETRICK, ESQ.
Suite 1010, 1700 Broadway
Denver, Colorado 80202
On behalf of Petitioner

- ERWIN N. GRISWOLD
Solicitor General of the United States
Department of Justice
Washington, D. C.
On behalf of Respondent

P R O C E E D I N G S

1
2 MR. CHIEF JUSTICE BURGER: We will hear argument
3 next in Number 98: Relford against the Commandant.

4 ORAL ARGUMENT BY JUDSON W. DETRICK, ESQ.

5 ON BEHALF OF PETITIONER

6 MR. CHIEF JUSTICE BURGER: Mr. Detrick, you may
7 proceed whenever you are ready.

8 MR. DETRICK: Mr. Chief Justice and may it please
9 the Court:

10 This case is in this court on a writ of certiorari
11 to the United States Court of Appeals for the Tenth Circuit.
12 This Court granted certiorari and limited it to two questions:
13 one being whether the facts of this case follow in the scope
14 of this Court's holding in O'Callahan v. Parker, that crimes
15 committed by a serviceman within the United States in times of
16 peace, must be service-connected if the military courts are
17 to have jurisdiction.

18 The second question presented is the retroactivity
19 of O'Callahan v. Parker. Now, O'Callahan v. Parker involved
20 an inquiry by this Court into extent of the power granted by
21 Congress under Article I, Section 8, Clause 14 of the Constitu-
22 tion to vest courts martial with jurisdiction over the crimes
23 a serviceman committed within the United States and during a
24 time of peace.

25 O'Callahan involved the crimes of assault with

1 attempt to rape, attempted rape and house breaking.

2 Q Was O'Callahan on a military reservation?

3 A No, Mr. Chief Justice; the crime was com-
4 mitted within the City of Hawaii -- Honolulu, Hawaii; I'm
5 sorry. At the time of the commission of the crime the --
6 O'Callahan was off duty, out of uniform. The victim of the
7 crime in that case was a civilian totally unrelated to the
8 military.

9 Q Do you think the military reservation factor
10 has any relevance here?

11 A I do not, Your Honor. I might point out at
12 this point that the crimes involved in this case do involve
13 -- there are two rapes and kidnappings and they were all four
14 crimes committed on a military reservation, and that reserva-
15 tion being Fort Dix, New Jersey, with the exception of one
16 kidnapping, which took place on McGuire Air Force Base, which
17 is directly adjacent to Fort Dix, New Jersey.

18 Q Do the civilian authorities have any juris-
19 diction on the base; any police authority, to start with?

20 A The police authorities? I don't know, Your
21 Honor. I would imagine not. They -- the military police
22 probably have the police jurisdiction --

23 Q I would submit if it's not in the jurisdic-
24 tion of the court martial, it's in the jurisdiction of the
25 Federal Criminal Court, if it's a camp.

1 A Well, if the question is whether, for in-
2 stance, if a civilian were to commit a crime on a military
3 reservation he is not subject to military jurisdiction. If the
4 question was whether the state courts or the Federal District
5 Court would have jurisdiction of that crime, I don't know what
6 the case is as far as Fort Dix, New Jersey is concerned.

7 Q Well, there is a case --

8 A Pardon me, Your Honor.

9 Q There is a case which says that if the -- if
10 it is Federal territory and they have gone through all the
11 requirements to condemn it, et cetera, et cetera, et cetera,
12 and if it's a camp and if a civilian is involved it's Federal.

13 A Yes, it may well be Federal, but nevertheless,
14 I don't believe that that means that the military courts have
15 jurisdiction over --

16 Q I didn't say that. I'm just saying the
17 state isn't involved.

18 A In this case it may well be that the state
19 is not involved. There are military reservations in the United
20 States where the state might well be involved because they a
21 have not ceded jurisdiction to the Federal Government and they
22 maintain jurisdiction over those military reservations in
23 situations where the civilian authorities have jurisdiction;
24 at least that is my understanding of the situation.

25 Q Mr. Detrick, if these offenses had taken

1 place in Weisbaden, Germany, would you have a different case?

2 A Yes; I think you would. The reason I think
3 you would is -- there are several reasons I think you would.
4 Number one: under the practical situation required involves a
5 crime committed in Germany, if the courts martial do not have
6 jurisdiction over it you would, of practical necessity,
7 probably be tried by the host country's courts.

8 Now, in any event, under those situations it's not
9 going to be granted the right to a jury trial, indictment by
10 a grand jury in a civilian court of the United States, and I
11 think that the exercise of military jurisdiction in that situa-
12 tion may well be an exercise within the least possible power
13 adequate to the end proposed.

14 Whereas, if it were committed in the United States,
15 I feel that it would be without the least possible power, even
16 though it was committed on a military reservation.

17 I will point out, as the Court already has, the
18 distinctions between the O'Callahan case and this case, are the
19 facts that the crime was committed on a military reservation
20 in this case, where it was not in O'Callahan and also this time
21 one of the crimes was committed against a military dependent
22 and that she was the wife of a member of the Air Force and she
23 also worked at the post exchange restaurant, I believe on Fort
24 Dix.

25 I would submit --

1 Q She was a sister --

2 A She was the sister of a soldier and was
3 visiting the Walson Army Hospital with her brother on the day
4 she was kidnapped and raped.

5 In the military court he received a sentence of
6 death, forfeiture of all pay and allowances and reduction to the
7 lowest enlisted grade. It went to what was at that time the
8 Board of Review, which is now the Court of Military Review and
9 it -- the sentence was reduced to confinement at hard labor for
10 30 years and a dishonorable discharge and forfeiture of all pay
11 and allowances.

12 Q What if he had been in uniform at the time.
13 Would that have made any difference in the case?

14 A I don't think it would either. That factor
15 wouldn't make any difference at all, Your Honor, because I
16 think in the O'Callahan case this Court, in effect, looking at
17 several factors, what we really have to do is arrive at a
18 definition of service connection, I think.

19 I think this Court looked at several factors in
20 O'Callahan, one of those being the factor that the courts are,
21 of necessity, and validly so, probably, instruments of dis-
22 cipline, as well as justice.

23 Secondly, the existence of specialized military
24 courts depends upon the special needs of the military.

25 Thirdly, I think the Court found that the jurisdiction

1 of military courts in light of these considerations and in
2 light of history, must be limited to the least possible power
3 adequate to the end proposed, the end proposed being the main-
4 tenance of military discipline in the Armed Forces.

5 Q How about security of the military base?
6 Isn't that private?

7 A I think the military has an interest in the
8 security of the military base, certainly.

9 Q Is there any other power to establish or
10 enforce or maintain security on the base, other than the
11 military?

12 A I don't know, Your Honor. I think the
13 military has an interest --

14 Q Civilian police can't function there --

15 A Pardon me?

16 Q Civilian police from the nearby state's
17 government can't function there, can they?

18 A I doubt if they can unless they are asked
19 to function on that post. But, let me point out I think the
20 interest -- I am not contesting the fact that the military
21 does have an interest in maintaining law and order on the post.
22 I'm not contesting that a military commander has the authority
23 and responsibility as the Respondent points out, to maintain
24 law and order on a military installation.

25 I do contest that these interests lead to the

1 conclusion that the military must be able to try and punish
2 the serviceman who commits a crime on a military installation
3 which leads to disorder or lawlessness on the military installa-
4 tion. I don't think that that conclusion follows the reasoning
5 that they have this interest.

6 I think what the Court was after in O'Callahan was
7 not simply an interest of the military or a military tie, but
8 a necessity on the part of the military to have jurisdiction
9 over this crime if the maintenance of military discipline is
10 to be preserved. The necessity that they exercise jurisdic-
11 tion as opposed to civilian courts exercising jurisdiction.

12 The reason I say that I don't believe the conclusion
13 that they must exercise jurisdiction follows from the state-
14 ments that they have an interest in maintaining law and order
15 on a military reservation, is simply that I think the civilian
16 courts, exercising their jurisdiction will adequately serve the
17 interests of the military in that situation.

18 The man who commits the crime on the post, a service-
19 man, is not going to go unpunished, he is simply going to be
20 punished by civilian authorities rather than the military
21 authorities. I think that any other conclusion takes it out-
22 side of the scope of the least possible power adequate to the
23 end proposed.

24 I might add that I think the same reasoning applies
25 to the factor of military dependency. I might also point out

1 that the Court of Military Appeals basically agrees with that
2 proposition that they have found the military dependency and
3 I will admit it is military dependency by itself, does not
4 give the requisite service connection to the crime.

5 Q Let me try to test your -- the scope of
6 your concept of interest. Suppose he was on -- Petitioner
7 here was on sentry duty that night. He abandoned his post and
8 then engaged in all this activity.

9 A Yes, I think there would be military juris-
10 diction involved there, Your Honor, because I think there is a
11 military crime of abandoning your post while on duty or some-
12 thing of that order --

13 Q At that time obviously that would be subject
14 to military jurisdiction. I'm talking about the crimes that
15 we are dealing with here.

16 A Okay. I am sorry. I don't think -- let me
17 back up a minute -- I think the military exercising its juris-
18 diction over that military crime adequately serves the mili-
19 tary's interest. I don't think that that gives them the right
20 to exercise jurisdiction over the crimes of rape committed
21 while this man was -- after this man left his duty position.

22 Does that answer your question?

23 I also feel that the use of military installation
24 boundaries can lead to some very unusual and illogical con-
25 clusions if it is used by itself without any analysis of the

1 nature of the crime involved and the interests of the military
2 in exercising jurisdiction over that crime. I think the Court
3 of Military Appeals' decisions adequately point this out.

4 Now, Respondent seeks to limit jurisdiction over
5 crimes committed on a military reservation to those crimes
6 which affect the security of persons and property on a military
7 reservation. I don't think that this restriction in any way
8 alters the illogical results that will be arrived at through
9 the use only of the military installation boundary as the
10 jurisdictional line.

11 I don't think this Court in O'Callahan anticipated
12 that either, because I think they placed great emphasis on
13 an analysis of the crime itself and its effect on the interests
14 of the military organization.

15 If I --

16 Q What was the status of this man -- well there
17 are two offenses -- my question is whether he was on what we
18 used to call in the Navy, "liberty." I guess that they have
19 a different word for it --

20 A He was on an evening pass.

21 Q Pass. Was he on that?

22 A He was on evening pass; according to the
23 record he was on evening pass at the time all four crimes were
24 committed.

25 Q Both kidnappings and both rapes?

1 A Yes, Your Honor. And out of uniform. I
2 don't feel that these are of any importance anyway --

3 Q Well, wouldn't you agree that if he had
4 committed this offense while he was on duty with respect to
5 -- on guard duty or something, that he might be, or working in
6 an office as a clerk-typist?

7 A Again I feel that that would create a
8 military interest in a jurisdiction --

9 Q -- to the fact he was off duty, don't you?

10 A Not with respect to the crime of rape and
11 kidnapping.

12 Q Now, I have understood you to just now con-
13 cede that kidnapping and rape of a fellow worker who was a WAC,
14 it would be a military offense if they were both on duty at the
15 time. Did I misunderstand you?

16 A No, you did not. There is a military crime
17 involved, but I don't believe the military crime, the crime
18 the military had jurisdiction over would be a crime of rape and
19 kidnapping. It would be a crime of assault on a superior
20 commissioned officer or --

21 Q Suppose she was a subordinate; he was a
22 sergeant and she was a corporal.

23 A I'm not familiar with the uniform code of
24 military justice in terms of each listing of its crimes, but I
25 am sure there is a military crime involved.

1 Q Well, there is a general article, is there
2 not?

3 A There is a general article, yes, Your Honor.

4 Q That was used in this case for the kidnapping
5 charges, wasn't it?

6 A Yes.

7 Q Suppose both of them were -- and one was a
8 sergeant and one was a WAC and they were both off duty and
9 both in dead center of the camp. Who would have jurisdiction?

10 A Both were off duty --

11 Q Both were corporals.

12 A Both were off duty and they happened to be
13 on a military reservation. I would say --

14 Q They were in the middle of the military
15 reservation. I don't want to get into the question about the
16 lines. And he, with force, raped the WAC. Who has jurisdic-
17 tion?

18 A The civilian authorities, Your Honor.

19 Q What civilian authorities?

20 A It depends upon the particular camp involved.
21 Some, as I understand the situation, some military installa-
22 tions are on land that jurisdiction has been ceded to the
23 Federal Government by the state, or they existed in the state
24 prior to the state's existence. In those situations the
25 Federal --

1 Q Well, what interest would the state have in
2 those crimes?

3 A Well --

4 Q Wait a minute. This is in the State of
5 New Jersey. This is an Army camp in the State of New Jersey,
6 which by your definition, is state property and the WAC is from
7 Honolulu and the GI is from Alaska. Now, what interest does
8 the State of New Jersey have to that crime in the middle of
9 that army camp?

10 What interest?

11 A The general interest. I'm not sure -- to
12 preface my answer, I am not sure that the State of New Jersey
13 has jurisdiction. It's either the State of New Jersey or the
14 Federal Government; I don't think that affects my --

15 Q But, you want a civil court?

16 A That's correct, Your Honor.

17 Q Either state or Federal.

18 A That is correct, Your Honor.

19 Q Either one.

20 A Whichever happens to have jurisdiction over
21 that installation.

22 Q Well, isn't the whole point it does have
23 jurisdiction over that land?

24 A My whole point is that the -- either a state
25 or the Federal Government, a civilian jurisdiction has

1 jurisdiction, not the --

2 Q Do you recognize the difference between the
3 Camp Dix in New Jersey and the hotel in Honolulu?

4 A Yes, I think there is a difference.

5 Q A whole lot of difference.

6 A I think there is a difference. I do not think
7 there is a distinction within the context of the reasoning in-
8 volved in the O'Callahan decision, however.

9 I do not think that the fact that that crime was
10 committed on a military installation increases the interests
11 of the military in trying and punishing that man. It certainly
12 does increase their interest to the extent that there is a
13 police interest involved there, but that police interest is
14 adequately met by the apprehension of that person and turning
15 him over to the civilian authorities, whoever has jurisdiction.

16 Q I'm puzzled by your emphasis on the under-
17 lying ownership of the real estate. Suppose this crime had
18 happened on the -- whatever end of the -- of Cuba we have a
19 -- base. No state has any interest there.

20 A I don't mean to place emphasis on that. I'm
21 simply trying to answer questions. I --

22 Q You seem to put quite a bit on when you
23 emphasized at the outset he was on evening pass in civilian
24 clothes and yet you come to the conclusion in response to the
25 questioning that if it were high noon and if he were on duty in

1 the office as a clerk typist or a sentry, it would make no
2 difference. You simply said that no Federal, no military
3 authority here, if I get your position.

4 A There is no military interest of the sort
5 that requires military jurisdiction.

6 Q Well, then what about the situation of our
7 base in Cuba? We have a Naval base of some kind in Cuba.

8 A Yes. We have, I am thinking of Guantanamo
9 Bay, which I think is the Naval Base. That may be a situation
10 closely --

11 Q Who has jurisdiction there?

12 A That may be a situation closely related to
13 the situation of the military base located in Germany and it
14 may be a particular military person maintaining jurisdiction in
15 order to exercise immediate disciplinary control which would
16 attach in that situation and bring the case within the concept
17 of the last possible power.

18 Q What was your answer on Germany? We turn
19 him over to the German authorities?

20 A No. My answer was that I think military
21 jurisdiction would attach because of the fact that in any event
22 the practicalities of the situation because of the need to take
23 him back here, the practical problems of taking him back. The
24 status of forces treaty agreements give the host countries
25 general jurisdiction. In any event, if the military doesn't

1 exercise jurisdiction he is not going to get his trial by jury
2 in a civilian court of the United States.

3 Q What civilian jurisdiction would have taken
4 over in this case in your view?

5 A That's where we get into the problem of who
6 has jurisdiction other than the military over the soil at Fort
7 Dix. And I frankly have to answer Your Honor, that I don't
8 know. I know that as a fact, the Federal Government, the U. S.
9 Attorney's Office has been claiming and exercising jurisdiction
10 over crimes committed on Fort Dix by civilians, for example.
11 They are then referred to the civilian authorities.

12 I have just a few minutes left, I think, and I would
13 like to discuss briefly the second question presented by this
14 Court's grant of certiorari, and that was the question of
15 retroactivity of O'Callahan.

16 Our submission is that the relevant facts in this
17 question would be: O'Callahan was convicted in 1956; his
18 military conviction became final in 1957. This Court handed
19 down the O'Callahan opinion in June of 1969. Petitioner in
20 this case was convicted in 1961 by general court martial. His
21 conviction became final in a military appellate system in 1963.

22 We would submit, Your Honor, that O'Callahan should
23 be given full retroactive effect so as to apply, not so as to
24 apply to Petitioner's conviction, even though it occurred and
25 became final some six years prior to this Court's decision in

1 O'Callahan.

2 This Court in a number of cases, but significantly
3 in Linkletter v. Walker and Stovall v. Denno, set forth three
4 criteria to use -- my time has expired.

5 MR. CHIEF JUSTICE BURGER: We will take it up in the
6 morning and you will have eight minutes remaining in total.

7 MR. DETRICK: Thank you.

8 (Whereupon, at 3:30 o'clock p.m. the argument in the
9 above-entitled matter was recessed to resume at 10:00 o'clock
10 on Wednesday, December 16, 1970).

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