



10-1974

United States v. Mazurie

Lewis F. Powell Jr.

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The state of Wyoming has filed an amicus brief urging the petn. be denied. It claims that the tribal ordinance at issue effectively pre-empt's state law since resp here is located on land that is not within the tribe's jurisdiction but that of the state. ^{W.B.} This is incorrect. The tavern

Sweet Discussion

was located within the exterior boundary of the reservation which is also subject to state taxation and receives certain state services. I agree with your observations re: the importance of this case. Siegel 2/21/74

Q whether Indian Tribe had authority to require liquor license in addition to state license to operate a bar on land patented by U.S. to Resp's predecessor but within the Indian Reservation. **DISCUSS**
CA 10 ~~is~~ said "no".

Grant? Siegel
2/15/74

Probably wrong, but case may not involve an issue of general imp. I'll rely on our Indian law experts.

Preliminary Memo

Conf. Feb. 22, 1974
List 1, sheet 2

No. 73-1018

UNITED STATES

V.

✓ MAURIE

Cert. to CA 10
(Lewis, Seth, Holloway)
Also motion to file out-of-time petition
Federal-criminal

Untimely (non-jurisdictional)*

*The CA 10 opinion was rendered on November 8, 1973, and the petition was filed on December 28, 1973. Thus the petition is 20 days non-jurisdictionally out-of-time. The motion to file a late brief says that the Land and Natural Resources Division of the Department of Justice, "which normally handles civil cases," did not call the case to the attention of the SG's office until December 12, 1973, when the

case was already untimely. The motion stresses the importance of the case to the Indians and says that they should not be made to pay for a Government blunder.

1. After a nonjury trial in USDC (D. Wyo, J. Kerr) resps were convicted of violating 18 U.S.C. 1154 (see appendix to this memo). The conviction was reversed by the CA 10, however, principally on vagueness grounds but with an additional suggestion that the Government and the Indians lacked the power to make resps' conduct a crime. The U.S. attacks this decision across the board.

2. FACTS: There is little debate about the facts. In brief, resps operate the Blue Bull Bar on land patented in fee to their predecessor by the United States but located within the boundaries of the Wind River Indian Reservation. They hold a liquor license from the State of Wyoming but none from the two occupying Indian tribes, the Arapahoe and Shoshone. Until 1971 no such license was required and the grant of the state license sufficed to allow resps to sell liquor on their land. At that time the Tribes passed an ordinance, duly published in the Federal Register, which made such a license mandatory for sales within the reservation.

Resps then sought a license but were turned down. According to the petition the bar remained closed for a short period after the denial, but resps subsequently resumed business without the tribal license. This prosecution resulted.

3. OPINIONS BELOW: The USDC concluded that resps' land was within Indian Country, as defined by 18 U.S.C. 1154, and that resps were therefore subject to federal law. The court further found that the Wind River Tribes had passed an ordinance requiring a license in conformity with 18 U.S.C. 1161, and that resps had nevertheless sold liquor on the reservation without a license from the tribes. This was enough for conviction.

The CA 10 in a somewhat muddled effort reversed. According to the Court of Appeals the important question was whether resps' land fell within the definition of "fee-patented lands in non-Indian communities." If not, the Government had failed to prove an essential element of the crime. The court then stated (*italics theirs*): "The proof in the record herein of this element of the crime is inconclusive and indefinite." The problem, according to the court, was that there were no standards for determining what a "community" was, no standards for determining what a "non-Indian" community was (i.e. what percentage of Indians), and no standards for determining what an "Indian" was (i.e. what percentage of Indian blood). The court concluded:

"We must hold that the terminology of 'non-Indian community' is not capable of sufficiently precise definition to serve as an element of the crime herein considered, aside from other factors or elements with similar infirmities. The statute is thus fatally defective by reason of this indefinite and vague terminology."

The CA supported this result by referring to United States v. National Dairy Products Corp., 372 U.S. 29, and Connally v. General Construction Co., 269 U.S. 385. According to the court, a person

cannot be required to guess at the statute's meaning nor should reasonable men differ as to its application. Furthermore, the court seemed to say, the USDC erred by requiring resps to show that they were within the exception to the definition instead of requiring the prosecution to show that the definition fit them. See Gruenwald v. United States, 353 U.S. 391.

The court also questioned the "authority of the Government or of the Tribes to regulate the defendants' business in a way that a failure to conform constitutes a crime." (emphasis theirs). The court expressed doubt about whether the Government could regulate a business on land it granted in fee and stated positively that any such power, should it exist, could not be delegated to the Indians. The Indians were merely a voluntary association of citizens with no authority over persons (ineligible for membership) on their own lands. Cases discussing the sovereignty of Indian tribes were distinguished as being in the "context of relationships between a Tribe and the federal or state government." As the court stated: "Congress cannot delegate its authority to a private, voluntary organization, which is obviously not a governmental agency, to regulate a business on privately-owned lands, no matter where located."

4. CONTENTIONS:

(1) Petr urges that the CA,10 opinion, far from following National Dairy Corp., supra, is inconsistent with it. Here the resps had ample warning that their conduct would violate the law

because federal officials had told them to secure a license or face prosecution. Resp tried and failed to comply. In a case not involving First Amendment rights the notice in the actual case before the court is the relevant factor. These defendants knew they were violating the law.

Furthermore there was no basis for thinking that the Blue Bull Bar could come within the exception, almost no matter what definition was adopted. The bar was about three-quarters of a mile from Fort Washakie which apparently is the leading Indian community in the area. Resps might be able to argue that they were not part of this community, but they could not establish any other community to be part of. According to the Government the nearest non-Indian community (by some unexplained definition) was 15 miles away.

(2) The Government also claims a conflict with Buster v. Wright, 135 F. 947 (CA 8), where the CA 8 held that Indian tribes had inherent authority "to license and tax non-Indians conducting business on fee patented land within the exterior boundaries of their reservations." (petn., p. 15). The CA 10's holding to the contrary ignores a line of cases holding that Indian tribes are governmental units with various sovereign powers.

(3) Finally petr urges that the suggestion that Congress could not regulate liquor sales on private lands within an Indian reservation is contrary to Perrin v. United States, 232 U.S. 478. The Constitution, art I, sec. 8, (authorizing Congress to regulate

commerce "with the Indian Tribes") is a sufficient grant of power. Respondents' contentions: Resps merely say that the liquor business on Indian lands will not go unregulated because of this decision since state control will continue. Resps do not respond to the Governments substantive arguments at all. They do suggest that the petition's lack of timeliness should weigh heavily if not totally against it.

There are three amicus briefs. Two supporting the Government emphasize the importance of Indians being able to regulate the liquor trade within their reservations. The third brief filed by the State of Wyoming on behalf of resps says that state licenses should not be rendered a nullity by Tribal action.

5. DISCUSSION:

(1) There is no question that resps knew their selling of liquor without a tribal license was considered by the federal government and the Indians to violate 18 U.S.C. 1154. An unreasonable interpretation by the authorities would not necessarily save an unfathomable statute, but the application of the statute to resps hardly seems arbitrary. The CA 10 mixed its vagueness discussion with observations which seemed to make the question more one of burden of proof. The court apparently felt the evidence did not show that resps were without the language of the exception. According to the government, resps failed to show any reason to believe the exception applied. (One resp in fact testified: "We are kind of out there by ourselves, you know.") Viewing the facts as stated

in the two lower court opinions it is quite difficult to see how the phrase "non-Indian community" could apply here.

(2) Buster v. Wright, supra, did hold that the Creek Indian Nation had authority to tax non-citizens of the Tribe for the privilege of transacting business within its borders, despite the fact that the business was conducted on fee patented lands. The authority was said to be "one of the inherent and essential attributes of its original sovereignty." The CA 8 did note, however, that the power of the U.S. Government to permit others to trade on the lands without an Indian license was not at issue. One might argue that Buster does not control a case in which a state has applied its laws to land placed under state jurisdiction by the federal government and the Indians have rendered the state law a nullity.

(3) In Perrin v. United States, supra, the Court stated:

"The power of Congress to prohibit the introduction of intoxicating liquors into an Indian reservation, wheresoever situate, and to prohibit traffic in such liquors with tribal Indians, whether upon or off a reservation and whether within or without the limits of a State, does not admit of any doubt."

In that case Congress had imposed a restriction on ceded lands within the vicinity of lands retained by the Indians which prohibited sale of intoxicating liquors. The Court noted that Congress had broad discretion to control the sale of liquor even on lands merely proximate to Indian lands as part of its protective concern for the Indians. That decision seems broad enough to sustain the constitutionality of 18 U.S.C. 1154.

In general, I think the decision of the CA 10 seems wrong. The suggestion that the federal government and the Indians could not regulate the sale of liquor near to Indian lands seems contrary to the tenor if not the actual holdings of earlier cases, and is not convincing. The vagueness argument also seems weak. Resps had notice that their conduct would be considered a crime and merely guessed wrong about the merits of their case. That does not seem to me to be a vagueness problem. I do not think it was improper to require the defendants to introduce persuasive evidence to bring themselves within the exception to the statutory definition once the sale within Indian boundaries was shown.

There is a response.

2/12/74

Farr

USDC and CA ops in petn.

Appendix

18 U.S.C. 1151 provides in pertinent part:

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation * * *

18 U.S.C. 1154 provides in pertinent part:

(a) * * * whoever introduces or attempts to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, shall, for the first offense, be fined not more than \$500 or imprisoned not more than one year, or both; and, for each subsequent offense, be fined not more than \$2,000 or imprisoned not more than five years, or both.

* * * * *

(c) The term "Indian country" as used in this section does not include fee-patented lands in non-Indian communities or rights-of-way through Indian reservations, and this section does not apply to such lands or rights-of-way in the absence of a treaty or statute extending the Indian liquor laws thereto.

18 U.S.C. 1161 provides:

The provisions of sections 1154, 1156, 3113, 3488, and 3618, of this title, shall not apply within any area that is not Indian country, nor to any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior and published in the Federal Register.

BOBTAIL MEMO

TO: Mr. Justice Powell

DATE: November 7, 1974

FROM: Joel Klein

No. 73-1018, U.S. v. Mazurie

This is a relatively trivial case involving the question of whether Congress can authorize the Indian tribes to license the sale of liquor in taverns that are located on small, privately-owned, enclaves on the Indian reservation. CA10, in effect, said no. My own thinking is that CA10 ought to be reversed.

I^{can}/see no constitutional objection to a statute allowing the Indians to decide who will sell liquor on or near an Indian community. Congress traditionally has been allowed great latitude under its constitutional authority to regulate commerce with the Indians. CA10's first claim - that the definition of "non-Indian community" is vague - is silly, particularly in this case where the defendant was well-apprieved that he was violating the law and where no First Amendment rights are at stake. CA10, in free-floating fashion, also suggested that perhaps Congress was without authority to regulate in this area and, in any event, ^{that Congress} could not delegate that authority to the Indians. But this Court has repeatedly held that Congress may regulate the sale of liquor to Indians, even on non-Indian land. E.g., Perrin v. U.S., 232 U.S. 478.

Nor is there anything to the delegation point. There is little left to the doctrine of "unconstitutional delegation," and, in general, Congress permissibly delegates much authority to the Indians. Thus, there are no serious constitutional questions here.

There is, however, a non-constitutional ground on which to ~~sustain~~ ^{reverse} CA10's decision. The CA, reversing a finding of USDC without acknowledging the reversal, held that the government had failed to prove that respondent was not located in a "non-Indian" community. Thus the government did not establish a jurisdictional element of the crime. It seems to me, however, that USDC, not CA10, is correct on this factual issue. There can be no serious contention that respondent's tavern was in a non-Indian community since approximately 80% of the 200 families living within 20 square miles of the tavern are Indians. I would, therefore, reverse CA10's reversal of USDC on the ground that USDC's finding of fact was not clearly erroneous. *Tavern Clearly located in Indian Community*

Although I recommend reversal, I can understand why CA10 was troubled. Respondent is licensed by the state and operating on his own land. It seems a bit unfair to require him to get a license from the Indians as well. Perhaps what is most offensive about the scheme is that the Indians can, without any review, discriminate against non-Indians, such as respondent, in the granting of licenses. Nevertheless,

5.
Congress' power in this area has been exceptionally broad,
and to affirm CA10 would require swimming upstream for far
more time than I think the effort would be worth.

J.K.

ss

Reverse

Q1: Whether Congress has auth. under Art I, Sec 8, cl 3 to regulate control of liquor on Reservation? Clearly, it does.

Q2: Whether 18 USC 1154 is unconst. vague because term "non-Indian communitarian" is not defined? But certainly not vague as applied. Resps were notified in advance.

Q3: Whether delegation of auth. to Tribe was lawful? Clearly, it was. The Tribe is a quasi-governmental agency. Congress has plenary power & it has delegated authority here in limited manner.

Sachse (SG)

CA 10 said "non-Indian" was not defined - thus statute is vague & invalid.

CA 10 also held Congress lacked power to authorize Tribes to license

Not a 1st Amend. case. Test is not whether it is facially vague; rather whether vague as applied.

Hamilton (for Repeal)

Repeal are citizens of U.S. & Wym.

Indians on Reservations, with requisite % of Indian blood, are citizens of U.S., Wym & the Tribe. Most of residents of Reservation are not members of Tribe. Tribal Council decides who are entitled ^{to membership}.

Sec 1154 is vague - no criteria

Repeal were DS in criminal case - burden was on Gov't to prove that Bar was not located in a non-Indian community (the double negative is in the statute)

[But J. Marshall thinks burden is on D to prove the exception]

Repeal stipulated Bar was "in Indian Country" - but Hamilton argues that there is not evidence that the Bar was ^{not} in a "non-Indian community". (But see DC's findings - 34, 35 of SG's Rehe).

Stalkus (Ant A/G of Wyo)

This is land owned in fee & thus State of Wyo. has sole & exclusive jurisdiction — regardless of whether this was ~~in~~ or not in a non-Indian community.

(See Sachse's rebuttal to Stalkus's argument)

Sachse (SG - Rebuttal)

All facts were stipulated except whether Bar was ~~at~~ not located in a non-Indian community. DC decided this factual issue against Resp.

Statute has been on books since 1949 —

The Chief Justice Affirm or D16
No criminal act
shown by evidence
Statute is void
for vagueness

Douglas, J. Affirm
Agrees with CA on
vagueness

Brennan, J. Affirm

On vagueness
Sub-section C
is impossibly vague.

Stewart, J. Reverse

Sub-section C not
quite as bad as Brennan
suggests, as some of terms
are defined in other statutes

There was sufficient
notice - we are not
concerned with 1st Amend
issue. Not vague as applied

The DC - familiar with
area - made findings
which warrant reversal
of CA 10

Silly to think this
was a non-Indian
community.

Agrees with Potter

On vagueness.
Who is an "Indian"
Double negative.

Blackmun, J.

Agree that only issue is
fair notice - & there was
such notice here.

Sub-div. (c) was "patchwork"
to take care of non-Indian
community.

Powell, J. Reveries

(See my Argument Notes)

I agree with Potter
& Byron.

Not vague or applied.

Nothing to other
issue

Rehnquist, J. Reveries

Agrees with Stewart,
White, Blackmun & Powell

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

CHAMBERS OF
JUSTICE POTTER STEWART



December 20, 1974

73-1018 - U. S. v. Mazurie

Dear Bill,

I agree with your opinion for the
Court in this case.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

✓

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 21, 1974

Dear Bill:

In 73-1018, U.S. v. MAZURIE I
voted the other way though at the time
the case seemed marginal. I will however
acquiesce in your opinion. If there is
a dissent, I will of course take another
look.

W. O. Douglas

Mr. Justice Rehnquist

cc: The Conference

See pp 3, 4, 5

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
✓ Mr. Justice Powell

3rd DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: 12-24-74

No. 73-1018

United States, Petitioner, } On Writ of Certiorari to
v. } the United States Court
Martin Dewalt Mazurie et al. } of Appeals for the Tenth
Circuit.

Reviewed
LJP
12/26

[December —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

The respondents were convicted of introducing spirituous beverages into Indian country, in violation of 18 U. S. C. § 1154.¹ The Court of Appeals for the Tenth Circuit reversed. *United States v. Mazurie*, 487 F. 2d 14 (1973). We granted certiorari, 415 U. S. 947 (1974), in order to consider the Solicitor General's contentions that 18 U. S. C. § 1154 is not unconstitutionally vague, that Congress has the constitutional authority to control the sale of alcoholic beverages by non-Indians on fee-patented

Included
to join

¹ "18 U. S. C. § 1154 provides in pertinent part:

"(a) . . . whoever introduces or attempts to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, shall, for the first offense, be fined not more than \$500 or imprisoned not more than one year, or both; and, for each subsequent offense, be fined not more than \$2,000 or imprisoned not more than five years, or both.

Joined
12/27

"(c) The term "Indian country" as used in this section does not include fee-patented lands in non-Indian communities or rights-of-way through Indian reservations, and this section does not apply to such lands or rights-of-way in the absence of a treaty or statute extending the Indian liquor laws thereto."

land within the boundaries of an Indian reservation, and that Congress could validly make a delegation of this authority to a reservation's tribal council. We reverse the Court of Appeals.

I

The Wind River Reservation was established by treaty in 1868. Located in a rather arid portion of central Wyoming, at least some of its 2,300,000 acres have been described by Justice Cardozo as "fair and fertile," *Shoshone Tribe v. United States*, 299 U. S. 476, 486 (1937). It straddles the Wind River, with its remarkable canyon, and lies in a mile-high basin at the foot of the Wind River Mountains, whose rugged, glaciated peaks and ridges form a portion of the Continental Divide.² The reservation is occupied by the Shoshone and Arapahoe Tribes. Although these tribes were once "ancestral foes," *Shoshone Tribe v. United States*, *supra*, at 486, they are today jointly known as the Wind River Tribes. As a result of various patents, substantial tracts of non-Indian held land are scattered within the reservation's boundaries. It was on such non-Indian land that respondents Martin and Margaret Mazurie operated their bar, which did business under the corporate name of The Blue Bull, Inc.

Before 1953 federal law generally prohibited the introduction of alcoholic beverages into "Indian country." 18 U. S. C. § 1154 (a). "Indian country" was defined by 18 U. S. C. § 1151 to include non-Indian held lands "within the limits of any Indian reservation."³ In 1949,

² F. Harmston, *Wind River Basin 2* (1953); H. Granger, et al., *Mineral Resources of the Glacier Primitive Area, Wyoming*, Geological Survey Bull. No. 1319-F, F2-95 (1971).

³ "18 U. S. C. § 1151 provides in pertinent part:

"Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country," as used in this chapter, means (a) all land within the limits of any Indian reservation under the

the term was given a narrower meaning, insofar as relevant to the liquor prohibition, so as to exclude both fee-patented lands within "non-Indian communities" and rights-of-way through reservations.³ Act of May 24, 1949, 63 Stat. 89, 94, 18 U. S. C. § 1154 (c), *supra*, n. 1. The quoted term is not defined, a fact which creates problems with which we shall shortly deal. In 1953 Congress passed local option legislation allowing Indian tribes, with the approval of the Secretary of the Interior, to regulate the introduction of liquor into Indian country, so long as state law was not violated. Act of Aug. 15, 1953, 67 Stat. 586, 18 U. S. C. § 1161.⁴ The Wind River Tribes responded to this option by adopting an ordinance which permitted liquor sales on the reservation if made in accordance with Wyoming law. When The Blue Bull originally opened, a liquor license had been issued to it by Fremont County, Wyoming, and its operation was therefore consistent with that tribal ordinance. But in 1971 the Wind River Tribes adopted a new liquor ordinance, Ordinance No. 26.⁵ That ordinance required that retail liquor outlets within Indian country obtain both tribal and state licenses.

In 1972, the Mazuries applied for a tribal license, after

jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation"

⁴ "18 U. S. C. § 1161 provides:

"The provisions of sections 1154, 1156, 3113, 3488, and 3618, of this title, shall not apply within any area that is not Indian country, nor to any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the Federal Register."

⁵ The ordinance was properly approved by the Secretary of the Interior and published in the Federal Register. 37 Fed. Reg. 1253-1254 (Jan. 27, 1972).

warnings that they would be subject to criminal charges if they continued to operate without one. The Tribes held a public hearing which Martin Mazurie and the Mazuries' lawyer attended. Witnesses protested grant of the license, complaining of singing and shooting at late hours, disturbances of elderly residents of a nearby housing development, and the permitting of Indian minors in the bar. The application was denied.

Thereafter, the Mazuries closed The Blue Bull. Three weeks later they reopened it. It remained in operation for approximately a year, until federal officers seized its alcoholic beverages and this criminal prosecution was initiated.⁶

The case was tried to the District Court without a jury. Since most of the factual issues were disposed of by stipulations,⁷ the testimony at trial primarily dealt with whether the bar was within "Indian country." On the basis of testimony about The Blue Bull's location, and about the racial composition of residents of the surrounding area, the court concluded that the bar was so located. Holding that federal authority could reach non-Indians located on privately held land within a reservation's boundaries, the Court entered a judgment of conviction. Each respondent was fined \$100.

The Court of Appeals reversed the conviction. It concluded that the prosecution had not carried its burden

⁶ The Blue Bull was reopened after the decision of the Court of Appeals. In April 1974, however, Fremont County refused to renew its license and it was again closed. Brief for Petitioner 5, n. 4; Brief for Respondent 20, n. 8.

⁷ It was stipulated that The Blue Bull was being operated without the license required by Ordinance No. 26, that alcoholic beverages had been sold at The Blue Bull, that The Blue Bull was located within the Wind River Reservation, but on land which it owned in fee, and that The Blue Bull had been properly licensed by state authorities.

of proving beyond a reasonable doubt that the bar was not excluded from Indian country by the § 1154 (c) exception for "fee-patented lands in non-Indian communities."⁸ This conclusion was tied directly to the more basic holding that:

"[T]he terminology of 'non-Indian community' is not capable of sufficiently precise definition to serve as

⁸ The District Court did not make a specific finding of fact that The Blue Bull was not located in a non-Indian community. The court did find that it was in "Indian Country" (Petition, at 35), that it was situated "at a site known as Fort Washakie, Wyoming" (Petition, at 34), that "Fort Washakie is not an incorporated non-Indian community with recognized boundaries" (Petition, at 34), and that the bar had been operated in violation of 18 U. S. C. § 1154 (which contains the exclusion from "Indian country" of fee-patented lands in non-Indian communities). The ambiguity in the trial court's findings is readily explained by respondents' failure to focus on the issue at trial. The nature of defense testimony and cross-examination is discussed below, pp. 7-8. That respondents failed to contest the issue is further established by their motion to dismiss at the close of the Government's evidence. The basis of the motion was failure "to prove beyond a doubt that [respondents] are operating in an *Indian community*" (emphasis added), App., at 64, which even if true is plainly irrelevant under the wording of § 1154 (c). Respondents' counsel then proceeded with an argument based on respondents' unrestricted fee ownership of the property on which the bar was located. *Ibid.* In addition, respondents' counsel did not dispute the court's statement at the close of the trial that the "sole issue" was "whether or not the Tribal Council has jurisdiction over deeded land held by these parties in fee . . ." Record, Vol. II, p. 140. The court went on to state that,

"it is in Indian Country. There is not any question. You do not need to cite a single case that this bar and this ten acres is located in Indian Country. I am not saying it is Indian land, but it is Indian Country." *Ibid.*

Again, respondents' counsel made no objection. He also apparently did not seek to focus the court's attention on the issue by filing either a post-trial brief or proposed findings of fact and conclusions of law—while both parties had the opportunity to do so, only the prosecution's submission appears in the record on appeal.

an element of the crime herein considered The statute is thus fatally defective by reason of this indefinite and vague terminology." 487 F. 2d, at 18.

As a second basis for reversal, the court held that insofar as 18 U. S. C. § 1161 authorized Indian tribes to adopt ordinances controlling the introduction by non-Indians of alcoholic beverages onto non-Indian land, it was an invalid congressional attempt to delegate authority. The Court of Appeals also suggested that Congress itself could not regulate the sale of alcohol by non-Indians on fee-patented non-Indian lands within Indian reservations.

II

It is well established that vagueness challenges to statutes which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand. *United States v. National Dairy Products Corp.*, 372 U. S. 29 (1963). In determining whether § 1154 (c) is unconstitutionally vague as to these defendants, we must therefore first consider the evidence as to the location of the Blue Bull.⁹

The evidence showed that the bar was located on the outskirts of Fort Washakie, Wyoming, an unincorporated village bearing the name of the man who was Chief of the Shoshones during their early years on the Wind River Reservations. *Shoshone Tribe v. United States*, *supra*, at 486. *Harmston*, *supra*, at 3-4. Fort Washakie

⁹ We assume, *arguendo*, as has the Government in its arguments before this court, that the prosecution has the burden of proving that the § 1154 (c) statutory exceptions are not applicable. Because of this assumption, and because we conclude that the Government in any event did carry this burden, we need not consider whether the exception must be pleaded and proved by criminal defendants. Cf. *United States v. Vuitch*, 402 U. S. 62, 70 (1971) (dealing with a criminal statute in which "an exception is incorporated in the enacting clause of a statute.") (Emphasis supplied.)

is the location of the Wind River Agency of the Bureau of Indian Affairs, and of the Tribal Headquarters of the Wind River Tribes. One witness testified that the village was an "Indian community." App., at 49. The evidence also showed that of the 212 families living within a 20-square-mile area roughly centered on The Blue Bull, 170 were Indian families, 41 were non-Indians, and one was mixed. A large-scale United States Geological Survey map was introduced to show the limits of this housing survey. It indicates that the survey included all settlements within the Fort Washakie area, and that the nearest not-included concentrations of housing were at Saint James Church and Ethete, some four miles beyond the boundaries of the survey and some six miles from Fort Washakie. The evidence also established that the state school serving Fort Washakie, and located about two and one-half miles from The Blue Bull, had a total enrollment of 243 students, 223 of whom were Indian.

Other evidence bearing on whether The Blue Bull was located in a non-Indian community was Martin Mazurie's testimony that the bar served both Indians and non-Indians, and that, "We are kind of out there by ourselves, you know." App., at 70. A transcript of the hearing on the Mazuries' application to the Tribes for a retail liquor license was also admitted at the trial. That transcript indicates that The Blue Bull was located near a public housing development populated largely if not entirely by Indians. Residents of this development complained that persons leaving the bar late at night, and for one reason or another having either no transportation or no destination, would wander into the development.

There was no testimony that The Blue Bull was in a non-Indian community. The defense did obtain acknowledgements by prosecution witnesses that they could not precisely state the boundaries of the Fort Washakie Indian community. Otherwise, examination by the de-

fense was directed at establishing that the term "Indian" was without precise meaning, and that the State of Wyoming generally had jurisdiction over non-Indians and their lands within the Reservation.

We think that the foregoing evidence was sufficient to justify the District Court's implied conclusion that Fort Washakie and its surrounding settlements did not comprise a non-Indian community. We do not read the opinion of the Court of Appeals as reaching a conclusion contrary to that we have just stated. That Court instead based its decision on the proposition that such proof did not go far enough, a view generated by its opinion of the requirements this statute must meet in order to avoid the vice of vagueness. The Court of Appeals was looking for proof beyond a reasonable doubt of precisely defined concepts of "Indian" and "community." We gather that it expected persons treated as "Indians" in the housing and school surveys to be proven to satisfy a specific statutory definition. Similarly, it apparently expected that proof concerning the "community" should have conformed to some specific statutory definition, presumably one keyed to a geographical area with precise boundaries.

We believe that the Court of Appeals erred by holding that the Constitution requires proof of such precisely defined concepts. The prosecution was required to do no more than prove that The Blue Bull was not located in a non-Indian community, where that term has a meaning sufficiently precise for a man of average intelligence to "reasonably understand that his contemplated conduct is proscribed." *United States v. National Dairy Products Corp.*, *supra*, 372 U. S., at 32-33. Given the nature of The Blue Bull's location and surrounding population, the statute was sufficient to advise the Mazuries that their bar was not excepted from tribal regulation by virtue of being located in a non-Indian community.¹⁰

¹⁰ We note that the § 1154 (c) exception is available for fee-

III

The Court of Appeals expressed doubt that "the Government has the power to regulate a business on the land it granted in fee without restrictions." 487 F. 2d, at 18. Because that Court went on to hold that even if Congress did possess such power, it could not be delegated to an Indian tribe, that Court did not find it necessary to resolve the issue of congressional power. We do, however, reach the issue, because we hereinafter conclude that federal authority was properly delegated to the Indian tribes. We conclude that federal authority is adequate, even though the lands were held in fee by non-Indians, and even though the persons regulated were non-Indians.

Article I, § 8, of the Constitution gives Congress power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." This Court has repeatedly held that this clause affords Congress the power to prohibit or regulate the sale of alcoholic beverages to tribal Indians, wherever situated, and to prohibit or regulate the introduction of alcoholic beverages into Indian country.¹¹ *United States v. Holliday*, 3

patented lands which are in *non-Indian* communities, rather than for those which are *not* in *Indian* communities. This fact renders irrelevant the inability of prosecution witnesses to specify precise boundaries of the Fort Washakie *Indian* community.

We need not detain ourselves with an issue which seemed to cause the Court of Appeals some difficulties, that of what qualifies a person as an "Indian." The record plainly establishes that, in the circumstances of this case, the distinction between Indians and non-Indians was generally understood. Those who testified about the housing and school surveys displayed no difficulty in making such classifications. Nor did Mr. Mazurie. He testified that when there was trouble at his bar he would call the county sheriff to deal with a non-Indian, but would call the Tribal Police to deal with an Indian. When his counsel questioned him as to how he determined which was which, he simply replied, "Because I knew them." App., at 70.

¹¹ It is undisputed that the Wind River Tribes have not been emancipated from Federal guardianship and control. There is thus

Wall. 407, 417-418 (1865); *United States v. Forty-three Gallons of Whiskey*, 3 Otto 188, 194-195 (1876); *Ex parte Webb*, 225 U. S. 663, 683-684 (1912); *Perrin v. United States*, 232 U. S. 478, 482 (1914); *Johnson v. Gearlds*, 234 U. S. 422, 438-439 (1914); *United States v. Nice*, 241 U. S. 591, 597 (1916).

Perrin v. United States, *supra*, demonstrates the controlling principle. It dealt with the sale of intoxicating beverages within premises owned by non-Indians, on privately held land in an organized non-Indian municipality. The land originally had been included in the Yankton Sioux Indian Reservation, but had been ceded to the United States. The cession agreement, as ratified and confirmed by Congress, specified that alcoholic beverages would never be sold on the ceded land. The land was subsequently opened to private non-Indian settlers. In upholding Perrin's conviction, this Court stated:

"The power of Congress to prohibit the introduction of intoxicating liquors into an Indian reservation, wheresoever situate, and to prohibit traffic in such liquors with tribal Indians, whether upon or off a reservation and whether within or without the limits of a State, does not admit of any doubt. It arises in part from the clause in the Constitution investing Congress with authority 'to regulate commerce with foreign nations, and among the several States, and with the Indian tribes,' and in part from the recognized relation of tribal Indians to the Federal Government." 232 U. S., at 482.

Seymour v. Superintendent, 368 U. S. 351 (1962), is a more recent indication of congressional authority over events occurring on non-Indian land within a reservation.

no doubt that this case is properly analyzed in terms of Congress' exclusive constitutional authority to deal with Indian tribes.

The case concerned an Indian's challenge to a state burglary conviction. The Indian contended that because the offense took place within "Indian country," it was within the exclusive jurisdiction of the United States by virtue of 18 U. S. C. § 1153. This Court agreed, despite the fact that the crime occurred on land patented in fee to non-Indians. While the opinion did not address the constitutional issue, it did reject a variety of statutory arguments for excluding the crime's situs from 18 U. S. C. § 1151's definition of "Indian country." Of significance for our purposes is the fact that Congress' authority to define "Indian country" so broadly, and to supersede state jurisdiction within the defined area, went both unchallenged by the parties and unquestioned by this Court.

We hold that neither the Constitution nor our previous cases leaves any room for doubt that Congress possesses the authority to regulate the distribution of alcoholic beverages by establishments such as The Blue Bull.

IV

The Court of Appeals said, however, that even if the Congress possessed authority to regulate The Blue Bull, it could not delegate such authority to the Indian tribes. The court reasoned as follows:

"The tribal members are citizens of the United States. It is difficult to see how such an association of citizens could exercise any degree of governmental authority or sovereignty over other citizens who do not belong, and who cannot participate in any way in the tribal organization. The situation is in no way comparable to a city, county, or special district under state laws. There cannot be such a separate 'nation' of United States citizens within the boundaries of the United States which has any authority,

other than as landowners, over individuals who are excluded as members.

“The purported delegation of authority to the tribal officials contained in 18 U. S. C. § 1161 is therefore invalid. Congress cannot delegate its authority to a private, voluntary organization, which is obviously not a governmental agency, to regulate a business on privately owned lands, no matter where located. It is obvious that the authority of Congress under the Constitution to regulate commerce with Indian Tribes is broad, but it cannot encompass the relationships here concerned.” 487 F. 2d, at 19.

This Court has recognized limits on the authority of Congress to delegate its legislative power. *Panama Refining Co. v. Ryan*, 293 U. S. 388 (1935). Those limitations are, however, less stringent in cases where the entity exercising the delegated authority itself possesses independent authority over the subject matter. *United States v. Curtiss-Wright Export Corp.*, 299 U. S. 304, 319-322 (1936). Thus it is an important aspect of this case that Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory, *Worcester v. Georgia*, 6 Pet. 515, 557 (1832); they are “a separate people” possessing “the power of regulating their internal and social relations” *United States v. Kagama*, 118 U. S. 375, 381-382 (1886); *McClanahan v. Arizona State Tax Comm’n*, 411 U. S. 164, 173 (1973).

Cases such as *Worcester*, *supra*, and *Kagama*, *supra*, surely establish the proposition that Indian tribes within “Indian country” are a good deal more than “private, voluntary organizations,” and they thus undermine the rationale of the Court of Appeals’ decision. These same

cases in addition make clear that when Congress delegated its authority to control the introduction of alcoholic beverages into Indian country, it did so to entities which possess a certain degree of independent authority over matters that affect the internal and social relations of tribal life. Clearly the distribution and use of intoxicants is just such a matter. We need not decide whether this independent authority is itself sufficient for the Tribes to impose Ordinance No. 26. It is necessary only to state that the independent tribal authority is quite sufficient to protect Congress' decision to vest in tribal councils this portion of its own authority "to regulate Commerce . . . with the Indian tribes." Cf. *United States v. Curtiss-Wright Export Corp.*, *supra*.

The fact that the Mazuries could not become members of the tribe, and therefore could not participate in the tribal government, does not alter our conclusion. This claim, that because respondents are non-Indians Congress could not subject them to the authority of the Tribal Council with respect to the sale of liquor, is answered by this Court's opinion in *Williams v. Lee*, 358 U. S. 217 (1959). In holding that the authority of tribal courts could extend over non-Indians, insofar as concerned their transactions on a reservation with Indians, we stated:

"It is immaterial that respondent is not an Indian. He was on the Reservation and the transaction with an Indian took place there. [Citations omitted.] The cases in this Court have consistently guarded the authority of Indian governments over their reservations. Congress recognized this authority in the Navajos in the Treaty of 1868, and has done so ever since. If this power is to be taken away from them, it is for Congress to do it. *Lone Wolf v. Hitchcock*, 187 U. S. 553, 564-566." 358 U. S., at 223.

73-1018—OPINION

14

UNITED STATES *v.* MAZURIE

For the foregoing reasons the judgment of the Court of Appeals must be reversed, and the convictions of respondents reinstated.

Reversed.

December 27, 1974

No. 73-1018 United States v. Mazurie

Dear Bill:

Please join me.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

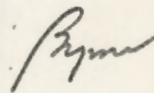
December 30, 1974

Re: No. 73-1018 - U. S. v. Mazurie

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

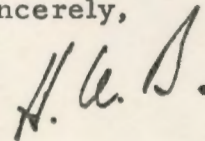
January 6, 1975

Re: No. 73-1018 - United States v. Mazurie

Dear Bill:

Please join me.

Sincerely,

A handwritten signature in dark ink, appearing to be "H.A.B.", written in a cursive style.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 14, 1975

RE: No. 73-1018 United States v. Mazurie

Dear Bill:

Please join me.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

January 13, 1975

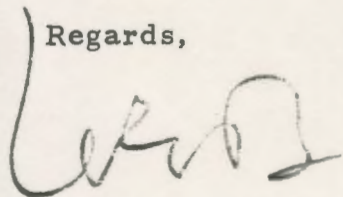
✓

Re: 73-1018 - U. S. v. Mazurie

Dear Bill:

Please join me in your circulation of today's date.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 14, 1975

Re: No. 73-1018 -- United States v. Martin Dewalt Mazurie

Dear Bill:

Please join me in your opinion in this case.

Sincerely,


T. M.

Mr. Justice Rehnquist

cc: The Conference

[illegible]