Rule 1

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Western District Of Wisconsin Bar Association

Volume 24, Number 3 November 2014

Honorable Barbara B. Crabb: A Jurist to Her Core

The WDBA devotes this issue to Judge Barbara B. Crabb, hopefully as a surprise to her.

Judge Crabb personifies the special meaning that "the Western District of Wisconsin" conveys throughout the country. Being a jurist grows from, not separate from, her humanity. Comments by members of her extended law family identify just some of her countless ripple effects. Judge Crabb's own insightful 2006 reflections on the spearfishing cases, which follows those comments, display the fortitude, dedication and decency rightly perceived by so many.

Editing this issue, requiring repeated readings of the commentary, was pure joy. Beyond this issue being entertaining, it may spark inquiries into how we each may, in our respective legal roles, respond positively as humans entrusted with those roles to improving the ways that law serves society.

- Richard Briles Moriarty

Stephen L. Crocker - *"Judge Crabb recently told the Milwaukee Journal Sentinel that she expects to continue to serve ''til it's not fun.' So, the next time you see Judge Crabb, hand her a flower, tell her a funny story, or if you're a patent attorney, just wish her a nice day and keep walking. We all want to keep her on the bench and in our lives as long as we can."*
(Complete article begins on page 2)

Joni Dye - *"Inspirational, courteous, sensitive, dedicated and brilliant – a tiny fraction of the adjectives describing Judge Crabb. She is a true person of greatness and a person I am most proud to know."*
(Complete article begins on page 4)

Cecelia Klingele - *"In sum, any young lawyer would be privileged to work for a boss like Judge Crabb. I'm grateful to have had that honor, and am delighted to share with the Western District Bar Association in honoring her now."*
(Complete article begins on page 5)

JoAnne F. Kloppenburg - *"Kindness, strength, acuity, high standards, doing justice—these were the mark of a very special judge, and helped make my clerkship a magical year."*
(Complete article begins on page 6)

Susan Vogel - *"Every year Judge Crabb embarks on the daunting task of choosing a bright and promising law clerk who will work in her chambers for the following two years...." Comments "from many of her former and current clerks show how the lessons they learned during their clerkship influence their professional and personal lives today."*
(Law clerk comments begin on page 7)

Judge Crabb (when asked, "what do you think is the most important responsibility of a judge?") *"The most important task is to decide."*
(Reflections by Judge Crabb begin on page 12)

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A Panegyric upon Judge Crabb

Stephen L. Crocker, Magistrate Judge
Western District of Wisconsin. Clerked 1983-1984.

The dweebish title is cribbed from Kierkegaard, as an existential homage to one of my first interactions with Judge Crabb in 1983. As one of her new law clerks, I was drafting an order denying a defendant's motion for summary judgment in an equal protection case in which the plaintiff claimed that the way the defendant police officer had treated him "made me feel like a dog, like nothing." The defendant's attorney pooh-poohed this claim of harm, to which I suggested Judge Crabb respond by finding a triable issue of damages; after all, "nothingness lies coiled in the heart of being, like a worm," See Sartre, J.P., "Being and Nothingness: A Phenomological Essay on Ontology." Judge Crabb didn't use the quote, but she denied summary judgment. For the rest of the year, whenever she edited my drafts, Judge Crabb would circle in red ink any particularly impenetrable notion and ask in the margin: "Sartre?"

Back then, the Western District was quartered in the old post office on the second and third floors. Even 30 years ago that was a dreary setting, evoking Mad Max's post-apocalyptic "Halls of Justice." You could see the prisoner lockup from the clerk's counter, and the deputies would take shackled prisoners into the public restrooms where they were as likely to run into the AUSA prosecuting them as court staff. Offices and chambers were scattered pell-mell through the building. Judge Doyle was still working, and the new guy, Judge Shabaz, was ensconced in a warren at the top of the north wing, with Ellie and a law clerk who smoked at his desk. You could do that then. Joni Dye ran the show in Judge Crabb's chambers; when Joni told us to jump, we jumped. The clerks handwrote drafts on yellow legal pads and Joni would type them on the office's only word processor, about the size of a washing machine.

One of Judge Crabb's traditions was our weekly brown-bag lunch in chambers with her, all of her law clerks and law school interns, Joni and the court librarian, Michele Sumara. We didn't even have real tables, we sat around empty six-foot wooden spools for cable. Weekly luncheons were just one example of Judge Crabb's genuine interest in getting to know her staff, not just as lawyers, but as people. Judge Crabb also invited all of her staff and their partners to her home for a sit-down dinner with her and Ted. When I returned to the court in 1992 as the magistrate judge, these traditions lived on.

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Judge Crocker Tribute

Continued from page 1

Obviously, Judge Crabb doesn't have to do any of these things, but they're just part of her naturally decorous demeanor and her empathetic personality. The decorum might cloak the empathy, but what quickly becomes apparent to anyone who works with Judge Crabb is her genuine concern for and unflagging loyalty to everyone in the court family. She knows everyone who works here and keeps her finger on the pulse of personal and court-wide events and morale. Judge Crabb will go to the mat for anyone and everyone who works in the blue cube. She will not miss the court-wide summer picnic, nor miss the monthly all-court First Thursday gatherings, and she unflinchingly judges the annual cook-off between court units. She does these things not just because they are important to others, but because they are important and meaningful to her.

As for decorum, Judge Crabb manifests this in many ways. First, she is the most precise writer in the building. Joni used to toss copies of Strunk & White to the new law clerks, and you had better follow it. Judge Crabb has it memorized; she probably is an uncredited guest editor. If a clerk didn't know the difference between "that" and "which," ended sentences with prepositions, or split infinitives, that all got tightened up quickly. Second, Judge Crabb dresses impeccably. My personal style is "Quetico-scruffy" but even I can tell when someone's outfit is stylish, well-tailored and matches from scarf and brooch down to the shoes. That would be Judge Crabb, every day of every week, year in, year out. Third, she is well-read and literate. How she has time to read novels, biographies and histories with her crushing workload escapes me, but she also subscribes to the New York Times and the New Yorker, and she actually reads them. Judge Crabb routinely asks me if I've read this article or that in the New Yorker; frankly, I rarely make it past the cartoons or the movie reviews. Last week Judge Crabb was laughing about a New Yorker article deconstructing the "emotional support service animal" movement; I responded that that issue was still on my nightstand, but I'm thinking "Shoot, was that the one with the review of 'Fury'? I already recycled it!" Fourth, Judge Crabb is a world traveler. She has boated down the Amazon watching birds. She has careened in speeding taxis through the smoggy streets of Beijing. She jetted to London as the keynote speaker at an IP/FRAND conference. Finally, Judge Crabb is the most dignified, imperturbable trial judge I have ever seen.

One of her sayings is "what a judge says in a whisper the lawyers hear as a shout." She practices what she preaches. When WDBA attorneys serve as local pilots for the coastal attorneys who parachute in for trial, they warn that you measure the BBC "receptiveness <—> irritation" spectrum in nanometers (as differentiated from the JCS model, which started at irritation and rose to hyperballistic).

But the reason for this tribute issue of the newsletter is that we all recognize that Judge Crabb is one of the hardest working, most highly regarded, federal judges in America. We all are lucky to have the privilege of working with her or appearing in front of her. The Western District has been fortunate to have an array of long-serving, fair, efficient judges, each of whom brought–and brings–a different style and personality to the bench. I submit that good as they all were and are, none matches Judge Crabb's remarkable combination of honor, integrity, intelligence, fairness, loyalty, compassion, tenacious work ethic and judicial longevity.

One recent example from Judge Crabb's list of accomplishments is her leadership during the regrettably long period after Judge Shabaz retired during which Judge Crabb was the only district judge in this court. She not only kept us afloat, she kept us moving forward at speed. Everybody pitched in at the oars, not just Peter Oppeneer and his entire clerk's office, which figuratively gave blood, but also Collins Fitzpatrick in Chicago (the Western District's éminence grise) and our crew of regularly-visiting judges: Reinhard, Miller, Adelman, Griesbach and Stadtmueller. Even Judge Posner jumped on board to grab a patent lawsuit (we deny any knowledge that he might have had ulterior motives). The court was able to keep extra law clerks on the payroll and we had regular lifeboat drills, with Judge Crabb providing calm direction to about eight high octane clerks sitting around the conference room in her chambers.

Even the attorneys helped out by acquiescing to a new computer assignment wheel that upped the percentage of magistrate judge consent cases. It was a successful team effort and everybody did his or her part, but we would not have succeeded without Judge Crabb's firm hand on the wheel, accompanied by the respect and admiration she had earned from her friends and colleagues in the federal court system that made everybody want to help out.

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Judge Crocker Tribute

Continued from previous page

I have more examples–the 1984 Project ELF injunction, the usufructuary treaty decisions in the '80s and'90s, the two-jury-trials-at-once feat (a.m./p.m. shifts), the myriad patent trials, the 2014 gay marriage decision–but I'll stop here. It is inarguable that Judge Crabb has come to embody the heart and soul of the United States District Court for the Western District of Wisconsin. We all are fortunate–and grateful–to have had, and to continue to have the opportunity to work with her and for her. Judge Crabb recently told the Milwaukee Journal Sentinel that she expects to continue to serve "'til it's not fun." So, the next time you see Judge Crabb, hand her a flower, tell her a funny story, or if you're a patent attorney, just wish her a nice day and keep walking. We all want to keep her on the bench and in our lives as long as we can.

It's Not the Title - It's the Person

by Joni Dye (Retired)
Secretary and Pro Se Case Analyst, 1974-2010

For 35 years, I was privileged to work in Judge Crabb's chambers, first as her secretary and then as a "pro se case analyst." When Judge Crabb received the Margo Melli Award a few years back, I was asked to speak. I shared my observations of qualities Judge Crabb possessed that I aspired to learn. Here are a few excerpts:

"It has been my goal for some time now to copy Judge Crabb's ability to inspire others to grow beyond the perceived limitations in their lives. She's shown me how this works. With quiet expressions of confidence, she allowed me to dissolve the parameters of the standard secretarial mold, and to create such a challenging and rewarding mix of substantive and administrative duties that most law clerks would comment at the end of their clerkships that they wished they had my job."

"Another thing I wish to copy is her depth of courtesy and sensitivity. I've watched her command a courtroom under the most intense circumstances, with unequaled patience and grace. I've observed her anguish over harsh and unbending sentencing guidelines. I've relayed to the mail box hundreds of cards and personal notes Judge Crabb somehow finds time to write to countless numbers of professional and personal friends she's made over the years, recognizing their smallest and greatest achievements, the saddest and most joyous events in their lives.

"I want to develop just a small piece of her brilliance, a feat made particularly difficult by the degree of dedication and personal sacrifice I've seen it require. Through long hours of study, well beyond an ordinary lawyer's ten-hour day, Judge Crabb reads volumes of filings on a multitude of topics, absorbing more than most could absorb in double the time. Pure luck has played no part in her having built a reputation for being an exceptionally intelligent judge who consistently renders well-written, highly reasoned and fair opinions. She spills the blood it takes to earn these accolades.

"Inspirational, courteous, sensitive, dedicated and brilliant – a tiny fraction of the adjectives describing Judge Crabb. She is a true person of greatness and a person I am most proud to know."

President's Corner

By Jeffrey A. Simmons

With this issue we celebrate the career of our court's longest serving judge, the Honorable Barbara B. Crabb. For 43 years Judge Crabb has served the Western District, first as a magistrate judge, and then as a district judge appointed by President Carter in 1979. Judge Crabb's imprint on this court is unmistakable. She has given the court a reputation for civility, intelligence and speed that is known around the country and is the envy of visiting counsel. This court is an enjoyable place to practice largely because of her.

In recent years, despite technically being on "senior status," Judge Crabb put the interests of the district ahead of her own, shouldering a significantly increased caseload resulting from a long-vacant judgeship. She kept the trains running on time during a point in her career when many would have been content to stop watching the clock. All of the members of this district's bar are sincerely grateful for the time and energy she devoted to maintaining the court's high standards during a difficult period.

On behalf of the members of the Western District of Wisconsin Bar Association and all of the other attorneys who have appeared before you, thank you.

A Role Model in Law and Life

by Cecelia Klingele, Assistant Professor of Law
University of Wisconsin Law School
Clerked 2005-2007

A decade ago, when I was a law student, I remember asking my favorite professor what I should do when I graduated. Without hesitation, he responded, "You're asking the wrong question. It's not what you do that matters, it's who you do it for." How right he was! Lucky for me, my first legal employer was Barbara Crabb, a judge whose thoughtfulness, wisdom, and impeccable grace raises the bar for all of us in the legal profession.

I first met Judge Crabb when I interviewed for a job as her clerk. Her reputation preceded her: every professor I had and every former clerk with whom I spoke told me that clerking for her would give me the best possible introduction to the law and the judicial system. They were right. From the very start, she was both warm and keenly demanding. A full year before I began clerking, she sent, along with my letter of appointment, a packet of information about chambers in which she emphasized the important of treating all litigants with dignity; of working diligently in service of the country; of issuing carefully crafted, well-researched, and timely-written opinions; and of always being forthcoming and humble about what we did and did not know. It was clear that she saw her job as one of service to the people of her district, and that she wanted all those in her chambers to work together to provide the best, most accurate, and most timely answers we could to the questions litigants brought before us. Throughout my clerkship, that was what she taught me and my co-clerks to do.

Judge Crabb is not showy, and while bright and affable, she is not effusive. Unlike other judges I have met, she did not regale us with stories or give lots of lectures. Instead, she taught us by example. I remember sitting in my office one day with my co-clerk, Bonnie Cosgrove, talking about how much we wanted to be like Judge Crabb—more patient, more tempered, more gracious (and more fashionable!). She inspired us to be better lawyers and better people. When, with the impatience of youth, we got frustrated with careless lawyering, she would gently remind us of the pressures real lawyers face when managing multiple clients and heavy case loads. At the same time, she never hesitated to hold lawyers to account for serving their clients' interests, whether those clients were big corporations or prisoners. She treated everyone with evenhandedness, and with genuine compassion.

Judge Crabb also possesses a legendary work ethic. She lives by Rule 1 of the Federal Rules of Civil Procedure, and the maxim that "justice delayed is justice denied." She requires the lawyers who appear before her to be prompt in their filings, and does not tolerate needless delay. She has long run one of the tightest ships in the federal court system, and has tried multiple cases daily when the docket demands it of her. That was as true in the early years of her "retirement" as it was when she was Chief Judge.

I was fortunate to clerk for Judge Crabb during some of the years she served as Chief Judge, and was therefore able to observe not only her legal acumen but her wise stewardship. With true Midwestern frugality, she encouraged the court staff to be thoughtful managers of tax payer dollars. Even before the fiscal crisis, there was no wastefulness, travel was modest, and expenditures were made in the genuine interests of the district—not just for the convenience of the court. If only all government leaders were equally conscientious!

Of course, Judge Crabb is not remarkable only inside the courthouse. She is also an engaged member of the community who remembers that being a good judge and being a thoughtful citizen are not mutually exclusive endeavors. Over the years, she has worked extensively with the United Way, making large-scale contributions to our community. She has also made time for the small acts of kindness that define life: visiting homebound elderly friends, baking casseroles for families in need of help, and generally noticing and tending to the needs of those around her. She remains deeply connected to the many lawyers she has mentored over the years, sending her former clerks birthday cards, handwritten notes, and even scheduling visits with them now and then as her travels take her around the country (and the globe). By her example, she inspires those who know her to be more selfless.

In sum, any young lawyer would be privileged to work for a boss like Judge Crabb. I'm grateful to have had that honor, and am delighted to share with the Western District Bar Association in honoring her now.

A Tribute To Judge Crabb Powerful Grace

by JoAnne F. Kloppenburg
Judge Wisconsin Court of Appeals
Clerked 1988-1989.

Twenty-five years later, I still carry with me this most dominant lesson from my clerkship with Judge Crabb—she showed me how powerful grace can be. Judge Crabb exerted deliberate control over every case, from the most plebian prisoner complaint to the most intense and pressure-laden litigation (spearfishing and treaty rights) with gracious composure, perceptive insight, thoughtful intelligence, professional respect for the attorneys appearing before her, and humble appreciation of the hopes and cares expressed by the claims of the people they represented.

The comments of my fellow clerks will no doubt extol Judge Crabb's considerable virtues and recount the highlights that made our clerkships in her chambers so special. I've been asked to focus on what the Judge herself has called the single most interesting litigation she has ever encountered, the Chippewa treaty rights litigation.

During the second half of my year (alas, it was only a one-year appointment then) as Judge Crabb's clerk, the treaty rights case loomed large. Early in 1989, Judge Crabb wrestled with the resource allocation phase of the treaty rights case, and later that spring she presided at the hearing on the defendants' motion, supported by the governor, for a preliminary injunction to prohibit the tribes from exercising their treaty spearfishing rights from May 5, 1989, until the remainder of the season.

I vividly recall the pre-hearing gathering of all of the attorneys in the Judge's chambers, where Judge Crabb, with the quiet but piercing power of her unassailable command of the issues and the weight of justice, set the direction and parameters for the hearing to follow. By little more than the force of her stature and office, Judge Crabb communicated to the attorneys the weight of the extraordinary nature of the relief being sought and the extraordinary position being taken by the state in support of that relief—an injunction preventing certain people from engaging in lawful activities on the ground that other persons were creating a dangerous situation by their illegal actions.

The tension at the hearing was palpable but Judge Crabb was unfazed and impeccably prepared. In her polite but purposeful, gracious but workmanlike, manner, she cut through the drama, kept the focus on the task at hand, and ultimately issued a decision that restored the rule of law to a volatile situation. It was an honor to be requested, and to provide, whatever assistance she required in such a high-pressured and high-stakes proceeding.

Returning to the more mundane, the last sentence above reminds me of one Judge Crabb's most enduring rules (which that sentence violates): minimize the number of commas in every sentence. That rule is part of my legal writing lectures and by following it I have overcome many an instance of writer's block and clunky composition.

Finally, it was not all unrelenting work that spring. Even as my co-clerk Judy and I diligently eliminated the chambers' backlog, Judge Crabb took the time, literally, to smell the roses (only they were actually tulips) as she suddenly squeezed us all into Connie's compact car to wander through a Shorewood Hills garden in its early spring splendor.

Kindness, strength, acuity, high standards, doing justice—these were the mark of a very special judge, and helped make my clerkship a magical year.

Clerk's Corner

By Peter Oppeneer, Clerk of Court

For the past twenty-seven years, I have been honored to work with Judge Crabb and to witness what she does for the Western District. This Clerk of Court's Corner is my inadequate attempt to describe what she means to our court.

Judge Crabb has served this court as magistrate and district judge for more than four decades: hundreds of trials, thousands of parties, countless opinions, orders, and rulings. At times, she carried the judicial load almost single handedly. The sheer weight of her labor for the court is almost incomprehensible. She seems tireless to those of us who work beside her, though surely she is sometimes exhausted. Yet the volume of work she has done is only a small part of her contribution to the court.

More impressive is the incredible quality of her judging. She has an insatiable intellectual curiosity for the law, the cases before her, and the world at large. She is incisive and decisive; unfailingly dispassionate and evenhanded. Parties leave her courtroom knowing they had a full and fair opportunity to present their case and her rulings were well reasoned. Her thoughtful and thorough approach never compromises the spirit of Rule 1.

Perhaps Judge Crabb's greatest contribution to the court is her leadership. She has served as Chief Judge for much of her time with the court, grappling with the most challenging administrative decisions and problems. She sets the very highest standards for integrity, excellence, and compassionate service. She is genuinely interested in each of us who work with her. She embodies what we aspire to be as a court.

Musings and Memories from the Law Family of Judge Crabb

Introduction by Susan Vogel, Secretary to Judge Crabb

Every year Judge Crabb embarks on the daunting task of choosing a bright and promising law clerk who will work in her chambers for the following two years. She has had the privilege of working with over 70 clerks since 1979. She enjoys getting yearly updates from each of them about their careers, children, grandchildren and new accomplishments. Her annual holiday newsletter keeps her connected with them and she takes great pride in seeing the different paths that each has taken and the opportunities that they have found along the way.

The comments below from many of her former and current clerks show how the lessons they learned during their clerkship influence their professional and personal lives today.

Clerking with Judge Crabb contributed significantly to my career, which provided a unique opportunity to see what transpires in chambers. My legal career began by learning from a well-respected, smart and fair jurist who challenged all her law clerks to see through rhetoric to effectuate just and practical resolution of disputes. I miss book discussions with the Judge, but those communications have shifted to emails and cards and, every year or so, catching up in person.

Nadine C. Abrahams (Shareholder, Jackson Lewis, Chicago). Clerked 1992-1993.

I really valued the clerks' weekly lunches with Judge Crabb, where we discussed cases, books, current events and anything else on our minds. As a new lawyer, I learned that there are rarely perfect solutions to difficult legal questions and that, at some point, an imperfect answer is far preferable to continued hand-wringing.

David Anstaett (Partner, Perkins Coie). Clerked 2001-2003.

Judge Crabb is an amazing jurist and person. Setting high standards for herself, and inspiring others to meet those standards, she accomplishes more before dawn (swimming, baking, reading, reviewing recent opinions, and writing a card to a former clerk) than most accomplish in a day. She instilled in me the importance of examining legal issues from all sides and of complying with procedural requirements and grammatical rules. My love of the law, and a deep respect for the judicial process, were reinforced. She is the essence of integrity and kindness. I am continually grateful for my time with her.

Juliet Berger-White (Partner, Hughes Socol Piers Resnick & Dym, Ltd). Clerked 1999-2001.

Judge Crabb has had a profound impact on my practice of law. Her legal writing and analysis skills are unmatched. Serving under her tutelage helped improve my legal writing and analysis exponentially. In fact, in each writing task I take on I always ask myself, "W.W. J. W.," that is, "What Would Judge Crabb Write."

Albert Bianchi, Jr. (Associate at Michael Best & Friedrich LLP). Clerked 2008-2010.

On a Friday, while clerking for Judge Crabb, she handed down the rather controversial decision that Wisconsin's mandatory bar was unconstitutional. Maintaining her signature sang-froid, she joined my co-clerk Lisa Neubauer, Joni Dye and me at Paul's after work for drinks. We needed to steel our nerves. The Judge may simply have appreciated the atmosphere. I'd be happy if I could routinely exhibit her kind of calm: the calm you reach through reason, honesty and hard work.

Susan Erickson (Retired from private practice). Clerked 1987-1988.

Clerking for Judge Crabb has been a wonderful experience. Her intelligence, work ethic, and down-to-earth demeanor sets the standard that all of us at the Western District court strive to maintain. As with countless other clerks, she made me a more incisive and thoughtful writer.

Joshua Fredericks (Pro Se Law Clerk, Western District of Wisconsin). Clerked 2007-present.

Judge Crabb personifies judicial temperament: smart, fair, even-tempered, thoughtful, thorough, practical, and respectful. She was an absolute joy to work for. I continue to learn from her. Nearly every prisoner claim I research unearths a well-reasoned opinion that she wrote. Thank you, Judge Crabb!

Susan Gleason (Pro Se Law Clerk, U.S. District Court, Central District of Illinois). Clerked 1991-1992.

Clerking for Judge Crabb was the ideal way to begin my legal career. On and off the bench, she was a model of the legal profession at its best. More than thirty years later, I draw on lessons learned during my clerkship year. And my students think it's very cool that I clerked for the judge who struck down Wisconsin's ban on same-sex marriage!

Sally Goldfarb (Professor of Law at Rutgers University School of Law, Camden, NJ). Clerked 1982-1983.

Decades on the bench
A snap for such a Mensch
Who brings humanity and smarts
To the justice she imparts

Each year brings a new batch of clerks
With book smarts but many writing quirks
With a guiding hand and so much patience
She teaches her brand of excellence

Out into the world these clerks then venture
Imbued with strong ethics so there's never a censure
Pursuing the rule of law and fairness for all
We owe a debt of thanks to the Judge, our role model

Patti Goldman (Northwest Managing Attorney, Earthjustice). Clerked 1983-1984.

Judge Crabb is a fantastic mentor. She allows her clerks to gain valuable substantive experience, while offering guidance to help us grow. As a civil rights lawyer, I am so grateful for all that Judge Crabb has done to advance civil rights on a broad range of pivotal legal issues.

Elaine Grant (Senior Trial Attorney, Civil Rights Division, U.S. Department of Justice). Clerked 1995-1996.

Decades after beginning my legal career clerking for Judge Crabb. I still marvel at my luck. My years with her were formative and positive – in more ways than I could foresee. Since then, at critical junctures and seemingly inconsequential moments, I have drawn on and benefitted from what I learned while clerking for her. I cannot imagine a finer role model or friend.

Susan B. Greenberger (Partner, Bricker & Eckler LLP, Columbus, Ohio). Clerked 1979-1981.

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Judge Crabb has been an inspiration to me for her calm resolve and fearlessness. She's always done the right thing, the right way. At the risk of sounding like a fangirl, I also must say that I aspire to be as kind and classy as she is.

Karen Guss (Solo practitioner, Philadelphia). Clerked 1993-1994.

I was lucky. Very lucky. My legal career began with two years under the guidance of Judge Crabb. Her efficiency and acumen are remarkable. What most impressed me was her willingness to treat every litigant with respect, including prisoners whose handwritten complaints came in on dog-eared paper. She leads by example. We should all do the same.

Kendall Harrison (Attorney, Godfrey & Kahn, S.C.). Clerked 1995-1997.

I owe so much to Judge Crabb. She provided an education both rare and enduring. Judge Crabb showed me professional excellence at its fullest. She was kind and thoughtful, but also brilliant and decisive. I am fortunate beyond words to have had a year in her chambers.

Matthew Kipp (Partner, Skadden, Arps, Slate, Meagher & Flom, LLP, Chicago). Clerked 1989-1990.

Judge Crabb taught me how to write. No jargon, fancy words, or complicated sentences. Just clean, clear prose (always active voice, of course) to ensure that litigants themselves, not just lawyers, understand why they won or lost. I try to impart that wisdom to my students.

Alexandra B. Klass (Professor of Law, University of Minnesota Law School). Clerked 1992-1993.

Judge Crabb set the standard by which I measure other judges, which all too few meet. Her work ethic, demeanor, fairness, intellectual honesty and respect for the law are an extraordinary combination. And she's such a nice person -- her chambers were ideal for a productive but friendly clerkship. Memorable was adoption of Judge Crabb's "exceptional opinion" in Trane, 718 F.2d 842 (7th Cir. 1984).

Philip H. Lebowitz (Partner, Duane Morris LLP, Philadelphia). Clerked 1981-82.

After the Alfred Murrah Federal Building in Oklahoma City was bombed, Judge Crabb led by example. Work went on. The Judge continued to command respect in and out of the courtroom, and she insisted on submitting to the same security searches that were quickly adopted for everyone entering our building.

Mike Lee (Assistant General Counsel, U.S. Environmental Protection Agency). Clerked 1994-1995.

Judge Crabb is a brilliant jurist and a remarkable person. Her distinguished career serves as a model for what it means to be a true public servant. Clerking for the Judge was an honor and an experience that I draw upon continually, both professionally and personally. Congratulations Judge, and thank you.

Seth L. Levine (Levine Lee LLP, New York). Clerked 1993-1994.

Judge Crabb had a tremendous effect on my career path. I interned for her during second year of law school. She hasn't been able to get rid of me since! I will be forever grateful to her for giving me my dream job. It never gets boring and I never stop learning new things from her.

Jeff Monks (Law Clerk, Western District of Wisconsin). Clerked 2000, 2002-04, 2006-present.

Congratulations Judge Crabb for your outstanding tenure on the bench. As your first law clerk I witnessed you becoming a judicial superstar from day one. I now welcome you to the emerita ranks and know you will continue to inspire and enlighten many for years to come.

Krista Ralston (U.W. Clinical Director and Professor of Law Emerita). Clerked 1979-1980.

The best way to begin a legal career is observing a judge's office running well. During weekly morning conferences with the Judge and Clerk's staff, I marveled at how they juggled hundreds of cases, many trial-ready or moving towards it. The Judge was always unfailingly kind, patient, and courteous to those who worked for her while keeping her sense of fun.

Deirdre Roney (General Counsel, State of Massachusetts Ethics Commission). Clerked 1986-1987.

Judge Crabb's example of a principled, dedicated jurist will long remain with me. Observing her completing a complex phase of trial in one day while conducting a hearing in a separate case over lunch, I recognized that the endurance and agility required is nothing short of awesome. I hope to carry into my career a fraction of Judge Crabb's work ethic and poise into my career. I am so thankful to be learning from her.

Jillian Rountree (Law Clerk, Western District of Wisconsin). Clerked 2013 to present.

After issuance of an unpublished opinion I worked on, the losing attorney noted its inconsistency with a prior unpublished opinion. Checking paper files (no e-files then!), he was right. Obsessing about it all morning, I finally went to Judge Crabb saying "I screwed up." Prepared to explain and apologize profusely, when she asked "Is it fixable?" I said yes. She replied calmly, "Then go fix it." That was that. No anger, no recriminations, no blame. Just fix what can be fixed and move on. Until then, I seldom encountered that view. It continues to resonate.

Judy Royster (Professor of Law; Co-Director, Native American Law Center, University of Tulsa College of Law). Clerked 1986-1987.

Judge Crabb was my first female boss. She taught me that a woman can express intelligence and authority in the workplace differently, in disarming ways, and that one can balance a full work life and a rich family life. Judge Crabb's lessons have been affirming and lifelong. And I am so grateful to her.

B. Michele Sumara (Attorney/Shareholder at Hawks Quindel, SC). Clerked 1987-89.

For someone who received basic legal training in Japan, everything I observed as an intern at Judge Crabb's chambers was fresh. Fascinated by the dynamism of what happens in the blue courthouse, I went back to Japan to finish my thesis, American Law from the Trial Court Perspective. In many respects the experience in Judge Crabb's chambers shaped my view of the law and my academic career as a comparative lawyer.

Masayuki Tamaruya (Professor of Law at Rikkyo University, Japan). Clerked 2002.

An Oxford inmate petitioned to visit his dying son in a Chicago hospital. I showed Judge Crabb my draft granting the request. "By what law?" she asked. Judicial discretion, compassion. "And prison security concerns?" She insisted, "Find the law. Apply the law." Petition denied, the press was in uproar. Janet Reno weighed in. One night, secretly, guards whisked the sleeping prisoner to his dying son's bedside. Compassion prevailed; so did judicial integrity. Judge Crabb's gift was to tease out my natural response, then skillfully guide me to judicial restraint.

Diane K. Vaillancourt (Civil Rights Lawyer, Santa Cruz, California). Clerked 1993-1994.

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The origins of the "rocket docket" reputation of the Western District may go back to 1981, when Judge Crabb secured approval for four law clerks to deal with the backlog. During 1981-82, a significant reduction occurred thanks to Judge Crabb and her long-time assistant, Joni Dye.

Dan Westman (Managing Partner, Morrison & Foerster LLP, McLean, Virginia). Clerked 1981-1982.

An attorney took great liberties with a cited holding and wrote inappropriately about the other side. To teach him a valuable lesson, a paragraph in my draft opinion critiqued the attorney. The judge invited me into her office and said she agreed with everything I'd written. She then told me that she hoped I felt better and to delete the paragraph. I've used that technique many times since: think through what I'd like to say to someone, write it down in as pointed language as possible--and then delete it. I learned a valuable lesson: use the delete button.

Jo Whiting (General Counsel, The Wisconsin Credit Union League). Clerked 1991-1992.

Although we were new to Madison in 1990, you and your talented staff made us feel right at home. We are grateful that you set high standards of integrity, good writing, deep thinking and compassion that we have tried to emulate throughout our careers. Thanks for being a great mentor and friend.

Laurie Woog (Managing Attorney-Woog Law Office, Scotch Plains, NJ) and Katherine Allen (Associate General Counsel, The Pennsylvania State University). Clerked 1990-1991.

By asking her clerks to visit prison in the first weeks of their clerkships and then to seriously consider prisoner pro se petitions, she modeled for us what many only preach - that every life has value and deserves respect.

Judy Wurtzel (Currently Consultant on Education Policy and Programs). Clerked 1988-89.

In 2006, Judge Crabb accepted my invitation, as Chair of the DOJ Diversity Advisory Council, to reflect on the spearfishing cases. Her presentation remains fascinating, enjoyable and, unfortunately, timely.

Like Judge Frank Johnson of Alabama in the 1950s (a comparison Judge Crabb modestly resists), her judicial demeanor and bravery in the face of death threats, resolving multiple litigations over an extended time period, ultimately diffused a volatile and dangerous situation. Rights guaranteed by federal law, rather than racism, prevailed because a judge was just that – a judge.

- Richard Briles Moriarty

Reflections On The Spearfishing Cases

Barbara B. Crabb
November 8, 2006
Wisconsin Department of Justice

It's really interesting for me to reflect back on the Chippewa treaty rights cases. They were such a part of my life for so many years that I have trouble thinking of them as the "history" that they are. Then I receive an invitation like the one from Richard Moriarty and I realize that no one else thinks of them as current events. I had a similar experience a few weeks ago when I walked through the theater gallery at the Union and looked at photographs of the Vietnam protest activity on the university campus. Those protest years aren't history; they're part of my life.

I remember crossing the mall after a spring alumni function at the Union in the late 60s and savoring the fragrance of the blossoming trees when I suddenly became aware of the far less fragrant smell of tear gas. In the same way, I remember my husband coming out of a gas station in Minocqua in the late 80s and telling me that when he went in to pay, he saw a large petition to impeach Judge Crabb and he decided not to use his credit card to pay for the gas. I remember receiving art work that said, "Spare a Walleye; Spear a Crabb."

I remember the sound of the bomb going off at Sterling Hall in 1970, bringing the protest era to an end and I remember the surreal quality of the 1993 spearfishing trial in Wausau — the dying gasp of ten years of violent anti-Chippewa protest.

So how can I convey to you the tensions that the spearfishing cases produced in northern Wisconsin? Let me start with some context.

10,000 years ago, the Algonquin Indians occupied the eastern part of North America. Sometime before the 1600's, some of them migrated westward into the Great Lakes region in an area stretching from northwestern lower Michigan across the upper peninsula of Michigan, northern Wisconsin and into eastern Minnesota.

The Chippewa lived in small bands throughout the territory and made their living by exploiting every natural resource in that territory. They were semi-nomadic. They moved through the woods by foot using snowshoes and toboggans in the winter and traveled on the thousands of lakes and rivers in the area by canoe. Their lives changed dramatically with the arrival of the fur traders in the 1600s; they began to change again in the 1830s, when the U.S. government started buying land in Indian territory from the Chippewa. The government was motivated in part to provide territory for a growing population of whites and in greater part by a desire to acquire the land's pine and mineral resources.

(Continued on next page)

To that end, the United States entered into a number of treaties with Chippewa bands in Michigan, Wisconsin and Minnesota. The critical treaties for the Wisconsin Chippewa were three. The first was the 1837 land purchase treaty in which the Indians agreed to sell hundreds of thousands of acres of land in return for annuities in money and goods for 60 years. Treaty Commissioner Henry Dodge told them the Chippewa that the Great Father did not buy land for a term of years but that he would agree on the President's behalf to grant the Indians "the free use of the rivers and the privilege of hunting upon the lands [they were] to sell to the United States. Dodge promised the Chippewa chiefs that they would be allowed to hunt, fish and make syrup on the lands during the President's pleasure.

Five years later, in 1842, Congress sought additional land from the Wisconsin Chippewa. This time, the United States purchased by treaty all the Chippewa land in northern Wisconsin between Lake Superior and the Mississippi, hoping to exploit the mineral deposits and commandeer the southern shore of Lake Superior for military purposes. The 1842 treaty included a stipulation by the Chippewa to maintain their right of hunting on the ceded territory, with the other usual privileges of occupancy, until required to move by the President of the United States. In return, the Indians were promised annuities for 25 years in cash, goods and provisions, along with money for the support of schools, two blacksmith shops, two farmers and two carpenters.

In the late 1840's, pressure grew to move the Chippewa westward to Minnesota. In 1849, a group of Chippewa representing 16 Lake Superior bands traveled to Washington to urge Congress not to move them but to grant them reservations in the ceded territory. The trip was unsuccessful. The Minnesota Whig party had helped elect a new president – Zachary Taylor– and the Minnesotans had influence in Washington. They saw removal of the Chippewa to Minnesota as a boon. If the Chippewa moved to Minnesota, their annuity payments would move with them. The federal jobs connected with the annuity payments would give the new Whig governor, Alexander Ramsay, more patronage jobs for himself to fill and fewer for the governor of Wisconsin, who was a Democrat. The territorial legislature in Minnesota passed resolutions in favor of revoking the usufructuary rights of the Chippewa on the lands ceded in 1837 and 1842.

No doubt in response to this political pressure and perhaps because of his background as commandant of military forts in Wisconsin and Minnesota, President Taylor issued an executive order in 1850, revoking the privileges of occupancy granted to the Indians in the 1837 and 1842 treaties and ordering them to remove to Chippewa lands in Minnesota. Despite this order and vigorous efforts by federal officials to move them, the Chippewa resisted the move westward and remained in Wisconsin.

Many groups, including the Wisconsin legislature, newspaper editors and influential citizens lobbied in support of the Chippewa's resistance to the removal order. This may come as a surprise to you if you were raised, as I was, on blood and thunder cowboy and Indian movies in which the major theme was Indian raiding parties, retaliation by white soldiers and constant fighting between whites and Indians. The story of the Chippewa is entirely different. When the fur traders arrived, they with no hostility from the Chippewa. In fact, many of them married into Chippewa bands and were assimilated. Two centuries later, white settlers met with a similar reception. In fact, when efforts were made to find examples of problems between the Chippewa and the white settlers, federal officials were unable to find any reports that could be substantiated.

My guess is that the small number of settlers in the vast regions of the ceded territory posed no threat to the Chippewa. There was no clash of lifestyles, as was true in other parts of the country. The white settlers lived pretty much the way the Chippewa did: they hunted, fished and logged in an area in which the resources were ample enough for all of them.

By 1854, national policy had changed from removing Indians to western lands to one of setting aside small reservations for their permanent homes. The Wisconsin legislature wrote to Congress and the President to ask that it rescind the removal order and encourage the permanent settlement of "those Indians as shall adopt the habits of the citizens of the United States."

That same year, 1854, the government negotiated its final treaty with the Chippewa, with the Chippewa ceding land west of Lake Superior and the United States agreeing to set aside certain tracts of land for what are now the Bad River, Lac Courte Oreilles and Lac du Flambeau bands of the Lake Superior Chippewa.

In 1856, the Red Cliff reservation was created by executive order of the President for Chief Buffalo and his followers, who had come with the chief to LaPointe for the 1854 treaty negotiations. The Sokaogon and St. Croix bands received no land at all in 1854 or at any time thereafter until 1938, when Congress appropriated funds for buying land for reservations for these two bands.

In this brief summary, I've omitted much of the fascinating history of this time, including the scandalous decision in 1850 to require the Chippewa to collect their annuities at Sandy Lake, near what is now Brainerd, Minnesota, more than 300-500 miles from their villages in Wisconsin. This ploy was part of the scheme by Governor Ramsey of Minnesota and Indian agent John Watrous to get the Chippewa to move to Minnesota. The Chippewa were told they would receive no services or annuities unless they came to Sandy Lake, but the federal government failed to make adequate arrangements for feeding and housing the Indians. Deliveries of the annuities and rations were delayed for weeks; unscrupulous traders took advantage of the Indians' hunger and destitution to sell them goods at highly inflated prices.
Disease broke out among the Indians as they waited in vain for annuities that never arrived. They burned their canoes for fires in an effort to stay warm and then had to walk back to their villages with their belongings on their backs. At least 400 died from illness, hunger or exposure.

If you're interested in reading more about the history and politics of this whole period, I recommend these two short books, Chippewa Treaty Rights by Ronald N. Satz and Indian Nations of Wisconsin, by Patty Loew.

After 1854, the Wisconsin Chippewa remained in the territory they had ceded to the United States. They continued to engage in their traditional hunting, fishing and gathering and supplemented these activities with temporary jobs such as sawyering or log driving or selling wood. Economically, the Chippewa did not thrive; their agricultural efforts produced little food or income. No surprise there. How many of you have tried to grow crops in northern Wisconsin? Although their reservations included timber resources, the Chippewa were unable to profit economically from them. They were at the mercy of logging companies that took their reservation timber and cheated the Indians out of its value and of trespassers who took Indian timber without permission and without any fear of prosecution. Often, crooked Indian agents were behind the cheating, as Congress found out when it undertook an investigation into logging practices on Chippewa land in 1884.

In 1892, a congressional committee determined that the federal government owed the Chippewa more than $92,000. The determination was a meaningless one. Congress never appropriated the funds to pay the money it had promised the tribes. Although the Wisconsin Chippewa had given up 15 million acres of land, more than 3 billion board feet of virgin timber and valuable mineral rights in return for 271,653 acres and usufructuary rights, Congress was not willing to pay them the modest annuities and special payments it had promised in the three treaties the United States had signed.

At the same time, the Chippewa were finding it increasingly difficult to secure fish and game. Tourists started arriving in northern Wisconsin, seeking opportunities for recreational hunting and fishing. At the same time, the state was restricting the tribes' ability to fish and hunt off their reservations and imposing state hunting and fishing regulations even on the reservations.

For the first two-thirds of the twentieth century, the Chippewa were among the poorest citizens of the state. They had little access to jobs, education or medical care. In large part, they were a forgotten part of society. Then in the 60s and 70s, in a seismic shift, the Indians took to the courts to assert their rights.

It was like Clark Kent changing to his Superman costume in the telephone booth. All of a sudden, the Chippewa were using the courts to secure their rights just as other Americans had been doing for centuries. What happened? Certainly one factor was the tenor of the times. Indians were not the only minority group that was beginning to recognize and assert its rights. Another factor that cannot be overemphasized was the existence of the federal Legal Services organizations that Congress funded during the Johnson administration. This funding had a major impact throughout the country. In Wisconsin, for example, funding for one of these programs, Wisconsin Judicare, led to a number of important court decisions for Indians in Wisconsin and helped to train lawyers who would prosecute cases on behalf of Indians and other traditionally unrepresented groups.

In 1974, two members of the Lac Courte Oreilles band were arrested for spearfishing in Chief Lake in Sawyer County. Michael and Frederick Tribble were convicted and fined, but rather than simply accepting this result, they brought suit against Lester Voigt, head of the Department of Natural Resources, other employees of the DNR and the Sawyer County District Attorney and Sheriff for interfering with the Chippewa off-reservation hunting and fishing rights. The case was consolidated at the beginning with a criminal action brought by the United States against Jerome Bouchard for trespassing upon a waterway belonging to the Bad River band and a civil suit brought by the United States against a number of landowners for a declaratory judgment that the United States held three sections of land for the benefit of the Lac Courte Oreille band. Seventeen years, many trials, many appeals, dozens of lawyers and a number of judges later, the legal landscape of northern Wisconsin had changed perceptibly and permanently.

My predecessor, Judge James E. Doyle, decided in 1978 that the Chippewa did not retain any usufructuary rights outside their reservations. Rather, he held, those rights were extinguished when the reservation boundaries were finally determined. In reaching this decision, he relied on Chief Buffalo's statement at the time of the signing of the 1854 treaty that the Chippewa understood that the "whole" of their non-reservations lands would go the United States in exchange for their reservation.

In 1983, the Court of Appeals for the Seventh Circuit reversed Judge Doyle's decision, holding that when the Chippewa signed the 1854 treaty, they did not understand that they were giving up their usufructuary rights in return for reservations. The court relied on the canons of construction that Indian treaties must be construed as the Indians understood them, that ambiguous language must always be construed in favor of the Indians and that abrogation of rights must be explicit. It found Chief Buffalo's remarks were not sufficiently explicit to indicate that the Chippewa understood they were giving up their usufructuary rights. Rather, the court of appeals said the remarks could be construed as merely a reference to the Minnesota land that was to be ceded to the United States and not the land that had been ceded previously.

When the court of appeals' opinion issued, the reaction in northern Wisconsin was visceral. Non-Indians saw themselves excluded from the hunting and fishing opportunities that were such a large part of their lives. They pictured themselves confined to their homes as bands of Chippewa roamed the area appropriating the natural resources to themselves, free to ignore any regulations imposed by the state or anyone else. They were frightened, troubled, angry and very uneasy. After nearly nine years, the case was just beginning. Let me give you a little taste of the difficult questions that remained. Could the Chippewa use modern hunting and fishing methods and tools? Could the Chippewa hunt and fish on privately-owned lands if landowners made the land available to the general public for such purposes? Could the resource be allocated between the Chippewa and non-Chippewa? On what legal basis? And if so, how was the allocation to be determined? Would the Chippewa have a permanent right in the resource? Could the state regulate or restrict the Chippewa's exercise of their usufructuary right for any purpose and, if so, which one?

Judge Doyle divided the case into two phases: the declaratory phase, which involved determining such things as the types of activities the tribal members could exercise under the treaties, how the resources were to be allocated, the boundaries within which the activities could take place and the state's authority to regulate.

Phase two was to focus on regulation. Judge Doyle continued to work on the case as his health failed. Before he died in 1987, he turned over the case to me. One of the phase one issues still to be litigated was the allocation of the resources. One suggestion was to allot the Chippewa so much of the resource but no more as would enable them to achieve a modest standard of living. After a trial was held on that issue, however, plaintiffs' evidence showed that if the entire resource were utilized by the Chippewa, it would not provide them a modest standard of living.

Obviously, the modest standard of living could not be a measurement of allocation. Many people urged a 50-50 split but I struggled with this. Nothing in the treaties supported such a division. In the end, no overall allocation was ever made. Instead, the parties worked out compromises and accommodations specific to each resource category.
This might be a good place to say how much in awe I am of the work of all the lawyers who participated in the treaty rights case. One of my colleagues characterizes judges aptly as spiders, waiting in their webs for good stuff to come to them, never initiating any of it. It was the lawyers that conceived of the case, prosecuted it and defended it. Each time that I privately questioned whether some new question that arose in the case could ever be wrestled into some form in which it could be decided, the lawyers managed to do it. They litigated vigorously and often contentiously. Still, they managed to come to resolution on many issues and to put the demands of the case before their own disputes with opposing counsel. Not that it was a lovefest. It was a hard fought case, with plenty of grounds for irritation and hard feelings. When it came to determination of allowable state regulations, the most controversial of the species in dispute was walleye. Tempers ran high when the court of appeals determined that the treaties had not been abrogated and when the Chippewa resumed spring spearfishing in 1985.

The tensions reached a fever pitch after I decided, after a very long bench trial, that the off-reservation regulation of the walleye and muskellunge harvest was reserved to the Chippewa "on the condition that they enacted a management plan that provides for the regulation of their members in accordance with biologically sound principles necessary for the conservation of the species being harvested." This resolution sounds far more radical than it really was. The parties had agreed to a number of conditions before the order was entered, such as a requirement that the bands notify the DNR of the takes they would harvest in the following year and what methods they would use. They had agreed that the only lakes the Chippewa could designate were those on which an estimate of the fish population had been made within the preceding two years and that the total Chippewa catch on any designated lake could not exceed 20% of the total allowable catch, as defined by the DNR. Furthermore, both sides were obligated to exchange biological information with each other.

It is possible that few of the people in northern Wisconsin read the detail in the opinion or were calmed by it, if they did read it. Ronald Satz writes in Chippewa Treaty Rights that protesters showed up at boat landings starting in 1983 and their presence spurred violence. However, it was not until after the 1989 decision recognizing the Chippewa right to spear spawning walleye that large parties of protesters started forming in an effort to prevent the fishing.
As I noted, the spearers were required to give the DNR advance notice of each lake on which they intended to spear fish or use gill nets, along with their intended harvest and the date of harvesting. Not surprisingly, word got out to the protesters and spread among them so they knew where to focus their protests.

If you're at all familiar with boat landings on small lakes in northern Wisconsin, you know that they are mostly small areas leading down to the lake, just big enough for a few cars to pull in, turn around and drop their boats at the water's edge, with some nearby space for parking. Spearing takes place in early spring—or what passes for it in northern Wisconsin. Walleye start spawning just as the ice goes out on the lake, not in the balmy days of late May or early June. "Ice out" is an interesting phenomenon. I learned from the trial that just as the Chippewa moved east to west across the upper midwest hundreds of years ago, "ice out" occurs in an east to west pattern across northern Wisconsin.

As the spearers, their families and other tribal members would arrive at the landing of a designated lake, they would be met by protestors trying to prevent them from getting their boats into the water. The protesters jammed the small landings, trying to block the spearers' approach to the lake, then threw rocks, yelled obscenities and threats at the spearers and their supporters, blew steel whistles in their ears and mocked the religious smudging ceremonies the Chippewa carried out before they began fishing. Out on the water, protesters drove their boats toward and around the spearers to try to swamp their boats and dump the fishers into the cold water.

The activity on the lake may have been the most dangerous. Spearers stand up in their shallow bottomed boats so that they can look down at the lake bottom where the walleye are spawning. The boats stay close to the shoreline and the gravel spawning beds. The spearers wear miner hats, with flashlights. (Many people believe that the traditional version of spearing, which involved flaming pitch-filled bark torches attached to canoes near the spearer, led to the naming of the Lac du Flambeau band. The French fur traders observed the activity and referred to the lake as that of the flaming torches or Lac du Flambeau.) Because spawning takes place just as the ice is going out of the lakes, few people could survive more than a few minutes if they were thrown into the water.

(A disclaimer: I don't know how big the crowds were at first, or what tactics they used in the beginning. I wasn't there–remember, I'm just the spider. None of the evidence introduced in court described the boat landings day by day. What I'm describing is what the evidence showed went on at many boat landings on many occasions.)

Many of the protesters belonged to an organization called Stop Treaty Abuse, which was organized by a man named Dean Crist. Crist was a ubiquitous figure on the boat landings and out on the lake, encouraging his followers to protest more loudly and more effectively. Stop Treaty Abuse was one of a number of organizations that formed in northern Wisconsin, including PARR, Protect American Rights and Resources. These local organizations were part of a nationwide phenomenon that appeared wherever Indian treaty rights were recognized by courts, such as in the state of Washington.

On May 4, 1989, partway through the violent 1989 spearing season, anti-treaty rights protesters broke through a police line at one of the boat landings. The Milwaukee Journal urged Governor Thompson to call out the National Guard to provide protection. Instead, the governor came into federal court in support of a motion by defendants for a preliminary injunction to prohibit the tribes from exercising their treaty spearfishing rights starting at midnight May 5, 1989 and lasting until the remainder of the season. I denied the motion for the reasons stated in the memorandum that should be attached to your outline. I don't have to tell you lawyers how extraordinary it would have been to grant an injunction preventing certain people to engage in lawful activities on the ground that other persons were creating a dangerous situation by their illegal actions. I took the opportunity in the memorandum to make the point that many of the protesters found so hard to swallow, which was that recognizing the rights of tribal members to spear spawning walleye was not giving them "special rights." Rather, that recognition was an acknowledgment that tribal members have the same rights as other Americans to go to court to enforce rights they have secured by contract.

Obviously, my words did not convince the protesters to stop harassing the spearers. The protests dwindled for the rest of that season, but according to James Klauser, an aide to the governor, that was because "Mother Nature cooperated better than Mother Crabb."

The protests flared up again in 1990 and 1991, but the number of arrests declined considerably between 1989 and 1990. This was probably because law enforcement had more experience, better staffing, more effective policies, such as the banning of alcohol at the landings, and more law enforcement tools. One of these was a new state statute that provided for forfeitures for interfering with or attempting to interfere with lawful hunting, fishing or trapping and allowed civil actions for injunctions against persons engaging in the prohibited activity. Somewhat ironically, the law was pushed by hunters wanting relief from the animal rights activists trying to interfere with the harvest of wild animals. However, it turned out to be an efficient tool for dealing with the anti-treaty protesters.

In the early spring of 1991, the Lac du Flambeau hired the firm of Charne, Clancy & Taitelman, S.C. and took the initiative to stop the protests through different legal means: seeking a federal court injunctions against the members of Stop Treaty Abuse, Dean Crist and some of the other active members of the group. In March 1991, plaintiff and some of its members filed a motion for a preliminary injunction to enjoin interference by the protesters and local sheriffs with plaintiffs' treaty right to spear walleye. Although I found that plaintiffs failed to show any likelihood of success as to their claim of a conspiracy between Stop Treaty Abuse and the sheriffs, I found that plaintiffs had shown a likelihood of success on the merits of their claims against the members of Stop Treaty Abuse under 42 U.S.C. §§ 1982, 1985 and 1986, but not under § 1983, because that statute does not reach the actions of private parties, as we all know.

In order to find a likelihood of success on the merits under the statutes, it was necessary to decide several interesting issues: 1) whether plaintiffs were subjected to intentional discrimination solely because of their ancestry or ethnic characteristics," as required under § 1982; (2) whether the fishing rights that the plaintiffs were exercising were property rights within the meaning of § 1982; and (3) whether members of a corporate organization can be held liable for conspiracy if all of their actions are taken in furtherance of the corporation's goals.

The first question seemed the easiest. The use of racial epithets and Indian-bashing was pervasive at the boat landings. In the opinion, I noted that members of Stop Treaty Abuse had subjected plaintiffs and other tribal spearers to racial insults, obscene comments, derogatory songs and chants and air raid sirens and whistles, along with rock throwing, threats of harm, minor batteries and damage to their vehicles. I described incidents in which STA members had tried to swamp, tip or ram the boats of spearers, had played "leapfrog" with spearing boats (blocking the path of a boat so that the spearer has to go around them and then moving quickly in front of the spearing boat again) and had dragged heavy objects through the spawning beds to stir up the lake bottom and make it difficult to see the fish.

I found that STA members and others had displayed posters with slogans such as "Timber nigger"; "Save a walleye; spear a squaw"; "Custer had the right idea"; "Help Wanted: Small Indians for mud flaps. Must be flexible and willing to travel." I found also that STA had sponsored a contest for concrete walleye decoys that would divert spearers from live fish and damage their spears.

Defendants argued that their opposition to spearing of walleye during the spawning season was not racially motivated. Rather, they said, it was purely a manifestation of their concern that the spearers would harm the resource. Defendants argued that they would have acted in the same way had any other group threatened to engage in the same activity. I found this argument no more persuasive than the arguments of an earlier time in which it was common to hear people say that they had nothing against blacks as long as they didn't exercise their rights to live in the same neighborhood or go to school with white children. As to the question of property, I found that the word extended to the usufructuary right possessed by the Chippewa under the treaties, that is, the right to take the profit, utility or advantage of property without altering the substance of the property itself.

The conspiracy among the members of STA was the trickiest issue. A number of cases, including Dombrowski v. Dowling, 459 F.2d 190 (1972), hold that a corporation cannot conspire with itself and that if the alleged conduct is simply a single act of discrimination by a single business entity, the fact that two or more agents engaged in the act will not usually constitute a conspiracy under § 1985(3). However, there are cases that hold that corporations are not off the hook if the plaintiff can show different acts undertaken by different defendants and a reference in Dombrowski itself to the idea that agents of the Klan could not carry out acts of violence with impunity simply because they were acting under orders from the Grand Dragon.

With the likelihood of success on the merits established, the other requirements of a preliminary injunction proved no obstacle to plaintiffs. The injunction issued. I said expressly in the order that the injunction was not intended to reach defendants' verbal insults, taunts, posters or literature, but was limited to physical acts.

Plaintiffs then moved for summary judgment. The facts were more fully fleshed out on this go-around. For example, it was undisputed that STA had announced on three occasions in 1989 that it would pay fines for all persons who crossed police lines, that in 1990, it had encouraged members and others to cross police lines at Big St. Germain Lake, that in 1989, it had discussed ways of interfering with plaintiffs' use of gill nets and that it had put together protest kits for distribution at the landings. It was undisputed that STA members had prepared literature containing false and inflammatory statements about Indians, such as saying that "thousands of fish spoil because of warm weather and the lack of ambition to clean them" and that they receive free surplus food plus a cost of living allowance from the federal government of more than $20,000 per family per year. It was undisputed that the protesters had hung and distributed racist posters, that they had employed racial taunts at the boat landings, that they had used obscenities against the spearers and they had placed a caricature of an Indian on the podium at a Stop Treaty Abuse rally held in Minocqua in 1992.

Despite what I thought was pretty convincing evidence that defendants were motivated by racism at least in part, the court of appeals reversed the grant of summary judgment. It conceded that the "stench of racism [on the record] is unmistakable" and that the facts of the case made its decision an "extremely close call," but that it was error to grant summary judgment. So long as the Stop Treaty Abuse members denied that they were motivated by racism, the court should not have found the question undisputed.

The court of appeals noted that the organization had distributed a "Protesting Policy" flyer that told protesters not to carry signs containing racial slogans and not to shout racial or obscene remarks and that Dean Crist had denied making the racial slurs that some affiants swore he had made.

Trial took place in Wausau at the old federal courthouse, which is now owned by the city. It's a spartan, sparsely furnished place. When we hold trials there, we have to install a telephone and rent wastebaskets, desk chairs, water pitchers and other necessities.

The trial was to the court because plaintiffs were asking only for injunctive relief. The defendants objected vigorously to this decision but had no grounds on which to support their position.

The trial was perilously close to a farce, with the defendants merely going through the motions of a trial. The defendants had no defense. The plaintiffs introduced evidence showing that Dean Crist had his hand in the entire operation as organizer, communicator and cheerleader of the protests. His pizza business was command central. People who wanted to know where STA would be protesting on a given night would call the restaurant for information. Crist orchestrated the protests. He used his bullhorn to whip up the crowd's enthusiasm and intimidation.

Particularly damning to defendants was the evidence that the STA board had ordered the destruction of the STA membership lists when plaintiffs filed the lawsuit. That action permitted the drawing of the inference that all of the persons who uttered racial slurs or engaged in violent acts were STA members.

Defendants made almost no effort to refute the evidence of racial animus. No STA member other than Crist testified to contradict plaintiffs' accounts of the protests. Defendants put in some evidence to the effect that the organization did not sell buttons or hats until 1990 and that another protest group wore blaze orange. This was intended to show that plaintiffs' witnesses had described acts of protest committed by persons other than STA members. It was not persuasive.

The low point of the trial came when Dean Crist's lawyer and his female companion got up and left the courtroom in the middle of the trial. Counsel never said a word to the court before the two of them left, but simply walked out, long fur coats trailing behind them on the floor, like brides going down the aisle, never to be seen again in that courtroom.

With that, the spearfishing controversy came to an anti-climactic end.
No doubt the end to open protesting and discrimination was helped along by the growth of the casino industry, which gave the Chippewa the opportunity to earn a decent living. No longer were they so dependent on the walleye and muskellunge for food.

The state bar now includes an Indian Law Section. Under Chief Justice Abrahamson's leadership, a state-tribal-federal conference has been established. The Oneida tribe has hosted two large conferences of this organization; the last one was a national conference that included Indian judges from throughout the United States. State court judges in the ceded territory have been developing compacts with the tribes covering the handling of cases that overlap both jurisdictions. The tribes are engaged in leading edge environmental work, sometimes on their own and sometimes in conjunction with the DNR. Rich alerted you to Donna Jones's letter in the September issue of the Wisconsin Lawyer about James Schlender, a remarkable man who served as the chief executive officer of the Great Lakes Indian Fish and Wildlife Commission for 20 years. In 2000, the Chippewa erected a memorial in McGregor, Minnesota to honor the Indians who died at Sandy Lake and on the long march home.

I learned a lot during all these trials and the briefing on all the motions. But I re-learned the most important lesson a judge must learn and not forget. Do you have any guess about what that lesson is? What do you think is the most important responsibility of a judge? The most important task is to decide. You may think it is to decide correctly, but you'd be wrong. Not that deciding correctly isn't important. It's just that it isn't the most important thing. And a good thing. Because who ever knows what ruling is correct?

Judge Doyle worked for years on his decision that the Chippewa had given up their usufructuary rights in 1854 when they agreed to accept reservations in the ceded territory. The court of appeals worked equally hard and long on its decision that the Chippewa had NOT given up their rights in the 1854 treaty. Which decision was the correct one? Who can say? As hard as we try, we can't be sure. And besides, rules change. But, the overwhelming feeling I have about the case is gratitude. Gratitude from being able to be a participant in the single most interesting litigation I've ever encountered; gratitude for being on the scene of such a significant part of our state's history; gratitude for the opportunity to be a witness to the extraordinary efforts made by the Chippewa and people of goodwill in the State of Wisconsin to forge an honorable accommodation of the Chippewa's long withheld usufructuary rights in the ceded territory.