The Spearfishing Civil Rights Case: *Lac Du Flambeau Band v. Stop Treaty Abuse-Wisconsin*

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Introduction

In 1991, the Lac du Flambeau Band of Lake Superior Chippewa Indians, four individual tribal members, and Wa-Swa-Gon Treaty Association sued Stop Treaty Abuse Wisconsin ("STA"), an anti-treaty group, to put a stop to STA's campaign of harassment of tribal members exercising off-reservation spearfishing rights. The case resulted in the issuance of a permanent federal court order prohibiting interference with off-reservation treaty-protected fishing activities.

Legal Context: The Relationship of Spearfishing Civil Rights With the Treaty Rights Cases

The designation "Spearfishing Civil Rights" is used to avoid confusing the case with the "treaty" cases. The following summary places the case in context:

- The continued *validity* of the treaties of 1837 and 1842 and the right of members of the Lake Superior Chippewa to harvest fish and game on lands ceded under those treaties was established by the Seventh Circuit Court of Appeals' 1983 decision in *Lac Courte Oreilles v. Voigt, et al.*,[2] normally referred to as the "*Voigt* case."

- The *scope* of tribal members' treaty-reserved hunting and fishing rights was established in a series of subsequent federal district court and appellate court decisions in Voigt. Thirteen of these decisions are published in official federal court reports. The last was handed down February 21, 1991.[3]

- The Spearfishing Civil Rights case that is the subject of this essay was filed in 1991 after treaty rights had been affirmed and defined in the *Voigt* litigation. Its purpose was to *enforce and protect* these rights from interference.

Historical Context: Why the Spearfishing Civil Rights Case Was Filed

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[2]700 F.2d 341 (7th Cir., 1983), cert. denied 464 U.S. 805, 105 S.Ct. 53, 78 L.Ed.2d 72 (1983),

[3]*Lac Courte Oreilles v. State of Wisconsin*, 758 F.Supp. 1262 (W.D. Wis. 1991)

In 1989-90, STA waged an intimidation campaign by organizing "protests" at boat landings that the Lac du Flambeau Chippewa had designated for fishing. STA protests could sometimes be light or carnival-like but were often characterized by acts of intimidation and violence. STA was not satisfied with expressing opposition to spearfishing but aimed at actually preventing it.

Law enforcement officials, drawn from agencies from across the state, were typically on hand in force at the lakes targeted by STA. Nonetheless, rock throwing under cover of darkness, speed boat flotillas blocking the Chippewas' access to lakes, deliberate high wakes near spearfishers, gunshots, threats and virulent racial insults were common. A popular sign read "Spear an Indian, Save a Walleye." Another, uglier sign went further: "Spear a pregnant squaw, save two walleyes."

STA protests were particularly active and violent in the spring of 1989. At one landing, STA protesters broke through police lines. Then Wisconsin Governor Tommy Thompson and the Wisconsin Department of Natural Resources – unwilling to send a strong signal that unlawful behavior would be firmly met, deterred and punished – instead sought a federal court order under the *Voigt* case to shut down treaty spearfishing prior to the opening of the state's angling season and for the remainder of the year.

In denying this request, federal district judge Barbara Crabb viewed the State's request as "reminiscent of the 1960's, when the exercise of rights by blacks provoked controversy and raised tensions" and upheld the State's obligation to protect tribal members' lawful exercise of their rights:

> As a matter of law, the fact that some are acting illegally and creating justified fears of violence, does not justify abridging the rights of those who have done nothing illegal or improper.[4]

Despite STA's efforts to diminish the expressions of overt racism that were undermining its cause, racial slurs were common. Moreover, STA's disavowal of racial slurs was unconvincing. STA brochures fanned anti-Indian prejudices, asserting that tribal members each received $20,000 in federal benefits each year and that "thousands" of walleyes, speared with spears imported from Korea, were wasted by tribal members too lazy to clean them.

In addition to claims against STA and its organizers, another claim was crafted against Northern Wisconsin sheriffs for refusing to provide a protected area on the boat landings for tribal members. Since the 1950s, the Civil Rights Act of 1871, 42 U.S.C. § 1983, had been the primary means of suing state officials for civil rights violations in hundreds of cases relating to school segregation, prisoner rights, and police brutality. Section 1983 creates a right to sue in federal court for actions that deny the right of equal protection or due process "under color of state law."

Section 1983 did not cover actions by private parties. Section 1982, enacted as part of the Civil Rights Act of 1866, provided that all persons had the same right as white persons "to inherit, purchase, lease, sell, hold, and convey real and personal property." Although Section 1982 had rarely been used, it seemed to fit. Wisconsin courts had held that a tribal right to hunt and fish

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[4] *Lac Courte Oreilles v. State of Wisconsin*, Case No. 74-C-313-C (W.D. Wis.)Unpublished Order May 8, 1989.

was a form of property right under Wisconsin law.[5] If it could be shown that the defendants had interfered with the plaintiffs' rights to fish and that the interference was racially motivated, the plaintiffs would be entitled to a federal remedy.

It was decided not to include a claim for money damages because of the difficulty of quantifying the plaintiffs' damages, the cost of hiring experts to prove damages and the complexity that the issue would add to an already-complex case. The complaint did, however, include a claim for attorneys' fees.

In addition to the Tribe, the plaintiffs were Wa-Swa-Gon Treaty Association and several of its leaders, including Tom Maulson, Nick Hockings, Gilbert ("Gibby") Chapman, and Robert Martin. James Williquette, Wayne Wirsing and David Enblom, the sheriffs of Vilas, Price and Ashland, counties, respectively, were named as defendants for failing to provide protected areas at boat landings for tribal members and their supporters. The sheriffs of Ashland and Price counties were named larges because of a single incident at Butternut Lake. STA, in addition to fifteen of its most prominent members, were also named.

The Filing of the Case, the March 7, 1991 Hearing and the Preliminary Injunction

Lac du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty Abuse-Wisconsin, Crist et al. was filed February 1, 1991. The case was assigned to federal district Judge Barbara Crabb, the judge who also handled the *Voigt* Treaty case. Pending a full trial, the plaintiffs sought a preliminary injunction prohibiting any interference with Chippewa treaty-reserved off-reservation fishing rights by the non-law enforcement defendants. They asked that the sheriffs be ordered to provide protected areas at boat landings for spearfishers' supporters and that STA supporters be required to keep at least 250 feet (a stone's throw) away. The complaint included a demand that, in the event the plaintiffs prevailed, the defendants pay attorney fees, as permitted under federal law.[6]

The hearing was held March 7, 1991 and lasted ten hours. The case against the STA defendants went in well. The plaintiffs testified in detail about the abuse they had endured, and witnessed, at the boat landings on the lakes. In addition, they explained the importance of spearing as a means of subsistence and cultural affirmation. Their testimony was highly credible and effective, both on direct and on cross-examination. Eddie Benton Benai, an Ojibwe spiritual leader, testified as an expert on the cultural and religious aspects of spearfishing.

With respect to the racial animus behind the STA protests, the plaintiffs relied not only on the testimony from the plaintiffs but also a videotape, about 25 minutes in length, which had been prepared with the assistance of a film student at the University of Wisconsin-Madison. The video, a compilation of highlights from boat landing videos made by Great Lakes Indian Fish & Wildlife Commission and individual Indians and their supporters, featured many of the racial slurs, posters and chants described in the complaint and conveyed the ugliness of the protests.

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[5]Van Camp v. Menominee Enterprises, Inc., 68 Wis.2d 332, 343, 228 N.W.2d 664 (1975)
[6]42 U.S.C. § 1988

The case against the sheriffs was much less successful. Williquette, Enblom and Wirsing all denied any conspiracy to aid Crist in his anti-spearing efforts, insisting that they were doing their best to keep the peace under extremely difficult circumstances, with the result that no deaths or serious injuries had occurred at the landings. As experts, they testified that the 250 foot separation between STA and Indian people that was requested in the complaint was not practical. Al Shanks, Wisconsin's Director of Emergency Government, added his expert testimony on their behalf.

Aftermath of the Preliminary Injunction

On March 15, 1991, just one week after the Wausau hearing and shortly before the start of the 1991 spearfishing season, Judge Crabb issued her ruling.[7] She was unconvinced by the claims against the sheriffs but, with respect to the STA defendants, gave the plaintiffs a complete victory - a preliminary injunction prohibiting all forms of interference with tribal spearfishing. Some of the plaintiffs were nearly euphoric. Others were more cautious.

As a result of Crabb's ruling, STA lost credibility. Politicians distanced themselves. STA members became fearful that they would have to pay the plaintiffs' attorney fees, as well as their own. STA staged just one major boat landing obstruction action in 1991, at Sand and Dam Lake. Thereafter, STA's momentum evaporated, never to return. The lawsuit would continue for four more years but the era of the raucous, sometimes violent, often racist, boat landing protests was already practically over.

The three sheriffs later filed a summary judgment motion to dismiss the claims against them, which Judge Crabb granted. Clearly, the judge believed that the sheriffs were doing their best under difficult circumstances and deserved credit for the lack of any deaths or serious injuries. She had no intention of imposing any additional burdens on them. The plaintiffs decided against an appeal.

After the 1991 spearfishing season, it seemed clear that the STA crowd had lost its appetite for boat landing demonstrations. The plaintiffs' announced their intention to file a summary judgment motion against the STA defendants. One after the other, the defendants or their lawyers contacted the lawyers to determine how they could get out of the case. The defendants paid amounts ranging from $200 to $4,000 and agreed to be permanently bound by Judge Crabb's preliminary injunction. The case did not end, however. Dean Crist and STA remained defiant and refused to settle.

Dean Crist Tries to Use the Spearfishing Civil Rights Case to Re-Litigate Voigt

By fall of 1991, STA was a shell organization nearly indistinguishable from Dean Crist himself. Crist embarked on a multi-year strategy to use the civil rights case as a means of relitigating the *Voigt* Treaty Case, raising legal arguments that Crist and his lawyer, Richard Sommer, felt the State of Wisconsin had not sufficiently exploited. Crist defended against the plaintiffs' summary

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[7] *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty-Abuse, Wisconsin, Inc.*, 759 F.Supp. 1339 (W.D.Wis.1991).

judgment motion by arguing that he and STA could not be liable for violating the plaintiffs' treaty rights because such rights did not exist!

Crist raised two arguments to support his thesis that the plaintiffs had no rights. First, citing provisions in the 19th century treaties for "half-bloods," he deduced that only full blooded Chippewas were entitled to exercise treaty rights and pointed out that the plaintiffs had not proven their full blood. Crist's second argument was that the Lac du Flambeau Band of Lake Superior Chippewa had filed a claim with the Indian Claims Commission ("ICC") and been compensated for the difference between the amounts actually received for lands ceded to the United States and the fair market value of the lands at the time.

Crist's "full-blood" argument was patently meritless. The treaties were contracts between political entities, the United States and the Lake Superior Chippewa. The leaders of the various bands, including the Lac du Flambeau band, had signed the treaties as representative of their respective bands. The creation of reservations for the Lac du Flambeau and other bands was expressly authorized by the 1854 treaty. Lac du Flambeau and the other bands had formed governments under the Indian Reorganization Act in the 1930s. These bands were indisputably the legal successors-in-interest to the Lake Superior Chippewa that entered into the treaties and reserved off reservation fishing rights. The status of "half-breeds" in the middle of the 19th Century was irrelevant. The Chippewa bands in the modern era were free to define membership as they wished and any members were legally entitled to exercise the rights the Lake Superior Chippewa had reserved.

The Indian Claims Commission argument had superficial plausibility. Section 22 of the Indian Claims Commission Act of 1946 provided that "[t]he payment of any claim, after its determination in accordance with this Act, shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy" and "[a] final determination against a claimant made and reported in accordance with this Act shall forever bar any further claim or demand against the United States arising out of the matter involved in the controversy."[8] The Lake Superior Chippewa bands had been compensated under the ICC for the difference between the amounts they received for ceding the northern two-thirds of Wisconsin and the actual market value of the ceded lands. Crist argued that the award precluded the Voigt suit because the Tribe had already been compensated for the loss of hunting and fishing rights in the ICC judgment. The problem with Crist's argument was that the Tribe never sought compensation for the loss of off-reservation treaty rights before the ICC because the Tribe continued to insist that those rights survived.

Crist's defenses were substantively flawed and could not, in any event, have succeeded but it must have been especially galling to him that they were thrown out in part on procedural grounds. Crist failed to include the "half-blood" and ICC defenses in his original answer to the complaint. By the time he attempted to raise them, the deadline for amendments to the pleadings had long since passed.

Judge Crabb's 1992 Summary Judgment Decision

[8] 60 Stat. 1055

On January 6, 1992, Judge Crabb granted the plaintiffs' motion for summary judgment and made permanent the preliminary injunction entered the previous March.[9] Judge Crabb first pointed out the flaws in the two new defenses Crist had raised. The Tribe's right to define its own membership disposed of the "half-blood" argument and the Seventh Circuit's decision in *Voigt* that the Tribe's off-reservation hunting and fishing rights survived was binding and could not be re-litigated. In her eleven-page written decision, Judge Crabb cataloged the overwhelming evidence against Crist and the STA defendants:

> Stop Treaty Abuse-Wisconsin encouraged as many people as possible to gather at boat landings and on lakes. The group supported the assembling of boats around launching areas while plaintiffs were trying to launch their boats. At Catfish Lake in 1989, Stop Treaty Abuse members and others encircled the launch area with 35 to 40 protest boats to make it more difficult for Lac du Flambeau to launch their boats.
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> It was one of Stop Treaty Abuse's objectives to get as many boaters as possible driving back and forth on the lakes in an effort to disturb Lac du Flambeau spearers attempting to exercise their fishing rights.
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> On at least three occasions in 1989, Stop Treaty Abuse announced it would pay fines for all persons who crossed police lines at launching areas. At Rainbow Flowage in 1989, Stop Treaty Abuse members crossed police lines to occupy the area where the plaintiffs were launching their boats. In May 1989, Stop Treaty Abuse members and others crossed police lines at Trout Lake to the area in which the plaintiffs were launching their boats. Later, Stop Treaty Abuse paid the court costs of all the persons arrested. In 1990, Stop Treaty Abuse encouraged members and others to cross police lines at Big St. Germain Lake.
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> Also in 1989, Stop Treaty Abuse discussed with its members and others the spraying of rocks with insect repellant and the use of blunted hooks as drifting anchors to interfere with plaintiffs' treaty-protected right to use gill nets.
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> The purpose of the on-water protests and the protests at the boat landings was to stop the plaintiffs' exercise of their right to engage in off-reservation spearing of walleye and muskellunge.
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> The goal of Stop Treaty Abuse-Wisconsin has been to stop the plaintiffs from exercising their treaty recognized right to spear fish, by doing everything in its power to stop plaintiffs' spearing.
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> Defendant Crist decided where Stop Treaty Abuse would protest. It was his stated policy to crowd the boat landings with people and vehicles to make it more difficult for spearers to launch boats, to use artificial decoys to interfere with spearing, to get as many boaters as possible driving back and forth on the lakes making waves to make it difficult for spearers to stand in their boats and to see the fish. At a Stop Treaty Abuse meeting in April 1989, he advised members on techniques for interfering with Chippewa spearing.

[9] 781 F.Supp. 1381 (W.D. 1992)

He has stated, ‘our efforts to hinder the tribal spearing and netting harvest won’t be stopped....’ ‘Every fish saved from the spearers will mean an extra fish for the sport anglers ... that is why disturbing spearers will be effective....’[10]

Defendant Crist made wakes on lakes where Lac du Flambeau members were spearing on almost every evening that there was spearing in 1989 and 1990. He did so intentionally, in an effort to impede spearing. In 1989, at Minocqua Lake, Trout Lake and Big Arbor Vitae Lake, defendant Crist participated in on-water protests against Chippewa gill netting. At Big Arbor Vitae Lake in 1989, Stop Treaty Abuse members, including defendant Crist and others, formed a flotilla of boats around the launching area while spearers tried to launch their boats. At Plum Lake in 1990, defendant Crist and other Stop Treaty Abuse members, including board member David Worthen, made high wakes while plaintiff Nick Hockings was trying to spear. Defendant Crist was in a large assemblage of boats clustered around the boat landing at Catfish Lake in 1990, as Lac du Flambeau spearers attempted to launch their boats.

Stop Treaty Abuse paid defendant Crist’s fines and legal fees in connection with his arrests at Rainbow Flowage and Trout Lake in 1989 and paid his legal fees in connection with his arrests at Plum Lake in 1989 and 1990, at Big St. Germain Lake in 1990, and at Catfish Lake in 1990.

Defendant Crist believes that Stop Treaty Abuse has been effective in minimizing plaintiffs' fish harvest.

On occasions during 1989 and 1990, protesters pelted spearers, their family members and friends with stones. On many occasions during the 1989 and 1990 spearing seasons, protesters crowded groups of Indians, subjecting them to unwanted physical contact while blowing whistles, shouting threats, racial slurs and insults.

Protesters at landings in 1989 and 1990 threatened spearers and their families with violence. At protests organized by Stop Treaty Abuse, members and others have interfered with plaintiffs' right to practice their religion and have prevented them from sharing fishing activities with their children and other members of their band.[11]

Stop Treaty Abuse literature prepared by defendant Crist, Charles Ahlborn and Al Soik for distribution to members and the public is filled with inflammatory statements about the plaintiffs, such as

a. Chippewa spearers use spears “mass produced in China and Korea,” and outboard motors “manufactured in Japan”;
b. Many speared fish are sold;
c. “Thousands of fish spoil because of warm weather and the lack of ambition to clean them. Each year thousands of spoiled game fish are dumped in dumps and along road sides because tribal member [sic] didn't want to clean them”;

[10]Id, at 1390
[11]Id, at 1390-91

> d. Tribal members receive "huge amounts of free government surplus food including cheese, butter, milk and other vast amounts of 'commodity' foods. Along with these free foods they receive free food stamps and a cost of living allowance of over $20,000/household/year. They are also eligible for free government housing, subsidized heat and light, a whole list of government entitlements and subsidies, and a host of other government benefits. Tribal members receive 100% free medical and dental care, free pharmaceutical coverage, free day care and free and complete educational subsidies.[12]

The evidence seemed more than ample to establish the two elements of our case: (1) interference with the plaintiffs' right to fish and (2) a racial motivation. STA's literature, filled with false statements calculated to fuel STA members' anti-Indian bias, nicely complemented the testimony of our witnesses. Judge Crabb concluded by issuing a broad and powerful permanent injunction against the STA defendants who had not already signed consent decrees:

> Defendants Stop Treaty Abuse-Wisconsin, Inc., Dean Crist and Tommy Handrick and all those acting in concert with or at the direction of these defendants are enjoined permanently from
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> a. Assaulting or battering any member of the Lac du Flambeau band or any member of the family of a Lac du Flambeau band member at any landing or on any lake within the ceded territory;
> b. Intentionally creating wakes on any waterway to interfere with any spearer;
> c. Planting decoys in any waterway;
> d. Intentionally blocking spearing boats from moving from the boat landings out to the spawning beds;
> e. Shining lights into the eyes of any spearer or spearing boat operator while on the water;
> f. Playing "leapfrog" with any spearing boat, or otherwise impeding the progress of any spearing boat; and
> g. Taking any other action that is intended to or may reasonably be expected to interfere with plaintiffs' exercise of their spearing rights, including blowing whistles at spearers or any members of their families.[13]

Having prevailed on the merits, the plaintiffs were entitled, under federal law, to an award of attorneys fees from the losing defendants.[14] By the spring of 1992, fees and out-of-pocket costs (included more than $50,000 expended by ACLU-Wisconsin), totaled $182,745.92 and Judge Crabb issued judgment in that amount. It would be several years before any fees were collected.

The Seventh Circuit Court of Appeals Reverses

STA and Crist appealed from Judge Crabb's ruling on several grounds. They challenged the court's use of summary judgment with respect to the issue of racial motivation, arguing that

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[12]Id, at 1391-92
[13]Id, at 1395-96
[14]42 U.S.C. § 1988

motivation could never be decided on summary judgment and that Crist's real motivation was to save fish and fight for "equal rights," not hostility toward Indians. He had a right, he argued, to a trial at which the trier of fact could assess the credibility of his protestations. Even more important to Crist's grand strategy was his appeal from Crabb's denial of his motions to amend his answer to add defenses based on the plaintiffs' lack of "full-blood" status and the ICC judgment.

Oral argument before the Seventh Circuit Court of Appeals in Chicago was held September 11, 1992 before Judges Manion, Bauer and Moody. Dick Sommer's partner, Bill Schroeder, argued that the defendants were primarily motivated by conservation concerns and that anti-Indian slogans used to establish racial animus were protected by the First Amendment. I conceded that racial slurs were protected by the First Amendment but pointed out that they nonetheless served to establish the racial motivation behind the interference with the plaintiffs' rights, a necessary element of our claim. Schroeder also made an elaborate argument relating to the two featured legal defenses that, he hoped, would result in reconsideration of the very existence of the treaty rights.

On April 14, 1993, the Seventh Circuit Court of Appeals reversed Judge Crabb.[15] There was little in the opinion to comfort Crist and STA, however. The Court's only disagreement with Judge Crabb was her failure to give STA a trial on the issue of racial motivation. The court signaled that it had little doubt as to the outcome of such a trial:

> It is regrettable that Crist, STA and their supporters may view our decision today as a victory. We wish to dispel any such notion. As the record stands, the stench of racism is unmistakable. We refuse to fall victim to the maxim that "hard facts make bad law," however, and believe well-established principles governing the disposition of motions for summary judgment require that STA and Crist be allowed a trial to demonstrate the sincerity of their assertions of an absence of racial motivation.[16]

Most devastating from Crist's point of view, the court upheld Crabb's denial of the motion to add the "half-blood" and ICC defenses:

> STA sought leave to file a supplemental response to the LDF motion for summary judgment, and twice sought leave to amend its answer. STA desired to assert two additional defenses. First, that the treaty-retained usufructuary rights no longer exist, due to certain Indian Claims Commission ("ICC") findings made prior to our decision in *Voigt* that compensation had been paid to the LDF to extinguish them. Second, that some plaintiffs and LDF members lack the requisite Indian ancestry necessary to qualify under the treaties to exercise the rights, thus lacking standing in this action. The district court denied STA's requests for leave to amend its answer to raise these defenses, and granted the LDF's motion to strike a supplemental response to its summary judgment motion raising the ICC defense. The district court found that STA had not raised the defenses in a timely manner. Further, the district court found the defenses meritless, our decision in *Voigt* having conclusively determined the existence of the rights and identity of the

[15]991 F.2d 1249 (7th Cir. 1993)
[16]Id at 1263-64

parties entitled to exercise the rights.

> On appeal, STA argues at length that *Voigt* is not a *res judicata* bar to these defenses and therefore the district judge committed reversible error in not allowing the amendments. STA urges us to conduct a *de novo* review, *res judicata* being a question of law. However, STA makes no convincing argument why the district judge abused her discretion in not allowing the amendments and supplemental brief due to their untimeliness. That alone is reason to deny STA's appeal of this issue, and avoids discussion of its convoluted arguments regarding *res judicata*, which, in any event, we find an unpersuasive collateral attack on our earlier decision in *Voigt.*[17]

The Court reinstated the preliminary injunction pending trial and vacated the plaintiffs' attorneys' fees award. STA had asked that, on remand, it be given a jury trial before a different judge. The Court denied both motions and sent the case back to Judge Crabb for a trial to the court.

The 1994 Trial: Judge Crabb Again Rules for the Tribe

The Seventh Circuit's decision left Crist's case alive but on life support. Crist's grand hope of using the case to overturn *Voigt* depended on somehow getting before the United States Supreme Court. The bench trial in Wausau before Judge Crabb lasted a week. STA supporters attended and sat on one side of the courtroom in blaze orange while, on the other side of the courtroom, were the Lac du Flambeau spearfishers and their supporters. There were few surprises. The plaintiffs' witnesses were largely the same individuals the lawyers had in late 1990 to build the case, including Tom Maulson, Nick Hockings, Gibby Chapman, Scott Smith, Brooks Bigjohn, Anita Koser, Dorothy Thoms, and others. An addition was Denise Wildcat, a tribal member who had been at Sand and Dam Lake when STA staged its only large 1991 boat landing "protest." Sarah Backus, a member of Witnesses for Non-Violence, a group that supported treaty rights and witnessed many STA boat landing actions, provided the court with a lengthy catalog of racist and sexual insult that she had witnessed at the landings. Sarah's testimony was effective and Judge Crabb cited it in her written decision.

The STA defendants and their lawyers were unable to respond effectively to our evidence. They weakly insisted that STA discouraged racial slurs but they could not deny that they were common at the landings. Nor could they escape their public statements in support of overt interference with spearfishing. There was little doubt as to the outcome and, on February 7, 1994, Judge Crabb issued her written decision in the plaintiffs' favor, this time relying on the testimony given by each sides' witnesses under oath in open court.[18]

The Court of Appeals Affirms and the Supreme Court Denies Review

On October 7, 1994, the lawyers were again in Chicago arguing before the Seventh Circuit Court of Appeals. The panel this time consisted of judges Cummings, Flaum and Ripple. Crist, apparently having had a falling out with his lawyer, argued the case on his own. On December 8,

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[17]Id, at 1256
[18]843 F.Supp.1284 (W.D. 1994)

1994, the Seventh Circuit Court of Appeals again ruled, this time affirming Judge Crabb's decision.[19] The court found Judge Crabb's factual findings entirely adequate:

> In her opinion on remand from this Court, Judge Crabb has marshaled six pages of evidence to show that defendants' interference with plaintiffs' spearfishing was racially motivated. There is no need to restate all the evidence in the opinion below supporting the district judge's conclusion. As shown there, STA's purpose was to stop tribal members from exercising their off-reservation treaty rights including their rights to spear and net fish. STA's co-founder and chief spokesperson, defendant Dean Crist, was opposed to LDF's spearing and netting of fish even though applicable treaties gave the Lake Superior Chippewas such rights.
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> A brief summary of the most egregious examples of defendants' conduct amply demonstrates the basis for Judge Crabb's findings. Spearfishing protesters yelled numerous racial insults at the Indians--among them the accusation that all Indians are on welfare and filling up Wisconsin's jails. STA members called spearers "Tonto," "redskin," "welfare warriors" and "timber niggers" and stated that taxpayers had paid for their boats; protesters also mocked an Indian chant and caricatured an Indian ceremonial dance. STA members were heard to say that Indians could not find their food stamps because they kept them under their work boots.
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> In addition to ridiculing Indian culture and traditions, protesters' racist rhetoric took more violent forms as well. The protesters advocated spearing an Indian to save a walleye and urged supporters to drown Indians. As the district judge reported at one point in her opinion:
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> > Protesters yelled, "Dead Indian, dead Indian" and sang, "A half breed here; a half breed there," to the tune of "Old McDonald had a farm." At Eau Pleine Reservoir, they referred to Indian women as squaws and bitches and said, "The only good Indian is a dead Indian." In 1989, they said that "Custer had the right idea."
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> Defendants employed these racial slurs to exploit the deep-seated anti-Indian racism in northern Wisconsin. Defendant Crist claimed that he lacked any racial animus and but for his protest activities had a good relationship with Indians in the community, but called no Indian to testify in support of this claim.
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> We adhere to the view expressed in our prior STA opinion that use of racial slurs here provides evidence of prohibited intent against this minority group.[20]

The Court of Appeals also affirmed Judge Crabb's award of attorney fees, by now totaling $241,841.50:

> In awarding attorneys' fees, the district court is of course entitled to consider the results obtained. Here even the STA concedes the effectiveness of the permanent injunction, for

[19] 41 F.3d 1190 (7th Cir. 1994)
[20] Id, at 1192-93

> defendants have ended the harassment and intimidation previously exerted against the LDF. These Indians' rights are no longer being violated as a matter of course.
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> The plaintiffs' motion for attorneys' fees and costs was well supported by the affidavits submitted and excludes time for unsuccessful claims. The STA's argument that this lawsuit was "simple" is completely without support. It has resulted in three district court opinions and two opinions by this Court. This action involved many issues and extensive discovery proceedings and required the refutation of numerous motions. The various issues justified plaintiffs' retention of a large law firm knowledgeable in civil rights litigation. It is absurd to contend that plaintiffs were not prevailing parties or that they had only a modicum of success.
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> In careful opinions, the district court explained why plaintiffs were awarded $159,194.50 in attorneys' fees and an additional $82,647 for later work. Those opinions are persuasive that the amounts awarded were justified.[21]

Crist was nothing if not persistent. In his own mind at least, he was still not beaten. He filed a petition to the United State Supreme Court, which accepts about 125 cases for review each year from about 5,000 requests. On May 1, 1995, the Court denied Crist's petition, bringing the case, and Crist's quest to overturn *Voigt*, to an end.[22]

[21]Id, at 1194

[22]514 U.S. 1096, 115 S.Ct. 1823, 131 L.Ed.2d 745 (1995). May 1, 1995.