

Mr. SWIMMER. The right of the tribal court prevails over the right of the natural parent.

The CHAIRMAN. But not in the case where the State has invoked jurisdiction.

Mr. SWIMMER. Well, the State is not going to be able to invoke jurisdiction if the tribal court takes jurisdiction of the case. If the State takes jurisdiction of the case, it has to decide the case along the lines of the Child Welfare Act.

The CHAIRMAN. I have been advised that the tribe can request jurisdiction but either parent can object. Isn't that correct?

Mr. SWIMMER. That the tribe can request jurisdiction but the parents can object?

The CHAIRMAN. Yes.

Mr. SWIMMER. It is my understanding that is possible but that the tribe would survive. The tribe's request for jurisdiction over the child is predominant and would dominate.

I will check that out with our legal people as far as that is concerned, but if that is an issue that can be resolved, that would be helpful to be sure that the natural parent has the right to object to tribal jurisdiction. If we can write that into the act, it will go a long way, at least in that provision.

There are other provisions in the act that are, I think, just as onerous. One of them is the removal of alcohol abuse and nonconforming social behavior as a reason to remove a child from a home.

I don't know what the intent of that is, but I am afraid that being in a home with an alcoholic situation that would result in a case worker recommending removal of the child and saying that can't be used as an excuse would be extremely harmful to an unprotected infant.

We see cases on a regular basis of child abuse in Indian country, and particularly those of alcoholic families. I don't think we can justify it and simply say because alcohol in certain cases is prevalent in an area that that should be removed as an excuse.

But that is just one of our objections. As I said, Mr. Chairman, I don't want to take the time of the committee. I would be happy to give you example after example of how we believe this bill can be very detrimental to the best interests of Indian children, and that is our objective here.

I have no reason to oppose any effort by this committee or this Congress or this administration to seek the best interests of the Indian children. However, I do object when it gets into this idea of creating a bureaucracy of lawyers, consultants, social workers, proposal writers, and everybody else spending money on everything but what appears to be the best interests of the Indian children. I think that is the way we are going.

I think we need to address what is going on on the reservation. We need more social workers out there. We project the possible cost just of the amendments is going to be \$7 or \$8 million. I would take that money and add social providers out there and people who could work directly with families, who could help remove some of the problems that we see out there on a regular basis with families.

We don't need to put people into courts, and we don't need to put lawyers arguing over who has custody of this or that. We need to

put people out there on the reservation where they can be working directly with families trying to build and construct a family structure on that reservation that is now in danger of being lost totally because of alcoholism and—

The CHAIRMAN. If that is the case, why doesn't the BIA recommend additional funds for just what you have described?

Mr. SWIMMER. The problem that we have in the budget generally is what I described before, Mr. Chairman. It is difficult for us to say that on top of the \$1 billion that we have, we can justifiably come up here and say, well, but we are not getting this problem done and we need some more when I cannot justify to the committee that the \$1 billion we spend is being spent well.

Yet, if I make a proposal that some of the things that we think would be much lower priority should be changed to put money into Indian child welfare, we immediately, of course, are chastised by the Indian community and the special interests that have that pot of money.

I think we do have to reach the point, though, where we begin prioritizing where our money goes, because there is not an unlimited supply. We see this in our school systems where we are spending an average of \$8200 per student. Yet, we are not getting the quality education.

Yet, when we go out and talk about changing the structure of education, we see that it is basically an employment program. We don't get support on it. We say, well, where are those people going to work if we hire teachers instead of teacher aides.

It is a complex. Oftentimes, we find that putting more money in on top of money that is being spent poorly isn't going to help the situation, and part of that is what we have here.

I think we need to redirect some of the funding that we do in the child welfare area. We are spending money now. These grants that we give out, the \$7.5 million that we give now, are given out competitively based on who can write the best proposal and who can include all of the right words in that proposal. Oftentimes, that money goes off reservation to urban Indian groups serving children who are not even on the reservation or affected by the reservation.

Yet, we see tribes coming to me regularly appealing this, because they say we are not getting the money out here on the reservation.

The CHAIRMAN. Who is making the grants now, your office?

Mr. SWIMMER. The Bureau of Indian Affairs makes the grants.

The CHAIRMAN. Aren't you supposed to see if these applications are proper?

Mr. SWIMMER. We check them with a fine toothed comb. We go over them and we give as much weight as we can to the tribe, and sometimes they just don't have as good a proposal writer.

Congress has mandated that these be competitive, that we put these out as competitive, not where the need is, but where the competition is best, who can write the best proposal. That is who gets the money.

The CHAIRMAN. Well, you can assist them to write good grant applications.

Mr. SWIMMER. We do that. We even give them help with the deadlines and the time lines, and oftentimes, we will get a late application by two or three days. Yet, everyone else has theirs in on

time. But we do provide that up front assistance, Mr. Chairman, to the extent that we can, and we can't write the proposal for them, because they have to be able to write the objectives that they are trying to accomplish and compete on that basis with everyone else who is trying for a Child Welfare Act proposal.

The CHAIRMAN. Am I correct to conclude from your statement that you have a concern that the child's best interest may not be well served in a tribal court?

Mr. SWIMMER. Not across the board. Many tribal courts have yet to be able to establish rules of procedure, of conduct, and this isn't across the board. It may be in the neighborhood of 50/50 or maybe less than that. But where you have tribal courts that aren't adequate yet and where we are still trying to build on that and add to tribal courts and provide training and what have you there, but where we don't have it yet, yes, there are serious problems with subjecting a child to—

The CHAIRMAN. Do you mean 50 percent of the Indian courts are not wise enough to rule upon something like this?

Mr. SWIMMER. Some tribes don't even have them, Mr. Chairman. Some tribes don't have tribal courts. In those cases, of course, the kids generally do—the tribe defers to the State process.

But then you have tribes that are attempting to bring tribal courts up on the reservation and they are not there yet, and, yes, there are problems with those kinds of courts that haven't been fully established yet, and they don't have the rules operating.

The CHAIRMAN. How long has it taken for the Indians to establish their courts?

Mr. SWIMMER. Different tribes have been going at different times. In some cases, tribes just recently obtained the right to a tribal court. They have just retroceded jurisdiction or they have just had a law passed that gives them certain jurisdiction, and they have established a tribal court.

It is an on-going thing. It is dynamic. Some tribes will have tribal courts, and some tribes decide they won't and they will go back under State jurisdiction.

The CHAIRMAN. Is there any responsibility on the part of the Government of the United States to assist these people to establish tribal courts?

Mr. SWIMMER. Yes; there is, and we are doing that. In fact, one of our—

The CHAIRMAN. Have you been able to identify those courts that you claim do not provide proper service?

Mr. SWIMMER. I think we could give you a list of those that are not up to a standard.

The CHAIRMAN. And what have we done about them?

Mr. SWIMMER. We continue to work with the people on the reservation in those tribal courts. This very year, we have proposed in our budget a tribal court training program where we can bring people into a training situation and help the tribes establish the rules of procedure, train judges, set up court rules and what have you so that they can operate tribal courts.

I believe that is essential to justice on the reservation.

The CHAIRMAN. Isn't it correct that up until now the BIA has done almost nothing to train these people, that they have trained themselves?

Mr. SWIMMER. Oh, I don't think so, not at all, Mr. Chairman. We have put money—again, that would say that the money that we have spent has all been wasted. We have put money in our budget regularly. We have tribal judges training provided. We have had many different ways of working with tribes to establish their courts and we continue working on that.

The CHAIRMAN. I would like to get a report from you as to the extent we have assisted these courts.

Mr. SWIMMER. Sure.

[Information to be supplied follows:]

In 1987 and 1988 the Bureau provided the following training sessions for tribal court personnel.

Court personnel serviced

	<i>Percent</i>
Regular training sessions—seven.....	401
On-site training sessions:	
Pine Ridge.....	16
Seneca.....	30
Alcohol and drug training, Public Law 99-570:	
Two alcohol and drug	120
Two juvenile code	86
Northwest Tribes.....	35
Montana and Wyoming Tribes	(1)
Child abuse and neglect training (Provided for and funded by Division of Social Services)—Nine: Percent of multiagency personnel serviced.....	510

¹ Figures pending.

During FY 1987 the following activities were accomplished:
 8 Tribal Liquor Ordinances were processed through the office and published in the Federal Register;
 3 Tribal Liquor Ordinances were processed and are pending further action by the Solicitor's Office;
 2 Court Reviews were conducted;
 28 "Needy Tribal Courts" were funded;
 12 Area Offices were funded to provide Child Protection Team Training, most to be accomplished in FY 1988. Division worked with multi Bureau agencies to develop minimum guidelines for developing Child Protection Teams at Area and Agency levels;
 Model Juvenile Code was developed;
 Funding was provided for Acoma, Canoncito, Laguna Model Juvenile Alcohol and Drug Abuse Facility; and
 Funding guidelines were developed for expenditure of "Needy Tribal Court" funds.

During the FY 1988, the following number of training sessions were conducted:

Court personnel serviced

	<i>Percent</i>
Regular training sessions:	
Eight	446
One training course remains in FY 1988 which will service approximately 60 trainees (projected).....	60
On-site training sessions: Oklahoma City University CFR judges	(1)
Alcohol and Drug Training, Public Law 99-570:	
Two alcohol and drug (scheduled for July/August 1988) (projected).....	120
Five training sessions at five Bureau Area office locations.....	(1)

¹ Figures pending.

During 1988, the following activities were accomplished:

In addition to these training cycles, other innovative approaches have been taken to disseminate court related information. In January 1988, a conference was organized in Washington, D.C. on "The Future of Tribal Courts".

A one day mini conference for tribal judges was held in Albuquerque, New Mexico in April 1988. The following four regional tribal judges organizations were in attendance to address tribal court concerns: Northern Plains Tribal Judges Association; Southwest Indian Judges Court Association; Northwest Judges Association; Great Lakes Tribal Judges Association. It should be noted that three of the four tribal judges association supported the need of expanding the Bureau's court related services through the development of a Judicial Services Center to be established in the field.

Under contract, a Model Juvenile Code and a Model Child Protection Code are being developed for dissemination to the tribal court systems.

Under contract, the Bureau provides the Indian Law Report to all the tribal court systems.

35 "Needy Tribal Courts" were funded.

4 Tribal Liquor Ordinances were processed through the office and published in the Federal Register.

7 Tribal court Reviews were conducted.

5 tribal courts have been scheduled for review in remaining FY 1988.

Inter-Tribal Appellate Court Systems.—In an attempt to strengthen tribal court systems, by providing them a forum in which to develop a written body of case law which could address unique differences in administering justice within Indian country three inter-tribal appellate court systems are being set up in the following areas: Albuquerque, New Mexico; Northwest Inter-Tribal Court Systems; and Wyoming, Montana Tribal Courts.

Alternative Dispute Resolution Study.—Pouch Band Alabama Creeks.

The CHAIRMAN. So, you can't trust 50 percent of the tribal courts?

Mr. SWIMMER. I don't know that that is the right number, Mr. Chairman. I know that if there is even one that should not or doesn't have the ability to make decisions in these kinds of cases that we shouldn't be subjecting to children or other people to those courts at this time, not exclusive jurisdiction anyway.

The CHAIRMAN. Isn't that a terrible indictment that we have not succeeded in setting up an adequate tribal court system?

Mr. SWIMMER. I don't know. It depends on where you are talking about, Mr. Chairman, because in many cases, there is no need for a tribal court. In many cases, there hasn't been a need for a tribal court. In many cases, up until funding was available, many tribes, not all, but many were doing very well using State court systems. Many tribes today contract and use State court systems. There are many tribal people who are judges in State courts.

We are not dealing with a situation where they are in total isolation. You have county, city, and State courts available on reservations now, and you have tribal courts out there.

As tribes develop and they want tribal courts, we are attempting to do everything we can to help them reach that stage. In Oklahoma, for instance, on the eastern side, none of the tribes have tribal courts. There is no court jurisdiction there for the tribes. By law, they have all been put under the State judicial system.

The CHAIRMAN. Do you believe that your agency, the BIA, has primary responsibility for monitoring State compliance with the Indian Child Welfare Act?

Mr. SWIMMER. I think so. I think our agency and I also think other agencies of the Federal Government involved in providing services to Indian children, but I would say that we are primary.

The CHAIRMAN. According to a survey conducted by the Indian Affairs Committee staff, the only BIA effort to monitor State com-

pliance to see whether they meet the provisions of the act with the corrective action component is in the Portland area office.

Mr. SWIMMER. I would like to furnish the committee with a report on what our monitoring consists of, and I think that there is—I don't know the extent of it, but I do know that we do some, and I would like to have it explained to the committee how we do it, what the constraints are, and what the reports have shown.

The CHAIRMAN. Have you received reports from your field offices as to their activities on monitoring State compliance with the act?

Mr. SWIMMER. Hazel Elbert is here. I would defer to her on that if she would come forward and explain what the procedures have been.

Ms. ELBERT. Mr. Chairman, the Portland area office may do some activities in regard to monitoring State activity. We would have to check with them to find out exactly what they do, but we don't have a responsibility to monitor what the State does under this act. They are required to report to us, and we do get some reports, but I am not satisfied that the reports are a full report of their activity with regard to Indian children.

The CHAIRMAN. If the BIA does not have the responsibility of monitoring to see whether States are complying with the act, who does? This committee?

Mr. SWIMMER. Let me correct what I said based on what Hazel said, because I think my statement about it is our responsibility to monitor is what she reflected in that the States are required or supposed to be sending us reports. I am not sure how we would go about monitoring in the sense of oversight on a State system unless the State provides those reports to us.

We can obviously send people to the State and examine the records.

The CHAIRMAN. Are we satisfied that the States are sending in reports?

Mr. SWIMMER. In some cases, I think, but not in all.

Ms. ELBERT. Yes.

Mr. SWIMMER. I don't think we are getting as complete a report as we would like, and it is an on-going process to—

The CHAIRMAN. Will you submit a report to this committee as to the States that have been providing reports on this act? From what I gather here, you are not certain whether States are complying with the act.

Mr. SWIMMER. We have reports from 30 or 40 States from 1979 through the current year of adoption statistics pursuant to the Indian Child Welfare Act. We can furnish all of these reports that we have received to the committee.

[Information to be supplied follows:]

Under the current ICWA, the Bureau of Indian Affairs (BIA) does not have any authority to make States comply with the Act. The Act requires that states provide the BIA certain information concerning completed adoptions, but it does not give the BIA any enforcement authority. Accordingly, on several occasions we have gone out with general mailings to the states (court systems) informing them of their responsibility to report this information. This approach did not prove very successful, and our last effort was a directive to our area offices to make contact with appropriate state representatives to attempt to get this information (a copy of that memo is attached).

We also entered into an interagency agreement with the Department of Health and Human Services to complete a study of children in placement through the states, tribes, and Bureau, and to investigate issues of compliance with the ICWA. This study was completed approximately two weeks ago. A copy is attached for your information. This information is very complete and offers many insights into problems of implementation with the ICWA.

MEMORANDUM

To: All Area Directors.
From: Deputy to the Assistant Secretary—Indian Affairs (Tribal Services) Hazel E. Elbert.
Subject: State Adoption Reports Pursuant to P.L. 95-608—Indian Child Welfare Act (ICWA).

This is to request your immediate assistance in obtaining information required by 25 CFR 23.81 from the state(s) covered by your administrative jurisdiction for service delivery. Specifically, 25 CFR 23.81 and P.L. 95-608 mandate that, "any state court entering a final decree or adoptive order for any Indian child shall provide the Secretary of the Interior within 30 days of copy of said decree or order, together with any information necessary to show: (1) The name of the child, the birth date of the child, the tribal affiliation of the child and the Indian blood quantum of the child as required by Sec. 3011(a) of P.O. 95-608 (25 U.S.C. 1951); (2) Names and address of the biological parents and adoptive parents; (3) Identity of any agency having relevant information relating to said adoption placement."

The attached information was developed by Central Office Social Services staff from the states who have reported Indian adoption decrees for the period between 1978-1986. In addition, there is a listing of states who have not reported any Indian adoption activity since the passage of ICWA and these states are as follows: Arkansas, Connecticut, Delaware, Georgia, Hawaii, Kentucky, Maryland, Missouri, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont and West Virginia.

The reporting requirement only applies to Indian children who have been adopted in a state court proceeding (voluntary or involuntary) after November 8, 1978. Where the court records contain an affidavit of confidentiality from the biological parent(s), the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act, as amended.

We request all updated information be submitted to Central Office from each Area Director by close of business, September 16, 1987. All information collected is to be mailed to: Bureau of Indian Affairs, Acting Chief, Division of Social Services, Code 450, MS 310-S, 1951 Constitution Avenue, NW, Washington, D.C. 20245. The envelope containing all such information should be marked "Confidential".

Attachment.

ADOPTION STATISTICS PURSUANT TO THE INDIAN CHILD WELFARE ACT OF 1978 FROM 1978 TO 1987

	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
Alabama.....				1						
Alaska.....		20	36	45	46	81	84	106	92	7
Arizona.....		13		2	2		1	3	2	
California.....		1		1					1	1
Colorado.....		5	4		1	3	5	2	4	
Florida.....					1					
Idaho.....				1						15
Illinois.....		2								
Indiana.....							1		1	
Iowa.....							1			
Kansas.....			1			1	1		2	1
Maine.....										
Massachusetts.....			1							
Michigan.....				1	2					
Minnesota.....		4	14	13	13	9	12	19	20	12
Mississippi.....				2						
Nebraska.....		1	2			7	1		2	

ADOPTION STATISTICS PURSUANT TO THE INDIAN CHILD WELFARE ACT OF 1978 FROM 1978 TO 1987—Continued

	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
New Mexico.....						1			1	
New York.....			2	1		1	1			
North Carolina.....		3					1			
Oklahoma.....		5	15	7	10	4	22	12	13	7
Oregon.....				1	1	2		3	3	
South Dakota.....		2	2	1						
Texas.....								3		
Utah.....			2		2		1	1		
Virginia.....							1			
Washington.....		3	1			3		1	3	
Wisconsin.....		2	5	3	2	1	2		2	1
Wyoming.....				1						

Mr. SWIMMER. Our concern is whether, because of the nature of the act, sometimes an Indian isn't going to disclose that to a court, and if they are not aware that there is Indian ancestry or Indian blood with an individual and they are not identifiable, they very well may not tell a court or a State adoption agency that they have any Indian blood or that they are members of a tribe.

Ms. ELBERT. Mr. Chairman, we do let our areas know that we have some concern about reports coming from the States and that they should be reporting to us on a regular basis. To get statistics like we have here, we had to put forth a concerted effort to get the reports.

We send memos to our field, and I presume that Portland, if they have some activity with regard to monitoring, it is a result of the memos that have gone out from the central office to them that we do need these statistics, that the law says that they are supposed to report to us.

We do have some statistics, but I personally am not comfortable that this is a full reporting of all of the activity that has occurred out in the States.

The CHAIRMAN. Well, we should commend the Portland area office for reacting and responding to your memos, but apparently the other offices have not.

Mr. SWIMMER. Well, I am not sure. I would have to see what the committee is referring to, but we have information from almost all of the areas by State, from Alabama to Wyoming, on statistics on adoptions of Indian children. Maybe Portland has sent some other information that the State of Washington or Oregon has. We also have those States included in this report, but many others.

So, I don't think that—as we said, this is coming from the State. If we got something out of Portland, it is because they followed through and went to the State. It is not our report. It is a State report where we received the information from the State coming to us, and we are assuming that all of our area offices have been following through with our request, because we have received information from different States.

We are just not satisfied yet that we are getting 100 percent of what we are asking for.

The CHAIRMAN. The clear conclusion that I have reached from your statement and that of the Secretary is that this is a bad, bad bill and that "the bill should not be enacted." Now, having said that, am I correct to conclude that you believe the present law is sufficient, adequate, proper, non-racist, and American?

Mr. SWIMMER. I think there are some problems in the present bill, too, and I think that in the very first policy statement that we need to put a period after the words "best interest of the Indian child." I think we would be willing to recommend some changes, some amendments to the current law.

However, I do believe that the current law has provided sufficient protection on a continuing basis. It is not something that Congress is going to be able to mandate that anybody comply with anything. It is going to take time for us to get compliance.

The reports indicate that over the years, we are reaching good compliance, 80 or 90 percent in some areas, and I think we are, as people become familiar with the Indian Child Welfare Act as it exists now, that they are complying with it and, in fact, as I said earlier, we have some cases where tribes are reaching far beyond what we think even the intent of the act was to start with. They are already reaching out way beyond their jurisdictional boundaries.

However, I think there are some concerns about that which we would like to address in some amendments to the bill. But our primary objective in this, as I said, is to make sure that whatever the court does, tribal, State, or otherwise, that they look at the best interests of the child. Then, given all the weight of the other factors of being reared on a reservation in an Indian family, it is undoubtedly that the other principles that we are trying to accomplish here are going to be accomplished.

But we must start with the best interests of the child as our guiding principle, and I would say that the bill that we have now accomplishes that purpose. I believe that the proposed amendments are bad.

The CHAIRMAN. I thank you very much.

The vice chairman wanted to be here, as you know, but he has had an emergency. He should be coming in later, but I would like to keep the record open so that he and other members may submit questions for your consideration, sir.

Mr. SWIMMER. Thank you, Mr. Chairman.

The CHAIRMAN. I thank you very much.

Next, we have a panel consisting of the director of the Arizona Department of Economic Security, Dr. Eddie Brown; and the division director of the Casey Family Program of Rapid City, South Dakota, Mr. Eugene Ligtenberg.

Gentlemen, welcome to the committee.

Dr. Brown, we will begin with you.

**STATEMENT OF EDDIE F. BROWN, DIRECTOR, ARIZONA
DEPARTMENT OF ECONOMIC SECURITY, PHOENIX, AZ**

Mr. BROWN. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate the opportunity to address you today regarding the Indian Child Welfare Act. I do have a prepared state-

ment that I will make available. I will try to move as quickly as possible through this, but I do want to make sure that I make certain points.

I am the director of the Arizona Department of Economic Security, and I am also an enrolled member of the Pascua Yaqui Tribe in Arizona.

The Indian Child Welfare Act provides for the establishment of relationships between the States and tribal governments in order to protect and preserve Indian families and communities. The State of Arizona fully supports the rights of tribal governments to intervene in child custody matters regarding children members of tribes.

The Arizona Department of Economic Security administers State and Federal employment and human service programs in Arizona and is responsible for child welfare programs, including child protective services, foster care, and adoptions. The department also licenses and monitors child placing group care and adoption agencies.

In Arizona, as you are probably aware, there are 20 federally recognized tribal governments which have jurisdiction over tribal lands. Reservations account for 26.6 percent of the total land base and are located throughout the State.

The total Indian population residing on Arizona Indian reservations is approximately 200,000. This represents the largest reservation Indian population in the United States and accounts for approximately 20 percent of the reservation Indian population nationwide. Forty-six percent of the reservation population is under 18 years of age.

Many accomplishments have been made as a result of the implementation of the Indian Child Welfare Act, and let me just briefly hit on a few:

A permanent Indian child welfare specialist position to coordinate for services for Indian children funded through State appropriations has taken place.

Thirteen on-reservation child abuse/neglect prevention and treatment programs are funded through State appropriations.

A tribal child protective service academy training program which has trained already 35 tribal workers during the past year.

An annual Indian child welfare and family service conference, now in its fourth year, to train State and tribal staff and define tribal, State, and Federal roles in the provision of services to Indian families as well as a project with the Arizona State University School of Social Work and the Inter-Tribal Council of Arizona to develop a model curriculum for child welfare workers serving Indian communities has been developed.

The use of formal intergovernmental agreements to pass through title IV-E foster care funding to tribes has been adopted. This agreement clearly recognizes the sovereign status of tribal governments.

We are proud of these accomplishments in Arizona and continue to work towards increased coordination of services and resources with tribal governments. We feel that the Indian Child Welfare Act mandates have given our State the impetus for these activities.

Now, what I would like to do is to keep my comments directly related to State-tribal relationships in regard to the amendments.

In the best of all worlds, the amendment provisions would mean that the tribes would take cases involving Indian child custody proceedings into their courts, relieving the State system of this responsibility. In reality, that currently does not happen.

It is the experience of the Arizona Department of Economic Security that the tribes are rarely able to assume jurisdiction early in State proceedings because of their lack of social service and judicial resources. Tribal response to notification of hearings needs to be strengthened and coordinated to ensure early tribal intervention and participation.

The proposed requirements for State agencies and courts solidify what has been the practice of Arizona Department of Economic Security and its courts. The department works closely with tribes in providing services for their members. The department has supported the tribes' roles in State court proceedings and has encouraged tribes to assume jurisdiction. We believe procedures in the amendment eliminate subjectivity in applying the act.

These provisions mandate additional efforts and record keeping that will require increased resources to be dedicated by our agency. It will be necessary to provide more detailed training of case managers in ICWA requirements and in the area of available resources. State attorneys prosecuting the dependency and termination proceedings will have additional trial responsibilities in order to protect the well-being of Indian children.

Now, there are three specific areas, however, that cause agency concern within Arizona. These are:

1. Separate State licensing standards for Indian foster homes.
2. Annual audits of private child placement agencies.
3. Funding guidelines and fiscal resources.

Let me just hit briefly on each of those three.

In regard to separate State licensing standards for Indian foster homes, the Arizona Department of Economic Security recognizes the interests of the Indian community to place children in foster homes that maintain social and cultural ties. Our department seeks to place all minority children, whether they be black, Hispanic, or Indian, in appropriate homes which meet health, social, and cultural standards to ensure a child's growth and stability.

The proposed amendment to Title I, section 105(f) states "if necessary to comply with this section, a State shall promulgate, in consultation with the affected tribes, separate State licensing standards for foster homes servicing Indian children and shall place Indian children in homes licensed or approved by the Indian child's tribe or an Indian organization."

The "if necessary" provision is unclear. Our department recognizes the licensing authority of tribal social services on reservations. Arizona would strongly object, however, to having separate State promulgate standards for off-reservation foster families of Indian descent.

We believe that our current rules allow flexibility and consideration of cultural and environmental differences as long as the health, welfare, and safety of the child is not jeopardized. Separate regulations would be impractical and unnecessary.

Arizona's rule promulgation procedures allow considerable public comment. State law, procedures, and the additional cost for such enactment make this section of great concern.

Second, annual audits of private child placement agencies. Title I, section 115 requires States to include compliance with the act by the private child placement agencies "as a condition of continued licensure" and further mandates State agencies to "annually audit such agencies to ensure that they are in compliance."

Throughout the country, it is recognized that there are continued abuses of the Indian Child Welfare Act procedures. To require State agencies, however, to monitor compliance of child placing agencies creates several difficulties. Let me just hit on those:

Licensing staff within Arizona rarely review more than 5 to 10 case files of a child placing agency. As it now stands, the extent of the audit is not clear and probably could not be met with existing resources.

State resources of time and staff are not sufficient to expand current monitoring functions.

Licensing staff, while they are knowledgeable regulators, however, such audit requirements would demand legal expertise not currently required by the social services licensing staff.

We would recommend that States be mandated to include, as a contract item, compliance with the Indian Child Welfare Act in licensing standards, not only for child placing agencies, but also for group care and adoption agencies.

Now, the third and last is in title II, and it refers to the funding guidelines and fiscal resources. Title II, section 203 addresses Federal funding guidelines to carry out the provisions of the act. These guidelines restrict grant awards to tribes or Indian organizations.

Since the act mandates State agencies to expand staff training, resource development, notification, legal requirements, licensing functions, Congress must recognize that States will also need financial assistance.

Neither the tribe nor the States can adequately comply with the act without sufficient funds. Indian tribes have received insufficient funds to meet the act's mandate since its inception. As the Indian Child Welfare Act case load increased, funding at the national level has decreased.

Congress must consider entitlement funds to tribes and to States where federally recognized Indian tribes are located. The Federal Indian Child Welfare Act funding needs to be greatly expanded.

I am aware that additional funds are available through title IV-B and title IV-E of the Social Security Act. Of Arizona's 20 tribes, only 5 tribes, the Navajo, Hopi, Gila River, San Carlos Apache, Tohono O'Dham, receive title IV-B funds, and only one tribe, the Gila River, receives title IV-E funds.

The Federal administrative requirements to receive these funds are complex and cumbersome. Tribes find it difficult to achieve the administrative sophistication needed for fiscal and programmatic compliance, particularly for title IV-E. Tribes should be able to access title IV-E funds directly from the Federal Government, and simplification of administrative requirements should be considered.

The proposed amendment, title II, section 201(c), requires further clarification regarding the responsibility and liability of the States

with respect to tribal compliance of non-compliance with provisions under the Adoption Assistance and Child Welfare Act. States must not be held responsible for funds provided under title IV-B and title IV-E of the Social Security Act when such funds are no longer under the jurisdiction of the States.

I want to thank you for allowing me to present these issues here today. The rights of Indian children and their relationships to their tribes are extremely important. The realities of fiscal and programmatic resources which are available to the tribes and State child welfare agencies need to be considered prior to increased Federal mandates.

Thank you.

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

The CHAIRMAN. Dr. Brown, am I correct to conclude from your statement that you approve the measure with the exception of those shortcomings that you mentioned?

Mr. BROWN. Yes; and I am here, clearly, Mr. Chairman, to speak to the State-tribal relations. There are many other things that spoke to the bill that the State does not feel that it is in a position to respond to at this point in time.

The CHAIRMAN. You indicated in your second concern that the States should not be given the responsibility of monitoring compliance with the act, that your staff is inadequate, and the funding is not enough. Whom do you believe has the responsibility of monitoring compliance?

Mr. BROWN. Let me say that if further discussion were available and an agreement were reached where resources were made that would allow the State that flexibility, the State would consider it. However, as it now stands, I think it clearly stands in regard to the Bureau of Indian Affairs and the area offices to audit compliance.

However, I think they are in the same situation that we are in the lack of resources to be able to do the type of auditing job that is necessary.

The CHAIRMAN. For some time, I believe, you were the Director of the Division of Social Services in the BIA.

Mr. BROWN. Yes.

The CHAIRMAN. At that time when you were director, whom did you believe had the responsibility of monitoring compliance?

Mr. BROWN. The Bureau of Indian Affairs.

The CHAIRMAN. Do you believe that the funding requested by the Bureau is adequate to carry out the intent of the act?

Mr. BROWN. No, I do not believe that the funding requested ever for the Indian Child Welfare Act has been adequate to do the type of job that is mandated by the legislation.

The CHAIRMAN. We made a survey not too long ago. It was not a scientific survey—to find out what are the most used words in testimony, and we found that in the top five is a word "prioritize." I find it difficult to pronounce, prioritize, and the Secretary used it, I think, five times this morning, prioritize.

I am asking you to prioritize the issue. Where do you put child welfare?

Mr. BROWN. I would put child welfare at the top of the list, Mr. Chairman. Very clearly, when you look at the needs not only being faced by tribes but States currently, the needs of children in the

areas of teenage pregnancy, alcoholism, drug abuse, suicide, mental health, all of those really relate to a need to go back and to ensure that we are providing some type of preventive activities.

This is not only a need for the Indian Child Welfare Act and the Indian communities but perhaps for all of our State in regards to the requirement.

The CHAIRMAN. From your perspective as one who worked in the Bureau and one who is now outside working with the Bureau and observing the Bureau, do you believe that in the process of prioritizing, the Bureau has placed child welfare, as you say, on the top of the list?

Mr. BROWN. Mr. Chairman, I believe that based on resources and the lack of resources, no, they have not.

The CHAIRMAN. Where do you believe the prioritizing process has placed the number one priority?

Mr. BROWN. Excuse me, Mr. Chairman. What do I believe has been placed as the number one priority within the Bureau?

The CHAIRMAN. Yes.

Mr. BROWN. Definitely on economic development.

The CHAIRMAN. Well, we have been analyzing the budget as presented to us. For example, in the area of personnel, we find that there are no cuts in the central office. Yet, we find drastic cuts of personnel in the field, grant programs cut by 50 percent, but personnel in Washington receive pay raises.

Is that good prioritizing?

Mr. BROWN. Mr. Chairman, I think it is clear when you visit Indian country and you visit the tribes and you look at the staff and the staffing out in the field in the area office, it is clear from the reviews that we did while I was with the Bureau that you not only had people who were undertrained, but also you did not have nearly the staff needed to do the kind of comprehensive family and child services that are needed on reservations.

As a result, you have tribal governments which are 638 or contracting out their social services, struggling to pull together and have done a magnificent job in pulling together Federal resources and State resources and tribal resources to meet the needs of Indian children and families.

I think that need is critical in Indian country. I do not believe that it is currently being service not only by the Bureau but by the other family and children agencies from the Federal Government serving Indian tribes. It is severely lacking.

The State within Arizona is committed to commit what resources, but even the State is concerned in regard to, particularly in Arizona, the number of tribal governments and the cost and the role of the Federal Government to provide the necessary monies to ensure strong families and children.

The CHAIRMAN. How would you rate our government's effort to provide adequate training for tribal courts? Adequate? Inadequate? Insufficient? Sufficient? Too much? Too little?

Mr. BROWN. Given their funding, I would say that they have made a very good effort. However, again, the funding for training and the dollars that can be put into training are so limited so that the type of training that needs to take place—very clearly, within the act, one of the needed areas for training is between tribes and

States and the tribal and State workers in coordinating and how that works between the court systems and between the agencies themselves.

There has never been, to my knowledge, enough dollars to do the kind of adequate training that is necessary. As a result, some States have also taken up and begun to provide training as the State of Arizona has done.

The CHAIRMAN. I thank you very much, Dr. Brown. We would like to submit questions for your consideration, if we may.

Mr. BROWN. Thank you.

The CHAIRMAN. Mr. Ligtenberg.

STATEMENT OF EUGENE LIGTENBERG, DIVISION DIRECTOR, THE CASEY FAMILY PROGRAM, RAPID CITY, SD, ACCOMPANIED BY ELIZABETH GARRIOTT AND DARICE CLARK

Mr. LIGTENBERG. Thank you for allowing us to be here today to give this input.

My name is Eugene Ligtenberg. I am the director of the South Dakota Division of the Casey Family Program. With me in this room are Elizabeth Garriott, a social worker from our office in Martin, South Dakota, serving the Pine Ridge and Rosebud Indian reservations; and Darice Clark, a social worker from our office on the Fort Berthold Reservation in North Dakota.

The CHAIRMAN. Are they here today?

Mr. LIGTENBERG. Yes; they are.

The CHAIRMAN. Would you like to bring them up here?

Mr. LIGTENBERG. Thank you.

The CHAIRMAN. Welcome, ladies.

Mr. LIGTENBERG. The Casey Family program provides long-term foster care to children who cannot return to their biological families and who are not likely to be adopted as determined at the time of intake. At the current time, the program serves 97 Native American children plus approximately 600 other children in the western United States. Two-thirds of the Native American children are served in North and South Dakota.

We would like to give our support to the Indian Child Welfare Act of 1978, first of all, and also to S. 1976. We believe that S. 1976 would significantly improve the existing act.

The Native American culture is unique in this country, and it cannot be compared to other cultures and ethnicities.

Most Native American cultures have a natural foster care system that has been in existence for hundreds of years before contact with the majority culture. The process of acculturation and assimilation has drastically altered this system.

Many native cultures view children as a responsibility of the group or tribe rather than a possession of a set of parents. Individual rights were subservient to the group or tribe, because native people viewed life as a whole entity made up of everyone and everything in the universe. Native people need to have the opportunity of this responsibility being returned to them.

For many years, it was the policy of the United States Government to assimilate native people into the dominant culture. This

assimilation was not by choice of the native people but was forced upon them.

Efforts to take away their unique tribal kinship and religious values have been devastating. Now that tribes are again strengthening themselves, we must provide laws and means for native people to reestablish themselves, their values, and their customs.

The Indian Child Welfare Act of 1978 as done much to reverse the movement of Indian children to non-Indian families who, for the most part, have not been helpful in establishing the unique identity of Native American children.

S. 1976 will protect children who are not currently protected by existing law. It is not the responsibility of Native American people to meet the demand of non-Indian families to have children through the adoption process.

The United States Government established reservations for Indian tribes to have their own tribal governments and to interact with the United States Government as separate entities. Hence, other ethnic groups do not need to have Acts of Congress protect and preserve their heritage and culture in this way.

We support the priority setting for placement. In our experience, when we have committed ourselves to the preservation of a child's culture, we have been able to locate homes for Indian children as provide in the act. Therefore, we do not believe lack of Native American families is an adequate excuse for not complying with the priority established in the act.

Many of the children with whom we work have previously been in non-Indian foster homes. Many of them have low self-esteem and lack identification with their culture. Many times, they have a negative perception about being a Native American.

In policy and practice, we are committed to providing Native American children positive role models within Indian families. In addition, we provide experiences designed to enhance their identity as Indian persons.

We support the amendments which require private agencies to comply with the act as part of their licensing requirements and which require States to make active efforts to recruit and license Indian foster homes.

We support the establishment of Indian Child Welfare Committees in each area to monitor compliance with this act on an ongoing basis.

In my opinion, an Indian child who is helped to have a positive identity as an Indian person has his or her chances of a happy, well-adjusted, productive life significantly increased. I believe that S. 1976 will increase the likelihood of that happening.

I urge your support and thank you for your consideration.

[Prepared statement of Mr. Ligtenberg appears in the appendix.]

The CHAIRMAN. You were here when Secretary Swimmer testified and clearly stated that this was a racist bill. If I hear you correctly, you have suggested that Indian children should be placed with Indian families. Am I correct?

Mr. LIGTENBERG. That is correct.

The CHAIRMAN. Do you consider your agency to be a racist agency?

Mr. LIGTENBERG. Certainly not. I believe that it is very difficult for many of us to understand what it really means to be a tribal member or to be associated with a tribe and what tribal culture means.

The CHAIRMAN. Do you find it difficult to find Indian foster homes?

Mr. LIGTENBERG. No, we don't.

The CHAIRMAN. I have read several articles written by eminent psychologists indicating that their studies would show that Indian children placed with or adopted by non-Indians have unique problems. For example, they find high rates of suicide, substance abuse, and runaways among them.

Do you find this to be true with your experience?

Mr. LIGTENBERG. I have found that to be significantly true, yes.

The CHAIRMAN. And I will ask all three of you this question, because uppermost in our concerns is whether this act with all the amendments will serve the interests of the child, not the interests of the tribe or the tribal leaders or the tribal courts.

Do you believe that this measure will serve the best interests of the Indian child?

Mr. LIGTENBERG. I believe that it will, because I believe that the best interests of the tribe and the best interests of the child are inseparable. That, again, becomes difficult for many of us to understand what it really means to be a tribe.

As I mentioned in my previous testimony, the Indian culture places higher priority on the tribe, frequently, than on individuals, and that is difficult for many of us who have been raised in this country to understand and appreciate.

The CHAIRMAN. Do you ladies agree?

Ms. GARRIOTT. Yes; I do, Mr. Chairman. I was the child welfare director for the Rosebud Sioux Tribe.

The CHAIRMAN. Would you identify yourself, please?

Ms. GARRIOTT. I am Elizabeth Garriott from the Rosebud Sioux Tribe, and I was the child director for the tribe for 5 years under title II. If I may, could I make some remarks to the comments that were made by the Secretary this morning?

The CHAIRMAN. Go right ahead.

Ms. GARRIOTT. Thank you.

The CHAIRMAN. You have traveled a long distance to be here with us.

Ms. GARRIOTT. Yes, and I am from the reservation, and I plan to die there, and I work with our Indian children.

I would like to remark that in the years that I have been with the tribe, I have never received any kind of technical assistance from the Bureau to write my Title II proposals, and they have always been very competitive, and the funding has been very low. It is almost as if the funding is given arbitrarily. I just would like to say that for the record.

Also, I think our tribal courts are more than adequate to make those decisions for our tribal children, whether they are on the reservation or off the reservation.

I think that on our reservation, we have judges who are trained. We have a person who is an attorney who works with the Indian

Child Welfare Act. We have advocates, and we also have a child welfare group that makes these decisions.

We don't just arbitrarily bring children back to the reservation. We look at all the possibilities of what is in the best interest of that child. If that child has never been on the reservation, there is no way that we would bring that child and subject that child to the life of the reservation if we feel that is not in the best interests of that child, and we feel very strongly about that.

The CHAIRMAN. I thank you very much. As you know, I was a guest of your reservation last week, and I would like to thank all of you and the leaders of the tribe for the hospitality extended to me.

Ms. CLARK. Mr. Chairman, my name is Darice Clark. I am from the Fort Berthold Reservation in Newtown, North Dakota, and our Casey office is situation on the reservation.

I wish to support the bill. It is in the best interests of the child.

I have also worked in the urban areas of King County and Seattle. I didn't really have any serious problems with the act at that time, and the amendments that are brought in front of us today, we feel, will positively add to the interests of the child. I have no problems with them.

The CHAIRMAN. I thank you very much.

I am pleased to call upon the distinguished colleague of mine from the State of Washington and the vice chairman of this committee, Senator Evans.

Senator EVANS. Thank you very much, Mr. Chairman.

I have no questions at this time, but, Mr. Chairman, I do have an opening statement which I would ask be submitted in its entirety into the record.

But just let me comment very briefly. The concerns, I think, which we are facing here are concerns of maintaining the integrity of families and, along with that, the integrity of some of the heritage and background of many Indian children which can be lost unless there is adequate attention paid to the families, the tribes, the culture, and the heritage of those young children.

That is why we are dealing with this act, why we are looking with extra care at the circumstances under which adoptions and other elements of child care are handled. I hope that as a result of this hearing and any subsequent legislation that might be passed that we do end up with both the desired end goal of placing Indian children in homes that are supportive and homes in which they have the best opportunities possible, but also homes in which the heritage and the culture of the tribes from which they come can be maintained and enhanced.

With that, Mr. Chairman, I would ask that the entire statement be placed in the record.

The CHAIRMAN. Without objection, so ordered.

[Prepared statement of Senator Evans appears in appendix.]

The CHAIRMAN. I would like to now call upon our third panel consisting of Mr. Robert B. Flint, counsel and board member of the Catholic Social Services of Anchorage, Alaska; Mr. Marc Gradstein, Esquire, attorney, San Francisco; and Mr. David Keene Leavitt, Esquire of the Academy of California Adoption Lawyers of Beverly Hills, California.

Gentlemen, welcome, and I believe we will begin with Mr. Flint.

STATEMENT OF ROBERT B. FLINT, COUNSEL AND BOARD MEMBER, CATHOLIC SOCIAL SERVICES, ANCHORAGE, AK, ACCOMPANIED BY SISTER MARY CLARE, FORMER EXECUTIVE DIRECTOR, CATHOLIC SOCIAL SERVICES, ANCHORAGE, AK

Mr. FLINT. Thank you very much, Mr. Chairman and members of the committee.

I also have with me and would like to introduce Sister Mary Clare who for nearly 20 years was the executive director of Catholic Social Services in Anchorage. She worked extensively with Native families, both birth parents and adoptive parents, and was involved in all agency placements. If you had any questions from somebody who had hands-on experience, she would be well able to answer them.

The CHAIRMAN. Sister, it is good to have you with us.

Mr. FLINT. I have a prepared statement which I believe the committee has. As you will note, the concerns that we address today involve only the area of voluntary adoptions. We do not get involved with children in need of aid, nor do we have a foster home program. Therefore, we are not able to speak with any expertise or background in those areas.

In the voluntary adoption section, we have two major concerns. First, the client's desire for privacy, and, second, the client's ability to participate in the selection of adoptive parents. There is also a third major area of concern regarding the timing of the withdrawal of a consent.

In the privacy area, I refer specifically to section 103(a)(2) on page 19 which requires notice to the tribe in the consent proceedings and to section 105(g) on page 25 requiring notice in the selection proceeding not only to the tribe, but to the family members which include step parents and all the way down to second cousins.

What the law does and is intended to do, as I understand these amendments, is specifically to withdraw any right of objection by the birth parent to the sending of notice to any of these groups or individuals. It is this part of the amendments that causes us trouble.

The reasons for birth parents coming to a voluntary adoption agency and their concerns are as many and varied as there are individuals. Any good social worker will encourage the birth parents to include their family members in the discussions and in the planning for keeping the children or for adoptive placement. That includes other agencies where appropriate, and, obviously, the tribe is one of them.

This is an intensely private and personal and troubling matter for the birth parents. There are many instances in which they do not want their personal lives and problems exposed to others. To require notice to be given over the objection of the birth parent is the equivalent of requiring the birth parent to wear a scarlet letter so that, in effect, his or her private life is exposed to public view.

There is no objection and, I think, can be no objection on the part of any agency to sending such a notice as long as the client or the birth parent herself or himself has the opportunity to say in this area, "I do not want my private life to be exposed."

Second, in the selection process, section 105(e) on page 24 prohibits placement outside the order of preference even if the preference of the birth parent is otherwise. This particular section runs counter to the trend in adoptions generally. This trend is very much toward birth parents involvement in the choice of the adoptive parents.

In this particular area, we find more and more open adoptions where not only are the birth parents specifying criteria, but they are also requesting to talk to the adoptive parents and to interview them to see if they satisfy the birth parents' criteria.

Those criteria include, of course, race and culture. However, there are also religious and professional criteria, social habits, size of family, and other criteria, including some which are subjective. This is particularly true in private adoptions where the birth parents go out and find their own adoptive parents and, simply for reasons of their own, like a particular family.

There are occasions for which I could give you anecdotal examples. One was, for example, a birth parent who was Russian Orthodox. Her prime consideration was that the family be Russian Orthodox. Despite our Russian background in Alaska it is not that easy to find a prospective adoptive couple who are Russian Orthodox.

What this amendment would do is to eliminate criteria other than race or culture from any consideration whatsoever as well as eliminate the birth father's or birth mother's own wishes.

Third, in the area of termination, the present law says that the consent may be withdrawn prior to the decree of adoption or the decree of termination, as the case may be. The procedure in Alaska is that after the consent is signed, the birth parent has 10 days to withdraw that consent for any reason. At that time in an agency situation, the child is then free for placement for adoption.

Typically, 6 months passes before finalization while the home study is in progress and the child is viewed in the home. That is a very critical period of bonding and if, in fact, the consent can be withdrawn during that period of time that the child is placed with the family, it could have an adverse impact, obviously, on the best interests of the child.

I have found myself, since I do a lot of relinquishment of parental rights, that the 10-day period works particularly well. I have made no scientific survey, but I would say easily one out of four or one out of five parents, both Native and non-Native, do change their minds within the 10-day period, withdraw their consent, and have no trouble understanding the procedure.

My suggestion as far as the act is concerned in the notice area is if there is a concern that private attorneys or voluntary agencies are over-reaching their clients, then I would suggest that we have already established a court hearing whereby the birth parent appears before the court for sworn testimony.

Now, already, our practice is to ask the birth parents questions regarding whom they want, what objections they might have to any notices, what their criteria are for placement, what opportunity they have had to select an adoptive couple, and, specifically, have they selected an adoptive couple. Thus, we put the objections and desires of the birth parents on the record.

If it were desired that the amendments be strengthened by, in fact, putting those requirements in the act as, for example, there are requirements to find out and certify that the parent understands the relinquishment in English, you could put similar requirements that the court certify as to preference requirements and confidentiality requirements for the client's protection.

As previously stated, we would request that the language of the present act in which the preferences of placement of the natural parent be considered be retained so that this right of choice be preserved as it is for all other individuals.

Finally, we would suggest that the present law for a decree of termination be retained.

I wish to make an additional point. I was made aware yesterday of testimony that was given in November before this committee which specifically singled out Catholic Social Services as a reason the law needs to be amended, and certain statements made there need to be corrected.

First of all, I think one should be aware that the drafter of that testimony is the opposing counsel in a contested adoption case that is presently before the Alaska courts involving ICWA issues. At the first level, the court determined on the ICWA issues in their entirety in favor of Catholic Social Services.

So, far from being above the law, as that testimony stated, the court has issued a ruling that we are in perfect compliance with the law. That case is under appeal now and I assume will be appealed through all possible levels.

However, the November testimony was that Catholic Social Services has specific criteria which prevent or discourage the selection of native adoptive parents. In fact, we have no such criteria, and we have no income criteria at all.

I personally have handled adoptions by parents, Native and non-Native, whose income level was as low as \$12,000 a year which, in Alaska, is very low indeed. No one has been excluded for income or social criteria. The Agency does support itself in part on fees from its clients who are adoptive parents. However, these fees are adjusted according to income and can be completely waived.

Sister Mary Clare, in my discussions with her, cannot remember any time, over her nearly 20 years of experience where Native parents have been refused for any reason. In fact, there have been placements of Native children with Native parents. I have handled them myself regularly over the years.

The Agency always, as it must under the Indian Child Welfare Act, gives a native adoptive applicant preference over a non-Native. If a couple came in yesterday or even this morning and is qualified, they are preferred for adoption of a Native child over someone who has been on the list for two or three years.

Catholic Social Services, and I would think most adoption agencies of its kind, is not in fact an adoption Agency but an agency for parents and children. The first client is the birth parent him or herself. The agency is designed to help that person be comfortable with whatever choice he or she makes, to keep the child or not. In fact, Catholic Social Services is no longer primarily a source of children for adoptive parents. Because of changing social values, today there is less social disapproval of single parenthood and counseling

of birth parents has changed radically. Whereas perhaps 10 or 15 years ago the majority of birth parents gave up their children, now probably 80 percent or more of those who come to Catholic Social Services keep their children, and it is part of the Agency's process to help them be comfortable with that decision. Only if the choice is made not to keep the child is adoption offered as a service to them. While the adoptive parents are, of course, very important, they are very much secondary to the concerns for the birth parent as a client and for the child.

I thank the chairman and the committee for their consideration. If there are any questions, I or Sister Clare would be glad to answer them.

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

The CHAIRMAN. I cannot speak for the committee, but as a member of this committee, I can assure you that your three areas of concern are concerns of mine, especially the area that deals with the confidentiality that the biological parent, I believe, are entitled to.

So, I can assure you that I will ask that these provisions be revisited and something done about it.

I thank you for your statement, and I am glad that you had the opportunity to present your position as to that last closing statement. We want to be fair with everyone here.

Mr. FLINT. I appreciate that, Mr. Chairman. Thank you.

The CHAIRMAN. Senator Evans.

Senator EVANS. Thank you, Mr. Chairman.

Let me deal with your own particular circumstances in Alaska. Could you give me a little historical background as to how many Native American children have been adopted and, of those, how many have been adopted into Native families? What has been the record?

Mr. FLINT. We as an agency—and this is the largest private agency—have, over the last 10 years, I would estimate placed perhaps 250 children in adoptive homes. Less than half of those would be Indian or Native Americans—

Senator EVANS. When you say less than half, do you have any idea of how many out of the 250?

Mr. FLINT. I would say about 100 or 110 or 120, perhaps one-third to 40 percent at the maximum. I tried to get the racial characteristics of the adoptive couples, but I can't get those. I think the majority of Native Children were placed in non-Native homes although there were a significant number of Natives, both Alaskan and American Indian, who were adoptive parents.

Senator EVANS. Those are pretty ephemeral figures. Could you for the record give us some more accurate, say a 10-year record, of how many total children, how many were Native American children, and how many of those adopted were adopted into Native American families?

Mr. FLINT. I can try to get that for you, and I would refer—these are figures that I don't know, but I noticed last November that Mr. Alfred Ketzler of the Tanana Chiefs Conference submitted some figures relating to State placement, those who were under State jurisdiction, and I believe these are in the record.

I will try to get figures for our Agency. It is difficult, however, Senator, because in addition, there is the private adoption area for which there is no, to my knowledge, readily available central collection point for statistics that I can have access to. But I can certainly get you more accurate than, say, the 250 gross and the 100 Natives over the last 10 years and submit that to the committee.

Senator EVANS. All right, and of those 100 or however many there are, what kinds of families they were adopted into.

Mr. FLINT. Yes, sir.

[Material to be supplied appears in appendix.]

Senator EVANS. What is your specific position on the whole question of a Native child's village or tribe and their right to intervene in a voluntary adoption proceeding?

Mr. FLINT. I think that the cultural aspect is extremely important, and the tribe should be involved to the extent of the permission of the birth parent. My only concern is where there is an objection by the client.

As I stated, a birth parent would be encouraged to deal both with family members and the tribe. So, I think notice is entirely appropriate save only the objection of the birth parent.

Senator EVANS. How does that square with the question of confidentiality? How does the tribe ever know? How does it ever have an opportunity to intervene if confidentiality prevents them from getting information as to what is going on?

Mr. FLINT. Well, I think if there is no objection, then you can give them notice, and I don't have any objection to giving them notice. However, if you accept the principle that a birth parent ought to have the right to keep those affairs private, then they would not know, because that is the very idea of confidentiality. She says or he says or both of them say, if they are both involved, that they simply don't want other entities, family members, or tribal organizations involved, because this is their personal decision.

All I am saying is that we think that principle, the right of privacy which adheres to that individual, should be followed. Otherwise—

Senator EVANS. But under those circumstances, of course, your State of Alaska would be privy to that information, would it not?

Mr. FLINT. The State of Alaska is. We are required in agency and private adoptions to give notice of the final adoption hearing to the State Department of Social Services. They check their computer for child abuse and other such things.

There is no notice required or intervention of any kind for the relinquishment or consent process by the State or anyone else.

Senator EVANS. But there is notification to the State. Is that correct?

Mr. FLINT. Of the final adoption hearing, not of the consent proceeding, yes. There is a notice to the State Department of Health and Social Services of the adoption proceeding. That is correct, and that is by State law.

Senator EVANS. And you don't believe that should be extended to the other governmental unit which is the tribe?

Mr. FLINT. I would be glad to agree that it should be extended to the tribe except for the objection of the birth parent.

Senator EVANS. So, you distinguish between the governmental responsibility of the tribe and of the State.

Mr. FLINT. Well, as I understand it, the reason for the State's interest and the reason for that notice is as I have said. They run the names through the computer to check for the adoptive parents to see if they have ever come up on any child abuse case or come through the system so they can presumably assure that the placement is not being inadvertently into a home that is inappropriate.

That, I think is certainly a governmental function and relates, I believe, to children in need of aid or at least preventing the abuse of children. So, I would think that would be a governmental function. That is what I understand they need it for.

Senator EVANS. What about the potential abuse of a different sort in a Native American child being introduced into an adoptive home where all of the cultural and historical and similar ties of that child to the whole Native American community would be, in essence, destroyed or ignored? Is that of concern?

Mr. FLINT. It is of concern, and the present act talks, of course, about the rights of the child as an Indian child, and it says the preference of the natural parent shall be considered in determining the selection.

The problem with a rigid system as the amendments would set up is that you don't take into account individual circumstances. There is a whole spectrum of people and their relationship to Native American society. Some have no connection at all. Some have a great deal of connection.

What the present law allows the court to take into account are those varied circumstances. I think that the court is permitted to do that and, indeed, is required to do that under the present law. But what the amendment would do would be to flip flop over to the opposite side and not take into account the wishes of the natural parent where, in fact, the parent or the child has no contact with the tribe.

The elimination of flexibility doesn't seem to me to do much for the child, whereas the present act allows those very items that you mentioned to be taken into consideration.

Senator EVANS. In relationship to that whole thing, how do you interpret the section on page 24 where it talks in subsection (f):

Notwithstanding any State law to the contrary, the standards to be applied in meeting the placement requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or family resides or with which the parent or family members maintain social and cultural ties.

Mr. FLINT. Oh, I don't have any problem with that section.

Senator EVANS. What if a family has neither of those, maintains no social or cultural ties and does not reside in the community? Would they then not be subject to these provisions?

Mr. FLINT. I would assume not. The standards are referred to as those of residence or cultural ties. If neither of those are present, I assume the standard would not apply.

Senator EVANS. But isn't that what you are worried about?

Mr. FLINT. No; what I am worried about is (e) which is immediately above that section, Senator. The order of placement preference in law is not changed by the amendment. It is the same as in the present law.

The present law says that the order of preference can be varied or not followed. One of the reasons the court can change or avoid the preference is the wish of the birth parent. Now, what (e) says is that a placement preference expressed by the parent or Indian custodian or a request of confidentiality shall be considered, but only as long as the placement is within the order of preference. In other words, there is no ability to vary the order of preference.

Now, I give you two possible situations. One is in the strictly private adoption where, for subjective reasons, a birth parent has chosen a particular couple that the birth parent likes and just thinks they would be a fine family. If they are non-Native, then they cannot be considered because they are not within the preference.

In an agency circumstance where you present several couples to a birth parent for choice, as I mentioned in my remarks, there might be several categories. There might be, for example, a request for a specific religious belief, or specific social habits, that the mother shouldn't work, or there should be a certain number of children, or "I would like one of the people to be a teacher." I mean, there are all sorts of criteria.

And you might have a Native family, perfectly good, obviously qualified because they are there, presented which are okay but don't meet the criteria that are important to the birth parent. All we are saying is that those criteria are important to her. We think the court should be allowed to consider those and make them important in the placement, because they are important to the mother or father.

Senator EVANS. To what degree does the importance to the mother or father relate to the importance as far as the child is concerned? Who has priority?

Mr. FLINT. An agency considers that the first client—

Senator EVANS. In this case, I am not talking about agency or anything else. In your own view, who should have priority?

Mr. FLINT. My own view is that, first of all, the birth parent has priority.

Senator EVANS. Over the child?

Mr. FLINT. That is true, because when you come in, for example, it is the choice of the birth parent as to whether or not to give up the child or not. Now, the social worker, on an objective status, might think, "gee, it is better that this child be placed for adoption."

But that is not the choice for the agency or the social worker or anybody else, because it is the parent's right to determine what she feels or he feels is best for him or her under the circumstances as to whether to keep the child.

Now, once the decision is it is best for adoption, it is my view and the agency view that in the process of adoption planning, the prime person to consider what should happen to that child and how that child should be raised is also the birth parent. Beyond that, then you have the best interests of the child, because the agency is responsible for the child, but given the fact that the criteria of the birth parents are universally honorable and decent enough criteria, it seems to me to be inappropriate not to follow those criteria.

So, I would say the birth parent has that right of choice. Senator EVANS. Interesting, especially when you compare it with the potential parallel of a mother and an unborn child.

Mr. FLINT. Well, I have considered that, and I don't think there is a lot of consistency in some of the law, but I am thinking—

Senator EVANS. Well, I am not talking about law now. I am talking about fundamental philosophy. It seems to me there may be an inconsistency, and I am curious about it.

Sister MARY CLARE. That issue is a good one. I am glad you addressed it.

When a girl comes in for counseling, she is the primary client. So, our responsibility is to her. Her baby isn't born yet. So, in the counseling process, I say my responsibility is to you to help you as much as I can. You have a responsibility toward your baby. And that is where she makes the responsible planning.

We see adoption as responsible planning, not giving up your baby. We don't use that term. It is placing your baby in a permanent home.

Now, the primary client does become so important in a sense because she is the one you are looking at, talking to, and she is the one who is having all the anxiety, remorse, guilt, doubt and who has to face her family, face her tribe, face the village when she returns.

And adoption is not a good word in the village. It can be something that she is going to have to—that is a stigma, too. So, what we have to deal with is so many issues and her own sound self-esteem.

So, attitudes are taught, not caught. You know, you come into an agency with low self-esteem very often, and you are often dealing with children. In some of the testimony you have, it says Catholic Social Services snatches babies, you know. I read it, thinking of these little 14-year-old girls that come in and say please help me. I didn't feel like I was snatching babies.

It is a big issue. It is harder issue when you have the teenage pregnancy, and that is a big issue in our country.

Senator EVANS. It surely is. But in this fundamental question of the relationship of rights between the child and the parent and the parallels between the mother and an unborn child and the mother and a child already born, that preference which I heard that the parents probably have at least the prime consideration over the child would not extend, at least in all circumstances, to the mother of an unborn child and that relationship, because you would not extend that, of course, to abortion, I presume.

Mr. FLINT. We would not?

Senator EVANS. Well, who has the prime right at that point, the mother or is it the unborn child?

Mr. FLINT. Well, I wouldn't personally extend the right of a parent or anybody else, for example, to beat their kid up, either. I mean, obviously, parental rights, as we know—that is why we have children in need of aid proceedings—do not extend to all dominion over your children.

All we are saying is that when you make parental decisions as to how the child should be raised, that is appropriate parental choice. I would also suggest that the idea of choice in placement is inti-

mately connected with the decision as to whether or not to give up a child.

In fact, what you might have, although the birth parent might decide it is best for his or her own circumstances to give up a child, if she cannot get the family desired, then she very likely will not give up the child. She will keep it which is fine if that is her choice, but if it is her choice because the law does not permit her to select the family that she wants, then it is obviously an adverse choice for her and perhaps also not in the best interests of the child.

Senator EVANS. But isn't that a choice which is also modified by—if she has a family of choice and wants to place this child with a family of choice, what if the social services agency said that is an inappropriate choice?

Mr. FLINT. Oh, well, we are also required under State law to do a home study to qualify the families. First of all, in an agency circumstance as opposed to a private adoption, when a birth parent is presented with families or files of families, then these are all qualified people, whether they are Native or non-Native.

So, certainly there is a screening, although, in fact, those who get into the process and who want adopted children and the longer they wait, they are all very clearly qualified people. So, those are screened in advance.

Private adoptions also require home studies.

Senator EVANS. Well, in agency adoptions where you are providing alternative potential parents to that birth parent, to what extent does your agency, for instance, attempt to find, as a priority, Native American adoptive parents for a Native American child, or are you essentially assuming that this is something that ought to be race neutral and that other factors are the ones that ought to be considered?

Mr. FLINT. Well, the agency tries to keep up its list by general advertisements throughout south-central Alaska or simply letting the word be known. People come in who desire a child and ask to be put on the list and go through the home study. Those are Native Americans or black Americans or all sorts of Americans.

What we do is we follow the act, as I mentioned, in that those who are Natives get the preference according to the act as far as the adoptive placement of the child.

Senator EVANS. But in seeking out potential parents, you make no particular effort to seek out a bank or a group of potential adoptive Native American parents?

Mr. FLINT. Not any specific other than just telling the people in Alaska, including the Native Americans, that we are available. We would welcome the assistance of anyone who could boost those lists for qualified applicants.

Senator EVANS. You are saying that you are following the existing law. That is what we are dealing with now is the potential change in existing law and trying to figure out what, if anything, is appropriate in the change of existing law. I guess I am probing just to find if a new law that would either require or encourage the seeking out of potential Native American parents—

Mr. FLINT. Oh, that would be fine. I don't have any objection to that at all. I mean, this has been a relatively small agency. I am

sure you have heard the resource excuse often enough, but there is no question but that one could do more. And if you wish to mandate that in the statute, that is fine. That is no problem at all.

What I want to emphasize is not the theory of the act or the preference which we have followed or to even say that we should not do more in recruiting Native Americans as adoptive couples. All I want to do is in this sort of group area is carve out a small right of individuals to make choices, and that is all.

Senator EVANS. Okay, thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank you very much.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

First of all, I want to welcome my friends from Alaska. I have known Bob Flint for many years. He, as I am sure you are aware, is a board member and counsel to the Anchorage Catholic Social Services, a non-profit organization, and Sister Mary Clare has been in Alaska for, I believe, some 19 years working in the area of placing children in good homes.

I am sure that the issue is clearly understood that we have before us, Mr. Chairman, and that is whether these proposed amendments are unduly restrictive in not allowing the birth parent to basically have her recommendation on the placement of the child have any significant consequence. This is a position that has been—I assume Sister Mary Clare could comment on case situations where the mother has requested the assurance of privacy.

In small villages, to suddenly find that no longer is that confidentiality going to be adhered to nor are the wishes of the birth parent going to be followed, one wonders of the extraordinary discrepancy that would exist between a native woman who wants to put her child up for adoption and a non-native woman who does not have to run the risk of having her confidentiality breached.

I am wondering if either Sister Mary Clare or Mr. Flint could comment on what appears to be almost a violation of individual rights of confidentiality where the Caucasian woman could have that assurance, but under these amendments, a native woman would not have that assurance.

Sister MARY CLARE. Yes; that has happened to me several times with a white girl—that happens very often where the birth mother is Caucasian and the birth father could be Eskimo. Our agency is involved with counseling, so you counsel both to understand that they both have a cultural heritage here which is to be honored. So, within the confines of the counseling situation, they come to a determination.

Now, before the Indian Child Welfare Act, there was no problem. Now, there is in a sense. If we go by this new bill that is up—

Senator MURKOWSKI. The new amendments.

Sister MARY CLARE. With the new amendments, you must adhere to the native culture.

Senator MURKOWSKI. When you say adhere to the native culture, then we are saying that the native woman—

Sister MARY CLARE. That white girl—

Senator MURKOWSKI. Or the white girl, either one.

Sister MARY CLARE. Right, according to the new bill cannot really determine which couple she chooses. Say she wants it in an all white home.

Senator MURKOWSKI. Does that mean, Sister, that that woman has to publicly make known to the tribe that she is going to place the child up for adoption?

Sister MARY CLARE. Yes; I just had a case like that last year.

Senator MURKOWSKI. Now, in the case of Alaska, that would be the village.

Sister MARY CLARE. Yes.

Senator MURKOWSKI. The village would have to be notified.

Sister MARY CLARE. Yes, which we have done.

Senator MURKOWSKI. And that is in the new amendment.

Mr. FLINT. Yes.

Senator MURKOWSKI. OK, but a white woman wouldn't have to do that, a Caucasian woman?

Sister MARY CLARE. Well, the State does it.

Senator MURKOWSKI. I mean, the point I am trying to make is there seems to be a prejudice here which would mandate that a Native mother would have to notify the village regardless of her wishes while a non-Native woman would not.

Sister MARY CLARE. Right.

Senator MURKOWSKI. I would ask my friend the counselor if there is some violation of an individual's rights in so doing, because, obviously, the tribe would supercede. The needs of the tribe over the individual is what we are saying here, isn't it?

Mr. FLINT. I am sorry, Senator. I didn't hear your question.

Senator MURKOWSKI. The point I am trying to make is the question of the individual right of one woman, because she is a Native, to have to be mandated by not being able to keep confidential her wishes for the placement of that child vis a vis the Caucasian woman who would have the rights of privacy just as a matter of course and her own individual rights.

Mr. FLINT. That is correct. You have people in the same situation deciding whether or not to give up a child. One, under this amendment, would have to give notice to various people, and one would not. There is a difference, yes.

Senator EVANS. They are not really in the same circumstance, are they?

Mr. FLINT. Well, they are both giving away their children.

Senator EVANS. I know, but one is a Native American child and the other one is not.

Mr. FLINT. Well, it may not be, Senator. We have had circumstances as Sister mentioned where the birth mother was a non-Native and the unmarried birth father—who is not a parent by definition under the act—was a Native or American Indian. So, the child then becomes qualified under the act, and the birth mother would have to have, under this legislation, the tribe and the extended family, presumably her own extended family which is not native, notified even though she has no cultural ties whatsoever.

Or, as has been said before, there are so many different cases among the large number of American people. Some Natives maintain a lot of contact with their cultural group. Some don't. Some

haven't been back to the village for a long time. Yet, they would still have to notify.

Senator MURKOWSKI. What about the case of a mother who hadn't been back to the village for some time? Could the village simply mandate the disposition of that child if she wanted to put that child up for adoption?

Mr. FLINT. Yes.

Senator MURKOWSKI. We have, Mr. Chairman, in Alaska, of course, many of our native people who have moved from their village and moved to other States. I am sure they would never contemplate a situation where they would be required to bring that child back to the village upon the village mandate that putting the child up for adoption would require that kind of set of circumstances.

I think what we have here, Mr. Chairman, and I am sure you are aware of it, is a justifiable situation of the concern of the village and the tribe to maintain the heritage of their own people, but the realities associated with many of the villages in Alaska with which, of course, the witnesses are much more familiar than I, but which I have a good deal of familiarity with, are that in most cases, there are efforts made to place the children with native families, but not in all cases are there enough native families which can accommodate the children that are needful of a home.

So, on some occasions, they move outside the native family. It would be my interpretation that these amendments would restrict to the point where what do you do in the case where you do not have enough adequate Native homes available to accommodate these children and, yet, these provisions would disallow you from going outside the village area. So, you are caught in a catch 22.

What would be the provision as you see it, Mr. Flint, for a situation where in a particular village there were no more available accommodations? Would it then move to another village or—

Mr. FLINT. Yes; it would move to the third preference which would be another Indian or Native family.

Senator MURKOWSKI. And under your operation now, you currently attempt to find a native home. If you can't find a Native home, you what, move to the foster home, and Indian foster home?

Mr. FLINT. No; right now, the question to the girl is does she want the child placed with members of her family. Normally, if she is coming to a voluntary agency, the answer has already been decided. No, she doesn't.

Then would she like the child placed back in her home village. If she says no to that, then you are in the third preference, and you take those Indian or native families that are on your list and you give them preference.

So, they may not be the same. You know, I can't remember exactly, but I have had Alaska Native child adopted into a south 48 Indian family, that is, someone who had the type of background. So, we move down the preference ladder.

If we are required to adhere to those preferences rigidly, then we would not be able to move out the preferences even if the circumstances require it.

I think if I might comment, one of the problems with establishing rigid standards with human beings is that human beings with

their own opinions and their own circumstances make their own categories. The trouble with doing it on such a rigid basis is that you may hit a big part of the problem, but you are going to create so many other problems, because individuals vary so differently.

If you could at least make your amendments flexible enough to take into account human variations, I think we wouldn't come back to you years later with some tales of injustices that were done because a statute was crafted so rigidly.

I don't detect that any of us are against the purpose of the act. Surely, we are supportive, and we are trying to follow it as best we can, and we certainly could do it better. I will admit that and be glad to have language that would make us do it better, but please don't lock individuals into such a rigid structure that they can't move according to their own desires and circumstances.

Senator MURKOWSKI. You are referring primarily to the wishes of the birth mother in regard to the placement of the child.

Mr. FLINT. Right.

Senator MURKOWSKI. And your interpretation that these amendments would basically eliminate—

Mr. FLINT. Put a lock on her.

Senator MURKOWSKI. And that is basically your objection.

Mr. FLINT. That is right.

Senator MURKOWSKI. So, are you suggesting any other language or just striking of that particular—

Mr. FLINT. No; I was suggesting that you could have some language, particularly—in my comments—in the initial court hearing with the consent or relinquishment, you could have as we do now but put it in the law that this girl's wishes were certified by the court, that this is what they were. So, you would have the independent court verification of what she wanted rather than just relying on the agency.

Senator MURKOWSKI. Well, how do you bridge what she wanted or what she may want with what is in the best interests of the child? Do you leave that up to the court?

Mr. FLINT. Well, that would always be up to the court, yes.

Senator MURKOWSKI. So, that would be left up to the court, but she would have an opportunity to voice a recommendation.

Mr. FLINT. That is right. You see, the existing law doesn't even say it has to be followed. What it says is that her wishes shall be taken into account which I think is appropriate language.

If in the odd ball case you had a totally inappropriate family, then her wishes wouldn't govern, but they ought to be considered.

Senator MURKOWSKI. I wonder, Mr. Chairman, if you might consider that the Senator from Alaska would be pleased to propose that as a corrective amendment at an appropriate time that indeed the wishes of the mother be so noted for review by the court which, to me, doesn't seem to be an unrealistic consideration for the court to reflect upon if indeed that would cure the concerns expressed by our witnesses.

Senator EVANS [acting chairman]. Certainly, at the end of this hearing, presumably, we would move on at some future date to the markup of the bill and be subject to whatever amendments at that point the members might suggest.

Senator MURKOWSKI. All right. I thank the chairman.

Senator EVANS. If there are no further questions, thank you very much.

Mr. FLINT. Thank you.

Senator EVANS. Next, we have Mr. Marc Gradstein, attorney at law from San Francisco.

STATEMENT OF MARC GRADSTEIN, ATTORNEY AT LAW,
SAN FRANCISCO, CA

Mr. GRADSTEIN. Thank you, Mr. Chairman.

I think the questioning of the last witness has brought into focus the true change this amendment seeks to make in the existing law which, as he also said, no one seems to disagree with the existing law in spirit. I think what the Indian Child Welfare Act of 1978 sought to accomplish, which was the end of involuntary break-ups in Indian families—the approach to that was to be giving added protection to the parents so that parents wouldn't have their children taken away against their wishes by State courts that were insensitive to their special needs.

I think the focus in voluntary placements also has been to give the parents additional protection in the sense that they have to have their consents or relinquishments clearly understood.

I think the point where this bill, in my opinion, goes awry is the very point the chairman has just raised, and that is that we are going beyond the parents now to protect against assimilation. We are going now and saying the parent's right to make that decision should not be considered the primary concern.

I think one of the issues raised by Senator Inouye when he was questioning the gentleman from the Interior Department was whether or not the jurisdiction of the tribal courts under the new amended bill would be subject to objection by the parents. I think he was under the impression perhaps that if the parent objected, then jurisdiction would remain in the State courts.

From my reading of the bill, that is not the case at all. It appears to me that the bill is saying quite clearly that the decision, in effect, to place the child for adoption, the consenting to the adoption, takes away the parent's right to determine which jurisdiction he or she is under.

I think that is a critical question this committee has to wrestle with.

Do we want to tell people who are not voluntarily subjecting themselves to the jurisdiction of a tribal court by living on a reservation—they are living somewhere other than a reservation where they presumably feel they are subject to the same State court jurisdiction as any other American citizen—now because they come within this act—and I will address in a moment what constitutes coming within the act, because I think that is another critical area that must be examined by this committee—that individual who may live in Alaska or who may live in Texas and nevertheless be connected to an Alaskan tribe, since we are speaking of Alaska, that individual in Texas would be, as soon as she consents to the adoption, subject now and her baby would be subject to the jurisdiction of a tribe in Alaska.

I believe on page 12, the last two lines of section (b), it indicates there that the parent may object as under the present law but that the objection is then discounted as soon as the parent places the child.

In effect, what that does is it says that a parent by placing a child gives up the right to determine which jurisdiction has control over that child. In my view, although I don't like to use the word racist, that was used earlier, I think what it does do, is it takes certain rights basic to all other American citizens away from that parent of the child within this act.

As such, I think it is a bad idea.

I am not saying that we want to have the mother not make a placement that is sensitive to the needs of this child and the cultural needs of this child, whatever background it may have. But I think we have to let her make that choice, not a court.

I would like to turn to the other issue that deeply troubles me in regard to this bill which has not been discussed yet this morning, and that has to do with the definition of who comes within this act, because I think there, too, we look at a potential for serious difficulties both legal and practical.

That has to do with the definition section of the bill which expands the definition of an Indian child far beyond what we had in the initial act. The initial act basically brought a child within the act if the child was eligible for tribal membership, a clear, understandable, meaningful standard.

At section 5 of the definitions on page 7 of the bill, there is the additional section (c) added to the original act at line 20, which I have absolutely no understanding of how that can be workable. It basically says that a child of Indian descent is within this act.

Now, when we are talking about tribal membership or eligibility for tribal membership, we have a clear standard that, along with being subject to the act, also grants that individual the potential for certain tribal benefits.

Indian descent, I feel, is such an amorphous concept that it could include people who have so little connection with that particular aspect of their heritage that it would be ludicrous to treat their children, against their wishes, in a tribal court they have no connection with, as Indian children.

I think if the amendment is not amended to delete that addition, it will be like a monster. It will make for trouble that is beyond our wildest dreams, and I would urge the committee to rethink that issue, because I think the implications are scary.

That is all I have to say.

[Prepared statement of Mr. Gradstein appears in the appendix.]

Senator EVANS. Thank you.

As you read the section on page 24 of the act—you may have a different page number. This is section 105, subsection (f). Do you have that?

Mr. GRADSTEIN. Yes; I am looking at it.

Senator EVANS. At least the first one-half or two-thirds of it is pretty much a restatement of current law. How do you interpret that in terms of applying the standards of this act, the preferences that are listed in previous subsections of section 107, when it says that the standards to be applied shall be those of the prevailing

social and cultural standards of the Indian community in which the parent or family resides or with which the parent or family members maintain social and cultural ties.

Now, that is essentially the current law. It is maintained or retained in this act. What if the parent or family members do not reside on the reservation or have no social and cultural ties with the tribe? Wouldn't that by omission exclude them from the standards applied in section 107?

Mr. GRADSTEIN. If this were the only change in the law or the only portion of the law we were focusing on, I would agree. I think it is the concern that the decision over the child's future would be made by, potentially, the tribal court itself.

Senator Inouye earlier asked the question—I think before you were here, Senator—of whether tribal courts are competent to make these decisions. He asked that of the gentleman from the Interior Department and received a sort of a 50/50 kind of answer.

I don't agree with that answer. I think that tribal courts are competent to make decisions. I just think that they should be making decisions about the subjects that come within their normal jurisdiction.

My objection is not to the tribal courts. It is to the expansion, this almost extraterritorial kind of expansion, of tribal court authority to non-tribal court matters. That is the fear I have.

They may look at this and say there is no social tie here, but nevertheless, wouldn't it be better for the child, since the child is one quarter or one-eighth or one-fiftieth Native American, to have the child raised on a reservation by an Indian family. They may not make that determination, but to let a woman making the decision of whether or not to abort her child, or whether or not to have her child placed for adoption, live with that uncertainty is to create, I think, some very dangerous results.

It may never get to the tribal courts. She may go ahead and have that abortion, if she doesn't know. She may just keep the child or she may, as has been suggested in some of the written testimony I have read, simply not tell the truth when asked what is your background as a means of avoiding—

Senator EVANS. That, of course, is always possible in any circumstance.

Mr. GRADSTEIN. Yes; I think the impetus for her to do that, though, is much greater if, against her wishes, she is being told that by telling the truth, she may find her child not going where she thinks is best for it, but going where some person unknown to her might consider a better choice.

Senator EVANS. Isn't that the case when they go in front of a State court?

Mr. GRADSTEIN. No; because in a voluntary placement, the mother chooses the family. The mother picks the people that she wants to have adopt her child.

When I adopted my son, his mother and I knew each other. She said, "I want this man and his wife to adopt this child," and the State court simply said, "Is there any reason not to grant her wish?" Is there anything about this family, having studied them through the social services process, that would indicate that it would be contrary to the child's best interest? But we respect her

wish to make that selection unless there is." As such, the court granted that adoption.

Now, if she had been part native American, which I don't believe she was—frankly, I never asked her that question. This was before this act was written. She could have been. I wasn't particularly concerned with what her background was.

However, if she had been part Native American, even the smallest part or even if she were totally non-Indian, but the father of the child were the smallest part native American, and when she told him she was pregnant, and he said I don't know anything about it, it wasn't me—so, here she is in that situation, at 15 years of age, trying to make a decision that is very, very important to her as to where this child she loves, and she does love this child, is going to be adopted and raised and by whom, and she is being told, "Sorry, young lady, we can't guarantee your placement with Mr. Gradstein, or my client, or whomever, because it may be that, when we notify this tribal court, that is in some way involved, they will say, "We have a better idea," and that will take precedence over her idea.

I think that kind of law is so paternalistic and scary, in terms of being almost a big brother government concept, that it would be terribly chilling on adoptions.

Senator EVANS. Haven't we been a big brother government to the Indian tribes generally over the last 150 years?

Mr. GRADSTEIN. I think that is one of our failings as a government, and I think what is so good about the Indian Child Welfare Act, as it is presently written, is that it says that Indian parents have rights that should be respected, and I fully agree with that.

It says that before you take a child away from an Indian parent involuntarily, the courts must do all sorts of things to protect that family from being broken initially. If, after expert testimony and substantial burdens of proof, the court determines that this child must be removed from that Indian home, then at least every effort must be made to place that child with another Indian family.

That is what we have done. We have given the Indian parents rights against that kind of paternalism in the act of 1978, and I applaud that. We have also said that the Indian parent who wants to place the child voluntarily, may choose with whom to place that child, so long as it is real clear that that parent is doing so knowingly.

That is why we bring the parent into court and have a judge read, in effect, Miranda warnings of a sort to this person, and say "Do you understand what you are doing?". And we give her the right to reclaim that child, right up until the last minute—unheard of in State courts, without any question.

My feeling is that big brother is backing off in the law of 1978 and saying: "Give these people, the parents of these Indian children, the right to make these decisions. Let's not break up families."

As far as this bill wants to go ahead and monitor whether that is being done—it sounds like nobody is monitoring that from the testimony of the Interior gentleman—I think that is a commendable goal, and I agree with it.

But I think when it goes to the point of including within its ambit, all persons of Indian descent, no matter how slight, or how significant, and when it takes away the right of the Los Angeles resident, who has no desire to be living on some reservation that she had never been to, and she is not even of American Indian ancestry herself, but the father happens to be slightly Indian, and suddenly, she is subjected to the tribal court jurisdiction of a court in another part of the country, I think that is going too far, and that is what I am fearful of.

Senator EVANS. Of course, I have always thought all children were the subject of two parents, the last I checked.

Mr. GRADSTEIN. That is my understanding.

Senator EVANS. You can't totally ignore either the father or the mother in these circumstances. Obviously, there are differing considerations, and I think the courts have well recognized those in terms of the mother's particular interest, but there are two parents—

Mr. GRADSTEIN. I fully agree.

Senator EVANS. And I think they should both be considered.

However, again going back to that I read, doesn't that to you say that for those people who are off the reservation who have no cultural and social ties that at least that section which sets forth the priorities of adoption—the priorities of a member of the Indian child's family, a foster home licensed or approved as an Indian foster home, that list—would not apply?

Mr. GRADSTEIN. I think it is very vague what that would mean. I think a court could do practically anything with that. It says the social and cultural standards of the Indian community in which the parent or family resides or with which the parent or family members maintain social or cultural ties.

We could be talking, just for the sake of argument, about a father of a child who is of a very small percentage Indian—let's say he has an Indian great grandmother with whom he maintains some contact—and he has been found guilty and convicted and sentenced for the rape of the mother, and he is serving his time in prison right now, but he maintains some social ties with that great grandmother, and the woman is non-Indian. Theoretically—I am not saying that tribes are going to run around doing these things, but the fear of it, I fear, will be chilling on birth mothers.

Senator EVANS. And your concern is not so much the competence of the tribal courts but—

Mr. GRADSTEIN. Or the good will.

Senator EVANS. But culturally what they might be required to do.

Mr. GRADSTEIN. I just think that the unknown, to a person of a different culture—just as we are focusing on the difference in the Indian culture, to the non-Indians, the Indian culture is an unknown, and something not to be taken for granted.

Someone who grows up in San Francisco or Los Angeles or here in Washington, and has no connection with the Indian culture, and is suddenly being told when she comes to my office and says that the father of this child is a very small part Cherokee, suddenly she has to deal with: What does that mean? Who is going to decide about the fate of my child?

I am fearful that the result, in practice, will be something other than what this act intends and not to the benefit of Indians or adoptions or children.

Senator EVANS. At some point, there are differing interests, interests of maintaining a cultural identity and interests in the parental choice, and, in each case, they are of differing ratios. Is there a legitimate dividing line, a point where one takes some precedence over the other? Or, in your view, is it simply parental choice?

Mr. GRADSTEIN. I think that the parental choice to submit to the jurisdiction of a tribal court ought to be the way you decide which body determines—just like in any other matter—which body determines the applicable law.

If I go on an Indian reservation, and I do something that is in violation of the tribal court law, I am subject to that law. If I leave, I am not. If I am a tribal member and I leave, I am not.

I think the tribal members do deserve the same—or, of course, the people who aren't tribal members but are slightly Indian—that is the other issue that just so pervades this bill that I just can't leave it—they don't have that right. They don't have that same choice, of choosing the jurisdiction in which they are subject to the laws, and I think we have to give people that right.

Now, if in an involuntary proceeding—I would go along, I think very happily, with the section (c) definition, the Indian descent definition, if it were done in this way. You have an involuntary proceeding. Someone is, let's say for the sake of argument, in San Francisco, and the Department of Social Services says, "This child should be taken away from the parent involuntarily."

The parent says, "Wait a minute, I am of Indian descent, and if you are going to try to take my baby away, I would like to make a motion in this court to join the tribe and have my Indian descent respected so that this decision could be made by a tribal court." If it were done in that fashion, I think that is fine.

I think as long as we give the parents the choice, we are on the right track. I think once we take it away from them, then that very question you raised earlier about abortion is this terrible inconsistency we have.

On the one hand, we are saying to this same person you may kill your baby, under present law, without anybody's permission—without the father's permission, without the court's permission. You just walk in there to that abortion clinic, and you have solved your pregnancy problem.

However, if you go ahead and give that baby life because you love it, suddenly, you are the victim of all these conflicting, complicated social pressures; unless we allow this woman to have the choice to say, "I want to maintain my privacy."

Why? The obvious reason is simply a matter of people who don't want to have to say that they have had a relationship at 15, but I think, frankly, it may even be more true among tribal members who, at a very young age if someone is pregnant and it is found out—I have had this said to me as a question by someone on the telephone. She said I don't live on a reservation. I am not subject presently to the tribal court jurisdiction, but I associate with people from my tribe. In fact, that is how I got pregnant. I think

she was 12 she said, and if anyone finds out that I am pregnant, I will be shunned. That was the way she put it. My reputation will be gone. I will not have a social life, not as I presently would.

What can she do? When I told her about the act, she has a real problem. In California, that tribe has to be notified, and as soon as they are notified, if her aunt Tilly is the enrollment officer, her privacy is out the window.

I have had that question more than once in different contexts, once when a woman was married and she separated from her husband and got pregnant. She had already determined that her children were not enrollable tribal members. She had had children with her husband, and the man by whom she got pregnant was, very apparently to her, non-Indian.

Under California law, she would have had to notify the tribe back in Montana, and she said her mother was the enrollment officer, and if her mother knew that this had happened, she couldn't go back, not even for a visit.

I think those considerations—

Senator EVANS. What you are saying in what you just described is that a person holding a position of responsibility within an Indian tribe doesn't maintain the same standards of confidentiality that the State would.

Mr. GRADSTEIN. No; what I am saying is that privacy is such a critical issue in adoptions that if we force people to give that up to people who know them—I am not saying that any tribal officer would run around telling everyone. I have no reason to believe that. But in this case, the woman said it is my mother, the very person she is trying to avoid finding this out.

I personally feel she ought to have the right not to have her mother know this. This was a grown woman, a mature person. She was back with her husband. They were trying to reconcile, and we had a real problem.

Senator EVANS. While that may more frequently be the case, it is not impossible that that be the case with the State agency or notification and the confidentiality within the State as well.

Mr. GRADSTEIN. It could happen.

Senator EVANS. It could happen.

Mr. GRADSTEIN. I think the likelihood is much less, though.

Senator EVANS. Oh, sure, the likelihood is less. The principle is the same.

Mr. GRADSTEIN. True. It just adds one more special problem for the native American mother that the non-Indian mother does not have. That is what I am trying to say. We are, in a sense, discriminating against her, in an effort to do a good that I am not sure we will end up with, if we make this the law. I don't think we will. I think we will end up with something much worse.

Senator EVANS. OK. Thank you very much.

Mr. GRADSTEIN. Thank you.

Senator EVANS. Let's turn to Mr. David Leavitt from the Academy of California Adoption Lawyers of Beverly Hills, California.

STATEMENT OF DAVID KEENE LEAVITT, ESQ., ACADEMY OF CALIFORNIA ADOPTION LAWYERS, BEVERLY HILLS, CA

Mr. LEAVITT. Thank you, Senator.

I want to express my appreciation to the committee and to its staff for making room for me to testify. I know it was a long witness list, and I am going to not read my prepared remarks which I have submitted.

Senator EVANS. Your full remarks will be placed in the record.

Mr. LEAVITT. Thank you, Senator.

I am coming from a different direction, and I think it is important at this point. Generally speaking, as an individual in the world of adoption, I can associate very fully and sympathetically with the remarks of Mr. Flint and with Mr. Gradstein.

On behalf of the Academy of California Adoption Lawyers, however, I am only authorized to address two issues which I think are serious issues and which are not in disagreement with the fundamentals of the Indian Child Welfare Act. I doubt if there is anyone in the room here who really opposes the Indian Child Welfare Act or the aims of that act. Everybody here disagrees on whether it is doing it properly or well but not as to the reality and the propriety of the aims.

Now, I am coming from a State which is very different from any of the States represented by the Senators on this committee except for Senator Inouye. Senator Inouye and I are both from States where everybody is from somewhere else.

The Indian tribes and the Native Alaskan villages that have been the subject of discussion by Mr. Flint are right there in Alaska. Their children are being placed, generally, with couples in Alaska. If the tribal council or the tribal court wants to intervene, they are right on the scene, and they are generally dealing with offspring of Indian population.

Everybody today up to this point has been talking about Indian children as if it were taken for granted that they were the offspring of member of the tribe at or near or in contact with the tribal authorities or the tribal organization. In California, it just is not what we are dealing with.

Almost all the children in California which are subject to adoption and subject to the Indian Child Welfare Act are involved with tribes thousands of miles away. There isn't a single Indian tribe within 3,000 miles of Honolulu, and they are 6,000 miles from the Algonquin. Our Indian ancestors in California are never local people, and they are almost always intermarried with non-Indians.

So, what I am talking about are the youngsters who are not clearly Indian.

Also, I want to latch onto a comment made before you got here, Senator Evans, by the representative of one of the South Dakota tribes, and that is our tribal councils aren't interested in grabbing these children from far away who are only part Indian. As a matter of fact, that isn't the purpose of the Indian Child Welfare Act.

The Indian Child Welfare Act was designed to protect the interest of the tribes in the retention of their children and from the forced or induced or artificial assimilation into the general popula-

tion which was taking place 10 years ago in Arizona and Utah and so forth. I don't have to remind you what these specifics were.

What we are dealing with in California are a bunch of children that have some ancestral connection to an Indian tribe. The tribe itself has no part in their daily lives. They have no interest in the tribe. Their parents have no interest in the tribe. Sometimes, the parent is an unwed father, and we can't even find him.

The last thing in the world the tribe is interested in is claiming this child. I believe that that child was not within the purview of the original act, but I think when the original act was put through, the focus was so completely on the perspective of the Indian tribe and the youngsters who were either conceived or born on the reservation or near the reservation that the impact on the non-Indian community was not considered.

So, I come here to urge two things on behalf of the committee. I urge that the definition of the Indian child to be included within the scope of the act be refined.

It seems to me that there should be two elements that the committee should include in defining the Indian child within the act. It should be either entirely of Indian ancestry or mostly of Indian ancestry, and if it is of less than half Indian ancestry, there should be an additional requirement of ethnic connection to the tribe.

In other words, Mr. Taylor and I had a telephone conversation where he defined this concept of within its community as based on a 1938 court case, and it referred to persons who weren't exactly within the tribe but they lived nearby and they interacted with the community of the Indians.

Well, if the act wants to include their offspring, I have no objection to that, but these were people ethnically and ancestrally connected to a tribe and within its culture and their children's culture was properly to be preserved. What we are dealing with in California are youngsters—mostly it is the father of the child who is claimed to have Indian descent, and he isn't there anymore, or if he is there, he won't admit paternity, and half the time you can't figure out what tribe it is.

Louise Reyes of the Bureau of Indian Affairs—I saw her in the back of the room a little while ago—Louise gets the inquiries from California, and she will confirm that 90 percent of the time, California's inquiries trying to establish an Indian connection for the child gets a response from Washington that they can't find it. Meanwhile, the child is tied up in the system and doesn't get adopted.

We have another thing which I find shocking. I was talking to the county counsel of the biggest public adoption agency in the whole United States, and he told me very frankly that when the word "Indian" comes into a possible ancestor, they start putting all their non-Indian cases ahead. They just don't have enough staff or budget to really deal with the cases where a part Indian child with an indefinite Indian ancestor might get them involved in the Indian Child Welfare Act. So, they just put that child's case aside.

Well, it seems to me, Senator, most of this is definitional and that if we can arrive at a definition that the Indian tribes will have proper access to the children that they are really interested in who really has cultural ties to the child and sufficient ancestral roots in

the tribe, then the act itself will focus on its own real target, and it will permit funds and administrative time to be used in pursuing the interests of youngsters who really do belong within the purview of the act.

The other element I want to touch on briefly is the problem of the unwed father. The act as it presently stands applies to unwed fathers where they have acknowledged paternity or their paternity has been adjudicated.

The thing that is significant about this is that when a person admits paternity or his paternity has been adjudicated, you can reach out and find him and bring him in to procedures, but the problem that we are dealing with is the unwed father who isn't there or maybe it is one of three fathers and one of them is Indian; and we don't know which one fathered the child, and the child gets all tied up in delay while people are looking for a father.

So, I would urge that the unwed father provisions of the present act be retained and that the only unwed father subject to the act be those who are adjudicated or acknowledge paternity.

This concludes my remarks, Senator, in view of the written presentation I previously made.

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

Senator EVANS. You mentioned the difficulties in California. I understand you have a parallel State of California Indian Child Welfare Act.

Mr. LEAVITT. Indeed, we do.

Senator EVANS. And what is the definition of an Indian under that act?

Mr. LEAVITT. We only refer to the Federal act. We have regulations—we have a State statute which requires compliance with the Indian Child Welfare Act, in effect, but it doesn't make these definitions on its own. Again, if the Federal act were redefined to include the more better defined group of Indian children, the California law would follow.

I might add, by the way, that California always notifies the tribe when it is alleged that there is an Indian ancestor somewhere along the line—notifies the BIA, not necessarily the tribe, because it might not know the tribe. But California gives the notice, and our problem is with the children whom the tribes are not interested in, and this is what I would like to see defined out of the act.

Senator EVANS. Does your act, however, require that if there is a declaration or assertion of any form of Indian ancestry that you notify the Bureau of Indian Affairs?

Mr. LEAVITT. I believe that it does. I know the State routinely does that. The attorneys don't do it.

Senator EVANS. Isn't that what slows things down and scrambles them? When your State law requires the notification, you in your testimony earlier on said that you have a big problem in California. Isn't it your own State law that creates the problem?

Mr. LEAVITT. No; because our State law follows the Indian Child Welfare Act, and if the Indian Child Welfare Act were revised to narrow it down, I know our State law would adjust to that.

Senator EVANS. But you don't notify or request any adjudication from the Bureau of Indian Affairs?

Mr. LEAVITT. Yes; we do.

Senator EVANS. When you do that before there is definite knowledge of whether that person is eligible for membership in the tribe or the other very specific things in the current law, you go to the Bureau of Indian Affairs, and it gets lost in the maw of the bureaucracy.

Mr. LEAVITT. It is not so much that. It is that most of the time, the connection with the tribe is so ephemeral, it is so indefinite, that the tribe can't find this person. I am not talking about the one who walks in the door and he or she is an Indian. She is a member of the Navajo. She is enrolled, or the father of the child is enrolled. You know who they are. You know where they come from. You notify the tribe.

That is not our problem. Our problem is with the part Indian, the culturally unconnected Indian, the one who has an Indian grandmother and doesn't exactly know which tribe it is, or one Choctaw and one Cherokee. We have terrible problems with the Cherokee simply because the major tribe in the country that does not require actual enrollment is the Cherokee.

Most tribes require enrollment, so if someone says he or she is an Iroquois, you then ask the next question: are you enrolled in the tribe? If that person says no, then the act doesn't apply to that person's offspring.

But when you ask them and they say Cherokee—and most of the Native Alaskan villages also do not require enrollment. So, when you have one of those people, you send to Washington, you send them a name, and they can't find anything. Washington consults the village or the tribe and comes back with no name.

It delays adoption proceedings and sometimes so long that the child can't even be adopted by the time it is free for adoption. It puts involuntary termination of drug abused children, of tormented children, of abandoned children—it puts their freedom from parental custody control and availability for adoption on a long track.

It just seems to me that a lot of it could be dealt with by redefining Indian child so that the definition focuses on the ones we are trying to protect and that the tribes are interested in but clearly eliminates the marginal, the mostly assimilated, the only part Indian child that, right now, the act takes in.

I don't think anybody really cared about when the act was drafted. It is just one of those unintended consequences which has had serious effects and which I urge the committee to address.

Senator EVANS. So, you are not even talking about the potential amendments. You are talking about the current law and its requirements.

Mr. LEAVITT. Two things. I think the current law should be amended to narrow the definition of Indian, and I think the amendment that would bring the unwed father within the scope of the act who has not been adjudicated or admitted to be the father—I think that amendment should be disapproved.

I think the absent, uncertain, running away father who is not admitting paternity is such a dreadful problem that even if he is an Indian, coping with that problem is just too deleterious to the need of children for prompt placement in good homes to delay placement while somebody goes trying to establish paternity from a fellow who doesn't want to be found.

Senator EVANS. I understand all that, and it is a difficult problem. The unfortunate end result is that the child carries half of that parent's genes and characteristics and blood. You know, even if the father is long gone and doesn't care, that child for a lifetime is going to carry that heritage.

Mr. LEAVITT. Well, Senator, what we are talking about is whether a very complicated Federal law involving tribunals and jurisdictions, in California's case, almost invariably thousands of miles away, with which the parties to the case have no connection—whether that is wise, and I submit that it isn't wise.

Senator EVANS. All right. Thank you very much. You have been very helpful.

Mr. LEAVITT. Thank you.

Senator EVANS. The next panel is Ms. Violet A. P. Lui, Ms. Evelyn Blanchard, and Ms. Margaret Rose Orrantia. Ms. Lui is the attorney for the Navajo Nation, the Department of Justice, Window Rock, Arizona. Ms. Blanchard is vice president of the National Indian Social Workers Association of Portland, Oregon. Ms. Orrantia is executive director of the Indian Child and Family Services Consortium in Escondido, California.

We will proceed in the order in which you are listed on the witness list. Ms. Lui, we will begin with you.

STATEMENT OF VIOLET A.P. LUI, ATTORNEY, THE NAVAJO NATION, DEPARTMENT OF JUSTICE, WINDOW ROCK, AZ

Ms. LUI. Thank you, Senator Evans.

I am pleased to be afforded the opportunity to appear on behalf of the Navajo Nation. I am the attorney responsible for handling the Indian Child Welfare Act cases on behalf of the Navajo Nation.

There have been references made to a case that many of you already know, the *Keetso* case. You have already heard about, I am sure, another case that was litigated over 1 year ago, and that involved Jeremiah Holloway, also known as Michael Carter.

In listening to the testimony given today, I was struck by the presence of persons not specifically named nor dwelled upon. There were speakers here who were quite eloquent in addressing the rights of an Indian mother to privacy and confidentiality. I want to assure the committee that the Navajo Nation has a very strong concern about the rights of a young Navajo mother contemplating placement of her child.

But I do have to comment that the eloquence concerning the rights of the child that I heard from various speakers seemed to be motivated by a very strong concern over that unemphasized element, and that is the needs of parents wanting to adopt children. They seem to be a strong element here today.

Statements in terms of the best interests of the child have also been made with regard to what is American, what should be non-racist. These statements I take to be echoes but very foreboding echoes of a theme that has been present in the area of Indian law, and that is Indians should be liberated from its special relationship with the Federal Government.

It is our position that the Indian Child Welfare Act, as it exists and as it is proposed to be amended, strengthens Indian children,

strengthens Indian parents, strengthens this society. It is an unusual situation in this world that the United States of America has an explicit and historically enforced relationship with its native people.

It is uncomfortable for other Americans to contemplate this relationship from time to time, and some of that discomfort was apparent in the comments today. There are times when the existence of Indian people, their wishes to remain Indian people, are inconvenient for other American citizens.

I do not use that term lightly. I do not mean to denigrate the desire of people out there for children. But as Mr. Ligtenberg expressed, it is not the duty of Indian people to provide children for those who desire to have children.

I note the statistic offered by Mr. Flint in his comments that their finding is that 80 percent of persons they counsel now will decide to keep their children. Look at that statistic. Fewer children are available. The pressure is there even for these well meaning people who see themselves as a helping force to place children. There is a pressure there to place children, to make them available.

So, when we come to issues such as Senator Evans comment, there is a State requirement, is there not, for you in your confidential interaction with the young mother to involve the State to an extent, it seems to me that it is just a small step and not a very intrusive one to make the involvement of the tribal government also a basic, natural—natural because it will be law—requirement.

There is an assumption that notice to the tribe is a breach of confidentiality and privacy. That is an assumption that is not necessarily a given if notice is required to the tribe.

The Navajo Nation feels very strongly that these amendments, particularly where the tribal involvement will be required in voluntary proceedings, that these amendments are necessary. The *Keetso* case was a very good example of the fact that we did not receive notice early on about the child. The child was born July 20, 1987. We did not receive any indication that an adoption plan was being considered until November 1987. As soon as we did, we began to take action to look into the case.

We did so quietly and sensitively. We did not litigate the case in the newspapers and never have. That is not the way we approach these cases.

We learned well after matters had proceeded in the *Keetso* case that the family involved had known at least as of May 5, 1987 before the child was born that the child was domiciled on the reservation as a matter of law, and their efforts to adopt her in California were not legal. We learned this through a tape, a copy of which we intend to submit for the record, that was provided to us by a Bay Area Indian group in which Mrs. Pitts was in the audience of a talk show, and the talk show host included Mrs. Carter of the Utah family that attempted to adopt the young Navajo boy and her attorney.

The question was posed by Mrs. Pitts: we are flying out a young Navajo girl from the reservation. She is going to live with us and have her child. We intend to adopt the child. Can they—I assume she meant the tribe—take the child from us?

The Carters' lawyer responded, having gone through the experience himself in the case and litigating that specific issue, that the domicile of that young mother is the reservation. The domicile of that child will be the reservation. What you are doing is not legal.

So, we were faced with a situation that here were people who had pretty good sound information on what should be done and, yet, we were faced with having to pursue our rights under the law, having to go to California into the California court system—which we have no problems with doing, of course, because the law is there, it is clear, and there are processes—having to argue to the court what the law says and what should be done and having to wait.

Months tick. Months go by. We get our decision, and that somehow didn't seem to help. We were met with resistance all the way.

The final outcome was that we went through the Navajo Children's Court with what I think are very good results. As the chairman of the Navajo Nation has described in a letter that Senator McCain is to submit for the record, I understand, the outcome protected the child's Indian heritage. The outcome protected the mother's interests. The outcome protected the extended Navajo family's interests in that child, and the outcome protected Mr. and Mrs. Pitts.

There has been criticism for what all happened, but when it comes down to what I now know, what we had to find out subsequent to all of this, it is that the very people who wanted the child had the information to do the correct thing and yet did not.

In the *Holloway* case, we faced a similar situation. The law was there. Yet, there was still resistance.

What it comes down to is we need the act to be strengthened. We need the specific notice requirements.

Now, in the discussion today regarding the confidentiality problems, the privacy concerns, we take that very seriously ourselves, and we do intend to submit further suggestions on that. However, that is not an area in which we would say that we need to back away from notice to the tribe, the involvement of the tribe.

There may be individual cases with particular tribes where some other avenue needs to be worked out, but that does not mean that the general rule should be so altered that the tribe is not given notice. That is like throwing the baby out with the bath water, and there is no need for that. There is no call for that.

In sum, Mr. Chairman, I want to commend the fact that this bill has been offered which expresses the desire not to cut back on the protections of this act but to expand it to create new avenues so that Indian children can be helped to retain their Indianness and so that in any consideration in any court of this land, when you are dealing with an Indian child, that there will be almost an automatic consideration that part of the best interests include the fact that they are Indian.

Thank you.

[Articles submitted by Ms. Lui appears in appendix.]

Senator EVANS. Thank you very much.

Ms. Blanchard.

STATEMENT OF EVELYN BLANCHARD, VICE PRESIDENT, NATIONAL INDIAN SOCIAL WORKERS ASSOCIATION, PORTLAND, OR

Ms. BLANCHARD. Good morning. Thank you for the invitation to appear here.

My name is Evelyn Blanchard. I am vice president of the National Indian Social Workers Association, and I am employed by tribes and Indian families throughout the United States and Canada as an expert witness in their efforts to regain custody of their children. I was employed by Jeremiah Holloway's mother in the case to which Ms. Lui referred on the Navajo.

I have a written statement which I will submit to you, but I would like to cover some other areas in my oral discussion. Before that, I would like to call to people's attention that while there are not tribal leaders and tribal officials on many of these panels, it is my experience that these individuals and these governments all are very concerned about the further development of this law and support the strengthening of it.

In addition to the position of U.S. tribal leaders, we also have in the room today with us tribal leadership from Canada. We have with us Mr. Phil Fontaine who is vice chief of the Assembly of First Nations in Ottawa, and also is vice chief from Manitoba. We have Chief Jim Bear from the Broken Head Indian Reserve in Manitoba and David Iftody, the Child Welfare Advisor for the Assembly of First Nations in Ottawa.

We also have Joan Glode who is the first director of the Micmac Family and Children's Services of Nova Scotia. The Micmacs in just the last several years have embarked upon a very ambitious educational effort among their people and have taken control of the family and children's services from the Children's Aid Society in Nova Scotia. Currently, Joan is working to get a Micmac child returned from California where the child remains in the custody of the State and for whom the Micmacs did not receive notice until some 5 months later.

I would like to first of all address some of Mr. Swimmer's comments regarding the racist characteristics of the Indian Child Welfare Act and, particularly, these amendments and his questions about its constitutional status.

I have had the opportunity to work with this law since it was being thought about and drafted. So, I do have a long history with the act. It is my memory that these constitutional issues were raised initially by the Department of Justice before the Indian Child Welfare Act was passed in 1978 and that Congress decided they were without merit.

So, I don't see the need to continue to bring up these constitutional issues, especially when they are only viewed from the non-Indian perspective and where the concern about them comes from a strong emphasis of private, independent adoption efforts.

As regards the racist characteristics of the act and the amendments, those are difficult to understand. For example, 2 years ago in the State of Oregon, we were able to get enacted a State law entitled "The Southeast Asian Refugee Child Welfare Act," because it was found in our practice of children's services that the Southeast

Asian people were in fact experiencing identical practices experienced by Indian families which brought about the passage of the Indian Child Welfare Act.

In the State of Minnesota, a State law exists which recognizes the ethnic backgrounds of all peoples, not just Indians, not just Southeast Asians, but Italians, Germans, Danes, and Norwegians. Respect is given to the plurality of people and its contribution to this Nation. So, I fail to understand these racist claims.

Also, I think there has been little doubt in anyone's mind since the passage of this act and even before that the Bureau has always been seen as the agency that has responsibility for monitoring the act. In fact, it issued guidelines to State courts. That establishes some status.

Unfortunately, the Bureau has not made real attempts in the past 10 years to address this problem of monitoring. I think that it contributes directly and greatly to the many misunderstandings that have developed with regard to protections that the act provides to Indian people, tribes, and children.

Sometimes they say if you are not paranoid, you are crazy, and this is one of the times where I think maybe that is so. Even yet in 1988, no effort is being made.

Mr. Swimmer indicated that he thought that the country was in about 80 to 90 percent compliance. Well, in my travels throughout the United States, I can tell you that that is hard to believe. I don't see it.

Recently, the State of Washington and the State of Oregon got together. There were representatives of tribes, schools of social work, State children's services divisions, IHS and other Indian organizations. They got together and proposed a very simple monitoring instrument that we could test out using students from both of the schools, the School of Social Work at UW and PSU in Portland. We figured that, at the most, this would probably cost about \$47,000 and maybe less.

I carried this to the Bureau of Indian Affairs offices here in Washington, DC, and the idea was totally rejected in spite of the fact that we had sent out a copy of our proposal and a description of our effort to all the States in the Union. We received 22 responses from States indicating that they had no means to monitor. Some had made meager attempts, but these were no good, and they were very anxious to be able to try out an instrument like this.

We were told that the effort that the Bureau was making is a study that is being conducted by an organization or a corporation called CSF. I had an opportunity to look at the materials developed for that study. There are 11 different questionnaires. I didn't count, but at least a third to one-half of the questions that are posed in these 11 different questionnaires are open-ended questions.

I don't know who the people are who are going to be asking these questions of judges, case workers, or whomever throughout the country. However, I can tell you from my practice that they need to be people who are very knowledgeable about the field. Otherwise, the kind of data that will result from this effort may be useless. If it is not useless, it is going to be extremely difficult to compile which raises a lot of questions about the validity of the effort.

Efforts are being made by States to, for example, monitor private agencies. I can speak for both the State of Washington and the State of Oregon, because I am very closely tied to child welfare services there. I have served for many years on the Children's Services Division Advisory Committee of the State of Oregon, so I am very close to the practice, and we also work very closely with the people in the State of Washington. So, I know that at least in these two States, specific efforts are being made to gain some control over private agencies to assist them to adhere to the requirements of the law.

Many objections have been raised with regard to these amendments as they pertain to privacy and individual freedom and confidentiality. It has been said that our basic rights are being taken away.

First of all, I think we need to keep in mind that many of these voluntary adoptions are, in fact, not voluntary but, frankly, involuntary. In the case of Jeremiah Holloway, as you become familiar with the history of that case, the situation of that mother, and the options that were placed before her, and the people who really held the power in that young woman's life—at 18 years old, had not completed high school, no training for employment, a broken love affair—I mean, this is a typical 18-year-old who gets pregnant. She is a very confused person.

In my opinion, and I am a social worker and have been working in the field for 26 years in child welfare services; those circumstances certainly do not contribute to a thoughtful, voluntary act on the part of these mothers. I would not describe Cecelia Holloway's relinquishment of her child through voluntary adoption consent as voluntary. It simply isn't.

In fact, it has long been recognized in the field of social work, not just in work with Indians, that it is inappropriate to press the birth mother with the problem of relinquishment during her pregnancy. In fact, the outcomes for the mother's health, both physical and emotional, are reduced when this individual is required to experience such stress.

It is very difficult, I know, for many non-Indian people to understand why it is that it is necessary that notice of birth be given to the tribe even over the mother's objection. And I think that if we look at the law again and contemplate the placement preference, I think we will see that the Congress in 1978 tried very hard to provide the kinds of protections that the tribes really saw that they needed.

As was explained to Congress repeatedly when the law was being developed, Indian people have two relational systems. They have a biological relational system, and they have a clan or band relational system.

It is the convergence, if you will, of these two systems in tribal society that creates the fabric of tribal life. And each of us as an Indian person has a very specific place in the fabric. We have very specific responsibilities within the fabric. Those responsibilities are our rights, individual rights. And even our mother has no right to deny us those rights.

We want that. We know ourselves, and that is necessary for these children.

Unfortunately, the resistance to an understanding of our philosophy remains strong. In fact, as we heard today, frankly, corrupted. What it appeared to me that some people were saying today was that not only do we relinquish some of these protections that were instituted ten years ago, but also nobody wants to go back to a reservation, nobody really wants to be an Indian. These children who have been separated and whose parents have been separated from reservations for years have no interest or affiliation or concern or respect for their tribal knowledge.

That simply is not the case. A lot of the work that I do is, in fact, in the State of California with Indian children who are third generation Californians. Their grandparents were the ones who were relocated to the Bay Area by the Bureau of Indian Affairs for either training or employment. We are now working with the grandchildren.

I can tell you from my own experience that the ties between these children and their relatives in the Pueblos and in other tribal areas throughout the country is extremely strong. And when these children return, they immediately get the benefit of the resources of their tribes and communities. They are named. They are accepted into a clan. They are taught how to hunt. They are taught all the things that they need to do as part of their lives.

I had hoped that one young woman with whom I am working right now from Canada would be able to accompany me, because I think that she would be able to demonstrate to you the necessity for the strengthening of the law through these amendments.

The recommendations that are being made to improve the law are ones that have arisen out of the practice of both law and social work in these past ten years. This particular young woman was adopted out of the Province of Saskatchewan through Lutheran Family Services to a family in York, Pennsylvania. At least from what I can tell from what information I have received, there was no post-adoptive work and no follow-up.

This child was physically, sexually, and emotionally abused by both adoptive parents. She was adopted when she was seven. She ran away from them finally for the last time when she was thirteen years old.

From then on, she lived in about 22 different foster homes, psychiatric wards, and group homes. You name it, she was there.

She is a classic case of abuse. She entered into prostitution. She became absolutely obese. She is completely ashamed of herself. It is hard for her to have any kind of contact with anybody. She isolates herself. She is only one example.

I have helped work on a campaign for a young man sitting right now in Stonybrook Prison in Manitoba. Cameron Curley was featured on "60 Minutes" several years ago. This child also was brought into this country, placed with a man from Wichita, Kansas who drove to Brandon, Manitoba to pick him up. No study, nothing.

Mr. Curley turned out to be a pedophile, and Cameron suffered, was shamed, beaten, physically and sexually abused under this man's care until he was probably about 14 or 15 and then he, too, began to run away. When he was about 19 years old, he returned to his adoptive home and slew his adoptive father.

These are only two cases, and these are Canadian cases, and I wanted to highlight those because the Canadians are very interested, too, in these amendments. These two cases mirror the experience of hundreds of Indian children from the U.S. who have been placed with non-Indian families for adoption.

Unfortunately, it seems that we are yet meeting the needs of the non-Indian adoption market as opposed to the best interests of the Indian child, and the numbers of disruptions that come to our attention certainly would support that position.

Before going down to testify in the *Holloway* case on the Navajo, I called Cecelia Sudia who works with the Children's Bureau and who has responsibility for oversight of Indian programs. I wanted to know, because I thought I might be asked on the stand, how many adoption disruptions are there where Indian children are involved.

She told me that she had absolutely no clue, because they had no figures on how many Indian children had been adopted. Now, that sort of flies in the face of Mr. Swimmer's 80 and 90 percent.

I know from just working with the Children's Services Division in the State of Oregon that we are not able to report that, because, frankly, our information systems are not set up sufficiently to be able to do that. The Indian Child Welfare Act liaison who works in the central office in Salem has been keeping pencil notes, but it is not yet a part of the information system, and I don't believe it is in the State of Washington, either.

I might call to your attention—

Senator EVANS. I wonder if you might summarize at this point. We still have one more witness, and we are running out of time.

Ms. BLANCHARD. All right. I might just let you know, though, that the States of Kansas, Washington, and Michigan, through tribal-State agreements, are reporting voluntary placements. The States of Minnesota and Oklahoma, through their own State laws, are reporting voluntary placements.

So, I don't see that some of these problems that have been brought forth are insurmountable.

Thank you.

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

Senator EVANS. Thank you very much.

Let's turn to our final witness, Ms. Margaret Rose Orrantia.

STATEMENT OF ROSE MARGARET ORRANTIA, EXECUTIVE DIRECTOR, INDIAN CHILD AND FAMILY SERVICES CONSORTIUM, ESCONDIDO, CA

Ms. ORRANTIA. Thank you, Mr. Chairman. I am Rose Margaret Orrantia from Indian Child and Family Services. We are based out of Escondido, CA. The area that we serve is San Diego County and Riverside County.

We are title II grantees. We have recently been notified that we will be funded for next year. That means that this will be our ninth consecutive year of funding under the title II grants.

I would like to say that in the nine years that the program has existed, I think that we can show a model for the Indian Child Welfare Act being implemented. We can show you a program that has

a reputation for excellence, and with limited resources, we are able to ensure that in those counties where we are working, the act is implemented. It can happen if the resources are made available.

I do not have written testimony to submit, because I was using the time prior to coming here to submit an appeal to the Bureau of Indian Affairs. We were notified that we will be funded, but the level of funding is ludicrous. There is no way that the amount we were given will allow us to provide the services that are needed in this area.

For the gentleman from Beverly Hills in California that testified prior to us, I would like to say that the State of California very definitely does have an indigenous population of Indian peoples. They are not all from out of State. I think he needs to do a little homework.

Not only are there quite a number of indigenous peoples, part of the problem with the State of California is that because these indigenous peoples were small bands of Indians and because they did not have large land bases such as the Navajos have or other tribes, it is an area that is really beautifully set up to divide and conquer. And in the State of California, that is precisely what happens.

I would also like to say that the State of California, by its own survey which was conducted in 1983 and 1984, has found itself to be 85 to 95 percent out of compliance with the Indian Child Welfare Act. The suggestion that States be allowed to monitor their own compliance, to me, is like putting the wolf in as the shepherd of the flock. I sincerely doubt that you are going to have any kind of compliance.

In the counties that we serve, I have a current case load for April of 1988. In San Diego County, we have 51 children currently in placement. In Riverside County, we have 62 for a total of 113 children in those two counties. All but 8 of those children are in either a relative placement, in a tribal licensed home, or in a licensed Indian home.

We actively recruit Indian homes. We have enough Indian homes for the children that are referred to us. Any of those counties or any of those States where the comment is made that there are no homes available, I think that if a little research is done, you will find that there have been no active efforts made to recruit Indian homes.

Because of the difficulties that we were having with the State of California in their persistent and continuing lack of cooperation to place Indian children in Indian homes and saying that they couldn't be placed because there were no Indian homes and when those counties were doing the recruiting, there were no Indian homes, because they weren't recruiting them.

So, I can prove to you that those homes are there. They are not only Indian homes; they are good Indian homes. They are good Indian homes by anybody's standards.

I keep having this feeling that the majority population seems to feel that you have to lower standards somehow to have a good Indian home. That is not the case.

All of our homes are licensed. We use the State of California standards which we adapt, because we have that ability and that prerogative to do it because the act gives us that ability and pre-

rogative, and our homes are excellent homes. We are monitored on a yearly basis. They come out and evaluate our homes, our files, and they go visit our homes. There has never in the history of our being licensed been any gross deficiencies found in any of our homes.

Then, just to further provide services, we found it necessary to apply to become licensed as a State adoption agency, because for the children who were in the case load, once parental rights were terminated and it went to adoptions, there was no way for us to have access or to have input as to where these children were going to be placed.

We began to find that, in most cases, the children were being placed in non-Indian homes and, once again, the same excuse is used, that there are no adoptive Indian homes. Once again, I will give you the same reason: they don't recruit them.

So, it is essential that there be programs such as ours that are out there, that are actively recruiting, that are doing case management, that are ensuring that the children are being placed in Indian homes, and that the homes are being monitored, which is what we do.

Those are some general comments that I wanted to make in reference to why Indian children don't get placed in Indian homes.

I have some further comments that I wanted to make.

I also would like to state that this past year, our organization also did pick up the Los Angeles project which was defunded by the Bureau of Indian Affairs, and we picked it up on monies that were given to us by the State of California. It was a one-time only appropriation.

If you will look at that case load—and I will submit the case load profiles to you so that you can have them — we asked for a print-out of the case load for the county of Los Angeles, and they identified 200 Indian children in their case load. Yet, only 35 were referred to us.

Of the 35 that were referred to us, only 5 of those children are in Indian homes. All the rest are in non-Indian placements. Several of those cases are now at the point where there has been termination of parental rights. I believe the *Micmac* case is one of them.

Those children are in non-Indian homes, and in our experience, what happens is that the court will say that they find good cause to the contrary to place the children in Indian homes because they have already been in non-Indian homes for anywhere from months to years and that it would be detrimental to the children to be removed and placed in Indian homes.

Some of the other issues I wanted to address have been addressed in some part by some of the other people who have testified. The whole issue having to do with training— there is not adequate training. I guess I can only speak for California. There is not adequate training for the county social workers. Most of them are not familiar with the act. It has been in existence for ten years. Yet, to this day, they will say well, I didn't know there was such a thing as an Indian Child Welfare Act.

The system for notifying tribes that the State has put into effect is cumbersome. When a child is going to be adopted, county workers are instructed to fill out a very lengthy and complicated form