

Wabanaki Legal News

Controversy and Jurisdictional Disputes Regarding Elvers

by: Jennifer Egan, PTLA Intern for the Native Unit

Elvers are baby eels, who migrate yearly through the ocean waters of Maine. They are prized as a delicacy in certain markets, and a lucrative fishery has developed here in Maine to harvest or catch elvers. Two types of tools are used to harvest elvers: dip nets and fyke nets. Dip nets are dipped into the water in order to catch the eels. Fyke nets are funnel shaped nets that are held open with hoops. These nets are used to trap the eels as they move down the river.

This past year the Maine legislature passed L.D. 451 "An Act to Cap Certain Marine Resource Licenses Issued by the Passamaquoddy Tribe." This act stipulates that the tribe could issue 124 licenses that allow 1 piece of gear (fyke net or dip net), 26 licenses allowing two pieces of gear (fyke net or dip net) and 50 licenses that only allow the taking of elvers in the St. Croix River. In the past, the Passamaquoddy could issue as many licenses as they wanted. This year the Passamaquoddy issued 575 licenses, 425 of which the state labeled as illegal. The idea behind the license limitations is that there would be less gear in the water. However, the new state law placed no limits on the amount of eels that each licensee could take. Thus, many felt that this new license limit provided no conservation measures for the species.

This past March, the Passamaquoddy passed a law that provided conservation measures designed to protect the elver population. This law placed a 3,600 lb. seasonal limit on the amount of elvers taken by the entire tribe. This worked out to approximately 6.2 pounds of elvers per license holder. The tribe also took steps to regulate the spacing of fyke nets to ensure that there was a pathway for elvers to pass through. The Passamaquoddy are very concerned with preserving the elver population for future generations. Elver fishing has been a large part of Passamaquoddy culture for centuries. The

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We Want to Hear From You!

If you have comments, articles or ideas on how this Newsletter can be helpful to you, please let us know.

Please send articles or letters to:

Wabanaki Legal News, Pine Tree Legal Assistance, 115 Main Street, Second Floor, Bangor, ME 04401.

Or you can send e-mail to: jashby@ptla.org

The articles in this paper are meant to give information, NOT to give legal advice. No one should interpret any law without the help of an attorney who has been told all the facts.

Pine Tree Introduces Newest Native Unit Attorney

Recently we took the opportunity to sit down with Sherri Mitchell, Pine Tree Legal's newest Native American Unit attorney. Sherri comes to Pine Tree after the departure of attorney Paul Thibeault. Pine Tree Executive Director Nan Heald reports that, although Paul left big shoes to fill, Maine's native populations will be remarkably well served by the enormously capable Mitchell. Here is a transcript of our conversation with Attorney Mitchell:

I understand you're a member of the Penobscot Tribe. Did you grow up in Maine?

Yes. I grew up on the Penobscot reservation on Indian Island, where I have been living since my return to Maine last year.

Tell us about your path to Pine Tree Legal.

I have been doing some form or other of Native advocacy work for the past twenty years. I have worked on local, national and international indigenous rights issues and have had the opportunity to work with tribes across the United States and Canada, as well as the Maya in Guatemala. For the past seven years, I have been working primarily on indigenous land rights and sacred sites protections across the United States and Canada. This work has included coordinating and participating in direct protests, coordinated legal actions and policy making.

When I decided to return to Maine, I wanted to find an opportunity to use my skill set to serve the tribal communities in Maine. Pine Tree's Native American Unit provided me with the opportunity to do just that. I am really enjoying the opportunities that this position has given me to help address some of the issues that impact the immediate lives of tribal members. It's very rewarding to be able to help people where they live.

Why did you decide to go to law school?

I was actually recruited by Rob Williams, who was the Director of the Indigenous Peoples Law and Policy Program at the University of Arizona Law School. I had always imagined that I would go to law school, but his phone call was the push that set things in motion. Six months after receiving his call I was on my way to Arizona, where I received my J.D. and a certificate in Indigenous Peoples Law and Policy. Accepting Rob's offer of a scholarship was one of the best decisions that I have ever made. The training that I received there has helped me to become a much more effective advocate for Native people.

You worked in the law in other places before you came to Pine Tree. Where? What type of experiences did you have there?

I worked as a law clerk for the United States Department of the Interior, in the Solicitor's Office, for the Division of Indian Affairs, in Washington, D.C. While there, I was primarily focused on land rights issues, but I also worked on issues pertaining to federal recognition and the fallout over the Carcieri Supreme Court decision. I also worked for Fredericks, Peebles and Morgan Law Firm (FPM) in Boulder, Colorado. FPM is a full service law firm with several offices around the country. FPM serves as general counsel for numerous tribes. I worked on a broad array of issues while I was with them, including land management, state and federal jurisdictional issues, policy making, environmental protection, tribal sovereignty, and political issues, along with a number of business related activities.

Are you excited to be back in Maine?

I admit that I was reluctant to come back to Maine, because I was concerned about being able to continue working on the issues that I am most passionate about. However, once I returned I realized how much I had missed being home. As a Penobscot, I have a strong connection to the river. After being away, I find that I am now grateful every time I cross the bridge onto the reservation and see the beauty

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Elver Fishing

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eels have been used for subsistence and as a part of ceremonial practices.

The controversy over regulating the Passamaquoddy fisheries is part of a larger problem that arises under the Maine Implementation Act. The question is whether the state of Maine has jurisdiction to limit subsistence practices in open waters.

The State's exercise of jurisdiction is generally restricted or non-existent with respect to "internal tribal matters." A 1st Circuit case in 1997 found a number of areas where Maine jurisdiction is "curtailed." While the decision in the *Atkins v. Penobscot*, 130 F.3d 482 (1st Cir. 1997) case was about the harvesting of timber on Penobscot land, it can arguably be applied to a number of other areas as well, including to Maine's fisheries. Determining the application of *Atkins* to open waters fishing is the primary concern of those who seek to limit or challenge the State's regulation of tribal elver fishing.

When on-reservation conduct involving only Indians is at issue, state law is generally inapplicable, for the State's regulatory interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strongest." Some in the Passamaquoddy population say that as long as the tribe is not trying to regulate the hunting and fishing rights of non-Indians, the issuance of elver permits to tribal members is an "internal tribal matter."

"Elver fishing has obviously become a contentious issue, but it has also become symbolic of the effort of Maine tribes to stand as sovereigns alongside the state of Maine."

The settlement act discussed jurisdiction, and gave examples of where the State could and could not regulate. However, the *Atkins* court noted that the criteria laid out in the settlement act are mere "examples and not exclusive" of what constitutes internal tribal matters. Asking, for example, whether other municipalities issued the same permits is too broad of a test to determine what constitutes an "internal tribal matter." The *Penobscot* argued that to "truly . . . exercise its residual sovereignty, it must be free to act within the present marketplace and not be stereotypically restricted to ancient forms of economic support." The *Atkins* court found that there was a 4 part test in any analysis of whether the State may exercise jurisdiction over a tribal matter: the effect on non-tribal members, the subject matter of the dispute, particularly when related to Indian lands or the harvesting of natural resources on Indian lands, the interest of the state of Maine, and prior legal analysis. The Court found a number of areas where Maine jurisdiction is scaled back, notably in regards to the harvesting of natural resources on Indian land. The Court found that issuing permits is a way a tribe can manage the resource on the land. "The issue . . . involves matters of . . . the economic use of natural resources inherent in the tribal lands..."

A Maine Superior Court case further clarified what an "internal tribal" matter is. *Great Northern Paper, Inc. v. Penobscot Nation*, 770 A.2d 474 (Me. 2001) identified a two-part test to identify whether something is an internal tribal matter. This case was about the Freedom of Access Act. The Court found that the Freedom of Access Act did not apply to tribes when they were acting in their municipal capacity with respect to internal tribal matters but did apply when they were interacting with "other governments or agencies in their municipal capacity." Generally, state laws that apply to municipalities also apply to tribes, but there are a few exceptions. One is the "exclusive power to regulate certain aspects of the fishing and wildlife resources within their territories." However, when a tribe's actions cause them to interact or affect those outside the tribe they are no longer acting in respect to internal tribal matters.

Elver fishing has obviously become a contentious issue, but it has also become symbolic of the effort of Maine tribes to stand as sovereigns alongside the state of Maine. It is clear that Maine tribes have the rights of sovereigns with respect to "internal tribal matters." The Passamaquoddy argue they are not trying to regulate non-Indians. Some members have claimed they are only trying to protect the health and safety of the tribe by allowing members to participate in a lucrative market while also maintaining traditional subsistence practices. In addition, they say, they are trying to implement conservation policies that will preserve the practice for future generations.



Penobscot women at the annual community days gathering, Indian Island.

NEWS FROM THE NORTH

from the Presque Isle office of Pine Tree Legal

As many readers know, this past year has been a time of transition in the Native American Unit at Pine Tree Legal. Here in the Presque Isle office, we have worked hard to insure that changes in staffing have not affected our ability to deliver services to our native clients. We continue to conduct outreach at the Micmac and Maliseet bands on a monthly basis. In addition, because of a (thankfully temporary) shortage in staffing state wide, Jeff Ashby of the Presque Isle office undertook to travel to the Passamaquoddy Tribal Court as needed to assist our native clients there. To do his work there, Jeff was sworn into the Passamaquoddy tribal bar. He reports he very much enjoyed his time in Tribal Court, and it was rewarding to work with the Passamaquoddy population. That said, Jeff will not miss the drive from Presque Isle to Pleasant Point and, although he hopes to visit Judge Irving and her excellent staff in the future, Jeff is thankful that attorney Sherri Mitchell will be undertaking most (but not all!) of Pine Tree Legal's duties in the Passamaquoddy Court.

Recent cases handled in the Presque Isle office of Pine Tree included evictions at both Micmac and Maliseet. In those cases, where native families faced the possibility of losing their homes, attorneys for Pine Tree were able to negotiate with the landlord housing authorities for additional time for tenants to stay in their homes, or for a dismissal of the eviction outright. We have also seen and addressed cases where native parents faced termination of TANF benefits. For natives living on tribal land, there is an exemption to the rule that terminates those benefits after 60 months. If you have a case of this type, please do not hesitate to contact our office for help.

Lastly, we would like to express our congratulations to the newly elected (or re-elected) chiefs at Micmac and Maliseet: Edward "Charlie" Peter-Paul and Brenda Commander, respectively. Recently, attorney Ashby has had the opportunity to visit at length with each "new" chief. Our strong relationship with the returning Chief Commander goes back a long time, and we are confident from our warm discussion with Chief Peter-Paul that our new relationship with his office will be equally rewarding and beneficial.

Sherri Mitchell Interview

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of that river surrounding us. I took much of that beauty for granted when I was a kid. But now I deeply value my connection to both the place and the people of my community.

Tell us about the work you're doing here at Pine Tree.

I'm carrying quite a varied case load. My cases include: housing and other types of property rights issues, border crossing issues, ICWA related issues, hunting and fishing rights, social security cases, racial discrimination, etc. I am really enjoying the varied nature of the work. I am also very inspired by the other staff. Pine Tree staff members are all very caring and committed people. They all have incredible credentials and could choose to work anywhere, but they choose to invest themselves in serving the most vulnerable members of our populations. It's great to be surrounded by such wonderful people.

Are you still able to do some of the advocacy work that you have done in the past?

Yes. I want to continue to advocate as much as time permits, despite my full-time work at Pine Tree. I am careful to keep the two separated, but I am thankful that Pine Tree has been so supportive of my commitment to that work.

Going forward, how do you think your work can best impact the native populations of Maine?

I think that by addressing the issues that people are facing on a daily basis, while also reaching out to historically problematic service providers, we can begin to shift the sometimes stark realities that people are facing. I also think that this reaching out will help to move those relationships in a more positive direction. Many of the issues that I deal with are connected to people getting their basic needs met. When people feel secure in having their basic needs met they are free to focus on accomplishing greater things in their own lives, which benefits all of our communities.

Where can clients find you? In which office do you work? Do you serve populations of both Passamaquoddy and Penobscot?

I am located in the Bangor Office of Pine Tree Legal. I represent members of all of Maine's native populations, but primarily do outreach to the Passamaquoddy and Penobscot Tribes. I am at Sipayik and Indian Township to meet clients on the second Tuesday of each month, and am on Indian Island on the last Tuesday.

We understand you're a widely published author and – notably – a poet. Care to share a poem with our readers?

I'll share a poem that I wrote years ago after coming out of a woman's sweat at Sipayik:

The Lodge

*So, here I stand alone
Cold wind on dampened skin
Having just stepped out of the womb
Waiting, silent, anticipating my return
Round two, once again embraced
By the giver of life, a child
I am free*

*Back to this sacred place
Where confusion falls away
Worries seep into the Earth
The scent of cedar fills my head
Grandmother sings her song
I am free*

*No garments to flatter this woman's body
Or false image to uphold
No paint upon my face
Hair is loose, unbound
I am free*

IMPORTANT NOTICE

If you receive TANF and live on an Indian Reservation, your TANF benefits cannot be terminated because of the five year time limit if over half of the adults on the reservation are not employed.

Call Pine Tree Legal Assistance at:
1-877-213-5630 if you get a letter from DHHS telling you that you have reached the 60 month (5 year) lifetime limit.

You may be exempt from termination.



Beautiful Penobscot River - Indian Island

Problems With the IRS ???

WE MAY BE ABLE TO HELP! Pine Tree Legal Assistance's Low Income Taxpayer Clinic (LITC) offers free representation to qualifying taxpayers.

Facing the following tax problems:
Outstanding tax debt
Levies and liens
Earned Income Tax Credit denials
Exams and audits
Innocent spouse relief
Injured spouse relief
Tax Court representation

Call 942-8241 to speak to one of our LITC advocates today.
www.ptla.org/low-income-taxpayer-clinic

FREE TAX WORKSHOPS – CALL US TO ARRANGE FOR A TRAINING ON TAX ISSUES IN YOUR AREA.

It's Your Money – You Earned It – Now Claim It

by Helen Hall, Esq.

Generally Native Americans pay federal income tax on earnings with the exception of income exempt by specific treaty, agreement, or Act of Congress. For example, tribes in Oregon and Washington have fishing rights established by treaties with the U.S., so income from fishing by tribal members is exempt from federal income tax.

Some examples of earned income are wages, salaries, tips, net earnings from self-employment, union strike benefits, employer-paid disability benefits and military combat pay. Earned income does not include unemployment, alimony and child support, interest on bank accounts, investment income and non-taxable payroll deductions for dependent care or retirement plans or public benefits such as , Social Security, SSI, and welfare,

If your income is not exempt from federal income tax, there are two credits you should know about; the Earned Income Tax Credit and the Child Tax Credit. These credits help workers keep working and care for themselves and their children. The money can be used for child care, auto repairs, transportation, medical expenses and to catch up on rent and utilities, to name a few ways the money can help workers care for themselves and their children.

How Much Can Workers Earn And Still Qualify for the Earned Income Tax Credit (EITC)?

For Tax Year 2013:

Number of Children:	Income Less Than:	EITC up to:
3 or more children	\$46,227	\$6,044
2 children	\$43,038	\$5,372
1 child	\$37,870	\$3,250
No Children	\$14,340	\$487

- Investment income cannot exceed \$ 3,300.
- Workers claiming the credit and not raising children must be between the ages of 25 and 64.

How Much Can Workers Earn and Qualify For the Child Tax Credit (CTC)?

Workers who earned more than \$ 3,000 in 2013 can get a CTC refund.

Income less than:	Filing Status:
\$ 110,000	Married
\$ 75,000	Single or Head of Household
\$ 55,000	Married filing separately

The CTC is worth up to \$ 1, 000 for each qualifying child.

The CTC first reduces or eliminates any income tax owed. Then, workers may get any remaining CTC as an additional refund. The family can get the amount of the CTC that remains after income tax is eliminated, or 15% of the family's taxable earned income over \$ 3,000, whichever is less.

Definition of a "Qualifying Child" for claiming the EITC and the CTC.

EITC

- Relationship: Son, daughter, grandchild, stepchild, adopted child, brother, sister, stepbrother, stepsister (or their descendants) or a foster child placed by a government agency.
- Residence: Must live with worker in the U.S. for more than half the year.
- Age: Under 19 or under 24 if full-time student or any age if totally disabled

CTC

- Under 17

If you are a qualifying child, you cannot claim the EITC yourself.

If a child is claimed for both the EITC and CTC, the same worker must claim both credits.

There is an exemption for non-custodial parents to claim the CTC but not the EITC. If a non-custodial parent is permitted to claim a child as a dependent as part of a divorce or separation agreement, the parent can claim the child for the CTC. The non-custodial parent must attach IRS Form 8332, "Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent," to their tax return. The Form requires the custodial parent's signature. There is no exemption for the non-custodial parent to claim the EITC.

To claim the EITC, married workers must file a joint tax return with one exception:

A separated parent can claim the EITC without filing a joint tax return with the other parent if:

1. The parents have lived apart for the last six months of the year.
2. The child lived with one of the parents for more than half of the year.
3. That parent paid more than half the cost of maintaining the household for the year and is eligible to claim the child as a qualifying child.

Under these circumstances , the parent living with the child is considered unmarried for tax purposes and can file as "head of household" and may claim the EITC.

Restorative Justice Practices in Tribal Courts

by Sherri Mitchell, Esq.

Tribal courts often operate under a dual justice system. One is based on the American philosophy of retribution and the other is based on an Indigenous philosophy of restoration. The American system is adversarial in nature. One of the primary goals of this system is to impose punishment for violations of the law. This often involves the levying of fines and separation from the community through incarceration.

The Indigenous philosophy, with a focus on restoration, seeks to harmonize the underlying conflict and restore balance to the individuals affected and the community at large. Under this system, the judiciary works to restore relationships and heal lives. One of the primary goals of this system is reintegration into the community.

American justice is based on rules and principles. Indigenous justice is based on human relationships and webs of connectivity. James Zion, former Solicitor to the courts of the Navajo Nation, says that "The basic concepts of Indian justice are relationships, reciprocity, solidarity and process...[and] understanding that what I do has an impact on you and what you do has an impact on me." Zion goes on to say that the Anglo world has a lot to learn from this concept.

There is clear alignment between the restorative practices of contemporary tribal courts and traditional forms of indigenous justice. Restorative court systems often employ a team of individuals who work with the parties to resolve the dispute. This is similar to the traditional system that consisted largely of a council of tribal elders or other designees. As mentioned above, this form of justice recognizes that the offender will eventually be reintroduced into the community. Therefore, it seeks to heal the underlying causes of the troublesome behavior, to prevent repetition in the future. Former Navajo Justice, Ray Austin, tells us that indigenous courts are focused on restoring harmony and balance to the spirit of the individual who commits the offense, because it is believed that people who are whole do not engage in harmful actions. In this way, you are also helping to restore balance and harmony to the community.

Shanti Thakur looked at restorative justice practices in her film *Circles*. The film focuses on the practice of circle sentencing, which is currently being employed in the Yukon where incarceration rates for Indigenous peoples is disproportionately high. It looks at the fact that going to jail was simply a natural extension of attending residential boarding schools for many indigenous peoples. Circle sentencing seeks to heal the offender, the victim and the community. Circle sentencing is based on traditional Indigenous peacemaking practices using negotiation and consensus. Under this system, all parties to a dispute come together to determine the appropriate response to the crime.

MITSC Documents Humanitarian Crisis Faced by Wabanaki Tribes Within the State of Maine Due to Maine Indian Claims Settlement Act & Maine Implementing Act

Commission Calls for Action To Address Human Rights Crisis

by John Dieffenbacher-Krall - Director, Maine Indian Tribal-State Commission

Responding to a request from UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya, the Maine Indian Tribal-State Commission (MITSC) recently submitted a fourteen page letter and twenty-one documents supplementing its original filing of May 16, 2012 asserting that the Maine Indian Claims Settlement Act (MICSA) and Maine Implementing Act (MIA) "have created structural inequities that have resulted in conditions that have risen to the level of human rights violations." The MITSC's August 8, 2013 filing with the UN Special Rapporteur states "certain provisions of the legislation... align closely with tribal termination provisions." The Commission adds "[t]he ways in which these provisions have been interpreted by state and federal courts constitute the partial termination of tribal self-governance and thus the tribes' ability to provide for the protection of natural resources, the provision of an economic base, and preservation of their unique cultures."

"For more than two years, the MITSC has thoroughly researched what impacts the MICSA and MIA are having on the Wabanaki Tribes within the State of Maine today consistent with our charge to "continually review the effectiveness of this Act [Maine Implementing Act]," said Jamie Bissonette Lewey, MITSC Chair. "What we found is for many key indicators of community health conditions have deteriorated for the Maliseets, Micmacs, Passamaquoddies, and Penobscots since MIA and MICSA took effect in 1980. Specific provisions in MIA and MICSA are causing this structural oppression."

"Maine Indian Claims Settlement Act (MICSA) and Maine Implementing Act (MIA) have created structural inequities that have resulted in conditions that have risen to the level of human rights violations."

The MITSC filing cites two formal State of Maine investigations into the effects of the Maine Implementing Act on the Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Indian Nation, several state and federal court cases, letters, its own policy position statement on river herring restoration in the St. Croix River, and health advisories warning against consuming fish and game due to toxic contamination as evidence to support its conclusions. The MITSC responded to UN Special Rapporteur James Anaya's question asking how "the MICSA and MIA framework severely limits Wabanaki tribes in Maine with regard to economic self-development, cultural preservation and the protection of natural resources in tribal territories."

The MIA and MICSA comprise laws enacted by the State of Maine and US to complete the Maine Indian Claims Settlement Agreement in response to a lawsuit filed by the Passamaquoddy Tribe and Penobscot Nation in 1972. During the latter stages of the Passamaquoddy and Penobscot negotiations with the State of Maine and the US, the Houlton Band of Maliseet Indians became involved. The Aroostook Band of Micmacs has a separate settlement agreement with the US enacted by Congress in 1991.

The MITSC submitted its original letter to UN Special Rapporteur James Anaya in response to his request for information as part of his first official country visit to the US. Representatives of MITSC and the Wabanaki Tribes met with Mr. Anaya and members of his support staff on May 16, 2012 at the United Nations in New York City to allow him to hear from Tribal citizens directly and to present information on the systemic human rights violations occurring due to specific provisions of MICSA and MIA. In his final report on his official visit to the US, Mr. Anaya finds that the "Maine Indian Claims Settlement Act and Maine Implementing Act create structural inequalities that limit the self-determination of Maine tribes; structural inequalities contribute to Maine tribal members experiencing extreme poverty, high unemployment, short life expectancy, poor health, limited

educational opportunities and diminished economic development."

"MIA and MICSA are not working. No Tribe negotiates to deepen its People's poverty. Provisions included in the MIA and MICSA designed to provide flexibility have been either blocked or unused. Unilateral interpretations of the Acts by the Office of the Maine Attorney General and state and federal courts contrary to the process that produced the laws have magnified the inequities of MIA and MICSA. As the nation states of the world and the United Nations recognize today as International Day of the World's Indigenous Peoples, Maine and the US can truly honor the meaning of this day by addressing the structural problems in MIA and MICSA causing a human rights crisis for the Wabanaki Tribes within the State of Maine," stated Jamie Bissonette Lewey.

MITSC consists of an equal number of representatives from three of the Wabanaki Tribes, the Maliseets, Passamaquoddies, and Penobscots, and the State of Maine with the twelve Commissioners electing a thirteenth member as chair. Besides continually reviewing the effectiveness of the Maine Implementing Act (30 MRSA §6201 - §6214), it is also charged with monitoring "the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State."

Professor James Anaya fulfills his duties as Special Rapporteur on the Rights of Indigenous Peoples under a mandate of the United Nations Human Rights Council. The Human Rights Council resolution 15/14 authorizes and requests the Special Rapporteur to "examine ways and means of overcoming existing obstacles to the full and effective protection of the human rights and fundamental freedoms of indigenous people, in conformity with his/her mandate, and to identify, exchange and promote best practices". To learn more about the responsibilities and work of the Special Rapporteur, go to <http://unsr.jamesanaya.org>.

For More Information about MITSC, contact: John Dieffenbacher-Krall, (207) 817-3799 (c) (207) 944-8376

OUTREACH SCHEDULE

Passamaquoddy Tribe

Indian Township-Clinic at Peter Dana Point:
2nd Tuesdays 9:30 am – 11:30 pm

Sipayik Tribal Courtroom:

2nd Tuesdays 1:30pm – 3:30am

To make an appointment call: 1-877-213-5630 or 942-8241

Penobscot Nation

Penobscot Tribal Courtroom

Last Tuesday of each month from 10am-12pm
(changes to schedule announced in Tribal Newsletter)

To make an appointment call: 1-877-213-5630 or 942-8241

Houlton Band of Maliseets

Housing Authority

Last Wednesday of the month 1pm to 3pm, call 1-877-213-5630, local 764-4349

Aroostook Band of Micmacs

The Clinic

Last Wednesday of the month 9am-12pm
call: 1-877-213-5630, local 764-4349

Jury Trials and Tribal Courts: A History

by: Tiana Vermette, Student, University of Maine and Sherri Mitchell, PTLA Native American Unit Staff Attorney

In this article we focus on the role of the jury in a court trial. We discuss the origin of the jury, its role in society and the similarities between jury trials and traditional Indigenous conflict resolution practices.

Jury Duty can be traced back to the 12th century, when King Henry II issued a series of assizes that are credited with forming the British common law. An assize is an edict that arose out of the periodic meetings of the barons. The Assize of Clarendon established the grand jury system for investigating crimes. The Assize of Northampton established a jury of presentment to determine which cases should be heard. The juries consisted of twelve free and lawful men. It differed from the modern system in that jurors were informed about the details of the case and the evidence prior to the trial and decisions were generally made in advance of the hearing. However, this process is the genesis of the modern day jury system.

This practice was brought to the United States by Alexis de Tocqueville in 1831. Tocqueville saw more in America than a new land, he envisioned a new way of living. Inspired by what he envisioned, he published two volumes on a new form of democracy titled *Democracy in America*. These two books were fundamental in the forming of the current American Democratic system. A key part of this system was trial by a jury of one's peers. Tocqueville's work is perhaps even more relevant today than it was in the past. At a time when true representative democracy is vanishing, historians believe that Tocqueville's work provides some of the most comprehensive and insightful views on democracy that were ever written, and that these volumes will be instrumental in rebalancing our democracy into the future. There is little doubt that his work was largely responsible for forming the modern day American Justice system.

The judge and jury work together in a
common effort to implement the
principals of freedom. The Judge
determines the law that is to be applied,
while the jury decides the facts of the
case.

Prior to the introduction of the jury system, punishment for crimes was often brutal and archaic. Trial was by ordeal in medieval times. This was an ancient practice where the guilt or innocence of the accused was determined by subjecting them to unpleasant and often dangerous experiences. The test was generally one of life or death and the proof of innocence was determined by the survival of the accused. In some cases, the accused was considered innocent if they escaped injury or if their injuries healed. Unsurprisingly, many innocent people died as a result. The introduction of the jury system provided the accused with the opportunity for a fair and just trial.

The importance of jury duty lies in the protection of our rights and liberties. This is achieved through teamwork. The judge and jury work together in a common effort to implement the principals of freedom. The Judge determines the law that is to be applied, while the jury decides the facts of the case. Jurors must possess sound judgment, honesty and a sense of fairness; it is one of the highest duties of our citizenship. The jury is charged with aiding in the maintenance of law and order. They protect one of the most fundamental principals of our democracy, preserving justice among their fellow citizens. The citizens of a nation rely on jurors to protect the fundamental rights of life, liberty and the pursuit of happiness.

Early tribal courts were set up by the Bureau of Indian Affairs. They were designed to help assimilate Native Peoples into the larger American legal system. Today, there are many tribes that continue to mirror the American justice system. However, a growing number of tribes have attempted to bring back traditional dispute resolution practices, by incorporating these practices into the structure of their court system.

In the 1880's, the United States government, operating under paternalistic ideals, believed that there was a need for greater law and justice in Indian country. This belief led to the creation of the early tribal court systems. It wasn't until 1934 that Indian Tribes were allowed to set up their own justice codes and operate court systems

that enforced tribal laws that were actually created by the tribal peoples.

One very important aspect of the tribal judicial system is defining the court's authority, or jurisdiction, to hear disputes. One of the primary elements of our sovereignty is to be able to clearly define the boundaries of our territories and to determine the rules and laws that will define how we live within those territories. Conducting jury trials in the tribal court system provides tribal people with an active role in the exercise of sovereignty. This process is also akin to traditional practices of dispute resolution. (Editor's note: For more information on traditional Indigenous dispute resolution practices please see the article on Restorative Justice.) Jury duty in a tribal court can resemble the process of being advised by a tribal council or elder's council. Here, individuals are being judged by their fellow citizens, citizens who share their social values, customs and beliefs. When you are judged by your peers, there is also much less fear of racism or other race based misconceptions becoming a factor in the judicial process.

Incorporating jury trials into the tribal court system honors both our past and our future. It allows us to determine our course, while encouraging us to remain mindful of the core values that have sustained us for millennia. Citizen participation in the court system ensures that our judiciary will provide a broad representation of those values, by incorporating them actively into one of the main components of our self governance, our judicial system.



Penobscot River near Indian Island

Restorative Justice

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This process consists of multiple phases and is overseen by a community justice committee. In phase one the community justice committee interviews the offender. In phase two, there are separate healing circles held for both the victim and the offender. Phase three brings everyone together to work out an appropriate sentencing plan. And, in phase four the justice committee conducts follow-up circles to monitor and discuss the offender's progress and next steps.

Another form of restorative justice involves the use of family group conferencing. Family group conferencing is also reflective of traditional tribal practices, paralleling the function of a family clan council. Here, the victim, offender, family, friends, co-workers, teachers and spiritual leaders all come together to take collective responsibility for the victim and the offender.

Family group counseling began to surface as a modern practice in New Zealand in 1989, and was based on the traditional practices of the Maori. Family group conferencing is based on four dispositional options:

1. An immediate warning by the police.
2. Police requiring the offender to apologize or provide community service.
3. Family group conferencing.
4. Standard Court Sentencing

Each of these different forms of restorative justice provide an opportunity to bring balance and harmony to the entire community,

Please see **Restorative Justice**, Next page

A Website to Help Those Who Serve: Stateside Legal

by Adam Harr, VISTA Volunteer

Stateside Legal is a website that Pine Tree Legal Assistance created that has helpful, current, and easy to read information on benefits and laws that affect service members, veterans, and the family members who support them. On the site, you can find resources about issues that Pine Tree staff has always helped Mainers with, such as housing issues and public benefits. Stateside Legal, though, specializes in self-help resources on military service related legal issues. For example, there are currently some useful and new resources about the following issues that can be found at www.statesidelegal.org:

Women Who Serve:

Our new landing page is geared towards women who are currently serving, have served, or are the spouse supporting a current service member or veteran. Some resources categories listed on the page include VA healthcare, family issues, challenges associated with relocating and more. Check out the link: <http://statesidelegal.org/women-who-serve>

Military Sexual Trauma (MST):

There is an epidemic of sexual assault in the military that often results in post traumatic stress disorder (PTSD) for the victims. PTSD is a medical condition for which you can receive disability compensation. It can be difficult to receive benefits for injury or mental illness as a result of a sexual assault because of the difficulty in obtaining the medical and other records from the military to prove the case. Maine's own Ruth Moore, a Navy veteran, helped combat this through the Ruth Moore Act. This new law lets a person submit alternative forms of evidence (such as statements from family and friends) to show the effects of the assault. To learn more about MST, including finding treatment for related mental health conditions, go here: <http://statesidelegal.org/military-sexual-trauma>

Advocate Landing Page:

In addition all the helpful information for people facing their own legal problems, Stateside Legal has resources for people looking to help others. More technical in nature, some of the materials on our Advocate Landing Page are geared towards attorneys but can be just as useful to savvy family or friends looking to support the veteran or service member in their lives. Legally, only those accredited by the VA can assist a veteran on a disability claim. For information on getting accredited and much more, go here: http://statesidelegal.org/advocate-info?qt-advocate_info=1#qt-advocate_info

Restorative Justice

Continued from previous page

something that is often lacking in the American Justice system. Restorative justice helps communities to view crime as more than an isolated criminal offense. It views it as a symptom of a larger problem and allows parties to find a lasting resolution to those problems, so that they are not repeated in the future.

Five Principles of Restorative Justice

Restorative justice operates around five basic principles. These are:

1. Crime consists of more than a violation of the criminal law and defiance of authority.
2. Crimes involves disruption in the three dimensional relationships of victim, community and offender.
3. Because crime harms the victim and the community, the primary goals should be to repair the harm and heal the victim and the community.
4. The victim, community and offender should participate in determining the response to crime; it is believed that the government should release its monopoly over that process in order to make it more effective to the individuals involved.
5. Case disposition should be based primarily on the victim's and the community's needs, not solely on the offender's needs or culpability, the danger that he/she presents or on their criminal history.

The practice of restorative justice is becoming more and more prevalent. The increase in participation has caused some within the criminal justice system to raise a flag of concern. The primary concern has been with the inability to track restorative justice outcomes. Proponents argue that creating stricter guidelines that are focused solely on traceable outcomes will hamper the process, making it less likely that practices will be specifically geared toward the needs of the individuals involved.

As tribal courts become more self-determined and sophisticated, it will be interesting to see the long term role that restorative justice practices will have. In the end, the community will have to decide if they want to move their court toward a more Americanized structure, or if they want to organize their court in alignment with the traditions and beliefs of the communities they serve.

COMMUNITY RESOURCES

AROOSTOOK BAND OF MICMACS:

www.micmac-nsn.gov

Administration, Housing,
Child/Family Services

764-1972
or 1-800-355-1435

Micmac Head Start Program
Health Department

768-3217
764-1792 or
1-800-750-1972

HOULTON BAND OF MALISEET INDIANS:

www.maliseets.com

Administration

532-4273
1-800-564-8524(in state)
1-800-545-8524(out of state)

Maliseet Health Department

532-2240 or 1-800-640-2266

Maliseet Health Clinic

532-4229

Maliseet Housing Authority

532-9140

Indian Child Welfare

532-7260 or 866-3103

Social Services and LEAD

532-7260 or 1-800-532-7280

Domestic Violence and
Sexual Assault Program

532-6401 (24/7)

Advocacy Program

532-3000

Maliseet Tribal Court System

www.maliseets.com/tribal_courts.htm

Court Administrator 532-4273 x 217

e-mail: tribal.courts@maliseets.com

PENOBSCOT INDIAN NATION:

www.penobscotnation.org

Administration

827-7776 or
1-877-736-6272

Indian Health Services

817-7400

Penobscot Housing Dept.

817-7370

Penobscot Human Services 817-7492

Indian Island Police Dept

817-7358 (dispatcher)

827-7188/911 (emergency)

827-6336 (business)

Domestic Violence and Sexual

Assault Crisis Hotline

631-4886 (24/7)

Office - Lynna Tupica

817-7498

Penobscot Tribal Court System

Director of Tribal Court

817-7342

Clerk of Courts 817-7329

PASSAMAQUODDY TRIBE:

PLEASANT POINT www.wabanaki.com
Administration 853-2600
Pleasant Point Health Center 853-0644
Pleasant Point Housing 853-6021
Domestic Violence-Peaceful Relations 853-2600 ext 266
Emergency: 853-2613
Police Department 853-6100
Social Services 853-2600 ext. 264 or 261

Tribal Court System (www.wabanaki.com/tribal_court.htm)
Clerk of Courts 853-2600 ext. 278

INDIAN TOWNSHIP (www.passamaquoddy.com)

Administration 796-2301
Indian Township Clinic 796-2321
Indian Township Housing 796-8004
Police Department 796-2704

Tribal Court System (www.wabanaki.com/tribal_court.htm)
Clerk of Courts 853-2600 ext. 252
(when court is in session call: 796-2301 ext. 205)

STATEWIDE CRISIS SERVICES

HEALTH & HUMAN SERVICES

DHHS Child Abuse 1-800-452-1999(24 hour)
1-800-963-9490(TTY)
DHHS Adult Abuse and Neglect 1-800 624-8404

DOMESTIC VIOLENCE

Maine Coalition to End DV 1-866-834-HELP(24 hour)
Houlton Band of Maliseets *Domestic Violence and Sexual Assault Program* 532-6401(24/7) or 532-3000
694-1353 (cell)
Penobscot Indian Nation *Domestic Violence and Sexual Assault Program* 631-4886 (24/7) or 817-7498
Passamaquoddy Peaceful Relations 853-2600 ext. 266
Spruce Run 1-800-863-9909
Penobscot County
Battered Women's Project 1-800-439-2323
Penobscot County
The Next Step 1-800-315-5579 or 255-4785
Washington County
Hope and Justice Project 1-800-439-2323 (24/7) or 764-2977
Aroostook County

RAPE CRISIS SERVICES

Rape Response Services 1-800-310-0000
Penobscot County
Aroostook Mental Health Center 1-800-550-3304
Aroostook County
Downeast Sexual Assault Svcs. 1-800-228-2470
Washington County

OTHER SERVICES

Youth Crisis Stabilization 1-800-499-9130
Statewide Suicide Referral Line 1-800-568-1112
Poison Control Center 1-800-222-1212

2-1-1 MAINE & COMMUNITY ACTION PROGRAMS

2-1-1 MAINE www.211maine.org

2-1-1 Maine is part of a national movement to centralize and streamline access to health and human service information and resources. The state of Maine has thousands of programs offering all types of health and human services.

COMMUNITY ACTION PROGRAMS bring community resources together such as heating assistance and other utility issues, subsidized housing, child care, and transportation services for disabled people. Call 2-1-1 for your local program.

LEGAL SERVICES

PINE TREE LEGAL ASSISTANCE www.ptla.org

Pine Tree Legal represents low-income people with legal problems.
Portland: 774-8211 Augusta: 622-4731
Machias: 255-8656 Lewiston: 784-1558
Presque Isle: 764-4349 Bangor: 942-8241
Farm worker Unit: 1-800-879-7463

VOLUNTEER LAWYERS PROJECT www.vlp.org

1-800-442-4293
If you meet its eligibility requirements, the VLP can give you legal advice or informational materials for free. In some cases the VLP may provide a referral to a private attorney for free representation.

LEGAL SERVICES FOR THE ELDERLY www.mainelse.org

1-800-750-5353
If you are age 60 or older, LSE can give you free legal advice or limited representation.

Intake hours are:

Monday Wednesday and Friday - 9am to 12pm (family law only)
Tuesday and Thursday - 1pm to 4pm (other areas of law)

PENQUIS LAW PROJECT www.penquis.org

1-800-215-4942

This group gives legal representation to low income residents of Penobscot and Piscataquis Counties in cases involving domestic relations. Priority is given to people who have experienced or are experiencing domestic violence, sexual assault or stalking.

DISABILITY RIGHTS CENTER www.drcme.org

1-800-452-1948

Advice and legal representation to people with disabilities.

BANGOR COURT ASSISTANCE PROGRAM

941-3040

Volunteers are available at the Bangor District Court once a month to help you fill out family law and small claims court forms. For upcoming dates call Holly Jarvis at 561-2300.

OTHER COMMUNITY RESOURCES

WABANAKI MENTAL HEALTH ASSOC. www.wabanaki.org

992-0411 or 1-866-275-3741

Wabanaki provides culturally-sensitive psychological and social services to the Native American populations of Hancock, Penobscot, Piscataquis and parts of Washington Counties.

MAINE INDIAN TRIBAL STATE COMMISSION www.mitsc.org

817-3799

SOCIAL SECURITY ADMINISTRATION

www.ssa.gov/reach.htm

Statewide 1-800-772-1213
Bangor Area 877-405-1448 - 1-800-325-0778 (TTY)
Presque Isle Area 1-866-837-2719 - 764-2925 (TTY)

MAINE HUMAN RIGHTS COMMISSION maine.gov/mhrc

624-6290 or Maine Relay 771 (TTY)

EMPLOYMENT INFORMATION

MAINE DEPARTMENT OF LABOR

To file unemployment claims online:
www.maine.gov/labor/unemployment

To file unemployment claims by telephone: 1-800-593-7660

Or go to your nearest Career Center: (mainecareercenter.com)

Bangor: 561-4050 Calais: 454-7551
Houlton: 532-5300 Machias: 255-1900
Presque Isle: 760-6300