

Annotated Bibliography -- Corrections

[Author not known]. (Undated). *Report on Passamaquoddy Indians* (Box 2512-0414, Folder: Executive - Task Force, Human Rights). Indian Affairs Records, Maine State Archives, Augusta, ME.

In this lengthy report, which appears to have been written for the U.S. Commission on Civil Rights, the unknown author outlines in detail ways in which Passamaquoddy people have been denied equal protection under the law. Of particular relevance to the corrections experience of Wabanaki people, the report stated that discriminatory and brutal tactics were used by local police, Passamaquoddy people were unable to obtain effective legal counsel, could not legally post bail, were excluded from juries, and were prosecuted in state district courts rather than in federal courts, which had jurisdiction over crimes on tribal lands elsewhere in the country. In addition, other biased conditions were described such as effective segregation in public schools where Passamaquoddy children had to pay to attend because their parents did not pay local property taxes, and discriminatory hiring practices.

Baca, K. (2001). The changing federal role in Indian Country. In *National Institute of Justice Journal*, April 2001. Retrieved from <https://www.ncjrs.gov/pdffiles1/jr000247c.pdf>

This article describes a pilot effort of the US Department of Justice to fund alternative forms of justice in Indian Country, in recognition of increasing crime rates in Native communities. Of relevance to the TRC, the author underlined that lack of adequate resources as a significant problem, and also addressed issues around sovereignty.

Diocese of Portland, Diocesan Bureau of Human Services. (Undated). *Proposal for Passamaquoddy education research program* (Box 2512-0412, File: Bilingual programs). Indian Affairs Records, Maine State Archives, Augusta, ME.

Although this is a proposal for an education program, it also contains what seems to be a Native ally's perspective on the situation faced by Passamaquoddy communities in Maine. The proposal outlines "grievances" faced by Passamaquoddy relevant to child welfare and corrections-related issues: discrimination in employment, by state police, and by state Indian agents, state control of treaty lands, absence of equal police protection and freedom from arrest, and disproportionately high school drop out rates. It is reported that no Passamaquoddy has served on a Washington County jury for 144 years. In addition, the proposal addresses an underlying assumption by many white people who work with the tribes that relocation and assimilation are the "only 'final' solution to the Indian 'problem'" (p. 5), as well as a dominant cultural bias in which Native people are viewed as permissive, having no discipline, not being future-oriented, not respecting private property, and the Passamaquoddy language being considered to be more of a "jargon" than a legitimate language.

This proposal suggests a number of factors that would have contributed to higher rates of incarceration of Native people in Maine in the late 1960s, and suggests that the issue of unequal treatment within the criminal justice system was beginning to be noticed by the larger Maine community, or at least by allies directly involved in working with the tribes.

Gousse, J. (2012). The politics of justice: Navigating the waters between legal efficacy and racial profiling in the state of Maine. *DUNE: Digital UNE, Theses, Paper 13*. Retrieved from <http://dune.une.edu/theses/13/>

In this student thesis, Gousse examined the overrepresentation of racial minorities, and in particular Native Americans, in the Maine corrections system through the lens of institutionalized domination and control of racial minorities by the white majority. Of particular interest to the TRC, Gousse conducted his own research and analysis of prisoner data acquired through the Maine Department of Corrections. Gousse found that Native Americans composed 2.7 percent of the Maine prison population, while only composing 0.6 percent of the total state population. This rate is even higher than the national statistics for Native Americans in prison. Nationally, Native Americans constitute 0.9 percent of the total population, and 1.2 percent of the prison population. Gousse argued that this clear overrepresentation, resulting from historical and present-day social and legal mechanisms designed to repress Native peoples in Maine and maintain power for the white majority, is often dismissed or overlooked because as a percentage of the prison population, Native Americans are such a small fraction within a majority-white prison population. Gousse's analysis is especially valuable because very little data has been made publicly available to document the racial demographics of the corrections system in Maine. Gousse also connected the overrepresentation of Native Americans in Maine's prison system with the cumulative trauma of generations of Native American children being removed from their cultures, first through residential boarding schools and more recently through child protective services. However, Gousse's data analysis only represents one point in time, and points to a need for more transparency and improved tracking on racial demographic data in the corrections system to support further analysis and to create greater accountability of the corrections system to the public. Gousse's thesis also provides a response to those who argue that Maine does not have racial profiling problems, or problems in general with racism, because it is such a "white state" and simply does not have the minority population of other states.

Governor's Task Force on Human Rights. (1968). *Governor's Task Force on Human Rights*. (Box 2512-0414, Folder: Executive - Task Force, Human Rights). Indian Affairs Records, Maine State Archives, Augusta, ME.

This report highlights human rights issues in Maine faced by racial minorities and the poor. A substantial portion of the report is focused on Native people in Maine, with attention to land title issues, police abuse and corrections system injustices, and educational disadvantages. The appendix includes articles in about unfair treatment of Passamaquoddies by justice system, in particular related to the "Labor Day fracas" incident in which a law enforcement posse illegally raided the Pleasant Point community, physically assaulting community members and illegally

entering people's homes, apparently in retaliation to the arrest of some community members for assaulting a police officer.

This report seems to have received a lot positive attention in the media, and represents an official recognition of the existence of racism in Maine and in particular, the impact on Native peoples. In particular, the report points to racism within the criminal justice system, stating "To be an Indian in the State of Maine means. . . . White men can commit acts of violence against you and your family with almost complete immunity, while you are likely to be arrested for the slightest infraction of the law, and prosecuted to the hilt" (p. 1). The full report can be retrieved at the Maine State Library.

Indian Affairs Subcommittee of the Task Force on Human Rights. (1968, July 20). *Interim minutes of the Indian Affairs Subcommittee*, (2512-0414, File: Executive task force, human rights). Indian Affairs Records, Maine State Archives, Augusta, ME.

These minutes appear to be a precursor to the actual recommendations of the subcommittee to the Task Force on Human Rights. Overall, these minutes give a picture of factors that were preventing the tribes from being able to exercise autonomy, including state control of tribal affairs through state control of tribal lands, lack of clarity around citizenship status, lack of clarity around individual land titles, the lack of voting representation for tribal communities at the legislature, the absence of tribal governments in the administration of trust funds intended for the tribes, and the inadequate training and pay for tribal law enforcement. Of relevance for the corrections issue, the subcommittee noted there is "rarely an Indian on any jury" (p. 3) in the areas around the reservations and that tribal constables do not receive full police training, and that tribal members do not have adequate access to legal counsel.

Kaliss, A. (1967, December 4). [Letter to Rev. Coleman P. O'Toole] (Box 2512-0411, Folder: P.) Indian Affairs Records, Maine State Archives.

This letter outlines current conditions on the Passamaquoddy reservation at Peter Dana Point and Princeton, including lack of adequate sewer and sanitation, as well as lack of educational and economic opportunities. Kaliss argues that the only way for these complex problems to be tackled is for the people impacted to "do the tackling" themselves.

Kenny, M., & Mishina, T. (2005). *Juvenile disproportionate minority contact in Maine*. Portland, ME: University of Southern Maine. Retrieved from http://www.ojjdp.gov/dmc/state_research_reports.html#me

This report was created by the Maine Statistical Analysis Center in compliance with federal regulations that require states to collect and analyze data about race and ethnicity for all points in the juvenile justice system and address subsequently identified concerns. The report represented phase one of fulfilling this mandate to identify the capacity of the state to collect the needed data to evaluate whether disproportionate minority contact (DMC) was an issue in Maine.

In short, the authors found that data collected at the time of the analysis was largely insufficient and incomplete. Only arrest data was complete and consistent enough to analyze DMC. While the findings concluded that American Indian juveniles were 42 percent less likely to be arrested than white juveniles, the authors pointed out that because American Indians in Maine predominantly live in rural areas, and that most arrests in Maine occur in urban areas, it is probably inaccurate to compare American Indian arrest rates against the statewide rate. The authors recommended that future analysis compare rates within counties, rather than comparing minority rates with statewide arrest rates.

Morrison, K. H. (1968, May 10). Maine Indians see double standard. *Brunswick Times Record*. (Box 2512-0108, Folder: Lands - Passamaquoddy Land Case.) Indian Affairs Records, Maine State Archives, Augusta, ME.

This article compares standards of justice used in Labor Day arrests of 7 Passamaquoddy individuals for assaulting a police officer with the investigation into the murder of Peter Francis (Pleasant Point) by a white man. The author described the double standards applied in these two situations, emphasizing the swift and uninvestigated police response on the reservation in the Labor Day incident, in which at least two Passamaquoddy men were beaten by the police and homes were searched without a warrant. This is compared with the relatively quiet handling of the investigation and subsequent charges brought in the Peter Francis case. The article begins with this: "For the Passamaquoddy Indian, law and justice in Washington County moves with the swift force of lightning or the dilatoriness of a retarded moose -- depending on which side he finds himself."

In addition to highlighting the double standards of justice, this article also gives a window into the media coverage of these two incidents and the growing awareness of discrimination within the criminal justice system.

Native American Rights Fund. [Undated]. *Prisoners in our own land: A proposal to the Irwin-Sweeney-Miller Foundation* (Box 2512-0409, Folder: Misc. (5) - NARF, CENA). Indian Affairs Records, Maine State Archives, Augusta, ME.

In this proposal for funding, the Native American Rights Fund (NARF) described the discriminatory treatment of Native Americans' interactions within the criminal justice system, as well as the overall dissonance between the Western legal system and the traditional approaches to justice found in Native communities. NARF identified a number of injustices, including the disproportionately high rate of incarceration of Native American men, that Native individuals serve longer sentences on average than non-Native people, that 80 percent of crimes for which Native people are incarcerated are alcohol-related, and that a Native person is 10 times more likely to serve time for a misdemeanor than a non-Native person. NARF identified addressing issues of profiling and police brutality, jury discrimination, jail problems (inadequate facilities, especially in rural areas), lack of available treatment for alcoholism, and problems with federal and state prisons (hair length discrimination, lack of religious freedom, parole board bias).

Unfortunately, NARF offered no citations for their statistical information. This proposal is also not dated, but can be dated to at least 1972 or later because of a reference made in the proposal.

Noreus, B., Hubley, T., & Rocque, M. (2009). *Disproportionate minority contact in Maine*. Portland, ME: University of Southern Maine. Retrieved from http://muskie.usm.maine.edu/justiceresearch/Publications/Juvenile/Juvenile_DMC_AssessmentandIdentificationReport2009.pdf

This report was created by the Maine Statistical Analysis Center in compliance with federal regulations that require states to collect and analyze data about race and ethnicity for all points in the juvenile justice system and address subsequently identified concerns. It represents the assessment and identification phases of the disproportionate minority contact (DMC) federal requirement. See Kenny et al. (2005) in this annotated bibliography for a related earlier report.

Six counties in Maine had sufficiently large minority populations to draw statistically significant conclusions from the available data for the years 2005-2007. Among those six were Aroostook County and Penobscot County. Native American youth were grouped with “all minorities” for the presentation of results, with the exception that for Aroostook County, the authors noted that the rates of referral to juvenile court (instead of referral for diversion from court) for Native American youth were consistently more than double the rate for white youth. In Aroostook county, arrest rates for minority youth were one-third the rate for white youth. In Penobscot county, no consistent trends emerged from the analysis, however arrest rates for minority youth were either comparable or less than arrest rates for white youth in all three years evaluated.

In comparison to the earlier DMC report (see Kenny et al. 2005), Maine made significant improvements in data collection for race and ethnicity at all points in the juvenile justice system. However, the report also recommends that in part due to the difficulty of statistical analysis given the comparatively small population of Native youth in Maine, that Maine do more to reach out to Native American communities to more accurately discern issues related to disproportionate minority contact. This recommendation was also one of Maine’s “areas for improvement” as identified by the federal government to be in compliance with federal requirements. It is not known whether further steps have been taken since this report was produced in 2009.

O’Neal, B., & Cartwright, S. (1979, June). Maine Indians behind bars. *Wabanaki Alliance*, pp. 8-9 (Box 2512-0112, Folder: Clippings). Indian Affairs Records, Maine State Archives, Augusta, ME.

This article described Wabanaki Alliance reporters’ visit to the Maine State prison in Thomaston to talk to Native inmates. The reporters spoke with six different men (one Micmac man, two Penobscot men, one Passamaquoddy man, one Makah man from Washington state, and one Lakota man from Pine Ridge) about why they were incarcerated and what their prison experience was like. The article describes the isolation of being in prison and the various histories of the men interviewed. There is no aggregate information in the article about numbers of Native

people in prison in Maine, and the article does not suggest differential incarceration rates or treatment of Native people in Maine, but rather touches on the individual circumstances of the men interviewed. It does say that a dozen out of the 400 inmates at Thomaston were Native.

Perry, S. W. (2004). American Indians and Crime: A BJS Statistical Profile (NCJ 203097). US GPO: Washington, DC. Retrieved from <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=386>

This 2004 report from the Bureau of Justice Statistics still contains some of the most current national data on the crime victimization rate of the American Indian population, as well as the incarceration rates of American Indians, and are more likely to be victimized by someone of another race. The most striking finding was that American Indians are more than twice as likely to be victims of violent crime than the national population. Among the statistics reported related to incarceration, the report states that between 1992 and 2001, violent crime arrest rates for American Indians declined by 26 percent, and overall American Indian youth were less likely than all youth to be arrested for violent crime. In 2001, the American Indian arrest rate for alcohol violations was two times the national rate. American Indians made up 16 percent of violent offenders in federal prisons in 2001 -- 55 percent of American Indian inmates are serving time for a violent crime. Data from 1994 indicated that more than half of all American Indians released from prison returned to prison, either sentenced for a new crime or having violated the conditions of their release.

Unfortunately, this report does not provide a wider context from which information about disproportionality related to incarceration can be analyzed, and it was beyond the time frame of the TRC research to conduct its own analysis. That being said, knowing that American Indians/Alaska Natives make up less than 2 percent of the national population, it is clear that American Indians are more likely to serve sentences for violent crimes than the general population.

Poupart, J., Redhorse, J., Peterson-Hickey, M. & Martin, M. (2005). Searching for justice: American Indian perspectives on disparities in Minnesota criminal justice system. St. Paul, MN: American Indian Policy Center. Retrieved from <http://www.crimeandjustice.org/researchReports/>

This is a report on a study of disparities in the criminal justice system in Minnesota, through use of quantitative data as well as extensive interviews with Native inmates, community members and social workers. The report does an excellent job of connecting the impact of historical, legislated racism with current criminal justice experiences of Native people, as well as outlining numerous socio-environmental factors that increase the likelihood of contact with the corrections system. This study could serve as a model for Maine to use to better document and understand racial disparities in Maine's corrections and criminal justice systems.

Prison Policy Initiative. (2010). *American Indians/Alaska Natives are overrepresented in Maine prisons and jails*. Retrieved from http://www.prisonpolicy.org/graphs/2010percent/ME_American_Indian_2010.html

This graph compares the percentage of the Maine population that is American Indian/Alaska Native (AI/AN), based on 2010 US Census data, with the percentage of the Maine prison and jail population that is AI/AN. AI/AN people made up 0.6 percent of the Maine population in 2010, and 1.7 percent of the incarcerated population, indicating an overrepresentation.

State of Maine Juvenile Justice Advisory Group. (1992). *[Report on technical assistance]* (1640-1404/Box 12, File: Juvenile Justice). Child and Family Services Records, Maine State Archives, Augusta, ME.

This report, found in an agenda packet for a 7/16/92 Juvenile Justice Advisory Group (JJAG) meeting, referenced that Native American youth are the most overrepresented group in Maine's juvenile justice system. The report identified "culturally appropriate early intervention systems development" as a possible need, and briefly outlined an initial strategy for developing an early intervention system for the Passamaquoddy and Penobscot tribes. It appears that this identification of needs came from the tribal governments themselves, rather than from the JJAG committee. The report indicated that this is a needs assessment that will be further reviewed by JJAG. JJAG is a state-government sponsored advisory group that still exists today.

VanNostrand, M., Keebler, G., Jablonski, P., & Kays, B. (2006). *Pretrial case processing in Maine*. St. Petersburg, FL: Luminosity, Inc. Retrieved through email correspondence with Professor Cynthia Jones, American University, Washington College of Law.

Luminosity, Inc., was authorized to conduct this study by the Maine Corrections Alternatives Advisory Committee. The study examined pretrial case processing in all 16 counties in Maine. Of relevance to the TRC, VanNostrand et al. were able to locate jail booking data on the Maine county jail populations for Aroostook, Penobscot and York counties. Apparently, the other counties in Maine did not have systematic enough data collection systems to include in the study. VanNostrand et al. reported that for 2001 to July 2006, Aroostook County reported that 3.7 percent of the jail inmate population was Indian, Penobscot County reported that 2.6 percent of the jail inmate population was Indian, and York County reported that 0.2 percent of the jail inmate population was Indian. Since the focus on the study was pretrial case processing, the authors did not comment on the racial demographics of the jail inmate population.

Among the recommendations of the study relevant to the TRC, the authors recommended that county jail data collection be required to meet minimum guidelines (although they did not specify collection of race data among their minimum requirements), and that bail commissioners should be trained in the rights of defendants including the constitutional right to equal protection under the law based on race (among other protected statuses) and the right to bail that is not excessive.

Wabanaki Restorative Justice and Healing Commission. (2014). *Report to the U.S. Commission on Civil Rights regarding criminal sentencing disparities for Native Americans in Maine*. Unpublished report. Retrieved through Maine Wabanaki REACH.

This report highlights that data on Wabanaki and other Native American individuals in the Maine corrections system are incomplete and inaccurate, in spite of concerns that have been raised by Wabanaki community members about the disproportionately high incarceration rates for Native people. The report states that it is the experience of commission members that “a substantial portion of the inmates in the Washington County jail, sometimes even a majority of the inmates, may be from Passamaquoddy reservations” (p. 3).