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ARMED SERVICES — MILITARY JURISDICTION — RESERVISTS

Wallace v. Chafee,

451 F.2d 1374 (9th Cir. 1971).

The inferiority of military justice when compared with civilian justice has long been recognized.[1] Courts-martial, because they have traditionally been more concerned with discipline than justice, have tended to be more retribution-oriented and "less favorable to defendants" than civilian criminal courts.[2] Equally important, court-martialed servicemen are not given the full constitutional protection of the Bill of Rights.[3] At a minimum, a member of the armed forces cannot claim the protection of the fifth amendment right to grand jury indictment[4] or the sixth amendment right to a trial by a

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[1] *See, e.g.*, Toth v. Quarles, 350 U.S. 11, 17 (1955), which commented that "military tribunals have not been and probably never can be constituted in such way that they can have the same kind of qualifications that the Constitution has deemed essential to fair trials of civilians in federal courts."

[2] O'Callahan v. Parker, 395 U.S. 258, 265-66 (1969).

[3] It is not entirely clear whether a serviceman's rights stem from the Bill of Rights or from the Uniform Code of Military Justice, 10 U.S.C. §§ 801-940 (1970) [hereinafter cited as UCMJ]. Henderson, *Courts-Martial and the Constitution: The Original Understanding*, 71 HARV. L. REV. 293 (1957).

The UCMJ was enacted in 1950 pursuant to Congress' power "[t]o make Rules for the Government and Regulation of the land and naval Forces." U.S. CONST. art. I, § 8. Today, the question of which of these sources provides the rights of servicemen is of diminished practical consequence because many of the provisions of the Bill of Rights are specifically set forth in the UCMJ. These rights include the right to appointed counsel before special and general courts-martial (10 U.S.C. § 827 (1970)), the right against self-incrimination (10 U.S.C. § 831 (1970)), and the right to have illegally obtained evidence excluded at trial (10 U.S.C. § 837 (1970); *see In re* Meader, 60 F. Supp. 80 (E.D.N.Y. 1945)). Moreover, the United States Court of Military Appeals has applied Supreme Court interpretations of the Bill of Rights in military cases applying corresponding UCMJ provisions. *See, e.g.*, United States v. Tempia, 16 U.S.C.M.A. 629, 37 C.M.R. 249 (1967); United States v. Jacoby, 11 U.S.C.M.A. 428, 29 C.M.R. 244 (1960).

While the serviceman's rights may in fact be the same regardless of their source, the security afforded by an act of legislative grace cannot compare with that accorded by the Bill of Rights, which protection could never be withdrawn.

[4] The pretrial procedure and charging process for a serviceman does not include a right to a grand jury indictment. *See* 10 U.S.C. §§ 830-35 (1970). The fifth amendment expressly negates this right in "cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger." Thus, although the fifth amendment exception is not applicable in cases that do not arise in time of war or public danger, the UCMJ's general abrogation of this right is nonetheless applicable.

The fifth amendment right to grand jury indictment has not been held to be absolute in either federal or state prosecutions. Indeed, the right to such an indictment has not

jury of his peers.[5] Since this loss of fundamental rights occurs whenever court-martial jurisdiction is exercised, the Supreme Court has narrowly circumscribed that jurisdiction.[6]

Applying court-martial jurisdiction under the Uniform Code of Military Justice (UCMJ) to reservists on inactive duty training raises particularly vexatious problems, for these persons are "soldiers" only during training sessions and are otherwise civilians. Court-martial jurisdiction over these reservists is clearly provided for by article 2(3) of the UCMJ,[7] subject to the one precondition that the reservist must *voluntarily* accept UCMJ jurisdiction. Because of the serious consequences that accompany a loss of one's constitutional rights, any exercise of court-martial jurisdiction over reservists, it seems, should at least be tempered by a clear showing in each case that the reservist actually knew that he was consenting to UCMJ jurisdiction and was aware of the import of his consent. A failure to accord reservists such protection, however, may be presaged by the recent Ninth Circuit Court of Appeals decision in *Wallace v. Chafee*.[8]

Appellee, James M. Wallace, a private first class in the Marine Corps Reserve, was convicted by summary court-martial[9] for willful

been incorporated into the due process clause of the fourteenth amendment, Hurtado v. California, 110 U.S. 516 (1884), and only exists in federal criminal prosecutions where the crime carries a penalty of greater than one year in prison. FED. R. CRIM. P. 7.

[5] Baldwin v. New York, 399 U.S. 66 (1970), held that, if an offense could be punished by greater than six month's imprisonment, a civilian court, at least, was constitutionally required to provide a trial by jury. In the present case of Wallace v. Chafee, 451 F.2d 1374 (9th Cir. 1971), Wallace had been charged with disobeying a superior officer in violation of 10 U.S.C. § 890 (1970), which, under 10 U.S.C. § 856 (1970), is punishable by confinement at hard labor for a term of five years. Thus, Wallace would have had the right to trial by jury if he had been tried in a state court.

[6] *See* notes 36-47 *infra* & accompanying text.

[7] 10 U.S.C. § 802(3) (1970). Article 2(3) makes subject to the UCMJ "[m]embers of a reserve component while they are on inactive duty training authorized by written orders which are voluntarily accepted by them and which specify that they are subject to [the UCMJ]."

[8] 451 F.2d 1374 (9th Cir. 1971). *Wallace* is apparently the first case dealing expressly, albeit summarily, with the validity of court-martial jurisdiction over reservists on inactive duty training under article 2(3). In United States v. Schuering, 16 U.S.C.M.A. 324, 36 C.M.R. 480 (1966), the defendant-reservist was convicted for larceny committed while he was on inactive duty training. The United States Court of Military Appeals, in reversing the conviction because jurisdictional requirements had not been met, impliedly upheld court-martial jurisdiction over reservists under article 2(3). *See also In re* La Plata's Petition, 174 F. Supp. 884 (E.D. Mich. 1959); *In re* Taylor, 160 F. Supp. 932 (W.D. Mo. 1958).

[9] The UCMJ provides for general, special, and summary courts-martial. 10 U.S.C. § 816 (1970). Each court's jurisdiction is limited primarily by the maximum punishment that can be imposed. Summary courts-martial may adjudge any punishment except death, dismissal, dishonorable or bad-conduct discharge, confinement for greater than one month, hard labor without confinement for greater than 45 days, restriction to

disobedience of the order of a superior commissioned officer to get a haircut.[10] Wallace had completed the enlistment procedure and had acknowledged in writing his acceptance of orders subjecting himself to UCMJ jurisdiction.[11] At no time prior to enlistment and acceptance of his orders, however, was he given specific information concerning the UCMJ or court-martial jurisdiction. The district court granted Wallace a writ of habeas corpus — on the ground that Wallace had not voluntarily consented to UCMJ jurisdiction consistent with article 2(3)[12] — but was reversed by the court of appeals.

The court of appeals agreed with the lower court that the right to civilian trial with its attendant safeguards is a fundamental right[13] and recognized that voluntary acceptance of UCMJ jurisdiction is statutorily required for that jurisdiction to attach.[14] The court of appeals, however, applied a different standard than the district court to ascertain whether Wallace had in fact accepted voluntarily. The district court applied the *Johnson v. Zerbst*[15] standard (*i.e.*, the

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specified limits for more than two months or forfeiture of more than two-thirds of one month's pay. 10 U.S.C. § 820 (1970). A similar restriction applies to special courts-martial, limiting their jurisdiction to cases authorizing confinement for greater than six months and hard labor without confinement for greater than three months. 10 U.S.C. § 819 (1970). General courts-martial have jurisdiction over cases with all punishments. 10 U.S.C. § 818 (1970). *See* note 3 *supra.*

If a commanding officer utilizes his nonjudicial power of punishment, an objection thereto before the imposition of such punishment necessitates an adjudication before a court-martial. 10 U.S.C. § 815 (1970). However, in no event may one be brought before a summary court-martial without his consent. 10 U.S.C. § 820 (1970). Thus, the UCMJ protects the accused's right to counsel since the right only exists in special and general courts-martial. Application of Palacio, 48 Cal. Rptr. 50, 238 Cal. App.2d 545 (1965).

[10] 10 U.S.C. § 890 (1970).

[11] These orders, tendered pursuant to 32 C.F.R. § 713.607 (1971), provided:

> During the actual performance of regular drills, periods of equivalent instruction of duty, and annual training pursuant to this order, you are subject to the Uniform Code of Military Justice. Upon acceptance by you of these orders you will be subject to the code during periods of inactive duty training performed which are the same or an interrupted continuation of the training contemplated by these orders.

[12] Wallace v. Chafee, 323 F. Supp. 902 (S.D. Cal. 1971).

[13] 451 F.2d at 1377.

[14] *Id.*

[15] 304 U.S. 458 (1938). *Johnson* was a civilian habeas corpus case. The Supreme Court granted the writ because the petitioner had been denied counsel at his trial in a federal district court without a valid waiver.

Courts have applied the *Johnson* "knowing and intelligent waiver" standard often, in order to ensure that fundamental rights have been voluntarily waived. *See, e.g.*, McCarthy v. United States, 394 U.S. 459, 466 (1969) (guilty plea as waiver of constitutionally protected trial rights); Miranda v. Arizona, 384 U.S. 436, 475 (1966) (self-incrimination and counsel).

"intentional relinquishment or abandonment of a known right or privilege" standard) to evaluate the validity of Wallace's waiver of his fundamental rights.[16] The Ninth Circuit held there was no need to apply the *Johnson* standard because enlistment in the reserves is purely voluntary, whereas the right to counsel dealt with in *Johnson* is related to a trial proceeding which has been thrust upon the defendant.[17] Instead, the court concluded that

> it should be sufficient if the contract law standards of notice and volitional act are met [in the enlistment situation]. One who enters a contract is on notice of the provisions of the contract. If he assents voluntarily to those provisions after notice, he should be presumed, in the absence of ambiguity, to have understood and agreed to comply with the provisions as written.[18]

In reversing the district court, the court of appeals held that such standards had been met in *Wallace*.

The appellate court's statement is in accord with the general principle of contract law that, in the absence of fraud, one who does not choose to read a contract before signing it cannot later relieve himself of its burdens. Many courts of late, however, have tempered this basic tenet of freedom of contract with equitable notions where the contracting parties occupy positions of unequal bargaining power.[19] At a minimum, these courts have protected the offeree in an inferior bargaining position by requiring that he be put on notice and made aware of important rights which he is about to sign away.[20]

Enlistment has long been viewed as a contractual relationship,[21]

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[16] 323 F. Supp. at 904.

[17] 451 F.2d at 1377.

[18] *Id.*

[19] Before a court applies the often stated rule that one who signs a written contract is bound by its provisions whether he was aware of them or not, it should carefully consider the facts of the case with respect to the form in which the provisions appear on the document, *to the manner in which they were (or were not) called to the attention of the signer, to the character of the provision as one that the signer had reason to expect to be contained in the writing, and to the relative positions of the parties in the bargaining process.* 1 A. CORBIN, CONTRACTS § 128 (1963) (emphasis added).

[20] The waiver cannot be hidden among other provisions in the contract. *See, e.g.*, Gerhardt v. Continental Ins. Cos., 48 N.J. 291, 225 A.2d 328 (1966); Cutler Corp. v. Latshaw, 374 Pa. 1, 97 A.2d 234 (1953).

[21] *See, e.g., In re* Grimley, 137 U.S. 147 (1890).

Although the orders subjecting Wallace to court-martial jurisdiction were signed prior to his taking the oath of enlistment, both the district court, 323 F. Supp. at 903, and the court of appeals, 451 F.2d at 1378-79, rejected arguments that military status was required *before* one could be bound by orders accepted, viewing the enlistment process as a single, integrated transaction. Even if the signing of the orders were not viewed in this way, the signing would still be effective as a contract to take effect upon the occur-

and the court of appeals could have justifiably applied these equitable principles to the enlistment process. But instead, the court concluded that sufficient notice of court-martial jurisdiction was provided by a statement in the orders Wallace acceded to during the enlistment process, to the effect that he would be subject to the UCMJ.[22] In arriving at this conclusion, the court held that the burden of inquiry was on the prospective enlistee and, in the absence of any inquiry by Wallace, he was deemed to have understood the document he signed.[23]

Unfortunately, this approach to Wallace's case is inconsistent with anything but a wholly fictitious view of the circumstances under which the enlistment papers were signed. First of all, because the enlistment document made no explicit reference to court-martial jurisdiction, the adequacy of notice is questionable under any view of contract law.[24] Notice was especially hampered in this case because the orders subjecting Wallace to UCMJ jurisdiction were immersed in a "sea of forms" signed incident to enlistment.[25] And secondly, Wallace occupied a distinctly inferior bargaining position vis-a-vis the military, and it was the military which provided the terms of the enlistment contract.[26] Only if the court of appeals had more closely scrutinized the enlistment process and taken account of these factors, could there have been realistic protection of Wallace's rights.[27]

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rence of a condition precedent, enlistment. Either way, equitable contract principles are applicable.

[22] 451 F.2d at 1377. There was no reference to court-martial jurisdiction per se in the document signed by Wallace. There was only a statement indicating that he would be subject to the UCMJ.

[23] *Id.*

[24] *See* note 22 *supra*. *See also* Riverdale Fabrics Corp. v. Tillinghast-Stiles Co., 306 N.Y. 288, 118 N.E.2d 104 (1954).

[25] 323 F. Supp. at 904.

[26] Although Wallace's enlistment was a volitional act, as the court points out, 451 F.2d at 1377, it must be remembered that the alternative to enlistment in the reserves is remaining eligible for the draft. In light of this, and since acceptance of the orders was a precondition to enlistment, the prospective enlistee is not realistically in a position to object to the requirements imposed by the military for entry into the reserves even were he to know and understand them. This situation, which furthers the inequality of the parties' bargaining positions, is another factor weighing in favor of applying the equitable contract approach to the enlistment process.

[27] The contract approach taken by the court of appeals is also questionable in light of the statutory language of article 2(3). As noted by the court, 451 F.2d at 1377, article 2(3) is the only one of the 12 jurisdictional provisions of the UCMJ which expressly makes such jurisdiction dependent upon voluntary submission. *See* 10 U.S.C. § 802 (1970). Because the court of appeals applied a pure freedom of contract standard, it afforded Wallace no more protection than he would have received had there been no requirement that his acceptance of orders be voluntary. In effect, then, the court has completely read the voluntariness requirement out of article 2(3). *See also* 323 F. Supp. at 904.

Because the fundamental rights to grand jury indictment and trial by jury are lost in the court-martial process, *Johnson v. Zerbst*, as well as equitable contract doctrines, should have provided adequate legal grounds in *Wallace* to require that a valid forfeiture be made with *actual* knowledge.[28] The court of appeals' refusal to apply *Johnson*, simply because the waiver occurred in a context unrelated to trial, hinges on a tenuous distinction. While it is true that the enlistee in the reserves voluntarily enters the service, this should not be permitted to spread a contagion of voluntariness regarding the waiver of fundamental constitutional rights, absent a clear showing that the waiver was made with actual knowledge. Were Wallace a civilian, a purported waiver of his right to grand jury indictment[29] or jury trial[30] would not be given effect unless the *Johnson* standard were satisfied. There is no valid reason for not applying a test of equal stringency when the waiver of the same rights occurs in the enlistment process.[31] In fact, because the enlistee is far less "on guard" about the import of waiving his consti-

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The Ninth Circuit's treatment of some of the legislative history is also questionable. An analysis of the legislative history of article 2(3) seems to indicate that UCMJ jurisdiction was intended to cover a reservist on inactive duty training only if he were using dangerous or expensive equipment. *See* S. REP. NO. 486, 81st Cong., 1st Sess. 8 (1949); H.R. REP. NO. 2498, 81st Cong., 1st Sess. 860 (1949). *See generally* Gerwig, *Court-Martial Jurisdiction Over Weekend Reservists*, 44 MIL. L. REV. 123, 127-28 (1969). The court peremptorily dismissed this question.

[28] *See, e.g.*, Gerhardt v. Continental Ins. Cos., 48 N.J. 291, 225 A.2d 328 (1966); Klar v. H & M Parcel Room, 270 App. Div. 538, 61 N.Y.S.2d 285 (1946), *aff'd* 296 N.Y. 1044, 73 N.E.2d 912 (1947). Were the provision itself unconscionable, as was the disclaimer of warranty in Henningsen v. Bloomfield Motors, 32 N.J. 358, 161 A.2d 69 (1960), making the clause clearer and more conspicuous would not suffice to satisfy equitable contract doctrines and validate the waiver. Nothing is per se unconscionable, however, about permitting an individual to waive his right to grand jury indictment or his right to jury trial. *See* Patton v. United States, 281 U.S. 276, 312 (1930) (jury trial); Turner v. United States, 325 F.2d 988 (8th Cir.), *cert. denied*, 377 U.S. 946 (1964) (grand jury indictment). A clearly worded, conspicuous waiver, therefore, may suffice to give adequate notice and satisfy equitable contract law. But the better view of the equitable contract standard, Cutler Corp. v. Latshaw, 374 Pa. 1, 4, 97 A.2d 234, 236 (1953), as well as the *Johnson* standard, would require that the enlistee be specifically told that subjecting himself to the UCMJ would entail the loss of fundamental rights.

[29] *See, e.g.*, Turner v. United States, 325 F.2d 988 (8th Cir.), *cert. denied*, 377 U.S. 946 (1964).

[30] *See, e.g.*, Patton v. United States, 281 U.S. 276 (1930); Dranow v. United States, 325 F.2d 481 (8th Cir. 1963).

[31] The district court extended the requirement that court-martial jurisdiction be voluntarily accepted by reservists to include the right of the reservist to revoke his consent at any time after he has enlisted. However, such a holding is not supported by the legislative history of article 2(3). 451 F.2d at 1377-78. Nor is the district court's holding mandated by either the *Johnson* test or contract law.

tutional trial rights than would be a defendant in a criminal trial, arguably he should be protected by an even more stringent standard.

By not adopting such a test of voluntariness, the court of appeals failed to adequately protect the constitutional rights Wallace enjoyed prior to becoming a reservist.[32] Moreover, the court glossed over the more fundamental question of whether, in light of recent Supreme Court holdings that constitutionally restrict court-martial jurisdiction, such jurisdiction can ever be validly applied to reservists. And in a related vein, even assuming the validity of extending court-martial jurisdiction to reservists, the court of appeals completely failed to assess the possible impact of these same Supreme Court cases in determining the elements of a "voluntary" acceptance of jurisdiction.

The Ninth Circuit's view that a reservist on inactive duty training can be constitutionally subjected to UCMJ jurisdiction may appear correct at first blush, on the theory that he is a "serviceman," but it does not recognize the fundamental difference between a reservist and a "soldier." Although a reservist may be labeled "soldier" two days a month, he is essentially a civilian. This distinction and the problem it poses concerning the relation of the UCMJ to reservists on inactive duty training has been recognized by at least one judge on the United States Court of Military Appeals. Judge Ferguson noted in his concurring opinion in *United States v. Schuering*[33]

> the troublesome question of exercise of the power to try ordinary citizens by courts-martial on the basis of their tenuous connection with the armed forces through membership in the reserve forces and attendance at inactive duty training drills. Such an extraordinary exercise of military judicial authority over our modern day militiamen bears the closest examination — even from the constitutional standpoint — particularly when the civil courts are open and functioning throughout the Nation with the authority to punish all who transgress its laws, reservist or no.[34]

Although *Schuering* dealt with the applicability of article 3(a) of the UCMJ to reservists, Judge Ferguson's admonition applies equally in relation to article 2(3).[35]

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[32] *See* notes 3-5 *supra* & accompanying text.

[33] 16 U.S.C.M.A. 324, 36 C.M.R. 480 (1966).

[34] *Id.* at 331-32, 36 C.M.R. at 487-88 (Ferguson, J., concurring).

[35] 10 U.S.C. § 803(a)(1970). The reasoning of the court in *Schuering* demonstrates the confused results which can occur with respect to UCMJ jurisdiction over reservists on inactive duty training. The Court of Military Appeals noted that, for military jurisdiction to attach, the accused reservist must be subject to military law (*i.e.*, on inactive or active duty) both at the time of the commission of the offense and at the time of trial. The court, therefore, reversed a court-martial conviction, holding that

Were military justice the equivalent of civilian justice, any question as to whether court-martial jurisdiction can apply would have little practical consequence. But because there are serious differences, several Supreme Court cases have consistently construed military jurisdiction as narrowly as possible. A careful examination of these cases supports the view that reservists on inactive duty training should not be subject to the UCMJ at all — or, at a minimum, their acceptance of such jurisdiction should be effective only when *truly* voluntary.

The first case which narrowed the jurisdiction of the UCMJ was *United States ex rel. Toth v. Quarles*,[36] in which article 3(a) of the UCMJ (which provided for court-martial jurisdiction over ex-servicemen)[37] was held invalid as applied to civilian veterans. The Court reasoned that Congress could constitutionally subject only members of "the land and naval [f]orces," as provided in article I, section 8, to court-martial jurisdiction. Veterans, once they become civilians, could not be tried by military courts simply because they were subject to the UCMJ when the crime was committed. *Toth* was thus the first case to require serviceman status as a prerequisite to military jurisdiction.

The *Toth* rule was extended in *Reid v. Covert*[38] when the Court held that, as a matter of constitutional law, civilian dependents who committed capital crimes while accompanying servicemen overseas could not be subjected to UCMJ jurisdiction. *Reid* dealt with article 2(11) of the UCMJ which applied court-martial jurisdiction to "all persons serving with, employed by, or accompanying the armed forces without the continental limits of the United States."[39] Extending the civilian-serviceman status test of jurisdiction initiated in *Toth*, the plurality noted that a civilian does not lose his civilian status merely by accompanying the military abroad.[40] This view was soon extended by the Court to noncapital offenses committed by

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there was no jurisdiction because the trial was not held during a regularly scheduled drill. This situation demonstrates the problem inherent in attempting to attach military jurisdiction to an individual who is subject to such jurisdiction only two days a month. 16 U.S.C.M.A. at 327, 329, 36 C.M.R. at 483, 485.

[36] 350 U.S. 11 (1955).

[37] 10 U.S.C. § 803(a) (1970). This article provides that a person who committed certain offenses while subject to the code is not "relieved from amenability to trial by court-martial by reason of the termination of that status."

[38] 354 U.S. 1 (1957).

[39] Act of May 5, 1950, ch. 169, art. 2, § 11, 64 Stat. 108 [now 10 U.S.C. § 802(11) (1970)].

[40] 354 U.S. at 23.

civilian dependents accompanying the armed forces abroad,[41] and to capital[42] and noncapital[43] offenses committed by civilian employees of the military overseas.

More recently, the Court elaborated on the status test of jurisdiction in *O'Callahan v. Parker*.[44] The Court, in an opinion by Mr. Justice Douglas, held that " '[s]tatus' [as a serviceman] is necessary for [court-martial] jurisdiction; but it does not follow that ascertainment of 'status' completes the inquiry, regardless of the nature, time, and place of the offense."[45] In *O'Callahan* a soldier was convicted of attempted rape, housebreaking and assault with intent to commit rape. But the Court recognized the shortcomings and inadequacies of military justice, particularly the absence of grand jury indictment and jury trial, and held that UCMJ jurisdiction could not constitutionally be invoked because the victim was unaffiliated with the military and the crimes were committed while the soldier was off post, on pass and out of uniform. The Court concluded that, for a

> crime to be under military jurisdiction [it] must be service connected, lest "cases arising in the land or naval forces . . ." as used in the Fifth Amendment, be expanded to deprive every member of the armed services of the benefits of an indictment by a grand jury and a trial by a jury of his peers. The power of Congress to make "Rules for the Government and Regulation of the land and naval Forces," . . . need not be sparingly read in order to preserve those two important constitutional guarantees. For it is assumed that an express grant of general power to Congress is to be exercised in harmony with express guarantees of the Bill of Rights.[46]

Thus, since *O'Callahan*, the UCMJ cannot apply even to full-time soldiers in all situations.[47] The fact that non-service-connected crimes committed by full-time servicemen are constitutionally excepted from court-martial jurisdiction, even though the status test has been met, lends support to the position that crimes committed by reservists on inactive duty training should also be excepted from such jurisdiction, since their military connection is slight. But re-

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[41] Kinsella v. United States *ex rel.* Singleton, 361 U.S. 234 (1960).

[42] Grisham v. Hagan, 361 U.S. 278 (1960).

[43] McElroy v. United States *ex rel.* Guagliardo, 361 U.S. 281 (1960).

[44] 395 U.S. 258 (1969).

[45] *Id.* at 267.

[46] *Id.* at 262.

[47] *Id.* at 272-73. While *O'Callahan* has been limited in some respects by Relford v. Commandant, 401 U.S. 355 (1971), its rationale for the present purposes is still undiminished. The *Relford* facts were similar to *O'Callahan's* except that in *Relford* the rape occurred on post and the victims were affiliated with the post. *Relford* explicitly stated that it dealt only with *O'Callahan's* factual application and not its rationale. 401 U.S. at 360.

gardless of the merits of this absolute position, the underlying premise of the High Court's decisions — that court-martial jurisdiction is onerous and is invalid unless its propriety is clear — implies that the voluntariness of a reservist's consent to military jurisdiction should at least be tested by the highest standards. The court of appeals, of course, applied no such standards.

In sum, both the reasoning and results in *Wallace* are questionable. The court ignored several arguments that would have required an opposite result and, in applying a restrictive view of contract law, relied on an unrealistic characterization of the entire enlistment process. To presume that the enlistee understands his important waiver of rights in the typical enlistment process is, in effect, to peremptorily strip him of those rights. Without requiring the military to explain the meaning of the waiver to an enlistee, he is not going to glean that meaning from an isolated provision in the orders subjecting him to the UCMJ. For the future, the most important question raised by *Wallace* is whether the other circuits — and ultimately the Supreme Court — will arrive at conclusions similar to the Ninth Circuit's. There are persuasive reasons, if not clearly controlling reasons, for a contrary holding.