

SOUTER, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 00–454

ATKINSON TRADING COMPANY, INC., PETITIONER
v. JOE SHIRLEY, JR., ET AL.

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

[May 29, 2001]

JUSTICE SOUTER, with whom JUSTICES KENNEDY and THOMAS join, concurring.

If we are to see coherence in the various manifestations of the general law of tribal jurisdiction over non-Indians, the source of doctrine must be *Montana v. United States*, 450 U. S. 544 (1981), and it is in light of that case that I join the Court’s opinion. Under *Montana*, the status of territory within a reservation’s boundaries as tribal or fee land may have much to do (as it does here) with the likelihood (or not) that facts will exist that are relevant under the exceptions to *Montana*’s “general proposition” that “the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.” *Id.*, at 565. That general proposition is, however, the first principle, regardless of whether the land at issue is fee land, or land owned by or held in trust for an Indian tribe.