

to write as a Palestinian? As an American? As a Papua-New Guinean? As a European? From what discrete sets of cultural resources does any modern writer construct his or her discourse? To what world audience (and in what language) are these discourses most generally addressed? Must the intellectual at least, in a literate global situation, construct a native land by writing like Césaire the notebook of a return?

Lo, a people dwelling alone, and not reckoning itself among the nations! —NUMBERS 23:9

12. Identity in Mashpee

IN AUGUST 1976 the Mashpee Wampanoag Tribal Council, Inc., sued in federal court for possession of about 16,000 acres of land constituting three-quarters of Mashpee, "Cape Cod's Indian Town." (The township of Mashpee extends inland from the Cape's southern shore, facing Martha's Vineyard, between Falmouth and Barnstable.) An unprecedented trial ensued whose purpose was not to settle the question of land ownership but rather to determine whether the group calling itself the Mashpee Tribe was in fact an Indian tribe, and the same tribe that in the mid-nineteenth century had lost its lands through a series of contested legislative acts.

The Mashpee suit was one of a group of land-claim actions filed in the late 1960s and 1970s, a relatively favorable period for redress of Native American grievances in the courts. Other claims were being initiated by the Gay Head Wampanoag Tribe on Martha's Vineyard; the Narragansets of Charlestown, Rhode Island; Western Pequots, Schaghticoke, and Mohegans in Connecticut; and Oneidas, St. Regis Mohawks, and Cayugas in New York. The Mashpee action was similar in conception to a much-publicized suit by the Passamaquoddy and Penobscot

tribes laying claim to a large portion of the state of Maine. Their suit, after initial successes in Federal District Court, direct intervention from President Jimmy Carter, and five years of hard negotiation, resulted in a favorable out-of-court settlement. The tribes received \$81.5 million and the authority to acquire 300,000 acres with Indian Country status.

The legal basis of the Penobscot-Passamaquoddy suit, as conceived by their attorney, Thomas Tureen, was the Non-Intercourse Act of 1790. This paternalist legislation, designed to protect tribal groups from spoliation by unscrupulous whites, declared that alienation of Indian lands could be legally accomplished only with permission of Congress. The act had never been rescinded, although throughout the nineteenth century it was often honored in the breach. When in the 1970s Indian groups appealed to the Non-Intercourse Act, they were attempting, in effect, to reverse more than a century of attacks on Indian lands. The alienations had been particularly severe for eastern groups, whose claim to collective land was often unclear. When court decisions confirmed that the Non-Intercourse Act applied to nonreservation Indians, the way was opened for suits, like those of the Maine tribes, claiming that nearly two centuries of Indian land transfers, even ordinary purchases, were invalid since they had been made without permission of Congress.

Although the Mashpee claim was similar to the Maine Indians', there were crucial differences. The Passamaquoddy and Penobscot were generally recognized Indian tribes with distinct communities and clear aboriginal roots in the area. The Mashpee plaintiffs represented most of the nonwhite inhabitants of what, for over three centuries, had been known as an "Indian town" on Cape Cod; but their institutions of tribal governance had long been elusive, especially during the century and a half preceding the suit. Moreover, since about 1800 the Massachusetts language had ceased to be commonly spoken in Mashpee. The town was at first largely Presbyterian then Baptist in its public religion. Over the centuries inhabitants had intermarried with other Indian groups, whites, blacks, Hessian deserters from the British Army during the Revolutionary War, Cape Verde islanders. The inhabitants of Mashpee were active in the economy and society of modern Massachusetts. They were businessmen, schoolteachers, fishermen, domestic workers, small contractors. Could these people of Indian ancestry file suit as the Mashpee Tribe that had, they claimed, been despoiled of collectively held lands during the mid-nineteenth century? This was the question a federal judge posed to a Boston jury. Only if they answered yes could the matter proceed to a land-claim trial.

The forty-one days of testimony that unfolded in Federal District Court during the late fall of 1977 bore the name *Mashpee Tribe v. New Seabury et al.*, shorthand for a complex, multipartied dispute. Mashpee Tribe referred to the plaintiffs, the Mashpee Wampanoag Tribal Council, Inc., described by its members as an arm of the Mashpee Tribe. A team of lawyers from the Native American Rights Fund, a nonprofit advocacy group, prepared their suit. Its chief architects were Thomas Tureen and Barry Margolin. In court the plaintiffs' case was argued by the trial lawyer Lawrence Shubow, with assistance from Tureen, Margolin, Ann Gilmore, and Moshe Genauer. New Seabury et al. referred to the New Seabury Corporation (a large development company), the Town of Mashpee (representing over a hundred individual landowners), and various other classes of defendant (insurance companies, businesses, property owners). The case for the defense was argued by James St. Clair (Richard Nixon's Watergate attorney) of the large Boston firm Hale and Dorr, and Allan Van Gestel of Goodwin, Proctor, and Hoar. They were assisted by a team of eight other lawyers.

The presence of the Town of Mashpee among the defendants requires explanation. It was not until 1869 that the community living in Mashpee was accorded formal township status. From 1869 until 1964 the town government was overwhelmingly in the hands of Indians. During this period every selectman but one was an Indian or married to an Indian. Genealogical evidence presented at the trial showed that the families of town officers were closely interrelated. No one contested the fact that before the 1960s Mashpee was governed by Indians. The disagreement was over whether they governed as an "Indian tribe."

This basic demographic and political situation, which had not altered drastically for over three centuries, was revolutionized during the early 1960s. Before then census figures showed a population in Mashpee fluctuating in the neighborhood of 350 Indians and "negroes," "coloreds," or "mulattoes" (the official categories shifted), and 100 or fewer whites. A reliable count of 1859, which served as a benchmark in the trial, listed only one white resident. After 1960 for the first time whites were recorded in the majority, and by 1970 whites outnumbered Indians and other people of color by 982 to 306. By 1968 two of the town's selectmen were whites, the third Indian. This proportion was in effect at the time of the lawsuit. Mashpee's white selectmen voted that the town should legally represent the non-Indian majority of property holders who were threatened by the land claim.

"Cape Cod's Indian Town" had finally been discovered. For centu-

ries a backwater and a curiosity, in the 1950s and 1960s Mashpee became desirable as a site for retirement, vacation homes, condominiums, and luxury developments. Fast roads now made it accessible as a bedroom and weekend suburb of Boston. The new influx of money and jobs was first welcomed by many of Mashpee's Indian residents, including some of the leaders of the land-claim suit. They took advantage of the new situation. The town government, still run by Indians, enjoyed a surge in tax revenues. But when local government passed out of Indian control, perhaps for good, and as the scale of development increased, many Indians began to feel qualms. What they had taken for granted—that this was their town—no longer held true. Large tracts of undeveloped land formerly open for hunting and fishing were suddenly ringed with "No Trespassing" signs. The New Seabury development, on a choice stretch of coastline, with its two golf courses and expansionist plans, seemed particularly egregious. Tensions between traditional residents and newcomers increased, finally leading to the suit, filed with the support of most, but not all, of the Indians in Mashpee. The land claim, while focusing on a loss of property in the nineteenth century, was actually an attempt to regain control of a town that had slipped from Indian hands very recently.

Earl Mills

Earl Mills has taught high school in the Falmouth Public School system for over twenty-five years.¹ Between 1952 and 1967 he lived in Falmouth, ten miles from Mashpee. Mills has taught physical education, health, and social studies. He advises the student council and directs various other extracurricular activities.

In Mashpee he shares ownership of the town's best restaurant with his ex-wife, Shirley. He is its principal cook.

Since the mid-fifties Mills has held the title of Chief Flying Eagle of the Mashpee Wampanoag Tribe.

On the witness stand he is earnest, engaging, very much the coach or Boy Scout leader. Forty-eight years old, trim, athletic-looking, he wears a striped necktie, blue blazer, loafers.

Mills recalls his youth in Mashpee during the thirties and forties. He

1. The descriptions of persons and places date from the fall of 1977. Readers should bear in mind that individuals' lives have changed since then, as have aspects of the situation in Mashpee.

was never as good a hunter as his brother, Elwood, so he often skipped the frequent hunting trips. Early on he asked questions and read books. He questioned his grandmother, "the strong arm" behind his uncle (who had held the formal title of chief and was "a drifter"), and also his mother, the treasurer and tax collector of the town, "the strong arm behind me."

In the thirties, Mills recalls, some townspeople wore regalia occasionally, and a few spoke a little Indian dialect. He remembers the festive atmosphere of a close community—selling corn at town meetings, the yearly beach outings, the annual herring run.

As a child he was shown the location of "Indian taverns." These were not drinking places, according to Mills, but just places where paths crossed. You would pick up a stick, spit on it, and throw it on a heap to appease spirits in the area.

Mills says he can still identify two "Indian taverns," but most have long since been cleared away because the sticks, piled high, were a fire hazard.

This is the extent of the Indian rituals Mills reports. Raised a Baptist, he does not now consider himself a Christian, but he believes in a creator, "something greater than me."

Mills says that when he inquired after Indian artifacts, especially the traditional Mashpee plaited baskets, he was told by his father that "those fellows up around Cambridge must've taken them" (a reference probably to the Harvard Anthropology Department). His father showed him how to plait bark baskets, a skill he had acquired as a young man from Eben Queppish, a master basket maker in Mashpee.

Mills recalls that as a boy he made fun of the old-timers, including the medicine man of the period, William James.

In Falmouth High School Mills excelled in athletics. ("You had to be a scrapper to make it.") Sports were a road to confidence in a threatening environment. Outside of school, like his father and other Mashpee Indians, he served as a guide for hunting and fishing parties in the region.

Q.: "How was your youth different from that of any small-town youth?"

A.: "We were different. We knew we were different. We were told we were different."

Only in the late forties did Mills learn Indian dancing—in the army. On a lonely evening during basic training at Fort Dix two comrades, a Montana Chippewa and a New York Iroquois, performed their dances. Mills was chagrined to admit that he knew none himself.

Earl Mills tells about his five children—four by his first wife, who is

part Navajo, and one by his second wife, who is Caucasian. The eldest, Roxanne, is married to a Choctaw. Earl Jr. (called "Chief") lives in Falmouth and in recent years has become a champion drummer at various Indian gatherings and powwows. Shelly, also a fine drummer, attends Native American festivals all over the Northeast. Robert lives on Commonwealth Avenue in Boston. "He's into quill work, leather work, skins," Nancy, the child of Mills's second marriage, is now six years old. She does Indian dances. Her parents agree that she is a Wampanoag.

Mills explains his duties as tribal chief. He teaches beadwork, leatherwork, and basketry in Mashpee. Overall his job is to be a mediator, to keep his people "on balance."

Under questioning he cannot or will not give any specific examples of his mediations. Mills tells how in the late fifties and early sixties he and three whites formed a committee to restore the Old Indian Meeting House in Mashpee. The meeting house, which had fallen into disrepair, had for many years been the most visible symbol of Indian life in the town.

During the fifties there had been a tribal constitution of some sort (the document is introduced into evidence), but Mills testifies that the tribe did not follow the constitution as written. Tribal meetings were held irregularly, with notice passed by word of mouth. (Where, St. Clair asks on cross-examination, are the minutes for these purported tribal meetings?)

In the early seventies, Mills says, he attended a grant-writing seminar at Dartmouth College, along with Amelia Bingham, a state employee (sister of John Peters, the tribal medicine man, and Russell Peters, chairman of the Tribal Council, Inc.). Mills says he had little originally to do with the land suit. As chief he simply approved the action of the incorporated body on behalf of the tribe. It was discussed in his restaurant kitchen.

Earl Mills testifies that he respects John Peters. The two of them represent the Mashpee traditionalist wing. The modernists, he says, people like Russell Peters, are the legal arm of the tribe and represent its interests in dealings with the government, the courts, and foundations.

St. Clair's questions portray Chief Flying Eagle as an opportunist following rather than leading his people. They reveal that Mills's traditional authority was recently challenged by Russell Peters and others who wanted to sell beer at the annual Mashpee powwow, a festival attended by a considerable number of tourists and other outsiders. Over the chief's

objections beer was sold. St. Clair harps on this evidence of lack of leadership. Rebutals follow, concerning different tribal responsibilities and roles. There are references to President Carter's inability to control the (beer-related) behavior of his brother, Billy.

On the stand Chief Flying Eagle often sounds like a social studies teacher; his speech is larded with pat anecdotes and homilies.

Only once, toward the end of his testimony, does he do something unexpected. Asked whether he often wears Indian regalia, Mills answers no, only at powwows. Then he suddenly tugs at his necktie, pulling two thin strings of beads from under his shirt. One, he says, is turquoise, from the Southwest. The other small strand was a gift from his father.

Many people in the courtroom are surprised by this apparently spontaneous revelation—surprised and, as Mills stuffs the beads back into his shirt and fumbles to readjust his tie, a little embarrassed.

Images

At the end of the trial Federal Judge Walter J. Skinner posed a number of specific questions to the jurors concerning tribal status at certain dates in Mashpee history; but throughout the proceedings broader questions of Indian identity and power permeated the courtroom. Although the land claim was formally not at issue, the lawyers for New Seabury et al. sometimes seemed to be playing on a new nightmare. At the door of your suburban house a stranger in a business suit appears. He says he is a Native American. Your land has been illegally acquired generations ago, and you must relinquish your home. The stranger refers you to his lawyer.

Such fears, the threat of a "giveaway" of private lands, were much exploited by politicians and the press in the Penobscot-Passamaquoddy negotiations. Actually small holdings by private citizens were never in danger; only large tracts of undeveloped land held by timber companies and the state were in question. In Mashpee the plaintiffs reduced their claim to eleven thousand acres, formally excluding all private homes and lots up to an acre in size. Large-scale development, not small ownership, was manifestly the target; but their opponents refused pretrial compromises and the kinds of negotiation that had led to settlement of the Maine dispute.

According to Thomas Tureen the sorts of land claims pursued in Maine, Mashpee, Gay Head, and Charlestown were always drastically

circumscribed. At that historical moment the courts were relatively open to Native American claims, a situation unlikely to last. In a decision of 1985 permitting Oneida, Mohawk, and Cayuga Non-Intercourse Act suits the Supreme Court made it abundantly clear, in Tureen's words, "that Indians are dealing with the magnanimity of a rich and powerful nation, one that is not about to divest itself or its non-Indian citizens of large acreage in the name of its own laws. In short, the United States will permit Indians a measure of recompense through the law—indeed, it has done so to an extent far greater than any other nation in a comparable situation—but it ultimately makes the rules and arbitrates the game (Tureen 1985:147; also Barsh and Henderson 1980:289–293).

Seen in this light, the Mashpee trial was simply a clarification of the rules in an ongoing struggle between parties of greatly unequal power. But beneath the explicit fear of white citizens losing their homes because of an obscure past injustice, a troubling uncertainty was finding its way into the dominant image of Indians in America. The plaintiffs in the Non-Intercourse Act suits had power. In Maine politicians lost office over the issue, and the Mashpee case made national headlines for several months. Scandalously, it now paid to be Indian. Acting aggressively, tribal groups were doing sophisticated, "nontraditional" things. All over the country they were becoming involved in a variety of businesses, some claiming exemption from state regulation. To many whites it was comprehensible for Northwest Coast tribes to demand traditional salmon-fishing privileges; but for tribes to run high-stakes bingo games in violation of state laws was not.

Indians had long filled a pathetic imaginative space for the dominant culture; they were always survivors, noble or wretched. Their cultures had been steadily eroding, at best hanging on in museumlike reservations. Native American societies could not by definition be dynamic, inventive, or expansive. Indians were lovingly remembered in Edward Curtis' sepia photographs as proud, beautiful, and "vanishing." But Curtis, we now know, carried props, costumes, and wigs, frequently dressing up his models. The image he recorded was carefully staged (Lyman 1982). In Boston Federal Court a jury of white citizens would be confronted by a collection of highly ambiguous images. Could a group of four women and eight men (no minorities) be made to believe in the persistent "Indian" existence of the Mashpee plaintiffs without costumes and props? This question surrounded and infused the trial's technical focus on whether a particular form of political-cultural organization called a tribe had existed continuously in Mashpee since the sixteenth century.

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The image of Mashpee Indians, like that of several other eastern groups such as the Lumbee and the Ramapough, was complicated by issues of race (Blu 1980, Cohen 1974). Significant intermarriage with blacks had occurred since the mid-eighteenth century, and the Mashpee were, at times, widely identified as "colored." In court the defense occasionally suggested that they were really blacks rather than Native Americans. Like the Lumbee (and, less successfully, the Ramapough) the Mashpee plaintiffs had struggled to distinguish themselves from other minorities and ethnic groups, asserting tribal status based on a distinctive political-cultural history. In court they were not helped by the fact that few of them looked strongly "Indian." Some could pass for black, others for white.

Hazel Oakley, Hannah Averett

Mrs. Oakley is membership chairman of the tribe; Mrs. Averett, who is an active member of the Mashpee Baptist Church, works with Indian children in the public schools.

These women wear no Indian jewelry. They speak simply with New England accents about their childhood experiences, their values, their parents and grandparents.

They look like what they are: ordinary pillars of the community, churchwomen.

They describe their activities on behalf of the tribe. Mrs. Oakley has recently been establishing a membership list. It includes people living out of town as well as Indians who oppose the suit and who will testify for the defense in court.

Mrs. Averett looks to be in her fifties. She says that her earliest memories of community life in Mashpee were the powwows. She also recalls regular Sunday school picnics at a place called Daniel's Island, attended by Mashpee Wampanoags and their children. They played games and sang hymns. Her mother, grandfather, and relatives in the town told her Indian legends and stories—about Cranny Squanett and Mausop and one about "some Indian maiden that swam in the lake with the trout."

English was spoken in the family, but Mrs. Averett recalls that some of her older relatives knew "Wampanoag language." The only time she heard her grandfather speak the old tongue was once when his mother was sick and he held a long conversation with her in her room. Mrs. Averett's mother said to him, "Dad, why didn't you tell me you could speak Indian?" When he made no reply, Hannah asked, "Grandpa, why

didn't you tell us you could speak Indian? Why didn't you teach us?" He said, "I just want my children to learn the English language and learn it as well as they can."

Mrs. Averett recalls her mother's herbal remedies—teas and cough medicines, skunk grease rubbed on for a chest cold—some of which she still uses.

Mrs. Averett has done housework for a living since she was a girl. During the war years, however, she went to New Bedford to do defense work in a Goodyear plant, then to the Boston Naval Yard, where she was a rope maker. From there she went to the Hood Rubber company, did a few years in Boston shoe factories, and then went back to housework. In 1952 she married William Averett. He died in 1958, and she returned to Mashpee. "I had two sons to bring up. I felt I could do it better down there. I felt that if anything should happen to me, my people were there. If I needed help, my people would be there to help me."

Three years ago Mrs. Averett joined the Mashpee Wampanoag Tribal Council, Inc., and became active in federally funded Indian education programs. She testifies that the immediate motivation for her involvement came from her youngest son. He used to take walks in the woods after school—she didn't know where. "One day he came in and he asked me, he said, 'Why don't you do something about this?'" He explained that he often went to a favorite spot where deer grazed. "He said, 'It was the most beautiful sight you could ever see. Now they're putting up a golf link, and I'll never see it again.'"

Since 1974 Mrs. Averett has been chairperson of the Indian Education Parent Committee, a federally funded Indian education program to help Mashpee Wampanoag children in the schools. The committee organizes tutoring, arts and crafts programs, local and general Indian history classes, sessions with Chief Mills and Medicine Man Peters, visits from other native groups, field trips to the United Nations in New York, to the Museum of the American Indian, to historic sites in Gay Head. "This is to expand the culture of our people, to see how other tribes, other people live."

Mrs. Averett is also chairperson of the board of trustees of the Mashpee Baptist Church.

On cross-examination she is asked about possible inconsistencies in her claim to Indian identity: You don't eat much Indian food, do you? Only sometimes. You use regular doctors, don't you? Yes, and herbs as well.

How do you know your ancestors? My mother, grandparents, word of mouth. Have you traced your ancestry? Did you use the 1859 census? (introduced as evidence at the trial). What about being a devout Baptist and an Indian?

Mrs. Averett testifies that she respects the medicine man, John Peters (calling him a "counselor"). She respects Indian beliefs: the Great Spirit, the land, "grandmother moon and the earth and all those things . . . They are very dear to me, and I respect them. But I also respect God through my Christian belief. And to me God and the Great Spirit are the same."

She has recently received an Indian name, Bright Star, from the medicine man. She isn't sure she is allowed to go into details about her naming ceremony: there is a prayer, a circle formed. "Everything is round, as our lives."

She likes to see drumming and dancing being taught to today's children. They do it the way other kids skip rope.

Outside the courtroom during a recess some of the Mashpee women talk fondly about their children's Indian activities. "But he's got to cut that hair!" "If only they took care of it, but, you know . . ." "He looks like a wild man!"

The Sea

Ramona Peters is a college-educated woman in her twenties. After participating in a training program at the Children's Museum in Boston, she has recently returned to Mashpee, where she teaches classes in Indian language and lore. During her testimony she relates a myth about a giant who swims over to the Wampanoag tribe at Gay Head on Martha's Vineyard. On his return the giant turns into Moby Dick, the great white whale.

(I suddenly realize that the Indians in this courtroom are descendants of Tashego, the Gay Head harpooner of Melville's *Pequod*. This connection somehow gives everything a strange reality and depth grafted now onto my own literary mythology.)

A good deal of testimony at the trial concerns Cape Cod Indians' closeness to the sea—long traditions of shellfishing and work on whaling vessels in the nineteenth century. Vernon Pocknett, an activist and

nephew of Mabel Avant, the town's leading traditionalist and historian during the forties and fifties, tells of a federal CETA program Title 3 grant to encourage modern aqua-farming by Mashpee Indians.

Would the jury see aqua-farming as a "traditional" activity?

Borderlines

Mashpee Indians suffered the fate of many small Native American groups who remained in the original thirteen states. They were not accorded the reservations and sovereign status (steadily eroded) of tribes west of the Mississippi. Certain of the eastern communities, such as the Seneca and the Seminoles, occupied generally recognized tribal lands. Others—the Lumbee, for example—possessed no collective lands but clustered in discrete regions, maintaining kinship ties, traditions, and sporadic tribal institutions. In all cases the boundaries of the community were permeable. There was intermarriage and routine migration in and out of the tribal center—sometimes seasonal, sometimes longer term. Aboriginal languages were much diminished, often entirely lost. Religious life was diverse—sometimes Christian (with a distinctive twist), sometimes a transformed tradition such as the Iroquois Longhouse Religion. Moral and spiritual values were often Native American amalgams compounded from both local traditions and pan-Indian sources. For example the ritual and regalia at New England powwows now reflect Sioux and other western tribal influences; in the 1920s the feathered “war bonnet” made its appearance among Wampanoag leaders. Eastern Indians generally lived in closer proximity to white (or black) society and in smaller groups than their western reservation counterparts. In the face of intense pressure some eastern communities have managed to acquire official federal recognition as tribes, others not. During the past two decades the rate of applications has risen dramatically.

Within this diversity of local histories and institutional arrangements the long-term residents of Mashpee occupied a gray area, at least in the eyes of the surrounding society and the law. The Indian identity of the Penobscot and Passamaquoddy was never seriously challenged, even though they had not been federally recognized and had lost or adapted many of their traditions. The Mashpee were more problematic. Partisans of their land claim, such as Paul Brodeur (1985), tend to accept without question the right of the tribal council, incorporated in 1974, to sue on behalf of a group that had lost its lands in the mid-nineteenth century.

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They see the question of tribal status as a legal red herring, or worse, a calculated ploy to deny the tribe its birthright. However procrustean and colonial in origin the legal definition of tribe, there was nonetheless a real issue at stake in the trial. Although tribal status and Indian identity have long been vague and politically constituted, not just anyone with some native blood or claim to adoption or shared tradition can be an Indian, and not just any Native American group can decide to be a tribe and sue for lost collective lands.

Indians in Mashpee owned no tribal lands (other than fifty-five acres acquired just before the trial). They had no surviving language, no clearly distinct religion, no blatant political structure. Their kinship was much diluted. Yet they did have a place and a reputation. For centuries Mashpee had been recognized as an Indian town. Its boundaries had not changed since 1665, when the land was formally deeded to a group called the South Sea Indians by the neighboring leaders Tookonchasun and Weepquish. The Mashpee plaintiffs of 1977 could offer as evidence surviving pieces of Native American tradition and political structures that seemed to have come and gone. They could also point to a sporadic history of Indian revivals continuing into the present.

The Mashpee were a borderline case. In the course of their peculiar litigation certain underlying structures governing the recognition of identity and difference became visible. Looked at one way, they were Indian; seen another way, they were not. Powerful ways of looking thus became inescapably problematic. The trial was less a search for the facts of Mashpee Indian culture and history than it was an experiment in translation, part of a long historical conflict and negotiation of “Indian” and “American” identities.

(This is how I came to see the Mashpee case, and the account I give of it reflects my way of seeing. As a historian and critic of anthropology I tend to focus on the ways in which historical stories are told, on the alternate cultural models that have been applied to human groups. Who speaks for cultural authenticity? How is collective identity and difference represented? How do people define themselves with, over, and in spite of others? What are the changing local and world historical conditions determining these processes?)

At the Mashpee trial these were the kinds of questions that interested me and that now organize my account. I am not fictionalizing or invent-

ing anything, nor am I presenting the whole picture. The reality presented here is the reality of a specific interest and field of vision.

I attended most of the trial, and I've used my courtroom notes as a guiding thread. I've read what has been published about the history of Mashpee and the litigation, notably Francis Hutchins' *Mashpee: The Story of Cape Cod's Indian Town* (1979), Paul Brodeur's *Restitution: The Land Claims of the Mashpee, Passamaquoddy, and Penobscot Indians of New England* (1985), and William Simmons' *Spirit of the New England Tribes* (1986). I've had access to Rona Sue Mazur's Ph.D. thesis in anthropology at Columbia University, "Town and Tribe in Conflict: A Study of Local-Level Politics in Mashpee, Massachusetts" (1980). And I have consulted the trial record. But I haven't systematically interviewed participants or done firsthand research in the archives or in Mashpee.

It should be clear from what follows that I am portraying primarily the trial, not the complex lives of Indians and other ethnic groups in Mashpee. Still, in the process I make strong gestures toward truths missed by the dominant categories and stories in the courtroom. Thus I invoke as an absence the reality of Mashpee and particularly of its Indian lives. I do this to maintain the historical and ethnographic seriousness of the account, a seriousness I wish both to assert and to limit.

I accept the fact that my version of the trial, its witnesses, and its stories may offend people on several sides of the issue. Many individual positions are more complex than I have been able to show. My account may be objectionable to Native Americans for whom culture and tradition are continuities, not inventions, who feel stronger, less compromised ties to aboriginal sources than my analysis allows. For them this version of "identity in Mashpee" may be about rootless people like me, not them.

It is, and is not only, that.

When I report on witnesses at the trial, the impressions are mine. Others I spoke with saw things differently. The trial record—which stenographically preserves, by a precise but not infallible technique, the meaningful, spoken sounds of the trial—provides a check on my impressions. It does not, of course, provide much information on the effect of witnesses or events in the courtroom. It omits gestures, hesitations, clothing, tone of voice, laughter, irony . . . the sometimes devastating silences.

I offer vignettes of persons and events in the courtroom that are obviously composed and condensed. Testimony evoked in a page or two

may run to hundreds of pages in the transcript. Some witnesses were on the stand for several days. Moreover, real testimony almost never ends the way my vignettes do; it trails off in the quibbles and corrections of redirect and recross-examination. While I have included for comparison a verbatim excerpt from the transcript, I have generally followed my courtroom notes, checked against the record, and have not hesitated to rearrange, select, and highlight. Where quotation marks appear, the statement is a fairly exact quotation; the rest is paraphrase.

Overall, if the witnesses seem flat and somewhat elusive, the effect is intentional. Using the usual rhetorical techniques, I could have given a more intimate sense of peoples' personalities or of what they were really trying to express; but I have preferred to keep my distance. A courtroom is more like a theater than a confessional.

Mistrustful of transparent accounts, I want mine to manifest some of its frames and angles, its wavelengths.)

John Peters

Peters is about fifty years old. He wears a sport jacket with a turtle-neck sweater. He is graying, dignified, and appears somewhat taciturn. He speaks with broad New England vowels.

Peters is medicine man of the Mashpee Wampanoag Tribe. He testifies that whereas he and Earl Mills, Chief Flying Eagle, are leaders of the tribe, they are not alone. All elders are leaders. Women are leaders: Mary Lopez, Hannah Averett ("in the education field"), Mrs. Mills (Earl Mills's mother), Hazel Oakley.

He describes a growing interest in Native American religion. Asked about traditional rituals in Mashpee, he recalls participating in the peace pipe ceremony, offerings to the Great Spirit, "for as long as I can remember."

Newspaper notices from 1936 are introduced as evidence. They report tribal meetings and "Indian Day" services at the Old Indian Meeting House. Peters remembers these services. He and his father were in the choir. Reverend Redfield (the Baptist minister) and William James (the medicine man) both participated. Christian hymns were sung. The peace pipe was smoked.

Peters tells of his youth and training as a medicine man. There were no specific ceremonies or rites of passage. An old man, Russell Mingo, talked at Saturday dinners about Indian matters. "We kids didn't under-

stand." In his late teens Peters approached William James with questions, and he learned "things about Mother Earth." Neither James nor his parents ever spelled much out. "A medicine man doesn't force things on you."

Peters is a strong, understated presence. Also a savvy witness. Under cross-examination he pauses for a long time after hostile or baited questions. Often he slowly repeats the question before answering, turning it over in public view.

Peters recalls his school days. The Mashpee were called "thieving Indians" or "Womps" (from Wampanoag). The latter was not always pejorative, he adds. The school basketball team was called the Womps, the cheerleaders the Wompettes.

On cross-examination Peters is reminded that the traditional ceremony "Indian Day" was proclaimed by the governor of Massachusetts, who was not an Indian. Reverend Redfield was not an Indian either. And smoking the peace pipe was not limited to Indians. The Mashpee parish and the Old Mashpee Meeting House Corporation all depended on non-Indian participants. How can he claim, as he does, that they are "arms of the Mashpee Tribe"?

Q.: What does it take to be a member of the Mashpee Tribe? A.: Tracing ancestry back to your great-grandfather or great-grandmother. How do you know? We know each other. Who was your great-grandmother? (Peters cannot recall her first name.) Was she an Indian? Yes. Have you traced this specifically? No. Who was your great-grandfather? Charles Peters. Wasn't he a preaching Indian from Martha's Vineyard? Yes. Not a Mashpee Wampanoag Indian? No.

Peters is asked about the years he has lived away from Mashpee while still serving as medicine man. In 1964 he worked for more than a year in Hawaii as a private detective. Between 1973 and 1976 he was based on Nantucket. He testifies that from the latter residence he was able to stay in touch. He employed Mashpee people in his various business ventures.

With a brother and nephew he is currently part owner of Peters Fuel Oil. The concern owns two trucks and does a moderate business. Q.: This is a private, not a communal tribal business? A.: Yes.

Peters testifies about a land-development plan proposed some years back by a company he founded with various family members, the Ashers Path Development Corporation. He is confronted with blueprints for the development that was submitted to the town but never carried through. The blueprints show an extensive subdivision into thirty-seven lots.

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Peters is reminded of his years in business as a general contractor and of making bids on projects for the New Seabury Corporation (now a symbol to many Indians of excessive development). He is unclear about whether he has since left contracting and real estate.

When pressed on the conflict between business activities and his role as medicine man, he comments that the art of making money is probably inconsistent with being an Indian; but all Mashpee Indians make money. It depends on how you do it.

He is asked, Was what you were doing as a developer a destruction of the earth? Exactly what part of your business was consistent with Indian values? Peters offers no clear answers. But, he adds, "if I had developed that plan, I'd have been violating my principles."

Peters testifies that until recently he didn't spend enough time as medicine man counseling people. Early in his career he was much less conscientious than he is now. During the last five years he has changed "totally."

Peters is asked about current Indian religious practices in Mashpee. He can specify no customary rites at birth or at puberty. He has himself been married and divorced twice without any special Indian ceremony. He was married in a Baptist church by a white minister. Asked whether it was a typical Baptist ceremony, Peters replies that he can't say, since all Christian marriages seem the same to him.

How many "followers of traditional religion" are there now in Mashpee? Peters won't guess and questions the word followers. It's not a question of authority, he says, of leaders and followers. A person can be very religious without worshipping in a building or participating in a formal gathering.

Who are the "traditionalists" in Mashpee? It's hard to be sure. Maybe there are a hundred or so. His brother Russell (chairman of the Tribal Council, Inc.) is not a traditionalist. As for his other brothers and sisters, he hasn't formed an opinion.

Peters testifies that the Supreme Sachem, Elsworth Oakley, a Mashpee, has recently designated him Supreme Medicine Man of the Wampanoag Nation. He has passed his local duties to a young man, Skip Black. "He's been in my mind for some time."

Peters says that he and Oakley are currently helping groups of Wampanoags in New Bedford and Brockton to form tribal structures.

Q.: "Do the new tribes you're creating there have any plans to bring lawsuits?"

A.: "You mean, taking over New Bedford and Brockton?"

History I

The case against the plaintiffs was straightforward: there never had been an Indian tribe in Mashpee. The community was a creation of the colonial encounter, a collection of disparate Indians and other minorities who sought over the years to become full citizens of the Commonwealth of Massachusetts and of the Republic. Decimated by disease, converted to Christianity, desirous of freedom from paternalistic state tutelage, the people of mixed Indian descent in Mashpee were progressively assimilated into American society. Their Indian identity had been lost, over and over, since the mid-seventeenth century.²

The plague. When the English Pilgrims arrived at Plymouth in 1620, they found a region devastated by a disease brought by white seamen. The settlers walked into empty Indian villages and planted in already cleared fields. The region was seriously underpopulated. In the years that followed Puritan leaders like Myles Standish pressed steadily to limit Indian territories and to establish clear "properties" for the growing number of newcomers. Misunderstandings inevitably ensued: for example whites claimed to own unoccupied land that had been ceded to them for temporary use.

Richard Bourne of Sandwich, a farmer near what is now Mashpee Pond and a tenant on Indian lands, studied the language of his landlords and soon became an effective mediator between the societies. He was friendly to the area's inhabitants, remnants of earlier groups, who came to be called South Sea Indians by the settlers to the north. He believed that they needed protection; becoming their advocate, he negotiated formal title to a large tract adjoining his farm (which in the meantime he had managed to purchase). His ally in these transactions was Paupmunnuck, a leader of the nearby Cotachesset.

2. The two "histories" that follow represent the best brief interpretive accounts I could construct of the contending versions of Mashpee's past. They draw selectively on the expert testimony presented at the trial—testimony much too long, complex, and contested to summarize adequately. The overall shape of the two accounts reflects the summation provided at the end of the testimony by each side's principal attorney. "History I" owes a good deal to Francis Hutchins' book *Mashpee: The Story of Cape Cod's Indian Town* (1979). This book takes a somewhat more moderate position than the courtroom testimony on which it is based. "History II" owes something to the general approach of James Axteell's book *The European and the Indian* (1981). Axteell was witness for the plaintiffs.

Bourne's "South Sea Indian Plantation" was to become a refuge for Christian converts, for as white power increased, it became increasingly dangerous for Indians to live around Cape Cod unless they came together as a community of "praying Indians." Under Bourne's tutelage the Mashpee plantation was a center for the first Indian church on the Cape, organized in 1666.

Thus Mashpee was originally an artificial community, never a tribe. It was created from Indian survivors in an area between the traditional sachemdoms of Manomet and Nauset—the former centered on the present town of Bourne at the Cape's western edge, the latter near its tip.

Conversion to Christianity. Badly disorganized after the plague and confronted by a growing number of determined settlers, the Cape Cod Indians made accommodations. Live and let live was not the Puritan way, especially once their power had been consolidated. Tensions and conflicts grew, leading to war in 1675 with the forces of the Wampanoag Supreme Sachem Metacomet ("King Philip"). After Metacomet's defeat Indians who sympathized with him were expelled from their lands. Many, including some who had remained neutral, were sold into slavery.

The price for living on ancestral lands in eastern New England was cooperation with white society. The Mashpee, under Bourne's tutelage, became model Christians. By 1674 ninety Mashpee inhabitants were counted as baptized, and twenty-seven were admitted to full communion. The "praying Indians" were entering a new life. They stopped consulting "powwows" (medicine men, in seventeenth-century usage); they respected the Sabbath and other holy days, severed ties with "pagans," altered child-rearing practices, dressed in new ways, washed differently. The changes were gradual but telling. They reflected not only a tactical accommodation but also a new belief, born of defeat, that the powerful white ways must be superior. When Bourne died in 1682, his successor as Protestant minister was an Indian, Simon Popmonet, son of Bourne's old ally Paupmunnuck. This was a further sign that the Indians were willingly giving up their old ways for the new faith.

"Plantation" status. Once the South Sea Indian Plantation had been established, its inhabitants' claim to their land rested on a written deed and on English law rather than on any aboriginal sovereignty. Like other "plantations" in New England, the community at Mashpee was a

joint-ownership arrangement by a group of "proprieters." Under English law proprietors were licensed to develop a vacant portion of land, reserving part for commons, part for the church, and part for individual holdings. All transfers of land were to be approved collectively. This plantation-proprietary form, as applied to early Cape Cod settlements such as Sandwich and Barnstable, was intended to evolve quickly into a township where freemen held individual private property and were represented in the General Court of the colony. The white plantations around Mashpee did evolve directly into towns. From the late seventeenth century on their common lands were converted into private individual holdings in fee simple. Mashpee followed the same course, but more slowly. As late as 1830 its lands were the joint property of proprietors.

For complex historical reasons Mashpee's progress toward full citizenship lagged almost two centuries behind that of its neighbors. An enduring prejudice against Indians and their supposed lack of "civility" certainly played a part, for during the early and mid-eighteenth century the Indian plantation was governed in humiliating ways by white "guardians." Nonetheless, development toward autonomy, while delayed, did occur. In 1763, after a direct appeal to King George III, Mashpee won the right to incorporation as a district, a step on the road to township status and a liberation from oppressive meddling by white outsiders. Then, beginning in 1834 and culminating in 1870, a series of acts of the Massachusetts legislature changed the Mashpee plantation into an incorporated town. Its inhabitants had overcome the prejudice and paternalism that had so long hemmed them in. They were now full-fledged citizens of Massachusetts.

Taking the colonists' side. From early on the Indian inhabitants of Mashpee gave signs of active identification with the new white society. During King Philip's War a certain Captain Amos, probably a Nauset from near Sandwich, led a group of Indians against Metacombet. Amos became a prominent inhabitant of Mashpee after the conflict ended. A century later the district of Mashpee sent a contingent to fight in the Revolutionary War against the British, a commitment of troops even greater than that of the surrounding white towns. Reliable accounts estimate that about half the adult male population died in the war. A Mashpee Indian, Joshua Pocknet, served at Valley Forge with George Washington. At these critical moments, therefore, the descendants of the South Sea Indians

showed something more than simple acquiescence under colonial rule. Their enthusiastic patriotism strongly suggests that they had identified with white society, relinquishing any sense of a separate tribal political identity.

Intermarriage. Mashpee's population showed two significant periods of expansion. During the 1660s and 1670s there had been an influx of Indians from elsewhere on the Cape. Then after a century of relative equilibrium the population rose again in the 1760s and 1770s. Census figures are inexact and subject to interpretation, but it seems clear that before 1760 the principal newcomers were a steady trickle of New England Indians: Wampanoags from Gay Head and Herring Pond, Narragansets and Mohicans from Connecticut, Long Island Montauks. Immigration was restrained by the tutelage of outside "guardians," some of whom had an interest in keeping Mashpee small so that "unused" Indian lands could be made available for whites. After 1763, however, the newly incorporated district opened its borders to a variety of new settlers. A few whites entered by marriage but maintained a separate legal status. Their progeny, if one parent was Indian, could become proprietors. At least one white man "went native," living in a wigwam—just as the Indian residents of Mashpee were abandoning the last of theirs. Four Hessian mercenaries stayed on after the Revolutionary War and married Mashpee women. It is recorded that they accepted Indian manners.

The 1776 census counted fourteen "negroes" in a total population of 341. Significant intermarriage with freed black slaves occurred in this period, but it is difficult to say how much since common parlance, reflected in the census, sometimes mixed diverse peoples of brownish skin color in categories such as "Indian," "mulatto," or "negro." Intermarriage between blacks and Indians was encouraged by a common social marginality and by a relative shortage of men among the Indians and of women among the blacks. The local racial mix also included Cape Verde islanders and exotic imports resulting from the employment of Mashpee men in the far-flung sailing trades and women in domestic service: a Mexican and an Indian from Bombay are mentioned in the written sources.

By 1789 Mashpee's white minister, the Reverend Gideon Hawley, had become so concerned about Mashpee being overrun by blacks and foreigners that he engineered a return to plantation status, with himself as guardian of the town's threatened authenticity. This return to a restric-

tive paternalism was a setback for Mashpee's ability to grow and develop into a distinctive, independent nonwhite community. It was not until the 1840s, after a long conflict with Hawley's successor, the Reverend Phineas Fish, that local leaders finally rid themselves of outside tutelage. The struggle for citizenship had been slowed but not stopped. By the time of the final transition from plantation to township status in the four decades after 1830 the American citizens of Mashpee had become a complex mix—"colored" in contemporary parlance—that included several American Indian, black, and foreign ingredients.

Mashpee becomes a town. In 1834, following a popular rebellion against the outside authority of the Presbyterian minister Fish, district status was again accorded by the Massachusetts General Court. The Mashpee were no longer wards of the state and, like other towns, were governed by three elected selectmen. But full citizenship did not follow, largely because the proprietors of Mashpee wished to preserve traditional restraints on the sale of lands to outsiders. Leaders such as Daniel Amos argued that many inhabitants of Mashpee were not yet ready for the responsibilities of citizenship and unrestricted property rights. They might sell their lands irresponsibly or be maneuvered into debt; the community would be invaded and broken up. In practice the entailment on property did not seal off Mashpee from growth. To qualify as a landowner one had to trace ancestry to at least one Indian proprietor; and by the mid-nineteenth century quite a few individuals around the Cape could make this claim. In 1841–42, at the urging of Indian entrepreneurs such as Solomon Attaquin, who had returned to Mashpee with the end of state tutelage, most of the district's common lands were divided among its individual proprietors—men, women, and children. Lands could now be freely bought and sold, but still only among proprietors.

This progress did not go uncontested. Mashpee was divided among those who, like Attaquin—self-made men reflecting the era's dominant *laissez-faire* capitalist ethos—wanted to move quickly to remove all barriers to individual initiative and others who wanted to move more slowly or who saw in the old plantation entailments a guarantee of community integrity. In 1868 matters finally came to a head. A petition to the General Court from two of Mashpee's three selectmen and twenty-nine residents requested an end to all land-sale restrictions and the granting of full state and federal voting rights. This petition was promptly countered by a "remonstrance" signed by the third selectman and fifty-seven Mash-

pee residents urging that the district's status not be altered. A public hearing was called to air the differing views.

The hearing, which took place in early 1869, marks a crucial turning point in Mashpee history. Records of its disagreements offer a rare access to a diversity of local voices and opinions. Those who spoke in favor of the proposed changes evoked centuries of degrading state tutelage and second-class status. It was time, they said, for Mashpee inhabitants to be full citizens, to stand on their own. If this meant that some would fail or be displaced from their lands, so be it. They spoke also of the commercial advantages to the region of making portions of its land available for outside capital investment. Representatives of Mashpee's "colored non-proprietors" (a status that gave certain mulattoes and blacks all rights of proprietorship except title to land) also favored the changes in legal status. As valued members of the community they felt the restriction on landholding to be an insult and a reminder of an inferior condition they had in every other respect left behind.

Others opposed the changes. They argued that the influx of outside capital would be a very mixed blessing, and without the present protections many who were not wealthy and wise to the ways of business would soon be displaced. They would find themselves, in the words of one speaker, "ducking and dodging from one city to another, and gain no residence." Some proprietors did not think the right to vote in state and federal elections worth the risk; the present system, providing real control over Mashpee's government, seemed sufficient to local needs. The Reverend Joseph Amos ("Blind Joe" Amos), the community's most influential spiritual voice and leader of a successful Indian Baptist movement three decades earlier, opposed the changes. He said that another generation of preparation was needed before the proposed step could safely be taken. Solomon Attaquin, who owned the Hotel Attaquin, a renowned hunting lodge in Mashpee, spoke for abandoning the district's special status. He evoked a lifelong dream of full citizenship and equality, a dream shared with others in the community. Those who had worked long and hard for this day should not have to die without gaining the status of free men in the commonwealth and the nation.

A vote was taken. Eighteen favored participation in federal and state elections, eighteen were opposed. The removal of land restrictions was sharply rejected, twenty-six to fourteen. Despite this vote by a minority of the total population the recorded discussions clearly showed a consensus in favor of ultimately ending Mashpee's special status, with dis-

agreements only on the timing. The Massachusetts General Court, recognizing this fact and more impressed by Mashpee's "progressive" voices, in 1870 formally abolished the status of "Mashpee proprietor." All lands were henceforth held in fee simple with no restrictions on alienation. All residents, whatever their ancestry, now enjoyed equal status before the law. The transfer of town lands to outsiders began immediately.

This turning point marked the end of Mashpee's distinctive institutional status stemming from its Indian past. Though the community was divided on the change, the most dynamic, forward-looking leaders favored it; whatever their hesitations on timing, community members willingly embraced their future as Massachusetts and United States citizens.

Assimilation. During the years between 1870 and the 1920s Indians throughout the nation were forced to abandon tribal organizations and to become individual citizen-farmers, workers, and businessmen. This was the period of the Dawes Act with its extensive land-allotment projects west of the Mississippi. Not until the twenties was there much evidence anywhere of tribal dynamism. Mashpee residents continued to live as before, working as hunting and fishing guides, servants, and laborers in various trades. The town remained a backwater. To find steady work people often had to move to nearby towns or even farther afield. The historical record contains little evidence of any distinctly Indian life in Mashpee before the Wampanoag revival movements of the twenties. The town apparently did not undergo any major demographic or social changes and remained a rather cohesive community of long-term residents, most of whom were of varying degrees of Indian descent. Significantly, between 1905 and 1960 the category "Indian" disappeared from Mashpee's federal census records. The more than two hundred individuals who had previously been so classified were now listed as either "colored" (distinct from "negro") or "other." Only in 1970 would they again be called Indian. In the eyes of the state the majority of Mashpee's inhabitants were simply Americans of color.

Some of these Americans participated in the founding of the Wampanoag Nation in the late twenties. At that time various more-or-less theatrical revivals of Indian institutions were under way. People in Mashpee showed interest, but the daily life and government of the town were not materially affected. The Wampanoags did not, like many other Indian groups in the thirties, take advantage of the turnaround in policy at John

Collier's Bureau of Indian Affairs (BIA) to reorganize themselves as a federally recognized "tribal" unit. The new sense of Indianness around Mashpee was a matter of county fairlike powwows, costumes, and folkloric dances.

The individuals of Indian ancestry from Mashpee who filed suit in 1976 were American citizens similar to Irish- or Italian-Americans with strong ethnic attachments. Individuals such as Earl Mills and John and Russell Peters had simply taken advantage of the latest wave of pan-Indian revivalism and the prospect of financial gain to constitute themselves as a Mashpee Tribe. Mashpee's distinctive history was in fact a story of Indian-Christian remnants who over the centuries had repeatedly given up their customs and sovereignty. Theirs had been a long, hard struggle for equality and respect in a multiethnic America.

Vicky M. Costa

Vicky Costa is seventeen years old; her father is Portuguese, her mother Indian. She considers herself an Indian. She looks like any American teenager.

Q.: How do you know you're an Indian? A.: My mother told me. She speaks softly. Judge Skinner asks her to speak up so the court can hear. "Think of yourself shouting across a field to those people," indicating the jury, "over there." (The "field" is a courtroom cluttered with lawyers' tables, papers, documents, items of evidence.)

Vicky Costa does not shout, and everyone listens closely. She tells about the values she is currently learning in Mashpee: "To walk on Mother Earth in balance, and to respect every living thing."

Q.: How often do you dance? A.: All the time. Q.: When did you dance most recently? A.: Last night.

She describes her Indian dancing. She says she first learned at a powwow "a long time ago." Now she attends powwows regularly.

She names the dances: animal names, "blanket dance," "fancy dance." In the "round dance" they turn and dance to the good and bad spirit, moving in both directions so neither of the spirits will be offended. Is there music? Singing? Just the round-dance song. The purpose of the animal dances? To imitate the animals, mocking them. To thank the Creator for that animal.

(The mood in these questions and answers is conversational, quiet. Is it partly because this time Ann Gilmore of the plaintiffs' trial team is

conducting the examination? It is one of the rare moments in the trial when a woman speaks directly with another woman. For whatever reasons the prevailing sense of contest and performance is gone.)

Costa testifies that she has been studying what she calls the "Wampanoag language" for one-and-a-half years. She says that as a girl she had to go to the Baptist church but now believes in Indian values.

On cross-examination she assents to hostile questions with the devastating American teenage shrug: "Yeah . . . Yeah . . . Yeah . . ."

History II

The case against the Mashpee plaintiffs was based on a reading of Cape Cod history. Documents were gathered, interpreted, and arranged in a coherent sequence. The story emerged of a small mixed community fighting for equality and citizenship while abandoning, by choice or coercion, most of its aboriginal heritage. But a different, also coherent, story was constructed by the plaintiffs, drawing on the same documentary record. In this account the residents of Mashpee had managed to keep alive a core of Indian identity over three centuries against enormous odds. They had done so in spite, sometimes surreptitious ways, always attempting to control, not reject, outside influences.

The plague. Aboriginally the concept of tribe has little meaning. The "political" institutions of Native American groups before contact with Europeans varied widely. Cape Cod Indian groupings seem to have been flexible, with significant movement across territories. Communities formed and reformed. In this context it is unclear whether the elders of local villages or sachems or supreme sachems should be identified as "tribal" leaders. These individuals had supreme power in some situations, limited authority in others. The plague was a disaster, but it did not decimate the Cape to the extent that it did the Plymouth area. In any event the response of the survivors at Mashpee, regrouping to form a cohesive unit, was a traditional political response, albeit to an unusual emergency. Written sources reflect only the views of whites, such as the evangelist Bourne, who saw his "praying Indians" paternalistically as passive remnants. The intentions of leaders such as Paupmunnuck and his kin are not recorded.

Thus it is anachronistic to say that the community gathered at what would later be called Mashpee was not a tribe. It is well known that the

political institutions of many bona fide American Indian "tribes" actually emerged during the nineteenth and twentieth centuries in response to white expectations and power. Neat analytic categories such as "political organization," "kinship," "religion," and "economy" do not reflect Indian ways of seeing things. The simple fact remains that Bourne's South Sea Indian Plantation was a discrete community of Cape Cod Indians living on traditional Indian land—an arrangement that, through many modifications, survived until the mid-twentieth century.

Conversion to Christianity. Accounts of conversion as a process of "giving up old ways" or "choosing a new path" usually reflect a wishful evangelism rather than the more complex realities of cultural change, resistance, and translation. Recent ethnohistorical scholarship has tended to show that Native Americans' response to Christianity was syncretic over the long run, almost never a radical either-or choice. Moreover, in situations of drastically unequal power, as on Puritan Cape Cod, one should expect the familiar response of colonized persons: outward agreement and inner resistance.

The disruptions caused by disease, trade, and military conquest were extreme. All Indian societies had to adjust, and they developed varying strategies for doing so. Some passed through revitalization movements in the late eighteenth and early nineteenth centuries, led by messianic figures: the Delaware Prophet or Handsome Lake. These movements incorporated Christian features in a new "traditional" religion. Other groups renewed native culture by using Christianity for their own purposes. The white man's religion could be added on to traditional deities and rites. Beliefs that appeared contradictory to Puritan evangelists coexisted in daily life. Native American religions are generally more tolerant, pragmatic, and inclusive than Christianity, a strongly evangelical, exclusive faith.

This is not to say that groups such as the South Sea Indians did not embrace Christianity in good faith or find there a source of spiritual strength. It is only to caution against the either-or logic of conversion as seen by the outsiders whose accounts dominate the written record. The gain of Christian beliefs did not necessarily mean the loss of Indian spirituality. It is easy to be impressed by surface transformations of clothing and public behavior and to forget that continuous kin ties and life on a familiar piece of land also carry potent "religious" values.

Adopting Christianity in Mashpee was not merely a survival strategy

in an intolerant, hostile environment. The faith of the "praying Indians" kept a distinctly indigenous cast. Beginning with Richard Bourne's successor, Simon Popmonet, Indian ministers in Mashpee preached in Mashuset, a practice that continued throughout the eighteenth century. When white missionaries were imposed from outside, they were forced to use some Massachusetts or to compromise, like Gideon Hawley, who conducted bilingual services in tandem with a respected Indian pastor, Solomon Briant. Moreover, the historical record before 1850 is filled with conflict between authoritarian missionaries and Indian church members. Hawley, who served from 1757 to 1807, progressively alienated his parishioners, especially after Solomon Briant's death in 1775. His successor, Phineas Fish, lost virtually all local support and in 1840, after a protracted struggle, was physically ejected from the Old Indian Meeting House by irate Indian Christians.

Baptist revivalism had already won over most of the congregation, a change tied to a political assertion of Indian power. As in many nativist revitalization movements, an Indian outsider took a leading role—in this case William Apes, a young Pequot Baptist preacher. Blind Joe Amos had already acquired a larger following for his all-Indian Baptist meetings than the Congregationalist minister, Fish.

The situation was volatile. Apes, a firebrand with a vision of united action by "colored" peoples against white oppressors, stimulated a Mashpee "Declaration of Independence" in 1833 on behalf of a sovereign Mashpee Tribe. (This was one of the few times before the twentieth century that the word *tribe* appears in the historical record.) The effect of the declaration and of the political maneuvers that ensued was to wrest control of the town's religion from the outsider Fish, reclaiming the Meeting House and funds from Harvard University supporting Indian Christianity for the majority faith, which was now Baptist. Mashpee returned to district status, free of outside governors.

Over the centuries Indians in Mashpee fought to keep control first of their Presbyterian and then their Baptist institutions. Religion was a political as well as a spiritual issue. Well into the 1950s the New England Baptist Convention habitually referred to Mashpee as "our Indian church." The exact nature of Mashpee Christian belief and practice over the centuries is obscure. The historical record does not inform us, for example, of exactly what took place in Blind Joe Amos' insurgent Baptist services during the 1830s; but even the partial written record makes it clear that Christianity in Mashpee, symbolized by the Old Indian Meet-

ing House, was a site of local power and of resistance to outsiders. At recurring intervals it was a focus of openly Indian, or "tribal," power.

"Plantation" status. Leaders of the South Sea Indians probably recognized, with Bourne, that title to land under white law was needed if it was not to be despoiled by an aggressive colonization; but seventeenth-century English proprietary forms did not unduly restrict their ability to function as an Indian community. Collective ownership of land, with individual use rights, could be maintained. The legal status that to some appeared an impediment to progress in fact protected the traditional life ways of Indian proprietors.

Although eastern Indians were not accorded reservation lands, Mashpee's plantation status created a de facto reservation. Unlike all its neighbors Mashpee did not quickly become a town but had the status forced on it in 1869. The plantation was widely considered to be Indian land held collectively in a distinctive manner. The reasons for keeping Mashpee "backward," a pupil of the state, were often racist and paternalist; but from the viewpoint of a small group struggling to maintain its collective identity, the proprietorship arrangement was an effective way of having legal status while also maintaining a difference. While there was internal disagreement at times, the majority of Mashpee proprietors consistently favored keeping the plantation land system. This was changed only by legislative fiat in 1969, against their expressed wishes. Until then an "archaic" status had been effectively used to preserve Indian lands in a collective form through rapidly changing times. The land-claim suit aimed to restore a situation illegally altered by the Massachusetts legislature.

Taking the colonists' side. The fact that some South Sea Indians fought against Metacombet in King Philip's War does not prove that they were abandoning their Indian sovereignty or independence. More did not fight, and the motivations of those who did are a matter of speculation. There was nothing new about Indians making war on other Indians. Moreover they may have had little choice. Puritan authorities were on the warpath, and even "loyal" Indians were punished during and after the war by loss of lands and slavery.

As for the war against England, again we should be wary of imputing motives. The Mashpee Indians who served in the Revolutionary Army

may not have done so primarily as "American" patriots. They were, among other things, rebelling against the authority of their missionary Hawley, an ardent Tory. Moreover, as Indian status has evolved in the United States, it has been legally recognized that the privileges of citizenship (including the decision to unite in war against a common enemy) do not contradict other arrangements establishing special group identity and status. One can be fully a citizen and fully an Indian.

To expect Cape Cod Indians to hold themselves apart from the historical currents and conflicts of the dominant society would be to ask them to commit suicide. Survival in changing circumstances meant participation, wherever possible on their own terms. Staying separate or uninvolved would be to yield to the dangerous fantasies of protectors, like Hawley, who worked to keep the Mashpee pure—and under his tutelage. The inhabitants of Mashpee again and again resisted this restrictive "authenticity." The record confirms that they wanted integrity but never isolation.

Intermarriage. There was a good deal of racial mixing in Mashpee, but the exact extent is hard to determine, given the shifting categories of different censuses and doubts about how race was actually measured. Mashpee was a refuge for misfits, refugees, and marginal groups. At certain times a natural alliance against dominant white society formed between the town's Indian "survivors" and newly freed blacks. The crucial issue is whether the core Indian community absorbed the outsiders or were themselves absorbed in the American melting pot.

Historical evidence supports the former conclusion. Since whites and people of color who settled in Mashpee during the eighteenth and most of the nineteenth centuries could not become proprietors, this limited the influx; non-Indians remained a significant but small minority. Children with one Indian parent could become full community members. Intermarriage frequently occurred, and thus the purity of Indian blood was much diluted; but the legal and social structure consistently favored Indian identification. With land entailment and the maintenance of close kin ties among property holders a core was maintained. In any event blood is a debatable measure of identity, and to arrive at quotas for determining "tribal" status is always a problematic exercise. There are federally recognized tribes as mixed as the Mashpee, and organized Indian groups vary widely in the amount of traceable ancestry they actually require for membership.

Ethnohistorical studies show that in New England the mixing of different communities was common well before the Pilgrims' arrival. Adoption was frequent, and it was customary to capture and incorporate opponents in war. Indians were in this respect color blind. In colonial times a large number of white captives stayed with their captors, adopting Indian ways, some even becoming chiefs. Mashpee's later openness to outsiders—as long as the newcomers intermarried and conformed to Indian ways—was a continuation of an aboriginal tradition, not a loss of distinct identity.

In 1859, after more than a century of intermarriage and sporadic population growth (the dilution of Indian stock lamented by the missionary Hawley), a detailed report by the commissioner for Indian affairs, John Earle, offered a census of the "Marshpee Tribe" that included 371 "natives" and 32 "foreigners." The latter were people living on the land without proprietary rights and not lineal descendants of Indians. They were described as "Africans" and "colored." Only one "white" was listed. The names of "natives" listed on the 1859 census served in the trial as a benchmark of continuous "tribal" kinship ties.

Mashpee becomes a town. There is strong documentary evidence that most of the proprietors between 1834 and 1869 wanted to hold on to Mashpee's special land restrictions. Commissioner Earle asserts this in his report. "Progressives" such as Attaquin were more vocal, and their testimony thus receives more weight in the record than the less articulate majority who in 1869 voted decisively against township status. Spokesmen (note how few female voices are "heard" by history, although the role of women at the center of community life was undoubtedly crucial) such as Blind Joe Amos and his brother Daniel urged postponing the transition. They argued that most people in Mashpee were too "immature," not "ready" to dispose of their land individually. Give us just one more generation, Daniel Amos asked in the 1830s. His brother asked the same thing in the late 1860s. What do these arguments signify?

For those who see Mashpee's "development" and assimilation as inevitable, such statements require no interpretation: they simply show that even the traditionalists in Mashpee were ready eventually to give up their special status. But this is to assume the historical outcome. The Indian proprietors of Mashpee valued community integrity and possessed effective public and informal leadership. They had shown much strength and initiative in dealing with their various "protectors." The early histor-

ical record reveals a steady stream of petitions—1748, 1753, 1760—on behalf of the “poor Indians of Mashpee called the South Sea Indians” protesting abuses by the agents appointed to watch over them. More recently they had successfully asserted their autonomy against the missionaries Hawley and Fish. They were hardly “immature.” Yet throughout the mid-nineteenth century Mashpee proprietors temporized, hesitated in the face of an “inevitable” progress. Their ability to protect their community from the coercions and enticements of white society was evidently precious to them.

The modified plantation status they had secured in 1834 gave them a way of keeping collective control over land and immigration while not isolating the community from interaction with the surrounding society. Even the “allotment” of lands sanctioned at that time reproduced an aboriginal land arrangement. Parcels were traditionally given to families for exclusive use while ultimate collective ownership was maintained. (In 1834, moreover, three thousand acres were formally kept as common land.) Continuing entailments on land sales outside the community guaranteed a flexible nineteenth-century tribalism. In this context public arguments about Mashpee’s “immaturity” should be seen as ways of addressing an outside audience, the Massachusetts General Court, which still thought of the plantation as a ward of the state and which had already decided and again would arbitrarily decide its fate. It would be impolitic in addressing this body to say that Mashpee rejected full township status in the name of a distinctive vision of Indian community and citizenship. An argument for delay couched in paternalist rhetoric was more likely to succeed.

This interpretation of the debates in 1869 is at least as plausible as a literal reading of the recorded public utterances. Mashpee, like Indian communities throughout their recent history, was split between modernists and traditionalists. The traditionalists prevailed in the vote, but the modernists swayed the authorities. In changing Mashpee’s land entailment the legislature violated both simple democracy and the Federal Non-Intercourse Act of 1790. But even the forced change—although it ultimately brought much land into non-Indian hands—was not fatal. The Mashpee Indians used their new imposed status as they had their former one. For almost a century local government was kept firmly in the hands of a closely interrelated group of town officers. Mashpee remained “Cape Cod’s Indian Town.”

Assimilation. The Mashpee Indians did not “assimilate.” The term’s linear, either-or connotations cannot account for revivalism and for changes in the cultural and political climate between 1869 and 1960. There have been better and worse times in the United States to be publicly Indian. The late nineteenth and early twentieth centuries were among the worst. Government policy strongly favored tribal termination and the dispersal of collective lands. It was not until the late 1920s that the failure of allotment schemes was recognized and a “New Indian Policy” instituted at the BIA that favored tribal reorganization. If there is little evidence in the historical record of “tribal” life in Mashpee between 1869 and 1920, it is no surprise. Many groups all over the nation that would emerge later as tribes kept a low profile during these years. Mashpee seemed to be simply a sleepy town run by Indians, known for its good hunting and fishing. There was no political need or any wider context for them to display their Indianness in spectacular ways. Everyone knew who they were. A few attended the Carlisle Indian School in Pennsylvania during this period. Traditional myths and stories were told around kitchen tables; the piles of sticks at Mashpee’s “Indian taverns” or “sacrifice heaps” grew into enormous mounds; life close to the land went on.

The history of Indian tribes in the United States has been punctuated by revival movements. The 1920s saw the organization of the Wampanoag Nation, with various explicit tribal institutions including a supreme sachem and a renewed interest in more public Indian displays: dances, regalia, powwows, and the like. As in all revitalization movements “outside” influences from other Indian groups played a major role. Eben Quepish, who had once ridden with Buffalo Bill’s Wild West Show, taught traditional basket making and on demand donned his Sioux war bonnet. Individuals from Mashpee participated in nationally known groups such as the Thunderbird Indian Dancers. The effects of these revivals were largely cultural. There was little need for political reorganization in Mashpee, for the town was still governed by an unchallenged Indian majority. Political reorganization of a more explicit “tribal” structure would occur during a later revivalist period, the ferment spurred by the loss of town control after 1968.

Like other tribal groups the Mashpee have been opportunists, taking advantage of propitious historical contexts and undergoing external influences. They have survived as Indians because they have not conformed

to white stereotypes. They have lived since aboriginal times in a traditional locale. They have maintained their own hybrid faith. Over the centuries they have controlled the rate of intermarriage and have fought for the political autonomy of their community. Explicitly tribal political structures have sometimes been visible to the outside world, as in 1833, the 1920s, and the 1970s, but for the most part these structures have been informal. Often the "tribe" in Mashpee was simply people deciding things by consensus, in kitchens or at larger ad hoc gatherings where no records were kept. The chief in Mashpee, when there was one, shared authority with a variety of respected leaders, women and men. Politics was not hierarchical and did not need much in the way of institutional forms. The "tribe" in Mashpee was simply shared Indian kinship, place, history, and a long struggle for integrity without isolation. Sometimes the Baptist parish served as an arm of the tribe; so did the town government. When the Mashpee Wampanoag Tribal Council, Inc. filed suit in 1976, it did so as a new legal arm of the tribe.

Russell Peters

Dressed in a blue three-piece business suit, Russell Peters is indistinguishable from a half-dozen lawyers in the courtroom. He is clean-cut, and his speech is sprinkled with technocratic jargon: he says "utilize" instead of "use," he "provides input." Brother of the tribal medicine man, John Peters, the witness is president of the Mashpee Wampanoag Tribal Council, Inc.

After graduating from college, Peters did military service in Korea and Europe. He then held jobs in Philadelphia and Boston, living away from Mashpee for a total of eighteen years. In 1974 he left a job at Honeywell Laboratories and returned to Mashpee to work for the coalition for Eastern Native Americans (CENA), a private organization heavily dependent on federal funds. At CENA he earned \$14,000, a \$9,000 cut in salary from his former employment. The project soon ended, and he and others were out of work. In 1974 he participated in the founding of the Tribal Council, Inc., becoming its first president.

Currently Peters is project director of a television series on eastern Native Americans. As president of the Tribal Council, Inc., he receives no salary.

He testifies that the council is "the business arm of the tribe." It does

what the tribe should not do: "No self-respecting tribe would become incorporated."

He says that before bringing suit on behalf of the Mashpee Indians the council was primarily concerned with securing grants from the federal government, usually through CENA, such as the 1976 grant for aquafarming. Various employment programs have also been funded. Peters mentions a CENA Title 3 Indian project in which his input led to a distinction between Mashpee Wampanoag and Gay Head Wampanoag groups.

The Tribal Council, Inc., has helped with funds for clearing fifty-five acres acquired for tribal use. It has helped organize powwows and a clam bake to dedicate this first acquisition of tribal land. Peters testifies that two unity conferences have been held there in the last year and a half. At these events the council participates, but the leaders are the chief and the medicine man.

Currently the council is operating on a \$30,000 federal grant. Its headquarters is the parsonage. Peters says that he is serving a term as one of three members of the parish committee. The council pays \$50 or \$60 a month rent for its headquarters.

Peters admits that there have been conflicts with the chief, Earl Mills, problems of defining roles; but these are being worked out. Naturally, he says, we consulted with our chief in preparing the land-claim suit.

Since 1968 Peters has been licensed as a real estate broker, but he has sold only a couple of houses. His wife, also a broker, has sold six and a few parcels of land. Peters Enterprises, comprising Russell and three siblings, developed a fifteen-acre subdivision. Of the five houses built two are now occupied by Peters and his brother John, the other three by non-Indians. Peters Enterprises no longer functions.

The witness adds that, with his son, he is involved in the early experimental stages of developing a new product called "Reflecto-Shield."

Russell Peters testifies that he has several times run for public office—the planning board, the board of assessors—but without success.

Peters is asked about his percentage of Indian ancestry. He cannot say. He thinks that his father, Stephen Amos Peters, came to Mashpee sometime before he was born. His father had formerly lived in Boston and New Bedford and was involved in real estate. Some of his father's forebears may have lived on Martha's Vineyard. He cannot trace exactly the genealogy he claims goes back to 1859 in Mashpee. His mother, born in Georgia and raised in Boston, is not a member of the tribe. He knows very little about Blind Joe Amos, a possible relation through his father.

Q.: Had he been substantially involved with the plaintiff group before formation of the Tribal Council? A.: No, he had been absent for almost twenty years. Had he participated in powwows? Yes, by attending. Like hundreds of others? No. A Mashpee Indian participates differently. Is he a religious person? No. A traditionalist? Well, traditional values, yes. But not exhibited too much.

The witness is asked about a sworn deposition taken before the trial in which he had joked about having to wear a "\$200 hippie suit" Peters says he is not comfortable wearing Indian regalia.

History III

The following excerpt from the cross-examination of Ramona Peters by James St. Clair is quoted directly from the trial record.

Q.: All right. Now, you've told us that when you've been here, within the last year or two, as I understand it, you have organized a singing society comprised roughly of about eight people, is that right?

A.: I didn't say that I organized it.

Q.: Well, did you?

A.: Jointly with another singer.

Q.: Who is the other singer?

A.: Well, two other singers.

Q.: Who were the other singers?

A.: Tony Pollard and Earl Mills, Jr.

Q.: Tony Pollard is the same one that comes from New Bedford?

A.: Yes.

Q.: He is not a Mashpee, member of the Mashpee group, is he?

A.: He is now.

Q.: He is now?

A.: The Mashpee group, he lives there.

Q.: I'm sorry, I can't hear you.

A.: He lives there now, yes.

Q.: He lives there now. He lives in Mashpee, is that right?

A.: Yes.

Q.: Therefore, you say he's a member of the Mashpee group because he lives in Mashpee?

A.: Because you say Mashpee group.

Q.: All right. You understand that I'm referring to the plaintiffs in this case when I say the Mashpee group?

A.: No, I'm sorry.

The Court: There is a little bit of a problem here. Mr. St. Clair refuses to say "tribe," so he says "group," and we worked this out with Mr. Pocknett yesterday. What he refers to as a group is what you refer to as a tribe. Now, the question is, is the gentleman from New Bedford part of what you refer to as a tribe?

The Witness: No.

Q. (By Mr. St. Clair): Now, since you've been in Mashpee—let's see, you returned from Boston about when?

A.: I commuted to Boston.

Q.: But you spent your time in Boston, as I understand it.

A.: I worked it so I could work at home as practical experience, my latter part of the training program.

Q.: When you say this singing society that you, Mr. Pollard, and another person organized, when was that done, 1976?

A.: Yeah, thereabouts.

Q.: When you say you've been teaching young people, that is under thirty, how to make things such as totems, regalia, traditional clothing and giveaways, over what period of time have you been doing this?

A.: Oh, probably since I was 15, there in Mashpee.

Q.: No, but I understand you are now engaged in some sort of informal classes.

A.: Yes, I'm doing that now.

Q.: Is that right?

A.: Yes.

Q.: Teaching people to do these things, is that right?

A.: Yes.

Q.: You say about half of the members of the group that you would call a tribe have participated?

A.: In making things with me?

Q.: Yes.

A.: No, I don't believe I said half.

Q.: How many people attended these informal classes?

A.: If I include the making of a canoe, that would encompass nearly the entire tribe. They all participated in it.

Q.: Well, you testified that you were engaged in teaching people how to make drums, totems, regalia, traditional clothing, and giveaways?

A.: I don't think I said I teach them, I said we do this together.

Q.: I see. You also conduct a language class?

A.: Tony conducts the class, I attend.

Q.: You are learning, you are trying to learn the language, right?

A.: Yes.

Q.: That's been within the last year, is that so?

A.: That's true.

Q.: And then you have been conducting informal history classes?

A.: Yes.

Q.: In this last year?

A.: Yes, during this last year and other years as well.

Q.: Well, you told us, did you not, that you've been conducting history classes, and about half of the people have shown up?

A.: They are informal classes and not all done in one place. There is no formal thing about it, no students, I don't call them students, they are my people. We talk to each other, therefore, educational teaching happens.

Q.: You are in the role of a teacher, are you not?

A.: No. Sometimes—what do you mean "role of a teacher?"

Q.: Haven't you done a lot of study of history?

A.: I've done a lot of studying, and I've been taught, yes.

Q.: Didn't you study when you were in Boston, history?

A.: I studied museum training, museum—

Q.: Didn't you tell us you studied history?

A.: I told you I did research when I was here, yes.

Q.: All right. You studied history when you were in college as well, didn't you, too?

A.: Sometimes.

Q.: And you've done a lot of studying about the people in Mashpee recently, haven't you?

A.: Not recently, no.

Q.: Well, in any event, you were in effect telling others about what you had learned, isn't that right?

A.: That is correct.

Q.: That's because they hadn't known about it, isn't that right?

A.: Not in all cases, no.

Q.: Well, if they had already known about it, there would be no point in you telling them about it, would there?

A.: We like to talk about ourselves.

Q.: No, please. If you were telling them about it, it would be because they didn't know about it, isn't that right?

A.: Not at all times, no.

Q.: Well, most of the time, isn't that so? Can't you answer that question?

A.: For the young people, yes.

Q.: Sure. And if it hadn't been for you, they wouldn't have known anything about it, isn't that right?

A.: No.

Q.: I see. You were telling them something they already knew? Is that your testimony, Miss Peters?

A.: No.

Q.: And when you organized the singing society, there wasn't anything there before that, either, was there, of that nature?

A.: Not the same group, not the same songs.

Q.: And you had to teach the people how to make drums and totems and regalia because they didn't know how to make them, isn't that right?

A.: No.

Q.: Is it your testimony that they taught you?

A.: Some of them did, yes.

Q.: I see. You had gone taking courses out West in a program called the teepee program, right?

A.: Yes, sir.

Q.: And then you had gone upstate New York and spent how many months?

A.: Nine or ten.

Q.: Traveling around with groups up there, how long?

A.: Well, 10 months, 9 months.

Q.: Would it be unfair for me to suggest, Miss Peters, that you are an activist in the Indian movement?

A.: What kind of movement?

Q.: You are not aware of an Indian movement?

A.: There is an organization that has a name Indian Movement.

Q.: Is it unfair of me to ask you whether or not you are an activist in that group?

A.: Unfair?

Q.: Yes.

Mr. Tureen: Counsel has not made clear what group he is asking about.

The Court: You are objecting to the question?

Mr. Tureen: I am, your Honor.

The Court: The objection is sustained to the question in that form.

Q.: You have been very active in Indian affairs, have you not?

A.: Yes, I have.

Q.: Principally in the Far West?

A.: Well, I was there, but—

Q.: And in upstate New York?

A.: Indian affairs of what nature, any particular nature?

Q.: Didn't you tell us you traveled around with a number of Iroquois groups?

A.: I traveled around in a spiritual caravan.

Q.: And you have been personally in Mashpee then for about a year now, right?

A.: Yes.

Q.: Now, where you went to school out West in Oklahoma, I assume you told people there, the students there, where you came from?

A.: Yes.

Q.: And what group you said you were affiliated with?

A.: Yes.

Q.: And their knowledge of that group you said you were affiliated with was based on what you told them, wasn't it?

A.: And alumni.

Q.: Well, let's see, your mother went there?

A.: Yes, and Eleanor Sturgis went there.

Q.: How many people from Mashpee went to Bacone College to your knowledge, Junior College?

A.: I think five or six.

Q.: You, your mother, and who?

A.: Eleanor Sturgis.

Q.: Is she a relative of yours?

A.: No.

Q.: And who are the others, if you know?

A.: Robert Alan Maxim, Gail Marcellino Andras, Errol Hicks, and myself.

Q.: And now, before you went away to school—Incidentally, is that a private institution, if you know?

A.: Private?

Q.: Is it owned and operated by the state or federal government or is it owned and operated on a private basis, if you know?

A.: Private.

Q.: Do you know or are you guessing?

A.: I am not sure what they call themselves, Daughters of American Revolution, and some Christian organizations involved in it.

Q.: Let's see, the Daughters of the American Revolution is not an organization that you would associate with Indians, is it?

A.: In our history, yes.

Q.: Pardon?

A.: I said in our history, yes, Wampanoag history—Mashpee Wampanoag history.

Q.: Daughters of the American Revolution, in your understanding of what you say is your history, have an Indian origin?

A.: It is not our history, but we were involved with that revolution and 149 of our Mashpee people died in that fighting for your independence.

Q.: Fighting for what?

A.: Independence.

Q.: But it is your understanding that the Daughters of the American Revolution have an Indian origin or are in some way related to persons of Indian descent?

A.: They embrace me as a member.

Q.: Pardon?

A.: I said the women that I met that were involved with the Daughters of American Revolution felt a kinship with me because of the Mashpee Wampanoags that had died in the war.

Q.: All right. Now when you attended schools on Cape Cod...

The Experts

Expert testimony by professional anthropologists and historians played a major role in the Mashpee trial. The defense rested much of its case on the historical testimony of a single scholar, while the plaintiffs depended more on anthropologists. Indeed the trial can be seen as a struggle between history and anthropology.

The principal expert witnesses were, for the plaintiffs, James Axtell, a well-known ethno-historian, and Jack Campisi, an anthropologist who had written on the Oneida of New York State. They were seconded by William Sturtevant of the Smithsonian Institution and the Sioux scholar-activist Vine Deloria. Ann Borden Harding, a professional genealogist,

traced at least one ancestor from the 1859 "Marshpee Tribe" census to nearly all the currently claimed tribal members. The defense relied on a sociologist, Jean Guillemin, who had written an ethnography of Micmac Indians in Boston (Guillemin 1975), and Francis Hutchins, a historian. Trained in political science and the author of respected works on India, Hutchins had recently shifted his research to Native American history.

All of the experts gave detailed testimony whose fine points I cannot represent here. On the stand, as might be expected, many subtleties and qualifications were lost: lawyers pressed the scholars for sharp, unambiguous opinions. As in all long trials the sequence of testimony mattered. Axtell's testimony from early in the proceedings was only dimly remembered by the time Hutchins wrapped up the case for the defense.

I have already summarized a good deal of Axtell's testimony in the History II section and that of Hutchins in History I. Both experts based their testimony on essentially the same corpus of historical documents unearthed by research teams from both camps. The defense, advised by Hutchins, devoted major resources to historical research, building its positive case largely around the presentation of a "complete" documented record of Mashpee history.

The plaintiffs placed more reliance on the oral testimony of living Mashpee Indians and on anthropological accounts of Native American life in Mashpee and other comparable cultures. Campisi did a stint of ethnographic "fieldwork" on the Cape, but because of professional and budgetary constraints he was restricted to short periods of participant observation and interviewing. (His fieldwork was repeatedly parodied by St. Clair as "twenty-four days and nights in Mashpee.") There was occasional talk of issuing a subpoena for his field notes.) Campisi made no claims for the professional adequacy of his research; but as a result of what he had seen, heard, and read, as a professional anthropologist he felt able to assert that elements of an Indian way of life and a real if minimal tribal organization did exist in Mashpee.

Over strenuous defense objections the crucial question is posed:
Campisi: I believe they are a tribe.

Judge: Your belief is one thing. Is it your professional opinion as an anthropologist that they are a tribe?

Campisi: Yes.

What does a professional anthropologist mean by tribe? Campisi lists

five criteria: (1) a group of Indians, members by ascription—that is, by birth, (2) a kinship network, (3) a clear consciousness of kind—"we" versus "they," (4) a territory or homeland, and (5) a political leadership.

Campisi testifies that he asked Indians in Mashpee about their relatives and found evidence of "a very close interrelated network of kinsmen." He found "a lot of people who did not live in Mashpee but who retained a contact." Relatives from Falmouth, Marston Mills, Yarmouth, Hyannis, even from California regularly return to Mashpee for the powwow or other community events.

Campisi testifies that the Mashpee Baptist church is a force neither for nor against cohesion and a sense of Indian identity. The Indian community currently contains Christians and "traditionalists." While the latter probably form a numerical majority, the picture is complicated by syncretic relationships between the two belief systems. Asked to define the term syncretic he answers with a story about an old Oneida man, a devout Baptist, shaking the pumpkin at a water cure and explaining: "Didn't Jesus cure? Didn't he give us the power to cure?"

He explains that events such as the powwows or summer "homecoming" are ways of identifying Mashpees as a distinct group. Although the powwow caters to outsiders and tourists, it also operates on other more exclusive levels. Gatherings of this sort have a social function, drawing together the dispersed community, and also a spiritual, educational function (their pageants and ceremonies are concerned with moral subjects and Indian history; they teach reverence for the earth). Parts of the unity conferences are sacred and closed to outsiders. During his visits in Mashpee Campisi found evidence of a naming ceremony and planting and harvesting ceremonies (informal, at the family level). He testifies that the yearly herring run (which he has never observed personally) has traditional significance. It is an ecological, social, economic, calendrical event. In cross-examination it emerges that there are more than fifty herring runs in Massachusetts, with the taking of fish regulated in ways similar to those in Mashpee.

Campisi explains the division of labor between traditionalists (the chief and medicine man) and modernists (the Tribal Council, Inc.). He tells of other recognized tribes that do not speak an Indian language. He distinguishes "acculturation" from "assimilation." In the latter process a sense of separate identity is lost; but there are different levels of assimilation. Behavioral assimilation might include American Indians adopting Western clothing: in this domain Mashpee have adopted many traits.

"There is also the level of cultural assimilation. That is where you alter your value systems, your attitudes, where you adopt fully the belief system of an outside society. To an extent I don't think that has happened."

Judge: "I don't understand the phrase, 'To an extent it hasn't happened.' Does that mean to an extent it has happened?"

Campisi: "Well, I think in certain kinds of values it has happened. The value about a market economy: the Mashpees are involved in a market economy. They go to work, they buy, and they sell, and they own and disown, and that is not a cultural value we usually attach to aboriginal Indian tribes. So that is a value that has changed."

Judge: "What about the Baptist affiliation?"

Campisi: "In some ways religion has changed, they have affiliated religiously. But then the problem comes that they have colored the Baptist with value systems from the past, too, in certain aspects."

Judge: "What are you referring to when you say that?"

Campisi: "When you get individuals who are devoted Baptists who also give you viewpoints and value systems which are identifiable as Mashpee Indian or generically as Indian—"

Judge: "I haven't got that clear, yet. What are those value systems which you identify as being characteristically Indian which you say are retained even among those Mashpees who are Baptists?"

Campisi: "Well, the attitude with respect to the reverence for the earth, which is a large concept that Indian people deal with, that you use the earth and you return to the earth, that you don't waste, that you are put on the earth not to sustain yourself, and you owe an obligation to sustain the earth you are put on."

Judge: "I don't mean to be facetious about this, I'm trying to get it defined. Do you see a distinction between a Mashpee Baptist who holds these things, and, say, a Sierra Club Baptist who feels the same way; is there some difference in the attitude?"

Campisi: "From what I know about the Sierra Club, they are probably very similar."

Judge: "It's not unique?"

Campisi: "It might have been a borrowing from the Indian by the Sierra Club."

Judge: "Or vice versa."

Campisi: "Well, since they were here before the Sierra Club—"

Like all the experts at the trial Campisi is pressed to distinguish a tribe clearly from an ethnic group. How is it like and unlike the Amish,

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for example? First, a tribe has a traceable heritage to aboriginal ancestors. And second, it is strongly connected to land, to the fact of being indigenous.

(Here as elsewhere the trial's most conspicuous double bind surfaces. To sue for land the Mashpee must be a tribe; to be a tribe they must have land.)

Various questions successfully blur the distinction between tribe and ethnic group. Is Mashpee volunteer leadership different from that of an ethnic group? No.

Is anthropology a social science, Mr. Campisi? Why does Morton Fried, a respected authority, write that the concept of tribe is a myth invented in the late eighteenth century? What about the categories proposed by Elman Service in his book *Profiles in Anthropology*: band, tribe, chiefdom, state? Aren't the Mashpee more like a band? Don't some anthropological sources describe them as a band? Isn't Elman Service a respected anthropologist? What is your framework? Aren't you making up your definitions as you go along?

And aren't the Indian ceremonies you describe in Mashpee little more than casual gestures?

"What I think I'm trying to say, Mr. St. Clair, is that your gesture may be my rite."

Anthropological categories ricochet strangely around the courtroom. For example kinship: I suddenly notice that lawyers call their opposing colleagues "brother." And totemism: Judge Skinner gets caught up in a description of clan structure among the Oneida and its absence in Mashpee. Curious, he asks Campisi how the clan is related to the totem. A technical discussion ensues about totemic symbols and emblems in Iroquois and Algonquian societies. Suddenly some of us notice, just above Skinner's head on the wall of the federal courtroom, a large eagle.

An adversary system of justice, the need to make a clear case to counterbalance an opposing one, discourages opinions of a "yes, but," "it depends on how you look at it" kind. Experts on the stand were required to answer the question: Is there a tribe in Mashpee? Yes or no? On cross-examination, confronted with evidence that their disciplines had no rigorous, commonly accepted definitions of key categories such as tribe,

culture, and acculturation, the experts could only smile or wince and stick to their guns.³

Anthropologists speaking as scientific experts could not explain to the court that theirs was a historically limited and politically enmeshed discipline. They could not admit that many fieldworkers were now testifying in court on behalf of resurgent indigenous cultures as part of a post-colonial context governing how researchers from one society could represent or "speak for" another group. (There was a time when an anthropologist could casually refer to "my people", now indigenous groups can speak of "our anthropologist"!.) On the stand it was difficult to explain that the word *tribe* could mean different things to a scholar discussing a range of aboriginal systems, reservation Indians of the nineteenth century, and legally reorganized groups of the 1930s, or that the term was unlikely to mean the same thing for an author of evolutionist theories writing in the 1950s and an expert evaluating the aspirations of eastern Indian communities in the 1970s.

William Sturtevant's testimony compared various Native American tribes. Rather than asserting a sharp definition of the institution, he portrayed a field of family resemblances and local histories. He suggested that it would be simplistic and unjust to establish a list of essential "tribal" attributes against which individual cases could then be checked.⁴ On cross-examination this flexibility was made to appear as fuzziness or as an opportunistic, sliding set of criteria. Vine Deloria also testified to the variety of Native American institutions. Pressed to define *tribe* he answered: "As I use it and as I understand other Indian people using it, it

3. Lawrence Rosen provides a good overview of the anthropologist as expert witness (1977), discussing the constraints of the adversary system, ethical dilemmas, persistent problems of defining terms such as *tribe*, *band*, *nation*, and *chief*. Rosen suggests that the role of anthropologists in legal proceedings will probably increase, and he offers advice for scholars preparing themselves to enter a dangerous but necessary arena.

4. See Sturtevant 1983 for his reflections on the contestation of the concept of *tribe* at the trial. He suggests the need for a concrete, "polythetic" definition flexible enough to accommodate considerable local variation. This is supported by the legal scholar L. R. Weatherhead in his useful survey of the issue of tribal status in the courts (1980). Weatherhead refers to "tribe" in the ethnohistorical sense . . . not to a stock anthropological definition of 'tribe' but rather to the peculiar history of each Indian group. Thus, in speaking of reconciling the legal and ethnohistorical meanings of 'tribe,' we are talking about deriving a legal standard flexible enough to include the different social, political, and cultural arrangements of each American Indian group" (p. 5).

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means a group of people living pretty much in the same place who know who their relatives are. I think that's the basic way we look at things."

Q.: "Can a group be a tribe without a political organization?"

A.: "This is getting increasingly difficult to respond to, because we don't make the distinctions that you do in the Anglo world: religious, political, and everything else. What you are talking about is a group of people who know where they are. They may have to respond to outside pressures and adopt political structures, religious structures, or economic structures to deal with the outside society. There's no question I can answer if I have to begin to divide that community up and say we have these identifiable structures, the same way you do in the white man's world, because it's not the way I look at it" (A defense motion to strike the answer as nonresponsive is denied.)

The anthropologists on the stand were clearly more comfortable with a polymorphous notion of culture than with the political category of *tribe*. And given the court's unwillingness to establish a rigid initial definition, much, if not most, of the testimony at the trial concerned the status of Indian "culture," broadly conceived, in Mashpee. This cornerstone of the anthropological discipline proved to be vulnerable under cross-examination. Culture appeared to have no essential features. Neither language, religion, land, economics, nor any other key institution or custom was its *sine qua non*. It seemed to be a contingent mix of elements. At times the concept was purely differential: cultural integrity involved recognized boundaries; it required merely an acceptance by the group and its neighbors of a meaningful difference, a *we-they* distinction. But what if the difference were accepted at certain times and denied at others? And what if every element in the cultural *melange* were combined with or borrowed from external sources?

At times the experts seemed to suggest that culture was always acculturating. But then how much historical mix-and-match would be permissible before a certain organic unity were lost? Was the criterion a quantitative one? Or was there a reliable qualitative method for judging a culture's identity? Was it necessary to frequent the people in question? In anthropology coherent representations of a way of life are expected to be based on fieldwork. But would a year's fieldwork in Mashpee have produced a professional account significantly better than Cam-pisi's "twenty-four days and nights"? Doubtless yes; but would a

year be enough to gain the trust of all factions in the area, Indian and white?

Campisi's limited familiarity with life in Mashpee was far greater than that of the opposing anthropological expert. Jean Guillemin, a sociologist by training, did no credible fieldwork in Mashpee at all. She had little choice: only a few Indian people would speak with her. The bulk of her testimony was thus based on sworn depositions taken by order of the court before the trial from a random sample of fifty Mashpee residents. On this basis, along with the evidence of written documents, she had no hesitation in affirming that Mashpee Indians never had a distinct culture and never were a tribe. The Mashpee clearly differed from the Micmacs she had written about and knew firsthand. Micmacs had maintained continuous ties of kinship and political authority over the years; their language had survived; and they possessed a land base in the Canadian Maritime Provinces to which they regularly returned. In cross-examination Guillemin's research practice of "anthropology by deposition" was effectively attacked, while her definition of tribe was shown to be heavily weighted toward formal leadership and sovereignty, exactly the elements most lacking in Mashpee.

Guillemin defended the adversarial questions and answers of the pretrial depositions as a source of social scientific data. This led to rebuttals by experts on social science methodology, covering sampling techniques, investigator bias, the value of telephone surveys, and so on. She derived statistical tables based on the depositions showing a low level of familiarity with Indian myths and legends in the randomly sampled cross-section of Mashpee Indians. The plaintiffs challenged these as misleading pseudoscience. Judge Skinner finally allowed the tables to be shown to the jury, explaining to the lawyers at the side bar that he personally found them unconvincing but that he could not find a cogent reason for excluding these subjective conclusions while admitting Campisi's equally selective and subjective opinions. Interpretive and quantitative approaches to the study of society did battle in the courtroom, and neither came out looking rigorous.

Guillemin's inability to talk with Indians in Mashpee seriously undermined her credibility as an anthropological expert; but the difficulties and resistance she encountered raised a general doubt. How could a balanced, neutral cultural account ever be produced in a politically divided situation? Could any expert speak without bias in such a situation? Campisi was very clearly "positioned" in Mashpee, primarily associated

with one segment of the population. Unlike a historian, an anthropologist drawing on fieldwork cannot—even in theory—control all the available evidence. A community reckoning itself among possible futures is not a finite archive. Unlike a psychiatric expert, moreover, an anthropologist cannot claim to have met alone with his or her subject—a "culture."

William Sturtevant

William Sturtevant is curator of North American ethnology at the Smithsonian, editor of a detailed multivolume reference work on North American Indians. His comparative knowledge of the field is extensive. Sturtevant's most prolonged professional fieldwork was with the Florida Seminoles. He has not done research in Mashpee but since 1936 has known that there were Indians there because his parents had a summer house nearby in Woods Hole. On the stand he provides general concepts and comparative expertise on eastern Indian groups.

Sturtevant distinguishes ethnic neighborhoods from tribes. Beyond the fact that they are not Indian, ethnic neighborhoods are more permeable, he says. A Chicago Irishman can come to South Boston and be accepted as a community member. This may not apply with Native Americans—a Gay Head in Mashpee for example.

Sturtevant distinguishes acculturation from assimilation. The former involves the adoption of cultural traits, the borrowing of customs, it is a matter of degree. The latter refers to a relation between societies, the incorporation of one society into another. A completely assimilated society no longer exists. Acculturation, he says, has taken place among all Indian tribes.

The Mashpee powwow is an example of acculturation. The word and custom are old, but the rituals, pageants, dances, and so on are influenced by white and other Indian institutions.

Sturtevant testifies that acculturation is relatively unimportant in the determination of tribal status. There are other universally recognized tribes as acculturated as the Mashpee.

It is characteristic of life in many Indian tribes for members to stay away for extended periods while keeping up ties and returning to the center to retire.

Sturtevant introduces the concept of an "emerging tribe." The Seminoles, for example, split off from the Creeks, moved into Spanish Florida,

and became a new tribe. Tribes are not always aboriginal but can be created in changing historical circumstances. This seems to have occurred with the South Sea Indians in Mashpee.

In cross-examination the Mashpee-Seminole comparison is attacked.

Q.: The Seminoles fought three wars against the colonists and United States, the Mashpee didn't. So the two aren't really comparable, are they? A.: Well there are similarities, also many differences.

Sturtevant is confronted with an article he had written in 1968 surveying Indian communities of the eastern United States, including the Mashpee. He is asked, If they are a tribe now, why didn't you call them one then? Why did you use the word community throughout the article and not tribe? What is the difference? Haven't you changed your mind for the purposes of this case? Portions of the text are debated.

In his article Sturtevant claims that "a restrictive definition of Indian identity" has caused much suffering. Can he give an example? Yes: insisting that you can't be an Indian unless you are a member of a federally recognized tribe. Or saying you can't be an Indian if you have black ancestry. Or defining Indianness by "some fairly high degree of blood quantum."

On the question of how much Indian ancestry it is appropriate to require of a tribe Sturtevant cites the difficulty of determining exact genealogies earlier than the mid-nineteenth century. Degree of ancestry varies enormously among tribes. It is not a crucial determinant of identity. What counts is some descent from aboriginal Indians, a bounded (though permeable) social group, recognition of this group by self and others, and some autonomous political organization.

Judge Skinner imagines a lineage traced seven generations back yielding only one aboriginal Indian among hundreds of ancestors in that generation. If there are now about three thousand progeny traceable to this single Indian ancestor living together in a community, and if all of Sturtevant's other criteria are met, would that community be an Indian tribe? The expert ponders. "Yes." He smiles. "It would be an extremely interesting one."

Q. (St. Clair): "The South Sea Indians, where did they come from?"

A.: "Across the Bering Straits."

Q.: "Across the Bering Straits. Now that would be about—"

A.: "Twenty-five thousand B.C."

Q.: "And you consider that a helpful answer, do you, Doctor?"

A.: "Yes."

Q.: "Is it your view that the Mashpee constituted a tribe at the time of contact?"

A.: "I think it's unknowable."

Q.: "You don't know whether they were a tribe at the time of contact?"

A.: "I don't."

Courtroom Notes

Remember not to take what happens here as normal. Notice the abstractness of the rules and rituals, the way life in Mashpee appears in court through an odd refracting and enlarging lens.

Mashpee on the stand: nervous, tight, secretive, eager. In the audience: car pools of the faithful, selectmen in three-piece suits and stylish haircuts, young Indians in jewelry, headbands. Mashpee scattered on the courtroom benches, nodding to or looking coolly past one another, sharing private jokes. None of it is admissible evidence.

Earl Mills pulls his necklaces out from under his tie, but too eagerly. The act uncomfortably expresses what the trial is about: proving, making visible and theatrical something subtle, near the skin.

By late December the town of Mashpee alone is out \$350,000 in trial costs.

Indianness. The court clings to its saving abstraction—tribe—an Indian institution that never authentically existed, though not in the way the defense is arguing. "Tribe" is attached to Indians, a way of differentiating them, giving them both an identity and a political structure—things that can be dealt with.

In the courtroom: seeing and not seeing this tribe, guessing at life in Mashpee.

Theater of the courtroom. Dramatic poses struck by the attorneys: mock incredulity, anger, bathos. "Secret" conferences at the side bar. The actors' makeup is too blatant, their gestures too crude. St. Clair harps too

long on a point, but his audience is a more distant one than that currently watching. He plays to the jury members a month hence as they try to remember key points from the accumulated jumble of facts.

Before the session Judge Skinner, looking thin in shirtsleeves, sets out his books and papers on the bench. Then he leaves to make his robed "entrance."

Characters in the drama develop. The judge: benevolent, testy, distracted, curious. The different personalities on the attorneys' teams. The mysterious jury takes shape. By half time they have relaxed, chatting during consultations at the side bar, nudging one another when Skinner seems for an instant to be nodding off. In the elevator they joke about passing around colds.

Lawyers and spectators guess at the meaning of the jury's reactions, but there is little sign of consistent sympathy for either side. As the trial nears its end, these curiously passive actors become the center of attention.

There is a second privileged audience. Certain things are addressed to the jury, others to the record.

The jury looks on as oral testimony is made into a text. They are not themselves allowed to write, but court stenographers capture every word for the trial record. This document is used both to refresh the jurors' memories and as a basis for later appeals and judgments. While the court is a theater of dramatic gestures, it is also a machine for producing a permanent document.

Notice those small virtuoso performances, the quiet comings and goings of the stenographers (trained to hear not separate words but articulated sequences of sound).

An oral ("tribal"?) way of settling a dispute—by consensus. Everyone concerned talks, listens, argues for as long as necessary until a solution acceptable to all is found. Everyone's view of the "facts" shifts; some wear down others, compromise, cajole, berate, make trade-offs. If no consensus can be reached on a crucial matter, the group splits.

This process is preserved in an enclave of orality within the vast writing machine of the law: the jury room.

The jury's consensual procedure is used to settle either-or choices:

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guilty or not guilty, tribe or no tribe, sane or insane. The jury cannot propose concrete solutions. They decide that one side has won, the other lost. The adversary system is designed not to produce a judgment that will satisfy everyone or that may be renegotiated next year if the situation changes. It determines winners and losers, a decision on the permanent truth of the case.

In this sense the law reflects a logic of literacy, of the historical archive rather than of changing collective memory. To be successful the trial's result must endure the way a written text endures.

But doesn't the adversary system for producing recordable facts and durable judgments assume a mediating culture surrounding its theatrical confrontations? After all, the abstractly opposed viewpoints are resolved by the common sense of a jury of "peers." And what if this shared culture and its common sense assumptions are precisely what is at issue in the proceedings?

Indian life in Mashpee—something that was largely a set of "oral" relations, formed and reformed, remembered in new circumstances—had to be cast in permanent, "textual" form. The Indians on the stand had to convince a white Boston jury of their difference without conversation or—as happens in practice—living nearby, struggling to work out who is who. The plaintiffs had to represent themselves through scripted exchanges with attorneys, statements for the record, proceedings witnessed, passively and objectively, by jury members with no right to enter, to ask, or to venture an opinion.

Vignette: Judge Skinner telling Vicky Costa to think of herself "shouting across a field . . . to those people over there."

Richardson Jonas

Richardson Jonas is a Mashpee Indian, raised in town and now living and owning property there. He is fifty years old, powerfully built, dignified, opinionated, stubborn. In appearance Jonas is one of the more "Indian-looking" witnesses to take the stand. He was subpoenaed by the defense.

Jonas' wife is of Portuguese ancestry. They have four children. He believes that the majority of his forebears on his father's side were Indian.

On his mother's side (she came from North Carolina) he doesn't know. He can't specify percentages.

Jonas says he went to grade school in Mashpee and graduated from high school in Falmouth. He grew up with Russell Peters and Earl Mills, was active as a youth in the Baptist church but is not now a churchgoer.

From 1952 to 1954 he served in the U.S. Army Eighty-second Airborne Division and has been a leader of the local American Legion chapter. Jonas is a union construction worker for a New Bedford company. He has also served for more than ten years on the Mashpee Planning Board.

He recalls powwows in the early 1940s. They were held on private land, always with drumming and songs (none of them purely Mashpee in origin). There was a model Indian village, knickknacks for sale. He manned an American Legion food concession at the powwow.

He does not know of any specific Indian ceremonies for marriage, puberty, birth, or healing; but at the powwow, he recalls, "they had what appeared to be some sort of religious practices."

Jonas is not a member of the Tribal Council, Inc. He says that he was never invited to any tribal meetings before the incorporated body was formed. Although he is a friend of Earl Mills', he cannot say what Mills does as chief or how and when he was chosen by his predecessor, Elsworth Oakley. In Jonas' view the work of Mills and medicine man Russell Peters is "ceremonial."

He testifies that he has never heard the word tribe used as much as in recent years.

He is asked about his work on the town planning board. Jonas insists that although he has developed a piece of property, he is "not a developer." Currently he holds a few parcels of land, "possibly six." (The cross-examination shows that he has an interest in as many as twenty-one properties.) He vehemently denies feeling any resentment toward the lawsuit or the Tribal Council because of these land interests.

Jonas says that when he calls himself a Wampanoag Indian, he is referring to his Indian ancestry and not to any tribal affiliation. He does not know what a tribe is. When pressed he hazards a definition: "I would think that a tribe would be where you have a chief, and he's the governmental factor over those who serve under him."

On cross-examination the witness is confronted with conflicting statements from his deposition collected before the trial. At that time he defined tribe differently, largely in terms of Indian ancestry. He described the Baptist church as "the traditional religion of the Mashpee Wampanoags."

Jonas admits that the American Legion Post, which serves a wider area than Mashpee proper, is the only community organization he has been active in. He is proud of his Indian heritage and cares about the Wampanoag future. He has never participated in Indian education projects or in the Meeting House restoration or in the museum or in "Blind Joe Amos Day" or in any of the Tribal Council activities. He wasn't asked to help and didn't volunteer.

Are his children Indians? He won't say. Don't they participate in powwows? Yes. Does one of his daughters wear regalia? Yes.

Does he hold himself apart from the Indian community? (Vehemently) No.

Having been to more than twenty powwows, can he say who organized them? He does not know.

In 1975 at the meeting where fifty-five acres were transferred to the Mashpee "tribe" for "tribal purposes," did he vote for the article? Yes. The use of the term tribe made perfect sense to him then, didn't it? Why didn't he protest its use? Jonas says he really didn't give the matter much thought.

Q. (Shubow): "You have lived in Mashpee all your life, right?"

A.: "Yes, I have."

Q.: "Do you like being part of the community?"

A.: "Yes."

Q.: "Is it because you want to live as part of a Mashpee Wampanoag Indian community where your ancestors have lived?"

A.: "I don't think I, as you say that question, I don't think of it like that. I want to live there because my roots are here, and my ancestry is here. And I have property here and whatnot here that belonged to my ancestors way back in the 1800s."

The Record

The defense's crucial positive testimony was that of its historian, Francis Hutchins, who stayed on the stand for nearly five full days. His long, meticulous recitation of historical particulars summed up the case against the Tribal Council. Hutchins' manner on the stand was unhurried and thorough. He moved from document to document: deeds, petitions, laws, missionary correspondence, town records, state papers. He led the court again through the plague, the arrival of the Pilgrims, Richard Bourne's plantation scheme for the South Sea Indian remnant. He explained English proprietary law, described the early deeds drafted by

Bourne, recounted the transformation of the Mashpee Indians into Christian patriots. He documented their long struggle against second-class status, culminating in the community's final emergence as a township in 1869.

Hutchins' recitation was exhaustive, frequently tedious. He avoided dramatic gestures. For long periods he seemed little more than a conduit for the historical record. Unlike James Axtell, who was occasionally ironic about his own expertise and who openly raised the question of scholarly bias, Hutchins stuck to the facts. After so many clashing oral testimonies one had the sense of being on solid documentary ground. Everything rested on specific written evidence.

It was easy to forget that this historical narration was not a matter of walking on continuous solid ground but was more like jumping from one stone to the next. The documents relevant to life in Mashpee were often few and far between, biased in complex ways. The stones Hutchins landed on were slippery. One had to balance on them in a certain way. For example a missionary's "factual" record of how Indians had fallen from their proud ancestral past could reflect primarily his own discomfort at recent community changes that he was unable to control. A deed might record white more than Indian notions of ownership.

Hutchins' testimony—and his book (1979) based on it—leave no room for deep ambiguity. In his discourse the facts simply tell a story; they are not *made* to speak. Nor does the historian weigh the massive silences of the archives—Mashpee life as seen and lived by the vast majority of participants who did not write.

(Recall again that the presentation you are now reading is very different from the one in the courtroom. This is not a description. Unlike the two "histories" provided earlier, the defense's complete account of Mashpee's past was not followed immediately by a contradictory full account. Coming as it did at the end of the long trial, the weight and coherence of Hutchins' long history lesson could not be adequately countered.)

Hutchins moves ahead. The Wampanoag revivals of the 1920s appear in newspaper accounts and printed memoirs. Eben Queppish dons a Sioux war bonnet; Indian road shows are described; Nelson Simons, who attended the Carlisle Indian School, teaches basketry in Mashpee, falsely claiming descent from a Pequot chief who fought against the

whites. The Wampanoag nation is created with its offices of chief and medicine man.

Hutchins is asked if a Mashpee tribe might have used the town government after 1869 for its own purposes:

You reviewed the governmental structure of the town in the twenties and thirties? Yes. And there was no office in town called chief? That is correct.

The Verdict

When Hutchins finished, the defense rested its case. The two principal attorneys, St. Clair and Shubow, then delivered their summations. Each was a review of the trial's evidence in the form of a compelling story. Life in Mashpee over the centuries was given two heroic shapes and outcomes. Shubow recounted "an epic of survival and continuity." St. Clair celebrated a "slow but steady progress" toward "full participation" in American society.

Judge Skinner then gave his instructions. He reviewed the course of the trial, mentioning briefly each witness. He reminded the jurors that the burden of proof was with the plaintiffs; they must prove by preponderance of the evidence (but not, as in a criminal case, beyond a reasonable doubt) the existence of a tribe in Mashpee. In its decision the jury was free to rely on inference and circumstantial evidence. They should not be unduly swayed by the authority of experts but must trust their own common sense judgment of the witnesses' credibility, weighing how well their conclusions matched the evidence presented, observing their way of speaking, even their "body English."

The jurors would be asked to decide whether the proprietors of Mashpee were an Indian tribe on six dates pertinent to the land-claim suit: (1) July 22, 1790, the date of the first Federal Non-Intercourse Act; (2) March 31, 1834, when Mashpee achieved district status; (3) March 3, 1842, when land was partitioned to individuals; (4) June 23, 1869, the end of all alienation restraints; (5) May 28, 1870, incorporation of the Town of Mashpee; and (6) August 26, 1976, commencement of the present suit.

Skinner told the jurors that they would also be required to decide on a seventh question: Did a tribe in Mashpee exist *continuously* during the relevant historical period? If not, the plaintiffs would fail. Moreover the judge instructed the jurors that if at any time they found tribal status in

Mashpee to have been voluntarily abandoned, then it could not be revived. Once lost, it was lost for good.

The judge specified the legal definition of *tribe* that would apply, a matter about which there had been considerable suspense. Skinner opted for a relatively loose formula preferred by the plaintiffs and drawn from the case of *Montoya v. United States*, 1901: "A body of Indians of the same or similar race united in a community under one leadership or government and inhabiting a particular, though sometimes ill defined, territory." For the plaintiffs to win, all the key factors of race, territory, community, and leadership had to be continuously present.

Skinner reviewed the testimony related to key factors of the definition. **Race.** Exogamy and an influx of outsiders into a tribe is normal and necessary. The crucial question was whether the outsiders had been incorporated. If the jurors found that the group had Indian ancestry and had opted to focus on that ancestry rather than others, this could satisfy the racial requirement.

Territory. By holding land legally under an English proprietorship, Indians did not thereby become English. Without a reservation system, there was no other way to secure land in New England. The jury had to decide whether the Mashpee proprietors used the English arrangement to preserve their tribal form or whether they preferred the English way, and thus abandoned the old form. Skinner warned against the "Catch-22" of requiring a formal land base in this case, since that was precisely what the suit was about.

Community. An "Indian community," Skinner cautioned, is not just "a community of Indians." Boundaries are crucial and can be maintained in various ways. The jury had to decide on the basis of incomplete historical evidence whether Mashpee constituted a discrete community with a definite boundary. A community for the purposes of *Montoya* is something more than a neighborhood.

Leadership. At this small scale leadership can be informal. Sovereignty, a requirement raised by the defense, is inappropriate; but tribal leadership should have roots in a once-sovereign Indian political community. The jury was to rely on its common sense about participation and leadership, the balance of core enthusiasts and people peripheral to the group. There must be more than a coterie claiming to speak for an Indian community. There is no inherent contradiction between serving as a tribal leader and functioning in the wider society, for example as a

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businessman. Skinner pointed to the gaps in the historical record. Evidence of tribal leadership in Mashpee between 1870 and 1920 is particularly scarce.

The issue of tribal existence is complex, the judge concluded, but it is not more so than issues of sanity or criminal intent, which are routinely decided by juries. Skinner expressed confidence in this jury's ability to weigh the evidence, argue freely, persuade, and finally reach unanimity on the seven yes-or-no questions.

The jurors were sequestered, accompanied by a large pile of documents. After twenty-one hours of deliberation they emerged with a verdict:

Did the proprietors of Mashpee, together with their spouses and children, constitute an Indian tribe on any of the following dates:

July 22, 1790? No.	June 23, 1869? No.
March 31, 1834? Yes.	May 28, 1870? No.
March 3, 1842? Yes.	

Did the plaintiff groups, as identified by the plaintiffs' witnesses, constitute an Indian tribe as of August 26, 1976? No.

If the people living in Mashpee constituted an Indian tribe or nation on any of the dates prior to August 26, 1976, did they continuously exist as a tribe or nation from such date or dates up to and including August 26, 1976? No.

The verdict was a clear setback for the Indians' suit. But as a statement about their tribal history it was far from clear. Judge Skinner, after hearing arguments, finally decided that despite its ambiguity—the apparent emergence of a tribe in 1834—the jury's reply was a denial of the required tribal continuity. His dismissal of the suit has since been upheld on appeal.

The verdict remains, however, a curious and problematic outcome. We can only speculate on what happened in the jury room—the obscure chemistry of unanimity. What was done with the pile of historical documents during the twenty-one hours of discussion? Did the jurors search for a false precision? Asked to consider specific dates, did they conscientiously search the record for evidence of tribal institutions, for mention

of the word *tribe*? If so, their literalism was nonetheless different from that encouraged by the particularist history of the defense, for the jury found that Mashpee Indians were inconsistently a tribe. Violating the judge's instructions, they found that a tribe first did not, then did, then did not again exist in Mashpee. Historical particularism does not by itself yield coherent developments or stories. Entities appear and disappear in the record.

The jurors' response contained an element of subversion. In effect it suggested that the trial's questions had been wrongly posed. Asked to apply consistent criteria of tribal existence over three centuries of intense change and disruption, the jury did so and came up with an inconsistent verdict.

Afterthoughts

The court behaved like a philosopher who wanted to know positively whether a cat was on the mat in Mashpee. I found myself seeing a Cheshire cat—now a head, now a tail, eyes, ears, nothing at all, in various combinations. The Mashpee "tribe" had a way of going and coming; but something was persistently, if not continuously, there.

The testimony I heard convinced me that organized Indian life had been going on in Mashpee for the past 350 years. Moreover a significant revival and reinvention of tribal identity was clearly in process. I concluded that since the ability to act collectively as Indians is currently rebound up with tribal status, the Indians living in Mashpee and those who return regularly should be recognized as a "tribe."

Whether land improperly alienated after 1869 should be transferred to them, how much, and by what means was a separate issue. I was, and am, less clear on this matter. A wholesale transfer of property would in any case be politically unthinkable. Some negotiation and repurchase arrangement—such as that in Maine involving local, state, and federal governments—could eventually establish a tribal land base in some portion of Mashpee. But that, for the moment, is speculation. In the short run the outcome of the trial was a setback for Wampanoag tribal dynamism.

In Boston Federal Court, Cape Cod Indians could not be seen for what they were and are. Modern Indian lives—lived within and against the dominant culture and state—are not captured by categories like tribe or identity. The plaintiffs could not prevail in court because their dis-

course and that of their attorneys and experts was inevitably compromised. It was constrained not simply by the law, with its peculiar rules, but by powerful assumptions and categories underlying the common sense that supported the law.

Among the underlying assumptions and categories compromising the Indians' case three stand out: (1) the idea of cultural wholeness and structure, (2) the hierarchical distinction between oral and literate forms of knowledge, and (3) the narrative continuity of history and identity.

The idea of cultural wholeness and structure. Although the trial was formally about "tribal" status, its scope was significantly wider. The Montoya definition of tribe, featuring race, territory, community, and government, did not specifically mention "cultural" identity. The culture concept in its broad anthropological definition was still new in 1901; but the relatively loose Montoya definition reflected this emerging notion of a multifaceted, whole way of life, determined neither by biology nor politics. By 1978 the modern notion of culture was part of the trial's common sense.

In the courtroom an enormous amount of testimony from both sides debated the authenticity of Indian culture in Mashpee. Often this seemed to have become the crucial point of contention. Had the Mashpee lost their distinct way of life? Had they assimilated? In his summation for the plaintiffs Lawrence Shubow took time to define the term *culture* anthropologically, distinguishing it from the "ballet and top hat" conception. Closely paraphrasing E. B. Tylor's classic formula of 1871, he presented culture as a group's total body of behavior. He said that it included how people eat as well as how they think. Using the anthropological definition, he argued that ecology, the special feeling for hunting and fishing in Mashpee, the herring eaten every year, spitting on a stick at an "Indian tavern," these and many other unremarkable daily elements were integral parts of a whole, ongoing way of life.

It is easy to see why the plaintiffs focused on Indian culture in Mashpee. Culture, since it includes so much, was less easily disproven than tribal status. But even so broadly defined, the culture concept posed problems for the plaintiffs. It was too closely tied to assumptions of organic form and development. In the eighteenth century culture meant simply "a tending to natural growth." By the end of the nineteenth century the word could be applied not only to gardens and well-developed individuals but to whole societies. Whether it was the elitist singular ver-

sion of a Matthew Arnold or the plural, lower-case concept of an emerging ethnography, the term retained its bias toward wholeness, continuity, and growth. Indian culture in Mashpee might be made up of unexpected everyday elements, but it had in the last analysis to cohere, its elements fitting together like parts of a body. The culture concept accommodates internal diversity and an "organic" division of roles but not sharp contradictions, mutations, or emergences. It has difficulty with a medicine man who at one time feels a deep respect for Mother Earth and at another plans a radical real estate subdivision. It sees tribal "traditionalists" and "moderns" as representing aspects of a linear development, one looking back, the other forward. It cannot see them as contending or alternating futures.

Groups negotiating their identity in contexts of domination and exchange persist, patch themselves together in ways different from a living organism. A community, unlike a body, can lose a central "organ" and not die. All the critical elements of identity are in specific conditions and replaceable: language, land, blood, leadership, religion. Recognized, viable tribes exist in which any one or even most of these elements are missing, replaced, or largely transformed.

The idea of culture carries with it an expectation of roots, of a stable, territorialized existence. Weatherhead (1980:10-11) shows how the Montoya definition of tribe was designed to distinguish settled, peaceful Indian groups from mobile, marauding "bands." This political and military distinction of 1901 between tribe and band was debated again, in technical, anthropological terms, during the Mashpee trial. How rooted or settled should one expect "tribal" Native Americans to be—aboriginally, in specific contact periods, and now in highly mobile twentieth-century America? Common notions of culture persistently bias the answer toward rooting rather than travel.

Moreover the culture idea, tied as it is to assumptions about natural growth and life, does not tolerate radical breaks in historical continuity. Cultures, we often hear, "die." But how many cultures pronounced dead or dying by anthropologists and other authorities have, like Curtis' "vanishing race" or Africa's diverse Christians, found new ways to be different? Metaphors of continuity and "survival" do not account for complex historical processes of appropriation, compromise, subversion, masking, invention, and revival. These processes inform the activity of a people not living alone but "reckoning itself among the nations." The Indians at Mashpee made and remade themselves through specific alliances, ne-

gotiations, and struggles. It is just as problematic to say that their way of life "survived" as to say that it "died" and was "reborn."

The related institutions of culture and tribe are historical inventions, tendentious and changing. They do not designate stable realities that exist aboriginally "prior to" the colonial clash of societies and powerful representations. The history of Mashpee is not one of unbroken tribal institutions or cultural traditions. It is a long, relational struggle to maintain and recreate identities that began when an English-speaking Indian traveler, Squanto, greeted the Pilgrims at Plymouth. The struggle was still going on three-and-a-half centuries later in Boston Federal Court, and it continues as the "Mashpee Tribe" prepares a new petition, this time for recognition from the Department of the Interior.⁵

The hierarchical distinction between oral and literate. The Mashpee trial was a contest between oral and literate forms of knowledge. In the end the written archive had more value than the evidence of oral tradition, the memories of witnesses, and the intersubjective practice of fieldwork. In the courtroom how could one give value to an undocumented "tribal" life largely invisible (or unheard) in the surviving record?

As the trial progressed the disjuncture of oral and literate modes sharpened. The proceedings had been theatrical, full of contending voices and personalities, but they ended with a historian's methodical recitation of particulars. In the early portions of the trial the jurors had been asked to piece together and imagine a tribal life that showed recurring vitality but no unimpeachable essence or institutional core. Indian-ness in Mashpee often seemed improvised, ad hoc. The jury heard many wishful, incomplete memories of childhood events and debatable versions of recent happenings. In what may be called the "oral-ethnographic" parts of the trial many—too many—voices contended, in

5. In the preceding discussion I am not suggesting that the ethnographic categories of culture and tribe, however compromised, should be subsumed in the recent and more mobile discourse of ethnicity. Ethnicity, as usually conceived, is a weak conception of culture suitable for organizing diversity within the pluralist state. The institution of tribe, still trailing clouds of aboriginal sovereignty and reminiscent of its eighteenth-century synonym *nation*, is less easily integrated into the modern multiethnic, multiracial state. The resurgent cultural-political identity asserted by Indian tribes is more subversive than that of Irish-Americans or Italian-Americans: Native Americans claim to be both full citizens of the United States and radically outside it.

its "documentary" ending too few. A historian's seamless monologue was followed by attorneys' highly composed summations, two fully documented stories. There was no way to give voice to the silences in these histories, to choose the unrecorded.

The court imposed a literalist epistemology. Both sides searched the historical records for the presence or absence of the word and institution tribe. In this epistemology Indian identity could not be a real yet essentially contested phenomenon. It had to exist or not exist as an objective documentary fact persisting through time. Yet oral societies—or more accurately oral domains within a dominant literacy—leave only sporadic and misleading traces. Most of what is central to their existence is never written. Thus until recently nearly everything most characteristically Indian in Mashpee would have gone unrecorded. The surviving facts are largely the records of missionaries, government agents, outsiders. In the rare instances when Indians wrote—petitions, deeds, letters of complaint—it was to address white authorities and legal structures. Their voices were adapted to an imposed context. The same is true even in the rare cases in which a range of local voices was recorded, for example the public debates of 1869 on township status.

History feeds on what finds its way into a limited textual record. A historian needs constant skepticism and a willingness to read imaginatively, "against" the sources, to divine what is not represented in the accumulated selection of the archive. Ultimately, however, even the most imaginative history is tied to standards of textual proof. Anthropology, although it is also deeply formed and empowered by writing, remains closer to orality. Fieldwork—interested people talking with and being interpreted by an interested observer—cannot claim to be "documentary" in the way history can. For even though the origin of evidence in an archive may be just as circumstantial and subjective as that in a field journal, it enjoys a different value: archival data has been found, not produced, by a scholar using it "after the fact."

The distinction between historical and ethnographic practices depends on that between literate and oral modes of knowledge. History is thought to rest on past—documentary, archival—selections of texts. Ethnography is based on present—oral, experiential, observational—evidence. Although many historians and ethnographers are currently working to attenuate, even erase this opposition, it runs deeper than a mere disciplinary division of labor, for it resonates with the established (some would say metaphysical) dichotomy of oral and literate worlds as well as

with the pervasive habit in the West of sharply distinguishing synchronic from diachronic, structure from change. As Marshall Sahlins (1985) has argued, these assumptions keep us from seeing how collective structures, tribal or cultural, reproduce themselves historically by risking themselves in novel conditions. Their wholeness is as much a matter of reinvention and encounter as it is of continuity and survival.

The narrative continuity of history and identity. Judge Skinner instructed the jury to decide whether the Indians of Mashpee had *continuously* constituted a tribe prior to filing suit in 1976. For the land claim to go forward the same tribal group had to have existed, without radical interruption, from at least the eighteenth century. The court's common sense was that the plaintiffs' identity must be demonstrated as an unbroken narrative, whether of survival or change. Both attorneys in their summations duly complied.

St. Clair's story of a long struggle for participation in plural American society and Shubow's "epic of survival and continuity" had in common a linear teleology. Both ruled out the possibility of a group existing discontinuously, keeping open multiple paths, being both Indian and American.

An either-or logic applied. St. Clair argued that there had never been a tribe in Mashpee, only individual Indian Americans who had repeatedly opted for white society. His story of progress toward citizenship assumed a steady movement away from native tradition. Identity as an American meant giving up a strong claim to tribal political integrity in favor of ethnic status within a national whole. Life as an American meant death as an Indian. Conversely Shubow's Mashpee had "survived" as a living tribe and culture from aboriginal times; but the historical record often contradicted his claim, and he sometimes strained to assert continuity. The plaintiffs could not admit that Indians in Mashpee had lost, even voluntarily abandoned, crucial aspects of their tradition while at the same time pointing to evidence over the centuries of reinvented "Indianness." They could not show tribal institutions as relational and political, coming and going in response to changing federal and state policies and the surrounding ideological climate. An identity could not die and come back to life. To recreate a culture that had been lost was, by definition of the court, inauthentic.

But is any part of a tradition "lost" if it can be remembered, even

generations later, caught up in a present dynamism and made to symbolize a possible future?

The Mashpee were trapped by the stories that could be told about them. In this trial "the facts" did not speak for themselves. Tribal life had to be emplotted, told as a coherent narrative. In fact only a few basic stories are told, over and over, about Native Americans and other "tribal" peoples. These societies are always either dying or surviving, assimilating or resisting. Caught between a local past and a global future, they either hold on to their separateness or "enter the modern world." The latter entry—tragic or triumphant—is always a step toward a global future defined by technological progress, national and international cultural relations. Are there other possible stories?

Until recently the "history" accorded to tribal peoples has always been a Western history. They may refuse it, embrace it, be devastated by it, changed by it. But the familiar paths of tribal death, survival, assimilation, or resistance do not catch the specific ambivalences of life in places like Mashpee over four centuries of defeat, renewal, political negotiation, and cultural innovation. Moreover most societies that suddenly "enter the modern world" have already been in touch with it for centuries.

The Mashpee trial seemed to reveal people who were sometimes separate and "Indian," sometimes assimilated and "American." Their history was a series of cultural and political transactions, not all-or-nothing conversions or resistances.⁶ Indians in Mashpee lived and acted between cultures in a series of ad hoc engagements. No one in Boston Federal Court, expert or layperson, stood at the end point of this historical series, even though the stories of continuity and change they told implied that they did. These stories and the trial itself were episodes, turns in the ongoing engagement. Seen from a standpoint not of finality (survival or assimilation) but of emergence, Indian life in Mashpee would not flow in a single current.

6. William Simmons' collection and analysis of New England Indian folklore, *Spirit of the New England Tribes* (1986), not available at the time of the trial, provides much evidence for the productive interpenetration of Christian and Native American sources. It shows how Indian "tradition" was maintained through appropriation and interaction, transmitted both orally and in writing. Simmons provides background on the Mashpee Wampanoag culture hero, the giant Maushop, who, in Ramona Peters' testimony, unexpectedly turned into Moby Dick. The plaintiffs' lawyers and experts made little appeal to continuing Indian folklore, perhaps because of its evident implication in the religious traditions and fairytales of surrounding ethnic groups.

Interpreting the direction or meaning of the historical "record" always depends on present possibilities. When the future is open, so is the meaning of the past. Did Indian religion or tribal institutions disappear in the late nineteenth century? Or did they go underground? In a present context of serious revival they went underground; otherwise they disappeared. No continuous narrative or clear outcome accounts for Mashpee's deeply contested identity and direction. Nor can a single development weave together the branching paths of its past, the dead ends and hesitations that, with a newly conceived future, suddenly become pre-figurations.

(Hesitations. In 1869 Blind Joe Amos and the majority of Mashpee proprietors agreed that they were not yet ready to become citizens of Massachusetts, separate entrepreneurs with individual control over their lands. They held back, declining a "progressive" step imposed by the legislature. Was it from backwardness? Confusion? Fear? Or something else: an alternate vision? A different voice?

What Susan Howe (1985) has written about a woman—Emily Dickinson, working during the same decade from another place of New England "isolation"—echoes strangely the Indian predicament: the problem of finding a different way through capitalist America.

HESTITUTE from the Latin, meaning to stick. Stammer. To hold back in doubt, have difficulty speaking. "He may pause but he must not hesitate"—Ruskin. Hesitation circled back and surrounded everyone in that confident age of aggressive industrial expansion and brutal Empire building. Hesitation and Separation. The Civil War had split America in two. He might pause, She hesitated. Sexual, racial, and geographical separation are at the heart of Definition. Tragic and eternal dichotomy—if we concern ourselves with the deepest Reality, is this world of the imagination the same for men and women? What voice when we hesitate and are silent is moving to meet us? (p. 22)

In 1869 Joe Amos and the others did not go on record as resisting full citizenship. Separation and dichotomy were not their agenda: they were already more than half-caught up in a new America. It is important to distinguish hesitation from resistance, for hesitation need not oppose or acquiesce in the dominant course. It can be an alert waiting, thinking, anticipating of historical possibilities. Along with the history of resistances we need a history of hesitations.)

Stories of cultural contact and change have been structured by a pervasive dichotomy: absorption by the other or resistance to the other. A fear of lost identity, a Puritan taboo on mixing beliefs and bodies, hangs over the process. Yet what if identity is conceived not as a boundary to be maintained but as a nexus of relations and transactions actively engaging a subject? The story or stories of interaction must then be more complex, less linear and teleological. What changes when the subject of "history" is no longer Western? How do stories of contact, resistance, and assimilation appear from the standpoint of groups in which exchange rather than identity is the fundamental value to be sustained? Events are always mediated by local cultural structures. By focusing on the peripheral places, the neglected "islands of history," in Sahlin's words, "we . . . multiply our conceptions of history by the diversity of structures. Suddenly there are all kinds of new things to consider" (1985:72).

In the diversity of local histories—like that of Mashpee—we find distinctive processes and directions. The channeled, inevitable flow of events begins to loop, waver, and fork. In 1830, for example, was the proprietary status of the Mashpee Indians an eroded "survival" from archaic English law, a social form destined to disappear? Or by the nineteenth century had it become a specific invention, a novel way to live on Indian land in modern America, a possible future? Neither story is false; both can be amply documented from the historical record. To say that the strange "tribal" integrity of the Mashpee Plantation was destined to disappear is to accept the history of the victors. But the suit filed a century later was an attempt to reopen this foregone conclusion. Mashpee's semiautonomous plantation, a specific mix of individual citizenship and collective entailment, now appeared not as a historical dead end but as a precursor of reinvented tribalism. No return to a pure Wampanoag tradition was at issue, but rather a reinterpretation of Mashpee's contested history in order to act—with other Indian groups—powerfully, in an impure present-becoming-future.

Whatever the trial's outcome "tribal" life had once again become powerful in Mashpee. Only a literal, backward-looking sense of authenticity (one no group would willingly apply to itself, only to others) could deny this emergent reality. The Wampanoag Supreme Sachem, Elsworth Oakley, commented after the verdict: "How can a white majority decide on whether we are a tribe? We know who we are."

The future of Native American life on Cape Cod after the setback in court is uncertain.

The years immediately following the verdict were marked by disarray in Mashpee. An anticipated petition to the Department of the Interior for tribal status was slow to emerge. During this period the Bureau of Indian Affairs standardized its procedure for recognition claims, following criteria similar to those required by the court in *Mashpee v. New Seabury et al.* (Weatherhead 1980:17). The Indians in Mashpee watched with misgivings the progress of a petition by their fellow Wampanoags at Gay Head. In 1986 the petition was turned down in a preliminary finding. Government experts cited an insufficient degree of community specificity over the years and a loss of tribal political authority after Gay Head became a township in 1870. Gay Head's history was similar to Mashpee's.

Appealing the preliminary finding, the Native American Rights Fund presented additional evidence, compiled by Jack Campisi, of continuing social networks among Gay Head Indians and of a line of tribal authority after 1870. On February 8, 1987, for the first time ever the Bureau of Indian Affairs reversed a negative preliminary finding. The Gay Head Wampanoags were given full tribal recognition.

Quotations from a Native American Rights Fund press release:

Henry Sockbeson, the Penobscot attorney representing the tribe: "This decision means that the Gay Head will be able to settle their land claim within a few months. Under the terms of the settlement the Tribe will receive approximately 250 acres of land that can be developed. We anticipate that they will use it for housing and economic development."

Gladys Widdiss, chairperson of the Wampanoag Tribal Council of Gay Head, Inc.: "I am delighted. This now means that the Tribe can function in a formally recognized manner. Our status as a tribe can no longer be in doubt. Recognition means that our survival as a tribe for generations to come is assured."

Jack Campisi and Native American Rights Fund attorneys are working on Mashpee's petition.

Two Snapshots

Mrs. Pells is an Indian born in Mashpee. She is seventy-one years old, now living eighteen miles away near the Bourne Bridge, and is an active member of the Tribal Council, Inc. She is dignified, slow-speaking.

She shows an enlarged photograph of her grandmother, Rebecca Hammond, Blind Joe Amos' daughter.

She has been a member of the Mashpee Wampanoag tribe "since birth."

She testifies that she lived in New York between 1928 and 1972, where she was active in a number of Native American organizations. During the 1940s she was secretary of the "American Indian Thunderbird Dancers." Most of the dancers did not originate in Massachusetts, and only one of the dancers was from Cape Cod.



"Chief" Mills is Earl Mills's teenage son. He says he knows he is an Indian because his father told him. He likes to hunt and hang around with his cousins in Mashpee. A champion drummer, he participates often in Native American gatherings around New England. Recently he was among the young people arrested at a camping retreat held to promote Indian consciousness on the fifty-five acres of tribal land in Mashpee.

Chief Mills is bushy-haired, dressed like an ordinary teenager. He wears some jewelry.

Q. (St. Clair): "I notice you have a headband and some regalia?"

A.: "Yes."

Q.: "How long have you been wearing such clothing?"

A.: "Oh, I have been wearing a headband as long as needed, when my hair was long enough."

Q.: "How long has that been?"

Judge: "That which you have on there, is that an Indian headband?"

A.: "It is a headband."

Judge: "It has some resemblance to an ordinary red bandanna?"

A.: "Right, that's what the material is, yes."

Judge: "A bandanna you buy in the store and fold up in that manner?"

A.: "Yes."