

Wabanaki Legal News

A Newsletter of Pine Tree Legal Assistance

Volume 10 Issue 2

www.ptla.org/wabanaki

Spring 2007

IN THIS ISSUE:

- *Criminal Justice Commission at Sipayik*
- *Juvenile Justice on Indian Island*
- *Passamaquoddy Appellate Court Clarifies Eviction Procedure*
- *Fighting Discrimination*

Pine Tree Legal Teams Up With MITSC For Legislative Orientation

by Paul Thibeault, Esq.

On January 25, 2007 I spoke to the Maine Legislature as part of the legislative orientation on Native American issues that was presented by the Maine Indian Tribal-State Commission (MITSC). My piece of the educational session focused on the historical background and basic provisions of the Maine Indian Claims Settlement. I described the legal/political relationship that existed between the tribes and the state and federal governments before the 1980 Settlement, what that relationship might have become if there had been no settlement (including the federal Indian law concepts that would have defined that legal relationship), and gave a description of the major provisions of the Settlement, including the unusual jurisdictional compromise that it created.

Why did I believe that it was worthwhile for a Legal Services lawyer to join MITSC in its effort to educate state legislators about the challenges that confront Native people in Maine? As an attorney who has represented individual Indian people living in poverty, I have learned that when tribal and state governments become embroiled in endless jurisdictional disputes the people who suffer the most are not the governmental leaders or bureaucrats, and certainly not the lawyers who represent the contesting parties. Rather, those who suffer the most are Native people struggling with the daily reality of unemployment, lack of education, poor health and other aspects of unrelenting poverty. They are the neglected citizens of both their tribes and their state, who are seriously harmed by the inadequacy and inefficiency of government services and the lack of sustainable economic development. I joined MITSC to represent them in educating the state legislators about Indian issues.

In the wake of the bitter and contentious casino vote in 2003, MITSC was crippled in its efforts to promote a constructive tribal-state relationship. But that situation is changing dramatically. Over the past year MITSC has been rejuvenated and has made impressive progress in improving the relationship between the state and the tribes in ways that will benefit Pine Tree Legal clients. The new Chairperson of MITSC, Paul Bisulca, and the new Executive Director, John Dieffenbacher-Krall, have shown

Please see **MITSC**, Page 3

MAINE SUPREME COURT DECIDES FRANCIS IV

by Paul Thibeault, Esq. & Michael Guare, Esq.

Since 1996, Pamela Francis, the former Executive Director of the Pleasant Point Passamaquoddy Housing Authority, has been trying to sue the Housing Authority, its former Executive Director, Colleen Dana-Cummings, and several other members of the Passamaquoddy Tribe. Ms. Francis' case began with her termination from her position as Executive Director and evolved into a dispute over the ownership of her former residence on the reservation. The case has now been to the Maine Supreme Court four times. In each of the first three cases, the Maine Supreme Court addressed the limitations of state court jurisdiction over "internal tribal matters" as set forth in the Maine Indian Claims Settlement Act.

In its first three opinions (*Francis I, II, and III*), the housing authority and the other defendants argued that Ms. Francis' claims involved internal tribal matters and asked the Maine Supreme Court to dismiss her claims, but the Court refused to do so. In *Francis I*, the Court found that the housing authority could not take advantage of the protections of section 6206 of MICSA because the housing authority was not a branch of the Passamaquoddy Tribal government. In *Francis III*, the Court held that MICSA protections against the authority of Maine's courts did not apply to individual members of the Tribe.

In this latest decision in *Francis IV*, the Court attacked the issue of sovereignty over "internal tribal matters" in a different way and with a different result. The Court clarified that section 6206(1) of the Settlement only protected the Tribe, and that the protections could not be used by other entities or individuals to protect themselves from the jurisdiction of the Maine courts. However, it went on to say that, "[w]hile only the Tribe may benefit from the prohibition on regulation of internal tribal matters addressed in section 6206(1), any party may assert that a court of the State lacks jurisdiction over a particular claim because court action on the claim would cause prohibited state regulation of an internal tribal matter."

The Court then allowed the Passamaquoddy Tribe to intervene in the case so that the Tribe will be able to make arguments and offer evidence "regarding whether the court is being asked to regulate an 'internal tribal matter.'"

The language in the Maine Indian Claims Settlement legislation concerning "internal tribal matters" has been the most controversial piece of the Settlement and has generated several divisive and expensive law suits. Shortly after the Settlement a profound disagreement emerged between tribal and non-tribal parties concerning the meaning of the "internal tribal matters" provision. Section 6206(1) states:

Except as otherwise provided in this Act, the Passamaquoddy Tribe and the Penobscot Nation, within their respective Indian territories, shall have, exercise and enjoy all the rights, privileges, powers and immunities...of a municipality of and

Please see **Francis IV**, Page 3

Partnership With Sipayik Criminal Justice Commission

by Paul Thibeault, Esq.

Staff members from the Native American Unit continue to work closely with the Sipayik Criminal Justice Commission (SCJC) on a range of issues concerning the treatment of Native people in the state criminal justice system and correctional facilities. There have been several new developments since the last edition of The Wabanaki Legal News.

Strip Searches In County Jails: One of the most serious problems that tribal members brought to the Commission was strip searches at the Washington County Jail. In response to concerns raised by the SCJC, as well as litigation filed by other parties concerning abusive jail search practices, the Maine Department of Corrections proposed new strip search rules for county jails. The SCJC submitted its own written comments on the proposed rules, as did the Maine Civil Liberties Union and Pine Tree Legal Assistance. The final rules for jail searches were adopted effective October 9, 2006. Several of the rules were changed as a direct result of the intervention by the SCJC.

The definition of strip search was modified to make it clear there may be no touching of an arrestee, except in connection with a manual mouth search. Language was added requiring law enforcement personnel to treat arrestees with respect and to minimize embarrassment and indignity during searches. A statement was added to clarify that constitutional law applies when the rules do not cover an issue. A requirement was added that, when searches are conducted by consent, a written consent form must be used and maintained by the law enforcement agency for a minimum of seven years. The definition of strip searches was also changed to make it clear that the visual inspection of male genitals and any private areas of an arrestee's body constitutes a strip search that is subject to the rules.

Although numerous other comments were not actually adopted as new language in the rules, the official written responses by the Department of Corrections make it clear that the rules should be interpreted in a way that provides more protection for the rights of persons who are searched. For example, the comments make clear that the grievance procedures for jails are applicable to strip searches. (All jails in Maine must have grievance procedures in place.) The comments also confirm that the only persons that can

be present during a strip search are those that are specifically listed in the record keeping section of the rules.

Washington County Jail Investigation: In 2006 the Commissioner of Corrections authorized an investigation into allegations that the SCJC presented concerning abuse and neglect of Native American prisoners at the Washington County Jail. The problems include improper conduct of searches, and generally inadequate medical care including interference with on-going medical care for diabetics and others with special medical needs, and inappropriate treatment of prisoners who are going through detox while in jail. The investigation has been completed and a written report is expected soon. The SCJC is cautiously hopeful that corrective actions will be promptly and constructively implemented. The SCJC has established a positive working relationship with the new Sheriff in Washington County. He has been responsive to criticism and receptive to suggestions on ways to improve services to Native people. But in any event the SCJC will continue its advocacy concerning the Washington County Jail. At the time of this writing a meeting is scheduled at the Washington County Jail with the Deputy Commissioner of Corrections.

Religious Rights of Native Prisoners: Last year the SCJC began in-person discussions with the Commissioner of Corrections and other state officials concerning unreasonable limitations on the rights of Native prisoners to practice Native spirituality. Progress has been made, but much remains to be done. Access to Native spiritual leaders and spiritual materials has been improved. The DOC has agreed to work towards a mechanism for Sweat Lodges and Sacred Feasts. A sweat lodge is currently being planned at the Bolduc Unit. There is also agreement to create channels for the Tribes to send medicines, as well as both language and religious books and tapes.

But there is still no agreement concerning critical issues including sweat lodge ceremonies at Maine State Prison in Warren. Sacred Feathers, an inmate advocacy group at Warren, recently filed a federal lawsuit because they are dissatisfied with the responses from the Department of Corrections. That lawsuit is independent of the on-going advocacy efforts by the SCJC.

The Passamaquoddy Representative to the Maine State Legislature, Donald Soctomah, is working in collaboration with the SCJC. Along with the Penobscot Representative,

Please see **Sipayik**, Page 4

Wabanaki Legal News is online @:
www.ptla.org/wabanaki

Visit our website:
www.ptla.org/wabanaki and follow
the "Subscribe" link.

Or contact Rachelle Parise at:
rparise@ptla.org

- Subscription is FREE!
- Receive email updates
- Stay informed



Fair Housing Tester Training to take place at Pleasant Point.

Fair Housing testing is a way to find out if landlords are discriminating. Testers are trained as investigators. Two testers - one Native American and one white - separately approach each targeted landlord to compare how they are treated. **Each tester is paid \$25.00 for the training and \$30.00 for each test performed.**

Friday, April 20, 2007 - 10:00 am
Pleasant Point Housing Authority Conference Room

For more information contact Rachelle Parise at 774-8211 ext.
1265 or rparise@ptla.org

MITSC

Continued from Page 1

outstanding leadership and personal commitment. Despite large obstacles such as inadequate funding, they are actively working on several important new initiatives, including the Tribal-State Work Group that is currently considering changes to the Settlement legislation that would address problems that were identified at the 2006 Assembly of Governors and Chiefs.

MITSC has faced many challenges that have interfered with its intended purpose to help shape the new and evolving tribal-state relationships. Inadequate funding has been a major problem from the outset. The federal government does not provide funding. Only the state is legally required to fund MITSC and the annual state appropriation is less than \$35,000. Even with voluntary contributions from the tribes, MITSC is chronically underfunded. How can MITSC be expected to have a serious impact on complex tribal-state issues if it lacks sufficient funding to maintain even basic operations? MITSC is currently seeking additional funding so that it can carry out the critical responsibilities outlined in the Settlement legislation in a manner that MITSC finds to be effective.

Despite its on-going funding problems, MITSC has shown that it is committed to finding workable solutions that will benefit all people in Maine, tribal and non-tribal alike. Perhaps the biggest obstacle is the fundamental disagreement that has emerged between tribal and non-tribal interests concerning the intent of the "internal tribal matters" provision in the Settlement. That basic disagreement has generated many years of jurisdictional confusion and conflict, as well as expensive litigation that has wasted valuable tribal and state resources that could have been better utilized to improve conditions for Native people who need jobs, housing and better government services. The on-going disputes have centered on the extent to which the Settlement was intended to limit the sovereign powers of the tribes, especially in activities that have potential impact outside of the tribal communities. The parties on both sides maintain fervently that properly defining the scope of "internal tribal matters" is critical to accomplishing the overall purposes of the new inter-governmental relationship that was established by the Settlement.

MITSC was created with the express mission to continually review the effectiveness of the Settlement with respect to the economic, social and legal relationship between the tribes and the state. As a legal advocate for poor people, I believe that supporting the strong role that was originally intended for MITSC is in the best interests of the many Native people in Maine who are still living in poverty 27 years after the Settlement.

Francis IV

Continued from Page 1

subject to the laws of the State, provided, however, that internal tribal matters, including membership in the respective tribe or nation, the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections and the use or disposition of settlement fund income shall not be subject to regulation by the State.

The disagreement between the state and the tribes has centered on the extent to which the Settlement was intended

to limit the inherent sovereign powers of the tribes, especially in activities that may involve non-Indians and have potential impact outside of the tribal communities. The state interpretation would limit the meaning of the words "internal tribal matters" to the areas listed in section 6206 - membership in the tribe or nation, residence within Indian territories, tribal organization, tribal government, elections, and the use of settlement funds. Further, the state and other parties allied with the state, such as paper companies, have maintained that, except for internal tribal matters, Section 6206(1) essentially replaces the tribes' sovereignty with the status of a Maine city or town.

Supporters of tribal sovereignty believe that the state government's interpretation of "internal tribal matters" contradicts the spirit of the Maine Indian Claims Settlement. They believe that the state's interpretation of tribal control over internal matters is overly narrow and is not consistent with the principles of federal Indian law that provided the historical and legal context of the Settlement. Federal Indian law has been guided by the belief that laws must specifically state that they apply to Indian tribes in order for them to be used to regulate tribal activity. From the viewpoint of tribes, the state of Maine's narrow interpretation of sovereignty has resulted in unnecessary interference with the efforts of the tribal communities to preserve their culture, protect their natural environments, and improve economic conditions for Native people.

Tribal advocates have maintained that the tribes would never have given up their basic sovereignty for the Settlement. They would never have entered into the Settlement, if they had understood it to mean that tribal sovereignty under federal law would be exchanged for rights only equivalent to that of any city or town in Maine and subject to state laws like any city or town. Tribal advocates also argue that the provision for municipal status (in which the internal tribal matters language appears) was primarily intended to be a grant of new authority to the tribes so that they would have access to municipal funding sources.

The Washington County Superior Court will now have to examine all of the relevant facts to determine which, if any, involve internal matters. Ms. Francis' case involves tribal housing that is situated on trust land, and serves exclusively, or almost exclusively, tribal members. Since 1996, this trust has been operated under a uniquely Indian housing program, NAHASDA. These facts should figure prominently in the Superior Court's analysis and the final resolution of this case.

PAUL THIBEAULT'S OUTREACH SCHEDULE

Indian Township-Clinic at Peter Dana Point:

1st and 3rd Tuesdays 9am - 1pm

Sipayik Tribal Courtroom:

2nd and 4th Tuesdays 9am - 1pm

PETER SABONIS' OUTREACH SCHEDULE

Indian Island-Tribal Court:

March 28th, 1pm - 5pm

Or for an appointment, call 942-8241 ext.217

Tax Tips 2007

KEEP YOUR REFUND!

- Don't pay for "rapid refund"
- Use tax filing assistance in your area
- File for free online
- File for all available tax credits

AARP Tax-Aide To find the site nearest you, call 1-888-687-2277 or go online at www.aapr.org/taxaide.

IRS-VITA (*Volunteer Income Tax Assistance*) To find the site nearest you, call 1-800-829-1040 Or online at www.ptla.org/PDF/vita.pdf

www.ptla.org/ptlasite/tax/taxtips.htm

DON'T IGNORE TAX NOTICES!

- Has the IRS denied your claim for the Earned Income Credit?
- Have you been notified of a "tax deficiency"?
- Do you have a tax debt that you are unable to pay?
- Do you and your employer disagree about whether you are an independent contractor?
- Are you being audited?

If you have questions about any of the above call the Native American Unit at: 1-800-879-7463 for a referral to Pine Tree's **Low Income Taxpayer Clinic**.

www.ptla.org/ptlasite/taxpayer/litc.htm

The Native American Unit at Pine Tree Legal Assistance

gives free legal help to poor Native Americans. The unit's priorities are cases involving an individual's status as a Native American, including:

- ◆ *Race discrimination in employment, housing, public accommodations, education and credit*
- ◆ *Jay Treaty / cross border rights*
- ◆ *Tribal housing*
- ◆ *Indian Child Welfare Act (ICWA) issues*
- ◆ *Civil rights violations*

Call us at 1-800-879-7463. Contact information for Pine Tree's statewide offices can be found on page 8.

The **Wabanaki Legal News** is published by Pine Tree Legal Assistance, Inc. The views expressed by individual authors in this newsletter are not necessarily shared by Pine Tree Legal Assistance or its staff.

Executive Director of PTLA: Nan Heald, Esq.

PTLA Native American Unit
Directing Attorney:
Staff Attorneys:

Eric Nelson, Esq.
Judith Plano, Esq.
Mike Guare, Esq.
Paul Thibeault, Esq.
Jeff Ashby, Esq.
Peter Sabonis, Esq.
Danny Mills

KIDS Attorney:
Paralegal:

SIPAYIK

Continued from Page 2

Donna Loring, he has introduced state legislation that would require state prisons and jails to make reasonable accommodations for Native American religious practices. The SCJC and Pine Tree Legal Assistance will be providing testimony to the Judiciary Committee in support of the legislation.

Relationship with the Maine Indian Tribal-State Commission (MITSC): Pine Tree Legal and the Sipayik Criminal Justice Commission have been working closely with MITSC on criminal justice and corrections issues. MITSC has been very supportive of SCJC's advocacy for Native people. MITSC has been closely monitoring the response of state officials to the SCJC's request for investigation of the Washington County Jail as well as the on-going discussions on access to Native religion in the state prisons and jails. MITSC is proving to be a valuable statewide resource on these critical issues. (See the front page article on the new initiatives MITSC has taken under the leadership of Paul Bisulca, the first Native American Chairperson of MITSC.)

Fighting Discrimination Against Native Americans

Over the past few years, Pine Tree's Native American Unit has worked to bring discrimination cases on behalf of Native Americans in Maine in the areas of employment, housing, education, and public accommodations. Anyone who has experienced discrimination knows that it can be subtle. Usually the person or organization accused of discrimination does not come out and say, for example, "I fired you because you're Indian." Native Americans know that it is common in Maine to be passed over in line at a store, to wait longer than others to be served at a restaurant, to hear nothing after leaving a message about an apartment, to be told that a unit is suddenly rented when you arrive to look at it. Yet even though such discrimination is subtle and perhaps more difficult to prove, it is still illegal, and it is very important to keep fighting it at every turn.

If you believe you have been discriminated against because you are a Native American, please call us right away. Also, it is very important to gather information about the discrimination as soon as possible. Write down the specific date, time, and place when the discrimination occurred. Be sure to get the name or write down a physical description (height, weight, hair color, age, glasses?, etc.) of the offending person. Also, get the names and phone numbers of witnesses who observed or heard it. Often times a case will turn on whether there are witnesses.

Native American Unit attorneys have brought discrimination cases before the Maine Human Rights Commission and the courts and have achieved some significant results. We intend to keep bringing discrimination cases in the hope that they will continue to break down barriers to equal treatment. Win or lose, it is important to this generation, and to future generations, to fight illegal discrimination.

EDITORIAL

Cheap Shot or Reality? Two Systems of Juvenile Justice

by J. Peter Sabonis, Esq.

A 16 year old Glenburn boy takes a gun from his grandparents, goes on an 8 day spree of burglaries and vehicle thefts over four counties, assaults an adult with an ax, and sets off a massive manhunt which prompts fearful school officials to close four schools. The boy is found, arrested and charged with 31 criminal counts. If tried as an adult, the boy would face up to 30 years in prison on one charge alone. After the youth's psychological evaluation indicates he would benefit from rehabilitation at Mountain View Correctional Facility, the State of Maine decides not to try him as an adult. He gets 2 1/2 years in Mountain View.

A 16 year old Indian Island boy takes a gun and, with a group of colleagues, forces his way into a Bangor drug dealer's residence and demands, at gun point, the occupants hand over "drugs and money." The gun is not loaded. The police respond to a 911 call and burst through the door, catching the Island youth, but not his accomplices. He is charged with three crimes. If tried as an adult, the boy faces up to 30 years in prison on one charge alone. After the youth's psychological evaluation indicates he would benefit from rehabilitation at Mountain View Correctional Facility, the State of Maine decides nevertheless to charge him as an adult.

Why the different treatment? Is it because the Indian Island child is Native? When I raised this to the Penobscot County Assistant District Attorney, who made the decision to treat the Native child differently, he called it a "cheap shot."

I think not. A cheap shot is something that is unnecessarily aggressive or beyond the bounds of fair play. Calling public officials' attention to different treatment that has racial implications is important and necessary. Freedom from discrimination is a fundamental right under the U.S. Constitution. Further, there is a fundamental notion that the State will treat like crimes alike. Ah, but there's the rub. These are not like crimes, says the Assistant District Attorney. The Native child had threatened others with a gun drawn (but not loaded), and the arresting officers were braced for a shoot-out that may have produced fatalities. The seriousness of this crime alone requires the State to put the Indian child in Adult prison.

I disagree. But even if I were to agree with the Assistant District Attorney, just for the sake of argument, the different treatment of the two youths raises the specter of another, more insidious, form of discrimination: institutional. Let me explain.

Institutional discrimination or racism is a form of discrimination that's simply built into the system. The Indian Claims Settlement Act, regardless of its intent, has produced two different systems of juvenile justice in this state: one for Native kids, and another for non-Native.

Native youth who commit misdemeanor offenses on

Reservations are tried, with a few exceptions, in Tribal Court. A felony offense, even on the reservation, is tried in State Court. This is the law under the Settlement Act. Most youth who have criminal problems, Native and Non-Native, fall into a typical pattern: Problems in school (oftentimes due to undiagnosed special needs or family issues), disinterest in school, association with others who are disinterested in school, risk-taking behavior, involvement with the law on minor charges, increased risk taking behavior and criminal involvement, and then major criminal involvement. The Settlement Act guarantees that a Penobscot youth who follows this path will enter the State system with a splash -- a felony.

But what came before the splash for a Penobscot youth is different than for a youth off the Island. A youth off the Island who gets involved with the police on minor, misdemeanor infractions, will get some service interventions in an attempt to prevent this pattern of increasingly more serious criminal behavior. The Island youth will not. Why? Because of the different level of resources committed to the two systems.

Let's take a typical example involving the two 16 year olds at the start of this article. Let's say each was arrested at 15, with criminal trespassing charges and each was found possessing alcohol or having consumed it at the time of arrest. The non-Native child will be assigned a Juvenile Community Corrections Officer (JCCO) from the state Department of Corrections, who will interview and evaluate the youth. This evaluation will use tests to determine the youth's substance abuse involvement (known as a JASAE) and/or his mental health (MASAE). Should these evaluations show the non-Native youth to be "at risk" for further substance abuse, the JCCO may direct the youth to a treatment program and recommend that it be court-ordered. Alternatively, should the youth show significant family problems that leave him unsupervised, the JCCO may explore involvement by DHHS, and again, recommend it be court-ordered. While this may not deter the youth from further criminal involvement, there is an attempt to get at the root of the problem.

The Penobscot youth tried in the Tribal Court system will not get any of this. The system, as it is currently funded and configured, employs a "part-time" Juvenile intake officer who doubles as Tribal Court Director. No JASAE or MASAE is used to evaluate the youth, no significant substance abuse treatment targeted for youth exists on the Island, and DHHS is not court-ordered into situations where lack-of-supervision is the sole issue. Until recently, most agencies would not even supervise Tribal youth, so they did not even have the option of community service. Sure, families with troubled youth on the Island may get

Please see **Editorial**, Page 7

IMPORTANT NOTICE If you have MAINECARE or will be applying for MAINECARE

**Native American recipients are exempt
from co-pays. Let DHS caseworkers know
that you are Native American in order to
take advantage of this exemption.**

TRIBAL APPELLATE COURT VICTORY

On February 19, 2007 the Passamaquoddy Appellate Court upheld the dismissal of an eviction action filed by the Housing Authority at Indian Township. The tenant was represented by the Native American Unit.

Previously the trial judge, Rebecca Irving, had dismissed the complaint on the grounds that the Housing Authority had failed to provide the tenant a proper notice of termination as required by its own written policies. The Housing Authority appealed that ruling. While upholding the decision by Judge Irving, the Appellate Court went further to clarify the procedural rights of tribal housing tenants.

The Court found that the Housing Authority had failed to give proper written notice of its intention to seek termination of the lease. It also found that its staff had no independent authority to terminate the lease without approval by the Housing Board, and that the tenant was denied the due process to which she was entitled under the terms of the Indian Township Passamaquoddy Housing Authority Manual. The Appellate Court confirmed Judge Irving's finding that the Manual requires a written 30-day notice of termination that includes explicit information about the tenant's right to request both informal and formal hearings with the Housing Board. It also confirmed that, only after the Housing Authority complies with the procedures required by the Manual, may it file a complaint for eviction in the Tribal Court. The Appellate Court stated that the termination notice that was given in this case was "grievously flawed in that it erroneously stated that the [the tenant's] lease was terminated in seven (7) days and it fails to account for the fact that only the Housing Authority Board of Commissioners, not the Housing Authority staff, has the power to terminate the lease."

This decision clarifies other questions of law as well. First, it states that, given the nature of Maine winters, the lease requirement that a tenant not leave a unit empty for more than 14 consecutive days is reasonable. Second, the court states emphatically that the Tribe has the authority to control tribal housing as an internal tribal matter within the meaning of the Maine Implementing Act and that the tribal Housing Code supersedes conflicting State of Maine laws that may have applied to tribal housing prior to the enactment of comprehensive tribal housing laws. The court completely rejected the Housing Authority's contention that the Tribal Court should ignore the tribal housing laws and policies and instead follow state law as it applies to eviction actions against tenants-at-will as defined under Maine law.

The decision in this case is an important victory for tenants in tribal housing. It requires the Housing Authority to strictly follow the due process requirements of the written policies that the tribe has adopted pursuant to its sovereign powers, and not to arbitrarily apply state law when it might be more convenient in evicting a tribal tenant. In the past the Housing Authority, under different tribal leadership, had failed to follow a coherent and fair process for eviction that complied with its own written policies, the due process standard of the Indian Civil Rights Act, and the lease requirements of the federal Native American Housing and Self-Determination Act. The tribal courts have now brought clarity to a situation that was confusing not only for

the tenants but also for the staff and board at the Housing Authority. Hopefully these decisions will be welcomed by all concerned, including the new leadership at the Housing Authority, and will provide the structure for fair and consistent eviction procedures at Indian Township.

CALIFORNIA TRIBE LOSES MAJOR SOVEREIGNTY CASE

On February 9, 2007, the D.C. Circuit Court of Appeals decided that federal labor law applies to tribes and businesses run by tribes, such as casinos. The San Manuel Band of Mission Indians of California operates a casino on its reservation. A union wanted access to casino employees to organize them. The union argued that the tribe violated the National Labor Relation Act (NLRA) by excluding the union.

Judge Janice Brown, an appointee of President Bush, wrote the decision for the majority in *San Manuel Indian Bingo and Casino v. National Labor Relations Board*. If upheld on appeal, the decision could make sweeping changes to tribal sovereignty. It would greatly expand the federal government's right to regulate tribal businesses, and possibly other tribal matters.

The San Manuel Band argued that a federal law should not apply to a tribal enterprise unless Congress had clearly stated that intent. Because the NLRA does not mention Native American tribes, they argued, it should not apply to tribal businesses. The San Manuel Band maintained the position that any ambiguity in federal labor law should favor tribes.

The court greatly weakened this principle. It decided that federal laws can regulate the business ventures of a tribal government without impairing tribal sovereignty. According to the court, sovereignty does not involve operating a casino. The court agreed that operating a casino is a tribal government undertaking, but the court drew a distinction between acts of governance that only affect tribal members or internal matters and acts that affect non-members. The court said, "[f]irst, operation of a casino is not a traditional attribute of self-government. Rather, the casino at issue here is virtually identical to scores of purely commercial casinos across the country. Second, the vast majority of the Casino's employees and customers are not members of the Tribe, and they live off the reservation."

The court viewed tribal sovereignty not as an inherent power to act as a government but merely as a means to preserve Indian culture. "The principle of tribal sovereignty in American law exists as a matter of respect for Indian communities. It recognizes the independence of these communities as regards internal affairs, thereby giving them latitude to maintain traditional customs and practices. But tribal sovereignty is not absolute autonomy, permitting a tribe to operate in a commercial capacity without legal constraint."

If the decision is not reversed, tribes in states such as Michigan, Connecticut, Washington, and Florida will likely need to draft labor relations agreements and laws that comply with the NLRA. The San Manuel Band could ask for a rehearing by the three-judge panel or ask a full panel of the D.C. Circuit to hear the case. The tribe could also petition the Supreme Court for review.

EDITORIAL

Continued from Page 5

directed to Wabanaki Mental Health Ass'n or WINGs, but these programs provide case management (coordination of referrals), not services; and these referrals are rarely initiated by the Tribal juvenile justice system.

So the Indian Island youth and the Glenburn youth most likely will have different service-intervention histories by the time they stand before a State judge facing felony charges. For the Glenburn youth, the court appearance is, most likely, another step in a series of repeated vain attempts to help the youth through treatment, counseling, and other services. For the Indian Island youth, the court appearance is his first step into the State system after a downward spiral uninterrupted by interventions or services.

Into this system steps an Assistant District Attorney who wants to portray himself as tough on crime and thinks that pointing a gun is far more serious than carrying one, and who thinks that scaring police officers is far more serious than scaring school systems. And so he decides the Indian Island youth deserves to be tried as an adult, but not the Glenburn youth. The Assistant District Attorney, given the benefit of the doubt, is color blind. The system that produced each child, however, is not.

J. Peter Sabonis is an attorney with KIDS LEGAL, a project of Pine Tree Legal Assistance. KIDS provides free legal representation for Tribal youth charged with offenses in Tribal and State courts, and represents parents of Tribal children in Special Education cases. Comment on this article, or add your own articles or columns at www.wabanaki.pbwiki.com. The password is "Gluskap," and is provided on the website if you forget.

Sabonis maintains office hours in Tribal Court once a month. His next visit is March 28, 2007, from 1:00 p.m. to 5:00 p.m. Drop-in or schedule an appointment by contacting Sabonis at 942-8241 ext. 217 [psabonis@ptla.org] or the Tribal Court Clerk.

Maliseet Health Clinic	532-4229
Maliseet Head Start Program	532-2410
Maliseet Housing Authority	532-9140
Indian Child Welfare	532-7260 or cell: 866-3103
Social Services and LEAD	532-7260 or 1-800-532-7280
Domestic Violence Program	532-6401 or 694-1353(24 hour)

PENOBSCOT INDIAN NATION:

<i>www.penobscotnation.org</i>	
Administration	827-7776
Indian Health Services	827-6101
Penobscot Housing Dept.	817-7370
Penobscot Human Services	817-7492
Indian Island Police Dept	817-7358(emergency #)
Mental Health Services	817-7430
Domestic Violence	817-7491

PENOBSCOT TRIBAL COURT SYSTEM

Director of Tribal Court	817-7342
Clerk of Courts	817-7329
Tribal Prosecutor	945-5502
Probation Officer	817-7342
Juvenile Intake Officer	817-7342

PASSAMAQUODDY TRIBE:

<u>PLEASANT POINT</u> <i>www.wabanaki.com</i>	
Administration	853-2600
Pleasant Point Health Center	853-0644
Emergency:	853-4811
Pleasant Point Housing	853-6021
Domestic Violence-Peaceful Relations	853-0644 ext. 555 or 274
Emergency:	853-2613
Police Department	853-2551
Social Services	853-2600 ext. 264

TRIBAL COURT SYSTEM

<i>www.wabanaki.com/tribal_court.htm</i>	
Clerk of Courts	853-2600
Probation Officer	853-2600

INDIAN TOWNSHIP *www.passamaquoddy.com*

Administration	796-2301
Indian Township Clinic	796-2321
Indian Township Housing	796-8004
Indian Township Child Welfare	796-5079
Police Department	796-2704

TRIBAL COURT SYSTEM

<i>www.wabanaki.com/tribal_court.htm</i>	
Clerk of Courts	796-5600
Probation Officer	796-5600

STATEWIDE CRISIS SERVICES

HEALTH & HUMAN SERVICES

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

DOMESTIC VIOLENCE

Maine Coalition to End Domestic Violence	1-866-834-HELP(24 hour)
Spruce Run	1-800-863-9909
<i>Penobscot County</i>	
Battered Women's Project	1-800-439-2323
<i>Penobscot County</i>	
The Next Step	1-800-604-8692
<i>Washington County</i>	

RAPE CRISIS SERVICES

Rape Response Services	1-800-310-0000
<i>Penobscot County</i>	
Sexual Trauma & Recovery Svcs.	1-800-550-3304
<i>Aroostook County</i>	
Downeast Sexual assault Svcs.	1-800-228-2470

AROOSTOOK BAND OF MICMACS:

www.micmac-nsn.gov

Administration	764-1972
	1-800-355-1435
Micmac Head Start Program	768-3217
Health Department	764-7219
	1-800-750-1972
Micmac Housing	768-3217
Child and Family Services	764-1972

HOULTON BAND OF MALISEET INDIANS:

www.maliseets.com

Administration	532-4273
	1-800-564-8524(in state)
	1-800-545-8524(out of state)
Maliseet Health Department	532-2240
	1-800-640-2266

Washington County

OTHER SERVICES

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

HOME HEATING ASSISTANCE & ELECTRICITY ASSISTANCE

The Federal Fuel Assistance Program gives fuel assistance money to residents who need help with fuel bills. The program is called LIHEAP (Low Income Energy Assistance Program). To find out if you qualify, call your Tribal Office or call your nearest Community Action Program (CAP). Maine's electrical power suppliers also offer low-income assistance administered through the CAP agencies.

Low Income Telephone Service Help:

If you qualify for Food Stamps, MaineCare, TANF, SSI or Fuel Assistance, speak to your local CAP agency to see if you qualify for a reduction on your monthly telephone bill.

Washington/Hancock CAP <i>energy@whcacap.org</i>	664-2424
Penquis CAP	973-3630 1-800-585-1605
Aroostook County CAP Presque Isle	764-3721 1-800-432-7881
Houlton	532-5311
Fort Kent	834-5135
Madawaska	728-6345

LEGAL SERVICES

PINE TREE LEGAL ASSISTANCE

www.ptla.org
 Pine Tree Legal represents low-income people with civil legal problems including:

- ♦ Eviction from public housing.
- ♦ Home foreclosures
- ♦ Discrimination
- ♦ Domestic Violence
- ♦ Loss, reduction or denial of government benefits
- ♦ Problems with Medicare or Medicaid
- ♦ Special Education or Public Education

Portland: 774-8211	Lewiston: 784-1558
Augusta: 622-4731	Bangor: 942-8241
Machias: 255-8656	Presque Isle: 764-4349
Native American Unit & Farm worker: 1-800-879-7463	

VOLUNTEER LAWYERS PROJECT

www.vlp.org 1-800-442-4292
 If you meet its eligibility requirements, the VLP can give you legal advice or informational materials for free. In some cases the VLP may provide a referral to a private attorney for free representation.

Intake hours are:

Monday, Wednesday, Friday 9am to 12pm
 Tuesday and Thursday 1pm to 4pm

MAINE LAWYER REFERRAL AND INFORMATION SERVICE

www.mainebar.org/lawyer_need.asp 1-800-860-1460
 For a \$25.00 fee, you can be referred to a lawyer in your area. The first half-hour of consultation is free.

LEGAL SERVICES FOR THE ELDERLY

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

PENQUIS LAW PROJECT

www.penquiscap.org 1-800-215-4942
 This group gives legal representation to low and moderate income residents of Penobscot and Piscataquis Counties in cases involving

domestic relations, including divorce, protection from abuse, child support and visitation. Priority is given to people who have experienced or are experiencing domestic violence, sexual assault or stalking.

DISABILITY RIGHTS CENTER

www.drme.org 1-800-452-1948
 This group offers advice and legal representation to people with disabilities.

BANGOR COURT ASSISTANCE PROGRAM

www.ptla.org/ptlasite/cliented/family/pclsa.htm 941-3040
 Volunteers are available at the Bangor District Court once a month to help you fill out family law and small claims court forms, serve forms, calculate child support, and answer questions. Upcoming dates: March 7th, April 4th, May 9th, June 6th, from 12-1:30pm. Or call Holly Jarvis at the Bangor District Court.

OTHER COMMUNITY RESOURCES

WABANAKI MENTAL HEALTH ASSOC.

www.wabanaki.org 888-291-4965 PIN # 3076
 990-0605

NATIONAL ASSOC. OF INDIAN LEGAL SVCS.

www.judicare.org/nails.html

MAINE INDIAN TRIBAL STATE COMMISSION

www.mitsc.org 394-2045

SOCIAL SECURITY ADMINISTRATION

www.ssa.gov/reach.htm
Statewide 1-800-772-1213
Bangor Area 990-4530
 941-8698 (TTY)
Presque Isle Area 764-3771
 764-2925 (TTY)

MAINE HUMAN RIGHTS COMMISSION

www.state.me.us/mhrc/index.shtml 1-800-827-5005

MAINE CIVIL LIBERTIES UNION

www.mclu.org 774-5444

MAINE ATTORNEY GENERAL'S OFFICE

www.maine.gov/ag
Consumer Mediation Service 626-8849
Lemon Law Arbitration Program 626-8848

MAINE PUBLIC UTILITIES COMMISSION

www.state.me.us/mpuc/consumer/cad.html
Utility Service Complaints 1-800-452-4699

EMPLOYMENT/LABOR INFORMATION

CAREER CENTERS

www.mainecareercenter.com
Bangor 561-4050
Calais 454-7551
Houlton 532-5300
Machias 255-1900
Presque Isle 760-6300

STATE BUREAU OF LABOR STANDARDS

www.maine.gov/labor/labor_laws/wagehour.html
Wage/Child Labor Complaints 624-6400

US DEPT. OF LABOR (wage and hour division)

www.dol.gov/esa/whd/ 1-866-4USWAGE