7 The Continuing Pursuit of Justice

During the 1950s and 1960s, the Chippewas and other reservation Indians across the United States confronted numerous efforts to abrogate their treaties and to seize tribal lands for dams and other purposes. Indians responded by turning to the federal courts for protection of rights reserved under treaties. The State of Wisconsin provided an early example of this trend. In 1962, the Menominee Indians contested the arrest of a tribal member by state wildlife authorities for hunting out of season (Lurie 1987, 59; U. S. Court of Claims 1967, 998-1010). When the case finally reached the Supreme Court several years later, the justices ruled that nineteenth-century Menominee treaty rights relating to hunting were still valid since they had never been explicitly extinguished by the United States government (U. S. Supreme Court 1968, 404-12).

The Court's contention that treaty rights must be *explicitly* extinguished by the federal government and just compensation provided in order for the United States to abrogate them is one of a series of legal precedents referred to by scholars of Indian law as "canons of construction." Four such canons have emerged since the nineteenth century (Cohen 1982, 221-25). A brief review of them is essential to our understanding of the legal context and the results of recent Chippewa efforts to protect their treaty rights.

Judicial canons or standards of interpreting Indian treaties evolved during and after the treaty-making era of American history. This period lasted from the 1778 treaty with the Delaware Indians until Congress ended treaty making in 1871. The following four canons or principles have emerged from a number of Supreme Court decisions:

1) treaties must be liberally construed to favor Indians;
2) ambiguous expressions in treaties must be resolved in favor of the Indians;
3) treaties must be construed as the Indians would have understood them at the time they were negotiated; and
4) treaty rights legally enforceable against the United States should not be extinguished by mere implication, but rather explicit action must be taken and 'clear and plain' language used to abrogate them.

These standards of dealing with cases involving Indians represent an acknowledgement by the federal judiciary of the unequal bargaining position of the Indians at the time of treaty negotiations. This acknowledgement is based, among other things, on the federal government's employment of interpreters and its superior knowledge of the language in which the negotiations were conducted. Fundamentally, the canons reflect the fact that justices of the U. S. Supreme Court have acknowledged Indians did not bargain with the federal government from a position of equal strength (Cohen 1982, 221-25).

The reason for the emergence of the canons is rooted in the special trust relationship between the Indian people and the United States (Cohen 1982, 220-22). This relationship was outlined in an 1831 U. S. Supreme Court case involving a dispute between the Cherokee Nation and the State of Georgia. Chief Justice John Marshall declared Indian tribes to be "domestic dependent nations" whose relationship to the United States resembled that of "a ward to his guardian." Marshall viewed Indian tribes as self-governing entities, but he recognized that their location *within* states of the Union established a "peculiar" relationship with the federal government (U. S. Supreme Court 1831). The concept of the federal trust responsibility to Indians evolved judicially from Marshall's rulings (Satz 1987, 34-49; Cohen 1982, 220-21) and has played an important role in the efforts of Wisconsin's Chippewa Indians to protect their hunting, fishing, and gathering rights.

The primary question of concern to federal judges and legal experts in reviewing treaty rights controversies is this: what reasonable expectations did the Indians have as a result of treaty negotiations? Although federal judges have recognized the duty of the United States to carry out the terms of treaties as they were understood by Indians, it is not an easy task to determine today what the understanding of an Indian tribe or band was more than a hundred years ago. Among the most important documents used for this purpose are the proceedings that were usually recorded during the treaty councils. Copies of those documents that have been preserved in the National Archives and Records Service in Washington, D.C., are available on microfilm (Hill 1981, 44-45). The proceedings contain the official minutes of the treaty negotiations as recorded by representatives of the U. S. government. Together with related correspondence to the commissioner of Indian affairs and other government officials, the proceedings often help to clarify the motives, concerns, and perceptions of U. S. treaty commissioners and Indians. Since the proceedings were written by government employees and thus undoubtedly are biased in favor of the United States government, federal judges have carefully noted those instances in which these documents support the Indians' recollection of events and treaty provisions as opposed to the government's written version of the treaty. In instances where the proceedings reinforce the Indians' version (see, for example, those noted in Chapters 2-4 of this study), the courts have ruled in favor of the Indians in interpreting the provisions of the treaties (Kickingbird *et al.* 1980, 34).

During the last two decades, the descendants of all of the Lake Superior Chippewa bands have increasingly turned to the federal courts for assistance as some white Americans have challenged their efforts to continue to enjoy the rights their ancestors reserved in the treaties they signed with the federal government. Events of the mid- and late 1960s set the stage for the legal actions of later decades. The Great Society programs of the Lyndon B. Johnson administration opened up new links between Indian leaders and the federal government (Prucha 1984, 2: 1092-095). Office of Economic Opportunity (OEO) funds were used, among other things, to establish legal services programs. Wisconsin Judicare, for example, was established to assist low-income people in the state's northern counties, which also happen to contain all of Wisconsin's Chippewa reservations (Lurie 1987, 51, 54; Wilkinson 1990, 23). Although the programs of the Johnson administration had an important impact on the lives of many American Indians, the following events related to the rising Indian militancy[47] of the late 1960s and early 1970s captured the attention of the news media[48] and spotlighted Indian grievances: the organization of the American

Indian Movement (AIM) in Minneapolis in 1968, the seizure and occupation of Alcatraz Island in San Francisco Bay in 1969, the Trail of Broken Treaties that resulted in the occupation of the Bureau of Indian Affairs building in Washington, D.C., in 1972, and the seizure of the hamlet of Wounded Knee on the Pine Ridge Reservation in South Dakota in 1973 (Prucha 1984, 2: 1116-120).

Such militancy had its counterpart in Wisconsin as well. In addition to the Indian students who badgered university administrators for Indian counselors and programs in Indian studies and languages, there were such events as the three-day occupation of the Northern States Power Company dam site near the town of Winter in Sawyer County in late July and early August of 1971 by a group of about a hundred Lac Courte Oreilles Chippewas and some twenty-five AIM supporters[49] and the occupation on New Year's Eve 1974 of a vacant Catholic novitiate near the reservation town of Gresham in Shawno County by the Menominee Warrior Society.[50] By the mid-1970s, however, most Indian activists in Wisconsin—like their counterparts across the United States—had turned to the legal system for assistance in redressing their grievances (Lurie 1987, 54-56, 58).

Wisconsin Indians looked to the federal courts and organizations such as the Native American Rights Fund and Wisconsin Judicare to seek the benefits of the federal government's trustee relationship to the tribes without the burden of federal domination (Lurie 1987, 54). As Indian activists Russel Lawrence Barsh and James Youngblood Henderson have noted, in the American constitutional system of checks and balances "the ultimate security of a minority excluded from or too few to take advantage of majoritarian political processes lies in the Constitution and constitutional courts" (Barsh and Henderson 1980, 138).

The rising militancy of the 1960s and 1970s gave many Indians a new sense of pride in being Indian, and a new generation of leaders sought legal redress for their grievances. "The legal weapon is especially potent in the Indian situation," a student of the new Indian politics reminds us, "because the relationship of Native Americans to the United States, unlike that of any other group in American life, is spelled out in a vast body of treaties, court actions, and legislation" (Cornell 1986, 128).

As early as 1971, Wisconsin Judicare had undertaken a test case involving Chippewa fishing rights in Lake Superior under nineteenth century treaties (*Capital Times* 1972). In two cases reviewed together, the Wisconsin Supreme Court ruled on January 6, 1972, that the Red Cliff and Bad River Chippewa Indians had fishing rights in Lake Superior by virtue of the establishment of their reservations on the lake's shores in the 1854 treaty, but the majority decision recognized the state's right to "reasonable and necessary" regulations to prevent a substantial depletion of the fish supply and declared that Indian methods of gathering fish had to "reasonably conform to the aboriginal methods." In a concurring opinion, Chief Justice E. Harold Hallows upheld the right of the Chippewas to fish in Lake Superior but disagreed with his colleagues on state regulation of Indian fishing. Hallows argued that the needs of whites should not determine the extent of Chippewa fishing rights nor should the Indians be limited to using aboriginal methods. As Hallows commented:

> The majority opinion states to the Indians you have your historic and traditional fishing rights, but the state of Wisconsin 'who did not grant you those rights in the first place' is going to regulate them. The regulation of the Indians' right to fish could reduce them to the status of privileges of the white inhabitants of Wisconsin. I cannot agree that the

> needs of the white inhabitants of Wisconsin must determine the extent of the Indians' fishing rights. Nor can I agree that the methods of fishing by the Indians must be by aboriginal methods.

Hallows concluded his remarks by stating, "the Indians should be allowed a spinning rod as well as a bone hook or spear" (Wisconsin Supreme Court 1971, 410-12).

The most famous court case involving Chippewa hunting, fishing, and gathering rights in Wisconsin is *Lac Courte Oreilles Band of Chippewa Indians* v. *Voigt*. In early March of 1974, Wardens of the Wisconsin Department of Natural Resources (DNR) arrested Frederick and Michael Tribble, members of the Lac Courte Oreilles (LCO) Band, for spearfishing on Chief Lake, located south of Hayward in ceded territory in Sawyer County. Charged and found guilty of possessing a spear for taking fish on inland off-reservation waters and for occupying a fish shanty without a proper tag, the brothers were defended by the LCO Band, which filed suit in 1974 against DNR Secretary Lester P. Voigt, DNR Conservation Wardens Larry Miller and Milton Dieckman, Sawyer County District Attorney Norman L. Yackel, and Sawyer County Sheriff Donald Primley for interfering with Chippewa off-reservation hunting and fishing rights (*Capital Times* 1974; U. S. District Court 1978).

In 1978, Federal District Court Judge James Doyle ruled against the Chippewas. Doyle concluded that "when the boundaries of the Lac Courte Oreilles reservation were finally determined pursuant to the 1854 treaty, the general right of the Lac Courte Oreilles Band and its individual members to hunt, fish and gather wild rice and maple sap in the area ceded by the treaties of 1837 and 1842, free of regulation by state government, was extinguished, except as to reservation lands, and except as to special hunting and fishing rights on limited parts of the ceded territory adjacent to the treaty reservations which might properly be inferred from the language of the 1854 treaty setting apart the reservations 'for the use of' the Chippewa" (U. S. District Court 1978, 1361).

After initial rejection of their arguments by Judge Doyle, the Chippewas turned to the U. S. Court of Appeals for the Seventh Circuit, which in 1983 reversed Judge Doyle's decision and reaffirmed the sanctity of the treaties and the right of the Indians to hunt, fish, and gather on and off their reservations on public lands[51] in ceded territory in the so-called *Voigt Decision* or what has come to be known as LCO I.[52] In deciding in favor of the Indians, a three-judge panel reviewed historical and ethnographical evidence and concluded the Indians had been led to believe they could continue to hunt, fish, trap, and gather on ceded lands as long as they refrained from molesting white settlers. Further, the judges ruled that the usufructuary rights were not withdrawn by the 1850 Removal Order because the order was invalid; they concluded the 1854 treaty did not specifically revoke those rights either (U. S. Court of Appeals 1983).

In reversing Judge Doyle's 1979 decision, the U. S. Court of Appeals was upheld by the U. S. Supreme Court, which refused to review the case (U. S. Supreme Court 1983; *Milwaukee Sentinel* 1983). The Court of Appeals remanded the case to Judge Doyle with instructions to "enter judgment for the LCO band . . . and for further consideration as to the permissible scope of State regulation over the LCO's exercise of their usufructuary rights" (U. S. Court of Appeals 1983, 365).

Soon after the Supreme Court refused to review LCO I, the other five Chippewa bands recognized as successors to the Chippewa Indians who signed the 1837 and 1842 treaties—the Red Cliff Band, the Sokaogon Chippewa Indian Community/ Mole Lake Band, the St. Croix Chippewa Indians, and the Lac du Flambeau Band joined the Lac Courte Oreilles Band in the lawsuits that followed (Bichler 1990b, 2).

Meanwhile, Governor Anthony S. Earl, a Wausau attorney who had served as secretary of the Department of Natural Resources from 1975 to 1980, was anxious to promote harmony in the northern part of the state where the *Voigt Decision* had stunned many non-Indians. On October 13, 1983, just ten days after the U. S. Supreme Court refused to hear the appeal of the *Voigt Decision* by the State of Wisconsin, Earl issued *Executive Order 31* which stated:

> WHEREAS, there are eleven federally recognized Tribal governments located within the State of Wisconsin, each retaining attributes of sovereignty, authority for self-government within their territories and over their citizens; and
>
> WHEREAS, our Nation, over the course of two centuries has dealt with American Indian tribes through the application of international common law, negotiation of treaties, and constitutional interpretation of law, each recognizing the special government-to-government relationship as the basis for existance {*sic*}; and
>
> WHEREAS, the Supreme Court has consistently upheld this unique political relationship developed between Indian tribes and the United States government; and
>
> WHEREAS, the State of Wisconsin was established in 1848 with a continuous vested interest in service to all of its citizens regardless of specific jurisdiction, ethnic or cultural background, religious affiliation or sex; and
>
> WHEREAS, it is in the best interest of all units of government, federal, tribal, state and local to recognize the pluralistic diversity of our government and society;
>
> NOW, THEREFORE, I, ANTHONY S. EARL, Governor of the State of Wisconsin, order my administration, state agencies and secretaries to work in a spirit of cooperation with the goals and aspirations of American Indian Tribal Governments, to seek out a mutual atmosphere of education, understanding and trust with the highest level of tribal government leaders.
>
> AND, FURTHERMORE, all state agencies shall recognize this unique relationship based on treaties and law and shall recognize the tribal judicial systems and their decisions and all those endeavors designed to elevate the social and political living conditions of their citizens to the benefit of all. (State of Wisconsin Executive Department 1983)

Earl called for cooperation between state agencies and tribal governments, but the state and the Chippewa bands continued to confront each other in federal court.

When Judge Doyle entered a partial judgment in favor of the Chippewas as specified by the Seventh Circuit of the U. S. Court of Appeals, the Wisconsin Department of Justice appealed that ruling. State officials claimed usufructuary rights could not be exercised on any land that had at any time been privately owned. A three-judge panel of the Seventh Circuit ruled in 1985 (LCO II) on the availability of private and public lands subject to the exercise of treaty rights. "It is appropriate once again to say," the judges stated, "that the whole thrust of LCO I was that the usufructuary rights survived after the treaty of 1854 and that those rights must be interpreted as the Indians understood them in 1837 and 1842." The judges also ruled that "Wisconsin's obligation to honor the usufructuary rights of the Indians is no more or less than was the federal government's obligation prior to Wisconsin's statehood" (U. S. Court of Appeals 1985, 182-83).

During the 1986 gubernatorial campaign, Republican Tommy G. Thompson, the Assembly minority leader from Elroy, attempted to woo voters away from Democratic incumbent Governor Earl in northern Wisconsin by openly speaking against Chippewa reserved treaty rights during campaign swings in the region. At a Protect Americans' Rights and Resources (PARR) banquet in Minocqua near the Lac du Flambeau reservation where the most active spearfishers reside, for example, Thompson spoke to about two hundred and thirty anti-treaty activists:

> A very major difference between Tony Earl and me is that I believe in treating all people equally. I believe spearing is wrong regardless of what treaties, negotiations or federal courts may say. The exercise of these special privileges has hurt our tourism industry, created an image problem and has hurt real estate and land values . . . . If I am governor, the state of Wisconsin will defend your right and your title to your lands. (*Milwaukee Journal* 1986a; *Wisconsin State Journal* 1989a)

Thompson told a meeting of the Northwoods Realtors in Rhinelander that "spearing is wrong, period" and that "we cannot stand by and let our fishing areas, hunting grounds and tourism industry be threatened" (*Ashland Daily Press,* 1986).

Governor Earl took a different approach to the treaty rights issue. In June, he appointed a sixteen-member commission to "review alternatives for resolving concerns about the exercise of treaty rights, improving understanding between Indians and non-Indians and addressing the social needs of the region." Commission members included the tribal chairs of the Chippewa bands and non-Indians. Among the latter were local government officials, representatives of the tourism industry, conservationists, a minister, and a college instructor. Earl named Jeff Long, chair of the town of Boulder Junction in Vilas County, and Stockbridge-Munsee tribal chair Leonard Miller, president of the Great Lakes Inter-Tribal Council, as co-chairs. The governor urged the commissioners "to explore ways to resolve disputes stemming from the Indian treaties, to encourage better race relations and to promote tourism and economic development." Earl urged the commission to engage in "positive thinking about Wisconsin's Northland and its resources." In response to reporters' questions about proposals to abrogate treaties, Earl replied, "I'm not going to join the chorus of abrogating the treaties. Politically, it's the easy way, but hell, I know that's kidding the people" (*Milwaukee Journal* 1986b; *Message Carrier* 1986).

Candidate Thompson criticized the governor for failing to appoint critics of off-reservation hunting and fishing rights to the tribal-community relations commission (*Milwaukee Journal* 1986c). Following his victory at the polls in November, Thompson was confronted with growing opposition to Chippewa treaty rights—a problem political opponents claimed his own campaign had helped to inflame. Paul DeMain, editor of *News from Indian Country* (Hayward, Wis.) and a former aide to Governor Earl, claims that Thompson's courting of PARR and Stop Treaty Abuse (STA) since 1986 gave those groups a legitimacy they did not deserve and emboldened them to mount large boat-landing protests against spearfishers. "Tommy Thompson pumped those people up," DeMain argues (*Wisconsin State Journal* 1989a, e; *Milwaukee Journal* 1989f). Evidence to support DeMain's contention that Thompson played into the hands of PARR and STA may be gleaned from the promotional literature of these organizations. *PARR Issue,* for example, regularly informs dues-

paying and potential members in words and in photographs of the frequent meetings between PARR officers and the governor and his aides (*PARR Issue* 1991q, v). Such tactics undoubtedly assisted the development of anti-treaty sentiment as Judge Doyle addressed the various issues emerging from the *Voigt Decision*.

After LCO II, Doyle divided the court proceedings on Chippewa treaty rights in Wisconsin into three phases:

> **Phase I:** The Declaratory Phase was to result in the determination of the nature and scope of Chippewa treaty rights.
> **Phase II:** The Regulatory Phase was to lead to a determination of the permissible scope of regulation by the state of Wisconsin.
> **Phase III:** The Damages Phase was to lead to the determination of the amount of damages, if any, to which the Chippewas are entitled for interference by state officials with the exercise of their off-reservation treaty rights. (Bichler 1990a, 254; *Masinaigan* 1990a)

After dividing the proceedings into these phases, Doyle began to address the various issues.

On February 18, 1987, on what treaty rights opponents referred to as "Doomsday for Wisconsin" (*Milwaukee Journal* 1987a, 22A), Doyle ended Phase I of the court proceedings by affirming in LCO III the right of the Chippewa bands to exercise their usufructuary treaty rights to harvest nearly all varieties of fish, animal, and plant life available in ceded territory necessary to maintain a "modest living" free from state interference. The state may, however, impose restrictions upon the Chippewas provided restrictions are "reasonable and necessary to conserve a particular resource." Doyle ruled that the Chippewas could employ any means of harvesting resources used at the time of the negotiation of the treaties or any developed since then, the Chippewas could trade and sell harvested goods to non-Indians using modern methods of distribution and sale,[53] and that "appropriate arrangements" must be made to allow the Chippewas to exercise their usufructuary rights on private lands *if* public lands were insufficient to support a modest living. The judge further explained his reasoning:

> I have found, and now repeat, that the Chippewa understanding in 1837 and 1842 was that in the absence of a lawful removal order or in the absence of fresh agreement on their part, settlement and private ownership of parcels by non-Indians would not require the Chippewa to forgo anywhere or in any degree exercise of their reserved usufructuary rights necessary to assure that, when the exercise of those rights was combined with trading with non-Indians, the Chippewa would enjoy a moderate living within the entire ceded territory. (U. S. District Court 1987a, 1432, 1435)

Republican Governor Tommy Thompson responded to Doyle's rulings by announcing that the state would appeal (*Milwaukee Journal* 1987a, 1A).

Following Doyle's death in June of 1987, Judge Barbara Crabb took over the case and began Phase II of the court proceedings. Judge Crabb ruled in August of 1987 (LCO IV) that the modest living standard did not restrict the Chippewas to an upper limit during their harvesting of resources. She also established the legal standards for permissible bounds of state regulation, maintaining that the State of Wisconsin could regulate Chippewa off-reservation usufructuary rights in the in-

terests of conservation, public health, and safety, provided the regulations were reasonable and necessary to conserve a particular species, did not discriminate against the Chippewas, and were the least restrictive alternative available. Effective tribal self-regulation, however, would preclude state regulation (U. S. District Court 1987b).

Less than two weeks after Judge Crabb announced her ruling in LCO IV, the U. S. Court of Appeals for the Seventh Circuit criticized the legal team the Thompson administration had assembled to challenge the *Voigt Decision* and to protest the awarding of interim attorney's fees to the Chippewas. Not only did the judges dismiss the state's appeal on August 31, 1987, but they also imposed sanctions for "inexcusable" errors in filing the appeal. Pointing out that this was Wisconsin's third error concerning appellate jurisdiction in the litigation resulting from the 1983 case, the judges expressed concern about the state's "serious lack of understanding of the basic principles of federal appellate review." In assessing sanctions for the "frivolous appeal" the judges stated, "we are entitled to expect better from the State of Wisconsin" (U. S. Court of Appeals 1987).

Following the rulings in LCO IV and in the appeal case, state and tribal officials sought a delineation of the Chippewas' harvesting rights. In 1988 (LCO V), Judge Crabb determined the Chippewas could not maintain "a modest living" of slightly more than $20,000 per family from the available harvest within ceded territory (U. S. District Court 1988). Crabb in 1989 (LCO VI) established Chippewa walleye and muskellunge rights using a plan proposed by Chippewa tribal conservation officials in the Great Lakes Indian Fish and Wildlife Commission modified by a "safe harvest" calculation methodology supplied by the state. The judge prohibited state officials from interfering in the regulation of treaty rights with regard to the harvesting of walleye and muskellunge except insofar as the Indians had otherwise agreed by stipulation (U. S. District Court 1989).

On May 9, 1990 (LCO VII), Judge Crabb ruled on Chippewa off-reservation deer harvest rights within the ceded territory. She recognized the state's right to prohibit deer hunting by Indians in the summer and during evenings based on safety concerns and decided that Indians and non-Indians were each entitled to one half of the game harvest[54] (U. S. District Court 1990a, 1401-02, 1413-27). Attorney General Hanaway reacted positively, noting that the decision put the Chippewas and non-Indians on an equal footing. "The decision is in a sense equal rights for everyone," he said. Stop Treaty Abuse leader Dean Crist, however, summed up the anti-treaty rights position by observing, "the bad thing is you still have less than 1 percent of the population with 50 percent of the resource." Crist accused Crabb of "trying to court-appoint co-management" (*News from Indian Country* 1990c, d)

Judge Crabb ruled on October 11, 1990 (LCO VIII), that the Chippewa Indians could not sue the State of Wisconsin for an estimated $300 million in damages for denial of treaty rights over the years. In an opinion that shocked treaty rights advocates and brought loud cheers from the Thompson administration and anti-treaty spokespersons, Crabb argued that recent U. S. Supreme Court interpretations of the Eleventh Amendment[55] indicate that states have "sovereign immunity" from lawsuits by Indian tribes. As a result, the Chippewa bands must persuade the federal government to sue the State of Wisconsin on the bands' behalf if the Indians are to have any hope of collecting damages for the state's past denial of their treaty

rights. Meanwhile, as attorneys for the various bands contemplated appealing Crabb's ruling in Phase III of the proceedings, the judge reviewed the state's power to regulate Chippewa harvesting and selling of timber in ceded territory (*Eau Claire Leader-Telegram* 1990i, j).

Crabb, who had earlier barred the state and its counties from challenging the Chippewas' treaty right to harvest and sell timber, reviewed these rights in a four-week trial held in early 1991. About 1.8 million acres of county forests lie on ceded lands, and the Wisconsin Counties Association and the Wisconsin County Forests Association have vigorously argued for many years that timber rights on county forest lands are not covered by the Chippewa treaties. In the mid-1980s Wisconsin counties earned in excess of 3 million dollars annually from timber sales. In addition to the counties, the state, which was represented in the trial independently, has about 370,000 acres of land, generating approximately $800,000 annually, involved in the timber rights dispute. Many Chippewa leaders, facing unemployment rates exceeding fifty percent on their reservations, view logging as a way to boost their economies (Wisconsin County Forests Association *et al.* 1990, 1, 6; State of Wisconsin *et al.* 1990, 2-3; *Milwaukee Journal* 1984b, 1989d; *Green Bay Press Gazette* 1990; *Milwaukee Sentinel* 1990f; Hazelbaker 1984, 6; Mulcahy and Selby 1989, 24; *Eau Claire Leader-Telegram* 1990h, i, 2a, 1991). Federal Indian policy scholar Robert H. Keller recently suggested that the Chippewas "could be granted special if not exclusive access for sugaring," or they "could be paid royalties on all commercial sugar collected from their traditional lands." Since Chief Flat Mouth had specifically told Governor Henry Dodge at the treaty negotiations in 1837 that the Indians wanted to "reserve the privilege of making sugar from the trees," Keller argued the Chippewas reserved the right to take maple syrup from ceded territory just as they reserved the right to harvest fish, game, and wild rice (Keller 1989, 118, 124, 128).

On February 21, 1991, Judge Crabb simultaneously issued opinions and orders relating to the Chippewas' timber harvesting claims and to the state's right to enforce its civil boating regulations against tribal members engaged in the exercise of their usufructuary rights. Observing that neither Judge Doyle nor she had previously addressed explicitly the Indians' usage of tree resources at the time of the nineteenth-century treaties, Crabb concluded that the harvesting and selling of timber were not among the Chippewas' "usual and customary activities." Crabb also argued that "logging cannot be characterized as simply a modern adaptation of a traditional harvesting activity engaged in by the Chippewa." Conceding that the Chippewas have "a somewhat stronger argument to the effect that . . . [they] never understood they were selling timber resources other than pine," Crabb nevertheless ruled that the state and county governments could impose "reasonable and necessary" regulations for conservation of forest products so long as they do not discriminate against Indians (U. S. District Court 1991a). Crabb also ruled that the State of Wisconsin could enforce and prosecute violations of safe boating laws committed by tribal members engaged in treaty activities provided that the regulations did not "infringe, restrict, hinder, impede or prohibit the time, place or manner of treaty fishing rights (or limit the quantity or types of fish or other resources harvested) and are reasonable and necessary for purposes of public safety and conservation" (U. S. District Court 1991b). Barring appeals or the raising of other issues by the tribes or the state, Crabb concluded that all of the issues in the seventeen-year-old

litigation had now been adjudicated (U. S. District Court 1991c). In mid-March, Crabb responded to efforts by the Lac du Flambeau spearfishers to stop what they allege to be "a racially-motivated campaign of violence and intimidation . . . to make it difficult or impossible for them to spear fish" by prohibiting treaty protesters from interfering with the exercise of spearing rights (U. S. District Court 1991d). Several days later, on March 19, 1991, Crabb issued her "Final Judgment," summarizing and clarifying the court's decisions, which evolved from the lengthy litigation. Crabb advised all parties involved that they had two months to review the document and to determine whether or not they wished to file appeals (U. S. District Court 1991e; see *App. 7*). Two months later, on May 20, the six Chippewa bands and Attorney General James E. Doyle, Jr. announced in separate statements that they would not appeal the rulings. The litigation resulting from the state's interference with the reserved treaty rights of the Chippewas, which had come to a head with the arrest of the Tribble brothers in 1974, had finally been resolved. In announcing their decisions not to appeal, the Chippewa leaders and Attorney General Doyle alluded to their hopes for a new era of cooperation and improved tribal-state relations (See *Apps. 8-9*).

During the years between LCO I in 1983 and Judge Crabb's Final Judgment in 1991, while the Chippewa bands and the State of Wisconsin litigated the extent of Chippewa treaty rights, the two sides worked out a series of interim agreements.[56] The agreements dealt with such issues as the exercise of treaty rights off the reservations, the measures necessary to protect natural resources, and the role of tribal and state game wardens. The Chippewas agreed to temporarily limit the exercise of their rights, and Wisconsin officials agreed not to arrest Indians harvesting natural resources within the agreed-upon guidelines. The Indians and the state reached the first such agreement on the issue of harvesting white-tailed deer in November of 1983 shortly after Governor Earl issued *Executive Order No. 31* calling for state-tribal cooperation. While working with leaders of the Earl administration to establish interim agreements, the six Wisconsin Chippewa bands joined with other tribes in Minnesota and Michigan to form the Great Lakes Indian Fish and Wildlife Commission and set about adopting a conservation code, hiring tribal fish and game wardens to regulate Indian fishers and hunters, assessing and managing natural resources, and publishing data to counteract propaganda from white backlash groups (*Milwaukee Journal* 1984a; Strickland *et al.* 1990, 7-8; Great Lakes Indian Fish and Wildlife Commission {c.1988}, {c.1989}; Busiahn 1989a; Busiahn *et al.* 1989; *Masinaigan* 1990b; Bichler 1990b).