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7-18-2014

Statement by Richard Totten collected by Rachel George on July 18, 2014

Richard Totten

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General Information

Private or Public Statement? Private

Statement Provider: Richard Totten

Date: July 18, 2014

Location: Augusta, Maine

Previous Statement? No

Statement Gatherer: Rachel George

Support Person: N/A

Additional Individuals Present: N/A

Recording Format: Video

Length of Recording: 28:53

Recording

RT: I am a little deaf. I've got hearing aids, but they don't totally compensate.

RG: Okay, so I will talk really loud. (*simultaneously*)

RGT: (*simultaneously*) Soft sounds, soft sounds I don't hear well. (*laughs*)

RG: Okay, no problem. So, it is July 18, 2014. We're here in Augusta, Maine. My name is Rachel George. Would you mind stating your name, please?

RT: Richard Totten.

RG: Fantastic. The file number is ME-201407-00071. Uh, Richard, have you been informed, understood and signed the consent form?

RT: Yes.

RG: Fantastic. And I have to let you know that if at any point during this interview, you indicate that there is a child or an elder in need of protection or that there is imminent risk of serious bodily harm or death to an identifiable person or group, including yourself, that that information may not be protected as confidential. Do you understand?

RT: Yep.

RG: Fantastic. Is there anything you want to say, starting off, or do you just want me to jump into the questions?

RT: Yep, just jump in.

RG: Okay. Can you tell me about your employment with the State Child Welfare or DHHS?

RT: Well, I worked with the State for 37 years.

RG: Mm-hm.

RT: Uh, started out as a caseworker. They sent me to get my Master's degree.

RG: Mm-hm.

RT: And then, I came back and was a caseworker for almost another year. And then I got promoted to a supervisor for a couple years. And then I got promoted to program supervisor.

RG: Mm-hm.

RT: And I was a program supervisor for 20-odd years. And then I got promoted to, ah, program administrator. And I had that position for, you know, 11 years in York County.

RG: Wow. Were you in York – What offices were you in while you were working?

RT: I was in the Portland office, uh (*clears throat*) for 26 years, I think it was, and then, in the Biddeford office for 11 years. And then when I retired, I went to work as a volunteer child welfare ombudsman –

RG: Mm-hm.

RT: – and I've been doing that for seven years.

RG: Can you tell me a little bit about what that position is like? For that volunteer – ?

RT: Uh, when people have a complaint about the department, the child welfare system –

RG: Oh, Okay.

RT: – they can complain to the ombudsman, which is a, an independent position that was set up by the legislature to, it doesn't have any authority over the department, but it does an independent review of the work of the department, writes up a report on the case, sends it to the department with recommendations about what we think, as an ombudsman, that the

department maybe should be doing –

RG: Mm-hm. Mm-hm.

RT: – and, ah, at the end of the year, it does a report to the legislature. The purpose, *primary* purpose of the program, is to make recommendations for improving child welfare services.

RG: Mm-hm. Throughout your time working with DHHS, both employed and working in this volunteer position, how — did you come across many cases where you were working with Native families?

RT: Not very many.

RG: Were there any cases that stood out to you?

RT: Uh, (*clears throat*) one I remember really well. Actually, most of the, the, ah, Indian families that we dealt with down in District 1 were from out of the state.

RG: Mm-hm.

RT: I remember we had a Navajo, and a Sioux and an Aleut, and some others that, that were not Maine Tribes.

RG: Mm-hm. Mm-hm.

RT: The one case that I actually remember the most was not a Maine Tribe either, although it was related to a Maine Tribe, because it was a Micmac Tribe in Canada and the person was out of, out of one of the reservations from there, not from Maine. So the Indian Child Welfare, ah, Act *was* applied to that case because the Micmacs have a, a different status.

RG: Mm-hm.

RT: They kind of straddled Canada and –

RG: Yeah.

RT: – Maine?

RG: Yeah. Can you tell me about what the policy was when you were working with that case? I mean, I can – I'm sure it's a bit complicated because you're dealing with a Tribe that's not even in the country.

RT: Well, basically we follow the same policy we would if it, if it had been in, you know, a Maine Tribe.

RG: Mm-hm. Mm-hm. And was that the same for the other cases that you came across that dealt with Tribes from –

RT: (*nodding*) Yep. Yep. Yep. We'd reach out to the Tribe try to, you know, try to find the Tribe and find out whether or not the person is a Tribal member; and then, y'know, does, does the Tribe want to assume jurisdiction over the case or not, and, if not, what, what does the Tribe want?

RG: Mm-hm. Mm-hm. How would it work if the Tribe did assume jurisdiction over the case; for example, if someone in the case where the child was Navajo, and there's that large distance between the two, where the child was living in Maine and the Navajo Nation is –

RT: (*overlapping*) –I don't know; that would've been interesting.

RG: Yeah.

RT: But, as, as I understand it, some Indian Tribes have their own child welfare staff.

RG: Mm-hm. Mm-hm.

RT: And so, if they take jurisdiction over it, it, it would be their case. So we would be out of it, I presume.

RG: Mm-hm. Mm-hm.

RT: Now, how they would do that from the Navajo to Maine, I don't know.

RG: Yeah.

RT: None of the cases where it was at far did the Tribes assume jurisdiction, because they were – well, generally, they were cases where the grandparents of the child had left the reservation and were not enrolled members –

RG: Mmm.

RT: – and the parents had *no* connection whatsoever to the Tribe and so the grandchild was even more removed.

RG: Mm-hm. When did you first learn about Maine's policies related to the Indian Child Welfare Act?

RT: Well, it would be when the, when the law was passed.

RG: Mm-hm. Did you receive any specific training about the Indian Child Welfare Act?

RT: Yep. (*nodding*) We had statewide training.

RG: Can you tell me a little bit about it?

RT: Well, I don't remember a whole lot of it, other than it, it going over the Indian Child Welfare Act and the Indians participated in the training, if I remember. We had a smudging ceremony.

RG: Mm-hm.

RT: In fact, I've been to two or three smudging ceremonies where, you know, the Indian Child Welfare Act or the policy was something that was being, ah, trained on.

RG: Mm-hm. Do you remember what year that was, that you received that training?

RT: I don't.

RG: That's okay. Um –

RT: I have to look it up – whenever the law was passed! (*laughs*)

RG: (*laughs*) Yeah. Yeah. Um, so there's a number of experiences in working within the Indian Child Welfare Act that I'd love to ask you about, um, your experiences in working in that area. If you don't have any, that's okay, just let me know. But I'm going to go through and ask you about all of them. Sound okay?

RT: Um-hm.

RG: Okay. What were your experiences in or challenges that you found in initial identification of a child as Native American?

RT: Well, as a caseworker, I never had any so, and that was probably before the actual Act, anyway, too. So I don't have any direct experiences as a caseworker. As an administrator, uh, I would want to get involved if I was, like, reviewing a case, or something?

RG: Mm-hm. Mm-hm.

RT: And then, that would be something that I would, would look for. Like I remember one case where we took custody of a child because the parent had threatened to run away with the

kid and hide on the Indian reservation. And I thought that was a *clue* ... that the parent might be an Indian!

RG: Mm-hm.

RT: – And the case worker had *not* identified *that* or done anything under the Child Welfare Act, so –

RG: Mmm.

RT: You know, my role on – was two levels removed from supervising that worker – was meeting with the supervisor and bringing that to the supervisor's attention, and making sure that the Indian Child Welfare got complied with, and the Tribe got contacted.

RG: Mm-hm. Mm-hm.

RT: And so that generally was my role – it was more secondary.

RG: Mm-hm. Did you have to review very many cases where things like that happened, where there wasn't identification of a child as Native American to begin with?

RT: No, not a lot.

RG: That's good to know.

RT: And I think that was probably early on, too.

RG: Mm-hm.

RT: I think it probably took the department a while to get used to this. It was something that needed to be a routine thing.

RG: Yeah, absolutely.

RT: And that is something I see as, as an ombudsman is frequently, as you mentioned, of a caseworker writing letters to different Tribes trying to determine whether or not the child is a member?

RG: Mm-hm.

RT: And, in the court papers, it seems like it's a routine question that the court asks the department –

RG: Okay.

RT: 'Is this child a member of a Tribe?'



RG: Mm-hm. ... Um, how about – and not necessarily in your time as a caseworker – but as an administrator or a supervisor, in that notification of children to Tribal Child Welfare; so if I child came in to, or came to your attention, what was the process like for notifying Tribal Child Welfare about that child? Is that something that you ever dealt with?

RT: Not directly.

RG: Okay.

RT: No.

RG: That's okay. Um, and how about in determining – well, you talked about this, actually – so in your experiences in child custody hearings or challenges you found in child custody hearings dealing with Native American children?

RT: *(pause)* Again, I didn't have any directly. Ah, there was one case, one case I'd mentioned, that had gone to the law court, and I was involved in that, uh, again, more as an administrator than as a direct provider. And then I *(clears throat)* I remember I did receive a couple of calls on a couple of different cases from, ah, an advocate – and generally what. all that I did on those cases is talk with the supervisor involved and, and remind them that we had to basically defer to the advocate.

RG: Mm-hm.

RT: I mean, not carte blanche, obviously. If we adamantly disagreed with them, then, you know, it would probably come to me for a review.

RG: Mm-hm. Um, and how about, if you've ever had any experiences in arranging foster care placements for Native child, children? Perhaps not directly, but as an administrator?

RT: Not directly, no.

RG: Um, how about in kinship care? Do you have any experience working with that as an administrator?

RT: Not directly, no.

RG: Termination of parental rights?

RT: *(shakes head 'no')*

RG: Adoption?

RT: Well, the only case that I was talking about involved both terminating the parental rights and clearing the child for adoption.

RG: Mm-hm.

RT: And that was why it went to the law court.

RG: Mm-hm. Um, what do you consider active efforts to prevent the break-up of an American Indian family?

RT: I wouldn't think it would be any different than the efforts that we should be making with any family – that we should be clear with them up front, what the issues are; and, and offer them services; and if there's any way to keep the child in the home by providing services, developing a safety plan, ah, we should be doing that before we jump to court.

RG: Mm-hm. Um. I'm not sure if you would have experience in this part, but how are Tribal Child Welfare staff included in the development of a family case plan –

RT: I haven't had any –

RG: – involving a Native American child?

RT: I haven't had an experience with that.

RG: That's okay. Um, to the best –

RT: (*overlapping*) The question is generally what if the Tribe does not assume jurisdiction, that they tend not to be all that involved.

RG: Mm-hm.

RT: Although I know that we did have situations where there was a – I forget his name – I think his name was Silvernail, and he was an expert for the Tribes – and he would testify in cases.

RG: Mm-hm.

RT: But generally that's, that's all I know that, that the Indians had. He would do his own assessment, and then he would testify as to what position he thought should be taken.

RG: Mm-hm. And –

RT: (*overlapping*) But then I don't think he was involved any after that.

RG: Mm-hm. Was that in the child custody hearings?

RT: Yeah.

RG: Okay.

RT: Yep.

RG: Um, to the best of your knowledge, if a Tribe declines to intervene in a child custody proceeding covered by ICWA, what are the reasons for that? Do you know?

RT: I don't know. *(laughs)*

RG: That's okay.

RT: I don't know why they would decline. I guess probably it would be because the child had no connection to the Tribe.

RG: Mm-hm. And to the best of your knowledge, when the State declines to transfer a child custody proceeding covered by ICWA to Tribal Court, what are the reasons for that decision? Or to the Tribe? If the *State* declines to transfer?

RT: Well, that's never come up, that I've ever – with, with me anyway, so I can only hypothesize. Maybe the, ah, Indian parent was not involved at all, whatsoever, and the other parent was not an Indian at all and objected.

RG: Mm-hm.

RT: I s'pose that might be a reason.

RG: Mm-hm. Um, and you had a mentioned a little about, ah, 'Silvernail,' I believe is what you said –

RT: Well, I –

RG: – the name was?

RT: – I'm not very good a remembering names.

RG: That's okay.

RT: I'm thinking that's what it was, but –

RG: That's okay. Ah, so, this question is, have you had any experience in working with an expert witness for Indian Child Welfare? So that's what it sounds like to me – he was an expert witness?

RT: Yeah. Yeah. Now I didn't have any direct experience working with him, but I was aware of him testifying in some different cases.

RG: Do you know what kinds of things he was testifying about?

RT: Ah, nope!

RG: That's okay. Um, what State Child Welfare policies, practices and events influenced your work with Native American children and families?

RT: Well, partly, that we have a policy that basically is based on the law.

RG: Mm-hm.

RT: Um, you know, and my role on that one was that when it came out in a draft form was to give feedback on it.

RG: Mm-hm.

RT: (*clears throat*) And, ah, if I remember right, it was overly redundant, and, ah. So, reviewing the policy; making sure that my supervisors were trained in the policy; and that they provided training to their staff, and training in the law. You know, and, we have – You know, that's something that was built into new worker training, so all new workers are trained in it when they come in.

RG: Mm-hm.

RT: And periodically there's, there's ongoing training in the Indian Child Welfare law. And then, 'cause, as an administrator, it's something that, that I would look to, if I was reviewing a case. And it's certainly part of any Federal review that occurs.

RG: Um, how did State Child Welfare policies and practices change during your time when you were working there, with really –?

RT: – Change in time?

RG: – Change **during** your time working there.

RT: Oh, during my time.

RG: Yeah.

RT: Ah, well, primarily, it's, ah, paying attention to the existence of the Tribes, and deferring to them, listening to them.

RG: Mm-hm.

RT: Uh, hopefully, it was designed to improve the working relationship between the State and the Tribes. (*clears throat*) And I was involved in a, a couple of meetings with the Tribes. Ah, all of the program administrators from around the State got together with each of the Tribes collectively in a meeting to discuss policies and issues.

RG: Mm-hm. Can you tell me a little bit more about that meeting, what it was like?

RT: I can't remember a lot about it. I remember it was, ah, up in Brewer.

RG: Mm-hm. Do you remember how long ago it was, approximately?

RT: Well, I've been retired seven years, so ... at least 10 years ago.

RG: That's great. Um, over the course of your work with State Child Welfare, what *did* you – or, ah – yeah, what *did* you see as barriers to the successful implementation of the Indian Child Welfare Act, if you saw any barriers?

RT: (*clears throat*) Well, in my district, it was just the lack of actually having cases that involved Indians.

RG: Mm-hm.

RT: So that, you know, it's the kind of thing that the workers weren't really familiar with.

RG: Mm-hm.

RT: And, ah, if it wasn't a Maine Tribe, it was always difficult to try to figure out, well, 'How do I figure out where this Tribe is? And how do I get in touch with it? Who's the contact person?' kind of thing.

RG: Mmm. Mm-hm.

RT: Now, like, one of the ones I just reviewed, as an ombudsman, there was a, a Tribe in another state and the worker wrote to that Tribe. And the Tribe said, 'No, he's not known to us.'

But we have three other branches of the Tribe down the road, he might belong to one of them. Why don't you write to them?

RG: *(whispered)* Wow.

RT: And, I thought, well, you know, it would've been nice if, if – they know the other branches, I presume – if they'd reached out to 'em. So now the worker's got to figure out, 'Well, all right, *(laughs)* so who do I contact for those two branches?'

RG: Mm-hm. Mm-hm.

RT: But, so, I think that just not being familiar with the process and, you know, I noticed, the caseworkers, if they're not familiar with how to do something, then they avoid it. So I think that's probably the biggest barrier, it's the State –, the Districts – have had very few Indian cases that come to their attention.

RG: Yeah. Yeah. Um –

RT: – It's also, I think, a difficulty, too, is I think the department is used to being in control. And it's something I see a lot with kinship cases.

RG: Mm-hm.

RT: When we place with kin, the kin have an attitude that they think that *they* should be in charge because they're the grandparent or the aunt or uncle, and they should be able to make the decisions. And it becomes a conflict point with the department when the department is the one making the decision –

RG: Mm-hm.

RT: – doesn't agree with what the kin want to happen.

RG: Mmm. Mm-hm.

RT: And the department usually ... they're in control, so they will make the final decision. And I think the same thing probably happens when Indians are involved, and the Indians want something to happen, and the department is not used to deferring to them –

RG: Mm-hm.

RT: – instead of being in situations where the Tribes haven't actually assumed jurisdiction, but maybe want to still be actively involved in some way.

RG: Yeah. Yeah. What strengths does the State Child Welfare system, um, possess in ensuring that the Indian Child Welfare Act is followed?

RT: Well, I think the State is, is committed to, ah, understanding different cultures and how that impacts what's going on with a child. I think the State's sensitive to that. And, you know, I think, maybe one of the things that's heightened the State's sensitivity to that is the, the influx of refugees into Maine.

RG: Mm-hm.

RT: Portland has a large Somali population, and that's certainly sensitized them to that issue. I mean, I was involved in a case with the Somalis where we actually had to have the rules and regulations of licensing translated into Somali, so that an applicant for foster care could understand what, what the rules actually were.

RG: Mm-hm. Mm-hm. ... That's really interesting.

RT: And I don't think they've ever translated any of that into, um. The Indians have written language?

RG: Um-hm.

RT: Newspapers and things?

RG: Um-hm.

RT: So I don't know if the State's ever translated stuff? That'd be an interesting question to look at.

RG: Mm-hm. That's absolutely a very good question. Um, what weaknesses does the State possess in ensuring ICWA compliance?

RT: *(pause)* Well, the one I already mentioned, just in terms of the lack of, ah, familiarity in working with the Tribes.

RG: Mm-hm.

RT: And the tendency to, 'We're in change' kind of mentality.

RG: Mm-hm. Ah, what strengths and weaknesses do uh, Wabanaki Tribes possess in working with the State for ICWA compliance?

RT: I'm not as familiar with that. I think, probably, maybe, a, a weakness would be *(clears throat)* the huge history they have of adverse experiences working with the State would, I

would think, *greatly* reduce their, um, ability to trust the State.

RG: Mm-hm.

RT: I think that could be a weakness.

RG: Absolutely. Could you talk a little bit about the importance of caseworkers learning and having a knowledge of American Indian family structure and culture, if you think there is an importance to that?

RT: Oh, yeah, I think that's important. I think that's important for, for any, cultural group that the department works with to, to understand what their norms and values are, and how that impacts how the parents behave and what they do. Is, is what the parent's doing, is that within the norm of their culture? Or is that something that's not even the norm of their own culture?

RG: Mm-hm.

RT: It, ah, allows you to put the parents' behavior in perspective, and I think that's important for the Tribes, but it's also important for – that's my *own* position – it's important for everybody. I mean, just because somebody is a white person doesn't mean that they all come from the same background.

French families have different backgrounds from Irish families and Polish families and English families, and even within a Polish family, you probably have a wide variety. So, you know, my bottom line is, don't make any assumptions, uh, with labels. You look what's behind the label.

RG: Yep. Absolutely.

RT: I think that would certainly apply to Indian families, too.

RG: Mm-hm. Mm-hm.

RT: I'm sure that all the Indian families aren't alike.

RG: Mm-mm. *(soft laughs)*

RT: So ...

RG: Exactly. Could you talk about the importance of having an Indian child who is placed in out-of-home care to be placed within reasonable proximity to his or her home community?

RT: Well, again, that's a basic standard that the department has of any child. You want to reduce the trauma to the child, as much as you can, of taking him away from the parent. So, if you can keep him in the same school, ah, with the same friends and same contacts, you know, all of that's going to minimize the trauma the child has from being removed from the parent.



RG: Mm-hm. Could you talk about the importance of an, having an Indian child who's placed in out-of-home care participating in his or her Tribal events and spiritual customs, social activities?

RT: Yeah, I think that's important. Ah, that case that I told I remembered about that went to the law court – that was one of the strengths of the family is that, even though they weren't Indians themselves, they really made an effort to connect the, the child to the Tribe and to their cultures. Um, I'm not sure, at the time, that the *child* saw the importance of that, 'cause they were, you know, like, very young children.

RG: Mm-hm.

RT: But, ah, it, was good to expose them to that, and everybody wants to know what their roots are, pretty much.

RG: Absolutely. Absolutely. In what ways do you see Maine's Indian Child Welfare policies and the Adoption and Safe Families Act working together? And in what ways do you see them not working together?

RT: Well, I would think that they logically uh, do mesh, because they, they both basically want the same thing for the child. They're all focused on, you know, what's in the best interest of the child and keeping the child safe.

RG: Mm-hm.

RT: So, I don't know, I don't see any conflict there. Ah. How they do conflict? *(pause)* [00:26:00] *(inaudible)* the trust level, obviously. Ah, I think it isn't as clear-cut when you have a, an Indian that's married to a non-Indian, and what are the rights of the non-Indian side of the family.

RG: Mm-hm.

RT: I think that might be an area where there would be conflict.

RG: If you could change anything, or make anything happen at the Tribal, State or Federal level to improve the lives of children touched by the Indian Child Welfare Act, what would you do?

RT: If I could do anything, I would eliminate the negative history that exists between the Indians and us, and the white population.

RG: Mm-hm.

RT: Of course, we can't do that, so. Obviously, I think what, what I would do differently is try and focus more on how to work cooperatively together. We do mesh, so, this is probably a very good step in figuring out what that is and how, I mean, how **do** we work together so that the Indians can trust that the State has the same goal and objective that they do, and that, that we're not enemies of each other, that, that we really are one in the same.

RG: Mm-hm. Mm-hm.

RT: That's a challenge obviously.

RG: *(softly)* Yeah.

RT: And I, you know, I understand. The Indians have **ample** reason *(shaking head)* to not trust the State. I understand that. And, ah maybe that something the State needs to do more educating of its staff about the atrocities that we have done to the Indian Tribes – so that there really **is** a reason for them to not trust us. And, and, ah, we need to reverse it.

RG: Is there anything else you want to tell the TRC about your experiences either working with DHHS or now as a volunteer, that I perhaps didn't ask about?

RT: No, I don't think so because, like I said, I have such minimal experiences of actually being involved with Indian families. There's no reservation near Portland and Biddeford.

RG: Mm-hm. Still, your perspective was incredibly helpful.

RT: *(smiles)*

RG: Um, so there's nothing else you'd like to add?

RT: No, don't think so.

RG: Okay. I want to thank you so much for your time today, and for sitting down and bearing with me while I was a couple minutes late.

RT: Yep, no problem!

RG: Um, if it's okay with you, I'm going to stop the recording?

RT: Yep!

RG: Perfect.

END OF RECORDING