

ICWA: Nuts and Bolts

4-21-2021

Aimee Neri: To get started to remind everybody to please mute their mics. We are going to be recording today's session. So if you wish to have your cameras up, that is entirely fine. And again, just remember to mute your devices. I would like to start by thanking all of you for joining us today for ICWA Nuts & Bolts, the first part of a four-part series titled ICWA: What You Need to Know, Why it is Required and Why it Matters. My name is Aimee Neri and I'm the coordinator for the eighth judicial district court improvement project and the statewide project manager of ICWA practices in family courts. I have some housekeeping information to share with you before we get started. Today's presentation has been approved for one credit hour in the area of diversity, inclusion and elimination of bias and a half credit hour of professional practice for the appellate division second department. Please be certain to complete the affirmation form with evaluation that was attached to your training email and send it to Melissa Wade at mwade@newyorkcourts.gov at the completion of the webinar. I believe the form will also be uploaded in the chat box for easy access. There will be two CLE codes that are shared during this training. They will be said and shown on the screen. Please know that we are not able to share the codes in the chat box, and we are not able to repeat the codes later on in the training once they've been shared. So please do your best to pay attention for when we do share them in real time. Additionally, for those who stated interest in continuing education unit credits, CEU's, participation is required in all sessions to receive credit. No partial credit is being offered for CEU's. If you have not yet submitted payment for the CEU's, or you have not yet received the link for the CEU credits, [crosstalk] if everybody could just remember to please mute their mics. If you need to receive the link for CEU credits or you have not submitted payments yet you can email Allison Eberle and her email will be placed in the chat as well. Finally, if you have specific questions for the presenters, please type them into the chat box so that they can be shared with the presenters for response. And if you're having any technical difficulties or issues with Microsoft teams, you can email Anna Wilkinson at anwilki1@nycourts.gov, and she will be able to assist you. So I will now turn it over to Trista Borra, our Director of the Division of Child Welfare and Family Justice in the New York State Unified Court System Office for Justice Initiatives.

Trista Borra: Thank you, Aimee. Hello and welcome everyone. As we gather here across New York State, I want to make a land acknowledgement and give thanks to the nine nations of the Haudenosaunee and Algonquin people whose lands these are, for their care and stewardship of this place from time immemorial. As Aimee said, my name is Trista Borra. I serve as the Director of Child Welfare and Family Justice Initiatives, including the Child Welfare Court Improvement Project for the Office for Justice Initiatives and I'm excited to be here with all of you today. Before I introduce today's program, I want to make, take a moment to thank the Child

Welfare Court Improvement Project team for always keeping the importance of the Indian Child Welfare Act on our radar and for bringing this training series to life. Thank you so much. I appreciate all of you. Also, I want to thank OCFS for their partnership in this work and the Appellate Division Second Department Attorney for the Child Panel and Family Services League for their support and providing CLE and CEU credits. As practitioners, it's very important to learn and understand the essential components of the Indian Child Welfare Act so we can uphold it. ICWA also requires us to honor the fundamental elements of cultural livelihood and national governments in indigenous communities. Most importantly, ICWA was enacted and must continue to be upheld so that indigenous communities are afforded their rightful protections as citizens of sovereign nations. I'm honored to be able to introduce to you our esteemed presenters. Today, we have the Honorable Carrie Garrow and Heather LaForme to share with us the nuts and bolts of the Indian Child Welfare Act. Judge Garrow serves as the chief judge of the St Regis Mohawk tribal court, where she runs a healing to wellness court and the tribal court improvement project.

She has worked as a visiting assistant professor and has the, as the executive director of the center for indigenous law, governance and citizenship at Syracuse University College of Law. She is also a consultant to the Tribal Law and Policy Institute. She's the author of many articles and the co-author of the second edition of Tribal Criminal Law and Procedure. We are grateful to have Judge Garrow as a presenter today, and as a partner in CWCIP work. We also have with us Heather Laforme, who serves as the Native American affairs specialist for the office for Native American services within the office of children and family services. Heather serves as a liaison to the nine American Indian nations in New York State. In her role as a liaison, she provides technical support and assistance to the nations to determine their needs and meet legal obligations in accordance with treaties, law and contracts. Heather is also a member of the Onondaga Nation, Beaver Clan, and an enrolled member of the Mississaugas of the New Credit First Nation band located in Ontario, Canada. Heather is also a 2020 fellow of the Minority Professional Leadership Development program with AdoptUSKids. I'm happy to now turn it over to Heather and Judge Garrow. Thank you both and thank you all for being able to be here with us today. Take care.

Judge Garrow: Thank you, Trista and Aimee and the CIP organization for having us. And Heather, can you hear me?

Heather Laforme: Yes, yes I can.

Judge Garrow: So Heather what wasn't in your bio is that you're actually here to make sure I get everything right, because you're down in the trenches. So we need you, and I appreciate all the help you've given our nations. So I think Aimee is going to share our slides? So as Aimee said, just go ahead and type your, if you have questions in the chat. Aimee, if you'd like, if you want to interrupt in and ask us if you feel it's appropriate time, feel free to do that. And we'll try to also leave some time at the end for questions. So let's just jump in. And let's go to the next slide. So I'd like to start off with the notion of sovereignty for the Indian Nations.

So I'm Mohawk, I'm part of the Haudenosaunee or the Six Nations. And obviously every Nation may have a little bit different definition or how they explain sovereignty. So I only want to speak for the Haudenosaunee, but all Nations certainly would agree that that our sovereignty as Indian Nations means that we can run our own governments and take care of our own people through our governments. This is the up on the screen is the Two Row Wampum or Gā•sweñta' and we often encompassed our laws and treaties and Wampum belts. And this is from when the Mohawk entered into an agreement, a treaty with the Dutch, which was then assumed by the British and subsequently the United States. And the purple rows, one represents the Haudenosaunee and the other one represents the Dutch or the colonists. And you'll note that they're parallel and they're not to cross. So essentially that means that we stay in our canoe and govern our own people, and we don't interfere with what's going on in the state or federal affairs, and the same with the, with the colonists that they stay in their ship. They don't try to steer our canoe or interfere. And that's our notion of sovereignty. Heather, did you want to add anything to that? I know you work with of all the nations across the state. So I don't know if you want to add anything.

Heather Laforme: No, you did a fine job explaining that. Just to reiterate what Judge Garrow said is most, all nations have their own form of government. There are some that choose to have an elected council, and there are some that choose to remain traditional. So it's just be mindful with what Nation you're dealing with and respect their governing system.

Judge Garrow: That was such a good point. Like it's always good to get to know who your neighbors are and learn about how they govern and which unfortunately is not always taught in schools. And so most Nations have a way that you can interact with them and, and learn about and how they govern. Let's go to the next slide. So of course, the United States does recognize the sovereignty of Indian Nations. They, it's limited and we often disagree, but nonetheless, they do recognize it. I just always like to know that the underpinnings of the recognition is a Doctrine of Discovery, which is a very racist philosophy, which essentially means that when the colonists came over, it's based on the notion that the land was empty, because there weren't Christians here. The people that were here, the Indigenous people could not own the land. And that's the basis of a lot of the Indian law or all of Indian law today, federal Indian law, state law. And you might think, well, that's outdated and wouldn't stand today, but it's has been cited by the U S Supreme court in the Cheryl Case, not that long ago. And so it's still recognized as part of the foundation of federal Indian law and should be acknowledged as such that it's not a very good foundation. It's very much based on colonialism that indigenous people are inferior. The Supreme Court has recognized our nationhood and that we are Nations. It phrases it as a domestic dependent nations. So it does not recognize our ability to interact with other foreign nations other than the United States. Also has been recognized in numerous other cases, subject to some limitations, which we don't have very much time to go in today. And most of the federal laws and policies that have evolved over time have always been focused on how do we deal with the Indian

problem? What essentially, how do we, how we being the United States, how does the United States and the states themselves deal with these pockets of land, the Indian Nations have, and how can we get control of those lands? And that's always been the focus of the United States has had various policies and laws to deal with those issues from removal, moving Indian Nations west, putting them on reservations, trying to break up their land in order to free it up so it's subject to taxes and so non-Indians can hold it, to focusing directly on trying to break up Indian families and assimilate them, and through boarding schools, schools on reservations, trying to assimilate them by removing them and placing them with non-Indian families. Let's go to the next slide. So I thought I'd use the example of New York since one, we're focusing on New York, but it gives a good example of the distrust that the Indian Nations have with the states and the federal government. So New York, who fortunately for us documented their relationships with Indian Nations so there's great records in the New York State archives. They were even back to when New York State was first formed they were constantly doing investigations as to how do we deal with the Indian nations, generally focused on land. One of the most well-known ones was 1880 Whipple report, and they went around and visited all the Indian Nations and focused again on what Indian Nations do with their land, whether or not they're Pagan or Christian, whether or not they have Western type court systems. And it was a very negative report, essentially focusing on what can we do to change the Indian Nations to absorb them into Westernized culture. And there are great documents online. They're like 200 pages though. So don't go into them today, but just so you know, that that's the history that Indian nations know very well. And many times when I taught at law school, I always tell my law students, when you go and work with the Indian nations, remember they come with all this history, of the treatment, being criticized, what they do with their land and how they maybe treat it the way Western culture would, and not understanding their culture of family systems either and trying to change their government. So let's go to the next slide. One more click. I think there's some, there we go. So I know subsequent series later in this series, you'll learn more about the Thomas Indian Boarding School. So the Thomas Indian Boarding School was, I'll just touch on it briefly, was the only state run boarding school. And one way to deal with, to try to assimilate Indian Nations was to work with the children and children were removed and placed into boarding schools. And that happened here in New York. And you'll see that in the Unseen Tears documentary and the impact that has on families, when you remove children. I think you all understand what happens to the child and what happens to the family. And it really impacted our people and Indigenous people all across the country who are removed. And in Canada as well, they had a long history of doing that as well. And it created again that distrust that Indian Nations often have with New York, because not only were they focusing on the land and trying to remove that from the Nation's ownership, but also interfering with families. Let's go to the next slide. And this is just a quick slide. I wanted to make sure this was a new material. This is online, the link is there. And I believe Aimee is going to send out a PDF of the slides. There's a great article in here about the history of New York state and Indian Nations, but there's also great article in here by my law clerk, Danielle Mayberry, on ICWA. And so I wanted you to have that as

well. So let's go to the next slide. Alright. So now we're going to get into the history of ICWA. But before, Heather, did you want to jump in before we talk about the history of Indian Child Welfare Act?

Heather Laforme: No, I think you've done a good job on touching the history. I would have done the exact same thing in my presentation as well and referring to the boarding schools and how that has impacted our families today.

Judge Garrow: Okay. And I'm sure you'll talk about that more. You see that still today. I still talk to people today who families went through the boarding school system and were impacted and are still recovering from that. And so I'm excited that you'll be hearing more about that. So in the 70s, so this was the era where the federal Indian policy era, where the federal government began focusing more on sovereignty and self-determination and what can we do to work with the Indian Nations to support that. And they were receiving a lot of complaints about what the states were doing. And interestingly, there's an early US Supreme Court on Indian law, the Kagama case, which noted that the one of the worst Indian nations enemies were the states, because you have an Indian nation, that's free from most states from any state jurisdiction. And that's going than the 1800s, but the states did not like that, and so that's why they were considered enemies. And so in the 70s, there were many numerous reports about what the states were doing with Indian children. And so the people came forward and testified as the Senate held oversight hearings on this issue, and all kinds of examples of Indian families and children that were being removed. So there were 25 to 35% of Indian children separated from their families - over a quarter of the children. And they were placed in adoptive families, foster care, or sometimes, unfortunately institutions. And even that happened even here in New York, where one out of 74.8 Indian children versus one out of 222.6 white children ended up in foster care. And 96% of those were in non-Indian foster homes. So they were really removed from the communities and they were also placed up for adoption at a higher rate for the non-Indian children. Let's go to the next slide. Because of that, Congress passed the Indian Child Welfare Act. And Heather, did you want to jump in about anything more about the hearings before we talk about the nuts and bolts of it ICWA?

Heather Laforme: They did a few studies, so it wasn't just one study that they did. They actually did two to three different studies and found that the results were exactly the same, that Native American children were being removed, at a higher rate. So I think that's just important to point out is that this isn't just one study. It was a series of different studies through the 70s, and they came to the same conclusion that Native children are being removed more than any other demographic.

Judge Garrow: But one of the things that always sticks out in my mind I encourage you, if you ever have the chance to read some of the transcripts of people who testified, that the moms that came forward, several that talk about how sometimes they just went and asked for help, maybe for the state child welfare agency. And remember these, these families have already suffered through the boarding school area era. So they might have some of the consequences from that. And so a lot of

those testimonies you can find online if you just Google the congressional testimony. Actually I just did that last week and some things popped up, but they're in the congressional record. And so women talked about how they were pressured, or if a child was taken, we didn't get noticed with Wilson Lavonne talking about why notices on par. So they didn't even know, they didn't know how to appear in court. They were never advised of any of their rights. And its just devastating to read the testimony of some of the parents who had children taken away from them. So Congress finally enacted the Indian Child Welfare Act to counter that, the high rate of removal and acknowledged the existence that these children are vital to the Indian Nations continued existence because policy eras before this focused on termination of Indian Nations, assimilation, essentially doing what they can do to remove or assimilate Indian Nation so there weren't anymore, thus the removal of children. But now finally the federal government was acknowledging that children are important to the nations. There's a high percentage of the families that are broken up by removal and it's usually done by non-tribal individuals. And that the states hadn't recognized the relationships of Indian people and our cultural and social standards. So it might be different. So Heather, I'm not sure what a lot of the communities you work with, some of the nation's downstate. I know I'm familiar with some of the cultures in the community I grew up with, obviously. I think about families in Alaska, where it's common for them to travel around in the summer and fish or in the Midwest, go run, sending to gather wild rice or some cultures it's important that you live with the grandmother because that's part of the culture. And so there's many times that states don't acknowledge that. I don't know if you have any thoughts on that, Heather.

Heather: Well, I think it's important. So, what you're talking about would be what we call child rearing practices, right, in practice and understanding. And you would have to work with a nation to really understand that relationship and how that works. So, I can kind of lead this into a QEW (Qualified Expert Witness) type question but when you're working with a nation, you're going to be working with someone who may be a qualified expert witness and I'm sure Carrie will touch on that a little bit. And that would be the person that will be able to explain all of the child rearing practices that go on in that nation. Like Carrie said, when the hunters would leave and sometimes they would take a third of the entire families and leave the babies with the grandmother to raise. I bet you that still happens today because it's still a very remote community. Maybe not so much here in New York and the Continental US, those practices have sort of died out. But when we think about just in my family, just when we're punishing children, we use what we call the water therapy but it looks a lot different. It sounds a lot harsher than what it really is. It's taking water and you're just sprinkling it into a baby face or you might use a cup of water and it's cold water. And that really sounds far fetched, it doesn't sound normal but we believe that the water has spirit, right, and it the calms of children and is supposed to grab their attention and redirect their behavior. So just the different practices, you really have to start having those discussions, if it's something that's not seen as normal in everyday life I guess.

Garro: That's a great example. I mean, it was so important that Congress was recognizing this. I think that the differences between a lot of the Pueblos, who are patrilineal, whereas the Paiute-Shoshone are our matrilineal. So we're very different and so it's so important for the agencies that happened to be working with their families, to understand what your culture is and how that impacts how you raised your children and not to assume that something they're doing is just too strange. And that kid is not safe. You don't know that until you learn the culture. Let's go to the next slide. Welfare act, so Congress acknowledged and declared as policy that they were to protect the best interest of Indian children and to promote the stability and security of Indian tribes and families, by the establishment of the minimum federal standard. So this is a minimum, and so states can act and enact other laws to protect Indian children and families even more but this is the minimum to protect them from the removal and the placement in foster and adoptive homes. It's so important, especially nowadays, we won't have time to get into this but I think it's important for states to think about what are other standards, as they work with their nations that interact with their agencies. Is there something, perhaps to raise the standard I'd be interested to hear your point on this. A lot of my colleagues who work in Indian child welfare but also work in child welfare in general, talk about ICWA and the minimum standards, actually being the gold standard that they wished happened for all children. Do you have any thoughts on that?

Heather: No, no, I'm just kidding. So yeah, ICWA has been thought to be the gold standard because of the active efforts that have to happen before hand, when removing a child. When we go in and we're looking at a possible removal, we really should be looking at what have we done to ensure that this family stays together. What we done? Does the mom need services? Does the mom, you know, so when I'm coming up and I'm thinking of this example, that actually came out of St. Regis when I was working with them a few years ago, CPS was called and it was because the children were wearing summer clothes in the middle of winter and the school was alarmed. They really didn't know what was going on. Come to find out mom's washer broke, right. So how can we help them either repair the washer or get them a new washer so that children don't have to be removed for something so minute that we would have the resources to do for them. So, is active efforts before or after they're removed, right? How do we reunify this family and if it's not possible, what family members are available, right? We're looking for, we want to keep these children with their family, we want to keep them connected to the community and within their nation. We don't want them to lose that connection.

Judge Garro: Right. Awesome. That's a great example. I would've gotten in trouble. I wear summer clothes all year around. It's amazing. I did see in the chat box, a question about active versus reasonable efforts. We will get to that a little bit more. I think we probably have a slide on that but if not, we'll make sure to talk about the difference. Let's go to the next slide. So this is our first sale CLE code. I don't know Aimee if I'm supposed to say this but I'll say it out loud, so take note. If you're doing CLE, the first code is activeefforts1. So activeefforts1. Go ahead and turn the slide whenever you're ready, Aimee. Okay. I didn't know I was

supposed to say. So the first question that always comes up is, what proceedings are covered by ICWA. When I worked at University, I used to get all sorts of phone calls from people wanting to know if their cases fell under ICWA. So the four areas are foster care placement, termination of parental rights, pre-adoptive placement and adoptive placement. Generally, I like to think about it, if the state's involved, then it's an ICWA case. That's my easy answer. Heather, what would you like to add?

Heather: That's a good summarization. Usually I say that once we're thinking about removal, that's when ICWA is triggered, right. Once that child is removed out of that home, that's when ICWA starts. The clock starts for ICWA.

Judge Garrow: Right, right. Yes. Thinking about removing the kid. I'm going to let you take the question. I'll read it. Would that include neglect petitions for supervision?

Heather: So I presume that means that the children are staying inside the home but the judge has ordered supervision of the family for preventative services.

Judge Garrow: Yes, yes.

Heather: Thanks Madison. So, no right? ICWA is triggered, it's kind of yes and no. This is going to be a two-part question because we're looking at the active efforts to keep those children in the home, and then what happens if the children are removed, right. Then we're going to go full force. So I think you kind of like your answer better now, Judge. In the states involved, there's going to be an ICWA case.

Judge Garrow: Yeah and here's my thing, I would rather err on calling it in an ICWA case earlier, than down the road saying, oh man, we should have, and having to backtrack. Because then you're just harming the child. That's another good reason to have a good relationship with whatever nations are in your area is if you're not a hundred percent sure, then involve them and get them involved because chances are, they're going to be able to help you do those active efforts and make sure that child's not removed. We've had a child, a mom, who in our family treatment court and their welfare case is pending, neglect case is pending in the county but that we could remain in the home. Certainly a perfect example of active efforts is referring them out to some type of drug court or especially a healing to wellness court that the tribal court might be running. Okay, next slide. I think we might've missed a question but it flew by really fast in the chat box.

Allison Eberle: Judge the question was from Michelle. She has a child in care who was six but was never registered with a nation and both parents are deceased. So she was asking for some guidance on that particular case.

Judge Garrow: Yeah, we'll use that example cause we will get to that in a slide, I think and that'll give Heather time to think of the answer. Oh look, we're here already. So, so this is the language from the statute. Oh, six nations, not six-years-old. Okay, obviously

I'm married I'm the age of 18, a member of a nation eligible for membership and a biological child. Then in New York, this is one of the examples where you can go above a biological child of a member, I'm sorry, a biological child of a member or citizen of Indian nation or tribe and the residing are domiciled on the Indian Nation. And so who gets to decide if the child is eligible and that's the Nation. Is that so important because as nations, we're the only one who can say that we're a citizen or under New York rules, whether it's a biological child of a citizen. It's just, United States would never let Canada say who's a United States citizen. It's our right as Indian nations to say whose a citizen. Heather, do you want to take a stab at the question about if the parents are deceased?

Heather: Sure. So, if you have a child in care and you believe them and you have reason to believe that they're Native American, you're going to send a tribal notification letter to six nations. Yes, their parents may be deceased. If they were both registered again, it's going to go back to the tribal nation, to determine if this child is eligible for membership. Usually, a case like this, if a parent who was enrolled is deceased, what you would have to do is provide like a birth certificate of the child, with the biological parent's name on it and at their death certificate to the tribal nation, just so that there's proof that this person had passed away and then they will make their determination. 95% of the time, I do see the child being enrolled into that nation, but you just have to start that paperwork and that conversation with the nation.

Judge Garrow: Yeah. I'm sure most Indian nations would be able to verify the parents and then go from there and probably help identify at some family members as well. Let's go to the next slide. Okay. So who has jurisdiction? If the child is residing or domiciles in the reservation and this is straight out of this statute. So the tribal court has exchanged, oh, somebody can turn their on their phone. The tribal court has exclusive jurisdiction. Also when the child is already a ward of tribal court. Say, for instance, the child was here in my tribal core, and then we allowed, or I allowed, or the associate judge allowed the child to relocate temporarily to Syracuse, maybe to live with a grandparent or aunt or something. The court would still have jurisdiction. I think that there was a follow-up question in the chat box. Did you see that, Heather?

Heather: I did and she's asking what if the parents were never registered. If they were never registered, that doesn't mean that they're not eligible. Their parents or grandparents could be registered. So again, you just want to start that conversation with the tribal nation and they'll make that determination for you.

Judge Garrow: Yes. Any comments or thoughts about explicit jurisdiction of the tribal court, Heather, before I move on?

Heather: What was that? You kind of went out.

Judge Garrow: Oh, sorry. Any comments on tribal court, exclusive jurisdiction if the child's living on the territory?

Heather: I mean, sure. So there can be an instance where a child is living on a reservation and CPS is called and you know, it could start in county court and then it can be transferred over to the tribal court. Generally, what I usually see is that if it starts at county court, it generally stays in county court. Unless there's a request for tribal transfer. Again, the same way. If it starts in tribal court, generally stays there, unless the nation sends it to, or there's a request to send it to county court. Just for various different reasons, it can go back and forth, but it can't go either way, the request has to happen.

Judge Garrow: Right. Let's go to the next slide. I see a question, who can make a request for transfer. Hold on, I think we do have a transfer slide, so we'll get to that. So, I think we're going to spend a little time here on notice. I'm a member of the New York Federal State Tribal Court forum and Indian Nations forum and we do a lot of training on ICWA. A lot of times what we hear, is sometimes the most places where equity has struggled with is in the notice requirement. So, say notice, that means that the parties and the tribe, or the nation received notice that a case is pending. It's required in any involuntary a child custody proceeding. You give notice to the parent or the Indian custodian and the nation, and you do it by registered or certified mail, return receipt, which is good so you know where it went and where it didn't go. It needs to be of any pending proceedings, any at all, not just one and done, but every time and also the parties have a right to intervene. It should be sent to the Secretary of Interior, in New York. Aimee, I'll pass this over to you. If you don't know, then you contact Heather's office, right? Tell me, is that where you see problems with ICWA is in the notice?

Heather: No, actually. When I recently just did a data review for the 2019 data, we did not see any issues with notification or placements, even if there was good cause of deviate. What we saw were issues with active efforts and QEW usage. We couldn't track those two, but notifications, if a caseworker or an attorney or parent calls my office, that's the first thing we email to, to fill out when to send to the nation. We provide all of the contact information for the tribes. We provide an easy to fill template. You really just put in the children's names and their date of birth. We just request a carbon copy back to our office, once it's sent out so we can track it. I think the issue around notifications since 2016 has been, when we say you can email it, you can fax it. Generally, that's what they're doing, but they forget that they must also send it registered or certified mail.

Judge Garrow: Okay, good point. Well, glad to hear that what your stats are showing. I always remind people that notice can only happen if you ask the right questions. So you're asking the family, the parents, or grandparents, and the child, if they're old enough to know, are you a native child, or do you have your mom or your dad or your grandparents, and not to assume just based on what they look like that others, the way that person can be native, because they don't look like a native person. So it's still important to ask those questions. Many of the courts, I'm hoping almost all of the family courts in New York, have the signs up that people have been working really hard on, that they're in the court room or the court building somewhere, reminding people to let the court know if you are native or

eligible for enrollment. If notice is not happening, that it can happen. I see some questions popping up. I didn't catch them all.

Allison Eberle: Yes Judge, there's a question about residential placements for youth. The question is there are occasions that families claim they have ancestry, but there's no verification or proof, and there's no county information. What could they use to prove their ancestry at that point?

Judge Garrow: Hmm. Heather, thoughts?

Heather: What we encourage caseworkers to do or residential institutions to do, is to send out a notification with all of the information that they have and then if a person says that I may be from the Apache Nation and that's what they're coming out with and that's what we will encourage them, to send a letter to all of the other 16 different Apache nations, to wait for replies. If they don't have any really confirming information, then we just have to dig a little deeper, like where were their grandparents born, what states, were there any nations in the reservations near where they were born; and try and see, try and figure it out that way. They really don't have any information, as far as that...then we, I suggest then they send a letter to the Secretary of the Interior.

Judge Garrow: Okay. [crosstalk]. There's an official form for the travel webpage. So I think, Heather, your website has a lot of the information on there. I know our tribe, I don't think there's an official... I've never looked on our website. I suppose there could be. But we actually have a person, Jean Square, who people can call and talk to you. She's our ICWA person. The other thing I was going to point out is that sometimes it can take a while, right, to confirm a person's, with the Nation... when to get the notice out and the Nation to confirm, but you should still be acting like it's an ICWA case until it's confirmed that it's not.

Heather: Yep.

Judge Garrow: You don't want to backtrack. Is that your experience as well, Heather?

Heather: Exactly. Some of the nations just due to the influx of letters since 2016 that I think I had a conversation once with one of the Cherokee Nations and they said, "It's at least six months before we can respond probably before we can even get to that letter that's come in and respond," because they're just so backlogged that that's how long it's taking them to respond.

Judge Garrow: Right. Right. So be patient, you're not being ignored. Let's go to the next slide. So we've already kind of touched on transfer. Heather was mentioning it. So, if the child is in state court, someone... And I think we had a question in the chat.

So the Nation, the Tribe, or the parent can petition to transfer to Tribal Court and it shall be transferred unless there's good cause. The parent can object, the Tribal Court can decline because for whatever. It could be any reason. It could be you don't have the resources, or the distance is too far, who

knows? But, the Tribal Court just does have the right to say no. And also some good cause has to exist and the regs have outlined the things that the cause is not... I believe that's on the next slide. Yeah. So because there was a lot of litigation around this, the regs did address what it's not. Sometimes it's helpful to know what it's not. A good cause is not if the proceedings are in an advanced stage because the notice was not provided. That doesn't matter. It should still be transferred. It's not good cause if there had been prior proceedings involving the child, which, for whatever reason, no petition was transferred, that's not a good excuse just because they didn't ask for the other trial. Good cause it's not whether the transfer could effect the placement of the child. That's up to the Tribal Court. A good cause is not the child's cultural connections with the Tribe or the reservation. Some state courts would argue, "That child's never been out to the reservation, so they don't have any connections," but the courts can't consider that. And the court also can't consider the socioeconomic conditions or negative perception of the tribal or tribal social systems or judicial system. So it's important to be aware of those. I think if we see some other questions coming in the chat.

Allison Eberle: Yeah. Judge, we pulled out four questions, if you could address those.

Judge Garrow: Sure.

Allison Eberle: The first question is confirming does ICWA apply when parents determining custody between themselves, or is it only if ACS, CPS, and/or the state were to get involved?

Judge Garrow: If it's just custody between mom and dad, I would say no. I don't know. Heather, do you want to disagree with that?

Heather: Not at all. That's it.

Judge Garrow: I'm pretty sure you don't want all the parents calling your office. Those were the cases that would call when I worked [inaudible]. Those are the calls I would get, and ICWA will know if it's just between mom and dad, if the state's not involved, then ICWA doesn't apply. What's the next one?

Allison Eberle: Our next question is, is there an official form for the tribal notification or a webpage that would include a phone number and direct person to reach?

Heather: So the official form to send out to the Tribal Nations that you can find at OCFS.NY.gov under Native American Services. We have all of our forms there. And then to find all of the ICWA designees, you can find it under the federal register, and they update that every year.

Allison Eberle: Thank you. Our next question, does involuntary proceeding include when a parent signs a child into foster care by a 1021 instead of a removal by a 1022 or 1024?

Judge Garrow: So, Heather, I don't know all the New York codes, so I'll let you have it. I'll let you answer first.

Heather: So yeah, I am lost, too. So a 1022 and a 1024. I'm not sure. Can I call a friend? Aimee?

Judge Garrow: [Laughter] Let's phone a friend. Let's phone Aimee. I think she's coming on. This is a video. They took our slides down. I'm sorry. I can't share my slides and have the button to mute or unmute. So can you just repeat the question one more time?

Allison Eberle: Yes. Does involuntary proceeding include when a parent signs a child into foster care by a 1021 instead of a removal by a 1022 or 1024?

Aimee: So my initial response is that yes, ICWA still applies because there is state intervention. There's state intervention and this is not a custody that's between two parents. And we will hold that question and we will be happy to get just further documentation that somebody can then use to support next steps moving forward when that's the issue.

Judge Garrow: That would have been my guess. I was thrown because I don't know the numbers, but even when a parent is voluntarily giving up a child, there are provisions of ICWA that applies so.

Aimee Neri: I will share again, my screen.

Heather: Great. Thank you, Aimee.

Aimee: I think I won the million dollars.

Heather: I know.

Aimee: I'm going to keep that one in my back pocket [inaudible].

Allison Eberle: We have two more questions. If we have another second.

Judge Garrow: Sure.

Allison Eberle: Does ICWA notification need to be done on Article 10 placements with a relative or a DSS does not take custody, but the child is placed out of the parent's home?

Aimee: I would say yes.

Judge Garrow: I would. Yeah, go ahead, Heather.

Heather: We are still removing that child out of their home, even though they're going with a family member.

Allison Eberle: Thank you. And our last one for now, if the parents consent to the removal and placement, does there need to be a QEW hearing?

Judge Garrow: That's a good one.

Heather: Can you repeat that one more time?

Allison Eberle: If the parent's consent to the removal and placement, does there needs to be a QEW hearing?

Judge Garrow: My thought would be it would depend on what the Tribe's position was. That's a good question. If the Tribe is objecting to it... So I see, if the tribe consents- [crosstalk]. Aimee, do you want to... is our phone a friend jumping in?

Aimee: Yeah. Your phone a friend is here again. So, yes. Judge, there's two pieces to this. So the QEW is not, right, ICWA is not based on generally what the parent's preference or position is, right?

Judge Garrow: Right.

Aimee: So yes, a QEW always needs to be included in the proceeding, in every new hearing, right, or stage of the case. And, of course, at that point, if you have contacted the Nation, and the Nation is participating, and has shared a position that says it's not necessary, they are exercising the right to intervene and you can honor that. And as Judge Garrow said previously, if you have not heard from the Nation, you still need to move forward as though this is fully an ICWA case until you hear from the Nation that it's not. So in those instances, again, yes, you would also still want to move forward with a QEW.

Judge Garrow: Okay. That would have been where I would have landed. Thank you.

Heather: Somebody just asked what a QEW is and that is a Qualified Expert Witness, and they have to testify as to the appropriateness of the removal.

Judge Garrow: Yes. And we will get to a little of that. So I think on the slides... And I think we're going until 2:00, is that correct, Heather? I think we've got another-

Heather: Yep.

Judge Garrow: Let's go to the next slide because we'll get to active efforts, which I think always spurs as a lot of questions. And so if we're non-ICWA cases, agencies have to provide reasonable efforts, but in an ICWA case, the state has to provide active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. I think this goes back to even prior to removal the first time, as long as it's not an emergency. During the supervision, are you doing active efforts, or what are you doing to make sure you're providing active efforts? So to place a child in foster care or to terminate parental rights, you

have to demonstrate that they've been done and that they're unsuccessful. And so thoughts on active efforts, Heather?

Heather: No, that's correct. A judge has to make that determination as to whether active efforts have been successfully done. And if not, then if we're in the pre-removal, then if they've proven that active efforts have been unsuccessful, then the judge can order the remand. That's why I always encourage caseworkers to make sure you're documenting your active efforts, what you're doing, because a judge will be looking at those active efforts and what you have done, what have, what has been done, what are you doing to keep this family together? So it's just really important to make that documentation,

Judge Garrow: Right. And I always like, people are always saying, "Well, what exactly is an active effort?" And my answer is, "Well, it's active." And so I always give the example of active efforts is not saying, "Okay, here's your referral to treatment and handing it to the parent and then they have to figure out how to call." So I'm talking about substance abuse treatment. "To call the agency and get an assessment and figure out who's going to watch the kids while I'm gone, and how am I going to get there because I don't have a car?" Active efforts is working with your mom or your dad to figure out how to get them there. And sometimes doing what is often referred to as a warm handoff, helping them meet those people, checking up and following up afterwards. I have a great example. The other day... actually, it's been a couple of weeks now where so we had a mom, a parent, who was doing very well. She's in our Family Treatment Court, but she had been doing super well. Suddenly, used again so had gotten herself in a bit of a pickle, but we thought, okay. And the Family Court was working with her, the county court, and we thought, okay, now she's back on track. But she didn't show up court, to my court, and we were all surprised. And her caseworker, not in my Family Treatment Court, but her case worker with our Tribal DSS, fortunately, was attending our staffing that day. Staffing is before our family treatment, which was a drug court, before our hearing, so we're talking, updating me on the participants. The caseworker was on the phone. Obviously, we're all virtual now, but she was actually driving in her car, and I think she had come from county court. I think that's what she was doing. And she was surprised that this mom had not shown up to my court and she said, "Okay, I'm going right over to her house." And so, as she's talking to us, she's driving over to this mom's house. And I thought that was a perfect example of active effort. She wasn't waiting, just waiting for the mom to check in, but was making an effort to see what the mom needed and to provide whatever rehabilitative services that the mom needed. Do you have any examples of active efforts, Heather, you want to share?

Heather: So I use one very similar to yours, but I'm just thinking about the other ones. It's really just providing services, collaborating with different providers, too, to make sure that the families have what they need. Again, using that warm handoff. Don't just say, "Hey, call ABC agency." "Hey let's call them together, and we'll have a conversation. You can tell them what you need," or "I know somebody there

that works there and works really well with clients." So it's just going that extra mile for clients.

Judge Garrow: Heather, have you every heard any examples where, because the judge obviously has to document it's been done and that they've been unsuccessful. Have you ever heard of a judge saying, "No, that's not good enough. You need to do more," to caseworkers?

Heather: No, I have not. I've not heard that as of yet.

Judge Garrow: Okay. Certainly, I think it's within a judge's right. Certainly, obviously, that's why caseworkers need to document all the things they've done and many case workers go above and beyond, but certainly the judge can. So I see a question. What happens if the judge were to make that finding? Well, I won't speak for any other judges, but for me, it would be, "Let's try again. Whatever it is that you tried," or more likely, "Let's do something different. Obviously, what has worked in the past has not worked, and so is there something else that we have left undone certainly before we terminate parental rights?" And then give the caseworker and the family some time to do that, as long as it's in the best interest of the child. Anything else before we go on from active efforts? I don't know if there are any questions or anything else you want to share, Heather?

Heather: On active efforts? No, I think we touched everything. I don't know if there's any other questions.

Allison Eberle: There are a few more questions.

Judge Garrow: Great.

Allison Eberle: There's one question, what happens when both parents have different Nations?

Heather: Well, it's up to the Nation.

Judge Garrow: I'll jump in and see if Heather wants to the correct me. But it's up to the Nation to claim each as a citizen and some Nations have rules about citizenship, that you can only be a citizen of one. So it can be up to the nation, and if they're eligible for both, it may be up to the parent as to where to enroll the child. Have you had that come up, Heather?

Heather: No. No, I have not had that come up as of yet, but I can't remember where I had this conversation, but we were talking about if there were two Nations involved, the two Nations have to have a conversation as to who is going to be the ICWA intervener.

Judge Garrow: You should send them both notice until it's figured out, though.

Heather: That's right.

Judge Garrow: Even though it's like \$7 to send certified mail now, right?

Heather: I think so.

Judge Garrow: Better to do it now than... Wait, I think there are more questions.

Allison Eberle: There is. What if the child is already adopted, but to a Native American home?

Judge Garrow: Before active efforts?

Allison Eberle: It doesn't say, but there's a follow-up that says the same question, if the child is already adopted, but to a Native American home, but returning him home is causing a rift in the family after residential care.

Judge Garrow: Well, I'm a little confused because if the child's adopted, I'm not sure how you would return it home unless the adoption's being challenged. And I don't know if I want to wade through that one. Heather? We might want to move on to the next question?

Heather: Yeah, I think this one is a little confusing because I don't know.

Judge Garrow: I don't want to give-

Heather: When they say "home," are we going back to the biological parents, are we going back to the adoptive parents?

Judge Garrow: Right.

Allison Eberle: That's the last question for now.

Judge Garrow: Okay. All right. Let's go to the next slide. Oh, here's our second code, which is Sovereignty the number 2. I don't know if you get bonus points if you spell it correctly. Sovereignty is a challenging one. Okay. Aimee, whenever you're ready. So we'll talk about that. An Indian Nation can intervene, and this, again, is from the ICWA legislation. In a state court proceeding for foster care placement or termination, the Indian custodian of the child and the Indian child's tribe has a right to intervene at any point. Heather, you probably have a lot to share about how you see different nations intervening, and also participating in state court, if you want to touch on that.

Heather: Yeah. So I see a difference in participating, so that may not necessarily be a party to the case. They may just want to observe the case and they may attend court hearings. And sometimes a judge may ask them questions, but they haven't intervened at all in the case. Then we have Tribal Nations that actually petition to intervene, meaning they either want the Tribal jurisdiction sent over, or they disagree with the placement, and they really want to make their point, point heard that they

have resources for this child and they want to make sure that the child is going where they're connected to their family and their Tribal Nation.

Judge Garrow: And can you talk a little bit more how state court and judges are receptive to that?

Heather: So some have really good relationships. Some have conversations, they have a good dialogue, they have a good relationship when it comes to affording Tribal Nations the rights under ICWA. Sometimes we see a little... and it's just a different area across the state, it's not just any one area in particular where sometimes a Tribal Nation gets ignored, right? So, it's my office or Aimee, we advocate for the Tribal Nations to have a voice at the table, like, "Hey, this child is ICWA, this is their representative, they have some ideas, they have some resources available for this child. So why don't we hear them out?"

Judge Garrow: Perfect. Thank you. Let's go to the next slide. So also, one of the differences between ICWA and non-ICWA cases is the standard of proof. So for foster care placement, there needs to be clear and convincing evidence, including; and this is where we'll talk a little bit about, you need the testimony of a Qualified Expert Witness; that's the QEW; that the continued custody of the child by the parent or the Indian custodian is likely to result in serious emotional or physical damage to the child. And then, when you're talking about termination, it's beyond a reasonable doubt. And again, you need the testimony of the Qualified Expert Witness. Heather, in your experience, talk a little bit about the QEWs. Who generally is a, or gets called to be a Qualified Expert Witness?

Heather: So sometimes, it is a member of the Tribal Nation. It can be someone who works for the Tribal Nation. It can be a Clan Mother, it can be a Faithkeeper, someone who knows about the child-rearing practices of that Tribal Nation. And I want to make a point here that these may not be caseworkers as the state would recognize a caseworker. They are actually just members of the community. And they may work at Home Depot. But they have a title in the community as a Clan Mother, as a Faithkeeper. So you don't have to have degrees or credentials to be a QEW. You have to have that knowledge of the child-rearing practices and the customs and the norms of the Tribal Nation.

Judge Garrow: And so, Heather, whose responsibility is it to make sure the QEW is there for that specific court day?

Heather: That would fall on the County's part.

Judge Garrow: Okay.

Heather: Or the department.

Judge Garrow: And in your experience, has it had been hard for the Counties to get QEWs?

Heather: Yes. Yes, it has. I was just going to make a little comment. I feel like I'm on the stand right now.

Judge Garrow: Oh, sorry. [Laughter]

Heather: In your experience...

Judge Garrow: I'm sorry.

Heather: It's... Repeat that question?

Judge Garrow: [Laughter] Well, since you are under cross-examination. Has it been hard for the counties to find QEWs?

Heather: Yes. Yes, it has been. For a small community, it might be hard for them to come up with someone to be a QEW. Sometimes members of the community are not familiar with court, don't like going to court. Again, we have to look at the historical trauma with court and governments. Or they just don't have the resources available within their community. So I try to have them reach out to other communities for a QEW. If that doesn't happen, then they can reach out to my office and ask for me to review the case and be a QEW.

Judge Garrow: Oh, so you've served as a QEW?

Heather: I have, yes. Many times.

Judge Garrow: Okay. That's interesting. I did not know that. I would imagine that would be hard. I think we have some questions popping into the chat.

Allison Eberle: We do. There's a few. There's a clarification. "By foster care placements, we mean both foster care and relative care placement?"

Judge Garrow: For the standard of proof, I would say yes. Would you disagree with that, Heather?

Heather: No, I don't disagree with it.

Judge Garrow: I would, yes.

Heather: That's correct.

Allison Eberle: Our next question. "Does ICWA have any application in matters when a child's parents have different Tribal Nations in two different countries, such as the United States and Mexico?"

Judge Garrow: Oh! I thought you were going to go with Canada. Which, around here, is the general. So, well we do have nations that are cut by the US-Mexico border. That is a hard one. Because the United States will only recognize the nations that are in the United States. So my experience is that the courts would only recognize the, for equal purposes, the nation that resides in the United States. I don't

know if you've had any other experience. You've probably dealt more with Canada, Heather, right?

Heather: Yeah. No, we encourage them to reach out to the First Nations in Canada as good practice. Again, they can be a good resource for the child. They can have family that's up there. It might be a good placement for the child. You just never know what could come out of that connection with the First Nation in Canada. What we do, in Erie County, if we have a case in front of us that's Six Nations generally, they are thought of as an ICWA case, just because Six Nations represents the Cayuga, Onondaga, Oneidas. And then, we have those nations over here as well. So it's like they're included in that community.

Judge Garrow: And I think you made such a good point is that, just because ICWA doesn't require you to do it doesn't mean it's not a good practice or even a best practice to reach out to those nations on either side of the border to see what sort of resources or family members are on that side of the border. And certainly, that would fall under active efforts. So next question?

Allison Eberle: "Who qualifies a person as a QEW, the tribe or state judge?"

Judge Garrow: Go ahead, Heather.

Heather: So that's a two-piecer. So the Tribal Nation is going to [laughter] provide you, this person, as to who they deem to be the Qualified Expert Witness. But when they get in state court, the judge is going to put on record that they would qualify this person as a QEW.

Judge Garrow: So the short answer is the nation and the judge should agree that the person's an expert, right?

Heather: Right. Yeah.

Judge Garrow: Next question?

Allison Eberle: So the next few are both on QEWs. "If the child is removed from one parent and placed with another that is also native and tribe and the child, the parent of that child is removed from objects, do we need a QEW hearing?" So if the child that the parent is removed from objects, is a QEW hearing required?

Judge Garrow: Well my thought is, since the child is being removed, you should have the QEW. But I will defer to Heather.

Heather: No. That's a good and best practice to have is make sure that you have a QEW for any removals that you have.

Judge Garrow: Regardless of whether the parents [crosstalk]?

Heather: Correct. Yeah.

Judge Garrow: Next one?

Allison Eberle: And our last question for now. "Does the QEW that the district selects me to be approved by the tribe to ensure that it's an appropriate individual to serve as QEW?"

Heather: Yes.

Judge Garrow: Yes. Absolutely. Alright. Let's go to our next slide. We may not get through all the slides but that's okay. I'm glad we can answer your question. I'm sure we haven't answered all your questions. It feels like some of them are like law school exams. So ICWA does require a placement preference for foster care and adoption. And that's to keep the children with the family in the community of the nation, which is the purpose of ICWA. And so, it applies to involuntary foster care and adoption placements and to voluntary adoption. So let's go to the next slide. So the placement preference for foster care. And the important thing, which is not up on the slide; because I might've done these when I was really tired; is that the nations can change the preference, okay? And so, you should check with your nations. Oh, look! I did put it up there. Okay. But the preference in the law is it should be a member of the child's extended family. Or, if that's not available, foster home-certified, approved by that nation and approved by appropriate social services. Or, if that was unavailable, then it's Indian foster home-certified or approved by an authorized agency. And last is the institution for children approved by the nation or an Indian organization, which has a program to meet the needs of the child. Heather, do you want to add anything?

Heather: No. I mean, that's pretty much it. I mean, if you really take a closer look at this list, right? It doesn't give you an option for non-Native placement that's not approved by the Nation.

Judge Garrow: Good point.

Heather: So you really, what I encourage the caseworkers to do is just make sure you're documenting that you've reached out to all of the child's extended family and they were not willing or able to take the child. You really just have to document why this placement preference was not adhered to and as to why you placed, where the child is placed, if it's not in one of these preferences.

Judge Garrow: Excellent. Thank you. Do you, working with the nations, do you see many changes in the preferences?

Heather: No.

Judge Garrow: Okay.

Heather: They usually follow this right to the T.

Judge Garrow: Okay. And I understand. Well because generally, the preference is always, keep it with a member of the family.

Heather: Mm-hmm (affirmative).

Judge Garrow: I saw some questions popping in. Anything on the preference?

Allison Eberle: There's a question here that says, "If a youth was adopted outside their tribe into a non-native family, and following that, the child ends up in placement, do you still need to notify the tribe?"

Judge Garrow: Yes. Because the child's still native. Disagree, Heather?

Heather: Nope, I don't. That's correct.

Allison Eberle: So there's a follow-up to that that says, "If, when doing that family history, there is no information that ICWA was part of the adoption process and you're unable to get confirmation with the place and county that ICWA was followed, are you still obligated to inform the tribe?"

Heather: Yes.

Judge Garrow: Yes. Yes. Doesn't matter if it got screwed up before. And hope nobody sues. Let's go to the next slide. So this is an adoption, member of the preferences, member of the child's extended family, other members of the nation or other Indian family. So Heather, I love your, there's no non-native preferences. And that's the whole purpose behind ICWA is to keep families connected. Would encourage you, if you haven't already, to watch some of the amazing documentaries that are now being produced. Blood Memory is one of them. Dawnland. And just talks about people who have been removed pre-ICWA, sometimes post-ICWA, where it wasn't followed, and the devastating effects that had on them, not being a part of their culture and not understanding who they are. And it's so important. Anything you want to follow up on this, Heather? About adoption?

Heather: No. I mean, when again, with caseworkers, we're documenting, we're documenting. I have, when we've had an issue where a child was up for adoption, I reached out to the other nine Tribal Nations to see if they did have an adoptive resource. So if there's ever where you're at a point in a case where you cannot find another Indian family, don't feel, reach out to me. I will reach out to the other nations for you to see if they have adoptive resources. If it comes that they don't, then they don't. And then, we're going to look for the best interest of this child to stay in the community where they're at.

Judge Garrow: Perfect. And let's go to the next slide, which I think is the last slide. Yes. So just as a wrap up, because then, we might have some more questions. But a lot of people ask, especially when I was teaching law school, "Do we still need the Indian Child Welfare Act?" And one, it's still good law. And just for those of you who might

have questions about Brakeen, which I'm not going to talk about, but that's not in our district or not in our circuit, and so, it doesn't apply in New York State.

And there's so many examples of still, the need to protect Indian families. This is just a couple studies. They weren't done here in New York but they were done in urban areas, noting that 1% are of American Indian children, also Alaskan Native children, are investigated for maltreatment. And 3% are placed in out-of-home care. And that percentage was still higher compared to non-native children. And then there was this urban study also that the American Indian and Alaskan Native children were two times more likely to be removed, despite the caregivers of white children who were slightly more likely to have drug and alcohol abuse problems. So when the non-native or the white families were presenting with drug and alcohol problems, they were given the resources they needed and the children were not removed but the native children were more likely to be removed. So we still need the Indian Child Welfare Act. Certainly, the class action out in South Dakota has demonstrated that many state courts are not providing the protections that the Indian children and families and nations still need. So, Heather, anything you want to say before we take the last few questions?

Heather: No. I think that sums it up well, that it's definitely still needed.

Judge Garrow: Okay. Do we have any other questions? I think we've got five minutes left before...

Allison Eberle: Yes. "Since ICWA is a federal statute, does it only apply for federally recognized Nations?" The example given here is the Shinnecock Nation is federally recognized. However, the Poospatuck Tribe is only recognized by New York State". And I do see here, Charles shared some state law. Thank you, Charles.

Judge Garrow: Yeah. So, and this is one of the, and I'm sure... And Heather, if you want to add, too. But so, some of the laws in New York State have extended provisions of ICWA too, the state recognized. So that will differ according to state, whatever state you happen to be in. I didn't know if you want to add anything, Heather?

Heather: Yeah. I mean, since we recognize a state-recognized Tribal Nation here in New York, we also recognize state-recognized Tribal Nations in other states.

Judge Garrow: Oh! Has that happened very often?

Heather: Sometimes, it does. Mm-hmm (affirmative).

Judge Garrow: Wow! We've never talked about that. Okay. Next question?

Allison Eberle: "If notice was not given to a tribe, does the tribe have standing to pursue a wrongful adoption proceeding?"

Judge Garrow: Read that one more time?

Allison Eberle: "If notice was not given to a tribe, does the tribe have standing to pursue a wrongful adoption proceeding which granted the adoption?"

Judge Garrow: I would say yes. Heather?

Heather: You said no?

Judge Garrow: No. I would say that they could pursue wrongful adoption. There's a provision in ICWA that you can challenge the adoption.

Heather: Right. And that's what I was going to say. I think the timeline is two years? Like you can invalidate it before two years? Mm-hmm (affirmative).

Judge Garrow: Yes. Yes.

Allison Eberle: The next question. "In your experience, does the DSS caseworker typically testify at the QEW hearing as well? As the QEW, are you usually provided with CPS notes to review before you testify?"

Heather: That's a very good question. When I, in my experience, when I have testified, it's usually just been myself. And you, as the department, the department should be affording the QEW all of the notes on the case, the progress notes, the hard notes, because they have to be able to have an informed opinion and they can't do that without collaborating with the county.

Judge Garrow: Probably have time for one last question.

Heather: Mm-hmm (affirmative).

Allison Eberle: Our last question; which the answer is yes; "Is it possible to get a copy of the slides?"

Judge Garrow: Yes! The answer's yes. Did we win the million dollars? We got through all the questions.

Allison Eberle: The final question is, "Are, both Judge Garrow and Heather, are you sharing your contact information for specific questions?"

Judge Garrow: Go ahead, Heather. Sorry. I didn't mean to interrupt.

Heather: You can find my number right on the OCFS website. You can Google my name. All the OCFS information comes up to contact my office.

Judge Garrow: Yes. You can have my contact information. I can probably type it in the chat maybe. Because I don't think I put it on the slides, but I can put in my email in the chat. And I'll probably just refer you through Heather.

Aimee Neri: We're happy to share those, too. We will be sending out, everyone actually should know, please expect to receive, in the next few days, an email that will include a PDF

version of the slides. It will include the evaluation for today's training that we are asking everybody to please, please fill out. It's very important for us, in terms of our continued funding, as well as ensuring that the programs that we are providing are, in fact, useful. And when we do that, I will ensure that we have both Heather and Judge Garrow's contact information included in that email.

Judge Garrow: Thank you.

Trista Borra: Well, it is 1:59. So I would like to say thank you so, so much to Judge Garrow and to Heather LaForme for being with us today. And thank you to all of you who have participated in today's training. I thought that the questions coming in were very, very important questions. And it allowed for some very rich dialogue.

And remember that there are three more presentations that are coming up. The next one is on May 5th, which will be the documentary viewing of Unseen Tears. On May 6th, we have a panel presentation with members of various Nations where New York State is situated. And then, finally, in May; I apologize; on May 19th, we will have one final presentation specifically with Judge Garrow and Heather LaForme, talking about the application of ICWA in Article VI cases, in Article VII cases, and also in private adoption cases. So be sure to register for those as well, if you have not. And we look forward to continuing to be with you throughout the next several weeks. Thank you, everyone.