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Statement by Greg Dorr collected by Meredith Eaton on November 3, 2014

Greg Dorr

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General Information

Private or Public Statement? - Private

Statement Provider: Greg Dorr

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Previous Statement? N/A

Statement Gatherer: Meredith Eaton

Support Person: N/A

Additional Individuals Present: N/A

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Recording

ME: So my name is Meredith Eaton. I'm the statement gatherer with the Wabanaki TRC. Could you provide your name?

GD: Yes, my name is Greg Dorr.

ME: Okay. So the file number is ME 201411-00120-001. Today is November 3, 2014 and this recording is taking place in Bangor, Maine. Greg, have you been informed, understood, and signed the consent form?

GD: Yes I have.

ME: Okay, and I just want to advise you that any information that is disclosed that a child is in need of protection, or that there is imminent risk of serious bodily harm or death to an identifiable person or group, including yourself, may not be protected as confidential.

GD: That's understood.

ME: Okay. So, Greg, my first question for you– is it ok if I call you Greg or do you prefer Mr. Dorr?

GD: No, Greg's fine.

ME: (*Laughing*) Ok. Sorry. Should have asked you that before. And you're welcome to call me Meredith if you need to address me. Could you please tell me about your current or past employment as an attorney representing the Maliseet tribe? [00:01:22.10] So how many years did you work as an attorney?

GD: Right. So I graduated from law school in 1991. Began working with the Maliseet tribe soon after that on governmental issues– tribal governmental issues, employment issues, challenges that they were having with the settlement acts, and employment discrimination cases, child protective cases, and issues that they were having with the state and municipal government. And I've sort of continued that work through the years and really right up until today doing work for– child protective work for them mostly the thrust of what I'm doing these days. I have– so I would say I pretty much have been involved with them since 1992 although the early years were not child protective oriented, they were governmental issues. And I can talk about that a little bit more.

ME: Sure. [00:02:41.18] How did you first become involved in working with the tribe?

GD: The tribe had used services of one of my partners, Nat Rosenblatt, who is still one of my partners, but we have since changed firms– on some federal issues. And we worked with a tribe on federal issues, and I sort of became– you know he asked me if I would take a look at a particular issues and then sort of developed a relationship with the tribal leaders– officials. [00:03:15.12]

ME: Ok. And how many years during this time would you say included working with child welfare cases?

GD: Well I had done child welfare cases in the non-Native setting right from the beginning of my practice as court appointed work. You know I would say probably over my career, probably I've done several hundred cases of which, you know, about a third of those have been Native cases, Maliseet cases. The first Indian Child Welfare cases I had of course were not Maliseet, they were cases that just happened to arise and I was appointed to, you know the Bangor District Court. [00:04:02.26]

ME: Great. When did you first learn about the Indian Child Welfare Act? If you can recall, how were you made aware of the Act, and could you comment on the type and amount of training you received related to understanding ICWA?

GD: Yeah I was thinking about that question. I think probably I had some understanding of the Indian Child Welfare Act in law school, but I can't say it was a particular class that I took and gave some in-depth training in that. That certainly wasn't the case. The way the issue came about I can remember was in a non-Native case that I was handling in the District court where I represented one of the parents. And we– the co– I represented whether it was Mom or Dad, my co-counsel represented the other parent, and we came up with this issue of the heightened



standard– the heightened standard for proof required by the state because the Indian Child Welfare Act applied. So that was my first sort of exposure to that in terms of litigation.

[00:05:13.01] And we were successful in that context in getting the– the court found that it didn't rise to the level of the higher standard. So you know it was interesting to be able to have kind of spot that issue and then bring it up and utilize it. My co-counsel's a judge now. I'm not (*laughing*). So it was pretty much his invention there but you know– but since then I've had a fair amount of training. I've been—the Maliseets in 1998 put on a two-day training program where they had a lawyer from a Western tribe or had some affiliation with a Western tribe come out and do a training session. I went—soon after the agreement with the state of Maine was signed, I went to a program put on by the National– it's the National Indian Child Welfare Association.

[00:06:08.19] Did a week in New York– upstate New York on permanency planning. And so had– that was pretty intense training course that involved state workers, representatives of the tribe, representatives from other tribes, and I thought it was– it was very useful. But again it did focus pretty much on permanency planning. And since then I've done– I've given a bunch of talks, courses, programs, whatever you want to call on the application of the Indian Child Welfare Act. Most recently in June I gave a presentation to the registrars of probate for the state of Maine in Augusta. I gave an hour and a half discussion with materials about what they needed to know as probate registrars in terms of handling the Indian Child Welfare Act. Not just for the Maliseets, but really any child that it applied to.

ME: Any Native child. [00:07:18.23]

GD: Yeah.

ME: Ok. So could you please describe your experience in working to negotiate the 2002 memorandum of agreement with the state, and in this case I am just a listener who will nod along, but content is not my area of expertise. So strengths and challenges I guess would be the–

GD: Sure. So just for a little bit of background.

ME: Sure. I would appreciate that because I am interested in this. [00:07:48.20] I have no prior knowledge.

GD: Right so just as a matter of history, and I'll try and not be– history that I'm aware of is that the Maliseets were not continuously represented prior to 2002 in child protective matters that were pending in state court. So there were a number of issues with which we can kind of talk about what was going on there. But there certainly was a level of distrust between the tribe and

the caseworkers and the AG's office. [00:08:26.15] In terms of application of the law, analysis of the facts and I even— /i even think there was questions about the judge or judges who were applying the law. And I think for one thing it was the fact that the tribe didn't have a constant legal representative or participant— social worker participant in the process such that they could understand— the tribe— tribal officials could understand why the decisions were being made by— or why particular decisions were being rendered by judges, why particular positions were being advocated by DHS caseworkers or Attorneys General.

[00:09:17.18] So what I suggested when— and these are, this is a theme that can kind of go a long way in terms of what I can speak to is that these officials— tribal officials were elected but yet really probably had no, or limited, training in how a child protective case is processed through the court system. And yet they're the ones that have to be accountable to their constituents. And tribal members who would come to them and complain you know this is— we feel like we're being treated unfairly. So what I suggested initially was we ought to— we really need to be able to— in order to be able to evaluate this, we actually need to be involved in a case. We need to have our social worker involved in the case at the level of the planning and service recommendation and evaluation and monitoring of the case. We need to have a lawyer there to advocate the positions of— that the tribe has as a legitimate interest in advocating about and the law recognizes that the tribe has.

[00:10:29.25] So we started at that point, ok pre-19— well it was pre-2000 let's just say. The agreement came up in 2002. And what I had done in a couple of cases that were sort of quote unquote “high profile cases” was to get involved in the case and start asking questions about why particular decisions were made. I involved a masters-level social service—social service educated worker to speak with the department and that I intended— what my plan was to use as the ICWA expert.

I filed motion— motions in that case to invalidate the prior decisions that were made of the court because of the failure to comply with many provisions of ICWA, the most important being applying the standard of proof that was necessary. The orders themselves were defective and deficient in that way. Let alone notice to the tribe. The tribe kind of got its notice from the parent not from— and that was years into the process. So that's where the issue started.

That case I think appeared in the Bangor Daily soon thereafter. And we started a dialogue because I think that there are good people on both sides of this, the state, the tribe, all recognizing that A) we oughta be a to sit down and talk about what we're doing and B) we oughta probably be able to solve it [00:12:22.29] because most importantly we care about two things, 1) that the children are in safe, healthy homes, and 2) that the tribe is— that they're connected to the tribe and they don't become separated from that connection.

So starting with that goal I think we all understood that we probably could reach an agreement around an area where congress had already passed legislation, 1979. State just wasn't necessarily following it in all cases. So we started there and that process went— I think that was one of you questions, what was the strengths of the process. The strengths of the process was that it actually got— it started out with the Attorney General at the time, Steven Rowe, calling a meeting where tribal members were there. Other tribal social services providers were there or workers— caseworkers. And it started with a airing of concerns. [00:13:31.18] Legitimate,

some. Some perhaps not fully developed concerns, but it was an opportunity to sit down and just have your piece said about that.

I worked with the Assistant Attorney General who was on the case was Elizabeth Stout. Elizabeth drafted and circulated an agreement that we— another attorney for the tribe and I worked on. [00:14:08.06] And tried to improve. And we— it was a back and forth discussion and I think basically what— and we again circulated that to the tribal counsel and they had input on it. They listened to our recommendations. But I think what that process recognized was there was a real interest in the state changing the way that it had done business in cases that involved Maliseet children. And so that was the biggest strength that came out of it. Did it— it didn't solve every problem that we had, but it was a good start.

It also lead to [00:14:49.20] a task force at the state level where myself and the director of the Indian Child Welfare and the social service person met with state level Attorney General— actually the chief of the Child Protective Division and who at that time was David Hathaway. And Sandi Hodge who was the ICWA liaison or she was heading up sort of the ICWA— trying to bring about this change for the department. [00:15:33.19] So that helped.

That was very helpful, and I can give you some concrete examples of how that helped. But in addition to that we were having task force meetings at the local level in Houlton because that's where primarily all our cases are. That involved again the Assistant Attorney General, caseworkers from the department there, and us sitting down and talking about how we were going to implement the agreement that we put on paper. And we had the agreement on paper. Now where were we going with it?

ME: Right, because at this point there had already been a law in 1979 that was not being implemented, and now there was this paper and it's like, ok, how do we make sure that this actually gets implemented.

GD: Right. [00:16:18.00] And I think there was a great desire on the part of the state to make the changes that were necessary to put in place a process that complied with the federal law. And the tribe was actively— from what I saw, the tribe was actively involved. It had, you know, the chief attended many of those meetings. The chief was the prime mover and shaker to get this thing before the Attorney General. I mean I can give you my experience. I don't know what the chief was doing behind the scenes, but I'm sure it wasn't just sitting back from this process and letting things take shape, I'm sure she was very vocal in what she was doing. And as well sharing her experiences as a tribal member. I think that was invaluable. [00:17:12.08]

ME: Great. So I mean we definitely talked about strengths. It sounds like there was buy in from a lot of the— it got people around the table talking. How about your experience in working with the tribe to draft the Child Protection code? [00:17:34.06]

GD: Yeah. I just want to mention one more thing about that just before I forget that. Is that one of the challenges with that agreement— 2002 agreement was the decision about what the tribe would have jurisdiction over. Ok? Because that could have really been— that could have been a fight that didn't allow us to get to the issues of how we were going to handle these cases within the state process. It could have been an obstacle to putting this agreement together. And I'll tell you the state and the tribe have fought over several issues and I've been involved in them so I could tell you. But one example is the authority that the tribe had to make its own employment decisions without review by the state. That resulted in some federal litigation and whatnot. There are other issues like that. But what I saw was the state putting aside [00:18:45.18] and I'm talking about the— and when I say the state in large measure I'm talking about either the Department or the Attorney General. But in this case the Attorney General essentially said look— even though this is exclusive jurisdiction under ICWA only for children on reservation, A) we understand even if you don't have a reservation, it might be trust land that that certainly is applicable. And by the way these are all Maliseet children in the state and so we're going to recognize that you have jurisdiction here for all children.

[00:19:12.13] So that went a long way to A) recognizing the importance that— of Maliseet children to the tribe as a resource, and also putting I think some faith and trust from the tribe in the state's willingness to make this agreement work. Because they were saying, well ok, it's all the children that we have. It's not just the children on the reservation. They're going to hear our position with regard to all the children in the state. So that's an important key.

ME: No absolutely that is important. [00:19:51.06]

GD: Sharing the experiences of putting together the Child Protective code. So the agreement built on this idea that either— that there were some prerequisites that needed to be put in place before the tribe could assert its jurisdiction over its children. One was it needed to put into place a team of trained professionals— you know social work trained folks. In the past even my beginnings, we weren't working with social workers believe it or not, just a representative from the tribe which is for all kinds of reasons. And so we— the second step or prerequisite was that they sort of develop either a court of their own or enter into some agreement with other tribes to utilize their court systems. Or utilize the state court system as the default. Utilizes the state court system— it comes with some difficulties because not to mention the sort of education process because not everyone is up to speed on the [00:21:18.14] requirements or protections that ICWA gives to the tribe, not up to speed to the idea that the state wants to allow the tribe to have maximum participation in the outcome of children that are Maliseet and the placement of children of Maliseet. So every case at least outside of Houlton was and probably still continues to be a bit of an education and even in Houlton we still have a hurdle to overcome.

[00:21:43.28] But what we ultimately have done, we went through a bunch of phases where we tried to utilize other Native courts. But right now we're in a situation where we're dealing— all the cases are being dealt with within the state court system. So I worked on a draft of the Child Protective Code for the Maliseets with the idea that many aspects of that code would not come into place until the tribe had a tribal court. So there were rules, regulations, and procedures for how we would process— how we the tribe would process a child protective court— a child protective case in our court system or the court system of another tribe.



So many of those aspects have not come to fruition in terms of— we haven't really implemented them. The most important I would say that we have implemented [00:22:45.29]— and it would be I guess one of the highlights of the process— was taking the political component out of the— in the child protective decisions. Ok and we did that through the use of the child protective team. It's a team of individuals who are employed by the tribe, professionals. Teachers, social workers, domestic violence advocates, you know doctors, nurses, whatever, who have no political connection to the— meaning they're not necessarily going to suffer a loss in the next election for a decision that the make about keeping— finding that a child— or recommending that a child was not safe in the particular Maliseet home. That was I would say a highlight I think. And it was a difficult process to get to that point because as I mentioned to you before the officials who are accountable for the decision making, want to be— have some control over the decision making.

[00:24:06.22] So separating that I think took a great deal of education and faith and confidence by the chief and the tribal council. It was— it's been very impressive to watch that process develop. And I've said many times, you might not want to be a part of that decision because the decision you know is not necessarily something that elected officials have been trained to deal with or should have to make decisions about because of their elected decision. They put people on that they think are qualified, that are professional, that can investigate, hear all the facts, and then make a decision. [00:25:03.17] And if the laws not being applied or they think the laws not being applied, they certainly can call me. We talk about it. We see how the law— because again, all of these cases are confidential. And it's very difficult to be in that position where you're being told one side of it and then making a decision about it and then being advocated by a parent outside of that process. That is— that must be one of the most difficult parts of being an elected official. [00:25:39.24] So I'd say that was a highlight. And that also had challenges as you can (*laughin*)— as I've kind of alluded to.

ME: Sure. Absolutely. Ok. So, could you— I'm going to list a number of things and if you could for each of these items, describe your— if you have any experiences in working within the Indian Child Welfare Act and challenges for each of the following items? So the first would be initial identification of a child as Native American.

GD: Right. You know that seems to be— is a duty of inquiry under ICWA, everybody has a duty of inquiry there: judges, caseworkers, and Guardian ad Litem. And it seems to me that that initial identification is best done by the intake workers when they're dealing with a report of abuse or neglect. And it's a matter of having them ask the question. I mean we've gotten a ways down this process before, and it's obvious that no one's asked the question. Sometimes I'm told though that the question was asked and no one said anything about being Native American until later down the process.

[00:27:07.15] And I don't know— I wasn't there; I'm not there. I can't— I don't know what to think about that. But it seems to me that there's no— there's absolutely no question about it, no

doubt in my mind that that— the Native background should be one of the questions that comes up and is asked both parents, not just one of them. And the child if that's appropriate. And I think— I think that the process is getting better from the caseworker standpoint. There's been a lot of training around that— the issue.

[00:27:43.25] I know for sure that it is on the form that the court reviews. So the court is prompted to ask it at the initial meeting at the— are there any ICWA issues here? Is there any Native background? So you know again we...I was describing— I know I'm going on here— I was describing some situation where case workers I think particularly in maybe areas of Maine that are not heavily populated with Native reservations or trust land or what have you, you know they're looking out for protecting the children. Safe environment for the children. And we've imposed— we haven't, the federal government imposed on them another obligation here to look out for the role their child's culture plays and the connection to the tribe. And it's important. And it's an important one.

But you get a level— there has been a level of resistance to [00:29:03.02] changing the way we do things. And we all like somewhat routine— somewhat of a routine so it's— you can understand why it happens. But anyway, I think it's gotten better. I think it's still— there are certainly cases that it's missed by the court. In fact, I'm going to litigate one this week where the question was never asked, and yet they proceeded with a consent and no one was aware that there was Indian background or Native background. So it happens. It's still happening.

ME: Your experiences and any challenges working with state notification of children to tribal child welfare? [00:29:55.19]

GD: We had put in place with the state and local task force a process where our case worker— our ICWA director— would go to assessments, would go out to— after there was a report— would go out and co-investigate assessments. Now that isn't— that is not expressly required by the Indian Child Welfare Act. But that is a— that certainly would be something within the spirit of the law. And certainly would assist with active remedial measures component. 'Cause if you go out and you set up a safety plan, it's awful nice to have the tribe involved in that plan. So we— well I say the state is not technically required to do that under ICWA— through our task force, through our agreement with the state, we've gotten that to happen. And it's been— it's been a positive experience I think in the Houlton area. There are a couple of limiting factors.

Again the geographic distance between our site of operation, the fact that we only have one qualified ICWA director to go do these things so different parts of the state— it's a problem. And B) or two I mean the challenge has been some caseworkers have not embraced the idea that that would [00:31:41.16] be something that they would want to do— include the ICWA director in that, and that's unfortunate. And I think that we would like— even if we can't do it, we'd still like to be invited to go and do the assessment.

ME: Ok. Experiences and/or challenges in terms of the state working with the tribes to identify Native children? And I guess maybe you spoke to that a little bit, but if you have anything to add?

GD: Yeah. No I don't have anything to add to that. Yeah. I don't have anything to add.
[00:32:17.20]

ME: Ok. Determining the jurisdiction or the residence of Native American children?

GD: And I did speak to that. I mean the jurisdiction issue again was something we worked on when we developed the 2002 memorandum agreement. So that worked out well, giving the tribe the right to assume jurisdiction over all the children. *[00:32:40.27]*

ME: Great. Child custody hearings?

GD: Well I've been involved in a number of child custody hearings. I mean litigated child custody hearings. One thing with the agreement did, I guess this is sort of the high point is that the agreement, whether it did it intentionally or not, I've often advocated that the agreement requires the tribe and the state to have a unified position as to the child. *[00:33:11.13]* Unless we believe— unless one or the other, the state in most cases— believes that it puts the child at risk. And there's a method of dispute resolution, which we've once used. We've used that one time where we've needed to have a dispute between the DHS and the state. Typically what happens is the department and the caseworkers, the perfect scenario with the input of the Guardian ad Litem, sit down and kind of formulate a plan.

The ICWA director has gotten input from the tribe's child protective team about the situation, and so the tribe's position is fully heard and shared among the players there, the Guardian ad Litem and the caseworker. And we have had to utilize other language from the agreement to say in case of tie, we win unless you can tell us why it presents a risk to the child.

[00:34:16.15] And by and large that has been embraced. That, you know, we point out the agreement and we email it to them because they haven't seen it. And we point out where it is on some have not and that's just a part of the turnover or whatever that the department experiences. But typically we're able to do that. But we have had some litigated custody hearings that— I mean one that I can remember vividly is a TPR on parents that we had felt were not ready to be TPR'ed. Meaning that the active remedial efforts had not been given. There'd been some efforts that had been made, but we didn't feel that it rose to the level of—

ME: TPR again is?

GD: Termination of Parental Rights.

ME: Right, ok. *[00:35:10.00]*

GD: So we had— we've had that fight. We've had— at the jeopardy stage we have had some litigation, we have had some child custody cases, typically involved whether or not there was enough evidence there. But what I've seen— we had more of those when I first began with this

process. What I've seen now is that we either have the evidence or we don't, and because of the higher standard— and we can talk about that as we get to it— but because of the higher standard that ICWA provides as clear and convincing evidence, the child is at risk of— we— that can be a good thing and it can be a bad thing because it requires there to be more evidence. So if we just simply have this suspicion— remember the tribes position on this is [00:36:04.16] it wants to have kids in safe, healthy, happy homes with the parent, but if the parent is not able to provide that, we don't simply say just because it's a Native home, we're going to rubber stamp it and say we want our child there.

[00:36:25.19] These social workers, they have licensing requirements about children at risk, and they have to make responsible decisions. And we have been so thankful to be able to have the chief and the council embrace that idea that we want to have— you know healthy, happy placements for these kids. And if it's with the parents great. Wonderful. We'll do everything we can to provide it there, but if it cannot be done in a safe way for the child, then we have to make harder decisions. And so we litigate over those and sometimes— we're often on the department's side obviously because of what I just said about the agreement, and we're often times adverse to a— one or both parents, depending on what the issues are. [00:37:22.05] So that's my experience with custody. I have had post TPR being with the parents have been— their parental rights have been terminated. I have had extended family members litigate over who's going to have custody, and I've been involved in those fights too. [00:37:43.00]

ME: And I think you alluded to this a minute ago, but the use of heightened evidentiary standards to establish the need for involuntary out of home placement of Indian children. So experiences in or challenges?

GD: Right I guess what I would say about that is of course you know the reason for that is to have the child remain in the home. [00:38:08.14] Unless there are clear and convincing reasons to take the child out of the home and the child's in clear and convincing danger or it's beyond a reasonable doubt for termination, these are— these are standards that the state court needs to apply such that we don't break up the Indian family. The problem sometimes we're seeing is that the standards— the heightened standards— prevent us from moving forward with a case that is on the edge. Because every time that we try a case to a judge, our credibility is at stake. And if we don't have the evidence or the evidence is close, we're not going to try a close case to a judge we try cases to every time. Because sooner or later he or she is going to wonder whether or not our judgment about the case is right.

So we— close cases sometimes might not get tried. Whereas in the state system— meaning the non-Native system, those cases would get— would get tried. The other thing is that that heightened standard, we've talked about this before, if the tribe were adjudicating its own cases and being the decision maker, you know there's a question as to whether or not that standard would necessarily need to apply. These standards are about— these standards are about state courts making decisions about Native children as to whether they stay with the Native family. But a tribal court might make a decision using and applying a lower standard. [00:39:55.12] And it's been a topic of discussion. Obviously we're not at that point. We think the tribe has a great interest in applying its own standard or its own judicial process to its children, but it— we're just not at that point is I guess what I would say.

ME: Ok. Experiences with and challenges in the state transfer of Indian child custody proceeding to tribal court?

GD: Right and as I said there is no mechanism to do that at this point although I will share with you that just last week I was asked– I'm asked by– I'm asked on a regular basis about this about whether we can transfer this to tribal court– transfer this particular state court matter to tribal court by case workers. And shame on the AAG that does that because usually there's a – usually– I don't get angry but I have fun with it, let's put it that way, because they should know better. There the ones that are– that should– they should be enforcing this agreement. They should be aware of it. They should understand where we are with this. So there's no mechanism to transfer to tribal court at this point. [00:41:18.14]

ME: Right. Ok. The requirement for the use of active remedial and rehabilitative efforts to prevent the breakup of Indian families before out of home placement is ordered?

GD: I'd say that the use of active remedial efforts is– I mean it's required by ICWA. I would say that folks in the Houlton or Aroostook County area understand that probably as well as anyone. [00:41:52.08] As again the less frequently you deal with these tribal cases, the less education you have about them, the less you're going to be familiar with that. So we use this as a role– we take our role as sort of educator and we try to explain about the active efforts. But yes it is a part of the standard order that gets completed in these cases.

ME: Ok. And finally, specific ICWA procedures for obtaining consent in voluntary out of home placements? [00:42:27.26]

GD: You know this goes right back to identifying whether or not a case is covered by ICWA, whether ICWA applies or not. And that goes back to doing the appropriate questioning at the intake stage by the caseworker and the AAG that's involved. [00:42:45.15] Or the probate registrars or clerks or the probate judge. But if you don't know and you didn't ask whether there was any Native background, you're probably not going to follow the procedures that ICWA provide with regard to involuntary and voluntary proceedings. I filed a motion last week to invalidate the consent that was provided by the parents because it doesn't comply with ICWA's consent requirements. [00:43:19.11]

ME: *(Sighs)* Alright. How are you doing?

GD: *(Laughing)* No, how are you doing

ME: I'm ok. I'm ok. But I just– just wanted to check in with you. It's a lot of information to process and you know ultimately I'm just the statement gather and the content will be evaluated and used at a later date. But certainly is a lot of new information for me personally to absorb. So you're all set to continue?

GD: Sure. [00:43:52.25]

ME: Ok. So— and again this is a set of questions that I've never seen before so (*laughing*)— because they're unique to you. So once notice has been received, how often does your tribe intervene in a child custody proceeding covered by ICWA? [00:44:09.29]

GD: If the case is pending in Maine, we'll intervene in every case. If the case is pending outside of Maine, I will ordinarily write a letter explaining to the judge that we're not going to intervene. And oftentimes, however, make our position— if we have a position— known. It's hard to do that when we haven't gathered—done the appropriate work on the ground to gather facts about the placement, whether it's safe and appropriate on and on. But to the extent that we can provide guidance to the out of state court, I'll often write a letter. [00:44:57.08]

ME: Ok. How does the state involve the Maliseet tribe in cases with Native children that remain state jurisdiction?

GD: Well the cases— it's different. So case by case basis. But oftentimes, particularly in Houlton in the Houlton area— I say Houlton. I mean that's the base of the Maliseet reservation or— so it's not just Houlton, it's Caribou, it's Presque Isle. But within that sort of court system. We are often just joined as a party automatically once the case has been identified as being a Maliseet child. Ok? We're joined as a party.

Other— I can tell you that other— that's happened in other places. Bangor it happens from time to time. But most of the time our caseworker is involved in some component of assessment, and if there's an emergency removal is involved in identifying a potential preferred placement options under ICWA. And so we're usually kind of involved. And what I do—and even the cases that we're [00:46:18.17] made a party so that we have correct mailing and whatnot information—I will file a motion to intervene, it's a certain standard motion to intervene. Enter my appearance into the case, and then provide copies of whatever I receive from the court or whomever to our ICWA director. So she is included in that whole piece. So it's...it's a process that as soon as we're notified, we get in the case as quickly as we can. We've got to—

ME: It's a pretty standardized process.

GD: Pretty standardized process for us now. It's just being alerted to the fact that we're— and you know and sometimes there'll be cases [00:47:04.13] where people will say, “Well I'm Maliseet”— in fact I had a case like this last year— I mean last week. “I'm Maliseet,” and I said to my direc— to my client you know, this is specific definition under ICWA in order to comply so you've got to conform to it. So I said, “Is this person a member?” She was the biological parent. “No, but she's got an application in.” So, you know, that doesn't make you member. [00:47:38.11] So you don't qualify technically. Now could we— so we couldn't enter our appearance in the case. All we could do is provide whatever assistance the social worker wanted us to apply. But technically the higher standard doesn't apply [00:47:54.16] to you know look at it technically.

So it often times and this is you know ICWA doesn't apply to Canadian tribes or— so we are challenged because there is— this is a tribe that evolved on the US boarder. No— not their fault

that the United States decided to draw a line you know where it drew. But they're one common people at one point. So it's a shame that we're not able to advocate for these folks, but we have no power under ICWA to do that. [00:48:38.12]

ME: Ok. Sounds like it has a lot of kind of technicalities depending on what the specifics are of each case. What are the strengths of the contacts, connections, and dialogue between the state and the Maliseet tribe in Child Protective cases involving Maliseet children?

GD: Yeah, I think it goes back to— goes back to really the purpose of the agreement, which was to sort of recognize the importance of maintaining contact between the tribe and its children. And also I consider 'em kind of co-goals. I don't think they're inconsistent. And also maintaining a safe, healthy placement, whether it's with the parents or an Indian custodian or with a Native— another Native family or even a non-Native family. We're— those goals— those two goals are goals that we share. And so our conversations with state workers are really around those two goals, meaning how are we going to best maintain the connection between the tribe and this child, and is this a home that's safe and appropriate. And we look at those— we look at those issues, whether it's— obviously the parent, we'd like all the children to be with the parent.

We don't want to break up the Indian family. That's what ICWA's charged us to preserve, but there are times when hard decisions need to be made about removal or placement so that the parents can do what they need to do to ensure long term integrity and stability of the Indian home, the Indian family. [00:50:50.03] I think we've got a challenge that we haven't yet come up in terms of litigation. That we're going to have to work through the state not to begun discussions with this. But we had a decision by the United States Supreme Court last year concerning some limitations that it drew for ICWA. You may have— you may have been— this was a fairly popularized case—

ME: I think I know what you're talking about.

GD: Yeah. And what— what's troubling but obvious is that the court essentially said that you have to have an Indian family in order to break it up. So they have to be a unit— a family unit in order for it to be kind of broken up. That was sort of implicit in what they were saying. [00:51:47.09] And sometimes we— and that's where the application of the active remedial effort comes in to avoid the breakup of the family. You know, sometimes we often have families or family units let's say where there's a father, a mother, and a child that looking at it you question whether or not it was the sort of family unit that intended to be preserved. There's serious drug or alcohol use, there's domestic violence, there's insensitivity toward one maybe being Native one not Native, there's racial insensitivity toward one of the parents that's Native, and you wonder to yourself— I mean I have to apply the law that I've dealt with, ok, as to whether that is a family that is intended to be preserved by ICWA.

And they're not easy decisions, and I fortunately the child protective team and my client the ICWA director who have social work— who has a social work degree and understanding about these sorts of relationships gets to tell me what the outcome is they would like to see, and I advocate it using the law, which is— so I don't have to make the tough, tough decision. But it's certainly there and obvious to us. I don't even know if that answers your question—

ME: I think so, and I actually— I think you answered eight and nine. One was about the strengths and one was about the weaknesses and the challenges in relation to contacts, connections, and dialogues. [00:53:30.16] So I think you've addressed both of those unless you have something additional to add on number nine. But—

GD: I'm long winded (*laughing*).

ME: No. That's ok. But I mean I get what you're saying. You're saying you have to uphold the law but then there's the gut check kind of part of it as well, which I don't envy being in that position. But you're saying you know, there's a number of people who are kind of involved in the process. And that makes it— that's a strength that it's not in any one person's purview to make that decision solely. It's based on qualifications and expertise making a recommendation.

GD: Absolute right. And I think that's why— I mean I have so much faith in the decisions that we ultimately bring to court. Now are we always successful in convincing the judge that that's the right decision. No, sometimes not, because there are advocates on the other side. There are mothers and fathers of Native children who have a different perspective on what we're doing and maybe make a better witness or maybe make a— maybe make a better plea. [00:54:33.18] And let's face it, I mean we're all— no one wants the unpleasant decision or task to say these children shouldn't be with their biological parents. That's something we would all want and hope for everybody. But we're not going to do that in an unsafe system.

ME: But a strength is that within that process there is buy in of all the people who are involved.

GD: Exactly right and it goes back to— it even— that whole process that we're using to make decisions is really even mirrored—and you know I don't know how much they did this before we kind of came to the agreement in 2002. But I've seen changes at DHHS level whereby they do a process with family team meetings where they bring in all of the players, all of the people who have something to say about the situation, and they get buy in, and they get recognition of inappropriate activity or actions or what have you. It's a— most of the folks that we're dealing with here are intelligent people that— I'm talking about the parents— they're intelligent, they're [00:56:09.06]— they care for their children, they love their children, and if you asked them they would want to do right by their children. Some people have issues— addiction issues, domestic violence issues, attachment issues that frankly I'm not even qualified to talk about but I know they severely limit their ability to make good choices for their kids and their family and that's why we're there. [00:56:39.26]

ME: Right.

GD: I'm wearing you down (*laughing*).

ME: No. No. Absolutely not. Does your tribe ever use its own expert witness in child custody proceedings under ICWA that remain in state court?

GD: Yes. So all of our cases are processed in state court, and we utilize in voluntary matters we always identify the Indian Child Welfare Director as our qualified expert under ICWA. And it does a couple of things. It's a difficult job because we have one person to say at the jeopardy stage, these are all your problems and why we're removing your kid, and we also have that same person to say, after we've removed your kid, this is what you need to do so you can get your child back. That's a tough role for someone to navigate. Most agencies that do this sort of work, meaning state agencies, have an intake and have a family services. So once they've identified the problems, these bad guys go away and the good guys help you with your services. [00:58:00.00] We're just— we don't have that luxury.

ME: And that's because of a lack of resources?

GD: Lack of resources. Absolutely. We—

ME: So it's not by design, purposeful designs?

GD: It's not purposeful design. Again we'd be— my client would be meeting at all of the team meetings in all aspects around the state, and she covers them now by phone. [00:58:24.25] She can't drive to every single one of them and we have— there are enough cases in the service area, meaning Aroostook County, to keep one person busy without out of state— without out of county—

ME: Sure. I can imagine.

GD: Right. But she does it nonetheless. She will make herself available either by phone or even in person to cover some of these cases, particularly the ones that we need her on. And to serve as an expert witness, she'll draft a report saying what the problem is and we will provide her testimony. Now we've done that. We have had to provide testimony in those cases both at the jeopardy phase, meaning the removal, and also at the TPR stage. We do very few TPRs. We're not— termination of parental rights is the last resort for the tribe and the tribe is not— we can talk about it a little bit later— but not really favorable to that. [00:59:30.17] We— the TPRs that we have supportive— have supported have been where placement as been to a relative, to a close relative. Enough said about that.

ME: When presenting an expert witness under ICWA, do you know what criteria the state uses to establish a qualified expert witness?

GD: Well, I don't know what they use as criteria, but they always ask me, "Who do you want us to use as an expert?" But mostly this idea of using our own person, using our ICWA director, came from the state. That was one of their suggestions was why don't we use your ICWA director. It give the tribe– not to mention the fact that it complies with ICWA and satisfies it, but it gives the tribe ultimate say about what it wants to have happen to the child. It is the tribe's position as to whether or not the tribe feels as though the child is in– at risk of serious emotional or physical harm [01:00:38.04]. So it is the tribe's time to speak about what that is. And courts have been– state courts have been excellent with this. We have interactive video that we can use– have our tribal– or our state– our ICWA director testify from or over the phone. Court have even allowed– permitted it by phone. Typically we have them there in person. But when she can't be there in person, we– that's what we've done.

ME: So the state is often using the same person or there's just the one person versus two separate experts?

GD: It's just one person. [01:01:16.18] The state identifies our exp– our ICWA director as their witness for purposes of satisfying the qualified Indian expert. So it works out well I think.

ME: Ok. How often is the existing family exception applied in cases involving a proceeding otherwise covered by ICWA?

GD: You know, I read this question and– existing family meaning– I think this is having to do with– maybe I'm misunderstanding the question, but what we do is our first placement option is with a family member, relative family member. So we use that as– we use that all the time. That's the first placement option. It's what statutorily is required. The tribe has also adopted – pursuant to its authority under ICWA– a tribal council adopted a resolution that says– that sets out a different preference than is in the law. And I can just tell you that [01:02:36.20] that preference is not only just a family member, but a family member that the tribe believes will most actively nurture the child's cultural development and maintain the tribe's connection with a child.

So another reason for the ICWA director to speak as the qualified Indian expert to say about the– to say not only about the harm that's being created there in that home that needs to be removed– that the child needs to be removed from, but also to provide the tribe's position as to which relative –if there's a fight between relatives– the tribe believed would be more helpful in maintaining the child's connection to the tribe.

ME: Ok. 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 this decision? [01:03:46.21]

GD: Well...the only– the only cases that I can think of that we haven't intervened in are out of court– (*correcting*) out of state proceedings. So it's distance and resources. But we've had cases in Ohio, we've had cases in the Southern part of the country, out West that have involved Maliseet children. We've confirmed that they involved Maliseet children, and we have not intervened because we don't have the money, resources to go there and attend all those hearing

and participate. Furthermore it would require— for my participation in those proceedings— would require our hiring a local counsel—

ME: Who's licensed in that state?

GD: Who's licensed in that state to get me either to do a pro hac vice so that I could— under his or her guidance— could advocate for the tribe. So it's very exp— could be a very expensive process. [01:04:50.14]

ME: Sure. So ultimately it's the reason for the decision is a lack of resources and geographical distance.

GD: Absolutely.

ME: Ok. In cases that remain in state court, does the state conduct active remedial and rehabilitative efforts to prevent the breakup of an American Indian family before or in out of home placement of an Indian child? [01:05:14.02]

GD: Yeah. I spoke to that issue a bit. It varies. Some situations are better than other. We have— I told you we have been asked to go out and do those assessments. My client participates in the family team meeting that would result in a safety plan that the parents would buy into. If they violated the safety plan, typically the petition would be filed, and they would seek— the department would seek custody.

[01:05:51.24] Now— and you wanted to know what some of those— some of the types of evidence that the state would use? And the evidence is safety assessment, the safety plan, the services that were provided by the state, caseworkers, the evidence coming from the family team meetings, referrals for treatments that were made, coordination with the ICWA director, contact that was going on there, attempts to find kinship placement, provide resources from the family— extended family members to support the family that we're concerned about, and offers of transportation assistance. Because it's not good enough just to offer the program. “Hey go to Batterers’ Intervention,” but if you can't get there cause you don't have a car [01:06:54.03] then we offer transportation services. Visitation issues.

And in every single case that we have where the state as begun the proceeding, we make an effort to— cause many of these— some of these children are young children— we make an effort to— and there— so they're only eligible, the parents are members and the children are eligible for membership. And that's enough to qualify for ICWA to apply is that one of your biological parents is a member, and you're eligible as a child. [01:07:38.04] We make an effort to get those children, make them members. Get them enrolled as members whenever a proceeding like this happens. So it's a good resource for us but again that is some— we cite those as active

efforts to prevent the breakup of the Indian family. One—I wanted to mention something and I've forgotten it, but maybe at the end we can remember.

ME: (*Laughing*) Yes if you think of it be— feel free to shout it out. [01:08:17.28]

GD: Was that my stomach?

ME: Could be mine. I'm not sure.

GD: I think it's mine.

ME: Could be snow on the roof. We can chalk it up to whatever. Ok. So I think we're getting to the home stretch here with question sixteen on my sheet. To the best of your knowledge is the active effort standard used by the state in cases— in cases involving Indian— boy this is a weird sentence. To the best of your knowledge is the active effort standard used by the state in cases involving Indian children different than the reasonable effort standard applied in cases not involving Indian children?

GD: Well I think it is different. And I think it's— what I cited to you before. A reasonable effort might be for me to say to you as a parent, “Go to Batterers’ Intervention.” But I think the ICWA would require more because you might say to me, “Well I work such and such time to such and such time and I don't have a car, and I usually get a ride.” So we need to make transportation available to you so that you can actually go to do what program that we want you to do. So it requires I think a little more assistance, maybe a lot more assistance sometimes, and it has to be ongoing. Not in the early stage offer that assistance and sort of fall off. [01:09:55.28]

And we're continually— we're continually addressing those issues with the department. Oftentimes— and we all could do a better job at it. It's a resource issue. And not only does the tribe have a resource issue, problem, but the state has a resource issue. And the law is written in such a way that it's required— you've got to prove that those efforts were made at certain points in the proceeding, particularly if you're going to TPR someone. And so it's an issue that we've focused on. We've done a lot of planning around. One of the most pleasant experiences that I've had around this issue was last— you'd think I did every thing last week— I keep saying I did this last week. It was literally two weeks ago.

I was at a judicial settlement conference where all of the parties jointly and then separately or at least in their collaborative groups, met with the judge. [01:11:09.12] And one of the things that the tribe was asked to do by the judge, which I thought was a great question, was to go out and meet with my client, the tribal representative, and provide a list of the items that we wanted to see the parents comply with...so that we would recognize that the children were appropriate to return. At least the steps we wanted them to take so that we could evaluate the appropriateness of returning the children. [01:11:49.24] I thought that was great because basically what it gave was, during a settlement conference gave an opportunity for feedback for the parents. What part of that can't we do? What more active ingredient must there here for us to do what you're asking of us?



And it happens at the beginning of the case, not the technical beginning but the beginning of the proceeding, so that the parents really can— if they're desirous of putting their lives in the position that everyone in the room thinks they ought to put them in, they can talk about those individual components. As opposed to when we first started this process, children would be taken, reasons and failures be evaluated as the case went on. You're going to ask me about ASFA later, and I think that we can talk about that in that setting. But I think one of the positive aspects of this process that I'm mentioning with the judge was that early on in the process he gave the parents the items that we— and committed all the parties essentially to saying this is what we all think you need to do. [01:13:30.04] And allowed for the parents to buy in on that.

ME: So they got instantaneous feedback that allowed them to then respond to it.

GD: Respond to it and refute it if they felt like it wasn't an important component to their wellbeing and their childrens' future wellbeing. [01:13:50.03]

ME: Sure. Ok so you mentioned the Adoption and Safe Families Act. So the next question is in what ways do you see the Indian Child Welfare Act and the Adoption and Safe Families Act working together, and the second part, in what ways do you see these two acts not working together?

GD: Ok. If I could just— let me start with the last question is how they don't work together. I think obviously— I think ASFA puts in place timelines for permanency. Timelines for permanency for the children. And I— you can debate that, whether that's a good thing or that's not a good thing. As far as I'm concerned speaking from my experience with the Maliseet cases, I can say to you, the timelines for ASFA have never presented a problem to us that we could not overcome. [01:14:40.29] One of the reasons is that there is a component to ASFA I think when you're placing with chil— when you're placing with family relatives, a relative placement, it can extend the time periods. That may be under the category of 'other good cause' to extend the time periods. I don't know that it's specifically identified as family placement.

But I think a positive aspect of the— of the Adoption Safe Families, ASFA, Adoption and Safe Families Act, is that it does create this beginning middle and end. There's a beginning, middle, and end to this for the parents, meaning that while the judge often tells them at the jeopardy stage when they consent they say, "Yes we understand we haven't gotten our act together the way I should be, judge. We really want to try to do this." Well there's a process to do that. [01:15:44.22] Ok. And the judge usually follows it up by saying, "You understand that there's a short window of time where we have— we need to see improvement and if we don't see improvement, the state will have to take certain action including filing a TPR." I can tell you that I have had a—cases after the Adoption Safe Families Act that went on for four, five, six,

seven, years. So the— there are ways to deal with that in the context of an ICWA case so they're not always bearing down on us. And we make a pitch for the fact that— and this is the tug of war— that there's a design here under ICWA that unless the evidence is there that beyond a reasonable doubt these parents can't care for these children, then we ought to leave the opportunity open for the parents to care for the children. [01:16:46.22]

Ok. If we don't have the evidence to show that they absolutely, positively— not absolutely, positively— I'm taking that— that beyond a reasonable doubt, placing the children with them would create serious emotion, physical harm, there won't be a TPR filed in an ICWA case. And then it just— the time continues to go on. So there's a tug of war between the two; ASFA saying we want to have this happen within 22 months, but could be longer. Now, as a parent, being given the opportunity to say these are the issues that you have, these what you need to do to work on it. We're monitoring what you're doing. And we're going to evaluate it at the end to see if it's appropriate and then we're going to place. I mean many of these cases get— there's reunification. Now it didn't— it wasn't always like that. I mean I could tell you the first case that I told you about when I started— when I got involved in this. The children were removed for more than five years, and the department when asked about th— the department when asked about why at the end of it said, “Well they have attachment disorder.” Well attachment disorder is that the child hasn't been able to attach to the parent. Well because they've been in custody for so long.

So the real reason [01:18:21.24] the original reasons you removed the children have completely been alleviated. This person, this parent, this mother that we want to reunify with has gone to get a degree, she has employment, she's gotten rid of the abusive father, and there's no reason— there's no reason why these children ought not to be back in her home other than the fact that the social worker who's making the decisions is the same social worker that congress was afraid of making decisions about Indian parents and Indian children when it passed ICWA.

To begin with saying that often time non-Native social workers have misconceptions about parenting and about Natives parenting. And the fact that this particular woman had a history of involvement as a child with child protective services, had involvement now with her children with protective services, somehow led to the conclusion that she couldn't protect or provide for her kids. Well you know what? We got her kids back in her home. [01:19:36.27] And she's— from what I understand has done a fantastic job doing it. And of course as a single mother and with a number of children, I'm sure she has had her issues that she had to confront from time to time. But that's life that's not a Native or non-Native issue. That's a life issue and we just try to support— provide her with enough support so that she can get through it, and I think she's done a marvelous job. But [01:20:06.21] yep.

ME: What strengths does child welfare possess in— I'm sorry what strengths does state child welfare possess in ensuring ICWA compliance? What effective procedures or practice does the state have in place for promoting ICWA compliance?

GD: Well the state has more resources than the tribe does. Ok. And this kind of goes back to what I was mentioning to you about— would the tribe like to make its own—have its own judge



make its own decisions about its child protective cases? Sure it would. But there's a whole lot of things that need to be done prior to that to make sure that the decisions that the judge is making are sound and safe and supported. Now one of the things that we have difficulty doing and there's an agreement between the tribe and the state about how we access this information, but the state has a program, a computerized information system called MACWIS, I can't tell you what the— what it stands for, but it's an ability to do research as to cases where there's been substantiated [01:21:24.06] child abuse or neglect to determine criminal histories to— and I don't have access to it, I can't speak to it like a social worker could, but it's a very valuable asset for a person trying to assess whether or not there's been neglect or abuse or potential of neglect of abuse. Without it and some other resources that the department has, I'm not sure how one goes about making an intelligent decision. So we rely— the tribe relies heavily on the state resources to make good decisions about cases and whether or not there's a potential for abuse or neglect.

So that's a strength that the department— that the state has that the tribe does not have. The other thing is, according to our agreement we're supposed to have a couple of training sessions per year—I don't know if that's happening or not— on ICWA. [01:22:31.26] Last week I talked with—I spoke with a caseworker from the department who was reading the agreement for a coming up case that we have, and she said, “We don't have that, we don't do that.” And she said, “More importantly it's not just not having those two trainings a year, but it's training about the specific requirements of the act and the agreement and implementing those that we often don't get training about.” We get a lot of training around the history and why the act came into being but less training about what are we supposed to do. And it's important to understand why you're doing it, no doubt. [01:23:28.10]

But I often have—I field a lot of questions from caseworkers and AAGs and lawyers even about what are they supposed to do at this stage, what does ICWA require, can I give them a short cut to what they need to do? Yeah. You know, but I think that it just shows that there probably could be more training. It's important to train about why and I'm undermining that, which is part of your mission here, is to discover what— why this all came about. But we got it and we need to apply it. And I would love to see resources put in to training folks, caseworkers and other about what we need to do such that we can give the tribe maximum participation in making its decisions and what is the word collaboration mean with the tribe and how's that— how's that comprised or what does it look like and what would you do to collaborate and what isn't something you wouldn't want to do?

ME: Right. That's the second time that's come up today for me. So hopefully they'll— hopefully the commission will take note. [01:24:41.11] So I think you answered number 19, which was the flip side about the weaknesses, but did you have anything to add that you didn't say? The weaknesses of ensuring ICWA compliance?

GD: Yeah the— just a couple of things would be— some states have a mirror law to ICWA. It's the state ICWA law. Some— and that's not uncommon in an area of discrimination. In the area of discrimination—

ME: Ok. So there's a federal law—

GD: (*Overlapping*) There's a federal law and state law—

ME: (*Overlapping*) and state law. Ok. [01:25:25.13]

GD: The— there's a constitutional issue there, but you know I see that there are state ICWA laws, and the question is whether or not that makes sense. Certainly if you had the buy in of the tribe you would have an agreement that would be consistent with the provision of ICWA 19— I think Section 19, 19. That's one thing. The other thing is that some states— and you could get this information quite readily by just Googling it— is have checklists on every component of ICWA for state judges. [01:26:05.28] Minnesota is one in particular that I refer to. You know everything from the duty to inquiry of asking about Native status all the way to the consent or withdrawal of consent. What needs to happen if a parents going to withdraw their consent? Covers the whole gamut of what ICWA requires and it seemed to me that that process could be helpful. I don't— not being a state court judge, I don't know what the resources the state court offers judges, but that would seem to me to be a helpful resource for state court judges. So...[01:26:52.05]

ME: So now we're moving into the closing questions, are you doing alright?

GD: You know what, I could take a restroom break if you don't—

ME: Sure. [01:27:06.11] (*Short break*)

[BREAK IN THE RECORDING]

ME: So this is part two of file number ME 201411-00120-001. Ok, so Greg we are on question 20. So I have a number of closing questions for you. Do you think ICWA does enough to protect the rights of Indian Children and/or Indian tribes?

GD: You know, ICWA doesn't— ICWA provides a great deal of rights and process— processes for the tribes to advocate for particular positions. It doesn't provide any funding as we talked about before, it doesn't provide any resources, it doesn't provide with a— with the sort of things again, you would would want to have to be making sort of sound decisions. Tribes kind of have to come up with that on there own and get funding where they get it BIA, whatever it is. I mean the federal government may in fact provide funding for some of this stuff. It does not as far as I can see address the piece we talked about before which is the assessment piece. It seems to me the tribes— you know it's just a limitation. Once the case is filed in court, it triggers ICWA, but prior to that, it seems to me a lot of good work can be done prior to the



petition being filed. I think there's an interesting issue that I've dealt with before and probably would want to raise it again in context of emergency petitions that are filed.

Emergency petitions seem to be the basis of emergency petitions seem only to be the basis under the law of a threat or of physical harm as apposed to emotional harm or neglect. And I don't think that's well understood. I think— I've had arguments, discussions with the AG's office and with caseworkers about that position although I've had judges vacate emergency orders where there was no potential of physical harm. So...I think there were certain things that were left unsaid. Another component to ICWA where I think it's weak is not requiring notice of the tribe at the adoption stages. There's some notice— there's some funky notice— it doesn't define voluntary— a voluntary proceeding, but yet may times you don't really know if it's voluntary, meaning that the parents are going to consent until after the proceeding is filed. But there's no notice given to the tribe in voluntary proceedings.

So the question is whether or not parents can, you know, take the tribe out of it and the state— but effectively the tribe is all I care about—and run through a guardian to a relative who may or may not be safe or a person who may or may not be safe. And then the probate court has made a decision about placement that ordinarily should be under the purview of the state district court, the child protective issues that come up there, and the application of ICWA. It's an effort to avoid— I've seen it again fairly recently where there's been an attempt by parents to— knowing that they were soon to be the subject of a petition, have—and run by going into a voluntary proceeding before the probate court—and run the whole child protective process.

And that is not allowed for the tribes participation or so for what ought to have happen for these children where they are clearly in jeopardy, meaning the parents knew they weren't going to be able to take care of them for the particular reasons. And didn't allow for the state resources to be there to assist, and investigate and find out whether or not the home was safe. And so I think there are— you know some people might debate that with me and say well we want the— why shouldn't I as the parent be able to say wherever my kids— where my kids can go, where I want my children to go? Well, you can. But you know the tribe ought to be able to have a say about that too because particularly we're dealing with families that are— where one may be Native, the other may not be Native.

The placement for family preference is the family. So it's non— its eyes are closed to whether it's Native or non-Native, but we have a policy that we would like to see the child placed with the family that's most going to nurture the Maliseet culture and tradition, and we ought to be able to be heard on that is what I'm saying. If that family is safe and appropriate for the children, that's fine. We may endorse that. We have— we've developed— when we developed the 2002 agreement with the state, we developed a— because of the lack of Native foster homes, we developed an agreement between the foster home and the tribe— foster parents and the tribe and the parents, and we use it in non—Native cases, where we are getting the parent, the foster

parents to agree to do certain contact items. To keep the tribe in the loop, so to speak, of this child's life. So we don't completely lose out on—

ME: Their cultural identity, their heritage?

GD: Correct. You got it. So those are the few weaknesses. If we sat here longer I probably could come up with some more, but those are a few weaknesses that I think ICWA could be improved.

ME: Ok. And so I guess does that answer question 21 about how could the state wild welfare system improve in terms of ICWA? Ok.

GD: Sure does.

ME: Ok. If you could change anything or make anything happen for Native American children involved with ICWA, what would you do?

GD: Well, that's easy. I mean I would— I'd provide safe, culturally sensitive homes with the children's family members, parents— biological parents preferen— you know as a first preference. But my experience is that even the homes can be— and we talked about it before— can be culturally insensitive. Not to mention unsafe. I mean, I'm dealing with the reality of it, ok? Drug use, domestic violence, racism within the home. While racism may not be a basis for finding jeopardy, it certainly is not appropriate for that child to be in that home. It's not the kind of place that I think the tribe that I represent wants to have— wants to have discussions— have children— their children anyway, hear those sorts of discussions about descriptions of the mother in particular. It's verbal abuse and it's— it's disgusting quite frankly. But I would want— yeah I'd want these parents to do the right things for their kids, but they don't always do that so we— that's why we have a job I guess to come and try to influence the court or advocate for safety.

ME: Great. So, Greg, anything else that we haven't covered today that you want the Maine Wabanaki TRC to know about your experiences as an attorney or that we haven't talked about today to share in your statement?

GD: Yeah no. We've covered— I would say we've covered most of it. I mean I guess the only thing that I would say is I've enjoyed working for the tribe; I've enjoyed being part of creating— and I don't by any means take credit for this— but just being a part of the Maliseet tribe creating a healthy community for itself. And I can see that— and for it's children, and I can see that simply well from all of the activities that it provides but also from the fact that we're placing children with Maliseet foster parents. There wasn't one single one— one single foster home when we first started this process that the state of Maine felt was appropriate to place a Maliseet child in. Not one. Ok. And now we're doing it significant portion of the time if not each and every time. We have candidates for placement within the Maliseet community. That's a really— that's a really amazing process to have been a part of.



And I think we're doing some good work on the end of– at the beginning of before it gets to court. And it has nothing to do with me; I'm not involved in this process. I only see these cases when they go to court, but I know that there are many more cases that get investigated, assessed and safety plans get put in place. And the case never comes to– the parents do what they need to do and they never get to the point of actual removal. So that was never happening before. There was not a liaison at the tribal level to facilitate that but the state was not really open to that either. So I think we've made a lot of progress. So I guess those are the things that I feel most proud about in working for this client.

ME: Great. Wonderful. Well before we wrap up I just want to say thank you so much for coming today. For taking the time. Your contribution and sharing of your experience means a great deal to the work of the Wabanaki TRC, and to this process, and you know we've been doing this for a number of months, hearing statements and experiences, and this helps to weave together kind of a bigger kind of shared or communal parts of a puzzle that has many, many facets and goes many, many decades back. So thank you for being part of that for something that's very much bigger than both of us in this room.

GD: Absolutely right. No and thank you for asking me.

ME: Great. So I am going to go ahead and turn this off.

[END OF RECORDING]