fine very precisely, very clearly, what those notices should provide for.

But that's what we're talking about is a single piece of paper and $1.50 in stamps, and that is not a cumbersome procedure.

In terms of substantive, I think that, as Ms. Gorman pointed out, we have discussed in this whole process the existing Indian family doctrine. There were other issues, such as Public Law 280, the court determinations in Public Law 280 states, tribal court determinations and jurisdiction also in Alaska. And there were some discussions about punitive fathers.

All of these issues fell out of the discussions and the process over our commitment to develop a consensus piece of legislation that will affirmatively promote, from all perspectives—from the adoption community perspective and from the tribal community perspective—the best interest of the child.

Now, I assure you that there are existing issues out there, and we are committed to looking at those issues in either legislation, particularly the existing Indian family doctrine, which we are opposed to.

But I would recommend that any process in legislation on these other issues follow the process that we've used in this, and that is a demand that the native community, in the form of the tribal governments, be affirmatively consulted and participate in development of that legislation.

It is a government-to-government relationship and the tribal involvement is critical and it should not be a Member of Congress simply dropping in a bill and expecting everybody to fall in line. It does require some consultation with the tribes. These are the people that are being affected. These are the people that should have a say. They've got a system of government that can represent them, and it should be used.

With that, I would conclude my remarks. If there are any questions, I'd be glad to answer them.

The CHAIRMAN. Thank you.

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

The CHAIRMAN. Jane, let me ask you about your association. I'm not familiar with it at all. It's a nationwide association of adoption attorneys?

Ms. GORMAN. Yes; it is.

The CHAIRMAN. How many members do you have?

Ms. GORMAN. Several hundred members, and we are from every State in the Union, as well as Canada.

The CHAIRMAN. And you primarily facilitate adoptions, obviously?

Ms. GORMAN. Yes; all of our practices are primarily adoption related.

The CHAIRMAN. Are a number of those attorneys, do they specialize in adoptions of Indian children, or kind of general?

Ms. GORMAN. I don't think—no, I don't think anyone's practice is solely in adoption of Indian children—but everyone's practice touches it. There aren't that many Native American adoptions so that anyone could specialize.

The CHAIRMAN. Do I understand from your testimony that Representative Pryce's proposal would place the jurisdiction in the

State courts? Perhaps I didn't understand your complete testimony, but do you believe that would also erode tribal sovereignty, as some of our subsequent speakers had alluded to?

Ms. GORMAN. Of course it would erode tribal sovereignty. The reason that I can't really address—two reasons that I can't really address Congresswoman's proposal are: First, I haven't seen it, but that's really a dodge, because I pretty much know what it says. Second, is because I have a conflict of interest with my own clients, perhaps, because if it does, indeed, as she represented here today, codify the State court opinion in my own case, I can't take a position against it. But what I can tell you is that I can affirmatively say is only legislation which passes into law will help my clients. I do not believe Congressman Pryce's legislation will this year or any year in the foreseeable future pass into law.

I believe these compromise amendments may, and I believe that they would, not only help my existing clients, the Rosts, but other aspects of the bill would have kept the *Rost* case from ever happening and would help many other cases that I come into contact with on at least a monthly basis, if not a weekly basis.

The CHAIRMAN. Thank you.

Mike, your testimony states that many of the cases arising from the ICWA are the cause of poor social work, in your written testimony. Is that meant to mean poor social work on the reservation?

Mr. WALLERI. No; almost all of these cases arise off reservation. In fact, I've never seen one actually arise on reservation or within the Indian country in Alaska.

What normally happens is that the agency or the person actually makes the placement. In our experience, a social worker usually isn't involved. A professional social worker usually isn't involved because most professional social workers will do a background check to determine whether or not a child is really available for adoption, and that's the big issue, whether or not these children are really available as a factual matter for adoption.

One of the ironies here is what is an existing Indian family, and an existing Indian family many times encompasses much more than the maybe western notion of a nuclear family. And many people who are engaged in the adoption field and somewhat unprofessionally simply don't know that, aren't aware of it. They don't check it out, and they don't see what—they don't do the basic background check to find out if this child is really available for adoption or whether or not there is already a home within that child's existing family which will provide a nurturing, caring, and loving home for them.

And so because there is no notice provision, they're placed. They end up bonding. And the net results is that you've got people who maybe 6 months ago were total strangers to this child having an emotional bond with the child established by this poor social work, and the result is oftentimes the conflicts that we've seen arise.

So when I used that term "poor social work," oftentimes it's a lack of any social work in terms of what we would notice as a professional standard of social work, and in some cases, actual willful disregard of the law.

The CHAIRMAN. I think you're right in that most non-Indians think in terms of a family like Mom and Dad or a nuclear family,

wherein Native peoples believe, as Congressman Faleomavaega has already alluded to, that the family is an extended family. It includes more people in the immediate family than just Mom and Dad.

With that, do you have any questions?

Mr. FALEOMAVAEGA. I just want to commend Ms. Gorman for her fine statement, and I want to assure her that if there was any sense of implication that I suggested that all the attorneys out there are a bunch of crooks trying to make a fast buck in these adoption cases, that certainly was not my intention.

But, at the same time, I do express concern that if there is willful fraudulent misrepresentation on the part of the attorneys to do something like this, then they should be corrected.

I certainly want to thank her for her support in this legislation and the process.

One of the concerns that I have and that was alluded to earlier is it's always the problem of saying, on the part of the white community, what is an Indian. Blue eyes? Blonde? How do you—how far do you go back and say you're 1/32?

It's an administrative problem. I'm sure that it's true with adoption agencies. I'm sure it's true even under State law. We understand that.

But, as I've tried to share with you earlier my experience—and I know exactly how the Indian communities relate to themselves. In my own island community, you may be 1/10 removed as a cousin, but you are, as far as they are concerned, brother and sister. Everybody is your aunt and uncle and the closest and most meaningful situation.

Now, I'm sure that many of our white families feel the same way, too, but for the most part it has been my experience that it's either mother and father or grandfather, and anything beyond that gets a little blurry as far as family is concerned in what I perceive as the American family.

But I do want to thank you both for your fine statements, and I sincerely hope, Mr. Chairman, that we will carry this legislation through, go through the debate process, and I hope that we will pass this legislation.

Thank you both for your testimony.

The CHAIRMAN. And I thank this committee, too.

With that, I would tell all witnesses that the record will be open for written testimony for two weeks. If you have any further comments you'd like to turn in, that will be considered.

With that, this committee is adjourned.

[Whereupon, at 12:42 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. DONNA M. CHRISTIAN-GREEN, U.S. DELEGATE FROM THE VIRGIN ISLANDS

Thank you Mr. Chairman for giving me the opportunity to make brief opening remarks. This is a very important hearing and I commend you Chairman Young and Chairman Campbell for your willingness in holding this joint hearing today.

Let me begin my saying, first of all, that the issue of the welfare of Indian Children is of great concern to me—indeed I am concerned about all of the issues that affect Native Americans.

In the last Congress, as the result of several high-profile adoption cases involving lengthy disputes under the Child Welfare act, questions were raised about whether the Indian Child Welfare Act, [ICWA] fairly took into account the best interest of the children, parents and the tribes.

The IWCA, as you know Mr. Chairman, was enacted in 1978 to address the widespread removal of Indian children from Indian families and placing them with non-Indian families or institutions.

Recognizing the need for legislation to address the concerns raised by the high-profile cases in the last Congress, Chairman Young and Ranking Member Miller introduced legislation, which is virtually identical to the bills before us today, in hopes of addressing these problems.

H.R. 1082 and S. 569 are the product of a proposal which emerged from the mid-year convention of the National Congress of American Indians [NCAI] in Tulsa, OK in 1985, and which is known as the "Tulsa Compromise." Mr. Chairman I look forward to working with you and the members of both to the committees represented here today in moving forward with the bills before us. Thank you again Mr. Chairman for allowing me to make this brief opening statement. I look forward to hearing from the witnesses.

PREPARED STATEMENT HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Mr. Chairman, I first would like to thank you for holding this hearing today. I am a cosponsor of the Indian Child Welfare Act (ICWA) Amendments of 1997, and I am pleased that we are having this discussion about how to reasonably improve the implementation of ICWA while still preserving the rights of tribal courts and Indian parents and, most importantly, ensuring the well-being of Indian children.

Before the enactment of ICWA in 1978, one quarter of Indian children were removed from their homes and families, many times for dubious reasons and without parental notification. A large percentage of these children were then placed in foster care in non-Indian homes or were adopted by non-Indian families.

One of the major reasons for this situation was the ability of states, rather than tribal governments, to exercise jurisdiction over child welfare proceedings involving Indian children. As this Committee knows well, state judicial bodies frequently have

failed to recognize and honor tribal relations and the cultural, social and religious customs of Indian communities.

To address this problem, Congress enacted ICWA, which recognizes exclusive tribal jurisdiction over Indian child welfare proceedings arising in Indian country. ICWA also presumes tribal jurisdiction in other cases involving Indian children, while permitting concurrent state jurisdiction in custody and adoption cases for good cause. By creating a statutory mandate for tribal and parental involvement in all Indian child welfare proceedings and allowing referral to tribal courts, the current system has succeeded in protecting the rights of Indian communities, children, and families.

Unfortunately, there have been a few rare, but high profile cases involving ICWA in recent years that resulted in significant trauma for all parties involved: Indian children, adoptive parents, birth parents, and Indian tribes. These cases initially prompted the proposal of sweeping changes to ICWA in the last Congress that would have overreacted to the concerns and significantly compromised ICWA. I'm pleased that the Senate last year resisted the temptation to enact expansive changes and that instead, with this legislation, we move beyond controversy to consensus.

This legislation would address the concern these cases have caused by providing new guarantees of early notice to tribes in cases involving the placement of Indian children, balanced by new, strict timeframes within which Indian families and tribes can intervene in adoption proceedings. I understand that this bill has the support of tribes, including the four tribes located in North Dakota, as well as the support of adoption advocates.

I have been a long-standing supporter of ICWA, and it is my hope that the Senate will enact these changes in a timely manner.

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

Thank you, Chairman Campbell and Chairman Young, for convening this hearing on two bills, S. 569 and H.R. 1082 to amend the Indian Child Welfare Act of 1978 (ICWA). In the Senate, this bill has five cosponsors. . . myself, and Senators Campbell, Domenici, Dorgan, and Wellstone.

As we found last year, the issue of Indian child welfare stirs the deepest emotions. Nothing is more sacred than children. And while developing common ground is always difficult, it is especially difficult on such a deeply personal issue. The amendments to ICWA contained in this bill have been crafted to resolve many of the differences between Indian tribes and advocates of adoption ICWA was enacted in 1978 in response to growing concern over the consequences to Indian children, families and tribes of the separation of large numbers of Indian children from their families and tribes through adoption or foster care placements by the State courts. In response, Congress protected both the best interest of Indian children and the interest of Indian tribes in the welfare of their children, by carefully crafting ICWA to make use of the roles traditionally played by Indian tribes and families in the welfare of their children through a unique jurisdictional framework.

The bills we are discussing today will amend the Indian Child Welfare Act of 1978 to better serve the best interests of Indian children without trampling on tribal sovereignty and without eroding fundamental principles of Federal Indian law.

As with all compromises, I am sure each side would prefer language that is better for them. I am told that many Indian tribes would rather not have any amendments at all, and that many in the adoption community would rather have no ICWA. But on behalf of the Indian children and their parents, both biological and adoptive, I want to extend my personal thanks to persons on both sides of this debate who have led the way to a compromise in which both sides, and most importantly, Indian children, are the winners.

More than 2 years ago, several high-profile adoption cases captured national attention because they involved Indian children caught in protracted legal disputes under ICWA. Adoption advocates believed these cases would provide political support for amendments they had long sought to the Act. Indian tribes felt like they were under siege, battling distorted news stories about what the ICWA does and does not do while at the same time having to fend off overly broad amendments to ICWA.

It is remarkable that a few visionaries on both sides ventured away from the battle lines to begin to talk with each other about what common ground might exist. These talks began a long process of negotiation over possible compromise amendments to ICWA. Over time, the protagonists began to see ways in which some of each side's objectives could be accomplished through common agreement.

There is no doubt in my mind that, in the case of an Indian child, there are special interests that must be taken into account during an adoption placement process. But these interests, as provided for in ICWA, must serve the "best interests" of the Indian child. And those best interests are best served by certainty, speed, and stability in making adoptive placements with the participation of Indian tribes.

I firmly believe this bill better enables us to serve the best interests of all in ways that preserve fundamental principles of tribal sovereignty by recognizing and preserving the appropriate role of tribal governments in the lives of Indian children. We've delayed too long and I intend to pursue enactment of this bill as soon as possible.

PREPARED STATEMENT OF HON. GEORGE MILLER, U.S. REPRESENTATIVE FROM CALIFORNIA

Today, we are taking testimony on two identical bills, the Indian Child Welfare Act Amendments of 1997. The bill that I cosponsored in the House, H.R. 1082, is, I believe, a timely bill that reflects a carefully crafted compromise between the interests of Indian tribes seeking to protect their culture and heritage and the interests of non-Indians seeking greater clarity and security in the implementation of the Indian Child Welfare Act of 1978.

This bill is virtually the same as legislation I cosponsored last year and is the direct result of our consideration of several high-profit adoption cases involving the adoption of Indian children. These cases, involving lengthy disputes under the Indian Child Welfare Act, focused our attention on whether the Act fairly, and to the greatest degree possible, takes into account the best interests of Indian children, families, prospective parents, and Indian tribes.

H.R 1082 stands in contrast to other attempts last Congress to rectify these problems by simply gutting the Indian Child Welfare Act and repealing many of the protections it affords Indian children and their parents. Proponents of our legislation now include the American Academy of Adoption Attorneys and Jane Gorman, the attorney who represented the family in the *Rost* case.

Our bill is intended to strengthen the act and to protect the lives and future of Indian children first and foremost. We understand that to a few parties on either side of the debate this bill may not seem perfect. Few compromises are. But what this bill does is truly important. This bill helps Indian children by providing allowing adoptions to move forward quickly and with greater certainty. This bill places limitations on when Indian tribes and families may intervene in the adoption process. Yet at the same time, this bill protects the fundamental rights of tribal sovereignty.

The point is that this bill places the interests of Indian children above all else, first by ensuring that they will have as equal a chance as any other children at having a loving family and a home, and second, by protecting their interests in their own culture and heritage.

We cannot forget why we had to have the Indian Child Welfare Act in the first place—to stop the widespread removal of Indian children from their families and tribes that was occurring on reservations across the country. Former Committee Chairman Mo Udall, who pushed through this landmark legislation in 1978, recognized that: "Indian tribes and Indian people are being drained of their children, and as a result, their future as tribes and as a people is being placed in jeopardy." Testimony taken by our Committees revealed that as much as 25 to 35 percent of all Indian children were being placed in non-Indian homes away from reservations. Much of the problem was caused by unethical adoption agencies with little regard for Indian culture, sovereignty, or family feelings. The purpose of the 1978 law was to give Indian tribes a chance to have their side of the story heard when it came to adoption proceedings. This was accomplished by giving tribes the right to participate in state court proceedings and to have those proceedings sent to tribal courts when appropriate. We will preserve that right.

One result of the passage of the Act has been the development and implementation of tribal juvenile codes, juvenile courts tribal standards, and child welfare services. Today, almost every Indian tribe provides child welfare services to their own children. Furthermore, we now know that the Act has motivated courts and agencies to place greater numbers of Indian children into Indian homes and that there has been an overall reduction in foster care placement as well.

In other words, the Indian Child Welfare Act has worked. Indian children have been placed in loving homes and the removal of children from their culture has diminished. Unlike other minority cases, there is no shortage of families willing to

adopt Indian children. Less than 1 percent of all Indian adoption cases since passage of the Act have caused problems.

Some have tried to blame the few but well-publicized failures on the Indians, some have concluded that rolling back the Indian Child Welfare Act is necessary to prevent future miscarriages of justice, and some have even asserted that they are doing it with the best interests of the Indians at heart. But Indian people have heard claims like these all too many times before. We understand how hard it must be for them to live with this rhetoric, especially when the stakes are so high. We must all bear in mind that from an Indian perspective, it is the very future of their people and their culture that is at stake.

It is time for non-Indians to understand that Indian families are not necessarily opposed to other people raising their children and giving them loving homes. But it is even more critical that they understand that Indian people must have a voice in these adoptions.

While we in Congress are often the first to prescribe what is best for American Indians, we usually fail in our attempts to deliver on our promises, largely due to our unwillingness to listen to the very people we're trying to help. I have listened to the tribes and to the families and I believe that the Indian Child Welfare Act Amendments of 1997 are a fair and balanced approach that can bring peoples and cultures together, not divide them.

PREPARED STATEMENT OF HON. DEBORAH PRYCE, U.S. REPRESENTATIVE FROM OHIO

Mr. Chairmen, distinguished members of the House and Senate Committees, thank you for inviting me to testify today regarding the Indian Child Welfare Act of 1978, known as the ICWA, and specifically to discuss S. 569 and H.R. 1082.

My interest in this issue began when my constituents, the Rost family in Columbus, OH, told me the story of their fight to keep their adopted twin daughters. When these little girls were placed for adoption by their birth parents, nobody knew of their Indian heritage. It was only after their grandmother signed the father and the girls up with the Pomo Indian tribe that the ICWA was invoked and the adoption was put on hold. Three years later, after taking a second mortgage on their home, accruing thousands of dollars in legal bills, and enduring a tremendous emotional toll—the Rosts' fight continues. The *Rosts'* case is not an anomaly. Since I became involved in this issue, I have heard numerous horror stories from people all over the country who are victims of the ICWA. Much of this stems from a broad and inconsistent application of the law.

An article written by Christine Bakeis, published in the Notre Dame Journal of Law. Ethics and Public Policy last year does a good job of explaining the fundamental flaws of the ICWA as applied by the courts. I respectfully recommend to my colleagues that you read this article as your committees debate ICWA reform, or perhaps invite Ms. Bakeis to testify at future hearings.

The 14th amendment of the U.S. Constitution protects the rights of individuals against classifications based on race. And, it protects the rights of parents to control their children's upbringing as fundamental liberty and privacy issues. The ICWA flies in the face of these constitutional principles that we as Americans hold dear. The ICWA excludes all other circumstances to the sole factor of race and denies basic constitutional rights to parents who have a child with Indian blood. For example, a mother who has no Indian blood or any ties to Indian culture, who voluntarily places her child for adoption, and chooses the adoptive parents, can have the decisions she makes for her child overturned by an unknown third party, solely because her child has Indian blood.

As more and more Americans become outraged by the violation of basic individual rights that the ICWA embodies, I believe we will witness the demise of this law.

S. 569 and H.R. 1082 do nothing to address these fundamental issues. Instead these bills take a procedural approach that, in my view, is cumbersome enough to significantly discourage the adoption of Indian children. The complexity of these requirements almost guarantees an inability to comply. I challenge the members of the committees to read this legislation and understand what it requires. As a former judge, I can tell you that courts are going to have a very difficult time applying the provisions. Frankly, these bills' 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 language that the House of Representatives passed last year. However, in an effort to make a good-faith compromise, I will remove some 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 state court decisions 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 is of Indian descent, and at least one parent 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 Supreme Court accepts the application of this doctrine as the 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 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, Native American tribes, and adoptive families.

Thank you.

PREPARED STATEMENT OF HON. GERALD B.H. SOLOMON, U.S. REPRESENTATIVE FROM NEW YORK

Thank you for the opportunity to share my thoughts on the reform of the Indian Child Welfare Act.

My understanding and interest in the Indian Child Welfare Act stems from my own personal experiences with adoption. As a strong supporter of adoption, I understand the need for families who have sought to make homes for children who were not able to be raised by their biological parents.

It is up to those of us who have been adopted not only to share our stories with others, but to speak out in favor of the adoption decision. My support has grown out of my fundamental view that every human life is precious and that every person deserves the right to life and a happy home.

I, myself was blessed to be adopted by a generous stepfather and raised in a loving family. I want to give all children the chance to grow up in a caring and loving family environment. For this reason, I write to offer my full support for reform of the Indian Child Welfare Act. The Indian Child Welfare Act was passed in 1978 in response to a terrible problem within the Indian community: the high numbers of Indian children being placed in foster care and the breakup of many Indian families because of the unwarranted removal of their children by non-tribal public and private agencies. This was clearly an unjust situation that needed to be corrected in order to protect the sanctity of the Native American family.

Though the Indian Child Welfare Act was meant to remedy this situation, the reality is that the Act has been detrimental in some cases. The problem that the Act was created to correct, namely, the inordinate number of Indian children in foster care, has actually risen since its enactment because of the increased authority the Act can give an Indian tribe. This increased authority has lengthened the adoption process and left many innocent Indian children in foster care.

This joint hearing has been convened to discuss proposed language to amend the Act to respond to many of these concerns. I believe this language represents a step in the right direction in reforming the Act and was created through negotiations between tribal governments and the adoption community. I am encouraged at sections that will facilitate voluntary agreements between Indian families or tribes and non-Indian adoptive families.

However, I am concerned that this language, while commendable, will not address cases where the adoptive child is retroactively registered with an Indian tribe. I know all my colleagues in this Congress share my interest in providing families with the assurance that their adopted children will not be removed from their family due to retroactive registration. I understand the need to allow the Indian tribes the ability to intervene in an adoption case, however, fair and unbiased regulations need to be implemented. With future discussions like this hearing between the House and the Senate, these concerns can hopefully be rectified.

This legislation is extremely important to the families of this country, Indian and non-Indian. Adoption plays a vital role in strengthening the family unit and protecting the values of this great Nation. In reforming the Indian Child Welfare Act, we must remember that the best interests of the children must be paramount in all child custody proceedings. Congress must work diligently to remove illogical barriers

to adoption and provide a sense of security to adoptive parents and children that their adoptions will be permanent. For this reason, I hope the Chairmen will continue to pursue and pass reform of the Act in this Congress.

I urge support of full reform of the Indian Child Welfare Act and thank you both for your important work on this issue.

PREPARED STATEMENT OF ADA E. DEER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Good morning Chairman Campbell, Chairman Young, and members of the committees. I am pleased to be here to present the Department of the Interior's views on proposed amendments to the Indian Child Welfare Act [ICWA] of 1978. The Department of the Interior supports, without reservation, H.R. 1082 and its companion bill, S. 569, which have incorporated the consensus-based tribal amendments developed last year by tribal governments and the National Congress of American Indians [NCAI] and the adoption community to improve the Indian Child Welfare Act.

Congress passed the Indian Child Welfare Act in 1978 [ICWA], after 10 years of study on Indian child custody and placements revealed an alarming high rate of out of home placements and adoptions. The strongest attribute of the ICWA is the premise that an Indian child's tribe is in a better position than a State or Federal court to make decisions or judgments on matters involving the relationship of an Indian child to his or her tribe. The clear intent of Congress was to defer to Indian tribes issues of cultural and social values as such relate to child rearing.

In addition to protecting the best interests of Indian children, the ICWA has also preserved the cultural integrity of Indian tribes because it affirmed tribal authority over Indian child custody matters. As a result the long term benefit is, and will be, the continued existence of Indian tribes.

The Indian Child Welfare Act of 1978 is the essence of child welfare in Indian Country and provides the needed protections for Indian children who are neglected. On the whole, the ICWA has fulfilled the objective of giving Indian tribes the opportunity to intervene on behalf of Indian children eligible for tribal membership in a particular tribe.

There have been concerns over certain aspects of the ICWA and the ICWA should be revised to address problem areas and to ensure that the best interests of Indian children are ultimately considered in all voluntary child custody proceedings. Although several high-profile cases were cited to support the introduction last year of ICWA amendments, which would have been detrimental to Indian tribes and families, those cases do not warrant a unilateral and unfettered intrusion on tribal government authority.

The provisions contained in H.R. 1082 and S. 569 reflect carefully crafted consensus amendments between Indian tribes seeking to protect their children, culture and heritage and the interests of the adoption community seeking greater clarity and certainty in the implementation of the ICWA. First and foremost, the amendments will clarify the applicability of the ICWA to voluntary child custody matters so that there are no ambiguities or uncertainties in the handling of these cases. We know from experience that State courts have not always applied the ICWA to voluntary child custody proceedings.

The amendments will ensure that Indian tribes receive notice of voluntary ICWA proceedings and also clarify what should be included in the notices. Timely and adequate notice to tribes will ensure more appropriate and permanent placement decisions for Indian children. Indian parents will be informed of their rights and their children's rights under the Act, ensuring that they make informed decisions on the adoptive or foster care placement of their children. When tribes and extended family members are allowed to participate in placement decisions, the risk for disruption will be greatly reduced. While the amendments place limitations on when Indian tribes and families may intervene and when birth parents may withdraw their consent to an adoption, they protect the fundamental rights of tribal sovereignty. Furthermore, the amendments will permit open adoptions, when it is in the best interest of an Indian child, even if State law does not so provide. Under an open adoption, Indian children will have access to their natural family and cultural heritage when it is deemed appropriate.

An important consideration is that upon a tribe's decision to intervene in a voluntary child custody proceeding, the tribe must certify the tribal membership status of an Indian child or their eligibility for membership according to tribal law or custom. Thus, there would be no question that a child is Indian under the ICWA and ensures that tribal membership determinations are not made arbitrarily. Last, the amendments will provide for criminal sanctions to discourage fraudulent practices

by individuals or agencies which knowingly misrepresent or fail to disclose whether a child or the birth parent(s) are Indian to circumvent the application of the ICWA.

In summary, the tribally developed amendments contained in H.R. 1082 and S. 569 clearly address the concerns which led to the introduction of Title III of H.R. 3286 (104th Congress), including timeframes for ICWA notifications, timely interventions, and sanctions, definitive schemes for intervention, limitations on the time for biological parents to withdraw consent to adoptive placements, and finality in voluntary proceedings.

Chairman Campbell and Chairman Young, we want to express our grave concern that the objectives of the ICWA continue to be frustrated by State court created judicial exceptions to the ICWA. We are concerned that State court judges who have created the "existing Indian family exception" are delving into the sensitive and complicated areas of Indian cultural values, customs and practices which under existing law have been left exclusively to the judgment of Indian tribes. Legislation introduced last year, including H.R. 3286, sought to ratify the "existing Indian family exception" by amending the ICWA to codify this State-created concept. The Senate Committee on Indian Affairs, in striking Title III from H.R. 3286, made clear its views that the concept of the "existing Indian family exception" is in direct contradiction to existing law. In rejecting the "existing Indian family exception" concept, the Committee stated that "the ICWA recognizes that the Federal trust responsibility and the role of Indian tribes as parens patriae extend to all Indian children involved in all child custody proceedings." [Report 104–335 accompanying S. 1962, 104th Cong., 2nd Session].

The Department of the Interior's position on the emerging "existing Indian family exception" concept is the same as previously stated in the administration's statement of policy issued on May 9, 1996. We oppose any legislative recognition of the concept.

The Department's position is that the ICWA must continue to provide Federal protections for Indian families, tribes and Indian children involved in any child custody proceeding, regardless of their individual circumstances. Thus, the Department fully concurs with the Senate Committee on Indian Affairs' assessment and rejection of the "existing Indian family exception" concept and all of its manifestations. We share the expressed concerns of tribal leaders and a majority of your committee members about continuing efforts to amend the ICWA, particularly those bills which would seriously limit and weaken the existing ICWA protections available to Indian tribes and children in voluntary foster care and adoption proceedings.

The United States has a government-to-government relationship with Indian tribal governments. Protection of their sovereign status, including preservation of tribal identity and the determination of Indian tribal membership, is fundamental to this relationship. The Congress, after 10 years of study, passed the Indian Child Welfare Act of 1978 (Pub. L. 95–608) as a means to remedy the many years of widespread separation of Indian children from their families. The ICWA established a successful dual system that establishes exclusive tribal jurisdiction over Indian Child Welfare cases arising in Indian Country, and presumes tribal jurisdiction in the cases involving Indian children, yet allows concurrent State jurisdiction in Indian child adoption and child custody proceedings where good cause exists. This system, which authorizes tribal involvement and referral to tribal courts, has been successful in protecting the interests of Indian tribal governments, Indian children and Indian families for the past 18 years.

Because the proposed amendments contained in H.R. 1082 and S. 569 will strengthen the Act and continue to protect the lives and future of Indian children, the Department fully embraces the provisions of H.R. 1082 and S. 569.

In closing, we appreciate the good faith efforts of tribal governments in addressing the ICWA-specific concerns raised by certain Members of the Congress and in developing tribally acceptable legislative amendments toward resolving these issues within the past year. I would like to thank Chairman Campbell, Chairman Young, and the committee members for all their hard work and heartfelt assistance to tribes in shepherding the tribal amendments through the legislative process. This administration will endeavor to ensure that tribal sovereignty will not be compromised, specifically, the right of tribal governments to determine tribal membership and the right of tribal courts to determine internal tribal relations.

This concludes my prepared statement. I will be pleased to answer any questions the committees may have.

Prepared Statement of Mervin Wright, Jr., Chairman, Pyramid Lake Paiute Tribal Council

The Pyramid Lake Paiute Tribe supports the proposed amendments contained S. 569 and H.R. 1082. These provisions resulted from a 3-day workgroup of trib leaders, non-Indian adoption attorneys and the professionals who work in the ar of Indian children welfare who were present at the National Congress of Americ Indians 1996 midyear conference. I was present at the Tulsa NCAI conference d ing the floor debate on the ICWA resolution and there were many emotional sto shared by Indian men and women who are products of extended families who rais them.

The provisions reflect a consensus by tribes and non-Indian adoption attorneys strengthen the current Indian Child Welfare act for the best interests of Indian ch dren and to protect their culture and heritage, which clearly is a very high priori

The Pyramid Lake Tribe supports the amendments that includes notification voluntary cases. This notice would allow and improve the time line for the extende families and the tribes to respond in Indian child placement proceedings. This not would also contain distinct information so that a tribe can make the proper jud ment on intervention. The amendments would also ease the adoption process so th no Indian child has to wait an extended time to become a member of a loving, carin family.

We do not support any amendment that would eliminate the right of a tribe determine its own tribal membership. We strongly object to state court judges w have established an "existing Indian family doctrine" in which the judges have rul that ICWA does not apply to children who have no significant ties, either cultural or by proximity, to their reservations. This doctrine infringes upon the inhere right of the tribes as sovereign nations to determine its own membership. We appr ciate Senator McCain's remark in his prepared statement in which he refers to pr serving the fundamental principles of tribal sovereignty by recognizing and preser ing the appropriate role of tribal governments in the lives of Indian children.

We, as Indian People feel very strongly toward protecting our children. As we loo back at our histories our ancestors have, at certain times, given the ultimate sa rifice to protect our ways of life. In today's society we have to use our best abili to impose the same principles of representation in these critical issues. Our inter is to protect our future, which is vested in our children. Our children are our fu ture—we need to nurture and protect them.

The Pyramid Lake Paiute Tribe commends Chairmen Campbell and Young an members of the House Committee on Resources and the Senate Committee on I dian Affairs for holding a joint hearing on the amendments to the Indian Child W fare Act. We urge passage of the proposed legislation developed by consensus of tri al leaders at the Tulsa NCAI midyear conference in 1996. Your efforts in represen ing the best interests of our Indian children are greatly appreciated.

Prepared Statement of Stanley Crooks, Chairman, Shakopee Mdewakanton Sioux Community Council

The Shakopee Mdewakanton Sioux Community [Dakota] Business Council appre ciates the opportunity to submit a written statement on the Indian Child Welfa Amendments [ICWA] which were the subject of a joint hearing on June 18, 19 convened by the Senate Committee on Indian Affairs and the House Resources Com mittee.

The Shakopee Mdewakanton Sioux [Dakota] Community supports the propose ICWA amendments developed and approved by consensus of tribal leaders at a mid year conference of the National Congress of American Indians in Tulsa last year We believe, as all tribes do, that our Indian children are our future and they mus be protected.

The provisions contained in both the Senate and House bills, S. 569 and H.R 1082, reflect the combined efforts of tribes to protect our greatest resource—our ch dren, our tribal culture and heritage, and the efforts of the non-Indian adoptio community to achieve clarity and certainty in the implementation of ICWA to best benefit the Indian child.

It is our belief that ICWA has worked well although, as with non-Indian adoption proceedings, there will be from time to time, high-profile cases that will bring a sharp focus on the shortcomings of the proceedings. It is our understanding that many of the high-profile cases would not have occurred if the mandates of ICWA had been complied with during the adoption process. We would like to note that Mike Walleri, attorney for Tanana Chiefs Conference, stated in his oral testimony

that "It is important to remember that this legislation addresses issues that arise in less than 5 percent of the tribal ICWA case loads."

It is important to tribes that the government-to-government relationship be maintained so that our tribal sovereignty is not compromised and that sovereignty embodies the right of a tribe to determine its own membership. Therefore, the Shakopee Mdewakanton Sioux [Dakota] Community opposes any proposal that contains the so-called "existing indian family doctrine" used by some state court judges who establish an exemption to ICWA in cases where, in their sole judgment, the biological parents fail to maintain a sufficient contact with the tribe. State court judges do not have the right or the knowledge to determine tribal membership; only the tribe can do that. We encourage you to oppose any amendments that would be harmful to either Indian children and families or tribal governments.

We commend the chairmen and the committees for their leadership in seeking legislation in which both the indian and non-Indian adoption communities can concur and that will result in affirmative contributions to the well being of Indian children. Thank you.

Prepared Statement of the Winnebago Tribe of Nebraska

The Winnebago Tribe of Nebraska appreciates the opportunity to submit for the record our written comments on amendments to the Indian Child Welfare Act.

The Winnebago Tribe is in support of S. 569 and H.R. 1082 which are identical to legislation offered by Senator McCain that passed the Senate last year. This legislation is based on a consensus of tribal leadership at the National Congress of American Indians Mid-Year Conference in Tuisa in 1996 in cooperation with the Northwest Indian Child Welfare Association and representatives of non-Indian adoptive families. Their goal was to reach suitable language to improve ICWA that would best serve not only adoptive families but most importantly, the Indian tribes and those most important to us—our Indian children and their rights to maintain their affiliation and identity with their tribes.

Our tribal government is activeiy pro-family and pro-child. We spend considerable amounts of tribal funds, staff time, and governmental energy working to better the lives of our children. The staff of the Winnebago Tribe Department of Human Services consists of one indian child welfare worker who handles the Tribe's ICWA cases both on-and off-reservation and three child protection services personnel who handle ICWA cases only on the reservation. These dedicated community members serve the tribe not only as professionals in social services, but they are also parents, aunts and uncles, and grandparents of the Indian children who are so important to the future of our tribe.

The Winnebago Tribe currently has active Indian Child Welfare Act cases in seven states: eight in Iowa, three in Minnesota, one in Montana, one in Nebraska, one in New Mexico, one in Washington, four in Wisconsin, and eight of which have been transferred to tribal court. Efforts at family reunification are strong. Consequently, cases have been closed. This demonstrates that the ICWA interventions are successful. Moreover, in none of the active cases are parental rights about to be terminated.

From our Tribe's experience, we have found, generally speaking, that state courts are willing to work with the Tribe in child custody and placement proceedings. Our success rate has been good in getting cases transferred back to tribal court, particularly in instances where the case has not been going on for longer than 1 year.

The experience of the Winnebago Tribe has been that state courts have sometimes misunderstood or been unenlightened about the provisions of the Indian Child Welfare Act. However, when state courts having jurisdiction over Winnebago children are willing to work with the Tribe in custody proceedings, we have found that the outcome has furthered the best interests of the Indian children.

The Winnebago Tribe feels strongiy that tribes should intervene in every ICWA case involving a child who is eligible to be a member of our Tribe. This will not necessarily lead to a request to transfer to tribal court, however. To exercise this right, however, we need notice. If we don't find out about these cases, our children run the risk of being forever lost to their heritage and to the benefits and privileges of membership in our Tribe. For these reasons, we simply believe that it is in the best interests of Indian children that each tribe should be notified when there is a placement involving a child who may be or is a tribal member. We especially support the provisions regarding notification that are contained in the bills before your committees. These amendments would ensure that Indian tribes receive timely and detailed notice of voluntary ICWA proceedings.

The Winnebago Tribe is in strong opposition to any proposal that would legitimiz "the existing Indian family doctrine" imposed by some state courts in which judge have ruled that ICWA does not apply to children who do not live on a reservatio unless at least one parent is of Indian descent and maintains significant social, cu tural or political ties to the tribe in which the parent is a member. We strongly ob ject to State court judges making up this doctrine in order to keep our childre away from their tribal heritage and rights as tribal members. We would strenuousl object to any legislative amendments to S. 569 and H.R. 1038 which would statu torily codify this doctrine. This doctrine infringes upon the fundamental right of th tribes to determine our own membership as sovereign nations.

The Winnebago Tribe appreciates the leadership of the Senate Indian Affai Committee and the House Resources Committee on moving these bills forwar Thank you for holding this joint hearing on these ICWA amendments. We applau your willingness to consider and to support tribally developed amendments t ICWA.

In conclusion, we urge you to move these bills to enactment as quickly as possible The best interests of many Indian children in large part depend upon these bill being made law as quickly as possible. Thank you.

Department of Justice

STATEMENT

OF

THOMAS L. LeCLAIRE

DIRECTOR

OFFICE OF TRIBAL JUSTICE

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

AND THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

CONCERNING

PROPOSED AMENDMENTS TO THE INDIAN CHILD WELFARE ACT

PRESENTED ON

JUNE 18, 1997

Chairman Campbell, Chairman Young, and members of the Senate Indian Affairs and House Resources Committees, I am Thomas L. LeClaire, Director of the Office of Tribal Justice at 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 ("ICWA"). The Administration and the Attorney General recognize the need for caring families and nurturing homes for Indian children. The Department supports S. 569 and H.R. 1082, which evolved from a dialogue among adoption attorneys and tribal representatives on how to strengthen ICWA. 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, particularly when the affected parties are apprised of their statutory rights and duties and the Act's provisions are applied in a timely manner. 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 a tribe, 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. One's heart goes out to the parents, prospective parents, and

especially to the children, who find themselves entangled in these disputes.

In addressing these problematic cases through legislation, Congress should be mindful of ICWA's important purposes and its affirmation of tribal rights of self-government. In the 104th Congress, the Department of Justice opposed Title III of the Adoption Promotion and Stability Act of 1996, H.R. 3286, which, in our view, was inconsistent with tribal authority over matters of tribal membership. See Letter from Andrew Fois, Assistant Attorney General for Legislative Affairs to Chairman McCain, June 18, 1996. S. 569, in contrast to Title III of the Adoption Promotion and Stability Act of 1996, preserves tribal self-governance while enhancing certainty in child custody and adoption proceedings pursuant to ICWA and while strengthening federal enforcement tools to promote compliance with ICWA in the first instance.

I. The Right Of Indian Tribes To 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. Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831). 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." Ex parte Crow Dog, 109 U.S. 556, 568 (1883). ICWA is a constitutionally valid statute that is closely tied to Congress'

"unique obligations" to Indian tribes by protecting the best interests of Indian children and families while promoting tribal rights of self-government. See Morton v. Mancari, 417 U.S. 535, 555 (1972).

II. The Statutory Framework Of The Indian Child Welfare Act

The United States has a government-to-government relationship with Indian tribal governments. Protection of the sovereign status of tribes, including preservation of tribal identity and the ability to determine tribal membership, is fundamental to that relationship. To this end, ICWA establishes a dual jurisdictional system for Indian child custody proceedings: a) Congress confirmed the exclusive jurisdiction of tribal courts in Indian child custody proceedings when the Indian child is domiciled in tribal territory; 25 U.S.C. § 1911(a);[1] and b) Congress created a procedure to transfer off-reservation Indian child custody cases to tribal courts, but allowed state courts to retain jurisdiction of such cases where good cause exists.[2]

ICWA establishes substantive and procedural protections for Indian children, Indian families, and Indian tribes. In any involuntary state court proceeding to place an Indian child

[1] See Fisher v. District Court, 424 U.S. 382 (1976) (tribal courts have exclusive jurisdiction over adoptions of Indian children who are domiciled on the reservation).

[2] ICWA, notably, recognizes the role of biological parents in this process by reserving the right of either parent to refuse to transfer a case involving their child to tribal court. 25 U.S.C. § 1911(b).

outside the home, ICWA requires notice to the Indian parent or custodian and the child's tribe, and imposes a ten-day stay of proceedings, which may be extended to thirty days. 25 U.S.C. § 1912(a). ICWA also establishes a right to counsel for indigent parents and a right to examine records, and it requires state child welfare agencies to make remedial efforts to prevent the breakup of the Indian family. 25 U.S.C. § 1912(b)-(d).

In any voluntary state court proceeding for relinquishment of custody or parental rights, ICWA requires the court to certify that it has explained the consequences of the action and that the Indian parent has understood those consequences. 25 U.S.C. § 1913(a). No consent to adoption is valid if made before an Indian child is born or within ten days after birth.[3] Id. Consent to adoption may be withdrawn prior to entry of a final decree, 25 U.S.C. § 1913(c), and consent to foster care placement may be withdrawn at any time. 25 U.S.C. § 1913(b). After entry of a final adoption decree, a collateral attack on that decree alleging fraud or duress may be initiated within two years of the decree, unless a longer period is provided for by state law. 25 U.S.C. § 1913(d).

III. The Operation Of The Indian Child Welfare Act

The Department of Justice has only a limited role in the implementation of ICWA, so our knowledge of how, and how well,

[3] The ICWA ten-day protective period is consonant with many state laws. More than half of the states do not permit parental consent to adoption until 3 days after a child is born. M. Hansen, "Fears of the Heart," ABA Journal (November, 1994) at 59.

ICWA works is premised largely on the reports of the Departments of the Interior and Health and Human Services.[4] These agencies report that ICWA generally has helped to preserve the integrity of Indian families and tribal relations with those families, especially when parties are informed about ICWA, abide by its provisions, and it is applied in a timely manner.[5] In fact, despite some recent concern about ICWA's application to certain off-reservation cases, legislators seem to agree that ICWA works.

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 these cases are adjudicated without significant problems. The application of ICWA to a limited number of cases involving adoptive placements that are later challenged by biological parents or the child's tribe, however, has drawn criticism. This criticism, in turn, provides in part the impetus for amendments to the ICWA.

These cases are difficult and heart-rending, often having tragic consequences for all parties to the dispute. It is important to reiterate, however, that these problematic cases are not indicative of the manner in which ICWA operates in the vast

[4] See Hearing Before the Senate Committee on Indian Affairs, (1995) (statement of Joann Sebastian Morris, Acting Director, Office of Tribal Services, BIA); (statement of Terry L. Cross, Executive Director, National Indian Child Welfare Ass'n); (statement of gaiashkibos, President, National Congress of American Indians).

[5] Other positive results reported under ICWA are the development of tribal juvenile codes, tribal court processes for addressing child welfare issues, and tribal child welfare services.

majority of instances. 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 In re Bridget R. decision by the California Court of Appeal. 49 Cal. Rptr. 2d 507 (Cal. Ct. App. 1996), cert. denied, __U.S.__ (1997), 117 S. Ct. 1460. In that case, twin girls of Indian descent were placed with a non-Indian family when their biological parents relinquished them to an adoption agency. The biological parents and the interested tribe subsequently challenged the adoption. The ensuing protracted litigation has disrupted the lives of all those who are involved in the dispute.

Had ICWA been complied with in that instance, however, most of the delay -- and quite possibly the litigation itself -- would have been avoided. The biological parents would have been required to wait 10 days after birth to relinquish their rights, and prior to relinquishing their rights, they would have been instructed by a judge as to their rights under the statute and the consequences of their waiver of those rights. None of this occurred, and that created the problem. Bridget R., therefore, signals a need to fine-tune ICWA's statutory mechanisms to provide incentives for the early compliance with ICWA in the adoption process.

Many supporters of Title III of H.R. 3286 focused solely on Bridget R. and other anomalous cases and made the assumption that

held in Santa Clara Pueblo v. Martinez, 436 U.S. 49 (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 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 the quantum of litigation. The existing trigger for ICWA -- tribal membership or eligibility for tribal membership -- is readily discernible by an inquiry to the relevant tribal government. In contrast, the "social, cultural, or political affiliation" test incorporates subjective criteria more likely to create additional litigation, with attendant delays in the adoptive placement of Indian children, than to "streamline" adoptive placements.

In the view of the Department, Title III, by incorporating the "existing Indian family" doctrine, would have undermined tribal self-government and the objectives of ICWA. The Department, therefore, opposed the Title III amendments to ICWA. The Senate Committee on Indian Affairs reached a similar conclusion, stating that the doctrine, as codified in Title III of H.R. 3286, "is completely contrary to the entire purpose of the ICWA." S. Rep. No. 335, 104th Cong., 2d Sess. 14 (1996). As a result, this Committee struck Title III of H.R. 3286 and ordered the bill reported with the recommendation that the Senate

pass the bill without Title III.

V. Amendments to ICWA Through S. 569 and H.R. 1082

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 promises to advance the best interests of Indian children while preserving longstanding principles of tribal self-government.

Although the Department has had little experience litigating ICWA issues, we have reviewed S. 569 in light of our experience with civil and criminal enforcement, the United States' commitment to supporting tribal sovereignty, and basic principles of statutory construction. S. 569 would clarify ICWA, establish some deadlines to provide certainty, reduce delay in custody proceedings, and strengthen federal enforcement tools to ensure compliance with the statute in the first instance.

CONCLUSION

We appreciate the efforts that the Chairman, the Vice Chairman, and the Committee have made to foster dialogue on the Indian Child Welfare Act. S. 569/H.R. 1082 amends ICWA in a manner that is both respectful of tribal self-government and conducive to certainty and timeliness in voluntary adoptions of Indian children. In conclusion, I would like to reiterate the Department's support for S. 569 and the important goals that guided Congress in enacting ICWA. In addition, we are committed

to working with the Committee, tribes, and all interested parties to further ICWA's goals.

This concludes my prepared statement. At this time, Mr. Chairman, I would be pleased to respond to questions from you or other Committee Members.

TESTIMONY OF DEBORAH J. DOXTATOR
CHAIRWOMAN OF THE ONEIDA NATION OF WISCONSIN
BEFORE THE SENATE COMMITTEE OF INDIAN AFFAIRS AND
THE HOUSE RESOURCES COMMITTEE
JUNE 18, 1997

Thank you for your invitation and the 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.

My name is Deborah Doxtator and I appear on behalf of my Tribe, the Oneida Nation of Wisconsin. The Oneida Nation is a rather large Tribe, with more than 14,000 enrolled members, located in Northeastern Wisconsin. The Oneida, like many other Tribes, have a commitment to their community. As part of this commitment, they have chosen to devote many of their resources to the children who are part of our community through the development of the Oneida Indian Child Welfare program.

In my testimony this morning, I will cover four main areas. I will give a brief overview of the Indian Child Welfare Act (ICWA) and discuss the Oneida Indian Child Welfare Program. Then I will briefly discuss the recent concerns about the Indian Child Welfare Act in reaction to a high profile court case, and the amendments proposed by H.R. 1082 and S. 569, both of which are based on a proposal first brought to Congress by the National Congress of American Indians last year. I will explain why these amendments enhance ICWA for everyone, most importantly for Indian children.

THE INDIAN CHILD WELFARE ACT

The Indian Child Welfare Act was passed by Congress in 1978 (ICWA) in an effort to stop the mass removal of Indian children from their families and native communities. Evidence presented to the Senate in 1974 indicated that 25-35% of all Indian children were removed from their homes and placed in foster care, adoptive homes or institutions. Other information presented to Congress in 1978 indicated that the adoption rate of Indian children was eight times that of non-Indian children, and that 90% of placements involving Indian children were in non-

Indian homes. In 1994, sixteen years after the ICWA's enactment, more than half of Indian children placed for adoption were still adopted by non-Native Americans.

In testimony before the Senate Select Committee on Indian Affairs in 1977, Mr. Calvin Isaac stated:

> One of the most serious failings of the present system is that Indian children are removed from the custody of their natural parents by non-tribal government authorities who have no basis for intelligently evaluating the cultural and social premises underlying Indian home life and childrearing. Many of the individuals who decide the fate of our children are at best ignorant of our cultural values, and at worst contemptful of the Indian way and convinced that removal, usually to a non-Indian household or institution, can only benefit the child.

The Indian Child Welfare Act attempts to prevent the removal of Indian children from their communities by providing a jurisdictional framework for child custody cases involving Indian children who are removed from their homes, as well as establishing placement preferences for those children when they are removed.

The great majority of Indian Child Welfare Act cases begin, not as private, voluntary adoptions, but as state or Tribally initiated abuse or neglect cases. Quite often, Oneida Social Services or a local social service agency will learn of child abuse or neglect and investigate allegations made against a parent by visiting the family and interviewing them.

If the worker feels that there is a danger to the child, court proceedings are generally initiated against the parents and continued custody by the parents is reviewed by a state or Tribal court. If the court determines that the child is in danger, the judge must determine whether to remove the child from his home. It is at this point that the Indian Child Welfare Act becomes a factor.

The Indian Child Welfare Act provides a mechanism that allows Indians parents and their Tribes to become involved in child placement proceedings, where the child is placed outside his or her Tribal home. ICWA creates three distinct jurisdictional categories. An Indian Tribe may exercise exclusive jurisdiction over child custody proceedings involving a who child resides on the reservation. Where the child does not live on the reservation, it provides for concurrent jurisdiction of the state and the Indian Tribe of the child. Finally, where a child's Indian Tribe may not have a Tribal court or chooses not to exercise its right to transfer a case to its court of jurisdiction, it affirms the right of the Tribe to participate in proceedings in state court.

One other important area addressed by ICWA is codification of placement preference standards for adoptive and foster homes. ICWA, pursuant to congressional findings acknowledging the importance of the Tribal community to the individual, makes placement

preferences which stress the need to seek placement within the child's extended family and community before outside resources are considered.

The jurisdictional affirmation provided by the Act and the placement preferences are the basis for our involvement in ICWA proceedings and are vital to the continued effectiveness of our program here at Oneida.

The program we operate at Oneida is very successful. This success is based on the cooperation of state and local authorities who are aware of the program and actually look to us an additional, positive resource for aiding families in trouble. However, there are time when the provision of ICWA are not followed. Currently under ICWA, failure to follow its requirements is grounds for vacation of the court decree granting custody.

ONEIDA INDIAN CHILD WELFARE PROGRAM

The Indian Child Welfare Act provides the Oneida Nation of Wisconsin with a valuable resource for maintaining contact with young tribal members and their families and retaining them as part of their community. The use of the provisions of the Act has allowed us to place hundreds of children in Indian homes, either permanently or until their parents were able to care for them.

In the period beginning in 1990 through June of 1996, the Oneida Nation intervened in cases involving 336 Oneida children. Every one of these children was enrolled or eligible for enrollment with the Oneida Nation. Over 90% of the children involved in these cases were victims of abuse and neglect. Less than 5% of these cases were voluntary, private infant adoptions (the area of concern leading to proposed legislation in the last session).

The Oneida Nation currently has devoted an entire unit of its Social Services program to administration of Indian Child Welfare Act cases. Additionally, the Indian Child Welfare Act program has two assigned attorneys who are directly responsible for those cases involving ICWA.

The Oneida Nation recommendation regarding the placement of any child which is made pursuant to ICWA is determined by a Board composed of Oneida citizens, the Oneida Child Protective Board. The Board is charged with oversight of all Indian Child Welfare Act cases involving Oneida children. It is the duty of the Oneida Child Protective Board to inform themselves regarding all Indian Child Welfare cases, and make appropriate decisions regarding the placement of Oneida children, utilizing information from the Oneida Tribal social workers, the Oneida attorney, as well as state and county social workers, and the guardian ad litem (who is the attorney that represents the best interest of the child).

Currently, it is the Oneida Nation policy to intervene in all cases involving Oneida children. An Oneida child is a child who is one-fourth Oneida and is either enrolled or the