

The Burger Court Opinion Writing Database

United States v. Abel

469 U.S. 45 (1984)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

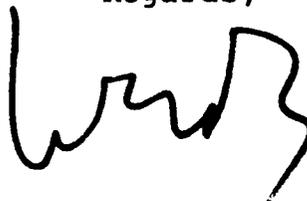
December 5, 1984

RE: 83-935 - United States v. Abel

Dear Bill:

I join.

Regards,



Justice Rehnquist

copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 3, 1984

No. 83-935

United States v. Abel

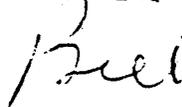
Dear Bill:

I'll be happy to join if you could address two small matters.

First, as you know, I dissented from your opinion in Jones v. North Carolina, 433 U.S. 119 (1977), cited in footnote 2 on page 7 of your draft. I'd be more comfortable joining your opinion if Jones were not cited, or at least if you would omit the words "if any" from the footnote.

Also, at the bottom of page 7 you state that an "inference of subscription to the tenets of [an] organization from membership alone . . . might not be sufficient to convict beyond a reasonable doubt in a criminal prosecution. . . ." Should not you say that such an inference would not support a criminal conviction?

Sincerely,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 3, 1984

No. 83-935

United States v. Abel

Dear Bill:

I agree.

Sincerely,

Bill

Justice Rehnquist

Copies to the Conference

ST - 34

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 5, 1984

83-935 -United States v. Abel

Dear Bill,

I agree.

Sincerely yours,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 4, 1984

Re: No. 83-935-U.S. v. Abel

Dear Bill:

Please join me.

Sincerely,



T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 6, 1984

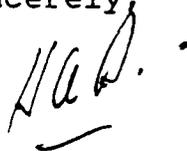
Re: No. 83-935, United States v. Abel

Dear Bill:

Please join me.

I have one trivial question. Abel raised other issues on his appeal to the Ninth Circuit. See the first paragraph of the majority opinion below. Should we, therefore, reverse and remand rather than merely reverse, so that the Court of Appeals will consider the other issues when the case returns to them? It may work out this way anyway with a straight reversal, but I am never sure.

Sincerely,



Justice Rehnquist

cc: The Conference



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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 30, 1984

83-935 United States v. Abel

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

31 11 30 1984

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: NOV 29 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-935

UNITED STATES, PETITIONER *v.*
JOHN CLYDE ABEL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[November —, 1984]

JUSTICE REHNQUIST delivered the opinion of the Court.

A divided panel of the Ninth Circuit Court of Appeals reversed respondent's conviction for bank robbery.¹ The Court of Appeals held that the District Court improperly admitted testimony which impeached one of respondent's witnesses. We hold that the District Court did not err, and we reverse.

Respondent John Abel and two cohorts were indicted for robbing a savings and loan in Bellflower, California, in violation of 18 U. S. C. §2113(a) and (d). The cohorts elected to plead guilty, but respondent went to trial. One of the cohorts, Kurt Ehle, agreed to testify against respondent and identify him as a participant in the robbery.

Respondent informed the District Court at a pre-trial conference that he would seek to counter Ehle's testimony with that of Robert Mills. Mills was not a participant in the robbery but was friendly with respondent and with Ehle, and had spent time with both in prison. Mills planned to testify that after the robbery Ehle had admitted to Mills that Ehle intended to implicate respondent falsely, in order to receive favorable treatment from the government. The prosecutor in turn disclosed that he intended to discredit Mills' testimony by calling Ehle back to the stand and eliciting from

¹ *United States v. Abel*, 707 F. 2d 1013 (CA9 1983).

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 3, 1984

Re: No. 83-935 United States v. Abel

Dear Bill,

To address your concern I will make the following changes in my circulating draft of this opinion:

1) Footnote 2 on page 7: I will omit the words "if any" from the footnote.

2) At the bottom of page 7: I will delete "might not be sufficient" and insert "would not be sufficient."

Sincerely,



Justice Brennan

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

*Recard of
file -
WGB has
seen*

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: _____

DEC 4 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-935

UNITED STATES, PETITIONER *v.*
JOHN CLYDE ABEL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[December —, 1984]

JUSTICE REHNQUIST delivered the opinion of the Court.

A divided panel of the Ninth Circuit Court of Appeals reversed respondent's conviction for bank robbery.¹ The Court of Appeals held that the District Court improperly admitted testimony which impeached one of respondent's witnesses. We hold that the District Court did not err, and we reverse.

Respondent John Abel and two cohorts were indicted for robbing a savings and loan in Bellflower, California, in violation of 18 U. S. C. §2113(a) and (d). The cohorts elected to plead guilty, but respondent went to trial. One of the cohorts, Kurt Ehle, agreed to testify against respondent and identify him as a participant in the robbery.

Respondent informed the District Court at a pre-trial conference that he would seek to counter Ehle's testimony with that of Robert Mills. Mills was not a participant in the robbery but was friendly with respondent and with Ehle, and had spent time with both in prison. Mills planned to testify that after the robbery Ehle had admitted to Mills that Ehle intended to implicate respondent falsely, in order to receive favorable treatment from the government. The prosecutor in turn disclosed that he intended to discredit Mills' testimony by calling Ehle back to the stand and eliciting from

¹ *United States v. Abel*, 707 F. 2d 1013 (CA9 1983).

Stylebook only
throughout, marked.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

Circulated: _____

Recirculated: 12/6/84

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-935

UNITED STATES, PETITIONER *v.*
JOHN CLYDE ABEL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[December —, 1984]

JUSTICE REHNQUIST delivered the opinion of the Court.

A divided panel of the Court of Appeals for the Ninth Circuit reversed respondent's conviction for bank robbery.¹ The Court of Appeals held that the District Court improperly admitted testimony which impeached one of respondent's witnesses. We hold that the District Court did not err, and we reverse.

Respondent John Abel and two cohorts were indicted for robbing a savings and loan in Bellflower, Ca., in violation of 18 U. S. C. §§2113(a) and (d). The cohorts elected to plead guilty, but respondent went to trial. One of the cohorts, Kurt Ehle, agreed to testify against respondent and identify him as a participant in the robbery.

Respondent informed the District Court at a pretrial conference that he would seek to counter Ehle's testimony with that of Robert Mills. Mills was not a participant in the robbery but was friendly with respondent and with Ehle, and had spent time with both in prison. Mills planned to testify that after the robbery Ehle had admitted to Mills that Ehle intended to implicate respondent falsely, in order to receive favorable treatment from the government. The prosecutor in turn disclosed that he intended to discredit Mills' testimony by calling Ehle back to the stand and eliciting from

¹ *United States v. Abel*, 707 F. 2d 1013 (1983).

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 6, 1984

Re: No. 83-935 United States v. Abel

Dear Harry,

As I told you on the telephone earlier today, when preparing an opinion for the Court in a case coming from a federal court I have for the last several years concluded only with the word "reversed," rather than "reversed and remanded, etc." Al Stevas tells me that even where the opinion says only "reverse," the mandate will all but invariably say "reversed and remanded, etc." Thus while I agree with you that there are other issues undoubtedly open to consideration on the remand from our opinion, I think the wording of the mandate will be sufficient to make it clear that this is the case.

Sincerely,



Justice Blackmun

cc: The Conference

D

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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

November 29, 1984

Re: 83-935 - United States v. Abel

Dear Bill:

Please join me.

Respectfully,



Justice Rehnquist

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 29, 1984

No. 83-935 United States v. Abel

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference

57 11 11 11