

Indian Foster Care in S. Dakota: A Case Study in Investigative Storytelling Gone Awry

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Chapter 1

A Summary of Five Sins

In October 2011, NPR aired a three-part investigative series by [reporter Laura Sullivan](#) and [producer Amy Walters](#) alleging abuses in the foster care system for Native American children in South Dakota. With a mix of statements by the reporter and much innuendo, the series unmistakably alleges that the state's Department of Social Services was systematically removing Indian children from their families in order to collect federal reimbursements. The series further alleges that cultural bias — it stops just short of saying racism — was behind the overwhelming placement of these children in white homes, in possible violation of federal law.

Five Violations:

- **No proof**
- **Unfair tone**
- **Factual errors**
- **Incomplete reporting**
- **No state response**

The series attracted national attention and won prestigious journalism awards. Some Native American advocates have since issued their [own report](#) supporting the reporters' findings. Activists and foster care policy leaders from each of the state's nine tribes also enlisted the United States Bureau of Indian Affairs in holding a May "summit" in response to the series.

Gov. Dennis Daugaard and the secretary of the state's Department of Social Services, Kim Malsam-Rysdon, on the other hand, have condemned the series. They say that it is inaccurate and misleading. Many South Dakota residents also have written me in disapproval of it.

More than 18 months have passed since the series aired. This might seem an inordinate amount of time, but I faced a conundrum. The two sides — the state and the reporters — stuck to hugely separate versions of not just interpretation, but also of what would seem to be easily measurable facts. I finally resolved in the spaces between other posts to slowly re-report parts of a major investigation that had taken the journalists

themselves a year.

I also felt that more than a standard critique was needed. As I delved into the defense of the series by the reporters and editors, I had a gnawing sense that the real issue was deeper than the story. The challenges that I was having in deciphering the tone and images of this story reflected what seemed to me to be a misuse of the techniques of storytelling in other complicated investigations, too. I wrote a long preliminary report to show what actually was being said in the South Dakota series and what substance there was behind it. I presented the draft to the reporters and editors late last year. I gave a copy as well to CEO Gary Knell.

Appalled journalistic traditionalists might say that this is like a reporter showing a story to its subject before publishing it. The traditionalists would be right. But I was searching for truth and fairness. Based on the responses I got to the first draft, I dug more and further clarified my thoughts. This final report is a substantial rewrite but still arrives at starkly different conclusions from that of the reporters and top editors. I have presented this account to them, too, and invited them to write a detailed dissenting opinion. [They have chosen instead to post a short statement linked here.](#) They acknowledge some shortcomings but still stand behind the series. They declined to respond on the record to most of the points in this report.

I have no monopoly on the truth. I welcome you to read their defense and pick apart my analysis on your own.

The Bottom Line

My finding is that the series was deeply flawed and should not have been aired as it was.

The series committed five sins that violate NPR's code of standards and ethics. They were:

1. No proof for its main allegations of wrongdoing;
2. Unfair tone in communicating these unproven allegations;
3. Factual errors, shaky anecdotes and misleading use of data by quietly switching what was being measured;
4. Incomplete reporting and lack of critical context;
5. No response from the state on many key points.

No doubt the investigative team was driven by the history of injustices suffered by Native Americans. There is much to be outraged about. But good intentions are not enough. Specifically, there is no whistleblower, no document — no smoking gun even — to support the unmistakable allegation that for nearly the last 15 years, state social workers have been so evil as to take Indian children from their families as a way to reap

federal funds for the state government. The charge is so shocking and such a potential insult to many dedicated social workers that the burden of proof should have been especially high.

There is more that is wrong, too. The reported federal reimbursement numbers are badly inflated. That is a factual flaw. Perhaps more upsetting to many of us is a moral one: concern for the centrally relevant matter of child neglect is simply dismissed. That many of the foster decisions, meanwhile, are in fact made by the tribes' own independent judges goes unreported altogether. The crucial context of social ills and a crisis of Indian family breakdowns on the state's reservations are also all but missing.

Whatever the truth, the proof here is so weak that this series is itself an injustice.

So, too, is a real-world concern. All sides agree that the preferred alternative is to put Native children in Native foster homes, but unreported is that there is an acute shortage of these homes in the state and nationally. Relatedly, South Dakota courts and social workers often skip the foster care system altogether and use a companion welfare program in which Indian children are indeed put in Indian homes. As many children are put in Native homes under the welfare program as are put in white homes under foster care, according to state records. There is no mention of any of this in the series.

What we hear instead are innuendo and loaded half-truths. Sullivan, for example, says on-air that because of a special needs "bonus" in federal aid, Indian children "are worth more financially to the state than other children." As I show more fully in Chapter 2, the tone and unsupported implication is that the Indians are mere chattel to state social workers. In another part, Sullivan clearly implies that the social workers willfully go on to reservations and "drive off with an Indian child," as she put it on-air. The unmistakable suggestion is that they do so regularly and without a court order. But no proof was presented; the state denies the charge.

Nothing in this report should be taken as proof that social workers, judges and other state officials commit no abuse or that the state shouldn't be doing more to keep Indian children in Indian families. My investigation is of the NPR series, not of the state. I do not know the full truth of what is happening on the ground in South Dakota.

In March, the [American Civil Liberties Union helped file a narrow case](#) in federal court charging that a local judge and social workers in one county had railroaded the taking of several Indian children from their families. The [local judge and state officials](#) have moved to dismiss the charges for lack of evidence. At the time of my writing, the case was still going forward. Indeed, there are so many Indian complaints over foster care that there is certainly reason to ask about state misconduct. My point here, nonetheless, is that no matter what emerges from the ACLU case or any subsequent NPR investigations, this first series falls so far short in proving its allegations and

implications of widespread state abuse that the series, as presented, is itself an injustice.

Even the heartbreaking anecdotal story that provides the narrative arc tying together the series is unsubstantiated. It is based largely on hearsay from the grandmother of the children involved, and not on information from the parents, who were the ones who actually dealt with social workers and the courts. The state Department of Social Services (DSS) strongly disputes that there was any wrongdoing in the case, but this response was not reported. Indeed, we never hear from any parents in the entire series. Nor did the reporters get the parents to agree to make their files public so that we wouldn't have to rely on hearsay. This particular case, moreover, was handled by a tribal judge, not a state one, but nothing was made of this in the story.

The idea that the abuses are systematic or widespread is communicated by the reporter's language and quotes and by the very fact that a three part series is being dedicated to the subject. Host Melissa Block introduces the series with a seemingly stunning statistic from Sullivan and Walters that, unexplored, is left to stand as prima facie proof of large-scale violations. Block correctly notes that Indians make up 15 percent of the child population in South Dakota "but account for more than half the children in foster care." This represents a disproportion of nearly 3.5-to-one.

What the series does not say is that in 2010, the year Block refers to, the disproportion among children who leave their homes — for whatever reason — was great or greater still. In one measurable sample, the Indian-white imbalance was five-to-one for Indian children found to be living with kin receiving welfare. Given that this group of children alone was eight times larger than all those in foster care, Indians themselves seem to be setting a trend of removing children from families.

The high demographic disproportion of Indians in foster care, in other words, proves little about abuse. I show this more fully in Chapter 2. What the disproportions and the large number of Indian children living with kin do suggest, however, is that many Native American families in South Dakota are internally hemorrhaging. We don't know how and why, however. The series doesn't explore it.

Money as the Driver

But the series does offer an incendiary motive for state actions. "Money" is how Sullivan introduces this motive, saying on-air: "State officials say they're doing everything they can to keep Native families together. But there's another powerful force at work, too: money. We'll talk in a minute about how the federal government sends the state thousands of dollars for every child it takes."

The suggestion in the series is that the state somehow profits from the federal reimbursements. Yet, the reporters came up with no specific bureaucratic practices to criticize, no quotas or targets to be reached, no fraudulent accounting. As I show in Chapter 3, the whole money angle is based on a misrepresentation of how federal incentives work. According to federal formulas, the state match for reimbursements has fluctuated between 40 percent and 50 percent in recent years — not the almost one-quarter erroneously cited in the story. Whatever the split, the more children the state takes from families, the more it costs the state.

Two silent definitional shifts pump up the \$100 million number.

To be sure, the series never explicitly claims that the state actually profits. The series gives two officials a chance to say so. Sullivan, however, followed their denial with a statement that discredits them, saying on-air: "But, in general, the more children that the department has, the more money they may be getting from the federal government."

Without some proof of wrongdoing or some fair context, the use of the word "may" here by Sullivan is not a qualification adding fairness; it is verbal swordplay and a stab.

Meanwhile, the series says South Dakota receives "almost \$100 million" in federal money for foster children, an amount that we are led to believe drives the abuses. As I show in Chapter 4, this attention-getting headline number is both misleading and greatly exaggerated.

Two silent definitional shifts made well into the story pump up the number. When hearing about the federal funds in a story on Indian children, we naturally think that Sullivan still means Native Americans when she refers to "children" or "a child." She does not. The \$100 million refers to reimbursements for children of all races and ethnic groups in South Dakota, including white, Sullivan later told me. The second silent shift is that the reporters were counting federal money not just for foster care, but also for adoptions and psychiatric residential treatment.

While the larger measures have relevance as context, the switch to them without telling us created a misleading result. Based on their proportional weight among foster children, looking at Native Americans alone reduces the total amount of reimbursements by roughly 40 percent. The \$100 million becomes \$60 million. The story's so-called "incentive" shrinks.

It shrinks more.

Sullivan said that she also included \$37 million to \$70 million in medical reimbursements. This is a large range for what would seem to be a verifiable number from the federal government. Instead of using official federal or state sources, she said

that she based her estimates on information from advocates and unnamed sources cleared by her editor.

Malsam-Rysdon said that the *entire* expenditure for all children of all races in DSS custody for all manners of care in fiscal year 2010 (the year covered by the series) was \$68 million. This includes \$12.7 million for Medicaid, as well as all other medical expenses, she said. Under the 60:40 match that year, the federal government reimbursed \$39.5 million. Using the proportional formula again— the federal government does not break out reimbursements by race or ethnicity — the reimbursements tied to Native American children was roughly \$22.5 million. We are now down to a quarter of the \$100 million number.

Ignoring the moral matter of child neglect is irresponsible.

You can jiggle with the numbers and definitions, but nothing I did or was given by the reporters changes this order of magnitude. And this \$22.5 million includes adoption and Medicaid, which are questionable to include. Concerning Medicaid, the overwhelming number of all children — and roughly half the Indian ones — were already receiving it before the state took custody over them, Malsam-Rysdon said. The amount of incremental Medicaid funds coming through the state as a result of Indian children being put into foster care thus approaches insignificance, making it hardly an incentive.

Sullivan and Walters have not given me evidence showing that the state's figures are wrong. I cannot audit the state, but their numbers are public and official and have remained consistent. Listeners, meanwhile, never hear the state's budget sums, nor its denial of the "almost \$100 million" claim. Once again, the state's response is not reported, as happens so often throughout the series.

Missing Context

Still, as odd as this might sound, the inflated dollar numbers don't bother me as much as they did the investigative and radio reporting colleagues I consulted. To me, the more important point is that either there is, or there is not, systematic abuse of Native American children and families — whatever the dollars involved. In addition to the unproven allegations, what troubled me more about the reporting on taking children from their families was its irresponsibility. Among the critical things that the series ignored, or largely ignored, were the moral matters of child neglect, the legal matter of state child welfare laws and the social matter of the suffering on many of South Dakota's Indian reservations. I detail all this in Chapter 2.

Sadly, on iconic reservations such as Rosebud, Cheyenne River, Crow Creek and, perhaps most poignantly, Pine Ridge, home of the 1890 massacre of Indians at Wounded Knee, many Indian families today are in alarming distress. The reservations have some of the absolute worst rates in the nation for alcoholism, fetal alcohol spectrum disorders,

teenage suicide, teenage pregnancy and domestic abuse. Gangs and illegal drugs are common. According to a much-cited 1998 report done at the Harvard Center of Population and Development, where I have worked and remain associated, life expectancy hovered around 48 years for men and 52 for women, similar to Somalia's. One imagines that life expectancy has improved since that report was done, but clearly the overall picture is dire.

Unreported was that 40% of the placements were made by the tribes' own judges.

This is not to blame the families. They are victims of poverty and history. Rather, it is to blame the dysfunctions for contributing to the large number of children who wind up in foster care relative to whites. Compared to the number of children in foster care over

the last three years, eight to 10 times more are not living with either parent. See Chart 5.6 in Chapter 5.

I am sure that most of us in the audience, Native Americans included, believe that parental neglect has to be mixed in here somewhere. Whether or not neglect is involved in any particular situation, the overall issue of neglect certainly demands to be addressed. Yet, what little discussion there is of it in the series is in the context of alleged cultural ignorance by social workers and a mistaking of poverty for neglect. Malsam-Rysdon, the DSS head, vehemently denies the allegation of cultural arrogance and points to specific state regulations and laws defining what constitutes neglect. Her defense is not reported, however, nor are the laws or definitions of what the state considers neglect to be. I lay out the laws and regulations in Chapter 2 so that readers can decide for themselves if they seem reasonable and deserved reporting.

The series did quote Malsam-Rysdon as defending the legality of the state's actions, and we did hear an aide say that the state's primary interest is the safety of children. But this is different. Anyway, those statements, too, are dismissed in the storytelling.

Also ignored was the national context in which the policy trend has long been to favor protection of the child over protection of the family, whatever the ethnic or racial group. What is happening to Native American children in South Dakota in many ways is similar to what happens to all children everywhere after families break down due to drug or alcohol-addicted parents or other such serious maladies. It could be that neglect should be defined differently for Native Americans, as some Indian activists seem to want to argue. But if so, then intellectual honesty and NPR's standards require that there be contextual reporting on the national trends, dissection of the family-child trade-offs and a full discussion of the claimed cultural contradictions surrounding neglect.

Here are two examples of what NPR could have done. One is a [New York Times story from New Mexico](#) that directly confronts the trade-offs faced by Native American foster care. More relevant still is [this story from the Sioux Falls Business Journal](#) in which

Native Americans in South Dakota debate the difficulties surrounding foster care. Note that the governor has offered to help the tribes receive direct child welfare funding from Washington. I don't know if the NPR series motivated the gesture, but even before the series ran, the state already had turned over child welfare responsibility to tribal social workers on four of the nine reservations and financially supported them. The Sioux Falls story shows also how the series has misled many Native Americans in the state into believing that there is a pot of \$100 million in federal funding to go after. One could even be justified in saying that the series failed the state's Native Americans even more than the rest of us.

Partly explaining this failure is a conceptual framing of the series based on a single-minded interpretation of the 1978 Indian Child Welfare Act, or ICWA. That act commendably requires that Indian children taken from their families be placed as much as possible with relatives or tribal members. Yet, a second, jaw-breaking statistic in the series is that "nine out of ten" of the state's Indian foster children are being placed in white families. As discussed in Chapter 5, this is presented as virtual prima facie evidence of state cultural abuse and as a violation of the spirit, if not the letter, of the federal law.

Listeners do not hear, however, that some 40 percent of those placements are made by the tribes' own independent judges on the reservations, not by state judges. Indeed, state data shows that the tribal judges put Indian children in white homes at an even higher rate than do state judges. Charts in Chapter 5 show this and other related tribal judge insights.

There is some debate over whether ICWA applies to tribal judges, which I review in Chapter 6. Whether it does or not, ignoring the tribal judges is unjustifiable under NPR's standards of completeness and fairness. That Indian judges are involved in the placing of Indian children in white homes is so culturally relevant to the themes of bias and abuse that clearly the role of Indian judges and their comparison with state judges has to be addressed.

The only reference that the story makes on-air to tribal judges is to say that they merely "rubber-stamp social service requests." The charge is incorrect on its surface. There are no DSS recommendations of any sort to stamp on two of the state's nine reservations; the two have their own licensed social workers. DSS workers do not get involved. One of the two is Pine Ridge, the largest reservation in the state. On two other reservations, state workers are involved in only a minimal number of cases when called in by the tribe. So, on four of the nine reservations, state social workers have little or no presence. Tribal social workers, moreover, sometimes recommend putting children in white homes, too. The tribal social department arrangements, like the tribal courts, are part of agreements between the tribes and the state and part of the extensive sovereignty that tribes have under treaties with the United States.

To ignore the role of the tribes' own judges and social workers, as the series does — not to mention to ignore the Native Americans who are judges and social workers for the state itself — is a form of cultural arrogance of its own.

Meanwhile, one of the central related anecdotes is wrong. Sullivan says on-air that “every one” of the 33 foster children from the Crow Creek tribe were put in white homes. In fact, 15 of the 33 were put in Native homes, according to both the tribal leader cited as a source and the state. A breakdown of the fifteen shown in Chapter 5 suggests that social workers are more discerning in putting children into various types of settings than the series suggests.

Then there is failure to mention the Indian children that state and tribal judges do indeed put in Indian homes. Some of these children are in foster homes, but an even larger number are put in the homes of kin who are then awarded welfare benefits under the federal welfare program, Temporary Assistance for Needy Families (TANF) to help support the added child. Just like foster children, these TANF children are under court custody and the financial support for the first child is the same. Over the last three years, the sum of the TANF and foster children put by the courts in Native homes has roughly equaled the number put in white homes. I pull all the placement numbers together in Chart 5.6.

You can argue that there are still too many Indian children being put in white homes. But if you are going to charge or even imply that these placements represent racism or cultural abuse, what you can't do is ignore the context of all placements being made into Indian families. These placements not only run counter to the abuse thesis, they also are just what ICWA seeks to achieve, whether you call it foster care or not.

Powerful storytelling techniques are not designed to hide reporting failures.

To be fair to Sullivan and Walters, I discovered these TANF placements only recently. The reporters can't be expected to have known everything. I have had the luxury of being able to go back and forth for months with Malsam-Rysdon and her staff to get them to give me numbers that, under ICWA reporting requirements, are not kept in the way that I have defined and presented them in Chart 5.6, as well as elsewhere in this report.

Sullivan has declined to say whether she knew about the TANF children, but the knowledge might have emerged if she did related reporting that was not included in the series but should have been. This was on what social workers call the “decision tree” they go through as they try to decide where best to recommend that a child be placed. What is pertinent to note here is that among the standard alternatives are whether to recommend the TANF or foster care routes, depending in large part on the financial circumstances of willing kin. Foster care is usually recommended for sibling groups, Malsam-Rysdon said, because under federal funding formulas, TANF aid drops after the

first child but remains constant under foster care. The main advantage of the TANF program is that it sidesteps foster care licensing requirements.

Chief among these licensing requirements, meanwhile, is what many experts say is a major explanation — arguably *the* major one — for why Native children are put in white foster homes: There is an acute national shortage of licensed Indian ones. This was not reported in the series.

Federal law requires that foster parents attend training classes and meet a series of other requirements if they are to be part of the foster care system and receive foster payments. As I describe in Chapter 5, the requirements, which are federal ones applying to the state, limit the number of candidates. South Dakota had only 62 licensed Native American foster homes in July 2012, according to Malsam-Rysdon. Colorado had seven, according to an expert there. A concerted movement is under way across the country to recruit more Indian foster parents, including in South Dakota. A story exploring that effort, including an assessment of the disproportionate number of Indian homes needed and whether the state is sincere in its recruiting, would seem to be central to an investigation of the state's foster care placements.

To its credit, the series did quote the director of the Division of Child Protection Services, Virgena Wieseler, who said of Indian foster homes that “we’re always trying to recruit them, because we need more.” But then Sullivan discredits her comment by saying that it “comes as a surprise” to a Native American grandmother. This woman and a second grandmother are presented as “licensed” foster parents who had been assigned no children — another example of cultural bias. The interviews with the two grandmothers run at great length. The governor’s office disputed their licensing claim, and it turns out that the women were in fact not licensed by the state, but by the tribe. This is no mere bureaucratic matter. In addition to the state having to meet a federal requirement, imagine the public outcry if improperly licensed foster parents were to abuse children. Sullivan declined to say whether she knew about the licenses.

A prize jury and advocates didn't hear the series as just raising questions either.

A [separate interview with one of the grandmothers](#) on NPR's *Tell Me More*, excerpted at length in Chapter 5, underlined in a way that the investigative series never did just how fraught these domestic and foster care decisions can be. The woman's own grandchildren were taken from her daughter because the daughter had left them unattended. The daughter apparently had an alcohol abuse problem, according to host Michel Martin. A judge later elected to give custody to the stepfather of the children and not the grandmother. We are not told why. The grandmother may very well make a good foster parent, especially for her own grandchildren. And the state's interpretation of negligence may very well be too strict. But as Martin suggests, social workers, police and judges face excruciatingly difficult decisions in anything having to do with families and children.

Culture and blood ties are very important, but I suspect that most Native Americans would agree that what is first at stake is the safety of the child, however defined. Yet, the series largely ignored the consideration of child safety.

These and other problems with the series violate NPR's standards.

In the next four chapters, I deconstruct the transcript in detail to show how the violations are made for each of the principle allegations. The exercise pains me, for I fear feeding a widespread cynicism today that often leads to a reading between the lines of news stories and an imagining of things that just aren't there. But the infractions in this series are so frequent and so serious that they are a case study in how *not* to do radio "storytelling." The technique, largely pioneered by NPR, is wonderful because it connects intimately with us, the audience. It does so through a highly produced mix of sounds, voices and personal narratives. This technique, however, is not designed to hide reporting failures or to make unproven allegations through unfair innuendo.

In the concluding chapter, Chapter 6, I analyze the flawed framing on ICWA and how it intellectually led the whole series astray.

What Went Wrong?

I cannot tell you exactly what went wrong in the reporting and editing that resulted in a conceptually flawed series with so many mistakes. The head of the investigative unit who directly oversaw the South Dakota story, Susanne Reber, has since left NPR. The reporters and National Editor Steve Drummond, Senior Vice President for News Margaret Low Smith and Executive Vice President/Chief Content Officer Kinsey Wilson all disagree with the crux of my findings. Drummond was the second-step editor on the series, after Reber. Smith had little directly to do with preparation of the story, and Wilson was not in a direct editorial position when the story ran.

Wilson has now led his own investigation of the series, based on my preliminary report. He and other senior editors agree that the Web version should have been more detailed, extra care should have been taken to reflect the state's position through other sources when the state assumed an adversarial posture, and that the definitional switches should have been made clear. But as seen in the attached review by him, he has concluded that the basic story stands.

To me, a more legitimate story would have raised and explored the many questions surrounding Native American foster care. The reporters and editors have declined to say why they didn't go in that direction, or even if that there was their intent. I myself have gone back to listen to the series many times to see if I am over-reacting to just what it is the series says. I still hear an intended expose and am not alone. So do supporters of the

Hostilities with the state hurt the state's case, NPR's story and our need for the truth.

series. In awarding a prestigious George Foster Peabody Award, the jury [wrote](#): “This three-part report detailed how cultural bias and possible financial gain led South Dakota and 32 other states to ignore federal law barring the separation of Native American children from their families or tribes.” In calling for congressional investigations, the Coalition of Sioux Tribes for Children and Family, an advocacy group, said a “central finding” of the NPR series was that “South Dakota is removing children...for what appears to be profit.” Posters for the South Dakota “summit” in May repeated NPR’s \$100 million funding claim and picked up on its financial motive angle by saying, “Lakota children are not for sale.” Numerous quotes by tribal leaders in the local press and respected Native American websites such as [Indian Country Today](#) and [Native News Network](#) also repeat the story’s claims as fact.

A headline writer inside NPR itself apparently heard the series the same way. The headline on the Web version of Part One still reads: “[Incentives And Cultural Bias Fuel Foster System.](#)”

But what is evident from the word choices in the series is that the reporters and producers tried to push the story beyond the proof that they had. I don’t know why. I can say that a common danger in doing long investigations on a subject evoking passions is that reporters can get too invested in their working assumptions and lose their sense of north. I myself as a reporter have succumbed to this danger more than once. I was fortunate enough to be saved by skeptical editors. A senior editor at *The Washington Post* recently told me that he killed an average of three advanced investigations a year, usually over the protests of the reporters, who couldn’t see that they didn’t have the goods. The NPR reporters didn’t have the goods either.

Some of the factual errors and incomplete reporting clearly trace back to a hostile relationship between the journalists and state officials. DSS officials, after initial openness, restricted access to the reporters. Malsam-Rysdon and Wieseler met with the reporters only once, together, and for less than an hour. Malsam-Rysdon told me she felt that Sullivan and Walters had made up their minds, and so she didn’t want to meet more with them. Before the series aired, the governor’s office released an unusual “[prebuttal](#)” saying that that the NPR reporters had “an obvious desire to create a story rather than report the facts of the matter.” The statement had a menacing personal tone that said, improperly, that Sullivan was from San Francisco, demonizing her as an outsider. Letters from senior editors to the governor did not calm the waters.

I cannot judge who was primarily to blame for the hostility. I can say that the breakdown in communication did not help the state’s case, NPR’s story or the public’s need for truth. Still, it is incumbent upon reporters to establish empathy to get subjects to talk. In the reporters’ defense, you could argue that perhaps the officials didn’t cooperate because they had something to hide. I don’t know if the officials were hiding

something. But Malsam-Rysdon, her staff and the governor's press secretary, Tony Venhuizen, were cooperative with me, giving me much information that Sullivan and Walters did not have for their story. Of course, it also was in the interests of the officials to cooperate with me.

Investigative reporters should clearly say what they found — and didn't find.

An obvious question is whether the bad relations incited the reporters to adopt their accusatory tone and conclusions. I don't know the answer. Certainly, it is human for reporters — or anyone — to want to stack the deck against an uncooperative official whom they think may be hiding information. Regardless, under [NPR's ethics standards](#), stories must be based on the best available evidence, and not just on suspicions or beliefs.

Whether the officials were cooperative or not, NPR is responsible for what it airs and publishes.

This is not the first time that the investigations unit, though staffed by superb veteran reporters, has had problems over the last two years. A [series on private prisons](#) had to be clarified. A [story on the anti-terrorism efforts of shopping mall police](#) was worthy in some parts, but unfair and confusing in others by failing to be explicit in its conclusions. A new editor, Robert Little, recently joined the unit. I hope this report is of use to him.

My recommendation is that almost all investigations of wrongdoing be required to include clear statements by the reporter of exactly what she or he has found. Just as important, the reports should be required to say what he or she has *not found* that is relevant and gives context. When it comes to serious accusations of wrongdoing, it almost always is insufficient for the hosts or reporters to allude and then leave the alleged conclusions in the mouths of others, as this series often did. The reporter, in other words, should stand up and be counted as the authoritative voice in the story, instead of hiding behind the incomplete voices of others. If nothing else, the exercise will expose the holes in the story.

If the idea is to explore serious questions, rather than allege wrongdoing, then that, too, should be made clear by the reporter or host. Charges, counter-charges and responses can then be left in the mouths of others, so long as the collection of voices is a fair exploration guided by the reporter.

There is a legitimate storytelling style such as the one sometimes used by documentary filmmaker Erroll Morris in which the reporter is largely absent and the case is made through a steady building of excerpts from interviews and public statements. These documentaries are usually years in the making, however, and are extremely expensive to do. Realistically, NPR investigative teams have neither the time nor the money to achieve what are works of art as much as journalism.

To be sure, NPR reporters and producers are extraordinarily talented. They turn out

highly produced stories every day that heavily integrate a documentary storytelling style, and often do approximate art. Some leave me breathless. But rarely will an investigative team have the luxury to put years into a production, and even then have the time on-air to let their findings roll out fully and slowly. Short of being able to do this, the responsible solution in a complicated investigation is for the reporter to add the needed clarity, context and fairness. The narrative storytelling becomes illustrative.

This is not the first problem that the investigations unit has had over the last two years.

The very worst thing that the reporters and producers can do is let the allusions and voices come off as unfairly manipulative. This is what the South Dakota series does, even if not intentionally. And this is why being responsible and honest means acknowledging what you don't know. It means, for example, saying you don't know why a particular child was taken from his family, or where the boundaries are between competing laws, or how much reimbursements actually are, or what a statistic really indicates, or why there are so few Native foster homes, or what really is best for a child.

These needed clarifications are hard to capture through narrative storytelling. When you don't have the material to do so, it is not enough to be technically accurate and simply leave out the clarifications and context, as the foster care series repeatedly does. Narrative storytelling works wonderfully for many types of stories. But a complicated investigation — as much as you might want to use narrative storytelling to connect with us in the audience — must above all still be accurate, complete and fair. In the next four chapters, I will show in detail how the foster care series failed on each of these points.

Finally, my differences with the editors and reporters mostly concern the first of its three parts. This was the headline-grabbing part about the alleged state abuses. [Part One](#) takes up almost 23 minutes of the total 39 minutes aired. One of the solutions for dealing with the shortcomings in Part One would have been to expand it and chuck the next two parts as extraneous, though that decision is the editor's prerogative.

[Part Two](#) was about Gov. Daugaard's former conflict of interest when he was both the state's part-time lieutenant governor and director of Children's Home Society. This is a private non-profit that is the state's largest psychiatric residential treatment center for foster children. Part Two walks a line that is so fine in its fairness to Daugaard that I will leave it to others to debate. Suggestions in the story that the center might have received sweetheart contracts from the state government were offset with acknowledgment that the center was widely considered the most competent such facility in the state. The story did not allege any improper personal gain by Daugaard or that the conflict was hidden. Daugaard ran for governor based in part on his success at Children's Home, which was unchallenged by his political opponents. An underlying point of Part Two, Sullivan said, was to show the political connections of the foster care system in South Dakota. Those connections may be true but don't prove wrongdoing.

[Part Three](#) lightly sampled cultural identity issues of two professionally successful Native Americans raised as foster children in white families. Parts Two and Three probably would not exist were it not for Part One, which is what I focus on in this report, even when I say “the series.”

Let me say upfront that I found nothing to suggest that Sullivan and Walters intentionally committed any ethical violations. Sullivan has continued to follow foster care developments in South Dakota, while Walters left in June to join Al Jazeera America. Let me also say that at a time that most of the American news media is pulling back on expenditures and coverage, the NPR investigative team deserves credit for taking on a complex issue with a troubling history.

If only they had gotten it right.

Chapter 2

Abuse In Taking Children From Families?

The Allegation: Indian children are being forcibly removed from their families and put into foster care at high rates that reflect widespread or systematic abuse by the state Department of Social Services.

The best case in defense of the NPR series on Indian foster care in South Dakota is in the first hearing of the story. You have a hard heart if you don't get goose bumps.

A more intellectually honest and complete story would have indeed been exploratory.

The weaknesses emerge when you start taking apart the transcript.

This chapter sets the baseline for the next three and concerns the alleged large-scale abuse by the state's Department of Social Services in the court-ordered taking of Native American children from their families. In an effort to be as fair as possible to the NPR investigative team, I will extract large portions of the transcript so that you see their full case and its context, and feel much of the emotional impact. You may in the end feel that they are right and I am wrong.

Host Melissa Block, relying on the reporting by Laura Sullivan and Amy Walters, [opens on *All Things Considered*](#):

BLOCK: For more than a century, the U.S. government forced Native American children into boarding schools, stripping them of their families and traditions. In 1978, Congress put a stop to that. The Indian Child Welfare Act says Native children should not be separated from their relatives or tribes. Except now, it's happening again. This time, it's foster care.

Today, we begin an investigation that uncovers a disturbing pattern of how one state places Indian children in foster care. NPR's Laura Sullivan reports on the cultural and financial forces at work in South Dakota, a state where Indian children make up just 15 percent of the population, but account for more than half the children in foster care.

Sullivan picks up from there with what on one level is storytelling technique at its finest. She imparts a strong sense of people, of place, of sentiment, of the issues, of indignation — all in a powerful narrative arc.

LAURA SULLIVAN, BYLINE: It's not hard to find them. There are thousands of them - Native Americans with missing children.

TANYA HILL: Well, my name is Tanya Hill(ph) from the Standing Rock Sioux tribe. I lost nine grandchildren through the Department of Social Services.

DELORES HIPINTS: My name is Delores Hipints(ph). I am from Cheyenne River Sioux tribe. I've got two grandchildren in the system.

LIZ GUGLI: I'm Liz, Liz Gugli(ph). I have nine grandchildren, two of which were taken by DSS.

WESTILA CUPIWIN: My name is Westila Cupiwin(ph). I come from the Mnikhowozu band. I had a grandchild and I haven't seen him - well, he was like, 4 years old. He's 16 now.

SULLIVAN: These families want their grandsons and granddaughters, nieces, nephews, their children. And federal law says they should have them. Poverty, crime and alcoholism are real problems in South Dakota's poorest areas. Still, federal law says that except in the rarest cases, Indian kids must be placed with relatives, tribal members or at the very least, other Native Americans. But in South Dakota, that's not happening.

An NPR investigation has found that every year, the state is removing roughly 700 Indian children, some in questionable circumstances. At the same time, they have largely failed to place them with family or their tribes. In South Dakota, nine out of 10 Native kids in foster care are in non-Native homes or group care, according to state records.

State officials say they're doing everything they can to keep Native families together. But there's another powerful force at work, too: money. We'll talk in a minute about how the federal government sends the state thousands of dollars for every child it takes. Four of those children were Janice Howe's grandkids.

Hi. Are you Janice?

JANICE HOWE: I'm Janice.

SULLIVAN: I'm Laura. It's nice to see you.

Howe lives on one of the many dirt roads of the Crow Creek Indian Reservation, where the dust blows on the window frames of simple houses. People here are poor, in the way few Americans are poor. There's electricity when you can pay the bill. Howe turns a chair to cover a hole in the unpainted wall.

HOWE: I'm the eldest of nine kids, and I got my bachelor's degree in nursing.

SULLIVAN: Her sister lives across the street; her parents, across the road; her daughter, two doors down with her two granddaughters and two twin grandbabies. A tight-knit family. At least they were until one afternoon two years ago, when Janice Howe's phone rang.

HOWE: She said, you don't know me but - she said - I work for the Department of Social Services. And I'm calling you in reference to your daughter, Erin Yellow Robe. And I said, what's going on? And she says, your daughter is going to be arrested for drugs. And I said, drugs?

SULLIVAN: Howe wondered, could there be something she missed? She'd never seen any sign of drugs. Then the social worker changed Howe's life.

HOWE: And she said, we need to come and take the kids.

SULLIVAN: Early the next morning, a car pulled up out front. Howe's daughter wouldn't let go of the babies. She kept saying she hadn't done anything wrong. Howe could barely watch.

HOWE: I seen them pull up, and I seen them go in. And then I seen them bringing them out.

SULLIVAN: Outside, the babies were calm.

HOWE: They were sitting in them cars and they were just looking at me like - most babies, they don't cry if they're raised in a secure environment. So I went out there, and I took their diaper bags and stuff out there. And I was just crying - and they left.

SULLIVAN: But as Janice Howe watched the car pull around the bend, something occurred to her. The social worker took the two babies, but she said Howe could keep her two granddaughters, 5-year-old Rashauna and 6-year-old Antoinette.

HOWE: I thought that was weird. I just thought, why can't I just keep them all?

SULLIVAN: The babies were driven to a white foster family a hundred miles away. At home, Janice Howe and her daughter sat on the steps and cried, as they waited for the police to come to take her daughter to jail. The hours went by.

HOWE: And no one ever came.

SULLIVAN: A week went by, a month, nothing. The summer turned into fall.

HOWE: No one ever came.

SULLIVAN: Howe's daughter, Erin Yellow Robe, has never been arrested for drugs or anything else. Social service officials say they can't talk about individual cases. But one source who has reviewed the department's file said the social worker believed Yellow Robe was abusing her prescription pills. But the file also says the case was based on a rumor from a woman who, it turns out, didn't like the Howe family.

And yet not only did they take the two babies, two months later, Janice Howe waited at the school bus stop. But the girls weren't on it. A social worker had taken them from school.

HOWE: I felt like, oh, my God. It's happening again. They didn't even call and tell me. Nothing. Nothing.

Sullivan introduces other characters to add anecdotal support for the allegation of large-scale state abuse. This is a key one:

PETER LENGKEEK: It enrages me. Cousins are disappearing, and family members are disappearing. We're very tight-knit families here. This breaks my heart.

SULLIVAN: Peter Lengkeek is a Crow Creek tribal council member. This tribe has lost more than 33 children in years, an astounding number for a reservation with only 1,400 people. Every one was placed in a white foster home.

LENGKEEK: If the state had their way, we'd still be playing cowboys and Indians. I couldn't imagine what they tell these kids about where they come from and who they are. It's kidnapping—that's how we see it.

State officials finally get their chance to respond:

VIRGENA WIESELER: We come from a stance of safety. That's our overarching goal with all children.

SULLIVAN: Virgena Wieseler runs a division of the Department of Social Services, an hour away in Pierre. She says the department believes in the Indian Child Welfare Act, and does its best to place as many Native American children with relatives or tribal members as it can find.

WIESELER: If they can be returned to their parent or returned to a relative, and they can be safe, then that's our goal.

SULLIVAN: Officials say they're dealing with abject poverty and substance abuse, and they have to do what's best for the kids. Rysdon is the department's secretary. And she says what's best often means driving onto a reservation and taking a child.

KIM MALSAM-RYSDON: Of course we think it's legal, or we wouldn't be doing it.

SULLIVAN: Malsam-Rysdon says state law supports that. But federal law says tribes are sovereign and two South Dakota judges, two lawyers and a dozen tribal advocates told NPR a state official can't drive off with an Indian child from Crow Creek, any more than a Crow Creek official could drive off with a child from Rapid City.

The allegation of a cultural bias at work is made most clearly in this excerpt:

SULLIVAN: Without question, some children in South Dakota need to be removed from their families. But according to state figures, less than 12 percent of the children in foster care in South Dakota have been actually physically or sexually abused. That's less than the national average. And yet South Dakota is removing children at almost three times the rate of other states, according to the National Coalition for Child Protection Reform.

To understand how that's possible, how the state can remove Janice Howe's four grandchildren and more than 700 other Native kids every year, you have to understand one word: neglect. The state says parents have neglected their children, and neglect is subjective.

BOB WALTERS: The standards are set too high for our people.

SULLIVAN: Bob Walters is a council member for the Cheyenne River Sioux tribe. He says what social workers call neglect is often poverty and sometimes, Native tradition.

WALTERS: We're family people. If there's 30 people in my home, that's fine. I was raised with my mom and dad and 12 kids. I'm very thankful I grew up that way.

SULLIVAN: He says social workers are often young, and many have never set foot on a reservation. He says they don't understand that food is often shared among families. State officials acknowledge that only 11 of their 183 caseworkers are Native American. But officials say they do yearly training to expose workers to Native practices.

Sometimes, though, it's not just cultural differences. Jolene Abourezk worked for the department for seven years. She says taking kids was expected.

JOLENE ABOUREZK: It's just the norm here; that it happens so often, people don't question it - like, good, you are doing a good job for taking more kids in. It's just the way it's been, and it continues to be that way.

Janice Howe, the grandmother in the opening anecdote, surfaces throughout the story, serving as a thread that ties it together. Part One then closes with an affecting scene of her with her reunited grandchildren, bringing the narrative arc to an end:

(SOUNDBITE OF CHILDREN SINGING)

SULLIVAN: Janice Howe now runs a support group in a church for families that have lost children to foster care. On this night, 48 people showed up to talk and exchange stories. In front, Antoinette and Rashauna played. Usually, when NPR producer Amy Walters and I would visit, they would hide. They later explained that like their mother, they are scared of white people and do not want to talk to them. But on this day, they drew closer. Rashauna took the final step, and pointed out a pair of radio headphones.

RASHAUNA YELLOW ROBE: Can I try them on?

SULLIVAN: They held the microphone up to each other.

ANTOINETTE YELLOW ROBE: What's your name?

RASHAUNA YELLOW ROBE: Rashauna.

ANTOINETTE YELLOW ROBE: Uh-uh.

RASHAUNA YELLOW ROBE: I mean, (unintelligible).

SULLIVAN: Janice Howe leaned in and quietly asked them, what was it like in foster care? Rashauna looked up at her.

RASHAUNA YELLOW ROBE: I thought we were going to stay there forever.

SULLIVAN: And then suddenly, Antoinette blurts out a story about how Rashauna wet her pants, and the foster parents made her wear the underwear on her head.

ANTOINETTE YELLOW ROBE: Whenever Rashauna wet her pants, they put underwear on their head - the ones that she peed in, on their head.

SULLIVAN: Janice Howe looked away so they wouldn't see her eyes fill with tears. Rashauna climbed into her lap. As the singing started, they slowly swayed, knowing that even now, Social Services can come back. Even now, at any time, they can take the children.

Laura Sullivan, NPR News.

It doesn't get much more powerful than that. I was both moved by the personal stories and enraged by the state's actions the first time I listened to the story. Having been largely raised in the Jim Crow South, I have experienced hypocrisy and racism first hand.

But then...

Well, to use a storytelling technique, let's set aside the anecdotal story of Howe for a moment and look at the bigger allegation of large-scale forced removal of Indian children. That is what gives the series importance from a policy perspective, not just as a human interest story.

Condensing from the above, here is the story's case:

Block opens by framing the removals as a "disturbing pattern" in which the state is taking Indian children at 3.5 times the rate of white children. Sullivan says that this amounts to roughly 700 Native American children a year, "some in questionable circumstances." The "some" is a rare note of restraint in a series that otherwise

unmistakably alleges that the abuse is widespread and is motivated, at least in part, to obtain federal funds. “There are thousands of them,” says Sullivan, as she presents a series of grandmothers with grandchildren who were taken away. South Dakota’s removal rate is almost three times that of other states, Sullivan says. Families aren’t being notified as social workers are merely driving on to reservations and taking children — “kidnapping,” a tribal leader calls it. The Howe case and other anecdotes indicate that

Something is going on inside many Indian families in South Dakota. But what?

the state’s purported reasons for removing the children aren’t true. Only 12 percent of the state’s foster children were removed from their families after having been physically or sexually abused — lower than the national average. Thus, while foster care is indeed sometimes justified, Sullivan notes, she says that deciding what constitutes neglect is “subjective,” to which a tribal leader says that the state often mistakes poverty for neglect. A former state social worker then drops the hammer. She says that it’s just “the norm” for social workers to take Indian children from their families.

An attempted expose comes through clearly. Both Block and Sullivan refer to NPR’s “investigation” and Sullivan says what it has “found.” What I hear — and what advocates, prize-givers and listeners who have written me hear — is a clear allegation that the state is willfully taking Indian children from their families, on a large and unjustified scale. This picture is colored in for 23 minutes on *All Things Considered*, an extraordinary block of valuable terrain on NPR’s signature afternoon show.

Which leads to its own question: How true, really, is the allegation? Let’s look at the evidence.

First, there is this factual error: The comparison among states is both wrong and wrongly presented. Sullivan cited as a source the [National Coalition for Child Protection Reform](#). This is a small group that advocates for keeping families intact and is critical of foster care in general. We should have been told this about the group, so that we can better judge its information, but we weren’t. Still, the group’s statistics, taken from the federal government, appear to be reliable.

I first heard Sullivan’s statement — “South Dakota is removing children at almost three times the rate of other states” — to mean that it was three times the rate of all other states, making it a lone outlier. It isn’t. South Dakota was fourth or third highest in removal rates among states, depending on whether the ranking is for all children under 18 or impoverished children under 18, according to the advocacy group. One can find a few “other states” in the group’s rankings for which South Dakota has a rate three times higher, but then we should have been told which ones.

Sullivan’s comparison with other states, meanwhile, repeats a critical flaw that I will discuss in greater depth in Chapter 4. The advocacy group’s rankings are for *all* foster children, not just Indians. Sullivan, however, never alerts us to this shift in what is being measured. She did not explicitly say that the rankings were for all children. She also did not indicate what the ranking for just South Dakota Indians might be.

Additionally, any comparison among states demands context. By all accounts, foster care is strongly correlated to poverty. U.S. [Census Bureau data](#) shows that Native Americans nationally have the highest poverty rate among races and Hispanics. South Dakota’s population is third among states in its percentage of Native Americans. Ergo, South Dakota’s high ranking in removals is consistent with its high percentage of impoverished Native Americans. This suggests that socio-economic factors are at play — as well as structural and racial obstacles — and not just government action in foster care.

Let’s remember this as we look at the central piece of evidence related to the removal allegation. This is the extreme disproportion between the rates that Indian and white children are taken from the families. As Block said, “Indian children make up just 15 percent of the population, but account for more than half the children in foster care.” (We probably all know that she means 15 percent of the *child population* in the state, and so can forgive that oversight.) Block doesn’t say that she is comparing Indians with whites, but given that the non-Native population in South Dakota is overwhelmingly white, that is effectively what she means. The Census Bureau estimates that, in 2011, whites made up 87 percent of the state population and Native Americans made up 9 percent, leaving just 4 percent for all others. I myself will thus use white and non-Native interchangeably when making demographic comparisons in South Dakota.

Kim Malsam-Rysdon, secretary of the state Department of Social Services (DSS), confirmed the 3.5-to-one disproportion cited by Block. More specifically, she told me

Poverty, by itself, does not constitute neglect.

that while Native Americans in 2010 represented 16 percent of the state’s population under 18 years old, they made up 57 percent of the children forcibly removed under court order from their families. This

disproportionality is well known in the state and among experts and advocates, but it is presented in the NPR investigation as if it were a new finding. Beginning with Block’s framing of the series, it also is presented as *prima facie* evidence of cultural bias and abuse.

The statistic, however, turns out to be a poor indicator of either.

In Chapter 5, I will show how the number of children that the courts take from their families and put in Native American homes is roughly equal to the amount they put in white foster homes. This placement in Indian homes, most of them of relatives, is not mentioned in the series, though it softens, if not belies, the image represented by the

3.5-to-one number and the reporter’s tone of a brutish state that cares little for Indian families.

But an even more telling insight into just what the 3.5-to-one number means comes from looking at a comparative reference group: These are Indian children who are *not* under court custody but have moved in with relatives anyway. This is a much, much larger group of children. The only ones for whom we have measurable statistics are the ones living with kin who receive welfare aid under the federal/state Temporary Assistance for Needy Families program, or TANF. It is probably safe to say that like the children in state custody, these children come from economically poor families that have broken down, for whatever reason. This group by itself is nearly eight times the size of the number of children under court custody. As Chart 2.1 shows, there was a monthly average of more than 3,600 such children in FY10 and FY11, a large sample size that gives some statistical validity to observing them.

And what running the numbers on this reference group shows is that their demographic disproportion is even *greater* than that of the Indian children taken by the courts. The Native reference group amounted to 72 percent of all the state’s children of all races who moved out of their families under the voluntary arrangements with TANF kin in FY10. This is nearly five times the population weight of the state’s Native Americans under the age of 18. This five-to-one disproportionality, in other words, is even more jaw-dropping than the 3.5-to-one ratio for children moved out by court order. There may be hidden explanations we don’t know for the difference, but an obvious key variable is whether the courts and social workers control the outcome or not. When they do, the removal rate is *lower, not higher*, than what many extended Indian families are doing on their own. This suggests that extended Indian families have set their own high removal rate, which the state is following.

Chart 2.1 Native and Non-Native Children in Kinship Families Receiving TANF Support, Under and Not Under State and Tribal Court Custody, FY10 and FY11

	FY10 – All Children	FY10 – 72% Native Children	FY11 – All Children	FY11 – 70% Native Children
TANF funding, no court custody	\$8.3 million	\$5.98 million	\$8.3 million	\$5.81 million
Avg. monthly number of children, no court custody	5,050	3,636	5,182	3,628
TANF funding for children, under court custody	\$1.59 million	\$1.14 million	\$1.62 million	\$1.13 million
Avg. monthly number of children, under	425	306	433	303

court custody				
Total monthly average of children	5,475	3,942	5,615	3,931

Source: South Dakota Department of Social Services

State officials insist that they prefer to let extended families take over, most of which happens without the state ever knowing. Malsam-Rysdon said that social workers usually step in only when they are told of emergencies, and even then they still prefer to defer to an extended family if it can offer safety and care for a kinship child. I cannot confirm what state officials say, but certainly the statistics partly back them up. If judges and social workers are to be judged fairly, all this should have been reported but wasn't.

The disproportionately high breakdowns, meanwhile, also suggest that something terribly wrong is going on inside many Indian families in South Dakota. But what?

The series, in a major failure, says little about this larger context. Possible cultural, historical or social answers get tossed out, along with the question of whether parental neglect might be a justification for the high removal numbers.

Here is pretty much the full treatment of neglect on-air, repeated from above:

SULLIVAN: Without question, some children in South Dakota need to be removed from their families. But according to state figures, less than 12 percent of the children in foster care in South Dakota have been actually physically or sexually abused. That's less than the national average. And yet South Dakota is removing children at almost three times the rate of other states, according to the National Coalition for Child Protection Reform.

To understand how that's possible, how the state can remove Janice Howe's four grandchildren and more than 700 other Native kids every year, you have to understand one word: neglect. The state says parents have neglected their children, and neglect is subjective.

BOB WALTERS: The standards are set too high for our people.

SULLIVAN: Bob Walters is a council member for the Cheyenne River Sioux tribe. He says what social workers call neglect is often poverty and sometimes, Native tradition.

WALTERS: We're family people. If there's 30 people in my home, that's fine. I was raised with my mom and dad and 12 kids. I'm very thankful I grew up that way.

SULLIVAN: He says social workers are often young, and many have never set foot on a reservation. He says they don't understand that food is often shared among families. State officials acknowledge that only 11 of their 183 caseworkers are Native American. But officials say they do yearly training to expose workers to Native practices.

You will note that the state never gets a chance to explain what it means by “neglect.” The state, in fact, has a long list of conditions that go far beyond physical or sexual abuse. Among them, for example, are an illegal drug environment, sustained emotional harm, and leaving a child home alone “without proper care” — conditions that I suspect most of us would consider legitimate grounds for determining abuse and neglect.

Here is the full list as supplied to me by the governor’s office:

An abused and/or neglected child (SDCL 26-8A-2) is defined as a child:

- (1) Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse;
- (2) Who lacks proper parental care through the actions or omissions of the child’s parents, guardian, or custodian;
- (3) Whose environment is injurious to the child’s welfare;
- (4) Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child’s health, guidance, or well being;
- (5) Who is homeless, without proper care, or not domiciled with the child’s parent, guardian, or custodian through no fault of the child’s parent, guardian, or custodian;
- (6) Who is threatened with substantial harm;
- (7) Who has sustained emotional harm or mental injury as indicated by an injury to the child’s intellectual or psychological capacity evidenced by an observable and substantial impairment in the child’s ability to function within the child’s normal range of performance and behavior, with due regard to the child’s culture;
- (8) Who is subject to sexual abuse, sexual molestation, or sexual exploitation by the child’s parent, guardian, custodian, or any other person responsible for the child’s care;

(9) Who was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B; or

(10) Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamines or any other unlawfully manufactured controlled drug or substance.

The story falls into the trap of infantilizing Indians as if they were not adults.

The state objects to Sullivan's on-air description of neglect as a "subjective" term. Here, I side with Sullivan. Judging what constitutes an environment that is "injurious to the child's welfare," for example, is subjective. This is why we have judges who deal with each case one by one. More important to me than the semantics is whether the courts or social workers are systematically unreasonable in applying the standards. This was not investigated by the series, however. Some DSS critics say that tribal social workers are less inclined than state ones to find neglect and recommend removal. If true, that would be an important story to explore.

The issue of when to keep families intact or split them for the benefit of the child bedevils all communities, not just Indian ones. National trends have swung back and forth over what is best, dividing people of good will. Failure to examine any of this, and ignoring the many sides and perceptions of neglect, represents incomplete and unfair reporting. This [everyday story in The Washington Post](#), for example, has nothing to do with Indians but shows how states across the country are constantly slicing and re-slicing how to define neglect.

How much real neglect, however defined, might there be in the Indian foster care cases? I don't know. Malsam-Rysdon, in her interviews with me, repeatedly said the same that tribal leader Walters did: poverty, by itself, does not constitute neglect.

Of Bob Walters' example of 30 people crammed into a presumably small home, Malsam-Rysdon told me: "Twenty kids sleeping in a small living room or in a small environment is not in and of itself a safety concern. But if they don't eat for three days, or if no responsible adult is around, then safety concerns go up. We stand by our process to assess that." I suspect that most Native Americans would find this position reasonable and would themselves raise questions about the conditions for children in a home with 30 people in it. Whether social service workers are as reasonable in their judgments and execution, I can't say. But neither did the series explore this question, as it should have.

What Malsam-Rysdon does say is the obvious: "There is a correlation between poverty and neglect." She correctly insists that "correlation is not causation." But, sadly, some of

the reservations in South Dakota are among some of the poorest places in the nation and are afflicted with some of the worst social ills.

This can best be seen at Pine Ridge, an iconic reservation among Native Americans. It was here, at Wounded Knee in 1890, that between 150 and 300 Lakota Sioux men, women and children were massacred by US cavalrymen. In 1973, a group of some 200 Oglala Lakota and members of the American Indian Movement seized what by then had become the tiny reservation town of Wounded Knee and held out for 71 days against federal and state law enforcement officers. Two people died. The protests were against both the United States government and the local tribal leadership. Two years later, two FBI agents were shot and killed at Wounded Knee. The Indian Child Welfare Act, drafted by then-South Dakota Senator James Abourezk, grew in part out of the sympathetic national reaction to a history of suffering and exploitation highlighted by the protest at Wounded Knee.

The reservation remains in the news, but more now for just the suffering. Articles and books recite a statistical slate of misery. A highly-reviewed book last year, [Days of Destruction, Days of Revolt by Chris Hedges and Joe Sacco](#), focused on four of the worst places for poverty in the nation, and Pine Ridge was one of them. [NPR's [Neal Conan interviewed Hedges last August](#) about the book on *Talk of the Nation*.] Shannon County, which is made up of Pine Ridge Reservation, had the lowest per capita income of any county in the country in the 2010 Census. The Rosebud, Cheyenne River and Crow Creek reservations were close behind. Unemployment on them is variously estimated at between 70 percent and 89 percent.

As [Nicholas Kristof wrote last year](#) in *The New York Times*:

Half the population over 40 on Pine Ridge has diabetes, and tuberculosis runs at eight times the national rate. As many as two-thirds of adults may be alcoholics, one-quarter of children are born with fetal alcohol spectrum disorders, and the life expectancy is somewhere around the high 40s, shorter than the average for sub-Saharan Africa. Less than 10 percent of children graduate from high school.

[Matthew Power wrote earlier in Harper's](#):

The youth suicide rate is ten times the national average. One in three women is a victim of rape. Life expectancy is roughly equivalent to Somalia's. Plagues of alcohol, drugs, domestic and gang violence. Pine Ridge is as profoundly damaged a place as exists in America.

NPR's own reports over the last year and a half have included segments about the federal government's reinvestigation of [45 deaths on the reservation](#), a [lawsuit filed against big brewers](#) by the Oglala Sioux Tribe for contributing to the alcohol problem,

and an [audio slideshow in partnership with National Geographic](#) featuring images of poverty on Pine Ridge by photographer Aaron Huey.

I have never been to Pine Ridge or South Dakota. I cannot confirm the accuracy of these accounts. But their statistics of family dysfunction and social misery are so overwhelming that, clearly, child neglect has to figure somewhere in there. Certainly, an investigative series reporting on foster care removals by the state cannot sidestep the social ills with just a few throwaway lines and the dismissal of neglect as a reason. Pine Ridge may be even more interesting because it has its own tribal social workers.

The series falls into a well-meaning but old trap that academics and policy makers from our two major national political parties have been leaving behind. This is the trap of focusing so much on blaming the state or racism or structural reasons for problems shared by some group to the point that it infantilizes the group members, as if they were not adults and had no responsibility of their own. Many African-American leaders and scholars today, for example, rue their denial in earlier decades of the disintegration of the black family.

None of this is to say that racism or structural obstacles don't exist or are not significant factors. They are, and they need to be reported. But the single-minded framing of the series on cultural abuse by social workers and judges is limited and naïve. It is not in keeping with NPR's normally sophisticated analysis and exacting standards for an intelligent audience.

The story's brief mentions of neglect amounted to little more than throwaway lines. For example, Sullivan said: "Without question, some children in South Dakota need to be removed from their families." I disagree that this is enough. Delving in much greater detail into the social context is not another story, but should be an integral part of *this* story if it is to be complete, accurate and fair. As it was, those lines of minimal context were followed on-air with a "but" or a "still," as the first one did: "Still, federal law says that except in the rarest cases, Indian kids must be placed with relatives..."

Meanwhile, South Dakota listeners caught a weakness in the Yellow Robe narrative. Janice Howe's story is heart wrenching, but several doctors, lawyers and others from the state wrote to advise caution. They noted that the story should be confirmed with the court case files, and that those files and court proceedings were closed to the public under the state's right-to-privacy laws. (Some states in recent years have opened child removal cases to the public.) The strong impression given by the anecdote is that state social workers took the child willfully, with little good reason and no court hearing or order. There is no proof of that, however.

Sullivan, meanwhile, does say in the story that she has an unnamed source who saw the DSS file. The source said that the reports of drug abuse by the mother were based on rumors from a family enemy. I have no reason to doubt Sullivan's reporting on this, but

there was a surer route to confirm the truth: the investigative team should have asked the parents to sign off on releasing the official file. This would have given the anecdote authority.

This leads to a second fundamental weakness in the family account. The person making the accusations about how the children were taken, about the lack of prior notification and about the lack of information on their whereabouts is the grandmother, not the mother. Yet, it was the mother, not the grandmother, who dealt directly with the state as the children were taken and afterwards. Likewise, the state's responsibility was to inform the mother, not the grandmother. We don't know what communication there was between the state and the mother because we never hear from the mother, directly or indirectly.

Indeed, no mothers are interviewed in the entire series. All the family anecdotes involve interviews with grandmothers. This is not without value, given the extended nature of Native American families and the preference under the law for moving foster children into the homes of relatives. But when it comes to allegations concerning removals, it is parents, not grandparents, who are the first-hand source. Janice Howe's account may very well be true, but without the official documentation and without corroboration from the mother, it is, in the end, hearsay.

Of course we think it's legal or we wouldn't be doing it.

- Kim Malsam-Rysdon

There is, additionally, no response in the story from the state to her account. Sullivan on-air says, "social service officials say they can't talk about individual cases." Tony Venhuizen of the governor's office, however, insisted to me that "all court processes were followed" in the Yellow Robe case. This much, at least, should have been reported. To be able to respond with more detail, Venhuizen said, the state needed that signed release of confidential state records by the family. He added: "We welcome Ms. Howe (the grandmother) and the other individuals who spoke to Ms. Sullivan to waive the confidentiality of their records." Sullivan has not responded.

It is the Howe anecdote that also contributes to the unproven allegation that state social workers, in Sullivan's words, are merely "driving on to the reservation and taking a child." The obvious insinuation is that they are doing so regularly at will and without a court hearing or order. This insinuation caused Malsam-Rysdon to bristle in her interviews with me. "There are strict procedures that we have to follow and we don't take any child without a court order," she told me. Which is why, she said, she does tell Sullivan on-air, "Of course we think it's legal, or we wouldn't be doing it."

Without proof that state social workers do take Indian children at will, Sullivan's tone and backhanded statement — presented as a denial — is tendentious and unfair, at best. Sullivan's ensuing on-air statement adds to the damage. It is gratuitously irrelevant when she says that "two South Dakota judges, two lawyers and a dozen tribal advocates

told NPR a state official can't drive off with an Indian child from Crow Creek, any more than a Crow Creek official could drive off with a child from Rapid City." To my knowledge, no one in the state claims that it can do so.

Malsam-Rysdon summarized state policy in two bullet-points in an email as follows, adding her own italics and underlinings:

- [Child Protection Services] cannot remove children from a home without a court order. In an emergency situation, only law enforcement can remove the children. *In no case can CPS remove children without involvement from the courts or law enforcement.*
- In cases where the protected child is Native American, and living on a reservation, it is tribal law enforcement and tribal courts that are involved.

More on this last point is in Chapter 5 on placement. Alert readers might have noted the curious detail that it was an Indian tribal judge — not a state judge — that had the jurisdiction in the Yellow Robe case.

Finally, the story offers what at first glance might appear to be insider testimony about state abuse. It isn't, at least not really. This is how it transpires:

SULLIVAN: Sometimes, though, it's not just cultural differences. Jolene Abourezk worked for the department for seven years. She says taking kids was expected.

JOLENE ABOUREZK: It's just the norm here; that it happens so often, people don't question it - like, good, you are doing a good job for taking more kids in. It's just the way it's been, and it continues to be that way.

SULLIVAN: Now, she works for her tribe, the Oglala Sioux, and reviews every case to help get the kids back.

We as listeners reasonably assume that Abourezk recently worked for the state and that the "norm" she described was current. We are assuming wrongly. Abourezk left her state job in 2001, 10 years before the series aired, according to a press release from the governor's office. That is too long ago for her quotes to be of much use as the major source of "inside" information about state practices. That the series noted that she worked seven years for the state — giving her authority — without noting how dated were her views was a stacking of the deck.

In sum, from Sullivan's reporting I have no reason to doubt that transgressions by state social workers in removing Indian children from their families do happen. But there is nothing in the reporting to support the allegation and the whole *raison d'être* of the series that those transgressions are widespread or systematic. The series, moreover,

was unfair in cherry-picking facts to make the worst case possible. It failed to provide the crucial socio-economic, programmatic and statistical context that totally changes the complexion of the story and challenges its conclusions about a culturally-biased motive driving court-ordered removals.

Given the sparse facts on state abuse, a more intellectually honest and complete story would have indeed been exploratory, and less accusatory. It would have raised questions and tried to come to grips with how often transgressions take place. It also would have dealt head on with the many complex social, cultural, legal and national family policy reasons that contribute to why so many Indian children are taken from their families, as well as why so many move in with relatives under voluntary arrangements with and without state support. That richer, more nuanced story would have better served the suffering being endured by many Native American families today.

Meanwhile, there is a second motive that the series alleges is driving state-ordered removals. This one is even more provocative. It is money, the subject of the Chapter 3.

Chapter 3

Filthy Lucre

Allegation: A financial interest to reap federal aid drives the taking of Native American children from their families and placing them in foster care.

Follow the money. This is what investigations so often rightly do, and in the case of Indian foster care in South Dakota, the money is mostly federal aid. The allegation made by the NPR reporting team is that the state unnecessarily takes children from Indian families so as to collect federal funds. This uncovering of what amounts to evil state bureaucratic greed has never been reported before and, if true, provokes outrage.

The problem is that the allegation is unproven, and much of the language and storytelling used to make it are unfair.

The allegation is unproven and much of the language and storytelling is unfair.

Let's look at how the charge is presented. On a superficial level, the wording can be seen as technically correct. On air, however, and online it comes off more as a chimera of wordplay that, added to the direct statements by Sullivan about financial motive, paint an unmistakable picture of wrongdoing.

Sullivan introduces the theme [early in the piece this way on-air](#):

State officials say they're doing everything that they can to keep Native families together. But there's another powerful force at work: money.

The online set-up offers a little more detail, but no qualification or change in nuance:

State officials say they're doing everything they can to keep native families together. Poverty, crime and alcoholism are all real problems on South Dakota's reservations and in the state's poorest areas. But, state records show there's another powerful force at work — money. The federal government sends the state thousands of dollars for every child it takes.

When Sullivan later returns to develop the point in the radio version, she begins:

Most social workers care deeply about the children they work with, and few

would voluntarily take on more cases. But a close review of South Dakota’s budget shows there’s a financial incentive at work. Every time a state puts a child in foster care, the federal government sends money. Because South Dakota is poor, it sends lots of money — almost \$100 million a year.

The parallel online sentences add a comparison to other states that I have italicized:

A close review of South Dakota's budget shows there's a financial incentive for the department as a whole to remove more children. Every time a state puts a child in foster care, the federal government sends money. Because South Dakota is poor, *it receives even more money than other states* - almost a hundred million dollars a year.

“Money” — filthy lucre, judging by the tone — is thus a driver to “remove more children.” But the first hint of weakness in the argument is that added comparison to other states.

The claim that South Dakota “receives even more money than other states” is wrong. In FY2010, the year the story mostly deals with, South Dakota was 48th among the states in [Title IV-E funding](#), the central source of federal assistance for foster and related care and adoption for all children, including Indians, [according to the United States Government Accountability Office and the Department of Health and Human Services](#). The state was followed only by Delaware and Wyoming. One could technically argue that the two represent “other states,” but I have to believe that the reporters did not mean to be that disingenuous.

South Dakota also didn’t lead on a per capita basis. I didn’t find a per capita ranking of all 50 states, but in the table below, I did my own calculations and looked at six other states with similarly small populations but most with relatively large numbers of Indians. South Dakota received less federal money than North Dakota and Alaska, the two states it is most often compared with on Indian and other matters. I also looked at California, the largest state by total population and the one that received the most federal funds for foster care. South Dakota received roughly a quarter of what California did on a per capita basis.

3.1: Per Capital Comparison of Federal Title IV-E Funding Among Some States in FY10

	Total Population 2010	Title IV-E FY2010	Amount Per Capita
South Dakota	814,180	\$6,692,959	\$8.22
California	37,253,956	1,203,416,331	32.30
North Dakota	672,591	11,480,622	17.07
Delaware	897,934	4,048,197	4.51

Alaska	710,231	13,814,304	19.45
Vermont	625,741	10,541,014	16.85
Maine	1,328,361	18,072,134	13.60
Montana	989,415	12,264,446	12.40

Source: [2010 Census](#) and [March 2012 GAO report](#), "Foster Care Program: Improved Processes Needed to Estimate Improper Payments and Evaluate Related Corrective Actions."

Nor did South Dakota lead on federal funding per child in foster care. According to Kim Malsam-Rysdon, the head of South Dakota's Department of Social Services, South Dakota in 2010 received \$11,344 per child, less than half the national average of \$25,019. This is for a child of any race.

The comparative error by itself does not undermine the money thesis. What does is the almost empty case that follows.

Let's look at just the radio transcript. I do this in criticism as much as in convenience. The Web version should have differed substantially from the radio one, but didn't. We as listeners don't want a radio report to get bogged down in numbers and other details, but we do expect the Web version to be complete. The total lack of supporting documentation and data online was unacceptable.

Here, then, in full is the proof of the financial angle that was broadcast, beginning with the repeat of Sullivan's introduction of it:

SULLIVAN: Most social workers care deeply about the children they work with, and few would voluntarily take on more cases. But a close view of South Dakota's budget shows there's a financial incentive at work. Every time a state puts a child in foster care, the federal government sends money. Because South Dakota is poor, it sends lots of money - almost \$100 million a year.

BILL NAPOLI: When that money came down the pike, it was huge. That's when we saw real influx of kids being taken out of families. Families were being disrupted because the money was there.

SULLIVAN: Bill Napoli is a former state senator who served on the Appropriations Committee. He says there was little state lawmakers could do. This was federal money, and it went straight to Social Services.

NAPOLI: I'm sure that they were trying to answer a public perception of a problem and then slowly, it grew to the point that they had so much power that no one - no one - could question what they were doing. Is that a recipe for a bureaucracy that's totally out of control? I would say so.

SULLIVAN: Department officials Virgena Wieseler and Kim Malsam-Rysdon strongly disagree. They say money has never influenced their decisions to remove a child.

WIESELER: The state doesn't financially benefit from kids being in care.

MALSAM-RYSDON: Right, no.

WIESELER: The state is always paying some part of it.

SULLIVAN: But, in general, the more children that the department has, the more money they may be getting from the federal government.

WIESELER: It's still, you know, state general dollars that have to match all those federal dollars that come in.

MALSAM-RYSDON: Right, right.

SULLIVAN: Except it's not exactly a match. According to federal records, last year, the federal government reimbursed the state for almost three-quarters of its foster care expenses. Then there's the bonus money. States get money if they move kids out of foster care and into adoption, about \$4,000 a child. But if the child has special needs, they can get as much as \$12,000.

Well, a decade ago, South Dakota designated all Native American children special needs, so Native American children who are permanently removed from their homes are worth more financially to the state than other children. In 10 years, just this bonus program has brought South Dakota almost \$1 million.

MALSAM-RYSDON: The key to that funding, though, is that those dollars are to be used to support adoptive placements.

SULLIVAN: The department's Kim Malsam-Rysdon.

MALSAM-RYSDON: So the state does not gain monetarily from placing kids in adoption.

SULLIVAN: Or does it? That money, and almost \$100 million more, funnels into the state economy every year. The department employs 1,000 workers. It supports almost 700 foster families, who receive as much as \$9,000 a year for per child; 1,400 families who receive thousands in adoption subsidies; and dozens of independent group homes that get millions of dollars in contracts to take care of children. Just ask former Governor Bill Janklow, who ran the state in the 1990s.

How important was the money that was coming from the federal government to Social Services?

BILL JANKLOW: Incredibly important. Look, we're a poor state. We're not a high-income state. We're like North Dakota without oil. We're like Nebraska without Omaha and Lincoln. We don't have factories opening here, hiring people at high-wage jobs.

SULLIVAN: The federal government gave South Dakota at least \$15,000 for Janice Howe's grandchildren while they were in foster care. South Dakota spent more than half of that money on administrative costs, according to federal records. But even now, as the money filters in, the federal government asks few questions about whether states are complying with the Indian Child Welfare Act. In fact, a 2005 government audit found at least 32 states are failing, in one way or another, to abide by it.

GEORGE SHELDON: I think we've got to do better. And frankly, to the extent to which we can provide some leadership, I'd like to see us do that.

SULLIVAN: George Sheldon is the man in Washington sending the money. He just took over the federal Administration of Children and Families, and says he wants to make changes.

SHELDON: When you have a financing system that pays states based on the number of children in care, what's the incentive to keep kids out of care?

So, after stating the money motive at the beginning of the passage, Sullivan fleshed out the thesis, but in a backhanded, prejudicial way. "They say money has never influenced their decisions to remove a child," she reports, and then allows the two state officials to deny this on-air. But without proof behind the charge, raising it is akin to the infamous example of asking a male politician when he stopped beating his wife. The denial is reported, but a doubt is left and the damage done. Here, too, there is no proof. And here, too, the harm is done.

Looking for Proof

Seen close, Sullivan's case rests mostly on quotes by former state legislator Napoli, former governor Janklow and federal official Sheldon. Let's look at each.

First, Napoli:

His statements could be seen as the closest thing to an accusation by someone

authoritative. He says:

BILL NAPOLI: When that money came down the pike, it was huge. That's when we saw real influx of kids being taken out of families. Families were being disrupted because the money was there.

Napoli is referring to the 1990s, when the United States Congress passed two key bills. One established the Family Preservation and Family Support Services Program, which set up the Title IV-E funds for foster care. The other was the Adoption and Safe Families Act, which helps move foster children into adoption as soon as possible. The laws have to do with all Americans, not just Indians.

The two laws sought to respond nationally to the crack cocaine epidemic, the eruption of AIDS and a growing number of jailed mothers — all bad enough, but made even worse by an economic recession. Both laws provided increased assistance to keep families together. But in what has been a historical swinging of the policy pendulum between maintaining families and protecting children from abuse and neglect, the bills put the emphasis on the latter.

They were part of a trend reflected by an explosion in the number of children — of all races and ethnicities — being put into foster care. Between 1986 and 1995, their number shot up to nearly 500,000 from 280,000. This was a 76 percent increase, [according to a legislative history of the child welfare system by the scrupulously independent Pew Charitable Trusts](#). Said Pew's report: "When States protested the added costs of protecting children in unsafe homes, Congress reacted by creating federal foster care funding. In this way, the federal government ensured States would not be disadvantaged financially by protecting children."

3.2: Children Of All Races In South Dakota Foster Care, Not Including Group Centers And Psychiatric Residential Treatment, 1995 - 2012

State Fiscal Year	Children in South Dakota Foster Care/monthly average
1995	426
1996	457
1997	469
1998	520
1999	540
2000	644
2001	707
2002	795

2003	745
2004	780
2005	784
2006	672
2007	665
2008	814
2009	794
2010	778
2011	783
2012	741

Source: South Dakota's Department of Social Services

South Dakota was no exception. I could not easily get South Dakota foster care numbers back to 1986, but between 1995 and 2002, as the national rate continued to grow at a fast clip, the average monthly number in South Dakota of all children in foster care, grew to 795 from 426, according to state-provided numbers. This was a growth rate of 86 percent — not too unlike the national rate. After 2002, the number in South Dakota trended slightly downwards. In other words, the growth in foster care in South Dakota was part of a national trend, as was the growth in federal funding, which responded to a need across the country.

Napoli says as much in his next quote. "I'm sure that they were trying to answer a public perception of a problem," he says. His statement is unclear as to where he stands

**The sources have
bureaucratic beefs
but don't confirm the
money thesis.**

concerning the policy pendulum, but it is acknowledgement of the messy trade-off between protecting families and protecting children, which the series largely ignores. More importantly, nowhere does he say that the state Department of Social Services is doing anything illegal or immoral. Indeed, his most explicit beef is bureaucratic. He says federal funding to the

department "grew to the point that they had so much power that no one — no one — could question what they were doing. Is that a recipe for a bureaucracy that's totally out of control? I would say so."

Nothing here, however, is damning. The department may be bureaucratically powerful — "out of control," as legislators are often want to say about the executive branch — but this is a far cry from saying that it is putting children into foster care so that it can collect federal funds. He never makes that charge.

As might be expected, moreover, Malsam-Rysdon disagrees with Napoli's bureaucratic analysis. Malsam-Rysdon argued to me that her department does not have the power that Napoli claims, and that the state legislature has to approve the use of federal funds, not to mention approve and allocate the matching state funds. I don't know who is right, although I do have to believe that Malsam-Rysdon's department does not have

total discretion over its budget. Regardless, her rejoinder should at least have been heard by us.

The second offer of proof is the quotes by former Gov. Janklow. Sullivan asks him on-air: “How important was the money that was coming from the federal government to Social Services?” And he replies, “Incredibly important.”

The most he confirms is that federal money is important to a poor state like South Dakota. And?

Lastly, there is the interview with Sheldon, the then new head of the federal Administration for Children and Families, the agency that provides most of the federal funds:

“When you have a financing system that pays states based on the number of children in care, what's the incentive to keep kids out of care?” Sheldon asks on-air. It's an interesting question. Sheldon is saying that there are no financial incentives to re-think foster care in general. This is part of the pendulum conundrum: keeping families intact versus protecting the children. But his statement proves nothing when it comes to malfeasance. Sheldon doesn't even make an accusation.

Incentive? Or Loss?

But as in so much of the discussion over foster care, Sheldon does refer to “incentives,” and this, it turns out, is critical. Confusion over just what incentives mean is at the heart of how the series goes astray on the money angle. The federal and state governments speak of federal funding as an “incentive,” but the series miscommunicates the intended meaning. To the extent that federal funds help the state do its job, the money is indeed an incentive. But the same can be said of federal funds transferred to states for education, health care, police and myriad other state services aided by federal programs. By making it cheaper for states, the federal aid encourages the undertaking of these services.

But this is not like a common incentive in the private sector. There is neither a sliding scale nor a bonus for the state if it meets or passes certain targets. To the contrary, if the state rounds up more than some minimum number of children it gets nothing extra from the federal government. Indeed, there is no profit for the state at all. Seen in private industry terms, the more the state puts Native children into foster care, the more it loses, not gains. This “loss” is in the ever-greater amount that the state itself has to pay for a greater number of children.

To calculate the size of what the state pays, we have to look at federal reimbursement formulas. Sullivan reports in the segment above that the federal reimbursement is for

"about three-quarters" of South Dakota's foster care expenses, meaning that the state pays about a quarter.

Malsam-Rysdon, however, said that the state's contributions are significantly more, and she cited federal funding formulas and turned over budget summaries. In FY10, the year that is the focus of the story, she said the federal government contributed \$30.5 million toward total expenses of \$55.7 million for foster and related care for all children, not just Indians. Another \$850,000 came from minor "other" sources such as a children's trust fund, leaving the state's contribution of \$24.4 million, equal to nearly 44 percent. For FY11, she said that it was 42 percent. See chart 4.2 in Chapter 4.

**Think for a second:
\$100,000 a year for the
state is hardly worth selling
your soul for.**

Either of those percentages is a long way from the reported quarter. Malsam-Rysdon estimated that the proportional breakdown between federal and state contributions was roughly the same for Indian children. She insisted that there were no additional or hidden federal funds going through other departments. The reimbursement proportion is central to the financial charge, and yet the state's disagreement with the one quarter assertion was never reported. It should have been.

More fundamentally, what is certain is that whatever the proportion is, the state pays *something*, as even the series acknowledges. Says Wieseler on-air, "the state is always paying some part of it." And the more children that the state puts into foster care, the greater the total is. This hardly makes the federal funds much of an "incentive" for the state to want to remove more children from their families. If the state does so, the federal funds do not lessen what the state pays in absolute dollars, do not lessen what it pays in relative dollars per child, and do not create a profit for the state.

Some Native American advocates have seized on the NPR report and said that it proves at least that the state just somehow wants to bring extra money from outside into the economy and state coffers. But now the distance between crime and payoff is so great that the motive is even less credible. The state government and state taxpayers have to pay more by paying their share, no matter how you cut it.

To their credit, Sullivan and producer Amy Walters do air Wieseler, head of Child Protection Services, saying unequivocally, "The state doesn't financially benefit from kids being in care." Yet, Sullivan immediately dismisses the denial by returning to her loaded use of incentives and saying, "But, in general, the more children that the department has, the more money they may be getting from the federal government." This is technically true but totally misleading. The use of "may" as a hedging word is no defense here.

Also misleading is the investigation's use of the terms "match" and "bonus." But here the miscommunication is doubly unfair, because it is done with a tendentious tone. The

tone might be acceptable if there were proof to support it, but there isn't.

The illogic gets lost in the semantics of 'incentive', 'match' and 'bonus'.

After Malsam-Rysdon notes on-air, for example, that the state has to “match” the federal funds, Sullivan dismisses her statement by saying that it is “not exactly a match.” True, it is not a one-for-one match, as Sullivan appears to mean here. But in the lexicon of federal and charitable fund-giving, a “match” can be any percentage. The state never claims it is one-for-one, and I suspect that most federal-state matches aren't. The on-air dismissal is thus sarcastic rather than informative.

Similarly, the government refers to extra federal funding for special needs children as a “bonus.” As Sullivan reports above: “Well, a decade ago, South Dakota designated all Native American children special needs, so Native American children who are permanently removed from their homes are worth more financially to the state than other children. In 10 years, just this bonus program has brought South Dakota almost \$1 million.”

The tone is set by the opening, “Well,...” The word verbally raises a doubting eyebrow, a favorite set-up for television sit-coms. What follows, however, isn't comical. Indian children are described as “worth more financially to the state than other children.” This leaves little question as to the story's implication: The state considers these Native children as mere chattel for making money.

Without offering any supporting evidence, the characterization is egregiously unfair. Also unfair is the suggestion that the state somehow wrongly manipulated to achieve the special needs designation. The series wants to have it both ways, asserting in some parts that Native children do indeed have special needs for cultural reasons but then, in this part, casting aspersions on the validity of the designation.

Finally, there is this gratuitous swipe: “In 10 years, just this bonus program has brought South Dakota almost \$1 million,” Sullivan reports. Let's think for a second about what “just this” means. Almost \$1 million over 10 years is an average of \$100,000 a year. This is hardly much of a “bonus” worth selling your soul for in a state with a total budget in FY10 of about \$4 billion. And let's be clear: the \$100,000 goes to the state treasury, not any individual. According to Malsam-Rysdon, this small amount of money, under federal requirements, all goes to help services for adoption families such as support groups and mental health counseling. (This is separate from adoption subsidies, which go directly to the families.)

In sum, the special needs “bonus,” the federal “match” and the general foster care “incentive” are misrepresented in the story and do not constitute much of a financial motive for the state to take Native children from their families unnecessarily and put them into foster care.

There are no reported targets, quotas or orders to get more children and thus more money.

This is true whether you hear the motive allegation as one of seeking profit or of bureaucratic inertia. This latter is a sophisticated organization analysis based on the way bureaucracies in any organization — corporate, government or non-profit — tend to do whatever they can to justify their continued existence and budget. Or, more benignly, they just keep doing what they do, as if they were on auto-pilot.

In the case of the financial angle in the South Dakota series, this would mean that officials and social workers in the Department of Social Services act in ways that keep the federal money flowing, either intentionally or unintentionally.

The organizational analysis is not explicitly made in the series. It can be defensibly argued, however, that it is implicit in the script. No matter. We still come back to this more important point: *No proof is actually presented that the state is taking Native American children from their families as a way to collect federal funds, whether intentional or unintentional.* The reporters present no whistleblower, no documents, no smoking gun to back the financial allegation. The only way to get federal money is to take children, and nothing in the series shows that state officials set targets or quotas to maintain or increase the number of children taken, or issue orders just to round up a few more. The reporters came up with no specific bureaucratic practices to criticize. These specifics that would make the case were not even discussed.

Without any such proof, it is thus, to me, not enough to say that the series was merely raising and exploring questions about the role of federal aid. That may have been the intention of some of the journalists working on the series. The editors do acknowledge that, at the very least, the script could have been clearer about the semantic confusion created by the funding terminology. But what comes across in the final product is so loaded, and with enough specific statements about the money motive, that we as listeners are left with no doubt about the abuse of Indian children by the state. Or in this case: whether state social workers were so cruel as to forcibly take Indian children from their families as a way to collect money for the state, if only because the money was there.

Lacking proof and necessary context, the result is a report beneath NPR's standards.

Chapter 4

The Mystery Of A Missing \$100 Million

Allegation: South Dakota receives almost \$100 million a year in federal reimbursements for foster care of Native Americans.

A cartoon poster summoned Lakota Indians to the May summit on foster care. “South Dakota receives \$100 million each year from Washington D.C. for foster care,” declared the poster, and highlighted the amount in red.

“Shouldn’t this funding go to the tribes so that they can handle their own foster care needs?” It is a good question. A big red “Yes” followed.

The sought-after \$100 million cited in the poster comes from the NPR investigative series and shows how the size of the federal funding claim, stated on-air as fact by reporter Laura Sullivan, has taken on a life of its own. Yet, the number is almost certainly wrong. It may be an exaggeration by three to four times.

The number is important because it is for this money that state social workers are portrayed as making pacts with the devil. In a poor state like South Dakota, which gets nearly half of its operating funds from the federal government, \$100 million is a lot of money. But in addition to it being unproven that federal funds act as a motive for alleged state abuse in ripping Indian children from their families, as seen in Chapter 3, the dollar amount itself is based on mistaken calculations and misleading labeling.

It's really more like \$23 million for Indian children, using all the reporter's definitions.

To show how we are misled, let's go back to the beginning. The website headline on Part One refers to “[Native Foster Care](#).” Melissa Block introduces the series as being about “how one state places Indian children in foster care.” The framing and all the reporting on-air by lead reporter Laura Sullivan is about — or seems to be about — Native American children. To all of us in the audience, this is a story about Indians. Yet, the dollar amount is in fact for reimbursements related to children of all races and ethnicities. And it is not for just foster care, but for adoption and other related services, too. We are not told that these switches are being made in who and what the reimbursements are for, even though the changes inflate the total — in a big way.

The unannounced switches are made when reporter Laura Sullivan opens the finance section of her story by saying:

Sullivan: Every time a state puts a child in foster care, the federal government sends money. Because South Dakota is poor, it sends lots of money - almost \$100 million a year.

How are we supposed to know that when she refers to “a child” here, she means of any race or ethnicity? Or that “foster care” includes adoption and other services?

The hidden nature of the definitional transition can be seen even more graphically online in a prominent box summarizing the very findings of the series. Each of the first four findings speak specifically and only about Native American children. Then the fifth says (ungrammatically):

* A close review of South Dakota's budget shows that they receive almost \$100 million a year to subsidize its foster care program.

I — and I am sure most readers — took the reference to “its foster care program” to be referring only to Native American children, too, and only for what most of us think of as a foster child living with a foster family, or possibly also in a group center.

What is the fiscal size of the exaggeration? In fiscal year 2010, 43 percent of the children in foster care in South Dakota were not Native American, according to the state. As the reimbursements for Indian and other children are roughly equal, this switch in measures alone drops the supposed total coming into the state for Native children to \$57 million. No mean drop.

In FY10, meanwhile, there were 1,473 adopted children of all races receiving state and federal support, compared to a monthly average of 792 in standard foster care in foster homes according to the state. Among Indian children, 767 were in adoption and an average of 484 were in foster care. At any one given point in time, in other words, foster children are actually greatly outnumbered by adopted ones — almost by double.

4.1: State Breakdown of Child Placements, FY10 and FY11

	FY10 Actuals, All Children	FY10 Actuals, Native Only	FY11 Actuals, All Children	FY11 Actuals, Native Only
Adopted	1,473	767	1,550	946
Foster care, avg/mo	792	484	783	440
Group care, avg/mo	91	70	103	73
Psychiatric residential, avg/mo	196	102	196	107

Source: South Dakota Department of Social Services

The editors explained the broader definition this way:

In the story, we use foster care as an umbrella term that covers the treatment and care of children who are removed from their homes after allegations of abuse, neglect or assault. All children who are placed for adoption wait in foster care until the adoptive process is complete. Federal guidelines under the Adoption and Safe Families Act require states to move children into the adoptive process if they have been in foster care for the preceding 12 months. States can move earlier but few do. The majority of South Dakota children removed from their homes with little exception are placed first in emergency care or family foster care.

What the editors are saying here is that the story counts as foster funding is all federal money for the care of children put in emergency, family, group, treatment, guardianship and adoption arrangements. But I could not find such an “umbrella” definition of foster care in either popular usage or any dictionary. The [child welfare glossary of the federal Department of Health and Human Services](#), perhaps the most authoritative source, defines foster care as:

“A service for children who cannot live with their custodial parent(s) or guardian(s) for some period of time. Children in foster care may live with relatives, unrelated foster parents, or with families who plan to adopt them. Foster care is intended to be short-term, with the focus on returning children home as soon as possible or providing them with permanent families through adoption or guardianship. For purposes of Federal reporting and funding, the term also describes non-familial placement settings including group homes, residential care facilities, and supervised independent living.”

The government, dictionaries and most of us, I believe, do not consider adoption as foster care, for example. Only about halfway through the finance section of their story do Sullivan and Walters even mention adoption, and then they do so in offhand ways.

Adding white children and adoption pumps up the number without telling us.

It would be defensible for Sullivan, working with producer Amy Walters, to include children in all these categories in their reporting. Each of the categories is relevant to their theme of state abuse of Indian families. What is wrong is to be unclear in the labeling.

I didn't calculate how much the inclusion of adoption and other groups exaggerates the funding total, but surely the impact is large.

Then there is a third major disputable funding variable in the investigative team's

calculations. These are medical expenses. Of the “almost \$100 million,” Sullivan and Walters told me that \$37 million to \$70 million represents medical reimbursements, most of it through Medicaid.

This is an extraordinarily broad range for a number that is available from the state or the federal government. From the state side, Kim Malsam-Rysdon, secretary of the Department of Social Services, told me that Medicaid expenditures for Sullivan’s expanded group of children in foster, adoption and related care was less than \$13 million in FY10. The feds reimbursed roughly \$9 million of that, she said. This is far below Sullivan’s band of \$37 million to \$70 million. Non-Medicaid medical reimbursements are minor, Malsam-Rysdon said.

Because federal Medicaid reimbursements are not broken down by race or ethnicity, we don’t precisely know how much of this \$9 million reimbursement was for Indian children alone. But a fairly obvious estimate can be done. The funding that is related to Indians is roughly proportional to their number, according to Malsam-Rysdon. More Indian than white children receive special need funding, but this is a tiny amount of money, as we saw in the introductory section. Given that 57 percent of all children who were removed by the state from their families in FY10 were Native American, according to the state, this would mean that the amount of Medicaid related to Native American children was just over \$5 million.

We are now a long, long way from \$37 million to \$70 million in medical expenses. As an incentive to take Indian children from their families, moreover, the \$5 million is even less a temptation than this small sum might suggest. Only a part of it is actually incremental, or new, money, because many of these Indian children were already receiving Medicaid while living with their birth families. Sullivan told me that the state appears to use the federal reimbursements to cover hidden salaries and administrative costs. Malsam-Rysdon said that less than 5 percent of the Medicaid reimbursements are kept by DSS to cover such costs and that the rest goes to families.

So, then, what is the bottom line? How off might the \$100 million be?

The state has an answer. Using Sullivan’s own expanded definition of foster care and including Medicaid, Malsam-Rysdon said that federal reimbursements in FY10 were \$39.5 million for all children, of which \$22.5 million was for Native ones alone. Not counting Medicaid, she said that the totals were \$30.5 million for all children and roughly \$18 million for Native ones. With or without Medicaid, we now are in the neighborhood of a third for all children and a fifth for Native ones of the claimed almost \$100 million.

This is more than the \$10.6 million that the state originally claimed in its first public response after the NPR series aired. But that number was based on a limited definition of foster care and did not include Medicaid, Malsam-Rysdon said.

The following chart pulls together the state's current figures for federal reimbursements and the total number of children involved in the many different categories for FY10 and FY11.

4.2 State Breakdown of Federal Reimbursements for Foster and Related Care, Including Adoptions, FY10 and FY11

	FY10 All Children Actuals	FY10 Native Only 57% (est. based on aggregate weight)	FY11 All Children Actuals	FY11 Native Only 61% (est. based on aggregate weight)
FUNDING				
Total	\$55.7 million	\$31.7 million	\$56.4 million	\$34.4 million
Federal	\$30.5 million	\$17.4 million	\$31.5 million	\$19.2 million
State	\$24.4 million	\$13.9 million	\$24 million	\$14.6 million
Other	\$850,000	\$48,500	\$850,000	\$518,500
MEDICAID				
Total including Medicaid	\$67.7 million		\$69.6 million	
Medicaid Only	\$12.7 million (\$3.7m. state/\$9 m. federal)		\$13.2 million (\$4.0m. state/\$9.2 m. federal)	
Federal reimbursements including Medicaid	\$39.5 million	\$22.5 million	\$40.7 million	
State portion including Medicaid	\$28.1 million		\$28 million	

Source: South Dakota's Department of Social Services

Malsam-Rysdon said that the above calculations include all federal funds going to families, institutions and the state. The money helped cover expenses, she said, related to "foster care, group care, psychiatric residential treatment, subsidized guardianship, subsidized adoption, independent living services, parenting education, staffing, administration, family preservation services and tribal contracts." Again, she said that there was no extra hidden money.

NPR editors said the "almost \$100 million" funding number was informed by many

sources. Among them, they said, was an advocacy research non-profit for low-income families called [CLASP](#); a federal official from the Administration for Children and Families; the director of the [National Coalition for Child Protection Reform](#); former state lawmakers; former governor Bill Janklow; and several other unnamed sources.

These are iffy sources for hard numbers that should be officially and readily available.

These are all good people to approach for analysis, but the authoritative hard numbers should be readily available from official public sources. I do not have the capacity to audit the state's balance sheets. But the governor's office and the Department of Social Services would have to be telling such extraordinary lies with their numbers, which real auditors can easily disprove, that it seems unlikely that they are dissembling to the extent that Sullivan and Walters's numbers suggest.

NPR said the state declined repeated requests for follow-up interviews, did not answer detailed questions submitted by email, told its foster care contractors not to cooperate with NPR and did not offer any satisfactory explanations for federal reimbursements.

Malsam-Rysdon denies this. "Her claim that we wouldn't provide a clear breakdown of budget and expenses is an outright lie," she wrote me. "We answered all budget and other questions she asked, and our state's Bureau of Finance and Management provided all budget information she requested, and this is supported in e-mail. I've asked her to provide a specific list of questions she asked of DSS that she claims weren't answered."

I cannot judge who was at fault for the breakdown in communications between the NPR reporters and the state. The poisoned atmosphere was certainly damaging to all concerned. Still, the lack of a state response to the \$100 million number, if only to say what editors told me, was a regrettable omission, which editors acknowledge.

I have no reason to think that Sullivan and Walters intentionally sought to be misleading in their definitional switches. Poor writing and editing appear to me to be to blame for making the switches without ever saying so.

The end result was a poorly supported dollar number that appears to leave a greatly exaggerated image of how much federal money is going to actual foster care for Indian children in South Dakota — and thus, to magnify the supposed incentive the state has for removing Indian children from their homes. As the summit poster indicates, the series also misled Native Americans themselves.

Chapter 5

Who Is To Blame For Native Children In White Homes?

Allegation: Indian foster children are put in white homes at extraordinarily high rates, reflecting systematic cultural bias and violating the federal Indian Child Welfare Act.

“Kill the Indian in him and save the man,” said Capt. Richard Henry Pratt, the 19th century founder of the Carlisle Indian Industrial School. It was a prescription that became a model for Indian boarding schools that often coerced attendance and forced Indian children to change their language, dress and manners.

The schools thrived across the country well into the 20th century and reached their height in the 1960s, when the civil rights movement turned on them. Few of the schools are left today.

But the memory of what was effectively a cultural extermination campaign by some — not all — schools and officials remains strong, especially among Native Americans. It is this memory that surfaces in the NPR series about South Dakota today. [As host Melissa Block opens](#): “It's happening again. This time, it's foster care.”

Focusing on one culprit without proof denied listeners a needed look at a difficult issue.

This charge of culturally-driven abuse is tied especially to what happens to the children after they are taken by court order from their families. The overwhelming number — nine out of ten, reports Laura Sullivan — are put in non-Native homes. In South Dakota, this almost invariably means white ones.

The 1978 Indian Child Welfare Act (ICWA), sponsored by South Dakota's own then-senator, James Abourezk, was designed to prevent just that. The law, known as ICWA, calls for placing Indian foster children in the homes of relatives or tribal members as much as possible.

The reasons why the law's goals are not being met in South Dakota and most other states add up to a story that demands to be done. But not the way the NPR investigative team did it. They focused on only one alleged culprit — the state — but offered no proof to back the charge that the state was acting out of cultural bias or racism. A needed look at a difficult issue was failed by errors and crucial missing context.

Among the most serious omissions that make it look like all blame lies with the state are:

- Native American judges on reservations are themselves responsible for more than 40 percent of the placements;
- These tribal judges put Indian children into white foster homes at the same rate as state judges;
- Tribal and not state social workers manage almost all the cases on four of the state's nine reservations;
- The Indian children in white foster homes represent only a small proportion of the total number of Indian children who have left their parents;
- State and tribal judges do in fact place a roughly equal number of Indian children in Native homes as in white foster homes. However, many of those put in Native homes are not formally part of the foster care system even though the benefits and the purpose are the same.

Let's look at what, at first reading, seems to be a compelling presentation by the investigative team. After Block's opening summary and reference to the sad history, Sullivan [leads off with anecdotal interviews](#) with the series of grandmothers. She then gives eye-opening statistics that supposedly show that the abuse is widespread:

SULLIVAN: These families want their grandsons and granddaughters, nieces, nephews, their children. And federal law says they should have them. Poverty, crime and alcoholism are real problems in South Dakota's poorest areas. Still, federal law says that except in the rarest cases, Indian kids must be placed with relatives, tribal members or at the very least, other Native Americans. But in South Dakota, that's not happening.

An NPR investigation has found that every year, the state is removing roughly 700 Indian children, some in questionable circumstances. At the same time, they have largely failed to place them with family or their tribes. In South Dakota, nine out of 10 Native kids in foster care are in non-Native homes or group care, according to state records.

This "nine out of 10" statistic is backed by a supporting interview with a tribal leader:

LENGKEEK: It enrages me. Cousins are disappearing, and family members are disappearing. We're very tight-knit families here. This breaks my heart.

SULLIVAN: Peter Lengkeek is a Crow Creek tribal council member. This tribe has lost more than 33 children in recent years, an astounding number for a reservation which only has 1,400 people. Every one was placed in a white foster home.

Sullivan returns to the unifying narrative arc of grandmother Janice Howe and the moving story of her Yellow Robe family:

SULLIVAN: Some tribes have agreements with the state; Crow Creek doesn't. But the state has never been challenged in court about this. So Janice Howe was stuck in a strange but common legal limbo.

Howe lives on a reservation; state courts don't apply to her. But especially on poor reservations, tribal courts can be overrun, underfunded, operated part-time by a revolving door of judges who rubber-stamp social service requests. Howe didn't know how to get a hearing. She didn't know any judges or lawyers. She certainly couldn't afford one. And Social Services told her they couldn't tell her anything.

HOWE: I have written letters to Virgena Wieseler, asking questions. I wrote letters to the governor.

SULLIVAN: How did the Department of Social Services respond to this?

HOWE: They didn't.

The Howe story then serves to further the placement abuse thesis by introducing the local representative from the federal Bureau of Indian Affairs responsible for monitoring ICWA:

VALANDRA: The state does have Native American foster homes. So yeah, it's working.

SULLIVAN: But state records show only 13 percent of Native kids in foster care are placed in Native homes. In fact, Valandra admits that not one of the children in his almost three-dozen cases is placed with a Native American family. So I asked him...

Do you feel like maybe these children have been let down a little bit?

VALANDRA: Of my cases, I think they're all, right now - how do I want to - the placement of the children right now are - are - boy, that's...

SULLIVAN: With Valandra, a dead end, Janice Howe asked to have the kids moved to a Native home. She wanted them to go to sweats and sundance, but nothing changed. Social Services' Virgena Wieseler says they would like all Native kids to be in Native homes, but they've only got a few and they don't have room.

WIESELER: And we're always trying to recruit them because we need more. We are constantly recruiting in all of our offices, for all kinds of foster families.

Now comes an anecdote disavowing what Wieseler says and showing what appears to be the state's bias against Native Americans, aka racism, by technical definition:

SULLIVAN: That comes as a surprise to Marcella Dion. She's Native, and she's a licensed foster-care provider. She has lots of room.

MARCELLA DION: I was like, whoa, what's going on? I got my ICWA license, no kids.

SULLIVAN: Dion's home has been empty for six years. Then there's Suzie Crow, also from Crow Creek.

SUZANNE CROW: I've been a foster parent here over a year. They've never called me for a kid.

SULLIVAN: In that year, more than 600 Native children in South Dakota were placed in white foster homes. The Pine Ridge Reservation says they've got 20 empty homes. A few months ago, Suzie Crow asked a social worker why she hadn't gotten any kids.

CROW: He said, well, there's a long process, this and that. I said, no. I said, the long process is there's no road from you to Indian people. That's the long process.

Sullivan returns to the powerful Howe narrative:

SULLIVAN: The long process for Janice Howe and her daughter was waiting months just to see the kids. She missed braiding their long hair. They follow tradition that you don't cut hair unless there's a death in the family. When they were finally granted a visit in January of 2009...

HOWE: I started crying. Their hair was cut to their shoulders.

SULLIVAN: The girls looked so thin. They begged Howe and their mother to take them home.

HOWE: I didn't want to cry in front of them because I knew that they were already upset. I just said: You know what? Pray hard, OK? Pray. Look outside because I'm looking at the same sky. OK? OK, Grandma, they said. And they left.....

SULLIVAN: It had been a year and a half, and Janice Howe's grandchildren were still in foster care. Howe made one, last desperate move. She went to her tribe's council meeting. She told the whole story - how they came one day and took the kids, how her daughter had never been charged with anything, how a social worker had told her they were now putting them up for adoption.

Many on the council nodded with familiarity, and then they did something they had never done before. They passed a resolution warning the state that if it did not return the Yellow Robe children, it would be charged with kidnapping and prosecuted.

Nobody really thought it would work. But a few weeks later, a car pulled up with Rashauna, Antoinette and the two twins - no longer babies, but 2-and-a-half-year-olds.

To open [Part Two of the series](#), host Michele Norris adds to the overall allegation:

There's a federal law that says Native American children who are removed from their homes should be placed with their relatives or tribes. The idea is to stay close to their culture. But this week, an NPR News investigation finds that in South Dakota's foster care system, that's not happening. Hundreds of Native children are placed instead in private group homes. The homes get paid millions of dollars to care for the kids.

Part Two ends evocatively, bringing back the historical memories and making sweeping claims on behalf of a child:

SULLIVAN: On Children's Home's campus, kids walk through the hallways to get to their next class. This place has won many state accolades for its work with these kids. But none of that means much to Suzy Crow or her granddaughter, Brianna.

SUZY CROW: She was over there most of three years.

SULLIVAN: Suzy Crow was taken from her family and forced into boarding school - like thousands of other Native American children over the past

century.

CROW: Every night, me and my sister would meet at her bed and would say, let's run away tomorrow - just to comfort ourselves that we're still there. This foster system reminds me of that.

SULLIVAN: Crow didn't want Brianna to grow up like she did, not knowing who she was or where she belonged. It took a court order for the state to finally send Brianna home.

CROW: I didn't care what it took. I battled with them.

SULLIVAN: State records show South Dakota paid Children's Home almost \$50,000 over three years, to care for Brianna. And all across the state, grandmothers, aunts and uncles, family and tribal members would have cared for Brianna - and hundreds of other Native American children like her - for free; close to their tribes and culture, like federal law intended.

Laura Sullivan, NPR News.

And in [Part Three](#), Sullivan expands on the central theme that the ICWA law is not being observed:

SULLIVAN: The Indian Child Welfare Act says that except in the rarest cases, native children who have to be removed from their homes must be placed with relatives, their tribes, or other Native Americans. Yet 32 states are failing in some way, to abide by this law, according to a 2005 government audit.

And so the series lays out its case incriminating the state for culturally-driven abuse in the placement of Indian foster children. Says the Web headline flatly: "[Incentives and Cultural Bias Fuel Foster System](#)." The storytelling is virtuoso.

If only it would have been less certain and more exploratory.

To be sure, the state has some responsibility for not putting Indian children in more Native foster homes. I am not willing to put my hand in fire and say that no bias is at work. I do not know. But what I do know is that the proof offered by the series for the motive doesn't hold up upon inspection.

Let's flush out how the series makes two basic factual errors and lacks fundamentally crucial context in three areas.

Error #1: The licensing of Suzanne Crow and Marcela Dion

Interviewing grandmother Marcella Dion, Sullivan on-air called her a “licensed foster care provider” whose foster home “has been empty for six years.” Sullivan also interviewed another grandmother, Suzanne Crow, who was allowed to say on-air that she, too, had been licensed a year earlier and had yet to be assigned a child. Sullivan further reported that the tribe of the two women, the Crow Creek Sioux, claimed to have 20 empty foster homes. All this is offered as examples of how the state disregards tribal homes in favor of white or non-Native homes.

What Sullivan did not report was that the two women and the other members of the Crow Creek tribe did not have the *correct* licenses to receive foster children.

The women had tribal licenses, which are sufficient only if the tribe has signed an agreement with the state. This is a federal requirement — not a devious state one. The

Tell Me More captured the trade-offs surrounding the grandmother in a way the series missed.

Crow Creek Sioux had a licensing agreement from 1995 to June 2009, but the tribe chose not to renew the agreement in 2010 and 2011 precisely in order to limit state authority on the reservation. Indeed, the grandmother whose story is the narrative backbone of Part One, Janice Howe, also lives on the Crow Creek

reservation and Sullivan reports on-air in reference to her: “Some tribes have agreements with the state; Crow Creek doesn't.” Then, however, she adds: “But the state has never been challenged in court about this.”

Whether the state has been challenged or not in court is so pregnant with implications that to drop that bomb without any further explanation is wrong to do. Why hasn't the state been challenged, for example? Is the reporter suggesting that some conspiracy is afoot? Is there really a valid legal case? Says who? The reporter?

The licensing issue is no trivial, bureaucratic matter. Imagine the public furor if something bad happened to a foster child and it was discovered that social workers knew the foster parent was improperly licensed.

Legal niceties aside, a [separate interview](#) with Suzanne Crow by Michel Martin on *Tell Me More* (aired on the same day as Part One of the series) is instructive on the fundamental nuances that the investigative series missed. Martin makes reference to a second appearance by Crow in the investigative series. The appearance is in Part Two and is about Crow's own grandchild, who was in a group home. As you read Martin's interview, imagine that you are a judge or a social worker and have to decide whether to assign foster children to Crow. The excerpt starts with Martin referring to Crow's grandchildren:

MARTIN: They're a boy and a girl. They're both under 18. Now as I understand it,

they didn't come back to either your daughter Lena or to you.

CROW: No. My daughter, they took her parental rights away first, and then I filed a petition for adoption. And when it came time to decide about the adoption, their stepdad filed a petition for adoption, too.

MARTIN: Are they with him now?

CROW: Yeah, they're with him. He's married to a non-Indian woman, and I think she had a big part in the decision.

MARTIN: Well, as we mentioned, and according to this NPR News investigation, the story of your losing your grandchildren is not unique. I wanted to ask, in your circle of friends, neighbors, acquaintances, how common is it to have an experience of children being taken away?

CROW: It's real common. It's almost the same as back in the day when they took all the Indian kids and put us all in boarding school.

MARTIN: What was the reason why your grandchildren were taken away from your daughter?

CROW: She said she left them with her cousin and she was supposed to move out of her house that day, so she went to get a van and she didn't come back for a long time and that her cousin just walked away from the kids.

MARTIN: Well, I think you would agree that was a dangerous situation, wouldn't you?

CROW: Yes.

MARTIN: So what do you think should have happened in that case?

CROW: Well, what should have happened is somebody - I think there was two college students that lived in the duplex with her and they supposedly called the police. And I lived across the street. But at the time, I was on the reservation doing some business. So, my grandkids told the police our grandma lives over there if you could wait for her. But by the time I got the phone call, they'd already been there about two hours.

But when I got there, I went to the police. I went to the - they call it the children's inn to tell them I'm their grandmother, I'm home, I can take them, but nobody would give them to me.

MARTIN: Now, the state of South Dakota makes the argument that it has the responsibility to make sure children are obviously safe. I'm sure you would agree with that. And as we understand it, just from NPR's reporting in this case, there was the allegation that the children had been left outside unattended for some time. There was a concern that your daughter was also abusing alcohol. But it is your view that you, as the grandparent, and you were capable of taking them, that you should have been the first choice?

CROW: Yes.

MARTIN: There are those who would listen to our conversation and would say, and forgive me, I'm not judging you and I'm not judging your daughter, but there are those who would say if your daughter did have an alcohol problem and if she did leave the children unattended and if she did leave them with people who were no longer willing to care for them, what should the state have done? Your response would be?

CROW: If my daughter wasn't capable, then they should have handed them over to me instead of dragging them through all that torment before I could get them. And another thing that I don't agree with is the state of South Dakota, they're thinking about putting Indian kids where it's safe is not the same as mine.

MARTIN: Could you talk more about that?

CROW: Well, I don't think that, like, when they came to inspect my home before when I - after I filed the petition for adoption, I did everything. I went to foster parenting classes. They did that background check on me. They came and checked my home and everything was good. But in the beginning when they say that they want the Native American kids to be safe, that's not necessarily what they really mean. That's just an excuse to keep them longer in the system.

The excruciating difficulties and trade-offs of the entire foster care issue come out in the Martin interview in a way that never happens in the investigative series. Navigating among what is best for the child, the family and tribal culture is treacherous. In this particular case, Crow may very well have been a good adoptive parent for her grandchildren, or could have become a good foster parent for other Indian children. We all have made mistakes in our pasts. That she went so far as to take the classes would seem to speak well for her. I do not know — and cannot know because individual case

files are not public — whether the state considers her worthy to be a foster parent now, or why the judge decided to give adoption to the stepfather instead of to her. There may have been other information that did not come out in the interview. But what is clear from a journalistic perspective is that Crow’s experience is not a clear-cut example of state abuse. If she is to be used, then all the compromising details about her have to be reported, too.

Error #2: The number of Crow Creek children put in white foster homes

The Crow Creek tribal leader interviewed on-air is Peter Lengkeek, but it is Sullivan herself who reports that of the 33 tribal children taken from their families over recent years, “everyone was placed in a white foster home.”

This is wrong. The state disputed the claim, and Lengkeek himself told ombudsman researcher Lori Grisham that the state is correct. Lengkeek said that in his interview with Sullivan, he was not referring to the tribe but to a particular family, the Yellow Robes. This is the family of grandmother Janice Howe. A mistake like this can happen, though Sullivan, who was informed months ago by me of the mistake, has yet to correct it.

According to both Lengkeek and the state, the correct statistic is that 15 of the 33 children taken from the Crow Creek tribe were placed in Native care. From the point of view of wanting to put Native children in Native homes, this is in fact a much better ratio than the overall one for the state.

It is relevant, meanwhile, to look at the breakdown by Lengkeek and the state of where the Crow Creek children go. I do not know if the tribe is an exception among the state’s nine tribes, but Crow Creek’s central role in the series is underlined by how it is the source of most of the anecdotes supporting the allegations of state abuse. The breakdown paints a far more diverse picture of where the tribe’s children are actually placed than the one we are given by the series.

As you can see in Chart 5.1, the diversity in the placements suggests, moreover, that some criterion is being used by the state in putting different children into different foster arrangements. It might even mean that social workers try to find the right match for a child taken from his family. Such care would not be unusual for people who go into their line of work because of a calling to help people in need, particularly children. This, in fact, is what Malsam-Rysdon claims. She said that social workers are trained to proceed up a “decision tree” of options that begins with looking for family members and then balances the perceived needs of the child with the available alternatives. Certainly, an investigative series on placement abuse by state social workers that does not even mention what their placement criteria might be is derelict. Here is the Crow Creek breakdown:

5.1: Court-Ordered Placement of Crow Creek Sioux Children Living in Foster and Related Care as of February 2011

Assigned by Tribal Court out of the Chamberlain Office	29
Trial Family Reunification	1
Relative Placement	8
Foster Care with Relative	3
Foster Care off the Reservation, Non-Native Homes	6
Foster Care off the Reservation, Native Homes	2
Boarding School	3
Group Care Center	1
Residential Treatment Center	5
Assigned by State Court out of the Chamberlain Office	4
Relative Placement	1
Foster Care off the Reservation	3
Total Children Assigned	33

Source: Governor's Office of South Dakota

Note, too, that 29 of the 33 children were removed from their families and sent elsewhere by the Crow Creek tribe's own Crow Creek judges in a Crow Creek court — and not by state courts. This takes us to the first piece of critically missing context.

Missing context #1: The placement rulings made by the tribes' own courts

The state readily agrees that the overwhelming number of Indian foster children end up in white homes. The placement statistics for South Dakota and other states are well known among foster care and Native American workers, advocates, officials, scholars — and, of course, among Native Americans themselves.

The state, however, did contend in its first protests after the series aired that it was a minor exaggeration to say that “nine out of ten” Native children were put in white homes. Kim Malsam-Rysdon, head of the Department of Social Services (DSS), told me that the proportion was 83 percent, which rounds down to eight out of ten. But what I learned after querying both sides is that each is right on this detail.

The state is citing the FY12 proportion, while the series was rounding up from 87 percent in FY10. Citing an FY10 number is consistent with most statistics used in the series. The misunderstanding, however, reflects another of the shortcomings in the

series. We in the audience are not given a year for almost any number in the entire report. This is perhaps understandable on-air; it is not online. The confusion was avoidable. Ideally, to add authority, a chart on this central statistic could have been presented in the Web version that shows the fluctuating placement share over time.

Still, whether the proportion of Indian children placed in white homes is 83 percent or 87 percent is of marginal importance: each number is extraordinarily high. The real problem is that neither number supports the prima facie case of state cultural bias that the statistic suggests and the series alleges.

The white placement numbers are pumped up by lumping decisions by tribal courts with those of state courts. This is a violation of NPR’s standards on fairness and accuracy. Tribal courts are largely sovereign and are not “the state.” The actions of tribal courts, moreover, offer valuable context for just what the placement numbers mean and whether they support the broad argument of cultural bias.

Each of the nine tribes in South Dakota has its own tribal court. I asked Malsam-Rysdon for a breakdown of the decisions by them and state courts. On December 31, 2011 (shortly after the series aired), fully 41 percent of the foster and related Native cases were being overseen by tribal courts, she reported back. This alone significantly reduces the number of children that the series says “the state” puts in white-run homes and institutions. According to Malsam-Rysdon, only about half of the foster and related care cases of Native American children — 54 percent — were cases being overseen at that time by South Dakota state courts and were subject to ICWA. Another four percent were in state courts but not subject, usually because the children were not eligible for tribal membership, as defined by the tribes, she said. While these figures were for the end of 2011, Malsam-Rysdon said that a similar pattern prevailed when NPR's reporting was done earlier in that year. Here is her breakdown:

5.2: State and Tribal Court Cases Subject to ICWA Cases, December 31, 2011

	Children in Placement	Percent of Total
Tribal Court Non-ICWA	351	41.20%
State Court ICWA	464	54.46%
State Court Non-ICWA	37	4.34%
Total Children in Placement	852	

Source: South Dakota Department of Social Services

Additionally — and this is critical to the validity of the series — the tribal courts place Indian children in white foster families or group centers at similar or even higher rates than state courts. On June 30, 2011, for example, the tribal court rate was slightly higher, as shown in this DSS chart provided at my request:

5.3: State and Tribal Court Placement of Native American Children in Indian and White Foster Homes, June 30, 2011

State Total		
Race of Foster Parents	Number of Native American Children	Percent of Children Placed
Native American	78	17.18%
White	370	81.50%
Other	6	1.32%
State Court		
Race of Foster Parents	Number of Native American Children	Percent of Children Placed
Native American	45	17.31%
White	209	80.38%
Other	6	2.30%
Tribal Court		
Race of Foster Parents	Number of Native American Children	Percent of Children Placed
American Indian	33	17.01%
White	161	82.99%
Other	0	0%

Source: South Dakota Department of Social Services

The tribes' own courts, in other words, find it necessary or desirable to put their own children into white foster families and institutions at the same jaw-dropping rates as cited by NPR. Why? An investigation of Native American foster care clearly has to address this question. The series doesn't reveal the record of tribal courts, and so it fails to ask the question.

The tribal courts also are much slower than state courts in reunifying foster children with their original Indian families. Reunification — or, alternatively, adoption — is the third important piece in the foster process, after removal and placement. Malsam-Rysdon gave me the following data on reunification by state and tribal courts:

5.4: Reunification by State and Tribal Courts of Indian Children with their Families, 2011

		Children Reunified	Average Months to Reunification
State Court		682	4.24
	American Indian	281	3.35

Tribal Court		177	10.40
	Cheyenne River	57	9.02
	Crow Creek	11	9.11
	Flandreau-Santee	0	0.00
	Lower Brule	3	14.51
	Oglala	7	19.42
	Rosebud	61	6.81
	Sisseton Wahpeton Dakota	23	19.37
	Standing Rock	9	11.44
	Yankton	6	13.74

Source: South Dakota Department of Social Services

Does this mean that state judges and social workers are more sensitive to keeping Indian families intact than are Native American judges from the tribes themselves? I don't know. Malsam-Rysdon said that one reason for the reunification difference is that state courts have greater resources through the state Department of Social Services to work with families and their children. Four of the nine tribes use their own social workers. All this seems to say something positive about state courts and the DSS — about “the state,” in other words — and it doesn't easily square with the idea of racial exploitation, cultural bias or similar abuse. Leaving out this side of the story — leaving out the comparative insights on placement and reunification — is a serious shortcoming that leaves a heavily one-sided result in the series.

Indeed, the central, heart-wrenching case of Janet Howe and her four grandchildren was under the jurisdiction of a tribal judge. Yet, little is made of this even though the Howe case is the unifying narrative in making the many allegations about abuses by the state. Sullivan notes on-air that “state courts don't apply to Howe” but calls this a “strange but common limbo,” without any explanation.

I am not sure what legal limbo she is referring to. There is no limbo related to the jurisdiction of the tribal court here. That Howe didn't know how to get a hearing, as Sullivan reports, may be true and is worth reporting. She also reports that Howe gets an infuriating bureaucratic run-around from state and federal officials. This, too, rings true. In the end, Sullivan reports that Howe complains to the tribal council, which passes a resolution “warning the state that if it did not return the Yellow Robe children, it would be charged with kidnapping and prosecuted.”

'Rubber stamp' is wrong on its surface on four reservations and lacks proof for the other five.

But all this ignores the central fact that final jurisdiction in the case lies not with the state Department of Social Services but with the Crow Creek's own judges. Sullivan does not report whether the tribal council complained to the tribal court in the Howe case. Political and cultural ideological divisions are common on many reservations, including

between tribal judges and councils. But I have no idea if that is the case here. As a member of the audience, I would have liked to have known, however, and the story should have told us.

Sullivan declined to answer questions about the tribal judges. She says in the lone on-air reference to them, in relation to Howe, that they “rubber-stamp” DSS service requests. This would seem to dismiss them as being manipulated. Yet, the four reservations with their own social workers have little or no involvement with DSS, so little or no manipulation is possible. In two of these four, the Oglala Sioux and Sisseton Wahpeton Oyate, the agreements between the tribes and the state are such that DSS does not get involved in child cases there at all. The Oglala Sioux reservation is Pine Ridge and is the state's largest. On the Standing Rock Sioux and Flandreau Santee Sioux reservations, DSS only gets involved in child neglect or foster care cases if called in first by the tribe, which Malsam-Rysdon said happens only in rare special cases.

The tribal courts and social workers on these four reservations put children in white homes off the reservation, just as the state courts do. Tribal social workers do appear to be less likely to take children from their families in the first place, according to Native American advocates. But that is another matter. It, too, also should have been explored but wasn't, as discussed in Chapter 2.

Additionally, the series offered no proof for the extent that tribal judges might be pliable on the other five reservations. Among these is Crow Creek. Some Native American advocates say that the manipulation takes place when state social workers tell a tribal judge that the child will lose federal/state funding support (called Title IV-E) if he or she is not put into a state-licensed foster home. But this is the same federal requirement that I mention above; it hardly seems to qualify as manipulation by the state. Some advocates say as well that required training lasts three to six months, a major barrier. Malsam-Rysdon told me that that the training takes 30 hours and is most often completed in a 10 week course. She said that it is done in less time for relatives taking in a foster child. Critically, the training is a federal requirement, not a state one, she said.

I have no doubt that tribal judges mostly follow the recommendation from DSS or tribal social workers. Malsam-Rysdon also notes that some of the tribal courts are more active and better staffed than others. But as an example of assertiveness by at least some tribal judges, many of them actively seek to take over the cases of their tribal members who live off the reservation, too. ICWA gives the tribal judges this power.

The law further requires the state to inform the tribal courts of all cases involving its members, precisely so that the tribal judges can step in. In FY11, as an example, the

cases for 235 Native-American children that had originated in state courts were transferred to tribal courts at the request of the latter, Malsam-Rysdon said. The tribal courts, in other words, do indeed have considerable power and some of them exercise it, taking cases away from the state courts. But again, none of this is reported in the series.

Tribal judges, moreover, as well as the tribal police who work alongside the social workers in recommending and carrying out removals, personally know many of the families on the reservations and their circumstances. This is according to many accounts and to my own limited experience reporting a story years ago on a reservation in Maine. According to [South Dakota's Department of Tribal Relations](#), the largest South Dakota tribe by population, Oglala Sioux, has 38,000 people. The smallest, Flandreau, has just 726. Almost all the families in each tribe go back many generations and are intertwined.

At the same time, the political infighting on many reservations that sometimes pits tribal courts versus tribal councils results in a high turnover of judges on some reservations. I will return to this issue of the role of tribal politics and competing cultural ideologies in Chapter 6.

I do not pretend to be an expert on tribal courts in South Dakota. But the foregoing shows that it was highly misleading to lump the decisions of these courts in with those of the state. Lost, as a result, were crucial insights on state cultural bias. The “nine of out ten” number, it turns out, is a poor indicator and highly misleading.

The investigation, in other words, should have wrestled with the critical role of the tribal courts, the comparison between them and state courts, the pressures on them within the tribes, the relationship between them and the state Department of Social Services and the differences among the reservations. The series did almost none of this. More generally, it also did not mention the federally required training and licensing for family and tribal members.

Missing context #2: Looking at more than just foster care, state and tribal courts place Indian children in Native homes as much as white ones, while the state helps support many more Indian children living with kin receiving welfare aid

This piece of crucially missing context steps back from focusing on foster children alone to include a larger child custody universe in which the aims of protecting Indian culture and families is in fact accomplished—and with state aid.

In FY10, the year measured in the series, and for the two fiscal years since then, a monthly average of some 4,000 Indian children were no longer living with either of their parents but with kin receiving financial support under TANF. This is the federal government's main family welfare program, but is administered by the state. See Charts

5.5 and 5.6. Still more Indian children live with relatives whose income is above eligibility levels, but we don't have a measure for them. The 4,000 alone is a large number in a state in which the 18-and-under population was 32,000 and the total Native population was just 79,000 in the [2010 census](#).

As almost all the children with kin have moved out of nuclear families that likely are in crisis for one reason or another, it seems safe to say that many Native American families in South Dakota are under great stress, as discussed in Chapter 2.

Of these nearly 4,000 children, meanwhile, a monthly average of some 300 were under state or tribal court custody. This means that they were placed in the homes of their relatives under a court order in consultation with DSS or tribal social workers. The social workers monitor, support and have legal responsibility for the extended family arrangements. These aren't purely voluntary arrangements, as the rest of the nearly 4,000 are.

5.5 Native and Non-Native Children in Kinship Families Receiving TANF Support, Under and Not Under State and Tribal Court Custody, FY10 and FY11

	FY10 – All Children	FY10 – 72% Native Children	FY11 – All Children	FY11 – 70% Native Children
TANF funding, no court custody	\$8.3 million	\$5.98 million	\$8.3 million	\$5.81 million
Avg. monthly number of children, no court custody	5,050	3,636	5,182	3,628
TANF funding for children, under court custody	\$1.59 million	\$1.14 million	\$1.62 million	\$1.13 million
Avg. monthly number of children, under court custody	425	306	433	303
Total monthly average of children	5,475	3,942	5,615	3,931

Source: South Dakota Department of Social Services

These 300 or so children are not formally in foster care, though for the purposes of investigating systematic state bias, they should be considered as if they were. These children are as equally under the custody of the courts and social workers as foster

children are. The TANF relatives do not receive Title IV-E foster care stipends from DSS, but the TANF funding, which also comes through DSS, is virtually identical in amount for the first child taken in. Just like a foster family, the TANF families usually become eligible for the aid precisely because they are adding a child. The TANF support drops significantly for additional children, which is why, according to Malsam-Rysdon, DSS often recommends the TANF formula for individual children and foster care for sibling groups. Foster care aid grows constantly per child. A final reason to include the TANF relatives is that they are a privileged alternative. They need no license and undergo no training, as foster parents do.

The financial support levels and the requirements for both TANF and Title IV-E are set by the federal government, not by DSS. Eligibility under the two programs is part of the “decision tree” that social workers and the courts go through in deciding where to place a child, according to Malsam-Rysdon. Other factors include the availability of a kinship family, psychiatric needs or whether a child is particularly unruly, she said. Regimented group centers are often prescribed for the latter. I do not know if this so-called tree is just a sham, but most state and tribal judges surely are versed in the alternatives, too.

Sullivan declined to answer my questions as to why the decision-making process was not part of the story. Leaving it out was a double shame because it would seem that

Unreported was that the state puts Native children in Native homes under another program.

there are genuine potential issues in the weighing of alternatives to explore. Perhaps on a reservation, the TANF income that comes with one child is enough to take in siblings too. Or perhaps what social workers see as a child’s socialization or psychiatric needs are

growing pains or resentments that can be better resolved in the cultural cocoon of a tribe or extended family. But the pros and cons of these and other such specific case criteria—the real nitty gritty of social work and the whole foster care issue—are unmentioned or obliquely glossed over in the NPR series.

Just as we are deprived of the insights that tribal judges offer, we also are deprived of the ones that looking at tribal social workers might offer. Roughly 60 percent of the TANF family cases under court custody were handled by tribal social workers, and 40 percent by DSS ones, according to Malsam-Rysdon. The tribal workers are on four of the nine reservations. They operate under agreements with the state, so they, too, are part of the state’s foster care “system,” however judged. Still, I suspect that breaking them out would add critical nuance. It would be valuable to analyze, for example, how their recommendations to the courts on matters of neglect, income, socialization and psychiatric needs might differ from that of state social workers, and what the comparative outcomes of those recommendations over time might be.

What the series gave us instead were interviews with several grandmothers. Their statements carry weight, but unexplored are limited and one-sided. How are we—Native Americans and all Americans—to judge if these grandmothers are wise or

uninformed? How are we to know if they are well-meaning but in the end do more harm than good for a child? And even if we all come to an agreement on what constitutes harm, how much must the harm be before we as a society—Native Americans and all Americans—have a right to intervene in an extended family? A fact-based series is supposed to help us all answer these difficult questions.

Meanwhile, the very fact that state and tribal judges are putting Indian children in the home of kin and other Native Americans cries to be reported and analyzed in a series that alleges cultural bias and abuse in court placements. Making the cry even louder is that the number of children being put by the courts in Native homes is roughly equal to the number being put in white foster homes. In FY10, for example, state and tribal courts put 388 Indian children in TANF kinship and Native foster homes, versus 402 in white foster homes. In FY11, the placements in Native homes actually outnumbered those in white homes, before reversing again in FY12. See Chart 5.6.

The difference more solidly favors white placements if you add in group centers, but no matter: the point here is that the number of children being put in Native homes by state and tribal courts — some 40 percent of them at the recommendation of DSS — is substantial by any measure and doesn't square easily with the placement thesis in the series. Some state officials and actions may indeed be biased or racist. I don't know. But in addition to having to prove it, fairness demands placing the white placements in the full context of all placements, especially considering that those in Native homes seem to contradict the allegations of widespread or systematic state abuse. The added irony is that these unreported Native placements are exactly what ICWA seeks.

Then there is the matter of proportion. How big, really, is the white foster home problem? Is a monthly average of 360 to 400 children in white homes a lot? The sense you get from the series is that if for some reason a Native family in South Dakota breaks down, odds are great that the children will end up in white foster care. But it turns out that this is not so. Over the last three years, a back-of-the-envelope comparison shows that the monthly average of 4,100 or so Indian children who left their parents and were living in Native homes receiving some sort of state aid outnumbered the 400 or so children in white foster homes by a factor of 10 or 11 to one. If you add in group centers, the proportion still runs between eight and nine to one. See Chart 5.6, which offers the clearest picture of what is happening in placements in South Dakota.

5.6: Placements of Native American Children Under DSS Custody or in Kinship Families Receiving TANF, FY10-12

	FY10	FY11	FY12
Living with kin receiving TANF, under and not under state custody			

With kin who receive TANF but not under state custody, avg/mo	3,672	3,762	3,988
With kin who receive TANF and are under state or tribal custody, avg/mo	306	303	297
Total with kin receiving TANF, avg/mo	3,978	4,065	4,285
Living in foster and related care under state custody			
In licensed non-Native foster homes, avg/mo	402	362	375
Estimated in licensed Native foster homes, avg/mo	82 (17% homes have at least one Native parent)	78 (17% homes have at least one Native parent)	56 (13% homes have at least one Native parent)
Estimated total in licensed Native and non-Native foster homes, avg/mo	484	440	431
In licensed group centers, all non-Native, avg/mo	70	73	62
Estimated total in licensed Native and non-Native foster homes and group centers, avg/mp	554	513	493
In psychiatric residential treatment centers, all non-Native, avg/mo	102	107	96
Comparison, in non-Native foster homes versus Native foster and TANF homes under state and tribal court custody			
In licensed non-Native foster homes, avg/mo	402	362	375
In Native foster and TANF homes under state and tribal court custody	388	381	353

Source: South Dakota Department of Social Services

I am sure that there are many ways to slice and dice these comparisons, but the indisputable fact remains that the number of Indian children living in the tribal and kinship homes far outstrips the number in white homes and institutions.

Is the number of Indian children in white homes and institutions still too high? Each of us will have our own opinion. But while it is obligatory for NPR to report the views of those who say it is — their argument is strong and legitimate — you can't do so fairly without giving this sense of proportion. That one out of every 10 state-supported Indian children living away from their parents is in a white foster home sounds very different from saying that nine out of every 10 Indian foster children are in white homes. Both proportions are correct and both should be reported to give a complete sense of context. The only number to make the air, however, was the one that seemed to support an allegation of government racism and abuse.

Reporters can't be expected to learn everything, but the 'decision tree' would have helped.

A final reporting note: I have to be fair to the reporters, too. They can't be expected to know everything. The numbers as presented in Chart 5.6 do not appear anywhere else to my knowledge. I myself didn't know about the TANF placements by the courts when I wrote the first draft of this report. I stumbled upon them in back and forths with state officials as I tried to better understand the placement decision tree. The state follows federal reporting requirements and does not record and compare numbers as I have. It took many more patient back and forths, corrections and refined definitions before I was able to complete what otherwise looks like a deceptively simple chart.

Should Sullivan and producer Amy Walters have come up with all these numbers in their own digging? Not necessarily. Some reporting discoveries are just luck. Also, the team planned to return to South Dakota to do more reporting to continue the series. Indeed, Sullivan has been doing just that. But I do think that it is fair to say that if you are going to make the allegations that were made in Part One of the series, then you have to go after the full context, including drilling down into the placement decision tree, which is central to the whole thesis of the series.

A final technical note on Chart 5.6: Exact comparisons are hard to make. Without doing a second manual count, the state says it doesn't know precisely how many Native foster children are in Native homes. Under federal reporting requirements, what the state records is how many of the foster homes have at least one Native parent. The number of foster children in Chart 5.6 is thus a low-end estimate based on the number of these homes. I say low-end because it assumes only one child per home; some homes may have more. A chart that would be a real Cadillac model would also break down how many of the Native foster parents are kin of the children. But asking for a hand count to get this level of detail was far more than I could ask for an ombudsman review.

Remember: the comparative numbers are monthly averages, adding to the number of files to open and layers of complication to calculate.

Missing context #3: The shortage of Native American foster homes and ICWA's vague legal requirements

How many properly licensed Indian foster homes are actually available in South Dakota is another obviously relevant question that the series does not answer — or even ask. Rather, Sullivan repeatedly falls back on saying that the state “must” put the children in Native homes except in “the rarest” or “unusual” circumstances. This reporting formula unfairly oversimplifies a known reality.

Jill E. Tompkins, who when she was interviewed by editorial assistant Andrew Maddocks was director of the University of Colorado’s American Indian Law Clinic, said that ICWA — and the entire foster care issue in states across the country — largely comes down to an availability question. Are there in fact a sufficient number of Native American foster homes in which to put children? The answer is simple: No. There is an “overwhelming” lack of them, Tompkins said. There were only seven Native foster homes in the entire state of Colorado, she said. South Dakota apparently does better. Malsam-Rysdon said that in July 2012, for example, the state had 62 foster homes with at least one Native American parent. The number hasn’t changed much since then, she said.

Saying what the state 'must' do without noting what it 'can' do is unrealistic and unfair.

Tompkins said that it is the state’s responsibility to try to come into compliance with national law and enlist more Native homes. As an advisor to many states — not South Dakota — she said that most try to do so, but they run up against high costs and practical difficulties.

Traditional media and advertising to recruit foster parents is largely ineffective on reservations, she said. As a result, state social workers must visit families one-by-one to see if any are interested in the job. This is labor-intensive work that states say is expensive. It also results in few candidates, as some who might want to volunteer do not meet state or tribal standards, Tompkins said. The biggest hurdle, she said, is the requirement for criminal background checks. Any felony, including a long-ago DUI, is usually enough to disqualify someone, she said. And as we have seen, alcoholism and drug abuse are high on many South Dakota reservations. A modern secular trend adds further difficulties. The number of available non-Native and Native foster homes is declining in general across the country because there are fewer stay-at-home mothers and fewer two-parent households, Tompkins said.

To their credit, Sullivan and Walters do put the question about recruiting native foster homes to Wieseler, the head of Child Protection Services in DSS. Wieseler replies on-air, “And we're always trying to recruit them because we need more. We are constantly

recruiting in all of our offices, for all kinds of foster families.” But then Sullivan discredits Wieseler's statement by next saying on-air: “That comes as a surprise to Marcella Dion.” The misleading and to some extent irrelevant interview with Dion and Crow follows. And that’s that. The Dion and Crow stories leave an unmistakable conclusion of systematic cultural bias by the state against Native foster parents. There is no exploring of the inconvenient unavailability of properly licensed foster homes.

This is so even though ICWA is in fact vague about what states “must” do. The law says merely that the states must do all that they can to put Native children in Native homes “in the absence of good cause to the contrary.” [Guidelines issued by the U.S. Bureau of Indian Affairs](#) don’t go much further in defining what “good cause” might be. The guidelines say that states can put Indian children in non-Indian homes only if there is an “unavailability of suitable” Native families “after a diligent search has been completed.” A “diligent search” and “good cause” are messy terms to define.

Malsam-Rysdon told me that the emerging federal court standard that DSS seeks to meet when recommending white placements is to show state and tribal judges that DSS made an “active effort” to first find a Native foster home. This is a higher bar than the “reasonable effort” that has been required by some courts, she said. In response to a question from me, she wrote: “We are actively working on recruiting more Native American foster homes, particularly in the Rapid City, Cheyenne River and Rosebud tribal areas. We have a contract just starting in Rosebud for tribal staff to help with recruitment and training of Native American foster families, and are in discussions with the Cheyenne River Sioux Tribe to partner in a similar way.” Under the Rosebud contract, the state has funded the hiring by the tribe of two recruiters. The results so far remain meager, however, because of the same old difficulties in signing up families, Malsam-Rysdon said.

She said that some advocates and tribal members wrongly claim that DSS demands that a foster home have a separate bedroom for a foster child, which many potential Indian homes don’t have. She said that this and rumored income requirements are untrue “myths” that foment criticisms of DSS or lead many potential parents to think that they are not eligible. It is standard, she said, that a family needs the foster funding to cover the extra costs of taking in a child. What is not acceptable, she said, is if the potential foster parents need the foster funding to support themselves, which would mean that there would not be enough left to feed and clothe the child.

Wieseler and Malsam-Rysdon, of course, have a self-interest in defending their department’s record. The new recruiting may even have been in response to the NPR series. I don’t know.

Whether South Dakota is violating ICWA is for a court to decide. None has, but a class action suit filed in March may lead to a first bite at the apple. The [American Civil Liberties Union helped two of the tribes](#) — Oglala and Rosebud — and three individuals

to file a suit in a federal court against DSS, a state attorney and a county court, for allegedly ramrodding the removal of some Indian children from their families. The suit alleges that the families were not given sufficient time or opportunity to prove their ability to care for their child or question the state. The suit cites ICWA but is carefully limited to the processes in one state court, according to a published interview with the American Civil Liberties Union (ACLU) lawyer who prepared the suit. The named state officials, claiming a lack of evidence, have all filed motions for dismissal.

The U.S. Supreme Court, meanwhile, ruled in late June on a challenge to the constitutionality itself of ICWA, which I will discuss in Chapter 6.

What is sufficiently clear here is that the certainty with which Sullivan and the series talk about how, under ICWA, only the “rarest” of exceptions are allowed for non-Native placements, is unwarranted and unfair without some explanation of the legal vagaries and practical limits surrounding the law. As much as saying what the state “must” do — which itself is disputable — journalistic fairness requires equally addressing what it “can” do, given the obvious difficulties in finding anywhere near a sufficient number of Native foster homes.

This difficulty cuts to the core of the nation’s foster care policy. Perhaps the policy pendulum should swing back more to defending the family and not the child, so that fewer foster homes are needed. Or perhaps the state should walk away from Native American child protection cases, leaving the tribes to deal alone with the matter, possibly with state funding. These questions involve profound legal and moral debates. But we in the NPR audience don’t get to hear or read them in the investigative series. Indeed, as late as May 2013, in a [report](#) on the summit, Sullivan was still saying on-air:

“The Indian Child Welfare Act says if children have to be removed from their parents, they must be placed with relatives, tribal members or Native American foster homes, except in unusual circumstances. State records show nine out of 10 Native kids are placed in non-Native homes.”

And that’s it — technically accurate but lacking context and totally unfair on the whole placement conundrum.

In sum

Taken together, a detailed look at the two errors and the three areas of missing context present a lesson. They show how anecdotal storytelling, while compelling, can be misleading when the underlying reporting is weak. And the reporting on the alleged cultural bias and abuse by the state of South Dakota in the placement of Indian children in foster homes was very weak.

Chapter 6

Where It All Went Wrong: The Framing

How could the NPR series have gone so wrong? After all, many talented people with a rigorous dedication to truth worked on it.

I cannot see into their hearts, but nothing I found suggests that any were operating with a hidden agenda. Sure, the reporters sympathized with the Native American families they interviewed. Who wouldn't? But NPR and its reporters do stories every day in which they sympathize with people, including victims, on a human level and yet get the broader policy analysis and context right. Indeed, no other news organization does this better than NPR. And I say this as someone who is not part of the newsroom but who was worked for some of the best news organizations in the country.

No, what went wrong in this series was something else. It was the framing.

The reporters and editors, in other words, had blinders on.

Somehow — I don't know how — the investigative team became convinced that the most appropriate and newsworthy lens through which to see the entire issue of Indian foster care in South Dakota was the Indian Child Welfare Act (ICWA). The temptation is understandable. Whatever doubts there may be about the details of state abuse, the state seems at first glance to be in massive violation of at least the spirit of the law, if not the letter. The best I can tell — the editors declined to speak on internal processes — the chain of command went along with that framing. Given how long it took me to deconstruct the story, I can easily understand how busy editors could become convinced. Those jaw-dropping numbers — the high disproportionality between Indian and white children taken from their families, and the overwhelming placement of the Indians in white homes — seem practically to make an open-and-shut case. The history of past racial abuse, cited by Melissa Block in opening the series, made that case all the more believable.

Once you bought into the ICWA narrative, and especially the broad legal interpretation of it in the story, everything else falls into place as part of the storytelling. The illogic of the financial incentive argument gets lost in semantics, but fits neatly as a motive for abuse under ICWA. The reported funding amount of “almost \$100 million” was impressive. There was no reason for senior editors to question it.

The idea that the state Department of Social Services was engaged in wrongdoing seemed to be confirmed when the two top DSS officials cut off the reporters' access to the department and the governor refused to meet with them or with editors in

Washington. But this also meant that the main sources to challenge the ICWA narrative weren't on the playing field.

The reporters and editors, in other words, had blinders on. The danger of framing a complicated social issue with a single narrative is that it becomes easy to lose sight of other, competing narratives and explanations. And this is what came to pass. A single-minded framing in the series on the violation of ICWA, a law that has the worthy goal of defending Native American culture, resulted in largely ignoring other state programs, the social context, competing laws, the actual availability of Native foster homes and the moral goal of protecting children.

Everyone will have an opinion as to how to balance the cultural needs of a child and a community, on the one hand, with the developmental needs and safety of that child, on the other. In this case, I think most Americans would like to do it all for the child, while still protecting Indian culture. My reading of the country and polls is that for most Americans, diversity and tolerance for all cultures have become foundational American values as much as democracy and the work ethic. Still, I think that even Native Americans agree that, in a choice between culture and child, the higher moral value is protecting the child.

We each will draw our own line between defending culture and defending a child.

Much, of course, will depend on the circumstances of any one situation. Ideally, a child is better protected staying in the family. Congress passed ICWA to prevent the boarding school abuses at the time. Whether the law is now outdated — or needed more than ever because of foster care — is certainly worth exploring journalistically. Regardless, my point here is

that no matter where each of us draws the line of protection between child and culture, an investigative series that frames the foster care issue almost exclusively through the culture lens of ICWA is myopic, and — even for Native Americans — misses much of the rest of the moral picture when judging state actions.

Malsam-Rysdon is certain about what she feels must be the state's priority. "Protecting the child always comes first," she told me. Or as Wieseler says on-air, "We come from a stance of safety. That's our over-arching goal with all children." At the very least, this is an honorable position. Yet, this view, and much of the issue of parental negligence tied to it, was effectively dismissed as largely irrelevant under the ICWA framing that the investigative team imposed on the story.

Their framing was so severe that the series did not even mention the hundreds of Indian children that state and tribal courts put in the homes of relatives under a separate federal welfare program, effectively serving the same purpose as foster care. These children, combined with the small number of foster children that the courts do put into tribal homes, roughly equal the number placed in white foster homes. This runs counter to the state abuse thesis of the story. Indeed, the number of Indian children in foster

care is only a small percentage of the total number of Indian children who have moved out of their parental homes in what appears to be a crisis of Indian family breakdown in South Dakota. But because they are not in the formal foster care system, these children are outside an analysis focusing on violations of ICWA. The state gets no credit for achieving just what ICWA wants to achieve. One can argue that the foster care numbers are still too high, but without the broader context we in the audience get a skewed view of what is actually happening in South Dakota.

Similarly, the series minimized or ignored legal questions surrounding Native American sovereignty. These questions have vexed the United States since its founding. States across the country continue to be embroiled in ever-new legal disputes over Indian rights, from gambling to police matters. Issues of child custody and licensing of Indian foster homes in South Dakota and across the country are part of this great, gray legal morass. The confusion is predictable. The relations between tribe and state grow out of a Euro-American conquest done under the morality and logic of one historical era. Yet, we live today in a different time that elevates a moral logic based more on fairness and equality.

Malsam-Rysdon sent me a copy of an email that she sent to Sullivan after their short, ill-fated interview. In the email, Malsam-Rysdon quoted from state law, which cites federal law, and says that the state “shall take immediate, appropriate steps to secure the safety and well-being of the child or children involved.” It adds: “When removing children from homes located on the reservations in South Dakota, tribal law enforcement is involved.” Hence, state social workers can intervene on reservations but tribal police must accompany them when a child is being taken from a family. What the law doesn’t allow, however, is for a tribe to reject a state social worker if it wants to. Tribal sovereignty, in other words, is limited.

A Supreme Court case underlines how the team's ICWA interpretation was one-sided, too.

It is out of this clash between child welfare laws and the goals of ICWA that the state government and most of the tribes in South Dakota have negotiated foster care agreements. But all this confusion becomes background noise and is largely ignored under the extreme ICWA framing of the series.

This framing also allowed Sullivan to reject the need to distinguish between the rulings of tribal courts and state ones. With that dismissal was lost the insights from the decisions made by Indian judges. Those insights, we saw in Chapter 5, contradict what was the investigative team’s use of a high white placement statistic in effectively alleging racism by state officials and social workers.

We have discussed how ignoring the tribal judges is journalistically wrong. It may be legally mistaken, too, under an ICWA framing. The American Bar Association’s *Indian*

Child Welfare Act Handbook, by B.J. Jones, Mark Tilden and Kelly Gaines-Stoner, says of the law:

The beginning point for any analysis of the Indian Child Welfare Act in an understanding of what type of proceeding the act is intended to cover. The Act applies *only to child custody proceedings in state courts*. (My ital. p. 27, 2nd Edition).

And here is what the respected advocacy group, the National Indian Child Welfare Association, a source used in the series, says on [its website](#):

ICWA does not apply to divorce proceedings, intra-family disputes, juvenile delinquency proceedings, or cases under tribal court jurisdiction.

I am not expert enough to take a position on the law, but clearly there is at least enough serious difference that if the tribal courts are to be lumped in with state ones on legal grounds, the story has to say why. It did not. Rather, its framing of its interpretation of ICWA was presented as a given.

Illustrating the imprudence of this stance are the arguments and divisions among honest people surrounding a Supreme Court ruling in June. The case concerned an infant with a miniscule amount of Cherokee blood — [three-256ths](#) — who the Latina mother had given to a South Carolina couple for adoption. Instead of any expected left-right divisions on the bench, questions raised by the justices and competing lawyers and child welfare groups reflected how so much of what surrounds ICWA is in fact socially delicate, legally contradictory and morally difficult.

One set of questions in the court's hearing — but not dealt with in the NPR series — revolved around race. Who is an Indian? Is it a cultural construct, or a blood one, and if the latter, what percentage blood is required? Each tribe has its own blood-based rules, but how far out do you go to be treated separately by state and national law? As Chief Justice John G. Roberts Jr., who is himself the father of two adopted children, asked, “Is it one drop of blood that triggers all these extraordinary rights?” The father in the case is three-128ths Indian.

Another set of questions revolved around racial and sexual discrimination. Whether the father had given up custody and abandoned the child was part of the dispute. But he sued and won in South Carolina on ICWA grounds. [Lisa S. Blatt, the lawyer for the adoptive parents, told the court](#): “Your decision is going to apply to the next case and to an apartment in New York City where a tribal member impregnates someone who’s African-American or Jewish or an Asian Indian.”

“You are rendering these women second-class citizens with inferior rights to direct their reproductive rights and who raises their child,” she said.

The court partly sidestepped ICWA by deciding on child custody grounds. It ruled 5-4 that ICWA didn't apply if the father didn't have custody, and so sent the case back to South Carolina to re-decide if he did. This was seen as a partial victory for the adoptive parents because ICWA didn't automatically rule out all other considerations, as the state supreme court had originally ruled — “with a heavy heart,” the state court said. Writing for the majority, Justice Samuel Alito seemed to leave the door slightly ajar for further limiting ICWA when he wrote, “The Act would put certain vulnerable children at a great disadvantage solely because an ancestor — even a remote one — was an Indian.”

In a dissenting opinion, Justice Sonia Sotomayor, countered that the court's ruling ran contrary to Congressional intent in ICWA to preserve “the familial bonds between Indian parents and their children and, more broadly, Indian tribes' relationships with the future citizens who are ‘vital to [their] continued existence and integrity.’ ”

NPR's own Code Switch blog offers lessons on how concepts of race are changing in America.

Each of us will have our own opinion as to which of the two arguments we accept. But the point here is that there are arguments. They are compelling ones that reflect the serious differences of opinion related to ICWA. It is not for the NPR reporters to decide, as they essentially did, that their strict ICWA interpretation trumped all.

The questions raised in the court case, moreover, are unlikely to go away as concepts of race are changing in America. Inter-marriage and personal preference are blurring racial boundaries as more people classify themselves as “other.” More than 16 percent of Americans, myself included, are Latino, and almost all of us have a mix of indigenous, black and/or white blood. I myself have Colombian Indian blood through my maternal grandmother. I figure that I am one-16th Wayuu. The “one drop” rule that American society and laws have historically used to define non-whites is giving way to a *mestizo* concept from Mexico and many other Latin American countries in which racial purity matters less than education and income. At the same time, repeated studies show that the Millennial generation and what corporate marketers call the “New Mainstream” downplay differences of race, ethnicity, gender and sexual orientation in favor of education and income, too.

Make no mistake: race still matters in America. But nowhere is the changing *zeitgeist* captured better than on NPR itself, in radio reports and a superb cutting-edge blog, [Code Switch](#). It is being produced by a new team of mostly young reporters who focus precisely on what they call the “frontiers of race, culture and ethnicity.”

None of this is to denigrate the value of protecting traditional Native American culture. The South Dakota investigative series was correct to emphasize that its protection is important to Native Americans, and thus to all of us, in deciding the placement of Indian foster children. State officials, too, readily agreed in their interviews with me. In

addition to respect for Indian history, and its unique place in American culture, there is a practical consideration. An emphasis on traditional rituals and values is seen by many tribal leaders, advocates and social workers as a means to rebuild a sense of identity, pride and self-improvement to combat the grinding ills — the alcoholism, drugs, gangs, teenage suicides, youth pregnancy and sense of defeat — that plague some reservations, though by no means all.

But Native Americans are no different from other racial, ethnic or religious groups in being divided themselves about where to draw the larger conceptual line between emphasizing tradition and encouraging any of a number of concepts of modernity. Among some White Anglo-Saxon Protestants, for example, the fight is over home schooling, or religious fundamentalism. Among Native Americans, the choice in its starkest terms is whether to emphasize reservations as museums of nostalgia or prepare members to cope in the evolving globalized world around us. After all, many, many Native Americans — off and on the reservation, and of different blood levels — are role models of success in mainstream America. Some are decorated military veterans, and I am willing to venture that almost all see themselves as proud Americans. While many take pride in some tribal cultural customs, few are guided exclusively by them. This, too, is no different from most racial and ethnic groups in America.

The narrow-minded ICWA framing in the NPR series meant that none of these nuances surfaced. The short but emotive Part Three, for example, interviewed adult Indians who had been in white foster care as children. As host Ari Shapiro told it, “even in the best

circumstances, the loss of culture and identity can leave a deep hole.” This is surely true and valuable to report. The rest of us in the NPR audience want to know more about what is happening to our fellow Americans who are native to this land. But then, many children torn from their families and put into foster homes suffer from issues of identity, regardless of their ethnic background. Read, for example,

Janet Fitch’s gripping novel, *White Oleander*. It is about a teenage white girl traveling through the California foster care system. For Indian children in foster care, where are the impact lines between loss of culture and loss of the right kind of family support? We — Native and non-Native Americans — deserved to hear more about this.

As the Stoics say, things happen. My hope is to reduce the chances that they will happen again.

What certainly would have seemed to fall in the sweet spot of the series, meanwhile, was overlooked. I am referring to attempts by the state and the tribes to improve relations in dealing with foster care. No examination of them happened in the series, except for online links to two past state commission reports. This was a shame. The 2004 Governor’s Commission on ICWA was a group of 29 people representing DSS, the nine Indian tribes, and various government agencies. The mutually agreed report outlined bridge-building steps to improve collaboration. The report put most of the onus on the state, as the senior partner, a responsibility that the state accepted. A year later, a follow-up report was issued that said many of the steps had been met. But this time

there was a wide division of opinion among the tribes themselves, some agreeing with the state and some not. This division is never reflected in the NPR series, a disservice once again to the complexity within Indian communities and to the state, too.

What we got instead was a story in May on the summit meeting that the Web headline called “historic,” even though the state did not participate and no major independent news site in South Dakota that I could find called it that. But given that the summit was mostly organized by advocates and the nine ICWA directors from the tribes, the characterization is justifiable under a rigid ICWA framing.

Cara Hetland, the radio news director of South Dakota Public Broadcasting, gave her own summary of state-tribal relations to my office. “I think that there is always an effort to bridge the gap, but I am not convinced that progress is ever made,” she said. The state was partly to blame, but some of the tribes often didn’t follow through on their end of bargains either, she said. This may stem from a long-standing distrust of American governments. Still, the mutual distrust affects the ability of the two sides to collaborate on foster care, she said.

This seemed to me to be a valuable insight that was missing from the series. And it came from an NPR resource, an editor at a member station who is on the ground and closest to the situation. But, sadly, the NPR investigative team consulted neither her nor the station. If they had, the NPR series might have been very different.

And so a major investigative series filled with errors and placed within a myopic framework slipped through the editorial cracks and on to the air and the Web. It even won major prizes. As the Stoics say, things happen. Fortunately for NPR, they rarely happen as badly as they did in the South Dakota series. But bad things will happen again. Reporters and editors are human. No shame in that. Sullivan and the rest of the NPR team have done great work on other stories and surely will continue to do so on more. My hope with this report is to show how and why the bad things happened in this particular series, and to help minimize the chances that they will happen again.