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Statement by Sarah LeClaire collected by Heather Westleigh on October 15, 2014

Sarah LeClaire

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General Information

Private or Public Statement? - Private

Statement Provider: Sarah LeClaire

Date: October 15, 2014

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Previous Statement? N/A

Statement Gatherer: Heather Westleigh

Support Person: N/A

Additional Individuals Present: Gail Werrbach

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Recording

HW: Heather Westleigh and I'm here with Sarah LeClaire and—

GW: Gail Werrbach

HW: And it is October 15, 2014 and the file number is ME 201410-00102. We are in Caribou, Maine. And I need to ask you now if you have been informed, understood, and signed the consent form.

SL: Yes, absolutely.

HW: Any information that you disclose is confidential to this except any indication that a child is in need of protection or there is an imminent risk of serious or bodily injury to an identifiable person or group, and that may not be protected. Do you understand?

SL: Yes I do.

HW: Thank you. So I'm going to begin with some questions (*talking about copies of paperwork*). Could you please tell me about your current and or past employment as a tribal attorney?

SL: I worked with Pine Tree Legal up until I think 1996 and I'm really unfortunately not sure about the exact year I started representing the Aroostook Band of Micmacs but after I opened my private practice, I became employed as a contract attorney with the Aroostook Band of Micmacs to work specifically on their Indian Child Welfare cases that were—had made their way into the state court system in Maine and several cases that made their way into the state court system in other states.

GW: So that was about—what year did you start that?

SL: I'm really grasping at straws here for the year when I started. I think that I may have been the ICWA attorney—I just resigned last year. It could have been as long as twelve to thirteen years I think but honestly it was one of those things I was going to try and ferret out. I can tell you this and this might help you place it in time. I came on board when Rosella Silavoy came on board as an ICWA worker so whenever that was, was very close in time to the year. She—we started as newbies together.

HW: Okay. And that was the amount of time you were working with child welfare cases?

SL: Well, I worked with child welfare practices in my private practice.

HW: Did those involve Indian Child Welfare?

SL: I did represent in cases where there were Native children, yes.

HW: So prior to that time, you had as well?

SL: Yes, absolutely.

HW: And about how many child welfare cases do you think you worked with?

SL: I really, you know its so hard, you know, you don't keep statistics with that. [00:03:46.16] And I saw some questions when you sent me the questionnaire. Again, it would really be pulling a number out of thin air. I'm going to take a guess and it really is a guess—somewhere between 50 and 120 cases but it's that broad. 'Cause really as you know, child welfare cases, you can pick one up in 1996 and still have it going in 2006 and how many hearings you go to and how many meetings you attend and stuff like that. So it tends to all—to identify each case separately by year in my mind is impossible.

HW: Of course.

SL: I just don't have the time to go through my files, some of which no longer exist of course.

HW: That's all good information though, makes sense. Can you speak more to your current or past employment as a parent's attorney?

SL: First of all when I took on the Aroostook Band of Micmacs, I pretty much removed myself from representing any other entity in child welfare cases because I thought that the possibility of conflict was just too great and I wanted to concentrate on representing the band. So I did represent people in child welfare cases, mostly starting out as a guardian ad litem. Um, when I first went into tribal practice, there was another attorney who was getting out of representing—being a guardian ad litem and I took on a significant number of cases all at once in the 1997, 1998 era. And I think one or two of those might have involved members of the Aroostook Band of Micmacs.

HW: Did you do work as a parents' attorney as well?

SL: I did represent parents. I represented adoptive parents during that period of time as well.

HW: How many years did you work as a parent's attorney?

SL: Um, well my career was 1983 to 1996 with Pine Tree, where of course we weren't doing that kind of work. I understand Pine Tree now does informal guardian ad litem work, informally represent people: domestic abuse cases and stuff like that. At the time, we weren't doing that, although I was taking some domestic violence cases actually. Um, representing parents in child welfare cases would not have happened while I was with Pine Tree Legal. I did start doing that in 1997-1997. With a variety of different cases.

HW: Do you feel comfortable saying what types of cases?

SL: Um, as far as, we're talking strictly about child welfare cases, right?

HW: Not necessarily. This asks about both—in terms of the question. It asks how many years you worked as a parents' attorney and how many years you worked on child welfare cases.

SL: It's a badly worded question, and I developed it.

HW: (*Laughs*) Am I reading it correctly?

GW: No, you're reading it correctly. I think it's trying to get at—

SL: Was I representing parents at the same time that I was doing child welfare?

GW: Well it's just to get a sense for the diversity of an attorney's work, how much and what the length of time was, perhaps representing parents. I mean you had different roles—

SL: Again, this is the faded, gray area of my memory. When I started in child welfare, I would have started representing parents and also working as a guardian ad litem. When I took on the Micmacs, I phased out any representation in any child welfare case that I wasn't the attorney for.

GW: Right. So when you were representing parents or you were being a GAL, some of those could have been Native parents or Native kids?

SL: Yes, absolutely. There were one or two that come to mind that I very brightly recall.

HW: That helps and also just so I understand, when you phased to working exclusively or primarily as the attorney for the Aroostook Band of Micmacs, were you working primarily as a parents' attorney or were you working in child welfare cases as well?

SL: I think I was working mostly as a guardian ad litem. I do remember working for a number of parents. Those cases didn't seem to last that long. The GAL cases seemed to go on forever but again that is a generalization. I would say most—some of the cases that I recall the best, I was representing parents because they were very, I don't know. I just remember them. But there weren't I don't think that many in comparison to the Guardian ad Litem ones. A long time ago.

HW: [00:09:47.26] When did you first learn about the Indian Child Welfare Act?

SL: It would have been when I was a guardian ad litem. And that period of time between when I opened my private practice and became an ICWA attorney.

HW: So you were made aware of it through that process?

SL: Yeah, I mean it was part of the consideration.

GW: So was it part of the training that you got to be a GAL?

SL: What training?

GW: Okay, that's what we're asking about.

SL: (*Laughing*) Yes, that's one of the things that I found fascinating when I first became a GAL was that there was this underlying belief that because you got to law school that you were somehow fit to—to talk to children, to assess their health and safety, you know, which I find stunning. So the advances they've made in that arena are certainly well placed. It was like so I went to law school...so I know how to...

GW: And was that the same in terms of ICWA? So you're a GAL for a Native kid back then, so you should know something about...

SL: Yeah, I don't think there was a differentiation at all back then. At all. If anything there was probably—I mean there's been progress in the acceptance of ICWA as valuable tool, as opposed to an annoyance, which is what I think it was considered in the early days...not by me, but things have changed.

HW: Was there any specific way that you became aware of the policies?

SL: Well, I'm a lawyer, so you have to keep, I mean...I remember buying my first ICWA book from the American Bar Association. They published it and I think it's called Guide to the Indian Child Welfare Act. I bought several books on my own. I remember calling the California Judges' Bench Guide to the Indian Child Welfare Act. NAR publishes a very good book, I don't know if that was around back then. So I educated myself essentially.

HW: Would you be able to describe experiences of working within the ICWA such as—there's a few different aspects: What were the challenges in the initial identification of a child as Native American?

SL: Um, that was a little probably haphazard in the beginning but I think the department would make the effort to try to figure it out. I think sometimes more serious about it than others. [00:13:18.23] I think the issue of looking for Native placements was something that we struggled with early on and I know on our first case working together, we did not have any Native placement. I remember saying, "Well, we're not going to say that—we're going to say that we are entitled to a Native placement," and she took the child to the band offices. It was a baby and we got a Native placement and that was very exciting. It really was. I think that was the first case we worked on. We had a very good relationship, I hope, from my perspective we did (*laughs*) I hope that she could same about me. But I don't know what the question was.

HW: It was about the initial identification of the child as Native American?

SL: Again, I think the Micmacs were a very small tribe and I think there was enough knowledge about, kind of this generalized knowledge, these heightened rights if your client was a member of the tribe so I think a lot of people would want to be identified if they were a member of the tribe so we had a number of cases where people actually weren't. I think the Department made an effort—as to whether they made a sincere effort to cross their t's and dot their i's about proper notification—I think that was an evolving—probably still evolving to this day. But it was a kind of, "Well you know you're here," kind of thing as opposed to following the letter of the law. But they would make them prove it—by the time I got on board there was enough of a knowledge and at least, respect for that you don't want to get all the way through the process and then find out that you didn't do it right. So I think that was the motivation to some extent as opposed to cultural respect.

HW: And it sounds like from the story you described that there was some working with the tribes?

SL: Yes. Yeah. I mean it was not—I mean it's been an evolving process. Was everybody excited about working with the tribes? No. No way. I think it was perceived as an annoyance but we were there to advocate and we did.

HW: Can you say more about what was the annoyance? It sounds like there definitely were some challenges in terms of people working together especially around identification.

SL: *(Sighs)* Well, you hate to talk about what is in other peoples' minds because you really don't know. I do remember, I mean and we are talking about memories, and memories generally are different than reality *(laughs)* so everything I say, take with a grain of salt. But I do remember having a meeting at the courthouse. I think it was Judge Griffiths that called it and it was about, I don't actually know how the meeting got started but I remember sitting around the tables in the front with Rosella and talking about ICWA and saying, "Look the attitude about this law has got to be that this is the family of these children and you've got, everybody's got to start thinking about this as being resource as opposed to some [00:17:38.20] procedural hurdle that—it's not about hurdle, it's about you making sure this resource is utilized. That when these kids age out of the system, that this is who they have at the end of the line." And um, you know, stop thinking about this as something negative and start thinking about it as, "My god, these kids all have this wonderful resource here. Why wouldn't you want to bring the tribes in?" I remember having that meeting and things getting more—better.

GW: This is a little bit of a segue and I should know the history better but and I know it better with the Penobscot and Passamaquoddy but not as well with the Micmacs—so at what point, do you know did they start having an ICWA coordinator? 'Cause they were recognized—

SL: The Micmacs were recognized in 1992. Because the tribe was kind of left out.

GW: So was Rosella the first ICWA?

SL: No, I think she was preceded by Carolyn Maple. And I think I worked for a very brief period with—now when I say I started with Rosella I think I actually started with Carolyn Maple. But for a very brief period of time.[00:19:23.23] But she was just leaving that post. I think she was the coordinator.

GW: So they would have gotten recognition in 1992 and then one of the things is that one of the places that they would have been able to build their infrastructure so to speak is to then actually have an ICWA coordinator?

SL: Yes, and I couldn't answer any questions regarding what they had going there prior to 1992. I just don't remember and I don't know if I can contact—well before 1992 or even before 1996 when I opened a private practice. But Carolyn I think was the first.

GW: I know she's on our, one of the people to talk with. But I guess I'm saying that once the tribe got recognized, then there were some different players so to speak between the tribe and DHS at that point. Because then you had actual coordinators.

SL: Oh yeah, recognition was huge.

GW: That was a big huge shift at that point.

SL: Yeah, it was.

GW: I'm just thinking about it in terms of what you were saying and what you were describing as that memory in terms of the meeting with the judge.

SL: Well that would have been late nineties or early 2000s.

GW: Sorry.

HW: No, it's great. What were some challenges in determining the jurisdiction or the residence of Native American children?

SL: Um, jurisdiction—can you explain that?

GW: Meaning whether—I guess the jurisdiction thing is different from the Micmac and Maliseet because they don't have a tribal court. The question comes up more when we talk to Penobscot or Passamaquoddy. And I'm just assuming, I'm not at all well versed in the legal piece that it was all run through the state system, that when you were working then, you were representing the tribe's interest in the state court.

SL: Yeah. And if it was a tribal member involved, then we would intervene. Yeah, as a right. Under ICWA

GW: So the jurisdiction question wasn't really there because it was—the only option was state court.

SL: Yeah, and I can see why there are two issues, with the Passamaquoddy and Penobscots, whether they're going to take the case into their own court or not.

HW: What were some challenges with child custody hearings?

SL: Oh well, I mean that's something that's progressed as well too, I hope. DHS almost couldn't lose a case in the beginning. I think we always had a challenge trying to find Native

placements when children were in foster care and I think—I mean that was a big issue and I think they did fairly well with it. There were some cases of course where we couldn't—just monitoring the cases. And I'm sorry I've lost the question.

HW: It's about child custody hearings. Any particular challenges with those hearings?

GW: Or your general experiences. We sort of have this laundry list of all the components of ICWA and what your experiences or challenges were, and if they're relevant, because sometimes like when we've interviewed judges there's pieces of this that have nothing to do with what they do as judges. If it's relevant than great, if not it's fine.

SL: ICWA is a big law. It's not a very copious law, but it contains a lot of interesting things and I mean I've had very many interesting experiences pushing the meaning of it and I remember—I mean, it's something you had to do, you had to be good advocates to ensure. One of my last cases, we had a child who had been adopted that was returned (*inaudible*). And we didn't receive notice and they were going to send the child to another foster placement out of state and we invoked—I remember tearing through it thinking, “There's has to be something.” We invoked the provision for prior notice and we stopped what I think would have been terrible, terrible and it was a pretty recent case, out-of-state placement.

GW: In a non-Native home?

SL: Yep. I remember doing one down in the coast of Maine where a parent was privately trying to terminate parental rights, of a Native—a Micmac parent and within the context of a non-child welfare case. So by file, there's an intervener saying, “You're terminating a Native parent's rights.” I remember calling up NAR and calling all over the country and saying, this is what I'm going to do, I have any backing and I was allowed to intervene for the tribe. And we stayed in that proceeding. Once we're in (*laughing*), we were in and we stayed throughout that proceeding and I think we were quite helpful in assuring continuing contact for that child.

GW: With the Micmac community or relatives?

SL: Yeah. But that was a very interesting case because this a private divorce and you guys are in here, what are you doing here? It's like, well, determining.

GW: That goes with the Supreme Court and it really was interesting.

SL: So we did quite a few interesting things over the years. We did a child—there was a child that we thought was in jeopardy in foster placement and we brought an emergency provision within the context of the DHS case and we were successful in removing the child. So, I don't know if that answers at all what you were asking me.

GW: Well these are pretty free flowing conversations so don't worry.

HW: Yeah and some of the best information comes out of that kind of conversation. And I'm trying to go back and forth—am I covering what I'm supposed to cover, too? I feel like some of this is just not applicable to her because of the situation.

GW: Well this one we may ask about. The use of heightened evidentiary standards to establish the need for an involuntary placement in foster care?

SL: That's something we insisted on absolutely.

GW: What does that "heightened evidentiary"—what does that look like in terms of the actual real life—and I don't mean specific cases.

SL: Well clear and convincing for removal and beyond reasonable doubt, of course, in termination. So that was very helpful in negotiating. [00:28:42.08]

GW: You mean as a way to sort of remind DHS?

SL: Yeah. And so it's the real, that's the backbone of ICWA really, but one of them is the heightened evidentiary piece. And I think it really, I mean what is the burden of proof? The burden of proof is the filter that facts have to go through. And the more important the right, the higher the burden of proof and so to say beyond reasonable doubt, I think that puts in everybody's mind that it's pretty serious so...I think my recollection.

GW: Have you seen that change at all over the years, for example when you first started, what DHS was thinking was evidence for removal of a Native child versus as you moved along in your work?

SL: Yeah, I remember one particular case where I think we were doing a PPO hearing, and I was saying, "We need clear and convincing evidence at this point, not just at the jeopardy level. We need it at this point." And I remember writing a little brief about it. So I mean something we always tried to insist upon as far as I can recall because it is so important.

GW: So did you see changes in how DHS went about its work over the years in that respect?

SL: DHS has gotten more serious about respecting ICWA absolutely. Absolutely. I mean they wrote a manual on it, they train their AGs on it. Um, the AGs were always very, "Is this an Indian child," of course they have to do this. I think if you could point something out, more accepting of it—I mean things are definitely better from that perspective. When I first started out, there was you know, not a real acceptance or respect for it would be the polite way to put it. But that definitely changed. I think the Department had some very good people that saw what it was, what it was supposed to be, I'm not saying it was always perfect but...

HW: And so you didn't—I'm just going to confirm—you didn't deal with any transferring of jurisdiction to the tribe or any of?

SL: No, the Micmacs don't have a tribal court. I was briefly involved with the Maliseets' effort to obtain a tribal court which kind of—but I didn't move—the legislature passed a specific law to allow them to do that, but the burden of doing that hadn't moved in that direction yet.

GW: So, sorry this another segue but we're actually trying to piece this little piece together. So, it was another one of those sovereignty issues in terms of the state legislature having to agree to let the Maliseet use the Penobscot for their tribal court?

SL: There was a specific provision in the Indian Land Claims Act I believe, I mean I don't have it in front of me, but that allowed the Penobscots and I use that word with a great deal of...

GW: Right, I know what you're saying.

SL: Err. Allowed them to have their tribal courts. It did not allow the Maliseets and the Micmacs to have a tribal court. So I bet that was three, four, five, years ago now. Six years ago? The Maliseets went to the legislature and got permission and there was a bill to use the tribal court. So are they using the Penobscot court now, is that what they're doing?

GW: I don't think they are. It didn't go anywhere. But there was...we asked it in terms of child welfare, not in terms of other tribal courts. And of course, we're these strange people coming in to communities and each community, there's been layers of trust building and all of that. So I think the Maliseets have been the community that has been the biggest challenge I think for us, to be trusted, to be able to come in and I think that's and getting better, but that's still a big challenge.

SL: I was hired by the Maliseets during the tribal court effort for about a year or two years.

GW: To do their child welfare cases? Oh, just to help with their—

SL: To help their work up towards having a tribal court. And then the bill, I mean I was at the legislature when the bill was passed and then that—I think the administrator that they hired was no longer hired and—

GW:...so the court didn't come to pass?

SL: No we got so far as picking out a building but the administrator and I were working on policies and procedures and then it just evaporated.

GW: It's a huge amount of work, I mean my understanding from talking to some of the other tribal judges and their historical—just their describing what's involved for the tribe, for the judge, I mean it's a huge—

SL: Yeah, I mean essentially you have to open a child welfare department and be willing to settle a great deal of time and money, so. I'm also somewhat affiliated with the Penobscot tribal court—I sit on the appellate panel and occasionally go down and do cases at the tribal court

level. I've done a couple of child welfare cases down there when judge (*inaudible*) couldn't come...(*inaudible*).

HW: Okay. In your opinion or in your experience, how often does the state use a qualified expert witness as defined by ICWA or BIA guidelines when determining out-of-home placements involving Indian children?

SL: Well it was something that we insisted on. Rosella Silliboy used to serve in that capacity, Carolyn Maple in several cases, Betsy King. Um I remember one particular case where we used the department's psychologist out of Bangor. [00:37:19.16] But those are the three that come to mind.

HW: When you say insisted on it, was that a struggle?

SL: Um, just to remind them, "Oh, you know, you need to," but that became to be more of you know, "Oh we need an expert," and uh, we did have some struggle towards the end with which expert um, but basically it was Rosella, Carolyn, and Betsy.

HW: When presenting an expert witness under ICWA, what criteria does the state use to establish a qualified expert witness?

SL: Again going on memory and—I think they looked toward the tribe more than any one factor as to who we would agree would be an appropriate expert. And early on it was again, Rosella and nobody ever as I recall challenged that or—that was—so I think they looked towards the tribe more than anything as opposed to what we wanted, or what the tribe wanted.

HW: I just lost my place, I had it too. Oh, okay. Does your tribe ever use it's own expert witness? I think you've kind of answered that.

SL: Yes. It's kind of one of those issues in the litigation where—who are we going to use—ICWA requires this. ICWA doesn't necessarily say the tribe has to be thrilled with whoever is chosen but in my experience, the department looked to the tribe for guidance on who to pick. And there were a couple of cases where they were not happy and got into a bit of a snit over who to use. But, you know, I can't say that I recall a case where we thought that, like they weren't bringing people in and forcing the issue. It was who does the tribe want to put forth.

HW: How often is the existing family exception involving a proceeding otherwise covered by ICWA?

SL: Um (*laughing*), you're going to have to explain that to me.

GW: That's a good question. That shows my lack of knowledge. That's a good question, I don't know.

SL: What is it again?

GW: How often is the "existing family exception" applied to cases involving a proceeding otherwise covered by ICWA?

SL: So you're saying the child would go to a non-Native family. Oh that happens. That certainly happens.

GW: And the second one, I think. The question right after that, I think, is about state court which all of your cases stay in state court.

SL: Yep. Um, Rosella and I went to West Virginia once—

GW: Relating to the existing family question?

SL: Oh.

GW: The next question I guess gets at the notion of what the department is doing in terms of active and remedial efforts to—I don't want to say stop—but to prevent the break up of American Indian families? What's your sense in terms of what it looks like in the state end of it—particularly the notion of active and remedial—

SL: Well active efforts, it's something we would argue about, you know, when people don't show up for visits or something like that. Well, "You need to call them and find out why." It's not enough to just say "visit scheduled." I think that's a point that could probably use more work is understanding and responding to particular barriers. It's a big county and so, you know, you set up a visitation miles away from where someone lives and it's hit or miss if they are going to get there. I mean issues that affect a lot of Native families also affect lots of other families. You don't have transportation up here, you are in big trouble so the active efforts piece is very extremely important. But I would say that is probably an area where more work needs to be done to recognize the need for active efforts, not to be judgmental. Because someone needs active efforts to find out what the situation is and to recognize that making this work is the best possible thing that could happen for this child. Because anyone who has been in the system long enough, and I've been in the system, worked in the system long enough to see repetitively that, you know, these kids are going to come home. They are going to come home in as good a—with a relationship built up with the tribe. And so that that's, you know, I don't know if this is responsive to the question.

HW: Yes.

GW: Especially [00:44:38.23] the comment about what the judgment is about or what the perception is about making those active efforts I think is a really—

SL: Yeah, I mean, we're dealing with the echoes of people who were mistreated or their grandparents were mistreated and raised in the residential schools and parenting issues that that presents echoing down through time. It needs to be understood and not made judgmental, you know not making pejorative assessments. And just the idea that you really, really want this to work because that is the best result that could happen—you're not going to take a Native child and divorce them from their tribal affiliation and not have that be harmful to them at some point down the line. Plus, the vitality of the small tribe. That's actually a very small tribe and the vitality of the tribe, that's actually important as well. So children are the vitality of the tribe.

GW: One of my Passamaquoddy students when she was writing one of her last assignments, her lifelong learning plan was, "I'm going to have four kids at least," and she did. She was like, "I'm adding to the next generation. That is important to my community and to me."

SL: Absolutely. The last ICWA coordinator I worked with, Tammy Moorie and she is young, very committed to the culture and it was really wonderful to work with her and see her with her children and recognizing the importance of that is wonderful.

HW: Um, to the best of your knowledge is the "active efforts" standard different from the reasonable standards that are applied in cases not involving Indian children?

SL: It should be (*laughing*), I mean absolutely. It is the difference between—you have an appointment and figuring out what the barriers are to what that is, so. Yeah, active efforts are: what does this person need to make this work? So we're going to go that extra mile. And that's what I took it as. And Carol Maple was very good at that. When she worked as an expert. I learned a lot from her about what active "efforts" means.

HW: And you've answered this a bit anyway, but are there more things you can say about what some of the challenges are in having child welfare cases involving Native children considered in court, in state court?

SL: Well you're dealing with the very purpose of ICWA which is a presumption that state courts don't treat Native children fairly and they don't treat tribal cultural fairly. And I think that certainly existed in Maine and there's no—probably hideously so. So yes. What was the question (*laughing*)? You say a couple things and...

GW: You warned us, we didn't give you enough coffee.

SL: Oh yeah, that's true too.

HW: Challenges, some of the challenges of having child welfare cases involving Native children considered in state courts.

SL: Yeah. And again, I think the level of respect for ICWA has increased but there certainly was and I'm sure there continues to be, “Why do people get this heightened level of rights?” And so if you don't understand history and you don't understand where everybody here is coming from and what their history is, I mean, um. [00:50:00.19] The recognition of, you know—not everybody belongs a white “Dennis the Menace” type family. The congressional record that accompanied the Land Claims Settlement with the Maliseets, Penobscot, and Passamaquoddy—is how tribal people were treated in Houlton back in the, what was it—I know his name, he just passed away—the first Native American graduate of Houlton High School wasn't until 1968. And well, I mean, Houlton was not a great place to have your rights respected if you were Native American. So, um, it's been, it's a continuing, evolving process.

HW: Are there strengths of having child welfare cases involving Native American children considered in state courts?

SL: I hope they are. I mean I think that's something that we tried—that was the message that we tried to get out—was that this is an important resource. This is a family situation. I feel kind of like a shill but I know what's important too and I really, this child has resources, why are you taking him away? Why aren't you respecting him? This child as a member of the Aroostook Band of Micmacs is going to have health care is going to be able to attend higher education, is going to have contact with their tribal culture. But the health care and the education piece seems to be heard.

HW: In what ways do you see the Indian Child Welfare Act and Adoption of Safe Families Act working together?

GW: Or not.

SL: I really don't think I could answer that.

HW: Okay.

GW: I think that where the conversation has come up is the issue around permanency—that you have ICWA in the efforts to find the child—to have the child be in the best situation within his or her community and with the ASFA, the piece around permanency and the timelines that came in—

SL: I became pretty cynical about permanency. I really did. And I was—early on, you had children who were in institutional settings who had failed foster placements and it was like, why are we terminating their parental rights? Why—or for what are you—I think I came up with the term “orphanizing” this child for no reason at all? They are either—they're not—this is not a high chance for successful adoption case so why are we severing gratuitously almost the relationship between the child and their parent? There were a number of cases like that where somebody on the other side of the coin might say you are condemning this child to never be adopted.

GW: What would happen in those—

SL: Well, there were a few cases where I was like—I mean, when you ask that question, I mean I think the first time I asked it, you know a little light bulb went off in my head, it's like, "Why are we even doing this case? Why are we terminating this parent's rights?"

GW: By we, do you mean coming from the state or from the tribe?

SL: Yeah, why is this procedure going on, why are we moving in this direction? And there were a few cases where it stopped. Because it was—what's the point? They're still the parent. Okay, maybe they aren't going to live with this parent, but what's the point if they're not going to—and the other side of that coin is, well, you are kind of condemning this child to—well not really because if they end up developing a relationship or whatever. And I don't know, it's very complex and having gone through failed adoption phases, there's nothing worse. There's nothing worse. You know, this idea that everybody can be—that adoption is this great panacea of everything and everything's going to be beautiful after that is a bunch of wishful thinking.

GW: And how did the tribe view permanency when they came up against that in state court with DHS?

SL: Well again I can't speak to what the tribe wanted but you look at each case—one of these failed adoptions the tribe was very in favor of because the child had been in foster placement for a number of years and for a significant period of time and thought it was a good idea, several years ago. So I think everybody wants what's best for the child and I think the tribe stopped to think about what at some of these junctures, kind of going through this system where parents aren't okay and you get past that point, so we're going to terminate the parental rights and then we're going to go find an adoptive placement. And we said, "You will find the permanency first [00:57:01.06] before we set this child loose." And then there was the case when the child was sent back in, we said, "Hey, we have a say in this," so I don't know what the statistics are of failed adoptions in the state. Do you?

GW: I don't know.

SL: It's something that somebody should bear out. Some interesting research.

HW: The next two questions have to do with the strengths and weaknesses of the state's child welfare process in ensuring ICWA compliance. The first one is: What effective procedures and practices does the state have in place for promoting ICWA compliance?

SL: I really don't think I can speak to that. Again, we're a small tribe. We're in a kind of isolated area up here so I think they do ask people if they have tribal affiliation or are Native

American. And the tribe gets contacted to determine whether this is a tribal member. So. And I did have one case, going back. Actually I think I've had a couple, where we had Indian children from out west from the large tribes out west and northwest where they declined intervention, which was interesting.

HW: Do you have any sense of why they declined?

SL: I think it was just because they're huge compared to the Micmacs, the idea of retaining counselor interest in the case in northern Maine—I just don't think—I think they had their hands full where they are...I'm sure they had their own court. And probably, and I'm really just speculating here, but the tribes of the two cases I can think of, I'm sure these tribes had their own courts and were not familiar and probably did not have an ICWA. I don't know but I know they declined jurisdiction. I was like, really?

GW: It does happen. Well I'm still sort of formulating this in my head but it does happen sometimes when um, you also get into the issue of a Native parent and a non-Native parent—the whole issue of the parent who is on the census but the child is not on the census—that gets pretty complicated. And sometimes white parents have been in this case too of being able to access a state service because they can't because they don't have that service within the tribe.

SL: And that's where you have the tribal court system probably, right?

GW: Right, and the tribal court is letting it stay or keeping the jurisdiction with state court because they think the possibility of accessing different kinds of expenses or services for that child which I still think there's something not right with that system. That decision making at all. It's definitely not a level playing field in terms of what the resources are for the tribe and what the resources—not that it's great shakes for the rest of white Maine. But it should be different but that's one of those pieces that's rattling around in my head as I think about this whole system.

SL: We did several cases in other states by telephone and ones by personal appearance, and those were kind of interesting because we had a couple of states that weren't used to dealing with tribes at all. And I mean—were just so respectful of the law because it was something new and different. But it was quite an experience.

HW: The other question around that is if you see any particular strengths or weaknesses the tribes possess in working with state to ensure ICWA compliance.

SL: (*Repeats question*) I think that the designation of ICWA coordinator is vital to that so the state knows who they can contact—it was becoming over burdening to the ICWA department at certain point. You know, if you have one person handling all of that for the tribe it's too much work, frankly. So this—that echoes down the line [01:03:22.10] in contact issues and things like that. If we—I think since I've left the ICWA department of the Micmac has hired an additional person, an ICWA coordinator and another person to go up and make regular visits with children but when I was there, it was literally just one person that had to do all of that—it was too much the community contact piece is a big job.

GW: Just to do the monthly contacts with kids in care.

SL: Well, in Aroostook County. I mean you can be up in St. Francis or down in Ludlow or Island Falls. And it's a tremendous—I mean, you only have so many days in a month and you have court, visitations, and bringing the kids in to participate in community services or community activities at the tribe, tribal offices. It's too much for one person. It really is. I think they have somebody who is actually going up doing that but it was after my time—but if they do, I'm thrilled about it because it's a very important piece.

HW: Can you speak to the importance of an attorney learning about and having knowledge and understanding of Native American family structure and culture.

SL: It's really, really important. It's really, really important. We all come with our own view of the world that we grew up in and the idea that there's differences and if you don't understand why there are differences, it's very two-dimensional. And besides, it's just such an interesting story. I just, and I was really lucky, I think it allowed me to understand my job so much better. Because I'm so old (*laughing*) I've been around for so long. I was interning at Pine Tree when the Micmacs were just starting their recognition process and had the great opportunity to meet Harold Prince and Bunny McBride who were the anthropologists who came up here in the early eighties to make a case for the Aroostook Band of Micmacs, to make the anthropological case for them that they weren't just—this entity, this tribal entity that had had a presence in Maine—that was nomadic which made it difficult to pinpoint their location. You know, going down and clamming in certain months of the year, hunting in certain months of year and so I was exposed early on when I was a newbie, I wasn't even a lawyer yet. I was still in law school—to the history of the Micmac people here and Harold and Bunny were just really great people and introduced me to (?) and so I always had a kind of basic knowledge from that exposure—who the Micmacs were.

HW: Can you also talk about the importance of an Indian child who is placed in out of home care to be placed within reasonable proximity to his or her natural family?

SL: Vital. Absolutely vital. And unfortunately in Aroostook County, difficult.

HW: Because it's hard to be near anything?

SL: Can you repeat the question? [01:08:16.29]

HW: Can you talk about the importance for an Indian child who is placed in out of home care to be placed within reasonable proximity to his or her natural family.

SL: So you're not just talking about an institutional setting, you're talking about foster homes. That was—that is a big issue and remained an issue all during my time as the ICWA attorney right up until the end. 'Cause Island Falls is in Aroostook County and there may be a wonderful resource down there or in any community, but if a family is in Limestone or Caribou or New Sweden or Fort Kent, no, it's not conducive to. I mean what does it do? Either the children are traveling or the parents are traveling by the time they get there. Plus access to the tribal facilities—and that's hard because there's trips and stuff like that are impossible to do without—no kid likes to travel—get them in the car and drive them for hours. It's no fun for a child.

HW: Were there times that was possible? That you saw a benefit for the child.

SL: Oh yes, absolutely. I think it's really, really important they maintain a meaningful contact, that's not made painful by the experience of long distance transport. And visitation at the tribal facilities is important too as opposed to the fish bowl (?) or the (?) services.

HW: Do you mind saying a little bit about why?

SL: I just think that people who know—that whole environment and way of visiting is extremely uncomfortable, I would think. I've observed a couple of visits and I would not want to go through that. I can't imagine the children and parents want to go through that. It's just not natural. And that's not saying that it's not beneficial. It's certainly beneficial for the parents and children to have contact. You know, it tends to make it a little artificial, uncomfortable. I think the tribal office for visitation is more user-friendly.

HW: Thank you. I liked hearing you talked about. Appreciate it.

SL: I mean, I feel very inadequate answering these questions because it's you know, you go about your work day by day and you do what you can in your cases to help a child, but you're really talking about the trajectory of people's lives. It's kind of scary. [01:11:42.04] But anyway.

HW: Do you mind speaking about the importance of an Indian child placed out of care to participate in tribal events, spiritual customs, social activities?

SL: I think it's important and again it maintains that contact with the tribe that's hopefully going to be lifelong. But it's just important for the child to be in that community and that's for the health of the child and the health of the tribe. Again, they can't separate those two at all and it's extremely important in a small tribe because every child is so important that it's necessary. And again, the distances, anything that is a barrier to that is hard. [01:12:58.04] The further they get away from that, the harder it is for them to come back to it in the long run. So I think it's a very, very important piece that takes a lot of time and effort on the part of the tribe. But if the children are local...

HW: Do you think that ICWA does enough to protect the rights of Indian children and/or Indian tribes?



SL: Um, no, I don't. No I don't. I mean, ideally the tribal court is the way to go, I think. Um, asking...we had one case where there was—but again, I have a hard time talking about cases because of my ethical obligations, so I'm not going to talk about the details of the case at all. I'm simply going to say that a family that was having some trouble ended up coming in front of the tribal council. And I decided to go that night and I think they put us the last thing on the agenda so that there would be some privacy. I didn't really realize I would be there as long as I was (*laughing*). But, I think the impact that that had on the whole situation was so refreshing and so wonderful and I really just—we were asking for something very technical and the interests that the tribal council expressed towards this family to help them was really great. And I think it was very helpful and I was—went away from it very excited and I think that it would be nice if there was—it would be better—I won't use the word nice—if it was tribal court and that issue that you raise about access to services is equal, that would certainly be better. Absolutely Because the tribal court doesn't come in there was pejorative stuff like ICWA. ICWA is there because of the pejorative view that the state courts have. It's just implicit in the law and it's the reason for the law and so it's kind of interesting that you tell people ICWA doesn't apply in tribal courts. Why? Because you don't need to protect Indian families from tribal courts (*laughing*). So yes, I think ICWA definitely does what a tribal court can't do.

GW: Well we've definitely seen some differences around the whole use of TPR depending on whether there is a tribal court or not. It just doesn't happen in tribal court.

SL: We pretty much did a no-TPR policy, no willing TPR policy at some point, and I can't earmark the exact time during my job as a contract attorney but—

GW: But you're still—the state can still have pushback on that.

SL: Yeah, but you can do a lot. I think we were able to do a lot with that. (*Inaudible*) and you've got to do beyond reasonable doubt. “What's your plan?” again, we're not going to do a gratuitous TPR. And so if you have no plan then—so there was a policy shift during my years there. It was just a good idea. [01:18:05.18] Even when you think it's going to be a great idea. It seems like it's going to work out.

HW: Do you have other thoughts about how the state child welfare system could improve in terms of ICWA?

SL: Um, I think that—as with all systems, that there are—that it's as good as the people that populate it. And there are some excellent people at DHS who understand the law and its purposes and there are still some that are struggling in thinking (*inaudible*). And so I think that's a weakness that should be worked on—maybe historical education, more contact with the tribes in a non-adversarial way. I don't know. I mean, I don't know if there's any real—the

tribes are a part of the culture in Aroostook county and there people have perceptions about them—what your parents thought or what your grandparents thought and those carry down, and overcoming them still needs to be done. Have I said that artfully enough (*laughing*)? Um, I remember when we were doing the Maliseet piece, their attorney had brought with him this document from the Revolutionary war era, General Washington seeking the assistance of the Maine tribes and I just think that should be taught in the schools. You know, what is going on with teaching the Maine children about this incredible thing that we have here which is the four tribes. It's amazing. When I did a case in the other state and I called tribal welfare down there, and they were like, excited! And it was—well, we used to be tribes here, we have burial grounds. That's all that's left of their tribes. And here we have these four tribes and I just—what's going on with the schools to teach about them? I don't think a thing, is there?

GW: Well there's supposed to be because the change in education act that went through. I know at the university when it first came out, they did these very large scale summer institutes that Native studies was involved with and College of Education was—to bring teachers from all over. But I also know—totally anecdotally—I also know from a young woman who is friends with my son who is actually working, getting her Masters for students where English isn't their first language—is it first learners? It's a much nicer term for people who are in this country learning English for the first time. So she's come up to do some summer institutes up at UMaine to get the rest of the credits that she needs. That's good—the Department of Education—there's diversity classes that teachers need to take. So she's taking a couple diversity classes and she's come up and stayed with us when she's done that and one of them-- John Bear Mitchell who does the student services piece for the Wabanaki center was teaching. And she came home one day and she was just a righteous 25 year old—but with good cause—about some of the older teachers in the class who were mandated to take it from other places—not Aroostook county but northern Piscataquis or Northern—I'm sure all sitting right in the hallowed halls of the Bangor Public School system—were coming up with these comments that showed tremendous lack of knowledge about it, ignorance, respect, and clueless as to that those comments were problematic. Which was even more disturbing to her. So I think, again, they are similar to what is with ICWA, you have a law that comes in, you put in this somewhat perfunctory training—

SL: So this is about training teachers?

GW: Training teachers but the new law says, there's a whole piece around the Maine Indian education act or I forget what it's called. They're supposed to be teaching about Maine's tribes. I think it went in maybe five years ago.

SL: Are there any materials?

GW: They are—they're supposed to generate materials.

SL: Have they done that?

GW: They have, and again, it's like when you were talking about people. There are some teachers who have clearly gotten it and put it into history and put into social sciences and— youngsters until high school age—and others who totally missed the boat or who resent having



to, “Oh this is just one more thing they are making us do as teachers.” So I think it runs—it truly runs the gamut and the teachers have to be educated as well because they didn't necessarily have it. They weren't taking Native studies classes when they were getting their education degree 20 years ago so unless it's their mindset to really develop that aspect of their knowledge, they're just not thinking about it and they're not even—well I mean, there's just so many people who—I mean there are Mainers who don't know there are tribes in Maine. I mean, “What do you mean there's tribes in Maine?”

SL: And the perception that anybody who is a member of a tribe has got money and is...

GW: On Easy Street.

SL: To this day I still hear that.

GW: So it's still [01:25:22.07] I mean again, I think Donna Loring was pretty involved with that Act getting through and I forget who the Passamaquoddy tribal rep was—it may have been Donald Soctomah—but I think they are really moving that forward but. It's still, yeah, I still think of the person that I worked with for years up at Indian Township who was head of the Health Center, Liz Neptune, and she took—it took her years to be able to walk through the doors of Woodland High School and not feel like her whole body was shaking because of how kids were treated. And I think the average Mainer just doesn't know that.

SL: And wouldn't accept it.

GW: Right.

SL: And wouldn't accept it, wouldn't—

GW: So we still have a ways to go. You know, I was a doctoral student in Texas, and I have to say in terms of teaching diversity, it's much harder when you're in a state that—now we've surpassed Vermont as the whitest state in the nation. I mean it's—my twenty year olds don't think they have any homophobia, don't think they have any racism, they treat everybody nice, they treat everybody well—some of them get totally ticked off at us when we teach white privilege. They are just incensed. Um, but I have to say teaching that in Texas where you have Latino kids, you have African American kids, I probably had some Native kids but I wouldn't have known it back then in the '80s. It's a different, you know, it's different when you have an African American student who is willing to say, “Let me tell you what it's like walking across the white University of Texas campus.” And it's—not that I think the burden of that teaching should be put on kids of color. But it's hard. And we do, we don't stop doing it. I mean our juniors, every year there'll be some that get absolutely ticked off. We have students that tell us we teach too much on Native Americans. I'm not kidding you. I read all the teaching

evaluations. A kid will write for one of our introductory classes, “We're always talking about Native Americans.” Well, because that's right in your backyard. An oppressed group of people that you need to know about.

SL: I remember I was on the left side of the spectrum by far. I moved up here to go to college in Houlton and I remember when the—every deed that was drafted in Aroostook county or in all of Maine actually, had this little warning about Land Claims and I remember thinking that was so fabulous. I'm like, “Yeah, that's good.”

GW: Oh by the way, you may actually own this.

SL: Or at least recognize that [01:29:10.21] you're not the first people that lived here.

GW: Yeah, it's been interesting.

SL: It needs to be taught in schools. I mean, just because it's interesting.

GW: Did I go off without you being able to—

HW: That's okay. I think we covered mostly all of the questions and I think the last—what I didn't ask you directly, you covered. Is there anything else that you want the TRC to know?

SL: Um (*pause*). I'm sure there are a lot of things I would like the TRC to know, but I've covered pretty much most of it.

GW: Thank you so much. Thank you for taking the time. That was very informative and helpful.

SL: Thank you. And if you think of anything that I haven't answered, let me know.

HW: Okay.

SL: I mean, I'm very happy with this work that's being done, and it would be great if each tribe had a court and the courts had the resources to do the job right. They do a much better job of it. They would, if they had the resources to do it. That's it?

GW: Alright. Thank you so much.

HW: Thank you.

[END OF RECORDING]