

# INDIAN CHILD WELFARE ACT OF 1978

THURSDAY, MARCH 9, 1978

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON INDIAN AFFAIRS AND PUBLIC LANDS,  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D.C.*

The subcommittee met at 10 a.m., pursuant to notice, in room 1324, Longworth House Office Building, Hon. Teno Roncalio (chairman of the subcommittee) presiding.

Mr. RONCALIO. The Subcommittee on Indian Affairs and Public Lands will please come to order.

We are meeting today to continue hearings on S. 1214, the Indian Child Welfare Act of 1977. The bill was entered in the last hearing record. This is the second day of our hearings, and we want to clarify in our bill the jurisdiction to be established and the situation of the placement of Indian children, which we feel is deeply needed.

We will receive into the record today information to help us in this effort, from my colleague from Utah, Gunn McKay, and Don Fraser, my colleague from Minnesota. We will also receive evidence from the Department of Justice and hopefully some BIA material to help us with our deliberations.

We have a number of groups that are here with us.

Is Mr. Gunn McKay here, or is his statement for the record?

Without objection, we will enter Mr. McKay's prepared statement in the committee's files of today's record.

[Prepared statement of Hon. Gunn McKay may be found in the committee's files.]

Mr. RONCALIO. I believe the essence of his statement is there would be no objection to the changes which we have discussed.

Is Robert Barker here?

Mr. BARKER. Yes, Mr. Chairman.

Mr. RONCALIO. Do you intend to give a statement, Mr. Barker?

Mr. BARKER. I would be glad to at the end of the hearing if it would be appropriate. It might save time if I came near the end after the others have testified.

Mr. RONCALIO. All right.

Is Mr. Don Fraser here?

I do not see Don.

Did anyone hear from Don's office?

[No response.]

Mr. RONCALIO. Larry Simms, attorney/advisor, Office of Legal Counsel, Department of Justice.

[Prepared statement of Larry L. Simms may be found in the appendix.]

STATEMENT OF LARRY L. SIMMS, ATTORNEY/ADVISER, OFFICE OF  
LEGAL COUNSEL, U.S. DEPARTMENT OF JUSTICE

Mr. RONCALIO. We have a copy of your statement. We would like to insert it in the record verbatim and ask you to either read it, if you wish, or comment on it, either way.

Mr. SIMMS. Mr. Chairman, I think it might save you time since the statement itself adds nothing to nor subtracts from the letter addressed to Chairman Udall on February 9, to simply touch on a few points and then answer any questions that the committee may have.

Mr. RONCALIO. All right. Please proceed.

Mr. SIMMS. Initially I would like to convey both Mr. Harmon's and Deputy Assistant Attorney General Lawton's regrets that neither of them could be with you. Both of them are deeply involved in looking at legal questions in conjunction with the Taft-Hartley injunction problem. They both send their regards.

Mr. RONCALIO. They are very busy, I know.

Mr. SIMMS. Also, I would like to apologize on behalf of the Justice Department and the administration that our views on the constitutional issue raised by this bill have been so late in coming.

As the chairman is aware, the bill passed the Senate on November 8 without the Senate having been provided with our views on this question, which I think is unfortunate, and we certainly are responsible for that. We hope they have now been provided to Chairman Abourezk on the Senate side and, of course, to this committee.

I think I would make only two points in regard to the prepared statement.

The first point is that we are entering an area with respect to the classifications drawn in this bill where there are no clear decisions one way or the other as to whether or not the kind of line-drawing and kind of classification done by the Bureau would or would not be held constitutional by a court.

We are having to draw on decisions, some of them very recent, some of them a bit older, which—

Mr. RONCALIO. Are you referring to the *Mancari*, *Fisher*, and *Antelope* cases cited in the letter to Mr. Udall? And they are in here?

Mr. SIMMS. Yes; they are.

Mr. RONCALIO. I see.

Mr. SIMMS. Those decisions in our view indicate that the courts, in particular the Supreme Court, would scrutinize very closely a classification that was drawn solely on the basis of race, and in this particular case we think that the bill would set up a possibility for people being classified solely on the basis of the amount, the percentage of Indian blood, or the fact that they were non-Indians or Indians.

We are particularly concerned with the former classification. To simply give you a hypothetical, one can imagine two families living on a reservation where the children of that family both had significant contacts with the tribe, one had the requisite percentage of Indian blood to be eligible for tribal membership and the other one did not. The status of the parents could go any number of ways. You could have a situation in which a child was living with one parent who, in fact, was a non-Indian.

Under this bill, as we interpret it, and as the Department of the Interior understands it, the parent of the child being eligible for membership in the tribe would be deprived of access to the State courts, assuming, of course, that the State had jurisdiction over family relations matters in the first place. Whereas, the second child would have access to the State courts. It is this discrimination that—

Mr. RONCALIO. Do you have a suggestion to eliminate that situation from the bill?

Mr. SIMMS. Yes, sir.

Mr. RONCALIO. Would you tell us that?

Mr. SIMMS. We think it would be very simple to add a provision to the bill insuring that tribal jurisdiction over family relations matters were had only with the consent of the parent. It is as simple as that.

Mr. RONCALIO. Yes.

Mr. SIMMS. In other words, if the parent consents to have the tribal court take jurisdiction, the problem is completely eliminated in our view.

Mr. RONCALIO. Have you discussed the draft that BIA has planned as a substitute to the bill?

Mr. SIMMS. No, sir, I am afraid I have not.

Mr. RONCALIO. I think it will be in there. We will look for it to be there.

Thank you, Mr. Simms.

Mr. DUCHENEAUX. Mr. Chairman, if I might.

Mr. Simms, are you aware of the Interior Solicitor's Office commenting on the issues that you have raised here about the invidious discrimination point?

Mr. SIMMS. Yes, sir. We held at least two meetings before this opinion was rendered, at which the Solicitor's Office was represented. We have had discussions with them. They sent followup views after the last meeting, which was in very early January.

Mr. DUCHENEAUX. Do they share your views on this?

Mr. SIMMS. It is possible that they do not. I can give you a specific example in one of the meetings I attended at which the Solicitor's representatives were present. It was their view that the case of *Morton v. Mancari* would support this particular discrimination—that is, the classifications that this bill sets up. I made the argument, which I think was never adequately answered by the Solicitor's Office, that language in *Morton* clearly bases the court's rejection of the equal protection argument on the fact of tribal membership.

Mr. DUCHENEAUX. Getting to that point then, Mr. Simms, are you familiar with the Maryland Court of Appeals case, *Wakefield v. Little Light*?

Mr. SIMMS. No, sir, I am not.

Mr. DUCHENEAUX. That is a case in which this exact point was drawn into question. The question was the domicile of the child involved. In *Wakefield*, the Maryland Court of Appeals said,

We think it plain that child-rearing is an essential tribal relation within the case of *Williams v. Lee*.

The bill, as it is currently drawn, provides that "Indian" means any person who is a member of or potentially eligible for membership in Indian tribes. The bill directs its attention toward Indian children.

Mr. SIMMS. Yes, sir.

Mr. DUCHENEAUX. Both the *Wakefield* court and the *Fisher v. District Court* case—the Supreme Court case—consider that child-rearing is an essential tribal relation, which both the tribe and the United States as trustee have an interest in protecting; and that includes eligible Indian children who are members of the tribe or the child who is eligible for potential membership in that tribe, does it not?

Mr. SIMMS. I would assume that is correct.

Mr. DUCHENEAUX. If you follow the *Wakefield* case and the *Fisher* case, it would seem to result that the tribe had a very legitimate interest in protecting the welfare, not only of children who are members of that tribe, but children who are eligible for membership in that tribe. Is that right?

Mr. SIMMS. There is a leap there between the two, and I doubt *Fisher* stands for that proposition. In *Fisher*, the tribe involved there had, by its own tribal ordinance, assumed jurisdiction over family relations matters only over members of the tribe. There was no attempt whatsoever by the tribe in that case to assume jurisdiction over family relations matters of Indians who were not members of the tribe.

Mr. DUCHENEAUX. We are taking the language of the court now within the *Williams v. Lee* case, where the court says that the State cannot have jurisdiction over an Indian reservation where they affect an essential tribal relation.

So, if we take that doctrine of the central tribal relation and apply it to the point you have raised and, if we accept the fact that Indian children who are eligible to be members of an Indian tribe form the potential membership of that tribe, then the tribe has a legitimate interest in protecting and preserving their welfare.

Mr. SIMMS. I suppose the question you are raising gets to the point made at the very end of the letter to Chairman Udall. Assuming, as we do, that a court would apply a stricter standard of review than it had to apply in the *Fisher* case and in the *Morton* case and in the *Antelope* case, the question would be whether the interest that you have identified, which most certainly is a legitimate interest, would be deemed compelling enough to overcome what is clearly a classification based on race.

It is our judgment that, with regard to the protection of children whose parents for whatever reason have declined to have the tribe protect the interests of their children by seeking to have family relations matters determined in a State court, we would have great difficulty in concluding that the interest you have identified supervenes or overcomes the interest of the parents.

Mr. DUCHENEAUX. Let me read one final statement, Mr. Simms, in the *Fisher* decision, where the court said: "Moreover, even if a jurisdictional holding occasionally results in denying an Indian plaintiff \* \* \*"

I realize we are dealing with, in this case, a member of a tribe, but the court does not distinguish that.

\* \* \* an Indian plaintiff a forum to which a non-Indian has access, such disparity treatment of the Indian is justified because it is intended to benefit of the law and furthering the congressional policy of Indian self-development.

Do you think that that makes any difference to the position you have taken here today?

Mr. SIMMS. The court does, of course, go on to cite the language that I rely on in *Morton v. Mancari* at the end of the quote you just read.

I think it is clear that Congress has a great deal of latitude to define what the Indians' interest in self-development is and is not. Certainly the *Oliphant* decision recently handed down by the Supreme Court makes that much clear.

Mr. DUCHENEAUX. It makes it clear that the Congress could in certain circumstances delegate powers or give or confer on the Indian tribes jurisdiction over non-Indians, does it not?

Mr. SIMMS. I think it clearly does.

Mr. RONCALIO. Is the problem not a problem of discrimination against the parent, not the child?

Mr. SIMMS. That is the point we make, and I think we make very strongly. I think that that raises an issue which I am really not prepared to discuss fully.

I have glanced very quickly through one of the reports—it looks like a very excellent report—that has been submitted on this problem. The report takes the position, or makes the statement, that the family relations within the Indian community are a very different thing. It suggests that State domestic law gives the parent the kind of property interest in the child, that is, apparently at least according to the report, not recognized in Indian communities and the tribe itself.

The tribe itself has a great deal of interest, institutional interest, in the upbringing of a child. I think what we see there is the clash of two philosophies that may be very different, and how a court would deal with that when the court finally had to decide I am not prepared to speak to.

But I think it is a difficult problem. I think it is at the heart of our problem.

Mr. RONCALIO. Are there further questions?

Mr. TAYLOR. Just a couple.

The question you raised about denial of access to State courts, I assume when you raise this issue, what you are talking about is the provision in the bill that would allow a tribe to request a transfer of jurisdiction out of the State court to the tribal court?

Mr. SIMMS. Yes, sir.

Mr. TAYLOR. And adding language that the consent of the parent would be required to solve any constitutional problem?

Mr. SIMMS. It may go beyond the specific example you gave in the sense that I think that under the bill we can be involved with more than a simple transfer. It would be involved with an initial assumption of jurisdiction over the child by the tribe even in the absence of a State court proceeding. So it would include both.

Mr. TAYLOR. The recommendations you made or that Interior has advised us of are related to the transfer provisions.

Mr. SIMMS. Yes, sir.

Mr. TAYLOR. OK.

The other question I have on this: Following Frank's line of interrogation on this *Perrin* case, which I am sure you are familiar with, you cite it in your letter—

Mr. SIMMS. Yes, sir.

Mr. TAYLOR. The other question is that in that case you had an Indian person living in an Indian community but he was not a member of the tribe. He had not formally become a member of the tribe.

Mr. SIMMS. Right.

Mr. TAYLOR. And it was held in that case that Federal criminal law would be applicable to him, that State criminal law was not applicable to him.

Mr. SIMMS. Yes.

Mr. TAYLOR. If we take a position that a tribe cannot exercise jurisdiction over a person such as in *Perrin*, an Indian person living in an Indian community and regarded by that community as a member of the community, if we say that State law is not applicable, but we also say tribal law is not applicable, then what do we have?

Mr. SIMMS. You may have a void. You may have a jurisdictional void.

Mr. TAYLOR. Would this bill with its definition not be attempting to fill that void?

Mr. SIMMS. Without a doubt it would. I think that in this particular situation the void, if it were left—in other words, if we were talking about the application of this bill in a State were the bill amended, which had not assumed jurisdiction over family relations matters of Indians—the only course of action would be to have Federal authorities who normally handle matters—of course, many Indian tribes have not assumed jurisdiction over family relations matters at present—are handled by Federal authorities pursuant to law or by the State if the State has assumed jurisdiction.

In this case, it would be a question of in the absence of State jurisdiction, of a parent having access to Federal authorities as opposed to the tribe.

Mr. TAYLOR. But you would concede, as between the tribe and the State, that there would be a void if we failed to deal with the *Perrin* type of situation?

Mr. SIMMS. There may well be.

Mr. TAYLOR. Thank you.

Mr. SIMMS. I am not suggesting at all that that would be a desirable thing. I think filling all these jurisdictional voids is, you know, something that everybody desires to do.

Mr. RONCALIO. Thank you very much, Mr. Simms.

Mr. SIMMS. Thank you, Mr. Chairman.

Mr. RONCALIO. We appreciate your contribution to our problem this morning.

Next is Mr. Aitken, director of social service, Minnesota Chippewa Tribe.

Mr. Aitken, would you like to have someone accompany you to the table?

[Prepared statements of Robert Aitken, with attachments, and William Caddy may be found in the appendix.]

**PANEL CONSISTING OF: ROBERT AITKEN, DIRECTOR OF SOCIAL SERVICE, MINNESOTA CHIPPEWA TRIBE, ACCOMPANIED BY MR. MATSON, COUNSEL; AND WILLIAM CADDY, CASS COUNTY DEPARTMENT OF SOCIAL SERVICES, CASS COUNTY, MINN.**

Mr. AITKEN. Mr. Matson could possibly answer any legal questions you may have.

Mr. RONCALIO. Mr. Matson, why do you not join us at the table. Is there a William Caddy here with you?

Mr. AITKEN. Yes, Mr. Chairman.

Mr. RONCALIO. You three gentleman are from Minnesota. You are welcome to read your statements if you would like, but we will enter them in the record and you may summarize if you like.

Mr. AITKEN. Thank you, Mr. Chairman.

Rather than read the entire testimony, what I would like to do is express the support of the Minnesota Chippewa Tribe for S. 1214, because it is consistent with and reinforces Public Law 93-638, the Self-Determination Act. In my testimony I have a copy of a resolution stating that the tribal executive committee of the Minnesota Chippewa Tribe does support it. I have included a current breakdown of our social services division in the Minnesota Chippewa Tribe.

Mr. RONCALIO. If it would be corrected with amendatory language removing the possibility of unconstitutionality along the lines you heard about from the Justice Department, would you still be in support of the bill?

Mr. MATSON. I am confident the bill would still be supported, yes.

Mr. RONCALIO. Thank you.

Mr. AITKEN. I have brought along letters of support for our social services division from various countries—Iatasca County, Cass County, Beltrami County, and the State of Minnesota.

Our social services division that we have for the Minnesota Chippewa Tribe is 3 years old. It started as part-time work for college students, is now one of the major divisions for the Minnesota Chippewa Tribe.

We are still young and we really have no authority within our own reservation so much as to enforce the authority that we do have. We have social workers who cannot cover some of the problems that we do have on the six reservations, but we do not have enough of them to really be effective. I feel that this bill, S. 1214, does give us the support that we need to do exactly what we need to do.

Mr. RONCALIO. International Falls. I notice that with interest because I held hearings up there many years ago on the Rainy River problem of pollution caused by a paper company and that was more emotional than any I have ever had. That was pretty mean, way back many years ago.

You have only four volunteers in that whole area?

Mr. AITKEN. Yes; that is a relatively new branch in our social services division we started last August. So they are working very, very hard on getting more into that area. We have to sell the judges on the idea of letting our volunteers work with the children.

Mr. RONCALIO. You are plowing new ground with it.

Mr. AITKEN. Right, sir.

We have within our staff 14 members and we have 100 percent Indian staff.

Mr. RONCALIO. Very good. We will read your statement and be guided by it. I suspect we will be making some amendments to the bill, but I understand that these amendments will be acceptable to the Senate side also. We have two of their staffers here today, to be sure we are coordinating this so we do not get off in two different directions.

Mr. Matson, do you want to add anything?

Mr. MATSON. Yes, Mr. Chairman.

One, I think it is particularly encouraging to me as a lawyer to see the Congress act in this fashion. I see a lot of new miles going through the court system. What I perceive to be the major problem, and the single element that gives rise to the most criminal behavior, is really a lack of pride and lack of self-esteem. It begins from a very young age and it is fostered by the fact that the people that are making decisions over problem children, if you will, are non-Indians.

I think there is a feeling of frustration and a feeling that they are not the masters of their own destiny. With the Minnesota Chippewa Tribe's funding and staffing of social services, I see a change in that. We do use the Minnesota Chippewa Tribe services in State courts and most courts in Minnesota have allowed us to bring in tribal social service staff personnel, but this act is essential if we are to go any further.

I also just have a final comment, I guess, and that is that the Minnesota Chippewa Tribe does have a tribal court and right now it is exercising jurisdiction over a conservation code and game violations.

I think it could be easily expanded to handle social welfare problems. It would need an additional funding source obviously to do the program. You have to do it right and to do it right costs money. But I think that the Minnesota Chippewa Tribe certainly has the expertise to do it.

I guess with that I would just close by saying that we think that it is clearly in line with self-determination policy that the Congress has taken toward Indian tribes, we feel that social welfare is definitely an essential tribal relation. We feel that it is imperative for the continued viability of the Indian culture as a culture that enriches all of us, that they are able to make their own laws and be governed by them.

Mr. RONCALIO. We appreciate that statement very much. Thank you.

Let me go off the record a moment.

[Discussion off the record.]

Mr. RONCALIO. Back on the record.

Do you have something to add?

Mr. CADDY. Yes, Mr. Chairman.

I am Bill Caddy and I am a supervisor for the county department of social services, Cass County, northern Minnesota.

What I would like to do today is to describe a mutual effort between the Minnesota Chippewa Tribe and the Cass County government to provide better child welfare services for Indian families on the Leech Lake Reservation.

Minnesota is a Public Law 280 State and the legal responsibility for all social services delivered on the reservation rests with the county of residence. Now in Cass County, American Indians constitute about 10 percent of the total county population, but Indian children constitute 80 percent of the children that we now have placed in foster care. So that historically at least, an Indian child in Cass County was eight times more likely to be placed in foster care than a white child.

This has changed somewhat. This is a legacy from the past that goes back about 10 years. In addition to that, the children were usually placed in non-Indian foster homes, so they not only lost their families, they lost their cultural heritage.

We are working together now and we are trying to remedy this and I can only describe that situation as a catastrophe socially, but I think we are all becoming more enlightened about how to deal with that.

What I am trying to give you this morning is the other side of the program, the county worker's or social worker's side of it. I have heard comments from people in the social service business before that the question of capacity of the tribe to deliver social services—and that is specifically what I would like to speak to.

I am convinced that they can, they have and there is no problem. The reason I am speaking to this is we have been working together since July of 1976 when the Cass County Welfare Board agreed to fund a full-time Indian child welfare worker under supervision of the Minnesota Chippewa Tribe to be housed on the reservation and work with Indian children and their families.

As we grew to know each other and appreciate each other, we prepared an application for a grant from the National Center for Child Advocacy under the auspices of the tribe. The application was successful and the American Indian Indian foster care project started operations October 1, 1976.

The hypothesis of this application grant was that American Indian staff, operating under the supervision of tribal government and within the context of child welfare standards as adopted by the State of Minnesota, could more effectively deliver child welfare services to American Indian families.

We are now well into the second year of the project and the social service staff of the tribe has demonstrated that this hypothesis is valid in our estimation. The project has demonstrated to us at the county level that the Minnesota Chippewa Tribe has the expertise and capacity to deliver Indian welfare services in a thoroughly competent and professional manner. The project is expanded now into three other counties that lie within the Leech Lake Reservation and this project has been received with open arms by the social service staff of those counties.

A note is that none of the counties serving the Leech Lake Reservation has ever had an Indian social worker on their staff. There has never been any sensitivity training, any cultural awareness training, nothing.

The social workers in these counties have been trying to deliver social services to Indian families for years with very little success. And I am sure that I represent the feelings of all these social workers when I say that this project has demonstrated to us there is a better way to provide services to Indian families, a better way than we have been trying to do for the last 30 or 40 years.

As far as developing the capacity to deliver services to all the reservations of the tribe, I would like to say that, bearing in mind the capacity they have today has been developed in less than 3 years and that there is now a corps of experienced staff people, that the Minnesota Chippewa Tribe could develop the capacity to provide services to all six reservations in Minnesota within a short time period.

In conclusion, I would just like to say there are two fundamental points of the situation that are addressed by this act that really should no longer be ignored, that is, that Indian social workers work more effectively with Indian families; and that tribal government can

effectively deliver social services within the context of the standards already adopted by the State.

Thank you.

Mr. RONCALIO. Thank you. We are in agreement with your two conclusions.

Thank you, gentlemen, all three of you.

Are there any questions?

Mr. JACKSON. Yes: I would like to ask some.

I am curious about the status of funding on this project that you said began in October 1975.

Mr. CADDY. 1976, it should have been.

Mr. AITKEN. The statement was typed wrong.

Mr. JACKSON. Through what period is this grant going to extend?

Mr. AITKEN. It comes from HEW and it goes through September 1978. No future support is anticipated at this time.

Mr. JACKSON. In the event that this legislation does not get passed and funded before that time, which is I think a good possibility, are there any contingency plans to continue funding through the county or some other source?

Mr. AITKEN. I have quite a few plans on how to keep our social services funded. This is one of them.

I want to urge the committee also to stress a permanent type of funding situation for our social services division. It is one of the great problems that we do have, which is to know at the end of this year that the project staff that we have, the experience that we have gained, may be lost after September if our funding expires. If we are to build an effective staff and maintain the effectiveness of social services, we have to have some kind of a permanent type of funding and I hope that this would be addressed in the bill.

Mr. MATSON. If I could just briefly address that question, the Minnesota Chippewa Tribe is comprised of six reservations and they are scattered throughout northern Minnesota and they run from Grand Portage to a town called Menominee and they are probably over 200, maybe 400, miles apart. To provide services on all of these reservations requires really a tremendous amount of money.

Grand Portage does not have a lot of resident Indians, but there are some problems there. Travel time is necessary and it really is an expensive proposition providing good services, but I am confident that money spent on child-rearing will save money later on.

You can see it in the criminal justice system and perhaps that could be avoided.

Mr. CADDY. As to the counties, the counties just do not have the capacity to support it. Our title XX allocation for social services is \$275,000, and we are spending \$750,000 right now, so—and Cass County is more supportive than some of our surrounding counties. So it is not a feasible plan.

Mr. AITKEN. We are in a paradox. If we go to the counties, we have to tell them they have no authority on the reservations. So you are caught between a rock and a hard place.

Mr. JACKSON. It seems that the successes you have have to do with the ability of the county and the tribe to maintain a fair level of trust and communication.

Mr. CADDY. Yes.

Mr. JACKSON. Is that unique?

Mr. MATSON. It is unique or perhaps unique with the social services departments of the counties. I think that there is maybe more cooperation with the social services than there would be with, for example, the juvenile probation officers or the court itself or perhaps the sheriff's department.

Mr. JACKSON. Thank you.

Mr. RONCALIO. Thank you again, gentleman.

Ms. FOSTER. A number of times the issue of confidentiality has been raised, that mothers will not wish the tribe to know of the placement. Is this something that you have run across in your situation? Is this a vital concern or is it a minimal concern?

Mr. AITKEN. It has been a concern that cropped up from time to time, but we have handled it in the same situations as the county does or that the people wish to be respected—well, respect their wishes.

Mrs. FOSTER. The other question is, you operate now on the demonstration grant?

Mr. AITKEN. Yes.

Mrs. FOSTER. If that funding runs out and this bill does not pass on time, will you benefit from that grant program? What other source of funding do you have?

Mr. AITKEN. One situation was to go to the county and ask them to fund some of the workers. We are funded really from three sources: One is contracted from the Bureau of Indian Affairs for a small amount of money, and the other is a research and demonstration grant from HEW; and the third is what we call the Law Enforcement Assistance Act through the State of Minnesota. That is a crime prevention program.

Mr. RONCALIO. LEAA funds, yes.

Mr. AITKEN. Right. But in answer to the question at this time, I really do not know which way we can go. I am hopefully going to do some good selling job to HEW that we are funded for next year. I think it is a valuable experience that we would lose if we did not have it.

Mr. MATSON. Mr. Chairman, I wonder if I could make a short response to a statement that I believe the gentleman from the Justice Department made.

Mr. RONCALIO. Yes.

Mr. MATSON. That is the cutback in jurisdiction. We find it very common in Minnesota that has more than one Indian tribe, particularly the Red Lake Indian Reservation, which is not a member reservation of the Minnesota Chippewa Tribe.

Mr. RONCALIO. What is it?

Mr. MATSON. It is its own tribe, the Red Lake Bands, Pembina.

Mr. RONCALIO. Canadians originally?

Mr. MATSON. There were perhaps some that came from Canada.

Mr. RONCALIO. Basically United States?

Mr. MATSON. Yes; residents of the United States.

Mr. RONCALIO. They have their own sovereignty and all?

Mr. MATSON. That is correct. I believe when Public Law 280 was passed, Red Lake was excepted out of the Indian country that the jurisdiction was passed for. At any rate, there are many enrollees at Redlake that reside within the bounds of the reservations, posing the

Minnesota Chippewa Tribe, and I think that many of these families would view themselves as Leech Lakers, for example, or White Earthers or Fond du Lacers, this type of thing, and I think that their main identity is as Indians and perhaps as Chippewas, and therefore I think it makes sense that if there is a tribal court system set up, the jurisdiction passes to the court over the children as well as whose parents happen to be enrolled in that particular reservation.

Also as far as restricting it to children within the reservation, I do not think this is what the Justice Department recommended, but as is the case with many reservations across the country, the larger cities are oftentimes just off the reservation. For example, in Minnesota we have the Leech Lake Reservation and we have Bemidji, which is just to the west of it, and we have Grand Rapids just to the east of it. A lot of times we have Indian families that are very much affiliated with the reservation, but for some reason, and oftentimes when the children are very young, the mother and father will be living just off the reservation.

Mr. RONCALIO. That is a good point.

Mr. AITKEN. Could I comment on Mrs. Foster's question, on confidentiality?

Were you directing it at adoption more so than anything else?

Ms. FOSTER. Yes; the confidentiality usually comes into play in a case of an unwed mother who does not want the parents or the tribe to know.

Mr. AITKEN. It is a unique situation for adoption of Indian children, because Indian children have certain educational rights and educational benefits that they can have, but in order to gain these benefits, they must be enrolled members of the tribe.

Mr. RONCALIO. That is right.

Mr. AITKEN. So what we have done is we can release the information to that child, what their blood quantum is, what tribe he is enrolled in without giving the name of the parents.

Mr. RONCALIO. You have no State statutes that prohibit that now? Wyoming used to have these statutes that were in conflict with that, but you do not have them?

Mr. AITKEN. No, sir, but we have adoption policies and procedures within our own office that we have adopted.

Mr. RONCALIO. Gentlemen, I think this has been very, very good.

Mr. Clausen from California has just joined us. I want to go to the next panel, if we may.

Mr. CLAUSEN. Yes; thank you very much.

I am sorry I was not able to be here. I am quite interested in the thrust of what we are discussing and particularly as it relates to the preamble of the legislation here. I will have a chance to visit with you, Teno, and staff will brief me on this.

Mr. RONCALIO. Thank you again, gentlemen. We appreciate it very, very much.

Mr. Wilford Gurneau, director, Native American Family and Children Services; Patricia Bellanger—any relation to Enrico Berlinguer, the Secretary General of the Communist Party? He is giving my people a lot of trouble these days. Also we have Beryl Bloom, director, United Indian Group House, Minneapolis.

You can read your statements if you want to, or we can put them in the record and you can comment, however you wish. If it is short, you can read it, fine.

Let us take the entire study message and enter it into the committee's files of today's hearing record.

**PANEL CONSISTING OF: PATRICIA BELLANGER, FIELD DIRECTOR, AH-BE-NO-GEE CENTER FOR URBAN AND REGIONAL AFFAIRS, UNIVERSITY OF MINNESOTA; BERYL BLOOM, DIRECTOR, UNITED INDIAN GROUP HOUSE, MINNEAPOLIS, MINN.; AND WILFORD GURNEAU, DIRECTOR, NATIVE AMERICAN FAMILY AND CHILDREN SERVICES, MINNEAPOLIS, MINN.**

Ms. BELLANGER. Mr. Chairman, rather than reading our study, we would like to kind of explain. First of all, this colloquium we held consisted of a group of about 100 native American professionals in the field of child abuse and neglect. These showed findings of these workers which indicated the integrity of the Indian family clearly. It also showed that the use of the extended family as a portion of the treatment was something that all of the different professionals there used.

Some of the people that attended our hearing are in the room and will be testifying.

Also, it showed clearly that using treatment techniques that were modified for Indian clients worked better; also Indian people working with Indian people. This is how the study came out all the way through.

One of the things that it pointed out was a jurisdictional question: That Indian people should have the right to control their own lives, this Self-Determination Act. We fully support the Minnesota Chippewa Tribe's stand. We feel that is clearly one of our rights.

I am from Cass County. I remember quite well the way the county was before the coordination between the tribe and the county. I left instead of staying there. [Laughter.]

But we also have to understand that in an urban area such as Minneapolis, perhaps half of the Indian people there are Ojibwa. We have Sioux, Winnebago people, Choctaws, every tribe that you can think of. And in an urban setting like this we have the United Indian Group House, of which Beryl Bloom is the director. I am the field director up in the northeastern area, Wilford Gurneau is director of the Native American Family Services. We work with all sorts of children, but we also have the need now.

Right now the State has clear jurisdiction over our children; and the rate of our children being removed from the home is very, very high in Minnesota. We would like to see the jurisdiction somehow, even in a working relationship such as Cass County and the tribe, but we would rather work in a relationship with the tribe itself in the jurisdictional setting somehow, possibly that we have an advisory committee set up in an urban area that would include members that are already working in the field.

Working in child abuse and neglect and working in social service agencies, perhaps a council might be set up. Indian people always

work better in councils. We talk together, think together and come out with conclusions that make sense to us. And that this council should be in charge of licensing foster homes, assisting case planning for families, and in need of foster care or whatever, assisting in placing these children themselves.

There is a demonstration project through the national child abuse and neglect project called Ku Nak We Sha' out in Oregon, Toppenish, that has sort of that thing going. I went to see that program and was very impressed with the working relationship that I saw between the county and the Indian people, the police and Indian people. The police were bringing the children in there instead of taking them to the emergency shelter home for the county.

We saw that the placements were better for the children. They did not stay in placement long. If the workers saw that the family was out partying or something, the workers would go grab that family and bring them back and say, "Hey, you got kids," and it was a better relationship that I saw that could work for us.

Mr. CLAUSEN. Where was that?

Ms. BELLANGER. Ku Nak We Sha' in Toppenish, Oreg.

Mr. CLAUSEN. In Oregon?

Ms. BELLANGER. Yes. It is part of the—it is a demonstration project. It is an emergency shelter home basis. The Yakima Tribe has that thing, but I think it is a Public Law 280 State also. They work hand in hand with the State. I think it really works well.

I think this planning agency or council would provide liaison between Indian community and State and local agencies for changing local policies to better reflect Indian relationships, Indian/non-Indian relationships.

As an example of that, I am not going to—we don't have it reflect in the statement, but we have done things such as help legislate on the State level the urban Indians' problems and everything to try and change that. This council would have a better chance at looking at these things and better chance to help us work together.

Also, there is another problem that we see that we would like to address, that all of the money coming into the State to the local level, the county government, clearly marked for Indian use, for welfare, be identified and addressed through the advisory councils such as title IV of the Indian Education Act. They have advisory councils on the local level, State level and national level that show how that money should be channeled.

We have seen that that has helped Indian children go to school. We have seen the parents begin to interact with the school. Different things are happening. We can see that happening also if the money, for instance, \$478,000 is coming into the State of Minnesota for indigent Indian accounts. It goes directly to the State and here we are and then into the county welfare and they are placing our children.

Ms. BLOOM. On February 1 of this year in Hennepin County they received approximately \$525,000 from the State, of indigent State moneys, and they had 190 children in placement. They were servicing 190 children in Hennepin County with these moneys. 150 of these children were in foster homes, not identified as Indian foster homes, but foster care facilities, and 40 of these were in what we call rules 5 and 8 in the State of Minnesota, residential treatment centers.

We run a program that can accommodate 30 youths and we have a service with this county and at this time we are full to capacity, but we are being utilized by Hennepin County, only 10 of our residents are placements from Hennepin County.

So it clearly states there is a prejudice on the part of the local level government that they are not utilizing the Indian community services that are available even though we meet the criteria by the State, because we are a State-licensed facility.

You know, it is—another area of our concern from the group home standpoint is that we also need shelter for younger children as Pat was saying, and in 1976 in Hennepin County there were 425 children in this age group taken out of the home and placed in shelter homes for anywhere from 2 days to 7 days and maybe 5 or 6 days the family was not notified where their children were.

And the percentage was that there was 22.6 percent of these kids—we don't even comprise populationwise 1.7 percent in Hennepin County—so it is very clearly demonstrated by these statistics that there is a need for Indian jurisdictional rights, the advisory council that Pat is talking about, and we are competent to handle our own affairs.

Mr. GURNEAU. Thank you, Mr. Chairman.

I am Wilford Gurneau, I am from Minnesota. I live in Minneapolis, but was born and raised on the Red Lake Indian Reservation. Our agency, Native American Family and Children Services, is dealing with crisis situations in that we interview in behalf of families that are going to court or termination hearings and we are in the field of reuniting families.

We are also in full support of the resolution spoken to by Mr. Bob Aitken and the panel before us. We know well that they are short-staffed and they cannot cover the reservations that they are to cover. Now we have two cases from Minneapolis going up north that are in the delegation now.

But to get down to what I am saying is, I would like to rather than elaborate or read my testimony, I would like to put my views on that.

Over the years, since 1972 until December of 1977, our agency was successful in reuniting 211 children back with their natural parents. These cases involved where there were termination rights by the courts in custody hearings and negotiations with counties and returning the children back to their families.

May I add, I think that a professional person should be left alone to do this. I negate that. I think that a person that involves himself with child welfare can learn these practices and put them well to use, as we have demonstrated. We were not professionals, but we were successful in returning 211 children back to their natural parents. I would consider myself a paraprofessional.

The real case is that the children were returned to their natural parents. We found that about 80 percent of the casework involved there was no delivery of services whatsoever. This prompted the worker who was involved with these families to do an about-face and work to get the children back because they did not follow the rules and regulations as mandated by the State regulations in that we remind the workers in each county that they are there for the specific reason to keep families together and not to break them up.

At the beginning of their casework they have failed to do this. This is why we were successful in returning these children. A lot of these cases, some of the cases we do not hear of and it is too late, is that we knew what was going on. There was no followup or there was no following of rules and regulations by the States. The social service practice was sloppy and we have asked help from the State department of public welfare to intercede in our behalf and the families' behalf, which they have not done. They will not help us with this.

We knew what was happening in the State. No help came from anyone. We had only one recourse left open to us. That was to call in the Health, Education, and Welfare Civil Rights Department, Health and Social Services Division. We showed there was discrimination against native Americans in Minnesota.

Mr. CLAUSEN. Against what?

Mr. GURNEAU. There was discrimination involved in services in regard to foster parent adoption of children in the State of Minnesota. So Health and Education Region 5 of HEW Civil Rights Division came to Minnesota and did their study, their investigation, and found the State of Minnesota in noncompliance with the Civil Rights Act of 1964 in regard to foster parent adoption. That has been 11 months ago and to this day the State department of public welfare has done nothing to remedy these matters even with the threat that they may lose their Federal funding in foster care and adoption.

Also, if I may get back to the funding part of it, we have been operational since 1972. We have not had any large grants from HEW or any large foundations in the State of Minnesota or elsewhere even though we have disseminated proposals time and again. We were in a catch-22 situation. We are not from the reservation, we are not professional people, we cannot be licensed because we don't have any money, but we did struggle along piecemeal, church groups, perhaps \$5,000 or \$6,000 here and there to keep us going.

It was a year and a half, almost 2 years, that I worked by myself without pay to keep this program going, spending \$6,000 of my own money, which I could not afford, during that interim. I got so far behind on my bills and I have a bill of sale—I had to sell my house to satisfy my bills.

I showed the lady this. This is what is going on in Minnesota. We know it is happening, it is wrong, but somebody has to do the work. We are all dedicated people to our children, and this is why I say that we in the urban areas need help in the way of funds.

Mr. RONCALIO. We understand that is a very serious and tragic review of the facts in Minnesota. We hope we can do something to correct it.

Mr. GURNEAU. Also, Mr. Chairman, what I say is backed up in my testimony, that from HEW to the State of Minnesota and other plans—

Mr. RONCALIO. We will have this admitted into the record.

Thank you. We thank you very much.

Are there questions?

Mr. CLAUSEN. Yes; Mr. Chairman.

I am intrigued by your testimony, and please accept my sincerity when I say that you shouldn't apologize for not quite being a professional, because we have so many professionals that are so professional

that they lose sight of what the problems really are. You indicated there were some churches working with you.

Mr. GURNEAU. Yes.

Mr. CLAUSEN. When I read all of this and I can only go back to some of the things I observed out in my own congressional district, there are church organizations and there are church organizations, some that are very effective in their own programs and dealing with their own people. I just made a note here: You made reference to the idea of working with the tribe. That is precisely what I do in my own area. I try to work with them and their council. I have an area where we have tried to integrate most of the community activities outside of the tribe working with and in the tribal council, and we have had a tremendous amount of success in integrating all the programs into the kind of thing that would be beneficial to Indians and non-Indians alike.

Going back to the church organizations again, have you talked to some of the Mormon Churches because they have a tremendous family program? It is just a matter of people knowing how to proceed, how to set these things up and develop their own funding. I have seen this occur with Seventh Day Adventists in our area. They have their own welfare program. There is no Government money, but they really take care of themselves and this is what I read you saying. You would like to work with that direction.

Have you had a chance to visit with any of them to get a clear-cut understanding and a philosophy of how they handle the revitalization of the family unit, how they hold together, and the families are nothing more than a group of people that go to make up a community? Have you had a chance to visit with them?

Ms. BELLANGER. No; I haven't, sir. We talked about the integrity of the family, you know, just talking amongst ourselves and amongst the tribes and everything. I think that native American people really have a much better understanding than most non-Indian people of family.

When we talk about family and extended family, we mean more than parents and grandparents and everything.

Mr. CLAUSEN. Oh, yes.

Ms. BELLANGER. I think you are right. I observed the Mormon Church. I have never really talked to anyone there.

Mr. CLAUSEN. The only reason I say that is that clearly, whatever you would learn from them, you would want to have it adapted to your own objectives, your own "goals of self-determination" and that sort of thing. I only suggest that I have seen a proven situation in any number of cases and it is reflected in my mail, Teno. They do not come asking us for help. All they want to do is be in a position where they can help themselves.

So I think in many cases we get hung up on the fact we have to have money to accomplish these things when, in fact, if you can learn how others are doing it, it might be tremendously beneficial. I think that the very fact that we have set up, if you remember, Teno, one of the revenue-sharing programs, we made it possible for Indian tribes to qualify for revenue-sharing.

One of the reasons I supported it was it permitted them to do their own thing and be treated just like any other political subdivision of

our Federal system of government. They administer their own affairs, so that concept and that principle would permit the people in the given area to address the problems and all the variables and set the priorities.

You made reference to your ability to work on a demonstration project, the county, the police, the Indian people, for the placement of children. This is the kind of thing we are talking about. I think so many times we have so many categories of programs, Teno. If we could bring all these categories together into a consolidation of some of these funds and get them up in there in a fair allocation formula, you would not have to come to Washington.

Ms. BELLANGER. I agree with that.

Ms. BLOOM. Identifying the moneys coming into the State available for Indian services, you know, if the moneys come—

Mr. CLAUSEN. You want to control everything. We just want to help people, not control everything.

Mr. RONCALIO. With respect to your reference to the Toppenish, Wash., program, I am glad to hear the reference to Maxine Robbins. Do you work with her out there?

Ms. BELLANGER. Yes.

Mr. RONCALIO. How do you pronounce the program, Ms. Bellanger?

Ms. BELLANGER. Ku Nak We Sha'.

Mr. RONCALIO. Thank you very, very much. You made an excellent and helpful contribution to our work. I see your Congressman, Don Fraser, has come in. We will call him now.

We are glad to see you, Don. You can read your statement or proceed in whatever way pleases you.

[Prepared statement of Hon. Donald M. Fraser may be found in the appendix.]

#### STATEMENT OF HON. DONALD M. FRASER, A U.S. REPRESENTATIVE FROM THE STATE OF MINNESOTA

Mr. FRASER. I think it would be well for me to put my statement in the record and speak informally a few moments.

Mr. RONCALIO. Fine. We will enter it in the appendix.

Let me first ask the students to come in and sit up here if you want to. Grab a chair somewhere so you do not have to stand up.

Mr. FRASER. I am here to support the action by the subcommittee on the Indian Child Welfare Act. I understand the administration has not yet decided to offer its full support, but I hope enlightenment will come their way.

Mr. RONCALIO. I hope so, too. This administration is just acquiescing in 192 Federal employees being transferred from IRS and I do not know what this administration is trying to do to incumbent Democrats, but I got news for them. Every time I turn around, they are just not getting with it, if I may say so on the record.

Mr. FRASER. That is right.

Mr. RONCALIO. And this is another case we have here.

Mr. FRASER. Let me just comment on two sections of the Indian Child Welfare Act. Those are sections 101(e) and 102(c) and (d). Let me say, first, we have a large urban Indian population in our city, one of the larger populations in the United States in proportion to our

overall population. We estimate that the native American population is about 4 percent of the population of our city.

Under sections 101(e) and 102(c) and (d) before transfer of the Indian youth, the local agency would have to notify the member as well as the tribe with which the youth has significant contact. Although this appears to be an insignificant burden, we are told by people who are familiar with this that this is not likely to work well in an urban setting. So we would like to ask the subcommittee to consider amending the act to include a provision for designation by the Secretary of a suitable Indian organization in an urban area which has a large Indian population, which could serve as a quasi-representative of the tribe for notification purposes.

Mr. RONCALIO. Let us stop there. Does that sit well? I am trying to coordinate with the Senate. Does that sit all right?

Mr. TAYLOR. It would be new, but I think that it is an intriguing idea.

Mr. RONCALIO. Why do we not entertain it?

Ms. MARKS. We have had objections to that provision by the National Congress of American Indians. However, I think that the provision has never been developed where they could actually take an adequate look at it.

Mr. RONCALIO. Why do we not try it?

Ms. MARKS. Their immediate concerns have been whether the tribes agree that, in fact, it is the tribe who has the relationship to the child. Therefore, they feel that if some arrangement could be worked out possibly with the urban organizations where they would also be notified as well as the tribe, something like that might be much more acceptable.

Mr. RONCALIO. That is all right, sure.

Mr. FRASER. I think the fear is it will not function, so this will provide an alternative means of notification.

Ms. MARKS. Right.

Mr. FRASER. Now, section 202(a) would allow the Secretary to establish Indian development programs off the reservation. This could be very helpful to those of us in the urban setting. Our fear is the BIA is too much reservation oriented.

Mr. RONCALIO. It is out West, no question about that.

Mr. FRASER. So the subcommittee might mandate the establishment of programs at a rate commensurate with a need in the area. In other words, stronger language so the BIA would know the Congress intended they deal with the urban problem, as well as the reservation problem.

Those are the two main suggestions that I wanted to offer to the subcommittee.

Mr. RONCALIO. Maybe we can do it this way. One of them will be in the statute and one in the report to see that they get attention.

Mr. TAYLOR. Mr. Fraser, I have one question particularly related to Minneapolis. As this bill is presently drawn, it is designed to service people who are members or eligible for membership in a federally recognized tribe?

Mr. FRASER. Yes.

Mr. TAYLOR. That eliminates Indian people who are members of tribes not federally recognized, or people who are members of tribes

with whom the Federal relationship has been terminated with. I wonder what percentage of the Indian population in Minneapolis would fall into that category, if you would know. If not, perhaps Mr. Guineau could help.

Mr. FRASER. Yes; it exceeds my information.

Mr. GURNEAU. I do not have the exact figure on that.

Mr. TAYLOR. We have received testimony on this problem and it could be a problem in Minneapolis, which is why I asked the question. We will have other testimony later today.

Mr. FRASER. It may be that we can find out. We just do not know at this point.

Mr. RONCALIO. Thank you very much. We appreciate your help. We are hoping to work this out in legislation that will be identical with the Senate-passed version or something they will accept if we change it, so we do not have to go to conference and we can get a bill signed.

Mr. FRASER. I am all for that.

Mr. CLAUSEN. Thanks. We will stay in touch with you.

Mr. RONCALIO. We have two votes. I suspect if we are going back to Humphrey-Hawkins, that is a vote to approve the journal.

We will go on with the hearing; we will not bother with the floor activity. That is the second bell. You have 10 more minutes.

The next witness is Omie Brown, director, Urban Indian Child Resource Center, Oakland, Calif.

[Combined prepared statement of Omie Brown and Jacquelyne Arrowsmith may be found in the appendix.]

**PANEL FROM THE URBAN INDIAN CHILD RESOURCE CENTER CONSISTING OF: OMIE BROWN, DIRECTOR; AND C. JACQUELYNE ARROWSMITH, BOARD MEMBER**

Mr. RONCALIO. This is the Oakland demonstration project and we are anxious to hear what you have to say; we appreciate your coming. You go right ahead.

Ms. ARROWSMITH. I am Jacquelyne Arrowsmith and I am a board member for the center. I am going to read this since this whole procedure is new to me. I will make side comments from the statement.

Ms. BROWN. I would like to make comments after she has finished.

Mr. RONCALIO. OK.

Ms. ARROWSMITH. The Urban Child Resource Center and Indian Nurses of California, Inc., based on experience in the field of child welfare, strongly support S. 1214. However, in its present working form, it excludes thousands of deserving and eligible American Indians, specifically those Indians who are members of federally terminated tribes. By rewriting the definition of Indian in section 4, paragraph (b), this possible oversight would be rectified.

The Urban Indian Child Resource Center was founded 3 years ago by Indian Nurses of California, Inc. The center was the first urban Indian project funded through the National Institute of Child Abuse and Neglect in 1975. The center's main objective is to help Indian children who become innocent victims of parental neglect and/or abuse.

Before the establishment of the resource center, most of the Indian children identified as being neglected were immediately taken up by the county court or welfare system and placed in non-Indian foster homes. As a result, Indian children end up in homes of a foreign culture with very little chance of ever returning to their rightful parents.

The center is located in the San Francisco Bay area and serves a population of 45,000 native American Indians. Eighty percent of the Indians are mobile and often return to their homeland. With this fact in mind, the center provides a linkage between urban and reservation living. Aid is given to the Indian families in a broad array of services ranging from the availability of emergency food and clothing to identifying Indian homes to be licensed as foster homes.

The center has served 215 families which becomes approximately 1,500 clients when each family member is counted individually.

Ms. BROWN. There are Indian children placed out of Indian homes. At the time we started the Urban Indian Child Resource Center, there was only one Indian home licensed through Alameda County. We now have 7 and potentially licensing at least 10 more within the next 15 months or so.

Mr. RONCALIO. Is Alameda County directly south of Richmond?

Ms. BROWN. Yes.

Mr. RONCALIO. Between Richmond and San Leandro?

Ms. BROWN. I think it is west and south—south, yes, between them.

Ms. ARROWSMITH. Also, of this number of clients received, they represent 39 different tribes, many of whom are California residents. There are at least 500 persons they receive with family friends, and they are from the community. This number increases as the resource becomes more established in the community.

The staff is unique in that all are Indians except our bookkeeper, and they number 17 and they come from 11 different tribes.

Ms. BROWN. Of those staff members, I guess we only have one with a masters degree, the rest have associates of arts or are not degreed, but they do have the sensitivity to the Indian community which we do not find in the county social services agencies.

Ms. ARROWSMITH. Many of them are continuing on with their schooling on their own time. The board members exist of professional Indians, seven of us are registered nurses and there is a teacher from the community; they are all on board. They represent, I think it is eight different tribes. The Indian Nurses of California, Inc., is a non-profit organization established in 1972. The nurses represent 35 tribes and reside throughout the State of California. The Indian Nurses of California Executive Council acts as the board of directors for the Urban Indian Child Resource Center and meets quarterly to monitor the center's activities.

Our recommendations are that S. 1214 needs to be strengthened but has to become law as it is essential to reduce external placement of Indian children and increase the capacity of young Indian families to understand child development and utilize community resources.

We respectfully suggest that the definition of "Indian" be changed to read as follows:

"Indian" or "Indians," unless otherwise designated, means any individual who (1), irrespective of whether he or she lives on or near

a reservation, is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendent, in the first or second degree, of any such member or (2) is an Eskimo or Aleut or other Alaska Native, or (3) is determined to be an Indian under regulations promulgated by the Secretary.

We recommend that Indians rally to support this bill, S. 1214.

Mr. RONCALIO. Would you put a Hawaiian native in there, too, since you are in California, and we have quite a few from Hawaii?

Ms. ARROWSMITH. Usually Hawaiians do not consider themselves in this area.

Mr. RONCALIO. They are looking around now for some friends and I know that to be a fact. I just wondered about that, do we need that sort of definition in the bill.

Ms. BROWN. What we are experiencing is where you have an agency or group of people, Indian children fall into the cracks and no one else does anything about them. The reservation Indians don't recognize us and especially in cases where a good percentage of our population are our clients, our customers, are or have been relocated by Bureau of Indian Affairs.

Now they are considered terminated; they are no longer considered Indians now that they are relocated to the urban areas in that there needs to be a definition. Also, the California Indians who are experiencing very much the same problems.

Mr. RONCALIO. Problems would arise because of problems for funding purposes, also that definition for establishing blood quantum for distribution of funds which has been left the criterion of the tribe. The tribe can say who is an Indian, not us, not the Congress. We have pretty much left that to the tribes over the decades.

We will try to redress that problem in the report language so that at least we know that the problem is there and maybe we can do something there.

Ms. ARROWSMITH. This definition was taken in part from Public Law 94-43.

Mr. RONCALIO. But you broaden it just a little to include the urban?

Ms. ARROWSMITH. No; we have let out some of it.

Mr. RONCALIO. That is good to know. Maybe we can carry on.

Mr. TAYLOR. That is the Indian Health Care Improvement Act, Mr. Roncalio.

Ms. BROWN. That would be more applicable to the non-federally recognized tribes, as well as the urban Indian population.

Mr. RONCALIO. And those who have been terminated since the act. We think you have made a good statement. Thank you very, very much.

Ms. BROWN. I want to add, Mr. Chairman, that by not including the—by limiting it to the federally recognized tribes, it makes it very difficult to carry out services for urban Indians and people that are not recognized by the Federal Government, and that represents, as you know, there are approximately 1 million Indians in the Nation today and there are 500,000 of them that live in urban areas; and of those according to statistics, the age tends to be lower. I know that in our own caseload, that we, and our parents, are much younger than the national average.

Mr. JACKSON. I was curious what percentage of your caseload would fall into the category of people from nonrecognized tribes?

Ms. BROWN. What percentage?

Mr. JACKSON. Roughly.

Ms. BROWN. If you are talking about—if you are specifically talking about enrolled members of our clients, I would say half of them are enrolled, half of them are not.

Mr. JACKSON. Thank you.

Ms. BROWN. And if you are talking about California Indians, we really don't have enrollment per se; they have different criteria and that creates something else. The rest of the population are enrolled on reservations, but they often do not get the services that are extended to the reservation Indians and what we are saying is that there is—that we recognize that reservation Indians have to have the services that they are receiving; Lord knows if they don't get enough of it. But equally as important, that urban Indians are experiencing the same thing. When we went for funds to the county for title 20, we were told that we were No. 351 down the list. To compete for that on a small scale of numbers becomes very difficult.

Mr. JACKSON. Is the National Institute for Child Abuse and Neglect the sole source of your funding?

Ms. BROWN. At this point, we have a full foster home recruitment from title 20, but this is the last year of our funds. We know, according to the Office of Child Development reports on Indian state of the arts, that all of the urban child welfare programs operated by Indians are having financial problems and most of them have to close because they cannot relocate or cannot locate funds.

Mr. TAYLOR. What is your operating budget for the past year?

Ms. BROWN. We have a \$250,000 operating budget which includes a small research project of \$48,000 at this time and this is again, I say, our last year of our demonstration funds, and it is much more difficult to find funds for an urban Indian project, especially in the area of child welfare.

Mr. RONCALIO. Let me go off the record here.

[Discussion off the record.]

Mr. RONCALIO. OK; back on the record again.

Thank you both for your statement. We appreciate your coming to help us with our work.

Dorothy Buzawa, supervisor of operations, ARENA Project, accompanied by Mary Jane Fales.

[Combined prepared statement of Mary Jane Fales and Dorothy Buzawa may be found in the appendix.]

**PANEL FROM THE ARENA PROJECT CONSISTING OF: DOROTHY BUZAWA, SUPERVISOR OF THE EXCHANGE; AND MARY JANE FALES, DIRECTOR**

Mr. RONCALIO. You may read your statement verbatim if you like or you can just comment, and we will put it in the record.

Ms. BUZAWA. Good morning; we are very glad to be here. This is Mary Jane Fales, director of the ARENA project; I am Dorothy Buzawa, supervisor of the Exchange and head of the Indian adoption project. We are part of the North American Center on Adoption which

is a division of the Child Welfare League of America. The North American Center is concerned in breaking down all the barriers that prevent children from being placed in a permanent home in the United States.

ARENA goes back 10 years to 1967 and during these 10 years we have placed over 2,000, helped to place over 2,000 children. As a precursor of this, the Indian adoption project started in 1957 and during this 20 years, we have helped place about 800 Indian children. We have also been concerned with placing them in race where possible and we have become increasingly successful in facilitating these placements in the last several years. We have also become very active in helping States and recruitment groups to learn how to more effectively find Indian homes for their children.

We have also had the privilege of working with Indian advocate groups such as the Association of American Indian Affairs and the National Congress of American Indians. We are very pleased to see that they have been pushing for legislation to help children so that so many are not removed from their families.

We would like to, today, support title 2 of the bill, particularly the family development program because we think it would be really helpful in helping Indian families and, along with that, titles 3 and 4. However, we have very serious questions about the first title.

Ms. FALES. You will have to excuse me, this is the first time I have testified, and I am not going to be making a very popular statement around here which is not to support title 1. We very strongly believe in the need for keeping children in their biological families whenever possible and when that is not possible, we really very strongly can see that children need to remain in a culture that is similar to the one that they have. And we believe that the bill, the heart of the bill is in the right place, but some of the provisions in there we feel may instead of helping children, may instead cause, some problems. We have some real serious concerns about the way in which that may affect many of the youngsters particularly those youngsters who are not living on the reservations.

I see that now we have close to 1,000 youngsters who are legally free for adoption registered with us from all over North America, Canada, and the United States and a small, but significant percentage of those youngsters have some portion of their culture Indian related. Most of the youngsters do not and have not lived on a reservation. Many of those youngsters are not infants, we are talking about older children and we are very concerned that many of these children under that law, title 1, would be prevented from having a permanent home instead of helped to having one.

I feel that we see many children lingering in foster care all over the country, black, Chicano, Puerto Rican, and white and we hope to knock down these barriers, not build them up. We are happy to hear, and one of the major questions we had, was the constitutional question which seemed to have been addressed by a number of groups and we are pleased to see the waiver clause may be put in and that sounds like that might handle many of the questions we had there.

But I think we get to real questions of jurisdiction and how that would be handled and those questions that really may affect many of those youngsters not living on the reservation. For example, the

psychological parent has been, I think, used in courts all over the country to perceive that many youngsters can develop psychological parents. Many of the youngsters not on reservations are in foster homes where they built up psychological ties. They may be Indian, but not of the same tribe. Those foster parents may have one foster parent who is not eligible for a tribal membership, but be Indian, or they may be non-Indian. Many of the youngsters we are talking about have significant amounts of other heritages, like this year we placed some black Indian youngsters in a black home.

There, I think, that they will be more comfortable. Their identity problems will be less in the black culture than they will be in the Indian culture as an example of some of these youngsters.

We are concerned about what determines significant contact with an Indian tribe. That is in there because many of the youngsters we are talking about not on the reservation have not had, they don't relate necessarily to the tribe and particularly those youngsters who do have significant amounts of other minorities in their blood, in their cultural background; we are concerned about the biological relationships that some of these youngsters have with their non-Indian biological parents and what does this mean if they have, for example, a child who is half Caucasian and has lived with a grandparent on the Caucasian side and has some ties.

The way the law is written in title 1, there may be real restrictions to these youngsters being able to maintain those biological ties and contacts.

We have real concerns about what it means to transfer. What about those youngsters who have more than one Indian tribal background? Which tribe, the jurisdictional question is again, and the time delays. I know as a social worker and adoption worker for many years I have been in courts many times presenting cases on children where there was no question about the parent has time to surrender, there was no question about their cultural heritage or the home. It has still taken a tremendous amount of legal complications and time and we are just really concerned that there may be even more problems in releasing many of these youngsters who have not had, whose parents may want to release them.

Mr. RONCALIO. You heard the witness who preceded you regarding, particularly with the Chippewa, the problem of having to have a second notification. I notice your 102(g) criticisms here are the fact that when you have to give notice you think it invades the privacy of parents by having to serve that notice on the chief of the tribe. That is a real problem there.

Ms. FALES. We have concerns, I guess, because we feel that if the parent chooses to move off the reservation and make some determination over the future of their child, that you know this is, I guess I am interpreting and I am not a lawyer so I am not sure I am following the legal language here, but that if the parent has the right to waiver notification and chooses to go into the State court sometimes that seems more fair to the privacy or rights of that parent. I am thinking if you can say if you choose to move to California or say your daughter chose to move to California and have a child out of wedlock, that your own council back in your home town wouldn't

have to be notified of the interests of that child or what is happening with that child and have a right to determine the future of that child.

We have some real concerns over that.

Mr. RONCALIO. Is this a realistic concern?

Ms. FALES. You mean that the parents' privacy—I think if they chose not to remain on the reservation, shouldn't they have some right to the privacy of what happens to their lives off the reservation.

Mr. RONCALIO. That is a little different thing, of course.

Mr. TAYLOR. We had other testimony in this same direction a month ago, Mr. Roncalio, and in fact these are some of the alterations being considered in this revised draft.

Mr. RONCALIO. What is BIA suggesting in its draft?

Mr. TAYLOR. Among other things, exactly what Ms. Fales refers to. When an application is made for a transfer of jurisdiction of a case out of the State court to tribal court, the parent involved would have some right to consent.

Mr. RONCALIO. But this is an objection to some chief executive officer of the tribe or other person being also notified. This is the objection that she states.

Mr. TAYLOR. I think the objection is overly broad.

Mr. RONCALIO. I do, too.

Mr. TAYLOR. The notice is appropriate, but the parent should have a say in the process and that is being considered.

Ms. FALES. We also have major concerns about the time period for the youngsters.

Ms. BUZAWA. Particularly in 101(c) where the bill would allow parent or parents to withdraw consent up to finalization of adoption. We feel this is much too long a period of time. Because that can drag on and in States now it can be 6 months, 1 year, or 1½ years and that would mean that the child and adoptive home is not able to make a commitment to where he is, the parents are not sure, the adoptive parents are not sure any day that consent could be withdrawn.

Mr. TAYLOR. I might say that is another area that is under consideration for some amendments.

Ms. BUZAWA. We would suggest that 30 days be a sufficient time for the biological parents to be sure that they are doing what they want and that they have had counseling and are fully aware of what is going on.

Mr. RONCALIO. I am getting so old, I do not understand terms after so many years of practicing law and 10 years around here. What is the distinction between a biological parent and natural parent?

Ms. BUZAWA. I think the terminology is changed recently. Natural sounds like one thing and unnatural would be something else so biological does not have too much of a negative connotation to it. It is just a statement of fact.

Ms. FALES. Social work lingo.

Mr. RONCALIO. Social worker lingo, OK.

Ms. BUZAWA. So we would make a suggestion of 30 days as being adequate time to change the consent.

Also, we would like to see some accountability system put into this bill so that every child that is in placement can be viewed or reviewed every 6 months or at some other length of interval. I see a head nodding—

Ms. MARKS. Yes.

Ms. BUZAWA. So that the child can get back to its own family if that family has been rehabilitated and is able to take the child, that would be fantastic. If need be, the child is free then to go into adoption, too. But this accountability system would be really very good.

I know in other pending legislation, H.R. 7200 or S. 1928, that this is being considered, too.

Mr. RONCALIO. OK, ladies.

Ms. FOSTER. I have a question, Mr. Chairman.

Ms. Fales, you said that you had about 1,000 children presently on a list of children who are available for adoption?

Ms. FALES. These are children from all over North America.

Ms. FOSTER. Nationwide at the present time.

Ms. FALES. Canada and the United States.

Ms. FOSTER. And a percentage of those were Indian?

Ms. FALES. A small percentage at this point are Indian youngsters.

Ms. FOSTER. Do you know how many that would be?

Ms. BUZAWA. Around 20 or 25.

Ms. FOSTER. The percentage?

Ms. BUZAWA. No, the number.

Ms. FOSTER. Do you have any knowledge of—let me ask you the other way. How do these children come to this list? Is this voluntary or involuntary consent?

Ms. FALES. You are talking about two things. The referral to our organization was voluntary on the part of the agencies who are looking for an adoptive home for these youngsters. These are all children whose legal rights have been terminated previously. But as far as whether I would say that probably better than 50 percent of these youngsters have had involuntary termination of parental rights and the other half may have had voluntary termination where the parents have given their permission. So it differs according to each case.

Ms. FOSTER. In the case where the original action which led to the child being placed for adoption was involuntary, don't you feel in that situation that a tribe should have a right to come in and act as an additional protective source for the children?

Ms. FALES. Well, in for example those 50 percent of youngsters where it has been involuntary?

Ms. FOSTER. Yes.

Ms. FALES. The recruitment of Indian homes on the part of the agency might be without identifying perhaps the privacy of the biological parent, should definitely be considered.

Ms. FOSTER. But in involuntary consent you have a privacy concern; but where a child is being placed involuntarily through a court proceeding, don't you think in that situation—

Ms. FALES. As long as there are not time delays. That is one of the concerns we have, that many of the youngsters get caught up in the systems of finding homes which end up with the youngster growing old while the courts are trying to make some determination for them. And transferring all the jurisdictions.

Ms. FOSTER. In the case of adoption, is not the time in which somebody can withdraw consent in most State courts 90 days or longer?

Ms. BUZAWA. It varies; 30, 60, or 90.

Ms. FOSTER. Are you distinguishing between withdrawing consent and having to revoke the consent through proceedings? Up to 10 days, you can withdraw consent. There is no proceeding under this legislation; you can withdraw consent. After 10 days and up to 90 days, there is a different system, you have to come in and offer proof.

Ms. MARKS. That is in the staff draft. If we can possibly clarify for you, it would help. There has been a discussion and a lot of discussion by staff about the consent withdrawal provision and possibly amendments. Suggestions have been made that up until the final decree is an extensive period of time and probably should be limited somewhat.

Mr. Taylor's suggestion was something to the effect of giving a limited period of time where a consent could simply be withdrawn and then, after that particular point in time, still allowing for a petition of withdrawal but making it an involuntary situation where there was a court proceeding to determine where the withdrawal was needed. It would be a case where the best interests of the child could be considered by a neutral force at this point in time.

I realize that the problems of time constraints are there, but my feeling has been after reading a lot of testimony and talking to a number of people that there is a two-fold situation here. There is a need to provide a child with a home, a good home as quickly as possible, but there is also a need to make sure that that home is really the answer to that child's problems.

I have seen cases where it is my true honest opinion that there has just been too much rushing. There has been a push, push, push, push and all factors have not been adequately considered. And problems have resulted 4 and 5 years later as a result of pushing too fast and having a family which is not prepared to handle some of the situations that they are going to be faced with in the future. This is another side which I feel equally strong about.

Ms. FALES. I think that you are right in saying that often parents are not adequately prepared; you are right in saying that perhaps not all placements work out.

On the other hand, I do think that as overall studies have shown us that in terms of psychological adjustment of adult adoptees as opposed to those who languished in foster care that the younger and sooner a child is placed in a permanent setting the better chances they have as adults in making psychological adjustments.

And that is if they can't be in their biological family, I also tremendously agree with the statement of this particular bill is addressing that many of these youngsters really could remain in their biological homes if adequate work was given to those parents.

Ms. MARKS. The other point I would like to address, if I may, is in terms of the actual preference standards. I think that you are discussing, at least over the phone we were discussing, the problem of handicapped kids.

Ms. FALES. Yes.

Ms. MARKS. At this point, it is my opinion that the bill would not prevent the placement of a child in a non-Indian home if circumstances warranted. What it does is to provide a statement, you shall give preference to in absence of—then the big quotes "good cause to the

contrary." I think that does leave discretion there. I would hope sincerely that those preference standards would be considered by the social worker as an automatic step in the line, that it is not something to be considered as a brand new element in social work. That to me is what I would believe to be good social work. If those things are not considered then somebody is not doing an adequate job in my opinion.

So, I am concerned about the fact that people tell me that that may be an unnecessary time-consuming step. I think it is a very necessary step. And while it may take some time, I think it should not be underestimated.

Ms. BUZAWA. What we have also found now is that in most States they do have a preference, and it is working in substance, already working.

Mr. TAYLOR. That is contrary to the evidence that the committee has received because the evidence we are receiving is that of almost all ethnic groups within this country, the sole one that has been singled out for placement of children outside that ethnic group are American Indians.

So, the information we have been receiving in the committee is contrary to what you have said. There is a recent move in that direction.

Ms. BUZAWA. I am talking about the last couple years.

Ms. FALES. That isn't to say that enough has been done. I agree. We do definitely, as social workers, need an Indian culture, and I think we need a lot more tools to find Indian families, and I think that that is again more help in that regard outside those Indian families living on the reservations who may be interested in adoption. I think there have been barriers put up to them, too.

Ms. MARKS. This was also discussed by the staff, I would be interested in seeing or hearing any ideas you may have in terms of keeping a register through the Bureau of Indian Affairs or some other Federal agency of potential homes. Some type of national coordination which might alleviate some of these problems.

Do you have any indications of what could be done in this area? We would be happy to review any suggestions that you feel would be helpful.

Ms. FALES. In essence, ARENA was set up to kind of do that, maintain the list, the problem has been that we are voluntary and there is no mandate to register families. It is a hard thing to enforce agencies to do.

Ms. MARKS. Yes.

Ms. FALES. And that is the problem.

Mr. TAYLOR. I have read some of your testimony on these different sections, pages 3, 4, and 5. Some of the problems you have noted we have just discussed and are under consideration for amendments; some of the objections you make such as Patty noted, the preference provisions, I think result because your interpretation of the bill is not an accurate one. Non-Indian placements have not been excluded from consideration. And the significant contact test that is contained in the bill is designed to solve the problem that you have talked about where an Indian child is raised outside an Indian setting and has very limited or no contact with a tribe.

In a case like that the judge would have discretion on the application of preference standards and the application of the jurisdictional standards. The whole purpose of the significant contact test was to establish that sort of flexibility.

Ms. FALES. I guess we are just questioning it in practicing. I am fearful in practice of seeing how that might be differently handled by a variety of judges and how it might cause time delays for the process.

Mr. RONCALIO. Thank you both very, very much. I got a suspicion we are going to leave the language alone on page 8 and over to page 9 because when we balance all we have heard, it seems as though this tries to solve the problem with the least amount of hassle:

That no final decree of adoption may be entered within ninety days after the birth of such child or within ninety days after the parent or parents have given written consent to the adoption, whichever is later.

You would prefer that shortened up a little?

Ms. FALES. Yes; I think what Ms. Marks was saying is true for most children under the laws that in the States the parent always has a right to contest in court after the case, but they have to go through the court proceeding in order to do that.

Ms. MARKS. You may want to draft up some suggestions specifically, timetables or language that you feel is workable, I have not had an opportunity to read what you have included in your statement, but I would be very willing to talk with you by phone or communicate in letter before we finish up with this. The big concern is that the bill has got to work. It really has to work.

Ms. FALES. That is our concern, yes.

Ms. BUZAWA. Yes.

Mr. RONCALIO. Thank you both very, very much for helping us.

Suzanne Letendre, Northeast Indian Family Structure Project, Boston Indian Council, Inc., Jamaica Plain, Mass.

We are happy to have you here. We have your statement. You are welcome to comment on this in 5 or 10 minutes if you would like or you can read it verbatim, if you feel better doing that.

[Prepared statement of Suzanne Letendre may be found in the appendix.]

**STATEMENT OF SUZANNE LETENDRE, DIRECTOR, NORTHEAST INDIAN FAMILY STRUCTURE PROJECT, BOSTON INDIAN COUNSEL, INC.**

Ms. LETENDRE. I think I prefer to read it.

Mr. RONCALIO. Fine.

Ms. LETENDRE. Good morning, Mr. Chairman and members of the subcommittee.

I am here to speak about the needs of Native American families residing in the Northeast and the discriminatory nature of the Indian Child Welfare Act of 1977. We—and I speak on behalf of the Northeast Indian Family Structure Project and the Boston Indian Council, Inc.—we do not challenge, but rather, strongly support those sections of the bill which insure tribal court and tribal council, a significant degree of authority in matters regarding the future of our children when foster care and adoption determinations are made.

We do not object to the definition of "tribe" in this instance being limited to those tribes served by the Bureau of Indian Affairs. We also approve of those sections which provide for the involvement of Indian organizations in areas of family development and child protection. However, we most adamantly object to the definition of "Indian" and "Indian organization" (section 4(b) and (d)), which deal with Indians outside the tribal context and which, if enacted, would unfairly exclude the vast majority of native Americans in the Northeast from benefits, protection and much needed assistance provided for in the bill.

In the greater Boston area alone, where approximately 4,000 Native Americans reside, we estimate as many as 300 Indian children have been placed in foster or adoptive placement, the great majority of which were placed in non-Indian homes. In Maine where the constituency, family structure and child-rearing practices closely resemble those of Native Americans in Boston and which is the only New England State with available statistics, Indian children are placed in foster homes at a per-capita rate 19 times greater than that for non-Indians and two-thirds of such Indian children are placed with non-Indian families.

The American Indian Policy Review Commission found that Aroostook County, Maine had the highest placement rate of any county. This current rate of family disruption that is occurring amongst the Maine-Massachusetts Indian population has not gone unnoticed. Both the native American community and the U.S. Department of Health, Education, and Welfare have recognized the need for special intervention and prevention programs for Indians in the Northeast. They also have begun to take steps to develop a program to address the situation.

The U.S. Department of HEW has granted the Boston Indian Council, Inc., a small amount of funds on a short-term basis to initiate a Northeast family support project to meet the special child welfare needs of Indian people in New England. However, it is highly improbable, considering the ceiling on State title XX funds, that the State will be able to sustain this program beyond this year.

The project is a joint effort of BIC and two Indian organizations in Maine, the Central Maine Indian Association in Orono and the Association of Aroostook Indians in Houlton, to ensure the integrity and stability of off-reservation Native American families. It is the hope of the project staff that this collaborative effort will protect the ethnic heritage and political birthright of native Americans, enlighten social institutions to the unique needs and problems facing the Indian community, and change the current patterns of foster care as practiced for Indian people by non-Indian social service agencies.

Since the commencement of the project, our staff has had to deal with numerous blatant injustices on the part of social agencies with regard to native American families in the Boston community. Two such instances dealt with single mothers who had their children taken from them on rather dubious grounds and who desperately sought our support to help them regain custody of their children.

The first case deals with a mother who had her child placed in foster care because on one occasion she was not at home when her child returned from nursery school. When the mother requested our assistance

in getting her child back, we immediately contacted the social worker involved and asked on what legal grounds was the child removed?

The social worker was speechless for there was no legitimate grounds on which she could justify her department's actions. Fortunately in this case we were instrumental in quickly reuniting the child with her mother and bother.

The second case involves a young mother who is presently in a foster home and who has spent the most part of her life drifting from seven different foster homes. A few months ago she also had her own child taken from her.

For several months the State retained physical custody of her child without filing any petition, thus without filing any petition, thus without the appropriate legal sanctions for removing and retaining the child. When this matter finally came before the court, legal custody was then temporarily transferred to the State. The mother is now faced with a very difficult and demoralized process of trying to prove that she is, in fact, a fit and capable mother.

Since the social agencies involved disapprove of raising the child in the mother's foster home where five other Indian children are currently being cared for, they recommend that either the mother change foster homes, thus continuing the transient foster care syndrome or have the 17-year-old mother move into her own apartment, thus face the economic and emotional adjustment to urban living alone.

When we examine the Indian Child Welfare Act section 2(a), we find the problem facing our native American constituency in the Northeast precisely as described in the bill. Yet by virtue of a most restrictive definition of "Indian" therein the benefits of the bill become regionally discriminatory. Hence, the proposed legislation which purports to be a general act, that is, Indian Child Welfare Act dealing with a generic problem, in fact, fails to do so by failing to address the problem as it is felt by those native Americans who are not included in the bill's restrictive definition of "Indian."

This definition of "Indian" is contrary to the drift of Indian legislation in the past two decades: Where Congress has dealt with Indians outside the tribal context, a broader definition has always been used, for instance in (1) CETA title III, (2) ANA urban and rural grants, (3) Indian set-aside for nutrition in CSA, and (4) Indian Education Act.

One clear example of a less-restrictive definition can also be found in the Indian Health Care Improvement Act, which I believe was dealt with by this committee and which is enclosed with my testimony. Our question is on what rational basis should this bill break from the longstanding policy of Congress most recently included in the Indian Health Care Improvement Act? We strongly object to the use of the Indian Child Welfare Act to narrow the definition of "Indian" outside the tribal context. Such an action puts in jeopardy Indian children and families who, based on this bill's preamble, should be included.

We realize that some of these services' eligibility issues may be solved when the administration or Congress solves its recognition policy, but no one can be certain about when or how such a policy will be implemented. Even when such a policy is, in fact, implemented, a

significant portion of native Americans who are in need of assistance will still be ignored such as: (a) those members of State-recognized tribes who may not seek or who are unable to seek Federal recognition, (b) fullbloods with less than one-fourth of any one particular tribe who are nevertheless denied membership to a tribe because of their blood quantum, (c) members of decendants of members of tribes terminated since 1940, (d) those terminated individuals of federally recognized tribes, and (e) individuals who lost tribal status as a result of relocation.

Hence, those native Americans who are faced with adjusting to off-reservation living, who lack the support and assistance of their tribal courts and councils, who are alienated in urban settings and lost in a world unaccustomed to the Indian way of life and the Indian family structure, and who, in fact, make up a significant portion of the alarming national statistics on Indian family disruption, are ignored by this bill, left stranded, unassisted while they watch in bewilderment the termination of their parental rights and the placement of their children with people who are total strangers to them.

Clearly there is no morally justifiable basis for supporting the restrictive definition of "Indian" found in this bill. We recommend that section 2(b) be amended in line with the definition of "Indian" found in section 4(c) of the Indian Health Care and Improvement Act, so that benefits under sections 202, 203 and 302 will be available to a broader category of native Americans. Within the context of tribal jurisdiction and services the definition can be narrow, but in the broader context of off-reservation Indian organizations a more expansive definition must be used.

We urge that you reject an arbitrary policy that would unfairly determine which native American children will be blessed with the comfort and security of growing up with their families and communities and which will be torn from their families, their mothers and fathers, brothers and sisters and robbed of their Indian identity and political rights.

Mr. RONCALIO. That is an excellent statement. You have given us a lot of things to think about.

Something will have to be done about a definition of an Indian, and I am sure it will be. Probably the one we came up with earlier which you said we could take out of the act last year.

Mr. TAYLOR. It is a question, Mr. Roncalio, that we will have to put before the committee, and it is a political decision.

Ms. MARKS. They will make the decision, yes.

Mr. RONCALIO. Thank you very, very much.

I am going to be leaving in a few minutes, but I will ask the chief of staff, Frank Ducheneaux, who is a Sioux, to help us with this and maybe listen to the last one or two.

Right now we can have Ms. Beauprey, Great Lakes Inter-Tribal Council, Ashland, Wis.

Are you here, ma'am?

You can read your statement if you like, or you can put it in the record and comment on it, either way.

[Prepared statement of Trilby Beauprey may be found in the appendix.]

**STATEMENT OF TRILBY BEAUPREY, DIRECTOR, ALTERNATIVE LIVING ARRANGEMENTS PROGRAM, GREAT LAKES INTER-TRIBAL COUNCIL, INC., ODANAH, WIS.**

Ms. BEAUPREY. I will read it, Mr. Chairman.

Mr. RONCALIO. All right.

Ms. BEAUPREY. I would like to start with good afternoon.

Mr. RONCALIO. It is just about that time, yes.

Ms. BEAUPREY. As with others, I am new to this, so I will—

Mr. RONCALIO. Let me interrupt you. I am supposed to be in three other places. You have heard of the Humphrey-Hawkins bill and what it does for people who need housing and jobs? Well, it is pretty important in creating jobs. It is on the floor now, and they have some problems about needing all good, loyal and faithful Democratic members to help in consideration of the bill. Let us know what you have. What we would like you to do is hit the high spots. Will you do that for us?

Ms. BEAUPREY. OK. I guess, as with everybody else, I do have some suggestions and recommendations on some of the wording in the Child Welfare Act.

I guess I will kind of give you some information that I have come up with.

I am Trilby Beauprey, and I am a Menominee Indian from the State of Wisconsin. I am presently the director of the Alternative Living Arrangements Program with Great Lakes Inter-Tribal Council, Inc., in Odanah, Wis.

This is in the second year of funding through Wisconsin's LEAA program of criminal justice.

Our program is responsible to the Great Lakes Inter-Tribal Council, Inc., service area encompassing 10 Indian reservations in 31 of the 72 counties of Wisconsin. It was my job, along with two other staff members, to recruit foster parents who were native American. Their homes would serve as emergency temporary shelter care facilities for 12- to 17-year-old native American status offenders.

I would like to put you in touch with additional information, feelings, and national statistics which will help you envision the plight of my people today.

Dr. David W. Kaplan in his address to the Seventh Annual North American Indian Women's Association Conference, June 14, 1977, says:

The native American family system has been and is subjected to enormous economic, social and cultural pressures. Although the traditional extended family exists in many places and kinship ties remain strong, it is clear that the old ways are not so powerful and widespread as they once were.

S. 1214 can help build and support the Indian family who has been or is weakened because of disruptions to its structure. S. 1214 is important and deserves your full support.

Dr. Kaplan continues:

Certainly poverty, high unemployment, poor health, substandard housing and low educational attainment impact tremendously on the strength of the family but equally important is cultural disorientation and loss of self-esteem.

The American Indian still ranks lowest in per capita income of any national racial group with a per capita income of 46 percent of white American income. 48 percent of all rural Indian families are below the poverty level.

Accidental death rates experienced by the Indian population remain higher than the U.S. total rate (figure 1). The accidental death rate for Indian children ages 1-4 is three times the national level.

Some of the symptoms of cultural, community and family distress are the high suicide and homicide rates, the number of accidents and, of course, alcoholism and drug abuse. Serious manifestations of these trends are reflected in the precipitous climb in the rate of juvenile crime.

For young adults ages 15-24 years, the suicide rate is four times the nation as a whole and the homicide rate is about three times the U.S. total (figure 2). And the major epidemic of alcoholism continues to spread. (Figure 3.)

By recognizing these horrible facts, we can understand what it means when we read in S. 1214 findings, section 2(c).

The separation of Indian children from their natural parents including especially their special needs, is socially and culturally undesirable. For the child such separation can cause a loss of identity and self-esteem, and contributes directly to the unreasonably high rates among Indian children for dropouts, alcoholism and drug abuse, suicides and crime. For parents, such separation can cause a similar loss of self-esteem, aggravates the conditions which initially gave rise to the family breakup, and leads to a continuing cycle of poverty and despair.

S. 1214 in Findings, section 2(a), finds that:

\* \* \* an alarmingly high percentage of Indian children, living within both urban communities and Indian reservations, are separated from their natural parents through the actions of non-Tribal government agencies or private individuals or private agencies and are placed in institutions (including boarding schools), or in foster or adoptive homes, usually with non-Indian families.

I would like to share with you, further, information concerning Wisconsin Indian adoption and foster care statistics which were part of an Indian child welfare statistical survey, July 1976, as it pertains to the State of Wisconsin.

This comes from the Association on American Indian Affairs.

I would not outline all the information contained in the survey, but have included it in my testimony as a matter of report.

I am interested, however, in relaying to you pertinent concluding remarks regarding foster and adoptive care of Indian children in the State of Wisconsin.

There are 10,176 under 21 years old native American Indians in the State of Wisconsin.

There are by proportion 17.8 times as many Indian children as non-Indian children in nonrelated adoptive homes in Wisconsin. There are by proportion 13.4 times as many Indian children as non-Indian children in foster care in the State of Wisconsin.

By per capita rate, Indian children are removed from their homes and placed in adoptive homes or foster care 15.6 times more often than non-Indian children in the State of Wisconsin.

The Wisconsin statistics do not include adoptive placements made by private agencies and therefore are minimum figures.

A list of changes that I see as desirable in S. 1214 are as follows, and I hope that in hearing these that you will offer whatever comments you may have to make.

Through Great Lakes Inter-Tribal Council, Inc., opportunities exist for tribal members on various reservations to identify native American families interested in providing a home for the placement of an Indian child or children.

Foster homes are available for emergency situations described as an "immediate physical or emotional threat" to the child in S. 1214.

Therefore I would omit—and I give a series of sections and lines—from it the “temporary \* \* \* threatened inclusive” and substitute the following for each of the omissions above:

Under circumstances when the physical or emotional well-being of the child is immediately threatened, emergency temporary placement is to be within the reservation or county of a cooperating blood relative, private Indian individual, Indian family, Indian tribe, or Indian organization which offer such placement facilities/home(s) (if these facilities have not been exhausted through contacts as resources no child placement shall be valid or given any legal force and effect).

I support this type of change because I sincerely believe, as it has been my experience, that there are viable Indian people resources within the reservation and the county to meet these needs. I would urge that only after these resources have been exhausted that any other placement be allowed.

I see S. 1214 giving Indian tribes jurisdiction over the welfare of a precious resource: their youth. That is why I do not object to the written notices, however, without any specifications as to “when” the 30 days commences is ambiguous.

I propose for:

Section 101 (b) line 11;  
Section 101 (c) line 24 omit “of”;  
Section 101 (d) line 6; and  
Section 101 (e) line 22.

The following be added: “being made via registered mail and the 30 days commencing with the tribal governing body’s receipt of such notice.”

Mr. TAYLOR. You will be happy to know we have an amendment like that under consideration.

Ms. BEAUPREY. You do? Well, I would like to see it made possible for the tribes as well as the families to know all parties—“prominent ethnic background”; within section 101(d) line 13 and “their phone number or the phone number of a consenting neighbor”—within section 101(d) line 13.

Knowing the prominent ethnic background of the parties involved will help to establish whether or not this child will be placed with people compatible with that child’s background.

If it becomes necessary to contact any of the parties, it would be advisable to obtain the involved parties’ telephone numbers.

Also, although I hold deep respect for the decision of a judge, I would not want to see a determination passed down on whether a child is Indian or not based solely on the judge’s or a hearing officer’s discretion, rather, under section 101 (e), line 2, after “notified” include:

To further insure that the best interests of the child are adhered to in making such a decision an advocate for the child in question must be present and heard.

When withdrawing from an adoptive child placement, I believe the family should be given the right to withdraw the child at any age. Therefore, under section 102(c), line 12, “and the child is over the age of 2,” should be omitted.

I want the tribal governing body to be aware of what is happening to its youth. That is why, under section 102(c), line 18, after “adoption” I would add: “and the tribal governing body has been notified via registered mail of this action.”

Under title II, Indian family development: We have been recruiting foster homes on the reservations and the counties in which the reservations are located. Therefore, I do not want to see Indian organizations limited to off-reservation Indian family development programs. I hereby request that an Indian organization be given the sole right to determine whether it wants to carry off-reservation or on-reservation Indian family development programs.

I would then change:

Section 201(c), line 8, after “reservation” to include “or on-reservation”.

This would give Indian tribes within an Indian organization the option to carry on an Indian family development program as a state-wide project for people on or off the reservation. The following revision permits such a decision:

Section 202(a), line 22, after “Tribe”, to include “or Indian organization”.

Section 202(a), line 23, after “operate”, to include “on the reservation or off the reservation”.

I see great possibilities under this act for nontribal Government agencies to contract for the Indian organizations’ foster homes resource.

Therefore, under section 202(b), line 23, after “Tribe”, include “or Indian organization”.

An Indian organization can determine for itself whether it wants to operate an Indian family development program off or on the reservation under the act.

Therefore, under section 203, line 9, after “reservation”, include “or on reservation”.

Our office has been approached to investigate the well-being and best interest of a youth already in placement by a member of the extended family and/or a private Indian individual, and I would like to see:

Section 204(a), line 19, after “requests,” to include “or where the natural parent, Indian adoptive parent, blood relative or guardian does not exist or lacks the ability to care for the child. Then together or separately, an interested private Indian individual(s) and the adolescent in question may request placement in an Indian foster home that desires the child.

And, section 204(a), line 1, to include after “restoring,” “or permitting.”

And, section 204(a), line 4, include after “left,” “or in the case of an interested private Indian individual to allow a child placement to be made.”

Dr. Kaplan concludes:

The Indian culture with its customs and traditions, especially that of the Indian extended family, is a very valuable heritage and must not be lost. There is much we have to tell and teach the culture threatening our demise.

S. 1214 can only be effective if you assure available appropriate funds for the attainment of its purpose and its life. In developing this, I would encourage the Secretary to involve more Indian people in its further development. Thank you.

Mr. DUCHENEAUX. Thank you, Ms. Beauprey.

On behalf of Mr. Roncalio, I would like to thank you for your statement.

The staff will take it into consideration. As Mr. Taylor indicated, some of the changes you recommend are already under consideration by the staff and by the subcommittee, and we will consider the rest to see if we can make the changes you recommend.

I do not have any questions.

Mr. TAYLOR. No questions.

Ms. MARKS. No questions.

Mr. DUCHENEAUX. Thank you very much.

Ms. BEAUPREY. Thank you.

Mr. DUCHENEAUX. Our next to the last witness is Faye La Pointe, coordinator for social services for child welfare, Puyallup Tribe, Washington.

**STATEMENT OF FAYE LA POINTE, DIRECTOR OF SOCIAL SERVICES FOR CHILD WELFARE, THE PUYALLUP TRIBE, WASHINGTON STATE**

Ms. LA POINTE. Thank you. I am here again.

The Puyallup Tribe Council heard a couple days ago that the bill, as it came out of the Senate, was "dying."

Mr. DUCHENEAUX. Ms. La Pointe, are you going to read your statement or submit it for the record?

Ms. LA POINTE. Yes, I did submit.

Mr. DUCHENEAUX. It will be admitted for the record.

Ms. LA POINTE. We have been here before. Our tribe has sent a delegate down every time there was a hearing.

A lot of our recommendations have been incorporated into the final bill as it came out of the Senate.

They asked me to come in and reenforce the idea that they believe that the bill was ready when it came out.

There are a couple things I would like to address, and I have to excuse myself because I have a bad cold, and my ears pop, and I can't hear a thing anybody says.

But, when we talk about confidentiality, I think I pretty well addressed that as it came from the tribal council.

About the rights of the unwed mother, confidentiality rights, and whether she wishes to give up her child and relinquish rights to her child, I have heard a lot of testimony about what should happen to the child. They should have various opportunities to go to a good home—but what we live with in the urban area and on the reservation is that unwed mothers, once successful in relinquishing that child, she comes back to the Indian community and suffers from shame, humiliation, and that kind of thing. And she ends up in self-destructing herself through alcohol—whatever means—suicide.

I think that I have heard some social workers talking about benefits for the child. but there is not a whole lot of followup for that unwed mother. We live with it, you know, we live with it every day.

We face frustration because we have come here, you know, we have looked for dollars for social services, and we have gone to the Bureau, and they have been helpful. We have gone to the Indian Health Services Mental Health Bureau seeking assistance.

I feel very bad that the bill is dying at this point. We know that we can work with urban organizations. Puyallup is, in fact, in an urban area. The Puyallups, by definition of the Federal Government, are urban Indians.

I kind of have to smile when I hear another definition for an Indian because I kind of get into trivia once in a while, and about a year ago I counted 175 different definitions of what is an Indian. Now I am hearing we are going to have another one.

We can work, you know, with urban organizations. We do in Tacoma. We have a model there in Tacoma.

I would urge this committee at this point to support the bill as it is written.

Mr. DUCHENEAUX. Ms. La Pointe, I think perhaps I should say to you that, at least as far as the subcommittee chairman is concerned, and I hope the other members of the subcommittee, this bill is not dead.

It does appear from the witnesses, yourself and others, that it may require additional work in terms of amendments and changes to fit all the situations we are trying to deal with, but the bill is not dead.

I think we are going to move it along. Perhaps not as rapidly as the Senate, but I think we will move it along.

Ms. LA POINTE. Can I ask, are there any time limits on it? The rewrite will come out next month, will it?

Mr. DUCHENEAUX. The subcommittee will complete hearings today, and then will work on amendments both through staff discussions and through meetings in 2 or 3 weeks or so to work on the bill further.

It will take some time, but I just want to assure you that the bill is not dead.

I had one question. I did not see it so much in your statement, but you talked about confidentiality. Could you expand on your comments on confidentiality a little bit?

Ms. LA POINTE. In our area, we through the State department of health and social services, have workers coming to us saying you can't do this—Indians are not ready, their tribes are not capable of handling confidentiality.

My response to them is, you know, we have proven it. Ask any FBI agent that was looking for an Indian fugitive in Indian country.

Ask us to support enforcement from DSHS when they are looking for a father. We do know how to handle that.

Mr. DUCHENEAUX. Is it your position that the tribal government is at least as able and willing to preserve the confidentiality of its members' affairs as the child placement agency?

Ms. LA POINTE. Sure. It has been our experience since we have been involved in Indian child welfare there has only been one unwed mother in 3 years that has requested that confidentiality. To my knowledge that has never been violated.

The child is an enrolled member, and you know some day, if he wants to, he will find out.

Mr. DUCHENEAUX. I have no further questions.

Ms. FOSTER. To clarify, you described the mother coming back to the reservation as being in a state of depression. You are saying that is because she is reconsidering what she has done and she wished not to have done it?

Ms. LA POINTE. Yes.

Ms. FOSTER. Maybe you can elaborate.

Ms. LA POINTE. Yes; I heard there was consideration in shortening that time for reconsideration, and I would not like to see that at all. I would rather extend it.

Ms. FOSTER. Do you feel most of the mothers, when they give up their child, give the consent, and they later regret it?

Ms. LA POINTE. Right. We know that by experience.

We have been working with Indian child welfare for many years now.

Ms. FOSTER. Do you have in here, or would you be willing to write, the consent waiver provision in such a way that it will take care of your concern and also wherever you disagree?

Ms. LA POINTE. Sure.

Mr. DUCHENEAX. Patty?

Ms. MARKS. I think just for the record and for your information, because I was talking to Don Milligan the other day, Senator Abourezk spoke with me last night for quite an extended period of time, and he also spoke with Mr. Roncalio, and I think that his concern is basically the same as expressed by Mr. Ducheneaux, that we are not talking about something that has a number, such as S. 1214, or S. 2000, or a H.R. 501. What we are talking about is basic provisions that we have to get through.

That may take changing some numbers around, changing some organizational provisions, and so forth. But I think that at least his personal opinion, and my understanding the opinion of Senator Hatfield and Senator Bartlett as well, is that at this point in time we are going to work for the provisions and forget about the numbers and get something through that is, above all, workable, because a bill that will be vetoed or a bill that is going to reach constitutional problems 6 or 8 months after it is passed will be useless.

We have to try to find a middle road. I think that that is where we are at, at this point.

Mr. TAYLOR. If I could add one thing to it.

There are very few minimum areas in here where a change in direction of the bill is being considered. Some of the parental acceptance of a transfer of jurisdiction to a tribal court, a few areas we talked about today, are in discussion. But for the most part the people found this language in here very confusing, and I think a lot of the testimony, as we saw this morning, reflects that confusion.

So I believe what's really happening here is, we are retaining this bill almost in its present form, but we are trying to give it clarity that it apparently does not have right now. That's really what has happened.

Mr. DUCHENEAX. If that completes your statement, I want to thank you very much for coming.

Ms. LA POINTE. Thank you.

Mr. DUCHENEAX. Our last witness, and not the least important by any means, is Mr. Robert Barker, attorney and special counsel for the Church of Jesus Christ of Latter-day Saints. With the firm of Wilkinson, Cragun, & Barker.

I am sorry we held you so long.

Do you have a prepared statement?

## STATEMENT OF ROBERT W. BARKER, SPECIAL COUNSEL TO THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

Mr. BARKER. Yes, Mr. Ducheneaux, and I would like the statement to be made a part of the record.

Mr. DUCHENEAX. On behalf of the chairman, it will be made a part of the record.

Mr. BARKER. I would like to address myself to a couple questions here.

I have been very interested to hear the testimony this morning because in my 30 years of practicing, I have represented Indian tribes during all that period of time, and I realize there is a very serious problem that needs attention.

I would like to say that I appear here today on behalf of the Mormon Church, and the church certainly does not oppose this legislation. Our sole purpose is to be sure that in enacting this legislation and addressing ourselves to a very complex and serious problem, that we don't by oversight do anything that will interfere with the ability of the Indian people to carry on voluntary programs which they consider to be beneficial to them, and we are particularly concerned about the Indian student placement program of the Mormon Church which was developed solely in response to requests of the Indian people themselves, parents of Indian children, that the church assist them in allowing their children to reside off reservation to better their educational experience.

Now, this was in response to desires of parents of children who are members of the church.

I want to make clear that this is not a guise for any other program in response to Indian children and their parents that we assist them in their educational program.

I want to make clear, too, that our program is only temporary in nature, it is not a permanent adoption of any kind. The ability of the parents to regain the custody of the children at any time at their request or the desire of the child to return is recognized as an essential part of the program.

Now, with that in mind I think that that changes the perspective maybe that some people have of the program.

We are concerned that the literal language of the bill might be construed as to preclude the voluntary consents of parents and the desires of the parents, and we feel that there is no one better qualified to look after the interests of Indian children than their parents.

So we feel that the bill should not intentionally or otherwise—certainly not unintentionally—infringe upon the constitutional rights of these parents, and we would urge an amendment be enacted.

My testimony directs itself to an amendment to the existing bill. Certainly the provision of the first sentence of the amendment to the Senate bill dealing with this. Section 102(h) is acceptable to us, but the notice requirements we have suggested be slightly modified mainly to comply with our practice that we have experienced in working with the Indian tribes.

We have some 2,700 students that are involved in this program. We deal with some 75 tribes, some formal and some informal, some

that are recognized and some that are not recognized, and about three-fourths of these students right now, at the request of the chief executive officer, we send to them the information on the child, the names and addresses of the natural parents, the name and address of the family with which the child is residing, so that, if at any time the tribe needs to get in touch with that child or its parents, natural parents or the parents of the family with whom the child is residing, they can do so. There are emergencies and things like that that may justify this.

So we do, at the request of the tribe, when we know they are wanted and they are interested in it and are in a position to handle it, we do furnish that now, and we would propose to continue a similar program.

We would urge that it not be unduly encumbered by enlarging the information beyond that which is really necessary and desirable because this program, after all, is a noncompensated program.

The church provides this as a service for its members, and we only have a limited budget. We want to keep it as simple and as practical as possible and not get into unnecessary expenses.

The second thing is that there is no expense paid by the Indian family at all for this program. The expenses really are incurred by the host family who agree to take the child into their home and treat them as their own child and pay all the expenses of their living and education and everything as if they were one of their own children.

But, of course, they also undertake it on the understanding that they will continue their relationship with their own family and their home and try to cultivate their appreciation for their culture and their relationship with their immediate family.

Now, I have looked into this several times over my career and talked with people who have grown up and lived in the program.

I am not going to encumber the record here, Mr. Ducheneaux. We put in a lot of material on the Senate side, of letters and testimonials and comments that had come from many Indians all over the country, Indian parents who felt very strongly that this program should be not encumbered, Indian children who were in the program, and tribal leaders who had gone through the program were serving as leaders in their tribe now and felt strongly for the benefit of their people that this program should not be encumbered.

Now, it is my understanding that the intent of this legislation is not to interfere with this voluntary type of program. I think it is just a question of being sure our language is correct, and we want to be careful that it is not unintentionally restrictive.

We will cooperate in any way we can to see that the language of the bill is clarified so it will not be.

We again want to emphasize that we are not opposing the legislation.

I would just say, I have a couple comments as someone interested in the Indian people over the many years having observed some of their legal proceedings, that we have got to be very careful with this legislation, to make it work.

Number one, we have to not create a constitutional block on the rights of these Indians so somebody will litigate and tie it up in courts and it won't just be workable. I think there are ways to write this in such way so we won't face these constitutional challenges.

Number two, we have in this country a large spectrum of Indian tribes. We have one like Navajo, which is highly organized and well financed and able to carry on extensive programs.

We have another little group like the Shevitz that I bet you there is no one on this committee knows how to find the chief executive officer and could not do so within a period of time because they are very dispersed and not organized.

Now, what one group like the Arapaho Tribe of the Wind River Reservation, in the chairman's district, whom we represent, what they can do is one thing, and what a highly fragmented tribe with just a few members and no finances can do is another thing.

I am very concerned that we not impose a burden on tribal courts which they are not able to carry. I am not saying this in the point of view of the church. I am observing this from my point of view in writing this legislation for any help it would be to the staff. I know, for example, that the key court officials in Navajo are very concerned about what kind of inundation would occur in their courts under this legislation, and it does not do us any good to impose a burden on the tribal courts or family courts in the States which they just cannot handle.

So my thought is that, in writing this legislation to meet our target and our need and to get relief we need in this area, we should be very restrictive in our language, target it in to hit what we want to do, and be careful not to blanket in unintended programs that shouldn't be affected or create controversies.

Now, there is one other thing I would like to say, as implied in my statement, and that is that we are dealing with a social problem, socialworkers, and they are in the nature like lawyers and doctors, they have a confidential relationship with the people they deal with.

From the church's point of view in furnishing these lists to the tribes when they have shown a concern and interest, we have not had a very practical problem of having any substantial objection to them.

I do feel, though, that if any parents or any child, say, over 12 years of age who knows what is going on indicates a strong objection, that we would have a problem of ethics of whether we should disclose information that that parent and child had not wanted disclosed.

I don't think there will be very many, but to avoid any technical, constitutional problem, it would be well to provide that, if people have objection to giving notice to the tribe, that they could instruct or direct that it not be given. Then it would not pose any technical or legal argument, and as a practical matter—this probably occurs very, very seldom—but most of our notices will be given.

Another thing I would like to address my attention to from the point of view of practical experience is the problem of automatically requiring notice to the tribe.

Now, when I think of the Navajo, when I think of the Shoshone at Wind River or the Arapaho at Wind River, or the Menominee, something like that, that is no problem. Everybody knows where the tribe is, everybody knows who is tribal chairman, and what to do about it.

But there are some groups that are very hard to keep up with and know who they are. When I went back to the Senate committee—I mentioned this problem in my testimony—I was very curious to notice that the next day my secretary was on the phone, and I said, "What were you talking to the Bureau about?" She said they were calling to see if I could give them the names and addresses of the chairman, the secretary, and the tribal council of three of our tribes.

They said that for almost 2 years now they have been trying to get this from the field and their lists are 3 years out of date.

So they have to come to us to get them. Now, it is not easy for someone like a church organization or somebody not dealing with these people daily to know whom to send this information to. Now, it is not that we don't have confidence in their ability to handle this information because, when we have an organized tribe with competent people like we have heard here today, they are as able to handle this information as anybody in the non-Indian field, maybe somewhat more sensitive to the problem and the needs. And we have had great confidence in them.

But, on the other hand, we, as a church, having confidential information given to us through the social services, wouldn't want to sit down and make a list and mail it to the last-known post office box and it might get to anybody, into anybody's hands, including people running promotions and gimmicks and lotteries and research projects and things who would completely invade the privacies of these families.

But, if we send it to the chairman, if he wrote to us and said, "Please send us this information, such and such," we would have no hesitancy because we know he is responsible and he would see that it was properly used.

But, to go to some unknown person with it, it may never get to the chairman or designated tribal people, it may go to someone 4 years out of date and getting his mail a long ways away from the reservation, then we can see problems of confidentiality. So that is the reason we proposed the approach in my testimony.

I would again like to say there is a real need here.

We commend the committee and those who have worked on it, in their efforts to meet it. I know this because I have had two sons who have been missionaries among the Indians in recent years, one in the Southwest, in Arizona and New Mexico, one in North Dakota and South Dakota, and they both told me that this is an area that needs attention, and I commend you for doing it. And I just again caution us as we move to do it so it is workable both from the constitutional, legal point of view, and, second, that we are not putting a burden on so we create a bottleneck so that it cannot function.

Mr. DUCHENEAUX. Thank you, Mr. Barker.

I want to apologize for the chairman not being here. As he indicated, there is some very important legislation on the floor and other Members I am sure are there, too. I really wish they had been here to hear your testimony. Mr. Roncalio specifically asked that your statement be provided to him.

Mr. BARKER. I appreciate that, Mr. Ducheneaux.

I know their heavy burden and they have to be several places at once. So, I am sure they will learn of what I had to say.

Mr. DUCHENEAUX. I have a few questions.

One deals with the main thrust of your statement, and that is the church's program. It is a very sensitive area and I hate to get into it.

I wish one of the members were here to ask you the questions about it.

I understand some of your concerns about provisions of the bill with respect to notification of the tribe. One of your statements was that if a tribal chairman wrote to you, the church would very willingly make available the information requested with respect to the child.

Does that not impose an unrealistic burden on the tribe to be aware that the church has a child in one of their homes in that program?

How are they to know in order to write a letter asking for the information?

Mr. BARKER. That is a fair question, Mr. Ducheneaux.

I think the answer is more of a practical experience than anything else and that is this: That we operate this program in certain areas, and I am sure that each of the tribes in the areas we operate know the area and if they had any doubt, of course, they could just inquire.

My point is this: That they know where we operate and they also know our schedule, that is, we take these opportunities to go into school about the first of September or end of August each year.

Now, the only point I am talking about is that we have worked this out with the tribes where we operate that are concerned. Now, what I am saying is that we are only—they just merely ask us to send it to such-and-such a place so that they tell us how to direct it so that we are getting the right location.

They have no problem because they know each year that they want this and we have a working arrangement for example with the Navajo and the Sioux. Well, send it to where they desire and it comes in promptly after the placement is occurring.

What we are trying to avoid is not the main body of our people that are involved here, but rather the fringe little groups that was mentioned here today.

Suppose we have somebody in Idaho who is a member of the Indians of California. I know from having tried a lot of lawsuits involving Indians of California, there are 500 tribes, bands, or groups in California.

That is the Kroeber list of Indians of California. Now, if I don't—if suppose they are descendants of four different tribes, bands, or groups then one Miayana, one might be a something or other, might be from the Okiya group, one might be from someplace else, but they have no relationship with the tribe, they are living in Idaho—it is very difficult for the church to determine with that child in Idaho whose parents might descend from maybe four different groups, and if the parents have no relationship with the tribe, how we would comply with this if the tribe didn't say they were interested.

Now, our point is if an organized group—

Mr. DUCHENEAUX. The bill as sent over here requires this notice and defines an Indian tribe. That is defined in the bill as a certain thing, an organization, a governing body. How is this governing body that you are talking about in California, this small tribe of California, any of the small tribes, how in the world are they to know that one of their tribal members or a child of their tribal member in Idaho, is

going to be entering this program so that they can request the church for that information?

Mr. BARKER. Doesn't that get back to the practical problem, if they had our notice, would they be concerned and would they use it or do anything with it—in other words, if they have no continuing relationship with them and it might be any one of the 500 bands or groups in California, if the person is in Idaho, and their parents are in Idaho, and if we then sent notice to all four of those groups that they were descended from, if we could find out who they were and where they were?

Mr. DUCHENEUX. The bill does not require that. The bill only requires that notice be sent to the chief executive officer of the tribe in which the child is a member.

Mr. BARKER. My point is, Mr. Ducheneaux, my own experience at Fort Duchesne, Utah, with the tribe, the chairman of that tribe Rex Curry, who is now dead, but he told me—I asked which roll are your children on—he has four children.

I have two on the Uintah roll, two on the White River roll, and then we will have another one that will be on the Ontrepaga roll.

My point is that when you say the tribe of which they are a member you get into problems of how you determine that tribe. Who do we notify? Do we notify the chairman of the Uintah band or White River band or the chairman of the Ontrepaga band?

If they have absolutely no concern, they are out in California a long way away, isn't it as a practical matter very easy—they know that on the 1st of September if they are concerned and want to know whether they have any children they could write and say I am chairman of the Myana band, our address is so and so, will you please advise me whether you have any children on placement.

We would be glad to respond to that and we would respond to that, and if we had somebody on placement, we would send them the information unless the parents have indicated an objection under my program.

I do not believe the objection would occur. I am not saying this by way of the church wanting to avoid the thing, I am saying something on your writing of legislation which is practically feasible to work.

You can tell us to send a notice and we will inquire of the Bureau of Indian Affairs and even this committee and that committee and find out if they know, but if we cannot find out and we cannot comply, if we cannot determine who to send it to, you are writing an impossible, an unconstitutionally vague language.

Mr. DUCHENEUX. There is a law on the books—

Mr. BARKER. Yes.

Mr. DUCHENEUX. It has not been observed probably in the last 50 or 60 years, but it is on the books.

Mr. BARKER. Let me see what it is, maybe we can work it out.

Mr. DUCHENEUX. Section 286 of title 15, United States Code. It provides that no Indian child may be removed from a reservation by anybody without the consent of the parents and further it provides that—

Mr. BARKER. On that so far, of course, we have the consent of the parents.

Mr. DUCHENEUX. It further provides that the consent must be before the superintendent of the reservation in writing and he has to send that notice to the Commissioner of Indian Affairs.

Is that unconstitutionally vague? Is that an unfair requirement on anybody taking an Indian child off a reservation?

Mr. BARKER. My suggestion, Mr. Ducheneaux, is that that statute as interpreted with its legislative history would not apply to the kind of educational experience for the consent of parents we are talking about.

You could look at the legislative history of it; you are talking about permanent removal.

Mr. DUCHENEUX. No; it says no child shall be taken for educational purposes beyond the reservation.

Mr. BARKER. I think that the courts would not apply it in view of its legislative history. Maybe we better amend that statute to make it practical.

I am here to help work the problem out rather than to find other problems.

Mr. DUCHENEUX. I don't want to belabor this point, I think Mr. Taylor has a question.

Mr. BARKER. Can I go back to this other one because this is more than either legal argument or anything else. It is a question that we have to, whatever we do, make it practical.

There is no use of putting something on the books that cannot work. The problem is, we will of course comply with the directives to the extent we are able, but the problem is that you want the tribes—at least I want the tribes—that are concerned and able to do something about this, to get the information properly and accurately.

I do not want to put in a requirement which will require people to do the impossible and, therefore, ignore it. I think that we all want to carry out the spirit of this notice and I am merely saying that as we do, let's face the reality of how do you identify the tribe of which a child is a member.

Mr. DUCHENEUX. I understand that, and I appreciate that.

I want to move on to something else and perhaps there are other questions on this point. Since you are here, I want to take advantage of your expertise as an attorney who has worked many years in Indian affairs.

You brought up the question of the constitutionality of this bill and that of course was the major point advanced by the Justice Department.

With respect to two categories of people now—this is with respect to the notice requirements, jurisdiction requirements, transfer requirements—on category was the on-reservation member situation. The Justice Department clearly admits and recognizes that the Indian tribes have a right to jurisdiction over any placement or adoption of a child in that situation.

They go on to say with respect to the other two categories that is, the situation where there is a nonmember of the reservation—an Indian eligible for membership in the tribe but not a member on and off the reservation. They advance the proposition that to require the State courts to give notice to an Indian tribe of any action with respect to a child in that situation, or to provide for a transfer of that action

to the tribal courts would be invidious discrimination and a denial of the equal protection of the laws.

I want to pursue that a little bit, not long, but for a short time. Is it your opinion that an Indian tribe independently of the natural parents of an Indian child, has a legitimate interest in that child if it is a member or eligible for membership in the tribe?

Mr. BARKER. Let me speak this way, Mr. Ducheneaux.

I have not gone back to review the cases recently to speak to this and expect mainly by my reaction and tendencies based upon years of exposure to Indian law and the answer is this: I think they have a definite legitimate interest that needs to be considered and protected. I do not think though that that interest overrides and is superior to the right of the child and the parents.

I think the first protection has to be different even to the individual rights of the parents and family.

Mr. DUCHENEUAUX. For the purpose of this, let's not bring in the issue of the parents.

I want to assume a situation.

Mr. BARKER. I think the answer to your question then is yes, and I just wanted to say that properly qualified you would have no constitutional question there. This is a situation where the State court has involuntarily separated an Indian child from his parents.

Mr. DUCHENEUAUX. Involuntarily?

Mr. BARKER. Yes.

Mr. DUCHENEUAUX. Does the tribe have a legitimate interest in the welfare and disposition of that Indian child who is either a member of or eligible to be a member in the tribe?

Mr. BARKER. I think my answer would still be yes.

That is my reaction, yes.

Mr. DUCHENEUAUX. In your mind, would it be an interest which is or could be independent of the interests of the parents?

Mr. BARKER. Yes, qualified as I have said before, unless it is some way infringed upon the rights of the parents.

Mr. DUCHENEUAUX. We are assuming an involuntary separation.

Mr. BARKER. Yes.

Mr. DUCHENEUAUX. If you destroy the children of the Indian tribe, you destroy the tribe.

Mr. BARKER. I think that is sound.

Mr. DUCHENEUAUX. That is obvious.

So, the tribe has a legitimate interest, and the United States has obligations through treaty, statute, et cetera, to preserve and protect the tribe.

Mr. BARKER. Right, and preserve the public interest which is part of that.

Mr. DUCHENEUAUX. The tribe.

Mr. BARKER. Yes.

Mr. DUCHENEUAUX. If you destroy the children of the Indian tribe, cases of *Wakefield v. Little*; *Hyde and Fisher v. District Court*, but, in view of the rationale of those cases and similar cases, does not the United States then have, under its trust responsibility and power of the Constitution, the power to affect the State courts' operation on Indian children of that nature?

Mr. BARKER. I would think so. I certainly heard your discussion and read of the case this morning with the representative of the Department of Justice. It certainly seems to me that the language you quoted is directly on point.

I have not examined how broadly that has been examined in appeals, how many circuits subscribe to that viewpoint, but it seems to me that it has never been ruled contrariwise by any circuits or courts. So, I think that that is good law at this time.

Mr. DUCHENEUAUX. Just to follow a little more: so there could be a compelling interest on the part of the United States to act to protect the continued viability of an Indian tribe by enacting legislation protecting the children of that tribe or those children eligible to be members of that tribe?

Mr. BARKER. I would think that that is sound; yes.

Subject again to my limitations, so long as you are not infringing upon first the basic right of the individual and his family so that you would have a constitutional violation, I think the two are reconcilable.

Mr. DUCHENEUAUX. Are there any questions?

Mr. JACKSON. I had a question with respect to this problem of notice to the hypothetical families in Idaho, et cetera.

The minimum age requirement to be in the LDS program is 8 years; is that it? Eight to eighteen, I believe.

Mr. BARKER. It would be 8 years, but they have to be 8 years of age for baptism, and they must be members of the church before they go. So, they cannot go under 8.

Mr. JACKSON. Has there been any experience under this program that the children and their parents have themselves difficulty in identifying what tribe they consider to be members of?

It would seem if the parent and child know what band, say, on the youth's reservation they belong to, there would be no great problem in identifying which group would have to be notified.

Mr. BARKER. My concern is that I am trying to protect against what is not the ordinary case, but the exception which would get us into litigation and testing the validity of the statute.

My answer as to the practical problem, as I have said, right now is that with 75 percent of our people, they are getting this information by a letter, and I think that in most instances, particularly in our work where we work mainly on regular existing Indian reservations, that there would not be much of a problem.

I think that as a practical matter it can work out. My concern is not to create a few situations that create impossibilities. I am telling you that the chairmen of the various Sioux groups, chairman of the Navajo group, and others, under this procedure I am talking about are finding it very workable because we have a continued working relationship with them with no problem.

Mr. JACKSON. Perhaps some sort of excepting language along the lines of except where good evidence to the contrary can be shown that it is not possible to make notice in timely fashion as required by the act, something like that, would that possibly solve the problem?

Mr. BARKER. It possibly could, and certainly I would tell you this, we would make every effort to do what we can, but I really, if I were to be called on some of the situations that I am familiar with and asked who to serve notice on, I would have a difficult time because

some of these people do not consider themselves members of any particular tribe since they have long since been terminated and do not have a relationship.

I think the problem you have to guard against—not that it occurs in our program very often—but it is a conceivable thing to challenge validity.

Say you have a young woman and who moved away from her tribe a long, long time ago, and she has an illegitimate child. And she has never wanted the people at home to know about it. Then she gets into a point where she wants to place the child in some sort of placement thing, not to terminate her connection with it but to help her in her care and development of that child. She is raising it as hers and she wants to keep the relationship. She does not want the people back in Oklahoma where she came from to know about it. She would object to our sending a notice to the Kiowa tribe in Oklahoma, but she would want the child in the program.

That is the kind of a thing that I think raises technical objections. How many of those do we have? Very few, but that might be the one that would challenge the whole validity of the statute.

I think it is much better to realize the realities and to work around it than to write some arbitrary language and impose a burden that is impossible of meeting.

Mr. JACKSON. There is some amendatory language under discussion to provide a waiver in the case where the parent objected to such notification.

Mr. BARKER. That would provide or take care of that one.

On the question of notice to the tribe, certainly in all the big tribes, everybody that is in this room here today, there would be no problem. We would know where they were.

There is a difference between the federally recognized ones that we are dealing with and the number of actual Indian tribes is rather substantial as you know.

Mr. JACKSON. That is a difficult problem I guess.

Thank you.

Mr. DUCHENEUX. Gunilla Foster.

Ms. FOSTER. I have seen your written testimony here.

The program is voluntary and all the children go to the places on a bus; is that right?

Is that the normal way?

Mr. BARKER. The usual thing, for example, if we are taking a group of people from Navajo, we will have an appointed day where all of the children and their families and their friends come together and we go in. All the work has been done and they get on the bus and they take them to the place where they will reside. Then, they have, through the social workers and ecclesiastical leaders, the families on the receiving end ready to take them, process them and receive them.

Ms. FOSTER. If somebody wants to join the program late, he is not able to do that then?

Mr. BARKER. That is the problem.

We gear it to a particular time so they can get into schools. You see how our biggest problem, and our purpose here is education. They have got to be at that home and settled and registered and ready to go to school on time because that is what they are coming for.

Ms. FOSTER. So, most of the time everybody goes at the same time?

Mr. BARKER. Goes at the same time and usually go home at the same time.

Ms. FOSTER. If somebody wants to discontinue the program during the year, then, they can—

Mr. BARKER. They can go home.

Ms. FOSTER. How do they get home?

Mr. BARKER. They get home. It is arranged between the host family and the natural family with the church people seeing that it is taken care of and it is worked out.

Ms. FOSTER. At their expense, right?

Mr. BARKER. No; often it is done at the expense of the host family or the church depending on the situation.

Ms. FOSTER. So, you are saying the majority of children travel at one time to the school so there is no reason why you would not be able to let the tribes know within 30 days that they have arrived?

Mr. BARKER. In the first place, when you are dealing with 2,700 people, it takes a little while to get all the names and everything tabulated and double checked to be sure you are right. We get everything worked out on sheets and assignments.

We use the idea of 45 days just to be sure we can work within it and be sure we are accurate. As a practical matter, I would think on most occasions that would be adequate time.

Ms. FOSTER. Do you not know before you put the children on the bus who they are and who the parents are and where they are going or is this something you decide after they come to the school?

Mr. BARKER. No; it is worked out before.

Ms. FOSTER. So, you would have a list before?

Mr. BARKER. Often we have a few cases of where the Indian parents say, well, they do all the processing and at the last minute they say I don't think you should go. So, we don't have them all on our list, and then they come in at the last minute and say they would like to go, we have decided.

We figured out who will take care of the problem at home, we can handle it, et cetera. So, we need flexibility. Sometimes people are all set to go and something comes up at home, unexpected illness in the family, and they need them at home or something and they decide not to go.

So, we have to be flexible for the last minute adjustments.

Ms. FOSTER. I do not understand. When a mother or father put their child on that bus, do they know what family that child will stay with?

Mr. BARKER. Usually.

Ms. FOSTER. They would have their address and phone number before they left?

Mr. BARKER. Usually, but not always. Usually, yes.

In other words, they do not get into the problem of the suitability and the availability of the family they are going to reside with.

Mr. FOSTER. No.

Mr. BARKER. That is really the question for the social workers and the local ecclesiastical people who know the families, whether they are able to take care of them and that they have the right attitude and ability and the right children in the family so that the Indian child would feel comfortable—that sort of thing has to be worked out.

Ms. FOSTER. OK.

Mr. BARKER. It is conceivable at the last minute something would come up that would make one family, host family better for this particular Indian child than another.

So, there might be one or two last minute changes. Usually, the planning and everything is all done in advance so that we know where they are going. So, 30-45 days lead time to check all the lists, very few, is what we are asking for, and it is worked out pretty well with the tribes we work with.

Ms. FOSTER. My concern is that, during the 30 days in which the tribe does not have notice, something major could have happened to the child's family at home, and if you do not have that list with which to communicate through the church and to the home, there is a very long time lapse there.

Mr. BARKER. As a practical matter, if something happens like that for example, Peter McDonald or somebody at Navajo would get on the phone and call the social service office in that same day, we would have a phone call back and working with them to work it out.

They know exactly where to go and who to call and that is the fastest way to do it. As a practical matter if something like that comes up, they call us, and we will break our backs to be sure that family's needs are taken care of.

Mr. DUCHENEAUX. Pete Taylor?

Mr. TAYLOR. I just have a few observations to make on your testimony.

I was concerned about your reference to imposing a burden on tribal courts under this bill.

As I read this bill—and I think probably you will agree—this bill is not transferring any jurisdiction to tribal courts which they do not already have unless they ask for a transfer out of a State court proceeding.

In addition, some tribes are authorized to come out from under Public Law 280 and establish courts of their own. Again, that would be a volunteer act on the part of that tribe.

So, I do not see this bill as resulting in some automatic addition of a massive caseload onto the tribal courts.

Mr. BARKER. On that I would just say that I have heard some tribal judges of our larger groups express great concern that people expect them to handle a case load and activities that they would not be able to handle with their existing funds and personnel.

I am just responding to that and I think that what you say is true. If they can't handle it, then they don't have to reach out and ask for the jurisdiction. There may be a little bit of a practical problem between what the political leaders of the tribe might think they can handle and what the courts can handle with their personnel funds.

Just like the Nation expects our courts to handle their litigation but the ninth circuit is 3 years behind. You argue a case in the ninth circuit and you can't possibly get a decision for 3 years. Something ought to be done about that and it is likely to happen in the tribal courts.

Mr. TAYLOR. Perhaps they should examine the tribal court structure where I think most cases are disposed of in 2 weeks.

Mr. BARKER. Yes; that is right.

Mr. TAYLOR. Another observation I had on this problem of the recommendation that the tribal chairman communicate with the church to find out about the placements is that the LDS program is

not the only program that is operating on Indian reservations and I have no idea how many different programs may be operating.

If the burden is on the agency to notify the tribe, then the chairman has a way of keeping track of this. If the burden is on the chairman to write the different agencies, I do not know how he would ever find out which ones have been functioning in that area.

Mr. BARKER. I would say this is a two-edged sword, too.

It is a practical problem. If we get a small tribe, band or group that's organized they don't have a lot of staff and people to work on this type of problem and we would have to gear ourselves to the fact that they can only do so much follow-up and the church is aware of this.

If we could just some way work out an arrangement whereby we could get the responsible party on a current basis and not be expected to go beyond that, of course, we are willing to do this because we understand the problem is of the tribes, so that the tribe cannot be given an impossible burden but neither can the church organization.

Mr. TAYLOR. The third observation I would make, and it may be an area of some confusion, is that as I read S. 1214 as passed by the Senate, the executive officer of the tribe which was to be notified was the executive officer of the tribe occupying the reservation from which the child was being taken.

Mr. BARKER. Yes.

Mr. TAYLOR. It was not necessarily the tribal chairman of the tribe of which the child was a member.

Mr. BARKER. I understand.

Mr. TAYLOR. So that could be some difference in our thinking on that.

Mr. BARKER. If that is clarified, then—and if you are on a reservation, there is no problem of finding out, for example, who the chairman of the Navajo tribe is or who the chairman of your Wind River, two tribes, for example, up there, you could find out whether it should be Arapaho or Shoshone.

On some reservations you might have a number of tribes. I guess you could find out who to send it to, but it might be a problem where you have multiple tribes on a reservation.

Mr. TAYLOR. When the case worker or recruiter or missionary is there, on the reservation, it certainly would be no different for him to go to the tribal headquarters or wherever and ascertain who the chairman of the tribe is. I would not think so.

Mr. BARKER. My point is that, to use two good examples, the Wind River Reservation, if you use the test of residing on Wind River Reservation, you have two very fine, strong tribes, the Arapaho and Shoshone; now which one do you want us to send it to?

Mr. TAYLOR. Both. [Laughter.]

It is a fair observation which reflects on this draft.

Mr. BARKER. It is a tough problem to work with, but I am sure we can find a solution.

Mr. DUCHENEAUX. Ms. Marks has a question.

Ms. MARKS. Just one quick one because I do not really understand procedure in one area of this whole thing.

It is my understanding that many States and county school systems, prior to enrolling a child in school, require some type of a legal document stating that the person enrolling that child has some type of legal responsibility for that child.

Is that generally always worked out previously so we are not dealing with any guardianship arrangements even on a temporary basis?

Mr. BARKER. Yes, Ms. Marks.

It is fully understood by the States in which these families are serving as host families. This arrangement is worked out and there is no legal guardianship. They fully understand that the Indian children are merely coming to reside in the home of the host family. They are coming there along with the other children from that home, but they belong, for example, at Navajo or they belong at Hopis or Fort Hall or someplace and they are members of the families of those reservations.

Ms. MARKS. The last quick question, you mentioned to Ms. Foster that all the children generally leave together.

Are they generally returned together at the same time? So in other words, if a child is not returned when at the end of the school year for some reason—the family wishes him to stay—what is the procedure?

Are you aware of these as the church is aware of these? Do they get special permission from church staff as well as the parents or does this become an interpersonal relationship between the two sets of parents?

Mr. BARKER. I am sure the program operates this way. We have a rule that a child must be returned and the only exception to that is if the natural parents request for some reason that they be retained—that is a very, very rare exception, about the only case I know of is where at home there was serious illness in the natural parents. One passed away and the other was very seriously ill and the father asked by letter if they could keep the child over the summer because he wanted to come back in the fall. This was taken up by the host parents with the church and they looked into it. They found it to be a genuine condition and approved it.

That would be a rare exception, but it is probably the only example I can think of where they would stay on.

Ms. MARKS. Thank you.

Mr. DUCHENEAUX. Thank you very much, Mr. Barker, we appreciate your testimony.

The Chairman has asked that the following correspondence be inserted in the record:

A letter from the late Gov. Wesley Bolin of Arizona in support of the bill with specific comments.

A mailgram from the Shoshone and Arapahoe tribes of Wind River Reservation in Wyoming.

Additional testimony by the Central Maine Indian Association.

Testimony from the Seattle Indian Center, Inc.

Also other letters from State officials commenting on the legislation.

[The additional material referred to may be found in the appendix.]

Mr. DUCHENEAUX. I think that concludes our hearing. The chairman normally indicates that the record will remain open for 10 days for any additional statements or testimony.

That will close the hearing.

Thank you very much.

[Whereupon, at 1:10 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

A P P E N D I X

Additional Material Submitted for the Hearing Record

STATEMENT OF RICK LAVIS, DEPUTY ASSISTANT SECRETARY-INDIAN AFFAIRS (PROGRAM OPERATIONS) BEFORE THE HEARING OF THE SUBCOMMITTEE ON INDIAN AFFAIRS AND PUBLIC LANDS OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, U.S. HOUSE OF REPRESENTATIVES ON S. 1214, THE "INDIAN CHILD WELFARE ACT OF 1977", FEBRUARY 9, 1978.

Mr. Chairman, I appreciate the opportunity to appear before this Subcommittee today to present the Interior Department's testimony on S. 1214, "The Indian Child Welfare Act of 1977".

We agree that too often Indian children have been removed from their parents and placed in non-Indian homes and institutions. We also agree that the separation of an Indian child from his or her family can cause that child to lose his or her identity as an Indian and to lose a sense of self-esteem which can in turn lead to the high rates among Indian children of alcoholism, drug abuse, and suicide. However we do not believe that S. 1214, in its

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