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11-18-2014

### Statement by Elizabeth Stout collected by Marcie Lister on November 18, 2014

Elizabeth Stout

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## **General Information**

**Private or Public Statement?** - Private

**Statement Provider:** Elizabeth Stout

**Date:** November 18, 2014

**Location:** Portland, Maine

**Previous Statement?** No

**Statement Gatherer:** Marcie Lister

**Support Person:** N/A

**Additional Individuals Present:** N/A

**Recording Format:** Video

**Length of Recording:** 00:40:03

## **Recording**

**ML:** I am Marcie Lister, I am a statement gatherer with the TRC, and I am here with—

**ES:** Elizabeth Stout.

**ML:** The file number is ME-201411-00136. Today is the 18<sup>th</sup> of November, 2014, and we are in Portland, Maine at the Unitarian Universalist Church on Allen Avenue. Liz, have you been informed, understood, and signed the consents?

**LS:** Yes, I have.

**ML:** I just further need to advise that if any information is disclosed that a child is in need of protection, or if there is imminent risk of serious bodily harm or death to an identifiable person or group, including yourself, this may not be protected as confidential.

**LS:** I understand.

**ML:** Thank you. Liz, could you please tell me about your current and/or past employment as an attorney including how many years did you work as an attorney, how many years did this

include working with child welfare cases, and approximately how many child welfare cases you worked with?

**ES:** Okay. I was admitted to the Maine bar in 1990. At that time I started working at the District Attorney's office in Cumberland County. I worked at the District Attorney's office until 1994 when my first child was born. And [00:01:48.22] I continued to work mostly in a consulting role as an attorney for a few years following that. I did do some litigation work. In 1998 I joined the Attorney General's Office in the child protection division. I worked there until October of 2002. While I was in the Attorney General's Office, I had a caseload in York County. Myself and one other attorney were responsible for York County. My caseload at the time that I left was over a hundred children, which was part of the reasons - one of the reasons that I decided to leave that office. I didn't feel that that was- that I was able to do the work I needed to do with that many cases. But [00:02:43.29] so that was part of my caseload, but I was doing that every day, all day, five days a week for those four years. I - four and a half years.

I was also named as the interim chief of the Child Protection Division in 2001 approximately. Late 2001, and I should say that I'm speaking from my memory, I tried to find my specific records so if I'm not specifically correct on all the dates, I apologize, but in approximately 2001 I was named Acting Division Chief. The previous chief left somewhat unexpectedly and they needed someone to quickly step into that role. During that time I had a lot of great opportunities, but one of them was working to address the problems between the Houlton Band of Maliseets and the DHS with regard to child welfare cases. So I'd be happy to discuss that further. In 2002 I left the Attorney General's Office. I opened my own practice. I practiced on my own occasionally with other partners from 2002 until 2011. In 2011 I joined a larger law firm and that's where I am now. Givertz, Scheffee, and Lavoie is the name of the firm. [00:04:06.02] And we do family law in Portland. After leaving the Attorney General's office in 2002 I continued to work in child welfare cases primarily as a guardian ad litem for children who were in state custody. That work continued for several years, but I don't- well that's not true, right now I currently have one child welfare case that I'm continuing to work on and in that case I'm representing grandparents. So that's a summary of my professional experience. [00:04:42.12]

**ML:** When did you first learn about the Indian Child Welfare Act?

**ES:** When I joined the Attorney General's Office that was part of our training was to have information about that. They had- they had ongoing trainings within the office on that topic.

**ML:** Okay, well you've answered the sub-questions there. Could you please describe your experiences in working within the Indian Child Welfare Act? Specifically, and I'll read you what were the challenges in - I'll read the list and you can comment and I'll go back and read anything you need me to - challenges in initial identification of a child as Native American? Or would you prefer me to go through them one by one or...

**ES:** Well I did review these so I think I can respond in a way that may address those areas if that works?



**ML:** Excellent, excellent so you do not need me to read through the - read through every - that's fine.

**ES:** I think- I think - and I have them in front of me as well so I'll refer to them as well. [00:05:48.07] What I would say about that is in York county when I was acting as an attorney for DHS - and I call them DHS still I know it's DHHS.

**ML:** Right. We've been using - I've been using them interchangeably.

**ES:** Okay. So... when I was carrying a caseload in York County, the issues with the Indian Child Welfare Act included a couple of areas. First of all, we did have ongoing training on the Act. [00:06:16.08] Second of all, we were as attorneys we were responsible to ensure that the DHS caseworkers were asking the questions when they first interacted with the families or at least when they interacted with families where removal of a child was becoming a possibility. Or as early on in the process as possible, but certainly when people began to consider whether that was something that - the level of harm that they were reporting was to that level. And in terms of my own experience, there were very few cases in York County where the Indian Child Welfare Act came into play, but there were some.

So, one of the questions that was asked in this section about difficulties or challenges - initial identification of a child as Native American. One of the challenges was that we did not have a ready access to information about what level of relationship qualified a child as being eligible for enrollment. [00:07:33.09] Because all of those standards are different and as I said my caseload was around 100 kids so there's a lot going on and it proved to be a challenge - I needed to know whether - if they had a second grade grandmother who was a tribal member, did that qualify this child for enrollment such that the Indian Child Welfare Act would be implicated. So it was hard to get that information. There were resources in York County through the department that were available to us. It just took that extra effort.

So... initial identification of a child as Native American within the meaning of the Act that was a challenge, definitely. There were very few times when notification of a tribe was- we would research whether the child was eligible for enrollment and then occasionally the answer was yes and then we went through the resources that were connected to the department to notify the tribe. Because there were very few cases, I can't say that I had difficulty notifying the tribes. I personally did not have any cases where the tribe chose to intervene in the case or... that I needed to get further involved than that. I was aware of one of my colleague's cases; the tribe did intervene and was a party to the case as the case went forward. And I was aware of that but that's the extent of my direct experience in that way. So my experience directly working with tribes to identify the children, determining jurisdiction, residence of Native American children and child custody hearings, the heightened evidentiary standards, I didn't have much if any direct experience with those issues as well. [00:09:27.24] So... I don't know that I have a lot

more information for that topic, but I will say that in my role as Interim head of the Division, I had much more involvement because some of the Assistant Attorney Generals who were in Houlton and in other more- different parts of the state were having difficulties and were having difficulties with their relationships with some of their contacts in the - with the tribal representatives, etc. And those were some of the factors that led us to convene a work group in - I believe it was in 2001. Might have been the first of the year of 2002 - to try to address some of the difficulties in relationships that were happening. I can talk more about that later. [00:10:19.13] Yep.

**ML:** Actually we're going to get to that right now. I'm going to ask you this even though you had mentioned before that - just so I get it on here. Could you tell me about the 1999 incident with the two Maliseet girls in the community? This is when the state came in to remove the girls from their home and the.. the chief Brenda Commander said, "No," would not allow it. Can you - yeah can you say anything about this?

**ES:** Right. I don't have any information about that specific case. I suspect that it was one of the precipitating events that moved us towards developing this work group to try to address the problems in communications and relationships between the state and the tribes, particularly the Houlton Band of Maliseets. [00:11:17.27]

**ML:** Which bring us to that topic.

**ES:** Who are you and why are you here (*laughing*)?

**ML:** Can you tell us about the agreement that was drawn up between the state and the Maliseet tribe including what was it like facilitating those discussion, what were some of the main concerns that arose, how did the discussions progress, and what was the outcome?

**ES:** Well I have to say that in all the things that I've done in my career, it's one of the things I'm most proud of. I feel that we engaged in a process that was very productive. [00:12:01.22] I feel that the relationships between the individuals who are in charge of DHS and in charge of the tribal child welfare agencies was very much improved. I feel that the process was very helpful in breaking down barriers. And at least put in place a structure for a more positive relationship in the future. That sad part is I don't know what happened after I left, but what I will say is that we - the Attorney General brought to my attention that there were these difficulties in communications, and I believe - again I'm just going on memory - that it had gone into the legislature through the legislative representative Donna Loring, that the Brenda Commander - Chief Commander had tried to address her concerns through the legislature. The legislative representatives then contacted the Attorney General and the Attorney General contacted me and said you - let's try to do something about this. And so what we did was convene a work group that included Sandra Hodge who was one of the leaders in the DHS child welfare system, I don't remember all the names. Arlene, can't remember her last name, was one of the Passamaquoddy child welfare representatives, there were other child welfare Indian child welfare representatives from the Penobscot tribe, so Passamaquoddy and Penobscot tribes had good representation there. The Maliseet tribe had good representation there. We had - I think we had one person one time come from the Micmac tribe.



[00:13:49.02] We did commun- keep them in the communications loop, but they didn't participate particularly in the meetings to my recollection. We also had a couple of attorneys who represented. One represented the Houlton Band of Maliseets, and another I'm not sure what his role was but it was as an advocate for one or more of the tribes who were participating. Brenda Commander was at many if not all of the meetings.

So a number of people. I think our group may have been 15 to 20 people. And we started meeting at the state house in Augusta in one of their large conference rooms, and the purpose of the meeting to start out with was to hear from people what were the problems that people saw going on on the ground so to speak. [00:14:45.08] And the first part of our work was really gathering information to identify what the problems were. We continued to meet approximately monthly. I would say I think we met for a year maybe - about a year? It did continue after I left the Attorney General's Office in October of 2002. I continued to work as a volunteer mediator with the consent of the parties. So even after that point, I continued to sort of organize and lead the meetings. And after each meeting I would write up a summary of what happened and emailed it to the parties. And that document that you have is one of those summaries. I don't know where the rest of them are. They're out there somewhere, but I've searched and I can't seem to find them. And I've asked a number of people and they haven't been able to help me. [00:15:40.21] But in any event, so we had these regular meetings, we identified the problems and we talked about potential solutions and played those out. And could we do them and was there cost involved and how would that be addressed, and etc., etc. So where - should I just keep talking?

**ML:** Sure.

**ES:** Okay. So where this got to was that one of the problems identified - or one of the sources of the problems that were identified was that the Houlton Band of Maliseets did not have their own tribal court. And so - in my perception and recollection is that they also had very limited resources for child welfare intervention. And so... but as far as the issue with the tribal court, the discussion evolved to having the Maliseets have access and be able to use the Penobscot tribal court for their child welfare proceedings. [00:16:48.02] And that required the consent of the Penobscot tribe, it required the consent of the DHS, it required the consent of the state of Maine Governor's office, and we eventually drafted an agreement that represented that agreement and was signed by the principles. We had a signing ceremony in Houlton. I - my again my best guess is that that was in the spring of 2003, May approximately. That's my best guess. And the governor, John Baldacci, was there. The Attorney General, Steve Rowe, was there. Chief Commander was there, the chiefs of the Penobscot and Passamaquoddy tribes were there and hat we had a ceremony to do that. [00:17:32.27] So I was very glad. As I said I had left the practice more than six months before. So when that was done I was really off into another area of my life and... I don't know what happened. I don't know what happened after that. But I do feel like that coming together face to face, we always had food (*laughing*), we

always had - we had nice comfortable place, we had... And to give opportunity for people to be heard about what are the issues and what are we going to do about them was really an important process. And was as I said it was very satisfying for me to participate. I was very honored to participate in that. So that's my story. *[00:18:27.04]*

**ML:** Well thank you. What do you consider good cause or causes to deny transfer of a case to tribal court? And then there are a number of examples here, which I won't read through because I know you have read them and have them in front of you.

**ES:** Well I know this speaks to the problem that existed at that time, which was that the Maliseets didn't have a court. So there weren't any cases that could be referred to their court because they didn't have one, and that's a logistical problem they tried to solve. I understand they still don't have a court. I wonder whether they're accessing the Penobscot court, but in any event that would be, that's one - one - it's not so much that I consider it good cause. It's just a fact. They didn't have a court so those referrals weren't being made. In terms of good cause it would be that the tribal court didn't want to take the case or if it - well I mean I know there have been disputes about cases where they're being - been at the very end of the state court process and then there's been a request to transfer to tribal court. *[00:19:38.14]* I've never had to deal with that directly and make a recommendation about that. My concern would be that you have a child who's been in foster care system for eighteen months to two years and do - the interest of the child in a resolution versus an extended process. In the interest of the child in the cultural heritage, etc., of course, but I think that we have to be mindful of the time particularly for younger children who are lacking permanence and may get bounced from one foster home to another. So that would be a factor if it came at the very end of a state court process. *[00:20:21.14]*

**ML:** Any other comments you want to make about this question?

**ES:** I don't think so. I don't think so.

**ML:** Okay. Then moving on. To the best of your knowledge, if a tribe declines to intervene in a child custody proceeding covered by ICWA, what are the reasons for this decision?

**ES:** I don't know. I don't know. They feel that - perhaps they feel they don't have the resources, perhaps they feel the connection to the tribe is too attenuated? I don't know why they would. *[00:21:09.14]*

**ML:** To the best of your knowledge, when the state declines to transfer child custody proceeding covered by ICWA to tribal court, what are the reasons for this decision?

**ES:** Assuming a tribal court exist, the only reason that I've ever heard of being put out there was that we've already - we're at the - it's either post- termination or it's at the very end of the years of litigation already.



**ML:** I don't think this question's in here, but a question that comes to my mind after what you've just said, can you - what are reasons that you - that you're aware of or could postulate on why a tribe would - would not intervene until that late in the process?

**ES:** That they didn't know. That they didn't know. *[00:22:10.02]*

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

**ES:** I can talk about expert witnesses generally but I do not have any experience with this particular issue.

**ML:** Okay. I don't know whether - do you have a sense whether that could be useful information? I really don't.

**ES:** Well any exp- I think that the expert witness under ICWA is a very specific category so I'm not sure that just general expert witnesses information would help.

**ML:** Okay. What do you consider quote active efforts end quote to prevent the break-up of an American Indian family before or during an out of home placement for an Indian child? When making a case that active efforts have been made, what types of evidence do you present?

**ES:** Again I'm reaching back now more than ten years. So my information is not fresh, but... efforts in either an American Indian family or non-Native family would include offering services to parents to address the problems that exist, substance abuse for example. Providing substance abuse services, providing individual counseling, providing family counseling, providing assistance navigating whatever resources may be available for housing or other assistance. Working with the family to identify supports in the community. Safe people that may, if it's a relative or a neighbor or somebody in the community, who can provide safety for the child on a temporary basis while the parent addresses the problem that created the risk of harm to the child. Those are the general categories. *[00:24:16.12]*

**ML:** Thank you. Is the "active" effort - is the active in quotes effort standard used in cases involved in Indian children cases different than the "reasonable" efforts - reasonable in quotes - standard applied in cases not involving Indian children?

**ES:** I don't know the answer to that question. I imagine it's a higher standard, but I don't know.

**ML:** 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 these two acts not working together?

**ES:** Well, I'm going to answer the last question first and that's exactly the issue I was just talking about, which is that the Adoption and Safe Families Act is geared towards getting children to permanency as soon as possible. The Adoption Safe Families Act sets timelines for certain events to occur that are triggered by the removal of a child from a home. So within this amount of time this has to happen, within this amount of time that has to happen, within twelve months there must be a permanency plan for the child. If reunification has not been successful within another time period, the state must file a termination of parental rights unless there's good cause not to. [00:25:35.16] So in some ways they work at cross-purposes. They work - they work together in that both are designed to protect the best interests of the child. I just think that the Indian Child Welfare Act considers other aspect of the child's best interest that are not part of the analysis under the Adoption and Safe Families Act. Does that make sense?

**ML:** It does. In what ways do you see the Indian Child Welfare Act and the Adopt- wait that's what I just - never mind. Over the course of your work as an attorney, what do or did you see as barriers to the state's promoting ICWA compliance?

**ES:** As I said I think a lack of quickly accessible information about eligibility for enrollment, that would be a helpful. I think too that the sooner that the tribe can become involved, the better. So when I was doing this, as - again, we worked with our caseworkers to ask the question around the time that they were considering removal. They need to ask it further - or earlier. [00:26:50.23] So that, you know, if there's a child in trouble, is this child eligible for enrollment or enrolled and if so, why not connect with those resources. I understand everyone's strapped for resources, but it's a different type of resource and why not connect with it as soon as possible? So that - the barrier is early identification, understanding of eligibility for enrollment, and for example for me working in York County I think there were maybe three cases out of four years with hundreds and hundreds and hundreds of court hearings that involved the Indian Child Welfare Act. So making sure that people are adequately trained to ask the questions and identify the issues. And be sensitive to them. [00:27:49.27] I'm finally getting old enough that I appreciate what that - I'm starting to appreciate what that means.

**ML:** How could the state child welfare system improve in terms of ICWA?

**ES:** Earlier identification. I would say I suspect - I'm not basing this on personal experience - but I suspect that more routine training about the importance of the child's connection to the tribe. I think that again, everyone sort of struggling with managing at very high caseloads, etc., and they may overlook that. Not out of malice but out of ignorance. [00:28:42.06] So highlighting why that's such an important connection to protect.

**ML:** What strengths does state child welfare possess when ensuring ICWA compliance? What effective procedures or practices does the state have in place for promoting ICWA compliance?

**ES:** Well one thing the state does very well I think is they have a lot of forms. And I know that - you're smiling, I smiled, who likes to deal with forms? Nobody. But I think that to ensure that the protocol is written and clear that you must. And it's not going to move forward until you address that issue. I know in 2000/2001 again I was aware of I didn't have personal experience, but I was aware of cases that got to adoption clearance. The parental rights had been



terminated, the child is - they've identified adoptive parents, they have done - the adoptive parents have the finger prints, etc., etc., and it's time to - for the AG's office to sign off that this is ok, and I've heard of people who said, "You never asked about ICWA." And that's not - that's not good for anybody. You need to ask early. You need to make sure that the forms don't let the case progress without making sure those questions are asked. [00:30:07.20]

**ML:** What weaknesses does state child welfare possess in ensuring ICWA compliance and what could the state do to promote ICWA compliance?

**ES:** I think all the DHS caseworkers that I've ever met are completely overwhelmed with their caseloads. A lot of them are young, there's huge turnover, they don't have a lot of experience - now some people do and I'm in awe of their persistence and dedication to this field, but it is a high turnover, and they are high caseloads. So I think that what can the state do to promote better compliance? Well they need - it's about quality work across the board I think. Number one. And number two, I think scheduling routine trainings, keeping the issue on the front burner is something that needs to happen. I think projects like this are a way of increasing awareness about this issue. [00:31:10.01] And you have hundreds of people in a system who are doing the best they can every day. You need to make sure they've got the awareness of what the problem is.

**ML:** What strengths do Wabanaki tribes possess in working with the state for ICWA compliance? What procedures or practices does the tribe have in place that helps facilitate state ICWA compliance?

**ES:** Well again, my base of knowledge is limited, but from what I know and can see, Erlene Paul was her name - the woman who was on the board, and I just saw her like a year ago at another conference and she's still doing what she's doing. So I think one of the strengths is the dedication of the people who are working within that system. I think too what I saw in our workgroup was a willingness to persevere, to listen, to respond, to be open to alternatives, and to try to work constructively to solve this problem. I'm - I don't know how - what percentage of the players so to speak have rotated in with new people, but certainly the people that I worked with were all interested in solving this problem, not pointing fingers. And I would certainly say that's true of the Wabanaki child welfare folks that I worked with. [00:32:36.04]

**ML:** What weaknesses do Wabanaki tribes possess in working with the state for ICWA compliance and what more could tribes do to ensure ICWA is followed in every case?

**ES:** Resources as always. I think that if you were able to - and I - maybe they do this- but if you were able to have a child welfare person from the tribe be in the DH - Houlton DHS office three days a week or on some routine way to maintain those connection, that would help both understanding of the need for compliance as well as compliance itself. In terms of other

weaknesses, I think I don't - my knowledge of the Indian tribes in Maine is so small compared to all the information that is available, but I think that that the history has created people on both sides to be suspicious of each other. And to be fearful of each other, and that's not a position from which we can get productive work done. *[00:33:57.05]* And what I mean to say about my lack of knowledge - there may be really good reasons for that, but it's an unfortunate place to start from.

**ML:** Please talk about the importance of attorneys learning about and having knowledge of American Indian family structure and culture?

**ES:** Well I read this question before I came here and I was thinking about it. The important - and in my copy it says the importance of state's attorneys having knowledge of - so I'll answer from that perspective.

**ML:** Yeah. I don't know why -

**ES:** No, no it's ok but in - because the answers are a little bit different. From a state's attorney's perspective, they need to have some knowledge. They don't need to be able to give a dissertation or anything like that. What they need to know is that this is something you must pay attention to and you must address it and if you want to know why, let's explain the American Indian Native family culture. But if you're - the importance - so the need to know about the cultural issues support the reason why it's so important. So to that extent it's important to know something about it. But I think the most important thing the state's attorney needs to do is to say, oh I need to call somebody on this case. I need to make sure the tribe's notified, I need to make sure that DHS workers done what they're supposed to do, tribe's identified, tribe's notified, tribe's given an opportunity to intervene early. *[00:35:37.20]*

So not so much about the cultural issues specifically as the importance of the issue. From a more general perspective the answer is more general in the sense that... the Native American culture is part of our culture, part of our state. And if part of our state is not doing well, that affects all of us so it's important for attorneys working in this field, but others in our state to be aware of the different cultures and the importance of the and why we need to pay attention. *[00:36:17.24]*

**ML:** Please talk about the importance for an Indian child who's placed in out of home care to be placed within reasonable proximity to his or her natural family?

**ES:** Well the first part of that is where is that child going to be place? And they need - that was big topic in our work group is recruiting Native foster homes. So the first question is can they be placed with a Native family. The next question is if the answer is no to have proximity in order to access community evens and participate in community events obviously is really important. But Maine's a really big state and it's a long drive between many of the homes and the DHS office and the courts and everywhere else. So that's not always possible. *[00:37:14.29]*

**ML:** Please talk about the importance for an Indian child who is placed in out of home care to participate in his or her traditional tribal events, customs, and social activities?

**ES:** Critical. Not as good as placing - as keeping the family together, not as good - and the second choice of placing in a Native foster home, but then the third choice is let's try to keep them connected to the community. So you need foster parents who are going to be open to participating in that even if they're not Native families.

**ML:** Well now I have a few closing questions for you. Do you think ICWA does enough to protect the rights of Indian children and or Indian tribes?

**ES:** It's hard for me to say about that. How that's functioning now. *[00:38:05.14]* We wouldn't have had to spend a year in a work group if it was adequate then. So... I guess that's what I have to say about that.

**ML:** How could the state child welfare system improve in terms of ICWA?

**ES:** Again I think I've touched on these things. I think routine training, routine outreach to the caseworkers, to the AAGs, to the parent's attorneys, to the court personnel, the judges, to say be alert to this so that if there's - if there is an opportunity that we take advantage of it early.

**ML:** If you could change anything or make anything happen for Native American children involved in ICWA, what would you do? *[00:38:49.21]*

**ES:** Well first, fund the child welfare agencies so they could do their job and avoid the need for removal. Second, recruit, fund, and support more Native families being foster families.

**ML:** And what else do you want - is there anything else that you would like the Maine Wabanaki TRC to know about your experiences as an attorney within - with child welfare cases?

**ES:** Well I - I think we've covered all the substantive issues, but I would just say that it was an honor and a privilege for me to be able to work with the child welfare folks from the various tribes. I... I really enjoyed getting to know them as people, I thought the work that we did was meaningful and productive, and I'd be happy to do anything else that would be helpful. *[00:39:53.10]*

**ML:** Good to know. You never know when you might get a call (*laughing*). Thank you very much, Liz. I will be turning the recording off. *[00:40:03.02]*

[END OF RECORDING]