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COURT OF INDIAN OFFENSES
FOR THE COMANCHE NATION TRIBE OF OKLAHOMA
ANADARKO, OKLAHOMA

IN RE:)
)
RECOGNITION OF COMANCHE)
NATION BUSINESS COMMITTEE,)
TRIBAL ADMINISTRATOR,) Case No. CIV-12-054
) (Mag. Judge Lujan)
COMANCHE NATION,)
)
Petitioner.)

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EXCERPT OF TRANSCRIPT OF PROCEEDINGS
HAD JUNE 22, 2012
BEFORE THE HONORABLE MAG. JUDGE LUJAN
ANADARKO, OKLAHOMA

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REPORTED BY:

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1 (On June 22, 2012, proceedings were had before the Honorable
2 Mag. Judge Philip Lujan, and the Order is as follows:)

3 * * * * *

4 THE COURT: All right. I don't need to
5 hear anything more. All right.

6 Now, where we're at -- there is some
7 history to this 25CFR11.118. And the Court actually
8 doesn't have to go to the documents that have been
9 presented, it has its own limitations on its
10 jurisdiction as prescribed, because this is a court
11 of limited jurisdiction. And this 25CFR11.118 is
12 that limitation.

13 I don't know if I should be proud of that
14 25CFR11.118 because that is sometimes known as the
15 Lujan Provision. When I first started 25-30 years
16 ago, I had the audacity to say that tribes should
17 follow their governing documents. And I will tell
18 you that that was very upsetting. And I was a very
19 brash person at that time.

20 I hope that experience and age have
21 tempered me and I hope that I've gained some wisdom
22 since then. But there's two things that are part of
23 status -- and Indians, we're always concerned about
24 status. The first one is "You're nobody until
25 you've been sued in federal court." That's one

1 status and I've been sued in federal court.

2 The second one, and this is even more
3 important because this is the Indian world, and not
4 many white guys can say this, "You're nobody until
5 they spread the blanket at the powwow to raise money
6 to fly to D.C. to complain to get you unhorsed.

7 That's the one I'm most proud of, because
8 they have spread the blanket to raise money to fly
9 to D.C. to get rid of me. Because of the audacity
10 that tribes should follow their governing documents.

11 Now, this 118 is the result of a
12 compromise. I'm still here, but they took away my
13 stick.

14 Here is the other compromise, and I'll
15 just tell you -- and I'll put that on the record
16 over there for the secretary to hear it -- the other
17 compromise is when you don't have this court
18 authorized to hear election disputes and internal
19 disputes the decision remains with guess who? The
20 BIA.

21 So tribes now have to make a choice: You
22 want to live like it was in the 1950s, or do you
23 want to authorize this Court to have things done
24 publicly, to have the law enforced.

25 I will tell you this -- and I don't want

1 to build the drama here. It's very straight
2 forward: In these documents and laws that have been
3 passed by the tribe, one of the canons -- you've
4 heard some canons of construction mentioned here,
5 one of the important canons of construction is the
6 specific controls over the general.

7 The Comanche -- whereas the Comanche
8 Business Committee intends that nothing in this
9 resolution shall be deemed to supercede or conflict
10 with the provisions of 25CFR11.118, and it says it
11 very strongly at once again in Internal Tribal
12 Government Disputes.

13 Now, this -- this is a question that has
14 gone up -- also some background -- this has gone up
15 to the Appellate Court, because I have argued and I
16 have written and made decisions consistent with the
17 principle that when a -- when a tribal official
18 violates a tribal constitution, that's not a
19 dispute, it's either lawful or it's unlawful.

20 The Appellate Court, I'll just tell you,
21 to use slang, has slam dunked me three times on
22 that. They do not agree with me.

23 So this is where -- and remember I told
24 you earlier, I have made decisions that are
25 distasteful for me. It's distasteful if, in fact --

1 which we don't know -- if, in fact, the Comanche
2 Constitution has been violated, and that violation
3 can continue with impunity, it's a sad day for the
4 Comanche people. And until -- this is going to take
5 a political decision. If enough Comanche people are
6 outraged by that sufficiently to give the proper
7 authorizing legislation by the Tribal Counsel to
8 this Court, that will continue until that is
9 accomplished.

10 I can be outraged. It's diametrically
11 opposed to everything that I've lived for,
12 philosophically, and what I've done for 30 years,
13 for tribal officials to violate their own governing
14 documents. I'm not saying -- you see, I can't say
15 that that's what's happened here, because that's not
16 before the Court. I'm just saying the idea of that.

17 But each. This -- this law that's come
18 down -- not law, this CFR regulation that limits
19 this Court's jurisdiction has said each individual
20 tribe must do that specifically in order to bring it
21 into the Court. And until it does that, I'm
22 (Indicating.) I'm like this. No matter what outrage
23 or whatever I may think or whatever I see, see I'm
24 like this. (Indicating.)

25 So I'm going to grant the motion they've

1 carried today here, because there is no
2 authorization. The obligation was on -- was on this
3 party to show me affirmatively where I have been
4 given the authority. And all of the things and
5 events -- those of you who know more about what
6 happened than me, you may be -- you may be outraged
7 about this. But the solution is not for me to
8 violate the law in order to enforce the law. That
9 can never be done. That's part of -- that's part of
10 an oath that you take. And that's why police --
11 police are dangerous when they violate the law to
12 enforce the law. Judges are dangerous when they
13 violate the law to enforce the law. It's not
14 sufficient to say, "I'm doing good." It is not
15 sufficient in a lawful society to say, "I'm going to
16 do this for good. Forget the law, I know what's
17 good."

18 Well, that's a temptation for people who
19 have authority and power. But I want you to know I
20 am resisting that temptation. And I'm not able to
21 reach the facts, the merits, whatever the
22 circumstances were, I'm unable, until I'm handed --
23 like I always say for -- we're all Plains Indians
24 here -- until the Comanche people hand me the pipe.
25 You hand me the pipe and I promise you I'll hold

1 that and I will do whatever is necessary. But I
2 don't have the pipe.

3 That would be the Order of the Court.

4 I would like for -- Counsel, if you would
5 prepare the appropriate order.

6 MR. GOODMAN: We would, Your Honor. We
7 will submit it to the other side for review and then
8 submit it to Your Honor.

9 THE COURT: All right. Thank you,
10 gentlemen.

11 And that means that -- what that means for
12 everybody, for the lay people here, my Order is
13 withdrawn automatically because this Court has no
14 jurisdiction in this matter. That's what I found
15 today.

16 (Applause.)

17 THE COURT: And you're excused.

18 No demonstrations, please. Go ahead and
19 leave in an orderly manner.

20 MR. GOODMAN: Thank you, Your Honor. Are
21 we adjourned?

22 THE COURT: You're adjourned.

23 (Proceeding adjourned.)

24

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C E R T I F I C A T E

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

I, JENESSA K. KALSU, a certified shorthand reporter within and for the State of Oklahoma, certify that the above proceeding was taken by me in stenotype and thereafter transcribed by computer and is a true and correct transcript of the excerpt of the proceeding; that the proceeding was taken on the 22nd day of June, 2012, in Anadarko, Oklahoma; that I am not an attorney for or a relative of any party, or otherwise interested in this action.

Witness my hand and seal of office on this the 22nd day of June, 2012.

JENESSA K. KALSU, CSR
Oklahoma CSR No. 01654
Expiration Date December 31, 2012