

The Schumacher-Matos report on NPR's coverage of child welfare in South Dakota: A case study of an ombudsman gone awry

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UPDATE: SEPTEMBER 30, 2013: The Lakota People's Law Project has written its own excellent response to the NPR Ombudsman. Their report is essential reading to fully understand the Ombudsman's egregious failings. It's available here: <http://lakotalaw.org/watching-the-watchdog>

When I left a job at the intersection of child advocacy and journalism nearly a year ago, I did not think that anything would happen that was so egregious, so fundamentally wrong, that I would feel compelled to return.

Then I read Edward Schumacher-Matos' [report](#), *Indian Foster Care in S. Dakota: A Case Study in Investigative Storytelling Gone Awry*, about [NPR's stories about Native American child welfare in South Dakota](#).

Schumacher-Matos has brought me out of "retirement"

I was formerly executive director of the National Coalition for Child Protection Reform, an organization Schumacher-Matos describes, accurately, as "a small group that advocates for keeping families intact and is critical of foster care in general." Today it's even smaller. We ran out of money. There is no longer an executive director. I remain a member of the group's volunteer board of directors.

During my time at NCCPR I actually was in touch with Schumacher-Matos. I wrote to praise a column he'd written for the *Miami Herald* condemning the plague of vicious, abusive comments that editors allowed to be posted under website versions of news stories.

For the past year, I have not commented on child welfare issues because I would not like anything I said to cause controversy for my current employer, an outstanding organization that is not involved in child welfare issues. So let me state the obvious explicitly: **The opinions expressed in this report are my own and in no way reflect the views of my current employer.**

Of course this also means there was not time to make this critique as comprehensive as I would like. So I do not discuss all of the points raised by Schumacher-Matos with which I take issue. I would be glad to discuss all of these issues further with Schumacher-Matos or anyone at NPR. I do agree with NPR executives that [the stories had flaws](#). But I also agree with Kelly McBride, a senior ethics scholar at the Poynter Institute, who [told NPR's David](#)

[Folkenflik](#):

It's very possible, in an investigative story, to get certain facts wrong but still have the overall truth be quite accurate. And I'm not saying that's an excuse because when that happens it's incredibly unfortunate and even irresponsible on the part of journalists.

(I disagree with the characterization of honest error as “irresponsible.”)

On one point I agree with Schumacher-Matos: I wish that NPR executives had taken the time to issue a point-by-point response.¹ But in the absence of such a response, Schumacher-Matos does exactly what he accuses the NPR journalists of doing: He fails to seek out the other side of the story, when the usual sources wouldn't answer all of his questions.

The Ombudsman's office contacted me one year ago, but only for the data used for our [NCCPR Rate of Removal Index](#). No one from that office ever followed-up to ask for a response to their concerns about how the NPR reporters interpreted those data. Indeed, it appears Schumacher-Matos spoke to almost no one except South Dakota state officials and checked almost nothing they told him. In particular, he returns over and over and over again to the secretary of the state's Department of Social Services (DSS), Kim Malsam-Rysdon – and displays no visible effort to verify anything she said.

To cite just one example: A large portion of Schumacher-Matos' critique rests on the claim that grandparents profiled in part one of the NPR series had only tribal foster care licenses and not a state license and therefore the state could not, under federal law, place children in foster care with these grandmothers.

He is unquestionably wrong in suggesting that the children could not be placed with the grandmothers at all. Indeed, elsewhere in his report he goes to great lengths to discuss a program that places children with grandparents who have no licenses at all. As for whether tribal licenses are just as valid as state licenses:

Did Schumacher-Matos contact federal officials about this? Did Schumacher-Matos ask for the regulations? Or did he just assume that if Malsam-Rysdon says it, it must be so. As is discussed at length later in this report, I can find nothing in federal law or regulation that states tribal licenses are not as valid as state licenses, whether or not the tribe and the state have a formal agreement, and some evidence that Schumacher-Matos is wrong about this.

In general, Schumacher-Matos' description of state and federal power and responsibility concerning licensing contains serious errors which I also will discuss below.

¹ As it happens, I knew one of those executives a long time ago. Thirty years ago, Kinsey Wilson was a reporter for the Rochester *Democrat and Chronicle* and I was both a reporter and media critic for the city's alternative weekly, *City Newspaper*. Wilson is one of the finest journalists I've encountered in Rochester or anywhere else – and one of those most willing to listen to criticism with an open mind. I have no doubt that he did, indeed, look closely at the stories and at the Ombudsman's review. I am sure his view that the stories are fundamentally sound was carefully considered and not a reflection of the defensiveness that is too common among editors.

But that is a small matter compared to the fundamental failure of Schumacher-Matos' report:

THE FRAMING OF THE OMBUDSMAN'S CRITIQUE IS FUNDAMENTALLY WRONG

Before getting into specifics, it's important to look at the overarching assumptions in Mr. Schumacher-Matos' "re-reporting" of this story. I find great irony in the fact that he says the NPR stories "went wrong" because of "the framing." In fact, that is exactly the problem at the heart of Schumacher-Matos' critique. The entire framing is based on one fundamental assumption, repeated over and over again. That assumption is flat wrong.

Schumacher-Matos claims that the heart of the issue is "protection of the child over protection of the family." Over and over he says things like: "culture and blood are important, but I suspect most Native Americans would agree that what is first at stake is the safety of the child..." or "...a historical swinging of the policy pendulum between maintaining families and protecting children from abuse and neglect..." or "...the pendulum conundrum: Keeping families intact versus protecting the children" or "everyone will have an opinion on how to balance the cultural needs of a child and a community, on the one hand, with the developmental needs and safety of the child, on the other."²

But that is *not* the heart of the issue; rather it is a false dichotomy.

Over and over Schumacher-Matos *assumes* that keeping families together is risky and foster care is safe. He assumes that child safety and development and family preservation are at odds and must be "balanced." It's a common assumption among journalists when they first begin reporting about child welfare, and it is exactly the framework that agencies taking a lot of children prefer. But it is a false framework, reinforced whenever a high-profile death of a child "known to the system" makes headlines. Indeed, it used to be the near-exclusive framework at NPR – something discussed in more detail at the end of this report - until Laura Sullivan and Amy Walters set the record straight

The framework is false. There is a wealth of evidence that in the overwhelming majority of cases seen by child protective services workers, *including many in which those workers now resort to foster care*, family preservation is the *safer* option – and the option that leads to significantly better outcomes for children.

There is a summary of that evidence with full citations here:

<http://www.nccpr.org/reports/01SAFETY.pdf>

There is more information here: <http://www.nccpr.org/reports/evidence.pdf>

²I'd like to be able to provide page citations, but the .pdf version of the full report from the Ombudsman does not have page numbers.

And still more here: <http://nccpr.info/80-percent-failure/>

Among the various types of foster care, kinship care – placing a child with a grandparent or another relative – consistently has been shown to be safer than what should properly be called “stranger care.” That is true even when the kinship care home is unlicensed. For a summary of the research, with citations, see the section of [NCCPR’s report on Nebraska child welfare](#) starting on page 25: (The findings concern kinship care in general and are not specific to any state, it just so happens that I summarized them most recently in a report about Nebraska).

Even if Schumacher-Matos choose simply to disbelieve all of this evidence, one of Schumacher-Matos’ central points is that the NPR reporters allegedly failed to provide adequate context to listeners. Schumacher-Matos’ failure to acknowledge even that the central thesis of his critique is a claim that is widely disputed – and give his readers the information to make their own judgment – is a huge lapse that, in itself, makes his entire report suspect.

Schumacher-Matos’ deep personal conviction that any effort to do more to keep children with their families is a risk that puts the safety of the child against some vague concept of culture obviously will color his approach to evaluating NPR’s reporting of these stories. If one believes family preservation is inherently at odds with child safety then one will be upset by any story that says not enough is being done to preserve families.

SOUTH DAKOTA IS AN OUTLIER

The NPR stories relied in part on data compiled by NCCPR, our annual *Rate-of-Removal Index*. He acknowledges that “[NCCPR’s] statistics, taken from the federal government, appear to be reliable.”

Schumacher-Matos’ primary argument with how NPR reported these figures rests not on what reporter Sullivan actually said on the air, but on Schumacher-Matos’ *interpretation* of what she said.

The story said that South Dakota takes away children at a rate nearly three times that of other states.

Schumacher-Matos writes:

*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 [emphasis added].*

But why? Presumably, had Sullivan meant “all other states” she would have *said* “all other states.”

The bottom line is this: In 2010, the rate of child removal in South Dakota was more than two-and-a-half times the national average.

I use the 2010 data because, as I recall, they were the most recent available when I was contacted by Amy Walters and Laura Sullivan. The 2009 and 2011 figures are almost identical, but because of changes in other states, in 2011 South Dakota had “only” the sixth worst rate of removal when poverty is factored in.

In any event, on August 10, 2012, I emailed the full documents for 2009 and 2010 to Schumacher-Matos’ staff – at their request. I said this in the cover note:

As you'll see, no matter how you run the numbers, or which year you choose, South Dakota is an extreme outlier, taking away children at one of the highest rates in the nation. If you need any further information, please contact me at any time.

Instead Schumacher-Matos ignores the comparison between South Dakota and the national average – and his office never contacted me.

In addition, using data from 2010, South Dakota’s rate of removal is triple (or more) the rate in 11 states – not just “a few” as Schumacher-Matos claims. One of those states, by the way, is Alabama, a state with a high child poverty rate and a history of racial bias, which was able to transform its child welfare system into a national model - and improve child safety - by rebuilding its system around family preservation. (A member of my group's board of directors brought the lawsuit that led to these changes.) There's more about the transformation in Alabama [in this story from *The New York Times*](#).

Another of those 11 states is New Mexico. New Mexico has a child poverty rate at least as high as the rate in South Dakota. The percentage of the population that is Native American is about the same. But in New Mexico the proportion of foster children who are Native American is equal to their proportion in the general child population. In contrast, in South Dakota, Native American children are in foster care at a rate 3.9 times their rate in the general population, according to [these data from the National Council of Juvenile and Family Court Judges](#). This is known in child welfare as “disproportionality.”

In fact, it is likely³ that, of the ten states in which the percentage of the population that is Native American is highest, only two had a higher rate-of-removal than South Dakota in 2011, and only one had a higher rate-of-removal in 2010. (Yes, Mr. Schumacher-Matos, that rate-of-removal is for all children not just Native American children.) In only one of these states is the rate of disproportionality worse than in South Dakota.⁴ See the table in Appendix A, page 26, for more details.

In his report, Schumacher-Matos then goes on to suggest that somehow, South Dakota’s high rate of removal is the result of the high rate of poverty in that state. He writes: “South Dakota’s high ranking in removals is consistent with its high percentage of impoverished Native Americans.”

³ I use the qualifier “it is likely” because I was unable to find data on Indian population by state more recent than 1999 ([available here](#)). Certainly there may be shifts in the ranking of the top ten states since then, but those shifts are not likely to significantly alter the comparison.

⁴ The disproportionality data measure the number of children in foster care on a given day, not entries into care. I know of no state-by-state data on disproportionality of entries.

He says this even though, only a few paragraphs before, he acknowledges that the *NCCPR Rate of Removal Index* specifically factors in poverty. Indeed, the *Index* compares rates of child removal both to the total child population and the impoverished child population in each state – and we emphasize our strong belief that the better means of comparison is to the impoverished child population.

Furthermore, Schumacher-Matos' own discovery of hundreds, perhaps thousands of other placements that are not *called* foster care but sometimes may *be* foster care, suggests the rate of removal in South Dakota may be even worse, something discussed later in more detail. (This problem exists in many if not most states, not just South Dakota.)

I do not recommend using the *Rate of Removal Index* to draw conclusions about states whose rankings are similar. But - once one factors in poverty, as the *Rate of Removal Index* does - it's a good way to identify the extreme outliers. With a rate of removal two-and-a-half times the national average, South Dakota is an extreme outlier.

Schumacher-Matos also complains that the *Rate of Removal Index* does not break down the state-by-state figures by race. Unfortunately, the federal government doesn't make state-by-state entry data readily available that way. He then complains that the NPR story somehow doesn't make clear that the figures apply to all removals. In fact, Sullivan never claims that the data apply only to Indian children – I leave it to listeners to decide if they were as easily confused as Schumacher-Matos.

More to the point, the fact that these data apply to all races does not in any way undercut Sullivan and Walters' stories. The point is that a take-the-child-and-run mentality pervades South Dakota child welfare. It would be ludicrous to think it applied only to the white children. And, as noted above, data specific to Native American children indicate that the same pattern applies when only Native American children are counted. Those data also show that other states with high Native American populations and high poverty rates have lower rates of removal.

This further suggests that, no, it's not neglect by high numbers of impoverished Native Americans that somehow causes so many South Dakota children to be taken from their homes.

Rather, these data and the data from the *NCCPR Rate of Removal Index* suggest that South Dakota routinely confuses poverty with neglect – and that confusion occurs even more often when the child is an Indian.

POVERTY AND NEGLECT

Schumacher-Matos writes that

Malsam-Rysdon, the DSS head, vehemently denies the allegation of cultural arrogance and points to specific state regulations and laws defining what constitutes neglect.

But there is a vast difference between “specific” and merely “lengthy” – a difference Schumacher-Matos documents himself by helpfully reprinting the entire South Dakota statute on “neglect.

Among the definitions for neglect in that statute are a child:

Who lacks proper parental care through the actions or omissions of the child’s parents, guardian, or custodian

Whose environment is injurious to the child’s welfare

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.

There’s also the wonderfully-tautological:

Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse;

By these definitions it is hard to believe there is an impoverished child anywhere in South Dakota who could not be deemed neglected and removed from her or his parents at some point during childhood.

Even Schumacher-Matos admits that Sullivan was right to label these standards “subjective.” Amazingly, he states “the state objects” to that characterization. Yet, in Schumacher-Matos’ eyes, that absurd objection in no way diminishes the state’s credibility.

With statutes so broad and so vague the fate of a child reported as neglected depends not on the rule of law but on which caseworker shows up at the door and what mood she’s in.

But Schumacher-Matos sees it differently.

He writes that under South Dakota law neglect can include

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.

Let’s consider the last of those.

A parent is desperate to keep her job; it’s the only way to avoid being evicted for nonpayment of rent. Her young child is home sick. Her boss says: “Come to work or you’re fired.” What does she do? Stay home, get fired, get evicted and have the child taken because of homelessness? Or go into work, hope no one finds out and, if someone does, have the child taken because she left “the child home alone without proper care?”

In our [Issue Paper on Child abuse and poverty](#) we cite one real life case after another involving this kind of situation and others where poverty is confused with neglect. [And check out this searing New York Times story](#) specifically about the issue of leaving children home alone “without proper care” – and the extent to which race and class bias become part of the decision-making process.

Schumacher-Matos says documenting the incredible vagueness and subjectivity of the neglect statute is not enough. Somehow, Sullivan and Walters must prove that people in the system are “systematically unreasonable in applying the standards.”

But the language is so breathtakingly broad that there are no “standards.” That’s the point. And the evidence of unreasonableness is in the data discussed above, the data Schumacher-Matos tortures logic to dismiss.

THE MYTH OF DUE PROCESS FOR FAMILIES

Schumacher-Matos also tells us not to worry about the breathtaking vagueness and subjectivity of South Dakota’s “neglect” statute because all problems are solved by individuals who gain mystical powers of wisdom and insight simply by donning robes – in other words “judges who deal with each case one by one.” And, Schumacher-Matos notes triumphantly some of those judges are *Indians!*

Similarly, he makes much of the claim in an email from Malsam-Rysdon that:

[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 [emphasis in original].

Time for a reality check.

This particular claim is made so often all over the country that, in [an article for Nieman Reports](#) about covering child welfare, I warned reporters not to fall for it. The article, a sidebar related to [a longer story](#), is called “Things sources say that almost always aren’t true.” I listed three classic canards. This was the first:

1. The Child Protective Services (CPS) agency administrator says: “We can’t take away children on our own. A judge must approve everything we do. Families are protected by due process.”

The truth is that untrained, inexperienced, overwhelmed CPS workers can take away children on their own, and they often do. In all 50 states caseworkers have the authority to remove a child from the home on the spot. In about half the states they can do it themselves, in the rest they must call law enforcement, but the decision rests with the worker alone.

In theory, this is supposed to be done only in emergencies. In fact, in New York City, to cite

one example, the child welfare agency has admitted that this is their typical procedure, whether there is an “emergency” or not. A judge doesn’t get involved until a few days later. At that point she is faced with a lawyer for CPS who does this for a living and has had days to review the file, versus an overwhelmed, impoverished parent who, if she has a lawyer at all, just met him five minutes ago. As a report from the New York City Public Advocate’s office points out, it’s impossible for that lawyer to mount a defense without seeking a postponement. The child stays in foster care. That report and others have found that representation for parents typically ranges from shoddy to nonexistent.

*In New York City parents win their cases just 1.6 percent of the time. A second report, from an independent advisory panel of national experts, found that **the city’s family court judges admit they routinely remove children even when they don’t think CPS has made a case because they’re terrified of the publicity if they send a child home and something goes wrong** [emphasis added].*

I would add to that description the fact that even when a caseworker turns to a judge before removing a child, it’s almost always an *ex parte* hearing – that is, only the state’s side of the story is heard. So it’s no wonder that caseworkers lose at such hearings only slightly more often than the National Security Agency loses in the FISA court.

That item about judges rubber-stamping removals for fear of what would happen if they don’t should be particularly understandable to Schumacher-Matos. In his own report, when discussing licensing of foster homes he writes:

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.

I’ll deal with how this paragraph reflects Schumacher-Matos’ misunderstanding of what foster home licensing is all about later. For now, let’s follow his implicit advice and try imagining the public furor if a law enforcement officer or a judge refuses a request from a caseworker to take away a child and “something bad happened.”

After Malsam-Rysdon sent Schumacher-Matos that email, he could have learned a lot by writing back and asking her one simple question: “When you ask law enforcement to take away a child in an ‘emergency’ or when you ask a judge for a court order, how often do they say ‘no’?” There is nothing to indicate that Schumacher-Matos posed that question.

Much later in his own report, Schumacher-Matos hints at the real power relationships between the state and Indians when he writes: “What the law doesn’t allow, however, is for a tribe to reject a state social worker if it wants to.”

As for Schumacher-Matos’ claim that the NPR stories didn’t do enough to discuss the terrible problems on Indian reservations, and was insufficiently deferential to neocon ideology that says you “infantilize” poor people if you don’t blame them for their problems, that is covered well by Kelly McBride of Poynter in NPR media correspondent [David Folkenflik’s report](#) on the South Dakota child welfare stories and the Ombudsman’s report.

I will note only that Schumacher-Matos' report reminded me over and over again of a comment made by the chief juvenile prosecutor in an Iowa county where one of ten Native American children is in foster care. That prosecutor declared:

*I don't think there's anything in any of these cases that points to something positive about Indian culture, except the culture of drugs and the culture of poverty and the culture of abuse.*⁵

To my ears, Schumacher-Matos is saying the same thing – but at greater length and with a bit more subtlety.

Schumacher-Matos' discussion of “neglect” also implies that, when faced with actual neglect and/or poverty confused with neglect there are only two options: Do nothing or take away the children. But the reason states like Alabama and Illinois (discussed briefly later) have been so successful in safely reducing foster care is that they built an entire infrastructure of alternatives, ways to provide help to families so they could keep their children safely in their own homes.

Of course not every state has this. And no wonder. Though these alternatives cost less in total dollars, when a state uses these alternatives it receives vastly less help from the federal government than if it chooses to place the child in foster care.

And that, of course, brings us to...

FINANCIAL INCENTIVES

Though Schumacher-Matos devotes a large part of his report to this topic, he doesn't really respond to what the NPR stories actually said about financial incentives.

Instead Schumacher-Matos creates a caricature - throwing around terms like "filthy lucre" and "making pacts with the devil" and “evil state bureaucratic greed” and “so cruel as to forcibly take Indian children from their families as a way to collect money from the state.” He writes that the “unmistakable allegation” in the stories is 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 from the federal government” [emphasis added]. The stories themselves neither say nor imply any such thing. Schumacher-Matos infers the allegations of ill-motivation on his own and then engages in first degree “inference peddling” to his readers. Then he responds less to what the NPR journalists said, but to his own caricature.

No, child welfare agency officials don't gather around in a secret room and, rubbing their hands with glee say, *a la* Montgomery Burns on the Simpsons and declare: “Well, well. I see there are more children we can take. Eeeeehhhhxcellent.”

⁵ Lee Rood, “Unfit or Unfair,” *Des Moines Register*, February 10, 2003, p.A1. As far as I know, this story no longer is available online.

But doctors don't sit around in similar gatherings trying to figure out how many extra bodily organs they can remove because they are paid on a fee for service basis. On the contrary, most of them have persuaded themselves that all that surgery is exactly what their patients need. Yet study after study has shown that when doctors are paid on a fee for service basis they perform more operations and conduct more tests.

It's no different in child welfare. And, no, the fact that public agencies don't "make money" on removing children doesn't change that. The issue isn't what pays more, but what costs less.

There are safe, proven alternatives to foster care that cost less than foster care and, for the overwhelming majority of cases, are safer than foster care. But while they cost less in total dollars, they may cost more for a state or county - precisely because the federal government picks up a large part of the tab. (My own estimate for South Dakota is that the federal government reimburses a little over 61 cents on the dollar - not as high as the NPR stories estimate nor as low as the state claims. The estimate is based on the chart on the final page of [this document](#).)

It is true that financial incentives don't operate in a vacuum. There also are personal incentives and political incentives - and all of them push in the direction of child removal. This is discussed in more detail in our [Issue Paper on financial incentives](#) and in our report, [You Get What You Pay For](#).

The open-ended entitlement discussed above, known as Title IV-E, is not the only harmful financial incentive.

Consider the incentives in the so-called Adoption and Safe Families Act (ASFA) of 1997. Schumacher-Matos discusses, and for some reason, dismisses, the fact that this law gives significant bonuses for adoptions over a baseline number. Congress did this with the specific intent of using money to motivate states to get more children adopted. For better or worse, (and I would argue worse, given terrible side effects such as [a sharp increase in legal orphans](#)) it worked. Adoptions of foster children increased significantly when financial incentives changed.

Schumacher-Matos seems to take offense at the fact that the NPR stories refer to these payments as bonuses. But that's not the journalists' term - it's the term used by Congress and the federal government. (Since I find these payments appalling, I prefer the term "bounties.") So though Schumacher-Matos claims that "there is neither a sliding scale nor a bonus for the state if it meets or passes certain targets" that is, in fact, exactly how the adoption bonuses work.

But the real irony here is that there's another financial incentive for foster care right under Schumacher-Matos' nose. In fact, it is, to use Schumacher-Matos' term "the smoking gun." Schumacher-Matos mentions it himself in his own report. At least twice Schumacher-Matos alludes to the fact that if removal involves one child, South Dakota will try to find a relative, but if it involves multiple children the children will go to foster care with licensed strangers. That's because there is no federal reimbursement for unlicensed kin and payments to kin via the Temporary Assistance to Needy Families program (TANF) - the program which replaced Aid to Families with Dependent Children, aka "welfare" - drop after the first child!

Yes, TANF is federal money, but it is not an open-ended entitlement, it is a small amount of money gleaned from savings state achieve through reducing welfare rolls. And while the federal government says foster care funds can't be used for unlicensed homes (an issue to which I will return) the *state* decides how much it will pay a family in TANF funds. Schumacher-Matos writes that Malsam-Rysdon told him that, in Schumacher-Matos' words, "under federal funding formulas, TANF aid drops after the first child but remains constant under foster care." That is untrue. The state of South Dakota is free to match foster care payments to strangers by giving the same amount, in TANF and/or state funds, to unlicensed relatives. It also is free to decide whether or not to reduce TANF benefits after the first child. **Schumacher-Matos writes in his own report that because of these *financial incentives*, the State of South Dakota chooses to shunt sibling groups into foster care with strangers.**

Consider also how many people who have studied foster care or worked in it agree that federal financial incentives encourage needless foster care.

Schumacher-Matos praises the Pew Charitable Trusts as "scrupulously independent" when he quotes from a Pew document he likes. Yet he ignores the fundamental conclusion of [the commission Pew established to study foster care](#):

Current federal funding mechanisms for child welfare encourage an over-reliance on foster care at the expense of other services that might keep families safely together, allow children to return safely home, or move children swiftly and safely from foster care to adoptive families or permanent legal guardians.

And Pew isn't the first. The National Commission for Children, created by Congress and the President, concluded that children often are removed from their families "prematurely or unnecessarily" because federal aid formulas give states "a strong financial incentive" to do so rather than provide services to keep families together." (See p. 290 of the report, [available here](#).)

And David Sanders, now Executive Vice President of Systems Improvement at Casey Family Programs and formerly director of one of the nation's largest child welfare systems, the Los Angeles County Department of Children and Family Services, [said this](#):

What you have now is an incentive to initially remove the child and an incentive to adopt them out. I think when you put these two together, there is a problem

All of these incentives are so powerful that, when Prof. Leroy Pelton, former director of the Social Work program at the University of Nevada Las Vegas, charted the rise and fall of America's foster care population through the 20th Century for his landmark book, *For Reasons of Poverty* (Praeger, 1989), he found that the most powerful factor in that rise and fall is financial incentives.

There are still other financial incentives. With so much more federal money available for foster care than for safe, proven alternatives, the whole service infrastructure in states grows up around substitute care, be it in foster homes, group homes or institutions. So when

workers say "I'd leave this child home but we don't have alternatives" it's precisely because financial incentives have promoted building a strong network for one option - foster care or institutions run by strangers - while not building up alternatives.

This then leads to the second set of incentives: It varies from state to state, but most institutional care, and often much family foster care is overseen by private agencies. These agencies typically *do* make money from foster care, because typically they are paid for every day they hold a child in care. Here again, it's like hospitals, which tend to keep people in beds longer when they are paid *per diems*. And if Schumacher-Matos want to see what happens when these incentives are changed - just look at Illinois; and then try to say with a straight face that financial incentives are irrelevant.

Illinois once had more than 50,000 children in foster care. Then, again, as part of a class-action lawsuit, the incentives for private agencies were changed. Today the figure is under 17,000. And, once again, independent court-appointed monitors say the reforms have been accomplished without compromising safety. If Schumacher-Matos would like to know more about the Illinois reforms, and the vital role of changing financial incentives, I would be glad to put him in touch with the lawyer whose class-action lawsuit brought about these fundamental improvements.

The problem goes even deeper. When you build your child welfare infrastructure around powerful private agencies paid on a per diem basis, they have a profound vested interest in the status quo, and use their influence with state officials to keep things that way. (In Illinois, as noted above, it took another class action lawsuit to change things) - and *that* is why, in South Dakota, the governor's prior employment, discussed in part two of the NPR series, is so concerning.

THE STATEMENTS OF NAPOLI, JANKLOW SHELDON – AND FORMER SENATOR ABOUREZK

Schumacher-Matos go to great lengths to deny the simple, obvious meaning of the statements from former South Dakota State Senator Bill Napoli, former South Dakota Governor Bill Janklow and George Sheldon, the federal government's top child welfare official.

In his discussion of Napoli Schumacher-Matos also misstates the history of child welfare legislation and what certain laws do. Title IV-E is a creature of the Adoption Assistance and Child Welfare Act of 1980, not the Family Preservation and Support Act of 1993. This is stated clearly in [the very document](#) Schumacher-Matos cites as the source for his information. The other law he discusses, ASFA, did *not* provide increased assistance to keep families together - its entire thrust was to encourage more removal of children and rushing to terminate parental rights. The Family Preservation and Support Act funding was a drop in the bucket compared to the giant open-ended Title IV-E entitlement for foster care.

More to the point, do Napoli, Janklow and Sheldon think they were misrepresented? Did they complain to Schumacher-Matos that their statements somehow were misconstrued or put in the wrong context? I presume that if they had, Schumacher-Matos would have mentioned it.

Did Schumacher-Matos contact any of them himself? After all, Schumacher-Matos says he re-reported the story - so did Schumacher-Matos call them up or email them and ask if the context for their quotes was accurate?

I don't know Napoli or Janklow. I am acquainted with George Sheldon and I have considerable familiarity with his outstanding work, in particular when he was one of the key leaders of the transformation of the Florida child welfare system. The keystone of that transformation was a dramatic change in financial incentives, which led to a significant drop in removals with no compromise in child safety, as documented by independent evaluators.

There is more about Sheldon, and multiple links to information about Florida, in this post to the [NCCPR Child Welfare Blog](#).

Take a good, hard look at George Sheldon's track record, Mr. Schumacher-Matos. Read his statements in Florida and his testimony before Congress about financial incentives. Then try to tell NPR listeners with a straight face that he didn't mean exactly what it sounds like he means: There is a federal financial incentive for foster care and that leads to children winding up needlessly in foster care.

That also is what Sullivan and Walters suggested. The talk of “making pacts with the devil” and “filthy lucre” come from the fervid imagination of Schumacher-Matos.

Schumacher-Matos also ignores another expert from South Dakota who was not quoted in the original series, but did speak out strongly in support of the series. Former South Dakota Sen. James Abourezk, an author of the Indian Child Welfare Act, made his comments on South Dakota Public Radio shortly after the series aired. Indeed, though Schumacher-Matos says he re-reported the series, he seems to have reached out to none of those in South Dakota who found it accurate. He did not even reach out to a former county child abuse prosecutor who reached the same conclusions as NPR – [and allegedly was fired in retaliation](#).

In fact, when it comes to human sources, the “re-reporting” appears to be confined largely to officials from the state of South Dakota.

TRYING TO DISCREDIT AN EYEWITNESS

Schumacher-Matos also seeks to discredit the claims of a former caseworker for the state quoted in the stories, Jolene Abourezk. She said that a high rate of child removal is

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.”

And why should we ignore this eyewitness? Because, Schumacher-Matos writes:

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.

But the very next paragraph in NPR's story notes that Abourezk's current experience is relevant as well:

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

So it's not as if Abourezk has been out of touch with the South Dakota Department of Social Services for the past decade.

(By the way, later in his own report, Schumacher-Matos bases a description of relationships on Indian reservations in part on "...my own limited experience **reporting a story years ago** on a reservation in Maine" [emphasis added]).

But there is other evidence that past and present practice is the same – data from Schumacher-Matos' own report.

One chart he compiles tracks the number of children in South Dakota foster care for each year from 1995 through 2012. In 2001, the year Abourezk left state service, the number was 707. In 2012 it was 741. So apparently, past practices are just like present practices.

The number of children entering care each year in South Dakota [also has remained largely constant at least as far back as 2000](#)⁶ – with the exception of 2012 where, at last, there was a decrease, probably because of NPR's excellent reporting.

So if the number of children being taken away in South Dakota when NPR broadcast its reports is just about the same as the number when Abourezk made her comments, it is likely that practices changed little if at all.

THE AMOUNT OF MONEY INVOLVED

I don't have time to get into all of the issues Schumacher-Matos raised, though I'd be glad to discuss this one, or any other, with Schumacher-Matos, if he wants to follow up. I would make only one point: As long as foster care money is an entitlement the key point is not the total amount that goes to the state, but the fact that every time the state has to make a decision - foster care or a better home-based alternative - the federal government puts a financial thumb on the scales favoring foster care.

But it is misleading for Schumacher-Matos to seek to minimize federal payments by writing that South Dakota "was 48th among the states in Title IV-E funding" referring to total dollars. South Dakota will receive less total funding because it is a small state.

⁶ The data to which this statement is linked go back to 2003. Older data, in the possession of the author, apparently no longer are available online.

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As for Schumacher-Matos' comparison of dollars *per capita* and per foster child, the results he got, if accurate, may well be a function of "churning." States with exceptionally high rates of removal often are quick to take a child, and relatively quick to realize they made a terrible mistake - the problem is that the act of removal is so traumatic that enormous damage still often is done, particularly since children do not experience time the way adults do. Elsewhere in Schumacher-Matos' critique he cites data indicating average lengths of stay of only a few months for children taken by the State of South Dakota. When lengths of stay are that "short" - using an adult's sense of time - it often means the child never should have been taken in the first place. It also means the total amount of money paid by the federal government will be less, since the payment is a percentage of total foster care costs.

No, the key measure is the proportion of foster care costs reimbursed by the federal government. And as noted earlier, when it comes to Title IV-E, the best data I can find indicate that South Dakota is getting back about 61 cents for every dollar it spends on Title IV-E foster care.

LICENSING

In Schumacher-Matos' discussion of placement outside Indian homes, he discusses two instances in which the NPR stories refer to grandmothers as licensed foster parents. Schumacher-Matos then writes:

*What Sullivan did not report was that the two women did not have the **correct** licenses to receive foster children. [Emphasis in original.]*

Schumacher-Matos goes on to claim that a tribal license is insufficient in the absence of an agreement with the state. "This is a federal requirement - not a devious state requirement," he says.

Really? How does Schumacher-Matos know this? Did he check the relevant federal statutes - or did he just rely on what he was told by state officials?

I can find no reference to a requirement for any such agreement on the website of the Department of Health and Human Services Administration for Children and Families, and at least one of the questions and answers [on this FAQ page](#) suggests otherwise:

Question: Must foster family homes approved through the tribal process meet the same standard as homes licensed by the State?

Answer: The definition of "foster family home" at 45 CFR 1355.20 gives tribal licensing or approval authorities the jurisdiction to license or approve homes that are on or near Indian reservations. This is consistent with ICWA at section 1931(b) which states that for purposes of qualifying for funds under a federally assisted program, **licensing or approval of foster or adoptive homes or institutions by an Indian tribe is equivalent to licensing or approval by a State. The authority to license or approve includes the authority to set standards.** [Emphasis added.]

The Native American Rights Fund does reference state-tribal agreements - but as an option not a requirement. [From their FAQ](#):

11.16 - Are tribes allowed to license foster homes eligible for federal benefits?

Yes. **Section 1931**(b) provides that: [f]or purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

16.14 - How does tribal licensing approval apply to placement?

The foster care placement preferences of the ICWA at **1915**(b) grant a preference for foster homes licensed, approved or specified by the Indian Childs tribe. If the Indian Childs tribe has licensed, approved or specified a foster home for an Indian child, the Indian child must be placed in that home unless the state court determines that good cause exists not to do so.

Part II of the ICWA at **1931**(b) also ratifies the acceptability of tribal foster homes by stating that for purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State. This language means, for example, that a tribally-licensed foster home qualifies for Title IV-E funding that is allocated to states by the federal government, if the state places the child directly in the tribally-licensed home *or* the tribe and state have a Title IV-E Agreement between them *or* a state-tribal **1919** agreement. [Emphasis added]

10.4 - Does 1919 require a tribe or state to enter into tribal-state agreements to address foster placement and foster care payments between the state and tribe?

No. A state is not required to enter into an ICWA agreement with a tribe. ***Native Village of Stevens v. Smith***, 770 F.2d 1486 (9th Cir. 1985). Conversely, tribes are also not required to enter into ICWA agreements with states. Agreements, however, are entered into as a cooperative endeavor between sovereigns and can help structure limited available resources and services to best serve Indian children and families. A tribe may also want to enter into a Title IV-E agreement with a state to access much needed federal funding and ensure states coordinate with tribes in Indian child foster placements and comply with tribal placement preferences. See also **FAQ 19.5**, **19.6**, and **19.7**, Application of Other Federal Laws.

Of course it's always hard to prove something doesn't exist - perhaps I missed a subsection somewhere. But Schumacher-Matos makes no reference to requiring state officials to show that federal law *does* require such an agreement. Does Schumacher-Matos have the evidence?

But let's assume for the moment there is such a requirement and I've overlooked it. Such a requirement would *not* mean that the state couldn't place children with the Indian grandmothers. *If* such a requirement exists - and again I've seen no proof - it would mean only that the State of South Dakota would not get federal reimbursement for the placement. Since Schumacher-Matos considers it the ultimate insult to suggest that the noble folks at the

South Dakota Department of Social Services would even *think* of letting "filthy lucre" affect their decisions, clearly this is irrelevant. (And in fact, as is discussed later, Schumacher-Matos makes much of the fact that South Dakota places hundreds of children in homes with no licenses at all.) So in fact there is no federal barrier whatsoever to placing children with these grandparents - only a financial disincentive.

Schumacher-Matos compounds the problem by claiming not only that state and tribal licenses are different, but a tribal license somehow is "improper:"

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.

This quote from Schumacher-Matos also raises another issue:

Surely he's not suggesting that those saintly, noble folks at South Dakota DSS would ever deny a child the best possible placement just because if something went wrong they might look bad? Surely they never act based on such ignoble motives - do they?

LICENSING DOES NOT EQUAL SAFETY

More generally, Schumacher-Matos has fallen into the common trap of equating licensing standards with safety standards. Of course there is a lot of overlap. But foster care licensing standards typically were written before kinship care was formalized and came under the purview of child protective services agencies. As a result, it is common for state licensing standards to be as much about middle-class creature comforts as about genuine health and safety needs. This has, in fact caused hardship for children across the country who are denied kinship care placements not because those placements are unsafe, but because grandparents can't dot every i and cross every t to comply with page after page of licensing requirements - and the state doesn't want to miss out on the federal money it loses by placing a child in an unlicensed home.

I have not read the South Dakota foster parent licensing requirements. Has Schumacher-Matos? Since he's the one expressing horror at the thought of placing a child in an unlicensed foster home, he's really the one who needs to check.

I wonder if the South Dakota standards are like the standards in Michigan? Those standards are so strict that the condo where President Obama was raised by his grandmother [probably wouldn't qualify](#).

RACE

Schumacher-Matos devotes much of his critique to arguing that race has little or nothing to do with the fact that Indian children are in South Dakota foster care at a rate 3.9 times the rate in the general population, or that they are predominantly in white foster homes.

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He argues it's not race – it's all that neglect caused by poverty. In this he echoes the party line of America's child welfare establishment ever since racial bias in child welfare became a big issue about a decade or so ago.

For someone who has followed child welfare for 36 years as I have, first as a journalist and then as an advocate, this is wonderfully ironic. For decades, child welfare officials insisted they never, ever took away children because of poverty. But raise the issue of race and they'll immediately say: No, the disproportionality is not because of race, it's because of poverty!

In fact it's both.

For starters, it would be amazing if racial bias were not a factor in child welfare decision-making – since it's a factor in every other aspect of American life. Surely all of the discussion surrounding the case of Trayvon Martin – all the stories about Black parents having to have “the talk” with their children, the facts of everyday life for an African American male when he goes shopping in a department store or tries to hail a taxi, should make that obvious.

There is, however, a small group in the child welfare field who cling to a Myth of Child Welfare Exceptionalism. That is, the notion that child welfare professionals are somehow so much more skilled, more noble, more caring and more immune from prejudice than people in every other field of endeavor that there is little or no racial bias in child welfare.

The problem with that, aside from the arrogance, is that it ignores a mountain of research specific to child welfare. Much of that research is discussed, with citations, [in this NCCPR Issue Paper](#). I'll cite just one of them here. It involves what happens when caseworkers are given hypothetical situations and asked to evaluate the risk to the child. The scenarios are identical – except for the race of the family. Consistently, if the family is Black, the workers say the child is at greater risk.

Most of the formal studies of racial bias involve African American children. There is no reason to believe that there is any less prejudice against Native Americans.

Schumacher-Matos' attempt to minimize the role of racial bias also ignores the fact that some states do a better job of avoiding such bias than others. As noted previously, among the states where the percentage of the population that is Native American is highest, South Dakota has a worse record for racial disparity than all but one or two.

Schumacher-Matos' most puerile line of defense boils down to “But look! Look! The *Indians* do it too!” That is, tribal courts also take away Indian children and place them in white foster homes. This overlooks several factors.

- The issue *is* addressed in the NPR series, just not at the length Schumacher-Matos would prefer, when Sullivan noted that “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.”

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- Racial bias is not confined to prejudice against another race. Name almost any racial or ethnic group and one can find tensions within that group: northern Italians vs. southern Italians, Shia Muslim vs. Sunni Muslim, Sephardic Jew vs. Ashkenazi Jew, light-skinned African American vs. dark-skinned African American, Cayuga Indian vs. Seneca Indian. Often these intra-racial and intra-ethnic rivalries are fueled by another important bias, class bias.
- The very poverty Schumacher-Matos notes so often when it suits him means that reservations and tribal courts are likely to lack the resources to fund alternatives to foster care. Thus, as he acknowledges in his own report:

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.

Notice what Schumacher-Matos does here - it is instructive concerning his approach to the NPR stories:

- First he says the fact that tribal courts also place children in white homes at high rates shows that when the State of South Dakota does the same thing, it can't be because of racial bias.
- But then, when he gets an answer to this claim that he doesn't like - that tribal courts sometimes are forced to do this because of *financial incentives* - he changes the *question*, saying this doesn't prove "manipulation by the state."

THE FOSTER CARE TWILIGHT ZONE

In the course of "re-reporting" the story, Schumacher-Matos did come across something interesting. But he misunderstood the implications of his finding.

Schumacher-Matos stumbled into what I have come to call "[the foster care Twilight Zone](#)," thousands of "off the books" placements of children nationwide that often should, in fact, be counted as foster care, but are not; thereby artificially lowering a state's rate of removal.

Throughout his report, Schumacher-Matos refers to another category of care in which Native American parents surrender their children to relatives. Often these relatives are unlicensed and so, South Dakota provides only meager TANF funding to those relatives (even though, as noted above, and contrary to Schumacher-Matos' claims, the state has the right to set TANF reimbursement to relatives at any rate it chooses).

This category is vastly larger than officially-counted foster care – it includes about 4,000 children. Schumacher-Matos argues that so many of these placements are with Native American relatives that they more than balance out the huge bias toward white families for formal foster care – thereby suggesting that there is no racial bias in South Dakota foster care.

In fact, it suggests nothing of the kind.

Schumacher-Matos describes all but about 300 of these cases as “purely voluntary.” He is arguing that every single case in which an Indian child happens to live with a relative who, in turn is receiving TANF funds (what used to be called welfare) is somehow equivalent to cases in which caseworkers remove a child by force of law and consign the child to foster care. By this logic, when I was a young child and my parents had my brother and me stay at our grandmother’s house when they were on vacation, then we should be counted as a same-race foster care placement (had our grandmother been receiving welfare, that is).

Schumacher-Matos is on more solid ground when he suggests counting the 300 Native American children placed in kinship homes under formal court and/or child welfare agency supervision.

But even then, when group home and institutional placements are included, as they should be, nearly 59 percent of Native American foster children in South Dakota are in non-native homes. (See Chart 5.6 in Schumacher-Matos’ report.)

In fairness to Schumacher-Matos, odds are some of those other 3,700 placements are not like my vacation time with my grandmother. They probably are not really voluntary at all and Schumacher-Matos is wrong to label them all “purely voluntary.” Around the country caseworkers sometimes have said to a parent: “Send this one child to his grandmother or we’ll take all the children and place them with strangers.” That’s every bit as coercive as a standard foster-care placement.

But the fact that these kinds of kinship placements exist is not a sign of cultural sensitivity. These so-called voluntary placements that are not so voluntary exist because they save caseworkers the hassle of going to court and getting the judge to rubber stamp the removal. It also eliminates court review – and any requirement to actually help the family. The child can be filed away and forgotten.

This also means, of course, that the appallingly high rate of removal for South Dakota should be even higher, perhaps significantly higher. (This would not necessarily make South Dakota’s ranking worse since some form of foster care Twilight Zone probably exists in every state.)

OVERRIDING THE VETO OF SILENCE

One of the reasons child welfare agencies often exercise their power arbitrarily is that there is nothing to stop them. Earlier I explained why Shumaker-Matos’ vision of checks and balances is the Disney version of how child welfare works.

But the problem is compounded by the fact that so much of the system operates in secret. So when parents or extended family come forward, an agency can simply hide behind “confidentiality,” and refuse to comment.

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In other situations, up to and including matters of alleged “national security,” reporters typically go ahead anyway – most of the time they wouldn’t think of allowing a government agency’s silence to kill a story. But too often child welfare is different.

That’s because so many reporters go in with the same biases as Schumacher-Matos – they revere caseworkers and have a very low opinion of parents caught up in the system. As will be discussed shortly, that was the dominant attitude at NPR for years. These reporters are glad to have a reason not to follow up on a parent or a grandparent’s allegations.

Of course, when reporters accept this veto of silence it only reinforces agency determination to keep their confidentiality laws and/or policies and fight efforts to make the system more open. Indeed, I have a theory that every time a reporter decides not to pursue a child welfare story because the agency won’t talk, somewhere, an agency flack gets his wings.

Laura Sullivan and Amy Walters decided to override the veto of silence and pursue the story anyway. And now Edward Schumacher-Matos is giving them hell for it.

He argues that the stories of grandmothers, in particular grandmother Janice Howe, should be discounted, first because they are grandparents and not the parents who lost legal custody, and second because the parents did not give South Dakota DSS permission to release their entire file.

I wish they had given that permission. But given how terrified they must be of DSS, it’s not hard to see why they wouldn’t. Indeed, there is alarming evidence that DSS has [retaliated against even high-profile whistleblowers](#) who have said they agree with NPR’s stories. No wonder Native American parents who’d already lost their children would be scared.

As for the fact that these grandmothers are, well, grandmothers, that should not diminish their credibility one iota.

Schumacher-Matos justifies discounting the grandparents’ accounts this way:

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.

This is contradicted by the very fact that, elsewhere in his own report, he emphasizes the number of children who live with grandparents – and therefore can be taken from grandparents.

And, in the case of Janice Howe, she was an eyewitness to much of what she describes and two of the children were, in fact, taken from her. That is not hearsay.

South Dakota DSS is not as helpless to defend itself as it sounds. A handful of states have passed legislation allowing the state or local child welfare agency to talk if a case has been made public by anyone else – including a parent or grandparent. Nothing is stopping the

South Dakota Legislature from doing the same. Has Malsam-Rysdon asked for such legislation? Schumacher-Matos does not say.

Similarly, today roughly 47 percent of foster children live in jurisdictions where court hearings in these cases are open. Has Malsam-Rysdon tried to persuade the legislature to add South Dakota to that list – or does she prefer to keep it all secret?

For a full list of recommendations for greater openness and accountability in child welfare, see NCCPR's [Due Process Agenda](#).

THE INDIAN CHILD WELFARE ACT

I will deal only briefly with Schumacher-Matos' odd claim that a series of stories about Indian child welfare should not be "framed" by – the Indian Child Welfare Act (ICWA). This is a bit like saying that a story about the history of voting rights in, say, Shelby County, Alabama should not be framed by the Voting Rights Act of 1965.

Indeed Schumacher-Matos himself seems to regard ICWA much the way Justices Antonin Scalia and John Roberts regard the VRA – as, in Scalia's words, an improper "racial entitlement." But that does not mean that NPR reporters are obligated to do the same. Schumacher-Matos even suggests we should be guided in our understanding and interpretation of ICWA by Roberts – whose views on race certainly are not the ones I would choose for guidance.

Schumacher-Matos argues that

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

But it is Schumacher-Matos who had blinders. ICWA does not ignore the social context, it was passed in response to that context. And again, note the bias that permeates Schumacher-Matos' narrative: ICWA supposedly compromises "the moral goal of protecting children."

He goes on to discuss, at length, a recent Supreme Court case involving ICWA. But that case involved a custody dispute between a birth father and adoptive parents, there was no involvement by a government child welfare agency, and no taking of a child by such an agency by force of law. These different types of cases raise different issues when it comes to ICWA. But, since Schumacher-Matos brought up the case, he would be well-advised to be guided less by John Roberts and more by [this cogent analysis from Andrew Cohen](#) in *The Atlantic*.

Schumacher-Matos also says something odd here. In quoting, favorably, Chief Justice Roberts he notes that Roberts "is himself the father of two adopted children..." as though this somehow should give him more credibility in a dispute between adoptive parents and a birth parent.

Schumacher-Matos goes off on other odd tangents, offering up his personal views on race and suggesting that somehow they should guide NPR reporters. Indeed, he seems to find a work of fiction, the novel, *White Oleander*, a better source of guidance for journalists than the relevant federal statute. He writes that

... 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.

He also offers up another digression:

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.

So the comforting neocon narrative of a post-racial America – and a novel – are better guides for NPR journalists covering Indian child welfare than the Indian Child Welfare Act. How could those NPR reporters not have realized this?

THE HARM SCHUMACHER-MATOS HAS DONE TO JOURNALISM AT NPR

When I was a reporter for a mid-size daily newspaper, I made a suggestion that did not endear me to the newspaper's top editor. I said that his newspaper, and every other, should have an ombudsman. I still believe that – for newspapers, broadcast, and online news organizations alike. Examples of Ombudsmen who have improved not only their own newspapers but the standards of journalism as a whole range from Geneva Overholser at *The Washington Post* in the 1990s to Margaret Sullivan at *The New York Times* today. I agree with Kelly McBride that it would be a shame if what Schumacher-Matos has done in this case soured NPR on the whole idea of having an ombudsman.

But sadly, in this case, Schumacher-Matos did his job so poorly that it is likely to harm both children in South Dakota and journalism at NPR.

For many years, Schumacher-Matos' view of child welfare predominated at NPR, something documented in [many posts to the NCCPR Child Welfare Blog](#). One news editor for *Morning Edition* infamously [demeaned parents caught up in the system as “these people”](#) making clear that “these people” had no place on NPR's air.

Story after story did everything Schumacher-Matos would want. In addition to ignoring

“these people” the stories accepted the view that family preservation and child safety are inherently at odds.

But apparently no one at NPR had a problem with it when reporter Michelle Trudeau began a multi-part series on foster care [by falsely claiming](#) that: "A child is placed in foster care only as a last resort, when parental maltreatment or neglect is extreme and unremitting."

Then there was the time NPR produced multiple segments on a study of transracial adoption – [and spoke only to white people](#).

That’s why for years, I felt NPR really stood for No Parent Response.

And then Laura Sullivan and Amy Walters started looking into the kinds of issues NPR had systematically ignored. Suddenly “these people” had a voice.

Let’s get real, Mr. Schumacher-Matos. We’ve both spent enough time in newsrooms to know what happens when someone drops a bomb like your report. The sheer overkill, the over-the-top condemnation that goes far beyond any errors the series might contain, means that:

- Those in the NPR newsroom who still look upon parents caught up in the system as “these people” will be empowered to do more of the same biased reporting.
- Any attempt to report on racial and class bias in child welfare, or needless removal of children, will be thwarted by editors who “don’t want to go through that again.”

There were [failings in NPR’s reporting](#) on Indian child welfare, and Schumacher-Matos had a responsibility to single them out. But his 80-page excoriation of what was a fundamentally sound story with fundamentally sound conclusions means it will be a long, long time before “these people” get a voice on NPR again.

SEE FOLLOWING PAGE FOR APPENDIX A

####

RESPONSE TO THE SCHUMACHER-MATOS REPORT/26

APPENDIX A

Rates of disproportionality in states with high Native American populations

State	Native Americans As Percentage of Total population	Rate at which Native Americans are overrepresented in the foster care population
Alaska	16.4	3.1
New Mexico	9.5	1.0
South Dakota	8.2	3.9
Oklahoma	7.8	0.8
Montana	6.5	3.8
Arizona	5.5	0.7
North Dakota	4.8	2.9
Wyoming	2.3	0.6
Washington	1.8	6.9
Nevada	1.8	1.2

Sources:

Native American population: <http://www.census.gov/population/estimates/state/rank/aiea.txt>

Disproportionality rates: http://www.ncjfcj.org/sites/default/files/Disproportionality%20TAB1_0.pdf (See table starting on p.2.)