

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

LEGISLATIVE RECORD

OF THE

***One Hundred and Ninth
Legislature***

OF THE

STATE OF MAINE

SECOND REGULAR SESSION

January 2 to April 3, 1980

THIRD SPECIAL SESSION

May 22, 1980

THIRD CONFIRMATION SESSION

July 17, 1980

FOURTH CONFIRMATION SESSION

July 24, 1980

FIFTH CONFIRMATION SESSION

September 12, 1980

**REPORT, HEARING TRANSCRIPT AND
RELATED MEMORANDA OF THE JOINT
SELECT COMMITTEE ON INDIAN LAND
CLAIMS**

**[DUE TO ITS SIZE, THIS DOCUMENT HAS BEEN DIVIDED
INTO TWO ELECTRONIC FILES. THIS IS THE SECOND FILE.]**

I believe, although I am not sure, addressed a motion to the United States Supreme Court and said we think you ought to strike that statement in your decision in Wilson because it would tend to pre-judge pending cases including the case involving the State of Maine and it was of great interest to me to note that the Supreme Court explicitly refused to strike that statement from its decision in Wilson. This was just within the last few months; however, to show the complexity of these cases, the United States District Court for the District of Connecticut wrote a decision contrary to that statement that appeared in the Wilson Case of the United States Supreme Court in the Mohegan Case said that, indeed, the Non-Intercourse Act was applicable to the Eastern Indians. Historically I would believe that the evidence could show quite overwhelmingly that the situation that existed in 1790 when the Non-Intercourse Act was first enacted shortly after the adoption of the Constitution found the United States to be victorious in the Revolution, however, having a standing army of about 500 soldiers with nations, literally nations, capable of raising substantial armies aligned on its Western Border, these were called the Indian Nations, Indian Tribes. When the Revolution was resolved by treaty, the Colonies and Great Britain resolved their differences but Great Britain had no authority nor did it purport to act on behalf of the Indian Tribes that had supported Great Britain in the American Revolution which involved virtually all of the war-like Tribes on the Western Borders of the Country as it then consisted. So we had to make our peace separately with these then independant nations. The Constitution and framers of the Constitution in their wisdom granted to the Federal Government, the States, including the State of Massachusetts, part of which is now the State of Maine, ceded

that authority to the United States to deal with the Indian Tribes. Why? Because they were nations with whom we had been at war and were in a position to threaten if they were so inclined the continued existence of the Government of the United States as it then existed. President Washington determined that a better way to proceed was not to challenge these war-like Tribes but to seek to get a long with them, to accommodate them, to avoid, if you will, incidents that would result in war-like actions on their part and as we all know, and perhaps as a part of human nature, land disputes often are the cause of irreconcilable positions being taken by various people. We've seen that here today. The Government recognized that we cannot have independant people going out and making deals with Indians concerning land for several reasons. First of all, disputes are bound to result in conflagration. We as a new nation couldn't afford to have that happend. We'd just been through a revolution. Furthermore, the Federal Government had to know what lands it had a responsibility to its citizens to protect and there were other considerations. All applicable to the Western Indians. There was no difficulty with the Eastern Indians. They were not war-like, in fact, most of them fought on the side of the Colonies. They were not enemies, potential or otherwise. The story can be told in far greater detail but let me summarize by simply saying that the purposes of the Non-Intercourse Act of 1790 and the reinactments thereafter were designed not to meet the threat of any Eastern Indians because such threats did not exist. They were designed to meet threats from the Western Indians and the history of the American Indian-United States Government relationship up until very recent times has dealt solely with the United States Government who has

the responsibility and the authority under the Constitution to deal with Indian Tribes and organized tribes, progeny of the Western Indian Tribes, most of whom entered into treaties with the United States in resolution of these disputes in a peaceful manner and consistent with the designs of our Government. As you know, no such treaty exists with respect to the Indians in the East. Specifically, no such treaty exists with respect to the Maine Indians so I feel quite confident when this issue is fully addressed, that this issue should prevail. In all candor, I must say that this same argument has been addressed to the United States District Court of the District of Connecticut in a very fine brief of amicus curiae written by the Office of the Attorney General of this State arguing that the matter before that Court, apparently without significant effect. But that's what we have a Supreme Court for. That's why I say this case is bound to go all the way to the Supreme Court, probably on appeals from both sides. We further think that another defense available and a good one arises out of the circumstances wherein Maine became a separate State from the State of Massachusetts where I come from. I think this took place in 1820, if my memory is correct, and at that time, there was a review as indeed there had to be by the Congress of the United States of the undertakings of the new State of Maine with the old State of Massachusetts and some of those undertakings specifically related to the responsibility for the care of the Indian People in what would be the new State of Maine. Those undertakings were fairly explicit and set out in the documentation submitted to the Congress for its approval of Maine becoming a new State. The Congress approved of those undertakings. We, therefore, argue and I think with considerable force that that

Constituted a ratification by the Congress of the United States and the United States Government of the assumed responsibility by the people of the State of Maine for the American Indians and recognized the validity of such land transactions that had taken place prior to 1820. However, this same argument has been addressed to Courts, Inferior Courts, and I believe this same argument was addressed by the decision in Passamaquoddy against Morton, which as Mr. Wiggins has pointed out is a very limited decision but it is a decision without affect. I think, however, it is a valid argument, that if addressed to that Court again, but surely to the United States Supreme Court, would be a productive victory for the people of the State of Maine.

There are other evidences of Federal ratification of titles. Every time the Federal Government makes a taking for a highway and so forth recognizes the title of persons deriving title from Indians--prior Indian conveyances, we say constitutes a ratification of prior conveyances and there are other evidences to which--on which we would rely for such a claim of Federal ratification. You should understand, as I explained earlier, the power in our Government that can deal with this is the Federal Government. The States and Constitution ceded that power to the Federal Government in the Commerce Clause of the Constitution in which it said the Federal Government shall have the responsibility for governing commerce with foreign nations, commerce among the several states and with the Indian Tribes. So that's why I said to you earlier we have to have a tripartite agreement in which the United States Government is an essential part because only the United States Government can ratify, confirm and clear the titles to the land in the State of Maine which is what the

State claim--Indians claims are all about. We say that the Government of the United States has done this when Maine first became a State for the reasons that I have outlined and has done it on a number of other cases. We say, therefore, that the titles have been ratified by the authority of the Government of the United States which has the only power and authority to deal with the matter. Further we say that the Tribes, particularly the Penobscot and Passamaquoddy, do not qualify as Indian Tribes within the meaning of the Non-Intercourse Act and the Acts that follow thereafter. First, because they do not have nor can they demonstrate the necessary sovereignty to constitute a Tribe today and even if they could so today, they cannot show that over the years without exception and continuously since aboriginal times have they maintained their identity as a Tribe. We believe the law to be that they must show not only that they are a Tribe now, which the Mashpee Indians were unable to do in the Mashpee Case, and with all due exception to Mr. Wiggins when he said none of these cases have ever gone to trial, one has gone to trial and the Indians lost that case. A precedent, I think, that might share some light as to why we think ultimately we would prevail. But, however, back to the required continuity that we believe the law establishes for the plaintiff to show that not only that it is now a Tribe but that it always has been a Tribe continuously since aboriginal days. We think that they cannot do that. We think that there are large gaps in the history that show the lack of the necessary ingredients of a Tribe so that the continuity does not exist that is required by law.

We think further that the Tribes would have a great deal of difficulty in establishing that they in fact did exercise exclusive

dominion over the size of the claim they now put forth which consists of more than half of the State of Maine. Under no circumstances is it conceivable to me that a group of people of this size can contend that they had the exclusive control and domination of an area of the size they now claim. I don't think they can show that. This argument, of course, would not be productive of a complete win but certainly if it were to prevail and all other arguments were to lose, it would certainly cut down substantially, in my view, the area to which they could establish a claim. It must be an exclusive occupation and domination. I don't think they can show that to very large areas in the State of Maine. Again, however, these are matters in which I am sure Mr. Tureen and the very distinguished Staff that works with him would take issue.

There are a few other issues that I could mention. I don't know how much longer I should be going here. A question was addressed earlier today, does the Statute of Limitations afford a defense for the defense of laches, which to the lawyers among you would have a meaning, let's call it the equivalent of a Statute of Limitations for the purposes of this discussion. Is that an applicable defense? Mr. Tureen indicated as I recall today, he did not think it would be an effective defense and believe it or not, I'm inclined to agree with him because the theory behind the Non-Intercourse Act is that the Indian People are not--were not competent as a matter of law to convey title. It would require the ratification of the Federal Government to do so. Now there are ways and there are ways of conveying property. One of them would be to permit an adverse possessor to take occupation of land, let the period of limitations or laches expire and the possessor now owns it. For obvious reasons, if the Indian Tribes

were incapable as a matter of law of passing title, they can't pass it directly or indirectly. Judge Pettine in the United States District Court for the State of Rhode Island so held and I think Mr. Tureen is correct that there is a long line of decisions that would tend to support that and the reasons, I think, are clear; however, there is respectable authority for the proposition that a Federal Common Law of Laches could be applicable. Wherein the Federal Government has authority to deal with Indian Title, they can develop a Law of Laches and there is at least one, and I think two, United States Supreme Court decisions so holding. That would be a defense available to us in our opinion. In order to support this defense, then, we would have to show, as I think we could, a knowledge on the part of the claimants and their predecessors in interest of a claim and with that knowledge, not doing anything about it for many, many years, not doing anything about it so as to bring into play the Federal Common Law of Laches as distinguished from State Law Statute of Limitations or State Law of Laches.

I think further that consistent with a recent and famous United States Supreme Court decision in the Rosebud Sioux Tribe Case that the relationships over many years between the plaintiff Tribe and the State, in this case the State of Maine, and the reasonable expectations of the people on both sides of the argument based on that relationship should not be lightly overturned by the Courts and in Rosebud they said in substance, look, both the Indian and the non-Indian for many years have thought that a certain boundary, let's say, has existed. Whether or not it really exists there at this point is really, in our view, immaterial. Both parties thought that was the situation. Their relationships were

based on it, we are not going to disturb it. We believe that that theory is applicable to this case. There are other defenses available. They do become more and more technical as we go through them. I am not clear in my mind that they would be of great enlightenment to you if we were to go through them and I don't think we would have sufficient time because to give a thorough treatment of all of the matters that we would seized upon in defense of this case would take, as I say, many hours but I would like to leave with you in which I think is the thrust of the request is a summary of why we say we think we would win and leave with you, again, however, an understanding of why I say while we would ultimately win, it would be a long time, it would be expensive and no one is issuing a gold bond certificate as to the result.

I would be pleased to try to respond to any questions through the Chairman that any of you would like to address.

SENATOR COLLINS: Are there questions from Members of the Committee at this time?

MR. ST. CLAIR: I would only hope I could, I'm not guaranteeing that I will but--

SENATOR COLLINS: I'm sure we will call upon you in the future if we have questions but at this time are there any Committee questions you'd like to propound to Mr. St. Clair?

MR. ST. CLAIR: Thank you, Mr. Chairman.

SENATOR COLLINS: Thank you, Mr. St. Clair. We're going to take about an 8 minute break to stretch ourselves and then we're going ahead with some neutrals, with some proponents and then finally come back to opponents.

[OFF THE RECORD]

SENATOR COLLINS: Let's resume. At this time we will hear from Mr. Libhart.

MR. LIBHARD: I would like to speculate just for a moment on what might happen here in order to make a point that I think is extremely important for your Committee to consider. It seems from all of us watching the Washington scene that there's going to be some great difficulty in getting Congress to fund the Bill that is the third part of the proposed Settlement to these Claims. If it is not funded sufficiently, obviously it will not please the Indian Tribes. While that is going on, it seems almost certain from what we have heard here today that some kind of proceedings are going to be brought at least from the dissidents of the Penobscot Tribe to try to declare invalid the vote that was taken with respect to the acceptance of this Proposal by that Tribe. That may also mean an extended and protracted case in Court. If those things happen down the pike, then we're not going to be any better off than we are today. At no time today has anyone reaffirmed the position that those of us who have been watching this situation for several years now know so well. But perhaps it is worth restating. The United States Congress by a very simple act can extinguish these claims. Now, I am very well aware that this Proposal has been made, I'm very well aware that President Carter in Bangor, I believe, in March of 1978 in response to a question from one of the Penobscot Indians as to whether or not he would veto a Bill if it were passed, he paused for a moment and said yes, he would. President Carter has been known to change his mind before, he may change it again, or he may not be the President when this Act finally reaches him.

It seems to me that it is absolutely--at least for me it's unbelievable that we in this State have spent so much of our resources and so much of our time, including the time of all of these people today and your Committee and now the Legislature under-the-gun as it were. We're being told, you must make some kind of Settlement because if you don't there is a possibility of losing this case. If we have the kind of guilt feelings or whatever have you towards these Indian Tribes, that they have not been fairly used over the years or they were not fairly used in 1790, then it seems to me, at least, that we should be making a logical approach towards some legislation both in Maine and in the Federal Congress to make some better situation between ourselves and those people. But we should not be doing it under-the-gun. There isn't anybody here, lawyer or historian or anyone, who has studied this case thoroughly who would not admit readily that had the United States Congress in 1790, 1800, 1820, 1850, 1960--maybe 1960 is a little late, but 1950 at least--had this problem addressed to them, the people in Maine are concerned over their land titles because there is some potential claim, the Congress, I think without any delay, would have acted to extinguish those claims. There isn't any question in my mind about that particularly in the late 1700's and the early 1800's when all of these things were going on. Why is it wrong today for the Congress to extinguish those claims? Why aren't we pushing that approach? It seems to me we've got the cart entirely before the horse. We should be asking--the Governor of the State of Maine who I recall and I'm sure you all recall has said over and over again if this case is to be in the favor of the Indians, then some Court should tell us that because the Courts are not going to tell us that, we're

going to win. The place to settle it is in the Court. I think the place to settle it is in the United States Congress and I think our Congressional Delegation should be able to convince, at least at this late date after all the money that's been spent, our Delegation down there that we do have a serious problem in Maine with financing, whatever it is, the Town of Medway, the City of Millinocket, or whatever it is, and extinguish the claim which they can do very quickly, they have complete authority to do it, they certainly intended to do it, everybody agrees with that back in the late 1700's early 1800's. It seems to me that's where the pressure should be. At the same time there could be an on-going approach. For those of us, and I happen to be one of them, who feel very strongly that our Indian Brothers have not been properly treated over the years, we should be doing something about it and it shouldn't only be the Federal Congress that should be doing something about it. It should be in partnership with the State of Maine. But it should not be done under-the-gun. Now, that's the approach that I think we should be taking. If you persist, though, in going in this situation, I think our Indian Brothers had some very good points. Not only have they been rushed terribly in making their decision, you as a Committee are being rushed terribly in making your decisions. I've asked the Attorney General today to confirm something that I believe to be totally true. This Bill would abolish as far as Indian Territory is concerned the Colonial Ordinances of 1641-1647. Now the Colonial Ordinances of 1641-1647 are the Ordinances that are part of our common law that allow us to go by foot to the great ponds to fish and fowl and other things. Now, by abolishing the Colonial Ordinances with respect to Indian Territory,

it wouldn't do us a bit of good to have an Indian fishing license or hunting license by way of the common law and the bounds of the Indian Territory were properly posted for trespassing. That could be developed and the sportsmen of Maine should be very well aware of this. The result of this present Bill in its present form if passed with the proper approach by the Indians would prevent, if they wanted to, hunting and fishing in Indian Territory by non-Indians. There are a lot of other problems with this Bill. I think it was hastily drawn as we often do in Maine and Senator Conley is not hear but I served in the Legislature with him a hundred years ago in his first term. We did it then, we do it now. We don't properly prepare ourselves. You remember Attorney General Lum begging for money way back to get prepared for this case. It wasn't given. Why do we have to do things in such a rush. I think the Indians should have more time so that their people feel confident that at least when the vote is taken, it is an intelligent vote and I don't think you'd see these folks here today so up in arms if they felt they had proper warning and they had been voted down. Their complaint is that they didn't have proper warning, they didn't have a chance to talk to the others, they didn't have a chance to make an intelligent decision and they don't like it. The people of the State of Maine are going to be feeling the same way towards you folks. If a Bill printed March 26, 1980, heard today, is enacted Monday and Tuesday and the sportsmen of the State of Maine discover after two or three years, after this thing has been fully funded and everyone has woken up to the consequences that they've lost the vast areas of prime hunting and fishing to, all intents and purposes, for their own use. Thank you very much, Mr. Chairman.

SENATOR COLLINS: Thank you, Mr. Libhart. I'm going to ask the Attorney General to respond to the Committee, not right now, I guess, because we have a few other people, but I will put in on our agenda to have some responses to that particular suggestion.

REPRESENTATIVE HOBBS: Is it possible to ask questions of the witnesses, especially the last gentleman who testified, Mr. Chairman?

SENATOR COLLINS: You'd like to ask questions of Mr. Libhart?

REPRESENTATIVE HOBBS: Libhart would you like to submit to a question?

MR. LIBHART: I'll try.

REPRESENTATIVE HOBBS: Thank you, Mr. Libhart. You stated that you would like to have Congress act to extinguish any title that the Indians might have in the property which is under contest. The question I have, put yourself in the situation where you had a legal issue and you had a forum to have that legal issue discussed. Would you want your right to have that legal forum taken away by Congress--an Act of Congress?

MR. LIBHART: I am in that exact position right now and a lot of people in this room have been. Not only does the United States Congress have the right to take your property and mine for Federal purposes by eminent domain proceedings, but the State of Maine has always had the right to take your property and mine for eminent domain proceedings.

REPRESENTATIVE HOBBS: But there's compensation that is provided.

MR. LIBHART: I understand that. I suggested and I strongly suggest that I feel very strongly about it. If the conscience of this State is such that damages should be paid because of some claim that is

being extinguished by this power that the Federal Congress has had ever since the enactment--the acceptance of the Constitution, if we feel that there is merit to this claim and if we feel that there has not been proper compensation, then I feel very strongly that it should not only be the Federal Congress who is appropriating funds to make repartition but it should also be us in the State of Maine. Now, I do not agree that the vast territories that the Indians seem to claim are the subject matter of proper consideration of damages because the Indians did not occupy those territories. They never claimed title to them. There's no word in Indian for deed or ownership of land. Their highways were the rivers, the coast of Maine and that's all they ever occupied. If you want to read Indian history as I have done for many, many years, they did not go the Katahdin. Most Indians were deathly afraid of Katahdin. We see in the papers that Baxter is subject to this claim. It's not.

REPRESENTATIVE HOBBS: I'd like to raise another point with you. Let's say Congress did, in fact, pass a bill to extinguish the claims and that was challenged in the Courts by the Indians through Mr. Tureen and let's say they argue 5th Amendment due process questions, about whether or not you can extinguish a person's trespass damages which a person can get if he shows or she shows that there's been damage to that person or that land or that land was owned, in fact, and there are damages. Part of this suit is not only getting the land, part of the suit could be to trespass damages. What happens then if there was a judgment, a huge trespass judgment, one by the Indians? What you could find is that they could get the land anyway through an execution--levy of an execution on the losing defendants' real estate. There's that possibility.

MR. LIBHART: Well, if you're talking in percentages as we are here today, with the Attorney General conservatively saying it's a 60-40 chance--I happen to think it's probably 90-10 chance of our winning--the chances of that kind of thing that you've just given to me is probably about two or three percent. You can lose any lawsuit it but you've got to talk in realities and what you've just proposed, is a possibility that's not going to happen unless there's a terrible change of thinking in the people of the State.

REPRESENTATIVE HOBBS: There's probably only one or two things that are sure in life but that is a possibility like the possibility that the State of Maine could prevail, there's a possibility that the Indians could prevail. But there is that possibility and the issue I just raised is not out of the extreme that it might not occur.

MR. LIBHART: Trespass actions have always been tried in the State of Maine by juries and I'm an old trial lawyer and the old trial lawyer always says, if you're going to lose, settle, and if you're going to win, fight, and that's the one I'd want to fight.

SENATOR COLLINS: Thank you, Mr. Libhart. The next speaker is Mr. Floyd of Bangor.

MR. FLOYD: Senators, Representatives, I am Joe Floyd, the Public Member of the Atlantic Seamen's Salmon Commission. It's the independant Commission that is mandated by the Legislature to oversee all aspects of the Atlantic salmon. May I say at the outset that I sympathize with the Committee on the enormity of your task and myriad of problems that have been presented here this morning on this Settlement question. You are certainly to be commended.

I'm not here to argue the merits of either side of the Settlement. I'm serving more in a capacity--in a more informational capacity to apprise the Committee of some of the potential disastrous effects that could result should we fail to understand the fragileness of the environment of the Atlantic Salmon. The Atlantic Salmon is an anadromous species; that is to say, it feeds and matures in the salt water and then it goes to fresh water to spawn. Now, unlike the Pacific Salmon, it does not die after spawning. Indeed, it returns to the sea and can come back and spawn again and again. Its progeny spend the first three years of its life in fresh water and then when it reaches about 6 to 10 inches long, it will then go to the sea. From that time, it will spend from one to three years in the ocean maturing and then it returns to the river of its origin and then it will complete the spawning cycle. Now, contrary to popular notion, in Maine there is a proximity of Atlantic Salmon. Now, in a normal year, now, normal year, one would be hard pressed to find 5,000 adult Atlantic Salmon in the State of Maine. An abnormal year, last year, you probably would have been hard pressed to find 3,000 adult, spawning Atlantic Salmon in the State of Maine and those may indeed be outside figures. The fragile character of the habitat and environment of this specie demands constant management and biological attention. Now, since 1947, the Atlantic Seamen's Salmon Commission has committed all of its energies, its expertise and its resources to maintaining and restoring this most famous fish to the historical rivers of Maine. We have experienced a notable success in restoring the salmon to the Penobscot River. We presently enjoy an adequate fishery in all the other rivers; however, in each river, the success is predicated

on a careful monitoring of each waterway and watershed. We have established no fishing sanctuaries in critical areas on the Machias River, at Libby Brook, at Mopang Stream, Old Stream and Crooked River. We closed to fishing for Atlantic Salmon at Sodom Brook and Scoodic Brook on the Narraguagus Rivers. We entertain the same measure of restraint on the Kenduskeag Stream and the Penobscot Rivers. We allow only fly fishing for the Atlantic Salmon. Last year we closed the season two months early rather than risk losing our stock for the future. This year, we delayed the opening of the Atlantic Salmon Season by one month to May 1. We cut the bag limit down to one fish daily in order to--we don't want to take any chance whatsoever with the future of this fish and to take any chance we would consider would be specious on our part. That is why you can appreciate a concern with the distinct possibility of some parts of these rivers falling within the confines of the Settlement. It also appears that the one and a half mile proviso will occur on the Mopang Stream--the head waters of the Mopang Stream in the Machias River, head waters of the Pleasant River and in critical parts of the Penobscot River. Now, to allow sustenance fishing, would be sheer folly. It is possible, now, with this sustenance fishing that, indeed, it would be possible for the Indians to string a gill net or string any net, a bag net or anything, right across these rivers and completely wipe out--completely wipe out the spawning stock. Now, to allow any group, whether it be Indian, private or commercial to have jurisdiction in the habitat of this Salmon is incomprehensible. Double standards of management could be disastrous and could signal the death bell of a lifetime investment. We consider it most necessary for us to maintain authority over this fish.

We must be party to any regulations regarding the present and future of the salmon. The Commission Staff has just completed after years of research and data seeking extensive and intensive management reports on each of our rivers. They contain the blueprints to ensure this future. These show the results of some \$25 million worth of effort having been put into the program. I would employ each of you on this Committee and each Member of the Legislature to weigh very carefully the consequences of this Settlement. Jurisdiction in its present proposal form could spell danger to the salmon. One irresponsible act, one innocent mistake, one error at the wrong time, could ruin a hundred years of work research and dedication to the Atlantic Salmon. It certainly bears the Legislatures closest consideration and attention. Thank you.

REPRESENTATIVE PEARSON: May I ask a question.

MR. FLOYD: If I can't answer the question, we do have Al Meister here who is the Atlantic Salmon expert.

REPRESENTATIVE PEARSON: I may want the Deputy Attorney General to respond to the question if he so desires. I believe-- I can't put my finger on it right off because I don't know the Bill by heart but I believe there is a mechanism in here to prevent an instance like you're talking about. The Commission of Inland Fisheries and Wildlife could step in and say you're doing it wrong, you cannot do that any more. Is that not correct?

MR. FLOYD: The mechanism is there but it may be too late of a mechanism.

REPRESENTATIVE PEARSON: How long, Sir, did it take you before you were able to stop the clubbing of fish in the Kenduskeag Stream several years ago?

MR. FLOYD: That was two years ago. It took too long. It took too long, yes. The only concern--the only thing we're concerned about is the immediacy of the fact that you could completely stop a run. In the Kenduskeag Stream it wasn't a case of them running but it was a case they did indeed kill fish. We'd be concerned about if you could string a net, you could completely--like Mopang Stream, for example, they could completely net out--it would be possible to net out the entire spawning area of Mopang Stream.

REPRESENTATIVE PEARSON: But there are mechanisms, are there not, in this Bill to prevent that from happening?

MR. FLOYD: After the fact. It could be after the fact. As I understand it, it could be after the fact. In other words, it does say at the end going through all the process with the Commissioner getting together with the Committee that yes, indeed, and the Commissioner would have the final result in saying--in regulating the fish.

REPRESENTATIVE PEARSON: Is it conceivable that right now somebody could put a gill net across the stream and do the same sorts of things in violation of the law and you not catch it?

MR. FLOYD: Yes, it is possible.

SENATOR COLLINS: Thank you, Mr. Floyd. Our next speak is Louis Flagg of Winthrop.

MR. FLAGG: Mr. Chairman, Members of the Committee, my name is Louis Flagg and I am a member of the Department of Marine Resources and I would like to readjust the question that Senator Pearson had regarding the regulations that the Commissioner of Inland Fisheries and Wildlife would be able to promulgate in an emergency situation. As I understand

the Bill, it does allow for a subsistence fishery without regulation and I think this is where the concern lies, is that a subsistence fishery would not be subject to regulation by either the Tribal State Commission or the Commissioner of Inland Fisheries and Wildlife. Now, that is where I think the issue becomes an important one. I would like to just draw to the Committees attention two items of concern to the Department of Marine Resources. The Department is responsible for the management of Alewife Fishery Resources which are currently harvested by 28 coastal municipalities. For two of these municipalities, these exclusive fishing rights historically granted by the Legislature will be compromised by the passage of this Bill. They are the town controlled Alewife Fishery by the Town of Franklin and the Pleasant River Alewife Fishery controlled by the Town of Columbia Falls. Both of these runs are dependant on fish production in waters which will come under the regulatory authority of the Tribal State Commission. As the Department of Marine Resources does have primary responsibility for the management of this fishery and jointly regulates fishing for other anadromous or sealand fish species, we would like to recommend that the Department of Inland Fisheries and Wildlife be required to consult with the Department Marine Resources prior to making any regulations related to anadromous fish stocks that may be fished or come under the regulation of the Tribal State Commission. The Bill also makes reference to treatment of Indian Territory as municipalities, however, with regard to hunting and fishing issues, there is established a special relationship between the Department of Inland Fisheries and Wildlife and the Tribal State Committee. Tidal waters of the State do not come under the jurisdiction of the Department

of Inland Fisheries and Wildlife. As the Pleasant Point Reservation is adjacent to tidal water and future acquisitions could occur of lands adjacent to tidal water, the question that we have is would Indian Fisheries such as shellfish or aquaculture in tidal waters adjacent to Indian Territory be subject to rules and regulations of the Department of Marine Resources? And we feel that there is a need to clarify the State authority over any present or future Indian Fisheries which may occur in tidal waters of the State. Thank you.

SENATOR COLLINS: That you, Mr. Flagg. Our next speaker is Isabelle Shay.

MS. SHAY: My name is Isabelle Shay and I am of the Wabanaki Nation. I want to start by asking questions that no one can answer and make some observations and a statement which I find hard to deliver under these most oppressing conditions.

Question one, if the little green squares on the map represent major progresses that Native People have made to get back their lands, then what does the big white background mean.

Number two, was the Land Claims Settlement based on keeping one man out of Federal Prison or was it based on genocide of Native People?

Number three, why were the Legislators this morning speculating how to impose their laws on the Indian People even though the Settlement is not final?

Number four, If winning the Land Claims means not guilty for injustices done to Native People in history, what does losing the Land Claims mean?

I want to make the following observations. Two incomplete statements were made that were highly symbolic to me at least. Becoming a new municipality

is progress, indeed, for rural and off-reservation Indians but for a sovereign nation, it is a put down. If Maine is a sovereign State, then we are a sovereign nation. I wish to base my statement on a remark I heard this morning. "Maine should not be burdened by what is clearly a Federal Matter." Every possible Court action or legal avenue has not been explored nor has every alternative for a fair hearing been examined. When the Constitution of the United States was drawn up, Native People were not considered so objectivity is impossible within the legal framework of the United States. The only way Indian Nations can be guaranteed objectivity is to go to the United Nations and the World Courts and be represented by International lawyers. If that is done, I personally think that the Wabanaki sovereignty will ultimately prevail and I make that statement without any reservations. Thank you.

SENATOR COLLINS: Thank you. Our next speaker is James Mitchell of Vassalboro.

MR. MITCHELL: Senator Collins, Representative Post and other Representatives and Senators, I had suggested earlier today to several people that I had some technical amendments to this Bill. I have been involved in the Case for about as long as there's been a case in one way or another; however, as I talked to people on both sides of the issues, it became clear that the technical amendments were more than that and that the ideas that appeared simple had been very carefully argued and debated. I don't need to go in today or at this point to the various technicalities which I thought could be dealt with by the Committee but rather to reinforce the arguments that have been made by both sides that this Bill has been negotiated and should be adopted as it is. Amendments can

be made in the future by another process. So I will leave the technical amendments and go to another area. Most of what I had planned to say has been said, fortunately for you, I will then be shorter and it need not be said again. I was going to talk about the history of the Indian Peoples but they have talked about it themselves. I was going to talk about the cultural tenacity of the Indian Peoples but they have demonstrated that on their own. I was going to talk about the necessity for a land base and I was even going to make a comparison that was made in a way I'm not sure was intended to be complimentary but can be. The comparison to the only other peoples in our Western Civilization who have exhibited the kind of century after century cultural tenacity that the Native Americans have exhibited and that is, in fact, the Jewish People. It is not surprising that after 2,000 years they still felt the need for a land base. A land base to maintain a civilization. A particular manifestation of humanity which it would be a tragedy to lose. So the Indians, they need a land base to maintain what is, in fact, a civilization. A particular manifestation of humanity which it would be a tragedy to lose. Now, there is some question which has been raised today by certain members of the Penobscot Nation but the purpose of this Settlement is to create a land base to allow these people of dignity of control of their own destiny on their own land. If the questions that have been raised are sufficient to make this Committee believe that the Settlement has not been endorsed by the Indian People, then I think the Committee should satisfy itself in one manner or another that the Indian Peoples have, in fact, endorsed the Settlement. It appears to me and I am going to assume that that is the case. If we are able to take the historical

traditions that we have been told about and reverse them, if we are able through our system to return a significant land base, we are able to say for the first time in 200 years that our system really works. Now, the Indians have been told to use the system ever since we've been here and they have been trying. In 1887, an Indian, another Indian named Mitchell, went to this Legislature. He was a Passamaquoddy and he spoke to this Legislature trying to get land back for the Passamaquoddies. He said, we look around and we see all the rich men worth thousands even millions of dollars in Cherryfield, in Milbridge, in Machias, East Machias and Calais and we ask ourselves, where did they get their money? The answer is said Louis Mitchell, they get it from timber on land that used to belong to the Passamaquoddy Indians. They have been trying to get this land back that long. They have been told to use the system and now they have used the system and the system has worked and the one thing that really hasn't been said here today and the last thing I am going to say is this Settlement should be endorsed because it's just, because in this country, in this State before this Committee and at this time, justice can be obtained through our system.

SENATOR COLLINS: Thank you, Mr. Mitchell. Our next speaker is William Bullock of Bangor.

MR. BULLOCK: Senator Collins, Representative Post and Members of the Committee, my name is Bill Bullock, president of Merrill Bankshares Company of Bangor. Our bank is one of the largest banks serving Northern, Central and Eastern Maine with some 50 branches located throughout the original Indian Land Claims area of 12.5 million acres. It is now approaching four years since Judge Gignoux ruled in the early fall of '77 that the

that the Federal Government did have a trust relationship regarding the Indian People of our Country and, consequently it was the duty of the Federal Government to bring suit against our State of behalf of the Indians to recover their disputed lands. One of the consequences of this ruling were some grave economic consequences at that time which included the inability of municipalities and other public bodies in the Indian Claims Area to sell securities and, in fact, kept the State of Maine, its Bond Bank and housing authority out of the public markets for more than six months. In addition, with the threat of litigations against individual properties such as was done in the Mashpee suit, for awhile early in the fall concern was such that many banks in the Claims Area did not make mortgage loans and to this day, all title opinions on real estate in the Claims Area contain a disclaimer regarding our Land Claims Suit. You will recall that beside individual homeowners, the question of title held up the construction of the 40 million dollar Bangor Mall Project for almost two years. In the fall of 1977, I was appointed by former Governor Longley as head of the Task Force to study the economic implications of the Land Claims Suit. Serving on this Task Force were members of both the Senate and the House and private citizens, including bankers, lawyers and also members of the various interested departments in State Government working with us. In addition, the Governor, then Attorney General Brennan, Deputy Attorney General Patterson and many others. Consequently, I feel that I do have some knowledge concerning this most serious matter and would like respectfully to offer the following comments supporting the ratification by our State House of Representatives and Senate of the proposed Land Claims Settlement.

The original tentative Settlement agreed upon several years ago called for a financial payment of approximately \$60 million from the Federal Government or approximately \$115.00 an acre. The current package of \$80 million works out to a per acre cost in the neighborhood of approximately \$180.00, which when one considers the compounding of double digit inflation and the increasing land values, does not appear to be out of line. Today's editorial in the Bangor Daily News questions several areas of the Proposed Settlement, especially the cost and here again, I would suggest the following: The people of Maine and the Indian people are indeed the innocent parties here of an action that took place almost 200 years ago with the real burden lying upon the Federal Government. The Federal Government got us into this can of worms and it's their responsibility to get us out. Unlike the Western States, we have never received any Federal Funds for our Indian People from the Bureau of Indian Affairs and I look upon part of the \$80 million from the Federal Government as funds justly due our State for reimbursement of the financial costs that we have paid for the human service needs of our Indian People for over this period of time. Is \$80 million such a substantial sum for a Federal Government with a budget approaching three-quarters of a trillion dollars to pay a State with one of the lowest per capita family incomes in our nation to prevent it from suffering the dire economic consequences of a long and protracted court action or the possibility, again, of our State and its political sub-divisions not having access to debt markets or people not being able to buy and sell real estate. For example, there is nothing to prevent if some action is not taken the instituting of liens against property owners in the Claims Area. This could be of such a consequence, it could bring our most important

industry, the paper and pulp industry, to its knees. The Mashpee suit has been settled well over a year now and still they are having problems unraveling the liens that were placed on the real estate in Mashpee by the Wappanogs with adverse affects on titles still changing hands. The Bangor Daily News further indicates that the State has a strong legal position. While I am familiar with the State's case which does appear to be a strong one as articulated by our Attorney General Cohen, Mr. St. Clair, Mr. Wiggins, I personally do not have the faith in the Court System that we can win a protracted trial. The facts are we have yet to win in any preliminary opinions in the Courts. The costs and the uncertainties of a protracted Court Trial to me are just not worth the risks.

The opponents of the Settlement argue, like Mr. Libhart, that 9,500 Indian Claims pending in Congress will result in Congressional action abolishing aboriginal rights or claims of the American Natives. This is to me ridiculous and wishful thinking. Can you imagine the affects on the foreign policy of this country which has continued to expound the subject of human rights as one of our most important policies.

Lastly, there is concern regarding the jurisdictional question of laws on Indian Lands. In this regard, the Proposed Settlement worked out by Attorney General Cohen will give our State much greater control and jurisdiction than any other State in the Country over Indian People. Here again, I might add that I am a member of the Penobscot Salmon Club and I have been known to wet a line here and there.

In conclusion, Senator Collins and Members of the Committee, I urge your prompt and favorable recommendation of the Proposed Settlement. This is a

problem that has been with us now for over a decade and one which cannot be swept under the rug. It will not go away. In order for our State to prosper in the 1980's, it is imperative that we get this Land Claims Problem solved as soon and as expeditiously as possible. Thank you.

SENATOR COLLINS: Our next speaker is William Ayoob of Millinocket.

MR. AYOOB: Representative Post, Senator Collins, Members of the Committee, my remarks to you will be very brief. I'd just like to explain to you what the Indian Land Claims have done to the particular community that I serve. I am the Town Manager in Millinocket. I can sympathize with the points that have been brought to your attention this morning and this afternoon from both sides of the issue and I'm sure it's not going to be an easy decision for you to arrive at to make your recommendations to the Legislature. But the position Millinocket finds itself into is right in the core of the entire Claim. This past year, 1979, the Town as it normally does, sought out and received \$3 million in tax anticipation notes. The notes were issued on a qualified legal opinion. The qualified legal opinion being that our legal opinion was very good except in it it mentioned that we were subject to the Indian Land Claims. The Boston Market that took those tax anticipation notes in 1979 found that they could not resell them and looked back to the banks in the State of Maine to take some of those notes back. Unfortunately the Town of Millinocket wasn't aware of what happened until 1980 when I went out to sell \$3 million worth of notes again and the banks that have been extremely courteous with us and this is not a discredit in any way to them, however, I did not realize what happened in 1979 until January of 1980. I finally did get through the courtesy and the hard work of one of our local banks a million and a half and God willing,

some time in May I will be told that we can have the other million and a half of tax anticipation notes and the crux of our problem is not of our ability to pay. We're one of the most fluid financial communities in the State of Maine but it's getting a good legal opinion that's bothering us. We don't know where it's going to end. But it's posing us a very serious problem. Based on that, I would ask you to give very serious consideration to a positive acceptance of this package.

SENATOR COLLINS: Thank you, Mr. Ayoob. Mr. Howard Cousins.

MR. COUSINS: Senator Collins, Mrs. Post, Members of the Committee, my name is Howard Cousins, I'm vice president of the Bangor and Aroostook Railroad in Bangor, Maine. I, too, will be short in view of the time. I urge acceptance--favorable acceptance--of this Proposed Settlement because of our concern for industry, particularly in the pulp and paper industry. We are completely a part of the pulp and paper industry and to the extent that some 88 percent of our business concerns the pulp and paper industry, that's pulp wood in, wood chips in, paper out, logs, lumber, wood pulp, bunkerseed oil, clay, chemical, starch, etc. We show in our good example of the ripple effect of what happens when you do approach an industry with an action such as the Indian Lands Claim. We employed last year 877 employees and we paid them over \$14 million. We, the employees and the management of the Bangor and Aroostook Railroad, urge acceptance favorably of this report and Settlement of the Indian Lands Claim. Thank you.

SENATOR COLLINS: Thank you. The next speaker is Mr. Claude Carbonneau of Millinocket.

MR. CARBONNEAU: Mr. Chairman, Members of the Committee, my name

is Claude Carbonneau. I'm employed by Northeast Bank of Millinocket as an assistant vice president. I wish to express the opinions of our Institution in this matter. Northeast Bank of Millinocket is a commercial institution located in the heart of the contested Land Claims Area. Our institution's general service area includes the Towns of Millinocket, East Millinocket and Medway. For approximately the past five years, we have faced some serious disruptions in our normal business activities as a result of the Land Claims Case. The prospects of a drawn out Court battle would certainly have further adverse implications in the financial community which could eventually touch every individual and business in the contested area. First of all, it is not our intention to defend the merits of the Proposed Settlement as described in Attorney General Cohen's press release of March 13 of this year. As a financial institution in the Claims area, we come here rather to argue for a rapid and just settlement of this Case. We do not believe that it would be in the best interests of this State to proceed with the ordeal of an expensive Court action which could take years to complete and could place the State's financial community under very serious strains. Thus far, the adverse affects of the suit in our service area have been minimized. This has been due in part to the ability of the financial institutions to uncover new sources of funds when more traditional avenues were closed due to the Land Claims. The seriousness of the Claims became dramatically evident to us in the Medway, Maine, Middle School Project. In the mid-1970's, the Town of Medway contracted to build a new Middle School under the existing school funding laws. Being responsible for securing the financing of the project, the Town contacted the Maine Bond Bank seeking long-term financing for its new school

through the next State of Maine Bond Issue. At the outset of the construction period, the Town received a commitment from the Bond Bank to include their request for long-term funds in its next issue. Shortly thereafter, however, the serious nature and impact of the Land Claims Suit was brought to the public attention. Very quickly markets for Maine Bonds evaporated very quickly and the Town of Medway was informed that the timing for the next issue could not be determined. At this point, the Town turned to the local financial institutions for help in meeting their financial needs. Generally in these sizable bond issues, financial institutions seek a bond or loan purchase agreement more commonly known in the industry as a take out from the large Boston or New York Banks. The Land Claims Suit again negated this option, since the Boston Banks were also questioning the marketability of a Medway Bond issue. As a result, they refused to consider a take out. Therefore, Medway was left with a school which was 60 percent complete and no means of financing the completion of the project or the long-term repayment. After some difficult times, a solution was reached through the cooperation of private investors and our Northeast Banking system. This solution did allow for completion and financing of the school but not without some serious obstacles and additional cost to the Town due to the Suit. The bond holders in this instance invested in the issue due in part to their belief that a negotiated Settlement could and would be reached. It is our opinion that it would be far more difficult to find the investors and banking institutions willing to participate in this type of project with the Land Claims Case to be settled through litigation. More recently, serious problems have arisen in the areas of municipal short-term financing or tax anticipation loans to our communities. Mr. Ayoob just alluded to

some of these. After the Land Claims Suit was brought to light, we again observed some increasing reluctance in the Boston money centers to purchase portions of the tax anticipation notes of our communities. In this case, the Boston money centers were unable for lack of demand to resell these municipal obligations in the secondary market. This year our Boston Financial Correspondants informed us that they would not purchase any of the up-coming tax anticipation notes from our service area. As a result, we were faced with the task of obtaining the necessary funds from within our more limited resources or withdrawing from municipal short-term financing forcing our communities to seek financing elsewhere. Fortunately, the resources were available this year and we've placed very competitive bids for the local municipal business. However, in the absence of a settlement, the future of municipal lending in our opinion is not very bright. The Land Claims Suit has also had an impact on the real estate mortgage market, both consumer and business. For some time now we have been unable to obtain a clean unqualified title opinion on all real estate in our area. Legal firms are citing that clear title cannot be certified until the Land Claims Case is resolved. Most mortgage lenders including Northeast Bank of Millinocket have chosen to continue extending these types of loans, accepting the qualified opinions as a reasonable business risk. This decision has been based upon the on-going negotiations in the Case and the reasonable prospects to a settlement to this problem. What would happen to the mortgage market if this Case proceeds to litigation is very unclear. Certainly, as in Mashpee, one possibility would be a freeze on mortgage lending in the affected areas. In any event, it would certainly be safe to state that if an out-of-Court

settlement cannot be reached, the home and commercial mortgage markets will suffer some serious consequences.

In conclusion, it is not our intention to question the validity of the Claim or the merits of the Proposed Settlement; however, based on our most recent experiences, we do strongly support a negotiated Settlement. We firmly believe that proceeding to litigation in this matter would not be in the best interests of the individual citizens and communities in the affected areas and of the State of Maine as a whole. In our opinion, the difficulties and sufferings which could face citizens and communities alike in the event of litigation far outweighs the uncertain benefits which may result from this course of action.

Thank you.

SENATOR COLLINS: Thank you, Mr. Carbonneau. The next speaker is Mr. John Colgan.

MR. COLGAN: Mr. Chairman, Ladies and Gentlemen of the Committee, my name is John Colgan, I'm the executive secretary for the Millinocket Chamber of Commerce. I represent roughly 85 to 90 businesses in the Town of Millinocket. The Settlement Act of 1980 or whatever it's called, I wasn't asked to come down here and rule on the pros and cons or whether the vote was legal with the Indian Tribes or where we're doing this or that. I was asked to come down here to convey the message from the Chamber of Commerce that we have quite a lot involved in the Town of Millinocket. There is a strong feeling there that if this is not settled and this cloud taken off the State of Maine, that we're in for deep trouble. There seems to be a feeling that if it goes to Courts, the repercussions might be quite great, per se, movement of raw material

from the field to the plants. This would have a very strong repercussion on the Millinocket Area, East Millinocket and every mill in this State. Now, we have a labor force, Millinocket, East Millinocket, Portage of Nashville, of 4,500 people and that's not including the service people that come in from the Southern part of the State, our sales people selling parts and equipment, all the equipment we've got. That doesn't also take into consideration the contract logging service people, independant contractors that sell wood to Great Northern, which some of you know is a considerable amount. This is--they told me to keep this very short, by the way, they told me I wasn't a politician so keep it short and I told them I would. This is about the message the Chamber of Commerce wanted me to send down to you. We firmly believe that this package should be accepted as is. Thank you.

SENATOR COLLINS: Thank you, Mr. Colgan. The next speaker is Gerald Talbot of Portland. While we're waiting for Mr. Talbot, I'll call on the next speaker, Robert Chafee of West Gardiner.

MR. CHAFEE: Senator Collins, Representative Post, my name is Robert Chafee, I live in West Gardiner and I am here today in my capacity as the Executive Director of Maine Forests Products Council. The Forests Products Council represents some 670 members. Those members are large and small landowners, loggers, truckers, processing mills, both large and small, all over this State. Approximately half our members either own land and resources, operate on the land or resource or run a processing installation requiring some of the resources which are in this disputed area. I'd like to urge your support of this LD and say simply that if any of us had doubts before about the large cloud that's been hanging over the State of Maine, I think everything that's been said today reinforced the fact

that there's a very large and very dark cloud over the State of Maine and LD 2037 represents one opportunity to get a little sunshine through and dispell some of the shadows. Thank you very much.

SENATOR COLLINS: Question.

REPRESENTATIVE STROUT: Did you take a poll of the landowners that you represent or is this just your opinion?

MR. CHAFEE: I was contacted by the Executive Committee. The overall Council has a Board of Directors. Ten of the Members of the Board are also elected as Executive Committee and we contacted them this morning.

REPRESENATIVE STROUT: But you have not taken a poll of the full membership.

MR. CHAFEE: No, in fact, our legislative operations as--altogether are done through the Board of Directors and we notify members and they work through the Board of Directors.

SENATOR COLLINS: Thank you, Mr. Chafee. Is Gerald Talbot in the room? If not, we'll return to our list of opponents and the first name I has is that of Barry Tyne of Township 3.

MR. TYNE: Ladies and Gentlemen, my name is Barry Tyne. I live in Township 3, Northern District in Northern Hancock County, which is on Nicatous Lake, right smack in the biggest green area on the map. My wife and I run a sporting camp on Nicatous Lake and we make our home there with our two children. I'm also the president of the Nicatous Camp Owners Association which is comprised of approximately 50 members and we're within a half of mile of West Lake on which there are some 65 camps. Some informational material was given to me published by the University of Maine just to show you that if you're not acquainted with the area that unorganized territory

is not necessarily completely in the boondocks and out of sight of the greater population of the State. In 1963, the University of Maine had a publication, Recreation and Timberland Management, right in our area called the Passadumkeag Area and within a 50 mile radius of West and Nicasious Lakes at that time there was some 206,000 people, projected in 1976 to 230,000. So any settlement in this area would affect a great many people not just the few of us back in the woods.

I guess I would first like to tell you why I'm here and the reason for my concern. The first that I heard about this was in a publication of the Bangor Daily News on March 14th showing a front-page picture of our lake and two camps of our members--belonging to two of our members. In that article it said, "also included in addition to the 300,000 acres was this Nicasious Lake Area." That turned out to be inaccurate that that would be part of the 300,000 acres but nevertheless, it kind of got the adrenalin going. In that article it was also mentioned that there would be certain changes in the hunting and fishing laws, principally subsistence fishing. On March 16th, still not having heard anything from representatives or paper company landowners right around us, we read that the Penobscots had approved the Settlement. Apparently they had information long before our people right in the area did and most of the other people in the State and I don't fault them for that. On March 17th, House Speaker Martin defined the area some where above Newport, below Houlton and between Quebec and New Brunswick, which really didn't narrow it down too much. On March 18th in the Bangor Daily News, Deputy Attorney General Patterson was quoted as saying and I have all the quotes here but in essence was quoted as saying the land subject to the Settlement Agreement

would definitely be filled in before it was submitted to any Legislative Body for vote and that it was very important for both the Indians and the non-Indians, especially the people in the area. On March 18th, I attended the address by Attorney General Cohen at the Senate and at that time he said that a map will be available, I believe, that afternoon. I left my name on a list and I got a synopsis of the Proposed Settlement but was advised that the map was not for public release so we still did not know where we stood. I spoke to Deputy Attorney General Patterson right after that hearing and he was in a rush to get to the House but when I mentioned that I was from the Nicatous Area, he said, "Nicatous, where is that?" It didn't ring any bell with him. So it made me worried and it made a lot of people in the area worried that we were just being passed right over. Now we can see from the maps that actually and truly Townships 3,4, 39, 40 & 41 are in the Proposed Settlement Area and it'll have a direct effect on us. I'm not here to speak about sovereign rights or the advisability of a Settlement at all. I believe that there should be a negotiated Settlement but I believe that before you are not always esoteric arguments but LD 2037 and I believe that's what should be examined. I received a copy of it today. I am primarily concerned with the regulation of fish and wildlife resources and subsistence fishing. What in heavens name do we have subsistence fishing and hunting in 1980? That might have applied to Indians and non-Indians alike 200 and even 100 years ago. Today not only with all the Federal Programs, the wages paid in private industry but in addition, the money Settlement and the income from that Settlement would give no justification at all to someone to go out and claim that he had to shoot three deer or catch 22 fish on Tuesday in order to subsist. It

doesn't make sense. Subsistence fishing, I believe a question was directed by Representative Pearson that there are controls. Well, I ask you to examine those controls; that those--the Commissioner, from my reading of this document, can only step in after repeated surveys request for the Indians to shape up or desist on certain practices and as the fellow from the Atlantic Salmon Fisheries said, it might be too late and it could be too late. These things could take years to bounce back and forth before a lake is fished out and then his power of authority--anytime you pass a law, you have to be able to enforce the law--the enforcement powers only apply when what is outside the territory of the Indians is affected. So Nicasius Lake could be drained, the fishing--the hunting in the area could be ruined. I'm not saying it will happen, I'll say--alright, I'm not saying it'll happen but I'm saying that the only time the Commissioner can do anything is if he finds that waters out--sticking with the fishing--outside that area are affected. So if the Passadumkeag River is not affected--the Salmon don't go down the Passadumkeag River, the Bass don't go down--who will enforce this supposedly check on improper practices? Nobody. They can't under the law as it's written.

I'd also define what sustenance is. Sustenance in the dictionary that I have at home says, "sustaining life or nourishment," second meaning, "means of livelihood." That means they could be a professional hunter and fisherman and sell their game. The Governor was quoted in the papers as saying that he's all for equal rights, regardless of race, religion, color and so forth. How can anyone say that the law is equal and applies equally to all when 200 yards from my home, I have to hunt

two weeks or two and a half weeks out of the year--I have the right to be in the woods with a gun when people with two legs, two arms, no better, no worse than I am, can hunt all year long and claim they're sustenance hunting. There are many poor people in this State who could sustenance hunt and there's no exception made for them because everything would go hog-wild. It would be unenforceable. So how can we pass a law knowing that very importance provisions--at first blush it might seem that hunting and fishing, blah, it's just a little segment of this whole thing. It's a very big segment in the State of Maine and it's a very big segment to the people of this State and in this particular area. I believe and there are many people here, Indians and non-Indians alike, who say this law is not fair, that people are not being treated equally and I agree with all of them. The law doesn't treat people equally and it does, in effect, establish a nation within a nation. The laws should apply equally to all people legally within the State of Maine and I believe that any law passed should try to avoid these pitfalls and there's a simple solution to it. Not an easy one, but a simply one. All the newly acquired land should come under the general laws of the State period. That's it. Thank you very much.

REPRESENTATIVE PEARSON: Mr. Chairman, could I ask a question?

SENATOR COLLINS: Yes.

REPRESENTATIVE PEARSON: Mr. Tyne, is your land in jeopardy, where you have your lodge and your cabins?

MR. TYNE: Is my land in jeopardy? Indirectly, yes.

REPRESENTATIVE PEARSON: Do you own--

MR. TYNE: I own the land in fee simple but I earn my livelihood

from that land. If paying customers are prohibited from hunting or fishing or if there is no hunting or fishing in the area, I fold and I lose my land.

REPRESENTATIVE PEARSON: Mr. Chairman, I think that some of the questions that he has raised, in my opinion, you can do what you wish because you're the Chair, but I think that I'd like to have John Patterson address the questions that he's asked about, how rapidly you could address the problems of over hunting, over fishing, what is sustenance hunting and that sort of thing, if it's permissible.

SENATOR COLLINS: I think we do want to have Mr. Patterson address those. I do have one or two others who have an urgent time schedule that I have agreed to hear, though, and then we'll call on Mr. Patterson. I'd like at this time to call upon Neana Neptune of the Penobscot Nation.

MS. NEPTUNE: My name is Neana Neptune and I am a member of the Penobscot Nation. I am half Penobscot and half Passamaquoddy and I have lived most of my life on the Penobscot Reservation, Indian Island. I am very proud of what I am and who I am but what I have seen here today makes me very sad because what I have seen in your eyes and what I have felt from you people has been prejudice. What I have heard here from some of the speakers is typical of what has gone on for years. People can deny the prejudice, they can deny the feelings and you may not even be aware of them but what I have learned over the years--and I am 32 years old, I'm not a little kid--I've learned a lot in my life, I've been through a lot in my life and I've learned a lot of things through experience. I've lived in my world on the Reservation and I've lived in your world out of choice. But what I have seen is a society that has learned that Indians are no good, that Indians are beneath the white man. I have heard

it in the speakers here. We have been called remnants by the man from Hancock County, Mr. Wiggins, we have been called dissidents because we don't believe the same way that other people believe and I just had a young girl ask me, "what does dissident mean?" And what I see that it means is that if you don't go along with what people around here think, the majority of the people think, then you are labeled a dissident. People on the Reservation have been labeled traditionals. We have been marked dissidents because of what we believe in, because of what we are trying to fight for and that was our freedom. We do have rights but because we are a minority and because of this society around us and the beliefs that have been instilled in you people, it's there, I know it's there and I don't believe that some of you can really help it. Maybe some of you people aren't even aware of it. We choose to live on the Reservation. I don't live on the Reservation now because I am single and I am not eligible for the housing because I don't have any children and I'm not married and there is no housing on the Reservation for single people. But I have lived on the Reservation because I wanted to. I have a father who lives in Connecticut and some day when he retires, he wants to come back home and he wants to come back to his home and you people sitting have a right to take that away, so you're taking the right. You've heard a lot of opposition here but what I have heard is a lot of prejudice, a lot of negative opinions about Indians, I've heard people say that we are not a Tribe. And I learned as a child that I was a Penobscot Indian and a member of the Penobscot Tribe and I don't know who has the authority to say or who has taken the authority to say that we are or are not a Tribe. My people have come here to state their opinions, to state their feelings and

we have tried that with our own Governor and our own Council and it went to deaf ears. My people that have been here to speak were granted a time limit and any non-Indians that have been here, they could speak as long as they wish and that does upset me. I was told by Senator Collins that everything was repetitious. It may be repetitious and what I am hearing from other people, non-Indians, is repetitious. It's gone on over the years, the opinions and the beliefs as far as Indian People are concerned. I cannot open your minds and I cannot open your hearts and a lot of people, a lot of my people from the Reservation are very saddened about this Proposal that's going to go through. There were a lot of questions that people had as far as this was concerned and we were not even given the right to question those. We weren't even granted the right to be heard. I cannot--I see so much in your faces and in your eyes and I can feel feelings from you people. I am sensitive to that. I've learned that over the years and I know what is in your hearts and it saddens me. Senator Collins said, "don't forget, we are people." Well, I'm asking you people not to forget that the Penobscots, Passamaquoddies, the Maliseets and also the NicNaks are people too. Our only problem right now is that we are a minority and there's nothing that we can do about that. You have all trained, you've all been taught certain beliefs, certain ideas, and I feel like the Indians are being shoved under the table to get them out of the way and that's the way it's been over the years and it's just as frustrating here as it has been with our own Governor and Council. I do feel, though, that I have been given the right to speak where I have not had the opportunity to speak when we were on the Reservation and we had our meetings. Because we do live in a dictatorship and there are problems on the Reservation. A lot of internal problems that this Proposal

has brought about. But I know of one man from the Reservation and the rest of us are all labeled dissidents and this man is a very respected member of the community. There are a lot of respected members of the community that have joined us against this Proposal and I don't call them dissidents. I don't call myself a dissident and I don't call anybody else a dissident who disbelieves what I believe and I don't believe that anybody has the right to label me because of what I believe in or because I don't believe what you believe. I hope that all of you people sitting here listening can go home and look within yourselves, honestly take a look at yourselves and see the prejudices and biases that you have picked up in this society as far as Indian people are concerned. Some of this is so engrained that you don't even know, that you aren't even aware. I hear it in the speakers that have already been up here. I've heard it at the jobs that I've worked at. I see it in the eyes and I hear people say, no, no, no, I'm not prejudice but I can feel it and I can see it but the problem is that person cannot see it or will not admit to it. I don't know if any of you people have a conscience but my people have rights too. We have a right to be heard and we have a right to respect for what we believe in, for what we're fighting for and I don't believe that anybody has a right to label any of us because of what we believe in. That's all I have to say.

SENATOR COLLINS: Thank you, Miss Neptune. Our next speaker is Francine Leevy Murphy. I'm not sure if I've pronounced the last name correctly, it begins with M. Is Francine here? The next person on our list is Francie Murphy.

MS. MURPHY: My name is Francie Murphy and I'm a member of the Penobscot Tribe and I live on Indian Island. I really don't have much to say, I think Neana has said most of it all for everybody but I'd like to say this, if we ever had to take that vote over again, I'd vote no. Thank you.

SENATOR COLLINS: Thank you. Our next person is Alberta Francis. The next person on the list is Frederick R. Lark of Middletown, New York.

MR. LARK: Thank you. My name is Frederick Lark, I reside in Middletown, New York, I also have a lease in Township 41. I'd like to say a few words for the leasees that are going to be involved in this transaction.

A little earlier, Mr. Tyne made reference to first finding out about the proposed takeover of Township 41 when he saw a picture of a camp in the paper. Well, that was my camp and I didn't like that much, okay, and I dislike the whole way the thing is being handled. First, this is the method in which I find out what's happening to my property. After all, whether it's leased or not, it is my home. It's not my principal home but still, I selected it, I wanted it, I paid for it and we maintain it as we go along and to all of a sudden be told, well, now you can't have it any more or it's our intention that you will be able to keep it in the future or the paper company might tell us, it's our intention not to divest ourselves of this land. Well, the land is on the map and everybody's going to forget about everything that happened here today probably, they'll still have the map and it says that the land is gone and somehow this doesn't seem to be the right way to handle this. As leasees, we invested our money in the State of Maine, whether we're from Maine or not and we come here

because we like it here. This whole deal is not the right way to handle it. I'd like for all the leasees, if someone can tell us where we stand. If you want us all out of here, tell us, everybody get out. If you want us to stay, then let us know where we stand. Will we retain our camps when all of this is over or won't we. They say, well, our intention is that they can keep it but I don't have anything in writing. Tomorrow you can say, well, our intention is today to change our mind. You know what they say about the road to hell. Paved with good intentions and everybody seems to have good intentions. They have good intentions to the Indian Nations. I don't think anyone is trying to hold anything against the Indian Nation. It seems like the whole thing is being rammed down the Indians' throats, the way they explain it here today. You have no controls over this whole operation. You say, well, we have the environmental controls. The Land Use Regulatory Commission will regulate how people can build up around a lake. Chances are what will happen, after everything is ruined, you'll say, well, gee, we made a mistake. We should have changed things before and then it will be too late. Being from New York, I saw what happened to the Hudson River. When I was a kid, your parents would have skinned you alive if you went swimming in the Hudson River. Well, today, it's coming back. But we shouldn't have to do that here in the State of Maine. You've got good waterways and you should be able to keep it that way and I think you have to put in sufficient controls. The way the Bill reads as I can see it, there are no controls. We'll just do it and then whatever happens later, we'll worry about that later. That gets Maine off the hook and the Federal Government can worry about it. Nobody cares whether it's a good law or whether it's fair to anybody, let's just get

everything off Maine's back. I think that's all I have to say. Thank you.

REPRESENTATIVE POST: Thank you. I just want to let you know that we will try to clarify as much as possible the issue of the camps but we have two more people who want to speak in opposition and we'll finish with that before we go on to some of those issues.

MR. LARK: Thank you.

REPRESENTATIVE POST: The next person on the list is Phil Guimont.

MR. GUIMONT: I would like to stand in opposition to the land claims because I don't believe it is a sufficient base for a sovereign nation to become independant and self sufficient and a lot of people are concerned about their tax dollars being used in the support of Indians. Well, Indians don't want this either. We want a sufficient land base with autonomy and all the rights of sovereignty on it so that we can be self sufficient and independant. Thank you.

REPRESENTATIVE PEARSON: Madam Chairman?

REPRESENTATIVE POST: Representative Pearson.

REPRESENTATIVE PEARSON: Could I have your name and--

MR. GUIMONT: Phillip Guimont and I live on Indian Island and I am a member of the Penobscot Nation.

REPRESENTATIVE POST: Thank you and I think the last one we have on our list is Dolly Smith from Pleasant Point.

MS. SMITH: I came here this morning to listen to the proceeding and halfway through the Attorney General's statement, I felt that I had to speak. I owed it to my children to express my opposition to this Settlement Package and why do I oppose it? Because it doesn't sound fair at all to our people. I see my people split in three ways. Those that have gone into

what America calls the melting pot, those that are traditionally minded like myself and those that are neither nor. They are living their lives as Indian People, not understanding the full impact of this Indian Land Case. I even have a hard time understanding it and there are some materials that I saw this morning that I have never seen before. In a case as complex as this one, how does anyone expect people with little or no understanding of the legalities to comprehend all that goes into the Settlement Proposal and understand it in an hour or two and is it legal to accept a vote of 54 in favor of the Proposal when you have 623 people eligible to vote? Is it legal? It's being presented without time to study it and it's pushed without the majority of our people understanding it. I know we have lawyers that are working for us but I strongly feel that with a case like ours, all our people need to understand it and it will take time. I know that we have people on the Negotiating Committee but I don't feel they represent us. Most of the people on the Committee are in tune to the ways of the white society and they had no objections to the Settlement but what about the traditionally minded people who place more value on land besides money and our rights as a free, sovereign people. I have never considered myself a U.S. citizen in the terms that you would think of yourselves as a citizen. I consider myself a Passamaquoddy. The passing of this Bill comes a drastic change for our people and I don't even think they are aware of it, of the taxations that's involved, I don't understand it myself. It is said that we will be considered a municipality. I don't even think they know what a municipality is and as a municipality we will have to abide by the laws. There are no legal guarantees that the land or the money in the Proposal will materialize. The only guarantee I

see with the passing of this Proposal is to legally extinguish our identity and our rights as a sovereign people. Thank you.

SENATOR COLLINS: Thank you. This concludes our list of those who signed up to speak. Have I missed anyone or is there anyone who has come in whose name was called? If not, we will then try to meet a few of the questions--excuse me, Mr. Flagg.

MR. FLAGG: Mr. Chairman, I'd like to just make a short statement if I could, relative to our concerns. I would want to impress upon the Committee that we only saw the Bill this morning and really haven't had an opportunity to look at it in depth and I would like to say that many of our concerns may already be addressed in other areas of the Bill and so, therefore, our concerns may be premature and we'd be happy to talk with the Committee about them at a later time.

SENATOR COLLINS: Thank you, Mr. Flagg. Mr. Patterson, would you take some questions or Mr. Cohen. Some members of the Committee have particularly asked that we try to address some of the questions about salmon and fishing and so on and there may be some others. Do you wish to comment, Mr. Cohen?

ATTORNEY GENERAL COHEN: I have one particular point and not to stand on protocol, Mr. Chairman, but then Mr. Patterson can respond if that's alright, regarding the concerns about sustenance fishing and also the Atlantic Salmon and the depletion of resources. Mr. Patterson will address that. I just wanted to make one point regarding what Mr. Libhart indicated earlier. Unfortunately he's gone. He approached me during the lunch break and either he misunderstood me or I misunderstood him as far as the applicability of the colonial ordinances regarding the laws here.

There's no question about it that the right of access to great ponds is intact and guaranteed under the LD that's now before you. I wanted to make that absolutely clear. There's no question about that at all.

On the sustenance fishing and also regarding the concerns that were raised by Marine Resources that I don't believe concerns Mr. Patterson, we'll explain those.

SENATOR COLLINS: Just a minute, please. Mr. Attorney General, one more question.

REPRESENTATIVE POST: Could you just clarify on what basis the access to the great ponds still exists?

ATTORNEY GENERAL COHEN: Well, the common laws are still applicable and §6204 specifically refers--which would generally refer to Colonial Ordinances also and, therefore, guarantees the access to great ponds. Specifically, in that paragraph, shall be subject to the laws of the State on the one, two, three, fourth line which includes the common law and so there's no question about that particular point.

REPRESENTATIVE POST: So under that interpretation, it includes the common law?

ATTORNEY GENERAL COHEN: That's correct, yes. Right and that's under--on Page 3, Sub-§4 where it specifically includes the common law.

SENATOR COLLINS: Mr. Patterson?

MR. PATTERSON: First, with respect to Mr. Flagg's comments, it's not his fault that Mr. Flagg didn't completely understand it. We've been in the process of discussing this and briefing a variety of state officials that have been around and we simply haven't had an opportunity to talk with everybody yet. Mr. Flagg expressed concern about two items, first of all, regulation

of marine resources in coastal areas. Under the Bill, the only areas within the Indian Territories along the coast would be the Pleasant Point Reservation. There is no other green area or red area along the coast of Maine that would be within the Indian Territory. Within Pleasant Point and the Coastal Area adjacent to Pleasant Point, the Passamaquoddy Tribe would have the same authority that any other municipality does to regulate marine resources. I believe that is limited solely to the enactment of shellfish conservation ordinances and as in the case of any other municipality, a shellfish conservation ordinance has to be approved by the Commissioner of Marine Resources so in that respect, the Passamaquoddy Tribe in the regulation of marine resources would be on the same footing as any other town in the State. To the extent that either Tribe buys any other coastal land anywhere else in the State, and, of course, they are free to do that just as you and I are, they would have no other rights in that coastal land other than what you and I would have.

With respect to the comment about Donnell Pond, I believe Donnell Pond is more than ten acres in size, therefore, it would not be subject to Tribal regulations. It would be subject to regulation of fisheries by the Tribal State Commission. The State's interest, therefore, would be protected by its participation in that Tribal State Commission. In addition, any ordinance that the Tribal State Commission might adopt would be subject to the continuing residual authority of the Commissioner of Inland Fisheries and Wildlife. Now, the Commissioner of Inland Fisheries and Wildlife doesn't have to wait until some harm occurs. Under the Bill as drafted and as agreed to, beginning of the bottom of Page 9 and going over onto Page 10, particularly on Page 10, the Commissioner can act when he finds that harm is

occurring or when he finds that there is a reasonable likelihood that a Tribal practice will cause harm. Not only can he act when he finds that a Tribal practice will cause harm but when he finds that the lack of a Tribal Ordinance, for instance, the failure to enact a particular protective ordinance on the part of the Tribe, he can then step in and exercise his residual authority to enforce normal state laws.

With respect to the comments of the gentleman from Nocatous Lake, Mr. Tyne, I believe his name is, specifically his comments were directed toward the right of the members of the two Tribes to engage in sustenance hunting and fishing. First of all, it should be clear that reference to sustenance fishing occurs in two places in the Act, in 6207, Sub-§1 appearing on Page 8 and on 6207, Sub-§4 on Page 9. In the first instance, the reference to sustenance hunting and fishing is used with respect to the adoption of Tribal Ordinances. Now, remember that the Tribes can adopt ordinances with respect to hunting and with respect to fishing but only on ponds of less than ten acres in size. Those ordinances have to be equally applicable to Indians and non-Indians except that the Indians can make special provisions for sustenance hunting by their members and thereby draw a distinction between Indians and non-Indians. The second provision with respect to sustenance hunting--before I go on to that, that provision would not apply to Nocatous Lake. Nocatous Lake is more than ten acres in size and the Tribe in any event would not have authority to adopt regulations on that Lake. With respect to a Lake like Nocatous, which is more than ten acres, the Tribal State Commission would have jurisdiction. Any regulation regarding fishing would be enacted by the

Tribal State Commission. The nine member Commission, four members of which are representative of the Tribe, four which are appointed by the Governor and the ninth is appointed by the other eight from a retired justice of the Maine Supreme Court or the Federal Court. The Tribal State interest in that is equally shared. The regulations of the Tribal State Commission as applied to Nicasious Lake would not apply with respect to sustenance hunting by Indians or rather, sustenance fishing by Indians except that such right of sustenance fishing is subject again, like the other rights that the Tribes receive, to the residual supervisory authority of the Commissioner. If you look at the bottom of Page 9, Sub-§4, it says that sustenance fishing within Indians Reservations. This provision about which the gentleman expressed concern is on its terms only applicable to the Reservation which is only the red area shown on that map, not all the green area. Second of all, it is, as you can see from the last line, subject to the limitation of Sub-§6. If you go down to Sub-§6, that's the section which gives the Commissioner of Inland Fisheries and Wildlife supervisory authority. Now, as I said before with respect to Donnell Pond, the Commissioner of Inland Fisheries and Wildlife does not have to wait until harm occurs in any of these instances. If he finds that harm is occurring by virtue of a Tribal hunting or fishing regulation, he first notifies the Tribe, attempts to resolve it amicably with them, if that fails, he calls a hearing, takes evidence at that hearing and he can, if he finds that harm is occurring, rescind the Tribal Ordinance or the Commission regulation and apply usual state laws. In addition, if he finds that a Tribal practice or the lack of a particular Tribal limitation is reasonably likely to cause harm, he

can also step in and apply usual state law. Let me give you an example. Suppose there is a particularly sensitive lake that had previously had prohibitions on the use of live bait, the Commissioner could go to the Tribe and say I would like you to enact an ordinance prohibiting the use of live bait in this lake because the use of live bait presents particular harm to this fishery and also the fisheries with which it's connected, the Grand Lake Stream Area, for example. The Tribe could enact that ordinance and the concern is met. If the Tribe doesn't enact that ordinance and the Commissioner believes that the lack of that ordinance creates the danger of the fishery being damaged, he can call a hearing and he can impose that regulation himself under usual state law.

REPRESENTATIVE POST: Just to clarify in my own mind and perhaps in the minds of some other people since this is an issue that we've had a lot of discussion and a lot of questions about, the only time that the §4 on Page 9 applies, and that's notwithstanding any regulation, sustenance fishing within the Indian Reservations may take place on Indian Reservations.

MR. PATTERSON: Yes. That's a good point. As to Nicauous Lake, that Sub-§4 doesn't apply. Nicauous Lake is not within the Reservation.

REPRESENTATIVE POST: And as far as sustenance hunting and fishing on the other Indian Territory, either totally within the Indian Territory or on ponds of ten acres or less, the sustenance hunting--the privilege of sustenance hunting has to be defined by an adopted ordinance?

MR. PATTERSON: That's correct.

REPRESENTATIVE POST: It doesn't mean that they can go out--that an individual can go out and take 20 deer a year but the ordinance has defined may be taken under that provision?

MR. PATTERSON: Yes.

REPRESENTATIVE POST: Okay. Then the concern that I do have and maybe the provision of the Commission may be sufficient, I do have a concern on the fairly detailed procedure that one has--that the Commissioner has to go--the Commissioner of Inland Fisheries and Wildlife has to go through in terms of taking remedial action. Perhaps there are not that many areas totally within the Indians Territory that we have to worry about those kinds of occurrences happening but could you tell me, in terms of--on summary here on Page 10, the Commissioner may--it's about halfway down the page--may adopt appropriate remedial measures including rescission of any such ordinance or regulation and in lieu thereof order the enforcement of the generally applicable laws or regulations of the State. Is that--does that include, since that language talks about generally applicable laws and regulations, does that include the fact that the Commission could enforce specific regulations that may be adopted by the Altantic Salmon Commission because those are not necessarily laws but they may be to a specific area, either a closed area or a specific season for an area but they're not necessarily general regulations of the State.

MR. PATTERSON: Well, they're general in the sense that the Commission has general regulatory authority which it can exercise in specific ways. Yes, I would say that that falls generally within the language of generally applicable laws and regulations of the State.

REPRESENATIVE POST: So, what would happen is that the Commission would promulgate a regulation and that could be done under their emergency powers and then the Commissioner of Inland Fisheries and Wildlife would

have to enforce it if he found necessary?

MR. PATTERSON: They could not promulgate the specifically applicable--particular regulation until the Commissioner of Inland Fisheries and Wildlife first took some act to supercede whatever Tribal ordinance existed or Commission regulation existed.

REPRESENTATIVE POST: Well--

MR. PATTERSON: The first step would be action by the Commissioner of Inland Fisheries and Wildlife to notify the Tribe to hold a hearing and then to supercede whatever activity was going on on the Tribal Lands and then to tell them--or to make these, for instance, the Atlantic Salmon Commission free to then exercise its general authority in that area.

REPRESENTATIVE POST: So it would be the Salmon Commission that would be adopting the regulation then.

MR. PATTERSON: Yes, you'd then go back to whatever the generally applicable law of the State is.

SENATOR COLLINS: Representative Gillis.

REPRESENTATIVE GILLIS: On this same line as Representative Post has been on, when the Commissioner comes across something that he believes is adversely affecting the fish and the wildlife and so forth, does he have the authority to take immediate corrective action and then go to the Tribal State Commission?

MR. PATTERSON: No, he does not. He has to consult first with the Tribe or the Commission, depending upon who has jurisdiction. You always have to keep in mind that there are different jurisdictions. For hunting, it's the Tribe and for small ponds, it's the Tribe. For rivers, streams and large ponds, it's the Commission. The first step is to consult,

second step is the call a hearing, the third step is to act if he finds sufficient grounds to act.

REPRESENTATIVE GILLIS: This condition could exist for months, maybe years, before it's resolved.

MR. PATTERSON: Well, it depends how fast he wants to act. There are no particular deadlines set in here for notice, adequacy of notice. So long as it's reasonable notice.

REPRESENTATIVE GILLIS: But he does not have the authority to take immediate direct action.

MR. PATTERSON: No, he does not.

SENATOR COLLINS: Senator Redmond.

SENATOR REDMOND: Mr. Patterson, the State denies to the municipalities the right to promulgate to make any regulations regarding the fisheries and the wildlife in their own municipalities. That question has come up several times on the Committee on Fisheries and Wildlife and now as I understand it, in these areas that we are discussing today, the Indians will have the privilege of passing their own regulations in those areas. Now, isn't that discrimination against the white man, to disallow him to pass his own laws in his municipalities and allow another group of people to be able to do that?

MR. PATTERSON: Well, let me answer that in part and then ask the Attorney General if he wants to respond to it. First of all, the State currently lets Indians and the Legislature currently lets Indians engage and regulate their own hunting and fishing on their on reservations. That's a current state law. That's in Title 12, §7076. That was a right which the State gave to the Indians on their reservations some years ago.

So in large measure, the policy embodied here was long ago recognized by the Legislature of the State. That's why the right to sustenance hunt and fish on reservations which is found in Sub-§4 on Page 9, is not such a major departure from current policy. As to whether or not that's discriminatory, the entire Act represents a compromise in many respects. This is one of the areas in which there was vigorous negotiation. I think as the Attorney General stated quite clearly in his opening remarks and remarks to the Legislature last week, there were certain areas in which the State felt it appropriate in the negotiations to recognize traditional Tribal interests. This is certainly an area in which the State has long recognized as a general matter particularized cultural interests of the Indian Tribes in Maine. Indeed, if you go back to the original agreements that were negotiated back in the 1700's and 1800's, you will find in some of them preservation at that time of particular kinds of hunting and fishing rights. So it is not as if the idea of having these particular kinds of rights in Indians is particularly unique nor is it unique to the State of Maine. As a general proposition, States elsewhere in the country that have Indian Land in those states are unable to exercise their regulatory authority over Indian hunting and fishing practices on their lands. This is a measure of remedial state authority which to my knowledge is not found in any other state in the country and I would suspect that those states which are having controversies with their Indian Tribes would deeply value the kind of authority that we have negotiated in this agreement.

SENATOR REDMOND: Well, basically this sounds very reasonable, however, this question keeps popping up in my mind, this whole issue is-- in order to try and settle this case of discrimination on the one side, however,

this other group are going to very reluctantly accept to be discriminated against.

MR. PATTERSON: What I think people have to try to keep in mind is the fact that this is a lawsuit. We are settling a lawsuit and not trying to decide it's a matter in the absence of the lawsuit that this is good public policy. This represents a negotiated compromise and it has to be viewed from that perspective and not from the perspective of were the slate clean, would we do this.

SENATOR REDMOND: Thank you.

SENATOR COLLINS: Representative Pearson.

REPRESENTATIVE PEARSON: John--Deputy Attorney General John Patterson, I'd like to ask you this question, suppose there has been no ordinance regarding gill net enacted by either one of the Tribes and somebody does that and the fishery stock is in jeopardy because of that, what steps are taken and how fast can they move?

MR. PATTERSON: Well, the point I've tried to make is that you don't have to wait until that occurs. The Commission of Inland Fisheries and Wildlife can go to the Tribes before the fact and say, this is a list of regulations, of ordinances that I would like you to adopt because I think it's necessary to protect the fishery. I would suspect that in most instances, the Tribes share the concern about protecting the fishery. I think that's a genuine concern and I would suspect that in most instances there would be an amicable working out of any problems. If, however, the Tribe objects and does not enact that ordinance or the Tribal State Commission doesn't enact that ordinance, the Commissioner doesn't have to wait until the harm occurs. He can go out and act in the absence of a

Tribal ordinance and can hold if the evidence so demonstrates that the lack of that Tribal ordinance is reasonably likely to cause a harm, that if we permit gill netting to occur, if we don't prohibit it, that there's going to be some harm to the fishery and he can go out himself and take action under normal State law to prohibit gill netting.

REPRESENTATIVE PEARSON: John, in hunting, there's been a concern expressed to me of having children around a pond or a lake or out in the woods where hunting is allowed to occur all year round and you don't know when it's going to occur and concerning the safety of the children and for themselves, for that matter. How would you answer that kind of a concern?

MR. PATTERSON: The Act requires that, on the bottom of Page 9, that lands and waters subject to regulation by the Commission or either Tribe shall be conspicuously posted in such a manner as to provide reasonable notice to the public of the limitations on hunting, trapping, fishing or other use of such lands and waters and while there was recognition of the fact that people needed to be on notice if we're going to have different kinds of legal schemes around, that they were going into an area where a different legal regime applied.

REPRESENTATIVE PEARSON: Well, let me put it this way. There's a cottage on a pond that for one reason or another, leased or bought or owned, or whatever, this family goes to and the kids play out in the yard and it's completely surrounded by the Indian Territories in which hunting is allowed all year round. What protection would that individual have from a stray bullet or whatever?

MR. PATTERSON: Well, I suppose he has no more protection from a stray bullet than I have in normal hunting season in walking down a road.

I don't know as you can legislate against stray bullets.

REPRESENTATIVE PEARSON: It would just be a hunting season all year round that you would always have to be concerned about, is that it?

MR. PATTERSON: Yes.

REPRESENTATIVE PEARSON: Just one more question and I'll be through and that's on Page 3, I think. It involves Nicatous Island. I understand that when I first became a Legislator that Nicatous Island has--well, first of all, Nicatous Island is the Island where the East Branch and West Branch of the Penobscot River come together and if you're going North on the Interstate and you look over on the lefthand side, it's the Island that you see. I understand that the Governor of the Council some time ago transferred that land to an individual without, at least in some peoples' opinion, due process. What is the status of that Island under this Bill?

MR. PATTERSON: The Bill contemplates that with respect to the Penobscots, any Island reserved to them by 1818 remains a part of their reservation unless since 1818 and the date of enactment of this Bill, it has been transferred out of Tribal ownership, in which event, any Island including Nicatous Island would remain the property of whoever owns it, whoever had it as of the date of enactment of this Bill. With respect to any Island including--with respect to Nicatous Island, however, if the Tribe subsequently reacquires it, it becomes a part of the reservation again.

REPRESENTATIVE PEARSON: Thank you, John.

SENATOR COLLINS: Representative Dow.

MR. PATTERSON: Can I interupt for just a second? By the way, there is an error with respect to the definition of the Passamaquoddy

Indian Reservation which both Mr. Tureen and I have noticed was an omission. The definition of the Passamaquoddy Reservation fails to include Pleasant Point and the parties will jointly take care of proposing to you a technical amendment.

SENATOR COLLINS: Mr. Dow.

REPRESENTATIVE DOW: I was going to ask you a question on the land that might be sold. Before we enact this Bill, will we know in fact what all of the landholders that are now in the process of selling, if they are going to be selling, what they're going to do with the lease land if it's going to be offered for sale to the camp owners?

MR. PATTERSON: Not by the terms of this Bill you won't. There's nothing in here that makes that a pre-condition to the effect of this Bill.

REPRESENTATIVE DOW: And we won't have it just for general knowledge of the Committee either at that time.

MR. PATTERSON: You're certainly free to solicit that, in fact, we have solicited from the companies and the Tribes a list of all lands which are under negotiation. There's been some flux about that and we've tried to produce maps which are always up to date. We have also solicited from the landowners a complete inventory of any leased lots which would be on their land which would be proposed to be sold.

REPRESENTATIVE DOW: But we won't know whether all of them, all of the landlords want to sell or what's going to happen to that piece of property.

MR. PATTERSON: That's right. There's nothing in here that prohibits that in any way. We operated on the foundational principle that

the Tribes are free to do with their money as they wish the same as anybody else and they can go out and buy land just as you or I can. The only areas in which we particularly defined lands in this Bill are any lands which might be in their territory and would thereby have a particular legal status. Other than that, the Tribes are free to go out and buy land and they have no particular rights on those lands any more than you or I do.

SENATOR COLLINS: Representative Post.

REPRESENTATIVE POST: On the transportation of game section on either fish taken within the Indian Territories or water subject to Commission regulation on the transportation of game, I understand with the game they have to be registered pursuant to ordinances adopted by the Passamaquoddy Tribe and the Penobscot Nation but does that mean that game--if in fact there are no registration stations in each section of the Indian Territory, does that mean that game can be transported between one section of territory to another which has not actually been physically registered if the ordinance that has been adopted allows that?

MR. PATTERSON: Yes, I think it would. It's not much different from the problem now, I think you have, where you have only in the State a limited number of game registration stations around the State. I don't think that we would expect that there would be a game registration in each particular parcel of that green land, though this hasn't been worked out in detail.

REPRESENTATIVE POST: I think the difficulty is--I mean, now, we only have a limited deer season but we're talking about trying to enforce in the off-season for the rest of the State, not killing and

transporting game and it seems to me that that would put a burden on the Inland Fisheries and Wildlife Department as far as their enforcement of off-Indian Territory laws go.

MR. PATTERSON: Well, I think you have to look at that question in a case by case basis. If, for example, in June of the year a member of the Passamaquoddy Tribe were found off Indian Territory with a deer in his or her possession, the State enforcement officer would presumably inquire of that person where they got the deer. If they could demonstrate some registration tag indicating that it was taken on Indian land legally, they would then be free to go on their way. If they didn't have a registration tag, it would then be a judgmental decision in which the officer would have to make as to whether or not he thought that person was, in fact, telling the truth and issue a summons to that person. For example, if the person was found coming immediately off the land in which there was no registration station, it would probably be reasonable to conclude that, in fact, the deer was caught on Indian Land or shot on Indian Land and, therefore, was shot legally. If, however, the person is found with a freshly shot deer up in Northern Aroostook County and there's no Indian Lands around, I would presume that, in fact, the deer was not shot legally and would issue a summons. In the final analysis, that would be a matter which the Court would have to decide after that person was summoned into Court. If the Tribal member contended that he shot it legally on Indian Land in a legal Indian Season, that would be a matter of fact for the Court to judge and those kinds of factors would come into play.

REPRESENTATIVE POST: Either with Indian People or non-Indian People, if, in fact, hunting is allowed on those areas, it seems to me

that it might present some real enforcement problems in our off-hunting season.

MR. PATTERSON: If I were administering this for the Tribe, I would want to insure that to the maximum extent possible there was a registration station on each parcel so that a member of my Tribe could register that deer and avoid the difficulties of dealing with State Law Enforcement Officers when he was transporting that deer from point A to point B.

REPRESENTATIVE POST: On the--under the ability to adopt ordinances for hunting and fishing licenses, it states that ordinances shall be equally applicable on a non-discriminatory basis to all persons regardless of whether such person is a member of the respective Tribe or Nation. Does that mean that if a license is charged that the license has to be the same for both Indian and non-Indian because it has to be non-discriminatory?

MR. PATTERSON: Yes, I believe it does. The only basis for drawing a distinction for ordinances is with respect to special provisions that the Tribe can enact for the sustenance of the individual members of the Penobscot or Passamaquoddy Tribes. If there was some way in which the licensing was connected with sustenance hunting, there might be a way in which the ordinance could be drafted so that there'd be a difference in fees or licensing. I can't think of an example off the top of my head but it may very well be possible that a distinction could be drawn.

REPRESENTATIVE POST: But if it is not and there are licenses, they have to be the same for either Indian or non-Indian?

MR. PATTERSON: That's right.

REPRESENTATIVE POST: Thank you.

SENATOR COLLINS: Representative Strout.

REPRESENTATIVE STROUT: Yes, I have a question. What part in here--I've been looking through it all day and I'm trying to figure out I guess what part the Maliseets play in this document or will they even after Congress acts. It seems that they're going to be allotted just money or--

MR. PATTERSON: The Maliseets play no part under this Act. The Maliseets have no particular rights conferred upon them with respect to any lands under the terms of this Act. They do appear in the proposed Federal Legislation which the Tribe and the Attorney General's Office have agreed on and they will get some measure of money under that to purchase up to 5,000 acres of land. As currently drafted, that Bill would not give them any particular rights on that land other than any other property owner.

REPRESENTATIVE STROUT: Just land?

MR. PATTERSON: That's right. There would be no provision for Tribal trust--

REPRESENTATIVE STROUT: No trust.

MR. PATTERSON: Right.

SENATOR COLLINS: Any other questions from Members of the Committee for Mr. Patterson?

REPRESENTATIVE POST: Because I have had two questions asked that I've opposed, one is, would you define sustenance for us and does it, in fact, include one's earning a living.

MR. PATTERSON: We didn't just use the word sustenance, we used

sustenance for the individual which we construe as not covering commercial fishing operations. We believe that means consumption by the individual.

REPRESENTATIVE POST: So sustenance is for consumption by the individual and not earning a living.

MR. PATTERSON: Yes. Let me also direct your attention to Page 8, the provision regarding adoption of Tribal Ordinances. The Tribe can adopt ordinances with respect to hunting, trapping or taking of wildlife and taking of fish. That would not cover, we don't believe, a selling or otherwise disposition of it in a commercial sense. Selling of fish is prohibited by State law, selling of deer, moose, caribou, is also prohibited by State law. Under State law there is a distinction between hunting or taking of wildlife or fishing or taking of fish and the disposition of that fish or wildlife afterwards.

REPRESENTATIVE POST: So that the special rights include taking and transportation of those fish taken.

MR. PATTERSON: Right.

REPRESENTATIVE POST: Does it provide exceptions also to general possession laws because that's the way we enforce many of our fisheries and wildlife, that you can't possess--

MR. PATTERSON: Yes, I think it does. Obviously if you can take it, you can possess it.

REPRESENTATIVE POST: I was given a specific example on Atlantic Salmon and that is under Township 24 in which the whole Township is shown on the map. That includes Mopang Stream and it provides a third of the spawning area of salmon for the Machias Stream or River, given the extensive time that it may take for the Commissioner to be able to go through the

process before he can make a finding of harm to a species off the Indian Territory, how would you suggest that that spawning area might be protected if ordinances are adopted one right after another or they may change?

MR. PATTERSON: Okay, let me go through the scenerio again. First of all, that stream would not be under Tribal jurisdiction, it would be under the jurisdiction of this Joint Commission, the Tribal State Commission. State law would continue to apply in that instance as a transitional measure until such time as the Commission decided to adopt some different regulation. As soon as the area around Mopang Streat is acquired, in other words, the State law does not automatically become non-operational. It continues in existance until the Commission affirmatively takes some action. If you'll look about 2/3 of the way down Page 9, you'll see the language,"in order to provide an orderly transition of regulatory authority, all fishing laws and regulations of the State shall remain applicable to the waters specified in this sub-section," that means the water's under the Commission regulation, "until such time as the Commission certifies to the Commissioner that it has met and voted to adopt its own regulations." Now presumably, the Commissioner can play some roll in meeting with the Commission ahead of time and help them shape their ordinances and as I suggested before, can suggest to them, this is a particularly sensitive area. I believe you need an ordinance--a regulation in this area that looks like this. If the Commission adopts that kind of regulation, the problem is solved. If the Commission doesn't adopt that kind of regulation and the Commissioner feels that the lack of that kind of regulation or the variation that the Commission adopts is going to present a problem in the future, he can immediately begin the process

to rescind that regulation. He doesn't have to wait until the harm occurs. If he finds that the regulation or the absence of a regulation presents the reasonable likelihood of harm, he can act.

SENATOR COLLINS: Are there any other questions from the Committee? Thank you have much, Mr. Patterson. I would ask the Committee to consider including in the official record of this hearing, two written items, one is the memorandum from Attorney General, Mr. Richard S. Cohen, dated March 28, 1980, addressed to Joint Select Committee on Indians Land Claims, Re: Proposed Indian Land Claims Settlement, which has been handed out just a few minutes ago to each of us here at the Committee table. This memorandum responds to a letter addressed to the Attorney General by this Committee on March the 26th. Is it the pleasure of the Committee to include this memorandum as a part of this record?

SENATOR CONLEY: So moved.

SENATOR COLLINS: It is so voted. The second matter relates to a statement by former Governor James B. Longley. The Chairman of the Committee received a telephone call last evening from former Governor Longley in which he said he was uncertain whether or not he would be here today. This forenoon there was delivered to me this statement. There has not been an opportunity to make copies of it as yet. The date of the statement is March 23, 1980. I read it quickly and I perceive that it is substantially what has already appeared in the news media within the past week. I assured Governor Longley that if he did not attend that any statement that he wished to say would be brought to the attention of the Committee. Is it the wish of the Committee to include this statement in the record today? (No objection from the Committee) Without objection, it is so ordered. Are

there any other materials the Committee wishes to make a part of the official record? Would Mr. Tureen come down to the podium, please, we have a couple questions for you. Mr. Pearson.

REPRESENTATIVE PEARSON: Mr. Chairman, will the transcript of this hearing be introduced as part of the official record of the Senate and the House?

SENATOR COLLINS: We have not an answer to that for sure as yet. Would you wait just a minute while I confer with my co-chairman? There has been high-level discussion about that question and I am informed by my co-chairman that the Speaker of the House and the President of the Senate are contemplating that this transcript might be made a part of the official Legislative Record as an Appendix to that Record. I expect that the final decision on that might be available when we reconvene next week. I believe some Members of the Committee now have some questions for Mr. Tureen.

REPRESENTATIVE POST: Mr. Tureen, we received from you earlier a list of the townships or acreage that you--were included as options. Is it your understanding that--or is it with your consent that certain lots within that acreage are now being offered to camp owners for sale before transfers are made to either of the Indian Tribes or Nations?

MR. TUREEN: Well, it's our understanding that the companies have already offered some of those parcels and that they had done that previously. To the extent that they've done that, that is probably a legal obligation that we can't interfere with.

REPRESENTATIVE POST: What about offerings which have not been made yet because we're not sure at this point how many of the companies

are making those offerings. What about offerings which have not yet been made but companies may wish to make them?

MR. TUREEN: I'm not aware of the dimension of the problem. I think we're dealing with comparatively few camps other than the Dead River Property where we are aware of what they are doing. What you need to understand is that the--some of the lands that are included are lands which the Tribe has merely a right of first refusal and we at this point are not aware of--they are simply areas that might be considered in the future. We're not aware of the particular composition of the camps on those lakes right now.

REPRESENTATIVE POST: So you don't anticipate any difficulties with leasees who wish, in fact, to purchase their property before transfer is made. You don't anticipate any problems with that or any objections to that?

MR. TUREEN: From the information that I have, no, I don't.

REPRESENTATIVE POST: Is it your understanding that in instances in the Maine Statutes where there are differences made between existing municipalities and new municipalities that the Indian Territories would come under the definition of a new municipality?

MR. TUREEN: That is my understanding.

REPRESENTATIVE POST: Is it your understanding that for the purposes of payment in lieu of taxes that the State Tax Assessor would be setting the valuation of real and personal property when that was used as a basis for payment in lieu of those taxes?

MR. TUREEN: That is also my understanding.

REPRESENTATIVE POST: I think that's all I have.

MR. TUREEN: That's in the absence of an assessment by the Tribes. There's a mechanism in the Legislation, in the absence of an assessment by the Tribes under certain circumstances for using an average valuation from across the State.

REPRESENTATIVE POST: I believe that any specific discussion on assessments by the Tribe were--I don't know if I can find them here--were not in the taxation section but were in the section on receiving funds from the State itself.

MR. TUREEN: Absent that, the assessment would--your initial question, the answer to that is absent that in which regard to assessments that it is our understanding that the State Tax Assessor would be the one who would be setting those valuations.

REPRESENTATIVE POST: So for instance, for the assessment of county taxes then the State Tax Assessor would set the valuation on the Indian Territory in each respective county which would go on the basis of determining what the Indian Territory was liable for in payments in lieu of taxes?

MR. TUREEN: That's correct.

REPRESENTATIVE POST: Under the property tax section, there was an exemption for any real or personal property within Indian Territory used by either Tribe or Nation for governmental purposes. Is that supposed to mean used exclusively for governmental purposes. I mean, if it was an individually owned truck or building, just because it might be used periodically for governmental purposes, wouldn't give it a total exemption.

MR. TUREEN: That was an item that was discussed in the negotiations, the language that you see before you is the product of negotiations. We were

not going to--the Negotiating Committee was unwilling to get into a position where if some item that was used 99 percent for governmental purposes happened to be used one percent for non-governmental purposes, they would lose that exemption.

REPRESENTATIVE POST: Well, I'm concerned about just the opposite happening, that something that was used 99 percent for private purposes, just because it was used 1 percent of governmental purposes, wouldn't be liable for taxation or payment in lieu of taxes.

MR. TUREEN: You're talking about a very remote possibility when you're talking about payments in lieu of taxes in any event and that's the way the legislation was written, what you identified, if you feel that is a problem, is a problem. A determination would have to be made on that particular question on the particular facts of the particular situation.

REPRESENTATIVE POST: It's your understanding then that under this legislation that any real or personal property that may be privately owned would--if it were used at all for governmental purposes, would be totally exempt.

MR. TUREEN: No. I think there's obviously a standard of reasonableness. You postulate the extreme situation and I suppose there will be some minimal tests of reasonableness applied to that.

REPRESENTATIVE POST: Is there any problem in doing what we often do in many of our taxation issues of inserting the word primarily?

MR. TUREEN: Well, that's the problem with any amendment to the Legislation. What you have before you is something that was discussed in negotiations. I think we would view that as something more than a technical change.

REPRESENTATIVE POST: And is your understanding that the definition of governmental purposes--the general standard definition as far as what other municipalities are able to do as far as governmental purposes are concerned?

MR. TUREEN: Yes.

REPRESENTATIVE POST: So it would not include any business activities.

MR. TUREEN: That's correct.

REPRESENTATIVE POST: And it would just--as far as governmental purposes for all tax exemptions are concerned, either in the territory or the organized areas are what's generally accepted governmental purposes for municipalities.

MR. TUREEN: Yes, the Legislation deals separately with business activities carried on by the Tribes.

REPRESENTATIVE POST: But governmental purposes is the generally understood definition of governmental purposes as far as municipalities is concerned.

MR. TUREEN: That's correct. That's the way the Legislation is set up.

REPRESENTATIVE POST: Okay.

SENATOR COLLINS: Mr. Tureen, two questions--these are not my questions, they have been handed to me by other Members of the Legislature. One, are you satisfied that proper procedures were followed to bring this Bill before this Committee?

MR. TUREEN: Well, let me address that. The--one aspect of Tribal Sovereignty is Tribal decision making on questions of this nature and it's

a difficult matter and, I too, have listened to everything that's been said today. Neither the Passamaquoddy Tribe nor the Penobscot Nation operates under a constitution. The Tribes have procedures of their own for making decisions on matters of importance to the Tribe and in this instance, I'm satisfied that as a legal matter, the Tribes met their legal requirements in terms of making their decisions and that this matter is properly before this Committee and the Legislature. An injunction was sought in the Tribal Court and was denied. An injunction was sought on the grounds that this was--that the procedure within the Tribe was illegal. The Tribes moved on this as quickly as they felt they could. The Tribal Council, and while I recognize that opinions differ on this, it's my personal feeling that reasonable and honest people could have concluded, and I'm talking about people on the Tribal Council, could have concluded that it was in the vital interests of the Penobscot Nation to move as quickly as possible with regard to this question. We negotiated--the Negotiating Committee negotiated this agreement with the Attorney General's Office. Toward the end of those negotiations, all parties to the negotiations recognized that it would be helpful, certainly, if this Bill could be dealt with by the Legislature of the State of Maine at this session so that it could then get started in Congress and it was everyone's feeling that it would first have to be dealt with by the Tribes. Then the Tribal Councils set these matters for decision in the shortest period of time that they felt they could because they felt it was important. Yes, it was a short period of time. All of us would have liked more time and I'm speaking now for myself and the other members of the Negotiating Committee with whom I've worked with on this but the Negotiating Committee and the Tribes thought that it was in their vital interest to move as they did and it's their

expectation that the State will now deal with it as expeditiously as possible. But insofar as the precise question is concerned, yes I feel that it was legally done.

SENATOR COLLINS: Thank you, Mr. Tureen. The last question is one in the memorandum of former Governor Longley and in pursuing his memorandum, I believe this is perhaps the only thing that hasn't been touched in some other way today. You may or may not be able to respond to it. The question is, why wouldn't it be appropriate for the Legislature to ask the Indian Tribes to submit this claim to the United States Court of Claims without any economic sanctions during the trial if the Indians refuse whatever Congress recommends?

MR. TUREEN: Well, this is a--we're going back to an issue and a discussion that was carried on at great length a couple of years ago and there are two basic answers and as I talk about those two, I may think of others. The basic answers are, first of all, that my clients are primarily concerned with the return of land and their claims for return of land primarily. And in the United States Court of Claims, the United States Court of Claims has no power to return land. Now, that's the first answer but I think the real answer is a much more--goes to a much more important aspect of that question and that is that the Congress of the United States, and I think all of us have to realize this as a practical reality, is not going to open itself for liability in this case. The United States Government has said that it feels we have a strong case. The State of Maine has said that there's substantial chance, 40 percent risk, chance of our winning. All parties have acknowledged that the exposure, the value of the case is potentially into billions of dollars. The United States Government is not

going to open itself to that kind of liability when the chances of our winning are assessed in the way that they are. What we would be facing as a practical matter is precisely the plan that Governor Longley, himself, was the architect of several years ago when legislation was introduced in Congress that would, yes, allow the Indians an opportunity to sue in the Court of Claims but which would put a ceiling on what they could recover which would expropriate the vast bulk of their claim with no compensation whatsoever and allow them to sue for that which the United States was willing to permit them to recover. That is fundamentally unfair. That is a fundamental violation of legal rights, of human rights, it certainly would not be tolerated by my clients nor by the international community and it is an impossibility and so when we talk about a suit in a Court of Claims, we're talking about something which could never happen in a fair way and we're talking about proposing a truly shameful act. My clients have indicated their willingness throughout this process to negotiate an honorable settlement. They have reached a negotiated agreement with the Attorney General of the State of Maine. Not everyone is happy with that but at least it's a negotiated agreement.

SENATOR COLLINS: Thank you. Are there any other questions for Mr. Tureen? Thank you, Mr. Tureen.

MR. TUREEN: Thank you very much.

SENATOR COLLINS: Is there anyone else that the Committee wishes to hear from before we conclude the hearing? Mr. Perkins, could you come to the podium.

REPRESENTATIVE POST: Can you give us an estimate of the amount of acreage that's involved with leased camps in the areas that have been

defined in our LD?

MR. PERKINS: I cannot in terms of acreage. I believe on the Dead River Land, there is something above a hundred leases. On the Great Northern Lands, I believe there are something under 20. I was asked earlier by Representative Pearson to address the question of the Diamond Land and I've done that. The Diamond Lands proposed for option involve two parcels. One in the towns that lie across the border, involving the Towns of Argyle and Alton. There are no leases there. In the Town of Lake View, there is one lease and that owner has been informed that he may either purchase or have it accepted. Georgia Pacific has no leases outstanding. I will attempt to take steps just as quickly as possible to determine what leases there are on the other lands and what the company policy is to them. There have been several camp owners here at this hearing today who have inquired of me and I have referred them to the respective company manager so that they might determine whether they were within an area and get prompt information. If there is anybody else here with that problem and if they haven't had a communication yet from their respective landowner, if they don't want to wait for the communications which I think would be forthcoming shortly, they can communicate with that lease manager or whoever they deal with at the company and get the answer. It's unfortunate that between the circumstances of the matter breaking in the press before people anticipated and the manner and the fact that there's been a continued effort understandably by the Tribes to improve the location and the contiguity of their lands, that the inclusion of lands has been sort of bouncing around. But that process of, number one, completing your information in that regard and number two, there being appropriate communication is going forward and

I will report on it to you just as quickly as I can.

REPRESENTATIVE POST: Thank you.

SENATOR COLLINS: Any other questions for Mr. Pearson--excuse me, Mr. Perkins? The Committee has scheduled a work session for Monday and at that time we will be deliberating on all that we've heard today. The Committee Members are advised that if they have any specific issues on which they would like to meet with Commissioners or other members of the State Government on Monday, they will make it known to David Flanagan of the Governor's Staff. He will try to arrange those matters.

MR. PHILLIPS: Excuse me, Senator.

SENATOR COLLINS: Sir.

MR. PHILLIPS: I submitted two questions to the Board and I would like to have those two questions asked to Mr. Tureen and I'd like to have his answer please. I'd like to have that answer on record. Two questions on a yellow piece of paper, torn in half, from Neil Phillips. It's on a legal sheet of paper, torn in half. Would you allow me to ask him, please, if you can't find them? I submitted them right after lunch.

SENATOR COLLINS: Could you restate the questions to us?

MR. PHILLIPS: Alright, I direct this question to Mr. Tureen. In the lawsuit, Gary Akins vs. the Penobscot Governor and Council, is it not true that you stated that the vote on March 15th would only be an advisory vote?

SENATOR COLLINS: Would you state the other question too, please, and then we'll have him answer both.

MR. PHILLIPS: And the second question is that if this is an advisory vote, will this question be brought back to the people so that

people can either affirm it or throw the thing out?

SENATOR COLLINS: Mr. Tureen.

MR. TUREEN: The answer to the question is that I did state that the vote as a technical matter was an advisory vote. There is no specific procedure layed out in the Penobscot Nation for dealing with this kind of issue. The Tribal Council speaks for the Tribe and it decided that before it would move forward with this Settlement Proposal, that it wanted to allow the people of the Tribe to speak in a referendum, which it did. It was not legally advised to do that. I will say at the last general meeting that was held in the Tribe to consider a settlement question, that was a year ago when the Tribes voted on the amount of land that would be acceptable in the Settlement and the amount of money that would be acceptable. That was-- the decision at a general meeting was made to conduct that vote by referendum. It's not for me to answer the second question. That's up to the Governor and Council--to the Penobscot Nation itself.

SENATOR COLLINS: Thank you, Mr. Tureen. I believe this concludes our hearing. I know that our stenographer is about out of material and energy. I thank all of you for coming today, for your patience and your contributions and the Committee will be meeting on Monday to give this matter further work. This hearing is now adjourned!

* * * * *

I N D E X

to the transcript of the public hearing on LD 2037

Prepared by Legislative Research

Abenaki Nation		Birt, Walter (Administrative Assistant, Board of Selectmen, East Millinocket)	
Remarks re.....	121	Remarks.....	62-4
Aikens, Andrew (Chairman, Passamaquoddy-Penobscot Negotiating Committee)		"Bottomly vs. Passamaquoddy"	
Remarks.....	27-28	Remarks re.....	3,49
Alewife fisheries		Brennan, Joseph (Governor, Maine)	
Remarks re.....	119-120	Statement by representative.....	11-16
Atlantic Sea Run Salmon Commission		Brown, Darryl N. (Representative)	
Remarks on behalf of....	115	Remarks.....	47,48
Atlantic Seamen's Salmon Commission		Bullock, William (Merrill Bankshares Co.)	
See Atlantic Sea Run Salmon Commission		Remarks.....	124-128
Attean, Gary (Penobscot)		Camps, Private Leaseholders	
Remarks.....	83-4	Remarks re....	34,44,46-8, 57-8,135-40,144-6,161-2, 169-70,176-8.
Attorney-General		Carbonneau, Claude (Northeast Bank of Millinocket)	
See Cohen, Richard		Remarks.....	129-133
Ayoob, William (Millinocket)		Chafee, Robert (Maine Forest Products Council)	
Remarks.....	128-9	Remarks.....	134-5
Bangor and Aroostook Railroad			
Remarks on behalf of.....	129		
Barresi, James (Executive Director, Northern Maine Regional Planning Commission)			
Remarks.....	61-2		

Chambers, Reed (Counsel for the Houlton Band of Maliseet Indians)
 Remarks.....51,52,53

Cohen, Richard (Attorney-General)
 Memorandum included in record.....168
 Remarks.....2-10,35,36,39,42-5,47,48,53,56,57,59,60,148-9

Colgan, John (Millinocket Chamber of Commerce)
 Remarks.....133-134

Collins, Samuel W. (Senator)
 Remarks.....1-2

Conley, Gerard P. (Senator)
 Remarks.....35,40,41,42

Cote, Julia (Penobscot)
 Remarks.....85-6

Crowley, Eunice (Penobscot)
 Remarks.....77-78

Courts
 Jurisdiction
 Remarks re.....56

Cousins, Howard (Bangor and Aroostook Railroad)
 Remarks.....129

Dead River Group
 Remarks on behalf of....30-34

Diamond International Corporation
 Remarks on behalf of...30-4

Donnell Pond
 Remarks re.....150

Dow, Charles G. (Representative)
 Remarks.....39,40,161

East Millinocket
 Board of Selectmen
 Remarks on behalf of...63-4

Eminent domain procedure
 Remarks re.....53-54

Fish and game
 Hunting/fishing for sustenance, regulation
 Remarks re.....55,56,151,153,165

Licenses
 Remarks re.....45-6,164

Regulation on Indian land
 Remarks re.....151-159

Stocking with fish
 Remarks re.....39-40

Transportation of game, registration
 Remarks re.....162-4

Trapping
 Remarks re.....39

Flagg, Louis (Dept. of Marine Resources)
 Remarks.....119-121,148

Flanagan, David (Legal counsel to Gov. Joseph Brennan)
 Remarks.....10-16

Floyd, Joe (Atlantic Sea Run Salmon Commission)
 Remarks.....115-119

Georgia-Pacific Corporation
 Remarks on behalf of...30-34

Gillis, Robert J., Jr. (Representative)
 Remarks.....45,46,155-6

Great Northern Paper Company
 Remarks on behalf of...30-34

Great ponds
 Access to
 Remarks re...111-12,148-53

Guimont, Phillip (Penobscot)
 Remarks.....146

Hobbins, Barry (Representative)
 Remarks.....49,113

Houlton Band of Maliseets
 Remarks on behalf of..28-29,50-53,89-93
 Remarks re.....50-53,165

Indian Land Claims Settlement
 Cost.....7-10

Judicial settlements
 Considered.....4-7,19-21,99-108,175-176

Legislative settlement
 Subject to amendment.41-2

Liability of state.....43

Indian territories
 Status as a new municipality
 Remarks re.....36
 International Paper Company
 Remarks on behalf of..30-34

Land use ordinances
 Remarks re.....49
 Lark, Frederick R. (Lease-
 holder, Township 41)
 Remarks.....144-146

Legislature
 Right of Indians to be
 elected
 Remarks re.....35
 Libhart, Wayne P.
 Remarks.....109-115
 Longley, James B.
 Statement included in
 record.....168

Maine Forest Products Council
 Remarks on behalf of..134-5
 Maine Forestry District
 Remarks re.....37
 Maine Indian Tribal-State
 Commission
 See also Fish and game -
 Regulation on Indian land
 Remarks re.....59-60

Maliseets
 See Houlton Band of Maliseets

Marine Resources, Dept of
 Remarks on behalf of..119-
 121,148

Mashpee, Mass.
 Remarks re.....5-6,19-21

Medway, Maine
 Remarks re.....63-64,131

Merrill Bankshares Company
 Remarks on behalf of.124-8

Millinocket, Maine
 Remarks on behalf of.128-9
 133-4

Mitchell, Dana (Penobscot)
 Remarks.....64-72

Mitchell, Elizabeth (Repre-
 sentative)
 Remarks.....43,44

Mitchell, James (Vassalboro)
 Remarks.....122-124

"Mohegan Tribe vs. Connecticut"
 Remarks re.....4,49

Mopang Stream
 Remarks re.....166-168

Municipalities
 Revenue in lieu of taxes
 Remarks re..36,58-9,170-3
 Murphy, Francine Leevy (Pen-
 obscot)
 Remarks.....143-4

Neptune, Martin (Penobscot)
 Remarks.....88-9

Neptune, Neana (Penobscot)
 Remarks.....140-143

Neptune, Stan (Penobscot)
 Remarks.....80-83

Nicatous Island
 Remarks re.....160

Nicatous Lake
 Remarks re..135-140,151-153

Nicatous Lake Camp Owners
 Association
 Remarks on behalf of.135-
 140

Nicholas, Barbara (Maliseet)
 Remarks.....90

Northeast Bank of Millinocket
 Remarks on behalf of.129-33

Northern Maine Regional
 Planning Commission
 Remarks on behalf of.61-2

Ostrangle, Mike (Penobscot)
 Remarks.....85-6

Pardello, Ann (Penobscot)
 Remarks.....78-9

Passamaquoddy Tribe
 Remarks on behalf of...23-7
 146-8

Patterson, John (Assistant
 Attorney General)
 Remarks...37,38,39,40,41,
 46,47,54,55,59,149-168.

Pearson, Michael D. (Repre-
 sentative)
 Remarks 50-8,118-9,139-40,
 158-60,169

Penobscot Tribe
 Advisory vote, March 15
 Remarks re.....178-9
 Remarks on behalf of...23-7,
 64-89,140-44,146

Perkins, Donald (Landowners"
 representative)
 Remarks.....30-5,44,45,57,
 58,177

Phillips, Neil (Penobscot)
 Remarks.....86-8,178-9
 Pingree Heirs
 Remarks on behalf of....30-4
 Pleasant Point
 Included in Passamaquoddy
 Reservation
 Remarks re.....161
 Polchies, Terry (Chairman,
 Houlton Band of Maliseets
 Negotiating Committee)
 Remarks.....28-9
 Post, Bonnie (Representative)
 Remarks....36,37,38,146,149,
 153-5,162-7,169-73,176-7

 Redmond, Andrew (Senator)
 Remarks.....39,156-8

 St. Clair, James D. (State's
 Counsel)
 Remarks.....16-23,99-108
 St. Regis Paper Company
 Remarks on behalf of....30-4
 Sapiel, Sam (Penobscot)
 Remarks.....73-7
 Sappier, Lumis J, Sr. (Maliseet
 Land Claims Committee)
 Remarks.....90-3
 Scott Paper Company
 Remarks on behalf of....30-4
 Sewall, Charlotte Z. (Repre-
 sentative)
 Remarks.....44,45
 Shay, Isabelle (Abenaki Nation)
 Remarks.....121-2
 Sipsis (Penobscot)
 Remarks.....79-80
 Smith, Dolly (Passamaquoddy)
 Remarks.....146-8
 "State vs. Dana Soccabasin"
 Remarks.....3,49
 State-Tribal Commission
 See Maine Indian Tribal-
 State Commission
 Strout, Donald A. (Represent-
 ative)
 Remarks...58,59,60,135,165

 Takach, Bertrand
 Remarks on behalf of....30-4
 Taxes
 Loss by municipalities
 Remarks re...36,58-9,170-3

 Tureen, Thomas (Counsel to
 Penobscot and Passamaquoddy
 Tribes)
 Remarks...23-27,47,49,50,
 169-176,179
 Remarks re.....65
 Tyne, Barry (Necatous Camp
 Owners Association)
 Remarks.....135-40

 Wabanaki
 See Abenaki
 Wiggins, J. Russell
 Remarks.....93-9
 "Wilson vs. Omaha"
 Remarks re.....4

RICHARD S. COHEN
ATTORNEY GENERAL



STEPHEN L. DIAMOND
JOHN S. GLEASON
JOHN M. R. PATERSON
ROBERT J. STOLT
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

March 28, 1980

To: Joint Select Committee on Indian Land Claims
From: Richard S. Cohen, Attorney General
Re: Proposed Indian Land Claims Settlement

In response to questions posed to me by Senator Collins and Representative Post by their letter of March 26, I am pleased to provide the following responses:

1. What are the major consequences of failing to enact this bill?

As I have said in my earlier statements, failure to enact the Maine Implementing Act could have serious consequences for the State and its citizens. In my opinion, if the matter is not settled, the claim will go to trial. The cost of a trial to the State alone, not including private defendants, would probably exceed \$1 million. It would take roughly 5 to 6 years to get a final decision from the United States Supreme Court. During that time titles and mortgages in the claim area would be in turmoil, and municipal bonds would not be marketable. If it goes to trial there is a serious risk of the State and private landowners losing a substantial tract of land and being ordered to pay money damages.

In addition, if the matter goes to trial and if land is awarded to either Indian Tribe, the State will in all probability be unable to enforce any of its laws on those lands.

2. What special provisions exist for Indians attending the University of Maine, such as tuition arrangements, and will they continue after settlement of the claim?

As we understand it, under the current policy of the University of Maine, Indians pay no tuition or fees. This

exemption is not required by law, however, and can be continued or terminated at the option of the trustees.

3. What is the status of Indian Territory after settlement, either organized or unorganized, and what are the tax consequences? Will it result in any tax exemptions? What will be the effect on the Forest District, the Spruce Budworm District, and the Tree Growth Tax Law?

The Indian Territories will be unique legal entities. Although they will not be called municipalities they will, with a few exceptions, be the functional equivalents of municipalities. In effect the Territories will be organized areas of the State and will no longer be considered unorganized territory of the State.

The Unorganized Territory Educational and Service Tax, Title 36 M.R.S.A., Sections 1601-1605, will not apply to the Indian Territory. Since the Indian Territories will be the functional equivalent of organized areas, these taxes will not apply to the Territory. We have been advised that this will result in a loss of approximately \$170,000 per year in tax revenues to the State. However, since the Territory will not receive services as unorganized areas, we would anticipate a commensurate reduction in State costs.

With respect to other taxes, the Tribes will pay all State, county and district taxes of any kind applicable to any municipality. These taxes will be called a fee but paid in the same amount as the usual tax. Income to the Tribes from the Federal Tribal Trust Fund will be exempt from State income taxes as is any income to any other municipality. Any land owned by a tribe in a town can be taxed by the town and taken for non-payment of taxes.

Any land acquired by the Tribes in an area currently designated as within the Spruce Budworm District will remain within that District and will pay the taxes. It is unclear, however, whether the Indian Territories will be within the Forestry District because of the way in which the Maine Forestry District is defined by the present law. However, the Legislature is free to amend the Maine Forestry District enabling act and specifically include the Territories or the Tribes may themselves opt to be included in the Forestry District.

With respect to the Tree Growth Tax Law, it will apply within the Indian Territory to the same extent and in the same manner as other municipalities. To the extent the Tribes chose not to levy property taxes within their Territories, the Tree Growth Tax Law is of no practical effect in those areas.

4. How was the price of land to be purchased under the settlement negotiated, and who was involved?

Negotiations were conducted directly between landowners and the Tribes. Since all parties agreed that any purchase of land would be funded by Congress, we did not believe it appropriate

to participate in those negotiations. In addition, I believe that former Governor Longley was of the view that the State should not participate in land acquisition negotiations. I agreed with Governor Longley's position and have acted consistent with it. Only Congress has authority to decide how much money should be appropriated for this purpose. I am confident that Congress will carefully scrutinize the requested appropriation.

5. What will the State's obligation for welfare, education, and other services be after the settlement? Will the Federal Government assume any of these obligations?

The Department of Human Services is required to reimburse any municipality 90% of the general assistance costs that exceed .0003 of that municipality's state valuation. This same system will apply to the Tribes in their respective Territories. We believe the current general welfare statutes provide sufficient safeguards to prevent the Tribes from abusing that system. If, however, abuses do occur, the Legislature is free to amend the general welfare laws to correct them. In this regard, however, it should be noted that of the budget of the Maine Department of Indian Affairs for F.Y. 1979-80, an estimated \$450,000 can be classed as general welfare assistance. It is apparent therefore that the State has traditionally spent substantial sums for these programs on the reservations. Under the Implementing Act these direct appropriations will cease and the Tribes will work within the present system as any other municipality does.

The State of Maine currently funds nearly the entire cost of education on the existing Reservations. This cost for fiscal year 79-80 was approximately \$770,000. After the settlement, the Federal government will contribute heavily to the cost of education on Penobscot Territory and Passamaquoddy Territory. For fiscal year 80-81 the Federal government is expected to contribute approximately \$1,126,000 to the cost of education on the two territories. We anticipate therefore that the State will have little if any financial obligation for education.

Another State expense for municipalities is in the area of road maintenance. Again, however, we expect that under the proposed Implementing Act, the State will realize a net savings. Under present law all roads on the Passamaquoddy and Penobscot Reservations are designated as state highways, no matter how small, and as a result the State pays all costs of maintenance. Under the Implementing Act, this provision will be repealed and the State will have the option of designated state highways and state-aid roads within Indian Territory as it does in any other municipality. While we do not have cost estimates, it seems reasonable to assume that such a scheme will result in a cost savings to the State.

6. Will jurisdiction and ownership of any "Great Ponds" be affected by the settlement?

Ownership of and access to Great Ponds will be completely unaffected. The waters and subsurface lands will remain under State ownership. The general common law right of access to Great Ponds will apply to any of these ponds.

Fishing jurisdiction on Great Ponds, 50% or more which shoreline is within Indian Territory, will be vested in the Tribal-State Commission with authority in the Commission to adopt regulations on season, bag limits, size limits and methods. This regulatory authority is subject to the residual power of the Commissioner of Inland Fisheries and Wildlife to supercede Tribal-State Commission regulations if he determines that the regulations are harming or there is a reasonable likelihood that they will harm fishing stocks in other water.

7. May Congress alter the amount of money in the settlement, and what is the consequence if it is altered? What is the consequence if Congress appropriates no money after the Legislature has enacted the claims bill?

Congress' power in Indian law is absolute and as a matter of constitutional power Congress can extinguish the claim on any terms that it wishes. Whether an alteration would affect the chances of enactment of the bill is a matter of political judgment and would depend upon the magnitude of the reduction. I would, however, expect that the Tribes would oppose any bill that appropriates less than that to which they agree. Congress could nevertheless provide less money if it wished to do so, though I would not expect Congress to go so far as to extinguish the claim without any compensation.

With respect to the State bill, although it contemplates an appropriation by Congress as a precondition to its taking effect, since Congress' power is absolute, Congress could ratify or otherwise implement the Maine Act without regard to that limitation.

8. What will be the effect of the settlement on "camp lots" leased on lands transferred to the Indians? What policies on future leasing have been agreed to?

We do not know the policy of all the landowners but we understand that some have agreed not to sell lands which are leased for camp lots. We also understand that Dead River and Great Northern will give camp owners the opportunity to purchase their lots and thus except those properties from the Indian Territories. To the extent such lands are sold, the

Tribal Negotiating Committee has represented to us the Tribes' intention to continue the leasing policies previously employed by the timber companies. This representation is not binding, however, and the Tribes could refuse to renew leases after the termination dates just as any other landowner can.

9. What are the estimated expenses of the Tribal-State Commission and who will pay them?

The Governor has suggested that the Commission's initial expenses not exceed \$3,000.00 per year. These costs are proposed to be paid out of the administrative account of the Department of Inland Fisheries and Wildlife. The amount and source of monies can be changed by the Legislature if circumstances require.

10. (A) Will the fish and game provisions of the bill establish two independent licensing authorities in the Territory and Reservation areas?

Yes. The Tribe will have authority to regulate hunting and fishing in small ponds and may require a license. The Tribal State Commission will have authority in large ponds, rivers and streams and may require a license.

(B) Will Maine residents have to purchase two licenses?

The Tribe and Commission are authorized, but not required, to require licenses on lands or waters under their jurisdiction. These licenses would be separate and distinct from State licenses. However, State licenses are not required to hunt or fish in Indian Territory or waters under Tribal-State Commission control.

(C) Will non-Indians be entirely barred?

Whether non-Indians are barred from the Territory depends on tribal policy. As landowners the Tribes will have the same power to open and close their lands as paper companies do. Since the Tribes may buy land anywhere in the State which will not be included in the Tribal Territory, they will, like any other landowner, be able to use these lands in any legal manner.

(D) How will the licensing and regulatory authority of the Commissioner of Inland Fisheries and Wildlife be affected?

As a general rule, state fish and game laws regarding hunting and fishing will not apply in Indian Territory. Taking of game and fish is controlled in the first instance exclusively by the Tribe or Tribal-State Commission. However, the Commissioner can do surveys, can check game registrations and can take remedial

steps, including superceding those regulations, if he finds Tribal or Tribal-State Commission regulations to be harming or that there is a reasonable likelihood that they will harm other fish or wildlife resources.

(E) May the Indians close their lands to hunting and fishing?

Yes.

(F) How does this authority compare to that of private landowners?

Like private landowners, the Tribes can close their lands. Unlike private landowners they can adopt separate hunting and fishing regulations as explained above.

(G) Who and how will Indian hunting and fishing regulations be enforced?

Tribal law enforcement officers will be equivalent to municipal police officers and within the Indian Territory the Tribal police can enforce all laws including Tribal ordinances on hunting and fishing and regulations of the Tribal-State Commission. All other state law enforcement officers, including Fish and Game Wardens, can also enforce Tribal-State Commission regulations and other laws of the State.

Indian violators of Tribal fish and game ordinances will go to Tribal Court. Non-Indian violators will go to State Court. All violators, Indian and non-Indian of Tribal-State Commission regulations go to State Court.

Tribal law enforcement officers will also be subject to the mandatory training requirements applicable to other local police officers.

11. How will the Tribal School Committees be selected, what specific powers will they have and who will pay education expenses?

Tribal school committees are currently provided for by special laws. Those laws will be repealed and the Tribes will be authorized to create their own school committees as any other municipality does. They will be subject to general state education laws, but as a transitional measure, and until those new committees are created, the current school committees will continue in operation.

Educational costs will be a shared Tribal-State expense using the same formulas and methods used in any other municipality. Currently all Indian educational costs are borne by the State, with the appropriation for the current fiscal year amounting to \$770,000. We have been informed that the U.S. Bureau of Indian Affairs anticipates expending more than \$1,100,000 per year on Indian education beginning October 1, 1980. Upon inquiries to the Maine Department of Educational and Cultural Services, we have been advised that this federal payment will more than exceed the anticipated state and local share of education for comparable municipalities.

12. If Indians purchase a business or building with state funds or guarantees and it fails, may the state or other creditor take it to meet the outstanding loans? May lands in the Territories or Reservations be attached by creditors? If not, what remedies are available to enforce payment of debts?

The answer to these questions are not found in the Maine Implementing Act but are contained in the draft of the Federal bill to be proposed to Congress. Lands of the Tribes within the Indian Territories may not be taken or attached to pay creditors, regardless of whether the creditor is the State or other person. However, creditors are entitled to be paid out of Tribal Trust Fund income. Thus a creditor can sue the Tribe for a debt. If the Tribe fails to pay the judgment, the creditor can request the Secretary of Interior to pay the judgment out of the Trust Fund income. If the Secretary refuses to pay, the creditor can sue the Secretary. We would conservatively estimate the annual Trust Fund income at \$1,250,000 for each Tribe which should be ample to pay most debts.

Lands owned by the Tribe outside their Territory are not subject to the same protection and can be foreclosed against, attached or taken for non-payment of taxes or debts. Individual members of the Tribes will not own Tribal land but will occupy parcels assigned to them. Their status is in some respects similar to a person who leases land. The land such individuals occupy cannot be taken or attached by creditors.

13. May Tribal authorities open and close roads through the Territory or Reservation lands, and may they charge for road use?

Private roads owned by the Tribe can be open or closed at will. County or State roads cannot be closed and the Tribe cannot charge fees. County or State roads, whether owned in fee or held under an easement, will not be transferred to the Tribe but will remain under control of the State or County.

14. Are non-Indians residing on Territory or Reservation lands liable for taxes imposed by Tribal authorities? Do they participate in selecting those Tribal authorities or in determining the tax rates?

The real and personal property of non-Indians residing on the Territories is subject to taxes imposed by the Tribal Authorities within those territories. Non-Indians residing on the Territories do not have the right to vote in Tribal elections but the Tribes could elect to extend that right to non-members. However, they are entitled to receive any municipal or governmental services provided by the Tribe or Nation or by the State, with minor exceptions, and are entitled to vote in National, State and County elections in the same manner as any tribal member.

15. What is the effect of the settlement on state and Federal authority over coastal or marine waters?

The only coastal land that will be owned by either Tribe is the current Pleasant Point Reservation of the Passamaquoddy Tribe. By virtue of this ownership, the Passamaquoddy Tribe will have authority to enact shellfish conservation ordinances just as other municipalities do in the coastal lands immediately adjacent to Pleasant Point. As in the case of municipalities generally, the enactment of such ordinances will be subject to approval of the Commissioner of Marine Resources. The Tribes will have no other rights in coastal or marine resources other than any other person or entity.

No other coastal lands will be included in the Indian Territory. To the extent the Tribes might buy other coastal land, they have no more rights in the coastal lands or marine resources than any other person.

16. What specific municipal powers and duties are given to the Tribe and Nation under this bill?

The effect of the bill is to make the Indian Territories the functional equivalent of a municipality. The bill confers on the Tribes within their Territories those powers and duties possessed by municipalities under "home rule." Those powers and duties include but are not limited to ordinance powers, taxation powers, home rule powers, the power to sue and be sued and the power to dispense and receive services.

17. What specific "rights incident to ownership of land" in Indian Territory will the Indians gain under this bill?

The quoted provision, which is found in the last sentence of Section 6207(1), means that the Tribes have all the same rights in their property as any other landowner, including the right to prevent hunting, trespassing or snowmobiling, to lease the land, sell stumps off it, or develop it.

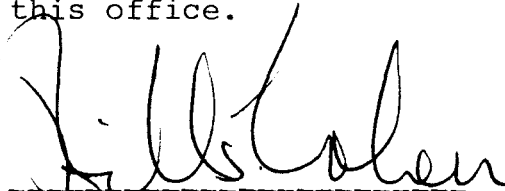
18. What provisions govern the grounds and procedures for civil actions, or custody or domestic relations actions that are within the jurisdiction of the Tribes?

The Tribes are free to establish their own procedures without State regulation but subject to the Federal Indian Civil Rights Act. We assume the Tribes will adopt their own laws regarding minor civil matters and domestic relations as do other Tribes in the county. We understand that the Penobscot Nation now has an operational Tribal Court, employs a lawyer as Tribal judge and that the Court utilizes the Maine Rules of Civil Procedure.

19. What will be the financial obligations of the state after enactment but prior to the effective date of this Act? Will there be an appropriation for transition during FY 1981 or 1982?

The existing State appropriation for Indian programs ends at the end of the current fiscal year. It is unclear whether the State has a legal obligation to fund some or all of the existing Indian programs, until such time as the settlement is implemented and federal funds flow to the Tribes. However, we understand that the Governor is preparing a transitional appropriation for FY 1981 to continue Tribal assistance. Federal funding begins on October 1, 1980, the start of the federal fiscal year.

I hope the answers provided herein are helpful. Please feel free to inquire further of this office.


RICHARD S. COHEN
Attorney General

RSC:mfe

Included in the Record by Committee vote

STATEMENT BY: Former Governor James B. Longley

IN RE: His intention to remain as neutral as possible on the Indian Land Claim Question and yet alert the news media to unanswered questions that need to be answered.

DATE: March 23, 1980

Over the past few days, I have been asked by representatives of the news media, as well as concerned citizens, what posture, if any, I have taken with respect to the most recent proposal regarding the Indian Land Claims against the innocent citizens of Maine.

Candidly, in fairness to the present Governor and Attorney General, I went to the maximum extent possible to remain neutral on this question; yet, I am deeply concerned. I am concerned most of all for the people of Maine and their Legislators to the extent I detect pressure being exerted on them to rush this proposed legislation. I feel that the Legislature should strive to avoid pressure to resolve this question in what might well be too short a time. Furthermore, I would hope the Legislature would not simply pass the buck to Maine's Congressional Delegation or the Congress as a whole as it relates to this question.

The Indian Law Suit against the rest of the citizens of Maine was one of the most difficult issues I faced during my time as Governor. I spent countless hours working with the Maine tribes, Attorney General Brennan and other state lawmakers and members of the Maine Congressional Delegation

and the White House, in an attempt to resolve this dispute in the fairest and most equitable manner possible for the Indian as well as non-Indian citizens of the State of Maine. The issues have not grown simpler, and Governor Brennan and Attorney General Cohen are to be commended for their continued hard work and dedication toward fairness for all as demonstrated by their efforts since I left office.

Just under two weeks ago, the details of an out-of-court settlement of this dispute were released to the news media. Soon, a Joint Select Committee of the Legislature will conduct a hearing on the proposed settlement, and a vote to enact the proposal may soon follow. We would do well to remember that we are dealing with a dispute which has its legal origins in actions taken over two hundred years ago. I hope that after this extended period, the Legislature will not act hastily to approve that which they may not fully understand. There are a number of issues here that must be carefully weighed to insure that we do not plant seeds today, that in future decades or years, even centuries, will return again to haunt us.

I am not speaking in opposition to the latest agreement. I simply want to urge caution by the Legislature and suggest that they proceed carefully with all the time possible to fully review and understand the proposed settlement. Specifically, they must act with full knowledge and understanding of the course of conduct they are urging on the United States Congress. They should not be rushed. Several questions need to be examined thoroughly, including:

(1) Why would \$81 million dollars plus special tax breaks be negotiated by pulp and paper companies and private landowners, with Indian Legal Counsel, without any state involvement?

(2) Why has the price of land been substantially increased from the time I was Governor, when private landowners quoted prices ranging from \$100 to \$112 per acre, vis a vis the present price quoted under this settlement agreement of \$181 per acre. This is a difference of over \$20 million dollars. Who is to receive this money?

(3) To the extent both federal and state taxes are involved, why shouldn't citizens and the news media of Maine have an actual list of:

(a) Land to be purchased and where and from whom?

(b) The price to be paid per acre to individual landowners?

I would submit that the Legislature and the news media and the people of Maine should have these answers before the public hearing.

(4) Why wouldn't it be appropriate for the Legislature to ask the Indian Tribes to submit this claim to the United States Court of Claims without any economic sanctions during the trial, if the Indians refuse whatever Congress recommends? During my term as Governor, the citizens of Maine were subjected to tremendous economic pressure and leverage, and I feel it only fair that the Indian Tribes try to avoid this approach in the future, based on the willingness of the Legislature to submit any bill to the Congress.

(5) Let us not believe that Maine taxpayers will not have

to pay for the \$81 million dollars unless they are not paying Federal Taxes. Let us not say there is not going to be additional tax or cost on the taxpayers of Maine. There will be. Therefore, is it fair to say there is not going to be additional tax imposed on the taxpayers of Maine?

(6) I feel that unless each Maine lawmaker thinks \$81 million dollars is fair, they should search their conscience as to whether it is fair to pass the buck to the Maine Delegation and the United States Congress.

(7) Should the federal government or the Indian Tribes reimburse the State of Maine from any settlement they might receive for the millions of dollars the taxpayers of Maine have paid our Indian citizens due to the fact the federal government in the past refused to recognize our Maine Indians as eligible for federal assistance while still pouring millions of dollars into the western Indian reservations.

Finally, during the time I served as Governor, I was criticized by Indian Legal Counsel for the nation within a nation objective I felt Indian Legal Counsel was seeking. The Indian Legal Counsel consistently criticized my challenge and consistently denied that the nation within a nation concept was one of their objectives. I am now advised, and my study of the proposed legislation to the Maine Legislature confirms, that there is indeed a nation within a nation concept contained within the proposed bill. However, I have also been further advised that the present bill limits the separate nation status that recent court decisions have rendered. While I

disagree with these recent court decisions, I would simply challenge the Legislature to make certain they are not extending separate and preferential laws for Indian Citizens as contrasted with our non-Indian Citizens. If this is so, the State of Maine has indeed rendered favored treatment to one class of citizens, or in effect, endorsed the concept of a second class of citizens vis a vis a first or preferential class of citizens at the expense of the rest of the citizens of Maine.

Once again, I commend the Governor and the Attorney General and I firmly believe each of them is trying to do what is right and fair for all people of Maine. However, I urge each and every legislator to examine this entire proposal very carefully and avoid being pressured or rushed on hasty decisions and matters as important as this for the people of Maine and the entire United States from the standpoint of the precedent that might be set. During the time I was in office, I was advised that there were approximately ninety-five Indian cases pending against the citizens here in the United States. At the time I left office, I was advised that there were 1,500 cases pending against these same citizens of the United States. I am now advised by Senator William Cohen, the Senior Minority Member of the Indian Affairs Committee of the United States Congress, that there are 9,500 cases pending concerning water rights, hunting and fishing rights, land titles, and yes, questions involving nation within a nation, separate rules and laws and ordinances, and I am simply urging the Legislature to weigh not only what is best for Maine but also what our

responsibility is to the entire United States from the standpoint of the precedent we might set. Based on my experience with the Maine Legislature, they will try to do what is right for our Indian citizens as well as our non-Indian citizens. I wish them well in this regard.