



Cultural beliefs of Athabascans protected under the 1st amendment?

FAIRBANKS—Alaska's regulations concerning the taking of moose clashed with the ancient practices of Athabascan Indians at funeral ceremonies as pre-trial hearings for Carlos Frank of Minto were held in Fairbanks last week.

Frank admitted to killing a cow moose last Oct. 16 between Livengood and Minto where a potlatch ceremony was being

held for a recent dead in the Native community. He is being charged with transport of an illegally killed moose.

The case is the first of its kind in the United States and its outcome will set a significant precedent, according to defense lawyers Robert H. Wagstaff and R. Collin Middleton of Anchorage.

The defense is arguing to

dismiss the charge on grounds it is unconstitutional as it applies to Frank. The cultural beliefs of Athabascans are of the same importance as religion, and their beliefs are legally defined as religion; and therefore are guaranteed protection in the First Amendment of the U.S. Constitution.

It is unthinkable for Athabascans not to make funeral

potlatch when someone dies, Middleton told the court. It is essential there be Native foods including wild game and it is essential they be fresh, he added.

Middleton pointed out that the Athabascan culture is ancient and was practiced before the treaty between the U.S. and Russia purchasing Alaska in 1867, before the statehood act in 1959 and before the Alaska

Native Claims Settlement Act in 1971.

One of the defense's arguments was that the Native Claims Settlement Act was intended to preserve the Native way of life in this state.

Frank's lawyers were hired by the Native Corporation Doyon, Ltd. Doyon has an estimated 9,000 shareholders, most of

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whom are Athabascan like Frank.

When Frank testified he explained he knew moose-hunting season was closed but it was expected moose meat would be found for the 200-300 people who would congregate at Minto to eat together and honor the dead man at the potlatch.

"I don't feel I've done anything wrong," said Frank. "I would do it again if there were no meat; to show respect."

Prosecutor Richard J. Ray has

questioned how essential fresh moose meat is to potlatch, and nobody has produced documentation that it is, despite evidence that fresh meat has been used since ancient times.

Mrs. Barbara Lane, an anthropologist from Victoria, B.C., testified for the defense that moose is the staff of life for Athabascans and the lack of written documentation that the meat be fresh should be interpreted as such accepted practice that it is taken for

granted.

The court proceedings finished last Thursday after four days in Fairbanks District Court. The case deals with what is legally called a case of free impression, meaning the issue has not been addressed in court since Alaska statehood and, apparently never before anywhere else in the nation.

What wound up Thursday is called an evidentiary hearing at which both sides present evidence on the motion to

dismiss the charge against Frank before the case goes to trial.

Defense lawyers Wagstaff and Middleton will prepare a written statement of their case as will prosecutor Ray and Judge Monroe N. Clayton will mull them over before asking for oral arguments in the matter. His decision is not expected for about four months.

Either side is expected to appeal the outcome of Judge Clayton's decision.