Another example of how we are trying through these amendments to increase tribal involvement and control is an amendment clarifying that tribes have exclusive jurisdiction over children domiciled on the reservation.

A third example of an amendment which attempts to increase tribal involvement is the amendment which would require that whenever a State agency is going to be in contact with an Indian child for more than 30 days, the tribal social services agency must be notified so that it can provide input, refer the child for appropriate services, et cetera.

A third goal of the amendments is to try to increase the possibility that families will remain intact. The tribal services requirement that I just mentioned is one example of how we have tried to do that. Another example is an amendment that would include additional safeguards to make sure that voluntary out-of-home placements are in fact voluntary. Also, we would require that expert witnesses have cultural sensitivity to the child's background in involuntary proceeding where the State is trying to remove a child. These proposed changes are examples of amendments which based upon this third principle.

The fourth goal of our proposed amendments is to try to maximize the possibility that those children who are placed out of home are placed with their extended families, other tribal members, or other Indian families whenever possible. The provision in the current bill that allows placement outside of those categories for good cause has been the subject of some abuse on the part of agencies and courts. What we propose is removing that language from the Act and replacing it with specific instances in which such placements would be allowed. In addition, there would be specific requirements that the State must meet before it can look for a non-Indian placement; certain efforts to find an appropriate foster care placement in an Indian household would be required.

A fifth goal of our amendments is fairer and quicker proceedings. As many of you know, these proceedings often drag on year after year after year, which certainly is not in the best interests of the child. We have recommended increased access to Federal courts as one solution and we have asked that expedited proceedings be mandated in certain circumstances.

The sixth goal of the amendments is to try to introduce more compliance monitoring mechanisms into the bill. At present, there really is just not much of a check upon whether or not the Act is being complied with. For example, Title XX audits of State social services programs audit a wide variety of activities by State social services agencies, but they don't monitor compliance with the Indian Child Welfare Act. Including compliance with the ICWA in the audit is one example of how you can introduce into the law mechanisms for monitoring compliance.

In addition, we have recommended that committees be set up by the BIA on an area-by-area basis which could monitor the overall system to make sure that compliance is occurring.

The seventh area that we have tried to address in the proposal is to improve the Title II grant process. You have heard testimony about how problematic that process is. I would just, as an aside, mention that I heard the Bureau state, in its testimony, that they

are funding 128 programs and that this is equal to all of the programs that have received a passing grade. But they didn't tell you how they set the passing grade. They didn't explain how the number of so-called qualified programs has been reduced from about 160 or 170 a few years ago to 128. I suspect that those additional 40 or 45 programs have not suddenly become unqualified to provide services; rather they have become unqualified because the Bureau doesn't want to see appropriations increased.

The last goal of the proposed ICWA amendments that I will mention today is to improve the recordkeeping of foster care and adoptive placements and to increase access to such records. I know that Senator McCain questioned the statistics attached to the Bureau's testimony. Quite obviously, States are not reporting placements of Indian children the way they should. That kind of information should be made available to everyone concerned so we can all see what is actually happening out there.

The second part of our proposal deals with funding. There are a number of ways to deal with funding. I know some witnesses have suggested that Title II be made an entitlement program and that the appropriations be significantly increased. That is certainly one way to deal with this problem. If Congress were to appropriate $30 million for that program and make it an entitlement program, that would certainly go a long way toward addressing funding problems.

We have prepared an alternative approach because we weren't so sure that Congress would appropriate $30 million for a program that it has only appropriated $8.84 million in the current year.

This alternative approach provides for set-asides for tribes from some of the block grant programs targeted to States. Thus, we propose direct Federal funding to tribes under title XX. I noticed that HHS testified that it supports that particular amendment, and we are happy to hear that.

Also, we have proposed direct set-asides under title IV(B). You have heard that there is a small amount of funding going to tribes under title IV(B), but the eligibility requirements for funding under IV(B) are currently very restrictive. Only a small number of tribes receive that money at present, and the amount of money involved is minuscule. We are looking for a much larger set-aside without all of the eligibility restrictions that HHS has placed upon the IV(B) tribal program.

The last program for which we have suggested a set-aside in the Alcohol, Mental Health, and Drug Abuse block grant. Our intent in proposing these set-asides is to provide a stable, secure source of funding for tribes that they would be able to count on year after year so that they can set up social services programs that will be consistent and on-going. I don't think that the proposed funding will be totally adequate, but certainly much more adequate than is current funding.

The last part of our second proposal involves title IV(E). There has been some testimony about title IV(E) foster care payments. At present, the way I understand the law, a tribe can receive IV(E) payments only if it has an agreement with the State.

If the State does not sign an agreement with the tribe—if they can't agree on the terms, if the State isn't interested, whatever the reason—then IV(E) payments are not payable to tribes. The failure

to execute agreement can arise from a whole number of factors and it is our belief that an agreement should not be a prerequisite for tribes receiving IV(E) funds to fund tribally licensed foster care homes.

I heard the State of Alaska pretty much say the same thing in its testimony, that the State felt that linking the two programs together, tribal and State programs, and requiring that each meet the other's requirements in order for funding to continue, was not a productive way to set up the system.

Often this linkage is one reason why States are reluctant to enter into agreements, because they don't want to lose control over whether or not compliance is occurring. I think the best way to deal with this problem is to provide for direct funding to all tribes who have licensed their own foster homes. That is what we have proposed.

Just one last comment I would like to emphasize. The purpose in developing these proposals was to start a process, to try to encourage appropriate forums address the needs which we have heard over and over again.

We would urge the committee to take our proposal, take other proposals, take the comments to these proposals, and develop a bill that reflects as many of the needs and concerns that you have heard and that we have heard and which most of the people in this room are aware of, get that bill introduced, circulated it to Indian country, let everybody have a shot at it and indicate if they like it or they don't like it and to come up with better suggestions about how to address these problems, and then pass a bill that Indian country can support and that will meet the needs that are out there.

That was really our goal in developing this proposal, and we are glad to see this hearing being held because we feel that it's an important step in the right direction. I thank you for inviting us.

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

Senator McCAIN. Thank you, Mr. Trope. We appreciate your being here, and I can assure you I have looked at your proposal and so has staff. I think they are going to provide a very valuable contribution to this process. I want to tell you we intend to address the issue exactly as you recommend.

Mr. Dorsay, thank you for being here, and please proceed with your statement. If you choose, I can make your complete statement a part of the record.

STATEMENT OF CRAIG DORSAY, DIRECTOR, INDIAN LEGAL SERVICES PROGRAM TASK FORCE ON ICWA, PORTLAND, OR

Mr. DORSAY. Thank you, Senator McCain. I am not going to address my prepared testimony.

Senator McCAIN. Without objection, both your prepared statement and Mr. Trope's prepared statement will be made part of the record.

Mr. DORSAY. Thank you.

Senator McCAIN. Please proceed.

Mr. DORSAY. Thank you. As an introduction, I am appearing here on behalf of legal services programs across the country. I serve as

the coordinator to assist them on Indian child welfare cases. As you also know, I spent three years on the Navajo reservation handling the Indian Child Welfare Act for the tribe, and I am the attorney who has handled the now, I guess, infamous Halloway Carter case.

Senator McCAIN. It is certainly famous in Arizona.

Mr. DORSAY. Yes; I think the Halloway case serves a useful example because in my opinion the Indian Child Welfare Act worked exactly the way it was supposed to in that case. The unfortunate aspect of it is that it took so long to reach the proper resolution and that the length of time was not in the best interest of the child at issue in that case.

The case points up a couple of things I think the committee needs to address. One, for instance, is the problem in the fact that each State under the Indian Child Welfare Act as it exists now has the opportunity to interpret the act the way it sees fit. So, for instance, in the Halloway case we already had decisions out of the State of Arizona and the State of New Mexico confirming the tribe's exclusive jurisdiction over these types of cases, and yet we were forced to justify that position for over five years in the State of Utah.

The expenditure of resources on the part of the tribe was just enormous. I would have hoped that the Halloway case would have settled that issue, but I am also aware of another new decision out of the Supreme Court of Mississippi holding that where a child is born in a hospital off reservation and the parents sign a consent to adoption, the Indian Child Welfare Act doesn't apply because the child has never been part of an Indian home. So we still have that problem. Until we can get some uniform interpretation, we are in great difficulty.

I think two examples in the Halloway case point out why tribal court jurisdiction was critical. Both of those go to some of the stories in the press that I am not sure were accurate. All the stories indicate that the adoption was granted in 1980, that the mother consented voluntarily. That wasn't quite true. The child was taken from the reservation by an aunt who had converted to the Mormon religion, and that aunt had arranged the placement of the child in a home. She took the child without telling the mother what the purpose for the removal was, and then later convinced the mother that that removal was proper and had her sign a consent.

All of the testimony in the State court was that the mother didn't do anything to revoke her consent, she knew where the adoptive parents lived, she could have hired an attorney. They asked her to perform all the actions that a college-educated non-Indian person would. In tribal court we asked the mother what she did after she gave consent. She went back to the reservation and she had a number of tribal ceremonies performed. She did the hand trembler, which is the Navajo diagnostic ceremony. She went through the beauty way, the corn pollen way, the turning of the basket, and a number of other ceremonies designed to try to get the child back.

The medicine man told her the way for her to get her children back was to pray, and she did that. So from the traditional Navajo perspective, she was doing everything she could to obtain the return of the children. The State court said she had done nothing

and had abandoned the children, and therefore terminated her rights.

The same thing happened also in that the mother had allowed a grandparent to take care of the child for a while. The State court terminated her rights, in part, based on the fact that she had abandoned the child by letting the grandparent take care of the child. Under Navajo custom, that is a common concept and by Navajo statute does not constitute abandonment.

The final issue on that I think I want to address is the bonding issue. That gets to the speed of the trials. We stated as soon as I intervened in the case that we didn't want bonding to be used against us. We asked for visitation in late 1982 so that it wouldn't be used against us, and the State judge denied that visitation, saying the case would be completed in a short period of time.

Of course, that bonding was the basis for all the outcry in the press that why are we trying to steal this child away after he has lived in the home for so long.

The Aunt in this case deliberately tried to remove the child. She stated in testimony she did not want that child placed in an Indian home. If the act had been followed correctly, there were many Navajo homes who would have taken that child and the case would never have arisen and this child would never have suffered any of the emotional damage that he did.

I want tc address also the funding issues. I enjoyed listening to some of the Bureau testimony on funding. We have a lawsuit presently going on in Federal District Court in Phoenix against the Bureau of Indian Affairs on the title II grant program.

It is a fact, I find it kind of frustrating because I submitted testimony to the committee in 1984 suggesting changes, and I think in reviewing that testimony it remains relevant today, all the changes that we suggested. As the Bureau testified in 1984, they always recommend zero dollars for funding. It's nice that we're up to $8.8 million, but that funding is always imposed on them rather than them asking for it.

They also stated that the proposals total approximately $13 to $14 million. Well, I could say, for instance, from the Navajo perspective, we have asked whether we could submit proposals for more than the limit, which is $300,000 for the Navajo Tribe. That is denied. So the limit of applications is an artificial limit imposed by the bureau on tribes. There has never been an assessment of the need for these types of services in Indian country, and I would submit that the need is critical and much larger than they have asked for at this stage.

Technical assistance, we consider so far has been a joke part of the Bureau. The TA that has been provided is only provided beforehand. In the lawsuit that is going on, we asked for what technical assistance the Bureau had provided, and they provided us with a list of 41 actions. Of those 41 actions, 37 consisted of sending the public notices that had been published in the Federal Register to the tribe. None of them involved a face-to-face meeting with tribal personnel and assisting them in coming up with an adequate proposal.

The minimum score necessary to get funded is 85. In one of the years we had an 84, even though the Bureau admitted the local

area office stated that our application showed need for the funding. The central office here in Washington required that the area office disapprove the grant application because it did not show merit and need because it was one point short. I have a hard time believing that there is no need on the Navajo Reservation for these type of services, given the unemployment rate and poverty rate.

We also have a lawsuit going on against the State of New Mexico on title XX funding. I think as Myra Munson pointed out, there is a great difficulty because of this squeezing of funding among States and tribes.

When the State of New Mexico had a consent decree entered against it because it was not providing adequate services to its own non-Indian citizens, it resolved or tried to conform with that consent decree by taking money away from the Navajo Tribe that it was contracting with the tribe under title XX to meet the terms of its own consent decree. So, we have been suing the State of New Mexico to get adequate funding under that.

I agree with Mr. Trope's comments that under IV(E) funding you have to be in State custody at the moment. One of the other questions that Senator Inouye addressed was placements. We would have a lot more Indian homes available if there was funding necessary to identify those homes and to support them. There are not enough available homes. I had a case that I fought for 2½ years, and when we finally won the right to have the child placed back in the family, the family had to refuse because they couldn't afford to take the child in their home and there was no foster funding available for tribe.

I have been involved in over 500 Indian child welfare cases. My experience has been mixed on them. Some States are very good. Other States are bad. I could probably provide a personal list.

Senator MCCAIN. What is your opinion of Arizona?

Mr. DORSAY. Arizona is mixed. I was going to address the subject of State-tribal agreements, for instance. We have an agreement with New Mexico that works very well. The same thing that Washington talked about, we put the social workers together, told them find out what works, and we have an agreement that has reduced litigation by 90 percent. We have tried the same thing with Arizona. It has been 4 years now, and we don't have an agreement. Some courts are good, some are bad. The court decisions out of Arizona have been excellent, but you should probably ask Anslem Roanhorse, who is the director of the division, who will be testifying this afternoon. He would have a better idea.

Oregon, we have trouble having the State recognize tribal courts as competent courts. It has been mixed.

We have submitted some of our own proposals. They are, in essence, a great deal like those provided by the association. I think there are some minor differences, and I agree with Mr. Trope that the committee and Indian country should work out an agreement that works best in these cases to bring this funding around and to bring the jurisdiction around in a way that protects Indian children.

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

Other material retained in committee files.]

Senator McCain. Were you satisfied with the results of the Halloway case?

Mr. Dorsay. Yes; I think it was the best, given the circumstances of the case. If we had known about the placement when that placement initially occurred, we would not have settled for anything less than placement in an Indian home. At this stage, the mother is very satisfied that she has some contact with her child. That was not a setting, not a result that we were able to get in the State of Utah. The child's culture will be protected; he will be protected against emotional damage from being taken away from his present home. So I think it's the best result, given the facts of the case.

Senator McCain. We have some follow-up questions that we would like to send to you for the record and ask your responses, from other members of the committee.

I appreciate both of you being here. Both of you, I appreciate your dedication on behalf of these problems that affect native Americans. I know it has been very frustrating for you from time to time, but I think there is a lot of people who appreciate what you've been doing and have done.

Thank you very much for appearing today.

Mr. Trope. Thank you.

Mr. Dorsay. Thank you.

Senator McCain. The hearing will recess until 2 p.m., when we will hear from panel number five, the last one on this hearing day.

This committee will stand in recess until 2 p.m.

[Whereupon, at 12:36 p.m., the committee was recessed, to reconvene at 2 p.m., this same day.]

AFTERNOON SESSION—2:15 P.M.

Senator DeConcini [presiding]. The Senate Select Committee on Indian Affairs will come to order. This is a hearing on the Indian Child Welfare Act, and we have a panel that we are going to hear: first, from Mr. Roanhorse, director, Division of Social Welfare, Navajo Nation.

Is Mr. Roanhorse here?

Mr. Roanhorse, if you would please summarize your statement, your full statement will be printed in the record.

STATEMENT OF ANSLEM ROANHORSE, DIRECTOR, DIVISION OF SOCIAL WELFARE, NAVAJO NATION, WINDOW ROCK, AZ

Mr. Roanhorse. Thank you, Mr. Chairman. Members of the Senate Select Committee on Indian Affairs, staff, and ladies and gentlemen, my name is Anslem Roanhorse, Jr. I am the executive director of the Navajo Nation Division of Social Welfare. I am honored to present this testimony on behalf of the Navajo Nation regarding the Indian Child Welfare Act.

The Navajo Nation has provided written testimony, and in the time permitted I would like to just highlight the major concerns noted in that written material.

I am the descendant of the Totsohnii Clan, which is also called the Big Water Clan, and born for the Tsi'Naajinii Clan, which is called the Black Streak Wood People Clan. My maternal grandfather was of the Ashiihi Clan, which is referred to as the Salt

People Clan. My paternal grandfather is of the Tachii'nii Clan, which is referred to as Red Running into the Water People Clan. I mention my clan membership because one's identity and blood relations are still very important to the Navajo people.

I have worked with the act as a social worker, administrator, and trainer. I was instrumental in establishing the first ICWA program for the Navajo Nation in 1980. Since 1980 the Navajo Nation's ICWA program has grown to the point where it now receives up to 400 referrals per year from throughout the country. I was also instrumental in developing an intergovernmental agreement between the State of New Mexico and the Navajo Nation, and this agreement helped in clarifying the processes, procedures and policies for handling the Indian child welfare cases. Finally, I conducted several training sessions on the act in at least five States.

As you may know, the Navajo Nation is the largest Indian tribe in the United States. The land covers approximately 25,000 square miles. The Navajo Nation spans into three States; namely, Arizona, New Mexico, and Utah. Additionally, the Navajo Nation spans into three Federal regional offices; namely, the Region VI office headquartered in Dallas, Texas; Region VIII office headquartered in Denver, Colorado; and Region IX office headquartered in San Francisco, California.

Craig Dorsay, an attorney, also submitted a testimony this morning. Mr. Dorsay was formerly employed by the Navajo Nation and currently assists the Navajo Nation with the ICWA cases through a contractual relation. The Navajo Nation supports his testimony.

The Navajo Nation has operated an ICWA program for several years through the Division of Social Welfare. In fiscal year 1985 this program handled 407 referrals, and in fiscal year 1986 there were 334 referrals. The Navajo Nation's program is the collaborative effort of both the Division of Social Welfare providing the general social work services and the Department of Justice providing legal representation to assert the tribe's interest and its children. This program has been designed to meet the obligations and requirements which the ICWA has created for the Indian tribes.

The funding program which was created by the ICWA and implemented by the BIA is the source of several problems which should be addressed. First is the funding limitations which the BIA has created in implementing the ICWA program. This guideline provides a maximum funding level of $300,000 per year for tribes of more than 15,000 members. This limitation simply ignores the reality of the Navajo Nation, where there are approximately 202,000 members, more than 50,000 of whom reside off the Navajo Nation. Moreover, some 50 percent of the tribal membership is 18 years of age or less, the group to be protected by the ICWA.

It is the Navajo Nation's position that these guidelines be changed to recognize the existence of the largest tribal population in the United States. These artificial constraints severely limit the Navajo Nation's ability to respond to the demands for services.

The other aspect of the grant which I must address is the overall manner in which the BIA has operated the program. The BIA has characterized the grant program as competitive discretionary grant program. As such, a grant application must receive a minimum score of 85 out of a possible 100 points to receive funding. Because

of this requirement, the Bureau of Indian Affairs did not provide any ICWA funding in fiscal year 1985 and fiscal year 1986. We have appealed the BIA's actions.

We recommend that the process should be one based upon the needs of the tribe or tribal organization. Further, because the ICWA has important mandates concerning the tribe's interest in its children and imposes duties upon the tribes, these grant awards should be treated as entitled funds to Indian tribes and tribal organizations.

I know you hear this all the time from Federal programs. However, I want to point out that the Federal funds that the Indian tribes receive the funds are inadequate to begin with and have gotten more inadequate over time.

While the ICWA case load has increased, the funding at the national level has decreased. The Congress appropriated $9.7 million in fiscal year 1983, $8.4 million in fiscal year 1984, $8.7 million in fiscal year 1985, $8.4 million in fiscal year 1986, and $8.8 million in fiscal year 1987. I would like to point out that the Congress initially appropriated only $6.1 million for fiscal year 1987, but it was only in June 1987 that the Congress approved $2.7 million supplemental funds.

The overall level of the funding under the ICWA program should be increased to at least $15 million to meet the needs of the tribes and tribal organizations.

There are several points I must also emphasize. The first is that the Navajo Nation believes that the provisions of the act concerning exclusive jurisdiction of tribal courts, Title XXV United States Code Section 1911(a) provisions are clear and work well. This section does not require changes. In the area of voluntary or private placement of children for adoption, preadopted or foster care, the section 1915 provision seems clear such placement requires notice to tribes. Unfortunately, some State courts believe the ICWA does not apply to private placements. We need the Congress's help to clarify this point and to develop better enforcement mechanisms.

Finally, the question of whether a Navajo parent or custodian can prevent the transfer of the case to tribal court under section 1911(a) of the act is also a problem. We agree that a non-Navajo can prevent such a transfer, but it is our position that this section was not meant to defeat the tribe's interest in taking the case back to the tribal court on the sole objection of the Navajo parent or custodian. This area should be clarified.

In closing, I would like to thank the committee for entertaining my testimony.

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

Senator DeConcini. Thank you, Mr. Roanhorse.

Let me just ask, in your statement here you talk about the problem also relating to the formula that is applicable here, and you make an analysis that a tribe with as few members as 15,000 would receive the same amount as, say, the Navajo Nation.

Are you proposing a different change in the formula that I missed here?

Mr. ROANHORSE. Yes; I think there are two things that the Navajo Nation is very much interested in. The first one, of course, is the funding formula. We know that over 50 percent of 202,000

members are those people who are ages between zero to 21. So, in that sense, 15,000 is only about seven and one-half percent of the Navajo Nation's population.

The second area of major concern that the Navajo Nation has is, of course, the funding level. We strongly feel——

Senator DECONCINI. It is not only the formula, it's that the funding level is too low?

Mr. ROANHORSE. Yes.

Senator DECONCINI. If you changed the formula without increasing the funding level, you're going to make it worse, actually; right?

Mr. ROANHORSE. I suppose so, sir, yes.

Senator DECONCINI. You stated the need to clarify the act's application to private placement of Indian children. How many children who are Navajos have been placed privately without the Navajo Tribe being notified? Do you have any numbers?

Mr. ROANHORSE. The States have been very good in terms of making notices to the Navajo Tribe, and there were some cases in the early part of the work that we have done where the State was not able to follow the procedures of the ICWA provisions, but we're able to go into the State court and then try to make those corrections.

But the 300 to 400 referrals that we get on an annual basis, I think, are beginning to now understand the provisions.

Senator DECONCINI. Well, do we know how many children have been placed privately?

Mr. ROANHORSE. No; I don't have that information at this time.

Senator DECONCINI. Is that available?

Mr. ROANHORSE. Yes; I can make that information available to you.

Senator DECONCINI. Would you, please? Thank you.

[Information to be supplied is in Mr. Roanhorse statement which appears in the appendix.]

Senator DECONCINI. How important do you consider the urban programs to be relevant to this subject matter?

Mr. ROANHORSE. The urban programs, those Indian organizations that are located off reservations in metropolitan settings, have been very helpful to the Navajo Nation. In cases where we don't have any Indian programs available in those areas, we often turn to these urban programs to help us in doing the social services investigation and in making contact with some of the family members within that setting. So they have been very helpful.

Senator DECONCINI. Thank you very much. Thank you, Mr. Roanhorse. We appreciate your testimony.

Mr. ROANHORSE. Thank you.

Senator DECONCINI. We will now have a panel of M . Leroy Littlebear, associate professor, University of Liftbridge; and Antonia Dobrec, president, Three Feathers Association; and John Castillo, chairman, ICWA. Mr. Littlebear is accompanied by Mr. Blood of the Blood Tribe Indian Association.

Gentlemen and ladies, if you would summarize your statements, your full statements will be placed in the record, and we would ask that you summarize them for us, please.

Who wants to lead off, if you would identify yourselves?

STATEMENT OF JOHN CASTILLO, CHAIRMAN, ICWA TASK FORCE, ORANGE COUNTY INDIAN CENTER, GARDEN GROVE, CA

Mr. CASTILLO. My name is John Castillo. I am the Indian Child Welfare Task Force chairperson. I have summarized my statement as best as possible. We are honored to have the opportunity to speak before this committee today. The American Indian Mental Health Task Force is a southern California grass-roots organization concerned about the mental health and welfare of Indian communities, particularly Indian children and families. The task force is comprised of members from the following Indian community organizations: Southern California Indian Centers, Los Angeles County Department of Mental Health, American Indian Program Development, Los Angeles County Department of Children's Services, American Indian Child Service Workers, Escondido Indian Child Welfare Consortium, Los Angeles Indian Free Clinic, Southern California American Indian Psychologists.

The following is our testimony. Today, 63 percent of American Indian people live in the cities, and Los Angeles is the home of the largest urban Indian population in the United States. We are the second largest urban Indian population. We are the second largest Indian community in the Nation. Members from over 200 different tribes now live in the area, and three-fifths of all urban Indians live below the poverty level, and in Los Angeles the poverty rate for American Indian people is 45 percent.

Indian people have the highest high school dropout rate, 23 percent, and if you were to include the number of students who never enter high school, this figure would increase to 65 percent.

Substance abuse is highest for Indian people versus other ethnic groups. Indian children suffer from mental illness at a rate of 20 to 25 percent.

These factors combined with other psycho-social stressors leave urban Indians at a high risk for mental illness and impaired ability to care for families and children. It is estimated that one out of every 46 Indian children within Los Angeles is placed within the custody of the juvenile dependency court. This figure does not include Indian children who have been put up for adoption out of the home and other institutions.

In 1985 a study estimated an 85 percent ICWA noncompliance rate within the State of California. It has been our experience that compliance is elevated with careful monitoring of Governmental services by Indian-run ICWA programs. In Los Angeles there currently is identified 206 Indian children within DCS—DCS being the Department of Children's Services—99 of whom are placed outside of family homes. Since identification of Indian children is a severe problem and past history indicates that the error rate might be as high as 100 percent, it appears that 200 Indian children in placement may be more of an accurate figure.

Providing the appropriate Federally mandated services is violated in many ways. Misidentification of Indian children is a very severe problem. Criminal attorneys and county counsel have little knowledge about ICWA, and they perceive this legislation to be a tool of manipulation for the parents. Most of the attorneys are reluctant to do the work involved. In Los Angeles County there is

only one attorney who willingly works with ICWA cases. Private attorneys are frequently ignorant of ICWA law or choose not to follow it by instructing clients not to let the State social workers know the Indian heritage of the child up for adoption.

Children's service workers are sometimes prejudiced and intentionally violate ICWA. At a recent child abuse workshop three case workers openly admitted that they would intentionally violate ICWA because they believe it would be detrimental to the welfare of the child.

ICWA training results in improved communication between Government workers and the local Indian community more appropriate to the utilization of community services and increased ICWA compliance. Inadequate funding for legal services affects all aspects of Indian child welfare. In Los Angeles there is no mental health services available which have been designated to meet the unique cultural needs of the Indian people. Even when Indian people do utilize county services, they generally do not return, because services are insensitive to their needs.

Today, the Bureau of Indian Affairs chooses to determine that mental health psychological services are not fundable by their programs, even though such services are mandated in most cases by the courts.

These services are what enable parents to raise their level of functioning so that they can adequately care for their children. Not only should all ICWA programs contain funds for psychotherapy services, including psychological testing, but this must also be spelled out as part of the definition of remedial, preventive, and reunification services.

Although there is no hard data, American Indian clinicians, social workers, and psychologists agree that the most frequent psychological diagnosis is major depression that evolves from a long history of removal of Indian children from their homes. This removal has disrupted the bonding process prerequisite for a healthy development process.

The depression is frequently masked by substance abuse, is frequently debilitating, and the parents are unable to get out of bed to care for their children or necessary business. It is estimated in Los Angeles about 80 percent of Indian parents whose children are removed from the home wind up homeless. This makes unification even more difficult.

Although the population of American Indians is only six-tenths of a percent, 5.5 percent of the skid-row homeless are American Indians. Furthermore, over one-third of the Indian people served by native American housing and emergency housing programs are children, yet only three percent of these people achieve stable housing.

These families are at high risk for having their children removed. Urban ICWA programs must include case management and mental health services for these high-risk people as well.

The unavailability of Indian foster and adoptive homes, particularly in urban areas, contributes to the erosion of Indian culture throughout the United States. The State of California has more Indians than any other State, yet only 11 counties are covered by ICWA. Few directors of the Department of Mental Health have

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ever heard of the Indian Child Welfare Act. ICWA must spell out that urban Indian communities are entitled to funding for ICWA programs.

To ignore 63 percent of the Indian population is to contribute to the genocide of Indian people. The Indian Child Welfare Act is one of the most significant pieces of pro-Indian legislation. However, it accomplishes nothing if it is not backed by funding which accomplishes its goals.

Certainly, by providing extremely inadequate funding, as is now the case, the Government perpetuates intertribal conflict and conflict between reservations and urban communities. If that is the goal of Congress, then they are doing a good job.

In conclusion, we would like to recommend this: that ICWA funding be expanded to include urban programs, that each urban, rural, and reservation community assess their ICWA needs, and receive funding based on need.

ICWA programs should include money for: adequate legal representation; adequate mental health; case management; psychological services as part of preventive, remedial, and reunification services; services for homeless Indian families as part of preventive services; the development of adequate foster and adoption resources; and the training programs for the dissemination of materials. Any Indian child in Canada or the U.S. who is 25 percent or more Indian should be eligible for Indian child welfare, regardless of enrollment status. There should be no special group, no special interest group to be exempt for ICWA restrictions. And finally, that the Title II of the Indian Child Welfare Act be included as an entitlement program under the Social Security Act.

Thank you very much for your kind attention.

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

Senator DECONCINI. Thank you very much, Mr. Castillo.

Who would like to be next?

STATEMENT OF THURMAN WELBOURNE, REPRESENTING THREE FEATHERS ASSOCIATES

Mr. WELBOURNE. My name is Thurman Welbourne, and I am representing Three Feathers. The president of Three Feathers Associates and the director of projects, Ms. Antonia Dobrec, due to a prior commitment, is unable to be here. Therefore, I am here to present the testimony. Accompanying me today is Ms. Janie Braden, and we are both employed by Three Feathers Associates, and our job title is family court services counselor for the Court of Indian Offenses for the Anandarko area in Oklahoma. We have submitted written testimony.

We have been listening to the testimony since it started this morning. To avoid being repetitive, I would like to highlight two key areas with regard to Indian Child Welfare Act and the implementation of the act.

One of the recommendations is that the Secretary of the U.S. Department of the Interior be required to submit on an annual basis a report that would delineate the status of Indian children in substitute care within State public welfare systems, also tribal child welfare systems and Bureau of Indian Affairs systems, and the

status of Indian children in preadoptive placement and the number of adoption decrees granted by courts serving these three systems.

Second, Congress should direct the Secretary of the Interior and the Secretary of the Department of Health and Human Services to jointly develop and implement a system for annual onsite compliance review of States and tribes providing services to Indian children.

Further, where it be found that noncompliance exists, he be provided in the act that would allow for withholding of all Federal assistance received by noncomplying States or tribes. The reason for this is that at present there is no standardized method of tracking of Indian children that enter the substitute care systems of the State, tribes, or BIA. As a result, it is highly improbable to determine an accurate accounting of the total number of Indian children in substitute care or to determine the level of service provided by each system.

In essence, it is very difficult to plan if we don't know where we've been. So the act that was enacted back in 1978—and has been in existence for 9 years, and I think we need to know what the system has been doing. I think the system that we are recommending in terms of a report would provide the Congress and the Indian community, the Indian people, as well as State and Federal agencies with some crucial documentation that would provide for more effective and efficient planning.

The second highlight that I would like to address to the committee is that the Indian Child Welfare Act should be amended to include a title that provides that the Secretary of the Interior, in a collaborative effort with the Secretary of Health and Human Services have the responsibility and sufficient funds to establish ongoing research and demonstration programs for Indian child welfare services, programs for the education and training of social workers and counselors and a national Indian child welfare center.

The national Indian child welfare center would serve as a clearinghouse of information, provide for resource material development, provide ongoing in-service training for child welfare workers, supervisors, administrators, and provide training and technical assistance for child welfare workers within the public welfare system. The current national child welfare center supported by the Department of Health and Human Services could serve as a model.

In concluding our testimony, we would make one last request. It would please us very much if Congress would resolve that the month of November 1988 be Native American Child and Family Month. Thank you.

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

Senator DECONCINI. Thank you.

Yes, sir?

STATEMENT OF LEROY LITTLEBEAR, REPRESENTING INDIAN ASSOCIATION OF ALBERTA, CANADA

Mr. LITTLEBEAR. My name is Leroy Littlebear. I am from the Blood Indian Tribe in southern Alberta, Canada. I have with me Narcisse Blood, who is also from the same tribe, and we are representing the Indian Association of Alberta.

Originally, we were supposed to have another party with us in the person of Alexander Denny of the Mikmaq Grand Council from the Province of Nova Scotia, but unfortunately Mr. Denny was unable to make it, so we are here to kind of speak both for the Grand Council and the Indian Association of Alberta.

We are here to speak to and propose some amendments to the Indian Child Welfare Act for purposes of having Canadian Indian children included in the Indian Child Welfare Act. It is of utmost importance to include aboriginal Canadians in the scope of the Indian Child Welfare Act. Although there is no comparable national legislation in Canada, a number of provinces have enacted similar provisions and the trend is toward greater devolution of child welfare responsibilities to aboriginal organizations.

The international border physically divides more than a dozen major aboriginal nations, and it is a tragic fact that aboriginal Canadian children are separated from their communities by social welfare agencies in the United States each year.

Although there are Blackfoot reserves on both sides of the border, for example, a Blackfoot child from the Blood reserve in Alberta taken into custody while visiting relatives on or near the Blackfeet reservation in Montana is not Indian under the Indian Child Welfare Act and therefore need not be returned to either reservation.

Because of the depressing economic conditions on most reserves in Canada, a great number of aboriginal Canadians seek temporary, largely seasonal work in the United States each year. Several thousand Mikmaqs work each summer in the blueberry and potato fields of Maine, for instance, and there has been a substantial Mikmaq community in Boston, consisting of temporary as well as permanent U.S. residents, for more than two centuries. The same can be said of Indians from the Province of British Columbia and the Province of Alberta, going down to the State of Washington to work in fruit orchards.

Indian families residing temporarily in the United States suffer from exactly the same stereotypes and biases on the part of social welfare agencies as U.S. Indians have reported. They have fewer resources to protect themselves, moreover, because they are not only not Indians under U.S. law but also non-citizens.

While we welcome the initiative taken by the Association on American Indian Affairs in this regard, its proposal to add the words—and I quote—"tribes, bands, nations, and other organized groups that are recognized now or in the future by the Government of Canada or any province or territory thereof" to the definition of Indian tribe is incomplete and not compatible with Canadian conditions or administration.

In our view, it would result in judicial and administrative confusion, inconsistent results, and too little protection. It is essential that any reference to Canada added to the Indian Child Welfare Act: A, be consistent for the sake of precision and clarity with Canadian terminology; B, be realistic and appropriate in terms of the organization and administration of aboriginal communities in Canada; and, C, place aboriginal Canadian and American Indian children on equal footing as far as possible.

Achieving this will require, in our view, a new explanatory section of the act rather than simply lumping Canadian children into existing provisions without adjustments.

Before introducing our proposed text, some background on aboriginal Canadians will be useful. Under section 35 of the Canadian Constitution, 1982, there are three aboriginal peoples of Canada: Indians, Inuit, and Metis. Most aboriginal groups refer to themselves as First Nations.

The Indian Act provides for the registration of Indians, and registered Indians may or may not also be listed as members of particular bands. Bands exercise various degrees of internal self-Government under the Indian Act and agreements with the minister. In northern Quebec, for instance, an alternative form of Indian regional Government has been established since 1975 as part of a comprehensive land claims agreement. Except as provided by treaty or agreement, provincial child welfare laws apply on Indian reserves.

Inuit are not organized into Indian Act bands, and there are no reserves in the northwest territories in the northern part of Canada. The Inuit of northern Quebec, for instance, have established the regional administration as part of their land claims agreement with Ottawa, but Inuit self-Government elsewhere is conducted by village mayors and councils under both Federal and territorial supervision.

Inuit legal status is in a dynamic state, pending the settlement of land claims to two-thirds of the Arctic, and one proposal under serious consideration is the organization of a new, predominantly Inuit province.

The third group, Metis, properly speaking are prairie groups of mixed French and Indian ancestry. Many still live in distinct rural communities, particularly in Manitoba, Saskatchewan, and Alberta.

In addition, there are thousands of nonstatus Indians throughout Canada whose ancestors were enfranchised involuntarily because of marriage to non-Indians or under a program which resembled the United States forced-treaty policy of the early 1900's. Canada recognizes national-level Metis and nonstatus political organizations only.

While bands are the basic unit of Indian Act administration, they are artificial constructs based on residence on a reserve rather than cultural unity. Some bands are multitribal, but in a majority of the cases, the ethno-historical tribe or nation is divided into several bands. Although bands have called themselves First Nations, they are not nations in the same sense as Navajo or Hida. In many instances, including Mikmaq and Blackfeet, the traditional national political organization persists, but is not recognized by Canada.

The situation is further complicated by what we refer to as provincial territorial organizations. Originally authorized in 1972 to pursue land claims, these provincial territorial organizations receive Federal funding for a variety of human services programs. Other regional aboriginal human service organizations have also emerged recently outside of the band, tribe, or PTO structure.

The supreme position of bands, PTO's, other Government-funded aboriginal organizations and traditional——

Senator DECONCINI. Excuse me, Mr. Littlebear. Can you conclude and summarize, please? We will put your full statement in the record.

Mr. LITTLEBEAR. Okay. Well, I guess the point of all this is to emphasize the necessity of taking Canadian organizational differences into account insofar as they affect the locus of responsibility for child welfare.

What we are wanting to basically propose is that there be a designated agent provision in the Indian Child Welfare Act and that this designated-agent provision consist of maybe several references to which Indian children that may be apprehended by social welfare services here in Canada that can be turned to for purposes of repatriating Canadian Indian children back into Canada and from there into Indian communities.

If you will permit me, I will just go over our proposal for a new section. Section 25 is a new section we are proposing, would be section 125 titled "Aboriginal Peoples of Canada."

Senator DECONCINI. Can you summarize that, Mr. Littlebear, please?

Mr. LITTLEBEAR. Yes.

Senator DECONCINI. Thank you.

Mr. LITTLEBEAR. What we are proposing is that aboriginal peoples of Canada be included in the Indian Child Welfare Act, that the Indian child's tribe in the case of aboriginal people of Canada shall be the child's Indian band or organization that may have some responsibility for child welfare, and for purposes of section 102 of this act, notice shall be given to the Government of Canada who is responsible for Indians and the land reserves for Indians.

Last but not least, in any State court child custody proceeding involving an aboriginal Canadian child, the court shall permit the removal of such case to the aboriginal, provincial, or territorial court in Canada which exercises primary jurisdiction over the territory of the child's tribe upon a petition and, of course, absent unrevoked parental objection as provided for in other cases by sections of the Indian Child Welfare Act.

Senator DECONCINI. Thank you.

Mr. LITTLEBEAR. So basically, what we are saying is to have Canadian Indian children protected under the Indian Child Welfare Act.

Senator DECONCINI. That notice be given being one of those things.

Mr. LITTLEBEAR. Right.

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

Senator DECONCINI. Thank you.

Mr. Castillo, I am sorry my time is running out, as everybody's is here. But is there any Indian Child Welfare Act programs in Los Angeles now?

Mr. CASTILLO. No; there is not.

Senator DECONCINI. There is not.

Mr. CASTILLO. That is why we formed the Indian Child Welfare Task Force to work with the county in providing a vehicle for at least abiding by the Federal mandate, Federal law.

Senator DECONCINI. So you get no services now under this act?

Mr. CASTILLO. No; we do not.

Senator DECONCINI. Thank you.

I have no further questions. Thank you very much, gentlemen, for your testimony.

The committee will stand in recess, subject to the call of the Chair.

[Whereupon, at 4:56 p.m., the committee was adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

STATEMENT OF SENATOR FRANK H. MURKOWSKI

Mr. Chairman, I am pleased that the Committee is holding this oversight hearing on the implementation of the Indian Child Welfare Act which was enacted on November 8, 1978. This law was passed in response to Congressional findings that a high percentage of Indian and Alaska Native families were being broken up and that children were being placed in non-Indian foster and adoptive homes and institutions.

At the time this act was being considered it was reported by the American Indian Policy Review Committee that the rate of removal of Native children from their homes and placement in foster care was 300 percent higher than the rate for non-Native foster placement. The adoption rate for Native children was 460 percent higher than non-Native children, and 93 percent of the adoptive homes were non-Native. Clearly there was a need to provide protection and assistance to American Indian and Alaska Native children and their families.

I am looking forward to hearing from today's witnesses on how the Indian Child Welfare Act has been implemented in Alaska. I am pleased to welcome Ms. Julie Kitka from the Alaska Federation of Natives, Mr. Alfred Ketzler, the Vice-President of the Tanana Chiefs Conference, Fairbanks, Alaska, and Ms. Myra Munson, the Commissioner of the Alaska State Department of Health and Social Services. I am sure your comments will be helpful to the committee.

OPENING STATEMENT FOR SENATOR DANIEL J. EVANS
ON THE INDIAN CHILD WELFARE ACT OVERSIGHT HEARING

THANK YOU MR. CHAIRMAN. WE ARE HERE TODAY TO REVIEW A VERY IMPORTANT LAW WHICH SERVES TO PROTECT ONE OF THE MOST VITAL RESOURCES IN INDIAN COUNTRY; THE CHILDREN. IT IS SAID BY THE HEALING PEOPLE OF THE MAKAH, WHO RESIDE AT THE MOST NORTHWESTERN TIP OF THE CONTINENTAL U.S., THAT WHEN A CHILD IS BORN THE GIFT OF LIFE MUST BE BREATHED GENTLY INTO HIS MOUTH. AND FOLLOWING THAT GREAT DAY, THE BREATH, THE SONGS AND GESTURES OF CARING MUST BE CONSTANTLY BESTOWED UPON THAT CHILD. IT IS THIS CULTURAL WAY OF LIFE THAT IS PROVIDED TO INDIAN CHILDREN AND MUST BE MAINTAINED SO THAT THESE CHILDREN WILL THRIVE AND MAKE THE WORLD A BETTER PLACE.

IT IS OUR DUTY IN THE SENATE TO HELP MAINTAIN AND PROTECT THIS WAY OF LIFE. FOR NEARLY A DECADE, THE INDIAN CHILD WELFARE ACT HAS SERVED AS A MEANS FOR PROTECTING INDIAN CHILDREN FROM BEING PLACED IN ADOPTIVE AND FOSTER-CARE SETTINGS WITH NON-INDIAN FAMILIES. HOWEVER, THE LACK OF SUFFICIENT RESOURCES AND CHANGING PHILOSOPHICAL OPINIONS ON WHAT IS IN THE BEST INTEREST OF THE CHILD HAVE DIMINISHED THE ABILITY OF TRIBES TO CARRY OUT THE INTENTIONS OF THE LAW. IN FEW INSTANCES, THE NEGLECT OF THE COURTS TO FOLLOW THE LAW MAY STEM FROM LACK OF KNOWLEDGE OR EVEN RACISM. THIS IS VERY UNFORTUNATE AND WE MUST CONSIDER OPPORTUNITIES FOR CORRECTING THIS SITUATION.

YOUR RECOMMENDATIONS AND THOSE OF COUNTLESS TRIBES WILL BE

CONSIDERED AS I DEVELOP A BILL TO AMEND THE INDIAN CHILD WELFARE ACT. I AM HOPEFUL THAT WITNESS TESTIMONY WILL OFFER PRACTICAL SOLUTIONS FOR IMPROVING THIS VITAL AND INTEGRAL LAW. IT IS VITAL IN THE SENSE THAT WE MUST CONTINUE TO BREATH LIFE INTO INDIAN CHILDREN. AND INTEGRAL IN THE FACT THAT WE MUST SUSTAIN THE CARING PROVIDED BY INDIAN FAMILIES AND THEIR COMMUNITIES. I LOOK FORWARD TO HEARING YOUR TESTIMONY.

STATEMENT OF GARY PETERSON, DIRECTOR, SOUTH PUGET INTERTRIBAL PLANNING AGENCY (SPIPA) AND CHAIRMAN OF THE INDIAN CHILD WELFARE ADVISORY COMMITTEE OF THE AFFILIATED TRIBES OF NORTHWEST INDIANS

Mr. Chairman, members of the Select Committee, I appreciate the opportunity to address you today on a matter that is critical to the survival of Indian communities, the Indian Child Welfare Act. I am from the Skokomish Indian Tribe in the State of Washington. In my capacity as director of SPIPA I have had the opportunity to work with Indian social workers and Tribal governments throughout the Northwest during the last four years.

SPIPA administers a social services contract under 638 contract guidelines for the following tribes: Makah, Lower Elwha, Quileute, Jamestown Klallam, Skokomish, Squaxin Island, Chehalis, and Shoalwater Bay. We also administer a contract with the State of Washington to provide children and family services to the above mentioned tribes and the Nisqually Tribe.

I currently serve as chairman of both the Affiliated Tribes of Northwest Indians Indian Child Welfare Advisory Committee and the Northwest Indian Child Welfare Association.

The Tribes in the Northwest have prioritized Indian Child and family issues and have been actively involved in identifying problems and developing solutions to these problems. A major problem we confront is a lack of reliable, adequate sources of funding for social services programs, particularly child welfare. The Bureau of Indian Affairs has arbitrarily administered the Title II ICWA grant program. Year after year, the level of funding has been grossly inadequate and the distribution process poorly managed. We have advanced several solutions to the funding problems, including establishing Title II as a fully funded entitlement program ($25-35 million/yr not 8.8 million as at present) and mandating a

tribal set-aside for funding under the Title XX Social Services Block Grant and other related social services and child welfare programs that are currently aimed only at the states. We are aware of the Association on American Indian Affairs (AAIA) draft legislation to address this issue and believe that its approach is consistent with the positions we have long advocated.

Another set of problems that we have faced are those arising from a lack of clarity and completeness in certain parts of the Indian Child Welfare Act. While the Act has been a tremendous tool for the tribes to use on behalf of our families and children, its phraseology is sometimes ambiguous. This has led, unnecessarily, to problems and court disputes. Moreover, in some cases the Act does not go far enough. For instance, we strongly believe that there should be mandatory notice to the tribe of voluntary placements. It is for these reasons that we have advocated amending the Indian Child Welfare Act to strengthen it.

The Association on American Indian Affairs has submitted amendments to the Act to the staff of your committee. We have discussed the need for these amendments with the Association and are aware that others have also submitted proposed amendments. I am not prepared today to comment on amendments specifically but support the approach of amending the Act. We will comment extensively when a draft bill is prepared.

To that end we urge the Committee to act promptly on these initiatives. The problems caused by "loopholes" in the Act and sporadic, unreliable, poorly managed funding gets worse as time goes by, not better. We need quick action in the 100th Congress. Quick action by the Congress will enable Tribal governments to avoid the loss of their children and the disruption and destruction of their families.

Another issue that we believe that the Committee should be aware of is the

is the failure of the BIA and IHS to incorporate maximum participation of the tribes in Federal programs administered for them. Tribes should not need to contract in order to have programs in accordance with their needs and desires. Rather, there should be a stronger mechanism for ensuring that policies and priorities of tribes are in fact reflected in Federal Indian Programs. For example, the implementation of the Alcohol and Drug Abuse Prevention Legislation. The BIA and IHS are now mandating child protection services teams. We have opposed this concept as currently conceived because we believe that this is an inadequate approach to the problem of alcohol and drug abuse, particularly in view of the lack of training of most BIA and IHS social workers in this specialized field. Tribes have numerous ideas for the use of this money that would be much better targeted to the need. Yet, without adequate input, the federal government has decided to spend significant amounts of money on these teams-- teams which are unlikely to have a significant impact in most instances.

Another concern that we would like to raise with the Committee is the failure of the Bureau to adequately fund tribal courts. In order to properly and fully implement ICWA, adequately staffed and trained tribal courts are essential. We urge Congress to increase funding for tribal courts.

In conclusion, these are but a few of the problems that we might have identified in the Indian Child Welfare area for your consideration. Tribal governments are working hard to protect Indian children and families. Your support and assistance in addressing these concerns and others will bring about positive change in the lives of Indian Children and families.

TESTIMONY OF THE ASSINIBOINE AND SIOUX TRIBES

OF THE FORT PECK RESERVATION

before the Senate Select Committee on Indian Affairs

Oversight hearing

on the Indian Child Welfare Act

By: Caleb Shields, Member
Tribal Executive Board
Assiniboine and Sioux Tribes
of the Fort Peck Reservation

November 10, 1987

TESTIMONY OF THE ASSINIBOINE AND SIOUX TRIBES
OF THE FORT PECK RESERVATION

before the Senate Select Committee on Indian Affairs

Oversight hearing on the Indian Child Welfare Act

Mr. Chairman and members of the Committee, I am Caleb Shields. I am a member of the Tribal Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Reservation, Montana. I appreciate the opportunity to testify before this Committee concerning needed amendments to the Indian Child Welfare Act.

The Fort Peck Tribes have been very active in matters affecting the welfare of their children. Two years ago, we made substantial revisions to our juvenile code which were designed to improve adjudication of Indian child welfare cases. We have just received a $100,000 multi-year grant to establish a model treatment program for victims of sexual abuse, which will be the first of its kind in Indian country.

In addition, we recently negotiated an agreement with the State that will permit Indian children on our Reservation to receive Title IV-E payments for foster care, and also requires

the State to assist in providing protective services to Indian foster children. The agreement is significant in other respects as well-- for example, it recognizes our Tribal Court's jurisdiction over children who are members of tribes other than the Fort Peck Tribes, and provides that the State will recognize tribal foster care licensing standards for purposes of federal foster care payments.

Our experience in Indian child welfare matters includes intensive observation and evaluation of the functioning of the Indian Child Welfare Act. Enacted in 1978 to stop the wholesale removal of Indian children from their homes and culture, the Act has greatly increased tribal courts' ability to exercise jurisdiction over Indian children. It has also increased the procedural protections for Indian children who do end up in state courts. However, ambiguities and gaps in the Act have made it less effective than it should be. The Fort Peck Tribes commend the Committee for taking the time to re-evaluate the Act and consider needed changes.

Our comments on the Act will follow the draft bill prepared for this Committee's consideration by the Association of American Indian Affairs.

Definitions. One of the most crucial sections of the Indian Child Welfare Act is the definition of "Indian child." The Act currently limits this definition to children who are members of or eligible for membership in a tribe. The Act implies, although it is unclear on this point, that tribal court jurisdiction is limited to children who are members of that particular tribe. This leaves out two crucial classes of Indian children-- children who are Indian but not eligible for membership in any tribe, and children who are members of one tribe but reside on another tribe's reservation.

Abused, neglected, and abandoned children who are members of an Indian community should have their cases heard in tribal court. This is a fundamental principle of the Indian Child Welfare Act, and should apply regardless of tribal affiliation. Otherwise, Indian children will continue to be placed in nonIndian foster homes and lost to their Indian communities.

There is another compelling reason to recognize tribal court jurisdiction over all Indian children. Some state courts want nothing to do with any Indian children, regardless of tribal membership. This is the case in Roosevelt County in Montana, where the local judge has refused to hear cases involving Indian

children, even where those children are not members of the Fort Peck Tribes. In spite of this, the state social workers will not file these cases in Tribal Court because at least until recently, the State did not recognize tribal court jurisdiction over any children who were not members of the Fort Peck Tribes. Congress must end this Catch-22 by acknowledging tribal court jurisdiction over all Indian children. Unlike state courts, tribal courts are ready and willing to handle all these cases, and are more likely to place these children within the Indian community.

The draft bill does not deal with children who are tribal members, but not members of the tribe on whose reservation they reside. We suggest that a section be added to the bill to cover this situation. The tribal court on the reservation where the child resides should have concurrent jurisdiction with the court on the reservation where the child is a member. The tribal court would notify the membership tribe of the pending case, and give that tribe the opportunity to request transfer of jurisdiction. Decisions on transfer of jurisdiction would be made under the same standards as apply to transfers from state court to tribal court. If the membership tribe did not request transfer of jurisdiction within a reasonable time, or its request was denied, the other tribal court would retain jurisdiction, subject to the membership tribe's right to intervene. We already use this

procedure at Fort Peck, and it works well.

The draft bill seeks to extend the protections of the Indian Child Welfare Act to children who are not members of any tribe as long as they are considered members of the Indian community. We agree with this completely. However, the definition of Indian child for this purpose should include the requirement that the child be of Indian descent.

Transfer of jurisdiction to tribal court. The Act currently provides that where tribal and state courts have concurrent jurisdiction, the state court must transfer a case to the tribal court unless there is good cause to the contrary or unless either parent objects. This part of the Act has not worked as intended. The "good cause" requirement is vague, and gives state courts too much latitude to refuse a tribal request for transfer. And, parents can block tranfers simply because they don't want their cases heard by tribal court. This entirely defeats the purpose of the Act.

The draft bill would delete the good cause requirement and substitute several specific grounds for refusal to transfer jurisdiction. We generally support this, but request one change. The draft bill would permit a state court to refuse a petition to

transfer if the petition were not filed within "a reasonable time." This should be changed to give tribal courts and Indian parents a minimum period of thirty days to request transfer. Otherwise, the reasonable time requirement will be abused by state courts.

The draft bill would permit parents to block transfer of jurisdiction to tribal court only if their objection to transfer were consistent with the purposes of the Act. The Fort Peck Tribes support this amendment. Irrational fears about tribal courts should not be permitted to deprive these courts of the opportunity to adjudicate cases involving Indian children. As demonstrated by the recent well-publicized case in Navajo Tribal Court, tribal courts can handle even the touchiest cases in a fair and orderly way.

Procedural rights in state courts. An earlier version of the draft bill would have clarified that Section 102 of the Act applies to voluntary court proceedings as well as involuntary proceeedings. This means that the procedural protections, such as the right to court-appointed counsel, access to records, and efforts to reunite the family, would apply to proceedings where a parent seeks to give up a child on a "voluntary" basis. The Fort Peck Tribes support this proposal, and urge that the Committee

include it in the bill to be introduced.

This change is much-needed, for the simple reason that voluntary proceedings are still abused by the states. Parents are persuaded to sign over their children to foster homes rather than having a petition of abuse and neglect filed against them. This is quicker and easier for the states, and also allows them to virtually ignore the Indian Child Welfare Act, including such basic protections as notifying the Indian child's tribe. Application of procedural protections to voluntary proceedings will mean that more cases will be transferred to tribal court, and that more parents will understand their rights and receive services to help them reunite their families.

The draft bill would add a new subsection (g) to Section 102 of the Act. This subsection would provide that certain conditions, such as inadequate housing and alcohol abuse, do not constitute evidence that a child should be removed from his home. The thrust of this section seems to be that conditions of poverty beyond the family's control should not result in removal of the family's children. We agree with this, but do not agree with the wording of the subsection. First, we are concerned about including alcohol abuse on the list. The role that alcohol abuse plays in abuse of children and destruction of families should not

be minimized. Second, the term "non-conforming social behavior" is too vague and detracts from the focus on the family's poverty.

We suggest that only the language about family and community poverty be retained. This makes the purpose of the section much clearer. The second sentence of the subsection, requiring a direct causal connection between conditions in the home and harm to the child, should be placed in a separate section. This new section will ensure that parents are not penalized for any conditions in their home that do not adversely affect their children.

Placement preferences for Indian children. The Indian Child Welfare Act establishes preferences in placement of Indian children by state courts, both for foster care and adoption. However, there is a "good cause" exception to these placement preferences. The draft bill would remove this general exception, and would substitute several specific exceptions. The Fort Peck Tribes support this change, which will provide better guidance to state courts. However, we suggest that the request by an older child for a placement outside the preferences be simply a factor, not a controlling factor, in the court's decision.

The draft bill would also describe the efforts a state must

make to locate a placement within the order of preference. We support this, because state courts are too quick to claim that they cannot locate a suitable Indian foster family-- often after failing even to contact the child's tribe or members of his extended family.

We do suggest one change in this section. In addition to contacting the tribe, the state should be required to contact the BIA agency, which often has information on available Indian foster homes.

The draft bill provides that notwithstanding any state law to the contrary, state court judges can permit continued contact between the Indian child and his family or tribe following an order of adoption. The Fort Peck Tribes strongly support this amendment, which will be particularly important where Indian children are adopted by nonIndian families. The amendment should be strengthened even more by a requirement that nonIndian adoptive families be required to take steps to keep the child in touch with her Indian heritage. We have entered orders of this kind in Fort Peck Tribal Court and have been pleased with the results.

Petitions to invalidate state court orders. The Act gives

parents, custodians, and the tribe the right to file a petition to invalidate a state court order if that order violates particular provisions of the Act. The effectiveness of this provision has been limited in one important respect-- it does not include violation of the placement preferences as grounds for invalidating a state court order. The placement preferences are crucial to the purposes of the Act, and furthermore, they are violated frequently. The Fort Peck Tribes strongly support Section 105 of the draft bill, which would add violation of the placement preferences as grounds for invalidating state court orders.

Section 105 of the draft bill also provides that petitions to invalidate a state court order can brought in federal court. We support this provision, because in our experience state courts are very slow to invalidate their own orders in Indian child welfare cases. Also, there would be fewer violations of the Indian Child Welfare Act in the first place if state courts knew that their orders would be subject to federal review.

State's obligation to provide services to Indian children. The draft bill would add a new Section 101(f) to the Act, providing that nothing in Section 101 authorizes a state to refuse to offer social services to Indians on the same basis that

it offers them to other citizens. The Fort Peck Tribes strongly support this provision. We see the necessity for it very clearly, because in Montana the Attorney General has used the Indian Child Welfare Act as an excuse to rule that the state cannot provide services to Indian children who are within tribal jurisdiction. Although we have made some progress on this issue through our foster care agreement with the State, there is still great reluctance to acknowledge the State's obligations to its Indian citizens.

Now that the BIA's social services budget is so limited, it is simply not realistic, much less legal, for states to assume that the BIA takes care of all Indian social service needs. States must be required to provide needed services to Indians. Tribal/state agreements are useful to establish the best means for the states to do this, but these agreements only affirm, they do not create, the states' duty in this respect.

Indian Child Welfare Act grants. The Fort Peck Tribes have a concern about the Indian Child Welfare Act grant programs. For the grants that serve children on and near Indian reservations, Indian tribes and organizations have equal priority. This has created problems for us at Fort Peck. Until two years ago, we were receiving a grant to operate a foster home licensing

program. We lost that grant and at least two other tribes lost theirs as well. At the same time, an urban Indian organization began to receive a sizeable grant. We have no objection to urban organizations receiving grants for off-reservation programs, but we feel strongly that tribes should have first priority for grants to serve children on and near Indian reservations. We need these grants to assist us in exercising jurisdiction over our children. Tribes that have this direct and crucial responsibility should have primary access to grant funds.

I thank the Committee for the opportunity to testify on these important issues, and I would be glad to answer any questions you may have.

STATEMENT OF

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Tanana Chiefs Conference, Inc.
201 First Avenue
Fairbanks, Alaska 99701

before the
SELECT COMMITTEE ON INDIAN AFFAIRS
U. S. SENATE

OVERSIGHT HEARINGS
ON
THE INDIAN CHILD WELFARE ACT

November 10, 1987

My name is Al Ketzler. I'm the Director of Native Services of the Tanana Chiefs Conference, Inc., a regional consortium of 46 Interior Alaskan Tribes. I have also been a Board member of the Association on American Indian Affairs for the last 15 years. I wish to thank the Committee for the opportunity to address you today on the implementation of the Indian Child Welfare Act.

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In 1987, eight years after passage of the Indian Child Welfare Act, the problems which the Act tried to rectify have worsened in the State of Alaska.

The 1976 survey done by the Association on American Indian Affairs, which ultimately led to the enactment of the Indian Child Welfare Act (ICWA), found there was an estimated 393 Alaska Native children in State and Federal out of home placement. In 1986, that figure had risen to 1,010, which represents a 256% increase. During the same period of time, the total population of Alaska Native children increased by only 28%.

The figures are even more disturbing when one considers that the Alaska Native population is only 14% of the total Alaskan population, yet Alaska Native children make up 49% of the state's out-of-home placement. The disproportionate adoption of Native children is equally appalling. For the year 1986, out of all the children placed in adoptive homes by the State of Alaska, 64% were Alaskan Native.

As the figures indicate, the removal of our children from our homes and culture continue at a rate that far exceeds our population. The problems in Alaska continue to worsen for Native children.

After removal of the Native child, his/her chances of being placed in a Native home are not very good. At best, the child has a 59% chance in those areas of the state that are predomi-

nantly Native. In the more urban areas of the state, the figure drops to as low as 4%. These statistics, which are based on raw data obtained from the State of Alaska, demonstrate that Native children are being removed from their homes and placed in non-Native placements at a greater rate today than estimated in 1976. In 1976 Congress was alarmed. We believe that in 1987 Congress should be outraged, and take steps to strengthen the ICWA to stop this in the future.

Tanana Chiefs Conference, Inc. (TCC) has attempted to enforce the ICWA with only marginal success. Our region is one of the best in placing Native children in Native homes, but still over 54% of our children in State foster care are in non-Native homes. Sadly, many of these children have relatives who are capable of taking care of them and have requested the children to be placed with them, but are denied by state officials.

There are some reasons why we have had only marginal success. The biggest is the lack of resources. Title II funds available under ICWA are competitive. Tribal programs are funded based upon their grant writing ability, not on need or on the quality of the tribal program. This means that tribal programs are sporadically funded and we do not know if we will be funded from one year to the next. An average child protection case will last for two years, so that it is not clear whether our tribal program will survive long enough to provide services to a child in tribal protective custody.

Our tribes are denied any federal assistance for tribal foster care. The State of Alaska receives federal support for State foster care under Title IV-E of the Social Security Act and may share that with the tribes if it wishes. However, the State of Alaska has decided not to negotiate any agreement which would allow federal assistance for tribal foster care. Consequently, our tribal foster care is either voluntary, or funded under some other program for which the child might otherwise be eligible.

Another problem in our enforcement effort is the time litigation takes. Often, if we challenge a placement in State court, the litigation takes between two and three years. TCC villages have been faced with the difficult problem of overturning an adoption on a foster care placement only to find that the child has bonded to the foster/adoptive family. Should the tribe remove the child, causing problems for the child now or allow the child to stay and cause the child pain in adolescence and adulthood, resulting from the child's alienation from his/her people? In considering litigation, the State will often engage in this type of moral blackmail, asking the tribe to allow an illegal placement and avoid causing the child the trauma of uncertainty over his/her future which prolonged litigation will cause.

ICWA needs to be strengthened. Title II funding for tribes under the Act should be stabilized and allocated to tribes in a similar manner as Self-Determination Act contracts [PL93-638]. Federal foster care assistance needs to go directly to the tribal agencies and should not be subject to State veto. Finally, the

loopholes and legal ambiguities that allow extended litigation needs to be tightened to ensure that Native children are removed from their homes only when absolutely necessary and placed in their tribal foster homes or other Native homes.

While these are our major general concerns, we will also submit more detailed suggestions to the Committee shortly. We thank you for your interest and urge the Committee to take action to strengthen ICWA.

82-115 O - 4

STATEMENT OF HAZEL ELBERT, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS (TRIBAL SERVICES), DEPARTMENT OF THE INTERIOR, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON THE IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT.

November 10, 1987

Mr. Chairman and members of the Committee. I am pleased to be here today to report on the progress in the implementation of the Indian Child Welfare Act (ICWA) of 1978.

The Indian Child Welfare Act of 1978 (P.L. 95-608; 25 U.S.C. 1901 et seq., 92 Stat. 3069) recognizes that the tribe has the primary authority in matters affecting the welfare of the Indian children and their families residing on their reservations. The Act is not limited to reservation based tribes however. It extends to tribes in Oklahoma occupying lands within former reservation areas, and to Alaska natives. The Act recognizes the traditional role of state agencies and courts where an Indian child or his family does not reside on a reservation and has specific provisions for transfers of cases from state to tribal courts. In cases where a state retains jurisdiction, the Act authorizes tribes to intervene in the proceedings and participate in the litigation; it imposes certain evidentiary burdens in state court proceedings and establishes placement preferences to guide state placements.

Title I of the Act focuses on legal issues, including individual custody proceedings, legal representation in custody matters and reassumption of jurisdiction. We are aware that these procedures have been the basis for litigation in recent years although we are not parties in those cases. You may be aware of the highly publicized case of the Navajo boy who was adopted by a non-Indian family in 1980. The birth-mother later filed suit on the basis that proper procedures were not followed and the Utah Supreme Court

agreed. In 1986 the case was returned to the jurisdiction of the Navajo court to decide the best placement for the child. We are pleased that a settlement has been reached between the parties that appears to be a reasonable arrangement for all concerned.

Although the Navajo case has been the most publicized, it has not been the only case taken to court under Title I of the Act. Although the procedures under Title I we believe, are clear, it may be many years before all states and tribes are aware and fully understand them.

The primary reason Indian children are separated from their families and enter into foster care systems is because of child abuse or neglect. For the month of August 1987, 15% of the total complaints of possible child abuse and neglect involved physical abuse, 69% involved neglect, 12% involved sexual abuse and 62% involved alconol or substance abuse. Although we do not have statistical data to identify the number of Indian child custody proceedings handled nationwide on an annual basis, the information available which most closely reflects this number would be the total number of Indian children in foster or out of home care. As of June 30, 1986 that number was 9,123. We currently have an interagency agreement with the Department of Health and Human Services to complete a study on children in out-of-home-placements. The draft findings of that study indicate that 52% of the children were under state care and 48% were under tribal, Indian organization, or BIA care.

The BIA and IHS have cooperatively developed Child Protection Team procedures and reporting requirements. They have been developed to ensure that reports of suspected child abuse and neglect are handled in a timely manner and to assess any immediate threat to a child's safety. The teams will include social service agencies in communities and provide them an opportunity to share information and resources and plan for children and families involved in child abuse and neglect situations.

We have also entered into an inter-agency agreement with the Department of Health and Human Services to fund model sexual abuse treatment and prevention programs on the Hopi and Ft. Peck Indian reservations.

Title II of the Act authorizes the Secretary of the Interior to make grants to Indian tribes and tribal organizations to establish and operate Indian child and family service programs. In Fiscal Year 1987, 128 grants were funded with a total appropriation of $8.8 million. Currently, 48 percent of the grants are multi-year grants and the remainder are single year. Multi-year grants were initiated in 1986 and the current multi-year cycle will operate through the 1988 funding cycle. The multi-year grants were developed out of recommendations originating from the 1984 oversight hearing. This procedure has been so successful we are currently considering accepting only multi-year applications when the new multi-year cycle begins in Fiscal Year 1989.

Title III of the Act requires state courts to provide the Secretary of the Interior with a copy of any decree or order in an adoptive placement of an Indian child, and authorizes the release of such information to the child at the age of 18 in order to be enrolled in his or her tribe. Attached to my written statement is a list that identifies the total number of adoptions by state. However, states have not been diligent in their reporting and recent contacts with individual states indicate this may be a serious undercount. Our area offices have been directed to contact all states in their jurisdiction to obtain more accurate information.

Title IV of the Act required a report to Congress on the feasibility of providing Indian children with schools located near their homes. This report has been completed.

The information we have provided today is very limited and highlights only some of the concerns addressing Indian children and families. We believe that the Indian Child Welfare Act has made a difference in meeting the needs of Indian children in need of foster and out-of-home placements. We are aware that the Committee staff has circulated to the tribes some draft bills to amend the Act. We did not receive those drafts until just last week and therefore have not had time to review them. We would be most pleased to provide our written comments at a later date.

This concludes my prepared statement. I will be happy to answer any questions the Committee might have.

ATTACHMENT

ADOPTION STATISTICS PURSUANT TO THE
INDIAN CHILD WELFARE ACT OF 1978
FROM 1978 - 1986

	1978	1979	1980	1981	1982	1983	1984	1985	1986
Alabama				1					
Alaska		20	36	45	46	81	84	106	92
Arizona		13		2	2		1	3	2
California		1			1				1
Colorado		5	4		1	3	5	2	4
Florida					1				
Idaho				1					
Illinois		2							
Indiana							1		1
Iowa							1		
Kansas			1			1	1		2
Maine			1						
Massachusetts			1						
Michigan				1	2				
Minnesota	4	14	13	13	9	12	19	20	12
Mississippi			2						
Nebraska		1	2			7	1		2
New Mexico						1			1
New York			2	1		1	1		
North Carolina		3					1		
Oklahoma		5	15	7	10	4	22	12	13
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
Wyoming				1					

Data reflects number of adoption proceedings reported by states.

U.S. Department of Justice
Land and Natural Resources Division

Office of the Assistant Attorney General — Washington, D.C. 20530

May 21, 1986

Honorable Ralph W. Tarr
Solicitor
United States Department
of the Interior
Washington, D.C. 20240

Dear Ralph:

This responds to your request that the Department of Justice file an amicus brief in Colorado in the Interests of Ashley Ann Taylor, Case No. 845JV689, Div. 6, District Court, County of Arapahoe, Colorado. You specifically request that the United States assert that the paternal grandparents be given precedence over unrelated Indian foster parents in this adoption proceeding pursuant to section 105 of the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1915.

This case involves a twenty-one month old child, a member of the Choctaw Nation who was placed with foster parents on or about March 1, 1985. She has remained with those foster parents since that time. The foster parents and the paternal grandparents are seeking to adopt the child in this proceeding. The state court has ruled that it has concurrent jurisdiction over this matter with the tribal court, but has made no determination as to who the adoptive parents should be. A hearing in the matter is scheduled for May 26, 1986.

Section 105(a) of the ICWA provides:

> In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

28 U.S.C. § 1915(a). The legislative history of section 105(a) of the ICWA indicates Congress' intent to "establish a federal policy that, where possible, an Indian child should remain in the Indian community" but not to preclude "the placement of an Indian child with a non-Indian family." H.R. Rep. No. 1386, 95th Cong., 2d Sess. 23 (1978).

The Bureau of Indian Affairs has issued guidelines interpreting the ICWA, including section 1915(a). Those guidelines specifically discuss what constitutes "good cause" to modify the preferences set forth in section 1915(a):

> F.3. Good Cause To Modify Preferences
>
> (a) For purposes of foster care, preadoptive or adoptive placement, a determination of good cause not to follow the order of preference set out above shall be based on one or more of the following considerations:
>
> (i) The request of the biological parents or the child when the child is of sufficient age.
>
> (ii) The extraordinary physical or emotional needs of the child as established by testimony of a qualified expert witness.
>
> (iii) The unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria.
>
> (b) The burden of establishing the existence of good cause not to follow the order of preferences established in subsection (b) shall be on the party urging that the preference not be followed.

Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed. Reg. 67,583, 67,594 (Nov. 26, 1979). Nonetheless, as acknowledged in the introduction to the guidelines, this provision applying "good cause" to modify preferences, and the guidelines in general, are interpretative, not legislative, in nature, and not binding on the courts:

> Although the rulemaking procedures of the Administrative Procedure Act have been followed in developing these guidelines, they are not published as regulations because they are not intended to have binding legislative effect. . . . If procedures different from those recommended in these guidelines are adopted by a state, their adequacy to protect rights guaranteed by the Act will have to be judged on their own merits.

44 Fed. Reg. 67,584 (Nov. 26, 1979). The guideline on "good cause" is clearly interpretative because the ICWA does not expressly

delegate to the Secretary the responsibility to interpret the statutory language of section 105. As acknowledged by the introduction to the guidelines, "[p]rimary responsibility for interpreting . . . language in the Act [which does not lie with the Department] rests with the courts that decide Indian child custody cases." Id.

Because the guidelines are merely interpretative and not legislative, we conclude that this case does not merit the amicus participation of the United States. The language of section 105(a) clearly leaves the state court with ample discretion to modify the preferences set forth there as long as "good cause" is shown. The Department's guidelines on "good cause" are not binding on the court and therefore provide no legal basis for us to argue that awarding custody to the foster parents is incorrect as a matter of law. The legislative history of the ICWA expressly provides that "placement of an Indian child with a non-Indian family" is not precluded by section 105(a). H.R. Rep. No. 1386, 95th Cong., 2d Sess. 23 (1978). Moreover, the state court has recognized that the ICWA applies to this child and we have no reason to believe it will ignore the Act when it makes its adoption determination. Finally, we fail to recognize a significant federal interest that would be implicated by the state court's adoption determination in this case.

Please be advised that our decision at this time does not rule out federal amicus participation at the appellate level should a strictly legal issue arise as a result of the trial court's determination. I appreciate your bringing this matter to our attention.

Sincerely,

F. Henry Habicht II
Assistant Attorney General
Land and Natural Resources Division