

**September 9, 2005 ICWA Agenda  
Pierre, SD**

**9:00 am** Opening prayer and Welcome (Co-Chairs)

**9:05-9:30** Overview of Legislation 2004  
-Judge Kern  
-Ann Holzhauser

**9:30-10:00** Summary of South Dakota Supreme Court decision  
-Judge Jones

**10:00-10:15** Break

**10:15-11:30** Department of Social Services (status of efforts to implement recommendations)  
-Virgena Wieseler, Child Protective Services  
-Kathy Deserly, DSS Consultant  
-Teresa Nieto, ICWA Program Specialist

**11:30-12:00** Report from the Great Sioux Nation ICWA Consortium  
-Lori Walking Eagle  
-Raymond Cournoyer

**12:00-1:00** Lunch

**1:00-1:45** Report from Tribes: Cheyenne River, Crow Creek, Lower Brule, Flandreau Santee, Rosebud, Pine Ridge, Sisseton-Wahpeton, Standing Rock, Yankton

**1:45-2:30** Small group breakout

**2:30-3:00** Small group reports

**3:00-3:30** Strategic plan - next meeting date

**Governor's ICWA Commission  
September 9, 2005, Pierre, SD  
Meeting Minutes**

**Commissioners Present:** Raymond Cournoyer, Bob Walters, Dave Valandra, Garrie Kills A Hundred (on behalf of Guy Zephier), Sara Olson, Lynn Sudbeck (on behalf of DJ Hanson), Judge Jack Von Wald, Judge Kathleen Trandahl, Judge BJ Jones (Co-Chair), Judge Janine Kern (Co-Chair), Tracey Manywounds, Cordelia White Elk, Renee Eggebraaten, Ann Holzhauser, Mike Schad, Virgena Wieseler, Sr. Mary Curran, Bill Whitelance, Doug Herrmann, Steve Emery, Jim Bradford, Teresa Nieto

**Commissioners Absent:** Rose McKauley, Deb Fischer-Clemens, Tami Maroney Bern, Joni Cutler, Bob Gray, Theresa Two Bulls, Keith Bonenberger

**Others present:** Margaret Bad Warrior, Pamela Bennett, Duane Jenner, Tom Magedanz, Roger Campbell, Marge Two Hawk, Robert Becker, Aske Whitebird, Lori Walking Eagle

**1. Welcome**

The meeting was called to order at 9:11 a.m. Bob Walters said the opening prayer.

Virgena Wieseler introduced the new Secretary of DSS – Deb Bowman. Deb thanked the co-chairs for continuing the endeavor, and also thanked the Commissioners for the work that has been done. She described her background and experience. The governor has decided to have the Commission look at the top 30 recommendations and prioritize the ones that have not been acted upon yet and also come up with ways to implement them. She also briefly described what DSS has done to comply with the recommendations.

**2. Overview of 2004 Legislation (UJS and DSS)**

Judge Kern summarized why the Commission was reconvened. Governor Rounds would like to have a report by November 30, 2005. The Commission will now review which of their 30 recommendations have been implemented and which have not. They will look at the ones that have not been executed and think of ways in which they can be implemented. Much has happened since the December 2004 meeting. The 2005 legislature enacted several statutes effecting ICWA compliance and the Supreme Court rendered three important decisions. Judge Kern also discussed SDCL 26-8A-33 which was originally submitted to the Supreme Court by the ICWA Commission as a proposed rule. The Court held a hearing on February 17, 2005 and adopted the rule. Commissioner Emery testified in favor of the rule. It is now codified as 26-8A-33, and allows Tribes to appear in ICWA proceedings either through counsel or by a representative designated by the Tribe. DSS has made a lot of steps forward.

Lynn Sudbeck (UJS) talked about recommendation numbers 12, 29, and 24. The three recommendations are intertwined. Judge Gors has agreed that the Green Book needs to be updated and he will be in charge of making the revisions. Judge Gors has copies of checklists from the National Council of Juvenile and Family Court Judges and the NCSC recommendations to incorporate into the Green Book. NICWA has a credit card sized list of what happens during court. UJS has received permission to copy and hand out to families. Keith Bonenberger has been named the state-wide ICWA Coordinator to work with DSS. Judges have training sessions twice a year; the next spring training will have an ICWA component. Lynn also brought up that North Dakota state judges meet with the tribal judges

three times a year. DJ Hanson will attend this next week. The training is in New Town, North Dakota and the contact person is Jim Ganje ([jganje@ndcourts.com](mailto:jganje@ndcourts.com)).

Judge Jones asked how judges from the state and tribes can speak to each other about an ICWA case (ex-parte communication). Judge Trandahl said that judges can do that between states (Uniform Child Custody Jurisdiction and Enforcement Act). Judge Kern suggested that tribal judges should be included in this type of legislation. <sup>11</sup>

Ann Holzhauser (DSS) briefly went over the four bills that were passed.

**HB 1226 – notice bill.** Notice can be made by telephone or fax, 48-hour hearing to be sent to tribe, ICWA requirements to be tracked by certified mail (sent to parents, tribe, Secretary of Interior, BIA, Indian custodian). The files now include a sample form so that each file is uniform.

**SB 55 – relative placement.** This does not only apply to ICWA cases, but to all cases. Relatives are given preference for foster care and adoptive placement, as long as it is in the best interest of the child. This also applies to custodians such as: stepparents, adoptive parent of sibling of child in question – in order to keep children together. If a non-relative is chosen over a relative (adoptive placement) then that relative has a right to request a hearing. This bill doesn't prevent the tribes from intervening in an A & N.

**SB 12 – appearances.** This bill authorizes a parent to appear telephonically for a hearing to voluntarily terminate parental rights.

**HB 1258 – expands** definition of an abused and neglected child to include one who knowingly exposes the child to an environment that is being used for the manufacture, use or distribution of methamphetamine or other drugs.

### 3. **Summary of South Dakota Supreme Court decisions**

Judge Jones summarized the three SD Supreme Court decisions that were rendered and discussed an important case pending in California.

**JSB-Rapid City.** Does the Adoption and Safe Families Act apply to Indian Children? The SD Supreme court is the first court in the nation to resolve this. ASFA does not relieve "active efforts". If it's an Indian child, DSS is not relieved of duty to provide services to Indian families. DSS doesn't have to apply ASFA, but the tribe has to apply ASFA to kids coming through the court system.

**M.H. – Sioux Falls.** Who is a qualified expert witness? The Supreme Court held that just because someone has general knowledge of ICWA that does not qualify someone as an expert witness. The Supreme Court also held that expert witnesses must have knowledge of that particular Tribe's child-rearing practices and not just generic knowledge.

**The People of the State of South Dakota in the Interest of O.S.** Who is a qualified expert witness? The Supreme Court upheld use of a DSS social worker who had four years experience in DSS where half of her cases involved ICWA. Social workers are generally going to be qualified expert witnesses (QEW). The courts will probably have a problem with lawyers being a QEW. The Supreme Court denied QEWs testifying by phone because tribe had not made prior arrangements.

**Doe v. Mann (California) – challenges to court decisions.** Mother took case to Federal court through 1914 – Indian parent or child may challenge state court decisions to overturn decision. Now there is a case in front of Judge Schreier filed by the Crow Creek Sioux Tribe. Currently because of habeas corpus (cannot use to challenge termination of parental rights), but 1914 may be used to do this.

**Break – 10:26 am to 10:51 am**

**4. Department of Social Services – status of efforts to implement recommendations.**

Virgena Wieseler (Director, CPS) went through a PowerPoint Presentation regarding the efforts of DSS to comply with the ICWA Commission's top 30 recommendations.

- #1 - Governor Rounds met with Secretary Bowman, Virgena Wieseler, and Ann Holzhauser about the ICWA Commission in January. They suggested doing follow-up meetings this year. He reappointed the Commission through Executive Order and wants a report by November 30, 2005.
- #2 - Hire Child Placement Investigators (Family Locators) housed in Pierre and Rapid City. The focus will be on kids coming into care, contacting tribes, contacting other relatives – and asking relatives how they wanted to proceed in terms of kinship care, licensed foster care, etc,. The investigators will help the families through whichever process they choose. The positions were filled in August.
- #3 - Statewide ICWA director for DSS. Duties were reassigned in CPS State Office to free up an FTE for the ICWA Program Specialist. DSS hired Teresa Nieto; she is located in Rapid City. Among others, her job duties are: to conduct an ICWA knowledge assessment review within the CPS department – 22 question assessment of knowledge for staff to establish a baseline as to ICWA knowledge in the office to focus training efforts; ICWA compliance case reviews by office; ICWA director's meetings; identifying expert witnesses and making a listing available; and visiting tribes to review ICWA office.
- #4 - Contracting. Currently have contracts with the Sisseton Wahpeton Oyate. Working with the Oglala Sioux Tribe and the Rosebud Sioux Tribe on an Integrated Child Welfare System.
- #6 - ICWA info on CPS website. Providing a listing of all ICWA offices, their contact information, and tribal judges so offices can go to website when dealing with an ICWA case. The info was also sent to Chuck Shroyer and was forwarded to all state's attorneys. ICWA resource material was distributed to all state's attorneys offices at a training seminar. The Green Book will contain a chapter on ICWA, a copy of the BIA guidelines, a copy of the notice bill that had been passed, and federal regulations. The State Bar Association also did A & N training with an ICWA component; the training is available for all attorneys.
- #7 – Create family placement specialist teams with representatives from the DSS. DSS has hired two social workers; their sole responsibility is to locate relatives of children entering care. They are also working with ICWA directors to assist in locating relatives. They hope to meet with tribes about case planning, child care, etc.
- #8 – presented by Kathy Deserly, who has been working with Virgena's office since last November. She is working with CPS to design collaborative circles and a recruitment/retention strategic plan. They want to bring back the State-Tribal effort. The State-Tribal work group to be looked at as more of a collaborative effort. They are asking themselves what activities this group would tackle.

What is coming out of the ICWA Commission and how can they be sure it lives on after the Commission ends. The next meeting will take place on the 21<sup>st</sup> and 22<sup>nd</sup>. Tribes are submitting names to participate and the state has identified people as well. Virgena stated that the same people must show up to the meetings consistently for things to get done. Judge Kern asked for a copy of the members of the collaborative and a copy of the draft plan for all the Commission members. Aske will send it out to all the ICWA Commissioners after the next Collaborative Circle meeting scheduled for September 21<sup>st</sup> 22<sup>nd</sup>, 2005.

- #9 – resolved through HB 1226
- #10 – revise format of PRIDE. PRIDE is a copyrighted curriculum – and cannot be changed. PRIDE Adaptation Project which is an ongoing initiative by the PRIDE Advisory Workgroup to develop a PRIDE curriculum focused on Native American families. South Dakota is one of the states being looked at to pilot the curriculum. Extending families through UNITY, available through Casey Family Programs and some CPS trainers have been trained. SRST, CCST, SWO, and FSST have licensing agreements with the State. CRST, RST, and OST have draft licensing materials.
- #13 – create a statewide ICWA office within state government. No office has been created but DSS has hired a statewide ICWA coordinator and UJS has named Keith Bonenberger as the ICWA contact person.
- #14 – court reports go to ICWA director and tribal judges.
- #16 – MOU between Casey Family Programs and CPS in Mission and Pine Ridge to implement Family Group Decision Making. Implementing Group Family Decision Making in Rapid City as a pilot program with assistance of Casey Family Programs in Pine Ridge. Need to obtain outcome data to support expansion in other areas.
- #18 – develop a protocol for transfer of cases.
- #19 – DSS contracts with the Children's Home Society to complete all kinship home studies, home locators. CPS has had a 25% increase in relative placements between July 2004 and June 2005 (this number does not just include Native American children, but all children that come into CPS custody). The CPS staff is striving to improve that number.
- #21 – implement ICWA resources within state and private adoption agencies. DSS and UJS should designate people who are expert witnesses and disseminate information.
- #22 – develop a network of ICWA experts.
- #25 – ICWA affidavit – update in Green Book. Ongoing discussion with State's Attorneys regarding updates in the Guidelines. Have ongoing dialogue with several counties on the ICWA Affidavit.
- #28 – Certificates of Mailing should clearly indicate which documents were sent to the tribes. Efforts have been made to attach the Certificate of Mailing to the document mailed in the DSS file and to develop a tracking log to be contained in each case record.
- #30 – protective capacity assessment being piloted. Directly relates services to issues causing children to be unsafe in home – behavior vs. compliance based. DSS wants to reconnect children with their families and keep them safe. Plans are to begin the pilot this fall.

**Lunch – broke at 12:02 pm and resumed again at 1:05 pm.**

**5. Report from the Great Sioux Nation ICWA Consortium**

Lori Walking Eagle and Raymond Cournoyer from the Great Sioux Nation ICWA Consortium gave a PowerPoint Presentation on their organization. The organization is comprised of tribal ICWA directors/employees. They are a work in progress – they have developed by-laws and a charter, and have done Honoring the Children ceremonies. They leverage funds for attorney's fees and travel; they are coordinating a list of all ICWA offices on the reservations. They are planning a workshop in December in Rapid City. They are meeting in Rosebud in September (the 3<sup>rd</sup> or 4<sup>th</sup> week in September). The GSN ICWA Consortium extended an invitation to the Commission to attend and speak at their meeting.

Raymond Cournoyer added that in Charles Mix County, he must submit a tribal resolution for each case he is appearing on in Circuit Court. Judge Jones and Judge Kern said that one resolution designating him as the representative of the Tribe should be sufficient. They offered to write letters to Chief Justice Gilbertson to discuss training for UJS staff on his issue.

## 6. Report from Tribes

### **Standing Rock Sioux Tribe – Tracey Manywounds**

Her office currently has agreements with North Dakota and South Dakota. They don't terminate parental rights – as termination is not a part of their code and tradition. There is a strong court system – a licensed Standing Rock Sioux Tribal attorney gets the forms or court orders. There are administrative reimbursements from 4E from ND, currently trying to access from SD. They are focusing on suicide prevention and received a grant to assist in suicide prevention efforts. OST has come up to help Tracey in the communities as well as the State of North Dakota. She will be having a meeting with the SD Health and Human Services department to help with suicide prevention. Her office is funding a lot of programs which promote positive activities and assisting families with burial expenses. She has a good working relationship with ND and all four tribes in ND run their own programs. It's approved through the state and federal 4E agreements.

### **Oglala Sioux Tribe – Cordelia White Elk**

For the past four years they have been building an integrated child welfare program. It is designed to work with a number of disciplines: courts, public safety, mental health, etc. They organized a leadership committee who drive this and are now seeing the results. They will be having a judiciary retreat to provide training on this new program. They are also pulling in custom laws which include community members and spiritual leaders. There are also interagency meetings with I.H.S., CPS, and Dakota Plains Legal Services. The ICWA Commission has helped them tremendously and the Tribal/State committee will help.

### **Crow Creek Sioux Tribe – Dave Valandra**

Dave's office has a good working relationship with the State of South Dakota. His office deals strictly with ICWA cases. He monitors 70 cases in various states other than SD. 16-17 cases are from SD. He does licensing of foster homes (currently 11 licensed foster homes), does home studies, etc. All foster homes are full. He also gets 250-300 notices from other states for enrollment eligible children related to ICWA.

### **Cheyenne River Sioux Tribe – Bob Walters**

The tribe is currently working on standards for licensing programs. In 2000 they passed standards and sent them to the state, but nothing was done. They are in the process of working on changes with a tribal lawyer. CPS is needed. Children are being put into non-

Indian foster homes far away (98+ miles). They are working on getting foster parents on the reservation.

**Yankton Sioux Tribe – Ray Cournoyer**

He thinks there have been a lot of positive steps to help tribes. He has been running into problems with the State's Attorney regarding notification. Currently, the State's Attorney requires Ray to have a separate tribal resolution for each child. This poses a problem for the 48 hour hearing.

**Flandreau Santee Sioux Tribe – Garrie Kills A Hundred**

Stated he is very impressed by what he's heard today. He is willing to make a commitment to this process. They are currently trying to get a Boys and Girls Club started.

**Rosebud Sioux Tribe – Steve Emery**

Steve spoke on a number of topics throughout the day and therefore did not give a separate report.

**Sisseton Wahpeton Oyate – Judge BJ Jones**

The Oyate has had 4E agreement with the State since 1978 – which helps with placement. They also have BIA funding and the tribe kicks in \$500,000 per year for children. They receive about 100 cases to transfer jurisdiction. He says that in regard to the transfer protocol, that the local law enforcement and social workers have a duty to cooperate with tribes to help enforce the presentation of the case. He also brought up that AFSA applies to children on reservation but does not apply to children off of the reservation. They are also beginning to have problems with the "disestablished reservation" label.

**Lower Brule Sioux Tribe – Rose McKauley**

Rose was not present at this meeting.

Judge Kern then asked if any other Commissioners wished to speak on behalf of their agencies.

**Sr. Mary Curran:** the Catholic Family Services program is still looking to see if any of the recommendations apply to them. They have found a couple of things they should be doing. Their program does not deal with A&N cases, however this has been educational for them.

**Jim Bradford:** he asked if the legislation has done anything good for the children. Steve Emery commented that generally it has done some good; however he does not like SB 12. This bill is ok for folks who are beyond the authority of SD judges (people who are in federal custody); on the other hand for those who are within SD jurisdiction, this may pose some problems. Jim was worried that this legislation wouldn't help the kids. Ann Holzhauser said that the effects of these bills may be hard to judge right now because the bills were just enacted.

**Mike Schad:** His office deals primarily with A&N cases and they're doing their best, but doesn't know if it's good enough. As far as the 48 hour hearing and tribal affiliations of kids – sometimes tribal affiliation is still not known by the time the hearing takes place. The biggest issues that he's run across is the notice of the 48 hour hearing. Adding exposure to methamphetamine as grounds to file a petition will have an immediate effect because the meth problem is huge in Pennington County. Overall he thinks that the communication between the State and the tribes can still be improved and a conscious decision to improve communication is a matter of developing new relations with people again. Biggest benefit

he's seen is the building of communication. Steve Emery commented that this is the first time that he's aware of that the State Bar has addressed ICWA. Steve appreciates what Mike's been doing and thinks it's tragic that the Commission ends on November 30. The ongoing dialogue that has been taking place is very helpful because the State's Attorneys and Tribal administration have a lot in common. Steve also commended DSS for being on the job 24 hours a day 365 days a year. Mike Schad added that with the revised Green Book there should be more training on ICWA. Ann Holzhauser said that she e-mailed the State Bar Association and said she'd help with the training on ICWA but that there ought to be other people involved also. Mary Curran brought up that it shouldn't be advertised as just for ICWA abuse and neglected cases, but also made available to all attorneys.

## 7. **Small Group Breakout**

The Commission broke out into three groups to discuss the 30 recommendations and to prioritize the recommendations that have not been touched upon yet.

## 8. **Small Group Reports**

Prioritization of recommendations:

**Group 1:** #4 – recommend having Secretary Bowman send out a letter to the tribes on this point. #5 – tribes and DSS should work at identifying potential expert witnesses. This is an urgent concern. #12 – priority placed upon protocol developed by each tribe, state's attorney, and UJS. #15 – public defenders offices identifying someone who specializes in ICWA cases for parents (Minneapolis does this and they have an office set up for it) – governor would send a letter to tribes asking them if they would be interested in receiving more help in receiving funding from the federal level to help with ICWA cases (assistance in advocating for funds). #18 – transfer of records and funding (4E) should follow the child. This should be addressed soon and look into developing protocol for addressing other funding issues. Assure expert witness testimony for foster care placements – look into and follow how it's being developed across the state – expert testimony presented within 90 days – 1912E needs additional funding/compliance – could happen at the adjudicatory hearing – an area where we need to improve and build it into the Green Book and maybe state law as it's already federal law. #30 – active efforts – distinction between reasonable efforts and active efforts at the court level. Possibility of Commission members commenting on what the National Center for State Courts report said. Judge Jones and Judge Kern requested that Commissioners send their comments to them.

**Group 2:** mainly talked about Mike Schad's case – training DSS workers to seek the info out (possibly an Indian custodian) as soon as they get the case. Asking social workers to look into that and at the same time having the tribes do a record check (for an Indian custodian). Protocol on transfer and the need for it – judicial training, bar training, continuing CLE's – training every 5-8 years is not enough.

**Group 3:** #18 – transfer protocol – getting cooperation from law enforcement, DSS, etc. in presenting in tribal court. Bringing kids back from another state possibly by using interstate compacts to follow child rather than not having access to funding. Availability for tribal judge to use state court room where family is, providers are, resources are, witnesses are. Develop a check list for private adoptive agencies and judges to use. Funding for developing the expert witness list available by tribe needs to be looked into. Training in SB 12 at the annual conference for Clerk of Courts – talk to UJS people on

Commission on doing the educational training. Develop a form for relatives to help them get a hearing. Develop a resource listing by tribe on: mental health departments, alcohol/drug departments, traditional healers, housing, etc. Laminate cards with ICWA info on it and the ICWA offices info on it.

Things to accomplish before the next meeting: summary of what was reported by the end of next week (Mike Schad, Ann Holzhauser, and Virgena Wieseler). Virgena will send out an e-mail of her PowerPoint Presentation and a draft of Collaborative Circle along with who is involved with it. At the next meeting the written document needs to be talked about (how to draft it). Report progress and look at recommendations that weren't addressed and how they can be implemented.

Jim Bradford brought up that he would like to see some of the Commission members on the Collaborative Circle. The input to the Governor and Legislature is very important. He would like to know how to take what the Commission has done and keep people vested in what has been talked about. Judge Trandahl said that a lot of progress has been made but a lot of people don't know about it and a lot of good things have been done by the state and tribes. Judge Kern suggested that maybe there ought to be a press conference. Judge Jones suggested a summary of great accomplishments from DSS, a slide show, discuss what hasn't been done yet and which entity is responsible, and talk about the report.

9. **Strategic plan – next meeting date**

The next meeting date was discussed (October 8, 2005) in Rapid City. This date was suggested as the majority of Commission members will be there for the Black Hills Powwow.

Sr. Mary Curran concluded the meeting with a prayer. The meeting ended at 4:15 pm on Friday September 9, 2005.

---

<sup>111</sup> On September 14, 2005, Judge Trandahl sent the Commissioners an e-mail in response to Judge Jones' concern in which she stated that the 2005 Legislature repealed the UCCJA and enacted the UCCJEA in its place. Pursuant to Section 104 of the Act, codified at SDCL 26-5B-104, the courts of South Dakota are now required to consider Indian Tribes the same as states. Furthermore, child custody determinations made by Tribal courts are to be honored under the terms of the UCCJEA.