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In the

Supreme Court of the United States

UNITED STATES,

Petitioner,

v.

MARTIN DEWALT MAZURIE, et al.,

Respondent.

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SUPREME COURT, U. S.

No. 73-1018

Washington, D. C.
November 12, 1974

Pages 1 thru 53

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IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES, Petitioner,	:	
v.	:	No. 73-1018
MARTIN DEWALT MAZURIE ET AL	:	

Washington, D. C.

Tuesday, November 12, 1974

The above-entitled matter came on for argument at 11:38 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN., JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

HARRY R. SACHSE, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C. 20530 For the Petitioner

CHARLES E. HAMILTON, ESQ., Broadway and Park, Riverton, Wyoming 82501 For the Respondents

JEROME F. STATKUS, ESQ., Assistant Attorney General, State of Wyoming, 204 Capitol Building, Cheyenne, Wyoming 82002 For Amicus Curiae

C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 73-1018, United States versus Martin Dewalt Mazurie et al.

Mr. Sachse, you may proceed whenever you are ready.

ORAL ARGUMENT OF HARRY R. SACHSE, ESQ.,

ON BEHALF OF PETITIONER

MR. SACHSE: Mr. Chief Justice and may it please the Court:

This case is here on writ of certiorari to the Court of Appeals of the Tenth Circuit to review a decision of that case that held unconstitutional 18 USC 1154, one of the principal laws regulating the introduction of liquor into Indian reservations and 18 USC 1161, a law of the same purpose.

In doing so, it reversed the District Court which had convicted the defendants in this case.

I think the best way to approach this case is first with an analysis of the statutes for a few minutes and then with the exact facts of this case so the facts will make sense in the context of the law.

The problem of liquor on Indian reservations has been a serious problem to Indian tribes and Congress for a long time and in the early 1800's, Congress absolutely

prohibited the introduction of liquor into Indian country and absolutely prohibited the sale of liquor to Indians who are under the guardianship of the United States, no matter where they were.

This remained essentially the law until 1949.

In 1949, the Act, which is now Section C of 18 USC 1154 -- that is on page 3 of our brief -- was passed and that section redefined Indian country -- you know Indian country has been defined to include all the land inside an Indian reservation.

That Act redefined Indian country for the purposes of the liquor laws to exclude rights of ways through reservations and non-Indian communities and Congress, in making that amendment, which was just part of a general set of amendments to 18 USC, said that it was to bring the statute more into accord with the way the statute actually had been enforced.

Then the practical effect of it, of course, was to say that where there were little non-Indian communities on an Indian reservation, that liquor could be sold there or that a truck passing through an Indian reservation could not be stopped because it was carrying liquor.

Then, in 19 --

QUESTION: That is, in the absence of a treaty or a statute. Is there any statute?

MR. SACHSE: There is nothing in the treaty and no particular statute that would apply here. There could be a treaty that would say, nowhere in the Reservation ever, or something like that.

Then, in 1953, 18 USC 1161 was passed. This was a local option statute. The Indian people had felt for some time that the laws totally prohibiting the introduction of liquor into Indian reservations was discriminatory against them and unnecessary.

And Congress, reacting to that, passed a very limited statute that said, liquor was still illegal in Indian country as defined by these two statutes but it could be legally introduced if, number one, it did not violate state law and, number two, the Tribe passed an ordinance allowing it to be introduced and that ordinance was approved by the Secretary of the Interior and published in the Federal Register.

That was the degree of control over the introduction of liquor into Indian country that 18 USC 1161 provided.

Now, the facts of this case:

The Wind River Reservation is a major reservation in Wyoming. The Shoshone and Arapahoe Tribes are there.

In 1953, after the passage of this -- of 18 USC 1161 -- they took advantage of the new Act and passed an

ordinance saying that liquor could be introduced into the Reservation if it was done so in accordance with state law.

After that ordinance was approved by the Secretary of the Interior, advertised in the Federal Register -- after they passed that ordinance, the predecessors of the Mazuries bought a piece of property on the Reservation and opened a bar.

They then operated that bar for -- they had a valid state liquor license -- they operated the bar for 18 years. Then the Tribe reconsidered the resolution, decided that it shouldn't have the reservation be wide open, passed a new ordinance, an ordinance -- ordinance number 26 -- which provided that to introduce liquor into the reservation, that a person henceforth would have to obtain a tribal license as well as a state license.

This regulation, which set out in some detail the information that had to be supplied to the Tribe, standards for obtaining a tribal license, was approved by the Secretary of the Interior and the regulation looks pretty much like any municipality regulation on liquor licenses, was approved by the Secretary of the Interior, advertised in the Federal Register --

QUESTION: Where is the regulation?

MR. SACHSE: The regulation, I am sorry to say, was not reproduced in the Appendix. It is in the record and

also in here -- but it is in the record of the case.

QUESTION: Here?

MR. SACHSE: I mean, it is -- I have a copy of it right here. It is in the record of the case.

QUESTION: It was introduced at the trial.

MR. SACHSE: It was introduced at the trial and stipulated. It was stipulated that it was a validly adopted regulation and the publication in the Federal Register was also introduced at the trial.

The regulation allowed an existing bar to continue until it had to get a new state license and at that time required it to apply for the Tribal license as well.

The Mazuries did not apply for the Tribal license. They were notified then to apply. They then did apply for the Tribal license, gave the information that was required and a public hearing was set up by the Tribal Council to hear their application.

At that hearing, there was considerable testimony -- this is in the record also -- of disorderliness at that bar. There was testimony that the bar was near a housing project where a lot of old people lived and that people came out of the bar late at night making all sorts of noise.

There was testimony that there had been seven or eight killings on the reservation, all of which had been associated with the use of alcohol, that there had been

fights in this particular bar, that the bar had been selling to minors.

As a result of this, the Tribe refused the liquor license to the bar. The managers then closed the bar for a period of several weeks.

They then decided to reopen it and reopened it in defiance of the action of the Tribe. At that point, the --

QUESTION: Did all these untoward incidents happen during the 18-year period or just toward the end of it?

MR. SACHSE: I don't think the record shows the particular incident happened, your Honor. I am unable to determine from the transcript that was there whether these things occurred in the last few days or earlier.

The BIA then closed the bar and the U.S. Attorney brought a misdemeanor charge against the Mazuries under 18 USC 1154 for operating a bar in Indian country as defined in that statute without the consent of the Tribe.

At the trial, almost everything that was said up to now was stipulated. The stipulation is in the Appendix.

The trial focused on the question of whether the Mazuries could claim that their bar was in a non-Indian community and thus was excepted from the Tribal regulation.

The Government introduced witnesses on this point and the testimony is quite complete on this question. The Government showed that the bar was located three-quarters of

a mile from Fort Washakie, which is an unincorporated village at the headquarters of the Tribal Government.

They showed that there had been a housing survey made a year or so previously to determine the condition of housing in that area and that it showed, and the man who made the survey was there and cross-examined, that within a 20 square mile area of Fort Washakie, there were only 212 families living and that of those, 170 and a half were Indian families and that 41 and a half were non-Indian families. The halves were one mixed family that lived in the area and they counted that family, half each way.

The Government also brought in the superintendent of the school district there and there was a state school supported both by federal funds and state funds opened to all the children who lived in that area.

The superintendent testified that, of 243 students, that 223 were Indian and the school was two and a half miles from the bar.

Mr. Mazurie himself testified that, "So we are kind of out there by ourselves, you know."

He also testified that his bar served both Indians and non-Indians and that when there was trouble, if there was trouble with Indians, he would call the tribal police and if there was trouble with non-Indians, he would call the county sheriff.

On the basis of this record, I should say the case was tried before judge alone and with jury waived and on the basis of this record, the judge found that the defendants had opened the bar in Indian country and were in violation of the statute and implicit in that finding, of course, was that it did not fit in the exception of the statute of a bar run in a non-Indian community because that was the real point of the testimony at the trial.

Now, the Court of Appeals found that the term "non-Indian community" is undefined and therefore, no one could tell whether he was operating a non-Indian community and therefore, the entire statute, 18 USC 1164, which prohibits the introduction of liquor into Indian country, is unconstitutionally vague because it contains this exception.

The Court went on to say, even if the statute is not unconstitutionally vague, we doubt that Congress has the authority to prohibit sales of liquor by a non-Indian on land that he owns in an Indian reservation and then went on to say, but even if Congress does have that authority, it is an unconstitutional delegation of that authority to let the tribe itself make the decision, even under the limited circumstances of this statute, as to whether liquor can be sold within the Indian country and its reservation.

We think, as you know, that this decision of the

Court of Appeals is just simply dead wrong, that, first, on the question of the vagueness of the statute, certainly, one can postulate a situation in which it might be difficult to tell whether one is in an Indian community or a non-Indian community.

Actually, in 25, 26 years of application of the statute, apparently that kind of problem has not come up but this is not a First Amendment case. This is an ordinary criminal case and the test in a case such as this is not whether one can find vague areas, but whether the statute was vague as applied to these defendants.

Congress meant something sensible by the words "non-Indian community" and there is no sensible definition of "non-Indian community" that could include a bar three-quarters of a mile from the Tribal headquarters in an area with one of the highest concentrations of Indian families that you often find in an Indian reservation.

I think the Court's -- I don't think I need to recite to the Court its test in United States versus National Dairy Corporation but that test is applicable and I think Justice Holmes' statement in the Wertz Bach case quoted recently by the Court in Broadrick versus Oklahoma is also quite applicable in borderline cases, I interpose. It will be time enough to consider it when it is raised by someone whom it concerns.

I think it is quite clear that the Mazurie's knew they needed this Tribal license. They only opened the bar after the Tribe had passed its ordinance and that as far as they are concerned, they simply don't have standing to raise what might be some borderline question in some other case.

Now, on the question of the authority of Congress, that is absolutely clear that Congress had totally prohibited sales of liquor in the Indian reservations before it modified those regulations.

That prohibition covered both Indian-owned and non-Indian-owned land. The constitutional authority for this is Article I, Section VIII of the Constitution, which gives the Congress authority over trade with the Indians and this Court flatly held that years ago, in United States versus Perrin, that Congress has the authority to regulate the sale of liquor within Indian country whether it is on privately-held or publicly-held land and Perrin is not the only case.

Practically every aspect of that law was litigated at one time or another in the half-a-dozen cases on page 15 and 16 of our brief that support this point. Now --

QUESTION: I suppose, Mr. Sachse, one can sympathize with the Mazurie's. They had had this business for 18 years and all of a sudden, they can't have it.

MR. SACHSE: Well, I don't sympathize with them too much because they opened the business on an Indian

Reservation because the Tribe had made one of two choices, either to allow or not to allow the introduction of liquor.

Now, they knew that that was not an inexorable choice, that if things did not work out the Tribe could change this and when the Tribe did change it, that they would have to apply for a Tribal license or be totally prohibited if the Tribe said no liquor on the Reservation.

So they went in to make a profit from the opening of this Reservation through sales of liquor and there is no vested interest there that I can see.

And I should point out that, subsequently, the state also denied their liquor license. This did not render the case moot because they had already been convicted of the federal offense but the state also, for whatever reasons, felt that this bar should not continue.

As to the delegation of authority proposition, I just want to make several short statements.

One is that an Indian Tribe is a governmental unit, that this Court has recognized that reservations were reserved as the area where the Tribe's governmental authority would apply.

For instance, in the McClanahan case, that a Tribe, that a state ordinarily does not have jurisdiction inside an Indian Reservation but narrow exceptions have been drawn in matters purely affecting non-Indians where the

state will have jurisdiction.

But where an important Indian interest is at issue, and the sale of liquor within an Indian Reservation, I think, is clearly such an interest, that the Tribe does have a certain governmental authority and there is quite a good argument that could be made that even without any statute of Congress, the tribe would have the right to prohibit the sale of liquor within the Reservation and I refer the Court to some rather old cases of this Court, the lead one of which is Morris versus Hitchcock, as stated in our brief.

But here, we don't have to get into the more difficult question of a Tribe's general authority over non-Indians who live on the Reservation because Congress, which the Court over and over has recognized as having plenary authority in this area, has specifically granted this legislative power and has done it in a very limited and restricted way, with full account for the interests of non-Indians.

The very exception that is attacked for non-Indian communities recognizes and protects a non-I dian interest here and the requirement that the regulation be approved by the Secretary of the Interior makes this a very limited delegation of authority and that it be advertised in the Federal Register so that everyone will know that it is there and I point out that this Court has stated numerous

times that in assuming responsibility for the Indians -- I am thinking here particularly of the Mancari case the Court decided last year, but that relies on a whole line of cases before it that Congress necessarily has power to do the things that are reasonably necessary to perform that trust responsibility and nothing could be a better exercise of the trust responsibility than to return in this controlled and limited way some power to the Tribe to decide whether this very important problem to the tribe is to be handled by a complete prohibition or by other methods.

I have one other thing I want to say before I sit down but I think my time is up.

MR. CHIEF JUSTICE BURGER: You may stretch it for -

MR. SACHSE: Well, I will say this, that I think behind the Tenth Court's opinion is the proposition that an Indian Tribe shouldn't ever make a decision that affects a non-Indian and that the idea that a non-Indian has to submit himself to the Tribe's jurisdiction on whether to open a bar there is simply some way un-non-Indian-American, unwhite-American, or something like that.

But that this Court's decision in Williams versus Lee makes it clear that that is not so, that in an appropriate, limited situation, the person does have to go to the Tribal authority.

MR. CHIEF JUSTICE BURGER: You may develop that

after lunch, if you wish.

[Whereupon, a recess was taken for luncheon from 12:00 o'clock noon to 1:01 o'clock p.m.]

AFTERNOON SESSION

MR. CHIEF JUSTICE BURGER: Mr. Sachse, you have about eight minutes left, altogether.

MR. SACHSE: Unless the Court has some question on what I have just said, I'll save this remaining time for rebuttal.

MR. CHIEF JUSTICE BURGER: Fine. We may have some questions later.

Mr. Hamilton.

ORAL ARGUMENT OF CHARLES E. HAMILTON, ESQ.,

ON BEHALF OF RESPONDENTS

MR. HAMILTON: Mr. Chief Justice and may it please the Court:

I live in Riverton, Wyoming and we are centered approximately in the center of the Wind River Indian Reservation, which is a reservation made up of the Shoshone and Arapahoe Tribes and which, as I am sure you are aware, constitutes considerably over 2 million acres.

The history of this reservation has been varied and sundry with considerable amount of the land being removed from the reservation by the Federal Government, all of that north of the Wind River and they then started

distinguishing the cases based on what was south of the Wind River, which is the area which we have which they called the portion of that which had not been taken away.

Now, the basis for the patent in this case which was rendered to my clients' predecessor and title was 34 stat. 182 which states, among other things, that the United States Government, upon the issuance of that patent without restriction does thereby relinquish all jurisdiction over that particular portion of land.

So then who has jurisdiction over that land? And that is taken up immediately by Article 21, Section 26 of the Wyoming Constitution, which says that the minute a patent is issued, that the land becomes subject to the exclusive jurisdiction of the State of Wyoming.

Now, Mr. Mazurie and the Blue Bull, Inc. are both legal citizens of the State of Wyoming. They are then subject to the rules and regulations of dual citizenship, that of being citizens of the United States of America and as being citizens of the State of Wyoming.

Enrolled members of the Shoshone and Arapahoe Tribe, on the other hand, are the beneficiaries of three levels of citizenship, those of being citizens of the United States, of the State of Wyoming and of the Shoshone and/or Arapahoe Tribes.

This is a very exclusive club, a very exclusive

group. You cannot belong unless you have 25 percent Indian blood on your father's side.

Now, there are many people on that Reservation who have in excess of 50 percent Indian blood but who were born out of wedlock and things of that sort. These people are not eligible for tribal membership.

You have to pass all of the rules and regulations. You have to be approved by the tribal council before you can even belong to it. There are a few more than 4,000 total enrolled Indians on the Reservation.

There are 25,000 people who live within the exterior boundaries of that Reservation. Obviously, the majority of the people who are there and who are affected by any rules and regulations of the Tribal Council are non-Indians. I don't know --

QUESTION: Do you know how many non-Indians, technically, in the sense you were just talking about?

MR. HAMILTON: Yes, sir.

QUESTION: That is, between whites and the marginal group who can't fit into the club?

MR. HAMILTON: Yes, sir. In other words, I don't know -- the conversation has been, all the way through this matter at all three levels of courts including here today, your Honor, that we are talking about the rights of the Indians to self-determination, to self-government, as opposed

to non-Indians who I guess, as everyone else -- now, just because you don't belong to the club, does that make you a non-Indian? I guess it does. I don't know. That is one of the problems I am having with 1154-C because if I can't tell who the players are in the game, then it is pretty -- or what the rules are or what kind of a ball is in play, then I have a tough time measuring out the field.

So what we have been up against in this case is trying to determine just what 1154-C means. Does it mean that the community must be predominantly enrolled Indians?

Does it mean that the community must be predominantly people of a certain percentage of Indian blood and, if so, what does it mean, that they must go to an Indian school or that they must speak some Indian dialect, that they have a certain color skin, that they shave or don't shave.

You know, where is the criteria?

There isn't any which anyone can reasonably understand.

QUESTION: My understanding is that out West it varies from tribe to tribe.

MR. HAMILTON: Yes, sir, that is true.

QUESTION: There is no standard federalregulation?

MR. HAMILTON: That is correct, your Honor.

QUESTION: For a quarter or a 64th or --

MR. HAMILTON: So far as enrollment is concerned, yes, sir, that is correct. But the Shoshone and Arapahoe Tribes and I have had considerable problems practicing law up there over the past years in trying to go to the Tribal Council with people that I felt in my opinion were qualified to be enrolled and have them summarily dismiss me and say, we don't want to listen to you, Mr. Hamilton, and, of course, there is no appeal, of course, and so these people were not enrolled.

And it is kind of a personality thing up there and it is a very difficult thing to deal with.

QUESTION: Could your client have come within any of the comparable definitions of 1154-C that you alluded to a moment ago on this?

MR. HAMILTON: So far as the criteria for admittance to the club, no, sir, he would not.

QUESTION: Well, could his establishment have been deemed within a non-Indian community under any of those tests?

MR. HAMILTON: Well, I don't know.

In other words, it says that if the government can prove -- now, please understand, it is not a matter of affirmative defense on our part. This is a criminal case and I differ with my respected colleague here who argued that we have the burden of proving that we were in a non-Indian

community. We have the burden of proving nothing here because we were the defendants in a criminal case.

But the Government -- it is a burden of the Government to prove beyond a reasonable doubt in this matter, and in all matters of this sort --

QUESTION: Mr. Hamilton --

MR. HAMILTON: Excuse me?

QUESTION: Well, what about a normal criminal case in a state? Frequently the defense of insanity is -- the burden of that is placed on the defendant.

MR. HAMILTON: Yes, sir, but that is on our particular statutory procedure which first of all gives it a choice about whether or not to plead that defense and if so, then he is subjected to the following conditions.

That is not the case here.

The case here says that the Government has the duty of proving beyond a reasonable doubt,

One, that you sold liquor -- which we admit.

Two, that you are located within the exterior boundaries of a reservation -- which we admit.

Third, that you are not located in a non-Indian community.

They did not prove beyond a reasonable doubt one of the elements of this crime, which is that we were not located in a non-Indian community.

You see, what is wrong with the statute is it has a double negative in it, which makes it very difficult to understand in the beginning. But the United States did not prove anything in that regard. It was completely up for grabs. Nobody knew, when we walked out of the district courtroom in Cheyenne, what was going on.

QUESTION: How did they offer proof in that respect, by maps?

MR. HAMILTON: Well, your Honor, I have a map of that reservation which was an exhibit in this case and which was about 10 feet by 15 feet square and I spread it and I went and took a red pencil and marked off every piece of deeded land on that reservation. It took two and a half days with two people and a red pencil to do it. That is how much there is. And that map was an exhibit and Fort Washakie was placed there and the land around Fort Washakie is, in fact, about right in that area, is about 50 percent red. So I kept asking both members -- both chiefs -- in other words, both chairmen of the respective tribal councils, the Arapahoes and the Shoshones, I said, "Where is the boundary line between the community and the country?"

They didn't know.

"Where is the -- is this place in the community?"

They didn't know.

I asked Mr. Hobbs, who has been the superintendent

of the reservation and worked for the Bureau of Indian Affairs since 1961, I said, "Mr. Hobbs, you are the administrator of this reservation. Where are the boundary lines?"

"I don't know."

I said, "Well, is this in a non-Indian community?"

"I don't know."

Well, there just wasn't any burden of proof met at all.

Okay, so let's assume that -- and, based on this and on these facts, the Tenth Circuit said, "We're sorry, we just cannot, in our conviction. You just totally failed in your burden of proof."

QUESTION: Well, I thought it was proved that your clients' lands were fee patent lands. You proved that.

MR. HAMILTON: Yes, your Honor, that was stipulated.

QUESTION: Oh, that was stipulated.

QUESTION: Yes, sir, it is fee patent land without any reservation at all except the usual reservation in that part of the country as to irrigation ditches and things of that [nature] constructed by the Government.

You see, the problem with Wyoming, at least the problem to many of the Wyoming residents, is that 48 percent of the state belongs to the Federal Government and sometimes

it is a little difficult for Wyoming residents, you know, to live in harmony with the Big Brother, so to speak, because of the large, large, government ownership in the state.

Now -- yes, sir.

QUESTION: I am still worried about this burden of proof.

MR. HAMILTON: Yes, sir.

QUESTION: How are you so sure it is on the Government to show that this is on excluded territory?

MR. HAMILTON: I --

QUESTION: That it is not on excluded territory?

MR. HAMILTON: Your Honor, under the terms and conditions of the statute, the sale of alcohol and traffic in alcohol with Indians is allowed generally. In other words, the 1953 statute said, because of the racial discrimination involved by not allowing the Indian people to drink, we hereby will allow them to drink.

QUESTION: Providing they agree to it.

MR. HAMILTON: Providing they agree to it within the exterior boundaries of their reservation.

All right, sir. So, in 1954, they agreed to it, in this reservation.

Then, along came 1154-C in '49 and they said -- and the Congress then said that because of the fact that there are so many little towns on these reservations which

have liquor outlets now, we assume an inspection should be made for them.

Now, there is another liquor outlet -- excuse me.

QUESTION: Well, why isn't the burden on them to prove the absence of the exception rather than your burden to prove that you are within the exception?

MR. HAMILTON: Well, your Honor, so far as I am concerned, they did not prove anything. We proved that this bar was located --

QUESTION: Within the --

MR. HAMILTON: -- on a county right-of-way.

QUESTION: Within the big boundary line.

MR. HAMILTON: Yes, sir.

QUESTION: You did prove that.

MR. HAMILTON: Within the huge boundary lines, yes, sir.

QUESTION: Right. They proved that.

MR. HAMILTON: Yes, sir.

QUESTION: And you say it is dead center, nobody to prove whether it is in the exception or not.

MR. HAMILTON: That is correct.

QUESTION: So that if your burden is to show that it is within the exception, you lose.

MR. HAMILTON: Well, your Honor, I don't have any burden, it is a criminal case is what I am saying.

QUESTION: Well, I know several criminal defenses that are affirmative defenses.

MR. HAMILTON: Yes, sir, this does not happen to be one of them.

QUESTION: Well, it carved out an exception.

MR. HAMILTON: Your Honor, I know of no statute which requires this criminal -- this set out as an affirmative criminal defense such as insanity is.

QUESTION: And you don't -- excuse me.

MR. CHIEF JUSTICE BURGER: Your answer is that this is an essential element of the crime?

MR. HAMILTON: Yes, your Honor.

QUESTION: The exception is.

MR. HAMILTON: Yes.

QUESTION: Except for subdivision C is there any reference -- there are many references in Indian country, of course -- but there is anywhere in the statute any reference except in C to non-Indian communities or even to Indian communities?

MR. HAMILTON: No, sir.

QUESTION: It is the only place.

MR. HAMILTON: It is the only place and there is no -- there are no guidelines or definitions whatsoever --

QUESTION: There is the definition of Indian country, but not of Indian communities and, I gather, the

District Court found that this was Indian country, all right.

MR. HAMILTON: Yes, your Honor.

QUESTION: Not whether or not it was an Indian community or not Indian community.

MR. HAMILTON: That is correct and the thing about it is, if the burden of proof is on the Government to prove that this is not a non-Indian community. There is that double negative again.

QUESTION: Which is to say what, to prove that it is an Indian community?

MR. HAMILTON: Yes. Or it is an element of the crime for them to prove that it is in the community because of the exception in the law.

Now, I will call the Court's attention to the fact that my client was prosecuted under Section 1154, which --

QUESTION: Mr. Hamilton?

MR. HAMILTON: Yes, sir.

QUESTION: The district judge found that, as I read the record, that the land was in Indian country. Is your position that there is no evidence to sustain that?

MR. HAMILTON: No, your Honor, we admitted that it was in Indian country because it is under 1151 -- under the definition of Section 1151.

QUESTION: For a reservation.

QUESTION: You can be in Indian country --

MR. HAMILTON: Yes, within the exterior boundaries of the reservation, yes, sir.

QUESTION: You can be in Indian country and not in non-Indian country.

QUESTION: No, non-Indian community.

MR. HAMILTON: Well, you can be in Indian country and be in a non-Indian community.

QUESTION: Right.

QUESTION: Like Riverton.

MR. HAMILTON: Well, but that presents a problem in that the southern part of Riverton is predominantly within the Indian and Mexican people. They live down on one side of town.

Now, is part of the non-Indian community an Indian community? Where is your guideline?

QUESTION: You mean, it might be an Indian community even though --

MR. HAMILTON: Within a non-Indian --

QUESTION: -- 90 percent of the population were Mexicans or whites or something else?

MR. HAMILTON: Sure.

QUESTION: At the same time, it might be a non-Indian community although 90 percent were Indians?

MR. HAMILTON: Certainly.

QUESTION: That is your --

MR. HAMILTON: Where is the guideline? And what is an Indian and what is a non-Indian? Who tells us that?

QUESTION: If 1154-C provides that the term Indian country as used in this section does not include fee patented lands in non-Indian communities and the district court finds that this took place in Indian country, he is negating the application of that exception, isn't he?

MR. HAMILTON: No, sir.

QUESTION: Why not?

MR. HAMILTON: Because he did not make any finding as to the community.

QUESTION: But he doesn't have to. All he has to do is to make that definition of -- this is excluded from Indian country and if he says nonetheless this took place in Indian country, he negates the application of the exception.

MR. HAMILTON: Well, I don't believe he does, your Honor. I believe that he also has to make a specific finding as to the concept of the Indian community because of the physical location of this establishment.

QUESTION: Well, you don't think that was implied there despite the proof of the number of families, the number of Indians in a certain square mile area and the fact

that the bar was out thereby itself?

MR. HAMILTON: Your Honor, the question asked was as to the number of Indian children enrolled.

Now, were these in the school? Were these enrolled Indian children?

They didn't know.

Is enrolling in the tribes the criteria? No one knows.

QUESTION: Well, certainly the presence of Indian families, to the extent of what, 244 out of 260 or something like this, there must be some kind of criterion.

MR. HAMILTON: Your Honor, we don't know what an Indian family is. Does that mean that each member of the family is an enrolled Indian in one of these two tribes?

I don't know.

There are no guidelines. There is no criteria as to what is an Indian and what is a non-Indian.

QUESTION: You indicated a little while ago that eligible Indians were not permitted to be enrolled.

MR. HAMILTON: Often this happens. Are those Indians or non-Indians as far as the statute is concerned? We don't know.

QUESTION: If Indian country in the '53 Act is used in the same sense as Indian country in C of the '49 Act, then it, by definition, does not include a non-Indian

connumity.

MR. HAMILTON: That is correct, your Honor, but what I am saying is, I don't know how to determine what or what is not a non-Indian community because I don't know what a non-Indian is.

QUESTION: If I understood you correctly, the district court made no findings beyond what you had already stipulated to, namely that you were in Indian country.

MR. HAMILTON: That is correct, your Honor.

QUESTION: And that your position is, he had to go beyond that and take the second leg of subsection C and make an explicit finding on that.

MR. HAMILTON: That is right, your Honor.

QUESTION: To do that, he'd have to define what is an Indian, wouldn't he?

MR. HAMILTON: Yes, sir.

QUESTION: Hypothetically, would he have to say an Indian includes not only Indians enrolled in the two tribes, either one of the two tribes, or any person having any degree of Indian blood? And then count up how many there were?

MR. HAMILTON: Your Honor, I don't know because here is the thing, this probably, you know, this is the United States Supreme Court and you have to probably make rules for all of the Indian tribes here. I think that this

is a pretty important case and the thing about it is, maybe we would adopt in Wyoming what is the standard of the tribe in Wyoming? It may be in South Dakota, you would have whatever the standard sets up for membership in the tribes there, all others being non-Indians.

I don't know.

QUESTION: But could I ask you -- let's assume that -- either assume that this was Indian country or not or that it was a non-Indian community or that it wasn't.

Let's assume that a statute, however, expressly made the Indian tribal liquor laws applicable to stores on this piece of land.

Now, I suppose the federal law would govern, unless it was unconstitutional, wouldn't it?

MR. HAMILTON: No, sir, I don't believe the federal law governs.

QUESTION: All right, but let's assume it was a federal statute that says -- assume a federal statute said, "The Indian Tribal liquor laws shall apply to the following described piece of property"and describe this piece of property precisely.

MR. HAMILTON: All right. There, of course, you have no problem because anybody can determine what the property looks like.

QUESTION: Well, you have a problem because the

Federal Government has the power to do that.

MR. HAMILTON: That is true, especially when you have a federal statute that says once you convey the property out on fee simple without reservation or restriction, that then it goes to the states, under the state jurisdiction and that is what happened to the piece of land that my client sits on.

QUESTION: Under Wyoming jurisdiction, you say.

MR. HAMILTON: Yes, sir and if you relate 34 stat 182 to Article 21 section 26 of the Wyoming Constitution, the two dovetail just like that.

The minute that patent is issued without reservation or restirction, then you are under the jurisdiction of the State of Wyoming. You enjoy all the benefits and rights of citizenship. You enjoy all the benefits and rights of the court system, the appellate system, the franchise system, everything. You have everything guaranteed by the United States Constitution and the Wyoming Constitution but under Indian jurisdiction, you don't, none.

QUESTION: Does this record show, or could we spell out from this record in any way, how many of the people in the area where your establishment is located, this community, are enrolled members of one of these tribes?

Or are none of them?

MR. HAMILTON: I have no idea, your Honor, you

would have to go through the tribal rolls of Fort Washakie and that would be a monumental job.

QUESTION: Well, your answer is that this record doesn't tell that.

MR. HAMILTON: Yes, sir, it does not because these are strung all over 3 million acres.

QUESTION: And your position is that it would be an essential part of the government burden in this case to establish that fact.

MR. HAMILTON: Yes, sir.

QUESTION: Well, is your client's place within any incorporated municipality of any kind?

MR. HAMILTON: No, sir, there is only one incorporated municipality in -- within the exterior boundaries of the reservation and that is the City of Riverton.

QUESTION: Which is the most --

MR. HAMILTON: There are other small communities out around, but just --

QUESTION: Are they incorporated?

MR. HAMILTON: No, sir.

QUESTION: No. Incidentally, I suppose, in the statute, community could as well mean neighborhood, whatever that is.

QUESTION: Don't findings of fact number 10 and

number 11 in the district court's judgment indicate, at least, his understanding of the meaning of a non-Indian community, particularly number 11? Incorporated, non-Indian community with recognized boundaries.

MR. HAMILTON: Well, your Honor, that is not what the statute says.

QUESTION: Well, you know what the statute says.

MR. HAMILTON: Yes, sir, that might be his interpretation, but I --

QUESTION: And you say the statute is too vague to understand but at least the district court seemed to understand it in these terms of an incorporated non-Indian community with recognized boundaries.

MR. HAMILTON: Well, your Honor --

QUESTION: And I think in fact number 11 on page 34 of the Government's brief.

MR. HAMILTON: Yes, sir. Yes, sir, but it is now my --

QUESTION: I'm sorry, of the petition for writ of certiorari.

MR. HAMILTON: Umn hmn. But it is my understanding at this time that on certain reservations the Indians have been asked to incorporate the community and they have refused, suggesting that then they would be removed from the jurisdiction of the United States and the --

QUESTION: Well, you are talking about Indians incorporating.

MR. HAMILTON: Yes.

QUESTION: This is non-Indian community with recognized boundaries.

MR. HAMILTON: Well, your Honor, it is a difficult thing to do in that area. People are --

QUESTION: Riverton is incorporated, isn't it?

MR. HAMILTON: Yes, sir. It was a land grant in 1906 and it was kind of like the Oklahoma land rush.

QUESTION: And the finding number 10 that it is two and a half miles from the reservation public school and we know from the evidence introduced that a vast majority of the students -- of the pupils of that school are Indian.

MR. HAMILTON: Well, they are Indian, your Honor, but I don't know what -- I don't --

QUESTION: And you see --

MR. HAMILTON: -- know what Indian means. That is still the problem. There wasn't any questions asked and I couldn't find out how many of them were, in fact, enrolled Indians. They didn't know.

QUESTION: Well, it doesn't say tribal members. It says non-Indian communities.

MR. HAMILTON: Yes, sir, whatever that might be.

QUESTION: Well, there was a good deal of evidence

introduced on this, wasn't there, if it is correctly summarized on page 8 of the Government's brief?

MR. HAMILTON: Which brief, your Honor, there is about --

QUESTION: The Government's brief. The brief for the United States, filed August 15th of this year.

Just the first three or four sentences. You are familiar with it, I am sure.

212 families, of which 170 and a half are Indian families and the remainder non-Indian families.

MR. HAMILTON: Yes, your Honor, but the thing about it is, Indian families is a questionable statement. I don't know what the criteria is to determine what those people are. I do know --

QUESTION: Well, the statute doesn't say anything about tribal members.

MR. HAMILTON: I know it doesn't, your Honor. It also doesn't say what an Indian community is.

QUESTION: Or what it is not.

MR. HAMILTON: Or what it is not.

QUESTION: Does your attack in this respect go to a defects of the statute, that the statute is a statute under which no crime can be established?

MR. HAMILTON: Yes, your Honor.

QUESTION: Yes, it does.

QUESTION: Apart from the proof.

MR. HAMILTON: Yes, your Honor.

It is a two-pronged attack. In other words --

QUESTION: You say they haven't made their proof but you say it isn't a good statute.

MR. HAMILTON: I don't think there is any possible way they could make their proof under that statute, your Honor.

QUESTION: Incidentally, I noticed going back to Finding 11 that Fort Washakie is not an incorporated, non-Indian community with recognized boundaries. Are there any incorporated non-Indian communities with recognized boundaries?

MR. HAMILTON: The only incorporated town with any exterior boundaries with the reservation is Riverton.

Now, whether it is a non-Indian community or not, I have no idea, or whether a part of it --

QUESTION: Can you have an unincorporated, non-Indian community?

MR. HAMILTON: I don't know, your Honor. So far as that statute is concerned, I have no idea. What I am saying is, I think it is a questionable where, you know, people of intelligence can differ and if so, then it is not a proper statute for criminal prosecution.

QUESTION: Well, do you think a statute which might

otherwise be vague or nearly vague can have its faults cured by construction?

A federal statute.

MR. HAMILTON: Well, your Honor, if it can't have its faults cured by construction, then it had better be stricken down.

QUESTION: Well, all right, but --

MR. HAMILTON: By the Congress.

QUESTION: That is what the Court of Appeals did. It struck it down.

MR. HAMILTON: Yes, sir. Yes, sir, it did.

QUESTION: Why shouldn't it have construed it if they thought it was vague?

MR. HAMILTON: I think they felt that the evils here did not justify that due to the fact that they felt that in spite of this statute that the Indians and the TRibal Council had no jurisdiction over non-Indians.

QUESTION: I know they had another reason besides vagueness to give the judgment.

MR. HAMILTON: On deeded land within the exterior boundaries of the reservation.

QUESTION: How about Riverton? Does Riverton have a mayor?

MR. HAMILTON: A mayor?

QUESTION: And council?

MR. HAMILTON: Yes, sir.

QUESTION: How many Indians?

Is the mayor an Indian?

MR. HAMILTON: No, sir. I was just out there last week and he is not.

QUESTION: Is anybody on the council an Indian?

MR. HAMILTON: At this time, no, sir.

QUESTION: You don't know whether or not that is an Indian Reservation?

MR. HAMILTON: I --

QUESTION: You don't know whether it is non-Indian.

MR. HAMILTON: I would say, your Honor, that it is not predominantly Indian people, no. But there is a --

QUESTION: You said you couldn't tell whether it was non-Indian or not but now you can.

MR. HAMILTON: No, sir, I don't know what the standard is.

QUESTION: Oh, I see.

QUESTION: Well, more practically, are there bars in Riverton?

MR. HAMILTON: Yes, sir, many.

QUESTION: And do they get licenses from the Indian --

MR. HAMILTON: No, sir, they get them from the state.

QUESTION: Have any of them ever been prosecuted for not paying it?

MR. HAMILTON: Not yet, not since the Tenth Circuit Court. This is the test case.

QUESTION: Well, this isn't the test case for Riverton, is it?

MR. HAMILTON: It is the test case for that reservation, your Honor.

QUESTION: But, in other words, it seems to -- from your answers, it seems to have been clear to everybody up to now that Riverton is a non-Indian community.

MR. HAMILTON: That is assumed, yes, sir.

QUESTION: That was true with this piece of property, too, wasn't it? For 18 years?

MR. HAMILTON: Yes, sir.

QUESTION: No. No, it was --

MR. HAMILTON: Well, the issue actually never arose. You see, ordinance 26 changed this in 1971.

QUESTION: Mr. Hamilton, is Wind River CAnyon still as beautiful as it used to be years ago?

MR. HAMILTON: Yes, your Honor, but they straightened the road out, I am happy to inform you, so it is not quite as hazardous as it used to be.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Hamilton.

We seem to have some problems here that your colleague, Mr. Statkus, has used up your time but that was, perhaps, partly attributable to the Court.

We'll give you -- will five minutes help you out any?

MR. STATKUS: Yes, your Honor and I would appreciate it very much.

ORAL ARGUMENT OF JEROME F. STATKUS, ESQ.

FOR WYOMING, AS AMICUS CURIAE

MR. STATKUS: Mr. Chief Justice, and may it please the Court:

The State of Wyoming's interest in this particular case -- and our entrance as Amicus, is first off, that this is fee patented land owned by a non-Indian and it is our position that the State of Wyoming has so an exclusive jurisdiction over this liquor license.

Secondly, that the State of Wyoming provides due process protection in the issuance of a liquor license, due process protection in the renewal of a liquor license, due process protection of the revocation or suspension of a liquor license.

Basically, our laws pertaining to the regulation of liquor in the State of Wyoming protect not only the licensee which, in this case is the Respondent, but also the public and we would respectfully submit to the Court

that Indians are certainly a part of the public of the State of Wyoming.

They are citizens of Wyoming and of the United States that we provide, by statutory machinery, a mechanism wherein the members of the reservation, both Arapahoe and Shoshone, can participate in the statutory procedures relating to the renewal or suspension or revocation of a liquor license.

We feel that on the disestablishment or relinquishment theory, we feel that the opinion of this Court in 1914 in Clairmont v. United States and also Dyck v. United States about the same time are very important here.

We think that these two cases support the proposition that fee patented land owned by a non-Indian is not subject to federal control or Indian control here.

QUESTION: So you would be making this argument, your argument, even if there were no subsection C of 1154?

MR. STATKUS: Yes, your Honor, that the State of Wyoming has exclusive jurisdiction over this liquor license.

QUESTION: Right and that -- and when you emphasize that your state gives due process protection too before denying or withdrawing a license, was it your implication that the tribal people do not?

MR. STATKUS: My implication is that it is not very

clear. The ordinance itself is arguable.

Under the section on revocation or suspension, it is unclear to us whether or not, for instance, 10 days' notice has to be given in order to have a license revoked or suspended. It is also unclear just whether or not -- and I don't think the record shows us -- or shows an absence of this -- that in Wyoming, when we have hearings on liquor license subject to the Wyoming Administrative Procedure Act and there is no indication in ordinance number 26 that, for instance, Respondent Mazurie would be accorded due process protection.

QUESTION: But in this case he was given a hearing, a full hearing, was he not?

MR. STATKUS: He was, after --

QUESTION: Wasn't he?

MR. STATKUS: Well, sir, your Honor, he had a license since 1969. The property, the deeded land, had been selling -- or business had been located since '54.

Now, what happened was, his application to the Tribes was for initial license, not a renewal, and we think that is very inequitable.

The hearing given him --

QUESTION: He was given a hearing.

MR. STATKUS: He was given a right to come into the -- before the Joint Tribal Council and the record shows

that he wasn't given the right to cross-examine witnesses. The record, as in Wyoming, it doesn't show that the tribes have adopted any type of rules or regulations which comport with due process and protect the Respondent.

QUESTION: And you gave him a hearing too, didn't you?

MR. STATKUS: I might clarify that. That hearing was held before the county commissioners. The county commissioners -- this was renewal, your Honor -- they decided not to renew the license.

The case was appealed pursuant to one of our statutes to District Court. The District Court sent it back for the reason that the County Commissioners had not adopted rules and regulations and so Mazurie is operating at the present. The case is in limbo.

QUESTION: Was this denial of hearing point argued before the lower court?

This is a criminal case, as I understand it.

MR. STATKUS: Yes, sir, it was a matter that --

QUESTION: Well, what you are arguing, was it presented to the court below?

MR. STATKUS: I don't -- I think it was presented but I don't know how much --

QUESTION: In any case, you weren't there.

MR. STATKUS: No, I wasn't there, sir. All I can

read is from the record.

But my point is, your Honor, that the State of Wyoming has an interest in the regulation of liquor and we provide a due process procedure for the issuance of an application of license --

QUESTION: Were you denied that under this statute? Was Wyoming denied that under the statute?

MR. STATKUS: The difference between the --

QUESTION: Was Wyoming denied that under the statute?

The answer is no.

MR. STATKUS: Well, it is our position that --

QUESTION: Isn't that right?

MR. STATKUS: Yes, your Honor.

QUESTION: Well, what are you complaining about?

MR. STATKUS: It is our position that the land in question is fee patented and that the State of Wyoming has so an exclusive jurisdiction over that liquor license.

QUESTION: I take it your point to be that Wyoming doesn't have to share the power to issue liquor licenses with anyone, including the United States of America.

MR. STATKUS: Yes, sir. Yes, sir.

QUESTION: And that somebody that you deem worthy of a license in your state should have a license.

MR. STATKUS: Yes, sir.

QUESTION: And should not be deprived of it by an Indian tribe.

MR. STATKUS: Yes, sir.

QUESTION: If he is a non-Indian operating on his own fee patented land.

MR. STATKUS: Yes, that is our point.

I would like to say that it has been an honor for me to present the State's position on this case to this body.

Thank you very much.

MR. CHIEF JUSTICE BURGER: You helped us in a very short time.

MR. STATKUS: Thank you.

MR. CHIEF JUSTICE BURGER: Thank you.

Mr. Sachse, you have a few minutes left. Do you have anything further?

MR. SACHSE: Yes, I do. I think I have eight minutes and I may need it, with all the things that have been said in the last few minutes.

REBUTTAL ARGUMENT OF HARRY R. SACHSE, ESQ.

MR. SACHSE: To start with, the position of the State of Wyoming is nothing less than that this Court should reverse Seymour versus Superintendent, Mattz versus Arnett, and repeal 18 USC 1151 and should find fact contrary to the findings of fact of the District Court.

It is clear and it was stipulated in this case that, first, it is clear that federal law does apply to non-Indian-owned land inside the boundaries of an Indian reservation.

Now, to get to Mr. Hamilton's argument, I have to say this. When I first started practicing law it was in BAton Rouge, Louisiana and one of the first cases that I had was a -- I was defending against a motion for summary judgment and somebody told me that the best defense against the motion for summary judgment is to totally confuse the court and they then will think the problem is so complicated that they can't grant the summary judgment.

And I think Mr. Hamilton has made a good run at that in this case. We have --

QUESTION: You have about 10 minutes now to clear that up.

[Laughter.]

MR. SACHSE: I think I can do it because that is exactly what the trial in the District Court was about and what Mr. Hamilton is trying to do is to establish here in 20 minutes what he was unable to establish in a day or two in the District Court.

The finding of the District Court -- now, remember, it was stipulated that these acts occurred within the Indian reservation on fee patented land. Everything was

stipulated except the question about the non-Indian community and when the --

QUESTION: If it was a non-Indian community, it wasn't Indian country.

MR. SACHSE: If it was a non-Indian community, it was an exception under statute. It was not Indian country as defined by 18 USC 1154.

QUESTION: I see. Right.

MR. SACHSE: And the court held in finding number 21 that the defendant, "In dispensing intoxicants from the Blue Bull absent a license from the tribe, violated Section 1154."

Now, they didn't say, violated Section 1151, which is the broad definition of Indian country, but 1154, which has the exception in it about non-Indian communities and I want to make another point straight. I --

QUESTION: The only findings I recall was that it was not incorporated.

MR. SACHSE: His only specific finding as to the community was that, in his first list of findings, which was that Fort Washakie was not an incorporated, non-Indian community. But then his final finding is that the defendant violated 18 USC 1154.

But I want to make a point about burden of proof --

QUESTION: That might have been on the premise

that he assumed that to be a non-Indian community, it had to be incorporated.

QUESTION: It might have been, if you haven't read the testimony that was before the District Court. But before the District Court had solid testimony before it and by the way, the question about who was enrolled and who was not enrolled was fully brought out in the District Court and then the testimony as to the school children, it was testified that they were enrolled members of the tribe and the testimony as to the Indian population, it was discussed who was enrolled, who was not enrolled and the figures stand up one way or the other.

But the point that I am trying to make here is that the District Court only had one thing to decide and that was whether this occurred in a non-Indian community and there was simply no evidence that however you wanted to stretch, the idea of non-Indian community that this occurred in a non-Indian community and because of that, the Court held that 1154 was satisfied.

But the point I was making a minute ago was that we don't urge a burden of proof on the defendant here.

There was solid testimony, solid evidence and a finding in this case that this did not occur in a non-Indian community and a lot of the confusion in the District Court was Mr. Hamilton's continued attempt there, as he

finally got around to doing here, to try to say that the Government had to prove that it occurred in an incorporated Indian community. But that is not what the statute says.

QUESTION: Mr. Sachse, all you have to prove is that it happened in Indian country.

MR. SACHSE: That's right, in Indian country and --

QUESTION: And finding 17 is, "This court holds that although said Defendants operated Blue Bull on land deeded them in fee, such land is in Indian country and therefore subject to federal law and you say that is a finding which excludes non-Indian country, namely, non-Indian communities.

MR. SACHSE: That is right and that is why this is as to 1154, which defines Indian country with that exception in it and not as to 1151 and when you read --

QUESTION: It is really finding 17 rather than 21, isn't it? Or at least the two together. Is it?

QUESTION: Well, what that really means also is --

MR. SACHSE: Well, 21 makes it clear.

QUESTION: -- that we don't know what the District Court's standard was for judging Indian community.

MR. SACHSE: We know that the District Court --

QUESTION: If you looked at Levin, you would know what his standard was. If you looked at all of them, you don't know what it is.

MR. SACHSE: I think what we know is, under a broad or a narrow standard, this was not an Indian community and that under -- excuse me, a non-Indian community and the question was whether it was a non-Indian community and applying the National Dairy approach to this case, this statute is clear enough and I think in operation it has been clear enough that this statute has been there since 1949 and there has been no attempt to enforce it in, say, Riverton.

QUESTION: How many convictions have there been under it, do you know?

MR. SACHSE: I don't know.

QUESTION: Is there anything in the Code, any annotation?

Well, if you don't --

MR. SACHSE: I don't know. I don't recall.

QUESTION: When do you say this Respondent first required a license?

MR. SACHSE: He required a license -- well, he first required a license after the Tribe passed an ordinance a tribal license, in 1953, providing for tribal licenses.

QUESTION: Did he get one?

MR. SACHSE: He couldn't -- no, he was denied a tribal license.

QUESTION: Was he operating in the meantime?

MR. SACHSE: When he was denied the tribal license, he closed down for awhile. He then went to his lawyer and he then decided he would open up again and test the --

QUESTION: That was in '70.

MR. SACHSE: '70. Excuse me, did I say '53?

QUESTION: Yes, you did.

MR. SACHSE: I'm sorry. It was in 1973.

He first was able to open his bar in the first place, not because of the tribal license but because of a tribal blanket authorization.

QUESTION: And that was back in 1953.

MR. SACHSE: And that was back in 1953.

Does this Court have any [further questions]?

MR. CHIEF JUSTICE BURGER: I think not.

Thank you, gentlemen, the case is submitted.

[Whereupon, at 1:46 o'clock p.m. the case was submitted.]