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Statement by Debi Francis, Esther Mitchell, Sandra Smith and Carolyn Bluhm collected by Rachel George on February 12, 2014

Debi Francis

Esther Mitchell

Sandra Smith

Carolyn Bluhm

General Information

Private or Public Statement? - Private

Statement Provider: Debi Francis, Esther Mitchell, Sandra Smith and Carolyn Bluhm

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Statement Gatherer: Rachel George

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Recording

RG: All right. It is February 12, 2015. We are here at Indian Island, Maine. My name is Rachel George and I am here today with:

DF: Debi Francis.

SS: Sandra Smith.

EM: Esther Mitchell.

CB: Carolyn Bluhm.

RG: Excellent. And the file number is P-20150100015. Debi, have you been informed, understood and signed the consent form?

DF: Yes.

RG: Excellent. Sandra, have you been informed, understood and signed the consent form?

SS: Yes.

RG: Esther, have you been informed, understood and signed the consent form?

EM: Yes.

RG: And Carolyn, have you been informed, understood and signed the consent form?

CB: Yes.

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

GROUP: Yes, yes.

RG: Excellent. Is there anywhere in particular you'd like to start or would you like me to go through the questions?

DF: Let's start with the questions.

RG: Okay. Could each of you tell me about your employment with Tribal Child Welfare?

DF: Yeah, the total number of years that I worked in Tribal Child Welfare so far has been seven years. I do have thirty plus years of experience working with children in a paid employment capacity.

RG: Can you tell me about when you came on board with Penobscot Nation?

DF: Penobscot Nation—I got hired in May of 2011 and been here till present. Working in the capacity of Assistant Director of the Social Services. One of the programs under that umbrella is Child Protection and supervising the child protection staff.

RG: And where were you working prior to Penobscot Nation?

DF: I worked prior to that—I was working at Bangor Counseling Center doing clinical therapy. I was doing that for quite a few years.

RG: Excellent.

DF: Before that—I'll keep going (*laughing)*.

RG: Okay.

DF: Okay, before that I also worked late 1999 until the early 2000's with Betsy Tannian, she was the ICWA Director up in Houlton Band of Maliseet. And I was the cultural specialist

under her working with foster children throughout the state of Maine that were Maliseet children throughout the state of Maine placed in foster care. And their homes were non-Native homes. So I would go in—and I also developed a curriculum and that curriculum got also passed up to the state of Maine and with other DHHS departments. And it was more or less protocol for that tribe with a relevancy with traditions, language, other type of cultural activities, working with the children. So I would go out maybe like either would be on weekends or even the weekdays in the summer, a lot in the summer, with these children at different locations and we would do the cultural activities.

RG: What was that experience like for you?

DF: For me I think it was a—for me I was glad to do some enrichment with the children. They were very glad to have that component piece, you know, in their lives as well, learning their songs, their heritage, their traditional songs with the drum. I'd bring my big pow-wow drum. I'd bring different types of also materials—I think for the most part I've done, we've done ribbon shirts, ribbon dresses for each one. What else did I do? There was a lot of intense pieces. Also, bringing the children up to Wabanaki Day. There's a social each year that Sharon Toner with Wabanaki Mental Health, she puts on she had a social to bring everybody together. It's basically in March and bringing the children up to that as well to have them experience a social. Because children and socials—it's very important that they experience that. They experience it just because of the legacy when they're getting into that stage and the age where they have to do it, then they know the protocol as well, so.

I mean children might be running around, doing this and doing that, but they're still learning and they're listening and that's what that piece is about. You know, entering into the pageant, grand entry, what's that about. You know, also honoring all your veterans, what's that about. You know, those are the things that they learn and they could learn that through—just by observing through play which, but they haven't had the exposure to understanding to know that. And then also to understand what different meetings are like a shawl, what's the meaning behind that shawl, you know. When we do things, there's a lot of ceremonial with that, a lot of symbolic pieces, what those mean and how does that reflect back to you and who you are and your belongingness and that's what it is really, is the belongingness. You belong to the tribe, the tribe belong—it's a reciprocal piece. The tribe is yours. You are the tribe. It goes hand in hand. So those are the things that I did with them. And like I said it was a good experience. The children loved to work and do this thing. They also had different, we did different projects too, that they built things. They learned things and stuff like that so it was good. I liked it.

RG: That's great.

SS: My turn? (*Laughing)* I'm a current child welfare case manager. I could've been, I started out interning here in I think it was 2011 and just never left. I started in different roles,

supervising visits then as the child welfare investigator and now I'm the case manager all in a very short timeframe. I started this role fall of last year. Still learning. I think every week I learn something important. Still trying to improve. Before that I did direct support with adults with disabilities for ten years.

EM: I'm a child welfare investigator. I started here October 2014. So I am still learning, very new. Before that, or currently, I work at the Penobscot Nation Youth Program and I've been there for about three years. And before that I worked for New England Home Healthcare working with the elderly in their homes and I've done that for about five years. And yeah.

CB: Excellent. Thank you. Am I allowed to like, make sure that there's something on the record that someone may not have mentioned?

RG: Absolutely.

CB: I think that all three of the people before you that just spoke are Penobscot Native Americans themselves which I think is important to make sure that that's on the record. For myself, I worked for the state of Maine as a DHS caseworker from 1993 to 1995 then I went to law school and then I worked for the Attorney General's office for the state of Maine representing the Department of Health and Human Services in child protection cases. And then I was hired by the Penobscot Nation in April of 2000 and I've worked for them in their child welfare for—ever since except I did take a six month leave of absence at the end of 2010 and the beginning of 2011. I'm trying to think of what else I'm supposed to tell you. That's probably it.

RG: How has your experience differed working with the AG's office and now working with the Penobscot Nation?

CB: Working for the Attorney General's office there was a lot more policy that was driven by the Attorney General themselves. You work at the pleasure of the Attorney General. And there is a hierarchy in which you need to make sure that you clear certain things with. Working for the Penobscot Nation what I have found is that well, tremendous learning curve has been discussed here already. Things that I had no idea about when I first came to work for them. The history of children being taken to boarding homes, the history of children being put in foster homes and not being allowed an opportunity to identify themselves as Native American. And then when I was hired by the tribe I tried to educate myself also. I mean I did some silly things because you don't have a whole lot of time so I went on Netflix and I looked up every single documentary on Native Americans and I think one of them was called like Five Hundred Nations and what their Native American culture was like back in the 1500's, the 1600's and how it was a utopian type of existence and they didn't have substance abuse. They didn't have sexual abuse. They didn't have domestic violence. And so I did a lot of that and taught myself how important the maintaining the Native American culture is and learned that there was actually a holocaust that occurred in our country and before coming to work for the Penobscot Nation I am embarrassed to say, even after becoming a lawyer that I did not know that. I knew that there had been some serious harm done to the Native Americans but I did not know that there was an all-out genocide and an all-out holocaust. I'd only known about the Jewish holocaust. And perhaps some of the things that happened in Africa.

And so then as I began my work the Penobscot Natives and sometimes the Passamaquoddy Natives, because some of them worked here also over the years, would teach me little things. And one of the things that I thought was the most important thing for me to learn about my job that was very different than working for the Attorney General's office is that the tribe cannot afford to lose their children. And I don't mean just in terms of damage. I mean in terms of literally they cannot afford to lose their children. And so when we intervene in a state case or when a child is informed that they are Native American and they are brought back into the culture, that is really important for the tribe's preservation which is very different than on the state's side. On the state side they don't worry about whether they are going to actually lose children or whether they are going to be facing extinction at some point just by virtue of the numbers and if blood quantum is the determining factor eventually the math is that they will, that some of the tribes would become extinct. I know the Cherokee Nation does the mitochondria DNA and I think that this is probably a better way of managing to make sure that the tribe continues forever.

RG: Thank you. Can each of you tell me generally what your experiences have been like working with tribal child welfare?

DF: Me first? Okay. My experience working with child welfare is I find that it's because you're working, you know, for your own people and for the next generation that are coming up—it's very important that, you know, you're saying to yourself that you're making the right decisions and the decisions, you know, that's going to be the healthy decisions for the child itself or the children themselves. And also, you know, our philosophy is, you know, trying to keep our families together and at what, you know, what levels can we intervene? Like even on the lowest level of just, you know, safety planning, getting resources. Because we like to see ourselves, this department for child protection likes to see ourselves not just as that, you know, coming in and intervening where we have to but as a resource way before any of that happens, you know. To see how we can support the family and assist so there's no big crisis or removal of children or anything like that. You know, the damage that occurs when that happens. So for me it is very important to really work with our families, get down to their level and see where they are at, meet them where they are at, to work with them. I think it's very important and not just take it as, you know, it's your job. This is where we're at and this is what has to happen. You know, go into that kind of like they—mechanical automatic mode. It's, these are real people so you have to treat them, you know, in the moment what's going on and be there at their level for that. So that's very important to me.

SS: I think she summed it up pretty well. It is important that the community sees us as a resource and not just the people that are going to come in and judge and possibly take their children. It's much better to help them in any way we can at those lower levels before it gets to the point where it is a major safety concern for the child or children.

EM: Yeah, I agree. And my experience so far where this is all still a learning process. I still find it very valuable being in this community and making sure our children thrive no matter their circumstance.

DF: I think one big thing too because like, you know, I live in my community. I know Sandra lives in the community and Esther lives in the community. We live here and these are the people that, you know, we meet and greet on a daily basis. I know that there is, you know, we have our professional boundaries and stuff but at the same time we kind of, you know, you get the feel of who is who and you know, it's a small community. You know and that's the whole juggling act and the line you have to walk, you know what I mean? But at the same time too is you kind of know too that, you know, if someone is starting to have some kind of like what would I say like a, call it grumblings, like little rumblings, we kind of know it already, you know, through the, more of an anecdotal type of comes to you, you know what I mean? So you kind of know it so, you know, at the same time it's like trying to figure out where there, you know, where it's at, where it's going and then hopefully there's other family members that can kind of intervene at the early stages so that way it doesn't really get kicked over to a call in this department here, you know. And sometimes we can head it off at the path just by, you know, other subtle ways of doing things.

CB: For me, I think that one of the things generally has been overarching in my experience is that there's been a tremendous amount of respect which is something that is beyond professionalism. When I've been working up here—and also the level of creativity that the tribe is able to do. I know Deb herself doesn't just talk the talk but she walks the walk. She's had kids in her home and—which is an incredibly beautiful thing for someone to do as opposed to sort of putting things at arm's length or distancing yourself. I think for these women before you it's particularly personal which is unusual for me.

RG: When did you first learn about Maine's policies related to Indian Child Welfare?

DF: Well, I'm going to tell you, we're so busy (*laughing*) that when it comes time to doing something—like we know our tools in our toolbox, right. We know our state tribal agreement that we have and a lot of other things, okay. So when you go onto the website for the DHHS, you know, they have the whole column and stuff like that so to tell you the truth, I just looked it up today. And when I see it, I see a philosophy they have. That philosophy goes right into ICWA. I mean they're not outside the realm of what ICWA is all about. And, you know, they cite the Title 25 U.S.C, you know, that's our guide and bible and stuff like that. And then one thing that was really cool that I did see and hear were the ICWA definitions on page because it's a lengthy page here, I think it's page 17, Carolyn pointed that out, is the transfer to tribal social service agency or to tribal court mandated transfers. I love that. Because those are the pieces that kind of get stuck out there in other pockets of Maine, small rural areas where they might not have an ICWA case ever and then all of a sudden they have one. They don't really know what to do with it so the state of Maine for the most part working with the DHHS.

I mean, you know, at the in the trench levels, you know, there's a lot of turnover some time so you have to go back to finding out where that person's skills levels are and stuff and maybe they need some more supervision and stuff and you run up against some of that piece is where things that they might be saying to you a Native family that lives, you know, out in the larger

community in one of the towns or something like that is not accurate. And then you find out later and then you have to go back and kind of make sure that that supervisor is really giving them what they need to work in that field because just by doing that we miss out. We could be missing out on potential cases that we need to be involved in because they are not, they're saying it's their jurisdiction and that's it. No tribes are going to be involved and stuff like that and that's not true. That's not true. So those are those things that they just don't know. So those are the things that you have to always kind of like fight that little fight there and or it can get corrected quite quickly. But with this piece here how they have this in here. I'm glad they do but I think their workers, their frontline workers need to know this. They need to know this.

SS: I think, you know, as (*inaudible*), I had an idea about ICWA but it wasn't until I actually worked here where I really got into the details and what it really meant and the jurisdictional issues. And we've had to learn really fast. I mean this is our job and a lot of it is the educational piece when we do run into brand new state workers is informing them because they might not know and just working those details out right in the beginning whenever possible.

EM: I first learned about ICWA I was in high school. I was part of an organization, non-profit. It was called NACHME, Native American Children—I think it was—Healing Mother Earth and the lady who ran it was Sherri Mitchell. She was a relative of mine. She was, she told us about ICWA roles and standards in a more introductory level. Like this is something that you need to know, be aware of. So that was the beginning of my understanding of ICWA. And I just have collected more information along the way until this point where I am here at child welfare and there is more depth to it (*laughing)*.

CB: To answer your question about when did I learn about Maine's policy. What Debi was referring to is the DHHS policy. There, I think is a lack of uniformity in terms of the state of Maine policy, the executive branch will do one thing, the legislative branch is doing, well, I don't think there is anything before the legislative branch. And the judiciary, each individual judge treats the policy, I guess if you want to call it differently. And I think Sandra is correct that there is a lot of training that we do one tree at a time as opposed to wishing that the whole forest could know what each of them is doing. And I've also noticed that there is a lot of individual differences with respect to Assistant Attorney Generals and judges as I mentioned and I know Sandra mentioned caseworkers and since there are those individual differences, it really shows a lack of uniformity which I think would be a good thing to address. So in terms of Maine's policy I don't think there really is one policy and that I think is the fairest way to put it. In terms of training I have received over the years I've received training as a state lawyer, a state of Maine lawyer, last spring 2014 the family division for the state of Maine put together a two day training for child welfare. You might have been there. And part of that was about the Truth and Reconciliation and also about the past harms that have been done to Native Americans and about how there just needs to be more of an education and understanding that this is really important thing to start to address.

RG: Thank you. Could each of you describe a situation or multiple situations where you felt very positive about your work on behalf of a Penobscot child and family that involved working with state child welfare?

DF: Jeez I'm trying to think which case back along would be positive in working with the state child welfare.

RG: It's okay if nothing comes to mind.

DF: Yeah, I'm trying to think.

SS: I think since I've been here I've had at least one case where, you know, it was a shared case with the state and we were able to reunify at the end of that. But I was working with the, a counterpart in the state that knew ICWA, that there wasn't any of that jurisdictional tension. We worked very well together. And there was a positive outcome at the end. It's not always the case but I know it can happen.

DF: Well, I think for the most part too on certain cases, on the state's side you might have another caseworker that takes over in midstream of that case. And then you've got to bring them up to, you know, where you're at. You know what I mean, for them to like quickly get on board and hit the ground running, you know what I mean? So that kind of is, kind of like the downside of that when caseworkers shift in midstream. And, you know, I don't think it's anybody's blame for anybody but it just happens, you know. And one caseworker might have more experience than the other one coming in or vice versa you know what I mean? Yeah.

RG: Could you describe a situation or multiple situations in which you felt less positive about your work on behalf of a Penobscot child and family that involved working with the state?

CB: While they're thinking about that can I answer the other question?

RG: Yeah, absolutely.

CB: In terms of positive outcome I think that bringing kids home to the Penobscot Nation is the overarching positive outcome. We had, we've had a bunch of amazing cases but one of the cases I'm thinking of is a 15-year-old about a year and a half ago whose parents had left him with his grandmother and he ended being kicked out of the grandmother's home and went to live with a friend's family. State DHHS became involved because it wasn't here on the Island and they notified the Penobscot Nation and the Penobscot Nation found out that this kid was actually Penobscot Native American. And he did not know it, 15 years old. And he now knows it and that to me is a tremendous save. It's great that the state of Maine communicated with the Penobscot Nation to see whether his parents were on the registrar, on the census because that means that his offspring and so on and so forth. So that was a really positive thing and then another positive thing that I'm thinking of that Deb can probably talk, speak more to than I can is that we had a state of Maine case in which a little boy had come into state custody. We intervened in the case and the case just sort of meandered. Both parents were substance abusing. The mother was a Canadian Native American. The father was a Penobscot Nation Native American. They had burned a lot of bridges with their extended family members and so

when they rehabilitated became sober, Deb had to step in to say we need to get together and I can let you take it from there, what you did in terms of bringing that whole family back together and trying to mend those fences.

DF: Yeah, they were, their sobriety was probably like early month's stages of sobriety and we were still keeping the case open for reunification. They were doing their part with their providers and stuff. We got to the point where they needed more support. They needed more of those family supports. And the, you know, the walls that came up around the other family members because they didn't, really the family members didn't want to go down that path again where, you know, they're in sobriety and stuff like that and all of sudden they fall off and they're back, you know, they've been, that's been their experience all along and they just didn't want to do it again. They wanted to just cut all ties. So what we did was to help bridge that because they needed that piece too to stay in sobriety and then also, you know, for that family to stay together. What we did was we did some talking to the extended family members which would have been like the father's parents, sisters, you know, his sister and stuff like that.

And to do a mediation so that way they can get things out on the table, things that, you know, the family, the extended family members didn't like about what was going on or where they felt they were. You know, their own feelings and everything else that frustrations with this. So everything kind of went out on the table and then from that things that were strength based were picked up and they started to mend their relationship and today their relationship with the father himself can talk to his mother and father and have a conversation and feel like he's come back into the fold again. His wife, which is the mother of the child that was at the home, she's got that relationship with that side of the family too so she feels like she is supportive as well. Her, because her family is in Canada and frequently they come down but it's not like right here when things, you know, things happen in the moment and stuff like that and you need that extended family to kind of come in. So right now that whole family and that whole family unit is doing great right now. I mean and it's been what, I think more than 18 months, going on two years now that they've been sober.

RG: Excellent. All right. Could you describe a situation or multiple situations in which you felt less positive about your work with the state on behalf of a Penobscot child?

DF: Okay, so this is just a little, this is me. I never feel less positive about what I'm doing (*laughing)*. I got good confidence even if I'm wrong, I'm good with it and I own up to it. But I might get frustrated and hem and holler and stuff like that for the state side but (*laughing)*. Because, you know, don't marginalize us. We're here, baby, we're here. You know, we're not going away so. Deal with us in a business sense, you know, it's not personal, but I'm coming at you if I need to come at you, I'm going to come at you, you know, it's, and it's the right thing, you know, and do the right thing. That's it, you know. It's, you know, be honest with yourself, be truthful. Even if you're wrong, be truthful. No one is going to kill you. Just

do it, you know. And I think that's who we are anyways is if you've got your integrity I'm not going to come up against that, but if you're bringing it, and I feel it and you're right there with me, then good let's work together. But if you're, if that, you know, if there's some kind of a chink in that link or, you know.

We as a people, we kind of grow up and, you know, it's instilled in you too, is that you got to watch yourself because there's, you know, there's discrimination out there. You look different in a population 99.9% white, you look different. And then there's a history with white people so as they come and approach you, you don't just see them you see way behind them and all the history that goes way back and you're just saying, "Okay, now who is this person and what this person is going, what is going to come out of this person's mouth before we can start trusting you?" And you have to because you've got children. The children need to know that too. You don't want to set them up for being out there and all of a sudden something happens to them, you know, that's devastating you know. So working with like I said with the state workers and stuff like that, you're just waiting because sometimes that pops out and it's like, "Okay, really, this is really, you know, where you're at and you're brining all your discriminating pieces and everything else?" It's like, you know, I can't work with you.

You got to, you know, I got to put you aside somewhere and I've got to find someone else that I can work with because this, you know, you've grown up in whatever was instilled with you with hate and whatever. I can't handle that. I can't handle that. I can't handle that because I'll just get down and be, I'll be ghetto too, you know, I'll come up against you. I'll take off my, everything out, take my hats off, my gloves, okay, let's go, you know. Because that's the fight. That is the fight. That is the struggles. And that struggle is still out there. It is. You wish it wasn't, you know. You wished that someone had some, you know, everybody had that meeting of the minds and the intelligence of getting way above that but that's still out there. So anyways going back to what's negative (*laughing)*, I think, you know what, to tell you the truth if there is something that that there is a barrier then I'm still going to, that's a challenge. I'm still going to keep going after it till I can get around it, you know what I mean? So really I can't really say that something is negative.

RG: What are some of the challenges that have come up?

DF: Some of the challenges. Okay, we're going back to like jurisdiction. Going, you know, Maine is still that tough, you know, good old boy's state, you know? Just, you know, that 'them people over there' type of thing, you know. And something that could be just as simple as just something going through court and you just get rid of it and you know you are done with it. They want to hold on to it. There's nothing really that they can hold on to but they do it anyways for their own power. And you can feel that too. You can feel prejudice. You can feel it. And it comes out, you know, even in their affect and their own—being animated. You know, rolling your eyes and those little subtle things you can catch, you know. And then that's the one who's in power that can say, you know, either we're going to transfer a case or not transfer a case. It's like that, yeah, and that's the person that's in power. So yeah, that's out there. That's out there. So we'll still try to fight the fight. Find other ways. It just it makes you start thinking more and giving a better analytical thought process of how we're going to do this. I think that's our survival mode really. We go, you kick into survival. It's there. It's just, its innate. You have anything to say, Carolyn?

CB: Yeah. I always have something to say. I would say in terms of whenever I felt less positive about my work has been when caseworkers or judges for the most part—there are a few parent's attorneys, guardian ad litems, and a few AAG's who act like it's a pain to have to have ICWA involved. We have seen eye rolling. We have seen temple rubbing. I'm talking judges also here. We've seen negative body language, negative facial expressions. Those are the kinds of things that Deb's talking about when she says, "I can feel that prejudice is still here." And it's remarkable because I'm talking about a situation that happened just four weeks ago where Deb I think had when I say this is personal she really experienced a level of disrespect that I just found to be really sad. Sorry (*whispered)*.

DF: That's okay.

CB: (*Hard time talking, crying)* And I think also when, when Deb and I have gone to court for a case in which we intervened instead of transferring the case and we'll stand in the hallway and sometimes find a quiet place to talk to the caseworker about what's been going on and Deb will find out things that she was not aware of and like treatment team meetings that are held where the tribe was not called to be at the table and she I don't want to speak for you but I think that that is very painful to realize that there is just a lack of communication. And that it's such a small thing to do it's a very respectful thing to do, a kind thing to do and those are the humanistic things that I think are really important but I think that the prejudice that still exists today is to me shocking. If you had asked me a year ago how things were going I probably would have said a lot fewer incidents of eye rolling like, "Oh, the tribe's here," or, "ICWA is involved," or, "Oh, that means we have to do a higher burden of proof. It has to be clear and convincing. It can't be by a preponderance of the evidence. They don't believe in TPR out there. We have to do permanency guardianship which means we have to tell these foster parents that because the tribe is involved that the parents are going to have an opportunity to come back every year," which happens very rarely. But it's just a really negative thing but we have had a recent situation that has just I think bowled us both right over and I think it is an understatement when I say that it's disrespectful. It's shocking.

RG: All right. So this next question is a bit of a long one. I'm going to ask about various interactions with the Indian Child Welfare Act and how that, any challenges you've experienced, barriers, or general experiences in working with the state in this and various aspects of the Indian Child Welfare Act so I'll pose the question as a whole and if you have anything that stands out, please do mention it and if not, then I can move on to the next one. So could you describe your experiences in working within the Indian Child Welfare Act and in particular working with state child welfare surrounding initial identification of a child as Native American?

CB: I'm happy to jump in while everybody is thinking about it. When I was a state caseworker back in 1993 to 1995 as I said, part of my training was that there were two things

that you asked every parent. And that was typically paternity and whether there was any Native American heritage. It was one of the two questions that had to be addressed right out of the box and I received that training through the Muskie Institute and that doesn't seem to be at the top of the state caseworkers minds anymore. It's interesting because sometimes the caseworkers will be surprised. It's as though the parent or the tribe itself has to bring it up. And when I mentioned that 15-year-old boy, luckily that caseworker did ask the tribe whether there might any Native American heritage. But that would have been a real loss if that tiny piece had not been done because the parents were not in court ever. So they were not there at the table to say, "Hey, this is an ICWA case." And that's how quickly a child can be lost in all of that, and all those descendants can be lost.

RG: Is there anything anyone else wants to add to that one in particular?

DF: Well, I think recently because, you know, as passing's working with state supervisors and stuff to make sure things get over and make sure they have the right contact numbers and stuff so there's no excuses why you can't call. That in recent months—and like I said I can't really speak for everything, maybe some things still fall through the cracks and, you know, if it's out there somehow someway, you know, it's going to resurface. But initial identification of children as Native American—we do get those calls from the state of Maine specially the Bangor area because we are in this same area, vicinity as they are. Just to check, like they'll run, you know, a name or we also get other ICWA inquiries from other states as well. And that's upon a regular basis too. They send out to as many tribes as they can especially if a parent doesn't really know the specific tribe that they might be affiliated with or else they might have an idea and they them to as many tribes as they can. And we do process them and we send back if there's, you know, whether there is a hit or there's not, we send back. Let's see workers to identify Native children, identify Native children, I don't think we do that.

SS: Interesting thing about ICWA inquiries from away is I don't know how other tribes how quickly they process them. We do that very quickly here. Usually within a couple of days and we have a response back. I have called other state offices in different states and they're just surprised we respond because they've sent them out to multiple tribes before and I've had people tell me they've never gotten a response back. So it's incredibly important that we are responding and we're doing it quickly to identify possible Native children out there.

DF: And I think, you know, it just rings true that if someone is sending something we have a responsibility to and in a timely manner to get that back to them. Most usually when they do they send out an inquiry they also send that what's going on with that case, you know. You have the child or children's name, their parents and what's going on with that case. You know, where that case is at and whether the child is with another family member or it's going to court at a certain date. So yeah, we need to get that back to them. Because, you know, even if it was, you know, the child is eligible for enrollment or the child's on the census we need to let them know that because we want to intervene and be a part of that. Or if they're not, or none of the names that are there are listed have ever been on the census, at least we can get that back to them as well and let them know that, you know, it's not this tribe that has any affiliation. But I think we have a big responsibility in that piece too to make sure that they get that information back because they're sending and we want them to send it. And I think all other tribes want them to send it, too. But it's our responsibility to honor and take to get it back to them.

RG: How about in determining jurisdiction of Native American children or residence?

DF: I'll give that one to you (*laughter)*.

CB: All right. Well, typically we haven't had much of a problem with that. If the tribe wants to intervene, we've always been able to do that. But in a recent case within the last few months we did, we do have an issue. And the court decided that because there was an issue of jurisdiction that it was going to have a hearing but in the meantime both teenage boys were living with people who were not, would not have been looked into because it takes a lot longer to have a trial in state court than it does in tribal court. And the department for the state of Maine did not decide to take custody of these boys. And these boys have an older sibling who at one point was homeless and became desperate and did some desperate things and now is in prison. And so the tribe was really worried about these boys and wanted action to occur and so moved to transfer. But the lower court in the state of Maine decided that it would hold a hearing first and that was almost three months ago. In the meantime the tribe filed a PPO hear in tribal court but now we're in a turf war because the state of Maine has not relinquished its jurisdiction. The tribal court has acted on its jurisdiction to protect the boys and also pay for their stay where the people that they're living with because who knows how long a placement would last if you weren't getting paid to care for the kids. And what's really sad about jurisdiction issues is that it's confusing for the kids, it's confusing for the parents and it really takes away from what we're supposed to be doing there which is just to protect the kids. Whether, regardless of who has jurisdiction we're both well meaning, sovereign territories, the state of Maine and the Penobscot Nation. And we should be able to act to protect the kids. But the confusion for these boys I think has really exacerbated the issue and it has been driven by the jurisdiction turf war.

RG: What was the reasoning behind the state refusing to transfer jurisdiction?

CB: At the outset it was an objection by the mother and like I said but there was an urgency in the minds of the Penobscot Nation because of the older brother who at one point became homeless and desperate and that these boys were placed with people who were not receiving financial assistance and background checks needed to be one. So the Penobscot Nation said, "We can't wait. These kids can't wait." And we had offered for the state of Maine DHHS to take temporary custody and they refused and so we saw it that we were boxed in. Deb was left with no choice but to file the petitions here in tribal court which has made a real mess of the case. And like I said very confusing for these boys because I think these boys are receiving the message that the state of Maine doesn't respect the Penobscot Nation. And for these particular boys that's really negative. So it's more than just the legal jurisdiction issue, there's a real substance to it that is palatable.

RG: How about any challenges or general experiences in child custody hearings and working with the state?

DF: I don't think we have, yeah, there's none.

RG: All right. And in arranging foster care placements?

DF: That's still with the tribal state agreement. We kind of—if we don't have a place, we reach out to them and they scan what they've got and they have minimal as well, you know, and it's tough goings out there, you know, for everybody. So we try to work together with that. We have like team meetings, arranging family visits, that kind of goes, you know, when we're doing, you know, when we intervene and there's a tandem thing going on. You kind of want to make sure that it's the ideal, you know, togetherness doing it. You know what I mean like you want the ideal arrangement.

SS: Well, and communication.

DF: Yeah. Communication.

SS: Oh, that's not our state are communicating effectively and well. I think things go pretty smoothly.

DF: Yeah, everybody knows what everybody's doing when you communicate.

SS: When that breaks down the problems occur. You know, meetings can happen and we might not know about them or we find out after the fact. And that's never good because then we're always out of the loop and till we kind of push back in. But it's important to have that communication. For the most part, you know, I've had good experiences with that and occasionally you don't. So then you work to make it and get those, get on the same page. To really talk with the other case managers or even their supervisors if necessary to see how we can do this and do it well. 'Cause it's not about a turf war with another case manager, it's really about the child. And how do you get everything streamlined for them.

DF: Number six never happened (*laughter)*.

CB: No, you're right.

DF: To your knowledge, if your tribe declines to intervene with a child custody proceeding covered by ICWA, what is a reason for this decision? Never happened.

CB: You always intervene.

RG: Is there anything you would want to add to number seven about the state declining to transfer a child custody proceeding.

DF: Yeah, ask the judge (*laughing)*.

RG: All right. To the best of your knowledge, does your tribe ever use its own expert witness?

DF: Yes.

RG: Can you tell me what that process has been like?

DF: The process for an expert witness? Yeah, you're just looking for someone or, you know, that knows their tribal customs, heritage, what the—going back to what you would want to instill in your children, you know? I mean when you look at, we talk about our ancestors. We talk about them daily, you know, that's part of our conversations, you know, with ancestors. They're a part of us, you know. Maybe other cultures don't do that, but we do. Those are the things that children need to know. They need to know their role and their place just like you need to know your role in your family. You need to know your role and your place within the tribe too because that's your family too. And we think of, when you think of the good of the tribe, you know, you're thinking in that wholeness, what's good for the tribe is good for me. Not the more self-preservation. We don't think that way. We think of the tribe as a whole and where we all fit in the scheme of things.

CB: I'm not sure if this question is talking about the expert witness as required under the Indian Child Welfare Act to testify in a state proceeding—and the one thing I know is that the Penobscot Nation has said that it has to be a Penobscot Native. We haven't ever used another Native American in that role. That's the only thing I would say.

RG: Excellent. When your tribe becomes aware of a state ICWA violation, does it have a policy for legally challenging the state's Child Welfare determination?

CB: Well, there had been various violations over the years. We had a case that the state of Maine opened in southern Maine in 2008 and the tribe was not notified until 2010. And so that's a violation. In terms of whether the tribe has a policy with respect to that—in that particular case, you know, the tribe was very upset about it but my marching orders because I'm the person who would have to file something legal on their behalf—my marching orders at that time were to send a message to the Assistant Attorney General and say that we accept their apology because I had received an email saying, "Oh my God, we failed to notify the tribe and it's been two years." And my marching orders from the tribe was to let them know to please make sure that this doesn't ever happen again but we accept their apology with respect. And so I wasn't instructed to file a civil law suit for reparations or anything of that nature and I think that's really interesting.

In terms of other ICWA violations, we file all kinds of different things. It depends on what kind of violation there was. If there was a lack of due diligence in a case, we have made

more— asked more of an effort of the state caseworker to find out the names of the parents or that sort of thing because the child may be eligible for enrollment but not necessarily on the census. And there've been ICWA violations in terms of what I mentioned a moment ago, the burden of proof. The burden of proof is supposed to be clear and convincing. Well, in that case I mentioned where it was ongoing in state court for two years it was under the preponderance of the evidence. But we didn't go back to cure it, we just decided to move on from that point forward. And like I said the tribe really just wants it to be about the kids and what's best for these kids not whether, you know, you originally checked all the boxes or dotted the "i's" or crossed the "t's". There very focused on just making sure that the kids are going to be safe.

RG: Because you've expanded on it a little bit I'm going to skip number 10 and I'll go right to number 11 which is if you wanted to tell me about the importance of caseworkers learning and having a knowledge of Native American family structure and culture.

DF: I've been looking at a couple of these questions 11, 12, 13. I think, you know, just plainly speaking, I think these questions should be posed to the state workers themselves.

RG: Mm-hm and they are.

DF: Because we can talk all day about this and try to critique this and that but I think it's really, they know it. They know that they need to have some teaching and learning and stuff. We did have an ICWA work group for many years. I know there was Esther Attean and Martha Proulx on that along with Molly Newell and also from here as well and other tribes and stuff—to put together trainings and modules, web-based for ICWA training for state workers. I'm not sure if that's being used or not but that's really what all your questions you have here should be already in play so I'm not sure where that's at. So to really talk about these questions here I think it's doing a state a disservice and the state workers a disservice because they know. They know what their strength and weaknesses are. They really do and I don't know, we just keep, you know, touching a wound all the time with that and, you know, I think they just have to, whatever they're doing is taking it to that next level where it is web-based and start using it. Or if they're using it, you know, where is the measureable—you have a baseline and where's the measureable differences now. I'd like to see that.

CB: And just picking up on that I would say that the state caseworkers are so busy that I don't think that the individual tribes should or would expect them to know all of the cultural differences. I think that the tribe, for the Penobscot Nation at least, what they're looking for is as I said before make it the second question after paternity in terms of who should be involved because the tribe is like another parent. So if you're asking who's the mother, who's the father? Right behind that ought to be is there a tribe? And then after that it should be just communication with the tribe and I don't think that we can expect state caseworkers with as busy as they are to know all the cultural differences and the creative things that they may come up with in terms of what would be helpful for the Native American kids to know or learn. So for me that would be my only expectation is for the caseworkers to recognize is that the tribe is like a third parent. And you'd never have a DHS case with one parent and never include the other. And so the tribe should be the same way.

RG: What do you see as strengths and weaknesses in the state child welfare system for ensuring ICWA compliance?

DF: Well, like I said, you know, I'm not in their system. I don't know where, you know, if I start coming up against something that that's a barrier for me and then I know that there's, you know, that it's a problem. I'm not in there moving around. I think that like I said, that would be more of a fair question for them to analyze.

RG: What do you see as the strengths and weaknesses that the Penobscot Nation possesses in working with the state for ICWA compliance?

CB: I can jump in and maybe someone will springboard off what I have to say but I think that one of the best things that I've seen happen is tandem investigations. Where they work together. When the, when a state caseworker comes onto the island they usually will partner with someone here from Penobscot Nation child welfare and I think that that's very beneficial for the family and for the kids to see that there is a real partnership going on.

DF: Yeah, and that's, that's only in the instance if there's a non-Penobscot living here that state worker would come over to the island because they're not Penobscot. And then when they would also represent ourselves in the home because you might have other ones that are Penobscot. So if something is going on with one child that's non-Penobscot in the home, it is probably going on with the other ones so that's why we work together. But outside, on the state side, like if they're a Penobscot home that's in another town or whatever, you know, it's helpful that because we're going to intervene anyway so it's helpful that we're there from the get go and it would be helpful if we're on the state side that we're there from the get go. Because we have certain resources that they might not be able to tap into that we can tap into so that way everybody's working for the betterment of the child or the children.

SS: That's really important especially with the cases of Penobscot Nation territory. It might be their first introduction to the tribe. Especially like with the young man that didn't know he was Native. Had friends that were Native and all that but, himself, did not know. So I mean part knowing what that state worker was his introduction into, "Hey, we're here, you're one of us, you belong," and so that is incredibly important that we are there from the beginning.

DF: Yeah, I think when he found out, he, you know, he brightened up and he had a big smile and he, you know, thought that, you know, it was the biggest thing that could happen to him that someone else is out there or someones else is out there that, you know, want to take an interest in him.

CB: And a really special identify.

DF: Yeah.

CB: That not a lot of people have with, you know, your ancestors were here ten thousand years ago. And so you may feel something a little different than some of your other peers. One of the things in that case just to follow up on that is I just remembered the guardian ad litem wrote in his report—and it was a state guardian ad litem said that the most valuable thing that this boy's parents—now remember his parents abandoned him, ever gave him was his Indian heritage.

RG: In what ways do you see the Indian Child Welfare Act and the Adoption and Safe Families Act working together and in what ways do you see them not working together?

DF: I haven't thought of that question.

CB: I'm trying to figure out what number is it?

RG: Twenty.

CB: Oh, that's why I wasn't seeing it. Oh, well, I think that, you know, I don't know that Deb conceptualizes it this way but she's all about this—is that it's permanency driven. Kids don't languish in foster care. We try to either get them back home with their parents or that they are in permanency guardianships situations and hopefully some kinship involvement but I think that the Indian Child Welfare Act and the Adoption Safe Families Act it's all permanency driven. And a permanent home for a child that might not be able to have permanency guardianship for example, is their tribe. And if that's, even if that's all they end up with because sometimes kids age out or they're young and they make unwise decisions, their tribe is still always here.

RG: What are your concerns about tribal children who are in the state child welfare system?

DF: The concerns is, you know, where are they placed at? What homes have the state exhausted, you know, I mean you're going from the nucleus out. Is it a Native home that they've been placed in? Is it with a, well a family member's Native home. Then outside of that non-Native the biggest concern is how are they keeping contact with other Natives or other tribe itself. So the child can have, you know, nominative role models in his or her life. And that just that contact and keeping contact with the tribe.

CB: I think that the thing that I know that Deb has brought up to me more than once is that when we do enter into a permanency guardianship situation and if it is with a non-Native family because sometimes these kids will boat with their feet if they're teenagers and they place themselves. And so we may end up doing a permanency guardianship and I'm thinking of four kids in probably from 2010 to 2014 that we placed with permanency guardianships. And in the permanency guardianship order, we placed language that says, you know, you promised to continue to maintain the children's ties to their tribe. You promised to bring them up for a social event at least once a year. Very minimal requirements and I think that the concern is that they don't follow through. They don't maintain that promise. And we have just recently discovered that and I believe Deb is going to be changing her policy in terms of

whether that is going to be a matter of trust or whether that's going to be something that she and her team follow up on if they haven't done it, I will file something in terms of contempt of court.

I mean certainly we will try more remedial issues first like call them up and say, you know, you haven't brought so-and-so for a couple of years, but if they continue to ignore, I think it would be fair for Deb to be able to say I want you to file a motion for contempt. Because we haven't made it a strong court order, requirement, but I think that we probably should. Oh, and the other thing that Deb's also working on—I feel like I'm speaking for you (*laughter)*, is on the state side that there is a worry that for some reason that some of the Native American kids are not being offered V9's. And then we have one case in particular where Deb has decided that the state didn't offer this kid a V9. He's eighteen. He's no longer living with the family that he was living with and he's still in high school. And I don't know why the state decided not to offer him a V9 because that would sound like a situation in which they typically would offer a V9. So Deb went out and I believe it was your very first one and you've changed the policy that—

DF: Yeah, we're doing, we have voluntarily consent form where they can volunteer—it's the same as, similar to a V9. They volunteer whether they are going to stay in school or have a job and then we also offer support for that as well. And the caseworker will make sure that, you know, advocate for him or her. Same thing with a V9.

SS: Concerning is these kids will turn eighteen. They're in permanency guardianship and they may or may not be able to remain in that home for whatever reason. We can't just have them out there in the world with nothing to fall back on. So we've got to have that connection that we're here and that we're willing to support them should they need it. You know, they can contact us and we're going to help them. We don't want them out on the street and without resources, without a place to be and that is the big concern that that will happen.

DF: Yeah, what's sad about it too is, you know, and really all we can base our experience on is the ones that are in non-Native homes, is, you know, when your placing for permanency you want that forever home so there's that bonding that occurs, the attachments, the feeling that you're part of the family, you're a member of the family so even when you're eighteen and you're moving on or if you're not moving on, there's still that family you can go back to. And so we are seeing that it's not the case. They're eighteen and they're out of the house. They keep being kicked out of the house. So where is all of that, you know, this is my home forever, you know, you're my forever parents but when I turned eighteen there's no connection no more, you know. It's, you know, it's just very sad situation and then, you know, putting yourself in the position of the child themselves when you're eighteen, that's scary.

I remember when I was eighteen, you know, and you're growing up, it's like okay, even though I'm eighteen, I still want to live at home. I don't have no resources to be on my own or anything like that, you know. I mean when I grew up in the sixties and then into the seventies and stuff, there's, you know, you've seen kids being kicked out of the house and it's like, "Good thing my mother don't do that to us. We're going to live at home forever and ever until we're ready to go." I always felt fortunate that my mom always instilled that into us, you know, because I had like different friends and stuff or, you know, you knew friends that, you know, they because you're still, in some turmoil, you know, your teenage years is that turmoil years and stuff and you really don't know what you're doing or what, where you're going to go and stuff. And, yeah, they would get kicked out. And it's like, "Oh my God. I can't see myself being on the street, where would I be?" It's scary. It's scary. So we got to be there to kind of help them, be a net for them and do what we can do. Do what we can do.

CB: And that's in line with the idea that you're the third parent.

RG: Do you think ICWA does enough to protect the rights of Native children and Native tribes?

DF: I think, you know, really working ICWA in the framework of ICWA, I think we got to go back and look at that and strengthen it. You know, there's a lot of different areas where you got to have a stronger language, stronger pieces where you could really take a bite out of something, you know, it's there, it's there, but it's never really been tweaked. We need to go back and change some things, big things. We got to do it.

RG: What kinds of things would you like to see changed?

DF: Well, I mean even going back to the—was it the baby Veronica case was a year or two ago. And looking at that and then going down and it dropped back down to the lower court and then it went up to the Supreme Court and stuff. I don't have it with me but I had a lot of looking at that, I had a lot of ideas of how they need to go back and start looking at that and changing things because it, you know, the interpretations and stuff and it was very, I mean it was like you can just open the door and that interpretation will stick, that interpretation will stick, you know. It's got to be kind of looked at, how the language is and stuff and brought up to where it can be more precise, you know, meaningful. And there's no, if you're going to interpret it, I mean everybody's, it's not going to be everybody, like sitting here, we're got one, two, three, four, there's five of us, right. We can all have five separate interpretations and they're going to stick on the wall. Come on.

SS: We need to go back to that uniformity. If it's interpreted differently you don't have uniformity. So really if they narrow it down and change the language, make it stronger, you're more likely to get that uniformity. Less variation in outcomes.

CB: Right and I think it really boils down to whether the state of Maine trusts the tribe. Like I said before the tribe does a great job. They have their own tribal court, their own tribal welfare program, child welfare program and there's, you know, similar requirement for rehabilitation, reunification, access to the same services. Why the state of Maine would want to interpret ICWA that didn't just relinquish jurisdiction to the tribe every time is a real question for me.

And it shouldn't be a matter of trust or interpretation. It should be black and white, that the tribe wants their child back, like a third parent. And the tribe doesn't need to be rehabilitated or reunified. They just need to be notified.

SS: It has implications nationwide. It's not just Maine, that's, if they strengthen it on the national level and then that level is going to do a lot for the helping with how its interpreted. And how it is enforced.

RG: If you could change anything or make anything happen for Native children involved in ICWA, what would you do?

DF: This is the magical question.

CB: Yep, I know. We talked about this on the phone. You want me to go first?

DF: Let's take our wand out. Ting! (*Laughter)*

CB: I like it. Well, we talked about this on the phone when we were looking over these questions together. And one of the things that occurred to me while I was talking with Debi was that it would be great if there could be a handbook that were given to children to explain to them in low level but also, you know, intelligent language, what it means to be a Native American, what their history was like, going back to the Holocaust and going back to the utopian society and, you know, one of the things Deb mentioned on the phone was that—no, actually mentioned it in the van was that she still has pictures in her mind of colonial America and she still remembers the Cowboys and Indians and that sort of thing. And so I was thinking that it would be nice if there was a book or a handbook that could be given to Native American kids to explain their uniqueness and what it means to have a tribe.

I mean we have teenage boys who are not wanting to identify themselves as Native American, perhaps because they've internalized some negative messages about what that means. And how do we bridge that gap? And I think that that kind of a handbook would also be helpful for caseworkers because then they would be reminded why you don't roll your eyes, why you don't act like its and extra burden. This is what happens to me. And if they had those right there at the ready on their desk that would be a really awesome thing I think for them to be able to have to give out and for kids to be able to hold on to. Because if they do get kicked out of their permanency guardianship home, they can say to themselves, "Hey, I didn't just have two parents, the state of Maine was never really my third parent, but the tribe is always my third parent."

RG: Is there anything else anyone wants to add to that question?

DF: Yeah, I just think that, you know, for us because we live in the state of Maine for them to know that there's five tribes in the state of Maine. We're all different and unique to our own selves and working with us—and this happened recently, probably several months ago, also working with the head one for the AAG for the state of Maine she coordinates with, you know, with all of them and stuff. Looking at like—Penobscot Nation has a tribal state agreement and we've entered into that agreement and it's been ongoing since 1982. Other tribes have different types of pieces. Some don't have an agreement. But there was this person wanted to use one of the other tribes—it wasn't an agreement, it was something that they set up together for a more of a collaboration with what each one's responsibilities are when working with the state and she just wanted to use that one as an overall blanket for everybody else, to give to her AAG's and say, "Okay, this is what you're going to do when you're in court, you know, you're going to notify blah, blah, blah but." But as I'm reading it, there's a lot of differences than what our tribal state agreement is.

So I let her know that "No, I'm not going to allow you to use this tribe over here's agreement if that's going to fit with them, then that's fine. We have something different and I don't want to lose anything because you're going to be using theirs. I want to use ours." So she was kind of like a little bit like, "Okay, now it's going to be a little bit more work for me if I'm going to get everyone separate thing," but yes, you need everyone's separate thing. We are separate nations. We are separate sovereignties, you know, it's like using, you know, the country of France's whatever that one would be to England or whatever, you know, and use that to cover everybody else. You can't. You can't. You know, there's separate pieces but to come with that mindset, that mind frame, the mindset that know that you're working with different sovereign nations that everything is going to be different. And to understand that and to, you know, grasp a hold of that concept. That this is a sovereign nation. Even though we're in the state of Maine separate that out. We're sovereign nations.

CB: I'm just piggybacking on that, I would say that the Land Claims Settlement Act says in it that the State of Maine—it's like a contract sort of, where the state of Maine says we will give you help and protection for your children and your tribal people, if you give us and stop fighting over the land and so the tribe, this is what really blows me away, is the tribe has paid to have a seat at the table. And they paid a lot in terms of the amount of land that was given up. And that was one of the things that just blows me away in terms of people not knowing their history, but like I started this conversation, I myself just fifteen years ago had to teach myself what the true history is. And so I think that that is something that would be great for people to know that there is also the tribe gave up not just they lost a lot of their people, but they gave up land in exchange for a seat at the table to make sure that their kids are going to be well taken care of and not allowed to be homeless.

RG: Is there anything else that you want the TRC to know about your experiences?

SS: You haven't said much, Esther.

EM: Did you forget the sound of my voice (*laughing)*?

SS: I think so.

EM: Well, I've just been soaking it all in and learning from this team that we have here at the table. Very strong women and very proud to work with you guys.

DF: Thanks. I guess we're done.

RG: Okay. Thank you all for taking the time.

[END OF RECORDING]