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## INDIAN CHILD WELFARE ACT

TUESDAY, NOVEMBER 10, 1987

U.S. SENATE,  
SELECT COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:14 a.m., in room 485, Rayburn House Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Murkowski, McCain, and DeConcini.

### STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. Our hearing this morning is on the implementation of the Indian Child Welfare Act of 1978. It has been nearly 10 years since this act was enacted. An ample period of time has now passed to determine whether this act and the courts and agencies which administer it are meeting the expectations of the Congress when the act was enacted.

This act is premised on the concept that the primary authority in matters involving the relationship of an Indian child to his parents or extended family should be the tribe, not the State or the Federal Government. This is particularly true in cases where the child resides or is domiciled within the reservation or jurisdiction of the tribe. The act is not limited to reservation-based tribes. It extends to tribes in Oklahoma occupying lands within former reservation areas, and it extends to tribes in native villages in Alaska whose lands are not held in trust and are not within the former reservation areas.

While the act recognizes the importance of the tribe and its primary authority in matters affecting the welfare of Indian children and their families residing or domiciled on their reservations, the act does not operate to oust the States of jurisdiction in appropriate cases. The act recognizes the traditional role played by State agencies and courts where an Indian child or his family does not reside or is not domiciled on the reservation. Thus, the act makes specific provisions for transfers of cases from State to tribal courts and it requires that States give full faith and credit to the public acts of an Indian tribe.

With respect to cases over which the State retains jurisdiction, it authorizes tribes to intervene in the proceedings and participate in the litigation. It imposes certain evidentiary burdens in State court proceedings, and it establishes placement preferences to guide State placements.

The fundamental premise of the act is that the interest of the child will best be served by recognizing and strengthening the capacity of the tribe to be involved in any legal matters dealing with the parent-child relationship.

The clear understanding of the Congress when this act was enacted was that failure to give due regard to the cultural and social standards of the Indian people and failure to recognize essential tribal relations is detrimental to the best interests of the Indian child.

The high rate of placement of Indian children in foster care or adoptive situations reflects that the system existing prior to enactment of this act was not serving the best interests of the Indian children. The act is founded on the proposition that there is a trust responsibility of the United States to provide protection and assistance to the Indian children and their families and that the most productive means of providing such protection is through the institution of the tribe itself. The purpose of this hearing is to determine the extent to which these objectives are being met.

Without objection, the opening statements of Senators Murkowski and Evans will be placed in the record.

[Prepared statements of Senators Murkowski and Evans appear in the appendix.]

The CHAIRMAN. We have divided the witnesses into five panels for this hearing. Our first panel consists of the following: the ICWA committee chairman of the Affiliated Tribes of the Northwest, Shelton, WA, Mr. Gary Peterson; council member, Fort Peck executive board of Poplar, MT, Mr. Caleb Shields; the spokesperson of the Alaska Federation of Natives, Anchorage, AK, Ms. Julie Kitka; and the vice president of the Tanana Chiefs Conference, Fairbanks, AK, Mr. Alfred Ketzler, Sr.

Will Messrs. Peterson, Shields, Ketzler, and Ms. Kitka take the chairs?

Mr. Peterson.

**STATEMENT OF GARY PETERSON, ICWA COMMITTEE CHAIRMAN,  
AFFILIATED TRIBES OF THE NORTHWEST, SHELTON, WA**

Mr. PETERSON. Good morning, Mr. Chairman. I appreciate the opportunity to be here today to address a concern that is critical to the survival of Indian people nationally; that is, the well-being of Indian children and Indian families. I am from the Skokomish Tribe in the State of Washington, and I work for the South Puget Intertribal planning agency. We are a planning consortium that does social and economic development planning on behalf of four small tribes in western Washington.

The tribes that I work for view a direct connection between our ability to succeed economically and the stability that we find in our communities, so they view a direct relationship between economic development and resolving children and family problems in our communities. So they let me work on Indian child welfare problems.

I am not a social worker, but I have had the opportunity to work with Indian social workers throughout the northwest over the course of the last three years. I currently serve as the chairman of

the Affiliated Tribes of Northwest Indians' Indian child welfare advisory committee, and also chair the Northwest Indian Child Welfare Association.

The message that I would like to bring on behalf of children and families today is one of a sense of urgency. I think from other people who will be testifying later you will hear that an awful lot of work has gone on among the Indian tribes, a lot of effort has gone into protecting Indian children and families, and we view our ability to successfully do that as a process, a cumulative process that involves a lot of hard work and a lot of contributions from a lot of different people, and we are hoping that this committee will sense the urgency that we are trying to bring and take some prompt action after the hearings today.

We are testifying on behalf of some amendments to the act which we think will strengthen the act and make the job of the protection of children easier for both the States and for the tribes to do in the coming years. We would also like to see the positions of the tribes strengthened in relation to how the Federal programs are operated that benefit Indian children and families. The Bureau of Indian Affairs and Indian Health Service, for example, we would like to have more input on how they operate their programs.

The last piece, I think, of this problem is tribal courts, and we are hoping that the committee will make some recommendations and take some actions that will strengthen the tribal courts and enable our courts to handle the case load that will develop as we assert more and more control and as we do more and more with problems that involve custody of Indian children in our communities.

Thank you, Mr. Chairman.

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

The CHAIRMAN. Our next witness is Mr. Shields.

**STATEMENT OF CALEB SHIELDS, COUNCIL MEMBER, FORT PECK  
EXECUTIVE BOARD, POPLAR, MT**

Mr. SHIELDS. Thank you, Mr. Chairman. I am Caleb Shields of the tribal council of the Fort Peck Assiniboine and Sioux Tribes in Montana. I want to express my appreciation for the opportunity to testify on the Child Welfare Act.

Mr. Chairman, the Fort Peck Tribes have been very active in matters affecting the welfare of their children. Two years ago we made substantial revisions in our comprehensive tribal code, in that portion of the juvenile code, which were designed to improve adjudication of Indian child welfare cases. We recently completed, after 2 years of negotiations, 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 courts' 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 comments on the act will follow the draft bill prepared for this committee's consideration by the Association of American Indian Affairs.

One of the most crucial sections of the 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 regardless of tribal affiliation. Otherwise, Indian children will continue to be placed in non-Indian foster homes and lose their Indian communities.

There is another compelling reason to recognize tribal court 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, which is on the reservation where Fort Peck is located, 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.

The draft bill does not deal with children who are tribal members but not members of the tribes 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. 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 protection of the act to children who are not members of any tribe as long as they are concerned 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. 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. The draft

will 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 30 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 courts only if their objection to transfer were consistent with purposes of the act. The Fort Peck tribes support this amendment. 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.

An earlier version of the draft bill would have clarified that section 102 of the act which applies to voluntary court proceedings as well as involuntary proceedings. 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 the 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.

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 "nonconforming social behavior" is too vague and distracts from the focus on the family's poverty.

We suggest that only the language about family and community poverty be retained. 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 homes that do not adversely affect their children.

The act establishes preferences in placement of Indian by State courts, both for foster care and adoption. However, there is a good-cause exception to these placement preferences. The draft will 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 prescribe the efforts the 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.

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. The amendment should be strengthened even more by a requirement that non-Indian adoptive families be required to take steps to keep the child in touch with her or his Indian heritage. We have entered orders of this kind in the Fort Peck tribal court and have been pleased with the results.

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 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 be 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. The draft bill would add a new section 101(f) to the act, providing that nothing in the section 101 authorizes the State to refuse to offer social services to Indians on the same basis that it offers them to other citizens of that State. The Fort Peck Tribes strongly support this provision.

In Montana, the attorney general has used the 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 a State's obligations to its own Indian citizens.

Now that the BIA 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.

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 2 years ago, we were receiving grants to operate a foster home licensing program. We lost that grant and at least other tribes lost theirs as well in Montana. At the same time, an urban Indian organization began to receive a sizeable grant.

We have no objections to urban organizations receiving grants for off-reservation programs, but we feel strongly that tribes should have first priority to serve children on and near Indian reserva-

tions. 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.

Mr. Chairman, I thank the committee for the opportunity to testify, and I would be glad to answer any questions you might have.

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

The CHAIRMAN. Thank you very much, Mr. Shields.

Ms. Kitka.

#### STATEMENT OF JULIE KITKA, SPOKESPERSON, ALASKAN FEDERATION OF NATIVES, ANCHORAGE, AK

Ms. KITKA. Good morning, Mr. Chairman, members, and staff. My name is Julie Kitka. I am special assistant to the president of the Alaska Federation of Natives. The Alaska Federation of Natives is a statewide Native organization in the State of Alaska, representing the regional corporations set up by the Alaska Native Claims Settlement Act, a number of the nonprofit regional associations in the State, and almost 98 percent of the villages within our State.

I am pleased to be able to testify here today on behalf of AFN. We will be submitting written comments specifically on the technicalities of the amendments before you.

I wanted to bring to your attention today that this issue is one of the most important facing Alaska Natives. I have been spending considerable time working on our land-related issues and amendments to the Alaska Native Claims Settlement Act to try to resolve the different 1991 issues, but the issues dealing with and affecting Alaska Native children ranks just as high as the issues in protecting our land base.

Approximately 98 percent of all the litigation Alaska Natives are involved in at this point are not dealing with our land and resource issues, with subsistence or other related issues. The litigation is dealing with Alaska Native families and Native organizations trying to protect their rights to keep Native children with their families and extended families. This is something that cannot be allowed to continue—the tremendous litigation, and the waste of resources of Native people and communities just to try to protect children in their communities.

There is a whole complex array of problems dealing with children in our State: 1) the higher rate of alcohol abuse, 2) domestic violence, 3) sexual offenses, and 4) the high number of Alaska Native families which are split up by native men going into the correctional system for a variety of reasons. All these have tremendous impacts on the children in our State.

We would like to see a comprehensive approach dealing with the social service needs and in strengthening ways of keeping Alaska Native families together. We have several suggestions on this, and one which goes beyond the scope of the amendments before you today but which we feel is very important.

In the late 1960's, Congress took a leadership role in establishing a Federal field commission to take a look at the status of Alaska Natives. We would like to urge this committee to take a leadership role in having some type of commission or organization set up to do

a field examination in the State of Alaska on the status of Alaska Natives and their families.

We would like them to report on what is going on in the communities. For example: what is causing almost 50 percent of the inmates in the State of Alaska to be Alaska Natives? Why are 50 percent of all the Alaska Natives that are in the correctional centers from one area of the State?

All these things combined are impacting our families and our children. They are primary causes on why our children are being brought into the State system and in, either foster care or being circulated around the State outside of native families.

This field commission or whatever title you call it could come to Alaska and travel to the major regional areas in our State and some of our villages and report back to the Congress their findings and recommendations.

In addition, we would like the committee to consider funding a statewide Indian child welfare coordinating project for Alaska Natives. The purpose of this project would be to coordinate Alaska Native positions on these amendments, and coordination of ICWA issues in our State, in order to deal with the disparity among the regions in our State.

There are some areas in our State which are very well prepared and are dealing with the implementation of the Indian Child Welfare Act well. There are some positive things going on. We are very pleased with the Governor of the State of Alaska, and also Commissioner Munson, who is going to be testifying later, in their efforts in continuing negotiations for a model State-tribal agreement.

However, we do need a statewide coordinating project because the disparity in the regions is such that those areas in our State which need the agreement or need better representation in dealing with Indian child welfare issues are the ones that are not getting the representation. A statewide project would facilitate that, especially for those areas of greatest need.

There are several other technical issues which we would like to address. One deals with the whole area of concurrent jurisdiction within the State. Jurisdiction deals with Alaska Natives and their rights to tribal self-government. We feel this is an issue which must be addressed by this committee to mitigate our continuing with this tremendous amount of litigation.

Local control of issues such as how native people raise their children and address child welfare issues is absolutely essential. Our councils in our villages must have the authority to make critical decisions on the ground. Areas are remote and also because there are real clinical benefits for local control and native councils being able to make these decisions. When you are talking about communities being ripped apart by alcohol and drug abuse and all the other factors, there is a tremendous healing process that must take place in our communities. Reassumption of concurrent jurisdiction or local control will facilitate this healing which must take place in our communities.

Another issue which must be addressed in the amendments is the ability to transfer children's cases from the State courts to tribal courts. Right now we don't have many tribal courts in our State, but there is a tremendous interest in developing competent

tribal courts, and again with the idea of local control. We would like to have a mechanism to facilitate the transfer, as different areas become able to deal with this on the local level. We would like to have the tools from the Congress in order to have this happen.

Another issue is with voluntary proceedings. That, in our view, is a major loophole in the Indian Child Welfare Act and one that must be fixed. There is a tremendous amount of native children which are leaving native families and communities and going to non-native families through voluntary proceedings. This must be addressed.

Another concern which is raised by a number of native organizations in written testimony, deals with the issue of notice. Like I mentioned earlier, we are involved in a State-tribal negotiations process with the State of Alaska dealing with a lot of procedural issues. The notice requirement is a crucial component to the agreements. Unless they are aware that the proceedings are taking place, native organizations and villages aren't going to be able to participate.

We would like to have two tribal notices sent, one to the villages and also one to the regional association (which may be providing the technical assistance or the staff work on behalf of the villages). Alaska is unique in that with all our villages we have regional associations which provide a lot of services and facilitate things for the villages. A dual tribal notice would ensure that we have native representation at State proceedings that affect native children.

The last issue which I wanted to raise deals with the funding issue in the Indian child welfare grant process. Right now it's on a competitive process, and basically with a competitive bid process, you're talking about those groups which are best able to put together a funding proposal are going to receive ICWA grants.

We feel that Indian child welfare issues, are spread throughout our State and every single one of our areas should be entitled to core funding on Indian child welfare and should not be competing against one another. The problems are different, but the needs are still there statewide. We would like to see a change instead of competitive bidding, that there be a core funding established.

That concludes the concerns that I would like to address at this time. We will be submitting written testimony which outlines the specifics on the amendments before you. We pledge our utmost cooperation, our legal counsel or whatever, to flesh out whatever amendments that could help to make ICWA work better in Alaska. Thank you.

The CHAIRMAN. All of your written statements will be made part of the record.

Thank you very much, Ms. Kitka.

Our next witness is Mr. Ketzler.

**STATEMENT OF ALFRED KETZLER, SR., DIRECTOR, NATIVE SERVICE TANANA CHIEFS CONFERENCE, FAIRBANKS, AK**

Mr. KETZLER. Thank you, Mr. Chairman. My name is Alfred Ketzler. I am director of native services for Tanana Chiefs Conference, a regional consortium of 43 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.

In 1987, 8 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 found that 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-percent increase. During the same period of time, the total population of Alaska Native children increased by only 18 percent.

The figures are even more disturbing when one considers that the Alaska Native population is only 14 percent of the total Alaskan population. Yet, Alaska Native children make up 49 percent 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 percent were Alaska Native.

As the figures indicate, the removal of our children from our homes and culture continues 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 or her chances of being placed in a native home are not very good. At best, the child has a 59 percent chance in those areas of the State that are predominantly native. In the more urban areas of the State those figures drop to as low as 4 percent. 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 ICWA and to stop this in the future.

Tanana Chiefs Conference, Inc. 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 percent 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 only marginal success. The biggest is the lack of resources. Title II funds available under ICWA are competitive. Tribal programs are funded based on 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 it will be funded from 1 year to the next. An average child protection case will last for 2 years, but it is not clear whether our tribal programs 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 the State foster care under title IV(E) of the Social Security Act and may

share that with 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 2 and 3 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 problem 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 or 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 or 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 contracts, which is Public Law 93-638. Federal foster care assistance needs to go directly to 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 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 the Indian Child Welfare Act.

[The Prepared statement of Mr. Ketzler appears in the appendix.]

The CHAIRMAN. Thank you very much, Mr. Ketzler.

We will take a short recess. There is a vote pending at the present time. I will be back in a few minutes.

[Recess.]

Senator MURKOWSKI. [presiding] At the request of Chairman Inouye, I would like to call the meeting back to order and proceed with the agenda. It is panel one, I believe, Mr. Gary Peterson, ICWA committee chairman, Affiliated Tribes of the Northwest, Shelton, WA; Mr. Caleb Shields, council member, Fort Peck executive board, Poplar, MT; Ms. Julie Kitka, spokesperson—spokeswoman, excuse me—for the Alaskan Federation of Natives, from Anchorage.

We welcome your testimony. I am going to have to be leaving shortly for the State Department, so please excuse that. Your statement, I gather, has been given, and there are some questions posed by the chairman. Is that correct? I wonder if you could respond with regard to private adoption agencies and how they handle Indian children under the Child Welfare Act.

I guess we are interested in recommendations that you may have to remedy a problem that has been identified. Could you identify

the problem and what your recommendations would be? Julie, do you want to try that one?

Ms. KITKA. The problem with voluntary proceedings is that it is a loophole in the Child Welfare Act in which the notice requirements do not—or at least have been interpreted—not to be in effect. We would like to see that the Native parent that is involved in a voluntary proceeding have most of the same rights as a parent in an involuntary proceeding. We would like them to have the right to appointed counsel. We would like for the agency which is trying to facilitate the voluntary adoption to have to show a strong standard that culturally appropriate remedial and rehabilitation services have been provided in order to try to keep the native family together. Voluntary placement should be a last resort as opposed to a first option in dealing with a difficult family situation.

We feel very strongly that Native families should be given assistance to stay together as a unit and keep Native children in Native families and extended families. The voluntary proceedings is a loophole in the act and that provision needs to be tightened up.

Senator MURKOWSKI. What kind of legal representation is provided to native families in the child welfare proceedings as they are currently constituted?

Ms. KITKA. Well, basically in Alaska not all of our villages and regional associations have legal representation which deals with Indian child welfare. We have several areas of the State which have tribal lawyers who follow these cases and represent native families in court on a day-to-day basis. However, there is still a tremendous lack of legal representation in these Indian child welfare cases on behalf of native families.

In addition, some areas of the State a native representative representing the village's interests have been denied because they do not have standing as a lawyer. They have been denied being able to provide testimony, relevant facts or bringing in different witnesses.

Senator MURKOWSKI. The last question—and the chairman is back.

Mr. Chairman, I have proceeded to just ask a couple of questions of the witnesses.

My last question is with regard to adoption or proposed adoption or placement of native children in non-native homes and the willingness of non-natives to adopt or initiate proceedings of adoption, it is my understanding that that is something of a concern to the native groups, in Alaska at least, where I have some familiarity. I am wondering if there is a firm decision with regard to the placement of native children in non-native families on a permanent-adoption concept.

Ms. KITKA. Prior to the implementation of the Indian Child Welfare Act, thousands of native children were shipped out of the State of Alaska and adopted by non-native families. The current situation is that because of the Indian Child Welfare Act, they are not shipped out of State but they are still circulated within the State. There is a lot of procedural issues which have not been addressed in order to try to stop this and keep children in their communities or with their extended families.

Until quite recently, the State of Alaska would have no qualms in placing, for example, a Yupic Eskimo child with a Tlinget Indian

family and think that they were in compliance with the Indian Child Welfare Act. What you're basically talking about is two different cultures. The State of Alaska has made vast improvements in their implementation, but we have got a long way to go.

Senator MURKOWSKI. Mr. Chairman, thank you for the opportunity to pose my questions. I want to thank the witnesses, particularly Mr. Al Ketzler, who is a long-time acquaintance of mine, and Ms. Julie Kitka, both from Alaska.

The CHAIRMAN [presiding]. I thank you very much.

Senator MURKOWSKI. I have a statement for the record that I would like entered, Mr. Chairman.

The CHAIRMAN. Without objection, so ordered.

Senator MURKOWSKI. Thank you.

The CHAIRMAN. Throughout your testimony all of you have expressed concern over the large numbers of native children being placed in non-native foster homes or permanently adopted by non-native families. So that the record would be complete and so that those who are not acquainted with the problem will understand the reasons for your concern, I will call on all of you to tell me why it is bad for native children to be placed in non-native homes.

The first witness, Mr. Peterson.

Mr. PETERSON. Mr. Chairman, I think there are many, many reasons why it is a problem. I guess my non-social worker, non-professional response would be as a member of a reservation community. Having lived in that community all of my life and in many cases having known of families, where all of the children were adopted or placed in foster care, and I remained in that community as those children moved out.

Seeing many of those children finding their way back to our community as teenagers, as young adults, and just viewing the problems that they have had readjusting to getting back into our communities, and in many cases being familiar with the children as they were in non-Indian homes and the problems that they have in those homes before they find their way back to our communities, I think to me the problem is that the children find that they are not fitting, that they don't feel like they belong in the place where they are.

I think they recognize that they are Indian, but they're not sure what that means. And when they come back to our communities, I believe that they have been subject in a lot of cases to a lot of the stereotypes that people have of Indians. So when they come back to our communities and they're trying to figure out how they belong there, they lean on those stereotypes.

So in a lot of cases I believe that they think that if Indians drink, which is one of the stereotypes of Indians, that then they're going to drink the most, that they're going to drink more than anybody else does on the reservation, and they end up involved in extreme activities like that that they believe are a part of Indian identity just because of the stereotypes that they have been subjected to.

Until they find their way through that, they have a lot of problems. I think the reservation community is a place that can help them find their way through that which they can't get any place else.

The CHAIRMAN. I presume you are speaking of children being placed in foster homes, returning to reservations?

Mr. PETERSON. Yes; And I think in a lot of cases children who were adopted, when they reach a certain age and start deciding for themselves who they are and what they want to be, find their way back to our communities as well.

The CHAIRMAN. Mr. Shields.

Mr. SHIELDS. Mr. Chairman, I wouldn't say that placement of Indian children in non-Indian homes is all bad. Clearly, there are cases where, even on the reservation at Fort Peck, Indian children are adopted by non-natives within our community. The same as they are with foster home placement. Indian children are placed in non-Indian homes in foster care, and some of them are good, some are bad, just the same as with Indian foster parents.

I think what we have tried at Fort Peck is when children are placed in non-Indian homes, whether foster care or adoption, we have required that some contact be retained with the tribe of that child, returned periodically to visit relatives.

One of our biggest problems that has to be addressed is the expanding role of foster parents. If we had enough of those qualified homes, there wouldn't be a need for all this adoption. If we could have the expanded definitions of the extended family, which is one of the amendments supported by the Association of American Indians to expand that definition, we wouldn't have as much problems as we do now.

But in any case, if there could be that requirement that the Indian child would not lose contact with his tribe or his people, in the adoption process, it would be much better for the child and for the tribe and their extended family that reside either on or off the reservation or near the adopted child.

The CHAIRMAN. Are you testifying that in Fort Peck the reservation retains jurisdiction over the child?

Mr. SHIELDS. Yes.

The CHAIRMAN. Even if he enters into a non-native foster home?

Mr. SHIELDS. Yes.

The CHAIRMAN. And that is by agreement?

Mr. SHIELDS. Yes; in the adoption order.

The CHAIRMAN. And that child is required to return to the reservation.

Mr. SHIELDS. That's correct.

The CHAIRMAN. On a regular basis?

Mr. SHIELDS. That is correct.

The CHAIRMAN. How often is that?

Mr. SHIELDS. At least once a year. In the summer months, where this one child returns every summer for a short period of time.

The CHAIRMAN. Is that the same in other areas, Ms. Kitka?

Ms. KITKA. Your question was how do we feel about Native children being adopted by non-Native families. We certainly realize that in some limited circumstances that is necessary. We think that there is a lot of circumstances in which it is unnecessary. The disadvantage of Native children going into non-Native families is what they miss out on. It's not the care that they're getting in the non-native family, it's what they're missing out on.

One of the factors, a part of being Indian and part of being Alaska Native is the richness of the history, richness of the traditions, of extended families. For example, a child would miss out on the different legends and stories which their grandfather might tell them, or they'd miss out on helping their grandmother do different activities with their family, and in the community.

They would miss out on all the beautiful things about being a Native, all the richness and diversity of their culture. They would miss out on their language, especially certain traditional areas in the State where English is a second language as opposed to a primary language. If a child is taken out of that area, they will be very confused because they will have had their early years of their training in their home Native language. They will be going to another situation which may have no appreciation for all the language skills and the talents that that child has developed.

The most important concern for our children is the development of a good self-esteem. We feel that with good self-esteem a Native child can succeed and do anything that they want anywhere that they want—but they've got to have a good grounding. In order to have a good grounding, we think it's essential that they stay within the Native community where people love them and care for them and are able to give them that extra richness.

The CHAIRMAN. What if there were no foster homes in the villages and tribes?

Ms. KITKA. There are foster homes, but there needs to be a concentrated effort to identify more families and get lists of these families and get them circulated throughout the area. If there is not a family in a particular village, there are clusters of villages which are of the same ethnic background, same language, same culture, and there are families in the neighboring villages. There can be enough foster homes. Not enough attention has been on identifying these Native families and circulating the lists around to the appropriate State agencies and Native organizations.

Native families are willing to be foster homes—they are just not aware of how you go about it.

The CHAIRMAN. Would the Fort Peck arrangement improve the situation?

Ms. KITKA. Pardon me?

The CHAIRMAN. Would the arrangement that we find in Fort Peck, where the children are required to return to the reservation on a regular basis, would that arrangement help your situation?

Ms. KITKA. Well, I think that in some aspects that would without a doubt help. However, the practicalities of that, because of the great distances involved in the villages in the State, it would probably be very cost-prohibitive. If you talk, for example, of a child being in Anchorage and their home village is, for example, Kakto-vik on the North Slope, the cost might be prohibitive. But I think it would be a positive step.

The more logical step would be to keep the child in that regional area, in one of those neighboring villages surrounding their home village if there is no foster care, rather than having them be in a more distant place from their home village.

The CHAIRMAN. Mr. Shields, who pays for the transportation?

Mr. SHIELDS. The adopted parents.

I would like to add, Senator, that we would prefer the increased programs that foster home licensing on the reservation rather than adoption. But there is a shortage of foster homes at the present time, and until these other things happen, expanding of the extended families and things, and working out agreements with the States on payment and what not, there will be a need for adoptive parents. But we would prefer expanded foster home programs.

The CHAIRMAN. I have my own reasons that native children should to the greatest extent possible, be placed in native homes. But I wanted to hear from you because nowhere in your testimony do you tell us why it is bad to have native children placed in non-native homes.

Mr. Ketzler.

Mr. KETZLER. Mr. Chairman, I guess I would have to equate that as parallel to my own life, where I was a child of a German father and a Athabascan mother, and what happened was that my father died when I was very young. But I feel that I missed both parts of the best of their culture. I don't speak the language of the Indian nor do I speak German. I end up with English, and I look at children that are adopted out from native families to other races and see that they lose both and they don't fit into the other. Granted, they can receive the love and so forth, but it doesn't make up the difference. The problem I had was that it took me well past my 21st birthday to understand who I am.

The CHAIRMAN. All right.

I am sorry I wasn't here when my distinguished friend from Alaska asked questions, but if he has asked these questions, just tell me.

Mr. Peterson, you spent much time advising us of the inadequacy of funding. Can you elaborate on what you mean by inadequate funding, in what areas, and how much would make a difference?

Mr. PETERSON. Mr. Chairman, it's been an ongoing problem of not only inadequate funding but the way that the funding exists and is managed.

The Bureau of Indian Affairs, for example, has a title II program that provides money for tribes to operate Indian child welfare programs, but annually the Bureau makes an effort to cut that money. It's \$8.8 million for all the tribes in the nation. Every year they have attempted to reduce that amount, as meager as it is. As poorly as it meets the need, they have tried to reduce that amount.

So it hasn't been consistent, and it brings into question the commitment on the part of the Bureau to Indian children and families. One year, for example, they attempted to reduce the budget by 50 percent, from \$8.8 million to \$4.4 million, which would have been disastrous.

The other part of the process involves the competitive nature of the program so that tribes end up writing a proposal and they don't know from year to year whether their program will exist or not. In some cases the tribes have even closed down a program and then received funding and so they had to start the whole thing back up again. That creates a lot of disruption in the management of a program. It doesn't enable the tribes to do any effective, long-range type of planning.

There is also a lack of tribal input into the funding process. There was some money made available for fighting drug and alcohol abuse on Indian reservations, and the Bureau of Indian Affairs and Indian Health Service were the agencies that were designated to manage that program. Basically what happened is that they increased the staffs at Indian Health Service and BIA to do what, I don't know. In the case of the alcohol money, they mandated child protective service teams that will be Federal employees but we're not sure about how effective those programs can be or how they're going to fit into the programs that we operate. So there have been a lot of problems with it over the years.

The CHAIRMAN. I gather that the State of Washington and the several tribes of the State are in the process of reaching an agreement on how to implement this act?

Mr. PETERSON. It took us four to five years, but we did work out a very comprehensive agreement with the State. And as a matter of fact, we are planning a signing ceremony of that agreement on November 23 in the State of Washington with the Governor. The agreement basically is going to implement the act. A group of social workers in the State met to identify barriers to them doing their job effectively, and they put together what they would propose as an agreement, and then we negotiated that with the State of Washington.

There have been several spinoffs from that that involve amendments to State law that relate to foster care, for example, where the State amended their laws to recognize the right of the tribe to license foster homes and committed the State to make payments for those licensed homes. The homes are licensed based on tribal standards.

So we do have an agreement in the State, and we are real proud of all the work that has gone into that and how comprehensive it is, and we are in the process of implementing that agreement right now.

The CHAIRMAN. With that agreement, would some of your concerns still exist?

Mr. PETERSON. I think that the agreement, again as a part of the implementation process, in order for us to succeed, it's going to take a lot of commitments from other people. The State of Washington has met some of that commitment, the tribes have met a lot of the commitment, and so we're looking now to this committee, for example. Yes, we will still have the concerns and will still need some of the things that we are recommending—the amendments to the act and some of the funding, resolving some of the funding problems—to enable us to continue to meet the needs of Indian children and families.

The CHAIRMAN. Mr. Shields, we were advised that recently you had a rather bad case involving a group foster home in which numbers of minor native children were abused by the people running the foster home.

Mr. SHIELDS. That's correct.

The CHAIRMAN. I believe there was a criminal case, and these people are now serving long prison terms.

Mr. SHIELDS. That's correct.

The CHAIRMAN. Can you briefly tell us the nature of this case and how you hope to prevent its reoccurrence?

Mr. SHIELDS. Mr. Chairman, this group home was established, I believe, in 1971. This was prior to the tribes having any foster homes, any type of program. We have no other place to send children, so they were kept in group homes with house parents. That program at different times had up to 26 children in the three homes that were available. That is when these incidents started occurring. There was a man and wife, house parents in these homes, watching and taking care of the children.

Since that time, with the foster care licensing program, there has been less and less children placed out in that group home. In fact, it has got to a point that for all practical purposes the group home is closed now because they have no children to watch. All the children are placed in foster homes.

Nevertheless, there is still going to be a need for some type of a group home because there are some children that cannot be placed in foster homes; either because of their behavior or what not, you know, foster parents don't want the children.

So what we are looking at, whether they are neglected or abused, and with that grant that we received through the Bureau of Indian Affairs, we are looking at the research and evaluations that are necessary to have a safe group home for children that cannot be placed anywhere.

One of the things that we are looking at is rather than having house parents, that we would have matrons watching those children, to minimize instances of abuse, especially sexual abuse. We feel that some type of a matron program would eliminate any future incidence of that kind.

The CHAIRMAN. Do you have any program to monitor or supervise these homes, whether they be group or separate?

Mr. SHIELDS. Well, under that memorandum of understanding between the BIA and the IHS which we just implemented recently, we have that abuse-and-neglect team, and we have the staff that is provided under the MOU. We have a special prosecutors and investigators, counselors to oversee and prosecute any incidence of this kind in the future.

The CHAIRMAN. But that team comes into action when abuse has been made known.

Mr. SHIELDS. Yes; that's correct.

The CHAIRMAN. Do you have any group that on a regular basis would visit and monitor these homes?

Mr. SHIELDS. The foster homes?

Mr. SHIELDS. Yes; we have that now. Between the BIA and the tribal foster home licensing program—and I was going to mention this on the funding aspect, we started out with the foster home licensing grant for a couple of years, and then being competitive or not, we had lost the grant. Foster home licensing in that type of program is so important to the tribes, and under our priority system the tribe picked up that program under tribal funds.

Now, if the tribe was not able to do that, if we were unable to continue a foster home program, we never would have been able to get this agreement with the State providing foster care payments and the protection services in line between the tribe and the State.

But our present foster home licensing program, which is a tribal program funded by the tribes, does do evaluations and home visits to try to minimize any abuse incidents that might occur.

The CHAIRMAN. I ask this question because there are good and bad foster parents and good and bad matrons. I think just as many matrons have been involved in abuses as parents, and without any sort of monitoring or periodic checking, these abuses will never surface.

Mr. SHIELDS. Right. The group home, if it does reopen, would be under the foster home licensing program, as I understand it.

The other thing that we're looking at is we have a couple of organizations on the reservation—Voices for Children, for one—that have really been helping the tribes and demanding oversights on foster care and abuses and neglect. We would like to see that in establishing oversight hearings on the reservation by the tribe, by the tribal Government, that those type of things would be placed within the court systems and the programs to monitor activities, to monitor qualifications and eligibilities of foster parents and background checks, you know, in-depth background checks. We hope that with what is coming forward down to the Fort Peck tribes now, that we would be able to make some big corrections that weren't there before.

The CHAIRMAN. You have established a program to assist victims of sexual abuse, and it has been described as being a very good program. Could you tell us what is involved in your program?

Mr. SHIELDS. The neglect-and-abuse team has just started within the last month. These were individuals who were recommended by the tribe and hired by the Indian Health Service and the Bureau of Indian Affairs, as I said, to investigate and prosecute child abuse and neglect. Along with that is provided the counseling and follow-up, the things that would be needed for these children.

One of the important things of that neglect team, I think, is going to be sort of a team that is going to be working primarily for the benefit and protection of children and not to be controlled by any faction which may exist on the reservation, whether it be tribal Government or the community. They are there to do a job, and that is to protect the children.

The investigation is, I think, the real important aspect of the abuse and neglect. Before, there was always poor investigation, investigation that never took place when it should have, and for different reasons. I think the enforcement part of that neglect and abuse is going to be the key to deter future incidents.

The CHAIRMAN. You have reached an agreement with the State of Montana. Is it just with your reservation, or does this cover all other reservations?

Mr. SHIELDS. No; it's just with the Fort Peck Reservation because we have been negotiating with the State for about two years.

The CHAIRMAN. Are the other reservations doing the same thing?

Mr. SHIELDS. I think they may be on that track now, Senator. At least we would hope, because you have to look at children all over the State. It is a problem trying to get the State to agree to such a negotiated agreement. We would rather, Senator, have funds funded directly to the tribe. You know, if that ever came about, we would prefer that. But in the meantime we thought it necessary

that we take the lead in Montana to resolve those problems between our tribe and the State to provide the things that are necessary for them.

The CHAIRMAN. So, under this agreement, the cost of support for the child is borne by the State?

Mr. SHIELDS. Yes; also, part of that agreement, as I had in my testimony, I believe, is the recognition of our standards for foster care.

The CHAIRMAN. And the State makes direct payments to foster parents?

Mr. SHIELDS. Yes.

The CHAIRMAN. Not through the tribe?

Mr. SHIELDS. No; directly. Especially where the children are not members of the tribe.

The CHAIRMAN. I would now like to ask our Alaskan representatives. I am not certain whether my friend from Alaska asked these questions. But am I correct that 96 percent of urban native children have been placed in non-native homes?

Mr. KETZLER. Yes; well, it depends on the area that you look at in Alaska. But that is the numbers that we received from the State, and our determination is that either 96 are non-native or four percent are placed in native homes in urban areas.

The CHAIRMAN. And that 40 percent of native children in reservations or in native villages have been placed in non-native homes?

Mr. KETZLER. Yes; that would be about 49 percent.

The CHAIRMAN. It is 49 percent. Do you have any procedure or program by which you monitor or assume jurisdiction over these children?

Mr. KETZLER. A few of our villages have set up their tribal courts now, and they have assumed jurisdiction over some of the children. But the majority of them, the villages that we deal with, don't have this system. So that what happens is that with one agency in Fairbanks that deals with a huge area covering the whole interior of Alaska, and to give you an idea of how big it is and the cost, to go from Fairbanks to Holy Cross, which is our furthest village, costs \$572 round-trip air fare, plus it takes a whole day to get there.

So the problems that we have in trying to monitor or sending people out to investigate these cases is just tremendous.

The CHAIRMAN. Is the placement of these children under the jurisdiction of the State courts?

Mr. KETZLER. Well, again it depends on if the village has a tribal court. That the State has recognized, after losing a couple of cases in the State Supreme Court and the Ninth Circuit Court, that the tribal courts do have jurisdiction. But in others, the State has jurisdiction.

The CHAIRMAN. Ms. Kitka, if I recall, you stated that you are having troubles with tribal courts in Alaska?

Ms. KITKA. Yes; it's my understanding that the only tribal court which the State recognizes is on Annette Island, the Metlakatla tribal court, because they are a recognized reservation. The other tribal courts are having difficulty with the State as far as recognizing whatever decisions they make. Our overall goal is we would like—

The CHAIRMAN. Why is that?

Ms. KITKA. Well, the State does not at this time recognize concurrent jurisdiction. There has been a couple of court cases which have basically come out—and this is also what the State of Alaska has argued in court briefs—that there are no tribes in Alaska, that Public Law 280 took care of the issue of tribes in Alaska, the Alaska Native Claims Settlement Act took care of tribes in Alaska and that there is no Indian country.

So the whole issue of jurisdiction is something that causes tremendous litigation in a State in which you have native villages and native organizations saying, "Yes, we have some rights under this act," or, "We want to assert this and we want to assert that," and the State coming back trying to beat you back down.

We are involved right now and for the last year and a half, almost 2 years, involved in negotiations with the State of Alaska on some State tribal agreements. And basically we are very pleased with that process. Governor Sheffield and the past administration was instrumental in getting that started, and Governor Steve Cooper has continued on with this.

Basically, what we are working toward is a working document which would implement some of the procedural things under Indian Child Welfare between the villages and the State. But there is a couple of key issues which aren't being addressed in the negotiations, and that deals with the funding issue, the jurisdiction issue, and tribal courts. The tribal courts, like I said, it has been one of our goals that every single village council or cluster of village councils or regional area should be able to handle their own child welfare matters. That has been kind of our goal.

In addition to that, we would like to see those areas that are interested in setting up tribal courts either on a village level or on a cluster level or a regional area be able to be recognized with concurrent jurisdiction so that if they are to the point where they are able to actually handle child welfare matters in a very competent manner and a very responsible manner for the native people in that area, that they be allowed to use that as a form of local control.

The CHAIRMAN. Would the so-called draft bill submitted by the Association of American Indian Affairs address and cure the problem you have just cited?

Ms. KITKA. I think it will go a long ways. We are submitting written testimony which would basically address some of the technical things in that proposed bill. It's my understanding that there is a little bit of confusion because of the jurisdictional issue being such a question mark in our State at this time, the fact of whether or not Alaska native villages fall in the fact of being Indian country or not Indian country or what have you, the amendments the way that they are need a little bit of technical work.

What we are not suggesting is jumping completely into the whole tribal governance jurisdiction issue completely, but basically trying to get some tools to villages in order to try to make this act work in Alaska. Like I said, we've got some technical changes that we think can make these amendments work better for Alaska.

The CHAIRMAN. Senator McCain.

Senator McCAIN. I have no questions, Mr. Chairman.

The CHAIRMAN. Well, I thank you all very much. If you do have written statements that you would like to submit, please do so, and these statements will be made part of the record.

Our second panel consists of the deputy to the assistant secretary of the Bureau of Indian Affairs, Ms. Hazel Elbert; and the associate commissioner of the Division of Children, Department of Health and Human Services, Ms. Betty Stewart.

The committee appreciates your participation in this hearing this morning. May I call upon Ms. Elbert?

**STATEMENT OF HAZEL ELBERT, DEPUTY TO THE ASSISTANT SECRETARY (TRIBAL SERVICES), BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC, ACCOMPANIED BY LOUISE REYES, CHILD WELFARE SPECIALIST; KAREN ECKERT, CHILD WELFARE SPECIALIST; DAVID ETHERIDGE, SOLICITOR**

Ms. ELBERT. Thank you, Mr. Chairman, 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 of 1978. The Indian Child Welfare Act of 1978 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 re-assumption 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 percent of the total complaints of possible child abuse and neglect involved physical abuse, 69 percent involved neglect, 12 percent involved sexual abuse, and 62 percent involved alcohol 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 percent of the children were under State care and 48 percent were under tribal Indian organization or BIA care.

The BIA and IHS have cooperatively developed child protection teams and 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 interagency agreement with the Department of Health and Human Services to fund model sexual abuse treatment and prevention programs on the Hopi and Fort 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 multiyear grants and the remainder are single-year. Multiyear grants were initiated in 1986 and the current multiyear cycle will operate through the 1988 funding cycle. The multiyear grants were developed out of recommendations originating from the 1984 oversight hearing. This procedure has been successful, so we are currently considering accepting only multiyear applications when the multiyear 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 the 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 in 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 draft bills to amend the act. We did not receive these bills until just last week and, therefore, have not had time to review them. We would be most pleased to provide our comments at a later date.

Mr. Chairman, this concludes my prepared statement, and I would be happy to answer any questions the committee might have.

[Prepared statement of Ms. Elbert appears in the appendix.]

The CHAIRMAN. Thank you very much.

As the title of the act indicates, the Indian Child Welfare Act, we are concerned with the welfare of the native Indian child. From that vantage point, all of the witnesses who appeared before you expressed concern over the large number of native children being placed in non-native foster homes or adopted by non-native families.

From the standpoint of the welfare of the child, can you tell us if it is in the interest of the child to be placed or not placed in non-native homes? What is desirable?

Ms. ELBERT. That is a very difficult question to answer. When you consider that, as some of the witnesses testified here this morning, that you have an alcohol and substance abuse program in a lot of the homes that reaches 89 percent, and yet you have children that are being abused and neglected and the whole objective is to keep the family together, that is ideal if you can do that. But I think you have to weigh each case on a case-by-case basis to make sure that you are not subjecting the child, trying to keep him with the family, to a worse situation than if you put him in a non-Indian setting.

I think it's important that the child retain as much of his culture as he possibly can if that is feasible to do without subjecting the child to so many things to deal with that complicates his life. My feeling is that if a non-Indian setting is going to provide that child love and care, an education and is going to make sure he is well taken care of, that is just as good a setting as if the child were kept in the Indian setting, if he is going to be subjected to all of these other things that complicates his life as well.

The CHAIRMAN. In the case of Alaska, the testimony is that only four percent of the urban native children is placed in tribal homes and the rest are placed in non-native homes. Is the situation so bad in Alaska that only four percent of the children could find homes in the native environment?

Ms. ELBERT. Mr. Chairman, since we don't really have a lot of involvement in the placement of these children, I don't know what all is taken into consideration in making those placements. We are really not involved in the placement part of this act except if the courts are not able to locate the child's parents or to identify from which tribe that child is descended. It is only then that the bureau gets involved in placement situations.

The CHAIRMAN. Would you be in favor of establishing tribal courts in the Alaskan Native villages?

Ms. ELBERT. Mr. Chairman, that is a much bigger question than I am prepared to answer here. I think you could have a whole hearing on that question.

The CHAIRMAN. Who can answer that?

Ms. ELBERT. I don't believe there is anyone here with me today who can.

The CHAIRMAN. Well, will you have the Assistant Secretary provide an answer to that?

Ms. ELBERT. I will mention to the Assistant Secretary that the committee would like to have a response to that question.

The CHAIRMAN. Have you received a copy of the so-called draft bill that these people have been testifying on?

Ms. ELBERT. I believe our legislative office has. I have not seen the bill.

The CHAIRMAN. Has your legislative office made any recommendations on that measure for or against?

Ms. ELBERT. I don't believe so.

The CHAIRMAN. Will you ask them to submit a statement indicating their support or nonsupport of the measure?

Ms. ELBERT. Surely. As I indicate in my statement, we would be glad to make comments on the bill.

[Information to be supplied appears in the appendix.]

The CHAIRMAN. All witnesses have indicated a lack of funding. Can you tell us something about funding?

Ms. ELBERT. Funding for 1987 we received an appropriation of \$8.8 million for title II of the act. And we funded 128 grants, I believe, with an average grant of about \$69,000. We try as best we can to make sure that the proposals are equitably funded, and they are funded, we think, on a need, merit, and performance type basis.

I do believe that some of the comments that some of the witnesses made about who gets funded and who doesn't get funded has some basis. It depends on how good a proposal writer you are as to whether or not your proposal receives funding. If you are a good proposal writer—and there are a lot of good proposal writers out there—quite naturally your proposal is going to look a lot better than one that isn't put together quite so well.

The CHAIRMAN. So you are telling me that the merits of the case are secondary; that it depends upon how well someone has command over the Queen's language?

Ms. ELBERT. I think that's true not only in this situation but any situation where you have moneys that are awarded on a proposal type basis. It depends on how good the proposal writer is.

The CHAIRMAN. Do you provide a program to assist tribal offices to write these applications?

Ms. ELBERT. We provide technical assistance to any tribe that requests our assistance in putting together a proposal.

The CHAIRMAN. Why don't you help them write those application forms?

Ms. ELBERT. We do provide technical assistance if they ask us.

The CHAIRMAN. Do you believe that the amount that was appropriated, that \$8-plus million was sufficient?

Ms. ELBERT. The \$8.8 million allowed us to fund all of the applicants that received a favorable score. However, we did fund them at a reduced level. If we had had more dollars, we would have

funded them at a higher level than we did. I don't believe there were any that applied and made the score that did not get some funding.

The CHAIRMAN. There is a difference between some funding and appropriate funding. Is the amount sufficient to carry out the intent of the program: to serve the welfare of the Indian child?

Ms. ELBERT. Having to fund at a reduced level, it obviously is not enough.

The CHAIRMAN. What would have been sufficient?

Ms. ELBERT. I believe the number of requests and the amounts involved that we have gotten have over recent years averaged around \$13-14 million.

The CHAIRMAN. Before proceeding, would you identify your assistants there?

Ms. ELBERT. Yes; this is Louise Reyes, who is a child welfare specialist in the Social Services Division of the Bureau of Indian Affairs; and Karen Eckert, who is also a child welfare specialist.

The CHAIRMAN. Then from your testimony, you have been able to provide 60 percent of the requested funds?

Ms. ELBERT. Of the \$8.8 million? Yes, sir, that's what we were appropriated.

The CHAIRMAN. But it's 60 percent of that which was needed; is that correct?

Ms. ELBERT. Is 60 percent of the \$8.8 million?

The CHAIRMAN. You said that the full amount would have been \$14 million.

Ms. ELBERT. I said based on the number of applications that we have received and the dollar amounts involved, it amounts to about \$13-14 million—I stand corrected. The requests, the total amount of the requests that we receive each year have averaged about \$14 million since the inception of the program.

The CHAIRMAN. Of the \$8.8 million, what amount was utilized for grants?

Ms. ELBERT. All of it.

The CHAIRMAN. All of it?

Ms. ELBERT. Yes, sir.

The CHAIRMAN. No administrative costs?

Ms. ELBERT. We do not take administrative costs out of the \$8.8 million. It all goes to grants, except for this year we did do some mandatory child protection team training.

The CHAIRMAN. How much is that?

Ms. ELBERT. About \$20,000—about \$200,000.

The CHAIRMAN. Do you on a regular basis monitor this program?

Ms. ELBERT. The child welfare program, yes, we send our social workers—Karen, Louise, and others that we have on the staff—who go out periodically to monitor the grants.

The CHAIRMAN. To all of the areas?

Ms. ELBERT. We try to get to them—we did not, I don't believe, make all of them last year because we did not have adequate staff to do so.

The CHAIRMAN. May I ask how many reservations were monitored last year?

Ms. ELBERT. Eight grantees in Sacramento, two in Juneau, and two special ones—eight in Sacramento, three in Juneau and spo-

radic reservations throughout the rest of the country. But I don't know in total how many. We would have to gather that information and provide it for you.

The CHAIRMAN. How many grantees did we have?

Ms. ELBERT. There are 128.

The CHAIRMAN. Out of 128 you were able to monitor eight in Sacramento, three in Alaska, and sporadic throughout the country—I don't know what sporadic means.

Ms. ELBERT. We estimate about 10 percent of the grantees.

The CHAIRMAN. You were able to monitor 10 percent of the grantees?

Ms. ELBERT. That is what our estimate is, that we monitored about 10 percent of the grantees.

The CHAIRMAN. Are you satisfied that the remaining 90 are being implemented in a proper fashion?

Ms. ELBERT. I can't say that I am, no, sir.

The CHAIRMAN. Thank you.

Senator McCain.

Senator McCain. Thank you, Mr. Chairman.

Ms. Elbert, I am somewhat surprised to see that the degree of noncompliance by the States, where according to Title III of the act they are required to provide the Secretary of the Interior with a copy of the Indian decree or order in an adoptive placement of an Indian child. And I noticed the list that you provided shows very little reporting, especially in my own home State of Arizona, which in 1979 had 13 and then there has been none or a maximum of three ever since.

How do you account for that?

Ms. ELBERT. You mean for the fact that the States don't report?

Senator McCain. Yes.

Ms. ELBERT. I suppose the State systems have a lot to do with it. There are a lot of things that fall between the gaps in any situation, and I imagine that when it comes to notifying the BIA that we have an adoption situation going on, it's something that just doesn't occur to them to do.

We try as best we can to keep those people informed who are involved in adoptions to the requirement that the BIA be notified in these situations. We have a newsletter that we put out every month that goes to all of the tribes, State organizations, the State court systems and what have you. And I would presume it's just an oversight on their part.

Senator McCain. Do you have any ideas as to how we can get their attention?

Ms. ELBERT. Well, we are continuing to address it in our newsletter, *Linkages*, that goes out every month, and we have had discussions about developing an awareness program so that we can make those who are involved in Indian child welfare a little more aware about the requirements of the law and what is incumbent upon them to do.

Senator McCain. Well, let me suggest that we might get the attention of the States by threatening to withhold their funding in some way. I think it's very hard for us to get a handle on this situation if we don't know what's going on in these cases. Perhaps you can provide us with some recommendation, because although I ap-

preciate your newsletter, I think it's pretty obvious that there has been no improvement. In fact, looking at these numbers as I see them, there has been an actual decline in some States in reporting.

Ms. ELBERT. That is probably an issue that we can address in re-viewing the legislation that I understand has been drafted.

Senator McCAIN. Good. Can you estimate how often cases which are similar to the Holloway Carter are filed?

Ms. ELBERT. How often such cases are filed? We would have no way of knowing, since there is no requirement to notify us when a case is filed.

Senator McCAIN. Does the BIA play any role in assisting this particular child in this situation?

Ms. ELBERT. No; we answered quite a bit of correspondence on it.

Senator McCAIN. Has the department ever requested intervention by the Justice Department in a Child Welfare Act case?

Ms. ELBERT. I believe we have requested intervention in a case prior to the act and one since the act, and we have had some involvement in a third situation.

Senator McCAIN. Has the BIA offered an opportunity for tribes to be involved in the development of child protective procedures?

Ms. ELBERT. I presume you are talking about the child protection team effort that we have ongoing. We developed the procedures in coordination with the Indian Health Service, and we have had oversight hearings on them once. We are in the process now of having follow-up meetings that would involve the tribes.

The tribes do have an opportunity to become involved in the child protection effort at the local level. They can actually be a member of the child protection team, if I am not mistaken.

Senator McCAIN. Staff tells me that when you requested the Justice Department intervention, that the Justice Department refused to intervene. Is that true?

Ms. ELBERT. That's correct.

Senator McCAIN. What were their stated reasons for doing so?

Ms. ELBERT. I am not sure of that. I would have to check with legal counsel.

This is Dave Etheridge.

Senator McCAIN. Would you state who you are, sir?

Mr. ETHERIDGE. David Etheridge, solicitor's office.

Senator McCAIN. Thank you. Could you provide us with that information?

Mr. ETHERIDGE. They sent us a letter, which I think has been fairly public. They didn't feel that there was a substantial Federal interest involved in that particular case that would justify Federal participation in it.

Senator McCAIN. Would you provide that letter that you received so that it can be made part of the record, please?

Mr. ETHERIDGE. Yes, I will.

[Information to be supplied appears in the appendix.]

Senator McCAIN. This appears to me, Mr. Chairman, that our Justice Department has a trust responsibility in that area, clearly.

I have no more questions, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you very much.

Ms. Stewart.

**STATEMENT OF BETTY STEWART, ASSOCIATE COMMISSIONER,  
DIVISION OF CHILDREN, YOUTH AND FAMILIES, DEPARTMENT  
OF HEALTH AND HUMAN SERVICES, WASHINGTON, DC, ACCOMPANIED BY PHYLLIS NOPHLIN, PROGRAM ANALYST**

Ms. STEWART. Thank you. Mr. Chairman, Senator McCain, I am very pleased to have this opportunity to appear here today to discuss the implementation of the Indian Child Welfare Act and how the Department of Health and Human Services has coordinated activities with the Bureau of Indian Affairs to assist in achieving the goals of the act.

I am here representing the Children's Bureau, which is located in the Administration for Children, Youth, and Families in the Office of Human Development Services [OHDS], the Department of Health and Human Services.

The Children's Bureau administers the child welfare services program under title IV-B of the Social Security Act and has a longstanding interest in child welfare services for Indian children and their families. The Indian Child Welfare Act of 1978 is the expression of this Nation's policy to protect the best interest of Indian children and to promote the stability and security of Indian families. It established standards governing the removal of Indian children from their families, encouraged the placement of such children in foster or adoptive homes which reflect the unique values of Indian culture and held that no adoption of Indian children would be legal unless a tribal court concurs.

We fully support the law's emphasis on tribal jurisdiction over Indian child welfare matters and efforts to preserve the child's cultural heritage. Our support for the act and its goals has been demonstrated in a number of ways. Most notably, we have facilitated agreements between States and Indian tribes and have undertaken several joint projects with the Bureau of Indian Affairs. In addition, we have used OHDS discretionary grant funds to provide seed money and training for Indians working in the child welfare field.

These contributions, in turn, are perhaps best seen in the context of the larger role that the Children's Bureau plays in providing child welfare services to all children in need of them. Many of the principles of the Indian Child Welfare Act are similar to the requirements of the Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272. This landmark legislation established a new foster care and adoption assistance program under title IV-E of the Social Security Act and modified the title IV-B child welfare services program to improve protections and services for children.

The goals of Public Law 96-272 and the goals of the Department in administering this legislation are as follows: first, prevention of unnecessary separation of children from their parents; second, improved quality of care and services to children and their families; and, third, permanent homes for children through reunification with their parents or through adoption.

Our philosophy, simply stated, is that, if possible, all children should stay with their parents. If they are in foster care, they should be reunited with their parents, and if they cannot stay with or be reunited with their parents, they should be adopted.

Therefore, in recent years we have put major emphasis on the provision of family-based services to prevent foster care, prompt reunification of children who are in foster care, and the adoption of children with special needs.

Under Public Law 96-272, the Secretary of Health and Human Services makes grants to States for child welfare services and may provide direct funding for child welfare services to Indian tribes. Tribal grants were first awarded in 1983. In 1987, 35 tribal organizations received grants totaling \$432,679 under section 428 of the Social Security Act.

To be eligible for funding, a federally recognized tribe must be delivering child welfare services under an Indian self-determination contract with the BIA and must develop a child welfare services plan through joint planning with ODS Children's Bureau staff. Joint planning, which is required by the law, means tribal and Federal review and analysis of the tribe's current child welfare services program, analysis of the service needs of children and their families, identification of unmet service needs to be addressed in a plan for program improvement, and development of goals and objectives to achieve those improvements.

Our regional office staff have met on an annual basis with Indian tribes to carry out joint planning. We believe that the planning effort is a worthwhile undertaking because it gives the tribes the leadership role in assessing their needs and in developing suitable resources. With the tribe's concurrence, joint planning also offers the opportunity to include both the State and the BIA in the planning process and provides an opportunity for the development of cooperative agreements concerning the provision of these services.

The provision of services to Indian children and families, particularly children and families on reservations, varies depending upon relationships between the tribes and the States. In some States there are good relationships between States and tribes. In other States, however, tribal-State relations tend to be problematic.

The problem of divided or uncertain legal jurisdiction and responsibility for intervention and provision of service has long been recognized. One solution proposed has been the development of tribal-State agreements on Indian child welfare issues, spelling out State and tribal responsibility for action and funding. Past agreements were supported by both ACYF and the Administration for Native Americans, but tended to be narrow in scope. For example, an agreement that the State would contract with the tribe to develop and maintain native American foster homes on the reservation: A State could have a different agreement with each of the tribes in the State.

Recently, however, the American Association of Indian Affairs has worked with the State of Washington and an association of Washington tribes to develop a comprehensive agreement covering all aspects of Indian child welfare and defining responsibilities and procedures in all circumstances.

This agreement, signed by the State and almost all of the 26 Washington tribes, will be the focus of a meeting that we will sponsor this winter with representatives from the American Association of Indian Affairs, the State of Washington Indian desk, and the

tribal association to present information on the development and implementation of this agreement. At this meeting we will bring together the Administration for Native Americans, the Administration for Children, Youth, and Families, the Bureau of Indian Affairs, congressional staff, native American organizations, and other national organizations.

It is our hope that this agreement will serve as a model for other States and tribal associations around the country.

In a number of other Indian child welfare areas we and the Bureau of Indian Affairs have engaged in collaborative efforts to improve services to Indian children. For example, in September 1985 ACYF and the BIA jointly contracted for a study of the prevalence of Indian children in substitute care. The study also examined the implementation of the Indian Child Welfare Act and relevant portions of Public Law 96-272 as they affect Indian children and their families. This provides a systematic national examination of the effects of the Indian Child Welfare Act.

The purpose of the study was to determine the number of Indian children in substitute or foster care across the country and to obtain data about their placements and case goals. The study was also designed to learn how States, tribes, and BIA agencies are working together in an effort to comply with the legislation and to determine what successes and problems are affecting its implementation.

Data collection for the study was recently completed. An extremely high return rate for the survey was achieved from States, tribes, and BIA agencies. Preliminary findings indicate that approximately 9,123 Indian children were in substitute care in 1986. The final study is expected to be available in January 1988.

Other examples of collaborative efforts between ACYF and BIA include BIA participation in two ACYF advisory boards which are appointed by the Secretary of HHS, the National Advisory Board on Child Abuse and Neglect, and the Advisory Committee on Foster Care and Adoption Information.

BIA staff has been detailed to OHDS to work on Indian child welfare issues. For several years, BIA staff have served on OHDS grant review panels, and OHDS staff have served on BIA grant review panels in the area of Indian child welfare.

The Children's Bureau participated as a member of a BIA task force on child abuse and neglect, which advised BIA in its development and implementation of local child protection teams.

One recent outcome of this interagency collaboration has been a formal interagency agreement under which HHS transferred \$200,000 of fiscal year 1987 child abuse prevention funds to the BIA to be used on two reservations, including Fort Peck, with special problems of child sexual abuse.

From 1985 to 1987 OHDS has funded approximately 66 discretionary grants totaling over \$4 million to address a wide variety of Indian child welfare issues. Some projects were focused on developing cooperation between States and Indian tribes. Others were focused on prevention of out-of-home placements and improving child protective services on Indian reservations.

Grants provide training for Indian students interested in working in child welfare services and for Indian practitioners already

working in this area. Still other projects were designed to help resolve problems of chemical dependency, school dropouts, and run-aways.

These OHDS discretionary grants, it must be emphasized, are for developmental purposes only. Grants made by the BIA under the Indian Child Welfare Act are designed to fund direct service delivery. The discretionary grants made by OHDS complement BIA efforts by providing seed money for future service improvements.

In closing, the Department actively supports the Indian Child Welfare Act and the principles it embodies regarding the prevention of family separation, the promotion of family reunification, and the central role of Indian tribes in deciding these issues. Although we have not yet completed our analysis of the draft bill proposed by the Association of American Indian Affairs, we appreciate the opportunity to comment on draft legislation affecting the Department of Health and Human Services.

Mr. Chairman, that concludes my prepared remarks. I would be happy to respond to any questions.

[Prepared statement of Ms. Stewart appears in the appendix.]

The CHAIRMAN. Thank you very much, Ms. Stewart.

Your statement is a very fine one. I very much agree with your second paragraph, in which you say, "The Indian Child Welfare Act of 1978 is the expression of this Nation's policy to protect the best interests of Indian children and to promote the stability and security of Indian families."

The purpose of this hearing is to determine whether the Nation's policy has been appropriately implemented.

You follow this by indicating, "We fully support the law's emphasis on tribal jurisdiction over Indian child welfare matters and these efforts to preserve the child's cultural heritage."

Are you disturbed or concerned with the statistics that we just received from Alaska that 96 percent of Native Indians in urban areas find themselves in non-Native homes?

Ms. STEWART. Yes; I think that everyone here would have to have some concerns about such an extremely large percentage.

I can say, in general, we have had some difficulty in obtaining accurate statistics.

We are hopeful that the study we funded jointly with the BIA will give us some additional information that will help to inform us more specifically about the numbers of Indian children in adoption and foster care throughout the country, including Alaska.

We feel that the information that we will gain from this study will be very helpful to us and others in addressing this problem.

The CHAIRMAN. Are you also concerned with the statistic that 49 percent of native children on reservations are being placed in non-native homes?

Ms. STEWART. I think, sir, that I would have to know more about some of the specifics of why this is happening. It seemed to me in the earlier testimony that while there was concern that children were not being placed with Indian families, there was also a feeling that children who were placed with non-Indian families on reservations still had opportunities to maintain and retain their cultural heritage.

The CHAIRMAN. You have said the following: "Most notably, we have facilitated agreements between States and Indian tribes."

How many agreements have you facilitated?

Ms. STEWART. I am sorry I don't have that exact number, but I would be glad to provide it for you.

The CHAIRMAN. Well, how many agreements do we have between States and tribes? I gather that there are just about two of them; is that correct?

Ms. STEWART. Two?

The CHAIRMAN. Yes; one with the State of Montana and the other with the State of Washington.

Ms. STEWART. I am sorry, could I just have a moment?

[Pause.]

The CHAIRMAN. I am talking about the title IV money.

Ms. STEWART. Mr. Chairman, we know that a number of agreements have been negotiated between States and tribes. Some have been negotiated in the past and have not been continued. Some are in place currently. I cannot give you an exact number now, but we will be very glad to provide that information to you. But certainly there are many more than two.

The CHAIRMAN. Without these agreements, the funds, title IV funds, go from your office to the State and it is the State's discretion whether they pass it on to the foster homes. Is that correct?

Ms. STEWART. I am sorry, sir, are you speaking of title IV-E funds?

The CHAIRMAN. Yes.

Ms. STEWART. Yes; you are correct, the title IV-E funds go directly to the States, and it is the State's decision to determine who administers those funds. And you are also correct that State and tribal agreements make it possible for tribes to assume responsibility for Indian children in foster care. With such agreements, tribal organizations are more likely to feel that there is an equitable distribution of title IV-E money, which is, as you know, related to those children who are in the foster care system who are AFDC-eligible. That includes Indian children as well as non-Indian children.

The CHAIRMAN. In other words, if the States refuse to recognize the jurisdiction of the tribal courts, the moneys are not passed through?

Ms. STEWART. It is my presumption that it is the State's responsibility to make those determinations, yes, sir.

The CHAIRMAN. Would you think it would be a better arrangement, as suggested by the Association of American Indian Affairs that these grants be paid directly to the tribes?

Ms. STEWART. We received this proposal only late last week and have not had a chance to review it. We have, however, had a legislative proposal suggesting that social services block grants provide money that would go directly to the tribes. So we would be supportive of that.

The CHAIRMAN. Can you provide us with your review and your recommendations on this draft bill?

Ms. STEWART. Yes; I will make your wishes known to our legislative staff, yes, sir.

[Information to be supplied follows:]

In response to the Committee's request for the number of agreements the OHDS has facilitated between States and Tribes, we have the following information concerning State-Tribal IV-E agreements. Although there are many issues around which States and Tribes may wish to enter into cooperative agreements, information was sought only on title IV-E agreements which allow Tribes to assume responsibility for the foster care placement of Indian children while the State provides the foster care maintenance payment with Federal participation. Following is a State-Tribal listing of current IV-E agreements and agreements under negotiation. Regional office staff indicate they have facilitated all the listed agreements with Tribes except the Sisseton/Wahpeton, and Cherokee in North Carolina agreements.

<u>State</u>	<u>Tribes with Current IV-E Agreements</u>	<u>Tribes with Pending IV-E Agreements</u>
Arizona	o Gila River	o Navajo
Florida	o Seminole	
Minnesota	o Six Bands of the Chippewa Nation White Earth Boise Fort Leach Lake Fond du Lac Grand Portage Mille Lacs	
New Mexico	o Zuni o Navajo o Laguna o San Felipe o Ramah Navajo	o Jicarilla o Acoma o Santo Domingo
North Carolina	o Cherokee	
North Dakota	o Devil's Lake Sioux o Sisseton/Wahpeton o Three Affiliated o Standing Rock	

<u>State</u>	<u>Tribes with Current IV-E Agreements</u>	<u>Tribes with Pending IV-E Agreements</u>
Oklahoma	o Comanche o Cheyenne/Arapaho o Ponca o Pawnee o Tonkawa o Otoe-Missoula o Ft. Sill Apache o Absentee Shawnee o Apache o Choctaw	o Kickapoo o Seneca Cojuga o Caddo o Wichita o Delaware o Cherokee
South Dakota	o Sisseton/Wahpeton	
Washington		o Joint agreement with 26 Tribes in State

The proposal by the American Indian Affairs Association is under review by the Department. When we have completed our review, we will provide the committee with our recommendations.

The CHAIRMAN. You have indicated that, "The provision of services to Indian children and families, particularly children and families on reservations, varies depending upon relationships between tribes and the State. In some States there are excellent working relations, with joint planning and Indian tribal involvement in funding decisions. In other States, however, tribal-State relations tend to be problematic. The problem of divided or uncertain legal jurisdiction and responsibility for intervention and provision of services has long been recognized."

Could you give us an assessment of these excellent working relations and what States are involved, and the problematic relations and the States?

Ms. STEWART. Are you asking me for a listing of the States that have good relationships and those that don't?

The CHAIRMAN. Yes.

Ms. STEWART. I am not really prepared to give that information, no, sir.

The CHAIRMAN. But you testified to that.

Ms. STEWART. Yes, sir; but I was not prepared to give you an actual list of those States that we think work well.

The CHAIRMAN. Did you have a list?

Ms. STEWART. I don't know that we actually had a written list.

The CHAIRMAN. If you don't have a list, how can you tell us that some are excellent and some are problematic?

Ms. STEWART. Members of our staff and staff in our regional offices who work with various States and tribes provide us with this information. But I am just not prepared to talk about individual States.

The CHAIRMAN. Will you provide us with a list?

Ms. STEWART. I will make every effort to do so, yes, sir.

[Information to be supplied follows:]

In response to the Committee's request for a list of Tribe-State relations both excellent and problematic, we provide a brief assessment from four regions with significant Indian populations.

Region VI

New Mexico has experienced both good and problematic relations with various Tribes. The quality of the relations seem to change frequently as both State and Tribal administrations change frequently.

Oklahoma has gone from bad relations with Tribes three or four years ago to what is described as an excellent relationship today. Over the last two or three years more and more of the Tribes in this State describe the State's openness and willingness to work with them.

Region VII

There are no title IV-E agreements with Tribes but there is a negotiated agreement between the State of Kansas and the Four Tribes of Kansas Consortium to provide services, including foster care. (The agreement is a purchase of service contract not a title IV-E agreement.) The regional office was involved in agreement facilitation and describe the State-Tribal relationship as excellent.

Region VIII

Many States in this region have been wrestling with various problems regarding services to Indian children on reservations. In the face of diminishing resources, discussions have developed between the State agencies and the BIA area offices regarding which agency will provide child welfare services to Indian children.

Region X

Alaska will soon have agreements with Tribes in place. Biggest problem here is that Tribes have 13 corporations of over 250 villages and each village wants their own agreement. Regional Office is helping facilitate.

Oregon is working on an agreement with Tribes. Regional Office is helping to facilitate.

Washington has good relationship with Tribes. DSHS has an "Indian Desk" with 4 or 5 employees which deals with Indian Issues. The State is in the process of negotiating a joint agreement with 26 Tribes. The process of negotiating this agreement has forged a new and more productive State-Tribe relationship. As a result of this agreement Tribes will be involved in every aspect of child welfare service delivery to Indian children.

The CHAIRMAN. You have indicated that you consider the arrangement worked out with the State of Washington should serve as a model for other States. Is that the official position of your agency?

Ms. STEWART. In support of this agreement we are sponsoring a meeting so that those who worked out this agreement can present it to others within the Administration that are involved with Indian affairs and to other national organizations. We do feel that it presents a real breakthrough in States and Indian tribes working together on the comprehensive development of services for all Indian tribes. We in the Children's Bureau are very supportive of this agreement and would like to see other States make similar efforts. Yes, sir.

The CHAIRMAN. Thank you very much, Ms. Stewart.  
Senator McCain.

Senator MCCAIN. Mr. Chairman, I noted that both our witnesses have not had an opportunity to review the legislation, and I wonder when they will be able to review and provide their recommendations to the committee.

First, Ms. Elbert, I guess you might comment?

Ms. ELBERT. In about 3 weeks.

Senator MCCAIN. Ms. Stewart.

Ms. STEWART. I don't have a specific timeframe to give you, sir, but as soon as possible.

Senator MCCAIN. Well, I guess I should ask next how long before this hearing were you notified that we would have the hearing?

Ms. STEWART. I'm sorry?

Senator MCCAIN. How long ago were you notified that you would be asked to appear before this committee?

Ms. STEWART. I think, sir, about 1 week or 1½ weeks ago.

Senator MCCAIN. I have no further questions, Mr. Chairman.

The CHAIRMAN. I thank you very much.

Ms. STEWART. Thank you.

The CHAIRMAN. The next panel, we have Ms. Michelle Aguilar, from the Governor's Office of Indian Affairs, the State of Washington; and Myra Munson, commissioner in the Department of Health and Social Services, of Juneau, AK.

Ms. Aguilar and Ms. Munson, I am sorry I can't stay for the hearing. I have to report to another committee, so our distinguished friend from Arizona will be presiding from now on, Senator McCain.

Thank you very much.

Senator MCCAIN [presiding]. Thank you, Mr. Chairman.

Ms. Aguilar and Ms. Munson, if you choose to summarize your statements, please feel free to do so, or if you choose to read your entire statement, also feel free to do that. Please proceed.

**STATEMENT OF MICHELLE AGUILAR, GOVERNOR'S OFFICE OF  
INDIAN AFFAIRS, STATE OF WASHINGTON, OLYMPIA, WA**

Ms. AGUILAR. Thank you. For the record, my name is Michelle Penoziequah Aguilar. I am the Executive Director of the Governor's Office of Indian Affairs for the State of Washington.

Prior to my current position I served as the Indian child welfare Program Director for the Suquamish Tribe. This is the second Indian child welfare oversight hearing at which I have testified. In order to address the problems that are inherent in the act, and that have allowed Indian children to continue to lose contact with their cultural heritage, and in tribes continuing to lose their children; it has been our position that it is imperative to develop amendments to the act, now.

It is also imperative that Indian children receive appropriate services, and that is directly related to funding. At the hearings in 1984, the witnesses spoke to the need for noncompetitive, consistent Federal funding for ICWA programs.

At one point we were receiving, I believe the figure is, \$9 million something; we are now at \$8.8 million. In 1984 we asked for somewhere around \$28 million; that was asked by the National Association of Native American and Alaska Native Social Workers. The bureau has testified that there are 128 grants currently funded. There are 280 Federally recognized tribes, to my knowledge, in the United States and there are approximately 220 native villages. Less than a third are Iran and funded for I.C.W. programs.

Plus, we also have native American children who are not receiving what I consider culturally relevant services because they belong to treaty tribes that have no Federal recognition at this point. I'm sure that there are also Indian children that belong to State-recognized tribes that would benefit from more appropriate services.

The State, in working with the tribes, have found that inadequate funding is one of the major reason for inconsistent services for Indian children. Coupled with a lack of clarifying amendments to the act, it is a major cause of continuing confusion and litigation.

The State, at the request of tribal social workers, began the process of negotiating a tribal-State agreement, and in the last two-and-a-half-years have arrived at what we feel is probably the most comprehensive Indian child welfare tribal-State agreement in the Nation. It addresses the same areas as the Association on Native American Affairs' proposed amendments.

The Secretary of the Department of Social and Health Services for the State, Jule Sugarman, is quoted as saying that: "This agreement represents a most significant impressive partnership, which I fully support. This agency is committed to the terms, conditions, and obligations contained in the agreement."

The agreement is acting as a blueprint for Statewide policies in the treatment of Indian children. It goes beyond the act in recognizing Indian children. It picks up children that might have fallen through the cracks previously. Most of the tribes in the State are in the process of going through their councils, getting resolutions so that they can officially sign the agreement.

Those tribes that at this point do not have social service programs, or don't feel that they can enter into the agreement officially, will in fact, benefit from the agreement being in place. This agreement basically is the new policy of the State in regards to service provision for Indian children. In effect it states: "This is

how, from the day forward, we will treat all Indian children within the State of Washington.

In my written testimony there are several areas, philosophical areas, that the State of Washington has determined is in the best interest of all citizens, and primarily Indian children. I won't read those to you, as you have them in the statement.

One of the outcomes of the negotiation process in the agreement was the development of legislation that provided a means to make payments for Indian licensed foster care. Basically, the bill causes the State to recognize the foster care standards of Tribal foster care licensing agencies. Those standards are, of course, in compliance with Federal regulations and include additional tribal standards.

Payments will come through the State and be made directly to tribally licensed foster families. That will reduce duplication of services by State social workers and tribal social workers.

I think that the State of Washington is doing and has done everything that they possibly can to make it work in Indian country. The State is committed to continuing to work with the tribes in developing programs that will best serve Indian children. The financial assistance is minimal. Our State, like others, is constrained by not having enough money to provide services to children, Indian children as well as other children.

It is our position that amendments will include areas that we found necessary to address in our agreement to make things work in this State; and that it has been very important to develop this agreement so that culturally relevant services can be provided.

The State is ready at any point a bill is brought forth, to make comments, to assist in any way we can. Thank you very much.

[Prepared statement of Ms. Aguilar appears in the appendix.]

Senator McCAIN. Thank you very much, Ms. Aguilar.

I would like to proceed with Commissioner Munson before we have questions.

Please proceed, Commissioner. Thank you for being here today.

**STATEMENT OF MYRA MUNSON, COMMISSIONER, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, JUNEAU, AK**

Ms. MUNSON. Thank you. I appreciate the opportunity to speak before this committee today. Currently, I am the commissioner of the Department of Health and Social Services for the State of Alaska. The department is a multiservice agency providing child welfare services as well as many other human service programs.

Prior to accepting this appointment in December 1986, I had developed extensive familiarity with the Indian Child Welfare Act providing training concerning the act from 1980 through late 1983 to most of the native associations and many of the village councils throughout the State, as well as to all new social workers, probation officers, and other employees of the Department of Health and Social Services with any direct responsibility for child welfare services.

In the course of doing that, I also provided training for members of the Bureau of Indian Affairs and virtually all groups in the State with interest in the Indian Child Welfare Act. For the three

years immediately prior to accepting this appointment, I worked for the State attorney general's office, representing the Department of Health and Social Services in child welfare matters.

I have provided fairly extensive written testimony for the committee and will summarize those comments there.

It is my impression from the contact that I have had throughout our State that in fact there has been considerable improvement in the practice of child welfare as it affects Indian children in our State since the passage of the Indian Child Welfare Act. It is my belief that the act was clearly needed and that many of the purposes of the act are being accomplished, although not to the extent that either the State nor certainly the villages, in our State would like.

I would like to correct some of the impressions left by prior testimony about the statistics in our State. We have in our department probably the least adequate data system that one could devise for a child welfare program. Thus it is no surprise to me that incorrect and misleading statistics are believed to be correct by people within our State. I have heard statistics, similar to those Mr. Ketzler cited, quoted recently at another meeting. I am not sure where they came from, though they are attributed to the State. I am not sure of their timing nor exactly what numbers are used.

Today, I cannot give you absolute numbers, nor can I guarantee you these that I have today are absolutely correct, but I do know at least that they are recent. What I have with me is the result of very careful checking of both our computerized data system and some fairly significant hand tallying, which is required any time we try to gather child welfare data.

In fiscal year 1986, of all protective services offered to all children in our State, 34 percent of the recipients of those services were Alaska Natives; 66 percent of the recipients of child protective services were non-native children. Of all of the native children receiving protective services, 66 percent received those services while the child was living in the home of his or her parents. Of the 34 percent of the children who were in out-of-home placement, 68 percent were in the home of a relative or a foster home.

Our foster home numbers are very difficult to interpret because we do not have reliable data on a case-by-case basis of the race of the foster home or whether the foster home is a relative. We do know that 32 percent of the native children in care were in the home of a relative. Some of those children were in relative foster home placements where the extended family member became licensed as a foster home. It is difficult, if not impossible, for me to tell you how many.

We do know that of all of our foster homes licensed in the State, 26 percent of the foster homes are native families, meaning that at least one of the two parents is Alaska Native.

What I can't tell you today is exactly how many children we are talking about. What I can tell you with reasonable certainty is that the number of native children placed in native homes is considerably higher than 4 percent, cited by Mr. Ketzler for urban areas; 8 percent of the children—

Senator McCAIN. Where do you think that information came from?

Ms. MUNSON. I honestly don't know. There are a variety of documents floating around that include various statistical breakdowns. Depending on how they're interpreted and when they were produced, it may be possible that those numbers came up—I just don't know. They do not match any set of presentations of material that I have. I have asked the Division of Family and Youth Services recently to pull all of the various reports that might include such statistics. Those numbers don't match any sets that we have.

Senator McCAIN. Will you be sure and provide us with what you do have?

Ms. MUNSON. Yes, I will.

Senator McCAIN. I think it's very important. Thank you.

Ms. MUNSON. Even in Anchorage, where half the State's population resides and where we have the greatest difficulty achieving the placement preferences of the act, eight percent of the foster homes licensed are native homes; 33 percent of the children placed are native. We know that Anchorage is the area in which we have the greatest trouble in compliance with the act.

By contrast, in some other regions of the State, the vast majority of native children who are taken out of their homes, will be placed in a native home either in the village or with a relative. In some cases where a home cannot be found in the village, the child will be brought into a regional center area. For example a child may be removed out of a village into the NaNa region, and brought into Kotzebue, a community of about 3,000. Still, most of those children will be placed in native homes.

Our most serious placement problems are in the larger centers in our State—Anchorage, Fairbanks, Juneau, Dillingham, and so on—the sort of regional centers where there is a mix of both native and white families.

I know that not only our staff is finding native foster homes a difficulty. I spoke recently with the president of the Kodiak Area Native Association (KANA). He indicated the most challenging task facing their child welfare worker is finding native foster homes. And that is the Native Association trying to do that. It's a very difficult problem, and it hinders all of us in our efforts to find adequate placements.

There are, however, many positive things happening in the State with regard to implementation of the Indian Child Welfare Act. As Ms. Kitka pointed out, the State is involved in negotiations to develop an Indian Child Welfare tribal-State agreement. We are doing that in a somewhat different process than was used in the State of Washington, but it is a process that has been widely, although not universally, endorsed in our State.

State representatives are meeting with representatives of a variety of native organizations and villages to develop a model agreement focusing on procedural aspects of the act. We hope to achieve an agreement about which the State can say, "We will agree to all of these terms," and then to offer that agreement to all of the villages of the State. As was pointed out, we have over 200 villages in the State, each of which has the governmental authority under the act to enter into an agreement with the State.

To assure that the agreements can be actually implemented it is my conviction that the agreement must be as uniform as possible

throughout the State with variations being limited to certain areas of the agreement. In practical terms such uniformity will be necessary or our social workers simply will not be able to use them meaningfully, given that many of the children are in urban areas and the social workers may be working with children from potentially any one of those 200 villages at a given time.

In fact the team of drafters elected by the native representatives and by the State are coming together to continue that work this week.

In addition, the Alaska Supreme Court has adopted new children's rules for the first time in 20 years. They significantly changed the rules and have incorporated most of the procedural provisions of the act.

A year ago the State adopted legislation allowing for visitation after adoption in certain cases where the parties agree or the court orders it. This was not directed only at Indian families but it certainly helps in Indian cases even more than in others. While still with the attorney general's office, I used these new provisions in at least one case to protect an ongoing relationship of an Indian child with her biological parents even after the adoption was finalized.

Since 1980 all training offered by the Division of Family and Youth Services in child welfare matters has been offered to representatives of the native associations and village councils with child welfare programs. Recently, there was a training session on adoptions offered by the Division of Family and Youth Services. Representatives of many of the native associations and tribal councils were there. Out of that came an agreement to work on developing a statewide list of adoptive placements for Indian children, which has been a goal of the department for some time despite very limited funding for its adoption programs.

These have been only examples of many things going on throughout the State.

Many people who have testified here have commented on funding. Lack of adequate funding for tribes has probably more seriously hampered the implementation of the act than any other single factor. Lack of adequate funding for State child welfare programs equally hampers the implementation of good practice as it affects Indian children because it hampers our ability to implement good practice for all children.

As I point out in my written testimony, much of what we seek to do in protecting Indian children comes about not only because of the requirements of the Indian Child Welfare Act, but because of changing understanding of good child welfare practice generally. Certainly since I began practicing social work in 1972, the practice has changed dramatically. Our understanding of the needs of children to remain within their own families and within their own racial or cultural group has changed dramatically—unbelievably—since the early 1970's and late 1960's.

When states have inadequate funding for their general child welfare programs, though, we fail to achieve many of our goals to the extent that we would like. I think if we were to inquire into our accomplishments under the Adoption Assistance and Child Welfare Act of 1980, we would see failings similar to those found when we examine compliance with the Indian Child Welfare Act.

I would like to comment specifically on some of the things which I think have hampered the implementation of the act. I mentioned the inadequate child welfare funding for villages by the bureau of Indian Affairs. I think the funding problems extend beyond that, though. In the early 1980's I took part as an ex-officio member of an ad hoc Indian child welfare organization in Alaska, a loosely drawn together group of people who were working for native associations and villages. Initially it was called the Alaska Native Child Welfare Task Force, and later, the Alaska Native Child Advocacy Board.

That group, which met almost monthly for nearly three years, ultimately dissolved because of the competitiveness of the BIA grant process in our State as well as the chaos of the grant process. I think "chaos" is really the only appropriate word to use to describe the quality of technical assistance supplied in our State to the villages and the associations by the Bureau of Indian Affairs.

By the end of the organization's life, virtually every meeting was consumed with people exchanging notes about their latest communication with some member or another of the Bureau of Indian Affairs—either in our State; Washington, DC.; or in Region X—Seattle—trying to find out what the status of the grants was. Ultimately, it simply became a poor use of everyone's money to attend the meetings either by phone or in person, particularly given the cost of travel and telephone communication in our State.

Only in the past two or three months has a Statewide group, of native associations and villages formed again to look at the issues of child welfare. The impetus, I think, was the adoption training I mentioned earlier, as well as the State-tribal negotiations that are going forward.

Senator MCCAIN. Is there any improvement in the information from the BIA?

Ms. MUNSON. I can't speak about the grant process because I have not had the regular contact since 1983. I think there are other people here who could speak to that more directly.

As to the adequacy of other information, though, I would like to comment on that separately. I took part in many efforts to communicate with the Bureau of Indian Affairs, trying to acquire information about what our State should use to identify villages for notification purposes; in seeking help from the bureau to identify what the tribe for an individual child might be; and in responding to questions from attorneys and social workers around the country who would periodically call me trying to figure out to whom a notice should be sent.

It was not at all uncommon in the early years of the act, for the Bureau of Indian Affairs to send a notice to a regional profitmaking corporation rather than to a village, an obvious lack of understanding of notification. Quite honestly, the BIA staff were far more confused than most of our State social workers.

It is my impression that while notices no longer go routinely to corporations, the situation has not improved dramatically. The Bureau of Indian Affairs is seldom of any great assistance to anyone in determining what the tribe of an Alaska native child might be or to villages in Alaska in developing enrollment.

You need to understand that most of the villages in our State do not have up-to-date enrollments, and that the regional corporation enrollments were for the purposes of corporate membership. For the purposes of the Alaska Native Claims Settlement Act many people enrolled in a regional profitmaking corporation outside of the region from which their family had come from. So the regional corporation enrollment does not reflect the political or Governmental relationship that exists between the Indian people in our State and the villages from whence they come.

Determining what the tribe of a child in our State might be is an overwhelming task for the State and for anyone else. The Bureau has been of virtually no assistance in that process.

In addition, I think, in our State as well as in others, there are instances in Federal law, particularly in the Social Security Act, where for a tribe to receive funding, or for the State to receive funding if the tribe is also receiving it, both the State and tribe must meet the Federal standards set out in that law. The requirement essentially is that each make the other conform to that law. It is not a helpful practice to the States and tribes in trying to reach their own agreements.

To the extent that the Federal Government wishes to impose requirements on tribes or States for the practice of child welfare programs, they should impose them directly on the tribe and on the State and not seek to have either the State or the tribe impose the requirements on the other for either to receive the Federal funds. That is the case under title IV(E); both the State and the tribe must be in compliance or both may suffer sanctions.

While our State is not one with an agreement that provides for pass through funding, having to impose those requirements on tribes is certainly an impediment we will have to get around to develop State-tribal agreements. It is my advice to the committee that you consider amendments that at the very least remove that kind of harness arrangement between States and tribes wherever it occurs.

I would like to respond to a couple of the questions that have been asked of people who testified earlier. One asked about legal representation. Alaska recognizes a very extensive right to court-appointed counsel. Virtually any parent is entitled to legal representation. Almost every child has a right to an appointed guardian ad litem. What is not available, in most instances however, is legal representation for the village. In some cases, the village or an association has used limited resources to buy legal representation for the village.

In the early days of title II funding—and again I can't speak to the present situation—tribes were not allowed to use their funds to acquire legal representation. Nor were villages authorized to use those funds for training.

It is my conviction that had every parent in this country had adequate legal representation by someone knowledgeable about child welfare, we might never have needed an Indian Child Welfare Act or the Adoption Assistance and Child Welfare Act of 1980. Having good legal counsel to represent each party in an adversary child welfare case, would have improved child welfare practice enormously. In fact, if every tribe had had legal representation or

did now, the quality of interaction in these cases would be improved.

Finally, it is certainly true that there is much litigation in Alaska about the meaning of certain requirements of the Indian Child Welfare Act. But it is small in relationship to the number of cases arising under the act, most of which are worked out amicably or, at least, without an appeal. In many cases, a village intervenes either formally by appearing in the State court proceeding or informally by offering consultation to the State. Arrangements are made for placement in a relative's home or even to leave the child at home. In cases when permanent separation is required, agreements are reached about the appropriate adoptive placement for a child.

In those instances where conflict over the facets or the law occurs, the case is litigated, and occasionally appealed. There is undeniably significant difference of opinion about how the law should be interpreted over certain aspects of the law in our State. Those differences do not prevent progress from being made in our implementation of the act though.

Thank you.

[Prepared statement of Ms. Munson with statistics for active and non-active CPS cases, appears in the appendix.]

Senator McCAIN. Thank you very much.

I want to thank both of you for very fine testimony. First I would like to say that Senator Evans is still participating in the floor activities regarding another issue that affects the State of Washington, the Washington nuclear waste repositories. I am sure you are aware of that, Ms. Aguilar, and we are hopeful that he is successful in not arranging anything for the State of Arizona. [Laughter.]

Ms. AGUILAR. Right.

Senator McCAIN. I did talk with him before this hearing, and he is very proud of the work that the State of Washington has done, and the work you have done in particular, in taking the lead in this agreement if it is going to help the tribes and the social services agencies adhere to this act. I think you are to be congratulated, and I am going to urge my friends in Arizona to examine very carefully what you have done in hopes that we can arrive at a similar agreement.

Ms. Munson, I would have a lot of questions for you. I think your testimony is excellent. If I understand your position, it is that every village in Alaska has Governmental authority to enforce the ICWA and to enter into agreements with the State. Is that correct?

Ms. MUNSON. That's correct.

Senator McCAIN. I am also interested in your statement concerning the requirement for increased Federal funding, but there is also a requirement for increased State funding. I hope that perhaps we can work out in Alaska and in other States better communications so that there is a better understanding of how those two requirements interrelate. I don't see a lot of coordination in that effort. Do you?

Ms. MUNSON. No.

Senator McCAIN. Well, some of my other colleagues may have some other questions for both of you. I appreciate both of you for

coming this long way, and I think you have contributed enormously to what we are trying to achieve here.

I just have one more question for Ms. Aguilar.

What, in your opinion, has been the primary reason for the success realized in the development of this compact on Indian child welfare?

Ms. AGUILAR. I think it was the dedication of the social workers. I would really have to give the Indian social workers credit for just hanging in there and for the tribes that supported us. At that time I was working for the Suquamish tribe. We were operating under very, very limited funding. The tribes allowed us to leave, sometimes our clients or the tribe suffered from our absence to be at the negotiations, to be drafting this. As you can see, it is a very comprehensive agreement.

I also think that we went in with the attitude of let's fix everything, let's do it all and present it to the State, and if we're lucky we'll get 50 percent. During the first year of negotiations, that is basically what happened. The State said, "Well, we really can't do that, and we really can't do that, and we really can't do that."

After 1 year of sitting down with the social workers and beginning to really understand the problems and the complex issues involved with the relationship between States, tribes, and the Federal Government, the State started saying, "Well, why don't we do this," and they started handing everything back to us, only from their point of view. And what we say is that we basically feel that they have had a chance to walk in our moccasins for a while.

I must give credit to one of our AG's who also, after 1 year, said, "I think I'm beginning to get it. I guess I am beginning to think a little bit like an Indian might think." She took the—

Senator McCAIN. We've been trying that for a long time. [Laughter.]

Ms. AGUILAR. She took the impetus to write some legislation that we really didn't feel was much closer than a couple or three years down the road, and we got it passed immediately.

That happened the same way with the Department of Social and Health Services. There were a few dedicated people there who took the time to understand the problems and say, "Yes, we need to fix it. We need to somehow take the intent of the Federal act and make it reality in this State for Indian children. We value Indian people."

Senator McCAIN. Well, finally, Ms. Munson, I was sorry to hear that anecdote that you related about the number of meetings that took place and the frustration that you experienced. If you have any ideas as to how we can help in ensuring that you don't face a repetition of those enormous frustrations, we would be glad to consider any ideas you have.

Ms. MUNSON. The truth is I don't know what the source of the problem is within the Bureau of Indian Affairs, and I think you have to look at what the source of that problem is to figure out the solution. I quite honestly don't think it's entirely limited to inadequate funding. I think that is certainly a part of the problem, but that's not all of the problem. I suspect this committee, which has probably far greater experience with the Bureau than I, is in a

better position to figure out what the real source of that problem is.

Senator McCAIN. Well, I certainly would appreciate your comments on the proposed legislation as well.

Ms. MUNSON. We will offer that. We have received a copy of the proposed legislation and also of some other proposals that have come to this committee. We will provide feedback to the committee.

Senator McCAIN. Thank you.

Thank you both for being here.

The next panel is Mr. Jack Trope and Mr. Craig Dorsay, if they would please come forward.

**STATEMENT OF JACK F. TROPE, STAFF ATTORNEY, ASSOCIATION OF AMERICAN INDIAN AFFAIRS, NEW YORK, NY**

Mr. TROPE. Thank you, Senator McCain, and members of the committee. My name is Jack Trope. I am staff attorney with the Association on American Indian Affairs in New York. The Association is a national, nonprofit organization that is dedicated to the protection and enhancement of Indian rights. We have been long involved in Indian child welfare, dating back to the late 1960's. Some of the studies by the Association were instrumental in providing the background for the act in 1978, and at the request of Congress we were involved in helping draft that bill back in the 1970's.

Since then we have continued our activity in this area. We have participated in tribal-State negotiations leading to agreements. We have been involved in assisting attorneys involved in litigation. And as several people have mentioned at the hearing, we have also been involved in preparing a draft legislative proposal that some of the witnesses have commented upon in their testimony.

Before I talk about any of the specifics of the proposal, I would like to give you a little background about how we came to develop this proposal. In the course of our work in Indian child welfare, we repeatedly heard comments from people that we work with in the field about different problems that they confronted in their efforts to fully implement the intent of the Indian Child Welfare Act. After hearing such concerns expressed on numerous occasions, we decided that we would systematically try to develop a legislative package to address some of the problems that we were hearing from practitioners in the field.

The comments fell into two broad categories. One is the lack of adequate funding for Indian Child Welfare and Social Services, a problem which you have heard numerous witnesses testifying about both here and at earlier oversight hearings back in 1984.

The second set of problems involves sections of the Act that are less than clear or less than comprehensive in terms of how they should be implemented, giving those States who do not like the act the room to maneuver out of its provisions. Certainly not all States have attempted to evade the Act. There are many States that are constructively trying to implement the act, and I think you have just heard testimony indicating that the State of Washington is a good example of that.

But the Act has enough slack in it that in those States where there isn't that kind of commitment, there is room for the State courts or social services agency to avoid full compliance with the intent of the Act.

After we started to develop our proposals, we talked informally with dozens, if not hundreds, of people—at seminars, conferences and in the course of our work. We reviewed previous hearings before Congress, case law, and developed a draft proposal. That draft proposal was circulated to numerous people in Indian country—not comprehensively; that was not our goal. Rather we were simply trying to survey a reasonable cross-section of opinion to inform the work that we were doing. Finally, we drafted the proposals that are included in our testimony before you and which have been the subject of some of the witnesses' testimony earlier today.

Let me just give you briefly an overview of what goals the proposals are designed to achieve. Before doing that, however, I would note that we have two legislative proposals laid out in our written testimony that are separate but also interrelated—a proposal to amend the Indian Child Welfare Act and one to amend the Social Security Act. Both of them recognize that the best and most culturally sensitive mechanism for protecting Indian children and families is the tribe, a tribe that has adequate authority, adequate input, and adequate resources to provide the services that Indian children and families need.

Now I would like to address the goals of our proposed legislation. First of all, I will discuss the amendments to the Indian Child Welfare Act. Basically, I will try to summarize what we have done in terms of eight goals or categories.

First, the amendments would clarify and expand the coverage of the act. Thus, for instance, there has been some confusion as to when the Act applies when you have an unwed father. We have tried to specify what an unwed father must do to demonstrate paternity. That is one example of a clarifying amendment.

When I talk about expanding coverage of the act, the best example is the provision dealing with Canadian Indian children. Many such children come into this country, are not covered by the act, and as a result, they are suffering from the same sorts of abuses that occurred prior to the Act in regard to American Indian children. We have tried, in our amendments, to bring them under the Act without getting into some of the international jurisdictional problems that that sort of change might cause.

The second goal that we have tried to achieve with our amendments is to increase tribal involvement and control of the process. Thus, for instance, we provide for notice to tribes of all voluntary proceedings. Many children are continuing to be placed in non-Indian households through the voluntary proceeding mechanism because tribes are not necessarily made aware of or notified when these sorts of placements occur. I would note that the degree to which any placement is voluntary is relative. Some placements that are voluntary are not without some preexisting pressure on the part of State agencies who don't want to deal with some of the provisions of the act which pertain to involuntary placements.

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