

TRANSCRIPT

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

First Meeting : July 22, 2019

Senator Mike Carpenter (Task Force Senate Chair) :

Welcome to everybody for coming this afternoon for the meeting of the Task Force and to make changes to the Maine Indian Claim Settlement Implementing Act. Before we get started, I'd like to go around the horseshoe and to have everybody introduce themselves and indicate your role, if you will. We'll start down this end here. Turn your microphone on because the world is listening.

Chris Taub (Attorney General's Office, Ex officio/non voting member of Task Force): There we go. My name is Chris Taub and I'm from the Attorney General's office. I'm in the civil litigation and appellate division. I've been there since 1999.

Paul Thibeault (Maine Indian Tribal-State Commission, Ex officio/non voting member of Task Force): I'm Paul Thibeault. I'm the Managing Director of the Maine Indian Tribal-State Commission.

Senator Marianne Moore: Good afternoon. I'm Marianne Moore and I represent the Senate District 6, which is all of Washington County as well as Winter Harbor, Goldsboro, Sullivan and a couple of unorganized territories in Hancock County as well.

Chief Clarissa Sabattis.: I'm Chief Clarissa Sabattis from Houlton Band of Maliseet Indians.

Sen. Mike Carpenter: Mike Carpenter.

Chief Kirk Francis: Good afternoon everyone. Chief Kirk Francis from Penobscot Indian Nation. It's good to be here today.

Vice Chief Maggie Dana: Good afternoon. Vice Chief Maggie Dana, Passamaquoddy Tribe at Pleasant Point, Sipayik.

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Chief Edward PeterPaul: Good afternoon. Edward Peter-Paul, Chief of the Aroostook Band of Micmacs.

Chief William Nicholas: Good afternoon. William Nicholas, Chief, Passamaquoddy Tribe of Indian Township Motahkomikuk.

Melanie Loyzim: Good afternoon. I'm Melanie Loyzim, Deputy Commissioner at the Department of Environmental Protection.

Sen. Carpenter: Anne, do you want to introduce yourself?

Representative Anne Perry: (on speaker phone) Yeah. Good afternoon. I'm Representative Anne Perry from District 140, which includes Indian Township, Baileyville, Baring, Calais, Charlotte, Robbinston, Perry, Pembroke and Pleasant Point.

Sen. Mike Carpenter: Thank you.

Rep. Donna Bailey: Oh boy. Good afternoon. I'm Representative Donna Bailey. I represent House District 14, which is part of the incredible city of Saco and I am the house chair.

Sen Mike Carpenter: Good afternoon again. I'm Mike Carpenter, Senate District 2, Presque Isle to Patten. I represent the Aroostook Band of Micmacs and Houlton Band of Maliseets largely within my Senate District. We are here this afternoon to do some organizational things with regard to the Task Force and begin to open the conversation, as Senator Moore said a few minutes ago. Open the conversation about how we might make some changes, some meaningful changes to the Indian Lands Claim Settlement Act, which is now about, almost 40 years old. If you would take a look inside your book, everybody on the committee, on the panel, sorry, has a loose-leaf folder. If you look just beyond the first blue piece, you'll see the joint order that actually established this Task Force. We are tasked with, again to use Senator Moore's words, beginning a conversation about how we can make better the relationship between the Tribes and the state of Maine.

I'll speak for myself and also to some degree, to other members of the legislature that I've spoken with over the course of the winter. We come here without any preconditions. We tried to put as many of our biases aside as we can, although we are human beings. We are here to listen. I'm here to listen. I hope that the other members are as well and begin the process of healing some wounds that exist out there, inadvertent wounds or unintentional wounds. I don't know, and I don't know that makes a difference going forward. I think that there's an opportunity here over the course of this summer and continuing on if necessary, to make some meaningful changes in the relationship.

I believe that the changes, if they are going to occur, have to begin at this level and then we can ask our federal partners to follow our lead. I don't think it works, going the other way around. I want to thank the Governor's office for joining us. I want to thank the Attorney General and his

representative for joining us. I think they are necessary players in this ongoing play, if you will. I'll stop with that and look to my co-chair, Representative Bailey. Not only the co-chair of the Judiciary Committee but by the joint order, the co-chair of this Task Force.

Rep. Donna Bailey: Thank you, Senator Carpenter. I would reiterate what Senator Carpenter said. I certainly come into this with no agenda, other than trying to find some solutions, trying to find some ways to make life better for the Indian Tribes located within the state of Maine. I don't know what that's going to look like. I don't know if that means we take what we have and tear it up and start from scratch or do we try to just tweak what we already have and change certain sections of it? I have no preconceived notions and I look forward to a discussion around this horseshoe, gathering information and again, coming up with solutions. I'm a solution based kind of person and that's what my focus is and that's what my focus is going to be in this Task Force. I look forward to working with all of you.

Sen. Mike Carpenter: Before we go any further, I was remiss. I did not introduce our incredibly capable staff. Where did Sam go? Oh, Sam is over here. If I can get through the summer and figure out how to pronounce Sam's name, I'll be doing well. Sam Senft, who is an analyst in the Office of Policy and Legal Analysis and Janet Stocco. They are two people that have been designated to help us. They were the ones who put this together, this meeting together and I'll apologize. It wasn't their fault. It was fairly short notice here. We are going to try to come up with more dates going forward so people have a chance to plan their calendars and whatnot. I really appreciate the attendance.

If you look at your agenda, item three, Tribal goals and priorities. It seems to me that at this point it might be a good time and I'll call on the Chiefs in the order that they are on my paper. It just happens that both of the first two come from Northern Maine. No offense to you, Southerners. I will call on Chief Peter-Paul First. Just give us an outline of where you would like to see this organization go.

Chief Edward Peter Paul (Aroostook Band of Micmacs): Well I think we've struggled a long time here in the state of Maine, with the laws that we have. It puts us back in the Stone Age, not really being able to do anything. I think that in moving forward, hopefully that the Tribes will be in a better place economically and socially. I guess those are some of my goals for my Tribe. Economically, it is important. Being able to create our own laws on our land and jurisdiction, is important as well. It will be easier after I hear everybody else.

Sen. Mike Carpenter: Good. All right. That's the beginning. Chief Sabattis of the Houlton Band of Maliseets.

Chief Clarissa Sabittis, (Houlton Band of Maliseet Indians): Thank you. I guess for myself, I am hoping that out of this process, we'll have more people that understand the importance of self-determination and self governance for us and the benefits that it can also bring to the state of Maine. I think that when you look at other states, Tribes often help to bring up these areas that suffer from lower socioeconomic status. We have opportunities to bring resources to these areas and partner with the State, rather than have barriers in front of us that really keep us from doing everything that we can. I guess for me right now, that's where I'm hoping we are at. I mean I have a lot more in detail, that I'd like to talk about but for me, that's an overarching goal, is really for some mutual respect and understanding of what this Land Claims Settlement Act and Implementing Act has done to create significant barriers and in turn, I think make it difficult for us to bring our communities or raise our communities up, socioeconomically. We have a lot of barriers with economic development. We have a lot of barriers. I mean for our Tribe alone, we don't enjoy the same rights as even Passamaquoddy and Penobscot but at the same time, I don't want to have to become a municipality to enjoy those rights. They should be ours inherently anyways. So, thank you.

Sen. Mike Carpenter: Thank you. Chief Francis, I think you are next on the list.

Chief Kirk Francis (Penobscot Nation): Again, thank you and it's good to be here. Before I make some comments, I just want to acknowledge some faces we'll all be seeing from our team going forward. I want to acknowledge Ambassador Dana who is in the crowd there. I think most of you know her. Also, our in-house legal counsel, Mark Chavaree, I saw here but he didn't want to sit on somebody's lap so apparently he is out there. Outside legislative counsel, Allison Binney is here as well and I see Penobscot's Tribal Council member Craig Sanborn over there, as well as many Tribal citizens here. It's good to see everyone. I would just reiterate some of the comments made by the Chiefs. I think when we look at the 1980 Land Claim Settlement, we were in a period of time where the Tribes of Maine were coming off over a century of being wards of the state, basically during the land claims.

The whole case is based on illegal treaty making with the Commonwealth of Massachusetts, then assumed by the state of Maine. This is a document that we are now four decades into, with enough of a history and a track record to know that this was a failed experiment. I think that the Land Claim Settlement really is a stagnant document that doesn't move in real time with the progress and the uptick in activity in Tribal governments and what we can do. At Penobscot, for example, not unlike any other Tribe sitting here. We are running over 100 programs, employing close to 200 people in our government operation and managing close to 200,000 acres of land. Our Tribes have grown up and we have the ability to govern ourselves. We are now, as I mentioned, four decades into this agreement so almost a half a century now, a century and a half of, in some cases, an oppressive relationship with state government over basic core sovereign rights of the Tribes.

Now all that being said, I come here and the same spirit as everyone else. I'm going to hopefully use this process to put that behind us and to find a path forward where our citizens can address and our governments can address disparities that shouldn't exist in 2019, around educational outcomes and economic opportunity and healthcare and overall basic public safety that the Tribes of Maine are being prohibited from participating in, despite the fact that great laws have been passed to address these issues. I look forward to the conversation. Like the Chief, I have a lot more to say around specific sections of the Act and jurisdiction and laws applying when they should, when they shouldn't. How the state and tribes can set structures to find common ground and overcome concerns and do that in a mutually sovereign to sovereign way. Thank you for having this. I appreciate everyone's effort in setting this up and I look forward to this continued conversation, more importantly some much needed outcomes.

Sen. Mike Carpenter: Thank you, Chief. Vice Chief Dana.

Vice Chief Maggie Dana (Passamaquoddy at Sipayik, Pleasant Point): A lot of good points made. I would be just pretty much saying the same thing. How I see it I guess is Settlement Act is supposed to be a living document, where we're able to go back and make changes in favor of the Tribes to make things better. That hasn't happened. I think we all recognize that. The relationship, it's supposed to be between the state and Tribes and, in my belief, it's supposed to be dynamic and effective. Again, I think we are in a tough area, but we are moving to new ground. The other thing I would mention too is consultation with the Tribes, I think with many tribes across the states. We just need to work on that a lot. We should be consulted more before laws are passed or anything that affects us, whatever areas those are. I think I will just close by saying the Tribes just want to flourish and not be limited. There's a lot more other issues, sustenance, and...We'll get into all that. So, that's about it.

Sen. Mike Carpenter: Thank you. Chief Nicholas.

Chief William Nicholas (Passamaquoddy at Indian Township, Motahkomikuk): Thank you, Senator Carpenter. Last but not least, right?

Sen. Mike Carpenter: I had nothing to do with setting it up this way.

Chief William Nicholas: We go way back, so we always got something to say to each other.

Sen. Mike Carpenter: You are going to hear some back and forth.

Chief William Nicholas: First off, I'd like to recognized my Vice Chief from Passamaquoddy Tribe of Indian Township, Darrell Newell, who will be sitting in if I'm not able to attend some of these meetings and will sit in while I'm here as well. I wanted the chair and vice chair to be able to

know that. Also, our Representative from Passamaquoddy Tribe, Rena Newell, who is in attendance as well. Thank you for being here. The Passamaquoddy Tribe is the only tribe actually in United States that has two separate administrations recognized by the federal government

but one tribe and it really is different for us as the Passamaquoddy Tribe, working with all the other Tribes in the state of Maine. We all should be on the same footing. That's something that needs to be recognized as we work through here, is that the Passamaquoddy and the Penobscots can't be in a different boat than the Maliseets and the Micmacs. Although socially and economically, we all have different things that we have to deal with locally or socially. Our belief system and our traditions and our values are the same. What I'd like to see happen, come out of this whole session of everything that we put together, is to recognize the inherent sovereign rights of the Passamaquoddy people, the Penobscot Nation, the Micmac and the Maliseet, for once. Because if it was recognized right from the beginning, we wouldn't be sitting here today talking about whether or not we can have our rights, which are our rights, given back to us because really, that's what this is about. We don't need anybody to make decisions for us. We can do that for ourselves. We can be partners in economic and social growth in the state of Maine, if we could just be recognized as such. I don't think it's much to ask. There's a lot of entities out there that go by exactly what each one of these Tribes sitting at this, round, well, it's a little bit of a horseshoe table here, sit at and come to us to learn ways of being able to be effective in today's environment, in today's times, whether it's fishing game, sustenance. Sustenance cannot be determined by anybody else other than the tribes themselves. The meaning of sustenance goes way back. A lot of what we deal with on a daily basis and a yearly basis throughout this state has to do with our fishing rights, our hunting rights, our social and economic growth, our ability to be able to govern ourselves, as we already have that right to do. Once our sovereignty is recognized, everything else will fall into place. I believe with who we have at the table here, we can accomplish a lot and look forward to working with the Chiefs and everybody that's here from the State, MITSC, the Attorney General's office and be able to work with everybody, staff, to be able to come up with a good document that can work for the Tribes and the State together. We are here together. We've been here, you've been here since 1492. We've been here since. We are still trying to protect. We are still trying to maintain a balance. We are all living it every day. So, let's work together. We can do it. Thank you.

Sen. Mike Carpenter: I want to apologize to Representative Newell. I did not introduce her at the beginning. My apologies, Rena. So, I think the first thing we need to address is how, if we have this smorgasbord of issues that were allegedly addressed in the Indian Claims Act. This is my feeling and I'll open it up to people to discuss it. It seems to me we are somewhat limited in terms of time. Although, I wouldn't get hung up on any of the time frames in the order. I think that can always be, probably always can be expanded if it looks like we are doing some good work, but it seems to me that if we could identify a few items that we could work on over the

course of five or six summer meetings, perhaps come to some sort of a consensus and again, my preference would be to keep it down to a relatively small number of items.

If we could have success on some of those things, I think, and I'm not speaking for the Senate president and I know Donna is not speaking for the speaker, I think we would have no problem getting authority to continue to work on other items. I don't think we should try to get our arms around the whole buffet this summer. I just don't think that's realistic. I think because of some of the history that's gone on here, it may be important that we be able to show some successes and some good faith. I think Chief Nicholas maybe hit on it maybe...and I don't know how we codify that, but you talked about the recognition of your sovereign rights. How do we take that as a discrete item and agree to it? That's going to be simply a matter of language, which may mean nothing, unless the intent to follow through. I've heard sustenance, obviously a big issue. It seems to me probably that's certainly something that needs to be on the table and it's something we could deal with this summer. Economic development. Chief Dana talked about consultation, coordination between the governments. That's a big deal. That's a big deal. It seems to me it ranks right up there with Chief Nicholas' recognition of the sovereignty issue. If we just took those items, stop right there and worked on those items, spent a whole day just around this table chewing on each one of those with regard to the language and the current law and how could we change, tweak, repeal whatever to make those items work for us, does that make any sense? I'll recognize anybody who wants to jump in. Chief Francis.

Chief Kirk Francis: Thank you, Senator. I agree with you. I think we can find ways to address certain sections. To me, I think the main issue falls around 6206 and 6206(a) and 7205 in the federal act but that's different and we'll have to advocate for those changes later. But, in the kind of legislative intent of what the Tribes were looking for we sent the May letter to the Speaker and the President, on ways to get at exactly what we are talking about here in terms of recognizing the Tribe's inherent authority, its status, its relationship. Getting away from a position that there is no federal trust relationship in Maine. That there's no things such as Canons of Construction and federal Indian law not applying in this state. Things that tribes all across the country, not only enjoy but are thriving because of. So when we look at those sections, enjoying all the same rights and privileges as tribes across the United States, is going to be critical to the success of this effort, I think.

When we talk about addressing issues such as violence against women. And we can't have a situation where every time a federal law is created, that one demographic of people, the Maine Tribes are left out of those things to address real serious conditions. In that trust fiduciary relationship we have, a lot is considered in those processes. So, here in the state of Maine, there is an assumed authority around certain issues but yet we are not structurally set up to deal with the conditions that that leaves behind, so we still struggle with those issues and that's just one example. Things as simple as trying to provide disaster relief within our territories and

to do things around our environment and participate in the Clean Water Act. I mean it's the whole gamut.

So, to me, we need to focus on a section that allows the Maine Tribes to access federal beneficial acts and the State should identify if that's allowed, then what are the concerns? The elephant in the room is always gaming. Is there a concern over that issue? Then what can we do collectively to mitigate those concerns and to set up a process that addresses those issues? To me, that that gets at a lot of these issues and also 6204, with what laws the state of Maine apply within Indian territory. If we can get at those issues, I think we can get back to a more recognition of the tribe's inherent authority and right to self-governance. That's just my opinion.

Sen. Mike Carpenter: I don't have 6204 or 6206 in front of me. I'm familiar with what I think they are. Other comments, other members of the Tribal representatives or State representatives that want to add to what I had thrown out? Chief Nicholas.

Chief William Nicholas: Senator Carpenter. Just to touch on what Chief Francis was saying, some of my notes... Recognizing the Tribes as a whole. Inherent exclusive authority over economic growth and business within their reservation and Tribal territories, ultimately takes care of a lot of the issues that we face today. Every single time we try to do something within our reservation territories for economic growth, we get shut down. So if we had to talk about one thing right off the top, that would be the very first one because without economic growth and without us being able to grow within our reservations and do things that we want to do, that we shouldn't and we don't need permission from anybody else to do but because of the hinderance of the Land Claim Settlement Act, we are not able to explore the areas that other tribes across this nation are able to do. That would take care of a lot of the issues. That's just my opinion. Sustenance. Rights (? not clearly audible) is second. I think that...

Sen. Mike Carpenter: Can I hold you just for a second?

Chief William Nicholas: Yeah.

Sen. Mike Carpenter: Outside of gaming the other, how does the Claims Act interfere with economic development? We'll get back to gaming. I'm not taking that off the table but just how does the state shut you down?

Chief William Nicholas: Well there are opportunities at the Tribes, for instance the Passamaquoddy Tribe, when it comes to taxation and different things that you could do on reservation. That you could work with other Tribes and other businesses to come in, to lure in places like Washington, Aroostook County, that need the economic growth. They otherwise

don't because of the limitations that some of these puts on us. All of a sudden, a law will pop up and they will say, "Well you can't do that. You can't put a building there or you can't build," even outside of gaming. Even if it is gaming, to me it's all on the table. I'm not saying any of the Tribes that would want to do it. They may want or they may not but that should be our choice. We should be able to make that choice, just like every tribe across the nation is able to. That hinders growth. That hinders economic growth. We are responsible for ourselves. Once that's recognized, I think we are going to be able to move on but we are responsible for us. When I get up every day, I know what the economic and the social and the issues are within my community. Every minute of the day, I know. I know just about everybody that I deal with, even the ones that don't live on reservation. I know the hardships of all of them, trying to move home but they can't. So when we talk about, when we hear all the things about keeping people in Maine. Well how about we keep our people on the reservation so we have more jobs for them to be able to stay? When we want to go fishing, you have got a fight over a certain number of licenses when we should be able to go do that without being hindered. We are not going to deplete the resource. We are only going to use something that we've always used, that we've always lived by.

That's us. That's how we identify ourselves, is through our culture, our traditions and our values. When we talk about some of these sections when it comes to, and I know we'll get to them as we move on, whether it's an enforcement of laws on reservation or how we agree upon it, there's a lot of great things at work. There are some things that work. There really are. The Attorney General's office is here. There's some laws that we have that work that, at least while I'm Chief. Working through the state on some of these things, it's worked really great, but there's some things that haven't. And rulings, different rulings coming out. Depending on if it's a Democratic Governor, or a Republican Governor or who is sitting where. It seems to always work either for or against the Tribes and there's a lot of misconception out there.

I think ultimately being able to live as we always have and be able to make the decisions, is ultimately what we are looking for. It's what I'm looking for, while I'm sitting here. Economically and socially, Senator, if we can address some of these ones that were just mentioned, that's a home run. Because we're not really asking to do anything outside of our reservations or our territory. We are asking to make our own decision. It even sounds awful when you say, "Asking" but we are looking to be able to get some clarity on these laws and changes so that we can make and have economic growth within our territories.

Sen. Mike Carpenter: How does the state of Maine craft policy, law that would apply to everybody in the State of Maine, except Tribal members on reservation? I mean that's what I hear you saying, is when it comes to siting a building or when it comes to level of taxation, you want to have a separate sub structure of law that only applies to the Tribal members on the reservation?

Chief William Nicholas: That's how it is, that's how it is Indian Country.

I think what I'm saying is ultimately on reservation within our territory, we make rules and our laws ourselves anyway. It's very uncommon that we have a lot of interference and I think you know that but when we do get interference, it's more on our economic projects and the growth of our community. The health of our communities as Native people, I don't want to put it on a scale but it's not good and that hasn't been created by us. A good sustenance living you used to be able to be had. You can't do that now.

Sen. Mike Carpenter: One of the questions I asked in the Task Force when we first discussed it was, is there a model out there? You say that things work. This is the way it works elsewhere in Indian country and it works well. Can somebody give me a model of a state-tribal relationship that seems to work well, reasonably well? Billy, sorry. Chief, you are up.

Chief William Nicholas I'm not done. No. I'm just kidding, Kirk. (laughter)

Sen. Mike Carpenter: I have the button up here that says whether you are done or not. (laughter)

Chief Kirk Francis: Just to some of the points made, I think nobody is talking about running something just wide open...We are talking about access to laws and policy that already exist, that tribes all across the country thrive in. It's proven over and over and there are multiple examples out there and I'll get to them, that prove when tribes do better, the state does better and the local community does better. You have seen joint county hospitals and schools and libraries and all these things that the state also through good partnerships can take advantage of these opportunities on taxation, federal taxation, for example, on the reservation and the benefits that go with that. There are multiple United States Treasury reports that talk about the under investment into Indian country because of situations that exist exactly here in Maine. So when you say, "How does the State hinder economic development?" First of all, when we talk about this gaming issue, this is a carte blanche right that tribes had before the Indian Gaming Regulatory Act that gets regulated and rights get reduced. And even in that reduced situation of that Act, we are prohibited from accessing that. I don't know if my Tribe would want to do gaming or not do gaming, but it becomes offensive when we have two commercial casinos in the state and the tribes are consistently left out of that conversation. That's one example. Another example is around permitting and who gets to do it. We've been trying to develop wind power energy in Western Maine for close to two decades, but what do you think an investor of a \$250 million project is going to do when he finds out he has got to go through a state permitting process, he has got to go through a tribal permitting process and then possibly get caught up in all these jurisdictional battles that take place over that? The structure itself of the Implementing Act is clearly the problem over the years, of the Tribes trying to advancing that. Now you look at states like New Mexico, for example. When you hit

that state, you understand fully that the indigenous people there are part of that state's, not only history but part of its current agenda and so there are billboards. If you didn't know any better, you would know in short order that there is, I'm sure it's not perfect but there is a great relationship and they are part of things there and those tribes by and large do very well. You look at other states like Connecticut for example, where not always the greatest of policy relationships with the state but even with a Settlement Act, they found ways to overcome a lot of different things. There are multiple examples out there.

In the state of New York for example, they don't always have the best relationship in terms of policy and all of those things but those tribes are contributing over a billion dollars, one tribe contributing over a billion dollars to state communities. There's a lot of things that can be done, as Bill talked, about around tax-free sale opportunities and a whole host of other things that that could go on to benefit the state. Ultimately, I think it gets down to not so much having this kind of justification and approval process through this conversation but more about, are we in a space where we understand after a century and a half some type of a unique relationship with the state of Maine? I think we are all clear it's not working or we wouldn't be here but we in a place to recognize the inherent sovereign authority of the tribes?

The question that I would ask again is, what would make the state uncomfortable about that? Again, I think that recognition is either there or it isn't and I realize that once that is recognized sovereign to sovereign and government to government, good responsible governments, they negotiate and talk and they mitigate concerns with their neighbors in their state partners. I think if we can get to a place where we are acknowledging in that right, we'll get to a place where we become solid partners and then there is always two seats at the table and we are negotiating to common ground all the time. There's just no mechanism to do that now.

Sen. Mike Carpenter: New Mexico, is that as a Settlement Act?

Chief Kirk Francis: I don't think so.

Sen. Mike Carpenter: I don't think so. I also had heard that there was a pretty good relationship between the tribes in the state of Mississippi. Does Anybody know anything about that?

Chief Kirk Francis: I don't want to keep talking but I think that Mississippi Band of Choctaw of course had it. They come from one of the poorest counties in the United States, down in Philadelphia and they've developed an economic empire in that area through the great work of people, legendary leaders like their former chairman, Phillip Martin, whose name escapes me but we spend a tremendous amount of time with them through our regional organization, United South & Eastern Tribes. We have a great relationship with all of those Tribes but they've really taken some of the poorest areas of Mississippi and turned them into a real economic success there.

Sen. Mike Carpenter: Chief Peter-Paul.

Chief Edward Peter Paul: Mike, I'm listening to everybody speak and these are a lot of great steps but a lot of what we are talking about are the federal issues. You asked like, "What was easy for us to do here?" I think that is to confer state jurisdiction to the Tribes. That would be the easiest thing for us to do.

Sen. Mike Carpenter: Easiest in the sense that if that were just done by state law, first of all, I'm not sure that would be easy at all to put through the legislature. That might go a long way to solving some issues but I don't know what the ramifications of that are. How would you see that playing out?

Chief Edward Peter Paul: I think it would be a good first step and it would make changing everything else through the federal piece a lot easier. If the federal government sees that we have a state jurisdiction that says they are conferring jurisdiction, then why wouldn't the federal government follow the same suit? I mean that's the ultimate goal, right?

Sen. Mike Carpenter: Yup.

Chief Edward Peter Paul: Jurisdiction to the Tribes, I mean that's really cut and dry pretty easy.

Sen. Mike Carpenter: My sense has always been in terms of how this process should work, would be that if the state of Maine can reach consensus by something like this group and then, excuse me, maybe ultimately the legislation on a piece of this, whether it's a big piece or a small piece, I think the federal government will go along with it. I think our legislators in Washington have always looked to the state. I don't think it worked at all. Flipping it around the other way, I don't think anything's going to come out of Washington, number one, that's going to change the dynamic in the court system. You have two Tribes that don't have their own court system so theoretically, two Tribes could have exclusive jurisdiction over criminal and civil issues and two tribes would only be able to have concurrent jurisdiction at this time because you don't have a court system set up. So we couldn't just wipe the slate clean and put everybody in the same bucket. That wouldn't be...

Chief Edward Peter Paul: That's what you would be doing.

Sen. Mike Carpenter: Right.

Chief Edward Peter Paul: That's what you'd be doing. You'd be getting rid of the state power that the two Tribes have and then they would have their inherent sovereign powers. Mike, we

are going through all this and I got a question for the State. What laws do the State want to keep in the books? I guess can we start there? What's important to the State? What is not on the table is what I'd like to see, I guess.

Sen. Mike Carpenter: Well I don't think any of us here, including the Governor's office or the Attorney General's office is able, maybe they are, is able to say, "Well the State needs to keep this, this or this." I think this is expected, hope to be a collaborative process so we can move to some sort of concurrent process that leads to what Chief Nicholas has been arguing for. I don't know. I guess maybe I don't understand your question, Chief.

Chief Edward Peter Paul : The title of this is the Maine Indian Land Claims Settlement Act, right?

Mike Carpenter: Right.

Chief Edward Peter Paul : It doesn't say anything about jurisdiction. Why is jurisdiction even in this document in the first place?

Mike Carpenter: Because it was put in there when the Act was passed. The issue of jurisdiction was laid out.

Chief Edward Peter Paul : Okay but is there a need for it?

Mike Carpenter: I don't know. I think that's one of the things.

Chief Edward Peter Paul : Well I guess to me that's where I'm at. It's like, okay, you are asking us what we want taken out and I'm asking, what does the state want left in there? I mean to me, I think what the state needs is more about the title to the land. If we are all okay with the title till the land and then you give us full jurisdiction

Sen. Mike Carpenter: What do you mean by jurisdiction? Define jurisdiction.

Chief Edward Peter Paul : Jurisdiction is able to have a court, our own inherent court, set up our own court system.

Sen. Mike Carpenter: You can do that now.

Chief Edward Peter Paul : We would have no authority right now.

Sen. Mike Carpenter: But you could set up the court system with the Penobscots and Passamaquoddys. Once the court system is functioning in theory, then the legislature turns everything over to you.

Chief Edward Peter Paul : I could make an agreement with Kirk or Billy here and use our court system, tell the court. I mean it's done in the State.

Sen. Mike Carpenter: I don't think anybody in the State would have. I can't imagine.

Chief Edward Peter Paul : I mean that's something. I mean a lot of these things, to me, I mean we are talking about it like it's so complicated. To me I think, I think we are over complicating it. It's like we are asking what we want taken out. I'm asking, what needs to stay? I'm even saying that, part of it, what needs to stay is the land. That's what it was all about. I mean let's make it about land. Why can't we just do that?

Sen. Mike Carpenter: Tell me what you mean.

Chief Edward Peter Paul : Just make this document exactly what it says, "Land claims." We will settle the land claims. It's settled. It's done. Now all we are doing is dealing with jurisdiction. I'm just confused. That's all.

Sen. Mike Carpenter: I mean the Tribes in the Settlement Act where were recognized as separate entities. It was all about land but then it was all about, as I recall, all about recognition of the Tribes. So the Tribes were federally recognized. Then we tried to say, "Okay, if you wiped out everything other than the extinguishment of the

Chief Edward Peter Paul : Title

Sen. Mike Carpenter: "Claim, cleared the title, then Micmac Drive, the street in your reservation would be nothing different than our avenue in Houlton. You'd have no more authority over that. City of Presque Isle would have complete authority over it as far as criminal jurisdiction and all that. You are saying...So what they tried to do, and I don't think they did it very well but what they tried to do is to set up the Tribes as entities, as enclaves. The hope was, Chief Francis is right, it's been 40 years trying to get there, was that over time is supposed to be, as Chief Dana said, a living document, a dynamic document and it hasn't moved an inch in 40 years. I think, again I don't want to talk too much, that that's what we are trying to get to, is try to figure out how to make it so you folks can have the sovereignty that you are entitled to. It's inherent to every American, regardless of your skin color or anything else.

Chief Edward Peter Paul : Before the 1980's Act was even settled, the Penobscots and Passamaquoddys had exclusive jurisdiction on their land. I think they were okay and they didn't act all crazy, obviously not.

Sen. Mike Carpenter: Let's just use that, by exclusive. You said they had exclusive jurisdiction over their land. Are you saying that if for example somebody wanted to set up a paper mill on Indian Island or some other manufacturing plant, that they would not have had to go through the Department of Environmental Protection and all of that? I think I disagree with that but I'm not that old.

Chief Edward Peter Paul: There was a lawsuit but I'm not that familiar. We were actually wards of the state so we didn't have the authority. I mean there was some exercising of sovereign rights within reservation territory but

Sen. Mike Carpenter: Fishing.

Chief William Nicholas: The totality of it, we were still recognized, we may not like that word, wards of the State but we were.

Sen. Mike Carpenter You couldn't have just gone ahead and said, "Okay, John, you can go ahead and build your paper mill right there in the state. Go away and leave us alone."

Chief William Nicholas: I mean they sent people in. People bought land within our reservation. We had to buy that back. There's a lot of things that were affected back then. But what I'd like to do... If we are looking to see where our starting point is, we have attorneys that work on these things for us. I'm not an attorney by trade. You can call me a sidewalk attorney, if you'd like but I know a lot and I know a lot of history and I've been part of a lot of different things. I'd like to see us be able to have our attorneys work with other attorneys before our next meeting. To come into this meeting and say, "These are the sections that affect us the most because we know based upon your presentation, that there's going to be a small window of what we should probably be able to work on this time" and have that. I mean I don't know how everybody else feels but we've got to come to some things like 6204, 06 (a), (b), (c), (d), (e), all the way down through 700s.

There are some things at work and the Tribes recognize that. Our school systems for the Passamaquoddy Tribe, Penobscot Nation, that are recognized in the Act, that aren't recognized by the other tribes. Those are things that we've got to talk about because there are a lot of things that are convoluted in this that effect maybe two Tribes and don't affect the other two. Or three reservations versus the other two reservations of the five. That's what I suggest. I don't mind talking more and more on this and concentrating on this but at least the Chiefs are

on the table. I don't know what your thoughts are but I think if we engage our attorneys with, hey, here's some sections and this is why and this is what we'd like to have change for language, we could bring that back to you.

Sen. Mike Carpenter: Chief Sabattis and then I'm going to just stop for a second and make a couple of suggestions. Go ahead.

Chief Clarissa Sabattis .: I just wanted to say that coming into this, there was a consensus that 6204, 6206, 6206 (a) were the places where we wanted to start and where we really want to focus on. I appreciate all the conversation, but...

Sen. Mike Carpenter: All right and I agree with that. Let me make a couple of suggestions. We have about 20 minutes before the gentleman from Michigan State is going to make his presentation. I don't want to cut anybody off but I think Chief Nicholas, so what if we did this? What if we said for the next meeting...And maybe we don't need to set an agenda for two or three meetings. What if at the next meeting we asked the Tribal representatives to come back with some concrete ideas about how to mesh the issues of exclusive jurisdiction and concurrent jurisdiction? I know you all thought I was focusing too much on the child welfare but it seemed to me I was trying to find a piece that might work better. Again, collaboration and consultation that you spoke about is so, so important. So If we set the next meeting and we came back here and you deal with your legal counsel and come back to us with some specifics about those particular items.

Again, it seems to me we are now looking to encompass the whole buffet. I want to emphasize this, Chief Nicholas. I don't think we are that limited. I think we could take some small bites and see if we can figure out how to make them work and if we have success there, I think we have an unlimited amount of goodwill here and time to go forward. If we can't agree on the jurisdictional piece, that doesn't mean that we are a failure. I think we need to maybe at that point step back and look at some of them, whether it's sustenance, whether it's gaming or whatever and nothing is off the table. I'm just suggesting that. I'm just not sure that right out of the gate we can get to any kind of a consensus on the jurisdictional piece. I don't want that to cause us to fail. But I'm willing to try.

Chief Edward Peter Paul: There you go. I just wanted to say that I don't know that much about that lawsuit that gave them the exclusive jurisdiction. I just know that they had it and who I would ask would be Paul Thibeault, if we could ask him, when the first Passamaquoddy and Penobscots had the exclusive jurisdiction on their property.

Paul Thibeault: I assume you are referring to the State v. Dana and the Bottomly cases that were decided in 1979, which prior just prior to the Settlement, established that the Tribes had..., Well first the Passamaquoddy reservation was Indian country within the federal of Indian

country, that the state didn't have jurisdiction there. And in Bottomly, that the tribes had all the same, essentially all the same sovereign rights as the quote end quote, "Western Tribes". I mean that is what the court decision in 1979 said and that is what was compromised in 1980.

Sen. Mike Carpenter: By the Act?

Paul Thibeault: By the Act.

Chief Edward Peter Paul: Thank you.

Sen. Mike Carpenter: I probably knew that one time and forgot it. Do we want to take maybe a 10 minute break before Mr. Fletcher comes in? Is everybody okay with moving forward at least the next time we meet? If we could come up with a date a month out, will that give you enough time to try to come back here with some concrete proposals? We are going to try to avoid taking questions or comments from the floor but the legal counsel for the Micmacs, Craig Sanborn, Craig.

Craig Sanborn: I just wanted to point out that the Micmac Nation operates under a different Implementing Act with the State of Maine and that is an issue, whether that Act is valid or not. If we refer to 602, whatever, there's comparable sections in that Agreement that (in audible/allegedly in place) that are separate, that refer to the Micmac Nation. I just want to make sure that we keep in that mind as we move forward.

Sen. Mike Carpenter: Right and I believe that the Aroostook Band of Micmacs are currently in litigation on that issue, on the issue of whether their Settlement Act is even valid or not and we are not going to do anything here.

Craig Sanborn: No, we are not.

Sen. Mike Carpenter: Oh, I thought you were okay but there's a dispute I think, about whether or not their version of their Act was ever ratified by the Tribe but nothing we do here will stand in the way of that.

Craig Sanborn: Can we get a copy of that certification that the State has?

Sen. Mike Carpenter: I don't think there is one. Is there?

Craig Sanborn: No, I don't think so.

Sen. Mike Carpenter No. I don't think there is one. You know that. (Inaduable) the whole side of the room. Before we take a break here for Mr. Fletcher, how do we want to set a date? Today is July 22nd. If we set it a month from today, can anybody look at their calendar and see what that looks like? By the way, we are going to try to start at 9 o'clock in the morning. No more 1 o'clock starts. We plan to spend some time here.

Chief Nicholas: August 28.

Sen. Carpenter: What day of the week is that? No. I said 22nd. Do we have compromise?

Chief Francis: Senator, I just think we better just keep moving within the next couple of week, I would think. As we all know, I don't think..I mean we all think this is easy but the sausage making that goes on here is not easy and it's going to take a lot of time getting something in place. I agree with the Chiefs, that we should get focused on maybe just drafting a bill that we can work from, all of us, with our staff and your staffs and then bring that to this meeting and then start going through those sections that we are trying to change. What gives people heartburn, what doesn't and how do we fix that. Because to me, if we are not addressing the jurisdictional issues that are facing this relationship, I don't know what we are doing here, because that's where the conflict lies. I think if we roll our sleeves up on it, we can get a good work product and have a good conversation around that. We can at least try to get some positive outcomes there.

Sen. Mike Carpenter: Well I wouldn't disagree with that whatsoever. If you want to bring in a piece of legislation for us to look at and then work, as we say here in the legislature, I'm okay with that. Unless you've already done a lot of the work, it's going to take you more than a couple of weeks, I think.

Chief Kirk Francis: Well I think we have. Again, I think if we work from the joint letter that was sent in May with the joint priorities of the Tribe, highlighting the things that Micmac representation has talked about here today, making sure that there's parity and all of those things, I mean I think it's just a matter of tweaking some language. We have, I think some smart people on our side that can spend some time on this over the next couple of weeks. My fear is we are going to end up with any hiccup in August. We are going to end up in September. You all probably don't know if you are going to get called back in anytime. I know the Tribal leaders have a lot going on as well, so my preference would be that we try to do something in the two week frame.

Sen. Mike Carpenter: I'm going to say go a little bit longer than that because if you have a product that you want us to consider, it seems to me that we need the other committee

members here, the other Task Force members here. In fairness, we need to have a copy of that in our hand at least a week before we come in so, why don't we compromise and try to find a date three weeks out? You get me, you get our staff what you have within a couple of weeks. Give us at least a week to have it in hand. Fair enough?

Chief Kirk Francis: Well I think my vision, and I don't speak for everyone obviously, is that the staff would be involved in this process and that these sessions would become the work sessions on those documents. Not a yay or nay type situation but we would be working on that product.

Sen. Mike Carpenter You are drafting. Your folks are drafting it.

Chief Kirk Francis: That's fine.

Sen. Mike Carpenter: Then sharing with our folks.

Chief Kirk Francis: I could draft it right now if you'd like, one sentence.

Sen. Mike Carpenter: What did you have for a date?

Chief Peter Paul: August 13th?

Sen. Carpenter: What day of the week is that?

Chief Nicholas: Tuesday?

Chief Sabbbits: I can't do it.

Chief Peter Paul: Mondays are hard.

Sen. Carpenter: What about the 14th, Wednesday?

Chief Nicholas: The 14th?

Chief Sabittas.: What about the 9th?

Sen. Carpenter: 14th? Anne?

Rep. Anne Perry: I'm okay with 14th.

Sen. Carpenter: Clarissa? 14Th?

Chief Sabittas..: What about the 9th?

Chief Peter Paul: 14th works. We can do 14th.

Sen. Mike Carpenter 9th?

Chief Peter-Paul: 9th, is that enough time for you, Mike?

Sen. Carpenter: If you get us a..

Sen. Marianne Moore: 9th is fine. Just keep in mind it's a Friday, the traffic.

Chief Francis : I would prefer the 9th

Sen. Carpenter: Will you get us a working document by the 1st or 2nd, by the 2nd? Let's say it's a week ahead. You got to get it to me. You've got to get it to these folks back here so make sure your counsel has their contact information. August the 9th, is that okay with you Anne?

Rep. Anne Perry: Yeah, the 9th is fine for me.

Sen. Carpenter: Senator Moore?

Sen. Marianne Moore: It's fine with me. I'm flying in from Nashville do I will just come straight to Augusta. At 9am?

Sen. Carpenter: I want to get started early.

Chief Peter Paul: Yes sir...(inaudible)

Sen. Carpenter: I'd go 8(am). Before we take a break here and wait for Mr. Fletcher, does anybody have any other comments or thoughts? Mr. Attorney General, do you have anything you want to add or anybody from the Governor's office want to add anything to what we've done? No? Thank you for being here. Thank you. If not, we'll take a break. It's 2:30. Thank you.