

### General Information

**Private or Public Statement?** Private

**Statement Provider:** Anonymous – A1 (-00017A) & Anonymous – A2 (- 00017B)

**Date:** February 4, 2015

**Location:** Augusta, Maine

**Previous Statement?** No

**Statement Gatherer:** Rachel George

**Support Person:** N/A

**Additional Individuals Present:** Gail Werrbach

**Recording Format:** Audio

**Length of Recording:** 1:04:56

#### Transcriber's Note:

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

### Recording

**RG:** Alright, it is Jan, February! Pardon me. 4th. February 4th, 2015. It might help if I knew what day it was. Ah, we're here in Augusta, Maine. My name is Rachel George. Um, I'm here with Gail Werrbach who is our Commissioner sitting in today. And I'm here today with:

**A1:** Uh, my name is uh, *[NAME REDACTED]*. I'm the *[redacted]* Judge of the Maine District Court.

**RG:** Alright.

**A2:** My name is *[NAME REDACTED]* and I'm a District Court Judge.

**RG:** Excellent, and the file number is ME 201501-00017. *[NAME REDACTED]* Have you been informed, understood and signed the consent Form?

**A1:** I have.

**RG:** And *[NAME REDACTED]*, have you been informed, understood and signed the Consent Form?

**A2:** Yes.

**RG:** Excellent. And I have to let you know that at any point during this recording you indicate that there is a child or an Elder, currently in need of protection, or that there is imminent risk of seriously bodily harm or death to an identifiable person or group, including yourselves, that that information may not be protected as confidential. Do you understand?

**A2:** Yes.

**A1:** I do.

**RG:** Perfect. Um, could you uh, each individually tell me about your employment as a Judge, both past and present?

**A1:** Well, I'll start. Um, I am, the Chief, uh, this is *[NAME REDACTED]*. I am um, currently the *[redacted]* Judge of the District Court. I've been the District Court Judge for uh, 12 years. Um, I um, was in Private Practice for 20 years prior to that. Uh, I did a lot of Child Protective work as a private attorney and then um *[REDACTED]*.

**A2:** My name is *[NAME REDACTED]* I'm a, uh, an active retired District Court Judge. I've had that status for a year and a half. Prior to that I was a full time District Court Judge for 21 years. Uh, prior to that I was in Private Practice and as part of my Private Practice for 8 years I was a Tribal Court, uh, Tribal Court Judge. I left the Tribal Court Judgeship when I got uh, appointed as a Maine District Court uh, Judge. Uh, while I was in Private Practice, I handled Protective Custody cases as an attorney for parents and as a Guardian ad Litem, and for a short time on a contract basis with the Attorney General's office, prosecuting uh, Child Protective Cases.

**RG:** That's fantastic. Um, could you each tell me about when you first learned about the Indian Child Welfare Act? And Maine's policies related to Indian Child Welfare?

**A1:** Well I, I knew about the Indian Child Welfare Act when I was in Private Practice. Uh. We did not have um, a great many um, cases that involved the Indian Child Welfare Act but it was something that all of the attorneys that I worked with uh, were aware of and knew we had to be on the lookout for any case that uh, uh, implicated in any way the Indian Child Welfare Act.

**RG:** Did you receive any specific training of, on the Indian Child Welfare Act?

**A1:** Uh, I think that there was uh, it was part of a seminar, the first time, I, I got to know about it, it was part of a seminar that I think the Bar Association did for attorneys that

were involved in the Child Welfare System. Um, there was some mention of it at that point in time. Um, and then since then we've had a number of trainings. Um, that uh, we both, uh, both the Judicial Branch has uh held for Judges and we've also had trainings that were done by, um, uh others in the State where some of our Judges have attended.

**A2:** Yeah, about 30 years ago, I read Barbara Kingsolver's book, "Pigs in Heaven." And the story line is about a, it's been a long time since I read that book, but it's about an adoption by a non-Indian Mom uh, of an Indian child and there was no compliance with the Indian Child Welfare Act at all and ultimately the adoption got vacated. And Mo-, uh, the adoptive Mom really got involved in, in Tribal uh, culture. And ultimately, the child who had been bonded to her, uh, wound up, up, back at her, I was instructed to read that, that book uh, before I went to a conference on Tribal Court Jurisdiction, that the Passamaquoddy Tribe sent me to, in my capacity as a Tribal Court Judge. But before I read that book, I just had a pretty shallow knowledge of the Indian Child Welfare Act. Since then um, I did go to that conference which um, a large part of it was devoted to ICWA, um, but we've had some, we have Judicial training, in house Judicial training and a few of those Judicial training sessions have dealt with the Indian Child Welfare Act.

**RG:** Um, I guess, I'm going to ask you each to take a moment and read over question 3, um, and I'm gonna, I'm going to ask it or phrase it as, uh-, 'Could you explain or describe your experiences working with the Indian, or working within the Indian Child Welfare Act? Any challenges you've noticed? Or dealt with, any major success that you noticed or dealt with? Um, and this is, below is a list of kind of various aspects of working within the Indian Child Welfare Act.

**A1:** So, do you want us to comment on some of these?

**GW:** Right.

**RG:** Sure, that would be absolutely wonderful.

**GW:** Yeah.

**RG:** Just, so yes, on general experiences working with the Indian Child Welfare Act. Any challenges. Could be challenges in general that you've noticed.

**A2:** I think uh, I don't wanna speak in too general terms, but me, individually, I don't think we paid much, as close attention to the requirements of the Indian Child Welfare Act, just going back historically, a couple of decades. Uh, and in, in recent years, I think, uh, the Maine Judiciary is, is, is very sensitive to the requirements of, of ICWA. Um, when we have a uh, a Protectiv-, Protective Custody Case, our case management order that we go through

specifically references the Indian Child Welfare Act, and all Judges, I think, that have involvement with Child Protective Cases, um, ask all the participants in the proceeding whether or not ICWA is implicated in the, in the case. There are some times when a particularly, when you have a Tribe, a non-Wabanaki Tribe, where that information gets to us later, later in the game.

**GW:** Yeah.

**A2:** Um, but at least in recent years, the last decade or so, it seems to me, we haven't had too much trouble identifying uh, when a child who's a subject of a Prot-, of a Child Protective Proceeding is eligible for, for Tribal Court uh, membership, which is the, the standard that implicates ICWA. Um, and I think uh, in recent year also not only has the Maine Judiciary been much more sensitive to the requirement of ICWA, but I think, the uh, the Tribes have been as well. I think historically, um they were not as involved in the court system as they are now, uh, and um, um, I'm just looking at-, so in terms of identification of a, of a child as a Native American, um, all a Judge can really do is ask the participants. Uh, uh, a Judge cannot conduct an independent--

**GW:** Right.

**RG:** Umhm. Umhm.

**A2:** investigation. A Judge has to rely on the information. But typically now in a case, because the Tribe gets noticed. And historically when the Tribe got noticed, at least in Washington County, they didn't always, uh, respond to the notice. Uh, in recent years there are um, they are responding to, and getting involved in virtually every case. In some cases, they're asking that we transfer the case and other cases they just participate with their attorney. So, there are a lot of people there, to ask and I think if someone is uh, is eligible for membership in any of the Wabanaki Tribes, uh, we're gonna flush that out. Uh, almost because, someone will know that. And um, but the other Tribes, I, you know it's, I, I don't know what efforts the Department of Human Services takes uh, to find out, other than interviewing the parents. But to find out whether or not there's a possible Tribal affiliation uh from a Western Tribe or some other Tribe.

**GW:** *[NAME REDACTED]* do you have a sense for um, that you can speak to, any patterns for when um, a Tribe decides to, when a, when a Tribe decides to request Jurisdiction back to the Tribe and when they might decide to keep that Jurisdiction within the State. Are there any themes or patterns that you see

**A2:** None, none

**GW:** in the ways that the Tribes make those that decisions.

**A2:** none that I've been able to identify. Uh, there's a great level of cooperation between the Tribal Courts and the State Courts as I indicated earlier. I was a Tribal Court Judge, the current um, District Court Judge who has my former position was a Tribal Court Prosecutor

and prosecuted Child Protective Cases on behalf of the Passamaquoddy Nation before, in addition to his private practice, before he became a Tribal Court Judge, so there's really a lot of cooperation. I could only think of, in all the time that I was a Judge of, one case that was contested as to whether or not uh, the State Court should retain jurisdiction or, or give it over, to the Tribe. And in that case, that one case that I will not talk about

**GW:** Right, right.

**A2:** specifics but um, the request for Tribal Court jurisdiction was made very, very late in the game. And it was denied. But to my knowledge that's the only time, that one time was the only time the State Court denied the Tribal Court of jurisdiction with respect to a child who was eligible for membership in the Passamaquoddy or Penobscot Tribes. Or Micmac, we have Micmac and Maliseets too. Um, so, um, there's a, but, so I, so I, in terms of, when they get involved in a case and when they don't get involved in a case, I can only speculate. And I'm not gonna do that.

**GW:** OK, that's fine.

**A2:** But I don't, but I don't know.

**GW:** Yeah. And the other thing I just, back track, what was the time period that you were uh, the Tribal Judge?

**A2:** Tribal Judge? Well I've been a, uh, a District Court Judge for uh 22 and 1/2 years. So, the eight years prior to that. *[Laughing]*.

**GW:** OK. You're gonna ask me to do the Math! *[Simultaneously]*: I'm in big trouble here.

**A2:** *[Simultaneously]*: I was only a math major*[Laughing]*.

**A1:** *[Simultaneously]*: --30 years so that would be 1970,

**A2:** in the '70's?

**A1:** 1980, '85, '85 ta

**GW:** OK.

**RG:** '93.

**GW:** So really the early years of ICWA.

**A2:** Yeah, early years of ICWA.

**GW:** Yah.

**A1:** [*Simultaneously*]: 8-, 85 - 93?

**GW:** [*Simultaneously*]: That, that's why I was trying to sort of get a historical perspective too.

**A2:** Yeah and people, lawyers didn't talk about ICWA back then. Really. In Child Protective Cases, and uh, um, I became more sensitive to it when I went to that conference and read the Kingsolver book.

**GW:** Umhm.

**RG:** Can you speak to why um, there was less attention focused on ICWA and where the shift happened if there was kind of a, a trigger, I suppose, that caused a major shift, especially within the judiciary to focus more on, on the Indian Child Welfare Act.

**A2:** Well not only the judiciary, but the Tribe uh, as well. The Tribe um, um, didn't get involved in State Court Proceedings. You know, going back, that's a, you know, a relevantly recent development. Now they're pretty scrupulous about it. And every time they're noticed they participate sometimes they'll request um, a transfer of the case and other times they won't. And so, I think the State and Tribal folks got together at the same time [*laughing*] really. Got more sensitive to ICWA at about the same time.

**RG:** Is there any thing that you see as kind of a, a tri-

**A2:** a precipitating cause?

**RG:** Yeah, yeah.

**A2:** Um, I, uh no.

**RG:** That's OK. Would you like -,

**A1:** Uh, I, I concur with uh, with [*NAME REDACTED*] assessment. The one difficult um, experience that I've had, uh was with an Alaskan Native American Tribe that um, despite everything that we could think of, phone calls, emails, uhm, letters, certified letters, we could not get them to agree to even participate in any way in our proceedings. And that was very frustrating for us because we were trying very, very hard to abide by the terms of ICWA, and get some participation. And what we ultimately did in that case is uh, I enlisted the aid of, of um, some folks from the Penobscot Nation that actually uh, came and stood in for the folks that uh, were not cooperating with us. Um. Identifying uh people, uh as Tribal Members, is difficult because as [*NAME REDACTED*] said, you have to take the word of the folks who are in front of you. And uh, one of the, one of the uh difficulties is that there are many people who have family folklore, that says, 'Oh yes, my Grandfather, uh, was uh, you know, a Cherokee or,

or whatever and um, and so, you immediately say, 'OK, we need to track that down', only to find out that it really was only family folklore, and you've spent a lot of time and a lot of energy tracking that down, but we're pretty scrupulous about doing that, each and every time.

**A2:** I want to go back to uh, a question that I refused to speculate on, uh, earlier.

**GW:** Yah.

**A2:** Uh, to amplify my response in this way. Uh, when I went to the Tribal Court Conference, Jurisdictional Conference 30 years ago in Arizona, I was the only Tribal Court Judge at that conference who wasn't a Tribal Court Member. All the other Court Judges were Tribal Court Members and so, in the evenings I got to socialize with my Tribal Court colleagues and they were uh, jealous of the fact that, when I made a Child Custody decision, I wasn't making it with respect to somebody I was related to-

**GW:** Right.

**A2:** -or somebody who was a neighbor of mine. So, it could be uh that in some of these cases, the Director of the Child Welfare Department is a little uh, too closely connected to a child to be uh, uh feel objective about it or to feel comfortable

**GW:** Yah.

**A2:** about it. I don't know.

**GW:** Yeah. No. I think that has been a huge challenge for tribal members working within their Tribal Human Services and Child Welfare System and some of the challenges we hear from being a Tribal Foster Parent or, or uh, yeah.

**A2:** It's a very intimate community.

**GW:** It's, It is. It's a, it's a real challenge. I mean I hear it from my students. We um, part of my getting involved with this is we had a number of Federal grants to provide um, scholarships to increase the number of um, tribal social workers because for years it was basically white social workers doing probably, most of the Tribal Child Welfare in the State. Um, and that's been a challenge for them too. They want to go back to their communities, they want to give back to their communities, but um, sometimes there's some very, very personal costs to *[Simultaneously]*: to doing that.

**A2:** When the Passamaquoddy Tribal Courts were set up in both the uh, Penobscot Nation and the Passamaquoddy Nation, um the Penobscots hired a well, hired Andy Mead.

**GW:** Right, *[simultaneously]*: we, yeah, we talked to Justice Mead.

**A2:** *[Simultaneously]*: uh, as their Tribal Court Judge,

**GW:** Yeah.

**A2:** the Passamaquoddys hired Shirley Bailey who was um, uh a Tribal Court Member

**GW:** Yah.

**A2:** and um, but I think they had some problems, uh, political problems with having someone in the Community making all those decision. And then they decided to hire someone from outside *[simultaneously]*: of their Community.

**GW:** *[Simultaneously]*: from outside. Yah. Especially when it's such a small Community, I think. Sometimes in the larger Western Tribes, one of my graduates who's a, who's Lakota, she can work within the Lakota Community, but not her home community, because the Tribe is larger. There's still challenges for her, but she can, she doesn't have to work at you know, Pine Ridge, she can work at another, another area. And that's really, that's not possible, here in Maine. You know.

*[Pause.]*

**RG:** Um, in your experience as a Judge, um, have any of you worked with or been in contact with an expert witness used under ICWA?

**A1:** Yes, and, again, I would point back to that specific case that I had mentioned in which we were not able to get uh, Members of a Tribe in Alaska to participate. And so, through the assistance of the Penobscot Nation, we used one of their members to testify on appropriate placements, appropriate procedures for us to go through, with regard to that particular case.

**A2:** Not really surprisingly, we uh, we had experts lined up occasionally, but um, in almost in every instance but that one I cited earlier, the State and the Tribal officials agreed on, on the, on the jurisdiction so. Experts never came into play.

**RG:** Um, thinking specifically about your time working with the State Court, uh, are there any Child Welfare cases that would have been covered by ICWA where the State did not transfer the case to Tribal Court. And to the best of your knowledge, of course not specifically implicating the case, uh, what were the reasons for those decisions.

**A2:** Well the only, you mean in a contested case where the Tribe wanted jurisdiction and the State wanted jurisdiction?

**RG:** Umhm.

**A2:** There's only the one I told you about and that was just because jurisdiction was retained by the State, just because the request for tribal jurisdiction came so late in the in the game, it was, well after jeopardy, well after reviews and all kinds of attempts at reunification. It was just seen as too much of a delay from the child's perspective.

**RG:** Umhm. And are there any Child Welfare cases covered by ICWA that you know of where the Tribe has declined to intervene? And if so what were the reasons for that decision to the best of your knowledge?

**A1:** Uh, again, the only case that I'm aware of where, where, I'm not aware of any where they have declined. I'm aware of cases in which, they have, the case I mentioned where they have just not, not responded. But other than that um, we've had a very good relationship, particularly with uh, the Penobscot Nation, the Passamaquoddy Tribe, both the Micmacs and the Maliseets.

**A2:** In our case, the only T-, uh, you know, in recent years that the Wabanaki Tribes have always intervened when they were, you noticed. Historically that always wasn't the case. But for a decade or so, it has been the case. But there have been a few occasions where um, other Tribes, a Western Tribe, uh, um have not responded.

**GW:** Ok. So your time frame then, your guesstimate on that timeframe's about the last 10 years or so, that that's shifted.

**A2:** Probably more than 10 years. Time goes by so quickly now. *[Laughing.]*

**GW:** Yeah, yeah, I know what you're saying. Um,

**A2:** *[Laughing.]*: It's probably more than 10 years.

**GW:** Yeah.

**A2:** Yeah, cause that would, yeah, I would say at least, at least 15 years.

**GW:** I mean, I'm not trying to put words in your mouth, but as I'm always listening to people, I'm always, sort of trying to put all the jigsaw pieces together and one of the things that did happen in the late '90's was a fairly significant audit by the Federal Government, related to the numbers of kids that were in Foster Care and the State Child Welfare System came, '97, '98. *[Cough]* Excuse me. Came under some fairly heavy scrutiny *[simultaneously.]*: about

**A2:** *[Simultaneously.]*: Yeah, they started looking into it more, yeah, the DHS folks, yeah

**GW:** *[Simultaneously.]*: about the disproportionate. Right. Which I guess that sort of, um fits

with what you're saying in terms of also the Tribes and the State starting to work together and the Tribes also. Sounds like being more often present when a case came before the, before a State Court System.

**A1:** I think that's an accurate statement, I think, uh, in looking back uh, ever since, I've been on the bench for, for, for 12 years, that, ICWA has always been an important focus of what we deal with. But, when I was in private practice it was about that time frame I think that attorneys began to understand about the implications of ICWA and so I think the time frame is about right. '97, '98, somewhere in there is when it really started to become well known that, that was something that uh, was very important.

**RG:** How often is the Existing Family Exception applied in cases involving a proceeding otherwise covered by ICWA?

**A2:** Um, in terms of...

**A1:** You need to explain the,

**A2:** Yeah.

**A1:** the term. I think you need to be, I think you need to explain it exactly [*simultaneously*]: what you mean by that.

**A2:** [*Simultaneously*]: What piece of Legislation are you referring to?

**RG:** I think that one is from -,

**GW:** That may have been -. That's a good question. Um,

**A2:** The Adoption and Safe Families Act?

**GW:** Yeah, it's a, uh, uh, I guess, um, I'm getting ahead of myself but one of the things, again, not to put words in, in your mouth, but one of the pieces that seems to be coming together as I look at is um, how does the Adoption and Safe Families Act fit with ICWA? And how does it not fit with ICWA? And,

**RG:** We can start there, actually if you want to talk -,

**GW:** Ok, and the, and the other piece that I see is um, there does seem to be more tension between those two in the systems that don't have a Tri-, their own Tribal Court. That there, they're real challenges in Aroostook County. Not that there aren't challenges in the rest of the State for any of the ICWA cases as well, but they seem um, uh, and I think it's also fair to say that's also something that the, we've talked to a lot people up in the county that that's another piece of the challenge, but how, the state system has the Adoption and Safe Families Act which says thou shalt do this and meet these requirements



**A2:** Right.

**GW:** and the whole issues around permanency and those and then you have the Indian Child Welfare Act which um, again, I'm speaking for myself there's aspects I think you could drive a Mac truck through and I'm not an attorney. Um, and how those fit, how those two fit together-, how those two fit together or don't fit together. And, am I making any sense.

**A2:** I can speak to that a little bit.

**GW:** Yeah.

**A2:** The uh, what I found curious about the um, The Adoption and Safe Families Act, is that there's no reference at all in the act to ICWA, which is kind of mind boggling really if you think about it. I don't what Congress were thinking or what they weren't thinking um, but it's like, they didn't even think about tribal sovereignty when they you know, passed that, that Act. But, um, the, that act does not amend the, the uh, Indian Child Welfare Act, so it has the same force and effect now, in my view and to my knowledge there's no court that has said otherwise. Um, then it did before the Adoption and Safe Families Act was passed. There's some more rigorous requirements in, in in that Act than in ICWA, like you say, there are places you can drive a truck through. But I don't think there's necessarily any conflict between the two. And uh, I haven't found that to be the, uh, the case, even under the I mean, the Adoption and Safe Families Act was, I think a response to having kids just languish in custody for, without any kind of judicial intervention and review for years and years and years. There were horror stories about, about that and I think Congress responded to that without even thinking about ICWA. They don't mention it in the act at least. Um, but uh, and that but there are exceptions uh, you know, in the act. Uh, and, I, the way I think me, and I think, most other judges have looked at that, there's a requirement that you file a petition for termination and custody doesn't happen in a pretty fair time frame, but those petitions do not have to be granted. Uh, it just causes, uh, it forces uh the system to take a hard look at the case to see, 'is this a case that's going somewhere?' And there's nothing in ICWA that requires that you leave a kid in limbo for years and years and years. So, I think if you look at the purposes of both acts, there's no, there's no necessary conflict between either. And there are some that would argue that, that ICWA was amended by um, passage of, of that act. But, I, I don't believe there's any, any legal support for that argument.

**GW:** Hm.

**A1:** The, the uh, the big conflict, I think comes not in the court context, uh but it's possible that it comes from some extent in the DHHS context. Because they're funding is driven by adherence to uh, the Adoption and Safe Families Act. Uh, and so there's um, there's an incentive at times and I think for them to make sure that they have adhered to that act. And, and uh, I, I agree with, with [NAME REDACTED], in that from the court's perspective, uh, they have to file within certain dates, but we don't necessarily have to grant anything within

certain dates. And so, to the extent that we can, we can make sure that ICWA is competitive and that the purpose of ICWA and I think that's really wh- uh, for many judges, it, is the concept of what ICWA is trying to do. What it's about is something that people try very hard to adhere to. Even if uh, we have to find some creative ways to do that and still comply,

**GW:** Yeah!

**A1:** with the Adoption and Safe Families Act.

**GW:** Yeah.

**A2:** Yeah, as a result of the Adoption and Safe Families Act we're reviewing cases more frequently than we did historically. And we're reviewing Indian cases more frequently than we did historically and non-Indian cases and so I don't see how that undermines any of the purposes of ICWA to, to have judges pay more attention to cases than the-, than they have historically.

**GW:** I think the impression that I have is of the, the issue around termination of parental -, that clarification that you gave was very helpful. I think the, in the tribal communities, the petition for termination of parental rights carries a huge historical significance and t-, and some would say a very -,

**A2:** and the burden is much higher.

**GW:** Right. And, some would say also a very retraumatizing um, language, experience for the tribes. Um, so, um, that the positive part of it, which is that we shouldn't leave kids in limbo and we should look at what's happening with kids, I think, that sometimes gets that, that's not the part that's always heard, I think, when you're dealing with the rank and file Tribal Child Welfare folks.

**A1:** Well, it

**GW:** So, uh, that's just, it's very interesting to me cause, because it also speaks to me in terms of more communication that has to happen within the system, even though we know these acts, we know what's there. That there is just--

**A2:** Well, to terminate in Tribal Court, you need, the proof needs to be beyond a reasonable doubt.

**GW:** Right. Yup.

**A2:** To try to terminate in State Court it's clear and convincing evidence. It's a, well I can't precisely distinguish the difference between the two standards, there's a significant difference between those two standards. And, uh one values parents rights more than children's rights, and, everybody can have their own opinion as to which is the most appropriate standard.

**GW:** Yah.

**A1:** And the other thing is that, you know, one of the things that I think many judges look at is, is under the Adoption and Safe Families uh timetable, is, I think it's what 20? They have to bring it within 22 months

**GW:** Yeah.

**A1:** And um, 22 months is roughly two years. Uh, in the life of a 4 year old, that's 1/2 of his life!

**GW:** Yah.

**A2:** Yeah, I think-,

**A1:** I mean, it is half that child's life! And so, yes, it takes time at times to go through this process, but if you look at it from the perspective of the child, that's half that child's life has been sort of, in limbo. And, so, there are a number of things that are going on in, in uh, when you look at, uh, and that judges consider, when they look at uh, this case, but -. Again, uh, it, it is important to understand that judges will look at the Adoption and Safe Family Act, understand that things have to be filed within certain time frames, but that doesn't necessarily mean that the Judge has to agree that termination has to occur in that time frame. And that's particularly true in, in, in matters where there are uh, complicating factors, such as the fact that the child is uh, is a tribal member and, and, uh there is a long and brutal history, that uh, can retraumatize when you start going down roads too quickly. But you have to balance that against the timeframe from the child's perspective.

**GW:** Yah. Yeah. Very difficult. Yah. Yeah, I don't think our reports gonna be able to give an edict on that, but I think it, hopefully at least, um, keep raising that in terms of the awareness and keep pushing for avenues for the key people who are involved to keep um, revisiting and talking about it and trying to examine that. Um, because I think when that doesn't happen, then the lack of communication then impacts what happens for those, *[simultaneously]*: for those kids and families.

**A2:** *[Simultaneously]*: Yeah, when you're terminating though uh, the parental rights of a Tribal Court Member, um to some extent, you, depending on who the proposed adoptive parents are, you may be terminating that child's uh, culture and heritage.

**GW:** Right, right.

**A2:** to a certain extent. So one can understand there might be a higher burden of proof in those,

in those cases.

**GW:** Yeah. Absolutely. Right.

**RG:** Um, before I go through the rest of the general questions, there's one other one that I would like to ask, um, it's actually not on here, and I'm wondering

**A1:** Ah, hidden agenda!

**RG:** A hidden agenda!

*[Laughter]*

**RG:** Um, I'm wondering if any of you could shed some light on, um a piece of legislation that went through in 2009 which created a court for the Maliseet community, and what has happened with that.

**A1:** Um, I think that they would be in the best position to be able to tell you what has happened. We um, as you know, the tribal courts, don't have any formal connection with the state court system. Having said that, the state court system has always made itself available to assist in any way that we can. Both in terms of facilities and in terms of, you know, we've lent recording equipment, we have invited judges to all of our Judicial Colleges so that they can attend, and they do attend. Uh, so we've had a very good and close relationship with tribal judges. Uh, but we have made it known that we are happy to assist in any way that we can with the establishment uh, of the new court. Uh, but frankly, we have not been involved enough to know exactly where that stands. Um, and we know that they have struggled. But I don't know enough to be able to tell you exactly where they are right now. We certainly would make uh, continue to make an offer to them, uh of any assistance that we can give. Uh, but um, but I really don't know the progress that they have or have not made at this point.

**RG:** Ok. Thank you.

**A2:** And nor do I. I, I really don't.

**GW:** Ok.

**A2:** I knew that they had a system, but that's all.

**RG:** Alright.

**A1:** We wer-, by the way, just, just a - we were very supportive uh, in 2009 of uh, their ability to be able to do that. But um, again, that, we respect the uh the sovereignty of their situation and have not attempted to become involved unless we're requested to do so.

**A2:** Have you spoken to any Aroostook County Judges?

**RG:** No.

**A2:** Because they might have more information on that point.

**GW:** We've talked to the attorneys, right?

**RG:** We-, yes, we've spoken to a couple of attorneys.

**A2:** Oh, ok, well, yeah, that's probably

**GW:** We've probably, we've probably had the biggest challenges making connections with the Maliseet Community, which is I think, probably one of the reasons Rachel is asking the question--

**RG:** Mhmm. Yeah.

**GW:** of audiences who might know. Um,

**RG:** Not trying to bait anyone.

**GW:** Yeah.

**A1:** No.

**GW:** The other on, the other tribal communities, I think we've had uh, um, good connections, you know formal meetings with the Chiefs, formal meetings with their counsel, um, other informal meetings obviously with residents, with the Micmac and the two Passamaquoddy reservations and the Penobscots, but it, it's uh, and this is not to denigrate the Maliseets, at all, but, but that has been a bit of a, more of a challenge [*simultaneously*]: uh, for us.

**A1:** [*Simultaneously*]: Well we, we stand ready to assist you in any way that we can. But uh, it's something that they need to do.

**GW:** Yeah. Yeah.

**RG:** What strengths does State Child Welfare possess in ensuring ICWA compliance?

**GW:** So what are -

**RG:** In your opinion?

**A2:** What strength do

**GW:** Yeah. What do you, what do you think that the State Child Welfare System is doing well in term of ICWA compliance? It's sort of two questions. What do you think is going well? What do you think isn't going so well?

**A2:** Well, I think they're pretty scrupulous about um, identifying particularly um, with a Wabanaki Child, identifying whether someone is eligible for membership in a tribe, and therefore identifying a case that implicates ICWA, and I think they're also scrupulous about uh, trying to in a Indian case trying to get a family placement. I think they've gone to great lengths to do that. They really uh, try to do that. They try to do that outside of the family context as well, but I think they're particularly sensitive in the tribal context, even more sensitive to placing a child with family members because of the cultural piece.

**A1:** I think kinship placement has been uh, a very, very important part of what DHHS has been doing over the past few years. And, I agree with my colleague that in fact, uh, that is heightened, when it comes to a child that is eligible for membership in any of the tribes. They really have done a good job, with that.

**A2:** Because, not only is that child losing his immediate family, the Indian child, but he's losing the extended tribal affiliation as well. So it's a pretty big deal.

**RG:** Mhm.

**GW:** Yah.

**A1:** So they, I think they have developed, uh, DHHS and the Attorney General's office, have developed a very good working relationship with the social workers and with tribal members. Uh, social workers for the tribe and tribal members to make sure that not only is a child identified, but also if the child is identified, then immediately working with the Tribe to make sure that uh, the tribe is playing an important role in making sure that this case goes where it should. So I think, I think, that relationship is a pretty good relationship. I think the weakness is that we have done that, I think, uh so well on the Wabanaki tribes that it becomes more difficult when it's a different tribe, from a different part of the country. Because they know exactly what to do when it's a Wabanaki child. When it's not, they um, they are not uh, as attuned to the procedure to go forward and, and engage that other Tribe. I don't know if that makes any sense to you.

**GW:** Yah.

**A1:** But they do very well in regards to Wabanaki kids.

**RG:** And what strengths and weaknesses um, do you notice, or do you see, Wabanaki Tribes possessing in ensuring or working with the State for ICWA compliance?

**A2:** You know, I don't really see anything behind the scenes, what goes on behind the scenes,



but, it's just pretty obvious that there's a very cooperative relationship. Uh, between the, the uh, the State of Maine Department of Health and Human Services and other counter parts. Um, you know, and in terms of compliance, maybe this is a little off topic, but historically, there's a guardian ad litem appointed in every protective custody case and historically those guardians didn't receive any particular training but now there are, what are called, "Rostered Guardians", ok? And um, so before any lawyer could be a guardian ad litem, no matter what his or her experience level was, but now, there's a, a process that a Lawyer has to go through to be "rostered" and as part of that uh, process, they're sensitized about, guardians are sensitized about ICWA. And so you have, just another party there to make sure that the ICWA requirements are being complied with, where historically, that necessarily wasn't the case. But the, the, the guardians are pretty independent in Maine and they're not a rubber stamp for the Department of Human Services by any stretch of the imagination. So that's just a, another mechanism for a-assuring that ICWA is complied with.

**GW:** Yup, yeah. Um, can you talk about the importance of attorneys within the State learning about and having knowledge of American Indian family structure and, and culture?

**A2:** You know, I think, there's...that some effort should be made to educate attorneys about that and I'm not sure if much of an effort has been made. There's been uh, an effort made to sensitize them as to the requirements of ICWA, but maybe we should requi-, make them all read the, the Kingsolver book. *[Laughing.]*

**GW:** Yeah. *[Laughing.]* I've gotta go, it's been a while, Ok, I have got to get that out.

**A2:** *[Laughing]* But um, and the Tribe could pr-, I was thinking about this actually on the way down, I don't know why, but the Tribes could participate in that process as well. If the tribe were willing to provide, the tribes are willing to provide education, I think they'd find a number of receptive audiences among the bench, the Bar, the guardians, and, and everything else. Uh, uh, up to now, I think people, it's just people just on their own reading about tribal culture and some do and some don't. But there's no formal mechanism to educate. And I think in the guardian training, I don't think, they get into that, you know, the, *[simultaneously]*: family structure.

**A1:** *[Simultaneously]*: Not with that issue. We spend a lot of time going into the Indian Child Welfare Act and what the requirements are and so forth and so on, but in terms of education of cultural norms of family ties, of the nature of uh, Native Americans, I, we, we've not done that. And uh, I would, I would uh, just throw out for the Commission's consideration um, every Spring, as long as we continue to have Federal funding, uh, every Spring we have a Child Welfare Conference where we invite attorneys uh that practice in the Child Welfare area

**A2:** Oh, that's great idea.

**A1:** to come for free. We pay their overnight, we pay their, all the costs for them to attend conferences each year on Child Welfare topics. Uh, I would be happy to set up a portion of that in a future year, as an opportunity for tribal members, or others to come and participate in an educational program that, that makes attorneys have a better understanding of what they're dealing with.

**GW:** Yup, yup, That would be great.

**A2:** That's really a ve-, a great idea. And I'm not sucking up to the Chief, but *[laughing]*

**GW:** *[Laughing]*

**A1:** It's Ok, you can do that.

**A2:** *[Laughing]* because you have all the petitioners there. The guardian ad litem are there, the judges are there, the lawyers are there, DHS workers are there, like everybody that needs to be there to here that, is there. And so, it's just a really efficient way of communicating that information to all people that really cou-, need to hear it.

**GW:** Yup.

**A1:** Now, this year's is all done. We're doing it in April and we've got speakers and that's all lined up but for future years, we'd be happy to do that.

**GW:** Yeah. No, That's a great, that's a great idea. Yeah. And, and we'd have a better sense of our, our work would be uh, completed this summer so it would, that is one of the things that we want to do even though the Commission formally ends in June. Many of us will probably participate in public forums, educational forums, Nationally or within the State.

**A2:** The lawyers all go, the guardians all go, cause we're pickin up the tab.

**GW:** Right.

**A2:** We put em in a hotel.

**GW:** Yah.

**A2:** So, you've got a captive audience there. It, it's really a good idea, *[NAME REDACTED]*.

**GW:** Yah, yah. Um, can you also talk about the importance for an Indian child who's place in out of home care to be placed within reasonable proximity to his or her tribal family?

**A1:** Well, that, that's, uh, it's obviously, that's something that we pay a lot of attention to regardless of whether a child is a member of a tribe or not. The purpose of the Child Welfare process is really to promote reunification. And reunification isn't gonna happen if the



opportunity is not there, proximity wise for parents to continue to interact with their child in positive ways. And so, from our perspective it is, it is extremely important that a child be placed in close enough proximity so that the parent can then easily have continued contact. If you don't provide that, you're not really serious about reunification. So that's something that's very important to us.

**A2:** Yeah just to follow up on that, I uh, and, and you know, it's important to every child, and every parent to have a fair chance at reunification. It's not a fair chance if it's difficult to even see your child. But it's also important, not to disrupt the, this child, his a relationship with his parents have been disrupted. You don't want to disrupt the school relationship, the relationship with relatives, the relationship with friends, if you don't have to, you know? So it's, it's, it's very important. We all are pretty scrupulous as *[NAME REDACTED]* said about the trying to do that.

**GW:** And I guess the follow up is also in terms of the importance when they're in out of home care to be able to participate in tribal events or social activities, um...

**A1:** Echoing what *[NAME REDACTED]* said, I the purpose is reunification. And the focus is on what's in the best interest of that child. And, uh, it's not in the child's best interest, it's not in the family's best interest if this child has become so separated from everything that child has known, and everything that's important to that child uh, and everything that's important to that family, ah, to sabotage, uh eventual reunification. So we have to do whatever is necessary to encourage the child to continue to have the contacts, the, the participation in making life as normal as you can, in the context of what we're working with, the normal as you can so that that child uh, doesn't experience overwhelming change and uh, and difficulty.

**GW:** Right.

**A2:** It's hard to imagine, being a parent and a grandparent, members of the Department of Human Services, coming into my home and removing something as, as precious as one of my children or, or grandchildren and then telling that child, 'Look, um you can't live with Mommie and Daddy anymore. That's part of it. But, you can't play with your friends anymore, you've got to go to a different school with strangers, um, in a different community'. Um, you know that's uh, that can be more damaging to the child than the reason that the Department got involved in the first place. So you, you really, we are very sensitive.

**GW:** Yeah.

**A1:** Now. I don't mean to imply by that there aren't circumstances by which, you know, there aren't a lot of options. Uhm, because there are circumstances where we have children that have been very seriously harmed, um, physically, emotionally, and for some kids, the only option

that's available is a structured environment that uh, that may not be as close as we would like to have it.

**GW:** Umhm.

**A2:** Right.

**A1:** Uh, those, those cases uh, hopefully, are few and far between. I think the majority of the cases that we deal with are ones that we try to keep people, keep the community together. Because that's the way that the- uh, that the case is gonna get resolved.

**A2:** Yeah, those placements aren't always possible as *[NAME REDACTED]* said, and even the family placements sometimes, family members are denying the child's reality about what happened. And obviously you can't place a child in that kind of an environment.

**GW:** Hmm. The last couple of questions um, are I guess are following up on what else you think, any recommendations you have, if you could change anything, uh, make anything happen for Native children, um change how things operate in terms of our State Child Welfare System, sort of what or any closing recommendations or thoughts that would be helpful to the Commission.

**A1:** Uh, I'm sorry, I, the first thing that came into my mind when you said that was, I wish that you would be able to provide me with a magic wand.

**GW:** Hmmm.

**A1:** To be able to make some of these difficult problems go away. Umm.

**GW:** Yeah.

**A1:** But the fact of the matter is, is that many of these children, not just Native American children, but many of the children we deal with in the child protective system are very damaged, uh and are in very difficult circumstances, and, I cannot emphasize enough how, how grateful I am for all of the people in the system that work so very hard to do the best that they can for the kids that are in front of them. Um, and that's from, that's from social workers to Assistant AG's, to the attorneys, to the guardians, and to the judges. Uhh, these are difficult, difficult, difficult cases and uh they're the kind of cases uh, you go home after having decided and you lay in bed trying to get to sleep and worry about whether you made the right call or not and whether you did it right or whether you did it wrong. And, and those are, those are, are, are tough cases. But, I'm constantly impressed uh, with all of the people in the system that really are trying to do the best that they can with what they have. So. Um, I'd leave it on a positive note and say that, that uh, 'are there things we could do better?' I'm sure that there are. I'm sure that there are ways that we can improve but things in Maine are vastly different than they were 20 years ago and, I think uh, people are doing the best that they can with what they have.



**A2:** I agree, I'm older than he is, but I think we've come a long way since I've been a lawyer and since I've been on the bench in terms of protecting children. Um. We-we're doing um, a much better job that we ever have. And as [NAME REDACTED] says, there's always room for improvement. And it's, I think it's really remarkable how well we're doing given the resources that we have as well and obviously that's something that's out of our control, um, but it seems like budgets keep getting slashed and cut back. And the numbers keep going up. Um, the uh, so as the budgets are getting slashed, the numbers seem to be going up, so -

**A1:** Yeah, just to, to, to put that in a little bit of context. I don't know the extent to which the, the Commission understands. Um, we, the, the uh, Maine Court System, the District Court System has about 120,000 cases a year that are filed, that's of all types. That does not include 110,000 traffic cases, these are just other cases. They're divorces, they're evictions, they're foreclosures, they're uh, criminal cases. All that stuff. We have 36 judges and we have 36 judges, at any one time when you figure people that are sick, or on vacation, or whatever, we effectively have around 30-32 Judges working at any one time. And our Child Protective cases, uh, over the past few years have gone up, dramatically. The numbers of Child Protective cases in some of our District Courts last year, by July, they had already reached the same number that they had reached throughout the entire previous year. So, um, we are, we have a lot of very dedicated people that work very, very hard and these are difficult cases, they take a long time, they take a lot of hard work. And uh, I could not be more proud of the job that people do, in terms of, just trying to um, you know, keep these cases on the right track and do the best that you can for the children that are there.

**A2:** Yeah, we've had education with respect to the ICWA requirements, but we really haven't as, as a group lawyers, or a group of judges, haven't had the cultural piece.

**GW:** Yeah. Yah. Thank you. Anything else that you want to add?

**A1:** No, just to thank you for and the other Commissioners for doing this work. I think that this has the potential to be a, kind of ground breaking opportunity for um, people to understand one another and come to some, I'm not gonna say resolution because I'm not sure that that's the right term but to come to, to come to grips with uh, where we've been and where we need to go.

**GW:** Yeah.

**A2:** Ya, we did some things as in Washington County. We uh, I was the, head of the drug court there and we had a number of tribal court members who were drug court clients as well as and, and we did some things to try and sensitize people. We would go on these hikes and things like that to try to show people in recovery that you can have fun without getting high and to try to bond with people. But we included uh, uh, the Tribe in, in, in those activities and

we went to a Sweat Lodge once, with court officers and judges and everything else and um, we actually held a tribal, a drug court session in the Passamaquoddy Tribal Court at Pleasant Point. Um, and so, we did some things like that and I thought that they were valuable, but I think, *[NAME REDACTED]* suggestion, just because it's all set up. You've got everybody there.

**A1:** All the judges are there.

**A2:** All the judges are there. All the guardian ad litem, all the attorneys, the DHS workers. They're all there and uh, they're gonna come because they get a free room, and a free meal and everything else, they're gonna come. So that's all set up. Uh, it's a big State and people don't have a lot of money, guardians and lawyers don't have a lot of money, there's struggling, but they get a, a free room in Portland, they're gonna come. And so, if you could just incorporate some

**GW:** Yeah. Absolutely!

**A2:** the court system would be, *[REDACTED]*, would be very receptive to, to that kind of input.

**GW:** Yeah, I think so and I think we've heard it from other judges and other attorneys that we've met around the state um, who would feel, feel the same way.

**A2:** Good.

**GW:** Well, we will be, I know that we will be um, uh, getting our, our report out to all of the key stakeholders and getting input from people, so -

**A2:** Give that to the Chief maybe.

**GW:** You will, you will hear back from us.

**A1:** Great.

**GW:** Absolutely. Thank you very much.

**A2:** OK! Thank you dear.

*[Simultaneous]* Thank you's.

**A2:** Do you have far to drive?

**GW:** Just back to Bangor.

**A2:** You, and where are you at.

**RG:** Back to Bar Harbor.

**A2:** Oh, way up--

**GW:** Yeah, Rachel's our--

**A2:** Almost as far as me.

**GW:** Rachel's our research coordinator and I don't even want to think how many miles she put on her

**[END OF RECORDING]**