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Treaty v. Law: A Commentary on Treaty Rights, Conservation Regulations, and Their Collision

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Abstract

This paper includes a discussion of American Indians as the original conservationists in the United States, a history lesson in Wisconsin treaties and conservation laws, and a case study of the murder of Chief Joe White, a Wisconsin Ojibwe Indian. Joe White was killed hunting out of season in northern Wisconsin; however, due to reserved rights from treaties, White had a right to hunt where he did. This paper will argue that American Indians face stereotypes, namely that they are a wholly nature loving ethnicity. This paper will discuss American Indians as equally destructive to the land as their white counterparts. However, it will detail that although they used the land to their own benefit; they also faced struggles in regards to maintaining their rights to natural resources, and ultimately suffered at the hands of a federal government during an era of treaty making. Amidst the negative there exists a positive – American Indians in the Midwest have become excellent stewards of land.

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Introduction

This paper will discuss American Indians as the original environmentalists. It will defy and breakdown the typical stereotypes associated with American Indians in relation to their use of the land. In addition, it will highlight current and recent efforts undertaken by Midwestern American Indian tribes to conserve the land and protect wildlife. Next, it will explore the treaties made between Wisconsin tribes and the federal government, focusing on what was given up and retained in the treaties by the tribes. Following the era of treaty-making, conservation laws were put into effect in Wisconsin. These laws were inadequate in that they did not take into account the hunting and fishing provisions set forth in the treaties. In order to fully understand the ramifications of American Indian use of the environment, treaties, and conservation laws, this paper will continue with a study of the murder of Chief Joe White of the Lake Superior Ojibwe. His death depicts not only the struggle between white and native ideals, but the ongoing struggle to maintain native traditions in a society that attempts to stifle them in the face of law and in the name of conservation.

The source of information concerning the killing of Chief Joe White is a collection at the Wisconsin Historical Society. This collection contains newspaper clippings and legal information. Further information and analysis is influenced by archival newspaper articles from around the country. Background information concerning American Indians and conservation is provided by articles from foremost conservation and American Indian experts. Also, treaty information comes from the Oklahoma State University Library which contains a complete list of Laws and Treaties applying to American Indians during the era of treaty-making.

Shepard Krech's book, *The Ecological Indian*, is a fantastic place to start when desiring to explore more about American Indians and their pre-Columbian interaction with the environment.¹ As an anthropologist, Krech explores several specific case studies to disprove that American Indians were the original conservationists. However, a word to the wise, Krech's work has been severely criticized and evaluated. While reading, it is sensible to consider what other experts have said following the publishing of *The Ecological Indian*. *Native Americans and the Environment: Perspectives on the Ecological Indian* edited by Michael Harkin and David Lewis provides critical analysis of Krech's work and is an excellent anthology to consider after reading *The Ecological Indian*.²

The last section of this paper discusses the legacy acquired through treaties, conservation laws, and the struggle for American Indians to maintain their rights to resources while existing in a rapidly changing white world.

¹ Shepard Krech, *The Ecological Indian, myth and history*, (New York: W.W. Norton & Company): 1999.

²Michael Harkin and David Lewis, *Native Americans and the environment: perspectives on the ecological Indian*," (Lincoln: University of Nebraska Press): 2007.

American Indians as the Original Conservationists?

Some archaeologists, anthropologists, and other learned scholars assert that prior to European contact, American Indians were as equally destructive to the environment as their white counterparts. Environmentalism in America has seen many changes throughout the centuries; likewise how certain groups of people treated the Earth has also evolved. American Indians have begun taking steps towards being excellent custodians of the land. Their efforts in the Midwest and particularly Wisconsin are stellar examples.

In the form of activities such as Earth Day, students are encouraged to look at the environment the way pre-Columbian Indians would in order to save it. Yes, it is valuable to promote students to think about what they can do for the environment; however, encouraging them to do so in the way American Indians have done is not suitable. Many have considered American Indians as excellent stewards of the land for quite some time. Although this is appropriate in some respects, it is often perpetuated by two standard stereotypes: the Ecological Indian and the Noble Savage. Furthermore, evidence exists supporting the idea that American Indians often acted for their own benefit, rather than for the good of the Earth. Their actions depict a highly civilized and intelligent ethnicity; a viewpoint few would agree with due to common misconceptions.

The Ecological Indian can be defined as “One of the most pervasive myths of the newly dominant scholars . . . at one with nature; not scientifically knowledgeable about the environment but so in tune with the harmonies and rhythms of earth spirits that he intuited

what was best ecologically, without fail.”³ This myth deprives American Indians of a diverse history, leaving non-Indians to believe that American Indians were strictly an ecological society. It was necessary for American Indians to think ecologically. They operated often under harsh conditions without European technology that tended to make life simpler. Any action that an American Indian would take was an action of survival. They took advantage of the land in order to secure their livelihood. Since American Indians are generally only seen as nature lovers, they are often chosen as the spokespeople for Earth Day. We assume and generalize that American Indians were the first environmentalists; therefore we find a group of people to imitate.

It is difficult to dispute the myth of the Ecological Indian without appearing anti-Indian. Likewise, it is just as difficult to reveal myths of one’s own culture which do not cast a favorable light. Campaigns other than Earth Day have also perpetuated the myth of the Ecological Indian. For example, the Keep America Beautiful campaign prominently featured Iron Eyes Cody or the “Crying Indian” at its inception in 1971. In a public service advertisement, as Iron Eyes Cody

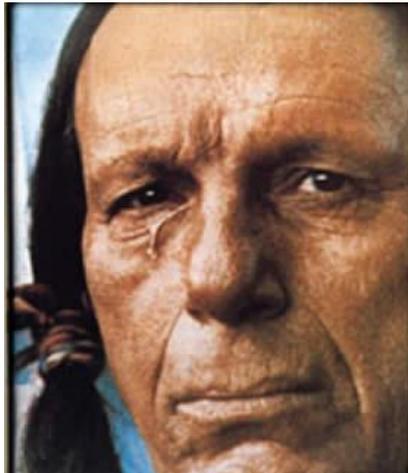


Figure 1 - Iron Eyes Cody

sheds a tear the narrator says, “Some people have a deep, abiding respect for the natural beauty that was once this country; some people don’t. People start pollution. People can stop it.”⁴ This public service advertisement implies that American Indians “have a deep, abiding respect for the natural beauty that was once this country” and non-Indians

³ Lorne Gunter, “Ecological Indian is a Myth: Neither criminals nor saints, early natives were simply human,” *Edmonton Journal*, 19 November 1999.

⁴ F. Dunaway, “Gas Masks, Pogo, and the Ecological Indian: Earth Day and the Visual Politics of American Environmentalism,” *American Quarterly* 60 (March, 2008): 84.

do not. By manipulating the image of American Indians, Americans are divided into “us” and “them.” “Us” being the people who have caused the Earth’s destruction and “them” as the keepers of the Earth’s natural beauty. In addition, this view uses American Indians to generalize that all American Indians were devastated by what the white man had done to the pristine landscape of the Earth.

This author is not claiming that *all* American Indians were poor stewards of the environment. Since each tribe is unique, it is not appropriate to generalize that all American Indians acted in the same manner. American Indians span numerous languages, cultural differences, and traditions. To assert that all American Indians were destructive towards the environment is racial stereotyping and a point I am trying to disprove. Claiming that all American Indians were the original conservationists perpetuates the idea of the Noble Savage. This idea deprives American Indians of a diverse cultural history and in effect lumps them all into a similar category of existence. “Indians were not environmental criminals, but neither were they saints; just humans.”⁵

Earth Day and the Keep America Beautiful campaign, are in their purest sense, excellent ways in which to present environmental awareness. However, it is inappropriate to use American Indians as the sole spokespeople. By doing so, the common references of the “Noble Savage” and the “Ecological Indian” continue without further research. Not to mention, many of these campaigns are often directed towards children. By providing such information at an early age, when children are at their most vulnerable and lack the ability to comprehend complex ideas leads to inaccurate information that they may believe for a lifetime.

⁵ Gunter, 1999.

The notion that American Indians were the original conservationists/environmentalists/ecologists is a long-standing myth that I will debate. Most children grow up with the thought that Indians used every part of the buffalo or deer or any other animal. The hide was used for clothing and packaging. The bones and teeth were used for jewelry and other accessories and tools. And the meat was obviously used for sustenance. However, there is evidence that, although American Indians were known for their animal hide clothing and bone jewelry, over killings and wastefulness did occur. For example, there is evidence of buffalo stampedes where hundreds of buffalo were killed and left to rot, unused. Although this is substantiation of misuse of resources, it also shows great determination and intelligence on behalf of American Indians because successfully completing a buffalo jump required much time, manpower, patience, and knowledge of the actions of a buffalo herd. In general, when Europeans first came upon the American Indians, they did not give them credit for being able to accomplish such a feat. Because of this, the idea of the Noble Savage and Ecological Indian continues today. Buffalo jumps are but one example of American Indian's poor use of the environment. In other cases, American Indians are accused of hunting some animals until extinction.

Also, in terms of land use, American Indians would burn the land, generally forests, in order to produce better hunting conditions. In an open area, it was much easier to spot an animal as well as track an animal in order to kill it. Evidence also exists to assert that forest burning was often done merely for entertainment purposes. Slash and burn farming shows that American Indians knew how to take advantage of the land in order to further benefit from it. Although this process is ultimately detrimental to the land and the ecosystems that rely on

it, American Indians are not the only ethnic group to practice such a process. William A. Patterson and Kenneth E. Sassaman assert that this has been occurring for over 1,000 years. It still occurs today, generally in rainforests. The practice of slash and burn farming demonstrates intelligence on the part of American Indians, at a time when most whites believe them to be merely savages. One of the major reasons American Indians may have turned to slash and burn is due to the extinction or difficulty in hunting certain animals, which encouraged a shift from a hunter-gatherer existence to an agricultural society. Patterson and Sampson argue that, "Indians used fire to drive game, communicate among groups, clear away underbrush, and prepare land for planting."⁶ The actions of American Indians are similar to that of whites in the same time period. Both American Indians and their European counterparts were trying to get the most they could out of the land in an attempt to create a better life for themselves.

Although teachers are mandated to teach students about conservation and environmental issues as well as American Indian topics, somehow the myth that American Indians were always nature loving conservationists perseveres. Perhaps teachers are not fully educated in either topic, which allows such falsehoods to continue. In Wisconsin, "Legislation requiring instruction in the conservation of natural resources at both the elementary and secondary level, and requiring science and social studies teachers to have 'adequate preparation' in the conservation of natural resources was passed during the 1930s."⁷ It is valuable that teachers are required to teach on this topic and there are many options for integrating conservation into science and social studies curriculum. For example,

⁶ William A. Patterson and Kenneth Sassaman, "Indian Fires in the Prehistory of New England," *Holocene Human Ecology in Northeastern North America*, (1988): 115.

⁷ Wisconsin Department of Public Instruction, "Science: A Guide to Curriculum Planning," 25 February 2008, http://www.dpi.state.wi.us/pubsales/scienc_1.html (accessed March 21, 2009).

EInWisconsin.org offers numerous options for teachers including teaching materials and field trip suggestions. A thorough list of organizations offers field trip ideas, and interactive web activities are available for teachers to use within the classroom, and even available for students to use at home.

In terms of American Indian history, “Beginning September 1, 1991, as part of the social studies curriculum, include instruction in the history, culture, and tribal sovereignty of the federally recognized American Indian tribes and bands located in this state at least twice in the elementary grades and at least once in the high school grades.”⁸ There is so much for students to learn. It is difficult to pick and choose what to cover in class and what to pass up. Although teachers are required to teach on certain subjects, the level and depth at which they do is up to the teacher. Therefore, students may often be left with a minimal knowledge of conservation and American Indian history, leading towards the belief of common stereotypes and generalizations about American Indians, treaties, and the environment.

⁸ Wisconsin Department of Public Instruction, "Social Studies - Wisconsin Laws," February 25, 2008, <http://www.dpi.state.wi.us/cal/ss-laws.html#tribes> (accessed March 21, 2009).

to the United States. Waukesha County resides within the five million acres ceded and consists of 555.6 miles squared of land or 355,584 acres. As of 2006, Waukesha County was populated by 379,577 people.¹¹ 379,577 people reside within 355,584 acres, so it is imaginable just how large of a tract of land Waukesha County is. Furthermore, Waukesha County consisted of only a fraction of the land lost in the 1833 treaty.

From the 1833 treaty, in terms of cash, they received one hundred thousand dollars “payable to individuals in lieu of reservations,” one hundred and fifty thousand dollars payable to other individuals, “two hundred and eighty thousand dollars to be paid in annuities of fourteen thousand dollars a year, for twenty years,” one hundred and fifty thousand dollars for agriculture and industrial advancement, and seventy thousand dollars for educational purposes. This amounts to eight hundred and fifty thousand dollars.¹² In today’s money, that’s about \$21,651,191.65. In addition, the Indians were given an equal amount of land to that of what they were giving up, west of the Mississippi River. This treaty made no provisions for the Chippewa, Ottawa, and Potawatomi in terms of reserved rights for hunting and fishing.

Article 5 of the July 29, 1837 Treaty with the Chippewa is vague in that it states, “The privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guaranteed to the Indians, during the pleasure of the President of the United States.”¹³ This stipulation contains the entire ceded territory rather than only one spot or just on the reservation. This vague wording later creates problems for both states and American Indians.

¹¹ Wisconsin Department of Administration, “Waukesha County Population,” 2006: 2.

¹² This does not include several other payments towards individuals and bands.

¹³ Kappler, Charles J. “Indian Affairs: Laws and Treaties.”

The American Indians of Wisconsin continued to require that they be allowed to live off the land in further treaties. Article 2 of the October 4, 1842 Treaty with the Chippewa Indians states, "The Indians stipulate for the right of hunting on the ceded territory, with the other usual privileges of occupancy, until required to remove by the President of the United States, and that the laws of the United States shall be continued in force, in respect to their trade and inter course with the whites, until otherwise ordered by Congress."¹⁴ It was not until the 1854 Treaty with the Chippewa that an actual reservation was designated in Wisconsin.¹⁵

The stipulations contained in the aforementioned treaties are extremely valuable in that they reserve the rights of the American Indians to continue hunting, fishing, and gathering on the ceded land. There is no specification other than "during the pleasure of the President" as to the ability of any other entity to interfere with these rights.

¹⁴ Kappler, Charles J. "Indian Affairs: Laws and Treaties."

¹⁵ Ibid.

Wisconsin Conservation Laws

Wisconsin citizens and lawmakers began to realize the need for conservation laws shortly after Wisconsin achieved statehood. In 1851, the first law relating to deer in Wisconsin was enacted. The Wisconsin Forestry Organizations states, "1851 – First closed season for deer, Feb. 1 through June 30; Indians permitted to hunt anytime." Their website provides an article entitled, "Deer-Impacts on Forest Ecology and Management." This article includes a chronology of deer hunting in Wisconsin. It mentions that in 1851, a law was enacted and that the Indians were still allowed to hunt at any time as well as the hiring of game wardens to enforce the laws, but does not mention the death of Joe White.¹⁶ The 1851 law closed the hunting season for five months. "However, these laws were enforced only by the local officers on foot or with horses. During the 1800s the common belief was that one could take whatever wildlife was wanted."¹⁷ So, this law had little effect on a large scale. As the human population increased, more people began hunting for sustenance as well as profit. In addition, the burgeoning lumber industry employed hunters to feed their crews.¹⁸

It was a difficult job for the few game wardens to carry out their duties. This is visible in the following statistic: "In 1885, reports estimated that 10,000 deer were shipped out of state, in spite of laws prohibiting such shipments. In 1886, a newspaper account told of the oldest and

¹⁶ Wisconsin Forestry, "Deer - Impacts on Forest Ecology and Management," *Wisconsin Forestry*. <http://www.wisconsinforestry.org/council-deerchrono.php> (accessed October 3, 2009).

¹⁷ Wisconsin Department of Natural Resources, "Wisconsin Wildlife Notebook: White-tailed Deer," <http://dnr.wi.gov/org/land/wildlife/PUBL/wlnotebook/deer.pdf> (accessed October 3, 2009).

¹⁸ Ibid.

most experienced hunter in the vicinity of Eau Claire killing 3 tons of venison.”¹⁹ Game wardens faced the challenge of patrolling a large amount of land and a misunderstanding of American Indian treaty rights.

In the 1890s, “public opinion turned in favor of deer protection. The shooting of large numbers of does and fawns was deplored. Sportsmen advocated shortening the hunting season, and even closing it for five years, abolishing spring and summer shooting, and preventing the sale of game at any time.”²⁰ While it is admirable to want to maintain the deer population, it is important to remember that few legislators kept in mind the rights of the American Indians.

Wisconsin also took steps in regards to fishing and maintaining the fish population. In 1871, Congress created the U.S. Commission on Fish and Fisheries. By 1880, according to the Wisconsin Bluebook,

Wisconsin is one of the most favored States, all things considered, for fish culture, in the Union, Michigan and Minnesota being her only rivals. The Wisconsin Commission has just entered upon its third year of practical and efficient work, and owing the liberal aid from Milwaukee, is hatching more fish with less money than any State in the Union. . .²¹

The State of Wisconsin took a deep interest in conservation in the late 19th century.

Unfortunately, they failed to take into account treaty rights that had been established earlier in that century.

¹⁹ Ibid.

²⁰ Wisconsin Department of Natural Resources, "Wisconsin Wildlife Notebook: White-tailed Deer," <http://dnr.wi.gov/org/land/wildlife/PUBL/wlnotebook/deer.pdf> (accessed October 3, 2009).

²¹ State of Wisconsin, "Wisconsin and her State Institutions," 1880.

Chief Joe White

On December 13, 1894, Joe White, one of the chiefs on the Odanah Reservation was hunting at Long Lake in Washburn County, Wisconsin.²² The land White and his compatriots were hunting on was within the ceded territory of earlier treaties with the federal government. In those treaties, the Ojibwe had reserved the right to hunt, fish, and gather within the ceded territory. White was actively partaking of his right to hunt on ceded territory. The game wardens of the area, however adhered to Wisconsin conservation laws which enacted stringent hunting times and amounts. White was arrested by Deputy State Game Warden Horace Martin and his assistant S.M. Hicks. According to most sources, White agreed to the arrest; however, a “scuffle broke out” and according to eyewitness accounts, White was clubbed in the head by a warden’s rifle and while White attempted to run away, he was shot. He died two hours later.²³



Figure 3 - Long Lake, Washburn County, Wisconsin

In the days and weeks that followed, an inquiry was made to determine the actual events of December 13, 1894. Lieutenant Mercer of the La Pointe Indian Agency began inquiring about the murder and finally, the Washburn County District Attorney filed murder charges against Martin and Hicks.²⁴ Incident reports filled newspapers throughout Wisconsin, the Midwest, and the rest of the country. The newspaper articles allow readers to piece

²² Odanah is a town in northern Wisconsin on the southern shores of Lake Superior. It is within the Bad River Reservation mainly and is now occupied by the Bad River Band of Lake Superior Tribe of Chippewa Indians.

²³ "Press reports & court documents concerning the killing of Chief Joe White, 1894." Wisconsin Historical Society

²⁴ *The Weekly Wisconsin*, "Placed Under Arrest," (Milwaukee, Wisconsin), 29 December 1894, 5.

together what occurred on December 13, 1894. They are filled with bias and frequently refer to White by his ethnicity.

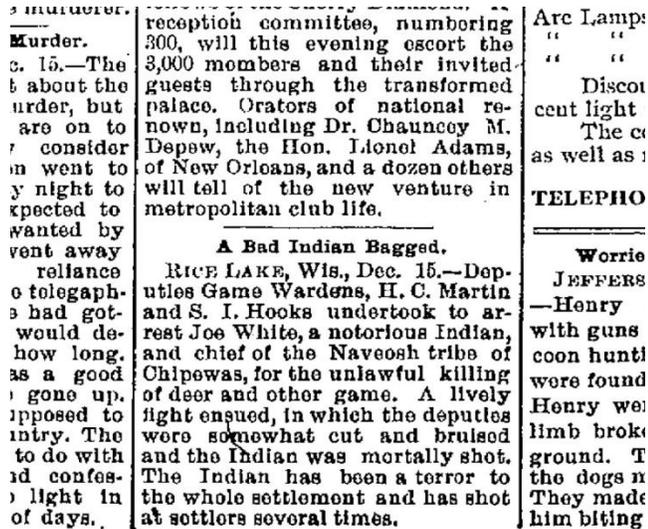


Figure 4 - *The Daily Light*, "A Bad Indian Bagged," 15 December 1894. Reproduced with permission of the Wisconsin Historical Society.

Generally, the newspapers depicted

White as a "terror to the whole settlement" and praised the game wardens in headlines such as, "A Bad Indian Bagged."²⁵ They labeled White as a red terror²⁶ and a poacher.²⁷ The papers also suggested the wardens had no other option than to shoot White.²⁸ Figure 1 provides an example of the literature available concerning the demise of Joe White.

In terms of the trial, the newspapers suggest that both sides would contest the evidence brought about by the other. All that exists is hearsay from either side. The only witnesses available were White's fellow hunters and the game wardens themselves. Heavy anti-American Indian racism is apparent at this time period. It is almost all too obvious of a guess as to the outcome of Martin and Hicks' trial.

The first document in the Joe White collection held by the Wisconsin Historical Society is a newspaper article entitled "Game Warden Shoots" from *The Watchman* of Shell Lake, Wisconsin dated December 20, 1894. The article details that Martin and Hicks had a warrant

²⁵ *The Daily Light*, "A Bad Indian Bagged," 15 December 1894.

²⁶ *The Sunday Advocate*, "A Red Terror Gets His Quietns," 16 December 1894.

²⁷ *The Galveston Daily News*, "Poacher Shot," 16 December 1894.

²⁸ *Weekly Free Press*, "Joe White No More," 20 December 1894.

for White's arrest issued by Judge Angel of Rice Lake.²⁹ The warrant was issued because White was apparently "slaughtering deer and boastingly asserted that he would kill anyone attempting to arrest him for the offense." It was also mentioned that in the past month White had fired upon individuals mistakenly thought to be wardens.³⁰ In the effort to overtake White, Martin suffered a minor injury to his hand. White was struck by Martin's Winchester rifle. White attempted to procure one of the warden's rifles, but was stopped by a shot to the thigh by Hicks under Martin's orders. This story is in contradiction with the testimony of Charles White, Joe White's stepson. Charles White testified that his father agreed to travel with the wardens to Rice Lake. However, Joe White requested to not be handcuffed. Charles White testified that the wardens proceeded to "pummeled" his stepfather, who in turn attempted to run away. When Joe began to run, he was shot by the wardens.³¹ Throughout the research done on Joe White, numerous incidents have been found in which stories conflict.

The next document in the Joe White Collection is titled "Is Very Much Mixed" and comes from the *Spooner Register* dated December 22, 1894. This article contains information that very much directly relates to the discussion of the collision of treaty rights and state laws. It states,

There is a question of jurisdiction to be decided before the man who killed White can be tried. The state authorities will demand the right to try the case because the killing occurred off the reservation, while the man who was killed was breaking a state law. The federal authorities will also demand jurisdiction on the ground that the Indian had a right to hunt where he did.³²

²⁹ *The Spooner Register*, "The Slayers of Joe White," 29 December 1894.

³⁰ *Shell Lake Watchman*, "Game Warden Shoots, 20 December 1894.

³¹ "Jury Has Been Secured," *The Centralia Enterprise and Tribune*, 23 March 1895, 20.

³² *Spooner Register*, "Is Very Much Mixed," December 22, 1894.

The article goes on to explain treaty rights and explains that White “apparently” had a right to do what he had been doing. The state was attempting to victimize the deceased Joe White because of his hunting actions. In regards to this article, it appears the state authorities did not take treaty rights into consideration.

The article "Joe White Again" from the Shell Lake *Watchman* on January 31, 1895 takes into account that the character of Joe White will be an issue at trial. There are conflicting arguments that White was “a quiet, peaceable man” and “one of the most desperate characters.” Individuals were called upon to testify in regards to White’s character. Again, White’s ethnicity was a common focus of testament.

The Joe White Collection also contains court documents pertaining to the trial of Hicks and Martin. The first document is The State Against S.M. Hicks.³³ Similarly to the newspaper articles of that time, the testimony of Hicks and the cross examination consists of a story that is in often in opposition with that of others. Hicks believed he was performing his job appropriately, and therefore he was justified in shooting White.³⁴ The trial of Hicks is thoroughly covered in newspapers across the state. The collection also contains a map of the shooting introduced at the trial.³⁵ The second court document contains the Testimony of Charles White, Dr. G.A. Barker, Joe Baker, Joe Naveash, Christian Sonstead, Horace Martin, and S.M. Hicks.

³³ The State Against S.M. Hicks (Washburn Series 27: Wisconsin. Circuit Court. Washburn County. Case files, 1886-1982).

³⁴ Ibid.

³⁵ See Appendix A

After the evidence had been heard and the newspapers had been read, a jury acquitted Martin and Hicks. *The Rice Lake Chronotype* announced the acquittal on March 22, 1895. The opinion of *The Chronotype* was that not only were Martin and Hicks justified in shooting White, but that it was entirely necessary for White to be killed. What *The Chronotype* found unnecessary was the trial itself. *The Chronotype* argued that the trial of Martin and Hicks was a complete waste of taxpayer dollars. This article was the most blatantly biased throughout all of the research done in that it thoroughly expressed the opinion that Joe White was “a bad one,” offering no sympathy that a man is dead.³⁶

³⁶ *The Rice Lake Chronotype*, “Justifiable Homicide,” 22 March, 1895.

Legacy

Joe White was killed because he was in violation of a state law and complications following his arrest. However, the law was unclear in regards to American Indians. The law has become clearer, and steps have been taken to ensure American Indians retain their rights, and maintain the environment.

Fishing in Wisconsin has been a hot issue for several decades. A near identical situation to the death of Joe White occurred near the LCO Reservation and remains one of the most important and memorable events in recent fishing history:

On a cold March night in 1974, Fred and Mike Tribble went spear fishing on a lake near their Lac Courte Oreilles Chippewa Reservation, and were arrested and charged with violating Wisconsin conservation laws. In the eyes of the Sawyer County sheriff and state wardens, the brothers had committed a simple act of poaching. From the perspective of the fishermen and their tribe, however, spearing fish was a complex expression of sovereignty under the series of treaties the Chippewa had signed with the federal government. The arrests evolved into the Voigt Decision, a ruling that unleashed a fury of racial, legal, economic, and political issues that had been simmering among the Chippewa and their neighbors for years. The battle over Chippewa treaty rights lasted seventeen years and cost the state more than ten million dollars. It polarized the people of Wisconsin as no other issue had in recent history, and united the previously disparate Chippewa bands who came together to defend their treaty rights and sovereignty.³⁷

One of the major problems whites had concerning tribal members spear fishing was that the fish population would rapidly decline due to overfishing. This, however, is certainly not the case, because reservations such as the Bad River Band stock over 15 million walleye annually. The Bad River Band is active in terms of ensuring fishing as an outdoor sport continues, as well

³⁷ Patty Loew, "Hidden Transcripts in the Chippewa Treaty Rights Struggle: A Twice Told Story Race, Resistance, and the Politics of Power," *American Indian Quarterly* 21 (2007).

as considerate for the walleye population. Furthermore, the Lac Courte Oreilles Fish hatchery stocked over 5 million walleye during the years 1990 – 1998.³⁸

Although scholars and other critics claim that the Ecological Indian is nonsense, in the mid-20th century, American Indians have become fantastic stewards of the environment. The US government takes an active role in providing federally recognized tribes with grants to operate wildlife and conservation organizations and to take on projects and research activities to guarantee environmental protection.³⁹

Indian Country comprises more than 100 million acres—much of which encompasses some of the most important fish and wildlife habitat in the nation. Countless plants and animals, many of which are protected by the Endangered Species Act, thrive on Indian lands. At the same time, Indian tribes have often lacked the means to adequately manage and protect these important resources.⁴⁰

Because Indians have few means to manage and protect, is that why in the pre-Columbian Era they didn't? Also, are Indians doing more now than before?

The US Fish and Wildlife Service offer two types of funding: the Tribal Wildlife Grant and the Tribal Landowner Incentive Grant. In the last 4 years, \$40 million dollars has been given out to tribes in order for them to take action in the environment. Some examples include, when in 2003 the Bad River Band of Lake Superior Tribe of Chippewa Indians was given a Tribal Wildlife Grant of \$174,784 to for Fish Hatchery Expansion.⁴¹ The Great Lakes Inter-Tribal Council

³⁸ Lake Chippewa Flowage, Chippewa Flowage Stories, available from <http://www.chippewaflowage.com/lco.html> (accessed 6 April 2009).

³⁹ U.S. Fish and Wildlife Commission, *Grant Programs for a Indian Tribal Government*, 1 May 2009, available from <http://www.fws.gov/grants/tribal.html> (accessed 20 April 2009).

⁴⁰ U.S. Fish and Wildlife Commission, *Tribal Wildlife Grant and Tribal Landowner Incentive Program: Periodic Report, 2006*, available from <http://www.fws.gov/grants/NativeAmericanLiaison60807.pdf> (accessed 20 April 2009).

⁴¹ U.S. Fish and Wildlife Commission, *Tribal Wildlife Grant and Tribal Landowner Incentive Program: Periodic Report, 2006*.

explains that 95% of the reservation's 124,234 acres remain undeveloped and wild.⁴² Also, the GLITC states that, The Bad River Chippewa operate a fish hatchery, annually stocking more than 15 million walleye into reservation rivers and other area lakes and streams."⁴³ The ability to expand the Fish Hatchery and maintain a pristine landscape are signs of the Bad River Band's commitment to the environment.

The Leech Lake Band of Ojibwe was given a Tribal Wildlife Grant in the amount of \$209,000 in 2004. The tribe matched that amount with \$157,220 in order to do a Cormorant Diet Study.⁴⁴ In 2007, the Leech Lake Band published a study on their findings. "The overall goal of this project is to determine if cormorants (medium to large seabirds) played a role in the decline of walleye in the early 2000's and if they did, at what population level they can be managed without having a significant negative effect on game fish and on other species of colonial waterbirds that nest alongside cormorants on Little Pelican Island."⁴⁵ The result of the findings indicated that the cormorants studied consumed a diet of less than one percent of walleye, meaning the cormorants were not affecting the walleye population. This study did include the removal of several hundred waterfowl in north central Minnesota in order to produce accurate results.

In 2003, the Little River Band of Ottawa Indians received a Tribal Landowner Incentive Grant in the amount of \$137,644 for a Bobcat Protection Project. The tribe added to that

⁴² Great Lakes Inter-Tribal Council, Bad River Band of the Lake Superior Tribe of Chippewa Indians, 2005, available from <http://www.glitc.org/pages/brblsc.html> (accessed 18 March 2009).

⁴³ Ibid.

⁴⁴ U.S. Fish and Wildlife Commission, *Tribal Wildlife Grant and Tribal Landowner Incentive Program: Periodic Report, 2006*.

⁴⁵ Leech Lake Band of Ojibwe, Double-Crested Cormorant Conflict Management and Research on Leech Lake 2007 Annual Report, available from <http://lldrm.org/assets/Cormorant%20management%20and%20research%20on%20Leech%20Lake%202007%20Final.pdf> (accessed 20 April 2009).

amount a total of \$74,936.⁴⁶ This project allowed the Little River Band to study spatial distribution, home range size, and habitat in order to continue to study and monitor the bobcat population in Manistee, Michigan.

In northwestern Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians is also striving to encourage environmental responsibility. One of their governmental entities includes the Conservation Department which deals with water quality, environmental protection, and other conservation related issues. The Conservation Department works with the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) as well as the U.S. Fish and Wildlife Service. The Fish Hatchery the tribe operates is responsible for “gathering spawn to restock reservation lakes, as well as lakes in ceded areas harvested by tribal members.”⁴⁷

As seen in the figures of the previous studies, tribes often match a substantial amount to fund their projects. Tribes have moved into the current era while maintaining their heritage. They have continued or instigated an ecologically positive standpoint through their own initiatives or with governmental assistance.

Overall, Wisconsin American Indian Tribes have shown an ability to serve the land in multiple ways. In addition, the efforts of all Midwestern tribes are valuable to Wisconsin because fish and wildlife migrate in and out of rivers which cross through neighboring states. Their contributions are valuable and worthwhile in terms of ensuring sportsmanship in the form of fishing and a general desire to maintain fish and wildlife populations in Wisconsin.

⁴⁶ U.S. Fish and Wildlife Commission, *Tribal Wildlife Grant and Tribal Landowner Incentive Program: Periodic Report, 2006*.

⁴⁷ The Lac Courte Oreilles, Tribal Entities, available from <http://www.lco-nsn.gov/entities.htm> (accessed 20 April 2009).

Conclusion

The battle between treaty rights and state laws continued to rage for many years, extending into another century, and uncertainty continued. Finally, justice was served in the form of the 1983 Voigt Decision following events such as the arrest of the Tribble brothers. In response to the case one of the judges, Judge Bunn stated,

After taking from (the Ojibwe) the great body of their lands in ...Wisconsin, allowing them to reserve certain portions for reservations, and stipulating they should always have the right to fish and hunt upon all lands so ceded, it would be adding insult as well as injustice now to deprive them of the poor privilege of fishing...upon their own reservation.⁴⁸

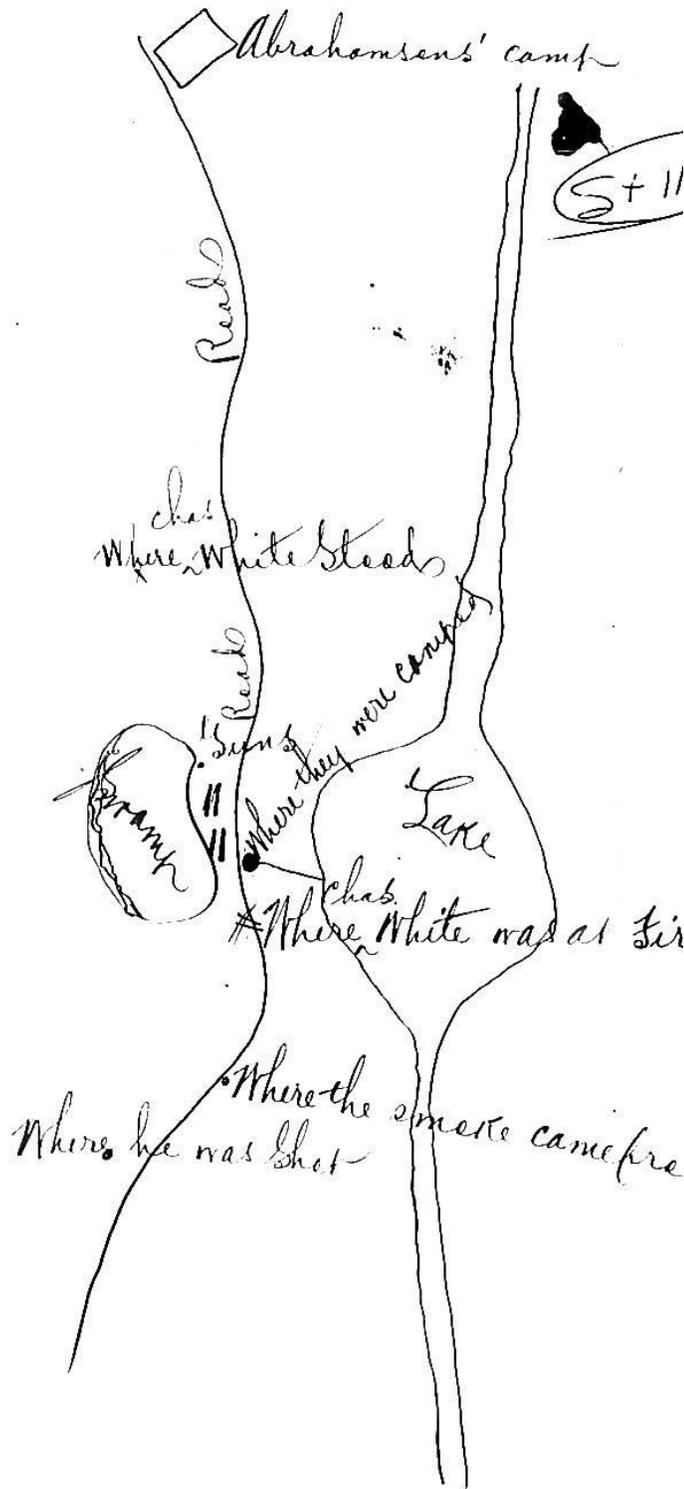
The Voigt decision secured the rights of the Ojibwe to continue taking advantage of their reserved rights.

The death of Joe White is but one instance where an American Indian has suffered due to a poor relationship between natives and the state. The trial of his killers showed strong Anti-American Indian feelings, and a disregard for treaty rights. American Indians have taken steps to improve their image. That they are slaughterers with no regard to state laws has been proven a falsehood through their current efforts maintain fish and wildlife species. It is this author's desire that a positive relationship between American Indians and the states may flourish and provide for an abundant environment.

⁴⁸ Satz, Ronald, *Chippewa Treaty Rights: The Reserved Rights of Wisconsin's Chippewa Indians in Historical Perspective*, (Madison, WI: Wisconsin Academy of Sciences, Arts and Letters: 1991), 84.

Appendix A

Press reports & court documents concerning the killing of Chief Joe White, 1894, "Map of the Shooting Introduced at the Trial."



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