

Whalers..... one back; four to return

Whaling captain Eugene Brower is getting back into the good graces of the law once again after a federal judge overthrew a government subpoena seeking to compel his testimony before a grand jury examining whaling activities of Arctic Slope villages.

Brower said he was very happy with the U.S. District Court Judge James von der Heydt's ruling to stop the subpoena forcing himself to testify.

"If the government wants to find out what's happening, all they have to do is come up here and talk with the whalers," Brower said, "and stop all this cloak and dagger stuff."

U.S. District Court Judge James von der Heydt, stopped a government subpoena saying that the language in the federal subpoena "was so broad" it impinges on whaling captain Eugene Brower's First Amendment rights of free speech and associa-

tion. Brower hopes that the judge will also do the same for the other whalers subpoenaed.

Jeff Feldman, Browers' lawyer, said the judge's ruling also "makes moot" a pending motion to hold his client in civil contempt for failing to comply with the subpoena.

The grand jury is probing allegations that the Eskimos were taking more than their share of bowhead whales allowed by a quota set by the International Whaling Commission.

Last month, federal prosecutors subpoenaed Brower, with whaling captains Rossman Peetook, Roger Silook and Lloyd Ahvakana to force the captains to testify and supply documents from the Alaska Eskimo Whaling Commission to a grand jury meeting in Anchorage on Oct. 23. Peetook and Silook are members of the whaling commission. Ray Proneberg, an employee of the AEWC was also subpoenaed.

The federal subpoenas ordered the men to give up "all documents, correspondence and writings" they had received from the whaling commission, their lawyers said.

Brower's lawyer countered with a move to stop the subpoena by claiming it violated his client's First Amendment's rights. Von der Heydt apparent-

ly agreed, in a two page order.

When a "collision occurs between First Amendment rights and a grand jury's quest for information," it's up to the government to prove "the means of obtaining the information is not more drastic than necessary to forward the government interest," von der Heydt said, quoting a 1978 federal appeals opinion. According to the whalers' lawyers, von der Heydt used Brower's motion to stop the subpoena as a "test case" for the others.

Larry Kulik, attorney for the other four, said he was prepared to file a similar motion if the

government again ordered his clients to appear, but now Kulik said he did not think it would be necessary.

Acting U.S. Attorney in Alaska Rene Gonzalez disagreed, saying that just because a subpoena is stopped doesn't mean that's the end of the investigation. "Once a decision is made and an investigation is made, that's it," Gonzalez said.

Gonzalez said that contrary to the recommendations of the federal attorneys in Alaska, top-level Justice Department officials in Washington ordered the criminal investigations.