

Housing and Active Efforts Under the Indian Child Welfare Act

Host

Lee Romney

Speakers

R – Rachel Veiga

V – Vevila Blossoming Bear

K – Kimberly Cluff

R: You're gonna turn right up here on Grange Road..(Oh I see). Yeah. So we can still buy land. It is expensive and then for housing if we have fee land, so if we purchase land and it's not in trust, we have to abide by the fair housing laws, and so we can't do tribal preference. We could be, in theory, buying land, building housing, and then not able to rent to or sell to any of our tribal members – until it's put in trust. L: And that can take years? R: Yeah, putting land into trust can take years...

California's Indian Country is experiencing an acute [housing shortage](#). Landless tribal members, including those [living in dense urban areas](#), aren't faring any better. The barriers to solving this crisis are many – and the historical roots are deep.

V: Our current problems with homelessness and really all of the challenges tribal communities face with high disparities are directly tied to colonization and the action of government and local communities since Euro American settlers came to this part of the country.

I'm Lee Romney, the host of this Judicial Council of California Podcast. Today we'll be diving into the topic of housing insecurity, and how it impacts tribal families involved in the child welfare system – or at risk of

involvement. We'll also be exploring how state courts and county child welfare workers can do better to make the search for suitable housing a more central part of 'active efforts' under the Indian Child Welfare Act.

K: When it comes to things like, what does a healthy and safe housing situation look like for this family, even if it doesn't meet your standard, trusting the tribe is incredibly effective.

Over the next half hour or so, you'll be hearing from staff of the Trinidad Rancheria in Humboldt County about some new *state*-funded housing programs. That voice you heard at the very top of the piece was housing director Rachel Veiga, touring us through the rancheria's patchwork of aging tribal housing. Vevila Blossoming Bear, the first-ever tribal liaison to the California Interagency Council on Homelessness, will be giving us an overview of the housing crisis. And Kimberly Cluff, legal director of the California Tribal Families Coalition, will dig into the various ways that housing instability plays out in ICWA cases – and what courts and counties can do better. We'll get started with Vevila, who's taking us back to 1851, the heat of the Gold Rush. Because we can't fix our present without understanding our past.

V: There were negotiations between government leaders and California tribes to negotiate for different lands that the tribes would be safe in given the settlers coming in.. and they did not make good efforts to consult with the right people, they did not confirm they knew the language.

Those government leaders [took the treaties back to the U.S. Senate](#) but California business interests objected to the tribes having any land at all

V: So they hid the treaties and did not tell the tribes that they had not been ratified and many of those tribes had already resettled in the communities promised to them. They then hired militias to kill the natives and kidnap their children. And we see things like this

throughout all of the history since EuroAmerican settlers have come to California.

After the double cross and the massacres came forced removal to reservations and many efforts to stamp out Native culture and take over ancestral Native lands. Among those, a full century later:

V: The [1956 Relocation Act](#)

It was federal law. The stated intent: to encourage Native Americans across the U.S. to leave their reservations, acquire vocational skills, and assimilate into the general population.

V: Tribal members were promised moving expenses, assistance locating housing, vocational training and health insurance. However they were told they had to leave and could not return to their dissolved reservations.

More than 200,000 Native people were settled in California cities including Los Angeles, San Francisco, Oakland and San Jose. That's why large inter-tribal communities remain in these urban centers, severed from their ancestral lands.

V: This Act resulted in a loss of traditional family supports, homelessness, unemployment and poverty because of course what they said the goals of the act were, were not realized.

Today's housing crisis grows out of that history. You should know, Vevila has worked in tribal advocacy for a long time.

V: My people are from the Choctaw Nation and I'm an individual with lived experience in homelessness, and I'll just add, I'm also a former foster youth and I've been working in ICWA in different contexts for over 20 years now as well. So I wear some different hats in the community.

Vevila's personal journey is not an uncommon one for Native people.

V: I can recall times that I would find shelter in abandoned vehicles. I remember being hungry. I remember having to stay with people that were not good influences in my life and were not helpful for my circumstances because I had nowhere else to go. I had another experience of homelessness that was simply staying with family where there wasn't room for me, but they made room because we didn't have a place to stay.

Her experience was intergenerational.

V: I've observed my dad for a time living in his vehicle, my mom lived in a tent. She found a safe place where she could be in her tent and stayed there for awhile.

The search for affordable housing, Vevila points out, is stressful even for those with full time jobs.

V: It's much more challenging for our families involved in the child welfare system, and we'll see counties have safe housing in their case plan and yet not provide housing services to support that family...

...even though that housing is often critical to successful reunification.

V: What we know from the research is that if people do not have a safe space for housing, then getting adequate nutrition, getting adequate treatment, I mean simply having the safety in your own home to get sleep, all of those things are less likely to happen. How can one heal, particularly if they're attempting to create big changes in their life in a brief period of time, without a safe space. It seems impossible.

Vevila's current role – tribal liaison to the CA Interagency Council on Homelessness – has existed for a little over two years. It grew in part out of a truth and healing council created by Governor Gavin Newsom and what Vevila describes as an unprecedented effort by his administration to engage with tribal stakeholders – and create policy based on their direct input. Vevila now oversees the [Tribal Homeless Housing, Assistance and Prevention](#) program, known as Tribal HHAP. It's been channeling about 20 million dollars a year in grants to tribes and rancherias across California to address homelessness and the risk of homelessness. It's a big deal – and it barely begins to address the vast need.

V: What we know is that California tribes and Native Americans have the highest disparities of homelessness.

Five times the rate of the general population, according to available data, but,

V: we know it's actually much higher than that, because data collection has not really occurred with California tribes due to a lack of engagement and inclusion. When Native Americans are surveyed, for example, if they enter a continuum of care homelessness response system, I will say we've received reports about them being told to go back to their tribe and get services. Or being marked the wrong race.

As for tribes,

They have less resources and more barriers than local jurisdictions to resolve homelessness. And they're rarely included in local homelessness solutions.

Those barriers can include a lack of basic infrastructure

V: Even like access to water. We've received stories about polluted lands, the complicated laws around land ownership, land that is

undevelopable, not having any land to build upon in the case of landless tribes. Many tribes lack a housing and lending market, and non-Native businesses will often not work with tribes.

For all these reasons, traditional government funding for housing is often out of reach. The Tribal HHAP grants, in contrast, have allowed tribes to get creative about how to solve their own unique problems. The program's still new, but projects in the works reflect that creativity.

V: Some have chosen to acquire new land so they can build new housing or shelter-like structures. We've had applicants propose renovating buildings. There was an old building that provided like at least 60 rooms that could be equipped with bathrooms and they're going to transform that into a youth center with wraparound programs for the youth. There are programs that provide interim housing and case management services, wrap around services to include medical and everything. There's a project that includes tiny homes with solar energy and they're purchasing an electric vehicle for transportation cuz you know they're in an isolated location.

The grants were structured to make sure that tribes get to define what housing insecurity looks like in their own communities. It's not clear how many grantees are using these funds for child welfare-involved families, Vevila said, but they *can* and we know that some are.

V: They may not name, with their proposals with us, this is specific for ICWA families, but we know it can go to all their families.

Another state-funded program called [Bringing Families Home](#), specifically aims to reduce the number of families in the child welfare system experiencing, or at risk of experiencing, homelessness. The goals: to prevent child removal and foster care placement and increase family reunification. Bringing Families Home was first funded back in 2016 – mostly to cover rental subsidies, deposits and other housing costs until families get on their feet. It's been open to all counties and tribal

governments, but tribal participation only recently took off – after a set aside specifically for tribes made the process easier. Dollars have flowed to [two dozen tribal grantees](#), including the Trinidad Rancheria. Let's get back to our tour with Rachel Veiga.

Bring up Ambi: It's so pretty out. It's gorgeous. (Dip down)

I'm with Laura Woods, a Yurok tribal elder who's my research assistant on this project. The Trinidad Rancheria's housing office is in McKinleyville, close enough to the coast to catch the ocean breezes. Rachel has been the housing director for a couple of years and we ask her to show us some of its limited tribal housing stock.

Ambi: Laura, this may seem odd, but maybe I'll sit in the back with Rachel? Laura: OK. I'll be driving Miss Daisies? Yes. (Hahahaha) ... Laura: I know where Yurok tribal housing is and I'll know where Trinidad tribal housing is (R: yeah). Lee: Laura has told me about just the waitlist for Yurok tribal housing. You know how long yours are? R: We just recently opened the waitlist like when I started so I think we have 15 families on it right now, but uh, I mean there's a much greater need than just that. L: Yeah people probably know that there isn't enough so they probably don't get on the list. R: Yeah (Dip Down)

The Trinidad Rancheria has 82 acres of trust land scattered across three communities – and 45 tribal homes – all of them built in the 90s and the majority still occupied by the original families. Many are elders now, rattling around in too much house on large lots that require upkeep. The properties are showing their age.

R: So this one on the left is one of the ones that we just did a renovation on, that was pretty much a total gut ..and then this house right up here on the left, we just redid that roof for them. Roofs are really preventative because you have a roof leak and then you know it turns into floors are rotten, all of that kind of stuff.

Rachel points out two more of the McKinleyville homes that need total rebuilds. County permits aren't required on trust land, which is a cost saving, but in these cases they were built without foundation venting and the floors are caving in from rot. The trust land up in Trinidad is in trouble too.

R: It's beautiful and the views are incredible and there's land erosion and so some of the homes are sloping pretty heavily, falling into the ocean and so we're having to look at stabilization of sloping, (Fade here) replacement homes, relocation all of those kinds of things.

We took you on this tour because it's important to understand just how limited tribes and rancherias are when it comes to solving their own housing issues – issues created by historical displacement and deception. For families involved in the child welfare system, the Trinidad Rancheria's fully occupied and aging housing stock is currently not an option. The rancheria does have 12 acres left of forested trust land – and hopes to build out more diversified housing, including smaller units and multi-family homes, to meet the needs of tribal members at *all* stages of life. That includes installing utility and other infrastructure, which will be expensive. As for acquiring and developing new land, as Rachel said at the top of the story, it takes *years* to put land in trust, and if it's not in trust, it can't be promised to tribal members. Given all that, the Bringing Families Home program – administered by the state Department of Social Services – was a golden opportunity. Back in the office, we sit down to talk about it.

R: Bringing Families Home was the first tailored program for us. Before I started, housing was really handled on a case by case emergency basis and mostly focused on the tribal housing that is existing. So we didn't have any rental assistance, rental subsidy. We didn't have any programs like that.

Rachel says, the fact that the program permits tribes to use their own definitions of homelessness has been a huge help.

R: We don't necessarily have a high population of people who are literally on the streets. But we do have a high population of people living in overcrowded homes, living in substandard homes, staying with family or friends. So to be able to adopt our own definition made it possible for us to provide assistance to people that maybe would fall through the cracks under traditional funding.

Her office uses funding from Vevila's even more flexible program – Tribal HHAP – to enhance the small pot of Bringing Families Home funds. They've assisted about a half dozen families so far involved in the child welfare system or at risk of involvement. But hurdles remain. Michael Howton, the rancheria's housing case manager, is sitting with us, and he nods his head as Rachel lays it out.

R: Mike has been doing a lot of outreach with property managers and landlords. From the tribe approaching landlords there's still a lot of, quite frankly racism and stigma around tribal members. And we have had landlords say, oh well we've worked with such and such other tribe before and that didn't work out, so we're not willing to rent to a tribal member.

That, of course, is illegal. But it still happens. And in this market, landlords have the upper hand. Tribal members who need housing in order to reunify with their kids have a hard time competing.

R: Just to speak a little bit to the housing crisis here in Humboldt County, I mean housing is really tough. We have the university here that is now growing at a rate that they can't even support the housing needs of all of their students. And then we have this outside community who's also looking for housing. We're having to look a lot outside with landlords, property management companies, and it's a long process. So if housing is something that people need for their child welfare case, that's a huge delay. And I have seen not in this position but in my previous position where they've done everything

that they need to do in their case to get their child back but they don't have safe and suitable housing and so child welfare can't return their child.

As the search goes on, some of those families bump up against statutory [time limits](#).

R: You know you get to 12 months, you get a six month extension. Eighteen months in. Eighteen months is not an obscene amount of time to be looking for housing around here, especially for people who, maybe their credit's not the best, they maybe don't have too high of an income. You know, they have a lot of things working against them. Eighteen months is not really that much time. That can have a huge impact on reunification. L: Well cuz if they max out that timeline, they lose their kids! R: Right.

Given those challenges, Rachel says there are things the county could do to help. For example, outreach to landlords and property managers on behalf of the rancheria, or direct assistance with rental subsidies — from the county's much larger budget. As for county child welfare workers, Rachel says they need to make the search for appropriate housing a top priority right out of the gate.

R: If you're removing a child and at the time of removal you can see, you're not gonna return a child to this living situation. Starting then to look for housing, to work on housing. I understand you gotta triage and do what's most necessary first, but put housing on that list of what is most necessary first. Because you can't be six months into a child welfare case and say ok, everything's looking good. We want to start doing unsupervised visits, and they don't have anywhere to do an unsupervised visit because you won't let them do an unsupervised visit in the home. Or you can't do overnights because there's nowhere to do the overnight. Housing in that way has a huge stall on the progress of child welfare cases.

Michael Howton is the rancheria's one-man show when it comes to housing stability, broadly defined. He does everything from help fill out rental and employment applications, to replacing vital documents, seeking out public assistance that tribal members might be eligible for, reminding them to pay their rent. And, he is *the* go-to for housing searches.

M: It really is just scouring every place that has any kind of housing listing, whether that's craigslist. There's a really great website that has like 15, 16 links to property management websites where you can look at all those, so I check those pretty much every day.

Ambi: Gotta remember my password, (typing sounds)

I follow Mike into his office, where a big white board is covered with his notes on families in need, including number of children under 18.

M: This person has three dogs, needs a lot of space, doesn't have income from work..

He picks up the phone to follow up with a property management company that hadn't returned his call from the week before.

(Ring)

And winds up on hold.

(Music) M: Lots of holding music in this job...

When he gets the right guy on the phone, he makes his pitch.

M: Hey, I called and left a message I think on Thursday.... (dip)

It's a four-bedroom house in Arcata. And Mike explains that he's already submitted an application – for a family of four from the Trinidad Rancheria who are part of the Bringing Families Home program. Then he gets the bad

news. The property manager says he's already offered it to a group of students from Cal Poly Humboldt..

M: If anything becomes available, feel free to give me a call. (ok) Awesome. L: College students? M: Yup college students. That's pretty common, especially you know that one it's probably walking distance (fade) from the college.

Before we pivot to the Indian Child Welfare Act, I want to stress: Nobody expects bench officers or county social workers to solve California's housing crisis. But clearly tribes can't do this alone. [A new round](#) of Tribal HHAP funding, deeply appreciated by tribes, will be awarded near the end of 2024. But future funding may be at risk due to the state budget deficit. And Bringing Families Home, well, right now there are no plans for another disbursement. Beyond that, ICWA experts point out, it's the county child welfare agency's responsibility to employ "active efforts" to keep families together and to work towards reunification. Kimberly Cluff is legal director of the California Tribal Families Coalition – which represents about half of the state's 109 federally recognized tribes in ICWA cases.

K: When a tribe, say, has a housing program, and a family in front of the court has a housing need. It's very tempting to say to the tribe, hey, tribe, get housing for this tribal family. And the tribe may be like, yeah, we'd like to get housing for the tribal family. We're working really hard to do that. We're trying to build these programs, and everyone kind of is like, That's so great. The family is a tribal family. They're in state court and the tribes got this housing program. There's a fundamental flaw with that. It is the county's responsibility to house that family. It is not the tribe's. It's a flaw that we fall into almost in a way that we're trying to be collaborative. And if you really pull that apart, it is the shifting of the burden of active efforts over to the tribe. And that is unacceptable. And housing is probably the place in which that is the most destructive because it is the hardest, most expensive of the resources, not to say that mental health care isn't also

expensive and very needed. But at least there's a federal funding stream like Indian Health Services.

Listening to tribes and trusting that they know their families best, however, is key, Kimberly says. To appreciate these distinctions, it's helpful to reflect on some of the demands that social welfare agencies made of tribal members [before the passage of ICWA in 1978](#).

K: You know, you have to have indoor plumbing, it's not safe for your children to use outdoor plumbing, or you must have electricity, or your kids have to go to school every day. Or you need a job in order to support your family. That's the list of things you need to do -- and then you can get your children back. And a kind of typical native parent might have said, well hold on a second, I don't have indoor plumbing, because the federal government built this housing and built it without indoor plumbing. And the federal government runs the school buses and the school and they don't send the bus anymore. And the unemployment rate on my reservation is upwards of 80, 90 percent. There are no jobs. The things they told them they needed to do were impossible to accomplish. And then the services that might have been provided to a parent to say, well, we'll help you, would be totally ineffective, ineffective one because they didn't work in a tribal or reservation land context, and ineffective because they didn't reflect the background, the history of the family, and the culture of that family.

Another example that remains problematic to this day:

K: Intergenerational housing, intergenerational family living, where a standard might be that you can't have children of opposite genders in the same bedroom. But you have families that live intergenerationally with lots of children in a single bedroom, and that's consistent with tribal culture and tradition. And yet it conflicts with some rule or regulation of a county.

The legal concept of “active efforts” grew out of these cultural clashes when ICWA was crafted.

K: Congress said, Alright, we're going to try and make sure that the services that are offered to families so that they can have their children either maintained in their home or returned if they'd been removed, actually help the family in an authentic and real way.

[Active efforts](#) versus the standard for non native non-ICWA cases, which is reasonable services.

K: Active efforts are meant to be services that go directly to the issues that are presenting in that family, and done so both through consultation and work with the tribe, and through the lens of what's going to help that native family on an individual basis.

Poverty, homelessness or unstable housing, it's important to state, are not reasons in and of themselves for child removal, which they absolutely were prior to ICWA. But, Kimberly says, the need for stable housing is still one of the top three issues that comes up regularly in court in ICWA cases. And, she says, the rush to comply with the case plan and check off that housing box can often undermine recovery and reunification.

K: There may be a housing resource that is available in the traditional lands or in the area where a parent in a case would like to be. There's two things that so often are missing. 1. Transportation. 2. Wi Fi or cell reception. So for example, agencies give parents cell phones and say to parents check in with me, and I'll tell you when your visit is. If the parent has accepted housing in an area where there's limited cell reception, they're essentially trading housing for visitation. And visitation is a cornerstone of reunification.

As for transportation – In remote rural areas, there's often what's called a 'Last Mile' problem, where public transportation stops a mile or often much farther than that from where a person lives or is trying to go.

K: So let's say we have a person who has a housing resource, but they don't have the transportation and the public transportation won't allow them to get close enough to be safe.

In many of these rural areas,

K: you also have a tremendous problem of missing and murdered indigenous people. And guess what is a really tremendous danger for Native people in rural areas – hitchhiking (L: oh yeah) and not having cell service. Right. You combine these things, and you end up making a house that might be available, really not available. So thinking about what it takes to surround an available housing stock to make it accessible, usable and safe for a family, I think also is sometimes overlooked.

What's needed as part of active efforts, she says, is a more integrated approach that links housing to access to family, to culture, to transportation, child care and other treatment services. In urban areas, where so many Native people were relocated in the 1950s, that could mean finding housing close to an inter-tribal cultural center.

And, Kimberly suggests, more flexibility is needed when it comes to housing that's excluded by certain county rules and requirements.

K: A family may be able to live intergenerationally. So you might be able to take a young family and they can live with, say, uncle or aunt in a home, except for that uncle has an old criminal history, and therefore that home is unable to accept. So you can't have mom who's trying to get her kids back live with uncle who might be a wonderful support system. In fact, he might be a better support system, because he's been through the system and he might be clean and sober, because he had some criminal past... And so maybe another area where we can be wiser and do better by these families is to think about, you know, what are the, for lack of a better word I'm gonna say

dumb rules that we can say, for this family, we are going to have a waiver of that provision, we're going to allow the system or the bench officer to have discretion.

In fact, under recently updated regulations for foster care or adoptive homes for Indian children, tribes can make their own determinations about what is safe and suitable. [Tribally Approved Homes](#).

K: Now if we could take that and expand upon it, and take Tribally Approved Homes concept to helping parents with finding their own housing, that would be really empowering. And of course there needs to be partnership in that.

Other legal changes might also be necessary to bring us closer to solving the housing piece of the puzzle. Because when housing is so hard to find, Kimberly says, those child welfare timelines just don't make sense.

For example, I could see a universe in which you say, oh, we're going to look at the community where the family is, let's say, a point system, right? They are a five on lack of housing, and they are a five on lack of transportation, and they are three on lack of, of mental health treatment, oh, their score is quite high. In that demographic, or that geographic region, we're going to give them 24 months. You know I do think that we're getting to the point where there will be a broader conversation about rethinking those time limits. And I think that tribes would do really well, to speak up in that conversation, and insert the concept of active reunification services to Indian families are inconsistent with the idea of time limited services.

That's it for today's Judicial Council of California podcast. I'm Lee Romney. A big thank you to everyone who participated and to Yurok research assistant Laura Woods. You can go to the script to see links and other resources.

Resources

- [Tribal Homelessness/Housing Funding Opportunities Overview 2023-2024](#) (source: California Interagency Council on Homelessness)
- [California Tribal Housing Needs and Opportunities: A Vision Forward](#) (August 2019 report by California Coalition for Rural Housing/Rural Community Assistance Corporation)
- [Native Data Sovereignty Can Address Data Gaps and Improve Equity](#) (source: Urban Institute, 2022)
- [Defining Active Efforts in the Indian Child Welfare Act](#), by Judge Leonard Edwards (ret.) (source: The NAAC Guardian, Vol 41 · No 01 Jan/Feb 2019)