

Wabanaki Legal News

Penobscot Nation v. Mills

The Penobscot Nation is involved in a significant court case in the Maine Federal District Court. The case may determine what sovereign rights the Penobscot Nation retains in the Penobscot River itself.

In 1980, the Penobscot and Passamaquoddy Nations and the Houlton Band of Maliseets settled a major court case known as the Indian Land Claims case. Part of that agreement was a State of Maine law called the Maine Indian Claims Settlement Act. This law tried to define the relationship between the Tribes and the State of Maine, including hunting and fishing rights within the reservations and traditional sustenance hunting and fishing rights.

Although traditional Penobscot hunting and fishing rights in the Penobscot River were recognized by both the Penobscot Nation and the State of Maine after the settlement became law, in 2012 Maine's Attorney General sent a letter to Penobscot Chief Kirk Francis saying that, in his opinion, the Penobscot River was not part of the Penobscot Reservation and

that therefore members of the Penobscot Nation were governed by Maine law when hunting or fishing, or doing anything else, on the river.

As a result of this letter, the Penobscot Nation sued the Attorney General. The lawsuit asks the Maine Federal court to declare that the Attorney General was wrong and that traditional sustenance fishing rights on the river still exist. So far the main thing that has happened in the lawsuit is that instead of just being a legal battle between the Penobscot Nation and the State of Maine, a lot of other entities have officially taken sides in the case. Eleven towns or municipal agencies, such as Millinocket, Lincoln, Orono, and Bucksport, and seven companies, such as Great Northern Paper and Verso Paper, have intervened on the side of the State of Maine, while the federal government has intervened on the side of the Penobscot Nation.

Watch for updates of this important and interesting case in future editions of the Wabanaki Legal News.

Case may determine what sovereign rights the Penobscot Nation retains in the Penobscot River.

Update: The Restorative Justice and Healing Commission

The Wabanaki Restorative Justice and Healing Commission (WRJHC) was established by a Resolution of the Pleasant Point Passamaquoddy Tribal Council. The WRJHC was created to find new and better ways for the tribal justice system to address the persistent problem of crime related to substance abuse, especially among young offenders. The stated vision of the WRJHC is as follows:

Establish an effective restorative justice program that re-thinks how we understand crime; how we define accountability; and how we can respond to crime in a way that not only builds community but reflects the customs, beliefs and history of our people.

The general elements of restorative justice were defined in a previous article in the Fall 2013 edition of this newsletter, and can be viewed at our website, www.ptla.org/wabanaki-legal-news. Restorative justice is an ongoing process and it is about relationships, not just a written code or legal structure. One of the goals of the WRJHC is to make better use of the many resources that already exist in the tribal community, and to

improve the working relationships between agencies that attempt to deal with the issues of substance abuse and crime.

One of the early steps the Commission took was to press for an active role in the selection of a tribal prosecutor. The result was the appointment of a very capable prosecutor who supports restorative methods in criminal justice. In recent months the Commission has taken other important steps toward reaching its goals, including the following:

- A report to the U.S. Commission on Civil Rights on criminal sentencing disparity for Native Americans in Maine. The report cited statistics that show that Indian people are being jailed in Maine at a rate at least three times higher than the general population, and possibly five times higher. The disparity is even greater for Native American women;
- Critically examining tribal bail practices and collecting tribal codes and resolutions with the goal of reforming tribal criminal laws and court practices in accordance with restorative justice goals;
- Developing a strategy to provide holistic "wrap-around" services to community members who are already in the criminal justice system or at risk because of substance addiction.

Please see **Restorative Justice**, Page 3

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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.



Hopi House, on the rim of the Grand Canyon.

Partnering for Native American Health – A Meeting in Arizona

Legal aid, healthcare and government leaders representing dozens of Native American tribes met on the Navajo Reservation in Tuba City, Arizona, on May 29, 2014, to better understand the issues affecting tribal health and discuss the role legal care can play in addressing barriers to healthcare.

The meeting, “Partnering for Native Health,” was convened by DNA-People’s Legal Services and the National Center for Medical-Legal Partnership, with funding from the Kresge Foundation.

The funders and organizers of the meeting provided financial assistance to help with the cost of travel and attendance for legal service providers and health care administrators from all over the United States. With this generous assistance, Pine Tree Legal Native Unit attorneys Jeff Ashby and Sherri Mitchell attended the meeting, joined by Newell Lewey, then the Health Planner with the Pleasant Point Health Center.

Participants at the meeting heard from many speakers, including Navajo Nation Vice President Rex Lee Jim, about the important role “medical legal partnerships” can play to help people achieve better health. Many of health needs of Native Americans are related to social factors outside the traditional role of what medical care can treat – things like domestic violence, limited housing options, and the challenges that come with a complex network of tribal, state, and federal benefit programs. The National Center for Medical-Legal Partnership emphasizes, on its website, that “one in six people needs legal care to be healthy.”



Navajo Nation Vice President Rex Lee Jim speaks to attendees at the “Partnering for Native Health” conference in Tuba City, AZ.

During the meeting, presenters from successful medical legal partnerships offered reflections on how to successfully integrate legal aid services within an Indian Health Services (IHS) facility and how new programs can engage health care partners.

One of the goals of the meeting was to help spread the medical-legal partnership approach to other health care institutions in tribal country. Participants heard from attorneys, physicians and allied health providers at medical-legal partnerships serving other populations. Speakers addressed the role of education and care coordination to make sure partnerships effectively address identified health problems.

Armed with this information, and excited about how to implement some of these ideas to help Maine’s Native

Medical-Legal Partnerships: Joining Forces for Good Health

Medical-Legal Partnerships” are partnerships between health care providers and legal services providers. For example, a medical-legal partnership might be formed between a hospital or health center and a legal aid organization like Pine Tree Legal. The purpose of these partnerships is to get health care providers to work with legal advocates to address legal issues that patients face. This results in better outcomes for patients, as these partnerships recognize that legal problems can and do affect people’s health.

Some patients need legal help to access or pay for health care. Legal service providers can help people obtain medical insurance benefits like Medicaid or Medicare. Sometimes a particular service or medication should be covered by one of these programs, but the patient is being told that it won’t be. This is a legal problem, and there may be ways to appeal or address denials by the government or the insurance company. Sometimes, a person needs help to get Social Security Disability benefits. A partnership between the medical provider and that person’s lawyer can greatly affect whether those benefits are granted. Getting those benefits will result in getting income and medical insurance, which will result in better health for the patient/client.

There are many other legal issues that patients face that can affect their health. A patient or her family members might be sick because of poor housing conditions, not enough food, or the presence of domestic violence in the home. Health care providers who spot these issues, and know how to advise or refer a patient to a legal solution, are seeing better health outcomes for their patients.

Depending upon what resources are available, most medical-legal partnerships do one or more of the following:

- Medical providers learn about how to spot legal issues affecting the health of their clients, they learn about how to make referrals to the proper legal service provider or agency who can help, and they make those referrals to contacts within those organizations that the partnership has fostered;
- Legal service providers go to the health care facilities on a consistent basis and provide trainings to assist medical providers and their staff to do the issue spotting and referrals referenced above;
- Legal service providers are provided space within the health care facility where they conduct regular intake of clients/patients referred by healthcare workers on-site.

The popularity of medical-legal partnerships is growing. More and more resources are being dedicated to this new “holistic” approach to assisting individuals in need. The American Bar Association and American Academy of Pediatrics have passed resolutions in support of medical-legal partnerships. Elsewhere in this edition of the Wabanaki Legal News, read about how Pine Tree Legal is exploring the creation of a medical legal partnership with one or more of Maine’s Native American populations.

Criminal Representation in the Tribal Court

The people of Maine know that Pine Tree Legal Assistance provides free legal services to low income clients, in civil matters only. Pine Tree usually does not represent people in criminal court. The only exception is in the Native American Unit, where Pine Tree's attorneys are able to provide criminal representation to clients facing criminal charges in the Tribal Courts. This is possible through a grant from the Native American Rights Fund (NARF). This grant is part of the NAILS program, which stands for Native American Indigent Legal Services.

The types of criminal cases that Pine Tree has seen in Tribal Court vary widely. Attorneys from the Native Unit have represented clients in vehicle operation offense cases, such as Operating under the Influence and Operating after Suspension; personal offense cases, such as Assault; and, property related cases, such as Criminal Mischief and Trespass. This has provided new opportunities for Pine Tree to serve tribal clients in new ways. Native Unit attorneys have conducted criminal trials, challenged the evidence and questioned police investigations. In at least one instance, Unit attorney Sherri Mitchell has agreed to represent an accused tribal member in a jury trial. In other instances, Pine Tree attorneys and their clients have been able to reach an agreement with the Prosecutor without going to trial. Such agreements allow clients to accept responsibility and have some say in the outcomes of their cases – outcomes that can focus on rehabilitation instead of punishment.

The criminal cases Pine Tree Legal attorneys handle in Tribal Court can help clients minimize their engagement with the criminal justice system, get fair results, challenge claims made against them, and/or help them fix problems in their lives. Pine Tree is pleased to be able to offer this additional service and to increase our engagement with our tribal clients.

Restorative Justice

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The Commission is trying to build on and learn from earlier efforts such as the community process that led to the adoption of a new Passamaquoddy Child Welfare Code. The Commission is also looking at the 1996 Passamaquoddy Community Vision process that identified 14 fundamental community values. Those values might provide the basis for a restorative justice approach to criminal justice.

It is noteworthy that the 1996 Community Vision Process did not directly address the role of the tribal court or the topic of dispute resolution. Why were those issues not discussed? The answer to that question may be a key to the success of the Commission's efforts to develop a criminal justice system based on principles of restorative justice.

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.

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.

The Indian Civil Rights Act

Supporting Restorative Justice and Traditional Values in Tribal Courts

You have probably heard the echoing gavel on the Law & Order series and its spin-offs on TV. Now imagine a spin-off called "Law & Order: Tribal Court." Instead of the familiar gavel sound, you hear a ceremonial drum and the voiceover says: "In the tribal court system, criminal defendants are not protected by the U.S. Bill of Rights. Instead, the rights of criminal defendants are defined by the Indian Civil Rights Act."

You might well ask why tribal police, prosecutors and judges do not have to apply the federal Bill of Rights. The short answer is that the first ten amendments to the U.S. Constitution, known as the Bill of Rights, were intended to limit the powers of the federal and state governments, not the tribes. Does this mean that federal law does not apply in any way to tribal courts? Definitely not. But the constitutional source of federal authority over tribal courts is the Indian Commerce Clause, not the Bill of Rights. Under the Indian Commerce Clause, the U.S. Congress can make laws that apply to tribal governments, including tribal courts. In 1968 Congress used that power to enact the Indian Civil Rights Act.

So what is the Indian Civil Rights Act? It is the result of a compromise that was designed to protect the civil rights of persons, both Indians and non-Indians, who have dealings with tribal governments, while respecting and preserving tribal sovereignty. The language in the Indian Civil Rights Act (ICRA) is similar to the language in the Bill of Rights, but with a few important differences. One of those differences is that criminal defendants who cannot afford a lawyer are not entitled to have one appointed for them. However, some Tribes, including the Passamaquoddy Tribe and the Penobscot Indian Nation, have chosen to provide court-appointed counsel to defendants facing the possibility of jail time. Another difference is that Tribes are not obligated to operate grand juries. But the most important difference is not in the wording of the ICRA but in the way that the wording is interpreted by tribal courts. For example, like the Bill of Rights, the ICRA guarantees due process and equal protection of law. But tribal judges are free to give different meaning to those phrases based on local tribal factors such as tribal custom, tradition and culture. Federal courts can review tribal court criminal cases where jail sentences are imposed

A Conversation With Pine Tree Legal Foreclosure Attorney Meagan Sway

The Pine Tree Legal Assistance Foreclosure Prevention Unit is a group that is dedicated to helping low-income Maine residents keep their homes. Attorneys and staff in the Unit work statewide out of many of Pine Tree's offices. Its newest attorney, Meagan Sway, is located in Augusta but handles cases all over the state. She sat down with us to talk a little bit about what the Unit does for homeowners.

How long have you been with the Foreclosure Prevention Unit? What did you do before you were a foreclosure lawyer?

I started in the Foreclosure Prevention Unit in September 2014. My previous experience was mostly in the criminal justice system, first as a defense attorney and most recently trying to convince Mainers to practice Restorative Justice with youth who have committed harm in their community.

Can you tell us a little bit about the types of calls you get in the Foreclosure Prevention Unit?

We have a phone line that is dedicated to homeowners who are worried they will lose their homes to foreclosure: (207) 623-7777 ext. 2211. Usually people are asked to leave a message, and then one of our wonderful advocates calls back to get more information, and we take it from there. We get calls from people who are at different stages of being behind in their mortgage payments: people who have fallen behind a month or two but who haven't gotten served with any court papers, people who have been served with foreclosure court papers, and people who got judgments against them and are being told they need to move out of their homes. We also get calls from homeowners who are being threatened by the towns they live in because the homeowners haven't paid their sewer or property taxes in a few years.

What kinds of cases does the Foreclosure Prevention Unit usually take?

We think it is important for any homeowner with questions about foreclosure to call us, because sometimes there are things that can be done that the homeowner doesn't know about. Because we're a small unit, we usually only represent homeowners who have been served with court papers on their foreclosure, or who have had judgments against them already. But even if we can't represent a homeowner in court, we usually have helpful information we can give and the names and contact information for housing counselors who might be able to help the person keep his or her home.

Right now, most of what we do is represent homeowners at mediation and at trial. Maine has a somewhat unique system where, for all foreclosure cases filed after January 1, 2010, a homeowner has the right to request mediation to try to work out a deal with the bank to keep her home. As long as the building is residential, the homeowner's primary residence, and made up of four or less units, the bank can't say no to mediation. This means they have to sit down with the homeowner and a neutral mediator to talk about options that might exist to keep the homeowner in her house. Our role in mediations is to know the options that are available for the homeowner and make sure that the mortgage servicer does what it is supposed to do under the law to evaluate a homeowner for mortgage modifications. We advocate for the homeowner and make sure the mortgage servicer negotiates in good faith, which it has to do by law.

Our primary goal is to get a homeowner an affordable mortgage modification, but sometimes there are legal issues in a person's foreclosure case that can help when the bank and the homeowner can't agree on an affordable modification. When we see those issues in a case, we can take the case to trial (usually in front of a judge) and we can try to get the case dismissed based on the legal faults in the mortgage servicer's case.

We've also been helping people who call in asking for help stopping their towns from foreclosing on their house because they haven't paid their property taxes. We haven't been able to represent everyone who is facing a tax foreclosure, but we've been able to represent some of them.

What is the best non-legal advice you could give to homeowners who are falling behind on their mortgage?

The best non-legal advice I can give homeowners is to stay organized. Keep a piece of paper by your phone and make a note every time you talk to someone from the mortgage servicer or the court: who did you talk to, when, about what, and what did the person tell you? There is a tendency when people are behind in mortgage or credit card payments to stop opening mail because everything coming through the door is bad news. It is really hard, but take a deep breath, count to five, and open your mail! There could be information from the court or the mortgage servicer in there with dates and deadlines you have to follow to stay in your house. Keep all of that mail in one easy-to-get-to place. It can be a hassle, but it is a lot easier to fight back when you have all the paperwork and can show what has happened through your documents.

Hot Topics in Consumer Law – Your Rights in Debt Collection Cases

Many people have debt. If you can't pay all your bills, you may be contacted by a debt collector. There are limits to when, where, and how debt collectors can try to collect money from you. Pine Tree Legal advises clients about their rights in debt collection cases, and sometimes we defend debtors in court.

Debt collectors can only call you during reasonable hours. That means no calls before 8 a.m. or after 9 p.m. They cannot call other people you know and tell them about your debt. This means they can't call your boss at your work, or call your neighbor or your family members to talk about the money you owe. Debt collectors are not allowed to threaten or harass you. They cannot use obscene language; they can't threaten to have you arrested if you don't pay; they can't threaten you with violence; they also can't threaten to take you to court unless they actually intend to sue you.

Debt collectors often "sell" debt to each other. This means one debt collector pays another for the right to try to collect money from a group of debtors. Debts can be sold over and over again. This can result in mistakes that may affect your credit. Sometimes debt collectors get incorrect information and wind up trying to collect the wrong amount, or collect from the wrong person. You have a right to know what the debt amount is, and who is claiming you owe it. This is called "verification". A debt collector is required to send you written verification of the debt within 5 days of first contacting you. If they don't, send them a letter asking for verification of the debt. If the debt collector does not provide this, they may not have a legal right to try to collect the debt from you.

In order to collect a debt in court, a creditor must prove you owe the debt, and that they've brought the case to court within the right time limit. For most consumer debt, like credit cards, the creditor must bring the case to court within 6 years of your last payment. Otherwise the case can be thrown out of court. A creditor must also prove that you owe the debt. If they don't have the right documents, like your original application or contract with the credit card company, they may not be able to prove this. If they can't prove to the court that you owe the debt, you will win the case.

Many debt collectors win in court even when they don't have a good legal case, simply because the person being sued doesn't understand his or her rights, or because he or she doesn't go to court to defend the lawsuit. If you are being sued for a debt and you don't know for sure that you owe it, you don't think the creditor can prove the debt, or you think it's been more than six years since you last paid on the debt, you should exercise your right to challenge this debt in court.

Pine Tree Legal Assistance may be able to help you with some of these issues. If you are being sued in court for a consumer debt, or if you are receiving calls or letters from debt collectors that break some of these rules please call your local Pine Tree Legal office. You can also find helpful information on this topic at our website: www.ptla.org.

Redlining: Discrimination Based Upon Where you Live

Redlining” is a form of unlawful discrimination, where the victim of discrimination is treated differently because of where he or she lives. Redlining can be denying or charging higher prices for services such as banking, insurance or healthcare, or denying employment to certain groups. It can also be charging more for products, such as items purchased at supermarkets or other stores, because of the location. Redlining is most often racially based and found in areas with large minority communities. Several racial groups, including Native Americans, have been negatively impacted by this illegal practice.

At one time in U.S. history, redlining was common and legal. For example, in the 19th Century, Native Americans were prohibited from living in the city of Seattle. In 1934, Congress passed the National Housing Act (NHA), also known as the Capehart Act. The NHA was part of the New Deal, designed to make housing more affordable at the end of the Great Depression. Following the passage of the NHA, the Federal Home Loan Bank Board asked the Home Owner’s Loan Corporation to look at more than 200 cities, to determine their potential security for home lending. They created maps and drew red lines around the areas identified as “secure,” and excluded the areas outside the red line. These maps were based on assumptions about the neighborhood, not on accurate information about the ability of residents to repay loans. In the inner city, the communities impacted by these exclusions were predominantly black. In 1934 it was also legal for municipalities to pass policies that excluded black people from moving into white neighborhoods. This meant that black people weren’t allowed to get a home loan to buy a home anywhere, since they were excluded from moving into the white neighborhoods and they were denied loans for homes in the black neighborhoods. These policies added greatly to inner city segregation.

Unfortunately, redlining continues today. In 1993, the Blackpipe State Bank in South Dakota was forced to settle a case for denying loans to Native people on the reservation. Redlining against tribal people living on the reservation has been quite common. This practice has largely been based on the belief that lenders or business owners would not be able to collect from tribal residents on the reservation. This issue has been addressed in a series of Supreme Court cases that gave courts personal jurisdiction over tribal transactions with non-tribal business owners. Additionally, laws such as the Fair Housing Act, Fair Credit and Lending Act and the Civil Rights Act have helped reduce the impact of these practices. However, there are still some businesses that refuse services to tribal members. This practice is illegal.

In the past year, Pine Tree Legal’s Native American Unit has heard of two potential redlining cases here in Maine. In one of those cases, a local company reportedly refused to provide services to the residents of Indian Island. Because the individual who informed us of this story was not interested in pursuing legal action against the company, we were unable to examine all the facts surrounding this case. But, if the facts were as reported, this is intentional and unlawful discrimination. The second case involved a local bank that refused to acknowledge a guardianship order from a tribal court. This issue was quickly resolved. In each of these two cases it appears to be the case that goods and services were denied tribal members for unlawful reasons. In each case there was and is a legal remedy for the victims.

If you experience any of these issues, or if you suspect that you have been the victim of redlining, contact Pine Tree Legal’s Native American Unit.

Tribal Court Jurisdiction

The issue of jurisdiction is a very complicated and important issue for Maine’s tribal nations. The term “jurisdiction” refers to the power and authority to govern or control. The Tribal Courts and the exercise of tribal jurisdiction are at the heart of tribal sovereignty. The fight to preserve tribal sovereignty and tribal rights begins with the jurisdiction of the Tribal Courts. The Tribal Court is where the Tribe exerts its right of self-governance and to protect tribal citizens, within the boundaries of their own territories.

In many instances, the Tribes have joint, or “concurrent” jurisdiction with the State and Federal Government. However, there are many instances where the Tribes have exclusive jurisdiction. The Maine Settlement Act states that the Penobscot Nation Tribal Court has the right to exercise exclusive jurisdiction over certain matters. For instance, the Settlement Act states that the Penobscot Nation has the right to exercise exclusive jurisdiction, separate and distinct from the state, over the following issues:

1. Criminal offenses for which the maximum sentence is one year imprisonment and a fine not exceeding \$5,000, and that are committed on the reservation by a member of any federally recognized tribe, except when committed against a person that is not a member of a federally recognized tribe.
2. Juvenile crimes against a person or property involving conduct that, if committed by an adult would fall within the exclusive jurisdiction of the Tribe.
3. Civil actions between members of either the Passamaquoddy Tribe or the Penobscot Nation arising on the reservation of the Penobscot Nation, and recognized as small claims under the laws of the State, and; civil actions against a member of either the Passamaquoddy Tribe or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Penobscot Nation by a member of either the Passamaquoddy Tribe or the Penobscot Nation.

Please see **Jurisdiction**, Next page

OUTREACH SCHEDULE

Passamaquoddy Tribe

A Pine Tree Legal attorney is available during the morning of regularly scheduled Tribal Court sessions in the Township and Sipayik Courtrooms:

Sipayik -- usually 1st Friday of every month
Township -- usually 3rd Friday of every month
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

A Pine Tree Legal Attorney will meet with you at the Housing Authority building by appointment, call:
1-877-213-5630, local 764-4349

Aroostook Band of Micmacs

The Clinic

A Pine Tree Legal Attorney will meet with you at the Health Clinic building by appointment, call:
1-877-213-5630, local 764-4349

Pine Tree Legal's Criminal Defense Work: A Case Study

The Native American Unit at Pine Tree Legal Assistance, Inc. has a long history of helping people in civil legal cases that come before Maine's Tribal Courts, at Passamaquoddy and Penobscot. As we have reported elsewhere in this and other editions of the Wabanaki Legal News, recent grants have permitted the Unit to expand this work to representing low-income Native American criminal defendants accused of misdemeanor crimes in Tribal Courts at Indian Island, Sipayik and Indian Township. Native Unit attorney Sherri Mitchell is currently representing Native clients in these cases.

Attorney Mitchell says that helping people in these cases to make sure their rights are being protected even as they face serious criminal charges is rewarding and important work. Often her work requires her to challenge evidence brought by the Tribes' prosecutors, to make sure the outcomes of these cases are fair. Sometimes she sees these cases through to trial, including the potential for a jury trial in some instances. Other times Mitchell works on behalf of her clients with the prosecutor to negotiate an outcome that balances punishment of the accused with his or her need for counselling or other help, while at the same time recognizing the rights and needs of the victims of crime.

One of Attorney Mitchell's criminal cases that recently came before the Tribal Court at Pleasant Point is interesting for the legal issues it raised. The charge was operating a motor vehicle under the influence of alcohol. The accused is a Passamaquoddy tribal member who came to the attention of Tribal Police because of an anonymous tip that she was driving erratically. That tip came in to the police department at 8 p.m. The officer on duty went to the accused's residence where he located the vehicle. He did not investigate further, but he parked and watched the vehicle and the house for about a half an hour, and then returned to his patrol. At 11 p.m. he drove by the residence and observed the parked vehicle, and all lights were off in the home. At 1:30 a.m., approximately 5 and a half hours after the tip, the officer observed the vehicle traveling on the roadway. He followed it, observed that the trunk was unlatched, and that the vehicle swerved a bit within its lane. At this point, the officer pulled the vehicle over. He discovered that the accused was intoxicated.

Attorney Mitchell reviewed this case and decided to file a motion to suppress evidence obtained as a result of the stop. A "motion to suppress" is filed to keep out of evidence anything a police officer discovers as a result of actions that are in violation of the Defendant's Constitutional rights. Relying upon decisions from other courts, including a decision from the U.S. Supreme Court, Attorney Mitchell argued that the police practice of stopping a vehicle so long after receipt of an anonymous tip is unlawful, as the tip should be considered "stale," not justified by any reasonable belief that the driver is doing anything unlawful at the time of the stop.

The result of the motion to suppress was a mixed one for the Defendant in this case. The Court did agree with Attorney Mitchell that the anonymous tip was "not sufficiently reliable" to justify the stop so many hours later. However, the Court found that the stop was nonetheless lawful because the officer was justified in stopping a car that was swerving, with its trunk open. Later, Attorney Mitchell negotiated a plea to the charge by and on behalf of her client.

While this case could be seen as a "loss," the Court's decision in the motion to suppress provides guidance for both the public and the police. It reminds us that there are limits to stopping people as a result of an anonymous tip. It is now clear that Tribal Police need to be careful not to overreach with traffic stops. Rather than relying upon anonymous tips, law enforcement officers are better advised to – as in this case – rely upon their own observations of wrongdoing before pulling someone over. As importantly, this case highlights the important work being done by Attorney Mitchell in Pine Tree's Native American Unit.

Jurisdiction

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4. Indian Child Custody Proceedings, as authorized under Federal law.
5. Other domestic relations issues, including marriage, divorce, and child support between members of either the Penobscot Nation or Passamaquoddy Tribe, where both reside on the Penobscot Nation, (or where the non-resident party agrees to the jurisdiction, or where jurisdiction has been originally established in the Tribal Court).
6. The Penobscot Nation also has the right to decide whether to exercise or terminate the exercise of the exclusive jurisdiction, thereby giving the State exclusive jurisdiction.

This year Pine Tree Legal took a case on behalf of a tribal member that allowed us to exert the Tribe's right to exclusive jurisdiction in a civil collection matter. This case involved a motor vehicle accident between two tribal members. The insurance company filed a complaint in the Maine District Court in Bangor against Pine Tree's client. Native Unit attorney Sherri Mitchell quickly realized that the case fell within the exclusive jurisdiction of the Tribe; it was an action between tribal members and it was connected to an incident that arose on tribal land.

Pine Tree immediately filed a Motion for Summary Judgment based on lack of jurisdiction in the Maine District Court. Prior to filing the Motion, Mitchell had a discussion with the insurance company's attorney and they agreed to dismiss the case. The case was dismissed because the Tribe had exclusive jurisdiction. The insurance company could have refiled the complaint in the Tribal Court but, in this instance, the case was dismissed with prejudice (which means that the other party released its right to bring the case again in another forum) because of the client's low income.

Cases like these are important because they assert the Tribe's right to exercise control over activities that take place within the boundaries of their territories. This maintains the sovereign authority of the Tribe, to the benefit of tribal citizens on tribal lands.

Partnering for Health

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population, Ashby, Mitchell and Lewey returned to Maine enthused about exploring medical legal partnerships in our communities. "There is real promise that Maine's Native people will be well-served if Pine Tree is able to develop these partnerships with one or more of our Native health centers," said Ashby. Noting Lewey's participation and enthusiasm for the idea, Ashby pointed out that Maine's tribal health care administrators have already shown that they are receptive to the idea of partnering with legal service providers to provide better service to patients. "Newell is eager to explore how to get something in place at Passamaquoddy, the Penobscots have been receptive, and I have felt very welcome in both Micmac and Maliseet Health Centers. In fact, the Micmacs often provide us space to meet with clients in their health facility."

The problem, of course, is funding. Programs that seek to expand services require additional staff and financial resources. Here, though, the participants of the meeting in Tuba City are hopeful. Ashby says "We believe that training and educating legal services staff and health care administrators at meetings like the one in Arizona positions us well to work with our Native partners to raise funds through grants or foundations to help us create medical legal partnerships – hopefully in the near future."

Civil Rights

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(through Writs of Habeas Corpus). But even then the federal judges cannot apply concepts like due process in exactly the same way they would in a federal prosecution. They are required to take into account the right of the tribal court (and by extension the right of the tribal community) to apply legal concepts in ways that are consistent with tribal values. In 1978 the U.S. Supreme Court made it clear in the case of Santa Clara Pueblo v. Martinez that the ICRA was intended to protect tribal sovereignty and that federal courts have limited power to review tribal court decisions about the scope of the rights protected by the ICRA.

How does this play out in the real world of tribal court criminal cases? It means that tribal courts have choices about how to use the ICRA and to what extent they want to adopt federal court doctrines on issues like due process. Some tribal courts have chosen to follow federal court decisions very closely. Other tribal courts, notably the Navajo Nation, have chosen to develop their own concepts of due process and equal protection, based on their own language and traditions.

For Maine Tribes, the Maine Implementing Act (part of the 1980 Indian Land Claims Settlement) states that the Indian Civil Rights Act and other federal Indian laws control procedures in tribal criminal cases, not state laws. This means that the tribal courts in Maine are free to make their own decisions about criminal procedures and the rights of defendants in the context of local tribal communities and the goals of restorative justice, such as:

- What searches and seizures are “unreasonable?” If the police are called to a tribal home because someone is sick, injured or intoxicated, to what extent should the police be able to search the home and seize objects or arrest people?
- Should the “exclusionary rule” be used so that evidence that is obtained by the police illegally is excluded from trials? Should that rule apply to searches but not confessions?

- What does the “right not incriminate yourself mean” in the context of a small tribal community? Are coercive police methods that are acceptable in big cities appropriate in the tribal context?
- What does the “presumption of innocence” really mean? How should bail conditions be imposed and enforced in communities still struggling with the impact of colonization and destruction of culture, including high rates of alcohol and drug abuse?
- What role should the tribal judge play in cases, especially if defendants are not represented by lawyers? Does the “adversarial” system used in Anglo courts work fairly in tribal settings?
- What type of “notice” satisfies due process in a tightly knit tribal community? Does a letter that is mailed to a post office box shared by numerous people satisfy due process?
- Does the forced collection of court fines from per capita Settlement payments raise any issues under the ICRA in tribal communities burdened by poverty and lack of jobs?

These are just a few of many legal questions that may be decided by tribal judges that may be different under the ICRA than they would be under the Bill of Rights. Thanks in part to the Martinez decision, the ICRA provides tribal courts and communities with an opportunity to identify and apply tribal customs and traditional values to Anglo legal concepts such as due process, probable cause, fundamental fairness, and equal protection. The ICRA allows tribal courts to modify objective and impersonal rules that are needed in major cities but make less sense and run contrary to local values in small, remote tribal communities like the ones in Maine. Even if a tribal court has embraced federal interpretations of these legal concepts, a tribal community may be strengthened and the credibility of the court may be enhanced when the effort is made to reconcile tribal values and traditions with legal concepts that come from a different culture.

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 768-3217
Health Department 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, Clerk's Office 817-7351
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 817-7469

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 ext. 254
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. 258
Tribal Court System (www.wabanaki.com/tribal_court.htm)
Clerk of Courts 853-2600 ext. 251
INDIAN TOWNSHIP (www.passamaquoddy.com)
Administration 796-2301
Indian Township Clinic 796-2321
Indian Township Housing 796-8004
Police Department 796-5296
Tribal Court System (www.wabanaki.com/tribal_court.htm)
Clerk of Courts 853-2600 ext. 251
(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 1-866-834-4357(24 hour)
Aroostook Band of Micmac
Family Support Services 1-800-750-1435
Houlton Band of Maliseets *Domestic Violence and Sexual Assault Program* 532-6401(24/7) or 532-3000
Penobscot Indian Nation *Domestic Violence and Sexual Assault Program* 631-4886 (24/7) or 817-7469
Passamaquoddy Peaceful Relations 853-2600 ext. 266
Spruce Run 1-800-863-9909
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 1-800-222-1222

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
Native American Unit: 1-877-213-5630

VOLUNTEER LAWYERS PROJECT www.vlp.org

1-800-442-4293 or 942-9348

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 or 973-3671

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 or 626-2774

Advice and legal representation to people with disabilities.

BANGOR COURT ASSISTANCE PROGRAM

561-2300 TTY: 941-3000

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.

Penobscot County Bar Association Legal Aid Clinic

Qualified, low-income Penobscot County residents can receive free legal advice in the areas of family law, bankruptcy, debt collection defense and Social Security Disability. For an appointment at one of the clinic sessions, call 942-9348 or 800-956-4276. Referrals to private attorneys for free representation may be available.

Native Courthouse Assistance Program

The Volunteer Lawyers Project provides free legal assistance to low-income Tribal members at Indian Island the last Tuesday of every month on a walk-in basis from 10:00 to noon. For more information call 942-9348 or 800-956-4276. Pleasant Point and Indian Township members can receive free consultations by appointment. Referrals to private attorneys for free representation may be available.

Washington County Bar Association Courthouse Assistance Program

Qualified, low-income Washington County residents can receive free legal advice in family law matters only. This program operates on a walk-in basis at the Calais District Court the first Tuesday of even numbered months and at the Machias District Court the first Thursday of odd numbered months at 1:00 p.m. For more information call 942-9348 or 800-956-4276. Referrals to private attorneys for free representation may be available.

Family Law HelpLine

If you meet the financial guidelines of the Maine Volunteer Lawyers Project, you may be able to get help with your family law case from a volunteer lawyer over the telephone. Call the Maine Volunteer Lawyers Project at 1-800-956-4276 or 942-9348 to see if you qualify and to set up an appointment on the Family Law Helpline.

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