

procedural reforms do not go nearly far enough to address the real concerns that are denying the placement of needy children in permanent loving homes.

I will reintroduce substantive legislation that is similar to the language that the House passed last year; however, in an effort to make a very good faith compromise, I will remove many of the provisions of this legislation that are objectionable to the Native American community.

This new bill will not address retroactive membership in a tribe, nor will it require adults to give written consent to become a tribal member. In addition, a provision that the tribes felt would limit their ability to appeal will be deleted.

The language that remains will codify into statute the law applied by many State courts known as the "existing Indian family doctrine." Under this doctrine the ICWA does not apply to children who do not live on a reservation unless at least one parent of Indian descent maintains significant social, cultural, or political ties to the tribe of which either parent is a member.

It is this doctrine that has been applied to the *Rost* case by the California court of appeals. The U.S. Supreme Court denied the petitions that asked for a review of this decision, indicating that the court accepts the application of this doctrine as a correct interpretation and application of the ICWA.

Codifying the existing Indian family doctrine into law is a good first step toward reforming the ICWA that should have the support of all parties interested in the law's preservation.

I continue to look forward to working with the committees, the Native American community, and all interested parties to improve the ICWA so that it can work to protect the rights of children, the Native American tribes, and all adoptive families.

Thank you very much for this opportunity.

Mr. Chairman, as you know, I am not alone in my support to reform the Indian Child Welfare Act in the House, along with what we did last year. My colleagues, Jerry Solomon and Todd Tiahrt share my views and are dedicated to this issue. And I understand Congressman Tiahrt has already submitted his written testimony to the committees, and with your permission I would like to submit Congressman Solomon's testimony to be included in the record.

The CHAIRMAN. Without objection, that will be included.

Ms. PRYCE. Thank you very much.

[Prepared statements of Ms. Pryce and Mr. Solomon appear in appendix.]

The CHAIRMAN. Let me ask you a couple of questions before I turn to my colleagues.

Ms. PRYCE. Yes, sir.

The CHAIRMAN. Just for my own information, how old was the Poco youngster to which you referred, the Rost child?

Ms. PRYCE. How old were they? They, I think, were—they were not infants, but they were just months old when they were adopted.

The CHAIRMAN. They're still in the legal custody of their adoptive parents now?

Ms. PRYCE. Yes; they are in custody of the adoptive parents.

The CHAIRMAN. Would this pending legislation that we're dealing with today not have corrected that problem with those particular adoptions had it been in place?

Ms. PRYCE. There are some who would argue that it would, but it still leaves it open to court interpretation, and that's the problem, Mr. Chairman. Courts are all over the board on interpreting this law, and it just needs shored up.

And the changes made in these two bills are—I think just further complicates it, as opposed to simplifying it, and it just will lead to further and further litigation.

The CHAIRMAN. Yes; in your opinion, other things being equal, is it better to place a child with a member of its close or extended family for either foster care or adoption, would you think?

Ms. PRYCE. All things being equal, I think it is better to place the child with a member of its family, if that doesn't also include bouncing through foster care for years and years and years.

The CHAIRMAN. You apparently feel this does not go far enough. I was wondering, when we deal with State courts, State adoption proceedings, would that conflict with the Federal regulations about who is determined to be an Indian or who is not, which currently leaves it to each tribe?

Ms. PRYCE. That is correct. No, I don't believe it does, sir. I don't think this touches that issue. Now, you'll hear testimony later on today that says it does, but this doesn't change that portion of ICWA at all.

The CHAIRMAN. Under your bill would it?

Ms. PRYCE. No.

The CHAIRMAN. It would not. Okay. Thank you. Chairman Young, did you have some questions?

Mr. YOUNG. Thank you, Mr. Chairman.

Congressman Pryce, I have information that the Rost family does support my legislation. I know we discussed this before and there will be testimony to that fact later on, so they apparently feel that this would have taken care of the problem. I understand your feelings about it.

The only thing—I read in your testimony and also listened to your testimony. I'd like to remind you that, being one that was involved, that ICWA was originally based on a government-to-government relationship, and that's what sovereignty is all about. It's not about the Constitutional rights of any one person unless it comes under the doctrine of the American flag. This is a country-to-country relationship.

We reviewed that. In fact, the Department of Justice will testify later. And at the time we wrote this act, we reviewed the 14th amendment very closely, and it was the opinion of the Justice Department and the opinion of this Congress that, in fact, it was a country-to-country relationship and not individual-to-individual.

So, although I respect your belief and what you're trying to do, I hope you don't base your total argument on that premise, because I don't think it will hold up in the courts, nor will it hold up with the Justice Department or with this Body, itself, because we did do this when we wrote this legislation.

Ms. PRYCE. If I might comment.

Mr. YOUNG. Yes, go ahead.

Ms. PRYCE. I understand that, sir, and I believe you are correct in that respect. My greatest angst comes from the fact that if we allow these situations to continue and these horror stories to keep appearing in the press, that the very good parts of ICWA—there will be a public outcry to have the whole thing repealed. There already is that movement over in the House, as you are well aware. I do not want to see that happen. And—

Mr. YOUNG. I appreciate that very much. The thing that I'm concerned is that this is a classic example of a bill that was written correctly, I believe, that had some weaknesses which we did not see, some lawyers that were not too scrupulous, and consequently we've had a problem.

But when we get to the horror stories, I've lived through the horror stories—

Ms. PRYCE. I know you have.

Mr. YOUNG [continuing]. In the previous years before we had ICWA, the reason I got involved in this, and I watched whole groups of people being expropriated out of their community and no one really knew what was going on. This was the reason ICWA was created.

I'm going to—I think my legislation is pretty well construed, and I want to thank the chairman. And we'll just have to debate this on the floor and debate it in the communities and see what's correct.

But I hope we have the one goal in mind, and what I hear you say is to try to make that work better.

Ms. PRYCE. That's right.

Mr. YOUNG. But also keep the premise of the act as we originally passed.

I thank you for your testimony.

Thank you, Mr. Chairman.

Ms. PRYCE. Thank you very much.

The CHAIRMAN. Vice Chairman Inouye, do you have any questions?

Senator INOUE. Mr. Chairman, may I commend Chairman Young for his statement and observation.

Many Americans, including myself, find it very difficult to, at times, understand the scope and the importance of Indian sovereignty, and that is what is involved in this case.

For example, I note that today many Americans are going abroad—in fact, two of my staff people have gone as far as China to adopt their children. I commend them for that. But they found that, in both cases, they had to comply with the laws of China. It mattered very little as far as parental consent was concerned. In every case, the parents consented, but the Government had to say yes or no. That is the nature of sovereignty.

The other matter that Chairman Young brought up I think is very important to the matter before us. On the matter of the 14th amendment, I think that has been cleared. I am certain you will agree that the status of an Indian tribe is not a racial classification; it is a political and legal one. Our relationship with Indian country is, as Chairman Young put it, country-to-country or nation-to-nation or government-to-government, and I believe that is what the act was premised upon.

So I hope that we will keep those matters in mind as we proceed here.

Thank you very much.

The CHAIRMAN. Without objection, what I'm going to do is go back and forth from side to side.

Senator McCain, did you have any opening statement or questions of this witness?

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

Senator MCCAIN. Mr. Chairman, I would like to have my opening statement be made a part of the record, if I may.

The CHAIRMAN. Without objection, so ordered.

[Prepared statement of Senator McCain appears in appendix.]

Senator MCCAIN. I'd just say I want to thank Congressman Young, Chairman Young, and my dear friend, Dan Inouye, and others, and you, Mr. Chairman, who have been involved in this issue. It has been a terribly frustrating one for me personally, as well as the Indian community, because we were able to, thanks to a lot of people, get the tribal attorneys—the adoption attorneys together and tribal representatives in what was an agreement that was, we believed, entirely acceptable. We passed it through the Senate here, as you know, and then it was blocked in the House.

I just don't quite understand how people could object to this. I understand on most issues the objections, but everybody admits that this compromise would improve the situation, make it easier to protect the interests of the child primarily, the family, and the tribes.

I hope we can move forward with it this year, and I want to thank you, Mr. Chairman, for your leadership, as well as Chairman Young, Senator Inouye, and others who have been involved in it.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, clearly any bill that we deal with that has effect on people's lives and something as emotional as adoption can be isn't going to satisfy everybody, but I certainly thank you for all the effort and leadership, Senator McCain, that you've put in on this issue.

Senator MCCAIN. Thank you, Mr. Chairman.

The CHAIRMAN. Congressman Kennedy.

Mr. KENNEDY. Thank you, Mr. Chairman.

I want to address my colleague, Representative Pryce.

You said that you do not support today the Young-Miller proposal?

Ms. PRYCE. I say I don't believe that it goes far enough, and I think that we're missing what may be our only opportunity to correct this situation once and for all. And I really think that the cumbersome nature of the requirements of these bills will just create more litigation, more problems in the courts, make a lot of business for a lot of lawyers.

In the long run, these things—many of the problems will be solved, but it will just create a horrendous cycle of litigation for many families that don't necessarily have to go through it.

Mr. KENNEDY. So this proposal, having been a compromise proposal, taking it into consideration, meetings that the tribal attor-

neys had, including the couple in your District, it improves on the existing law with respect to the concerns that you have, but it's not sufficient, in your mind, to—you don't—last year you supported it and this year you don't?

Ms. PRYCE. Last year I gave it qualified support because I think it does correct some of the problems, but, at the same time, it creates new ones.

And so there are elements in the adoption community that truly believe that the status quo is better than this bill, and so it is qualified support. I think that it does correct some of the problems, but in the same instrument creates new ones.

Mr. KENNEDY. Well, what I'm trying to understand is I believe that the Native American community that sort of signed off on this compromise as a viable compromise weren't happy with it, themselves. They figured they'd rather have it stay with the status quo and they felt that they were giving up a great deal to even come this far.

But if that's not good enough for you, I think the feeling amongst Native Americans is: Why even make the effort if this isn't even going in the direction we want it to go in in the first place?

Ms. PRYCE. Good question.

Mr. KENNEDY. So you can see where they would want to—

Ms. PRYCE. Certainly.

Mr. KENNEDY [continuing]. Keep the status quo, as opposed to even making the effort.

Ms. PRYCE. And there are many in the adoption community who would prefer the status quo, as well. That's my only point.

Mr. KENNEDY. But what I've been trying to figure out is if we're interested in making a—moving forward your proposal, or whether we want to just have a stalemate and have a face-off between two sides that are diametrically opposed.

Ms. PRYCE. Well, I don't know that it has to come to that. You know, it has been a process. It has been a painful process, but I think we're making progress.

The bill that we passed in the House last year is going to be re-introduced, much watered down, with many of the concerns addressed, and so I don't see this as a waste of time.

Mr. KENNEDY. Well, it may be a waste of time if you don't support it and it doesn't have—because in terms of Native American community, they're making an effort to listen and consider, but if they're—I mean, in their interest, they're trying to protect their own community.

Ms. PRYCE. Right.

Mr. KENNEDY. And for them, the flexibility they've tried to offer is not something that I think is out of their own best interest. And if you look at it from their own good faith compromise attempt, they've made some efforts to meet some of the concerns that your bill brought up. But now you're saying you don't think that that is sufficient or—I mean—

Ms. PRYCE. I don't know. I wasn't really a party to drafting it. My point is that we're all here with the same objective, and that is to preserve ICWA, and we really need to be careful how we do it.

Nobody feels more strongly about it than I do, after dealing with this for a few years now and being right in the middle of it. And so I'm just saying that I believe that we can do it better.

Mr. KENNEDY. I appreciate that. This is my last point. The fact of the matter is, it's hard for me to think that you're in the middle of it if there were 557 tribes that were against it at the outset when you first introduced your bill. It was unanimously rejected by Native American nations. And we do have a sovereign-to-sovereign, government-to-government relationship with Native American nations.

The fact that we're talking about a compromise where they, at least in this phase of the deliberations, have at least had some say in the matter, whereas before they didn't feel they had any say in the matter.

Ms. PRYCE. Congressman, I'm very encouraged because at least now they're talking to me. The reason they didn't is because we couldn't engage them. It was very difficult because it was a—it's a very emotional issue.

I think that we're all heading in the right direction, and the fact that we're all here talking about this is a very good thing.

Mr. KENNEDY. All right. Well, in conclusion, Mr. Chairman, I'd again like to associate myself with the remarks of Senator Inouye. The fact that there is a government-to-government relationship here, and that needs to be considered, because this isn't simply our Government's wishes. We need to take into consideration the governments that we're dealing with.

And when they have such a unanimity of opposition to this legislation, I think we need to definitely respect the sovereignty of their position and approach this on a negotiation basis, as opposed to a compromise basis that I think so far has only left them with a feeling that they are not sure who they are dealing with if they don't feel at the end of the day there's an assurance that the bill that they've signed off on that they feel is better than what was proposed is going to be the accepted alternative. And if it isn't, then I think they're dealing with a shifting foundation. I think that can be very unsettling. I can understand why it causes them a great deal of concern in going forward on this matter.

Thank you, Mr. Chairman.

The CHAIRMAN. Yes; Representative Christian-Green, do you have questions of the witness?

Ms. CHRISTIAN-GREEN. Yes; thank you, Mr. Chairman.

Congressman Pryce, you said in your statement that the complexity of the requirements almost guarantees an inability to comply. Could you point to one or two of the requirements that would be difficult to comply?

Ms. PRYCE. I don't have it in front of me, but if you have a copy of it, if you just turn to—just the notifications through each stage and how cumbersome that process is, that's a very good example of how difficult it will be to actually comply without setting up a cause for interruption later on of the adoption, because if everything isn't done to the letter of the law, now there's cause for tribes or whoever, family members, to come back later on, and if it's not done correctly, those adoptions can be then interrupted.

Ms. CHRISTIAN-GREEN. Thank you. You also responded to the first question when you answered that, if all things being equal, you felt it would be better for the Native American child to remain with the tribe. But all things are not always equal, truly equal. Would you also agree that, barring any serious circumstances that would create a negative effect or a dangerous situation for the child, that it would still be better, even if circumstances were not exactly equal, for the Native American child to remain with the tribe?

Ms. PRYCE. I think that's always preferable, except when a child bounces around for years and years of his or her life before there is any permanency in a family relationship.

And there's also some exceptions when you have a mother who is going to have a baby and would like to place that child with a family that she chooses, and she doesn't have any Indian blood, and her child may have some small quantum of Indian blood, but that woman then is denied the opportunity to place the child where she believes it should be.

And so there are exceptions to that general statement that you would like me to make, but obviously I agree that children of Indian heritage—you know, if they can stay in the tribal family and be brought up without having them bounced and bounced and bounced—and we have all heard those stories—I think definitely it would be preferable without that happening.

Ms. CHRISTIAN-GREEN. Thank you.

Ms. PRYCE. Yes.

The CHAIRMAN. Our good friend from the House side, good to see you here. Do you have some questions?

**STATEMENT OF HON. ENI F.H. FALEOMAVAEGA, U.S.
DELEGATE FROM AMERICAN SAMOA**

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I just want to say we do miss your presence in the House, but we also know that you're doing a tremendous job here in the Senate and really want to commend you for always being supportive of the important issues of confronting our Native American community.

I do also want to personally welcome my good friend from Ohio, the gentlelady from Ohio, Congresswoman Pryce.

As you know, Mr. Chairman, we are revisiting this issue again, and hopefully there will be some resolution to some of these very serious dilemmas that we find ourselves in.

I do have a sensitivity of what Congresswoman Pryce is trying to say, not because they're white parents or any parents. The whole concept of adoption I think is really where my good friend from Ohio is trying to make her point, and I fully understand and appreciate that.

Ms. PRYCE. Thank you.

Mr. FALEOMAVAEGA. It isn't because of white parents. We have instances where white parents, who in good faith followed the adoption laws, somewhere along the line got really messed up and they've incurred tremendous bills in paying their attorneys and trying to find out, and the agony and the suffering that they've had in just trying to adopt a child, whether they be Indian or any other.

But, at the same time, we also have a dilemma in trying to have the Members of both chambers of this institution, the Congress, to understand that, of all American citizens in our Nation, Native Americans have a very unique relationship with our Nation.

I believe, if I am correct in reading the Constitution, I believe Native American Indian tribes are the only entity expressly stated under the Constitution where, by treaty relationship, the U.S. Government has a very different and unique relationship with Native American Indian tribes.

By my last count, I guess about 400 treaties were entered between the U.S. Government and these Indian tribes, and by my last count every one of these treaties was broken by the U.S. Government. So we have a relationship, yes, and I don't want to dwell on the sins of the past, Mr. Chairman, but we've had too many trails of tears. These Indians have suffered. And I don't want to get into that. I get very emotional when I talk about this.

But at the same time I can sympathize, empathize, and appreciate the concerns that Congresswoman Pryce has brought before the committee.

ICWA was established for the very purpose to make sure that there is some sense of stability for Indian communities throughout our Nation. Yes, our first national policy was to kill the Indians, annihilate them, get rid of them. And then we came out with this so-called "assimilation" policy. Make them Americans. It wasn't until 1924 that we finally granted them U.S. citizenship.

So I think we have to have some sense of appreciation and a perspective about the problems that we're faced with when we deal with Native Americans and adoptions. It's a very relative issue.

I come from a society that is very communal, very similar to Native Americans, and I want to share with my colleagues my own personal experience about adoptions.

My wife is from Tahiti. We had two boys, two girls, and the last child that was born to us was a girl. And so my first cousin, who is a minister—he's only about 6 feet 5 inches, 250 pounds, typical Samoan weight and height—he had six sons. And he's just like an older brother to me. He comes up and says,

Hey, cuz, I just understand that your wife just gave birth to a girl. I have six boys. They need a sister. Could you please give us your girl so that it will make my family a little happier to have a girl around?

I said,

No problem. You can have my daughter.

Mr. Chairman, for a whole week my wife was in tears. She couldn't believe that I would be so callous and so without any sense of love and affection for this child that we'd just had. Yes, she had to give birth. I didn't give birth to this daughter. But in the essence, this was a cultural thing. And I suspect that Native Americans do the same thing. In fact, I wasn't even raised by my parents. I was raised by my grandparents.

So the whole concept of adoption has a very different meaning, I think. And I fully agree with my good friend from Ohio. We have laws. White parents, blue parents, red parents, they want to comply because they love the children they want to adopt.

So we're caught in this quagmire in saying how do we treat Indian children? Do we treat them just like any other American citi-

zen? Or do we pass Federal laws, as is the responsibility of the Congress? The full responsibility to deal directly with Indian tribes, is vested in the Congress because Indian tribes are sovereign nations.

Yes; we can talk on until we're blue in the face about sovereignty. I don't need to get into that, Mr. Chairman, but my colleagues can talk about gaming all day if we talk about Indian sovereignty.

But I do want to say that I fully support the Young-Miller version, hopefully that we are making a sincere effort to strike a balance and to see absolutely that the wishes or the Constitutional rights of white parents, blue parents, are fully protected when they adopt children, whether they be Indian children or any other child.

I think this is what I'm sensing where my good friend from Ohio is coming from.

But I want to share with you what Indian Child Welfare has done for our Indian community. It has saved countless Indian families. It has saved countless Indian children from losing their heritage. It has enabled and mobilized Indian tribes to develop their own juvenile courts, codes, and children welfare services.

What I want everyone to understand is that Indian tribes and Indian families are not the bad guys. We didn't draft and the Indians didn't create ICWA because Indians were the problem. No. ICWA was created because unethical adoption agencies were the problem, and they still are.

Indian tribes only want to make sure that Indian children find loving homes as soon as possible. This bill helps tribes accomplish that goal.

Yes; maybe our Indian court system was not very stable. Maybe they have problems. But this bill tries to address those issues.

We're giving due notice to the Indian court system that we currently have: Buckle up. You need to get your act together, too, to make sure that there is proper timing, proper authorities, proper procedures so that the rights of white parents are fully protected just as well.

So I just want to share this with you, Mr. Chairman. I'm proud to support the measure that Congressman Young and Congressman Miller have now proposed before the committee, and I will fight with all my energy any proposal that lessens the protection Indian children currently have under the Indian Child Welfare Act.

Again, Mr. Chairman, I want to thank my good friend from Ohio in expressing this concern of parents who have had to go through the agonizing experience of being taken around or given the run-around and never seem to get a final decision.

I would strongly suggest that my good friend from Ohio would offer some language in certain provisions of this bill that maybe we can work together and see how we can work this thing out and iron out the concerns that she has. I personally would welcome that, Mr. Chairman, and I would welcome my good friend that we could continue working the language of the current bill and see that maybe we can find the middle ground, we can find a position which is satisfactory to the needs of her constituents and the problems that she's had to face with them.

With that, Mr. Chairman, I thank you.

The CHAIRMAN. Thank you.

Mr. FALEOMAVAEGA. And I thank my good friend for being here.

Ms. PRYCE. Thank you.

The CHAIRMAN. I might say that a lot of times I think in this city we're driven by reports and legal positions and polls and statistics and a number of things, but I thank my friend from the House side for making that statement because he comes from a Native American culture—offshore, but a Native American culture—and I think he understands, as I do, that from a cultural standpoint there are a lot of things that we don't deal with in all these square boxes here in Washington.

When I tell people, for instance, that in the Indian community you can have two mothers, it's hard for them to believe that, but we very often do. I do. I have two mothers. One has passed away, my biological mother. I have an adopted mother. But there is nothing written. There were no reports, no court decisions.

There was nothing in many of the—most Indian cultures, and perhaps where my friend comes from, too—

Mr. FALEOMAVAEGA. Would the chairman yield?

The CHAIRMAN. Yes; Sure, for 1 moment.

Mr. FALEOMAVAEGA. I've got constituents, Samoan constituents, that write to me all the time and say, "I've got to go see my mother." I said, "Okay. Go ahead. What's the problem?" They'll say, "Well, I have no papers, no adoption papers." And whether the you're about to join the service or to even go to school, I said, "But you mean we have to go through this process?" "Well, see the court of law. We have laws." I said, "But, geez, my aunt raised me since I was a baby. As far as I'm concerned, she's my mother." This is the situation.

And, by the way, we didn't give our daughter to my—we did not. We still have our daughter. But as far as my cousin was concerned, that's his daughter and she's got six brothers, and which I never doubt in my mind that they're going to look after her when I die.

The CHAIRMAN. That's the Native communal way that you may have two mothers, you may be raised by an uncle or an aunt just as if you were a son. And when you try to put all that in some kind of legal jargon, it doesn't fit. But everybody understands it in the Native community and accepts it and treats it as if your "adopted mother" is your real mother, with all the deference you would pay to a real mother.

And none of that stuff fits, I suppose, here in Washington, but it certainly complicates the whole question when you're talking about how do you fit cultural values that have been generation after generation, century after century, as the accepted practice. How do you fit that in some law in Washington, DC? It doesn't fit. It simply doesn't fit.

Let me just maybe ask you one last question. Under your proposal for the purposes of ICWA, the State courts would determine—as I understand it, the State courts would determine who is an Indian. Is that or is that not right?

Ms. PRYCE. Well, Mr. Chairman, the process is the same as it is now. That does not change.

The CHAIRMAN. That means under your language the State courts would accept the tribes' determination of who is their en-

rolled member and therefore Indian, because the Federal Government accepts each tribe's determination?

Ms. PRYCE. But that is the subject of litigation under the bill—under the current status of the law now all the time. That won't change by my bill.

Like I said before, we don't—and that's the argument, that it's very hard to rebut, but we don't change that portion of ICWA at all. We're just codifying what the Supreme Court, by its denying a certiorari on this case, and many of the State courts have found as a sound basis for determination.

The CHAIRMAN. I see. Well, I do appreciate your appearance. Thank you very much.

I might ask you if you have any additional comments you'd like to make or things that you think could make the Young bill supportable, if you would give us those comments I'd appreciate it.

Ms. PRYCE. Thank you very much. I appreciate the opportunity to work with all of you.

The CHAIRMAN. And with that I'd ask Senator Inouye if he would Chair for the next few minutes. I have to run. I've got a little conflict. I'll be back in just a few minutes.

Senator THANK YOU.

Senator INOUE (ASSUMING CHAIR). Thank you.

Our next panel consists of the assistant secretary for Indian Affairs, Ada Deer; the director of the Office of Tribal Justice of the Department of Justice, Thomas LeClaire.

Secretary Deer, welcome to the committee.

STATEMENT OF HON. ADA E. DEER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC, ACCOMPANIED BY BETTY TIPPECONNIE, PRINCIPAL CHILD WELFARE SPECIALIST

Ms. DEER. Good morning, Chairman Campbell, Chairman Young, and members of the committees. I have accompanying me today Betty Tippeconnie, who is the Principal Child Welfare Specialist.

I appreciate the opportunity to present the Department of the Interior's views on the proposed amendments to the Indian Child Welfare Act of 1978.

I also want to note my appreciation for the strong leadership of each of the chairmen and former Chairman McCain and Chairman Inouye for all you have done on issues of concern to Native Americans.

Today's hearing will continue our cooperative efforts, exemplified most recently by our joint efforts to protect tribal governments from taxation and in the success of Chairman Young and Secretary Babbitt in reaching agreement on ways to reform the national wildlife refuge system.

I will summarize the written statement I have submitted for the record with the following points.

First, the Department of the Interior supports H.R. 1082 and its companion bill, S. 569, which incorporate the consensus-based tribal amendments developed last year by your tribal governments, the National Congress of American Indians, and representatives of the adoption community.

Second, while the Indian Child Welfare Act has fulfilled its objectives in giving the Indian tribes the opportunity to intervene in custody proceedings on behalf of their Indian children, the act should be amended to give it greater clarity and certainty in its implementation.

The proposed amendments will end any uncertainty that the Indian Child Welfare Act applies in voluntary child custody matters. The amendments will ensure that Indian tribes receive notice of voluntary ICWA proceedings and clarify what should be included in the notices.

If a tribe seeks to intervene in the voluntary proceeding, it must certify the tribal membership status of Indian children or their eligibility for membership. This certification will add certainty to the question of whether a child is Indian under the ICWA and ensures that tribal membership determinations are not made arbitrarily.

To reduce uncertainties in the adoption process, the amendments will also place time limits on when Indian tribes and families may intervene and when birth parents may withdraw their consent to an adoption, but only after the tribe receives adequate notice of proceedings.

As my colleague, Tom LeClaire, from the Department of Justice, will discuss, the amendments will provide criminal sanctions to discourage fraudulent practices by individuals or agencies which knowingly fail to disclose the Indian identity of a child or their birth parents in order to circumvent ICWA.

All these are good amendments and will make the act work better for tribes, birth parents, persons seeking to adopt, State courts, and, most importantly, Indian children. After all, that's what this is all about—protecting the best interests of Indian children.

In closing, and as the Department statement more fully discusses, I'm gravely concerned that the objectives of ICWA continue to be frustrated by State court created exceptions. These involved certain State courts who have sought to second-guess tribes as to who is an Indian or eligible for membership in the tribe.

This doctrine is called the "existing Indian family exception," and has been used by certain State judges to run amuck by delving into sensitive and complicated areas of Indian cultural values, customs, and practices that, under existing law, have been left exclusively to the judgment of Indian tribes.

A bill proposed last year which sought to codify this misguided practice was wisely rejected by the two committees here today. The Administration strongly opposes any legislative recognition of the existing Indian family exception because it is bad policy.

I also must take exception to Congresswoman Pryce's concern that ICWA is unconstitutional. The Supreme Court has long held in cases like *Morton v. Mancari* that Congress can legislate in the area of Indian affairs based on the political status of tribes and their members.

This concludes my testimony, and we at the Department of the Interior stand ready to assist you in any way so that there will be swift passage of these amendments by Congress and approval by the president.

Thank you.

Senator INOUE. Thank you very much, Secretary Deer.

[Prepared statement of Ms. Deer appears in appendix.]
Senator INOUE. May I now call on Director LeClaire?

STATEMENT OF THOMAS L. LECLAIRE, DIRECTOR, OFFICE OF TRIBAL JUSTICE, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Mr. LECLAIRE. Thank you.

Chairman Campbell, Chairman Young, and members of the Senate Indian Affairs and House Resources Committees, I am Tom LeClaire, director of the Office of Tribal Justice for the Department of Justice. Thank you for inviting the Department to present its views on S. 569 and the companion bill, H.R. 1082, which would amend the Indian Child Welfare Act.

The administration and the Attorney General recognize the need for caring families and nurturing homes for Indian children. To this end, the Department supports S. 569 and H.R. 1082. The proposed legislation advances the best interests of Indian children, while preserving tribal self-government.

We are informed by the Departments of the Interior and Health and Human Services that ICWA generally works well. The implementation of ICWA in a relatively small number of voluntary adoption cases, however, has evoked intense debate both in Congress and elsewhere.

Generally Indian parents or tribes in these problematic cases allege that ICWA was not complied with and seek to recover custody of the Indian children involved.

The time consumed by the legal proceedings disrupts lives and causes significant anguish.

In addressing these problematic cases through S. 569 and H.R. 1082, Congress has been mindful of ICWA's important purposes and affirmed tribal rights of self-government.

Since the early days of this Nation, the United States has recognized that Indian tribes have the authority to govern their members and their territory. The United States has entered into hundreds of treaties and agreements with Indian tribes, pledging protection for Indian tribes and securing the tribes' rights to the highest and best form of government—self-government.

ICWA is a constitutionally-valid statute that is closely tied to Congress' unique obligations to Indian tribes by protecting the best interest of Indian children and families while promoting tribal rights of self-government.

Mr. Vice Chairman, let me reiterate. As it exists and when amended by these proposed bills, it is our belief that ICWA is constitutional. Under ICWA, courts are able to tailor foster care and adoptive placements of Indian children to meet the best interests of children, families, and tribes. We understand that the vast majority of the cases are adjudicated without significant problems. The application of ICWA to a limited number of cases involving adoptive placement that are later challenged by the biological parents or the children's tribes has drawn criticism.

While these cases are heart-rending and they are difficult, they have a tragic result for all the parties involved, it is important to reiterate that these problematic cases are not indicative of the manner in which ICWA operates in most cases.

Further, many of these cases would not have been problematic if ICWA's dictates had been complied with at the outset of the adoption process.

For example, among the cases commonly cited for the need to amend ICWA is the adoption that provided the factual predicate for the *Rex Bridget R.* decision by the California court of appeals. The ensuing protracted litigation has disrupted the lives of all who are involved in that litigation.

Had ICWA been complied with in that instance, however, most of the delay and quite possibly the litigation, itself, would have been avoided.

Bridget R. therefore signals a need to fine-tune ICWA's statutory mechanisms to provide incentives for early compliance with ICWA in the adoptive process. And I would note that we think these bills do that.

Many opponents of ICWA have focused solely on *Bridget R.* and other anomalous cases and made the assumption that ICWA's application to these cases will produce a particular outcome; namely, the removal of children from non-Indian adoptive parents.

Cases such as *Mississippi Band of Choctaw Indians v. Holyfield* demonstrate that this assumption is mistaken. After the Supreme Court ordered the case transferred to the Choctaw tribal court, the tribal court determined that it was in the children's best interest to remain in the current placement with Vivian Holyfield, the non-Indian adoptive parent.

In order to preserve the link between the children and the tribe, the court made arrangements for continued contact with extended family members and the tribe. As *Holyfield* demonstrates, ICWA does not resolve the ultimate issue of who should have custody of a particular Indian child; rather, it allows courts to make that decision on a case-by-case basis, taking into account the best interests of the child.

I would like to address briefly the so-called "existing Indian family doctrine," a judicially-created exception to ICWA which has been fashioned by State court judges. That doctrine establishes an exemption from ICWA's mandates where the biological parents of the child fail to maintain a sufficient nexus with the tribe.

Pursuant to this exception, Federal statutory protections turn on a tribal member's degree of social, cultural, or political affiliation with an Indian tribe rather than on a tribal government's determination of tribal membership. This doctrine is contrary to recognized rights of tribal self-government.

For example, the Supreme Court held in *Santa Clara Pueblo v. Martinez* in 1978 that the power to determine tribal membership is a fundamental aspect of tribal self-government, akin to the power of the United States to determine its own citizenship. Tribal membership is thus a matter of tribal law which should be determined by tribal government institutions.

Moreover, the existing Indian family doctrine grafts onto ICWA a subjective and open-ended test that, if anything, will increase litigation. The existing trigger for ICWA, tribal membership or eligibility for tribal membership, is simple and discernible by an inquiry to the relevant tribal government.

S. 569 and its companion bill, H.R. 1082, reflect a carefully-crafted agreement between Indian tribes and adoption attorneys, an agreement designed to make Indian child adoption and custody proceedings more fair, swift, and certain.

In improving the fairness and certainty of ICWA, S. 569 and H.R. 1082 promise to advance the best interests of Indian children while preserving longstanding principles of tribal self-government.

These bills would clarify ICWA, establish deadlines to provide certainty, reduce delay in custody proceedings, and strengthen Federal enforcement tools to ensure compliance with the statute in the first instance.

We appreciate the efforts that this committee, Chairman Campbell, Chairman Young, have made to foster dialog on the Indian Child Welfare Act.

This concludes my prepared statement. At this time, Mr. Vice Chairman, I am prepared to answer any questions.

Senator INOUE. Thank you very much, Director LeClaire.

[Prepared statement of Mr. LeClaire appears in appendix.]

Senator INOUE. Because of the limitation of time, I will be submitting my questions for your consideration and response; however, I have been asked by the chairman, Senator Campbell, to ask certain selected questions.

Secretary Deer, as a former social worker, do you believe it would be in the best interest of Indian children to allow visitation under the proposed open adoptions provision if that child is adopted by a non-Indian family?

Ms. DEER. Yes, I do.

Senator INOUE. And, Mr. LeClaire, I realize that this is repetitious, but with respect to the so-called "existing Indian family doctrine," do you believe it is appropriate for State courts to make determinations regarding their membership in a tribe?

Mr. LECLAIRE. Well, in a word, Mr. Vice Chairman, no.

First of all, we don't believe that the doctrine, itself, is necessary because its purported use was to render constitutional a statute which the State courts suggested may have been unconstitutional, and our position is it is constitutional as it is currently drafted and would be constitutional after the amendments proposed before these committees would be applied.

As I indicated, by adding a subjective test we simply increase the opportunity for litigation. For example, in this room are a number of people, Indian people who have been in Washington serving Indian people in many capacities, both for the Federal Government and for private interests, and have perhaps not returned to their own reservations for quite some time. Would it be appropriate for a State court to examine, because of that, whether those people indeed were Indian? I believe they would believe they are Indian, and I certainly would believe that of my own tribal membership.

It is inconsistent with the historical relationship between the United States and tribes, and this is an area where States have little or no role.

Finally, State judicial additions to a Federal law is simply a bad precedent. It's inconsistent with the supremacy clause and it undermines the nationwide preemption in a particular area that Congress has attempted to craft.

Senator INOUE. Mr. LeClaire, does this measure before us enhance or diminish tribal sovereignty?

Mr. LECLAIRE. To the extent that it gives tribes an opportunity to participate outside of their territory in an issue that is fundamental to those tribes, I don't think that it in any way lessens tribal sovereignty.

Certainly, to the extent that the tribes in some ways lose the ability to control their children and therefore their destiny, tribal sovereignty is affected. But in the reality of the way Indian adoptions occur, both in the tribal courts and often outside of tribal courts, the Indian Child Welfare Act is a good balance of those competing—at times—competing interests.

Senator INOUE. Thank you very much.

The CHAIRMAN. I'd just welcome my friend Ada, and let me just jump in with a few questions.

Let me—perhaps Ada would answer the first one. Does the United States grant benefits to Indian people on tribal membership as determined by the tribes?

Ms. DEER. As determined by the tribes, yes.

The CHAIRMAN. How would this legislation affect that? Would it affect benefits to a youngster that's reclaimed by a tribe?

Ms. DEER. Could you elaborate on that question?

The CHAIRMAN. Let's say a youngster has been adopted out, and then the tribe comes along a few years later and makes a claim on him, and he has perhaps not been enrolled, or whatever circumstances. I was just wondering how it would affect that youngster, how tribal benefits would be affected, or if they would at all.

Ms. DEER. I think Mr. LeClaire could answer that question a little better. It's a legal one.

Mr. LECLAIRE. Mr. Chairman, I'm not quite certain how that would ultimately work out. I suppose it has something to do with whether or not the child is, in fact, a member of the tribe, and, if a member, entitled to, for example, medical benefits. The child may continue to be eligible for those benefits even if adopted by a non-Indian family.

If the tribal membership were determined, even judicially, that there was no membership, I suppose that would raise a much different question which we would have to examine pretty closely.

The CHAIRMAN. Tom, you heard earlier testimony—I managed to hear it all before I had to run out for a little bit—about the sponsor of the alternative bill, that she did not think that the State courts, in making determinations on adoptions, would have any effect on sovereignty or membership in a tribe. Do you agree with that? Or perhaps that question has already been asked, but let me ask it again.

Mr. LECLAIRE. I respectfully disagree with Congresswoman Pryce's statement in that area because I think, as this committee well knows, and having been involved in Indian issues for a long time—especially you, Mr. Chairman, and other members of the committee—that a determination of tribal membership is simply one that is done by the tribe. It is the essence of self-government. And, having made that determination and to be second-guessed by a State court using subjective tests would be inconsistent with the historical relationship that the United States has with tribes and

the power that tribes retain to determine their own membership, as recognized by the Supreme Court.

The CHAIRMAN. Okay.

Mr. LECLAIRE. I think I have enumerated—before you came back into the room, I enumerated a number of reasons why we thought that the existing Indian family doctrine is inappropriate, particularly because it gets the State involved in an area that has been predominantly a Federal/tribal relationship.

The CHAIRMAN. Thank you.

Are there any further questions from any Members? Congressman Kennedy?

Mr. KENNEDY. Thank you, Mr. Chairman.

Just following that up, what in these compromise bills preempts that existing family doctrine from ever being employed by State courts? I mean, what safeguards do these bills provide for a Native American country in making sure that State courts aren't going to preempt that fundamental right that they had to determine their own membership and to exercise their rights under ICWA?

Mr. LECLAIRE. The amendments, as I review them, do not alter ICWA in a way that has existed since its original passage, and so the doctrine, which is not actually enumerated in the act, I don't believe, would be affected. It may be that State courts will continue to find this doctrine existing even after these amendments were passed.

Mr. KENNEDY. Would it not then be important to put some language in these amendments, understanding that they have been agreed to and the like, but understanding also that Ms. Pryce and those that have come at this from her point of view haven't signed off on this bill, per se, any more, that we put in some language that State—very clearly that State courts, in matters with respect to ICWA, have no rights interpreting this doctrine, this existing family doctrine in such a loose way.

That seems to me the rub here in this problem is that State courts are interpreting something in their subjective opinion that runs contrary to a tribe's definition of membership.

Mr. LECLAIRE. I would agree with that, Congressman Kennedy, that addressing it directly would be the way to ensure that Congress' will is upheld—it would be a determination by this Body to determine whether or not it's appropriate to include that in amendments. I know that last year the attempts to codify that exception or doctrine were rejected.

Mr. KENNEDY. I understand that. I'm just saying, given the testimony of Ms. Pryce this morning, she said that basically this is—she's no longer satisfied with this as a compromise. And if that's the case, what I'm trying to think of is, you know, you give an inch, they take a mile, and then what do you have at the end of the day but continued problems because the fundamental issue here—and that is respect for tribal sovereignty—is still cast in the balance because State courts still ultimately have the discretion to use existing family doctrine in their proceedings.

And whereas you do make the mousetrap a little bit better so as to give tribes more access, I should say, to State courts, at the end of the day that's still all they have is access to State courts. They

don't have what remains and should remain in their dominion, that sovereign right to determine their own tribal members.

Mr. LECLAIRE. I would agree with that, and my understanding of the amendments is that they focus on streamlining and simplifying compliance with the ICWA, and it would be our belief that the doctrine, itself, does the opposite—it creates a more subjective test which is open to interpretation.

It may often ask State court judges to make determinations of membership that are in areas which are very unfamiliar to them, and to have people who do not have maybe a historical understanding of the special and significant relationship between the Federal Government, tribes, and the overriding principle of tribal self-government to determine its own membership making determinations in those critical areas.

Mr. KENNEDY. Well, I would only ask that if you could, for at least this Member, provide some possible language changes, and I look forward to discussing this further with yourself and the other panelists, because if this is going to become the bill that's debated, I think it is important that we start off from a more realistic standpoint for the purposes of understanding this issue so that we don't get into the minutia of making the proceedings run better, which I understand these compromise bills do, but go back to the fundamentals, and that is we wouldn't be in this problem to begin with if there was a basic acknowledgement, as you said, of the sovereignty in these cases.

Mr. LECLAIRE. Thank you. We'd be happy to work with you and your staff on any such request.

Mr. KENNEDY. Thank you.

The CHAIRMAN. I would point out, if there are no further questions, we've only got a little over one-third of the way through all the witnesses. We've been here 1½ hours. We're going to have to speed it up if we don't want to be here all afternoon.

Mr. FALEOMAVAEGA. Mr. Chairman, I do have a quick—

The CHAIRMAN. Go ahead, Congressman Faleomavaega.

Mr. FALEOMAVAEGA. I would just be remiss, Mr. Chairman, if I didn't express my personal welcome to Secretary Deer and my good friend, Mr. LeClaire, for their presence.

Gut reaction very quickly, Mr. LeClaire. Isn't the bottomline issue that Ms. Pryce is trying to share with the committee, if I were a white parent and I have to appear before an Indian court and I see all these Indians before, how would I be assured that I will be given justice and fairness in the whole adoption matter, because I really think that's the bottomline. I really think that's the bottomline.

Do you believe that there are sufficient provisions in the proposed bill that corrects those deficiencies? In other words, giving due notice to the Indian court system in the country that we'd better get the system worked out so that if a white parent has to go before them they'll be given a fair hearing? I really think that's the bottom line. We're talking about fairness.

Mr. LECLAIRE. Well, there has only been a small number of cases adjudicated in this contentious area. I think the fear—

Mr. FALEOMAVAEGA. Excuse me. The reason why they prefer going to State court is because they feel that they'll be better treated there.

Mr. LECLAIRE. I think the fear is that ICWA is somehow outcome determinative, and the fact is it is not. It is a process.

Whether under a tribal court or whether in a State court, the overriding interests are the best interests of the child.

As I indicated in my statement, one of the most recognized cases in this area was the *Mississippi Choctaw v. Holyfield* case in which that very thing happened. The case was transferred out of—

Mr. FALEOMAVAEGA. My time is up, but I just want to get—do we have sufficient mechanics in the way this bill is being written to correct any problems of the Indian court system to make sure that they also are going to give that kind of assured justice when the situation like this occurs? That's all I'm trying to—

Mr. LECLAIRE. I think tribal courts, as they exist, when applying the best interests of the child, will do the same job that State courts do.

Mr. FALEOMAVAEGA. Do you think it might be helpful if we had a provision in the bill that maybe the Justice Department will inform every adoption agency in this country that before they touch an Indian child they'd better read ICWA first, because this seems to be one of the problems? Some of these attorneys didn't even know, or maybe they knew that the child was an Indian, but they went ahead and made the adoptions through State law, completely disregarding the ICWA. I think that might be helpful also.

Mr. LECLAIRE. I think the criminal provisions do intend to bring some attention to the need to have compliance, notice—

Mr. FALEOMAVAEGA. Do you think it might also be helpful if we had a provision to really—I mean, whatever attorney that purposely, knowing that this child is an Indian, and puts a white parent through the most agonizing experience, we've got to place criminal charges against them. Put due notice that if this person knowingly does something like this, that they will really be answerable for it, because that's another instance that I think we have with the problems of adoptions of Indian children.

Do you think that might be helpful also in adding those provisions to the bill?

Mr. LECLAIRE. We would certainly review those additions and work with the committees on any provisions that you thought would be helpful in that area.

Mr. FALEOMAVAEGA. Thank you.

Thank you, Mr. Chairman. I'm sorry.

The CHAIRMAN. And I thank this panel for appearing.

The next panel will be Deborah Doxtator, chairperson of the Oneida Tribe of Indians of Wisconsin; Thomas Atcity, vice president of the Navajo Nation, and Ron Allen, president of the National Congress of American Indians.

Chairperson Doxtator.

STATEMENT OF DEBORAH DOXTATOR, CHAIRPERSON, ONEIDA TRIBE, ONEIDA, WI, ACCOMPANIED BY AURENE MARTIN, ESQUIRE, ATTORNEY FOR ONEIDA TRIBE

Ms. DOXTATOR. Thank you, Mr. Chairman, for the invitation and opportunity to testify. I would also like to thank the chairmen of both committees and the individual committee members for their attention to this very important legislation involving Indian children.

I'm accompanied this morning by our attorney, Aurene Martin. If there are any technical questions at the end of the presentation, she'll be able to answer those. She worked with the attorney working group and the adoption attorneys on the Tulsa compromise.

I bring our greetings to you and to the members of your committee this morning. My name is Deborah Doxtator, and my Oneida name is Yukhiwanaw which means "she keeps our words for us."

As the elected chair of my nation, as a mother of four children who are growing up on our reservation, as a woman existing in our nation's legitimate matrilineal traditions, and as a person who recognizes the traditional obligations of acting now in consideration of those who will exist in seven generations, I am honored to be here.

I am humbled to think that I am having this opportunity to address an issue that will so significantly impact our future. My written testimony provides an overview of ICWA, and I am well aware that most of you know too well how it came to be passed.

With 25 to 30 percent of our children being removed from Indian country, our future was clear. The traditional obligations which we have for our young people could not possibly be fulfilled. They would grow up knowing they were different from the other non-Indian children that they encountered, but outside of color they would not know why. They would never learn our history, our culture, our traditions, or the obligations we hold so close to our hearts.

Years ago one of our tribal members was living temporarily in the Boston area. He was invited to address the Massachusetts State Committee as it considered passage of a bill similar to ICWA for State-recognized Indians. He brought his then 5-year-old daughter with him. Her name is Yakotu Hahe "she's happy."

The committee members smiled and all acknowledged the beauty of the name, but no matter how well-intentioned their statements, they did not understand that the beauty in her name is not found in its utterances. The true beauty is found in the carrying out of its obligations.

Yakotu Hahe was charged in the Long House with the responsibility to go to those tribal members who are sick or in pain. She was to bring them happiness and joy and to make them whole again. Were she removed from Indian country, she would never have carried out her personal responsibilities, nor would the nation have benefited from her involvement.

Our Indian children are integral to our present and our future. It is through them that the past has living meaning. If our children are taken from us, even through the best of intentions, the circle of our tradition will be broken and our future will come to an abrupt end.

I'm going to move directly to the end of my testimony, in light of the time. I wanted to summarize that there are two items that absolutely are vital in the consideration of any bill that would come forward, and that is the notice of voluntary proceedings and the time lines for intervention. For Indian country we definitely have to have those included in any language that would come forward.

But we also cannot accept any language in any bill that gives State courts the authority to determine whether a child is Indian or not. This invades our tribal sovereignty to the utmost extent, and I know that the U.S. Congress is very cognizant of that, from the remarks that I heard this morning, and so we would like to have that a part of our record.

Thank you for convening this hearing to provide Indian country an opportunity to be heard on this most vital issue.

We recall how your efforts in the last Congress were circumvented and how many of your colleagues were called upon to vote without a true understanding of ramifications of the issues, and we trust that what we have shared today provides a meaningful basis for legitimate dialogue on the issue.

Thank you.

The CHAIRMAN. Thank you. By the way, your complete written testimony will be included in the record.

Ms. DOXTATOR. Thank you.

[Prepared statement of Ms. Doxtator appears in appendix.]

The CHAIRMAN. Vice Chairman Atcitty.

STATEMENT OF THOMAS ATCITTY, VICE PRESIDENT, NAVAJO NATION, WINDOW ROCK, AZ

Mr. ATCITTY. Thank you, Mr. Chairman and members of the two committees.

I appreciate your invitation to be here, and above all appreciate the participation of the various members of the committee. Normally I testify just before one individual, but I see several Members of the Congress here, and that's very heartening and encouraging to me that we have a bill here that is of interest to Members of the Congress. Certainly this is of interest and import to the Navajo Nation.

You have our written testimony, so I will briefly highlight what we deem as most important issues to us.

First, the Navajo Nation supports S. 569 and H.R. 1082 sponsored by Senator McCain and Congressman Young, with some clarifications and friendly amendments.

S. 569 and the companion bill propose a new section, 1913.C and D, that requires that Indian child's tribe must receive notice of the proceeding, and that the notice must contain information to allow the Indian child's tribe to verify application of ICWA.

We are concerned that erroneous information may be provided to a tribe through oversight, error, or lack of a good faith investigation which does not rise to fraud and which would negatively affect both the tribe's ability to determine the child's enrollment and whether a tribe will intervene in the State court proceeding.

It is of critical importance that a good faith investigation be made into the information required by section 1913.D notice.

The Navajo Nation is also concerned that section 1913.E provides Indian nations only 30 days to file a notice to intervene. The 30-day deadline could drastically affect our ability to intervene in hundreds of cases across the country. I fear this may not be sufficient time to allow Indian nations to retain local counsel and negotiate attorney contracts which may be approved by the BIA pursuant to 25 U.S.C. section 81, which we do not have control over.

Additional time is also needed to address the determination of enrollment eligibility of an Indian child.

For these reasons, we recommend the time period be expanded to 90 days. If extending the time lines is not feasible, we recommend clarifying language be added to direct that the notice of intent to intervene only requires a simple statement which may be submitted by the tribe's ICWA program.

This clarification is needed to prevent ICWA from being deprived of any meaning.

It is important to remember that ICWA was not only enacted to preserve American Indian tribes' most precious resources, its members, but also to prevent the type of alienation experienced by Indian children who were adopted by non-Indian families before ICWA was adopted.

As they become older, many of these children faced difficulties in self-identification and adaption. While much has been said about children and parents, both natural and adoptive, it is extremely critical to be mindful of the long-term effects of depriving Indian children of their heritage.

Second, the Navajo Nation recommends language be added that would provide direct title 4-E funding to Indian nations for foster care and adoption assistance programs. Although this funding was intended to serve all eligible children in the United States, Indian children living in tribal areas are not being served.

To receive title 4-E money, a tribe must enter into agreement with States, with the State passing through these funds to the tribe. It has been very difficult to negotiate such agreements. Currently only 50 of the 558 federally-recognized tribes receive any title 4-E funding. This funding would allow Indian tribes to keep these families closer together rather than placing them in off-reservation and non-Indian homes.

We recommend that if direct title 4-E funding is not possible, then title 4-E funding be included in this legislation to require:

First, a provision requiring States to serve tribes rather than stipulating a tribal-State agreement.

Second, applying penalties as in public law 103-382, Multi-Ethnic Placement Act, should discrimination occur.

Third, that Navajo nation is also concerned about recent developments in State courts where judges are requiring, in addition to membership in a tribe, that they also have significant ties to an Indian tribe in determining whether ICWA applies.

Federal law and U.S. Supreme Court decisions consistently recognize the fundamental right of Indian nations to determine membership. Federal courts do not even attempt to make this inquiry. Therefore, it is a violation of tribal sovereignty and inappropriate for a State court to determine whether an Indian child or Indian parents are really Indian.

The Navajo recommends additional amendments be incorporated to halt this practice of State courts. Otherwise, ICWA will be undermined incorrectly by the States.

As a 14-year State legislator, I have seen well-intended Congressional legislation being misused by many of the States, and so this is the reason that we feel that care needs to be taken in this particular legislation.

I just want to say, in conclusion, thank you, Mr. Chairman, for your kind invitation. We would stand to any question you might have.

The CHAIRMAN. Thank you, Mr. Vice Chairman.

[Prepared statement of Mr. Atcitty appears in appendix.]

The CHAIRMAN. Ron Allen, if you'd like to proceed.

STATEMENT OF W. RON ALLEN, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, DC, AND CHAIRMAN, JAMESTOWN S'KLALLAM TRIBE

Mr. ALLEN. Thank you, Mr. Chairman.

I, too, join with my colleagues here in thanking you for the invitation to testify before the committees to express our views for the National Congress of American Indians regarding these two pieces of legislation.

We're very thankful that you and the House committee have brought this bill up and have introduced these bills in response to the tribes' response to this issue, as it was brought up in the 104th Congress. When it came up, as you know, it caused a great deal of concern in Indian country. I don't think I need to spend a great deal of energy conveying why. You know why.

Our testimony conveys the fundamentals in Indian law and Indian policy that we're concerned about, and also it conveys where our hearts are with regard to our Indian children and the welfare of our Indian children and the preservation of their culture and who they are and what their relationship is to our Indian communities. Those things are very important to us.

ICWA, you know, basically addressed a lot of problems, and we recognize that it has been addressing these problems. We also know that there are other problems that surface in any legislation. We see that, and we are very open to refinements of laws that would improve their procedures.

Congresswoman Pryce had raised a number of issues, and in her testimony this morning she conveyed the notion that adoption procedures are very cumbersome and unwieldy to wade your way through. It's not just Indian adoption that's cumbersome and unwieldy. All adoptions are cumbersome and unwieldy. It's a very delicate matter that the United States and the States take very sincerely.

With regard to ICWA, there's another extra hoop or two that Indian people want to see the procedure to go through.

Our amendments that came out of what we often refer to as the "Tulsa amendments" from our conference there last year, provided what we consider the issues that Congresswoman Pryce raised and Senator Glenn and others about certainty of procedure, certainty of process, timeliness of the process, and that's what those amendments are attempting to address.

We think that your bills, both on the Senate side and the House side, address that very matter. We think that it addresses those issues. So the extended family doctrine issues or concerns are really quite well covered.

We're very concerned about the notion that you should codify that in the law, and we absolutely object to that.

Currently I sit on a panel screens out candidates for a Federal district judge in the northwest. There are 18 candidates, and among them 7 of them sit on the State superior court.

I'm amazed at how many of these candidates don't know a great deal about Indian law. They don't know a great deal about our culture, our traditions, our way of life, the sophistication of our court systems, or how we manage our programs. So the notion that they would all of a sudden determine the applicability of a child's membership or the relationship to a tribe politically, socially, culturally, economically, it just is beyond me. And it's beyond their capacity, in our opinion, so it is inappropriate for us to even consider that kind of a solution.

We believe the solutions are very appropriate now that tribal courts are capable and competent to handle that issue.

So our objective here is to cause you to know that those cumbersome cases out there or those anomalies that are raised, are anomalies. We can literally bring up statistics that show that out of the thousands and thousands of cases, there are only a handful where there have been some problems, and the majority of them have been handled quite well and with a great deal of integrity and responsibility to the children.

So we believe that the bills that are being introduced by the Senate and the House do go far enough. Maybe we need to do some fine-tuning. We can do that, and the tribes have always been willing to consider that. But we want to make sure that both committees understand that while we want to protect the tribes' sovereign rights, we also want to protect the interest and welfare of our children. We believe our system accomplishes that. We believe that the amendments being proposed in these two bills address that matter and address it quite well, and the procedures will be very effective.

I also want to note that in the end of the last Congress there was a lot of opposition from the pro-life groups who were concerned that this process may cause Indian women to consider abortion more readily because the procedures for adoption are more cumbersome.

I'm a pro-lifer, myself, personally, and I can tell you that in our communities that pro-life is very much a part of our culture, that we have a bias toward making sure that our children are born and that, if the family is not capable of handling it, that we will find a part of the extended family or the family from which the baby is born to be adopted.

So that is not the truth at all, and we want to make sure that these committees understand that—that we do not believe in any way the statistics which show that there will be any increase in abortions because of this kind of legislation or these kinds of conditions out there.

And let me conclude by simply saying that there is a lot to this matter. We are ready and willing to work with you and your staffs,

with the other committee members and their staffs, to make sure that these concerns are being addressed.

I had shared with Congresswoman Pryce that we are ready and willing to discuss further with her to assure that her concern over this process is being met well within the framework of the tribal system and our coordination with the Federal system.

So we want to work with you as best we can to make sure that we're protecting the tribes' sovereign rights and the future of our children.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Ron. I can only say to your comments, the pro-life group doesn't understand the Indian culture, and they darned sure don't know Indian women.

[Prepared statement of Mr. Allen appears in appendix.]

The CHAIRMAN. I think I will defer first to our House colleagues for some questions before I ask a couple of my own.

Representative Kennedy, do you have any questions at this time?

Mr. KENNEDY. Thank you, Mr. Chairman.

The CHAIRMAN. Why don't you go ahead. And if you could also keep it down to maybe 5 minutes or so, I'd appreciate it.

Mr. KENNEDY. Yes; thanks, Mr. Chairman.

I just wanted to follow up, Ron, with some of your concerns about what is being proposed. You think that what's being proposed in terms of the compromise really strengthen ICWA and, therefore, you've come out in favor of these bills.

But if the State courts—and you're saying, with the penalties and the provisions, the State courts will have enough of an impetus to make sure that their tribes or sovereignty is respected, so I just want to get that assurance that you think that's—

Mr. ALLEN. Yes; we do firmly believe that, and we also firmly believe that the States have authority to assure that, if anybody is misrepresenting, misusing, or abusing the adoption practices and procedures and the laws, that they will be penalized, so we need to stop those kinds of improprieties.

Mr. KENNEDY. And so that we don't have the State court—and also, with respect to the existing family doctrine, we don't want the State courts to be employing that. So you feel this legislation—would it help for it to be more explicit, or do you think the penalties speak for itself, or do you think that it would be helpful to state, as a matter of policy, that the existing family doctrine that many State courts have relied upon to complicate this process should be considered null and void? I mean, is there any—in other words, is there any opportunity in this legislation to clarify for States that they shouldn't be employing their own subjective opinions in this respect?

Mr. ALLEN. Out of our last two conferences, we were provided direction by our leadership that we are more than willing to review the existing family doctrine issue with the committees on how it is best to be addressed. We do not want to see it codified in the law. We do think that—

Mr. KENNEDY. Right.

Mr. ALLEN. [continuing]. If you delegate authority to the courts to allow them to make these distinctions based on their criteria,

that it is going to be worse than what Congresswoman Pryce was conveying.

Mr. KENNEDY. Right. I understand that. What I'm saying is reverse the existing family doctrine and put that into law by saying that they do not have the ability to employ the existing family doctrine, directing them not to. That's what I'm pointing out.

Mr. ALLEN. Yes.

Mr. KENNEDY. If that should be codified into law. I mean, I—

Mr. ALLEN. That would be something we'd be very interested in.

Mr. KENNEDY. Right. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Representative Faleomavaega.

Mr. FALEOMAVAEGA. Mr. Chairman, I don't have any questions, but I do welcome both the vice chairman of the Navajo Nation and Ron Allen for his testimony.

Just basically, bottomline, the administration supports the proposed legislation and the NCAI supports it, our friend from the Navajo Nation supports it, and that's fine with me.

Thank you, Mr. Chairman.

The CHAIRMAN. Let me ask a few questions.

Vice President Atcitty, is it the Navajo Nation's policy only to intervene or seek jurisdiction in a case arising off-reservation if it is in the child's best interest?

Mr. ATCITTY. I think in all cases, whether it's on, off, or wherever, it should be number one in the child's best interest. Yes.

The CHAIRMAN. Are there professionals from the standpoint of, you know, university backgrounds and credentials and so on that work as tribal social workers with the people who are primarily responsible for determining whether there would be tribal intervention or not?

Mr. ATCITTY. Yes; we have, in our social services department, at least five individuals who have a master's degree in social work and probably the same number with baccalaureate, so it's within the tribe.

We certainly would like to see more of our people with advanced degrees, but we have—yes, we have properly-credentialed people helping us. In fact, I have with me here, Leila Help-Tulley, Master of Social Work, University of Utah; Delores Greyeyes, Master of Social Work, Arizona State University; and Sharon Clahchischillie, Master of Social Work, University of Pennsylvania.

The CHAIRMAN. Are they Navajos who also understand the culture?

Mr. ATCITTY. They are Navajos, yes, and speak Navajo, bilingual.

The CHAIRMAN. Yes; you recommended that the bill be amended to provide additional time before the tribe was required to intervene to 90 days, I believe you said?

Mr. ATCITTY. Yes.

The CHAIRMAN. Would that time be used to determine eligibility or determine whether it is in the best interest of the child to intervene, or is that basically just to comply with some of the other statutes that you already mentioned?

Mr. ATCITTY. From our experience, when there is a case of adoption anywhere in the country, we find that to try to locate an attorney who will help us handle it that has the necessary bar member-

ship in that State, it takes time. And then we have to go through a process of approval through the Bureau of Indian Affairs.

So 30 days is pushing us very, very hard, and we may not meet that particular deadline, so what we are requesting is that additional time be afforded us so that we don't find ourselves, for the sake of the child, that because of our own and other bureaucracies, that we failed to intervene on behalf of the kid or the child.

The CHAIRMAN. Ron, speaking for the National Congress of American Indians, do you favor the time limits on tribal intervention?

Mr. ALLEN. We think that they're reasonable; that that is what's going to provide the certainty of the process and the timeliness of the process and the costliness.

That was one of the issues that Congresswoman Pryce had raised in terms of being too burdensome on applicants.

The CHAIRMAN. What is the NCAI's position on the so-called "existing Indian family doctrine"?

Mr. ALLEN. We are—as I was mentioning to Congressman Kennedy, we are opposed to it being codified. We believe that the current amendments provide appropriate procedures to allow that that doctrine and those conditions are being addressed by the tribal courts and the tribal system, and that if we—we basically are opposing it because it undermines our sovereignty. That's the fundamental. And beyond that, it's a matter of procedure to assure that the best interest of the child is being addressed.

The CHAIRMAN. Okay. I have no further questions. If there are no further questions from the committee—

Mr. KENNEDY. I would just ask if Mr. Allen may be—if you have additional language that would help reemphasize that for the legislation, that State courts should not be adhering to any kind of notion of existing family doctrine, that they need to be sure to follow the procedures of ICWA and recognizing tribal sovereignty, just as a language or policy matter, that might be a helpful addendum for the courts to have to use in their proceedings, so there is sure to be no confusion in this matter.

Mr. ALLEN. And we will definitely be consulting and coordinating with our member tribes, as well as the other tribes across Indian country, to come up with some language that may be helpful in that matter.

The CHAIRMAN. All right. I might just mention, before this panel leaves, I had a personal experience with this about 3 years ago with an Anglo family that lives not too far from us down by Durango, CO, who adopted a girl when she was just a baby 1 year old, as I remember. And the girl was about 13 or 14, I guess, when I first saw her. I just happened to be sitting in a movie with my family watching a movie when she spotted me in the movie. This was a few years ago. And this young lady came up and I mean she just upbraided me like you wouldn't believe because apparently the tribe where she came from had started proceedings to have her returned to the family and the tribe. She hadn't had any contacts with them in all those years and didn't speak the language, didn't know anything about the culture or anything. You can imagine how upset she was and her parents, too.

So there is no question in my mind that we need to do something that has some certainty and finality to this issue.

I thank you for your appearance.

We will now take the last panel, which is Jane Gorman, Tustin, CA; and Mike Walleri, from the legal department of Tanana Chiefs Conference in Fairbanks, AK.

If you'd like to proceed, Jane, thank you for appearing.

STATEMENT OF JANE GORMAN, ESQUIRE, TUSTIN, CA

Ms. GORMAN. Thank you. I appreciate, on behalf of the adoption community, the opportunity to be here this morning.

First of all, I want to—this is not part of my prepared statement, but I do want to tell the group that these are compromise amendments. When Mark Gradstein and I first met with Bert Hersch and Jack Trope more than 2 years ago, the first issue that we attempted to talk about was the existing Indian family doctrine and all four of us practically walked out of the room. We then decided that since we'd flown 3,000 miles to meet with them, that maybe we should try to talk about some other areas and see if there were some compromises that the two communities could agree on.

The bills that are now before you are a result of those compromises that we have reached. If we attempt to deal with the existing Indian family doctrine in any form, I don't believe that there will any longer be a consensus between the adoption community and the Native American community. So I would urge, this group to not consider adding language in either direction on that issue, because I believe the consensus will fall apart, and these bills are very important for a number of reasons.

As you know, I'm Jane Gorman, and I do come here to urge passage of these proposed amendments. I'm here as president-elect of the American Academy of Adoption Attorneys, past president of the Academy of California Adoption Lawyers, and attorney for the Rosts, the prospective adoptive parents who are still, sadly, trying to adopt the twin girls who will turn 4 years old this year and over whom they are still in litigation.

Within the past few weeks, just 2 weeks ago, the birth family approached the Rosts and expressed a willingness to allow the adoption to proceed—both birth parents and the grandparents. However, their attorneys, as of 3 days ago, are not willing to enter into an agreement to withdraw their opposition to the adoption in return for visitation because, as the attorney expressed to me, the sole reason is because such an agreement is not enforceable.

These amendments, if passed, would remedy that roadblock and allow these twins to finally have the best of both worlds. They could grow up with the only family that they've ever known, which is not to say that the Rosts are any better parents than the Indian family would have been had the twins had remained with them at birth, but they're not there. They're with the Rosts. They've been there all their lives. They could also, at the same time, be exposed to their Indian relatives and to the culture.

Since I testified here last year urging support of these same amendments, hardly 1 week has gone by that I haven't received at least one call from adoptive parents telling me the same story week after week from State after State, some adopting independently,

some through agencies, The ages of the children, the States of residents, the tribes involved are all different, but the stories are strikingly similar. They tell me, "We know the child we're adopting or have adopted has Native American ancestry. We know the tribe was never notified."

The questions they ask me are always the same: What do we do now? How did this happen? Can the tribe come and take away my child? Did my attorney or the adoption agency do something wrong?

I tell them that legally, under the current law, inconsistent as this may sound, no, your attorney or the agency probably didn't do anything legally wrong in not notifying the tribe because in voluntary placements notification is not mandated; and yes, your child could be removed.

But what do we do now? That question is much harder. Do they belatedly notify the tribe and pray for mercy, or do they white knuckle it until the kid grows up and hope the tribe or the extended birth family never finds out?

I honestly don't know what to tell these people. The one thing that I do know and that I do tell them is that the Indian Child Welfare Act must be fixed so these problems don't continue to happen. Tribes must be given notice in voluntary placements, and they must have the shortest time possible after a child is placed and they receive proper notice, complete notice, to act or forever hold their peace.

I believe the amendments, as proposed, do provide 90 days notice. I believe that the Navajos are misreading the act. I understand that it is a little confusing, but if it's read as a whole it does require 90 days notice, so I don't believe that that time period needs to be extended.

On a quick reading of the Navajo proposals, other than the one which would address the existing Indian family doctrine, the other provisions I believe would be acceptable to my groups. Obviously, I haven't taken the proposals back to AAAA, but they seem consistent with our intent.

These amendments, if passed, would provide for both notice and early cut-offs of a right of a tribe to disrupt an adoption, and I believe would help both worlds.

The American Academy of Adoption Attorneys, which is a nationwide group of attorneys representing adoptive parents, birth parents, children, and agencies, supports this legislation because it will give finality to adoptive placement.

My colleague, Mark Gradstein and I began working with the tribes on this legislation more than 2 years ago in an attempt to draft amendments that would benefit everyone. We believe this bill would do that.

A small faction of the adoption community, a group of agencies who do not believe that the Indian Child Welfare Act has a valid purpose and thus should be repealed, and who routinely give no notice to tribes in voluntary placements so they can place Indian children with non-Indian families, will urge you, as they did last year, to defeat this bill. This group will claim, as it did last year, that the amendments will be detrimental to adoption and may even cause some women to abort their Indian children, but make no mis-

take about it, this group does not represent the adoption community.

The adoption community believes that these amendments would foster adoption because adoptive placements would be more secure and sooner. And there is no evidence whatsoever that more Indian children would be aborted or that attorneys and agencies would shy away from adoption of children either because of the cumbersome process, as Congresswoman Pryce predicted today, or because of these amendments.

The provision which would provide for criminal penalties against attorneys or agencies who willfully violate the notice provisions is not something we in the adoption community want or feel we need, but the ethical adoption community, we lawyers and agencies who follow the law and believe that ICWA is a law with a good purpose, are willing to give teeth to our promises and put ourselves on the line and our careers on the line in order to assure the Native American community that we mean what we say and we intend to follow the law.

We support these amendments and urge that you make them the law.

Thank you.

The CHAIRMAN. I thank you.

[Prepared statement of Ms. Gorman appears in appendix.]

The CHAIRMAN. Michael, if you'd like to continue, please.

STATEMENT OF MICHAEL J. WALLERI, ESQUIRE, LEGAL DEPARTMENT, TANANA CHIEFS CONFERENCE, FAIRBANKS, AK

Mr. WALLERI. Thank you, Mr. Chairman.

I have submitted our formal comments.

The CHAIRMAN. They will be in the record.

Mr. WALLERI. And I, in the interest of time, only wish to address a couple of other issues in addition to that formal testimony.

First of all, as has been beaten to death already here, but if I can beat it one more time, the issue of the 14th amendment just simply doesn't have any application or concern.

The House committee report in 1978 dealt with this exhaustively. The U.S. Supreme Court in *Fisher v. District Court*, dealt with this definitively. And since the passage of ICWA there have been at least two challenges in State courts to the constitutionality of ICWA, and the constitutionality of ICWA has been sustained in those cases.

It is a government-to-government relationship, and I think that's enough beating for 1 day.

I must take exception to the concern that these amendments are procedural in nature and not substantive. The observation is correct; the criticism I don't think is very well warranted.

In terms of being cumbersome, the notice provisions are one piece of paper and \$1.50 in stamps, and that is simply not a cumbersome burden when we're talking about a decision which is going to govern the entire lifelong life of a child. That is not a cumbersome procedure, and there is no way that you can read these amendments to suggest that there are any greater procedures than a simple notice, and that the verbiage in the bill is primarily to de-