

Larry Nesper

Thank you, Rick, for that very generous introduction. And thanks to the Commission for inviting me to be a part of this. It is in, many ways, a culmination of a long period of time and I'm honored to be here along with these people to talk about this issue.

I'll start by stating the question that we were invited to consider, which was: how have the tribal communities themselves been affected by the implementation of the rights by the tribes and the exercises of those privileges by the members? I'm borrowing a distinction here that I think I learned from Henry Buffalo in his remarks distinguishing between individual exercise and tribal right.

When Jims, Jim St. Arnold, Thannum and Zorn, of the Great Lakes Indian Fish & Wildlife Commission invited me to moderate this panel and to write a paper addressing that question, I knew I couldn't do it by myself. We began by planning the research process together. The first thing we did was to identify the many different domains of tribal life that were affected by treaty rights. We identified what it was we were going to look into to assess how the tribal implementation of the rights and the membership exercises of the privileges have changed the communities.

This was based on a fundamental belief that I held and I think it's been repeated in this conference. I've always believed that the recognition of the treaty rights was an extremely significant change in how the tribal communities think about themselves. I think this is a watershed moment in the history of the tribes in this area as well as the history of tribes across the continent.

The recognition of the treaty rights by the federal courts is a more powerful affirmation of Indian sovereignty than the progression of legislation of the self-determination era, such as: Indian Self-determination Act, the Indian Child Welfare Act, Native American Graves Repatriation Act and the Indian Gaming Regulatory Act. I would argue here that the law that recognizes the treaties is higher than congressional legislation and the effect, therefore, of the recognition of treaty rights and the treaties and the government-to-government, nation-to-nation relationship that that implies is going to be more broadly felt throughout the communities than any particular piece of legislation or maybe even all of the legislation brought together.

On the theory, that it was a revolutionary change in the community, it would then have important effects at two poles of tribal social experience, the one pole being at the level of individuals and families. People would no longer have to risk arrest and confiscation of their nets, their tools, their weapons and their food as they produce the life from the waters and the lands. Hunting, fishing and gathering were basically demilitarized. Now I know they went into a period of warfare upon immediate recognition, but in the long run that action would be demilitarized. There were no longer state wardens arresting Indian people for living a life they were given by the Creator, as we just heard recently.

Now, individuals and families will be able to do these activities with each other in the open, sharing the bounty of the land and the waters with each other and all that entails. This resulted in more feasting, more and bigger ceremonies, namings, feasts, other ceremonies, more relationships with each other generally, more sociality, if you will and more people being together in relationship.

The other pole of the effect are the tribes themselves as governmental entities. Tribes as governments possess the rights. The implementation of those rights required extensive

institutional development for the tribes. We're thinking here of natural resource departments, fish hatcheries, tribal courts and tribal law, educational and language programs and diet and health programs. Also included would be inter-community relationships such as the relationships between the tribes, between the tribes and the state, and between the tribes and the federal government in terms of the trust responsibility.

So those are the two poles, individual family and tribal institutions that we believe have been affected by treaty rights. The method we decided on to explore this was to interview tribal members from each of the communities in a whirlwind tour of the ceded territory in mid-March during our spring break. We were visiting at least two communities a day. We audio-taped interviews. We had them turned into three or four hundred pages of transcripts.

Then the second aspect of this method was a seminar in American Indian studies at the University of Wisconsin-Madison where students researched each of the communities. They tried to read everything they could that's been written about them in the last few decades. Some of you here may have taken phone calls, answered e-mails when students of mine were out there gathering information about how the communities have changed in the last 25 to 30 years. We also read and discussed those transcripts and the interviews in class and sometimes we listened to part of those transcripts to hear people talk and hear the heart-felt feelings behind those reflections that people brought to us.

I, then, wrote a paper to present on a panel to reflect on these changes that have taken place in the communities over these years. We would begin by looking really at the pre-*Voigt* situation while also considering the effect of the *Gurnoe* decision, as well as the treaty rights upheld in *U.S. v. Michigan* for the tribes on Lake Superior.

So, with that general kind of umbrella introduction into the nature of the project, the undertaking, I'm going to turn this over to the people who really lived this history and we will start to my left with Bucko Teeple.