

**Interview with Chief Kirk Francis of the Penobscot Nation
with Sunlight Media Collective
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Sunlight Media Collective spoke with Penobscot Nation Chief Kirk Francis about the historic judicial review of the Penobscot River Case now underway. This En Banc Review will assess whether the courts adequately applied Federal Indian Law when siding with the State of Maine's 2012 opinion that no part of the Penobscot River is Penobscot Tribal territory. The Penobscot Nation says this is an existential threat, and that they never ceded the waterways under any treaty or the Settlement Act, and that past case law supports their position.

We also spoke with Chief Francis about the new State recognition of the Wabanaki Tribes under the Violence Against Women Act (VAWA), the Penobscot Nation's response to the Covid crisis, reflections on the Black Lives Matter Movement & Racial Justice, police brutality and more.

Update: Penobscot River Case under En Banc Review

Meredith DeFrancesco:

Thank you for joining us today, Chief Francis, to update us on the Penobscot River case, previously referred to as *Penobscot Nation v. Janet Mills, Attorney General for the State of Maine*, now titled *Penobscot Nation v. Aaron Frey, Attorney General for the State of Maine*.

The Penobscot Nation has been in a protracted and painful legal battle with the State regarding the Tribe's territorial boundaries since 2012, when Maine declared that the Penobscot Tribe's reservation, which includes more than 200 islands in the Penobscot River, does *not* include any portion of the River itself.

In the first decision, the federal court found in favor of the State of Maine. The Penobscot Nation appealed. In a 2-1 decision that appeal was also

decided in favor of the State and industry intervenor position. Justice Torruella, in his dissent, however, wrote an extensive analysis of the interpenetration and application of federal Indian law and the Maine Indian Land Claims Settlement Act which supports the Tribe's Position. (on the Penobscot River sustenance fishery and territory...)

The Penobscot Nation then requested what is called an En Banc Review by the courts, to require a thorough examination of how and whether federal Indian law was applied accurately in these court decisions. The request for review was finally accepted this spring, and this month all parties submit supplemental briefs.

Chief Kirk Francis, again, thank you for speaking with us today.

Chief Kirk Francis, Penobscot Nation: Thank you for having me again.

Meredith DeFrancesco: Feel free to revisit and amend the quick introduction that we just laid out. But then, explain what an En Banc Review is and why it is imperative in this case to re-examine the lens that the decisions were made through.

Chief Kirk Francis, Penobscot Nation:

I appreciate the opportunity to talk about it. As you know, this has been the most important thing in the Penobscot Nation's life. Pre-pandemic, certainly. Keeping people healthy and safe right now is obviously a priority, as well. But this has been a high priority for us, as you mentioned, since 2012. We really saw this issue as more than a simple fishing issue. It was really about the cultural identity of the Tribe. It's about where our territory exists as we've always known it. And a whole host of things around that. I think you did a great job in kind of laying out where we've been with this. It's been an exhausting process. I think what people don't really understand is these legal battles are not only tough on resources and time, and all of that, but it's really tough on people emotionally. I think that gets missed a lot. There's a lot of hurt feelings, a lot of anxiety and just, quite frankly, a lot of confusion about what it exactly means when a state says that you don't have rights anymore in your ancestral territory.

As you mentioned, we went to District Court. Although the Court acknowledged the Tribe's sustenance fishing right bank to bank, it did not allow for the Tribe to exercise its associated authorities along with that, the ability to protect that resource, even over our own citizens within our territory. So we were obviously very concerned about that decision. We appealed to the First Circuit. The First Circuit then ruled, in a two to one decision, saying, basically that they were upholding the District Court decision. But they also went a step further and said, you know, "We're going to erase all of the language about sustenance fishing rights because we don't think that issue was ripe and shouldn't have been argued to begin with." There was really no reason for them to do that. But it was obviously a concern, and even the fact that they upheld any of that decision was also extremely concerning for the Tribe. So we vowed to keep fighting.

We then switched gears with our legal team. Drummond Woodsum has represented us, as they have for 30 years and through a lot of the process. In consultation with them we realized that they were an important member of the team and would continue to be, but we needed to really start to engage people who specialized in the Appellate process at that level. Because after the First Circuit all there is is the Supreme Court. But there is a process you can follow in the interim to ask for a new review of the decision, and that's the En Banc review that we've filed for.

We immediately put that together and filed for En Banc. And the likelihood of success for En Banc, people should realize, is not very good. If you look at, even just in the First Circuit, I think the percentage is about five percent of them get granted. It's not something that the courts typically do. So you have to prove a lot of things: that this is a national scope issue, that it contradicts previously Circuit Court holdings, that it contradicts Indian Law, you know. So it's a high barrier to really get an acceptance for the full panel to look at this.

We knew we were going to another step no matter what, so we really wanted the court to really take a look at it. We obviously think they got it wrong, and Judge [Torruella's dissent](#) was so strong and on point that we really felt that a senior member of that court like him would be able to get the ears of the other Justices and really talk about what was fair and just here.

Fortunately for us, after a two year wait after filing, we were granted the En Banc review. We're in the process now of filing new briefs on that case and then there will be a new schedule and order that will be laid out for oral arguments, etc. So the briefs are due in a few weeks and then there is a time frame for parties to respond to each others' briefs. Then they'll set an oral argument, and then it'll be in the full court's hands at that point.

So, we're really excited about the opportunity. We think one of the things that En Banc tells you when it's granted, is that a majority of the Justices thought it was worth looking at. And just the mere fact that that has happened really has justified a lot of our feelings. So that's where we are right now.

Meredith DeFrancesco: How many Justices will be reviewing it?

Chief Kirk Francis, Penobscot Nation: Six, I believe. There are typically seven, but one has been recused because of their work at Pierce Atwood before they joined the court. So there will be six.

Meredith DeFrancesco: And one of them will be Justice Torruella, the dissenter in the Appeal?

Chief Kirk Francis, Penobscot Nation: Yes. So, we think we've gained a pretty good panel here. We think there is a good slate of Judges that will look at it objectively and hopefully see it the way it should be.

Meredith DeFrancesco: And you said that you have a number of new Amicus briefs that will be filed on behalf of the Penobscot Nation? Can you update us on that?

Chief Kirk Francis, Penobscot Nation: Sure. So, one of the things that happened in the River Case early on was the Native American Caucus within Congress filed an Amicus brief on our case and in support of what Congressional intent is around Indian Law, Federal Indian Law. And it was an excellent brief. But that was six years ago, when we first hit the District court. There are new members of Congress. So we went back to Deb

Haaland, who is the first Native American woman to be elected to Congress, and she is the Chair of the Native American Caucus now. They were quite gracious in wanting to help, with Representative Tom Cole from Oklahoma, and a whole slew of new members of Congress signing on to the brief. We haven't seen their brief yet, we know it's being worked on. And so we're excited about that.

The Maine Indian Tribal State Commission (MITSC) will be filing an Amicus brief. That's a positive step. That was really contentious in the first round of cases between the Attorney General's Office and MITSC, in terms of whether or not MITSC had the authority to have independent counsel and think independently from the state, and all of those types of things. So everybody seems to be on the same page with that now.

Meredith DeFrancesco: They were recognized?

Chief Kirk Francis, Penobscot Nation: Yes, they were. The Attorney General's office actually produced a letter that said they didn't have any discomfort with that, and that was fine. So, that's good news. And the National Congress of American Indians, the United South and Eastern Tribes, the Affiliated Tribes of the Northwest Indians (who have had similar fish-based battles in the upper Northwest, Pacific Northwest). So, we're looking to garner as much intelligent support as we can around this, based on Federal Indian Law, treaty fishing rights, those types of things, to help the court understand the magnitude of this case. So, we're really excited and appreciative of all the support we've gotten.

Meredith DeFrancesco: So the United States Court of Appeals sent all parties a list of questions to expand on in the briefs that are currently being filed. I would like to go into some of those with you if you are able to do that with us. And I would have you choose which in particular you might like to highlight, but particularly we were interested in looking at the recent State and court recognitions of the River as part of the Tribe's territory and sustenance fishery.

So in number 10, the courts ask the questions, quote, "*What are the boundaries of the reservation? And what is the effect of Maine's former position that, 'Portions of the Penobscot River and submerged lands*

surrounding the islands in the River are part of the Penobscot reservation.?’
” And in question 3, there is reference to the River as being part of the reservation in the *Maine v. Johnson* decision. And number 9, “*Did the Penobscot Nation transfer the main stem of the Penobscot River under the Settlement Acts?’*”

So, just to preface before we get into that, we know we need to talk about the Settlement Act, because the State’s interpretation has been pivotal in this case. And so we do want to ask you, at some point, how the current Tribal State Task Force and [Maine Legislature](#)’s re-examination of the Settlement Act, currently underway, potentially impacts this court case and the basis of the State’s position? We know that there are an enormous amount of layers to this case and to the questions I am asking. So we would have you take the lead on what you would like to address first, as to the Settlement Act or some of those interpretations, recent and more historical, of the River being part of Penobscot territory and sustenance fishery.

Chief Kirk Francis, Penobscot Nation: Sure. I’ll just touch on a few of them. I think that the court is exactly right, what actually came from some of our first briefs, was in *Maine v Johnson*, in multiple licensing processes, FERC [Federal Energy Regulatory Commission] processes, all of those things. The Penobscot River is consistently mentioned as being part of the Penobscot reservation. So, why [Maine v Johnson](#) language is important—that’s a case we lost, by the way. It was the NPDES [National Pollutant Discharge Elimination System] case. It was really about wastewater discharge and who controlled that.

Meredith DeFrancesco: And the paper companies were very involved in that.

Chief Kirk Francis, Penobscot Nation: Yeah. Absolutely. It says in there, there is an acknowledgment that the water and submerged land is part of the reservation. And why that’s important here, and why the Justices are asking that, is because that would present a contradiction of First Circuit precedent in terms of how they based the ruling before, if those Justices in their decisions said, “That is the reservation, but...” They’re acknowledging that that’s the reservation and that would be a contradiction to the decision that

was made in the River Case. So, I think that's why they are trying to clarify that question and I think it's an important one.

In terms of the Tribe abrogating its rights to the River in the Settlement Act, there is nowhere anywhere that anybody can point to that says that the River was ever part of the discussion [in Settlement Act negotiations]. That was already an assumption by Tribal leaders and Tribal people, that the River was the reservation—that wasn't land that we were trying to claim during those times. And contrary to popular belief the River is not land to begin with, but I think that that is just...I don't know where that comes from.

The Settlement Act mentions the treaties. It mentions the Tribe's right to fish for sea-run fish in the reservation. The only place that exists is in the river. So, there's a lot of anecdotal language that really points to supporting the River as part of the reservation in some of the talks. But the Land Claims wasn't about the River, ceding the River or not. As a matter of fact, there's language quoted, from Milford to the Branches kind of language, meaning the Main Stem. So, that's just a ridiculous thing. And even when it points to the treaties. I mean, if you look at any treaty the Penobscot Nation ever signed, you know, there's no question we ceded lands very clearly from the banks of one side inland, for example. There was never any ceding of the Penobscot River. And the Settlement Act doesn't speak to that. What the Settlement Act, what they argue in the Settlement Act, that it speaks to, is the State's language that it's the state's right to control, manage, and enforce Natural Resource laws across the entire state, including our territory. And again, that's interpretative on their part, I think. But that's how they tie the Settlement Act to this ceding thought, is "if you agree to give up your jurisdiction on it then you are ceding it." And that's just never really happened.

Chief Kirk Francis, Penobscot Nation: So, I think the court is asking some important questions. And I'm glad they are because those are the very things, after a decision comes up, that, "Man, I wished I had another opportunity to address that." Because, even though we feel like we did substantively in the briefs, just a little clarification there could have been a big deal for one of the Judges, right? So, yeah. So, I think it's good that the court is asking for that

clarification, it really gives direction about what they want to drill down on in the next step. And so we are looking forward to being able to do that.

Meredith DeFrancesco: And how are you feeling about the re-examination of the Settlement Act at the Tribal-State level that was happening just prior to this, and probably would have had some more of a conclusion had COVID not come on the scene? How do you feel that could have informed or could still inform how the courts could look at this and maybe how the state could have, or could potentially going forward, be amending how they interpret the Settlement Act as they feel it applies to the Tribes?

Chief Kirk Francis, Penobscot Nation: So, I think LD 2094 is, as it sits right now- and we all know that it probably won't end up how it began in this process- but it could have huge impacts. Part of the argument for this bill is 1) this is about following suit with the rest of America, in terms of reversing course on a very negative history and a restoration of rights that were taken away. But also it's about building a more harmonious relationship as a sovereign to sovereign, and the recognition of that, to prevent these legal problems, these constant legal battles and litigation being the only way that we can solve those things. So, that really was a foundational principle of what the Tribal leaders wanted to stop - all of this negative legal stuff, constant challenges to the Tribes' authority and all of those things.

So it would have a huge impact on, just about every argument they made in the River Case wouldn't be valid anymore. And so, my fear is that (the state) very much knows that and I can already see the process kind of getting very legalese in terms of, "If you do this, then this could happen. What if they didn't do that? What if they didn't do this?" There's really a lot of trust issues around recognizing another true sovereign, I think. Then we try to reverse that conversation into, "Well look, as it stands right now do you think everybody trusts the State of Maine every time they get to make a decision?"

So anyway, to your question, I think that LD 2094 would have a huge impact on the legal arguments that the state would be able to make to support arguments that they've had before, if those things change. But more importantly I think that it's important to know that the State is committed to this process and really wanting to make things better—and I know we're dealing with the Legislature and not the Administration on the bill, but the

Administration is a big part of it. I think this would be a great time for the State to come to the table with some compromises and be able to talk about what the common ground could be here.

But we've heard none of that, and people have just moved forward and are filling their briefs. And, yeah, I think it's going to be a long road on 2094. There's like the perfect storm with this pandemic hitting, and I think there are going to be a lot of other priorities and I'm not sure this bill (LD 2094) is going to get prioritized even when they come back.

Meredith DeFrancesco: I'm interested in having you talk a little bit more about the particular importance in this case that an En Banc review is done, to see that Federal Indian Law is being applied in good faith. And I know it was a central theme for the Wabanaki Tribes, in the Tribal-State process that we were just discussing, that the Tribes here have not been afforded those same protections that other Tribes have under Federal Indian Law. If you wanted to speak a little bit more to the River Case in particular—how important it was to see that Federal Indian Law was given the full weight rather than being superseded by a flawed document, on everyone's admission, being the Settlement Act.

Chief Kirk Francis, Penobscot Nation: Yeah. So, obviously it's a hugely historic time for the Penobscot Nation in relation to this case. You have a situation where basically the court of the State takes the position that there are no federally-recognized Tribes in the State of Maine. That these are Tribes that exist under a state agreement (that being the Settlement Act), which of course no one else in the world agrees with, including the United States Congress, including every federal agency we've been 638 contracting with for 40 years.

So, the level of importance that is on this En Banc review... things like the Canons of Construction of Indian Law—do those apply to the Penobscot Nation? When there are ambiguities, the law says that the courts are always supposed to decide on behalf of the Tribe, when that condition exists. There are tons of ambiguities here. The court admits to that. But also seemed to buy into, in the first round, at some level, that somehow the Tribes of Maine need to be treated differently because of the Settlement Act.

So you have that going on. And then, the national significance of this is also really important, because Tribes all over the country, whether you're a PL280 Tribe or there are tons of Tribes with their own Settlement Acts, etc, you know, we can't have a situation... It's one thing for the Settlement Act to say, "Okay, Federal Beneficial Acts don't apply" because of XY and Z in the Settlement Act. It's another thing to say that "Federal Indian common law just doesn't apply to you generally." And nowhere in the Settlement Act does it say that. So, again, following the Federal Indian Law Canons of Construction is critically important to the protection of the Tribes. That's in place for specific reasons because history has told us that all States, local governments, enterprises, all they really had to do was create these ambiguities and they would still win the cases. And then Congress stopped that and said, "No. If there are ambiguities, you are to side on behalf of the Indian Tribe," to stop the taking of land and all kinds of other things.

So, here we are today in 2020 with five Tribal communities in this state still wondering why those principles of Federal Indian Law are not being applied to the protection of our issues. So, to me that is the important thing of the En Banc review. And that will really solidify the Tribes as—and even the court has said, you know, "These are federally-recognized Tribes. They were recognized in 1976, years before the Settlement Act. They enjoyed all the same powers, rights and privileges before the Settlement Act." So, yeah, those are the things that really are at stake when it comes to this case. And it's really about not having a situation where a state can just determine on its own that, "because we have this agreement that none of those protections are afforded to you and as far as we're concerned you don't have a federal relationship." So getting those things clarified will go a long way in the Tribe being able to protect itself.

River Reclassification and Sustenance Fishing

Meredith DeFrancesco: As a sidebar, but related... Recently with the new Administration in state government there was a comprehensive move to re-classify rivers and to classify certain areas as sustenance fishing areas, and that has brought some substantial changes, but it has also brought a certain

spin that allowed certain people to say that sustenance fishing has been recognized. I didn't know if you might want to comment on that, where sustenance fishing is being recognized, but that is still not being recognized as your sustenance fishery, as part of the Tribe's territorial waters.

Chief Kirk Francis, Penobscot Nation: Yeah, so that's the challenge we have in this state really. There was some really good work done on the water quality standards legislation, where we are now considering legal action against the EPA, ironically enough, because that's gone kind of sideways lately. But there was some great work done by the State and the Tribes on trying to make sure that we made a statute that was protective, first of all of the River, through a water quality standard that kept the River healthy. As we sit here, I'm not crazy about the fact that it is under State law, but I'm also appreciative that we have the highest human health criteria, in terms of water quality standards, in the country right now. [[HP1242, LD 1743, item 1, An Act To Reclassify Certain Waters of the State](#)] We're above Washington State. So when we started off at...I think we were way over 250 grams per day of consumption. The state was at 32 or some ridiculous number. That went on for years. And we're at 200 now in the legislation. So that's a really good compromise. It keeps the River healthy. It protects sustenance fishing, and more importantly moves towards the health of people. But we have a long ways to go there, as the fish contaminant study recently done shows us.

The issue of water quality and all of those things have been a real challenge. But the legislation is a good one. The re-classification of certain parts of the Penobscot River is good obviously, and is a recognition of sustenance fisheries. But what we see in both the legislation and in any reclassification process, is there is no real legal effect in terms of Tribal authority over those issues. It does not recognize the Tribe's inherent right to sustenance fishing, none of those... So, everybody is really good at talking about the recognition of sustenance fishing, until it gets to a place where the Tribe has a meaningful voice in that sustenance fishery. And so, in talking about whether it's managing the fishery, managing the resources, or enforcing, even, as I said, jurisdiction over our own citizens. So, it's nice, and it's good for the River, and we have to think about that too. But those things don't do a lot to recognize the Tribe's inherent rights to the River.

Meredith DeFrancesco: Where does it stand right now with how Tribal wardens can operate on the Penobscot River? Previously it was the case that they were operating and enforcing state laws when they applied to non-Tribal residents and also likewise for Tribal residents. Are the Penobscot wardens able to conduct themselves as they did before the court case?

Chief Kirk Francis, Penobscot Nation: So, our position right now with that is, you know, the litigation is still pending, there have been some decisions... We're going to operate the way that we've always understood it, until there is an absolute decision that says, "It's illegal, what you're doing." What we have done, however, was take a softer approach while the case was going on. We told the Maine State Wardens... As you may remember, shortly after the District court decision, they came into the reservation and started checking Tribal members—I mean clearly in the reservation, between Orson Island and Indian Island. Even if you subscribe to a common law riparian right, there's no land in there that is state land, so. And they took the position that it was well within their right to do so. So there was a big blow up and all sides agreed that State Wardens wouldn't be up there and we wouldn't be arresting non-Indians on the River. I mean we would do that under mutual aid agreements for crimes, obviously, just as a helpful measure, but we wouldn't be exercising sustenance-based authority over non-Indians until things were resolved.

Meredith DeFrancesco: And when did that happen, that incident and that understanding?

Chief Kirk Francis, Penobscot Nation: 2014, I think. Yeah. Or '15 maybe. There's been a lot of back and forth. Even the Old Town boat landing was just full of state warden vehicles, they thought there was going to be this big confrontation, and there wasn't. It so turned out that day that I was actually with one of the firemen and we were in the fireboat, which looks like a public safety boat, and we... I had no idea those guys were there. I went up to go by my camp and went by the Tribal members. There were half a dozen Tribal members or so in kayaks and canoes, and they were turning up between the islands and they waved and I kept going. And when I came back they flagged us down and told us what had just happened. Turns out, that warden was, his motor had died in the middle of the River and was just floating out there. So

we went over and were like, “You need any help?” And he was kinda in plain clothes and he just looked at us oddly. And that somehow turned into that we were somehow trying to intimidate the warden, and it was this big mess anyway. And like I said, I knew very little about it at that point. So that really invoked a conversation that, you know, “We can’t be stepping on each other here,” and so.. yeah.

Meredith DeFrancesco: Is there anything else you would like to add about the case right now, the process going forward, what you are hoping will happen at this point, Chief Francis? And we will be talking with you again for sure.

Chief Kirk Francis, Penobscot Nation: Yeah. No, I think that’s about it for now. Once the briefs are filed, we’ll make sure you get a copy of those and then we’ll have a more in depth conversation as the oral arguments get developed and that type of stuff, kinda where things are. You know, like I said, we’re optimistic and hopeful that if we are really allowed to tell our story to a diverse group of objective people, that we’ll be able to be very successful in this. So we’re looking forward to it, and hopefully getting some good news.

VAWA- Violence Against Women Act

Meredith DeFrancesco: Okay, great. Dawn, do you want to turn to questions about COVID and community care, and VAWA?

Dawn Neptune Adams, Penobscot Nation: Sure. Let’s start with VAWA [Violence Against Women Act] if you don’t mind. We haven’t really spoken since that public hearing in the State House about the Violence Against Women Act when the Governor and the Governor’s Office decided to work with us on that. If you could give us an update on what that means to us as womxn in the Penobscot Nation, that would be great.

Chief Kirk Francis, Penobscot Nation: Sure. Yeah, awesome. So, yeah, you are right. As it turns out there has been a lot of back and forth, and the

Tribe really standing their ground on demanding jurisdiction on all of our territory over this issue. We were able to get that. The bill was passed and it was signed and we have since ratified it and sent it back, and I have gotten confirmation from the Secretary of State that they are in receipt of that and everything is good to go. So, the court of course, given the COVID situation, has been relatively dormant the last couple of months, except for virtually and on an emergency basis.

So we haven't had the opportunity to really develop the infrastructure around trying those cases. As you know, we have to have a twelve person jury, we have to have a lot of different things. So what that means though, to your question for people, for women within the Tribe, is that they can fully expect now that when situations occur like they have been over the last couple of years.. I'm thinking of five maybe six cases off the top of my head where two of those cases lingered for over a year until the victim said basically, "I don't want to relive it," and walked away. Regretfully, in talking to them since, feeling like they didn't get any justice. In another case where a woman was sexually assaulted, that person [the assailant] fled to Florida. Despite finding them in Florida and despite an indictment the state refused to extradite them back to Maine. So, a lot of those types of things... What women can be assured of, even though we'll have limits on prosecution, we can stack those prosecutions. So, if it's a class D domestic violence for example, we can do "assault, domestic violence," and different things to make sure that people are held accountable on, each one of these charges would be imprisonable up to a year. So, they can be assured that they are going to get their day to be heard. And you know, not that our court wouldn't have to follow rules and evidence rules and all of those things, but it's not the kind of prosecutorial mill that state courts are. It would be given it's due attention.

And I think people could rest assured that they would have a real system to hold accountable for any injustice in terms of addressing these things. So I'm excited about it. I think it's a great opportunity for the Tribe. We're going to continue to fight for the felony portion, both at the state and federal level. We're in both Senate bills right now at the federal level for full VAWA jurisdiction over felony cases as well. And if they can ever figure out a way to move anything in the Congress, I think we're going to remain a very big part of that. So, yeah.

Dawn Neptune Adams, Penobscot Nation: Great. Thank you for that update. And the way things are, does the Tribe have exclusive jurisdiction or shared jurisdiction with the state?

Chief Kirk Francis, Penobscot Nation: So VAWA sets up, by it's legislation and by the Federal legislation as well, a concurrent situation. So that the concern over proper trials and all that were in all these processes whether it was Congress or the state or wherever. So to mitigate that, they've actually allowed for prosecution by multiple sovereigns. So if we botched a case, for example, or didn't bring a case (which I can never see us do) or screwed something up, the state would have the ability to also prosecute that case. Or if we prosecuted a case and it got challenged, you know, the defendant can challenge it in federal court. So it really sets up a situation where multiple jurisdictions can be involved in the same case if they so choose, separate and distinct from each other.

Dawn Neptune Adams, Penobscot Nation: Thank you very much for that, Kirk. As a Penobscot womxn, two-spirit womxn, who has dealt with multiple forms of violence, I am very much assured that my Tribe would have my back, judicially as well as in other ways. Thank you very much.

Chief Kirk Francis, Penobscot Nation: Yeah. No, it's a big issue and it's not just domestic violence. I mean, women, Indian women especially as we all know, are a demographic of people who are exposed to violence far more frequently than anyone else. So, it's a real serious issue and it's an important institutional jurisdiction for us to have if we're ever going to solve that issue. So, yeah. I appreciate it.

Penobscot COVID Response

Dawn Neptune Adams, Penobscot Nation: The other question I had, or just a request for comment and a request to give a shout out to the Penobscot Nation for the care of our Elders during this pandemic. I'm in contact with many of them and they have talked about how food has been delivered both

in the form of meals, (Elder meals) and the food bank. If you want to give us an update on community care in our Tribe, that would be wonderful.

Chief Kirk Francis, Penobscot Nation: Well, you know, our team did an outstanding job, I think, on a host of issues, and I'll get to that Elder issue which is obviously the most priority for us. But I think that very early on we knew, back in late February, just through USET's Office of Epidemiology [United South and Eastern Tribes] and through national conversations and seeing what was starting to happen in Washington State and other places, we knew that it was going to be a matter of time before—we didn't think it was going to be that quick—but we knew. And so we actually started to work with our Health Department and with the Epidemiology Center, back in late February, to create a pandemic response plan which focused on a multitude of areas including testing how patients... You know, we set up a remote Respiratory Care Center in back of the Clinic, so patients wouldn't be exposing each other to symptoms. And we did a whole host of things around that. So we presented the plan to Council in the first week of March. And it was a really good plan and it touched on a lot of different things. So we got that accepted and we didn't realize that four days later, five days later, we were going to be invoking that plan. So we initially went to essential employees only, sent everybody else home, and then it was five days later that everybody went home. So, it got honest quick, but we acted quick. And a lot of people say that we kind of closed too early, or we're re-opening too late, and I'm okay with those criticisms, because I think that the vulnerability of our population and everything I've learned about this is extraordinary. I mean, we have health disparities in our community that really account for an underlying condition for a large part of our population.

We look at the way our Elders live, mostly in the facilities, and we see what's happening in care facilities all over the country, and the devastating effect that that's having on them. We closed to any outside visitors right off. People were concerned about it, they understood why we did it, and we had a lot of concern about the isolation of our Elders during this period of time and so we started to think those things through as well.

And then we just sat and really spent an entire day with the staff, going over our food distribution plan and how we were going to do that. And we worked

with the schools. We talked to the school and said, “We’d like everybody eighteen and under to be able to get a meal everyday.” Some days some of these kids, unfortunately, it’s the only nutritious meal they get, and we’d like to make sure that continues. They were great working with us on that. So we didn’t just do K through 8, we did everybody under 18.

And then of course, Elder meals were our top priority. And we really were concerned about their isolation, how are we going to get them supplies, materials, all of that. So, to date, we deliver about 1,250 meals per week; about 900 of those meals are to the Elder community, both on and off reservation. We went from one meal per day to providing a small breakfast as well. So we’re doing two meals per day for the Elders. And then we really beefed up our food pantry so that everybody in between, whether you didn’t qualify as a youth or an Elder, but you still were indigent in some way and you needed help. We’re doing around 120 boxes of food for people a week, that gets them through a five day period I believe, or a six day period. And we’ve been trying to do things like, we got scallops from Passamaquoddy, we added those to some of the deliveries. Our bear hunters, we just picked up two loads of butchered bear meat, so it’s all wrapped and ready to go. We ordered some pigs, we’ve ordered cattle, and we’re expecting those to be done here soon hopefully.

So we’ve been trying to add more stuff and more diversity to the distribution. And then we recently, a few weeks ago, went to the color card system working with Wabanaki Public Health, so that Elders can simply put up a card of a certain color indicating that they have need or they don’t have need, so we kind of know if everybody’s okay. And then closing the reservation to outside visitors being essential only. We just really felt like we had an opportunity, the way the community is built, to be very successful, and also with the one way on, one way off thing. But we also understood that if we made some mistakes it could be very devastating, the way the community is built. So, to date we’ve had four total positive cases of Tribal members; one of those was treated at our facility, all of them lived off-reservation. So we’ve done very well and just want to keep it that way. And like I said, we get a little bit of irritation around the length of time it’s taken to open... We do have, again through the Epidemiology Center and

through our Health Clinic and input from all the Departments, we have developed a three-phased reopening plan that is available on our website, that still does things in those first few phases that keeps NOLI [family resources center] closed, that keeps visitors to a bare minimum to the elder facility, that also keeps travel bans for employees and all that type of stuff.

So I think we, again, until there is a vaccine or a treatment that is effective and proven to be effective in saving lives, I don't think we can, we're in a position where there is no good reason for us to take any risks. And I just think we're going to stay on a very cautious approach to all of this. And, you know, there's only 2,400 of us left, and I see what's going on nationally with some of our brother and sister Tribes, and... One that I work with almost daily through USET is the Mississippi Band of Choctaw, who basically had a Council meeting back in April, had an exposed staff member, and the Chief himself tested positive. Today they have over 800 cases and over 70 deaths amongst a population of 9,000 people.] So, it's...if it gets in it can be... You know, the former Chief's wife, Miko Denson, his wife [Lena] passed away last week from it. So it can be devastating.

And my fear is, as we look across the state, across the country; we had a President and Administration who had a very disjointed approach to testing when this all start, creating a lot of problems, and also had a lot of very disjointed message, confusing message, about reopening and where we are with all of that. I don't think those decisions are based even 50/50 on public health. I think those decisions are based on economics and re-elections, and we have the luxury of not doing that. And so, as things around us start to open up more and more I think it's going to be imperative to continue to be more cautious and be smart.

Dawn Neptune Adams, Penobscot Nation: I think it was really great that the leadership of the Penobscot Nation had a plan in place ahead of time and that, you know, rolled with the punches so to speak to keep our people safe. Thank you very much for that, Chief.

Chief Kirk Francis, Penobscot Nation: Yeah, no worries. Like I said, it was a really, really good team. I mean, the Directors all stepped up... You know,

we had people that were (one day) school teachers were delivering food, we had people that were, you know, nonessential medical workers that were delivering food. We had a lot of people really give a lot of themselves during a very scary time. So, yeah, I'll pass that along.

Meredith DeFrancesco: I know we can't keep you forever, but it seems we would be remiss, since you are the President of the United South and Eastern Tribes [USET], if you wanted to comment a little more generally on the impact of COVID on the Northeast Tribes and on the Southern Tribes?

Chief Kirk Francis, Penobscot Nation: Yeah. So, you know, it's been a real challenge for Tribes to get the resources they need to address this. So, we helped argue for and draft the COVID Relief Fund and try to get that for as broad a use as we can use those funds based on formulas and methodologies that helped all Tribes. Of course, things get very political. You'll notice even with the Tribal COVID Relief money, you know, states like Oklahoma and Arizona and all those good red states got a bulk of that money, right? And so the Tribes like Seminole, for example, that was probably bleeding twenty-five million dollars a month being closed, received five million dollars out of that fund. We're at Penobscot Nation; we received 8.9 million or something like that. So we did quite well in that first charge. But there was no rhyme or reason, so you had Tribes that needed a lot more resources—I knew Tribes in our region that didn't get anything! Because it was based on hub-population. And then the second charge of money that went out was based on employees. And then they said, the Treasury said, "Well you can use your enterprise employee numbers too." Well for Tribes in Maine, you know, our three, four hundred employees per Tribe doesn't measure up against, you know, a Navajo Nation who has multiple casinos and tens of thousands of employees, right, that they can claim. So, the bulk of those dollars go to those other Tribes. And we got some of those dollars and it was fine, we think we have enough resources to really do what we need to do.

But I think the challenge has really been testing, you know. There's only fourteen Abbott analyzers in the Eastern region among Tribes. We're fortunate enough to have one of them. But they are unreliable, there's a lot of false-negatives, and so they are not really good for surveillance tools, like

back to work testing and that sort of stuff. Because even the negative tests you get, you have to transport media for that to the CDC for example to be confirmed, or a laboratory. So, we just purchased a brand new docking testing system that should be here in a week or two that is the same system that the CDC uses, so we'll be able to do hundreds of reliable tests just as a matter of maintenance really. So we're excited.

We have a contact-tracing program that we have developed, so we are training people on that now. So, you know, we've learned a lot of lessons too from this, and there are probably some things that, you know, just every day something is changing. We've got all those deaths and illness down in Mississippi Choctaw, starting to see more infections in places like Louisiana Coushatta. You know, in States like Connecticut and Massachusetts; Wampanoag and Mohegan-Pequot all the way up to the upstate New York of course live in a very, you know, very dangerous geography for a while. So, having the resources to protect those communities was the most challenging thing. And we're on USET calls every day and we tried to collectively come up with best practices and all of that.

So, Tribes are doing okay. Obviously this situation in Mississippi is especially concerning, but for the most part I think, you know, Tribes are being faced with everything everybody else is, you know, huge economic impacts. Again, a thing we don't have to worry about, our government contract actually went on fairly well during this whole thing, but the Tribes with Casinos, our friends at Gila River reopened under a crazy Governor, not the Governor of the Tribe, the governor of the State, and they, you know, were forced because of competition and other things, to get rushed into that. And they had a casino worker pass away. Now they're being sued for re-opening, and it's just a whole mess, so. And it's a lot going on and I just think it's no time to let our guard down, and I just think it's very dangerous, the national politics around this issue.

Wampanoag Termination Attempt

Dawn Neptune Adams, Penobscot Nation: You mentioned the Wampanoag Tribe. Is there anything you would like to say about that termination attempt that was thwarted in Wampanoag?

Chief Kirk Francis, Penobscot Nation: Yeah, I was actually just talking to Chairman Cromwell the other day, we've been missing each other playing phone tag the last few days, but I...yeah, it's pretty awesome, you know. We were talking... We got the En Banc review acceptance and then almost just a short period of time later the court started scolding Interior for their actions and then, bam, you get this decision that came out that said, you know, basically that they didn't have a right to do that. So, it's a huge, huge victory. Not just for them, but you're just seeing all of this. No economic interests should be able to determine whether a Tribe has a right to regain their homeland. You're seeing it not just in Land to Trust, but you see it with Tribes that have been on the federal recognition list for decades that are being opposed for no good reason except the economic opportunities that they will have and how that will hurt somebody else. Hopefully these courts are starting to realize that 1) that is not legal and 2) that protecting these rights is extremely important to the health and welfare of Tribal people. And so the decision is awesome. And everybody is really happy about it.

Dawn Neptune Adams, Penobscot Nation: That's great. Thank you for that update.

Racial Justice and Police Brutality

Meredith DeFrancesco: The other more than timely issue is: if you have any comments right now on the racial justice/police brutality movement?

Chief Kirk Francis, Penobscot Nation: Yeah. I mean, all the Tribes in Maine did a joint statement, and I don't know if you saw it.

Meredith DeFrancesco: Yes.

Chief Kirk Francis, Penobscot Nation: And so we obviously are watching in disgust, like everybody else, what has happened, what is continuing to happen. I mean, even post the George Floyd situation, you still have people getting shot...And it's something that Indian people can relate to. When you look at the police violence charts, the way that a person of color—and Indians per capita get killed at the hands of police higher than any other race. We were talking about this actually at the Martin Luther King event last year, with the ACLU (American Civil Liberties Union) and others had these statistics. And so it's something we can relate to in terms of how people are dealt with in terms of disparities from the minute they are stopped until the time they are incarcerated and then through incarceration. So, it's a hugely important issue and I'm glad that the country is kind of—and it's not just the country, the entire world is kind of standing up and saying, you know, "This can't be the way things are." And so I hope there is meaningful change with it. And we'll do whatever we can to support that movement. And also understand, you know, that if you go back to the Civil Rights movement, that wasn't just about black people, that was, you know, Native Americans were also in the middle of that conversation. Even Dr. Martin Luther King mentions them at certain times, a lot of other Civil rights people mention Native Americans. You know, those Civil Rights workers in Mississippi were killed on Indian land at Choctaw. And so there is a huge history of these issues being intermeshed with the Indian issues as well.

So, I, you know...It's appalling. Rodney King was 30 years ago, but to see all that has happened between then and now and that continued to happen, and you know we're just seeing a glimpse of what the condition was. So it's something I'm hoping, you know, I hope, I hope... It doesn't help that we have a President that doesn't get more forceful, like what happened in Charlottesville and all

, who doesn't say anything really, except continuing to support the police.

I just hope that meaningful change comes from it. And I think that as a state we could do a lot too to send a message that that is not going to be the way that things go here. I think having Tribal people on the Maine Criminal Justice Academy Board was a big step. I also think the African American community needs to be represented on that board as well. And to help

develop policy on how people are dealt with in terms of use of force, engagement, all of those types of things that are the huge conversation.

But, yes, I'm hugely supportive. I've been enthralled by—I mean just think about, in the middle of a pandemic, how organized these things have become almost overnight, right? They seem disorganized at times, but anytime you get that many people in a space for a prolonged period of time...I'm not sure it's the safest thing to be doing right now, but I certainly understand why people did it. I took my daughters and drove down to the one in Bangor here and watched. I thought it was important for them to see where things are at with this and why it's important to get involved.

Dawn Neptune Adams, Penobscot Nation: I think it's great that the Chief has pointed out that these issues are things that we as Indigenous people have to deal with as well. We have had police brutality happen to our own citizens. My uncle was shot in the back by Old Town Police in 1979, David Tomah. So these are things that we need to explore together, and share our solidarity with all our relatives.

Chief Kirk Francis, Penobscot Nation: Definitely. Definitely.

Meredith DeFrancesco: More on that in the near future. Are there statistics on the disparities you were talking about in Maine?

Chief Kirk Francis, Penobscot Nation: Yes. I can forward those to you. Native American women, per capita, populate the Maine State Prison at higher rates than anyone else. And you have men not far behind. So it's a condition people don't really know about because we're such a small part of the population, right, people who identify as American Indian in this State. But it's a condition that, you know, you look at the whole Passamaquoddy issue we worked on with Corey Hinton's grandfather, [Peter Francis](#)... that's awful, but who got killed by out-of-state hunters. And the whole prosecutorial system that took over at that point really geared towards freeing these two non-Indians, as opposed to finding him justice, right. So there's a lot of those stories, and I think that this issue, I think these whole issues of social justice and bringing an end to kind of oppression in a multitude of areas is good for our issues too. I think it'll change the mindset of people,

politically, before they start to make decisions that went unchecked before. So, yes, I think the timing on it is important on a whole host of fronts, not just the Black Lives Matter movement. It's really a call to everyone to just bring a little more humanity to what these institutions have a responsibility to do.