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As you can tell, these people on this panel are extremely knowledgeable and have had the major responsibility for the cases that member tribes have been involved with in terms of treaty rights. I have had the privilege of being a part of them as well.

I got out of law school, walked into the tribal office of the Bay Mills Indian Community and there was already litigation going on concerning the right to fish in the waters of Lake Superior. It was in state court and I participated in the representation of the defendant, who was Abe LeBlanc. Bill James was the legal services director of the program governing the area. And if you take a look at the initiative for the cases in the Great Lakes, Legal Services represented everybody. If you stop and think why were the cases filed when they were when the treaties were signed 150 years ago, and state interference and citation of tribal members had been going on for 50 to 60 years? Why were the cases not brought until the 60s and 70s? Well, the easy answer is Legal Services Corporation did not exist until then.

The Legal Services Corporation was created by an act of Congress. There was special funding that was provided for Legal Services programs that could specialize in Indian law and a back-up center was set up as the Native American Rights Fund had just been established. It is Legal Services that we all owe a great debt of gratitude because they didn't get paid to represent the tribes. They did it because it was the right thing to do. Bruce was able to work on this case because he headed up the Back-up Center at the Native American Rights Fund in Indian law. And so when the U.S. decided to file suit on behalf of the Bay Mills Indian Community, Bruce, because of Legal Services representing the tribe, was able to come in as the Back-up Center director.

In *Voigt*, the case was started because two tribal members challenged the right of the state to prosecute Indian people for using spears to catch fish. They were represented by John Wiley and Peter Sferaza of Wisconsin Judicare. It is only at Mille Lacs where there was not any direct involvement of the Legal Services community. But we all owe them a great debt. And if you take a look at the Indian law cases involving treaties Legal Services attorneys have provided most of the representation.

So that is why, at least in my view, cases had to wait, because tribes did not have any money and at that time tribes could be eligible for Legal Services because they didn't have funds to hire attorneys to represent them on their own behalf. I was the first in-house attorney Bay Mills ever had. And I think if you take a look at circumstances around the Great Lakes, and the tribes there, having in-house counsel was not something that was very common in the 1970s. When I came to Judicare, there were only two tribes out of eleven in Wisconsin that had in-house counsel at that time. Judicare provided all of the legal representation for everybody else.

One other group that actually deserves a shout out is the Bureau of Indian Affairs. They provided the funding for the *Voigt* case. They're the ones that provided the money to get the judges trained. They're the ones that provided the money to hire biologists, to hire conservation wardens, to put staff in place. They're the ones who paid for the expert witnesses and the travel expenses and the deposition costs. We had budgets in the hundreds of thousands of dollars in the *Voigt* case. This litigation was extremely expensive, even with Legal Services providing help. That kind of money was beyond any organization's ability to pay. BIA's litigation support funding provided the funds for that.

There's another source of funding, and I think you all remember the name Gary Rankle, who headed up the BIA's Fish, Wildlife and Parks Office in D.C. They're the ones that provided the base funding; not the litigation money, but the money to regularize and institutionalize the infrastructure needed for tribal self-regulation. And that now is a part of the Interior Department's annual budget. It is submitted to Congress which provides base funding for this organization. And in other parts of the country is providing for the tribes directly, rather than an inter-tribal organization. We couldn't have done it without lawyers and the Bureau funding, it just could not have happened.

As you can tell from Marc's description, the litigation in these cases is an exercise in history. It's an exercise in ethnohistory as well because one of the canons of the construction of Indian treaties is that they had to be interpreted as the Indians understood them. The letter that Marc read is one of the indications that historians have to find that show what Indian people did understand. Their languages at the time were not written. Oral tradition was the source of information about this. Evidence is based on documents on the record, so that we had to recreate with expert testimony the sense of the times. What were people doing? How did they understand what was going on in order to translate that into what is the scope of the right reserved by the treaties?

We also can't forget that treaties are contracts. Each one has a different language. Each one can be interpreted to mean something different, and not every treaty has language that has been interpreted by the courts to have rights that continue to exist to this day. So just because you have a treaty doesn't mean that there is a right to utilize resources outside of the exterior boundaries of the reservation. We had treaties, as Indian people had always understood, that specifically reserved that right and that is why we won. Legal skills might have had something to do with it, but the facts got the win, not our exercise in the courtroom.

Once you have courts recognizing the continued existence of a right, you have a huge effort that is not historical but contemporary as to identifying what resources are subject to the right; what methods can be used to harvest them; what utilization can be made of them, i.e. is there a commercial component; and what kinds of regulations of that exercise are needed to protect the resource from depletion or to protect other people's health and safety. And that actually was the context here in Wisconsin of the eight years of season negotiations. Once you have an understanding that the right exists, what can you do, where can you do it, when can you do it and what kind of regulations are going to apply? We all knew by the time we got to trial what sort of actions the states would refuse to say were part of the rights and those the tribes refused to concede they were not.

The regulatory phase of the case dealt with those issues. The whole idea of the tribes being able to self-regulate to the exclusion of the state is based on cases that took place elsewhere in the Pacific Northwest. We simply built on that and were able to come up with sufficient detailed regulation that the state has no role in the direct regulation of the treaty right. The only thing the state can do, and that is by authorization from the tribe, is that law enforcement officers can cite into tribal court violations by tribal members of tribal regulations. That is something that was done by agreement. It is not anything that is required under the law.

Last, but not least, we have been talking about other aspects of treaty rights. We're in the midpoint, if you will, of exercising treaty rights, making sure that they are protected and the opportunity to harvest is there not only now but for future generations. The law only answers questions that are directly put to it, so if you ask this panel if treaty rights can be

utilized to prevent environmental degradation, such as uranium mining or the use of hydrochloric acid in extracting natural resources underground, or whether or not to prevent injection wells, whether or not it can restrict the removal of underground water for bottling for sale, there aren't any hard and fast answers. We don't know. We expect, however, that people in this room will be participating for generations to come in asserting those kinds of issues and ensuring that the history and future of Indian people continues to exist in these homelands.

We are all privileged to have been part of this. One of the things that I think every lawyer wants is to have a law career that is meaningful, that the cases that they are involved in made a difference, and what all of us have been able to do on this panel is to make a difference. Our participation in these cases to us is probably the highlight of our legal career, and we thank you all for the privilege of participating in it with you.