

# Wabanaki Legal News

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A Newsletter of Pine Tree Legal Assistance

Fall 2016

## Traffic Stop Leads to Favorable Plea Deal

By Ethan Plaut, Esq.

Pine Tree continues to represent tribal members charged with crimes in tribal courts, through its Native American Indigent Legal Services or “NAILS” grant. Pine Tree Legal has been fortunate to get interesting and rewarding cases through that work, and to help protect the rights of individuals charged with crimes in tribal courts. On a recent case, Pine Tree argued that the rights of a criminal defendant had been violated. By doing so, Pine Tree secured a client an extremely favorable plea agreement.

When a police officer stops a vehicle, that officer needs a reason to do so. In most situations, the law says the officer needs what is called a “reasonable articulable suspicion.” If an officer stops a vehicle without reasonable articulable suspicion of either a crime or a traffic violation, any evidence the officer gets after the stop may be suppressed. That means a court will not allow it to be used in at trial. In some cases, this can hurt the prosecution of a case so badly that it leads to a dismissal of criminal charges.

If, during a traffic stop, an officer wants to make an arrest, he needs even more than reasonable suspicion to do so. He or she needs what is called “probable cause.” Again, if the officer makes an arrest without probable cause of a crime, any evidence that the officer gathers during or after the arrest cannot be used at trial. It is important to note that an officer does not have to use the words “you’re under arrest” to trigger this rule. While the boundaries are not perfectly clear, if you are not free to go, then you are under arrest. Certainly if an officer puts handcuffs on someone and places that person into a police cruiser for

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## Pine Tree Legal’s Services for Veteran and Military Families

By Rob Liscord

Have you or someone you love served in the military? Twenty percent of Maine’s Native Americans have served in our armed forces. Native Americans serve at a higher rate than any other group. In 2016 Pine Tree Legal was able to expand its services specific to veteran and military families under two projects. We are able to connect with veterans from Kittery to Fort Kent,

First, in early 2016 we launched a new partnership with the VA Healthcare System.

Our newest project is a medical-legal partnership with the Department of Veteran Affairs Healthcare system in Maine. This project follows the national medical-legal model—Pine Tree staff work closely with VA Medical staff to identify the social and legal issues that affect a veterans health. Once a medical provider identifies a concern, they quickly can make a referral to Pine Tree’s staff to look into the legal situation. Do you or someone you love get medical care through the VA? Are you facing a legal challenge that effects your physical or mental wellbeing? Ask your VA clinician for a referral to Pine Tree’s Veteran Unit.

Our second initiative is in partnership with Preble Street Veteran Housing Services. Some may know Preble Street as the Portland based homeless services agency However, in 2013 they began expanding their work with veterans facing homelessness around the state. Now in the fall of 2016,

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## What is Happening at Standing Rock?

By Jeff Ashby, Esq.

The Standing Rock Sioux Tribe is protesting a pipeline that would run from North Dakota’s oil fields to a refinery 1,100 miles away in Illinois. The Dakota Access Pipeline would disrupt Indian burial sites and would have passed under the Missouri River upstream from the reservation, threatening to contaminate the tribe’s water supply.

Supporters of the pipeline, owned by Energy Transfer Partners, said the project offers the fast and most direct route for bringing Bakken shale oil from North Dakota to U.S. Gulf Coast refineries and would be safer than transporting the oil by road or rail.

Dakota Access is the company building the \$3.7 billion pipeline. The project was initially planned to pass by Bismarck, North Dakota. It was rerouted toward the Sioux reservation to protect local water supplies around the state capital.

The Sioux responded by protesting, and they have been joined by demonstrators from more than 100 other tribes. Many natives from Maine have traveled to North Dakota to protest in solidarity with the Sioux.

In the wake of protests, the Army Corps of Engineers, which approved the pipeline, has halted construction. President Obama had said he was considering ways to change the route of the pipeline.

Plans called for the pipeline to pass under Lake Oahe, a federally owned water source, and to skirt the Standing Rock Sioux Reservation by about half a mile. Most of the construction has otherwise been finished. The Obama administration

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Roger Paul flies the Passamaquoddy flag while marching at Standing Rock.

## A Criminal History Can Keep You from Crossing the Border

**But it May Be Possible to Enter Canada if you Apply for "Rehabilitation"**

By James Mitchell, Esq.

If you have a criminal conviction or a criminal arrest and try to enter Canada at a border crossing or at an airport, you may be blocked from entering due to immigration regulations. When attempting to enter Canada, border crossing or immigration officials may ask if you have ever been convicted of a crime and/or whether you've been charged with a crime. They do this because, under Canadian law, you can be denied entry as a result of past criminal activity. They call this "criminal inadmissibility". Border crossing agents have instant access to the FBI criminal database and can run criminal background checks whenever they feel that a person trying to cross may be a security risk. Past criminal acts of driving while under the influence, for example, are taken very seriously - even if you are a passenger in a car crossing the border, and even if you have no intention of driving while in Canada.

Canadian immigration officials can consider you to be criminally inadmissible if you have been:

- Convicted of a crime in Canada.
- Convicted of a crime outside Canada if it is considered a crime in Canada.
- Merely charged with - or even pardoned for - a crime outside Canada.

Crimes committed or charged as a juvenile will not prevent you from entering Canada unless you were convicted as an adult under the law of the country where the crime was committed.

If you are determined to be criminally inadmissible, you won't be admitted into Canada, but you do have the option to regain eligibility to enter Canada by filing a written application to be considered "rehabilitated." (In some cases, you may also be eligible to apply for a Canadian pardon, which is not discussed in this article.)

Once five years have passed since you were convicted of a crime (or since you committed a crime but weren't convicted of it) and the crime was punishable by a sentence of less than 10 years, you are eligible to apply for a rehabilitation determination. If you have not committed more crimes after the entry denial, and if you don't have an extensive criminal record, you might be determined to be rehabilitated and allowed entry if your application shows that you are not likely to commit other crimes.

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**Executive Director of PTLA:** Nan Heald, Esq.

### Native American Unit

Directing Attorney: Jefferson Ashby, Esq.  
Unit Members: James Mitchell, Esq.  
Judd Esty-Kendall, Esq.  
Deborah Beal  
Paula Fontes

### Wabanaki Legal News

Editor: Jefferson Ashby, Esq.  
Writers: James Mitchell, Esq.  
Jefferson Ashby, Esq.  
Erica Veazey, Esq.  
Ethan Plaut, Esq.  
Rob Liscord

## Standing Rock

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requested a voluntary halt to construction within 20 miles of the lake on each side, but Dakota Access continued construction to the shores of the lake.

Federal agencies must consult with native nations before approving construction projects that could threaten sacred sites. Opponents of the pipeline say that the Army Corps of Engineers failed to properly consult with the Sioux when permitting the Dakota Access Pipeline. By not involving the Sioux early in the permitting process, the Army Corps may have violated the Clean Water Act and the National Environmental Policy Act.

The U.S. Army Corps of Engineers had said it would clarify its plans for the controversial project near sacred tribal lands, and protestors have waited in suspense to hear the Corps' final decision. That decision came on December 4. "The Army will not grant an easement to cross Lake Oahe at the proposed location based on the current record," a statement from the Army said.

The decision was based on a need to explore alternate routes for the pipeline, although it remains unclear what those alternatives will be. For now it is an important victory for the Standing Rock Sioux and their supporters, but it remains unclear whether the decision will stand after President Obama's administration ends.

Many people question whether incoming President-Elect Donald Trump will support the construction of the pipeline. Opponents claim Trump has invested in Energy Transfer Partners. Kelcy Warren, head of Energy Transfer Partners, donated \$100,000 to the Trump Victory Fund. It is unclear how any apparent conflict of interest will be addressed within a Trump Administration.



Wabanaki tribal members and friends demonstrate against the Dakota Access Pipeline at the Bangor Mall on Black Friday.

### We Want to Hear From You!

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

Please send articles or letters to:  
Wabanaki Legal News, Pine Tree Legal Assistance  
373 Main Street  
Presque Isle, ME 04769

Or you can send e-mail to: [jashby@ptla.org](mailto:jashby@ptla.org)

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

## New Rules Allow Tribal Members to Gather Plants on National Park Land

By James Mitchell, Esq.

In August, 2016, the National Park Service (NPS) changed its rules to allow certain enrolled members of federally recognized Indian tribes to gather and remove plants and plant parts from National Parks. To do so, tribal members need to obtain a special permit, and the plants collected must be “traditionally associated” with specific National Parks for “traditional purposes.”

Traditional association is defined as “a longstanding relationship of historical or cultural significance between an Indian tribe and a park area predating the establishment of the park area”.

Traditional purpose is defined as “a customary activity or practice that is rooted in the history of an Indian tribe and is important to the continuation of that tribe's distinct culture.”

This rule is intended to respect and encourage distinct, tribal cultural practices and to help to reinstate or continue those practices on lands within areas of the National Park System, where those practices traditionally occurred, without causing a significant impact to the park.

Under the rule, a tribe that wishes to gain approval from the NPS to gather and remove plants or plant parts from a park area must submit an application. The tribe must provide information about its traditional association with the specific park area. The NPS must then determine that the tribe is in fact traditionally associated with the designated park area and that the tribe is proposing to gather and remove plants or plant parts within the park area for a traditional purpose. Permit requests for gathering activities that would adversely impact or impair the park will be denied.

Once the NPS determines that the requested gathering activity meets the requirements described above, it must make additional determinations before a special use permit will issue. These include:

- Before tribal gathering activities may begin, the NPS and the tribe must enter into a formal gathering agreement which is implemented by the issuance of the special use permit.
- The NPS will complete an assessment that finds no significant environmental impact will result from the proposed gathering activities.
- The NPS Regional Directors must approve each gathering agreement.
- The park Superintendent must be allowed to close park areas to gathering activities to protect environmental or scenic values or to protect natural resources if the gathering activities become unsustainable.
- The Superintendent must also be allowed to suspend an agreement or permit if terms or conditions are violated or if unanticipated or significant adverse impacts occur.

The required agreement between the NPS and the tribe must include the following:

- A description of the specific plants or plant parts that will be gathered.
- Specification of the size and quantity of the plants or plant parts that will be gathered.
- Identification of the times and locations at which the plants or plant parts will be gathered.
- Identification of the methods that will be used for gathering which will be limited to gathering by hand without power tools.
- Protocols for monitoring, gathering and removal activities, and rules about when NPS may intervene
- The permits will also identify specific members of the tribe who are designated by the tribe to gather plants at a particular location within a park area.
- The sale and commercial use of the gathered plants or plant parts within the National Park System will continue to be prohibited by existing NPS regulations.

Before these new rules were put in place, several tribes raised concerns. Some or all of these concerns could be addressed in future revisions of the regulation, including:

The application requirements are too complex and need to be simplified to allow smaller tribes with small staffs to navigate the process.

Any member of a tribe should be allowed to participate in gathering activities rather than requiring the tribes to provide the names of specific tribal members who may gather within the park.

The complex and formal permit application process conflicts with traditional plant gathering practices, which are conducted primarily in private or with families and are based upon traditional knowledge.

Tribes, not government officials, should monitor the gathering.

The NPS may not have the ability to protect the privacy of qualified plant gatherers as they participate in associated, traditional ceremonies while gathering.

There should be an exception to the rule against commercial use of plants for the manufacture of traditional American Indian handicrafts. (The NPS agrees with this request and will amend the regulation accordingly if it subsequently is interpreted to preventing such off-park commercial use.)

The regulation might abrogate, diminish or infringe upon existing treaty rights held by tribes to gather plants within NPS areas.

These new rules may impact Maine tribes and bands, as Maine has lands protected by the National Park Service. Whether Maine's native populations will claim traditional association with that land and show traditional use of plants found there remains to be seen. Whether land included in Maine's newly-created National Monument is covered by the new rules also presents an interesting question. The National Park Service encourages interested tribes to apply for this special use permit. The NPS contact person for doing so is Joe Watkins, Office of Tribal Relations and American Cultures, National Park Service, 1201 Eye Street NW., Washington, DC 20005, 202-354-2126, joe\_watkins@nps.gov.

### Problems With the IRS ???

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

Facing the following tax problems:

- Outstanding tax debt
- Levies and liens
- Earned Income Tax Credit denials
- Exams and audits
- Innocent spouse relief
- Injured spouse relief
- Tax Court representation

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

**FREE TAX WORKSHOPS - CALL US TO**

### IMPORTANT NOTICE

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

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

**You may be exempt from termination.**

## Pine Tree Introduces Newest Native Unit Attorney

Recently we took the opportunity to sit down with Jim Mitchell, Pine Tree Legal's newest Native American Unit attorney. Jim comes to the Native American Unit after spending the last eight years as a staff attorney for the Maine Volunteer Lawyers Project where he was responsible for recruiting attorneys from the private bar of the State's northern six counties to represent low-income people for free. Jim also organized a Courthouse Assistance Program in the Penobscot and Passamaquoddy Tribal Courts where tribal members received free legal advice through walk-in consultations. Jim is a member of the Passamaquoddy and Penobscot bars and practices frequently in all of Maine's Tribal Courts. Here is a transcript of our conversation with Attorney Mitchell:

### How long have you been practicing law in Maine, and what kind of law did you practice before joining Pine Tree Legal?

I started practicing law in 1985 as an Assistant Attorney General for the Maine Office of the Attorney General where I prosecuted child protection, child support and paternity cases for the Department of Human Services. I also prosecuted mental health admission cases and restaurant health code violations. I then went into private practice in Waterville handling family law, criminal defense, landlord-tenant, personal injury and real estate boundary dispute cases. In 2008, I began my work with the Maine Volunteer Lawyers Project.

### Why did you decide to go to law school?

I was a professional farrier (horseshoer) when I decided to change professions and go to law school. I always wanted a career that involved righting wrongs and fighting for the underdog, and I thought the law would fill that need which it has for me. When I graduated from the University of Maine School of Law my friends made a business card for me where the title of my business was "Shoe'em Or Sue'em".

### Did you have any legal internships in law school?

I interned with the Maine Disability Project, The US Attorney's Office and with the Farmworker Unit of Pine Tree Legal.

### Are you excited about working for the Native American Unit?

Most definitely. Having worked for Pine Tree Legal for the last eight years in the Bangor office gave me the opportunity to work with prior Native American Unit staff attorneys who all brought amazing and unique talents to the position with great success in providing access to justice for tribal members. I jumped at the chance to do this very worthwhile and rewarding work.

### How can tribal members find you for legal advice and representation?

I work out of the Bangor Office of Pine Tree Legal Assistance, and I represent primarily Passamaquoddy and Penobscot tribal members. I can be reached at (207) 400-3290. Also I meet with clients at Indian Island at 10:00 am on the last Tuesday of the month and at Sipayik and Indian Township on days that their courts are in session. Pine Tree's Native American Unit accepts new clients from all five Tribes and Bands through statewide telephone intake. The Native Unit's toll free number is 1 (877) 213-5360.



*Native American Unit Attorney James Mitchell, Esq.*

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## Update: Penobscot Nation v. Mills

*By Ethan Plaut, Esq.*

Since our last issue, there has been a major development in the case known as Penobscot Nation v. Mills, or the "Penobscot River Case." This is a case about what sovereign rights the Penobscot Nation has in the Penobscot River.

In the 1970s, the Penobscot Nation claimed that several prior land transfers were invalid under federal law, and that the Penobscot Nation therefore still had a claim to significant portions of land in Maine. That claim triggered a lawsuit, which was eventually settled by agreement. Part of that agreement was the Maine Indian Claims Settlement Act (a federal law) and the Maine Implementing Act (a state law). These laws tried to define the relationships between several tribes and the State of Maine, including hunting and fishing rights.

In 2012 Maine's Attorney General William Schneider issued a written opinion that the Penobscot River was not part of the Penobscot Reservation. He agreed that certain islands on the river were part of the Reservation but, as to the river itself, he claimed both tribal members and non-members had to comply with State law and the tribe lacked jurisdiction to regulate what occurred on the river. The Tribe filed a lawsuit to dispute those claims, and the United States joined the Tribe in its challenge. Many other parties joined the lawsuit as well.

In December 2015 United States District Court Judge George Singal issued a ruling in the case. He determined that there were only two issues that needed to be resolved in the lawsuit: (a) the boundaries of the Reservation within a particular portion of the river referred to as the "Main Stem", and (b) the scope of sustenance fishing rights of the Penobscot Nation on the same

## Sued in Small Claims Court for Credit Card Debt? We Can Help!

By Erica Veazy, Esq.

If you are being sued in small claims court for old credit card debt, there is a good chance that you are not being sued by the bank where the card came from. You are probably being sued by a "3rd party debt buyer." These are companies that purchase pools of old debt from original creditors like Citibank or Chase. Because the debt buying company is not the original creditor, they are called a 3rd party debt buyer. Because the debts were purchased for pennies on the dollar, collecting on just a few of these accounts creates a profitable business for the debt buying company. Collection efforts can include letters and phone calls and eventually may result in court actions against the alleged debtors.

Small Claims Court in Maine is for cases in which the plaintiff is seeking a money judgment of \$6,000 or less. Since most of these old credit card debts are for less than \$6,000, 3rd party debt buyers bring a lot of cases in Small Claims Court in Maine. The rules in Small Claims Court are much more relaxed than in other courts in Maine. In these cases, a third party debt buyer may choose to not even bring a witness to court. Lawyers for debt buyers often try to prove their cases using only old credit card records and other documents.

A lot of times, the debt buyer wins because the Defendant doesn't show up in court. The defendant may believe he really owes the debt, so he doesn't feel the need to show up to court to argue about it. He may feel shame about not having been able to pay the debt and may want to avoid the embarrassment of appearing in front of a judge and a courtroom full of people. The defendant might be confused about the court process. Finally, the defendant may not understand that he may have defenses in the case, and that the 3rd party debt buyer may not be able to prove its case against him. In all these cases the plaintiff - the 3rd party debt buyer - will automatically win.

You should know that in many of these cases, you do have good defenses and you may win your case if you fight it. Pine Tree Legal handles these cases, and we often see two major issues that help us prepare a defense:

- First, can the 3rd party debt buyer get its documents into evidence without a live witness present?
- Second, assuming the debt buyer can get its evidence admitted, does the evidence prove the claim alleged?

We have successfully argued that the 3rd party debt buyer must provide a live witness, subject to cross-examination, in order to admit any documents into evidence. A live witness is necessary to explain what the document are and why they are relevant. A live witness also gives the defendant an opportunity to test the credibility of the evidence by asking the plaintiff's witness questions (i.e. cross-examination).

The second issue in these cases is whether the debt buyer's documents actually prove its claim. The debt buyer must prove the defendant had a contract with the original creditor and breached that contract (i.e. didn't pay), that the plaintiff purchased the defendant's debt from the original creditor, and that the amount sought in the claim is the correct amount owed. The plaintiff's paperwork is usually woefully inadequate as to one, two, or even all three of these issues.

If you have been sued for an old credit card debt and you want us to review your case to see if we can help, please call us or come see us using the contact information provided elsewhere in this newspaper.



### How To Reach Us

The Pine Tree Native American Unit office is in Machias, but we also have advocates in Bangor and Presque Isle who handle Native Unit cases. Walk in to any one of these offices during walk-in hours, or - better still - call toll free to make an appointment: 1-877-213-5630; V/TTY: 711.

If you want to meet with an advocate in person in your tribal community, here is our normal schedule of outreach locations and times (we recommend you call first to make sure an advocate will be present):

#### Passamaquoddy Tribe

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

**Indian Township:** 3rd Friday of each month at the community center/court when court is in session.

**Sipayik:** 1st Friday of each month at the administrative/court building when court is in session.

**Call:** 1-877-213-5630; V/TTY: 711

#### Penobscot Nation

*Penobscot Tribal Courtroom*

Last Tuesday of each month from 10am-12pm

(changes to schedule announced in Tribal Newsletter)

To make an appointment call: 1-877-213-5630; V/TTY: 711

#### Houlton Band of Maliseets

A Pine Tree Legal Attorney will meet with you at the Housing Authority building by appointment.

**Call:** 1-877-213-5630; V/TTY: 711

#### Aroostook Band of Micmacs

A Pine Tree Legal attorney will meet with you at the Health Clinic building by appointment

Health Clinic: By appointment Call:

1-877-213-5630; V/TTY: 711

## United States Supreme Court Update: United States v. Bryant

By Ethan Plaut, Esq.

The United States Supreme Court recently issued an important decision involving the authority and role of tribal courts in criminal cases. The case involved a federal law that makes it a federal felony crime to commit a domestic violence assault within "Indian country," if the defendant has two or more prior convictions of the same nature. This law says the prior convictions can come from a tribal court. So, the law works to "enhance" a new domestic violence assault into a felony for people convicted in tribal courts of prior domestic violence assaults.

In United States v. Bryant, Mr. Bryant had multiple prior convictions from a tribal court for domestic violence. However, he did not receive a court appointed lawyer to represent him in those tribal court proceedings. He did, however, receive sentences of imprisonment. He then committed another domestic violence assault on a reservation, and was then charged by the United States for a federal felony crime under the law summarized above.

Mr. Bryant challenged the federal law based on the Sixth Amendment to the United States Constitution. The Sixth Amendment guarantees a court-appointed lawyer to a low income defendant in a state or federal criminal case where there is a chance of a jail sentence. In his prior tribal cases, Mr. Bryant received jail sentences without court appointed counsel. So he argued that using tribal court convictions - where he was not given a court-appointed lawyer - in order to create a new federal crime, violated the Sixth Amendment.

The Supreme Court disagreed and rejected his appeal. The Court noted that the Sixth Amendment does not itself apply in tribal court proceedings. Rather, the Indian Civil Rights Act (ICRA) controls and it requires a defendant to have a lawyer only if there is a risk of a sentence of more than one-year. Mr. Bryant received shorter sentences in his prior domestic violence cases.

Since the Sixth Amendment does apply to Mr. Bryant's federal criminal case, he claimed that only prior convictions that satisfy the Sixth Amendment may be used to "enhance" or elevate his crime to a felony. The Court, however, explained that an "enhancement" statute does not penalize the prior conduct that lead to the prior convictions. It does not "change the penalty imposed for the earlier conviction." Rather, such a statute punishes only the most recent offense. Therefore if an earlier conviction was valid when entered, it will "retain that status when invoked in a subsequent proceeding."

This case highlights not only the authority of tribal courts to impose criminal sentences, but also the unique legal complications and rules applicable in tribal courts. It also shows the importance of understanding how a criminal conviction can impact an individual in future legal proceedings.

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## Traffic Stop

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transport, that person should be considered "under arrest" for purposes of these rules.

In a recent case, Pine Tree argued that an officer violated these two rules when he stopped a vehicle and arrested its driver for operating under the influence of alcohol. The officer followed the vehicle for a considerable time period. He saw no problems with the vehicle's operation. While he never turned on his lights, the officer pulled into a driveway behind the vehicle and blocked it in. The officer then signaled to the driver and passengers that they were not free to leave. He then approached the driver and reported smelling alcohol. The driver then underwent field sobriety tests, and the officer found no signs of intoxication. Nonetheless, the individual was arrested and taken to the police station for a breath test.

Pine Tree prepared a defense that the officer's initial observation (that he smelled alcohol) was unconstitutional because the officer had no reason to stop or detain this individual for questioning, and therefore had no reason to smell his breath in the first place. Beyond that, Pine Tree prepared to argue that the results of the breath test could not be used at trial because the officers involved lacked probable cause to arrest the individual for that breath test.

While this argument seems strong, how a judge would resolve these types of questions is rarely certain. An unfavorable decision may lead to a conviction. Pine Tree discussed the issue with the prosecutor on the case, and a plea agreement was then reached, which resulted in a dismissal of the charge against this individual.

This is one example of how advocacy can protect a client's rights and interests, even during plea

discussions. It is also an example of Pine Tree's legal work protecting important rights and securing favorable outcomes for clients in tribal courts. If you are facing criminal charges in a tribal court in Maine, you may get in touch with Pine Tree to discuss your case.

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## Veterans

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they are truly a statewide project and Pine Tree has partnered with them statewide. Pine Tree works on the legal issues that affect homelessness and Preble Street can provide case management and some limited financial assistance.

If you or someone you love is facing an eviction, sleeping out or in a place that is unsafe or staying in the shelter. Please call Preble Street Veteran Housing Services. Do not let a less than honorable discharge discourage you, reach out today. The intake line is open from 9am to 4pm Monday through Friday. Don't wait to call 1-800-377-5709.

Lastly, Pine Tree Legal's Veterans Unit has begun looking in to VA Claims and Discharge upgrades for veterans who were discharged with a less than honorable discharge. Specifically, there are new guidelines from the Department of Defense around PTSD and also Military Sexual Trauma. If you feel that you were wrongfully discharged without your PTSD or sexual trauma considered, please reach out. We will be able to provide you guidance on your options and possibly provide assistance on your claims.

If you have any questions, do not hesitate to reach out. Email us at veterans@ptla.org or call at: 207- 400-3229.

## Criminal History

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Once ten years have passed since you were convicted of a crime (or since you committed a crime but weren't convicted of it) and the crime was punishable by a sentence of less than 10 years, rehabilitation status is assumed and routinely granted, unless you have committed new crimes or have a long criminal record.

If, however, your crime was punishable by a sentence of 10 years or more, you may apply for rehabilitation after five years, but there is no automatic, 10-year assumption of rehabilitation as there is when the sentence is less than ten years.

The fee for filing for rehabilitation is either \$200 or \$1,000 depending on the severity of the conviction or criminal act.

As a temporary solution, and on a visit-by-visit basis, you can apply for special permission to enter Canada at any time before you qualify for rehabilitation status by requesting a Temporary Resident Permit. This is a discretionary decision to be made by the border crossing staff on whether your visit to Canada is urgent or otherwise justified. The decision can be made instantly or may take several weeks so it should be filed well in advance of your attempt to cross the border.

If you are denied entry, you can get specific information about your entry status by contacting Canadian officials at a Canadian embassy, high commission or consulate office in the United States. There are also Canadian and American attorneys who specialize in representing people who have been denied entry to Canada due to criminal activity. Attorneys and Canadian officials can advise you about what criminal activity they have in their data system about you, and they can advise you on your available options to gain permission to enter Canada.

While having a criminal record is a major reason why US citizens are refused entry into Canada, other common reasons are no proof of: income, employment, sufficient funds, US residency, ties to the US or international health insurance. Gang or organized crime connections are also grounds to refuse entry.

Plan ahead before making plans to enter Canada if you have any criminal history to avoid this unpleasant experience. Online forms to apply for rehabilitation can be found at: [www.cic.gc.ca/english/information/applications/rehabil.asp](http://www.cic.gc.ca/english/information/applications/rehabil.asp).

## Penobscot v. Mills

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portion of the river.

On the first issue, the court decided that the Reservation does not include the river itself, but instead only the islands within the river. The court explained that the Maine Indian Claims Settlement Act defines the Reservation as "lands," and the Maine Implementing Act defines the term "Penobscot Indian Reservation" as "islands in the Penobscot River." So, the court concluded, reading these statutes to include water within the reservation would not make sense because these laws talk about the Reservation only in terms of "land" and "islands." The court also said that how the Tribe and State had treated the river in the time period between the original land claims lawsuit and the current lawsuit was a factor in its decision. The court found that the parties had acted as if the Reservation did not include the river itself, and that those actions supported its interpretation of the Settlement and Implementation Acts.

On the issue of sustenance fishing, Judge Singal said the relevant laws provide "broad protection for tribal sustenance fishing." He again looked to the words used in the statutes and the historical practices. He concluded that the statutes allow the Penobscot Nation to take fish for individual sustenance in the relevant section of the Penobscot River. The State had argued tribal members could only take fish while standing on the land or on an island, and the court flatly rejected that interpretation of the statutes.

The decision by Judge Singal ended the case in the United States District Court. However, his decision has been appealed by both sides to the lawsuit. That means the case will now go to a panel of judges on the First Circuit Court of Appeals. The Tribe and the United States are challenging on appeal the

ruling that the Reservation does not include the river itself. The State is challenging Judge Singal's decision to let the United States be a plaintiff in the case in the first place. There is no clear timeline as to when the First Circuit Court of Appeals will make a decision. Look for further updates in future editions of the Wabanaki Legal News.

# COMMUNITY RESOURCES

### AROOSTOOK BAND OF MICMACS:

[www.micmac-nsn.gov](http://www.micmac-nsn.gov)

Administration, Housing,

Child/Family Services 764-1972  
or 1-800-355-1435

Micmac Head Start Program 769-2072

Health Department 764-1792 or  
1-800-750-1972

### HOULTON BAND OF MALISEET INDIANS:

[www.maliseets.com](http://www.maliseets.com)

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

Maliseet Health Department 532-2240

Maliseet Health Clinic 532-4229

Maliseet Housing Authority 532-9140

Indian Child Welfare 532-7260 or 866-3103

Social Services and LEAD 532-7260 or 1-800-532-7280

Domestic and Sexual Violence

Advocacy Center 532-6401 or 694-1353(cell)

Advocacy Program 532-3000

### PENOBSCOT INDIAN NATION:

[www.penobscotnation.org](http://www.penobscotnation.org)

Administration, Clerk's Office 817-7351  
Indian Health Services 817-7400  
Penobscot Housing Dept. 817-7372  
Penobscot Human Services 817-7492  
Indian Island Police Dept 817-7358 (dispatcher)  
827-7188/911 (emergency)  
827-6336 (business)

Domestic Violence and Sexual  
Assault Crisis Hotline 631-4886 (24/7)  
Office - Lynna Tupica 817-7469

### Penobscot Tribal Court System

Director of Tribal Court 817-7328  
Clerk of Courts 817-7327

### PASSAMAQUODDY TRIBE:

**PLEASANT POINT** [www.wabanaki.com](http://www.wabanaki.com)

Administration 853-2600 ext. 254

Pleasant Point Health Center 853-0644

Pleasant Point Housing 853-6021

Domestic Violence-Peaceful Relations 853-2600 ext 266

Emergency: 853-2613

Police Department 853-6100

Social Services 853-2600 ext. 258

**Tribal Court System** ([www.wabanaki.com/tribal\\_court.htm](http://www.wabanaki.com/tribal_court.htm))

Clerk of Courts 853-2600 ext. 251

**INDIAN TOWNSHIP** ([www.passamaquoddy.com](http://www.passamaquoddy.com))

Administration 796-2301  
Indian Township Clinic 796-2321  
Indian Township Housing 796-8004  
Police Department 796-5296  
**Tribal Court System** ([www.wabanaki.com/tribal\\_court.htm](http://www.wabanaki.com/tribal_court.htm))  
Clerk of Courts 853-2600 ext. 251  
(when court is in session call: 796-2301 ext. 205)

## STATEWIDE CRISIS SERVICES

### HEALTH & HUMAN SERVICES

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

### DOMESTIC VIOLENCE

Maine Coalition to End DV 1-866-834-4357(24 hour)  
Aroostook Band of Micmac, *Domestic and Sexual Violence Advocacy Ctr.* 750-0570 or 551-3939(hotline)  
Houlton Band of Maliseets, *Domestic and Sexual Violence Advocacy Ctr.* 532-6401(24/7) or 532-3000  
Penobscot Indian Nation, *Domestic and Sexual Violence Advocacy Ctr.* 631-4886 (24/7) or 817-3165 ext.4  
Passamaquoddy Peaceful Relations 853-2600 ext. 266  
Spruce Run 1-800-863-9909  
*Penobscot County*  
The Next Step 1-800-315-5579 or 255-4934  
*Washington County*  
Hope and Justice Project 1-800-439-2323 (24/7) or 764-2977  
*Aroostook County*

### RAPE CRISIS SERVICES

Rape Response Services 1-800-310-0000  
*Penobscot County*  
Aroostook Mental Health Center 1-800-871-7741  
*Aroostook County*  
*Hancock County*  
*Washington County*

### OTHER SERVICES

Maine Crisis Line 1-888-568-1112  
Statewide Suicide Referral Line 1-800-568-1112  
Poison Control Center 1-800-222-1222

## 2-1-1 MAINE & COMMUNITY ACTION PROGRAMS

**2-1-1 MAINE** [www.211maine.org](http://www.211maine.org)

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

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

## LEGAL SERVICES

**PINE TREE LEGAL ASSISTANCE** [www.ptla.org](http://www.ptla.org)  
Pine Tree Legal represents low-income people with legal problems.  
Portland: 774-8211 Augusta: 622-4731  
Machias: 255-8656 Lewiston: 784-1558  
Presque Isle: 764-4349 Bangor: 942-8241  
Farm worker Unit: 1-800-879-7463  
Native American Unit: 1-877-213-5630

**VOLUNTEER LAWYERS PROJECT** [www.vlp.org](http://www.vlp.org)  
1-800-442-4293 or 942-9348

**Civil Legal Cases:** If you are low income, the VLP may be able to find a free lawyer to take your case. No criminal cases and no family law intake by phone.

**Family Law:** If you are low income and have a family law case, you can consult with a free lawyer for up to half an hour at the following courthouse clinics:

Bangor (Penobscot Judicial Ctr.): Wednesday from 1-3pm  
Ellsworth District Court: Second and fourth Tuesday of every month from 1-3pm

For information about family law clinics in Calais and Machias please call 942-9348

### LEGAL SERVICES FOR THE ELDERLY

[www.mainelse.org](http://www.mainelse.org)

1 (800) 750-5353

If you are age 60 or older, LSE can give you free legal advice or limited representation.

The helpline is open Monday to Friday, 9am to 4pm

**PENQUIS LAW PROJECT** [www.penquis.org](http://www.penquis.org)

1-800-215-4942 or 973-3671

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

**DISABILITY RIGHTS CENTER** [www.drcme.org](http://www.drcme.org)

1-800-452-1948 or 626-2774

Advice and legal representation to people with disabilities.

### BANGOR COURT ASSISTANCE PROGRAM

561-2300 TTY: 941-3000

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

## OTHER COMMUNITY RESOURCES

**WABANAKI MENTAL HEALTH ASSOC.** [www.wabanaki.org](http://www.wabanaki.org)  
992-0411

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

### MAINE INDIAN TRIBAL STATE COMMISSION

[www.mitsc.org](http://www.mitsc.org)

944-8376

### SOCIAL SECURITY ADMINISTRATION

[www.ssa.gov/reach.htm](http://www.ssa.gov/reach.htm)

Statewide

1-800-772-1213

Bangor Area

877-405-1448 - 207-941-8698

Presque Isle Area

1-866-837-2719 - 207-764-2925

### MAINE HUMAN RIGHTS COMMISSION

[maine.gov/mhrc](http://maine.gov/mhrc)

624-6290 or Maine Relay 771 (TTY)

## EMPLOYMENT INFORMATION

### MAINE DEPARTMENT OF LABOR

To file unemployment claims online:  
[www.maine.gov/labor/unemployment](http://www.maine.gov/labor/unemployment)

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

Or go to your nearest Career Center: ([mainecareercenter.com](http://mainecareercenter.com))

Bangor: 561-4050

Calais: 454-7551

Machias: 255-1900

Presque Isle: 760-6300