
Who's Watching the Watchdog?

A Critique of NPR Ombudsman Edward Schumacher-Matos' Egregious Errors in Attacking Laura Sullivan and Amy Walters' Reporting on Native Foster Care

In August 2013, the ombudsman for National Public Radio (NPR), Edward Schumacher-Matos, produced a biased and factually flawed review of Laura Sullivan and Amy Walters' Peabody Award winning series of stories exposing South Dakota's egregious violations of the Indian Child Welfare Act and mistreatment of Native American children, who are removed from familial custody at 3.5 times the rate of non-Native children in the state. In "Who's Watching the Watchdog?," the Lakota People's Law Project documents the irresponsibility of Schumacher-Matos' overwrought, 22 month effort to exonerate South Dakota for violating federal law. We do this by exposing six serious errors in his "re-reporting" of Sullivan and Walters' story, for which he spoke to virtually no Native American people, instead relying entirely for his data on the very South Dakota state officials his report defends.

****This report can be downloaded at: www.LakotaLaw.org/watching-the-watchdog.***

Executive Summary

1. Schumacher-Matos grossly understates the growth rate of foster child removal in South Dakota versus that of the nation as a whole, thus completely disregarding the fundamental violation of Native people’s rights and the blatantly disparate treatment of Native people by South Dakota’s child welfare system that is the core subject of Sullivan and Walters’ stories: Schumacher-Matos writes: “[B]etween 1995 and 2002, as the national rate [of foster child removal grew]...at a fast clip, the average monthly number in South Dakota of all children in foster care grew to 795 from 426... This was a growth rate of 86 percent — not too unlike the national rate.”¹ In truth, from 1995-2002, while South Dakota’s foster care enrollment increased 87%, the increase for the nation as a whole was only 12%.²

2. Schumacher-Matos exhibits extreme cultural bias when he mischaracterizes the voluntary decisions of Native families to place their children with kin as equivalent to instances where the state forcibly removes Native children from Native custody: Schumacher-Matos notes that when Native people in South Dakota voluntarily place their children with kin for periods of time, it is the same—for the statistical purpose of determining state-wide “child removal rates”—as when the state forcibly removes children and places them with white families. Schumacher-Matos then cites the fact that a high number of Native children in South Dakota live with relatives, and draws the



¹ Schumacher-Matos, Edward; “Indian Foster Care in South Dakota: A Case Study in Investigative Storytelling Gone Awry”; 8/9/13; P. 38:

http://www.npr.org/assets/blogs/ombudsman/South_Dakota_Foster_Care.pdf

² Casey Families Program; Barbell, Kathy & Freundlich, Madelyn; “Foster Care Today”; P. 2:

http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/policy-issues/foster_care_today.pdf. ALSO: Department of Health and Human Services; Administration for Children and Families; “Final Estimates for FY1998 through FY2002”: <http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport12.pdf>. Calculations: Per national numbers, $533,000 - 468,000 = 65,000$; $65,000 / 468,000 = 11.8\%$. Per state numbers, $795 - 426 = 369$; $369 / 426 = 86.6\%$.

illicit conclusion that this helps explain sky-high state removals: “Indian families have set their own high removal rate, which the state is following.”³

Contrary to Schumacher-Matos’ claims, when Native parents, in their private capacities, voluntarily place children into the care of extended family, *this bears little resemblance to the state forcibly removing and placing Indian children with white families.* It is widely understood in Lakota country that relatives caring for relatives is extremely common and culturally appropriate; it need not occur due to neglect nor other circumstances that could justify the coerced removal of a child by the state.⁴

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3. Based on an inappropriately narrow frame of reference for understanding the economic impact of public sector social service and health care spending, Schumacher-Matos summarily dismisses contentions that economic incentives may be playing a role in driving the astronomical rates at which Native children are taken out of Native custody:

In his report, the ombudsman writes the following concerning NPR’s assertion that economic incentives may, in part, lie at the root of runaway seizures and illegal placement of Native children in South Dakota by DSS: “Confusion over just what [financial] incentives mean is at the heart of how the [NPR] series goes astray on the money angle... Seen in private industry terms, the more [South Dakota] puts Native children into foster care, the more it loses, not gains.”⁵ Schumacher-Matos simply ignores the well-established conclusion by policy analysts that the economies of poor states like South Dakota are heavily stimulated by federal funding, including funding for foster care. By placing more Native children into foster care and adoption programs, South Dakota *does* benefit economically. For example, \$18,360,340—much of it federal funding—was spent in FY 2012 by the South Dakota Department of Social Services on

³ Schumacher-Matos, Edward; “Indian Foster Care in South Dakota: A Case Study in Investigative Storytelling Gone Awry”; 8/9/13; P. 23-24:

[http://www.npr.org/assets/blogs/ombudsman/South Dakota Foster Care.pdf](http://www.npr.org/assets/blogs/ombudsman/South%20Dakota%20Foster%20Care.pdf)

⁴ Jones, B.J.; “The Indian Child Welfare Act: The need for a separate law”; American Bar Association; 1995; P. 3-7

⁵ Schumacher-Matos, Edward; “Indian Foster Care in South Dakota: A Case Study in Investigative Storytelling Gone Awry”; 8/9/13; P. 40-41:

[http://www.npr.org/assets/blogs/ombudsman/South Dakota Foster Care.pdf](http://www.npr.org/assets/blogs/ombudsman/South%20Dakota%20Foster%20Care.pdf).

non-Native, privately-run group homes, psychiatric facilities, and religious organizations based in South Dakota that house foster children.⁶

4. Schumacher-Matos accepts at face value, without any critical scrutiny, claims of South Dakota DSS officials regarding the levels of their foster care-related spending that are blatantly contradicted by federal data:

Concerning the factor of economic incentives in the form of increased spending on health and social services funded overwhelmingly by leveraging federal funds, the ombudsman accepts the South Dakota DSS' statement 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 NPR series] was \$68 million. This includes \$12.7 million for Medicaid, as well as all other medical expenses."⁷ In fact, the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS) reports that South Dakota's Medicaid expenditures for children in foster care and related groups in FY 2010 were \$47,177,195⁸, indicating that overall spending was \$102,477,195—providing a much greater economic stimulus than would \$68 million.

⁶ Government of South Dakota; Spreadsheet of DSS contracts with private entities: <http://www.open.sd.gov/>. Note: The figure \$18,360,340 is just for South Dakota-based companies.

⁷ Schumacher-Matos, Edward; "Indian Foster Care in South Dakota: A Case Study in Investigative Storytelling Gone Awry"; 8/9/13; P. 5:

http://www.npr.org/assets/blogs/ombudsman/South_Dakota_Foster_Care.pdf

⁸ Centers for Medicare and Medicaid Services; "FY2010 Quarterly Cube": <http://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/MedicaidDataSourcesGenInfo/MSIS-Mart-Home.html>. Note: we have subtracted \$422,526 of spending by the Indian Health Service on foster care children from the total provided by CMS, because these dollars were spent on children under the jurisdiction of the tribes themselves. For a description of what is included in the definition of "foster care" for the purpose of the CMS Quarterly Cube, see P. 151 of the "Medicaid and CHIP Statistical Information System: File Specifications and Data Dictionary": <http://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/MedicaidDataSourcesGenInfo/Downloads/MSIS-Data-Dictionary-2012.pdf>.

5. Schumacher-Matos claims, in apparent ignorance of federal law, that there absolutely must be a licensing agreement between the state and a tribe for the state to recognize a tribally-licensed foster home, when in fact the law requires that children be placed in available, tribally-licensed foster homes unless there is good cause not to do so— regardless of whether there is a tribal/state agreement: Schumacher-Matos writes: “There is no exploring [by Sullivan and Walters] the inconvenient unavailability of properly licensed [Native] foster homes.”⁹ By “properly licensed,” he means *by the state* as opposed to *by the tribes*. Schumacher-Matos then argues that the state *could not legally* place children in tribally-licensed foster homes even if it wanted to, unless there exists a formal agreement between the tribe and state: “[Ignoring tribally-licensed homes as options for placement] is a federal requirement — not a devious state one.”¹⁰ To the contrary, according to the Department of Health and Human Services, the Indian Child Welfare Act asserts “licensing or approval of foster or adoptive homes or institutions by an Indian tribe is equivalent to licensing or approval by a state.”¹¹

⁹ Schumacher-Matos, Edward; “Indian Foster Care in South Dakota: A Case Study in Investigative Storytelling Gone Awry”; 8/9/13; P. 72:

<http://www.npr.org/assets/blogs/ombudsman/South%20Dakota%20Foster%20Care.pdf>

¹⁰ Schumacher-Matos, Edward; “Indian Foster Care in South Dakota: A Case Study in Investigative Storytelling Gone Awry”; P. 56:

<http://www.npr.org/assets/blogs/ombudsman/South%20Dakota%20Foster%20Care.pdf>

¹¹ Wexler, Richard; “The Schumacher-Matos Report on NPR’s Coverage of Child Welfare in South Dakota: A Case Study in an Ombudsman Gone Awry”; P. 16: www.nccpr.org/reports/NPRombudsman.pdf. Also: Health and Human Services Department, Children’s Bureau:

http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=145#693.

Note: It may occur to some that the Adoption and Safe Families Act (ASFA), passed in 1997, contains licensing restrictions on placements for a child that trump ICWA’s preferential placement mandates, contained in Section 1915(b). At least one ruling by the South Dakota Supreme Court undermines this hypothesis. That case dealt with whether or not ASFA trumps ICWA concerning the requirement by ICWA that states make active efforts to reunite Indian families before terminating parental rights. The Court found in favor of ICWA’s requirements, writing: “[N]o provision in ASFA specifically purports to modify ICWA. It would seem illogical that ASFA would implicitly leave unchanged certain ICWA provisions...while modifying

others...[Furthermore] when interpreting a statute pertaining to Indians, the United States Supreme Court has stated, ‘statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.’” Source: *The People of the State of South Dakota in the Interest of J.S.B., JR., Minor Child and Concerning J.S.B., Sr. and O.L.J., Respondents*; first paragraph of case brief:

<http://www.narf.org/icwa/state/southdakota/case/jsb.html>. Additional note: *Native Village of Stevens v.*

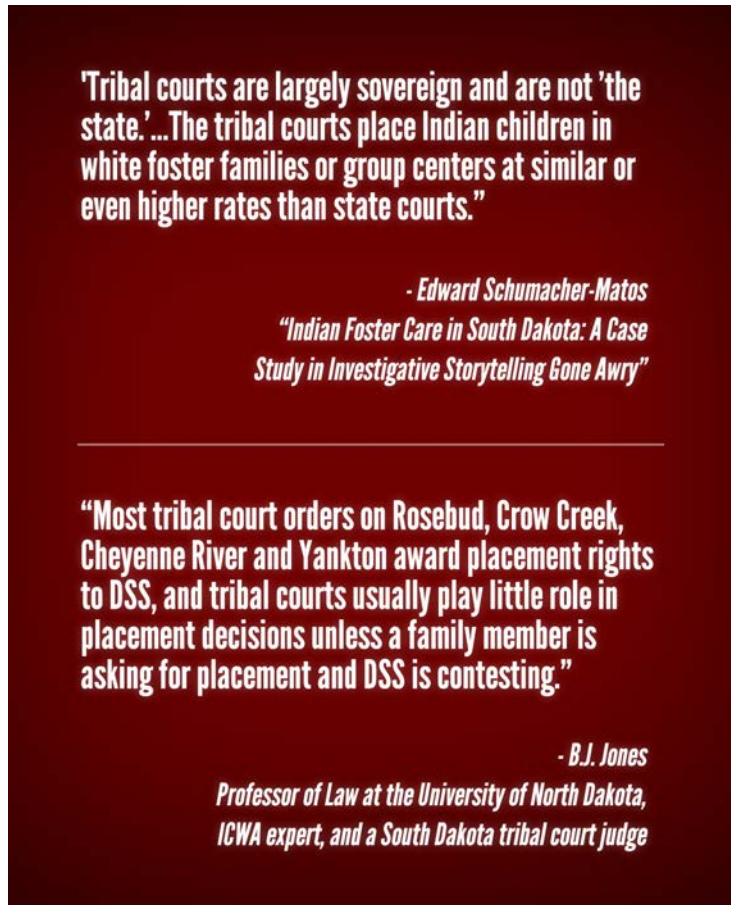
Smith also affirms our position that states have the legal right to place children into tribally-licensed homes without there being a formal licensing agreement between state and tribe. In that 9th Circuit case, the ruling is clear that, due to ICWA’s 1978 mandate that tribally-licensed homes are equivalent to state-licensed ones for the purposes of tribal children, the much older (1935) federal requirement from the Social Security Act, U.S.C. § 672, that licensing agencies for the state must have formal agreements with the state is *met* when a tribe is the one who licenses a foster home for a tribal child. Source:

<http://www.narf.org/icwa/federal/appeals/stevens.html>.

6. Schumacher-Matos falsely claims that tribal courts are directly responsible for placing Native children with white foster families and group homes at similar or higher rates than state authorities, when the truth is that many of the tribal courts in question have delegated placing authority to DSS: Schumacher-Matos asserts: "Tribal courts are largely sovereign and are not 'the state.'...The tribal courts place Indian children in white foster families or group centers at similar or even higher rates than state courts."¹²

B.J. Jones, Professor of Law at the University of North Dakota, ICWA expert, and a South Dakota tribal court judge for over twenty years, writes instead that: "Most tribal court orders on Rosebud, Crow Creek, Cheyenne River and Yankton [i.e. tribes in South Dakota for whom DSS is principally responsible for placing children] award placement rights to DSS, and tribal courts usually play little role in placement decisions unless a family member is asking for placement and DSS is contesting."¹³

Taken together, the six errors enumerated above demonstrate Schumacher-Matos' systematic mis-contextualization of the key issues at stake in the debate over South Dakota's illegal practice of stripping extraordinary numbers of Native children from their communities. These errors also demonstrate a shocking ignorance of the basic facts at hand, and, when combined with the many others cited by Richard Wexler, provide necessary and sufficient grounds for the rejection of Schumacher-Matos' report as a whole.



¹² Schumacher-Matos, Edward; "Indian Foster Care in South Dakota: A Case Study in Investigative Storytelling Gone Awry"; 8/9/13; P. 61:

<http://www.npr.org/assets/blogs/ombudsman/South%20Dakota%20Foster%20Care.pdf>

¹³ Jones, BJ; Email communication with LPLP; 9/2/13

The ICWA crisis in South Dakota is real, as reported by NPR's investigative team since 2011—despite Edward Schumacher-Matos' effort to gloss over it. Moreover, in the view of our Lakota People's Law Project, the most important way the federal government can support Lakota tribes in ending state abuses is to work intensively with Lakota leaders to develop tribal, federally funded, Title IV-E family services and foster care programs.¹⁴ For more on this, please read our special report, ["Sovereignty and Self-Governance in the Provision of Child and Family Services."](#) Tribally-run programs will take time to put in place, but they can—and should—be established as rapidly as practicable.

¹⁴ Lakota People's Law Project; "Sovereignty and Self-Governance in the Provision of Child and Family Services: Securing Direct Federal Funding for Tribal Administration of Title IV-A, IV-B, IV-C, and IV-E Services"; 7/5/13