




10-1976

## United States v. Antelope

Lewis F. Powell Jr.

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We could dispose of  
this summarily  
after Fisher, which  
discusses the equal protection  
issue. Consult Justice  
Stevens. Chris

Discuss  
with new to  
Grant or Joni 3

DISCUSS.

Respect, Indians, were convicted  
under Fed. Major Crimes Act of  
killing a non-Indian.

CA 9 reversed conviction on E/P  
grounds. If murder had been committed  
by non-Indian, state law would have  
governed and it require proof of mens  
rea - whereas ~~no~~ such proof is  
required under Fed. law. CA 9 held  
that subjecting an Indian to a lower

PRELIMINARY MEMO

January 9, 1976 Conference  
List 1, Sheet 3

No. 75-661

Cert to CA 9

(Kilkenny, Choy, Goodwin) racial

UNITED STATES

Federal/criminal

Discuss.

CA 9 decision  
is wrong.

Only Q is  
whether  
issue is  
significant  
enough to  
take up

Court's time.  
SG says it is.

Chris

v.

ANTELOPE

But laws applicable to Indians  
are not racial; they are based on  
Timely, with  
extension

1. SUMMARY: The SG challenges CA 9's conclusion that a portion of the  
Treaties & Indian may "opt" out of Indian  
Major Crimes Act applicable to Indians is unconstitutional as applied. laws.

2. FACTS: In 1974 four men broke into a non-Indian's house located on the  
Coeur d'Alene reservation. The four robbed the non-Indian and killed her by  
beating. Four enrolled Coeur d'Alene Indians were indicted. Two of the men,  
Antelope and Leonard Davison, were indicted of felonious entry of a non-Indian home



- 2 -

on an Indian reservation in violation of 18 U.S.C. § 1153 and robbery in violation of 18 U.S.C. §§ 1153 and 2111. Count III of the indictment charged Antelope and Davison, as well as William Davison and Seyler, with killing the woman in the perpetration of the robbery in violation of 18 U.S.C. §§ 1153 and 1111. Seyler was granted immunity and testified at trial as a government witness. The jury found Antelope and Leonard Davison guilty of all three counts, including first degree murder under Count III. William Davison was convicted only of the lesser included offense of second degree murder on Count III.

Resps appealed their convictions on the grounds that the murder provision of 18 U.S.C. § 1153 was unconstitutional as applied to them. They claimed that it deprived them of equal protection and due process under the 5th Amendment through an invidious racial discrimination without a proper government objective.

CA 9 agreed with resps and reversed all three murder convictions. It aff'd the burglary and robbery convictions under counts I and II as those had not been challenged.

CA 9 first described the statutory framework governing crimes on Indian land. It noted that the crime of killing an Indian by an Indian (on Indian land) is governed by the Major Crimes Act, 18 U.S.C. § 1153, which incorporates the federal definition of murder, 18 U.S.C. § 1111. Section 1111 defines murder 1 as including felony murder. The crime of killing an Indian by a non-Indian (on Indian land) is governed by the Federal Enclave Law, 18 U.S.C. § 1152, which also incorporates 18 U.S.C. § 1111. The crime of killing a non-Indian by an Indian (on Indian land) is also controlled by § 1153 and § 1111. However, the killing of a non-Indian by a non-Indian in Indian country is a state crime. For this last statement

CA 9 cited New York ex rel. Ray v. Martin, 326 U.S. 496 (1946); United States v. McBratney, 104 U.S. (14 Otto) 621 (1881); and United States v. Cleveland, 503 F.2d 1067 (CA 9 1974). Thus, when a non-Indian kills a non-Indian the definition of murder is determined by reference to the situs state's law [and the case is tried in state court]. The Idaho provision for murder 1 requires proof of premeditation and deliberation. In Idaho felony murder is murder 2. [But murder 1 in Idaho carries a mandatory death penalty.]

CA 9 then analyzed the equal protection claim as follows: In Idaho it is easier to get a murder 1 conviction under federal law than under state law because no proof of the mens rea element of premeditation and deliberation is required. Congress has granted to the federal courts jurisdiction of petrs' crime "solely on the basis of their race." CA 9 then said that petrs' argument "is not against the grant of jurisdiction itself, but rather against the accompanying definition of murder. CA 9 then said that "the sole basis for the disparate treatment of appellants and non-Indians is that of race." (Emphasis in original). CA 9 noted that in Gray v. United States, 394 F.2d 96 (CA 9 1967), cert denied, 393 U.S. 985 (1968), it employed the doctrine of federal wardship in upholding the disparate sentencing in rape cases. It distinguished that case on the ground that there the disparity mitigated the penalty for Indians raping non-Indians "and thus inured to the Indians' benefit." Here CA 9 noted that the Indians were put at a disadvantage because murder 1 was easier to prove under federal law. CA 9 noted that it dismissed the equal protection claim in Henry v. United States, 432 F.2d 114 (CA 9 1970), cert denied, 400 U.S. 1011 (1971) (which held that an Indian erroneously charged under § 1152 for his rape of two non-Indians on an Indian reservation rather than under § 1153 was harmless error), on the ground that the law applied identical definitions



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of rape under either federal or Nevada law. CA 9 then noted its holding in Mull v. United States, 402 F.2d 571 (CA 9 1968), cert denied, 393 U.S. 1107 (1969), "that when a statute does not subject the Indian defendant to any truly invidious racial discrimination (i. e., when he is not put in a genuinely disadvantageous position), it cannot be challenged on equal protection grounds." Here CA 9 found that when Indians are at a serious "procedural or substantive disadvantage" the case is different and one of first impression.

CA 9 found the rationale of United States v. Cleveland, 503 F.2d 1067 (CA 9 1974), applicable. In Cleveland under § 1152 a non-Indian assaulting an Indian is subject to the application of federal law in the federal court while under § 1153 an Indian assaulting an Indian is subject to application of state law in the federal court. There the court noted that Indians were subject to more severe punishment than non-Indians and thus upheld the dismissal of the indictments as unconstitutionally discriminating against Indians.

CA 9 then noted that the question was complicated in this case by the absence of federal jurisdiction against the comparative group, non-Indians killing non-Indians. But CA 9 held that the government cannot accomplish through discriminatory jurisdiction what it cannot accomplish through discriminatory statutory coverage. It held that discriminatory treatment here cannot be justified by the federal wardship of Indians, citing Keeble v. United States, 412 U.S. 205, which held that Indians must be given lesser included offenses charges even though the lesser included offense is not expressly enumerated in the Major Crimes Act. Finally CA 9 held that uniformity of federal law for multistate reservations is not a justification since for some of the crimes the Major Crimes Act incorporate state law definitions.



3. CONTENTIONS: The SG contends that Congress may assert federal jurisdiction with respect to offenses in which an Indian is involved as accused or victim, leaving to states the prosecution of offenses involving only non-Indians without violating equal protection.

The SG notes that while § 1152 on its face would apply to anyone committing a crime on Indian country, court made law limited its application only to crimes involving Indians. (See the cases cited by CA 9 supporting its statement that there is no federal jurisdiction for killing a non-Indian by a non-Indian. The cases justified the distinction on the ground that the state's interest in enforcement of its law as to its citizens overshadowed the federal interest in exercising its trust responsibility over tribal Indians and their property.) The SG then states that if the line between federal and state jurisdiction is proper, then Congress need not define crimes which are within its sphere of jurisdiction in conformity with state law. The Constitution provides for congressional authority over Indian affairs and provides that federal laws and treaties are supreme. The SG contends that the "discrimination" between Indian involved offenses and non-Indian offenses is reasonable because of the constitutionally mandated responsibilities of Congress with respect to matters involving Indians and the interest of the States in regulating relations among non-Indian citizens.

*Not racial*

The SG contends the legislative "discrimination" is not racial. The separate treatment of Indian affairs is a result of the Indians' former sovereignty and the United States' subsequent trust relationship. A person can cease being an Indian legally, although not racially, by severing his ties with the tribe. Canadian, South American and North American Indians of terminated tribes would not be

considered Indians in this context. Additionally, any Indian or non-Indian tried for murder under federal court jurisdiction (under § 1152 or 1153) is subject to the definition of § 1111. It is only if both the accused and victim are non-Indians that the result differs, but that is due to a recognition that state jurisdiction rather than federal governs the crime.

The SG then distinguished Keeble and Cleveland (although not necessarily conceding that Cleveland is good law) on the ground that both involved differential treatment of Indians as opposed to non-Indians, both of whom were subject to federal jurisdiction for the same crime. Here one is subject to federal and the other to state jurisdiction.

The SG contends this decision will lead to uncertainty in applying law to the major offenses. The SG contends that federal courts will have to apply a patchwork law, taking the most lenient provisions from the state and federal laws relating to the same offenses. Here, the SG notes that while Idaho does not include felony murder as a murder 1 offense, Idaho has a mandatory death penalty for murder 1 offenses which this federal crime does not. Therefore, had premeditation been proved, should the death penalty have applied? Presumably not. Additionally it is often difficult to determine what provisions of substantive and procedural law are more "lenient." It might also lead to application of a combination of federal and state law that is more lenient than either one. Finally, Indians have an interest in law enforcement on their reservation. A requirement of "leniency" does not further that interest.

The SG contends that the decision substantially affects law enforcement in some major areas of the country. CA 9 includes many reservations. (Those in



California are unaffected by this decision however because P.L. 280 makes state criminal law applicable within all the reservations of that state.)

Finally the SG contends that if Indians and non-Indians cannot be punished in different jurisdictions applying different laws, then the Court should reconstrue § 1152 and have it apply to anyone who commits a crime in Indian country, regardless of the identity of the accused or victim.

In a footnote the SG notes that CA 9 rev'd the conviction of all three men, although one of them was convicted of murder 2, not murder 1. The SG notes that the problem with the statutory scheme as seen by CA 9 only involved murder 1 and thus the third conviction should not have been reversed. The SG does not find that error important enough to seek cert on however.

4. DISCUSSION: The SG's arguments are persuasive, particularly as resps do not challenge the differential jurisdiction but rather challenge the application of law as a denial of equal protection. It would seem that if they do not challenge the jurisdiction, the jurisdiction must be assumed to be proper (and the SG also contends alternatively that it is or can be made so by reinterpretation). Once jurisdiction is established, federal law need not incorporate or be comparable with state law.

It would also appear that the SG is right that this holding will make application of any law confusing in the prosecution of crimes in many reservations within CA 9.

There is ~~no~~<sup>2</sup> response.

Kovacic

Op in petn

12/10/75

DK

[illegible]



October 15, 1976 Conference  
List 1, Sheet 4

No. 75-661

UNITED STATES

v.

ANTELOPE, et al.

yes

grant both motions  
for leave to proceed  
iff.

Direct Clerk to  
seek agreement  
between counsel  
for resps as to  
which attorney shall  
be appointed for all  
resps. If no agreement,  
grant both motions  
for appt. of counsel,  
but appoint only  
attorney Bowles for  
all resps. Gltz

Motion of Respondents Leonard Francis  
Davison, et al. for leave to Proceed Further  
Herein In Forma Pauperis. Also Motion of  
Respondents Leonard Francis Davison, et al.  
for Appointment of Counsel. Also Motion of  
Respondent Gabriel Francis Antelope for Leave  
to Proceed Further Herein In Forma Pauperis.  
Also Motion of Respondent Gabriel Francis  
Antelope for Appointment of Counsel.

SUMMARY: On February 23, the Court granted cert to CA 9 to review its

judgment reversing resps' convictions on grounds that the murder statute contained  
in the Major Crimes Act is unconstitutional as applied to resps Indians. Resps  
Leonard Francis Davison and William Andrew Davison request leave to proceed  
in forma pauperis and the appointment of John W. Walker, Esq. of Moscow, Idaho,  
to represent them in this Court. Resp Antelope seeks in forma pauperis treatment  
and the appointment of Allen V. Bowles, Esq., of Moscow, Idaho, to represent  
him in this Court.

As to all three resps, respective counsel state that affidavits in support of  
in forma pauperis relief have been forwarded for signing to resps and will

I agree  
w/  
Goltz  
TAB

eventually be filed with the Clerk. Such affidavits appear to be unnecessary as Mr. Walker (for the Davisons) and Mr. Bowles (for Antelope) were appointed by both the DC and CA (see, 18 U.S.C. §3006A(d)(6)).

DISCUSSION: Resps were treated as indigents in both courts below. Moreover, it appears that they remain incarcerated pending review in this Court. In forma pauperis relief appears warranted; although, for some reason and apparently at his own expense, Mr. Bowles filed a printed response in opposition to cert and a printed brief on the merits.

Attached to resps Davisons' motion for appointment of counsel is a letter addressed to the Clerk by Mr. Walker explaining that the SG inadvertently failed to advise counsel for the Davisons of the Government's intention to petition for cert. Accordingly, the only response to the SG's petn was filed by counsel for Antelope.

Counsel for the Davisons asserts that his clients' interests conflict with Antelope's on the question of which resp actually caused the death of the victim. He argues that the Davisons are entitled to be represented by counsel in this Court. It should be noted again that the CA appointed counsel for the Davisons and separate counsel for Antelope.

Inasmuch as Mr. Bowles has already filed a brief on the merits on behalf of Antelope, counsel for the Davisons should probably be allowed the opportunity to respond to the SG's brief on the merits. However, the issues presented for review in this Court appear to be common to all three resps and it does not appear necessary that the Court appoint two attorneys to represent resps.

The Court may wish to direct that the Clerk communicate with both counsel to request their cooperation in deciding upon one of them to be designated as appointed counsel in this Court and to present oral argument. In the alternative,



Mr. Bowles should probably be appointed to represent all the resps in which case, if counsel deems it necessary, only a supplemental brief on the merits need be filed to advance the interests of the Davisons.

There is no response.

10/5/76

Goltz

PJN

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OCT 15 1976

Court .....  
 Argued ....., 19...  
 Submitted ....., 19...

Voted on....., 19...  
 Assigned ....., 19...  
 Announced ....., 19...

No. 75-661

## UNITED STATES

vs.

ANTELOPE

Motions

*Two motions*

- 1. I.F.P. - Grant*  
*2. Counsel - grant separate counsel*

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
.....													
Stevens, J. ....													
Rehnquist, J. ....													
Powell, J. ....													
Blackmun, J. ....													
Marshall, J. ....													
White, J. ....													
Stewart, J. ....													
Brennan, J. ....													
Burger, Ch. J. ....													

*Grant separate counsel*



January 3, 1977

75-661 United States v. Gabriel Francis  
Antelope, et al.

The respondents, Indians, in the course of robbing a non-Indian on an Indian reservation in Idaho, murdered the robbery victim. Because the accused persons (later convicted) were Indians, the victim was a non-Indian, and the crimes occurred in Indian country, and further because the crimes were offenses specifically enumerated in 18 U.S.C. 1153, the crimes came within the jurisdiction of the federal district court.

Respondents were indicted and tried on a felony murder theory, authorized by 18 U.S.C. 1153 and 1111. Under these federal provisions, the government's burden of proof was less strict than under the Idaho homicide statute, which does not contain the felony murder doctrine. Thus, under Idaho law a conviction for first-degree murder would require proof of premeditation and deliberation, elements not required under the federal felony murder statutes.

Opinion of CA 9

CA 9 sustained respondents' position that the federal statutes (§§ 1153 and 1111) as applied constituted invidious racial discrimination violative of the Fifth Amendment. It noted that

if the non-Indian victim had been murdered by a non-Indian, the latter would have been tried under Idaho rather than Federal law; and under Idaho law, with no provision for felony murder, this state would have had the heavier burden of proving premeditation and deliberation. CA 9 concluded that "the sole basis for the dispirit treatment of [respondents] is that of race". And, in taking note of the government's argument that the issue was one of federal jurisdiction rather than an invidious classification, CA 9 said:

"The government should not be permitted to accomplish through discriminatory jurisdiction what it cannot do through discriminatory statutory coverage when both Indian and non-Indian defendants are jurisdictionally covered."

Respondents largely track, with considerable amplification, the rationale of CA 9. The brief on behalf of respondents William and Leonard Davison is considerably better than that filed on behalf of Antelope.

#### Position of the Government

The SG, on behalf of the government, denies with more than usual vigor the existence of racial discrimination. The alleged discrimination arises not from any invidious classification but solely from federal court jurisdiction over some offenses and not over others. The federal statutes are neutral on their face:

"The statute under which respondents were convicted of murder in the first degree, 18 U.S.C. 1111, applies to all persons charged with homicide in the special maritime and territorial jurisdiction of



the United States (which, by operation of Sections 1152 and 1153, includes Indian country), regardless of race, national origin, political status, or any other characteristic. In other words, any person who commits murder in the course of a robbery taking place on a military base or a vessel of the United States on the high seas -- whether Indian or non-Indian -- is equally liable to conviction for murder in the first degree. The same is true in the case of the killing of an Indian in Indian country.

In short, nothing anywhere in the United States Code affirmatively provides for different treatment of Indians and non-Indians charged with murder. The possibility of differential treatment arises only because, out of the entire universe of murderers potentially subject to federal court jurisdiction and to the application of substantive federal law by virtue of the geographical location of their offense, one group -- non-Indians who commit crimes against other non-Indians in Indian country -- is outside the reach of the present federal statutes governing crimes committed in Indian country. (SG's brief, at 13).

Although emphasizing primarily that the statute applies equally to any homicide within federal criminal jurisdiction regardless of race of the defendant, the SG also notes that the regulation of Indian affairs does not derive from race but rather from the special status of the tribes that we have emphasized in so many cases.

The SG makes a rather strong policy argument to the effect that the principle adopted by CA 9 (requiring equality of penalties imposed by the same crime under federal and state law) would lead to confusion if not the impossibility of enforcing criminal law in Indian country. The decision would require a comparison of state and federal law to determine which is more lenient, with federal law to be inapplicable whenever state law is more lenient. Indeed, as the SG notes, it is often impossible

to determine which is more lenient.

The SG asserts that, as "a practical matter", if the analysis of CA 9 is sustained, Congress would be forced either to assert exclusive federal jurisdiction over all offenses occurring in Indian country, thereby increasing federal responsibility beyond the needs of its trusteeship, or to provide that all offenses be governed by state law -- renouncing to this extent the supremacy of federal law in Indian country.

Finally, the SG urges that, in the event we agree with CA 9, we should construe -- to avoid a chaotic result -- 18 U.S.C. 1152 to include all offenses committed in Indian country. It is noted that the first paragraph of § 1152 requires the application of general federal enclave law to all offenses committed in Indian country, regardless of the identity of the accused but this Court in McBratney, 104 U.S. 621, interpreted Congressional intent -- in enacting predecessors of § 1152 -- as not extending federal jurisdiction to crimes between non-Indians. The SG says that if we agree with CA 9 in this case, we should reconsider McBratney and its progeny.

#### Comment

Although I am not entirely at rest, I am impressed by the SG's argument that we are dealing here with facially neutral statutes conferring federal jurisdiction. The discrimination -- if it can be so characterized -- results from the difference in the laws of different jurisdiction, federal and state.



January 17, 1977

BENCH MEMO

To: Mr. Justice Powell

From: Dave Martin

No. 75-661 United States v. Antelope

Offenses committed ~~in Indian country~~ <sup>in Indian country</sup> are covered by a complicated set of jurisdictional and substantive statutes. The standards to be applied (state law or federal law) and the forum where the offender will be ~~a~~ tried (state, federal or tribal court) vary--not according to any neat pattern--depending on the offense and the Indian or non-Indian status of the offender. ~~Here an Indians murdered a non-Indian, and federal law was applied in federal court.~~ It certainly cannot be said that the overall result ~~is generally~~ generally disadvantages either Indians or non-Indians by subjecting them to stiffer penalties or less favorable procedural rules. And no claim could be sustained that the whole complicated structure was adopted with the purpose of harming one group or the other. (Thus under the standard articulated in Justice Stewart's <sup>proposed</sup> concurrence in United Jewish Organizations, there is no equal protection violation--i.e., there has been no purpose to discriminate in the sense of intent to harm or disadvantage a particular group.)

But it happens here that these particular defendants are arguably disadvantaged when compared to a hypothetical non-Indian accomplice in the crime who would have been tried

in state courts under ~~xxxxx~~ Idaho law. For Idaho law, unlike federal law, contains no felony-murder provision. CA9 held that this amounted to invidious racial discrimination, and it therefore struck down resps' convictions. The question is a tricky one, but I agree with the SG that CA9 should be reversed.

The key issue is whether the ~~xxxxxxx~~/federal jurisdictional pattern is constitutionally valid, for it is only in the jurisdictional pattern that there is any "racial" distinction. There is no distinction based on race in the murder substantive/provisions that apply. All murderers within federal ~~xxxx~~ jurisdiction, regardless of race, are subject to the felony murder rule. [This fact distinguishes cases such as United States v. Cleveland, 503 F.2d 1067 (CA9 1974). There Indian defendants were charged with assault with a deadly weapon. ~~xxxxxxx~~ They came within 18 U.S.C. § 1153, which at that time provided for punishment of that crime in accordance with state law--albeit in federal court and as a matter of federal law. A non-Indian committing the same crime would have come within § 1152--i.e., still within federal court and federal law--, but § 1152 provides for application of specific federal law, 18 U.S.C. § 113, to assaults. The possible punishment under § 113 was substantially less. The court found this to be invidious discrimination. -- I think I agree with that result, because there federal substantive law applied to both Indian and non-Indian defendants, but harshness of penalty varied based only on the "race" of the offender. Such a difference is more overt and more offensive than the ~~xxxxxxx~~ difference involved here, which stems only incidentally from the fact of limited federal jurisdiction.



I am not sure I have expressed the difference adequately, but the point is that Cleveland is distinguishable. Moreover, Congress has acted, in Pub. L. No. 94-297, to remedy the discrimination Cleveland condemned. The new statute has no bearing on our case. <sup>(A copy is appended.)</sup>

Although the issue has never been squarely decided, it seems fairly clear that Congress could have exerted federal jurisdiction over all offenses committed in Indian country. However, in a line of cases beginning with U.S. v. McBratney, 104 U.S. 621, this court has construed the relevant acts so that a state retains jurisdiction over such offenses when committed by a non-Indian on a non-Indian victim. The question here is really whether confining jurisdiction in that way is inevitable permissible when the effect is occasionally to disadvantage ~~one~~ one group or the other. *(only occasionally)*

If this is to be treated as a strictly racial line, therefore subject to strictest scrutiny, then CA9 was probably right. I have no doubt but that the Court would strike down a hypothetical statute subjecting ~~all~~ offenses on military bases to federal jurisdiction, except when the offender was ~~white~~ black. Drawing that kind of a black-white line would be highly offensive, but perhaps more to the point, it would be irrational. It simply could not serve any legitimate purpose, nor has it any respectable historical antecedents. It could not stand <sup>the SG</sup> even if ~~it~~/could ~~be~~ show that state law was uniformly more favorable to the black defendants.

But I do not think ~~this~~ <sup>here</sup> the discrimination<sup>^</sup> would--or should--be considered equally pernicious as the black-white discrimination just hypothesized. There are two possible grounds for not finding the line drawn here to be "racial" in the sense that it calls for strictest scrutiny. (1) Not all racial Indians are considered Indians under § 1153. This point is made in Morton v. Mancari, 417 U.S. 535, 553-554. Blood Indians not recognized as part of federally protected tribes would not be included. The SG makes this point, but I do not think it deserves great reliance. For one thing, ~~XXXXXXIndian~~ someone without Indian blood can apparently not be considered an Indian under the statute even if so recognized by a tribe. <sup>U.S. v. Rogers, 45 U.S. 567.</sup> Moreover, it seems quite a difficult thing for someone once recognized as an Indian to disaffiliate. So the class may not be strictly racial--and this is not unimportant--but it still has many of the characteristics that make us uneasy about racial classifications.

*you* (2) More important is simply the history of this nation's relations with the Indians. A number of our cases emphasize that relationship is "unique," "anomalous," or "sui generis." Without this history one might well be called upon to treat <sup>as suspect</sup> this ~~this~~ differential treatment based on Indian-ness, ~~as suspect~~ but with it, a different standard applies. It was stated in Mancari, 417 U.S., at 555: "As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed." This standard



was applied in a jurisdictional setting just last term in Fisher v. District Court, 424 U.S. 382, 390-391, sustaining the differential jurisdiction.

I think the jurisdictional pattern here is rationally tied to Congress' obligation. It makes sense for Congress to take federal jurisdiction when Indians are involved as perpetrators or victims, for then tribal matters are closely implicated. When no Indians are involved, the ~~xxixaxixkx~~ impact on tribal matters is less direct, and Congress could rationally conclude that such matters should be left to state authority. That in some cases this pattern will incidentally result in somewhat harsher rules being applied to Indian offenders does not make it irrational.

D.M.

# Appendix

PUBLIC LAW 94-297 [S. 2129]; May 29, 1976

## INDIAN CRIMES ACT OF 1976

*For Legislative History of Act, see p. 1641*

An Act to provide for the definition and punishment of certain crimes in accordance with the Federal laws in force within the special maritime and territorial jurisdiction of the United States when said crimes are committed by an Indian in order to insure equal treatment for Indian and non-Indian offenders.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Crimes Act of 1976".*

SEC. 2. Section 1153, title 18, United States Code, is amended to read as follows:

### "§ 1153. Offenses committed within Indian country

"Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnaping, rape, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and larceny within the Indian country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

"As used in this section, the offenses of burglary and incest shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

"In addition to the offenses of burglary and incest, any other of the above offenses which are not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense."

SEC. 3. Section 113 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) Assault resulting in serious bodily injury, by fine of not more than \$10,000 or imprisonment for not more than ten years, or both."

Indian Crimes  
Act of 1976.  
18 USC 1153  
note.

Assault, pen-  
alties.



SEC. 4. Section 3242, title 18, United States Code, is amended to read as follows:

“§ 3242. Indians committing certain offenses; acts on reservations

“All Indians committing any offense listed in the first paragraph of and punishable under section 1153 (relating to offenses committed within Indian country) of this title shall be tried in the same courts and in the same manner as are all other persons committing such offense within the exclusive jurisdiction of the United States.”.

Approved May 29, 1976.

#### LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-1038 (Comm. on the Judiciary).  
SENATE REPORT No. 94-620 (Comm. on the Judiciary).  
CONGRESSIONAL RECORD, Vol. 122 (1976):

Feb. 4, considered and passed Senate.  
May 18, considered and passed House, amended.  
May 20, Senate concurred in House amendment.

PUBLIC LA

#### AUTHORIZA ON E

An Act to authorize fi  
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*Be it enacted by  
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4374) is amended to  
“Sec. 205. There :  
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in Public Law 91-19*

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“(c) \$3,000,0

“(d) \$3,000,0

Approved Ma

#### LEGISLATIVE HISTO

HOUSE REPORT No  
SENATE REPORT N  
CONGRESSIONAL R  
Mar. 15, co  
May 17, cor

Argued 1/18/77

Indians murdered a non-Indian in Indian Reservation, & was convicted of felony murder under Fed law.

CA9 held that Fed felony murder statute as applied was discriminatory because if Respe had been tried under Idaho law - which doesn't have a felony murder statute - there would have been a stricter burden of proof (<sup>premeditation</sup> - <sup>malice</sup> <sup>afterthought</sup>).

But Fed statute is a jurisdictional statute neutral on its face. It has a discriminatory ~~offense~~ effect only where state law differs & we have facts like these.

Fed. jur. statute can't conform to laws of every state



Reverse 9-0

The Chief Justice

Reverse

no invidious  
discrimination

~~Stevens, J.~~ Stevens, J.Reverse

Brennan, J.

Reverse

Harvey's op. in  
Morton v Mancari (?)  
controls.

Stewart, J.

Reverse

White, J.

Reverse

Marshall, J.

Reverse

Blackmun, J. Reverse

There is "judicial"  
- not racial  
discrimination.

Indians can't always  
expect to be tried under  
most lenient law.

Powell, J.

Reverse

Rehnquist, J.

Reverse



DM

United States Antelope

LFP has joined

Reviewed

LFP

OK

To: Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

Mr. Chief Justice Burger delivered the  
 opinion of the Court.

(See my letter)

From: The Chief Justice  
 APR 11 1977  
 Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

The question presented by our grant of certiorari is whether, under the circumstances of this case, federal criminal statutes violate the Due Process Clause of the Fifth Amendment by subjecting individuals to federal prosecution by virtue of their status as Indians.

to C. J.

4/12/77

(1)

On the night of February 18, 1974, respondents, enrolled Coeur d'Alene Indians, broke into the home of Emma Johnson, an 81-year old non-Indian, in Worley, Idaho; they robbed and killed Mrs. Johnson. Because the crimes were committed by enrolled Indians within the boundaries of the Coeur d'Alene Indian Reservation, respondents were subject to federal jurisdiction under the Major Crimes Act. 18 U.S.C. § 1153. <sup>1/</sup> They were, accordingly, indicted by a federal grand jury <sup>2/</sup> on charges of burglary, robbery and murder. Respondent William Davison was convicted of second-degree murder only. Respondents Gabriel Francis Antelope and Leonard Davison

I recommend you join but that you make 4 suggestions to the Chief. The first is the most important:

(1) In fn 7 change "the Indian reservation" to "Indian country, as defined in 18 U.S.C. § 1151." The fn is inaccurate as it now stands.

(2) On p. 5, delete "the remnants of." I think Indians might regard the phrase as slightly offensive.

(3) In fn 2, add "See also n. 8, infra." at the end, since there should be some acknowledgement of P.L. 280 if fn 2 is to be completely accurate.

(4) At the end of fn 5, add a "but see" cite to Woodson v. N.C. and Roberts v. La.

- Dave



were found guilty of all three crimes as charged, including first-degree murder under the felony-murder provisions of 18 U.S.C. § 1111,<sup>3/</sup> as made applicable to enrolled Indians by 18 U.S.C. § 1153.

(2)

In the United States Court of Appeals for the Ninth Circuit, respondents contended that their felony murder convictions were unlawful as products of invidious racial discrimination. They argued that a non-Indian charged with precisely the same offense, namely the murder of another non-Indian within Indian country,<sup>4/</sup> would have been subject to prosecution only under Idaho law, which in contrast to the federal murder statute, 18 U.S.C. § 1111, does not contain a felony murder provision.<sup>5/</sup> To establish the crime of first-degree murder in state court, therefore, Idaho would have had to prove premeditation and deliberation. No such elements were required under the felony-murder component of 18 U.S.C. § 1111.

Because of the difference between Idaho and federal law, the Court of Appeals concluded that respondents were "put at a serious racially-based disadvantage," 523 F.2d 400,



406 (CA 9 1975), since the federal government was not required to establish premeditation and deliberation in respondents' federal prosecution. This disparity, so the Court of Appeals concluded, violated equal protection requirements implicit in the Due Process Clause of the Fifth Amendment. We granted the United States' petition for certiorari, 424 U.S. 907 (1976), and we reverse.

(3)

The decisions of this Court leave no doubt that federal legislation with respect to Indian tribes, although relating to Indians as such, is not based upon impermissible racial classifications. Quite the contrary, classifications expressly singling out Indian tribes as subjects of legislation are expressly provided for in the Constitution <sup>6/</sup> and supported by the ensuing history of the Federal Government's relations with Indians.

"...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. Mazurie, 419 U.S. 544, 557 (1975).

Legislation with respect to these "unique aggregations" has repeatedly been sustained by

this Court against claims of unlawful racial discrimination. In upholding a limited employment preference for Indians in the Bureau of Indian Affairs, we said in Morton v. Mancari, 417 U.S. 535 (1974):

"Literally every piece of legislation dealing with Indian tribes and reservations...single out for special treatment a constituency of tribal Indians living on or near reservations. If these laws...were deemed invidious racial discrimination, an entire Title of the United States Code (25 U.S.C.) would be effectively erased...." Id., at 552.

In light of that result, the Court unanimously concluded in Mancari:

"The preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities...." Id., at 554.

Last Term, in Fisher v. District Court, 424 U.S. 382 (1976), we held that members of the Northern Cheyenne Tribe could be denied access to Montana state courts in connection with an adoption proceeding arising on their Reservation. Unlike Mancari, the Indian plaintiffs in Fisher were being denied a benefit or privilege available to non-Indians; nevertheless, a unanimous Court dismissed the claim of racial discrimination:

"Finally, we reject the argument that denying [the Indian plaintiffs] access to the Montana courts constitutes



impermissible racial discrimination. The exclusive jurisdiction of the Tribal Court does not derive from the race of the plaintiff but rather from the quasi-sovereign status of the Northern Cheyenne Tribe under federal law." 424 U.S., at 390.

Both Mancari and Fisher involved preferences or disabilities directly promoting Indian interests in self-government, whereas in the present case we are dealing not with matters of tribal self-regulation, but with federal regulation of criminal conduct within Indian country implicating Indian interests. But the principles reaffirmed in Mancari and Fisher point more broadly to the conclusion that federal regulation of Indian affairs is not based upon impermissible classifications. Rather, such regulation is rooted in the unique status of Indians as "a separate people" with their own political institutions. Federal regulation of Indians, therefore, is governance of the remnants of once-sovereign political communities; it is not to be viewed as legislation of a "'racial' group consisting of 'Indians....'" Morton v. Mancari, 417 U.S., at 553 n.24. Indeed, respondents were not subjected to federal criminal jurisdiction because they are of the Indian race but because they were enrolled members of the

Coeur d'Alene Tribe.<sup>7/</sup> We therefore conclude that federal criminal statutes enforced here are based neither in whole nor in part upon impermissible racial classifications.

(4)  
The challenged statutes do not otherwise violate equal protection.<sup>8/</sup> We have previously observed that Indians indicted under the Major Crimes Act enjoy the same procedural benefits and privileges as all other persons within federal jurisdiction. Keeble v. United States, 412 U.S. 205, 212 (1973). See U.S.C. § 3242. Respondents were, therefore, subjected to the same body of law as any other individual, Indian or non-Indian, charged with first-degree murder committed in a federal enclave.<sup>9/</sup> They do not, and could not, contend otherwise.

There remains, then, only the disparity between federal and Idaho law as the basis for respondents' equal protection claim.<sup>10/</sup> Since Congress has undoubted constitutional power to prescribe a criminal code applicable in Indian country, United States v. Kagama, 118 U.S. 375 (1886), it is of no consequence that the federal scheme differs from a state criminal code otherwise applicable within the boundaries of the State of Idaho. Under our



federal system, the National Government does not violate equal protection when its own body of law is even-handed,<sup>11/</sup> regardless of the laws of States with respect to the same subject matter.<sup>12/</sup>

The federal government treated respondents in the same manner as all other persons within federal jurisdiction, pursuant to a regulatory scheme that did not erect impermissible racial classifications; hence, no violation of the Due Process Clause infected respondents' convictions.<sup>13/</sup>

The judgment of the Court of Appeals is reversed and the cause remanded for further proceedings consistent with this opinion.

Reversed and remanded.

1/

18 U.S.C. 1153 provides in pertinent part:

"Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, rape, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape, incest, assault with intent to kill, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and larceny within the Indian country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States."

The background leading up to enactment of the Major Crimes Act is discussed in Keeble v. United States, 412 U.S. 205, 209-212 (1973). As noted in that case, the Government has characterized the Major Crime Act as "a carefully limited intrusion of federal power into the otherwise exclusive jurisdiction of the Indian tribes to punish Indians for crimes committed on Indian land." Id., at 209.

2/

Except for the offenses enumerated in the Major Crimes Act, all crimes committed by enrolled Indians against other Indians within Indian country are subject to the jurisdiction of tribal courts.

~~P. 280-2~~ 18 U.S.C. § 1152. Not all crimes committed within Indian country are subject to federal or tribal jurisdiction, however. Under United States v. McBratney, 104 U.S. 621 (1881), a non-Indian charged with committing crimes against other non-Indians in Indian country is subject to prosecution under state law. *See also* n.8 *infra*.



3/ 18 U.S.C. §1111 is the federal murder statute. It provides in pertinent part:

"(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, rape, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

Any other murder is murder in the second degree.

It should be noted that respondent William Davison was convicted only of second-degree murder, not felony murder, under 18 U.S.C. §1111.

4/ See n.2, supra. Federal law ostensibly extends federal jurisdiction to all crimes occurring in Indian country, except offenses subject to tribal jurisdiction. 18 U.S.C. §1152. However, under United States v. McBratney, supra, and cases that followed, this Court construed §1152 and its predecessors as not applying to crimes by non-Indians against other non-Indians. Thus, respondents correctly argued that, had the perpetrators of the crimes been non-Indians the courts of Idaho would have had jurisdiction over these charges.

5/ Idaho statutes contain the following definition of first-degree murder:

"All murder which is perpetrated by means of poison, or lying in wait, torture, or by any other kind of wilful, deliberate, and premeditated killing is murder of the first degree. Any murder of any peace officer of this state or of any municipal corporation or political subdivision thereof, when the officer is acting in line of duty, .. shall be murder in the first degree. \*\*\* All other kinds of murder are of the second degree." Idaho Code §18-4003 (1975 Cum. Supp.).



5/-cont.

Idaho law provides for a mandatory death sentence for first-degree murder. Idaho Code §18-4004. *But see Woodson v. N.C.;*

*✓ Robert v. La.*

6/

Article I, §8, of the Constitution gives Congress power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes."

7/

As was true in Mancari, federal jurisdiction under the Major Crimes Act does not apply to "many individuals who are racially to be classified as 'Indians.'" 417 U.S., at 553 n.24. Thus, the prosecution in this case offered proof that respondents were enrolled members of the Coeur d'Alene Tribe and thus not emancipated from tribal relations. Moreover, members of Tribes whose official status has been terminated by congressional enactment are no longer subject, by virtue of their status, to federal criminal jurisdiction under the Major Crimes Act. United States v. Heath, 509 F.2d 16, 19 (CA 9 1974) ("While anthropologically a Klamath Indian even after the Termination Act obviously remains an Indian, his unique status vis-a-vis the Federal Government no longer exists.") In addition, as enrolled tribal members, respondents were subjected to federal jurisdiction only because their crimes were committed within ~~the confines of the Indian Reservation~~ <sup>country, as defined in</sup> 18 U.S.C. §1157. Crimes occurring elsewhere would not be subject to exclusive federal jurisdiction. Puyallup Tribe v. Department of Game, 391 U.S. 392, 397 n.11 (1968).



7/-cont.

It should be noted, however, that enrollment in an official Tribe has not been held to be an absolute requirement for federal jurisdiction, at least where the Indian defendant lived on the reservation and "maintained tribal relations with the Indians thereon." Ex parte Pero, 99 F.2d 28, 30 (CA 7 1938). See also United States v. Ives, 504 F.2d 935, 953 (CA 9 1974) (dicta). Since respondents are enrolled tribal members, we are not called on to decide whether non-enrolled Indians are subject to 18 U.S.C. §1153, and we therefore intimate no views on the matter.

8/

Other than their argument that the federal statutes create an invidious racial classification, respondents do not seriously contend that application of federal law to Indian tribes is so irrational as to deny equal protection. (See n.6, supra.) They do point, however, to Congress' relinquishment of criminal jurisdiction over Indians in six States pursuant to P.L. 280, 18 U.S.C. §1162. But P.L. 280 is simply one manifestation of Congress' continuing concern with the welfare of Indian tribes under federal guardianship. Indeed, in adopting P.L. 280, Congress singled out certain Reservations to remain subject to federal criminal jurisdiction. Congress' selective approach in P.L. 280 reinforces, rather than undermines, the conclusion that legislation directed <sup>toward</sup> ~~forward~~ Indian tribes is a necessary and appropriate consequence of federal guardianship under the Constitution.

I don't understand the cross-reference.

9/ Federal jurisdiction would extend to crimes, regardless of the race of the perpetrator or victim, committed on federal enclaves, such as military installations, or on vessels of the United States on the high seas.

10/ Respondents base their equal-protection claim on the assumption that they have been disadvantaged by being prosecuted under federal law. In their view, their murder convictions were made more likely by the fact that federal prosecutors were not required to prove premeditation. Respondents essentially ignore, however, the fact that Idaho law provided the death penalty for first-degree murder, whereas federal law provides for life imprisonment as the maximum sentence. Moreover, they do not seriously question that the evidence adduced at their federal trial might well have supported a finding of premeditation and deliberation, since respondents were found to have beaten and kicked Mrs. Johnson to death during the course of a planned robbery. Under these circumstances, it is largely a matter of speculation whether, and to what extent, respondents have been "disadvantaged" at all by being prosecuted under federal law.

11/ It should be noted, however, that this Court has consistently upheld federal regulations aimed solely at tribal Indians, as opposed to all persons subject to federal jurisdiction. See, e.g., United States v. Holliday, 3 Wall. 407, 417-418 (1866);



11/-cont.

Perrin v. United States, 232 U.S. 478, 482 (1914). See also Rosebud Sioux Tribe v. Kneip, Slip opinion, at 30 n.47 (1977). Indeed, the Constitution itself provides support for legislation directed specifically at the Indian tribes. See n.6 supra. As the Court noted in Morton v. Mancari, supra, the Constitution therefore "singles Indians out as a proper subject for separate legislation." 417 U.S., at 552.

In this regard, we are not concerned with instances in which Indians tried in federal court are subjected to differing penalties and burdens of proof from those <sup>applicable</sup> ~~application~~ to non-Indians charged with the same offense. Compare United States v. Big Crow, 523 F.2d 955 (CA 8 1976), cert. denied, 424 U.S. 920 (1976), and United States v. Cleveland, 503 F.2d 1067 (CA 9 1974), with United States v. Analla, 490 F.2d 1204 (CA 10), vacated, 419 U.S. 813 (1974). See P.L. 94-297 (1976) (which provides for uniform penalties for both Indians and non-Indians charged with assault resulting in serious bodily injury). That issue is not before us, and we intimate no views on it.

*The 1st ¶ of this footnote certainly intimates views — but with this disclaimer the 1st ¶ is harmless.*

12/

Indeed, had respondents been prosecuted under state law, they may well have argued, under this Court's holding in Seymour v. Superintendent, 368 U.S. 351 (1962), that the state conviction was void for want of jurisdiction. In Seymour, an enrolled member of the Colville Indian Tribe was convicted in state court of attempted burglary within Indian country. In reversing the state conviction, this Court held:

12/-cont.

"Since the burglary with which petitioner was charged occurred on property . . . within the . . . [Indian] reservation, the courts of Washington had no jurisdiction to try him for that offense." Id., at 359.

If state courts would have had no jurisdiction over respondents' case, then state law does not constitute a meaningful point of reference for establishing a claim of equal protection.

13/

If we accepted respondents' contentions, persons charged with crimes on federal military bases or other federal enclaves could demand that their federal prosecutions be governed by state law to the extent that state law was more "lenient" than federal law. The Constitution does not authorize this kind of gamesmanship. Indeed, any such rule, even assuming its workability, is flatly inconsistent with the Supremacy Clause of the Constitution, Art. VI, cl. 2. Moreover, many of this Court's decisions invalidate attempts by the States to regulate Indian interests within the Reservations. As the Court stated in McClanahan v. Arizona State Tax Commission 411 U.S. 164, 170-171, "'State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply.'" See also, Rosebud Sioux Tribe v. Kneip, Slip opinion, at 19, (~~decided April 4,~~ (1977)).



April 12, 1977

No. 75-661 United States v. Antelope

Dear Chief:

Please join me.

I do have two or three minor suggestions that I have noted on the enclosed copy of your opinion.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

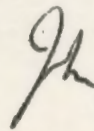
April 12, 1977

Re: 75-661 - United States v. Antelope

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference



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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 13, 1977

Re: No. 75-661, United States v. Antelope

Dear Chief,

I am glad to join your opinion for the Court  
in this case.

Sincerely yours,

P.S.  
/

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 13, 1977

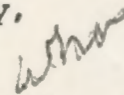
Re: No. 75-661 - United States v. Antelope

Dear Chief:

A propos our discussion of your circulating opinion in the above entitled case this afternoon, I offer the following language as a substitute for present footnote 9. I think in light of difficult and undecided questions as to the extent of the jurisdiction of Indian tribal courts and the like, it is important to cite cases such as those included in the proposed substitute footnote, not to make anything out of them in this case, but simply to show that they remain good law and that the language which you necessarily use in your opinion about Indian "sovereignty" is not to be taken with complete literalness.

Since Lewis indicated in his join letter to you that he was also suggesting minor changes, I am taking the liberty of sending a copy of this letter to him.

Sincerely,



The Chief Justice

Copy to: Mr. Justice Powell



4/13/77

Proposed addition to Antelope, footnote 9

  / Congress has provided for federal jurisdiction over the crime of murder on the reservation, much as on other federal enclaves, 18 U.S.C. § 1111, 1153. But as our opinions have recognized that Indian reservations differ in certain respects from other federal enclaves, the statute has been construed as not encompassing crimes on the reservation by non-Indians against non-Indians. United States v. McBratney, 104 U.S. 621 (1881); see Surplus Trading Co. v. Cook, 281 U.S. 647, 651 (1930); Williams v. Lee, 358 U.S. 217, 219-220 (1959); McClanahan v. Arizona State Tax Comm., 411 U.S. 164, 171 (1973). The statute does not single out Indian defendants; non-Indian defendants are also covered if the victim was a member of the tribe.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

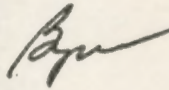
April 14, 1977

Re: No. 75-661 - United States v. Antelope

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to Conference



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

CHAMBERS OF  
THE CHIEF JUSTICE

April 14, 1977

MEMORANDUM TO THE CONFERENCE:

Re: 75-661 United States v. Antelope

Enclosed is the first print draft of the opinion. Further reflection suggests to me that I should omit the tangential references to the death penalty potential. Notes 5, 10, and 13 have been modified by excisions, and a small addition is added to Note 9 for emphasis. There is no substantive change from the typed copy circulated on April 11.

Regards,

WRB

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

✓  
April 14, 1977

Re: No. 75-661 - United States v. Antelope

Dear Chief:

Please join me.

Sincerely,

*H.A.B.*

The Chief Justice

cc: The Conference



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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 14, 1977

RE: No. 76-661 United States v. Antelope

Dear Chief:

I agree.

Sincerely,

*Bul*

The Chief Justice

cc: The Conference

April 14, 1977

No. 75-661 United States v. Antelope

Dear Chief:

I would be happy to have you add the footnote suggested in Bill Rehnquist's letter of April 13.

Sincerely,

The Chief Justice

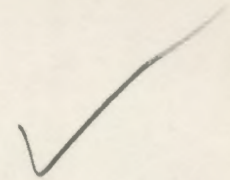
lfp/ss

cc: Mr. Justice Rehnquist



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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST



April 15, 1977

Re: No. 75-661 - United States v. Antelope

Dear Chief:

Please join me.

Sincerely,

A handwritten signature, appearing to be the initials 'wm', is written below the word 'Sincerely,'.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 15, 1977 ✓

Re: No: 75-661, United States v. Antelope

Dear Chief:

Please join me.

Sincerely,

*T.M.*  
T.M.

The Chief Justice

cc: The Conference



[illegible]