

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

[LR578]

The Committee on Health and Human Services and the Special Committee on State-Tribal Relations met at 1:30 p.m. on Tuesday, September 25, 2012, in the auditorium at the Nebraska Indian Community College, Macy, Nebraska, for the purpose of conducting a public hearing on LR578. Senators present: Kathy Campbell, Chairperson; Mike Gloor, Vice Chairperson; Dave Bloomfield; Scott Price, Chairperson; Annette Dubas, Vice Chairperson; and Lydia Brasch. Senators absent: Colby Coash; Tanya Cook; Gwen Howard; Bob Krist; R. Paul Lambert; Tyson Larson; and Jeremy Nordquist.

SENATOR CAMPBELL: (Recorder malfunction)...find their chair and we'll get ready to start. I'm Kathy Campbell and I serve as Chairman of the Health and Human Services Committee for the Nebraska Legislature, and I want to welcome you today to the public hearing on LR578. Before we start that public hearing and before we do introductions up here, I'd like to welcome for all of you to meet Michael Oltrogge. Mr. Oltrogge is the president of the Macy campus and we so appreciate the warm welcome we've had here and all the assistance.

MICHAEL OLTROGGE: (Exhibit 1) Thank you. Well, good afternoon. My name is Dr. Michael Oltrogge and I'm the president of the Nebraska Indian Community College. On behalf of the college, I would like to welcome everyone to our Macy campus. I would like to thank everyone for coming to the college today for this hearing, specifically Chairman Campbell, Senator Dubas, and Senator Bloomfield. Some brief housekeeping items: I believe there's tea and coffee set up in the back, as well as the agenda, the testifying forms, and the college catalogs for anybody who's interested. A brief word about the college is that we've been offering access to accredited higher education, cultural and language preservation/revitalization, and opportunities for economic growth since 1973, both within and beyond the Santee Sioux Nation and the Omaha Nation. The Nebraska Indian Community College is an open enrollment institution serving both native and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

nonnative students at the associate degree granting level. Once again, thank you for coming. It is an honor to be able to host this legislative hearing. I'm hopeful that the information gathered today will assist in a smooth transition for the betterment of the sovereign nations of Nebraska, the state of Nebraska, and most importantly the children who are affected through the federal and state Indian Child Welfare Act policies. Once again, thank you and welcome, and welcome to the college.

SENATOR CAMPBELL: Thank you. Thank you, Dr. Oltrogge. We are very appreciative of the spot to hold a public hearing. Legislatures often have the very best hearings when we get outside the Capitol. And I see Senator Price coming to join us. A whole group of people came in together. So we'll wait until Senator Price comes up and then I think what we'll do is we'll start...we'll give Senator Price a chance to kind of get settled in, so we'll start with introductions. To my far left, the lady with the earphones is Diane Johnson and she serves as the clerk for the Health and Human Services Committee and is responsible for the whole setup and recording. And so it's not easy to do that and Diane does a great job. So, Senator, would you like to introduce yourself?

SENATOR BLOOMFIELD: Senator Dave Bloomfield, District 17. I live over by Hoskins, represent Thurston, Dakota, and Wayne Counties.

MICHELLE CHAFFEE: I'm Michelle Chaffee. I'm legal counsel to the committee.

SENATOR CAMPBELL: And as I said, I'm Kathy Campbell and I represent District 25 in Lincoln.

SENATOR PRICE: Senator Price from District 3, represent Bellevue and Papillion and Sarpy County.

SENATOR DUBAS: Senator Annette Dubas. I represent District 34, that's in east-central Nebraska: Hall, Merrick, and Nance, and Hamilton Counties.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR CAMPBELL: Okay. With that, we will formally open the public hearing on LR578. I'm going to go through some general process and procedure. It's just to make it easier for you as you testify today. I would ask that you all either turn off your cell phones or silence them. There's nothing more distracting than when you're sitting and testifying and a phone is ringing, so if you would all take care of that. We don't require handouts in our committee and in an interim study, but if you have handouts, you can share them when you come up to testify. If you are not testifying today but you have a handout that you'd like, you can give it to the clerk when we take a break or at the end of the hearing. If you will be testifying today, we ask that you use the bright, florescent orange sheets and that you complete them, and you only need to fill those out if you are testifying. Your form should be given, and there's a box you can see over by the clerk, which helps her very much know the spelling of your name and who you might be representing, so please print. Diane is pretty good but she would like to have it printed. So you can also give her the handouts when you come forward. As you sit down to testify with us today, we'd ask that you spell your first name and your last name. And you say, now that's really silly, I just handed in a sheet with my name. The orange sheet is for our clerk to be able to make notes for the record. Your spelling is for the transcribers of the recording and so they need to hear your name and it spelled, so that's why we ask for that twice. We are so pleased to have everybody. We will start today, and I want to introduce one other senator that's joined us. Senator, would you like to introduce yourself?

SENATOR GLOOR: I'm Senator Mike Gloor from Grand Island, Nebraska; that's District 35. And I came in from the north so I had a nice tour of Macy before I found my way down here.

SENATOR CAMPBELL: We're glad to have all the senators here today. I should add that the senators represent the Health and Human Services Committee as well as the State-Tribal Relations Special Committee of the Legislature, and Senator Price serves

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

as the Chair of that special committee. So with all of that, we will start with an overview today on opening on LR578 from Judi gaiashkibos, and Judi will make her way to the front. Judi serves as the executive director of the Nebraska Commission on Indian Affairs and has worked with our office to set all of this up and we are very grateful. Thanks for joining us today, Judi.

JUDI GAIASHKIBOS: Thank you, Senator Campbell, members of the committee and the State-Tribal Committee. I am Judi gaiashkibos and my name is spelled J-u-d-i, my last name is g-a-i-a-s-h-k-i-b-o-s, and I am the executive director of the Nebraska Commission on Indian Affairs, beginning my 18th year so it's been a long time. I'm a member of the Ponca Tribe and I am also Santee Sioux. My comments really are going to be brief and not so much an overview. I'm going to leave that to all of my colleagues behind me. My role, as the Indian Commissioner for the state, is to serve as a liaison between the tribes and the state and the federal government. And so throughout the last few years there has been a coalition, the Nebraska ICWA Coalition, made up of representatives from our tribes and other entities. They've really done the hard work and the heavy lifting on this bill so I want to commend all them and thank them for their hard work. They approached me after they had done a majority, and a lot of this work was based on their work, looking at the models in the state of Iowa. And so I then...my role was to find someone, like our dear friend Senator Bloomfield, to introduce and request this interim hearing, so that's what I did. And as you all know, LR578, the purpose is for an interim study to review, investigate, and assess the state of Nebraska's compliance with both the federal Indian Child Welfare Act of 1978 and the state's legislation as well. So that's what we all have convened here today to do. I think you'll hear from personal stories from people and also legal perspectives, and I do hope that we can go from here and perhaps...I'm not sure if that's going to happen this session, but we can take the findings and craft something for either this session to address what we believe are different opportunities to strengthen the current legislation so that our Indian children are protected, and if not this session, the next session. So prior to the hearing today, a colleague and friend of mine gave me a book and I opened it up and there was a quote

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

in there that I thought was just so fitting for what I needed to say today, and it's by Sitting Bull: Let us put our minds together and see what kind of life we can make for our children. And I think that's what we're all here today to do. And I appreciate, Senator Campbell, your work on behalf of all of Nebraska's children and, of course, that you took the time to come here to the homelands of our Omaha people and make sure that our children are included when we look at Nebraska, the good life. So with that, I want to thank everyone that's really done a lot of work to bring us here today and I think we're going to have a good hearing, and I am committed to help in any way in the future to carry this forward. I would like to ask one of my board members, Commissioner Kenny Chapman from the Santee Sioux Nation, to come forward and say a few words on behalf of the Indian Commission and tribal representatives. Thank you very much. Wi'Bthu Ho. [LR578]

SENATOR CAMPBELL: Thank you, Judi. Are there any questions? [LR578]

JUDI GAIASHKIBOS: Any questions? [LR578]

SENATOR CAMPBELL: Thanks, Judi. [LR578]

JUDI GAIASHKIBOS: Thanks, Senator Campbell. [LR578]

SENATOR CAMPBELL: Good afternoon. [LR578]

KENNY CHAPMAN: Good afternoon, Senators. And I would like to...well, my name is Kenny Chapman, K-e-n-n-y, Chapman, C-h-a-p-m-a-n, Kenny Chapman. I'm with the Nebraska Commission on Indian Affairs. I'm also the director of the food distribution program on our Indian reservation. I deal with health and nutrition--food. There are so many things that I would like to say, but I don't know if I have the time this afternoon to get it all said. So I'm going to kind of cut part of it off, and hopefully I can get across what I'm trying to say. In Indian health, there's a lot we need to know because it's hard

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

to because the Native Americans are a lot different in their lifestyles than most people in the state and in America, and we need to know the people, why do they do this, why they do that; what should we do to prevent this, prevent that; for better, nutritious food, for mental health. There's a lot that we need to know. I'm noticing that I hear...overhear people talk and it's very good and we need to really step into this and maybe talk to some...maybe even myself, talk about what needs to be done, what should we do to make things a lot better, make sure other people understand, because there's a lot of it that they don't understand; a lot of it that the people who are trying to help them don't understand because they don't know them, they don't know their culture, how they was raised, why do they do this, why do they do that. So it's very good for anyone who's working for tribes trying to make things better to get to know them better, get to know each one and family, why do they do this, why do they do that, because there's a lifestyle that I see on reservations like nowhere else than this. We need to study them. Take the elderly or older gentlemen who knows the people, raised with the people, educated, now I don't say that to boast but I've been educated. I graduated from the University of Kansas. I have a degree in business. I have four degrees, and I don't say that to boast. I say that because to come out of the reservation like that, to have an education, is really something. It's really something. You see things, understand things better than other people do. And for that reason I come up here and hopefully I can say something that will kind of help us work together to make things better for the people. Nine times out of ten, a child will drop out of school. Children will get...the females will be pregnant before they get out of high school. It's things like this that are things that I know that I can do and...but I haven't had the chance. If I had a chance so I can go in and talk to the students in school it would be different, but I'm not allowed to because I'm a Christian. When you're a Christian, you're kind of outside. If you're in the traditional Indian way of life, then you're accepted. They'll let you go in and talk to the kids. But if you're a Christian....that's why we need to know a lot of these things in talking to people, like myself, to get to understand what needs to be done and how it should be done. And with that, I want to thank each and every one of you who is here in your efforts to help and make things better for the Native Americans in this country. Thank you very much.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

[LR578]

SENATOR CAMPBELL: Thank you, Mr. Chapman. Any questions? I'd like to welcome...thank you, Mr. Chapman, and I hope you'll be around in case we have any questions. [LR578]

KENNY CHAPMAN: Thank you. [LR578]

SENATOR CAMPBELL: I'd like to welcome Senator Lydia Brasch, who's joined us. Senator Brasch, would you like to introduce yourself, which district you represent and...? [LR578]

SENATOR BRASCH: Thank you. I represent District 16. And I apologize, I could not find the building. I received directions by the high school and then went to...I've learned the campus here and area very well now, so hope to be back. But my husband and I farm in Bancroft, but it's Cuming County, Burt County, and all of Washington County. Thank you, and I do apologize for my being late. [LR578]

SENATOR CAMPBELL: All right. We will continue with the testimony and Mr. McEwen, is Mr. McEwen here? Mr. Robert McEwen. For the senators, you will note that Mr. McEwen is listed on page 2 of the agenda, but he is going to cover today on two testimonies. He's going to cover briefly for us an outline of Marla Jean Big Boy's national perspective, who is the Chief Justice of the Oglala Lakota Tribe and the National Indian Child Welfare Association board member. She could not be with us and so you're going to cover a little bit of that and then also cover testimony for Nebraska Appleseed. Is that correct? [LR578]

ROBERT McEWEN: That's correct. [LR578]

SENATOR CAMPBELL: Okay. Because you're going to do two testifiers, we won't do

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

the lights. We'll just know that you need extra time. [LR578]

ROBERT McEWEN: Thank you, Senator Campbell. [LR578]

SENATOR CAMPBELL: Uh-huh. [LR578]

ROBERT McEWEN: (Exhibits 2-3) I appreciate that. My name is Robert McEwen, R-o-b-e-r-t M-c-E-w-e-n. I'm a staff attorney in the child welfare program at Nebraska Appleseed and, as Senator Campbell said, I will be testifying on behalf of Marla Jean Big Boy, who is a board member of the National Indian Child Welfare Association and the Chief Justice of the Oglala Sioux Tribe, in addition to my own testimony. So I again want to thank Senator Campbell and all of the members of the Health and Human Services Committee and the Tribal Committee as well, and I will begin summarizing Marla Jean Big Boy's testimony. First, I want to give a quick overview of the ICWA story, which begins in the nineteenth century, in 1819 actually, when the federal government instituted its first federal program to, quote unquote, better or civilize the Indian. The federal government's policies included...in the nineteenth century included forming boarding schools, using military-style discipline, outlawing the use of Native language in schools in the boarding school, and bonuses were given to teachers at the boarding school who would take a leave of absence to secure as many Native students as possible from the surrounding reservations. This continued on to the placing out system where many Native American children and Alaska Native children were placed on farms in the East and the Midwest, away from their home reservation, and the children were taught to learn the values, quote unquote, of work benefits of civilization. In 1959, the Child Welfare League of America and the Bureau of Indian Affairs adopted an Adopt an Indian program. Three hundred and ninety-five Native American children were placed in non-Native homes during the first year. In the 1970s, Congress became aware of some of the problems with "disproportionality" with Native American children in the child welfare system across the country. At the time ICWA was adopted, in between 25 and 35 percent of American Indian, Native American children were being placed outside of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

their homes by the child welfare system. Eighty-five percent of those children nationwide were being placed in non-Indian homes. The disparity shocked Congress and tribes knew that they could not continue losing members of their tribal community in this way. This led to the passage of the Indian Child Welfare Act. In 2005, the General Accountability Office studied...in 2005 the General Accountability Office published a study which documented a number of challenges that still face states and tribes to this day in implementing the ICWA but concluded that the law was working generally and that states and tribes were working together to further the goals of the law and to serve tribal children and families better. However, there are some things that the ICWA can do better. Actually, let me step back. There are three major things that the ICWA does. First, it sets up requirement standards and judicial procedures for private and public child placing agencies to follow in the placement of American Indian and Alaska Native children. It respects tribal sovereignty by recognizing tribes' authority to intervene or take jurisdiction in child custody proceedings. It provides limited funding to support a variety of tribal welfare services, and the details are included in Marla Jean Big Boy's written testimony. Tribes have always had means to access or address internal conflict in the child's well-being in their...in tribal court or their own tribal justice system. It's only recently, and in part due to the ICWA, tribal sovereignty and self-determination has been respected and supported by the federal government. This led to the revival and re-creation of tribal courts and child welfare systems. Tribal courts across the country can range from traditional peacemaking courts to federal regulation western models. Child welfare programs can range from one ICWA worker, who manages the state's handling of ICWA cases, to many workers and even in some cases hot lines to permanency. The state of Indian child welfare today, Indian children are still being overrepresented in the child welfare system. Across the country they represent .9 percent of all children but represent 2 percent of the total number of children in the foster care system in the United States. They are also 1 percent, roughly, of children in Nebraska's foster care system but represent 7.6 percent out of every child in foster care in Nebraska. American Indian children also face disparate treatment as compared to other children. They are twice as likely to be investigated, as compared to the general

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

population, by the child welfare system. They are twice as likely to be substantiated, as compared to the general population. And they are three times as likely to be placed outside of their home, as compared with the general population. The variance of state "disproportionality" rates tell us that individual policies and practices surrounding the ICWA have a great impact on the well-being of American Indian and Native children and families. States across the country continue to work to improve their ICWA compliance to aid in tribal capacity building and to ensure coordination of state and tribal resources in order to decrease Native "disproportionality" in child welfare. Marla Jean Big Boy had several suggestions to improve the ICWA situation in Nebraska and across the nation generally. I'm going to go through those quickly. She suggests intergovernmental agreements which clarify jurisdiction issues between state and tribal courts; delineate roles and responsibilities and ensure coordinated implementation of ICWA; provide procedures for challenges that may arise. She suggests share training manuals for both state and tribal workers. These should be created by or with tribes and focus on collaboration between the two entities. Tribal and state agency advisory groups that would train together, address programmatic and policy challenges, take on new service improvement projects, and discuss data collection and quality evaluation with both tribal and state officers. State ICWA laws: several states, as outlined in the NICWA testimony and in Nebraska Appleseed's testimony, have reinforced the federal law and clarified some gaps that the federal law has left, states such as Iowa, Oklahoma, and Minnesota, in addition to others, those states. If Nebraska does choose to implement a stronger state ICWA law, it should be done in close conjunction with the tribes. Some states, such as Minnesota, have created bench guides for courts where judges can rotate American Native children and are usually a smaller part of the population so it makes it easier for judges to stay up to date on ICWA policies and procedures. Performance-based contracting, including ICWA-related outcomes, ensure that all the state's partners share the state's goal of ICWA compliance. State worker job descriptions that include specific duties to comply with the ICWA, and these make clear that the ICWA is part of the job and should be complied with. And finally, sharing resources and funding. The states often work with tribes as their partners so as to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

increase tribal capacity to deal with these issues and it's good for both the state and Native children. So in conjunction with, in addition to these practices, it is NICWA's experience that states have the best child welfare programs for American Indian children are those states where the state engages in meaningful, respectful, and consistent consultation with the tribes in its borders and allows their perspective and considerations to drive the changes in programming for American Indian children and ICWA compliance. Now wearing my Nebraska Appleseed hat, we just wanted to say that we are supportive of all the goals of this hearing. We have been a member of the Nebraska ICWA Coalition for many years now, and we support the recommendations that are included in the handout made by the Nebraska ICWA Coalition. And if anybody has any further questions, I would be happy to take some. [LR578]

SENATOR CAMPBELL: Questions from the Senators? Senator Price. [LR578]

SENATOR PRICE: Senator Campbell, thank you. Thank you, Mr. McEwen. In listening, one of the things that...between what Mr. Chapman had to say and what you had to say was blending or having more of a focus that's holistic that takes in the culture versus just the system centric view that when we look at justice systems of the courts. So that's...I'll ask you to talk to that holistic approach, one. And two, when we talk about performance-based contracting, how is it that you...or if you can speak to what was presented, that you presented--say that...put it that way--what you represented there, how that performance-based contracting would play out? [LR578]

ROBERT McEWEN: Okay. I will take the first question. As interim to a more holistic approach, it's my understanding--I'm sure that some of the testifiers that will be testifying after me can speak better to this--but some of the tribes view a more holistic approach as better and more culturally sound to Native children and, in fact, I'm sure that they'll cite to some studies that show that the more holistic approach is more effective for that disparate population. In terms of performance-based contracting, I'm sorry, I'm not able to answer that question. That was part of Marla Jean Big Boy's

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

testimony. But if I could provide any follow-up in connecting with the National Indian Child Welfare Association, I can certainly follow up on that for you. [LR578]

SENATOR PRICE: Oh, that's no problem. I just kind of thought it was interesting that we have a system centric term, "performance-based contracting," versus a holistic one that Mr. Chapman spoke to of having more of an understanding of the cultural divide. And so it's hard when you have a lens of one kind in front of everything you do to step back and be more inclusive. So I just appreciate your attempt there. Thank you. [LR578]

SENATOR CAMPBELL: Senator Dubas. [LR578]

SENATOR DUBAS: Thank you, Senator Campbell. I think both in your testimony as well as the other testimony that you presented it was mentioned several times about the need to really include the tribes in whatever may ensue from this. So am I to understand that up to this point there has not been a lot of tribal involvement or not to the degree that the tribes are feeling is taking their thoughts and considerations under advisement? [LR578]

ROBERT McEWEN: And again, I would not speak for any of the tribes but I think there is a general feeling that the tribes could be included more in determining child welfare policies on the reservation and the child welfare system generally. [LR578]

SENATOR DUBAS: Okay. I'll probably follow up with some of the tribal testifiers, but I appreciate that, that input. [LR578]

SENATOR CAMPBELL: Any other questions? [LR578]

SENATOR BRASCH: I have one. [LR578]

SENATOR CAMPBELL: Oh, Senator Brasch. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR BRASCH: Are we speaking of just within the reservations or...? And the reason I ask this question, is it the parents' or mother's choice on foster placement? Say she would choose to not have the child or children on the reservation; are sent elsewhere. The reason I ask, I had to drive from Blair, I had a meeting earlier, to here but I did contact one family that started out as a foster family for two Native American children and loved them like their own, still do. The mother then had a third child and requested that these nontribal parents please adopt the two children plus the new child. And when speaking on the phone with one of the parents, the father, he indicated they are so honored to have these children, that they do honor and work with the tribals. And when I told him where I was coming, he said that their understanding was that there was not enough Native American families available for the number of children and that is why they were asked to be parents, caregivers. And they were hoping that it wouldn't...this hearing wouldn't exclude the possibility of other people who...and they said that color is not, you know, an issue at their home; that if they want to talk about it they can talk about it; that they don't exclude any nationality and do want the children to know their heritage. But am I correct, are there not enough homes here within reservations for foster children that...? And they were also saying that this center is so busy that they were familiar with this, that their caseloads are very, very burdensome to them in the fact that they gave the best praise for this facility and those who work here. [LR578]

ROBERT McEWEN: And again, I don't want to speak on behalf of any of the tribes and I'm sure that they will speak to some of those questions. But it's my general understanding that we do lack the necessary Native foster placements in the state of Nebraska. [LR578]

SENATOR BRASCH: We do lack them. [LR578]

ROBERT McEWEN: In Appleseed's recommendations, we suggested that we as a state

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

then should partner with the tribes to think about how we can increase the number of placements, because that is...it's an interesting quandary, because ICWA does have placement preferences. [LR578]

SENATOR BRASCH: Uh-huh. [LR578]

ROBERT McEWEN: The federal law has placement preferences that state that children should, if they can, be placed with an Indian family or Native American family, should be placed there first. That's interesting because Nebraska also passed a sibling statute fairly recently, last year I believe or 2011, that requires that siblings be placed together if it's possible. So that's an interesting point. [LR578]

SENATOR BRASCH: Uh-huh. [LR578]

SENATOR CAMPBELL: Yes, Senator Gloor. [LR578]

SENATOR GLOOR: Thank you, Senator Campbell. Robert, first of all, thanks for your help with this. I'm trying to kind of get a sense of who the players and what the hierarchy is here. Three dynamics, three players in this: We've got the feds through ICWA--and correct me, jump in and correct me anytime I'm wrong on this--we've got the state, and then we've got the tribes individually, maybe even collectively through the commission and other entities. Is that much correct? [LR578]

ROBERT McEWEN: I believe so. I would say it's three and four, because each tribe... [LR578]

SENATOR GLOOR: Sure. [LR578]

ROBERT McEWEN: ...probably individually,... [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR GLOOR: Sure. [LR578]

ROBERT McEWEN: ...as their own entity, would be a player but collectively as a group as well; the BIA through the federal government; and the state of Nebraska. [LR578]

SENATOR GLOOR: Okay. [LR578]

ROBERT McEWEN: And if anybody feels the need to correct me afterwards...but that's my general understanding. [LR578]

SENATOR GLOOR: But is ICWA at the top of this pyramid, more or less, when it comes to what currently is the driver behind decisions that are made? [LR578]

ROBERT McEWEN: It should be. In many cases, the ICWA is the federal law of the land so it is the supreme law of the land, so it should be the driving force in child welfare decisions for Native American children in the statutes. As I think you'll see today, many people might testify that that may not be the case in individual circumstances, but ideally the federal ICWA is the driving force. [LR578]

SENATOR GLOOR: Well, and my questions just primarily have to do with getting myself centered here to understand what's reasonable for the state to try and do and what may be beyond the state's reach on some of these things. So that's helpful. And you could respond to that comment. [LR578]

ROBERT McEWEN: Sure. As I said in the testimony, there is a provision in the federal law, I believe it's 25 U.S.C. 1921, that specifically,... [LR578]

SENATOR GLOOR: Why don't you feed that to me slower? [LR578]

ROBERT McEWEN: Oh, sorry. It's 25 U.S.C. 1921 and it specifically allows for states to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

enact heightened protections in their own state ICWA. As I said in the testimony, several states have taken that up and Iowa is a prime example and there was a great collaborative effort between the tribes individually, the tribes collectively, and the state of Iowa to enact a heightened protection in Iowa. Other states, like Minnesota and I believe the...and Oklahoma, in addition to many more, have and there's that role that the state has played in other states. [LR578]

SENATOR GLOOR: Thanks for repeating that. [LR578]

ROBERT McEWEN: No problem. [LR578]

SENATOR CAMPBELL: Mr. McEwen, if I read your letter correctly, the state of Nebraska has not updated the state version since 1985. [LR578]

ROBERT McEWEN: That is correct. [LR578]

SENATOR CAMPBELL: Since 1985? [LR578]

ROBERT McEWEN: And the Nebraska ICWA, codified in 1985, generally mirrors the federal statute. [LR578]

SENATOR CAMPBELL: Okay. [LR578]

ROBERT McEWEN: So if there are any inconsistencies or gaps that are left by the federal statute, those would still exist in our state statute. [LR578]

SENATOR CAMPBELL: Okay. Excellent. Any other questions? Thank you for double duty today actually. [LR578]

ROBERT McEWEN: No, thank you. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR CAMPBELL: Uh-huh. Our next testifier is Judge Thayne Glenn, and I hope I'm saying that right. For the audience, while the judge is making his way to the table, we will use the light system. We use the light system in hearings mainly to ensure that the first person who testifies has the same courtesy and we give the same courtesy to the last person who testifies, because you don't want to get in a situation where everybody eats up the clock and it's 6:00 and everybody wants to go get dinner or supper and we still have people who want to testify. So we generally start on five minutes and you'll see the green light; when it goes to yellow that means you have a minute; and when it goes to red that means please wrap it up and you'll look up and I'll be the person anxiously taking a look at you. And it's meant so that everybody gets a fair time to testify. So, Judge, you represent the tribal court and we're so pleased to have you. Thanks for coming today. [LR578]

THAYNE GLENN: Okay. First, just to get it on the record, my first name is spelled T-h-a-y-n-e, my last name is Glenn, G-l-e-n-n. I'm actually doing multiple duty. Let me see, I am the chief judge of the Santee Sioux Nation. I am the tribal prosecutor for the Omaha Tribe. I'm chief counsel for this college and I teach here. I've been practicing almost exclusively in Indian country for over a decade. I'm a member of the Nebraska State Bar. And I'm also aware of what much of the later testimony is going to be, so what I'm going to try and do is answer some of the questions that have already been raised and hit a couple of what I think are points that may not be raised in later testimony. First, Senator Gloor, in response to the hierarchy, the answer is, yes, but. Essentially what happened in 1978 is the feds passed a law and kind of left it to the states to do what they will and, for the most part, except with limited guidance from the BIA, have taken a hands-off policy completely. It's regulated state by state. And what might be understood but probably needs to be stated is the original reason for the passage of this act and most of the historical information that was presented previously, although it has some very negative consequences within Indian country, very little of it was intended with malice. What it was is these are acts trying to fix a very paternalistic

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

attitude towards tribes and Indian children. Unfortunately, while the act was passed with that intent, those attitudes have not gone away. If those attitudes had gone away with the enforcement of the act, we would have full compliance. Some of the things that other people talk about are very technical, legal aspects, but essentially we're dealing with what happens to Indian children that find themselves in child welfare proceedings in state court in Nebraska. Very well-meaning judges, very well-meaning county attorneys, very well-meaning guardians ad litem simply believe that their judgment for these children is better suited than the tribe's. I have practiced not exclusively but almost exclusively in tribal court in the state of Nebraska. I represented the Omaha Tribe for about seven years in, I didn't count, 200-300 ICWA cases in addition to my duties as prosecutor. What you get is there are some enlightened spots within the state, but primarily what you get is I would like to call it technical compliance. In many cases, it's simply lip service and the attitudes in the courtroom are how do we get around these people that are here that are interfering in our court process so we can go do what we intended to do originally. I'll give you two examples that I personally witnessed, one that was a mother that was in the child welfare system with her four children and was actually progressing reasonably well. The tribe left the children where they were because Mom was doing everything she needed to do. Mom was reasonably young, had a complication due with a medical procedure unforeseen and died on the table. The state's interest, obviously, in rehabilitating Mom disappeared at that point. When we at that point moved to transfer the children to tribal court, the judge believed, well, she knew better than we did for these children and kept it. I also had another judge when we had children that were eligible for enrollment, Omaha and Ponca, the tribal governments of both of those tribes got together in a joint meeting to determine what they thought was in the best interests of these children and how those matters should be addressed as far as eligibility, etcetera, and the state court judge took it upon himself to make his own determination of where these children were as far as what tribe they belong to, in the face of the tribal governments of both of the affected tribes. That is unmitigated, heavy-handed paternalism. And I like the gentleman in question but that's what it is. This flows down to one of the spots that I don't think anybody else will touch on, is the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

guardians ad litem who wield incredible weight in the system. I have seen...I'll wrap up. I have...many guardians ad litem honestly, and I've heard it stated, believe it's their affirmative and quite possibly ethical duty to protect these children from the tribes. That's the system that we're facing. And the...you know, anybody that has any additional questions or ever needs to get a hold of me, feel free to do so. I'm actually in Senator Price's district. I live in Bellevue. [LR578]

SENATOR CAMPBELL: Judge, is there anything that you had hoped to cover in your five minutes and missed here? [LR578]

THAYNE GLENN: Yeah,... [LR578]

SENATOR CAMPBELL: I don't want to shortchange you. [LR578]

THAYNE GLENN: ...one other thing. Just, like I said, I was trying to get to the points that...and there's a lot of other people that are going to talk about some of the other things. The other place that really needs somebody to mention is in juvenile court proceedings, Foster Care Review Board reports come in. You can't even challenge them. Almost universally they're anti-ICWA because they do not understand. And to be quite honest, if you've ever been to a Foster Care Board Review hearing, they are, universally almost, upper-middle-class white people that have no clue, have no way to relate with these children, and have no experience and no training on what ICWA means, and they're making recommendations that come in unchallenged. [LR578]

SENATOR CAMPBELL: Are there any local Foster Care Review Boards within the tribal jurisdictions? [LR578]

THAYNE GLENN: Tribal jurisdictions don't do Foster Care Review Boards, none of them that I'm aware of. That's strictly a Nebraska state law function so it doesn't function in tribal court. The tribal courts function in and of themselves. They're very much

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

results-oriented driven and less...don't get bogged down in some of the extra procedure but very results oriented. And they're also smaller systems so we generally...you know, the tribal caseworkers know all of these children. There's not lost children. And the last thing I think just in response to Senator Brasch's comment earlier about, no, there aren't...you know, we're talking about foster care placements for off-reservation cases. One of the things that needs to be done a better job of is there are generations of distrust of the state and all of its organs. Nobody voluntarily talks to DHS because their job is to take your children away. There is a reason that we don't have very many Native American foster care, because, well, nobody has made an effort to reach out and get past that. Nobody wants to voluntarily go see DHS. Where are you going to find your foster care? [LR578]

SENATOR CAMPBELL: Questions for the judge from the senators? Senator Bloomfield. [LR578]

THAYNE GLENN: Yes, sir. [LR578]

SENATOR BLOOMFIELD: Thank you, Mr. Glenn. I don't have your law education. I'm a retired truck driver. What, in a matter of a minute or two without opening up the whole thing here, do we need to do, in your opinion, to get down to where we can maybe get people to come talk to...? [LR578]

THAYNE GLENN: Yeah, very simply, within the framework of the federal ICWA statute, which is what Nebraska adopted with the exception of I think three words, word for word, there are very, very large, broad discretionary gaps, okay? And what we're talking about is we're talking in courtrooms where everybody in the courtroom, with the possible exception of the tribal representative who may be a non-attorney, is an attorney--there's judges, every...good cause, good cause is whatever you can convince the judge good cause is. I mean there are some more case law standards but essentially there are ways around every provision in there other than the notice provisions, if you're so

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

inclined. And the problem is, is paternalism is still...we're so inclined because we think we're going to do a better job than the tribes will of taking care of their own kids. So limiting some of that discretion or putting specific guidelines on that and, with the guardians ad litem, putting something specifically in there that indicates that the best interest of the child is, absent overwhelming evidence, is if not transfer at least compliance with all of the placement preferences, because the GALs get ten minutes in their basic GAL training on ICWA and that's it. They're clueless. The county attorneys have gotten much better in areas but the GALs don't and they carry a lot of weight. [LR578]

SENATOR BLOOMFIELD: Thank you. [LR578]

SENATOR CAMPBELL: Any other questions? Senator Dubas. [LR578]

SENATOR DUBAS: Thank you, Senator Campbell. So am I to understand...well, my understanding is with typically a child is they're looking to remove a child from the home. My understanding is we try to find a relative or a closely related person to that child. Is that not the case with Native American children? Are we just immediately looking outside of the family for placements? [LR578]

THAYNE GLENN: In many cases, yes. There has been made progress in the last five years. In some cases, they're not asking if they're tribal kids unless they have what to a, you know, white person looks like an Indian last name, and even then sometimes they don't. But the other thing is much of the family...and there are none of these children that do not have family. There are no, you know, there are no orphan children. They all have extended families on the reservations. But the problem is many of the caseworkers and many of the judges feel uncomfortable making placement on to a reservation because judges don't like to get the feeling that something is slipping out of their grasp. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR DUBAS: Okay. Thank you very much. [LR578]

SENATOR CAMPBELL: Okay. Oh, I'm sorry. Senator Gloor. [LR578]

SENATOR GLOOR: It's all right. Thank you, Senator Campbell. That was an entertaining last comment, by the way. [LR578]

THAYNE GLENN: It's true. [LR578]

SENATOR GLOOR: I'm sure in some instances. Thank you, Judge Glenn. You've given a lot of...I've made a lot of notes--my pen has run out of ink--for your brief five or six minutes. But I'm still trying to, you know, get back and build an underpinning here of understanding. And Justice Big Boy, I believe in her testimony, said that it's challenging for judges to stay up on ICWA, and so I'm...based upon what I've heard so far, it doesn't sound to me like ICWA is that fluid. Certainly the state hasn't been involved in making changes to ICWA. Is that maybe a polite way of saying that judges don't pay attention to ICWA, don't know ICWA, don't reference ICWA when they make decisions? [LR578]

THAYNE GLENN: In some cases. For instance, it's very common, if you get outside of half a dozen counties in Nebraska, that judges don't see ICWA cases that often,... [LR578]

SENATOR GLOOR: Yeah. [LR578]

THAYNE GLENN: ...and so when they do, they're just not as familiar with them. The other thing is, while there have been no legislative changes, there's kind of an ongoing amorphous series of case law that kind of goes back and forward. And unless you are actively interested in that particular subject, it may be possible that there are newer cases or a string of cases that you just haven't seen. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR GLOOR: So we're dealing...this was sort of my expectation when I came up here, with a very small subset of child welfare... [LR578]

THAYNE GLENN: Yes. [LR578]

SENATOR GLOOR: ...that's covered under a whole separate... [LR578]

THAYNE GLENN: Yes. [LR578]

SENATOR GLOOR: ...codex of laws that lends itself to problems above and beyond problems we may already be having in the child welfare system. [LR578]

THAYNE GLENN: And in many cases that's absolutely the truth. The number of people that are...the number of licensed attorneys in the state of Nebraska that are truly conversant with ICWA could probably all fit around the tables that you guys are at. There are some judges that have done a good job of educating themselves. The judges' associations have instituted new training internally. But there's still a lot of...judges hear a variety of matters... [LR578]

SENATOR GLOOR: Sure. [LR578]

THAYNE GLENN: ...and, except for three counties in the state, they don't even have dedicated juvenile courts. So what you have is county court judges... [LR578]

SENATOR GLOOR: Yeah. [LR578]

THAYNE GLENN: ...also sitting as juvenile court judges and they have a vast array of things they have to keep track of. And in many cases, yeah, I can very easily see how they kind of got out of step and they have to backtrack just because it's...if you only see two a year, how much time are you going to spend keeping up on the latest case law?

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

[LR578]

SENATOR GLOOR: Sure. Thank you. That was helpful. [LR578]

SENATOR CAMPBELL: Senator Price. [LR578]

SENATOR PRICE: Yes, thank you, Senator Campbell. Thank you, Judge. Not for right now but whoever hears or wants to and yourself, it would be interesting to get some data points to size this. When we talk, we've used some sizing terms that doesn't really give it concrete understanding when we talk about the number of cases, the number of family placements on reservation versus Native Americans that actually live off reservation. Okay, we have a lot of Native American families. And so in other words, in trying to understand that, to put a size, not just to size because bigger is more important. That's not the point. The point is to understand what it is that we're looking at here, if we have such a large, we heard in earlier testimony, disproportionate ratio within the community of child welfare. I see some numbers, but I don't see the other numbers and it would help me and help others, I believe. So if we have the opportunity to generate those things and bring them forward, it would be greatly appreciated. [LR578]

THAYNE GLENN: Okay. And I don't have...I'll tell you the truth, directly I don't have those numbers, although some of the people that would have access to those numbers are in the room, Sherri Eveleth and...from DHS. [LR578]

SENATOR PRICE: And that's why I bring it forward, so when people hear that those are things that will help to size, to understand, to bring to bear. And also, and when you talk about in your court cases, so you had a few hundred court cases. So I'm trying to make sure I understand this universe of numbers because that has, I believe, has bearing. [LR578]

THAYNE GLENN: And just one last comment before I go, because a lot of it, the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

paternalism also goes to how competent are the tribal courts. There's judges that...I mean there's judges that don't even know where the reservations are, that they exist. And I believe it was in 2004 when the feds came in to do the IV-E review of juvenile courts and how well they're complying. There's 93 counties in Nebraska. There are four tribal courts. There are only two, out of all of that, that they rated as doing a compliant...good job of compliance with those things. That would be Lancaster County Court and the Omaha Tribal Court. So that means that, you know, one out of four tribes was more competent than 92 out of 93 state courts. [LR578]

SENATOR CAMPBELL: Any other questions? Thank you, Judge, very much for coming today. [LR578]

THAYNE GLENN: Thank you. [LR578]

SENATOR CAMPBELL: Our next testifier is Mr. Thomas Pristow. Mr. Pristow is the director of the Department of Health and Human Services, Division of Children and Family Services. And I would assume that Mr. Pristow has some of the data. [LR578]

THOMAS PRISTOW: I do. [LR578]

SENATOR CAMPBELL: Good afternoon. [LR578]

THOMAS PRISTOW: (Exhibit 4) Good afternoon, Senator. Senator Campbell and members of the Health and Human Services and State-Tribal Relations Committee, my name is Thomas Pristow, T-h-o-m-a-s P-r-i-s-t-o-w. I am the director of the Division of Children and Family Services within the Department of Health and Human Services. Senator Campbell has heard this before. Please excuse my hoarseness, just allergies; seem to not be able to kick it yet so I apologize if I'm a little hoarse. I'm here to provide information about the department's compliance with state and federal laws that are subject of LR578. As your committees review and investigate and assess the state of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

Nebraska's compliance with both the federal Indian Child Welfare Act of 1978 and the Nebraska Indian Child Welfare Act, ICWA, there are many entities responsible for the compliance. That include my division, the courts, attorneys, other parts in child custody proceedings, and the Bureau of Indian Affairs. For the purpose of my testimony, I'll be talking just about Child and Family Services' role. CFS employs an ICWA specialist, which is one example of the department's recognition of the importance of our compliance. Her name is Sherri Eveleth, sitting here to my left, and she consults with CFS staff on ICWA policy in cases, case specifics, trains staff, appears as an expert witness in cases. She provides training to new judges and participates in ICWA Coalition, a group addressing the implementation of ICWA in Nebraska and Iowa; and she consults with tribal members who contact the department for assistance. She's also a member of a national group of state specialists who are Nebraska's commitment to continuous improvement and compliance with ICWA. CFS contracts with Omaha, Winnebago, Santee Tribes for them to provide child welfare and adult protective services, and to allow the tribes access to federal IV-E funding for out-of-home care. CFS also contracts with the Omaha, Winnebago, Santee, and Ponca Tribes to provide independent living services for tribal youth for domestic violence services. In addition, CFS coordinates and collaborates with tribes on child welfare issues with the federal Department of Health and Human Services, Children's Bureau, through the Nebraska ICWA Coalition. One CFS role in child welfare cases is to provide culturally appropriate services as part of ICWA's required active efforts for remedial services and rehabilitative programs to prevent the breakup of a family. CFS actually collaborates...actively collaborates with the tribes on individual cases and utilizes locally available Native American service providers. The number of Native American service providers, Indian children in foster care, other data relative to ICWA cases and the criteria to gather the data are complex. ICWA cases use the same terms but many have different definitions than other cases. One example is a definition of the Indian child. For ICWA to apply, a child must be identified with a political status of a member or eligible for membership in a federally recognized tribe. However, for purposes of federal reporting, Nebraska and all states identify children based on race. Not all American Indian or Alaska Native

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

children by race are members or eligible for membership in federally recognized tribes. Identification of appropriate data and changes to electronic databases are necessary to gather and analyze appropriate data, and CFS is working to do so. As a matter of fact, this morning I talked to my data folks and we are implementing a fix into our N-FOCUS that will help us gather better data than what we have right now. Included in the attachment I provided is information and data on reporting cases of children, tribal wards, number of children in DHS or OJS custody who are identified as Native Americans, number of foster parents identified as Native Americans, and additional information on active efforts and culturally appropriate services. In summary, LR578 is a welcome opportunity to highlight the importance of ICWA and to review the work that CFS has accomplished in collaboration with tribes. We honor the sovereignty of the tribes and continue to pledge our commitment, both with our efforts in collaboration with others responsible for ICWA and continuous improvement to ensure we comply. Thank you for the opportunity. If you had any questions, I'll be glad to answer them. [LR578]

SENATOR CAMPBELL: Questions from senators? Senator Bloomfield. [LR578]

SENATOR BLOOMFIELD: Thank you, Mr. Pristow, for coming up today. I know you're new to the post that you're at, too, or relatively new. Have you been able to communicate well with the tribes up here or have you found problems in communicating? [LR578]

THOMAS PRISTOW: What I found, well, Senator, the honest answer is in my tenure here it has not been a priority, but it is now. This week Deputy Director Maca, I asked her to work with Sherri and to incorporate her into our operational capacity, which has not been done before. So Sherri will be able to have greater exposure and coordination that she didn't have previous to this past week. [LR578]

SENATOR BLOOMFIELD: Okay. Thank you. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

THOMAS PRISTOW: So it is a priority with the...is a priority for me now and we're working on it. [LR578]

SENATOR BLOOMFIELD: Thank you. [LR578]

SENATOR CAMPBELL: Questions? Senator Gloor. [LR578]

SENATOR GLOOR: Thank you, Senator Campbell. Thank you, Director Pristow, for taking the time to come up here. I want to make sure I understand again that the numbers listed here are the department's listing of Native American children by race. They don't necessarily represent children that would be covered by ICWA. [LR578]

THOMAS PRISTOW: I believe that that's a true statement, yes. [LR578]

SENATOR GLOOR: Okay. Do we have any guess of whether... [LR578]

THOMAS PRISTOW: Well, that's the problem with our N-FOCUS that we're putting a fix in for, Senator. [LR578]

SENATOR GLOOR: Good luck. [LR578]

THOMAS PRISTOW: I'm greatly optimistic. [LR578]

SENATOR GLOOR: Okay. But I mean we... [LR578]

THOMAS PRISTOW: This is the best data we have is what you have in front of us, and I think it's up to the end of August of this year. [LR578]

SENATOR GLOOR: Okay. All right. Thank you. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

THOMAS PRISTOW: You're welcome, sir. [LR578]

SENATOR CAMPBELL: Mr. Pristow, on the numbers that are on page 2 here that you've given to the committee, if you just looked at that, would all of those numbers represent a disproportionate percentage if we put them beside all children in foster care, all children in out-of-home, all children in OJS? Have we...is there some way that we can do that? [LR578]

THOMAS PRISTOW: We can do that, Senator. It has not been done for this report. [LR578]

SENATOR CAMPBELL: Okay. [LR578]

THOMAS PRISTOW: And I don't know if I can ball park it for you. I don't have that type of depth to be able to do that. [LR578]

SENATOR CAMPBELL: It just seems to me...roughly we have what, how many children in foster care? [LR578]

THOMAS PRISTOW: 5,832. [LR578]

SENATOR CAMPBELL: Thank you. More than roughly. And so that includes all the OJS. And for our colleagues who are visiting with the Health Committee this...today, OJS is Office of Juvenile Services. And in Nebraska, when we count numbers of children in the foster care system, we include them also. [LR578]

THOMAS PRISTOW: Yes, we do. [LR578]

SENATOR CAMPBELL: And a number of states do and we found that out. But it would just seem to me might be helpful to get at whether we're at disparity, obviously--I think

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

we're going to hear testimony today of that--but just might be helpful if we could pull together some of those numbers as we start looking at it. [LR578]

THOMAS PRISTOW: Senator, I'd be glad to formally offer that to the committee. Give me three or four weeks to get it. [LR578]

SENATOR CAMPBELL: Oh sure. But I think as the two committees may meet after, it would seem to me, we'll take the testimony today and then at some point would...Senator Price and I would probably get together and recommend that the two committees have a conversation about what we might need to be done based on the recommendations we hear today. [LR578]

THOMAS PRISTOW: Right. Senator, my impression is that Sherri has been kind of out on her own doing a great job without a lot of guidance from central office. That's why I've asked Deputy Director Maca to incorporate her into operations so that we can have some continuity and she can get some support and so that we can find out what the gaps are and fix them. I don't know where they are right now. [LR578]

SENATOR CAMPBELL: The other thing that would be helpful when you pull together those figures for us is to map it and give us some idea where the children or youth are across the state. My guess is that, based on the judge's testimony, we're going to see a large cluster of children in certain areas, but it might be helpful. [LR578]

THOMAS PRISTOW: Yes. We'd be glad to do that too. [LR578]

SENATOR CAMPBELL: Okay. Any other questions? Senator Brasch. [LR578]

SENATOR BRASCH: I did have one. Up until redistricting a year ago, I did represent Thurston County, and an organization had reached out to me called Motherhood is Sacred, run privately here in Winnebago I believe. And when we look at the care and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

well-being of children, you know, does Health and Human Services or our health departments also try to provide intervention or assistance specific to their culture before they get to the point of needing foster care? Do we... [LR578]

THOMAS PRISTOW: Early on, early prevention. [LR578]

SENATOR BRASCH: Early on, do we try to avoid getting to that point, I guess, and is the Health and Human Services division equipped to do that? Do you work with the Native American commission or some of the organizations? I don't know if that organization is here today or not, but they had a wonderful program in place to make sure that mothers were prepared to have children or especially prepared to wait for a family, the responsibility. And I...it seems that we're losing our, oh, home ec classes of... [LR578]

THOMAS PRISTOW: Right. [LR578]

SENATOR BRASCH: ...you know, we're moving more into student testing and No Child Left Behind rather than families not leaving their children behind. [LR578]

THOMAS PRISTOW: Support. I can speak a little bit to that and what I will tell you is that, under the direction of CEO Winterer, we are dismantling the silos in the division...or in the department so that Dr. Schaefer and I or Dr. Adams and I, we can work together to look at the whole issue, regardless of where the children are across the state of Nebraska is to get there early. It's to provide support services and keep the state out of it--use the behavioral health system, use the public health system--we don't need to be in there, we need to...whether it's American Indians or whether it's, you know, any child. I know that there...I don't know how to answer your question about that specific. I know that Dr. Schaefer is culturally sensitive and I know that she has really great programs. We haven't until recently started to work together to make those connections, but we are doing that and we're actively...actually we're giving money to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

each other. I'm giving money to Public Health because she can better use it than I can on certain services. So we're on the way, Senator. [LR578]

SENATOR BRASCH: Uh-huh. Okay. Thank you. [LR578]

SENATOR CAMPBELL: Senator Price. [LR578]

SENATOR PRICE: Thank you, Senator Campbell. Thank you, sir. In listening to the testimony, I'm bringing a conclusion, kind of the idea that we've now moved an ICWA expert closer to the operations level to lend expertise in all the various aspects, and we just today have this hearing. And I'm wondering, did the LR drive a certain level of introspection within the department, unearthing or bringing forth some of these gaps that now the department has taken some steps proactively, if not goaded by the LR, but they're going to remain permanent? So in other words,... [LR578]

THOMAS PRISTOW: Right. I get it. [LR578]

SENATOR PRICE: ...we'll bring it in, and I don't want to do the hokey-pokey where we put one foot in, then we put a foot out, you know? So I was just wondering, what's your commentary on how this LR has brought to bear your department's understanding of some of these gaps? [LR578]

THOMAS PRISTOW: The LR, the committee accelerated my process. I would have got...I would have been here within a year of my tenure... [LR578]

SENATOR PRICE: Okay. Okay. [LR578]

THOMAS PRISTOW: ...because it was on my global plan. [LR578]

SENATOR PRICE: Okay. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

THOMAS PRISTOW: It's just because of this hearing, it accelerated my attention to it. It's not going to be...I don't do anything for show. [LR578]

SENATOR PRICE: Okay. [LR578]

THOMAS PRISTOW: I do it because it's best practice. Moving Sherri into that operational protocol is best practice and I'm not even sure...I mean I'm not convinced yet that I don't need more people other than her here to make this work, and if that's the case I'll do it. If I can defend it, if I can show that I need more FTEs,... [LR578]

SENATOR PRICE: Right. [LR578]

THOMAS PRISTOW: ...I will get them on board. And we're not going to put one foot in and take it back out, sir. [LR578]

SENATOR PRICE: Well, I think it's nice to hear this as it goes forward, as we look to...we've seen some other states be proactive in doing what the state can to tighten the ICWA, and it looks like we're beginning to lay the foundation for that here, both with this study and what you're doing and what's on your global horizon. [LR578]

THOMAS PRISTOW: Right. Right, and not only with ICWA but with all children that are wards of the state. We are making it...the children should be better off after we work with them than not, and in some cases that's not the reality. [LR578]

SENATOR PRICE: Thank you very much. [LR578]

SENATOR CAMPBELL: Just looking at the numbers on page 2 of your handout, if...we probably have the same kind of concern that we've had looking statewide that we've still got a number of children in out-of-home placement versus in-home. But I am struck, on

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

page 3, we don't really have very many homes at all, do we? [LR578]

THOMAS PRISTOW: No. No. [LR578]

SENATOR CAMPBELL: And as you look across the state and broken down by county there, we have the largest number of homes in Douglas and covering the number of children. So I know some of the things the department does, tries to target information to recruit foster families, and maybe we need to step up that issue even with our private agencies. [LR578]

THOMAS PRISTOW: Senator, I just talked to the providers today and we are...I think that would be another task that I could put on that provider group that's working with the state to make our services better, and it's an absolute. I mean that's a responsibility and obligation I think we need to really move towards. [LR578]

SENATOR CAMPBELL: Yeah. Based on the numbers that you're showing us today, that would be pretty obvious. Any other questions? Okay. It's harder to see when the senators are all in a line and not a curve, so that's why I keep looking. Thank you very much, Mr. Pristow. [LR578]

SENATOR PRICE: I'm blocking two of them. I apologize. [LR578]

THOMAS PRISTOW: Thank you. Thank you, Senators. [LR578]

SENATOR CAMPBELL: Our next testifier is Liz Neeley. Liz is bringing forward today for us the Foster Care Review Office data, and Ms. Neeley is newly appointed to serve on the Foster Care Review Office advisory board. So welcome. [LR578]

LIZ NEELEY: (Exhibits 5-6) Good afternoon, Senators. Thank you for the opportunity to testify today. My name is Liz, L-i-z, Neeley, N-e-e-l-e-y. While I do not profess to be an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

expert on the Indian Child Welfare Act or Nebraska's level of compliance, I am here today as a member of the Foster Care Review Office to provide you with some data. Some of the questions that you've been asking earlier I hope to answer about the documented racial disparities in our child welfare system. I'd like to identify some parallels between our child welfare system and our juvenile justice system, and suggest some ways to move forward. Hopefully my handouts are making their way down the line. What you'll see is data from December of 2011 from the Foster Care Review Office. This is a kind of one-day snapshot, not an annual year worth of data. And for those of you that do not necessarily speak statistics or read charts well, that's okay. I'm going to drill it down for you, and I have basically six things that I'd like to point out in terms of racial disparity in our child welfare system as they relate to Native American youth. The first is simply that Native American youth are overrepresented in out-of-home care. In Nebraska, the population of youth age 0 to 18, Native American youth comprise 1.8 percent of that population. Our out-of-home placements, they comprise 7.1 percent, and that is a statistically significant overrepresentation, and this number is actually an underrepresentation of Native American youth because this number does not include youth under the jurisdiction of tribal courts. So we have a huge disparity and we're underreporting that disparity because we're not including youth from...being under the tribal court jurisdiction. Secondly, Native American youth are more likely to be removed from the home more than once. So 37 percent of youth in out-of-home care will be removed from the home more than once; for Native Americans it's 46 percent. The third point, Native American youth are more likely to have more out-of-home placements. Out-of-home placements in Nebraska: 46 percent of all youth will have four or more placements; for Native American youth the percentage is 56. And this is a concern for a variety of reasons. We need our children to have continuity, consistency, and predictability from their caregiver. Multiple foster home placements can be detrimental and research shows that it has a direct kind of correlation with a need for mental health services later in life. Number four, Native American youth are more likely to have more severe placements. And what we were talking about earlier, Native youth are less likely to be placed with a relative; they're more likely to be placed

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

in foster homes. Of the 152 youth who were in foster families, only two of those families were Native American themselves. And on the OJS population we see similar types of more restrictive placements. Native American youth are significantly more likely to be placed at the YRTC-Kearney and Geneva and in secure detention compared to their white counterparts. Native American youth are more likely to have more caseworkers. I was pretty astonished by this statistic, but I'm sure it's one that you may have become familiar with. The majority of all youth in a child welfare system will have four or more caseworkers--59 percent will have four or more caseworkers; and for Native American youth it's 65 percent, and that is also a significant difference. And lastly, Native American youth spend greater length of time in the child welfare system. It takes longer for permanency. So on average, the time from removal to kind of placement for Native American youth is 526 days; for other youth in our system it's 459 days. The reasons for these disparities needs to be examined and addressed. First and foremost, outcomes in the child welfare system should be tied to the facts of the case and should not be negatively impacted by the racial or ethnic backgrounds of our youth. Secondly, legitimacy of our legal system is based on the perception that the law is applied in a fair and evenhanded manner. And when evidence such as this suggests the contrary, it diminishes the strength of public trust and confidence in our system. Basically, there are two kind of approaches that I'd like to bring to your attention. One of the primary strategies for combating racial disparity on the juvenile justice side is to take subjective decision-making processes and replace those with objective criteria. Historically, our child welfare system is characterized by subjective decisions by many people at many different points. Under this type of system there is no uniformity. Kids with very similar situations have completely different system responses. I was really happy to hear that in January of 2012 the state has moved to what's called structured decision making, and what that does is provide objective criteria for deciding when somebody should be removed from the home, if the home is secure, etcetera. And I think that by supporting both the data that comes from this, making sure that there's training in place, that it's being...we're being...having some fidelity to the model is going to strengthen our ability to not only track whether we're having an impact on racial disparity but also uncover the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

reasons why these disparities may be created in the first place. I see my red light is on so I'll stop there. [LR578]

SENATOR CAMPBELL: Can you just cover real quickly for us the second point you have there? [LR578]

LIZ NEELEY: Yeah, the second area that's worked very well on the juvenile justice side for addressing racial disparity is looking at case processing reform. And so, for example, in Nebraska youth will sit in secure detention for weeks and weeks, sometimes months, while waiting for evaluations or waiting for...to get in front of a judge on their docket, so they're not waiting because of their actions. They're waiting because of unnecessary delay by the system. And there is likely this same type of delay in our child welfare system. For example, data from the Foster Care Review Office indicates that 75 percent of youth get their adjudication hearing in the first three months, which is the statutory requirement. And so I believe we should be asking ourselves, okay, we have 25 percent of kids who are not meeting the statutory requirement. They're taking up to a year to get that first adjudication hearing. Why is that happening? How can we move forward with more timely response by the system? Another issue is establishing paternity. What can we be doing to make sure that the system has in place protocol to make sure that process happens in a timely manner so that we can become part of the solution for permanency? And so I think by mapping out the process and the system delay that we can help have better outcomes for youth. Time to permanency means fewer caseworkers, fewer placements, and better overall outcomes for youth. And if I could, I'd just like to thank Judge Glenn for his comments earlier. As a brand new member of the Foster Care Review Office, your comments have not fallen on deaf ears and on our agenda next month will be, one, how do we recruit more Native Americans to serve on our local Foster Care Review Boards and, secondly, to review what training we do have in place for ICWA. [LR578]

SENATOR CAMPBELL: Questions? Senator Price. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR PRICE: Thank you, Senator Campbell. This is disheartening. I think I find it more painful. That's why I wanted the numbers, that we can dig these numbers up can be so, as you said, have the fidelity that shows us it's a systemic problem that has challenge, that has yet to be addressed. That's all. Thank you. [LR578]

SENATOR CAMPBELL: Any other questions? [LR578]

SENATOR BLOOMFIELD: Senator Gloor has a question. [LR578]

SENATOR CAMPBELL: Oh, Senator Gloor. [LR578]

SENATOR GLOOR: Thank you, Senator Campbell. I'll take the statistical challenge here. We'll see where we go. [LR578]

LIZ NEELEY: Okay. [LR578]

SENATOR GLOOR: I don't doubt the numbers, but did we look at other variables as relates to, example, Native American youth are overrepresented in out-of-home care? If I substituted children in poverty are overrepresented in out-of-home care, children in poverty are more likely to be removed from the home more than once, I mean to what extent is this a poverty issue perhaps more so than a Native American issue? Or do the numbers look even worse when you take a look at Native American children? [LR578]

LIZ NEELEY: I guess my response would be twofold. First, you're exactly right that those things need to be looked at. The data has not been examined in a way that would look at this purely from a socioeconomic perspective. But this also lends itself to my comments earlier about objective decision making. When we don't have objective criteria in place, it's easy for subjective bias of class, like socioeconomic status or race and ethnicity, to come into play. And so a caseworker may confuse a child in poverty

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

with a child who is being abused or neglected. And so I think it comes in on many different levels and is a very good question and variables that should be examined. [LR578]

SENATOR GLOOR: Well, and you know there's the stereotype of just because they're Native American doesn't mean that they're in poverty. [LR578]

LIZ NEELEY: Right. [LR578]

SENATOR GLOOR: So perhaps that enters into some of the decisions that are made inappropriately. But I'm trying to get a handle on numbers and making sure that we're not missing what those numbers may actually be telling us rather than looking for this subset within a population that may be a population of poverty. [LR578]

LIZ NEELEY: Yeah. I really feel that, you know, to get at what Senator Price said, in order to make a change and to understand what needs to be done, we need to have the data in place to examine. And I am optimistic that through structured decision making we will be gathering data along the entire life of a case about very kind of crucial indicators, and that for the first time we may be able to properly address, you know, with sufficient leadership and that we'll be able to address the issue in a much better way. [LR578]

SENATOR GLOOR: Okay. Thank you. [LR578]

SENATOR CAMPBELL: Any other questions? I think at least the members of the Health and Human Services Committee are pretty attuned to the issue of poverty and the underlying causes, having had a great hearing and a lot of work, with Appleseed bringing in some national people. So it sort of undergirds what we're hearing today. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

LIZ NEELEY: Good. [LR578]

SENATOR CAMPBELL: So thank you very much... [LR578]

LIZ NEELEY: Thank you. [LR578]

SENATOR CAMPBELL: ...for the data. [LR578]

LIZ NEELEY: Thank you very much. [LR578]

SENATOR CAMPBELL: And we'll hope that the data can soon be included from the tribal councils. Our next testifier, and we will move into a section on family and personal stories, and Clarissa LaPlantay (phonetically), LaPlantay (phonetically), I'll bet I'm not saying that right. [LR578]

CLARISSA LaPLANTE: Clarissa LaPlant (phonetically). [LR578]

SENATOR CAMPBELL: LaPlant (phonetically), thanks. [LR578]

CLARISSA LaPLANTE: And it's spelled C-l-a-r-i-s-s-a. [LR578]

SENATOR CAMPBELL: Oh, you can have a chair, ma'am, and you want to just hand the orange sheet... [LR578]

CLARISSA LaPLANTE: Oh, I don't know how to spell my name. (Laughter) [LR578]

DIANE JOHNSON: Thank you. [LR578]

CLARISSA LaPLANTE: And my last name is spelled L-a-P-l-a-n-t-e. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR CAMPBELL: And, Clarissa,... [LR578]

CLARISSA LaPLANTE: And... [LR578]

SENATOR CAMPBELL: ...would you spell that just for the record just so they can know? [LR578]

CLARISSA LaPLANTE: Okay. C-l-a-r-i-s-s-a. [LR578]

SENATOR CAMPBELL: Thank you. [LR578]

CLARISSA LaPLANTE: Okay. I don't have any written paper because I feel what I'm going to say today is going to come from my heart. I guess I'm...well, I'm going to tell you what I do. I'm an ICWA specialist and I'm also a CPS supervisor for the Santee Sioux Nation. I've worked since 2005 with the Santee Sioux Nation. I come from the Omaha Tribe. I moved to Santee because of my husband. That's where he's from. I'm a grandmother of 19-plus and a great-grandmother of 7. I've been a foster parent, an adoptive parent, and a mother of six. The reason that I wanted to give some testimony here is because I started back in 1975 when myself and six other siblings were removed from home. And being Native American, that was detrimental to myself and to my siblings. My goal in life was to gather all of my brothers and sisters together, which in the end there was ten of us, three more. My mother had three more after the seven of us. And I was able to find all but one, and I guess my fear is that maybe he died. Myself and two brothers were able to stay within the family, near the family. At one point, they tried to adopt me and I said, no, because I have family that want me, and managed to live with my grandmother, then be removed from my grandmother because of my grandfather's drinking. My grandmother was not a drinker or a smoker. She was a "flay flay" (phonetic) Wa'u, which means she was a Mark of Honor woman. She raised me and gave me a lot of knowledge, and I believe the reason that I take care of a lot of children is because that's what she did. She raised a lot of us. The children that weren't

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

returned to us, that I found, were very angry towards the family, and I feel that they're missing out because they don't know who their family is. The journey that I went through in my life trying to find these children was because of my mother. I knew my mother and I sat for two weeks and I heard what she had to say and what she went through growing up and raising us and then losing us, I should say. And that was good times, those two weeks were really important to me because at that time I wanted to know why my mother didn't want us, and it wasn't that. It wasn't that my mother didn't want us. It was because we were taken from her. Back in those days, they didn't have AA, they didn't have ICWA, and she managed to always know where we were because of two people. The police woman who removed us got to know my mother and tried to help her keep track of where we were. Then the children that I found and tried to get to come and see my mother were not wanting to do that. The three of us that were able to live amongst our own families here in the Macy reservation. My grandmother lived right over the hill here, and it was a three-room house but we all had our own space and that was what was important. We had our own space. It's important to me, family is important to me, I have children now that are living with me that came to me just a week after I lost my son. Two are my cousin's children, they're nephews. Two are my great-grandchildren. And a week after my great-grandchildren came, I had another call from my nephew's child, and it was so hard to say no. But I knew I had my hands full, and I didn't think that it would be allowed because there was questions when my two great-grandchildren came to live with me. I understand why the parent...the Native families do not want to go through that process, because you've got a lot of paperwork you've got to do, six weeks before I got any kind of income for these children, having to use your own finances to feed and house these children. So those are some of the reasons I'm here is so that you can understand why Native families don't step forward, because it's a lot of paperwork, it's a lot. I had to take time off of work to do all of this. I had to drive to Lincoln for a court hearing with no assistance, in one day to drive to Lincoln, four hours from Santee and back, and then worry about who's going to pick up my kids from school. And I'm saying my kids because they have become my kids. These are my relatives so they're my children. That's how I was raised by my grandmother. These are her children and we

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

need to care for them. [LR578]

SENATOR CAMPBELL: I appreciate that. So you are a relative placement then.
[LR578]

CLARISSA LaPLANTE: Uh-huh, I'm a relative placement. [LR578]

SENATOR CAMPBELL: And at this point you are not a licensed relative placement.
[LR578]

CLARISSA LaPLANTE: Yes, I am. [LR578]

SENATOR CAMPBELL: Oh, okay. [LR578]

CLARISSA LaPLANTE: I got licensed through the Omaha Tribe through the tribe,
through my tribe. [LR578]

SENATOR CAMPBELL: Okay. So you would receive...at this point, licensed foster
parents receive more money. [LR578]

CLARISSA LaPLANTE: Yes. [LR578]

SENATOR CAMPBELL: So I just want to make sure for the record about that. Before
we go to any questions, thank you so much... [LR578]

CLARISSA LaPLANTE: Uh-huh. [LR578]

SENATOR CAMPBELL: ...for stepping in to help your family and coming today. Are
there questions from the senators? Senator Dubas. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR DUBAS: Thank you, Senator Campbell. And I, too, would like to thank you for what you do. We don't normally need thanks for taking care of our family, but I do thank you. You mentioned in your introduction that you're an ICWA specialist. [LR578]

CLARISSA LaPLANTE: Yes. [LR578]

SENATOR DUBAS: What do you do in that capacity? [LR578]

CLARISSA LaPLANTE: When we get inquiries about children then we work at getting...finding out whether they're enrolled, and if they're not enrolled we work at getting them enrolled and then we submit that to the courts. We file to Woodbury County; the rest of them we mail it to or fax to those programs so that they know that this child is enrollable or is going to be enrolled, and then we intervene into the courts and then we follow through to make sure that their process is going the way it should for these children. And we also find families that might be able to take the children. [LR578]

SENATOR DUBAS: Okay. What types of things would you like to see changed in the way Nebraska deals with ICWA right now? [LR578]

CLARISSA LaPLANTE: I'd like them to give more education to the social service workers so that they understand what they're dealing with and that they understand the Native families are very strong families; that you just have to keep pushing to try to get them to come forward because, like I said, this...I understand now why our families don't want to step forward because I'm going through it, so they have the understanding of the steps that they have to go through are strenuous steps. And some of them can't take off of work, you know, if they don't have the time. You know, I didn't have time a year ago because I had so much medical problems with my family, but now I do so it's not a big deal for me to take off of work and have to go to court. But for some families, they've had more problems as far as having to leave work and they can't leave work, so it makes it hard for them to make those steps. So there's got to be a way that we can

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

work with them, the caseworkers work with them, so that we can get them involved. I'm trying to recruit right now, myself and my supervisor are trainers of PS-MAPP. We've trained four families within...we licensed four families, I'm sorry, we licensed four families within the Santee Reservation, and we're working at licensing more. It's just a matter of getting out and recruiting and how we're going to do that. And I see different ones driving by me and I think, ah, that's a family right there that would be able to do that. But it's like I said, it's the hardship of having to take off time, the hardship of having to provide for these children until you get some kind of income for them. [LR578]

SENATOR DUBAS: Do you feel that there are adequate support systems in place, whether it's through DHHS or other agency types...support systems in place to help foster families, and especially Native American foster families? [LR578]

CLARISSA LaPLANTE: I think it's more to help the family that's involved rather than foster families. [LR578]

SENATOR DUBAS: Okay. [LR578]

CLARISSA LaPLANTE: I think they're more helpful in that instance because they're going to go out of their way to give them a ride to where they got to go to do the visitations and that kind of thing. Whereas, with us if we have to be at court they're not offering to assist us with mileage or anything like that. So we end up taking out of our own pocket. And none of the funding that we get for the children...the funding we get for the children that's for those children for whatever their needs are. It's not something for us to use, it's for them. So that's the way I see it and my income without those children I'd still have my income, so when I get that extra income, it's for those children and that's where I need to provide it is when I have to travel to court and whatever. [LR578]

SENATOR DUBAS: Thank you so much for your input. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR CAMPBELL: Senator Bloomfield. [LR578]

SENATOR BLOOMFIELD: Thank you, Senator Campbell. You said, I believe, that it's six to eight weeks before you get any financial assistance. [LR578]

CLARISSA LaPLANTE: Well, I'm not sure that's for everybody, but that was for me when I got these children. [LR578]

SENATOR BLOOMFIELD: Is there within the tribal system any assistance that you could rely on there to help? [LR578]

CLARISSA LaPLANTE: Yes, the tribe stepped up to the plate and they helped me. They helped me get clothing for those children because they had very little clothing. They helped me with getting a bunk bed for these children. So the tribe did step up and do this. [LR578]

SENATOR BLOOMFIELD: And they react quicker than the state does? [LR578]

CLARISSA LaPLANTE: Yes, they did. [LR578]

SENATOR BLOOMFIELD: Okay. Thank you. [LR578]

SENATOR CAMPBELL: Any other questions? Senator Brasch. [LR578]

SENATOR BRASCH: Thank you. [LR578]

SENATOR CAMPBELL: People on the end, I just can't see as well. I'm sorry. [LR578]

SENATOR BRASCH: That's all right. Tap on the table a little bit so. Mrs. LaPlante or Clarissa... [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

CLARISSA LaPLANTE: Yes, Clarissa. [LR578]

SENATOR BRASCH: Again, wonderful, I can't sing enough praises for your caring and taking care of these children and grandchildren. I'm a grandmother as well, and they will eat before I ever eat, you know, that's how families should operate. And what does concern me a little bit here is...and back to our new director here, yesterday I spoke to a gentleman who is helping care for a dying sister and he, too, wanted to reach out to Health and Human Services but they said the phone line was two and a half hours on hold. And so when I get back to the Capitol I will help escalate that, but I'm starting to believe that, you know, we do want to encourage everyone to work. I mean, I think employment, you know, it helps our families because government cannot afford to care for the population ongoing. It's the people who work that pay in to those who cannot work. So, you know, perhaps do you think evening hours or something, you know, some sort of a...because I know even job sharing will help working mothers where somebody could go in to work at 5:00 and work 5:00 to 10:00 so mothers or families wouldn't have the stress or the burden. Would you agree, you know, extended hours would be more beneficial to... [LR578]

CLARISSA LaPLANTE: That, and maybe conference calling. [LR578]

SENATOR BRASCH: Conference call? [LR578]

CLARISSA LaPLANTE: You know, when you've got to travel more than an hour, that's a long time. It takes the whole day. [LR578]

SENATOR BRASCH: And then the paperwork that is involved, was it...because I would worry...if you didn't ask enough questions, you're taking some young vulnerable child, a family, there should be a lot of questions asked before they go anywhere. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

CLARISSA LaPLANTE: Yeah. These are my own children, I still have questions about... [LR578]

SENATOR BRASCH: Yes, that's right. And so some assurance is given to, you know, whoever that these children will be safe...that they're safe and sound. Is there any other thing that we are not asking? [LR578]

CLARISSA LaPLANTE: I think that if they're going to place children within the tribe, then they should utilize those facilities, the social services, or the ICWA programs to be able to contact those families and maybe send through fax to get this paperwork to them so that they can get it signed and get it back to them as soon as possible, because that's kind of how I did it. I used the e-mailing and e-filing and whatever I needed to do to get to the people that I'm working with. Some families don't have access to that. They don't even have access to telephone. So it's difficult for them to be able to get the information they need or even to ask that information and to contact us and say...the reason I didn't go through the Santee programs was because I thought it was unethical because I work within that program, so I didn't feel that was appropriate. So I wanted to go to the Omaha Tribe to deal with these children. Some of the issues here is that I think my great-grandchildren may not be enrollable, they may be only one-eighth. And so when you look at situations like that, my fear is, okay, if I push the issue of getting assistance for them, are they going to take them from me because they're not enrollable, they're only one-eighth? But I'm not sure that they're not enrollable in the Arapahoe Tribe. So those are some of the issues that we look at too. Those are some of the fears that we go through because that's my fear is, okay, this child may not be enrollable so are they going to take them from me? [LR578]

SENATOR BRASCH: Is there...just one final question, do you see a multitude of situations that would take children out, or is there something at the core of all this that our families are no longer caring, you know, able to care...these families that...is, you know... [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

CLARISSA LaPLANTE: I don't know that they're not able to care for them. I think there are circumstances that arise, and I'm going to kind of talk a little bit about circumstance that happened to me. I had these two children...I had two of the children before hand, but I had some medical issues with my grandson, who I adopted, and we were at Children's Hospital and then sent to Rochester in two months' time. I had no one to watch these children. My children were busy. I have a son who is a police officer; I have a daughter who is in teaching; and I have another daughter that works within the school, and they weren't able to be able to transport themselves to and from the hospital and then be at work and then have to take of these extra children because they have their own children. So I requested respite. Okay, respite, when I requested that they said that I had to pay for that myself. And there was no way I was going to be able to pay for respite myself for two months. I had the...I had the...the tribe themselves donated time for me, the tribal employees donated time for me to be away. And, you know, I'm ever so grateful for that. And I'll never get...I mean, it's a never-ending thank you for helping me in that way and that's what the tribe is about is to help one another. And so in that instance they removed the children from me, but they didn't give them back to me. Seventeen months later I have them again because I know ICWA and I knew I was going to get them back because I wanted them back. So that's some of the things we go through. [LR578]

SENATOR BRASCH: Thank you. [LR578]

SENATOR CAMPBELL: Thank you, Clarissa, for telling your story. [LR578]

CLARISSA LaPLANTE: Thank you. [LR578]

SENATOR CAMPBELL: Our next testifier is Rita McClure (phonetic). (Inaudible.) She's not here, okay. Our next testifier is Racheal Strong. Good afternoon. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

RACHEAL WHITEHAWK STRONG: Good afternoon. Good afternoon, Madam Chairwoman and committee members. Racheal Whitehawk Strong, emaciyapi, my name is Racheal Whitehawk Strong, R-a-c-h-e-a-l W-h-i-t-e-h-a-w-k, Strong S-t-r-o-n-g. It's an honor to testify before you today. I'm here more to tell a personal story to kind of put a face behind some of the statistics. Sorry. [LR578]

SENATOR CAMPBELL: You're doing just fine. [LR578]

RACHEAL WHITEHAWK STRONG: I just think ICWA is a very important piece of legislation. I'm an enrolled member of the Rosebud Sioux Tribe. I'm not supposed to be an Indian, but I am. My mom was one of nine children born to my grandmother, Nina Whitehawk. Although my grandma wanted a better life for her children, she was very limited on the Rosebud Reservation in South Dakota due to past broken treaties, destructive governmental programs and forces outside of her control. Federal programs designed to kill the Indian, save the man, such as the Indian Adoption Project, brought social workers to her home to take all but one of her nine children. Between 1941 and 1967 as many as one-third of Indian children were separated from their families. My family is part of this statistic. [LR578]

SANDRA WHITE HAWK: Take a drink and a deep breath. Take a drink and put the water back in (inaudible). [LR578]

RACHEAL WHITEHAWK STRONG: Okay, this is my Aunt Sandy who I just met for the first time this year. [LR578]

SENATOR CAMPBELL: We have a lot of helpers today. Thank you. [LR578]

RACHEAL WHITEHAWK STRONG: My grandmother's only crime was that she didn't have an indoor toilet...that she had an outhouse and they were seen as poor financially, but not poor emotionally. Were they happy? Yeah. But someone decided that they

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

weren't and so came and took their children and decided what they thought was the best interest for my mom and her siblings. A non-Indian family adopted them, my mom and three of her siblings, from the Nebraska Children and Family Home in Omaha. And this is a picture of my mom and three of her siblings: my Aunt Deb, my Aunt Lynn, and my Uncle Max. My adoptive grandparents got them from this orphanage and the first words that they said to them were: forget your mother, forget your family, we're your only family now. You never had any family before this. They were taken to a small Nebraska town where they were the only Indian children, besides the school mascot. I'm not supposed to be Indian, but I am. My adoptive grandparents considered Indians are uneducated, alcoholic, suicidal drug abusers who only live in teepees. According to them I should ride to work in a headdress on a paint horse. I was not allowed to be Indian growing up. I (inaudible) not have an identity or know who I was. Families take pride in their heritage, but I didn't have pride for a long time. I grew up unaware of who I was, and when I found out I was Native and I started to embrace my heritage, my adoptive grandparents made me feel embarrassed and ashamed. My mother still doesn't quite know who she is. And in many ways she is still this scared, traumatized five-year-old who was uprooted from her home. The ICWA is so important for our Native communities to protect our children so we can lead happy, healthy lives with our families, be proud of who we are as Native people. There is still a lot of discrimination and attitudes toward Native people that prevail even in the legal system as Judge Glenn...as he showed with paternalism and cases in his...now it is paternalism, but before it was systemic policy to adopt out Native children. I never got to meet my Grandma Nina. She died of ovarian cancer before I was born which is something, too, that I should know anyway for health reasons. But I took on her name to cherish and honor her memory. And it is my hope that through my family story that you can understand a little more about why the ICWA is so important, why it is such an important piece of legislation. And the 7 percent of Indian children represented in the Nebraska...adopted out, that's a very high number. And so it's, obviously, still a problem compared to 2 percent national average. There is some...it is a problem that needs to be addressed in Nebraska for the Nebraska ICWA, so. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR CAMPBELL: Thank you very much for telling us your story about your grandmother and your mother. Are there any questions? Senator Dubas. [LR578]

SENATOR DUBAS: Thank you, Senator Campbell. Thank you so much for coming forward and I know this was very painful for you, but it is so important that you talk about this publicly and that others in your situation talk about this publicly, because this is a part of our state's history. It's not a proud part of our history, but if we don't know that part of our history, there is no way we will ever be able to go and try to make amends for what we've done either through ignorance or discrimination or whatever. And so I truly recognize how painful this was for you. But I just can't thank you enough for being brave enough to come forward and share. I mean, the point you made about your grandmother's health history, we should all...we all have a right to know that that particular part of our history and what we may need to deal with in the future. So, again I just can't thank you enough, and I hope you will continue to work on this story and not to be afraid to talk about it every opportunity you get because, again, until we really bring this to the forefront and talk about it without shame, but with a purpose for what you're doing, we can't change anything. And so, again, I'm repeating myself, but thank you so much for being brave enough to come forward. [LR578]

RACHEAL WHITEHAWK STRONG: Thank you. Thank you. [LR578]

SENATOR CAMPBELL: Any other questions? Thank you very much for coming. And thank you for bringing the picture. Our next testifier is Barbara Eagle. [LR578]

BARBARA EAGLE: Good afternoon. [LR578]

SENATOR CAMPBELL: Good afternoon and welcome. [LR578]

BARBARA EAGLE: Thank you. My name is Barbara Eagle, B-a-r-b-a-r-a E-a-g-l-e. I'm

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

from the Winnebago Tribe of Nebraska, I'm an enrolled tribal member. I also serve as our ICWA specialist for our tribe for approximately a little over a year. Before that I was a protection and safety worker for the tribe. Before that I was a protection and safety worker for the state of Nebraska. That's where I'm coming to the point of view today and where I want to express that. I would like to express and convey that the state of...being trained as a protection and safety worker for the state we didn't get very much training in ICWA area. It was only like a...maybe a 15-minute little talk regarding the ICWA law, period. And I took the 4-month training which now today is the SDM training and it only covers, you know, a month program now and most of it is field work. What is that going to do, you know, for our case managers, even on a state level? What is that going to do for case managers around the country, supposed to comply to ICWA, period? I don't think it's going to be very beneficial. It wasn't beneficial when I took the state training and I'm Native American. So that's kind of where my point of view is coming from. And I had a lot of great colleagues that were interested. I was kind of a guinea pig as well, because I was the only Native American in the whole service unit, the whole department, period, at that time. I don't know if there's any more today. But I learned a lot, too, on the state level which gave me great insight, great understanding as well; worked with Sherri Eveleth on many levels. She is a great colleague, a great understanding, she works well by herself, you know, and with the Indian tribes in the state of Nebraska. And really that's really where I would like to express my interest as being an ICWA specialist is just that, you know, the state look at that lack of, you know, that lack of...the training for everyone, not just, you know, the certain ones that are going to work with children, but everyone as a whole. [LR578]

SENATOR CAMPBELL: Okay. Questions? Sorry, I was taking notes. Questions?
Senator Gloor. [LR578]

SENATOR GLOOR: Thank you, Senator Campbell. Thank you for taking time to speak to us. The group that you did the training with, was that within a region, or was that within the entire state? [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

BARBARA EAGLE: That was all state workers that were training to be PSWs. [LR578]

SENATOR GLOOR: Okay. It was...but it was a statewide... [LR578]

BARBARA EAGLE: It was mainly for the DHS department at the Lincoln offices.
[LR578]

SENATOR GLOOR: Okay. [LR578]

BARBARA EAGLE: But we had some like Kearney representatives, you know, such
like, you know, other workers. [LR578]

SENATOR GLOOR: Okay. Thank you. [LR578]

SENATOR CAMPBELL: So what years (inaudible) were you with the department?
[LR578]

BARBARA EAGLE: Pardon? [LR578]

SENATOR CAMPBELL: What years were you at... [LR578]

BARBARA EAGLE: I believe it was in the early...like 2003...2004 time frames. [LR578]

SENATOR CAMPBELL: Okay. And so then you...I just want to make sure my notes are
right, so then you left to become... [LR578]

BARBARA EAGLE: I got offered the same job for my tribe which I took it, because it's
like the "come home ticket." [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR CAMPBELL: Gotcha, obviously. Sure, absolutely. No, no, no, I understand that. So, does the department...and this is sheer out of ignorance, okay, then who trains the ICWA specialists within the tribes? [LR578]

BARBARA EAGLE: We don't get no training other than if we do like the state regular trainings, more or less, it's like knowledge based that we've already...usually, maybe, an ICWA...I don't want to say for all tribes, start out as a PSW or, you know, there is some ICWA training when we do become specialists or we can certify throughout Indian country with different organizations. [LR578]

SENATOR CAMPBELL: Would it be helpful, do you think, for...as the department moves into a number of new programs in the child welfare area that that training be offered to the ICWA specialists across the state? [LR578]

BARBARA EAGLE: There should be some, yes, some very in-depth. [LR578]

SENATOR CAMPBELL: So that you'd know the same training and could...it would seem to me be very helpful in giving an opinion as an ICWA specialist from a tribe as the training, you would be there. [LR578]

BARBARA EAGLE: Yes. [LR578]

SENATOR CAMPBELL: I mean, I think if I were sitting at the same table with you and your being able to share your experiences with me, that would be really helpful for my education and awareness. [LR578]

BARBARA EAGLE: Correct. [LR578]

SENATOR CAMPBELL: Any other questions? Senator Gloor. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR GLOOR: Thank you, Senator Campbell. And I'd like to take her line of questioning a little bit further. Some of this training, can this be done, especially if it's something that is being set up by tribes cross-country, on-line learning opportunities? [LR578]

BARBARA EAGLE: There are some on-line programs within Indian Country that are accessible. I'm sure it would be accessible for non-Native entities. [LR578]

SENATOR GLOOR: Yeah. What is the oversight to make sure that there's quality programming or that the certification you get might be accepted if you were to move from one tribe to another, do you know offhand? [LR578]

BARBARA EAGLE: I wouldn't know that in-depth. [LR578]

SENATOR GLOOR: Yeah. [LR578]

BARBARA EAGLE: But, you know, there would be some good (inaudible)...some good correspondence that needed to be done. [LR578]

SENATOR GLOOR: But there are options out there. [LR578]

BARBARA EAGLE: Yes, there are great options. [LR578]

SENATOR GLOOR: You don't have to sit around waiting for a program. [LR578]

BARBARA EAGLE: There's the National Indian Child Welfare organization that helps everyone. [LR578]

SENATOR GLOOR: Okay. Thank you. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR CAMPBELL: Did you have a question? [LR578]

SENATOR PRICE: I think that kind of answers the question for the certification body both for the state and for national. I mean, as Senator Gloor was saying, somebody has to have the reins on what is a certified...I'm sure it's spelled out somewhere who owns that certification process. [LR578]

BARBARA EAGLE: Um-hum. [LR578]

SENATOR PRICE: Okay, that's all. Thank you. [LR578]

SENATOR CAMPBELL: Okay. Thank you very much for coming and sharing that helpful hint there. [LR578]

BARBARA EAGLE: Thank you. Thank you. [LR578]

SENATOR CAMPBELL: Ms. Johnson, are you doing okay? Okay. The reason I asked that is because I always ask the clerk about where I think we're maybe halfway through if she needs a break because she can never just get up and leave. So, if she's okay, we're going to keep going. Okay. So if you need to take a break, you shouldn't feel that you can't leave. Our next testifier is Vernon Miller who is indigenous Teacher of the Year in the Omaha Tribal Reservations. Congratulations. [LR578]

VERNON MILLER: Thank you. [LR578]

SENATOR CAMPBELL: And we're pleased to have you today. [LR578]

VERNON MILLER: Thank you very much. [LR578]

SENATOR CAMPBELL: So we'll start with the name and the usual... [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

VERNON MILLER: Vernon Miller, V-e-r-n-o-n, Miller, M-i-l-l-e-r. [LR578]

SENATOR CAMPBELL: Okay, you can go right ahead, sir. [LR578]

VERNON MILLER: (Exhibit 7) Good afternoon and thank you for allowing me this opportunity to offer my perspective here today. My name is Vernon Miller. I'm an enrolled citizen of the Omaha Tribe. I am currently the high school business teacher here at Omaha Nation Public Schools in Macy so I want to, as a tribal member, also welcome you to our community if that wasn't already done and just thank you for providing this opportunity to voice our concerns here and for just being here and making time out of your day. I know as a senator, you know, you have other jobs during the off-session and so I appreciate you making time to be here. I'm here today to provide my experience and view on the impact of Native children who are involved with the ICWA placement. An important understanding we must agree upon is that American Indian children in states across this country are still taken from their families and placed in foster care or adoptive homes at a much higher rate than other children, just as they were before the passage of the 1978 ICWA, a federal statute intended to help keep Native families intact. The pain of separation from family and community, the hurt you feel when you're taken from those who love you and want to protect you is so overwhelming that, unfortunately, it is one of many reasons why some youth consider suicide as their only way to deal with this burden placed upon them. Suicide rates among American Indian and Alaska Native children is 70 percent higher than that of the U.S. general population. Young American Indian men have a suicide rate 2 to 4 times higher than that of their adolescent males, while the suicide rate of young American Indian females are 11 times higher than the same-age females in other racial groups in this country. At Omaha Nation, and at other schools in Nebraska, where Native youth are maintained within their Native families and with Native adoptive families through placement, I've seen minimal to no change in the student's academic and social performances. Students are able to still acclimate into their classes despite their home

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

environment and replacement. At my school, students are able to find comfort as they are amongst their relatives who are on staff at our school, relatives also attending our school, and because overall they are still within their home which is our community. At Omaha Nation, and at other Native schools in Nebraska, students are further able to maintain their culture by continuing to learn their indigenous language offered at these schools and unfortunately not offered at their non-Native schools in Omaha and Lincoln and other parts of the state where that, unfortunately, is not an opportunity available. If there was ever an issue with the performance of a student in class and a parent is not available, it is not uncommon for an educator at my school to contact a grandparent, an aunt, uncle, or other relative when it comes to maintaining the student's success at our school. And I think that's also likewise in Walthill, Winnebago, as well as Santee. In the Native community, grandparents, aunts and uncles, they all share equal responsibility for the child, and the child's life is enriched by these relationships. I've personally been able to go to cultural and social events, not only in this community, but also statewide and have seen how these child's life is enriched by that. I've seen how Native children are maintaining their culture through their placement with another Native family who was empathetic and not sympathetic to maintaining our pride in who we are as Native people and ensuring the students' self-concept and self-esteem is intact. We must take notice and understand Native youth are sometimes removed from their families because a grandma or an auntie or an uncle is taking care of them, a culturally sound option as far as the tribes are concerned, but one that any state may define as neglect. The proper placement for a Native youth is first with their family, and second with another Native family in their community. Although non-Native adoptive families can promise to expose children to ceremonies and culture, there is no substitute for immersion. Children are the ones that carry on our traditions, knowledge, and are the future of our tribes, communities, and in this country. [LR578]

SENATOR CAMPBELL: Are there any questions? Senator Dubas. [LR578]

SENATOR DUBAS: Thank you, Senator Campbell. Thank you for coming forward and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

congratulations on your award. [LR578]

VERNON MILLER: Thank you. [LR578]

SENATOR DUBAS: You know, I've worked on foster care issues for the last several years and in my conversations with foster care youth, you know, they talk about the trauma of being removed from their homes, even if their home is not the best place to be, just the trauma of being removed from their home and put in another home with strangers, even if they are the most loving. And I think you've started to paint the picture of what that must mean for Native American children, especially if they are completely removed from their culture through the suicide numbers that you presented here. But could you maybe even paint that picture a little bit better about what that trauma really is to Native American children when they really are completely removed from their culture and put into another realm that they've probably have had little to no exposure to. [LR578]

VERNON MILLER: Sure. The reason why I brought up the suicide rate is because there is so many issues that lead to suicide, and the biggest component of that is not having the sense of self-concept, a sense of self-worth, and, obviously, that's ultimately their self-esteem. And so when Native children are removed from their community, their relatives, their family, and Native communities, the family component is what is essential in operating who we are as individuals, as a tribal member. And so when you're removed from that completely, entirely, and going to a nonpredominant Native community or even setting, you know, that's going to have a huge impact on that. When I grew up, I grew up in Lincoln, Nebraska, and I went to a predominantly white school and so I suffered, you know, not being able to learn my language, not being able to be around my family members because they were obviously here. And so that is something that, you know, we opted to do for...as someone who was in foster care, that's not an option for them, they're immediately placed out of that; put in a completely...unaware, uncomfortable, un...just from mere environment. And so by not having access to some

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

of those community things that we have here like as important as language and making our culture. And like I said, it's not uncommon in our school systems here in Winnebago, Walthill, Santee, and Macy, in Omaha Nation, that a relative is on staff, you know, at our school. There are other Native staff members. I never once had a Native educator in my life until I, obviously, went to school for that, but even coming here now I'm meeting others. And that's something as a person of color, and even a male of color, you have no access at all to almost in Nebraska. And so that's what's most important to me and I wanted to relate is that, you know, the issues that they face are extremely different than that of non-Native youth in that environment. [LR578]

SENATOR DUBAS: Thank you so much. [LR578]

VERNON MILLER: Um-hum. [LR578]

SENATOR CAMPBELL: Senator Gloor. [LR578]

SENATOR GLOOR: Actually Senator Dubas asked the question, more or less, I was going to ask. You're a success, I think, by a lot of people's definition, so I wanted to hear a little more about your story. And you gave it in your answer to her and that helps me relate a little better to what you told us. So thank you, congratulations. [LR578]

VERNON MILLER: Thank you. [LR578]

SENATOR CAMPBELL: Several years ago, the Legislature passed sort of a companion bill to the federal fostering connections and an emphasis on relative placement. And I believe that you...the senators sitting here are going to hear more about kinship placement in this upcoming Legislature because of the emphasis that will be brought by several groups to say, this is something that we really need to hone in on. So I thank everyone's testimony today because it's going to make all of us a lot more sensitive to the fact of what may be needed for the Native American and kinship. So I really

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

appreciate that very much. Thanks for coming today. [LR578]

VERNON MILLER: Okay. Thank you for your time. [LR578]

SENATOR CAMPBELL: Best of luck in the classroom. [LR578]

VERNON MILLER: Thank you, appreciate it. [LR578]

SENATOR CAMPBELL: As a former teacher, sometimes you just need to outwill, best of luck. [LR578]

VERNON MILLER: Thank you. [LR578]

SENATOR CAMPBELL: Our next testifier is Judge Runge, and I'm probably not saying that correctly, with the Tribal Court, Judge Runge. Is that correct, Judge? [LR578]

PATRICK RUNGE: Yes, good afternoon. [LR578]

SENATOR CAMPBELL: Welcome. [LR578]

PATRICK RUNGE: Thank you very much. My name is Patrick Runge, P-a-t-r-i-c-k R-u-n-g-e. I am the Chief Judge of the Winnebago Tribal Court which is just a little bit north of here. We...and...in our tribal court we deal with abused and neglected children. We receive ICWA cases from state court and address them as best we can. I'm also an attorney; I have a private practice in Omaha, and part of that practice is in juvenile court where I represent parents and children and serve as a guardian ad litem. So I have an opportunity to sort of sit with one foot on each side of the tribal state divide and get a different perspective on how ICWA works and what does and doesn't work. It has been my perspective from a state court setting that there's two issues with the implementation of ICWA. One is the learning about the "what" of ICWA, the nuts and bolts of the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

requirements and the notice and everything else. And I think there's been better training and then there's been better work to help people understand that. But there's...in addition to the "what" about ICWA, there's the "why" of ICWA, you know, the reason for ICWA to be put forward in the first place, to specifically address a governmental policy that was explicitly designed to destroy Native culture and to assimilate Native children into the broader non-Native population. And I think if you don't understand the "why" of ICWA, the "what" of ICWA doesn't really make a lot of sense. And I haven't seen, at least from my experience, outside of that setting, a lot of understanding about the "why" of ICWA. There's better understanding about the "what", about the nuts and bolts of how it works. But I think without that understanding of why, ICWA does become, as Judge Glenn mentioned, something to get around, another hoop to jump through, another hassle to deal with. And you don't really understand the necessity of it. In preparing to come and speak, there was an experience I had with a case that happened in Sioux City that I thought really illustrated ICWA at its best. There was a case that the Winnebago Tribe was requesting to transfer from Woodbury County to the tribal court. And there was an objection that was being raised to that transfer, in this case from the guardian ad litem. The case had been ongoing for some time in Woodbury County. The mother of the child had some mental health issues and some substance abuse issues and they were, I think, close to a termination in Woodbury County when the tribal removal petition was requested. The guardian ad litem was concerned because she really had no experience with tribal court. She had heard some of the...kind of the...I think she had concerns that she'd heard stories about how, well, if a case goes to tribal court then the kids will just be given back to the parents and that will be that. And so that was the basis for her objection. She basically said, once the case goes to tribal court I don't know what's going to happen, so I don't know what else I can do. So I went up, I was actually supposed to go testify at this hearing about what happens in tribal court and we had a kind of a conference. The guardian ad litem was there; tribe's attorney was there; and all the other parties were there. And the guardian ad litem raised her concerns and I suggested, well, how about if I just appoint you as a guardian ad litem in tribal court? And then you can come; you have the history of the case; you

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

understand what's happening. I could certainly use that. And then you would be able to continue on and be able to take care of and make sure that your children that you've been working with are protected. And there was kind of a pause. And she agreed that that would work. She withdrew her objection to the transfer and the case was transferred to tribal court. Over the course of the next six to nine months, we ended up getting the kids staying in the...in this case, non-Native foster home where they had been raised for years. We had a contested hearing where mom objected; it was clear from the evidence that even with, you know, that the non-Native parents were doing a good job with regards to maintaining that cultural contact, that there weren't any relative placements in the community that were either able or willing to step forward and it was in the best interests of the kids to stay where they are. So it ended up getting to where the case needed to go, but that wouldn't have happened if there wasn't a strong and enforced Indian Child Welfare Act that would have given the tribe the notice, given the tribe the opportunity, and had the parties educated enough to know that, yeah, okay, this case looks like it's going to get transferred one way or the other, so let's find a way to work together to have the state court system and the tribal court system work together so that we can really keep our focus on what's in the best interest for these kids. And so whatever this body can do to strengthen both the understanding of...sort of the "why" of ICWA, and then strengthen the enforcement of the "what" of ICWA, will certainly benefit the children of these communities. [LR578]

SENATOR CAMPBELL: Thank you, Judge. Questions? Senator Price. [LR578]

SENATOR PRICE: Thank you, Senator Campbell. Thank you, Judge, for coming forward. I'm struck with trying to understand, and maybe you can illuminate and elucidate on the definition of how family is defined in traditional court or children's court and then how ICWA goes about family definition and the delta between the two. [LR578]

PATRICK RUNGE: Well, I mean, I'm always a little hesitant, I'm not Native, so I'm always a little hesitant to speak for what a Native understanding of family is. But in a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

broad standpoint, and certainly from a Winnebago experience, the broader family is certainly much more involved with the raising of a child. [LR578]

SENATOR PRICE: More of the legal part about how... [LR578]

PATRICK RUNGE: Oh, I'm sorry. [LR578]

SENATOR PRICE: ...how does ICWA define it versus the court and the delta between the two? [LR578]

PATRICK RUNGE: Okay. The ICWA has some very specific...it's pretty black and white in terms of its placement preferences. You go to parents, and then...not remembering it off the top of my head, but it's...it's very black and white. It's this family member and then this family member and then this family member and then this family member. And you have to...it requires, and it's supposed to require that there's an inquiry that's made at a placement level of have we gone through all these placements if we're at placement number five. There's supposed to be an inquiry as to has placement one been exhausted, two, three, and four until you get there. [LR578]

SENATOR PRICE: So...but is that any different than you would find in a regular court? In other words, was a consideration in ICWA given to the family who...greater than what is in a non-ICWA case. So in other words, when people talk about wanting to get around, is the get around to avoid...the...that process of going through families part of it? And then you always...(inaudible) other type of system, I mean, that's my question. I...kind of reinventing the wheel, if we already have a...and we can't really do...we can make a more restrictive...I don't know if restrictive...prescriptive state version of ICWA where we can include those things, but they have to go through the (inaudible) different things versus what is currently being practice so we don't have to redo something; just have to tell them, follow the process. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

PATRICK RUNGE: The placement preferences are more restrictive and clearer than what would happen in a state court setting so that there are more numbers that you have to jump through in an ICWA case as opposed to a state case. Where the "get around" part comes into play is the same thing Judge Glenn mentioned, is in the discretion that the courts have to make a decision regardless. So, you know, ultimately a judge is going to make a decision of a placement based on the best interest of a child. And those placement preferences can be overridden and they need to be. You know, in this circumstance, mom would have been placement number one, but the evidence was very clear that mom was an inappropriate placement. So it's a tough tension to have, because you need to have that flexibility for a judge to be able to make those determinations based on the specific evidence of the case, but you also want to make sure that there's not the ability to have ICWA be on paper, but have no difference in terms of its reality. So some of that, I think, can be worked in terms of making some specific findings, you know, about the importance of connection to family, connection to culture that courts have to make or presumptions that get put into place; definitions of what good cause is to prevent transfer from state court to tribal court, whereas now it's just good cause without a lot of real meat on the bones for that description. But I think a lot more, it's getting to the hearts of the judges and decision-makers to understand, again, going back to the "why" of ICWA, because I think the more people understand about the "why" of ICWA, the compliance of the "what" will make a lot more sense and will just flow naturally from them. [LR578]

SENATOR PRICE: All right, thank you. [LR578]

SENATOR CAMPBELL: Any other questions? Thank you very much, Judge. Oh, Senator Bloomfield, sorry. [LR578]

SENATOR BLOOMFIELD: Thank you, Senator Campbell. Judge Runge, how far apart are Iowa and Nebraska when it comes to the...? [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

PATRICK RUNGE: You know, that's a hard question to answer, because it really goes more county by county as opposed to state by state. There are some counties in both Nebraska and Iowa that do a great job, that work very well with tribal communities. There are some counties in both Nebraska and Iowa that do a terrible job. So it's hard to answer from a statewide basis, because it really is dependent on the individuals that are involved: the county attorney...the county attorneys, the judges, the people who practice in that juvenile court. So it's hard to give a statewide answer to that question. I think, generally speaking, communities that are closer and have more interaction with Indian case...Indian child welfare cases tend to be better at it, but not always. [LR578]

SENATOR BLOOMFIELD: Yeah, I represent Dakota and Thurston County. How are we doing in comparison to...? [LR578]

PATRICK RUNGE: I think we've had a lot of good experiences with both Dakota and Thurston County. We have...I can only speak from a Winnebago perspective, but we have a very good working relationship with the Thurston County Attorney's office. And we have a good working relationship with the Dakota County as well. So I don't... [LR578]

SENATOR BLOOMFIELD: And Dixon County? [LR578]

PATRICK RUNGE: You know, I haven't had much in terms of interaction with them, at least that I can think of right off the top of my head. [LR578]

SENATOR BLOOMFIELD: Okay. Thank you. [LR578]

SENATOR CAMPBELL: Senator Gloor. [LR578]

SENATOR GLOOR: Thank you, Senator Campbell. Your Honor, how do you become a tribal court judge? Are you appointed? Are you elected? Are you hired? What's the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

process? [LR578]

PATRICK RUNGE: In the...the Winnebago Tribal Constitution defines a chief judge, and then certain associate judges. So, I'm appointed; the chief judge is technically a six-year term. So it's not a lot different from being hired, and, basically, I'm appointed. It's not an elective process. I actually worked in the tribal court beforehand. I was a public defender for a number of years and then I expressed an interest in the judicial opening when it became and I was appointed to that position. [LR578]

SENATOR GLOOR: Okay, thank you. [LR578]

PATRICK RUNGE: Sure. [LR578]

SENATOR CAMPBELL: Seeing no other questions, thank you very much. [LR578]

PATRICK RUNGE: Thank you. [LR578]

SENATOR CAMPBELL: And we will take a 5-minute break at the request of some people up here. [LR578]

BREAK

SENATOR CAMPBELL: Our next testifier is Misty Thomas from the Santee Sioux Tribe. Good afternoon and welcome. [LR578]

MISTY THOMAS: Good afternoon. [LR578]

SENATOR CAMPBELL: We're thinning the ranks, but we're still going strong, so please start out and we'll ask you to...the usual...with your name. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

MISTY THOMAS: My name is Misty Thomas, M-i-s-t-y T-h-o-m-a-s. I'm the director of social services for the Santee Sioux Nation, actually it's the Dakota Tiwahe Service Unit is the name of our unit. Within our unit we have child welfare including ICWA and our own CPS department and a number of other programs. But...and I've been involved with the ICWA coalition since its beginning. And I guess I'm supposed to address the needs in perspective of the ICWA specialists. And there's a lot that I was kind of hoping to cover, but I know three to five minutes isn't very long. So I'll try to address as much as I can. And some of it you have already talked about like the lack of Native American foster parents in the system, and that's across the state and across tribes. And we are trying to work on the PS-MAPP, which is the foster parenting curriculum, and making it more Native American culturally competent, and we are working with Heather Craig-Oldsen out of BCU and Briar Cliff University, and, as well as, Denise Gibson. And this is bringing national attention to PS-MAPP, as well as the state, because we, Clarissa LaPlante and I, we've been running the program in Santee and trying to provide as...as well as Gwen Vargas-Porter from the Omaha Tribe, and we're trying to work with these folks on improving the program to be more culturally competent and to help address that lack of Native American foster parents. But there's a lot of other issues that our ICWA specialists face as they go about their daily work and that includes the bias of caseworkers, judges, GALs, attorneys. And there's no...as well as non-Native foster parents. There's no doubt in my mind that people have the best interest of our Native children at hand. However, if they don't understand Native American culture and language and traditions and why that's important for that cultural identity, there is...how can they really truly be putting forth the best interest of that Native American child? And so we see a lot of that bias within the court systems, with caseworkers, GALs. And a lot of times we see that ICWA specialists have to prove themselves when going into court systems. The state of Nebraska is big, as well as, you know, we are...maybe for a little bit of clarification, our...in our own tribal CPS departments work with the families that are on reservation. Our ICWA's department works with those that are off reservation, so if they are involuntarily removed, that's when our ICWA department steps in and we can do the...we process about...you know,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

I know our department processes anywhere from 50 to 100 ICWA notices a week. And so those come in from across the nation. And once we identify a child as a ICWA child that's enrolled or eligible for enrollment and then we go into the intervention process. And so we work with a number of jurisdictions, a number of court personnel, and it seems like a lot of times everywhere we go it's different. We have to get to know that process and those people that work within that system. Judges are very different, and so it's...and so I can't say that across the nation that we face a lot of adversity, or we face a lot of those barriers, or I can't say that, you know, we...it varies so much by district to...from jurisdiction to jurisdiction. So a lot of times the...our ICWA specialists have to prove themselves within the courtroom. And you can imagine that we have a...it's not just within the state of Nebraska, and I can imagine we have a number of other tribes that are not represented here today that we have children in the system in the state of Nebraska. And so it's very difficult for us to be able to get to every court hearing, every family team meeting, every...do a home visit once a month, it's very, very difficult because the...our caseload extends beyond Nebraska. And so it's very difficult to try to get to all of those...to fulfill all those responsibilities for all of our cases. I'm out of time; I have a lot more, but. Questions? [LR578]

SENATOR CAMPBELL: Questions for Ms. Thomas? Okay. Was there anything that you really missed out of your list? [LR578]

MISTY THOMAS: I guess one quick thing was training for caseworkers. I know we've talked about that a little bit already and I have been involved myself with working with the state on training for caseworkers and trying to improve that ICWA portion of it. And I know that one of the barriers we came across was that they wanted the same for all caseworkers. And I can understand that, but the...you know, so, you know, like, those of us that are on the coalition have offered to come in and be a voice for ICWA and, you know, we can't...it's hard to speak for all tribes, but to be a part of that. And so they have talked about doing some videos of some of the...using some of the ICWA specialists from across the state to use in their training. So I have been involved in that and there's

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

definitely some improvement that can be done there. Again, we always worry about the unidentified ICWA children that are out there that we don't know, that they just haven't been identified and also a cultural plan and trying to fit a very circular world into a box. Basically, you know, as Native people that's who we are and that's where we come from is a very circular world and putting it into a box and black and white on paper can be very difficult sometimes because those things are, you know, like, Clarissa, I use her as an example, you know, the way she is in everyday life, she is...she is Omaha, she has that Native value, and her just taking care of those children. How do you put that on paper, you know? That's just an example. Some of those things that we face with that cultural plan. But I thank you very much for allowing us this opportunity and looking at this as a possibility for a study. [LR578]

SENATOR CAMPBELL: Thank you very much... [LR578]

MISTY THOMAS: Thank you. [LR578]

SENATOR CAMPBELL: ...for your suggestions. Our next testifier is Judge Orr to give us an idea of the efforts of the Supreme Court Commission on Children in the Court, the Subcommittee on Tribal and State Court Collaborations. Good afternoon. [LR578]

JAMES ORR: Good afternoon. Thank you. My name is James Orr, that's J-a-m-e-s, last name is O-r-r. I am a state of Nebraska county court judge in the Eighth District, the Eighth Judicial District. My home office is in Valentine, Nebraska. I'm here as a representative of the Nebraska Supreme Court Commission on Children in the Courts, Subcommittee regarding Tribal State Court Collaboration. The focus of the Supreme Court Commission is to...well, if I could put it this way, the courts are well aware of the problems that were occurring in the foster care system. The commission was formed to deal with that. One of the things the courts knew their responsibility was that would help improvements for kids involved in foster care is to move faster with less adversity or adversarial process in the court system. There are many...there's too many to discuss

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

about, but the...there has been a lot of improvements made in the quickness and efficiency that the state courts are trying to implement to move those cases, along with better outcomes for the children involved in these cases. I am a member and chairperson of a subcommittee of that commission known as the tribal and state court collaboration subcommittee. If I could I would let you folks know that it's a relatively new subcommittee. Up to this point we have focused on...in 2011 there was a resolution of the Chief Justices of the United States, or the State Supreme Court Chief Justices, passed a resolution dealing with tribal and state court collaborative efforts. If I could back up a little further, too, when the Supreme Court Commission formed this subcommittee, and with all good intentions, I think that is the words were used earlier, the paper was passed around the room looking for volunteers to be on the subcommittee. And that was fantastic and I have many qualified and zealous volunteers out of that first day, but what it left was unfair representation of almost entirely, with a few exceptions, of state representatives of that subcommittee. So I've done the best I can in the last year or so to travel around; Judge Vampola, county judge in Fremont; prior to that a tribal judge with Winnebago, took me around. I've met a lot of these people here in this room, and we're working towards improving that involvement from the tribal representatives in this committee and the improvements are significant here lately and we expect those to continue. One of the...up until that point, though, or until we can get to some more substantive issues, because we have the fair representation, the state was, on their side, able to do some things that accomplished some of the matters discussed in the resolution of the Chief Justices. There had not been, but there is now, tribal court information on the state Supreme Court's Web site. It had not been there before. That really did not take much, but that now is there. You would find any information on our state's tribal courts on that Web site, just as you would looking for information of my court out in Valentine. One of the...another item contained in the resolution was that new judges going through orientation would hear and listen of training of knowledge of our state tribal courts, and Sherri Eveleth has been doing that for us. She is...has done that on at least one occasion. What we're finding out is we need more people like Sherri to help us there because, as a matter of fact, what's

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

happening right now is a new judge is going through orientation in Lincoln and Sherri, of course, is here where she is needed the most. So I'll make it a personal point to get a hold of that new judge, make sure she has the knowledge to get a hold of Sherri. We can do that on a more informal basis there. The other matters of the resolution are getting to a lot of what you folks have been hearing today and that...it directs that the state court judges confer with the tribal court judges, they communicate with each other when there's a need be, because of a Native child being found in the state system, or also as we've come to see that we could have a child involved in both systems. And so the state courts are not blind to the issues that present themselves. It's not easy for me to sit here and listen to some of the stories of the other judges and their experiences in the tribal courts. But what we're looking for is a method where the resolution to what Judge Runge was talking about in that particular circumstance where, hopefully, that can happen without it, unfortunately, having to be scheduled for a court hearing, which could be...I don't know where they were and how long it took, a month or two in advance where finally people get together and they finally start talking and go, oh, I see, okay. That's what we're working on, so. [LR578]

SENATOR CAMPBELL: Questions? Senator Price. [LR578]

SENATOR PRICE: Senator Campbell, thank you. And thank you, sir, for coming and sharing. I...my question I have, we've heard before that a lot of personality-driven aspects within a court, that the issue is where we move faster, is that faster moving them away from ICWA and taking them out of the court, or is that faster inclusive of ICWA and that...what is lost by...and I'll (inaudible) because I don't have a great command of all the words, okay, but what is it...what is lost by erring to go forward with the ICWA, and so with NICWA, okay, and all those, what does it hurt us to go ahead and just follow, put that case in that? I mean, even a hint, let's go that route versus taking them out? Because I don't understand what the cost benefit is of just ignoring; or...and maybe we're talking precise, I don't want to cast dispersions, but it would seem to me if someone says I have a Native American child of some sort of representation,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

whether they're enrolled or not, engage, move forward. I'm unable to understand why you'd go away from it. [LR578]

JAMES ORR: Your words are perfect and it's an excellent question. With our emphasis to move quicker, that should not have any effect on not complying with ICWA because the awareness or the knowledge that we have a Native American child in a state court, abuse/neglect system should be known within hours of...if there's a removal. That should be one of the first things that the caseworker establishes. Is this an Indian child or is it not? Usually that's pretty simple; sometimes it's actually not as simple. But what's lost, if not following that...I don't know how to answer that other than what's lost if not following it other than...all state judges should be held accountable. And I don't know the facts of any of the cases that the other judges and the other testifiers are talking about, but there's appeal available. And the Court of Appeals, the Supreme Court has taken up several ICWA cases in the last few years. That's not a real good solution because, unfortunately, the child is lingering while those are occurring. But maybe there is something that needs to be looked at as to why those cases aren't being appealed. Is it a financial reason? Is it ability? I don't know that. But that's an avenue that has occurred to me over the last couple of hours is...if...I can't imagine that any state court judge would want to be routinely overturned for blatantly ignoring federal and state law. [LR578]

SENATOR PRICE: Thanks. [LR578]

JAMES ORR: All right. [LR578]

SENATOR CAMPBELL: Any other questions? Judge, thanks very much for coming. And just for the edification of our audience, the Supreme Court Commission on Children is convened and is advisory to the Chief Justice and the state Supreme Court... [LR578]

JAMES ORR: That's right. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR CAMPBELL: ...and is a member of a national group of state supreme court commissions on children. And we're very fortunate that we have a chief justice who is very attuned to children's issues, all children's issues. [LR578]

JAMES ORR: Exactly. Thank you very much. [LR578]

SENATOR CAMPBELL: Thank you. [LR578]

JAMES ORR: All right. Thank you. [LR578]

SENATOR CAMPBELL: Our next testifier is Jonathan Seagrass, I hope I'm saying that right, is the Legal Aid of Nebraska Native American Project. Good afternoon. [LR578]

JONATHAN SEAGRASS: Good afternoon. Thank you. And you did pronounce my name just fine. Thank you very much. [LR578]

SENATOR CAMPBELL: All right, good, good. So we'll spell it and say it for the record from you. [LR578]

JONATHAN SEAGRASS: (Exhibit 8) Thank you very much. My name is Jonathan Seagrass, that's J-o-n-a-t-h-a-n, Seagrass, S-e-a-g-r-a-s-s, just like the aquatic plant. I am a staff attorney with Legal Aid of Nebraska Native American Program. Legal Aid of Nebraska's Native American Program is comprised of three advocates, including two attorneys, who almost exclusively represent and provide other legal services to Native Americans in both the Nebraska state courts and the four tribal courts in Nebraska, including both in state court, Indian Child Welfare Act matters, and in tribal juvenile court matters. There's been a lot of thanks today. I do want to express my thanks to Senator Bloomfield for introducing the resolution creating this interim study and to Senator Campbell and the other senators for holding this hearing today. A lot has been spoken

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

about the reasons behind the act and the fact that a large majority of the Native American children in out-of-home care currently in the state of Nebraska are not placed in Native American settings. And, of course, in an effort...and this was, of course, a problem when the act was passed, and it remains a problem, unfortunately, still today. And, of course, in an effort to address this problem, the act in 1978, and then in Nebraska in 1985, enacted the act which requires that when deciding where children in out-of-home care are to be placed, preference should be given first to other members of the child's extended family, tribally-licensed foster care homes, other Native American foster care homes, or other tribally licensed institutions that would meet a child's needs. And the law makes clear that not only does preference need to be given, but that preference must be followed, unless there is, of course, the (inaudible) of good cause to the contrary. And Nebraska appellate courts have decided a few decisions about what exactly the procedure would be, what in determining good cause, and they found, first, in 1983, and most recently earlier this year, that there needs to be support in the record actually explaining whatever good cause there is whenever a placement is not in accordance with the preferences. And unfortunately, though, despite what I believe is a clear message from the appellate courts, it's not uncommon, in my experience, where a case where Native American children are placed outside of a Native American setting for there just to not be a justification given by the court as to why placement is not within the preferences. There may be a reason in certain cases, but no justification is given. And it's not uncommon for courts to not make any mention at all in the inquiry into why there is not one, in my experience. And to say that it's uncommon, I think maybe to state it somewhat nicely, in certain courts I really would be stunned if actually a court did undergo that kind of independent inquiry into why a placement is not in accordance with the preferences. It's just not a practice that, unfortunately, is done everywhere in my experience. And for me this indicates that not only do judges need to understand the placement preferences, but they clearly, some of them, do not understand the purpose behind the law. And it's important that they understand the law, the purpose behind it, and that they actively enforce it. And when courts are allowing placements outside the preferences to continue without asking why, I think that there's little incentive then for

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

county attorneys or guardians ad litem or caseworkers to themselves actively enforce the law. Most recently I was involved in a case where it was discussed in a certain manner, however, the discussion resulted in an order that all efforts from here on out to find relatives to place the children in this particular case with should stop immediately then and not occur anytime in the future. And I guess when that order entered, we appealed that decision and ultimately the Court of Appeals found that there wasn't evidence in the record to support that. But what's most troubling to me in that particular case is that by ordering that the Department of Health and Human Services should not make any efforts at all--and I'll try to conclude--to place the children with relatives, it sort of indicates that what the court was trying to do was trying to say that placement with relatives is just a problem rather than addressing any placements that may come up at any individual time and addressing the merits of each individual one. And, of course, there's only a very brief period of time which I have to speak, but the matters that I've touched on today indicate that there is a lack of understanding, and even worse commitment to the Indian Child Welfare Act and the problems that it's intended to address. There's been a lot of people indicating that it's vital today, and I would agree that significant work be done to educate attorneys and guardians ad litem, judges, and child welfare workers of not only the statutory requirements of the law but the purpose. The law is the law, as Judge Runge indicated. And it's extremely important that in doing so that the tribes are an integral part of that process. And again, I thank the committee for holding this hearing today. There's been many...Robbie (phonetic) mentioned it at the very beginning of the hearing that there is a document that has been presented to the committee by the Nebraska Indian Child Welfare Coalition that contains specific ways in which we believe the act could be strengthened. I do want to say that I support those. And I look forward to whatever other efforts this committee does in that regard. [LR578]

SENATOR CAMPBELL: Any questions? Senator Bloomfield. [LR578]

SENATOR BLOOMFIELD: Just one, Senator Campbell, thank you. You mentioned a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

case where they said that it was time to quit going down the relative track or the...how far down were they? You know, you go from mother to grandmother or so on, were we down to fifteenth cousin when they decided that, or were we still looking at close relatives? [LR578]

JONATHAN SEAGRASS: This arose in the context of me and my client presenting the department with several relatives who I believe were nieces, cousins, maybe, sisters of my client who was the grandmother in that case. And I do believe that prior to that there were other family members that were presented. Although I guess at the stage in which the court's order was entered, it only appeared that only beginning attempts were made to even reach out to those people. So I don't believe it had been assessed at that time whether or not any of those people were suitable. [LR578]

SENATOR BLOOMFIELD: How far removed were they and how far removed do you think we should go before such an order is eventually entered? [LR578]

JONATHAN SEAGRASS: Sure. Well, how far removed were these people? I believe that, like, I...I understand your question to indicate exactly what relation they were to the children. [LR578]

SENATOR BLOOMFIELD: Right. [LR578]

JONATHAN SEAGRASS: And so I believe that they were maybe cousins, maybe aunts and uncles, maybe great-aunts and uncles, as we would understand it. However, I guess as to what the...how far it should go, I do believe that the act indicates that in determining the appropriateness of placements under the preferences that the standards that should be used to be the prevailing standard and the community in which the...the Native American community in which the children come from. And, therefore, I believe that if it was the family member that would be considered, I guess, a member of the child's extended family, as the act says, in accordance with Native American culture

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

then I suppose it would be appropriate. However, of course, I can't speak to exactly what that would be. [LR578]

SENATOR BLOOMFIELD: My...I guess my point in bringing that out is...you know, if we get out to what we could call seventh and eighth cousins looking for people, are we damaging that child more by not getting him into someplace stable than we are by spending time looking for a distant relative? [LR578]

JONATHAN SEAGRASS: Sure. Of course, and I don't mean to suggest that a case should be prolonged unnecessarily to search for relatives that have not yet been found. In this particular case, the children, unfortunately, had already been placed in several out-of-home placements. And at the time, for some of these children, active search was being made for a placement that hopefully would be a permanent one which it, which at the time, did not have. [LR578]

SENATOR BLOOMFIELD: Thank you. [LR578]

JONATHAN SEAGRASS: Sure. [LR578]

SENATOR CAMPBELL: Any other questions? Thank you very much for testifying today. [LR578]

JONATHAN SEAGRASS: Thank you very much. [LR578]

SENATOR CAMPBELL: For the senators' benefit, three more people have been added to the list prior to Mr. LaMere's closing comments. Sandy White Hawk. So you will have to add them to your agenda. [LR578]

SENATOR DUBAS: We're going to speed-read this document in five minutes. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR CAMPBELL: It's been done before. [LR578]

SANDRA WHITE HAWK: (Exhibit 9) My name is Sandra White Hawk, that's W-h-i-t-e H-a-w-k, two words. [LR578]

SENATOR CAMPBELL: And spell Sandra too. [LR578]

SANDRA WHITE HAWK: Sandra, S-a-n-d-r-a. [LR578]

SENATOR CAMPBELL: Okay. [LR578]

SANDRA WHITE HAWK: Good afternoon. I want to thank you for this time. I know it really gets hard by the end of the day, but one of the things I have to mention to you before I begin is I've testified before other senate committee hearings and you have truly been the most respectful in your listening and in your questions. I've been interrupted and had very condescending comments from other places that I've been in for committees, so I commend you for what you're...how you're listening to the testimonies. That shouldn't count in my five minutes by the way. (Laughter) So anyway... [LR578]

SENATOR CAMPBELL: Miss Johnson will note that. [LR578]

SANDRA WHITE HAWK: All right. There's many things that I would like to address so...but I will just tell you where I draw my experience from. I am one of the nine children of Nina Lulu White Hawk Garnio (phonetic) from the Rosebud Reservation. I am an enrolled member there. I am Racheal Strong's auntie who she just met this summer. Each year we meet more family members from our huge family on the Rosebud Reservation who were either adopted out or grew up in foster care. The claiming of relatives who have been taken away is really a lifelong process. It takes us a long time sometimes to get through that initial pain and shame and then to even try to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

find where we are. Unfortunately, our generation are subject to many altered records and other things that have been huge barriers for us to make that connection. But I am the founder and director of First Nations Repatriation Institute. The institute is a result of a grass-roots effort to bring and raise awareness of what happens to adoptees. What is it like for someone who has grown up in foster care? What is it like emotionally, psychologically, and physically even to have to live in a community that doesn't reflect back your image in any way, shape, or form. I was the only Indian girl who grew up in a town of 4,000 people as well. So I didn't see my image reflected anywhere: magazines, TVs, teachers, employer, anyplace. It was also a time of extreme racism toward Native people. And so I endured that and it was quite difficult. But I've taken all of what I learned from my own experience and meeting and listening to other adoptees and have come to see that we have a lot of...a lot to share to inform adoption education, to inform foster care, to inform you that this legislation of ICWA is so far reaching. I've heard...but the most recent comment, how far back do we go? How far do we look before we're damaging the child? And that question has to be answered and looked at through the lens of Native people because we don't even define cousins the same way the larger society does. We don't define grandparents the same way. And we have our own family system of bringing other people who are maybe not blood related into our family and they have the role of uncle or aunt or...and they contribute to the family in that way. So when I heard that question, I thought to myself, as it applies to me and others I've known, there's no way that we couldn't find a family member today. Because today we have this media that gets us anywhere and everywhere. How is it that I can get to a phone number of someone who is unlisted when I'm helping an adoptee search, how can I find her birth mother? I'm not a professional. I don't have access to the Red Cross Internet capability. But yet we can find each other. So if we can do that on our end, surely people that are in kinship search and other places like that could search. So the answer to that question is we do it until we have a family member. And our families are huge. Even today there are huge families; we go back, go back, go back, we all can always find a relative. And why do we need to do this? Can a child be loved in a white family, a non-Native family that maybe lives close to the reservation who has artwork in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

their home, who has all the Indian movies because this is what I hear people tell me. I want to adopt an Indian child, I just love Indian art. This is just today, not 20 years ago. So what I say to that is that love is not the issue, because we have been loved by white families. We've also been brutalized by white families as well. And, unfortunately, the abuse rate is much higher than the love rate in the adoption and foster care issue. So love does not replace your development. Love cannot give you that sense of who you are. What does it mean to me? What did it mean to Racheal, my niece? She has no idea...had no idea she was Indian, didn't have any ability to express that. She doesn't know what it means in our language to be a "wiya," a woman. With each stage in life there is a responsibility that we grow into to then contribute to our family and then to our communities. So after we are "wiya" we become a "ina," a mother, and with that stage of life there's a certain way we expect...are expected to carry ourselves and then contribute to our family and our community. The relationship between a niece and an auntie is specific as well. And so for her I'm able to give that to her because someone gave it to me before me. But it took a lot of years of being able to make that connection. Sadly many of our adoptees and our people who grew up in foster care don't make that connection, aren't able to get through that barrier and they languish in addiction, abusive relationships, and suicide. I've met hundreds of adoptees throughout the years and I will continue to meet them and I have not met one adoptee, and even those who were loved and can say that their family loved them unconditionally and that they know that they are their child, had not had deep grief, unable to express it, and felt so emotionally isolated that there's no words to describe it. So that makes it difficult for the adoptive parent who loves their child; what do you mean? I love you so much, you should be able to tell me. There's...it...it creates...adoption and foster care out of our culture creates a lifelong difficulty, I shouldn't even say difficulty, a lifelong trauma that we have to undo, that's why it's important. And I've been around long enough, in my work I travel nationally and have been to many reservations. And there is a way, and it has to be met with...the communities themselves have the answers. The Indian nations have the answers and the capability with some assistance, you heard that earlier, this is what we need to make it work. So the leadership has to...then that's you, has to come

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

forward and say this is what we're hearing, this is what we're going to do, and do it with the spirit of ICWA, which is not just the black and white, the spirit of ICWA is what you heard from my niece earlier, the generational pain. So the document you have in front of you, I pulled together 16 times groups of community members, social workers, judges, lawyers, anyone who touches the decision on an ICWA case together with adoptees, fostered individuals, and other birth relatives to tell their stories, to sit in circles, and to learn from the stories. And one of the stories I'll close with is in Sioux City, Iowa, when we did this, there was a social worker there who...in his small group was just beside himself because here he had been a social worker for 15 years and he had never seen the positive expression of our culture within our Native community. At this event we always have a...it's always led in a spiritual way and based in our culture, so there was a drum group there of young men explaining how they had to behave themselves if they were going to be on this drum. We had grandmothers there talking about healing and how they came from a destructive place to a healing place. And this social worker had worked with Indian families all these years and had never...had never been in...even in our communities...never been anywhere. That was his first time. The only people he saw were people who came into his office. So he only saw them in crisis. He only saw them in hard times. And he didn't witness and see that there is such strength in our people. When I think of his...the term "historical trauma", I don't know if you've been...heard that term yet, but it's a term coined by a la punta (phonetic) scholar and it's defined as a collective, cumulative, emotional wound across generations. And that's what we're recovering from. We've been recovering from that since first contact. And we can see it today evidenced in our families that are still struggling, but even though we're struggling we are a strong people and know how to take care of our children. That red light has been on a long time. [LR578]

SENATOR CAMPBELL: It has. Any questions from the senators? You'll find as we get later and later in the day, questions are fewer. [LR578]

SANDRA WHITE HAWK: Yes, I figured that. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR CAMPBELL: Does not reflect upon the testimony. [LR578]

SANDRA WHITE HAWK: I expect an e-mail question from at least one of you.
(Laughter) [LR578]

SENATOR CAMPBELL: Thank you for your testimony. [LR578]

SENATOR BLOOMFIELD: Do we have your e-mail address? [LR578]

SANDRA WHITE HAWK: I thank you for your time. [LR578]

SENATOR CAMPBELL: I think it's inside the booklet. [LR578]

SENATOR DUBAS: Do we have your e-mail? [LR578]

SENATOR PRICE: It's on top of the document. [LR578]

SANDRA WHITE HAWK: My e-mail is right in here. [LR578]

SENATOR DUBAS: Very good. Thank you. [LR578]

SENATOR CAMPBELL: Thank you. All right, our next testifier is George McCauley.
Good afternoon. [LR578]

GEORGE McCAULEY: Good afternoon. Thank you, Senators and representatives and
community members, for allowing us to express some of the things that were on our
minds and so thank you for being here. [LR578]

SENATOR CAMPBELL: Oh, we'll have to have you state your name and spell it for us.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

[LR578]

GEORGE McCAULEY: My name is George McCauley, G-e-o-r-g-e M-c-C-a-u-l-e-y.

[LR578]

SENATOR CAMPBELL: Go right ahead. [LR578]

GEORGE McCAULEY: (Exhibits 10 and 11.) I'm a member of the Omaha Tribe, but I've been away from the reservation, living in St. Paul/Minneapolis area for 41 years. I left in 1967 and went off to a boarding school and then lived in the cities, but this has always been my home; it will always be my home, and this is where I'll come back to, so. No matter how long you've been gone and where you've been, this is where your roots are and this is where your family is and you're always connected to them, so. It's always good to come home, so. And I'm glad to be here. First of all, again, as you know, it's good that you come to our homeland to hear what we had to say. It shows that it's a sign of respect that you are here and interested in hearing what we are saying and thank you for that. I'm the QUICWA Administrator for the QUICWA compliance collateral project. We're based at the Minneapolis American Indian Center. And what this is, is a consortium of national organization of Indian tribes, urban Indian programs, advocacy groups, and different court judges--different judges, I can't remember their name--National Council of Juvenile and Family Court Judges is one of our partners. And what I'd like to talk about is what the...the way I can explain it or illustrate it is like picture a river with babies and children flowing down of a fast-moving river. And there are ICWA workers standing on the banks grabbing as many children as they can. There are also social workers, guardians ad litem, lawyers, and judges standing on the banks grabbing children at the same time and doing with them what they think is best, or as they say, in the best interest of the children. These children rarely make it back to the river where they came from. They usually grow up in foster care or are adopted out. But no one is at the beginning of the river to try and stop these babies and children from falling into the river. There is no dam. The Indian Child Welfare Act is supposed to be that dam.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

Compliance to the Indian Child Welfare Act is supposed to stop children from falling into the river of foster care and into adoption and being lost to our families and tribes. So the question is, how do we improve ICWA compliance? Right now, there are meetings going around across the country putting their minds together trying to come up with a solution. And today I come here to tell you about a project that we believe will help address ICWA compliance. We have been doing monitoring of ICWA at the Minneapolis American Indian Center for over 25 years. We have a court monitor placed at ICWA hearings in Hennepin County to follow these cases. The project we are working on today is based on that concept. But you don't need a court monitor; just anyone attending a court hearing using our checklist, which a copy is going around to each one of you. We are in the second year of this project and have recruited partners from across the country, and data is being collected from these jurisdictions, such as: King County in Washington State; Lansing, Michigan; and they'll start in St. Louis County in Minnesota, which is Duluth. We also have 16 tribes signed up as partners who will also be doing data collection, including the Omaha Tribe and just recently last week I talked with the Winnebago Tribe and they are interested in becoming a partner of ours, so. The goal of this project is to advocate for change in the behaviors, practices, and policies of individual child welfare agencies throughout the country. We designed an ICWA checklist that anyone can use who attends a court hearing. There are even some judges that are using it at this time. And the copies have been handed out and our partners are using this checklist and the data would be aggregated to give a picture of ICWA compliance across the country. The checklist and data collection is the beginning of a dialogue to see where we are with ICWA compliance. Identifying ICWA noncompliance trends for...what it should gives based on where ICWA is right now and how we can improve it. For example, there's a question on a form was that the question asked, is the child affiliated with the tribe or does ICWA apply? Those are very important questions that judges I hear don't really even address. Indian children cannot be identified by appearance. We have no idea our children are...we don't know how many children have been lost by not asking this question. It is a question that needs to be asked in every court. There is no identifying information and no direct reference to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

any individuals or agencies on a data collection. The checklist is about creating dialogue, not to place the blame on who or who is not doing what. It gives voice to the tribes and individuals. It was created...it can create better outcomes for our families, especially when the tribes are involved and ask to be part of it. So I thank you for your time and I have cards; and if any of you have questions, I'll be glad to take them.

[LR578]

SENATOR CAMPBELL: Questions from the senators? Thank you, Mr. McCauley, and particularly for bringing some samples. [LR578]

GEORGE McCAULEY: All right. [LR578]

SENATOR CAMPBELL: Our next testifier is Roz Koob. I'm not sure I'm saying that right. Am I saying that right? [LR578]

ROSALYND KOOB: Kobe (phonetically). [LR578]

SENATOR CAMPBELL: Kobe (phonetically). Sorry. Hello. [LR578]

ROSALYND KOOB: Hello. My full name is Rosalynd, spelled R-o-s-a-l-y-n-d. I go by Roz. Last name is Koob, it's spelled K-o-o-b. I am here individually as an attorney. I represent the Winnebago Tribe of Nebraska in all of its Indian child welfare cases across the United States. I also represent the Omaha Tribe of Nebraska on a case-by-case basis on its Indian child welfare cases, as well as other tribes that might find themselves in a state court either in Iowa or Nebraska. I am a licensed attorney in the state of Iowa and in the state of Nebraska as well as in several tribal courts, and I practice in Sioux City, Iowa. And what I wanted to address, and I thank all of you for being here, I've heard some questions asked today in my perspective as an attorney in the courtroom representing the tribes and only the tribes on ICWA cases. There's some questions that were asked that perhaps I can provide some additional answers or

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

perspectives to. One of the questions that was asked is, what is the difference between Iowa and Nebraska or how does Nebraska compare to Iowa? Iowa's ICWA is further along, further developed than Nebraska's. Nebraska is the carbon copy, basically, of the federal Indian Child Welfare Act. Iowa's Indian Child Welfare Act has provided added protections, added clarity to the law, and has clarified for the courts that it is the presumption of the Indian Child Welfare Act, it is the presumption of Iowa law that it is in the best interest of the children that the tribal courts make the determinations regarding the custody of the children. It's not the presumption that it's in the best interest of the tribal children to have state judges, state workers making that determination, but the best interest is that the children should transfer. That is probably the biggest and the most significant difference in the state of Iowa, as well as because of that in particular in Woodbury County where there's a large population, through strong efforts and concerted efforts they have now within the department of health and human services created the Native American unit. And that has been very beneficial. What I have seen in working with the state of Nebraska, I have yet to meet a caseworker that has been to a reservation. I've yet to meet a guardian ad litem who has been to a reservation. They are the ones that are in the court system making recommendations to the judges as to what the permanency should be for these children, whether these cases should be transferred, who these children should be placed with. And when I have the opportunity to ask them the question, all right, you say it's not in the children's best interest to transfer to the tribal court or it's not in the children's best interest to be placed with this relative, have you talked to the tribe? No. Have you been there? No. Do you even know what the tribe has to offer? No, I don't. Well, you've developed a cultural plan. Did you ever talk to the tribe about this because this is the first we're hearing of it? And the answer is no. What they've tried to do over in the state of Iowa, in particular northwest Iowa, is start to address some of those issues through the creation of the Native American unit. And we have Native American liaison workers, we have Native American social workers, and that has been of huge benefit. Another question that was asked is how is Thurston, Dakota, and Dixon County doing? I practice there. Dixon, I've never had a case in Dixon. And actually Thurston and Dakota County we don't have too many

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

cases, which I find interesting. I don't know if it's because there's not the identification of Native American children or if they're just not filing and removing children as frequently as some of the other counties. Now that the Supreme Court has said that tribes do not need attorneys to represent them in the courtroom, I think that there's been better compliance. But what I find statewide is the first question I'm asked when they see my name is, besides the comment of "oh, shit", the first question is do you have a placement? And my first response is, have you looked? (Laugh) I mean, you know, why are you asking me at this stage in the proceedings? Have you asked these questions before? There was a question as to basically what is the reluctance? Why is the state court reluctant to follow or apply ICWA? I think the basic...there needs to be an understanding as to at what stage in the proceedings the tribes get involved. In most cases by the time the tribe has even received notice, the child has already been removed, there has already been an emergency custody removal, the child has already been placed, there's already been statements made to placement providers as to what these state people involved, whether it's guardians ad litem, caseworkers, or otherwise, they've already created a vision and a plan in their head all before the tribe has even received notice that this child has been removed. And by the time that the tribe gets the notice, gets it on the court's docket to have a hearing just to get intervened in the case so that they can actually gain access to the information, a lot of steps have already been taken. And I see that I'm out of time but I would like to wrap this up. I do agree with Mr. Glenn in that there is a paternalistic view. Many times there is the belief that they, whoever they might be, can and already has determined what is better, and there's a real lack of trust and understanding. And we as attorneys, and that's who you're dealing with, guardians ad litem, county attorneys, we as attorneys are taught and educated to take and retain control, and to give that up is a very hard thing for people to do. And then to give that up to an unknown because they haven't been there, they don't know it, they haven't seen it work is very difficult, and I think that that is one of the biggest reluctancies as to why ICWA...they try to go around ICWA. And at sometimes they've already invested time, money, and energy and they're just like, well, where were you, tribe? You weren't here at the beginning, so why can you come in now? And they don't

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

understand why the tribe is doing what it's doing at what stage in the proceedings. And I would point out that I've had a judge who admonished and yelled at a caseworker twice because when the child was removed, she placed the child with family on the reservation and she got yelled at by the judge. I mean, yelled at because she took that child out of this judge's jurisdiction and out of this judge's control and how was this judge to know what was going to happen in the tribe on the reservation? So those were some of the questions that I've heard and I just thought that maybe I could bring another perspective to them. [LR578]

SENATOR CAMPBELL: Sure. Any questions from the senators? Thank you for answering the questions. [LR578]

ROSALYND KOOB: Thank you. [LR578]

SENATOR CAMPBELL: Our last testifier of the day is Frank LaMere, executive director of the Four Directions Community Center in Sioux City, and he's been a very patient gentleman. Good afternoon. [LR578]

FRANK LaMERE: Good afternoon, Senator. Thank you very much for the opportunity, Madam Chairman. My name is Frank LaMere, L-a-M-e-r-e. I reside in South Sioux City, Nebraska, and I work closely with the Four Directions Center in Sioux City, Iowa, which serves the Siouxland area. I want to mention real briefly about Four Directions. We have some basic tenets that govern our work. First and foremost, we want to make ourselves well, want to make our community well, and we want to bring our families back together the way it was before people came with a better way. And we work very hard at that. And we were born a number of years ago of issues having to do with child welfare and juvenile justice. Our community grass-roots community of Omaha's Winnebago, Santee Siouxs, and Poncas found a disproportionality of a system that takes our children in disproportionate numbers away from us, and the situation became intolerable. In 2002-2003, we took it upon ourself as a community, went to Des Moines, and we

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

helped to gain the passage of the Iowa Indian Child Welfare Act. That was done with probably less than a \$5 bill by a grass-roots community that had no political power but had a resolve to change things. So that's...I want to share that with you about the Four Directions Center and what we do. When I leave here tonight, I'm going to have the privilege of going back into Woodbury County and I have a Four Directions parenting program that will meet tonight. It's one of the most important things that I do. And tonight we're going to have three Winnebagos, two Santee Siouxs, and I believe one Omaha woman in our parenting class. That class is underwritten by the Iowa department of human services. Those who want to take our children are actually supporting the community efforts to keep our children. Uppermost in their mind and our mind is the welfare and the safety of the child. But we are on the same page. So they help to support, you know, that effort. Now I just want to mention that to you. There's many things that Nebraska may wish to entertain. That's one of them. And so what we do there is we have these families and the way I always characterized it is they come to parenting when the judge has the gavel about right here. And what they do is they come and they work to secure their parental rights and to strengthen their family. We're very much involved with that. That work has taken us many places. We passed the Iowa ICWA in 2003. We have a group there called the Community Initiative for Native Children and Families. It's called CINCF, the Community Initiative for Native Children and Families. Many have been here and many from the Nebraska side are a part of that group. I always like to point out with great pride that we're the sister, the brother organization of the Nebraska ICWA Coalition who took a look at some of the things we were able to do in the Siouxland area with that community and seek to replicate it as best they can on the Nebraska side. And they've been very successful in doing that. You know, our work, I've heard a number of comments and I have the privilege of being able to wrap up a little bit. There was a couple of things I want to share with you as you begin your work. I applaud you for your work on LR578. Even coming here it shows a commitment and a resolve to do something to make something better. And I want to share with you. There's you and the Native community that I work with, we share something and I'll tell you what that is. And we speak to this all the time, you know, in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

Woodbury County. When the children grow old, they must know that we fought for them. And you do that in your work in the Unicameral. We do that in the community. When the children grow old, they must know that we fought for them. It may be their saving grace. It may help them to live and to grow and to flourish as they enter adulthood and they understand that. I want you to, you know, think about that if you would. There are many, many things that happen over this long road of 10 or 12 years working with the state of Iowa. And I would hope that as you continue your work that you watch and listen to all gathered here, come and even see what we do, and we'll be able to find some shortcuts on how we can make things a little bit better, you know, for our community. And on the day before Thanksgiving, as we have done for the last ten years, we will have the memorial march to honor lost children. It is a memorial dinner and we memorialize two young Santee Sioux girls and one young Omaha boy who were lost, lost their lives in foster care in the Siouxland area. That prompted us to action there, and you don't hear about that very much, but we memorialized them and we have a unity dinner and we march very silently. And we'll do that again, you know, the day before Thanksgiving. I want you if you would as you continue your work in Nebraska watch some of those things we do. It's been a hard road but when our CINCF committee gathers every month, 40 community leaders, they don't come together for anything. But they go over there to Four Directions because they say there's some good things that happen there. We network. We talk about how we can better serve our children and our community. Lastly, Senator, you mentioned something that was my first note that I wrote down today. Somebody had mentioned that disproportionality rate, 7.6 times. Our children are more apt to be in the child welfare system--7.6 times more apt. That's a red flag. That's a red flag. I listened today. Red flags everywhere. We just, we have to find it within us to act on that. You made mention of that today when you questioned the Foster Care Review Board. With these kind of numbers, why are we not paying attention? Well, you have to ask yourselves that I think now. Senator Gloor a little bit earlier, I say with great respect, he had mentioned that maybe this is an issue not of Native people. Maybe it's an issue of poverty. We can find 100 different reasons to dance around that, but that's why we are where we are right now. We cannot vague the question. We have an issue

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

of disproportionality. Our children feed the system, they continue to feed the system. And until we address it and see these red flags before us, nothing is going to change. I applaud all of you for your good work and will complement your effort however we can up in this area with what we do. I would also, I missed it, but I would gather that you'll continue to take testimony because there's a couple of other reflections I'd like to share with you as you leave. And I would guess that the, you know, the hearing would be open for a period of time. But there's many things I've heard today. And I think our friend from the Appleseed center had mentioned that...he said that there's a...his perception and a perception that Roz mentioned, that's a lack of understanding and commitment, you know. And that is true. That rings true. Maybe if the last thing we remember about today is we walk away knowing that there's a lack of understanding and commitment, but there's resources, people with experience, and people with heart, you know, who will come and change things, most notably all of you. So I would share those things with you. I would thank you and I am a member of the Winnebago Tribe of Nebraska. And I'm a Nebraskan and I spend all my time across the river because we have a lot of our people there, and we need to come across and do some things that are going to be good for all of us, so. I thank you as I (inaudible) you for your time today unless there would be any questions or... [LR578]

SENATOR CAMPBELL: Any questions from the senators? Thank you very much, Mr. LaMere. [LR578]

FRANK LaMERE: Okay. Thank you. [LR578]

SENATOR CAMPBELL: Mr. LaMere...oh, I'm sorry. [LR578]

SENATOR BLOOMFIELD: That's all right. Mr. LaMere? [LR578]

FRANK LaMERE: Yeah. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR BLOOMFIELD: Thank you, Senator Campbell. What, from what you've heard here today, gives you the most hope and what leaves you the most dismayed of what we are trying to accomplish here today? [LR578]

FRANK LaMERE: You know, there is great hope. I will leave here with a very positive, you know, kind of a feeling. But I know that, you know, sometimes when we gather like-minded people with good hearts, we understand things. But you have to go back to your communities, you have to go back to your courts, you have to go back and talk to guardians ad litem, caseworkers, judges, court workers, court monitors who have done these things the same way for the last generation or two. And that's what you have to deal with. And I think if you can provide that education to the courts, I think that would be a good start. There's old attitudes and old ideas that we have about each other. And if we can take the first step in getting past some of those I think that we'll do well, and you've done that by being here. But get ready for the tough road ahead when somebody from another perspective comes and says, Senator Campbell, I've always done it this way. And, no, I haven't been on that reservation but I know. It...you know, paternalistic was a word that was used and, you know, I don't know if it's paternalistic or is it being sanctimonious. But we don't...if we knew everything and we had interacted and engaged one another to this point, we wouldn't be here right now. I applaud, you know, the resolution. I applaud your work. Anything we can do we certainly would make it happen. You're welcome to join us the day before Thanksgiving. We have had other state senators over the years come over. And then you can see what we do and you can enjoy a good dinner, too, so. With that, thank you very much. [LR578]

SENATOR BLOOMFIELD: Thank you. [LR578]

SENATOR CAMPBELL: Mr. LaMere, if you have additional comments you can e-mail them to the committee and we'll make sure everyone gets a copy... [LR578]

FRANK LaMERE: Okay. [LR578]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Health and Human Services Committee
September 25, 2012

SENATOR CAMPBELL: ...so if there's other thoughts you have. [LR578]

FRANK LaMERE: Thank you very much. [LR578]

SENATOR CAMPBELL: With that, we will conclude the public hearing today and encourage everyone to drive safely on their way home. [LR578]