

Banishment raises questions

SEATTLE (AP) — Two Tlingit Indian teen-agers banished to remote Alaskan islands aren't breaking the law by living on federal land and keeping firearms to protect themselves, said a tribal judge Monday.

But Seth Fine, the deputy prosecutor handling the case, said the tribal court is pushing its own agenda at the expense of justice, and the "real problem is that the people who are supposed to be supervising [the teens] have ordered them to break the law."

Simon Roberts and Adrian Guthrie, both 18, pleaded guilty last May to robbing a pizza delivery man in 1993. Snohomish County Superior Court Judge James Allendoerfer delayed their sentencing and released them to a Tlingit tribal court in Klawock, Ala., which banished the boys for 12 to 18 months.

They must return to Allendoerfer for sentencing in March 1996.

The Snohomish County prosecutor's office filed a motion March 30 to return the boys to custody, alleging they have violated terms of their punishment by possessing firearms and living illegally on federal land.

Roberts is living on Kuiu Island, which is in Tongass National Forest. The location of Guthrie's cabin has not been revealed, but a recent report about a visit by two U.S. Forest Service officers to the youths said both were living on Forest Service land.

Tribal judge Rudy James said the land belongs to the tribe, and he challenged prosecutors and other government officials "to produce a valid bill of sale and title to Tlingit lands, waters and resources."

He said the two will be moved to new locations to hide them from outsiders, not because of Fine's complaints.

James also said prosecutors have known since an October

progress report to Allendoerfer that Roberts and Guthrie were given rifles for protection and to hunt for food.

James' statement "asserts that they do not have to obey federal law," said Seth Fine, the deputy prosecutor handling the case. "I'm very frightened when I hear someone say they don't have to obey the law."

Tribal attorney Stephen Karl Kortemeier said it would be Fine's burden to prove why the banishment sites don't belong to the tribe. Fine said it would be Roberts and Guthrie's burden to prove why regulations against living on federal land are illegal.

In any event, said Fine, a land use dispute has no place in a criminal case, and the tribal court has made the teens "pawns in a power play."

In a separate legal move, the state Court of Appeals is considering a prosecution request to overturn the arrangement on grounds it is discriminatory.

Woman files lawsuit before death

MILWAUKEE (AP) — Honoring Karin Smith's dying wish, an inquest jury is recommending homicide charges against those who misread the Pap smears that could have saved her life and the life of another woman.

The district attorney is expected to decide this week whether to file charges against the laboratory, a technician and the doctor in charge of the lab in the case of Smith and Dolores Geary, both of whom died of cervical cancer.

District Attorney E. Michael McCann charged the women were victims of indifference and blatant errors. An expert testified at the inquest that the laboratory missed unmistakable signs of cancer.

The American Medical Association said it knows of only one previous case in which criminal charges were filed against a doctor for a mistake, and none filed against laboratories or technicians.

Smith died March 8 at age 29, after asking McCann to launch the investigation. She testified before a congressional committee a year ago she was dying because her health maintenance organization did not have the Pap smears diagnosed correctly.

"It was her wish for someone to pursue this because she felt it went beyond negligence," said her father, Jorgen Knudsen.

"She didn't want it to happen to anyone else," said Marlene Knudsen, her mother.

McCann said the inquest jury of six laymen was the first in Wisconsin to consider criminal charges for a fatal misdiagnosis.

Lawsuits and other civil actions are the usual course of action in cases of negligence and errors. The Smith and Geary families settled lawsuits against the women's HMO and the lab; Smith and her husband got \$6.3 million, the Gearys, \$3.5 million.

AMA general counsel Kirk Johnson said the usual punishment for negligent doctors or technicians is for licensing boards to take away their credentials.

"They're basically just banished from their profession. It's a pretty serious sanction," Johnson said.

In the only prior case of criminal charges against a doctor, Dr. Gerald Einaugler of New York was ordered last month to spend 52 weekends in jail for reckless endangerment and other offenses in the death of a nursing home patient. He mistook a dialysis tube for a feeding tube and pumped food into her abdomen.

Johnson questioned the need for criminal charges without willful misconduct, saying the criminal justice system isn't set up to handle such cases.

"It seems to me, you have a state medical board ... designed to deal with this very kind of thing. If you can find this element of willfulness and knowledge, obviously a criminal case can be made," he said. "It sounds like what you have here is very bad practice or negligence and you have a pretty effective remedy" in lifting doctors' licenses.

During last week's three-day inquest, experts testified cancer was evident in the Pap smears — gynecological tests for cervical cancer — years before Smith and Geary had their diseases diagnosed.

The women belonged to the same HMO, Family Health Plan.

In the case of Geary, a mother of three from suburban Oak Creek, a Pap smear in 1987 was reported as normal but showed obvious signs of cancer, said one of the experts who testified, Dr. Billy J. Bauman, medical director of the Dane County Cytology Center.

"It isn't very often that you see that number of malignant cells on a slide," he testified.

The laboratory reported another Pap smear as normal, but when Geary underwent a hysterectomy in 1991, she was found to have advanced cancer of the cervix, testimony showed. She died in 1993 at age 40.

Bauman said the presence of cancer was "unequivocal" in slides from Pap smears done in 1988 and 1989 on Smith, a Nashotah accountant. Her cancer wasn't diagnosed until she saw a doctor outside her HMO in 1991.

"Once it becomes invasive, then it's bad news. It's a bad way to die," he said.

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Company penalized for shredding

NEWARK, N.J. (AP) — Ortho Pharmaceutical Corp. was hit with \$7.5 million in penalties Monday for shredding documents to thwart an investigation into whether it was illegally marketing Retin-A acne cream as a wrinkle remover.

Declaring Ortho had put itself above the law, U.S. District Judge William G. Bassler fined the Johnson & Johnson subsidiary \$5 million, the maximum, and also ordered it to pay \$2.5 million to cover the cost of prosecution.

Ortho agreed to those penalties in January when it admitted its executives ordered workers to shred thousands of documents. The company pleaded guilty to obstruction and corruptly persuading others to destroy the material.

Under the plea bargain, Ortho

cannot be prosecuted for how it marketed the prescription drug, a synthetic form of Vitamin A.

While doctors are permitted to prescribe an approved drug for any condition, it is illegal to promote a drug for any use not approved by the Food and Drug Administration. The FDA approved Retin-A for acne in 1971.

The agency began investigating Ortho following widespread publicity in 1988 — and in some cases, buying hysteria — that resulted when a small study said the drug appeared to reduce signs of aging.

In court papers, Assistant U.S. Attorney Richard J. Schechter said Ortho "was far more involved with generating and orchestrating the Retin-A public relations campaign than it had

ever admitted."

Ortho has maintained it properly promoted Retin-A. It said it fired three senior executives and instituted measures to prevent future offenses.

One of the fired executives, Lester W. Riley Jr., 50, of Wrightstown, Pa., has been charged with conspiring to defraud federal regulators and persuade others to destroy documents. He is awaiting trial.

Riley was an Ortho vice president in 1991 — when the shredding took place — and became president later that year.

Johnson & Johnson, the world's largest health care company, is still awaiting FDA approval to sell Renova, a preparation with the same active ingredient as Retin-A in a slightly different formulation, to fight signs of aging.