

Military Jurisdiction over Discharged Servicemen - United States v. Quarles

Lowell R. Bowen

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mlr>



Part of the [Jurisdiction Commons](#)

Recommended Citation

Lowell R. Bowen, *Military Jurisdiction over Discharged Servicemen - United States v. Quarles*, 16 Md. L. Rev. 143 (1956)

Available at: <http://digitalcommons.law.umaryland.edu/mlr/vol16/iss2/5>

This Casenotes and Comments is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

Comments and Casenotes

Military Jurisdiction Over Discharged Servicemen

*United States v. Quarles*¹

In May, 1953, five months after being honorably discharged from the Air Force, Robert W. Toth was arrested at his place of employment in Pennsylvania by military police on the charge of having murdered and conspired to murder a Korean national while serving with the Air Force in Korea. He was immediately flown to Korea to stand trial by court-martial, and while he was there awaiting trial, a petition for *habeas corpus* was made on his behalf to the District Court for the District of Columbia,² contesting the constitutionality of Article 3(a) of the Uniform Code of Military Justice. Article 3(a) provides:

“Subject to the provisions of section 618 of this title, any person charged with having committed, while in a status in which he was subject to this chapter, an offense against this chapter, punishable by confinement of five years or more and for which the person cannot be tried in the courts of the United States or any State or Territory thereof or of the District of Columbia, shall not be relieved from amenability to trial by courts-martial by reason of the termination of said status.”³

Upon hearing on the rule to show cause,⁴ the District Court, Holtzoff, J., declined to pass on the constitutionality of Article 3(a) since the court-martial jurisdiction had not yet been exercised, but issued the order on the grounds that the Uniform Code of Military Justice provided no method of arrest or provision for preliminary hearing or removal, and that therefore the military police arresting Toth had no greater power than private citizens. At the hearing on the return of the writ,⁵ the court reaffirmed the statement

¹ 350 U. S. . . . , 76 S. Ct. 1 (1955).

² *Toth v. Talbott*, 113 F. Supp. 330 (D. C., D. C., 1953).

³ 50 U. S. C. A., Sec. 553(a) (1951 ed.). This section was intended to remedy such situations as *Hirshberg v. Cooke*, 336 U. S. 210 (1949), in which the Supreme Court invalidated court-martial proceedings against a naval enlisted man for an offense committed during a prior enlistment, although only one day had elapsed between discharge and reenlistment.

⁴ *Supra*, n. 2.

⁵ *Toth v. Talbott*, 114 F. Supp. 468 (D. C., D. C., 1953).

that the military police had no authority to arrest Toth and held that even if they had such authority, they had none to transport him to a distant point for trial.⁶ The writ was sustained and petitioner discharged. Upon appeal, the Court of Appeals for the District disposed of the lower court's ruling on the ground that the statute in making Toth amenable to court-martial jurisdiction implied the power to apprehend and remove.⁷ The court discussed the constitutionality of Article 3(a) and held it constitutional.⁸ The Supreme Court granted certiorari to pass upon this question.⁹

The court refused to sustain the provision as an exercise of either the Congressional power to raise and support armies, to declare war, or punish offenses against the law of nations; or the President's power as commander-in-chief; or as an exercise of martial law; and held that Congress had no power to "subject civilians like Toth to trial by court-martial".¹⁰ The court, by Mr. Justice Black, reasoned that:

"... any expansion of court-martial jurisdiction like that in the 1950 Act necessarily encroaches on the jurisdiction of federal courts set up under Article III of the Constitution where persons on trial are surrounded with more constitutional safeguards than in military tribunals."¹¹

In rejecting the argument that if the law were invalidated, discharged service men would go unpunished for crimes committed while in service, the court referred to the Congressional hearings at which the alternative of granting jurisdiction to the federal courts was discussed, and said:

"It is conceded that it was wholly within the constitutional power of Congress to follow this suggestion and provide for federal district court trials of discharged soldiers accused of offenses committed while in the armed services."¹²

The argument that service discipline would be adversely affected was also rejected as unsound, and the court concluded:

⁶ *Ibid.*, 469.

⁷ *Talbott v. United States*, 215 F. 2d 22, 31 (D. C. App., 1954).

⁸ *Ibid.*, 26.

⁹ *United States v. Talbott*, 348 U. S. 809 (1954).

¹⁰ *Supra*, n. 1, . . . , 8.

¹¹ *Ibid.*, 4.

¹² *Ibid.*, 7.

"We hold that Congress cannot subject civilians like Toth to trial by court-martial. They, like other civilians, are entitled to have the benefit of safeguards afforded those tried in the regular courts authorized by Article III of the Constitution."¹³

Mr. Justice Reed, joined by Justices Burton and Minton in dissenting, found sufficient constitutional authority in the power "To make Rules for the Government and Regulation of the land and naval Forces" granted in Article III, Section 8, of the Constitution. The effect of the decision, the dissent noted, was to destroy forever for all practical purposes a method that Congress deemed effective for crime correction. The decision released "without trial or possibility of trial, a man accused of murder",¹⁴ and brings Congress again face to face with the problem of punishing those guilty of crimes committed while in a military status who escape detection until after discharge. The alternative act giving jurisdiction to the federal courts will, doubtless, soon be passed by Congress, its constitutionality assured by the *dictum* in this case, but for practical purposes the three million former servicemen now in civilian status, are beyond the reach of the law, for any crimes they may have committed for which they were not at the time of commission answerable in the state or federal courts.

This case brings to the foreground one phase of the larger problem of the extent to which civilian citizens are amenable to trial by military tribunal.¹⁵ There are three classes of cases involved: (1) trial of civilians in a quasi military status; (2) trial of civilians in an area under martial law; and (3) trial of civilians discharged from a former military status.¹⁶

¹³ *Ibid.*, 8.

¹⁴ *Ibid.*, 9.

¹⁵ As used herein, military tribunal includes courts-martial, military commissions, and occupation courts in the nature of military commissions. Courts-martial are provided for by Congress, U. C. M. J., Arts. 16-29, 50 U. S. C. A., Secs. 576-593 (1951 ed.), under Article 1, Sec. 8, of the Constitution. Jurisdiction does not exclude that of military commissions, U. C. M. J., Art. 21, 50 U. S. C. A., Sec. 581 (1951 ed.). Military commissions are discussed in *Madsen v. Kinsella*, *infra*, n. 20, at 348, as follows: "In the absence of attempts by Congress to limit the President's power, it appears that, as Commander-in-Chief of the Army and Navy of the United States, he may, in time of war, establish and prescribe the jurisdiction and procedure of military commissions, . . . in territory occupied by Armed Forces of the United States. His authority to do this sometimes survives the cessation of hostilities." For trial of non-citizens by military commission within territorial United States, see *infra*, n. 16.

¹⁶ For the amenability of non-citizens, see *Ex parte Quirin*, 317 U. S. 1 (1942), holding that enemy agents entering the country in time of war were properly tried by military commission.

Certain civilians are amenable to trial by military tribunal because of their quasi-military status. Article 2 of the Uniform Code of Military Justice¹⁷ subjects to court-martial jurisdiction all persons serving with or accompanying the armed forces in the field in time of war; ". . . all persons serving with, employed by, or accompanying the armed forces without the continental limits of the United States . . ." and certain territories;¹⁸ and ". . . all persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary of a Department . . ." and which is without certain territories.¹⁹ An illustrative case of this class is the recent case of *Madsen v. Kinsella*,²⁰ involving the trial in occupied enemy territory by military commission of a civilian wife who had accompanied her Air Force husband into the United States Area of Control in Germany. In upholding her trial and conviction, the court stated:

"Both United States courts-martial, and United States Military Commissions or tribunals in the nature of such commissions, had jurisdiction in Germany in 1949-1950 to try persons in the status of petitioner on the charge against her."²¹

There seems to be little doubt that civilian citizens may be tried by military tribunals in areas of the United States under martial law. The limitation on military jurisdiction in this class goes rather to the situations under which martial law can be declared, the leading case being *Ex parte Milligan*.²² Milligan, a civilian resident of Indiana, an area claimed to be under martial law, was arrested by order of the military commander of the district and tried before a military commission for offenses against the United States. He was convicted and imprisoned under sentence of death, and upon petition for *habeas corpus* the Supreme Court

¹⁷ 50 U. S. C. A., Sec. 552 (11) (1951 ed.).

¹⁸ The territories excepted are "That part of Alaska east of longitude one hundred and seventy-two degrees west, the Canal Zone, the main group of the Hawaiian Islands, Puerto Rico, and the Virgin Islands, . . ." *Ibid*.

¹⁹ *Ibid*, Sec. 552 (12).

²⁰ 343 U. S. 341 (1952).

²¹ *Ibid*, 345. See also: *In re Berue*, 54 F. Supp. 252 (E. D. Ohio, 1944), merchant seaman on military transport ship; *McCune v. Kilpatrick*, 53 F. Supp. 80 (E. D. Va., 1943) same, on troop transport ship; *In re Di Bartolo*, 50 F. Supp. 929 (S. D. N. Y., 1943), civilian employed by a government contractor operating a military installation within an area of military operations.

²² 4 Wallace 2 (U. S., 1866). Note that unlike the Madsen case discussed above, which arose under military occupation government, this is a case arising under an attempt to impose martial law in the United States.

held that "Martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war."²³ In noting that the Constitution gave power to Congress to provide for trial of persons connected with the military service, the court stated, "*All other persons*, citizens of states where the courts are open, if charged with crime, are guaranteed the inestimable privilege of trial by jury."²⁴

United States v. Quarles has clarified the law in the third class of cases. Civilian citizens are not amenable to military trial for crimes committed in their prior military status, though they may be tried by the federal courts if Congress so directs.

LOWELL R. BOWEN

²³ *Ibid.*, 127. An interesting case arising during World War II in this area was *Duncan v. Kahanamoku*, 327 U. S. 304 (1946), holding that "martial law" in the Hawaiian Organic Act, while authorizing vigorous military action to preserve order and defend the Islands, did not authorize the supplanting of the courts by military tribunals.

²⁴ *Ibid.*, 123. For the separate but related problem of enforcement of military orders by the federal courts, see *Hirabayashi v. United States*, 320 U. S. 81 (1943), upholding the conviction of petitioner for violation of a curfew order promulgated by the military commander pursuant to an act of Congress during World War II.