

# JURY SELECTION QUESTIONED

## Fifteen Mile Radius System Criticized as Inequitable for Bush

By MADELYN SHULMAN  
Staff Writer

What may turn out to be a landmark case in the history of the Alaskan Court System and Alaskan Natives went before the Alaska Supreme Court in Anchorage last week.

*Alvarado v. State of Alaska* contests the policy of jury selection in the Third Judicial District in Alaska. The rule used to select juries in this district restricts jury selection to those persons who voted in the Anchorage Election District and reside within 15 miles of Anchorage.

All other citizens of the Third Judicial District, including residents of the 54 Native villages from the Southwest down through the Aleutian chain, are excluded from jury selection.

Cloyd Alvarado, a ¼ Aleutian fisherman in the Aleutian village of Chignik on the Alaskan Peninsula, was tried and convicted last year for the rape of his sister-in-law, Minnie Anderson of Chignik.

Chignik is a small Native village of about 100 persons located 450 miles southwest of Anchorage. Alvarado was tried in Anchorage. Under the 15 mile rule, residents of Chignik were automatically excluded

from the jury list.

"Therefore," says the appellate brief prepared by attorneys Chris Cook of Alaskan Legal Services and John Hedland, "though the crime was committed in Chignik and Chignik was the home of the victim and appellant, all the jurors were chosen from the area within a fifteen mile radius of Anchorage, which excludes Chignik."

Alvarado appealed to the Alaska Supreme Court to set aside his conviction on the grounds that his group, Alaskan village natives, was systematically excluded from the jury.

The purpose of the 15 mile limit on juror selection is to eliminate expense to the Court system. In its ruling, the Superior Court assumed Anchorage to be...

"a very cosmopolitan community which includes most, if not all, of the racial, economic, occupational and religious groups found in the Third Judicial District..."

What it does not include, says the appellant, are the Natives living in traditional villages throughout the vast area of the Third Judicial District.

Of the 149,617 persons in the District, 36,095 are excluded from jury duty—including 72 per cent of the Natives in the Judicial District.

In his arguments before the Alaska Supreme Court, attorney Chris Cook dwelt heavily on the findings of the Justice in

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the Bush Conference, held in Anchorage in December.

He was assisted in his defense of Alvarado by John Hedland, a former Alaska Legal Services attorney now in private practice.

The conference, Cook argued, emphasized the importance of representation of Natives at every level of the judicial system. The jury system, he argued, is at the heart of the judicial system.

Whatever "community" jury selection was based on in the Alvarado case, Cook argued, it was improperly defined if it did not include the place in which the crime was committed and where both the defendant and his alleged victim live.

Selection of jurors from the Anchorage area, Cook argued, had to be unfair to his client since there are nowhere near the percentage of Natives in Anchorage as there are in the entire Third Judicial District or any "community" which included Chignik.

One question the court has to decide is whether Cloyd Alvarado, a  $\frac{1}{4}$  Aleut with a Spanish father and half-white mother, should be considered a Chignik native or a San Francisco white.

Most court decisions in the United States regarding "excluded" groups require the person requesting the ruling be a member of the group excluded. One not a member of the excluded group lacks "standing" to contest the exclusion because he presumably is not hurt by it.

However, the defense argued, Alvarado is defined as a Native for purposes of BIA eligibility, Alaska Native Health Service policy and despite his San Francisco birth is eligible for a settlement under any proposed land claim bill.

He lives in the village of Chignik, is married to a full-blooded Aleutian and follows the village Native way of life.

Quoting from the Declaration of Independence, the appellant compared the transport of an Alaskan Native to Anchorage for trial to that of colonists brought across the seas to the mother country—one reason the colonists listed for their separation from England.

"Certainly," the appellant

argued, "if a white person in Anchorage was accused of committing a crime there, taken 450 miles to a Native village and tried by a jury selected from within a 15 mile radius of the village, he would consider this an unfair and unjust definition of community for selecting his jury."

A trial by jury in a small village, the attorney conceded, might not be possible—there might not be enough adults from whom to choose a jury or even enough electricity to run a transcriber.

However, trials could be moved to nearby regional centers or jury selection based on the entire Third Judicial District.

The 15 mile limit, argued Mr. Cook, adds a residence requirement to the qualifications for jury duty outlined in the state statutes.

The small village population makes a major crime a rarity. Holding trials in the villages would, however, educate the Native population in the workings of the court system. The expense of this, Cook argued, would be comparatively low.

The State, represented by Bob Eastaugh of the prosecutor's office, bases its case on the idea that no coherent group has been intentionally and systematically excluded from jury selection.

Village Natives, argued Eastaugh, are not a constitutionally cognizable group. If any group is excluded, it is rural people.

The prosecutor also argued that a predominantly Native jury might refuse to convict on rape charges. He quoted William Babcock, an anthropology expert who testified for the defense at the original trial, that the Aleuts might not share the idea of rape as a crime.

If the Alaska Supreme Court returns a favorable decision on the case of Alvarado v. Alaska, some new system of selecting juries will have to be devised—a system which does not exclude 72 per cent of the Natives of the Third Judicial, or any other, district.

This could change the concept of what justice means to the Alaskan Native, and end at least one of the grossest inequities Natives face in their relation to the court system.