

hope they don't feel offended by me referring to them as boys--but they mentioned that the State of Maine so far as they're concerned, they are lily-white. They're not guilty of anything. Then comes the so-called landowners. They will receive the same song. Now, so far as we're concerned at the present time, Carter has opened up a bid of \$81 million for the land--I don't know, somewhere in Maine. Maybe you fellows have a better conception of where that land is located. I certainly don't. We had definitely indicated where the Maliseet Land Claim lies and until such time that is resolved and let the people sit down with us in good faith and leave their snake tongues behind, we may be forced to take this under international law.

SENATOR COLLINS: Our next speaker comes from the County of Hancock, Mr. J. Russell Wiggins.

MR. WIGGINS: Mr. Chairman, Members of the Committee. This hearing, it seems to me, must make a very great impression on anyone. An impression of the complexity and the problems involved in the whole Indian Land Claims situation. I believe the Office of the Attorney General has done a remarkably ingenious, scholarly job of presenting the alternative courses that lie before this Committee and before the Legislature and before the people of the State of Maine. I may say in a prefatory note, however, that I believe the scheduled procedures for the Legislature are entirely too brief, the planned hearings of this Committee entirely too short, considering the importance of the issues that are presented and I believe they are as important as any great issues that have been layed before the Legislature of this State. It is remarkable, it seems to me, that the time you have set aside for deliberation

upon these issues is really not as long as the United States Congress devoted to considering the fate of the Snail Darter and that really the record that you are compiling won't be as considerable as the record the Environmental Protection Committee is compiling on Furbush Lousewort in the Valley of the St. John. I wish that it might be possible to expand these hearings to a very great degree and to defer any action in the Legislature until the hearings have been completed. It is a singular thing really that in all the discussions of this case that has been had in this State, very infrequently has there been any discussion and there hasn't been any such discussion here of the real merits of the Land Claims Case. If it were possible to expand these hearings, I would like to have them roughly divided into two broad considerations. One, a consideration of the history of the Land Claims Case from the very beginning. A history of the whole enterprise from the first disputes over the Land Claims in Maine. As a second category for consideration, I think the Bill of Settlement ought to be broken down and analyzed piece by piece and paragraph by paragraph as a conventional Legislative Committee would analyze a piece of Legislation or an appropriation. It is important to settle this issue. It is important to put to rest the long litigation that has been revolving around the Land Claims Case. It is not so important to settle it or attempt to settle it in a way that leaves unresolved many issues of principle that have long perplexed lawyers and scholars of this State. At the very least, I would like to see the record of this Committee expanded to include, first, an extensive discussion of the merits of the case by the Department of the Attorney General and by Counsel St. Clair setting forth not only their conclusions

as to the chances of the State and the people of Maine defeating the Indian Land Claims but as to portray the reasons upon which those judgments are based so that the Members of this Committee and the Members of the Legislature and the people of Maine on assuring of the evidence can help decide for themselves what the odds are. The odds seem to be very interesting-- at 60-40, I believe the Attorney General puts them. Is that really the odds or does anybody know? It's a matter of judgment after a long protracted study of it. I must say that the Land Claims Case over the last eight years, it seems to me, has involved a very unequal struggle. An unequal struggle between a well-financed, well-endowed, professionally trained core of specialist lawyers confronting year after year new lawyers for the State, amateurs on the issues and the problems of the esoteric field of Indian Law. In every local litigation and in every confrontation of the Department, the experience, the investment, the money and the finance has layed on the side of the Counsel for the Indians. The National American Rights Fund has raised millions of dollars to finance their struggle. The Legislature of Maine has not raised anywhere near as much money as they have already spent. I should hope that on the showing that the Attorney General has made of the options before the State that the Legislature will make one of two decisions--either to resist the Claim and to endow its officers and its legislators and its lawyers and counsel with the funds and the men to fight on an equal basis with those who have been endowed by the Lilly Foundation, the Ford Foundation and the Department of the Interior. That struggle if it is to be carried on ought to be carried on an equal footing and not at the disadvantage of

the lawyers who represent the people and the State of Maine. I have no predictions myself as to the possible outcome of such a struggle. Such inquiries I have been able to make over the last ten years into the merits of this dispute lead me to believe that the Indians lost in 1760 any claim they had to any lands in Maine. Four Indians from the Penobscot Tribe went to Boston and appeared before Governor Pownell and admitted that they had been on the wrong side in 85 years of the French and Indian Wars. They begged their pardons of the British Government and they said that they forfeited their rights to their land and prayed only that they might be given places to hunt and fish in the lands where they resided. At the same time, several Indians from the Passamaquoddy Tribe went to see Governor Lawrence in Halifax and layed a similar acknowledgment before him and asked alike for places to hunt and fish but acknowledged that they had forfeited their rights to land. That did not end this question of their claims to land in this area. In the long correspondence between the Governors of Massachusetts and the Lords of Trade and Commerce in London, the representatives of this colony stated repeatedly that the Indians here had lost the title to their lands and when the Lords of Trade and Commerce proposed in 1764 that something very much like our Indian Intercourse Act be passed in England and imposed upon this colonial area preventing anyone but the Crown from having land transactions with the Indians, Governor Bernard wrote back and said such Legislation is not necessary here. The Indians no longer have any land titles in Maine.

The other very pregnant issue that must come before this Committee

and before the Legislature and not to be addressed by it fully is the status of the Indian Intercourse Act of 1790. I know that there have been a succession of lower Court opinions adverse to the interests and contentions of the State of Maine and the landowners of Maine as to the application of this Law to the Indians in the State of Maine but I find that it a singular thing from 1790 until 1972, the Government of the United States conducted its affairs with the Indians as though these Indians were not Federal Indians and not under the jurisdiction of the Federal Government. Andrew Jackson, when he was discussing the issues of the Cherokee Indians, deplored the fact that the Federal Government was running the affairs of Georgia with its Indians while the State of Maine had complete discretion to deal with its Indians here and after Jackson had inaugurated the removal of the Federal Indian Tribes beyond the Mississippi, Secretary of War, John Calhoun advised him that now all the Indians had been moved that were called Federal Indians and that there were only remnants of Tribes left and he enumerated the Passamaquoddy and the Penobscot Indians of Maine as such remnants of Tribes. Now, I am not a lawyer and I do not know how to resolve these questions of historic policy but I submit that none of these contentions in all of the cases that have been examined or acted upon in the lower Courts have fully examined the historic background of these cases. The long and careful and scholarly study of Ronnie Banks has had apparently no impact upon the Courts that have considered this statute and its effect in New England. So I know that it is a difficult problem and it's hard to sustain optimism in the face of the long history of this contest and I believe that the opinion of the First Circuit Court left wide open by the express and explicit

declaration of Judge Coffin a reconsideration of all of these issues so as they might arise in any litigation over actual land suits.

I am further encouraged and I'm trying to anticipate what the future might be but the fact that there's been no trial in any of these land cases in any Court, no trial in which a live flesh and blood landowner who had had his land in his family for five generations stood before a jury and had themselves told that the man ought to be evicted from his property. There is a different atmosphere. There is a different climate in a courtroom proposing the eviction of a landowner from the esoteric discussions that take place in the chambers of lawyers and in the rooms of scholars and academicians. You have a practical situation and I'm not at all sure that every one of those cases would be resolved adversely to the interests of the landowners and the citizens of Maine. But I opt not to pretend to be a lawyer and I leave that to the skill of counsel who have spoken here today and I only hope that a fuller discussion of their estimate of the situation may be available to this Committee and available to the Legislature. I must say in closing that I rest my confidence in the future if litigation is decided upon on the basis of the material things we've just mentioned here today or that have been discussed on the hustings. I believe in the Government of the United States. I believe in the Courts of the United States. I believe it is a just Government and I believe the Courts are just Courts and believing that, I cannot believe that 10,000 or hundreds of thousands of the citizens of Maine who have committed no wrong against their fellow citizens are going to be driven from their farms, their fields and their homes and their factories

in a belated redress of grievance in a tardy effort to fix responsibility and vengeance and reprisal upon generations of Americans and Englishmen who went through a long and sanguinary struggle 200 years ago extending nearly over a hundred years of warfare to try to begin the transition here on this savage wilderness into a modern civilized state. Thank you.

SENATOR COLLINS: Thank you, Mr. Wiggins. At this time we would like to hear from James St. Clair. Several Members of the Legislature have urged the Committee to take the opportunity while he is here to have him briefly speak to the merits of the State's case because he will be leaving us for Massachusetts after a little bit now. I recognize James St. Clair, Counsel to the State of Maine.

MR. ST. CLAIR: Thank you, Mr. Chairman and Members of the Committee. Mr. Wiggins has addressed the subject of the merits in, I think, a rather effective way. I happen to know that he has made an in-depth study of the history underlying the Indian Land Claims Case in the State of Maine, as, indeed, any trial of such claims must involve. In the Mashpee case we went back to the, I guess, as early as the 16th Century and traced the evolution of the groups of people that eventually presented themselves to the Court claiming to be the Mashpee Indian Tribe. The same must be done in connection with the trial of the Maine Indian Claim Case if it comes to that. Much of the history that Mr. Wiggins has referred to, in fact, all of the history to which he has referred is consistent with our understanding of the historical evidence that would be available to be presented to the Court on behalf of the State of Maine in defense of these claims. Of course, much, much more detail and much,

much more information in scope would involve the historical background of the evidence. In dealing with the merits of the case, if you will, however, I'd like to make a couple of general observations. First, the time restraints. If we stood here for literally days, we might be able to fully cover all of the issues and all of the evidence that we think might be available in support of the State's Case on those issues. Further, with all due respect, our opponents are well represented here in the form of Mr. Tom Tureen and I assume that in the give and take of the adversary system, there are some things we would prefer he not know at this time and I'm sure he would have a few things he would not want us to know at this time. But I think that we shouldn't address this important issue on such a pedestrian level. It is, however, a fact. Finally, there are the constraints of the ethical considerations that bear on discussing in public cases that are pending in Court. It has been generally thought that lawyers ought to try their cases in Court and not in public; however, I feel that the presence of this distinguished Committee--Commission-- and the Legislative responsibility they have would justify a bending-- at least a bending of those ethical restraints because I consider the inquiry to be very legitimate and I consider the obligation to respond to the best of my ability.

I think the primary and perhaps the most important defense that would be advanced and I hope and believe would be successful would be that, indeed, the Non-Intercourse Act which is the basis of this and virtually all other similar claims was never intended to be and is not applicable to the Eastern Indians. The United States Supreme Court in a recent case, *Wilson against Omaha Tribe*, so stated. The Solicitor General upon the request of Mr. Tureen,



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

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

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