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Thank you Commissioners for the opportunity to speak with you today and to the Tulalip Tribes for hosting us. My name is Jennifer Yogi and I'm a staff attorney at the Northwest Justice Project. ("NJP") is a non-profit organization that provides free civil legal services to low-income people throughout the state of Washington. In addition to thirteen field offices, NJP also has a Native American Unit based in Seattle. Our offices offer legal aid to Native clients living in both tribal and urban Indian communities in a wide variety of issues. These include homelessness prevention, family law cases involving domestic violence, education rights, consumer protection, access to and preservation of public benefits and Indian trust property, and many more. We provide legal assistance to clients involved in tribal, state and federal fora.

The issues addressed by the Tribal Law and Order Act and this Commission are very important to ensuring greater safety in Indian Country, particularly for the clients we represent who are often at increased risk of harm. Today I would like to highlight the great need that exists with respect to representation for parents and children in tribal court dependencies and the critical issues that are at stake in these cases.

There are 26 tribal courts in the state of Washington. Of these, only a handful of tribes offer free or low-cost legal representation to parents or children involved in dependency cases, and even in those instances, legal assistance is limited to that tribe's members. As a result, NJP regularly receives calls from parents involved in tribal court dependencies,¹ often called "Youth in Need of Care" cases. I have provided advice and brief services for such parents in my capacity as a staff attorney on NJP's intake, advice and referral telephone hotline and also represented parents for two years in two tribal courts when NJP received a grant that allowed us to do this work. In the absence of special funding, we are able to provide representation to only a fraction of parents and children involved in tribal court dependencies.

It's important to note that while most pro se litigants are at a significant disadvantage in the legal system, the parent-defendants in these cases are even less likely to be in a position to effectively represent themselves and advocate for their family's needs. Legal counsel is often necessary to help the parents determine what steps they need to take in order to keep their children or have their children returned to their care. The parents I worked with were struggling with problems including chemical dependency issues, undiagnosed or untreated mental health problems and homelessness. Many had

¹ Washington statutorily recognizes an indigent parent's right to appointed counsel in dependency and termination of parent-child relationship proceedings; as a result, NJP generally does not offer legal services to parents involved in state juvenile court proceedings.

been physically and/or sexually abused as children and some were still in relationships involving domestic violence. These issues pose significant barriers to adequate self-representation. None of them were afforded a lawyer, even though they did not have the resources to hire a private attorney and even though they faced the possibility of permanently losing custody of their children.

Parents in these circumstances are largely left on their own to make sense of what is in most cases a complicated legal process. In addition to the benefit of having a trained advocate help navigate the process, I believe that the availability of counsel helps diminish the sense of powerlessness that parents in dependencies often have. Having an advocate eases parents' communication with tribal child welfare staff, and facilitates efforts to improve parenting skills and restore family relationships. Legal representation creates a greater likelihood of long-term safety and stability for the family, allowing parents to focus on their parenting and work on any issues that have posed a risk of harm to their children, rather than being overwhelmed by the legal aspects of the case. This in turn makes it more likely that parents are able to accomplish what is necessary for their case to be dismissed.

These cases present enormous challenges in terms of advancing what would appear to be a shared goal: family reunification. From outsiders' perspectives, a parent may not be viewed as a viable resource for their child, regardless of the parents' efforts, progress or desire to be reunited with their child. As a result, efforts to keep the family intact may be lukewarm. Parents often benefit from the perspective of an advocate to help determine services that the parent may need and to then advocate for those services. Although the tribal laws may dictate that the goal is family reunification, the system does not necessarily open the door to exploring and approving services that may be costly but needed, such as counseling, in-home family preservation services or drug treatment. On the other hand, an advocate for the parent or child can persuade the court of the importance of a particular service for the family.

An advocate may be able to help resolve the case more quickly, an outcome that is too infrequent. Native American children enter the foster care system at a disproportionately high rate. The Washington State Racial Disproportionality Advisory Committee found that Native American children are disproportionately adversely impacted at numerous decision points in the child welfare system. They are more likely than white children to be referred to the system, more likely to be tagged as high-risk and more likely to be removed from their homes.² Whether a case is eventually heard by a state juvenile court or is transferred to tribal court, involvement in a dependency proceeding has a significant and lasting impact on Native American children and families. When a child is removed from home, that can also mean that she is removed from her extended family, school and her tribal community. Due to a lack of sufficient foster homes in tribal communities, children are sometimes placed off the reservation, sometimes hours from their parents and family.

² Washington State Racial Disproportionality Advisory Committee, *Racial Disproportionality in Washington State*, Second Edition 2008.

Further, children who spend years in multiple foster homes are substantially more likely than other children to face emotional, behavioral, and academic challenges. As adults, they are more likely to experience homelessness, unemployment, and other problems.³ A child's mental, emotional, and physical health needs may go unmet for significant periods of time, impairing the child's development. Native American children may experience the loss of their family, identity, culture, heritage and language.⁴ The impact of separation and loss affects these individuals and families for years and for generations into the future. The consequences for children who are the subject of a dependency are well-documented and grim. To the extent that a case can be resolved quickly, or avoided at the outset, the family may escape the repercussions of involvement in the system.

The Commission has an opportunity to positively impact the well-being and safety of individual tribal members, their families and their communities by advocating for the importance of keeping Native families together. This is in keeping with the Tribal Law and Order Act's goal to improve public safety and justice systems in Indian country. Northwest Justice Project urges this Commission to include in its recommendations that increased funding be provided for (1) legal representation for parents and children who are involved in a tribal court dependency cases; and (2) for remedial and social services dedicated to family reunification.

³ Pew Commission on Children in Foster Care, *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care*, (Washington, DC, 2004), 9-11.

⁴ Carol Locust, *Split Feathers... Adult American Indians Who Were Placed in Non-Indian Families as Children*, 44 *Ontario Association of Child Aid Societies Journal* 11 (2000).