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THE PERSONAL IMPACT OF THE BOLDT CASE: A TRIBUTE TO PROFESSOR WILLIAM H. RODGERS, JR.

Professor Ron J. Whitener*

I was very pleased to be asked to speak at the celebration of Bill Rodgers's career to give some personal thoughts about the impact of the original *United States v. Washington*¹ case. Bill Rodgers was instrumental in the planning and conduct of this litigation. I was pleased because this case has had such a profound impact on my life. When I discovered that I was out of town during the celebration, I decided that publicly thanking Bill was too important, so I asked the organizers to allow me to appear virtually through a short video presentation.

I am a member of the Squaxin Island Tribe, one of the original intervenors in *Washington*.² I was born in 1969, while the original case was being readied for filing. I grew up in Kamilche, Washington, near the end of Skookum Inlet. Skookum Inlet empties into Totten Inlet, and at the mouth of Totten lies Squaxin Island. Squaxin Island, the long, skinny island in this picture, is the original reservation of the Squaxin Island Tribe and is surrounded by the many inlets of Southern Puget Sound.

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1. 384 F. Supp. 312 (W.D. Wash. 1974).

2. *Id.* at 327.



[Courtesy of the Squaxin Island Tribe]

Members of the federally recognized Squaxin Island Tribe of today are descendants of seven aboriginal bands, each originating from one of the seven inlets of Southern Puget Sound. The traditional fishing areas of the Squaxin Island Tribe include most of the marine waters beyond the Tacoma Narrows.³ It is a large marine area at the terminus of Puget Sound and historically it maintained a very rich salmon and shellfish fishery. This salmon fishery was at the heart of my ancestors' lives and religion.⁴

The aboriginal bands of Squaxin Island were among the South Puget Sound tribes and bands present at the Medicine Creek Treaty negotiations, where the United States sought cession of all the lands, excluding the Reservations, in the lower Puget Sound Basin.⁵ Representatives from Squaxin Island's aboriginal bands signed the treaty of Medicine Creek in December of 1854, along with aboriginal groups

3. *Washington*, 384 F. Supp. at 377–78; see also *United States v. Washington*, 626 F. Supp. 1405, 1441 (W.D. Wash. 1985).

4. AM. FRIENDS SERV. COMM., UNCOMMON CONTROVERSY: FISHING RIGHTS OF THE MUCKLESHOOT, PUYALLUP AND NISQUALLY INDIANS 3 (1970).

5. *Washington*, 384 F. Supp. at 377.

now making up the Nisqually,⁶ Puyallup,⁷ and Muckleshoot⁸ tribal groups. My grandfather, the baby being held here by my great-grandmother, knew many of the sons and daughters of the treaty signers.



[Courtesy of the Whitener Family]

6. *Id.* at 367.

7. *Id.* at 370.

8. *Id.* at 366.

He would tell me of United States representatives' promises to protect the fishing rights secured by the treaty. He told me that the United States negotiators told the Indians that these treaties would only be broken "when the sun rises in the West, sets in the East and the waters run uphill." This promise in all of the ratified Washington State Indian treaties was not kept, and the Medicine Creek Treaty immediately became a source of conflict between the tribes and the United States.

The United States forced a very fast negotiation of the treaty which was conducted in Chinook Jargon, a trade language of about 500 words.⁹ As Professor Charles Wilkinson described it:

[T]he Chinook Jargon was a rudimentary device for trade, a patchwork of English, French, and various tribal languages. How could it possibly speak to sovereignty, land ownership, fishing rights, assimilation, freedom, or the futures of societies?¹⁰

The Nisqually Tribe was very upset that the United States wanted to place their reservation far from the Nisqually River.¹¹ The river was and continues to be the blood of the Nisqually Tribe. This decision, along with other perceived breaches of treaty promises, sparked the Indian War of 1855.¹² Leschi, one of the Nisqually treaty signers, led the war.¹³ The Indians of South Puget Sound who did not head for the hills were interned by the United States on Squaxin Island and Fox Island.¹⁴ My great-uncles would tell me stories of the lack of fresh water and of the brave young men who swam to the mainland to bring back supplies, risking being killed on sight by settlers or the cavalry. My uncles would tell me about the Cavalry's periodic delivery of coffins to Squaxin Island. Through the lack of water and abundance of disease, scores of Squaxin, Puyallup, Nisqually and other Indians died during this internment. Today, Squaxin Island is kept preserved by the Tribe, largely out of respect for the several cemeteries dotting it.

9. CHARLES WILKINSON, MESSAGES FROM FRANK'S LANDING: A STORY OF SALMON, TREATIES AND THE INDIAN WAY 11 (2000).

10. *Id.*

11. *Id.* at 12-14.

12. CECILIA SVINTH CARPENTER, FORT NISQUALLY: A DOCUMENTED HISTORY OF INDIAN AND BRITISH INTERACTION 176-77 (1986).

13. EZRA MEEKER, PIONEER REMINISCENCES 172 (1905).

14. *See* CARPENTER, *supra* note 12, at 176.

Following the end of the war, there actually existed a period of relative peace in Southern Puget Sound. The Indians created an economy selling salmon, shellfish and other resources to the white settlers and to the Hudson's Bay Company at Fort Nisqually. A Bureau of Indian Affairs document from around 1870 described the Squaxins thusly: "The [S]quaxins, number 150, are on a reservation of the same name near Puget Sound, where no efforts at civilization have been put forth. They labor for settlers, hunt, fish, do a little farming, and live in comparative comfort in a semi-savage way."¹⁵ That's still a good description of us.

After the invention of the canning process, things changed in the Northwest. Large-scale fishing operations opened up, utilizing methods so effective that salmon runs once thought to be inextinguishable were decimated in a short time.¹⁶

Likewise, shellfishing operations began to squeeze out Indian harvesters. In the early 1900s, the United States sued the State of Washington to keep them from selling the tidelands of the Squaxin Island Reservation to non-Indian shellfishing interests.¹⁷

As the State of Washington's non-Indian salmon and shellfishing industries flourished, the Indian harvest was curtailed.¹⁸ Most of the tribes' traditional fishing and shellfishing areas were taken over and the Indians excluded. My grandfather's description of this time is bleak. Tribal families who had relied on salmon and shellfish lost their access to resources that were both their subsistence and their means of acquiring money. Tribal members were forced to enter non-Indian industries where they were not always welcome.

The loss of traditional ways, through assimilation and the denial of salmon and shellfish, created hopelessness on the Reservations never seen before. The mortality rate for Indians from alcoholism, suicide, and violence was and continues to be the highest among all United States

15. EDWARD P. SMITH, OFFICE OF THE COMM'R OF INDIAN AFFAIRS, *Information with Historical and Statistical Statements Relative to the Different Tribes*, in ANNUAL REPORT OF THE COMM'R OF INDIAN AFFAIRS TO THE SEC'Y OF THE INTERIOR, FOR THE YEAR 1875, at 95 (1875), available at <http://content.lib.washington.edu/cgi-bin/docviewer.exe?CISOROOT=/lctext&CISOPTR=1554>.

16. JOSEPH C. DUPRIS, KATHLEEN S. HILL & WILLIAM H. RODGERS, JR., *THE SI'LAILO WAY: INDIANS, SALMON & LAW ON THE COLUMBIA RIVER* 13 (2006).

17. *United States v. O'Brien*, 170 F. 508 (W.D. Wash. 1904).

18. *See United States v. Washington*, 873 F. Supp. 1422 (W.D. Wash. 1994) (the "Shellfish Decision").

racism.¹⁹ This environment was unlivable, and Indians began to fight back.

Everyone has heard of the organized “fish war” protests of the 1960s. What is not often discussed was the silent war between Indians and the State that went on for decades prior. Tribal members like my grandfather, my great-uncles and my father—labeled poachers by the State—played a cat and mouse game with the “fish cops” during every salmon season. Indians became the masters of midnight fishing. My grandfather and other relatives would tell me of all the ways to set a “sink net”—a gillnet weighed down to submerge a few feet under the surface so as to evade detection. These methods were so effective that my relatives would fish undetected under the Highway 101 bridge that crosses Kennedy Creek. My grandmother told one of my favorite stories about my grandfather and his cousin Jimmy Krise running through the front door of the house in full rain gear, muttering “fish cop” to my grandmother who was knitting, and then running out the back door. Minutes later, the local fish cop came through the front door, didn’t even look at my grandmother, who didn’t even look up from her knitting, and also ran out the back door.

When protest, tribal pressure, and advocacy by Bill Rodgers and others, convinced the United States to sue the State of Washington,²⁰ the tribes rallied around the effort. Finally, an impartial judge would review past actions. When Judge George Boldt issued the ruling (the *Boldt* Decision), the tribes rejoiced. Squaxin Island’s archive holds the letter our chair received personally from Judge Boldt, thanking the Tribe for its witnesses who greatly helped his decision-making process.

So what were the effects of the *Boldt* Decision? We know about the non-Indian protests.²¹ I started elementary school the same year that the *Boldt* Decision was issued. My entire experience in school is colored by incidents of discrimination based on bad feelings over it. I learned how to take and give a punch. I endured teachers allowing students to give presentations on the *Boldt* Decision in classes named “Current American Problems” and then singling me out to respond.

19. DEP’T OF HEALTH AND HUMAN SERVS., TRENDS IN INDIAN HEALTH (1999).

20. Resulting in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974) (the *Boldt* Decision).

21. *The Boldt Decision at 25 Years: The Fish Tale that Changed History*, THE SEATTLE TIMES, Feb. 7, 1999, at A1.

But I guarantee you that any Northwest Indian like me, who endured this and worse, didn't care when we were out on the water and that big Chinook buck hit the gillnet, or the Coho jumped inside of our set beach seine. In that moment we are tied to thousands of years of our history and all else is forgotten and forgiven.



[Courtesy of the Northwest Indian Fisheries Commission]

Tribal members with no direction in life became businessmen. They learned how to rig their boats, buy their gear and find the fish. They learned how to open markets and create small businesses buying fish from other treaty harvesters and selling them to wholesalers. Tribes, previously unable to access any significant tax revenues, could now tax the earnings of the tribal fishermen. This gave tribes unrestricted funds to begin working on priorities that the United States had little interest in funding, such as cultural protection, land acquisition, and enterprise diversification. Today we see many of these tribal enterprises flourishing and diversifying tribal economies.

The sub-proceedings filed annually under the continuing jurisdiction of *Washington* allow the tribal intervenors and the State to address issues

beyond the original trial. The Shellfish Decision²² opened new commercial avenues for both inter-tidal and sub-tidal shellfish resources. The intervening tribes and the State of Washington use the continuing jurisdiction of the case as a forum to settle disputes such as fishery resource harvest, extent of treaty usual and accustomed grounds and stations, and conservation of the salmon and shellfish resources.

More importantly, tribal ceremonies began to revitalize. At Squaxin Island, celebrations left unpracticed for decades prior to *Boldt*, like the S'gwiwi and the First Salmon Ceremony, were revitalized and are rallying points for both Indians and non-Indians.

Today many people say it is gaming that is revitalizing Indian communities, providing funding for tribal initiatives such as language reclamation, tribal health improvement and education. Here in the Northwest, I believe that revitalization started much earlier. It started when Bill Rodgers and his cohorts helped convince the United States to file that short complaint and then took the main oar in proving the case. Speaking for myself, my family and my tribe, thanks Bill!

22. *United States v. Washington*, 873 F. Supp. 1422 (W.D. Wash. 1994).