

● Anchorage area Native bias charged

Kodiak Natives say fair trial is impossible

By JEFFREY R. RICHARDSON
Anchorage Bureau Chief

A federal District Court judge in Anchorage has ruled that two Kodiak Natives and their village corporation can have a fair trial in Anchorage. Judge James A. von der Heydt ruled last Wednesday, that Shuyak, Inc., Bernard Wamser and Frances Shugak "have not shown that they cannot obtain a fair trial in Anchorage" on charges

that they committed fraud in setting up the corporation under the land claims act.

The ruling comes after a January 5th hearing at which attorneys for the defendants argued that the trial should be held outside Alaska. They presented a report by the Rowan Group, Inc., a public opinion survey firm, which indicated that it would be very difficult to have a fair Anchorage trial because a majority of Anchorage residents were found to be biased against Alaska Natives.

Shuyak Village Status

The three defendants were indicted by a federal grand jury

last July and charged with illegally enrolling Natives to Port Williams, also known as Shuyak. The government claims that Shuyak is not a Native village; people enrolled there claim it as an "ancestral home" to which they may return, under the land claims act, even though they don't reside there now.

The defendants had previously asked that the case be dismissed on the grounds that the grand jury that conducted the investigation was biased. The request was denied.

The Rowan report states in part that analysis of interviews

(Continued on Page 10)

Rowan report discloses prejudice ...

(Continued from Page 1)

shows "it is clear that there is an existing feeling against Alaska Natives in a majority of the cases when the issue is competitiveness, handling money, political activity, drunkenness, and handling corporations. This feeling is that white people can take care of money, corporations and politics while Natives cannot."

Racial Prejudice

The report is based on questions asked of Anchorage area residents. The question were designed to measure their degree of racial prejudice by answers they gave to questions about Natives and the land claims act. Answers to one question show that "a majority of the Anchorage population (51.4%) believes that Alaska Natives do not have a right to claim their traditional villages as well as villages in which they are now living."

The question of whether Natives have the right to claim either their present village or a traditional one, is crucial in the Shuyak case. Federal regulations governing the land claims act allowed Natives to enroll to an ancestral village for land claims

benefits, provided certain conditions were met.

Michael Rowan, head of the Rowan Group, prepared the report and testified at the January 5th hearing.

Qualified as an expert by Judge von der Heydt, Rowan explained how the survey was conducted. Trained, professional interviewers from his firm conducted personal, in-home interviews with 251 Anchorage residents. Rowan said he felt the survey was accurate because proven methods of gathering and analyzing public opinion were used.

Rowan surveyed people within 30 miles of Anchorage. Although jurors for a federal case could come from any part of the state, since Alaska only has one federal court district, most jurors living more than 50 miles from Anchorage do not sit on federal juries there. Rowan told the court that increasing his study area to a 50-mile radius would not change the results of the study.

When asked by the judge what his definition of racial prejudice was, Rowan replied, "When a characteristic is assigned by one racial group to

another."

Study Criticized

U. S. Attorney Leonard Linton attacked Rowan's study, saying too few people had been surveyed to draw a conclusion that a fair jury could not be found. Linton was also critical of the methods used by Rowan. He suggested that many of the people interviewed might not have had opinions about Alaska Native issues before the interview and that their answers were arbitrary and given without serious thought.

Although Rowan suggested that the court could use procedures similar to his own to determine more accurately if jurors were biased, Linton dismissed the idea. He agreed that intensive questioning of possible jurors was justified, but added, "There's been no showing that defendants cannot get a fair trial."

Jury Service

Shuyak attorney Smith disagrees. He told the Tundra Times last week:

"The government and court contend that they do not exclude rural Alaskans but that rural Alaskans excuse themselves. I argue that in fact it

is not important who does the excluding but that a large part of the population is excluded from jury service, which in many cases prevents the seating of a fair jury."

Rowan said conducting interviews in the privacy of a home, with a guarantee that the person's name would not be used, made certain that answers were honest. But, he said people questioned by a judge or attorney tend to answer almost automatically that they would be fair if they were seated on a jury because they don't want to seem disruptive or uncooperative.

Judge von der Heydt questioned whether Rowan could interpret prejudice from his interviews and said his conclusions were not based on a "knowledge of legal concepts on which juries are formed."

"What you're saying sir, is an attack upon the entire jury system that's been in existence for hundreds of years," von der Heydt said.

Smith denied the judge's charge saying, "We are not attacking the jury system, we're only asking that these defendants be given the opportunity to determine if there is racial prejudice."

Fair Jury Difficult

In his order denying a change of location for the trial, Judge von der Heydt wrote that Rowan's "ultimate conclusion was that an unbiased jury would be very difficult to obtain under present selection processes. This does not state that it would be impossible to obtain a fair trial and on that basis alone the motion to change venue must fail."

Smith commented last week on the connection between Rowan's study and the Shuyak indictments. He said the charge indicate "a lack of understanding by the white community of

what the land claims act is all about. It's the white community that doesn't understand Native relationships."

Some people now enrolled to Shuyak originally signed up with other Kodiak area village corporations, not realizing that they could enroll to an ancestral village site.

Federal regulations issued after the land claims was passed to govern its implementation stated that a Native's permanent residence could be the "permanent place of abode intended by the applicant to be his actual home. It is the center of the Native family life of the applicant to which he has the intent to return when absent from that place. A region or village may be the permanent residence of an applicant on April 1, 1970, even though he was not actually there on that date, if he has continued to intend that place to be his home."

Smith said he felt that underlying the government's position was suggestion that Natives were not permitted to enroll to traditional sites. He added that the defendant's position was that such enrollment was permitted, that Shuyak is an ancestral village and that "evidence will show that families that enrolled or changed to Shuyak had ancestral ties there."

Smith recalled the confusion surrounding enrollment after the land claims act was passed and said there was no criminal intent on the part of Shuyak people.

The Bureau of Indian Affairs has certified Shuyak as a Native village, but other agencies of the federal government continue to protest this decision. The eligibility of Shuyak to receive land and money under the congressional land claims settlement of 1971 is now before the U.S. Court of Appeals in Washington, D. C.