

## TRANSCRIPT

### *Task Force on Changes to the Maine Indian Land Claims Settlement Act*

Second Meeting : August 9, 2019

#### Part 2

**Rep. Donna Bailey**: So if I'm hearing you correctly, we really are just talking about real property taxes.

**Kaighn Smith (Penobscot Nation Legal Counsel)**: Well, section three, paragraph three, if I may, would change the law, and would put the Tribes and their citizens on a par of other Tribes and citizens in the United States.

**Rep. Donna Bailey**: Which..

**Kaighn Smith**: So, generally

**Rep. Donna Bailey**: ... can you explain what that is?

**Kaighn Smith**: Excuse me?

**Rep. Donna Bailey:** What is that?

**Kaighn Smith:** So generally speaking, when Tribal members generate revenue through their activities within Indian country, they are not subject to taxation. So it's on reservation activity that is generated pursuant to Tribal efforts. There's not a state tax imposed upon that income...

**Rep. Bailey:** So, for example... And believe me, I'm just trying to understand, because taxation is so far from what my area of expertise is.

Rep. Bailey: So, for example, if there's a store on an Indian reservation that sells goods, do they currently send sales tax to the State of Maine?

**Kaighn Smith:** Yes, I believe so. Mark, you could chime in on that. I believe that's the case.

**Mark Chavaree (Penobscot Nation Legal Counsel):** Yes, if it's a non-governmental activity.

**Rep. Bailey:** Okay. And so this proposal is to eliminate that, for example, and any other sort of taxes like that.

**Kaighn Smith:** Yes.

**Rep. Bailey:** You've got to keep it simple for me.

**Kaighn Smith:** Absolutely. And we would be delighted to provide the Task Force with a memo on how these taxes operate under principles of Federal Indian law, so that you could have a better understanding. Because it's not obviously... What we're doing through these amendments is to put the Penobscot Nation, the Passamaquoddy Tribe, the Aroostook Band of Micmac Indians, and Houlton Band of Maliseet Indians on the same playing field as Federally recognized Indian tribes across the country. And the tax consequences for states within the boundaries of tribal nations are well laid out in the treatises, and we can provide that for you in a simple fashion.

**Senator Mike Carpenter:** It would also seem to suggest, and maybe I'm reading it incorrectly, but that if I'm a tribal member working in Presque Isle, does this suggest that I wouldn't be subject to state income tax?

**Kaighn Smith:** No, you would be. Under principles of Federal Indian law, you would be. It's when you're generating revenue within the boundaries of the Tribe's jurisdiction that [crosstalk 00:02:37].

**Sen. Mike Carpenter:** So it's for the Tribal entity and the individuals. So if I work for... For example, if I work for the Aroostook Band of Micmacs, I would not be subject to state income tax.

**Kaighn Smith:** If you are a Tribal citizen working for the Aroostook Band of Micmac Indians generating revenue within the boundaries of the land of the Aroostook Band of Micmac Indians, that's correct.

**Sen. Mike Carpenter:** I wouldn't be generating... Okay. Yeah, okay, so the revenue I'm paid by the Band is revenue generated... Okay, all right.

So all tribal employees would be exempted from state income tax?

**Kaighn Smith:** Only if they're citizens of the respective Tribe.

**Sen. Mike Carpenter:** Right, right, I'm sorry, yes..

**Kaighn Smith:** And it's economic development within the reservation.

**Sen. Mike Carpenter:** Okay. I'm just trying to understand, I'm not...

**Kaighn Smith:** Understood.

**Sen. Mike Carpenter:** [crosstalk] judgment.

**Kaighn Smith:** Understood.

**Sen. Mike Carpenter:** Okay. All right.

You have more questions?

**Rep. Donna Bailey:** [inaudible 00:03:29].

**Sen. Mike Carpenter:**No, go ahead.

**Rep. Donna Bailey:** So the other one I noted that I needed more clarification was 6204, and that was the... I'm sorry, it's not... But let's do 6204, because that's the difficult one.

So help me understand, in your letter number one on page two talking about 6204, that the goal was "to establish that the laws of the State shall not apply to the Tribes or their respective lands, except as agreed by the State and the Tribes, or as provided by Federal law."

Then your proposal is to just completely delete 6204. So I'm not quite sure where the "except as agreed by the State and the Tribes" fits in.

**Michael-Corey Hinton (Passamquoddy Legal Counsel):** To answer your question, Representative Bailey, we added a section providing direct statutory authority for the State to enter into cooperative agreements with the Tribes, and those sorts of agreements could cover the types of issues that I think you're referencing.

**Rep. Donna Bailey:** So you're envisioning that as part of these cooperative agreements, that that's where the State and the Tribes would be able to say,

"Well, okay, yes, your court system... " I'm going to use the court system just because that's my frame of reference. "Your court system is adequately up and running now, and so you can go ahead and take full jurisdiction of x, y, z."

So that's what you're envisioning, that it would be through these cooperative agreements? That's where the "except as agreed between the parties" comes in?

**Kaighn Smith**: Sure. I think that could be one example. Perhaps a better example could be that if the Tribes and the State decided to reinvigorate what was 6210, where the qualifications for state law enforcement officers, they could have the police academy operating for tribal and state law enforcement officers and be trained pursuant to state law. If that's something that the Tribes thought was in their best interests with the State, they could do that.

I'll just say, that the working premise for the Tribe side of the Task Force, after Speaker Gideon asked the Tribes to sit down and figure out what should drive the Task Force, the first principle was that the Tribes should be treated like other Federally recognized Indian Tribes in the country with respect to the application of state law. And generally speaking, state law does not apply to Tribes and their citizens within Indian Country. Tribes are considered to be sovereign governments with their own self-determination.

And as a general matter, unless there's very compelling state interests, state authority is quite limited with respect to its authority over Tribes and Tribal citizens within Indian country. With respect to the activities of non-Tribal

citizens in Indian country, state authority may generally operate unless it interferes with Federal and Tribal interests reflected in Federal policy.

And the sort of restatement of that law as it has been handed down by the Supreme Court is that, if the imposition of state law would infringe upon the right of the Tribes to govern themselves, then it is barred. And that goes to the fundamentals of the dignity of a Tribal community to be self-governing. The states come in and try to overlay their laws on what the Tribe is attempting to govern itself, there's what the Supreme Court has called an infringement upon Tribal sovereignty, and it's barred.

**Kaighn Smith:** So that's part of the effort here is to relieve the Tribe of the burdens of state law that have unnecessarily held the Tribes back from realizing their own self-determination.

**Rep. Bailey:** So I think what I understand then is what you're really saying is the "except" part is more to do with non-Tribal citizens.

**Kaighn Smith:** Well, the language is "except as agreed to," right?

**Rep. Bailey:** Right.

**Kaighn Smith:** So, what would by virtue of 6204 and 6206 combined, we would have the relationships

**Rep. Bailey:** Well, you're proposing to delete 6204.

**Kaighn Smith**: Yes.

**Rep. Bailey**: So that's..

**Kaighn Smith**: As a result of deleting 6204, and as a result of the amendments to 6206, the Tribes would have the status of other Federally recognized Indian Tribes in the country with respect to when state law does or does not apply under the doctrines that I just described with respect to state authority over Tribes and their citizens, with a little more authority over non-tribal citizens within Indian country, "except as otherwise agreed to by the Tribes in the State."

So there may be opportunities for the Tribes in this state to sit down and to say, "Look, we think in these particular areas it makes sense for us to apply the laws of the state, or to have state law apply."

**Rep. Bailey**: So that brings us back to those cooperation agreements, which now I understand that.

**Kaighn Smith**: Yes.

**Rep. Bailey**: So what happens, though, if the Tribes and the State aren't able to reach agreement on one of these cooperation agreements in one of these areas? How do we resolve that?

**Kaighn Smith:** Those conflicts, if they were to emerge, would be governed pursuant to 6206 under principles of Federal Indian law. We would go to the Cohen Treatise. Felix Cohen wrote the seminal treatise on Federal Indian law that is the Bible for states and tribes to work out these matters. It's there. There are clear rules about where State authority begins and ends in Indian country. We can talk about those rules.

**Rep. Bailey:** No, no.

**Kaighn Smith:** I don't want to get into the weeds.

**Rep. Bailey:** Right. No, I'm more asking about the procedure.

**Kaighn Smith:** Right.

**Rep. Bailey:** How this is going to work, practically speaking, and the procedure.

**Kaighn Smith:** Okay, let me give you

**Rep. Bailey:** So you have this mechanism for the State and the Tribes to seek agreement

**Kaighn Smith:** Right.

**Rep. Bailey:** ... because we have this "except as agreed to." And I'm just trying to foresee, "Well, what happens if they're not able to reach an agreement?", how that gets resolved.

**Rep. Bailey:** Because, as you said in your introduction, part of what we're trying to do here is lessen the litigation, not add to it. So I don't want to put something in place that's just going to be another mechanism for more litigation.

**Kaighn Smith:** Right.

**Rep. Bailey:** So that's why I'm asking the question.

**Kaighn Smith:** Well, I mean, we can try to build that mechanism into the amendments here, and that might be a worthy effort. If there are conflicts, and those conflicts are real, then like in any ordinary aspect of life, they could end up in litigation. There was a significant case out of the State of Washington recently involving the Tulalip Tribe that had created an economic development zone, and the State of Washington decided that it should be able to tax the businesses within that zone. And they ended up in Federal court litigation to resolve that tax question. It was resolved in favor of the State.

Like all fields of law, there are niceties within parts of the law that still are being developed and challenged. It's not a perfect world, but we think it's a much more perfect world for tribal-state relations than the existing regime under the Maine Implementing Act.

**Rep. Bailey:** So what I hear you saying is that what you're trying to accomplish, though, is that the default would be Federal Indian law.

**Kaighn Smith:** Exactly.

**Rep. Bailey:** Which is not currently the case.

**Kaighn Smith:** Exactly right.

**Rep. Bailey:** Okay, thank you.

**Sen. Mike Carpenter:** Chief Francis?

**Chief Kirk Francis (Penobscot Nation):** I was just going to add, I think currently we have a system under the Settlement Act that provides for really no third-party dispute resolution that's led to 40 years of conflict. So this is a great area to be discussing, because I think it's an important one that we should sort out through this process. But as it stands now, there's language that talks about the states and the Tribes having to agree on, for example, the access to beneficial acts and other things.

So currently the system is failing to stop litigation and conflict. So I think this would be a great area to spend some time on, and hopefully throughout this process that that's what this process is accomplishing as we move forward is, what sections... And I think this conversation is great, because I had hoped that the document, and given an understanding of kind of foundationally where the Tribes were at and what we're trying to accomplish, would invoke a lot of conversation, and it's doing that.

And I think this process moving forward, we should talk about... and I know we'll get more into that, about what gives everybody a little bit of heartburn

and how we can resolve those things to move the process forward. But I also think it's

**Chief Kirk Francis (Penobscot Nation):**

important that when we talk about this document, and in the language that you're hearing, probably some for the first time, about principles of Federal Indian law, I think understanding where the tribes were and what the court said back in the late '70s about our status is really foundationally kind of where this mindset is all coming from. It's a factual history with the Tribe, and I think Paul was going to talk about a little of that in this meeting.

So we're not creating the wheel here, we're trying to regain what we lost in this Implementing Act. So thank you for those questions, but I do think that thirdparty dispute resolution has to be an important part of this conversation. And I think as we spend more time on what MITSC's role is, and how to look at that statutory language that created MITSC, and what their purpose is, maybe that's a mechanism, as well, given the fact that it's a fair committee that's appointed equally by the State and the Tribes.

**Sen. Mike Carpenter:** Anybody who wants to jump in here from the Task Force, please just catch my eye or raise your hand. I just had a couple of observations, I guess.

Essentially what you've done here, correct me if I'm wrong, is you basically have taken Chief Peter-Paul's suggestion at the last meeting and sort of set almost all of the Implementing Act aside, but for, except for, a build (?) back. And I'm not saying that in a negative way, but I think that's what we're talking about here, with the default position, as Representative Bailey says, being a determination under recognized Federal Indian law, which I'm not

familiar with and probably most of the panel members are not. And that's fine. That's seems to me to be an appropriate way to proceed.

So, as we go forward today in looking at the future, I'm going to look to the Attorney General's Office, Chris and you folks. It seems to me, and maybe somebody can object to this or say it's not appropriate, but it seems to me that before we come back to a further discussion, we can talk about the default position being how the courts and how the Federal law have recognized Indian law in Indian country. We need to have an understanding of what that means. Kaighn has said that now half a dozen times and I have no problem with that, but I don't understand what that means.

**Sen. Mike Carpenter:**

So it seems to me that just for your planning purposes, before we come back together, it might be the best use of our time if you folks got together with the Attorney General's office and see if we could have an agreement as to exactly what that means with regard to natural resources, with regards to taxation and all of those things, so that we're all at least playing... or singing off the same hymnal here. Do you understand? I'm not saying that very articulately, but do you understand where I'm going? Would that be something that you folks would consider doing with the AG's office prior to maybe getting down into the weeds on some of this stuff?

**Kaighn Smith:** We would be delighted to lay that out.

**Sen. Mike Carpenter:** Again, just to understand, "Okay, here's where the Federal courts, or the Federal statutes have put us with regard to this, and

with regard to this, with regard to this." Then at least we are back at the table, we're all on the same level of understanding, perhaps.

**Kaighn Smith:** Sure. Sure...

Absolutely.

**Sen. Mike Carpenter:** Mr.Thibeault did you have a hand up first? There you go. You had it.

**Paul Thibeault (Maine Indian Tribal State Commission-MITSC- Managing Director):** Okay. I just wanted to follow up on Chief Francis's invitation to comment, and to underscore some of what's been said.

**Sen. Mike Carpenter:** If you could just identify yourself on mic, because people are listening...

**Paul Thibeault:** This is Paul Thibeault from the Tribal State Commission. I wanted to follow up on the comments that Chief Francis and others have made about the pre-Settlement situation. And we touched on this at the last meeting, but I think it is foundationally really important that people understand that the day before the Settlement was signed, federal Indian law was in full effect in the state of Maine. Both the state and federal courts have made a series of decisions, Morton, Bottomly, Dana, that clearly indicated that federal Indian law was law in the state of Maine until President Carter signed that Settlement. And I don't think that can be overstated.

So when the Tribes are talking about flipping this switch, or as you've just described it, fundamentally reversing some aspects of the Settlement, yes, but what they're talking about is the situation that already applied to them prior to the Settlement. It's not new. It's not that it would be granting them something they never had from the time of those decisions. Until the Settlement, they had those rights under federal Indian law.

Just one other thing I wanted to mention that I think may not be fully understood in terms of the foundation and the background, is the Settlement is not the vehicle by which the Tribes obtained federal recognition. The court decisions were the vehicle by which the Tribes obtain federal recognition prior to the Settlement. So the Tribes, at least the Passamaquoddy and Penobscot Tribes, had federal recognition prior to the Settlement. They did not obtain it through the Settlement. I think that's an important thing for people to remember.

**Sen. Mike Carpenter:** Well, and I think your first point is extremely important that prior to the day when President Carter put his signature on the federal statute, and that's something I knew, but I had sorta forgotten, that federal Indian law controlled, so that's important. Could you turn your mic off, Mr. Thibeault? Thank you. Representative Perry.

**Rep. Anne Perry:** Well, excuse my ignorance, but I would love to have some sort of an education session on what is in federal Indian law. I really feel very inept and would love to have an education session, whether it be with the committee or have an opportunity to at least learn a whole lot more than I know.

**Sen. Mike Carpenter:** Well, I think that's where I was going with my earlier comments about we need that. The committee needs to be briefed by both sides, if you will, at that table at the next meeting as to what is the status. Now, I'm in hopes that you could get together before in between and come to an agreement as to where things stand with regard to federal Indian law. So how would this really, if we agreed with what you proposed here, what would the practical effect be on the ground for the state of Maine, for the Tribes, for the municipalities, and all that. So again, I don't know how. Give me your best guess, either Michael (Corey Hinton) or Kaighn as to ... Sorry, Mr. Smith, how long do you think that's going to take you?

**Kaighn Smith:** Go ahead. I happen to be a reporter for the American Law Institute's restatement of the law of American Indians, and we're going back to our advisors next month with our chapter on tribal state relations. I'll just say that it has been a very interesting process and a long process, but we're getting there. We started the project in 2013, so we're going to have to put some parameters around the subject areas that the task force would like to have us outline, because otherwise we're going to be writing a treatise and we're going to hand the treatise over to you.

So for example, we could outline state taxation in Indian Country, state authority over Tribes and their citizens, state authority over a non-Tribal citizen. We could basically start there, but I also have to say that this field is so steeped in history that no one can really begin to understand the field of federal Indian law unless one understands that the history behind it, and I think a short historical treatment of the field is also going to be important to provide to you. But I think what we should do is just describe what the

subject areas are of most interest so we can have some limitation on it. Perhaps what I just outlined, history, a state authority over Tribes and their citizens, state authority over non Tribal citizens, and taxation might be a good starting point.

**Mike Carpenter:** I think that would be a good starting point, and I should look to the Attorney General. I offered up his office without even getting a nod from him. Mr. Frye, do you think that, that's something that, assuming we can come up with some subject issues and some appropriate time frames, and I see Mr. Taub.

**Chris Taub (Assistant Maine Attorney General):** I just got the nod from the Attorney General to respond to this. So I mean, first of all I think it's just important to note that, as Kaighn said, federal Indian law is incredibly complicated and cases are decided virtually every day interpreting some nuance of federal Indian law that hasn't been decided before. So it's not as if there's sort of a set of instructions that we can just look at and say, "This is exactly how this would operate in the state of Maine."

And I think the other thing that's important to keep in mind. Is that whatever the legislature does with respect to the state Settlement Act, we still have this federal

**Chris Taub (Assistant Maine Attorney General):**

Settlement Act out there. And if the legislature adopts all of the proposals that the Tribes are making here with respect to the state act, there's still going to be a lot of issues there that are going to arise from the fact that we have a federal act that's in place.

And just so, for example, and this is incredibly complex and I don't pretend to understand all of it, but I can just flag a couple issues that sort of jump right out at me. One is that the proposed amendments purport to make federal law that provide benefits to the Tribes applicable to the state to the same extent as in Tribes in other states, but there's the federal law out there that places limits on the extent to which federal Indian law applies in Maine. So it's not clear to me that the state legislature would have the authority in the light of a clear directive in federal law to simply say, regardless of what the federal law says, federal law is going to apply in the state. So I think that's just sort of one issue.

I think another issue, and again, I have to profess that I am not an expert in Indian law, and the other thing I should say is that our office has 40 years of experience interpreting and applying and reading court decisions, applying and interpreting the Maine Settlement Act, but we are not experts in federal Indian law generally because we have not been operating under that regime. So I'm just sort of saying that in case I misspeak, it's not intentional, it's just my own ignorance.

But we do have a federal law. Under the federal law it says that a number of federal statutes that give criminal jurisdiction to the federal government over crimes that occur on Indian land are not applicable in the state of Maine. That's because the way the Settlement Act is structured, it sort of defines the extent to which the Tribes have jurisdiction over some matters, and the state has jurisdiction over other matters. So if we now eliminate the provisions that address the criminal jurisdiction and we have a federal law out there that says that there's no federal jurisdiction, it's not clear to me

exactly who would have jurisdiction to prosecute crimes occurring on Tribal lands.

Now, I think maybe the Tribes would have that jurisdiction under this proposal. Then so the issue there is that would mean possibly that Tribes would have jurisdiction over every crime up to felonies occurring on Tribal land, whether the

**Chris Taub (Assistant Maine Attorney General):**

crime is committed by a Tribal member or a non Tribal member. I guess this is all sort of a long way of saying that even with these amendments we're still going to have an overlay of federal law that is going to call us a lot of issues.

That said, I think it certainly to me would make sense if the Tribes and their counsel wanted to put together a memo outlining how they think federal law would apply if this proposal were to go through. I think we could look at that and I think there are certain things that we would agree on. I think a lot of what Kaighn has said I agree would be the effect of federal Indian law, that there might be some things that we would disagree with or say that it's not that clear, but I think that would probably be a helpful exercise. And if I just go on, there was sort of one other observation or maybe two other observations that I wanted to make.

The first observation is that there were sort of ... the Settlement Acts obviously arose as the result of a settlement. So you had multiple parties, you had the federal government, you had the Tribes, you had the state at a bargaining table trying to work out very difficult, thorny jurisdictional issues.

All the parties had different interests. I wasn't there. This was 1980. I was pretty young at the time. But there's a very detailed legislative history, and you can go through the legislative history and see exactly sort of what interests each of the parties were expressing and sort of what they thought was the most important thing to get out of the negotiations. And I think it's fair to say that if you look at statements from the state representatives, for example, the Governor, the Attorney General, other state Representatives, one of the most important things for them was that they're not be, I'm putting this in air quotes, that there not be a "nation within a nation."

So it was very important for the state representatives that ... and you can read this in the legislative history, that there be sort of one set of laws in this state that would apply to everyone. They didn't want sort of separate Tribal sovereign nations. They wanted sort of a broad jurisdiction. They wanted environmental laws, laws affecting air and water, to apply equally regardless of whether the activity was occurring on Tribal lands or not. So that was a very important interest for the state. And that's not to say that this legislature can't decide that, that's no longer a valid interest or the interest have changed or that Tribal interests are now, you know, argue in favor of revisiting that. But I just think it's important that the task force be aware that this was the interest.

**Chris Taub (Assistant Maine Attorney General):**

I mean, this was a conscious decision. They were sort of looking at the federal jurisdictional model and they were looking at this other model. And there was a very conscious effort on the part of the state to say this is the model that we think would work in Maine, given its size, given its population, given us geographic distribution.

The other thing that the state interests or that the state representatives noted was that it's not as if sort of the federal model was working out perfectly. States were still involved in litigation with Tribes, even under the federal model, and they still are. So those are kind of the interests that the state was looking at. And again, the legislature is free to revisit that, but I just thought it was important to point out that these are the kinds of interests that the state was advancing and that the state thought were important, and I think that if the task force does decide to significantly change the Settlement Acts, they should just be aware of what the effects are going to be and how those are going to relate to the interest that the state previously expressed.

Then just sort of the other category of observation or the other observation I wanted to make is just that there are ... you know, I've been to legislative committee hearings and work sessions and I hear a lot about legislators expressing concern about unforeseen consequences. And I mean I would say that this proposal has a lot of foreseen consequences, but it also has a lot of unforeseen consequences that are incredibly difficult to sit here and sort of identify all of them. But I just kind of wanted to flag a few of the issues, and I don't have answers to these necessarily, but I think these are just issues and you know, perhaps these are some things that the tribe could address.

One obvious issue, and Representative Bailey, you sort of we're referring to this, are taxation issues. So it's income taxes, it's property taxes or payments in lieu of property taxes, and it's sales taxes. You know, I'm not an expert in Indian law, but my understanding is that for transactions, for sales that

occur on Tribal land to Tribal members there's no authority of the state to impose an excise tax or a sales tax. So what states, and I think this is probably common knowledge to everyone, but what states and other jurisdictions have found is that when it comes to certain things that are heavily taxed, like cigarettes and gasoline, it's very difficult

**Chris Taub (Assistant Maine Attorney General):**

to regulate that kind of activity. Because, even though in theory a nonmember who buys a product on a tribal land is subject to a sales tax, it's very difficult to collect that tax.

Property taxes, if there are businesses that are located on Indian land, I'm not sure the extent to which those taxes would be collectible. So, that's sort of one issue. I think another issue that people should be thinking about are environmental issues. It's my understanding that under general federal Indian law, the state has virtually no authority to regulate or issue permits for activity that's occurring on Tribal lands. So that would mean development projects or wind power projects, and it also could affect activity occurring off the Tribal land. For example, I think there's a legitimate issue about the extent to which Tribes would have authority to impose discharge limits on entities that are discharging upstream from the reservation. So if you have municipalities who operate treatment plants that are discharging into waters upstream from a tribal reservation, I think we have to think about what issues that could cause...

**Sen. Mike Carpenter:** Chris, can I just interrupt you?

**Chris Taub (Assistant Maine Attorney General):** Yeah.

**Sen. Mike Carpenter:** Let me interrupt you. I don't want to cut anybody else off, but before everybody jumps in I want to say a couple of things:

1. I have come into this process anticipating that if the state, as represented by the Tribal members and the non Tribal members in this task force, could come to an agreement on some of these issues that we would then ask our federal partners to change the federal law to make it work. I certainly recognize that what we do here is not implementable probably without federal legislation. I believe, I continue to believe that the better chance of success for fixing, helping this relationship is to start from here and go out as opposed to wait for something from Washington to happen and come down.

So I recognize, and I think everybody here recognizes, that there's a more than 800 pound gorilla out there in the room that we have to deal with, and I think if we could come to an agreement, consensus here, then I think we would have a better chance of getting them. This is not going to be a quick process, number one.

**Sen. Mike Carpenter:**

2. All of the items that I think you feel are important to have on the table, I think we agree all of those things have to be dealt with. That's why this is going to be a slow process, but I think a baseline for that process to go forward is for the legal counsel, for the parties to be able to try to get together and give us a definition at least of where, recognizing that nothing is static except the Settlement Act of 1980, which has been pretty static since 1980 and we're trying to build some flexibility into it now, that where do we stand with federal Indian law today? Because you keep referring to,

Kaighn, Michael keeps referring back to the default of the federal Indian. We just need to understand where we are in that.

So maybe, and I'm looking for help here, maybe one of the things we could accomplish today is to put on the table for those folks to consider going forward, what are the areas that need to have some definition put to them? We've talked about taxation, we've talked about natural resources, we've talked about law enforcement and judicial process ... talk to, I mean

**Rep. Donna Bailey:** [inaudible 00:18:34] education and healthcare.  
[inaudible 00:18:34] healthcare.

**Sen. Mike Carpenter:** Health care, absolutely. Child protection, which is partly dictated by the Indian Child Welfare Act. Anyway, gaming, I don't know that gaming needs to be a separate and distinct. Although, we need to understand where the federal law is with regard to how ICWA (Indian Child Welfare Act) would work with what you're proposing here. Kaighn?

**Kaighn Smith:** So I before I commit or our team commits to putting pen to paper with respect to all these subject areas, I have to say that I jumped in out of a level of enthusiasm for this quite quickly, assuming that it would make sense. As I'm listening to the conversation unfold and thinking about whether we could actually do that and get consensus with the Attorney General as we lay these principles out, I wonder whether it might make sense for us to have an outside expert simply lay out the state of the law within the subject areas that the Task Force is concerned about and that the costs be shared by the state and the Tribes for that endeavor. I think it might

be a more neutral way to go about laying out the subject areas rather than having us attempt to do it with the time and effort and money that would cost for legal counsel for the Tribes to do that. It's just an idea.

**Kaighn Smith:**

I wanted to just sort of lay that out as one point.

But I wanted to also answer Mr. Taub's point about the constraints of federal law and whether we have an 800 pound gorilla or a slightly lighter gorilla. Congress, in its wisdom, gave advanced consent to the state and the Tribes to reach agreement as to jurisdictional allocations under 1725-E of the federal act. I'll just quickly read it to you because this will guide us. We don't have to go back to Congress with respect to agreements. It's essentially a negotiated treaty between the Tribes and the state to allocate jurisdiction.

It says, "The consent of the United States is hereby given to the state of Maine to amend the Maine Implementing Act with respect to either the Passamaquoddy Tribe or the Penobscot Nation," and I believe that also spills over to the Houlton Band of Maliseets and the Aroostook Band of Micmacs, "Provided that such amendment is made with the agreement of the effected Tribe or nation and that such amendment relates to, A, the enforcement or application of civil, criminal, or regulatory laws or the Passamaquoddy Tribe, the Penobscot Nation, and the state within their respective jurisdictions. B, the allocation or determination of governmental responsibility of the state and the Tribe or nation over specified subject areas or specified geographic areas or both, including provision for concurrent jurisdiction between the

state and the Tribe or nation. And, C, the allocation of jurisdiction between the Tribal courts and the state courts." Then it goes on to say the same works for the Houlton Band of the Maliseet...

**Sen. Mike Carpenter:** I'm going to assure you I knew that at one point, but I forgot.

**Kaighn Smith:** But so that's good. That liberates us a bit from the gorilla.

**Sen. Mike Carpenter:** It does, somewhat.

**Kaighn Smith:** And we can design our amendments with the agreement we need between the Tribe and the state to accomplish what congress foresaw there, and if we are outside the bounds of what we think that language is, then of course we'll have to put that in the category of having to go back to Congress. So I just wanted to make sure that everyone understood.

**Sen. Mike Carpenter** Let me go back to your first point, that might be an appropriate way to go to find an expert. A couple of caveats:

1. It would have to be somebody that both parties agreed to was a neutral arbiter on the issue, number one.
2. We'd have to know the cost of that. I know you have limited resources. We have limited resources. We'd have to go back to the legislature for more, but that might be something we have to do, but if you want to explore that with regard to both personnel and cost, I'm okay with that.

**Sen. Mike Carpenter:** Chief Peter-Paul

**Chief Edward Peter Paul (Aroostook Band of Micmacs):** What about the gentleman we had here last time? I mean, is that something that he would be

**Sen. Mike Carpenter**That would seem to me to be a possibility, but again, it seems to me it has to be somebody who would be recognized as a neutral, true expert, not an advocate for one side of the other. And I don't know that he would qualify for that. He certainly seemed to be knowledgeable. Chief Francis. I'm sorry, Chief Sabattis, you were first.

**Chief Clarissa Sabattis (Houlton Band of Maliseet Indians):** I was actually going to suggest that we have conversation about this afterwards and maybe get in touch with you.

**Sen. Mike Carpenter:** Well, what we might want to do would be to come up with some names that are recognized in the field and run them by the Attorney General's office to see what their thoughts are.

**Chief Clarissa Sabattis:** I would like to just talk about options. Not even that we necessarily want to hire an outside person to do it, so. I hate to delay anything, but I would like to have some discussions with everyone here.

**Sen. Mike Carpenter** Do you want to do that now? Take a break?

**Chief Clarissa Sabattis:** We had planned to talk afterwards briefly. So I don't know how you all feel about that.

**Sen. Mike Carpenter**Thank you. Chief Francis.

**Chief Kirk Francis (Penobscot Nation):** Thank you. Just briefly, Kaighn touched on one of my points, which was the federal act gives a great deal of authority to the state and the Tribes to make agreements and changes. What we're hearing with the extensive work we do in Congress is our delegation, over 80 members of Congress that we've met with on this issue in the committees of jurisdiction, is they're waiting for the Tribes and the state to come up with agreement, and those changes I don't think would be difficult at all to get resolved there if needed, but it would be very few areas that would need that.

Secondly, I think talking about what people's interests were back in 1980, I hope those mindsets have changed and I think we're here today because of unforeseen consequences. For over four decades later when we're lagging far behind in health disparities, economics, and also educational outcomes, when our people are exposed to violence in this state at three to five times more than anyone else. You know, these have been the consequences that the Tribes have lived with. I think this conversation is good, but we are trying to get into the mindset of what was an extremely new thing back in 1980 with the Tribes under a great deal of duress around the political environment. Many of these things that are being discussed as state interests were inserts into the federal law without Tribal consultation.

I think we just, we need to stay where our minds are today, understanding that this history under this act just has not worked. My fear is we're going to spend

three months, "Well, if we do this, what if this? What if that?" Well, we know that Tribal life will improve under lifting the restrictions of this Implementing Act, and we are trying to justify that and quantify that in these meetings. I think having Paul maybe on the agenda at the next meeting to talk, from MITSC, to talk about the history of the Tribes before the act as well as getting an extensive summary of what federal Indian law would look like in Maine I think would be important. So, that's all. Thank you.

**Sen. Mike Carpenter:** Thank you, Chief. Other thoughts or comments around the table? Yes, Vice Chief Newell. By the way, you're an improvement from Nicholas. I just want you to know that. (laughter)

**Vice Chief Darrell Newell (Passamquoddy Tribe Indian**

**Township/Motahkomikuk:** I think we've been all in agreement that the Implementing Act has been more of an obstacle than it has been of an assistance to resolve, and I appreciate the Attorney General's office speaking the truth about how Tribes initiated a claim to land here in the state, then the state exploited that and asserted its interest to make these Indians less Indian, take their sovereignty, take their identity, and take their Indianness from them and turn them into something different. And perhaps that was accomplished in the Settlement and in the Implementing Act. Perhaps that was accomplished to a degree. But I think this Task Force, since I've been sitting here since April, I was excited about its potential, and I'm a bit semi excited now. I'm less excited than I was in April and throughout the

months until our last meeting. But I still think it has some potential, and I'm hoping that some positive will come of it.

**Sen. Mike Carpenter:** I don't want you to be less excited. I think I anticipated that as we got further into this, it was going to be a slog. It's going to be a slog, and there are going to be times when it's not going to be very friendly or it's going to be difficult, but as long as we have people of good faith wanting to move forward, that's what I want to do. And I don't feel any restriction whatsoever in terms of how many meetings have been allocated. If we're making progress, I don't have any doubt at all that the leadership of this legislature will let us continue right into January, February, March, April of next year and we're going to be here anyway. But I do think, I think Mr. Taub's comments, we have probably all had them in mind, but we need to be as aware as we can be of the consequences.

I was around when the... Should I admit that? When the 1980 law was enacted by the legislature and I don't remember much about the details. But I do know this because I have grown up, not in Indian Country but around Indian Country in Aroostook County. The Tribes in those days were different than they are today. That's not to disparage any of them. Certainly people like Richard Silliboy was around in those days. But there were struggles then that the Tribes had that they don't have today. When I look at where the Tribes are today, just in my limited interaction with them and it's just like it is night and day literally. And that's why I was, Representative Bailey and I were if you will, the driving force between putting this group together. And it may all come to nothing, but it won't be because we haven't tried with good faith. So how I, again, I really think it's important that we have some sort of an understanding of how federal Indian law works.

**Sen. Mike Carpenter:** If we're going to keep referring back to that, it seems to me we can't go too far forward until we understand how that works in real life with real people, and so any suggestions about how we go forward with that? I mean I don't really want to have you folks make a presentation and then have us arguing back and forth with it. It doesn't seem to me like that's a good use of our time. The expert, the outside expert hired maybe problematic in that it'll burn up a lot of time and we don't have permission to use the resources and all that. So Mr Smith, you look like you're inching toward the microphone.

**Kaighn Smith:** Well there are there fundamentals that are so well established. There's two terrific treatises on federal Indian law. One is the the nutshell, believe it or not, written by Senior Judge William Canby Jr of the Ninth Circuit Court of Appeals. It's terrific and it's all laid out in terms of state authority, federal authority, tribal authority over natural resources and I don't think that that's controversial. There are obviously nuances here and there that do lead to litigation, but it's laid out quite nicely in that nutshell and then there's a 560 page treatise by Felix Cohen which is considered authoritative as well. One way to go about this would be just to photocopy or we can all get a copy of the Canby nutshell, but I also am sensitive to my client's interests in how they want to go about this. I'm just throwing out some ideas because I know it's an imperative from the Chair's perspective.

**Sen. Mike Carpenter:** Chief Sabattis?

**Chief Clarissa Sabattis:** Paul, I apologize in advance, but I wonder if this might be a roll that MITSC could take on, as far as providing some education

around the application of federal Indian law and what that would mean here.

**Paul Thibeault (MITSC):** Yes, I mean I think we can play a role there with the qualification that there are some specific provisions of the Act that really, specifically the MITSC, and so we are impacted in a very direct way as an entity by some of those provisions. But in terms of the kind of general overview of federal Indian law, I think we could do that. I agree with Kaighn Smith's comment that there can be text. It is a very good basic overview of the application of federal Indian law. So I think you're a long way towards getting that basic orientation you need by using at least some parts of the Canby treatise and I could, I and MITSC could build on that a little bit. I guess, to flesh that out a little more, if folks didn't want to just use the text.

**Rep. Donna Bailey:** Anyone else? Senator Moore.

**Senator Marianne Moore:** I think what would be most helpful for me is kind of having a view of what is in the federal law, for example with gaming, and then comparing it to our proposal, the proposed changes and that would be an easy way to identify, "Okay, sure, let's go with federal law. Or if we're going to take this out of our agreement, then this is what this is going to do," and I think that would be an easier way to really compare and make the decision, at least I know on my part. Yeah.

**Rep Bailey ?:** I mean that's kind of how I'm looking at it and I know it's not this precise because federal Indian law is not like a uniform law for example, but that's something we deal with here. We get a proposal. Let's implement

this uniform law having to do with , X, Y, Z, and then what we do is we look at this uniform law and we say, "Yeah, we kind of like A, B, and C, but this section here, that doesn't really work for Maine because Maine is different. So we're going to tweak that a little bit." So I think that's what we're trying to get at is what is the general understanding of in these different areas and this is federal Indian law.

Generally speaking, this is what is recognized as and then we as a task force can discuss whether that's something that works here in Maine, is appropriate here in Maine. Should we tweak it? Do we have to change this little definition? I don't know how we get there, but that's that. I agree. That's kind of how I'm looking at it or even if in these paragraphs having to do with different areas, if there was an introductory paragraph that said, "Generally federal Indian law on taxation provides blah, blah, blah, blah, blah." That's, that's what I think would be helpful to me as well.

**Sen. Mike Carpenter:** And even if there's a disagreement. Even if AG's office and representatives of the Tribes can't agree that would also be helpful to us to understand. "Okay, here are the two perspectives." So I still go back to the idea that I would like to have, if your Tribes are willing to do that, set up a meeting with the AG's office, with Chris and whoever else the AG wants to provide and spend a few hours sometime between now and then have a presentation. What

**Sen. Mike Carpenter:**

do you think, Paul? I think Paul could certainly be part of that, both with a legal perspective and a historical perspective. If that's something.. You okay with that? I think you'll have consensus on a lot of it, not necessarily all of it, but I think you'll have a consensus on a lot of it, but when you keep talking

about defaulting to that, I think we need to know what the default position is before we can make an informed decision.

So what are the areas? I outlined a few of them. I saw Michael (Corey Hinton) taking notes. We're talking about natural resources. We're talking about criminal and law enforcement jurisdiction. We're talking about

**Senator Marianne Moore:** Taxation.

**Sen. Mike Carpenter:**... taxation obviously.

**Senator Marianne Moore:** Healthcare.

**Sen. Mike Carpenter:** Healthcare.

**Senator Marianne Moore:** Education.

**Sen. Mike Carpenter:** I think the child protective piece is pretty well defined by ICWA (Indian Child Welfare Act). Chief? Other areas you can think of? Those are the big ones.

**Chief Kirk Francis(Penobscot Nation):** I think that those are a lot of the big areas. I also, in one of the principals in the letter, this access to federal beneficial acts for the Tribes... I think ICWA was a great example of the Tribes institutionally growing up and having every aspect of a fully functioning sovereign government to service our people. That example, the successes that are happening in ICWA are almost exclusively tied to the fact that we self-govern that issue. And so when we talk about ICWA, there is a federal law that's applied in the state of Maine that has proven to be a great success and so I would just say that I think whatever we do in follow up, we

have to continue to move swiftly on it, and I would support trying to in more detail outlining, to the extent possible, what that would mean in the state. But ultimately when we're talking about the inherent sovereign status of Tribes, as Corey and others have mentioned, this exists all throughout the United States.

At some point we're going to have to get to a place where the state or the Tribes, we can't control every aspect of this. It is what it is. It's a self-governance

**Chief Kirk Francis(Penobscot Nation):**

sovereign situation. And I would just say for example, if you put yourselves in our shoes and disagreement was with you in the state of Massachusetts. After 40 years, I think as a sovereign you would be arguing for these same selfgoverning right. And so I just hope we can get, it is a confusing, complicated subject and I understand that, but hopefully we can just... I support whatever we have to do to keep the process moving forward. We'll have our folks work with your staff on trying to do some research and come up with some solutions and get to the next steps here.

**Sen. Mike Carpenter:** I'm going to disagree with the Chief just in one respect. I don't think that we have to move swiftly. I think we need to move deliberately. And I know that I'm not really disagreeing with what he said at all, but again, this thing has been festering now for 40 years and for hundreds of years going back to 1820. I do think we've got an opportunity to make progress. I do think we need to understand the consequences as best we can and we're never going to understand all of them. No question about it. They're going to be unintended consequences that are going to jump out at us. If we have something successful here 10 years from now and say,

"Why didn't you see tha?" You know, but that's the way it is. That's the way legislative process works. Representative Bailey?

**Rep Anne Bailey:** So I just wanted to ask for some understanding and indulgence by those who are more versed on federal Indian law and understand that there are those of us here who just need to be educated so that our questions, that's where the questions are coming from. And unfortunately, because, as you've all pointed out, because of the way the Settlement Act was pressured here in Maine, we do not have experience with federal Indian law because it was on so many levels shut out of the experience here in Maine. So we have a lot of catching up to do. And for those of us who don't go to other states or don't go to DC a lot, we just don't even know what that means. We understand in a broader sense what it means, but we don't know the specifics. So I would just ask for you a little patience and indulgence while we kind of catch up with the rest of you.

**Sen. Mike Carpenter:** Mr. Taub?

**Mr. Chris Taub (Assistant Attorney General):** Just a couple other areas I think might be helpful to add to the list. Gaming obviously that might be

**Mr. Chris Taub (Assistant Attorney General):**

subsumed within some of the other categories. Trapping, fishing and hunting I think might be helpful, although I'm not sure there's going to be much of an issue or a debate about that one. And then the other issue that I think would be useful to get a little bit more clarity on, and this isn't really a matter of federal Indian law, but in the original Settlement Act, for land to

be taken into trust within municipalities, there had to be municipal approval of it and my understanding of of this proposal is it would sort of extend the deadlines for the Tribes to take land into trust and it would also eliminate the municipal approval requirement.

And there might be, and I'm not completely clear with respect to the Houlton Band of the Maliseets, but my understanding is there really isn't any geographical limitation necessarily on where land can be taken into trust for them. So it might just be helpful to get a little bit more of an understanding about how that acquisition process would work and then what would be the impact, for example, if land is taken into trust in the middle of, say, Calais, sort of what the impact of of that would be.

**Senator Mike Carpenter:** I would just point out that provision when it was discussed by the counsel for the Tribes, again, they defaulted to the same way, and I made a note, municipalities are losing control over the process and obviously they're losing revenue and whatnot. So I think that is definitely something we need to understand what that would be the ramifications that that would be. The other provision and I'd just ask the folks at the table to deal with this. One of the new provisions that you put in, which seemed a little bit odd to me was the new reservation piece. 25 or more members, and I just see, I mean as an attorney that kind of jumps out at me is as litigation on steroids perhaps. So do you and to future Indian communities, I'm referring to page 18 now. So if, and I don't mean to be flip, but if somebody discovers gold on my land, does that mean that Richard and 24 of his relatives can come inside that they now want to make that part of a new reservation?

**Micahel-Corey Hinton (Passamaquoddy Legal Counsel)**: Great question. This is original language.

**Senator Mike Carpenter**: Mic, mic, sorry. She does that to me all the time...(laughter)

**Micahel-Corey Hinton (Passamaquoddy Legal Counsel)** This is original language from the Maine Implementing Act. We didn't add the future Indian...

**Sen. Mike Carpenter**: Hold on a second. I'm sorry. Hold on a second. Page 18 is the top of the page.

**Micahel-Corey Hinton (Passamaquoddy Legal Counsel)** And in fact we declined to revise that, but I would just know why something like that is important. Not all of our communities have clean drinking water. My community right now, the water is a chemical blue green and a solution to clean drinking water has escaped us for decades, for a generation. The provisions in this Implementing Act that require municipal consent and state consent have quite literally blocked public health crises from being resolved and so I would just like to put that in mind and I'm happy to discuss that in more detail at a later point. But I'm just pointing out that we deal with real public health and safety problems on a daily basis and if it were not for the Maine Implementing Act, we would be able to resolve those on our own terms.

Instead, we're required to pay a pound of flesh when we want to meet basic needs like delivering clean drinking water. I would ask everyone if they would drink the water that came out of their faucet, if it was blue or green of a chemical color and just, I'm just going to caveat that by saying that what it normally looks like is brown yellow. So when we look at provisions like creating additional Indian communities or putting additional land in the trust, this is quite literally to provide for the longterm survival of our people.

**Kaighn Smith (Penobscot Nation Legal Counsel)**: And so if Senator Carpenter also..

**Sen. Mike Carpenter**: Hold on just one second. This looks like, is this in the current?

**Micahel-Corey Hinton (Passamaquoddy Tribe Legal Counsel)** Yes, this was enacted in I think 1979.

**Sen. Mike Carpenter**: So to use your example of the water, how does this Land...how does that improve the water situation?

**Micahel-Corey Hinton** Sure, great great question. I was playing off of a couple of points here that we've been raised, but the idea here is if the Tribal lands are for whatever reason, the reservations insufficient for meeting the needs of the community, for any number of reasons, this provision on page 18 requires the Tribes and the state to come together to designate a reservation where people can live, but on a more specific basis and other situations where say there is a small piece of land where there's a well with access to clean drinking water and the Tribe would like to have

clean drinking water, we can't access that clean drinking water right now by virtue of, not the paragraph on section 18, but by virtue of other parts of the Implementing Act. That's what I was referring to by that.

**Sen. Mike Carpenter:** But the language right here does not require a municipal rule.

**Michael-Corey Hinton:** No, you're right, it doesn't, but it does require state approval and that's just for the designation of additional reservations. I was referring to more of the [FITA 00:19:23] trust issues that the attorney general pointed out and I think these are all issues that are ripe for discussion.

**Sen. Mike Carpenter:** Again, I don't see where it says state approval. Am I missing something? It says you apply to the Commission (MITSC) and the Commission determines that, and in case, it's the Passamaquoddys, the Commission has the authority to establish the boundaries.

**Micahel-Corey Hinton** But it requires the recommendation be submitted to the legislature. The Commission must make a recommendation to the legislature and I think, I mean, I don't know if this provision has actually ever been put into use, but as I read it, it suggests that when the Tribe determines that it needs an additional community to be designated, that approval must be required. Approval must be required at the Tribal level and then a submission is made to MITSC and then MITSC deals with that and then that issue is referred to the legislature.

Speaker 12: [inaudible 00:20:21]

**Sen. Mike Carpenter:** I saw that yeah.

**Speaker 12:** [inaudible 00:20:25].

**Sen. Mike Carpenter:** Pardon?

**Speaker 12:** [inaudible 00:20:30].

**Sen. Mike Carpenter:** Go ahead, Chief Sabattis?

**Chief Clarissa Sabattis:** I'm speaking to your question about if they wanted your land because it had gold on it, I think this applies to land that they already have that's their land. It's not taking other people's land.

**Sen. Mike Carpenter:** Well again, I'm not sure we're all in agreement as to what it does mean, but I don't mean to get hung up on that. I just haven't seen it. Okay, Representative Bailey?

**Rep Donna Bailey:** Thank you Mr. Chair. Just going back to, you had talked about the municipality and future land acquisitions to put into trust and I understand that it's not necessarily federal Indian law, but I would be interested to know how this is handled in other states. Do other states in fact allow Tribes within their states to acquire other land to put into trust without the agreement of local municipalities or et cetera, et cetera. So if there's some way to get just kind of give an overview of what do other states do, that would be helpful to me.

**Sen. Mike Carpenter:** Chief Peter Paul.

**Chief Edward Peter Paul (Aroostook Band of Micmacs):** That already exists in the state of Maine. The Aroostook Band of Micmacs can put land into trust anywhere in the state without municipal approval or state approval.

**Mike Carpenter:** Is that just the Aroostook Band of Micmacs ? I'm looking to the..

**Corey Hinton:** The Passamamaquoddy Tribe does not enjoy the ability to put land into trust in the way that the Aroostook Band does.

**Sen. Mike Carpenter:** You agree with Chief's assessment of how they do it?

Corey Hinton: I'm not going to dispute what the Chief said, that's for sure.  
(laughter)

**Craig Sanborn (Aroostook Band of Micmacs Legal Counsel):** Their process is contained in the federal act, the federal Settlement Act. That sets out how they put land not trust and they have gone through that process to put (inaudible) into trust...

**Sen. Mike Carpenter:** And it's different than the other Tribes.

**Craig Sanborn:** I'm not sure I'd have to look at their Act...

**Chief Edward Peter Paul:** Claire (Chief Clarissa Sabattis) said and I have talked and it is different than the other Tribes. We don't need to petition the state as long as we use our land purchasing account.

**Sen. Mike Carpenter:** Chief Sabattis?

**Chief Clarissa Sabattis (Houlton Band of Maliseet):** We do have to post it though to give the opportunity for any objections from town, municipality.

**Sen. Mike Carpenter:** Mr. Taub?

**Chris Taub Assistant Attorney General:** Well is that premised on the idea that the state Micmac Settlement Act isn't in effect, because I think the state act does talk about getting municipal approval. Is that right? No?

**Craig Sanborn:** If I could say you're right, but in the Micmac Settlement Act, there's a conflict provision that says that in the event that there's a conflict between any of the Acts and the federal state, the federal act prevades. They have utilized their federal provisions to take land into trust and it has gone through.

**Sen. Mike Carpenter:** Chief Peter Paul

**Chief Edward Peter Paul:** We have not had any issues putting land into trust. We've done it and using our Federal Act.

**Kaighn Smith:** So it sounds to me that one thing just needs to be clarified for Representative Bailey is how does land and trust acquisitions work in Indian Country generally? Is there municipal approval required in Indian country? Generally we can, once we figure out how we're going to go about educating the task force that can be on the list. I do want to go back to what I feel is somewhat unsettled, which is how are we to actually mechanically address all these categories of federal Indian law, taxation, healthcare education, natural resources, gaming, hunting, fishing, trapping, land in trust.

This is all laid out in the Canby treatise quite succinctly. I just feel like we're in a limbo area here in terms of how you actually want to go about this and how the **Kaighn Smith**

the Tribe side want to go about this. There's been discussions of having Mr. Thibeault educate the committee. There's been discussions about the Tribes trying to reach consensus with the Attorney General's office as to what these principles are. There's been a little bit discussion about bringing in someone else in. I don't feel like we've reached a decision about how to go about that and I'm concerned that we're not going to move forward unless we have a vision of that.

**Sen. Mike Carpenter:** I didn't plan to let us end here until we had some sort of resolution, but we had a number of different ideas that were floating out there. So I go back to something I think I asked earlier. For you who work in, the two of you, you work in the field more extensively than does perhaps Mister Taub or anybody else in the Attorney General's office.

I think I started out this question by asking if you thought it would be helpful if between now and the next meeting you got together with the Attorney General's office to see if you could come to some sort of an agreement. Not what should be, but this is the status of federal Indian law with regard to this issue. If you're going to say to us, I use representative Bailey's words of default, if you're going to say to us that -- take all of these provisions of the Implementing Act away and treat us the way that Indians are treated every place else in the country. We need to understand what that is, and I'm just trying to figure out a way to get there and I'm open to any suggestions you guys have. Mr. Thibeault?

**Paul Thibeault (MITSC):** I guess I would just say at this point, I think we need to draw a line between educating us all about the basic provisions of federal Indian law as opposed to resolving, negotiating every question that might come up. Federal Indian law is what it is. And it's not something that has to be negotiated between the Tribes and the Attorney General's office or anyone else. I mean, it is what it is. The questions come up in terms of, there is litigation in Indian Country, but the federal federal Indian law

**Sen. Mike Carpenter:** It is what it is.

**Paul Thibeault:** It is what it is.

**Sen. Mike Carpenter:** But I don't understand what it is.

**Paul Thibeault:** So my personal view,, is it's not something that needs to be agreed between the Tribes and the Attorney General's office because it's subjectively what it is and it's a question of identifying what it is, not having the two parties have to hash out every nuance of what they think it means,

because it is what it is. And it doesn't answer every question. It's a body of law. There are cases, there are disputes that arise within it, but it is an established body of law.

**Sen. Mike Carpenter:** I understand that, but I don't know what that body of law looks like.

**Paul Thibeault:** Well, I'm just suggesting that I don't think it should be a matter of the AG's office and the Tribes trying to negotiate what they think federal Indian law is because I think it exists objectively. So--