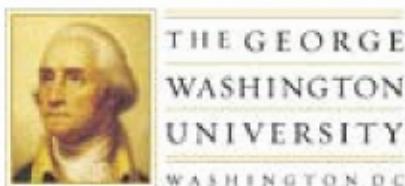


# The Burger Court Opinion Writing Database

*Crist v. Bretz*

437 U.S. 28 (1978)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

April 15, 1977

Re: 76-1200 - Crist v. Cline (p. 1 April 15 Conf. List)

MEMORANDUM TO THE CONFERENCE:

This case has been referred to the Legal Officers. I am requesting that the Clerk's Office relist it for the Conference following the circulation of a memo by the Legal Officers.

Regards,

*WRB*

cc: Mr. Rodak, Clerk

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 14, 1977

76-1200 - Crist v. Cline

Dear Chief,

For the reasons expressed in Bill Rehnquist's letter to you of this date, I too would vote to refer this case to the legal officers and to defer further consideration of it until we receive their report.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

April 14, 1977

No. 76-1200 Crist v. Cline

Dear Chief:

I agree with Bill Rehnquist's suggestion to refer this case to the Legal Officers.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 14, 1977

Re: No. 76-1200 - Crist v. Cline

Dear Chief:

Please consider this a "dissent", within the meaning of that term as it is used in your Memorandum to the Conference of April 13th, to the recommendation that the above entitled case be carried as "dismiss and deny". The pool memorandum in a footnote on the first page indicates, at least to me, that the question of whether or not this is a proper appeal under § 1254(2) is a very close one. I would hope the case could be referred to the legal officers on the jurisdictional point. Absent a jurisdictional defect, my vote in any event will be to grant plenary consideration whether by way of certiorari or noting probable jurisdiction.

The Montana statute in question, upon which the determination of whether the case is or is not properly appealable, is § 95-1711(3)(d), J.S. 57, which is a small subsection of a Montana Code section occupying four and one-half pages in the jurisdictional statement. The heading of the section itself is "Effect of Former Prosecution and Multiple Prosecutions". J.S. 55. This particular subsection reads:

"[Re-prosecution is barred if] the former prosecution was improperly terminated.  
. . . . [T]here is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the first witness is sworn but before verdict." (Emphasis supplied.)