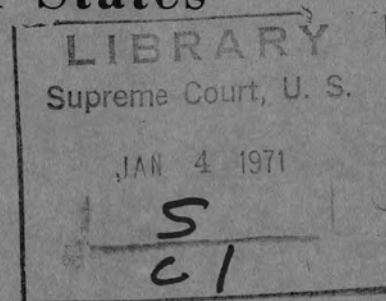


# Supreme Court of the United States

OCTOBER TERM, 1970



In the Matter of:

Docket No. 98

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ISIAH BELFORD,

Petitioner,

vs.

COMMANDANT, U. S. DISCIPLINARY  
BARRACKS, FT. LEAVENWORTH, KANSAS,

Respondent.  
----- x

*pt. 1.*

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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:

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On behalf of Petitioner

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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

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

ORAL ARGUMENT BY JUDSON W. DETRICK, ESQ.

ON BEHALF OF PETITIONER

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

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

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

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

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).