

General Information

Private or Public Statement? - Private

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Previous Statement? N/A

Statement Gatherer: Charlotte Bacon

Support Person: N/A

Additional Individuals Present: N/A

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Transcriber's Note:

This is an anonymous statement. Any redactions from the transcript and alterations to the audio have been done at the request of the statement provider in an effort to protect his/ her identity.

Recording

CB: And I just want to make sure it's going. Yep, everything is up. Um, I just talk into the recorder and let them know who's here.

A: Yeah, yeah, sure.

CB: And do my thing. So this is Charlotte Bacon, and I'm with [NAME REDACTED] and she is going to be providing a statement here in Brunswick on December 5, 2014. It's file number ME-201411-00133. And I have told [NAME REDACTED] that I'm a mandated reporter and that we discuss anything that makes us fear, makes me fear that there is a child or an elder at risk, I will need to report that, or if I fear that she is at risk, I will report that. We're

going to begin this statement now, and I will start with some of the first questions. And this is now much more informal. We don't have to follow the script quite so much.

A: Okay. All right.

CB: We can really move the way you would like to move through it.

A: Okay, sure.

CB: But because you've had so many different roles, [NAME REDACTED], in, um, connection to child welfare, in connection to legal issues that surround child welfare, we did think it was important to include your experiences, even as an informal foster parent and what that was all about. So can you talk to us a little bit about that?

A: Sure. I, I was a, I was an informally, I, um, became a foster parent with a Tribal member whom I was living with and partnered with. So initially we had one baby who was actually related to this person and whose mother could not care for him and then, um, and that was pretty much right off the bat within the first couple of months. At the time they had, um, particular housing that, the housing authority had developed, um, mother child housing on the reservation. It was one of its programs, and so there were some apartments already set up. They were brand new apartments for — And I don't think there were any fathers, single fathers, so it ended up being all single mothers. But that was not for some of the kids it was not working out well. And I say kids, meaning the parents, who were oftentimes 18, 19. This group of girls were in, were in these apartments, and so we ended up with two of those babies. And those babies, I think, had a distant relation. So, um, you know, my experience was very good. It was easy to be a foster parent to these kids because I knew their, I knew their mothers. And when we were working, one of the cousins, who was a teenager, would come over and take care of the kids. And I'd come home at lunchtime and see them. One was fairly short-term. I'm gonna say maybe six months. Um, and we probably got her when she was about nine months because she was walking by the time she went to live with a different family member. So. But the other one we had for two-and-a-half years until I moved. And I actually was going to bring him with me, um, when I moved off the reservation and, um, at the last minute another relative stepped in, uh, and wanted to keep him there which made, made sense to me.

CB: And what years were these?

A: '94 to '96. Middle of '96. So, and I would say the second child was probably '95. Yeah, '95 was the other, you know, nine-month old to toddler time period that we had her. And then there were a few weekends where we did respite for — There was a Tribal member who chronically lost her children. And, um, she had two. She had a teenage boy and a tween. So, you know, 12 and 14. And he had been, you know, at the time that I was there, Sipayik used state services like Hinkley. So, a lot of the teenagers would go to Hinkley, and they'd either have success there or they wouldn't. And the young man who was the 14-year-old, I think had been discharged from Hinkley for his behavior. And so, he'd gone back to his mother. And, you know, that was part of the experience is that when the state couldn't 'deal' with particularly the teenagers, they would just discharge them from foster care back to their



parents even though at least some of what I observed was that the parent was not equipped to, um, parent these children. Both because of the parent's struggles, usually with, uh, drugs and alcohol and mental health. That particular parent, for instance, and I think as a result of the parent's drinking and drugging, you know, there was some fetal alcohol. There was also just some attachment-related behaviors because, you know, those two particular teenagers that I'm thinking of had been in and out of foster care so many times. And I don't, you know, I don't think they had a good foundation for building relationships with people. And, you know, so I don't know whatever happened to those kids.

CB: Right.

A: But mostly it was a positive experience, and I enjoyed doing it and the supports were there. You know, it's, I think it's much easier, having been on the other side of foster care in terms of the state system and seeing what foster parents go through, I think there is a lot more supports on reservation. And there were then, but they were informal.

CB: Right.

A: You know, you just call other community members.

CB: Right. And it wasn't about licensing and it wasn't about anything to do with that, it was about —

A: Yeah, I don't recall going through a licensing.

CB: Open arms and —

A: Yeah, I don't recall going through a licensing process. There were, you know, there was a child welfare director and, uh, his wife had something to do with licensing but if, if we were licensed, I don't, I imagine, you know, we just said, 'Yeah, we'll do it,' and we signed some paperwork.

CB: Right.

A: It's, you know, it's not at all like state licensing. So, and hopefully it's become more formalized at this point. I mean that's probably not an ideal way to do it but, but, you know, so.

CB: But the kids were happy and you had a great time?

A: Oh sure, yeah, they could see their parents, you know, whenever.

CB: Exactly.

A: So very much open door that way. And it's easier to do re-unification that way.

CB: Absolutely.

A: Um. So.

CB: You were living right next to the kin.

A: Yeah, yeah, and you have a sense, you know, unlike if you're a state foster parent, unless you already had some relationship, you have a sense of what the parent, um, is like and whether that parent is safe to be in your home to visit with her child, you know.

CB: Yeah. It's a more developed, more fully nuanced relationship.

A: That's right. So the mother of the two teenagers wasn't always safe.

CB: Right.

A: And so, but wasn't really interested in seeing her kids, necessarily. She'd stop me on the side of the road and say, you know, 'How are they doing?' I'd say, you know, 'Good.' We, I mean I remember one time we made cookies. 'Yeah, we just made some cookies and, you know, I'll run some down to you,' you know, don't, well, you know, and I remember her saying —

(Charlotte's phone buzzes)

CB: Sorry.

A: Yep, no problem. 'I don't want them to know I'm here.' You know, I feel like she did some traveling, so that kind of thing. So that's all we, that was, you know, sad.

CB: Yeah. And, I think you may have already discussed this but a time when you felt less positive. You just sort of, there were these moments with the teenage kids where the mother was obviously, it was just hard to watch or was hard to accept that that was going on.

A: Yeah, and just watching the chronic, the chronicity of the, the system, you know. There were I would say a group of families or parents who lost, kept losing their children, and necessarily so. So those children were in and out of foster care. The younger ones mostly on reservation. The older ones both, um, off and on reservation. And that, I never knew what the fix was for those families.

CB: Right.

A: You know, it seemed like some families got better supports than others from the child welfare system, the Tribal child welfare system.

CB: And —

A: So that was disappointing.

CB: And why do you think some people got better treatment than others? Do you have a sense of why that happened?

A: You know, honestly, I felt like it was the, if the child welfare director, who was non-Indian, liked a family better than he liked other families, that seemed to, you know, if you sucked up to him, for lack of a better word.

CB: Right.

A: That seemed to be, and that certainly was the community sentiment that I observed. You know, so you wanted to keep, families wanted to keep, uh, families in crisis or struggling wanted to keep him on their good side.

CB: Interesting.

A: Would just do that.

CB: Interesting. Are you willing to share his name? I'm sure we can find it, but.

A: Don Amond.

CB: Don Amond. And that leads right into the next question. Is, did you receive any support from Tribal child welfare, DHS, or other service providers during your time?

A: We did. We did and, again, I, you know, again because of, you know, that I was a professional.

CB: Yeah.

A: I think that because I was, although I'm Indian, I was a non-Tribal member, you know, so I didn't come with the, you know, any kind of perhaps bad blood that may have happened between other people in that office, you know. Just the same thing that happens in small towns.

CB: Sure.

A: And, uh, so.

CB: And it was generally positive?

A: Oh, generally positive, absolutely. Yeah.

CB: That's really great. Um, is there anything else you would have wanted for the kids that were in your care at the time? Anything else you would have done?

A: Probably just more some, more of their own family supports. What we mentioned before. So.

CB: Yeah. Anything else you want to add about foster parent experiences? Are you in touch with any of the kids? Do you know them?

A: No, I'm not in touch with them. You know, the babies I didn't, particularly the last one, I thought it would be more disruptive to him, um, because I had moved away. So, and it was more complicated than he needed to be involved in. I am aware of what he's doing and those kinds of things, and I try to keep aware from a distance.

CB: Right.

A: Yeah, so.

CB: And moving on into the other roles that you've had, [NAME REDACTED], experience as an attorney and, um, these are more general. We can go into specifics about the experiences both a law clerk and working for Pinetree Legal, but if you want to describe a bit of the history of your work with, um, around Tribal issues as an attorney up in this part of the world? And how many child welfare cases did you work with? Um, how many years did you work on child welfare? How often did it come up?

A: I just, sure, well, okay. Initially I worked on child welfare cases, um, as a solo practitioner in Washington County and my office was at Sipayik. And so I had clients. Almost all of my clients were Tribal members, Passamaquoddy Tribal members, uh, for child welfare cases. Some of them, I had a couple of notable clients. One was a grandmother and her husband. And so, she was non-Indian, but her husband was Indian. And they were my clients for a child welfare proceeding that was back and forth between, um, the York County District Court system and the Tribal court at Sipayik. And so, that was a long-time case and an interesting one because their son was the Tribal member. The mother was non-Tribal member, and this toddler was going back and forth between Sanford and the reservation as custody kept getting returned back to mom. And then the grandmother and grandfather at Sipayik would, we would get custody to them, so it was just, that was kind of messy. And that case spanned more than two years. And then I —

CB: What year was that? In the nineties?



A: Yeah, '94 to '96. I was only at Sipayik '92 to '96. And the last two years, I was actually an attorney. The first two years I was a law student, so I would commute from— On Fridays —

CB: That's a long trip.

A: Yeah. On Fridays home, um, to Sipayik and on Monday mornings I'd go back down to Portland for law school. So, um, and in the summers I worked for the court as a law clerk to Judge Shibles, and then I think I worked for housing that summer as well. And, yeah, I did actually. And then, so I don't know how many cases, I probably had, as a brand new attorney while living there, I probably had maybe 30 cases, 40 cases. Somewhere between I'd say, 30 and 50. Some of those, and I can't recall how this happened, but in any event, the Navajo Tribe got my name, and so I had a couple of cases for them where there was a Navajo child in custody in the state of Maine. And so I entered my appearance in Bangor for one of those. And represented the Tribe and for the, you know, probably maybe about a month and a half's worth of time, to get the case transferred to their Tribal court. And that happened with two different Navajo children so that was — There were, like I said, a few cases that weren't, did not involve Passamaquoddy Tribal members, but most of my early child welfare cases did. And I, um, either represented parents, I was either representing parents, most often I was representing, I was the Guardian ad Litem. So.

CB: And describe your, um, awareness of ICWA to me if you will and obviously it was passed in '78, and obviously these are ICWA cases —

A: Right. I was —

CB: *(talks over)* — So what was your sense about ICWA and compliance and the state of Maine, and maybe also what I'm interested in is just a more general sense of how ICWA was being perceived by the state of Maine.

A: At that time, when I was a new lawyer, ICWA was being perceived as a pain. You know, it was a pain, um, to deal with. That certainly was the sentiment that I got from most of the DHS workers, um, less from their attorneys, less from the AG's office, at least it was expressed less to me. And at this time I wasn't in the AG's office yet, so I was dealing with a, you know, a couple of particular AG's and they were great. They didn't, they didn't know ICWA and everybody sort of relied on me if I was involved in the case to make sure that we were doing ICWA right. In terms of the lawyers and the judges. Caseworkers didn't want to deal with it, because it was extra work for them, higher burdens. They had to notice the Tribes, that kind of thing. So, I don't think compliance was great. I remember probably one of the most pivotal cases I had, and I was a brand new lawyer. I had only been a lawyer maybe six months. There was a child whose grandmother I represented, and so she was a Tribal member. But her mother had befriended people in Machias, and her mother had just essentially taken off. And the

grandmother didn't know where this nine-year-old was. And so, she hired me to try to find her. And we thought that she was in Machias. And we had, you know, first names for these people and so, you know, we kind of went on a wild goose hunt up to Machias in my car and found, you know, found who we thought had this nine-year-old, went to the probate court, tried to find out if there was a guardianship. You know, there was a mistake in how it was docketed and so it was docketed under a different last name. It was docketed under the non-Indian family's last name. So, in any event, I determined that there was no guardianship order and took the Washington county sheriffs with me back to the house. And we took, and the grandmother took her child. We took her child off, from these people, who were screaming at us. And the little girl at first didn't want to leave, and she'd only been away from her grandmother for about six months, but in that six months' time she — And they didn't know anything about the Indian Child Welfare Act.

We took her back down to the reservation. Their lawyer, the Washington County Sheriff's Deputy and them followed us to the reservation. Our police were there, (*brief laugh*) took the child and we brought it right into Tribal court and Judge Irving was great. We had a hearing right then. And, you know, it had become clear that ICWA had not been followed in the probate court. There had been an essentially, there had been a custodial determination made in the probate court without any of, um, ICWA's mandates being followed. And so, this non-Indian family had obtained custody of this child without notice to the Tribe. Her Indian custodian, which included her grandmother, and mother was nowhere to be found and so, within a couple of days we got it straightened out, and she remained on the reservation. But there was a real concern that she would be kidnapped by these people, which is why we had the Tribal police involved. They were very mad. They were very mad at me. Their lawyer was very mad at me. He thought, you know, that I was just crazy. And so it was, if I had to do it all over again, I probably would have been, adopted a more finessed approach, but that's what we were dealing with. That's the kind of thing, you know, and their treatment of it and the lawyer at the time's treatment of it was, you know, it's, 'Nobody pays attention to that. It doesn't matter. She's not really an Indian child.' You know, 'Her mother gave,' you know, all these reasons that it was something that was not needed to be followed. Almost like it was antiquated. And so there was a lot of that, that I ran into, again not from the judges. The judges, particularly Judge Romei, really was good about following it. There was a Bangor judge that didn't want to follow it and made that very clear to me during my —

CB: Is that Judge Mitchell?

A: No.

CB: Who was the case? Do you know the name?

A: Yes, Judge Gunther.

CB: Judge Gunther, okay.

A: She's not on the bench anymore. But she's, she, once — So now, at that point I was at the AG's office. And so I did a lot of training once I was at the AG's office. And the way I got to the AG's office was the AG in Washington County was retiring or — yeah, he was retiring —



and said, you know, you really do a good job with these cases. People need to know about the ICWA. I know you feel —

CB: And who was that?

A: John Hawks.

CB: John Hawks.

A: Yeah, he said, I know you — Essentially it was, do I fight him or join him? And I thought I could do more good by joining him.

CB: That is always an incredibly difficult choice to make.

A: Yeah.

CB: Whether you work by increments inside the system or whether you try and bring the house down.

A: Right, exactly. And I didn't have to do a lot of burning the house down.

CB: No, that's too vivid an image.

A: But certainly that —

CB: That's how much of a revolutionary does one choose to be? What part of the system do you choose to attack and where are you going to be most effective?

A: Exactly. And, you know, I didn't want to have to be the one. You know, because I was an Indian myself, and I'm an attorney, I didn't want to always have to be the one who was on, was, um, taking people to task. You know, it's not a great position to be in, to be confrontational, and that's not actually my nature. I'm conciliatory, not confrontational, and I didn't want to earn a reputation as this new lawyer, um, who was gonna make sure everybody is doing everything they should be doing. But it, you know, at times that's what I, that's the position I had to adopt and, uh, so that was always a struggle for me just personally because I, you know, preferred to resolve things, not escalate. But I think people got better. I think people got better. The hardest people to come along to understand why ICWA needed to be followed and that it wasn't just a set of conditions — It was, you know, you're talking about real people and Tribe's real interest in children, and the children's right to know the Tribe, even if they don't look Indian, which was often one of the things. Or grew up in Perry, not Sipayik or Township, you know, it was just to understand, you know, that a child has a right to

know who her relatives are and to grow up on the reservation if her, if there is family there that will raise her. And she doesn't need to be in Machias, you know, because you think she'll do better in school there. So there was a lot of that. It's more of an almost a classist than I felt a cultural.

CB: Interesting, and coming from, and coming from other lawyers, coming from DHS?

A: Yes.

CB: Coming from those, the bureaucratic entities that had some sort of jurisdiction or some sense of their own jurisdiction over a child's experience.

A: Right, and you know, really what it is it's looking at their belief about the child's best interest, versus, um, a person's right to parent or an Indian custodian's right to parent if it wasn't the mother. Because often times you had grandparents involved in these cases if the parent couldn't do it. So, um, you know, you have lawyers and social workers looking at well, it's really better for the child to be raised by these people who don't have relatives with drug and alcohol and mental health problems. You know, but that's not the standard. *(laughs)*

CB: That's right.

A: You know, I'd say yeah, that's your view of it. But you haven't even looked at the rest of the relatives. You're just going by, you know, the first layer here and then, you know, the ICWA builds in other Tribal members and other Indian custodians which state law doesn't have. So, there was a lot of getting them to open up their, um, thinking about how to solve the problem, you know, for — And DHS workers are very overworked. I get that. You know, they did a lot, but, you know, I would just, I would try to approach it with them, you know, think about if this was your grandchild, you know? You must have a relative in your family that's crazy and messed up, right? And would you people judging you by that one relative? No, of course not. You know, if you had the chance to have another family member, or you raise your grandchild, wouldn't you want that, you know? So sometimes you could appeal to their sense from that direction but, you know, it was pretty difficult. I mean, there's a lot of, there was a lot of, um, I don't know if I'd call it racist or just, just bigotry, about Indians and drugs and alcohol and mental health, you know, clumping everybody together.

CB: And notions about poverty. I've observed that a lot.

A: Yeah, that's right. That's right, yeah.

CB: And what it means to be poor and a judgment about poverty.

A: Yeah, sure, absolutely.

CB: That tends to strip away humanity from people.

A: Yeah, I mean, you know, there's some, Sipayik is a beautiful reservation. There are, you know, there were people living in some of the rundown trailers that never lost their children



and shouldn't have lost their children. Then there were people who regularly lost their children and, you know, the way they lived was often raised. And I'm not sure if, if that was something that the social workers and the lawyers, uh, who would make fun of these people also did about non-Indian families, maybe so.

CB: Some of these are very specific and we've covered some of them so I don't want to belabor any things we've already talked about, but the challenges in initial identification of a child as Native American. You reference sometimes the child 'didn't look' Indian so that that issue probably arose.

A: Yeah, you'd see that a lot. With people saying that, 'Well, I didn't know,' you know, the lawyer would say, 'I didn't know that kid was Indian. She doesn't look Indian. Her mother doesn't look Indian. Are you sure,' you know? I'd say, 'Yeah, you're just going to have to take my word for it. You're going to have to notice the Tribe and your clients know that she's Indian.' They know she came from, you know, Township. I had one where, you know, it was obvious that this child did not grow up in Woodland, because the whole family, you know, the child had an Indian last name that's very recognizable. And so, you know, it was back to being the police officer of the Indian Child Welfare Act. And it's not a great way to be but, you know, I didn't, I was going to do it, because it needed to be done and, you know, Rebecca Irving was very good about it as the judge. She was the judge.

CB: Her name has come up. I'm not sure if we've gotten an interview with her or not but I just want to make sure that I write that down, too.

A: She would be great to interview. She's, so she's in Machias. She's a lawyer as well. She — Prior to being the judge, she was the prosecutor for, I'm going to say, 15 or more years. Judge Mitchell, whom you've referred to, he's only been a judge a couple of years. His father is a local lawyer who practiced with me.

CB: We know.

A: Okay, great.

CB: We know, we know. And his father told us that he needed to speak with the son. So we've had — It's been very funny. It's been, Maine is large and small at the same time.

A: It's true.

CB: And, so going on with these questions. Notification of children to Tribal child welfare, was that, did people at Sipayik in Tribal child welfare generally respond well?

A: Yes. Yep, they did, yep, yep. The hard part sometimes was, you know, occasionally I'd run into this and I had a client who had difficulty getting her grandchildren on the census.

CB: Yes.

A: So you must have heard about the census. And so, you know, I remember that was a big deal and so sometimes, of course — Again, all small towns, all small towns have secrets. And so, you know, there was this, I had a case that was quite interesting. It was very important to this grandmother, obviously, to get her grandchildren on the rolls, and so I had to file a declaratory judgment action for paternity. So, there was a very respected Tribal elder who was her father, and he would not acknowledge being her father. And this is my client, who at the time was in her early fifties. So, I reached out to him very respectfully and all that, and he got, he got census involved to get me to back down. And then he got a lawyer and I again, we tried to do a lot of it behind the scenes, have him get an DNA test and told, I was willing to sign a confidentiality agreement. So was my client, is what I mean to say, was willing to sign that. But it was just to get her kids, so if she got his blood quantum then her daughter would have —

CB: It's about tuition remission, it's about all that services, it's about all kinds of things.

A: All that stuff. And finally, and he wouldn't do it, and we finally, I mean, now I'm just like kind of cringing that I did this but, you know, it's another burning down the house. And so, we filed a paternity action in Tribal court. Had a trial, used pictures and affidavits of other Tribal people. And Judge Irving found that he was her father. And all of the kids — So she got his blood quantum and everything went up from there and, you know, you got like ten more Tribal members.

CB: Exactly.

A : So even within the Tribes, occasionally there'd be a bump on this issue of who are Native children. So if those kids had been taken by, let's say they'd gone Bangor shopping which everybody from the reservation did at Christmastime.

CB: Right.

A: And there'd been some incident and DHS had gotten involved and taken those kids, they would not —

CB: They would not have shown up as Tribal kids.

A: Even though they lived at Sipayik their entire lives. (*laughs*) With their mother and grandmother, who were Tribal members. You know, so it's absolutely ridiculous result and, um, you know, I did not experience it except for in that one case, but this sentiment from Tribal members that I often heard was that census, you know, you needed to make sure you didn't get census on the wrong side of you.

CB: Interesting.

A: For the same thing which was, yeah.

CB: Interesting.

A: So that was the only time, you know.

CB: All of this we've discussed so much of this. All these cases seem to really intersect with this very particular issue of determining jurisdiction and residence of Native American children.

A: Yeah. The heightened evidentiary standards.

CB: Yep.

A: You know, I mean, most of the problem with ICWA and, for instance, in state cases, not so much in Tribal cases, is identifying who qualifies as the Indian expert.

CB: Yeah.

A: And so, if the person, you know, a lot of times they just want to sail that expert right on through, and if I was involved with the case, I wanted to know what the, you know, had the expert ever worked in the Indian communities, ever done any research, ever been familiar with the Indian families, those kinds of things. It wasn't enough to be a psychologist who might have read a paper about Indians or an article. So, that's still probably difficult in Maine, although I assume, I hope it's better to find a qualified Indian expert. And I had had a couple of psychologists once I was an AG that I used, but I don't remember.

CB: What year did you become an AG?

A: End of '96.

CB: '96.

A: Yeah, like, um —

CB: And you worked in, did you work in ... ?

A: I worked in, first I was in a Lewiston court which — I had a family, the guy, the young man was Wampanoag. He was non-status, so he wasn't on the rolls but his dad was, and, you know, I got the court to treat it as an Indian Child Welfare Act case anyway. Because I figured, anyway, it doesn't matter. So, and I was there two years and then I moved over to the

Augusta and, Augusta/Waterville/West Bath courts. And when I moved over to Augusta, just by coincidence this young man and his partner were also in Augusta, so I was dealing with their second child in foster care. And they went on to have three more.

CB: Wow.

A: And all within my time in Augusta. And so, by the time I left that position in 2005, they had lost all five kids, um, to DHS and foster care. It was just terrible. And that was the last case I did actually, was their case, and then I started my new job. It was very compelling, so. And we really spent a lot of time trying to keep that family together, especially with their last child. And it just didn't work, so. I would say like I said the biggest one is getting, was getting the, uh, qualified Indian expert.

CB: And any of these other, these other questions the requirement of the use of active remedial and rehabilitative efforts to present —

A: That came up, that certainly came up, um, early on, you know, for the first probably half of my time as an AG. It got better.

CB: Yeah.

A: You know, once the department realized that people are going to hold their feet to the fire and, you know, the AG's were good. My colleagues at the AG's office were always great and always interested in having me provide them trainings or any updates so that they could then make sure their clients, the department, were doing what they wanted to do because it didn't make sense to anybody to have to do all this over again.

CB: Hence the writing of the manual in '98.

A: Yeah.

CB: And the need to provide that information to people.

A: Yeah, yeah, and disrupt, you know, because ultimately you were disrupting a child. You might be moving a child back and forth between placements when you should have done it right the first time, and placed him with his Tribe, um, if not a family member. So I think everybody, you know, we had a good group and I only had one AAG that really gave me a hard time about it. And he wasn't there long. But everybody else really was trying and, you know, the caseloads then were enormously high, you know.

CB: I can imagine.

A: So, I'm not sure they caught all the cases, but they did seem to try. And, you know, what you saw sometimes not with, with Maine Tribal members, not any of the Wabanaki peoples, but you'd have somebody coming from out of state, and they would often say they were Cherokee. And so, from the department's and the attorney general's — You know, if they didn't think the person looked Indian, then they'd spend a lot of time trying to get ICWA not to



apply and I'd say, you know, 'You can't do that. You got to follow up with the Tribes and see if they've got this person on the rolls.'

CB: And again, census, is that incredibly potent *[00:36:24] (indiscernible)*

A: That's right, yeah. So that would be, you know, the active remedial efforts. If they thought that the person wasn't a Tribal member, then they would kind of slide on that.

CB: Right.

A: But if we'd get confirmation from one of those out-of-state Tribes, then they'd have to go back and do it over again. So, all of that is really important because of the notice requirements, to get that done quickly because you can't have that very first hearing unless the Tribe has been noticed.

CB: Exactly.

A: And, you know, a couple of the judges didn't want to delay proceedings because they were —

CB: *(talking over)* There was a child at issue.

A: There was a child at issue, and also if they're doing, you know — I remember having, respectfully, a little bit of a disagreement with Judge Gunther about this and saying, you know, we, 'Judge, I think we want to be careful not to do form over substance here. You know, it's pretty clear that this Tribe wants to be involved.' It was an outside Tribe, out-of-state Tribe. And for whatever reason, there were some delays and then moving to intervene, and at that point I was an AG and wasn't, you know — But I was scrambling to try to find them local counsel so they could get it done and, so. But I think, I certainly think people tried. I just think that a lot, a lot of it was difficult for people to deal with and most of it was the qualified Indian expert in the act of remedial measures piece.

CB: And getting onto number four, we discussed this a little bit, but just to make sure that we cover all the bases, um, once notice has been received how often does the Tribe intervene in a child custody proceeding covered by ICWA? What was your sense of that?

A: My sense for Passamaquoddy and Penobscot was that they almost always intervened.

CB: Okay.

A: And, uh, almost always requested transfer. You know, the only time they wouldn't is if there was some reason that the parents didn't want transfer to Tribal court. That happened a lot. Even some of my clients, when I was representing parents, before I was at the AG's office and I was a solo, you know, they would say, 'I don't like the judge. I don't like the prosecutor. They hate me. The judge has seen me too much in her court. I'll get a fair shake from Judge Romei,' you know, and so that's one of the —

CB: — one of the issues.

A: That's one of the things that would, you know, can, one of the reasons the state court can deny transfer.

CB: Um, hm. Exactly.

A: So, I had that come up from time to time. Never, you know, one of your questions is about the child, I never had a child that didn't want the case to be transferred.

CB: Right.

A: You know, certainly you'd see that maybe in juveniles —

CB: *(talks over)* And in terms of the state court agreed to transfer, how often, what was that like, did they generally agree to do that?

A: Yeah, I would say I mean again, in my experience with the cases I had, it was never an issue. If I said, you know, it should be transferred, either I was a guardian or I was a parent's counsel, then, you know, the court was fine to ship it off. And I think in Maine, it helps that we're a small bar, because Judge Romei in the district court and Judge Holmes in the probate court were aware that their colleague, Rebecca Irving, was the judge in Tribal court.

CB: Exactly.

A: You know, they trusted her judgment, you know. Maybe if there'd been somebody they didn't trust, when these were first set up as CFR courts, when Tribal courts, you know, they didn't have to be lawyers, and so I think there was a lot more distrust about Tribal courts then. That they weren't good enough.

CB: And the respect has actually grown.

A: Absolutely.

CB: *(talks over)* And there's a sense of confidence in the judges that are passed by the Tribal courts.

A : Absolutely, yeah.

CB: By the AG's office.

A: Oh yeah, and they're, I mean, I think maybe —

CB: (*talks over*) And by the judiciary.

A: Yeah, definitely.

CB: I want to ask Judge Saufley about that as well and see how, what her response will be on that front.

A: Yeah, yeah.

CB: It's very interesting. It's really interesting, because we've heard also from various Tribal council people that they often feel that their courts and their laws and their sovereignty, their basic sort of rights of jurisdiction, are not respected in many different ways and that ICWA is one of the ways in which this happens. So it's really, it's fascinating to sort of piece out. I really need a better understanding of when confidence began to increase in people's notions around this issue. Anyway, it's something for us to puzzle out but anything you can provide —

A: I'll think about that.

CB: Think about that, because, um, I'd really appreciate your perspective.

A: I mean I, you know, again it was just my experience, but I didn't have that experience with the judges. I really didn't. Just that very first time with that case where we had to go get the girl, and the judge actually sent me a letter apologizing.

CB: Interesting.

A: That he missed it, and he felt like he made a mistake or — Did he send me a letter? I know he called me, too —

CB: Contacted you.

A: And said, 'I messed this up. This is all on me. I'm really sorry.' I mean he was very and, you know —

CB: (*talks over*) For a judge to say that.

A: — Falling all over himself. I said, 'No, Your Honor, I'm sorry that it happened the way it happened.' I just, you know, it was very important to these people to, you know, to get their grandchild back and they were fearful that the non-Indians were going to take her to Florida

because that was allegedly a plan. So, you know, it all worked out. I always had a very positive experience except for the one time I said, with Judge Gunther.

CB: Yeah.

A: And I think she just hadn't dealt with ICWA enough.

CB: Right.

A: Even though she, you know, Penobscots are right there.

CB: Right.

A: But in any event.

CB: *(talks over)* And that can be the hardest, is when it's right, when it's right on your border.

A: That's true. So, yeah, I didn't have that sense from the judges I dealt with.

CB: And so I think we've already answered number seven as well: the Tribe accepts transfer of jurisdiction of child custody.

A: Yeah, that was, that was a no-brainer. They always did in my experience. I thought of somebody else that you could interview, but —

CB: Great.

A: I can write it down here.

CB: Terrific.

A: And we can just keep on. Who was the Tribal prosecutor after Rebecca Irving.

CB: Okay.

A: So, you know, I will say that for your question number eight, um, I believe I had one case where the proceeding was at such an advanced stage when — But it was an outside Tribe, so it wasn't a Maine Tribe.

CB: *(talks over)* Wasn't germane to this issue?

A: No. And the only other time I saw this, the problem with the Tribal court is what the Maliseets and the Micmacs, you know, if the state court didn't believe that they were set up to take jurisdiction, you know. But I didn't have. Really, any of those cases. That was just stuff that I dealt with when I was doing, um, statewide trainings.

CB: Sure.



A: For the judiciary, I did some trainings for the judiciary on the Indian Child Welfare Act as well as for my office, the AG's office so, you know.

CB: Are you still serving as the Indian expert on these, all these issues?

A: Yeah.

CB: I can well imagine how wearing that would be, after a period of time.

A: Yeah, yeah, you know, you don't want to just be defined by who you are, so.

CB: No. Who you happen to be genetically is, there's a lot more to the story of one's personal life than that.

A: Yeah, yeah.

CB: Not that that's not important. Down to question nine. If a Tribe declines to interview in a child custody proceeding, what are the reasons for the decision? We talked a little bit about that.

A: The only time I experienced that was if the parents didn't want the Tribe to intervene, and I think if — I'm not sure that that, um, that they have actually ever declined to intervene. I'm getting that question mixed up. I mean the transfer. So number nine, um, I don't know that there — I never experienced any time when the Tribe did decline. But number ten, I did experience cases where the state declined to transfer and that was one time because it was such an advanced proceeding.

CB: Right.

A: And then the other times were because the parents objected, the Indian parents objected. You know, under the Act, the non-Indian parent can object.

CB: Yeah.

A: Which is a flaw in the Act.

CB: *(talks over)* It's very strange.

A: Of course, sometimes, well, you might assume that of course, that the non-Indian parent might object, but I actually had a case where I was representing the Indian mother, and she objected, and the non-Indian father wanted it at Tribal court.

CB: Interesting.

A: And Judge Irving moved it to Tribal court, um, because the child had mostly lived on the reservation. So, that was interesting in that I don't know what my client, you know, my client was kind of a — She was just kind of an impulsive young person and, you know, I tried to talk her into that it was more important for her to have it in, you know, home court type of thing. So. It was just, mostly it was parents that I experienced.

CB: Expert witnesses. Here come that question again.

A: There's supposed to use it and I'm not sure that they always did and at least in, I think, I think that initially that was fairly lax. The definition of a qualified expert witness was fairly lax and not probably until we had, you know, we underwent some training as groups about it wasn't enough to say, you know, Gary Rasmussen, who is a psychologist that the department often used in, um, in these cases. Gary needed to have some training, and he actually did because he lived in the southwest, you know, and so he did have some, um, cultural sensitivity. He had had some training when he was out there and so he was somebody that I had used, if I'm remembering that correctly. I'm almost positive. 'Cause now it's been almost 20 years but, in any event, 15 years, 20 years. But I think, um, I think that was a struggle and I'd be curious about where things are these days. Who are the identified qualified expert witnesses? For instance, the lawyer who just called me, who is a guardian in an Androscoggin County case that's an ICWA case. You know, I wonder who they are going to use for a qualified witness for that? There just weren't a lot of resources known at that time.

CB: I think that covers questions 12 and 13.

A: Mm, hm.

CB: This is interesting, though 14, we didn't really discuss in a lot of detail. What do you consider active efforts to prevent the breakup of a Native family before ordering an out-of-home placement for a Native child? When making a case that active efforts have been made, what type of evidence do you present?

A: Yeah, so for me what I would, um, what I would ask the department to do either as a guardian or once I became an AG, certainly when I was parent's counsel, is, you know, it's not enough to send my client a plan. Let's pretend I was parent's counsel. It's not enough to send my client a plan that says she's got to do X, Y and Z. You also have to make sure you've had a conversation with her about does she have transportation to get there? Does she have childcare for when you want her to go to the substance abuse treatment program? Is it somebody that she is going to feel comfortable with? If she doesn't feel comfortable with this person, can she change counselors or are we all going to ding her for that? You know, and I would say to them, look, you've got to meet, your standard is by clear and convincing.

CB: Right.

A: In this case, and so active efforts means, you know, you just you don't just throw the resources or the resources at them, you've got to make sure that they understand how to utilize



them and make it, make it workable for them to utilize them. And you can't be rigid. I mean, one of the things that I've encountered in Washington County as a parent's attorney and a guardian was rigidity.

CB: Right.

A: And that was something that really I never got the chance to work on with the Washington County folks, um, state folks, because I was not their AG. When I became an AG I had a, I feel much more open, flexible — I had a great office in Augusta and a great office in Lewiston to work with, for the most part, you know. People were really open and, you know, they may not have always liked what I had to say but, you know, they really worked — I mean, I had a great relationship with the DHS offices that I worked with and I was really fortunate and they really worked their butts off on the cases that I had with them. And I would help them do their work to make sure we got it right, you know? And I think that was appreciated. And I wasn't too good to sit down and write something for them that they were supposed to do, but because they weren't sure how to do it for ICWA, then, you know, I might help them write the family service plan so that we could meet the active efforts. And the other active efforts piece was really digging into the family and the Tribe's resources in terms of who's out there that's available to take this child. And that was —

[END OF RECORDING]