



A Lakota People's Law Project Special Report

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Justice as Retaliation

How the State of South Dakota is Attempting to Punish Lakota Child Welfare Advocates and Protect Child Abusers — The Mette Case

On May 1st, The Aberdeen News of South Dakota reported that former South Dakota state attorney Brandon Taliaferro and court appointed child advocate Shirley Schwab were being charged by South Dakota State Attorney General Martin Jackley with witness tampering and subornation of perjury. Attorney General Jackley filed these charges in relation to the separate criminal prosecution of Aberdeen-based foster parents Richard and Gwendolyn Mette. Mr. Taliaferro is a well-known South Dakota Indian child advocate and, as a former Assistant State Attorney, he was in charge of prosecuting child abuse cases in Brown County. Mrs. Schwab is the widely respected court-appointed child advocate for Brown County. Richard Mette had been charged in 2011 by Mr. Taliaferro with a total of 23 felony counts of aggravated rape of a child and aggravated incest against two of four young Native American sisters who had been placed in his and his wife Gwendolyn Mette's custody by the Department of Social Services (D.S.S.) over the protests of the children's Lakota family. Gwendolyn Mette had been charged with 11 felony charges of aiding and abetting his crimes, and with neglect of the children.

Charges were lodged against Mr. Taliaferro and Mrs. Schwab by Attorney General Jackley on November 7, 2011, only days after an October 25th-27th National Public Radio broadcast. The Peabody Award-winning NPR report by Laura Sullivan revealed that the South Dakota D.S.S., in collusion with the present Governor of South Dakota, Dennis Daugaard, has been systematically violating the 1978 Indian Child Welfare Act over the past decade. The NPR report implied that South Dakota State officials violated the Indian Child Welfare Act in order to draw over a billion dollars in federal moneys into the State of South Dakota. Attorney General Jackley lodged charges against Mr. Taliaferro and Mrs. Schwab

shortly after closeting with Governor Dugaard following the broadcast of this NPR report. The NPR expose revealed that Governor Dugaard had served from 2002-2009 as the executive director of the largest private for-profit group home for Indian foster children in South Dakota, the South Dakota Children's Home Services, Incorporated. Governor Dugaard was the lieutenant governor of South Dakota while he directed this corporation. During Governor Dugaard's tenure as lieutenant governor, his South Dakota Children's Home Services, Incorporated, received more than \$50 million of state money, mostly in the form of no-bid contracts. Records show that Governor Dugaard was paid \$115,000 annually by this organization.

Immediately after lodging the charges against Mr. Taliaferro and Mrs. Schwab, Attorney General Jackley ordered night-time and early morning raids of both Mr. Taliaferro's and Mrs. Schwab's offices and private homes. Attorney General Jackley's agents seized private computers, private cell phones, and office and home documents attempting to find any possible evidence that Mr. Taliaferro and Mrs. Schwab had made any "unauthorized disclosures" of confidential D.S.S. information during their work on the Mette case. Attorney General Jackley did not state to whom this confidential information might have been disclosed.

Mr. Taliaferro and Mrs. Schwab vehemently denied these accusations by Attorney General Jackley, immediately pleaded not-guilty to the charges, and retained both criminal defense counsel and private civil attorneys to prepare a federal civil rights lawsuit against Attorney General Jackley, Governor Dugaard and the State Department of Criminal Investigation agents, and D.S.S. officials who brought these false charges against them. Mr. Taliaferro and Mrs. Schwab assert that Attorney General Jackley, Governor Dugaard, and D.S.S. officials are engaged in a federal criminal conspiracy to systematically discriminate against Lakota children, mothers, fathers, grandparents and relatives, and to unlawfully retaliate against any non-Indian people who attempt to step up to defend the South Dakota Native American population against this illegal conspiracy.

Within days of South Dakota A.C.L.U. Director Robert Doody's publicly announcing that he was ordering a state-wide A.C.L.U. investigation of these charges against D.S.S. officials, South Dakota D.S.S. officials took Mr. Doody's Native American children away from him and his Native American wife. As of the May 1st indictments of Mr. Taliaferro and Mrs. Schwab, Mr. Doody's children have still not been returned to him and his wife.

A public hearing has been scheduled for June 13th for Mr. Taliaferro and Mrs. Schwab.

According to Lakota People's Law Project (LPLP) investigators, the charges against Mr. Taliaferro and Mrs. Schwab were filed because of their repeated attempts to protect and enforce the rights of four young Native American girls, ages 7, 9, 14 and 16, who were involuntarily removed from their Lakota mother by D.S.S. officials and placed with Richard and Gwendolyn Mette. Mr. Taliaferro conducted a professional investigation and concluded that Richard Mette had repeatedly sexually molested the two older girls, while Gwendolyn Mette threatened to punish the children if they told authorities. Repeated reports of Richard and Gwendolyn Mette's conduct were conveyed to D.S.S. officials. However, the D.S.S. steadfastly refused to undertake any investigation of the Mettes. The four girls had originally been placed with the Mettes, a white couple, over the repeated objections of the girls' adult sister, who had asked that the girls be placed with her, as is required by the federal Indian Child Welfare Act. In placing the Indian girls with the Mettes, the South Dakota D.S.S. violated section 1915 of the Federal Indian Child Welfare Act that mandates that all active efforts necessary be undertaken by state D.S.S. officials to place Indian children removed from their Native parents' homes with their closest Indian relatives.

Mr. Taliaferro and Mrs. Schwab assert that South Dakota State Attorney General Jackley and his Department of Criminal Investigation operatives are actively coordinating with D.S.S. officials to use fabricated allegations of "unauthorized disclosure of confidential abuse and neglect information" and "witness tampering" to try to discredit the clear and convincing evidence that incriminates both Richard and Gwendolyn Mette of criminal conduct against the Indian children placed in their custody by the State D.S.S. These actions came immediately after the embarrassing National Public Radio expose of the decade-long pattern of unlawful conduct on the part of South Dakota State officials.

A special prosecutor assigned by Attorney General Jackley to prosecute the charges against Mr. Taliferro and Mrs. Schwab was later appointed by Attorney General Jackley to take over the prosecution of Richard and Gwendolyn Mette's case. Investigators at the Lakota People's Law Project (LPLP) have learned that South Dakota state prosecutors secretly offered to dismiss all of the serious felony charges against Gwendolyn Mette if she would go along with just one misdemeanor charge against Richard Mette, charging him with just a single spanking of one of the Indian girls, thereby allowing state officials to dismiss all of the Indian children's serious charges of rape and incest against Richard and Gwendolyn Mette. This would have cleared the way for state officials to more effectively prosecute Mr. Taliaferro and Mrs. Schwab for allegedly encouraging the Indian children to make up charges against the Mettes, ostensibly to publicly embarrass the D.S.S.

Due, however, to the outrage of the girls' Lakota family in response to this initially-attempted secret plea-bargain, the charges against Mr. Mette have now changed to a single charge of child rape. On March 27, 2012, Richard Mette pleaded guilty to this single count of rape of a child under 10 years old and will be given a 15 year sentence, with parole after only 5 years. Richard and Gwendolyn Mette originally faced a total of 34 felony charges, most of which were aggravated rape of a child and aggravated incest, with each charge carrying a potential life sentence.

Our LPLP investigation has revealed a common pattern: South Dakota state prosecutions tend to dramatically downplay criminal abuse cases brought against white foster care parents when Lakota Indian children are the victims. On the other hand, our investigation shows that Lakota parents are systematically treated more severely by D.S.S. than are white parents for virtually identical conduct. Indeed, over the last ten years, Lakota children in South Dakota have been systematically removed from their Lakota parents under factual circumstances under which white children would never have been taken away from their white parents. This is exactly the conduct of which former Assistant State Attorney Taliaferro accused D.S.S. officials, which resulted in his firing by the Brown County State Attorney in September of 2011. Mr. Taliaferro was fired after a face-to-face meeting with D.S.S. official Virginia Weisler and D.S.S. Chief Counsel Daniel Todd. In that meeting D.S.S. Officer Weisler and D.S.S. Chief Counsel Todd accused Mr. Taliaferro of "not being a team player" and of "being disloyal to the D.S.S."

The NPR expose revealed the South Dakota State officials' potential motive for taking such dramatically different action toward Indian families as compared to white families: Native American children are, by state law, automatically classified as "Special Needs Children," which triggers the dispersal up to \$79,000 in federal moneys to the State of South Dakota for every Lakota child so long as that Lakota child is not returned to their Lakota parent or placed with one of their Lakota family members.

According to published reports in The Aberdeen News on December 19, 2011, Mr. Taliaferro asserts that he is being prosecuted because he "was trying to protect children," and was "trying to hold the D.S.S. accountable." Mr. Taliaferro and his South Dakota attorneys, Thomas Wilka and Steven Sandven, officially charge, in official court documents filed in Taliaferro's appeal of his firing, that Mr. Taliaferro was unjustly fired as a direct consequence of his having attempted to stand up for the rights of Lakota children, Lakota parents, and Lakota relatives — rights that Mr. Taliaferro and his attorneys assert are guaranteed to the Lakota People of South Dakota by the federal Indian Child Welfare Act.

In earlier investigations, LPLP investigators found that the Brown County state attorney who fired Mr. Taliaferro, Kim Dorsett, had been privately representing the State D.S.S, under a private contract for \$75,000 per year. At the same time, she was publicly serving as the State Attorney for Brown County for only a fraction of that amount of money.

On December 19, 2011, The Aberdeen News finally reported that Ms. Dorsett was being paid up to \$75,000 per year by the South Dakota D.S.S. “for her private legal services” to the D.S.S. Ms. Dorsett’s private contract with the D.S.S. contained an express provision requiring that Ms. Dorsett “not engage in any activity contrary to the interests of the State D.S.S.” This contract appears to directly conflict with Ms. Dorsett’s obligation as the State Attorney for Brown County in the Mette case. As the state official responsible for enforcing the law, Ms. Dorsett is required to remain objective when presented with charges such as those brought to her by Mr. Taliaferro against the D.S.S.

On December 19, 2011, The Aberdeen News reported that Mr. Taliaferro “said that it is financially beneficial for the department to remove American Indian children from their homes and place them in [white] foster homes.” Mr. Taliaferro said that, over the years in which he served as the Assistant State Attorney in Brown County in charge of prosecuting abuse & neglect cases, he and the D.S.S. were “often at odds.” In official papers filed with the State Department of Labor in his appeal of his firing, Mr. Taliaferro charged that “following the orders of State Attorney Dorsett would have required [me] to violate the law, and ethical rules that govern attorney conduct.” Referring to the unlawful South Dakota state policy of systematically violating the Indian Child Welfare Act, Mr. Taliaferro asserted that he refused to participate in “a cover-up of misconduct” by the D.S.S.

On December 30, 2011, retired State Supreme Court Judge Robert A. Miller was appointed to oversee the trial of Mr. Taliaferro and Mrs. Schwab.

The Lakota People’s Law Project (www.lakotalaw.org) has been working in South Dakota for five years in the hopes of returning over 5,000 Lakota children to their Native families and tribes. LPLP currently is working to develop Native planned and operated child and family service programs in South Dakota. Its major goal is to improve enforcement of the Indian Child Welfare Act and ultimately to make the act itself more accountable and transparent through its amendment.

LPLP has documented many cases of the unjust seizure of Lakota children and their unlawful placement in non-native foster settings.

According to LPLP lead attorney Daniel P. Sheehan, “The current system is a total failure. Our research shows that the State of South Dakota is the worst violator of the Indian Child Welfare Act in the entire nation.” According to the Child Welfare League of America, between 61-63% of the children in state foster care in South Dakota are Native Americans, even though Native children make up less than 13% of the state’s youth. The data directly contradicts the common misconception that Lakota children are better off in non-native foster care. According to Judge Thorne of the Utah State Supreme Court, “Over 60% of Native children in non-native foster care who age out of the system are homeless, in prison, or dead by age 20.”

Since 2006, the Lakota People’s Law Project (www.lakotalaw.org) has partnered with the Native American tribes of South Dakota. Through law, public policy, research, and education, LPLP is challenging the systemic injustices of the last 150 years and working for the renewal of Lakota culture and society. LPLP is a project sponsored by the non-profit Romero Institute of Santa Cruz, CA. The Romero Institute (www.romeroinstitute.org), named after slain human rights advocate, Archbishop Oscar Romero of El Salvador, seeks to identify and dismantle the structural sources of injustice and threats to the survival of our human family.

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