



Unsettled

Triumph and tragedy in Maine's Indian country

COLIN • WOODARD

Portland Press Herald
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Maine Sunday Telegram



Unsettled

STORY BY COLIN WOODARD
PHOTOGRAPHY BY GABE SOUZA

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Preface

UNSETTLED

“Unsettled” is a newspaper series that appeared on the front page of the Portland Press Herald and Maine Sunday Telegram for 29 straight days between June 29 and July 27, 2014, and an epilogue following on Aug. 3. It traces the recent history of the Passamaquoddy people, starting 50 years ago this spring and ending in the present. It is a story that shocked many in Maine.

I began my scholarly and journalistic career abroad, traveling the world studying and reporting on ethnic conflict, post-imperial wars, the founding or refounding of nation-states, and the struggle to bring establish a more harmonious world in the wake of the Cold War. I did not expect to find many of the themes I explored in the Balkans, Central America and Micronesia right here in Maine, where I was born and raised.

The Passamaquoddy’s story is in many ways a familiar one in the wider world: an oppressed people win a struggle for liberation against their colonial oppressors, only to have their own leaders take their places during the protracted struggle to rebuild and revitalize a beleaguered nation. For Mainers – with our reflexive inferiority complex toward our former colonial masters in Massachusetts – finding ourselves playing the role of the oppressor is a disorienting experience that can’t help but reframe how we think of our present day relationship with Maine’s real natives and our past commitment to the law.

The series began as a conventional investigative report, a regular Sunday package exploring accusations of present-day corruption at the Passamaquoddy reservations. It quickly became apparent that the central problem was an absence of the rule of law, the tribe’s failure to pass a constitution that defined the powers of their government and ensured it was not above tribal law. In exploring how this state of affairs came to pass, I turned first to the historic land claims settlement of 1980, whereby the Passamaquoddy and Penobscot agreed to set aside their claim to two-thirds of the state, and then deeper until I found myself in the mid-1960s, in a Maine I didn’t recognize and which was, frankly, horrifying. My editors at the Press Herald, Cliff Schechtman and Steve Greenlee, encouraged me to go long: a continuous, month-long serial laying out the Passamaquoddy’s incredible story. I’m thankful to them for their support and encouragement; to designers Brian Robitaille and Peter Vachon, who gave the series its compelling look; and to staff photographer Gabe Souza, whose remarkable images

illustrate this volume.

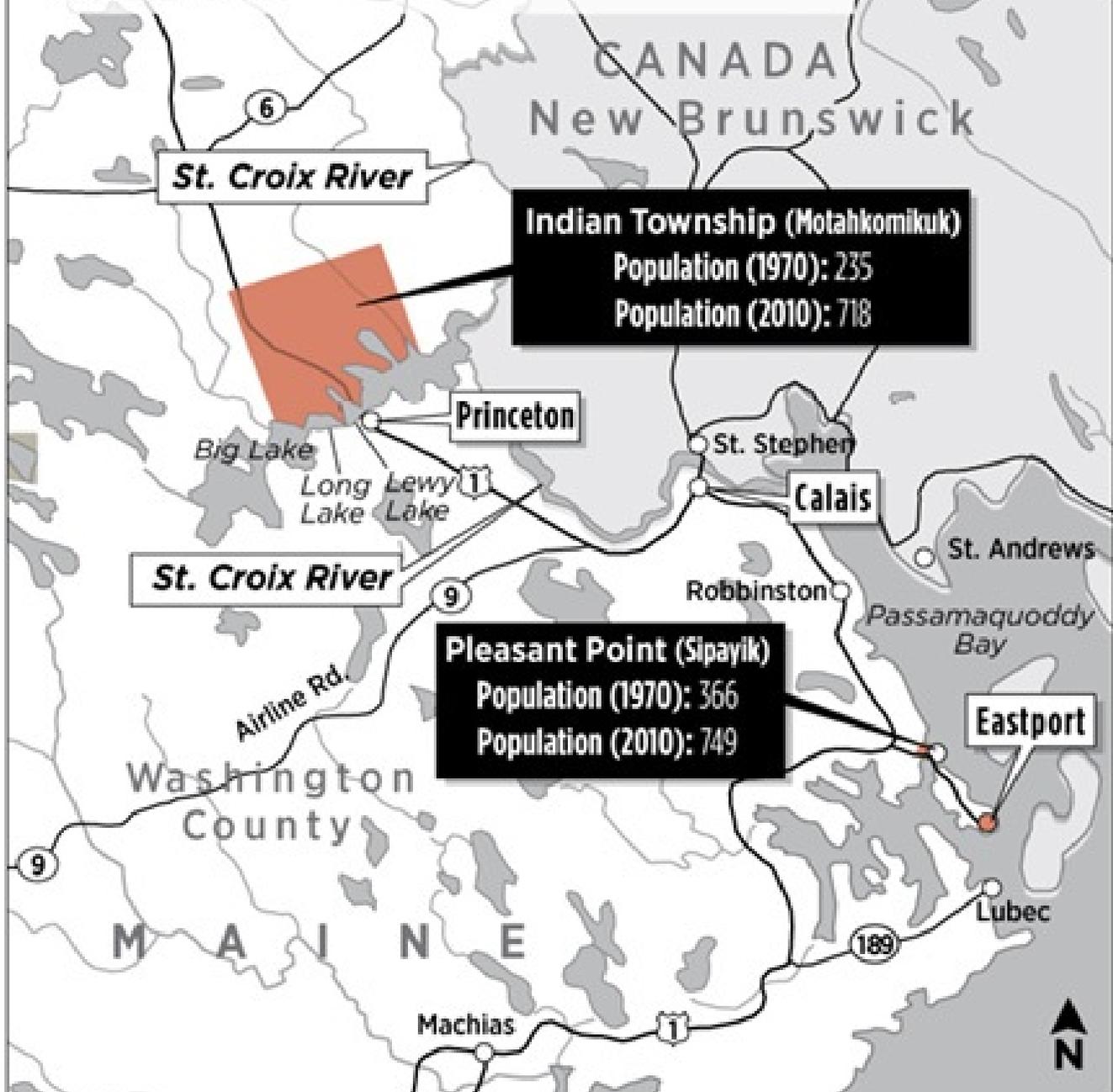
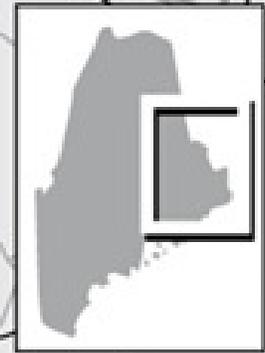
A quick word on those images: Each chapter of “Unsettled” was accompanied by a photograph Souza shot using a pinhole camera, or camera obscura, an early form of photography using a pin-sized hole instead of a lens to capture a moment in time. This rudimentary form of documentary photography yields soft-focus images with an aesthetic that blends modern-day scenes with the Passamaquoddy community’s past.

In response to the series, we received hundreds of letters, emails and phone calls, almost all of them positive, and nearly all of them asking the same question: Will “Unsettled” be available as a single volume? Maine Today Media, the Press Herald’s parent company, is issuing this e-book edition in response. We hope you enjoy it.

Portland, Maine.
Labor Day, 2014.

Passamaquoddy tribe

The tribe has two reservations - Pleasant Point near Eastport and Indian Township near Princeton. Each reservation elects its own governor and council, which come together as the Joint Tribal Council to deal with pan-tribal matters. Many of the tribe's 3,575 current members - each of whom must be able to trace one-quarter of his or her ancestry to persons listed in the 1900 tribal census - live off-reservation.



STAFF GRAPHIC | MICHAEL FISHER

Cast of Characters

UNSETTLED

Brian Altvater - Lt. Governor at Pleasant Point in the early 1990s and current chair of the tribe's blueberry company.

Christy Altvater - Pleasant Point father of six involved in 1965 incident with five Massachusetts hunters.

Stephanie Bailey - Indian Township resident and good government activist.

Annabelle Bassett - In the mid-1960s, Pleasant Point resident and wife of Danny Bassett.

Eddie Bassett - Current Pleasant Point tribal council member and longtime proponent of constitutional reform.

Danny Bassett - In the mid-1960s, a young Pleasant Point resident with a pattern of violence; husband of Annabelle Bassett.

Francis Brown - In the mid-1960s, county attorney for Washington County, the equivalent of today's District Attorney.

Clayton Cleaves - Current Pleasant Point chief and former logger.

Richard Cohen - State prosecutor, first head of new criminal division, and later attorney general of Maine.

Ken Curtis - Governor of Maine, 1967-1975

Deanna Francis - In 1965, a high school senior and niece of Pleasant Point governor George Francis. Later a healer, cultural and intellectual leader of her people.

George Francis - Pleasant Point Governor in the early 1960s, tribal representative to the legislature thereafter and tireless activist for his people against the state. Brother of Peter Francis and uncle to Deanna Francis.

Peter Francis - Pleasant Point native and younger brother of George Francis involved in 1965 incident with five Massachusetts hunters.

Don Gellers - Idealistic attorney for the Passamaquoddy in the mid-to-late 1960s and original father of the land claims effort.

Corey Francis Hinton – Attorney. Great-grandson of Peter Francis, currently seeking justice for his family and people. Son of Randy Hinton.

Randy Hinton - Grandson of Peter Francis, currently seeking justice for his family and people. Father of Corey Francis Hinton.

Five Hunters - Friends from Billerica, Massachusetts – Romolo Capobianco, William Robbins, Daniel Frobese, James Ellinwood, and Hugh O’Neill – involved in a chilling 1965 incident at Pleasant Point.

James Longley - Governor of Maine, 1975-1979

Bobby Newell - Promising young Passamaquoddy who becomes tribal constable in 1967 and later governor at both Pleasant Point and Indian Township.

Wayne Newell - Currently tribal elder at Indian Township; teacher, Harvard graduate, and stalwart promoter of the Passamaquoddy language.

Billy Nicholas - Indian Township resident; variously tribal police officer, game warden, councilor, governor, and logger. Brother Alex Nicholas is currently chief of police there and a second brother, Leslie Nicholas, serves on the governing council.

Joseph Nicholas - First tribal representative to the state legislature. In the mid-1960s, primary political rival to Pleasant Point governor George Francis.

John Reed - Governor of Maine, 1959-1966.

Allen Sockabasin - Indian Township native. In the mid-1970s, the “militant” young governor there.

Joe Socobasin - Current chief at Indian Township.

Donald Soctomah - Currently the tribe’s historic preservation officer and curator of the tribal museum at Indian Township.

John Stevens - Seven-term governor at Indian Township.

Tom Tureen - Tribal attorney in the 1970s and early 1980s who spearheaded the historic land claims effort. Summer intern to Don Gellers, 1967.

William Williamson - In the mid-1960s, a crusading reporter at the Portland Press Herald.

PROLOGUE

A 13,000-year journey leads
to a breaking point



A strip of standardized, federally built homes, stand amid the forests along Peter Dana Point Road on the Indian Township reservation, north of Princeton. The Passamaquoddy have hunted, fished and lived in eastern Maine for at least 13,000 years, but much has changed over the past two centuries.

SAINT CROIX ISLAND — It was here, on a tiny island near the mouth of the St. Croix River, just south of Calais, that Europeans first tried to plant a settlement in what is now New England.

None of them would have survived had it not been for the Passamaquoddy.

The party was French, and they settled here in the spring of 1604, four years before the abortive English colonization attempt near Popham Beach and 16 before the Mayflower voyage. Their 79-man party – which included Samuel de Champlain, who would later found Quebec – believed the six-acre island would provide protection from the Indians while affording easy access to the hunting and crop-growing grounds on the mainland.

Like many who tried to colonize these parts, the French underestimated the conditions in eastern Maine. The river froze, preventing the use of boats, and the powerful tides tore up the ice, making it unsafe to walk across. Shivering in inadequate shelters on their tiny

island, the isolated French began to starve.

Then the Passamaquoddy came, took pity, and gave them a cache of fresh meat and medicinal plants. Half the colonists survived the winter to flee southeast across the Bay of Fundy to what is now Annapolis Royal, Nova Scotia. “It would be very difficult to ascertain the character of this region without spending a winter in it,” Champlain concluded.

The Passamaquoddy knew the region well. Their ancestors were living in Maine 13,000 years ago, when the Ice Age ended and melting glaciers revealed vast tundra, a stark landscape of sedges, dwarf pines and grasses frequented by herds of caribou and mastodons. Their forefathers had adapted with the changing environment as tundra gave way to forest, mastodon to moose, caribou to deer. Later, when the glacial melt flooded an island at the mouth of the Gulf of Maine – now Georges Bank – the great tide-driven gyre kicked into life, creating one of the most fecund marine environments in the world.

Fish and game would sustain the Passamaquoddy right up until outsiders took much of their land and fishing grounds.

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By the time European explorers arrived on their shores, southern Maine Wabanaki had sprawling fields of corn, which were remarked upon by Champlain and, later, John Smith. But the climate was harsher in eastern Maine, the soils thinner, and the Passamaquoddy sustained themselves by hunting and fishing. Pierre Biard, a French Jesuit missionary who lived with the Passamaquoddy from 1611 to 1614, said they got their food from “chase and from fishing, for they do not till the soil at all” and described their seasonal round: hunting for inland game in late fall and late winter, feasting on spawning fish in the early spring, on inshore cod in May, and spawning eels thereafter.

Glooscap, the creator, according to Wabanaki lore, was an immortal hero who used his powers to improve and transform the world. Glooscap confronted selfish creatures that trampled on the well-being of others and taught that power should be used only for socially constructive purposes. He is said to have left his people just before Champlain’s arrival, leaving them to face their greatest challenge alone.

Relatively remote from the centers of European settlement, the Passamaquoddy were able to better survive the horrific disease epidemics that decimated New England’s Indian tribes following European contact and the terrible series of Anglo-Indian wars

that extinguished many tribes in the Colonial era.

They also had the relatively good fortune to have their lands claimed by the King of France, which held the eastern half of Maine and what are now the Maritime provinces until 1763. While Massachusetts Puritans looked upon Indians as savage heathens, the French regarded them as allies, their chiefs as vassal lords.

“We developed a good relationship,” says tribal historian Donald Soctomah. “It wasn’t perfect – there were a few items where there were some misunderstandings – but they came to be more allies with the tribe.” Jesuit priests converted many to Catholicism, and until the end of the 19th century, French – not English – was the most common second language in the tribe.

With the French defeat, the Passamaquoddy found themselves within the less hospitable British Empire. When the colonists revolted, they sided with them, responding to a call from George Washington himself who wrote asking their help in protecting the Eastern Frontier. They chose the winning side, of course, but because Nova Scotia (of which New Brunswick was then a part) did not rebel, they found their traditional territory split by a new international boundary. Over the next two centuries, many of the Passamaquoddy in New Brunswick would move west across the St. Croix, though some 200 remain in Canada.

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As more English colonists arrived Down East in the 1790s, Massachusetts (of which Maine was then a part) negotiated a treaty by which the tribe agreed to surrender most of its land in exchange for unimpeded fishing rights on the St. Croix, a trust fund, and what are now the reservations at Pleasant Point (near Eastport) and Indian Township (north of Princeton.)

“I think the main hope for the tribe was that they would be able to survive on the resources,” Soctomah says. “Some were still living a traditional life – fishing on the ocean or hunting at Indian Township. But then Maine started restricting access to these resources.”

By the 1890s, Maine courts had ruled that the Passamaquoddy had no rights to hunt on their own land because the tribe – now lacking the ability to negotiate treaties – no longer existed as a sovereign entity. Soon members of the tribe were forbidden to cut trees, while many of their fisheries resources were destroyed by dams, overfishing, and a

causeway connecting Pleasant Point to Eastport, which until then had been an island town. Much of the Passamaquoddy land was illegally seized. The tribe's trust fund was looted by the state.

Amid political, religious, and cultural pressures, the tribe suffered a split in the mid-19th century, with one faction moving to the winter hunting grounds at Indian Township – “Motahkomikuk” in Passamaquoddy – and the other remaining at Pleasant Point, or “Sipayik.” Divisions between the two reservations – which originally included tensions over substituting elected chiefs for hereditary ones and Protestantism for Catholicism – remain to this day. Each has its own governor or chief, government, and council, though the tribe is legally and culturally a single entity.

By the mid-20th century, state Indian agents controlled the rationing and distribution of food, heating fuel, medical care, and, by extension, much of tribal life. Fifty years ago today, Indians had no right to vote in Maine elections, nor could they serve on a local jury. When one of them was murdered, nobody was held accountable.

And then, one day in May of 1964, a group of Passamaquoddy decided they'd had enough.

This is their story.

CHAPTER ONE

An unlikely handshake alters
the course of Maine's history

MAY 19, 1964



Traditions and trials have been a part of Indian life in Maine for as long as members of the Passamaquoddy tribe, like this elder at Indian Township, can remember. Their ancestors found sustenance in this corner of the world for at least 13,000 years, adapting as eastern Maine turned from tundra to forest. They hunted and fished on land that shaped their lives, right up until outsiders came and took much of it away.

It was mid-May in the easternmost city in the United States, an island town perched on the ragged, arrestingly beautiful fringe of the country, separated from Canada and the rest of Maine by swift-moving 20-foot tides and attendant whirlpools. Eastport's last snowbanks had melted, the daffodils had sprung from the soil, and a young attorney from the Bronx was able to walk to work.

Don Gellers, 28, arrived at his office on Water Street, a former storefront in a late

19th century block kitty-corner from Eastport's imposing granite Post Office building, itself testimony to the city's past prosperity. The sardine plants that once brought the city wealth were shadows of their former selves, some abandoned on their piers. Gellers, standing on the sidewalk of its main drag, looked entirely out of place.

The young lawyer was short and intense, with shaggy blond hair and an expensive-looking tweed suit. He may have been puffing on a pipe, as he would later do when sitting for a newspaper portrait. A journalist who came to know him well once wrote that his first impression of Gellers "was one of meeting a young, old, friendly, tweedy sheepdog, if that makes any sense."

His secretary informed him that he would soon be having a guest: The governor, he said, was coming to call.

The governor, he thought, as he stepped into his office and seated himself at his battered desk. It was surrounded by precariously stacked heaps of law books, some propped up with wooden planks. How could the governor be coming to see me?

When the governor arrived, Gellers still wasn't sure what to think. The man standing before him was 71, bespectacled, with snow-white hair and a complexion and features that suggested he was not, like 99.4 percent of people in the state, Caucasian. Gellers had seen many pictures of John Reed, the governor of Maine, since moving to Eastport a few months earlier; this clearly was not him.

"Three of our women have been arrested for sitting on our own land," the man announced, only furthering the young lawyer's confusion. What did he mean "our women," Gellers wondered, and what did he mean by "our own land"?

The man, George Francis, looked at him with amusement. "We're Indians!" he proclaimed.

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Indians? Gellers didn't even know there were Indian tribes in Maine, or that they had trust lands and governors. He was so new to the area, so focused on starting his first law practice, that he'd somehow missed the presence of the Passamaquoddy Indian reservation at Pleasant Point, where George Francis was governor and through which all land traffic to and from Eastport must pass.

He was unaware of the existence of a second, larger Passamaquoddy reservation 45 miles to the northwest at Indian Township, where the recent arrests had occurred; that each reservation had a governor or that together they were home to 580 Indians, most living in poverty dire even by the standards of Washington County, the poorest in New England.

He didn't know that, as Indians, Francis' people couldn't vote in state elections or get their hair cut by the barbers of Princeton, just over the bridge from Indian Township. Or that, with rare exceptions, no Indian could get a job with the area's primary employers, the woolen mill in Eastport and the paper mill in Baileyville. Or that no Indian had ever served on a Washington County grand jury and that no white person had ever been convicted for killing an Indian, a not infrequent occurrence that was rarely seriously investigated.

He didn't know that 70 years earlier, state courts had denied the Passamaquoddy their treaty rights to hunt and fish on their land on the grounds that the tribe had now lacked sovereignty and, thus, did not exist. He didn't know that thousands of acres of their treaty lands had been taken, and that Indians weren't even allowed to cut wood on the land that remained. He didn't know that because the Indians were forbidden both outside jobs and access to the resources to sustain themselves, most were dependent on food and firewood parcels distributed at the whim of the state Indian agent, the arbitrary and much-feared retired fish inspector Hiram Hall, who had the power of life and death over his wards.

Most critically, young Gellers was blissfully unaware that no attorney in Washington County was willing to represent the tribe in this or almost any other matter of consequence. Gov. Francis had already made the rounds and been shown the door by each. Gellers, the peculiar young man from away, was his last stop. And Gellers seemed perfectly willing to hear the chief's grievances, oblivious to the grief it could bring down upon his own head.

It would be a conversation that would change the history of Maine, ultimately empowering its native people, and making Gellers the target of a state-sponsored conspiracy that would drive him out of Maine and the country.

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Francis apprised Gellers of recent events at Indian Township, where a white man was accused of a land grab. The Indians, led by that reservation's governor, John Stevens,

had made an appointment with Maine Gov. Reed and earlier that winter had driven the four hours to the State House in Augusta to seek his administration's intervention on their behalf. Reed kept them waiting for five hours, only to tell them he was not willing to help them. His attorney general, Frank Hancock, said if they didn't like it, they could sue. The Indians – who couldn't afford a hotel room and had eaten all of the bologna sandwiches they had packed – drove home hungry and in the dark.

Indians on both reservations were furious when they heard how their delegation had been treated. "This is one time all the Indians are interested," Francis warned state officials, "and will be fighting to the finish."

The morning before Gov. Francis' visit to Gellers' office, 75 Indians had descended on the disputed land, where the white owner of a cluster of tourist cabins sought to build a road. Five men stood blocking the road site. A group of women – including Gov. Stevens' wife – sat on a gravel pile meant to form the roadbed. At lunchtime, however, all but 10 Indians went home to eat. The police arrived, detained the five men they found and arrested the women, taking them to the Calais jail.

Now they needed a lawyer.

Gellers asked if the governor's people had proof that they owned this land. "We have treaties," Francis said. Treaties?, Gellers wondered. With whom? With the French Kingdom that once claimed eastern Maine? Pre-Revolutionary Britain? The governor's answer floored him.

"With Massachusetts."

But how do you know?

There was a moment of silence. Francis responded slowly: "Oh, everybody knows that."

By the end of the conversation, Gellers agreed to represent not only the Indian women in the Calais jail, but the tribe's claims to thousands of acres and millions of dollars given to them under a forgotten, 170-year-old treaty. The two men shook hands, and Francis headed out of the office.

An unlikely, formidable alliance had been formed, one whose reverberations would quickly be felt in Augusta and eventually travel all the way to the halls of the U.S.

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On one hand was George Francis, 71, who had grown up at Pleasant Point, fought in the First World War, and earned a college degree at the Carlisle Indian Industrial School in Pennsylvania. But at home in the 1920s the only work he could find was to smuggle liquor from Canada across the bay. He moved to Detroit, where he worked at the Ford Motor Co. for 40 years. He retired in 1957, returned home, and began fighting, loudly and boisterously, for his people.

At a time when few Indians dared to challenge white authorities, Francis was in the faces of all of them. In short order he was elected chief at Pleasant Point and began sending out a fusillade of pointed letters to state and federal authorities of all sorts, denouncing how the state was handling his people's affairs – and all the money the state was collecting from the contracts it doled out to outside loggers to cut the Indians' timber. State-maintained sewerage systems on the reservations were overflowing, forcing Indian Township residents “to drink their own sewage.” The longtime Indian agent, Hiram Hall, was a man with “a nasty Venom tongue like a rattlesnake,” who denied food, firewood, dental care, and even children's milk allowances to Indians who questioned his rule; one woman, Viola Homan had starved to death as a result, Francis claimed, while Alice Dana had frozen to death for lack of fuel. The state claimed it couldn't afford to hire so much as a resident nurse to attend to the Indians' medical needs, yet Francis charged it squandered funds on inflated oil, school busing and school lunch invoices. When Francis appeared in Augusta to examine his tribe's financial accounts he was denied access by an assistant attorney general.

“As long as I live, I will tell the whole U.S.A. the condition and mismanagement in regards to your department in handling our affairs,” he wrote the state director of Indian Affairs, Paul McClay.

In response, state officials were quietly working behind the scenes to take Francis down. Donald Brown, supervisor of Indian Affairs at the state Health and Welfare Department, instructed Indian agent Hall to withhold food and other disbursements to Francis while he worked to withhold the governor's \$4 monthly salary. Seeking a pretext to cut off other benefits, McClay wrote to the Ford Motor Co. asking for information on Francis' pension. The governor, McClay wrote his boss, “is obviously a senile old gentleman who is rapidly becoming more and more bitter against Mr. Hall and everyone and everything concerned with the Department.”

If Francis was bitter and angry, his new ally, Don Gellers had enough idealism and naivete for the both of them. Raised in a broken family in the Bronx and Queens, he had excelled in school and at law school prepared a legal brief for his professor that so impressed Brooklyn Supreme Court Judge Nathan Sobel, he took the unusual step of praising it in his written decision as the best prepared he had encountered. After an internship at the United Nations, Gellers moved to Eastport with his half-Filipino wife – a painter – burning with, as he would later put it, “a love of justice.” In newspaper portraits he smoked a pipe. After hours, he and his friends sometimes smoked marijuana.

The couple stuck out in Eastport like sore thumbs. Essentially an island community, Eastport in the 1960s was decidedly not Berkeley or Greenwich Village. Perched on the eastern fringe of the country – with 20-foot tides and staggering views of an archipelago of Canadian islands – it was a fishing and cannery town fallen on hard times. In 50 years it had lost more than half of its population and most of its employers, giving the town an eerie, empty, desperate feeling. Most of its people were terribly poor, except in comparison to the Passamaquoddy reservations up the road. The civil rights and counterculture movements were just beginning, and neither had yet reached the shores of Passamaquoddy Bay.

Pot-smoking, Ivy League-educated New Yorkers espousing countercultural ideas weren't welcome in most circles. Parking his car in front of the old WaCo Diner on his first trip to town, Gellers attracted the attention of a local policeman who demanded to see Gellers' license, presumably for the “offense” of having out-of-state plates. “This is an island community in Maine, and they don't accept you if you're from the next town,” says Frances Tomah, a white divorcee who moved to Eastport from New York with her five children in 1966 and was for a time Gellers' office assistant. “He and his wife had a very hard time of it.”

“At the time I thought he was raunchy, but there was such an innocent side to him,” adds Tomah, who later married a Passamaquoddy man. “I believe he really thought he could save the world by turning them on to peace and love and turning guns into plowshares. The days of ‘tune in and drop out’ were there, and he was a firm believer that one of his missions was to tune in the world.”

William Williamson, the Press Herald reporter who would cover the jaw-dropping events that soon followed, put it this way: “I probably knew Gellers as long and as well as anyone in Maine, and the adjectives I would use to describe him would include

generous, inconsiderate, brilliant, foolishly stubborn, studious, reckless and, most of all, unpredictable.”

He wanted to be governor of Maine, Williamson would add. “He might have made it too, except for his personal Achilles’ heel,” his unrigorously concealed use of marijuana.

Francis and Gellers set to work. Soon, each would have his strengths and weaknesses put to the test in almost every way imaginable. For there were dark forces out there, including men of violence, some quite capable of killing those who stood in their way. And one night five such men would walk right into George Francis’ living room.

CHAPTER TWO

White men from out of state come hunting for girls

NOVEMBER 14, 1965



Captured in the early morning through the aperture of a pinhole camera recently, this stretch of road leads into Pleasant Point Indian Reservation, where a menacing situation developed late in 1965, when out-of-state hunters clashed with the native residents.

When the white men arrived at his house, George Francis, the 72-year-old former governor of the Pleasant Point Passamaquoddy, was seated in his living room chair, watching Canadian football on the television. There were five of them, hunters from Billerica, Massachusetts, ranging in age from 23 to 32. They wanted women. George's younger brother Peter would try to get them to settle for lunch.

They traveled in a massive boat of a car – a white 1961 Cadillac convertible, with recessed rear wheels and long, sharklike fins on the back. Their leader was William Robbins, 32, a former Marine who had been a Hall of Fame athlete at Billerica Memorial High School, where he started playing while still in middle school, allowing him to win

an unprecedented six varsity letters, a record that still stands; to this day he has a scholarship named in his honor.

Behind the wheel was the Cadillac's owner, 25-year-old James Ellinwood, a husky 5-foot-11 football player with a conviction for assault and battery. Another in the party, 23-year-old Daniel Frobese, had been convicted for assault and battery and intoxication. Hugh O'Neill, 25, had also played football, while Romolo Capobianco, a married 25-year-old father of two, had, according to high school classmates, a terrific sense of humor, "an easygoing manner," and was "a friend to everyone." Years later he would spend 37 days in jail for refusing to clean up his informal junkyard in Billerica.

Around 1 in the afternoon, the Cadillac rolled to a stop outside George Francis' meticulously kept house, located at the crest of a hill at the edge of the reservation. A neighbor, George's brother-in-law Christopher "Christy" Altvater, had just gotten out of a car in the driveway. The white men greeted Chris. One even recognized him, having met him on a previous hunting trip, although Christy didn't remember. That wasn't surprising. The 5-foot-2 Indian had suffered a brain injury four years earlier when a 6-foot-1 white man from Eastport had clubbed him with the butt of a rifle. He had mild paralysis on his left side, headaches and dizziness for which he was receiving regular in-patient treatment at the Togus Veterans Administration Hospital in Augusta. He was 44, physically unthreatening, sociable and something of a prankster.

Christy went to the front door and yelled to George: "You got company!"

George came out and talked with them. "That's all they wanted to know, if I could get women for them," he would later testify. "And I said, 'I ain't got no women here.'"

The five men, all wearing hunting clothes, then asked where they could find beer on a Sunday. George told them. They headed back to their car and persuaded Christy to guide them. But before they pulled out of the drive, George's 17-year-old niece came out of the house to fetch her uncle Peter's keys from his car's ignition. The girl, Deanna Francis, would later testify they stared at her as she came and went.

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Christy and the hunters returned an hour and a half later with a six-pack and two cases of beer. Rather than heading on their way, the hunters barged, uninvited, right into the house. The Indians were concerned but worked to contain the situation.

Christy got them settled down in the kitchen, assisted by Peter, who was visiting from his home in Connecticut. He was 59 but looked much older. “Reservation life in those days was tough, and he bore the scars of the wear and tear,” says grandson Randy Hinton, who was close to him. “Life had been hard on him and it showed.” In World War II, he had served as a Seabee – a frontline engineer – in the brutal Pacific “island-hopping” campaign. He and a handful of men floated for days on a raft after their transport was torpedoed, catching fish with makeshift lures fashioned from a cloth and a safety pin; Peter was one of the few survivors, a fact he attributed to his “Indian-ness,” his grandson recalls, “his ability to draw deep within himself to survive.”

He was later feared lost when he failed to return from a moose-hunting trip early one winter, only to walk out of a deep Eastern Maine forest in the spring, having survived alone in his disabled panel truck through months of storms and subfreezing temperatures.

“Back then an older person looked much older than they would appear today,” Hinton adds. “I’m not saying he was a broken man, but his body was used up and life had taken its toll. His vision was failing. He suffered from the aches and pains of everyday life.” He also walked with a limp, the result of a knee injury in an accident at the naval yard in Groton, Connecticut, where he worked as a master electrician and from which he was about to retire.

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As Peter and Christy entertained the hunters, George Francis continued to watch television in the living room. In a tiny bedroom beyond, Deanna – who lived with George and his wife – was doing homework with two fellow Shead High School students, Maureen and Susan Tomah, ages 15 and 14.

Over the next hour and a half, the hunters drank beer and chatted with Christy and Peter, but it was the girls that were on their minds. Frobese, a dark-haired, dark-complexioned roofer, slipped into the bedroom and chatted with the girls. The second time he came into the room, Deanna would testify, he asked her: “Do you want to make fast money?” She went into the living room and told her uncle.

George ordered the hunters to stay out of the bedroom, but soon Frobese was back at the girls’ door, telling them that he was also an Indian. George ordered the men out of the house and threatened to call the police.

The hunters claimed to be hungry. “In my culture, we share food and share spaces,”

Hinton says. "Those men took advantage of that."

George asked Peter and Christy to take them down to the Altvaters and set them on their way. The hunters had consumed the better part of two cases of beer over the past two hours. Christy had drunk a couple of bottles of beer. Peter hadn't had anything at all.

In a couple of hours, he would be lying on the road with his head bashed in.

CHAPTER THREE

A simmering conflict,
stoked by alcohol, erupts

NOVEMBER 14, 1965



Violence broke out in November 1965 in the yard outside Christy Altvater's house, above, located just outside the Pleasant Point reservation. Two Passamaquoddy Indians were left badly beaten, one of them fatally.

The Altvater home was on a lonely stretch of road, just over the reservation boundary. It's still standing: small, two stories, its rear perched at the top of a steep hillside with views of the lower-lying parts of the Pleasant Point reservation and Cobscook Bay beyond. At the time, the front door was boarded shut. A barn across the street had collapsed, leaving a pile of nail-studded lumber. Christy Altvater hadn't been able to work since he had been beaten by a white man in 1960, and his family of eight survived on disability payments. They owed \$1,000 in back taxes and were being threatened with eviction by the town of Perry, a move being fought by their pro bono attorney, Don Gellers.

“Because the house was 200 yards off the reservation, nobody protected us,” recalls Christy’s daughter Lisa, who was 10 at the time. “But we never locked our doors. Our house was always open for people to come and eat.”

At dusk on Nov. 14, 1965, Lisa, her 8-year-old brother, Kirk, and her mother, Rita, returned home with their uncle, John Nicholas, having picked up his chainsaw from a repair shop in Dennysville. They were surprised to find four white hunters drinking beer in their kitchen. Another, much drunker hunter was in the downstairs bedroom “talking about atoms and nuclear stuff” with Christy and Peter Francis, who worked on nuclear submarines at the Groton Navy Yard in Connecticut and was visiting his home reservation for hunting season. Two daughters, 15-year-old Valerie and 18-year-old Gerarda, were doing homework in another bedroom.

Rita later described the situation as “crowded” and said her young son was immediately unhappy with the scene.

They had every reason to be concerned. The hunters told the mother of six they “wanted to see some girls.” One of the visitors, James Ellinwood – whom the Indian children would later describe as “the fat one” – kept inquiring about the whereabouts of Rita’s 16-year-old daughter, Judy, who he’d heard was pretty. He kept trying to go upstairs to find her. Judy was at the house of her boyfriend’s parents in Eastport, but none of the Altvaters told this to the hunters.

One of the hunters, a hulking ex-Marine named William Robbins, suddenly slapped Kirk several times in the face. “Go help your uncle,” he commanded.

Ellinwood struck up a conversation with young Kirk, charming the little boy and proposing they go off in his car to “shop for girls,” as Kirk would later testify. Before Rita knew what was happening, her son was headed up the road in the front seat of Ellinwood’s ’61 Cadillac convertible.

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Meanwhile the atmosphere in the house grew tense. From the bedroom, drunken Danny Frobese could be heard mocking Peter, sneering at the idea that an Indian worked as an electrician on nuclear submarines. When John Nicholas came in from sawing wood outside, Robbins made disparaging racial remarks about Indians. Robbins and another hunter propositioned Gerarda and Valerie, asking them to go to their Princeton camp with them. They said they “wanted companionship” and were using foul language.

“The air was very heavy, full of the spirit of ominous problems,” Rita later recalled in a detailed letter to each of her children. “I was too uneasy. I did not remember us having a phone to call for help or even the police. I felt like I could hardly move, I was so filled with the spirit of fear. I didn’t know what to do.”

Peter came into the kitchen and started making dinner. “I smell a rat,” he said in Passamaquoddy to the Altvaters. “Don’t trust these guys. They are up to something. They keep trying to start trouble. ... Get the children ready, and get them out.” He and Christy would stay and feed the hunters who, they hoped, would leave if the girls were out of the house.

Rita got the girls dressed and left the house in the family’s truck, bound for her niece’s home. “I’m glad we are out of that house,” one of the girls told her as they drove through the night. “Those men are scary.”

Meanwhile, Ellinwood and young Kirk were back at the home of George Francis, whose teenage niece was studying with two friends. Ellinwood had barged in, imploring 14-year-old Susan Tomah to “take a ride” with him and promising, “We’ll go slow,” according to her later testimony. He then demanded coffee, and kept sending Kirk in and out of the bedroom with a dime and messages on his behalf. The hunter, Susan recalled, offered twice in this fashion to give her the dime if she would “go out with him” in his car. Rebuffed, Ellinwood sent Kirk to make the same offer to 15-year-old Maureen Tomah, who also refused.

Failing in his attempts, Ellinwood went out to his car, to George’s relief. But a few minutes later, Kirk scurried into the bedroom a third time to tell Susan her mother wanted her at the door. Susan went to the door. Instead, it was Ellinwood again. “I want to take you for a ride,” he said. “I want to take you out first.” She closed the door. He drove off with Kirk.

Ellinwood drove around the reservation with Kirk, trying to convince other girls to get into the car. With Kirk’s help, he eventually persuaded 17-year-old Elsie Paul to take a ride, claiming Kirk’s sister wanted to see her. A young girl now seated beside him, Ellinwood steered his Cadillac back toward the Altvater home.

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Back in the Altvaters’ kitchen, violence broke out. All sides agreed that the conversation turned to marijuana and that the hunters had asked if they could get some.

As a prank, Christy offered Robbins an aspirin, claiming it was a “marijuana pill.” Robbins refused to take it.

Robbins, the former football star and Marine, would testify at trial that Christy then tore off his undershirt and came at him “like a raving maniac,” with “eyes as big as saucers.” Christy said Robbins attacked him suddenly and without provocation 10 minutes after the marijuana pill incident. Both agreed that Robbins tackled and punched his host.

Peter came into the room and said something to the effect that there was to be no fighting. Some of the hunters would later claim he was wielding a chair held over his head when he did so. If so, it must have been not overly intimidating, as Hugh O’Neill, one of the hunters, testified he walked up to Peter and apologized for the fighting.

The four hunters got up and left, followed first by Peter and then by Christy. At that very moment, Ellinwood pulled the Cadillac to a halt in the road with Kirk and Elsie inside.

Ellinwood turned to Elsie and said, “How about it?” she would later tell a grand jury, presumably a proposition to, at the least, travel with him to the hunters’ camp in Princeton. Both children saw three of the hunters on the right side of the road, opposite the house, where the wreckage of the old barn lay. Kirk said he saw them picking up some pieces of wood. The hunters approached the car to get in. Both children were scared out of their wits.

Events unfolded rapidly in the minutes and seconds that followed.

Elsie Paul opened the car door, scampered between the hunters, and began running uphill toward the Francis home. Ellinwood opened his door and hollered after her. Kirk slipped out after Elsie, intending to run around the back of the car to his house.

The hunters piled into the car and had to help an inebriated Frobese get in back. Kirk, rounding the car, saw Peter Francis approach Ellinwood, who was standing at the open driver’s door. The two men had words, the boy later testified, adding that Peter was unarmed. He also saw his father walking behind the car; Christy testified he had found a 4-foot stick lying in the driveway, picked it up, walked across the road and threw it in the brush pile by the barn.

Over the long, low trunk of the Caddie, Kirk saw Ellinwood strike Peter twice,

unprovoked, with what he thought was a knife. At least three of the other hunters clambered out of the car and charged Christy.

The hunters would later testify that the two older men had come at them with clubs and that they struck in self-defense. They were unable to explain why, if this had been the case, they didn't simply drive away, as Ellinwood was poised at the door and the other four men were already in the car.

The Press Herald spoke to two of the four hunters who are still alive. Romolo Capobianco claimed not to remember anything about the incident because of his advanced age. Frobese said he was a "blackout drinker" at the time and had only fragmentary memories of the day, the critical minutes around the beatings not among them.

Kirk saw three men, one carrying a "stick," start beating his father, who crumpled to the ground. Christy Altvater would later report having been kicked and beaten with "more than fists." He thought he might have briefly lost consciousness.

"Stop!" Kirk screamed at the three men. Ellinwood called out to them to get back in the car. They piled into the convertible and it screeched off into the night.

Kirk fled into the house in a panic. Christy stumbled after him in a state of shock.

Peter, 59, lay motionless, face down on the pavement. From the back of his head, a river of blood flowed down the hill. A nail-studded two-by-four lay a few feet away, soaked in Peter's blood. His hair was stuck to a fresh splinter lying on the ground nearby.

Most of his brain had already shut down, traumatized by a blow so severe it could have killed him instantly. He would never awaken.

CHAPTER FOUR

Tepid response from authorities leaves tribe furious

NOVEMBER 16, 1965



The headstone for Peter Francis sits in a small graveyard on the Pleasant Point reservation Down East. When his slaying in 1965 failed to result in any murder warrants being served, it became “a turning point in ... Indian lethargy and despair.”

It was dinner time, and Press Herald reporter William Williamson was home in Kennebunk and about to cut into a steak when the telephone rang. He answered, disgruntled.

It was a source, Don Gellers, a young attorney in Eastport who had recently been championing the cause of the Passamaquoddy Indians on the other side of the state. Gellers was breathless and excited. Williamson coldly told him he'd call back after he finished his dinner.

When he did, he found himself listening for a solid hour while Gellers told him the

harrowing story of Peter Francis being beaten to death by five white hunters 48 hours earlier. He related how the Eastport police had refused to respond to Christy Altvater's calls for help because he lived 1,000 yards from Eastport, and how a town policeman had told him he "didn't want to get involved," and how a deputy sheriff had ignored him altogether.

Gellers related how Altvater had next called him for help, his voice unrecognizable on account of the swelling of his face and jaw, and how the tribal constable had pleaded with hospital staff in Eastport to dispatch an ambulance to treat Francis, who lay dying in the road for more than an hour before help arrived. The 59-year-old man expired at the Eastport hospital the following morning.

After interviewing the hunters, Gellers continued, County Attorney Francis Brown – the equivalent of a district attorney today – drew up five murder warrants. They were never served. An indignant Gellers told Brown he would go to the press if they were not issued by 6 o'clock that evening. They weren't, which is why Williamson found himself on the phone. Gellers accused Brown of a "deliberate flouting of the law" that would not have occurred if the victims were white.

Gellers had called Williamson because he had heard he was a fearless and crusading reporter, one unafraid of challenging authorities. Indeed, Williamson would later become a social worker; his family recalls him daring a shotgun-bearing man to shoot him as he strode into a house to retrieve an endangered child.

He wouldn't disappoint. His story ran the next day, with Brown confirming the warrants had not been served "because we don't feel we have enough information." A few days later, Williamson was at Pleasant Point, exploring what he would later call the "many seemingly incredible questions about what was going on up in Washington County."

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By the time Williamson arrived, the hunters were back at their homes in Billerica, Massachusetts. Inexplicably, none had been charged in Christy's beating. One, James Ellinwood, faced a single manslaughter charge in Peter's death and had been freed on bail.

Gellers, on the other hand, was being threatened with disbarment for publicly questioning the authorities. The Washington County Bar Association had formed a "fact-

finding committee” to determine whether Gellers’ comments to the Press Herald constituted “conduct unbecoming of an attorney.” According to an account that Gellers later wrote, his fellow lawyers said they would call off the investigation if Gellers would claim in writing that he had been misquoted in the press. He responded that he would do no such thing, and that he’d “continue to do all I could to protect Indian lives and property because, as long as those two things weren’t safe, the value of everyone else’s life and property was thereby cheapened.” (The bar association ultimately backed down.)

Indians told Williamson they were furious that no charges had been brought against four of the hunters and that nobody was being charged with murder. They noted that six Pleasant Point Passamaquoddy had been killed over the previous 17 years – in a community of 330 – with nobody being held accountable. “Is the Indian testimony being considered seriously and is the law being applied fully in the case?” Williamson’s article would ask on their behalf. “Are (they) second-class citizens, legally as well as socially?”

Brown told the reporter he didn’t serve the murder warrants because he felt he couldn’t prove premeditation. Gellers pointed out he didn’t need to. Law enforcement had concluded Peter died from a blow with the nail-studded two-by-four, the use of which constituted the “malice aforethought” under the state’s murder statute. Further, Gellers said, because the Indians were beaten by a group, it didn’t matter which ones had wielded the club. And because the hunters had offered girls money for sex, Gellers argued, they were involved in a felonious conspiracy even before the deadly attack.

Pressed by Williamson, Brown also admitted that he’d given the hunters a heads-up – two days ahead of their court arraignment – as to what charges they would and wouldn’t face and the amount of the bail Ellinwood would need to raise. This allowed the other four to drive to Billerica and collect the money, ensuring their companion would be sprung from jail immediately.

A murder charge, Brown said, would “merely be wasting the taxpayers’ money.”

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Indians were incensed, though no one Williamson interviewed “expressed any belief there will be any conviction in the Peter Francis case,” he would write in a bombshell front-page story in the Sunday Telegram on Dec. 5, 1965. “In fact, they were mildly surprised that any arrest had been made on any charge.”

But the killing, Williamson would write prophetically, looked to be “the turning point

in a pattern of Indian lethargy and despair.”

“We’re tired of being treated like cattle or dogs,” tribal constable Raymond Moore told Williamson, noting that some were considering taking law enforcement into their own hands. “There have just been too many deaths and nothing is ever done about them.”

In that pre-Internet era, Gellers and George Francis worked hard to turn a national spotlight on the case and keep it there. They wrote U.S. Sen. Sam Ervin, a North Carolina Democrat, seeking the intervention of the Senate Subcommittee on Constitutional Rights, which he chaired. (Ervin demanded an accounting of the situation from Maine’s attorney general but ultimately determined his committee lacked jurisdiction because the slaying took place just off the reservation and Francis was not engaged in civil rights activities when it took place.)

Alerted by Gellers, the National Council of Churches – which represented the then-influential mainline Protestant denominations – asked U.S. Sens. Edmund S. Muskie and Margaret Chase Smith of Maine, and the Justice Department to investigate. “We are concerned by reports that four of the five white hunters are not being prosecuted,” the Rev. J. Oscar Lee, a council official, told the United Press International news service in New York. “The denial of justice in Maine is as serious as the denial of justice in Alabama or Mississippi.”

A delegation from the Maine Council of Churches met with Brown in January and declared they were unsatisfied with the county attorney’s explanation for why the murder warrants had not been issued. Soon they were in Attorney General Richard J. Dubord’s office, demanding action. Thereafter, Dubord started telling reporters there would likely be “secret indictments” brought in the case.

All of this was front-page news across Maine, and the handling of the case even made “The CBS Evening News” with Walter Cronkite, arguably the most influential figure in the news world at the time.

It had no effect. In February, an all-white grand jury in Washington County returned Brown’s single manslaughter indictment, one worded so strangely it raised the eyebrows of attorneys across the state. Garth Sprague, an attorney in Machias, the county seat, told Williamson the wording created “a made-to-order case for any defense attorney,” as it contained language for the lesser charge of assault.

No secret indictments ever emerged.

Ellinwood plead not guilty. The other four hunters were already home free.

CHAPTER FIVE

‘Beaten before we started’
at a controversial trial

MARCH 1, 1966



Michael-Corey Francis Hinton, a Passamaquoddy Indian living and working as a lawyer in Washington, D.C., visits the spot in eastern Maine where his great-grandfather, Peter Francis, was killed in 1965. Hinton has been lobbying the Department of Justice to reopen the case. “There will be justice done,” he says.

From the Indians’ perspective, the trial of Massachusetts hunter James Ellinwood, who was charged with manslaughter in the beating death of Peter Francis, was a farce.

In a written account of the trial prepared for her children, Rita Altvater – whose husband, Christy, had been severely beaten by several of the five white hunters during the attacks – described a hostile scene.

As they entered the courtroom at the Washington County Superior Court in Machias, Peter Francis’ daughter, Lila Hinton, asked Rita Altvater to point out the hunters to her.

Lila, 33, confronted them: “So you’re the five hunters that killed my father.”

“They said ‘yes’ and snickered,” Rita later recalled. During a recess one of them walked by and said, “A good Indian is a dead Indian.” Lila burst into tears.

On another occasion, Rita recounted, Peter’s wife, Isabelle, arrived late. “She stopped by the door and the usher said, ‘Sit down or leave.’ She said, ‘Excuse me.’ After this a white woman came in, the usher went and got her a chair.”

“We were beaten before we started,” Rita added.

Ellinwood, now 26 and the only one of the five hunters to be indicted, “appeared confident throughout the trial,” the Press Herald reported from the courtroom.

By the second day of the trial, the Indians were alarmed at what County Attorney Francis Brown was not asking them, and aired their concerns to William Williamson, the Press Herald reporter covering the trial.

The slain man’s niece, Deanna Francis, now 18, expressed surprise that she hadn’t been asked to testify that the hunters had offered her money to accompany them, as she had been before a grand jury three weeks earlier. John Nicholas, Rita’s brother, started to relate the conversations he’d heard at the Altvater home, but Brown cut him off to ask what time he thought he’d left there.

The prosecution also failed to introduce into evidence the splinter that had broken off the two-by-four – the presumed murder weapon – because it would have required recalling a witness and would have been “too expensive.”

Williamson reported their concerns in a story March 3. The reporter was then summoned to the offices of the Press Herald’s attorney, according to the Indians’ legal representative at the time, Don Gellers, and ordered to write only about the court proceedings themselves. Although his series of articles on the Nov. 14, 1965, killing would receive an award from The Associated Press, Williamson would soon resign from the paper as a result of the interference, Gellers and Rita Altvater both later asserted.

“He quit the paper because they really wouldn’t let him report what was happening,” says the reporter’s son, Barry Williamson. “He had a strong sense of injustice, and that case fell right into the pocket of that.”

At one point during the trial, Lila Hinton found herself face to face with Romolo Capobianco, whom Rita Altvater described as being the only hunter reticent about their misdeeds. In a letter to her children, Rita claimed Capobianco told the slain man's daughter: "I'm sorry that all this had to happen."

"He said he would talk with her and tell her about it, but for now ... he had to stick by them," Rita, who died in 1994, wrote in the letter, which a family member unsealed and read for the first time in late 2013, hours before allowing a Press Herald reporter to read it.

Reached at his home in Billerica, Massachusetts, recently, Capobianco was asked about the case. At first, he said: "Jesus, I don't know. ... That was a long time ago – it's all been forgotten." He then said he himself had forgotten the events, and then claimed not to remember whom he was hunting with or what had happened on account of his advanced years. "There's someone at the door," he said after a few minutes. "I have to go."

Another hunter, Daniel Frobese, said he had been a "blackout drinker" in those days and had only fragmentary memories of the day. The only thing he remembered about the final fight outside the Altvater home was that he had tried to get out of the car to retrieve one of William Robbins' loafers, and had been pulled back in by his friends.

Asked if, in the aftermath of the fight, any of his friends had said who dealt the fatal blows to the back of Peter Francis' head, Frobese said he still knew the other three men who were still alive – Robbins died in 2009 – and then said he had to go. Frobese did not respond to follow-up calls.

Ellinwood, who lives at least part of the year in Texas, could not be contacted. Hugh O'Neill, who lives in southern New Hampshire, did not respond to telephone messages.

Christy and Rita's youngest child, Kirk, the only witness to Ellinwood's fight with Peter, was put on the stand on his ninth birthday. Family members say he was humiliated for making syntax errors in English, his second language.

The hunters denied they propositioned anyone and claimed they had beaten the Indians in self-defense.

Ellinwood claimed he merely “stiff-armed” Peter once, contradicting multiple statements he had made to police on the night of the slaying that he had punched the 59-year-old at least twice. The hunters claimed Peter and Christy had come at them with “clubs.”

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Their version of events could not account for Peter Francis’ fatal wounds: blunt force blows to the temple and the back of the head, the latter powerful enough to have detached an extensive area of his scalp from his skull. Together the blows caused an extensive – and fatal – brain hemorrhage. The attending physician and pathologist testified these were consistent with a blow from a two-by-four. Bruises on his eye and hand suggested lesser blows.

The defense had earlier suggested there had been a drunken brawl. The pathologist’s report showed Peter’s blood alcohol level was vanishingly small, meaning he drank very little or possibly nothing at all.

Defense attorney Francis Day of Bangor suggested maybe Christy had hit Peter with the two-by-four, even though the two were close friends.

The all-white jury found Ellinwood not guilty.

The crowd jumped up in applause. “They were literally clapping and cheering when Ellinwood and those guys were freed,” Deanna recalled in an interview with filmmaker Ben Levine before her death in 2010. (Levine’s documentary is still in production.) “I mean it was just – I mean, in here” – she pointed to her heart – “carrying that all these years.”

“Uncle George was devastated,” Christy’s daughter Lisa Bassett recalls. “Our lives were destroyed.”

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Christy Altvater was never the same after the beating, family members say. He hanged himself in his basement in 1971.

For the rest of his life, Kirk Altvater, Christy’s son, suffered from panic attacks that would leave him doubled over, hyperventilating. He developed a stutter, and his hands

would shake. He killed himself in 1979. He was 21.

“There has been no justice, and irreparable harm has been done to my family,” says Peter Francis’ 27-year-old great-grandson, Michael-Corey Francis Hinton, an Indian law attorney at Akin Gump, one of the country’s most prominent law firms. “The damage is done, and it’s still affecting people, generations of my family, the Altvaters, and others in the community.

“This is the fire that burns within me,” he says, adding that his great-grandfather’s slaying and its aftermath influenced his career choice. “There will be justice done.”

His father, Peter Francis’ grandson Randy Hinton, agrees. “The tragedy of all this isn’t just the murder, it’s all the fallout and all the collateral injustice and pain and anger that revolves around that night,” he says. “Justice was never served, and those guys got away with murder.”

Although it was perhaps the most high-profile case of the era, the files for the case were purged before being transferred from Machias to the Maine State Archives. Conspicuously – and possibly uniquely – among the criminal cases of that era, even the formal judgment has not survived. All that remains are three pieces of paper: two random motions and the one-page form recording the verdict.

The U.S. Department of Justice has been reviewing the case, and the U.S. Attorney for the District of Maine, Thomas E. Delahanty II, says his office would likely need further evidence in order to proceed, despite the recent discovery of the long-lost transcript of the grand jury proceedings in the courthouse attic. It is also unclear if the case would fall under federal jurisdiction, as only some of the events of Nov. 14, 1965, took place within the boundaries of the Pleasant Point reservation.

Back in 1965, the only legal champion the Passamaquoddy had was Don Gellers, the one who had blown the whistle on the Francis murder and who continuously challenged the state’s handling of this and other cases.

Gellers didn’t know it yet, but he was about to be taken out of the picture himself.

CHAPTER SIX

Passamaquoddy's legal champion becomes a target

1964 TO 1966



An antique truck steers past the Custom House in Eastport early on April 30. Some leaders and residents of the nation's easternmost city – and elsewhere in Maine – took steps to retaliate against a young attorney when he began to represent the Indians in the mid-1960s.

By the time Peter Francis' assailants walked free, Don Gellers had made plenty of enemies.

After his first meeting with tribal Gov. George Francis in May 1964, the young attorney had thrown himself into representing the Passamaquoddy in matters great and small.

Within hours, he'd managed to get the charges dropped against the four Passamaquoddy women who'd been arrested in the "gravel pile" protest against a white man's seizure of reservation land, and negotiated a truce whereby construction stopped

on the contested parcel pending legal rulings. He then forced the presiding judge in the case to recuse himself, after showing he had signed the papers allowing the white camp owner to annex the Indians' land.

Gellers' letters to state officials compelled the Legislature to pay for emergency repairs to leaking sewerage systems on the reservation, and a rewriting of laws that had prohibited tribal members from hunting on their own reservation land. Barbers in the town of Princeton were required to accept Indians as patrons.

He had blocked an effort by the Town of Perry to evict the Altvater family from their home. When administrators at Shead High School retaliated by telling two of the Altvater children they would no longer receive free school lunches, Gellers protested to state officials, who forced the school to reverse itself.

When state police arrested two Indians for minor offenses on reservation land, Gellers successfully challenged the state's jurisdiction in a case that was at one point reviewed by Supreme Court Justice Hugo Black. The final decision by the U.S. Circuit Court of Appeals – the second-highest court in the land – transferred authority over certain misdemeanors by tribal members on reservations from Maine to the tribes themselves.

Gellers and the governors of the two reservations also launched an investigation of state Indian agent Hiram Hall and found evidence that he had made himself the legal guardian of numerous Indians and likely pocketed public pensions and benefits they were owed. "They served the summons on Hiram that day telling him he had to come to court the following week," recalls John Stevens, who was then governor at Indian Township. "He died that night."

Gellers and the chiefs successfully lobbied the state to shift oversight of the Indians to a separate Indian Affairs Department, which opened just months before Peter Francis was killed in November 1965. The top officials were replaced by a bearded 32-year-old anthropologist, Ed Hinckley, who wished to increase Indian self-government.

Gellers hosted press visits and organized events to draw attention to the Passamaquoddy's plight. At an NAACP meeting in Portland in the aftermath of the brutal attacks on black civil rights marchers in Selma, Alabama, Gellers, along with an Indian elder and a local minister, emphasized the parallels between the racial prejudice Indians faced in Washington County and that suffered by blacks in the American South.

Most significantly, Gellers was conducting research for the tribe's land claims case

against the state, which Maine Gov. John Reed and the Attorney General's Office had already refused to support.

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Gellers worked on contingency, meaning he would get nothing unless he was successful. Even so, researching the case was an expensive undertaking. In the first few months, Gellers had traveled to archives in Boston, New York, Washington, D.C., and Fredericton, New Brunswick, to gather documents that would prove the Indians' case. In that time he'd spent \$1,000 out of pocket and expected to need an additional \$5,000 over the next two years. This presented a problem, as the Indians had no money in hand and Gellers was quickly running out of his own.

The obvious solution was the Indians' trust fund, which contained \$60,000 in proceeds from state-supervised paper company logging on their reservation, but it was completely controlled by the governor of Maine and his executive council. When Gellers and the tribe approached Reed for an initial disbursement of \$3,000 to cover research expenses, the governor flatly refused.

"It is the unanimous opinion of the council and the opinion of the governor as well, that there is not sufficient possibility of benefit for the Indians," the chairman of the executive council wrote George Francis the month before his brother Peter's killing, "... for it to be wise and prudent action to commit trust fund money for the purposes outlined by Mr. Gellers."

Gellers rebuffed a counteroffer to give him three \$1,000 payments – one before, one "halfway," and one at the completion of his case – and nothing more. He told reporters it was a "cheapening and degrading offer," "cracker-barrel bargaining" and "a nifty way to get a final bargain from people who have been pushed around so much already."

The Indian chiefs were just as blunt. Pleasant Point Gov. George Francis said the trust fund was "our money and we demand it," while Gov. Stevens told Reed "you should be giving us a helping hand rather than putting handcuffs on us."

Cut off from their only assets, the tribal governors and their attorney also faced increasingly disturbing attacks.

Gellers soon found his legal services were no longer in demand among the white residents of Eastport. "His business went right downhill after he started representing us,"

Stevens recalls.

Signs appeared on the lawn in front of Gellers' Eastport home, denouncing him as a communist and worse. At one point swastikas were painted on his walls – Gellers was Jewish – an act he said was committed by a local public official, whom he later confronted over the incident. Another Eastport town father opened his hand to show Gellers' clerk two bullets, saying one was for Gellers, the other for George Francis.

Police began harassing Gellers and the tribal governors, subjecting them to regular traffic stops. "I wouldn't go anywhere without being stopped, and I imagine they was watching all of us," Stevens says, noting he would be stopped twice on his 14-mile commute to work in Baileyville. "Christ, when Don would come pick us up, they'd stop him in Calais, they'd stop him in Woodland. They'd take him back to the courthouse trying to find out what he was up to. Wouldn't charge him, they'd just let him go. But it took him three hours to get up here."

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State officials cut off food and medicine to members of Francis' and Stevens' families, who would find windows broken at their homes and car tires slashed.

Frightened, many Indians signed petitions calling for George Francis to be removed as governor and submitted them to state officials, led by Francis' political rival, Joseph Nicholas, an apologist for the state whom some Indians dismissed to reporters as an "Uncle Tomahawk." Nicholas, then the tribe's non-voting representative to the state Legislature, tried to have Gellers removed also. Washington County officials apparently approved: A few months later he became the first Indian ever allowed to serve on a jury there.

"I was like Joe Nicholas at first – thought it was a waste of time fighting the state for food and stuff, that we'd never get anywhere, and we'd hurt people since they had control of all the resources coming into the reservation," Stevens says. "I came around, but I should have been fighting alongside (George) all along."

Just before his brother's murder, George Francis lost his re-election bid, dealing a temporary setback to the Passamaquoddy's burgeoning civil rights movement.

Gellers and his wife were living hand to mouth. His office assistant, Frances Tomah, discovered one day that most of the food containers in their pantry were completely

empty, retained to hide their worsening situation. Unable to afford oil, they heated the rambling, 32-room home at Middle and Water streets entirely and only half-successfully with wood.

Susan Gellers, unable to take the strain, left her husband.

Gellers continued smoking marijuana but was taking fewer pains to conceal this illegal habit, seemingly oblivious to the forces seeking to take him down.

CHAPTER SEVEN

The Passamaquoddy's land claim case takes shape

1967



A stand of trees is captured by a pinhole camera at Indian Township in eastern Maine. A 1794 treaty with Massachusetts deeded thousands of acres to the Passamaquoddy people. This treaty would serve as the foundation of the land claims case Don Gellers was building.

Despite distractions, financial uncertainty and official harassment, Don Gellers was building a compelling land claims case for his Passamaquoddy clients.

In their first meeting in the spring of 1964, Pleasant Point tribal Gov. George Francis had told him that everyone knew about the tribe's rights under a critical 1794 treaty, including ownership of a trust fund and vast tracts of subsequently stolen land. In fact, outside of the tribe, these had been entirely forgotten.

The Indians themselves had discovered the treaty just five years earlier in the possession of Louise Sockabasin, great-aunt to Indian Township Gov. John Stevens'

wife, lovingly wrapped in a centuries-old envelope woven from sweetgrass and tucked unceremoniously into a trunk. When Stevens first opened and read it, he says he screamed with surprise.

The treaty had been negotiated in 1794 with Massachusetts, which controlled Maine at the time, and under it the Passamaquoddy had surrendered their ancestral lands in exchange for perpetual ownership of 15 islands in the St. Croix River, two in Big Lake, 10 acres at Pleasant Point, and the entirety of what came to be called Indian Township, 23,000 acres of forest, streams and lakes in what would later be eastern Washington County that the tribe had used as winter hunting grounds since time immemorial.

Recognizing the Indians would not be able to sustain themselves entirely on this reduced land base, they were also given a trust fund – \$37,471 in 1822, or \$147 million if it had just been left to compound interest through 1964.

Gellers discovered that when Maine became a state in 1820, it received this trust fund and 395,000 acres of deeded land meant to provide for the Indians.

Under the separation agreement with Massachusetts, not only was Maine required to uphold the 1794 treaty obligations, but they were written into the new state's constitution. They were found within Article X, Section 5, and remained in force.

However, learning what those obligations were wasn't easy.

That's because in 1875 the people of Maine ratified a constitutional amendment forbidding this article to ever be published. That amendment is still in effect: Open any copy of the Maine Constitution to Article X, Section 7, which proclaims Section 5 will "remain in force" but "shall hereafter be omitted in any printed copies." Exactly why this was done remains unclear.

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If the constitutional commissioners who proposed the change intended to ensure the state's obligations were forgotten, it was effective. Rather than protecting the Indians' trust lands, the state authorized some tracts to be flooded by dams, others to be annexed for the laying out of Route 1 in Indian Township and Route 190 at Pleasant Point, and thousands more acres transferred to white owners. In no case was compensation given to the Indians. In all, at least 10,000 acres had been stolen, among them the small plot where the gravel pile protest had taken place in 1964.

Maine courts had ignored the tribe's treaty rights, rubber-stamping the annexation of their lands by powerful landowners such as William Bingham (for whom the mountain is named) and, in the infamous 1892 case of *State vs. Newell*, ruling the tribe no longer existed.

“Though these Indians are still spoken of as the ‘Passamaquoddy Tribe’ and perhaps consider themselves a tribe, they have for many years been without a tribal organization in any political sense,” the court ruled. “They cannot make war or peace, cannot make treaties, cannot make laws, cannot punish crime (or) administer civil justice among themselves.”

In other words, having denied the tribe these sovereign powers, the state was now using the absence of these powers as grounds to deny them not only their treaty rights but the rights other tribes were by then enjoying under federal law.

Gellers also discovered that nobody was able to provide an accounting of just what had happened to the trust fund accounts or to the millions in state-organized timber sales that should have been held on behalf of the Passamaquoddy who, after all, owned the trees. Much of this revenue – which belonged to the Passamaquoddy and no one else – had apparently been diverted into the state's General Fund. In other words, the state had simply taken it.

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As for the 1794 treaty, it had indeed been forgotten, and state officials were publicly dismissing its validity. Privately, however, Gov. John Reed's administration was nervous.

After the Indians had visited Reed, apprising him of the 1794 treaty, state officials quietly wrote their counterparts in Massachusetts and Washington, D.C., asking whether they knew anything about it. Nobody did.

Just days after Gellers started representing the tribe, state officials became fearful he might try to secure federal recognition for the tribe. The commissioner of the U.S. Bureau of Indian Affairs reassured them that “our research has revealed nothing to substantiate a belief that any federal control over or financial responsibility for the Passamaquoddy Indians has ever existed.”

Unable to carry the expense of the case himself, Gellers had turned to the Indian

Rights Association, a Philadelphia-based social activist group dedicated to helping tribal people. After reviewing his early research findings, the group agreed to finance part of his expenses, although Gellers received no fees to support himself.

Around this time, Joseph Nicholas publicly accused Gellers of “exploiting the Indians for personal gain.” Gellers responded: “If I experience a great deal more personal gain of this sort, I just may starve.”

By the late winter of 1967, Gellers’ marriage had collapsed, just as his land case was coming together. He touted the latter to reporters as an effort to “redress 146 years of fiscal misdealings” by Maine.

Short-staffed, he asked the Law Students Civil Rights Research Council for a summer intern. A few months later, a young law student and his girlfriend pulled into the driveway in front of Gellers’ rambling Eastport home.

The intern got out of the car and knocked on the door. His name was Tom Tureen.

CHAPTER EIGHT

Against police, in court,
tribe's stuck on losing side

SEPTEMBER 3, 1967



An image created with a pinhole camera shows the shoreline off Pleasant Point in Down East Maine. Late in the summer of 1967, a routine traffic stop on the causeway leading to the reservation escalated into a violent conflict between Indians and the police.

It started as a routine traffic stop.

Maine State Trooper Arlo Lund was driving south through the Pleasant Point Indian reservation in his cruiser at 1 in the morning, accompanied by a 24-year-old tribal constable named Bobby Newell. As they exited the reservation and started across the causeway to Eastport, a convertible with Massachusetts plates and a missing taillight passed them going in the opposite direction.

Relations between Indians and law enforcement had long been strained, because of

what sheriffs and police officers both would and would not do.

“Local police were pretty rough on native people,” recalls Newell, who had become a constable to help his people. “They’d show up without warrants or anything, drag someone out and throw them in jail, and it would take a long time to get them out.”

Apart from unarmed, nonuniformed and essentially unpaid constables like Newell, the Indians had no public safety personnel of their own. Calls for help – to the police, the sheriff, the fire department, or ambulance services – were often ignored, as they had been the night Peter Francis was killed.

“Most of the time, if there were a fire on the reservation, that house would just burn to the ground, and an ambulance would take a half-hour or more to show up, so if you were having a heart attack you might as well write it off,” says Newell, who, like others of his generation, grew up in a house that lacked running water, a telephone or electric appliances. “A lot of Indian people wouldn’t even report a crime, because they knew nothing would become of it.”

As constable, Newell had seen police abuse up-close. “I’d bring somebody I’d arrested to the Eastport jail, and they would be in perfect shape and cooperating, and when I got to court, the guy would have been beaten up,” he recalls. “I’d ask what happened, and he would say, ‘Nothing.’” Such episodes were wearing on Newell, and he’d soon resign his post as a result of his disillusionment.

Newell’s informal partner, Trooper Lund, was different, a recent arrival to Washington County who showed no prejudice toward the tribe. Instead of treating the constables with contempt, Lund invited Newell to tag along on his patrols and to have coffee with him and other officers in Eastport. Newell taught him Passamaquoddy phrases, and Lund was pleased to be invited to Indian homes to socialize.

Lund did a U-turn on the causeway, turned on his lights, and pulled the car over at the reservation end of the causeway. He went up to talk to the driver, Edward Bassett, a Pleasant Point native on his way back to his job in Massachusetts.

Newell, sitting in the cruiser, saw a Volkswagen Beetle pull up behind him. Out stepped Edward’s hotheaded brother, Danny Bassett, a muscular former Army paratrooper with a violent past and an even more violent future. In the car was Danny’s much-abused wife, Annabelle, his brother Victor, two male friends, and Deanna Francis, the former tribal governor’s niece and one of the girls the Massachusetts hunters had

allegedly propositioned for sex, who was now 19. They'd been drinking at the Red Ranch Roadhouse just down the road. Danny was itching for a fight.

Newell ordered Danny to get back in his car. Danny, according to Newell, jumped him. The other occupants of the VW piled out, and one of the women said in Passamaquoddy: "Don't hit him; he's an Indian. Hit the other guy; hit the white man!"

Soon, Lund and Newell were engaged in a prolonged melee in which the trooper was backflipped into a guardrail and the cruiser's radio microphone was nearly torn out. They held their own – assisted by Edward Bassett, who physically restrained his brother – until Danny and his companions sped off in the Volkswagen.

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This incident would not have become the center of statewide media attention if not for the events that followed that rainy night.

Around 2 a.m., about half an hour after the fight, a dozen officers – state police, deputy sheriffs and game wardens – descended on the reservation, breaking into at least four homes and beating Indians.

Indian witnesses later testified that Deanna Francis, a freshman at the University of Maine, was kicked in the lower abdomen, and that Annabelle Bassett was beaten on the legs and arms with a billy club by Lund.

(Lund, who is retired and living in North Carolina, did not respond to an interview request.)

The two women said Deanna had been slapped and shoved and had her clothes torn by a state trooper at the Machias jail the next day.

Lund himself admitted dragging Victor Bassett out of a car by his shirt, at which point another officer clubbed the suspect on the forehead with a nightstick, causing considerable bleeding.

Newell saw several officers pin another suspect, David Homan, against the side of a house, demanding to know where Danny Bassett was. When Homan said he didn't know, Newell heard a series of "bumps and whacks" coming from the scrum, after which Homan said Danny was at Christy Altvater's home.

Around 3 a.m., a motorcade pulled up outside Altvater's house, one of the cars idling over the spot where Peter Francis had been beaten to death 22 months earlier. The police entered unannounced and without a warrant, searching for Danny. Instead they found a white houseguest, Robert S. Howe, an instructor at the Poland Spring Job Corps, whom they awakened rudely.

“They shined a flashlight in my face, said, ‘No, it’s not him’ and left,” recalls Howe, who would later serve as a legislator and executive director of the Maine Civil Liberties Union. “I followed them out in the rain, and I yelled: ‘What is going on?’ And a trooper came in and said, ‘Shut up or I’ll bust you.’ Then he just walked off. I couldn’t believe it.”

The following day, when Lund and Newell arrested Deanna Francis, Howe rode with her to the Machias jail, where he says he witnessed a state trooper grab and throw her against a stone wall, tearing her blouse.

Within days, Howe reported the incidents to the new governor of Maine, Kenneth Curtis, who ordered an investigation. Shortly thereafter, Howe was fired by the Job Corps after someone from the Attorney General’s Office placed a call to Job Corps Director Robert Lake. Lake confirmed to reporters that the caller had linked Howe and the Indian case but then denied it a day later.

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Don Gellers represented Danny Bassett and the other six Indians who had been involved in the initial melee, all of whom were charged with obstructing law enforcement. Four faced an additional charge of assaulting a police officer.

On the day of their first court appearance, Gellers discovered one of his clients being interrogated by Newell, Lund and the acting county attorney, Elbridge Davis. Davis, Homan later testified, demanded to know “what Don Gellers told me to say in court.” Gellers denounced the move as a violation of Homan’s rights and the American Bar Association’s Canons of Ethics. The judge denied his motion for a dismissal of charges against Homan.

The subsequent legal proceedings were bizarre. The initial judge recused himself without explanation in the midst of the trial. His replacement, Judge Ian MacInnes of Bangor, found four of the seven defendants guilty of various charges, but in announcing his verdict said he was “very disturbed” about the side issues in the case, which were

“probably more important than the actual case before me.” He urged “a forthright investigation” of the police actions.

A few days later, a grand jury issued new indictments against the Indians, including a conspiracy charge MacInnes had thrown out. Deanna Francis, who had just been found innocent of assault, was charged with aggravated assault. She and two others who had been found innocent of obstruction were once again charged with obstruction.

Gellers protested that these moves amounted to double jeopardy; he was overruled. His motion to have the proceedings moved to Cumberland County was denied.

When the Attorney General’s Office put forth lists of potential jurors, not a single one was Indian. Gellers successfully challenged the list, which was reissued with some Indian names. An all-white jury was nonetheless selected from it.

Before the new trial started, all seven Indians were arrested on additional, secret indictments. Gellers protested that since all seven Indians had appeared voluntarily in the past, there was no possible reason to have them arrested.

Through it all, no charges were filed against the police for their actions that night. They would be formally cleared of any wrongdoing in February 1969 by a Washington County grand jury. Newspaper editorials denounced the process, but State Police Chief Parker Hennessey announced he was “very pleased” with the results.

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Gellers planned a vigorous defense and appeals motions for his seven clients. But he would never see the case through.

Rumors had been swirling that winter that the police were out to get him. Everyone except Gellers himself seemed to know about it.

Bobby Newell heard it from deputy sheriffs in Eastport. Bangor Daily News reporter John Day was told of it by sheriffs in Old Town. Rumors even reached Gellers’ intern from the previous summer, Tom Tureen in Washington, D.C., who says he telephoned to warn his former boss.

“There was no question that the state police were out to get Gellers because he was a ‘bad actor,’ a ‘criminal drug user and dealer’ – all those justifications they used to

rationalize what they were doing,” recalls Daniel G. Lilley, who was the assistant attorney general who prosecuted several phases of the case against Danny Bassett and the other Indians.

Gellers, Lilley recalls, was an easy guy to hate, particularly among the law-and-order conservatives of that contentious era. He recalls Gellers arriving late to court before Judge Thomas Delahanty, a former agent in J. Edgar Hoover’s FBI, who made life hard on defendants. “He’d show up disheveled, he smelled bad and looked like he’d slept in a barn. He wore dirty white shirts with lousy ties,” he recalls. “He was obviously smart, but he wanted to die on every hill. Everything was going to go to the Supreme Court of the United States.”

Delahanty was clearly annoyed with the attorney. “Gellers would show up late, and it almost seemed like he was doing it to piss the judge off,” Lilley recalls. “He was just perfect, straight out of central casting.”

The state police, Lilley recalls, were cowboys. “I rode up to Calais with some of them on the Airline Road, and they would stop and get booze and see girlfriends. They were on top of the world, and it was quite an eye-opener for a young lawyer,” he continues. “And it was just us versus them, and they were fighting the Indian wars all over again. It was discrimination at its worst.”

“The motivations of people higher up than me were a little skewed from what they should have been,” he says.

Hy Mayerson, a Philadelphia attorney who later represented Gellers, says the young lawyer definitely rubbed many the wrong way. “You have this individual who talks as if he’s delivering sermons from the Mount, and the problem was sometimes he was, and at the same time he was doing it he was smoking a lot of weed,” he says. “But most of all he was just pompous. And brilliant. So he was a thorn in the side of those who say, ‘Do as I say or you’re dead.’”

Then, in the midst of it all, word got around that Gellers was about to make his most provocative move yet on behalf of the Passamaquoddy. His land claims case was about to be filed.

CHAPTER NINE

‘All the Passamaquoddy want
is what belongs to them’

MARCH 8, 1968



A dirt road leads into the woods in Indian Township, one of two Passamaquoddy reservations in Washington County. After years of research, an attorney representing the tribe in the mid-1960s believed he had found the way forward in a potentially historic land claims case against the state.

After five years of research, Don Gellers felt he had cracked the Passamaquoddy’s land claims case. The state, he believed, owed the tribe in excess of \$150 million and title to tens of thousands of acres of land illegally appropriated from their treaty lands on the eastern branch of the St. Croix River.

Now he was ready to file it.

He believed the facts showed that Maine had failed to live up to its obligations under the 1794 treaty, which had been explicitly passed on to Maine when the state regained its

independence from Massachusetts in 1820. The trust fund – worth perhaps \$150 million – had been mismanaged and looted, and now contained only \$70,000. Swaths of the Indians’ land had been given illegally to white settlers.

Gellers’ brief would demand full compensation for these breaches of contract, a reimbursement of their trust fund “and all accrued and accumulated income” and a return of stolen land. (His contract with the tribe gave him a 10 percent contingency fee, so if successful he stood to collect \$15 million.)

There was one considerable obstacle, however: Maine, almost alone among the states, refused to allow itself to be sued. But Gellers believed he’d found a way around the problem.

He would serve his suit on the Commonwealth of Massachusetts – which had no such prohibition – for failing to uphold the 1794 treaty. Massachusetts, presumably, would then sue Maine as an aggrieved sovereign.

The strategy, which focused on money more than land, had the added attraction of threatening only a handful of property owners. “There are four white families squatting on the land, and the Indians are willing to let them stay,” Gellers told the Boston Herald.

“All the Passamaquoddy want is what belongs to them, no more.”

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The research had been exhausting, a hunt for documentary treasures lost in archives scattered from the capital of the United States to the capital of New Brunswick. The Indian Rights Association grants – about \$7,000 a year – had kept the project going, but he was living hand to mouth, driving a Chevy he’d purchased for \$150.

His wife had left him almost a year before, and he started inviting his counterculture friends to crash and smoke dope at the 32-room Eastport home that housed his office and sprawling library.

He had taken up with one of his clients, Annabelle Bassett, the estranged wife of Danny Bassett, perhaps the most physically imposing and dangerous Indian on either reservation. Bassett, Gellers later wrote, had beaten his wife “viciously and constantly, even to the point of hospitalization.” Bassett knew they intended to marry once the divorce went through. “He said to me, ‘I will destroy you and everyone associated with

you,’ ” Gellers recalled.

Tom Tureen, who had worked on the land claims case as an intern in the summer of 1967, found Gellers brilliant but disturbing. In the 1990s, he told author Neil Rolde that Gellers had by then fallen into a self-imposed decline, was deep into drugs, and was “as weird and perverted and demonic as anyone I’ve ever met.”

Today, Tureen declines to elaborate, except to say: “He was – how should we say – a very imperfect person.”

Others who knew him had a less visceral reaction. Former Indian Township Gov. John Stevens remembers him as “a very kind and gentle man,” and “a real friend.” William Williamson, a Press Herald reporter, came to count him as a friend after leaving the paper. “Being with him was often exasperating, sometimes downright aggravating, but never, never dull,” he later recalled. “He had a high degree of personal magnetism, and I thought he was a witty, intelligent and thoroughly decent fellow.”

He was, however, loathed by many, denounced as “that Indian lawyer” and accused, as Williamson recalled, “of just about everything from dope peddling to miscegenation to advocating the violent overthrow of the government.”

“You would run the gauntlet going into Don’s house sometimes, because they would put up placards saying ‘Get out of Eastport’ or throw things at the house,” recalls his office assistant at the time, Frances Tomah, who says there were always a lot of hangers-on at the house, which had become a sort of “open house for a free-floating set of New Yorkers.”

“He was all business during the day, but I think they probably sat around and smoked pot and discussed how the world should work,” she adds. “Tom was super straight and squeaky clean, and not at all a part of that scene.”

Gellers, she thinks in retrospect, was struggling to be accepted. “He really was looking for a homeland, and he thought he might have found it with the Passamaquoddy.”

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State and local officials were still hounding him. The commissioner of the new Indian Affairs Department, Ed Hinckley, tried to persuade the Indian Rights Association to cut

off its crucial financial support, insinuating the attorney was squandering money better spent on other purposes.

Hinckley had convinced two of the association's board members that a "state lawyer" should be handling the case, apparently unaware that the tribe had sought and been refused just such representation. He visited the association's headquarters in Philadelphia bearing a letter signed by Joseph Nicholas, the leader of the tribe's non-confrontational faction, and a dozen other Indians, calling for Gellers to be removed as tribal counsel. The tribal government, however, reasserted its faith in the attorney.

"I think the state is pressuring Hinckley because it doesn't want our case to go to court," Indian Township Gov. John Stevens told the Press Herald when Hinckley's effort became public. "I think this whole business is just to foul it up."

In late 1966, Hinckley and his new Indian agent, Arnold Davis, approached former county attorney Francis Brown about a possible grand jury investigation of Gellers in connection, Davis later claimed. The proposed investigation was to focus on Gellers' actions during his struggles with the Indian Affairs Department, but it is unclear exactly what their allegations were.

Meanwhile, Stevens and former Pleasant Point Gov. George Francis – now the tribe's representative to the Legislature – charged Davis was continuing many of the practices that made his predecessor, Hiram Hall, so reviled. Davis, a 58-year-old former forestry warden, even told Press Herald reporter William Williamson he had deep admiration for Hall and hoped he could do "half as good a job" as he had.

The Indians, Davis added, "get too much now" and should be assimilated into white society. "They're like rats in a barrel as long as they're out there on the reservations, living on welfare."

Davis also claimed he had proof that some of the volunteers working on the reservations with VISTA – or Volunteers in Service to America, the domestic version of the Peace Corps – were homosexuals. Pressed for evidence in regards to one of the accused, he claimed he could "tell just by looking at him."

Davis was ultimately sacked for making comments like these to the press, but publicly he blamed Gellers – who had organized a petition drive against him – for his firing.

The police continued to pull Gellers over, apparently hoping to find him in possession

of marijuana. He and John Stevens began to suspect the police had tapped his phone, an assertion Stevens says they tested by giving out word of where the attorney was supposedly about to go. The police were awaiting him there.

Through obstacles personal and political, Gellers trudged on. And on May 8, 1968, he drove to Portland, picked up reporter William Williamson, and drove to the Suffolk County Courthouse in Boston to file Passamaquoddy Tribe vs. Massachusetts.

When he returned home to Eastport, the police were waiting for him.

CHAPTER TEN

The Eastport sting: Tribe's attorney comes home to cuffs

MARCH 10, 1968



A woman walks past the Eastport house that Don Gellers called home when he represented the Passamaquoddys in the 1960s. Gellers was arrested here in 1968, right after filing a \$150 million land claims suit for the tribe, on charges of “constructive possession” of marijuana cigarettes.

Having filed the Passamaquoddy's unprecedented land claims suit against Massachusetts and by extension Maine, the tribe's attorney Don Gellers returned home to Eastport, arriving the evening of March 10.

Inside, he expected to find his current house guest, Al Cox, perhaps the only black man in Washington County, whose rental home's furnace had failed during the winter.

But alongside Cox in the living room, towering over Gellers, was Danny Bassett – whose estranged wife had left him and was intending to marry Gellers – as well as a man

he'd never seen before. Danny introduced the man as Larry Burke, a Boston-based gangster affiliated with the notorious and deadly Patriarca crime family.

“That’s what greeted me when I came home,” Gellers recalls. “Who knows how long they’d been in the house and what they’d been doing.”

In fact, they’d been coming and going out of the house for several days, allegedly terrorizing Cox. According to Gellers, Bassett was having sex with a girlfriend in his bed.

The purported Mafioso said he had a traffic summons he needed advice on. Bassett dropped ominously that the wise guy had once shot a man in a parking lot on little provocation. Bassett also wanted Gellers to give him marijuana and some travel money to take a trip to New Brunswick. Gellers took him to his office and wrote him a check for \$100. They talked about the situation with Annabelle and the police assault case against both of the Bassetts, whom Gellers was defending in court.

Bassett later said Gellers rolled him seven marijuana cigarettes; Gellers says that while he used marijuana, he didn’t have any in the house that day.

Bassett and Burke left about midnight, but they were back the next afternoon, again seeking dope. They would claim Gellers turned to Cox and said “roll Danny six cigarettes.” Gellers went to his office to place a call to the Attorney General’s Office in connection with the police assault case.

Meanwhile, the two visitors would claim, Cox went upstairs and returned with six joints. Bassett lit one up.

The Mafioso – in reality state police Detective W. Lawrence Hall – charged into Gellers’ office, pointing a gun, and placed him under arrest. Hall, waving his gun around, radioed to a squad of state police officers waiting nearby saying, according to Gellers, “You’d better come in. The situation’s falling apart.” Danny Bassett burst into the office ahead of them, grinning and smoking his joint. “No one bothered him about it,” Gellers noted.

(Hall, now 80, recalls having his gun out during the arrest, but says he doesn’t remember Bassett smoking a joint. Hall was eager to be helpful, but his memories of the Gellers investigation are fragmentary as a result of four strokes.)

Gellers called Press Herald reporter William Williamson right then and there after somehow convincing Hall he had the right to do so. The reporter recalled “an almost incoherent conversation” during which the distraught attorney yelled at the arresting officer to stop pointing his gun at him. “Isn’t there something you can do?” Gellers kept repeating.

“For as long as I knew him, Gellers had an obsessive and distorted belief in the power of the press,” Williamson would recall. “This time was no different.”

Gellers and Cox were handcuffed and dragged into waiting cruisers. At a command post set up in a Calais hotel to oversee the operation, Assistant Attorney General John Kelly got the word that the arrest had gone down. He was waiting at the courthouse when Gellers was dragged in. Also at the command post for this routine pot bust were at least five policemen including the commanding officer of the State Police’s Bureau of State Identification, Lt. Emery R. Jordan, and Lt. Charles R. Bruton, who was appointed head of the Bureau of Criminal Investigation shortly thereafter.

Since Hall hadn’t seen Gellers in possession of marijuana, the attorney would ultimately be charged with “constructive possession,” based on the police detective’s allegation that Cox had gotten the six joints from the pocket of Gellers’ jacket.

Today, Hall says he would never have planted evidence, but that Bassett and other Indians he was working with on the operation had access to the house for several days, and were visiting it without his supervision. He also agrees that it is unusual to have committed such extensive resources – including what he says were several weeks of his time embedded with Bassett – to make a minor marijuana bust.

“They just said, ‘get this guy out of here,’ they didn’t really say why,” Hall recalls of his orders from his superiors. “It had to do with drugs, but it was just marijuana. I mean today, who even thinks about it?”

Possession of such a small quantity of pot has since been decriminalized and can be legally purchased in Maine for medical purposes. Even in 1968, Maine lawmakers had decided that possession shouldn’t be a felony and had made it a misdemeanor offense earlier that legislative session.

But there was a catch. The new law was subject to legal challenges, so courts could

technically continue to convict people under the outgoing felony statute. Gellers, to his shock, found himself facing two to four years in prison and automatic disbarment.

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Letters found by the Press Herald at the Maine State Archives reveal the extraordinary efforts taken by state prosecutors to ensure Gellers faced felony charges as they prepared the case for trial.

Alarmed that some marijuana offenders were being charged under the misdemeanor statute, the Attorney General's Office ordered all county attorneys to prosecute under the old felony law. Attorney General James Erwin met with Chief Justice Robert Williamson to discuss the "apparent misconduct by District Court Judges" who observed the newer, more lenient law.

Taking no chances, prosecution of Gellers' routine marijuana case was conducted by the head of the criminal division of the Attorney General's Office, Richard Cohen, assisted by Kelly, both of whom drove to Machias for that purpose.

To nobody's surprise, a Washington County jury found him guilty the following March.

At final sentencing in May 1969, Judge William Silsby sounded apologetic. "I have given you the minimum sentence that I could impose under the law as it is written in the statutes of this state," he said. "If your age had been younger, I would not have been obliged to send you to State Prison" instead of the men's reformatory. "I have no other choice."

He was given a two- to four-year sentence.

Gellers posted bail and then was declared indigent by the court.

By this time, Danny Bassett had pleaded guilty in the police stop assault case. He had been given a suspended sentence and released without so much as a fine. As Gellers was preparing the appeal of his own charges in the summer of 1969, Bassett got into a quarrel with unarmed tribal constable Percy Moore and shot and killed him with a bolt-action rifle. The state prosecutor – none other than Richard Cohen – agreed to his request to have his murder trial conducted without a jury.

The judge found him innocent by reason of self-defense. Many on the reservations believed Bassett got away with both crimes as part of a deal he had made with prosecutors to help them get rid of Gellers.

“The tribe was in shock because here we had somebody who was legally going to protect our rights and the state just takes him out,” says tribal historian Donald Soctomah. “People were pretty nervous – what were they going to do next, attack us? They were the law and could do anything they want.”

CHAPTER ELEVEN

Evidence emerges, lending credence to conspiracy

1969



A fallen leaf, captured by a pinhole camera, appears almost animal-like on a road through Peter Dana Point in Indian Township. In the late 1960s, the tribe's attorney, Don Gellers, was appealing his conviction on the drug charge that had gotten him disbarred.

Don Gellers and his supporters believed he was being framed in a conspiracy involving the police, the courts, the Attorney General's Office and the Indian whose estranged wife he had become involved with, all with the aim of retiring the Passamaquoddy's hated and effective defender.

The evidence suggests they were correct.

A prominent Boston trial lawyer, Harvey Silverglate, soon came forward with a remarkable story: On April 18, 1968 – just a month after Gellers' arrest – he had had

cocktails in a Bangor restaurant with Assistant Attorney General John Kelly, who bragged to him that “the powers that be in this state” were going to take down Gellers with the marijuana charge because he was a “troublemaker” who was “stirring up the Indians” and they “wanted to get him off the Indian suit.” They were using Danny Bassett, an Indian whose wife was romantically involved with the young attorney, to help them get their man.

Silverglate later testified that Kelly had told him that the AG’s office had been working with Danny so that he “would have his revenge” and that “ultimately, if they could convict Gellers of a marijuana charge or any drug charge, they would proceed to disbar him and get him out of the case.”

“(Kelly) said Danny was going to be the instrumentality in getting to Gellers,” Silverglate told the court. “I took it to mean it was a setup.”

Silverglate, who became a prominent and highly respected civil liberties lawyer, still recalls the scene 46 years later. “The prosecutor was talking about getting Gellers, and it was obvious to me they were looking to win the Indian suit by disabling the lawyer,” says Silverglate, who came to Maine to give testimony in Gellers’ hearing for a new trial. “It’s not unprecedented that prosecutors would go after the lawyer who was giving them aggravation.”

Silverglate himself felt vulnerable coming to Maine to testify against the authorities. “I don’t think they were very happy about having me testify, and I was sure Gellers wouldn’t be the last to be retaliated against for taking on an unpopular cause,” says Silverglate, whose clients have included Leona Helmsley, Michael Milken, and the Church of Scientology. “That’s why, as soon as I testified, I got the hell out of town.”

A federal prisoner in Ohio, Scott Workman, later sent Gellers’ former intern, Tom Tureen, a signed affidavit, saying he had been released from the Hancock County Jail in September 1967 after agreeing with a state trooper to play the role of the Patriarca gangster in the forthcoming sting.

“Sgt. Joe McCarthy came down into the basement and called me to the side and told me that an attorney by the name of Gellers was a troublemaker who was stirring up the Indians down there, and that they were going to get him,” Workman wrote. If Workman would “pose as a runaway gunman” from the Patriarca family and help state police Detective W. Lawrence Hall “in planting marijuana in Gellers’ home,” then the charges against him would be dismissed with the help of Assistant Attorney General Kelly.

Workman said he agreed and his charges were dropped. He claimed he later received word that “the deal is off,” the implication being that the authorities had allegedly decided to have one of their own detectives play the role instead.

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Kelly testified in court that he remembered having cocktails with Silverglate in April 1968, but had no recollection of discussing the Gellers case with him. Today, Kelly says he has no memory of being involved in either the restaurant conversation nor the alleged deal with Workman, but he admits the Attorney General’s Office behavior should raise eyebrows. “I was a freshman attorney and more of a gofer man, so they weren’t bringing me into any high-level conversations,” says Kelly, who now practices law in Portland. “I do recall being taken aback at the police action and the prosecution level and their attitude toward marijuana, which when you look back from the perspective of today was laughable.”

“Obviously they were very motivated (to get Gellers),” he adds. “The facts speak for themselves.”

Further, in 1968, Ed Hinckley was sacked as commissioner of the state’s new Indian Affairs Department for refusing to cut his expenditures. Gov. Kenneth Curtis – an important ally of the Indians – appointed former Passamaquoddy tribal Gov. John Stevens to replace him. Before starting work, Stevens recalls Curtis asking him if there was anything he wanted to know. “I said, ‘Yes, I want to know: Did you plant that stuff on Don Gellers?’” Stevens recalls. “If they planted it, I can’t trust the state police.”

Thereafter, Stevens says, he was invited to the governor’s office. There, Hall, the police detective who’d posed as the Mafioso, reluctantly admitted to having “put all those cigarettes all over the house and inside Don Gellers’ suit pockets.” Curtis, Stevens said, was apologetic. Hall was not. “They didn’t want to be exposed how they operate.”

Reached at his Florida home, former Gov. Curtis said he couldn’t recall the meeting but didn’t deny it might have occurred. Hall also didn’t recall the meeting, but said it could have happened, as he had known Curtis, who was a fellow Maine Maritime Academy alumnus; Hall said he would never have planted evidence himself, but couldn’t vouch for Danny Bassett and other Indians who had unsupervised access to Gellers’ home for several days during the operation.

Years later, Bangor Daily News reporter John Day wrote that in the months before the

sting “there were persistent rumors in law enforcement circles about a state police investigation of Gellers.” On returning from a meeting in Augusta in February 1968, Old Town police Chief Otis N. LaBree told Day that “the boys in the Attorney General’s Office were busting their tails to nail a lawyer up in Eastport on drug charges because he was ‘stirring up the Indians’,” according to one of Day’s published accounts, which appeared in 1980.

“I felt at the time they were really gunning for (Gellers) because he was an unpopular guy,” says retired attorney Cushman Anthony, one of the only lawyers in Maine who was willing to represent Gellers on appeal. “They were trying to get rid of a grain of sand in the oyster.”

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Gellers believes the conspiracy extended all the way to Curtis’ office, because he says he overheard Assistant Attorney General Richard Cohen placing a phone call there immediately after Gellers’ conviction. This seems unlikely, however, as the governor and Attorney General James Erwin were political rivals; indeed Erwin, a conservative “law and order” Republican, ran against Curtis in the next election.

“It was very questionable as to whether or not Gellers was guilty,” former Gov. Curtis recalls, adding his own relationship with the Attorney General’s Office was “basically uncooperative.”

“I think Gellers was so controversial to certain segments of the population that they tried to entrap him,” Curtis says.

In another strange incident a few days after the sting, Gellers’ friend and co-defendant Al Cox – free on bail – stepped out of Gellers’ house to allegedly discover Danny Bassett and his nephew Anthony “Pluto” Stanley slashing the upholstery in the attorney’s car and pouring sugar into the gas tank. When Gellers tried to press charges, he says the Attorney General’s Office sent Detective Hall – who was based in York County – to act as a “special investigator” on the complaint. Stanley admitted he and Bassett were guilty – Gellers says – but Hall refused to believe his signed affidavit and the court in Calais refused to issue a complaint. (Hall today says he doesn’t recall the incident.)

That law enforcement was working to get rid of an unpopular attorney seemed clear. The events that followed would also put the courts in an unfavorable light.

CHAPTER TWELVE

Tribe's attorney tries to appeal, but hurdles prove too high

MARCH 1969 TO MAY 1971



A pinhole camera captures vegetation growing from a basketball court at the Passamaquoddy's Pleasant Point reservation in Washington County. Forty years ago, the tribe's attorney, Don Gellers, faced an uphill fight as he tried to appeal his drug conviction.

Don Gellers tried to appeal his conviction but was turned down on a technicality.

Based on new evidence that he was being persecuted for political reasons, the Passamaquoddy's lawyer sought a new trial on the charges that he had six marijuana cigarettes in his house. But as the motion was being prepared in the fall of 1970, his attorney died, greatly hobbling the effort.

Destitute, Gellers turned to his former intern, Tom Tureen, who had returned to eastern Washington County as an attorney for Pine Tree Legal Assistance, a nonprofit that provided free legal representation to poor people.

Tureen, 25, had fallen in love with the area during his internship with Gellers in the summer of 1967. He and his future wife, Susan Albright, had lived in Gellers' wife's empty painting studio on one of the headlands looking over the sea. The Beatles' recently released album, "Sgt. Pepper's Lonely Hearts Club Band," was spinning on the turntable. At a time when many white Americans assumed there weren't any Indians left on the East Coast, Tureen found himself among a people who not only retained their language but, in some pockets, didn't speak English at all.

"It was very remote, the setting was dramatic, and the wrongs against the tribe were so obvious," Tureen recalls. "I had gone up there thinking it wouldn't be anything more than a summer internship, but the pull was so strong I ended up spending 35 years working with them. ... It was a transformative experience for me."

Afterward, Tureen returned to George Washington University Law School. He graduated in June 1969 and, with the encouragement of former Indian Township Gov. John Stevens, moved to Calais to work for Pine Tree Legal. He soon became interested in Gellers' land claims case, which had stalled while his former boss tried to fight his pot-bust convictions.

By the time Gellers reached out to him in desperation, Tureen was beginning to dig into the case, informed by his knowledge of the treaties and documents Gellers had painstakingly assembled over the previous five years. He started developing an alternative theory of the land claims case.

Gellers and Tureen put together the first new trial motion, based on Boston attorney Harvey Silverglate's claim that an assistant attorney general had admitted that his office was involved in a setup that resulted in the drug charges against Gellers, and on new testimony from tribal members.

Tureen's signed appeal to the court praised Gellers as "the lone legal champion of the civil rights of the state's most persecuted minority, the Indians" and said his representation of them had "aroused the displeasure of the Attorney General's Office," which had sought to prevent his land claims lawsuit "from ever being heard in court, and to stop the defendant from giving further legal assistance to the Indians." The AG's office had "subjected the defendant to terroristic measures never employed on anyone else in order to elicit him to get marijuana" including sending a two-man team to intimidate him with the suggestion of violence.

It had all been done, Tureen wrote, "solely out of malicious political motive."

But according to Gellers and another attorney, Tureen suddenly abandoned his client just hours before the crucial hearing for a new trial at the appeals court in Ellsworth. (Tureen says he doesn't recall this happening.)

Philadelphia attorney Hy Mayerson says he was in the room when it happened. He had been sent to Maine by the National Lawyers Guild, which was extremely concerned about the way the state was handling the criminal case, to express their reservations through an amicus curiae or "friend of the court" brief.

Tureen, as Mayerson and Gellers both recall, was detached during the meeting, his attention focused on a law review article he was preparing on his new theory on the land claims. They said he would occasionally ask Gellers some question about the treaties. "He wasn't representing his client. He was withdrawing and paying no attention to the momentous hearing that was taking place the next day," recalls Mayerson, now a prominent class-action attorney in Pennsylvania. "He said, 'You take care of it, Mayerson!'"

"I thought I was going up to represent the National Lawyers Guild in its strategic position – that even if the marijuana had belonged to Gellers, it had no harmful effect – and suddenly I find myself defending a lawyer in a criminal hearing because Tureen wouldn't do it," he says.

At the hearing the next day, Mayerson wrote in a sworn affidavit, "Tureen whiled away the hours, sitting next to me, proofreading that aforementioned law-review article draft, and not volunteering to say or do anything in the day's proceedings, for his client."

Gellers felt completely blindsided: "The betrayal was so sudden and shocking," he says. "I thought Tom and I were friends. He appeared with me on television, and we had this history of having done so many things together where he was a trusted person."

Around this time, the embattled attorney was lodging at the home of the now-retired Press Herald reporter William Williamson, who later remembered Gellers' phone calls to Tureen, in which he pleaded with him to serve as his counsel on his final appeals. "Tureen refused, and Gellers launched into a verbal tirade against his former friend that was beyond anything I have ever heard," Williamson would later write.

Whether Tureen had simply become consumed and distracted by his land claims

research or rather saw advantage in abandoning his former boss's legal defense is unknown.

Mayerson believes the latter. "It was plotted and diabolical," he says.

In an interview, Tureen was asked about these episodes, and first said he wasn't a lawyer yet, so he couldn't have represented Gellers. When his memory was refreshed with citations from court papers documenting his role and the time frame of the events, he said he didn't remember the details, but believed his employer, Pine Tree Legal Assistance, had pulled him off the case.

Donald Fontaine, then-president of Pine Tree, said that may have been so, as there had been a change in policy around that time by the program's funder, the federal Office of Economic Opportunity, forbidding its lawyers from handling criminal cases. "It wouldn't have had anything to do with the fact it was Gellers," he said. "We would have been delighted to represent him, but I suspect that was probably the scenario."

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Regardless, Tureen's sudden withdrawal left Gellers without proper legal representation, forcing him to cross-examine witnesses himself. It may not have mattered, however, as Judge William S. Silsby – the same judge who had earlier found him guilty – appeared dead set against his case. The state once again was represented by Assistant Attorney General Richard Cohen.

Silsby refused to let the Passamaquoddy Anthony "Pluto" Stanley testify to anything concerning the vandalism episode he witnessed involving Gellers' car and state police Detective W. Lawrence Hall's alleged intervention to prevent charges from being filed in the incident. Gellers wanted to introduce these incidents as evidence of a conspiracy, with the state authorities allegedly willing to cover up an informant's crimes while the attorney was fighting for his freedom. According to Gellers, the judge also refused to let Stanley testify that Danny Bassett – who by then had killed Indian Constable Percy Moore – had told him that he intended to kill Gellers as well.

Gellers says former tribal Gov. George Francis came to testify that Bassett had beaten his wife, Annabelle, to the point where she needed hospitalization, and that Bassett had told him he had framed Gellers and gotten away with murder as the payoff. Francis was not allowed to testify.

John Sockabasin came to testify that Bassett and Hall had plied him with liquor on the reservation to get him to lead them into Gellers' home without permission while the young attorney was in Boston filing the Indians' potentially epic land claims lawsuit. Again, Judge Silsby refused to allow him to take the stand.

Gellers wasn't allowed to ask Hall who had dispatched him to investigate the vandalism of the attorney's car, or to ask Assistant Attorney General John Kelly if it was true they had discretion to prosecute marijuana as a misdemeanor. "Immaterial," Silsby said in each case.

Bizarrely, Silsby refused to allow either the National Lawyers Guild or the American Civil Liberties Union to appear before him as friends of the court in the case, saying they lacked "legitimate interests."

Silsby rejected Gellers' motion for a new trial early the following month, May 1971.

According to Gellers, he met with Assistant Attorney General Cohen a few days later and informed him he planned to emigrate to Israel, though he intended to continue to assist in the prosecution of his land claims case. Cohen, he says, did not object and was provided his address.

He continued to fight his conviction for another two years, appealing to Maine's highest forum, the Maine Supreme Judicial Court. His final appeal was rejected on Feb. 20, 1973.

Few in Maine would ever hear from him again.

CHAPTER THIRTEEN

Convict goes, files stay,
and land claims case advances

FEBRUARY 1971 TO MAY 1976



An “open” flag flies above a storefront in Eastport, not far from where the Passamaquoddy’s attorney Don Gellers had his office in the early 1960s, before his former legal intern, Tom Tureen, took over as the tribe’s representative in the Indian land claims lawsuit.

In the winter of 1971, Tom Tureen developed his own theory of the Passamaquoddy’s land claims case, the one that would make legal history and transform the status and prospects of the tribe.

By his account – laid out in an exhaustive 1982 article in *The New Yorker* by Paul Brodeur – Tureen found himself wondering why the Passamaquoddy and other Eastern tribes didn’t benefit from the full range of assistance offered to their Western counterparts by the Bureau of Indian Affairs, or BIA, an agency of the U.S. Department of the Interior.

He soon found himself scrutinizing the root law, the Indian Non-Intercourse Act of 1790, passed by the First Congress to protect Indians from land grabbers. The law – which required Congressional approval for any sale of Indian land – created the trust relationship between the U.S. government and the Indians upon which BIA assistance and a whole range of other privileges grew. But the Non-Intercourse Act had always been understood not to apply to states such as Maine that had evolved out of the original Thirteen Colonies.

That winter, Tureen has said, he became convinced that the law actually should have applied in Maine and other parts of the Thirteen Colonies, and therefore Maine had no legal basis to have been treating the Passamaquoddy as wards of the state or to take their land. The U.S. government, in turn, had failed to uphold this federal law and should now be prodded to sue Maine on the tribe’s behalf. This key insight was the foundation stone of Tureen’s momentous case, and it was first laid out in the law journal article he had allegedly been researching in the hearing room during Don Gellers’ effort to have his drug conviction overturned.

“The federal government has never surrendered its power over the Maine tribes,” Tureen and co-author Francis O’Toole, a University of Maine law student, concluded in their Maine Law Review article, published in the spring of 1971. “That power must be resurrected and the many wrongs must be remedied.”

The article didn’t say so explicitly, but one of the wrongs translated into a potential Indian claim to half the state of Maine, since Congress had allegedly never approved the post-1790 transfers of their ancestral homelands.

Around the time the article came out, Gellers called a meeting with his Passamaquoddy clients to discuss how he was going to proceed with their case, given that he had been convicted of knowing the whereabouts of six marijuana cigarettes and would be moving to Israel. The meeting, held May 12, 1971, at the tribe’s new community hall at Indian Township, would be the last time Gellers would see his clients.

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Gellers had flown to Maine from Philadelphia with the attorney he had recruited to take the lead on the case, Stephen Feldman; his own attorney, Hy Mayerson; and “three boxes of files and documents from the land (claims) case ... in case anyone wanted to ask any questions about the work.”

His contract with the tribe, a copy of which the Press Herald has obtained, allowed him to associate with other attorneys at his expense in investigating, formulating and representing the tribe's claims "against the United States, and the States of Maine and Massachusetts." He would get nothing unless he won, at which point he would receive a fee not to exceed 10 percent, plus any uncompensated expenses.

Gellers later recalled his proposal: "I would continue to direct the case from my new location in Israel" and Feldman would continue to prosecute the tribe's land claims, both the one he had filed against Massachusetts and a second "huge acreage claim" against the federal government that he said was still in development. None of it would happen.

According to Gellers, Tureen appeared at the meeting and argued the tribe should break the contract. Tureen says he does not recall the meeting.

Tribal leaders were, understandably, noncommittal. Gellers, now a convicted felon and likely to be disbarred, was proposing to remain their chief counsel while residing in Israel to avoid serving his two- to four-year sentence at the Maine State Prison in Thomaston. They said they would let him know their decision within the week.

Gellers and Mayerson then walked over to the table to retrieve the three cartons of documents. "Tom Tureen moved in front of me, and stood there, so that I'd have to shove him out of the way to take them," Gellers later recalled, an account corroborated by Mayerson. Tribal members told the lawyers to leave them awaiting their final decision.

"Don was my man. I hired him, and I had to fire him, and it was the worst thing I ever did," says John Stevens, who was Indian Township's governor at the time. "But we knew he would never give it up to another attorney."

Stevens says the papers belonged to the tribe, because they had been collected on its behalf under the Indian Rights Association grants. "All that information he had collected was ours," he says. "So we went into his house, got the stuff, and started a new office."

Tureen says he does not recall the incident and notes that Gellers' research had little relevance to the case he would pursue. "He didn't care about anything the federal government did," he says. "He was concerned with the actions of Massachusetts."

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Tureen's strategy diverged from Gellers', whose suit against Massachusetts would die on the vine. "Tactically, he missed the big claim and the leverage that came from that," Tureen says, adding that Gellers' theory was vulnerable because it had no body of state-level case law to build upon. "With the federal Non-Intercourse Act, you had the cornerstone of federal Indian law, an established body of precedent."

Tureen, fearful that, in his words, "an individual attorney is comparatively easy to pick off," moved to set up a legal phalanx. He persuaded the Native American Rights Fund to act as co-counsel and, later, to put Tureen on salary. He brought two young attorneys to Calais to work full-time on the case and got one of the country's biggest law firms, Hogan & Hartson, to help him pro bono.

In November 1971, his team made a horrifying discovery. Congress, in 1966, had quietly passed a law that would forever extinguish all Indian territorial claims against the federal government that were not raised in court by July 18, 1972. Suddenly, Tureen not only had to get his complex and provocative case into court, but he had to do so in eight months.

Naively trusting the Bureau of Indian Affairs would want to help the tribe, Tureen appealed to the agency's commissioner, Louis Bruce, to file suit on their behalf. BIA officials said they were considering the matter, but in reality were sitting on the ball, apparently intending to run out the clock.

In May, Tureen traveled to Augusta and Washington, D.C., begging – and receiving – the assistance of Gov. Kenneth Curtis, Sens. Margaret Chase Smith and Edmund Muskie, and Congressmen Bill Hathaway and Peter Kyros. They each made statements or wrote letters to Secretary of the Interior Rogers Morton, and Sen. Smith went to President Richard Nixon urging that the Indians be allowed their day in court, but the BIA took no action.

If Tureen didn't file his suit within a few weeks, the entire land claims case would be moot. And that possibility, Hogan & Hartson attorney Stuart Ross realized, might in itself get them into court.

On June 2, 1972 – with just 46 days left – Tureen's team filed suit against Secretary Morton at the federal courthouse in Portland, asking a judge to order the federal government to immediately file suit against Maine for unlawfully appropriating the Passamaquoddy's lands. The judge agreed, and shortly thereafter the United States filed two \$150 million lawsuits against Maine, first on behalf of the Passamaquoddy and, a

day before the deadline, for Maine's other major Indian tribe, the Penobscots. The clock had been stopped.

Strangely, nobody in Maine paid it any attention. Through 1973 and 1974, the tribe's suit – *Passamaquoddy v. Morton* – was litigated calmly, outside the burning gaze of the media. Nor did the press take much notice in early 1975, when U.S. District Court Judge Edward Gignoux ruled in the two tribes' favor, reversing the 180-year assumption that Eastern Indians did not have a trust relationship with the federal government. Nor did they wake up when the First Circuit Court of Appeals upheld Gignoux's decision at the end of the year, or even when it became the law of the land on March 22, 1976, when the deadline to appeal to the U.S. Supreme Court expired.

Even when Tureen flew to Augusta – he had bought his own single-engine Cessna by now – state officials did not take his offer to negotiate a settlement seriously. Great Northern Paper, which owned 2 million acres in the claims area, told him they didn't see how it affected them. Attorney General Joseph Brennan, a Democrat with eyes on the Blaine House, was also uninterested in negotiations.

Gov. Jim Longley, the fiery, unpredictable independent who'd taken office in 1975, scoffed at the attorney and his tribal clients. The claim, he told Tureen, wasn't a serious proposition.

Within months, everyone would change their tune, and Longley would be at the U.S. Capitol, screaming at the state's highest-ranking elected officials at the top of his lungs.

The land claims struggle was underway.

CHAPTER FOURTEEN

Tribe resists injustices, in and out of court settings

1968 TO 1976



Just off Route 1 in Indian Township, this gravel pile, now a grass-covered mound, is where a group of Passamaquoddy sat in protest in 1964 to stop a white man from building a road on reservation land. The arrests that followed brought members of the tribe and Don Gellers together.

Outside the courtrooms, the Passamaquoddy had also been fighting for control of their land and destiny.

Inspired by the Rev. Martin Luther King Jr. and the ongoing campaign for civil rights in the South – and furious over the lack of justice in the 1965 killing of Peter Francis and the 1967 incidents of police brutality – increasing numbers of tribal members had come around to former Pleasant Point Gov. George Francis' more confrontational perspective. Things had to change, and Indians had to take direct, nonviolent action to force Maine's people to agree.

In the final months before his assassination, King had been organizing a civil disobedience campaign – “nonviolent, but militant, and as dramatic, as dislocative, as disruptive, as attention-getting as the (1967) riots, without destroying property” – for economic justice and human rights for poor Americans, regardless of background.

George Francis – now the tribe’s nonvoting representative to the state Legislature – joined the effort, the Poor People’s Campaign, which was to culminate in a march on Washington in June 1968. Despite King’s April 4 assassination in Memphis while organizing the event, the march went forward as planned.

Francis, age 75, was among the 3,000 who camped out in tents in a shantytown on the National Mall in Washington known as Resurrection City. “I have two problems: one is whiskey and another is milk,” he told Sen. Edmund Muskie’s Subcommittee on Intergovernmental Relations.

Maine’s Department of Indian Affairs had cut off deliveries of milk to children because of budget problems, he explained, “and all hospital and medical care has been taken away, except for emergencies.” Meanwhile, his complaints that Indians were selling their state food parcels to buy whiskey were falling on deaf ears.

His people’s trust fund, he told the press, was being improperly held by the state, which refused to even pass along the earned interest to the tribe.

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Shortly thereafter, back at Indian Township, 40 tribal members sat down in front of the skidders and logging trucks of a party of Quebecois contractors cutting trees on the reservation for Georgia-Pacific. The action came on July 4, 1968, one week after the Indians had ordered the paper company to remove its harvesting equipment from their township, alleging their operations were doing irreparable damage to the timber, which both the company and the tribe claimed.

Indian Township Gov. John Stevens demanded the company – which heretofore had hired only whites – adopt all-Indian crews, as they would be unlikely to look the other way when abusive cutting practices occurred. “They are using bulldozers and scraping the land barren,” Stevens told the Press Herald. “There won’t be a thing growing there for 200 years if we let them continue their present tactics.”

The Indians “had a merry picnic in the woods as their way of protesting,” the Maine

Times reported from the reservation. “The demonstration was not only nonviolent, it was gay.”

Four days later, Georgia-Pacific backed down, agreeing to train and hire Indian crews, to repair damage caused to date, and to turn over all cutting operations to the tribe within 15 years.

The following summer, the tribe also forced state officials to distribute milk and prescription medicines by setting up a roadblock on U.S Route 1 in Indian Township, which had been constructed decades earlier without compensation or permission. Cars were charged a \$1 toll, trucks \$2, for an hour or more before police arrived, the proceeds to be used to buy the milk and medicine.

“Some of those tourists would hand us a handful of dollar bills and say, ‘Yeah, give ‘em hell,’” Stevens recalls with a laugh. “We collected a few hundred dollars in a few minutes there.”

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In just a few short years, the tribe had rallied behind forceful leaders like George Francis, who were willing to brave retaliation from state officials to demand what had been taken from them.

Francis died in November 1971, just a month before Tom Tureen presented his aggressive theory of the land claims case to his people. He was 78.

Other tribes were taking a forceful approach, inspired by the American Indian Movement, which occupied the headquarters of the federal Bureau of Indian Affairs in 1971 and, in 1973, became involved in an armed 71-day standoff in Wounded Knee, South Dakota, site of an 1890 massacre of at least 150 Lakota Sioux by U.S. troops. After a month of largely sympathetic media coverage, federal authorities banned the press from interviewing the Indians.

Passamaquoddy activism reflected the more militant mood.

In March 1967, tribal members blocked Route 190, which was blasted through the Pleasant Point reservation in the 1950s, in solidarity with the Wounded Knee Sioux. They burned rubber tires. Council member Ralph Dana and two others suffered minor injuries when 25-year-old Basil Pottle of Eastport struck them while accelerating through

the roadblock. Shead High School sent students home early because of rumors of incidents at the school, where 20 of the 50 students were Passamaquoddy.

In 1972, Indian Township voters elected an aggressive young chief, Allen Sockabasin, who took a confrontational attitude toward state officials, alarming some in the tribe. Sockabasin, 28, who wore his hair long in the traditional fashion of his people, subsequently demanded the state vacate a group of Forestry Department buildings that had been constructed on the reservation. He shocked many by walking out of a meeting with Gov. Jim Longley, who backed down after Sockabasin occupied the buildings.

Thereafter Sockabasin fired the reservation's police chief for allegedly intimidating unarmed Indians with a 12-gauge shotgun. He halted construction of a \$2.2 million federally funded housing project on the belief that Indian workers at the site were being paid far less than non-Indians and not being provided professional training as previously agreed; the tribal council overruled him.

The next month, July 1976, somebody fired two rifle shots at his mobile home, narrowly missing his bedroom window and causing Sockabasin to seek police protection from the state. A gunman also fired into the home of State Trooper Robert Desjardin, who lived near Indian Township.

Sockabasin lost re-election to the veteran John Stevens in September 1976, but his most powerful contribution to the Indians' land claims was yet to come. In April 1977, he was accused of setting fire to the reservation's elementary school. He denied it and claimed that his rival, John Stevens had framed him.

“There were several of us at a party, and somebody set fire at the school, and when the police arrived, John Stevens said, ‘Arrest him!’” Sockabasin says. “And the police said, ‘For what?’ But they did it. And at the trial the witness – one of his supporters – said she didn't actually see me do it, though she said she had that night.”

In defending himself, however, Sockabasin would transform the legal landscape of his people.

CHAPTER FIFTEEN

Bombshells, compromises greet an unfolding crisis

1976 TO 1980



A Passamaquoddy Indian pauses in contemplation at the edge of Long Lake on Peter Dana Point in Indian Township recently. Stakes were high for Maine's tribes and the state alike in the developments that preceded the historic Indian land claims settlement.

Finally, the day came when Maine's political leaders, the press and the public realized the Indians' land claim was real. It was Monday, Sept. 27, 1976, the day the town of Millinocket discovered it could not float a \$1 million sewer bond because of the lawsuit. Within hours, the state treasurer discovered a similar fate would befall bonds planned by seven school districts, six towns and two hospital groups – with \$27 million in total at stake.

The Boston law firm Ropes & Gray – legal adviser to most of the nation's bond markets – warned that the tribes' claims as the rightful owners of huge swaths of

northern and eastern Maine could render all of these bonds worthless. With uncertainty over title within the vast claim area, residential mortgages and property sales were also up in the air.

Suddenly everyone was taking the Indians' cases seriously.

Early that Wednesday morning, Gov. Jim Longley – the fiery populist – called Tom Tureen, screaming.

“He was absolutely livid, and said he was going to Washington to fix this,” Tureen recalls. The governor had a radical fix in mind: changing federal law to ensure the Indians would never get their day in court. He had gone from dismissing the suit as a joke to demanding a suspension of the rule of law.

“This was a real constitutional crisis he was precipitating, because in a constitutional democracy, you don't deal with a group of people who are poor and powerless and win a decision in court by asking Congress to write a new law,” Tureen says. “How do you expect people to have respect for the law if, when it benefits someone you didn't expect it to, you change it?”

Tureen jumped out of bed in Calais, raced to his plane at the airfield in St. Stephen, New Brunswick, and took off for Washington National Airport. Somewhere out ahead of him, a state-owned, eight-seat Piper Navajo was headed in the same direction, carrying the furious governor. En route, Tureen managed to learn via radio that Longley had called a meeting with Maine's congressional delegation in the U.S. Capitol.

Back then, security in Washington wasn't what it is today. Visitors could just stroll into the Capitol building, and Tureen wandered the halls unaccompanied trying to find the meeting room. “I was unannounced, but it didn't matter, because Longley was screaming so loudly I could hear everything he was saying through the door in the hall,” Tureen says. “He was a wild guy.”

Congress, Longley told Sens. Edmund Muskie and Bill Hathaway and Reps. William Cohen and Dave Emery, should pass a resolution ordering the federal courts not to hear the tribes' cases.

“It didn't take any of us very long to realize that whether this was reasonable or unreasonable or right or wrong or just or unjust, the fact was that a tremendous amount of economic damage would be done to the state if the issue wasn't resolved one way or

another,” Emery recalls. “We didn’t want to set up a situation where the state government and Gov. Longley and Attorney General Joe Brennan would be on one side and these four guys sent to Washington were on the other.”

Cohen drafted the resolution, which was backed by the entire delegation, despite the fact that Muskie and Hathaway had previously lobbied the federal government to give the Passamaquoddy their day in court.

“Longley was a problem for them, because he was very popular and had created this firestorm,” Tureen says. “He put them in a very tough spot.”

Fortunately for the tribes, Congress adjourned without taking up the resolution. Everyone returned to Maine for an awkward winter of recrimination and worry.

Longley was a polarizing figure, comparable in some ways to Maine’s current Gov. Paul LePage. He won in a three-way race, with 60.3 percent of the electorate voting for his rivals. He called state legislators “pimps,” prompting national media attention. He stayed up late into the night writing venomous, punctuation-less letters to his opponents. “He’s just about divided the state during his first 70 days in office,” Bangor Daily News State House Bureau Chief John Day wrote in March 1975. “People either like him, or they think he’s Attila the Hun.”

For the Passamaquoddy, Longley was the latter. “He got on television and thanked the people of Maine for not resorting to violence – but nobody had been talking about violence,” says Tureen, who started getting death threats by telephone. “The tribe had been saying all along that this was a case for settlement, that could be resolved by negotiation ... and Longley saw the claims as a way to create a need for his leadership, by telling people they had something to fear and that he was the one to protect them.”

“It was simple demagoguery,” he adds. “And it worked. He could have been elected emperor for life at some points in there.”

Bobby Newell, who would serve on the tribal negotiating team, remembers getting a knock on his door at Pleasant Point, a four-hour drive from Augusta, shortly after being quoted disparaging Longley in the papers. There, on his doorstep, was the governor himself. “He wasn’t yelling, but he was extremely agitated,” Newell recalls. “I said, ‘Listen, you may be the governor of Maine, but this is my house!’”

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That winter, the Passamaquoddy and Penobscot made a number of goodwill concessions, including a pledge not to seek to fine or seize land from small landowners in the claims area; their case would seek damages from the federal government and target land held by the state or the paper companies. Maine's congressional delegation responded by introducing bills to extinguish the Indians' claims and limit the damages they could collect.

“The basic bill they proposed said ‘Never mind their rights,’” recalls Wayne Newell, who served on the tribal council at the time. “The majority was just going to wipe away their crimes.”

Then, to defuse the situation, the White House got involved. Months of proposals and counterproposals followed, with negotiating teams from the state and the tribes rejecting each. But everyone had ample incentive to keep talking because sending such an explosive case to trial carried staggering risks.

The Indians had reason to fear that, if pushed to the wall, Maine might get Congress to extinguish their claim or the courts would bow to public opinion. “The case could never be litigated because as a practical matter it was far too complex,” says the head of the state's negotiating team, John Paterson, who was deputy attorney general. “The tribes and their lawyers ... knew they'd be going to the Supreme Court and saying, ‘Uphold this 1790 law and evict 350,000 people from their land.’ There was tremendous risk in that (because) judges read newspapers too.”

On the other hand, if the parties went to trial, the state team feared titles, mortgages and new bond flotations could be frozen across two-thirds of the state for five or six years. Attorney General Richard Cohen – who took office in 1979 – would later tell the Legislature these would be “potentially catastrophic consequences” even if the state ultimately prevailed in court.

“Given ... the risks of the people of this state losing a substantial amount of land, the possibility of the state and its citizens being required to pay millions in trespass damages, I concluded that I had a duty to look for a reasonable settlement,” he added. The state's central goal: to make the federal government pay all the costs of whatever settlement was negotiated.

Meanwhile, the atmosphere was turning uglier. Indian children were harassed at schools. There were runs on guns at sporting goods stores. One state legislator told White House negotiators “someone should get a gun and shoot those bastards.” A state

senator said he was going to “invest heavily in Winchesters and Remingtons.”

Esther Attean, 10 years old at the time, remembers waiting for church near the base of the Pleasant Point causeway, watching a 16-year-old Penobscot girl walk across the span. A truck driven by three white guys from Eastport swerved to knock her off the causeway, breaking her legs. “They just deliberately hit her, and the police never came and nobody was prosecuted,” she recalls. “But there was a lot of violence like that then.”

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Pierre Redmond, an activist from Madison, argued against negotiation on the grounds that the Indians’ suit presented no threat because a victory could never be enforced. “Will there be any army of United States marshals which will descend upon the homeowners, farmers and woodsmen of eastern Maine? Will they be armed?” he asked in testimony before Congress. “Will people be injured and possibly killed if there is resistance to this court order? ... Does anyone in Maine seriously advance the argument that the courts would do such a thing?”

Sen. Hathaway, who had taken a moderate approach in the negotiations, was taken to task in the 1978 Senate campaign by his challenger, Rep. Bill Cohen, an outspoken opponent of the claim. Cohen ran an ad accusing Hathaway of breaking Maine in half, with an image of the state cracking like an egg. Cohen would crush the incumbent in November.

Then, two legal bombshells scared the parties into one another’s arms.

The first, bizarrely enough, involved former Chief Allen Sockabasin allegedly burning down his reservation’s school in April 1977. Sockabasin and another Indian had been convicted of arson by a Washington County court but they appealed on the grounds that Indian Township was “Indian Country” under the federal Indian Non-Intercourse Act of 1790 and therefore the state had no criminal jurisdiction.

In July 1978, to the horror of state officials, Maine’s highest court unanimously sided with the defendants. Maine criminal, environmental, business, hunting, fishing and income tax laws suddenly no longer applied on tribal reservations.

The state came to the table. Terms were negotiated. The federal government had agreed to pay.

Then in 1979 the U.S. Supreme Court handed down a decision in the case *Wilson v. Omaha*, which put into question the central pillar of Tureen's entire case. The 1790 Non-Intercourse Act, the justices ruled, applied only in "Indian Country," which did not include land "within any state," suggesting the nation's highest court might overturn the Sockabasin case and any land claims case won by tribes in the original Colonies.

"We were in the very last stages of negotiation and suddenly there was the risk that the Supreme Court might agree to review the Sockabasin case," Tureen recalls. "If we lost that, the tribes suddenly would not have federal jurisdiction or the protections of federal Indian laws. ... The whole thing might go away."

Tureen says he managed to plant a story in *The Washington Post* saying a settlement had been reached, which appeared the very morning the Supreme Court justices were conferencing to decide whether to take up the Sockabain case. "We did that quite purposefully so that the court would believe this was no longer a critical case to take," he recalls. "They didn't."

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They had dodged a bullet, but Tureen knew the two tribes' prospects if they went to trial had been greatly compromised, as the nation's highest court might well overturn their claims on appeal. Ronald Reagan – an opponent of the land claims – also appeared likely to defeat President Jimmy Carter in the 1980 election, which increased the pressure to get a settlement through Congress before a change in administrations.

"They were reading the tea leaves of Reagan not being sympathetic to an appropriation of millions of dollars to some unknown tribes in Maine," Paterson, then the state's deputy attorney general, says. "To get it done, they realized they had to make peace with the state of Maine."

The federal government would be funding the settlement, but Maine nevertheless demanded the tribes make a major compromise in regards to their sovereign powers.

Gov. Longley's position had always been clear: that the Indians could never be allowed to have "a state within a state," and this was embraced by Attorney General Brennan, who succeeded him as governor in January 1979. "That was all Longley," says Tureen, who believes the jurisdictional issue wouldn't otherwise have come up.

"We could never have a nation within a nation in Maine," Brennan's counsel, David

Flanagan, told lawmakers. “Such a result would not only be unworkable in a state our size, but it would also promote racial and ethnic hostility and resentment to the ultimate detriment of our people.”

Paterson, who drafted the final state-level settlement bill, says this had become “an uncompromising point of principle for the state.”

“We weren’t going to get into a situation where we had a patchwork of land where the tribes could do anything they wanted, especially since so much of Maine was unorganized territory, blank slates subject to all sorts of change,” he recalls.

The price of a settlement was steep. Unlike other federally recognized tribes across the country, Maine’s Indians were to be subject to virtually all state laws. Instead of sovereign reservations, they would be given the powers of municipalities – to run schools and police departments, to enact zoning, build roads, and receive state municipal aid. They would be entitled to govern their internal affairs, and to set up tribal courts to rule on minor offenses between tribal members on tribal land, but would pay state taxes and accept state environmental, labor and gambling regulations.

The deal, Flanagan would testify, involved “no significant compromise of the state’s sovereignty at all. What we have created is certainly not a nation within a nation but rather two new municipalities within the state.”

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It was an enormous compromise, and one the Passamaquoddy have second-guessed ever since.

“The core provisions of federal Indian law are there – like the ability to exclude non-Indians in your midst from voting – making a system to help ensure the survival of the tribes as a separate people,” Tureen says. “But it was definitely a compromise. It was a clear choice, and the stakes were very high.”

A final agreement was reached on March 4, 1980, under which the Passamaquoddy, the Penobscots, and the Houlton Band of Maliseets would split \$81.5 million. As their share, the Passamaquoddy would receive a \$13.5 million trust fund and \$26.8 million to acquire land.

“On our side we had dishwashers and housewives, and on their side they had people

who had been lawyers for a thousand years,” recalls Bobby Newell, a member of the Maine tribes’ four-person negotiating team. “The end result was remarkable given how outgunned we were. We made a deal.”

The tribal negotiating teams understood the essence of the compromise at the time, but most of their constituents did not.

Tribal members were asked to approve the settlement in hastily called referendum votes. The Passamaquoddy vote was held with less than a week’s notice; tribal courts refused requests for a delay, leading the Washington, D.C.-based Indian Law Resource Center to declare that it wasn’t “a fair or proper referendum whatsoever.”

“This proposed settlement deal has been thrust upon these people in such haste that they have not been able to make an informed, reasoned decision,” the group told Congress.

“We were given the agreement with a few hours’ notice and there was no consultation or information distributed in any way so that the people could make an informed decision,” says Pleasant Point resident Vera Francis, who had just reached voting age in 1980. “I voted no, because you just don’t sign on to something without knowing all the details.”

The Passamaquoddy approved the deal nearly unanimously, and the Penobscots by a wide margin. State legislators endorsed the agreement a few weeks later, with Congress passing matching federal legislation in September.

On Oct. 10, 1980, President Carter signed the Maine Indian Claims Settlement Act into law, ushering Maine’s Indians into a promising but hazardous new epoch.

CHAPTER SIXTEEN

Big question looms:
'Where would we go from here?'

1980 TO 1982



This Indian heirloom, depicting a man at “the end of the trail,” was given to Victoria Boston, a Passamaquoddy, after her father died in 2006. The populations on the tribe’s two reservations grew sharply in the wake of the land claims settlement of 1980.

There were high hopes for the land settlement among the Passamaquoddy in the two years that followed the historic White House signing.

It was a period when the ink was drying and the administrative machinery to facilitate the multimillion-dollar transfers was being set up. The tribes had given up a claim to two-thirds of Maine in exchange for what were comparatively modest cash settlements.

For many who had grown up in homes without running water or adequate meals, there was an expectation of sudden wealth. “This claim had been going on for so long, and the

whole time people were talking about how they would one day be rich when the claim was finally settled,” recalls Allen Sockabasin, who was governor at Indian Township when the tribe won federal recognition in 1976. “My dad, my Aunt Louise, they all died thinking they were going to be rich.”

Sockabasin remembers being shocked to learn from Tureen that they would have to borrow money from the federal government to build a long-anticipated medical clinic. “All the money was tied up,” he says. “He didn’t tell us that would be the situation.”

Indeed, many were realizing that the tribe’s quest for dignity, prosperity and self-determination was just beginning. “A majority of people thought it was going to be a long road ahead,” recalls tribal historian Donald Soctomah. “We got this settled, but where would we go from here?”

Newspaper accounts from the era highlighted a turtle-and-hare contrast between the Penobscots – who were eager to buy up land and invest in projects with their share of the settlement – and the Passamaquoddy, who had a more conservative wait-and-see approach.

Joseph Hartley Nicholas, the 66-year-old chief at Pleasant Point in this era, outlined his views to United Press International in the fall of 1980. “The basic goal for the management of the money and land we will be getting will be to preserve our Indian culture, our Indian genes,” he said. “If we don’t, we’ll be absorbed by our white neighbors.”

The tragedy of his people, the chief continued, was that they had been made wards of the state, forced into dependency by whites, and left with no path to escape. “Instead of giving money, the state should have given land and taught skills in animal husbandry, agriculture, counseling,” he added. “Any philosophy, any program not designed to help a people become self-reliant is no good.”

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The worst thing that could happen, Nicholas thought, was to simply disburse the \$13.5 million trust fund they were to receive among their nearly 3,000 members. He pointed to Oregon’s Klamath tribe, which in 1961 had won a \$71.3 million settlement that paid the then-enormous sum of \$43,000 to each of the tribe’s 1,660 members. Four years later, a University of Oregon study found, a quarter of the recipients had lost or spent it all.

“Money distributed like that would probably be the ruin of many in less than five years,” he added.

Illustrating the tribe’s conservatism: In December 1980, just after the land claims were settled, the Pleasant Point reservation entertained purchasing the Eastport Water Co. – the local water utility – from a Philadelphia company for \$2.9 million. Although more than half the costs would be covered by a federal grant, tribal members rejected the plan in a referendum, 110 to 29.

Quizzed again by The Boston Globe the following summer – when Merrill Lynch advisers were literally fêting Penobscot leaders with caviar – Nicholas said he had spurned Wall Street advances. “We waited hundreds of years for this settlement,” he said. “We are in no hurry to spend it.”

“The problem with this generation is they want something for nothing,” he said of those in the tribe who wanted to disburse the money to members. “They have seen hard times, but they are greedy now and too shortsighted.”

Ultimately, both tribes would take Chief Nicholas’ approach. As their attorney, Tom Tureen, said at the time: “There’s a sense that the tribes are a permanent fixture, that the decisions they make are for future generations as well as themselves. The only way to guarantee that is to hold the assets together.”

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It’s often pointed out that while the Passamaquoddy were poor, so too were the people of Washington County, which is today the state’s poorest. But a report by the state of Maine compiled in 1976 – just before the tribe began to receive federal services as a result of the historic *Passamaquoddy v. Morton* court case – shows how huge the gap still was.

At the time, Washington County residents had an annual per capita income of \$2,069. The figure for the Passamaquoddy reservations was \$700.

The county’s unemployment rate was a daunting 9.1 percent. Unemployment at Pleasant Point was at 90 percent; at Indian Township it was 95 percent.

The county’s high school dropout rate was 5.1 percent. Pleasant Point’s was 56 percent, and Indian Township’s was 98 percent, according to the report.

But with the land claims settlement, the reservations' population – just 700 in 1976 – was rapidly growing, jumping to 972 in 1980 and 1,189 in 1990. Overall tribal membership rolls grew even faster, as many with the requisite one-quarter bloodline suddenly saw advantage in identifying with the tribe.

In a short period of time, two small, close-knit communities nearly doubled in size, and the tribe's official population had reached some 3,000. This made the communities a little less cohesive – but more vibrant – than they'd been before.

“A lot of people came back because there was hope and people saw that they might be able to have work and a decent life,” says Bo Yerxa, a non-Passamaquoddy who was tribal health planner at Indian Township during the influx of the early '80s and helped set up the clinic there. “I think most people were pleased to have relatives back, to have a fuller school, and those sorts of things.”

They would need to draw on all their resources in the years ahead, for the road was to indeed be a bumpy one.

CHAPTER SEVENTEEN

The Indians' trusted adviser capitalizes on his role

1983 TO 1990



The Passamaquoddy Wild Blueberry Co. in Columbia Falls on Route 1 in Down East Maine was among the investments made by tribe in the years after the land claims settlement of 1980. Attorney Tom Tureen's firms brokered a series of investments that drew national media attention.

After winning the Maine tribes' land claims case, Tom Tureen became a celebrity in Indian country. His 1975 victory in *Passamaquoddy v. Morton* – which extended the possibility of federal recognition to tribes up and down the Eastern Seaboard – made him the go-to attorney for tribes seeking to follow the Passamaquoddy's playbook. *Time* magazine called it the “most celebrated Indian victory since Little Big Horn.”

By 1980, Tureen had already been associated with lawsuits involving more than a dozen tribes in six Eastern states, including a tiny group of Indians in rural southeastern Connecticut calling themselves the Mashantucket Pequots. Although the last inhabitant

of their 214-acre reservation had died years before, the Pequots would, with Tureen's help, become among the wealthiest tribes in North America.

Through 1981 and 1982, Tureen and his law partner, Barry Margolin, helped the Pequots negotiate a land claims settlement of their own, by which the 50-member tribe received \$900,000 to buy another 800 acres. As in Maine, the Pequots agreed to be subject to state civil and criminal law but – critically, it would turn out – not regulatory authority.

Shortly thereafter, Tureen and Margolin successfully challenged Connecticut's attempt to stop the Pequots from opening a high-stakes bingo hall. With Tureen's legal help and an investment by Malaysian billionaire Lim Kok Thay, the hall would become Foxwoods, a casino that today has 6,300 slot machines, 10,000 employees, and 6.7 million square feet of hotel, recreation and gambling space – an area larger than the Pentagon. By the 1990s the members of the Pequot tribe – even unemployed teenagers – were collecting \$100,000 a year in per capita disbursements.

In 1983 – when the Pequots' bingo hall was still in the planning stages – Tureen shifted his focus from helping tribes win recognition and land claims under the Indian Non-Intercourse Act to helping tribes make investments in their future. While keeping his law partnership with Margolin, Tureen founded a new entity, Tribal Assets Management, with a former Princeton classmate, Daniel Zilkha.

Between the two firms, Tureen had become the Maine tribes' near-exclusive business representative. The law firm brokered tens of millions of dollars of land and real estate purchases, while Portland-based Tribal Assets Management helped identify, negotiate and manage purchases of companies and other assets.

Tureen's tenure would prove polarizing. Some Passamaquoddy – including veteran Indian Township Gov. John Stevens – say he advised the tribe well in difficult circumstances. Others, however, question his business dealings with the tribe.

“He just befriended tribal leaders as they came into office, and he always made sure that he had a quorum of people who would approve of his direction, so he could shape our economics,” says former Indian Township Chief Allen Sockabasin, a longtime critic of Tureen. “He was friendly to me, so I thought he was my friend, but he really bamboozled us.”

Brian Altvater, who was lieutenant governor at Pleasant Point in the early 1990s,

agrees. “There was almost like a codependency between Tom Tureen and the Passamaquoddy tribe,” he says. “He felt all he had to do was to sell whatever he needed to the tribal elders, wine and dine them, and he had it made.”

He also had the trust and gratitude of many in the tribe, having won them federal recognition and the land settlement, says tribal historian and former legislative representative Donald Soctomah. “I think he should have maybe advised us, but shouldn’t have been our financial agent,” he says. “That seemed to me to be a conflict.”

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Conflict or not, Tureen’s firms brokered a series of investment deals that drew national media attention. He helped broker the purchase of two Rockland radio stations, a little-known map company called DeLorme and a blueberry farm near Columbia Falls. He helped them use their municipal powers to float a bond, raising the capital to buy Thomaston-based Dragon Cement, one of the only cement companies in New England.

On the whole, the Passamaquoddy’s investments paid off.

Their \$2.2 million investment in the 3,000-acre blueberry farm reportedly paid for itself in 18 months and today generates around \$2 million annually for the tribe.

The tribe purchased Dragon Cement for \$2 million and assumed \$23 million in loans, but five years later they sold it for \$80 million, a sum paid out over two decades, which helped balance budgets. The deal was considered so successful it became a Harvard Business School case study.

They made less money on DeLorme, which they purchased for \$700,000 and sold for \$2 million. Within a few years the company was worth many times that. A similar-sized investment in a Portland parking garage failed when the venture went bankrupt.

Then there was the so-called scrubber affair. When the tribe sold Dragon, they kept ownership of a patent for a new air scrubber technology developed by one of the company’s employees. Proponents said the scrubber could remove 95 percent of sulfur dioxide emissions at cement plants, and, in the process, produced a valuable component of fertilizer.

“Tureen told me that within the next two years the tribe was going to realize \$300 million in profits from the scrubber,” Altvater recalls.

The tribe invested \$2 million in its development, and the federal government another \$11 million. The venture never bore fruit. There was disagreement at the time as to whether Tureen was at fault for being overly optimistic about the state of the technology.

Overall, Tureen estimated the tribe had netted more than \$80 million from the investments recommended by his firm by 2003, a result he described at the time as “spectacular.” The lieutenant governor in that year – Joseph Socobasin, who is currently governor – concurred: “Basically the sentiment is that Tom did very well for us.”

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By contrast, the Penobscots did poorly, breaking even by Tureen’s account. A \$5 million purchase of mobile home manufacturer Schiavi Homes ended in bankruptcy and a million-dollar loss. Penobscot Gov. Francis Mitchell fired Tureen in 1990, only to be ousted himself in his re-election bid.

“I stayed on after the land claim agreement to help them fulfill it and make something of it,” Tureen says, expressing disappointment that some question his efficacy. “The process was remarkable, and I’m very proud of all those things that we did.”

In both tribes’ transactions, Tureen made out well. According to press accounts, his firm earned \$400,000 on the Schiavi Homes deal and millions on Dragon. By his account, Tribal Assets Management received a retainer of \$120,000, plus 5 percent of profits, but sources within the tribe say that when his law firm’s cuts are taken into account, the fees were higher, with 11 percent a widely cited figure. (Tureen has noted that money managers typically charge 20 percent.)

“I told him, ‘You have the best of all worlds,’” Altvater recalls telling Tureen after the parking garage bankruptcy. “We take all the risks, and if something happens we absorb it, but you still get paid.”

Tureen’s various ventures across the country made him a wealthy man. In 1998, Tureen and his wife purchased what was then Maine’s most expensive home. Stonecroft, listed at \$5.75 million, was designed by John Calvin Stevens and included 31 acres, a half-mile of ocean frontage, a pool, and a guest house and carriage house in Falmouth Foreside.

But in the preceding years, the tribe’s own house was getting out of order.

CHAPTER EIGHTEEN

Land claims settlement bears a powerful curse

1983 TO 1986



A Passamaquoddy elder and a member of the joint tribal council sifts through stacks of petitions at Pleasant Point. In an unexpected development, an exception clause in the land claims settlement led to some uncertainty about which laws should apply to Maine tribes.

As the settlement money began coming in and investments were being made, tribal members started becoming aware of an unexpected but extremely serious implication of the land claims deal.

Until 1976, when attorney Tom Tureen won them federal recognition, the Passamaquoddy were entirely subject to state jurisdiction in virtually all matters: criminal and civil law, labor and environmental regulation, taxation and electoral law. They were exploited – officially termed “imbeciles” and wards of the state – and denied constitutional rights such as the right to vote, but when tribal attorney Don Gellers or

tribal governor George Francis had fought for tribal members' rights, they knew what body of laws were supposed to apply, and which ones the state or federal government were violating.

From 1976 to 1980, the Passamaquoddy's legal status was also clear: It was a federally recognized tribe, subject to the same legal framework as long-before-recognized Western tribes such as the Navajo or Lakota Sioux. As such, they were not subject to the laws or taxes of the state of Maine, and the federal government had sole authority over felony-level crime on their reservations. Tribal members could count on the protections enshrined in the Indian Civil Rights Act, a 1968 law that extended to them most of the guarantees in the Bill of Rights – among them freedom of speech, due process, protection from unreasonable search and seizure, equal protection for all members before the law – providing protection against any would-be tyrants in tribal government.

But with the signing of the Maine Indian Claims Settlement Act in October 1980, those one-time legal certainties went out the window, laying the groundwork for mischief.

Under the settlement, Maine tribes agreed to a unique and, as it turns out, dangerously ambiguous jurisdictional arrangement. Under pressure, they agreed to be subject to the laws and jurisdiction of Maine, except for “internal tribal matters” and hunting and certain fishing rights on tribal territory.

What is and is not an “internal tribal matter” has remained uncertain ever since. Do state public records laws apply to the Maine tribes, which receive state and federal grants and funds? Does the tribe have to reveal its budget to its members, as other governmental entities in Maine must? Do state labor laws apply to tribal entities employing tribal members on tribal land? Does the state Constitution apply to tribal members living on the reservations? Whistleblower statutes? Anti-nepotism rules? Laws requiring the holding of open and honest elections?

Nobody knew exactly. The only way to find out was to take a specific matter to court – if, that is, the court would even hear the case.

Probe the matter further and it gets more ominous.

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As a result of the agreement, no federal Indian law – whether passed before or after 1980 – is applicable within Maine if it “affects or pre-empts the civil, criminal, or regulatory jurisdiction of the State of Maine” unless Congress explicitly specifies it is to apply to the Maine tribes. Maine’s attorneys general – including the current one, Janet Mills – have emphasized this point ever since.

This raises the possibility that Maine Indians living on reservations may not have the protections of the Indian Civil Rights Act. In anything deemed an “internal tribal matter” on these reservations, the Bill of Rights may not apply, leaving individuals vulnerable to unscrupulous tribal officials.

Add to that a long list of federal laws – the Violence Against Women Act, the Tribal Law and Order Act, the Indian Gaming Regulatory Act – that don’t specifically mention the Maine tribes, and the complications only grow.

“I think the Maine Land Claims Settlement Act is one of the most problematic agreements out there because of this gray area that exists in so many areas,” says Stephen Brimley, a consultant on Indian justice issues who recently served as director of the Penobscot tribe’s judicial system. “It’s a document that in my mind has created more problems than it solved.”

Making matters worse: Anything that came to be deemed an “internal tribal matter” was plunged into a nascent system in which the normal checks and balances on power had yet to be constructed.

Tribal members soon discovered that if they had a grievance against a tribal governor, official or council decision, they in effect had no reliable way to seek justice.

The Passamaquoddy learned this well in the summer of 1986.

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Traditionally, all members of the Passamaquoddy tribe had the right to vote in tribal elections, regardless of whether they lived in Eastport or Bangor or Detroit, Michigan, or right on the reservations, a practice that had also been encoded in the Maine laws that governed tribal elections and government prior to federal recognition in 1976.

But at a tribal caucus election held Aug. 5, 1986 – normally a routine affair to narrow the field of candidates for tribal council and governor – the tribal government asked

members to vote on whether to disenfranchise all tribal members not living in Washington County. Since one had to vote in person, few of the affected tribal members cast ballots, even though they constituted about a third of the electorate.

The measure also banned anyone who hadn't lived on reservation for at least two years from running or holding office. This disqualified, among other people, the sitting governor at Pleasant Point, Clive Dore.

Proponents of their disenfranchisement argued that the "off-reservation vote" had been abused. "Relatives and friends of candidates have been shipped in by the carload during tribal elections, from as far away as New York and the Canadian provinces, to support candidates and issues they knew nothing about, and the consequences of which would be felt only on the reservation," tribal member Roger Gabriel Ritter wrote the Bangor Daily News at the time.

If so, however, it was still unclear why a tribal member in Machias or Cherryfield would be more versed in reservation issues than one in St. Stephen, New Brunswick, just over the border from both reservations.

"We have a lot of Passamaquoddy living in St. Stephen and St. Andrews who have been family for a long time," says Bobby Newell, who became chief at Indian Township in that contentious election year. "I've gone back and forth on this issue in the past, but now I think they should have a say in what happens here, because they should have a say in what happens in the land and in laws that pertain to every Passamaquoddy. After all, one day they may retire here."

The proceedings were chaotic. "The caucus was a carnival or circus, noisy with many sideshows," an unnamed tribal council member told the Bangor Daily News shortly thereafter. "Order did not prevail." When the dust settled, the measure had been approved.

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The move was unprecedented for a Maine tribe. Around this time, the Penobscots rejected a similar provision and to this day allow nonresident members to vote, since the resources, settlement funds and tribal government belong to all members. "It's been that way since as long as I can remember," says Wayne Mitchell, the Penobscot's current representative to the Maine Indian Tribal-State Commission.

The Passamaquoddy's decision was extremely controversial, as it may have violated the Indian Civil Rights Act, which guarantees equal protection – presumably to include voting rights – to all tribal members. Former Chief Allen Sockabasin and Gail Dana, both of whom were living in Penobscot County at the time, were shocked when they were turned away from the voting booths at the general election that September.

“I was born Passamaquoddy, grew up at Indian Township, was governor there and served on the council, and suddenly I was disenfranchised because I was living in Bangor,” Sockabasin says. “They just took away my right to vote just like that!”

In the rest of Maine, the United States and most of Indian country, the solution would have been obvious: Challenge the constitutionality of the act in court.

But the tribe had no constitution, and that, as Sockabasin and Dana were about to learn, would make challenging the government's actions effectively impossible.

CHAPTER NINETEEN

For some in tribe, no right
to vote, nowhere to turn

SEPTEMBER 1986 TO JUNE 1987



The Pleasant Point reservation is captured in the aperture of a pinhole camera. A legal challenge resulted after an unusual Passamaquoddy caucus initiative in 1986 left many members of the tribe stripped of their right to vote on tribal matters.

As a result of an unusual 1986 tribal caucus initiative, hundreds of Passamaquoddy had their right to vote in tribal elections taken away because they lived outside Washington County.

A Passamaquoddy living in Steuben – an hour-and-40-minute drive from Pleasant Point – could vote for office there, whereas if he or she lived in equidistant Aurora, he could not, simply because it was over the Washington County line.

It appeared to represent a clear violation of the equal protection clause of the U.S.

Constitution and the Indian Civil Rights Act. Had the Passamaquoddy remained under federal jurisdiction or unfettered state jurisdiction or if the tribe had passed a constitution of its own, the disenfranchised Indians would have had no trouble having their case heard.

But as a result of the 1980 land claims settlement, judicial review of “internal tribal matters” such as this apparently fell into nobody’s jurisdiction at all.

Former Indian Township Gov. Allen Sockabasin and another nonresident tribal member, Gail Dana, tried to challenge their disenfranchisement in the tribal court, a body set up precisely to hear cases involving internal tribal issues. Or so they thought.

They filed their complaint, alleging violations of the equal protection clause of the federal Indian Civil Rights Act and traditional tribal practice, and seeking a restraining order to prevent the Sept. 2, 1986, election from going forward.

According to Sockabasin, the tribal court proceedings were a farce. In the midst of the court hearing, he recalls Tribal Judge John Romei calling a recess. As the court had their break, Tom Tureen, the attorney who had represented the Passamaquoddy and Penobscots in the land claims settlement, convened a joint tribal council meeting in the next room. There, Sockabasin says, Tureen advised the council to pass an ordinance forbidding the court from ruling on electoral matters.

“Tureen came back in and advised the judge on what had been done,” Sockabasin recalls. “Right in the middle of the court proceedings they changed the law.” (Tureen says he has no recollection of these events; Judge Romei did not respond to an interview request.)

At the end of the proceedings, Romei ruled the tribal courts did not have jurisdiction, as the tribal council had not given them such power.

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The plaintiffs appealed the decision to the Penobscots’ tribal court, which serves as the appeals court for the Passamaquoddy (and vice versa). Appellate judge Andrew M. Mead – who is now a justice on the Maine Supreme Judicial Court – issued a sobering decision on June 3, 1987.

“The Passamaquoddy Tribal Court is not a constitutional court. It has no existence

separate and apart from the government of the Passamaquoddy tribe,” he wrote. “Accordingly, the court ... can exercise no powers beyond those authorized by the tribe. Indeed, the tribe could extinguish the court at any time by appropriate legislation.”

Mead said he was “aware of no legislation, resolution or council action which would authorize it to entertain an action against the tribe itself. ... As such, a tribal member may not seek redress for tribal (government) action before the Tribal Court.”

Translation: absent a constitution making it a separate branch of government, the tribal court did not have the power to judge the actions of the tribal government and, in fact, served at its mercy. (Mead did not respond to an interview request.)

An “internal tribal matter,” Sockabasin and Dana had just discovered, is one not subject to judicial review.

Would the federal courts have heard his case? Would they have determined whether the Indian Civil Rights Act applies to Maine tribes? Allen Sockabasin was ultimately unable to find out.

Lacking the funds to pursue the case in federal court – and unsure if it would even be heard – Sockabasin was forced to abandon his efforts.

Any Passamaquoddy who lives outside of Washington County still cannot vote in tribal elections today.

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One clear political effect of the ban, many in the tribe say, is that the portion of the tribal electorate least likely to be beholden to government officials for their livelihoods had just lost their say in who those officials would be.

“They hand people money and expect their support or give them contract jobs for their support, and that’s how they keep control of people in the community,” says tribal member Ira Gilbert of Indian Township.

Regardless of the virtues of disenfranchisement, the incident foreshadowed what would become the tribe’s greatest liability, the Achilles’ heel that has hobbled its ability to build a prosperous future for its people: the lack of a constitution that would establish the fundamental laws of the tribe and the foundations of the rule of law in internal tribal

matters.

Traditional tribal structures, Sockabasin told the Maine Times in the fall of 1986, were inadequate to cope with the administration of tens of millions of dollars of grants, corporate assets, and trust fund investments secured as a result of federal recognition and the land claims settlement.

But efforts to approve a constitution to rectify the matter had failed, Sockabasin told the Maine Times, “because the constitution would have made the entire leadership accountable. From what I gather, nobody wants to be accountable. But we’re just dealing with too much money not to be held accountable.”

His words would prove prophetic.

CHAPTER TWENTY

With no constitution,
'a community ... without rules'

1986 TO 1993



St. Ann Church, in the village of Peter Dana Point in Indian Township, stands under a gray sky recently. Repeated attempts to enact a tribal constitution – a document that would have provided a legal foundation for the Passamaquoddy – failed.

There was never any doubt that the Passamaquoddy needed a constitution.

Such a document would establish the fundamental law of their land, and identify both the powers of elected officials and the mechanism to ensure they adhered to tribal law. Though it was abundantly clear from the outset that one was needed, getting it enacted would prove a complicated and formidable challenge, one that remains unfinished to this day.

With tribal council approval, attorney Tom Tureen had developed a draft constitution

in 1983 supported by a \$100,000 grant from the federal Bureau of Indian Affairs. It was never enacted.

Each time the document was put up for approval in the 1980s, it was passed by voters at Pleasant Point but defeated by those at Indian Township.

The Maine Times reported from the reservations in January 1987 that the defeat was due to opposition to two provisions in the document. One was a clause allowing tribal members convicted of “illegally selling drugs and alcohol” on the reservations to be banished for between six months (for a first offense) to life (for a third one.) The other was a provision banning convicted felons from holding elective tribal office.

“The element who opposed it is in office on the reservation today,” charged John Stevens, who had been narrowly defeated in the 1986 election for Indian Township governor by 43-year-old Bobby Newell, the former tribal constable-turned-politician. “They’ll never pass it the way it is with those two articles.”

Others blamed Tureen. “He came down here and he won the land claims, but Tom has been carried away with his big-league obligations, and he has left the government naked on each reservation,” council member Ralph Dana, Pleasant Point’s most successful businessman, told the Maine Times in late 1986. “He has forgotten about the little people here. In the absence of a constitution, the tribal government and Tom Tureen have freewheeled. The community is left without rules. There’s no accountability.”

Tureen had a solid counter to this argument, however. “I spent hundreds of hours working on the constitution with them,” Tureen told the Times. “It went out to vote several times and was defeated. How is that my fault?”

Many tribal members persisted in trying to get a constitution enacted, rightly seeing that without one it would be impossible to enforce tribal law on tribal officials. “Now the tribe members are at the mercy of the Joint Tribal Council,” Roger Ritter of Indian Township told the Bangor Daily News in 1990. “They can but they don’t have to honor petitions or hold public hearings on ordinances. We don’t have any guidelines to balance the power between the people and the government.”

Alberta Cleaves of Indian Township added: “We needed (a constitution) right after we went through the land claims, as a way of keeping our elected officials accountable to their people.”

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In January 1989, constitutional proponents circulated petitions on both reservations calling on the tribal governors to address the issue. Hundreds of tribal members signed them. That July, the governing council appointed a six-member committee to develop a draft. They held public hearings at both reservations in the early months of 1990, gathered concerns, incorporated them in drafts over 23 of their own workshop meetings and presented the results to the Joint Tribal Council.

The Joint Tribal Council – consisting of the governing councils, governors, and lieutenant governors of both reservations – was and is theoretically the supreme executive body of the tribe. After a three-month delay – its meetings were repeatedly canceled because Indian Township officials kept failing to show up for them – the body approved the draft and scheduled a tribe-wide public referendum for July 10, 1990, to approve or reject the constitution.

Voters came to the polls July 10. At Pleasant Point, the draft passed once again. At Indian Township, however, tribal members found the polls closed and locked.

Gov. Bobby Newell had canceled the vote at the last minute, suddenly claiming that “there are things in it that we don’t understand” and that needed to be examined in further workshops. His authority to cancel a referendum called by the Joint Tribal Council was unclear; but, because the tribe had no constitution, there was no way to challenge it.

Ed Bassett, one of Pleasant Point’s representatives on the constitutional committee, was flabbergasted by Newell’s action. “He knew the process all along (and) ... was very supportive of the whole thing,” he told the Bangor Daily News. “Now, all of a sudden, he does not have enough information? I really think it is a smokescreen.”

Newell’s primary political rival, former tribal Gov. John Stevens, agreed. “I think this is a sad day for the constitution,” he told a reporter, “and an even sadder day for the Passamaquoddy tribe.”

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Amid the outrage, Gov. Newell informed his counterpart at Pleasant Point that his reservation would vote Aug. 20 on the constitution “as currently drafted, and agree to be bound by the two reservations.”

But Newell canceled the Aug. 20 vote as well and declared he was overseeing revisions to the draft before residents of his reservation would be allowed to judge it. A public workshop was held Sept. 2, with a lively discussion of issues surrounding the rights of non-native widows and widowers when their native spouses died.

On Sept. 4 – the same day as the gubernatorial election between Newell and Stevens – Indian Township and Pleasant Point voters approved entirely different versions of the constitution, therefore neither had constitutional standing. Each reservation adopted its own version as municipal bylaws – though they are often ignored – and the Joint Tribal Council continued to operate in a vacuum.

Newell told the Bangor Daily News that the Indian Township draft “restricted the Joint Council from having so much power and we gave that power back to the people.”

In reality, the last-minute changes gave Newell greater power and his people less. He gave his office the novel ability to veto any action of the Joint Council, a move that could be overturned only by a unanimous vote of the latter body. Citizens’ referendums and votes to recall a governor would require two-thirds votes for passage, instead of simple majorities as the original draft read. A recalled official could also run for the same office in the very next election instead of having to sit it out.

“I don’t recall exactly what happened, but I know that a lot of times in the Joint Council we would have a lot of debates and controversy as to what each reservation wanted with the constitution,” Newell says today. “We made the decision based on circumstances that were happening at the time.”

Bassett describes the events of that late summer as a constitutional crisis on several levels. “It was crazy what went down. We never contemplated that somebody would defy the Joint Council to that point,” he says. “Nobody knew what to do.”

“I guess that was tribal politics at its lowest point, as far as people abusing their power,” he adds.

But on Sept. 4 Bobby Newell had also won re-election. The lowest ebb was yet to come.

CHAPTER TWENTY-ONE

As reservation's rule of law erodes, abuses thrive

1978 TO 1993



A boarded-up building belies the difficult life on Peter Dana Point in Indian Township. Governing without a tribal constitution in the years following the Indian land claims settlement of 1980 put the Passamaquoddy in a risky spot, even with their own leadership.

With the constitution stillborn, the tribal courts out of the picture and outside authorities not wishing to intrude on internal tribal matters, the stage was set for serious abuse.

It was the saddest twist of fate. Straight through the 1960s, the Passamaquoddy people had been grossly treated – with individuals denied the vote and wantonly killed, their allies jailed on trumped-up charges, their property and resources taken away – all because they lived without the legal rights and law enforcement protections most Mainers took for granted. Now, amid their hard-fought, David-and-Goliath victory over the state of Maine and the federal government, they were slipping into another legal

breach, this one first torn by the state but made far wider by the actions of their own leaders.

For rank-and-file members of the tribe, the rule of law had begun to slip.

Bobby Newell, the man perhaps most responsible for this state of affairs, had already been touched by accusations of impropriety.

Newell had grown up dirt poor and didn't begin to learn English until elementary school. Still, he became one of the few Passamaquoddy of his generation to attend college. As a young man, he had made an impression on Maine's first commissioner of Indian Affairs, Ed Hinckley, who saw in him the charisma, confidence and intellect to be a great leader, and Hinckley helped him become the first Maine Indian to attend the former Haskell Institute, the Indian college in Kansas now known as Haskell Indian Nations University. He attended the state police academy and, in his early 20s, had a short stint as a Pleasant Point tribal constable, resigning after being swept up in the epic 1967 police brutality case, where state troopers stood accused of barging into homes and beating the Indian inhabitants.

During the 1970s, Newell became active in politics at Pleasant Point, serving on the governing council and as director of the reservation housing authority, through which federal housing grants flowed. As the land claims settlement reached its final stages, he was named to the four-person negotiating team, and in the fall of 1978 he was elected governor.

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At his inauguration, Newell pledged to increase Indian self-sufficiency by encouraging small business, educational attainment, and greater administration of Indian services by the tribe itself. Two years later – even as the historic land claims settlement was being finalized – his constituents circulated a petition demanding his recall. Newell, it said, “was remiss in keeping the tribe informed of how federal funds and programs were being administered.”

Newell resigned, and tribal officials chose not to call for an outside investigation of his alleged misdoings. (He says today that at that stage “we didn't have any money to mismanage ... only a few funded programs, and they were very, very inadequately funded.”) Three months later President Jimmy Carter signed the land settlement act into law, diverting attention to the future.

Shortly thereafter, Newell left his wife and five kids, he says, and moved to Indian Township to live with his girlfriend, whom he later married. He took up logging.

D. Gordon Mott, a professional forester who had worked in the woods since 1946, was hired by the tribe in 1982 to develop a forestry plan. He remembers well encountering 6-foot-2 Newell on one of his first days at work, shortly after the logger had been forced to stop cutting a parcel of prime spruce for which he allegedly did not have the proper permissions.

“This great fellow came in the door with a terrible, terrible dark scowl on his face and towered right over (my colleague) and growled at him: ‘OK, you’ve put me out of work. You have to find a place to cut,’” Mott recalls. “I told him I did see a stand of balsam fir on Route 1 that had been hit by a storm but was still salvageable.”

At the time, balsam fir was the workhorse species, usually targeted for cutting, while the more valuable spruce and pine were allowed to mature. But when they drove to the stand, Newell asked if he could cut one of the trees down. “So he and his partner, Clayton Cleaves, got out and got their chainsaw and took the fattest fir they had there and knocked it down,” Mott recalls. “And Bobby knelt down and started smelling the stump. I said: ‘Bobby, what are you doing?’”

Newell’s response revealed the degree to which the logger had been targeting only the highest-value species in the forest: “I’ll tell you the truth,” Mott recalls him answering. “I’ve been a logger for 20 years, and I’ve cut spruce and pine but I’ve never cut a fir.”

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In a testament to his self-assurance and charisma, Newell – a recent transplant from a rival reservation – ran against veteran Indian Township leader John Stevens in 1986 and won. His sister Molly Jeanette Neptune was elected lieutenant governor. This was despite a letter from the federal Department of Housing and Urban Development surfacing in the final weeks of the campaign that complained that Newell – who sat on the tribe’s housing authority board – had not made a HUD rental payment on his own residence in nearly three years and had allegedly been involved in illegal self-dealing: winning contracts to repair housing authority properties.

The tribal council, possibly concerned about how he might oversee his own cutting of trees on tribal lands, passed a special ordinance forcing him to give up his logging license. Still, things would not go smoothly in the woods – and many other sectors –

under his two-term administration.

One of Newell's first acts was to shutter the tribe's child welfare office, where the director, former Gov. Allen Sockabasin, had uncovered dozens of cases of alleged child abuse and incest. According to press reports, 17 cases had been prepared for a Washington County grand jury and more than 70 cases were under investigation.

Office staff had been furloughed earlier in the year due to a temporary funding gap, but shortly after Newell took office, the tribal council made the closure permanent and attempted to seize all of its investigative records. "Many members of tribal government were under investigation," child welfare investigator and former Calais police Officer Ed Nadeau told the Bangor Daily News. "After (Newell) was selected governor, the whole child welfare program was thrown out the window."

None of the child abuse cases made it to court.

"It was hard," Sockabasin says today. "It's a small community, and you find yourself investigating people you're related to."

Newell told a reporter that Sockabasin had received poor evaluations from the BIA and was using his position in "a vindictive fashion" to "go after his political enemies."

Sockabasin wrote letters critical of Newell in the tribal newsletter, Keq Leyu (which means "What's going on?"); Newell shut the publication down. Sockabasin led petition drives to have Newell and his sister recalled, to institute two-year terms for all elected officials, and to restore the vote to tribal members living outside Washington County. None of his efforts succeeded.

Newell was re-elected in 1990. Then things began, once again, to come apart for him.

CHAPTER TWENTY-TWO

The perils of placing trust 'in the hands of the few'

1993 TO 2005



A pinhole camera captures a dog chained to a trailer on Passamaquoddy tribal land recently. For many people on the reservations, the way that leaders managed the tribe's newfound wealth after the land claims settlement of 1980 left a legacy of disenchantment.

For the Passamaquoddy, the primary legacy of the historic 1980 land claims settlement was their purchase of more than 100,000 acres of forestlands.

The tribe bought the land, including large tracts near Jackman in western Maine and another in eastern Penobscot County, from paper companies. Like other tribal trust land, the forests and the trees cut from them belong to the tribal members collectively and, in theory, should be a source of considerable – and renewable – income for them.

Indeed, the federal Bureau of Indian Affairs is charged with overseeing the

exploitation of the forests to ensure this important shared resource isn't stolen or squandered. In theory, the bureau can demand changes and shut down forestry activities if things go awry.

In early January 1993, the bureau did exactly that, suspending all timber sales because of inadequate oversight, recordkeeping and conflicts of interest.

Days later, D. Gordon Mott, who months before had been rehired to help manage forestry operations, wrote Indian Township Gov. Bobby Newell a detailed memo outlining critical shortcomings, all of them stemming from potential conflicts of interest, inadequate checks and balances, and a lack of political independence for forestry managers. If decision makers had close connections with particular loggers, he wrote, the forests would be the worse for the mischief that would ensue.

“It is my view that serious problems can develop if administration of a program that is responsible for an asset like the forest that is of vital interest to both communities and all tribal members is placed in the hands of the few,” Mott wrote. “The blueberry harvest cannot be exceeded, but the exploitation and degradation of the past decade in the forest can continue because it is not an annual crop. In the end its value will be lost.”

Tribal authorities were allowing loggers to run amok in their people's forest. “What had happened was that the tribal loggers had grown in numbers and ... were being accommodated regularly and more than sufficiently,” Mott recalls today. “They were accommodated to an extent that looked like it was beyond the capacity of the resource to sustain them for the long term.”

But the solution negotiated with the Bureau of Indian Affairs sidestepped many of these issues. Oversight of the tribe's forestry sector was transferred from the governor of Indian Township to the Joint Tribal Council, where Newell, his sister and allied councilors were members.

“The BIA was trying to promote tribal independence and tribal assumption of authority,” Mott notes. “These things conspired so that all the actors were working in their individual interest and not in the interest of the resource as a whole.”

Logging resumed, but the problems would only grow.

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By February 1993 – not even a month after weathering a crisis over mismanagement of forests – Newell’s administration was in jeopardy yet again.

Newell, who had been forced out of his previous governorship at Pleasant Point by a citizens’ petition and had blocked efforts to ratify a constitution that would have limited his powers, faced a new petition drive.

This time, tribal members were calling for an investigation into the legality of his administration’s financial transactions, and a suspension of his administrative authority. The governor, they feared, was mismanaging the reservation’s money.

He agreed to relinquish many of his powers, while the reservation’s governing council demanded a list of all expenditures over the previous five months and a copy of the most recent audit. Newell announced that he might not run for a third term, and was considering going to law school and becoming a judge.

Bizarrely, however, Newell was appointed interim administrator, essentially standing in for himself. Tensions on the reservation reached a boiling point.

In early March, several tribal members seized control of the Indian Township government headquarters after a meeting of the Joint Tribal Council, protesting Newell’s continued presence. Former Gov. John Stevens – Newell’s longtime rival – and four other councilors joined them. Late at night, Newell came inside and met with the group, agreeing to schedule and abide by a March 11 recall referendum vote.

Newell lost, and Stevens became governor. His administration claimed to have inherited \$3 million in debt. Asked by a reporter whether Indian Township was broke, just a decade after the land claims money had been transferred, Stevens responded: “Badly bent.”

Today Newell defends his second stint as tribal governor, which fulfilled campaign promises to put people to work by hiring tribal members to government positions and making investments in businesses on the reservation, rather than in Rockland or Thomaston.

While governor, Newell brought several small manufacturing operations to the reservation, and oversaw the construction of a \$1 million recreation center with a bowling alley and Olympic-size swimming pool. None of the projects would last. “I created nine entities and they couldn’t keep them up, so one by one they got set aside,”

he says today. “I saw them fill the pool with gravel, because they said it was too expensive to keep up.”

At both reservations, tribal government entered an era of instability.

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On taking office, Stevens promised to push through a tribe-wide constitution. Instead, he became tangled in a federal investigation involving allegations of sexual harassment made by female tribal employees. “They wanted me to be convicted to have a felony as a sex offender so I wouldn’t be able to run (for public office),” Stevens recalls. “They had this long list of names, and the women that were on there, not one of them said, ‘John did rape me.’”

Stevens was cleared of the charges but lost the 1998 election by a three-vote margin to his nephew, Richard Stevens, and would never again be governor. A year later, Richard Stevens faced a recall petition of his own over allegations of favoritism in promotions and layoffs. The petition was thrown out on a technicality – some of the signatories had failed to fill in the date. Three of the activists behind the petition took over Indian Township headquarters a few weeks later but were arrested within hours.

Nor were things smooth at Pleasant Point. In April 1995, 20 young protesters seized that reservation’s new tribal office building, which had been completed by appropriating \$900,000 previously earmarked to construct a youth center. A 72-hour standoff ensued, with police from both reservations, the Penobscot Nation, Eastport and the county sheriff’s office surrounding the building. The governor, Clive Dore, survived two petitions to remove him from office and a recall vote.

His underlying problem, supporters said at the time, was that many in the tribe were unable to face the fact that much of their money had been spent and they were now living beyond their means.

“When I came (in as governor) in 1991, everyone was hollering, ‘Where is our money?’” Dore told reporters in 1995. “During that period, a lot of faith in government was lost, and I am still dealing with that today.

The tribe had spent most of its liquid capital in the decade following the 1980 land claims settlement. The bulk of the tribe’s settlement – \$32.5 million – was reserved for land acquisition, and most had been spent for that purpose. The \$12.5 million trust fund

remained just that, with the interest paid out to tribal members each year.

The \$32 million profit from the windfall sale of the Dragon Cement plant had also been spent, Dore said, with \$19 million being distributed over several years to the tribe's 3,000 members and \$13 million expended on tribal government expenses.

“We’ve taken millions from the principal to keep people happy,” by keeping annual payments to members at an artificially inflated \$2,000 per person, tribal councilor Ralph Dana observed in the early 1990s. “We’ve created a monster.”

Dore said he had been forced to appropriate the youth center money to complete the Pleasant Point headquarters building because the tribe could not get a construction loan due to credit problems originating at Indian Township.

Tribal attorney Tom Tureen, who negotiated the land claims settlement and guided many of the tribe's subsequent investments, moved on in 1992. “After we ran out of money,” current tribal councilor Ed Bassett Jr. notes wryly.

Dore resigned in March 1996 and accepted a compensation package, including vacation pay. Lt. Gov. Rick Doyle was named to replace him. But in April, Dore had second thoughts. He told the U.S. Bureau of Indian Affairs – through which all federal money passes to the tribe – that he was actually still governor because he had never put his resignation in writing. Absent a constitution, the tribe had to wait three months for BIA to make the official ruling that Doyle was now governor.

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In 2002 Bobby Newell – twice ousted as a tribal governor – handily won the Indian Township governor's race against John Stevens. It would prove to be his last stint as governor.

The problems started immediately. The audit for fiscal year 2003 – the first of Newell's administration – found poor financial practices at Indian Township, including delayed reporting of transactions and decentralized bookkeeping. “Tribal information can be distorted and not accurate, which includes information reported to regulatory agencies,” auditor Ronald H. Smith reported in the September 2004 report.

Although they did not make it public at the time, the tribal council learned that the tribe's budget had been overspent by \$1.6 million, and that Newell had been improperly

appropriating federal substance abuse and HIV funds to make “general assistance” payments to council members. “The council voted to strip Newell of administrative authority, but backtracked when they learned they would no longer receive general assistance payments,” a federal Circuit Court judge would later write.

Newell defended the massive overspending at a May 2004 reservation council meeting: “As long as we are a federally recognized tribe and as long as there’s a federal government in place,” he told the council, “we will not run out of money.”

In February 2005, the auditor wrote Newell and the Joint Tribal Council regarding problems with the forestry program books, including lack of documentation to support expenses and payments, a failure to keep adequate records in order to bill loggers for the harvesting of tribal trees or to make an effort to collect what was owed, an inappropriate \$7,000 loan to a forestry employee, and the diversion of \$500,000 in federal project funds to cover the department’s ordinary overhead.

Smith, whose firm currently audits the Pleasant Point reservation’s accounts, declined to be interviewed.

By the end of March, protesters were gathered on the lawn of the tribal government building, calling for Newell’s administrative duties to be taken from him again. He closed the offices for several days, dismissing the protesters as “sidewalk bookkeepers.”

A petition calling for his ouster because of “irresponsible and reckless handling of tribal finances [and] no financial accountability” was signed by more than 130 Indian Township residents, including the reservation’s entire tribal council.

Newell stayed on the job and fired five tribal employees who had taken part in the demonstration against him. “They misbehaved and they didn’t have any respect for tribal government or its authority, and that’s why they got terminated,” Newell later said. The five launched a lawsuit in tribal court alleging a violation of their freedom of speech and seeking reinstatement and compensatory damages.

“If he has nothing to worry about, why did he fire us?” one of the five, Nakia Dana, said in a news release

It turned out Newell had plenty to worry about.

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Disagreement over powers
pollutes state, tribal relations

INDIAN TOWNSHIP — The historic land claims settlement agreement not only helped create a harmful legal vacuum within the Passamaquoddy tribe, it also put Maine tribes and the state on a collision course in regards to what powers each believes they exercised on tribal land.

The parties are still fighting over the act's meaning today.

State legal experts say the Maine Land Claims Settlement Act of 1980 was clear and that the tribe's representatives were entirely aware of its meaning.

Under the law, the Passamaquoddy and Penobscots are “subject to the law of the state” except in regards to “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.”

These two tribes also have “exclusive authority” within their territories to regulate hunting and trapping and fishing “on any pond” of less than 10 acres. (A joint body – the Maine Indian Tribal-State Commission – has regulatory power over fishing on other ponds, lakes and rivers lying within or partly within tribal land.)

They can – and have – set up tribal court systems to try misdemeanor offenses between tribal members on tribal land, and their governments have the powers and privileges of municipalities.

And from the state's perspective, that's essentially it. Any other powers the Passamaquoddy or Penobscots might have enjoyed – either before direct contact with Europeans in 1604 or from 1976-1980 when they were under federal jurisdiction – were surrendered in the settlement.

“The fact is the tribes willingly accepted the jurisdictional deal as the price for getting the settlement,” says former Deputy Attorney General John Paterson, head of the state's negotiating team at the time. “Later, for a new generation of tribal leadership, it all became that ‘the state pushed this down our throat and made us accept this.’”

Successive state attorneys general have vigorously defended this interpretation,

including the current one, Janet Mills, who has advised that federal Indian laws “are not applicable in Maine if they affect Maine’s jurisdiction” unless Congress specifically stated otherwise in the law’s text.

“The overall message from the courts is that the settlement acts are what prescribe the relationship between the state and the tribes – not general Indian law,” she told the Legislature’s Judiciary Committee last year.

The tribes disagree. They believe their sovereign powers were given by their creator, and the only powers they gave up are those explicitly described in the Settlement Act: being subject to the laws and jurisdiction of the state in matters not internal to the tribe. The Act, they argue, gave them additional enumerated rights – the bond-issuing privileges of a municipality, for instance – but those were in addition to their God-granted ones, not instead of them.

“The state of Maine thinks that the tribes only have the powers given to them by the state of Maine, but if you ask the tribe they say, no, we were given those powers in addition to their sovereign powers,” says Stephen Brimley, a Belfast-based consultant on tribal justice issues and former director of the Penobscots’ judicial department, who says the state’s stance is incorrect.

Maine officials essentially hold that the Settlement Act cleaned the slate in 1980 with regards to the Maine tribes’ sovereignty, eliminating their inherent powers, including those that had been recognized by the federal government as a result of Tom Tureen’s successful suit against the U.S Secretary of Interior several years earlier.

“That’s not true,” Brimley asserts. “There is no case law in the country that would establish that premise, and to think otherwise is ludicrous.”

This basic difference of interpretation has poisoned relations between Maine and the tribes ever since, and two subjects have provided regular flashpoints: fishing and gambling.

In the fall of 1982, state authorities threatened to shut down high-stakes beano games the Penobscots were holding on their reservation at Indian Island near Old Town. The games – which had been going on since the tribe won federal recognition (and, thus, sovereignty) in 1976 – featured pots of up to \$10,000, or 10 times the state limit at the time.

That winter the Penobscots sued in state court to permanently prohibit state authorities from interfering with their games, arguing that since the beano proceeds were used to finance tribal government operations, they were an “internal tribal matter” under the Settlement Act.

The court disagreed, saying the term applied to “at most, the relationship between the tribe and its own members” not “its operation of gambling activities for the public at large.” The games were shut down, depriving the tribe of \$125,000 in annual revenues – or about a quarter of their operating budget at the time.

In 1996, the tribe sued in federal court to be allowed to conduct gambling under the 1983 Indian Gaming Regulatory Act. They lost, the court finding that post-settlement Indian laws do not apply to the Maine tribes under the Settlement Acts.

The tribe has tried several times since to gain state approval for a casino, a potentially enormous source of revenue. A 2003 bid to build a \$650 million casino in Sanford was rejected by Maine voters by a 2-1 ratio, even as they approved another referendum question allowing the creation of what became the Hollywood Slots casino in Bangor. Voters rejected their 2007 racino proposal. This year the state senate declined to authorize a proposal to build a \$150 million facility in Calais, even as a second non-tribal casino has opened its doors in Oxford.

For many in the tribe, it’s hard not to draw a harsh conclusion. “It’s related to race, color, and creed,” says Clayton Cleaves, the current chief at Pleasant Point. “If God was my attorney and Moses was my adviser and the Apostles were my team and we went to Augusta we would still get turned down because of the DNA of Native Americans.”

Fishing rights have also been contentious.

In 1997, a group of Passamaquoddy claimed the aboriginal right to harvest clams and scallops off-reservation without licenses, and argued that saltwater fishing was an “internal tribal matter.” Maine’s highest court disagreed. Today the Passamaquoddy government can issue certain permits for the harvesting of marine resources, but only because the state Legislature passed a law allowing it.

Last year marine patrol officers wound up in a standoff with Passamaquoddy elver fishermen, who were fishing with licenses issued by the tribe that were invalid under state law. The state’s attempt to bring criminal charges against the fishermen continues to chill relations with the tribe.

“The tribe is exercising its inherent right and responsibility to fish, and we’ve never stopped fishing elver at any time,” says Vera Francis, a tribal activist who also makes a living fishing. “You can’t grow and strengthen the traditional economy from traditional activities without full access to engage in those activities, to learn about them, and gain and maintain the knowledge.”

“We’re Passamaquoddy – this is who we are,” she says forcefully, echoing a widespread sentiment among tribal members in regards to their right to such natural resources.

Others point to the fact that when there are disputes over the meaning of the settlement act, it’s the state’s courts that decide who is right.

“There’s a basic unfairness in the fact that conflicts with the state on Indian issues come to State of Maine courts. Because, wait a minute, they are one of the sides,” says retired attorney Cushman Anthony, who served as chair of the Maine Indian Tribal State Commission in the early 2000s. “If one said we should take the dispute to the tribal courts, white people would complain, but it’s exactly the same situation.”

“I’ve heard people say there ought to be a way that it would go to federal court instead, and I tend to agree,” he adds.

CHAPTER TWENTY-THREE

Feds move in, Indian Township governor feels the heat

2006 TO 2008



With Deer Island in New Brunswick on the horizon, the ocean waters of Passamaquoddy Bay lap against the shore at Pleasant Point. At Indian Township, Gov. Bobby Newell says he “got caught in the political crossfire by ambitious people” who wanted his job.

Time was running out for Indian Township Gov. Bobby Newell.

As his re-election bid approached in the summer of 2006, federal investigators representing four agencies descended on the reservation, inspecting documents dating back to 2002 and asking questions about how the governor had been spending federal funds. The investigation, which had been going on for a year, would land Newell in prison.

“My primary goal on the reservation was addressing and helping people who were poor so that they could have something and deal with substance abuse, and every spare

dollar I could get I funneled into that,” Newell says. “I got caught in the political crossfire by ambitious people who wanted to be leaders on the reservation and knew that even if I lost an election ... I would be elected governor again.”

“They wanted to get rid of me,” he adds. “I’m the new Don Gellers,” a reference to the tribe’s one-time attorney, who was run out of the country on a minor marijuana charge.

In September, Newell lost his re-election bid to challenger William “Billy” Nicholas, a council member and chief tribal game warden, by a vote of 258-144.

The new administration reported in January 2007 that Newell had left Indian Township \$3 million in debt, and had already spent \$1.2 million in revenues for the next fiscal year. Tribal government employees had lost their medical and workers’ compensation insurance, both of which had been terminated because of non-payment.

“I just want to go into my little hole and stay there, and if people are going to come and drag me out of that hole, then I am going to respond accordingly,” Newell told a reporter at the time. “If it has to be litigation, then I will do that.”

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The federal government dragged Newell out of his hole, indicting him on March 20, 2008, on 30 charges relating to the alleged diversion of \$1.7 million in federal funds.

Prosecutors alleged Newell had attempted to hide irregularities by firing employees who protested what was happening, including the five terminated after the 2005 protest against his governorship. Ironically, the firing and the lawsuit that followed – and ultimately was settled out of court – is what apparently first drew the attention of federal investigators.

At trial, investigators showed how Newell had used his nearly unchecked power to dole out hundreds of thousands of dollars in “general assistance” payments to friends, family, political supporters and other tribal members. During the last two fiscal years he was governor, the general assistance budget – which Newell allegedly used to grease the wheels of politics on the reservation of 600 – was overspent by a total of \$2 million. He paid out apparently arbitrary “honoraria” to himself, Lt. Gov. Joseph Socobasin and tribal councilors. He directed checks to be issued to himself, his son, and other family members for trips that investigators said had never occurred.

“On other occasions, Newell dipped into Housing Authority funds for wedding donations, unspecified small loans, travel reimbursement for his son, Eric, and ‘general assistance’ for two other tribe members,” a federal court opinion would state. He spent Bureau of Indian Affairs housing funds “on his friends, family, tribal council members and their families, including William Nicholas, the tribe’s current governor.”

To cover these costs, Newell ordered subordinates to “loan” the tribal government federal funds granted to support programs at the health, environment and police departments. In the fall of 2005, federal officials started asking where the missing money was but were rebuffed by the governor. By spring 2006 the situation was so dire that Newell was able to meet payroll only by raiding his employees’ 401(k) accounts and not paying federal and state withholding or rent payments (for employees living in federal housing).

“When Newell left office in September (2006), after losing the election to William Nicholas, the tribe only had enough money to pay for one person’s salary – Newell’s,” an appeals court judge would write.

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In November 2008, Newell was convicted of 29 counts including conspiring to defraud the United States, misapplication of federal funds, and fraud and lying to federal agencies. He was sentenced to five years at a federal prison in Pennsylvania.

Newell tried to appeal, arguing that these were all “internal tribal matters” under the Maine Settlement Act and therefore not under the jurisdiction of the federal court. The federal appeals judge was not impressed and upheld the convictions. Newell spent nearly four years in prison.

“The judge said I was helping my friends, but I helped everybody,” Newell says, and besides, those who succeeded him were aware of everything he was doing. “I don’t endorse the checks; the council does. But I’m the one who got charged.”

The court judgments did note that Newell did not appear to have acted in order to enrich himself, and several tribal members told the Press Herald they thought his motives may have been benign, if misguided. “Bobby had a very, very kind heart, and if he gave out \$100,000, \$99,000 of that went to the public and the other \$1,000 probably was not accounted for,” says Clayton Cleaves, the current chief at Pleasant Point and a longtime friend of the disgraced governor. “All those people who got new tires and clothes,

shelter, oil, cars, and assistance – in my opinion those folks should have come forward, and if they had, I think his (prison) term would have been shorter.”

As Newell’s prison van rolled up to U.S. Penitentiary Canaan in Waymart, Pennsylvania, the Passamaquoddy still had no constitution, and Billy Nicholas was well into his reign as governor.

The tribe’s problems were far from over.

CHAPTER TWENTY-FOUR

New leader, new scrutiny
on where the money goes

2006 TO 2010



The tribal government building at Indian Township. Even after Bobby Newell was convicted of misapplying federal funds and a new governor stepped into the leadership role, questions about spending and appropriations persisted on the reservation.

To this day, Bobby Newell says his convictions for corruption and conspiracy to misapply federal funds were orchestrated by his successor to the Indian Township governorship, William “Billy” Nicholas, and the current governor, Joseph Socobasin.

“They knew I was politically savvy and they wanted to get rid of me, so they went and solicited help from the U.S. Attorney’s Office and a senator’s office, and I got a lynch mob come after that,” says Newell, who served 46 months in prison. “Billy Nicholas was involved in all of it, and Joe Socobasin, who was my lieutenant governor for four years.”

True or not, Nicholas was certainly a major beneficiary of Newell’s downfall.

Nicholas, who defeated Newell in the 2006 election, was a colorful, charismatic figure with a checkered past.

Billy and his brothers – including current council member Leslie Nicholas and current Indian Township Police Chief Alex Nicholas – spent their early years in southern Maine, moving with their parents to the reservation after the tribe won federal recognition. Their father, Carl, served as lieutenant governor in the 1990s, and his great-uncle, Joseph Nicholas, was the first tribal representative to the Legislature.

Billy and Alex trained in law enforcement and were serving together as tribal police officers in 1989, the year the two made the newspapers for their role in a physical confrontation with tribal game wardens. The Nicholas brothers and two wardens were all suspended from their jobs after the incident, which occurred after they responded to a call from a policeman in Princeton whose cruiser had struck a deer. No further details were disclosed.

In 1997, Billy – by then serving as a tribal game warden himself – applied to join the Maine State Police. He passed the written and oral exams but failed a background check. Billy sued, alleging racial discrimination, but was unsuccessful. His effort to join the Maine Warden Service was also unsuccessful.

Bill Randall, a non-Passamaquoddy hired as a tribal fish and wildlife consultant, says he played a role in torpedoing Nicholas’ bid to become a Maine warden by relating incidents of heavy-handed behavior toward non-tribal hunters transiting tribal lands.

“He was openly prejudiced and hated white people so badly that one morning (in October 1999) on the South Branch Road north of Jackman he falsely arrested a white father and son for night hunting,” Randall said in a written statement to the Press Herald. Randall said he and a tribal game warden were able to get the charges dismissed, for which they both faced “threats of violence” from Nicholas.

Billy Nicholas declined multiple interview requests for this story.

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Nicholas became a rising figure in the tribal warden service and tribal politics. He joined the tribal council in 2002, the same year Newell became governor, and remained

there until this spring, when he suddenly resigned. In the Newell administration, he became the reservation's chief game warden, a position he holds again today.

During Bobby Newell's troubled final tenure as governor, Billy Nicholas also worked with the Maine Drug Enforcement Agency coordinating a network of confidential informants, who would buy drugs on both reservations and report who was selling. He also benefited from Newell's cavalier spending of tribal funds.

At one point, Nicholas testified at Newell's trial, his brand new pickup truck stopped working. The following week, one of his informants told him a drug counselor at the health clinic was paying people to vandalize his property. He testified that he dropped a lawsuit he was in the process of filing against the counselor after a meeting in Gov. Newell's office in which he was promised a check to cover the damage.

A printout of tribal government disbursements obtained by the Press Herald shows that in the final two years of Newell's administration, Nicholas was the beneficiary of tens of thousands of dollars in reimbursements, including "meeting fees," "donations," "general assistance" and "honorarium" – all above and beyond his salary and benefits. The payments, which included \$191 and \$240 expenditures listed on the ledger as "Cole" – the name of one of Billy's children – and \$4,120 as an "honorarium" – totaled \$49,965.51.

It wasn't Nicholas' only source of extra income.

In the fall of 2005, tribal auditor Ronald H. Smith of Buxton began questioning peculiar goings-on with a new bank account administered by Nicholas in his role as chief game warden. This so-called "Bear Account," which was intended to collect fees from outside bear hunters and their guides who paid to hunt on tribal land, was supposed to be used to support the warden service's core activities.

Instead, Smith warned tribal authorities in a letter that November, the account appeared to be used for some other, unauthorized purpose, with more than \$100,000 in federal funds being transferred into the account.

Nicholas had refused to answer Smith's questions about the account, the auditor informed tribal officials, leading Smith to "recommend all activity on this account be frozen immediately."

Smith testified at Newell's trial that, at a subsequent tribal council meeting, Nicholas

was so angry about the scrutiny on the Bear Account that he demanded Smith be fired then and there. Nobody seconded his motion at the meeting.

In 2007, after Nicholas became governor, the Indian Township government allegedly stopped paying the auditor for his work. Smith's firm won a \$91,900 court judgment against the reservation government for non-payment for auditing services performed on the fiscal 2005 books and other accounts. (Smith, whose firm currently audits Pleasant Point's accounts, declined to be interviewed for these stories.)

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A printout of Bear Account disbursements for fiscal year 2005 obtained by the Press Herald show more than \$1,000 in plumbing and heating repair payments to Billy's brother (and fellow council member), Leslie Nicholas; a \$4,500 "Workfare" advance to Billy's wife, Lucy; and \$250 to \$500 Christmas bonuses for everyone in the department, including \$500 for Billy himself.

When Pleasant Point Chief Melvin Francis died in a January 2006 car crash, Billy and three other wardens stood as an honor guard around his body. Billy collected \$1,658.32 from the Bear Account for his trouble and the cost of travel and meals in Pleasant Point, 45 miles away. His other wardens received between \$735.75 and \$982.23 apiece.

"I was surprised to see they paid themselves to be in the law enforcement honor guard for Melvin Francis," says Ed Bassett, a councilor at Pleasant Point who learned of the reimbursements later. "I guess they considered it work."

By the time Billy Nicholas assumed the governorship, however, the tribe's finances had been sucked nearly dry.

Nicholas himself described the scene in the closing months of Newell's administration, when the council had stripped the governor of his authority to hand out general assistance payments. "Soon the elders, people that were on methadone, people that were receiving in the community ... they were giving us a hard time," he testified at Newell's trial. They were saying "that it's not right, they're going to starve, they're going to go without, you name it. I mean it was – it was pretty hectic."

Layoffs followed as the new governor and council tried to get the tribe's fiscal house back in order. But it wouldn't be long before questionable practices began cropping up again.

CHAPTER TWENTY-FIVE

Tribe reels as its own leaders 'become our oppressors'

2007 TO 2010



A run-down basketball court at Pleasant Point. Decades after the land claims pact, Maine's Passamaquoddy reservations have become difficult places in which to thrive. Ira Gilbert, a tribal member at Indian Township, puts it succinctly: "There's a big law problem here: There is none."

In the continued absence of a constitution to ensure government accountability, an atmosphere of fear and intimidation took hold on the Indian Township reservation.

Numerous present and former tribal leaders say the atmosphere – which endures today – is unlike anything experienced by the tribe since the 1960s, when state Indian agents held the power of life and death over many of their dependent charges, and crimes by outsiders against Indians were rarely prosecuted.

“The tribal leaders are doing the same thing as the priests and paper companies used

to do,” says Allen Sockabasin, who was Indian Township’s governor in the 1970s, when the salary for the position was \$300 a year; today it’s \$102,500. “They’ve become our oppressors.”

Free discourse – the lifeblood of democracy – is becoming impossible, says the tribe’s current representative to the state Legislature, Madonna Soctomah. “People aren’t free to talk about the issues, because their employment comes from agencies that are controlled by people they might be criticizing,” she says. “Elections are bought because of this dependency.”

“You see what happens if you oppose someone in power,” adds Brian Altvater, who was lieutenant governor at Pleasant Point in the 1990s. “You speak your mind, you get targeted. Next thing you know, you don’t have a job.”

Ira Gilbert, an unemployed tribal member at Indian Township, puts it succinctly: “There’s a big law problem here: There is none.”

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Billy Nicholas had been elected governor at Indian Township in the fall of 2006, and some of his detractors place the blame at least partially on him. Some say they even felt fearful for their safety, and the fact that Nicholas’ brother Alex was chief of police only compounded their sense of insecurity.

Regina Petit, a former Indian Township councilor and one-time real estate administrator, drew Billy Nicholas’ ire on several occasions by speaking ill of him.

In an early incident witnessed by her mother, Petit returned a phone message from the governor in September 2007, in which he started “yelling and screaming (and) swearing at me,” threatening her with a protection order, and telling her to “watch your back,” according to a statement she later gave to the police.

“I have stood up and said that they aren’t going to get away with anything on the reservation. I know they are crooks, and I’m not afraid,” Petit says. “But when the people you’re criticizing are law enforcement officers with guns, that’s another matter.”

A little over a year later, Petit says she was confronted in the tribal government parking lot by the governor’s wife, Lucy, who she says ordered her to “stop saying things about my husband” and physically restrained her from leaving in her car.

Frightened, Petit drove to the tribal police station to file a complaint, only to have Billy Nicholas pull up outside “yelling, screaming and swearing (and) ... calling me nasty names,” according to a notarized statement Petit drew up shortly thereafter.

According to Petit, Police Chief Alex Nicholas and his son, Officer Alex Nicholas Jr. – the governor’s brother and nephew – had to block the governor from entering the station and, later, had to escort Petit to her car. “Your brother is a ticking bomb,” she says she told the police chief.

In May 2010, another woman, Stephanie Bailey, filed a police complaint on behalf of her daughter, who she alleged had been assaulted by her boyfriend, one of the governor’s sons. According to Bailey, the governor subsequently called her supervisors at her tribal government job and ordered them to dock her hours. She says he also called the reservation’s child welfare director, telling her they needed to remove one of Bailey’s foster children from her home – a teenager who had allegedly witnessed the assault – because Bailey was a poor parent.

“I was mortified that Billy was willing to take this dilemma so far,” Bailey recalled in a signed statement obtained by the Press Herald. “I broke down and cried with (the child welfare director) because I realized how corrupt our system is and I felt helpless.”

Bailey says she had to fight the governor’s attempt to have the situation handled in tribal court and ultimately won a protection order for her daughter from a District Court judge.

“I had to invoke my rights as a citizen of the United States, because I can’t get justice in my community,” she told the Press Herald, adding that she believed Billy “is a ticking time bomb.”

Several other tribal members told the Press Herald similar stories but were unwilling to speak on the record for fear of retaliation.

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Even lifelong political rivals Bobby Newell and John Stevens agree that things at Indian Township have reached a deeper, darker place since 2006, when Billy Nicholas was elected governor.

“John and I have been political opponents for years, but I can honestly say about John

Stevens is that when I lost to him, I knew that people were safe and were being watched out for,” says former Gov. Newell, who last year completed his 46-month prison sentence for misappropriating federal funds. “When either of us were in office, I don’t recall anybody being threatened. It happens a lot now.”

“Billy has learned to control everything, and if you don’t agree with him, he’ll get rid of you,” Stevens says, adding that the situation is far worse than the Newell era.

Nicholas declined repeated requests for an interview with the Press Herald, saying the paper’s interest was “politically motivated.”

What were his critics angry about? A great deal, starting with that most evocative of Passamaquoddy issues: tribal control of their land.

CHAPTER TWENTY-SIX

Tribe's dealings cloaked
in secrecy, and distrust festers

2007 TO 2010



The factory doors have since closed at the Indian Township site for Creative Apparel Associates, a Passamaquoddy venture that once made chemical-protection suits for the military. A lack of transparency clouded many of the tribe's business enterprises.

Because the Passamaquoddy lack a tribal constitution, an independent judiciary and clear delineations between what matters can be appealed to state or federal authorities, tribal members have few tools with which to hold their senior officials accountable.

Members of the tribe – including most tribal councilors – do not have the right to see their own government's budget; it's treated as a "need to know" secret. Nor are they guaranteed access to even the official minutes of the reservation and Joint Tribal Council's meetings. Except under rare conditions, the state's public records laws don't apply here, and nontribal members – be they journalists, attorneys or reservation

residents – have no right to attend or cover public meetings.

Major decisions involving the Passamaquoddy people’s shared assets – land purchases, the creation of companies or the disbursement of land leases – can and often are made outside the public eye, fostering suspicion and distrust.

In one of the poorest communities in the state, senior officials often draw comfortable salaries. At Indian Township, the reservation budget shows, the governor’s base salary in 2010 was \$102,500, significantly more than the current salary of the governor of Maine (\$70,000) or the governor of Pleasant Point (reportedly in the low \$60,000s). The median household income in Washington County is \$36,486.

Many of these problems had emerged during Bobby Newell’s administration. By numerous accounts, all of them continued under the man who was elected to the governor’s post in 2006, Billy Nicholas.

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The lease or sale of tribal land to outsiders is an extremely emotive issue for the Passamaquoddy, whose civil rights and land claims struggles of the 1960s and ’70s focused on the improper purchase or seizure of tribal lands by whites. Though the tribe doesn’t have a unifying constitution, both individual reservation constitutions forbid the lease of tribal land to nonmembers without a referendum (in the case of Indian Township’s constitution) or public hearing (in Pleasant Point’s).

But shortly after Nicholas was elected governor, the tribal forestry department overstepped its authority, granting a lease of a prime camp lot on a coveted beach on tribal trust land at Junior Stream near Springfield to one of the new governor’s friends, his soon-to-be business partner Brian Souers. In exchange, Souers, a non-Indian, upgraded the road to the area. Souers also set up a camp and boathouse on the prime plot, part of a site designated a public campground for the tribe.

Nicholas built a camp on the next lot. Indian Township Police Chief Alex Nicholas, his brother, built another a few hundred yards away. Although few knew it at the time, state corporate filings show that Billy, in the following summer, also became a silent partner in Souers’ new logging firm, BWB LLC, a venture that included Tribal Councilor Wade Lola. (The firm’s initials stood for “Brian-Wade-Billy.”)

Adding to the controversy, tribal member Kani Malsom had applied for a lease for the

very lot Souers had been leased back in 2004, but Malsom said his application kept getting lost – five times altogether, he later said. He was flabbergasted when the forestry department instead claimed the lot on Souers’ behalf.

“Those guys swindled it off me so they could have it for themselves, for their little rat’s nest,” Malsom later said in a videotaped interview. “They just pushed me out of the way so they could take it.”

In 2009, Tribal Councilor Ed Bassett of Pleasant Point got wind of the situation. Bassett, tall and fearless, had spearheaded the effort to pass a tribewide constitution in the 1990s. A passionate advocate for accountability and adherence to Passamaquoddy laws and ordinances, he would irritate some of his fellow members of the Joint Tribal Council by pointing out when their actions violated tribal law, often quoting from the source documents.

But when something complicated and untoward happened, Bassett would get out his video camera and create an exhaustive documentary on the issue. In the absence of a tribal free press, Bassett would interview sources himself, find and display documents and contracts, and go into the field to collect on-the-ground video to establish the facts.

In the fall of 2009, Bassett gave members of the tribal council copies of his 90-minute video, which featured two on-site visits to the Junior Stream campsite, a detailed interview with Malsom, and a powerful case for tribal law having been violated. (Someone later posted excerpts on the Internet). The Joint Tribal Council revisited the issue and affirmed that Souers had no right to a camp lot.

“Billy was not happy with me,” Bassett says. “He even filed a claim for ‘harassment’ in tribal court, but nothing happened with that.”

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Meanwhile, Nicholas and his allies oversaw the creation of a series of tribal joint-venture businesses, often putting themselves on the boards that controlled them. Each had the potential to help the tribe economically, but have proven divisive because they were created behind closed doors by a soon-to-be-familiar cast of characters, tribally owned entities about which few in the tribe could gain much information.

In 2009 they set up BlackBear Communications, a joint venture with Florida lobbyist Jonathan Stember, his business partner, Javier Garcia, and Washington, D.C., public

relations consultant Gerry Gunster. According to its website, BlackBear is a communications firm “committed to furthering the nation-to-nation relationship between Indian tribes, the United States government and private enterprise.”

Federal disclosures show BlackBear received \$40,000 during the runup to the 2010 Afghanistan presidential election to promote candidate Abdullah Abdullah, Afghan President Hamid Karzai’s principal rival, in the American media. According to the firm’s 2010 state filing, Billy Nicholas is its registered agent and sits on its management board, as does his brother Leslie Nicholas, current tribal Gov. Joseph Socobasin and Indian Township Councilor Elizabeth Neptune.

In August 2010, the tribe formed Tomah Water, a joint venture to extract and bottle water from tribal land. According to corporate filings, the tribe’s partner is HTwoO LLC, a shell company managed and partly owned by Michael Duguay, brother of Edward Duguay, Indian Township’s lobbyist and the director of Tribal Economic Development, who also advised officials on the project. The other partners in HTwoO were a pair of Florida-based LLCs, one of which was set up by Thomas R. Rummel Jr., CEO of a failed Florida bank, who is facing a \$6.3 million lawsuit from the Federal Deposit Insurance Corp. In 2011, the board of Tomah Water included two sitting council members, Elizabeth Neptune and Matt Dana.

Billy Nicholas and Gov. Socobasin also joined the three-member managing board of Creative Apparel Associates, a joint venture with Belfast clothing makers George and Sharon Rybarczyk, and remain there today. At its height a decade ago, Creative Apparel employed nearly 400 at six factories across Maine, including Indian Township, and produced chemical-protection suits for the U.S. military. (Its operations were mothballed in 2012 when the government contract expired.)

By May 2010, purchase orders obtained by the Press Herald show, Indian Township’s government was buying thousands of dollars of wood pellets from Snap LLC, a reservation-based company managed by the governor’s brother, council member Leslie Nicholas. The company – which other tribal sources say manufactures the pellets – does not appear to have a corporate registration in Maine, so its full management structure is unclear. In an open letter to the community written in early 2012, Leslie Nicholas indicated that Snap and Creative Apparel Associates shared the same board membership.

Critics question how much income the tribal officials earn from these board memberships, which were never ratified by the Joint Tribal Council. In the case of Creative Apparel, tribal members told reporters in 2006 that former board member

Bobby Newell had been paid \$500 a week, while Newell himself said his stipend was only \$100 a month. Three former council members told the Press Herald separately they understand that Creative Apparel has paid between \$1,000 and \$1,300 a month to each board member.

“Regardless of where we turn, there’s a lack of transparency,” says Pleasant Point Councilor Mary Creighton, who argues for increased openness, particularly since investment failures by one reservation affect the credit ratings of both. “We’re all Passamaquoddy, and the liabilities their businesses might create could affect us too.”

Billy Nicholas declined to be interviewed for this series.

The Press Herald interviewed Socobasin in early April [2014], but denied subsequent interview requests seeking his comment on the corporate transparency issues and more recent developments at Indian Township.

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Billy Nicholas also took heat for almost single-handedly derailing a 2007 legislative effort to open the St. Croix River to alewives, a small spawning fish that had been blocked by law from passing the dams at the entrance to the river at the insistence of smallmouth bass guides. Despite overwhelming scientific evidence that the fish posed no danger to the non-native bass and would enhance the ecosystem – and the support of the Pleasant Point and Canadian governments – Nicholas persuaded legislators to back off.

“In military parlance, it’s called a ‘command performance,’” Paul Bisulca, the chairman of the Maine Indian Tribal-State Commission, told the Press Herald in 2012. “He went into that hearing and without any doubt represented the Passamaquoddy tribe completely. How Billy was able to manipulate those people is beyond me, but there are some who can do it.”

Nicholas did not, however, represent the tribe as a whole and, in fact, was contradicting the official position of Pleasant Point’s tribal council. As word got around – in part via another detailed documentary video by outspoken Pleasant Point Councilor Ed Bassett – Nicholas’ political position began to weaken.

His logging crews, however, were having banner days in the tribe’s woods.

CHAPTER TWENTY-SEVEN

Tribe's forests, a crucial resource, fall prey from within

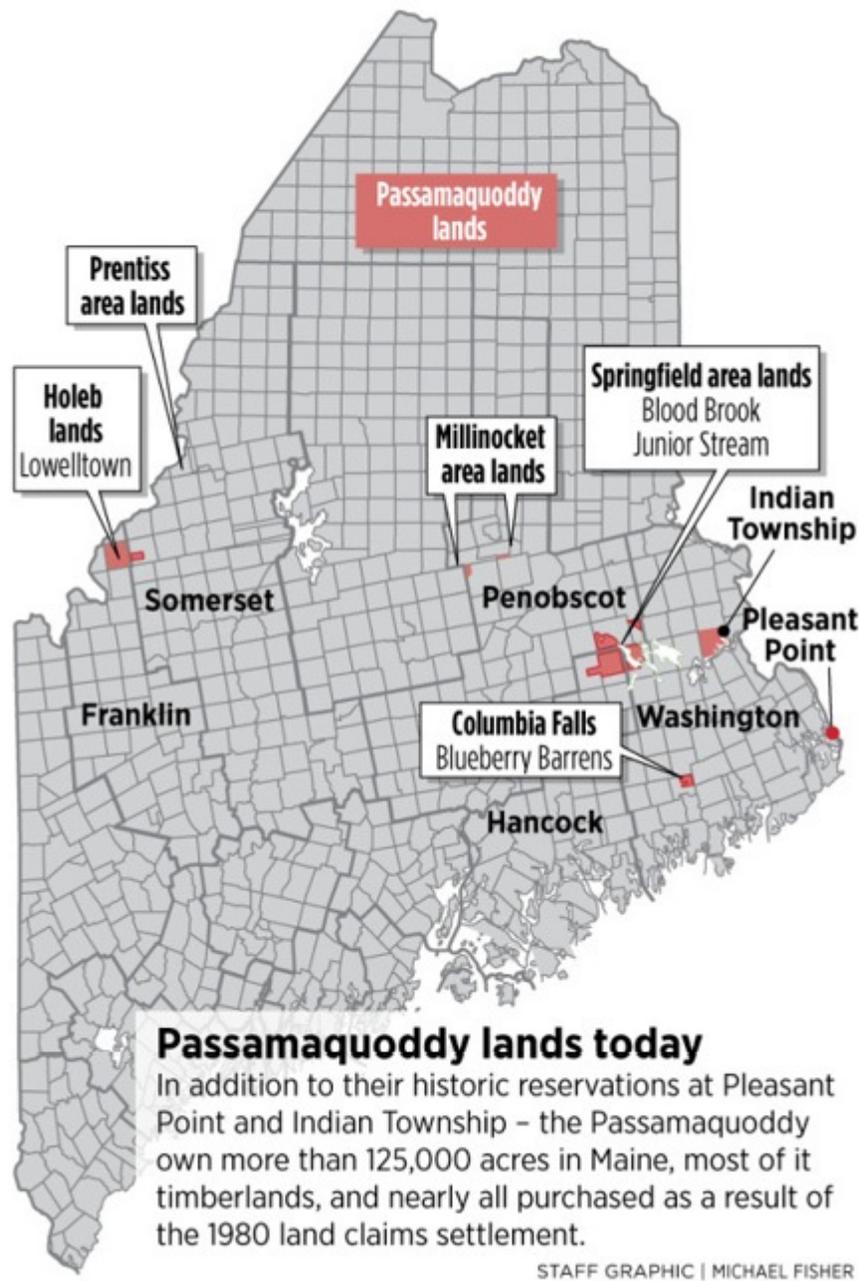
2006 TO 2014



An area off Peter Dana Point Road in Indian Township has been freshly logged in this pinhole camera photo. How the Passamaquoddy have managed forestlands in the past decade has led to a significant rift between the tribe's two reservations.

The forest, in theory, should be the tribe's most important legacy of the Indian Land Claims Settlement Act of 1980.

Managed correctly, the Passamaquoddy's 100,000-plus acres of forest and animal habitat should be a source of continuing prosperity, of employment and cultural security, home to game and fish and sacred places, a vast preserve of the Wabanaki people's 13,000-year-old homeland.



In practice, critics say, it has been used to enrich a handful of well-connected tribal members at the expense of the larger community.

Here’s how the tribe’s forestry policy is supposed to work: Tribal forestlands are to be managed for the long-term value of the woods over time by professional foresters and rangers at the tribe’s Forestry Department. The actual harvesting is contracted out – through either a bidding process on the open market or a negotiated one with tribal loggers – with the tribe collecting cutting fees, or “stumpage,” along the way.

Because the forest is a tribal trust – the shared patrimony of all Passamaquoddy people – the federal government is legally obligated to oversee these activities to ensure

that this shared resource is not squandered or looted. This task falls to the Bureau of Indian Affairs, a division of the U.S. Department of the Interior, whose forestry experts have the power to intervene if management appears to have gotten out of hand, and can even shut down forestry activities.

In reality, however, regulation of the forest has been effectively captured by some of the men who hold contracts to cut it.

In recent years these men – Billy Nicholas, his brother Leslie Nicholas and Richard Sabattus – all served on the Joint Tribal Council for Indian Township. Billy served as the reservation’s governor from 2006 to 2010 and is currently chief game warden at Indian Township, where he has partial responsibility for the protection of forestlands. For several years in the mid- and late 2000s, another tribal member, Wade Lola, who at the time had a contract and a logging partnership with Nicholas, also served on the council. In April of this year [2014], Nicholas suddenly resigned from the council and was replaced by Sonja Dana, whose husband is a logger.

When the Joint Tribal Council meets, members who are logging contractors have shared oversight power of the Forestry Department itself. The body sets the stumpage rates that are paid to the tribe, and can determine who can get logging contracts and under what conditions.

“Although – when we have our Joint Council meetings and decide on stumpage rates – they don’t vote, (the logging contractors) have a lot of influence,” said current Indian Township Chief Joseph Socobasin. “I don’t think they should be able to hold any contract, let alone a logging contract. If they are going to be part of the policymakers and decision-makers of the tribe and they have a contract on the side, there is a potential conflict of interest.”

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It is more than just a potential problem.

None of the recent councilors who have held logging contracts actually works in the woods. Rather, they subcontract the work, usually to non-native loggers, and simply collect a share of the profits. Nicholas did this while also collecting a salary from the tribe as either governor (about \$102,000 a year) or chief game warden (\$52,000) in addition to honoraria, bonuses and stipends to sit on the boards of tribal enterprises such as BlackBear Communications and Creative Apparel.

The current chief at Pleasant Point, Clayton Cleaves, says that arrangement is improper. “I think a council member should be able to get a (logging contract), but he should be right out there sawing down trees,” said Cleaves, a former logger himself. “Now if I’m a department director or something already, then by all means I should give somebody else the opportunity to harvest those trees and earn a living.”

During the early 2000s, loggers harvested between 3,300 and 7,600 cords a year from tribal forests. In 2006, the year Billy Nicholas became governor, that figure jumped to 15,270, then to 27,860 in 2008 and 29,102 in 2009, the highest harvest since 1985, when huge stands of forest were cut across Maine in response to a severe outbreak of spruce budworm. Last year [2013], the figure was 22,140 cords.

During this period, the Joint Tribal Council overruled Forestry Department recommendations and set stumpage rates far below the current market rate. “I think it was 50 percent of what they had originally proposed,” Chief Socobasin said of the 2012 sale at Holeb Township, near Jackman. This contributed to the Forestry Department running out of money in 2013. “We had to put \$300,000 into our forestry program or we would have had to shut the door.”

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Documents obtained by the Press Herald show that the Bureau of Indian Affairs has expressed numerous concerns with the tribe’s forestry management in recent years, including the low stumpage rates.

In early 2012, the bureau learned the tribe was allowing Billy Nicholas’ company, Nicholas Family Logging, to harvest timber without a BIA-approved permit or contract from tribal lands at Lowelltown, northeast of Coburn Gore on the Quebec border. It ordered the tribe to have Nicholas’ company “cease operations immediately” until a valid contract was approved.

The BIA’s annual review for 2012 found serious problems, including missing reports, the absence of a full-time forester at the tribe and the illegal cutting of “a still undetermined amount of timber” from tribal lands near Blood Brook in northern Washington County. BIA officials confirmed to the Press Herald that Nicholas Family Logging was among the harvesters involved in the improper cutting.

The BIA also found “that tribal loggers were paying stumpage at less than the approved contract rates” in an adjacent area, and noted that the Joint Tribal Council had

for months failed to provide the agency key documentation related to the incident.

In mid-December 2012, Scott Meneely, a regional forester with the BIA, wrote to the head of the Passamaquoddy Forestry Department, Ernie Neptune, seeking justification for the low stumpage rates at Holeb, but received no response. In late January 2013, agency officials informed the tribe that the low rates were unacceptable and threatened to shut down the Holeb operation.

By February 2013 the Forestry Department was in crisis, with the BIA investigating the improprieties at Blood Brook and the department's coffers empty because of the stumpage underpayment. But when the Joint Tribal Council tried to meet to deal with these issues, three logging contractors on the council – Billy Nicholas, Leslie Nicholas and Richard Sabattus – failed to attend scheduled meetings, denying the body a quorum.

“They are interfering in the progress of work by boycotting the (Joint Tribal Council) forestry issue until their demands are met,” Indian Township Chief Socobasin and Vice Chief Clayton Sockabasin said in an article in the tribal newsletter, Keq Leyu, in March 2013. “It looks as though the tail wants to wag the dog.”

Socobasin later wrote that clear-cutting was taking place across tribal territory.

“It is obvious by checking the Google Earth sites that wrongs have been committed,” he wrote.

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The BIA refused to answer any questions from the Press Herald, including basic policy questions, but bureau officials immediately alerted tribal officials to the newspaper's interest in the forest management issues. The office of U.S. Secretary of the Interior Sally Jewell, to whom the BIA answers, declined to answer questions about why the agency would refuse to speak to the press.

“BIA is guilty too because of their trust responsibility,” said Brian Altvater, former lieutenant governor at Pleasant Point. “They will write a letter and say they have five findings, and then the next year there are the same five findings. They threaten sanctions, but they just seem to stay in limbo.

“The problem with Forestry is that they are more worried about the logging contract holders than they are about running it like a long-term business,” he added. “The tribe

should be earning millions from all that timber that's being cut, but instead it's costing us \$300,000 to bail it out."

Neptune, the tribal forestry director who assumed office in May 2012 after many of the improprieties had taken place, said that assessment isn't entirely fair. The BIA gives the tribe \$200,000 a year to run the Forestry Department, but the Joint Tribal Council has chosen to spend those funds elsewhere, he said. The maneuver is legal, but it means his department has had to sustain itself entirely from stumpage fees.

"Maybe (tribal government) would value us more if they would give us that operating money upfront and receive a check from us at the end of the year," Neptune said. "A lot of people don't understand that we've been generating another \$200,000 a year for a decade, but the tribe takes it off the top."

He said forestry revenue was constrained by his department's commitment to maintaining habitat for deer, bear, fish and other wildlife, as well as certain sacred or historic sites. He said he was also upset by the department's lax oversight under his predecessors, but that the situation has changed.

"This is my land too, and I want to make sure it's managed properly," Neptune added.

In January of this year [2014], the public got involved. Hundreds of angry members of the tribe signed petitions demanding a public referendum that would ban elected officials from holding logging contracts and would require all cutting to be done by members of the tribe.

Logging contract holders argue it is impossible to meet their labor demands within the tribe. "Do you know how much it's cost us in the last 25 years to try to train native people to come work with my husband," said council member Sonja Dana, whose spouse used to log tribal land himself but now subcontracts the work to outsiders. "We had only one tribal logger who came rain or shine. ... If you don't have somebody who is family, you are out of luck."

The petitions to restrict the logging contracts were initially rejected on the advice of reservation attorney Craig Francis, who said the petitioners failed to attach "a proposed ordinance or resolution" and therefore the proposed referendum "does not need to be put to a vote by the people." Francis' stance fueled anger on social media sites, and in March tribal officials decided to schedule a vote after all.

Simultaneously, the Joint Tribal Council met to take action against the chief organizer of the petitions, Stephanie Bailey, who edits the all-volunteer newsletter Keq Leyu (in Passamaquoddy, it means “What’s Going On”). The newsletter, which currently exists as an invitation-only Facebook page, is the tribe’s closest thing to a free press.

The council ordered Bailey to rename the online newsletter because “Keq Leyu” was the name of a former government-run publication, now long-defunct.

Dana, one of the councilors, said she introduced the name-changing measure because she believed the closed website could nonetheless be accessed by third parties and that it was allowing state officials to keep apprised of internal tribal deliberations. She also said she was offended by the pseudonymous user names – which she referred to as vulgar Passamaquoddy phrases – employed by some of the site’s members.

“There’s some stuff in there that’s good, but you should see what some of the people in there talk about,” Dana said. “So the tribal chief told her: ‘You’re done’ and ‘Take it off.’ ”

Bailey isn’t complying with the order. “I’m going to laugh at them, because, as I told the chief, if you think you have any right to shut this down, you’re crazy,” she said.

Meanwhile, Chief Socobasin said in an April [2014] interview with the Press Herald that he’s been pushing to increase stumpage rates, with some success. “We have increased the rates, but they still need to be higher,” he said. “We’re moving in the right direction, but it’s sometimes difficult because of having three joint council members who are loggers and influence some of the voting members on what the rates should be.”

Vice Chief Sockabasin said he sympathizes with the public frustration on the issue but that progress is being made. “There’s been a separation between what is best for the resource and the tribe and what is best for the tribal member who is out there trying to make a living” from logging, he said. “Now we’re shifting back to having more of the benefit to the tribe versus the individuals.”

But controversy over the issues has reached a breaking point. In May [2014], voters approved both logging-related referendums – by a more than four-to-one ratio at Pleasant Point – but Chief Socobasin ruled that they had failed because they allegedly need a two-thirds majority on both reservations. (At Indian Township, the ban on non-tribal loggers

passed 127-121; the ban on councilors holding logging contracts by 140-97.)

The separate “constitutions” adopted by each of the reservations disagree on this point and, in any case, are not binding on pan-tribal issues, such as forestry assets and Joint Tribal Council ethics.

In the absence of a unified constitution, nobody is certain if the rule of law has been upheld or overturned, and nobody has the power to challenge it or to decide.

In a stunning development June 20 [2014], the governor of Pleasant Point, also called Sipayik, and the tribal council announced that they considered both referendums to have passed legitimately, and were formally breaking with Indian Township, also known as Motahkomikuk, over forestry management. They said they would be informing the BIA of their decision “to honor the results of the referendum” and would ask the agency “to assist with the protection of the tribal forestry resources.”

Pleasant Point Gov. Cleaves and his deputy, they said, would no longer participate in forestry management decisions, nor sign Forestry Department checks “until this matter has been resolved to reflect the will of the people.”

“Sipayik has struggled for decades trying to co-manage tribal forestry with Motahkomikuk only to see tribal forest resources be more and more exploited, and this is not satisfactory to the people,” the Pleasant Point government’s official statement declared. “This struggle has gone on much too long and it is time to declare that this forest management experiment is not working and must be fixed.”

Neither reservation chief responded to a request for comment on this development.

As the tribe runs headlong into this latest constitutional crisis, forestry problems are not the only ones it will confront.

CHAPTER TWENTY-EIGHT

Reservation leadership changes, though little else does

2010 TO 2014



The pinhole camera captures the trailer home of a Passamaquoddy tribal member in the parking lot of the now-closed Creative Apparel Associates building in Indian Township. Changes in tribal leadership in 2010 did not lead to a longtime goal: enacting a tribal constitution.

It all caught up to Billy Nicholas in the end.

The Indian Township governor had lost support on account of the various controversies during his administration, from the leasing camp lots to stopping native alewives from coming up the St. Croix River.

In the reservation's September 2010 tribal election, he received a stinging public rebuke, losing the leadership role to his own lieutenant governor, Joseph Socobasin, by a vote of 204-166. He didn't take it well.

Stephanie Bailey was standing outside the building where the ballots were being counted that night. When the results were announced, she said she saw Billy storm out and jump into his truck. “He squealed out of that parking lot, crying like a baby, and let it be known that night that he was done. He wasn’t even going to finish his term,” she recalled. When he went into his office to clear out his things – even though he had two more weeks in his term – Bailey says he had his gun resting on his desk.

“People who worked there felt intimidated when they saw that,” she recalled.

Nicholas declined to be interviewed for these stories. In a 2012 letter to the community, he wrote that he had “stepped away two weeks early to let the current administration have a smoother transition, and I began my own transition.”

“The Chief’s position,” he added, “is no walk in the park.”

Around that time he also convened a series of meetings with Gov.-elect Socobasin, who was for now still his subordinate as lieutenant governor. He wanted Socobasin to approve a severance package, and not a small one.

The severance package, documentation for which was obtained by the Press Herald, was for a staggering \$40,436. Socobasin, who says past chiefs sometimes got a severance payment equal to a few weeks’ salary, signed off on the unprecedented payment to his outgoing boss.

The governor – whose title was changed to chief in 2010 – admits he has no credible explanation for approving the payment. “I actually offered something that was not quite that high, but after we met a couple of different times and he gave his explanations, well ...,” Chief Socobasin said, his voice trailing off. “It was a week after the election, and I guess at the end of the day I had agreed to do it.

“Right or wrong it happened,” he said, “and, I don’t know, I guess I don’t have a reasonable answer.”

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The new chief was inaugurated with high hopes on Dec. 3, 2010, in a traditional ceremony presided over by his grandfather and seven-term governor, John Stevens. At the culmination of the proceedings – which included drumming, chanting, smudging (ritual cleansing with smoke), and shawl-dancing – Stevens placed the ceremonial

headdress on his grandson's head and embraced him.

The 38-year-old chief pleaded for his people to come together, both within Indian Township, where the election had been extremely divisive, and with the tribe's other reservation at Pleasant Point. In this vein, he praised Billy Nicholas for having returned the tribe to a sounder financial footing, even though the defeated governor had failed to show up for the ceremony.

“Many of the social issues in this community are because people have a lack of hope,” the new chief said. “We have 50 to 100 people applying for every position. We need to change that.”

People were hopeful. “Joe has a good heart,” Councilor Elizabeth Neptune told a reporter. “If he leads from his heart, as he did tonight, we will go far.”

Chief Socobasin, who said he does not plan to run for re-election this year, disappointed many on the reservation by failing to push through promised reforms, most critically the passage of a tribewide constitution that would make top tribal officials accountable to the people and to tribal law.

“I supported Joseph and I really believed that he could do something,” Bailey said. “Now I think he should really just step down.”

Throughout his term as chief, Socobasin spoke out on the vital importance of enacting such a constitution, calling it one of his top priorities. “I have nothing to lose because I'm not looking to be elected again and I can be fearless,” he wrote in an open letter to the tribe in January 2013. “I'll tell you what I hope to leave as an enduring tool for us to use and polish. ... I am hopeful that we will soon have a constitution of our own.”

But progress on this and other reform pledges kept its agonizingly slow pace, raising suspicions that the new governor remained under the influence of his predecessor, who was re-elected to the governing council in 2012. For many, disclosure of the post-election severance package – now common knowledge within the tribe – confirmed the worst.

“Joe told me when he got in, ‘I'm going to have that constitution. I'm going to set up a committee to do it. I want to make a ruling that they have to deliver in a certain period of time,’” recalled Stevens, his grandfather. “And I believe he would have done it if he hadn't appointed Billy to the committee. He dragged it out and dragged it out and

dragged it out.”

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Brian Altvater, a former lieutenant governor at Pleasant Point who chairs the board of the tribe’s profitable Passamaquoddy Wild Blueberry Co., said that in addition to the severance package, Chief Socobasin hired Nicholas to a \$45,000-a-year position as an economic development consultant. Socobasin refused to answer questions about this, and Nicholas declined to be interviewed.

In addition to his earnings from forestry contracts, board memberships, and serving on the tribal council, last year Nicholas was reappointed chief game warden, which carries a salary in the low \$50,000s.

“You add it all up, and some individuals have a lot to protect,” Altvater said dryly. “The reason we don’t have a constitution is corruption. They would rather have the power with a handful of elected officials.”

Allen Sockabasin, who was governor at Indian Township in the 1970s, agreed. “They say they want it, but they don’t want accountability or transparency. They want to be able to manipulate and politicize everything they do, so they can control everything,” he said. “We have people who are going hungry and tribal leaders who have three, four, five, six sources of income off tribal and federal money.

“And anyone who says something about it, they’re targeted,” he added.

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Take the case of the tribal newsletter, Keq Leyu. In the summer of 2012, Stephanie Bailey approached Chief Socobasin about reviving the publication, to give rank-and-file tribal members basic information about the proceedings of the Joint Tribal Council, announcements of public bids and contracts, and a place to discuss issues.

Initially, Socobasin was supportive, contributing open letters to the publication that sometimes frankly addressed public concerns about mishandling of forest assets, the existence and management structure of tribal companies, and other issues.

Although she and her husband struggled to support their family and foster children, Bailey worked on the newsletter without pay, relying on donations of printer ink and

access to computers to get one to three issues out each month, even when the electric company cut off her power for lack of payment.

But by the winter of 2012-13, Bailey began running into bureaucratic roadblocks. Socobasin would be unavailable for interviews. Department heads would refuse to share public information. Bailey said at one point Billy Nicholas' wife, Lucy, told the school principal not to share the school lunch menu and other basic information "because I would change it for my agenda." She said the chief told her Nicholas hated the newsletter and wished she wasn't writing it.

Her last issue ran in September 2013. "It was my hope that each department would be more engaged in keeping you all 'in the know,' but it is not so," she wrote in a farewell editorial that thanked Socobasin for his support. "Our team did the best we could with the limited information we were given. ... This issue is a small one because it seems the tribal departments that serve you have no news."

For months now, Socobasin and the reservation council have been pressing Bailey to stop using the Keq Leyu name on an invitation-only discussion page she maintains on Facebook. She has refused, and in April of this year, the governor told the Press Herald the government was considering its options to enforce the ruling. Last week he declined to answer further questions.

But there are some bright signs at Indian Township as well, indications that Chief Socobasin may be trying to push through some vital changes before his term in office expires in September.

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* A constitution was not passed under Chief Socobasin's watch. In the September 2014 elections, Billy Nicholas was re-elected chief at Indian Township. His brother Leslie was elected vice-chief and Alex became a member of the governing council.

CHAPTER TWENTY-NINE

‘We are getting stronger’

SPRING 2014



A Passamaquoddy elder rests his hands on an oar while working near Long Lake in Indian Township this spring. The people on the tribe’s two eastern Maine reservations have spent decades fighting for their rights while struggling to preserve their collective identity.

An economic, political and cultural renaissance is underway throughout Indian Country in the United States.

It’s been going on for nearly a quarter-century. Whereas in the 1980s, economic growth on Indian reservations lagged far behind the rate of the U.S. economy, through the booming 1990s and the stagnant 2000s, per capita income growth on Indian reservations outstripped the U.S. as a whole fivefold.

While U.S. poverty rates held steady (at 10 percent), in Indian Country they fell from 48 percent to 32 percent between 1990 and 2010. As U.S. unemployment increased from

8 percent to 10 percent, Indian unemployment fell from 26 percent to 19 percent over the same period. Incomes and life expectancy are still far below the U.S. average, but the gap is closing fast.

“The economic growth has been so rapid, and it has applied to both tribes with and without casinos,” says Joseph P. Kalt of the Harvard University Project on American Indian Economic Development, which compiled the data. “There’s a renaissance going on across Indian America and it’s not about casinos.”

The reason it’s happening, Kalt says, is the greatly increased control Indians have over their own affairs, including economic development efforts and the management of federally funded programs. “For a hundred years, the tribes were fundamentally being run by Washington, D.C., but we’ve switched from that now. Today tribal decision-makers are making their own economic and resource decisions and running their services and we see this marked statistical evidence of improvement.”

There’s a catch, though. The data show that the tribes which have missed out on this renaissance are precisely those that have failed to establish a stable rule of law enforced by formal checks and balances on those in power.

“In tribe after tribe, we see their turnarounds once there’s constitutional reform,” says Kalt, an economist at Harvard’s Kennedy School of Government. “Self-government matters, but you have to have a good government that works, and at its core is the rule of law issue.”

Which brings us back to the Passamaquoddy, a people who have had breathtaking achievements – and failures – in the 50 years since four Indian Township women sat down on a gravel pile to stop a white man from taking yet another patch of their land.

A few hundred impoverished wards of the state, denied the right to vote in state elections and even the basic police, fire and medical services other Mainers took for granted, took on the state of Maine and the U.S. Department of the Interior, blasting apart the legal assumptions that had denied sovereignty to Eastern Indian tribes. Against seemingly impossible odds, they negotiated a historic land claims settlement that redefined their status, ensuring they would never again be treated as wards and, as a 19th century Maine court ruled, “imbeciles.”

They and their allies first took on racist barbers and state patrolmen, then the governor of Maine and the U.S. secretary of the Interior. In the process, their chiefs were targeted

for sanctions, their first legal champion was railroaded through the courts, and their second was showered with death threats. But the Passamaquoddy persevered, and in doing so transformed the foundations of U.S. Indian law and policy to the benefit of dozens of tribes across the Eastern United States. They won themselves a trust fund, federal recognition, the means to expand their land holdings more than fivefold, and a great degree of sovereignty and self-government.

But that one hurdle remains: ensuring the rule of law at home, that essential underpinning of economic, social, and political prosperity the world over. The Passamaquoddy need an effective constitution, and the vast majority of them appear to want one.

It need not look like the U.S. Constitution, Kalt notes. “This is not one size fits all,” he said.

Under the Iroquois Constitution, for instance, actions of the tribe’s top “Confederate Lords” can be reviewed by a council of War Chiefs who can “divest the erring Lord of his title by order of the women in whom the titleship is vested.” The women – a certain circle of elders – select “another of their sons as a candidate and the Lords shall elect him.”

The Cochiti Pueblo of New Mexico have a pure theocracy in which a member of the shaman class – the Cacique – appoints key officials annually, but his actions are watched over by a Council of Principales, a sort of Supreme Court, but one without lawyers.

“Everyone has to get a rule of law that is backed up by checks and balances, but the system doesn’t have to be Western in style or design,” Kalt notes. “It just has to deal with the problem.”

What the Passamaquoddy’s constitution looks like will be up to them. Those that have been voted on in the past are modeled on the U.S. system, with a separate judiciary and power divided between governors, the Joint Tribal Council, and the people themselves, who can force certain actions through a referendum process.

Others argue for a more traditional system, whereby supreme power lies in a circle of female elders – Clan Mothers – who must act by consensus and whose orders are carried out by chiefs. “The Clan Mothers would be on the top, and they would put the decisions down on the council and chiefs who would be the ones who would carry them out,” says Plansowes Dana, an advocate for tribal fishing and hunting rights from Pleasant Point,

who says people still know who the Clan Mothers are.

One of them, several tribal members said, would be Mary Bassett of Pleasant Point, who says that under Passamaquoddy traditional governance, women played a central role. “It was a matriarchy really, and they had to have consensus,” she says. “But even if you didn’t agree, you didn’t make trouble.” The central purpose, which she and many other tribal members lament has been lost, was simple: “We just took care of each other.”

Many tribal members who spoke to the Portland Press Herald/Maine Sunday Telegram emphasized that people no longer look out for one another the way they did 40 or 50 years ago. Neighbors used to send their children to do household chores for the sick and pregnant mothers, and everyone parented the kids. The coming of the land claims, many said, has weakened those impulses, turning the tribe into more of a collection of competing individuals.

“When I was growing up I fetched people water, I helped doing laundry – people respected one another,” says Pleasant Point councilor Mary Creighton, 70. “I remember when this woman died in childbirth, my grandmother took in the kids. Those were things we did and were valued. I don’t see that anymore. Now people don’t even say hello to you.”

Indian Township tribal councilor Sonja Dana, 69, echoes this sentiment: “Before the land claim, everyone was basically equal and we didn’t have these problems,” she says. “The younger generation – I don’t know how we missed the boat in helping them to see what our cultural traditional values are.”

Plansowes Dana is one member of the younger generation who champions traditional ways and thinks they need not be declared extinct. “Anything that’s lost isn’t really lost. You just have to pray and ask the spirits and the Creator, and if you’re serious about it then the answers will be brought back to you,” she says. “Anything that’s been lost can be brought back again.”

“We need to go back to the Old Age,” she concludes. “We’re going in the wrong direction.”

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Fifty years ago – when elderly Chief George Francis first sat down with the young

attorney Don Gellers – the Passamaquoddy language was widely spoken, and many adults spoke English only haltingly. Today, however, this language that has been spoken on Maine’s shores and forests for millennia is in retreat.

Wayne Newell, who helped introduce a writing system for his people’s tongue in the early 1970s, estimates there are fewer than 400 people left on Earth who speak Passamaquoddy fluently, and the number goes down each year as members of the older generation pass on. “This past year, we lost seven, I think.”

“It’s been a real challenge over the years to keep the youngsters speaking the language,” he notes. “They understand, but not many of them are speaking.”

Some of the reasons for this would be familiar to speakers of small languages the world over: the arrival of television in the 1960s, the spread of English-language media through books, films and the Internet, and the absence of native language alternatives. And, as seven-term former Indian Township governor John Stevens puts it: “If there is a white woman married to an Indian or a white man married to an Indian woman, they don’t speak Passamaquoddy; they speak English.” Out-marriages are understandably common in a tribe that numbers only 3,000, a great many of whom are related to one another.

But the Sisters of Mercy, the Roman Catholic nuns who operated the reservation schools until the 1970s, didn’t help matters when they slapped or humiliated children for speaking their language. Parents, not wishing harm to come to their kids, sometimes intentionally raised them in English. On top of that, in the 1950s and 1960s, Passamaquoddy thought it rude to speak their own language in the presence of those who didn’t understand it, which reduced the exposure of mixed-marriage children to their Indian parent’s speech.

There’s more at stake than just words: Languages encode and express cultural values and ways of seeing and behaving in the world. “When I speak Passamaquoddy, it comes from a totally different perspective,” tribal member Dwayne Tomah says. “It’s the connection. I speak and I feel it; I’m connected to it.”

Allen Sockabasin, a longtime champion of the language who was governor at Indian Township in the mid-1970s, says non-speakers also lost access to information on traditional hunting and trapping techniques. “The language is the key to open the lock of independence for native people, because in our language are our traditional values, our way of life, our way of belief, and our spirituality,” he says.

Can the decline of the language be reversed? Wayne Newell hopes so, noting that technology can help record, preserve and teach endangered languages. “But I know it’s a hard road no matter what,” he says. “I’d just love to be more optimistic, but if I came back a hundred years from now, I would hope I would find the language being spoken, but honestly I don’t know.”

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There is renewed movement toward passing a constitution, however. A constitutional committee has drafted a new document— one largely inspired by the U.S. system, with divided powers and separate branches of government – and in 2011, the Joint Tribal Council sanctioned a process for it to be evaluated. Four public hearings must be held, alternating between the Pleasant Point and Indian Township reservations. A tribewide vote can then be held to ratify the final product.

The process has slowed to a standstill [as of summer 2014]. Indian Township held the first of its public workshop hearings last year [2013], but months have passed without Pleasant Point Chief Clayton Cleaves scheduling one for his reservation, effectively freezing the process.

Chief Cleaves says he isn’t trying to delay action but also indicated he isn’t a big fan of the constitutional effort. “Right now our constitution at Pleasant Point primarily has a lot to do with accountability and that’s all,” he says. “It was developed thinking that there are crooks running the tribal government and they should be held accountable. But I believe it should be greater than just protecting me as an individual from the tribal government.”

Rather, Cleaves says, the constitution should seek to expand the tribe’s rights vis-a-vis the state and federal governments, particularly in economic development matters like hunting, fishing and gambling. “Our constitution should allow me as a Native American to go fishing and not have to be subject to state laws,” he says by way of an example. “But I’m a little worried the state won’t recognize it.”

But his counterpart at Indian Township, Chief Joseph Socobasin, appears to be making a final push to present a constitution to voters before his term ends this September [2014].

“This is one of the goals I hoped to accomplish in office, to have a constitution ratified by both communities,” he said in April [2014]. “I think we have a unity I don’t

remember in a long time when it comes to this issue.”

Surprisingly, among the tribal members who say they see the need for a tribewide constitution is the person who did so much to prevent one from being adopted in the past. “We need to have a constitution that will make people accountable,” says former Chief Bobby Newell, who served his prison term for misappropriating federal funds and again resides at Indian Township. “You can’t have law without having somebody who can enforce the law.”

Even if a vote is held, passage at Indian Township remains uncertain, in large part because of fears that a joint document will somehow lead to dominance by Pleasant Point when key issues – who can vote, what activities elected officials can engage in, what jobs or rights residents who are less than one-fourth Passamaquoddy (and, thus, non-members) can hold – are brought to a vote in tribal referendums.

“I was one of them that stopped the constitution (under Newell) and I will continue to my dying breath,” says Indian Township councilor and former lieutenant governor Sonja Dana. “Pleasant Point never cared for Indian Township, and they’ve wanted us to go to hell, basically. They have more voters, so if we had a joint constitution they would outvote us on anything they wanted when you put any votes out to the public.”

While this is a real fear, it may be an unwarranted one, as the numerical advantage Pleasant Point once had has long since evaporated. According to the 2010 federal census, Pleasant Point has a total population of 749 to Indian Township’s 718. In the last gubernatorial election – which was held that same year – 370 tribal members cast ballots at Indian Township to only 340 at Pleasant Point.

In late April [2014], Chief Socobasin said he was renewing his push to get a draft constitution ready for voters, with the hope of a referendum on the document being held by the end of summer. He declined subsequent interview requests, however, and tribal officials say there has been no progress in recent months.

On April 15 [2014], former Indian Township Chief Billy Nicholas abruptly announced his resignation from the tribal council in a fiery letter. “Being in a political capacity puts me in a position of disadvantage when it comes to defending my rights,” he wrote. “My family and I are continually being attacked, and my recourse for defense as an elected official is limited.”

“I will not sit idle, and I will be able to address ignorant people without limitations,”

he added. “Although I have much more to say, the individuals that have participated in creating so much animosities and chaos in our community should be ashamed.”

Many in the tribe believe Nicholas intends to run for governor in this September’s election [2014]. Nicholas declined to be interviewed for this series.

Many are hopeful that a constitutional order will be established, enabling the tribe to follow so many other tribes into an era of increasing prosperity and cultural revival.

“What we’re doing is going through growing pains,” says Pleasant Point councilor Ed Bassett. “It may not be easy for us, but we are going to come out of this in a good way.”

“We have come a long way in 50 years – quite a long ways, I think,” says tribal historian Donald Soctomah. “Most of it for the better, some of it not so good. But I think we are getting stronger because we’re learning more about our culture and there’s more pride in our community about it.”

“We’re able,” he says, “to practice it out in the open.”

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While many Passamaquoddy are working to pass a constitutional document to mend their people’s civic rift, others are quietly working to heal older, deeper wounds.

The Passamaquoddy – individually and collectively – have been through a lot of trauma. Numerous tribal members say that the priests and nuns who used to run the reservation’s schools were often abusive, and that some priests – and at least one later public school teacher – sexually abused a large number of pupils of both genders. Additionally, in the 1950s through the 1970s, the state of Maine took many tribal children from abusive homes only to place them in often more abusive foster homes.

As in any community, such traumas can have an impact on the people in subsequent generations. Because of their history as neglected, unprotected wards of the state, people living at Maine’s Indian reservations bore more than their share.

When Denise Altvater was 7, she and her five siblings were taken from their parents and placed in a foster home in the Old Town area where they were starved, sexually assaulted, locked in a cold, rat-infested basement and made to stay in a urine-soaked bed for 24 hours at a time. When they tried to alert social workers, nobody believed their

stories. When she returned to her mother at 14, she was raped by a tribal member.

“I don’t think people understand what it’s like when you grow up in absolute Third World type of poverty and then you experience things that take your soul away, leaving you just a shell trying to survive day to day to day the best you can,” she says. “And what we do because we’re all hurting is that we have all this lateral violence that we take out on each other, and all this internalized oppression.”

It can be passed down on the unborn. You were abused as a child, or you watched some white men try to beat your father to death, or a teacher sexually assaulted you, and maybe you never talked about it. “It’s hard enough to grow up on a reservation and even harder when you grow up with a parent who has lived through so much trauma and PTSD that they pass it on to their children,” Altvater says. “My children didn’t know why as a mother I was abusive and absent, and then your grandchildren suffer this unsolved generational trauma that nobody has even talked about.”

Altvater talked about what happened to her for the first time in 1999, when she stepped forward and told her story for a film the Maine Department of Health and Human Services made to help train social workers to understand the importance of complying with a new federal law, the Indian Child Welfare Act, that mandated children be placed with foster parents inside their tribe whenever possible. She says she didn’t receive any emotional or clinical support, and wound up being hospitalized.

Now she’s helping people tell their stories safely as a co-founder of the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission, a quasi-state commission charged with uncovering the truth about what happened to tribal children involved with the state’s child welfare system. “The more you tell your story, the less power it has over you,” she says. “You can’t move forward without going back.”

The commission, formally signed into being in a June 2012 ceremony including Gov. Paul LePage and the chiefs of the Penobscots, the Houlton band of Maliseets, the Aroostook band of Micmacs, and the two Passamaquoddy reservations, is the first of its type in the United States to focus on Indian issues. Commissioners have been taking testimony from informants in recent months and intend to release a report in the second half of next year [2015].

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Don Gellers, the lawyer who first championed the Passamaquoddy cause, fled Maine

nearly 40 years ago after being convicted of “constructive possession” of six marijuana cigarettes. He says he told the man who prosecuted him, Deputy Attorney General Dick Cohen, that he planned to fly to Israel rather than serve his prison sentence. Cohen, he says, indicated he would not seek to stop or apprehend him.

Through Gellers’ long, unsuccessful effort to overturn his conviction, his attorney, Hy Mayerson, kept Maine authorities abreast of Gellers’ address in Israel, and they made no effort to apprehend him there or on his subsequent visits back to the United States.

Gellers emigrated to Israel in 1971, embraced Judaism, lived on a kibbutz, a collectivist farming community, and adopted his Hebrew birth name: Tuvia Ben-Shmuel-Yosef. He was wounded in the 1973 Arab-Israeli War, in which he served as a private in the infantry, and was later an officer in an armored unit. Wishing to practice law again, he also applied to the Israeli Bar, submitting full documentation of his conviction in Maine. On reviewing the case files, the principal legal assistant to the attorney general of Israel wrote: “The case is a catalogue of horrors – including, but not limited to, multiple violations of due process, manufactured evidence, clear efforts to ‘get him’ because he advocated unpopular ideas and defended unpopular clients.” Gellers was admitted to the Israeli bar without reservation.

As the 1980 land claims settlement came together he tried to sue the tribe for his 10 percent contingency fee, arguing that his former legal intern, Tom Tureen, had purloined and relied on his research to win the case. (Tureen denies this.) He was not successful.

In the early 1980s, he returned to the United States and settled in his native New York City. In 1989 he again disclosed the circumstances of his case to authorities at the U.S Circuit Court of Appeals for the 1st Circuit, before which he had been admitted to practice law in 1966. The court issued him a Certificate of Good Standing, allowing the supposed fugitive to practice law there.

Gellers – now Tuvia Ben-Shmuel-Yosef – is a rabbi living in Queens. He has not set foot in Maine since his final presentation to the Passamaquoddy at Indian Township in 1971, when he claims Tureen, his successor as tribal attorney, stole his land claims files. He fears he could be arrested if he returned to the Pine Tree State.

“These 50 years have been very, very painful years,” the rabbi said, noting that his controversial conviction and possible fugitive status have always hung over his head, waiting to be dropped on him by any opponent.

“It is a ‘Les Miserables’ story, and I am Jean Valjean,” he says, referring to the Victor Hugo novel. “It’s not simply a one-shot outrage, and when something like this is done it carries repercussions for life. These candlesticks are with me forever.”

He has never sought a pardon from a governor of Maine. Asked whether he would want one, he said: “Well, yes. Yes, that would be nice.”

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Along the shore of Lewey Lake, just north of “The Strip” at Indian Township, most of the camps built by that white landowner a half-century ago are still standing, right next to where the Indians staged their protest in 1964. The camp restaurant burned down years ago, and a residential home has been built on its footprint.

There are no signs or plaques or monuments pointing out the historic events that took place here 50 years ago this spring, nothing to mark the site of a protest that would unleash a chain of events leading to federal recognition for the Passamaquoddy, the historic land claims act, and all the years of struggle that followed.

No monuments save one, though you would never notice it or know what it was unless someone told you, or unless you were a Passamaquoddy Indian of a certain age.

It’s there, near the southern tree line: a gravel pile no taller than a man, covered in weeds, a jumble of materials deposited by a white man’s bulldozer that was finally stopped in its tracks.

EPILOGUE

Family's quest for justice still burns, a half-century later



Michael-Corey Francis Hinton, a Passamaquoddy Indian living and working as a lawyer in Washington, D.C., stands on the spot near the Pleasant Point reservation in eastern Maine where his great-grandfather, Peter Francis, was killed after a confrontation with five white hunters from Massachusetts in 1965. Hinton, who is working to get the case reopened, said: “For me it’s not so much about bringing justice to Peter Francis per se as to bringing justice to my people, period.”

PLEASANT POINT — On a dark November evening in 1965, Passamaquoddy tribal constable Raymond Moore was making his regular rounds of the Pleasant Point reservation when the headlights of his car illuminated a man lying face down in the road, a river of blood pouring from his head.

He stopped the car, jumped out and ran to discover Peter Francis, the 59-year-old brother of the reservation’s former governor, George Francis, comatose and dying, a nail-studded two-by-four lying nearby, covered in blood. Peter’s arms were outstretched, his brain apparently having shut down before his body even hit the ground.

Francis died the next morning – Nov. 15, 1965 – at the hospital in Eastport, the result of two heavy blows to the back of the head he had received during a violent confrontation with five young white hunters from Massachusetts. The men had sped off in their Cadillac convertible seconds after Francis hit the ground. They had also beaten Peter Francis’ friend Christy Altvater senseless in front of his own 8-year-old son, Kirk.

Nobody has ever been held accountable for the incident, which claimed one life but affected countless others. Murder indictments were drawn up against all five hunters but never served. One was charged with manslaughter but found innocent by an all-white jury in Washington County by reason of self-defense. In the brutal beating of Altvater – who later killed himself – the county and state prosecutors brought no charges at all.

For nearly half a century and through four generations, the Francis family has been seeking justice. Today they hold out hope that recent exposure of the case in the Portland Press Herald/Maine Sunday Telegram – and the discovery just months ago of a piece of key evidence that had mysteriously gone missing – may prompt state or federal prosecutors to take another look at one of the most disturbing chapters in the long, sordid story of Maine’s interactions with a people who have lived on these lands for at least 13,000 years.

“I’d like to see justice – not just for my grandfather, not just for the other victims of bias and prejudice in the state of Maine, but for my family and my people who carry this burden, who carry this cloud,” says Peter Francis’ grandson Randy Hinton, 61, a giant of a man who chokes up when he recalls his mother getting the terrible phone call that night when he was 12. “I would like to see that cloud slowly disappear in my lifetime.”

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Lila Hinton, Randy’s mother and Peter’s eldest child, attended the 1966 trial and spent years trying to get authorities to take another look at the case. “She talked about it for the rest of her natural life, but nobody would respond,” Randy recalls of his mother, who died in 1978. “I remember her saying to me once: ‘You know, it’s just another Indian.’”

Her brother, Peter Francis Jr., spent his life advising family members that there would be no justice for Indians like themselves. He had spent his early childhood in grinding poverty at Pleasant Point before their father relocated the family to New London, Connecticut. There his brother Skea Francis, a Marine veteran of the Korean War who had survived the horrific Battle of the Chosin Reservoir, died under suspicious circumstances in the late 1950s, with the family believing local police might have been

involved.

“When my grandfather Pete ... was killed, (Uncle Pete) was crushed,” Randy Hinton recalls. “I don’t think he ever got over the pain of his father dying. He let my mom and his older sisters carry the torch. He just sat in the background for many years and watched and waited, waited until the day he died.”

But before he died in February 2013, Peter Jr. – then the family patriarch – gave permission to his nephew Randy to try to seek justice. He warned Randy and his son that they shouldn’t expect justice, though. “It will never change,” he said as tears suddenly poured down his face, an exchange captured by Maine filmmaker Ben Levine, who is working on a documentary about the killing.

Randy has never given up. Earlier in life he had considered going to law school to acquire the tools to seek justice for his grandfather, but, as he puts it, “life got in the way.” Over the decades he researched the case and talked to legal and civil rights experts; nobody was very encouraging.

But now he has a powerful ally: his 27-year-old son, Michael-Corey Francis Hinton, who is – not coincidentally – a tribal law attorney at Akin Gump, one of the most influential law firms in Washington, D.C.

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Corey Hinton, at the time a third-year law student, was deeply affected by his uncle Peter’s warning not to expect justice for Indians in America.

“It was heartbreaking. Here was a man I revered – everything about him was cool and confident – to hear him say those words and become overcome by emotion, it just crushed me,” Corey recalls. “If there were any doubts in my mind about what we need to do and about what my mission and my career would be, all doubts were erased at that point.”

Corey had grown up in upstate New York, in a town where he and his sister were the only Indians in the school system. There were attorneys on his mother’s side, but they had been practitioners of divorce and family law, and even in his youth, Corey had an interest in social justice. He says he didn’t fully realize the systemic oppression native peoples have faced until taking a college class while interning for the National Indian Gaming Commission. And it all didn’t fully hit home until that moment with his Uncle

Pete.

“He was saying that, ‘I’m an Indian, and my rights will not be protected,’” Corey recalls. “I cannot allow that to be the status quo for myself and my children and my children’s children.”

He says his great-grandfather’s slaying had always influenced him, but after that day it became a conscious motivation.

“The events of that night have been an invisible guiding hand for me,” says Corey, who has represented his tribe pro bono in recent disagreements with the state over saltwater fishing rights. “For me it’s not so much about bringing justice to Peter Francis per se as to bringing justice to my people, period. His story is a microcosm of what has happened to indigenous people across the world.”

Nor has the slaying of Peter Francis and the state’s handling of it been forgotten by the Passamaquoddy, a tribe of 3,000 people with two reservations in eastern Washington County.

“The whole community went into shock, because it involved young people who saw it all happen and the victims were two beloved members of the tribe that didn’t have a mean bone in their body,” says tribal historian Donald Soctomah, who notes that at least four Pleasant Point Passamaquoddy were killed in the 13 years leading up to the incident, without any charges filed. “This is the one case where the tribe thought we were going to get justice. ... When they didn’t it was like a dark day over the community.”

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Together, father and son have been lobbying the U.S. Department of Justice to revisit the case. Two years ago they approached the U.S. Attorney’s Office in Maine, which agreed to take a look. Federal prosecutors quickly discovered what the Portland Press Herald/Maine Sunday Telegram also learned: Virtually the entire official court record for this, arguably the most high-profile case of its era, disappeared from the Washington County Courthouse records sometime before the case file was to be transferred to the Maine State Archives.

Conspicuous among that court’s case records for the mid-1960s, only three random sheets of paper have survived. Even the documents recording the official complaint and

judgment have disappeared.

U.S. Attorney Thomas E. Delahanty II says his office organized a search of the Machias court's cluttered storage attic in 2012 but came up with nothing. "We would need official court evidence from the trial, which no longer can be located," to consider moving forward with a case, he told the Press Herald last winter [late 2013].

A few months ago, however, an archivist found the transcript of the grand jury testimony for the case in the courthouse attic, copies of which are now in the possession of both the Francis family and the Press Herald. The 411-page transcript contains testimony, under oath, from investigating officers, doctors, the coroner, and 18 Passamaquoddy witnesses.

Corey Hinton says the family provided the transcript to the Department of Justice in Washington, D.C., in hopes that the case might be reopened under recently revised federal hate crimes legislation. But after several months, an attorney there recently told the family by email that the department did not believe the revised law would apply because the killing happened so long ago. The family says they are not deterred by a single email from a federal attorney.

Separately this winter and spring [2013-2014], the family's phone calls and emails to Delahanty's office in Portland went unreturned, and they did not receive a response to an offer they made to personally deliver the transcript there.

Delahanty told the Press Herald in June [2014] that he knew nothing about the transcript's existence but said he is interested in reading it. Based on a description of its content – and the fact that grand jury evidence does not include material from the defense's side – he said it is unlikely to result in new charges.

"It's a matter that has not been closed," Delahanty said of the case, "but my observation at this time is that it doesn't look like there would be sufficient evidence to go forward."

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The transcript, when added to detailed newspaper accounts of the trial itself and interviews with surviving witnesses, enables a fine-grained reconstruction of the events surrounding the slaying and its troubling aftermath.

The five hunters were all from Billerica, Massachusetts, 20 miles northwest of Boston, and knew one another from high school or shared work experiences on construction sites. Four are still alive, and three still live within 30 miles of their hometown. According to one of them, Daniel Frobese, the survivors all still know and see one another from time to time.

They drove to eastern Maine in James Ellinwood's white 1961 Cadillac, a convertible with recessed rear wheels and long sharklike fins.

Ellinwood, 25, was a tall, husky former football player who worked construction and had a prior conviction for assault and battery. William Robbins, the group's leader, was a 32-year-old former Marine and Hall of Fame athlete at Billerica Memorial High School and worked as a truck driver. Frobese, 23, was a roofer and, by his own admission, a "blackout drinker," who also had a prior conviction for assault and battery. Hugh O'Neill, a 25-year-old data-processing specialist, had played football with Ellinwood. Romolo Capobianco, 25, was a married father of two who had hunted in the area in the past; some witnesses say he expressed reservations about some of his friends' subsequent actions.

Nov. 14 was a Sunday, and deer hunting was forbidden by state law, so the hunters had left their camp near Princeton late that morning in search of other entertainment. Their camp was just a few hundred yards from the Passamaquoddy's other reservation at Indian Township, but according to then-Gov. John Stevens, they'd been run off a few days earlier. "Don't come around with liquor and try to entice young girls into drinking and taking them out and raping them somewhere," Stevens recalls telling them. "Stay the hell away."

That afternoon, they pulled up outside the home of former Gov. George Francis, 72, at the Pleasant Point reservation, 50 miles south of Princeton. They barged in and over the next few hours attempted to entice numerous teenage girls on the reservation – some as young as 14 – to take off with them, sometimes offering money, according to testimony by more than a dozen Indian witnesses. (At trial, the hunters would deny having propositioned any girls that day.)

Ultimately they were diverted to neighbor Christopher "Christy" Altvater's home, where George's younger brother Peter offered to make them dinner. He would die for his trouble.

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Peter Francis was visiting home for hunting season from New London, Connecticut, where he was an electrician at the naval submarine yard there. He was 59 but looked much older, with failing vision and a permanent limp from a workplace knee injury.

He was a man of impressive endurance. After the Japanese torpedoed his transport ship during World War II, he survived for many days on a tiny life raft in the South Pacific without food or fresh water; others aboard the raft perished.

He was later feared lost when he failed to return home from a moose-hunting trip early one winter, only to walk out of the woods in the spring, having survived alone in his disabled panel truck through months of storms and subzero temperatures. He had heard the search planes overhead, but they were unable to see his forest-green truck amid the pine and spruce; his next vehicle was bright orange.

“He was an outdoorsman and his church – his world – was the outdoors,” Randy Hinton recalls. “He was comfortable with who he was. He spoke his mind.”

His brother-in-law, Christy Altvater, was 5-foot-2 and had mild paralysis on his left side, the result of having been clubbed in the head with a rifle butt by a much larger white man from Eastport. (No charges were ever filed in that incident.) He had just returned from the Togus Veterans Administration hospital – he too had served in World War II – where he was being treated for related headaches and dizziness.

One of the last Passamaquoddy porpoise fishermen, Altvater was 45, puckish and physically unthreatening. The father of six, he was in the midst of fighting an effort by the town of Perry to seize his house, located just a few hundred yards off the reservation, for \$700 in back taxes.

“He was the kindest, most generous person you could ever meet,” recalls his granddaughter Patricia Altvater Morang Graffam. “He would take fruit down the hill to the reservation and give it to anyone or everyone. He gave everyone a chance and was a peacemaker, even to obnoxious drunks.”

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At the Altvater house, the Indians said the hunters became rowdier and some propositioned Altvater’s girls. Ellinwood swept up Christy’s 8-year-old son and took him off in his car in search of more girls. When he returned 35 minutes later with a 17-year-old girl in the front seat, his four hunting companions had just left the house,

followed by Peter and Christy.

The two Indian children in the car both testified that as they pulled to a stop they saw three of the hunters on the far side of the road, where the wreckage of an old hay barn lay, and 8-year-old Kirk said that he saw them picking up pieces of lumber. The hunters opened the car door, and the kids slipped out and away.

In the next few minutes, the hunters got into and then out of the car. Three attacked Christy, beating him with a heavy object. Ellinwood hit or straight-armed Peter Francis.

Then someone hit Francis twice in the back of the head with a blunt object, causing much of his scalp to separate from the back of his skull. A nail-studded two-by-four fell to the ground nearby, splintered from a powerful blow. Both board and splinter were soaked in Peter's blood type, and police found one of Peter's hairs stuck to the splinter.

The hunters sped off.

The Press Herald recently spoke to two of the four hunters who are still alive.

Capobianco claimed not to remember anything about the incident.

"I just turned 74, and I'm telling you my memory isn't as good as it once was. I don't remember anything about that," he said. "Why are you interested in that? It was so long ago; it's forgotten."

Robbins, who had lived in Keene, New Hampshire, died in March 2009.

O'Neill, who lives in Hollis, New Hampshire, did not respond to telephone messages.

Ellinwood, a recent resident of Spring, Texas, could not be located.

In a brief interview, Frobese said he was a "blackout drinker" in 1965 and had only fragmentary memories of that day in November, the critical minutes around the beatings not being among them.

Frobese said he didn't recall himself or others propositioning girls, although he thought Ellinwood had "given two girls a ride to a community center or something" while they remained at the Altvaters. "We went to the reservation for alcohol."

He said Ellinwood was a "scrapper" but that, in all the time he's known him, "I've

never known him to do anything with more than a fist.” Frobese also said that he didn’t believe he himself was involved in any part of the final fight.

When asked who did kill Peter Francis, Frobese said he didn’t know.

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In the hours after the slaying, County Attorney Francis Brown drew up murder indictments against each of the five hunters. They were never served.

Attorney Don Gellers, the idealistic young native of the Bronx who had started aggressively and effectively representing the tribe, called a Press Herald reporter and charged Brown with a “deliberate flouting of the law” that would not have occurred had the victims been white. Randy Hinton’s mother, Lila, who had traveled to Eastport from her home in Syracuse, New York, told the Press Herald she would not leave “until justice is done.”

Instead, the county attorney issued a single manslaughter indictment against Ellinwood. No charges were ever brought in Altvater’s beating.

The case received national attention. U.S. Sen. Sam Ervin, a North Carolina Democrat who chaired the Senate subcommittee on constitutional rights, demanded an accounting from Maine’s Attorney General Richard J. Dubord. The National Council of Churches urged the U.S. Department of Justice to investigate.

“This is the sort of situation you would expect in the Deep South but not in Maine or any other New England state,” council spokesman Fletcher Coates told a reporter.

At Ellinwood’s trial in Machias in March 1966, an all-white jury found him not guilty. Many whites in the courtroom rose in applause.

The victims’ families were devastated.

Christy Altvater was never the same after the beating. He hanged himself in his basement in 1971.

After the attack, Christy’s son Kirk suffered from panic attacks that would leave him doubled over and hyperventilating. “He never even talked when we played together, and when he did talk he would stutter quite a bit, which he hadn’t before,” recalls his cousin

Brian Altvater. “We’re more aware of trauma and stuff like that nowadays, but back then I doubt very much there was any help.”

Kirk killed himself in 1979. He was 21.

“The tragedy of all this isn’t just the murder; it’s all the fallout and all the collateral injustice and pain and anger that revolves around that night,” Randy Hinton says. “Justice was never served, and those guys got away with murder.”

He says his family is in it for the long haul, drawing on an enduring strength exhibited by his deceased mother and grandfather.

“That spirit is in me, and that’s a spirit I pass on to my children,” he says. “If justice doesn’t prevail for my grandfather in my lifetime, I’ve got my son and my daughter.”

“They’re well-equipped,” he says. “They’re not going to fight half a battle.”

About Unsettled

COLIN WOODARD

Staff Writer Colin Woodard spent more than a year researching “Unsettled,” logging thousands of miles and more than 250 hours of interviews with some 70 sources, including past governors of Maine and the reservations, tribal elders, councilors and activists, as well as attorneys, state officials, police officers and academic experts.

Woodard – who is the author of four books, including three works of history – reconstructed events through eyewitness interviews; newspaper archives; the correspondence and departmental records of government, including numerous files that had been previously sealed; state, tribal and federal court records; thousands of pages of tribal, state, and federal documents acquired through public records requests and confidential sources; and decades-old correspondence between attorneys, government officials, and tribal members.



Illustration by Pete Gorski/Staff from rendering by Stephanie Ann Francis.