

AND BE IT FURTHER RESOLVED, that this Resolution shall be routed to BIA, H.H.S., DSHS, NCAI, and such other U.S. Congressional committees who act on Indian Child Welfare matters, and

BE IT FINALLY RESOLVED, that the Tribe is requesting full support from the United States Congress to guarantee Federal Indian Child Protection Rights be practiced by all federal, State, private, and Tribal Child Protective Agencies and that Indian Child jurisdiction be immediately turned over to the respective tribes within this nation consistent with the 608 law.

C E R T I F I C A T I O N

As Secretary of the Muckleshoot Indian Tribal Council, I hereby certify that the above resolution was duly adopted at a regular meeting of the Tribal Council on the 16<sup>th</sup> day of April, 1984, held on Muckleshoot Indian Reservation, Auburn, WA, at which a quorum was present by a vote of 4 for, 0 against and 0 abstentions.

Marie Starr acting  
Elaine J. Perez, Secretary

Sonny W. Bargala  
Sonny W. Bargala, Chairman



Leo J. La Clair  
Executive Director

STATE OF WASHINGTON

GOVERNOR'S OFFICE OF INDIAN AFFAIRS

1057 Capitol Way • Olympia, Washington 98504 • (206) 753-2411 • (SCAN) 753-6780

May 9, 1983

To whom it may concern:

I recommend and support the Muckleshoot Indian Tribe's grant application entitled Muckleshoot Child Abuse and Neglect Prevention Program.

It is reassuring and long overdue to finally have an Indian organization with such high quality and experience address this most critical need from not just a treatment approach, but from one of prevention.

The Muckleshoot Indian Tribe and the State DSHS and other State agencies have enjoyed a mutually productive relationship for a number of years. Perhaps one of our best and most productive efforts has been through the Muckleshoot Youth Home which is a proven, effective means by which the Tribe has addressed Indian child and family concerns, especially as they relate to child neglect and abuse, throughout the State of Washington and the entire Northwest. Should the Muckleshoot proposed project become a reality, the vast networking of State agencies and personnel would be readily available and accessible to fulfill our responsibilities and commitments.

It is therefore without hesitation that I fully endorse and support the proposed Muckleshoot Child Abuse and Neglect Prevention Program.

Sincerely,

Leo J. La Clair

Leo J. La Clair



STATE OF WASHINGTON

## DEPARTMENT OF SOCIAL AND HEALTH SERVICES

2809-26th Avenue South, N56-1 • Seattle, Washington 98144

January 5, 1984

Marie Starr, Director  
Muckleshoot Youth Home  
39015 172nd SE  
Auburn, Washington 98002

Dear Ms. Starr:

As the only Indian specific youth home in Seattle/King County, the Muckleshoot Youth Home has provided valuable placement and social services to Indian children and their families.

Children requiring substitute care present a variety of problems and needs. When Indian children require out-of-home care, these needs are magnified and best met by culturally sensitive services. The Muckleshoot Youth Home provides such services and has proven to be a most valuable resource.

The Region 4 Indian Children's Unit has coordinated efforts with the Muckleshoot Youth Home in accessing clients to the Youth Home for placement and follow-up services. The Youth Home offers a vital alternative to non-Indian placements and thereby provides culturally relevant supportive services.

We wish you continued success in your efforts to provide a continuum of quality services to Native American/Alaska Native people.

Sincerely,

Alretta J. Bill, MSW  
Supervisor  
Indian Children's Unit  
Region 4

AB:bnd

Mr. ALEXANDER. Our next witness is Joe Tallakson, representing the Lummi Indian Tribe.

## STATEMENT OF JOE TALLAKSON, SENSE, INC., FOR THE LUMMI INDIAN TRIBE, BELLINGHAM, WA

Mr. TALLAKSON. Good afternoon. My name is Joe Tallakson. I represent the interests and concerns of the Lummi Indian Tribe regarding the Indian Child Welfare Act. I will be providing oral testimony today, with written testimony to be submitted for the record.

The Lummi Indian Tribe, located on the Pacific coast of Washington State, operates a child and family services program currently handling 135 wardships, 18 foster placements, oversight on 8 authorized foster homes with a total capacity of 28 children. The need and importance of the Indian Child Welfare Act for Indian children and their respective tribes across the Nation is self-evident. The procedures and processes to implement the act, however, have created difficulties that are both unavoidable and unnecessary.

In general, the Lummi Tribe strongly supports the recommendations presented by the tribes of Washington State regarding Indian child welfare. In particular, the tribe recommends the development of an entitlement base for each tribe, with a separate set-aside for competitive grants; 3-year-cycle funding under the competitive grants to provide program continuity; establishment of evaluation guidelines consistent from tribe to tribe and agency to agency; that the conduct of evaluations is clear and instructive for program staff to advise and assist local resource staff in the development of their programs; and, to develop training programs for all resource staff dealing with Indian child welfare on a continuing basis, versus the current interim and intermittent basis of training. In that regard, the State and tribal judges receive training in Indian Child Welfare Act law and the current issues.

The Lummi Tribe also would be interested in a concentrated technical assistance to tribes and adjacent counties to resolve jurisdictional conflicts. For instance, in Whatcom County, the court and prosecutor's office have failed to respond to tribal requests for assistance unless the case was processed through the county court, or the county court system has exhibited difficulty honoring a tribal court order when a child has been declared a dependent ward of the court and lives off reservation, or geographic location often rather than the type of offense now determines jurisdictional authority in cases of rape, incest, or physical abuse.

In closing, strengthening the staff resources through increased appropriations, core funding for each of the tribes in their Indian child welfare program, targeted training and technical assistance, and a separate and distinct appropriation of Indian child welfare funds within the BIA social services is necessary to ensure the development of adequate and effective local tribal resource staff and the ultimate goal of providing protective and supportive services for Indian children caught in difficult life situations in their most delicate stage of development. Thank you.

Mr. ALEXANDER. Thank you, and we will look forward to your written prepared testimony.

[The prepared statement follows:]

PREPARED TESTIMONY OF THE LUMMI INDIAN TRIBE, SUBMITTED BY JOE TALLAKSON

The Lummi Indian Tribe is geographically located in Whatcom County in Northwest Washington State, about five (5) miles west of the City of Bellingham, ninety five (95) miles north of Seattle and fifty (50) miles south of Vancouver, British Columbia.

The original acreage of the Lummi Reservation included 12,500 acres, about forty (40) percent of this has been alienated and is now owned by non-Indians. Approximately 7,900 acres remain in Indian control.

The Lummi Indian Tribe feels that our most valuable resource is our own people and our future lies with our Children. The children provide our links between generations, and are the future carriers of our traditions and culture. They will ensure that the Tribal family unit will continue to exist.

The Lummi Tribes current population (2,503) is young, with over 50% of the population under the age of 21. Of these there are 1,182 children under sixteen (16) years of age. During the fiscal year 1983 one hundred and sixty-six (166) juvenile cases were heard in tribal court. One hundred and thirty of these cases were dependency hearings. The Tribal Prosecutor's office processed 55 child protection service cases resulting in the need for protective supervision. Fifty-three (53) cases were placed in foster homes and sixteen (16) were returned to their natural parents. The incidence of child abuse is unknown overall, but is clearly increasing as is evidenced through documentation.

The Lummi Tribe presently operates a Child and Family service program and staffing consists of a coordinator, secretary, caseworker and a part-time case monitor.

Currently an important aspect of this program is the ability to license homes which provide foster care to Indian children. The program has 18 children in foster care. The Lummi Tribe currently has eight (8) approved foster homes, with approximately four homes pending approval. Potentially 28 children could be placed in these eight (8) homes. If all of these children were placed, the homes would be overloaded. It is essential that more homes be approved and made available for future placements.

Lummi Child and Family Services also has under its supervision 135 wardship cases. Lummi Child and Family Service is attempting to monitor these cases to insure that the wardships are abiding by the tribal court recommendations.

A new component recently added to the Lummi Child and Family Services program is a case monitor position to follow up on all sex abuse and severe physical abuse cases. Currently, this case worker has approximately 25 cases to monitor.

An additional component of Lummi Child and Family Services is to oversee and coordinate the Lummi Child Safety Council. This group is made up of various support service agencies both on and off the reservation. Their function is to discuss ways to educate the community in child abuse issues. The tribal program also oversees the Child Advocate Council. The Child Advocate Council staffs all severe abuse cases and refers clients to appropriate resources. The case monitor then insures that appropriate counseling takes place. For the victim, the abuser and the family.

As can be evidenced by the previous statistics, abuse and neglect is present within the Lummi community. To break the cycles and presence of child abuse the Indian Child Welfare Act is essential to the Lummi Indian Tribe, as well as to all Indian tribes.

P.L. 95-708, in and of itself is viewed as a positive step towards reinforcing tribal jurisdiction over child welfare issues. However, since the enactment of P.L. 95-708, there has been a lack of adequate congressional appropriations. Without adequate funding levels it is difficult to implement and to carry out the main purpose of the act.

There are many agencies in the surrounding community that may have resources to aid the tribe in addressing many of the issues confronting the Indian family unit. The tribal program is under staffed and underfunded which results in an inability to adequately coordinate with these various agencies and services, although the framework exists.

The Lummi Child and Family Services staff are unable to attend important meetings, provide input into planning of new service, organize the coordination of resources, (such as meetings with law enforcement agencies to resolve jurisdictional issues) and to compile necessary data for funding agencies.

Adequate resources are needed to effectively implement the Indian Child Welfare Act. The Lummi Tribe would prefer that a large percentage of funds be allotted to each tribe and have a smaller percentage be available on a competitive basis, and that grants be awarded on a three year basis and annual evaluation, budget submis-

sion and program update. This would alleviate the sporadic funding cycle and thus, insure program productivity. When programs are unsure, from year to year, if they will receive funding it's impossible to plan on a long term basis. Without long range planning, adequate prevention and educational needs cannot be met. The only aspect that can be dealt with are the case by case crises that arise.

Evaluation guidelines need to become an integral part of the Child and Family Service programs. This type of component allows the programs to keep on direct track and direct all energies in a positive manner. Rather than work from a negative aspect and deal only with the crisis situations. Evaluations are an important component to the success of a Child and Family Services program.

Training monies should be set aside in the funding allotments to insure education for tribal court personnel and Child and Family Services personnel. This is essential for all staff to be educated in abuse issues. This funding should also allow for contractual services which would afford the respective tribes resources for evaluation, legal intervention, periodic training for the staff and community as well.

In closing, strengthening the staff resources through increased appropriations with some emphases on training and technical assistance, and a separate and distinct appropriation for the Indian Child Welfare Act within the B.I.A. social services is necessary to insure the development of adequate and effective local tribal service delivery in this area is so critical to the future of Indian communities.

The Lummi Tribes Child and Family Services Programs ultimate goal is to provide protective and supportive services for Indian families, and most importantly for the children caught in different and difficult situations in their most delicate stage of development.

Our next witness is Maureen Pie', from Kotzebue, AK.

STATEMENT OF MAUREEN PIE', ATTORNEY-AT-LAW, MANILAQ ASSOCIATION, KOTZEBUE, AK

Ms. PIE'. Thank you. I would like to thank the committee for the opportunity to present some limited oral testimony today. I would also appreciate the opportunity to submit more formal comments within the next 30 days.

Mr. ALEXANDER. Fine.

Ms. PIE'. My name is Maureen Pie'. I am an attorney with the nonprofit tribal organization in the Northwest Arctic region of Alaska. The name of the organization is Maniilaq Association, and we are an association formed to serve the social, health, and educational needs of 11 Alaska Native villages in northwest Alaska.

If you would allow me, I would like to set the stage a little bit for you and describe the part of the country where I live and work. Kotzebue, AK is unlike anything that I have ever seen or experienced in the lower 49 States. Kotzebue is a small village of approximately 3,000 people, which makes it by village standards a very large community. It serves as the transportation and economic hub of a region of the State which was carved out by the Alaska Native Claims Settlement Act, and which is approximately the size of the State of Indiana. Within that area reside approximately 6,000 people, 95 percent of whom are Inupiat Eskimo. The other 3,000 who do not live in Kotzebue live scattered in 10 small villages, with populations anywhere from 600 to 62 people. Each of these villages is considered an Indian tribe by definition of the Indian Child Welfare Act, as well as many other pieces of Federal legislation.

We have tribal governments in every one of these villages, eight of which are Indian Reorganization Act councils and three of which are traditional councils in the process of applying for IRA status. Our tribal councils for many years have been dormant, in fact almost nonexistent. Several years ago, the State of Alaska actively encouraged villages to incorporate as municipalities under State

law, and since then small seven-member city councils have had the most influence in running day-to-day affairs in the villages of northwest Alaska. Currently, 10 of our 11 villages are such municipal corporations.

In recent months, our IRA and traditional councils have begun to see that a return to tribal and traditional custom will be the best hope for solving the severe social problems that beset the Alaska Natives of the region. Among them are epidemic domestic violence, suicide rates often estimated at 90 times the national average, and shockingly high rates of alcoholism, just to name three of the most visible problems. Another problem is the breakup of Indian families, and we applaud the Senate's efforts by the 1978 Indian Child Welfare Act to help resolve some of the problems that beset Indian families.

Currently, Maniilaq Association has started a brandnew program to provide legal counsel to the tribal governments in intervention in Indian Child Welfare Act proceedings. The program that went into operation approximately January 15 of this year, and it is currently staffed by one attorney for 10 months of the year and one paralegal for 6 months of the year.

The rest of my testimony will highlight three of our most critical needs. The first two are funding, of course, and communication. We are extremely isolated. In fact, I only heard about these hearings through a chance discussion with Bert Hirsch of the Association on American Indian Affairs. To my knowledge, I am the only representative of any Alaska Native group present, and in fact the United Tribes of Alaska, the Alaskan Federation of Natives, and other Indian lawyers who work for organizations similar to mine had not heard of these hearings until I called to find out if they would be attending. That was about 2 weeks ago.

As an example of what we feel adequate funding would be for a good tribal government program to provide not only technical assistance but training for our tribal councils—folks who do not remember or even have the first idea of what a tribal constitution is for—we submitted a budget to the Administration for Native Americans for approximately \$250,000 which would fund three full-time staff people. We realized that funding was very limited and that our chances were not good of receiving the entire amount. However, this was our best estimate for an adequate program. We did receive \$57,000 for this current fiscal year. We combine that with about \$20,000 from the Bureau of Indian Affairs' tribal operations and rights-protection programs to provide our tribal government services.

Our villages are in an even worse situation when it comes to finances. I would like to tell you a story of the village of Kobuk which is on the upper reaches of the Kobuk River, the furthest village in the region. It is situated at the base of the Brooks Range. It has a population of 62 and is entitled to approximately \$5,700 from BIA 638 grants to run its tribal government office. The village, as all the other villages, has very limited sources of independent income and relies almost exclusively on the bureau and other Federal programs for funding.

The village, for lack of adequate accounting and bookkeeping resources, had let a former grant slide and was without current fund-

ing and, therefore, without staff. When I visited the village a month ago, my assistant and I, with a volunteer from the village, opened 6 months worth of mail addressed to the tribal government. Included in this mail was a notice of Child-in-Need-of-Aid proceeding, sent by the State court system pursuant to the Indian Child Welfare Act, which informed the council of its right to intervene in a matter concerning a child from its village. The hearing had already taken place by the time the notice was opened.

A second example I would like to present involves a rather complex court case that we have going right now in the Superior Court of the State of Alaska, in Kotzebue. It is a trial-level court which handles adoption proceedings. We have an Alaska-Native mother who voluntarily gave up her child for adoption to a non-Native. When the petition for adoption was filed, the Kotzebue IRA council sought to intervene, and as a result of arguments by the preadoptive mother's attorney, that decision was held up for several months. The child is now 16 months old. For 7 months of her young life, this adoption proceeding has been contested, and because information is slow in getting out to the State court, this is a case of first impression for the judge in Kotzebue. He was very unfamiliar with the Indian Child Welfare Act, very unfamiliar with basic principles of Indian law.

We are still in litigation, briefing legal issues. The court is now entertaining a constitutional challenge to section 103(c), which allows for the absolute right of withdrawal of consent, which the mother has since sought to do. The litigation continues as the child continues to grow at a very early and important stage of her life and continues to remain with the preadoptive nonnative mother. This brings me to the third area that I would hope the committee would address, and that is the need for certain amendments to the act.

I will not go into detail here, but just briefly I would like to point out some of the sections of the act which in our litigation in Kotzebue, have given us difficulties. I refer to title 25 of the United States Code, so I will use those section numbers. First, section 1903, definitions. The court refused to apply a definition of "termination of parental rights" to adoption proceedings, even though by State law definition an adoption does work a termination of the parental rights of the natural parent. For that reason, our IRA council was denied a right as a matter of law to intervene. However, the tribe was given a discretionary right of intervention under Alaska court rules.

That involves 1903(1), subsections 2 and 4.

Also, the definition of "Indian" in 1903(3) will become a problem, as our Non-Alaska Native Claims Settlement Act shareholders have children.

Under section 1912, involving notice and the right of intervention in involuntary proceedings, again our court found that a contested adoption was not an involuntary proceeding, and based his denial of the right to intervene in part on that finding.

Section 1913(c) or section 103(c) of the act is the focus of our litigation, and we are expecting a trial court decision within the next month on whether or not the act is unconstitutional in that section because it will not allow a hearing on the best interest of the child.

Although we have argued to the court that it sets up a presumption based on extensive testimony to Congress on what is in the best interest of an Indian child in this case, there is currently a novel constitutional argument pending based on due process and a purported liberty interest in preadoptive family integrity.

If the court does so modify that section of the act, we will be forced to litigate who has the burden of proof in determining best interest of the child. Of course, this was not contemplated by the act, because it creates an absolute right to withdraw consent. Section 1912(f), which requires proof beyond a reasonable doubt for termination of parental rights does not automatically apply to a situation like this. So we may be running into problems in that area as well.

In sum, the act, as I said before, is apparently a wonderful step toward helping Indian families. Alaskan Native families, however, particularly in the bush, are extremely isolated. Their tribal councils are struggling for their very existence, let alone trying to intervene in Indian child welfare proceedings in State courts far from the village. And we are nowhere near the point of reestablishing tribal courts.

We appreciate the committee's attention to our concerns for better communication from all areas of the Government, for more adequate appropriations for these programs, and for addressing our concerns for needed amendments to the Indian Child Welfare Act. Thank you very much.

Mr. ALEXANDER. Thank you very much. We would be interested in your written testimony, if you have any concrete ideas about how to deal with the notice problems that exist in Alaska. We have had this act in existence for 6 years, and apparently it is not even known by the local courts, as you indicate, and the general range of information problems that you have mentioned in your oral presentation. We will be anxious to receive it.

Ms. PIE. I would be happy to put together something on that issue.<sup>1</sup> I would just like to say, in defense of the judge in Kotzebue, he was not completely unfamiliar with the existence of the Indian Child Welfare Act. However, because of the limited tribal resources, rights have never been forcefully asserted, and therefore he has never really had to deal with these issues.

Mr. ALEXANDER. Thank you for coming, and we appreciate your testimony.

Our next witness is Eric Eberhard, from the Navajo Indian Nation.

**STATEMENT OF ERIC EBERHARD, DEPUTY ATTORNEY GENERAL,  
DEPARTMENT OF JUSTICE, NAVAJO INDIAN NATION, WINDOW  
ROCK, AZ**

Mr. EBERHARD. Our prepared testimony was sent over this morning. The name that appears in the first line of that is Craig Dorsay. For the committee's information, Mr. Dorsay was unable to make it to the hearing today, oddly enough, due to a hearing in California in a Child Welfare Act case. My name, for the record, is Eric

<sup>1</sup> Not received at time of printing.

Eberhard. I am the deputy attorney general of the Navajo Tribe's Department of Justice. I am appearing here today on behalf of Chairman Peterson Zah and the Navajo Tribal Council.

If I may, I would like to start by discussing briefly the funding needs under the ICWA. As the committee may be aware already, in the last 2 fiscal years, the Bureau of Indian Affairs has provided approximately \$6,000 per area office for training of tribal staff to handle matters related to ICWA. I think it would be an understatement to call that amount of money ridiculous, but out of courtesy to the Bureau that is what we will call it: ridiculous. It is wholly inadequate.

We have, in the Navajo area, approximately 80,000 people under the age of 18. We cannot begin to adequately meet the tribe's duties to those children with \$6,000 to train tribal personnel. Our total funding for Child Welfare Act matters in the Navajo area for the last 2 fiscal years has been approximately \$300,000. Again, as I am sure you are well aware, that is the maximum allowed under current Bureau regulations.

We suggest to the committee that the formula for distribution of ICWA funds needs careful examination. It creates serious inequities. With the largest population to be served, we are in a position of competing for minimal funds, and to the extent that we succeed in that competition, whose interest is served? Certainly not the interest of all Indian people. The Bureau, through its allocation formula, has created an underfunding situation, and proposes for fiscal year 1985 to make that problem worse by terminating all funds for off-reservation ICWA programs.

Approximately half of the Indian people in the United States live off reservation. I am sure that when you review the legislative history of the ICWA, you see clearly that one of the primary concerns of Congress was to deal with the situation confronting Indian families in urban off-reservation areas. Here we are approximately 6 years later, and the Bureau of Indian Affairs does not even have the wherewithal to request funds for urban Indians under the ICWA, much less to provide adequate funding.

Each year in the Navajo area, we project handling approximately 250 ICWA cases, and each year those figures are exceeded by at least 50 percent. Two years ago, that figure was exceeded by 100 percent. We simply do not have the money to be able to handle those problems. In this fiscal year alone, we have already contributed from tribal general revenues \$30,000 to retain out-of-state legal counsel and to pay travel and expert-witness fees. We already contribute two attorneys who work virtually full-time at tribal expense on ICWA matters. We think the Bureau, in this program as in many other programs, is simply walking away from its trust responsibility, and it is doing so in the worst possible manner, by claiming that the Congress will not appropriate adequate funds.

From our point of view, the problem is not here with the Congress. The problem is in the Bureau. I would point out again that if you look at their fiscal year 1985 budget request, you can see the proof of that.

As to the substance of the act itself, I would first like to point out that at least for Navajo people, the act seems to be working fairly well. There are some problems, and I think those problems

start right in the declaration of congressional policy. If you look carefully at sections 1901 and 1902 of the act as codified, you find the use of the word "removal of Indian children." We are finding that the State courts have construed that term far too narrowly. The Baby Boy L case I am sure has been brought to your attention, and it is perhaps the paramount example of how a State court has taken the plain language of the statute and turned it on its head.

If an Indian child has never lived with an Indian family, but the Baby Boy L says there is no removal problem, and the ICWA does not apply, we think that Congress can correct that problem, and we think the way to do it is a very simple amendment to section 1901 and 1902. The specifics of the language we are proposing is in our written testimony.

Moving on to section 1903, there is confusion among the State courts as to whether the ICWA applies when the placement before it is a voluntary or consensual placement. Again, we think the State courts are taking the plain language of the statute and turning it on its head. It is clear to us, from the overall statutory framework, that the act does apply to voluntary placement. State courts would have us believe to the contrary. They would narrowly construe the act to only apply in situations of involuntary placement.

A principal concern for the Navajo people under the ICWA is section 1911(a). The State courts have uniformly taken the position in cases involving Navajo tribal members that the terms "domiciled" and "residence" are defined by State law, not tribal law. Because the Navajo people have their own unique definitions for "domicile" and "residence," what we are encountering at the State end is a total unwillingness to accord full faith and credit to those Navajo definitions of "domicile" and "residence." We even have a situation where a child kidnapped off reservation, taken to the jurisdiction of a State court in Utah, was found as a matter of State law to have changed his domicile and, therefore, was found to be subjected to State court jurisdiction.

Again, we have suggested in our written testimony some corrective action there. But I would like to state here and now for the record that Congress must impose a Federal definition of "domicile" and "residence" to bring an end to the destruction that the State courts are wreaking in this area. They have essentially pulled the act inside out when it comes to determinations of domicile and residence and tribal court jurisdiction.

Under section 1911, subpart D, the full-faith-and-credit provision, what we are encountering is a rather technical interpretation of this provision by the State courts. For example, if one of our tribal court judges or one of our tribal court clerks fails to affix the court's seal in the spot marked on the form, the State court refused to accept that judgment as binding and valid under full faith and credit. The State courts are applying non-Indian standards of due process, equal protection, to tribal court proceedings involving Indian children. On that basis, they are refusing to accord full faith and credit to tribal court judgments.

We think that can be corrected fairly simply. We think that the State courts ought to be required to apply a standard of fundamental fairness—nothing more and nothing less—in issues involving

full faith and credit. The act, as drafted, allows the States to apply hypertechnical, non-Indian standards in making these inquiries, and I would suggest to you that any State court judge has the wherewithal to take a judgment from any other jurisdiction—be it Federal, tribal, or another State—and make a determination under existing State laws that they do not require full faith and credit for those judgments. The act, as drafted in this provision, has encouraged that tendency among State court judges.

Under section 1912(a), we are encountering some difficulty with the State agencies and the State courts in the situation where a parent is in fact making a bona fide voluntary placement of an Indian child. We are not receiving notice of those proceedings. We think that a simple amendment here would cure that problem. The amendment, of course, would be to expressly state that notice is required, and the tribe is the proper recipient of that notice.

What is occurring in all too many instances is that Indian parents are being cajoled, persuaded, or intimidated into voluntary placements. The tribe is not being notified of those placements. The placement preferences that are set forth in the act are then ignored by the State courts and the State agencies, and we find that the act in essence is subverted at that point, to the detriment both of the Navajo Tribe, the Navajo child, and the parents of that child.

Under section 1912, subparts (e) and (f), we also have an ongoing difficulty with the term "expert witnesses." We are in litigation right now in 19 States, trying to return Navajo children to the Navajo Tribe and their extended families or their natural parents. In over half of those cases, our tribal social workers are not permitted to testify as experts, despite the fact that on any objective evaluation, you would find that their qualifications, training, and experience are at least comparable to, if not superior to, their counterparts in the State system. In those same cases, the State courts are allowing State social workers to testify as expert witnesses. We would ask that the Congress address this problem by either providing a specific definition of what kinds of qualifications an expert needs, or by expressly declaring that tribal social workers shall be expert witnesses for purposes of the act.

Under section 1915, we are finding that the State court judges are having a field day with the language "good cause to the contrary." What is good cause to the contrary? In our situation, if a Navajo family lives 50 miles from the nearest hospital, we have had State court judges declare that to be good cause to the contrary. If the State social worker tells the judge that the nearest school is 40 miles away, we have had judges declare that to be good cause to the contrary.

I emphasize that these findings by State court judges are not in cases where the child has exceptional medical needs or exceptional educational needs. These are ordinary children in all respects, except they are being denied the right to live with an Indian family and to be raised in their own culture. We would ask that the Congress either strike from this act the language "good cause to the contrary" or more carefully circumscribe it so that the State courts are not able to continue to use it to defeat the intent of the act by failing to apply any of the placement preferences.

This problem is probably the most serious one that we face. Out of 200 cases that we have handled in the last 15 months, this has been an issue in over half.

Finally, I would just reemphasize that from our point of view, this is a good law. It has helped tremendously. We think it does need some changes, if the intent of Congress is going to be met. We also would reemphasize the need for funds. The law is going to be meaningless for most tribes without adequate funding. Happily, the Navajo Tribe is able to put some money into it. But what about all the other and smaller tribes that are unable to do that? And even in our situation, there are limits to how much money we can afford to spend for what the Congress has declared to be a Federal trust responsibility.

I would be happy to answer any questions you may have, and I would like to express my thanks for the opportunity to appear before you.

Mr. ALEXANDER. I have only one general question. I am not really sure that you can respond to it at this time, but I would be interested in your views. What you basically have laid out in your testimony is an issue-by-issue correction, if you will, of various State courts' attempts not to implement the act. Now, if one was a creative State court, I assume that they could draft other exemptions onto whatever corrections we passed. What I am really asking is: Is there another approach that we might look toward rather than coming back every year or two and overturning 10 or 12 specific court decisions? The State courts, if they are going to be hostile to the act—assuming that to be the case for discussion—then they are going to not necessarily understand the amendments that are created to cure the problem we thought we had cured 6 years ago. I would just like for you to be thinking on that, if you would.

Mr. EBERHARD. From our point of view, it would be far preferable if all of these cases were heard in Federal court. We believe we would receive a much more fair hearing. We believe that the Federal courts have historically shown a greater sensitivity to both Federal Indian law and the needs of Indian people in general. That will not solve all the problems. There certainly are going to be some Federal judges who are hostile to the intent of this act. We think that some of the problems really are simply drafting: That some State judges of good faith have read the act improperly, and that with some clarification, that might take care of a percentage of the problems we are encountering.

How many State judges are really in a position of open hostility to the act is very hard to determine. I think there would be objections from a lot of people, judges and otherwise, were these cases all to be heard solely in Federal court. So from my point of view, and I think from the point of view of most of the lawyers who represent the Navajo Tribe on this, it is worth giving the State courts one more try to do it right, with some amended language from the Congress. And if in 2 or 3 years, that has not worked, then I think the Congress could clearly justify removing these cases from State court jurisdiction and putting them exclusively in the Federal district courts.

Mr. ALEXANDER. Thank you. We appreciate your testimony.  
[The prepared statement follows. Testimony resumes on p. 172.]

PREPARED  
TESTIMONY OF THE NAVAJO NATION BEFORE THE SENATE SELECT  
COMMITTEE ON INDIAN AFFAIRS ON THE OVERSIGHT HEARINGS  
OF THE INDIAN CHILD WELFARE ACT

I. INTRODUCTION

My name is Craig J. Dorsay. I am an attorney employed by the Navajo Nation Department of Justice. One of my primary responsibilities involves handling cases under the Indian Child Welfare Act. Chairman Zah has requested that I testify before the committee with regard to the ICWA. I am accordingly proposing several amendments to the ICWA on behalf of the Navajo Nation. In addition, I would like to offer some comments on funding needs under the ICWA. These amendments are based on my experience with over 200 Indian Child Welfare Act cases, as a trainer in over 50 training sessions on the Indian Child Welfare Act, as author of a litigation manual on the Indian Child Welfare Act published for the Legal Services Corporation Research Institute, and as Director of the National Task Force on the Indian Child Welfare Act. Most of these amendments are proposed in response to state court decisions which have attempted to limit the application of the Indian Child Welfare Act by distorting either the language or the legislative history to eliminate certain categories of proceedings from the Act's coverage. I will list these amendments in order as we proceed through the statute. A short explanation of the reasons for the amendments will follow each proposed change.

II. PROPOSED AMENDMENTS

The first change involves the findings and policy sections, 25 U.S.C. §§ 1901, 1902. Section 1901, subsection 4 and section 1902 talk about the establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in homes which will reflect the unique values of Indian culture. Several courts, including the Kansas Supreme Court in Baby Boy L, have applied this removal language to state that the Indian Child Welfare Act does not apply in a situation where the child has never been a member of an Indian home. Several other courts have rejected this language, namely the California Court of Appeals in the case of Junious M. and the Arizona Court of Appeals in The Appeal of Maricopa County, but confusion still exist surrounding this language. Applying the word "removal" to the Indian Child Welfare Act excludes all independent adoptions where the child is placed in an adoptive home without ever having been given a chance to be placed with the Indian natural parent or the Indian extended family, and violates Congress' responsibility to protect the potential tribal population of eligible tribal members. While independent adoptions and step-parent adoptions in the context of divorce proceedings were clearly meant to be included within the Act's protections, state courts seeking to ratify an already existing adoptive placement or who are disenchanted with the Indian Child Welfare Act to begin with have in several cases applied this language to exclude such children from the protections of the Act. Therefore, we suggest that the declaration of policy be amended to state: "the establishment of minimum federal standards for the removal of Indian children from their families, the placement of all Indian children who must be placed in foster or adoptive homes which will reflect the unique values of Indian

culture, and by providing for assistance to Indian tribes in the operation of child and family service programs." The Baby Boy L problem will also be addressed in other sections of the Act.

The next section of the Act is the definition of child custody proceedings, 25 U.S.C. § 1903. Again, we are dealing here with the fact that several courts have interpreted the findings of the Indian Child Welfare Act to hold that the Act was only meant to apply to agency removal of Indian children in involuntary child and abuse situations, even though this kind of holding ignores the entire voluntary consent section of the Act. Therefore, in the definition of child custody proceeding, we would add at Section 1903(1) "Child custody proceedings shall mean voluntary and involuntary actions and shall include . . . Then the various types of proceedings should be listed except that under Section 1903(1)(i), foster care placement, it should read "foster care placement which shall include any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution. . . and shall include voluntary placement by the parent of an Indian child;" Section 1903(1)(ii) termination of parental rights, should read "which shall mean any action resulting in the termination of the parent-child relationship, including termination which occurs as part of a voluntary adoption;" Section 1903(1)(iv), adoptive placement, shall read "which shall mean the permanent placement of an Indian child for adoption by an agency or by private individuals, including any action resulting in a final decree of adoption."

Under 1903, subsection 3, the definition of Indian needs to be revised to include all Alaskan natives. The problem with this definition arises because Alaskan natives are only included under the ICWA if they are members of Regional Corporations. Since new children do not become members of Regional Corporations until and unless their parents die, this section should be amended so as to include all Alaska natives.

Under 1903, subsection 6, the definition of Indian custodian must be changed to state "means any Indian person who has lawful custody of an Indian child under tribal law or custom or under state law." This change from the word "legal" to "lawful" is necessary due to the Oregon Supreme Court decision of State ex rel. Multnomah County Juvenile Department v. England, where the Oregon Supreme Court interpreted the word "legal" in a technical sense to hold that since state law gives legal custody of a child and foster placement to the state social services agency, no Indian person can be an Indian custodian. Since all 50 states have definitions which place legal custody in the state agency, the word "legal" should be changed so that the purpose of the Act is fulfilled, namely that the person who has physical custody under state law and stands in the shoes of the parent is protected from the inappropriate cultural removal of the Indian child from their custody. In one case a state court decided that because tribal custom did not specifically define custody in a relative as "legal custody," the grandparent in that case could not have legal custody under tribal custom and was not an Indian custodian. This opportunity for technical obstruction of the Indian Child Welfare Act must be removed.

Under 1903, subsection 7, the definition of Indian organization must be expanded to include organizations composed of terminated

Indians. At present, 25 U.S.C. § 1932 includes terminated Indians as organizations which are eligible to receive ICWA grant funds and to establish programs, including those for the placement of Indian children who must be removed from their families. However, since the definition of Indian organization in Part I of the Indian Child Welfare Act excludes terminated Indians, under the placement section of the Act, 25 U.S.C. § 1915, an Indian child could not be placed with an Indian organization which was controlled or operated by terminated groups of Indians. This is an obvious lapse in the drafting of the Act.

Section 1903, subsection 9, addresses the definition of parent, and must be expanded to specifically recognize the rights of biological parents under the United States Constitution. Even though 25 U.S.C. § 1921 states that federal law which provides higher protections to the rights of parents shall apply in the Indian Child Welfare Act, several courts have apparently been mystified by the absence of the word parent in the right to intervene under 25 U.S.C. § 1911, and have held that since a parent is not the first listed preference under the placement section for the Act, 25 U.S.C. § 1915, that parents were obviously not meant to be included within the Act's protection. This distinction is critical in those cases where a non-Indian mother is trying to place her child with non-Indian adoptive parents and states that she does not want her child raised as an Indian, even though she does not wish to raise the child herself. While it seems clear to those of us who practice Indian law that section 1921 protects the rights of unwed Indian parents in the proceeding, a short statement in the definition of parent that says "parents shall have all those rights to which they are entitled under the United States Constitution" will help clarify this confused area for state courts, and will give them less opportunity to avoid the application of the Act's requirements.

Section 1911 needs to be amended, or an additional definition section needs to be added which addresses the definition of residence and domicile. While the Bureau of Indian Affairs stated in its Guidelines that no special definition of residence and domicile needed to be adopted because those terms were adequately defined by state law and did not frustrate the intent of the Act, the experience of this attorney in over five cases has been that the state court will distort their own state definition of domicile to rule that jurisdiction over the case has been lost by the Indian tribe and that the state court can properly exercise jurisdiction over a proceeding. When this decision is made by a state court, invariably custody is awarded to non-Indian adoptive parents or foster parents over the requests and desires of the Indian tribe and Indian family. In a noteworthy case in which I am presently involved, an Indian child who spent his entire life on the reservation and who was kidnapped from the reservation by an Indian relative was ruled to have had his domicile shifted to Utah by the act of the natural mother abandoning the child. This kind of decision shows no respect for the sovereignty of Indian tribes and results in expensive legal battles to obtain the return of such children to the reservation, during which time they encounter massive emotional scarring because of their attachment to their non-Indian family.

Section 1911(b) needs to be expanded to address the problems of Public Law 280 tribes. For these tribes the child may be residing or domiciled on the reservation, but the state court may still have exercised initial jurisdiction over the child because of the dictates of Public Law 280. Several of these courts have ruled that they cannot transfer the case to tribal court where there is concurrent jurisdiction because the transfer provision of the ICWA only involves children who live off the reservation. Even in those situations where there is concurrent jurisdiction and the child lives on-reservation, it is the obvious policy of the Act to transfer the proceedings to tribal court to have the proceeding heard in an environment favorable to the Indian child.

Section 1911(c) should be amended to make it very clear that the tribe and Indian custodian have the right to intervene in both voluntary and involuntary proceedings. I would also recommend that this intervention section be expanded to include placement proceedings and adoption proceedings. This is because without the right of intervention, a state court will often not know that a tribe has modified its order of placement preference pursuant to section 1915(c), that an extended family member wishes custody of his or her child pursuant to sections 1915(a) or (b), or that a natural parent may desire the return of their child under section 1916.

Under section 1911(d), I would recommend that an express statement be included in the full faith and credit provisions stating that it is the requirements of fundamental fairness that shall guide whether the state court shall give full faith and credit to a tribal court order. In numerous cases I have been involved with, state courts have refused to give full faith and credit to tribal court orders based on technical distinctions such as the fact that notice was given to the attorney rather than served directly on the non-Indian adoptive parent even where the adoptive parents have received actual notice, where the seal is not affixed to the proper section of the paper and other hyper-technical distinctions which serve only to defeat the implementation of the Indian Child Welfare Act.

Section 1912(a) involves the basic contradiction that no notice is required in voluntary proceedings, or that this result seems to be intended by the section. Many states now take the position in voluntary proceedings that if a mother signs a waiver statement stating that they do not wish the Indian Child Welfare Act to apply, notice of any proceedings can be avoided to the Indian tribe. This violates the tribe's right to have a child placed according to a modified order of preference, and violates the right of the extended family to the placement preference order because they are often prevented from coming forward to express their desire for custody of their children. Therefore, I would recommend that subsection (a) be amended to just state simply "in any proceeding in a state court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of or termination of parental rights to an Indian child shall notify the parent or Indian custodian, ..." Notice does not mean intervention and obstruction by the tribe in all instances and if the placement preferences of the Act are followed, there will be no reason to fear tribal intervention in voluntary proceedings.

Section 1912(c) needs to be expanded so that the party to an Indian Child Welfare Act proceeding has the right to examine all reports or other documents used by the court or which may be the basis for any decision by the court. Several state social workers have refused to release information to tribes on the ground that that information has not been "filed" with the state court. This distinction is especially critical where a state worker will file a social summary with the court, but it is that worker's raw data file which will provide information to the Indian tribe or Indian parent about the basis for the social worker's dispositional and case work decisions.

Under sections 1912(e) and (f), I would recommend that a definition of expert witness be included directly in the Act. Several courts have refused to recognize as experts tribal social workers with extensive experience and on the other hand have recognized state social workers with no experience with Indian children or Indian social work. This kind of decision is contrary to the direct legislative history of the Act, which states that expert witness is meant to apply to someone with more than normal social work experience.

Section 1913 needs to be amended to state specifically that it applies to independent adoptions where the child is placed directly by a non-Indian parent into a non-Indian home and the Indian family is denied custody. This is the Baby Boy L problem I mentioned before.

Section 1914 must be amended to clarify federal jurisdiction under the Indian Child Welfare Act. It appears from the language of section 1914 that it is the initial state court action violating the Indian Child Welfare Act provisions that gives rise to jurisdiction in any court of competent jurisdiction, including federal court. This rationale, however, runs contrary to the accepted judicial maxim that once in state court, appeal can only be made through the various state courts. Since Indian tribes have a right to original federal jurisdiction under 28 U.S.C. § 1362, this right to have issues of federal law decided in federal courts should be protected under the Indian Child Welfare Act. However, since it is the obvious intent of the Indian Child Welfare Act that such proceedings take place first in a state forum, the tribe's right under 1362 to get into federal court must be protected. If a tribe were to refuse to go into state court at all and were to file an initial proceeding in federal court, it is likely that the federal court would abstain based on the reasoning that it could not assume that a state court would consciously violate the provisions of federal law. Once in state court, and once the state court violates the Indian Child Welfare Act, there is no method by which the tribe can get back into federal court unless this provision of the Act is held to preserve the tribe's federal court jurisdiction under 1362. The case of England v. Louisiana Board of Medical Examiners does not help in this situation. In that case the United States Supreme Court said that a party could reserve its federal court jurisdiction by filing first in federal court and asking for a remand of the case to state court. The holding of that decision stated, however, that if the party raised any federal court claims in state court, then reversion to the federal forum would be lost. Since under the Indian Child Welfare Act, the Indian party and tribe have no rights under federal law except those which are

given by the Indian Child Welfare Act, it would be useless to intervene in a state court proceeding under that principle because the protections of the Indian Child Welfare Act could not be raised in the state court without losing access to the federal forum later on. Since in most cases violation of the Indian Child Welfare Act takes place by ignoring the Act and following state law, tribes will gain nothing by intervening in state court proceedings under such a principle. Therefore, federal court jurisdiction must be clarified under this section.

Section 1915 of the Act should be amended to include some kind of limitation on good cause to the contrary. State court judges are using every imaginable reason to avoid implementation of the Indian Child Welfare Act or return of the child to the reservation or Indian family. While the legislative history to the Act states that this section is intended to preserve the child's right to be an Indian, state court judges are too often ignoring this caveat in the placement of Indian children. This principle specifically applies to section 1915(c) where it states that the preference of the Indian child or the parent shall be considered where appropriate. The states are using this section with parents to have the parent request that the Indian Child Welfare Act not be applied at all, or to request that the child be placed contrary to the preferences of the Act. This intimidation on the part of state courts and agencies was one of the major problems addressed by the Indian Child Welfare Act, and the practice should not be permitted to continue under the placement section as written. The Act states specifically in the legislative history that it is the child's right as an Indian which should control even over parental preference and this principle should be stated explicitly in the Act so that the Act's provisions cannot be avoided. In addition, state courts are using the good cause language to deny placement on the reservation because they think it is too rural, that no doctors are available, and for other culturally inappropriate reasons.

The only other section that I would like to address in terms of amendment is section 1921, concerning the applicability of other laws. This section should be clarified to make it clear that it is intended to help implement the Indian Child Welfare Act, and is not to be used as a means of avoiding the Act's provisions.

### III. FUNDING NEEDS

Let me start off the question of funding under the Indian Child Welfare Act by giving a brief summary of two examples of situations I have encountered where the lack of funding resulted in the policies of the Act being frustrated, despite conscientious involvement on the part of the affected Indian tribes.

The first case took place when I was acting as a Staff Attorney for the Indian Law Program of Oregon Legal Services. The fact situation involved two unwed parents. The father was a full-blood Pawnee residing in Oklahoma. The mother had run off with the Indian child to Oregon. The Pawnee father requested that we represent him in his attempts to obtain the return of his child to his natural family. We participated in a series of proceedings in Eugene, Oregon, over a period of two years, in which the state judge expressed extreme reluctance to return the child to what he considered an unknown situation in

a distant state where the child would be living with an Indian family. The mother was a confirmed alcoholic and despite repeated attempts at rehabilitation, continued to experience problems in the parenting of her child. Finally, at the end of the two-year period I managed to convince the judge that the need for permanency planning for this child was so great that the mother should be given no more opportunity to rehabilitate herself and instead the child should be returned to the custody of the natural father or the Pawnee Tribe. I had been in contact with the Pawnee Tribe over the course of this two years, and I contacted them to inform them that the child would be returned to the reservation and that they needed to arrange placement for the child. They informed me that the home of the natural father was not suitable for the child at the present time, and that because they had no money in their Child Welfare Program to pay for foster care placement, that they could not arrange a home for the child. Therefore, two years of active court involvement on my part ended up being wasted and the child remained in the non-Indian foster home in Oregon because sufficient funding was not available for placement on the reservation in Oklahoma.

The second situation involved a case I am handling for the Navajo Tribe, involving an independent adoption where the parents are two teenagers. The father is a full-blooded Navajo. The parents were prohibited from seeing each other after their respective parents found out that the non-Indian mother was pregnant, and the Navajo father was informed that the mother was going to have an abortion. His first information that a child had been born was when he received a call from the California Department of Adoptions two months after the child's birth, requesting enrollment information and medical information to be used by the prospective, adoptive parents, who were non-Indians, and in whose home the child had been placed within twenty-four hours of his birth. The father immediately informed the California social worker that he wished custody of his child, but was given no indication of how he could proceed to obtain the child's custody. The father's family then contacted the Bureau of Indian Affairs who informed them of several state Indian Child Welfare programs that might assist them. When the family contacted the Los Angeles Indian Center, they were informed that the Los Angeles Indian Center would like to help them but that their attorney had just been released due to a lack of funding. It was only when the Center then referred the family to the Navajo Tribe that an attorney finally got involved in the proceedings and intervened in the case. By that time the child had been in the prospective adoptive home for over four months, and the adoptive parents are now strenuously arguing that: (1) the father made no legally effective effort to obtain the return of his child; and (2) that the long time the child had now been in the non-Indian adoptive home should result in the natural father's request for custody being denied because of the bonding that has taken place between the child and the non-Indian adoptive parents.

These cases point out the critical needed for adequate funding to permit Indian tribes to assume their responsibilities under the Indian Child Welfare Act. It only takes one case in which a state court judge believes that an Indian tribe is not fulfilling its legal responsibility in a competent manner for that judge to give short shrift to the Indian Child Welfare Act and the rights of tribes and Indian parents in any other proceeding. A good example of this principle involves the

child in *In Re Birdhead*, a Nebraska Supreme Court decision decided in 1983. See, 331 N.W.2d 785. If you read that decision without knowing the facts, it appears that the Standing Rock Sioux Tribe intervened in an ICWA proceeding in Nebraska and then took no further steps to assert their legal rights, the Nebraska Supreme Court ruling that the tribe abandoned its right of intervention and its petition to transfer the proceeding to Tribal court by failing to appear at the trial. However, the real facts of that case are that the Tribe appeared for the first six hearings in this matter, during which time opposing counsel made repeated superfluous motions in order to attempt to drain the Tribe's resources. When the Tribe failed to show up for the seventh hearing, the trial court immediately made a ruling that the Tribe had abandoned its legal right of intervention and transfer.

There are several funding areas that are critical to full implementation of the Indian Child Welfare Act. They can be divided into two categories: on-reservation and off-reservation funding needs. On-reservation funding needs can be succinctly summarized as adequate funding to enable tribes to competently represent themselves in state ICWA proceedings. The Navajo Tribe presents an excellent example of what these funding needs are.

First, there is the need for adequate legal representation. The Navajo Tribe is currently involved in Indian Child Welfare Act proceedings in 19 different states. Because of the rules of each state bar association, the Navajo Tribe must hire local counsel in each state so that representatives of the Tribe may appear in court proceedings taking place in that state. While the Tribe attempts to use counsel that does not need to be reimbursed, such as legal services offices and Indian Child Welfare programs, the lack of adequate personnel has resulted in an expenditure of over \$30,000 by the Tribe in the last year to retain local counsel to assist the Tribe in these proceedings. While the Navajo Tribe has made a full commitment to enforcement of its Indian Child Welfare Act responsibilities and protections, many smaller tribes cannot afford this kind of expense, particularly where more than one proceeding is going on in several different states.

The other area in which on-reservation funding is critical involves the social work aspects of Indian Child Welfare Act cases. These aspects can be divided into two parts. First, state court judges need to be assured that adequate placement resources exist if they are to transfer a child to the reservation, and that adequate resources exist to provide the Indian child who is transferred back the services which they require; i.e., psychological services, family support services, parenting classes, etc. The second area of social work in which additional funding is required involves tribal testimony in state Indian Child Welfare Act proceedings in distant states. The tribe is always at a disadvantage, because every time there is a proceeding, tribal personnel must travel long distances while state court personnel are already in the vicinity of the area in which the Indian child is located. Thus, if Tribal social workers need to assess the incidents that have taken place, or to conduct a home study, or if a tribal psychologist needs to interview and evaluate the family, funds for travel and contract expenses for expert witnesses must be expended in order for the Tribe to adequately represent its position in state court. This also implicates

the situation discussed above where opposing attorneys will sometimes file continual and superfluous motions to attempt to drain the tribal treasury. Because of these massive expenditures, tribes are often forced to rely on state social work reports and experts appointed by state courts to evaluate Indian families. This is the exact type of bias which the Indian Child Welfare Act was originally enacted to rectify. Without adequate funding tribes cannot present unbiased testimony which will contradict those biased or prejudiced reports submitted by non-Indian state social work or psychiatric personnel.

The second part of this problem, although intimately connected with the first, involves off-reservation funding of urban Indian Child Welfare Programs. When these programs are in operation and are adequately funded, resources exist to assist tribes in distant state litigation which will be unbiased and which will adequately represent the tribal point of view. For instance, if an Indian Child Welfare Act program has an attorney who has been hired to handle Indian Child Welfare Act cases for that program, tribes are not forced into the expensive decision of hiring local counsel. In addition, if that program has social workers and psychologists on staff, those people will be in a position to assist the tribes in resolving a bad family situation due to the fact that they are located in the local area where the family is settled. This resolves the long-distance problems associated with sending tribal social workers and psychologists to distant destinations every time case work needs to be done. Since it is the cases in which the Indian family resides and is domiciled off-reservation which are most difficult for the tribes to resolve because there is no exclusive jurisdiction, it is particularly these cases in which adequate funding of urban Indian Child Welfare Programs is necessary. It is also urban areas where Indian families tend to get into difficulty and this difficulty comes to the attention of state authorities rather than being handled informally by the extended family structure or tribal resources, because those resources are not available. Thus, if anything, it is funding of urban programs that is most critical to successful implementation of the Indian Child Welfare Act, both from an individual and from a tribal viewpoint. The Bureau of Indian Affairs' position that funding should be ended for these urban programs is a complete abrogation of their trust responsibility to Indian people as imposed on that agency by Congress through treaties and the ICWA.

#### IV. CONCLUSION

The ICWA constitutes a significant congressional commitment to assist Indian families to raise their own children in a culturally relevant family environment. The Act has, for the most part, worked well. With the amendments which we have recommended and adequate funding, the ICWA can fulfill its intended purposes. On behalf of the Navajo Nation, I thank the committee for this opportunity to comment on the ICWA.

Mr. ALEXANDER. Our next scheduled witness is Mary Wood, who is the director of the Council of Three Rivers, from Pittsburgh, PA.

**STATEMENT OF MARY WOOD, DIRECTOR, NATIVE AMERICAN FAMILY AND CHILD SERVICE PROGRAM, AMERICAN INDIAN CENTER, COUNCIL OF THREE RIVERS, PITTSBURGH, PA**

Ms. WOOD. In correction, I am Mary Wood. I am director of the Native American Family and Child Service Program, which is a program of the Council of Three Rivers at the American Indian Center in Pittsburgh. I am not the director of the center. That director is Russell Simms.

I am really happy to have the opportunity to address some of the concerns that our program has identified in the 2 years that we have been functioning. These concerns are mostly problems with implementation of the act. The failure of service agencies to identify and track Indian clients is an important barrier to service. We have also found the case workers and casework supervisors, who may have received information or training on implementation of the Indian Child Welfare Act, do not always have the opportunity to disseminate such information agency-wide. To counteract this, we have placed strong emphasis on working directly with agency directors or their designees regarding Indian child welfare matters, and we involve them actively in planning appropriate training and technical assistance for their staff.

While there are many points of access for families in the mainstream who are seeking information or support regarding their decision to adopt, these are not geared to Indian concepts or needs. The Native American Family and Child Service Program interprets mainstream services to tribes and Indian families in order to identify and eliminate potential barriers to service. Any prospective adoptive family encounters a bewildering maze of redtape delays and frustrations. But for Indian families, these can present insurmountable barriers.

I have been active in the field of adoption for 15 years, and I am impressed with the tremendous growth of the Indian child welfare program over the past 3 years. We find, however, that the Indian child welfare programs face serious challenges in the fact that they are underfunded, while greater demands are placed on them than on more-established programs. These Indian child welfare programs face complexities of service deliveries, encompassing tribal codes and State statutes, while having unusually high service populations per worker. Although the Indian child welfare workers are dedicated, we are seeking numbers of workers experiencing "burn out" because of their frustrations that are due to understaffing, which is due to underfunding.

Tremendous gains have been made in the development of State tribal agreements. However, we need to place more emphasis on tribe-to-tribe agreements and off-reservation Indian child welfare program agreements in order to establish a strong matrix for the delivery of Indian child welfare services nationally.

We have worked with a number of tribes involved in child custody proceedings in distant States. Off-reservation Indian child welfare programs are uniquely able to assist tribes in the provision of

timely and cost-effective child welfare services for their off-reservation tribal members. There is a demonstrated need for specialized training and permanency planning, in preparation of foster and adoptive families, placement dynamics, and post-placement supports. In the past 2 years, the Native American Adoption Resource Exchange, which is a component of our Family and Child Service Program, has found that Indian child welfare programs need urgently additional training and experience in the preparation of Indian foster and adoptive families through group process or through family preparation processes that prepare them for the problems that they will experience.

An understanding of placement mechanics, family and community resources, and pure support systems will enable Indian child welfare programs to better prepare families for placement. Families will gain an understanding of the types of Indian children available for adoption and their special needs, as well as increased appreciation of themselves as resources for these children.

One of our greater areas of concern is the interpretation of the "good cause" clause in the Indian Child Welfare Act, section 101(b), 105(a) and 105(b). We have found that State courts may find "good cause" inconsistent with the substance and the intent of the act. For example, an Eastern seaboard State court recently declined to transfer jurisdiction to a Western tribe, citing their finding that the child in question did not have intellectual capacity to benefit from upbringing within a tribal setting, although the child was at no time determined to be deficient in intelligence.

A Great Lakes region State court refused to transfer jurisdiction to the tribe, arguing that there were "no appropriate" Indian families available for an Indian child, even though the tribe, through referrals made by the Native American Adoption Resource Exchange, was able to show an availability of Indian families. An Eastern State has declined to transfer jurisdiction for a preschool-aged child, based on the argument that the child has resided outside the Indian community for half of her life, and that it would be a hardship to transport the State's witness to the Midwestern tribal court.

State and private placement agencies are often reluctant to look to the preferences set forth in the act in placing Indian children. State and private agencies need to understand the order of preference applies to involuntary relinquishments, unless altered by the child's tribe. State and private placement agencies are not recruiting Indian families in sufficient numbers for the initial out-of-home placement. As a result, an Indian child is often placed outside the Indian community, and due to poor permanency planning, he remains for months—sometimes years—in the limbo of foster care. State courts then find bonding has taken place and find that represents good cause for setting aside the preference of the act and placing the child for adoption with the foster psychological parents.

The final concern I would like to bring to your attention today is the frequent request for services for Canadian Indian children who have been brought to this country for placement within non-Indian adoptive homes. These are frequently very problematic adoptions, where the children are finally becoming involved with local children-and-youth-service offices. These children-and-youth-service of-

fices contact us for assistance with planning appropriate home placement. In those instances where the children are 10 or younger, there may be American Indian families available for replacement. When the young people involved are already teenagers, it becomes increasingly difficult to identify appropriate resources. These children then become the victims of a system where Indian child welfare programs are unable to provide service.

There is a need for the development of procedures that will involve the child's Canadian band in planning. There is also a need to support the efforts of Canadian bands as they develop their own Indian child welfare service system.

In closing, the Indian child welfare program has successfully overcome many challenges but continue to need increased funding in order to provide effective, appropriate, and timely services to Indian children and families. I appreciate the opportunity to be here, and I will answer any questions that I can.

Mr. ALEXANDER. Thank you for your very thoughtful statement. You are located in Pittsburgh, I note. Are you aware of the educational institutions in your area that provide for social work degrees or counseling degrees spending any time on the Indian Child Welfare Act as they train their professionals who will then be members of the State court system?

Ms. WOOD. No, we are not aware that is happening. In fact, we are not aware of any kind of training that has taken place within the State of Pennsylvania for implementing the act. There has not been any kind of a written memo, even, coming down from the State offices concerning implementing the act.

Mr. ALEXANDER. Thank you very much. We appreciate your coming today.

We are going to go slightly out of order to enable someone to catch a plane. Our next witness will be Wanda Sharp, from the Mississippi Band of Choctaw Indians, from Philadelphia, MS.

**STATEMENT OF WANDA SHARP, DIRECTOR, CHILD ADVOCACY PROGRAM, MISSISSIPPI BAND OF CHOCTAW INDIANS, PHILADELPHIA, MS**

Ms. SHARP. My name is Wanda Sharp, and I am the director of the Child Advocacy Program for the Mississippi Band of Choctaw Indians, a federally recognized tribe that consists of some 4,500 members, located in east-central Mississippi.

It is a privilege for me today to testify in matters relating to the implementation of the Indian Child Welfare Act of 1978. I have had the privilege to administer grant program funds for the Indian child welfare moneys for the past 4 years. However, I have worked in the position I now hold for almost 6 years.

As we know, the Indian Child Welfare Act is a Federal law designed to correct the failure of the States to recognize the tribal, cultural, and social standards found in Indian reservations and families. The basis for the Indian Child Welfare Act is to protect the stability and security of Indian tribes and families by providing for assistance to the Indian tribes and the operation of a child and family service program.

Unfortunately, the effectiveness of such a program has been reduced due to insufficient funding. Over the past 2 years, my staff has been cut in half. Our main focus can only be on that of protective service program to abused and neglected children. However, the fact still remains that much work needs to be done in areas of prevention, adoption, high school dropouts, teenage pregnancy, runaways, incorrigibles, and training paraprofessional staff.

One of the most significant problems is the uncertainty of funding. As this committee is aware, tribes wishing to apply for a grant must spend time in developing proposals that must be evaluated in competition with many other applications. This procedure requires hundreds of hours of staff time to develop another proposal on a year-to-year basis and distracts and interferes with tribal programs meeting basic goals and objectives. I think it really would be great if we could extend this to a 3-year funding program.

If I may, I would like to address the specific sections of the act that we feel are problem areas. First of all, notice given to tribes regarding child custody proceedings many times is insufficient. In section 2311 in the Code of Federal Regulations, it spells out the information to be given to tribes. However, we usually receive only the petition, with the name of the child, the date of birth, and the parents' name. A contact person is rarely ever listed in these cases, which requires a lot of our time in trying to track down who it is, to find out more information, to find out if the child is a member of the Mississippi Band of Choctaw Indians or is eligible for membership.

Section 4, regarding the definition of an Indian child, states that an Indian child is an unmarried person under the age of 18 and is either a member of an Indian tribe or is eligible for membership in an Indian tribe, and is the biological child of a member of an Indian tribe. Over the past 2 years, I have found a number of Choctaw children needing services. However, because of the definition of "Indian child," I have no jurisdiction in the matter. Seemingly, if feasible, what is needed is some type of universal definition of an Indian child.

The act at present does not cover a youth who is a delinquent. This has become a really pressing problem on the Choctaw Reservation. The question we face is, who is going to handle a youth with multiple alcohol-related offenses and other delinquency-related problems? In fact, the Choctaw tribal court has put a hold on all delinquents coming to the attention of the Choctaw court, until such time as the tribe can produce a youth counsellor for these minors.

Our program receives an average of three referrals a week on youth-related problems that we are unable to respond to because no provision exists in the Indian Child Welfare Act for delinquency related problems.

As I mentioned earlier, Indian child welfare moneys have funded the operation of the Child Advocacy Program for the past 4 years. Indian child welfare funds have enabled us to meet some of the following objectives, and it has helped us to maintain an ongoing child advocacy protective services program for neglected and abused children, to act as a consultant to the Choctaw Tribal Council in writing children's code, to write an adoption code and present to the tribal council which was approved in 1982, to establish crite-

ria for licensure of Choctaw foster homes, to assist in establishing paternity of illegitimate Choctaw children, to work closely with Choctaw tribal courts and judges, and to find permanent home placement by means of adoption for 54 children, which I might add, over 98 percent have been placed with Choctaw people on reservations and others with other Indian tribes, receive emergency calls on the weekends and after hours, and attend training conferences, and act as matching funds for a title XX day care center, which serves a maximum of 74 children.

Without these moneys, it would have been impossible for our program to have continued. The Mississippi Band of Choctaw Indians still has many unresolved child welfare problems on which the tribe is placing a high priority in finding solutions. The Indian Child Welfare Act offers the best hope for accomplishing these priority goals. Thank you for allowing me to move up my schedule and present testimony. If there are any questions that I might answer at this time, I will be glad to try.

Mr. ALEXANDER. Thank you very much for coming. I hope you make your plane on time.

Our next witness is Tony Robles, from Oklahoma City, OK. Welcome.

**STATEMENT OF TONY ROBLES, COORDINATOR, INDIAN CHILD WELFARE ACT PROGRAM, NATIVE AMERICAN CENTER, OKLAHOMA CITY, OK**

Mr. ROBLES. Thank you. My name is Toby Robles. I am from the Native American Center in Oklahoma City, the Child Welfare Program.

Mr. ALEXANDER. Your prepared testimony, which the committee has, will be in the record, including all the attachments. We appreciate it.

Mr. ROBLES. I want to talk a little about the profile of the urban communities in Oklahoma. It is mainly the Tulsa and Oklahoma City area. The combined population of Indians in these two areas is about 45 percent of the total population in Oklahoma. Selected census tracts for Oklahoma City show that the Indian families range from 48 to 78 percent below the average income in Oklahoma City. Our own statistics in our child welfare program from 1980 to 1983 show the unemployment rate or the income below poverty guidelines at about 86 percent.

In Oklahoma City and in Tulsa, we have all the tribes that live in each area of Oklahoma, plus others from out of State. Statistics continue to show that the American Indian population is young. Our own N.A.C. social services program listed that there were 565 children 5 years of age and younger. They also had 765 children 21 years of age within those same families. Our own child welfare program statistics for this current year show that the average age for the 41 children we are currently involved with is 6 years old.

I would like to talk a little bit about the tribal child welfare programs. I believe that in Oklahoma, if tribes did not have their legal representation, which would be people from the OKC-N.A. center's legal program and people from the Native American Coalition in Tulsa's legal program, the tribes could not have implemented any

kind of action with the Indian Child Welfare Act. Courts in Oklahoma have requested and they still are that way about having lawyers in the courtrooms instead of the social workers or the paralegals. They will not allow a paralegal or social worker to represent the tribe. Without legal assistance, they would not have gotten too far.

Some of the tribal courts in the beginning were not working that well because of staff turnover. They felt that funding was not adequate. This has caused some problems with the tribal courts, because they have had cases that are still pending from 2 and 3 years ago. Some of the children were not even placed with the extended family; they have been placed with other tribal members, and this is still going on.

Nowadays they have been talking to some of the tribal child welfare programs, about doing tribal-custom adoptions, instead of doing the American-system adoption that we are used to today.

State courts are beginning to come around to complying with the act. Some of the rural judges are very rude to the lawyers that represent the tribes, to the tribal child welfare workers, and other people that are involved with the tribe. They have had to litigate the constitutionality of the act when it first came out. There are problems with the State courts denying transfer cases to the Court of Indian Offenses. We have heard a lot of complaints about that, and we are basically in the same situation as many of them because of the "good cause" clause.

Intervention in Oklahoma courts is allowed today, but as I said earlier, most tribes would not have been able to unless they had a lawyer to represent them in court, represent many of the smaller tribes in Oklahoma, and they are the ones we are worried about because they do not have the money to retain an attorney to represent them in State courts. There are only about four tribes in Oklahoma that have their own Indian child welfare attorney.

I have heard people talk about the consents, voluntary consents, for the termination of parental rights. One of the things that we have talked about in our office and with some other people is that most of these consents are done by single mothers. Consents are usually done by the DHS workers, the welfare workers. One of the things that the mother will not say sometimes is the name of the father, and the DHS workers will not insist on finding out who the father is.

We have been involved in a couple of cases where we have asked the mother to give the name of the father so that we can get his paternity affidavit signed, and if he wants to, he can relinquish his own rights. But if you do not get the father's name on that birth certificate, that child will lose his blood quantum, and he will never be able to have a heritage, once the termination is done by the single parent.

I would like to give you some statistics from Indian country with Indian children under State jurisdiction. In October 1979, there were 717 children in State jurisdiction. Today, there are 717. In Oklahoma County, in November 1981, there were 154. Today, there are 79. Oklahoma County and Tulsa County, which makes up the largest population—makes up a big population of the State—is the most active in DHS custody of Indian children, with about 20 per-

cent of all the Indian children in DHS custody coming from Oklahoma County and Tulsa County.

There are letters of support from different tribes, and I want to read this one, a short first paragraph. This is from the Muskogee Nation:

This letter is to express the Muskogee Nation's appreciation to the Indian Child Welfare Program for its assistance in serving the needs of citizens of the Muskogee Nation that reside in the Oklahoma City area. As you know, the Muskogee Nation has inadequate resources to intervene in child custody cases outside the Muskogee Nation. It is only through programs like yours that we are able to protect the rights of citizens in urban areas.

There are many tribes that say the same thing to us. We have other letters in here from tribes that say the same thing. We have letters from the public defender of Oklahoma County, the district attorney of Oklahoma County, the judge, the presiding judge of the Juvenile Division of Oklahoma County, who say the same thing. I hope you can read these sometime, because they are the ones who know.

Mr. ALEXANDER. As I mentioned, all the letters will become part of the record.

Mr. ROBLES. I just want to say that they know what the needs are, and they realize that we are in very important urban areas, as well as for tribes around the country or around the State. We have been to about 20 different district courts in Oklahoma with our program. Ethel Krepps here is from the other center in Tulsa that provides legal services also.

Mr. ALEXANDER. In your experience, have you found that the Oklahoma Indian Child Welfare Act, which was passed in 1982, has made much of a difference in how the State and local court systems cooperate with you, or the lack thereof?

Mr. ROBLES. Not really, because some of the judges do not even recognize the need for the Federal act. We have had judges tell us that before, that they do not believe in the Federal act, and we have had to educate them just by being in court litigating cases. That is what we have done in the past 4½ years. I think that we made a great impact in Oklahoma County, which has affected some of the other counties because of the caseload there. We have been able to do lots of litigated training.

Mr. ALEXANDER. You see your presence, more than the State statute, as providing the change that you said is slowly coming about in Oklahoma. Is that fair?

Mr. ROBLES. Yes.

Mr. ALEXANDER. Thank you very much. We appreciate your testimony.

[The prepared statements, with attachments follow. Testimony resumes on p. 206.]

PREPARED STATEMENT OF TOBIAS ROBLES OF THE NATIVE AMERICAN CENTERS

CHILD WELFARE PROGRAM OF OKLAHOMA CITY, OK

My name is Tobias Robles and I am a representative of the Native American Centers Child Welfare Program in Oklahoma City, Oklahoma.

In September 1979, the American Indian Lawyer Training Program wrote:

"In promoting and maintaining the integrity of society it would seem that laws would be necessary to insure the happiness and peace of mind of children. For almost two centuries Indian children have endured negative influence upon their lives by political and social hostilities. The Indian Child Welfare Act of 1978 was passed into law to prevent the unwarranted breakup of Indian families and to give tribal governments substantial authority in determining child custody matters. The script has been written. The actors must now be readied for meaningful performances. The Act has designated operative roles to tribes, states, and federal agencies. It calls for a cooperative effort spirited by good faith of all parties involved. If these roles are not carried out in a concerned manner, the objectives of the Act cannot be realized."

Well, four and a half (4½) years later, the Tribes have been cooperative, the States have been semi-cooperative as has the Bureau, but now the federal people are asking for \$0 appropriations for urban program or off-reservation Indian organizations for FY-1986. This is not cooperative, this is not good-faith, this is not within the spirit of the law and according to many it is not in the "best interest of Indian children," Indian families and the Indian Tribes.

OKC URBAN INDIAN COMMUNITY PROFILE

Oklahoma City's 1980 M.S.A. Indian population is 24, 752 ranking about third in the United States. Tulsa population is

The combined totals make up % of total Indian population living in urban areas. OKC is 15.4% of the population.

Selected Census Tracts show the average income for Indian families ranges from 48% to 78% below the average income for OKC. Since April 1980, our Indian Child Welfare program has recorded the rate of poverty for parents, parent, or Indian custodians. From that date to December 1983, the unemployment rate or income below poverty guidelines has been an average of 84%. Some months the percentage rate has been 100% unemployment. The N.A.C.'s Legal Program had 550 legal intakes for 1983. Of those 61% were unemployed or income below poverty guidelines. The N.A.C.'s Social Services Program assisted 755 families. Of those 97% were below poverty income guidelines or unemployed.

Statistics continue to show American Indians being a young race. The NAC's Social Services program had listed that there were 565 children 5 years of age and younger and they also had 765 children 21 years to 6 years of age within those families. Our ICWA Program statistics for this current year show the average age for the 41 children involved to be 6 years old.

The Department of Health & Human Services, Administration for Native Americans funded a study for the Oklahoma City Native American Community entitled, NATIVE AMERICAN COMMUNITY SERVICES REPORT. While it is not possible to submit the complete 487 page report, the "Highlights of Findings" show the gaps and barriers to existing services in the Oklahoma City area.

\* The Oklahoma City Native American community is "without" almost 10% of the services that should be available to it.

\* The Oklahoma City Native American Community is "without" a significant percentage of services that should be available for:

- Political Participation
- Recreation
- Child and Family Services
- Aging Services
- Emergency Medical Services

- Mental Health Services
- Nutrition Services
- Veterinary
- Energy Services
- Transportation

\* The most frequent barriers to delivering available services to the Oklahoma City Native American community:

- Unaware of existence of service
- Unaware of how to obtain service
- Unaware of need or importance of service
- Insensitive to Native American needs
- Prejudiced against Native Americans
- Insufficient Native American personnel
- Overall, doesn't get results/meets needs
- Unable to pay direct costs
- Unable to pay for transportation
- Lack of transportation to/from provider

\* The Oklahoma City Native American community is also "without" established extra-community linkages for planning"

- Economic Development
- Disease Prevention, Detection Diagnosis, Treatment and Rehabilitation
- Residential Environmental Control
- Hazardous Substance Control
- Housing
- Energy
- Communications.

& Tulsa

The OKC Indian Community representations all Tribes in Oklahoma and other Tribes from out of state. Urban Indian families don't know anything about the Act and many, many lawyers don't know anything at all about the Act. Those families involved in the legal process deserve and have a right to the best legal representation to prevent the breakup of their family according to the Act.

The Act is here because of unwarranted removal of Indian children from their by families by nontribal public and private agencies. Now the Federal people are not willing to fund off-reservation Indian ICWA programs. They don't realize or recognize the essential relations the urban Indian families and the urban Indian organizations have the Tribes.

TRIBAL CHILD WELFARE PROGRAMS

The last four years have taught us all how important extensive legal counselling and representation of the Tribes is to implementation of the Act and protection of individual children. Social workers and para-legal workers in individual tribal programs have realized that the whole area of "protective services" is so permeated with state laws and lawyers - at least as administered by white agencies and courts that advice of a lawyer may be a daily need. Questions arise in regard to law as it pertains to guardianships, adoptions, etc., which require more knowledge of law than they possess. The judges hearing the cases have not responded to the Tribal worker or give them very little merit in the courtroom, they listen to lawyers.

The representation of Tribal Child Welfare Programs at Show-Cause hearings, Pre-Trial hearings, Motion hearings, and Transfer of Jurisdiction hearings is of maximum importance. In cases where Transfer is denied, the Tribe must be represented at Adjudicatory hearings, Dispositional hearings and any further hearings including Appeals. State court proceedings which go through without transfer or early dismissal may last up to a year and a half.

Only a few of the largest Tribes can afford to hire Indian Child Welfare attorneys. And even still they will ask urban ICW programs for assistance with Tribal members. If only a handful of Tribes can hire ICW attorneys, what happens to other Tribes that need assistance in their own area and in the urban areas. Those that can't afford a good, knowledgeable ICWA attorney. Attorneys representing individuals under the Indian Child Welfare Act must be attorneys working with and for Tribal child welfare programs.

STATE COURTS/I.C.W.A.

Voluntary state court compliance with the Act is still the exception not the rule for prosecutors and judges in many of the state courts. Most of these officials simply do not believe in the Indian Child Welfare Act, if they did the need for our services would already have diminished.

We litigated the Constitutionality of the I.C.W.A. before a three judge panel in Oklahoma City, that determined the Act was constitutional. Despite that ruling the State has continued to object to the Acts Constitutionality. Also when there seems to be the possibility of mandatory compliance with the law, interpretations of the Act which obviously thwart its purpose are developed. The phrase "good cause" is still stretched to keep an Indian child with white foster parents alleging that a year and a half with them might mean trauma in relocating to an Indian family. In other cases, transfer to the Court of Indian Offenses was denied because the state judge found the C.I.O. was "not capable of taking jurisdiction" and this is "good cause." "Intervention" is allowed by the Courts but Tribes must have a lawyer in order to speak to issues in court.

The voluntary terminations of parental rights in the courts are usually written but not recorded, and the consequences of the consent are sometimes not fully understood by the parents or parent. Most of the voluntary consent are by young, unmarried, not too educated women, and in some cases their FIRST language was their own Tribal language. Also in these types of parental terminations, the mother will not name a father. When this is done the blood degree of the child will be lost forever. We have been talking to everybody involved in these terminations to at least try to establish paternity. And who knows maybe the father may want his child and if not at least the child will have the Indian blood degree.

Courts have not been willing to require the state to actively develop and certify Indian foster homes as required by Section 1912 (d) of the Act. There are numerous other examples (voluntary and involuntary placements or terminations notices to Tribes and extended families; placement preferences; state/tribal agreements; adoption record keeping), where the State courts, the prosecutors and individual case workers violate Indian families and Tribes' rights under the federal Act, the Oklahoma Indian Child Welfare Act and the United States Constitution in such a way that appeal is the only way to keep them from gutting the Act in Oklahoma.

STATISTICS/INDIAN CHILDREN IN D.H.S. CUSTODY

In October, 1979, there were 774 children identified as being of Indian heritage for whom the Oklahoma Department of Human Services assumed legal custody and/or supervision in all types of living arrangements. During the next three years and after the enactment of the Indian Child Welfare Act, the number of Indian children in D.H.S. custody rose to 896 in July, 1982. That is a 16% jump in State activity. Since July 1982, to November 1983, the number of Indian Children in D.H.S. custody declined by 179 to 717 children. That is a 20% decrease of children in D.H.S. custody.

Some of the DHS statewide living arrangements in November 1981 were 305 Indian children living in their own home, 148 living with relatives and 209 living in DHS Foster homes. These same statewide living arrangements for Indian children for December 1982, were 208 children living in their own home, 159 living with relatives and an increased 242 living in DHS foster homes. For November 1983, the living arrangements for our children were 212 Indian children living in their own home, 144 living with relatives and 235 in DHS homes.

This program's basic target area is Oklahoma County. In November 1981, DHS had 154 Indian children in their custody. The living arrangements at that time were 45 living in their own home, 15 living with relatives and 42 living in DHS foster homes. According to DHS December 1982 statistics, the Department had decreased Indian children numbers to 115. The living arrangements are 21 in their own home, 16 in relatives home and still 42 living DHS foster homes. In November 1983, the number of Indian children in DHS custody is reduced to 79.

Oklahoma County has the largest number of Indian children in DHS custody. According to statistics, since November 1981 to November 1983, the DHS custody of Indian children decreased by 50%. This decrease is significant in itself, that the busiest county in the State felt an impact due to working Tribal programs and this urban Indian legal services.

NATIVE AMERICAN CENTER INDIAN CHILD WELFARE PROGRAM

The Indian Child Welfare program was first funded in July 1980. Since that time this program has been involved in approximately 320 Indian child welfare related matters. We have referred 40 cases to other attorneys, agencies, or Tribal programs. This program has transferred approximately 80 cases to the Court of Indian Offenses at every court site and other Tribes. Our program has been Court appointed Guardian Ad Litem in 25 cases by the Indian Judges. Between January 1982, and March 1984, the program had scheduled 315 I.C.W.A. court hearings in various District Courts and the Court of Indian Offenses. The Program has also assisted or worked for 20 of the Tribes in Oklahoma and 4 Tribes from out of state. We have logged over 23,000 miles working for Indian families and Tribal program in the State. We have litigated ICWA cases in 20 District Courts. We are presently involved in 2 Federal Appeals. We have examined Tribal Child Welfare Codes. We have worked with Tribes and the State Welfare Department in hammering out a "sample" State/Tribe Agreement. Now the Tribes want to contract for State-federal funds for families under the jurisdiction of the Federal Indian Courts and for families located on Federal Trust land but the State refuses and they use a Federal excuse.

Keeping Indian families together, advocating for Tribal programs and helping the Courts to implement the Act is what we are doing. And we are doing it with the minimum of funds

*Est. Muskogee Constitution 1839*

*Muscogee (Creek) Nation*  
Office of Justice

*Geoffrey Standing Bear*  
General Legal Counsel

December 27, 1983

Legal Department  
Native American Center  
2900 S. Harvey  
Oklahoma City, OK 73109

Dear Toby,

This letter is to express the Muscogee (Creek) Nation's appreciation to your Indian Child Welfare Program for its assistance in serving the needs of citizens of the Muscogee Nation that resides in the Oklahoma City area. As you know, the Muscogee (Creek) Nation has inadequate resources to intervene in Indian Child Welfare cases outside of the Muscogee (Creek) Nation, it is only through programs like yours that we are able to protect the right of citizens in urban areas.

I sincerely hope that you receive funding to continue your program, a denial of funding to your program would directly harm the interests of the Muscogee Nation.

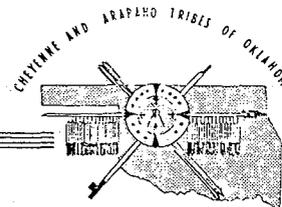
Sincerely,

Geoffrey Standing Bear  
General Legal Counsel

GS/kr

*Creek Nation Tribal Capital Complex - Highway 75 at Loop 56 - P.O. Box 580 - Okmulgee, Oklahoma 74447 - 918-724-1111*

CHEYENNE & ARAPAHO  
Indian Child Welfare Program



P.O. Box 38  
Concho, Oklahoma 73022  
(405) 262-0345  
1-800-522-3577

January 11, 1984

Toby Robles, Coordinator  
Child Welfare Program  
Legal Program  
2900 S. Harvey  
Oklahoma City, Oklahoma 73109

Dear Mr. Robles:

I appreciate the opportunity to respond in providing a support letter in behalf of your program. During the past seventeen months I have had the pleasure of working with your legal staff in the area of Indian Child Welfare. I have found the staff to be very dependable and competent.

I appreciate their assistance in legal representation of the Cheyenne-Arapaho Tribes of Oklahoma. I commend your staff on the commitment and dedication in the area of Indian children and families that become involved in child custody proceedings.

Sincerely,

Winnifred E. White Tail  
Indian Child Welfare Coordinator



Kiowa Tribe of Oklahoma

POSTAL BOX 361 • CARNEGIE, OKLAHOMA 73015 • 405/654-2300

December 27, 1983

Mr. Toby Robles, Child Welfare Coordinator  
Native American Center  
2900 S Harvey  
Oklahoma City, Ok 73109

Dear Mr. Robles:

Since the Kiowa Tribal Complex is located ninety miles from Oklahoma City, OK, and we have Kiowa Tribal members who reside in your area, or who may become clients of your program and others who have already benefited from your child welfare services, we support your efforts of service to Indian children in your area.

For the next year, the Kiowa Social Service Department, Kiowa Child Welfare Program is looking forward to working with you and your staff. We support your efforts and encourage you to continue to serve the Indian Population in the Oklahoma City, Ok area.

If you have any question, please call this number at (405) 654-2300 extension 232.

Sincerely,

*Julia Roubideaux*  
Julia Roubideaux,  
Kiowa Child Welfare Specialist  
*Clara Chanate*  
Clara Chanate  
Kiowa Child Welfare Caseworker

JR/jr

ABSENTEE SHAWNEE AND SAC & FOX TRIBES  
Indian Child Welfare Program  
Route 5, Box 144  
Shawnee, OK 74801

December 20, 1983

TO WHOM IT MAY CONCERN:

This letter is to recommend the Native American Center, Indian Child Welfare Program, located in Oklahoma City, Oklahoma, be considered for continued funding under the provisions of Title II, ICWA for the fiscal year 1984.

The Native American Center has made significant contributions to our tribal programs. Legal assistance has been provided to a minimum of twelve (12) families and at least thirty (30) children. The legal assistance has been most helpful to our tribal families.

We highly recommend this program for continued ICW funding.

Sincerely,

*Thomas J. Dry*

Thomas J. Dry  
Program Director

## KICKAPOO TRIBE OF OKLAHOMA

Post Office Box 58  
McLoud, OK 74851Administration (405) 964-2075  
Health Services 964-2074

## CHILDREN AND FAMILY SERVICE PROGRAM

January 6, 1984

TO WHOM IT MAY CONCERN:

The Legal Program of the Native American Center and its Indian Child Welfare activity is of inestimable value to individual Indian persons and to the tribes in Oklahoma.

The quality of service and the consistency of attention to Indian Child Welfare matters which we have observed of the Program, for several years now, certainly enhances the confidence we have in the capabilities of its staff.

We would characterize the Program and its staff as being among the most knowledgeable and experienced in legal aspects of Indian Child Welfare in the country.

There is no question, this is an extremely worthwhile and vital program which more than justifies funding under provisions of Title II, ICWA.

We recommend its continued funding for Indian Child Welfare activity for fiscal year 1984.

Sincerely,

Vernon T. Ketcheshawno  
Program Director

Dec 23-1983

Toby Robles  
Indian Child Welfare  
Native American Center  
5900 S. Harvey  
Okla. City 73109

Dear MR. Robles,

I want to write  
this letter to Thank you  
Albert, Doug, for the  
Assistance given me and  
my child in Oklahoma County.  
I've never been in this  
type of trouble, I didn't  
~~no what to do, I didn't~~  
have any money, But  
some how I found you  
Guys and you helped  
me out. I'm going to  
try and do better for  
myself and I hope  
you Guys can keep  
up the good work.

Thank you  
Brunda Honey

## PUBLIC DEFENDER OF OKLAHOMA COUNTY.

409 COUNTY OFFICE BUILDING  
320 ROBERT S. KERR AVE.  
OKLAHOMA CITY, OKLAHOMA 73102  
405-236-2727 EXT. 592

T. HURLEY JORDAN  
PUBLIC DEFENDER

January 3, 1984

Tobias Robles, Director  
Indian Child Welfare Program  
Native American Center  
2900 South Harvey  
Oklahoma City, Oklahoma 73109

Dear Mr. Robles:

I am writing this letter in support of continued funding of the Indian Child Welfare Program of The Native American Center in Oklahoma City. The legal staff of The Native American Center has been an active party in implementation of The Indian Child Welfare Act in the District Court of Oklahoma County and has provided numerous Indian families with quality legal representation in situations we all realize are difficult for all the people involved. They have also assisted numerous Indian Tribes in asserting their interest in Child Welfare proceedings.

The participation of the staff of The Native American Center has provided a cultural bridge that has assisted in developing coordination between state agencies, Indian tribes and organizations.

The Native American Center is the only organization in the Oklahoma City metropolitan area providing Indian people with this type of representation and my experience in working with them in court proceedings over the last several years has impressed me with their competence and dedication. I highly recommend their Child Welfare Program for continued funding.

Sincerely,



T. HURLEY JORDAN  
Public Defender

THJ:mk



ROBERT H. MACY  
DISTRICT ATTORNEY  
OKLAHOMA COUNTY

SEVENTH DISTRICT  
STATE OF OKLAHOMA

518 COUNTY OFFICE BUILDING  
OKLAHOMA CITY, OKLAHOMA 73102  
(405) 235-5522

January 3, 1984

Tobias Robles, Director  
Indian Child Welfare Program  
Native American Center  
2900 S. Harvey  
Oklahoma City, Oklahoma 73109

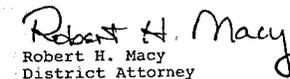
Dear Mr. Robles,

I am writing this letter to highly recommend the continued funding of the Indian Child Welfare Program of the Native American Center in Oklahoma City.

I will be brief in my remarks. There is no question that the legal staff of the Center has provided a critical service unavailable elsewhere. My dealings with the staff, particularly Doug Parr and Barry Benfield, have repeatedly demonstrated their dedication and competence.

I have no hesitation in urging your continued support of this vital program.

Sincerely,



Robert H. Macy  
District Attorney

RHM:kak



CHARLIE Y. WIER  
ASSOCIATE DISTRICT JUDGE

DISTRICT COURT  
OKLAHOMA COUNTY, STATE OF OKLAHOMA  
COUNTY COURT HOUSE  
OKLAHOMA CITY, OKLAHOMA 73102

January 4, 1984

Tobias Robles, Director  
Indian Child Welfare Program  
Native American Center  
2900 S. Harvey  
Oklahoma City, OK 73109

Dear Mr. Robles,

As presiding Judge of The Juvenile Division of The Oklahoma County District Court, I am writing this letter in support of continued funding for The Indian Child Welfare Program of The Native American Center in Oklahoma City.

The legal staff of The Native American Center appears before This Court in numerous cases involving the welfare of Indian children. They have played and continue to play an important role in advancing the implementation of The Indian Child Welfare Act (25 USC 1902 et seq.). The representation they provide for Indian parents and on behalf of Indian tribes has always been of high quality. The unique experience and expertise of The Native American Center in working with Indian people has contributed significantly to developing the necessary understanding and coordination among state agencies, Indian tribes, Indian families, and The Court that is enabling us to address the best interest of Indian children in the cases that come before This Court.

I strongly urge funding of this important program and the continuation of the excellent work they do on behalf of Indian families.

Sincerely,

Charlie Y. Wier  
Associate District Judge  
Presiding Judge Juvenile Division  
Oklahoma County District Court

SAN. 84

Dear Mr. Robles,

I am writing you this letter of my appreciation in your taking interest in my case and also that I at this time cannot afford an attorney at this time in helping me.

I would also like to thank the Tribal Court in accepting to hear my case, and would consider to meet any requirements that they might suggest depending in having my children back together with me, I do love them both and want to be with them.

I myself am trying hard to get the problems that I had had resolved.

Thank you

Debra Hagan



IN REPLY REFER TO:

## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
COURT OF INDIAN OFFENSES  
SHAWNEE AGENCY

April 19, 1984

Mr. Toby Robles  
Native American Center  
Indian Child Welfare Program  
2900 South Harvey  
Oklahoma City, OK 73109

Dear Mr. Robles:

Your advocacy for Indian families and Indian children in our State courts and Tribal courts is certainly recognized and appreciated. I would like to express my support for the continued funding of all off-reservation Indian Child Welfare Programs.

Sincerely,

*Rebecca Cryer*  
Rebecca Cryer  
Magistrate



Oklahoma Indian Legal Services, Inc.  
3033 North Walnut, Suite 103W  
Oklahoma City, Oklahoma 73105

(405) 528-5500

January 24, 1983

Mr. Raymond V. Butler  
Division of Social Services  
Bureau of Indian Affairs  
1951 Constitution Avenue  
Washington, D.C. 20245

Dear Mr. Butler:

I am writing this letter in support of the Indian Child Welfare program of the Native American Center in Oklahoma City. This program has been in existence for three years, and has served the large need for legal representation not only in Oklahoma City, but in many other areas of the state. It serves parents and tribes individually, and also provides guidance for the tribal Child Welfare programs, including participation in negotiations with the State for a tribal/state agreement which authorizes state payments of foster care to tribally licensed Indian homes. It is my understanding the Native American Child Welfare Program has handled the largest caseload of Indian clients in the state this past year.

I have worked with the legal staff of the Native American Center for a number of years, and have always been impressed with their dedication in serving Indian clients. I have worked especially closely with them during the past year on various Indian Child welfare matters, and recommend their Child Welfare Program highly.

Sincerely,

*Susan Work Haney*  
Susan Work Haney  
Attorney

SWH:dw

## Wichita And Affiliated Tribes

P.O. Box 729  
Anadarko, Ok. 73005  
Tel 405/247-2425

January 7, 1983

Dear Toby,

The Wichita Indian Child Welfare Program would like to extend a big "Thank you", to you and your program, which operates out of the Native American Center.

Thank you for all the legal advice and counsel that you provided for our program during this past year. Your organization has been a tremendous help in solving legal questions by tribal members, involving different issues.

This tribe is alarmed to hear that the Urban programs set up for the Indian people in the metropolitan areas would be getting done away with by the current presidential administration during FY'83.

It is our desire that your program continue to operate and be available for services to the Indian people for an indefinite period of time.

Respectfully,

*Lance E. Silverhorn*  
Lance E. Silverhorn,  
Coordinator ICW Program

Wichita  
Knoch  
Tevashah  
Wan

201 SOUTH 8TH

Legal Assistance Project for the Cheyenne Arapaho Tribes

## LEAPCAT

P.O. BOX 173  
CLINTON, OKLAHOMA 73601

405/323-4110  
323-4111

TO WHOM IT MAY CONCERN:

Implementation of the Oklahoma and Federal Indian Child Welfare Acts is crucial to prevent the further disintegration of Indian nations. As with any legislation, these Acts will remain unenforced unless Native American people have vigorous advocates who can work toward their enforcement in child welfare cases.

As attorney for the Legal Assistance Project for the Cheyenne/Arapaho Tribes, I am aware of the lack of knowledge of the terms of the State and Federal Child Welfare Acts among State court judges, district attorneys, social workers and private attorneys. I am also aware of the expertise of the legal staff of the Native American Center and their excellent performance on behalf of Indian people in these cases.

Since there are few advocates in Western Oklahoma with comparable commitment and expertise in an area where the need is so great, I urge your financial support of this project.

Sincerely,

*Carol Crimi*  
Carol Crimi  
Attorney at Law

*Gene Perryhill*  
PROJECT COORDINATOR

*Carol Crimi*  
ATTORNEY AT LAW

*Diana Humphrey*  
STAFF SECRETARY



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
ANADARKO AREA OFFICE  
P.O. BOX 368  
ANADARKO, OKLAHOMA 73005

IN REPLY REFER TO:

Social Services

CERTIFIED - RETURN RECEIPT REQUESTED

MAR - 2 1984

Ms. Millie Giago, Executive Director  
Native American Center, Inc.  
2900 S. Harvey  
Oklahoma City, Oklahoma 73109

Dear Ms. Giago:

Your application for Fiscal Year 1984 Funds under Title II of the Indian Child Welfare Act has been carefully reviewed and rated by the Area Selection Committee, reference 25 CFR 23.21 and pages 28 and 29 of the application guidelines. Based on the committee evaluation and recommendations, your application has been given preliminary approval. The average rating score given was 92, and ranked 3 out of fifteen approved applications. The Committee recommended funding in the amount of \$38,000.00 to serve 115 persons as the unduplicated service population.

In view of the fact that the Anadarko Area is being allocated \$51,720 less in Fiscal Year 1984 than was received in Fiscal Year 1983 and in keeping with the intent of the Indian Child Welfare Act, the following guidelines for funding are being established as Area policy. Therefore, when submitting your revised budget please stay within the stated guidelines.

1. Indirect Cost must not exceed 10% of allowed funding.
2. No out-of-state travel allowed unless directly related to a child welfare case.
3. Per sq. ft. cost for office rental space must be specified in budget narrative.
4. Purchase of office furniture or equipment will not be allowed.
5. No stipends or reimbursement for travel of child welfare board members to attend board meetings will be approved.
6. Funding for consultants and training must be justified and will be closely monitored. Budget narrative should clearly justify proposed expenditures in these areas.

You are hereby advised of your right to appeal this decision to the Deputy Assistant Secretary - Indian Affairs (Operations), in accordance

SUPPLEMENTAL TO  
TESTIMONY PRESENTED BEFORE  
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS  
APRIL 25, 1984, WASHINGTON, D.C.

My name is Tobias Robles and I am a representative of the Native American Center's Indian Child Welfare Program in Oklahoma City, Oklahoma.

Oklahoma is #2 in the Nation in State total Indian population. The State of Oklahoma has two major metropolitan/urban areas. They are Oklahoma City and Tulsa. Each of these urban cities have an Indian child welfare program that provides legal services for Indian child welfare act related matters. Approximately 40 percent of the state total Indian population lives in these areas and it tells according to the Oklahoma Department of Human Services statistics on Indian children in the custody of the Department. In December 1982, 22.4% of the statewide total of Indian children in DHS custody were in the urban areas. In November 1983, 18% was the statewide total for these two areas. Just the population percentages alone, says Congress must fund the urban programs. Many people believe it is unlawful not to fund the off-reservation programs and I must agree.

This program would like to provide Proposed Amendments to the Indian Child Welfare Act.

PROPOSED AMENDMENTS

The first change involves the findings and policy sections, 25 U.S.C. §§ 1901, 1902. Section 1901, Subsection 4 and section 1902 talk about the establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in homes which will reflect the unique values of Indian culture. Several courts, including the Kansas Supreme Court in Baby Boy L, have applied this removal language to state that the Indian Child Welfare Act does not apply in a situation where the child has never been a member of an Indian home. Several other courts have rejected this language, namely the California Court of Appeals in the case of Junious M. and the