Indian Attorney Takes Issue with Rep. Rivers

An attorney instrumental in pushing for settlement of aboriginal land claims in Alaska, which now cover well over 60% of the state, is challenging another lawyer—a U.S. Congressman—over his stand on Native land claims.

William Paul Sr., famed Tlingit Indian attorney, is taking issue with Congressman Ralph Rivers for his proposed "solutions" to aboriginal claims and his legal basis for upholding the right of the U.S. government to take lands under "public domain" near Native villages.

Paul helped negotiate the precedent-setting Tlingit-Haida land settlement in southeastern Alaska, which will give southeast Indians cash reimbursement for their loss in timber lands now in the Tongass National Forest. The Indian attorney is now representing various other Native groups in the state in their bid for aboriginal rights to lands now held under public domain by the Department of the Interior.

The famed lawyer, who maintains a 'legal' residence in Alaska but lives in Seattle because of his wife's health, recently wrote a letter to the Tundra Times challenging Rivers on his stand and quoting Supreme Court cases to back his arguments.

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'Ralph Rivers, running for re-election to the U.S. House of Representatives as per your issue of July 3rd against Mike Gravel, states his position on the validity of the 'blanket land claims' of the Eskimos to the land on the North Slope of Brooks Range which they have occupied for many generations and wherein virtually no whiteman lives except to exploit these same Eskimos.'

"Mr. Rivers, being a lawyer, knows these Eskimos from ancient times were owners of the land. To those who would dispute it, we quote from the Supreme Court of the United States first published in 1823 (Johnson vs. McIntosh & Wheat. 543):

No Public Lands Where Indian Claims Exist

'The contention that Indian lands are public lands subject to disposition as such * * * in Holden vs. Joy, 17 Wall 211, was again rejected by the Court. In this case the defendant, Joy, claimed under certain pre-emption Acts of Congres. * * * The Court * * pointed out that the occupancy right in the land in question had been in the Indians from the start and was therefore clearly subject to disposition by Indian treaties.'

"It should be noted here that the legal background of "treaty Indians" and "non-treaty Indians" is identical. See Walapai Tribe vs. Santa Fe R.R. 31 ' U.S. 339."

"In the Walapai case, the railroad had been in possession of land outside the Indian reservation for over 61 years by Congressional grant when the issue of the Indian title came up and the Supreme Court found for the Indians on the ground that the original Indian title had not been extinguished."

"This same issue was raised in the case of Tlingit and Haida Indians vs. U.S.A. 177 U.S. 452 in 1959. The Court of Claims said;"

'The Commissioner has found and we have adopted his findings that the use and occupancy title of the Tlingit and Haida Indians to the area shown herein was not extinguished by the Treaty of 1867 between the United States and Russia.'

"Mr. Rivers and the Bureau of Land Management knowingly, I believe, confuse the public by citing the Miller case (159 F. 2d, 997 /1947/)." "This was not an "Indian case" and lawyers agree now that its reference to original Indian title was dicta."

'The law laid out by the Supreme Court in 1823, 1832, and many subsequent cases has NEVER been modified. So I quote;'

'Subject to this right of possession, the ultimate fee was in the crown and its grantees, which could be granted * * * while the land remained in possession of the Indians, though possession could not be taken without their consent. Mitchell vs. U.S.A. 9 Pet. 711. 745.'

'The law of May 17 1884, said 'The Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation***'

"On the face of things it looks as if that word 'occupation' applied equally to whites and Indians. But that is not the case."

"For the 'whites,' that word means 'visible signs of occupation' (And when Indians appear in Court as individuals, they are really white persons who happen to have Indian ancestors.)"

"That was the trouble with both Miller cases wherein the Indians lost. The tribe to which they belonged was not in Court. We need now to see how the Supreme Court defined that word when applied to an Indian tribe, as follows:"

'Indian possession or occupation was considered with reference to their habits and modes of life; their hunting grounds were as much in their actual possession as the cleared fields of the whites; and their rights to its exclusive enjoyment IN THEIR OWN WAY and for their own purposes were as much respected.*** It is enough to consider it as a settled principle, that their right of occupancy is considered as sacred as the fee-simple of the whites. Mitchell vs. U.S.A. 9 Pet. 711, 745-747; Tlingit & Haida Indians vs. U.S.A. 177 F. Supp. 452'

"The Court calls this 'ownership.'"

"THE UNITED STATES IS THE INDIANS TRUSTEE"

"This has been said so many times, that it becomes tiresome to keep repeating it. In the same Mitchell case, the Court said;"

'By the law of nations, the inhabitants *** retain all the rights of property which have not been taken from them by the conqueror.'

"There is only one thing changed, namely, the Indians can sell only to the sovereign or with his permission.'

"I must cite the Schumacher vs. State of Washington 33 L.D. 454, 456, where certain lands were claimed under a school grant from Congress. An Indian was living there separate and apart from his tribe and without any rights based on treaty or executive order. In the suit, the Department ruled that the Indian's right was superior to that of the State of Washington. For our purpose, you could change the word Indian to Eskimo and the State of Washington to State of Alaska.

"The use of the words 'public lands' will not help Mr. Rivers because, as he very well knows, the Court considered these words as they relate to Indian ownership in Holden vs. Joy 17 Wall. 211 (1872), wherein Joy claimed under pre-emption acts of Congress and found out that homestead rights, even though fully complied with, were not enough and that the Indian's aboriginal claim had to be satisfied; otherwise the patent fails."

"I have space for only two items on his record on which Mr. Rivers bases his appeal for the votes of the natives;"

"1. That his bill 'authorized per capita payments to the Tlingits and Haidas.' This statement is false. The only reference his bill makes to per capita payments is to exempt such payments from State or National taxation. It takes still another Act of Congress to provide per capita payments."

"2. He says 'I urged that the regulations governing the administration of the Indian Allotment Act be revised to make it easier for individual Natives applying to get 160 acres either in one or up to four smaller tracts.'"

"Consider the fact that the land already belongs to the Indian community, still the Indian must fore-

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swear his ownership and apply for the homesteads (like a white man), and he has to live on the land for five years. In S.E. Alaska, he also must get the prior approval of the Forestry Department and prove that the land applied for is 'more valuable for farming' than for anything else. It is to laugh!!!"

"Why didn't Mr. Rivers provide it so that a Native might get his 160 acres simply by selecting it just as Congress allows the State to do up to 103 million acres?"

"The law as it now stands is virtually useless."

"SIZE OF THE LAND IS NOT THE ISSUE"

"Mr. Rivers is appalled at the size of the Eskimo-Indian 'blanket claims.' Why? If they own it as defined by our Supreme Court, why complain?"

"The oil-exploiters right now are allowed on the first application 200 000 acres, and there are over 2 000 'wild-catters' claiming such leases, NOT to dig for oil, but to sell such leases to the big corporations who are on the ground. Why not obtain such rights from the real owners. In any case, the United States as trustee could make the same terms for development as now and under the various Court decisions, the State could tax the production. Is the State entitled to more? Under our system of free-enterprise, the land and the business of the country belongs to the people."

"Government is essential and costs money, especially in war. To carry on such government, it has the right to tax and that is all. If it would take the property of its citizens, it can do so under the theory of eminent domain, namely, for a public purpose. But government has no moral right and often no legal right to confiscate the property of its citizens 'without the due process of law.' That is what our Constitution says."

"I would be willing to debate this proposition with Mr. Rivers or with Mr. Gruening."