

**THE ORIGINAL MEANING AND INTENT
OF THE MAINE INDIAN LAND CLAIMS:
PENOBSCOT PERSPECTIVES**

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B.A. University of Maine, 2001

A THESIS

Submitted in Partial Fulfillment of the

Requirements for the Degree of

Master of Arts

(in History)

The Graduate School

University of Maine

May 2012

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The Maine Indian Claims Settlement Act of 1980 brought to a close a tumultuous decade in which the Penobscot and Passamaquoddy Indians sued the State of Maine for illegal sale and transfer of their aboriginal land. The parties to the suit eventually negotiated an out-of-court settlement to resolve the land issue. While the settlement was originally framed as a watershed victory for the Penobscot and Passamaquoddy, the tribes soon found that the written document did not accurately represent their understanding of the negotiated settlement. Since 1980 numerous misunderstandings have occurred as a result of differing interpretations of the document resulting in timely and costly litigation. The basis of this study stemmed from a concept called “originalism.” This concept states that in order to derive an accurate understanding of a written historical document, it is first necessary to understand the historical context in which that document was created.

This research examines the historical context in which the Maine Indian Claims Settlement Act was framed providing insight into socio-economic conditions and circumstances of the tribes prior to bringing suit, the historical relationship between the tribes and the State of Maine, and the enormous pressure exerted on both sides to reach an agreement. Finally, this research focuses specifically on one of the most contentious areas of the settlement document referred to as the “municipality clause” as one example

of misinterpretations within the document. Despite the unforeseen circumstances that have resulted from misinterpretations of the settlement act, the settlement still provided a much needed shift in the tribes' circumstances, moving them away from poverty and dependency and into modernity.

ACKNOWLEDGEMENTS

The most valuable aspect of this scholarly work for me has been the cultivation of relationships along the way. I would like to thank members of the Penobscot tribal negotiating committee, Andrew Akins, James Sappier, and Tim Love, who provided me with interviews and supplemental information for this research. Without their participation, the intended outcome would have been impossible.

Thank you to members of Penobscot Nation tribal administration who facilitated my research in various ways; to the Wabanaki Center at the University of Maine for their encouragement and overall interest in the advancement of indigenous scholarship by and about the Wabanaki people; to my graduate committee members, Jacques Ferland, Maureen Smith, and Richard Judd for their time and patience; to my children for their continual support and patience during my academic journey, and to my Grandmother in the spirit world, Eva Bisulca, whose life demonstrated the importance of family, community, and advocacy.

Finally, I must acknowledge all of the courageous ancestors and relations who have contributed to history and who have demonstrated their tenacity and dedication to Penobscot existence. Netelnapem'nawak (All my relations).

DEDICATION

Dedicated to the Penobscot Tribal Chief and Council of 1972: Governor Francis “Bunny” Ranco, Lieutenant Governor Frank Loring, Eva Bisulca (my grandmother), Rita Dana, Harry Francis, Daniel Mitchell, Francis Mitchell, Frederick Nicola, Wilfred Pehrson, Beatrice Phillips, Irving Ranco, John Sapiel, Nicholas Sapiel, Lionel Taylor.

CHAPTER ONE

INTRODUCTION

During the 1960's and 1970's, in Maine and throughout the nation, numerous social and political ingredients combined that allowed unprecedented victories to manifest themselves. The Maine Indian Claims Settlement¹ serves as an example of one such victory. Both the claims and the settlement were unlike anything that had ever happened in Indian country before. A 1980 article in *The Christian Science Monitor* reported on the "ground-breaking legal pact" as the "Biggest Indian Victory since the Little Big Horn".² With this level of notoriety the Penobscot and Passamaquoddy tribes, two small, impoverished Indian tribes inconspicuously tucked away on reservations in Maine, became household words across the country.

The two tribes had a combined census of 1,125³ when they emerged from relative obscurity and demanded restitution and justice for lands that they alleged were stolen or illegally transferred by or to the State of Maine government beginning in the early eighteenth century. The Penobscot and Passamaquoddy tribes sought the return of a substantial land base in addition to financial compensation for their inability to sustain themselves from their lands for nearly two centuries. They also wanted their newly-

¹ The Maine Indian Claims Settlement Act of 1980 has two separate components: the federal law is Title 25:Chapter 19 Subchapter 2 Sections 1721-1735; and the Maine law is Title 30:Chapter 601 "An Act to Implement the Maine Indian Claims Settlement". This is commonly referred to as the Maine Implementing Act. Prior to settlement the claim was referred to as the Maine Indian land claims. The first potential for loss of original meaning and intent was the omission of the word "land" in the titles of the laws.

² "Biggest Indian Victory Since the Little Big Horn", *The Christian Science Monitor*, April 17, 1980.

³ Penobscot Indian Tribal Census, Indian Island, ME, 1970; Passamaquoddy Tribal Census, Pleasant Point, ME, 1970.

designated status as federally-recognized Indians to be confirmed through the land claims. These demands were made during an era in which the Penobscot and Passamaquoddy lived in abject poverty, were viewed as wards of state government, and existed in an unwanted, paternalistic relationship with the State of Maine government.

Undoubtedly, it was due to this existing power dynamic that little attention was paid to, and little concern was shown for the Indians' demands in the early days of the land claims. But as the tribes' legal team continued to successfully jump unprecedented legal hurdles and federal opinion swayed in favor of the Indians, the mood in Maine changed from indifference to shock, anger, and fear. Fear was perpetuated by newspapers, and Maine citizens used the newspapers to warn one another about the seriousness of the land claims through editorials, opinion pieces, and letters to editors. The newspapers also provided a place for hostilities toward the Indians to be unleashed.

While the Maine Indian Claims Settlement Act of 1980 was initially framed as victorious, the tribes soon discovered that their interpretation of the legal pact differed from the state government's interpretation. Following a tense decade in which Mainers feared for their property, tribal citizens suffered overt racial tensions throughout the state and severe factionalism within their own communities. After countless hours were spent in negotiations between the tribes, the State of Maine, and the White House, the tribes disappointedly found that the written word did not accurately reflect their original meaning and intent in settling the land claims. Additionally troubling to the tribes was the fact that decisions about how the language of the act was to be interpreted were being left up to Maine courts to determine. Numerous cases requiring litigation and stemming from the Maine Indian Claims Settlement Act soon emerged.

For different reasons both the State of Maine negotiators and tribal negotiators rushed to settle the case out of court and both sides acknowledged that the settlement act contained ambiguities. State negotiators rushed in order to eliminate the economic and social chaos that the lawsuit was creating throughout the state. The tribes rushed because they were pressured by their advisors to have a signature-ready document for President Jimmy Carter to sign before his term as president ended. Polls during the 1980 presidential campaign favored Republican Ronald Reagan to win. The tribes knew that Reagan planned to veto the land claims legislation if given the chance and if that were allowed to happen their decade-long pursuit for tribal justice and restitution would have been in vain.⁴

Additionally, in 1977 the tribes were further pressed by the possibility of “congressional extinguishment of the legal rights of Indians in Maine if they did not acquiesce” to the proposal recommended by retired, former Georgia Justice William B. Gunter, whom President Jimmy Carter had assigned to examine the problems created by the land claims.⁵ In their haste, both parties to the suit acknowledged that the settlement contained ambiguities but agreed that a component to deal with these ambiguities would be incorporated into the law. This was the original impetus for the creation of the Maine Indian Tribal State Commission (MITSC).

This research provides a basic chronology and explores the original meaning and intent of the Maine Indian land claims from Penobscot perspectives. Primary resources

⁴ Personal interviews with Andrew Akins, Penobscot negotiator, January 2008; James Sappier, Penobscot negotiator, April 2008; and Tim Love, former Governor of Penobscot Nation and Penobscot negotiator, June 2008.

⁵ “An Explanation of Penobscot and Passamaquoddy Tribal Land Claims”, *The Wabanaki Alliance*, October 1977.

utilized in this research include Penobscot tribal census data, tribal council meeting minutes, and personal interviews with three Penobscot negotiators who worked during the late 1970's negotiating the settlement for their tribe: James Sappier, Andrew Akins, and Timothy Love. The *Maine Indian Newsletter* published from 1966 through 1975 and self-described as "Maine's only state-wide Indian news media"⁶ illustrated the types of issues Indians in Maine faced during the late nineteen-sixties and early nineteen-seventies. Maine author Neil Rolde described the *Maine Indian Newsletter* as "...a treasure trove to the historian of the attitudinal changes then in ferment."⁷ Another valuable primary resource was *The Wabanaki Alliance* newspaper. This newspaper provided information on the land claims from tribal perspectives, something seldom represented in the mainstream media of the era.

A review of secondary sources for the Maine Indian land claims revealed numerous articles and copious legal documents. Some publications recounted the land claims history focusing on legal strategies, political maneuvering, and implications and consequences of the act post-1980. One such book, *Unsettled Past, Unsettled Future: The Story of Maine Indians* by Neil Rolde, offers a detailed overview of tribal-state history leading up to the Maine Indian Claims Settlement Act, and of the legal, social, and political battles that shadowed the tribes during the negotiations and since the settlement. Rolde's perspective is that of a former legislator immersed in and familiar with state political process. Rolde worked closely with the Penobscot and

⁶ *Maine Indian Newsletter*, 1966-1975.

⁷ Rolde, Neil, *Unsettled Past, Unsettled Future: The Story of Maine Indians*, Tilbury House Publishers, Gardiner, Maine, 2004, p 292.

Passamaquoddy tribal communities in researching the book. He further relied on contributions from colleagues from his legislative career.

By examining the socio-political atmosphere from which the tribes were escaping (and into which they found themselves immersed), this research builds on a key factor in the negotiations. Omni-present in the minds of the Penobscot negotiators was the fear of termination. At every turn they were forced to wonder how far they could push before they had pushed too far. The focus on what was happening socially and politically helps to create an historical context necessary to understanding original meaning and intent of the Maine Indian land claims.

Legal maneuvers, frenetic political activity, and compromise are succinctly detailed in *Blood Struggles* by Charles Wilkinson. *Blood Struggles* highlights the major hurdles of the land claims era and widespread land claims histories are presented as one native challenge in an era of many. “By the late 1960’s and 1970’s, Native people across the country were seeing hope for the fulfillment of the treaties, for self-determination broadly writ. They longed for the right to make their own decisions and their own mistakes.”⁸ Wilkinson’s research provided ample background in federal Indian policy regarding termination and contributed to the framework for historical context in which the Maine Indian Claims Settlement Act was born, negotiated, and settled.

The importance of capturing historical context particularly through oral testimony is the basis of *The True Spirit and Original Intent of Treaty 7*. Utilizing testimony of eighty Elders, this book provided an historical overview of one of several numbered treaties signed between the Canadian First Nations and the British Crown between 1871

⁸ Wilkinson, Charles, *Blood Struggles: The Rise of Modern Indian Nations*, W.W. Norton & Company, New York, NY, 2005, p. 177.

and 1921. All eighty Elders who provided testimony maintained that their version of the making of Treaty 7 differed significantly from the account constructed by government officials. Elders' stories handed down from generation to generation identified a breakdown in the spirit and intent of Treaty 7. Similarly, those involved in the negotiations of the Maine Indian Claims Settlement Act assert that the Act does not represent the tribes' original meaning and intent.

The Blackfeet Elders who collaborated on the creation of *The True Spirit and Original Intent of Treaty 7* claimed that their coming forth with stories did not serve a political or legal agenda, but facilitated passing on their history from one generation to the next. Aligning with those traditional values placed on face-to-face communication and transmission of knowledge from generation to generation, capturing oral testimony and utilizing Elder recollections are important to creating history from a native perspective. All the Elders agreed that “there is a fundamental problem with the written treaty because it does not represent the ‘spirit and intent’ of the agreement that was reached at Blackfoot Crossing in September 1877” and they wanted their tribal descendents to know the real story.⁹ In the case of Blackfoot Crossing the Elders believed that the agreement was a peace treaty, not a land surrender, and that they were agreeing to share their land with the newcomers in exchange for educational and medical assistance.

The problem of meaning becoming lost in written documents occurs in other historical sources besides treaties. The United States Constitution is one such document and, in Jack N. Rakove's *Original Meanings: Politics and Ideas in the Making of the*

⁹ Hilderbrandt et al, *The True Spirit and Original Intent of Treaty 7*, McGill-Queen's University Press, Montreal and Kingston, 1996, p. viii.

Constitution, Rakove argues that the original meaning of the United States Constitution can only be determined by attempting to recover the intentions of its framers. Rakove states that the recurring question in legal and political controversies surrounding the Constitution is: what authority should its original meaning/original intention/original understanding enjoy in its ongoing interpretation?¹⁰

Rakove introduces his concept of “originalism” – a theory regarding original meaning and intent that when applied to the Constitution argues that the meaning of the Constitution was “fixed at the moment of its adoption”¹¹ and that in order to accurately interpret the written document that is the Constitution, one must have an intimate knowledge of what the framers were thinking, feeling, and experiencing at the time that they created it.

Critics of originalism theory argue that even if it were possible to arrive at a satisfactory meaning to apply to the Constitution, doing so would “convert the Constitution into a brittle shell incapable of adaptation to all the changes that distinguish the present from the past.”¹² Rakove suggests that encapsulating meaning too rigidly disallows for adaptation. Similarly, Penobscot and Passamaquoddy tribal leaders have long stated that misunderstandings that occur with the Maine Indian Claims Settlement Act and its companion legislation and state counterpart, the Maine Implementing Act (MIA), are a result of both ambiguities in the act as well as narrow interpretations of the act by state government and state courts. Tribal negotiators understood the Maine

¹⁰ Rakove, Jack N., *Original Meanings: Politics and Ideas in the Making of the Constitution*, Vintage Books, New York, NY, 1996, p. xiii.

¹¹ Ibid.

¹² Ibid.

Implementing Act to be a document that was intended to be fluid and changeable and not intended to be a final product etched in stone.¹³

Negotiation decisions reached and recorded in the Maine Implementing Act were reached following a decade of economic, social, and racial turmoil. Therefore, it is likely that an examination of the Maine Indian Claims Settlement Act utilizing Rakove's originalism theory to focus on what framers were thinking, feeling, and experiencing when they created the Maine Implementing Act might reveal that good faith was absent in the negotiation of the Maine Implementing Act and that true intentions were not forthcoming.

This research focuses primarily on the formative years of the Penobscot-Passamaquoddy land claims, capturing first hand stories from key Penobscot negotiators in the land claims settlement. The importance of conducting this historical work is urgent due to the number of years that have passed since the formative years of the land claims (1960-1979) and since the settlement was reached in 1980. Some key players in the land claims history have passed away and with each passing the Penobscot and Passamaquoddy lose opportunities to learn this history through first hand accounts. In interviews conducted for this research certain members of the Penobscot tribal negotiating team were asked to share what their concerns and hopes were for the land claims. They also revealed what the reservation atmosphere was like in the decade preceding and during the land claims, and what they considered the original meaning and intent of the land claims to be.

¹³ Personal interviews with Andrews Akins, Penobscot negotiator, January 2008; James Sappier, Penobscot negotiator, April 2008; and Tim Love, former Governor of Penobscot Nation and Penobscot negotiator, June 2008.

Historical context and institutional memory surrounding the Maine Indian Claims Settlement are recorded within this research. Like the Blackfoot Elders of Treaty 7, the Penobscot negotiators also wished to share their stories with future generations in hopes that their truth would prevail should an opportunity to readdress the MICSA ever arise. This research strives to be an accurate record reflecting the original meaning and intentions of the Penobscot framers of the negotiated settlement.

This research is a contribution to Maine Indian claims settlement scholarship, outlining certain conditions and factors in hopes of stimulating continued analysis. One area of scholarship which has emerged is the interest in whether or not the settlement may have been coerced or agreed upon under extreme duress.¹⁴ There is ample room for scholarship within the topic of the Maine Indian land claims. Interestingly, although the settlement negotiations spun throughout the decade of the 1970's little remains known about the Maine Indian Claims Settlement whose birth ignited racial tensions, wreaked economic chaos, and whose ripple effects continue to rock the boat of tribal-state relations today.

¹⁴ Brooks, Laura, "Behind the Scenes of the Maine Indian Claims Settlement," in Native American Political Issues, www.oocities.org/capitolhill/9118/history5, accessed 1/16/12.

CHAPTER TWO

RESERVATION ATMOSPHERE PRECEDING THE LAND CLAIMS

The decade preceding the Penobscot and Passamaquoddy claim to sixty percent of the state of Maine was as radical as the claim itself. Throughout the 1960's struggles against racism, sexism, classism, and environmental degradation were commonplace and Native Americans were no exception to the marginalized groups finding their voices. The American Indian Movement, for example, bred the concept of Red Power which empowered Indians across America to unite, be proud, and be heard.

During the 1960's the population on the Penobscot and Passamaquoddy reservations was small. In 1968, the Penobscot tribal committee reported 815 people on their annual tribal census list. Only a small portion of this number actually resided on Indian Island, a 315-acre island located north of Old Town, Maine. The Penobscot tribe also maintained an inactive list of persons in their census recordkeeping. An inactive person was someone who had not reported in person to the tribal clerk for over one year. The process of reporting in person indicated that the tribe expected its citizens to maintain close relations with the tribal community by appearing to report at least once a year in person.¹

Census rolls for Sipayik, one of two Passamaquoddy tribal communities, were similar to Penobscot rolls. In 1968, Sipayik had 339 citizens on the census list; 339 citizens (plus 475 on an inactive list) were reported in 1969; and in 1970 and 1971, 330 citizens were reported on the tribal census list. Like Indian Island, Sipayik and Indian

¹ Penobscot Indian Tribal Census, Penobscot Nation, 1968.

Township saw significant increases in tribal citizenship in the mid-seventies as news spread about the tribes' claims to millions of acres of land and millions of dollars in restitution. By 1975, Sipayik had 1,116 citizens, 1,145 in 1976, 1,171 in 1977, and 1,269 citizens in 1978.²

On Indian Island, Penobscot citizenship increased to 1,050 by 1976. This included 174 new citizens and 144 people who were re-instated from the inactive list. Subsequent census rolls showed more increases in 1978 to 1,351 citizens, and in 1979 to 1,418 citizens.³ The rapid growth in census due to the influx of new citizenship was undoubtedly an extraordinary social situation with which the two small tribal communities had to contend. Prior to the 1970's, the tribes experienced an exodus of their citizens rather than an influx as many citizens left the reservations to pursue economic opportunities for advancement elsewhere.

There were many social and economic issues at the forefront of Penobscot and Passamaquoddy attention during the late nineteen-sixties and early nineteen-seventies. The *Maine Indian Newsletter* published from 1965 to 1975 illustrated the types of issues Maine Indians faced during this time directly preceding the challenge for ownership to Maine lands. In addition to resentment for broken treaties and lost lands, the *Maine Indian Newsletter* described an atmosphere where focus on poverty was paramount. In its pages the newsletter described how politicians at both the state and federal levels recognized and acknowledged substandard living conditions on the reservations. For example, in 1966, Governor-elect Kenneth Curtis acknowledged the tribes' needs during

² Pleasant Point Census lists, Sipayik, 1968-1978.

³ Penobscot Indian tribal census, 1976, 1978, and 1979.

his campaign speeches. Curtis “called for improved education, housing, and economic conditions for the Maine Indians.”⁴ Likewise, United States Senator George McGovern (D-SD) recognized Indian poverty and introduced a resolution to Senate calling upon Congress to articulate a new state of National Indian Policy. He called for a “renewed effort to break the chronic grip of poverty on Indian people.”⁵

Curbing poverty was a major focus during the sixties and seasoned politicians mindfully remembered to mention the plight of the Indians. However, speaking in generalities and offering no solutions, there remained no concrete vision for eliminating the problem. In addition to Governor Curtis and Senator McGovern, another politician addressing Indian issues was Hubert H. Humphrey, Vice President of the United States. In a 1966 speech entitled “A New Day for the American Indian,” Humphrey addressed the issue of Indian myths and romanticism, and the disservice that these fabrications created for tribal people. Humphrey stated that there is “nothing colorful about poverty, racial discrimination, and lack of preparedness for change that makes a minority fear and mistrust the inevitable progression of the human race from one phase of cultural and social accomplishment to the next.”⁶

The tribes and the governments regarded poverty differently. Outsiders to the reservations judged the ways Indian people lived and recommended solutions or offered suggestions without any consultation with the tribes. These judgments and recommendations often gave little consideration to root causes that placed Indians in

⁴ “Governor Elect Curtis Aware of Indian Needs,” *Maine Indian Newsletter*, vol.1, no. 4, November 1966.

⁵ “McGovern Asks Statement of National Indian Policy,” *Maine Indian Newsletter*, vol. 1, no. 5, December 1966.

⁶ Humphrey, Hubert H., “A New Day for the American Indian,” reprinted in *Maine Indian Newsletter*, vol.1, no. 6, January 1967.

these circumstances to begin with. The Penobscot and Passamaquoddy Indians were looking for ways to help themselves. The characterization played out in reform rhetoric of the era about poor, fearful, and incapable Indians appeared contrary to images set forth by Penobscot and Passamaquoddy people of their own existence. They knew the root causes for their circumstances because they knew their history. Penobscot Francis “Bunny” Ranco said that he first became aware of how Penobscot had lost their land from Elders. “The elders talked about it all the time. My father’s father Peter Ranco told me about it when he first took me muskrat trapping before the First World War.” Ranco said that history was handed down from generation to generation and that it was fairly common knowledge even amongst children of the tribe.⁷

In addition to being well aware of their historical past, tribal citizens also had ideas on what would help them out of their circumstances. They were not interested in perpetuating the image of Indians as helpless wards of the state which was an image which coveted them since the beginning of Maine statehood in 1820.

As an indicator for tribal life, the *Maine Indian Newsletter* reported on policies, politicians, and poverty, but tribal people were not so distracted with these issues that they failed to focus on the many positives they found in their lives. For example, in December 1966 it was reported that Sipayik threw a reception that was worthy of print in the *Bangor Daily News* for a veteran of three wars, Sabatis Mitchell. The news article read that: “Fourteen years before he was given the right to vote in a national election and less than two years after the Japanese attack on Pearl Harbor, Sabatis Mitchell, a proud

⁷ Brodeur, Paul, *Restitution: The Land Claims of the Mashpee, Passamaquoddy, and Penobscot Indians of New England*, Northeastern University Press, Boston, MA, 1985, p. 134.

American Indian was serving in the US Navy.” His retirement party recognized 20 years of active military service in Vietnam, the Korean conflict, and World War II.⁸

Likewise, the Penobscot tribe produced many decorated servicemen that fought in American wars. One such serviceman was Charles Norman Shay, a World War II veteran who was inducted into France’s National Order of the Legion of Honour in November 2007 for his heroic contributions as a 19-year old medic on Omaha Beach. In June 6, 1944, “...the risks he [Charles Norman Shay] took to save other soldiers on Omaha, scene of the bloodiest showdown of D-Day, would earn him a Silver Star for valor from the Army. Decades later, the president of France would bestow on him the country’s highest civil and military honor.”⁹

Indian accomplishments were recognized in the *Maine Indian Newsletter* such as the successful tourism efforts of the Passamaquoddy at Long Lake Campground. Not only was Long Lake Campground a good means of income for the tribe, but it extended tourism efforts to individual tribal citizens through the marketing and sale of tribal products.¹⁰ The Penobscot similarly developed tourism in their small island community. Indian Island resident “Chief” Bruce Poolaw was a Kiowa Indian who, together with his Penobscot wife, Lucy (Nicolar), developed a successful tourism niche on Indian Island. They erected a teepee at the entrance to the reservation to house a craft store, and enlisted several tribal dancers to form a dance troupe to entertain tourists. The Poolaws mastered the art of catering to tourists’ stereotypical expectations of what one could expect to see

⁸ “Full Indian Reception Given Three-War Vet,” *Maine Indian Newsletter*, vol. 1, no. 5, December 1966.

⁹ “Bravery at Omaha Beach,” *Portland Press Herald*, November 11, 2007.

¹⁰ “Long Lake Campground Provides Enjoyment for 340 Campers,” *Maine Indian Newsletter*, vol. 1, no. 5, December 1966.

on an Indian reservation – a teepee, dances, crafts, and a war-bonneted chief. Poolaw’s designation as chief was also a creative marketing tool as he was not a chief nor was he Penobscot.

The Poolaws and the dance troupe were an economic boom to the reservation. Their creativity brought tourists and income to the reservation through organized annual pageants that became an Indian Island tradition. The Poolaws were also instrumental in getting the first one-lane bridge erected in 1957. The bridge served a dual purpose of providing safe transportation back and forth to Old Town for tribal citizens, and an easier all-season method of transportation for tourists to visit Indian Island.¹¹

The efforts and accomplishments highlighted in the *Maine Indian Newsletter* were incongruent with the picture of destitution painted by outsiders looking into the reservation life. Graduation of tribal citizens from the University of Maine, recognition of athletic excellence, and career successes were other positives highlighted by the newsletter. The University of Maine offered tuition scholarships to Maine Indians beginning in 1934 and produced several distinguished graduates including Dr. Eunice Nelson Baumann, the first Penobscot woman to obtain an advanced degree from the University of Maine in 1939.¹²

The tribal communities certainly lacked the conveniences of most communities, homes, and families during the decade preceding the Maine Indian land claims, but there were cultural values in place that ensured support and comfort to one another. When a family suffered from particularly difficult financial times, “collections” were taken up to

¹¹ McBride, Bunny. *Princess Watahwaso: Bright Star of the Penobscot*, Charles Norman Shay, Old Town, ME, 2002, p. 32.

¹² “Indian Island Native Has Exciting Career,” *Maine Indian Newsletter*, vol. 3, no. 1, January 1968.

support them through the lean times. People walked door-to-door with boxes collecting food or wood for the family in need. Hunting game was done in a traditional, communal manner. Parties of men hunted together then split the bounty among all who participated. The bounty was further shared among their extended families.

An Elder's oral history project conducted in 2008 by the Penobscot Nation's Cultural and Historic Preservation Department asked tribal Elders to recall a fond memory about growing up on Indian Island. The majority of Elders interviewed recalled the simplicity of life and how people looked out for one another. During the years leading up to the Maine Indian land claims, Penobscot and Passamaquoddy people were financially and opportunistically poor but they were resilient, capable, and possessed communal values that helped them to take care of each other despite the oppression bearing down on them from outside the reservation community. They found themselves with many opportunities to help one another through lean times during the century and a half leading up to the Maine Indian land claims.

As tribal governing bodies, the Penobscot and Passamaquoddy were well informed in state and national governmental trends and affairs. During an era experiencing radical change, the tribes found themselves living in oppressive circumstances and many believed that the root causes of their poverty stemmed directly from their relationship with the State of Maine. Some suspected that the unofficial policy of the state government might be to make the reservation as poor as possible, so that everyone would move away and assimilate into white society. For numerous decades the tribes found themselves in a hopeless situation as wards of the State of Maine. During the 1960's, they listened to the speeches of politicians and undoubtedly wondered

whether anything would become of those orations or would they simply remain empty words.

The Penobscot and Passamaquoddy kept an attentive eye on politics in Augusta, and in December 1966 the tribes had a vested interest in the State of Maine budget. Only two years prior, the 102nd Maine Legislature created the newly formed Department of Indian Affairs, the first of its kind in the nation. Described as a “unique social experiment,” the tribes watched anxiously as its budget dwindled. Governor Kenneth Curtis during campaign speeches of the previous year called for improved economic, educational, and housing conditions for the Indians, but the proposed budget for the Department of Indian Affairs was inconsistent with his words.¹³

Edward C. Hinckley, then commissioner of Indian Affairs for the department, described the budget situation set forth by Governor Curtis as a “complete turnabout in the State’s approach to Indian affairs.”¹⁴ Tribal citizens did not sit idly and await their fate. They organized to address the Legislative Appropriations Committee in Augusta on March 19, 1967. Hinckley described the hearing as well organized and well attended. “All three Tribal Governors had come down, as well as two or three Council members from each Reservation. About 50 people attended the hearing. Eugenia Thompson testified as did a Passamaquoddy girl who’s doing post-graduate work in Brunswick. Gellers made a polite and mercifully short, favorable pitch.”¹⁵ Attorney Don Gellers of

¹³ “Governor Elect Curtis Aware of Indian Needs,” *Maine Indian Newsletter*, vol.1, no. 4, November 1966.

¹⁴ “Maine Commissioner Says Indians Face Scalping Under Curtis Budget,” *Maine Indian Newsletter*, vol.1, no. 6, January 1967.

¹⁵ Hinckley, Edward C., *A Unique Challenge: Letters Home From Maine’s First Commissioner of Indian Affairs 1965-1969*, p. 94.

Eastport later became instrumental in the foundational stages of the Maine Indian land claims.

The legislative session provided tribal citizens with the opportunity to address the Legislative Appropriations Committee. They shared concerns about the insufficient budget and about their inability to get a boost out of their current socioeconomic situations. They expressed to the committee some of their greatest needs. The tribes realized that the proposed annual budget in the amount of \$46,470 for the Department of Indian Affairs was grossly insufficient. With this amount of funding the Department of Indian Affairs had to pay four salaries for the Commissioner of Indian Affairs, two Indian agents at each of the two reservations, and a secretary. Further budget expenditures included office equipment, telephone, and travel expenses. After exhausting the bulk of the budget on paying themselves and their expenses, little was left for the tribes to create programs that they believed would begin to lift them out of their substandard living situations. The tribes were interested in establishing tribal positions such as a housing officer, social worker, account clerk, and an economic and human development officer.¹⁶

Testimonies offered to the appropriations committee revealed a picture of people ready and willing to help themselves, but in desperate need of seed money to start their programs. The reason they appealed to the Maine government regarding their circumstance was because the state of Maine government had been controlling their money since the start of statehood. Since the early 1800's, the State of Maine held in state coffers any and all money that was acquired through land sales and transactions which were conducted by Maine officials presumably on behalf of the tribes. The tribes

¹⁶ "Penobscots Deplore Proposed Indian Affairs Budget Cut," *Maine Indian Newsletter*, vol.1, No. 8, March 1967.

were not allowed to have any control over these monies. The tribes asserted that they knew what would work best for their tribal communities but they were not allowed to make those sorts of decisions for themselves. Instead, what was best for them was decided for them by outsiders, particularly state government officials. This arrangement perpetuated the paternalistic relationship that existed between the state and the tribes. It was a relationship the tribes sought to end.

The tribes expressed some of their greatest needs to the Legislative Appropriations Committee. Water and sewerage facilities, and fire and police protection were their most pressing needs presented. Personal stories at the appropriations sessions illustrated their needs: Indian children swimming at the lake in Indian Township developed sores presumably due to raw sewerage. The problem of sanitation and other deplorable conditions on Indian Island were well documented in 1934 by a young woman named Gladys Tantaquidgeon (Mohegan) who worked for John Collier at the Bureau of Indian Affairs. Collier sent her to Maine to gather information on the state of the tribes. Parts of her report appeared in *Indians at Work*, a magazine published by the BIA.¹⁷ Tantaquidgeon wrote that in 1933 state authorities had condemned their wells, and she found a year later when she visited the Penobscot community that “no attempts had been made to furnish them with pure water” and “in frigid weather they had to go down to the river, break the ice, and fill buckets to carry to their homes.”¹⁸ Still more than thirty years after Tantaquidgeon’s report, Penobscots were pleading for a sewerage system and also for the services of a resident nurse.

¹⁷ Rolde, p. 268.

¹⁸ Ibid, p. 270.

The need for fire protection was illustrated in a story about a child who died in a burning building on the island. This was an especially sorrowful and disturbing event because Indian Island once had its own volunteer fire fighters and sufficient fire fighting equipment, but when the Maine Department of Health and Welfare Services became responsible for tribal oversight in 1932, the group was “disbanded, their equipment taken away and given to the Old Town Fire Department. Maine Department of Health and Welfare Services determined that the tribe did not need their own volunteer firefighting crew.”¹⁹

Sipayik, one of two Passamaquoddy communities, expressed a need for police protection citing a disturbing incident that occurred sixteen months prior to the appropriations sessions when a young Passamaquoddy man was beaten to death in his community by Massachusetts hunters. The police officer called to respond to the incident arrived at the scene but stated that he “didn’t want to get involved”. He left the young man to die on the ground.²⁰

The focus in the 1960’s on human and equal rights provided a solid backdrop for the tribes’ move toward justice and equality. The primary problem for the Penobscot and Passamaquoddy was the loss of significant tracts of lands, diminishing their traditional life way and confining them to small reservation communities. In the culture of both tribes, Penobscot and Passamaquoddy families had thrived for thousands of years prior to European settlement on the Maine landscape. They possessed vast and intimate knowledge of the waterways and landscape in their ancestral territory, undoubtedly

¹⁹ “A Modest Request,” *Maine Indian Newsletter*, vol. 1, no. 8, March 1967.

²⁰ *Ibid.*

acquired as a result of thousands of years of occupancy. Only circumstances recent in their history prevented them from continuing this life style.

Beginning in early 1800's, ancestral territories were reduced significantly as a result of land transactions conducted by Maine government. Large swaths of tribal land were sold to large landowners such as timber companies and the payments received for these sales of tribal land were kept in the state treasury. The Maine Legislative Research Committee Report on Maine Indians (Also known as the Proctor Report) describes in great detail the various land transactions and treatment of funds:

“The Indians are wards of the State, so treated and recognized. In other words, the State is the guardian of the Indian tribes within its limits. If this is the case, then it is the duty of the State to take care of, manage and control the property of these tribes in a prudent and economical manner and for their benefit. To this end it would be the State's duty-if it found their property being depreciated in value or wasting away-to sell the same and invest the proceeds in such way and manner that the Indians should derive the benefit therefrom.”²¹

Their right to control their own affairs was denied them by state government. This decision to secure and control the tribes' money was recorded in Resolves of 1830, chapter seven, reproduced in the Proctor Report. The report stated that following sale of all their pine timber under the direction of the Indian agent:

“And all monies received for the sales aforesaid, shall be vested in some fund or stocks, and the income thereof shall be secured and appropriated for the benefit of said Indians, in such manner and for such purposes as the Governor and Council shall direct, but no part thereof shall be paid to said Indians in money, provisions, or clothing.”²²

²¹ Proctor, Ralph W. *Report on Maine Indians*. Prepared at the request of Legislative Research Committee, Auburn, Maine, September, 1942, p. 27.

²² *Ibid.* p. 28.

Basically the state planned to sell their land, keep their money, and not spend the money on any of their basic needs. The tribes voiced discontent about the state of their tribal affairs on numerous occasions. In 1843, Tribal Chief and Council sent a letter of protest to Augusta complaining about the logging boom. “At certain seasons there is no chance to land our canoes and boats on the eastern side which we have ever occupied as a main landing and it is the only safe and convenient place as a harbour.” They complained that without their consent the Indian agent “has leased their Fisheries on Old Town Falls on the Penobscot River and has thereby deprived them of their long enjoyed and much cherished and to them inestimable privilege.”²³

Following the Penobscot annual assembly in January 1844, Tribal Chief and Council sent another letter to the Governor of Maine. The letter stated the tribe’s belief that ‘all our trouble originated from the white people’ as alcohol and small pox were introduced, and their hunting grounds spoiled. “All these we knew not before now” and “by effects of these things we have become objects of pity.” Two years later Penobscot Chief John Attean wrote another letter of protest. In it he stated “We believe that the interest of the Tribe is not so much regarded [by the Indian agent] as the accommodation of the pale faces in our neighborhood, who are always looking out for a good bargain out of the poor Red Men.”²⁴ As decades passed it became increasingly clear that no improvement was in sight for the tribe and the right to control their own affairs became more critical than ever for the tribe’s survival.

A 1974 Maine Advisory Committee report for the United States Commission on Civil Rights documented testimony from Penobscot Richard Hamilton who testified:

²³ Banks, John, personal communication, April 2, 2007.

²⁴ Banks, John, personal communication, April 2, 2007.

“Since the Anglo-European invasion, Maine Indians have been subjected to continuous and unremitting social and economic injustices. In our present enlightened age everyone deplors the ‘plight’ of the Indians. Yet no non-Indian has had significant success in improving the record. Short of termination, no one sees an end to the present social problems. Social justice will not come to a powerless and impoverished group. Welfare or general assistance is of little permanent value. They do not provide individuals with the means to make their own way in the world. However, through the eyes of an economist, we can see a sound future. Through economic progress, the Maine Indian can be independent again...”²⁵

The Penobscot were convinced that they knew their way out of the impoverished situation they were in. They also knew that the continual erosion of tribal land holdings and the inability to control their own affairs were major contributing factors to their hardships. After decades of being under the thumb of the State of Maine, they had little reason to believe that anything would improve if they did not take drastic measures. Previous pleas to the State were numerous and the tribal voices expressed concerns on everything from logging booms to their fisheries in Old Town being leased out from underneath them; from inadequate sanitation to inadequate police and fire protection. Despite the numerous pleas, little improved for them.

During the nineteen-sixties and nineteen-seventies the time was ripe for the Penobscot and Passamaquoddy tribes to confront these problems and attempt to release themselves from the state oppression, especially as it appeared they had little left to lose. The opportunity for the tribes to fight for their land and lives presented itself after four Passamaquoddy women were arrested while protesting the latest piece of co-opted land at Indian Township in 1964. The ensuing events resulted in the Maine Indian land claims and eventually the Maine Indian Claims Settlement Act. The claims were more than an

²⁵ Maine Advisory Committee, “Federal and State Services and the Maine Indian,” report for the United States Commission on Civil Rights, December 1974, p. 5.

attempt to get back land. The tribes were adamant that in order to survive they needed to be in control of their own affairs. The Maine Indian Claims Settlement Act was intended to be the vehicle the tribes needed to move themselves away from dependency and into prosperity.

CHAPTER THREE
COMING TOGETHER: HOW PENOBSCOT
AND PASSAMAQUODDY UNITED

In 2005, Passamaquoddy Elder John Stevens recalled the protest that 41 years earlier had sparked the Maine Indian land claims: “This is where the war started,” he said as he recalled his tribe’s 1964 protest at a location in Indian Township. A local businessman had planned to build a road through the location but his plan met with protest from the Passamaquoddy. The protest “set in motion 16 years of legal, political, and cultural tumult” that resulted in the 1980 Maine Indian Claims Settlement Act. Stevens stated that the location was “kind of a memorial for us now.”¹

Maine Indian land claims history typically focuses on the actions and activities of the negotiating team and their legal advisors who negotiated the settlement in the latter years of the case. The Penobscot negotiating team was selected by Penobscot tribal council and was comprised of key male figures from the tribe. But the women of Passamaquoddy should be credited with creating the momentum for what eventually became the land claims case. The story takes shape in 1964 when four Passamaquoddy women were arrested for protesting what they believed to be an illegal land transaction on “the Strip” in Indian Township.

The strip is a portion of the Passamaquoddy reservation on U.S. route 1, located near Princeton, Maine. The circumstances around this land transaction involved William Plaisted, a non-native owner of Plaisted Camps who claimed that he won the deed to the

¹ “Legacy of the land claims,” *Bangor Daily News*, October 8, 2005.

land in question during a poker game. Plaisted Camps was an establishment built on the edge of tribal lands and located on “the Strip.” Several women of Indian Township asserted that the land newly acquired by Plaisted was clearly Indian land, used annually by tribal citizens for gathering and harvesting wood.² A sit-in protesting this land transaction ensued, blocking Plaisted’s attempt to “move gravel, sand and lumber from the site” and eventually resulted in the arrest of Passamaquoddy women Phyllis Sabattus, Pauline N. Stevens, Rita M. Ranco, and Delia R. Mitchell. The four were arrested and charged with disorderly conduct after refusing to “move from a sand pile at the site of a piece of disputed land at Princeton.” They claimed the land belonged to the Passamaquoddy and refused to leave after being asked to do so by a deputy sheriff and a state trooper.³

The subsequent search for the women’s legal defense was no simple task during a time when the Passamaquoddy had no money, no power, and very few sympathizers. The search for defense eventually led the tribe to Eastport attorney Don Cotesworth Gellers. Gellers agreed to not only help the women with their criminal charges, but to also help the Passamaquoddy tribe resolve the issue of rightful ownership of the land in question. The legal document that they believed solidified their case was the 1794 Treaty between the Passamaquoddy and the Commonwealth of Massachusetts which was recently rediscovered in an attic of Passamaquoddy Elder Louise Sockabasin in 1957.⁴ This document outlined in detail approximately 40,000 acres of land that was being held

² Rolde, pp. 10-11.

³ “Judge takes self out of Indian case,” *Bangor Daily News*, May 21, 1964.

⁴ Wilkinson, p. 220.

in perpetuity for the Passamaquoddy tribe. However by 1964, nearly all that land had been parceled out, sold, and lost by the Passamaquoddy.⁵

During the same year in which the treaty was rediscovered, the Penobscot tribe took initial steps to confront their land loss issue. Concerned about the illegal transfer of their land, in 1957 the Penobscot retained Massachusetts attorney, James A. Murphy, Esq. of Beverly, Massachusetts. Murphy announced his plan to appeal to President Eisenhower, to Congress, and to the United Nations “if necessary, to establish the Penobscot’s rights as an independent nation.” The appeal was the initial phase of an in-depth examination of treaties which Murphy would be conducting on behalf of the Penobscot tribe. Furthermore, the Penobscot requested “a moratorium on any legislation affecting them” until they had time to adequately research and examine the existing treaties. Murphy described the purpose of the treaty examination as a way to determine the extent of existing Penobscot landholdings as well as what was owed to them based on old treaty obligations.⁶

In a statement read by Murphy to the legislative welfare committee in Augusta, Murphy stated that “The Penobscot are not wards or citizens of the state of Maine. They are Penobscots, a free people. The state may not legislate unilaterally as to the Penobscot nation, its land or its existence.” He assured that the Penobscot intended “to take all peaceful measures necessary to preserve their nation as a free nation, their people as a free people.”⁷ Penobscot Elder Nicholas Ranco remarked: “You have laws of your own.

⁵ “Claims for lost tribal lands to get legal scrutiny from Reed, Council,” *Bangor Daily News*, September 17, 1964.

⁶ “Recognition as Free Nation Asked by Penobscot Indians,” *Bangor Daily News*, March 27, 1957.

⁷ *Ibid.*

Break them or amend them if you want to, but leave our laws alone.”⁸ Whether this action by Penobscot was related to the treaty rediscovery at Passamaquoddy has not been determined but both tribes were undoubtedly reaching their breaking points while gaining small confidences during this period of time.

Seven years later the protest on “the strip” presented the Passamaquoddy an opportunity to confront the issue of their land loss. Attorney Gellers was willing to expand the scope of the protestors’ case into an examination of what had happened to the lands that had been preserved for them in perpetuity in the 1794 treaty. But before the case could begin, the impoverished Passamaquoddy tribe had to find the means to pay for their legal defense. This proved particularly challenging as the Maine state government held all tribal monies in state coffers. In order for the Passamaquoddy to access their money, they had to ask permission from the state government to use it. So before Gellers could bring suit in federal court against Massachusetts and Maine to recover the value of lost lands, he first had to convince the State of Maine to allow him to be paid from the Indian trust fund which they controlled.

Gellers appeared three times before Maine government officials to convince them to release tribal funds for legal fees. Maine’s Attorney General Frank E. Hancock reportedly told Governor John H. Reed, “I can’t agree that this is a bona fide dispute” and he reported to Governor Reed and the Executive Council that he “believe(d) Gellers is relying almost entirely on a 1942 report made for the legislature” and that Gellers’ proposed plan “seems to me to be fishing.” The 1942 report that Hancock referenced was the “Report of Maine Indians” written by legislator Ralph W. Proctor and commonly referred to as “the Proctor Report.” This report, prepared at the request of Maine’s

⁸ Ibid.

Legislative Research Committee in 1942, contained detailed information about the loss of tribal lands.⁹

John L. Baxter, Jr. of Pittsfield who served as the Council's vice chairman said that "... as guardians of the trust funds we should have close contact with the progress of the cases."¹⁰ Eventually the Maine government allowed "the Passamaquoddy Indians to spend \$3,000 from their trust funds to pay for their day in court on a reservation boundary dispute and perhaps other matters..." and Governor Reed and the Executive Council authorized payment to attorney Don Cotesworth Gellers.¹¹ With payment secured, Gellers agreed to take the case and to pursue it on a scale much larger than just finding out who owned the Plaisted lot. Gellers made a statement to the press that "the Passamaquoddies don't claim any of the town of Princeton but I believe the tribe owns land on the outskirts of the town, where a drive-in movie, a motel and camps and other improvements are located."¹²

Four days after filing the initial paperwork for the suit, Gellers was targeted in a police sting operation and charged with possession of marijuana. Some negotiators expressed concern about the sequence of these events and wondered if Gellers was perhaps "set up" because of his sympathetic attitude toward the Passamaquoddy.¹³

⁹ Proctor, Ralph W., Report on Maine Indians (or Proctor Report), Legislative Research Committee, Augusta, Maine, 1942.

¹⁰ "Claims for Lost Tribal Land to Get Legal Scrutiny from Reed, Council," *Bangor Daily News*, September 17, 1964.

¹¹ "Passamaquoddies Given Okay for Day in Court," *Bangor Daily News*, June 26, 1964.

¹² Ibid.

¹³ Personal interview, Andrew Akins.

Gellers was adamant that the incident was an “obvious frame up.”¹⁴ His intent to expand the Passamaquoddy women’s disorderly conduct case into an investigation of land loss undoubtedly would have been unpopular. The Plaisted parcel of land was representative of countless cases where Maine Indians experienced futility and anxiety associated with land loss.¹⁵ While the truth about the incident remains unknown, it is clear that the incident changed the course of the land claims.

Once Gellers was unable to pursue his expanded case against Maine and Massachusetts, his intern, Thomas Tureen became interested in trying the case. A 1969 graduate of George Washington University Law School, it was with Tureen that the land claims case grew from the original six-acre parcel of questionable land won in a poker game into a land claims case for twelve million acres, or approximately two-thirds of the area of Maine. Through his research Tureen turned up the 1790 Trade and Non-Intercourse Act which became the legal foundation for the Maine Indian land claims case.¹⁶

The 1790 Federal Trade and Non-Intercourse Act is a law that was passed by the United States Congress. It prohibited states from entering into treaties with Indian tribes, and prevented the sale and transaction of Indian land *without congressional approval*. Tureen discovered the fact that sales and transactions of Penobscot and Passamaquoddy lands since 1790 had never followed this procedure. In fact, little regard was given to tribal rights and property. The Penobscot had four townships set aside in their Treaty of 1818 for “perpetuity” and by the 1830s these lands were gone. Likewise, the

¹⁴ Rolde, p. 17.

¹⁵ Akins personal interview.

¹⁶ Rolde, p. 20.

Passamaquoddy tribe lost thousands of acres of land that had been reserved for them in the 1794 treaty. The Penobscot tribe lost nearly all of their ancestral homelands and was living on a 315-acre island in the Penobscot River. Uncovering the 1790 Federal Trade and Non-Intercourse Act was ground breaking for the Penobscot and Passamaquoddy. They learned that all Indian land sales since 1790 were null and void because these land transactions were never ratified by Congress. “Though the land claim issue became news to the rest of the world, it had been a concern to our community for generations,” Passamaquoddy Allen Sockabasin recalled.¹⁷ The opportunity to do something about long seeded concerns was upon them.

In 1972, Penobscot James Sappier was contacted by Indian Township Governor George Stevens and was briefed on the land claims issue. Stevens urged him to contact Tom Tureen. Sappier recalled that he consulted with Ssipsis,¹⁸ a Penobscot tribal citizen, and her husband, Attorney Ken Thompson, and relayed Stevens’ message. The three of them made a trip from Indian Island to Calais to visit with Tom Tureen at his office at Pine Tree Legal in Calais, Maine. According to Sappier, Tureen reported that the Penobscot had significant interest in the developing land claims case as ninety percent of the land claims area was Penobscot ownership; and approximately 10-15% was Passamaquoddy. After the threesome visited Tureen, where they learned the details of the upcoming Passamaquoddy case, they returned to the Penobscot tribal community, informed some tribal council members and were put on the tribal council agenda.¹⁹

¹⁷ Sockabasin, Allen, *An Upriver Passamaquoddy*, Tilbury House Publishers, Gardiner, ME, 2008, p. 139.

¹⁸ Ssipsis (“Little Bird”) a.k.a. Eugenia Thompson, editor of the *Maine Indian Newsletter*.

¹⁹ Personal Interview, James Sappier.

April 11, 1972 was when Sappier first appeared before the Penobscot tribal council to brief them about the land claims. Governor Francis “Bunny” Ranco suggested that Tureen himself come before council and so Tureen was invited by the tribal council to appear at a date and time of his convenience. Nine days later, on April 20, 1972, Tureen made the first of many appearances before the Penobscot tribal council. On this date, he explained the merits of the case and urged the Penobscot to join with the Passamaquoddy efforts. He claimed that Penobscot participation in the claim would make the case stronger.

The Penobscot tribal council did not commit at this point in time, rather they suggested to Tureen that he contact Attorney James Murphy from Massachusetts who was previously assigned by the Penobscot to gather treaty information on behalf of the tribe. Tureen returned to council on May 2, 1972 to say that he contacted James Murphy, but had not yet obtained the information from Murphy. He asked the council to consider how they wanted him to proceed. For example, did they want to join the case with the Passamaquoddy? Did they want him to work alone or in conjunction with James Murphy?²⁰ Decisions had to be made quickly as deadlines were looming.

On June 7, 1972 Tureen visited the Penobscot Tribal Council again to speak about the land claims. Before tribal council, Tureen explained the critical deadline fast approaching: In 1966, the United States Congress had established July 18, 1972 as the deadline for Indian tribes to submit land and/ or trespass claims. This was only six weeks away from the date of Tureen’s visit. A council vote was taken on the motion that they follow the same process that the Passamaquoddy were following pertaining to the land

²⁰ Penobscot Tribal Council Meeting Minutes, April 1972 and May 2, 1972.

claims suit. A 10-2 vote carried the motion.²¹ Ten months later Tureen was a guest speaker at the Penobscot General Assembly, on April 3, 1973 where he discussed the land case in some detail.

Immediately after the Penobscot Tribal Council voted to unite with the Passamaquoddy effort, a whirlwind of unprecedented legal activities ensued, described as “one seemingly preposterous theory upon another.”²² Because the State of Maine had sovereign immunity and could not be sued by anyone except the federal government, the tribes’ first hurdle, with a six-week deadline, was to convince the United States government to sue the State of Maine on behalf of the Penobscot and Passamaquoddy tribes. A letter was developed and sent to Lewey Bruce, a Mohawk and Commissioner of Indian Affairs at the Bureau of Indian Affairs. The letter asked him to forward on to the Department of Justice (DOJ) an urgent correspondence. The correspondence asked the DOJ to sue the State of Maine on behalf of the two tribes. “The letter made its way across several desks. It got forwarded to the Secretary of the Interior; The Secretary of the Interior sent it on to the Department of Justice, and finally the Department of Justice sent a memo back to the Secretary saying that these tribes were not federally recognized and therefore had no standing.”²³

The next immediate hurdle for the tribes was to address their lack of federal recognition status. This was accomplished via *Passamaquoddy v Morton*. Rogers Morton was the Secretary of the Interior at the time. The case was filed in July 1972 and

²¹ Penobscot Tribal Council Meeting Minutes, June 7, 1972; and personal interview with James Sappier.

²² Wilkinson, p. 227.

²³ Personal interview with James Sappier.

won in 1975. In *Passamaquoddy v Morton* the tribes took the Department of Justice to court and won. Federal District Court Judge Edward T Gignoux presided over the hearing and concluded that both the Passamaquoddy and Penobscot tribes *were* federally-recognized tribes and that the Department of the Interior had the same trust responsibility to the Passamaquoddy and Penobscot tribes as it had to hundreds of other federally-recognized tribes across the country. Gignoux ordered the Department of Justice to sue to “preserve the claim” while other merits of the case were being determined. The *Passamaquoddy v Morton* decision was appealed and heard in the First Circuit Court of Appeals in December of 1975. The appeal was lost and the message was reiterated that the tribes were federally recognized tribes and that the DOJ must bring suit. The DOJ’s intent to sue the State of Maine for \$150 million on behalf of the Penobscot and Passamaquoddy tribes was an effort to seek monetary damages for the wrongful use and sale of tribal lands since statehood.²⁴

According to Penobscot negotiator James Sappier, *Passamaquoddy v. Morton* was a crucial decision, pivotal to the future of the tribes’ case. “It was a pre-settlement case which opened the door for DOJ to commence suing Maine.”²⁵ Following the case, the Penobscot and Passamaquoddy governors and tribal councils, who had been meeting together on a regular basis prior to the *Passamaquoddy v. Morton* decision, decided to select negotiating team members from their tribal communities who were appointed to

²⁴ Ibid; and Rolde, p. 33.

²⁵ Personal interview with James Sappier.

work alongside legal counsel.²⁶ This was undoubtedly in recognition and preparation for the arduous journey that lied ahead of them.

The effects of *Passamaquoddy v. Morton* were felt within months when financial institutions recognized that land ownership to 2/3 of the state of Maine was questionable. Municipal bonds, land sales, and mortgages were all affected.²⁷ It was at this point that Maine citizens who had previously paid little attention to the land claims began to take notice. Concern intensified in January 1977 when the Department of the Interior forwarded its recommendation to the Justice Department and “it was a shocker.”²⁸ The *Bangor Daily News* headline read: “Interior urges land claim in Indian Suit” and detailed DOI recommendations to amend the \$300 million damage suit by the two tribes to include a claim for land in the state of Maine as well. The article further stated that “The recommendation is believed to involve land now occupied by some 350,000 Maine citizens but neither Interior nor Justice Department officials would confirm the contents of the report.”²⁹

On January 17, 1977, Mainers woke up to more disturbing headlines: “Non-Indians’ eviction urged in state area”³⁰ setting off a frenzy in the media that lasted three years. As federal opinion swayed in favor of the Indians, the mood in Maine changed from indifferent to shocked and angry. Fear was perpetuated by newspapers as Maine

²⁶ Ibid.

²⁷ Wilkinson, p. 228.

²⁸ Rolde, p. 33.

²⁹ “Interior urges land claim in Indian suit,” *Bangor Daily News*, January 12, 1977.

³⁰ “Non-Indians’ eviction urged in state area,” *Bangor Daily News*, January 17, 1977.

citizens warned one another about the land claims via newspaper editorials, opinion pieces, and in letters to editors of newspapers across Maine such as this one:

“To the Editor: The lead article in your Jan. 17 edition regarding the possible eviction of 350,000 Maine residents is very serious business. We residents of northern and eastern Maine had better snap out of our slumber and consider what counter-action should be taken. I have watched the Maine Indians all my life as they received more and more goodies from the public coffers. The taxpayer builds them houses, recreation centers, sewage treatment facilities and businesses. The taxpayer furnishes them all the necessities and many of the luxuries of life (including free legal services with which to gather in more goodies). All of this because of some strange guilt-ridden theory that we owe something to these people.”³¹

A 1977 memo to Judge Gignoux by Peter Taft, head of the Land and Natural Resources Division of the Justice Department, recognized the land claims as “potentially the most complex litigation ever brought in the federal courts, with social and economic impacts without precedent, and incredible potential litigation costs to all parties.”³² The Penobscot and Passamaquoddy were in the throes of one of the most intense periods of their history.

³¹ Crandlemire, Donald C., “Serious Business,” Letters to the Editor, *Bangor Daily News*, February 4, 1977.

³² Granville, Ganter, “Sovereign Municipalities? Twenty Years After the Maine Indian Claims Settlement Act of 1980,” in *Enduring Legacies: Native American treaties and contemporary controversies* (Bruce Elliot Johansen ed., 2004), p. 29.

CHAPTER FOUR

INTENTIONS AND CONTENTIONS

The atmosphere in which the Penobscot and Passamaquoddy Indians pursued justice and restitution for their land loss can best be described as frenetic and hostile. Following the success of the tribal legal team in the *Passamaquoddy v Morton* case (1972), the appeal and second success which confirmed the tribes' status as federally-recognized Indians (1975) and after Federal District Court Judge Edward T. Gignoux ordered the Department of Justice to sue the State of Maine on behalf of the Indians, the Indian land claims case grew in scale and intensity.

While Mainers speculated about tribal intentions, the Penobscot and Passamaquoddy tribes felt that they were clear about their intentions all along. Through the Maine Indian land claims suit the tribes intended to:

- 1) Reaffirm their federal recognition status. This was important to them because it was viewed as a way to rid themselves from oppressive living conditions forced on them since 1820 when Maine assumed jurisdictional control over the tribes;
- 2) Receive justice and restitution for stolen or co-opted lands. Because the State of Maine essentially sold their land out from underneath them, they were unable to subsist from the land in the traditional manner which they were accustomed. Additionally, State of Maine control over funds generated from these sales forced the tribes to live in pauper-like conditions since the early 1800's;
- 3) Establish a land base that would open up opportunities for them to determine their own future – particularly their economic futures, and;

4) Secure the opportunity to rebuild their traditional ways of life – ways that required a substantial land base.¹

“We wanted to get as much land back as we could, right out of the box,” Penobscot tribal negotiator Tim Love said.² Andrew Akins, chairman of the tribal negotiating team, expressed the same intention at an informal discussion at the University of Maine on October 11, 1977: “We’re not interested in harming individual property owners. We do want land back, that’s true. We want a good land base.” The overall message relayed at the University of Maine panel was that cultural survival was contingent on land, and it was land that the tribes sought.³

Meanwhile, significant national and local occurrences weighed heavily on the minds of tribal negotiators. On a national level, Penobscot negotiator Sappier had concerns about termination. The United States policy of terminating Indian tribes was institutionalized in 1953 in the form of House Concurrent Resolution 108 which sought to put an end to the reservation system and the federal fiduciary responsibility to tribes. Congress “laced its new Indian initiative with an urgency rare for our national legislature.”⁴ The passage of HCR108 was followed quickly by Public Law 280, which undermined tribal sovereignty and placed jurisdictional control of reservations in the hands of state courts: “Congress complemented the termination policy by enacting a statute that cut straight to the heart of the sovereignty of those tribes not immediately

¹ Personal interviews with Andrew Akins, Tim Love, and James Sappier.

² Personal interview, Tim Love.

³ “Indian panel says land means survival,” *The Wabanaki Alliance*, October 1977.

⁴ Wilkinson, p. 57.

slated for outright termination.”⁵ While the termination policy is most often viewed as an element of the 1950’s, its effects terrorized Indians for decades and termination proposals continued well into the 1960’s. “Apprehension turned into fear and panic as word of HCR108 spread across Indian country. Even today, half a century later, for Indian people the word ‘termination’ represents the third rail, shorthand for all that is extreme and confiscatory in federal Indian policy.”⁶ Vine Deloria, Jr., a well-respected Standing Rock Sioux author, historian, and activist, wrote about the termination hearings: “...absolute terror spread through Indian country as the power of the committee was arbitrarily used against the helpless Indian communities.”⁷

There may have been multiple reasons for Congress passing the termination policy, but two of the most significant were: 1.) the belief that eliminating reservations and services to Indian reservations would save federal budget dollars, and; 2.) that termination would finally result in assimilation, forcing the Indians to give up their stronghold on their unique political and cultural identities. The history of U.S. PL 280 encompassed a half of a century from the 1920’s to the formal renouncement of the policy in the 1970’s. When all was said and done, Congress terminated more than a hundred tribes before the policy was shelved in the 1960’s and formally renounced in the 1970’s with passage of self-determination policy by President Richard Nixon.⁸

The fear of termination became imminent to the Penobscot, Passamaquoddy and their legal team when President Carter assigned retired, former Georgia Supreme Court

⁵ Ibid, p. 19.

⁶ Ibid, p. 57.

⁷ Ibid, p. 71.

⁸ For more information regarding termination, see Charles Wilkinson’s *Blood Struggles: The Rise of Modern Indian Nations* (2005).

Justice William B. Gunter to examine and report on the problems created by the land claims and to offer his recommendations. In July 1977, Gunter acknowledged the severe economic problems associated with the land claims case and suggested the possibility of “congressional extinguishment of the legal rights of the Indians in Maine if they did not acquiesce” to his proposal for settlement.⁹ Because of this imminent threat of termination in a hostile environment, negotiators of the settlement believed that they did the best that they could in negotiating a settlement for their tribe without going too far.¹⁰

Tribal negotiator James Sappier spoke about termination in a 1980 SALT magazine interview:

“I think the tribe is definitely heading toward economic independence. The only problem with that is that the tribes that started with economic independence ended up terminated and are now the poorest tribes in the United States. The reality is legally, Indians have the right to two-third of the state of Maine - actually the whole state of Maine. Now the reality behind this is: what would you do to a small group of people who had a 25 billion dollar case against you and a million other people? What would you do to them? There’s a lot of reality there. I’d say that a lot of the time we’re so scared of what could happen to the Indian tribe when all guns are pointed our way.”¹¹

As late as 1978 there existed anti-Indian legislation in Washington. This legislation was the impetus for the Longest Walk in June 1978, a cross-country march by native tribes and their allies protesting the abrogation of Indian treaty rights threatened by new bills in Congress. The march culminated in Washington, D.C., in June 1978, with approximately thirty thousand people. During the Longest Walk, the Penobscot and

⁹ Cartwright, Steve, “An Explanation of Penobscot and Passamaquoddy Tribal Land Claims,” *The Wabanaki Alliance*, October 1977.

¹⁰ Personal interviews, Andrew Akins, and James Sappier.

¹¹ Ibelle, William, “In Search of the 20th Century Penobscot,” *SALT Magazine*, No. 20, Portland, ME, January 1983, p. 33.

Passamaquoddy tribes received recognition by national coordinator for the Longest Walk and American Indian Movement leader Vernon Bellecourt. Bellecourt said: “We salute you for the very firm stand you have made. You are standing firm for all generations of all Indian nations.”¹²

Tribal attorney Thomas Tureen spoke about the relevancy of the Longest Walk to Maine Indians, indicating that bills such as the Cunningham Bill, proposed in 1978, “threaten our legal system at a time when Maine Indians are involved in legal questions of the land claims case.”¹³ The Cunningham Bill was introduced by U.S. Senator Jack Cunningham of Washington. Bellecourt described the bill as having the ability to “unilaterally abrogate Indian treaties and terminate Indian tribal status.”¹⁴

The Penobscot and Passamaquoddy negotiators and legal team grappled with local issues as well. With help from the media, the opposition was using fear tactics to gather support against the Maine Indian land claims. In January 1975, James Longley (Independent) became the 69th governor of Maine. “Charismatic, tireless in pushing himself and his ideas, imperious, scathing to those who opposed or questioned him, totally uncompromising, Governor Longley was a formidable opponent.”¹⁵

“He just kept agitating everyone. Brennan,¹⁶ too. Agitating the Maine population. They did this instead of facing the honest truth that they stole all this land

¹² “Indians rally at state capital”, *The Wabanaki Alliance*, June 1978.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Rolde, p. 29.

¹⁶ Joseph Brennan served as State Attorney General from 1975 – 1978, and 70th Governor of Maine from January 1979 – 1987.

from the tribes,”¹⁷ reported Penobscot negotiator Sappier. Penobscot negotiator Tim Love also remembered Longley as being problematic: “He just fired everyone up with the nation within a nation idea, and his racist attitude.”¹⁸ Nation within a nation was a term borrowed from the political conflict taking place north of the Maine border. Quebec and Canada were heavily engaged in secession debates with Quebec being viewed as a nation within a nation. Longley and Attorney General Joseph Brennan’s promise to the people of Maine during the land claims negotiations was that “not one cent, or one inch of Maine land” would be used to settle the Maine Indian land claims suit.¹⁹

Longley’s fiery personality was fuel for media fodder. Article after article appeared in Maine newspapers, each news heading churning up fear, anger, and hatred within the state such as: “Longley raps suit publicity,”²⁰ “Longley criticizes orchestration,”²¹ and “Longley: Indian precedent harmful.”²²

On January 12, 1977 Governor Longley wrote a letter to Tom Tureen and the Tribal Governors of Maine. In it he asked for their help. “Please cooperate with me as Governor and with the people of Maine who own homes and whose jobs depend on a fair resolution of the pending land claims case,” he wrote. Longley tried to convince them to

¹⁷ Personal interview, James Sappier.

¹⁸ Personal interview, Tim Love.

¹⁹ “Democrats Settle Old Score with Rep. Longley,” *Bangor Daily News*, July 6, 1996.

²⁰ “Longley raps suit publicity,” *Bangor Daily News*, February 3, 1977.

²¹ “Longley criticizes orchestration,” *Bangor Daily News*, February 3, 1977.

²² “Longley: Indian precedent harmful,” *Kennebec Journal*, March 4, 1977.

agree to accept monetary damages rather than insist that two-thirds of the land in the state belonged to them.²³

The Tribal Governors responded to Longley's letter:

“As we told you last fall, we must seek recovery of land both as a matter of principle and as a matter of law. Land is sacred to the Indians, and we are determined to recover a significant land base. Only through the recovery of such a land base can we regain the position of independence and importance which the non-intercourse act was designed to guarantee us, and which we would possess today if that law had not been violated.”²⁴

While the tribes had publicly declared from the beginning of the suit that they were not interested in taking homes from Maine citizens, they were angered enough to consider retracting that statement when on Tuesday, March 1, 1977, the Maine congressional delegation introduced identical bills to the House and Senate to extinguish Indian claims to property in Maine. This was done at the urging of Governor Longley. In a statement released by the Native American Rights Fund, tribal leadership denounced them for their action stating it had the potential to “trigger lawsuits laying claim to every home and piece of property in the claims area, which could encompass 60 per cent of the land in the state.”²⁵ Longley reportedly suggested the bills in order to protect other states against this harmful precedent which he felt the Maine tribes were setting. The action was viewed as “sneaky” and “concerning.”²⁶ The bills were eventually withdrawn.

The construction of the Bangor Mall was halted as a result of questionable land titles. Very little attention was given to the claims up until the point when the pending

²³ Longley letter to Tribal Governors, January 12, 1977, Maine Law Library.

²⁴ Tribal Governor's letter in response to Longley, January 18, 1977, Maine Law Library.

²⁵ “Longley: Indian precedent harmful,” *Kennebec Journal*, March 4, 1977.

²⁶ Andrew Akins, personal interview.

land claims muddied land titles to ownership within the claim area. Municipal bonds, land sales, and mortgages were all affected.”²⁷ In 1976, no municipal bonds were being approved within the tribes’ claim areas which encompassed two-thirds of the state. Bonds, land sales, mortgages, and landownership as Maine had previously known them, had come to a halt. Former state negotiator John Paterson describes the situation in the mid-seventies as “the worst crisis I’ve ever seen in State government.”²⁸

Headlines in the *Bangor Daily News* on February 3, 1977 read: “Land Claims Cloud Proposed Center.” The article described how the “Indian land claims may well end all hopes for a \$30 million shopping center that was to have been built this spring off the Hogan Road.” The article further stated that expected tax revenues for the mall were estimated to be \$1 million annual, and that in addition to halting mall construction, the land claims were also responsible for the “future construction on Court Street of a major housing project for the elderly” being “on the rocks.”²⁹

Slanderous letters were published regularly in “Letters to the Editors” in newspapers across Maine as a result of fear instilled in the public that they would be evicted from their homes and that Indians were going to take their land. These letters were spurred on by exaggerated news articles. Mainers reacted to the information. Indian children were being beaten up in schools and there was a resurgence of the Ku Klux Klan in Enfield, 10 miles north of the Indian Island. The same February 3, 1977 *Bangor Daily News* edition that reported on the halted construction of the mall complex

²⁷ Wilkinson, p. 53.

²⁸ Ibid, p. 227.

²⁹ “Land Claims Cloud Proposed Center,” *Bangor Daily News*, February 3, 1977.

and the elderly facility published the story, “KKK Resurgence Probed.” The probe was being encouraged by Robert Talbot of the Bangor NAACP branch. Talbot said, “Since the major purpose of the Klan has historically been shrouded in intimidation and violence, its reappearance in the state should be accompanied by alarm by all citizens.”³⁰ The local atmosphere was described as “very harsh”³¹ and Penobscot Elder Bobcat Glossian admitted his alarm. “There’s still a lot of resentment in the whites. They still call us dirty Indians. I was kind of worried with the land claim because of the KKK (Ku Klux Klan) had a meeting place up in Lincoln. I really don’t trust people like that.”³²

Penobscot negotiator Akins recalled the atmosphere of that time: “Nothing too much happened until 1975, 1976, when we tied up the state. Then no one could buy or sell any property. Until then, no one really took us seriously.”³³ During that time, Governor Longley remained adamantly resistant to an out-of-court settlement. “Historically, it always has been the side with the weakest case which makes the hardest push for a settlement” Longley stated. But because of the economic chaos created by unresolved land ownership issues, and fear that litigation could take years to resolve, the state was being pressured by third parties to reach a settlement and fast.³⁴

The Committee to Support Resolution of the Maine Indian Claims was one such third party. The committee was a citizens’ committee comprised of people from “all walks of life” who were placing pressure on state and federal governments to resolve the

³⁰ “KKK resurgence probed,” *Bangor Daily News*, February 3, 1977.

³¹ James Sappier, personal interview.

³² Ibelle, p. 50.

³³ Andrew Akins, personal interview.

³⁴ “Maine Still Adamant on Indian Land Claims,” *Bangor Daily News*, February 9, 1977.

Maine Indian land claims issue. Members of the committee were made up of influential Maine businessmen, bank presidents, attorneys, presidents of engineering firms, and town managers all advocating settlement of the claims in order to alleviate the financial crises which they were experiencing because of the claims.³⁵

It was at this point when confronted with indications of the upheaval and economic chaos that “the Governor and the Attorney General asked the Maine Congressional delegation for help, and the delegation turned to President Carter.”³⁶ The President enlisted the assistance of retired Georgia Supreme Court Justice William Gunter. Gunter was asked to “listen to the arguments on both sides of the case, to examine the merits, and to recommend any actions which the federal government and parties might take to resolve the dispute.” In July 1977, Judge Gunter reported to the President that the claims were “serious and substantial.”³⁷

He wrote in his proposal: “The problem is complex and does not lend itself to a simple solution because it is old and large.”³⁸ He further indicated that the tribes did not bear any responsibility for the creation of the problem, and that the federal government was primarily responsible because prior to 1975 they did not acknowledge the Penobscot and Passamaquoddy tribes. Due to the economic threat to the state of Maine, Gunter

³⁵ “Prepared Statement of William C. Bullock, Jr., President, the Merrill Bankshares, Bangor, Maine,” *Proposed Settlement of Maine Indian Land Claims: Hearings Before the Select Committee on Indian Affairs, United States Senate, Ninety-Sixth Congress, on S.2829 to Provide For the Settlement of the Maine Indian Land Claims, July 1 and 2, 1980, Washington, D.C.* U.S. Government Printing Office, Washington: 1980, pp. 423-424.

³⁶ Edmund S. Muskie Archives and Special Collections Library, Congressional Record – Senate, April 25, 1978, Maine Indian Land Claims, p. 11475, accessed January 24, 2012, at abacus.bates.edu/muskie-archives.

³⁷ *Ibid.*

³⁸ “Special Recent Development: Indian Lands,” a full-text of former Georgia Judge William B. Gunter’s original proposal, *American Law Review*, Vol. 5, No. 2 (1977), p. 428.

recommended an out of court settlement stating “this problem cannot await judicial determination. Adverse economic consequences will increase with intensity in the near future.”³⁹

Gunter proposed initial settlement terms of 100,000 acres of state-owned land, \$25 million cash from the federal treasury, plus the option for the tribes to buy 400,000 additional acres in the claims area. The proposal was rejected by both the tribes and the State.⁴⁰ In addition to the proposal, Gunter also urged “congressional extinguishment of the rights of the Indians in Maine” if the tribes did not “acquiesce” to his proposed settlement terms.⁴¹ Both Maine Attorney General Brennan and tribal attorney Tom Tureen agreed that the magnitude and scope of the land and the money involved in the suit put the nation’s legal system to the test in “an incredible mixture of history, politics, and morality.”⁴²

Penobscot negotiator Love recalled, “We felt totally confident in our case, it wasn’t just a front.”⁴³ One cause for confidence was that the foundation for the Maine Indian land claims case, the 1790 Trade and Non-Intercourse Act was given the opportunity to be put to the test in *County of Oneida v. Oneida Indian Nation* (1974). Oneida won their case in upper New York which rested on the interpretation of the 1790 Trade and Non-Intercourse Act. Utilizing the act as the basis of their case benefited the Penobscot and Passamaquoddy case. Up until the Oneida victory, the tribe’s legal team

³⁹ Ibid.

⁴⁰ “Tribal leaders want negotiated land deal,” *The Wabanaki Alliance*, August 1977.

⁴¹ Cartwright, Steven, “An Explanation of Penobscot and Passamaquoddy Tribal Land Claims,” *The Wabanaki Alliance*, October 1977.

⁴² “Brennan agrees: Tureen calls land claim test of system,” *The Wabanaki Alliance*, November 1977.

⁴³ Tim Love, personal interview.

wondered whether the 1790 Trade and Non-Intercourse Act violation would stand up in court. Typically, if a statute was not used for a long period of time then its effectiveness collapsed, but the foundation for the Oneida case being the same basis as the Maine case breathed life into the Maine Indian land claims.

The Oneida victory paved the way for multiple suits in the 1970's and multiple congressional settlement acts in the 1980's.⁴⁴ However, the negotiators' confidence in their case was overshadowed by the uncertainty of the courts. Penobscot negotiator Sappier recalled that period in the negotiating team's history: "The Supreme Court at that time never had a case worth over a billion dollars. Now with this case with a value of between \$2.5 and \$10 billion, they could just terminate the tribes. We had to be careful that the Congress did not decide to terminate the tribe. If we had gone into the courts, the court probably would have terminated us."⁴⁵

"The attitude then was that we had all these things against us, that this should never had gone anywhere, so negotiating was the only way to go." Sappier shared the legal team's concern over the presidency. "Reagan was coming in with his John Wayne attitude and already said he would not support the land claims."⁴⁶ The negotiators felt that the clock was constantly ticking, and it was.⁴⁷

There was activity occurring internationally, nationally, and locally that potentially influenced negotiations. Quebec was fighting Canada for secession, and the Viet Nam war was ending. The American Indian Movement was protesting U.S.

⁴⁴ "Beyond land claims, still a future," *Indian Country Today*, May 24, 2006.

⁴⁵ James Sappier, personal interview.

⁴⁶ Ibid.

⁴⁷ Personal interviews with James Sappier, Andrew Akins, and Tim Love.

governmental policies and broken treaties. And in Maine, the media were helping to create a frenzy over the possibility that hard-working Mainers might lose their homes to the Indians. The tribes had multiple influences and much to consider while negotiating for settlement. After several months of negotiations between the tribes' legal team and White House negotiating team members,⁴⁸ the White House released their proposal to settle the Maine Indian land claims. The reaction it received from state government was outrage. The *Portland Press Herald* coverage of the settlement plan reported "State Officials Were Initially Speechless and Then Became Outraged." One state representative was quoted as saying, "Someone should get a gun and shoot those bastards."⁴⁹ Governor Longley did not disappoint newspaper reporters by likening the proposed settlement to "something that would come out of Red China."⁵⁰

The White House proposal called for giving the two Maine tribes a \$40 million dollar cash settlement plus 500,000 acres of land. Negotiators were satisfied with the proposal and planned presentations for each of the three reservations. "The tribes were expected to approve the settlement without much controversy."⁵¹ But that was not the case and another deadline was looming.

This deadline was handed down by the White House and it gave the State and Maine paper companies until April 6, 1978 to respond to the White House proposal presented in February. The paper companies were now involved in the land suit as a

⁴⁸ The White House negotiating team appointed by President Carter was A. Stephens Clay, Leo M. Krulitz, and Eliot Cutler.

⁴⁹ Rolde, p. 39.

⁵⁰ Rolde, p. 40.

⁵¹ "Indians, White House agree on Settlement: Half million acres, \$40 million proposed," *The Wabanaki Alliance*, February 1978.

solution to finding large tracts of land that might be available for the tribes to buy back. “Under terms of the White House proposal, reached after months of secret negotiations, the State of Maine and 14 large landholders have until April 6 to respond.”⁵² In compensation for their “sacrifice” of 300,000 acres of land, the paper companies were given “\$1.5 million plus a sizeable write-off.”⁵³ Tureen was confident that a settlement would be reached out of court and that the paper companies would be unscathed because in his words, “they own the state.”⁵⁴ Still, he reminded readers that those 14 major landholders were “trespassers and do not have legal title to the land according to the Indian claims.”⁵⁵

The deadline arrived and “like a holiday nobody observes, the deadline seemed a hollow date.”⁵⁶ Passamaquoddy negotiator Wayne Newell accused Governor Longley and Brennan of blocking resolution of the claim when they requested a deadline extension. Newell called the request “a stalling tactic on the part of the Governor to try to sway public opinion.”⁵⁷ Brennan requested a 60-day extension but only received a one month extension until May 10, 1978. Rather than discussing negotiation, the State was continuing to research the validity of the claim and whether they were able to defeat it or not.⁵⁸ In a fireside chat hosted by the University of Maine, Wayne Newell compared

⁵² “Tureen sees claims settled out of court,” *The Wabanaki Alliance*, March 1978.

⁵³ “A Question of Responsibility,” *The Wabanaki Alliance*, March 1978.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ “Land case deadline finds Indians impatient, State indifferent,” *The Wabanaki Alliance*, April 1978.

⁵⁷ *Ibid.*

⁵⁸ “Deadline Extended,” *The Wabanaki Alliance*, April 1978.

Longley's tactics to McCarthyism stating that the State of Maine was "still trying to make people panic at the Indian claim."⁵⁹

Over time the tribal efforts lost cohesion. The White House proposal approved by the negotiators did not meet the approval of all tribal citizens. Not only did the proposal create outrage throughout the state, it also created outrage within the tribal communities. Francis C. Sapiel and Sammy Sapiel said they were "disappointed that the land claims may involve an award of money instead of land." The brothers felt that their tribe should "stick to the original claim for land which included \$25 billion claimed in damages."⁶⁰

A reader's opinion piece in *The Wabanaki Alliance* newspaper entitled "Everything to Lose" expressed lack of faith in the claims proposal. "Don't let the money dazzle you," the reader wrote. "A little money goes a short way if you have no talents to make a living."⁶¹ Two months later *The Wabanaki Alliance* reported that "Dissent splits claims panel" at the Passamaquoddy tribe at Indian Township.⁶² It became increasingly difficult for the negotiating team to reach consensus on a plan of action. Several negotiators were unhappy with the settlement proposal, preferring to take the case to court instead. Since the White House proposal was released in February, everyone had an opinion.

Negotiations, talks, and challenges continued including strong dissent from some tribal citizens who feared sovereignty would be jeopardized if the tribes settled out of court. Meanwhile, the talks turned to the next looming deadline. The joint tribal

⁵⁹ "Newell offers University Indian version of Fireside Chat," *The Wabanaki Alliance*, April 1978.

⁶⁰ "Indian brothers mull new land claims suit," *The Wabanaki Alliance*, August 1978.

⁶¹ Ward, Beverly (Lewey), "Everything to Lose," *The Wabanaki Alliance*, December 1978.

⁶² "Dissent Splits Claims Panel," *The Wabanaki Alliance*, February 1979.

negotiating committee had agreed to submit a draft resolution by November 30, 1979. At a hearing to discuss extending the deadline on November 1, 1979 both the State and the tribes reported significant progress. The deadline to submit a resolution was extended to April 1, 1980. This date also marked the deferral deadline for filing Indian claims in court under a statute of limitations.⁶³

At this point, the pressure that the tribal negotiating team and their legal representation experienced was enormous and only months remained before America selected a new president. The tribes knew that Ronald Reagan (R) was favored to win and that he planned to veto the land claim legislation if given the chance. If that happened all the work of the previous decade would have been in vain.⁶⁴ The intensity of the Maine Indian land claims never let up throughout the decade of the nineteen-seventies. They faced significant challenges and pressure both externally and internally within their respective tribes. Throughout the decade the negotiating team maintained their intentions to reaffirm their federal recognition status, receive restitution for their lost land, and acquire a significant land base for economic and cultural opportunities.

⁶³ “Report on Claims Due This Month,” *The Wabanaki Alliance*, November 1979.

⁶⁴ Personal interviews with Andrew Akins, James Sappier, and Tim Love.

CHAPTER FIVE

AMBIGUITIES AND AMENDMENTS

A whirlwind decade of unprecedented legal maneuvers in the Maine Indian land claims case came to a close in 1980. The previous decade of the seventies witnessed successes stemming from “one seemingly preposterous theory upon another.”¹ The dawn of the new decade found the joint tribal negotiating team working diligently under an extended deadline to submit a draft resolution of claims by April 1, 1980.

Since October 1979, the tribal negotiating team agreed that they were not going to discuss new developments publicly.² They focused on expanding a proposal drafted by Senator William Hathaway (D-Maine) which had been on the table since October of the previous year. The Hathaway plan proposed that the Passamaquoddy and Penobscot tribes receive \$37 million plus the option to purchase 100,000 acres of land. This plan was favored by large landowners now involved in the case and state officials. “Representative William S. Cohen, [R-Maine] said he, Gov. James B. Longley and Democratic Attorney General Joseph E. Brennan still felt the state could win in court” but supported Hathaway’s plan because, Cohen said, “it will not cost the state anything.”³

While the newspapers toted the proposal as a consensus, the tribes still had to hold general meetings in their respective communities to either approve or reject the plan. The tribal negotiating team had mixed reviews on the Hathaway plan. Penobscot tribal

¹ Wilkinson, p. 227.

² “Land Claim Talks Continue,” *The Wabanaki Alliance*, October 1979.

³ “Maine Officials Endorse Plan to Settle Indian Land Claims,” *The Hour*, vol. 107. no. 254, October 24, 1978.

Governor Wilfred Pehrson appeared on television stating his approval of the plan⁴; “One tribal negotiator commented, ‘In my opinion, it stinks’”⁵; and Penobscot negotiator Tim Love found value in the plan as a foundation from which to work.⁶

Meanwhile, there was a second significant deadline looming on April 1, 1980. On this date the statute of limitations for filing federal Indian claims was due to expire, for the third time. The statute of limitations originally set in 1966 for July 18, 1977 was temporarily extended by Congress in July 1977 to August 18, 1977, and in August the statute was permanently extended until April 1, 1980.⁷ The negotiating team managed to produce their draft proposal in March. From then on, they were on a dead sprint to the claims’ finish line.

Each tribal community met to approve the legislation. Maine legislative leaders of both parties agreed to extend their 50-day legislative session by two days which allowed lawmakers time to ratify the pact before adjournment,⁸ and a day-long public hearing was held March 28, 1980 at the Augusta Civic Center to hear testimony regarding the land claims settlement. An extraordinarily large crowd of over 400 people gathered at the civic center to hear and submit testimony.⁹

⁴ “Land Claims Seen Settled by April,” *The Wabanaki Alliance*, October 1978.

⁵ “Tribes may seek 250,000 acres,” *The Wabanaki Alliance*, November 1978.

⁶ “Land Claims Seen Settled by April,” *The Wabanaki Alliance*, October 1978.

⁷ “Resolution of Eastern Indian Land Claims: A Proposal for Negotiated Settlements,” *The American Law Review*, Vol 27:695.

⁸ “Legislators eye 2-day extension for Indian case,” *Portland Press Herald*, March 21, 1980.

⁹ “Land agreement gaining support,” *Maine Sunday Telegram*, March 30, 1980.

After years of economic repercussions caused by the Indian land claims, the landowners of Maine and Maine lawmakers were eager to put an end to the crisis. On April 3, 1980 the \$81.5 million resolution passed both the Maine Senate and House after only a day and a half.¹⁰ During the voting session Tom Tureen, attorney for the tribes, was overheard saying, “If they don’t go for it, then we’ll go for it.”¹¹

Fortunately for both sides there would be no need. The state was eager to recover from the economic chaos and to have the cloud of ownership cleared up. The tribe was eager to get the settlement signed before the end of President Carter’s administration. A new administration was something tribal negotiators knew would “kill us immediately.”¹² If the settlement was not signed by October the negotiators understood that “the whole deal would be off, and negotiators would have to start over.”¹³ Republican Ronald Reagan was expected to win the presidency and was also expected to veto the whole deal.

Emotions varied in the halls of Maine government. In the House, Representative Antoinette C. Martin of Brunswick said the bill is the least that could be done for Indians who had been historically mistreated. Representative James T. Dudley of Enfield responded by predicting there would be violence in his district: “Someone might drop a match and burn down the woods with Indians as neighbors.”¹⁴ His tirade continued, referencing the Ku Klux Klansmen who had recently re-established themselves in Enfield: “Believe me, if this bill passes, you are in for a lot of trouble...I live in that neck

¹⁰ “State Passes Claim Bill,” *The Wabanaki Alliance*, April 1980.

¹¹ Ibid.

¹² Tim Love, personal interview.

¹³ “Claims Funded,” *The Wabanaki Alliance*, December 1980.

¹⁴ “Brennan Signs Indian Claims Settlement,” *Bangor Daily News*, April 4, 1980; “State passes claims bill,” *The Wabanaki Alliance*, April 1980.

of the woods. I live with some hillbillies. I live with some Ku Klux Klansmen...I know what goes on in that neck of the woods....”¹⁵ Senator Andrew Redmond of Madison warned fellow Senators: “Although Indians are good citizens today, I visualize the possibility that increased activism in the years ahead may make them more aggressive.”¹⁶

Amidst on-going hostilities the final chapter in the settlement negotiations commenced after the tribes and the State agreed on LD2037 “An Act to Provide for Implementation of the Settlement of Claims by Indians in the State of Maine and Create the Passamaquoddy Indian Territory and Penobscot Indian Territory.” This legislation is commonly referred to as the Maine Implementing Act. The agreement of the tribes and the State on this piece of legislation was critical for moving the land claims forward. Only after the State passed LD2037 into Public Law 1979-Chapter 732 would Congress consider approving the settlement.

The Maine Implementing Act (MIA) was in essence a pre-requisite to the federal Maine Indian Claims Settlement of 1980. The MIA essentially outlined the unique relationship that the tribes and State would participate in as they resolved the tumultuous case of the previous decade. The MIA specified the laws that would be applicable to the tribes and to Indian lands in Maine.¹⁷ It also extinguished future tribal claims to Maine lands.¹⁸

Joseph Brennan, who started the era of the Maine Indian land claims as Maine Attorney General, was now the Governor of Maine who signed the MIA into law:

¹⁵ Rolde, p. 48.

¹⁶ “Indians wary of delegation’s stance,” *Portland Press Herald*, April 5, 1980.

¹⁷ Maine Indian Tribal-State Commission (MITSC), “Maine Indian Claims Settlement: Content, Context, and Perspectives,” Maine Indian Tribal State Commission, February 14, 1995, p. 14.

¹⁸ “Land Settlement wins state approval,” *Portland Press Herald*, April 4, 1980.

“...this case has afforded us the opportunity to lay the foundation of a new relationship with our Indian neighbors, a relationship based on full-fledged citizenship, of dignity and self-respect for the Indian citizens of Maine,” he said.¹⁹ However, “the ink was barely dry”²⁰ before problems surfaced. At the public hearing for the bill at the Augusta Civic Center, Andrew Akins, chair of the tribal negotiating committee, stated: “We are interested in building a new relationship with Maine, one of mutual trust and respect.” He promised that the tribe had no intentions of displacing anyone from the lands that the tribes would eventually purchase, and he reminded the state that in negotiation meetings with Maine Attorney General Richard Cohen it was agreed that neither side would make any changes or amendment to the package: “We have not and we expect the same in return from the Maine Senate or House.”²¹

Senate chairman Samuel Collins of Rockland who presided over the hearing suggested that a statement of fact be attached to the bill, and Attorney General John Paterson said his office had “a list of technical amendments.” Akins reiterated the tribal stance that no amendments would be tolerated. “We came to an agreement that there would be absolutely no amendments at all,” Akins said.²²

Two days after the Maine House and Senate passed the bill into law, the *Portland Press Herald* reported “Indians wary of delegation’s stance.” The article reported that “jurisdictional segments of the agreement giving the Penobscot and Passamaquoddy tribes status as municipalities were ratified Thursday by the Maine legislature.”

¹⁹ Ibid.

²⁰ Tim Love, personal interview, June 2008.

²¹ “State of Maine/Maine Legislature Joint Select Committee: Maine Indian Claims Settlement,” public hearing, March 28, 1980, p. 27-28.

²² “Indians want treaty intact,” *Portland Press Herald*, April 1, 1980.

Governor Brennan said it was to “clean up some technical errors and ambiguous language.”²³ This move clearly went against expectations of the negotiating team that no changes be made to the pact.

After the MIA cleared Maine lawmakers, the settlement act then had to navigate through Congress. It reportedly “sailed through the Senate Select Committee on Indian Affairs hearing” on July 1 and 2, 1980. Then with urgency reminiscent of the passage of HCR108 in 1953, both the United States House of Representatives and Senate swiftly voted to approve the Maine Indian Claims Settlement Act of 1980. “The house vote involved 28 minutes of debate. The Senate reportedly ratified the bill in three minutes flat.”²⁴

The Penobscot and Passamaquoddy tribes were awarded a total of \$81.5 million dollars: a \$27 million development fund and \$54.5 million to buy back land from willing private landowners. The State of Maine was awarded relief from paying any monetary judgment and relief from returning any of Maine’s land. They were also relieved of any wrong doing for their mismanagement of Indian affairs and finances which had caused the tribes immense poverty for over a century. Additionally, the tribes were forced to relinquish their aboriginal claim to any other Maine lands to effectuate the financial compensation and purchase on new land. The Settlement Act has been referred to as “the best deal the State of Maine could have made.”²⁵

²³ “Indian wary of delegation’s stance,” *Portland Press Herald*, April 5, 1980.

²⁴ “Congress okays land claims,” *The Wabanaki Alliance*, August 1980.

²⁵ Loring, Donna, *In the Shadow of the Eagle: A Tribal Representative in Maine*, Tilbury House Publishers, Gardiner, Maine, 2008, p. 195.

Penobscot tribal negotiator Akins was not pleased with what the tribes got because he had wanted more, but he felt they did the best they could do and stated that he would “stand by the settlement.” He was particularly pleased with the several community projects which were obtained as a result of the settlement. For example, the Penobscot Community replaced a corroding, one-lane bridge with a new, safer bridge and built a new school with expanded grades for the Indian Island children.²⁶

Passamaquoddy leader Albert Dana called it “a victory” and “...a stepping stone. No one will get rich. The goal is to offer every member of the tribe a job and a share of the profits,” he said.²⁷ One member of the joint tribal negotiating team indicated that what they received was more than they had anticipated: “When we first hired Tom we didn’t expect \$27 million and 300,000 acres. We expected the most we would ever get would be 100,000 acres and \$10 million.”²⁸ Attorney General Richard Cohen said, “I’m just glad it’s over. The issue has lingered over our heads long enough.”²⁹

Changes brought about by the land claims settlement allowed the tribes to move from poverty into modernity. Federal recognition gained through the *Passamaquoddy v. Morton* case (1975) opened opportunities for the tribes to access federal grant monies. The Penobscot tribal community quickly expanded, building a solid tribal infrastructure in an impressively short period of time. Expansion and improvements included the construction of a new community center, family housing units, a new school with expanded grades, a medical and dental clinic, police and fire departments, and a tribal

²⁶ Andrew Akins, personal interview.

²⁷ “Biggest Indian Victory Since the Little Big Horn,” *The Christian Science Monitor*, April 17, 1980.

²⁸ *Ibid.*

²⁹ “Congress okays land claims,” *The Wabanaki Alliance*, August 1980.

administration program that included a long sought-after housing authority and natural resources department to manage their newly acquired lands. Community jobs were plentiful in areas from construction to administration.

The Maine Indian Claims Settlement Act of 1980 (MICSA) was initially framed as victorious, the “Biggest Indian Victory Since the Little Big Horn,”³⁰ but it soon became apparent that the tribes’ interpretation of the legal pact differed from state government interpretation. The urgency in which the complex settlement was negotiated increased the likelihood that the Act would contain ambiguities, or grey areas that were expected to be worked out later. Tribal negotiators state that their understanding when they negotiated the settlement was that it was intended to be fluid and dynamic, changing over the years, rather than fixed and rigid.³¹ In fact, included in the MIA was a means resolve discrepancies associated with the Act. This was the creation of the Maine Indian Tribal-State Commission (MITSC) charged with the responsibility of continual review of the effectiveness of the settlement act .

MITSC, an inter-governmental organization whose membership is specified in the MIA remains in active operation today. Its membership is now comprised of thirteen members: Six state-appointed members and six tribal-appointed members from three different tribes (two from the Passamaquoddy Tribes, two from the Penobscot Indian Nation, and two from the Houlton Band of Maliseet Indians). The thirteenth member is the chair who is selected by the twelve appointees.³²

³⁰ “Biggest Indian Victory Since the Little Big Horn,” *The Christian Science Monitor*, April 17, 1980.

³¹ Personal interviews with tribal negotiators Andrew Akins, Tim Love, Jim Sappier.

³² www.mitsc.org, accessed November 18, 2011.

Unfortunately there would be no shortage of discrepancies. Since 1980 numerous issues have been litigated implicating various provisions of the MIA. Some of these litigated cases are: *Penobscot Nation v. Stilphen* (1983), *Passamaquoddy Tribe v. State of Maine* (1st Circuit 1996), *Great Northern Paper v. Penobscot Nation* (2001), *Penobscot Nation v. Georgia Pacific* (1st Circuit 2001), *Penobscot Nation v. Fellencer* (1st Circuit 1999), *State v. Johnson* and *Penobscot Nation v. USEPA* (1st Circuit 2007), and *Winifred B. French Corp v. Passamaquoddy Pleasant Point Reservation* (Maine Supreme Judicial Court 2006).³³

The Settlement Act has been referred to as the “1980 Attorneys’ Employment Act” by John Banks, Director of Natural Resources for the Penobscot Nation and longest standing member of MITSC. According to Banks the Settlement Act is in need of “a major overhaul” and “the only thing that will improve tribal-state relations are amendments to the Act.”³⁴

Particularly frustrating to Penobscot and Passamaquoddy tribal governments is the fact that interpretations are being decided too narrowly in state courts. Concerns were immediate that the document would end up “being used as a tool via court decisions to maintain the state’s jurisdiction over the tribes.”³⁵ The problem of continual litigation between the tribes and the State of Maine was discussed at a May 8, 2006 annual assembly of Governors and Chiefs at the Veazie Salmon Club in Veazie, Maine. It was recognized that litigation most often occurred when the tribes and the State were unable

³³ Sappier, Jim, “Tribal-Maine Issues: Issues that have been litigated or are in litigation,” in preparation for the 2006 Tribal-State work group to study issues associated with the Maine Implementing Act, Indian Island, Maine, 2006.

³⁴ Maine Indian Tribal-State Commission, Task force on tribal-state relations, “At Loggerheads: the State of Maine and the Wabanaki,” Hallowell, ME, 1997.

³⁵ Loring, p. 249.

to agree on the interpretation of the settlement act. The tribes expressed their concern regarding the process of settling disagreements.

One tribal governor at the assembly used the analogy: “If my wife was a judge and we were going to get a divorce, I wouldn’t get divorced in her courtroom!”³⁶ Former Penobscot Tribal Chief James Sappier said “there is just too much litigation costing everyone too much time and money.” Then State of Maine Governor John Baldacci agreed. Baldacci stated that in the absence of an “Indian policy” the MICSA “becomes the Indian policy.”³⁷ “It’s a settlement that resolved the land suit,” he continued “and it became the framework for dealing with any future issues. It shouldn’t be the sole determinant.”³⁸

One particular provision of the MIA which challenges the tribes’ original meaning and intent is the language providing the tribes with powers of municipalities. This is “one of the most contested provisions of the Maine Implementing Act.”³⁹ The language of MRS Title 30, Chapter 601 §6206, “Powers and Duties of the Indian Tribes within their Respective Indian Territories” reads:

“Except as otherwise provided in this Act, the Passamaquoddy Tribe and the Penobscot Nation, within their respective Indian territories, shall have, exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State, provided, however, that internal tribal matters,

³⁶ Girouard, Maria, field notes from the Annual Assembly of Wabanaki and State of Maine Governors and Chiefs, Veazie, ME, May 8, 2006.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Maine Indian Tribal-State Commission, “Mutual Freedom, Partnership, and Prosperity: The Social, Economic and Legal Relationship between the Wabanaki Tribes and the State of Maine,” Hudson, ME, 2006.

including membership in the respective tribe or nation, the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections and the use or disposition of settlement fund income shall not be subject to regulation by the State.”⁴⁰

Tribal negotiators contend that the municipality language was introduced when discussion on tribal finances came up during negotiations. The municipality language was meant to allow tribal governments the opportunity to seek the same funding as Maine municipalities⁴¹ since Maine had declared loud and clear throughout negotiations that “not one cent, or one inch of Maine land”⁴² would be used to resolve the land claim. At a meeting of the original negotiators hosted by the Penobscot Nation in August 2001, the municipality language, being one of the most contentious, was naturally discussed. The meeting was attended by Tom Tureen, Jim Sappier, Andrew Akins, Butch Phillips, and John Stevens.⁴³ All tribal negotiators are in consensus that the municipality designation was accepted “with the intent that the tribes were not to become a sub-political entity of the State of Maine” and to ensure that tribal governments would be “eligible for funding for schools and road maintenance and other funding that might come up.”⁴⁴

MITSC offered opinions regarding the municipality language in the settlement act on two separate occasions. In February 2001 and May 2002 MITSC stated that state laws to municipalities did not apply to tribal government, that “the tribal deliberative process

⁴⁰ MRS Title 30, Chapter 601: Maine Indian Claims Settlement, accessed at www.mitsc.org, November 18, 2011.

⁴¹ Personal interviews with Penobscot tribal negotiators Andrew Akins, Tim Love, Jim Sappier.

⁴² “Democrats Settle Old Score with Rep. Longley,” *Bangor Daily News*, July 6, 1996.

⁴³ Loring, p. 181.

⁴⁴ Loring, p. 182.

is part of tribal government and therefore an internal tribal matter.”⁴⁵ On both occasions the State of Maine disregarded their opinions.

Reportedly state negotiators “fearful of the creation of ‘a nation within a nation’ assert that the municipality language provided comfort to them with a recognizable model subject to control of the State.”⁴⁶ Former Democratic Representative to the Joint Select Committee on Indian Land Claims for the State of Maine, Bonnie Post, recalled that the “biggest difficulty in composing the final piece of legislation was what had been Governor Longley’s chief hang-up – the ‘nation within a nation’ problem – over tribal sovereignty.” In Post’s opinion the state’s intent was “to project its power as much as possible.”⁴⁷

Penobscot Elder Reuben “Butch” Phillips who served on a 2006 Tribal-State work group to study the differences in interpretation and understanding of the Settlement Act gave a statement to the group representing his understanding of the municipality language and state control as a former Penobscot tribal negotiator: “The tribes believed that the 1980 settlement acts would strengthen tribal sovereignty, however within a few years, narrow interpretations by the courts concerning ‘municipalities’ and ‘internal tribal matters’ have further limited tribal sovereignty.”

Phillips described his understanding of the municipality language: “Amid concerns that the state adamantly refused to contribute monetarily to the settlement, Sec. 6206(1)(Powers and duties of the Indian tribes within their respective Indian territories)

⁴⁵ Maine Indian Tribal-State Commission, “Framework for Discussion Wabanaki/State of Maine Leaders Meeting,” Stillwater, ME, May 8, 2006, accessed at www.mitsc.org.

⁴⁶ Ibid.

⁴⁷ Rolde, p. 46.

was written to provide the tribes the same services afforded to all Maine communities. We did not agree to become a municipality. We did not give up our nationhood.”⁴⁸

Prior to the 2006 Tribal-State Work Group, another task force created in 1997 by the 117th Maine Legislature worked to “explore ways of improving the Tribal-State relationship and the effectiveness of the Maine Indian Tribal-State Commission (MITSC).”⁴⁹ The report they produced, “At Loggerheads – the State of Maine and the Wabanaki,” lists the topic of “conflicting points of view on the Settlement’s intent” as one of “seven basic sets of issues that are affecting tribal-state relations in Maine.”⁵⁰ The task force found that the Tribes and the State have “fundamentally different views about the basic intent of the Settlement. The tribal view is ‘unless we gave it up, we retain it.’ The State view is ‘unless we gave it to you, you don’t have it.’”⁵¹

The idea of being a municipality under the state is unacceptable to the people who are indigenous to the land. The Penobscot Nation Tribal Government describes itself as one of “the oldest, continuous governments in the world”⁵² having existed and governed themselves in this area for thousands of years prior to Maine statehood in 1820. Former Penobscot MITSC Representative Mark Chavaree stated in 1998:

“The State says the Penobscot Nation is nothing more than a municipality and it can do what it wants on our lands. Maine does not have to negotiate with municipalities because they are creations of the State. We were here before the State. People often point to the section in the Settlement dealing with the rights and responsibilities of

⁴⁸ Phillips, Reuben, “Narrative in support of amendments of Land Claims Settlement Act,” 2006.

⁴⁹ Maine Indian Tribal-State Commission, Task force on tribal-state relations, “At Loggerheads: the State of Maine and the Wabanaki,” Hallowell, ME, 1997, p.1.

⁵⁰ Ibid.

⁵¹ Ibid, p. 2.

⁵² www.penobscotnation.org, accessed November 18, 2011.

municipalities. This was intended to be an additional authority, but the state likes to use this as a limitation on Tribes. I will never say we are another municipality. We are the Penobscot Nation.”⁵³

Many other MITSC commissioners have, over the years, expressed concern regarding the municipality language in the settlement act. Mike Hastings, Commissioner appointed by the State of Maine remarked that: “The municipal issue has gotten out of hand. To get the state negotiators to buy into the Settlement Act, they used the municipal scheme because this was familiar to them. Over the past 22 years, the phrase ‘like a municipality’ has become ‘a municipality.’”⁵⁴

MITSC Commissioner John Banks (Penobscot) agreed that the municipal language was “sold to the Tribes as a way to get funding” and former MITSC Chair Cushman Anthony referred to the municipal language as “a regrettable mistake.”⁵⁵ The disagreement on the municipality language is just one of many disagreements that the tribes and the State have with the settlement act. In the opinion of tribal government and many of the tribal-State work groups that have been created over the years to examine the settlement act the problem lies in the State’s narrow interpretation of the act.

⁵³ Maine Indian Tribal-State Commission, “Impact of Maine Civil Laws on the Wabanaki: 1998” December 1998, p. 16-17.

⁵⁴ MITSC Commission Meeting Minutes, September 25, 2002, accessed at www.mitsc.org, November 18, 2011.

⁵⁵ Ibid.

CHAPTER SIX

CONCLUSION

The original meaning and intent of the Maine Indian land claims are not captured in the written laws of the Maine Indian Claims Settlement Act. Loss of meaning in a written document occurs historically over time in all sorts of documents from treaties to the United States constitution. Jack N. Rakove, in *Original Meanings: Politics and Ideas in the Making of the Constitution*, suggests that the original meaning of written documents is best determined by recovering the intentions of its framers. Rakove further suggests that the best way to recover intentions is to understand the historical context in which the document was created.¹

Negotiations to resolve the Maine Indian land claims were reached and recorded following a decade of economic, social, and racial turmoil in Maine. Both sides to the party were under extreme duress. An examination of the creation of the Maine Indian Claims Settlement Act by focusing, as Rakove suggests, on what the framers were thinking, feeling, and experiencing when they created the Maine Implementing Act reveals that good faith was likely absent in negotiations and true intentions were not clear. The Penobscot and Passamaquoddy tribes were up against a long assumed power dynamic and were operating in an unbalanced system. “It was as if we touched a raw nerve that extended back into the innermost recesses of the true personality of the white people around here and unleashed all their deep hatred for Indians, together with their guilt for what they had done to the Indians over the years,” said Penobscot negotiator,

¹ Rakove, p. xiii.

Andrew Akins about people's reactions to the land claims settlement.² The Penobscot and Passamaquoddy tribes thought they were entering into a new era of existence. They looked forward to being equal government-to-government partners with the State of Maine. At the March 1980 public hearing in Augusta, Akins announced that the Penobscot were "interested in building a new relationship with Maine, one of mutual trust and respect."³ Tribal attorney Tom Tureen also spoke of a new relationship: "In the end what we wound up with was a blueprint for a governmental relationship between Indians and non-Indians." He acknowledged that although the plan was a compromise and was unique in structure "both sides see it as a framework within which the spirit of cooperation and mutual understanding which developed during the negotiations can continue into the future."⁴

However, the writing was on the wall. At the same public hearing Attorney General Richard Cohen's opening remarks revealed a different intent. Cohen said "This settlement tends to keep in place that historical relationship with which you are all accustomed, to which your forefathers have been accustomed and which your forefathers created. This in my view continues that relationship."⁵ For the tribes, the land claims settlement "represented a spirit of reconciliation between the State and the Tribes."⁶ For the state it perpetuated the colonizing goals of earlier treaties, and maintained the status

² Brodeur, Paul, *Restitution: The Land Claims of the Mashpee, Passamaquoddy, and Penobscot Indians of New England*, p. 134.

³ State of Maine/Maine Legislature Joint Select Committee, "Maine Indian Claims Settlement," public hearing, Augusta, March 28, 1980, p. 28.

⁴ *Ibid*, p. 24.

⁵ *Ibid*, p. 22.

⁶ Scully, p. 2.

quo. Former Penobscot Representative to the Maine State Legislature, Donna Loring sums up the problem with the Maine Indian Claims Settlement Act:

“The MILCSA is the document that defines the relationship between the state and the tribes. The name itself is a misnomer. It was an act to solve the dispute between the tribes and the state over land ownership of 2/3 of the state. What the act did do was solve the dispute of land ownership, but it was also a tool to keep the tribes in handcuffs, so to speak, and under state control. It was, in fact, a document that ended up being used as a tool via court decisions to maintain the state’s jurisdiction over the tribes in every area of the law, even internal tribal matters. This total control was never the intent of the tribes or the intent of congress. The intent of congress was to recognize and enhance the tribes’ culture and sovereign status.”⁷

The tribes contend that the State violates the spirit of the agreement by attempting to legislate and adjudicate the tribes rather than working cooperatively with them. After having been subjected to numerous losses at the hands of the state government, the Penobscot and Passamaquoddy tribes viewed the land claims as a way to rid themselves from the oppressive shroud that had been cast on the tribes since 1820 when Maine assumed control over them. Given the long historical legacy of indigenous subjugation in Maine it is clear that the current outcome never could have been the original intent of tribal negotiators.

The tribes felt the full effect of State practices which were destroying their culture. After all, they had been living the nightmare for decades. In the 1940’s, Penobscot Florence Nicola Shay, an advocate for Indian rights, spoke out against the State and its broken treaty promises which demonstrated the tendency for the State to not keep their word: “The Treaties are merely useless pieces of paper today as all promises have been broken...We are a segregated, alienated people and many of us are beginning

⁷ Loring, p. 249.

to feel the weight of the heel that is crushing us to nothingness. We are still in slavery, we are dictated to, and we are made to feel that we do not own our own souls.”⁸ The long history of oppression while living under the thumb of state government is amply documented in the government’s own legislative petitions, testimonies, and special reports. Within the tribal communities, the history of how they were once a prosperous and abundant tribe was handed down orally from generation to generation. Almost every tribal citizen knew the history of how their lands had been taken and all the citizens could experience the resulting consequences. Given their awareness of their history, it is doubtful that the Penobscot and Passamaquoddy tribes would have agreed to put themselves back in the situation from which they were escaping. There was comfort in the knowledge that a new relationship with the State was being created. Once the case was finally settled the tribal communities “felt victorious, justified, validated.”⁹

However the jubilation was short-lived once the tribes realized that their fate was still being determined by the State particularly through narrow interpretations of the settlement act in Maine courts.¹⁰ Some suspected that the State only intended to maintain the status quo all along, and that the one thing they did not want was for the tribes to be successful.¹¹

Over the past thirty years since the settlement was negotiated it has become increasingly clear that the tribes and the State have “fundamentally different views about

⁸ Wapanohki Museum and Resource Center, “Maine Indians: The People of the Early Dawn,” Pleasant Point Tribal Government, Perry, ME, date unknown, p. 27.

⁹ Brooks, Laura D, “Behind the Scenes of the Maine Indian Land Claims,” Native American Political Issues, <http://www.oocities.org/capitolhill/9118/history5.html>, accessed January 25, 2012, p. 4.

¹⁰ Personal interview with Akins, Sappier, Love.

¹¹ Personal interview with Love.

the basic intent of the Settlement.”¹² While the tribes maintain that they have the inherent right to self-governance, the State operates from a paternalistic position that “unless we gave it to you, you don’t have it.”¹³ Before the 2006 Tribal-State work group, Penobscot Reuben Phillips explained to the group that in order to “understand our way of life, and our government, one must appeal to our history, customs, and traditions to explain who we are as a people and why we do what we do.” He further explained that “tribes govern themselves with sovereignty granted to the tribe by the Creator and passed on to us by our Ancestors.”¹⁴

While the tribes speak of ancient roots and connections to their Creator, the State “tends to focus on the actual words in the Settlement. The tribes refer to the spirit and intent of the Settlement.”¹⁵ Assistant Attorney General for the State of Maine, Bill Stokes once posed the question, “why isn’t the land claims really settled? Isn’t it written in black and white?”¹⁶ and state negotiator John M. R. Paterson who during the negotiations was deputy State Attorney General for Governor Brennan said: “A deal is a deal, and we made a deal.” And while a deal may be a deal in Paterson’s words “it’s a deal whose origins and intricacies fewer and fewer Mainers understand.”¹⁷ Historian and activist Vine Deloria, Jr. commented on the problem of the written word: “History today

¹² Scully, p. 2.

¹³ Ibid.

¹⁴ Phillips, p. 1.

¹⁵ Scully, p. 3.

¹⁶ Loring, p. 194.

¹⁷ “Legacy of the Land Claims,” Bangor Daily News, October 8, 2005.

is often written by people who see only the words on paper and fail to see the emotional context of history which enables us to understand the flesh of the historical process.”¹⁸

While the Maine Indian Claims Settlement Act of 1980 has led the tribes down another path of struggle with their colonizers, it has also created tremendous opportunity for the tribes to exercise self-governance and create infrastructure and employment. True to the negotiators’ beliefs, the new money did not harm the tribes’ heritage and culture but provided a level of foundational security that allowed traditions to become strengthened. “Instead of worrying about what to eat and where to sleep, people will be able to concentrate on our past and pass it along to the generations that follow us.”¹⁹

Presently, the Penobscot and Passamaquoddy continue to be locked in an unwanted relationship with the State and they continue to seek ways to resolve the ancient conflict. Despite acknowledged ambiguities, the land claims settlement documents were given the status of a sacred canon by many state officials, judges, and attorneys. The tribes still have not found the respectful government-to-government relationship that they had been expecting and the State continues to treat the indigenous people of this land as mere problems. Former Executive Director of MITSC, Dianna Scully, wrote in her letter of resignation: “...I hope that some day the State of Maine will understand that the Tribes’ pursuit of sovereignty is not just an annoying flexing of tribal muscle, but is inextricably linked to their quest for survival both as peoples and as cultures.”²⁰

¹⁸ Deloria, Jr. Vine. “The Subject Nobody Knows,” *American Indian Quarterly*, Winter 1995, Volume 19(1), p. 143.

¹⁹ Jones, Clayton, “Biggest Indian Victory since the Little Big Horn,” *Christian Science Monitor*, p. 3.

²⁰ Maine Indian Tribal State Commission, “A Summary of the Activities of the Maine Indian Tribal-State Commission (4/19/03 – 6/30/06),” www.mitsc.org, accessed 12/1/11.

Despite centuries of social, economic, racial, and political challenges the Penobscot and Passamaquoddy tribes have remained tenacious not only in surviving, but thriving as distinct, dynamic cultures. The Maine Indian Land Claims provided a desperately needed shift in the lives of Penobscot and Passamaquoddy people. Specific meanings of the content contained within the written settlement document may be lost temporarily to some due to the variety of interpretations of the written word, and the results were not exactly what the tribes had in mind, but the intent of the land claims from a Penobscot perspective is unmistakable: land, restitution, and the promise of a better way of life. The history of the 192-year old conflict between the Penobscot and the State of Maine continues as both Penobscot and Passamaquoddy tribal governments explore ways to release the shackles that bind them. During the celebratory atmosphere following the settlement negotiation, Penobscot negotiator Akins declared: “There is nothing better than being a Penobscot Indian. We can’t imagine being anyone else. We believe we are the keepers of the Earth”²¹ and it is this mindset that keeps the Penobscot active in their quest for justice.

²¹ Jones, p. 3.

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