

Athabascans Gain Religious Rights

By Lucy Abeita and Fred Kirsteatter

Alaska's State Supreme Court, on December 21, 1979, ruled that the State and Federal constitutional guarantees of freedom of religion protected Minto Athabascan people in harvesting an out-of-season moose for a funeral potlatch. Fish and Game violation charges were dismissed against Carlos Frank of Minto.

The story began in October, 1975, when the people of minto began funeral potlatch arrangements for Delnor Charlie. Frank and 25 other men formed several moose-hunting parties. They believed that there was not enough moose meat for a proper potlatch. One cow moose was shot and Frank assisted in taking it back to Minto where the potlatch was held.

Someone passing by saw one of the hunting parties and reported it to State officials. The incident was investigated and Frank was charged with unlawful transportation of game illegally taken. The season for moose hunting was closed and there was not an open season for cow moose in 1975.

In District Court, Frank admitted transporting the moose. He raised the defense that applying the game regulation to him under the circumstances was an abridgement of his freedom of religion. After a hearing, Judge Monroe N. Clayton found that "the funeral potlatch is an integral part of the cultural religious belief of the central Alaska Athabascan Indian."

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He added, "Moose is an integral part of the diet and 'staff of life' of these Athabascan Indians;" but he also said it was not "specifically required for this ceremonial occasion, however desirable it may be." Judge Clayton concluded that Frank had not been denied his religious privileges. Frank was convicted and sentenced to a 45-day jail term with 30 days suspended, a \$500 fine with \$250 suspended, one year probation and his hunting license was suspended for one year.

Frank then appealed to the Superior Court. Judge Gerald J. Van Hoomissen agreed with Judge Clayton that fresh moose meat was not an "absolute necessity...as to override the compelling State interest of the State of Alaska in the management and control of its game for the benefit of all its people Native and white," and affirmed the conviction.

But in its reversal of the conviction, the Supreme Court stated, "We think the evidence is inescapable that the utilization of moose meat at a funeral potlatch is a practice deeply rooted in the Athabascan religion. While moose itself is not sacred, it is needed for proper observance of a sacred ritual which must take place soon after death occurs. Moose is the

centerpiece of the most important ritual in Athabascan life and is the equivalent of sacred symbols in other religions."

The Supreme Court cited the American Indian Religious Freedom Act: "It shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."

The House Report on the American Indian Religious Freedom Act says that "Indian people have long sought protective legislation for certain species and yet such laws, when combined with more restrictive regulations, insensitive enforcement procedures and administrative policy directives...have interfered severely with the culture and religion of American Indians." The House report suggested that such impacts on the traditional Indian religious practices are not "in compliance with the constitutional injunction that Congress shall make no laws abridging the free exercise of religion."

In conclusion, the Supreme Court stated that

allowing potlatch moose to be harvested for "such an accommodation is merely to permit the observance of the ancient traditions of the Athabascans." The court advised that the State adopt regulations governing the taking of moose for funeral potlatches, and that the regulations guard against abuses and aid in record-keeping to determine the impact it would have on moose populations.

Tanana Chiefs' President William (Spud) Williams commented, "The decision in the Carlos Frank case is the first time in Alaska State history that Native religion was ever recognized. It is the first battle of a long war that gives us back the legal right to be proud."

Recently Morkle Frank Ewan, an Athabascan leader, died at the Nakoiya Extended Care Facility in Anchorage. The Copper River Native Association was granted a permit to kill a moose for the deceased, the first such permit issued since the December 21 decision.

Perhaps now that the Supreme Court has finally determined the need for religious protection for Native peoples, there must be relevant policies within State and Federal governments in order to ensure responsible and reliable means of guaranteeing that right.