

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

MISDEMEANOR COURT DOCKET
AUGUST 1, 2007

TRANSCRIPT OF PRESENTATION OF LETTER
BY G. NORMAN ACKER, III

BEFORE THE HONORABLE TERRENCE W. BOYLE
JUDGE, UNITED STATES DISTRICT COURT

APPEARANCES:

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1 THE COURT: Mr. Acker, do you want to make an
2 THE COURT:

3 appearance?

4 MR. ACKER: I do, Your Honor. As Your Honor
5 MR. ACKER:

6 knows, the last term of court of the Misdemeanor Docket on
7 July 16, Your Honor issued an order in the matter of U.S.
8 versus Vasile Matei; and it has generated a lot of
9 interest in the community and from the public. In
10 response to that, the Superintendent at the Cape Hatteras
11 Seashore has written a letter to George Holding, U.S.
12 Attorney, explaining the situation and responding to some
13 of the issues raised in your order, and we would like, if
14 Your Honor, would accept it, to hand a copy of that letter
15 that was written to George Holding up to the Court, and
16 after that the National Park Service can make it available
17 to the public.

18 THE COURT: Let me see it, and if you will bear
19 THE COURT:

20 with me, I'll take a look at its contents.

21 (Document handed to The Court.)

22 THE COURT: It's a long letter.

23 THE COURT:

24 MR. ACKER: It is a long letter, Your Honor.

25 MR. ACKER:

It's eight pages and then a number of attachments.

(The Court reviews document.)

THE COURT: Well, I haven't had an opportunity

THE COURT:

to digest this in every detail, but -- and it's your

document, to the U.S. Attorney's office. And I first

1 thank you for providing the Court with a copy of it. I
2 thank you from The Court for a prompt and considered
3 inquiry and response. I recognize that -- and I'm
4 speaking here as the trial judge in that case from which
5 the order arose and as a trial judge who, on a regular
6 basis, tries cases arising out of this jurisdiction. So I
7 have an ongoing contact with the resource and the issues.
8 I think that it is responsible for the Government to pay
9 close attention to this issue, and it is not a -- it can
10 be a very simple issue, but the simplicity of it may be
11 too severe to allow a simple and drastic solution to
12 prevail. And I recognize that The Court has limited
13 authority and a limited function here, that the policy is
14 set by Congress. That's paramount and important. The
15 policy is set by Congress. Your department, the
16 Executive, has to implement that policy, and this
17 department, The Court, the Article III Courts have to
18 enforce the law.

19 So we have a situation now where the policy is
20 in place, but the execution of that policy and the
21 enforcement of it is not entirely consistent with what
22 appears to be the stated policy. And so without doing any
23 harm, we want to go forward.

24 I don't know how this will develop again. I
25 didn't know that that issue would present itself. It has

1 been a dormant issue for decades. And I'm not going to
2 make a speech, but I am willing to, since you brought it
3 up and since it bears on that case, I think that the
4 Court's ruling can be embellished. Stating the obvious,
5 for progressively decades since the '70s and the advent of
6 the Executive Order, beach use is in a straight line graph
7 going up. None of us can say exactly what the beach use
8 was in 1972 or 1977, but it was modest, if not remote,
9 compared to what it is now. And so the compatibility of
10 beach use by the public and the natural resource and the
11 mission and policy that the Department of Interior is
12 under -- the Department of Interior is not the Federal
13 Highway Administration. Their goal and their purpose in
14 being and their legislative mandate is not to provide
15 vehicular traffic. Vehicular traffic is a dependent
16 activity. Public enjoyment and utilization of the
17 resource, preservation of the resource and endangered
18 species and other collateral issues are the mission of
19 that. And these properties are set aside, either
20 exclusively or non-exclusively; exclusively as in Pea
21 Island, non-exclusively, the Seashore. More non-
22 exclusive, Cape Lookout. When I said the Seashore, I
23 meant Cape Hatteras.

24 So you have that model that is going on. And
25 beach traffic and beach use is a self-fulfilling exercise.

1 If five hundred vehicles can get on, then a thousand want
2 to get on. And if a thousand get on, then fifteen hundred
3 want to get on. And then two thousand are going to want
4 to get on. And the land that they are getting on wasn't
5 even there when this started. And so it's a problem that
6 is not going to go away without breaking. It's not going
7 to recede on its own. There is no self-correcting
8 mechanism in there. And of course you've got a policy.

9 This case arose in what happened to be the most
10 acute and the least defensible setting. Major holiday,
11 middle week-end cramming of traffic into an area that
12 foretells the prospect of some serious mishap, either from
13 nature or from man, in that setting. I guess the concern
14 is that it will be a broad brush response and that
15 legitimate or traditional uses that are compatible and not
16 in conflict with the resource will suffer at the hands of
17 non-traditional uses that are probably unlawful.

18 And the problem that -- I'm not in the position,
19 nor should I, tell you anything about how you do your
20 business. But if the law is there, you can't really turn
21 a blind eye to the law. And you can't selectively not
22 enforce certain laws. So you need to come up with a
23 responsible management from a law enforcement standpoint.

24 I note here that in the letter it talks about
25 the law enforcement component. And that is what I am most

1 experienced with and most conscious of. It talks about,
2 in paragraph 3, that the number of violations may be high,
3 but you need to keep that in context. Well, actually, the
4 number of violations is really low, because the violations
5 that are being committed far exceed, by an exponential
6 amount, the number of citations that are issued. The
7 number of citations that are issued is based on the human
8 capacity of the dedicated officers who are out there
9 trying to manage, with one officer, thousands of people
10 and to only respond to the ones that are the most
11 egregious, because you have to be selective and create a
12 hierachy, not to mention the fact that the rangers in
13 circumstances like this are responding to health
14 emergencies, non-criminal emergencies that are going on.
15 It's against the law to drink spirited liquor on the
16 seashore in open containers, right? Isn't that right, Ms.
17 Kocher?

18 MS. KOCHER: Yes, it is, Your Honor.

MS. KOCHER:

19 THE COURT: So in this environment where you
THE COURT:

20 have a crush of vehicles and people, if there are two
21 thousand to five thousand people, there are probably a
22 thousand violations going on at one time. And a factor
23 that is certainly relevant is that there are narrow
24 portals that are manageable through which you get on the
25 National Seashore. It's not like a parking lot. You

1 can't enter if from every direction. You have to come
2 through a ramp. You can't go over the dune. And so the
3 ability to count and to restrict and to correct and
4 whatever, should present itself at these access points.
5 And you may be doing that, and that may be a prime
6 consideration. But it's a little different from just the
7 streets of a city where you can get on it from every
8 driveway. And I hope you will take that into account.

9 I thank you for what you are doing and encourage
10 you to balance the participatory aspect of it with the
11 requirement of the law. Because the requirement of the
12 law can either in a case in this court or somehow, if the
13 requirements of the law come to bear, then the
14 participatory part is just going to become irrelevant.

15 MR. ACKER: Your Honor, the Park Service

MR. ACKER:

16 understands that and is trying to balance those. I think
17 it's fair to say that this should have been done years
18 ago. The encouraging thing is they have published in the
19 Federal Register the intent to do formal rule making,
20 negotiated rule making; and the parties that are most
21 interested in restricting the beach access have agreed to
22 participate in that along with the people who want the
23 continued access. And the Park Service is committed to
24 giving our office a quarterly update on the progress of
25 that to make sure that it does not languish. And so we

1 are encouraged by that. We understand there are some
2 things that are beyond our control: someone may bring a
3 lawsuit, there may be other actions that are taken to
4 force the Park Service's hand, but at this point we are
5 encouraged to know that they are taking it seriously and
6 are moving forward as quickly as humanly possible, at this
7 point, to rectify a situation that should have been done
8 earlier.

9 THE COURT: Well, I won't say anymore. Thank

THE COURT:

10 you.

11 MR. ACKER: Thank you, Your Honor.

MR. ACKER:

12 THE COURT: And we'll be in recess until the

THE COURT:

13 juvenile case.

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