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Statement by Andrew Mead collected by Rachel George on August 21, 2014

Andrew Mead

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General Information

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Additional Individuals Present: Gail Werrbach

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Recording

RG: Okay. So it is August 21, 2014. We're here in Bangor, Maine. My name is Rachel George. I'm here today with—

AM: Andrew Mead.

GW: Gail Werrbach.

RG: Fantastic. Andrew, have you been informed, understood, and signed the consent form?

AM: I have, yes.

RG: And sorry, the file number is ME 201408-00084. And I have to let you know that if at any point during this recording you indicate that there is a child or 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 yourself, that that information may not be protected as confidential.

AM: Yes.

RG: Fantastic. Is there anything you wanted to s-say starting off, or do you just want me to jump in to the questions.

AM: Ah, whatever is easiest for you. I can answer questions or do a narrative – whatever works best for your purposes.

RG: What do you think?

GW: Um, why don't we start out with the experiences. We keep refining our questions, too, so, um I guess we can start with the questions. Yeah, go ahead.

RG: Can you tell me about your past and current, um, experience as a judge?

AM: Sure. Um, I served as, ah, the Chief Judge, the first Chief Judge of the Penobscot Indian Nation Tribal Court from 1980 until 1990. I was appointed to the State Maine District Court in 1990; and to the State Superior Court in 1992; and to the Supreme Judicial Court in 2007, and that's where I continue to serve today.

RG: Um, in your time as a judge over all of those, um, various experiences, how many, um, child welfare cases did you work with?

AM: Over my entire judicial career?

RG: Mm-hm. Approximately.

AM: I will ... I will estimate maybe 75? Something like that. That's very, very approximate.

RG: Mm-hm. Mm-hm. Can you tell me a little bit more about your time working with the Penobscot Nation?

AM: Sure. Um, in the mid-'70s, as, as you know, ah, questions were being raised as to the State's involvement in Tribal affairs and things were kind of bubbling around. The Land Claims Act was starting to get traction and in the late 1970s, ah, several court cases really, ah, resolved the issue on the State side. I believe the State side wa– had State vs. Sockabasin and Dana. And the Maine Supreme Court, the court I'm on now, said: State has no business getting involved in any matter of Indian affairs. There's never been a treaty. We've had a Bureau of Indian Affairs for many years, but we had no business doing that. Thank you. Good-bye.

And, ah, the Tribes were thrown into something like chaos, particularly in the law enforcement region. Ah, the Federal government had jurisdiction over the major crimes under the Major Crimes Act but, other than that, there was basically no law.

So the Penobscots quickly mobilized and, um, created the concept of a Tribal Court and, ah, they were looking for a judge to create the court. My understanding is that they really wanted to bring in someone from the outside, who had experience practicing in the Maine District Court, and didn't necessarily want to have one of their own, because they wanted to have a

completely independent body. They really, really wanted the Court to have independence from the allegiances and political structure that occurred within the— and, ah, I think in retrospect, that was a very, ah, wise move. So there was an interview process. I applied; I was interviewed; and I was selected, and I remember, ah, Jerry Pardillo saying to me, "Okay, you're it! Take over." So, with little more than a gavel and a table, we started.

And, um, we had the, um, the Tribal Council adopt the Maine, ah, criminal statutes as the law of the Penobscot Nation to adopt, basically, the Maine District Court procedures as the procedures of the Tribal Court. And, ah, we started, and we hired a clerk, and it was rocky going at first. One of the first things we addressed was a challenge to the Land Claims Settlement. And, ah, it was a ... it was very, um, tense period, ah, and that withstood the judicial challenge. And we set about exercising the jurisdiction. At that point, the Maine State government hadn't necessarily recognized our independent judicial sovereignty.

Ah, but we consider ourselves, under residual sovereignty, to have jurisdiction over all crimes, um, child welfare actions, internal Tribal matters. We're forging along and, eventually, as you know, the Settlement Act included a limited grant of jurisdiction for Class E Misdemeanors and internal Tribal matters. And, of course, eventually the Child Welfare Act preempted—, or created right of removal for child protective matters. So we moved along and over the ensuing 10 years, the Court gathered additional credibility and the State eventually acknowledged that and raised the jurisdiction of the Court and said, "You're doing a good job."

Ah, the Probation office was happy to have our Probation Department supervise Tribal members over on the Island, and getting probably to the focus of what you're headed to — the Child Protective folks were actually kind of happy early on to hand over some child welfare responsibilities. But, it was a process. Things didn't occur overnight.

GW: Right.

AM: And that's—and I stayed with the Tribal Court, ah, for 10 years, until I was appointed to the Maine District Court. At which time, I ... retired. And, um, they gave me a nice plaque and a nice war club, which still adorn my office here.

GW: Yeah. Ooh, that is a beautiful one.

AM: Yeah, Stanley Neptune, ah—carved that.

GW: Yeah.

AM: And I have the mount made by it by a local millwork place and I brought it in, and they all stopped what they were doing. They came over and said—they had all sorts of questions. They said, "What sort of carving tools did he use? And what preservative did he use?" So I

tracked Stanley down and the answers were: He used a Boy Scout knife to carve it. And he used bear grease to preserve it. So these guys who'd worked in wood all their lives were just blown away by the artistry and the, um, the manner in which it was preserved, so—

GW: Yeah.

AM: So I still—, it's still present in my office here.

GW: Wow.

AM: It was my, my parting gift.

GW: Yeah. Yeah, beautiful.

RG: Um, when did you first learn about the Indian Child Welfare Act?

AM: Um, it was actually well after I was, ah, a judge (*softly laughs*) of the Tribal Court. I was admitted to the bar in 1976. And I practiced in Bangor. And my early practice did involve child protective cases. And, I must say, I had no idea ... of the unique circumstances of the, ah, Native American children who were run through the system. I think it's probably fair to say the judges didn't either. It was not part of the consciousness at the time. I mean, I can't speak for them. They're all, um, deceased for many years at this point but, um, it was not part of the, um, fabric of, of the law back in the late '70s. Taking notice of the unique circumstances of, ah, children in the protective services who were, um, Tribal members.

RG: How did—, or how were you made aware of the Indian Child Welfare Act?

AM: Um, the Penobscots were very, um, anxious to incorporate me into Tribal law and Tribal traditions, and they sent me to a number of conferences for Tribal Court judges, which across the country, the Tribal Court movement was on. So we attended those, and I became aware of the very powerful provisions of the Indian Child Welfare Act and how affirmative it was. But basically, through education, I didn't, I didn't learn it in Law School, didn't learn it as a practicing lawyer. It's the—the educational programs I attended after being a judge is where I first became aware of it.

RG: Mm-hm. Um, could you describe your experiences in working within the Indian Child Welfare Act? What challenges you dealt with or witnessed in— and then there's a number I'm going to ask you about.

AM: Okay.

RG: So, initial identification of a child as Native American – any, um, challenges you dealt with or it— that you witnessed, in that portion?

AM: Okay. I may have to do a bit of a narrative again on this.

GW: (*Overlapping*) Sure, that's fine.



RG: (*Overlapping*) Sure! Absolutely.

AM: And, I'm working from memory, so I-I (*exhale*) I need to put a footnote on everything I'm saying—or "This is my best recollection. It could be wrong." But, um ... I became of the—, aware of the Indian Child Welfare Act, and I had a very close relationship with the judges down here. And, at the same time, I think the State was becoming aware of it.

So I went in and I, I spoke with the local District Court Judges, because they preside in a jurisdiction where the Penobscots are, ah, fall within. And explained to them the fact that, you know, if there's any suspicion that a child may have Tribal membership, or be entitled to Tribal memberships, that they need to examine that, coming through the door. And that they should be sensitive to ... um, child's residence or traditional names. Ah, and I think, at the same time, the Department of Human Services folks were also becoming sensitized.

Ah, advised them that should the Nation decide to remove it to the Tribal Court, that they have no discretion. It pretty much must be removed unless, ah, a hearing is held, and a closer look. And, ah, to their credit, they were very receptive, ah, it was kind of news to them. Um, and we also had, ah, communications between the social services folks within the Penobscot Nation and the State folks. And my best recollection is that the State folks were actually pretty receptive to it early on, because they thought, "Great," you know, "We're burdened. We can't cover all the stuff we have now. If you folks want to talk it." So early on, we – and when I say, "We," I mean the Penobscot Nation and the social services folks, who were like removing every case to Tribal Court – the protective cases.

And we got there, and discovered, that we didn't necessarily have the wherewithal (*softly laughs*) – the resources to deal with all the cases that came in. So, there was a brief period of great excitement, enthusiasm – "We're going to bring all the stuff to the Nation here" – a realization that, once we did that (*deep breath*) um, we didn't necessarily have all the resources. So what we struggled to do was to bring the cases over and, in the Tribal Court, we were able to acknowledge some of the cultural norms that didn't necessarily relate to the community at large.

It was not– talk about being raised by a community. I mean, kids, ah, who lived on the Island there, it was not unusual at all for a parent to drop the kids off at another household, maybe a relative or a good friend, and leave them there for a period of time. Um, out here, if you did it in Bangor or Brewer, that would be considering to be abandoning the child.

Totally– it was totally culturally okay to share parenting obligations with extended family or the community so, we started with a much broader understanding of, you know, when a child is in jeopardy and the whole abandonment process. Um, and then the second part of that was placement. If, in fact, we actually had to make a placement that, um, we would always look

first at extended family or a placement within friends, within the community there. And, again, this was vastly different than what the, um, State Department was doing. They were looking for acknowledged foster parents and they have a cadre of people who will take kids on a short-term basis. Ah, but they're all certified, they're vetted—

GW: Yeah.

AM: —and reviewed, and things like that. Whereas, within the Tribal Court, if we knew that, you know, we had to remove the children from Family A, that placing them with friends who lived in the same neighborhood—ah, was not a bad thing at all. It was a good thing for the child, to keep them within a community, as opposed to yanking 'em out and pulling 'em out in, the wilds of Dixmont in a place where they didn't know. And certainly, there'd be no cultural placement. So, eventually, after that initial flurry of enthusiasm, we settled into, um, something more of a routine, where we'd be very careful about what cases would come over, what—which ones we'd take.

If, if the State folks were perfectly willing to, ah, place the children, as they must with, ah, Tribal members or extended family, we didn't jump in and remove every case willy-nilly. Ah, we sort of picked and chose them and, um, in the cases we did take, we still often looked to the State for resources. Ah, but maintained a close eye on things. We're up through like the mid-'90s here until— I'm sor— the mid-'80s through the later '80s. ... No. Yes! Late '80s. And at that point, we're watching the cases with great interest. And, at that point, the State was starting to become much more, ah, sensitized to the Indian Child Welfare issues and worked it out. But, it's pretty clear, that before— I think the consciousness-raising occurred like in the early '80s. Before that, ah, the State just treated, um, protective cases coming from the Indian Nation as any other neighborhood in the State. And—I did hear stories from elders and things that happened to them in years gone by and, um, we were — when I say, "we," I mean the Court and the Nation — were committed to (*coughs*) changing that parameter. So I'm sorry about the length of that but that's my best—

GW: (*Overlapping*) No, no, that's helpful.

AM: It's a— '80s were a real consciousness-shifting period for us.

GW: Yep.

RG: What kinds of cases, um, did the Tribe choose to pull over into Tribal Court?

AM: As I said, in the early going, everything (*softly laughs*). Um, the later cases — and I can't really necessarily speak for the social services folks, 'cause in the Court, I only get them after they've arrived — but they seemed to be cases ... um, where ... the Tribe could offer some unique ... resources for treatment. Um, and of course, alcohol and drugs are some of the biggest ones. But the Tribe had some extraordinary resources for treating that, too, they had granting sti— At one point, they had a, ah, facility, I think in Switzerland, where they could send people to for really intensive treatment for alcohol and drugs. So I think if it's the kind of case where the Penobscot could tap into their grants, opportunities and resources that the State wouldn't have an opportunity to do so there, they'd pull those cases over. Um ... and I don't ... I'm not aware of any hostile removals, where the State said, "No, we want to place this with, you

know, the 'Jones family' who live in Dixmont." Not to pick on Dixmont, but—

GW: No.

AM: —And they say, "No! We've got a sister-in-law, lives right here." And they say, "Well, we don't really like the sister-in-law. We're going to stick with this." I'm not aware of any cases like that. Maybe there were.

GW: Yeah.

AM: But it usually, it was if the Penobscots had unique resources for treatment of the underlining problems, um ... And we also had a more interactive, um ... When we held Tribal Court, it was very informal. Um, and I would have the parent — you know, the mother right there with, um, council, and the State— ah, have the, ah, Tribal social services people and the State social services people. And it was almost more of a—a mediation. We'd talk and the parent would speak just directly with me, but it's— I mean, I wore a robe and I sat up at a bench, but it was very, very informal. And I would address her by her first name. I say "her," because I'm trying to think of cases where we had— there were cases where they were fathers.

But, it was a much more organic setting and less sterile. And the idea was to—what's our plan going to be to get everyone back where they need to be. I think we offered that in a way that was more user-friendly than the State. And, of course, they'd just come over to the Tribal Court. It was right on the Island, and they'd bring their d—, dogs were always welcome. Um, and everybody was sort of on a first-name— very, very informal. Um, and it lent itself to ... (*big inhale*) addressing (*big exhale*) the, ah, the problems, whatever dysfunction had occurred that caused Protective Service to get involved with it. And of course, we were much more receptive to the next-door neighbor being the placement, even if they weren't approved by DHS, then the State Court would be.

RG: Um. ... In your time working with the Penobscot Nation, can you re— I know you said that there weren't any hostile, um, disagreements, but can you recall any times when the State refused to transfer a case?

AM: You know, there may have been, ah, because, as the Judge, as the Court, we only get the case after it's filed. So the folks who are in social services may be in a much better position to tell you. I was not aware of any hostile situations, because cases that came to me seemed to be ... okay. Um, and as I said, in the early going, the State seemed to be really receptive to this concept because it's a way to— (*softly laughs*)—shuffle off cases and devote their resources elsewhere. And that evolved over a period of time. But by the mid-'80s, when things kind of settled down, I'm not particularly aware of any hostile interactions between social services. The cases that came to Court seemed to be pretty...um, pretty agreeable.

RG: Mm-hm. ... I had a question on the tip of my tongue, and now it's gone.

GW: (*Overlapping*) I know, I was just thinking.

RG: Um... Oh! When you mentioned that, um, the Tribal Court realized that they didn't have enough resources, what kind of resources do you mean?

AM: Um, in a lot of these cases, um, the kids, um... have like unique needs for a particular psychological interventions. It can be very expensive, and sometimes you have to, ah, get referrals here and there. It was time when the Tribe was exercising more and more sovereignty and they had grants available to them, but it wasn't unlimited either. The State would have evaluators who were on retainer. They would always use "Dr. Jones" or—

GW: Right.

AM: —"LSCW" and they could just simply send, ah, the kids for evaluations for free. The Tribe instead would have to pay \$200 an hour. Um, and it was ... primarily, what I would call therapeutic kind of services— evalua— well, evaluation kind of services. Um, or if the child needed, um, in-patient treatment—

GW: Yeah.

AM: Things like that. They did seem to have good services for the parents, if there were alcohol and drug problems, they were tapped into some really good alcohol and drug treatment modalities. But when a kid comes into Protective Services, ah, there's got to be a Guardian ad Litem who's going to supervise their progress through the system. There's got to be evaluations and reports. I don't know if you've ever seen a DHS file, but they're very thick. I mean, basically, every day you have a worker making a reference or a notation in the, in the paperwork. And I think they didn't have ... necessarily the administrative, ah, depth of personnel and the, ah, evaluation services that the State would have. So, in that case, they would welcome the State to kind of, sort of, stay on board to look over their shoulder.

GW: And that was a time— the '80s was also a time where the State was using residential ... treatment fairly regularly for kids with, with emotional, behavioral problems.

AM: Yes.

GW: And I'm guessing that the— that would've been very expensive for the Tribe—

AM: Yes. Yeah.

GW: —to access. And State didn't really shift course, until the early '90s to, to, you know, get out of—

AM: That's a good point.

GW: —a good, I mean, I'm trying to think. I mean, at one point, they had, you know, 100 kids in out-of-state (*deep breath*) placement, I think around 1990—which was in the hundreds of

thousands of dollars.

AM: Yep.

GW: And that's all changed in the last 20 years.

AM: (*Overlapping*) Oooh, yeah!

GW: Big time. But—

AM: Oh, yes. It's— (*softly laughs*)

GW: —but, but probably when you were a Trib—, probably when you were with the Penobscots— that was—

AM: Yep.

GW: I'm guessing that may've been one of the reasons that the kids would stay in State custody.

AM: Yes. Yep.

GW: Um, also, I think the whole piece with DHS around, um, kids who needed treatment and voluntary, you know, relinquishment of custod— that the St—, some of the ways that parents could keep custody, but still access expensive services. The State hadn't really worked that out in the '80s either. And, um.

AM: Yeah, for sure.

GW: Yeah. Um. But, yeah. Were, um, were you also involved with, um, child custody hearings that were not necessarily protective but were, um, related to, um, divorce or who's, who has custody of the kids? Would that have been something that would've been handled in Tribal Court as well or not?

AM: Um, I don't remember any. I—and I think the reason is because ... our civil jurisdiction only extended to internal Tribal matters. And the divorce would've fallen under State law, assuming they got married by the State. So, I don't recall any inter— intra—Tribal member custody disputes that we got involved with. It was just protective cases.

GW: Okay. And, do you have a sense for— I was trying to reword our long-winded sentences here. Um, what was your sense of, of the standards used to decide that, that involuntary care needed to happen for a child? Was it different in the Tribal Court than, than in the, um, State

Court? I mean, was the whole notion of jeopardy? You talked—

AM: (*Overlapping*) Oh, yes! Yeah, yeah.

GW: You gave that example of abandonment—but was there a different way of, of assessing jeopardy within the Tribal Court than your sense of what was happening in the State Court?

AM: I think pretty clearly yes. Actually, that's a great question. Um. And, ah, a lot of it had to do with, um, cultural mores at the time. Um, there were things that would happen ... um, in the community down in Bangor, places like that, that would constitute jeopardy in the minds of the, ah, the judge. And I guess a classic example would be, um, if a parent with an alcohol or drug problem goes off on a bender and just disappears for three, four, five days. Um, the State Court judges would say, "You've just rung the bell. That's abandonment. Um, that is per se jeopardy, and they can't do that." (*Distant sound of fire engine sirens begins*) Um, within the Indian community, where it's more of a community raising a child, the fact that a parent may take a vacation that involves intoxication—

GW: Yeah.

AM: —but has left the kids with their best friend, next-door neighbor or with an extended family member doesn't raise an eyebrow at all. It just, it was accepted, and the child was never in jeopardy. And if it happened down in the community here.

GW: Right.

AM: And somebody's living on, you know, "Fill-in-the-Street," and just takes the kids to the person who lives in the apartment next door and says, "I'll see you sometime," —that's pretty serious business.

GW: Yeah.

AM: Whereas, if it was an accepted cultural thing, the kids are well fed, they're well cared—they're in a loving home, ah, we would reject the notion of jeopardy under those—we needed something more than that. We needed a real danger to them. And we had a couple cases like that. Ah, so, yes, I think there was a clearly ... a clear line of demarcation between what places a child in jeopardy within the Indian community and with the community at large because of this "A community raises a child" notion. It's a whole different dynamic than you get walking into a, um, a community down here.

GW: Yep. Was that also true— I may be going ahead, Rachel, but, um—The, um— Were you involved at all with termination of parental rights?

AM: Um, we would have been. But I'm trying to ... I don't think we ever did a TPR. I don't ... again, I'm working from memory, but I think I would remember that. I don't remember (*softly laughs*) ever doing a termination of parental rights in the Tribal Court.

GW: Yeah.

AM: I pretty sure we didn't. Although we would've had the authority to do it under, um, Indian Child Welfare Act and the extent to which we were vested with jurisdiction. No, it never happened. I can— I stand to be corrected on that, if I'm wrong, but I really can say with confidence that I don't believe we ever did.

GW: Yeah. Well, we've heard that, I mean, from the, ah, Passamaquoddy Courts as, as well. [I think] part of that, that community that you're that you're talking about—it's a different situation.

AM: Yep.

GW: Um, yeah. Um. ... You go. Step in, if you're—

RG: In your time working, ah, not with the Tribe, ah, what would you, or what do you consider – if there are any – a good cause to deny the transfer of a case to Tribal Court? And has that ever occurred for you?

AM: That's a good question. Um. ... I'm thinking out loud. It would have to be a very, very compelling case for not transferring. I, I think there are two ways that you approach it. I mean one would be if the State Social Services were fulfilling all of the objectives of the Indian Child Welfare Act, if they were, they were getting it done, and there was a request to remove it, but the, the child is being protected from jeopardy, all of the objectives are being fulfilled by the State Social Services or by the Courts, ah, that would provide a good predicate.

I would still think I'd want to have another link in that chain, to go beyond that, just the fact that they're doing a good job, because I would have to think that the, that the ... the motion, the request to remove it to a Tribal must be motivated by something other than just, like I said, the enthusiasm we fir— 'cau— "We're doing it because we can." The— but I would— it's a very hard question to ask because without knowing why does—does the Tribe want to remove it to the Tribe? What compelling reason is there? It seems to me, that's the key to it. So it's—it's hard for me to speculate about what that might be. I mean, I wouldn't do it, as a Judge, unless ... I wouldn't refuse a transfer...um...unless (*softly laughs*) I'm getting the language all twisted up here.

If there was a contested request to remove...um...and the State Agency was already fulfilling all of the objectives of the Indian Child Welfare Act, I would look very closely at why the Tribe still wanted it over there. Is there some resource, something else that can be offered? And...I think, as long as the Tribe can make a case that there is something more, I would let the, I would let the transfer take pl— I would order the transfer, the removal. But it's hard to—hard to do that in a vacuum. I can't give you a real authoritative answer on that.

RG: That's Okay. Um, now back in your time working with the Tribe, ah, did the Tribe ever use an expert witness in a child custody proceeding? Under ICWA? That remained in the State

Court?

AM: Okay, you lost me there. Did the Tribe ever use an expert witness on a case—

GW: Like if there was a State case— and, um, it hadn't been transferred back to the Tribe—

AM: I gotcha. Okay.

GW: —do you know if the State w—, w—, the State (*correcting*) — if the Tribe was also using expert witnesses, um, to, um, in the, in any of those State proceedings, and if you would've know that?

AM: (*Overlapping*) You know I wouldn't know the answer to that because, when I went on the Tribal Court in 19 ... 80, '80, I obviously didn't take any cases involving the Penobscot Nation, so I would not know the status of any case was pending between 1980 and 1990.

RG: Um, and what about your time working not with the Tribe, were—, did you ever encounter any expert witnesses used in cases covered by the Indian Child Welfare Act?

AM: Um, you're going, you're going back to, ah, 1976—through 1980. And I don't recall any.

GW: Okay. Mm-hm. Ummm. (*Deep breath*) We asked about expert witnesses, um. Let's see. Um... One of the questions we have has to do with the State making active efforts, um, in cases that remain in State Court, um. I guess, going back to when you were the Tribal Judge, did the State conduct active, remedial and rehabilitative efforts to present— to prevent the breakup of the family before ordering an out-of-home placement? Do you have any sense? I guess we're trying to get at what you saw in terms of State efforts, if this case stayed in that, in the State jurisdiction, to help keep families together. I don't know whether you would've been privy to that knowledge or not.

AM: I wouldn't have been. Anything I would've heard would've been very anecdotal because I, as I said I pulled back from anything pending in State Courts. I, you know, the few interactions we had with the State, um, social service folks, um, indicated to me that they were well aware of the Indian Child Welfare Act and what they should be doing. And they voiced a willingness to follow through with that, with the extent that they could. But I, I don't recall any. It would've been strictly anecdotal. Somebody would've said to me, "Well, did you know the State did this or that," and nothing is coming to mind on that.

GW: Okay. Um, this may be a policy want question. But, um, in what ways do you see the Indian Child Welfare Act and the Adoption and Safe Families Act working together or not working together and not working together? And, and I need to remember my, my policy history to remember when— I, I know when the Safe Families came in, largely in the '90s. Um, so I don't know if that was an issue in the, in the '80s. I was trying to— I mean, there was the Child Abuse and Neglect Act that came in the '70s to start driving, I think, some of the legal precedent, um, but, ah, I mean, one example is just Adoption and Safe Families has some really clear timelines that have changed over the years, but they just have these really clear timelines. Um, and I wondered if you— if, if that was an issue at all, the difference between State timelines around decision-making for kids and ICWA. Were there—

AM: Yeah. Well, that's a really fascinating question (*pause*). Um. ... I don't— It's hard to ... It's hard to kind of mesh the interaction of the two Acts together, um. ... This may not be particularly helpful, but in, in the cases that we did— have removed— good— 'course, this was back in the '80s again which has limited applicability, but, um, as long as we were satisfied that, um, the child was not in jeopardy, um, whether it was with, you know, a neighbor or a friend— we didn't too (*soft laughs*) cranked about the timeline thing, I mean, if everything sort of occurred on its own time. And if turns out that they could, you know, send the mother to, you know, a program in New Mexico and it's, you know, it's a 90-day in-patient thing. And we were looking at other timelines. We just didn't get too cranked about it. If the child is okay, and the child is not upset that, you know, Mom needs to take a vacation, but he'd be with, you know, Aunt Whoever.

GW: Right.

AM: Totally happy in the household. Has cousins that he considers to be brothers and sisters. We didn't get too worried about rigid timelines. Um, as you know, on the State side, because the State is so overburdened, um, I mean, we, even now, we see cases up on protection cases with it dragging on for two years, with a child desperately in need of: Fill in the blank. You have therapeutic treatment. Permanency planning. Adoption. And, um, they will drag on for like— our Chief Justice is particularly galvanized about this issue. Every time we get the case, she— she's a former head of Protective Services—as you may know.

GW: Right. Right.

AM: Um, and she just says, "This is intolerable! This— We—" And so she's very, ah, rigid about our holding up time-deadlines on the Court side. But she can't control what happens before the cases get to us. Ah, and on the State side, I think it does result in ... damage to the child. On the Tribal side, again, going back to the '80s, if we were satisfied that the child is in a good place in the community, we didn't get too worried about the delay, just because it's a different dynamic.

GW: Very different, yeah.

AM: A child in the State system who's in a holding pattern is being traumatized. A child who's in the Tribal community, surrounded by extended family and, and friends, isn't being churned. So.

GW: Yeah.

AM: It's a, it's a fascinating question about timelines and the interaction of the two Acts.

GW: Yep, well, as we've been doing some interviews, it's been very interesting for me, the

difference between the Penobscots and the Passamaquoddy.

AM: (*Overlapping*) Oh, really.

GW: They have a Tribal Court. And, I— We haven't met with the Maliseet, but with the Micmac who don't have a Tribal Court. And, um, it's, um, there's much to my mind — and this is still free-floating, I'm not putting it down on paper-to-pen right now — but, but I can see much more of the, um, tension between those two policies—the issues around following that permanency planning and, and the community, ah, the community piece—

AM: That is interesting!

GW: —um, in the communities that don't have their own Tribal, Tribal Court.

AM: That is fascinating! I'll look forward to seeing what you come up with on that.

GW: Yeah.

AM: That is a really— that may be an area that would be ripe for a closer look and maybe some action taken on.

GW: Yeah. I mean, even within those communities, where I think the State and the Tribe is really trying to work and collaborate together well, it's a different—it's a, it's a very different environment. Everything from what you were des— the informal court, I mean, my sense is that that's how the Tribal Court is still operating—today.

AM: Yep.

GW: —um, with the Penobscots and with the Passamaquoddy. And it's very different, I think, um, getting outside the community and parents walking to the, ah, you know, to the, where's the court? Is it in Presque Isle? I can't— I forget which—Presque Isle, um, so it's a different, whole different environment.

AM: Yep.

GW: Yeah.

AM: Fascinating stuff!

GW: Yep, real different. (*Deep breath*) Um.

RG: Have you dealt with many child welfare cases, um, since you've left the Penobscot Tribe? And you'll just—you'll have to forgive me. I'm not well versed in law, courts.

AM: That's, that's what I'm here for. Ah, when I went to the State bench for two years on the Dis—, I was on the District Court, which is where the protective cases come. So, I dealt with quite a few back then. Um, oddly enough, I don't remember any cases involving Tribal members. Maybe they were removed, I don't know. Then I went to the Superior Court for 17 years, had no contact with it. And I've been on the Law Court for the last eight years, and we

get them but, um ... I should've done some research before we got here, see if we have any Indian Child Welfare Act issues that have cropped up. None come to mind.

And 98 percent of the cases that come to us are on – well, not literally 98 percent – but a lot of—the majority are on termination of parental rights. And it just basically is how horrible the facts were, and whether they justified termination, and whether the State did its part, so we very seldom deal with, um, substantive legal issues like jurisdiction and compliance with the I-C-W-A.

GW: The other tension that I've seen – I don't know where this fits in – is when you have a child who has one parent who's enrolled, one parent who's not, and because the child doesn't meet our, sort of, ridiculous blood quantum – ah, and it's– I mean, "our," I'm not Penobscot, but, ah, the way that communities, um, I've seen. That's the other piece that we've seen, some of the legal issues come up in terms of, of, of ICWA, sort of where it– And, and some of those may be more child custody when, depending on which, um, it, particularly around divorces, where as you said they're being heard in the State–

AM: Right.

GW: –the State system. But, but, again, I feel really naive as a Commissioner, even though I've known– done some work in communit– in Native communities that, um, so there's this population of kids that sort of fit, you know, they fall through the cracks in terms of how the two systems work together.

AM: And they've got one foot in the legal, ah, accouterments of each community. And, ah, yeah, it's a big gray area.

GW: Yeah.

RG: Did you ever have any cases that dealt with that where, for example, the Penobscot Tribe pulled a child welfare case that, of a child who nec–not necessarily fell under ICWA? Who was like, for example, um, I don't know, maybe they're a quarter but, they're like an eighth of Penobscot–an eighth of Maliseet and, for whatever reason, they're not on either Tribal roll.

AM: I don't remember us ever getting involved in the issue. In the cases that we had, it was very clear that the child qualified as a member. And I think both parents were members. So it was truly internal. I'm not– I don't recall any of those jurisdictional issues popping up. And probably, they would pop up in the State Court side, and when the removal process has started, and then the non-member's going to say, "No." And that's where it's–the tension's going to take place.

GW: Yeah. Yep.

AM: Hmm. No, I actually never saw them when I was on the Tribal Court.

RG: What strengths do you see State Child Welfare, um, possessing in ensuring ICWA compliance?

AM: (*Deep breath, pause*) Well, I think it all, it all comes from leadership. I mean, Indian Child Welfare Act is a very affirmative bit of legislation. It's pretty powerful stuff. It has mandates in it. Of course, they don't mean anything if, um, the State agencies aren't aware of them and attentive to them. I think that will throw us right back to the 1970s, where nobody even knew better and nobody gave it a second thought if, in fact, the child may have Indian heritage – "Go ahead and place 'em with somebody in Lewiston. You know, what's the big deal?" So, if the State, um, leadership is not attentive to it, that's, that's, that's a weakness.

I think the strength is, um, that the State at least seems to me, if I – I've got a very limited vantage point now, being a judge. But our few interactions with the Assistant Attorneys General suggest to me that they're very aware of the existence of this Act. And I would think that would filter down to the line-level workers who, if they, you know, get a child in Lewiston with a name like "Sockabasin"—a light would go off in their head: possibility of Indian heritage. It may trigger ICWA considerations here. So the State's biggest strength is the leadership and how well they sensitize and motivate their line-level people to be aware of this stuff.

And I, I – another footnote is – I think the judges are aware of it. I mean, for a while, it was, um—and back, I remember during the '80s, when I'd go to some of the judges, and say, "You aware of this?" They'd say, "Well, no, not particularly." I'd explain it to them. They'd go, "Wow." And, so, "Okay, if I ever have a case, you know, involving a kid that is Indian, I'll give you a call." And that was the level. They were receptive to it. But not experts on it. But I think now, if you went to every District Court Judge and said, "Are you familiar with ICWA?" "Yes, I am." "What does it provide?" They could give you a pretty good description of what's involved with it. So, I think that's the strength is that more and more people are aware and sensitive to the issues.

RG: Mm-hm. What strengths or weaknesses – strengths and weaknesses – do Wabanaki Tribes possess in working with the State for ICWA compliance?

AM: Of course, I've been out of touch, I've been, you know, um, since 1990, been on the State Courts. There is a, a State-Tribal commission that deals with high-level policy stuff. And at one point, there was a Tribal-State Court Commission.

GW: Oooh!

AM: Um, but don't be too impressed. It was—Chief Justice McKusick created it back in the '90s, had a couple of meetings and it foundered. It just wasn't quite aware of what its authority was—what it was supposed to do. And I don't think the State-Tribal Coordinating Commission has met since the early or mid-'90s. Um, so, it's hard for me to know what strengths that, um, the Tribal authorities have in complying with ICWA because, um, I'm just not tapped into that anymore.

RG: That's okay.

GW: What about your sense of that, in terms of when you were starting out in the '80s, just historically, what were— you may have said some of that already, but any other piece, in terms of either strengths and weaknesses.

AM: I think the strength was, in the '80s, there was an enormous ground swell of activism and pride and, ah, at least, of course, I'm only talking about the Penobscots.

GW: Right.

AM: They were the only ones I dealt with, but they had a real sense of: "We need to take charge of this. We need to know what the laws are." And they had some real players, back in the day. And, um, you know, when the Indian Child Welfare Act presented itself, they said, "This is something we own," and started removing cases, left and right. Um, so, the strengths that the Tribe has is, I hope, a continuing sense of pride and activism, um, with regard to Tribal sovereignty and the children of the Tribe. I, I get the sense that they will never, ever allow history to roll back and just say to DHHS—"Just, you know, take our kids, and find one of your, one of your certified foster homes and place 'em there." I think there's a real commitment to it. I suspect there is.

GW: Yeah.

AM: I mean there was all during the early '80s, when I was there, all the leadership that I dealt with. And I was really tapped into the leadership, and they were very galvanized and affirmative. And, um, the Tribes sometimes, um, can tap into resources, ah, get through special grants for Native American communities and things that might not otherwise be available to, um, the State folks. I mean the State DHHS, as you know, is just struggling. Um, you pointed out residential stuff. I mean, we've, we've got cases coming in where kids were desperately in need of residential assistance, and then you get put on a waiting list, and it became a fake waiting list, because you'd never move up the list. And, um, it's just dreadful. But, it may well be that the Tribes, um, can kind of sidestep some of the problems, the resource difficulties that DHS is into, and get grants and resources that are unique to Native American communities. And, you know, outreach – keeping State judges aware of ICWA and what needs to be done there.

RG: Do you think that ICWA does enough to protect the rights of Indian, er, Native American children and Tribes?

AM: Hmm. That's a tough question. I mean, before ICWA, there was nothing and it was terrible. And when ICWA arrived, it was a huge step forward. Um, it's not ... perfect. I mean it isn't, um, it's a powerful weapon, but it's not a— it is not a, ah, a guaranteed thing that's going to

happen in every case. I mean, removal can be fought. I'd question why anybody would do it. Um, I would say simply that ICWA is a, is such an enormous improvement on what was before, meaning nothing.

Could it— could more be done? Yes, it could be made more affirmative. But, I think, as a bit of legislation, it's a, it's a wonderful piece of legislation. It's a powerful tool that can be used well when it's used wisely. I'm not sure what additional legislation could accomplish that well-intentioned people couldn't accomplish under the existing Act.

RG: Mmm. ... If you could change anything or make anything happen for Native American children covered by ICWA, what would you do?

AM: *(Pause)* That is a tough one. Um, when you say, "you," I assume you mean "you" as a judge in the judicial system...I, I think the only thing that we can— judges can do is to ... understand the object— the objectives of ICWA. I mean, we can look at the legislation: You need to do A, B and C, Subsection 2.2. But look at the big picture and say, "What was the objective of this? What was the wrong that it was trying to correct?"

And as we apply it, keep in mind the big picture. Um, that doesn't help a particular Indian child, but if we say, "Here is the wrong we're trying to address," and always keep that in the front of our minds, that's the best thing we can do. It's a good piece of legislation, but it needs to be administered in a way that addresses the objectives in the first place!

GW: Mm-hm. Okay. Is that— anything else that you want to add in terms of?

AM: I would just, as we're talking, there are actually a couple of things that occurred to me, which is that, you know, looking back, you know, the '80s were an enormous time of upheaval, lot of things happened. And the '90s happened. 2000s. It really is an appropriate time to step back and say, "Okay. Where are we? And what do we need to do?" I mean, when I first became aware of the Commission, I thought, we'll that sounds like a good, a good undertaking. It's worthwhile. But, it seems to me, as we're talking, it's really timely right now. 'Cause, um, we now have, you know, several decades of experience, um, and I'm sure, in your fact-finding, you're getting accounts of what happened before-hand—

GW: Yes!

AM: —the terrible things that occurred. And we should stop and say, "Have we addressed this?" I mean, it's better. But have we solved the problem that led to these terrible privations. No doubt that it's better. But we're at a time to stop and reflect and get our head above, you know, the helm, look around and where it goes. So that—, I commend you for that. Um, I would just say that, you know, the time that I spent among the Penobscots were—really informed a lot of my life. It, it changed my life.

It was that sense of community. I grew up in suburban New Jersey. I went to big colleges and stuff. And the Penobscots welcomed me. I mean, they brought— I was an outsider — but they really wanted the court to be independent, to apply the law, not to get caught up in the allegiances or the hostilities.

GW: Mm-hm, Right.

AM: And they united on that, wanting someone from the outside. They empowered me, and they supposed me and, ah, introduced me to a community. It's, it's a Nation that operates more like a family. And that goes right to what ICWA is all about. You cannot take the State protective custody laws and put the blinders on and apply those standard and those traditions and those cultural mores in that setting. It just, it's not a good fit.

Um, but it really changed my life. I just loved my time. They, ah— The Penobscots will, um, you know, they'll, they'll fight and they'll squabble and they'll say terrible things to each other. And when the day is over, they're still a family. And it's like, "Wow." I—I'd do some of the Tribal Council meetings and ... and was sometimes taken aback about how frankly they spoke to each other. And it occurred to me, this is a family. This is the kind of way that families will talk to each other in very (*laughs*) blunt terms.

GW: Mm-hm.

AM: But that's a good thing so, um. The, ah, I think the Tribal Court did some good things. I think ICWA did some good things. But it's time to stand up on the helm and see where we are, so. But, I commend the Commission and all the people doing the good work or, ah. I'm looking forward to the report.

GW: Right. Well, thank you so much.

RG: Yes, thank you.

GW: It's very helpful.

AM: It was a, it's a pleasure and it's a— please convey my best wishes back to my fel— I'm sure some of them remember me, and I remember them.

GW: Yep.

GW: Yeah.

AM: And it's the— it's all fond memories.

GW: Yep. We will.

AM: Okay.

GW: We will.

RG: Thank you so much for your time.

GW: (*Overlapping*) Thank you so much.

AM: Do you have time for a back, behind the scenes tour of courthouse, or do you need to be on your way?

GW: Sure.

RG: It's okay.

GW: No, we are—

[END OF RECORDING]