

THE NEW BOARDING SCHOOLS:

Racial Biases in the State of South Dakota Continue to Fuel Constant, Willful Violations of the Indian Child Welfare Act



"Folks in Indian Country didn't just wake up one day with addiction problems. Poverty and violence didn't just randomly happen to this community. These issues are the result of a long history of systematic discrimination and abuse."

— Michelle Obama, April 2015

"Indian children, parents and tribes deserve better."

— Federal Chief Judge Jeffrey Viken, March 2015

in Oglala Sioux Tribe and Rosebud Sioux Tribe v. Van Hunnik

"We are redoubling our support of the Indian Child Welfare Act, to protect Indian children from being illegally removed from their families...to preserve a vital link between Native children and their community that has too frequently been severed – sometimes by those acting in bad faith."

— U.S. Attorney General Eric Holder, December 2014

"There is no more vital resource to the continued existence and integrity of Indian tribes than Native children."

— National Congress of American Indians

Mission Statement

Executive Summary

The state of South Dakota continues to be in flagrant violation of the Indian Child Welfare Act and the Due Process Clause of the Fourteenth Amendment. The declining reunification rates of Native children with their extended families and kinship groups (when they are removed from their homes pursuant to allegations of “abuse and neglect”) and the increasing revenues of private white-run foster care providers, adoption agencies, and medical service providers in the state of South Dakota has compelled the Lakota People’s Law Project to conclude that the state of South Dakota cannot and will not adequately provide legally adequate Child Protective Services and Child and Family Programs needed by the Native Americans living in South Dakota. The Lakota People’s Law Project has concluded that targeting Native American children has been conducted by state officials motivated by a long-standing and demonstrated anti-Native American discriminatory racial animus.

Solutions

The Lakota People’s Law Project (LPLP) therefore requests the approval of all five remaining and presently pending Title IV-E Planning Grant Applications for the tribes of South Dakota to independently establish and run their own Indian Child and Family Service Programs. LPLP also requests an expedited process for administrative training in order to support newly formed, ongoing, direct Title IV-E agreements for the People of the Seven Council Fires (Oceti Sakowin).

LPLP further requests an official investigation be initiated by the Federal Department of Justice into the statewide violations of the Indian Child Welfare Act and the Due Process of Law by the South Dakota Department of Social Services as a means of revealing the widespread corruption that has come to characterize the state system.

LPLP moreover requests the initiation of a joint investigation by the U.S. Department of Health and Human Services and the Department of Justice to review the prescribing procedures of psychotropic pharmaceutical drugs for South Dakota’s Lakota foster children, as well as a review of the degree to which South Dakota state agencies comply with federally mandated procedures to supply data and information that meet the criteria of publicly accessible information.

Finally, LPLP calls for a comprehensive federal investigation that seeks to document the class-based invidious discriminatory racial animus that permeates the operation of Child Protective Service abuse and neglect determinations made regarding Lakota parents and the refusal of state officials to place Indian children with their Lakota relatives and tribal members as is required by federal law.

For more information visit www.LakotaLaw.org or contact LPLP by email info@LakotaLaw.org

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Introduction

The following report outlines the historical context from which the Indian Child Welfare Act emerged and how that law continues to be willfully violated by officials in the State of South Dakota. The report will not only lay out the history of anti-Native American racial hostility in the state, but also detail the profit motivations held by officials at the highest levels of state government in South Dakota.

A recent ruling by Federal Judge Jeffrey L. Viken found as a matter of fact that South Dakota state officials including a State Judge, State Attorneys and members of the State Department of Social Services actively and consciously conspired to deprive Lakota Sioux parents of their constitutional right to due process of law. This ruling validates what Lakota People's Law Project has been telling federal officials for more than a decade: that South Dakota is willfully violating the federal law throughout its state system in its provision of Child and Family Services to Native American families.

The following report details the motivations behind this systemic violation of ICWA, and the due process of law, including how state institutions are benefiting from seizing and removing Indian children because Native children attract substantially more federal money to South Dakota coffers than do children of other races. Moreover, the report reveals the "revolving door" between high-ranking state offices including the current Governor and present Lieutenant Governor and private foster care facilities that continue to receive large no-bid contracts from the state. These private foster care institutions financially benefit from the state's flouting of ICWA provisions and the due process of law.

The report also reveals and evidences the direct connection between the pharmaceutical industry and the state foster care system, demonstrating how large pharmaceutical companies interested in increasing revenue have worked hand-in-glove with foster care practitioners to incorporate the administration of antipsychotic medication to Lakota children for "behavioral issues," which are culturally specific to Native belief systems. Similar to the "revolving door" between private foster care institutions and state officials, there are major "conflicts of interest" between the healthcare industry and the South Dakota state government where no-bid contracts as political favors are common.

The following report not only demonstrates that ICWA and the due process of law are being flouted, but details the degree to which South Dakota state officials have used their offices to personally enrich themselves and the private institutions that they worked for or continue to work for at the direct expense of our nation's most vulnerable and marginalized people.

The Context from which ICWA Emerged: A History of Indian Mis-Administration

In 1928, the Institute for Government Research published the *Meriam Report*.¹ It was the first report on Native conditions since the ethnologist and former Indian Agent Henry R. Schoolcraft wrote a six-volume study for Congress in the 1850s. The Meriam report condemned the implementation of the Dawes Act land allotment scheme as well as the conditions on our Indian reservations and in their Indian boarding schools. Although the report found that the

Since the mid-1990s, South Dakota's Department of Social Services (DSS) has been **placing fewer and fewer Native children back at home** with their tribes and family. Now **less than half** of Native youth end up reunified with their family once entering foster care. Additionally, **nine of every ten Indian foster children reside in non-Native care** in South Dakota.

Indian boarding schools were "grossly inadequate," relying on rote curriculum, student labor, and insufficient food and medical supplies, the BIA kept the Indian Boarding Schools open for fifty years longer. Seizing Indian children from their homes, forcing them to cut their hair, abandon their native dress, and forgo all of their cultural practices and languages was in effect an act of "ethnic cleansing" intentionally initiated to "kill the Indian, save the man." The forced enrollment in American Indian Boarding Schools reached its peak in 1973, with over 60,000 Native students forcibly enrolled with many documented cases of sexual, physical and mental abuse occurring in those schools.

In 1975, Congress established the American Indian Policy Review Commission and conducted hearings to assess the problems that continued to plague Indian tribes.² Following weeks of testimony, the report issued by the commission confirmed the "Trust Responsibility" of the United States government towards the tribes and specifically denoted the obligation of the federal government to rectify the problems brought about by the federal administration of Indian policy and economic development. The American Indian Policy Review Commission was especially concerned with the development and support of community programs explicitly including child and family services.³

Professor Roger Buffalohead of the University of Minnesota wrote for the AIRPC, "From its formal organization in 1824, the Indian Service [precursor to the BIA] has been vested with considerable powers and gained a reputation for inefficiency and corruption....At any rate, the means used to defraud Indians and the Federal Government ranged from outright theft to shabby ventures just within the letter of the law."⁴

¹ Meriam, Lewis, *The Problem of Indian Administration*, The Institute for Government Research, Brookings Institute, 1928.

² American Indian Policy Review Commission, Final Report, Submitted to Congress May 17, 1977 <https://ia601409.us.archive.org/6/items/finalreport01unit/finalreport01unit.pdf>.

³ Ibid, p.62.

⁴ Ibid, p.62.

In 1978, in response to the alarming rates at which Indian children were continuing to be removed from their homes and tribes by state authorities, under the color of State Department of Social Services determinations of "abuse and neglect" the United States government passed the Indian Child Welfare Act. The law was designed, "to promote the stability and security of Indian tribes and families" by establishing clear federal standards that were required to be observed as a condition for the removal of Indian children from their families and tribe. The provisions detail the requirements for an Indian child in any custody proceeding so that an Indian child will not be removed from his or her Indian family home unless it is absolutely necessary. The act also mandates that if an Indian child must be removed, he/she must be "preferentially" placed with his/her extended Indian family or tribe, with a Indian foster or adoptive home that reflects "the unique values of Indian culture," and only as a very final resort with any non-Indian family.

However, virtually simultaneously to the enactment of ICWA, the racist attitudes on the part of many top government officials in the state of South Dakota peaked in response to protests and actions undertaken by the American Indian Movement (AIM) at Wounded Knee. Ex-Governor William Janklow, (1979-87, 1995-2003) while campaigning for Attorney General in 1973, stated that, "The way to deal with [AIM activists such as] Dennis Banks is with a bullet between the eyes." In April of 1976, Banks' attorney said "The man's life has been threatened by the highest judicial officer of South Dakota, William Janklow. Mr. Janklow, the Attorney General of South Dakota, has made the statement that the only way to deal with the AIM leaders is to shoot them in the head." Other sources quote Janklow as saying that the only way to resolve Indian issues in South Dakota would be to "put a gun to the AIM leaders' heads and pull the trigger."⁵

The Implementation of the Indian Child Welfare Act in South Dakota

The State of South Dakota has refused to make any good faith effort to preserve Native families as mandated by the Indian Child Welfare Act; the endemic racism and cultural biases on the part of the majority population against the Lakota people fuels unnecessary and unjustified removals of Native children from their homes in South Dakota. The revenues to private foster agencies and medical and pharmaceutical companies that supply "services" to these Indian children through the State constitutes an additional incentive to maintain this discriminatory policy of removal and guarantees that change will not occur without direct Federal intervention.

Since initially reporting to Congress and the Justice Department in 2012, the Lakota People's Law Project has continued to monitor the Rate of Removal, Reunification Rates, and the Percentage Determinations of Abuse and Neglect in the State of South Dakota. The

⁵ "Indian Leader Pleads Innocent to 5 Federal Firearms Charges" in the *Eugene Register-Guard* on Apr. 14 1976, "Dakotan Still Seeks Fugitive" in the *Spokane Daily Chronicle* on Apr. 20 1978, "People in the News" in the *Eugene Register-Guard* on May 25 1979

compliance on the part of the State of South Dakota with ICWA has declined precipitously since the earliest recorded data on the subject in 1998. Native children are continuing to be removed at an alarming rate, averaging 741 children per year. The “reunification rates” with their Indian family and tribe have dropped from over 80 percent to under 50 percent, and the rate of “Neglect” as a percentage of “Abuse and Neglect” cases has risen sharply from approximately 75 percent to over 95 percent, a determination which many tribal court judges deem to be subjective and fueled by cultural bias.⁶

Between 1997 and 2005, the State of South Dakota Department of Social Services systematically violated ICWA under the color of the authority of the Adoption and Safe Families Act (ASFA) refusing to make any “reasonable efforts” to place an allegedly abused or neglected Indian child with Indian family members, much less than “active efforts” that were mandated by the Indian Child Welfare Act (ICWA). This policy and practice continued until January 5th, 2005, when, in the case of *In Re J.S.B Jr.*, the South Dakota State Supreme Court issued its ruling that, “ASFA does not override ICWA.” The Lakota People’s Law Project has concluded that from 1997 - 2005, no “reasonable” or “active efforts” were undertaken by the Department of Social Services of the State of South Dakota to keep Lakota children with their Indian families or tribe and that officials intentionally denied Lakota parents and children of their fundamental rights motivated by a class-based invidious discriminatory animus.⁷

Passed within a month of the *In Re J.S.B. Jr.*, decision, Senate Bill 55 and House Bill 1226 were then enacted by the South Dakota legislature at the direct demand of the Attorney General and the DSS to water down the state’s obligations to abide by certain elements of ICWA. In March, 2015, the ACLU filed a successful lawsuit against South Dakota state employees and their polices which constituted willfull violations of ICWA and of the Due Process rights of Native parents and children.

Oglala Sioux Tribe v. Van Hunnik

In *Oglala Sioux Tribe and Rosebud Sioux Tribe v. Luann Van Hunnik*,⁸ Federal Judge Jeffrey L. Viken found, as a matter of fact, that the state of South Dakota has been systematically and comprehensively violating the federal rights of Indian families in the State of South Dakota pertaining to the removal of Indian children and their placement in white foster care settings.

“The court finds that Judge Davis (et al.) ... developed and implemented policies and procedures for the removal of Indian children from their parent’s custody in violation of the mandates of the Indian Child Welfare Act and in violation of the Due Process Clause of the

⁶ Administration for Children and Families; Adoption and Foster Care Analysis and Reporting System (AFCAR); “Child Welfare Outcomes”;1998-2001, 2002-2005, 2006-2009, 2009-2012. — Judges: BJ Jones, William Thorne

⁷ The People of the State of South Dakota in the Interest of J.S.B., JR, Minor Child and Concerning J.S.B. Sr. and O.L.J. Respondents; first paragraph of case brief: http://ujs.sd.gov/Supreme_Court/opiniondetail.aspx?ID=1367

⁸ OGLALA SIOUX TRIBE and ROSEBUD SIOUX TRIBE v. LUANN VAN HUNNIK, U.S. District Court, South Dakota, Western Division, CIV. 13-5020-JLV, Summary Judgement, March 30, 2015 http://www.docs.lakotalaw.org/summary_judgment_3.30.15.pdf

Fourteenth Amendment to the United States,” Judge Viken wrote in his 45 page ruling. Viken found that the state defendants violated not only six different provisions of ICWA, but also five different provisions of the Fourteenth Amendment of the U.S. Constitution.⁹

Judge Viken found that 823 Indian children were involved in 48-hour hearings in Pennington County, South Dakota from 2010 to 2013. While eleven percent of the children were discharged from DSS custody the day of the 48-Hour hearing, thirty-two percent of the Indian children remained in DSS court-ordered custody for more than sixty days after the 48-hour hearing.

Maintaining continued jurisdiction over this case, Judge Davis has insisted upon excising his continued ability to convene federal court hearings in order to ensure that all applicable court orders are fully adhered to in the future. This reasonably implies that the Judge’s decision to maintain this on-going authority over this case because he does not believe that the State of South Dakota will act in good faith to follow his orders without his exercising such continuing federal jurisdiction over the State official defendants. This ruling is crucial in that it shows that the violations of ICWA and the Fourteenth Amendment were not undertaken by just one individual, but by multiple executive and judicial officials of the State of South Dakota as a matter of policy. This now-established state-driven “class-based, invidious, discriminatory animus” will continue and will reassert itself unless further direct federal intervention is undertaken.

⁹ Federal Judge Jeffrey Viken ruled State Judge Jeff Davis and other state officials involved in Indian Child Removal cases violated the following provisions of the Indian Child Welfare Act: 1. Not allowing parents to see the ICWA petition filed against them; 2. Not allowing the parents to see the affidavit supporting the petition; 3. Not allowing the parents to cross-examine the person who signed the affidavit; 4. Not permitting the parents to present evidence; 5. Placing Indian children in foster care for a minimum of 60 days without receiving any testimony from qualified experts related to “active efforts” being made to prevent the break-up of the family; 6. Failing to hear expert testimony regarding the serious emotional or physical effects that continued custody of the child by the Indian parent or custodian is likely to result in for the child.

The state also found that state officials violated five provisions of the Fourteenth Amendment of the U.S. Constitution: 1. Failure to provide parents with adequate notice of the claims against them, the issues to be decided, and the state’s burden of proof; 2. Denial of the parents’ right to present evidence in their defense; 3. Denial of the parents’ right to cross examine witnesses; 4. Failure to provide indigent parents the opportunity to be appointed counsel; 5. Failure to base child removal orders on evidence presented at hearings and then subsequent submissions of written findings that are often materially different from evidence presented at hearings.

Financial Incentives in Federal Foster Care Funding: An Industry Built Around Indian Children

South Dakota continues to receive approximately \$63 million in federal funds in its state budget each year by caring for huge numbers of Native foster children in its Department of Social Services (DSS),¹⁰ despite its blatant violations of ICWA. Social Security Title IV-E federal grant money to support state run foster care pays states only when they remove children from their homes. These federal dollars are invested by the State of South Dakota to support foster care services, which, in turn, triggers successive rounds of spending that stimulate South Dakota's struggling economy. When NPR investigative reporter Laura Sullivan asked former South Dakota Governor William Janklow how important the federal money to DSS is to South Dakota, he said, "Incredibly important. I mean look, we're a poor state ... We're like North Dakota without oil. We're like Nebraska without Omaha and Lincoln. We don't have resources...We don't have high income jobs. We don't have factories opening here hiring people in high wage jobs."¹¹

Profiteering Through the DSS

Currently, in the State of South Dakota, a few private corporations provide the foster care and child juvenile justice services. The purpose of a state social service agency is to strengthen and promote a stable family—the Department of Social Services claims that it wishes to foster "independent and healthy families." Therefore, any and all services contracted by a given state department should meet that department's goal.

As it stands today, South Dakota businesses are garnering revenue from each step that Indian children take through it's child welfare system. Private agencies, such as Children's Home Society of South Dakota and Lutheran Social Services, receive millions of dollars each year: from the point at which an "incident" is reported; to when there is a need to provide emergency shelter; to "evaluations" of potential foster homes; to administering home and medical services throughout a child's time in care, even including post-adoptive services.

Private Agencies' Revenues Fuel Continuing Removals

The current Governor of South Dakota, Dennis Daugaard, is a long-time South Dakota Children's Home Society paid executive officer. Daugaard was the Lieutenant Governor of South Dakota while he was simultaneously the CEO of CHSSD from 2003 to 2009. Prior to 2013, Gov. Daugaard was the Chief Fund Raiser for the private corporation. Therefore,

¹⁰ State of South Dakota Budget, Fiscal Year 2014-2015; <http://bfm.sd.gov/budget/>; http://bfm.sd.gov/budget/BiB/SD_BIB_FY2015.pdf

¹¹ National Public Radio, Laura Sullivan; "Native Foster Care: Lost Children, Shattered Families"; October 25-27, 2011; <http://www.npr.org/2011/10/25/141662357/incentives-and-cultural-bias-fuel-foster-system>

defying ICWA’s mandates was not only financially beneficial to Daugaard as a state official, but it was personally financially rewarding to him as Executive Director of CHSSD. While Daugaard served as Lieutenant Governor, CHSSD received \$50 million in state funds, in the form of no-bid contracts, presenting a clear conflict of interest. Of this, Daugaard was personally reimbursed \$115,000 annually by the corporation while he received only \$17,699 per year as part-time Lt. Governor.¹²

Children’s Home Society

for Department of Social Services

- 1-15-0832-643: \$233,329; provide services to crime victims
- 2-15-0842-501: \$129,618; provide emergency shelter care for DSS youth
- 3-15-0842-509: \$461,191; provide family treatment foster care
- 4-15-0842-534: \$6,944,140; “provide an appropriate education program for youth”
- 5-15-0800-029: \$455,926; license foster parents to complete all in-home consultations
- 6-15-0800-031: \$133,286; provide post-adoption services
- 7-15-0800-032: \$25,000; provide parenting education classes
- 8-15-0823-303: \$329,124; operate a home visitation program
- 9-15-0832-642: \$48,949; “refer to the Victims’ Service Management system”

for Department of Corrections:

- 10-15SC180039: \$301.78 daily; residential treatment/group care services
- 11-15SC180040: \$213.55 daily; residential treatment/group care services
- 12-15SC180041: \$213.55 daily; residential treatment/group care services
- 13-15SC180042: \$71.23 daily; treatment foster care services requiring close supervision

TOTAL STATE SPENDING: \$8,760,563 for FY ‘15
(without daily rate costs)

The CHSSD contracted to provide the supervision of Indian children with behavioral or emotional problems in exchange for \$71.23 per Indian child per day from the State of South Dakota have contracted to provide “emergency shelter care” to Indian youth for \$92.10 per child per day.¹³ On the other hand, CHSSD’s Sioux Falls and Black Hills facilities bring in \$213.55 per child per day for residential psychiatric care, and the Sioux Falls Boy’s Intensive Care Unit charges \$301.78 per child per day. The total contracted amounts for “close supervision” and “emergency shelter” services are not to exceed \$129,618, and \$461,191 respectively. But the total amount South Dakota gives CHSSD for administering “psychiatric services” to Indian children comes to \$5,588,140 a year. The extraordinary cost of “psychiatric” care is due primarily to the pharmacological therapy that these Indian children are subjected to. The revenue generated by psychiatric care within CHSSD reveals why the organization strains to expand its psychiatric sector and bring more Indian children into its care.¹⁴ The evidence is clear: Children’s Home Society directly benefits from the Indian children to whom it prescribes powerful psychotropic drugs. The more Indian children receiving psychiatric services, the more money CHSSD is given by the state, which in turn extracts this money from the federal government. The same goes for South Dakota— the more Indian children placed

¹² http://articles.berdeennews.com/2011-01-07/news/27019496_1_matt-michels-lieutenant-governor-rounds-administration

¹³ <http://open.sd.gov/contracts/08/15-0842-501.pdf>

¹⁴ Under Daugaard’s leadership, “the Foundation secured enough gifts to complete the physical plants on both the Sioux Falls and Black Hills campuses” <http://www.chssd.org/foundation/history.asp> ; in re those campuses <http://open.sd.gov/contracts/08/15-0842-534.pdf>.

into foster care by the state, the more money is received from the federal government.¹⁵ The Tax Foundation ranks South Dakota fourth nationally in dependence upon federal funding.¹⁶

Another service CHSSD offers are PRIDE (Parent Resource for Information, Development, and Education) classes. PRIDE training equips potential foster and adoptive parents with the necessary skills that adhere to the “protective, developmental, and cultural needs of children placed with foster and adoptive families.”¹⁷ PRIDE classes are systematically mandated by the state for Indian parents of Indian children charged in abuse and neglect cases. These classes place heavy, and often insurmountable, barriers to the reunification of Indian families with their

children. PRIDE classes are proctored by the state, yet they fail to incorporate the unique cultural elements of family and child-rearing practices that are traditional in the Native American community. These programs utterly fail to meet the needs of the Indian children and their parents in creating the conditions for reunification, as is mandated by ICWA.

Ilene Brown, 62, lives on the Standing Rock Reservation. Her grandsons Aiden and Xavian were removed from their parents’ home in Rapid City in 2007 after the Rapid City Police were called for an argument between Brown’s Lakota son and his white neighbor. South Dakota Department of Social Services (DSS) agents accompanied the police

Lutheran Social Services

for Department of Social Services:
2-15-0842-520: social services; \$446,537; DSS foster care
3-15-085C-351: \$101,255.50; substance abuse services
4-15-0842-311: \$140,604; case management for children in CPS
5-15-0832-650: \$111,411; Division of Adult Services and Aging
6-15-085C-345: \$126,759; substance abuse and criminal thinking services
7-15-0842-511: \$897,639; foster care and adoption services
8-15-0842-533: \$508,891; psychiatric treatment for children in DSS care
9-15-0842-537: \$660,614; psychiatric treatment for children in DSS care
10-15-0842-538: \$739,968; psychiatric treatment for children in DSS care
11-15-0800-063: \$422,051; complete home studies of children in DSS care
12-15-0842-601: \$464,801; foster care services
13-15SC090514: \$66,200; community health services

for Department of Corrections:
14-15SC180013:; \$32,050; transportation for youth in custody of the state
15-15SC180117: \$14,560; group therapy for youth in Dept. of Corrections
16-15SC180118: \$50,000; individual/family-based services to youth in DOC
17-15SC180119: \$50 per youth/per group session; “moral reconation therapy”
18-15-1800-022: \$30,000; work training program to adults in DOC
19-15-1800-009: \$35,000; work training program pilot to adults in DOC
20-15SC180051: \$151.33 daily; juvenile services
21-15SC180052: \$63.31 daily; treatment foster care services with the DOC
22-15SC180053: \$78.14 daily; independent living classes in the DOC
23-15SC180054: \$139.12 daily; residential/group care therapy
24-15SC180055: \$139.12 daily; residential/group care therapy
25-15SC180056: \$317.79 daily; intensive psychiatric treatment for children

1-15-0300-010: agriculture; \$25,000; refer clients to consultant for farm loan mediation
27-15-AB-005: labor; \$135,333; recruit candidates for adult education instruction
28-15-AB-006: labor; \$4,800; prepare for Summer Summit conference

TOTAL STATE SPENDING: \$5,013,473.50 for FY '15
(without daily rate costs)

¹⁵ Note: Title IV-E spending reimburses states between 50-75% depending upon the expense. Medicaid costs are reimbursed at 69.4%, and SCHIP at 75.1% - at 75% reimbursement rate, \$1 spent by the state results in \$3 in federal funding.

¹⁶ The Tax Foundation, “Federal Aid to State Budgets.” 12/10/2012. <http://taxfoundation.org/blog/monday-map-federal-aid-state-budgets>

¹⁷ Department of Social Services, PRIDE & Unity Training <http://dss.sd.gov/childprotection/fostercare/pride.aspx>

and took the two infant boys into custody.¹⁸ Brown did all that she could to try to gain custody of her two grandsons: she moved from the Standing Rock Reservation to Rapid City, she found full-time employment as a cook at Youth and Family Services, and applied for Section 8 housing. And she also attended PRIDE classes.

Despite her complete compliance with DSS demands, every time Ilene Brown felt that she was one step closer to securing the custody of her two infant grandsons, caseworkers would tell her about yet another hurdle that she must jump over. Ilene Brown thought it would be a easy for the DSS to give her custody of her two grandsons through a kinship-care agreement. However, she was told by DSS officials that she would have to go through the arduous process of adopting her grandsons—the same process that total strangers have to go through to gain custody of a child who is not their relative. “How do you undo the blood?” Brown said. “How do you undo the genes, and everything I have that I gave to my grandsons? How do you do that and say I have to adopt my own grandsons?” When LPLP staff conducted the interview with Brown in 2013, she said it had been four years since she last saw Aiden and Xavian.

There is a customary custody agreement on Ilene’s tribal lands called hunkalowanpiin which, when a child moves from one person’s care into another’s, there are no hoops to jump through. Indian parents act out of a common interest and validate the agreement by letting other people on the reservation know about it. “We do it at home,” Brown said. “There is no paperwork. Just say, ‘so-and-so took that person,’ as their son or daughter or uncle or whatever, and then you spread the word. That’s how it’s done.” This is in stark contrast to the laborious, seemingly endless process South Dakota has put Ilene Brown and thousands of other Indian families through. “How can all these people at DSS walk around without feeling guilty? You have to really be a cold, cold-hearted person to do that to kids and still walk around with your little click-ety high heels in the courtroom taking all these kids away.”¹⁹

Current Tribal-State Agreements

South Dakota’s methods of establishing and maintaining contractual agreements with the Lakota tribes benefit the state apparatus and private foster care organizations at the tribes’ expense. The tribes are forced into engaging contractual agreements with the state because of their lack of infrastructural capacity, or funding, to run their own independent Indian child and family service programs. As a result, these contractual agreements compel each tribe to concede virtually all of the federal funds allocated toward Native services to the state agency.

What this means is that it has become impossible for the Lakota tribes to procure the funds to begin independent tribal programs. Under Dennis Daugaard’s leadership, South Dakota has increased its allocation of state child and family services to private corporations. For instance,

¹⁸ They were aged one and two when they were taken away from their parents.

¹⁹ Brown, Ilene; Testimony taken July/August 2013.

the state now has twenty-seven contracts with Lutheran Social Services for fiscal year 2015, eleven of which are with the Department of Social Services (DSS). Thirteen such contracts are with the Department of Corrections (DOC). The services listed in the contracts range from psychiatric treatment for children, to case management for children in Child Protective Services (CPS), to transportation services for youth in the custody of the state. Another private organization, the Children's Home Society of South Dakota, has thirteen contracts with South Dakota for this fiscal year, which amount to \$8.7 million.

When Tribes Attempt to Provide Services: The Inadequacy of Access to Title IV-E Funding

The Cheyenne River Sioux Tribe (CRST) in South Dakota provides emergency shelter to children who are removed from their homes due to abuse or neglect. The CRST has a vendor agreement with the state DSS in which the tribe receives \$26.83 per child per day. South Dakota has a vendor agreement with Children's Inn, which is owned and operated by Children's Home Society of South Dakota, to provide those exact same services. South Dakota's agreements with CRST and Children's Inn both have contracted for the exact same services. However, whereas Children's Inn receives \$92.10 per child per day, CRST receives only \$26.83. The tribe gets less than one-third of the amount received by Children's Home Society of South Dakota when it provides the same services as Children's Inn to its own members.

The “Revolving Door” Policy Among State Officials Generates Corruption in Administration of Child Welfare

From 1990 to 2002, the present sitting Governor of South Dakota Dennis Daugaard served as the director of fundraising for Children’s Home Society of South Dakota (CHSSD)—one of the select private agencies that hold contracts with the State for foster care services. In 2002, Daugaard was promoted to CHSSD’s Executive Director, a position that he held until 2009.²⁰ Also in 2012 Daugaard was asked by Mike Rounds to be his Lieutenant Governor running mate for the governorship, which he accepted. From 2003 to 2009, Daugaard served in both of those positions, as President of CHSSD and as the Lieutenant Governor of South Dakota.²¹ Daugaard claims that he stepped down from his position as Executive Director while campaigning for governor in 2009 “in order to avoid creating the appearance of a conflict of interest.” However, Daugaard had no problem with such an appearance of the conflict of interest presented by serving concurrently as Lieutenant Governor and CHSSD Executive Director from 2003 to 2009.

Once appointed President and CEO of Children’s Home Society of South Dakota, Daugaard expanded the psychiatric residential wing of CHSSD. By making this transition under Daugaard’s leadership, Children’s Home Society was able to claim the Title XIX reimbursement rate for medical care²² rather than the lower Title IV rate for foster care. DSS Secretary Deb Bowman signed off on those contracts which enabled CHSSD to receive the Title XIX reimbursement rate for medical care. Bowman was then appointed as a Senior Advisor to Dennis Daugaard once he was elected to be the new Governor of South Dakota in 2010, the same position that she held under former South Dakota Governor William Janklow.

Deb Bowman transitioned from serving as Secretary of the DSS to Senior Advisor to Governor Daugaard, where she remained until her retirement in 2014. Kim Malsam-Rysdon, who replaced Bowman as the Secretary of the DSS, joined Governor Daugaard’s cabinet as his Senior Advisor²³ upon Bowman’s retirement, once again filling Bowman’s vacated position. In January 2015, Malsam-Rysdon was appointed Secretary of Health— she now serves both as a

²⁰ Children’s Home Foundation History, <http://chssd.org/foundation/history.asp>

²¹ Setting the Record Straight, Mitchell Republic Insider, October 2011 http://mitchell.areavoices.com/files/2011/10/Daugaard-NPR-Setting_the_Record_Straight.pdf

²² Funding under the Social Security Act (SSA) Title XIX is separate from Title IV-E and has much higher caps on spending/reimbursements: http://www.ssa.gov/OP_Home/ssact/title19/1900.htm rather than allotted caps under Title IV.; Title XIX, Contract, pay rate here: <http://open.sd.gov/contracts/08/15-0842-534.pdf>.

²³ Malsam-Rysdon is also the Secretary of Health for South Dakota, in addition to her position as Senior Advisor to the governor <http://www.mitchellrepublic.com/news/local/3664669-gov-daugaard-names-kim-malsam-rysdon-secretary-health>.

When State Senate Rep. Stan Adelstein resigned in December 2013, Governor Dugaard was positioned to appoint his replacement in the state legislature. He chose Alan Solano, the Chief Executive Officer for Behavior Manage Systems Inc, a corporation with almost \$3 million in state contracts annually. Despite joining the state legislature in January of 2014, Mr. Solano felt comfortable signing three BMS grants and contracts totaling roughly \$3 million in April of 2014, four months after becoming a member of South Dakota's State Senate. It seems as if the wheel of corruption will only continue to spin until the funding for services is transferred directly to tribes. There are too many unsavory businessmen who will continue to take advantage of Lakota children until that is done.

sources: (1) "Governor Dennis Dugaard Appoints Rapid City Businessman to South Dakota Senate", Associated Press, 14 January 2014 <http://ksoo.com/governor-dennis-daugaard-appoints-rapid-city-businessman-to-south-dakota-senate/> (2) Behavioral Management System Contracts, 2014-15 <http://open.sd.gov/contracts/08/15-0851-601.pdf>, <http://open.sd.gov/contracts/08/15-085C-304.pdf>, <http://open.sd.gov/contracts/08/15-0851-301.pdf> (3) BMS provides services to adults suffering from mental illness and children who suffer from Severe Emotional Disturbances as well as residential and outpatient services for children.

Dennis Dugaard secured almost a dozen no-bid contracts for Children's Home Society while serving as Lieutenant Governor. Now, his Lieutenant Governor, Matt Michels, is effectively doing the same.²⁷ Before becoming one of the highest paid Lieutenant Governors in the

Senior Advisor and as the Department of Health Secretary. Notably, while Bowman was still serving as Secretary for the Department of Social Services, she also served as the CEO of Every Citizen Counts Organization (ECCO),²⁴ which maintained about \$35,000 in state contracts from the Department of Health.²⁵ These departments and executives have been and continue to be inextricably involved with the maladministration of Indian Child Welfare in South Dakota.

Governor Dugaard first ran for the South Dakota State Legislature at the recommendation of Bill Peterson,²⁶ at a time when Dugaard was serving as the Chief Financial Officer for Children's Home Society of South Dakota. Today, Bill Peterson serves as the Chief Vice President of Development and Foundation for Lutheran Social Services of South Dakota; a group which provides foster care, clinical treatment, and adoption services for South Dakota, receiving upwards of six million dollars each year in contracts and payments. Peterson's job description includes "annual fundraising," the same description provided by Dennis Dugaard for his tenure at the Children's Home Foundation.

This legacy of corruption in South Dakota has become even more apparent in recent years.

²⁴ Bowman ECCO CEO link <http://votesmart.org/public-statement/85699/gov-rounds-appoints-deb-bowman-to-lead-department-of-social-services#.VTAAJQ5nOA>.

²⁵ ECCO contracts with South Dakota Department of Health/Human Services - <http://open.sd.gov/contracts/19/4191-607-019%2015.pdf>; (2) <http://open.sd.gov/contracts/19/4191-651-010%2015.pdf>.

²⁶ Walker, Jon, Steady Optimism guides Dennis Dugaard's quest to be Governor, Argus Leader, 17 October 2010, <http://archive.argusleader.com/article/20101017/NEWS/10170319/Steady-optimism-guides-Dennis-Daugaard-s-quest-governor>

²⁷ This similarity is found in that both held leadership positions within organizations which have been reported to subvert the open bidding process, or Request For Proposal (RFP) system, in South Dakota; Dugaard by NPR - <http://www.npr.org/2011/10/25/141672992/native-foster-care-lost-children-shattered-families>, and Michels by ArgusLeader - <http://www.argusleader.com/story/news/local/2014/08/11/officials-look-averas-pricing-option/13883401/>

country,²⁸ Matt Michels served as the General Counsel for Avera Health, a network of hospitals and care clinics across South Dakota and the Midwest. As recently as November 2014, Avera was reported for subverting the open bidding process²⁹ in South Dakota by offering to cover out-of-pocket expenses for state employees who choose to receive healthcare at Avera hospitals.

Children’s Home Society South Dakota (CHSSD) is the largest private foster care organization in the state.³⁰ Even though Dennis Daugaard would eventually leave Children’s Home Society to run for governor in 2010, he continues to support and enact policies which generate large revenue streams for organizations which run foster programs like CHSSD by keeping Indian children in state facilities in violation of ICWA.

“In the spring of 2000, the FDA, the Food and Drug Administration, **notified the defendants of concerns about a link between taking Risperdal and developing diabetes,** and yet, that was the very point in time when the **defendants decided to aggressively ramp up their marketing of Risperdal for children,** which was **illegal.**”

—Texas Attorney General, *State of Texas ex rel Allen Jones*, Vol. 2 pg. 12

The broad effects of these unlawful and unconstitutional policies continue to inflict serious emotional and physical harm on Indian children and their families. The Government Accountability Office issued multiple reports between 2012 and 2015 expressly recognizing that foster children in state care receive psychotropic drugs at alarming rates.³¹ Native American children in South Dakota housed in residential psychiatric facilities such as Children’s Home Society are prescribed excessive amounts of drugs for prolonged periods of time.³²

Medication Algorithms in South Dakota: Biased Diagnostics Target Native Children

The overmedication of Native American children in South Dakota's foster care system is primarily caused by the illegal marketing of second-generation antipsychotics by

²⁸ Montgomery, David, “Lt Gov. Michaels among highest paid in nation,” Rapid City Journal - January 09, 2011

²⁹ South Dakota Bureau of Finance and Management’s Request For Proposal (RFP) System - <http://bfm.sd.gov/ledger/rfp.asp>

³⁰ Sullivan, Laura, “Tribes Question Foster Group’s Power and Influence,” NPR, October 26, 2011.

³¹ Report to Congressional Requesters, Children’s Mental Health, Concerns Remain about Appropriate Services for Children in Medicaid and Foster Care, Government Accountability and Oversight Office, December 2012 - <http://www.gao.gov/assets/660/650716.pdf>

³² Testimonies from Families, collected by the Lakota People’s Law Project 2013

“This is a case about the systematic looting of money from the Texas Medicaid Program by one of the oldest and largest drug companies in America. **It was not a one-time event, and it was no accident.** The evidence you will hear in this case is about the systematic scheme that was devised by the defendants that specifically **targeted** Texas and the Texas Medicaid dollars this state spends on its poorest and most **vulnerable citizens**, most of **whom are children**. And we're here **because the scheme worked.**”

—Texas Attorney General, *State of Texas ex rel Allen Jones*, Vol. 2 pg. 8

pharmaceutical companies,³³ the massive increase in prescribing psychotropic drugs to treat behavioral disturbances rather than mental illnesses,³⁴ and cultural misdiagnosis by South Dakota physicians who perceive Native American customs as symptomatic of mental health disorders.³⁵

Despite admitting guilt and paying criminal fines totaling billions of dollars, no major pharmaceutical manufacturer or retailer has been found criminally guilty by a judge for mismarketing their second-generation antipsychotic (SGA) drug agents.³⁶ The development of SGAs, or atypical antipsychotics, is the second major attempt to find a cure for particular mental illnesses, although there is still no drug that can cure a mental illness itself.³⁷ This did not prevent the world's major pharmaceutical manufacturers from employing aggressive marketing tactics once they developed a particular agent; in fact, every single drug manufacturer has entered a

guilty plea agreement to settle legal Medicare/Medicaid fraud and kickback claims regarding illicit marketing of their SGA drug agents.³⁸ Even with such penalties paid in full, the industry

³³ Bristol-Meyer Squibb settled for mismarketing Abilify - http://www.justice.gov/archive/opa/pr/2007/September/07_civ_782.html; Eli Lilly settled for mismarketing Zyprexa - <http://www.justice.gov/archive/opa/pr/2009/January/09-civ-038.html>; AstraZeneca settled for mismarketing Seroquel - <http://www.justice.gov/opa/pr/pharmaceutical-giant-astrazeneca-pay-520-million-label-drug-marketing>; Janssen (of Johnson & Johnson) settled for mismarketing Risperdal - <http://www.justice.gov/opa/pr/johnson-johnson-pay-more-22-billion-resolve-criminal-and-civil-investigations>

³⁴ Crystal, Stephen, Broadened Use of Atypical Antipsychotics: Safety Effectiveness, And Policy Challenges, US National Library of Medicine, National Institute of Health, July 5, 2010 - <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2896705/>

³⁵ Council of National Psychological Associations, Psychological Treatment of Ethnic Minority Populations, Published by Association of Black Psychologists, November 2003 <http://www.apa.org/pi/oema/resources/brochures/treatment-minority.pdf>

³⁶ US v. Eli Lilly, “Guilty Pleas Agreement” US District Court, Eastern District of Pennsylvania - <http://www.justice.gov/archive/usao/pae/News/2009/jan/lillyguiltypleaagreement.pdf>. Note: Other corporations entered similar plea agreements: Bristol-Meyer Squibb, AstraZeneca, GlaxoSmithKline

³⁷ The best case scenario for the administration of a psychotropic drug is that the drug will treat the symptoms of a given mental illness with contributing as little to no side-effects as possible.

³⁸ List of Second-Generation Antipsychotics: http://www2.nami.org/Content/NavigationMenu/Hearts_and_Minds/Second_Generation_Antipsychotic_Medications.htm
clozapine (Clozaril) - <http://www.fiercepharma.com/story/teva-hit-276m-settlement-clozapine-kickback-case/2014-03-12>; olanzapine (Zyprexa) - http://www.nbcnews.com/id/28677805/ns/health-health_care/t/eli-lilly-settles-zyprexa-lawsuit-billion/; quetiapine (Seroquel) - <http://www.justice.gov/opa/pr/pharmaceutical-giant-astrazeneca-pay-520-million-label-drug-marketing>; risperidone (Risperdal) - <http://www.justice.gov/opa/pr/johnson-johnson-pay-more-22-billion-resolve-criminal-and-civil-investigations>; paliperidone (Invega) - <http://www.lexisnexis.com/legalnewsroom/litigation/b/litigation-blog/archive/2012/06/11/johnson-amp-johnson-reserves-600m-to-settle-risperdal-invega-natreco-civil-cases.aspx>; aripipazole (Abilify) - http://www.justice.gov/archive/opa/pr/2007/September/07_civ_782.html; ziparsidone (Geodon) - <http://www.justice.gov/opa/pr/justice-department-announces-largest-health-care-fraud-settlement-its-history>

itself remains in the top handful of most profitable industries in the nation.³⁹

For these reasons, the Lakota People's Law Project requests a joint investigation by the Department of Health and Human Services and the Department of Justice in order to review the prescribing procedures for psychotropics to South Dakota's foster children, as well as to insist that South Dakota state agencies comply with requests for information that meet the criteria for "publicly accessible" information.

Prescribing Patterns in the State: Difficulties in Obtaining Data

The State Integrity Investigation ranked South Dakota forty-ninth when grading the nation on overall accountability.⁴⁰ Even aggregate prescriber data which should be publicly available, and which is made readily available in every other state, is very difficult

to acquire.⁴¹ When pressed for records, South Dakota officials claim that state law excludes medical records from being made available—they refuse to acknowledge there is a difference between disclosing an individual's medical records and disclosing aggregate prescriber figures for therapists and physicians.

For the last six years, antipsychotic drugs have received over 50% more than the number two category of drug reimbursements in South Dakota Medicaid.

Researcher Ken Kramer met multiple roadblocks including resistance from State Attorney Dan Todd, and at South Dakota State Departments, when trying to assess which doctors had been terminated from the state's Medicaid program. "Following Kramer's initial request, Assistant Attorney General Daniel Todd, Director of the South Dakota Department of Social Service's Division of Legal Services, told Kramer, "the information you request is not a public record in the state of South Dakota," in a July 25 reply.⁴² "South Dakota," Kramer went on to say, "is the only state in the country that attempted to withhold the records."

Researchers from the Lakota People's Law Project submitted a Freedom of Information Act (FOIA) request to the Center for Medicaid Services, specifically seeking aggregate prescribing

³⁹ KHN Morning Briefing, "Pharmaceutical Industry Ranks as 'Most Profitable' in 'Fortune 500', Kaiser Health News, June 11, 2009 - <http://kaiserhealthnews.org/morning-breakout/dr00004161/>

⁴⁰ Ross, Denise, "State Integrity Investigation", Project of The Center for Public Integrity, Global Integrity, and Public Radio International, http://www.stateintegrity.org/southdakota_story_subpage & <http://www.publicintegrity.org/2012/03/19/8423/grading-nation-how-accountable-your-state>

⁴¹ Mueller, Chris, "Florida man pries records away from SD officials," Mitchell Republic, 26 December 2013, <http://www.mitchellrepublic.com/content/florida-man-pries-records-away-sd-officials>

⁴² (1) Mueller, Chris, "Florida man pries records away from South Dakota officials," Daily Republic, PsychSearch.net, 26 December 2013 - <http://www.psychsearch.net/psychsearch-leaves-no-stone-unturned-victorious-again/> (2) Heidelberger, Cory, DSS Admits Public-Records Error with Release of Doctors Excluded from Medicaid, Madville Times, PsychSearch.net, 28 December 2013 - <http://www.psychsearch.net/psychsearch-relentless-pursuit-of-records-on-psychiatrists>

data by South Dakota doctors. In the sixteen months since that request has been filed,⁴³ not a single responsive document has been returned, even after four different follow up attempts.⁴⁴

The Few Available Indicators

The Department of Social Services retains Health Information Designs, Inc. to prepare notes and minutes for its Pharmacy and Therapeutics Committee Meetings. Their records are the only source of information regarding which drugs are prescribed in the state and reimbursed by Medicaid. From the first available records,⁴⁵ it is clear that four second-generation antipsychotic agents have been prescribed en masse in the state, all of which are produced and marketed by companies who have paid billions in settlements for the illicit promotion of those drugs to child care physicians. Prior to becoming the Lieutenant Governor alongside Governor Dugaard, Matt Michels served as General Counsel for Avera Health. Recently, Avera has been found subverting the contract bidding process in the state, similar to the ways in which Children's Home Society had under Dugaard's leadership.⁴⁶

Many multinational pharmaceutical manufacturers have settled multi-million and even multi-billion dollar lawsuits for mis-marketing pharmaceuticals to Medicare and Medicaid patients over the last ten years (including Bristol Meyer-Squibb Janssen Pharmaceutica, GlaxoSmithKline, and Eli Lilly).⁴⁷ The Lakota People's Law Project believes that the expansion of the Title XIX services to Native American children in the state of South Dakota by private foster agencies has included the misappropriate prescription of these same psychotropic drugs for behavioral modification at a profit for private companies. The impetus was pressure from large multinational pharmaceutical corporations, but also from an invidious racially discriminatory animus and profit motive.

The State of South Dakota contracts with the Avera Health network, which conducts research for the pharmaceutical industry, and retains doctors and therapists from that group to conduct psychiatric evaluations for children and adults who are in state care; one such doctor is Dr.

⁴³ This request was originally filed August 30th, 2013 with the Center for Medicare & Medicaid Services.

⁴⁴ The most recent follow-up attempt was on Tuesday, March 14th 2015 — a phone call to CMS.

⁴⁵ South Dakota Department of Social Services, Medicaid P&T Committee Meeting, September 5, 2008 <http://www.hidesigns.com/assets/files/sdmedicaid/dur-handouts/Septwebpack.pdf>

⁴⁶ Walker, John, Officials look into Avera's pricing option, Argus Leader, 11 August 2014 <http://www.argusleader.com/story/news/local/2014/08/11/officials-look-averas-pricing-option/13883401/>

⁴⁷ Bristol-Meyer Squibb settled for mismarketing Abilify - http://www.justice.gov/archive/opa/pr/2007/September/07_civ_782.html; Eli Lilly settled for mismarketing Zyprexa - <http://www.justice.gov/archive/opa/pr/2009/January/09-civ-038.html>; AstraZeneca settled for mismarketing Seroquel - <http://www.justice.gov/opa/pr/pharmaceutical-giant-astrazeneca-pay-520-million-label-drug-marketing>; Janssen (of Johnson & Johnson) settled for mismarketing Risperdal - <http://www.justice.gov/opa/pr/johnson-johnson-pay-more-22-billion-resolve-criminal-and-civil-investigations>

Timothy Soundy, who is contracted through Avera⁴⁸ to conduct psychiatric evaluations for children.⁴⁹ It is not problematic that Dr. Soundy has been contracted to provide evaluations for South Dakota. A different picture emerges when coupled with the fact that Dr. Soundy has procured sample subjects from a state institution where he is contracted to evaluate illness to provide genetic research to Avera.⁵⁰ Currently, Dr. Soundy serves as a member of the same psychiatrist workgroup alongside therapists who are privately contracted⁵¹ to do research by the same pharmaceutical manufacturers⁵² whose drugs are prescribed excessively throughout the state.⁵³

It is not the decision of foster parents whether or not they medicate children who are wards of the state; that decision remains situated between the state court, Department of Social Services, and the child's doctor. Even if a drug does not have a FDA approval for adolescent use, if a child is prescribed a particular drug agent for off-label use, foster parents must continue to provide it at the risk of being charged with medical neglect. The constant efforts on behalf of pharmaceutical industry, paying speaking fees or paying to wine and dine individual physicians, begs the question, "Who are the physicians that prescribe psychotropic drugs to foster children in South Dakota?" This injustice demands an investigation by HHS and the DOJ, there is no other mechanism to determine what adverse effects, and to what extent, have been suffered by Lakota children as a result of these actions.

Origins of Medication Algorithms

While serving as Governor of Texas, former President George W. Bush enlisted the assistance of the Texas Department of Mental Health and Mental Retardation (TDMHMR) to examine and evaluate the existing systems of delivery for mental healthcare within the state. That program was developed under Director Steven Shon, and it came to be known as the Texas Medication Algorithm Project (TMAP). Throughout the development of the project under the guidance of TDMHMR Director Steven Shon, the world's largest pharmaceutical manufacturers offered to pay for conferences, travel, meals, and other luxurious amenities for the purpose of gaining

⁴⁸ State of South Dakota, Department of Social Services, Division of Human Services Center, Consultant Contract, Avera McKennan and DSS Division of Human Services Center, 2014-15 <http://open.sd.gov/contracts/08/15-0800-114.pdf>.

⁴⁹ State of South Dakota, Department of Social Services, Division of Human Services Center, Contract for Health Care Services, Dr Timothy Soundy and South Dakota Developmental Center <http://open.sd.gov/contracts/19/15-1900-040.pdf>.

⁵⁰ Dr. Soundy lists himself as University of South Dakota, not Avera, in this study <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0033968>.

⁵¹ *Dollars for Docs*, "Talking with your Doctor About Pharmaceutical Company Payments", ProPublica 2011 <https://projects.propublica.org/docdollars/payments/checklist/10693231>.

⁵² Namely Eli Lilly.

⁵³ Health Information Designs, P&T Information, P&T Meeting Items, Date: 6/5/15 <http://www.hidesigns.com/sdmedicaid/ptinfo.html>.

“favorable (Risperdal) positioning within TMAP algorithm.”⁵⁴ With both legal and illegal funding from the pharmaceutical industry, TDMHMR began constructing a flow-chart of medications deemed appropriate for treating certain diagnosable mental illnesses.

Once elected President of the United States, George W. Bush issued an Executive Order⁵⁵ on April 29, 2001 to establish the New Freedom Commission on Mental Health. One of the most pointed recommendations of this commission⁵⁶ was that each state should adopt a medication

algorithm in order to expedite the reimbursement process for drugs designed to treat mental illness. This is, in effect, how the pharmaceutical industry itself “exported” this model to the rest of the country, including South Dakota.

A subsidiary of Johnson & Johnson, Janssen Pharmaceutica, paid a legal settlement for \$1.8 billion over the mis-marketing of its second generation antipsychotic drug Risperdal. During the case *The State of Texas ex rel Allen Jones v. Janssen Pharmaceutica*, it was brought to light that Janssen had been funneling payments to support doctors, conferences, speeches, and everything between in order to influence the TDMHMR and have Risperdal serve as the “first line” treatment of TMAP. The “deliverable” noted on payments read, “in order to gain favorable positioning for Risperdal in TMAP.”⁵⁷ The reason these companies sought favorable positioning was illuminated in the course of the case. In the early 1990s, Big Pharma recognized that the research and development of antipsychotic agents would be costly, and since less than 1 percent of the American adult population were currently suffering from the illnesses that those medications would treat, not to mention even less of that group were capable of paying high costs for the drugs by virtue of their illness, the only profitable mechanism for developing new psychotropics was to have states reimburse the costs for

“Once the defendants executed their plan successfully in Texas, they **exported it all over the United States by pointing to Texas as a model state to follow** and using Texas state employees to boost their revenue and further their sales goals for Risperdal.”

—Texas Attorney General, *State of Texas ex rel Allen Jones*, Vol. 2 pg. 13

⁵⁴ Jury Trial, *The State of Texas ex rel Allen Jones*, Volume 4, Testimony of N. Bursch-Smith.

⁵⁵ Executive Order April 29th, 2002 - <http://georgewbush-whitehouse.archives.gov/news/releases/2002/04/20020429-2.html>.

⁵⁶ Hogan, Michael, *The President's New Freedom Commission on Mental Health*, 22 July 2003, <http://govinfo.library.unt.edu/mentalhealthcommission/reports/FinalReport/downloads/FinalReport.pdf>.

⁵⁷ Jury Trial, *The State of Texas ex rel Allen Jones*, Volume 4, Testimony of N. Bursch-Smith.

patients.⁵⁸ These drugs continue to be reimbursed and prescribed for a substantial number of the Lakota children who remain in South Dakota's foster care system.

Patrick Red Feather was fourteen years old when South Dakota's DSS took him from his home following an argument with his mother over his curfew. Patrick's mother, Sheris Red Feather, kept all paperwork to document the fifteen months that her son was a ward of the state. After being moved to a psychiatric facility in Spearfish, Patrick ran away twenty times in the first six months he was there. At a hearing in January 2008, at the demand of the DSS, a South Dakota State Judge ordered Patrick Red Feather to be involuntarily administered powerful psychiatric drugs to correct his behavioral problem, "Within a couple days after he went on the drugs," Sheris said, "they told me, 'Patrick is all fixed now. He's all better because he's on these psychiatric drugs,' but he was like a zombie."

Sheris Red Feather, whose Oglala husband, Patrick's father, had committed suicide after being prescribed very similar psychotropic pharmaceutical drugs, pled with DSS officials to not place Patrick on these dangerous drugs for fear that they would cause him to become suicidal, "just like they had his father."

However, her warnings and her pleas went unnoticed and the DSS continued to force him to take an ever-increasing number of these drugs, in more and more powerful doses. Six months after Patrick was first ordered to take antipsychotics, he was put on suicide watch, and on October 14, 2008, after being prescribed five antipsychotic drugs, Patrick committed suicide.

Patrick Red Feather's case is only one of many such cases in South Dakota.

⁵⁸ Thomas, Katie, "J&J to Pay \$2.2 Billion in Risperdal Settlement", New York Times, 4 November 2013, <http://www.nytimes.com/2013/11/05/business/johnson-johnson-to-settle-risperdal-improper-marketing-case.html> — This plan functioned better than anyone in the pharmaceutical industry could have imagined. Record profits had been set and were maintained for over a decade, and continue to this day due to those illicit marketing efforts, Moylan, Tom, Texas Risperdal Trial Ends When Janssen Settles For \$158 Million, Company Says, 19 January 2011 — Birbrair, Lana, Judge Approves \$158M Settlement Of J&J Risperdal Suit, 27 March 2012: <http://www.lexisnexis.com/legalnewsroom/litigation/b/litigation-blog/archive/2012/01/19/texas-risperdal-trial-ends-when-janssen-settles-for-158-million-company-says.aspx>, <http://www.law360.com/articles/323754/judge-approves-158m-settlement-of-j-j-risperdal-suit>.

Systemic Violations of ICWA: Rates of Reunification Continue to Decline

Since the Lakota People’s Law Project initially reported to Congress on this topic in 2012, the reunification rates for Lakota children in South Dakota with their Lakota families and tribe have continued to plummet. As it stands today, a clear minority of Native children are ever reunified with their families once they enter South Dakota’s child welfare system.

From 1998 to 2012, Lakota children, on average, constituted 13.2 percent of the child population in the state of South Dakota.⁵⁹ However, in those same years, Lakota children, on average, represented 50.3 percent of the children in foster care in South Dakota.⁶⁰ The more current the data, the more it demonstrates that this problem has not changed— it has indeed, grown worse. As of June 30, 2012, 967 children were in paid alternative care in South Dakota (which includes foster care, group care, and psychiatric care). Five hundred and seventy of these children were Lakota. This means that 58.9 percent of the children in paid alternative care in the State of South Dakota in 2012 were Lakota.⁶¹

Less than half of Native youth end up reunified with their family once entering foster care.

From 1999 to 2012, the average number of Native American children entering the South Dakota foster care system every year was 741.⁶² South Dakota removes 7.4 children per 1,000, while the total state child population is 204,169. This ranks South Dakota fourth nationally for highest child rate-of-removal.⁶³ The National Coalition for Child Protection Reform (NCCPR) calculates the rates-of-removal per 1,000 impoverished children for each state in the nation, thereby assessing removal rates adjusted for poverty. The results show that South Dakota’s DSS removes impoverished children at a rate of 47.6 per 1,000, ranking South Dakota even higher nationally, at third, than it did with respect to removing children generally. The national average is 23.3 impoverished children removed per 1,000.⁶⁴

⁵⁹ Administration for Children and Families; Adoption and Foster Care Analysis and Reporting System (AFCAR); “Child Welfare Outcomes”;1998-2001, 2002-2005, 2006-2009, 2009-2012.

⁶⁰ Administration for Children and Families; Adoption and Foster Care Analysis and Reporting System (AFCAR); “Child Welfare Outcomes”;1998-2001, 2002-2005, 2006-2009, 2009-2012.

⁶¹ Letter from South Dakota Department of Social Services; 7/26/12.

⁶² Administration for Children and Families; Adoption and Foster Care Analysis and Reporting System (AFCAR); “Child Welfare Outcomes”;1998-2001, 2002-2005, 2006-2009, 2012.

⁶³ National Coalition for Child Protection Reform. “2011 August NCCPR Rate of Removal and Placement Index.”

⁶⁴ Ibid.

Additionally, the percentage of Native American foster children who are reunified with their families upon exiting care has decreased from 80.9 percent in 1999 to 47.8 percent in 2012.⁶⁵ Judging by the figures provided by South Dakota in the years 1999 through 2009, there were 785 more Native American children who entered it's child welfare system than exited it. Yet somehow, there are only 80 more Native American children cited as "in care" ten years later.⁶⁶ That leaves a total of 705 Native children unaccounted for—children who have disappeared from South Dakota's child welfare system. This group is not the only group of Native children in South Dakota whose status is indeterminable by currently-measured statistics; there is no indication regarding the welfare of children who leave by "other" exits as well.

"Other" is used by the Department of Social Services (DSS) to describe exits from care in some manner other than children being adopted out, reunited with their families, or aging out of the system. Categories include death, runaway, and transfer to non-foster care institutions, including the Department of Corrections and psychiatric facilities.⁶⁷ Specific death and runaway numbers are not provided by South Dakota, nor are any specific figures regarding how many children were transferred to juvenile and adult justice systems, or how many suffer permanent disabilities resulting from their time in foster care. All that is known is that "other" exits grew for Native American children from 6.9 percent in 1999 to 36.2 percent in 2012.⁶⁸ In total, the number of Native children who "disappeared" from South Dakota's child welfare system coupled with the number who exited care in the "other" category means that there are somewhere between 705 and 2,119 Indian children who remain unaccounted for to this day.

⁶⁵ Administration for Children and Families; Adoption and Foster Care Analysis and Reporting System (AFCAR); "Child Welfare Outcomes";1998-2001, 2002-2005, 2006-2009, 2009-2012.

⁶⁶ Ibid. note: 787 Native American children were cited as "in care" in 2010; there were 707 in 1999.

⁶⁷ Telephone Interview with South Dakota DSS, August 2012.

⁶⁸ Administration for Children and Families; Adoption and Foster Care Analysis and Reporting System (AFCAR); "Child Welfare Outcomes";1998-2001, 2002-2005, 2006-2009.

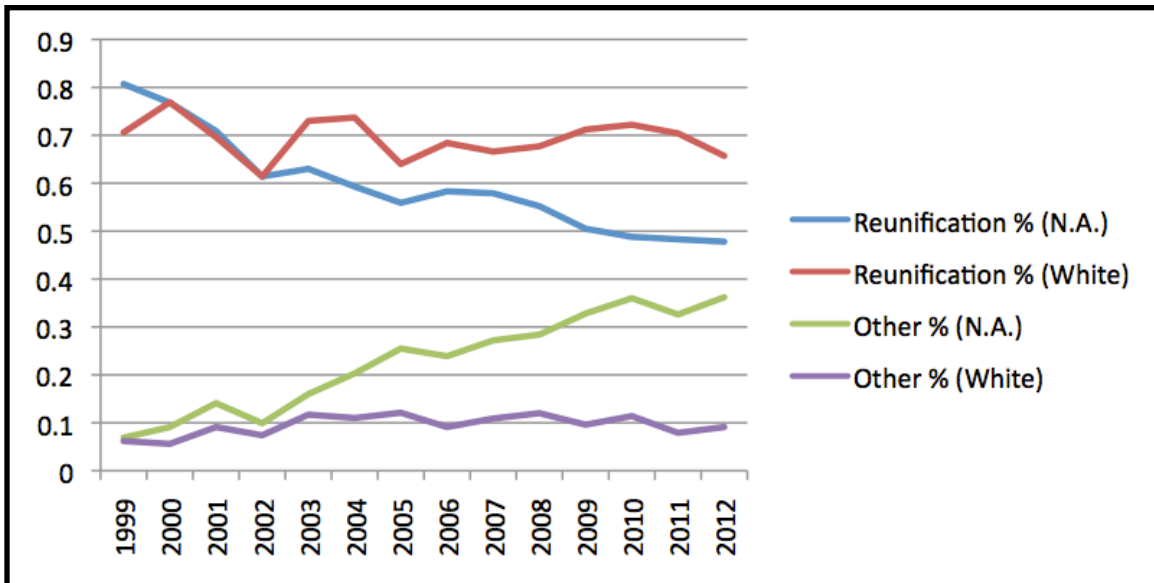


Figure 1: Reunification Rates

Figure 1 depicts the declining rates of reunification for Native American children who have been removed from their homes for alleged abuse or neglect. Native American reunification rates decline and their increasing exits to “other” stands in stark contrast to white children whose outcome data has stayed relatively stable.

The steady decline in reunification rates for the last fifteen years is not due to ineptitude on the part of the DSS. It is, a direct consequence of a discriminatory racial animus generating a culturally biased conception of neglect. The Indian Child Welfare Act Directors of the nine tribes of South Dakota wrote to the United States Congress about their concern that the endemic poverty of South Dakota’s reservations was being mislabeled as “neglect” by South Dakota state social workers.⁶⁹ South Dakota’s rate of identifying neglect is 18 percent higher than the national average. It peaked in 2010, at 95.8 percent of all “abuse and neglect” citations. As last reported in 2012, 94.8 percent of all removals were predicated upon “neglect.”⁷⁰ Utah Appeals Court Judge William Thorne stated that in his state of Utah, the removal of Native American children for neglect (neglect is approximately 66 percent of cause for removal in Utah) represents a “cultural difference” and is “subjective.”⁷¹ Note the large difference between Utah and South Dakota rates. Judge Thorne also stated that for Native Youth the suicide rate is six times higher than the national average for those children living in non-Indian homes.⁷² These native children who were fostered will be “more likely to...have a mental disorder or post-traumatic stress syndrome” and for those Native children who age out

⁶⁹ Lakota People’s Law Project, “A Report to the US Congress from the Coalition of Sioux Tribes for Children and Families” http://www.docs.lakotalaw.org/ICWA-Coalition_Report-to-Congress.pdf

⁷⁰ Ibid.

⁷¹ Brooke Adams, American Indian children too often in foster care, Salt Lake Tribune, March 26, 2012.

⁷² Ibid.

of the foster system "60% will be homeless, in jail or dead, within two years of leaving the system."⁷³

Mette Child Abuse Scandal

Brandon Taliaferro, the State Prosecutor for Brown County from 2008-2011, asserted that the Department of Social Services remove Indian children from their homes under factual circumstances under which he would never be directed to remove white children from white parents, to terminate parental rights of Lakota parents more often than he would white parents under those same circumstances, and to intentionally refuse to reunify Lakota children with their Lakota families in flagrant violation of the Indian Child Welfare Act because of what he determined to be a "discriminatory racial animus" shared by the executive staff of the South Dakota Department of Social Services. Taliaferro gave a folder of his "findings" in this regard to Brown County State Attorney Kimberly Dorsett, and Dorsett assured Taliaferro that she would write an "Informative Letter" to Attorney General Martin Jackley calling the issue to his attention. However, Dorsett never sent such a letter. Dorsett had, in April of 2010, in fact, signed a contract with the South Dakota Department of Social Services for \$75,000 a year to serve as a "Paid Consultant" to the DSS so long as she guaranteed she would not act "in opposition to the interests of the State of South Dakota or any of its departments."⁷⁴

Brandon Taliaferro (Assistant State's Attorney), Shirley Schwab (Court Appointed Child Advocate), and Mark Black (Special Agent for the Department of Criminal Investigation) were all fired from their positions in the State of South Dakota for speaking out against the state's unlawful handling of the Richard Mette child sexual abuse trial, wherein Richard Mette abused his Native American foster children for over a decade⁷⁵ while the Department of Social Services and the Attorney General's Office helped cover up the abuse.⁷⁶

⁷³ Judge Thorne, William, "Great Plains ICWA Summit", Speech, May 2013.

⁷⁴ State of South Dakota, Department of Social Services, Division of Child Support, Agreement for Legal Services Between Kimberly Dorsett and State of South Dakota, Department of Social Services, Division of Child Support Services; p. 8. note: This contract presents an obvious conflict of interest; <http://open.sd.gov/contracts/08/14-0800-002.pdf>.

⁷⁵ From 2010 to 2011, Taliaferro represented seven Indian siblings who suffered from sexual and physical abuse from their foster parents Richard and Gwendelyn Mette.

⁷⁶ Lakota People's Law Project, "Abandoned and Forgotten", June 2013 - <http://docs.lakotalaw.org/Abandoned-and-Forgotten.pdf> & Stephanie Woodward, "Rough Justice in Indian Child Welfare," 100 Reporters, December 26, 2012; <http://100r.org/2012/12/rough-justice-in-indian-child-welfare/#more-8122> ; note: For more information, please read the full report.

Conclusion

In the first quarter of 2015, the Department of Justice (DOJ), the Department of Health and Human Services (HHS), and the Department of Interior (DOI) took steps to improve the conditions for Indian Children, not only in the State of South Dakota but also across the country. The DOJ declared it will redouble efforts to support states' compliance with ICWA.⁷⁷ The DOI Secretary embarked on a listening tour.⁷⁸ And the Bureau of Indian Affairs issued stronger and clearer ICWA guidelines.⁷⁹ These actions indicate that there are currently meaningful efforts being undertaken by the United States government to meet ICWA's first purpose, which is to define the "best interests" of Indian child as remaining within the extended kinship system of the tribe. However, little progress has been made to meet the purpose of the 2008 Fostering Connections to Success Law which is to provide assistance to tribes in running their own Child and Family Service Programs.⁸⁰

At present, the only access South Dakota tribes have to Title IV funding is through the state of South Dakota by entering "Vendor Agreements." These agreements treat the Lakota tribes as a business, i.e. as a one-sided vendor agreement wherein the tribe commits to provide foster care services to the state. If there were direct IV-E funding to tribes, tribes would become the entities that provide Indian Child and Family Services to their own members in compliance with culturally appropriate standards, which the Indian Child Welfare Act and Federal Law have mandated to make since 1978.

The violations of the Indian Child Welfare Act, the violations of the Due Process Clause of the Fourteenth Amendment, the declining reunification rates of Native children with their extended families and kinship groups (when they are removed from their homes under allegations of abuse and neglect), and the increasing profitability of private foster care and adoption agencies in the State of South Dakota all lead the Lakota People's Law Project to conclude that the State of South Dakota cannot and will not adequately provide the Child Protective Services and Child and Family Programs needed by the Lakota people of South Dakota. From all the evidence presented, it is clear that stronger guidelines, a listening tour, and redoubling efforts towards compliance are all well-meaning, but utterly ineffectual, when dealing with a state that has been in flagrant violation of the Indian Child Welfare Act for decades. The solution to these violations is to stop the State of South Dakota from administering Child and Family Service

⁷⁷ Department of Justice News, "Attorney General Eric Holder Delivers Remarks During the White House Tribal Nations Conference," Washington DC, 3 December 2014 <http://www.justice.gov/opa/speech/attorney-general-eric-holder-delivers-remarks-during-white-house-tribal-nations>.

⁷⁸ Department of Interior Media Advisory, "Secretary Jewell to Kick Off Native Youth Listening Tour," 9 February 2015; <http://www.doi.gov/news/mediaadvisories/secretary-jewell-to-kick-off-native-youth-listening-tour.cfm>.

⁷⁹ Bureau of Indian Affairs, "Guidelines for State Courts and Agencies in Indian Child Custody Proceedings," 25 February 2015 <http://www.bia.gov/cs/groups/public/documents/text/idc1-029447.pdf>.

⁸⁰ GAO report, *Report to Congressional Requesters*, Foster Care; February 2015 <http://www.gao.gov/assets/670/668654.pdf>.

Programs to their Native population entirely, and instead to direct the appropriate federal funding to the tribes to run their own independent child and family service programs as they become adequately trained and equipped to do so.

The Solution

1. Grant the five Title IV-E Federal Planning Grants to the tribes of South Dakota in 2015 to begin planning the implementation of independent tribal child and family care service programs.
2. Reallocate appropriate Federal IV-E, XIX, Medicaid, and other relevant funds to go directly to tribes, thereby bypassing the state and creating the necessary resources for independently operated tribal foster care that can adequately uphold the provisions of ICWA by keeping Indian children within their extended families and kinship group.⁸¹
3. Initiate a U.S. Department of Justice investigation to ascertain and prove the discriminatory racial animus in the application of removal standards and placement standards by South Dakota Department of Social Services, their violations of the Indian Child Welfare Act and the willful nature of their deprivation of the due process of law to the Lakota people and their implementing Child and Family Services.
4. Initiate a joint investigation by the U.S. Department of Health and Human Services and the U.S. Department of Justice to investigate the prescribing procedures for psychotropics for South Dakota's foster children, and force South Dakota state agencies to comply with federally mandated procedures to supply medical information that meet the criteria for publicly accessible information.
5. Conduct a GAO investigation to determine the life outcomes of Native American children who have aged out of state foster care in the State of South Dakota.

⁸¹ The Lakota People's Law Project is currently part of a collaborative effort working towards securing grants and funding from individual donors to implement an ICWA Advocacy Center in the state of South Dakota, which will work pro-bono to represent families and tribes by asserting their civil rights and ensuring compliance with the recently updated BIA guidelines.

Addendum — A Theory of Law: The U.S. Government and the Trust Responsibility with Tribes

Historically, the United States has held tribal resources under a Trust Responsibility.⁸² The Trust Relationship legally implicates the U.S. in the future well being of the tribes, although the doctrine's notion of obligation on the part of Congress and the Federal Government has often been interpreted narrowly.⁸³

Chief Justice Thurgood Marshall's understanding of the Federal Trust Responsibility that it was to require the Federal government to return and repair resources it had taken from American Indians.⁸⁴ Recently, however, the Department of Justice has taken steps to clarify the obligations of the Federal government in regards to this Trust Responsibility. Part of this renewed Trust Responsibility is a recognition of Indians' inherent rights, including the right to take care of their own children under a stricter implementation of ICWA, motivated by a desire to rectify and address a long history of abuse.⁸⁵

The Indian Child Welfare Act was passed in 1978, whereby Congress declared it to be the policy of the United States to serve the "best interests" of Indian children by establishing a minimal set of Federal standards for any removal from parent or tribe. It has also recently stated that the government is obligated to provide direct assistance to Indian tribes to operate their own Child and Family Service Programs. In the thirty years between 1978 and 2008, tribes could only access Child and Family Service Programs through their state or by tribal-state agreements. As recently as 2008 however, legislation was enacted that requires states to negotiate Title IV-E Agreements in good faith with tribes, thereby allowing tribes to operate independent tribal child welfare programs.⁸⁶ However, the Government Accountability Office (GAO) has found that very few tribes operate their own tribal Title IV-E agreement programs,

⁸² Also referenced as "trust relationship."

⁸³ The only body of law considered to be on an equal plane to the Constitution in the United States are its treaties, which historically, were the means by which the federal government negotiated with Indian tribes. An early issue for the U.S. government was the question of how to incorporate hundreds of unique tribes into the comparatively young United States. The solution to this problem was the creation of the Bureau of Indian Affairs (BIA). Although Article 1 Section 8 grants Congress the discretion to regulate trade and manage treaties between foreign nations as well as the many tribes within the nation, the legal status of tribes was initially decided by the Judiciary branch in three paramount cases known to us today as the Marshall Trilogy**. In the second of those cases, *Cherokee Nation v Georgia*, Chief Justice John Marshall labeled the Indian nations as "domestic dependents," determining tribes' statuses as not sovereign due to a significant reliance on the federal government for protection from the states as well as a delivery of resources. This judicial creation of a Guardian and Ward relationship between the Federal Governments and tribes spawned the idea of the Federal Trust Responsibility; this doctrine made the U.S. legally responsible for the protection of tribal lands, assets, resources and treaty rights.

⁸⁴ *Cherokee Nation v. Georgia*, 30 U.S. 1 (1830) 8 L. Ed. 25; 1831 U.S. LEXIS 337.

⁸⁵ The Trust Responsibility was previously poorly defined as: "trusting someone with your cattle, who can sell it if they wish" (American Indian Policy Review Commission).

⁸⁶ PL 110-351, Government Printing Office, 2008 *Fostering Connections to Success an Increasing Adoptions Act of 2008*.

and that the Health and Human Services Department needs to improve timeliness to assist tribes.⁸⁷

More Testimonies from Families

The Lakota People's Law Project (LPLP) has collected hundreds of testimonies from families and children who have been subject to the capricious action of the state of South Dakota's Department of Social Services which has violated Lakota family members' ICWA rights. LPLP has determined, from receiving a vast number of testimonies and from the nature and facts of the removals, that the DSS has undertaken a policy of racial discrimination to deny the fundamental rights of the Lakota people of South Dakota.

Note: names have been changed for the purpose of protecting all witnesses.

Grandfather of Seized Children, Not Contacted

Brady is a member of the Oglala tribe. He is the grandfather of Trevor and Melissa, who are two and three years old. The two children were with their parents on their way home when their car was pulled over by a police officer. The children's parents were charged with driving under the influence, and were taken into custody. Trevor and Melissa were taken to the police station along with their parents. The police refused to let either parent make a phone call. Brady said Marshall and his wife would have called him or the children's grandmother to pick up the children, but because they could not contact them, the DSS took the children instead.

Brady contacted the police department in Box Elder and demanded to know why he wasn't notified to pick up his grandchildren, "I said, 'Why isn't there a law saying that you have to contact one of the grandparents?' There were two people that could have picked our grandkids up. They said, 'Well the police officers thought at the time that it was in the best interest of the kids to call social services!'"

After his encounter with the Box Elder police, Brady went straight to the ICWA office on the Pine Ridge reservation. He got in touch with the Oglala Nation Tiospaye Resource & Advocacy Center (ONTRAC) who helped him get his grandchildren back in two weeks time, "Had the social worker, social services worked with us at the time, none of this would have happened. They said, 'we're looking out for the welfare of the kids,' but I don't think they were. They didn't want to believe a word we said. They were going to do a background check on us. We had to just jump through hoops. But as soon as Pine Ridge stepped in, it was a lot easier working with Pine Ridge than working with social services in Rapid City."

⁸⁷ GAO report, *Report to Congressional Requesters, Foster Care*; February 2015 <http://www.gao.gov/assets/670/668654.pdf>.

Ever since the incident, Brady has noticed a dramatic change in Trevor and Melissa's demeanors, "Before, when they used to come to our house, they used to be happy to see us. But now they think they're going to be locked up all the time."

Brady said he is grateful for the help he received from organizations on the Pine Ridge reservation, but is upset that his grandchildren were unjustly taken away at all, "I think social services has got a long way to go when working with Native Americans, so I'm glad that we have programs like ONTRAC and ICWA to look over the Native people here in Rapid City and throughout the United States, but I know they're always short of funds and short of work crews. It took a whole week because [ONTRAC and ICWA officers] had a whole caseload, but just the little crack that the kids fell through for almost two weeks, I think it had a large emotional impact on them. I'm just glad that I got the kids back."

Deemed Competent Mother, Child Returned in a Week, Trauma Remains

Judy is a single mother from the Oglala Sioux tribe. She has a job, goes to school, is registered with her local church, takes Lakota classes, and is heavily involved in Lakota culture. On April 9, 2013, a DSS agent created the false idea that she was a neglectful and irresponsible parent.

She and her son were visiting a relative when a domestic incident occurred at the home. Judy's son was sleeping in another bedroom, far away from the incident, but when a neighbor contacted the authorities, DSS agent Heather Jones arrived with the police. Jones woke up Judy's son and took him. "They had no right taking my son from my family," Judy said. "He was not abused or neglected. There were no drugs or alcohol involved. They illegally took him from my family."

Judy said she showed the DSS her ICWA affidavit, but the agents did not honor it. An ICWA affidavit is a federal document outlining a parent's rights as stated by ICWA. Rather than acknowledging the affidavit, the DSS pushed it aside and argued that their judgment of Judy as an unfit mother superseded her rights. If the DSS had honored the affidavit, Judy's son would have been placed with one of her relatives. But instead, he was placed with a white foster family in Box Elder.

Judy challenged the petition to remove her son from her home, proved to the DSS that she was not an unfit mother, and she had him back within a week, "They took him on Tuesday, I fought and I got him back on Monday." Judy's story is unique among others like it. Most parents who can demonstrate their competency as caretakers wait one to three months before getting their children back.

Although Judy's case was much shorter than that of other parents', she said the process was still incredibly stressful. The two have sought counseling to cope with the emotional and psychological hardship, "I got him back, but the trauma and the stress, it's all there. My son is

traumatized. He thinks the social worker, Heather Jones, is going to come and get him out of my home anytime she wants.”

The Foster Care Cycle Continues

Tina has had two significant encounters with the South Dakota DSS: when she and her brothers were taken from their mother when she was ten, and again when her children were taken from her at age twenty-two.

She was at her elementary school when DSS agents walked in and took her from her classroom. They then walked her to her brother’s kindergarten classroom and took him as well. Tina’s mother had sexual abuse allegations filed against her so the DSS took Tina, her five-year-old brother, and her three-week-old brother out of their mother’s care. Tina said the agents did not give her mother a chance to speak for herself, and did not inform her that her children were being taken away, “I didn’t know why they took me from my mom, and why they took me and my brothers to a place with locked doors. I couldn’t get out and tell my mom where I was. I was scared. I thought, ‘Why do they have me in the back of a police car? I didn’t do nothing, my brother didn’t do nothing, why are we here?’”

Tina and her younger brother were placed in the same foster home, but they were separated from their youngest brother. Her brother was molested by the daughter of the foster family, while she was constantly bullied, being told she was “fat,” “ugly,” “stupid,” and that her mother did not want her. Angry at the sexual abuse her brother endured and the torment she received, Tina defied her foster parents and acted out.

She was later sent to a DSS facility for “misbehaving,” and all three children were separated from each other. At the facility, the torment continued. Agents told her that her mother did not love her, that she was worthless, and that she would never see her family again, “I had a family until the Department of Social Services stepped in and played with my life and took my family from me and put me with people that didn’t care. They took me away from everything I knew and tried to tell me I was a bad girl? No. I did not deserve that. Nobody deserves that. The only people that are bad are the people that do that to the children that don’t deserve it. And I’m telling you, those people are the state of South Dakota Department of Social Services.”

Twelve years later, shortly after giving birth to her second child, Tina was diagnosed with postpartum depression. She had gone through hard times and lost her home, so she and her children were living with her mother. When DSS agents discovered that Tina had postpartum depression, they deemed that Tina was neglecting her children and took them out of her care. She admitted that she had suicidal thoughts, but said that she never neglected her children. She said, “I neglected myself, trying to give myself to my children without taking care of myself and it made me a little sicker than I should have been. And I needed the help. I got the help but I got punished for getting the help I needed—by having my children taken from me.”

Tina's daughter was only eleven days old when she and her brother were put into foster care. Tina got her children back after three months, but she missed her son's first birthday. When she saw her children during visitation, she noticed that her daughter had bruises all over her back. When she asked DSS about the bruises, agents gave her an insufficient excuse and simply brushed her aside. Her concerns were completely ignored.

Tina's case is an illustration of the cycle the South Dakota DSS has forced specifically Native parents and children into. She is only one of the thousands of people who have experienced the plight of the South Dakota foster care system firsthand, "There are no words that can describe the damage that has been done to my family, not only to my children, but to me as well. Not once, but twice. Two times in my lifetime, I have been disrupted by the state when it wasn't deserved. It was unnecessary and uncalled for."

Most parents are unable to jump through all the hoops required by the DSS in order to achieve the return of their children. Their trauma, and often the trauma of their children is permanent, daily, and relentless.