

Indians' fish test in court

Trial of a minor criminal case — of major importance to Northwest Washington Indians — started in Skagit County Superior Court at 9:30 a.m. today. More than 100 persons, a majority Indians, were present in Judge Charles F. Stafford's courtroom.

Only one Swinomish Indian, Joe McCoy, is on trial, but the outcome of the case will affect fishing rights of all Washington Indians west of the Cascades and north of the Duwamish River.

McCoy is charged by the State with catching salmon during a closed season near the mouth of the Skagit River.

THE STATE alleges Indians have unrestricted fishing rights on, but not off, their reservations. Indians contend, under the 1855 "Point Elliott Treaty," that they have unrestricted fishing rights in their "usual and customary" fishing waters.

Also at issue, attorneys pointed out in opening statements, is where the boundary of the Swinomish Reservation lies.

The State, represented by County Prosecutor Walter J. Deierlein Jr., says the 1855 treaty, and another augmenting it in 1873, does not put the boundary out into the Skagit River channel.

DEFENSE COUNSEL, Harwood Bannister, however, said he would show that the reservation reaches out into the channel. He added that McCoy was arrested in "usual and customary" Indian fishing grounds.

Deierlein pointed out that the State is "uninterested" in a penalty against McCoy. "This is a case beyond the meaning of a fisheries violation."

This case was made necessary by the failure of the State Supreme Court to reach a decision — it split even — in a similar case in 1954, he noted.

The State is pressing this case because the rights of all fishermen, whites or Indians, sports or commercial, are involved, the prosecutor said.

(MILO MOORE, State Fisheries director, has said the State must be able to regulate the taking of salmon headed into rivers in order to halt the decrease in salmon runs.)

Deierlein, who is being aided by Deputy Prosecutor Paul N. Luvera Jr., said the State will prove three major points:

First, that the State can regulate Indian fishing off reservations.

Second, that the State has the right to regulate fishing, for conservation purposes.

AND THIRD, that McCoy was fishing off the reservation.

Bannister recalled that the 1855 treaty gave the United States the area west of the Cascades and north of the Duwamish River, except for certain reservations and rights reserved for Indians.

These included the right to fish in "customary" fishing grounds off reservations.

Parties in the treaty, he noted, included McCoy's ancestors, probably even one of his grandfathers.

Now, said the defense attorney, the State desires to break the "contractual" rights the United States gave the Indians.

HE SAID he will prove that:

The Indians have the right to fish in their "customary" waters, and the area McCoy was arrested in is part of the reservation.

It was brought out during the opening statements that McCoy and other Indian commercial fishermen had requested State Fisheries Department patrolmen to arrest them, as a means of testing the treaty and the Indians' rights.

The trial apparently will be long, possibly lasting well into next week, since numerous witnesses have been scheduled by both the defense and the prosecution.

Both the Indians and the State Fisheries director have indicated the case is likely to be appealed all the way to the U.S. Supreme Court.