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Native American in Maine: Toward a New Relationship*

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It often comes as a surprise to people who do not know Maine well that there are Indians and Indian Reservations in Maine. I am living proof that the tribes have been here since 1960 and long before, that we are here today, and that we plan to be here in 2010 and beyond, so long as the Penobscot flows.

There are more than 2,000 members in the Penobscot Indian Nation. Some 400 tribal members reside on Indian Island, one of more than 200 islands in the Penobscot River that comprise our reservation. Another 500 or so members live within an hour's drive of Indian Island. The Penobscot are one of four federally-recognized Indian tribes who live within the borders of the State of Maine. The Penobscot, the Passamaquoddy, the MicMac and the Maliseet tribes are the remnants of a once powerful confederacy known as the Wabanaki. Wabanaki is derived from our native language, and means "people that dwell in the land of the dawn."

From American Independence to the Settlement Act

Like many of the tribes of the eastern United States, the Penobscot until recently had no formal relations with the federal government; rather, we dealt directly with the colonies and, later, with the states. In fact, our tribe had no relationship with the federal government until the 1970s. The treaties that delineate our reservation were entered into with the Commonwealth of Massachusetts, in 1796 and 1818. In 1820, when Maine became a separate state, a treaty was entered into between the Penobscot and Maine, and the terms of the 1818 treaty were adopted. Ironically, this situation formed the basis for the Penobscot and Passamaquoddy tribes' later claims to ownership of two-thirds of the State of Maine.

Because we had no formal dealings with the federal government, these treaties never received the approval of the United States Congress, as required by the federal Trade and Non-Intercourse Act of 1790. Due to this lack of federal approval, the treaties were invalid; and all of our historic territory was, therefore, legally still owned by the tribes. Because the State of Maine

* Editor's Note: At the time of this writing, the State of Maine and the Penobscot and Passamaquoddy tribes are each appealing (for different reasons) a delegation of authority by the U.S. Environmental Protection Agency (EPA) to the State, to issue National Pollution Discharge Elimination System permits under the Clean Water Act. The recent EPA decision (January 2004) delegated permitting authority to the State for all dischargers in the Penobscot and St. Croix river watersheds, except those located on Indian Island in the Penobscot River and at Pleasant Point (or, Sipayik). The tribes argue this circumscribes their sovereignty rights, while the State is concerned it violates provisions of the Maine Indian Land Claims Settlement Act. When the EPA originally proposed the delegation of authority to the State, the tribes objected, arguing that the rivers should be looked at more expansively in terms of tribal jurisdiction or sovereignty, and expressing concerns over the State's environmental standards. The paper companies involved requested all the information the tribes had provided to the EPA in their challenge to the delegation, and the tribes declined, again citing issues of sovereignty. The tribes did not turn over documents for some time, but the information was eventually submitted under court order.

enjoyed sovereign immunity, we could not bring suit directly against it; only the federal government may bring suit against a State.

Because of the historic lack of dealings with the Maine tribes, the federal government was reluctant to act on our behalf. Accordingly, on June 2, 1972, the tribes filed suit in the Federal District Court in Portland, to force the federal government to bring suit on the tribes' behalf against the State of Maine for the illegal taking of our lands. The Federal District Court of Maine determined in Passamaquoddy v. Morton that the Maine tribes, despite never having established a formal relationship with the federal government, were, indeed, Indian tribes within the meaning of the Trade and Non-Intercourse Act of 1790; therefore, the federal government owed a trust obligation to us.

This decision was affirmed by the federal Court of Appeals for the 1st Circuit in 1975. Shortly thereafter, the federal government initiated a suit against the State of Maine on behalf of the Penobscot Indian Nation and Passamaquoddy Tribe, which case was later settled by the parties. This negotiated settlement came to be known as the Maine Indian Land Claims Settlement Act of 1980, and was later ratified and confirmed through federal legislation and a companion State act.

Prior to the Settlement Act, the State of Maine claimed full authority over the Maine tribes. In fact, the State created laws that governed every aspect of tribal life on the reservation, from the structure of our government to the licensing of dogs. These laws were codified in Title 22 of the State of Maine statutes, entitled, "Indians." Not until the court cases in the 1970s that led to the Settlement Act was it determined that the State had wrongfully exercised authority over the tribes all those years.

Unfortunately, the time between these court cases and the signing of the Settlement Act left little opportunity for the State to appreciate that the Maine tribes are separate governments, with sovereign powers exclusive of the State. The State leaders' interpretation of the Act is that it returned the tribes to a subordinate position vis-à-vis the State. We do not agree with this interpretation of the Act, and never will.

During the period in which the State claimed ascendancy over the tribes, it illegally sold four townships that the Penobscot owned in the Millinocket area. The proceeds from these so-called Indian Purchases were placed in trust with the State, and provided funding for State services to Penobscot people. Unfortunately, any claim by the tribe for this illegal sale was relinquished as part of the 1980 Settlement Act.

Personal Recollections

Before we proceed, let me offer some personal perspectives on life growing up on the reservations, since I did so.

Tribal members were not allowed to vote in federal elections until the 1950s, and in state elections until 1960s. My great uncle, Donald Francis, fought on behalf of the United States in World War II and was killed in action. It has always bothered me that he was deemed citizen enough to go to war and die for this country, but not enough of a citizen to have ever voted in a federal or state election.

A single lane bridge connecting Indian Island to the mainland was built in the early 1950s. Prior to construction of the bridge, tribal members accessed the mainland across a

sawdust trail over the ice in winter, and by ferry when the waters flowed. My great-grandfather, Sylvester Francis (Donald's father), was the last ferryman for the tribe.

For my grandmother, the bridge was a major technological advance for the tribe. She grew up when there was a ferry, and no bridge. Her father ran the ferry at one penny a person; and when he had a full load, all the kids would jump in because they didn't want to spend that penny. In winter, to travel across, the tribal members made a sawdust bridge to keep the ice from thawing, and people would actually drive cars across the ice bridge. There was one family my grandmother talked about who had a car, the only one on the reservation. They would pack the car up on Saturday and drive to Bangor with everybody's shopping list.

My grandmother was a sweet-grass braider. So, it was her job to do the braiding for the many basket-makers in the community; and they would barter. There wasn't much money on the reservation back then, so she would trade baskets for her sweet grass. Then, when she got a whole lot of baskets saved up, she would go and sell them. She continued this into her 80s. When my aunt moved to New Mexico, my grandmother would travel there each year with a huge suitcase full of baskets, and bring back turquoise and braided rugs. She was very instrumental in my growing up; I spent a lot of time with my grandmother.

I also spent a lot of time with my grandfather. He was a log-driver and an expert canoe-man, if that's right terminology (I can think of it in Penobscot, but it's hard in English). He would give us grief if we did canoeing strokes that resembled today's racing techniques. His was all one-side, one-handed; and he could move a canoe with a moose packed up in it, silently and efficiently. We talked about these great feats of physical-ness; so I really got inspired not only to match those feats, but maybe go a little farther. They would run from Indian Island to Lincoln Island (or, Manodnuck), which is thirty miles, and be there by lunch; so we had to try it, too. We got there by supper, but we got there. This was the impetus for what some of you may know as the "Katahdin 100."

The 60s and 70s

In the 60s, we were a very small community, with no general store; everything purchased or bought would be done in town. If you had no money, and most of us did, you would go see the Indian agent, Ray Ellis. "Uncle Ray" was a non-Indian in an office building with one room and a phone. It was always neat to go down there, because you would hear his phone ring, and it was this incredible sound that many of us didn't have in our homes. *I* was my mother's phone, which was the way I got into long distance running, I suppose. Every time she wanted to talk with somebody, *I* was her voice and would have to run. Or, I would run to the store, as she had no car.

When it was time to go to school, all of us would go down to see Uncle Ray, thinking it a term of endearment; because, to a very young child, here is this man giving money to my mother, so we could go into Old Town and get school clothes or a food order. Little did I know, at the time, that the money that Ray Ellis was giving out was money that was put in trust by the State of Maine for the tribes. This sounds nice, except when you realize where the money came from.

The State – from one office to another, I suppose – deeded to itself four townships of tribal land in the area, land that was not disputed. No permission was given from the tribe, whatsoever. Simply, "could you sign this?" "Sure!" The deal is done, four townships. It was helpful to find this out; because, as I was growing up, I was very upset thinking that my

ancestors somehow, through treaty, gave away or relinquished title to our most sacred place on this planet, Katahdin. It would make sense that the State did this on its own, without permission. The money had been set aside; and not knowing the full story, we felt like we were fine, we could have clothing and food on the reservation. So, many of us had guidance, clothing was purchased twice a year.

We had an elementary school on the reservation that went to fifth grade. In sixth grade, I went to Old Town, and that was quite the culture shock. It was the first time I ever had to get into fist-fights three or four times day, so that I could maintain the pride that I was given through my grandparents and my parents. Growing up on the reservation, I never heard the words, “you dirty Indian” or, “you lazy thief;” but in sixth grade, in the non-Indian school, I did. When you are a sixth-grader, and you grow up kind of tough, anyway, there’s only one way to resolve it. So, for the first month, all the kids from the Island were getting into these fights. Once we proved ourselves and people got to know us, the fights went away, and we all got to be friends. We went into junior high school in “Mill Town,” and then on to high school.

In high school, things got relatively easy for me. I was in the band; I played trumpet; I was in academics; I ran with a crowd of people who were motivated, somewhat intellectual. I don’t consider myself intellectual, but I managed to get the grades to get into college; and I was on the sports teams. So, things moved rapidly for me. I also witnessed for many of the people I grew up with, a different story: people who chose to keep their hair long, and not to stand at the Pledge of Allegiance, because they did not feel that the American flag represented their interests. I watched them being sent to the office on a daily basis – a total misunderstanding of cultures. They managed to get through, but it wasn’t easy; for me, personally, it was easy. I was just way too busy with homework and having to do this, that, and everything else, to be overly concerned about it.

In the late-70s it came to a point where I had to say something. I was in Maine literature, and the teacher was reading from a book; at “the early explorers learned medicines from the savages,” I raised my hand and said, “Who are the savages?” The connotation today, I suppose, is somewhat different from the time the book was written; for the sake of discussion, let’s work in today’s concept. She said, “Well, I suppose it would be the Indians. Do you have a problem with that?” I said, “Yes, well, I do. I’m Indian. I’m Penobscot, I know a lot of Penobscots, and I don’t consider them to be savages;” and the room just fell dead silent. “We didn’t know you felt that way.” “Well, you do now.”

I think it is important that, when these types of situations arise, we address them, so that stereotypes are put away through education. If I were running the classroom that day, I would have thrown down the book and said, “Now we can start teaching! Because we’ve got something worth talking about, instead of this book that is 200 years old!” You know, it was gray; I wasn’t overly excited about this book.

The point that I brought up was quickly dismissed, however, and she moved on. So, I was left with this “Wait a minute, I’m at the front line of this war here, and the battle’s gone.” The thing is, so weren’t the rest of the students in the class. You know, thirty students all looking at me, going, “What’s up? Talk to us. Let’s talk about this.” So, I was happy to talk about it, I think its important. There are many issues today that still need to be talked about: Redskins, things of this nature; Big Squaw Mountain. “Why can’t you guys get over it?” I hear people say. Well, when is it going to end, this political correctness road? My answer is, “When all the damage has been rectified.” So, we’re going to have to keep talking about these things.

The 80s

1980 came along, and that is probably when most people realized, “Wow, there are Indians in this state! ‘Didn’t realize that!’” A little bit was the process by which the tribe had to sue the State of Maine; and the State of Maine, being its own government, is exempt from the process. For the tribe to sue the State of Maine, we had to have someone of a larger stature step in and do that for us; and that was the federal government. So, we sued in federal court and won the right to sue the State of Maine for what was rightfully ours – two-thirds of the State of Maine. There was no dispute to that.

Even today, I have people come up to me and say, “ You know, I was working at such-and-such bank, and we were getting ready to do such-and-such transaction, and everything stopped;” because title was threatened. It was tribal land – two-thirds of the State of Maine! What were you going to do? People were living there; they had to settle this thing. There were many proposed settlements put before the tribe, and all were rejected. Then, the timeline was being used as a tool to force us to decide prematurely. I suppose that’s the definition of a settlement: when both parties disagree, they have to meet in the middle somewhere.

If you were the State of Maine, how would you deal with these people who think that two-thirds of the state is theirs; yet, legally, you don’t have a leg to stand on? What were you going to do about it? It just put the whole State of Maine in a total crunch. I was in high school at the time, and having to listen to comments in the community. “Well, what are you Indians going to do with all that land anyway?” “Well, give it back, and we will see.” And that is the end of the conversation.

The last discussion I remember the tribe having was, “Ronald Reagan is going to be in office, and he won’t sign this thing. We have to get it passed now.” I said, “Who is Ronald Reagan? I don’t care who Ronald Reagan is. I care about this document in front of me that starts off, ‘All past illegal takings of Indian land are hereby OK’d.’” We relinquished title; I closed it. It’s a huge document, and I closed it after page one. That is not right.

This is about illegal transactions. It’s just a case where land was illegally taken from the tribes, and we were being asked by this document, by signing this 1980 Settlement Act, to ratify it, to say it’s OK. I was 19 years old; I was not about to give in to that. My tribe did, however, by way of an “advisory” vote; and if there is anybody who was around at the time who is Penobscot or Passamaquoddy, and who remembers, it was considered an advisory vote, not a legally binding Penobscot vote.

Crunch time had come, however; deadline had come, and it was the last chance for the tribe to take a vote. The tribe took a vote; and I don’t know the numbers, but the “Yes” side won, accepting the Settlement Act. The State took this as the tribe’s position; it went forward, and President Jimmy Carter signed it.

The Penobscot and Passamaquoddy “team,” as it was called, the negotiating team, came back from several Washington trips to meet with us, the community. We looked at this one word and we said, “Well, what does this word mean, ‘municipality?’” “Oh, don’t worry about that. The State of Maine has said that they would recognize us like a municipality, so we can receive funding. So, don’t worry about that, that’s only for funding purposes.” Like your Star Spangled Banner, those words rang loudly on my face: “For Funding Purposes Only.”

Now, when law is being disputed, you do what? You go back to the intent. Our negotiating team came back from Washington, where they had gone for the sole purpose of

asking Congress about this “municipality” status. “This is for funding purposes only. This Settlement package strengthens tribal sovereignty.” Those were the words of the Congress: “strengthens tribal sovereignty.” “Cool! Maybe this deal isn’t so bad after all.” I still vote against it; but maybe it is not so bad after all, because the State of Maine at the time refused to recognize tribal sovereignty.

The State of Maine passed laws in Augusta dictating life on reservations where even they, the State of Maine, admitted they had no legal right to do so; and they did so, anyway. The tribes said, “Well, we need a set of laws, these ones will work for now; and until we change them, we’ll operate under them. They seemed to work for Old Town. You know, we’ll get our dog license and car license, things of that nature.”

“For Funding Purposes Only!” So, the tribe went forward with the concept, because the intent was that we remain a federally-recognized sovereign nation. Now, sovereign nation, if you want to put it in the context of countries, is different for tribes. It is not like we are the nation of Canada within the United States; we do not have that status. We have federal recognition, which is as a defined sovereign. *There is federal government, there is state government, and there is tribal government.* It receives its own status.

The State of Maine has repeatedly refused to recognize that status. We were of the understanding that because of the intent, because our negotiating team came home and reported after each visit to Washington that we are sovereign; “municipal status” is because we need to plow the roads. So, we are going to get the snow off the roads, and they are going to help us with some money to do that. Even to this day, that’s about all we get. We do have other programs that we have initiated and worked on with the State; but not as a result of the Settlement Act.

That was probably the biggest thing right there, the 1980 Settlement Act, that changed the status of the tribe. First of all, it gave us status in the State of Maine because, as Richard Barringer has written earlier, we were a forgotten people. *We did not forget who we were; but we were not there.* To this day, I still have people come up to me and say, “You know I grew up here, and I didn’t know there were tribes in Maine.” I was at Colby College recently, and they did not know that, 45 minutes north, there is a reservation with its own people. So, this educational piece still needs to happen.

Maintaining Culture and Autonomy

After 1980, the tribes sort of calmed down. We went about trying to create a life for ourselves, and still maintain our culture. Now, you want to talk about *two* heavy burdens. Create housing, create economic development, make sure our kids are going to school – and, at the same time, retain our culture. A lot of my cultural traditions – the language, the ceremonies, the activities – had to diminish, because of the time spent going to college. So, while I was in college, I maintained hunting, going to see elders, and doing my language; that’s my excuse for only getting C’s in college. I had to be diverse, plus play sports; that is the life for native people.

We work hard in two worlds. We are asked to be Indian; and, at the same, we are asked to be non-Indian, because of lifestyle. I think a lot of that comes from our *having* to ask ourselves to be that way; because if you don’t understand the dominant society, it will *run you over!*

We have become educated – we have doctors and lawyers and every walk of life; but that does not mean we have lost our traditions. We maintain a really strong sense of who we are. This is where you will find conflict, in a culture that views life one way, versus a culture that views it a different way. This conflict is evident almost daily. If you really want to see it at its highest point, you can go to Augusta and hear, “Here we are, we have these people: what do they want all these special rights for?” This is what you hear. “They don’t want to be subject to the same laws as the rest of the state.”

The Settlement Act clearly defines certain things, and it makes *zero* mention of others; and the zero-mention means that *that which was not discussed, was not relinquished*. We did not talk about *spirituality*. We did not talk about *sacredness*. We did not want to relinquish it! Our form of government: we did not give it to the state, because we did not want to relinquish it; nor our title to the river, or our title to lands. There are many things that are not in the Act. The problems, though, are the things that *are* in the act, where you find words like “Unless otherwise provided.”

Now, it is easy to run over that phrase really quickly: “*Unless otherwise provided, the laws of the State of Maine shall apply on the reservation.*” So, you think, “Wow, that is pretty powerful. The laws of the State of Maine shall apply on the reservation. Gee, that doesn’t sound very good.” “Well, Mister 19-year old college kid, don’t forget ‘unless otherwise provided.’” “Well, what does that mean?” “That is somewhere else in the Act.” “OK, take me to that. Read it to me.”

We did this. We had these huge public hearings. People would come and we would shred this thing, word for word; I went to law school from that. “Unless otherwise provided, you are acting as a tribal government.” “Oh, sovereignty!” “Yes. Congress said it will strengthen sovereignty.” There it is. “OK, I suppose it’s not that bad, after all; hopefully, we can live with it.” In every case where these two phrases come into discussion – “sovereignty,” and “unless otherwise provided” – the tribe takes one view, and the State of Maine takes the opposite. “Unless otherwise provided,” means to us that our tribal government is an internal affair, and shall not be subject to the laws of the State of Maine.

If I have documents that are created in my office and I am the chief of the tribe, would you consider these documents to be part of my tribal government? Would you not take the minutes from our Council meetings, and consider them to be documents created as a part of tribal government? I would. If you disagree, I have to live with it. And there are many who disagree; the State of Maine is one. The court system took that and said, “You have this municipality over here; you are a municipality!” They realized they couldn’t say it this way, however, because, in fact, you are not a municipality, you are a tribal government. You cannot be an orange if you are an apple. So how are we going to word that? Ah-ha! “A tribal government, when acting in its municipality status, shall be subject to Maine’s Freedom of Information law.”

When the apple is acting in its capacity as an orange, I guess we should peel it! We don’t know. Hopefully, someone is going to take this and appeal it, because it doesn’t make any sense to us. How could it, when the Chief Justice, or one of the Justices told the lawyers for the State of Maine and the mills, “It is none of your business!” The tribes took that to mean it is none of their business what we do or what we say, especially when the documents they were looking for were documents between my office and EPA, a federal agency, which is bound by federal law to produce those documents when asked for them.

You understand, I operate with a certain amount of common sense in life. “Now hold on, you are telling me those people requesting the documents, the lawyers representing industry on the Penobscot River, can go to EPA, request them, and they’ll get them?” “Yes.” “Then, why are they coming to us?” The Attorney General’s office for the State of Maine filed such requests with the EPA, and the EPA complied with that request. In Augusta are 14 feet of documents. The request that went from the State of Maine Attorney General’s office was identical in wording to the request that the tribes got from lawyers representing industry. Identical! The law firm representing the mills was in Portland; the law firm representing the State of Maine was in Augusta. How is it they had identical wording. So, when the tribe received this document, this request for our documents, we denied it.

We are not a political subdivision of the State of Maine! Read the law. Read Maine’s Freedom of Information law: all political subdivisions of the State of Maine shall comply with this law. Go to Augusta, go to Portland, go to these towns and demand whatever it is you are looking for! You do not go to the Town of Indian Island – that is, to the Penobscot Nation, a federally recognized sovereign – and demand documents. You may *request* them; and, as a matter of fact, of those who have requested documents in the past, we asked them in, we sat them down, and we talked to them. We have always had an open-door policy. The information requested in the documents has been offered as a gesture of good neighbors living and working on the same river; they didn’t want that.

All this happened as the result of the tribe’s opposing the State of Maine’s authorization from the EPA to administer the Clean Water Act here in Maine, in Indian waters. Now, if you go onto the reservation, no one is going to tell you different: the river is ours! It always has been, it is, and it always will be. This was not relinquished. If there’s going to be a pipe going into that river, directly into the river, we want to know what is in that pipe. We want to know the results; and we are educated. We have a complete department, the Water Quality Department; our people are out there every day, monitoring the water. Guess who is *not* out there every day, monitoring that water: *your* Department of Environmental Protection. We share the results with them, so they *do* know what is in the water. *We have a collaborative, good neighbor policy.*

Of course, we want them to know what is happening to the eagle. It was very important that we have the EPA retain oversight authority on these permits; because there was a permit issued to one request that allowed enough toxins to be discharged into the river that would accumulate in eagles to the point where there would be “not more than five eagle deaths per year.” These permits are public knowledge. You can go in, as we did, and say, “Let us see these permits; we want to know what is going on.” And when we saw that allowance for pollutants, we fought that. We got the EPA involved; and the permits were revoked, protecting the eagles. Not even the Audubon Society knew about this. We knew about it because it is our tradition to know about the river, and to protect it.

To The Present

With this request for documents and our opposition to the State of Maine’s handling of pollution permits in our water, you have probably heard the tribe’s name in the media of late; not to mention that “other” project of ours. This brings me to the present.

When I am not dealing with all of this, back on the reservation I am dealing with who is applying for what job, and what are the policies and did we follow them, and who got hired, and

they shouldn't have been hired because I do not like them, and they got their master's degree and I knew him when he was a kid, and I didn't like him then, and, besides, we have all these cats running around and we have to take care of them, and we licensed our dogs so why not do the same with these cats, and who is going to take care of the garbage, and who is going to do what – so, I am a little busy; but there is no issue that is not important, because if you do not take care of that garbage, it builds up. Speaking of garbage, do you know that there is a landfill right next door to the Penobscot Nation that we are getting involved in, as well? That is another story.

What else are we doing? We have a Boys and Girls Club, and it is getting national acclaim; and it follows that with status comes money. We have redone our gymnasium with a beautiful wooden floor, six baskets, a room divider, and a computer lab with 25 computers. Kids are there everyday, 15 to 20 kids in that one room, doing their homework every night, because we have a paid staff person who does homework with them. This May, we are creating an elderly-abuse tribal law. It will be tribal law that our elders are protected in all agencies and in community planning.

We are trying to bring our culture into our policies, into agency decisions, and things of that nature. At a recent press conference, I challenged the Maine Department of Environmental Protection (DEP) to show me in their regulations and in their standards for water quality, the word "sacred;" it *is* in ours. We are being asked to surrender to the State of Maine this protection of the eagle and the fish and the dragonfly and the turtle; yet, in *their* policy, in *their* water quality standards, you don't see the word "sacred." I don't know if I can sleep well with that; this is part of the issue.

The other issue is, *a sovereign regulates itself*; a sovereign enforces those regulations. If you want to get into a whole other topic, you may go to DEP, sit in their office for weeks as we have done, and you will read documents and find out what level of enforcement takes place in the State of Maine; and you will be educated. Because, if you are an industry and you pollute way above and beyond those standards, and there are numerous fish kills a year, and your comment as a departmental agent is, "Why worry, when there are no fish left to kill?" *I* worry; and I think all Maine *ought* to be worried. Whether or not DEP gets this authorization, every Mainer ought to be in their home and office, every day, asking, "Is that water being protected? Are we going to live by the status quo, and allow standards to be created but not lived up to?"

You ought to go to the DEP hearings when someone is there requesting a permit. I have been there, I have seen it; it is ridiculous. The permit is written before the hearing; the hearing is a formality to justify the permit. So, I went because one such permit was in the Penobscot Nation's water, and I had to stop the fellow and say, "I'm sorry if I don't understand all the terminology, but what is this 'mixing zone?' Mixing zone is the portion of river figured in cubic feet per second?" That was my assumption. "No, I'm sorry, it is figured in miles – how many miles of river it is going to take to identify these certain toxins, and dilute them to the point where downstream we cannot detect them." So, when you hear the phrase, "non-detect pollutant," it is because you are so far down river that you have had miles of river volume to dilute it to the point where you cannot find it.

If I seem a little upset, a little angry, it is because I have to live up to a tradition of thousands of years, a mandate that I protect that river and *all* its inhabitants. Not just for *my* use. We as humans are the most selfish creatures on this planet. *I* want to go fishing; *I* want to go camping; *I* want to go swimming. Beautiful, we should want that; but there is a *higher* purpose. I do not see that in the regulation, either. "Well, Chief, don't worry; we've written it in so you can go fishing." "You can go fishing. Well, does that mean, eat the fish?" "Oh, well, we're not

going to talk about that.” We are going to take this topic and put it on the shelf for now? Well, I am not. I want to talk about that right now, because sustenance fishing is not “catch and release.” Sustenance fishing is *eating* the fish.

Finally, let me ask some questions. Did Columbus call us “Indians” because he thought he was in India? Are we called “Redskins” because of the color of our skin? Did the Pilgrims create Thanksgiving? Do the tribes pay no taxes? Did Maine give the tribe millions of dollars in 1980s, and we squandered the money? I ask these questions because, along my trail, these are the things I still hear. Now, let me take a moment to give you the other perspective on all this.

In 1492, there was no such word as “Indian.” There was this country, India, and it was called Hindustan. Columbus was in search of whatever he found. It happened to be this particular place that had people he called “Indios.” In Latin there is a word for “Indios,” but not “Indian.” “Indios” means “People of God.” All of a sudden, “Indian” is not quite so bad.

“Redskin” is not the color of the skin; it is the color of the scalp when you take it off the head. My tribe and many other tribes had bounties on their heads, where it was so many pounds for a male scalp, a female scalp, and a child’s scalp; and you would have to produce the scalps to receive payment. There were many people in those days who got plenty rich. We have the proclamation on the wall in our Council chambers, because there are certain things that we will never forget.

Pilgrims were in fact *invited* to a particular ceremony that happened every year, and still does; we called it “giving thanks.” I guess you flip-flop it, so it has become “Thanksgiving.”

Tribes pay many taxes, most of what you pay. We don’t charge taxes to ourselves, however; we will not go so far in the acceptance of European culture, that we will tax ourselves. We pay taxes to the state, and we pay income taxes. Many people who live on the reservation do not pay a property tax to the state; nor do they pay a property tax to the tribe. As a matter of fact, we provide many things to them for nothing. We do not have a tax base, yet we give them services.

In 1980, with the signing of the Settlement Act, the federal government gave to the tribes \$81 million, or something like that, for the purpose of buying land; and that we did. The land had to be converted to Indian territory. For the Passamaquoddies, most of that has happened; for the Penobscots, we are still in the process. The Settlement Act states that we had a certain time to buy all the land and convert it to Indian status; and then they created a 100 step process for converting it – which included that if there is a town government involved, *they* have to approve it, too. Talk about challenges!

Now, I have already gone on longer than I ever have before. Questions and answers are great, because they allow me to find out where you are coming from, and that way I can speak to your thoughts.

Questions and Answers

Q: *Is there diminished legal status for members of the tribe? Can they run for legislature? Where do the lines get drawn?*

A: I would like to know that, too. Where do the lines get drawn? In Maine, the Penobscot Nation is in such a grey area that we'd like to identify exactly this distinction between when we are a state and when are we strictly a tribal animal. Can we vote? Yes. Can we run for offices outside the reservation? Yes. As a matter of fact, our non-voting representative to the Maine Legislature is now running for State Senate, and we wish her a lot of luck.

Ours is not a diminished status, however, if you are on the Penobscot reservation talking to people. They will tell you that we are a sovereign people, that we have been here for ten thousand years, that we have been who we are and never anything else. Our goal is to get Maine government and courts to understand that. When you read the letter of the law and you come to these gray areas, there is nothing to turn to except the intent. You have to go over all these legal documents; and we feel strongly that, even there, it supports our position 100 percent. For any entity to think otherwise is to disregard a lot of history.

Q: *You mention a landfill near Indian Island. In terms of economic development, is this something the tribe is considering?*

A: Economic development does not mean the destruction of our most precious resources. Tribal numbers work in these mills. The landfill in question, however, will be so huge; we are not convinced, from the research put forth by the state and the company, that they have a good handle on the science. We have readings of high levels of arsenic in water wells close to the site, as it is. This site is upstream of our reservation, and I mentioned catching fish. Fishing is not catch-and-release for us; it is sustenance. If we are convinced beyond a doubt that a facility upstream will not be harmful to us, then fine; but we *have* to be convinced.

The amount of time given to the public to fully understand this landfill is so short. The water quality person brought in the application, and it was in a box two and half feet long with huge three ring binders. We have 18 people in our department who are going over this, and they don't have time. The public hearing is next week, and the final permit will be written a week thereafter. This is the process that is used in giving permits. They give you the hearing and such a short amount of time that you and a staff of 18 people are not going to be able to do it. We are not opposed to it until we know for sure; we are desperately trying to move toward sure right now.

Q: *What is the source of your money to start development efforts?*

A: If you come onto the reservation, you will see a couple of really nice buildings and a beautiful school. I'm going to guess that 90% of what we have been able to do on the reservation is the result of contract money from the federal government, Bureau of Indian Affairs. It is specifically targeted, so we may not use that money for economic ventures; you have to use the money for services you've requested. We have high stakes bingo, though; and seven times a year people come from as far south as Rhode Island and play high stakes bingo on the reservation. That is our one profitable, money-making venture right now. Economic development is quite the challenge. We are looking to create a credit union, so the money we do have we can keep under our control and generate interest for ourselves.

Q: *About gambling: after the election of November 2003 and the defeat of casino gambling, I believe your first words were, “We haven’t lost; we just haven’t won yet.” Is this still your thinking?*

A: Absolutely. If you are hungry, you do not give up looking for food until you find it. On an economic basis, we do not know how far into the future our high stakes bingo is going to be able to feed us. Like a family that has a budget, we have a budget; but if a family is operating on a shoe string budget, paycheck to paycheck, what happens when the furnace breaks down? You are without, because you do not have a capital source to go to. That is what it is like for the tribe today. We are able to meet our needs, but that is just it. We cannot create things on top of that; we do not have the capital. We are working on it; but should we never get gaming, we will still work on it, and we will always be okay. We are survivors. We have survived a whole lot in the last 500 years, and we will be here for the next 500.

When it comes to gaming, if you look around Indian country, all around America, it is the absolute number-one way that tribes have turned things around overnight. With that as the model, we are certainly going to look at it as a means that we hope to develop, as well. We are not caught up on the morality question. We have been to Indian country, we have seen these casinos, we have seen tribal governments, we have talked with thousands of people, and we have read the government reports on related crime, and so on. We looked at every avenue and convinced ourselves beyond any doubt that this was a good project to get involved with. That is when we went ahead. We did our homework. It was not like we just wanted to bring this evil thing into Maine.

Q: *You speak about the tribe’s desire for acknowledgement of your concept of the sacred, and for this to become part of the way we all do business and make policy in Maine. What do you say to Mainers for whom gambling is immoral, and would like the tribe to recognize their concept of what is sacred?*

A: That is easy. Look at the religions of the world. If you put the religious leaders, each one representing their faith, in one room, and asked them to come out with one philosophy, what would happen? Is it happening across the world today? What is the result? Instead of talking to one another, they kill each other. That is how strong their beliefs are. Their perception, their faith says, if you do not join me, I will kill you; and they do it. That is the extreme example, of course; but it is real, it is happening today.

Morality is a question of faith. What you view as moral is good for you. What others view as moral is good for them. As long as the two do not harm one another, what is the harm? We tried, in talking about gaming, to discuss this question of morality in terms of gaming. We looked around the tribe; this was our first study group, and we wanted to get a feel for who would be harmed by gaming. So, we asked, “Who is gaming today?” “So-and-so usually buys a lottery ticket, so-and-so goes to every church bingo in the area; and so-and-so goes to Foxwoods twice a year, three times maybe.” We had a fairly good look at who was participating in gaming today.

Now, out of that population, who is adversely affected? How many divorces; how many child beatings; how many loss of jobs; who’s now in jail because of it? *ZERO!* It is a form of *entertainment* for these people. Do I go to Foxwoods? Do I play the lottery? I did once, but I never checked my numbers; so I never played it again. I personally do not participate in

gambling; but it is not for me to say, “Neither can you.” It is like saying, “My faith is this, so should not yours be this?” No. Mine works for me, and yours works for you.

For you to take away the tribes’ opportunity, *that* is immoral. Your morality works for you, let ours work for us. Don’t take this away from us. It is just unfortunate, given the terms of the 1980 Settlement Act, that we are in this mess as it is. Other tribes do not have to deal with a “settlement;” they don’t have a “settlement” with their state. They are free to have gaming, and they have it: overnight, jobs; overnight, education; and overnight, adequate housing. I have been there, I have seen them. I have talked to the elders of the united Nation. I have done my homework.

Q: *There was a lot of talk about the harm of gambling in the 2003 election. The Governor spoke out about it; and in the spring of 2004 the state is broke, and he is proposing that we join Powerball, which is even more like a high-stakes lottery. I am wondering, did you take that as a slap in the face?*

A: I try to be very political when I answer this with the media. I did not say I consider it a slap in the face; I said, “If you ask people here in Augusta, the words I am hearing are, ‘what a slap in the face!’” I’d like to take it a step beyond that. If you looked at our proposal, and if you counted every projected dollar that was an offshoot of the gaming facility itself, if you have close to 5000 jobs in the facility, and because the facility works with entities elsewhere in Maine you are creating other jobs, and you look at income taxes, and you look at what is being purchased, the total income was \$400 million a year to the economy of Maine. Powerball is going to create *nine* million dollars. I think *that* is a slap in the face to the *entire* state. You are going to have to cut programs if you are not going to raise taxes. If you are not going to raise taxes, you have to create revenue. I have yet to hear of a solid plan to create that kind of revenue.

Q: *People come to Maine tourism and to explore the wilds and the museums; and some say there is an opportunity for the tribes to show themselves and their history to their advantage, for a profit. Do you buy this notion? I personally find it a bit offensive. How would you respond to where the tribe gets a financial influx from someone coming around to look at them as a curiosity?*

A: In my answer, I hope to explain how both points of view are valid. That is, for us to stand up and be recognized, to display ourselves in our own voice – not a non-Indian speaking on our behalf, which is what has happened to this point – taking the credit, the glory, and the proceeds. We are going through this right now on the reservation; it was not on the agenda, but it kept us up until midnight: what are the native people in Maine, the Penobscot Nation, going to do if it does not like non-Indians doing it on our behalf? *We* need to do it.

Did we want to do it 20 years ago? No. I went to my tribe as a very young man and asked permission to start my own business, because I was getting phone call after phone call from people, mainly in our schools, asking, “Could you come to our school and talk about your culture?” Being fairly young, I said, “Why would I want to do that? Ah, No! You stole everything from us, and now you want to steal everything else.” That was the perception, growing up on the reservation. Leave us alone, and that is all there is to it. I underwent an extreme process that I put myself through, thinking, “Wait a minute; if we do not, *who* is going to do it?” I went to the tribal council. Oh, goodness! It was a great discussion; and they granted

me permission, through the discussion of, “If we do not, who will? If he is willing, let us support him.”

I went into the schools, and took baskets and things of that nature, because that is what people wanted to see; but I also took every opportunity to talk about the stereotypes. “Well, how did you get here?” “My Subaru.” “Do you live in a house?” “Yes.” “Well, we thought you lived in teepees.” “Well, I do. Remember that ‘teepee’ is Lakota for house, and ‘wigwam’ is Penobscot for house. Do you live in a wigwam?” “Oh, no!” “Do you live in a trash can, or what?” Students who got it would giggle, and what not.

There has been this need, and what I am hearing is a need and an opportunity for native people to stand up and take control of our own fortunes. If we do not, someone else will.

The Hon. Barry Dana, Chief of the Penobscot Nation, was born and raised on Indian Island, in a one-room house by the Penobscot River. At Old Town High School he earned All-State football honors, then traveled to Orono for his college education, the first person in his family to go to college. “It was only three miles,” he says of the journey; “but it was a world away for me.” While at Orono earning degrees in forestry and education, Dana co-founded the Native Americans at Maine club; and he has not stopped working since on matters of Native American education, cultural heritage, and economic self-sufficiency. In 1981, before the start of his senior year in college, Dana paid homage to the ancient Penobscot tradition of making long-distance treks to Mt. Katahdin. He ran the 100 miles from Indian Island to the mountain and, upon his return home, told others of the experience. Thus began a new tradition, the Katahdin 100, which today draws 100 or more people each Labor Day to run, walk, or paddle all or part of the way to Katahdin. Those who make the journey describe themselves as “spirit athletes.”

Having taught Native culture for 14 years at the Indian Island Elementary School, Dana started his own small business, Native Studies, to teach Native Skills to children at his outdoor camp in western Maine. He, his wife Lori, and their 9 year-old daughter Sikwani, live in a log house in Solon, where he keeps a garden, cares for his sled dogs, and makes birch bark baskets and canoes for sale. “I continue making them,” he says, “because when I do, I love it. I love making baskets, and I really love making canoes.” In Chief Dana’s time as leader of the Penobscots, the tribe has actively pursued not only a thoughtful approach to the question of casino gaming in Maine; but, as well, a small business incubator in an empty factory building on Indian Island, for self-employed Penobscots, especially craftspeople and artists; the feasibility of commercial windpower on tribe-owned mountains in western Maine; and a bottled water enterprise on tribal lands in the Carrabasset Valley.