

# State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or [gspencer@nycourts.gov](mailto:gspencer@nycourts.gov).

To be argued Thursday, September 5, 2019 (arguments begin at noon)

## **No. 69 Matter of Adirondack Wild: Friends of the Forest Preserve v New York State Adirondack Park Agency**

In 2012 and 2013, the State acquired roughly 19,000 acres of land in Essex and Hamilton Counties, which was designated the Essex Chain Lakes Management Complex Area and incorporated into the Adirondack Forest Preserve. The Department of Environmental Conservation (DEC), in consultation with the Adirondack Park Agency (APA), adopted a management plan for the area, which had been owned by a paper company for more than a century, in 2016. The management plan would, among other things, allow public snowmobile use on a one-mile stretch of Chain Lakes Road (South) that runs through a protected corridor where the Hudson River is classified as “wild” under the Wild, Scenic and Recreational Rivers System Act (Rivers Act). Two environmental groups – Adirondack Wild: Friends of the Forest Preserve and Protect the Adirondacks! Inc. – brought this lawsuit alleging that allowing public motorized use of a road within a wild river corridor would violate the Rivers Act and the more restrictive Adirondack Park State Land Master Plan, which prohibits the use of motor vehicles in wilderness areas regardless of prior uses. The Rivers Act generally prohibits the use of motor vehicles in wild river areas, but includes an exception that provides “existing land uses within the respective classified river areas may continue, but may not be altered or expanded.” The DEC and APA contended that the Rivers Act governs the case and that snowmobiles are permitted on the road as a continuation of a preexisting use.

Supreme Court dismissed the suit, saying the agencies properly concluded that “snowmobile use of the Chain Lakes Road (South) constitutes an existing use that will be permitted to continue without expansion or alteration.”

The Appellate Division, Third Department affirmed in a 3-2 decision, saying the Rivers Act is controlling and the DEC’s determination was rational. “As part of its investigation, DEC considered affidavits that were submitted by 17 individuals who averred that they had personal knowledge of the area” and that the roads there “have been used by snowmobiles during the winter season continuously since the 1950s. Petitioners do not contest the finding that snowmobiles have historically been used on Chain Lakes Road (South); rather, they argue that such use was limited to members of clubs that leased the surrounding property, and that opening a trail to public use would constitute an expansion of the preexisting use. Nonetheless, the record contains a sufficient basis for DEC to have rationally determined that there would be no alteration or expansion of the preexisting use of snowmobiles..., which had included operation by members of the public and an intensity of use commensurate with the proposed use.”

The dissenters said “the record does not support a conclusion that members of the general public previously operated snowmobiles on the Chain Lakes Road section in a density commensurate with that which will result from opening it to public use.... Although the affidavits include a number of references to ‘public’ use, when read in context, most of these are in fact describing use by club members and their guests ... and some apparently describe use by trespassers. The fact that some persons who had no legal authority to enter the area may previously have taken advantage of its remote character to use it without permission should not serve as the basis for a principled determination that it should now be opened to the general public.... We find that the Rivers System Act requires DEC to consider the increase in volume that results from opening a previously exclusively private road to unlimited use by the public in determining whether a previous use may continue,” which they say DEC did not do.

For appellants Adirondack Wild et al: Christopher Amato, Earthjustice (518) 860-3696  
For respondents DEC et al: Assistant Solicitor General Laura Etlinger (518) 776-2028

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## **No. 70 Cayuga Nation v Campbell and County of Seneca**

This case arises from a long-standing dispute between two political factions within the Cayuga Nation over which of them is the lawful governing body of the sovereign Indian Nation, a member of the Iroquois Confederacy located in Cayuga and Seneca Counties. The Cayuga Nation Council, led by Clint Halftown, had been recognized by the federal Bureau of Indian Affairs (BIA) as the Cayuga's governing body for purposes of federal funding and other interactions between the Cayuga Nation and the federal government. In 2014, the opposing faction led by William Jacobs and Samuel Campbell (the Jacobs Council) seized property where the Nation's offices and security center, as well as a Nation-owned cannery, gas station/convenience store, and ice cream store, are located and took control of the operation of those offices and businesses. In 2016, the two factions submitted to the BIA competing requests for federal funding, including funding for the Nation's seized offices. When the BIA failed to negotiate a settlement between the parties, the BIA Regional Director asked them to submit material supporting their respective claims to legitimate authority. The Jacobs Council presented evidence that it represented the Nation's leadership under its traditional governing structure of chiefs and citizens appointed by clan mothers. The Nation Counsel presented evidence from a survey, conducted by mail, in which a majority of Cayuga citizens responded that they supported it as the lawful leadership of the Nation. In 2017, the BIA recognized the Cayuga Nation Council as the lawful governing body. The Regional Director said "a significant majority of the Cayuga citizens have stated their support for" the Nation Council in the survey and he considered himself "obligated to recognize the result of that tribal process." The Nation Council then brought this suit against Samuel Campbell and 13 other members of the Jacobs Council, claiming they were trespassing on Nation property. The suit sought money damages and recovery of the seized properties. The defendants moved to dismiss the suit on the ground that the court lacked subject matter jurisdiction over internal government disputes of an Indian Nation.

Supreme Court denied the motion to dismiss, saying "the issue of leadership need not be determined by this Court. The plaintiff ... is simply asking the Court to accept and act upon the determination made by the BIA that Clint Halftown is the recognized representative of the Nation." It issued a preliminary injunction requiring the defendants to vacate the properties.

The Appellate Division, Fourth Department affirmed in a 3-2 decision, saying, "Although we agree with defendants that we may not resolve the Nation's leadership dispute, we are not required to do so in this appeal. Rather, we accord due deference to the BIA's conclusion that the Nation ... has resolved the dispute in favor of plaintiff.... We caution that we do not determine which party is the proper governing body of the Nation, nor does our determination prevent the Nation from resolving that dispute differently according to its law in the future."

The dissenters said the "majority assumes that, once deference is afforded to the most recent BIA decision, Supreme Court has jurisdiction to resolve the claims in the complaint without impermissibly intruding into issues of the Nation's internal governance. We cannot agree." The claims are "based on defendants' allegedly unlawful actions in exercising dominion over Nation property, managing Nation funds, and operating Nation businesses 'without permission or justification.' Each of those causes of action requires proof that the individual defendants acted without any authority or justification with respect to their use and possession of the Nation's property...."

For appellants Campbell et al (Jacobs Council): Margaret A. Murphy, Hamburg (716) 867-1536  
For respondent Cayuga Nation Council: David W. DeBruin, Washington, DC (202) 639-6015

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## No. 71 People v M. Robert Neulander

Dr. Robert Neulander was charged after a lengthy investigation with bludgeoning his wife to death in their home near Syracuse in 2012 and attempting to make it appear that she had accidentally fallen in the shower. He was convicted at trial in 2015 of second-degree murder and tampering with evidence. Neulander was sentenced to 20 years to life on the murder count.

After the verdict, a discharged alternate juror told defense counsel that a seated juror, Juror 12, had exchanged text messages about the case with third parties while the trial was underway and received media alerts about the trial on her cell phone. Defense counsel moved to set aside the verdict under CPL 330.30(2), which provides that a verdict may be set aside based on “improper conduct by a juror, or improper conduct by another person in relation to a juror, which may have affected a substantial right of the defendant and which was not known to the defendant prior to the rendition of the verdict.” A hearing on the motion established that Juror 12 had exchanged texts with third parties, but not that she had received media alerts. A text from her father said, “Make sure he’s guilty!” In other texts, one friend referred to Neulander as the “scary person,” and another friend said Neulander’s daughter, a defense witness, should be a suspect. Juror 12 did not disclose any of these communications, and instead deleted them and scores of other messages along with her web browsing history before she was ordered to surrender her phone for forensic examination. She also said falsely in a sworn affidavit that she had followed the trial court’s instructions “[a]t all times throughout the trial.”

County Court denied the defense motion to set aside the verdict, crediting Juror 12’s “testimony that she based her ultimate verdict strictly on the evidence that she heard in the courtroom and the law as charged by the Court” and saying “there is no basis in this record to find a likelihood that Juror 12’s missteps ... created a substantial risk of prejudice to the defendant.” The court said “it is apparent that while Juror 12’s actions were imperfect, her intentions were pure and she took her role as a juror seriously.... It is also abundantly and consistently clear that Juror 12 refrained from discussing the specific facts of this case despite the repeated ill-advised and unsolicited inquiries of her friends in the cyberworld.”

The Appellate Division, Fourth Department reversed and granted a new trial on a 3-2 vote, saying that, even if Juror 12’s “‘intentions were pure,’ we conclude that the juror’s intentions are not relevant to the analysis. ‘[E]ven well-intentioned jury conduct’ may create a substantial risk of prejudice to the rights of the defendant.... Moreover, it was not necessary for defendant to show that the juror’s conduct during the trial influenced the verdict inasmuch as, ‘[i]f it was likely to do so, it was sufficient to warrant the granting of the motion’.... [E]very defendant has a right to be tried by jurors who follow the court’s instructions, do not lie in sworn affidavits about their misconduct during the trial, and do not make substantial efforts to conceal and erase their misconduct when the court conducts an inquiry with respect thereto.” It concluded the juror’s misconduct created a substantial risk of prejudice to Neulander.

The dissenters said, “[T]he juror repeatedly refused to discuss the case in her texts, she indicated that she would not do so until the trial ended, and she expressed her commitment to hearing all the evidence before reaching any conclusion.... We perceive no reason to disturb the [trial] court’s credibility determinations, and we agree with its conclusion that reversal is not required here because defendant failed to establish any prejudice, or likelihood of prejudice, from the juror’s misconduct....”

For appellant: Onondaga County Assistant District Attorney James P. Maxwell (315) 435-2470  
For respondent Neulander: Alexandra A.E. Shapiro, Manhattan (212) 257-4880