

"I may not agree with a word you say but I will defend unto death your right to say it." — Voltaire

ANALYSIS--- THE 9TH CIRCUIT COURT DECISION

(EDITOR'S NOTE: Although *Tundra Times* bannered the decision of the 9th Circuit Court of Appeals under the headline, "HEARINGS PAVED BY RULING," the Alaska press generally underplayed the court ruling. The decision established the right for natives to contest state land selections on the basis of use and occupancy. John Borbridge, president of the Central Council of the Tlingit and Haida Indians of Alaska, enlarged on the ruling in the following analysis.)

By JOHN BORBRIDGE

When the Natives of Alaska, through the Alaska Federation of Natives, determined to petition Congress to legislate a just and equitable settlement of our aboriginal claims, the question we were most frequently asked at first was:

Do the Natives have any legally recognizable rights or are your claims simply an appeal to the conscience of the State and the Nation?

Although we never had any doubts about the answer, we asked our attorneys to research the question in depth. The product of their studies was presented to the Congress last session. In a nutshell, they confirmed that the law is what we always knew it to be.

Use and occupancy of land by a native group invests it with rights virtually as extensive as ownership. These rights, which coalesce in what is known as "aboriginal title," cannot be diminished or extinguished except by express action of Congress. It has been the policy of this Nation, even before it was organized under the Constitution, not to take land from the aboriginal owners except upon payment of its full value at the time of taking. Full value comprehends compensation for everything in, on, or over the land that contributes to its worth.

Until Congress expressly provides for its extinguishment, aboriginal title is enforceable against all comers, including states, even those who may have obtained paper title to the land. Anyone who takes paper title to land owned by a native group under aboriginal title, prior to its extinguishment, gets only a formal estate that is completely subordinate and subject to the natives' rights to the use, occupancy, rents and profits of the land.

All who have seriously studied the situation in Alaska, most recently the Federal Field Committee, have concluded that the Natives have aboriginal title to almost all land in the State. The only issue about which there has been even color or legitimate doubt is whether the provisions of the Statehood Act which authorize the State to select a quantity of land engendered a mode of extinguishing aboriginal title. Our attorney's conclusion that they did not have been confirmed by the United States Court of Appeals for the Ninth Circuit in the decision in the case of *Alaska v. Udall*.

This case involved an attempt by the State to force the Secretary of the Interior to approve a selection of one tract of land, and to issue a patent to a second tract which had been selected and tentatively approved. The natives of the village of Nenana had protested the selections of both tracts contending that they held aboriginal title to the lands involved. The district court ordered the Secretary to take the actions demanded by the State apparently on the theory that the Statehood Act gave the State the right to select and be granted the lands without regard to the existence of aboriginal title.

The Court of Appeals reversed the decision of the District Court pointing out that the only way it could affirm would be by holding, as a matter of law, that the uses which the Natives alleged they made of the lands were not sufficient to establish aboriginal title would not preclude conveyance to the State. The Court of Appeals also suggested that the District Court consider holding the case abeyance pending action by Congress on the settlement proposals before it.

The decision affirms the position of the AFN that the Statehood Act preserved the Natives' aboriginal rights "vis-a-vis" the State and preserved the power of Congress to reserve to them whatever interests it chooses in their aboriginal lands, notwithstanding such lands may have been selected by, tentatively approved, or even patented to the State. Specifically, the decision dispels any doubt that, as a matter of law, Congress has the authority to reserve royalty interests in lands for the aboriginal owners whether or not the lands have been selected by, tentatively approved, or patented to the State.

The decision also casts substantial doubt on the authority of the Secretary of the Interior to have approved or patented any

selections involving lands claimed by the Natives without first having conducted proceedings to determine the validity of their claims. In any event, in the absence of the enactment of legislation by Congress, the decision makes it clear that whether or not Secretary Udall's land freeze order is extended beyond its present expiration date, the State of Alaska cannot obtain possession of or patent to any additional lands under section 6(b) of the Statehood Act until proceedings have been held to determine the validity of the Native claims.

We remain firmly of the view that legislation is without question the best means of justly and equitably settling the aboriginal rights of the Natives. Although the decision of the Court of Appeals shows that there are alternative means available to the Natives to protect their rights, resort to them would very likely entail years of enervating administrative and judicial proceedings which would serve the interests of neither the State, the Nation nor the Natives.

Archie Moore Visits Native Medical Center

Archie Moore, former Light Heavy-weight World Champion boxer, chatted and signed autographs several hours for the patients and personnel at the Alaska Native Medical Center on February 6. A portion of his visit also included a film of his fight with Ernie Terrell. Refreshments were served adding to the occasion.

Greater Anchorage Inc. sponsored Mr. Moore's visit for the Golden Gloves Tournament which was held in Anchorage, February 5-7.

Letters to the Editor

29 January/11 February, 1970
Seattle, Washington

Sir:

I have never written before, and I hesitated before writing now, but I think that I should say something about the letter of "Mrs. Disgusted," which appeared in your paper several weeks ago. I am an Orthodox Christian, and a "white man" who came into personal contact with natives from Alaska while I was studying at the University of Kansas, only a short distance from Haskell Institute. Since I regard several of the natives that I met there as close friends, I was hurt since this woman was attacking them directly and me also, indirectly.

Over a period of time I learned what happened in Alaska since Russia transferred it to the United States, and I experienced the pain of having to deal with the powerful and basically hostile Bureau of Indian Affairs. What I want to say is based on what I have learned and experienced.

"Mrs. Disgusted" and those like her are like beggars who come to someone's house and then, when they are received and treated with kindness, rise up and with superior force throw out the owner, penniless on to the streets, despising him for having been kind and for not being as unfeeling and as rootless as the wicked beggars were.

She is undoubtedly an immigrant. Usually immigrants to a land not their own are eager to be welcomed and accepted by the people where they are going. They want to learn the language, at least enough to communicate, and they are willing to adjust themselves to the pattern of life there at least far enough so that everyone can live gracefully and

well.

The United States itself, has never been content even with this, but has imposed crushing burdens on all her immigrants to force them to do much more than necessary for a peaceful and happy life.

These same people, whose treatment of immigrants who came to them (unless they were the few favored ones) hardly stopped short of quiet persecution when they became immigrants, were not willing to give consideration to anyone. Arriving under dishonorable circumstances against laws, treaties and basic human consideration that they are careful to exact from others when it suits their advantage, they begin persecution in the land of their immigration.

Most people speak with a certain pride of their native land and their native language, including these people, but they make the word "native" take on disgusting and degrading meanings because of their slanders. What these people hate and despise is that anyone should dare to be different than themselves. They will not rest until everyone, "for their own good," has been forced by terrific suffering to become carbon copies of themselves.

They speak of the rights of the "people," of the "majority," of "majority culture" and of "ethnic groups" and majority groups" and insist on the "rights" of the people" or "majority" to force these "ethnic" groups or "minority groups" to give everything to the majority so that there can be "unity."

Before anyone is seduced or deceived into giving in, however, he should consider this: to give in MIGHT, eventually, stop the quiet persecution but how desirable is this life that is being held up as "progressive," "civilized," "unity."

After reading "Mrs. Disgusted's" letter, how many people want to become like her? It would be difficult to see how these "white people" live, especially from a different background and culture and when their cities, "small towns" and other places where they live may be somewhat distant from an Alaskan

village, but from what can be seen of "white men" in Alaska and perhaps reading about their affairs in the United States, particularly in economics, how much chance is there that the life of a "white man," in general, is not basically ruthless, uncaring for others, cynical toward God and man, wicked, selfish, narrow, lonely and sad? How many people would really choose that kind of life if they had a choice and knew anything else?

These "white men" have hurt many by referring to themselves as "civilized" and by degrading others by referring to their life as "backward" and "stone age." Does the pain that comes from their speech really convince anyone that what they are saying is good and true? Is it not more likely that these words come from ruthlessness and wicked pride?

Some of what they know can be profitably used, and this might very well be learned, if only to protect oneself from them. Likewise, much of what the peoples of Alaska know could profitably be learned and used by them. But before accepting too much of what they want to teach and especially before accepting their values be very careful or their values and life may destroy the peoples of Alaska as they have destroyed, and are destroying the "white man" in every sense that makes life worthwhile.

I am, Sir,

Yours faithfully,
Basil Shallcross

Shaktoolik 4-H

By ANNABELL BEKOALOK
4-H Club News Reporter

The 4-H club girls at Shaktoolik are working on their aprons and pillow cases we will start on our new businesses after we are done. We are now planning to have a rummage sale soon.

We are planning to order all kinds of beads with the money from the rummage sale. With the beads we will make bracelets and necklaces.

The 4-H boys club are done with all their leather crafts.

Poem— Spruce Tree

The sea-blue green needles
Are kissed by the breeze,
Pearl white snow sparkling
On tall spruce trees.

A mighty ruler of the land
Lovely, perfect and tall,
She's green in bitter winter
Nature is her law.

The forest area is refreshed
By her clean, clear, scent,
But tragedy comes forth
When a branch is bent.

Disease may strike the wound
Nature can't help her,
Slowly she may fade and die—
No one will remember.

—CLARENCE MURRAY, JR.
Box 2001
Fairbanks, Alaska

ARTIFACTS WANTED! If you are going to sell old-time objects, please contact the Alaska State Museum first. If you have old-time things that need special care, you can lend them to the Museum for safe-keeping and display. If your things are in the Alaska State Museum, they stay in Alaska. Contact: Jane Wallen, Director, Alaska State Museum, Pouch FM, Juneau, Alaska 99801, phone 586-1224.



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