

Testimony of Kami Hart

My name is Kami Hart. I am Akimel O’Odham (Pima) and an enrolled member of the Gila River Indian Community. I have a bachelor’s degree in Behavioral Science from Western International University and a Master’s Degree in Public Administration from the Harvard University, Kennedy School of Government. I am a Children’s Court Judge and I have been serving my Community as a Judge for over 13 years hearing exclusively child welfare and juvenile justice cases. Prior to my appointment on the juvenile court bench, I worked for my Community’s Tribal Social Services Department as a Child Protective Services worker for eight years. Since the day I became a Judge I have been working on collaboration with the state, tribes, and other agencies that work in juvenile justice and child welfare. I have collaborated with organizations that specialize in child welfare including the National Council of Juvenile and Family Court Judges, Casey Family Programs, the National American Indian Court Judges Association, and the National Indian Child Welfare Association to name a few. This has helped me establish relationships in an effort to improve the child welfare and juvenile justice systems in the Gila River Indian Community.

Indian Child Welfare Act

In 2012, Kathleen Quigley, Pima County Presiding Judge, and I approached the Arizona State, Tribal, Federal Forum (“the Forum”) to propose creating an Indian Child Welfare Act (ICWA) subcommittee. The Forum unanimously granted the creation of the ICWA subcommittee and appointed Judge Quigley along with myself as co-chairs of the subcommittee. The subcommittee consists of representatives from tribes and state, including judges, child welfare representatives, attorneys, as well as representatives from the Arizona State University, the University of Arizona, and the Casey Family Programs. The ICWA subcommittee has created an Arizona ICWA guide as well as helped collaborate several multidisciplinary training with the help of the Arizona Administrative Offices of the Court. During trainings with the ICWA subcommittee the majority of the participants welcome training and discussion around ICWA, however, there has been pushback from some state court judges and parent attorneys that believe ICWA requires them to do more work. But we just continue to train and educate as to the requirements of the law. It is a recommendation of the Gila River Indian Community to work diligently with the tribes to create trauma informed, culturally appropriate ICWA Court and state laws that follow or mirror ICWA.

ICWA has been labeled the “gold standard” for all child welfare cases and children across the country. It is imperative that states and tribes receive the proper funding to support family placement and

reunification. With challenges to ICWA, the Community recognizes the importance of ICWA and the positive impact ICWA makes on multiple generations and to the tribe as a whole. Understanding this, the Community has created an ICWA team that consists of ICWA attorneys, ICWA case workers and Qualified Expert Witnesses that quickly respond to ICWA matters. The Community intervenes in every and all ICWA matters involving Community member children. It is important to support tribes with the proper personnel to address ICWA matters immediately to ensure compliance with the law.

Customary Adoptions

Tribes across the country have been granting customary adoptions to relatives that are raising children since the beginning of time. The Community does not culturally recognize the concept of permanently severing ties to parents, it is not a tradition or custom. However, it is a traditional norm to have other family members assist with the childrearing practices and responsibilities of raising the children. In a customary adoption, a parent's rights are suspended rather than terminated. The children are usually with relatives who will raise the children but the children will know the biological parents and even have a relationship with them but the parents can never regain custody. In traditional state court adoptions, the parent's rights are terminated, it is meant to sever all ties and the relationship of the biological parents and the child permanently. In tribal communities this permanent severing of ties rarely happens. The Gila River Indian Community has granted at least three customary adoptions in cases that have open state ICWA cases. These are ongoing state dependency cases in which the state court agrees with a case plan of customary adoption. The tribe will file for customary adoption in the tribal court. Once the tribal court grants the customary adoption the state recognizes the tribal court order and closes the state dependency cases. This does require the state courts to respect tribal courts and give full faith and credit to tribal court orders. However, if all tribes and states were to do this, tribes will need to have funding for attorney representation of the parents and a Guardian ad litem or attorney representation for the children. In our first case, the parents did not have an attorney representing them, they agreed to the customary adoption after the Judge explained in detail the proceeding. However, the state sent the matter back to the tribal court to assign the parents an attorney to ensure the parent's rights were being preserved. Gila River Indian Community is in a better situation than many tribes in that we have a Defense Services Office located in the Community and have conflict attorneys on contract as needed. We have also been working with the Southern Arizona Legal Aid Services to assist in these cases as the Guardian Ad Litem. Granting the customary adoption allows the adopting

relative to receive adoption subsidies through the state that they would not have otherwise had access to since the tribe does not have the resources for adoption or guardianship subsidies.

Tribe Taking Jurisdiction

In areas immediately surrounding the Gila River Indian Community, the Community's Child Protective Services (CPS) office has been working with the neighboring counties to improve their relationship. This was done by continuously having communication with the Arizona Department of Child Safety (DCS). There is now a great working relationship with the Community's CPS. If a case involves a child that is an enrolled member of the Gila River Indian Community, the state and tribe may have dual jurisdiction. The Arizona DCS will defer the case to the tribe and the tribe has taken jurisdiction, sometimes without the state opening a dependency court case. The state DCS workers have appeared in tribal court cases as witnesses in trials. The tribe does not have any written agreement with the state for this. It is done based on mutual respect and understanding. Both Gila River Indian Community and the State of Arizona should consider creating an inter-governmental agreement to ensure this practice can withstand any changes in personnel.

Prevention and Diversion

The main goal in the creation of the Gila River Indian Community Children's Court is to rehabilitate the juveniles and families. Prevention and Diversion programs are necessary to ensure that not all juveniles and family that enter the juvenile justice and child welfare systems are placed in out of home care. As well as allows those who are placed out of home to return more quickly. Gila River Indian Community currently operates a Teen Court, Juvenile Drug Court, and Family Healing to Wellness Court. All three of these programs began as grant funded programs. The programs collaborate with other tribal departments including behavioral health and education to work towards providing the most appropriate services for each family. While the clients are different for each program all three serve to offer support to the whole family so that the juveniles and families do not return to the juvenile justice or child welfare system.

The Teen Court is a diversion program and geared towards juveniles with little to no prior criminal history to prevent them from reoffending. The Juvenile Drug Court program is geared towards juveniles who are arrested and involved with alcohol or drugs. The JDC accepts juveniles as diversion or while on

probation. Both programs offer cultural classes to introduce or re-engage the juveniles with the cultures and traditions of the Akimel O’Odham and Pee Posh people.

The Family Healing to Wellness Court (FHWC) program incorporates milestones for parents to achieve to demonstrate they are working towards and maintaining sobriety. There is a cultural liaison on the FHWC team that meets with the clients weekly to introduce them to the traditional and cultural practices of sobriety and child rearing. They also offer Family Circle meetings to include the entire family in the client’s sobriety. This has helped when children are to return home and allows the family to decide how best they can support the children and parents. Funding is necessary for cultural practices to be incorporated in drug courts. When juveniles and their families are more involved in the culture and traditions of the tribe they are more likely to maintain sobriety.

Murdered and Missing Indigenous Persons

The Community actively participates in the Murdered and Missing Indigenous Women tribal, state and federal collaborations and task forces. The Community has also committed to focus on multidisciplinary collaboration within the Community by creating a Murdered and Missing Indigenous Persons response team and task force. As many already know, foster care and the child welfare programs are breeding grounds for child sex trafficking. As a country we it is imperative that collaboration efforts of all of these task forces continue to work diligently together when it comes to our missing and runaway youth involved in all child welfare systems. Resources have to be devoted to improve education and trauma informed responses to our vulnerable youth this also includes our state and federal partners.

Thank you for the opportunity to appear before you today. I look forward to your questions.