INDIAN FAMILY DEFENSE

A bulletin of the Association on American Indian Affairs, Inc.

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The Destruction of Indian Families

The wholesale abduction of children from their families is perhaps the most tragic aspect of American Indian life today.

The decision to take Indian children from their natural homes is, in most cases, carried out without due process of law and with little regard for the impact on the children, their families, and the community.

A survey of states with large Indian populations by the Association on American Indian Affairs indicates that 25-35 per cent of all Indian children are removed from their families and placed in foster homes, adoptive homes, or institutions—and over recent years the problem has been getting worse.

In judging the fitness of a particular family, many social workers, ignorant of Indian cultural values and social norms, make decisions that are wholly inappropriate in the context of Indian family life and so they frequently discover child-desertion, neglect, or abandonment, where none exists.

For example, Indian *extended* families are far larger than non-Indian *nuclear* families. An Indian child may have scores of, perhaps more than a hundred, relatives who are counted as close, responsible members of the family. Many social workers, untutored in the ways of Indian family life and assuming them to be socially irresponsible, consider leaving the child with persons outside the nuclear family as neglect and thus as grounds for terminating parental rights.

Poverty, poor housing, lack of modern plumbing, and overcrowding are often cited by social workers as proof of parental neglect and are used as grounds for beginning custody proceedings.

Ironically, tribes that were forced onto reservations at gunpoint are now being told that they live in a place unfit for raising their own children.

The abusive actions of social workers would largely be nullified if more judges were themselves knowledgeable about Indian life, required a sharper definition of the standards of child abuse and neglect, and accorded Indian parents due process. Unfortunately, judges in or near American Indian communities often share the attitudes of the social workers.

The Indian child-welfare crisis will continue until the standards for defining parental mistreatment are revised. Very few Indian children are removed from their families on the grounds of physical abuse. One study of a North Dakota tribe showed that these grounds were advanced in only one per cent of the cases. The remaining ninety-nine per cent of the cases were argued on such vague grounds as "social deprivation" and on allegations of the emotional damage the children were subject to by living with their parents. Indian

Please turn page

The Abduction of Benita Rowland

On New Year's Day 1972, Benita Rowland, three-years-old, was abducted from her family on South Dakota's Pine Ridge Reservation.

Two women from Wisconsin, on a visit to Pine Ridge during the Christmas holidays in search of a child to adopt, requested permission from Benita's mother to take the child on a trip for a few days. At the behest of a local missionary who was heavily engaged in supplying Oglala Sioux children to non-Indian couples, Benita's mother signed a paper purporting to grant the two women permission for the trip. They promptly took Benita to their Wisconsin home and refused her parents' pleas to return her. The paper her mother had signed, the missionary later pointed out, was actually an agreement to relinquish all parental rights and to consent to the adoption of Benita.

For months Benita's parents sought unsuccessfully to obtain her return. Correspondence indicates that the two women—one, a professor of history at the University of Wisconsin, Whitewater—were prepared to purchase the child if her parents persisted. Writing to an attorney who volunteered his help to Benita's father, they asked, "Do you think Mr. Rowland might accept money in exchange for his signature?" They added, "Although he has stated that he will not consent to an adoption, we know that money talks."

In a letter to Benita's mother, the women justified their action on the grounds that "God has ordained it as it is." The letter goes on to state, "We have not taken Benita from you; you gave her physical birth, which we could not give, and we can give her opportunities which you could not give—so she belongs to both of us. But far more, she belongs to the Lord."

Learning of the case in October of 1972, the Association on American Indian Affairs brought the parents to Milwaukee and retained attorney Frederick Van Hecke to represent them in court. The Rock County Circuit Court swiftly ordered Benita's return. Commenting on the case to a *Minneapolis Tribune* reporter, one of the women observed, "We don't want to keep her with Indians pounding at the door." A short time later, the Wisconsin women voluntarily surrendered a second Indian child they had obtained illegally—an infant, Vina Bear Eagle. Vina is now back with her Oglala Sioux family in Wounded Knee, S.D.

communities are often shocked to learn that parents they regard as excellent care-givers have been judged unfit by non-Indian social workers.

The courts tend to rely on the testimony of social workers who often lack the training and insights necessary to measure the emotional risk the child is running at home. In a number of cases the AAIA has obtained evidence from competent psychiatrists who, after examining the defendants, have been able to contradict the allegations offered by the social workers. Rejecting the notion that poverty and cultural differences constitute social deprivation and psychological abuse, the Association argues that the State must prove that there is actual physical or emotional harm resulting from the acts of the parents.

One of the most frequently advanced grounds for separating Indian children from their parents is the abuse of alcohol. However, this standard is applied unequally. In areas where rates of problem-drinking are the same among Indians and non-Indians, this standard is very rarely applied against non-Indian parents.

Ivan Brown, seven, is thriving with his grandmother, Mrs. Alex Fournier. Five years ago North Dakota welfare workers repeatedly tried to sieze Ivan and put him up for adoption. He became so frightened by their harassment that he would run out of his log-cabin home and hide in the woods whenever an unfamiliar car approached. The AAIA defended Ivan and his grandmother in a successful 1969 court fight. The Ivan Brown case helped mobilize strong tribal resistance to illegal State child-welfare practices on the Devils Lake Sioux Reservation.

The United States Bureau of Indian Affairs and the U.S. Department of Health, Education and Welfare bear a major part of the responsibility for the current child-welfare crisis. The BIA and HEW both provide substantial funding to State agencies for foster care and thus, in effect, subsidize the abduction of Indian children. In Montana, for example, ninety-six per cent of foster-care placements are Indian.

Additionally, Indian community leaders charge that discriminatory State licensing standards have made it virtually impossible for a reservation Indian couple to qualify as foster parents. Recognizing that in some instances it is necessary to remove children from their homes, they argue that there are Indian families within the community that could provide excellent care. However, in sixteen states surveyed, approximately eighty-five per cent of all Indian children in foster care are placed in non-Indian homes.

"Baby Farms"

Neither the BIA nor HEW effectively monitor the use of the Federal funds provided to State agencies for foster care. Indian community leaders charge that Federally subsidized foster-care programs encourage some non-Indian families to start "baby farms" in order to supplement their meager farm income with foster-care payments and to obtain extra hands for farm work. (In some instances non-Indian families may have as many as twelve Indian children under foster-care contracts.) The disparity between the ratio of Indian children in foster care versus the number of Indian children that are adopted seems to bear this out. For example, in Wyoming, Indians account for seventy per cent of foster-care placements but only eight per cent of adoptive placements. Foster-care payments usually cease when a child is adopted.

The family-welfare crisis in American Indian communities is attributable not only to abusive practices by child-welfare and court officials but also to the absence of adequate preventive and rehabilitative services for families in trouble. The policies and programs of the Bureau of Indian Affairs and State welfare departments are, for the most part, directed at crisis intervention. A family is rarely assisted until an acute crisis has arisen. Then welfare agencies rapidly mobilize to provide the only remedy that seems practical to them—termination of parental rights.

The BIA also participates in the destruction of family life through its boarding-school program. For example, on the Navajo Reservation, eighty-three per cent of all Indian children ages six to nine, amounting to more than ten thousand children, are placed in federal boarding schools miles from their home. The BIA justifies this on the grounds that the absence of roads makes day-school education impossible. However, a large majority of Navajo children in the preschool years attend Head Start classes in their local communities using the existing road system.

American Indian tribes today, better informed of the magnitude of the problem and of their rights, are beginning to resist the wholesale removal of children from their homes.

The Association has recently launched a large-scale family defense program in the Great Plains and hopes to be able to expand it to other areas in the country. A number of tribes are developing comprehensive child-welfare programs and tribal ordinances to prevent the abduction of Indian children by welfare agencies. The Association is working with State agencies to adapt State licensing standards to the real needs of Indian communities in order that more American Indians can qualify as foster parents.

The AAIA is also seeking Congressional inquiry into the Indian child-welfare crisis in order to bring about essential reforms within the BIA and other appropriate federal agencies.

INDIAN FAMILY DEFENSE is a bulletin of the Association on American Indian Affairs. Editorial staff: *Executive Editor,* Mary Gloyne Byler; *Editor,* Steven Unger; *Business Manager,* Sylvia M. Hermelin; *Circulation Manager,* Lillian Pollack.

Court Actions

Blossom Lavone, three-years-old, was taken from her family by California social workers who did not think that an Indian reservation was a fit place to raise children. Blossom is only one of a great number of Indian children who have been separated from their parents.

The individual histories printed below illustrate some of the practical and legal obstacles which Indian parents often have had to overcome just to keep their families together. Because the families were represented by legal counsel, these cases are perhaps somewhat exceptional. In each of these cases legal intervention was successful in reuniting families that had been separated by welfare officials.

BLOSSOM LAVONE

In a California case, the State tried to apply poverty as a standard against a Rosebud Sioux mother and child. At the mother's bidding, the child's aunt took three-year-old Blossom Lavone from the Rosebud Sioux Reservation in South Dakota to California. The mother was to follow. By the time she arrived one week later, the child had been placed in a pre-adoptive home by California social workers. The social workers asserted that, although they had no evidence that the mother was unfit, it was their belief that an Indian reservation was an unsuitable environment for a child and that the pre-adoptive parents were financially able to provide a home and a way of life superior to the one furnished by the natural mother. The Association and a California attorney were successful in returning the child to her mother.

JAKE McCULLOCH

According to Potowatomie tribal custom, if a child loses both parents, other relatives automatically assume responsibility for his or her care. Responsibility for day-to-day care, even when the parents are living, is with the grandparents. When the three children of Leroy Wandahsega, Potowatomie, became orphaned in 1971, the Michigan juvenile court took charge of the children, who had been left with relatives of their non-Indian mother. Under tribal custom, Jake McCulloch, great-uncle of Leroy Wandahsega, was considered the grandfather, since the natural grandfather himself was deceased. He and his wife petitioned to adopt the children; however, the Michigan juvenile court granted custody to the State Department of Social Services. The Department sent the children to Florida for prospective adoption by a non-Indian family, cousins of the mother.

The Tribe then started a Federal court action against the State Department of Social Services on the grounds that the children's custody was subject to the determination of the Tribe and not that of the State. The Federal District Court of Western Michigan supported McCulloch, holding that the children were domiciled on the reservation, and therefore, only the tribe had the power and right to apply its law to determine custody of the children. It also held that McCulloch's attempt to secure custody or adoptive rights through the State court procedure did not waive the right of the Tribe to insist on its exclusive jurisdiction. In his decision, the Judge stated: "If tribal sovereignty is to have any meaning at all at this juncture of history, it must necessarily include the right, within its own boundaries and membership, to provide for the care and upbringing of its young, a *sine qua non* to the preservation of its identity."

As of now, the children are still in Florida, awaiting compliance by that State with the Federal Court's order.

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The Scope of the Problem

In the States of North and South Dakota, approximately seventeen times as many Indian children as white children, on a per capita basis, are living in foster homes.

In Montana, Indian children are placed in foster homes at ten times the national foster home placement rate.

In Minnesota, the rate of foster home placement of Indian children is four and one-half times greater than that of non-Indan children.

According to published government figures, approximately 39,000 Indian children attend BIA boarding schools and live in Federal dormitories. Some of these children are required to attend boarding schools because of the absence of day-school facilities and an adequate road system. Other children attend the schools because welfare officials believe this is a more suitable environment for them than their home environment.

While one out of two hundred children nationally are not in their natural homes, one out of every nine Indian children in North Dakota, South Dakota and Nebraska are not in their natural homes; they are either in foster homes, institutions, boarding facilities or adoptive homes. Thus, Indian children in these states are removed from their homes at a rate more than twenty times the national average.

"I Would Not Have Placed One Of Those Children Off This Reservation"

The following incident was recently described by William Byler, Executive Director of the Association on American Indian Affairs, on *Yale Reports,* a nationally syndicated radio program.

"Let me point to one of the most horrible examples that I, personally, encountered in this about tribal officials. We were working a few years ago with a tribe in [the Great Plains] where about 40 per cent of the children were not living at home but had been placed in foster homes, adoptive homes or Bureau of Indian Affairs boarding schools. A study showed that only one per cent of these children were taken away for physical abuse. Some 99 per cent, therefore, were taken away on some kind of vague standard such as we have been talking about. We found that all went through the tribal judge, an Indian woman. We took a case before her to appeal a decision that she had made and in a colloquy among us, the Indian mother who was losing several of her children, the tribal judge and the Bureau of Indian Affairs official, we pointed out that she had the power to make a reversal of her own decision. She was astounded at that statement of mine and turned to the BIA superintendent to ask him to confirm what I said. He did, indeed, confirm it. She looked thunderstruck, broke into tears and said, 'I have signed papers for a hundred Indian children to be taken off this reservation. I did not know that I had the power to say no. I thought that my job was to certify the papers of the county welfare agency. I would not have placed one of those children off this reservation.' She then quit her job . . ."

Legislative Recommendations

The child-welfare crisis reaches from the root of Indian life in the family to the bureaucracies of Federal and State governments. For the Indian family, crucial, sometimes irreversible, decisions often have to be made at a time of doubt and confusion, when unsuspecting parents can easily be unduly influenced by outsiders. The tribe needs clear recognition of its sovereignty in matters relating to child placement. State and Federal governments, which unwittingly have helped finance discriminatory practices, now need to develop programs that will sharply reduce the number of Indian children removed from their families and communities.

The following recommendations are based on discussions with Indian communities over a considerable period of time. They are offered here for review, criticisms, and suggestions. Subsequently, a final draft will be prepared and submitted for final review, and it will then be forwarded to interested Congressmen and Senators and appropriate Federal officials. These draft recommendations will by no means end the Indian child-welfare crisis; but we believe they are practical, first steps toward that goal. We have singled out what we believe can be accomplished by Congress and the Federal government in a year or two, recognizing that much additional work will be required over the years to come in order to assure that American Indian families are treated with the same respect, enjoy the same opportunties, and are afforded the same protections as other American families.

It is recommended that Congress:

I. Enact a law that withholds recognition of the legality of any placement of an Indian child for adoption, foster care, or other institutional or custodial care, unless made pursuant to an order of the Tribal Court, where a Tribal Court exists which exercises jurisdiction in child-welfare matters and domestic relations.

Many Indian children are taken from their families without Tribal Court action. Parents or guardians in times of doubt, confusion, or despair, sometimes voluntarily waive their rights and consent to the adoption of a child or his placement in a foster home or in other institutional or custodial care, only later to regret it. In some cases they are victims of harassment or subterfuge by child-care agencies both public and private and by individuals seeking Indian children. Once a waiver has been signed it is difficult, if not impossible, for parents or guardians to regain custody of the child. In the case of voluntary waiver and consent, the decision as to where the child is placed is determined not by a tribal agency, but by public or private agencies or by individuals. The result is that many Indian children are placed in non-Indian homes, often far from the Indian community, and other relatives or members of the tribe willing to provide care are denied this opportunity.

This recommendation is intended to afford the protection of the Tribal Court to Indian children and their parents or guardians in all cases relating to child placement. The Tribal Court itself would then be able in all cases to make its own decision as to what is in the best interests of the child and of the parents or guardians. The Court may recommend counselling for the family where such service is available or it may agree to the termination of parental rights. The Court would then also determine where the child should be placed. The Court may choose to place the child in a home on the reservation or transfer custody of the child to a tribal, state or private agency.

In cases where a child has been placed without a Tribal Court order, placement would be without color of law and the tribe or the parents or guardians could obtain a Federal court order for the return of the child.

II. Enact a law that: (1) authorizes Indian tribes to license foster homes and to accept state placements of Indian children and state funds in support of Indian children; and (2) requires that, where a state uses Federal funds, the Federal funds shall be made available to the state in support of the foster care of Indian children on condition that priority be given to tribally-licensed foster homes.

In most states with substantial Indian populations a majority of Indian foster children placed by public or private agencies are placed in non-Indian homes or in homes that have not been approved by a tribal agency; and relatively few Indian homes are licensed by the states to accept foster-care placements. The Federal government makes available to the states funds to provide child-care payments to these foster parents. Thus Federal funds are used to subsidize discriminatory state practices and licensing standards.

The purpose of this recommendation is to help reinforce the sovereignty of Indian tribes in matters relating to child-care placements and to help end discriminatory child-placement practices. A state that fails to comply with the condition contained in this recommendation would be subject to a cut-off of Federal child-care funds. The standards for licensing foster homes in order to qualify for foster-care payments would be the standards of the tribe. If the tribe determines to license a non-Indian home it would, of course, be free to do so and that non-Indian, tribally-licensed home would also enjoy priority over homes not licensed by the tribe.

III. Appropriate $ — million for construction in connection with a special Home Improvement Program under the Bureau of Indian Affairs to upgrade: (1) the housing conditions of Indian foster and adoptive parents; (2) the housing conditions of American Indians who seek Indian foster children or adoptive children, when such improvement would enable them to qualify under tribal law or licensing standards; and (3) the housing conditions of families facing disintegration, where such improvements would contribute significantly to family stability.

Federal and state subsidies for child care are largely based on the assumption that children will be placed with foster-parents who enjoy average or above-average means. Many Indian people who can and do provide excellent, loving care have income well below the average and do not have or cannot afford to obtain housing that meets tribal licensing standards, if the tribe includes the condition of housing in its standards.

The purpose of this recommendation is to supplement child-care payments with a home improvement subsidy as part of the Bureau's HIP program, in order to make it possible for more Indian homes to qualify as foster homes under tribal licensing standards; it will also help out in cases where poor housing contributes to family instability.

IV. Request that the Department of the Interior and the Department of Health, Education and Welfare submit for fiscal year 1975 a program and budget for comprehensive child-welfare and family-protection services that are designed to reduce sharply the number of Indian children removed from their homes and their communities.

The need has long been recognized for greatly expanded services to Indian children and their families to help prevent family breakdown and to help parents who have lost their children rehabilitate themselves and regain custody of their children. Additionally, there are families who have lost their children or may in the future lose their children without sufficient cause or without due process of law.

The Federal government—the Bureau of Indian Affairs and HEW in particular—has, for the most part, failed in its responsibilities to design comprehensive child-welfare and family-protection programs and thus it has not recommended adequate programs to Congress for funding.

This recommendation would put the Department of the Interior and the Department of Health, Education and Welfare on notice that Congress has a vital interest in the child-welfare crisis and this, it is hoped, would set in motion the necessary planning and budgeting within the Administration.

The design of any expanded child-welfare and family-protection services should be undertaken in full cooperation with American Indian communities and should provide for tribal participation in the administration of the services.

V. Request that the Department of Interior and the Department of Health, Education and Welfare regularly submit statistics on the placement of Indian children and an evaluation of the application of existing Federal laws and regulations in reducing unwarranted and unnecessary placements of Indian children.

This recommendation is intended to provide Congress with the information necessary for it to monitor the success of Federal efforts to end the child-welfare crisis and to determine whether additional Congressional action is required.

It is further recommended that the Secretary of the Interior, if he considers it within his powers, or Congress:

VI. Authorize the Bureau of Indian Affairs to make payment of child-welfare subsidies to adoptive parents on the same basis as it makes payments to foster parents.

In most states, foster-care payments cease when a child is adopted. A number of foster parents who wish to afford their foster children the protection of adoption do not have sufficient income to support them if they were to lose child-care subsidies.

This recommendation is intended to enable the BIA to extend child-care payments in order that foster parents of modest means may adopt their foster-children. Such adoptions are, of course, subject to the same approval as any other adoptions.

VII. Authorize and make funds available for the position of Chief of the Division of Child Welfare and Family-Protection Services within the Bureau of Indian Affairs.

The BIA has more than 15,000 employees. Although the Bureau retains a consultant for child-welfare matters, it has no full-time administrator to revise BIA policy, to develop a comprehensive program of services, and to oversee and coordinate the services that do exist. This recommendation is intended to remedy this defect.

Wisconsin: A Historic First

A group of concerned Wisconsin Indians has formed what is probably the first all-Indian state-wide child-placement agency in the United States. On March 16-17, 1973, a conference between representatives of the State's Indian communities and staff from the Wisconsin Department of Health and Social Services was held at Keshena, Wisconsin. Those attending the Keshena conference agreed that the problems relating to foster care could most effectively be solved by establishing an Indian child placement agency for the State of Wisconsin. Administrative responsibility for the Wisconsin American Indian Child Welfare Service Agency is an all-Indian policy board. Every effort will be made to develop membership within the Indian community.

The Agency will have these responsibilities:

1) developing foster homes among Indian families;

2) placement of children in these homes;

3) providing services needed by the child while awaiting placement;

4) supervision of the care of such children in foster care, and of the foster home or facility to assure appropriate care;

5) counseling parents or other responsible relatives to enable the child to return home as soon as feasible;

6) periodic review of placement to determine any continuing services.

In Wisconsin, Indian children are placed in foster homes at a rate ten times that for other children. Almost twelve per cent of the children under the legal guardianship of the State Division of Family Services are Indian, and the number of Indian children in foster care represents almost sixteen per cent of the total number placed by that agency—despite the fact that Wisconsin's population is only .03 per cent Indian.

A survey in ten counties of the northern region revealed that of 129 American Indian children in foster care, only 29 were in Indian homes. Furthermore, in the past two years, while eight children of American Indian origin were placed for adoption, only one was placed with an Indian family. In one county of this same region, the county welfare department supervises 43 children in foster care, all of whom are of Indian heritage. The same county has only five foster homes with one or both parents of Indian descent.

With a grant received from the Bush Foundation in September 1973, the Agency is now setting up its program. For further information, contact: Wisconsin Indian Special Welfare Program, 1414 North 27th Street, Milwaukee, Wisconsin 53208.

Court Actions *(Continued from page 3)*

CHERYL De COTEAU

In the *De Coteau* case, the South Dakota Department of Public Welfare petitioned a State court to terminate the rights of a Sisseton-Wahpeton Sioux mother to one of her two children on the grounds that he was sometimes left with his sixty-nine-year-old great-grandmother. In response to questioning by AAIA staff attorney Bertram E. Hirsch, who represented the mother, the State's social worker admitted that Mrs. De Coteau's four-year-old son John was well cared for, but added that the great-grandmother "is worried at times."

Previously, a judge had authorized foster-care placement of one child prior to a hearing on questions of neglect and termination of parental rights. The other child was placed in a foster home by the Department of Public Welfare without a court order.

Following a long legal battle, the Circuit and District County Courts ordered welfare officials to return Mrs. De Coteau's two children to her and they are now happy at home.

DAVID HOUGHTON

The following article appeared in Akwesasne Notes, *based on reporting in* The Nishnawbe News.

Two Indian brothers from the Upper Peninsula of Michigan were placed in an adoption home. The boys were Indian, the home was white.

The boys, David Houghton and his younger brother, were promised by social workers that they would be kept together. But after four or five months, the adopting family withdrew their application for David and asked that he be placed elsewhere—but they planned to keep the younger boy.

David was moved—to the home of Mrs. Jessie Hood, an Indian foster mother. Social workers told her nothing of the background—but David did. She informed American Indians United (AIU) of Ann Arbor, Michigan of the situation, and AIU arranged for attorneys from Michigan Legal Services to represent David.

Mrs. Hood permitted David to write his own family, whose address he knew. He received a reply by return mail. It was his first contact with them in two years. Since then, they have written regularly and have spoken by telephone.

But when social workers found this out, they attempted to move David from Mrs. Hood's care on twenty-four hour notice.

David's attorneys met with Juvenile Court Judge Francis L. O'Brien. They said that David was old enough to have some say in his placement, and that he could not be removed from the Hood home unless he requested it.

Judge O'Brien agreed—and also held up the adoption proceedings until his office could investigate.

"This is the first time any Indian group has protested the placing of Indian children into white homes. If the Indian people are against this, they have a right to protest and make their wishes known," Judge O'Brien said.

Mrs. Hood had been taking Indian girls in nearby "training schools" home on weekend passes.

"There's a real pattern among these Indian teenagers," Mrs. Hood said. "Seventy-five per cent of them are runaways from white foster or adoptive homes. They get away and they want to go home. Since that means the Upper Peninsula for most of them, they end up stealing a car. Then they end up in training schools."

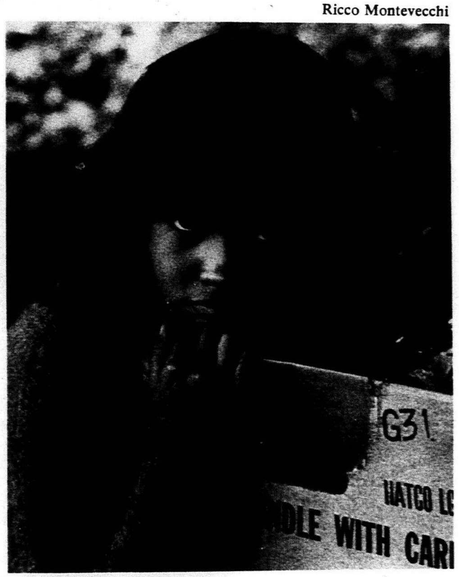
AAIA attorney Bertram E. Hirsch (standing) conferring with Cheryl Spider De Coteau in the Roberts County Court House in Sisseton, S.D. Also present are Dr. Joseph Westermeyer, Department of Psychiatry, University of Minnesota, and Mrs. Melinda Spider, great-grandmother of Mrs. De Coteau's children.

Devils Lake Sioux Resistance

In the Great Plains, the first massive resistance to abusive State practices began on the Devils Lake Sioux Reservation in North Dakota in 1968 when the Tribal Council adopted a resolution forbidding social workers to take children off the Reservation. The Benson County welfare department retaliated by cutting off BIA welfare payments in order to starve the Tribe into submission. A tribal delegation, accompanied by representatives of the Association on American Indian Affairs, travelled to Washington and convinced a reluctant Bureau of Indian Affairs to make payments for food directly to needy families without going through the County.

Today the resolution stands. After staff shakeups the County welfare department has established cordial relations with the Tribe. With funding from HEW and the Association's technical assistance, the Devils Lake Tribe designed and now operates a live-in Family Development Center that is winning international acclaim. The Tribal Court assigns families to the Center for counseling in cases where one or both of the parents face possible jail sentences for misdemeanors and the subsequent loss of their children. In addition, the Center's Indian staff provides home-counseling services throughout the reservation.

Ricco Montevecchi



Minnesota: 1 in 4

An analysis of adoption and foster care statistics for the State of Minnesota by the Association on American Indian Affairs reveals that one out of every eight Indian children under age eighteen is in an adoptive home. One out of every seven Indian children in Minnesota is in either a foster or an adoptive home.

Indian children are placed in foster homes at a rate four and one-half times greater than that of non-Indian children.

While an average fifty-six Indian children were adopted per year during 1961-1966, the number increased to an average 126 Indian children adopted per year during 1967-1972. The AAIA estimates that in Minnesota in 1971-1972, one in every 4.4 Indian children under one year of age was placed for adoption.

Indian children are placed in adoptive homes at a rate more than five times that for non-Indian children—and recently the rate is increasing. Indian children in Minnesota during 1971-1972 were adopted at a rate eight times the norm for non-Indian children.

At least 91 per cent of the adoptions of Indian children in Minnesota were made by non-Indian adoptive parents.

Based on these figures, at current adoptive rates, within ten years one in every four Indian children under age eighteen in Minnesota will be in an adoptive home, usually non-Indian.

CODE

The Association on American Indian Affairs has drafted a model child-welfare code which can be adapted by various tribes to strengthen tribal law protecting Indian families. It is available free of charge by writing to the AAIA in New York.

Tribes Act to Halt Abuses

One step in preventing the removal of children from their reservations is a resolution which sets forth the will of the tribe. Reprinted here are three such resolutions which were adopted by tribes confronting a child-welfare crisis; and a general resolution passed by the Coalition of Indian Controlled School Boards.

SISSETON-WAHPETON SIOUX

WHEREAS, The Sisseton-Wahpeton Sioux Tribe is interested in the well-being of all the enrolled members of the tribe and

WHEREAS, Minor children of Sisseton-Wahpeton descent have been placed in non-Indian foster and adoptive homes all over the United States.

WHEREAS, The tribal council is in the process of researching the sovereign status of the tribal entity in respect to its jurisdiction as stated in the constitution of the Sisseton-Wahpeton Sioux Tribe, and,

WHEREAS, It is the intent of the Sisseton-Wahpeton Sioux Tribe to establish its own method of social and economic development and well-being of the enrolled members, and,

WHEREAS, It is the strong feeling of the tribal council to "make every stand possible to keep these children on the reservation" (minutes of June 6th council meeting) and "the tribal council would like these children to be placed in an Indian licensed home until an Indian home can be found for them to be adopted;"

THEREFORE, BE IT RESOLVED, that Mr. Bert Hirsch, legal counsel from the Association on American Indian Affairs, will stand on these grounds in his argument in Roberts County Court on July 7, 1972 and future cases of this nature.

Adopted July 6, 1972.

(This resolution was passed in reference to the Cheryl DeCoteau case—and after many other children had already been removed from the reservation.)

CICSB

At its meeting in December 1973, the Coalition of Indian-Controlled School Boards, Inc., representing 120 school boards, adopted a strong resolution condemning the wholesale removal of Indian children from their families. The CICSB, Inc. deplored the conditions whereby Indian children are not only physically deprived of their culture, but even their attitudes and ideas are turned against their traditional tribal customs and lives. It further resolved to support by any means within its resources any efforts to counter the removal of Indian children from their families, relatives, and tribes.

THREE AFFILIATED TRIBES

WHEREAS, Many of our Indian children are being placed in foster homes off the Reservation and in non-Indian homes, and,

WHEREAS, It is the Tribe's opinion that our children in need of foster home placement will adjust to placement in an Indian home more readily, and,

NOW THEREFORE BE IT RESOLVED by the Tribal Business Council of the Three Affiliated Tribes that all agencies involved with the placement of Indian children in foster homes place such children with Indian families wherever and whenever possible.

Adopted September 9, 1971. *Continued on page 8*

OGLALA SIOUX

WHEREAS, Many of our Oglala Sioux Indian children have been placed in foster-home care with non-Indians; and

WHEREAS, This placement of our Indian children has resulted in many cases in adoption of our Indian children to non-Indian people, thus causing our Indian children to lose their identity as Oglala Sioux; and

WHEREAS, We have many Oglala Sioux parents who are capable and qualified to properly care for our Indian children, making it possible for our Indian children to associate themselves with their own race and learn their own culture; and

WHEREAS, If our Indian children are placed with members of our own race, not only will our children benefit by this association but it would also be an incentive for the Indian families to assume responsibility and develop themselves to a point where perhaps in time they can become self-sufficient; and

WHEREAS, The State Welfare Department and the BIA Welfare Department have both stated, that they would continue to place our Indian children in non-Indian homes for foster care purposes, unless they received a direction from the Oglala Sioux Tribal Council;

NOW THEREFORE BE IT RESOLVED by the Oglala Sioux Tribal Council in Regular Session on this 17th day of August, 1972; that, the Tribal Council feels that in order to protect the rights of the children and to encourage the concern of the adult members of the Tribe, that henceforth the placement of Indian children with non-Indians by the State and BIA Welfare Departments cease.

BE IT FURTHER RESOLVED, that the Crazy Horse Planning Commission take immediate steps to develop a Foster Child Care Program and to further initiate a study for family development.

Indian Family Defense will be published quarterly by the Association on American Indian Affairs. Our hope is that a newsletter which collects and exposes the isolated experiences of different tribes will demonstrate the national scope of the Indian child-welfare crisis—and become an instrument for change. We would like to learn of any families involved in legal cases regarding child-welfare; about any child-welfare projects that are planned or are being undertaken by a tribe; and from individuals with knowledge of family-defense problems. We feel it is urgent to learn and communicate the experiences of different tribes in coping with this problem.

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Room at the Top

The Bureau of Indian Affairs has no special program to cope with child-welfare problems and its Branch of Social Services has no special staff of experts in the field. On the reservations, the caseload of BIA social workers is reportedly so heavy that they are unable to do little more than process welfare payments. The Association on American Indian Affairs has recommended to the U.S. Commissioner of Indian Affairs that he appoint a full-time child-welfare specialist to revise BIA policy and to develop a comprehensive family-protection program including prevention and rehabilitation services. Although the BIA has 15,000 employees, the suggestion has been refused on the grounds that Congress has never authorized a staff position for such a person.

BIA Blocks Survey

On December 5, 1973 the Association on American Indian Affairs formally demanded that the Bureau of Indian Affairs release its data concerning the number of Indian children placed by the BIA in foster homes and institutions. The demand, made pursuant to the Freedom of Information Act, comes after a year in which the Association has been asking the Bureau to voluntarily release the figures.

The failure of the BIA to cooperate makes development of comprehensive, accurate statistics on the number of Indian children receiving adoptive, foster and institutional care extremely difficult. These statistics are a matter of public information that should be kept up-to-date and be readily available upon request. Instead, the BIA is obstructing a survey from being made.

In late fall 1972 the AAIA sent questionnaires to the various area offices and agencies of the BIA requesting statistics concerning Indian children placed by the BIA in foster homes and institutions. Had each individual area office and agency originally contacted been allowed to respond to our questionnaire, the information would have long since been submitted. The BIA, however, instructed its field offices not to respond directly, but to refer all inquiries to the BIA's Division of Social Services in Washington, D.C.

Four years ago, when a similar survey was made, the AAIA received full cooperation from the BIA in Washington, D.C. as well as in the field.

Unless the statistical documentation is forthcoming, the Association will have to commence legal action.

As this issue goes to press, the BIA has requested a meeting with the AAIA aimed at providing the Association with the data it has been seeking.

Mental Health Programs for the IHS in the Pacific Northwest Area, testified regarding a tribally run child-welfare program he helped develop among the Confederated Tribes on the Warm Springs Reservation. When a group home was opened in January 1973, 219 Indian children under age eighteen—28 per cent of the youth population—were not living with their natural parents. Since the opening of the group home, only one Indian child has been placed off-reservation in a non-Indian home. Many Indian families have received outreach services before placement was indicated. Most children referred to the group home have been returned to their parents, who are receiving out-patient follow-up, while some children have been placed in reservation-sponsored foster homes. The dramatic success of the program, Dr. Shore said, was determined by strong community sponsorship and participation.

Perhaps the saddest aspect of the whole child welfare crisis is how regular a part of reservation life it has become for the government to interfere with Indian family life. The damage this has done to generations of Indian parents and children is incalculable.

Robert E. Lewis, governor of the Pueblo of Zuni, New Mexico and president of the National Tribal Chairman's Association, spoke of the "growing concern and anguish in Indian country over the increasing numbers of Indian children being removed from their natural homes." He emphasized the tremendous psychological impact of child removal on the Indian parents, who are in effect told they are "bad parents." "The loss they suffer when their children are removed has impact on them the rest of their lives," Governor Lewis stated. "Emphasis on placement in off-reservation homes will cause the Indian family to view itself as incapable, remove its sense of responsibility and unity, and contribute to continued destruction of the Indian way of life."

Ms. Townsend considers herself one of the lucky ones because she was able to obtain legal counsel.

"I think that most of the Indian women are usually overwhelmed by people who think their children should be taken away from them; and they really don't stand up to anybody and they don't have anybody to tell," she said.

"Does this happen to a lot of other Indian people in your community?" Senator Abourezk then asked her.

"Oh yes, it does," she replied. "They just think it is the right thing for the welfare to be doing, and they just never say or have anything to say. They just let them do whatever they want to, let them adopt them out or whatever."

One witness told the story of an Indian woman who wept that she did not dare protest the taking of her children for fear of going to jail. In the Great Plains, a tribal court judge was astonished and bewildered when informed that a judge has the power to reject the custody petitions presented by the county welfare department.

Dr. Carl Hammerschlag, an IHS psychiatrist, spoke of the need for people to feel they are the masters of their own fate. "The underlying disease," he said, "is the disenfranchisement and the powerlessness that has been reinforced for one-hundred years."

Speaking for the AAIA, Bertram E. Hirsch, staff attorney who has defended many Indian families, explicated the legislative recommendations drafted by the Association which would begin the process of assuring that American Indian families will be treated with the same respect, enjoy the same opportunities, and afforded the same protections as other American families. (The draft recommendations were printed in *Indian Family Defense* No. 1.)

Doctors Carl Mindell and Alan Gurwitt, members of the American Academy of Child Psychiatry, emphasized the emotional risks involved in the taking of children. They urged that the BIA and state welfare agencies make explicit the goal of supporting the integrity of the Indian family and community, and that the options available to Indian communities, besides placement, be increased. They recommended that when placement is considered the child and the parents each be represented by an advocate. They suggested that the principle of *"what would be in the best interests of the child"* is too vague and perhaps should be replaced by *"the least detrimental alternative,"* which would suggest the seriousness and disruption inherent in placement outside the family. The two psychiatrists emphasized their concern that any decisions and any standards be made and developed under the auspices of the tribal governments. Any monies should also flow through the tribe. They also recommended that the tribe systematically

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Senator Dewey F. Bartlett and Senator James Abourezk.

review placements to insure that the child is indeed being provided the "least detrimental alternative."

Toward the close of the hearings, Senator Abourezk inquired of a spokesman of the BIA about what plans they had to meet the Indian child welfare crisis:

"Has the Bureau developed any comprehensive plan for submission to Congress to halt the unjust removal of children and to provide adequate prevention and rehabilitation programs for families such as the ones we have been talking about?"

The BIA representative replied, "Senator, I am not aware that the Bureau has developed any broad comprehensive budget proposals in that area."

Senator Abourezk then inquired, "So, you don't have any kind of plan to submit to Congress to halt the unjust removal of children from their families?"

The BIA spokesman answered, "The Bureau of Indian Affairs has not, Senator."

The child welfare crisis strikes at the heart of Indian life. Measured in numbers, measured in terms of its effects on the Indian family, measured by any standards of a society that considers itself democratic, it is appalling.

Poverty alone cannot be considered as the reason. Just as surely as poverty imposes severe strains on the ability of a family to function—sometimes the extra burden that is too much to bear—so, too, family breakdown contributes to the cycle of poverty.

Evelyn Lance Blanchard, assistant area social worker in the Albuquerque Area Office of the BIA, testified at the hearings in a personal capacity. "What is obvious," she said, "is that

Indian children and their families across the country generally are not being provided the services they require to grow into healthy, productive persons. . . . Much lip-service and many reactive fly-by-night programs have been proposed and implemented. But all of these are of a compensatory nature. . . How do you compensate legions of Indian parents whose rights and responsibilities to themselves and their children have been usurped by the paternalistic attitude which has characterized Federal-Indian relations? Out of this background comes the sensationally tragic experiences of Indian children who are the victims of not only malpractice of some social workers but also the victims of our lack of concern."

The main thrust of Federal policy since the close of the Indian wars has been to break up the extended family and to detribalize and assimilate Indian populations. The purpose of the first boarding school on the Navajo Reservation, as stated in its charter in the 1890s, was "to remove the child from the influence of its savage parents." Translated into personal terms, the effects have been cultural disorientation, an individual's sense of powerlessness, and consequent loss of self-esteem. These may be the most potent forces at work.

The child welfare crisis will not and cannot be overcome until power is returned to the Indian community and Indian people once again become the masters of their own fate.

Mr. William Byler, executive director of the Association on American Indian Affairs, concluded his testimony by emphasizing that the Indian child welfare crisis is not of significance to Indian people alone: "Indians, blacks, Chicanos, the poor, and parents that do not meet the majority's social norms —all are exposed to extraordinary risks of losing their children. If even one child is taken unjustly, all children are threatened. In the words of John Woodenlegs, a Northern Cheyenne, 'There is only one child, and her name is Children.' "

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A Long Way from Home

Boarding home programs and regional high schools for Alaska Natives are "helping to destroy a generation of village children." This is the conclusion of a newly published study, *A Long Way From Home: Effects of Public High Schools on Village Children Away From Home,* by Judith Kleinfeld.

Ms. Kleinfeld reports that their high school experience led to school-related social and emotional problems in 76 per cent of the students in the rural boarding home program, 74 per cent of the students in the boarding school, and 58 per cent of the students in the urban boarding home program.

One village board member said: "We send in our kids to learn. We want them to learn. Our sons get drunk. And our daughters get bothered by drunk boys."

She found that "the majority of the students studied either dropped out of school and received no further education or else transferred from school to school in a nomadic pattern that can create identity problems."

Kleinfeld adds that the high school programs created other severe costs such as:

—"Identity confusion, which contributed to the problems many students had in meeting the demands of adult life."

—"Development of self-defeating styles of behavior and attitudes."

—"Grief of village parents, not only at their children's leaving home, but also at their children's personal disintegration away from home."

Using very modest criteria of success, the study found that:

—Bethel Regional High School failed 96 percent of village freshman.

—Beltz Boarding School failed 67 percent of village freshman.

—Anchorage Boarding Home failed 77 percent of village freshman.

The average program operating costs totaled over $5,000 per student.

Currently being appealed to the Alaska Supreme Court is a case, *Hootch v. Alaska State Operated School System,* that asserts the rights of Native children living in 147 predominantly Native villages in rural Alaska to secondary instruction in their community of residence as provided for in Alaska's constitution and statutes, and under regulations promulgated by the State Board of Education. The outcome of the case will have a crucial effect on the education of 6,000 Alaska Native children —Indian, Eskimo and Aleut—who live in the State's remote villages.

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Senate Probes Child Welfare Crisis

In testimony before the Senate Subcommittee on Indian Affairs, Indian parents, grandparents and children described the problems and feelings of Indian families who are subjected to the arbitrary and abusive actions of local, state, Federal and private agency officials who undertake the unwarranted removal of children from their homes.

The Oversight hearings on the Welfare of Indian Children, chaired by Senator James Abourezk (D.-S.D.), were held in Washington, D.C. in early April. Besides the testimony of Indian people directly involved, the Senate Subcommittee heard testimony from the representatives of many national and tribal Indian organizations, as well as from professionals in the mental health fields.

Senator Abourezk called the hearings after receiving the report of his legislative aide, Sherwin Broadhead, who attended a child-welfare strategy meeting sponsored by the Association on American Indian Affairs (AAIA) at the end of January.

In his opening statement, Senator Abourezk noted that public and private welfare agencies seem to have been operating on the premise that most Indian children would really be better off growing up non-Indian. "The result of such policies," he said, "has been unchecked, abusive child-removal practices, the lack of viable, practical rehabilitation and prevention programs for Indian families facing severe problems, and a practice of ignoring the all-important demands of Indian tribes to have a say in how their children and families are dealt with. . . . It has been called, by some, cultural genocide."

An analysis of recent statistics gathered by the AAIA demonstrates that a minimum of 25 per cent of all Indian children are either in adoptive homes, foster homes, or boarding schools. In Minnesota, for example, one out of every four Indian children born today will be removed from the home of its natural parents to be put in adoptive or foster care. The number of Indian children taken from their parents is grossly disproportionate to their percentage of the population. In Montana, Indian children are taken out of their homes and placed in foster care at a rate thirteen times that for non-Indian children; in South Dakota, the rate is sixteen times higher; and in the State of Washington, nineteen times higher. In Wisconsin, it is sixteen times more likely for an Indian child to be removed from its family than for a non-Indian child. A survey done by the AAIA in 1969 reveals that 85 per cent of the Indian children in foster care are in non-Indian homes.

As witnesses at the hearings testified, on many reservations the most feared person in the community is the welfare worker. Thomas Peacock, director of the Indian Youth Program in Duluth, Minnesota, which is designed to reduce the disproportionate number of Native American youth in juvenile institutions in Duluth and its four surrounding reservations, described this scene at the Fond du Lac Reservation in Minnesota:

"A few years ago when a case worker would come out to the reservation—and its very obvious because they all had new cars—the case worker would pull up in front of the

N.E.W.S. Photo

Benita Rowland with her father, Ben. Background: Michael Chosa.

yard. I was at one house when the case worker came, and the mother said, 'Here comes our case worker.' And the children immediately ran into the rooms and hid underneath their beds for fear that they would be taken away."

Another incident illustrating fear of social workers was supplied by Mary Ann Lawrence, Sioux, director of an Indian family defense project on the Rosebud Reservation in South Dakota, who related one of her interviews:

"I'll call this boy Sammy. He's fifteen-years-old and he has two little brothers. Sammy was sent off to boarding school somewhere in Oregon or Idaho. . . . He told me that he didn't want to go back to school. He wanted to stay home and take care of his little brothers; and he was afraid that, if he went back to school, his little brothers would be taken away. He didn't think his little brothers should leave their mother . . .

Please turn page

He told me then, that if anybody came over there to take the children, he would take his brothers and go up in the hills. He said he knew a cave somewhere where no one would ever find them."

Ben Rowland, a member of the Oglala Sioux Tribe, described how two women from Wisconsin had taken his six-year old daughter, Benita, from her home on the Pine Ridge Reservation when she was three, supposedly on a "vacation." The women refused to return the child and Mr. Rowland had to take his case to court before being reunited with his daughter. (See *Indian Family Defense* No. 1.)

Custody proceedings against Indian people are sometimes begun not to rescue the children from dangerous circumstances, but to punish parents and children unjustly for conduct that is disapproved of.

Margaret Townsend, a member of the Paiute Tribe from Fallon, Neveda, testified that the day after she was arrested for a motor vehicle violation in January of this year, her children were taken by the police and put in a foster home. The Nevada State Welfare Department told her that she could not get her children back for at least six months unless she went to a rehabilitation center in Tucson, Arizona—in effect, making the children hostages. Mrs. Townsend had to go to court to recover her children. Parents of Nevada's Duckwater Band of Paiutes were threatened with the loss of their children when they sought to open their own school with funding by the Federal government and refused to send them to a county-run school.

Decisions to remove children often seem whimsical and random. Mrs. Alex Fournier, sixty-nine-years-old, came to the hearings with nine-year-old Ivan Brown, whom she has raised since he was three-weeks-old. When Ivan was two-years-old a welfare worker tried to take him forcibly during a session of the Devils Lake Sioux tribal court. Ivan, said Mrs. Fournier, was playing by the entrance. "He [the welfare worker] went out and took the child, and he was going to walk out with him. The little boy cried and started fighting back.

"So the judge in the courtroom said—Margaret Ironheart was the judge then—she said, 'Look, they're taking him.'

"I looked back and I ran out, and he was screaming and crying and hollering 'Momma.'

"He yelled out that he was taking him away; and I said, 'No, you're not going to take him. The way he's crying, you're not going to take him.'

"I took the child and I took him in."

Mrs. Fournier's strong resistance prevented Ivan from being taken away. Later the local welfare department cut off welfare payments in an attempt to starve Mrs. Fournier and the Tribe into submission. Instead, Mrs. Fournier's example encouraged tribal resistance. Today, Ivan is happy at home.

Cheryl Spider DeCoteau, a twenty-three-year-old member of the Sisseton-Wahpeton Sioux Tribe, testified that the South Dakota Department of Public Welfare petitioned a State court to terminate her parental rights on the grounds that she sometimes left her young child with his sixty-five-year-old grandmother. A hearing was not held until seven months after the child was taken from her. At the hearing Mrs. DeCoteau was put in the position of having to prove that she was a fit mother, instead of the State having to prove that she was not. A legal battle lasting several years was necessary before she was reunited with her son.

When she was expecting a second child, Mrs. DeCoteau said, welfare workers asked her to give up the child for adoption. Once a week they came to her home urging that she give up her unborn child. They were waiting at the hospital when the baby was born; they continued to return to her home after she returned from the hospital. Finally, when the baby was four months old, a welfare worker persuaded her to sign a paper without telling her that it was a consent for adoption. Then he took mother and child to the welfare office, where the little boy was spirited away to a foster home by one social worker while Mrs. DeCoteau was in conversation with another social worker in the next room. An attorney

N.E.W.S. Photo

Mrs. Alex Fournier. Background: Left to right, Ben Rowland, Michael Chosa, Mary Ann Lawrence.

for the AAIA was successful in returning the baby to his mother—but, again, not until legal proceedings had dragged on for more than a year.

Betty Jack, a Chippewa from the Lac du Flambeau Reservation in Wisconsin, testified regarding two cases which may be an ominous portent. One woman, she said, was told she would be able to keep her four children only if she went through an operation so she could not have any more babies. She was taken to an out-of-state hospital by a welfare worker and the operation was performed. When she got home, the welfare department took her children anyhow, and she has not seen them since. Another woman, from the Lac du Flambeau Reservation, was sent to the Keshena Woman's Prison when she became pregnant for the third time. Ms. Jack testified that the woman was sterilized there after being forced to give up her baby for adoption.

The decision to take Indian children from their natural homes is, in most cases, carried out without due process of law. It is rare for either Indian children or their parents to be represented by counsel or to have the supporting testimony of expert witnesses.

In a survey she has been doing, Mary Ann Lawrence found that most of the people interviewed were never told they could obtain legal assistance when faced with having their children taken from their families. When informed that they did have legal recourse, the response was usually, "Why didn't anyone tell me?"

Many cases do not go through an adjudicatory process at all, since the voluntary waiver of parental rights is a device widely used by social workers to gain custody of children. Because of the availability of the waivers and because a great number of Indian parents depend on welfare payments for survival, they are exposed to the sometimes coercive arguments of welfare departments. In a current South Dakota

entrapment case, an Indian parent in a time of trouble was persuaded to sign a waiver granting temporary custody to the State, only to find that this is now being advanced as evidence of neglect and grounds for the permanent termination of parental rights.

Children separated from their parents often may suffer such severe distress that it interferes with their physical, mental, and social growth and development.

Nine-year-old Anna Townsend, angered and hurt, wanted to tell the Senators about the mistreatment of her twenty-month-old brother while they were in foster care. "He [the foster parent] slapped him and smoked right in his face and puffed right in his face," she said tearfully.

Dr. Robert L. Bergman, chief of Mental Health Programs of the Indian Health Service (IHS) and Dr. George S. Goldstein, director of Program Development and Evaluation of the IHS, told of a sixteen-year-old who was treated soon after her return to the Navajo Reservation after having been taken away at the age of six months. Her adoptive parents—having removed her from her family and reservation in the first place—had "given up on her" and bought her a one-way bus ticket "home." In their joint statement, the two doctors testified, "It is not necessary to dwell on the confusion, shame and personal fragmentation suffered by this patient who represents a severe but not an atypical case of the harm done by the promiscuous off-reservation foster placement policies which have been pursued by the Bureau of Indian Affairs and other agencies." They further stated that at one small community where the IHS has a mental health clinic approximately one-quarter of the children are in foster placement of one kind or another.

Mel Tonasket, president of the National Congress of American Indians, described his experience as a member of the Colville Tribal Council. "The first case I was ever involved in," he said, "was that of a young lady, a teenager, who was taken away from her parents. She was put in a white group foster home off the reservation. She ran away about three times, so they took her from that foster home; and that's when I got involved in the case. I had an Indian foster home lined up for this girl. I had the BIA involved in the case. Yet the State refused to let this girl go to her Indian foster home and sent her to Spokane, which is 130 miles away, to another Catholic group foster home, from which she ran away. So they couldn't hold her there. I pleaded with them again to let her come back to the reservation and put her in an Indian home. About the second time she ran away from Spokane, they put her over someplace in Seattle, which is 250 miles away. And it never seems to cure the problem. It just seems to push it further and further away."

Leon Cook, of the Minnesota Department of Indian Work and former President of the National Congress of American Indians, told of his own orphaned childhood and his upbringing by his extended family. He described the effects of a speech he gave a year ago to Indian students in a youth home: "After I talked to them, a number of kids came up to me crying. I said I thought I gave a fairly good speech but I didn't intend to have everybody crying after I got through. What had happened, the kids came and said they really didn't know all those things about our communities.

"I said, 'like what?' They said: 'We were told that we couldn't go to our homes if we didn't have a permit to go back to our reservations. We were told that we had to have such permission to visit our relatives on our home reservations. We were told that we couldn't be given any information about who our parents were and where our home reservations were, or whether or not we were enrolled in our respective communities.

"These kinds of situations, in my mind, are not exceptions. I think it is true all over in communities across the country."

Senator Abourezk then asked Mr. Cook whether he thought it was possible that the state and BIA welfare workers could reform themselves or whether legislation was necessary. "I think," said Mr. Cook, "that the BIA and the state welfare workers have been acting like the oven-tenders at Auschwitz, and I don't think they are going to change overnight. I think that the only way you are going to change them is to establish law and legislation to forbid and prohibit that kind of mass adoption and theft and placement of Indian children."

Mel Sampson, a Yakima Tribal Councilman, appeared with Louis Cloud, vice-president of the Yakima Tribal Council on behalf of the Northwest Affiliated Tribes. Mr. Sampson read into the record the affadavit of Don James Morrison, an Indian adopted by non-Indians, who described the torment he went through when he discovered that his physical appearance was not that of his adoptive parents and began searching for his identity. "It is my opinion," Mr. Morrison stated, "that it is too tough for an Indian child to live in a non-Indian home. After they find out that they are an Indian, there should be an Indian around that they can talk to."

What Mr. Morrison described from his personal life was confirmed by the clinical experience of Dr. Joseph Westermeyer, a psychiatrist at the University of Minnesota, who described some of the difficulties of Indian children being brought up in non-Indian homes.

The majority of Dr. Westermeyer's Indian patients had been in a series of foster homes and exhibited the general characteristics of chronic insecurity, free floating anxieties, panic reactions, and difficulty adapting to family life and adulthood.

N.E.W.S. Photo

Mrs. Cheryl Spider Decoteau, Bertram E. Hirsch.

"Once they get into adolescence," he said, "runaway problems, suicide attempts, drug usage and truancy are extremely common. . . ." Dr. Westermeyer explained that while the children grew up with a non-Indian cultural and social identity, they discovered during adolescence that society perceived them as Indian, forcing on them an identity they did not have or understand.

In some instances, financial considerations contribute to the removal of Indian children from their families. For example, agencies established to place children have an incentive to find children to place. In towns with large Federal boarding facilities, merchants may fight to prevent their closing. Not

long ago, an Indian boarding school in the Great Plains was being phased out as unnecessary because the children could do better at home. Local merchants complained, and as a result of political pressure the full school enrollment was restored. Very recently, merchants protested the closing of Intermountain School with its large Navajo enrollment. The school remains open despite the fact that the closing was advocated by the Navajo Tribe.

The BIA and the Department of Health, Education and Welfare (HEW) bear a part of the responsibility for the current child-welfare crisis. Both provide substantial funding to state agencies for foster care and, in effect, subsidize the taking of Indian children.

Michael Chosa, a Chippewa from the Lac du Flambeau Reservation who is Administrative Assistant to the American Indian Child Development Program in the State of Wisconsin, described how Federal contracts sometimes reward the placement of Indian children in foster care by paying more to the states than their actual costs. "Some of the research that our organization has done in the last two years," he said, "has indicated that over $16 million is spent yearly in the State of Wisconsin to keep our Indian children in non-Indian care."

Senator Dewey F. Bartlett (R.-Okla.) asked about the efforts that have been made by tribes to resist the destruction of Indian families. In response, Mel Tonasket described the efforts of the Colville Tribes over the last four years to stop the placement of Indian children in non-Indian homes. One of their first steps was to stop tribal monies from being issued to adoptive or foster parents. The Tribal Council decided to keep that money in their office until the child reached the age of majority. Before this policy was instituted, the BIA had issued checks from the accounts of individual Indian minors to their adoptive or foster parents. The payments were in addition to the separate State payments made to foster parents for keeping a child. In many instances these monies, which should have been held in trust for the child, were used for the child's own maintenance. When the Tribe shut off the flow of the child's trust money to adoptive or foster parents, there was an immediate decrease in the number of non-Indians who wanted to adopt Indian children into their homes.

Mel Sampson also cited the case of another Yakima tribal member adopted as an infant by non-Indian parents. Through an inheritance, she receives a notable amount in lease income in addition to the regular tribal dividend. The adoptive parents took out a guardianship of her estate, and the BIA releases the child's money to them. Maintenance, school, medical and legal fees were taken from the estate. Thus the child was made to subsidize her own adoption.

Mr. Richard Lone Dog, testifying in a personal capacity, described his work as director of the Rosebud Detention Center, which works with foster children. He explained the difficulties of establishing enough foster homes on the reservation when there is not enough money available to the Tribe or its individual members to provide foster care. He compared the Rosebud Detention Center with Lutheran Social Services (LSS), which provides the same type of services. According to Mr. Lone Dog, LSS receives $900 per month per child from the State and BIA, while the Detention Center receives $277 per child per month.

The position of individual Indian foster parents is even worse. Mr. Lone Dog told of two elderly people who care for five of their grandchildren. Mr. Lone Dog pointed out that the grandparents receive only $35 a month for each child while Lutheran Social Services receives $30 a day per child. "Two people who are living on old age [payments] and get $35 per month for each child when the children range from fifteen on down to nine-years-old, have to send them to school—and all the other expenses that go along with it. Not only that, but whenever they . . . increased old-age benefits, the State also deducted that amount from their welfare for those kids. Then they wonder why we don't have Indian foster homes on the reservations!"

Jere L. Brennan, Superintendent of the Fort Totten Agency of the BIA, testified in a personal capacity, detailing the administrative wrangle facing Indian families. "The failure to

N.E.W.S. Photo

Mel Sampson (left), Louis Cloud.

consider the effects of policy decisions, regulations, and laws on Indian people," said Mr. Brennan, "results in Indian people not being able to fully participate or derive full advantage of programs developed to meet human needs."

Victoria Gokee, director of the American Indian Child Development Program, described how their efforts on behalf of Indian child welfare led to the formation of the agency because it was "apparent that the only way to overcome the difficulty that most Indians experience in dealing with the established social-services agencies was to have an all-Indian agency performing most services directly and acting as a sounding-board or buffer zone in other instances."

"It's very hard for an Indian woman to communicate with these people, because they do look down on Indians, I think," one witness declared, referring to state welfare workers.

Dr. Westermeyer, in his testimony, was of the opinion that social workers in Minnesota do an excellent job when dealing with problems occurring in the non-Indian population, but that the majority of them do "a very poor job" when called to assist Indian families.

Several witnesses spoke of what can be accomplished when the Indian community is involved. Mrs. Esther Mays described the work of the Native American Child Protection Council of Detroit, Michigan, a non-profit organization operated with all volunteer help from the Indian community, with a present membership of about fifty families in the Michigan area. The organization was founded in response to the needs of many Indian families and gives services such as family counseling, legal assistance, food, clothing, transportation and furniture to help keep families together. Their policy is to find Indian homes for Indian children, and they are active in recruiting such homes.

Dr. James Shore, director of the Community Psychiatry Training Program in Portland, Oregon, and former chief of

INDIAN FAMILY DEFENSE

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AAIA Reunites Five Indian Families

In less than a year the Association on American Indian Affairs has been instrumental in reuniting seventeen Indian children with their families. The wholesale abduction of children from their families is perhaps the most tragic aspect of American Indian life today.

Surveys of states with large Indian populations conducted by the Association on American Indian Affairs (AAIA) in 1969 and again in 1974 indicate that approximately 25-35 per cent of all Indian children are separated from their families and placed in foster homes, adoptive homes, or institutions. In some states the problem is getting worse.

The decision to take Indian children from their natural homes is, in most cases, carried out without due process of law and with little regard for the impact on the children, their families, and the community.

These are some of the most recent cases in which the AAIA has been involved.

SHOMIN

While she was looking for a new place to live, Mrs. Vivian Shomin, an Ottawa living in Peshawbestown, Michigan, left her six children with a close friend. The friend applied for temporary assistance from the local welfare department during the time she was caring for the Shomin children. The welfare department caseworker, instead of assisting her, obtained an emergency court order for the custody of the children on the grounds that Mrs. Shomin's friend was not a licensed foster parent. Mrs. Shomin arrived at her friend's house a half hour after the welfare department had taken the children away to put them in foster care in June 1974.

At a hearing during which Mr. and Mrs. Shomin were not represented by legal counsel, the welfare department, offering no evidence that the Shomin's were unfit parents, obtained a temporary order extending its custody. They argued now that the Shomin's own house was "inadequate"—citing its lack of indoor plumbing. The children, ages 4- to 15-years, all expressed their desire to stay with their parents.

Mr. and Mrs. Shomin contacted the AAIA, and a new hearing was promptly scheduled. The welfare department argued essentially that people with an income below a certain level could not provide a suitable environment for children. The Association refuted the notion that poverty and cultural differences are reasons for removing children from their families. On March 7, 1975, the Leelanau County Juvenile

Continued on page 7

Washington State improves regulations

The State of Washington, which for many years has had an appalling record in Indian child-welfare matters, has just taken an important step toward justice in foster care and adoptive placement of Indian children. It has now established humane minimum licensing requirements for private state-licensed child-care agencies serving American Indian children—requirements that recognize and respect the special needs of Indian children. They deserve the close attention of other states as a model.

Recent statistics for the State of Washington show that the number of Indian children placed in foster care is 10 times greater per capita than the rate for non-Indians and the number of Indian children in adoptive placement is 19 times greater. The overwhelming majority of Indian children separated from their families are placed in non-Indian homes.

Discriminatory standards have made it virtually impossible for most Indian couples to qualify as foster or adoptive parents. Moreover, Indian people have been almost entirely excluded from child welfare policy making and program administration. This is now beginning to change.

The new rules, promulgated by the State Department of Social and Health Services, became effective on December 29, 1974. The minimum licensing requirements, Washington Administrative Code (WAC) 388-75-093, are as follows.

1) Implementation of the licensing statute will recognize the unique tribal, cultural and religious sovereignty of Indian nations, tribes and communities. The licensing of a child-care agency on sovereign Indian soil shall in no way abridge the sovereignty of an Indian nation nor shall compliance with these rules and regulations be deemed to be a relinquishment of sovereign authority.

2) For the purposes of these rules the term "Indian" is defined as: a) any person who is enrolled in a Federally recognized Indian tribe or one of whose parents or grandparents is so enrolled; b) any person determined to be an Indian by the Secretary of the Interior; c) an Eskimo, Aleut or other Alaska Native; d) persons considered to be an Indian by himself or herself and by Indian community.

3) Boards and Advisory committees of agencies serving Indian children shall include Indian members in the proportion that the number of Indian children served bears to the total number of children served.

4) Agencies serving a substantial number of Indian children

Continued on page 8

Serena Case

A 37-year-old Pittsburgh mother of five who says she was sterilized against her will is seeking damages from welfare officials in Armstrong County, Pennsylvania, for allegedly ordering the operation and for illegally depriving her of three of her children.

In a complaint filed in United States District Court for the Western District of Pennsylvania, Norma Jean Serena said she first learned of the sterilization when she overheard a conversation in the hospital several days after the operation in August 1970. She said she was sterilized two days after she had given birth to her fifth child.

Mrs. Serena, a Creek-Shawnee from Oklahoma, said welfare officials told her prior to the birth that she "had had enough children and that there was a danger that any subsequent pregnancies might have resulted in the birth of retarded or deformed children."

Mrs. Serena further alleged that she did not learn that the operation was not mandatory until a 1972 custody hearing for her children.

Mrs. Serena has a retarded child who is institutionalized. Three children, ages 4, 6 and 7, live with her. An 18-year-old daughter lives away from home.

The complaint lists a total of 11 defendants, including several caseworkers in Armstrong County. Two physicians who allegedly performed the operation also are named defendants.

Welfare officials had placed two of Mrs. Serena's children in foster homes, but an Armstrong County judge ruled after the custody hearing in 1972 that they must be returned to her home. The complaint charges that the children were taken away when the caseworkers told her the children were severely ill and needed to be removed for medical treatment. However, Richard Levine, Mrs. Serena's attorney, said in the complaint that the two were not severely ill as represented and were placed in foster homes the same day.

The lawyer said that during the time the children were away, Mrs. Serena was ill and pregnant with her youngest child. He maintained that welfare workers assured Mrs. Serena that the youngsters would be returned, but that they had no intention of returning them. Welfare officials are further charged with depriving Mrs. Serena of her rights guaranteed by the First, Fifth, Ninth, Thirteenth and Fourteenth amendments.

(Adapted from an article by the Associated Press.)

The Association on American Indian Affairs is a private non-profit, national citizens' organization supported by its members and contributors. It assists Indian and Alaska Native communities in their efforts to achieve full economic, social and civil equality.

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HEW Study

The Social and Rehabilitation Service of the Department of Health, Education and Welfare is funding a national study on "Legal/Jurisdictional Issues in the Delivery of Social and Rehabilitation Services on Indian Reservations." The study is being conducted by the Center for Social Research and Development at the Denver Research Institute of the University of Denver.

To be covered in depth are three child-welfare services: adoptions, foster care, and day care. Also covered will be homemaker services, protective services, and institutional placements.

The project is divided into two parts—a legal study and a field study. The legal study will examine applicable Federal law, regulations, program policies, and Congressional testimony. It will also analyze key state laws and program regulations in selected states, as well as tribal codes on specified reservations.

The field study, which includes eleven reservations (Crow, Fort Peck, Yakima, Zuni, Navajo, Rosebud, Standing Rock, Fort Berthold, Red Lake, Menominee, and Gila River), is meant to reflect a wide-range of legal and jurisdictional issues regarding the delivery of child-welfare services. It will also include interviews with officials concerned with child-welfare from tribal, county, state, and Federal governments, and with personnel from private child-serving agencies.

The final report, to be finished later this year, will consolidate the legal background data with the "state of the field" in current child-welfare practice.

Indian Family Defense is published quarterly by the Association on American Indian Affairs. Our hope is that a newsletter which collects and exposes the isolated experiences of different tribes will demonstrate the national scope of the Indian child-welfare crisis—and become an instrument for change. We would like to learn of any families involved in legal cases regarding child-welfare; about any child-welfare projects that are planned or are being undertaken by a tribe; and from individuals with knowledge of family-defense problems. We feel it is urgent to learn and communicate the experiences of different tribes in coping with this problem.

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MONDALE BILL

Senator Walter Mondale (D-Minn.), Chairman of the Senate Subcommittee on Children and Youth, is sponsoring legislation to overcome the lack of adequate child and family services and build upon and strengthen the role of the family.

Senator Mondale's proposed Child and Family Service Act of 1975 (S. 626), if enacted into law, could have a major positive impact on the provision of Indian child-welfare services. The purpose of the proposed act is to establish and expand child and family service programs; build upon the experience of Headstart; give special emphasis to preschool children and their families with the greatest needs; and provide direct parent participation in decision-making.

The proposed act would specifically reserve funds for Indian children and authorize the Secretary of Health, Education and Welfare to provide direct funding to Indian tribes to carry out programs on their reservations, rather than requiring them to apply to the states. Funding authorization for the entire act would be $150 million for fiscal 1976 and $200 million for Fiscal Year (FY) 1977 for training, planning, and technical assistance and $500 million in FY 1977 and $1 billion in FY 1978 for program operation. (Headstart would be funded under separate authority.)

Among the purposes for which Federal funds would be authorized are: (1) planning and developing programs, including pilot programs; (2) establishing, maintaining and operating programs, including part-day or full-day child-care in the home, in group homes, or in other child-care facilities; other specially designed programs such as after-school programs; family services, including in-home and in-school services; information and referral services to aid families in selecting child and family services; prenatal care; programs to meet special needs of minorities, Indians, migrants and bilingual children; food and nutrition services, diagnosis of handicaps or barriers to full participation in child and family services programs; special activities for handicapped children within regular programs; programs to extend child and family services gains, including parent participation, into the elementary schools; (3) rental, renovation, acquisition or construction of facilities, including mobile facilities; (4) preservice and inservice training; (5) staff and administrative expenses of councils and committees required by the act; and (6) dissemination of information to families.

Success Story

At the Oversight hearings on the Welfare of Indian Children conducted by the Senate Subcommittee on Indian Affairs last year Dr. James Shore, director of the Community Psychiatry Training Program in Portland, Oregon, and former chief of Mental Health Programs for the Indian Health Service in the Pacific Northwest Area, testified regarding a tribally run child-welfare program that has had dramatic success. When a group home was opened in January, 1973, 219 Indian children under age eighteen—28 per cent of the youth

Please turn page

Institutional Bias Destroys Indian Families

The "institutional bias" of social agencies dealing with Indian families in crisis, according to a recent study, "is consistently in favor of (1) removal of Indian children from homes in crisis rather than amelioration of the crisis, (2) placement of these children in white foster homes, and (3) legal action to replace the biological Indian parents with adoptive white parents."

Dr. Joseph Westermeyer, a psychiatrist at the University of Minnesota, studied in depth eight cases in which Indian families voluntarily approached a non-Indian controlled helping institution for resolution of a family problem. "The action taken by the institution," he reports, "not only failed to resolve the problem, but in addition undermined the family as a viable unit."

Before the crisis that caused the families to turn to helping institutions, all the families had demonstrated strengths: the fathers had held jobs and supported their families; none of the parents had ever been institutionalized; child abuse was not alleged in any of the cases. But there was a usual sequence resulting in the crisis: unemployment, leading to problem drinking, leading to insufficient funds, leading to marital discord.

In seven of the eight cases Dr. Westermeyer studied, the families sought welfare assistance because of insufficient funds for food and shelter. (In one case the parents wanted a divorce and the judge remanded their children to welfare at the divorce hearing.) No services to keep the families intact were ever initiated: no financial relief, temporary homemaker services, treatment for chemical dependency, job assistance or marital counseling—measures of proven efficacy in such situations. The welfare department never sought a mental health consultation or evaluation; nor was any evaluation of the parental alcoholism problem obtained. Instead, in every case the children were summarily taken by the institution and placed in white foster homes.

"Removal of the children," Dr. Westermeyer writes, "had the same effect in all eight cases. It effectively destroyed the family as an intact unit. The parents invariably separated. It exacerbated the problems of alcoholism, unemployment, and emotional duress among the parents.

"In sum, it was the social institution that failed in these cases. None of these crises were so bizarre or irremediable that ordinary helping activities would not be useful. Instead of helping these families solve their problems, however, the people involved chose to employ police power against them. . . .

"The uniformity of these institutional actions," Dr. Westermeyer continued, "though they occurred in six different counties located in three separate states, suggests a social imperative operating against Indian families in our institutions. The result is a de facto ethnocide of values, attitudes and customs chosen by a group of people."

Four of the Indian families involved, remarkably, overcame the obstacles in their way and regained control over their own lives, finally successfully fighting the very agencies whose help they once sought in order to regain their children, and resume their parental responsibilities. "Truly," Dr. Westermeyer concluded, "our institutions have forced these people to march a modern Trail of Tears."

population—were not living with their natural parents. Since the opening of the group home, only one Indian child has been placed off-reservation in a non-Indian home.

The following is excerpted from Dr. Shore's testimony:

There was an old Indian custom among plateau tribes of the Pacific northwest that exemplified community responsibility for child care. The tradition concerned an individual called the Whipper Man who was outside of the immediate family. The Whipper Man was a highly respected person. Respect was shown by the elders and the young. However, this respect had to be earned. He was chosen by tribal leaders and relatives, based on the development of character beyond reproach. The Whipper Man functioned in the role of disciplinarian. He disciplined youngsters if they were disrespectful to elders. This discipline was administered in a very positive sense, and was understood by young and old. The whip he used hung over the door or on the wall, and was the omnipresent symbol reminding the children that the Whipper Man might be coming.

The plateau culture of central Oregon has demonstrated [through the Whipper Man] the impact of the community's sponsorship on the effectiveness of Indian child care.

After 2 years of intensive planning, a children's group home was opened. The development of this service has taken place under the sponsorship of the tribal council with mental health consultation from the Indian Health Service and support from other agencies. A child neglect committee of community participants had been functioning for several years with official tribal council endorsement and had established the precedent for community initiative in making decisions for the placement of Indian children. At the time the group home opened, there were 219 Indian children under age 18 who were not living with their natural parents. These children were part of the total youth population of approximately 800 under 18 years of age. The children in placement represented 28 per cent of the total youth population. Of this number 74, 34 per cent, were in foster care placement with the State children's services agency, 47, 21 per cent, were in boarding schools, and the remainder in tribal foster homes or other off-reservation homes. Local homes were not licensed and received few if any services. Children were removed from their family homes because of complaints of neglect or abandonment. In 1971 and 1972, the number of new Indian children placed in foster homes were 40 and 30 respectively. In 95 per cent of cases, this was directly related to alcohol misuse of their parents. Child abuse or battered child syndrome was virtually unknown and in my experience, very rare among American Indians.

The tribal child care services were developed to include intensive outreach family counseling in addition to the group home for Indian youth. The group home was designed to provide short-term shelter care, long-term placement, counseling and minor medical treatment for Indian children ranging from 1 to 18 years. Staff for the group home and the outreach family counseling program were 90 per cent Indian, most of whom came from the local community. In the first 12 months of operation, 246 Indian children from 135 separate families were placed in the facility. This represented 20 per cent of all reservation families. The children ranged in age from 2½ weeks to 19 years. Problems related to excessive drinking by the parents accounted for greater than 90 per cent of the placements. Child behavior difficulties such as juvenile delinquency and runaway reactions, or significant medical problems accounted for the remainder of the placements. During the first 7 months of operation, four children were placed in the center for care of a major medical problem. One child was placed for a cleft palate and three for failure to thrive. All of these children improved and were subsequently returned to their families.

In the 5 preceding years, a large number of Indian children under 18 had been detained in the tribal jail for acts of delinquency. These children numbered 77 in 1967, 98 in 1968, 121 in 1969, 118 in 1970, and 120 in 1971. In one case the length of detention was 32 days. At least 25 per cent of juvenile arrests have been for a drinking violation. For many others, delinquent behavior was associated with drinking problems of one or both parents. Although referrals to jail have continued since the opening of the tribal child care center, the average length of stay has been reduced to 1 day and many children are referred immediately from jail to the center, while others bypass the jail entirely. On only one occasion has it been necessary for the center's staff to refer an adolescent back to jail. This was because [the child was] an uncontrollable runaway.

Through clinical experience on this and other Indian reservations, I have encountered a sense of hopelessness and despair in working with Indian parents about problems of alcohol misuse and child neglect. Once placement of the children has been initiated, Indian parents often withdraw, become depressed and begin or resume intensive drinking. This process is often interpreted by the non-Indian outsider as a further lack of concern for Indian children, as additional evidence of instability.

The development of a community resource, where children can be adequately cared for in close proximity to their parents, is an essential step in program development. This must be combined with an outreach program by Indian counselors to keep parents involved. The decision to place Indian children is now made by the Indian community with due process through the tribal courts. If placement is necessary, the impact is minimized by a clearly stated policy of returning children to their own families within a short period of time. Although some children may need off-reservation placements in individualized treatment plans, the initial success of the program is highlighted by a dramatic reduction of off-reservation referrals. Since the opening of the children's group home in January 1973, only one Indian child has been placed off reservation in a non-Indian foster home. Many additional Indian families have received outreach services before placement was indicated. Most children referred to the group home have been returned to their parents who are receiving outpatient followup, while some children have been placed in reservation-sponsored foster homes.

Greater mental health efforts must begin with the preschool or elementary age child. Family stability is the essential aim concerning the construction of a chain of preventive adjustments.

The children's group home and the family outreach program under tribal sponsorship are essential links to begin this process within the cultural values and the political sanctions of the Indian community.

NACA Report

Native American Children's Advocates is an advocacy group on behalf of Indian children that grew out of the National Indian Child Development Conference held on April 25-27, 1974, in Albuquerque, New Mexico. The conference, coordinated by a small group of Indian mothers and other interested volunteers, brought together people from throughout the United States, and provided a forum for identifying common needs and exploring alternatives for meeting some of them on behalf of all Native American children.

The following are the observations and recommendations of the workshop on foster placement, adoption and welfare issues.

SESSION I

Native Americans throughout the United States should develop tribal governments and laws pertaining to specific areas of adoption and foster care placement of Indian children. The laws would be aimed at protecting the rights of Indian children, their families and the tribe.

Social service and human resource agencies should be accountable to the tribes they serve.

Preventive counseling should be more readily available to Indian families, as opposed to the present policy of having counselors become involved only when family problems have reached a crisis stage.

Adoption agencies should be more active in seeking Indian families interested in foster placement or adopting. Presently, the policy for those agencies is to wait for the family to come to them. In addition, Native American families who have applied to adopt or care for an Indian child should not be placed on a waiting list in favor of non-Indian families ahead of them. To our knowledge a shortage of Native Americans who want to adopt does not exist. Tribes should develop adoption/foster care policies and insist that local, county and state agencies comply with them.

Foster care, adoption and social service agencies should make themselves more knowledgable and sensitive toward Indian culture. Presently, many prospective Indian parents turn away from adoption or foster care alternatives because of the mounds of red tape they must face. If agencies were more aware of the heritage and family customs of the tribes they work with, much of this red tape could be eliminated.

Agencies dealing with Indian families should inform them of their legal rights pertaining to foster care and adoption.

Tribal councils, governments and the Indian community at large must become more involved in the planning and policy making of social service agencies dealing with the problems of Native Americans. This is especially true of agencies dealing with Indian children.

Discrimination against Native American grandparents must be abolished in adoption and foster placement policies. Contrary to the norms of non-Indian culture, extended families are a basic part of the Indian way of life. The discrimination against them is an insensitive attitude on the part of social service agencies.

More Native Americans should initiate and be responsible for foster placement and adoption agencies.

SESSION II

A nationwide Indian children's advocacy group should be created whose specific goal would be to strengthen family ties.

The present trend of sending handicapped Indian children to schools for the blind, deaf, mentally and physically disabled should be reversed so that they will be able to live at home whenever possible. In cases where they must be away from home, they should be placed in a local program administered by their own community. Adequate social, educational and rehabilitative services are needed in such instances.

More Indian people must be educated to the availability of services for handicapped and exceptional children. Exceptional children in Bureau of Indian Affairs boarding schools are not receiving adequate attention. In 1972, out of the 19,540 children who were classified as "exceptional," only 1,034 received some services. These statistics reveal a tremendous need for Native American tribes to develop programs which will provide services for these youngsters. It is a top priority issue.

A nationwide study by the Indian community of foster placement in and by religious affiliated organizations should be conducted to determine the following:

a) the number of Indian children in foster care homes;

b) parental attitudes toward foster care placement;

c) children's attitudes toward their natural and foster care organizations' attitudes toward Indians.

The study's results would be circulated to tribal councils so that appropriate legislation could be formulated to change the survey's negative trends. Statistics could be funnelled to advocacy-oriented groups.

Reservations need mobile health units so that families with handicapped children can receive appropriate health care. The types of services that could be made available would include physical therapy, counseling, eye, ear, nose and throat care.

In addition, more prenatal and postpartum education is necessary as a preventative measure against recurring causes resulting in adversity.

ACLU Files Suit

The New York Civil Liberties Union has filed another massive suit in its fight to protect the rights of children against "benevolent" state institutions. The suit, on behalf of ten-year-old Jay Andrew Joyner, charges city and state welfare officials with the systematic kidnapping of the children of the poor. The Bureau of Child Welfare will not allow Jay to be placed in the residential treatment program he needs unless his mother relinquishes custody of the boy. Over 5000 children in New York are taken away from their parents in this way. Their only offense is that they need help and have parents who cannot afford private assistance.

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INDIAN FAMILY DEFENSE is a bulletin of the Association on American Indian Affairs. Editorial staff: *Executive Editor*, Mary Gloyne Byler; *Editor*, Steven Unger; *Business Manager*, Ida Gellman; *Circulation Manager*, Ruth Alterman.

Urban Indians: Mental Health

A Minnesota psychiatrist thinks Indian people generally exhibit great psychological strengths, and that this is an asset to urban Indians.

Joseph Westermeyer, M.D., Ph.D. from the University of Minnesota, made his point in an address on institutional and cultural alienation at the third annual meeting of the Association of American Indian Physicians on August 8, 1974.

Dr. Westermeyer has, in his words, "worked with over 300 Indian patients, in between the cities and their families."

He said both urban and reservation people face problems related to education, income, political power and social status rather than "tricky psychological or mental" difficulties.

Because major mental illnesses and neuroses may occur less frequently in Indians, as some evidence suggests to him, he believes "there are reservoirs of great psychological strength among Indian people that allow them to deal with incapacitating social stresses" effectively.

Despite his observation that urban and reservation Indians experience some common problems, he noted urban Indians faced some peculiar difficulties. "Child abuse or child battering where parents beat their children is more common in the city," he said. He also listed state guardianship of Indian children and juvenile delinquency as being more frequent among city-dwelling Indians.

Such behavior could be expected, he said. Calling Indian people "migrants in their own country," he cited studies that range back to the 1930s on the mental health effects of migrations on various peoples.

"The universal findings among all of these (studies) is that migration . . . results in an increase of incidence of a wide variety of mental health problems that are most severe in the first generation of migration. The problems persist even down to the second and third generations, and I think what we are seeing in the cities today among Indian people really is quite predictable and expected," Westermeyer said.

He is optimistic that Indians moving to the cities can handle their problems. "I think there is no inherent psychological weakness among Indian people," he said. "Quite the contrary, I think they deal with problems in the cities that many ethnic groups would have difficulty handling."

The Minnesota psychiatrist also noted that when Indians move from traditional surroundings to urban areas "the city also imposes strings on Indian migrants" because what they encounter there is quite different from their home areas.

"The ghetto, so-called, is not really a transplant of the reservation," he said. "There is no tribal council, no tribal laws—no boundaries that really make the place an Indian place."

Instead, he stated, the ghetto mixes the poor Indians, blacks, whites, Chicanos, Puerto Ricans and others.

The city also separates the Indian family from its extended family, one of the Indians' "main social resources," and leaves the nuclear family more on its own, he said.

With these factors combined, the city "conveys a message that Indians do indeed belong to a poor group."

Dr. Westermeyer said one of his findings with his 300 Indian patients is a conflict thrust upon many of them by the different set of values encountered in the city.

"Many times," he said, "my Indian patients seem to be caught in the midst of really not knowing who they are. Part of the day, they act white—perhaps on the job or in their neighborhoods. Other parts of the day, they behave in a way more Chippewan or Siouan."

The Twin Cities psychiatrist also thinks there is "a reluctance among many Indian people to talk about their community and social problems. . . . the child neglect, child abuse, inadequate parents, delinquents, drug abuse, alcoholism, marital problems and the legal injustices that happen to their own people."

Stating he was "skating on thin ice" because he is non-Indian, he further said, "I think it's understandable that these problems have been perhaps neglected by Indian leaders who want to stress political, social and economic issues. I think it may be more important to talk about treaty rights than economic opportunities, but I believe even full treaty rights and socioeconomic determination will not eliminate these self-perpetuating tragedies within a year or a decade, or even for many decades. I think at some points these problems must be faced courageously by Indian leaders if anything is to be done about them."

Talking again of his Indian patients, Dr. Westermeyer told of individuals who didn't like themselves because they were Indian. One man, while intoxicated, cut himself on the arms with glass, hoping the skin would scar white.

"I started to, routinely, when I came across Indian patients, ask them what they thought about themselves as a Sioux or a Menominee or as an Indian. I found very commonly they had negative feelings, not only about themselves, but about other Indian people, too," he said. Westermeyer said this was "a revelation" to him.

"White people don't tell you they feel bad about themselves because they're Irish, Catholic or Scandinavian," he said. "They may feel bad about themselves for other reasons, but it doesn't involve their racial or ethnic identities.

"I also found I really couldn't do very much. I could help the depression, or I could help the person with his marriage problem, but I really couldn't do much about their identity problem."

In later questioning, the psychiatrist pointed out he was talking here about his patients and not Indian people in general.

Dr. Westermeyer said he also believes Indian people should not only plan but also provide mental health services. Funding, he said, could be handled through traditional Department of Health, Education and Welfare channels, with control of the monies to remain in Indian hands.

He also criticized institutions for not being sensitive to Indian needs, saying the majority of institutions did not understand why Indians couldn't take advantage of services they, the institutions, provide.

"I think a confusion between equality and sameness exists," he said. "I think we're only equal before God and theoretically before the law and certainly in our country we have ethnic and social differences among ourselves. To expect Indian people to come to community health clinics, for example, and take advantage of services that have been provided by majority people is just not realistic."

Reprinted from the newsletter of the Association of American Indian Physicians.

AAIA Reunites, continued

Court ordered the six children returned to Mr. and Mrs. Shomin.

JASON RENDON

Louisa Rendon never even had a chance to be a mother because a Welfare Department, expecting that she would be negligent, took her new-born baby from her at the hospital.

In April 1974 Mrs. Rendon, a 24-year-old White Earth Chippewa living in Texas, gave premature birth to Jason, her first child. Jason was placed in an incubator to assure his survival. While Jason was still in the hospital the Texas Welfare Department obtained a court order giving it temporary custody of Jason on the grounds that Mrs. Rendon's "expected possession" of her child would create a dangerous situation.

Thus, Mrs. Rendon, who had suffered the anguish of several stillbirths before, found herself judged guilty not only before she had a chance to prove her innocence, but before she even had a chance to take her baby home from the hospital. In its suit the Welfare Department argued that Mrs. Rendon "has personal habits which keep her outside the home." Why a previously childless woman should spend most of her time in an empty home the Welfare Department did not explain. The Welfare Department also maintained that Mrs. Rendon "has not prepared for such child," attaching great importance to the fact that she had not yet bought a baby bed or diapers. How Mrs. Rendon could reasonably be expected to have prepared for a baby born prematurely is another thing the Welfare Department did not explain. Finally, the Welfare Department argued that Mr. Rendon "is gone from the home for long periods of time." Why Mr. Rendon, a hardworking itinerant worker who sometimes travels to other communities to earn a living for his family, should abandon his livelihood also went unexplained. It is unknown whether Welfare applies this same standard to the executives of the multinational oil corporations headquartered in Texas, whose jobs take them to the four corners of the globe.

For months Mrs. Rendon tried repeatedly to regain Jason. Finally, at her request a hearing was held at the Menard County District Court in January 1975, with the AAIA providing her legal representation. At the hearing Dr. Johanna Clevenger, a Navajo psychiatrist and Secretary of the Association of American Indian Physicians, testified that her examination showed that the Rendons were psychologically able to care for Jason; and that he was probably being psychologically damaged in the foster home in which he had been placed by the Texas Welfare Department. The Judge decided to return Jason to Mr. and Mrs. Rendon; joking later that he didn't care if they "barbequed" the child.

NICHOLE JUNE DOGSKIN

When Nichole June, the youngest daughter of Enid and Freeland Dogskin was born on July 1, 1973, the Dogskin family found themselves in uncertain economic circumstances and, to protect their baby, authorized the local Indian Health Service Hospital on the Standing Rock Sioux Reservation to care temporarily for their child. A non-Indian lawyer looking for a child to adopt obtained the release of Nichole June from the hospital and took her to his home in South Dakota. At no time did he obtain a court order authorizing him to keep the infant in foster care.

A short time later, when Enid Dogskin obtained employment as a teacher's aide, she was referred to the lawyer, who refused to return the baby, stating that he intended to adopt the child.

For more than a year the Dogskins sought unsuccessfully to have Nichole June returned to them. Perry Manywounds, then chief judge of the Standing Rock Tribal Court, contacted the AAIA on behalf of the Dogskins. A hearing on a petition for a writ of habeas corpus was scheduled in the Circuit Court for the Sixth Judicial Circuit in South Dakota for May 17, 1974.

In the meantime, the Dogskins petitioned the Standing Rock Tribal Court, which scheduled a hearing on the return of their child for May 14, 1974, and ordered the lawyer to appear before it. At first he refused. But, facing a habeas corpus proceeding three days later in the Circuit Court, the lawyer submitted himself to the jurisdiction of the Tribal Court and obeyed its order for the return of Nichole June to Mr. and Mrs. Dogskin.

CHRISTOPHER SHAVING BEAR

Mrs. Delphine Shaving Bear temporarily entrusted her year-old son Christopher to the South Dakota Department of Public Welfare only to find that the Department later turned around and tried to use that action against her as evidence of neglect.

Early in 1973 Mrs. Shaving Bear, Standing Rock Sioux, signed South Dakota State Department of Public Welfare form CW-12 authorizing temporary care of her son while she hitchhiked several hundred miles in a successful weeks-long quest to recover her other two children. Christopher was placed with non-Indian foster parents living near the Standing Rock Reservation. Despite her subsequent requests for the return of her child, and the requests by legal counsel on her behalf, the Welfare Department refused to return him.

After the foster parents expressed interest in adopting the child, the social worker—in clear violation of the language of the form itself—filed a neglect petition against Mrs. Shaving Bear in District County Court. The CW-12 form signed by Mrs. Shaving Bear states, "I understand that this does not give the Division of Child Welfare the right to place my child for adoption."

Having no other grounds on which it could petition for the termination of parental rights, the Welfare Department tried to use the temporary relinquishment of custody as evidence of neglect; in effect, attempting to substitute the temporary granting of custody for the judicial proceeding that is the statutory requirement for the termination of parental rights.

The AAIA and South Dakota Legal Services attorney H. Richard Churchwell, representing Mrs. Shaving Bear, filed a petition for a writ of habeas corpus in the South Dakota Circuit Court. The petition alleged that there had been due process violations on the part of the Welfare Department because Christopher had been taken from his mother without a hearing; and it also maintained that the state court had no jurisdiction because the child was domiciled on the Standing Rock Reservation. The Circuit Court, in June 1974, held that the state court had no jurisdiction and returned Christopher to his mother.

WHITE EAGLE

After the death of her husband Emmerine White Eagle placed her eight children in temporary foster care on the Standing Rock Sioux Reservation in North Dakota. The foster family moved off the reservation to Mississippi, where

they petitioned for, and were granted, guardianship of the White Eagle children. For years Mrs. White Eagle, who never had any intention of permanently relinquishing her parental rights, made repeated efforts to have her children returned.

The children, age 7- to 20-years, were very unhappy with the foster parents who, they said, treated them "like slaves." The oldest daughter ran away last year to rejoin her mother on the Standing Rock Reservation, and spread the word about the children's mistreatment.

With the full support of the Standing Rock Tribal Court the AAIA, representing Mrs. White Eagle, filed a petition in the Mississippi Chancery Court to have her children returned. In January 1975 a court hearing was scheduled and the foster family—facing an appearance in court, the children's stated desire to return to their mother, and amid allegations of mistreatment—came to an out-of-court settlement relinquishing the children. The Bureau of Indian Affairs provided money for Mrs. White Eagle and her daughter Donna to go to Mississippi, and then for the whole family to return to Standing Rock.

The Tribe held a celebration welcoming them all home again.

Wash. State, continued

shall develop social service resources and staff training programs designed to meet the special needs of such children through coordination of tribal, Indian Health Service and Bureau of Indian Affairs social service staff and appropriate urban Indian and Alaska Native consultants.

5) In addition to reports required by WAC 388-75-072, an agency shall report to a child's tribal council the serious injury or death or abandonment of an enrolled Indian child.

6) In planning foster care and adoptive placements for Indian children, demonstrable consideration shall be given to tribal membership, tribal culture and Indian religions, unless the child's record substantiates that such consideration is contrary to the wishes of the child and/or his parent(s).

7) When foster care or adoptive placement of a non-enrolled child is planned, the Portland area office of the Bureau of Indian Affairs' form "Family Ancestry Chart" or appropriate equivalent shall be compiled, except for such children for whom it appears that foster care will last, or does last, less than 30 days. Appropriate steps shall be taken to enroll eligible children if not contrary to the wishes of the child and/or his parent(s).

8) Unless contrary to the wishes of the child and/or his parent(s), agencies serving Indian children shall make diligent and demonstrable efforts to recruit facilities and/or homes particularly capable of meeting the special needs of such children. Indian children shall be placed preferably in Indian foster homes or in non-Indian foster homes specifically recruited and trained to meet the special needs of Indian foster children.

9) The written policies and procedures statement on legal practices (WAC 388-75-124) of child placing agencies serving Indian children shall reflect the rights of Indian children and families based upon their unique social-legal status guaranteed by treaty and Federal law.

10) If not contrary to the wishes of a child and/or his parent(s), in the adoptive placement of Indian children, adoptive homes having the following characteristics shall be given preference in the following order: (a) An Indian family of the same tribe as the child within 30 days from the time the child is determined to be legally and otherwise ready for adoptive planning. (b) Within an additional 30 days, a Washington Indian family; considering first a family of similar cultural background, for example, Eastern or Western Washington. (c) Within an additional 30 days, an Indian family from elsewhere in the United States or Canada, through the Adoption Resource Exchange of North America, or other recognized adoption agency outside of Washington State. Attention shall be given to matching the child to an Indian family whose culture is similar to that of his natural parents, for example, Coastal, Plateau, Plains, Southwest, Woodland, etc. (d) Any other family who can provide a suitable home to an Indian child, as well as instill pride and understanding in the child's tribal and cultural heritage. Therefore, attention shall be directed to matching the child to a family residing close to an Indian population similar to the child's background.

11) Adherence to the foregoing rules and regulations regarding the American Indian shall be monitored periodically by the Department [of Social and Health Services] and in doing so the Department shall consult with and/or make use of the Indian Desk of the Department.

The State of Washington still has a long way to go in reforming its Indian child-welfare policies and practices in order to halt unwarranted and unlawful State interference in Indian family life. The State is continuing to revise its child welfare standards as they affect Indian people. The new licensing requirements offer reason for hope.

Havasupai Victory

The Havasupai Tribe of Arizona recently achieved a unique solution to one of its most pressing child-welfare problems. For nine months of each year all the Tribe's children aged ten and older were sent 350-miles away to a boarding school at Fort Apache. Havasupai parents could not see their children for most of the year, much less have an influence on how their children were being educated.

But now the Havasupai will be able to educate their children on the reservation because the Tribe went to Congress and, capping a fifty year struggle, won the return of trust title to 185,000 acres of its ancient homeland along the remote South Rim of the Grand Canyon.

For almost a thousand years the Havasupai seasonally migrated between their permanent upland homes on the Grand Canyon plateau and summer homes in Havasu Canyon (a side canyon of the Colorado), until that migration was interrupted by the National Park Service about fifty years ago. The 425-member Tribe was confined to a 518-acre reservation on the canyon floor, isolated from the rest of the world by steep canyon walls ascended by switchback trails that are often blocked for weeks at a time by ice.

Now, since President Ford signed the Grand Canyon National Park Enlargement Act on January 3, 1975, the Havasupai will be able to rebuild a community on the plateau. And the children will be able to live with their families while they attend school.

INDIAN FAMILY DEFENSE

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Progress on Boarding Schools

Enrollment in Bureau of Indian Affairs boarding schools, which has long been a target of reform efforts by the Association on American Indian Affairs, is at last beginning to decline.

The BIA school census for 1974 shows a total boarding enrollment of 30,251 (thousands as young as 5-10 years old) representing a decline of 12.5 per cent in three years, despite an increase in the school-age population.

It is generally agreed by psychiatrists and other mental health professionals that, except in rare cases, the early separation of children from the warmth of home and family is detrimental not only to the mental and emotional health of the child but adversely affects the family as well.

Enrollment in BIA boarding schools and dormitories is not based primarily on the educational needs of the children; it is chiefly a means of providing substitute care. Approximately 76 per cent of such enrollments are for "social reasons" or "because they are not able to get along with others."

The standards for taking children from their homes for boarding school placement are as vague and as arbitrarily applied as are standards for Indian foster-care placements. Furthermore, the Bureau of Indian Affairs in its boarding school program places children in situations far worse than those from which it is "rescuing" them.

For example children who have been judged to lack parental supervision find themselves coping with a staff-to-children ratio that averages 1-to-100 and can rise to 1-to-200 if a dormitory aide is sick. In some cases children are placed in boarding schools because of encounters with the law. Many of the children have serious delinquency problems, others suffer severe emotional disturbances.

While most of the children are placed in boarding schools for social reasons, there is no requirement that the boarding schools provide the supportive or therapeutic services the children need. In fact, there is abundant evidence to show that placement in a non-Indian foster home or in a boarding school usually compounds the child's distress.

In small towns with large BIA boarding facilities, merchants may fight to prevent their closing. Not long ago, in response to political intervention, one boarding school in a small town in North Dakota was being phased out as unnecessary because the children could do better at home. Dependent on the school, the merchants complained and, again as a result of political pressure, the full school enrollment was restored.

The AAIA is continuing its work to end the unnecessary and unwholesome federal reliance on boarding schools that blight so many young lives.

The AAIA believes that "the first and foremost need in Indian education is a change in point of view. Whatever may

Continued on page 4

AAIA Drafts Recommendations

The Juvenile Justice Standards Project of the American Bar Association recently asked the Association on American Indian Affairs to do a study of the special problems of American Indian youth. The following draft recommendations pertaining to child welfare, to be included in the study, are based on discussions with Indian communities over a considerable period of time. They are offered here for review, criticisms, and suggestions.

Surveys of sixteen states with large Indian populations conducted by the Association on American Indian Affairs in 1969 and again in 1974 indicate that approximately 25-35 per cent of all Indian children are separated from their families and placed in foster homes, adoptive homes, or institutions. (In some communities the incidence may be twice as high.) This rate, when applied nationwide to an estimated 400,000 American Indians under eighteen years of age, indicates that 100-140,000 Indian children are not living with their natural parents. Of this number, approximately 61-85,000 are children who live on or near federal Indian reservations and are thus, without question, entitled to the special protection of the United States.

The disparity in placement rates for Indians and non-Indians is shocking. In Minnesota, Indian children are placed in foster care or in adoptive homes at a per capita rate five times (500%) greater than non-Indian children. In Montana, the ratio of Indian foster-care placement is at least thirteen times (1300%) greater. In South Dakota 40 per cent of all adoptions made by the State's Department of Public Welfare since 1967-68 are of Indian children, yet Indians make up only seven per cent of the juvenile population. The number of South Dakota Indian children living in foster homes is, per capita, nearly sixteen times (1600%) greater than the non-Indian rate. In the State of Washington, the Indian adoption rate is nineteen times (1900%) greater and the foster-care rate ten times (1000%) greater. In Wisconsin, the risk run by Indian children of being separated from their parents is nearly sixteen times (1600%) greater than it is for non-Indian children. In Alaska, Alaska Native (Indian, Eskimo and Aleut) children are out of their homes and in foster homes, adoptive homes, or in boarding programs at a rate almost fourteen times (1400%) greater than that for non-Natives. Just as Indian children are exposed to these great hazards, their parents are too.

In some states the problem is getting worse: in Minnesota, one in every eight Indian children under eighteen years of age is living in an adoptive home; and, in 1971-72, nearly one in every four Indian children under one year of age was adopted. The number of Indian children adopted annually more than doubled over a five-year period.

Please turn page

In addition to the trauma of separation from their families, most Indian children in placement or in institutions have to cope with the problems of adjusting to a social and cultural environment much different than their own. In sixteen states surveyed in 1969, approximately 85 per cent of all Indian children in foster care were living in non-Indian homes. In Minnesota today, according to State figures, more than 90 per cent of non-related adoptions of Indian children are made by non-Indian couples. Only a few years ago there were just two licensed Indian foster homes in the State and, despite Indian protest, improvement is slow. A 1974 sample survey of 100 Indian wards of the state disclosed only one living in an Indian home. Few states keep as careful or as complete child-welfare statistics as does Minnesota, but informal estimates by welfare officials elsewhere suggest that this rate is the norm. A 1973 survey in Wisconsin shows that out of a total of 1,158 licensed foster homes, only four were Indian. In most federal and mission boarding schools, a majority of the parent substitutes are non-Indians.

What is to account for this disastrous situation? The reasons appear very complex, and they may never be perceived clearly and in their entirety. Some of the factors include a lack of rational federal and state standards governing child-welfare matters, a breakdown in due process, and the lack of remedial services in so many Indian communities.

Agencies of government, if they are to be of any real help in overcoming the Indian child-welfare crisis, must cease their intervention in Indian family life and try, instead, to afford Indian communities the opportunity to set their own priorities, design and administer their own programs, allocate subsidies, and monitor all expenditures not under their direct control.

TRIBAL SOVEREIGNTY AND INDIAN COMMUNITY PARTICIPATION

Federal and state policy should uphold the sovereignty of Indian tribes, and, among other Indian rural and urban populations, provide for Indian community participation in all aspects of governmental action affecting them.

Recognizing that it is vital to the best interests of Indian children, they must be permitted to enjoy without government interference the right to establish their own cultural identity.

Tribes that currently exercise jurisdiction over the custody of their children should be permitted to keep this right. Tribes that have never had jurisdiction or have lost it by acts of Congress, such as Public Law 83-280, should be granted the option of acquiring jurisdiction.

Tribes not presently recognized as sovereignties by state or federal governments should be granted such recognition, at least for the purpose of establishing procedures to hear and determine child-custody cases.

States should give full force and effect to the orders of tribal courts.

Where jurisdiction does not rest in the tribe, then the tribe should be permitted to intervene in state custody proceedings as an interested party.

Where the Indian population does not constitute a tribal entity, as in urban areas, boards composed of members of the Indian community should be permitted to review custody petitions and make recommendations to the court, serve as advocates for Indian children or their parents, and be licensed to act as family-service and child-placement agencies.

Affirmative action should be taken to allow Indians to serve on appropriate state and local commissions and boards in proportion to the number of Indian children who are involved in custody proceedings.

Tribes should be authorized to license or approve homes for foster care and adoptive placement both on and off the reservation, and agencies using state and federal child-care funds should be required to give preference to such homes.

Federal, state and local child-care services and subsidies for the benefit of American Indian communities should be administered directly by Indian tribes or by local Indian child-care agencies; and an accounting should be made to them for all public monies spent for Indian child welfare not under their direct control. Appropriations for the benefit of Indian tribes should be made available to the tribes in the form of block grants to enable them to allocate resources according to their own priorities.

Federal boarding school placements should be made only in accordance with tribal ordinances.

STANDARDS

New standards should be established, with the cooperation and consent of Indian tribes, that comprehend the unique life ways, cultural values, child-rearing practices, and social structures of Indian communities as they vary from tribe to tribe and that respect the special needs of Indian children. Grounds for intervention should be limited to demonstrable evidence supported by competent witnesses that the conduct of the parents is causing serious physical harm or severe emotional damage to the child. A degree in social work or mere employment by agencies of government should not per se constitute evidence of such competency. Poverty, housing conditions, misuse of alcohol, sexual mores, placement with a relative or a friend shall not be considered prima facie evidence of abuse, neglect or abandonment nor shall truancy or the delinquent behavior of juveniles. Further, it should be recognized that any rate of placement for Indian children in excess of the rate for all races is evidence of a denial of equal opportunity.

DUE PROCESS

Social workers and other agents of government who seek to initiate a custody proceeding against Indian parents should be required to submit their petition to an Indian tribal or community review board prior to bringing it before the court.

Special effort must be made to afford Indian parents effective, written notice. Such notice must be understandable in the parents' own language when that language is other than English; and every effort should be made to assure that the notice is actually received and understood. Additionally, notice should be made to the Indian tribe, to the members of the extended family in whose care the child may have been left and, in the case of other Indian rural and urban communities, to an Indian child-welfare or other Indian community organization.

At the time of the notice, and again throughout the proceedings, the Indian parents should be informed of their rights and the potential consequences of the proceedings in a language and manner that enables them to understand what is being done or contemplated.

Indian parents and their child should both have the right to counsel, and to have the supporting testimony of expert and character witnesses. The parents should have the right to choose their own counsel. The attorney appointed by the court to represent the child should not be the same attorney that represents the welfare department or other complaining party.

The right to a speedy trial should be available to the parents and their children. It is generally in the best interest of the child to remain in the parents' custody throughout the hearing and appeal, unless it can be shown that the child is in imminent danger and that the danger cannot be removed with the application of appropriate social services.

A jury trial should be available as an option to the parents and to counsel for the child and affirmative efforts should be made to seat Indians on the jury.

Parents shall be presumed to be innocent and to represent the best interests of the child. It should further be assumed that allowing the child to remain in the home is the least detrimental alternative.

The burden of proof should be on the state as a practical as well as legal matter.

Throughout the proceedings, the court should be constantly alert lest the manner in which it is proceeding erects culturally-conditioned barriers that affect the ability of the Indian parents to obtain a fair trial and the children an appropriate disposition. If necessary, there should be the assistance of knowledgeable persons who can help the parents and the court overcome language and cultural impediments.

Because of the special cultural factors that may make it very difficult for Indian parents to receive a fair trial and for the court to make an appropriate disposition, the state should be required to prove its case beyond a reasonable doubt.

Indian parents should have the right to examine all documents that have a bearing on the case and should have the right after trial to expunge from those documents reports and allegations that have not been substantiated.

The state or local authority should be required to demonstrate that it has made available all its remedial services before temporary custody is granted.

Informal Indian custom placements should be respected and no legal separations should occur from such placements unless in accordance with the standards applicable to the removal of the child from the natural parents.

Permanent disposition should be prohibited until the parents have had a reasonable opportunity to rehabilitate themselves and the state can demonstrate that it has made available or offered to make available rehabilitation services appropriate to the parents' culture. Parental rights should not be terminated owing to deficiencies in state and federal services.

The standards of the Indian community shall be applied in determining whether rehabilitation has occurred.

In dispositions, recognition should be given to the special needs of Indian children; and preference should be given to placing them in homes licensed or approved by Indian tribes or Indian community child-care agencies.

Extreme care should be taken to keep siblings together and no numerical standards that contribute to the separation of siblings should be invoked unless it can be demonstrated that it is in the best interests of the children and then only as a last resort.

Voluntary relinquishments of custody by the parents should come before a court for disposition. This is intended to abolish voluntary waivers. In those states where voluntary waivers

Continued on next page

Yakimas' Project Ku-nak-we-sha'

Project Ku-nak-we-sha', a demonstration child-welfare program designed by the Yakima Tribal Council, began operations in July, 1975 in Toppenish, Washington. The purpose of the program—funded for three years with a grant from the U.S. Department of Health, Education and Welfare—is to respond to child-welfare needs on the reservation in a way that is helpful to Yakima families and protective of the children.

Statistics submitted by Yakima Tribal Council members Mel Sampson and Louis Cloud to the Senate Subcommittee on Indian Affairs during Oversight Hearings on Indian Child Welfare in April, 1974 indicate that Yakima children have been removed from their families to be placed in adoptive or foster care (usually with non-Indian families) at rates far in excess for that of the non-Indian population. For the entire State of Washington, Indian children are removed from their families to be placed in adoptive or foster care at a rate fourteen times greater than that for non-Indian children. For years the Yakimas have felt that the existing State child-welfare program was inadequate and destructive.

The objectives of the new program are to halt—and reverse—the removal of children in need of services from the nurturing milieu of their kinship system. The primary complaint of Yakima parents about the existing State services has been that when families were in need of help the thrust of the State's program was to remove children from their homes and place them in adoptive care or long-term foster care—rather than provide services to help families stay together. Parents who might have benefitted from services were reluctant to seek help because if they did so they risked having their children taken away. The new program will involve tribal people by utilizing their traditional and highly successful child-care roles. Even in those cases where one of the parents may be having problems, the new program will draw upon the child's extended family to pick up the responsibility for children.

If intervention is necessary, the new program will focus on the family as a unit in order to enhance its ability to function and cope with problems. A receiving home for children is being established to provide temporary care if there is a serious problem. The program will work with families who, instead of being coerced, can make *voluntary* requests for temporary care, with the assurance their children are not going to be permanently removed.

The all-Indian staff of the program, directed by an experienced social worker, includes three family services counselors, four homemakers, and a registered nurse. All the workers are visible, accessible, integral members of the Yakima community. The program's direct services goals are to 1) develop and manage a system of emergency services for families in their own homes; 2) provide temporary care for children who have to be removed; and 3) be a central resource working with parents and children to coordinate all the services available to families.

Indian tribes in Washington State were unjustly deprived of civil and criminal jurisdiction over their members and their children by the passage of Public Law 83-280 in 1953 exposing the tribes to predatory state child placement practices. The tribes are asking Congress for repeal of PL 83-280.

"This is the first step," said Maxine Robbins, Acting Director of Project Ku-nak-we-sha', "in the Yakimas reclaiming their rights and responsibilities to serve the needs of the people in a way that is meaningful and helpful to them."

are permitted, a waiver to be valid or given any legal force and effect should be voluntary in writing, and signed in the presence of at least two witnesses and translated into the parents' natural language and fully understood. The consent should be subjected to review by a tribal, state, or local court. Parents granting their consent should have the right to withdraw it at any time prior to the termination of parental rights and adoption, and at least 90 days shall elapse before permanent custody proceedings are commenced. Unless these conditions are met, the consent should be deemed involuntary. The tribe and members of the extended family should be given an opportunity to make alternative resources available for the custody of the child.

In the absence of a valid state or tribal court order, state courts shall immediately order anyone in possession of an Indian child to surrender the child into the custody of his parents upon the demand of the parents. Should the state fail to so order, the Indian family should have immediate recourse to the federal courts in a habeas corpus action without having to exhaust state remedies.

RIGHT TO SERVICES

Indian children and parents should have the right to services appropriate to their special cultural and individual needs; including the right to a dayschool education.

The over-all goal of services to Indian children and parents should be to support the integrity of the family and the community.

Primary program emphasis should be on prevention and on removing the underlying causes for family disruption and community disintegration; and, following placement, emphasis should be placed on providing support services to the child and on rehabilitation services to the parent.

Federal, state, and local agencies serving Indian children and parents should establish divisions or desks to aid in policy-making, planning, budgeting, administration, and evaluation of programs made available to Indian tribes and communities.

Such programs should be carried out under the direct control of Indian tribes or Indian community agencies.

Administrative models should be developed that separate the police powers of the state to intervene in family affairs from those agencies that provide family services. These models should eliminate economic and other institutional incentives for placement.

Services and subsidies should be adequate to achieve at least minimum standards of maintenance.

Alternatives to placements should be increased and integrated in a continuum of services under the direction of the Indian tribe or community. These should include in-home help, home counseling, day care, and respite services; as well as housing improvement, employment counseling and the creation of job opportunities, and adequate health and mental health services.

Funds should be made available so that child-care facilities may be constructed within the Indian community and for the construction of essential roads and dayschools to eliminate unnecessary boarding school placement.

Facilities should be made available to Indian parents as an alternative to jail for minor offenses so that they may remain with their children and, wherever possible, they should be permitted to remain in their own homes. Special efforts should be made to train Indian social workers and other providers of care and to train foster and adoptive parents in the special needs of Indian children.

There should be a needs assessment for the children and the parents prior to and following placement.

All placements should be subject to periodic review by the courts to determine whether there is a continuing need for temporary placement, whether the placement should be made permanent, and whether the home in which the child is or will be placed meets the child's basic and special needs.

In temporary placements parents of children should be given regular reports and family visits should be encouraged.

Children placed with foster and adoptive parents in accordance with Indian custom should be entitled to aid to dependent children and the only grounds for refusing to extend such aid should be those standards that are applied to separating Indian children from the natural parents. The refusal to accept such aid should not be considered as evidence of neglect.

Subsidized adoptions should be permitted to overcome financial barriers to permanent placement.

Boarding schools that enroll children for social reasons should be operated like residential treatment centers with a staff-to-children ratio of no more than 1-to-12.

Every effort should be made to enter Indian children on their tribal rolls in order to qualify them for all rights and benefits of tribal members.

Any monies accruing to Indian minors in placement from leases, tribal dividends, or per capita distribution on Indian claims settlements should be placed in escrow and disbursed for the child's benefit under the direction of the Indian tribe.

In cases of adoption, the Indian child, upon reaching maturity, should be entitled to information about his or her natural parents and tribal affiliation without qualification.

ACCOUNTABILITY

Agencies of government should disclose current and proposed budgets for Indian family and children's services, and, where the funds are not placed under direct Indian control, there should be rendered an accounting for the use of the funds to Indian tribes and community agencies.

Reporting systems should be developed that provide to the Congress, state legislatures, the courts, and Indian tribes and communities continuing information on the nature and extent of the Indian child-welfare crisis, efforts to overcome it, and the adequacy of existing laws and services, at least until such time as the rate for Indian children in placement is reduced to the rate for the population as a whole.

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BOARDING SCHOOLS, continued from page 1

have been the official government attitude, education for the Indian in the past has proceeded largely on the theory that it is necessary to remove the Indian child as far as possible from his home environment, whereas the modern point of view in education and social work lays stress on upbringing in the natural setting of home and family life. The Indian educational enterprise is peculiarly in need of the kind of approach that recognizes this principle; that is less concerned with a conventional school system and more with the understanding of human beings." These words are quoted from the *Meriam Report,* commissioned by the Department of Interior and published in 1928.

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The "Drunken Indian": Myths and Realities

Of all the stereotypes about the American Indian perhaps none has been so long lasting and so deeply ingrained in our social fabric as that of the "drunken Indian." The stereotype has been reinforced by government programs (prohibiting the sale of alcohol to Indians for over a century), some missionary groups (who used to require a pledge of total abstinence by Indian converts), and even by ordinary citizens who imagined a hopeless "drunken Indian" as the passive and powerless victim of poverty and cultural disintegration.

The stereotype has highly destructive effects on Indian communities. One of the grounds most frequently advanced for taking Indian children from their parents is the abuse of alcohol. In the Pacific Northwest, 25 per cent of one tribe's children were in foster homes owing directly to alleged alcohol abuse by their parents—representing 95 per cent of all the children in foster care. The interpretation of alcohol abuse by non-Indian social workers, those that are not familiar with the workings of Indian society, is often based on the assumption that the drinking pattern of an Indian person reveals the same kind of personality disorders that it does in a non-Indian. The late Edward P. Dozier of Santa Clara Pueblo and other observers have argued that there are important cultural differences in the use of alcohol. Yet, by and large, non-Indian social workers draw conclusions about the meaning of acts or conduct in ignorance of these distinctions and frequently make inappropriate judgments about the ability of Indian parents to raise their children. Furthermore, this standard is applied unequally. In areas where rates of problem drinking between Indians and non-Indians are the same, it is rarely applied against non-Indian parents.

The stereotype often also destroys the chance for an Indian defendant to receive a fair trial in instances where crimes are related to excessive use of alcohol. Many non-Indians are inclined to immediately believe the "drunken Indian" stereotype without giving the Indian the chance to explain the circumstances and refute the charges. Thus it is extremely rare for an Indian charged with driving while intoxicated to be acquitted. The Indian defendant's story that he or she had two beers and then was driving home when stopped by a police officer is usually met by the response, "Oh, that's the old two beer story."

Scientific research has undermined the old simplistic stereotypes. The conclusions of this research have been summarized in an article, " 'The Drunken Indian': Myths and Realities" in *Psychiatric Annals* for November, 1974. The article was written by Joseph Westermeyer, M.D., Ph.D., an Associate Professor of Psychiatry at the University of Minnesota. Dr. Westermeyer has also assisted the Association on American Indian Affairs in the successful defense of Indian families through psychiatric evaluations of Indian parents in cases where they were threatened with having their children taken away by state agencies.

In his article Dr. Westermeyer concludes that alcohol usage patterns among Indian people vary widely. The stereotypical "Indian" drinking pattern involves the early appearance of intoxicated behavior with small doses of alcohol; "binge" and "party" drinking; and the continued purchase of alcohol until the money runs out. While this pattern has been observed among some Indian peoples, is not a unique Indian phenomenon. It has been observed among various non-Indian people—for instance, conventioneers in a strange city.

In addition, many Indian people use alcohol in a "white middle class" fashion, limiting their use in amount, time and place, and behaving in a manner not greatly different from their non-drinking behavior. Many other Indian people abstain from alcohol altogether. Still others may employ "Indian" drinking, "white" drinking, and/or abstinence at various times in their lives depending on social factors, personal preference

Continued on next page

Boarding Schools and Alcoholism

The atmosphere and environment of boarding schools for Indian students contributes greatly to the alcohol problems young Indians face today, an authority on alcohol and drug abuse told an alcohol studies workshop at the University of Arizona, Tucson.

"Boarding schools on reservations are probably one of the main reasons young people go into drinking," said Levon Benally, assistant director of the Navajo Alcohol and Drug Abuse Program.

He spoke at a workshop studying problems in Local Native American Alcohol Programming at the Seventh Annual Conference of the Southwestern School of Alcohol Studies and "Projections for the Future Health Needs of Native Americans," a health conference sponsored by the Division of Social Perspectives in Medicine, Arizona Medical Center, in May, 1975.

Benally said the boarding schools create a breaking up of the family and contribute to feelings of insecurity. He said self-experience has shown him the loneliness that can be generated by the situation at boarding schools.

Nine to 12 months out of each year for a dozen years, Benally said he was separated from his mother and father. "I didn't really know my parents. I didn't know the feeling of family.

"What's the solution? Do you knock out boarding schools and build public schools? There's no feeling of love and closeness at boarding schools. That's the feeling that must be overcome before we can start to deal with the problem," Benally said.

The remedy to alcohol problems faced by Indian youth should start at home, he said. Too many programs are placing rehabilitation ahead of prevention, which is backwards, Benally said. "Get back to home and family life, that's where the real prevention is."

Alcohol programs for Indians should contain community education on alcohol that emphasizes the affects alcohol has on the family, he said.

The prevention aspect of programs should deal with "why young people go into drinking. This is where we want to go in prevention."

Benally highly recommended that Indian programming become involved in the prevention aspect of treatment. "If you're going to make a success of your program you're going to need prevention, supplemented with rehabilitation treatment. Both are needed," Benally said.

Reprinted from *Indian Programs,* published by the University of Arizona at Tucson.

or life events. Because abstinence and "white" drinking are unremarkable and less apt to merit attention, non-Indians tend not to recognize their widespread occurence among Indian people.

Dr. Westermeyer found that while alcohol use can occur concommitantly with untoward events in the lives of some Indian people, it can also be associated with beneficial effects. It may, as among non-Indians, facilitate socialization. Binge drinking can at times provide an alternative means for handling grief or stress for some Indian people.

The statistical correlation between alcohol use and certain problematic events should not be simplistically equated with causal explanations. For example, suicides and homicides commonly occur along with alcohol usage among the present-day Navajos; yet Navajo suicide and homicide rates have remained essentially constant since 1880, while the alcoholism rate has increased. The same is true for the White Mountain Apache. Thus the relationship between violence and alcohol is a complex one that cannot be readily understood in simple cause and effect terms.

Dr. Westermeyer found no reliable scientific evidence for the notion that there is some inherent racial trait that results in alcohol's affecting Indians in a specific and unusual manner.

Considerable differences exist among groups of Indian people regarding rates of various alcohol-related events. For example, the Navajo death rate from Laennec's cirrhosis (associated with chronic alcohol use) has been lower than the national average, while the Mountain Apache and Hopi cirrhosis rates have been higher. Even within the Navajo Tribe, Laennec's cirrhosis is more prevalent among Navajos close to alcohol supply sources than among those living in the more remote locations.

Some Indian people are indeed alcoholics, who experience the same physiologic withdrawal from chronic, heavy alcohol use as non-Indians. These Indian people can benefit from treatment for their alcoholism. Treatment centers planned and staffed by Indian people appear to be having more success in helping them than the previous non-Indian oriented programs.

Dr. Westermeyer concluded that the variations in alcohol-usage and alcohol-related problems among Indian tribes and within tribes, and among Indian individuals, are so wide that any generalizations about Indian alcoholism are extremely hazardous. Such statements tend to have so many exceptions that a useless and misleading stereotype results.

Even among Indian groups that do have high rates of alcohol-related problems, Dr. Westermeyer found that it is difficult to know whether a given problem is caused by alcohol or by various social, economic, historical, cultural, and/or political factors. "Alcoholism problems are often associated in a given individual with such stresses as migration from the reservation to a non-Indian community; racial and ethnic prejudice; health impairment; unemployment or marginal economic status; outside interference by non-Indian social agencies in family and community affairs; and lack of control in his own community over the education of his children, law enforcement, religious institutions, and health and welfare resources.

"For any one Indian or group of Indians," Dr. Westermeyer said, "it is difficult to separate racial prejudice, family disintegration, or economic oppression from alcohol in the genesis of various problems. However, the danger exists that if alcoholism is focused on as the biggest problem, urgent political and economic issues may be ignored."

Choctaw Child Advocacy Program

The Mississippi Band of Choctaw Indians has received a three-year grant from the U.S. Department of Health, Education and Welfare to set up and operate its own child-welfare center. The Choctaw Child Advocacy Program has a five-member, all-Choctaw team, to be headed by a social worker. Its program is sensitively designed to work with Choctaw families, with the preservation of the Choctaw family as its objective.

The chief complaint of Choctaw parents about the prior existing programs has been the lack of preventive services for families experiencing problems. The difficulties of delivering services to a widely dispersed population were compounded by a frequent lack of understanding on the part of state programs, and the lack of social services staff at the Bureau of Indian Affairs. The result was that all programs available to families were crisis oriented—and too often the children were taken away. The new and innovative program aims to keep Choctaw children out of the system that removes children.

"This program offers the Tribe a real challenge and opportunity to demonstrate its concern for the rights of Choctaw children to be safe and secure, and to be free from fear and mistreatment," said Harold Keyes, Supervisory Social Worker at the Choctaw Agency. "If this program is successful, we hope it will become a prototype for other Indian tribes for national use."

Although the center has the authority to place a child in a foster home, that action will be taken only as a last resort. In order to fulfill its primary aim of providing counseling to keep families intact, family services counselors work past normal "business" hours at night and on weekends. Team members work closely with both on- and off-reservation law enforcement officials to insure maximum protection for Choctaw children.

For those Choctaws living on non-trust land, the program is establishing a system of youth court referees in the Mississippi state courts. Under this system Choctaw tribal people are able to fulfill all the responsibilities usually performed by non-Indian judges in cases involving Choctaw child welfare. This will assure due process for Choctaw families by providing an adequate and fair trial hearing without language or cultural barriers.

For those instances in which temporary child care away from the family may be necessary, the program has recruited seven Choctaw emergency foster homes. These Choctaw foster parents will be paid a stipend under contract whether they keep children or not.

In the past, the social services staff at the Choctaw Agency has had to deal with child-welfare problems at a crisis level. Now the new program aims to provide, when necessary, the in-depth contact and counseling needed to preserve the Choctaw family structure.

Letters to the Editor

Dear Editor:

As an Indian living in the urban area I find your news bulletin very interesting. We as "urban Indians" seem to have the same type of problem in regards to our Indian youth being placed in non-Indian foster homes at an alarming rate.

Steps have been taken to alleviate this problem by working with the State of California and County of Los Angeles Department of Social Services to set up a new American Indian Foster Parent Program.

We feel this will solve many of our problems with Indian youth and families through proper placement, by public or private agencies. And will reduce the number of Indian children being removed from their own cultural and ethnic environment.

Mamie Bohay, Director
Southeast Indian Center
Huntington Park, Calif.

Dear Friends:

If I can cooperate in the efforts to prevent the robbing of our children from their natural parents, until unfit parenthood can be proven in a court of law, it is in my opinion a much needed step in the right direction.

My family has been the observer of such a case in the person of a young Sioux girl from St. Francis lodged with a non-Indian family, who still advertise themselves as helping to find foster homes for Sioux children. While the child entrusted in their care, in sadness and shame finally solved her unhappy childhood by running away and compounding her problem by being an unwed mother.

Howard L. LaHurreau
Fort Wayne, Indiana

Dear Sirs:

We are writing to request a copy of your newsletter and to be put on your mailing list. As a social worker residing in Arizona on the Navajo Indian Reservation, I am very interested in the child-welfare problems of Indian people. Specifically I'm opposed to the practice of Indian children being removed from their parents, family and cultural surroundings, and placed in non-Indian adoptive homes.

To my knowledge this practice has all but been eliminated within the Tuba City Agency on the Navajo Reservation (western side) where I work. However in years past these adoptive practices were fairly common, and from what I understand, this still goes on within other Indian reservations in the country, particularly in the Dakotas.

I'm very eager to receive your newsletters. On more than one occasion I have had tourists driving through the Navajo Reservation drop by my office and ask if we had any children to give up for adoption. Also, we receive frequent inquiries by mail from throughout the country asking about adopting an Indian child. Now and then a long distance phone call is received, usually from some woman wanting us to send them a child for adoption to their home (and they'll pay for the airline ticket). Some missionaries have tried to start their own adoption programs for Indian children, but fortunately their efforts have been thwarted.

HEW Grants

Five Indian organizations or reservation programs have received grants from the federal government to help their communities identify and coordinate available services for abused children and their families, remedy gaps in services, and carry out public education on child abuse and neglect. The five grants, totalling $822,263.00, were made by the National Center on Child Abuse and Neglect, in the Children's Bureau of the Office of Child Development, of the U.S. Department of Health, Education and Welfare. The funds were authorized by the Child Abuse Prevention and Treatment Act of 1974.

The programs, meant to demonstrate new techniques for bringing child abuse and neglect services to Native Americans, will take into account cultural traditions and life styles, and will involve families in making decisions about the kinds of supportive services they need.

The five programs are: Cook Inlet Native Association, Anchorage; Montana Department of Social and Rehabilitation Services, Helena; University of Minnesota Center for Urban and Regional Affairs, Minneapolis; Mississippi Band of Choctaw Indians, Philadelphia; and the Yakima Indian Nation, Toppenish, Washington.

What the general public doesn't realize is that Indian families take very good care of their children. Children are highly valued in the Indian family. There is less neglect, abuse and mistreatment of Indian children by their families than exists in most cities and suburbs. Indian people can provide for their own children quite adequately, without interference from non-Indian people in other parts of the country.

We hope that you are successful in your efforts with your program.

Steve Lacy
Tuba City, Arizona

Brothers, Greetings!

I received copies of your *Indian Family Defense*, Nos. 1, 2 and 3. Thanks!

I am not easily moved, but at one point I was moved to tears. Also to contribute $15.

One question. Re: the Rendon case, where the judge didn't care if they "barbequed" the child. Why didn't you print his name? Why shield this animal?

May our Grandfathers, the Thunderers, guide your feet in smooth pathways, and may they carry you under their wings and shield you from all harm!

Charles Colcord/Matawelehsis
Nat'l. Assoc. of Metis Indians
New York, New York

Dear Sir:

I would like to subscribe to the newsletter . . . I am a Probation and Parole Officer, and I am dealing with adults and juveniles daily. Therefore, I am sure this newsletter will provide me with some useful information.

Wilbur M. Nelson, Sr.
Shiprock, New Mexico

AAIA Publications

3 Lakota Grandmother Stories: Health Lessons for Young People is a collection of stories by the distinguished Rosebud Sioux author, Virginia Driving Hawk Sneve. Published in response to a suggestion by the Lakota TB & Health Association, the booklet (20 pages) is part of a home health-education program. The Lakota TB & Health Association is a voluntary organization representing tribes and urban Indian communities in North Dakota, South Dakota and Nebraska. The AAIA will distribute the booklet free to Indian tribes and communities in the Great Plains. The stories are about germs, a visit to the hospital, and dental care. Although designed primarily for Indian children, they will be of interest to all children. The booklet is $1.00.

American Indian Authors for Young Readers is a selected bibliography of 63 books written by American Indian and Eskimo authors. An introduction by Mary Gloyne Byler, executive editor of *Indian Family Defense*, identifies some of the derogatory stereotypes and common faults in children's books about American Indians. Publication of the introduction in the *School Library Journal* stimulated a lively controversy about the role of stereotypes in children's literature. The price is $1.00.

American Indian and Eskimo Authors, the most comprehensive such bibliography ever published, was compiled to inform the general public of the large body of Native American literature. It contains almost 400 titles written or narrated by some 300 Indian and Eskimo authors representing more than 100 tribes. The price is $4.00.

All three can be ordered from: Interbook Inc., 545 Eighth Avenue, New York, N.Y. 10018.

Indian Family Defense is published quarterly by the Association on American Indian Affairs. Our hope is that a newsletter which collects and exposes the isolated experiences of different tribes will demonstrate the national scope of the Indian child-welfare crisis—and become an instrument for change. We would like to learn of any families involved in legal cases regarding child-welfare; about any child-welfare projects that are planned or are being undertaken by a tribe; and from individuals with knowledge of family-defense problems. We feel it is urgent to learn and communicate the experiences of different tribes in coping with this problem.

To receive a complimentary subscription, just complete the coupon and mail.

ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC. 432 Park Avenue South, N.Y., N.Y. 10016

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HEW Study

The Children's Bureau of the Office of Child Development, U.S. Department of Health, Education and Welfare, is funding a national "State-of-the-Field Study of Child Welfare Services for Indian Children and Their Families On and Off the Reservation." The study is being conducted by the Center for Social Research and Development at the Denver Research Institute of the University of Denver.

The principal objectives of the study are:

1. To determine the nature and extent of child welfare services availability, accessibility, acceptability, and adaptability.
2. To determine the differential needs of Native American families and children living either on or off the reservation for child welfare services.
3. To determine the interactional patterns between the existing child welfare services and those families and children in need of those services.
4. To analyze and synthesize the above information in a manner which would enable the Office of Child Development to develop a policy and operational strategy which would be in the best interests of Native Americans.

Included in the study will be a review of the current literature and of the unique historical and cultural factors affecting child-welfare services by and for Indian people. The study will examine whether inputs into the child-welfare macro-system by federal, state, county, tribal, and private organizations compete, conflict, or duplicate each other; or whether some needs are not met at all. In addition, barriers to service availability and delivery will be identified. The study will also determine the number of Native Americans receiving graduate social work education and the unique issues relative to their training and placement.

The "state-of-the-field" includes a review of legislation; Congressional testimony; federal policies, programs and regulations; state and county programs; tribal and private agency policies; and the relevant professional literature. More importantly, it includes a review of the nature and extent of current practice.

The final report will be submitted to HEW in mid-1976.

The Association on American Indian Affairs is a private non-profit, national citizens' organization supported by its members and contributors. It assists Indian and Alaska Native communities in their efforts to achieve full economic, social and civil equality.

If you would like to become a member, please fill out the coupon and mail.

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INDIAN FAMILY DEFENSE

A bulletin of the Association on American Indian Affairs, Inc.

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Omahas Aid Families

by Clifford Wolfe, Jr.
Executive Director, Macy Industries

Living on the reservation for the Omaha Indians has never been easy. During the winter the cold northern winds never seem to cease as they whip snow over the hills overlooking the Missouri River. In the summer the southern, hot, dry winds offer no respite from the heat. In short, Nebraska's harsh climate has always caused its people to develop a strong will to deal with its ever-changing weather or move on westward.

The Omahas have never wanted to move. Those who stay find Nebraska a beautiful place to be in the spring and fall. But something more sapping of the will than the weather has been present among the Omaha people—the breakdown of their cultural ways.

As with so many tribes, reservation life required new approaches for meeting daily needs. With the passing of the hunt and technological advances in farming, the need for traditional labor decreased. To make a living, Omahas either had to travel long distances to find work or move from the reservation. Most remained, only to have to rely on a welfare allotment for subsistence. Sadly, that welfare check could not help to strengthen the Omahas' resolve to preserve cultural identity and to find rewards in an advancing technological age. Instead, excessive drinking sometimes occurred. Inevitably, the family structure deteriorated.

Social workers from the county welfare office came to assist the families. Unfortunately, because of lack of knowledge of Omaha ways and because of fear and distrust on the part of the Omahas, the welfare people had little success. In the early part of 1972, at a time when across the nation minority people were demanding to solve their own problems, a number of Omaha leaders conceptualized "The Omaha Tribe Family Enrichment Program."

The program's purpose was "to strengthen family life on the reservation and to motivate individual family members to develop and utilize their ability to solve their own daily problems as individuals, as families, and as members of the community." To realize such an objective, a staff of three Omahas (two social aides and a team leader) were hired to be trained by professors from the University of Nebraska Graduate School of Social Work. Following the training, ongoing regular consultation was provided. It was up to each staff member to work closely with five families in the specific areas of home management: nutrition, health maintenance, consumer education, child-rearing, budget management, and care of the home. In addition to the home-making duties, constant attention was given to the problem of alcoholism.

The program began through financial support from the

Continued on page 8

Child Welfare Victory

Gail Little Light, a member of the Crow Tribe of Montana, has won a major legal victory that goes a long way towards protecting the rights of American Indian families to care for their children. Her victory—affirming the right of Indian tribes to determine the custody of their children—came in a case in which a non-Indian couple took Mrs. Little Light's young son off the Crow Reservation and attempted to adopt him in Maryland despite her protests. Frustrated by time-consuming legal proceedings, Mrs. Little Light later went to Maryland and virtually "kidnapped" back her own child.

Mrs. Little Light agreed to let a young couple serving with Volunteers in Service to America (VISTA) on the Crow Reservation care for her son Allie, then three-years-old, while she was recovering from serious injuries that required months of hospitalization after an automobile accident. At Mrs. Little Light's behest, the Crow Tribal Court issued an order on November 1, 1972 appointing the couple legal guardians of Allie for one year. Mrs. Little Light gave her consent for the couple to remove Allie from the Crow Reservation during the one-year period.

In July 1973, before the year expired, the former VISTA couple, in clear violation of the intent of the Crow Tribal Court order, filed a petition in the Circuit Court for Anne Arundel County, Maryland seeking to obtain "temporary and permanent custody" of Allie. Mrs. Little Light, who had sought to provide care for her son during a period of medical emergency but never had any intention of permanently giving him up, vigorously opposed this action and retained counsel to represent her.

In October, 1973, the end of the one-year period, Mrs. Little Light telephoned the couple requesting that Allie be returned home, but they refused. Because of the important questions of tribal sovereignty raised by the case, a motion of the Association on American Indian Affairs (AAIA) on behalf of the Crow Tribe to intervene in the Maryland proceedings was granted.

The AAIA argued that the right of Crow parents and their children to live together as a family and to protect their cultural integrity is a fundamental liberty safeguarded by the United States Constitution, and that the Crow Tribe has exclusive jurisdiction to determine the custody of Crow children.

Mrs. Little Light also petitioned the Crow Tribal Court to terminate the guardianship previously granted the VISTA couple. The couple was notified of the Tribal Court proceedings but did not appear. By an order of July 10, 1974, the Crow Tribal Court, noting that it had granted the couple special guardianship for a period of one-year owing solely to Mrs. Little Light's temporary medical disability and that she

Please turn page

was now able to resume her parental responsibilities, affirmed that Allie's permanent custody was with his mother and ordered the couple to surrender Allie to tribal officials. The couple refused to return Allie home.

Instead, the couple went ahead with their petition for custody of Allie in the Maryland court, and it was heard on July 12, 1974. At the hearing, counsel for the AAIA, representing the Crow Tribe, moved to dismiss the petition on the ground that exclusive jurisdiction to determine Allie's custody was vested in the Crow Tribal Court. Reserving decision on the jurisdictional issue, the chancellor of the Maryland Circuit Court heard testimony and arguments on the merits of the couple's petition. The trial, lasting a full day, inevitably became a trying ordeal for Mrs. Little Light who, in effect, found herself cross-examined on her competence as a mother. The court also heard testimony on Mrs. Little Light's behalf from Mrs. Janice Billie, a Bureau of Indian Affairs social worker on the Crow Reservation, and from Marjorie Wilkinson, associate judge of the Crow Tribal Court. Elloyd Lotridge, an attorney with Maryland Legal Services, represented Mrs. Little Light.

"This appeal draws into question the power of a state court to award custody of an American Indian child to non-Indian petitioners over the objection of the child's mother and of the Indian tribe to which he belongs, and requires an examination of the jurisdictional relationships pertaining to child custody among the Indian tribes, the federal government, and the various states. . . .

"Weighing these competing considerations in light of the unique facts in this case, including in particular that the Crow Court had continuing jurisdiction over Allie's custody, which it last validly exercised two days prior to the Maryland custody proceeding, and taking into account the limited duration of the Wakefields' guardianship, and considering that there can be no greater threat to 'essential tribal relations' and no greater infringement on the right of the Crow Tribe to govern themselves than to interfere with tribal control over the custody of their children, we agree . . . that in determining whether to exercise subject matter jurisdiction in such circumstances, the only rational approach is to determine the domicile of the Indian child. By using the Indian child's domicile as the state's jurisdictional basis, the Indian tribe is afforded significant protection from losing its essential rights of child-rearing and maintenance of tribal identity. . . .

"We think, in the circumstances of this case, that Allie's domicile remained on the reservation in Montana, and that the Maryland court properly declined to interfere with the jurisdiction over his custody already vested in the Crow Court of Indian Offenses."

Wakefield v. Littlelight
The Court of Appeals of Maryland

The chancellor of the Maryland Circuit Court handed down his decision on October 7, 1974. He concluded that the Circuit Court lacked jurisdiction to act and dismissed the couple's petition. The couple, still retaining custody of Allie, appealed the decision to the Maryland Court of Special Appeals. Mrs. Little Light, hoping that her son would finally be returned to her, petitioned for a writ of habeas corpus from the Anne Arundel County Circuit Court, but this was denied.

On July 26, 1975—a year after the hearing in the Maryland court, almost two years after the expiration of the Crow Tribal Court's original order, and after Allie had already spent almost half of his young life in the custody of people with no legal right to detain him—Mrs. Little Light went to Maryland and, without asking the VISTA couple's permission, simply took Allie back home to the Crow Reservation.

A few months later, on November 13, 1975, the Maryland Court of Special Appeals issued its decision and made Allie's future legally secure at last. Writing that "there can be no greater infringement on the right of the Crow Tribe to govern themselves than to interfere with tribal control over the custody of their children," the Court held that "Allie's domicile remained on the reservation in Montana, and that exclusive jurisdiction over his custody was vested in the Crow Court of Indian Offenses."

To the knowledge of the Association on American Indian Affairs, this is the first time that a state high court has decided the issue that a child domiciled on a reservation is subject to the jurisdiction of the tribal court and that the tribal court's jurisdiction continues even after the child is removed from the reservation and from the state where the reservation is located. While basing its decision on the question of domicile, the Maryland High Court also placed its opinion in the context of broad principles of Indian self-determination and tribal sovereignty in regard to child welfare.

Urban Program in Minneapolis

A group of Indian people working out of the Center for Urban and Regional Affairs of the University of Minnesota is operating an innovative child-welfare program to meet the needs of the greater Minneapolis area Native American community. The program began operating in the summer of 1975 with funding from the Office of Child Development of the U. S. Department of Health, Education and Welfare.

The program's purpose is to initiate a program of training, technical assistance, and service concerned with the prevention and treatment of child abuse and neglect in the greater Minneapolis area Indian community. It takes its name, Project Ah-be-no-gee, from the Chippewa word for "child."

The goal is to develop an institutional network that provides an alternative style of working with and supporting Indian families, and is more sensitive to the needs of Indian families than state-run services. To do this, the program is developing the resources and enhancing the capacity of professionals, associated personnel, agencies, community groups and others to more effectively meet the comprehensive needs of Native American children and families. The program is focussing on developing a highly skilled Indian child-welfare worker by training Indian people who have been raised in the same circumstances as those who they will be helping.

While Minnesota does have many fine social welfare programs, these programs have failed to meet the needs of American Indian families. Service providers who may do an excellent job working with non-Indian families are not equipped to handle the needs of Indian families, who have no choice but to withdraw when they find service providers unresponsive to their needs. They may also fear that the response to their needs will be detrimental to their families. In Minnesota, for example, Indian children are placed in foster care or adoptive homes at a per capita rate five times greater than that for non-Indian children, and approximately 91 per cent of the adoptions of Indian children were made by non-Indians. In Hennepin County in 1974, there were thirty-one cases resulting in the termination of parental rights; fourteen of these were Indian families.

Most of the migration of Indian people to the cities in Minnesota has taken place within the last decade. Today half of Minnesota's Indian population lives in the cities, principally inner-city areas, and half in the upstate rural areas on reservations. Indian families living in Hennepin County (including Minneapolis) are six times more likely than non-Indian families to be below the official poverty income level. Indian workers are three times more likely to be unemployed, and Indian students are twice as likely to have to drop out of high school as non-Indians. The typical Indian family is younger and larger than non-Indian families, and Indian families are much more likely to have relatives—uncles, aunts, grandparents—living in their homes.

The new program provides for Indian needs by addressing itself to the untapped strengths of Indian family and community life. A corps of ten Family Advocates is being trained to build on and with Indian family strengths, and to act as a liason between Indian families and service providers. Their training is multidisciplinary in the legal, medical and social dimensions of child welfare.

The program is developing positive intervention procedures to assist Indian families when necessary, but its emphasis is on preventing child welfare problems from occurring in the first place. The staff is developing an early warning and emergency service system to respond to indications of family stress that may lead to child abuse and neglect. By developing an understanding of the strong points of the Indian family, the program tries to keep parents and children out of the system that removes children.

While state-run programs had tended to isolate children and families in need of help, the new Indian-run program helps integrate the needy family into the network of the extended family and friends that can provide the help. The parents are always involved in the program, which is careful that it does not become a substitute for the family, but a reinforcer of family life.

The program is also taking a fresh look at why and how neglect occurs, and who is responsible. For instance, state agencies have tended to view truancy on the part of an Indian child as evidence of family neglect. But sometimes it is not the family which is to blame but the educational institution—which may discriminate against Indian students, or misunderstand their behavior—and it is this institutional neglect that may lead the student to becoming a truant.

The program is also operating a neighborhood house that stays open around the clock as a service and shelter center for parents and children. The neighborhood house stays open on weekends because experience shows that this is when most Indian problems pertaining to child welfare, family stress, alcoholism and chemical dependency occur.

The four critical areas that the program concentrates on are 1) overcoming the Indian families' fear of therapeutic and helping encounters through the Family Advocates who can bridge the gap between Indian people and non-Indian institutions; 2) developing preventive measures to strengthen Indian families and training Indian-staffed programs to be able to identify and intervene constructively, if necessary, with Indian families having problems; 3) developing data that more appropriately measures the child-welfare needs of the Indian community and that can serve as guides to crisis intervention; and 4) developing legislative recommendations on the state and county levels to bring child-welfare services in tune with the needs of the Indian community.

Project Ah-be-no-gee, in addition to the Family Advocates, is also training graduate students in case management and monitoring of family counseling.

The Policy Advisory Board for the project includes representatives from the University of Minnesota's Center for Urban and Regional Affairs, School of Social Work, and Department of Indian Studies; from the Hennepin County Welfare Department; and from the Native American Family Services Association—a community advisory group.

AAIA Expands Legal Defense

The Association on American Indian Affairs (AAIA) is undertaking a major new expansion of its legal services program to defend Indian families and assist Indian communities in their child-welfare needs. This expanded program is made possible by a one-year grant from Lilly Endowment, Indianapolis, Indiana.

The wholesale abduction of American Indian children from their families is perhaps the most tragic aspect of American Indian life today. There is an urgent need for a legal services program that can assure Indian parents and their children that they will receive due process of law.

To prevent this destruction of Indian family and community life and to strengthen the capacity of Indian communities to provide for the needs of Indian families, the Association has retained three additional attorneys to work throughout the United States with Indian tribes at their request. The attorneys will 1) provide legal representation for Indian families with child-welfare problems; 2) bring test cases on behalf of tribal councils; 3) assist tribes to regain jurisdiction over child welfare where it has been usurped by states; 4) seek the reform of state regulations pertaining to Indian child welfare; and 5) assist tribal councils that desire to revise the child-welfare sections of their tribal codes.

Surveys of states with large Indian populations by the AAIA indicate that 25-35 per cent of all Indian children are removed from their homes to be placed in adoptive homes, foster care, or institutions. Indian children are placed away from their homes by state and private agencies at a rate ten to twenty times greater than the rate for non-Indian children.

The Association has reunited scores of Indian children with their families over the last decade. In virtually every case that the AAIA has litigated in defense of Indian families, the courts have decided on behalf of the Indian parents and children. Most Indian parents, however, never have the benefit of counsel.

Tribal councils and Indian individuals interested in the program are urged to contact one of the attorneys for assistance. In California, Oregon, Washington, Idaho, Nevada, Utah, Colorado, Arizona, and New Mexico contact: William Lamb, Seaside Professional Building, 103 Cypress St., Fort Bragg, Calif. 95437; or LeRoy Wilder, Bell & Shepard, Suite 400, 3100 Mowry Ave., Fremont, Calif. 94538. In all other states, please contact: Bertram Hirsch or Lawrence Rappoport, AAIA, 432 Park Avenue South, New York, N. Y. 10016.

Sisseton-Wahpeton Sioux

The Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation in South Dakota is undertaking a unique child-welfare program with the help of a $110,000 grant from the Office of Education in the U. S. Department of Health, Education and Welfare. The purpose of the program, funded for one year, is to work with Sisseton-Wahpeton parents and children to mobilize the strengths of tribal families in order to nurture the well-rounded healthy development of their children.

The Tribe began developing its early childhood development plan because of the lack of U. S. Bureau of Indian Affairs and U. S. Indian Health Service programs. The programs that were available tended to make Sisseton-Wahpeton Sioux parents feel that they were not good parents, and the intervention done by child-welfare workers before had punitive features. In addition, the Tribe was disturbed by the disproportionately large number of children taken off the reservation by the South Dakota State Welfare Department to be placed in non-Indian adoptive and foster care. In the states of North and South Dakota approximately seventeen times as many Indian children as non-Indian children, on a per capita basis, are living in foster homes. In the summer of 1972 the Sisseton-Wahpeton Sioux Tribal Council passed a resolution expressing its grave concern about this situation and stating its strong feeling to "make every stand possible to keep these children on the reservation."

Through meetings with representative groups throughout the reservation the Tribe identified the varied needs of young children and their families that were not being met by existing programs. The survey identified problems such as the need to maintain adequate nutrition (the income of some families is inadequate to provide a balanced diet), inadequate home facilities in some cases, and a lack of diagnostic facilities for the identification of intellectual or physical deficiencies early in a child's life before irreparable damage has been done. Another particular concern of the Tribe was to encourage programs so children are fully prepared emotionally and intellectually when it comes time to enter school.

Before the new Parent-Child Involvement Program was started tribal members did substantial research on normal child development. From the outset the program decided to address itself to the positive strengths of Indian families by working with parents to involve them as active participants in the program and not merely as the passive recipients of services.

The program is now serving 107 children in 73 families. The children include 40 infants, 30 toddlers (eighteen months to three-years old), and 37 pre-schoolers (ages three to five years).

By involving parents and children as families the program aims to help children develop positive self-concepts that are the result of feelings that come from mastering skills and learning how to cope with their environment. As the children master the skills, their feelings of being capable and competent human beings are reinforced.

When the program began operating in October 1975 letters were sent to every reservation family with a child of eligible age. The parents made voluntary decisions about whether or not to participate in the program.

Early on home visits were decided upon to carry out the program. Now children eagerly await the arrival of their home-involvement aides every week. Before each home visit, the program's home-involvement aides develop a "lesson plan" specifically for each child. After the aide develops the lesson plan it is reviewed with the parent, and then the aide and the parent together go over it with the child. Some characteristic lesson plans involve developing motor control (for instance, the use of the two index fingers), language, and concepts. After the lesson plan has been reviewed with the child for the first time, it is left with the parent.

The families set their own guidelines for parent participation in the program through a Parents Advisory Council, whose members are chosen from each district of the reservation. Once every month there is a parents meeting in each district. The children play with each other while the parents are meeting, and later parents and children are able to participate in activities together.

The program's staff, all tribal members, includes a coordinator, secretary, and five home-involvement aides. The staff would like to add a language development specialist to the program to teach the Dakota language and English. They also plan to develop an extensive curriculum based on tribal traditions, as well as to expand their programs helping parents to meet their children's health and nutrition needs.

The Tribe is now hoping to have the program funded for another year, and it also hopes to start a nursery school-educational center associated with the Parent Child-Involvement Program.

Family Reunion

Rapid City Journal

Mrs. Mona Brown is enjoying having her son, Louis, home after being separated from him and her other children since they were taken by the Nebraska state welfare department thirteen years ago. AAIA staff attorney Bertram E. Hirsch reunited the Oglala Sioux family in Rapid City, South Dakota. Louis was given special leave from his U. S. Marine Corps station at Camp LeJeune, North Carolina. Previously, Mrs. Brown had been reunited with her older daughter, Virginia. The Association recently located Mrs. Brown's younger daughter, living in California.

Book Review

Editor's note: The ideas expressed in the book that is reviewed below have stirred considerable controversy. We are printing this review because it is representative of the concerns expressed by Indian people familiar with the needs of Indian families and children.

Beyond the Best Interests of the Child, by Joseph Goldstein, Anna Freud, and Albert J. Solnit. New York: Macmillan. 1973. Reviewed by Barry Reiman, MSW

This concise, clearly written, tightly reasoned little book spells out—in a most seductive manner—a rationale for courts and child-welfare agencies responsible for child-placement decisions. Its authors are critical of the kind of decision-making presently taking place in the U. S. court system: "While they [decision makers in law] make the interests of a child paramount over all other claims when his physical well-being is in jeopardy, they subordinate, often intentionally, his psychological well-being to, for example, an adult's right to his biological tie." (Page 4.)

In the initial chapters, the authors use psychoanalytic theory to develop "generally applicable guidelines" for child placement with resultant implications as they see them for "legislative and executive decisions" related to child placements.

Before proceeding to outline, briefly, the authors' principles and guidelines, I want to state that I regard this book as having dangerous and destructive implications for many children and natural—or, as the authors would say, "biological"—parents. I say this notwithstanding the fact that the authors make many sound observations and valid statements as to the emotional needs of children and the conditions necessary for those needs to be adequately met. In a sense, it is the apparent reasonableness of their presentation and the validity of many of their statements, as well as the authors' stature and reputation, that contribute to my concern about how this book will be used by child-welfare bureaucrats throughout North America to justify destructive and oppressive activities with low income families. This book has received some prestigious endorsements; for example:

—"If the basic philosophy of *Beyond the Best Interests of the Child* were put into practice, thousands of children would be saved from needless emotional scars."—Joseph H. Reid, executive director, The Child Welfare League of America.

—"If the National Council of Adoptive Parents' Organizations had the funds, we would send this book to every social worker, agency executive, and judge in the United States."—Jacqueline Wolf, president.

—"The lives of untold children are destroyed because . . . biological and legal parenthood takes precedence over that psychological parenthood which alone promotes the child's emotional health . . ."—Bruno Bettelheim.

These endorsements do not allay my anxiety.

My criticisms will follow an outline of the authors' principles and guidelines.

THE PRINCIPLES

The authors identify from psychoanalytic theory the basic need of a child for "unbroken continuity of affectionate and stimulating relationships with an adult" (P. 6) and identify the crucial problem as being: "How can the law assure for each child a chance to be a member of a family where he feels wanted and where he will have the opportunity, on a continuing basis, not only to receive and return affection, but also to express anger and learn to manage his aggression?" (Pp. 5-6.) They conclude, therefore, that any decisions perpetuating long-term uncertainty, erratic changes or discontinuity are bad decisions. The authors identify their two basic value premises as: (1) the needs of the child are paramount, and (2) a preference for privacy. With regard to the latter, they stress a preference for a minimum of state intervention *except* in cases of neglect and abandonment when it is in society's "best interests" to "break the cycle of grossly inadequate parent-child relationships." (P. 7.) This preoccupation of the authors prevails throughout the book.

SOME DEFINITIONS

The authors preface their guidelines with some crucial definitions of parent-child relationships.

(a) *Biological parent-child relationships.* They talk of the important psychological meaning *for parents* of the biological relationship as "confirmation of their respective sexual identities, their potency and intactness" and "the inclusion of the newborn and the infant in the parents' self-love." (Pp. 16-17.) They question "the invariable, instinctively based positive tie to the child" by biological parents as "belied by . . . cases of infanticide, infant-battering, child neglect, abuse and abandonment." (P. 17.) This strikingly pathological view of the child's natural parents effectively destroys our "illusions" about attaching special significance to those relationships and sets the tone for the remainder of the book.

(b) *Psychological parent-child relationships.* These relationships are seen as the most important for the child and result only from "day-to-day attention to his needs for physical care, nourishment, comfort, affection and stimulation" leading him to feel valued and "wanted" if the adult is "personally and emotionally involved." The authors describe the "wanted child" also needing someone to love as well as be loved if he is to develop healthy self-esteem. They comment that an absent biological parent remains, in fact, a "stranger." They also talk of the inadequacy of even "good" institutions in providing "psychological parents."

The authors also describe the (c) *adoptive parent-child* and (d) the *foster parent-child relationships.* When describing the former, they accurately identify some of the risks with older child adoptions and discuss, briefly, the feelings of adoptive parents and the need of adolescents to know their origins. Describing the latter, they accurately identify the weaknesses in these relationships as related to their frequently temporary nature and the state's right to remove the child from the foster home at any time.

THE GUIDELINES

1. Placement decisions should safeguard the child's need for continuity of relationships. The authors go on to outline the implications of this guideline for adoptions, custody and divorce procedures and temporary placements and make a number of seemingly sensible suggestions; e.g., subsidized adoptions as opposed to institutionalization or long-term foster care, custody decrees not subject to modification.

2. Placement decisions should reflect the child's, not the adult's, sense of time. Here the authors emphasize the need for speedy decisions, especially for young children. While their recommendations for early decisions on adoptions and custody actions appear to make sense in some instances, their statements on the subject of "abandonment and neglect" situations could be used by child-welfare agencies to justify serious

violations on natural families. "Applications of the child's sense of time guideline would require a shift of focus to the individual child's tolerance of absence and sense of abandonment and away from the adult's intent to abandon or an agency's failure to encourage a relationship." (P. 48.)

3. Placement decisions must take into account the law's incapacity to supervise inter-personal relationships and the limits of knowledge to make long-range predictions. The authors state: "It [the law] may be able to destroy relationships but it does not have the power to compel them to develop." (P. 50.) "It can, in fact, do little more than give them recognition and provide an opportunity for them to develop." (P. 49.) It is interesting that the authors can refer to the law's capacity to destroy relationships in such a casual, just-in-passing manner.

The authors go on to define the best placement decision as one that provides "the least detrimental alternative"; that is, "that specific placement and procedure for placement which maximizes, in accord with the child's sense of time and on the basis of short-term predictions given the limitation of knowledge, his or her opportunity for being wanted and for maintaining on a continuous basis a relationship with at least one adult who is or will become his psychological parent." (P. 53.)

The authors also state that children in contested placements should have full party status and the right to be represented by counsel. They then go on to develop some specific case examples with hypothetical new decisions being made, based on their guidelines.

In the final chapter, the authors attempt to justify their position by answering the question: "Why should the child's interests be paramount?" They talk about adults' "irrational reservations" concerning the primacy of children's needs. They talk about "adults' positive affectionate feelings if not sufficiently tempered" as imposing "an undue burden on the child." They also talk about "negative attitudes" as adult reactions to "the demands, competitive tendencies and regressive influences of the child." They talk about how "most basically these destructive attitudes express the parents' expectant sense that they will be replaced by the child. Adults universally experience children as representatives of their mortality." By painting such a pathological picture of parents, it becomes possible to dismiss their rights and feelings as insignificant. The authors imply that this must be done if the child's interests are to be "paramount." I do not believe that the child's interests and those of his parents, especially natural or "biological" parents, can be separated in this arbitrary manner. Indeed, it is a highly unrealistic and unjust position that the authors are taking here.

MY CRITICISMS

All of my criticisms relate to the basic belief that we cannot talk about the rights of parents and the rights of children as though they were unrelated. We can, however, talk about the rights of families, particularly natural families, or the relationships of children to their "biological" parents, to each other and to their extended family. All of our attitudes, our social services, our courts and other institutions should be geared to supporting, maintaining and enhancing the natural family. Attitudes, services and decisions that are in support of the natural family will be in the interests of both children and their parents; those that are not will be detrimental to the interests of both children and parents. In our work with children and adolescents in the residential treatment center over the past twenty years, we have always been struck by the extreme importance of children knowing and coming to terms with their natural roots and their origins if they are to grow emotionally to their fullest capacity and to feel complete as human beings. We have found this to be true even in cases where children have been separated from their natural parents for their entire lives in adoptive families, foster homes or institutions. My criticisms of the authors' position, as put forward in this book, come under two major headings.

1. They fail to recognize the extreme importance to a child of his biological roots and his relationship to his natural family and the corresponding relatedness of his parents and other family members to him. There is a strong tendency on the part of the authors to view parents' feelings and attitudes, especially those of natural parents, from a pathological point of view. This orientation allows them to consider the importance of natural origins (the "biological parent") as insignificant, and to raise to a pedestal their psychoanalytical based concept of the "psychological parent." By implication, racial and cultural origins also have little significance in the face of the "psychological parent." Black people, Native people and other racial minorities might rightfully smell a racial rat in these proposals. These groups are always disproportionately represented in the statistics of cases of so-called "neglect, abuse and abandonment."

2. They fail to recognize what should be the state's prime obligation, which is to help support the natural family, through the provision of the high-quality services badly needed by so many families in our society. In fact, the authors implicitly encourage the state's already strong tendency to opt out of its responsibility to provide adequate supportive services to families be they proper housing, jobs, adequate income support or other relevant human services. That families have been victimized is not a major factor in the authors' eyes. Only the supposed "interests of the child" and finding "the least detrimental alternative" carry weight in their view. Two more of their statements are worth looking at:

"Only in the implementation of this policy does there lie a real opportunity for beginning to break the cycle of sickness and hardship bequeathed from one generation to the next by adults who as children were denied the least detrimental alternative." (P. 111.)

"Whatever the court decides, inevitably there will be hardship. It may be the biological parents, already victimized by poverty, poor education, ill health, prejudice, their own ambivalence, or other circumstances, who are denied their child." (P. 108.)

The first statement effectively eliminates the natural family, especially the poor family, from being considered as the "least detrimental alternative," while making the middle-class adopting family appear to be the most desirable placement. The second statement is a fancy way of saying that "the poor will always be with us" and licenses further victimization of poor families.

These proposals, if adopted, will undoubtedly further increase the tendency of state child-welfare agencies to abuse and violate poor and troubled families with an increased emphasis on severing children's relationships with these families and even less concern with providing services which can help people fulfill their parenting functions and enable natural families to remain together to the benefit of both parents and child.

Reprinted from *Involvement: The Family Resource Magazine* (41 Madison Ave., Toronto, Ontario, Canada).

Alcohol and Race

New biological research may finally lay the old stereotype of the "drunken Indian" to rest. To investigate alleged racial differences in alcohol tolerance, two doctors at the Phoenix Clinical Research Section of the National Institute of Arthritis, Metabolism and Digestive Diseases measured the rate of ethanol metabolism in thirty American Indians and thirty whites. The mean rates of alcohol metabolism were virtually identical in the two groups.

"Both racial groups demonstrated a great deal of variation among individuals in their rates of alcohol metabolism," the doctors reported in the *New England Journal of Medicine* of January 1, 1976. "There was no significant difference between Indians and whites in the variation among individuals in the rate of blood alcohol disappearance, the variation in rate of alcohol metabolized per person, or the variation in rate of alcohol metabolized per unit of body weight. . . .

"Since our study showed no significant difference between American Indians and whites in rates of alcohol metabolism, the conclusion cannot be drawn that racial variations in proclivity to alcohol abuse can be accounted for by racial variations in alcohol metabolic rates."

The stereotype of the "drunken Indian" has been deeply embedded in the American social fabric for generations. Government, religious, and private programs, and ordinary citizens, have sometimes been unable to view Indian life except through the distorting prism of this stereotype.

The stereotype has highly destructive effects on Indian communities. Many non-Indians, inclined to accept the "drunken Indian" stereotype, interpret any Indian alcohol use as pathological; and it is common for welfare workers to take Indian children from their parents because they misjudge the parents' use of alcohol. Although scientific research has undermined the old simplistic stereotypes (see *Indian Family Defense* No. 4), there is still a widespread lingering notion that some inherent racial trait makes alcohol affect Indian people in a specific and unusual manner.

Australia: Letter to the Editor

Editor's note: In judging the fitness of a particular family, many social workers, ignorant of Indian cultural values and social norms, make decisions that are wholly inappropriate in the context of Indian family life and so they frequently discover child-desertion, neglect, or abandonment, where none exists. Problems arising from cross-cultural conflict often continue to haunt parents and children after an Indian child has been placed with a non-Indian family. The following letter, received from an Aboriginal woman in Australia, describes a situation remarkably similar to that facing American Indian families, and offers further indirect evidence that it is the conflict of cultures, and not pathology in the Indian community, that must be overcome if Indian families are to be able to raise their children in an atmosphere free from unwarranted governmental interference and coercion.

Dear Sir,

I am writing to you after having received a copy of your newsletter which outlined the experience of five Indian families who had been reunited.

In Australia a similar situation exists and during the past four-five years the Aboriginal community have been trying to reunite families but the difficulty is that many of our children have become "lost" to us after being placed in institutions. It has generally been assumed that the Aboriginal parents are not capable of caring adequately for their little ones so the children have been fostered out to white families, and in some cases even adopted without the consent of their mothers. There is a 90 per cent breakdown in these placements and the kids are returned to the care of the Social Welfare Department and placed again in an institution. This even occurs in cases where the kids have been legally adopted by white people. It is usually at this stage that the Social Welfare Department gets in touch with our Aboriginal organisations and brings to their attention that they have a child returned who has had no contact with Aboriginal people during his period in foster care.

When we are notified by the Social Welfare about these kids, we have been, without exception, able to reunite them with their families. However in many cases this has created even more problems for the kids who are unable to relate to their Aboriginal families after having been reared as "white" children. Most of them do not know that they are part of a large family and are confused when they meet their own brothers and sisters.

I now find that the greater part of my time is spent endeavoring to discover answers for the problems of the Aboriginal child in non-Aboriginal foster care who develops an identity crisis (usually between the ages of eleven and fourteen years) and is returned to the institutional care provided by Victoria's Social Welfare Department.

We believe that part of the answer is for the Aboriginal community to ensure that our children do not go into non-Aboriginal foster care in the first instance. However it is not always possible to prevent this. Young Aboriginal mothers living in hopelessness and poverty often give their children to white families in the belief that when they themselves are in a better position, the children will be given back. Experience indicates that the children are seldom reunited at an early age with their natural mother; they grow into teenagers who often cannot relate to either the Aboriginal community or the non-Aboriginal community. They are bitter, resentful of their Aboriginality and in striking out at the society they believe responsible for their misfortunes, they find themselves constantly before Magistrates and Judges and eventually in prison.

Although for twenty-five years I was active in the role of foster mother, it never occurred to me that this problem was existant—probably because the foster children in my care were in constant contact with their families and Aboriginal people. However about five years ago I found out that the oldest brother of one of my foster sons was in an institution after having been returned from white foster care. I made contact with the child who was eleven at the time and although he appeared quiet and withdrawn, I assumed that he was shy and a little overwhelmed at meeting his very own brother he never knew existed. I took the older boy home with me on every second week-end and requested permission to have him permanently home-released into my custody. I was informed that the boy had been returned to the institution because he was troublesome and sadistic. I persisted with my request to

have him home released and was given permission to have him for the six-week Christmas holiday period. It was during this period that I really found out that this lad had a major problem. He resented his little brother and was very cruel to him; he hated any mention of the fact that he was an Aboriginal; he hated any mention of his family, his foster family and constantly lashed out at us for no apparent reason, criticising any little thing we bought for him and always saying he didn't want "that," he wanted "this." For a few weeks I was patient but was glad when it was time for him to return to the institution after the holidays. I realized that the boy did have a problem and that it was not one I could help with at that stage. However I did keep regularly in touch and still brought him home during weekends.

During the following two years the Social Welfare Department asked that I take other children who had been returned from foster care on the same basis. It was during this time that I realized that all these children had a similar attitude towards society. It was then that I started looking for the cause which could only be that they had been denied all contact with Aboriginal people during their time in foster care. They only knew about their Aboriginality from history books and have told me of their different feelings in class when reading phrases such as "cowardly blacks," etc. One lad said that during a history lesson he deliberately tipped up the inkwell on his book and was ridiculed before the class as another example of the "cowardly black" who could not face up to reality. Another little girl (thirteen-years-old) told me that she hated being black—her mother (she had been legally adopted) had told her that she "had to live her colour down." Another girl said her foster mother kept a scrap book about all the terrible things that Aboriginal people do and would cut out extracts from the press and paste them in the book. She would have to read this book of cuttings at least once a month to make sure she realized "how lucky she was to have been given a chance to live in a white family and be saved."

Going back to the story about the brother of my foster son—after nearly five years he is showing signs of settling down. He has accepted his Aboriginality, has made contact with his own mother but could not relate to her so fled "home to us," and except for an occasional fit of the blues, is developing into a normal young man.

During the last two years the Social Welfare Department have partly recognized the fact that Aboriginal children should not be placed in white foster care and cut off from all contact with their own Aboriginal people, but this is still in the "talking" stage and nothing has been done to put an end to white fostering.

Mollie G. Dyer
Victorian Aboriginal Legal Service
Fitzroy, Australia

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OMAHAS, continued from page 1

U. S. Bureau of Indian Affairs. The second year the Nebraska Department of Welfare Region IV assumed the program and expanded it to include four workers and a part-time secretary. Today the all-Omaha staff includes six workers, and hopes to expand further.

The welfare administrators recognized the program's importance as a liason for getting to other members of the Tribe who were not in the program. But even more significant, it had become clear that through such close support by a social aide there could be positive gain in combatting social deterioration. Communication difficulties between young and old began to be addressed. Families who had been hundreds of dollars in debt, just in grocery bills alone, were now able to pay their bills each month. The relationship between excessive drinking and family breakdown was constantly exposed. Incentives were given to stop drinking; for example, anyone in the program who was drinking could not receive any help from a social aide until sober.

Of course the Family Enrichment Program has not achieved total success with every family that has been affiliated with its services. Not all families have reached a state in which they are able "to solve their own daily problems." Still, some can now balance a checkbook, comprehend the food stamp arrangement, deal with their youngsters' school problems, and take part in community activities. Soup sales and a sewing club have grown out of the program. Currently twenty-eight families receive this special attention, reaching out to well over one hundred people. It is a program that has little staff turnover. Indian people helping one another has served as the guiding force.

This year, for the first time, a children's group home has been added to the program. The group home accepts referrals from the Omaha Tribal Court and from the state courts, and is meant to serve as a transition for children back to their families.

The whole program seems to have survived the early obstacles of growing pains and looks forward to further expansion. Relations with the Department of Welfare have been excellent. Contractual negotiations are resolved in a cooperative spirit. Specific guidelines have been worked out for dealing with each family. If anyone is interested in knowing more about the program please contact Macy Industries, Macy, Nebraska 68039. We are most proud of this program and wish to show it to others.

The Association on American Indian Affairs is a private non-profit, national citizens' organization supported by its members and contributors. It assists Indian and Alaska Native communities in their efforts to achieve full economic, social and civil equality.

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INDIAN FAMILY DEFENSE

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Historic School Victory

In one of the most important court settlements affecting the education of Native American children, the state of Alaska has agreed to provide local community high schools in 126 Native villages in rural Alaska.

In a consent decree dated September 13, 1976, the State agreed to spend at least $20 million from a $59 million school bond issue, approved by Alaska voters this November, to build schools or otherwise provide facilities for Native high school students living in 126 remote villages. (Some $2.5 million from a bond issue proposed for 1978, if approved, will also be dedicated to Native high school construction.)

The decree states: "Every child of school age has the right to a public education in the local community in which he resides. Neither the department [of education] nor a [school] district may require a child to live away from the local community in which he resides to obtain an education."

The suit, *Tobeluk* v. *Lind* (originally *Hootch* v. *Alaska State Operated School System*), was a class action brought by Alaska Native children (Eskimo, Indian, and Aleut) of secondary school age against the State Commissioner of Education and members of the State Board of Education. The decree was issued by the Superior Court of the state of Alaska, Third Judicial District.

Even while the suit was pending, as a direct result of the litigation the state of Alaska started a crash program to put high schools in Native villages. Most of the 47 rural high schools started this year are in Native villages.

Under the decree, local secondary schools, or partial schools, are to be established in suitable public facilities as soon as practicable. The decree provides funds for renovation to render a facility temporarily suitable where possible, and major renovations or new construction will be undertaken where no suitable public facilities exist. Prior to construction or renovation, residents of each community will be able to present their ideas on the design of the facility for their community, and their ideas are to be incorporated in the design when possible. Designs are to provide for multiple use of facilities for community purposes.

The program of instruction offered in the schools is to comply with all the statutes, regulations and requirements applicable to the operation of public schools in the State.

In the past, Alaska Natives who wanted to continue study into high school had to attend Bureau of Indian Affairs boarding schools (some as far away as Oregon or Oklahoma), enroll in unsupervised correspondence courses, or board with a family in one of Alaska's larger cities. While almost all of the predominantly non-Native villages provide secondary schooling, only 20 per cent of Native children living in rural areas are served by community high schools.

In the decree's "Statement of Agreed Facts," the Alaska

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President-Elect Carter on Indian Child Welfare

Before the national election, Governor Jimmy Carter and President Gerald R. Ford prepared statements on Indian policy especially for *Indian Affairs,* the newsletter of the Association on American Indian Affairs. One of the questions asked of the candidates by the Association was whether their administration would recommend legislation and adopt administrative reforms to protect and strengthen American Indian family life. This was President-elect Carter's reply:

"Indian families and children, like all American families deserve to be protected and supported by government rather than ignored or destroyed. The rights of Indian families to raise their children as they wish have not always been respected by government. Today up to 25 per cent of all Indian children are raised in foster homes or adoptive institutions. Some of these placements are unwarranted, and many could be prevented if proper social services as well as sufficient educational, economic and housing resources were available to Indians. If I am elected President, I intend to insure that Indian families are assisted and bolstered by government policies."

Landmark Washington Ruling

The Washington State Supreme Court on November 4, 1976, ruled that Washington courts have no jurisdiction to determine the custody of a Blackfeet child placed in temporary foster care in Seattle by the Blackfeet Tribal Court, *Duckhead* v. *Anderson, et al.* No. 44120. The Court rejected the argument that Public Law 83-280 and Washington legislation based on that Act applied to matters arising on reservations outside a state's boundary. It also rejected the argument that the child's presence in Washington gave Washington courts jurisdiction.

The Court noted that Indian sovereignty remains the backdrop against which to read applicable treaties and statutes and that Congress has consistently acted upon the assumption that states have no power to regulate affairs of Indians on reservations without its expressed authorization. Relying on *Fisher* v. *District Court,* 44 U.S.L.W. 3490 (U.S. March 1, 1976) (per curum), the Court said that the child's presence in Washington was "of marginal relevance." In determining whether the child had gone beyond reservation boundaries and thereby become subject to State jurisdiction under the general rule stated in *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973), the Court looked to the child's domicile. It ruled that by becoming a ward of the Tribal Court, the child had become domiciled on the reservation and that the evidence did not support a conclusion that this domicile was intended

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to be changed by the Washington placement. The Court therefore concluded that the child had not gone beyond the reservation for jurisdiction purposes.

The child, an enrolled member of the Blackfeet Tribe whose reservation is located in Montana, had been taken into temporary protective custody by the Blackfeet Tribal Court on September 6, 1973. On March 20, 1974, the Tribal Court placed the child with Robert Anderson, a Blackfeet, and his Shoshone-Bannock wife, Theda, for one year. The couple lived in Seattle, Washington. The placement order provided that the mother, Patricia Duckhead, could petition for custody after six months. The mother, a Blackfeet member who had lived all her life on or near the reservation, did petition the Tribal Court. In December 1974, the Tribal Court found her fit and that it was in the best interests of the child to order his return to her. The Andersons refused to comply with the order and petitioned for adoption in a Washington State superior court.

The adoption was dismissed on full faith and credit grounds. When the mother sought a writ of habeas corpus in the same superior court, another judge ruled that the December 1974 order was not entitled to full faith and credit and that an independent determination of custody should be made by a Washington court.

Appeals and cross-appeals followed. The Andersons contended that the December 1974 order was not entitled to full faith and credit because they had been given no notice of the proceeding and had had no opportunity to participate in the hearing. The mother contended that the Tribal Court's jurisdiction was exclusive. The Supreme Court noted that State jurisdiction might be permissible where non-Indians were involved and where there was no interference with the right of tribal self-government. The Supreme Court said, however, that since the case involved Indians only, *at least* the self-government test must be met. In holding that the Blackfeet Tribal Court, acting according to its tribal laws and customs, had exclusive jurisdiction to determine whether the mother was to retain custody of her child, the Washington State Supreme Court concurred with the Maryland Court of Appeals in *Wakefield* v. *Little Light*, 347 A. 2d 228, 237 (1975), that:

> there can be no greater threat to 'essential tribal relations,' and no greater infringement on the right of the . . . [t] tribe to govern themselves than to interfere with the tribal control over the custody of their children . . .

The Supreme Court opinion ruled that, even if Washington courts had jurisdiction, they would be prohibited from exercising it by the "clean hands doctrine." The Court made no reference to the due process issues raised regarding the second Tribal Court order, but ruled that the March 20, 1974 order was entitled to full faith and credit. The Court said that by retaining the child in Washington for longer than the one-year placement period, the Andersons were violating another jurisdiction's valid order and that, therefore, their action could not be condoned.

Attorneys in the case were: Allen Sanders of Legal Services Center, Seattle, and Joan Anderson for the mother, Patricia Duckhead; Sidney J. Strong for the Andersons; Michael Taylor on behalf of the Blackfeet Tribe, amicus curiae; and Bruce Thompson and Daniel A. Raas on behalf of the Quinault Indian Nation, amicus curiae. Sandra K. Watts, reservation attorney for the Blackfeet Tribe, prepared the amicus brief for the Blackfeet.

Nevada Indian Foster Care Standards

When the Nevada Inter-Tribal Council assumed responsibility for the provision of Indian child-welfare services in western Nevada under a contract with the U. S. Bureau of Indian Affairs (BIA) in 1975, the Inter-Tribal Council also revised the standards and procedures for licensing Indian foster homes. Under the old standards, the Nevada State Welfare Department (which had previously contracted with the BIA) usually placed Indian foster children with non-Indian families. Using new standards the Nevada Inter-Tribal Council is able to place Indian children in need of foster care with Indian families.

In the past, prospective Indian foster parents who were known by the community to be good and loving caregivers might be denied a foster care license if the size of their house, the number of people in the family, or their financial resources were deemed unsuitable based on off-reservation criteria. The old criteria, in effect, disqualified capable Indian families, and many even hesitated to apply to become foster parents.

The key to the success of the new regulations is that they recognize reservation standards as the adequate and proper criteria for licensing Indian foster families.

The primary emphasis of the Nevada Inter-Tribal Social Services Program is to work with parents and children to keep families intact, using removal of a child only as a last resort. But in the event that foster care is necessary, now there are Indian families willing, able—and licensed—to provide the care.

The new foster home standards and procedures are printed below.

Foster Home Standards and Procedures

Every child has a right to live within the love and security of a family and to enjoy all the rights and protection guaranteed in the constitution including the right to nutrition, medicine, culture, education, shelter, guidance and freedom from fear and abuse.

For some children it will not be possible to enjoy these rights within the natural family setting or in the home of relatives because of death of parents, abandonment, neglect, abuse or illness of parents. To protect the rights of these children it is necessary for a community to provide a foster family situation.

As a representative agency of the Indian communities of Nevada it is the responsibility of the Inter-Tribal Council of Nevada Social Services Program to act as an instrument of the several tribal courts to insure that when it is necessary that a child be placed in a foster home on trust land that the child will receive a certain degree of protection and care.

To accomplish this end the following standards are established for the selection and supervision of foster homes within the jurisdictional area of the Inter-Tribal Council of Nevada Social Services Program.

Application. Any person who feels competent to be a foster parent may apply to the Inter-Tribal Council Social Services Program for certification. Applications will be accepted from single or married persons who have a stable and permanent home. The application will request the following information.

(a) Name of applicant.

(b) Name of spouse.

(c) Address and telephone.

(d) The names of at least five persons of whom no more than three are related by blood or marriage.

(e) The names, sex, age and relationship of all persons living in the household.

(f) The occupation and monthly salary of applicant and all members over eighteen.

(g) A statement concerning the use of drugs or alcohol by applicant.

(h) A statement concerning the number, sex and age of children desired.

(i) A statement asking if applicant is interested in caring for children with learning, physical or emotional problems.

(j) A statement requesting a brief statement concerning the applicant's reasons for wanting to be a foster parent.

(k) A statement affirming the truth of all information provided to the Inter-Tribal Council of Nevada Social Services Program.

Evaluation of application and home study. (1) A social worker will review the written application prior to a home visit.

(2) Home visits will be scheduled with all members of the household to obtain the following information.

(a) The physical characteristics of the home.

(b) The feelings of each member of the household to the introduction of a new unrelated member.

(c) The capacity of the applicant(s) to provide love, care and protection to an unrelated child.

(d) To determine if there is potential danger by hazard or neglect to a child in this home.

(e) To determine the stamina of the applicant to care for the requested number of children.

(f) To determine the maturity and soundness of judgment of the applicant.

(g) To enable the social worker to make a recommendation concerning approval/disapproval and the number and ages of children which could be placed with applicant.

Types of license or certification. (1) Regular—issued to a foster home which conforms to maximum standards and renewable yearly.

(2) Specific child—issued to a foster home which meets the minimum standards and which offers advantages to a specific child, and renewable yearly.

(3) Certification for temporary care—issued to a foster home which meets minimum standards. Placement in such a foster home may not exceed 90 days.

(4) Emergency certification—issued to a foster home for which a complete evaluation has not been completed. Placement in such a home may not exceed 14 days.

Reason for denial. A foster home license will be denied for failure to meet the minimum standards.

Continuing Evaluation of Foster Home

A social worker may visit the foster home at any time to determine compliance with standards. A minimum of two visits a year will be made for this purpose. A foster home which does not maintain compliance may have its license revoked immediately or may be placed on a 20-day probationary period after which the license will be revoked or reinstated. A written statement will be sent to the foster home informing them of reasons for probation or termination of foster home license or certification.

Specific standards (foster parents). A foster home license or certificate will not be restricted solely to married couples. In some cases a single parent foster home may not be appropriate and will not be used, however licensing will not be affected by marital status.

(2) Foster parents shall be responsible, mature individuals who are felt by the community to be of good character. Foster parents must be at least twenty-one years old. No restriction is placed on upper age level but an older foster parent must have the physical and emotional stamina to deal

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Indiana Victory

Marcia Marie Summers will have her first birthday on Christmas Day of this year, and it will be a happy one because now she is back home with her mother, Charlene, on the Standing Rock Sioux Reservation in Cannonball, North Dakota. A couple in search of a child to adopt had removed Marcia to Indiana and kept her there against the wishes of her mother and the Standing Rock Sioux Tribe. A four-month legal battle culminated on July 22, 1976 when the Circuit Court of Washington County, Indiana ordered Marcia returned to her mother.

Marcia and her mother's ordeal began in March 1976 when the Indiana couple (which only two months before had been denied a child to adopt by the Standing Rock Sioux Tribal Court) approached Ms. Summers and offered to care for three-month old Marcia while Ms. Summers attended school. At the couple's behest, she signed a paper granting the couple power of attorney over her daughter Marcia in actions involving parent-child relationships. Straightaway the document was signed, the couple left the reservation and took Marcia with them to Indiana.

As soon as Ms. Summers realized the couple's intentions, she revoked the power of attorney and appealed to the Standing Rock Sioux Tribal Court, which ordered the Indiana couple to return Marcia to her mother on the reservation. When the couple ignored the Tribal Court order, Ms. Summers, on the basis of the order, petitioned to obtain a writ of habeas corpus in the Indiana Circuit Court. On July 22, 1976 Ms. Summers appeared for a hearing in the Indiana Circuit Court, accompanied by her mother; Frank Brave Bull, a member of the Standing Rock Sioux Tribal Council; Marilyn Kary, Associate Judge of the Standing Rock Tribal Court; Joan Standing Bear, Tribal Court Probation Officer; and Tony Jones, a U.S. Bureau of Indian Affairs social worker on the Standing Rock Reservation. The Association on American Indian Affairs (AAIA) represented Ms. Summers.

The Judge of the Circuit Court promptly ordered the couple to return Marcia to her mother, stating that the Standing Sioux Tribal Court had "exclusive jurisdiction to determine the custody and welfare of Indian children domiciled on its reservation."

To the knowledge of the AAIA, this is the first successful application of the principles established in *Wakefield v. Littlelight* (see *Indian Family Defense* No. 5) that a child domiciled on a reservation is subject to the jurisdiction of the tribal court and that the tribal court's jurisdiction continues even after the child is removed from the reservation and from the state where the reservation is located.

with the guidance, care and protection of children. The foster parents must be willing and able to establish meaningful relationships with other persons.

(3) The income available to a foster home prior to the placement of a child must be sufficient to support the foster family at reservation standards.

(4) For pre-school foster children one foster parent will be uncommitted to employment or other full-time outside activity. For school-age children there will be a baby-sitter available for care of children during the time that the foster parent is away.

(5) Foster parents will be required to submit a medical examination form to the ITC Social Services Program. This requirement can be waived by the child-welfare specialist.

(6) A request will be made to the Bureau of Indian Affairs Law and Order Branch asking to report arrest history or other information which might cast doubt as to suitability.

Specific standards (facility). (1) A house of the foster parents shall be of a standard accepted on the reservation as adequate. The social worker may judge certain aspects of the home to be hazardous to children and request correction.

(2) Toxic materials and firearms shall be kept in a place restricted by lock or location from children.

(3) Sleeping and dining facilities will conform to reservation standards and custom. The foster parent shall insure that there is appropriate privacy and conduct.

Number of children in care. The number of children to be placed in a foster home will be determined by the ability of the foster parent(s) to provide appropriate care; by the size of the home in light of Indian lifestlye and custom, and in no case shall there be more than four children (foster and natural) in a single-parent foster home and six children in a two-parent foster home. Ages and special needs of children may further limit these standards.

Clothing allowances. A six-months clothing payment may be made upon placement if circumstances warrant. Thereafter necessary payment will be made quarterly. It shall be the responsibility of the foster parent to insure that the child has appropriate clothing and provide receipts to the Inter-Tribal Council Social Services Program on request.

Discipline. (1) Child training and discipline shall be handled with kindness and understanding.

(2) No child in care shall be subjected to verbal abuse, derogatory remarks about himself, his natural parents or relatives, or to threats to expel the child from the foster home.

(3) No child in care shall be deprived of meals, mail or family visits as a method of discipline.

(4) When discipline or punishment must be administered, it shall be done with understanding and reason. The method of punishment will be that which is accepted by Indian people in the community.

Northern Cheyenne Win in Supreme Court

In a per curiam opinion, the United States Supreme Court has affirmed the exclusive jurisdiction of the Northern Cheyenne Tribal Court over adoption proceedings in which all parties are members of the Tribe and residents of the reservation in Montana. The opinion in the case of *Fisher v. The District Court of the Sixteenth Judicial District of Montana* (decided March 1, 1976) reversed a decision of the Supreme Court of Montana, which had asserted that Montana state courts possessed jurisdiction over Northern Cheyenne adoption proceedings.

The U. S. Supreme Court held unanimously that the right of the Northern Cheyenne Tribe to govern itself independently of state law had been consistently protected by federal statute and that state court jurisdiction would interfere with the powers of self-government conferred on the Tribe.

The decision said, in part:

"State court jurisdiction plainly would interfere with the powers of self-government conferred upon the Northern Cheyenne Tribe and exercised through the Tribal Court. It would subject a dispute arising on the reservation among reservation Indians to a forum other than the one they have established for themselves. . . . It would create a substantial risk of conflicting adjudications affecting the custody of the child and would cause a corresponding decline in the authority of the Tribal Court.

"No federal statute sanctions this interference with tribal self-government. . . .

"Since the adoption proceeding is appropriately characterized as litigation arising on the Indian reservation, the jurisdiction of the tribal court is exclusive."

Study for Congress

The rates at which Indian children are being removed from their families to be placed in adoptive care, foster care, special institutions, and federal boarding schools continue to be far disproportionate to their percentage of the population.

This disparity in placement rates for Indian and non-Indian children is shocking and cries out for sweeping reform at all levels of government.

These were the main conclusions of an Indian child-welfare statistical survey done by the Association on American Indian Affairs (AAIA) in nineteen states with significant Indian populations. The survey, completed in July 1976, expands and updates similar surveys done by the AAIA in 1969 and 1974.

The new study was made for the American Indian Policy Review Commission, a recently formed agency of Congress.

The states included in the survey were: Alaska, Arizona, California, Idaho, Maine, Michigan, Minnesota, Montana, Nevada, New Mexico, New York, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

Some characteristic findings of the survey were: In Maine, Indian children are today placed in foster care at a per capita rate 19 times greater than that for non-Indian children. In Minnesota, an Indian child is 17 times more likely than a non-Indian child to be placed in foster care. In South Dakota the per capita foster-care rate for Indians is 22 times the rate for non-Indians.

Most of the Indian children in foster care are placed with non-Indian families. In Maine, for example, 64 per cent of Indian foster children are living with non-Indian families. In New York approximately 97 per cent of Indian foster children are in non-Indian families; and in Utah 88 per cent of the Indian foster care placements are with non-Indian families.

Indian children are also placed in adoptive homes at a rate far disproportionate to that for non-Indian children. In California Indian children were adopted in 1975 at a per capita rate 8 times that for non-Indian children, and 93 per cent of such adoptions were made by non-Indian parents. In Montana Indian children are adopted at a per capita rate almost 5 times that for non-Indians, and 87 per cent of such adoptions were made by non-Indians.

In states such as Alaska, Arizona, and New Mexico, which have large numbers of Indian children in boarding schools or boarding home programs, the rates at which Indian children are separated from their families indicate an even greater disproportion to the non-Indian rate. In New Mexico, when adoptive care, foster care, and federal boarding school placements are added together, Indian children are being separated from their families today at a per capita rate 74 times that for non-Indian children.

The accompanying table is based on the AAIA survey, and indicates the ten states with the highest rates of placement of Indian children in foster care.

INDIAN FOSTER CARE

THE TEN WORST STATES BY RATE OF INDIAN PLACEMENTS

State	*Foster care placements per thousand Indian children*	*Foster care placements per thousand non-Indian children*	*Per capita rate of Indians in foster care compared to non-Indians*
Idaho	77.5	12.1	640%
Maine	75.8	4.0	1,910%
Minnesota	58.1	3.5	1,650%
Wisconsin	53.5	4.0	1,340%
South Dakota	45.5	2.0	2,240%
Utah	37.2	2.5	1,500%
North Dakota	36.1	1.8	2,010%
Oregon	36.1	4.4	820%
Montana	35.3	2.8	1,280%
Washington	35.0	3.6	960%

Sisseton-Wahpeton Group Home

The Human Services Board of the Sisseton-Wahpeton Sioux Tribe in South Dakota has established a tribally-run child-care center in the town of Waubay in the Enemy Swim District of the Reservation. The child-care center, which is in a five bedroom low-rent house operated by a Sisseton-Wahpeton Sioux housemother and housefather, has gone a long way towards helping the Tribe provide for the welfare of its children and has helped renew the self-confidence of tribal families.

In the child-care center's first year of operation, approximately twenty children, from eight months to eighteen years of age, were cared for. Virtually all of the children served have been able to return to their families as a result of the care they received in the center and as a result of the services offered by the Tribe to the children's families. In addition, two children (siblings) were placed in an Indian adoptive home, and one girl, eighteen years old, was placed in a tribally-run work program and is now living on her own.

Were it not for this program, it is almost certain that all of these children would have been placed far from the reservation in non-Indian foster or adoptive homes—thus lost to their families and their community.

The Human Services Board, using the home as a resource, has been very active in providing services to help tribal families overcome crises and stay intact. When child-welfare cases arise, members of the Human Services Board, ten grandmothers, go as a group to the local state court to express their concern about keeping the Indian children with their families if possible, and in tribal foster and adoptive homes if the children are unable to stay with their families. The Board accepts referrals from the tribal and state courts, the police, and the state welfare department.

The initiative for the project grew out of a house-to-house canvas of the reservation by two Sisseton-Wahpeton Sioux women seeking to discover how many families had had children placed away from home by the state welfare department. (The AAIA's child-welfare survey completed this year for the United States Congress indicates that in South Dakota Indian children are removed from their families to be placed in foster homes, usually non-Indian, at a per capita rate 22 times greater than that for non-Indians.)

In 1972 the Sisseton-Wahpeton Sioux Tribal Council passed a resolution expressing its grave concern about the removal of Indian children and stating its strong feeling "to make every stand possible to keep these children on the reservation."

Children's Bill of Rights

Ratified by the Tribal Council, Mississippi Band of Choctaw Indians, October 30, 1975:

Even more than for other children, society has a responsibility along with parents for the well-being of Choctaw children. Citizens are responsible for acting to insure their welfare.

Every Choctaw child is endowed with the rights inherently belonging to all children. In addition, because of the temporary or permanent separation from and loss of parents and other family members, the Choctaw child requires special safeguards, resources, and care.

EVERY CHOCTAW CHILD HAS THE INHERENT RIGHT:

Article the first . . . to be cherished by a family of his own, either his family helped by readily available services and supports to reassume his care, or as a last alternative an adoptive family or by plan, a continuing Choctaw family.

Article the second . . . to be nurtured by Choctaw foster parents who have been temporarily selected to meet his individual needs and who are provided services and supports, including specialized education, so that they can grow in their ability to enable the child to reach his potential.

Article the third . . . to receive sensitive, continuing help in understanding and accepting the reasons for his own family's inability to take care of him, and in developing confidence in his own self-worth.

Please turn page

Article the fourth . . . to receive continuing loving care and respect as a unique human being . . . a child growing in trust in himself and others.

Article the fifth . . . to grow up in freedom and dignity in a neighborhood of people who accept him with understanding, respect and friendship.

Article the sixth . . . to receive help in overcoming deprivation or whatever distortion to his emotional, physical, intellectual, social and spiritual growth may have resulted from his early experiences.

Article the seventh . . . to receive education, training and career guidance to prepare him for a useful and satisfying life and maximize the potential for which he is capable.

Article the eighth . . . to receive preparation for citizenship and parenthood through interaction with Choctaw parents and other adults who are consistent role models.

Article the ninth . . . to be represented by an attorney at law in administrative or judicial proceedings with access to fair hearings and court review of decisions, so that his best interests are safeguarded.

Article the tenth . . . to receive a high quality of child-welfare services, including involvement of the natural parents and his own involvement in major decisions that affect his life.

Reprinted from the *Choctaw Community News*. (See *Indian Family Defense* No. 4 for a report on an innovative Choctaw child-welfare program that aims to prevent the removal of children and preserve the Choctaw family structure.)

New AAIA Book

The Association on American Indian Affairs (AAIA) is publishing a book-length collection of essays concerning the Indian child-welfare crisis in the hope that such a volume will assist American Indian tribes and urban Indian communities in their developing efforts to protect and strengthen Indian family life, and also inform the general public of the profound and tragic dimensions of the destruction of Indian family life taking place throughout urban and reservation Indian communities in the United States.

Essays in the Association's child-welfare volume examine the Indian child-welfare crisis in contemporary, legal and historical perspectives; document the human cost of the crisis to Indian parents, children and communities; and report on innovative programs designed and implemented by Indian tribes themselves. The book also contains a selection of tribal resolutions concerning child welfare.

The authors, Indian and non-Indian professionals and lay people concerned with Indian child welfare, all agree that a situation of profound prejudice and discrimination exists and that continuation of present state and federal policies would be one of the most detrimental alternatives for Indian families.

The Association is also publishing its volume in response to the many requests it has received over the years for information regarding the unwarranted removal of Indian children from their families. Except for the oversight hearings held by the Senate Subcommittee on Indian Affairs in 1974 (out of print), no extensive source of information exists. The Association hopes that this volume, which contains original essays and reprints of important statements not readily available, will help fill this gap.

The contents include:

The Destruction of American Indian Families
William Byler

The Role of the Federal Government: A Congressional View
The Honorable James Abourezk

The Effects of Boarding Schools on Indian Family Life: 1928
Lewis Meriam

"Kid Catching" on the Navajo Reservation: 1930
Dane Coolidge

"The Drunken Indian": Myths and Reality
Joseph Westermeyer

The Wasted Strengths of Indian Families
Carolyn Attneave

The Human Cost of Removing Indian Children from Their Families
Robert Bergman

Child-Welfare Services to Indian People in the Albuquerque Area
Evelyn Blanchard

Indian Child Welfare in Oregon
Aileen Red Bird & Patrick Melendy

The Ravage of Indian Families in Crisis
Joseph Westermeyer

The Question of Best Interest
Evelyn Blanchard

The Placement of American Indian Children—The Need for Change
Carl Mindell & Alan Gurwitt

Parent and Child Relationships in Law and in Navajo Custom
Leonard Jimson

Indian Children and Tribal Group Homes: New Interpretations of the Whipper Man
James H. Shore and William W. Nicholls

Tribal Resolutions

The title of the book is *The Destruction of American Indian Families*. It consists of approximately 96 pages and will be available in January 1977. The price is $3.50. It may be ordered now from the Association on American Indian Affairs, 432 Park Avenue South, New York, N.Y. 10016.

Child Welfare Bill Introduced

On August 27, 1976 Senator James Abourezk (D-S.D.) introduced the Indian Child Welfare Act of 1976 (S. 3777). The act is intended to (1) eliminate abusive child-welfare practices that result in unwarranted Indian parent-child separations; (2) end discrimination that prevents Indian families from qualifying as foster or adoptive families; and (3) provide Indian communities with comprehensive child-welfare and family-services programs.

S. 3777 was drafted by the Association on American Indian Affairs at the request of the Senate Interior Committee, and is a result of Indian child-welfare oversight hearings held by the Senate Subcommittee on Indian Affairs on April 8-9, 1974.

The bill was introduced in the closing days of the 94th Congress in order to help stimulate discussion of the issues it raises. Based on comments solicited from throughout the United States, the Association expects that the bill will be redrafted and introduced again in the 95th Congress early in 1977.

In introducing the legislation, Senator Abourezk said: "This bill is derived from hearings which I chaired on April 8 and 9 of 1974. I do not mean to suggest that this bill will relieve all of the problems that Indian families and Indian communities face. What I do mean is that this pattern of discrimination against American Indians is the responsibility of the Congress. We as elected leaders cannot lay back and allow these practices to continue. It is the responsibility of the Congress to take whatever action is within its power to see to it that American Indian communities and their families are not destroyed; to see to it that Indian people receive equal justice and the support of the federal government. We must commit ourselves to a course in Indian child welfare which will eliminate the abuses and injustices and which will begin the long overdue process of helping, rather than handicapping, Indian children and their families."

Advisory Committees Approved

The state of Washington is continuing to take important steps towards justice in foster care and adoptive placement of Indian children.

On October 27, 1976 the Department of Social and Health Services adopted sweeping changes in its rules. Of special importance are rules establishing local Indian advisory committees to provide for Indian participation in child welfare decision making and the delivery of services. Relevant sections of the new rules are below:

Local Indian child welfare advisory committee—purpose. The intent of [the rules] is to ensure protection of the Indian identity of Indian children, their rights as Indian children, and the maximum utilization of available Indian resources for Indian children. To ensure the realization of this intent, information about each current and future case involving Indian children for whom the Department of Social and Health Services has a responsibility shall be referred to a local Indian child welfare advisory committee on an ongoing basis according to procedures which recognize the privacy rights of the families.

The purposes of local Indian child welfare advisory committees are: (1) To promote relevant social service planning for Indian children.

(2) To encourage the preservation of the Indian family, tribe, heritage, and identity of each Indian child served by the Department of Social and Health Services.

(3) To assist in obtaining participation by representatives of tribal governments and Indian organizations in departmental planning for Indian children for whom the department has a responsibility.

Local Indian child welfare advisory committee—membership. Local Indian child welfare committees shall be established within each region. The number and locations of the local committees shall be mutually determined by the Indian tribal governments and urban Indian organizations served by that region and the Department of Social and Health Services regional administrator.

(1) The committee shall consist of representatives designated by tribal government and urban Indian organizations. The regional administrator shall appoint committee members from among those individuals designated by Indian authorities. These members should be familiar with and knowledgeable about the needs of children in general as well as the particular needs of Indian children residing in the service area.

(2) The committee may also include Bureau of Indian Affairs and/or Indian Health Service staff if approved by participating tribal councils and urban Indian organizations.

(3) The DSHS regional administrator and/or the Economic and Social Services Office administrator shall appoint a member of his child welfare supervisory staff as a liaison member of the committee.

(4) The local Indian child welfare advisory committee is an ad hoc advisory committee not specifically authorized by statute. As such its members are not entitled to per diem and travel expenses for the performance of advisory committee functions. This rule shall not be construed, however, to prohibit expense payments to members who are otherwise qualified for and perform services compensable under other programs such as the volunteer programs.

Local Indian child welfare advisory committee—sub-committees. Each committee may appoint a subcommittee of permanent members to participate in reviewing the situation of an individual child or children for the purpose of recommending future planning actions.

Local Indian child welfare advisory committee—functions. (1) The functions of the local Indian child welfare advisory committee are:

(a) Assistance to DSHS staff in cooperative planning for Indian children.

(b) Consultation to DSHS staff regarding the provision of adoption, foster care and child protective services on behalf of Indian children.

(c) Reviewing the situations of Indian children.

(d) Assisting in the implementation of recommended plans.

(e) Assisting in the recruitment of and making recommendations regarding the licensing of foster and adoptive homes for Indian children and providing culturally relevant services to Indian children.

(f) Requests the ESSO administrator to initiate reviews of casework decisions that the committee believes to be detrimental to the best interests of Indian children.

(g) Acts in an advisory capacity to the regional administrator and ESSO administrator regarding the department's implementation and monitoring of the rules related to foster care, child protection, and adoption services to Indian children and their families.

VICTORY, continued from page 1

Board of Education acknowledges the gross failures of the secondary education offered to Native village children. The decree reads: "Members of the plaintiff class enrolled in the boarding program have experienced accelerated drop-out rates, psychological and social problems, including disruption of family life and loss of sense of identity, and failure to live up to educational potential. Studies of drop-out rates indicate far higher rates among Native children attending boarding programs than among Native children residing at home while attending secondary school. This drop-out problem is in part attributable to severe homesickness often experienced by students in the boarding program. Some children who have finished the eighth grade in their villages have never gone away to attend secondary school. Others, while enrolled in a boarding program, have transferred on numerous occasions from program to program, without attaining discernible educational benefits from any program.

"Dormitory and boarding home programs have high costs in relation to the educational benefits provided. Typically, school absenteeism has been high. Furthermore, many village students are unable to benefit from the wide range of courses available at urban schools because they do not have the academic background to take advantage of them. Frequently, they end up in courses for slow learners. Yet these are the most expensive secondary school programs. In FY 1974, the rural boarding program cost an average of $4,200 per student per year for education and boarding, while dormitory programs cost $5,600 per student per year. The per student cost of local secondary school programs in the unorganized borough in FY 1974 was approximately $2,000. In FY 1975, the per student instructional cost for rural secondary school programs was approximately $2,300. For rural boarding home programs, the cost was approximately $4,600 per student. The cost of dormitory programs remained substantially higher. Actual costs per student in dormitory programs may end up higher because of the high drop-out rate, while the dormitory's fixed costs remain the same.

"Harmful effects have resulted from the boarding programs. Village students placed in both dormitory and boarding home programs often do not receive the guidance necessary to enable them to cope with town life or with emotional problems which they experience. Also, the sending of Native children to secondary schools outside of their villages has had harmful effects on village cultural and family life and on the student's relationship to each. When the student who attends a boarding program returns to his village in the summer, he finds it difficult to readjust to village life because of the increasing differences between himself and the other members of his village. He is unable to fully identify with either the town or village way of life. Such students are in the process of becoming what anthropologists term "marginal" people: usually, they are not assimilated into the town culture with which they must contend in order to attend secondary school, while at the same time they have become estranged from the village way of life. For many of these students, secondary school graduation represents the point of no return. If they have come this far, it is unlikely that they will ever return to the village permanently.

"Although village children who choose not to board away from home to attend secondary school are eligible to enroll in correspondence study, this program has in the past been unsatisfactory for most such children. This is so in large part because, for most students, parental interest and supervision are essential if the student is to complete correspondence courses successfully, and most village parents have not had sufficient formal education to supervise such courses effectively. Though the Department has greatly upgraded the elementary and secondary correspondence program in recent years by increasing the budget therefor from $81,405 in 1970 to $848,373 for the unorganized borough for 1975-76; secondary correspondence courses, which have been obtained from programs in Nebraska and Illinois, have not been sufficiently adapted to the educational needs and the culture of village children. Furthermore, the problem of parental inability to supervise a secondary school course of study continues to limit the effectiveness of the correspondence program for many students."

This recognition of the deleterious effects of wholesale and involuntary boarding on Native children marks the end of the era when state and federal education officials rationalized their boarding school program as a means of "civilizing" Native children by removing those they considered the "brightest and the best" from their village environments and denying higher education to those children they considered expendable. It ushers in a new day of hope for thousands of village children.

Health Care Increase

The Indian Health Care Improvement Act (P.L. 94-437), made law on September 30, 1976, authorizes an increase of $480 million for the U.S. Indian Health Service to be spent over the next three years, approximately doubling current expenditures.

In general the Act would: augment the inadequate number of health professionals serving Indians through health scholarship, recruitment, extern, and continuing-educational programs; eliminate the backlogs in Indian health care services; supply known, unmet medical, surgical, dental, optometrical, and other Indian health needs; construct and renovate hospitals, health centers, health stations, and other facilities of the Indian Health Service, including safe water and sanitary waste disposal facilities; and encourage the establishment of programs in urban areas to make health services more accessible to urban Indian populations.

Clearly the entire Act will benefit Indian families, but some provisions are of special importance for their potential impact on Indian family life.

For example, if the Act is implemented, increased preventive services will reduce the number of children who require hospitalization or other institutional care.

The legislative history of the Act makes it clear that a significant portion of the new funds are to be spent to reduce the incidence of otitis media and to perform corrective surgery to restore hearing. This would reduce the number of Indian children with impaired learning abilities, which often requires that the children be boarded at schools for the deaf.

Greatly increased funding is also available for mental health services, including: community and inpatient mental health services; model dormitory mental health services; therapeutic and residential treatment centers; training of traditional Indian practitioners in mental health; and treatment and control of alcoholism among Indians.

To implement the authorizing Act, it remains for the Congress to appropriate the necessary funds.

Child Welfare Bill in Congress — Page 7

INDIAN FAMILY DEFENSE

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Urban Program in Oakland

by the staff and volunteers of the
Oakland Urban Indian Child Resource Center

The Urban Indian Child Resource Center in Oakland, California was the first urban Indian project funded through the National Institute of Child Abuse and Neglect in 1975. It is designed to help create culturally-relevant alternatives for Indian families. The Center's major objective is to help Indian children who become innocent victims of parental neglect or abuse. More often than not, these children are neglected because their young parents are trying to establish their foothold in a new and cold urban society.

Betty Newbreast, Acting Director, explains that the majority of the American Indians moving to the cities are between the ages of 18 and 34. These young people, many of whom are solo parents, encounter abrupt and disorienting family experiences. The way they must rear their children is different from how they themselves were raised on the reservations. This new lifestyle is further hampered by such problems as unemployment, cultural and social isolation, substandard housing, alcoholism—all of which require the attentions of the parents so that little time or energy is left over to cope with the children's concerns. In such circumstances a child often becomes an unintended victim of neglect. For some of these young parents, the move to the city also means leaving behind the traditional extended families who usually assisted with child care as well as provide emotional support for the parents.

Before the establishment of the Urban Indian Child Resource Center, most of the Indian children identified as being neglected were immediately taken up by the county court or welfare system and placed in foster homes. As a result, Indian children ended up in non-Indian homes with very little chance of ever returning to their rightful parents. The Resource Center's staff has been trying to change this picture.

The Center's staff has a unique quality—it is entirely composed of trained Indian social workers. "The difference is 'cultural sensitivity,' " states Ms. Newbreast. The project works with the existing county system, but its emphasis is on the special needs of Indian families and children. The staff helps identify Indian homes to be licensed as foster homes, homes for volunteer emergency child placements, willing Indian families who will take in a solo parent and child if needed to keep the family together, and families who are willing to serve as surrogate "extended family-friends."

The Center's social workers reflect the diversity of the number of tribes represented in the urban population: Nate Watchman, Navajo; Patricia Apkaw, Sioux; Byron Sanderson, Pima; Sammy Williams, Choctaw; Vernon Randall, Sioux. Ms. A. Omie Brown, Navajo, is Executive Director; Betty Newbreast, Blackfeet, is Supervisor. Other staff include two parent aides: Pauline Hickman, Choctaw; Doris Runningcrane, Blackfeet. The secretary, Mable Pacheco, is Yakima/Lummi; and Patsy Price, bookkeeper,

Continued on page 8

Profile in Courage

A Turtle Mountain Chippewa woman, Muzzette Stubben, is today happily reunited with her two children after a courageous struggle which culminated in a hard-won personal victory and a legal victory which can help other natural parents—Indian and non-Indian—in the Montana state courts.

On February 1, 1977 the District Court of the Eleventh Judicial District of the State of Montana, the same court that terminated Mrs. Stubben's parental rights in 1974, took action to, in effect, restore those rights by clearing the way for her to adopt her own children.

The Court based its decision ordering the children placed with their mother for adoption on a stipulation: "At all times up to and including the time of the hearings Muzzette Stubben has indicated concern, love, and desire for her children . . . part of the change and development of her maturity have been rooted in this love for the children."

The children, Ramona and Pepita, had spent over two years in non-Indian foster homes after being separated from their mother.

Mrs. Stubben's parental rights had been terminated soon after she was sentenced to the Nebraska Center for Women on a conviction arising out of her having falsely endorsed two checks. She had done this at a time when she was unable to find employment, her former husband refused to contribute to the children's support, and she had great difficulty in obtaining assistance from the Flathead County Department of Public Welfare.

Released after serving an eight-month sentence, Mrs. Stubben began efforts to get her children back on the grounds that she had undergone a change of circumstances, grown and developed psychologically and emotionally (including participating in rehabilitative programs while she was incarcerated), happily remarried, and was now able to provide a loving, stable and suitable home for the children.

She asserted that a natural mother whose parental rights have been terminated, but whose children have not yet been placed for adoption, has as a matter of constitutionally protected due process a right to demonstrate to the Court which ordered the termination that she is presently fit and capable of caring for her children, and that the underlying behavior or problems which led to the termination no longer exist.

After a long and involved series of legal appeals, the Montana Supreme Court stated in November 1976 that certain aspects of Mrs. Stubben's case had not been considered previously, and concluded with the suggestion that "a further investigation might be made, a decision we leave to the District Court."

On December 6, 1976 the District Court granted Mrs. Stubben's petition for a new hearing pursuant to the Montana Supreme Court opinion, and further restrained the Flathead County Department of Public Welfare from placing her children for adoption.

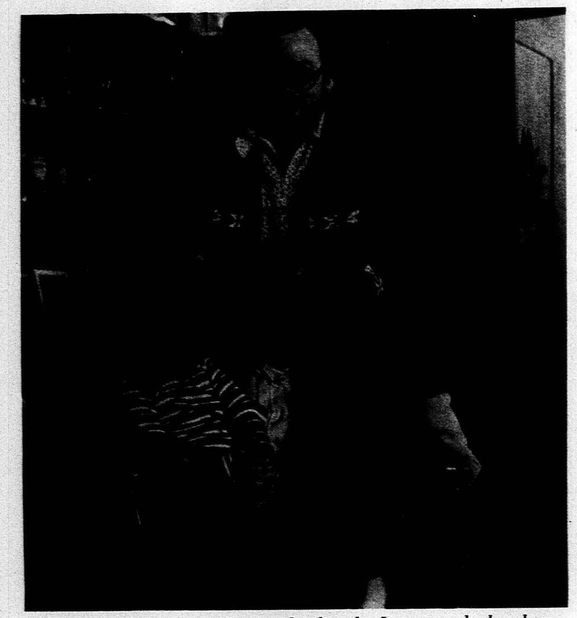
The new hearing was held in the Flathead County District Court on January 12, 1977. Dr. Michael Koch, Director of Child

Please turn page

Psychiatry at St. Paul-Ramsey Hospital in St. Paul, Minnesota, testified that he had concluded after examining Muzzette and Jerry Stubben (her new husband) that they exhibited none of the characteristics of unfit parents. Mrs. Stubben, he testified, is a mature and fit person capable of furnishing the mothering needs of a child, and she would be the most beneficial placement for maximum physical and emotional growth and development of the two children.

Another child psychiatrist, Dr. Jerome Chadwick, testified that after his examination of the Stubbens he concurred in all respects with the findings and conclusions reached by Dr. Koch. Dr. Chadwick, who is a member of the Committee on the American Indian Child of the American Academy of Child Psychiatry, further testified that the Academy had officially endorsed a position paper stating that the best interests of Indian children are protected and secured by guaranteeing that they be reared in Indian families, with primary emphasis on maintaining the natural parent-child relationship. The Academy's position is based on the fact that most Indian children removed from their families are placed in non-Indian foster and adoptive homes which generally do not fulfill the identity-developmental needs—rooted in cultural continuity—of Indian children.

Lawrence A. Rappoport



Muzzette Stubben with her husband, Jerry, and daughters, Ramona and Pepita, after their victory in court.

Muzzette Stubben's past delinquent behavior, Dr. Chadwick testified, may have resulted from inadequate identity formation, even though there was considerable love and affection between Muzzette and her own non-Indian adoptive parents. The placement of Mrs. Stubben's children in a non-Indian adoptive home, Dr. Chadwick continued, would subject them to substantial risk of developing psychiatric and emotional difficulties similar to those experienced by their mother.

At the end of the hearing the District Court, "deeming it within its inherent power to act in the best interests of the children," ordered the children placed with the Stubbens for adoption. A few days after the hearing the children returned home with their mother, and after six months the Stubbens will be able to petition for their adoption.

Within a few days after the hearing the Association on American Indian Affairs (AAIA) succeeded in placing Muzzette Stubben in contact with her own natural mother for the first time since she was herself placed for adoption as a little child.

The District Court ruling also raises the hope that other Montana Indian families can be reunited subsequent to termination of parental rights, if there has been no intervening adoption.

Mrs. Stubben was represented by Jon Heberling, an attorney in Kalispell, Montana, and by counsel from the AAIA.

Report on Indian Sterilizations

The General Accounting Office (GAO), an agency of Congress, has reported that 3,406 sterilization operations were performed on Indian women in the Aberdeen, Albuquerque, Oklahoma City, and Phoenix areas of the U.S. Indian Health Service (IHS) during fiscal years 1973-76. Of the 3,406 operations performed, 3001 involved women of child-bearing age (15-44 years old).

The report found that while consent forms were found in the medical records, those forms were generally not in compliance with U. S. Department of Health, Education and Welfare (HEW) regulations regarding "informed consent."

The most widely used form neither indicated whether the basic elements of informed consent had been presented orally to the patient, nor did it contain written summaries of any oral presentation that may have been made. The consent form also did not contain any written statement notifying patients of their right to change their minds.

The form used in 91 of 113 cases reviewed by the GAO was for medically required rather than for voluntary sterilization. (The current IHS reporting system does not distinguish between medically required or "therapeutic" sterilizations and those that are "voluntary".) Voluntary or nontherapeutic sterilization is defined in HEW regulations as "any procedure or operation, the purpose of which is to render an individual permanently incapable of reproducing." Sterilizations to treat an existing illness or injury are classified as therapeutic sterilizations.

Of the 3,406 sterilizations, 30 per cent were done at IHS contract facilities. Three of the six contract facilities serving the Albuquerque area used forms that did not meet HEW standards. Their main failing, according to the GAO, was that they failed to provide "full disclosure" or space for comments on what patients were told about informed consent.

The GAO noted that the forms also failed to include the required statement that no benefits could be lost if a patient decided against the operation.

Among the recommendations made by the GAO were that IHS expedite efforts to use a standard consent form which provides full disclosure of the information provided by regulations; provide better training for physicians so they fully understand the elements of informed consent and the requirements pertaining to persons under twenty-one years old or mentally incompetent; insure that contracts with non-IHS hospitals require compliance with HEW standards; and develop better monitoring procedures.

The GAO also recommended that the Secretary of the Department of Health, Education and Welfare direct that HEW sterilization regulations be amended to conform with a U. S. District Court ruling that patients be informed orally that no federal benefits can be witheld or withdrawn if patients decide not to be sterilized, and that the signature of the person obtaining consent appear on the consent form.

Apaches Fighting for Children

by Bill Hess

An Apache mother runs into financial difficulties. It is hard to pay all the bills and feed her children too. In the midst of her despair, an answer (so it seems) falls right into her lap. A "Christian" foster agency is placed in contact with her and they agree to take her son until she is able to iron out her difficulties. He will be there a maximum of two years.

She is assured her boy will be home for the holidays as well as summer vacation. It sounds good. Not knowing much concerning legal matters she then signs what she later recalls as "a blank sheet of paper with only a religious letterhead." Her son is then taken away. The White Mountain Apache Tribe is never notified of the arrangement.

To her dismay, the mother finds things do not work exactly as she had understood. Her boy is not returned for the holidays. The first summer arrives, and he comes home, but only for three weeks. He is then taken back under the guise of having to attend summer school. (The boy later claims there was no summer school.)

All attempts of the mother to contact her boy or his foster family are futile. The agency continually puts her off and never even gives her the name of the foster family.

Meanwhile the son hears that adoption might possibly be in the air. He is scared. He wants to go home. There may be poverty there but it is better than living in this foreign environment.

He has no way to contact his family. When his foster family gets near the reservation on vacation, he sneaks notes out to nearby people, hoping they will get to his mother and help get him home.

A note does fall into the hands of a council member, who is concerned but doesn't quite understand it or know how to interpret the note. The long stay continues.

Three years drift by. Other families find themselves in the same situation. Finally, some concerned mothers contact Chief Judge Anna Early, as all other avenues seem blocked.

Outraged, she gathers a small group of Apache women, storms down to Tucson, and recovers three children from the "House of Samuel," the so-called foster agency.

The battle is not over. There are perhaps thirty more Apache children and an undetermined number of Navajos being "watched over" by the House of Samuel.

The Tribal Council and Chairman Ronnie Lupe were so appalled by news of the House of Samuel that they passed a resolution stating that all future placement of Apache children must be processed through Tribal channels.

As Lupe points out, there is much deception here, and he likens it to earlier attempts of "cultural genocide" towards the Apache people.

Tribal attorney Kathy Rihr points out there is no way the Tribe can prevent parents from turning over their children to foster care, but that the resolution will enable the Tribe to make sure the parents understand what they are doing when they turn their children over to others, perhaps forever. This means the consequences of their actions will be explained to them in Apache.

RESOLUTION OF THE WHITE MOUNTAIN APACHE TRIBE OF THE FORT APACHE INDIAN RESERVATION

WHEREAS, the Tribal Council of the White Mountain Apache Tribe has become increasingly aware of and strongly concerned about numerous incidents of Indian families of the Fort Apache Indian Reservation whose children have been taken into the custody of non-Indian off-reservation residents, and

WHEREAS, Virginia and Gary Woods are two such persons who have obtained Indian children from families on the Reservation, and who reportedly operate under the name of the "House of Samuel," now located in Tucson, Arizona, and

WHEREAS, many complaints have been made to Tribal authorities, including the Tribal Council, by families of such children, concerning the circumstances under which their children have been taken by the House of Samuel, and under which often great difficulties have been encountered in obtaining the return of these Indian children to their families, and,

WHEREAS, such conduct on the part of the operators of the House of Samuel to maintain separation between parents and children has threatened, and may further threaten, said Indian children with legalized separation from their parents, families and Tribe in the form of involuntary adoptions and termination of parental rights, and

WHEREAS, the Tribal Council has warned in the past and continues now to command that in the matter of any proposed adoption of Indian children, the rights of all Indian people residing on the Fort Apache Indian Reservation, specifically as relates to the care and custody of their minor children, and the rights of the parents thereto, are properly the subject of determination for the Tribal Court of the White Mountain Apache Tribe, wherein the customs, culture, language, family backgrounds and applicable tribal laws may be examined in each case, and

WHEREAS, the Tribal Council deems the avoidance of tribal laws and tribal courts as a derogation of rights of the Indian people, both parents and children, and as a critical interference with Tribal self-government and the authority of the Tribe to provide for the welfare of its membership and the people entitled to its protections.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the actions of any persons or organizations, including Virginia and Gary Woods and the House of Samuel, to obtain and retain the custody of Indian children, to terminate parental rights, or to petition for adoption of such children, unsanctioned by tribal laws or courts of the White Mountain Apache Tribe, are hereby denounced by the Tribal Government on behalf of the Indian people of the Fort Apache Indian Reservation.

BE IT FURTHER RESOLVED that the Tribal Council forthwith directs that any and all such action as is necessary to cease and prevent said custody and adoption activities by non-Indian off-reservation residents be taken by every governmental department, agency and program of the White Mountain Apache Tribe involved in the protection, health, welfare, and safety of the Indian people of the Fort Apache Indian Reservation, and that every such governmental branch affirmatively fulfill its obligations to the Indian people in providing for their welfare.

BE IT FURTHER RESOLVED that the Tribal Council directs and authorizes the Tribal Chairman, through the Tribal Legal and Judicial departments, to assist in obtaining the return of all Indian children of the Fort Apache Indian Reservation presently held by the House of Samuel, upon the the request of the children's parents.

BE IT FURTHER RESOLVED that the Tribal Council further directs the Tribal Chairman to authorize the investigation of all matters relating to this resolution, and to report the findings, activities and actions taken in such investigation to the Tribal Council.

Adopted December 2, 1976.

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HEW Study

Responding to criticism presented in testimony at oversight hearings on the Indian child-welfare crisis conducted in April of 1974 by the Senate Subcommittee on Indian Affairs, the Department of Health, Education and Welfare commissioned and has published (in 1976), *Indian Child Welfare: A State-of-the-Field Study*.

The Study corroborates the testimony developed at the hearings and supports recommendations made by the National Congress of American Indians, the National Tribal Chairman's Association, the Association on American Indian Affairs and other participants in the hearings.

The "Indian Child Welfare Act" introduced in the Senate last year by the Honorable James Abourezk and reintroduced in April 1977, incorporates many of the recommendations presented at the 1974 hearings and re-stated in the 1976 HEW Study.

The "State-of-the-Field Study" in its summary of findings and discussion of policy implications of the findings, states:

Federal policies should support the planning, management, and delivery of child welfare services by tribal governments and by Indian organizations off reservations. There is widespread support for an amendment to the Social Security Act to permit direct funding of tribal programs under Titles IV-B and XX, and there are strong historical and legal, as well as practical, arguments for such legislation. The alternative is to find ways—through new legislation, the enforcement of existing federal law, and federal leadership—to encourage and require that states provide child welfare services to Indians without discrimination and with respect for tribal cultures and that states contract with tribes for the delivery of services. Programs to build the capacities of tribal governments and other Indian-run organizations in the field of child welfare are essential, whether the direct funding alternative or the federal-state-tribal alternative is chosen. Specific areas for policy change and the means by which changes might be made are listed below:

I. Operation of Programs by Tribal Governments and Indian Organizations

A. Federal Support for a Variety of Capacity-Building Activities

1. A series of federally supported projects to develop and evaluate a variety of models for the operation of child welfare services by tribes, intertribal councils, and other Indian organizations

2. Capacity-building grants focused on strengthening the planning and management capabilities of tribal governments and Indian organizations in the area of child welfare and child welfare-related services

3. Establishment of a national clearinghouse for Indian child welfare issues: to provide technical assistance and information to tribal and off-reservation programs, to prepare training materials and curricula, to monitor the development of Indian child welfare programs and supportive federal policies, and to define additional issue areas

4. Adjustment of requirements in contracts with tribes and Indian organizations to allow more flexibility in designing and operating programs which are responsive to cultural differences and to the special needs of Indian communities

B. Tribal Courts and Tribal Codes

1. Continued support for the development of juvenile codes by tribal governments

2. Federal (or state) legislation requiring that state courts and state agencies give full faith and credit to tribal court orders

3. Investigations by SRS [HEW's Social & Rehabilitation Service] of whether state agencies are contacting tribal courts in cases involving reservation Indian children, as required by recent program instructions; enforcement as required

C. Direct Funding

1. Detailed analysis of means to permit direct funding of Title IV-B and Title XX programs—and possibly other social service and financial assistance programs—by HEW directly to tribal governments

a. Inventory HEW programs and identify programs for possible direct funding

b. Analysis of precedents for direct funding and of possible funding mechanisms

c. Define possible funding levels and implementation plans

d. Prepare draft federal legislation permitting direct funding

2. Analysis of direct funding mechanisms applicable to Oklahoma and Alaska based upon a study of legal and jurisdictional responsibilities of tribal governments in Oklahoma and in Alaska Native corporations and associations

3. Analysis of direct funding mechanisms applicable to urban areas and other off-reservation areas

4. Analysis of possible relationships between programs operated by tribes and Indian organizations with direct federal funding and programs which are operated and financed by the states, such as state institutions

5. Joint planning by HEW, BIA, and tribes to coordinate social service program requirements to facilitate use of these funds for comprehensive local programs

D. As an Alternative to Direct Funding, Support Operation of Programs by Tribes and Indian Organizations Within the Present Federal-State Structure

1. Analysis of legal, financial, and other barriers to state-tribal contracting; design of legislation or other means to overcome barriers

2. HEW action to enforce statewideness provisions of Title IV-B and to insure nondiscrimination in allocation of Title XX resources, possibly including specific requirements that states set aside a certain fraction of their Title XX funds for services to Indians

3. Revision of boundary lines of counties and substate districts to conform to reservation boundaries

4. Establishment by state agencies of in-house Indian advocacy desks, modeled on the Washington Indian Desk

II. Adoptive and Foster Care Placements of Indian Children

A. Increased Involvement by Tribal Governments and Indian-Run Agencies in Placements

1. Funding to support the further development of existing Indian-run child welfare programs and establishment of more Indian-run licensed child-placement agencies to permit licensing of these programs as child-placing agencies

2. Support for Indian child welfare advocate programs, with career ladders leading to professional training for staff advocates

3. Replacement of the BIA contract for the ARENA [Adoption Resource Exchange of North America] project by a contract with an Indian-run agency to provide interstate placements where necessary and to provide technical assistance for the development of Indian-run child placing agencies

4. Requirement by state regulations that officials or staff of tribes or of off-reservation Indian organizations be notified prior to the placement of Indian children in foster or adoptive homes

5. Enforcement by SRS of the requirement that state or county agencies notify tribal courts of all cases involving tribal children; clarification of the 1974 program instruction to specify that this applies to cases where tribal children are temporarily off reservations, as well as to children on reservations.

B. Increased Efforts to Place Children with Indian Families

1. Increased efforts at the local level to recruit Indian foster and adoptive families

2. The drafting of special standards for Indian foster and adoptive homes; on reservations where tribes have jurisdiction to approve or license homes, tribes should draft standards; elsewhere, states should work with tribes and Indian organizations in drafting such standards

3. Enforcement by SRS of the 1974 program instruction regarding standards for Indian foster and day care homes

4. Explicit recognition in federal and state regulations of the desirability of placing Indian children in Indian homes, preferably with a family from their own or a related tribe. Regulations of the Washington [State] Department of Social and Health Services are a possible model

5. Expanded subsidized adoption programs

6. Joint review by BIA, states, and tribes of all cases of Indian children in long-term foster care; formulation of plans to return Indian children from non-Indian homes to their tribes where such action is appropriate

C. L.D.S. [Latter-day Saints (see page 6)] Indian Student Placement Program

1. Review by affected tribes of their participation in this program

2. Review by Congress of tax exemptions granted to foster parents in this program

III. Tribal Cultures and Child Welfare Services

A. Research to define the Implications for Child Welfare Services of Features of Several Tribal Cultures, Including Child-Rearing Practices and Family Structures

B. Development of Curricula for Schools of Social Work on Indian Tribal Cultures and Their Implications for the Operation of Social Service and Other Human Service Programs

C. Definition by Tribal Governments of Standards of Acceptable Behavior in Child-Related Matters; Inclusion of These Standards in Tribal Ordinances and Tribal Codes, as Appropriate

D. Federal Regulations Stating that the Goals of the Social Security Act Should be Interpreted in Indian Child Welfare Matters to Encompass the Preservation and Strengthening of Family Structures, Including the Extended Family

IV. Preventive and Supportive Services

A. Things for Children and Youth to Do—Jobs and Vocational Training Programs, Recreational Facilities and Programs, Cultural Programs, and Community Activities. Youth Workers and Programs, Like Those of the Traditional Settlement House, Are Needed

B. Flexibility in Federal-Tribal or State-Tribal Contracts to Permit Tribes to Use Funds to Support the Programs Listed Above, As Well As More Traditional Social Service Programs

C. Programs to Deal with Family Problems and with the Weakening of Traditional Family Structures

D. Group Homes and Emergency Shelters for Youth

E. Temporary Twenty-Four-Hour Child Care Programs

V. Boarding Schools

A. Recognition by BIA Boarding Schools that a Primary Part of Their Mission is to Provide Services to Children with Family and Behavioral Problems

B. More Professionally Trained Counseling and Guidance Staff at Boarding Schools; In-Service Training for Current Professional Staff

C. On-Reservation Alternatives to Boarding Schools, Such as Group Homes, Preventive Programs, and Youth Workers

Indian Social Work Education

A new survey of social work education for American Indian people, conducted as part of the Denver Research Institute's state-of-the field study of Indian child-welfare, concludes that "greater input and control of educational programs in social work for Indians by Indian people are essential."

The survey focused on the 84 accredited graduate schools of social work in the United States, and was primarily completed through questionnaires mailed to each of these schools, Indian faculty and students, and recent Indian graduates.

Several ways in which schools of social work, including those with formal programs for Indian students, can improve their program to serve Indian people better were suggested by the survey:

"(1) Indian tribes and groups could be given the primary responsibility for developing social work educational programs for Indian students. Such programs should have personnel, including directors, who are of Indian descent and who are recognized as such by their communities. Directors of these programs should be appointed as associate deans to insure their access to deans and other administrators. Although it may be desirable for directors of Indian programs to have doctorates, doctorates are not necessary to insure effective programs, and there are few Indians with doctorates in social work at the present time.

"(2) Programs should have strong ties to undergraduate and associate degree programs and to Indian-controlled colleges and community colleges located on reservations.

"(3) The presence of Indian faculty in schools of social work could also contribute to the programs' success. Thus, faculty recruitment efforts should be vigorously pursued, along with the development of faculty training programs.

"(4) Almost all of the existing graduate Indian programs have been able to establish special practicum placements for both Indian and non-Indian students in social welfare agencies serving Indian clientele. Federal agencies, Indian-controlled organizations, such as urban Indian centers and tribally-run human service agencies, and some private agencies can be used for field placements.

"(5) Although most schools have been reluctant to apply the concept of 'block placements,' this type of placement could be very effective. Basically, 'block placement' means that a student devotes a block of time (a semester or two quarters) to a social agency on a full-time basis without scheduling any course work. Thus, the block placement permits students to obtain experience on reservations or at other locations at a considerable distance from the schools of social work which they attend. Both Portland State University and the University of Utah have had Indian students placed in Alaska, and the placements have been deemed successful by the schools, the agencies, and the students involved."

The survey found that notable progress has been made in the past five years in increasing the numbers of Indian students attending graduate schools of social work, and in increasing the number of Indian faculty at those schools. Helpful new programs and curricula are beginning to be formulated. However, the survey reported, "many of the Indian respondents . . . indicated that more work needs to be done in all program areas to serve Indians better, especially in the areas of curriculum and support services."

Social services to Indian people need to be delivered by Indian personnel employed and directed by the Indian tribes and urban Indian communities themselves. One challenge before the schools of social work is to work with Indian people in developing trained Indian social workers.

LDS Indian Program

According to *Indian Child Welfare: A State-of-the-Field Study,* the Indian Student Placement Program of the Church of Jesus Christ of Latter-day Saints, which is responsible for a substantial fraction of all placements of Indian children in non-Indian homes, is "unprecedented in the history of Indian education."

An analysis and review of the L.D.S. program in the Study notes that the origins, operations, and purposes of the program reflect the beliefs of the church about American Indians as set forth in the Book of Mormon, "a scripture considered by the church to be a history of Indian people." Central to these beliefs is the idea that American Indians are "disgraced Lamanites" who were "cursed by the Lord with a darkened skin." As such, present-day American Indians are an integral part of Mormon theology and their "redemption" is part of the religious calling of the faithful.

The program, the Study points out, uses the foster care mechanism to place Indian children in the homes of church members. It currently affects the lives of some 2,000 children and their families. The goals of the program are described as "educational and religious." Basically, an Indian child is placed in a family and community setting which is predominantly non-Indian and reinforces the teachings of the L.D.S. church.

The Study reports that few studies have been made of the L.D.S. program, and that very little is known about its effects upon the students, the natural parents, and Indian communities despite the age (20 years) of the program and its "unusual feature of providing education through foster placement."

The only "recorded opposition" mentioned in the Study occurred during the 1950s when Hualapai parents from the small community of Peach Springs in northern Arizona complained about the circumstances under which their children were participating in the program.

According to the study, the parents charged the L.D.S. program with proselytizing enticement to encourage mass baptisms of children, alienating the affection of children from their natural parents, depriving parents of the responsibiity of training and caring for their own children, removing children from the reservation for education when it was available in their own communities, and using poor casework practices in carrying out the program.

Since then, it would appear that the only charge acted upon was the last one. "To say that the operations and procedures of the program are extensive and efficient would be to engage in understatement," the Study states.

As for the other charges, the Study points out that the L.D.S. program has never been subjected to formal evaluation by independent professional educators and social workers. Program records are open only to church-approved researchers, and the evaluations which have been made are either "in-house" or limited in scope.

"The concerns first raised by the Hualapai parents still need to be answered," the Study says. "Is there a need for such a program when there are schools available to the students in their own communities? Does the program undermine the parental role? What effect does the program have on the affections of children for their natural parents?

"While there has been no systematic evaluation of this program the information contained in two studies which have been done raises some serious questions about its effect on the cultural identity and emotional well-being of the participants.

"Therefore," the Study concludes, "tribal governments may wish to reconsider the desirability of recruitment of tribal children for the program." The report also points out that although no federal funds are expended in support of the L.D.S. program, "Congress did pass legislation allowing foster families participating in the program to take an income-tax deduction, and it may wish to reexamine this action."

Study for Congress

"The U. S. government, pursuant to its trust responsibility to Indian tribes, has failed to protect the most valuable resource of any tribe—its children." This was one of the findings of the American Indian Policy Review Commission, an agency of Congress, after a nationwide study of Indian child welfare. The findings are included in the report of Task Force Four on federal, state, and tribal jurisdiction.

The Task Force study found that the removal of Indian children from their natural homes and tribes has been and continues to be a national crisis that endangers the survival of American Indian tribes and has damaging social and psychological consequences for many individual Indian children. Non-Indian public and private agencies, the Task Force found with only some exceptions, demonstrate "almost no sensitivity to Indian culture and society."

Affirming that "the policy of the United States should be to do all within its power to insure that Indian children remain in Indian homes," the Task Force recommended:

"Congress should, by comprehensive legislation, directly address the problems of Indian child placement. The legislation should adhere to the following principles:

- The issue of custody of an Indian child domiciled on a reservation shall be subject to the exclusive jurisdiction of the tribal court where such exists.
- Where an Indian child is not domiciled on a reservation and subject to the jurisdiction of non-Indian authorities, the tribe of origin of the child shall be given reasonable notice before any action affecting his/her custody is taken.
- The tribe of origin shall have the right to intervene as a party in interest in child placement proceedings.
- Non-Indian social service agencies, as a condition to the federal funding they receive, shall have an affirmative obligation—by specific programs—to (1) provide training concerning Indian culture and traditions to all its staff; (2) establish a preference for placement of Indian children in Indian homes; (3) evaluate and change all economically and culturally inappropriate placement criteria; and (4) consult with Indian tribes in establishing (1), (2), and (3).
- Significant federal financial resources should be appropriated for development and maintenance of Indian-operated foster care homes and institutions: (1) in reservation areas such resources should be made directly available to the tribe; (2) in off-reservation areas, such resources should be available to appropriate local Indian organizations.
- The Secretary of the Interior should be authorized to (1) undertake a detailed study of the manner and form of child-placement records; (2) to definitely determine the full statistical picture of child placement as it currently exists; (3) to require standardized child placement recordkeeping systems from all agencies receiving federal monies; (4) to require annual reports from such agencies pursuant to the mandatory recordkeeping system; and (5) to review all rules and regulations of the federal government with respect to child placement, and revise such, in consultation with Indian tribes and child placement agencies to reflect federal policy of retaining Indian children in Indian homes."

The Task Force study also includes a statistical survey by the Association on American Indian Affairs of the pattern of Indian out-of-home placements in nineteen states with significant Indian populations (see *Indian Family Defense* No. 6).

Child Welfare Information Exchange

The Child Welfare Resource Information Exchange is one of the strategies developed by the National Center for Child Advocacy, Children's Bureau of the Office of Child Development, U.S. Department of Health, Education and Welfare to help realize one of its basic objectives—to improve the delivery of the nation's child welfare services. It will do this by promoting the use of sound methods, materials, and other tools which can assist the states and local public and private agencies to increase the efficiency and effectiveness of their programs, and improve the quality of the services delivered.

The main thrust of this effort is to promote the transfer of program and technological developments and knowledge in the child welfare community, and to assist in the replication and implementation of programs, methodologies, and materials to improve practice.

The Children's Bureau is already supporting a number of activities to disseminate and promote adaptation and utilization of curricula, program models, standards, and other efforts which were developed under its aegis. However, it was recognized that other federal agencies, states, foundations, local public and private agencies, national organizations, colleges and universities, and others have developed programs, materials, and methods worthy of replication and wider use. Often these programs are not widely known, and their use is limited to a few sites. Therefore, the main goal of the Exchange is to identify exemplary programs, to review them for soundness and transferability, to publicize their existence, and to provide technical assistance to facilitate their transfer, adaptation, and implementation.

The Exchange seeks programs which agencies can use to improve services to

- Children and youth in 24-hour care outside their own homes, including those in the juvenile justice sytem.
- Children vulnerable to inadequate early child rearing.
- Children vulnerable to delinquency.
- Children and youth vulnerable to or exposed to abuse, neglect, or dependency.
- Emotionally disturbed children and youth.
- Children and youth with developmental disabilities.
- Children and youth with physical disabilities
- Teenage parents

Those programs might be

- Successful service programs, such as
  - —early warning systems for potential family break-up
  - —adoption services for special needs children
  - —parenting education for teenagers
  - —preventive service programs
  - —24-hour emergency in-home care services
- Exemplary management systems to improve service delivery such as
  - —child needs assessment tools or systems
  - —management by objective systems
  - —case management systems
  - —interagency program compacts and plans
  - —service log systems that inform workers of client's progress in obtaining services from other providers
  - —service provider contracts which include standards of service effectiveness
- Effective continuing education courses or training programs
- Model laws, regulations, standards
- Research findings with applicability and practice

In addition to information on programs, the Exchange also seeks individuals to serve as independent reviewers to evaluate programs for their conceptual soundness and transferability. These would be persons who have created innovative programs or who have extensive experience with particular kinds of programs. They may be social workers, administrators, researchers, trainers, academicians, lawyers, educators, management specialists, planners, or judges.

Editor's note: If you have any questions about the Exchange, please contact Paul Mott, the project director, at (202) 331-0028, 2011 Eye Street, N.W., Suite 501, Washington, D.C. 20006.

INDIAN FAMILY DEFENSE is a bulletin of the Association on American Indian Affairs. Editorial staff: *Executive Editor,* Mary Gloyne Byler; *Editor,* Steven Unger; *Business Manager,* Ida Gellman; *Circulation Manager,* Ruth Alterman.

Child Welfare Bill Introduced

On April 1, 1977 Senator James Abourezk (D-S.D.) introduced the Indian Child Welfare Act of 1977 (S. 1214). The act is intended to (1) eliminate abusive child-welfare practices that result in unwarranted Indian parent-child separations; (2) end discrimination that prevents Indian families from qualifying as foster or adoptive families; and (3) provide Indian communities with comprehensive child-welfare and family-services programs.

The bill is co-sponsored by Senators Hubert Humphrey (D-Minn.) and George McGovern (D-S.D.).

S. 1214 was drafted by the Association on American Indian Affairs at the request of the Senate Interior Committee, and is the result of Indian child-welfare oversight hearings held by the Senate Subcommittee on Indian Affairs in April 1974.

OAKLAND, Continued from page 1

is Navajo/Choctaw. The project's Board of Directors is also unique in that the Board represents the Indian Nurses of California—a statewide organization of Indian nurses.

The staff describes their Indian-oriented social work as a process of integrating their Indian culture with social work methods. Help comes to the families in many forms of service—from the activity of the Family Representative as an advocate in court for a parent seeking to retain custody of a child, to the loving care and concern given by one of the parent aides.

Each day of service to Indian children enhances the expertise of the agency in handling family crises because of their direct application of individual treatment plans, their experience in interaction with the courts, parole officers, medical resources, and their growing understanding of the complicated and baffling maze of the welfare system.

Perhaps the best way to describe this integration of services is to relate some case examples. For instance, there is the story of a young Sioux family relocated from a reservation to East Oakland. They were not here long when the mother became ill and needed an operation. Because the father was newly employed he could not miss work and jeopardize their already precarious financial situation. The father instructed his nine-year-old daughter how to care for the four smaller children, and he left her in charge of them while he went to work. This is considered acceptable behavior on a reservation but not in an urban setting.

On the second day, a neighbor observed that the children were left unattended by an adult and the police were called. The County Child Protection Unit Service was summoned; and since they were unable to learn from the neighbors any facts about the family, they took the children and placed them in County emergency foster homes. The father returned to find his children gone and called the mother. Together they contacted the Child Resource Center for help.

When our Family Representative arrived, needless to say the family was very distraught. The children were in placement a week before the situation could be clarified with the county. When the children were returned the mother was fearful even to go to the corner store, because she thought the police were spying on her for an opportunity to take the children again.

After a great deal of reassurance and support to the mother, the staff explained that the plan was to assist her with homemaking service during her recovery and that this was a role of our agency which would prevent the loss of her children. She accepted the Center's services, and the homemaker called on the family so the mother could keep doctor's appointments, do her shopping and other outside duties. Now the Family Representative checks periodically with the family—ready to assist the family in its adjustment to urban living.

The uniqueness of the situation is that an Indian agency with Indian personnel understood the dilemma of the family and gave appropriate assistance. Without the crisis intervention, the disruption of a very strong Indian family unit could have occurred.

Another sample case involves a referral of a single parent family in trouble from a concerned person within the urban Indian community. There was general knowledge within the Indian community that seven small children in this Chippewa family were being severely neglected as a result of the parent's alcoholism. Another Indian agency alerted the Center to the children's plight. When a Family Representative went to the apartment to check on the family, there was no response from the parent. The children peeked through the door and said that no one was home.

It was not until another social worker who knew about the family persuaded the parent to accept the Center's involvement that a Family Representative was able to make contact with the parent. The parent agreed to accept detoxification after the Family Representative assured him that she would find emergency foster placement for the children during his treatment. The family did not have enough food or appropriate clothing and most of the children were without shoes. The total family subsistence was $500 per month from county welfare. The whole family life was centered in a two bedroom ghetto apartment.

It was late on a Friday afternoon that the children were picked up by the Family Representative and brought to the Center, given clothing, and fed. Some of the alerted Indian foster parents came by the agency to pick up the children, while others were taken to foster homes by the Family Representative.

After placement, the Center's parent aides called on the Indian foster families to assist in the adjustment of the children to their new temporary Indian parents. They also provided the homes with information about resources available from the community to aid in caring for the children.

Such temporary, but much needed, family assistance can mean the difference to an Indian child caught in circumstances that could lead to being placed in one foster home after another with no place to call home.

"Alcoholism is the greatest contributor to the problem of our families," states one staff member. "It steals our Indian children's parents and what is left of their proud Indian heritage."

The staff realizes that early intervention can be crucial in strengthening Indian families. What is especially needed is a program for teenage parents which would include intensive, Indian-oriented parent education classes. With increased resources for programs such as these, the future of Indian children could be made secure.

Association on American Indian Affairs, Inc.
432 Park Avenue South, New York, N.Y. 10016

November 17, 1977

M E M O R A N D U M

To: Indian Family Defense Subscribers

Re: S. 1214

We are pleased to report that on November 3, 1977 the United States Senate passed S. 1214, the Indian Child Welfare Act of 1977.

S. 1214 will go a long way towards eliminating the abusive child-welfare practices that have led to the unwarranted separation of Indian children from their families and towards allowing Indian tribes the opportunity to provide for their own children.

The bill must now be introduced in the U. S. House of Representatives and passed by that body before it can become law.

News of the bill's passage came too late to be included in Indian Family Defense No. 8. The Senate-passed bill is identical to the bill described on page 3 of the current issue.

INDIAN FAMILY DEFENSE

A bulletin of the Association on American Indian Affairs, Inc.

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Yakima's Project Ku-Nak-We-Sha'

by Michael Kelch
Project Ku-Nak-We-Sha'

Project Ku-Nak-We-Sha' (Caring) is an Indian child-welfare demonstration project designed and implemented by the Yakima Indian Nation to meet the child-welfare needs of the Yakima people in a culturally-adapted way. The project, in successful operation since July 1975, is presently in its third year of operation, under a three-year grant from the National Center on Child Abuse and Neglect, U.S. Department of Health, Education and Welfare.

One of eight innovative projects in the United States, Ku-Nak-We-Sha' has been successful in providing comprehensive child-welfare services to an Indian population which previously had not been satisfied with the level of care provided by the Washington State Department of Social and Health Services (DSHS). Statistics submitted by Yakima tribal council members to the Senate Subcommittee on Indian Affairs at Indian child-welfare oversight hearings in April 1974 indicated that Indian children on the reservation had been removed from their families at rates substantially higher than those for the non-Indian population. Most of the Indian children taken from their families were placed in non-Indian adoptive and foster homes.

A major project goal is to halt the practice of removing children in need of services from the nurturing milieu of their kinship system. Not one Indian child has been placed for adoption by the project.

By working with officials of the DSHS through local child-welfare advisory committees, and reaching a consensus with the state officials about the planning to be done for Indian children, the project director, Maxine Robbins, has been satisfied that the local DSHS child-welfare unit has not adopted out children either. In fact, since the Yakimas started Ku-Nak-We-Sha', the local DSHS office has not requested the termination of parental rights of one Yakima family—a dramatic change from the situation only a few years ago.

"We have worked hard to ensure our Yakima children remain with their family or extended family members," Ms. Robbins says. "We will continue to provide services which demonstrate that the removal of Indian children from their families is unnecessary and most often destructive to Indian children and parents alike."

The program has successfully recruited and supervised more than fifteen Indian foster homes when temporary placement has become a necessary adjunct to family treatment. In every instance, the project staff has sought to return the child in foster care to the natural family whenever it has become feasible. Project philosophy has been one of acceptance and flexibility with respect to understanding of a family's problems. "More often than not, we have found that straightening out a family's

Continued on page 7

Senate Child Welfare Hearings

In testimony before the Senate Select Committee on Indian Affairs in early August, Indian witnesses from across the United States backed S. 1214, the Indian Child Welfare Act of 1977, and blasted the Carter administration for its opposition to the bill.

Ms. Goldie Denny, director of social services for the Quinault Tribe in Washington State, testifying on behalf of the National Congress of American Indians, pointed out that the 130 tribes who are members of NCAI had unanimously endorsed a draft version of S. 1214. "The federal, state, and county governments have messed up Indian child-welfare matters ever since they started meddling around in them," she said. "So why not let Indian people run their own show for a change? They can do it a lot better than any other agency can."

"S. 1214," testified Calvin Isaac on behalf of the National Tribal Chairmen's Association (NTCA), "will put government responsibility for the welfare of the children where it belongs and where it can most effectively be exercised, and that is with the Indian tribes.

"If Indian communities continue to lose their children to the general society for adoptive and foster care placement at the alarming rates of the recent past, if Indian families continue to be disrespected and their parental capacities challenged by non-Indian social agencies as vigorously as they have in the past, then education, the tribe, Indian culture, have little meaning or value for the future. This is why NTCA supports the Indian Child Welfare Act," Mr. Isaac concluded.

Bobby George, Acting Director of the Navajo Office of Resource Security, stated that "the ultimate preservation and continuation of Navajo cultures depends on our children and their proper growth and development. We support the efforts of Senator Abourezk and this committee to see to it that an institutional safeguard, such as a tribal court and its law, shall play a dominant role in protecting both the tribal interest as well as the interest of the child whose future residence is being determined."

Ramona Bennett, Chairwoman of the Puyallup Tribe, pointed out that discriminatory state standards in Washington and other states lead to many tragic and unnecessary separations of Indian children from their families, and that tribes need the opportunity, as mandated in S. 1214, to operate their own programs. Emphasizing the importance of Title II of the act which would allocate funds for Indian family development programs, Ms. Bennett said: "Without actual dollars to provide services and competent staff and permanent facilities, none of these tribes or communities have even a chance to stem this very critical problem."

All of the Indian representatives were stunned by the testimony of administration witnesses from the Bureau of Indian Affairs (BIA) and Department of Health, Education and Welfare (HEW). The underlying premise of S. 1214 is that Indian tribes,

Please turn page

as local governments, have a vital role to play in any decision about whether Indian children should be separated from their families, and the bill provides that no placement of an Indian child who resides on a reservation shall be valid unless made pursuant to an order of the appropriate tribal court. Yet the BIA opposed enactment of the legislation, claiming that it would "impose one set of uniform federal standards over all tribes" and increase "federal intrusion in the regulation of tribal domestic matters and sovereignty."

A representative from HEW testified that the Department felt that general child-welfare legislation it has proposed, rather than a bill specifically addressing Indian needs, could be a "suitable vehicle" for serving the needs of Indian children. However, HEW admitted that its proposed legislation as drafted was insufficient to meet Indian needs. "We did find," the HEW witness said, "that we had not been careful enough to make sure that the kinds of things we were proposing generally were going to be as helpful as they ought to be particularly."

One reason that Indian witnesses were so angered by the HEW testimony was that it in effect ignored HEW's own study of Indian child-welfare needs. Responding to criticism presented at Indian child welfare oversight hearings before the Senate Subcommittee on Indian Affairs in April 1974, HEW commissioned and published a study which corroborated the testimony and supported the recommendations made by the National Congress of American Indians, the National Tribal Chairmen's Association, Association on American Indian Affairs and other participants in the hearings. S. 1214 incorporated many of the recommendations presented at the 1974 hearings and re-stated in the 1976 HEW study.

Speaking for NCAI, Goldie Denny testified that she was "appalled" by the administration statements. "I think it is a gross neglect of responsibility that they made these comments here today," she said.

"The Bureau . . . criticized S. 1214 for imposing standards on Indian people. That is not true," Ms. Denny testified. "The intent of the bill is to impose these standards upon the state, county and federal agencies who are now imposing their materialistic standards on Indian people."

"Contrary to what the administration witnesses testified to," testified Bertram E. Hirsch on behalf of the Association on American Indian Affairs, "this bill is based solely on a self-determination philosophy. It in no way imposes any standards or any way of doing things on the tribes, but, rather, gives the tribes free reign to implement their own customs, laws and traditions, and to develop their programs in the way that they see fit to meet the needs of their families and children.

"The standards that are imposed in this bill," he continued, "are standards imposed on state and county and non-tribal agencies that function on Indian reservations and in Indian communities in relationship to Indian families and Indian children."

Mr. Hirsch also pointed out that the administration's comprehensive child-welfare proposals were actually a step backward from the draft legislation upon which the proposals had been based. In the original legislation, which had been introduced in the Senate but not acted upon, important provisions had recognized the sovereignty of American Indian tribes. Those provisions were not included in the administration's latest proposals.

Several non-Indian organizations also testified in support of S. 1214. The American Academy of Child Psychiatry, noting the serious emotional problems which are created by placing Indian children in homes which do not reflect their special cultural needs, supported tribal jurisdiction over child-welfare matters, and urged that the tribes be given adequate financial assistance to establish and run their own programs. The American Civil Liberties Union pointed out that the present system is clearly doing an inadequate job in dealing with Indian child placements and urged that Indian tribes be supported in their efforts to exercise jurisdiction. The Friends Committee on National Legislation also called for tribal jurisdiction over child-welfare matters.

The only non-governmental witnesses to testify against the bill were representatives of the Church of Jesus Christ of Latter-day Saints who opposed the section of the bill that would have required that Indian parents notify tribal officials of private custody arrangements. The Indian Student Placement Program of the LDS Church is responsible for the placement of some 2,000 Indian students annually in Mormon foster homes while they attend schools away from their natural families.

Social Workers Back S. 1214

The Family Service Association of America, the national accrediting and standard-setting federation of more than 300 voluntary, family-serving agencies located throughout North America, has expressed its "full support" of S. 1214, the Indian Child Welfare Act of 1977.

To the knowledge of the Association on American Indian Affairs, the FSAA is the first professional social work organization to express such support.

Indian Child Welfare Bill

S. 1214, the Indian Child Welfare Act of 1977, was introduced by Senator James Abourezk (D-S.D.) on April 1, 1977, and is co-sponsored by Senators Hubert Humphrey (D-Minn.) and George McGovern (D-S.D.). The bill came out of the August hearings before the Senate Select Committee on Indian Affairs basically intact, but with several significant changes being made by the Committee.

The basic purposes of S. 1214, are to (1) eliminate abusive child-welfare practices that result in unwarranted Indian parent-child separations; (2) end discrimination that prevents Indian families from qualifying as foster or adoptive families; and (3) provide Indian communities with comprehensive child-welfare and family-services programs.

The bill is based on Senate oversight hearings held in April 1974 and on a number of studies since then which have documented that an alarmingly high percentage of Indian children are separated from their families and placed in foster or adoptive homes. The decision to take Indian children from their natural homes is, in most cases, carried out without due process of law and with little regard for the impact on the children, their families, and the community.

S. 1214 would declare that it is the policy of Congress to assist Indian tribes in the operation of family development programs, to establish standards for the placement of Indian children by non-Indian public or private agencies, and generally to promote the stability and security of Indian family life.

The underlying premise of the bill is that Indian tribes, as local governments, have a vital role to play in any decision about whether Indian children should be separated from their families. The bill provides that no placement of an Indian child who resides on an Indian reservation shall be valid unless made pursuant to an order of the appropriate tribal court.

The bill is intended to assure that Indian families will be accorded a full and fair hearing when child placement is at issue. It also establishes priorities in the placement of Indian children, with the first preference given to members of the child's extended family, and other preferences to homes licensed by Indian tribes or maintained by Indian people and institutions operated by Indian tribes and organizations.

Other sections of the bill authorize the Secretary of the Interior to assist Indian tribes in the establishment and operation of Indian family development programs. The objective of these programs shall be to prevent the break-up of Indian families and to insure that Indian children are removed from their families only as a last resort, if remedial services to help the family stay together have failed.

An amendment added to the bill after the August hearings would declare that it is the sense of Congress that the absence of locally-convenient day schools contributes to the break-up of Indian family life and require that the Secretary of the Interior submit a plan to Congress so that Indian families would be provided the option of a day school education for their children. Many Indian parents do not want to expose their children to the hazards of federal boarding schools. This plan would lead to the construction of locally-convenient day schools, while retaining boarding schools for parents who want them. Priority would be given to the need for educational facilities for children in the elementary grades.

The bill as it emerged from the Committee hearings, however, was in several significant respects weaker than the legislation as introduced.

The original bill would have authorized the Secretary of the Interior to provide legal counsel to Indian parents in child-placement proceedings, and no child placement would have been valid unless the parents received such counsel. The Secretary would have been empowered to do this either himself or through grants and contracts with Indian tribes or organizations.

The Committee's bill states only that Indian parents be afforded the opportunity to be represented by counsel, but does not require such representation. The Secretary would still be empowered to make grants or contracts with Indian tribes or organizations for legal programs, but is not authorized to provide services apart from these programs. Thus an Indian family that found itself outside the ambit of legal defense programs sponsored by Indian tribes or organizations would not be entitled to representation by the Secretary of Interior either, and whether or not the family would be represented by counsel would depend on its financial ability to hire an attorney.

A second area in which the bill was weakened is in the standards of evidence it requires for the removal of an Indian child from its family. The original bill provided that no child placement shall be made unless "clear and convincing evidence" indicated that a child may be subject to physical damage, or an "overwhelming weight of the evidence" indicated that a child may be subject to emotional damage. The stricter standard for proving emotional damage was written into the original bill because most Indian children are removed on vague allegations of emotional damage they may be subject to by living with their parents, and because the almost limitless scope of the word *emotional* creates the potential for unnecessary placements. The Committee's bill eliminates the stricter standard for proving emotional damage.

The Committee also dropped a section of the original bill that would have required the Secretary of the Interior to review all Indian child placements within the last sixteen years, and to institute, where appropriate, legal action on behalf of Indian parents whose children were illegally taken from them.

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Eskimo Families & Bowhead Whales

A proposal by the International Whaling Commission to prohibit the Eskimo people of Alaska from hunting the bowhead whales that they have depended upon for thousands of years highlights the close connection between a community's resource base and the health of its family and community life.

Eskimo leaders oppose the Commission's proposed action because the International Whaling Commission does not have jurisdiction over their subsistence hunting of the whales, and also because prohibition of the hunt could undermine the whole fabric of their culture.

"Hunting the bowhead is what keeps our communities together. Our people depend upon the bowhead, first for food and just as importantly for the survival of our culture," says Dale B. Stotts, an official of Alaska's North Slope Borough.

The destructive impact that governmental intervention would have was underscored by Alexander H. Leighton, M.D., a member of the National Committee on Indian Health of the Association on American Indian Affairs (AAIA) in a statement objecting to the Commission's action: "Subsistence whale hunting is of the first order of importance in terms of traditional Eskimo culture. It is vital to the development of skills, dignity, and cooperation; and these are important values to the mental health and psychosomatic wellbeing of Eskimo whale hunters. Any interference with their opportunity to continue the traditional hunt is a very serious matter and would undoubtedly have adverse affects on mental health in the whaling villages and on the self-image and personality structure of the people affected . . ."

In a separate statement, the AAIA also warned that governmental prohibition of the catch of bowhead whales would undermine vital family and social structures, and thus contribute to the circumstances leading to the breakup of Eskimo families.

Eskimo villagers fear that governmental intrusion disrupting the subsistence economy and traditional mechanisms for self-regulation in their communities could ultimately transform their self-sufficient villages into welfare ghettoes, and create a "culture of poverty" where large numbers of people feel hopeless, powerless, and unworthy, and where state intrusion becomes the norm rather than the exception.

The United States missed its opportunity to exercise its legal right to object to the International Whaling Commission's action by failing to file an objection with the Commission by October 24. Instead, the State Department has announced that it will seek a change in the "zero quota" at a meeting of the Commission in Tokyo in early December. Eskimo leaders charge that President Carter has betrayed them by failing to file an objection.

"We naively assumed," stated the Alaskan Eskimo Whaling Commission, "that when President Carter was faced with a choice between human rights and the rights of the animal-loving, man-hating conservation groups, he would opt for a course of action which maximized protection for a people within the borders of the United States. But we were wrong."

Congress Designates Child Welfare Funds

The budget for the U.S. Bureau of Indian Affairs for the new fiscal year (which began October 1) contains for the first time monies specifically set aside by Congress for child-welfare needs.

In the report of the House-Senate Conference on BIA appropriations, Congress specified that "$3,800,000 shall be available from social services to establish ongoing child-welfare programs."

The grossly disproportionate rates of placement of American Indian children in adoptive homes—ranging from ten to twenty times the non-Indian rates—indicate that the general social welfare programs of the BIA have failed to meet the special needs of Indian children.

The Congressional action is a welcome initiative to protect and promote the wellbeing of American Indian children and to prevent the tragic and unwarranted destruction of American Indian families.

Indian Child Welfare in Oregon

by Aileen Red Bird and Patrick Melendy

This report is a general description of the child-welfare problems among Indian people in Oregon. The "Indian ways" of raising children differ vastly from the middle class, non-Indian norms often used in studies by non-Indian investigators. It is hoped that this report will help to point out some of the differences.

A cross survey was taken of several different Indian communities to obtain the opinions of Indian people regarding what they felt to be significant child-welfare problems. Various case histories, including personal statements from Indian parents and children, are described in this report.

Case 1. The Indian mother of an eight-year-old boy was temporarily unable to care for her son after she broke her leg. She asked her sister to care for her son until she recovered. At school the boy gave his aunt's address as his own. The teacher asked if his mother had moved. He said "no." The teacher then asked with whom he was staying. The boy replied that he was staying with his mother. The teacher became upset and started yelling at him. The boy held his ears. The teacher decided the boy was disturbed and made an appointment for him to be tested for schizophrenia. The test could not be administered without the mother's permission. A staff member of the Portland Urban Indian Program, at the request of the school, visited the mother's home to obtain her consent. There the staff member learned that in the culture of the boy's tribe, children are raised by the extended family. In the extended family, children regard both their natural mother and her sisters as mothers because they share maternal responsibilities. The staff member explained this to the school, and the boy was not tested.

Case 2. A married Indian couple came to Portland with their infant girl. Previously, their two older children had been taken from them by the welfare department in another city. The family did not apply for needed welfare and other assistance fearing that they would again lose their child. The father, unable to find work, soon was forced to take his family to another city where relatives lived.

Case 3: An Indian mother living in Portland with her five children, ages five to eighteen years old, worked as a barmaid at night. The Oregon Children's Services Division (CSD) maintaining that her hours were bad for the children and assuming that the job made her an alcoholic, took her four youngest children. The mother tried diligently to follow the guidelines set by CSD for her children's return. She quit her job, went to "parenting" classes, and was tested by a psychologist. Her children were placed so distant that it was difficult to visit them. She became withdrawn and almost gave up all hope. Meanwhile, her two sons ran away from the group home in which they had been placed and stole a car to rejoin their mother. They were caught and incarcerated. Breaking out of jail, the boys made their way back to their mother, who happily took them in. The boys never had a juvenile record while in their mother's care. CSD, however, proceeded in court to terminate her parental rights. At the hearing, CSD described the mother as an alcoholic. Her work record—she had never missed a day—was brought up as part of the defense. Further testimony brought out that during the time her own children were not living with her, she continually cared for the children of relatives and friends who were temporarily unable to care for them. She did this without financial or other help from any agency. The judge severely criticized CSD, refused to terminate the mother's parental rights, and ordered CSD to start proceedings for the return of her two sons. Her two other children still have not been returned.

Case 4. The infant child of a twenty-six-year-old, divorced Indian mother with a drinking problem was placed in a foster home. The mother joined the Native American Rehabilitation Association, an alcoholism treatment program, which helped her to stop drinking. She earned a high school equivalency diploma and went on to enroll in a secretarial program at Portland Community College. The mother attended classes to make her a better parent and, at CSD's request, began consulting a psychologist. Yet when the foster parents requested to adopt the child, a CSD caseworker urged the mother to surrender her parental rights voluntarily, telling her "they would probably be taken away anyway." After trying to do whatever CSD requested for more than two years, the mother's parental rights were nevertheless terminated. Her hope destroyed, the mother has gone back to drinking.

Case 5. When an Indian mother was divorced from her non-Indian husband, the husband was given custody of the couple's three children. After ten years, the father sent the two older children, a fifteen-year-old boy and a sixteen-year-old girl, back to their mother because, he said, they were "savages," and he no longer could handle them. The mother took them in and learned that the children had spent considerable time in foster homes during the time she thought they were living with their father. The adjustment period was difficult for all. The son seems to have adjusted well with his mother. The daughter attends Chemawa Indian Boarding School and is also doing well. Recently the father returned to the mother the third child, a ten-year-old boy.

Case 6. The two-year-old daughter of an Indian mother was taken away when a CSD caseworker decided that the child was "failing to thrive" because she showed no weight gain and insufficient growth. The mother's older daughter, also living with her, was healthy, happy, and mentally fit. The mother explained to CSD that her younger child did not gain weight because she vomited after eating. Later it was learned that a doctor had prescribed the wrong formula for the child's milk. By that time, however, a court order had placed the girl in a non-Indian foster home. The Indian mother became frantic since the caseworker would not even reveal the location of her child's foster home. The mother was allowed to see her child again only after protests by the Chicano and Indian Studies Center of Oregon. Doctors later determined that the child lacked a growth hormone, which limited her development and made her susceptible to illness. After mother and daughter were reunited, it was discovered that the child had been physically abused by the non-Indian foster parents who tried to force her to gain weight.

From 1974—1975 there were 20 Indian children placed in adoptive homes by the Children's Services Division. Eighteen of the Indian children were adopted by non-Indians. Fourteen of the 20 Indian natural parents signed voluntary waivers surrendering their children. There is also a disproportionately large number of Indian children placed in foster care by private agencies.

Our research indicates that intimidation, coercion, and legal threats precipitated many of the voluntary surrenders. In a number of cases, racial prejudice is the major reason for terminating parental rights. It is alleged that judges in Klamath Falls, for example, would remove Indian children based on the stereotyped assumption that their parents are "drunken Indians."

Of the Indian children in foster care in Oregon, 95 per cent are in non-Indian homes. In the Portland area, there is only one Indian foster family certified by CSD. Other Indian families report that CSD foster family requirements virtually exclude them from qualifying. For example, CSD requires that foster homes have a specified amount of space in bedrooms for foster children. Indian families are often large and live in small homes which do not meet the CSD space requirements. Under the circumstances, most Indian families no longer even try to qualify.

Another reason for the low number of Indian foster parents in Oregon is the CSD policy prohibiting the placement of a child with relatives. This policy directly conflicts with the Indian extended family social structure.

The Confederated Tribes of the Warm Springs Reservation have a unique solution to their child-welfare needs. A group home is available for the temporary care of children twelve to eighteen years old, and "satellite" smaller homes are available for children up to eleven years of age. Originally the large group home, able to house approximately 15 children, was the only facility for children unable to stay with their families. The satellite homes were established when it was discovered that the younger children mistakenly thought that being sent to the group home was a form of punishment. The satellite homes are small and have married couples as houseparents. Living in the satellite homes with other children their own age, the younger children do not feel institutionalized or "punished." Both the group home and the satellite homes have been highly successful. Indian children are no longer sent off the reservation to non-Indian foster homes. If a child continues to need foster care after staying at the group home for three months, there are now 20 Indian foster families who can provide more extended care for the child on the reservation.

In Oregon, physical abuse of children is almost unknown in Indian communities. These communities do, however, consider as a major problem the policies and practices of governmental agencies which abuse their rights to raise their children in an Indian cultural environment. These policies and practices result from prejudiced attitudes that are institutionalized in schools, social services, health care, and the legal system. In addition, conclusions by the State Children's Services Division that Indian parents have neglected their children have frequently been based on non-Indian cultural values and standards. When applied to Indian families, these values and standards only compound existing difficulties.

This report is not meant as an attack on those individuals who administer the child-welfare system in Oregon; it is, however, an objective description by Indians and non-Indians alike of what is taking place today.

Solutions to Indian child-welfare needs must come from Indian people as well as federal and state legislators and professionals in the mental health fields. In order to find solutions, individuals in public and private children's services agencies need to recognize the unique cultural needs of Indian parents and their children. It is hoped that this report has helped to reveal some of these needs.

Reprinted from *The Destruction of American Indian Families*, published by the Association on American Indian Affairs.

"From These Beginnings" Indian Children Today

A speech presented to the fifty-fifth Annual Meeting of the Association on American Indian Affairs, May 9, 1977

by Evelyn Lance Blanchard, MSW

It is with a sense of sincere appreciation that I accept the invitation to speak with you this evening. I am mindful of the great assistance that has been given to Indian people through your contributions, the work of the staff of the Association and the guidance of the Directors.

The situation we face is very complicated and requires clear understanding.

Unwarranted and unjust governmental interference with American Indian family life is perhaps the most flagrant infringement of the right of Indian tribes to govern themselves in our time, and the most tragic aspect of contemporary Indian life.

The continuing bias of government policy is to coerce Indian families to conform to non-Indian child-rearing standards. Indian tribes are asking the state and federal governments to stop "saving" Indian families in this way and, instead, recognize and respect the rights and traditional strengths of Indian children, families and tribes.

Few people in these governments have sought to understand the philosophical base of Indian peoples' existence. The Indian experience has a fragility and strength that naturally molds the person into a being who is responsible and free.

Indian people have ancient beginnings, that for many are characterized by emergence legends. In some of these legends, only a few people, animals and other living things participated. As these beings moved through time and space, they gained an understanding of how their world would be and the character of the people they would become. Throughout these times and spaces, all learned about their relationship to one another.

When the final people emerged into the land that would be their country, specific lessons about how to live there were taught. These lessons were in addition to what had already been learned. The lessons covered all aspects of living and were concerned with preservation of the life of the community and the people who shared that life. Animals and other living things shared in that life to the same extent that human beings did.

To live in a world that is shared, there must be order. From the beginning in these communities, there was a division of labor and responsibility. The performance of certain tasks by specific groups was essential to the continuation of life. The interdependence of man was strongly emphasized. Yet, his independence was also emphasized through task assignment and expectation. The continuation of life-preserving functions was ensured through the teachings to the younger members of the tribe.

Out of these lessons developed the accepted behaviors of the specific tribal community. Accepted behaviors for any individual within the tribe derived from his sex and group membership. Each group and its members had responsibility for certain tasks that might be described as secular or religious in nature.

In this way, a person grew into what he would become in relation to the life of the tribal community. His role and responsibility were clear and every opportunity was given to learn these well. The accomplishment of his tasks was necessary. His individual expression developed out of his sensitivity to his unique role and responsibility. He gained an exquisite sense of his part in the order of the world. From this vantage point, he experienced his worth.

Few societies have allowed for the individual expressions of

uniqueness that are available to Indian people. The majority society allows for individual expression of uniqueness through individualism. The Indian tribal community allows for this expression through individuality. This is a very important difference in the way a people address life. In one sense, uniqueness must be novel or a departure from the normal. In the other sense, uniqueness becomes the refinement of life.

Perhaps the best way to describe this is to look at the various Indian art forms. There is a definite limitation of space and style. Within these limitations the artist must find room for his individual expression. The art of the Northwest Coastal Indians is a clear example of this. The outlines of the whale and raven, for example, are set. The differing artistic expressions are within the confines of those outlines.

Art becomes a visual expression of the individual Indian person's understanding of his social context. He accepts the dictates of his tribal group. He responds to the expected behavior because it has a life-preserving function, and provides him with an understanding. He does not re-create his world in the sense that artistic freedom of expression is generally understood. It is important that the social order be maintained.

Tribal groups exerted pressures of conformity and control on their people. The nature of these tribal characteristics provided its members with a sense of security and sureness that has been experienced by few people in this world. The ability to experience this comfort and security derived directly from the lessons that were taught to the people when they were eventually situated in their country.

These pressures, born out of the lessons taught, stimulated the development of a high level of sensitivity. This heightened sensitivity allowed tribal people to be acutely aware of balance and imbalance in the natural order of things. The disorder or imbalance might be caused by disruptions in human relationships, natural disasters or undesirable influences from within or outside the tribe. Experiences with the imbalances in life allowed people to better understand the balance of life. The incidence of threat or danger provided an opportunity for the people to better understand the nature of the world and of man's relationship to it. In this sense, imbalance of any sort took on the character of the natural order of things.

To maintain this kind of society, relationships must be extensive and entwined beyond blood relationship. The education and training of the children was in a very real sense the responsibility of the total community. Children were shared by everyone, which is a characteristic essential to an honestly interdependent community.

The importance placed on relationships necessitated a society that was based on interdependence and responsibility. These were among the first human experiences of the Indian person. They became the cornerstone of the philosophical life of Indian people. These experiences which form the basis of tribal tradition and culture were of such importance that they have persevered through all time and today remain an important part of the Indian person's view of life.

The tenacity with which the Indian person holds to the tribal ethos or value system is repeated in the everyday experience of most Indian people. Those beginning precepts of tribal life that he learned early remain as much a part of him as does the first suckling taste of life at his mother's breast.

It is from these beginnings that Indian children come.

On April 1, 1977 the Indian Child Welfare Act of 1977 (S. 1214) was introduced by Senator James Abourezk, a Democrat from South Dakota, and Chairman of the Senate Select Committee on Indian Affairs. That bill, if enacted, would promote the stability and security of Indian family life.

The foundations of our families have been given serious jolts. Yet, we are people who have strong and extended family ties, even in today's world. We maintain levels of relationship not present in many other groups. We affirm a relationship to the land unlike any other group in this country and our meaning in life is directly attached to it.

Many features of our land and its history provide part of what forms our philosophy of life. This philosophy is rooted in a vast and complex network of relationships that strongly and immediately connects all things in the world. Human relationships are extremely strong and binding. Indian people derive their identity from relationships to their families, relatives, tribes, and land base.

The network of blood and clan relationships provides a broad base of resources upon which to draw for the care of children, as was done traditionally. In effect, this network of relationships provides for Indian children what social service agencies provide for non-Indian children. These relationships, which have been ignored or disrupted by non-Indian controlled federal and state agencies, are the ones that must be drawn upon to provide Indian people the opportunity for self-determination regarding child welfare.

We know the strength of this philosophy and desire that our children share in it. To be able to share it, they must have the opportunity to live in its sphere of influence and learn from it. The passage of the Indian Child Welfare Act will help ensure this for us.

Editor's note: Evelyn Lance Blanchard's speech has been abridged for reasons of space. Readers who want to learn more may wish to purchase *The Destruction of American Indian Families,* a collection of essays concerning the Indian child-welfare crisis by fifteen Indian and non-Indian authors. (See below.)

AAIA Book

The Destruction of American Indian Families, published by the Association on American Indian Affairs, contains fourteen essays by Indian and non-Indian authors who agree that present state and federal policies, if not subjected to sweeping reform, can only further the destruction of American Indian family life.

"Essays . . . examine the Indian child-welfare crisis from contemporary, legal and historical perspectives; document the human cost to Indian parents, children and communities; and report on innovative programs designed by Indian tribes."—*Library Journal.* "A strong indictment of undue separation of Indian children from their families—chiefly as a result of governmental policy—and a reflection of the current struggle on behalf of the rights of Indian children."—*Child Welfare.* "A good job of introducing the subject."—*Choice.* "Of considerable importance for an understanding of current Indian affairs."—*Wassaja.* "Exposes the federal government's role in the Native child-welfare crisis and the genocidal effect of government policies on the Native community."—*Akwesasne Notes.*

To order this 90-page book, please use the coupon below.

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YAKIMAS, Continued from page 1

problems with social systems can be an effective aid in insuring that family members can assume responsible care for their children," reports Ms. Robbins.

The project has successfully developed a 24-hour, 7-day-a-week receiving home housed in the same facility as the project's counselling and administrative staff. "The community has responded well to the Receiving Home," says one Indian counsellor. "It provides the Indian family with visible assurance that their children will be served by an Indian staff and connected with the counsellor assigned to the case. This has increased the trust level enormously, an essential ingredient in working with Indian families."

The Receiving Home has become an integral component to the Project's growing number of professional services available to the community. With the Receiving Home serving as a neutral short term placement site, Indian counsellors have had the opportunity to combine traditional Indian values with professional social work practice in order to provide the necessary services to ensure a family's capacity for improved functioning as a family unit.

"We respect Indian values in relationship to non-interference of a family's private life," says Ms. Robbins. "We offer services in a way that allows families to view us as a resource, not a judgmental authority. Authority of course is used, but only when a child's safety is clearly threatened by family instability. Many of our referrals are increasingly self-referrals," a fact Ms. Robbins cites as an indicator of the trust level the project has developed with Indian families.

Project services provide for a full range of assistance to families in need. In addition to the crisis Receiving Home and foster care services, the project offers full medical screening and limited treatment, family counselling, alcoholism counselling, juvenile court social work services, family advocacy services, community education in the areas of child abuse and neglect as well as child management, crisis intervention services, a 24 hour report capability for child abuse and neglect, screening and referral services in coordinating needed social services to Indian families, and child protective services when necessary.

"The success of our Yakima program has been in large part due to our focus on the family unit as the appropriate object of treatment," reports Ms. Robbins. "We have found progress with multi-problem families to be a slow and gradual process, marked by frequent regressions. However, sticking with the family and having faith in their ability to deal more effectively with their problems has led to major success stories." Ms. Robbins remains enthusiastic and excited over the major strides made by the Yakimas in reclaiming the capacity to serve their people in ways which preserve family integrity and insure that its youth are not removed from their rightful cultural heritage.

Staff at the project are working intensely to develop a comprehensive social service program on the reservation. A major area of concern is the adolescent population. Ms. Robbins admits that there is no real ongoing service to the Indian adolescent at this time. "Our present service system is inadequate to the needs of the Indian adolescent. This is tragic because life patterns established at this early age are carried well into adulthood." A major project priority is to provide services to the Indian adolescent in the near future.

A federal court ruling (*Confederated Bands and Tribes of the Yakima Indian Nation* v. *State of Washington* [April 29, 1977]) in the Ninth District Circuit Court of Appeals, San Francisco, initiated by the Yakima Tribe has indicated that the Yakima Tribe has regained jurisdiction over civil and limited areas of criminal proceedings involving Indians on the reservation. Criminal and civil jurisdiction in Washington State for Indian tribes was assumed by the state with the passage of Public Law 83-280 in 1953.

Ms. Robbins states that return of jurisdiction will be a major turning point for the Yakimas in their long fight for self determination based on a treaty committment with the federal government in 1855. States Ms. Robbins, "We will continue to build a system of services which provide for our people what is necessary to insure their health, education and public welfare, in ways which respect their innate cultural rights as Native Americans belonging to a sovereign nation within the boundaries of the United States."

Families and Mental Health

The President's Commission on Mental Health should work with American Indian people to protect and strengthen Indian family life, the Commission was recently told by an American Indian clinical psychologist.

"The past undermining of American Indian family life places a tremendous burden on the present Commission to respond in new ways to a dehumanizing situation," Marlene Echohawk, Otoe, Ph.D., testified at a meeting of the Commission in Tucson, Arizona in June.

Citing statistics indicating the magnitude of the practice of removing American Indian children from their families to be placed in non-Indian foster or adoptive care, Dr. Echohawk said the efforts of the Commission should encourage "reintegrative forces."

Among the recommendations made by Dr. Echohawk were that American Indians be in control of all services provided to them and that administrative reforms necessary to protect Indian families be implemented. She also urged that mental health experts be available to work with tribes, families and children, and that the Commission itself include as many Indian people as possible in its work.

The Commission is due to make its final report to President Carter in June 1978. Indian people who wish to submit statements may write to the Commission at: President's Commission on Mental Health, The White House, Washington, D.C. 20500.

Child Welfare Victory

In a recent custody case involving a child from the Torres Martinez Reservation, a California Superior Court held that the standards of Indian custom and tradition should be applied in the case instead of the standards of California juvenile law.

Among some groups of Mission Indians of California there is a ceremony in which Indian mothers pledge to care for one another's children. According to Indian custom and tradition, the resulting relationship is termed *kumadre,* and is akin to being a "second mother" for the children.

Bernadine Castello, when she was temporarily unable to care for her then ten-year-old son Frederick in December 1976, placed him with his *kumadre* on the Torres Martinez Reservation in southern California. The state of California alleged that Mrs. Castello's action constituted neglect, and petitioned the Superior Court for the county of Riverside to remove Frederick from his family.

At the hearing, the court determined that Frederick was receiving adequate care, was healthy, and was attending school.

Both Mrs. Castello and Frederick's *kumadre* asserted that their special relationship with him, under local Indian custom

and tradition, imposed special responsibilities on the *kumadre* to provide for his care and support. .

"Although [Frederick] has no parent or [legal] guardian actually exercising care and control," the court concluded, "he nonetheless, under applicable Indian custom and tradition, is under the care and control of a person standing in a special relation to him, with all the responsibilities associated with natural parenthood."

The state of California asserted jurisdiction in this case under Public Law 83-280, which extended state civil jurisdiction to Indian reservations in California and five other states. In this case, Mrs. Castello did not challenge the jurisdiction of the California court. However, she did assert, and the California court affirmed, that Public Law 83-280 provides a statutory exemption for Indian custom relationships, and that the state court, rather than apply the standards of California juvenile law, should apply the standards of Indian custom.

The Association on American Indian Affairs provided legal assistance to Mrs. Castello in the case.

High Court Protects Families

A decision of the U.S. Supreme Court striking down a zoning ordinance in an Ohio city last May has deep significance for the protection of family life from unwarranted intrusions by public officials.

In the case of *Moore* v. *City of East Cleveland, Ohio,* the Supreme Court ruled that the strong constitutional protection of the sanctity of the family established in numerous decisions extends to the multi-generation extended family, such as is common in Indian communities.

The Court's 5-to-4 ruling reversed the conviction of Inez Moore, a sixty-three-year-old widow and grandmother, who an Ohio appeals court had found guilty of violating an East Cleveland housing ordinance that allowed only one family per dwelling unit and defined that family as basically the nuclear family. Mrs. Moore shares her home with her son and two grandsons.

Mrs. Moore appealed the conviction to the Supreme Court on the grounds that the ordinance was an unconstitutional infringement of the rights of her family. The City of East Cleveland suggested that any constitutional right to live together as a family applies only to the nuclear family—defined essentially as a couple and its dependent children.

To do what the city urged, the Supreme Court said, would require "cutting off any protection of family rights at the first convenient, if arbitrary boundary—the boundary of the nuclear family."

The Court likened the question before it in this case to those involved in previous cases in which it has upheld freedom of choice with respect to childbearing, the rights of parents to the custody and companionship of their own children, and traditional parental authority in matters of child rearing and education.

"Unless we close our eyes to the basic reasons why certain rights associated with the family have been accorded shelter under the Fourteenth Amendment's Due Process Clause, we cannot avoid applying the force and rationale of these precedents to the family choice involved in this case," the Court said. (The Fourteenth Amendment to the Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law.")

"Appropriate limits on substantive due process," the Court continued, "come not from drawing arbitrary lines but rather from careful respect for the teachings of history [and] solid recognition of the basic values that underlie our society."

Then the Court went on to say: "Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural.

"Ours is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition. Over the years millions of our citizens have grown up in just such an environment, and most, surely, have profited from it.

"Even if conditions of modern society have brought about a decline in extended family households, they have not erased the accumulated wisdom of civilization, gained over the centuries and honored throughout our history, that supports a larger conception of the family. Out of choice, necessity, or a sense of family responsibility, it has been common for close relatives to draw together and participate in the duties and the satisfactions of a common home.

"Decisions concerning child rearing, which *Yoder, Meyer, Pierce* and other cases have recognized as entitled to constitutional protection, long have been shared with grandparents or other relatives who occupy the same household—indeed who may take on major responsibility for the rearing of the children. Especially in times of adversity, such as the death of a spouse or economic need, the broader family has tended to come together for mutual sustenance and to maintain or rebuild a secure home life. This is apparently what happened here.

"Whether or not such a household is established because of personal tragedy, the choice of relatives in this degree of kinship to live together may not lightly be denied by the State. *Pierce* struck down an Oregon law requiring all children to attend the State's public schools, holding that the Constitution 'excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only.' By the same token the Constitution prevents East Cleveland from standardizing its children—and its adults—by forcing all to live in certain narrowly defined family patterns."

One of the main reasons for the unwarranted separation of Indian children from their families is that in judging the fitness of a particular family, many social workers, ignorant of Indian cultural values and social norms, make decisions that are wholly inappropriate in the context of the patterns of Indian family life and so they frequently discover neglect or abandonment where none exists.

For example, the dynamics of Indian extended families are largely misunderstood. An Indian child may have scores of relatives who are counted as close, responsible members of the family. In the *Moore* case, Justice Brennan was joined by Justice Marshall in a concurring opinion written, they said, "to underscore the cultural myopia" of the arbitrary boundary drawn by the East Cleveland ordinance. "In today's America," the Justices wrote, the 'nuclear family' is the pattern so often found in much of white suburbia. The Constitution cannot be interpreted, however, to tolerate the imposition by government upon the rest of us of white suburbia's preference in patterns of family living."

Many social workers, untutored in the ways of Indian family life or assuming them to be socially irresponsible, consider leaving the child with persons outside the nuclear family as neglect and thus as grounds for terminating parental rights.

The Supreme Court decision, although making no specific mention of Indian families, extends the constitutional protection of family integrity, and by so doing places the burden on welfare agencies to become more sensitive to the different cultural dynamics of Indian extended families, and accord them their proper constitutional protection.

Text of Child Welfare Bill—Pages 3-6

INDIAN FAMILY DEFENSE

A bulletin of the Association on American Indian Affairs, Inc.

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New England Indian Foster Care Project

by the Foster Care Project staff
of the Boston Indian Council

The Boston Indian Council (BIC) in Boston, Massachusetts, initiated an Indian foster care project to meet the special child-welfare needs of Indian people in New England at the end of October with the aid of a one-year grant from the U.S. Department of Health, Education and Welfare. The project is a joint effort of BIC and two Indian organizations in Maine, the Central Maine Indian Association in Orono and the Association of Aroostook Indians in Houlton, to ensure the integrity and stability of Native American families in the Northeast.

It is the hope of the project staff that this collaborative effort will protect the ethnic heritage of Native Americans and enlighten social institutions to the unique needs and problems facing the Indian community.

Our constituency is for the most part Micmac and includes Maliseet, Penobscot, and Passamaquoddy peoples. The Indian community in Boston itself is transitory in nature, as it is made up of people who move between Boston and their home reservations in Maine, New Brunswick, and Nova Scotia.

The project grew out of the concern of Indian people in Boston and throughout New England and the Maritime Provinces of Canada about the enormous number of Indian children removed from their families. As many as 25-35 percent of Indian children throughout the country are separated from their families to be placed in adoption, foster care or institutions. In Maine, the only New England state for which statistics are available, Indian children are placed in foster homes at a per capita rate 19 times greater than that for non-Indians, and two-thirds of such Indian children are placed with non-Indian families.

The overriding purposes of the project are to prevent the unwarranted separation of Indian children from their families and, in cases where foster care is necessary, to make foster care work for the benefit of the Indian community in general and for Indian children and families in particular. "We would like to help overcome the powerlessness that many Indian parents feel towards the social agencies that control their lives," says Suzanne Letendre, project director.

To accomplish these purposes the project has several specific goals, as follows:

(1) We would like to prevent Indian children from being unnecessarily taken from their families. Too often social workers do not understand that Indian ways differ from the ways of the majority society, and as a result conclude that a child should be removed from his or her home for reasons that are not applicable to the child's or family's situation.

(2) When a social worker proposes that an Indian child should be removed from his or her family (a) the Indian community should be consulted, and (b) corrective measures should be taken

Continued on page 7

House to Hold Hearings on Child Welfare Bill

The Subcommittee on Indian Affairs and Public Lands of the U.S. House of Representatives is scheduled to hold hearings on the Indian Child Welfare Act on February 9.

The legislation, already passed by the Senate, has the potential to protect thousands of Indian children from the tragedy of being unjustly separated from their families. Enactment of the bill would go a long way towards eliminating the abusive child-welfare practices that have destroyed great numbers of Indian families and towards allowing Indian tribes the opportunity to provide for their own children.

American Indian families won a significant victory when the Senate passed the bill (S. 1214) by a voice vote on November 3, despite the opposition of the Carter administration.

The basic purposes of the bill are to (1) end injurious child-welfare practices that result in unwarranted Indian parent-child separations; (2) end discrimination that prevents Indian families from qualifying as foster or adoptive families; and (3) provide Indian communities with comprehensive child-welfare and family-services programs.

The underlying premise of the bill is that Indian tribes, as local governments, have a vital role to play in any decision about whether Indian children should be separated from their families.

When the Senate Select Committee on Indian Affairs held hearings last August, Indian witnesses from across the country supported the bill. The Senate passed the bill as favorably reported out of the Committee.

Although the Senate-passed bill differs in several significant respects from the bill as originally drafted by the Association on American Indian Affairs (see *Indian Family Defense* No. 8), it will still protect the vast majority of Indian families from unwarranted governmental interference. It is hoped that the House will act to restore those sections deleted by the Senate.

Because of the importance of this legislation, *Indian Family Defense* is reprinting the full text of the Indian Child Welfare Act on pages 3-6.

New Sterilization Guidelines

On December 13 the U.S. Department of Health, Education and Welfare (HEW) published proposed new guidelines for federally-funded sterilizations. The guidelines (42 *Federal Register* 62718) were issued in response to serious allegations of cases in which patients were coerced into being sterilized over the last few years. A report last year by the General Accounting Office, an agency of Congress, found widespread inadequacies in the procedures used to obtain informed consent of Indian women for sterilization procedures and recommended reform of HEW's regulations. (See *Indian Family Defense* No. 7.)

Please turn page

The purpose of the new rules is to prevent situations in which patients decide to have sterilization operations because they lack adequate information about alternatives, fear reprisals (such as the withholding of welfare benefits or of medical care), or give consent under duress.

The regulations provide that a patient's consent to the operation must be in writing, given voluntarily, and with an understanding of the nature and consequences of the procedure to be performed.

Foremost among the information that must be provided is the advice that a patient is free not to be sterilized, and that a refusal will not result in a loss of federally-funded benefits or affect the patient's future right to care or treatment (including sterilization).

A person preparing to obtain informed consent to a sterilization procedure must provide *orally* all of the following information:

(1) advice that the individual is free to withhold or withdraw his/her consent to the procedure at any time prior to the sterilization without affecting his/her right to future care or treatment, and without loss or withdrawal of any federally-funded program benefits to which the individual might be otherwise entitled;

(2) a description of available alternative methods of family planning and birth control;

(3) a full description of the benefits or advantages he/she may expect to gain as a result of the sterilization;

(4) advice that the sterilization procedure is considered to be irreversible;

(5) a thorough explanation of the specific sterilization procedure to be performed;

(6) a full description of the discomforts and risks which may accompany and follow the performing of the procedure including an explanation of the type and possible effects of any anesthetic to be used;

(7) advice that the sterilization will not be performed for at least 30 days; and

(8) an opportunity to ask and have answered any questions he/she may have concerning the sterilization procedure.

Authorized consent forms must be used to ensure that the required information is in fact communicated to the patient and that the patient's consent is voluntary. The rules propose that the consent form should be in the primary language of the patient, and, if it is not, that an interpretor must be made available to assist the individual.

The proposed rules also establish special protections for groups particularly vulnerable to coercion—mental incompetents and people in mental, correctional or other institutions.

The new rules will govern only federally-funded sterilizations, but it is expected that they will be made applicable to programs where HEW personnel actually perform sterilizations—such as the Indian Health Service—by administrative directive. Current policies will remain in force pending adoption of the proposed rules.

Under federal law it is a felony, punishable by a fine of up to $1,000 and by imprisonment of up to one year, or both, to coerce any person to undergo a sterilization through the threat of withholding any service or program receiving federal financial assistance.

HEW has scheduled public hearings on the new regulations in thirteen cities around the country from January 27 to February 17. To learn the time and place of the hearing in your area, contact: Mr. Jim Loving, Office of the Undersecretary, (202) 245-7254.

The deadline for public comments on the proposed regulations is March 13, 1978. Readers who would like to review and comment on the regulations may obtain the complete text by writing to: Editor, *Indian Family Defense*, Association on American Indian Affairs, 432 Park Avenue South, New York, N.Y. 10016.

Boarding Schools Blasted

U.S. Bureau of Indian Affairs boarding schools are a menace to the mental heath of Indian children, H. C. Townsley, M.D., the chief of mental health programs of the U.S. Indian Health Service, said at a meeting in Portland, Oregon last September.

"BIA boarding schools ideally should be disbanded," Dr. Townsley said, "and Indian children given the same educational opportunities as the population in general."

"Boarding schools are understaffed, underfunded and remote [from children's homes]," Dr. Townsley is quoted as saying by *The Portland Oregonian*. "The children are often put into a militaristic atmosphere. 'Line up for this. Line up for that. Go to supper. Go to bed.'

"The Indian children are so menaced. Many come from broken homes to begin with and are put in an environment with more regulation. They don't have much of a chance. If a teacher or counselor has 40-50 children under his wing, he can't devote enough time to listening to the children as a surrogate parent."

Dr. Townsley called the average staff ratio of one teacher or counselor to every 80 Indian children "a tremendous menace to mental health." The dropout rate for Indian boarding-school students is 6-8 times that of the general population.

"One of the reasons is they never properly learn to read or write," Dr. Townsley continued. "They are passed socially one grade to the next and finally the tasks before them are more severe than they can handle.

"We all know what happens to children if passed from one grade to the next without some level of competence. It is tough next year, and tougher the following year. Finally they are so frustrated they drop out of school.

"Also, as these children become adults they are more apt to get into delinquency and more frequently wind up in criminal activities. Large numbers wind up in prison."

Dr. Townsley stated that the boarding schools now operating need more staff and adequate funding. But he made clear that he would phase out all boarding schools if he could.

Approximately 30,000 Indian children (thousands as young as five-ten years old) are placed in BIA boarding schools. Enrollment in BIA boarding schools and dormitories is not based primarily on the educational needs of the children; it is chiefly a means of providing substitute care. The standards for taking children from their homes for boarding schools are as vague and as arbitrarily applied as are the standards for Indian foster-care placements.

Title IV of the Indian Child Welfare Act, which recently passed the Senate and is now before the House of Representatives, declares that it is the sense of Congress that the absence of locally-convenient day schools contributes to the break-up of Indian family life and requires that the Secretary of the Interior submit a plan to Congress so that Indian families would be provided the option of a day-school education for their children.

INDIAN FAMILY DEFENSE is a bulletin of the Association on American Indian Affairs. Editorial staff: *Executive Editor*, Mary Gloyne Byler; *Editor*, Steven Unger; *Business Manager*, Ida Gellman; *Circulation Manager*, Ruth Alterman.

Indian Child Welfare Bill

Because of the significance of the Indian Child Welfare Act for all Indian children and families, and in order that all Indian people have an opportunity to evaluate it, *Indian Family Defense* is reprinting the entire text of the bill as it passed the U.S. Senate in November.

SECTION-BY-SECTION ANALYSIS

Title I is designed to clarify who has jurisdiction over Indian child placements and establish standards for child-placement proceedings which will ensure that Indian parents will be accorded a full and fair hearing when child placement is at issue. The bill provides that no placement of an Indian child who resides on an Indian reservation shall be valid unless made pursuant to an order of the appropriate tribal court. When foster or adoptive placement of an Indian child is necessary, the bill provides that a preference should be given to the child's extended family and, if such placement is not made, to Indian homes and institutions. The bill states that it is the duty of the U.S. government to protect the special relationship which exists between Indian children and their tribes. The legislation requires all states, the United States, and federally-recognized tribal governments to accord full faith and credit to the laws of any Indian tribe applicable to a proceeding under this act and to any tribal court orders relating to the custody of a child who is the subject of such a proceeding.

Title II authorizes the Secretary of the Interior to make grants directly to Indian tribes and organizations for the purpose of establishing Indian family development programs both on and off the reservation. These program funds may be used for such purposes as hiring child-welfare staffs, construction of child-welfare facilities, providing counsel and legal representation to Indian children and families involved in a placement proceeding, and developing and licensing Indian foster and adoptive homes.

Title III authorizes and directs the Secretary of the Interior to collect and maintain records of all Indian child placements from the enactment of this act forward and provides timetables for implementation of this bill.

Title IV requires the Secretary of Interior to do a study of the impact that the absence of locally-convenient day school facilities has on Indian children, and requires the Secretary to provide a plan for remedial action.

INDIAN CHILD WELFARE ACT OF 1977

The Senate proceeded to consider the bill (S. 1214) to establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes, which had been reported from the Select Committee on Indian Affairs with an amendment to strike all after the enacting clause and insert the following:

That this Act may be cited as the "Indian Child Welfare Act of 1977".

FINDINGS

SEC. 2. Recognizing the special relations of the United States with the Indian and Indian tribes and the Federal responsibility for the care of the Indian people, the Congress finds that:

(a) An alarmingly high percentage of Indian children living within both urban communities and Indian reservations, are separated from their natural parents through the actions of nontribal government agencies or private individuals or private agencies and are placed in institutions (including boarding schools), or in foster or adoptive homes, usually with non-Indian families.

(b) The separation of Indian children from their families frequently occurs in situations where one or more of the following circumstances exist: (1) the natural parent does not understand the nature of the documents or proceedings involved; (2) neither the child nor the natural parents are represented by counsel or otherwise advised of their rights; (3) the agency officials involved are unfamiliar with, and often disdainful of Indian culture and society; (4) the conditions which led to the separation are not demonstrably harmful or are remediable or transitory in character; and (5) responsible tribal authorities are not consulted about or even informed of the nontribal government actions.

(c) The separation of Indian children from their natural parents, especially their placement in institutions or homes which do not meet their special needs, is socially and culturally undesirable. For the child, such separation can cause a loss of identity and self-esteem, and contributes directly to the unreasonably high rates among Indian children for dropouts, alcoholism and drug abuse, suicides, and crime. For the parents, such separation can cause a similar loss of self-esteem, aggravates the conditions which initially gave rise to the family breakup, and leads to a continuing cycle of poverty and despair. For Indians generally, the child placement activities of nontribal public and private agencies undercut the continued existence of tribes as self-governing communities and, in particular, subvert tribal jurisdiction in the sensitive field of domestic and family relations.

DECLARATION OF POLICY

SEC. 3. The Congress hereby declares that it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligations to the American Indian people, to establish standards for the placement of Indian children in foster or adoptive homes which will reflect the unique values of Indian culture, discourage unnecessary placement of Indian children in boarding schools for social rather than educational reasons, assist Indian tribes in the operation of tribal family development programs and generally promote the stability and security of Indian families.

DEFINITIONS

SEC. 4. For purposes of the Act:

(a) "Secretary", unless otherwise designated, means the Secretary of the Interior.

(b) "Indian" means any person who is a member of or who is eligible for membership in a federally recognized Indian tribe.

(c) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided by the Bureau of Indian Affairs to Indians because of their status as Indians, including any Alaska Native villages, as listed in section 11(b) (1) of the Alaska Native Claims Settlement Act (85 Stat. 688, 697).

(d) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

(e) "Tribal court" means any Court of Indian Offenses, any court established, operated, and maintained by an Indian tribe, and any other administrative tribunal of a tribe which exercises jurisdiction over child welfare matters in the name of a tribe.

(f) "Nontribal public or private agency" means any Federal, State, or local government department, bureau, agency, or other office, including any court other than a tribal court, and any private agency licensed by a State or local government, which has jurisdiction or which performs functions and exercises responsibilities in the fields of social services, welfare, and domestic relations, including child placement.

(g) "Reservation" means Indian country as defined in section 1151 of title 18, United States Code and as used in this Act, shall include lands within former reservations where the tribes still maintain a tribal government, and lands held by Alaska Native villages under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688). In a case where it has been judicially determined that a reservation has been diminished, the term "reservation" shall include lands within the last recognized boundaries of such diminished reservation prior to enactment of the allotment or pending statute which caused such diminishment.

(h) "Child placement" means any proceedings, judicial, quasi-judicial, or administrative, voluntary or involuntary, and public or private action(s) under which an Indian child is removed by a nontribal public or private agency from (1) the legal custody of his parent or parents, (2) the custody of any extended family member in whose care he has been left by his parent or parents, or (3) the custody of any extended family member who otherwise has custody in accordance with Indian law or custom, or (4) under which the parental or custodial rights of any of the above mentioned persons are impaired.

(i) "Parent" means the natural parent of an Indian child or any person who has adopted an Indian child in accordance with State, Federal, or tribal law or custom.

(j) "Extended family member" means any grandparent, aunt, or unele (whether by blood or marriage), brother or sister, brother or sister-in-law, niece or nephew, first or second cousin, or stepparent whether by blood, or adoption, over the age of eighteen or otherwise emancipated, or as defined by tribal law or custom.

TITLE I—CHILD PLACEMENT JURISDICTION AND STANDARDS

SEC. 101. (a) No placement of an Indian child, except as provided in this Act shall be valid or given any legal force and effect, except temporary placement under circumstances where the physical or emotional wellbeing of the child is immediately and seriously threatened, unless (1) his parent or parents and the extended family

member in whose care the child may have been left by his parent or parents or who otherwise has custody according to tribal law or custom, has been accorded not less than thirty days prior written notice of the placement proceeding, which shall include an explanation of the child placement proceedings, a statement of the facts upon which placement is sought, and a right: (A) to intervene in the proceedings as an interested party; (B) to submit evidence and present witnesses on his or her own behalf; and (C) to examine all reports or other documents and files upon which any decision with respect to child placement may be based; and (2) the party seeking to effect the child placement affirmatively shows that available remedial services and rehabilitative programs designed to prevent the breakup of the Indian family have been made available and proved unsuccessful.

(b) Where the natural parent or parents of an Indian child who falls within the provisions of this Act, or the extended family member in whose care the child may have been left by his parent or parents or who otherwise has custody in accordance with tribal law or custom, opposes the loss of custody, no child placement shall be valid or given any legal force and effect in the absence of a determination, supported by clear and convincing evidence, including testimony by qualified expert witnesses, that the continued custody of the child by his parent or parents, or the extended family member in whose care the child has been left, or otherwise has custody in accordance with tribal law or custom, will result in serious emotional or physical damage. In making such determination, poverty, crowded or inadequate housing, alcohol abuse or other nonconforming social behaviors on the part of either parent or extended family member in whose care the child may have been left by his parent or parents or who otherwise has custody in accordance with tribal law or custom, shall not be deemed prima facie evidence that serious physical or emotional damage to the child has occurred or will occur. The standards to be applied in any proceeding covered by this Act shall be the prevailing social and cultural standards of the Indian community in which the parent or parents or extended family member resides or with which the parent or parents or extended family member maintains social and cultural ties.

(c) In the event that the parent or parents of an Indian child consent to a child placement, whether temporary or permanent, such placement shall not be valid or given any legal force and effect, unless such consent is voluntary, in writing, executed before a judge of a court having jurisdiction over child placements, and accompanied by the witnessing judge's certificate that the consent was explained in detail, was translated into the parent's native language, and was fully understood by him or her. If the consent is to a nonadoptive child placement, the parent or parents may withdraw the consent at any time for any reason, and the consent shall be deemed for all purposes as having never been given. If the consent is to an adoptive child placement, the parent or parents may withdraw the consent for any reason at any time before the final decree of adoption: *Provided*, That no final decree of adoption may be entered within ninety days after the birth of such child or within ninety days after the parent or parents have given written consent to the adoption, whichever is later. Consent by the parent or parents of an Indian child given during pregnancy or within ten days after the birth of the child shall be conclusively presumed to be involuntary. A final decree of adoption may be set aside upon a showing that the child is again being placed for adoption, that the adoption did not comply with the requirements of this Act or was otherwise unlawful, or that the consent to the adoption was not voluntary. In the case of such a failed adoption, the parent or parents or the extended family member from whom custody was taken shall be afforded an opportunity to reopen the proceedings and petition for return of custody. Such prior parent or custodian shall be given thirty days notice of any proceedings to set aside or vacate a previous decree unless the prior parent or custodian waives in writing any right to such notice.

(d) No placement of an Indian child, except as otherwise provided by this Act, shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately threatened, unless his parent or parents, or the extended family member in whose care the child may have been left or who otherwise has custody in accordance with tribal law or custom, has been afforded the opportunity to be represented by counsel or lay advocate as required by the court having jurisdiction.

(e) Whenever an Indian child previously placed in foster care or temporary placement by any nontribal public or private agency is committed or placed, either voluntarily or involuntarily in any public or private institution, including but not limited to a correctional facility, institution for juvenile delinquents, mental hospital or halfway house, or is transferred from one foster home to another, notification shall forthwith be made to the tribe with which the child has significant contacts and his parent or parents or extended family member from whom the child was taken. Such notice shall include the exact location of the child's present placement and the reasons for changing his placement. Notice shall be made thirty days before the legal transfer of the child effected, if possible, and in any event within ten days thereafter.

SEC. 102. (a) In the case of any Indian child who resides within an Indian reservation which maintains a tribal court which exercises jurisdiction over child welfare matters, no child placement shall be valid or given any legal force and effect, unless made pursuant to an order of the tribal court. In the event that a duly constituted Federal or State agency or any representative thereof has good cause to believe that there exists an immediate threat to the emotional or physical well-being of an Indian child, such child may be temporarily removed from the circumstances giving rise to the danger provided that immediate notice shall be given to the tribal authorities, the parents, and the extended family member in whose care the child may have been left or who otherwise has custody according to tribal law or custom. Such notice shall include the child's exact whereabouts and the precise reasons for removal. Temporary removals beyond the boundaries of a reservation shall not affect the exclusive jurisdiction of the tribal court over the placement of an Indian child.

(b) In the case of an Indian child who resides within an Indian reservation which possesses but does not exercise jurisdiction over child welfare matters, no child placement, by any nontribal public or private agency shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately and seriously threatened, unless such jurisdiction is transferred to the State pursuant to a mutual agreement entered into between the State and the Indian tribe pursuant to subsection (j) of this section. In the event that no such agreement is in effect, the Federal agency or agencies servicing said reservation shall continue to exercise responsibility over the welfare of such child.

(c) In the case of any Indian child who is not a resident of an Indian reservation or who is otherwise under the jurisdiction of a State, if said Indian child has significant contacts with an Indian tribe, no child placement shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately and seriously threatened, unless the Indian tribe with which such child has significant contacts has been accorded thirty days prior written notice of a right to intervene as an interested party in the child placement proceedings. In the event that the intervening tribe maintains a tribal court which has jurisdiction over child welfare matters, jurisdiction shall be transferred to such tribe upon its request unless good cause for refusal is affirmatively shown.

(d) In the event of a temporary placement or removal as provided in subsections (a), (b), and (c) above, immediate notice shall be given to the parent or parents, the custodian from whom the child was taken if other than the parent or parents, and the chief executive officer or such other person as such tribe or tribes may designate for receipt of notice. Such notice shall include the child's exact whereabouts, the precise reasons for his or her removal, the proposed placement plan, if any, and the time and place where hearings will be held if a temporary custody order is to be sought. In addition, where a tribally operated or licensed temporary child placement facility or program is available, such facilities shall be utilized. A temporary placement order must be sought at the next regular session of the court having jurisdiction and in no event shall any temporary or emergency placement exceed seventy-two hours without an order from the court of competent jurisdiction.

(e) For the purposes of this Act, an Indian child shall be deemed to be a resident of the reservation where his parent or parents, or the extended family member in whose care he may have been left by his parent or parents or who otherwise has custody in accordance with tribal law or custom, is resident.

(f) For the purposes of this Act, whether or not a nonreservation resident Indian child has significant contacts with an Indian tribe shall be an issue of fact to be determined by the court on the basis of such considerations as: Membership in a tribe, family ties within the tribe, prior residency on the reservation for appreciable periods of time, reservation domicile, the statements of the child demonstrating a strong sense of self-identity as an Indian, or any other elements which reflect a continuing tribal relationship. A finding that such Indian child does not have significant contacts with an Indian tribe sufficient to warrant a transfer of jurisdiction to a tribal court under subsection (c) of this section does not waive the preference standards for placement set forth in section 103 of this Act.

(g) It shall be the duty of the party seeking a change of the legal custody of an Indian child to notify the parent or parents, the extended family members from whom custody is to be taken, and the chief executive of any tribe or tribes with which such child has significant contacts by mailing prior written notice by registered mail to the parent or parents, or extended family member, and the chief executive officer of the tribe, or such other persons as such tribe or tribes may designate: *Provided*, That the judge or hearing officer at any child placement proceeding shall make a good faith determination of whether the child involved is Indian and, if so, whether the tribe or tribes with which the child has significant contacts were timely notified.

(h) Any program operated by a public or private agency which removes Indian children from a reservation area and places them in family homes as an incident to their attendance in

schools located in communities in off-reservation areas and which are not educational exemptions as defined in the Interstate Compact on the Placement of Children shall not be deemed child placements for the purposes of this Act. Such programs shall provide the chief executive officer of said tribe with the same information now provided to sending and receiving States which are members of the Interstate Compact on the Placement of Children. This notification shall be facilitated by mailing written notice by registered mail to the chief executive officer or other such person as the tribe may designate.

(i) Notwithstanding the Act of August 15, 1953 (67 Stat. 588), as amended, or any other Act under which a State has assumed jurisdiction over child welfare of any Indian tribe, upon sixty days written notice to the State in which it is located, any such Indian tribe may reassume the same jurisdiction over such child welfare matters as any other Indian tribe not affected by such Acts: *Provided*, That such Indian tribe shall first establish and provide mechanisms for implementation of such matters which shall be subject to the review and approval of the Secretary of the Interior. In the event the Secretary does not approve the mechanisms which the tribe proposed within sixty days, the Secretary shall provide such technical assistance and support as may be necessary to enable the tribe to correct any deficiencies which he has identified as a cause for disapproval. Following approval by the Secretary, such reassumption shall not take effect until sixty days after the Secretary provides notice to the State which is asserting such jurisdiction. Except as provided in section 102(c), such reassumption shall not affect any action or proceeding over which a court has already assumed jurisdiction and no such actions or proceeding shall abate by reason of such reassumption.

(j) The States and tribes are specifically authorized to enter into mutual agreements or compacts with each other, respecting the care, custody, and jurisdictional authority of each party over any matter within the scope of this Act, including agreements which provide for transfer of jurisdiction on a case-by-case basis, and agreements which provide for concurrent jurisdiction between the States and the tribes. The provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 78) shall not limit the powers of States and tribes to enter into such agreements or compacts. Any such agreements shall be subject to revocation by either party upon sixty days written notice to the other. Except as provided in section 102(c), such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction and no such action or proceeding shall abate by reason of such revocation: *And provided further*, That such agreements shall not waive the rights of any tribe to notice and intervention as provided in this Act nor shall they alter the order of preference in child placement provided in this title. The Secretary of the Interior shall have sixty days after notification to review any such mutual agreements or compacts or any revocation thereof and in the absence of a disapproval for good cause shown, such agreement, compact, or revocation thereof shall become effective.

(k) Nothing in this Act shall be construed to either enlarge or diminish the jurisdiction over child welfare matters which may be exercised by either State or tribal courts or agencies except as expressly provided in this Act.

SEC. 103. (a) In offering for adoption an Indian child, in the absence of good cause shown to the contrary, a preference shall be given in the following order: (1) to the child's extended family; (2) to an Indian home on the reservation where the child resides or has significant contacts; (3) to an Indian home where the family head or heads are members of the tribe with which the child has significant contacts; and (4) to an Indian home approved by the tribe: *Provided, however*, That each Indian tribe may modify or amend the foregoing order of preference and may add or delete preference categories by resolution of its government.

(b) In any nonadoptive placement of an Indian child, every nontribal public or private agency, in the absence of good cause shown to the contrary, shall grant preferences in the following order: (1) to the child's extended family; (2) to a foster home, if any, licensed or otherwise designated by the Indian tribe occupying the reservation of which the child is a resident or with which the child has significant contacts; (3) to a foster home, if any, licensed by the Indian tribe of which the child is a member or is eligible for membership; (4) to any other foster home within an Indian reservation which is approved by the Indian tribe of which the child is a member or is eligible for membership in or with which the child has significant contacts; (5) to any foster home run by an Indian family; and (6) to a custodial institution for children operated by an Indian tribe, a tribal organization, or nonprofit Indian organization: *Provided, however*, That each Indian tribe may modify or amend the foregoing order of preferences, and may add or delete preference categories, by resolution of its government body.

(c) Every nontribal public or private agency shall maintain a record evidencing its efforts to comply with the order of preference provided under subsections (a) and (b) in each case of an Indian child placement. Such records shall be made available, at any time upon request of the appropriate tribal government authorities.

(d) Where an Indian child is placed in a foster or adoptive home, or in an institution, outside the reservation of which the child is a resident or with which he maintains significant contacts, pursuant to an order of a tribal court, the tribal court shall retain continuing jurisdiction over such child until the child attains the age of eighteen.

SEC. 104. In order to protect the unique rights associated with an individual's membership in an Indian tribe, after an Indian child who has been previously placed attains the age of eighteen, upon his or her application to the court which entered the final placement decree, and in the absence of good cause shown to the contrary, the child shall have the right to learn the tribal affiliation of his parent or parents and such other information as may be necessary to protect the child's rights flowing from the tribal relationship.

SEC. 105. In any child placement proceeding within the scope of this Act, the United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the laws of any Indian tribe applicable to a proceeding under the Act and to any tribal court orders relating to the custody of a child who is the subject of such a proceeding.

TITLE II—INDIAN FAMILY DEVELOPMENT

SEC. 201. (a) The Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to carry out or make grants to Indian tribes and Indian organizations for the purpose of assisting such tribes or organizations in the establishment and operation of Indian family development programs on or near reservations, as described in this section, and in the preparation and implementation of child welfare codes. The objective of every Indian family development program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or parents, or the custody of any extended family member in whose care he has been left by his parent or parents, or one who otherwise has custody according to tribal law or custom, shall be effected only as a last resort. Such family development programs may include, but are not limited to, some or all of the following features:

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the construction, operation, and maintenance of family development centers, as defined in subsection (b) hereof;

(3) family assistance, including homemakers and home counselors, day care, after school care, and employment, recreational activities, and respite services;

(4) provision for counseling and treatment of Indian families and Indian children;

(5) home improvement programs;

(6) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(7) education and training of Indians, including tribal court judges and staff, in skills relating to child welfare and family assistance programs;

(8) a subsidy program under which Indian adoptive children are provided the same support as Indian foster children; and

(9) guidance, legal representation, and advice to Indian families involved in tribal or nontribal child placement proceedings.

(b) Any Indian foster or adoptive home licensed or designated by a tribe (1) may accept Indian child placements by a non-tribal public or private agency and State funds in support of Indian children; and (2) shall be granted preference in the placement of an Indian child in accordance with title I of this Act. For purposes of qualifying for assistance under any federally assisted program, licensing by a tribe shall be deemed equivalent to licensing by a State.

(c) Every Indian tribe is authorized to construct, operate, and maintain a family development center which may contain, but shall not be limited to—

(1) facilities for counseling Indian families which face disintegration and, where appropriate, for the treatment of individual family members;

(2) facilities for the temporary custody of Indian children whose natural parent or parents, or extended family member in whose care he has been left by his parent or parents or one who otherwise has custody according to tribal law or custom, are temporarily unable or unwilling to care for them or who otherwise are left temporarily without adequate adult supervision by an extended family member.

SEC. 202. (a) The Secretary is also authorized under such rules and regulations as he may prescribe to carry out, or to make grants to Indian organizations to carry out, off-reservation Indian family development programs, as described in this section.

(b) Off-reservation Indian family development programs operated through grants with local Indian organizations, may include, but shall not be limited to, the following features:

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children are provided the same support as Indian foster children;

(2) the construction, operation, and maintenance of family development centers providing the facilities and services set forth in section 201(d);

(3) family assistance, including homemakers and home counselors, day care, after school care,

and employment, recreational activities, and respite services;

(4) provision for counseling and treatment both of Indian families which face disintegration and, where appropriate, of Indian foster and adoptive children; and

(5) guidance, representation, and advice to Indian families involved in child placement proceedings before nontribal public and private agencies.

SEC. 203. (a) In the establishment, operation, and funding of Indian family development programs, both on or off reservation, the Secretary may enter into agreements or other cooperative arrangements with the Secretary of Health, Education, and Welfare, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare.

(b) There are authorized to be appropriated $26,000,000 during fiscal year 1979 and such sums thereafter as may be necessary during each subsequent fiscal year in order to carry out the purposes of this title.

TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

SEC. 301. (a) The Secretary of the Interior is authorized and directed under such rules and regulations as he may prescribe, to collect and maintain records in a single, central location of all Indian child placements which are effected after the date of this Act which records shall show as to each such placement the name and tribal affiliation of the child, the names and addresses of his natural parents and the extended family member, if any, in whose care he may have been left, the names and addresses of his adoptive parents, the names and addresses of his natural siblings, and the names and locations of any tribal or nontribal public or private agency which possess files or information concerning his placement. Such records shall not be open for inspection or copying pursuant to the Freedom of Information Act (80 Stat. 381), as amended, but information concerning a particular child placement shall be made available in whole or in part, as necessary to an Indian child over the age of eighteen for the purpose of identifying the court which entered his final placement decree and furnishing such court with the information specified in section 104 or to the adoptive parent or foster parent of an Indian child or to an Indian tribe for the purpose of assisting in the enrollment of said Indian child in the tribe of which he is eligible for membership and for determining any rights or benefits associated with such membership. The records collected by the Secretary pursuant to this section shall be privileged and confidential and shall be used only for the specific purposes set forth in this Act.

(b) A copy of any order of any nontribal public or private agency which effects the placement of an Indian child within the coverage of this Act shall be filed with the Secretary of the Interior by mailing a certified copy of said order within ten days from the date such order is issued. In addition, such public or private agency shall file with the Secretary of the Interior any further information which the Secretary may require by regulations in order to fulfill his recordkeeping functions under this Act.

SEC. 302. (a) The Secretary is authorized to perform any and all acts and to make rules and regulations as may be necessary and proper for the purpose of carrying out the provisions of this Act.

(b) (1) Within six months from the date of this Act, the Secretary shall consult with Indian tribes, Indian organizations, and Indian interest agencies in the consideration and formation of rules and regulations to implement the provisions of this Act.

(2) Within seven months from the date of enactment of this Act, the Secretary shall present the proposed rules and regulations to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives, respectively.

(3) Within eight months from the date of enactment of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this Act.

(c) The Secretary is authorized to revise and amend any rules and regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations, the Secretary shall present the proposed revision or amendment to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives, respectively, and shall, to the extent practicable, consult with the tribes, organizations, and agencies specified in subsection (b) (1) of this section and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

TITLE IV—PLACEMENT PREVENTION STUDY

SEC. 401. (a) It is the sense of Congress that the absence of locally convenient day schools contributes to the breakup of Indian families and denies Indian children the equal protection of the law.

(b) The Secretary is authorized and directed to prepare and to submit to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs and Committee on Education and Labor of the United States House of Representatives, respectively, within one year from the date of enactment of this Act, a plan, including a cost analysis statement, for the provision to Indian children of schools located near the student's home. In developing this plan, the Secretary shall give priority to the need for educational facilities for children in the elementary grades.

Mr. HATFIELD. Mr. President, a question has been raised regarding the geographical area over which a tribe is authorized to exercise original jurisdiction over child placement matters under this bill. The definition of Indian reservation found at page 5, section 4(g) is the relevant provision here. The definition speaks of three categories of Indian reservations, those presently recognized under Federal law and defined at 18 United States Code, section 1151 (the definition of Indian country), former reservations which have been disestablished, and reservations whose boundaries have been judicially determined to be diminished or disestablished. It is my understanding, and I would like to ask Senator ABOUREZK, the bill sponsor and chairman of the Indian Committee, to confirm this understanding, that where there has not been a judicial determination of diminishment or disestablishment, the boundaries of the reservation within which a tribe is authorized to exercise original jurisdiction are those boundaries presently recognized by the Federal Government pursuant to 18 United States Code, section 1151.

Mr. ABOUREZK. Yes; that is correct. The bill is quite specific on this point. The intent of this provision is not to expand the present federally recognized boundary of a tribe but simply to authorize those tribes whose reservations have already been diminished or disestablished by judicial determination, to exercise jurisdiction over the placement of Indian children within their former, or last recognized reservation boundary. That is, as recognized prior to such judicial determination.

Mr. HATFIELD. Therefore, in the case of the Umatilla Reservation in Oregon, for example, where there has not been such a judicial determination, the reservation boundaries shall continue to be those presently recognized by the Federal Government under 18 United States Code, section 1151.

Mr. ABOUREZK. Yes, that is correct. I would add, that the term former reservation would not apply to the Umatilla tribe either, since their reservation is not a former reservation as defined by this provision, but a presently existing one. Under the law, a reservation simply cannot fall into both categories at the same time and, therefore, there is no basis for concluding that any former boundaries associated with the Umatillas' former reservation would be recognized by this act. I might also add that this act authorizes tribal jurisdiction only over child placement matters involving Indian children.

Mr. HATFIELD. Thank you. Mr. President, I have one additional question. As you know, we very recently enacted legislation to restore the Siletz Indian tribe to recognized status for purposes of Federal service eligibility. It is my understanding that this bill would not affect the former reservation boundaries of formerly terminated tribes as distinguished from tribes who have not been terminated, but whose reservations have been disestablished. With respect to formerly terminated tribes such as the Siletz where the restoration statute did not reestablish a reservation, this bill does not authorize original tribal jurisdiction over their former reservation.

Mr. ABOUREZK. Yes, that is correct, the term former reservation clearly does not apply to terminated tribes whether or not they have been restored and, consequently, there can be no argument that the bill authorizes original tribal jurisdiction over their former reservation boundaries.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

NEW ENGLAND, Continued from page 1

so that the problem which caused the child's removal is alleviated and the child can be returned as quickly as possible to his or her own family.

(3) Indian foster homes should be licensed so that those Indian children who do need temporary out-of-home care can be placed in families more suitable to their needs. The program is planning workshops for Indian parents who are interested in caring for foster children, and ultimately the program staff hopes to recommend changes in state licensing standards so that capable and loving Indian families who are now unfairly disqualified will be eligible for licensing.

Imperative for success of the project is the community liaison. This person visits families who are either threatened with the possibility of having their children taken from them, whose children have already been taken, or who know of others so threatened. The community liaison discusses with the family any child-rearing problems they may be having in an effort to help the families overcome the problems. If the children have already been removed the community liaison discusses with the family the reason for which the children were taken and attempts to find ways to remedy whatever caused the removal and secure the return of the children.

The liaison also provides a vital link between Indian families who are faced with problems and the research being done by the project staff to document and correct the situation. Research is being done into legislation, cultural patterns, and "state-of-the-art" papers. Regulations governing foster care on the state and federal levels will be studied, kinship systems and extended family relationships will be documented, and current data which describes what actually happens when an Indian child is removed from his or her own family will be thoroughly researched.

In Massachusetts a three-member staff including director, research coordinator, and community liaison has been hired, an office has been set up at the BIC, and the project is officially underway. The project hopes that it will be able to hire a separate five-member staff and open an office in Maine early in 1978.

Our hope and plan is to protect Indian family life and change the current patterns of foster care as practiced for Indian people by non-Indian social-services agencies so that foster care works for the benefit of Indian communities. Indian heritage and culture as a whole will be strengthened when the family life of our people is no longer broken down but built up and supported.

For further information please contact: Suzanne Letendre, Foster Care Project Director, Boston Indian Council, 105 South Huntington Avenue, Jamaica Plain, Boston, Mass. 02130. Telephone: (617) 232-0343.

Report from Bottle Hollow

In early December the American Academy of Child Psychiatry released its report on the Bottle Hollow Conference on Supportive Care, Custody, Placement and Adoption of American Indian Children, held last April at Bottle Hollow, Utah on the Uintah-Ouray Reservation. Almost 200 people, Indians and non-Indians, participated in the work of the conference.

The organizers convened it "in response . . . to growing concern among Indian communities over the wholesale loss of their children and the absence of child-welfare services which would preserve Indian families and afford them culturally-sensitive prevention and treatment attention."

The conference was co-sponsored by the American Academy of Child Pyschiatry, Association of American Indian Physicians, Association on American Indian Affairs, American Indian Nurses Association, National Tribal Chairmen's Association, National Congress of American Indians, and the U.S. Indian Health Service (IHS) and Bureau of Indian Affairs (BIA).

The following are the recommendations made by the nine discussion groups at the conference.

PRINCIPLES

- Any and all Indian child-welfare programs must reinforce cultural ties.
- The developmental uniqueness of the Indian child, e.g., his noncompetitiveness, is to be kept in mind at all times.
- Non-Indian social workers must be educated in Indian ways.
- Whites must be made to understand that they can be useful only if they listen—not talk.
- The grandmothers should be viewed as sources of cultural learning, although they may need assistance since many are boarding-school products.
- We as Indians need to fill in any gaps which may exist in our knowledge and understanding of our distinct tribal heritages.
- The media must be assisted at every opportunity to recognize the positive values of Indian culture and avoid stereotyping.
- Indians must gain and maintain control over social-service programs, particularly because changes take a long time. Gaining control should be a conscious process even as we involve and improve the workings of outside organizations.
- Legal training and information must be part of the preparation for work for *everyone* concerned with Indian child welfare.
- There is need for accurate and timely information on funding sources, legislation, foster-home recruitment and child-welfare practices and activities. E.g., through a national newsletter which could grow into an inter-tribal network and or a consultant bank.
- Every Indian child-welfare program must be based on the premise that children should be kept with their families if at all possible.
- Tribal social-service workers need to develop early intervention techniques to forestall family disruption.
- Family and tribal intactness and our children's social and emotional self-esteem shall be accomplished through the use of older Indian people and education of the community. for the community must respond to the needs of its members with both preventive and treatment services.
- Legal recognition must be given to a wider spread of a child's blood relatives as care givers. This recognition shall include financial support for related care givers (ADC).
- Working Indian mothers—and fathers—should be given one paid day per month to spend with their children in order to relieve guilt and strengthen family solidarity.
- Indian child-welfare conferences should be held annually and

should include workshops on specific topics, e.g., child abuse and neglect, alcoholism, drug abuse, supportive services, etc.
- Failure to preserve Indian heritage shall be viewed as an aspect of child neglect.
- The process of social development and change is a continuum and we must each determine where our activities fit on that time line. It is never too late. One worker may lead to a group home, the group home to outreach workers and so on. E.g., drunks can work out their sentences by making bricks to build a group home. Don't be afraid to start small.
- We must not copy white services which are based on the nuclear family with no network, no coordination. Indian child-welfare services shall include participation by everyone: communities, tribal councils, clans, families and individuals. Further, Indians should prepare their own standards for child-welfare services which reflect the Indian values of love, care and concern.
- There must be across-the-board accountability: among program developers, funding agencies, tribes and clients.
- When in doubt, go Indian.

ADVOCATIONS OF ACTION

- Given that service coordination is difficult and providers (including judges) need education and feedback, Indian tribes and organizations shall hold regular network meetings of all persons and agencies concerned with the Indian family. If no such network exists, establish one.
- If your tribal council does not presently concern itself with child and family welfare, see to it that it does become so concerned. Establish a Committee on Youth in your council. Without council support, your efforts are almost certainly doomed.
- If no tribal council exists, as in cities, community support must be mobilized. There is a need for education at all levels of both Indian and non-Indian society.
- Immediate outreach to relevant agency resources must be made as soon as a child's need is identified.
- The many separate human-services programs—at local, state and federal levels—must be coordinated. Areas of responsibility for child-welfare service provision must be clearly analyzed and defined.
- Human development must parallel economic development. Sometimes we have to cure immediate and specific problems but we must always be about building broadly.
- Nutrition education must be made available to Indian families, taking into account religious aspects of cooking and eating.
- The self-image of our children must be raised by going back to pre-reservation times to revise our curricula and textbooks.
- Successfully "synthesized" (biculturally functioning) Indian people must receive human-services training. The angry young people returning to the reservations are a major source of strength to us. They must be trained to consciously ease the transitions between the Indian and non-Indian worlds, which must no longer be left to chance. Further, time must be allowed in which to return to the reservation—we cannot expect it all at once.
- Development of tribally-specific juvenile codes is a priority.
- We should utilize and adapt the Model Children's Code developed by the American Indian Law Center.
- The various tribal definitions of child abuse and neglect, as well as standards for foster care, should be pooled and distributed to the tribal councils.
- We must actively enforce the right of every child to be represented by a lawyer in potential placement proceedings.
- Tribal authorities, e.g., judges, must be educated, especially in the basic tenet that separation of children from their *extended Indian* families in any form is detrimental. They must also be helped to understand that local and regional adoptive agencies are preferable to any national effort. Welfare, placement and custody issues must be dealt with at the local level.
- *Outreach* to Indian families shall be a service program priority.
- As we develop our own programs, we must include both foster and adoptive parents in all aspects of care, including continuing relations with natural parents when a child is placed outside the home.
- Service providers working with families must consciously involve both mother and father, with female and male social workers working with each respectively.
- Police should be included in service and training programs, one goal of which should be a greater use of "cooling-off" periods which can prevent many over-hasty placements.
- Services which do exist are often used inappropriately, e.g., a group home used for babysitting. Tribes need to assess service usage patterns so that each service provides maximum care for the money.
- Children and parents should be prepared for any inescapable changes from the home so that the children can be equipped with coping skills.
- We must make certain that grant and contract dollars are used to obtain tribal control.
- Title XX [of the Social Security Act, which provides federal funding to states for social services] must be amended to provide direct funding to Indian tribes and groups.
- Senate Bill 1214 must be studied and given active support if it is found acceptable.*
- Public Law 83-280 must be repealed. We must all support S. 2010 which advocates that repeal.†
- Lobby with your Congresspersons as occasions arise. Do not be silent and passive.
- Know your enemies: do your homework on the counties, states, Congress, DHEW, the BIA, etc.
- Indian child-welfare supporters need to establish a lobbying group in Washington, D.C.
- The National Congress of American Indians and the National Tribal Chairmen's Association should be encouraged to continue their national political advocacy efforts and to coordinate them.
- Urban Indian programs must be developed and funds discovered to provide consultation to them.
- Tribes on reservations shall recruit professionals to provide training and technical assistance to their social-service programs.
- But—when in doubt, go Indian.

The above recommendations are reprinted from *Supportive Care, Custody, Placement and Adoption of American Indian Children*, a 93-page report on the Bottle Hollow conference published by the American Academy of Child Psychiatry. Copies of the report are available from the Academy (1800 R Street, N.W., Washington, D.C. 20009) for $1 each.

**Editor's note:* All the independent organizations which co-sponsored the Bottle Hollow conference—American Academy of Child Psychiatry, Association of American Indian Physicians, Association on American Indian Affairs, American Indian Nurses Association, National Tribal Chairmen's Association, and the National Congress of American Indians—issued statements supporting S. 1214, the Indian Child Welfare Act, after the Conference. Only the two federal agencies that were co-sponsors, BIA and IHS, did not support the bill—much to the shock of Indian people.

†*Editor's note:* S. 2010, the Indian Law Enforcement Improvement Act, was a bill introduced in the 94TH Congress but not acted on. It has not been re-introduced in the current (95TH) Congress. S. 1214, the Indian Child Welfare Act, authorizes Indian tribes to take jurisdiction over child-welfare matters in those states which have exercised jurisdiction pursuant to federal laws such as P. L. 83-280.

Harry Lapow/AAIA

Mother and children, Crow Indian Reservation, Montana. The Indian Child Welfare Act of 1978 is designed to promote the stability and security of Indian family life. The bill is scheduled to come before the U.S. House of Representatives for a vote in late May or early June. If passed, the bill will protect thousands of Indian children from the tragedy of being unjustly separated from their families.

Navajos Reunite Families

The Navajo Deinstitutionalization Project is helping find and return to their families children who were once placed in institutions because of mental or physical handicaps.

The program, under the direction of Mary Ann Jones, a Navajo social worker, has been successful in returning five children to their families. It has been estimated that about 150 Navajo children were placed in institutions by the U.S. Bureau of Indian Affairs because of their handicaps.

"We've found with most clients we've identified that the parents didn't want them out of the home. But the Bureau of Indian Affairs said it was the best thing," says Ms. Jones.

"Some have been in institutions ten or fifteen years, and some were lost," she said.

Once the children are home they are encouraged to help with simple tasks. One young man, for example, was given a chance to ride a horse and herd sheep, and showed that he could handle responsibilities the workers at his institution believed to be beyond his capabilities.

The families are happy to have their children back, but they are also apprehensive. "Families are saying, 'This child is an adult now. We're going to need a lot of support'," Ms. Jones said.

Under the deinstitutionalization program the families are now being offered training to help them care for their children. In addition, a parents' association has been formed to give support.

Ms. Jones works out of a small room at a school for special education on the Navajo Reservation. The school was started to give Navajo youngsters a chance to be educated without being sent away from their families.

Boarding School Guilty of Negligence

Late last year the U.S. Court of Appeals for the Tenth Circuit upheld a lower court decision that found the federal government guilty of negligence in its operation of the Chuska boarding school. The decision, which the United States did not appeal, upheld an award of nearly $1 million in damages to be put in a trust fund for three Navajo children.

Allison Bryant, Johnnie High, and Marvin High were awarded the money as compensation for the loss of their legs due to frostbite and gangrene.

On a cold and windy January afternoon five years ago, Allison, ten-years-old, Johnnie, eight-years-old, and Marvin, seven-years-old, ran away from the Chuska Indian boarding school run by the U.S. Bureau of Indian Affairs and tried to make their way home to their families. They were stranded in a severe snowstorm that hit the area that night, and not found until four days later. Their frozen legs had to be amputated.

The High brothers and Allison Bryant all live in the village of Naschitti, a small reservation community of not more than 500 residents, about twenty miles from Chuska. The boys' parents, like many other Navajos, are part of a livestock grazing culture and economy, making their camp at the lower Naschitti elevations in the winter, and moving to higher ground near Sheep Springs (about 30 miles from the school) during the summer.

If the parents wanted to visit their children, or bring them home for a visit, they would hitchhike to the school. In a deposition Mrs. High stated that no transportation was regularly provided by the school to facilitate visiting.

"Why do you send Johnnie and Marvin to Chuska to school?" Mrs. High was asked during the trial of the boys' case.

"It was recommended by the Welfare Department," she replied.

The Chuska boarding school sits atop a mesa in the San Juan Basin on the eastern side of the Navajo Reservation, at Tohatchi, New Mexico. Built in the 1960s, the school is one of the newer ones in the BIA's vast educational system. Four hundred fifty-five students in grades 1-8 attend Chuska; all of them are boarded.

Nationally, there are approximately 25,000 Indian boarding school students attending 77 schools operated by the BIA. Forty-six of the schools, enrolling 15,488 students, are located in the BIA's Navajo Area. Seventy-nine percent of the Navajo students enrolled in those schools are in the elementary grades.

The damaging and harmful effects of the federal boarding schools have long been known, and the method by which parents were forced to accept them from their inception in the 1890s—when their avowed purpose was "to remove the Navajo child from the influence of his savage parents"—were anything but idyllic. A law passed by Congress in 1894 authorized the withholding of rations from any parents who refused to send their children to the schools. Later the government agents, with hired stockmen and farmers, would drive on to the reservation to catch the children, sometimes roping them like cattle, and take them to the schools.

Many children never returned from the schools, which were periodically swept by epidemics. Those that did return after

Continued on page 6.

being separated from their parents for years were often strangers to their own families. In the schools children were subjected to militaristic discipline, prohibited from speaking their own languages, and punished if they tried to practice their tribal customs.

The government-commissioned Meriam Report, published in 1928, condemned the boarding schools as chief of those government practices which "have operated against the development of wholesome family life."

Forty years later, in 1968 when the Senate Subcommittee on Indian Education conducted a nationwide investigation of the boarding schools, it concluded that they were a "national tragedy."

The Task Force on Indian Affairs of the American Psychiatric Association calls the schools "a hazard to mental health." "A strange, sterile, impersonal environment" is provided as a substitute for home the Task Force noted. "The central problem is that children living without parents are not provided with anyone else."

The Navajo Division of Education, an agency of the Navajo Nation, estimates that 90 percent of all Navajo parents would send their children to day school if they could.

Runaways are a constant part of boarding-school life. The former principal of the school at Chuska estimates that there are an average of ten runaways per semester at each of the BIA's boarding schools.

During the day there are at least nine head counts of the children attending Chuska. The first roll call is at 6:00 A.M., when the children get up, followed by separate roll calls before breakfast, after breakfast, and right before the children actually go to the school building. Students check in again when they eat at noon and again before they return to school at 1:00 P.M. New counts are made after school lets out in the afternoon, before supper, and after supper. At night there is a bed check once an hour.

Allison and Johnny had both tried to run away from Chuska before; Johnny once, and Allison twice.

The day they ran away Allison, Johnny and Marvin apparently decided on what they would do after being dismissed from school. They left the school grounds sometime between 3:30, when classes were dismissed, and 4:00, when they had to be checked in at their dormitory.

At the trial it was established that during the crucial period from 3:30 to 4:00, known to be a peak time for runaways, there was no BIA official exercising responsibility for the children in their play area between the school and the dormitory.

The boys tried to reach their parents' winter camp at Naschitti, twenty miles away, by going over a mountain. They said they avoided the nearby road—on which they might have been able to hitchhike home, as their parents did—because they did not want to be detected.

On the first night the boys camped in a small cave on the mountainside. They testified that from where they camped they could see the lights of the Chuska boarding school.

The snowstorm hit that night. For the next four days, rather than go back to the school, the boys stayed where they were.

Finally, on Friday, they were found by a Navajo man. Their hands were swollen, edematous, still capable of motion, and still retained some sensation. They were very cold but not frostbitten. Johnny's and Marvin's legs were frozen solid to mid-calf, and cold to the knee. Allison's legs were frozen solid below the ankles, and cold up from there. None of the boys had pulses in their legs.

The boys' legs, diagnosed as having frostbite and gangrene, were amputated. Today all three walk on artificial limbs.

The trial court found that the runaways were a "proximate result" of the failure of the BIA to exercise supervision on the playground. "While the government is not an insurer and cannot take absolute steps to prevent an unfortunate incident such as this one," the court said, "it is their duty to provide some reasonable supervision and effort."

The reasons children give for running away from the boarding schools are vague. Often they "just want to go home." Allison Bryant told an aide he had run away "because he was lonely, mostly." The court in its decision took into account the "strange, sterile, impersonal" aspects of boarding school life.

In measuring the standard of care that would be appropriate for the children, the court said "it was necessary to consider the boarding school circumstances with young children accustomed to close family ties."

The United States attorney defending the BIA in this case argued that the supervision the BIA had provided was prudent, and that the government's efforts were focusing on making the boarding schools a more humane environment. If a child was going to run away, there was no way to prevent it. "You are virtually going to have to shackle them to their beds to prevent the problem," he said in his concluding argument to the court.

The Indian Child Welfare Act of 1978, now before the House of Representatives, would require the Secretary of the Interior to submit to Congress a plan to provide day schools for Indian children so the parents who object to sending their children to boarding schools would not have to do so.

Child Welfare Information Exchange

Indian tribes designing child-welfare programs may be interested in using materials of the Child Welfare Resource Information Exchange. The purpose of the Exchange is to identify exemplary child-welfare projects throughout the country which have the potential for replication in, or for the infusion of new ideas to, other settings. It is also undertaking to disseminate and actively promote the use of these materials by child-welfare agencies.

The Exchange promotes this dissemination and utilization in several ways. Its bulletin, *Exchange*, is published bi-monthly to disseminate information on existing programs which have improved services to children and youth and are likely to prove useful to other agencies.

Indian tribes may also write to the Exchange to receive free copies of descriptive summaries (abstracts) for all the resources in the Exchange on subjects of interest to their child-welfare programs. The Exchange is identifying materials describing programs, projects, and technologies in the following areas of child-welfare services: adoption, advocacy, alcohol and drug abuse, counseling, diversion, education services, emergency services, employment services, family planning, foster care, health services, homemaker services, legal services, mental health services, prevention services, probation and parole services, protective services, unwed parents services; also management concerns such as administrative practices, financial management, inter-agency and community planning, program planning, and reporting.

The Exchange is a project of the National Center for Child Advocacy of the Children's Bureau, within the new Administration for Children, Youth and Families of the U.S. Department of Health, Education and Welfare.

Tribes who are interested should write or telephone the Exchange at: Child Welfare Resource Information Exchange, 2011 Eye Street, Suite 501, Washington, D.C. 20006. Telephone: (202) 331-0028.

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House to Vote on Child Welfare Bill

In June, the U.S. House of Representatives is expected to vote on the Indian Child Welfare Act of 1978.

The bill, H.R. 12533, was introduced on May 3 by Morris K. Udall (D-Ariz.) and sixteen co-sponsors. A similar bill was passed by the Senate in November of 1977.

In introducing H.R. 12533, Congressman Udall observed, "The United States has assumed a trust responsibility to preserve and protect the Indian tribes and their resources.

"There is nothing that is more central to the preservation of an Indian tribe and no resource that is more vital to its future than its children. We could not more effectively and completely destroy an Indian tribe than by depriving them of their children."

The bill is designed to end a state of crisis that exists in the area of Indian child welfare by halting the wholesale abduction of Indian children from their families.

Based on information developed at Senate oversight hearings held in April 1974 and on a number of studies showing that an alarmingly high percentage of Indian children are separated from their families and placed in foster or adoptive homes, the Indian Child Welfare Act would declare it the policy of Congress to assist Indian tribes in the operation of family development programs, to establish standards for the placement of Indian children by non-Indian public and private agencies, and generally to promote the stability and security of Indian family life.

The basic purposes of the bill are to (1) eliminate abusive child-welfare practices that result in unwarranted Indian parent-child separations; (2) end discrimination that prevents Indian families from qualifying as foster or adoptive families; and (3) provide Indian communities with comprehensive child-welfare and family-service programs.

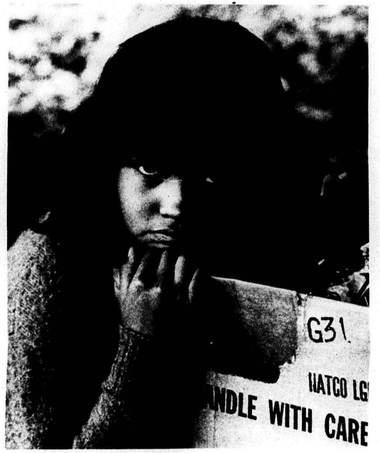
The intent of the bill is to assure that Indian families will be accorded a full and fair hearing when child placement is at issue. It also establishes priorities in the placements of Indian children, with the first preference given to members of the child's extended family, and other preferences to homes licensed by Indian tribes or maintained by Indian people and institutions operated by Indian tribes and organizations.

Other sections of the bill authorize the Secretary of the Interior to assist Indian tribes in the establishment and operation of Indian family development programs. The objective of these programs will be to prevent the break-up of Indian families and to insure that Indian children are removed from their families only as a last resort, if remedial services to help the family stay together have failed.

The child welfare crisis strikes at the heart of family life. Measured in numbers, measured in terms of its effects on the Indian family, measured by any standards of a society that considers itself democratic, it is appalling.

A survey of states with large Indian populations by the Association on American Indian Affairs revealed that 25 to 35 per cent of all Indian children are taken from their families and

Ricco Montevecchi



placed in foster homes or institutions. The decision to remove the children from their natural homes is, in most cases, carried out without due process of law and with little regard for the impact on children, their families and the community.

Many social workers, ignorant of Indian cultural values and social norms, make decisions that are wholly inappropriate in the context of Indian family life, frequently perceiving child-desertion, neglect or abandonment where none exists.

Poverty, poor housing, lack of modern plumbing, and overcrowding are often cited by social workers as proof of parental

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neglect and are used as grounds for beginning custody proceedings.

Ironically, tribes that were forced onto reservations, and kept there at gunpoint, are now told that they live in a place that is not fit for raising children.

Some children are removed from their families on such vague grounds as "social deprivation," or for the alleged "emotional damage" they are subject to by living with their parents. Indian communities are often shocked to learn that people they consider excellent parents have been judged unfit by non-Indian social workers.

Perhaps the saddest aspect of the whole child welfare crisis is how regular a part of reservation life it has become for the government to interfere with Indian family life. The damage this has done to generations of Indian parents and children is incalculable.

According to Evelyn Lance Blanchard, formerly assistant area social worker for the Albuquerque office of the Bureau of Indian Affairs, "Unwarranted and unjust governmental interference with American Indian family life is perhaps the most flagrant infringement of the right of Indian tribes to govern themselves in our time, and the most tragic aspect of contemporary Indian life.

"The continuing bias of government policy is to coerce Indian families to conform to non-Indian child-rearing standards. Indian tribes are asking the state and federal governments to stop 'saving' Indian families in this way and, instead, recognize and respect the rights and traditional strengths of Indian children, families and tribes.

"Few people in these governments have sought to understand the philosophical base of Indian peoples' existence. The Indian experience has a fragility and strength that naturally molds the person into a being who is responsible and free.

"We know the strength of this philosophy and desire that our children share in it. To be able to share it, they must have the opportunity to live in its sphere of influence and learn from it. The passage of the Indian Child Welfare Act will help ensure this for us."

Alaska Foster Family Services

In response to a growing awareness that serious deficiencies exist in the state of Alaska's system of foster-family services, the Director of the Division of Social Services established the Foster Family Services Task Force in 1976 to produce an assessment of the State's foster-care program and to make specific recommendations for improvement.

In keeping with the need for a true assessment of this system, the Director invited people representing a wide range of backgrounds and interests to become Task Force members—rural and urban people, Natives and non-Natives, foster parents and foster-care providers, private agencies, legislators, and social workers. People living in each of the Division's six regions participated, and sought extensive input from others in their region regarding necessary improvements in the foster care system.

As a result the assessment and recommendations expressed in the Task Force's report issued in July 1977 are broadly-based and represent the consensus of many opinions from around Alaska. People who were outside of the State's social services system worked with system representatives to search for solutions to problems plaguing foster-care services, and foster parents worked to ensure that their views and feelings were heard and represented.

Alaska is a culturally diverse state where Native people represent 17 percent of the State's population, yet Native children represent 72 percent of all children in foster care.

In its report the Task Force stated that too many Native children have entered the foster-care system, many of whom have stayed too long at too great a cost, and that intervention by the state of Alaska in the lives of the children and their families has not always produced positive outcomes.

The Task Force urged that foster care be utilized as a temporary tool to help preserve and improve the functioning of the natural family system and to minimize the harmful effects of foster placement on children who must be separated from their families.

To combat problems created by a foster-care system that is incompatible with Native cultures, the Task Force made the following recommendations:

- If a crisis occurs that requires placement of a child outside of the family, then placement should be made in a family compatible with the child's own family where the child will have opportunities for cultural, emotional, social, intellectual, and physical growth. The period of separation between the parents and the child should be as short as possible. All attempts should be made to place the child back home; if this proves impossible, then the child has the right to a permanent placement in a permanent, stable environment suitable to his or her needs.
- As made evident by the disproportionate number of Native children currently in foster care, it is imperative that the foster-care system recognize, affirm and integrate differing cultural values if it is to provide effective services to its clients. This process recognizes the importance of maintaining and strengthening cultural identity while interacting with the majority culture. To fulfill this requirement, change must occur at all levels of the foster-care system—recruitment of Native foster homes, training and recruitment of staff, delivery of casework services to Native children and families.
- There must be sufficient numbers of staff to carry out the responsibilities for providing quality foster care. These staff must offer the consistency yet flexibility necessary to manage the foster-care system by having clear lines of responsibility, manageable caseloads, and training in all aspects of the foster-care services.
- Foster parents must be given adequate training, must be included in the development and achievement of the treatment plan, must be included regularly in policy decisions affecting the foster-care system, and must be given reimbursement and legal coverage for their services.
- As the Division of Social Services alone cannot carry out its responsibilities for foster care, lines of jurisdiction and responsibility must be drawn among agencies providing foster care. Foster care services must be coordinated with other support services to ensure that the most complete care possible is given. Foster care staff should involve local communities in developing and improving foster-care services.

Canada: Native Women Recruit Foster Families

In March of 1973, after learning that approximately 44.1 percent of the children in foster care in the Province of Alberta, Canada, were of Native origin, the Voice of Alberta Native Women's Society resolved to concentrate their 1973-74 activities on the child welfare system as it involves Native children, with particular emphasis on foster care.

Fourteen regional foster-care workshops arranged by V.A.N.W.S. were conducted throughout the province. Workshop attendance ranged from fifteen to twenty and included women from the various Native settlements and communities in each region.

V.A.N.W.S. found that there were only 223 approved Native foster homes out of a total of approximately 3,400. Encouraged by the interest generated by the workshops, V.A.N.W.S. conducted a project employing Native women on a part-time basis to promote foster care and recruit Native foster parents, identify and encourage community programs for Native families, and survey the number of families providing care to children who are not their own, but who do not receive any financial assistance.

The project, which ran from October 1975 through June 1976, was funded through a grant from the Alberta Department of Social Services and Community Health.

Project workers identified 257 Native families who were interested in becoming foster parents—more than doubling the number of approved Native foster homes.

A report describing the project points out that the majority of the Native families were not aware of the need for foster homes, nor were they familiar with the foster-care program.

The report states, "Considering the fact that 44.1 percent of the children in care are of Native origin, many more Native homes are required. The project has proven that there are Native families who will become foster parents, however, the encouragement to get involved must come from a Native person who can relate the program in the Native language."

The project provided an insight into other services that would benefit Native families: home management programs; health programs; and child growth and development programs.

The project report recommends that additional funds be made available to the V.A.N.W.S. so they can continue to assist in the recruitment and development of Native foster homes.

Ms. Bertha Clark, Provincial President of V.A.N.W.S. says of the project, "I feel that there is a great need in some way to continue this program, to go on to other social needs of our Native people . . . I feel if these women could in some way continue to work they could work with communities and reserves on a prevention basis with families and children in order to prevent family breakups. I know that Native women going to Native homes to explain the program and what it is to be a foster parent has been a success in that the communication between Natives is so much easier, especially language-wise."

Nevada ITC in Need of Foster Homes

Supervisory Social Worker Efraim Estrada of the Nevada Inter-Tribal Council's Social Services Program says that the organization is in need of foster homes for Indian children.

"It's not that we need the homes at once but that we need to increase our eligible listing of homes to take care of the necessity when the time arrives," stated Mr. Estrada.

Homes in the Carson City, Reno and Ft. McDermitt area particularly are needed at this time, he said.

It is not necessary that households consist of two parents. What is looked for is a natural home style where there is a respect for people, the inhabitants of good character who enjoy children and are reservation residents.

There are no financial limitations. Even welfare families are eligible for qualifying, informed the social supervisor.

"Houses need not be of mansion dimensions. What is looked for is a solid family life," continued Mr. Estrada.

"Persons must be able to relate to children and have a willingness to work with the Social Services program," he said.

Children who may be in need of foster homes range in age from birth to 18 years. Most children placed are approximately 12 years old.

The organization in the past few years has placed six children at birth. The children may remain in the foster presence for from one day to several months or even a year.

Social Services will compensate foster parents at the rate of $140 for children under 12 years, $173 for those over 12 years and a higher rate in the case of handicapped children.

Persons wishing to know more about the program should get in touch with Efraim Estrada at Capitol Plaza Building, Room 121, 1000 East Williams Street, Carson City, Nevada 89701.

Reprinted from *The Native Nevadan.*

Senate Hearings Available

A limited number of copies of the 603-page record of the Senate hearing on S. 1214, the Indian Child Welfare Act, are now available. The hearing was held before the Senate Select Committee on Indian Affairs on August 4, 1977. The hearing record includes testimony on the bill by witnesses from Indian tribes and organizations, the U.S. Department of Health, Education and Welfare and Bureau of Indian Affairs, and private organizations. The record also contains much supplementary material in the form of prepared statements by Indian tribes and organizations, private groups, and state governments, as well as a statistical survey of the rate of Indian children in adoptive and foster homes in nineteen states with large Indian populations.

Copies of the hearing may be obtained free of charge by writing to: Editor, *Indian Family Defense*, Association on American Indian Affairs, 432 Park Avenue South, New York, New York 10016.

Book Review

Transracial Adoption, by Rita James Simon and Howard Altstein. New York: John Wiley & Sons, 1977. 197 pp. $14.95

Reviewed by Evelyn Lance Blanchard, MSW

In 1974, hearings before the Senate Subcommittee on Indian Affairs addressed the serious problems that exist in the field of Indian child welfare. Indians and non-Indians testified with concern and anger about the fact that thousands of Indian children were in placement away from their families, mostly in non-Indian homes.

Contrary to the position of the authors of this book, who state that "at the time of writing (1975) transracial adoption has almost ceased to exist" (page 10), placement of American Indian children in both foster and adoptive care continues as the main thrust of child-welfare services to Indian people.

The authors appear to have been unaware of the work being done by Indian workers throughout the country. The principal sources of information regarding transracial adoption referenced by the authors are *Far From the Reservation* by Dr. David Fanshel, the Indian Adoption Project as described by its director Arnold Lyslo, and reports of the Adoption Resource Exchange of North America (ARENA).

The absence of current information regarding the state of Indian child welfare sheds serious doubt on the conclusions reached by the authors. The numbers of Indian children in their study and those of others were so small that most of their conclusions were based on the responses of black children.

The Indian children cited in these studies were those placed mainly through activities like the Indian Adoption Project that have grown into the ARENA effort. Indian tribes throughout the country have loudly voiced their objections to ARENA's activities in Indian country.

A 1974 ARENA report listed 120 Indian children as having been adopted through its various programs. It is interesting to note that of these 120 children, six were from the United States; the remaining 114 children were from Canada. (Report of ARENA to Indian Desk, Washington State Department of Social and Health Services, 1975.)

An Indian child welfare statistical survey prepared by the Association on American Indian Affairs at the request of the American Indian Policy Review Commission documented the shocking disparity in placement rates for Indian and non-Indian children:

"In Maine, Indian children are today placed in foster care at a per capita rate 19 times greater than that for non-Indian children. In Minnesota, an Indian child is 17 times more likely than a non-Indian child to be placed in foster care. In South Dakota the per capita foster care rate for Indians is 22 times the rate for non-Indians. The statistics from other states demonstrate that these rates are not uncommon elsewhere.

"Most of the Indian children in foster care are placed with non-Indian families, In Maine, for example, 64 percent of Indian foster children are living with non-Indian families. In New York approximately 97 percent of Indian foster children are in non-Indian families; and in Utah 88 percent of the Indian foster care placements are with non-Indian families.

"Indian children are also placed in adoptive homes at a rate far disproportionate to that for non-Indian children. In California Indian children were adopted in 1975 at a per capita rate 8 times that for non-Indian children, and 93 percent of such adoptions were made by non-Indian parents. In Montana Indian children are adopted at a per capita rate almost 5 times that for non-Indians, and 87 percent of such adoptions were made by non-Indians." (*Report on Federal, State, and Tribal Jurisdiction,* Final Report of Task Force IV to the American Indian Policy Review Commission, p. 179.)

The authors of this book state: " . . . transracial adoption appears to be a mechanism whereby children can develop racial 'color blindness.' In other words, transracial adoption appears to provide the opportunity for children to develop awareness of race, respect for physical differences imposed by race, and ease with their own racial characteristics, whatever they may be." (Page 187.) Their position is constantly refuted by the numbers of confused Indian children who return to their reservation beginnings in search of themselves and their families. Indian people who gain some public recognition in the cities are frequently contacted by Indian children who have been adopted and want to learn something about themselves.

The authors reasonably question whether the "color blindness" of the Indian children will remain an enduring characteristic, in view of the fact that the children had not reached adolescence.

Indian Social Workers to Hold Meeting

The Association of American Indian Social Workers (AAISW) will hold its First Annual Meeting in Rapid City, South Dakota on September 16-17, 1978.

The Indian social workers who are organizing the meeting believe that there is a vital need for a national organization that unites the needs and concerns of *all* Indian and Alaska Native human-services providers, professional and non-professional. All Indian and Alaska Native people who are human-services providers concerned with the protection of Indian family and community life—regardless of formal education—are encouraged to become members.

One of the primary concerns of the AAISW is the Indian child-welfare crisis, and it has issued a statement in support of H.R. 12533, the Indian Child Welfare Act.

For further information about the AAISW and the September meeting, and to obtain a membership application, please contact: Association of American Indian Social Workers, c/o AAIA, Room 1008, 432 Park Avenue South, New York, N.Y. 10016. Telephone: (212) 689-8720.

An important characteristic of adoptive parents who considered themselves successful was that they adopted because "they wanted a child and because they believed they could offer the child a good home," (page 105) rather than for some broad humanistic concern for all people. This position is certainly supported by the experiences of many Indian workers who strive to help many adopted Indian children piece themselves together.

The benevolent foundations that may underlie the practice of transracial adoption have not, in most instances, supported the development of healthy adolescents and adults. Unfortunately, even this uninformed position will be used by the various social agencies and courts as the basis for continued placement of Indian children away from their families, relatives and tribes.

"If the fears expressed by black and Indian opponents of transracial adoption are realized," the authors write, "that these children will be white on the inside and black on the outside, and that they will be perceived by both white and black as pariahs, transracial adoption will be remembered as a dismal and emotionally costly *experiment.* If the hopes and expectations of the parents involved in transracial adoption are realized, and their children are emotionally whole, well-adjusted, and able to move easily within and between black and white communities, society's failure to maintain and support the program will be remembered with deep regret." (Page 187, emphasis added.)

It seems sad that experimental placement of Indian children in non-Indian homes is given so much consideration when the efforts of Indian people to care for their children have not been supported and, in fact, are being thwarted.

Text of Child Welfare Act—Pages 5-8

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Child Welfare Act Signed Into Law

On the last day of the 95th Congress, the Indian Child Welfare Act of 1978 cleared the House of Representatives and on November 8 was signed into law by President Carter. The legislation (Public Law 95-608) is designed to protect the most critical resource of American Indian tribes—the children.

The Indian Child Welfare Act will protect the integrity of Indian families by eliminating abusive child-welfare practices that result in unwarranted Indian parent-child separations, ending discrimination that has prevented Indian parents from qualifying as foster or adoptive families, and providing Indian communities with comprehensive child-welfare and family-service programs.

The underlying premise of the act is that Indian tribes, as local governments, have a vital role to play in any decision about whether Indian children should be separated from their families.

The act provides that no placement of an Indian child who is residing or domiciled on an Indian reservation shall be valid unless made pursuant to an order of the appropriate tribal court. In the case of Indian children not residing or domiciled on the reservation, the act directs State courts having jurisdiction over an Indian child custody proceeding to transfer the proceeding, absent good cause to the contrary, to the appropriate tribal court upon the petition of the parents or the Indian tribe.

The act assures that Indian families will be accorded a full and fair hearing when child placement is at issue.

To help ensure that the due process rights of Indian families are respected, the act provides that an indigent Indian parent or custodian will have a right to court-appointed counsel in any involuntary State proceeding for foster care placement or termination of parental rights. Where State law makes no provision for such appointment, the Secretary of the Interior is authorized to pay the reasonable expenses and fees of counsel.

Other sections of the act impose standards of evidence on State court proceedings involving Indian child placements. No foster care placements may be ordered in such proceedings unless "clear and convincing" evidence demonstrates that the continued custody of the child is likely to result in serious emotional or physical damage to the child. No termination of parental rights may be ordered in the absence of a determination supported by evidence "beyond a reasonable doubt" that the continued custody of the child by its parents would result in serious emotional or physical damage.

The act also establishes priorities in the placement of Indian children. First preference will be given to members of the child's extended family and other preferences to homes licensed by Indian tribes or maintained by Indian people and institutions operated by Indian tribes and organizations.

Other sections of the act authorize the Secretary of the Interior to assist Indian tribes in the establishment and operation of Indian family development programs. The objective of these programs will be to prevent the break-up of Indian families and to ensure that Indian children are removed from their families only as a last resort, if remedial services to help the family stay together have failed. The act also protects an adoptive child's right to tribal membership and to benefits associated with that membership.

The Indian Child Welfare Act is based on findings and recommendations of the Association on American Indian Affairs

Harry Lapow/AAIA

and was introduced by Senator James Abourezk, a Democrat from South Dakota. It is based on oversight hearings held by the Senate Subcommittee on Indian Affairs in 1974 and on a number of studies since then which have documented that an alarmingly high percentage of Indian children are separated from their families and placed in foster or adoptive homes.

The oversight hearings demonstrated the serious need for Congressional legislation to protect Indian family life. An extensive state-of-the-field study of Indian child-welfare practices commissioned by the U.S. Department Health, Education and Welfare confirmed the testimony presented to Congress, and a

Please turn page

nation-wide Indian child-welfare statistical survey done by the AAIA at the request of Congress demonstrated that Indian children were being removed from their homes at rates grossly disproportionate to non-Indian rates.

Poverty, poor housing, lack of modern plumbing, and overcrowding were often cited by social workers as proof of parental neglect and used as grounds for beginning custody proceedings. Some children were being removed from their families on such vague grounds as "social deprivation," or for the alleged "emotional damage" they were subject to by living with their parents. Indian communities were often shocked to learn that people they considered excellent parents had been judged unfit by non-Indian social workers.

According to Evelyn Lance Blanchard, MSW, Secretary, Association of American Indian and Alaska Native Social Workers, Inc., "Unwarranted and unjust governmental interference with American Indian family life is perhaps the most flagrant infringement of the right of Indian tribes to govern themselves in our time, and the most tragic aspect of contemporary Indian life.

"The continuing bias of government policy is to coerce Indian families to conform to non-Indian child-rearing standards. Our children are vital to our future. The Indian Child Welfare Act of 1978 requires State and Federal governments to respect the rights and traditional strengths of Indian children, families and tribes. The provisions of the legislation will make it possible for Indian parents to raise their children in their own way."

House Committee Report

The report of the House Interior Committee on the Indian Child Welfare Act includes an extensive discussion of the legal background of the act. Reprinted below is the section of the House report laying out the constitutional basis of the power of Congress to protect the rights of Indian children, families and tribes in State child-custody proceedings.

SUPREMACY CLAUSE

Clause 2 of article VI of the U.S. Constitution provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

When Congress legislates pursuant to its delegated powers, conflicting State law and policy must yield, *Gibbons* v. *Ogden,* 22 U.S. 1 (1824); *Hill* v. *Florida ex rel. Watson,* 325 U.S. 538 (1945); *Nash* v. *Florida Industrial Comm.,* 389 U.S. 235 (1967); *Lee* v. *Florida,* 392 U.S. 378 (1968); *Perez* v. *Campbell,* 402 U.S. 637 (1971).

The Constitution, laws, and treaties of the United States are as much a part of the law of every State as its own local laws and constitution. Their obligation "is imperative upon the State judges, in their official and not merely in their private capacities. From the very nature of their judicial duties, they would be called upon to pronounce the law applicable to the case in judgment. They were not to decide merely according to the laws or constitution of the State, but according to the laws and treaties of the United States—'the supreme law of the land.'" *Martin* v. *Hunter's Lessee,* 1 Wheat. 304 (1816). State courts have both the power and duty to enforce obligations arising under Federal law. *Claflin* v. *Houseman,* 93 U.S. 130 (1876); *Second Employers' Liability Cases,* 223 U.S. 1 (1912); *Testa* v. *Katt,* 330 U.S. 386 (1947).

PLENARY POWER OF CONGRESS OVER INDIAN AFFAIRS

The question is then: "Does Congress have power to legislate as proposed in the bill?" Clause 3, section 8, article I of the Constitution provides:

> The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

In an unbroken line of Supreme Court decisions, beginning with Chief Justice John Marshall's decision in *Worcester* v. *Georgia,* 31 U.S. 515 (1832):

> (The Constitution) confers on Congress the powers of war and peace; of making treaties, and of regulating commerce with foreign nations, and among the several States, and with the Indian tribes. These powers comprehend all that is required for the regulation of our intercourse with the Indians. They (Congress) are not limited by any restrictions on their free actions.

And ending with *United States* v. *Wheeler*__*U.S.*__(March 22, 1978):

> (There is an) undisputed fact that Congress has plenary authority to legislate for the Indian tribes in all matters, including their form of government.

The Supreme Court has, time and again, upheld the sweeping power of Congress over Indian matters. The cases are far too numerous to cite, but two cases will serve to exemplify this position. In *U.S.* v. *Kagama,* 118 U.S. 375 (1886) the Court said:

> These Indian tribes are wards of the nation. They are communities *dependent* on the United States. Dependent largely for their daily food. Dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal government with them, and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen.

And in *United States* v. *Nice,* 241 U.S. 591 (1916), the Court held:

> The power of Congress to regulate or prohibit traffic with tribal Indians within a State whether upon or off an Indian reservation is well settled. . . . Its source is twofold; first, the clause of the Constitution expressly investing Congress with authority "to regulate Commerce . . . with the Indian tribes," and, second, the dependent relation of such tribes to the United States.

It cannot be questioned that Congress has broad, unique powers with respect to Indian tribes and affairs. There is only one caveat: While those powers may be plenary, the exercise may not be arbitrary. For example, Congress may not take Indian property without just compensation nor may it establish a religion for Indian tribes.

PLENARY POWER AND CHILD WELFARE

The question then is: "Is the regulation of child custody proceedings and the imposition of minimum Federal standards an appropriate exercise of Congress plenary power over Indian affairs?"

Continued on page 11

Child Welfare Act: Analysis

The following is a section-by-section analysis of the Indian Child Welfare Act reprinted from the report of the House Committee on Interior and Insular Affairs. In instances where the act was amended on the floor of the Congress, additional explanatory material (enclosed in brackets [ ]) has been added by *Indian Family Defense.*

Section 1. Section 1 provides that the bill may be cited as the "Indian Child Welfare Act of 1978".

Section 2. Section 2 contains congressional findings. As amended, it lays the foundations for the power and responsibility of the Congress to legislate in the field of Indian child welfare.

Section 3. Section 3 contains a congressional declaration of policy. As amended, the section makes clear that the underlying principle of the bill is in the best interest of the Indian child. However, the committee notes that this legal principle is vague, at best. In a footnote on page 835 in the decision of *Smith* v. *OFFER,* 431 U.S. 820 (1977), the Supreme Court stated:

> Moreover, judges too may find it difficult, in utilizing vague standards like "the best interests of the child," to avoid decisions resting on subjective values."

Section 4. Section 4 defines various terms used in the bill.

Paragraph (1) defines the term "child custody placement" by defining four discrete legal proceedings included within the term. S. 1214 and H.R. 12533, as introduced, used the term "placement" which proved to be ambiguous with respect to the various provisions of the bill. The terms may not be current in the legal lexicon of domestic relations and might have some different or overlapping meaning in normal usage. The terms are intended to have the meaning given to them in the paragraph.

Paragraph (2) defines the term "extended family member". The concept of the extended family maintains its vitality and strength in the Indian community. By custom and tradition, if not necessity, members of the extended family have definite responsibilities and duties in assisting in childrearing. Yet, many non-Indian public and private agencies have tended to view custody of an Indian child by a member of the extended family as prima facie evidence of parental neglect. It should be noted that the concept was not unknown in the non-Indian world. Justice Brennan, in his concurring opinion in *Moore* v. *East Cleveland,* 431 U.S. 494, 508 (1977), noted:

> In today's America, the "nuclear family" is the pattern so often found in much of white suburbia . . . The Constitution cannot be interpreted, however, to tolerate the imposition by government upon the rest of us white suburbia's preference in patterns of family living. The "extended family" . . . remains not merely still a pervasive living pattern, but under goad of brutal economic necessity, a prominent pattern—virtually a means of survival—for large members of the poor and deprived minorities of our society.

Paragraph (3) defines "Indian" as any person who is a member of an Indian tribe. [The bill was amended on the floor to make explicit that Alaska Natives who are at-large members of Native Regional Corporations or who are members of the 13th Regional Corporation for non-resident Alaska Natives are included in the protections of the act. The amendment did not alter the inclusion in the definition of the term *Indian* those Alaska Natives who are members of Alaska Native villages.—*Indian Family Defense*]

Paragraph (4) defines "Indian child." The committee rejects the use of the term "merely" by the Department of Justice to qualify the eligibility of an Indian to be a member of an Indian tribe, particularly with respect to a minor. Blood relationship is the very touchstone of a person's right to share in the cultural and property benefits of an Indian tribe. We do note that, for an adult Indian, there is an absolute right of expatriation from one's tribe. *U.S. ex rel. Standing Bear* v. *Crook,* 25 Fed. Cas. No. 14891 (1879). However, this right has no relevance to an Indian child who, because of his minority, does not have the capacity to make a reasoned decision about exercising his right to enroll in his tribe.

Paragraph (5) defines "Indian child's tribe." It is assumed that the appropriate official can make a reasonable judgment about which Indian tribe the Indian child has the more significant contacts in cases where the child is eligible for membership in more than one tribe.

Paragraph (6) defines "Indian custodian." Where the custody of an Indian child is lodged with someone other than the parents under formal custom or law of the tribe or under State law, no problem arises. But, because of the extended family concept in the Indian community, parents often transfer physical custody of the Indian child to such extended family member on an informal basis, often for extended periods of time and at great distances from the parents. While such a custodian may not have rights under State law, they do have rights under Indian custom which this bill seeks to protect, including the right to protect the parental interests of the parents.

Paragraph (7) defines "Indian organization".

Paragraph (8) defines "Indian tribe".

Paragraph (9) defines "parent". It should be noted that the last sentence is not meant to conflict with the decision of the Supreme Court in *Stanley* v. *Illinois,* 405 U.S. 645 (1972).

Paragraph (10) defines the term "reservation". For the limited purpose of jurisdiction over Indian child custody proceedings, the last sentence of the paragraph addresses and varies the holding in cases such as *DeCoteau* v. *District Court,* 420 U.S. 425 (1975), and *Rosebud* v. *Kneip,* 97 S. Ct. 1361 (1977). [The bill as amended on the floor does not alter in any way the holdings of the Court in these two decisions, but does expand the definition of reservation to include other Indian trust lands in accordance with the holding of the Supreme Court in *U.S.* v. *John,* 437 U.S.____(1978). —*Indian Family Defense*]

Paragraph (11) defines "Secretary" as the Secretary of the Interior.

Paragraph (12) defines "tribal court".

Section 101. Subsection (a) provides that an Indian tribe shall have exclusive jurisdiction over child custody proceedings where the Indian child is residing or domiciled on the reservation, unless Federal law has vested that jurisdiction in the State. It further provides that the domicile of an Indian child who is the ward of a tribal court is deemed to be that of the court, which is generally in accord with existing law. The provisions on exclusive tribal jurisdiction confirms the developing Federal and State case law holding that the tribe has exclusive jurisdiction when the child is residing or domiciled on the reservation. *Wisconsin Potowatomies* v. *Houston,* 393 F. Supp. 719 (1973); *Wakefield* v. *Little Light,* 276 Md. 333 (1975); *In re Matter of Greybull,* 543 P. 2d 1079 (1975); *Duckhead* v. *Anderson et al.* Wash. Sup. Ct., November 4, 1976.

Subsection (b) directs a State court, having jurisdiction over an Indian child custody proceeding to transfer such proceeding, absent good cause to the contrary, to the appropriate tribal court upon the petition of the parents or the Indian tribe. Either parent is given the right to veto such transfer. The subsection is intended to

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permit a State court to apply a modified doctrine of *forum non conveniens,* in appropriate cases, to insure that the rights of the child as an Indian, the Indian parents or custodian, and the tribe are fully protected.

Subsection (c), for purposes of State proceedings for foster care placement or termination of parental rights, confers a right of intervention upon the Indian custodian and the Indian child's tribe. The committee is advised that the parents would have this right in any event.

Subsection (d) provides that the public acts, records, and judicial proceedings of an Indian tribe with respect to child custody proceedings shall be given full faith and credit by other jurisdictions to the same extent that such jurisdictions extend full faith and credit in other circumstances.

Section 102. Subsection (a) requires that, in an involuntary proceeding in State courts with respect to an Indian child, the moving party must provide certain notices to the parent or Indian custodian and the tribe. In lieu notice to the Secretary of the Interior is provided in cases where the location of the individual or tribe cannot reasonably be determined. The committee expects that the Secretary would make diligent efforts to relay such notice to the parent, custodian, and/or tribe. The subsection was amended to provide that the court would require such notice where it had actual or constructive knowledge of the Indian affiliation of the child.

Subsection (b) provides that an indigent parent or Indian custodian shall have a right to court-appointed counsel in any involuntary State proceeding for foster care placement or termination of parental rights. Where State law makes no provision for such appointment, the Secretary is authorized, subject to the availability of funds, to pay reasonable expenses and fees of such counsel. In adopting this amendment, the committee notes with approval the decision of the U.S. District Court for the Southern District of Florida in *Davis* v. *Page*, 442 F. Supp. 258 (1977), wherein the court held:

> Without benefit of counsel, Hilary Davis was little more than a spectator in the adjudicatory proceeding. She was ignorant of the law of evidence, and of the substantive law governing dependency proceedings. She sat silently through most of the hearing, and fearful of antagonizing the social workers, reluctantly consented to what she believed would be the placement of her child with the state for a few weeks. (p. 260.)
>
> The right to the integrity of the family is among the most fundamental rights under the Fourteenth Amendment. (p. 261.)
>
> The parent's interest in the custody and companionship of his child and the grievous nature of the loss which accompanies interference with that interest suffice to mandate the provision of counsel under a balance of interest test without further inquiry . . . (T)he right to counsel inevitably emerges as an element of procedural due process. (p. 263.)

Subsection (c) provides that each party to a State court proceeding for foster care or termination of parental rights shall have a right to examine relevant documents filed with the court upon which it may base its decision. The committee was advised that, in many cases, Indian parents or custodians have been, practically, denied the right.

Subsection (d) provides that a party seeking foster care placement or termination of parental rights involving an Indian child must satisfy the court that active efforts have been made to provide assistance designed to prevent the breakup of Indian families. The committee is advised that most State laws require public or private agencies involved in child placements to resort to remedial measures prior to initiating placement or termination proceedings, but that these services are rarely provided. This subsection imposes a Federal requirement in that regard with respect to Indian children and families.

Subsections (e) and (f) establish evidentiary standards for foster care placement or termination of parental rights. As introduced, H.R. 12533 required a "beyond a reasonable doubt" standard for both actions. While the committee feels that the removal of a child from the parents is a penalty as great, if not greater, than a criminal penalty, it amended the bill to reduce the standard to "clear and convincing" in the case of foster care where parental rights are not terminated. The phrase "qualified expert witnesses" is meant to apply to expertise beyond the normal social worker qualifications.

Section 103. Subsection (a) provides that consent to foster care placement or termination of parental rights must be executed in writing before a judge of a court of competent jurisdiction and that the judge must be satisfied the consequences of such consent was fully understood by the parent or custodian. Where the judge determines the parent or custodian does not have a sufficient command of the English language, it should be interpreted into a language such person does understand. The committee does not intend that the execution of the consent need be in open court where confidentiality is requested or indicated.

Subsection (b) permits a parent or Indian custodian to withdraw consent to a foster care placement at any time.

Subsection (c) authorizes a parent or Indian custodian to withdraw consent to termination of parental rights or adoptive placement of an Indian child at any time prior to the entry of a final decree.

Subsection (d) authorizes the setting aside of a final decree of adoption of an Indian child upon petition of the parent upon grounds that consent thereto was obtained through fraud or duress. This right is limited to 2 years after entry of the decree, unless a longer period is provided under State law. With respect to subsections (b), (c), and (d), the committee notes that nothing in those subsections prevents an appropriate party or agency from instituting an involuntary proceeding, subject to section 102, to prevent the return of the child, but does not wish to be understood as routinely inviting such actions.

Section 104. Section 104 authorizes the child, parent, or Indian custodian, or the tribe to move to set aside any foster care placement or termination of parental rights on the grounds that the rights secured under sections 101, 102, or 103 were violated.

Section 105. Section 105, as a whole, contemplates those instances where the parental rights of the Indian parent has already been terminated. The section seeks to protect the rights of the Indian child as an Indian and the rights of the Indian community and tribe in retaining its children in its society.

Subsection (a) provides that, in the absence of good cause to the contrary, a preference shall be given to adoptive placement of an Indian child with the extended family; a member of the child's tribe; or another Indian family. This subsection and subsection (b) establish a Federal policy that, where possible, an Indian child should remain in the Indian community, but is not to be read as

Continued on page 9

Indian Child Welfare Act

Because of the significance of the Indian Child Welfare Act for all Indian children, families and tribes, *Indian Family Defense* is reprinting the act in its entirety.

An Act

To establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Child Welfare Act of 1978".

SEC. 2. Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power . . . To regulate Commerce . . . with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

SEC. 3. The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children 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.

SEC. 4. For the purposes of this Act, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii). "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688,689);

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688,689), as amended;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) 'tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

TITLE I—CHILD CUSTODY PROCEEDINGS

SEC. 101. (a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) In any State court proceeding for the foster care placement

of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided,* That such transfer shall be subject to declination by the tribal court of such tribe.

(c) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

SEC. 102.(a) In any involuntary 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 and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided,* That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(c) Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

SEC. 103. (a) Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdaw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

SEC. 104. Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102, and 103 of this Act.

SEC. 105. (a) In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided,* That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

SEC. 106. (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 102 of this Act, that such return of custody is not in the best interests of the child.

(b) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this Act, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

SEC. 107. Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

SEC. 108. (a) Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) (1) In considering the petition and feasibility of the plan of a tribe under subsection (a), the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 101(a) of this Act are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 101(b) of this Act, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 101(a) over limited community or geographic areas without regard for the reservation status of the area affected.

(c) If the Secretary approves any petition under subsection (a), the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a), the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 109 of this Act.

SEC. 109. (a) States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

SEC. 110. Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

SEC. 111. In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this title, the State or Federal court shall apply the State or Federal standard.

SEC. 112. Nothing in this title shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

SEC. 113. None of the provisions of this title, except sections 101(a), 108, and 109, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after the enactment of this Act, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

TITLE II—INDIAN CHILD AND FAMILY PROGRAMS

SEC. 201. (a) The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program

shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this Act. The provision or possibility of assistance under this Act shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

SEC. 202. The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to—

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

SEC. 203. (a) In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health, Education, and Welfare, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare: *Provided,* That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 2, 1921 (42 Stat. 208), as amended.

SEC. 204. For the purposes of sections 202 and 203 of this title, the term "Indian" shall include persons defined in section 4(c) of the Indian Health Care Improvement Act of 1976 (90 Stat. 1400, 1401).

TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

SEC. 301. (a) Any State court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this Act shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show—

(1) the name and tribal affiliation of the child;

(2) the names and addresses of the biological parents;

(3) the names and addresses of the adoptive parents; and

(4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

SEC. 302. Within one hundered and eighty days after the enactment of this Act, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act.

TITLE IV—MISCELLANEOUS

SEC. 401. (a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health, Education and Welfare, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from the date of this Act. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

SEC. 402. Within sixty days after enactment of this Act, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this Act, together with committee reports and an explanation of the provisions of this Act.

SEC. 403. If any provision of this Act or the applicability thereof is held invalid, the remaining provisions of this Act shall not be affected thereby.

Approved November 8, 1978.

ANALYSIS, Continued from page 4

precluding the placement of an Indian child with a non-Indian family.

Subsection (b) establishes a similar preference for foster care or preadoptive placements of an Indian child. The language was amended to conform to language in H.R. 7200 of this Congress relative to foster care and adoptive placements in the least restrictive settings.

Subsection (c) provides that the tribe may establish a different order of preference which will be followed in lieu of the Federal standards as long as such order is consistent with the least restrictive setting standard in subsection (b). Where appropriate, the preference of the child or parent shall be considered and a request for anonymity of a consenting parent shall be given weight in applying the preferences. While the request for anonymity should be given weight in determining if a preference should be applied, it is not meant to outweigh the basic right of the child as an Indian.

Subsection (d) provides that the standards to be used in meeting the preference shall be those prevailing in the relevant Indian community. All too often, State public and private agencies, in determining whether or not an Indian family is fit for foster care or adoptive placement of an Indian child, apply a white, middle-class standard which, in many cases, forecloses placement with the Indian family.

Subsection (e) requires the State to maintain records showing what efforts have been made to comply with the preference standards of this section and to make such records available to the tribe and Secretary.

Section 106. Subsection (a) authorizes a biological parent of an Indian child to petition for the return of the child when a previous adoption of such child fails. The child shall be returned to the parent upon such petition, unless there is a showing, in a proceeding subject to the provisions of section 102, that such return would not be in the best interests of the child.

Subsection (b) provides that when an Indian child is being removed from a foster care home for purposes of further foster care placement, preadoptive placement, or adoptive placement, such further placement shall be subject to the provisions of this act, unless the child is being returned to the parent or Indian custodian.

Section 107. Section 107 confers a right upon an adult Indian, who was the subject of adoption, to secure necessary information from the court which entered the decree to enable the person to protect and secure any rights he may have from his tribal affiliation. There appears to be a growing trend in State law, supported by developing psychology, that an adopted individual has an inherent right to know his genealogical background. However, this section and section 301 are not aimed at that right. These provisions are aimed at different, but no less valuable rights. One, these provisions will help protect the valuable rights an individual has as a member or potential member of an Indian tribe and any collateral benefits which may flow from the Federal Government because of such membership. Two, these provisions will help protect the rights and interests of an Indian tribe in having its children remain with or become a part of the tribe.

Section 108. Subsection (a) authorizes an Indian tribe, which became subject to State jurisdiction under Public Law 83—280 or any other Federal law, to reassume jurisdiction over child custody proceedings upon petition to the Secretary of the Interior including a suitable plan.

Subsection (b) authorizes the Secretary, in considering a petition for reassumption, to take into consideration various factors affecting the exercise of such jurisdiction, including membership rolls, size of reservation or former reservation, and population base. Depending on such circumstances, the Secretary is given the flexibility to authorize partial retrocession based upon the referral authority under section 101(b) or to limit the geographic scope of the full exercise of 101(a) jurisdiction. The subsection was adopted as an amendment in order to take into consideration special circumstances, such as those occurring in Alaska and Oklahoma.

Subsection (c) provides for publication of notice of reassumption by the Secretary in the Federal Register and for the effective date of such reassumption.

Subsection (d) provides that reassumption shall not affect ongoing proceedings at the time of reassumption unless provided for in an agreement under section 109.

Section 109. Section 109 authorizes Indian tribes and States to enter into mutual agreements or compacts with respect to jurisdiction over Indian child custody proceedings and related matters. It also provides for revocation of such agreements by the parties.

Section 110. Section 110 establishes a "clean hands" doctrine with respect to petitions in State court for the custody of an Indian child by a person who improperly has such child in physical custody. It is aimed at those persons who improperly secure or improperly retain custody of the child without the consent of the parent or Indian custodian and without the sanction of law. It is intended to bar such person from taking advantage of their wrongful conduct in a subsequent petition for custody. The child is to be returned to the parent or Indian custodian by the court unless such return would result in substantial and immediate physical danger or threat of physical danger to the child. It is not intended that any such showing be by or on behalf of the wrongful petitioner.

Section 111. Section 111 provides that, where State law affords a higher degree of protection of the rights of the parent or Indian custodian, such standard will be applied by the State court in lieu of the related provision of this title. The section was amended by the committee to include any relevant protection or standard established under Federal law.

Section 112. Section 112 would permit, under applicable State law, the emergency removal of an Indian child from his parent or Indian custodian or emergency placement of such child in order to prevent imminent physical harm to the child notwithstanding the provisions of this title. Such emergency removal and/or placement is to continue only for a reasonable length of time and the committee expects that the appropriate State official or authority would take expeditious action to return the child to the parent or custodian; transfer jurisdiction to the appropriate tribe; or institute a proceeding subject to the provisions of this title. [Section 112 concerns the power of a State to make emergency placements of Indian children temporarily within the jurisdiction of the State. It was amended to make clear that a State may not invade the jurisdiction of the tribe by going onto the reservation to make such emergency placements. A further amendment clarified the intent of the section by requiring that such emergency placements terminate immediately when such removal or placement is no longer

necessary to prevent imminent physical damage or harm to the child.—*Indian Family Defense*]

Section 113. Section 113 provides for the orderly phasing in of the effect of the provisions of this title. As amended, it provides that none of the provisions of this title, except section 101(a), would apply to any State action for foster care placement; for termination of parental rights; for preadoptive placement; or for adoptive placement which was initiated or completed prior to enactment of this act. However, it is intended that the provisions would apply to any subsequent discrete phase of the same matter or with respect to the same child initiated after enactment. For instance, if the foster care placement of an Indian child was initiated or completed prior to enactment and then, subsequent to enactment, the child was replaced for foster care, or an action for termination of parental rights was initiated, or the child was placed in a preadoptive situation, or he was placed for adoption, the provisions of the act would be applicable to those subsequent actions. [This section was amended on the floor to delay for 180 days (until May 7, 1979) the effective date of only those sections of Title I affecting proceedings under State law. Those sections of Title I that went into effect on the date of enactment (November 8, 1978) are: Section 101(a), which states existing law with respect to tribal jurisdiction; Section 108, which authorizes retrocession of child custody to tribes under certain circumstances; and Section 109, which authorizes tribes and States to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings. Titles II, III, and IV also became effective on the date of enactment.—*Indian Family Defense*]

Section 201. Subsection (a) authorizes the Secretary to make grants to Indian tribes and organizations to fund Indian child and family service programs on or near the reservation and lists nonexclusionary services to be provided in such programs.

Subsection (b) permits tribes and organizations to use such grant money for non-Federal matching share with respect to titles IV—B and XX of the Social Security Act or other similar Federal programs. It would also recognize the licensing or approval of foster or adoptive homes or institutions by Indian tribes as equivalent to State licensing or approval.

Section 202. Section 202 authorizes the Secretary to make similar grants to Indian organizations for off-reservation programs.

Section 203. Section 203 authorizes the Secretary of the Interior and the Secretary of Health, Education, and Welfare to enter into joint funding agreements with respect to Indian child and family service programs, to the extent that funds are made available by appropriation acts for such purposes. The authority of the Snyder Act of November 2, 1921 (42 Stat. 208) is made available for the appropriation of funds for grants to tribes and organizations.

Section 204. Section 204 provides that, solely with respect to sections 202 and 203 of this act, "Indian" shall have the meaning assigned to it in section 4(c) of the Indian Health Care Improvement Act of 1976 (90 Stat. 1400,1401).

Section 301. Subsection (a) provides that any State court entering a final decree of adoption of an Indian child after the date of enactment of this act shall provide a copy of such decree together with certain other basic information to the Secretary, including any affidavit of a parent requesting anonymity. The Secretary is required to maintain such information and records and to insure that such information is kept confidential. The subsection provides that such information shall not be subject to the Freedom of Information Act.

Subsection (b) provides that, upon request of an adopted Indian child over age 18; an adoptive or foster parent of an Indian child; or an Indian child's tribe, the Secretary shall release such information as may be necessary for enrollment of the child or for otherwise protecting the rights of the child as an Indian. Where the biological parent has requested anonymity, the Secretary is authorized to certify to an Indian tribe the eligibility of an Indian child under the tribe's membership criteria without disclosing the identity of the parents, if such certification is acceptable to the tribe.

Section 302. Section 302 establishes timetables and consulting requirements for the secretarial promulgation of regulations implementing this act. [The act as amended simply requires the Secretary of the Interior to promulgate necessary regulations within six months of enactment; that is, by May 7, 1979. In offering the amendment to do this, Congressman Morris K. Udall stated: "I think it should be clear that it is the intent of Congress that the Secretary consult fully with Indian tribes and organizations in drafting such rules and regulations." —*Indian Family Defense*]

Section 401. Section 401 directs the Secretary to submit a report to the Congress on the feasibility of providing Indian children with schools located near their homes. The committee was informed of the devastating impact of the Federal boarding school system on Indian family life and on Indian children, particularly those children in the elementary grades and considers that it is in the best interests of Indian children that they be afforded the opportunity to live at home while attending school. It is noted that more than 10,000 Navajo children in grades 1 to 8 are boarded.

Section 402. Section 402 requires the Secretary, within 60 days after enactment, to provide appropriate notice and information about this act and its provisions to appropriate State officials.

Section 403. Section 403 provides that if any provision of this act is held invalid, the remaining provisions shall not be affected thereby.

Recommended Reading

The Destruction of American Indian Families, published by the Association on American Indian Affairs, contains fourteen essays concerning Indian child welfare by Indian and non-Indian authors.

"Essays . . . examine the Indian child-welfare crisis from contemporary, legal and historical perspectives; document the human cost to Indian parents, children and communities; and report on innovative programs designed by Indian tribes."—*Library Journal.* "A strong indictment of undue separation of Indian children from their families—chiefly as a result of governmental policy—and a reflection of the current struggle on behalf of the rights of Indian children."—*Child Welfare.* "A good job of introducing the subject."—*Choice.* "Of considerable importance for an understanding of current Indian affairs."—*Wassaja.* "Exposes the federal government's role in the Native child-welfare crisis and the genocidal effect of government policies on the Native community."—*Akwesasne Notes.* "This book can be an effective resource for courses in child welfare, protective services, social problems, social welfare, or race relations."—*Social Work.*

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REPORT, Continued from page 2

We need only cite three cases to lay the foundation for the power of Congress to legislate in this area. In *U.S.* v. *Holliday,* 70 U.S. 407 (1866), the Court said:

> Commerce with foreign Nations, without doubt, means commerce between citizens of the United States and citizens or subjects of foreign governments as individuals. And so commerce with Indian tribes means commerce with the individuals composing those tribes.

In *Dick* v. *U.S.,* 208 U.S. 340 (1908), the Court held:

> As long as these Indians remain a distinct people, with an existing tribal organization, recognized by the political department of the Government, Congress has power to say with whom, and on what terms, they shall deal. . . .

Knoepfler, in *Legal Status of American Indian & His Property* (1922), 7 Ia. L.B. 232, stated: "Commerce with the Indian tribes has been construed to mean practically every sort of intercourse with the Indians either in the tribes or as individuals."

Finally, the Maryland Court of Appeals, in a case involving the attempted adoption of an Indian child (*Wakefield* v. *Little Light,* 276 Md. 333, 347 A. 2d 228 (1975)), stated:

> We think it plain that child-rearing is an "essential tribal relation" within . . . (the test of) *Williams* v. *Lee* (358 U.S. 217 (1959)).

And again:

> . . . (C)onsidering that there can be no greater threat to 'essential tribal relations' and no greater infringement on the right of the . . . tribe to govern themselves than to interfere with tribal control over the custody of their children, we agree with the conclusion expressed in *Wisconsin Potowatomies* (*Wisconsin Potowatomies* v. *Houston,* 393 F. Supp. 719 (1973)) that in determining subject matter jurisdiction in such circumstances, the only rational approach is to determine the domicile of the Indian child. By using the Indian child's domicile as the State's jurisdictional basis, the Indian tribe is afforded significant protection from losing its essential rights of childrearing and maintenance of tribal identity.

Even this State court recognized that a tribe's children are vital to its integrity and future. Since the United States has the responsibility to protect the integrity of the tribes, we can say with the *Kagama* court, ". . . there arises the duty of protection, and with it the power."

GEOGRAPHIC SCOPE OF PLENARY POWER

Is the Congress limited to Indian lands or to the reservation in the exercise of its plenary power over Indian affairs? The answer is clearly, "No." Again, we need only cite one or two cases to support this conclusion.

In *U.S.* v. *Holliday,* supra, the Court said:

> If commerce, or traffic, or intercourse is carried on with an Indian tribe, or with a member of such tribe, it is subject to be regulated by Congress; although within the limits of a State. The locality of the traffic *can have nothing to do with the power.* (Emphasis added.) The right to exercise it in reference to any Indian tribe, or any person who is a member of such tribe, is absolute, without reference to the locality of the traffic, or the locality of the tribe, or the member of the tribe with whom it is carried on.

In *Perrin* v. *U.S.,* 232 U.S. 487 (1914), the Court held:

> We come, then, to the objection that the prohibition in the act of 1894 confers an unnecessarily extensive territory and is not limited in duration, and so transcends the power of Congress. As the power is incident only to the presence of the Indians and their status as wards of the Government, it must be conceded that it does not go beyond what is reasonably essential to their protection, and that, to be effective, its exercise must not be purely arbitrary, but founded upon some reasonable basis. . . . On the other hand, it must also be conceded that, in determining what is reasonably essential to the protection of the Indians Congress is invested with a wide discretion and its action, unless purely arbitrary, must be accepted and given full effect by the courts.

We cite again *U.S.* v. *Nice,* supra: "The power of Congress to regulate or prohibit traffic with tribal Indians within a State *whether upon or off an Indian reservation* is well settled. . . ." (Emphasis added.)

MEMBERSHIP AND PLENARY POWER

The question occurs, as raised by the Department of Justice in its report: "Is the power of Congress limited, constitutionally, to only those individuals who are formally enrolled as members of an Indian tribe?" Again, the answer is negative.

In 1934, Congress enacted the Indian Reorganization Act of June 18, 1934 (48 Stat. 988). Section 19 defined "Indians" as:

> . . . all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood.

Categories two and three of this definition are clearly not enrolled members of a tribe, by definition; yet Congress conferred the rights and benefits of the act upon this class of Indians, including the right to preference in Federal employment in the Bureau of Indian Affairs and the Indian Health Service. When the Supreme Court was called upon to construe the constitutionality of the Indian preference section of the Indian Reorganization Act in the case of *Morton* v. *Mancari,* 417 U.S. 535 (1974), it was aware that Indians who were not enrolled members of a tribe were made eligble for this preference by act of Congress, but did not strike the law down as invidiously discriminatory.

The reason it did not was because it was aware of its own past decisions with respect to congressional power over Indians not members of a tribe. Congress may disregard the existing membership rolls and direct that per capita distributions be made upon the basis of a new roll, even though such act may modify prior legislation, treaties, or agreements with the tribe. *Stephens* v. *Cherokee Nation,* 174 U.S. 445 (1899). Thus, the Supreme Court in the case of *Sizemore* v. *Brady,* 235 U.S. 441 (1914), said:

> . . . Like other tribal Indians, the Creeks were wards of the United States, which possessed full power, if it deemed such a course wise, to assume full control over them and their affairs, to ascertain who were members of the tribe . . .

In *Federal Indian Law,* at page 45 in note 10, it is said:

> It has been held that Congress is not bound by the tribal rule regarding membership and may determine for itself whether a person is an Indian from the standpoint of a Federal criminal statute. *United States* v. *Rogers,* 4 How. 567 (1846).

In the very recent case of *United States* v. *Antelope,* 45 U.S.L.W. 4361 (April 19, 1977), the Supreme Court said:

> It should be noted, however, that enrollment in an official tribe has not been held to be an absolute requirement for federal jurisdiction. . . .

Federal District Court Judge Battin, in *Dillon* v. *Montana,* (1978), ordered:

> 2. That for purposes of applying this (Federal)

exemption, the class of "Indian persons" . . . shall include persons possessing the following qualifications:

(a) that the person possess some quantum of Indian blood;

(b) that the person be recognized as an Indian by the community in which he or she lives, and that the putative taxpayer's wardship status has not been terminated by the government;

(c) that the person be an enrolled member of a federally recognized Indian tribe *or otherwise eligible to be recognized as an Indian ward by the Federal Government.* (Emphasis added.)

If the courts have found that Congress has the power to act with respect to nonenrolled Indians in the foregoing kinds of circumstances, how much more is its power to act to protect the valuable rights of a minor Indian who is eligible for enrollment in a tribe? This minor, perhaps infant, Indian does not have the capacity to initiate the formal, mechanical procedure necessary to become enrolled in his tribe to take advantage of the very valuable cultural and property benefits flowing therefrom. Obviously, Congress has power to act for their protection. The constitutional and plenary power of Congress over Indians and Indian tribes and affairs cannot be made to hinge upon the cranking into operation of a mechanical process established under tribal law, particularly with respect to Indian children who, because of their minority, cannot make a reasoned decision about their tribal and Indian identity.

SUPREMACY CLAUSE VERSUS STATES' RIGHTS

From the foregoing, it is clear that Congress has full power to enact laws to protect and preserve the future and integrity of Indian tribes by providing minimal safeguards with respect to State proceedings for Indian child custody. The final question is, paraphrasing the Department of Justice: "Does Congress have power to control the incidents of child custody litigation involving nonreservation Indian children and parents pursuant to the Indian commerce clause sufficient to override the significant State interest in regulating the procedure to be followed by its courts in exercising jurisdiction over what is traditionally a State matter?"

First, let it be said that the provisions of the bill do not oust the State from the exercise of its legitimate police powers in regulating domestic relations.

The decisions of the Supreme Court will set to rest the principal objection. It is appropriate to begin with the landmark case of *McCulloch* v. *Maryland,* 17 U.S. 316 (1819), where the Court stated:

> Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.

In *Brown* v. *Western Ry. Co.,* 338 U.S. 294 (1949), the Court said:

> The argument is that while State courts are without power to detract from "substantive rights" granted by Congress . . . they are free to follow their own rules of "practice" and "procedure." . . . A long series of cases previously decided, from which we see no reason to depart, makes it our duty to construe the allegations of this complaint ourselves in order to determine whether petitioner has been denied a right of trial granted him by Congress. This Federal right cannot be defeated by forms of local practice. . . . Strict local rules of pleading cannot be used to impose unnecessary burdens upon rights of recovery authorized by Federal laws.

In *Dice* v. *Akron, C. Y. Y. R. R. Co.,* 342 U.S. 359 (1952), the Court held:

> Congress . . . granted petitioner a right. . . . State laws are not controlling in determining what the incidents of this Federal right shall be."

Chief Justice Holmes, in *Davis* v. *Wechsler,* 263 U.S. 22 (1923), put it succinctly:

> Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice.

We will quote merely two other cases to support the proposition that Congress may, constitutionally, impose certain procedural burdens upon State courts in order to protect the substantive rights of Indian children, Indian parents, and Indian tribes in State court proceedings for child custody.

The Court, in *American Railway Express Co.* v. *Levee,* 263 U.S. 19 (1923), held that:

> The laws of the United States cannot be evaded by the forms of local practice. . . . The local rules applied as to the burden of proof narrowed the protection that the defendant had secured (under Federal law), and therefore contravened the law.

And finally, in an extensive quote from the landmark decision of the Court in *Second Employers' Liability Cases,* 223 U.S. 1 (1912), we examine the duty of State courts, otherwise having jurisdiction over the subject matter, to enforce Federal substantive rights:

> We come next to consider whether rights arising from congressional act may be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local law, is adequate to the occasion. . . . (The State court was of the opinion that it could decline to enforce the Federal right) because . . . it would be inconvenient and confusing for the same court, in dealing with cases of the same general class, to apply in some the standard of right established by congressional act and in others the different standards recognized by the laws of the State. . . . It never has been supposed that courts are at liberty to decline cognizance of cases merely because the rules of law to be applied in their adjudication are unlike those applied in other cases.
>
> We conclude that rights arising under the (Federal) act in question may be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local law, is adequate to the occasion.

CONCLUSION

Under the rules of the House, this committee has been charged with the initial responsibility in implementing the plenary power over, and responsibility to, the Indians and Indian tribes. In the exercise of that responsibility, the committee has noted a growing crisis with respect to the breakup of Indian families and the placement of Indian children, at an alarming rate, with non-Indian foster or adoptive homes. Contributing to this problem has been the failure of State officials, agencies, and procedures to take into account the special problems and circumstances of Indian families and the legitimate interest of the Indian tribe in preserving and protecting the Indian family as the wellspring of its own future.

While the committee does not feel that it is necessary or desirable to oust the States of their traditional jurisdiction over Indian children falling within their geographic limits, it does feel the need to establish minimum Federal standards and procedural safeguards in State Indian child custody proceedings designed to protect the rights of the child as an Indian, the Indian family and the Indian tribe.

Indian Family Defense, 1974-1979. 1974-1979. TS The Association on American Indian Affairs: Publications, Programs, and Legal and Organizational Files, 1851-1983: Legal Cases, Programs and Publications 382: 1. Mudd Library, Princeton University. Indigenous Peoples of North America, https://link.gale.com/apps/doc/AOBART310952707/INDP?u=aaia&sid=INDP&xid=7004ca5d. Accessed 7 Oct. 2020.