

COPY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER

STATE OF ALASKA,
Plaintiff,
vs.
GARY HARRISON, ET AL,
Defendants.

Case No. 3PA-91-0678 CR

TRANSCRIPT OF RULING; M.O. NOTICING DISMISSAL OF
ROAD OBSTRUCTION AND LICENSE CASES (EXCERPT)

BEFORE THE HONORABLE PETER ASHMAN
District Court Judge

Palmer, Alaska
July 9, 1994
8:35 o'clock a.m.

APPEARANCES:

FOR THE PLAINTIFF:

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FOR THE DEFENDANTS:

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[Telephonic]

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1 TAPE 3PA-13691

2 LOG 1000

3 P R O C E E D I N G S

4 (Defendants present)

5 THE COURT: Okay, actually I'll note for the record Gary
6 Harrison is present, Dave Carmen is present, David Harrison
7 is present, Kirsten Bey is present, appearing for Mr. Herz,
8 Dave Berry is present, appearing for Mr. Estelle. Is Mr.
9 Ziegler here?

10 UNIDENTIFIED SPEAKER: Yes.

11 THE COURT: Mr. Ziegler is here. I believe that's all
12 the Defendant's. Is Mr. Harry Lord here?

13 UNIDENTIFIED SPEAKER: No, he's not.

14 THE COURT: Mr. Lord is represented by the Public
15 Defenders on a consent. Can you reflect any recent contact
16 with Mr. Lord, Ms. Bey?

17 MS. BEY: Your Honor, I don't know. We just -- I just
18 picked up the Mr. Harrison file.

19 THE COURT: Well, given that Mr. Estelle and Mr. Herz
20 are not here, this may be complicated. Because I have some
21 complicated rulings to make and I'm going to make them
22 orally, because I don't want to delay the decision any
23 longer.

24 I've explained to the parties that I work without a law
25 clerk or a secretary, and for me to put this all in writing

1 would take me another several weeks to be perfectly frank,
2 and I don't want to do that. So, I'm going to announce it
3 orally now, and my comments are going to be available for
4 transcription.

5 In fact, I may order a transcript of the comments, made
6 up by the court transcripts division, so that I can go back
7 and correct anything that may be mistaken while it's all
8 still pretty fresh.

9 There's one item of housekeeping to do, and it's as
10 follows. As I was getting ready to -- as I was working this
11 decision over the last few weeks, I discovered that I was
12 missing some things that I needed. I do not have access to
13 the Anchorage law library on a regular basis and there were
14 citations to a variety of things which I didn't have in hand.
15 Particularly, Cohen's Treatise on Federal Indian Law. And so
16 I asked a friend of mine to lend me a copy. And I wanted the
17 parties to be on notice that I have a friend named Lloyd
18 Miller who is a practitioner. He is pretty heavily involved
19 in indian law practice. He is not involved in this case and
20 to my knowledge has no -- doesn't represent anybody who has a
21 stake in the outcome of this case. He and I have been
22 friends since we were in law school together at the
23 University of Virginia almost 20 years ago.

24 And so I just asked him if he'd lend me a copy of
25 Cohen's Federal Indian Practice. He did that. He also

1 loaned me Clinton, Newton and Price's textbook, American
2 Indian Law Cases and Materials. He loaned me the little
3 nutshell book, Kanby's [ph] American Indian Law. And I
4 discovered this week as I was preparing my final decision,
5 that I really needed a copy of Kluti Kaah. Judge Holland's
6 decision on the Kluti Kaah taps pipeline taxation case, which
7 is actually fairly central and critical to the decision that
8 I have to make here, and I didn't have a copy of it. So, I
9 asked Mr. Miller to give me a copy. As it happens, Mr.
10 Miller has also moved into a room in my house within the last
11 two weeks.

12 I disclose all that because I want to avoid the
13 appearance of any impropriety. I have not -- there is
14 actually a canon in the Code of Judicial Conduct, canon
15 number three. It says that a judge shouldn't do any ex-parte
16 communication about a case, but that a judge may obtain the
17 advice of a disinterested expert on the law applicable to a
18 proceeding before him if he gives notice to the parties of
19 the person consulted and the substance of the advice and
20 affords the parties reasonable opportunity to respond. And
21 that kind of triggered my thinking on this. I did not
22 consult Mr. Miller for an opinion. I did not discuss the
23 case in substance with him. He knows, of course, about the
24 case because people who practice indian law know about all
25 the cases that are going on. And when I asked him for these

1 textbooks and Kluti Kaah, it was pretty obvious what I was
2 asking for. But, I didn't ask him for an opinion, I didn't
3 solicit his advice. So, I don't really believe that this
4 canon comes into play. But, because he happens to be staying
5 at my house for a period of time and because he provided
6 these materials to me, to avoid any appearance of
7 impropriety, I wanted to put the parties on notice of that
8 and ask if anybody wishes an opportunity either to object, to
9 ask me to recuse myself, to respond in any fashion. That's
10 why it's complicated that Mr. Estelle and Mr. Herz are not
11 here, because that's a matter which may require consultation
12 with, for example, the Attorney General's office or with your
13 clients.

14 I think what I would like to do out of an abundance of
15 caution is give you all a few minutes to talk. Ms. Bey, for
16 you to talk to your clients and Mr. Berry, for you to consult
17 with Mr. Estelle or with an attorney general.

18 I will say that I don't believe that my contact with Mr.
19 Miller has affected my ability to be fair and impartial in
20 this case. I didn't solicit from him any advice or opinion.

21 If anybody wants to say anything now you can say it.
22 I'll give you five minutes or ten minutes, or if you need
23 more time than that, you should tell me that. I am prepared
24 to decide the case, to announce the decision in the case now,
25 but I will hold that decision until you've had a chance to

1 consider this point that's come up.

2 Mr. Berry?

3 MR. BERRY: Yeah, if I could just have I think five
4 minutes. I think Mr. Estelle is in another courtroom in this
5 building. I'll just check.

6 THE COURT: Ms. Bey, you want to consult with your
7 clients?

8 MS. BEY: And I think five minutes will be sufficient.

9 THE COURT: Mr. Robbins, I'll ask Mr. Berry to leave the
10 courtroom to make his call, and then you'll be up on the
11 speaker with Ms. Bey and the parties. All right?

12 MR. ROBBINS: Yes, Judge, that's fine. Thank you.

13 THE COURT: Take five minutes. Off record.

14 THE CLERK: Please rise. Off record.

15 (Off record)

16 (On record)

17 [John Baker, Assistant A.G., appearing telephonically]

18 [Mr. Estelle joined proceeding]

19 THE CLERK: We resume on record.

20 THE COURT: Mr. Robbins, can you hear me?

21 MR. ROBBINS: Yes, Judge Ashman, I have a request to
22 make.

23 THE COURT: Okay, just a second. Mr. Baker, can you
24 hear me?

25 MR. BAKER: Yes, Your Honor.

1 THE COURT: All right. Mr. Berry is here, Mr. Estelle
2 is here, Ms. Bey is here and all the Defendants except Mr.
3 Lord is present. Mr. Lord is appearing on consent by the
4 Public Defender.

5 Mr. Robbins, what's your request?

6 MR. ROBBINS: I was unaware that the hearing was going
7 to be scheduled for this morning on your decision. But, it
8 wouldn't have mattered too much anyway, because there's
9 another case that I'm involved in where there is an FED
10 hearing at 9:00 o'clock this morning.

11 THE COURT: Yeah?

12 MR. ROBBINS: And if my clients would consent, I'd like
13 to run over there. It shouldn't take more than 15 minutes.
14 The Court can proceed and I'll call back in as soon as I
15 return to the office. And I have no one who can stand in for
16 me at either this one or the other one. And my secretary
17 just told me that they would not -- well, actually we were
18 told that it was going to be continued, but I just got a call
19 from the court here saying that it's going forward. And I
20 just got that message about two minutes ago.

21 THE COURT: Well, that's up to your clients. My
22 preference is that you remain because it's -- this is sort of
23 intricate, and we've put a lot of time into this.

24 MR. ROBBINS: I agree.

25 THE COURT: And my preference would be to have one of my

1 clerks call calendaring at District Court in Anchorage and
2 say you're going to be a few minutes late because Judge
3 Ashman has you tied up.

4 MR. ROBBINS: That would be fantastic. Let me give you
5 the judge's name. Hang on just a second, please.

6 Judge, it's before Judge Souter.

7 THE COURT: For an FED?

8 MR. ROBBINS: For an FED. Yes, it's -- actually it's a
9 Superior Court case, but the FED was filed as part of the
10 Superior Court action.

11 THE COURT: Okay. Well, I'll ask Sharon to call and let
12 Judge Souter's chambers know that you're involved in a
13 complicated, multi-party decision and you'll be available in
14 about 20 minutes.

15 MR. ROBBINS: Thank you, Judge, I appreciate that.

16 THE COURT: Can you do that? All right. Now, as to the
17 Court's disclosure and request for any comments on the
18 disclosure about my contact with Mr. Miller. Mr. Robbins, do
19 you want to be heard on that?

20 MR. ROBBINS: Yes, Judge, I'd like to express on behalf
21 of myself and my clients that we have no problem with your
22 contacting Lloyd Miller and obtaining those materials or the
23 case.

24 THE COURT: All right. And Mr. Estelle, on behalf of
25 the State?

1 MR. ESTELLE: I don't believe we have any problem with
2 that either. My understanding was that the Court announced
3 that it had borrowed some textbooks and treatises on indian
4 law from Mr. Miller and had some contacts with him, personal
5 contacts, but did not involve this case.

6 THE COURT: Right. Actually, since you're counsel of
7 record here and since Mr. Baker wasn't aware, Mr. Miller and
8 I are friends for 20 years, we were in law school together.
9 He's a specialist in indian law. And by coincidence he has
10 taken a room in my house for the summer. So, we're in
11 reasonably close contact. We have not -- I have not
12 solicited his advice or opinion about this case. And I
13 believe his only familiarity with the case is what he's heard
14 around indian law circles and in reading. I think the facts
15 of this case are pretty well laid out in the Harrison v.
16 Hickel decision.

17 Given that, do you waive any objection?

18 MR. ESTELLE: That's correct.

19 THE COURT: All right. Is there anything further before
20 I go forward with the decision? Well, there is one thing
21 here, there is a motion to join 94-1128. This is the -- is
22 the driving without a valid license, driving while license
23 revoked that happened in the courthouse parking lot?

24 DEFENDANT HARRISON: No, it's driving without a valid
25 State of Alaska license. I have a valid Chickaloon license

1 and I have a valid Chickaloon registration.

2 THE COURT: I understand. I was simply referring to the
3 name of the charge, Mr. Harrison. And it is the incident
4 which is alleged to have occurred here in the courthouse
5 parking lot the last time we were here?

6 UNIDENTIFIED SPEAKER: Yes.

7 THE COURT: Does the State object to the joinder?

8 MR. ESTELLE: No.

9 THE COURT: I'll grant the motion to join.

10 MR. ESTELLE: I believe that's a limited joinder for
11 purposes of determining jurisdiction and not for trial.

12 THE COURT: Right, not for tri -- none of the cases are
13 joined for trial at this point. We've only joined them for
14 purposes of pretrial motions, as I understand it.

15 THE CLERK: And is that 1196?

16 THE COURT: 1128. Now, if you will bear with me. I am
17 going to announce this decision orally because as I've
18 explained, I just don't have the resources and no secretary
19 and I cannot type it up for you. I will have my decision
20 transcribed and I will review it and make any amendments or
21 corrections that I feel I need to make in writing.

22 Basically there are two sets of cases here and I'm just
23 going to refer to them generically as the road cases and the
24 license-registration cases, because that's what they are.
25 One set of prosecutions involves the alleged obstruction of a

1 highway by four of these Defendants. And the other cases all
2 involve drivers license and vehicle registration charges
3 against defendants who are alleged to be operating without
4 valid licenses or registrations.

5 In the road obstruction case, the essential conflict is
6 this. The highway or road which is the subject of the
7 charges traverses an allotment which is held by some of the
8 Defendants. The State claims that it has a right-of-way and
9 that the road which traverses the allotment is in fact a
10 highway within the meaning of highway in 11.81.900, which
11 defines a highway as a public road or right-of-way.

12 The Defendants assert that the State has no right-of-
13 way, that they hold title and authority to control traffic
14 across the road and that therefore they cannot be prosecuted
15 for the crime of obstruction of a highway.

16 The drivers license cases turn on the fact that in each
17 case where a Defendant was charged with a license or
18 registration violation, the Defendant was operating a motor
19 vehicle under authority of a Chickaloon drivers license or a
20 Chickaloon registration and license plate.

21 The assertion by the defense is that Chickaloon is a
22 sovereign nation with authority to issue drivers licenses and
23 to register vehicles. And the State's assertion is that it
24 is not.

25 That's the conflict as I see it.

1 I'll first deal with the road obstruction case. And I
2 think for purposes of convenience, I will adopt the
3 stipulated facts in the Harrison v. Hickel case at 6 Fed 3rd,
4 1347, a Ninth Circuit decision from 1993, which lays out the
5 procedural history of the original railroad right-of-way, the
6 history of transfers of authority and the entry, the
7 homestead, and then the allotment entry by Louis Harrison,
8 who is the predecessor in interest of the Defendants in this
9 case who claim title to the allotment.

10 And the question here for the Court is whether the State
11 can show by a preponderance of the evidence that the road is
12 a highway as defined by the statute. As I see it, that's the
13 essential question. We're in a criminal case. As I go
14 through all these cases all the -- most of the cases that we
15 deal with, with the exception of the two Harrison v. State
16 cases that were in the court of appeals, they're all civil
17 cases. We're in a criminal case where the State is
18 prosecuting the Defendants for an alleged violation of
19 criminal statutes. The Defendants say you cannot meet an
20 element of the offense because you can't prove that the State
21 has title to the right-of-way, therefore the case must be
22 dismissed.

23 So, in assessing who has the burden of proof, it seems
24 clear to me that the State has the burden to prove title.
25 The State has to prove that it has title to the right-of-way,

1 otherwise it cannot prosecute.

2 The defense contends that because title to the right-of-
3 way is in dispute, this Court lacks jurisdiction to decide
4 the question and therefore the case must be dismissed.

5 The State claims that its right-of-way is based on a
6 1959 deed that was issued under the Alaska Omnibus Act, which
7 essentially deeded over to the State rights-of-way and title
8 which had been held by the Federal government in its
9 territorial authority.

10 The Harrisons assert preeminent title because the 1962
11 certificate of allotment to Louis Harrison relates back, in
12 their argument, to the 1956 entry by Louis Harrison. In
13 other words, although the '62 certificate of allotment
14 postdates the '59 deed under the Omnibus Act, the Harrisons
15 assert that the '62 certificate of allotment has to relate
16 back to the original entry, which is 1956. The 1956 entry is
17 a homestead entry, not an allotment entry. But, Louis
18 Harrison, at some point after the '59 deed, converted his
19 homestead claim to an allotment claim and was given a
20 certificate of allotment under the 1906 Allotment Act.

21 The question of whether the '56 entry was subject to an
22 existing right-of-way grant is a question of Federal land
23 law. As would be the question of whether it's subject to any
24 sort of prescriptive easement. I think the parties are all
25 in agreement, no one argues, that anyone can get a

1 prescriptive easement across a native allotment. There is a
2 question as to whether an easement arose by usage prior to
3 entry by Mr. Harrison, or whether a right-of-way was created
4 by grant through the railroad and Road Commission exchanges.

5 The State claims -- the defense claims this Court can't
6 litigate this issue because this Court lacks jurisdiction to
7 decide Federal questions of titled indian land, number one.
8 And this Court lacks jurisdiction under its statutory
9 authority to decide any questions of title to real property,
10 and therefore this Court should dismiss this action.

11 The State says, no, no, no, the Court doesn't have to
12 litigate issues of title, this is a criminal prosecution and
13 title is simply an element of the offense. And this is where
14 we really get to the debate.

15 Everyone seems to agree that this Court cannot quiet
16 title to this right-of-way. And the State says the
17 Defendants need to go quiet title in Federal court. The
18 Defendants, of course, went to Federal court and sued the
19 State of Alaska in the name of Governor Hickel and a variety
20 of individuals, and were dismissed out of court on Eleventh
21 Amendment grounds. The Ninth Circuit said, in language which
22 could not be more plain, sue the Federal government because
23 they are your trustee and the Federal government has the
24 authority to litigate against the State of Alaska and quiet
25 title. That's the remedy that the Harrisons have here. And

1 the State takes the position that that's exactly what the
2 Harrisons should do. And that if they don't do that, we
3 don't really have a problem because the State has title and
4 title is simply an element of this criminal charge.

5 It seems to me that the State's argument begs the
6 question. To say that the State has title therefore we don't
7 have to litigate title begs the question, the issue is who
8 has title and where can it be litigated. On the existing
9 record, I believe that the State has not shown by a
10 preponderance of the evidence that it has title to this
11 right-of-way. I think the State is asking me to do what it
12 says -- to do for the State what it says I can't do for the
13 Defendants. I think that the State is saying that to take as
14 presumptively true the 1959 grant as evidence of clear title,
15 is litigating title. Which is exactly what the State says I
16 can't do for the Harrisons. So, the Court is in the position
17 of finding that what I cannot do for the Harrisons, I cannot
18 do for the State. I cannot litigate the issue of title to
19 this right-of-way. All I can decide is whether on the
20 evidence before me there is a prima facia -- there is prima
21 facia proof. And in the criminal context, that means proof
22 by a preponderance of the evidence that the State has title.

23 And I find that the State has not made that proof,
24 because the following questions remain unclear. And I simply
25 list the questions which were litigated by the parties, but

1 which the parties all agree can only be decided by a Federal
2 judge.

3 The ambiguity in the effect of the public land order
4 1093 when it revoked the executive order 2538, returning the
5 townsite, the Chickaloon townsite, to public domain. Did
6 that extinguish a right-of-way or did it simply extinguish
7 the townsite designation.

8 Whether the railroad grants of rights to the Alaska Road
9 Commission expired by nonexecution. There seems to be no
10 dispute that the Glenn Highway was not built on the route of
11 the Chickaloon Road. The grant from the railroad to the Road
12 Commission was for the purpose of building the Glenn Highway.
13 There is a factual dispute about whether part of the
14 Chickaloon Road was used to construct the Glenn Highway or
15 not. The Defendants argue that the grant expired of its own
16 accord. There are factual discrepancies between the
17 witnesses offered by the State and by the defense regarding
18 the actual existence of a road at the present site at the
19 time of Louis Harrison's entry onto the property. I have
20 affidavits -- the affidavits, by the way, are contested by
21 the defense because they weren't the subject of cross
22 examination. The State never made an offer to bring those
23 witnesses in. And I have taken those as offers of proof.
24 But, even accepting them as offers of proof, they are
25 disputed point for point by the live witnesses that have been

1 offered by the Defendants, and also by the maintenance
2 records, the highway maintenance records which disclose no
3 activity on the road by the Road Commission during the time
4 that the State says the Road Commission was managing the
5 road.

6 And there's also the question of whether there was an
7 easement designated in the homesite entry when Louis Harrison
8 entered in '56 and whether that easement is inferred to the
9 allotment application which was filed, I think, in '61.

10 Those are all interesting questions of Federal indian
11 land law, which cannot be adjudicated by this Court. And I
12 don't think anybody argues that they can be. They raise
13 significant questions about title to this right-of-way. And
14 the Court is left in the position of having to place the
15 burden of proof on the State, first of all, because the State
16 is prosecuting the case. If the Harrison's were suing the
17 State for quieting title, the burden would be on a plaintiff
18 in that capacity. The State is the Plaintiff here. The
19 State is exercising its police authority to prosecute crimes.
20 As such, the State has the burden to prove, make a prima
21 facia showing, that it can make the elements of the offense.
22 And at this point, I don't believe the State has shown by a
23 preponderance of the evidence that it has clear title.
24 Accordingly, the Court would be constrained to dismiss the
25 charges of road obstruction, unless the State chose to quiet

1 title.

2 I think if anybody should go to Federal court to quiet
3 title to the right-of-way, it should be the State of Alaska.
4 I believe that the burden is on the State to move to quiet
5 title if it intends to prosecute these charges. It is the
6 Court's intention to dismiss the road obstruction charges,
7 but I will permit the State an opportunity to request a stay
8 for purposes of litigating either in State court the Court's
9 ruling here or in Federal court, the quiet title action.

10 I can't order the State to go litigate in Federal court.
11 I think there is sort of a reverse Younger problem here. I
12 know that Federal courts can't enjoin State prosecutions. I
13 don't know if a State judge can threaten to dismiss a State
14 prosecution in order to force the State to litigate in
15 Federal court. I don't know of any principle of Federal or
16 State law that prevents me from saying that I intend to
17 dismiss the case, unless the Court receives some additional
18 determination of title from a court of competent
19 jurisdiction, which here has to be a Federal court.

20 Accordingly, the Court announces its intent to dismiss
21 the road obstruction cases 30 days hence, subject to a
22 request for a stay from the State of Alaska, or a notation of
23 an appeal with an attendant stay.

24 I have one other thing I need to say as a footnote here.
25 The parties have talked a lot about Jack Allen in this case.

1 And a lot about how the Department of the Interior failed to
2 adequately protect in its trust duties, to protect the
3 allotment rights of the Defendants here. And there's been a
4 characterization of Mr. Allen as having been motivated by a
5 personal bias in favor of kayakers and canoers and against
6 the Harrisons. At one point I took notice of the fact that
7 Mr. Allen was pretty widely known to be an avid kayaker, and
8 I think he was active in kayak circles before his death. The
9 defense in one of its pleadings suggested that I took
10 judicial notice of Mr. Allen's prejudice and lack of
11 partiality. And I wish to take strenuous issue with that
12 assertion and make clear for the appellate record that I made
13 no such finding. There is nothing in the record here to
14 suggest, beyond the inferences that might be drawn by the
15 parties, that Mr. Allen was motivated by any improper bias or
16 prejudice or interest. And I do not so find. There is
17 nothing within the Court's knowledge about which it could
18 take judicial notice and nothing in the record here to
19 suggest that Mr. Allen acted inappropriately or that his
20 conduct as regional solicitor was motivated by his personal
21 interest. I need that to be clear for the record, because I
22 felt that Mr. Allen's character was impugned and in some
23 fashion the parties seemed to suggest that the Court had
24 joined in that characterization, and I do not.

25 Now, on the drivers licenses. This is an even more

1 complicated area of law.

2 The State has argued basically that Stevens Village and
3 the two Harrison v. State cases are preemptive. That the
4 majority decision by Justice Matthews in Stevens Village,
5 taken together with Judge Singleton's decisions in the two
6 Harrison cases, preempt the field and require the Court to
7 conclude that Chickaloon is not a sovereign tribe and has no
8 authority to issue drivers licenses.

9 In fact, Singleton's decisions, Judge Singleton's
10 decision in the second Harrison case was. "In the absence of
11 some evidence that the Chickaloon Village has been recognized
12 as a self-governing tribe by the Federal government, it lacks
13 authority to register vehicles or to license drivers." Well,
14 in October of 1993 the Federal government explicitly
15 recognized the Chickaloon Village as a self-governing tribe
16 by publication in the Federal Register in the clearest,
17 broadest and most unambiguous language that Chickaloon is a
18 sovereign tribe. That seems to call into question the
19 continued applicability of the decision in Harrison v. State.

20 The Stevens Village decision all turn on the issue of
21 whether Alaskan villages were tribes and suggested that ANCSA
22 and the Indian Reorganization Act somehow precluded
23 designation of any Alaskan villages as tribes. The defense
24 has cited Justice Rabinowitz's strong dissent in that case.
25 But, it strikes me that the majority decision in Stevens

1 Village is also pretty much dealt with by the BIA notice in
2 the Federal Register. I can come to no other conclusion.

3 Judge Singleton points out in his decision, and it is a
4 matter of -- it's an accepted principle of law, that the
5 courts of the State of Alaska are not bound by Federal
6 decisions, other than the decisions of the highest court of
7 the Federal government. So, we're only -- the Alaska courts
8 are really only bound by Supreme Court decisions. And what
9 Judge Singleton said, and I think by inference what Justice
10 Matthews said in Stevens Village, was that this other
11 developing case law in the Ninth Circuit doesn't really
12 affect Alaskan case law, because they are lower courts, they
13 are not the Supreme Court. And while that's legally true,
14 when the executive acts through the Secretary of the
15 Department of Interior and issues a notice through the BIA
16 that Chickaloon Village is a sovereign tribe, I think that's
17 a statement by the executive which has the same force as a
18 Congressional statement or a statement by the Supreme Court
19 that Chickaloon is a sovereign tribe. It admits of no other
20 interpretation.

21 Given that, I don't see that Stevens Village and
22 Harrison v. State apply to this case anymore. Unfortunately,
23 that's the only law that the State argued. And the State did
24 not argue any of the other Ninth Circuit cases, which now
25 inform the Court's decision about what it means to be a

1 sovereign tribe in the State of Alaska. I am compelled, in
2 view of the decision of the Bureau of Indian Affairs to
3 recognize Chickaloon as a sovereign tribe, to look to the
4 Ninth Circuit decision because there are no other Alaskan
5 decisions that postdate the BIA designation, or that address
6 in any respect how you would treat a sovereign tribe in
7 Alaska since up to and including Stevens Village, the Supreme
8 Court of Alaska did not recognize sovereign tribes in Alaska,
9 with the exception of Metlakatla.

10 If you look at Stevens Village, Justice Matthews says,
11 "Judicial recognition of sovereign immunity turn" -- that was
12 an immunity case, Stevens Village was being sued on a
13 contract. "Judicial recognition of sovereign immunity turns
14 on whether Congress or the executive branch of the Federal
15 government had recognized the particular group in question as
16 a tribe." The executive is the Secretary of the Department
17 of Interior acting through the Commissioner of the Bureau of
18 Indian Affairs. That deals with that question raised by
19 Justice Matthews.

20 Since Alaska case law no longer controls, the Court has
21 to look to the other cases that have been in process in the
22 last few years in the Ninth Circuit and the District Court
23 for Alaska. Everybody agrees that tribal sover -- or that
24 tribal recognition and ultimately sovereignty that attends
25 tribal recognition, is subject to limitation by Congress.

1 And the extent of specific sovereign authority may be subject
2 -- may be dependent on circumstances. For example, if you
3 look at the -- and specifically to this case, if you look at
4 the operators license and vehicle registration cases, they
5 clearly begin with the premise that tribes can license
6 vehicles and issue drivers licenses if there is some
7 territorial connection. Now, until fairly recently that
8 meant a reservation. In Queets Band, which is the Washington
9 case, and Red Lake Band of Chippewas, both of those are
10 reservation cases that basically say tribal licenses are good
11 off the reservation. Actually, Queets has been vacated
12 pursuant to a stipulation of the parties and Judge Holland
13 says it's not authoritative case law, it may not be since it
14 was vacated. Red Lake was certainly a standing Supreme Court
15 authority. But, most importantly is the recent Oklahoma Tax
16 Commission case, Sac and Fox Nation, which dispenses with the
17 reservation requirement. That's an Oklahoma case. Oklahoma
18 has broken up its reservations and they're scattered
19 allotments now. And what it says -- I mean, basically what
20 Sac and Fox Nation says is there is authority to license --
21 it's also a taxing case, but there is authority to exercise
22 regulatory tribal jurisdiction in indian country not on a
23 reservation. Which means you don't have to have a
24 reservation to have indian country. That seems to be not
25 only the decision of the Supreme Court, but it's also clearly

1 the opinion of the Ninth Circuit as its decided particularly
2 Venetie, and Judge Holland accepts it as the law in the Ninth
3 Circuit in Kluti Kaah.

4 So, you can license vehicles if you're a sovereign tribe
5 with a territorial connection to indian country. Even if
6 it's not a reservation you can still license vehicles and
7 issue drivers licenses for operation on and off indian
8 country, provided I think that there is some connection to
9 indian country. What it says in Sac and Fox Nation is that
10 it's clear from that case that the vehicles are being
11 operated in indian country. So, referring back to Red Lake,
12 the Supreme Court says that the licenses are good off indian
13 country, even where the indian country is not grounded on a
14 reservation.

15 So, what's ~~indian country in Alaska and what sovereign~~
16 ~~authority extends when you decide that there is indian~~
17 ~~country in Alaska?~~ That's where we are in the Chickaloon
18 case.' And the question comes up, I think that even if you
19 look back to the -- well, in the whole range of indian law
20 cases, it's pretty clear that sovereign authority does not
21 mean all authority to do everything. It's clear that
22 sovereign authority of a tribe can be limited by
23 circumstances, by connection to territorial claims or area
24 claims, by the history of the tribe, what the tribe has
25 traditionally done. If you've got a tribe, to what extent is

1 it sovereign. And I guess I would look back to and quote at
2 this point the language from the BIA decision out of the
3 Federal -- the BIA notice out of the Federal Register from
4 October of 1993, which says that the acknowledgement here is
5 acknowledgement that the "tribe is entitled to the immunities
6 and privileges available to other Federally acknowledged
7 tribes by virtue of their status as indian tribes, as well as
8 the responsibilities and obligations of such tribes." It's
9 not merely the language that we've seen in previous BIA
10 references to entitlement to benefits. ~~That's a clear~~
11 ~~reference to the sovereign authority of tribes.~~ So, I start
12 ~~from the premise that the BIA recognition is as expansive as~~
13 ~~it could be.~~ The State has not made any reference to this in
14 its briefing, but if you look at Venetie and Kluti-Kaah, the
15 Federal courts say there is indian country in Alaska and that
16 it doesn't have to be grounded in reservations. And what
17 indian country is and to what extent you can describe it
18 depends on circumstances which are the subject of factual
19 decisions by trial courts after trials.

20 The -- as I indicated, Sac and Fox Nation suggest the
21 tribal members use of private cars in indian country but not
22 on a reservation is a sufficient interest to give rise to a
23 sovereign authority to issue drivers licenses. Now, it's
24 undisputed that Mr. Harrison's allotment is indian country.
25 But, it hasn't been shown in this case that the Chickaloon

1 tribe is made up of a series of contiguous allotments, which
2 would begin to look like a reservation.

3 If you look back to the Singleton decision in Harrison
4 v. State, he talks about how no -- that one of the factors
5 that you look at to decide if a tribe is a dependent indian
6 community for purposes of such things as regulation of
7 drivers licenses and vehicle registration, he says there are
8 no roads owned by the Chickaloon community, there are no
9 tribal roads, tribally owned roads. But, I think that's been
10 supplanted if you look at Venetie and Kluti Kaah, where they
11 say that ownership is not determinative. In other words,
12 ownership of roads by a tribal community is not determinative
13 of whether that's indian country, it's just a factor to be
14 considered.

15 And that gets us to the factors that determine whether
16 there is indian country in Alaska, which neither side
17 briefed. You can find it in the Venetie one decision or in
18 Kluti Kaah in a footnote, which says that the definit --
19 well, first of all, of course, they agree that a section 1151
20 definition of indian country applies in a civil context as
21 well as a criminal context. And Venetie one says, "A given
22 tract of land in Alaska could be classified as indian
23 country, depending on the analysis of relevant factors. Six
24 factors: the nature of the area, the relationship of the
25 area inhabitants to indian tribes and the Federal government,

1 the established practice of government agencies toward that
2 area, the degree of Federal ownership of and control over the
3 area, the degree of cohesiveness of the area inhabitants and
4 the extent to which the area was set aside for the use,
5 occupancy and protection of dependent indian peoples."

6 In Venetie and in Kluti Kaah the cases were remanded for
7 trials in the trial court, the district court, to litigate
8 these issues and were awaiting decisions on Venetie and Kluti
9 Kaah to decide whether -- what factual proof was made that it
10 was indian country.

11 Now, in this case we also took evidence about the nature,
12 and extent of -- well, evidence on each of these six points.
13 It was all submitted more or less in documentary form and
14 affidavit form by the Defendants. It has never been
15 addressed by the State. The State has not offered any
16 countervailing evidence regarding the assertions of the
17 defense regarding how these factors total up to constitute
18 indian country. And, in fact, what those -- what that
19 evidence means in terms of the nature and extent of indian,
20 country as it applies to Chickaloon, hasn't really been
21 argued out in detail by the Defendants.

22 We're in a criminal case. But, I think in this
23 situation the Defendants have the burden of proving that it's
24 indian country before they can argue that they should not be
25 prosecuted for driving on Chickaloon licenses and

1 registrations. I have reviewed some of the materials. I
2 would point out voluminous materials were presented to the
3 Court on the history of the region, linguistics, tribal
4 history, oral history and to the extent that the Court has
5 had an opportunity to review, I will not suggest to you that
6 I have read every page of every one of the books that were
7 presented to me. But, there is certainly sufficient evidence
8 there for the Court to find that the defense has made a prima
9 facia showing that there is indian country attached to the
10 Chickaloon tribe. The problem is that I don't have enough
11 information to declare what that is or to what extent, how it
12 affects the geography, that is, whether there is a
13 geographical connotation, and whether it creates a sufficient
14 interest for the Defendants to be entitled to issue licenses
15 and registrations.

16 If we were in a civil context, I would default the State
17 out and dismiss because the Defendants have made their prima
18 facia showing and the State has made no showing. But, I
19 think in this setting the appropriate thing for the Court to
20 do would be either to convene a further trial on the issue of
21 what is indian country and what is the nexus with issuance of
22 licenses. I have to examine the tribe's interest in issuing
23 licenses and to give the State an opportunity to reply both
24 in an evidentiary sense and by argument.

25 In the Federal cases a similar situation arose in Kluti

1 Kaah, I think, where the parties didn't really expect the
2 standard to be applied and the tribes had submitted on
3 pleadings and the Court decided it was unfair to decide on
4 pleadings and the parties should be entitled to a contested
5 trial. I think the same reasoning would apply here. Nobody
6 has addressed the question of whether this Court has
7 jurisdiction to decide what's indian country. It's a
8 slightly different question than adjudicating title, but it
9 carries some of the same connotations. And arguably the
10 parties should be required to go into Federal court to
11 litigate the issue of indian country. I'm not sure how you
12 do that, because there's no title to quiet. And this may be
13 one of those Federal questions that can be decided by State
14 courts. It's not a title decision, so I'm not precluded by
15 the statutory grant of authority to district courts, it's a
16 factual decision and it's been specifically held by the Ninth
17 Circuit to be a trial court decision. I don't know whether
18 it is a Federal trial court decision or a State court trial
19 decision, and nobody has briefed it.

20 So, I will invite the parties to tell me now or to tell
21 me in pleadings to be filed following this decision how the
22 Court should resolve the question. Having decided that the
23 Defendants have made a prima facie showing of the existence
24 of indian country around the Chickaloon sovereign tribe, how
25 we litigate the question of the nature and extent of that

1 authority and the degree to which the tribe's interests are
2 furthered by the issuance of licenses and registrations and
3 how that balances against any countervailing State interest,
4 and whether we can do it here or whether you have to find
5 your way somehow to Federal court..

6 Would you like a moment or two to digest what I've just
7 said and then to speak to me, or are you prepared to say
8 something now? Mr. Robbins?

9 MR. ROBBINS: Judge, I think I could probably respond
10 somewhat now, but like you have stated before, the issues are
11 complex. The -- of course, the primary moving attorney on
12 that issue is Rob Herz and he is not available to comment.
13 And I'm sure that he would want the opportunity to address
14 these issues.....

15 THE COURT: He's not back until August, is he? When is
16 he back?

17 MR. ROBBINS: I think he's gone for two weeks, it seems
18 like.

19 MS. BEY: He'll be back in the office, I think, on about
20 the 26th of July, that week, the last week of July.

21 THE COURT: He did brief all these issues and I think
22 it's appropriate for him to be involved. Mr. Estelle?

23 MR. ESTELLE: Mr. Herz has a backlog of felony trials
24 set for the first week of August, so don't count on his being
25 available to brief. And I think that the State would like to

1 see the written order before we take a position.

2 THE COURT: What written? You mean the transcript?

3 MR. ESTELLE: Yes.

4 THE COURT: Well, I can't tell you when transcripts will

5 have this done. It was my hope that the parties would sort

6 of be up to speed on this and tell me how you want to go.

7 MR. ROBBINS: Judge, I can tell you what my feeling is

8 based on indian law, would be that the extent of -- would you

9 like me to respond now or did you want to discuss it more?

10 THE COURT: Well, if you want to.

11 MR. ROBBINS: It occurs to me that the question of

12 whether a tribe is sovereign or not depends on the history of

13 the tribe. And that sort of brings into question the old

14 concept of aboriginal title, which of course was a Federal

15 question, because it had to do with the title. And I think

16 indian country, although legally you're not speaking of legal

17 title being vested in the tribe, you are speaking of a type

18 of title, namely indian country, what constitutes it and why

19 does it constitute it. For one thing, look at the types of

20 lands that are considered indian country.....

21 THE COURT: I understand.....

22 MR. ROBBINS:you have like a native allotment

23 that's clearly a Federal question, that is indian country.

24 You have reservations.....

25 THE COURT: I understand, Mr. Robbins. What I want to

1 know is, are you ready to tell me now what you want to do or
2 do you want some time before you tell me what you want to do?

3 MR. ROBBINS: Oh, I see. We should consult with the
4 clients first, Judge.

5 THE COURT: I think that's a good idea. I've given the
6 State 30 days before I dismiss the road obstruction case. I
7 would propose to -- I mean, I'm essentially saying that the
8 Defendant has -- the Defendants have met their prima facie
9 burden of showing the existence of Indian country. I think
10 that is also a prima facie basis for dismissal, absent some
11 reply or interjection by the State. And I would propose to
12 note dismissal in 30 days, unless the State files an
13 application to reopen, a motion for a trial, authority for
14 where the trial should take place. Or, the State, of course,
15 can go into Federal court if it wants and litigate it in the
16 Federal court against the Harrisons. Thirty days for
17 everybody?

18 MR. ROBBINS: The defense would accept that, Judge.

19 MR. BAKER: Your Honor, this is John Baker in Anchorage.

20 THE COURT: Yes, sir.

21 MR. BAKER: I had one -- just a couple of concerns. I
22 don't know that we -- I'm sure we'll want to take further
23 action and we wouldn't be able to tell you precisely what
24 that's going to be at this time. So, I think we would
25 probably want.....

1 THE COURT: Do you think 30 days is enough time to make
2 that decision?

3 MR. BAKER: Well, provided that we are able to get a
4 transcript. And the other thing that I would request, if
5 possible, if.....

6 THE COURT: Okay, I'll tell you what, I.....

7 MR. BAKER:there were additional points -- if
8 there were additional authorities that the Court may have
9 relied upon, the.....

10 THE COURT: No, I pretty well told.....

11 MR. BAKER:other treatises. I think I came in on
12 the, maybe the tail end of that.....

13 THE COURT: No, the treatises just.....

14 MR. BAKER:discussion. But, if there were any
15 additional authorities that the Court relied upon, if we
16 could maybe have those noted for the record so they would
17 show up on the transcripts.

18 THE COURT: I named -- the books I looked at were
19 Cohen's Handbook of Federal Indian Law, the case book
20 Clinton, Newton and Price on American Indian Law, Cases and
21 Materials. The West nutshell. Kanby [ph], American Indian
22 Law. And Kluti Kaah decision, Judge Holland's July 27th or
23 28th decision from '93. Those were the only authorities that
24 I relied on that weren't spec -- actually, Cohen is cited in
25 the briefs numerous times.

1 MR. BAKER: Sure, yeah.

2 THE COURT: I didn't actually rely specifically on
3 opinions in any of those text, they were simply materials I
4 consulted as I was trying to educate myself about general
5 principles behind these two areas of law. I'll.....

6 MR. BAKER: Thank you, Your Honor. I think we would
7 want to try to get a transcript.

8 THE COURT: Let me just tell you up front, there is no
9 way in the world transcripts in Anchorage is going to issue a
10 transcript in 30 days. But, if anybody wants a tape of these
11 comments, you can have your offices transcribe it and work
12 from that. I think that's going to be by far and away your
13 fastest way of doing it.

14 MR. BAKER: Well, I think that's the way we'd want to
15 proceed then, Your Honor.

16 THE COURT: Okay.

17 MR. ESTELLE: If, Your Honor, if there's -- if we could
18 ask that the 30 days begin after we get the transcript. I
19 mean, the cases have been dragging on for two years and it
20 seems like the difference between a month and two months at
21 this point if it's going to go up on appeal, is not.....

22 THE COURT: Well, I don't object to that. There is a
23 Rule 45 problem, see, we're in a criminal case. And at this
24 point since it's notices of dismissal against the State, I
25 would have to take a waiver from the Defendants of Rule 45.

1 I take it that it's your position that there is good cause to
2 toll Rule 45 because the long pendency of the pretrial
3 proceedings and essentially the Court's invitation for post-
4 decision briefing or supplementary authority, that you think
5 that this essentially is additional time tolled under Rule 45
6 by virtue of the pretrial proceedings.

7 MR. BAKER: That is our position, Your Honor. I believe
8 in order to make an informed decision that we need to have
9 the transcript before, otherwise we'll spend the 30 days
10 transcribing it ourselves.

11 THE COURT: Well, Mr. Robbins, how would you react to 60
12 days?

13 MR. ROBBINS: I know how I would advise my clients,
14 Judge, but I would like to advise them outside of the open
15 courtroom. If maybe rather than have everybody leave the
16 courtroom, if I could speak to maybe David and Gary Harrison?

17 THE COURT: Yeah, we're all tied up on the same phone
18 call. Tell you what,.....

19 MR. ROBBINS: Well, I mean, my recommendation would be
20 yes, to accept that.

21 THE COURT: I understand. Ms. Bey, what would be your
22 position?

23 MS. BEY: Your Honor, if Mr. Harrison could ask you a
24 question. Go ahead.

25 THE COURT: Okay. You want to ask me a question?

1 DEFENDANT G. HARRISON: Yes. On the last part where you
2 were saying, where you were thinking that the burden of proof
3 lies on the Defendants on the indian country.

4 THE COURT: Right.

5 DEFENDANT G. HARRISON: I'm wondering, does that mean
6 that we need to prove that the tribe owns several thousand
7 acres of land, which we do, or is what is the -- what is the
8 thing there.

9 THE COURT: The six factors I went through.

10 DEFENDANT G. HARRISON: Well, I mean -- well, there's
11 only one I was -- we've put a lot of that in your record.

12 THE COURT: Right.

13 DEFENDANT G. HARRISON: But, there's only one I was
14 trying to get clarified and that's, you know, the land issue.
15 Because we own land in a lot of places, the tribe does, and
16 that's why I want to get that.....

17 THE COURT: Right. And ownership of land is a factor.
18 And I've held that the proof that you've made thus far is
19 sufficient to sort of get over the top on the motion to
20 dismiss. I cannot say at this point what that means or
21 whether I'm even entitled to say what it means. The State
22 has not made any substantive reply to any of that
23 information, and I think the case law suggests that it's an
24 abuse of discretion. I infer from the case law that it would
25 be an abuse of discretion to in effect default the State out

1 at this point because it didn't respond, since nobody briefed
2 the Venetie, Kluti Kaah standard, to hold that the State at
3 this point fails because it didn't meet -- it didn't
4 counterbalance your evidence is probably unfair.

5 So, when I say you have the burden, it's in the context
6 of how we litigate a motion to dismiss. I think I can't
7 explain it anymore than that, and I think that if you need
8 more advice you probably need to consult with your lawyer.

9 DEFENDANT G. HARRISON: No, I can understand that now.
10 I was -- that's what I was trying to get squared away in my
11 mind.

12 THE COURT: Okay. Can we take the 60 days with Rule 45
13 tolling and be done right now, and then I'll give you all the
14 numbers for the tape and you can get a tape of this decision
15 and transcribe it. It might be useful if the parties want to
16 sort of get together and have one court transcriber
17 transcribe it and pay for it. I've seen that done in these
18 cases and it sort of saves everybody a little money. It's up
19 to you.

20 Sixty days, Ms. Bey?

21 MS. BEY: That would be fine.

22 THE COURT: Mr. Harrison, Gary Harrison?

23 DEFENDANT G. HARRISON: Yes, that's fine.

24 THE COURT: David Harrison?

25 DEFENDANT D. HARRISON: That's fine.

1 THE COURT: Mr. Carmen? Yes. Mr. Ziegler?
2 DEFENDANT ZIEGLER: Yeah.
3 THE COURT: And Ms. Bey on behalf of Mr. Lord?
4 MS. BEY: Yes.
5 THE COURT: Very well. Rule 45 is tolled for a period
6 of 60 days from today. Today is July 8th, 60 days is
7 September 7th. I will set trial call on these matters for
8 September 9th at -- oh, questions. David Harrison?
9 DEFENDANT D. HARRISON: Does this mean that the State
10 Troopers will stop harassing us when we drive around with our
11 registration and licenses with Chickaloon?
12 THE COURT: Before I answer that question, does anybody
13 else have a question similar to that? Mr. Ziegler.
14 DEFENDANT ZIEGLER: Yes, I was under the impression that
15 the State only had 30 days to do the -- because you made a
16 decision on the road issue.....
17 THE COURT: Right.
18 DEFENDANT ZIEGLER:that it was thrown out. And
19 that doesn't involve the other issues, am I correct?
20 THE COURT: Well.....
21 DEFENDANT ZIEGLER: I mean, they got 30 days.....
22 THE COURT: No, I think what we're saying is every -- 60
23 -- the State has asked for 60 days on everything. And I
24 understand everybody has agreed to 60 days on everything.
25 So, it will be 60 days, all right. September 9th at 8:30 for

1 all cases.

2 And the question of what the State can or cannot do
3 between now and then is outside the Court's jurisdiction.
4 Because I can't issue injunctive relief, I don't have that
5 authority. I cannot enjoin the State from prosecuting. I do
6 have you all under bail conditions not to drive on Chickaloon
7 drivers licenses. And the case is pending dismissal and the
8 bail conditions remain in effect. That's the status of the
9 case now absent a request to the contrary or an order to the
10 contrary. Does anybody want to be heard? All right, Gary
11 Harrison.

12 DEFENDANT G. HARRISON: I'd like to request that the
13 bail conditions be lifted till the 60 day period is up and
14 then we'll see what happens from there. The reason being is
15 because after so long, it's getting to be a little bit undue
16 thing to restrict an obviously sovereign member of our
17 council to be restricted when I need to do banking and a few
18 things like that for our tribal business and.....

19 THE COURT: I understand your request. Mr. David
20 Harrison, same request?

21 DEFENDANT D. HARRISON: Similar. A little different.

22 THE COURT: What is that?

23 DEFENDANT D. HARRISON: Well, it's to lift the bail
24 restrictions and -- because as the attorney general of
25 Chickaloon Village it makes it very tough to deal with the

1 issues that the State is trying to throw at me and, you know,
2 they've got me shackled now and they're trying to handcuff me
3 so I can't do anything.

4 THE COURT: I understand.

5 DEFENDANT D. HARRISON: And that, you know, due to all
6 of this, you know, on top of it all, you know, the State has
7 caused a very much a detriment to my health.

8 THE COURT: I understand your argument. Mr. Carmen,
9 same request?

10 DEFENDANT CARMEN: Yes.

11 THE COURT: Mr. Ziegler, you're not a drivers license
12 case.

13 DEFENDANT ZIEGLER: No, but I.....

14 THE COURT: Okay. Ms. Bey, do you want to be heard on
15 this?

16 MS. BEY: We would make that request, I think especially
17 in light of the fact that the Defendants have agreed to a 60
18 day time period and Rule 45 has been tolled for that. It
19 certainly is reasonable that they receive something in
20 exchange for that.

21 THE COURT: Okay. Now, if I lift the bail restriction,
22 the State still has the authority to go out and arrest them,
23 because I can't enjoin the State. I've simply given my
24 notice of my intent to dismiss these cases, which decision
25 has been stayed. There's nothing about that which prevents

1 the State, and in fact I don't have the authority to enjoin
2 the State from -- I mean, if the State believed, for example,
3 that it in good faith could go out and arrest the Defendants,
4 it just seems to me that we create havoc.

5 Mr. Robbins, do you want to be heard?

6 MR. ROBBINS: Well, Judge, it's kind of like the
7 Chickaloon people have waited so long.....

8 THE COURT: Do they want to be able to block the road
9 too, Mr. Robbins.....

10 MR. ROBBINS:to hear.....

11 THE COURT:during the next 60 days? Mr. Estelle?

12 MR. ROBBINS: That -- they haven't blocked the road
13 other than the demonstration of control over the road as a --
14 to make a point.....

15 THE COURT: Mr. Estelle.

16 MR. ROBBINS:which has precipitated the case.

17 MR. ESTELLE: We're opposed, Your Honor. The Court
18 never has to impose and obey all laws, bail condition, and
19 whether the Court does or does not just affects whether they
20 violate the bail conditions and put their security in
21 jeopardy. But, you're right, if you tell them to go drive
22 they're going to get stopped, they're going to get arrested,
23 they're going to -- and we're going to get back in here on an
24 assault case because they're going to say the Court told me
25 that they lifted bail conditions and I'm driving lawfully,

1 and the Court is going to have to dismiss, because the Court
2 adopted our legal theories and therefore you don't have a
3 right to stop me, get out of here. And we're going to be
4 back in here on another case just like this one where they
5 claim a right to block the road, then we have an assault
6 case. And the assault is still going to survive whether or
7 not they had a right to block the road.

8 THE COURT: I understand your argument. Let me stop
9 here.

10 MR. ESTELLE: I assume that the Court's ruling is on the
11 obstruction, not on the assault case. The Court has
12 addressed the obstruction and the driving, but not the
13 assault.

14 THE COURT: Okay, briefly, Mr. Harrison.

15 DEFENDANT D. HARRISON: You know, this issue not only
16 affects the Defendants that are in the cases, but there is
17 many more people out there that are driving with Chickaloon
18 licenses and registrations that Mr. Estelle hasn't brought
19 into this courtroom as yet.

20 THE COURT: The.....

21 DEFENDANT D. HARRISON: And so it's much broader than
22 just the few of us sitting here.

23 THE COURT: The record in the Federal case suggested
24 only three people that actually put licenses on their cars.
25 I take it it's your position more people than that have done

1 that?

2 DEFENDANT D. HARRISON: Yes.

3 THE COURT: Okay. Mr. Ziegler?

4 DEFENDANT ZIEGLER: Does that mean that us who have
5 Chickaloon licenses are forced to take a State license right
6 now? I mean, we're forced to -- you're telling us that we
7 cannot drive with our sovereign license, but we are
8 intimidated enough to be forced into buying a State license
9 and say, hey, we will be recognized if we get a State
10 license. But then that kind of throws us all down. If we do
11 that, then this whole case is.....

12 THE COURT: Well, you're not under -- as I understand
13 it, you're not charged with a license offense, Mr. Ziegler.
14 If you're admitting now that you're driving on a Chickaloon
15 license,.....

16 DEFENDANT ZIEGLER: No, I'm not. But, I.....

17 THE COURT: I didn't think you were. Mr. Baker, does
18 the -- do you have a position on this?

19 MR. BAKER: Well, on whether the -- what should happen
20 in the intervening 60 days?

21 THE COURT: Right.

22 MR. BAKER: Well, I guess I would hope -- I would
23 suggest that the easiest thing would perhaps be not to lift
24 the bail restrictions. I can't really speak for -- Mr.
25 Estelle is better suited to address, you know, the

1 functioning of criminal matters and charging decisions and
2 the conduct of the troopers. But, it seems to me that we are
3 -- we do have a potential prescription for disaster here if
4 we don't do something to maintain the status quo for the next
5 60 days. I think everybody is acting in good faith here.
6 The State legitimately believes that it has the right to
7 preserve public access on that road. And this overall issue
8 is far from resolved. We'd certainly like to do whatever we
9 could to keep this situation from escalating again until we
10 can get it resolved judicially.

11 THE COURT: Let me interrupt. There is a reality -- if
12 I may, Mr. Harrison. The reality is that whatever happens,
13 we're immediately in an appellate posture. One way or
14 another this case goes to the Court of Appeals immediately
15 with request for stay, bail conditions, all of those things,
16 requests for injunctions. And it just seems to me that the
17 likelihood of an appellate court maintaining the bail
18 conditions is pretty high.

19 Mr. Harrison, what?

20 DEFENDANT D. HARRISON: I would object to this 60 days
21 then.

22 THE COURT: Well, that seems to me to be a fair balance.
23 Perhaps what we ought to do is shorten the delay and keep the
24 bail conditions. And if everybody agrees to that, we have no
25 breach of the peace, we just force people to get underway.

1 DEFENDANT D. HARRISON: I would suggest that it be even
2 shortened more than 30 days.

3 THE COURT: No way it can be less than 30 days.

4 UNIDENTIFIED SPEAKER: Well, then they have to walk
5 home.

6 THE COURT: Okay, listen, I don't want to debate this
7 anymore. I'm not going to lift the bail restrictions at this
8 time. If there is an application to lift -- I'm going to
9 urge the parties to talk to each other. If you can get this
10 thing underway faster than 60 days, if you can get a
11 transcript to the State within a couple of days, and you want
12 to just ask them to take 30 days from the date of the
13 transcript, get a transcript prepared and I'll shorten the
14 time. And that will shorten the time that you're subject to
15 the bail conditions.

16 I'm not going to lift the bail conditions now. I will
17 entertain a written application for a modification to bail
18 conditions. But, at this point the bail conditions are that
19 the Defendants in the drivers license-vehicle registration
20 cases may not operate motor vehicles without valid Alaska
21 drivers licenses and registrations.

22 Anything else? My bail order affects Defendants in this
23 case. If anybody else chooses to engage in what would
24 constitute civil disobedience at this point, you do so at
25 your own risk.

1 Mr. Harrison, last thing, please be done.

2 DEFENDANT D. HARRISON: Are we going to shorten this 60
3 days?

4 THE COURT: It depends. If you can get a transcript to
5 the State.....

6 DEFENDANT D. HARRISON: Why should I have to get a
7 transcript to the State when.....

8 THE COURT: Well.....

9 DEFENDANT D. HARRISON:they have more dollars.
10 And they have a driver license to use to go and get one. You
11 put a restriction upon me where I can't even get out of my
12 home, out of my office, to go and do this work.

13 (End of requested portion)

14 LOG 0230

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C E R T I F I C A T E

SUPERIOR COURT
STATE OF ALASKA

)
) ss.
)

I, Kim Robinson, hereby certify:

(1) That the foregoing pages numbered 1 through 47 contain a full, true and correct transcript of proceedings in Cause No. 3PA-91-0678 CR and 3PA-94-1128 CR, State vs. Harrison, et al, transcribed by me to the best of my knowledge and ability from tapes identified as:

3PA-13691, Logs 1000 - 4200
3PA-13692, Logs 0003 - 0230

(2) That I have been certified for transcript services by the United States Courts.

DATED at Palmer, Alaska, this 13th day of July, 1994.

SIGNED AND CERTIFIED BY:

/s/

Kim Robinson
Court Reporter