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**Evelyn Lance Blanchard**

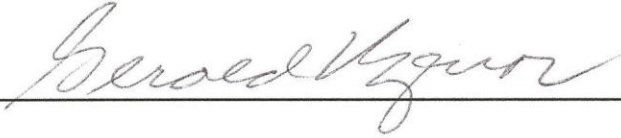
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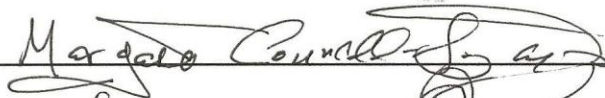
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**TO PREVENT THE BREAKUP OF THE INDIAN FAMILY:  
THE DEVELOPMENT OF INDIAN CHILD WELFARE ACT OF 1978**

**BY**

**EVELYN LANCE BLANCHARD**

B.A., Sociology, The University of New Mexico, 1962  
M.S.W., Social Work, University of Denver, 1969

DISSERTATION

Submitted in Partial Fulfillment of the  
Requirements for the Degree of

**Doctor of Philosophy  
American Studies**

The University of New Mexico  
Albuquerque, New Mexico

**July, 2010**

## ACKNOWLEDGEMENTS

This dissertation is the work of promises kept to many children, who throughout my forty plus years serving as an advocate for them and their families have, time and again, asked me to tell their stories. They wanted their voices to be heard, not only so that others would understand their loss and pain, but also that others would come to comprehend the commanding influence of powerful forces, often biased and uninformed, which determined their lives.

It is also in recognition of the many other advocates with whom I have worked from the earliest days of the Act's development. Special attention must go to my cherished friendship with Joseph DeLaCruz, who as President of the Quinault Nation, assisted me to gain access to tribal and Indian organization leadership throughout the country. He also introduced me to Goldie Denney, Quinault Director of Social Services, who would become the most precious of friends and a constant companion in the work to reverse the destructive thinking and practices that had served to destroy so many Indian families. Without the help of Bertram Hirsch's fierce commitment to correct injustices and his command of the law, I would not have been able to help return children to their families and tribes as an expert witness.

It is an undeniable fact that this dissertation would not have been completed without the guidance and support of M. Jane Young and Margaret Connell Szasz, whom I place among those rare and special educators, who believe in their students and unselfishly dedicate their time and effort to students' success. For almost half a century, Samuel Roll has been a mainstay in the work I have been called to do. His deep understanding of

human behavior and devotion to the integrity of family life have equipped and guided me to convince courts throughout the United States and Canada of the importance of familial relationship and the significance of the child's connection to tribal heritage. It is a special privilege to have Gerald Vizenor as a member of my committee. Gerald's voice, heard throughout the world, has insisted that the cloak of romanticism be torn away to expose the fallacy of the convictions of many, that Indian children would be better off reared by others than their families and tribes.

And lastly, my most heartfelt appreciation goes to my children, Stanton Lance and Kim Lance, whose great sacrifice during important years of their development, allowed me to do the work I have done that made it possible for many children to return to their families and people.

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**ABSTRACT**

This dissertation is the story of the destruction of Indian families as told to Congress in hearings held by the Sub-Committee on Indian Affairs in 1974 and the Select Committee on Indian Affairs in 1977 through the testimony of children, parents, Indian leadership, the Association on American Indian Affairs, psychological witnesses, and other advocates who opposed destructive child welfare practices. Their testimony described the illegal removal of Indian children, the exploitation of families through violation of their due process rights, the tragedy of children who were abused and neglected in placement, the psychological damage suffered by the children and their families, and the failure and neglect of the Bureau of Indian Affairs to protect the rights of Indian people as required by law. The litany of longstanding abusive practices revealed that one out of every four Indian children had been removed from her or his parents or extended family members in whose care they had been left, and that eighty-five percent of these children had been placed in non-Indian homes and institutions. Their testimony would convince Congress of the need to regulate the actions of state courts and public and private child welfare agencies to prevent the breakup of the Indian family.

The testimony further revealed the federal government's continuing use of federal boarding schools as a primary resource for the placement of Indian children taken from families experiencing difficulties and its failure to provide services to these families, and for those children for whom local schools, near to their family homes, were not available. The federal boarding school system was established in the late 1800s to assimilate the Native people into mainstream society and to destroy tribal life.

The Committees also heard from federal government witnesses who refused to accept their responsibility, and who strongly opposed enactment of laws to protect the integrity of Indian family life, despite clear evidence of the government's complicity in its destruction. Other witnesses who joined the government's opposition included representatives of the Church of Jesus Christ of Latter Day Saints who feared that a law to protect Indian families would interfere with its Student Placement Program in which over twenty-five hundred children were taken every school year into Mormon foster homes for educational purposes.

The information provided to Congress formed the foundation for the passage of the Indian Child Welfare Act of 1978.



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## Chapter I:

### “Indignity was heaped upon indignity. . .”

Joe S. Sando, Jemez Pueblo Historian

Cheryl DeCouteau testified to the Sub-Committee on Indian Affairs that the local welfare officials took her children from her because the man said:

. . . I wasn't a very good mother . . . and that my children were better off being in a white home where they were adopted out, or in this home, wherever they were. They could buy all this stuff that I couldn't give them, and give them all the love that I couldn't give them. (U.S. Senate 1975, 66)

On November 7, 1978 the Indian Child Welfare Act (ICWA, P.L. 95-608) became law. The intent of the law was to prevent the breakup of the Indian family. The law set standards to regulate the actions of state courts and public and private agencies involved in Indian child welfare matters and directed the establishment of Family Development Programs. Why was such a law necessary and how did it come to be?

Answers to these questions in congressional hearings held in 1974 and 1977 would provide the Senate Sub-Committee on Indian Affairs with information, sufficiently convincing, to pursue enactment of the law. Witnesses from tribes, Indian organizations, Indian rights organizations, professional organizations, government officials and individual Indian people painted the tragic picture of abusive child welfare policies and practices confronted by Indian families and their children. The litany of longstanding abusive practices revealed that one out of every four Indian children had been removed from her or his parents or extended family members in whose care they had been left, and that eighty-five percent of these children had been placed in non-Indian homes and institutions. Parents and children had been deprived of due process rights. Government agents lacked knowledge of

and disdained native customs and mores, and were oblivious to and/or rejected the role and responsibility of tribal government in the lives of their people. For Indian people accustomed to dispossession and dislocation, it was difficult to understand why, after all that had been taken from them, the destruction of their societies continued through the taking of their children. It was hard to accept that America's twentieth century view of the fate of the Indian family continued the colonial imperative of its destruction. Cheryl DeCouteau's family experiences, in the context of 1970's Sisseton, South Dakota, were borne of official and personal views of the individuals who decided her children would be taken. Attitudes are founded in and supported by beliefs and the values that emerge from them, that are not only the product of one's world view, but also the contemporary milieu in which the action takes place.

In opening remarks at congressional hearings in 1974 that laid the groundwork for passage of the Indian Child Welfare Act, Senator James G. Abourezk (D., S.D.)<sup>1</sup> declared that federal government action and inaction were complicit in conditions that resulted in removal and placement in substitute care of one out of four Indian children and described the situation as cultural genocide. That was also a conclusion shared by many who came to testify, Indian and non-Indian, alike. The power of federal and state governments to impose their views of child development and care in Indian country was experienced as continuation of colonial rule in which the nation determined matters of Indian policy within the context of its own best interest. In the eyes of numerous witnesses the destruction of the Indian family in the twentieth century was rooted in concepts and attendant compatibilities and conflicts of liberal democracy and colonial rule whose basic and long-standing response to the Indian family was neglect. In all, this situation was experienced as not unlike Indian policy of the

1800s with which twentieth-century America seemed to share goals, to assimilate or exterminate the Indian.

Removal of Indian children from their families and communities had its beginnings in the early days of colonization when Christianizing the Indian was seen as the most effective path to domination. European colonialists in both eastern settlements and western occupations held that it was not only their right but their duty to bring native people into their fold, ideologically, materially and socially. A central feature of the colonizing project was the education of native children. In Indian Education in the American Colonies, 1607-1783, Margaret Connell Szasz explains that colonial Indian schooling took place within the framework of a broad cultural exchange in which schoolmasters viewed their efforts as honest attempts to change Indian youth. It was thought that if the youth could learn to read, write and comprehend the teachings of the Bible and change their life ways accordingly, they might be able to teach others of their tribes to do likewise. Despite the diversity that characterized the early colonies, a common education pattern emerged.

First, either the colony or a missionary organization established the fundamental principle necessary for Indian schooling; the need to Christianize and civilize the natives.

[Second], one or more Euroamericans, either missionary or pious layman, emerged as the catalyst for the schooling movement.

The third essential ingredient of the planning stage demanded the involvement of at least one Indian. When this individual displayed some degree of competence in the basic tenets of Christianization and civilization, the success of the project was almost assured. (Connell Szasz 1988, 6-7)

A similar plan was executed by Catholic friars who enjoined pueblo youth in a program of indoctrination that often involved removal of children from their homes to missions.

The Friars selected certain youth from the pueblos and provided them with intense training; these children were then utilized to indoctrinate the rest. . . . These children, called doctrinarios, served a very important role in the colonization of the natives. In

a very real sense they were the culture brokers. They were the link between the oral and the literate spheres, deriving meaning from the texts they read and disseminating the “word” among their respective peoples as true “agents of literacy.” (Gallegos 1992, 91)

The friars, taking their lead from Dominican work with indigenous people in the Yucatan, employed a well-thought out plan to transform the Indians into model Christians through what was called “peaceful persuasion.” Based on knowledge of Pueblo politico-religious structure, the friars were well-prepared to design an assault on Pueblo society that fulfilled the goal to Christianize the people and continue its erosion. The assault required that the friars “drive a wedge into the main relationship that structured inequality, the relationship between juniors and seniors and between children and their parents” (Gutierrez 1991, 74). The methodology struck at the heart of reciprocal relationships and disrupted the deeply complex and intertwined web of interdependence necessary to Pueblo society. Ohkay Owingeh anthropologist Alfonso Ortiz explains reciprocity’s broad significance as it is viewed in the Pueblo world. Emphasis on reciprocity, a key term in the Pueblo equation, is “reflected in both man to god and man to man relationships and jurisdiction or maintenance of sacred symbols” (Ortiz 1972, 198). Ortiz helps with understanding of the significance of the Friars’ actions as they intruded on parental gift-giving functions and attempted to displace parents’ authority and responsibility.

. . . from the nature of Pueblo reciprocal obligations in ordinary life it is clear that the gods *ought* to honor man’s claims, in fact the formula of prayer—the four-fold repetitions for example—are exactly the same stimuli which are believed to force the truth from an *unwilling* speaker. Thus a cornmeal offering given to the gods renders a particular request virtually impossible to refuse when given to a human being or at the very least guarantees serious consideration of it. (Ortiz 1972, 208)

The friars had observed that

parents extracted labor and obedience from their children by controlling the gifts

children needed to present to other seniors if they were to obtain the symbols of adulthood—wives, esoteric knowledge, and allies. (Gutierrez 1991, 76)

Jemez Pueblo historian Joe S. Sando recounts the conditions Pueblo people faced under Spanish domination when “indignity was heaped upon indignity; and the Spaniards became repugnant to the people, for their indifference to human suffering, as well as for their ceaseless demands for produce, labor and services” (Sando 1992, 63). These early efforts by both the friars and missionaries to Christianize the Indian people would establish a paradigm of removal of children from their families and communities as an effective means to dominate indigenous societies and their people. At the heart of colonial methodology was the breaking of loyalty bonds between parents and children. Removal undermined the child’s sense of security and introduced questions of allegiance, safety and identity. The confusion faced by children in these earliest removals would be an experience shared by thousands of Indian children in the coming centuries.

Memories of these earliest harmful actions by New World settlers in the conquest of the nation were on the minds of Indian people who came to the 1974 congressional hearings to inform Congress of the abusive child welfare practices by government and private agencies and the consequent destruction and tragedy experienced by Indian families. In their minds the crisis in Indian child removal was an extension of practices that had accompanied Indian life for centuries. How had it come to be that the integrity of the Indian family could be repeatedly violated? Who were these Indian people from whom their children could be taken without due process of law? Were these actions modern American society’s culminating efforts to assimilate the native people? Where were Indians in America’s view and did they have a viable place in modern society?

Colonization and consequent dislocation were central themes in the writings of Edward Wadie Said, an American-Palstinian professor of English and Comparative Literature at Columbia University, who was a founding figure in post-colonialism. The phenomenon of representation is at the core of his theory of Orientalism which he describes in his book by the same name as “a way of coming to terms with the Orient that is based on the Orient’s special place in European Western experience” (Said 1978, 1). Central to his theory is the need for European representation of the Orient and its contemporary fate, a comparable phenomenon seen in the U.S. government’s design of Indian policy over the centuries. He proposes that without examining Orientalism as a discourse it is not possible to “understand the enormously systematic discipline by which European culture was able to manage—even produce—the Orient politically, sociologically, militarily, ideologically, scientifically, and imaginatively during the post Enlightenment period” (Said 1978, 3). The survey of Indian policy in Chapter II illustrates the federal government’s systematic pattern of conquest of the indigenous people of America with the identical goals in mind. Said hoped that the theory would “illustrate the formidable structure of cultural domination and, specifically for formerly colonized peoples, the dangers and temptations of employing this structure upon themselves or upon others” (Said 1978, 25). He searches for “an alternative both to politics of blame and to the even more destructive politics of confrontation and hostility,” and stresses acknowledgement “of the massively knotted and complex histories of special but nevertheless overlapping and interconnected human experiences” (Said 1978, 25). Said points out that “European culture gained in strength and identity by setting itself against the Orient as a sort of surrogate and even underground self,” a milieu familiar in Indian country (Said 1978, 25). Further emphasis of Orientalism is as a corporate institution for

dealing with the Orient through “making statements about it, authorizing views of it, describing it, by teaching it, settling it, ruling over it; in short, Orientalism as a Western style for dominating, restructuring, and having authority over the Orient” (Said 1978, 1-3).

America’s equivalent emphases are seen in depictions of Indians and definitions of them that fill the range of representation from noble to savage and all intersections in between.

The Devil’s Lake Sioux people of North Dakota lived under the yoke of misnomer for centuries amid widespread mainstream acceptance of the name they had been given. Many years ago when the author worked with the people, she queried them about their name, Devil’s Lake, which she thought an odd name for the people. It was explained that the lake was the home of spirit people, but non-Indian settlers of the area could not comprehend the significance of its name and meaning and labeled it Devil’s Lake. In the years after, the people reclaimed the name by which they had always known themselves and by which others knew them, the Spirit Lake Sioux. In Mixed Blessings: New Art in a Multicultural America, author Lucy R. Lippard explains that social existence is predicated on naming. There are those names we give ourselves and our communities “reflected in the arts by autobiography and statements of racial pride” and then there are those supposed neutral labels imposed from the outside. A concern about neutral labeling is that it “may include implicitly negative stereotyping and is often inseparable from the third—explicit racist name-calling” (Lippard 1990, 19-20). The settlers in the Spirit Lake area may not have seen their “naming” as offensive and, perhaps did not comprehend the centrality of the lake to the tribal peoples’ belief system. On the other hand, the assignation of the interpretative name, Devil’s Lake, continued a representation of ignobility needed both by those who sought to Christianize the Indian and those who sought to gain control of the Indian estate. Testimony of Northern



Plains' parents whose children had been taken from them described the racist attitudes of powerful government, religious and private agency officials portrayed in ugly, demeaning name-calling that left them with a sense of defenselessness and nowhere to turn for help.

In his 1993 book, Culture and Imperialism, Said identifies “[t]hree great topics [that] emerge in decolonizing cultural resistance”: first is “the insistence on the right to see the community’s history whole, coherently, integrally,” second, “is the idea that resistance, far from being merely a reaction to imperialism, is an alternative way of conceiving human history,” and last, “is a noticeable pulling away from separatist nationalism toward a more integrative view of human community and human liberation” (Said 1993, 215-217). An early example of decolonizing cultural resistance occurred in the Pueblo Revolt of 1680 when religious leaders united to drive the Spaniards from the area to end Spain’s dominance. The Pueblo people clearly conceived their human history differently from the conquerors, and the individual Pueblos came together in a pan-national effort in recognition of the fact that none, alone, could withstand Spanish imperialism. In 1944 Indians from tribes across the nation would come together to found the National Congress of American Indians to resist the Federal government’s policies of termination and assimilation in contradiction to tribal treaty rights and their status as sovereign nations. Indian resistance to colonization persisted from the moment it was imposed.

In The Third Space of Sovereignty: The Postcolonial Politics of U.S.-Indigenous Relations, author Kevin Bruyneel<sup>2</sup> also focuses on decolonizing cultural resistance and situates his discussion in the spatial and temporal boundaries of modern American-indigenous politics. The claim of Bruyneel’s theory is “that the imposition of American colonial rule and the indigenous struggle against it constitute a conflict over boundaries, a

conflict that has defined U.S.-indigenous relations since the time of the American Civil War” (Bruyneel 2007, xvii). The imposition of colonial rule now or in the past is an effort, also identified in Orientalism theory, to limit the ability of indigenous people to determine their own identity and to thwart their development economically and politically. Bruyneel locates the third space of sovereignty on the boundaries of contest, neither inside nor outside the American political system but in a “supplemental space, inassimilable to the institutions and discourse of the modern liberal democratic settler-state and nation” (Bruyneel 2007, xvii). He sees the modern struggle over colonial rule as a post-colonial conflict for two reasons: first, it defines the beginning of the modern era in U.S.-indigenous relations following the Civil War when the groundwork for westward expansion was laid that would lead to the inevitable containment of indigenous people within the boundaries of the United States. Bruyneel sees the concomitant ending of the treaty period in 1871 as an indicator of the end of “Old Colonialism” and the beginning of “New Colonialism” in which “the American federal government increasingly viewed tribes as domestic rather than foreign entities and as collections of individuals to be assimilated rather than as sovereign governments to be recognized” (Bruyneel 2007, xvii-xviii).

Almost fifty years before the end of the treaty period, America made clear its intentions regarding the fate of the Indian people in the passage of the Civilization Fund Act of 1819. Congress appropriated \$10,000 to provide “against the further decline and final extinction of the Indian tribes, adjoining the frontier settlements of the United States, and for introducing among them the habits and arts of civilization “ (Prucha 2000, 33). While Western Europe’s task to manage the Orient involved limited acculturation and assimilation of the general society, colonial America’s undertaking involved the assimilation of an entire

population of people called Indian and the creation of an image of the Indian that would be useful in its conquest.

Bruyneel observes two prevalent American sentiments about indigenous people's political status.

The first sentiment is that indigenous tribes and nations claim a form of sovereignty that is unclear because it is not easily located inside or outside the United States. . . . The spatial logic is quite simple, if the tribe is "part of the United States," it is not sovereign, but if it is sovereign, it cannot be part of and thus make demands on the United States. The second sentiment is that the treaty-secured rights of indigenous tribes stem from an archaic political time that cannot assume a modern form. (Bruyneel 2007, xiii-xiv)

Bruyneel discerns that "this sort of political discourse represents an effort to constrain tribal sovereignty, treaty rights, indigenous identity, and indigenous political expression through the imposition of the spatial and temporal boundaries of modern American politics"

(Bruyneel 2007, xiv). He asserts that the invocation of these spatial and temporal boundaries are commonly used by American political actors and institutions in their efforts to impose the political rule of American colonial power. But these boundaries are not impermeable; they are rendered seamless through indigenous political resistance and America's ambivalence about its relationship with indigenous people. Bruyneel perceives that "the American political system is not singularly defined by either liberal democracy or colonialism, but rather that elements of both comprise the foundation and form of the American settler-state" (Bruyneel 2007, 5). The challenge, as he sees it, "is to analyze U.S.-indigenous relations while acknowledging that liberal democratic and colonial impulses are not always contradictory, but often quite compatible in the effort to impose, secure and legitimate the boundaries of the American political system" (Bruyneel 2007, 6). Yet, he does not consider exclusion or inclusion as the central dilemma, because to recognize them as such only serves

to reify them. Rather, he believes that

the focal point of analysis should be on how U.S.-Indigenous politics, at its core, is a battle between an American effort to solidify inherently contingent boundaries and an indigenous effort to work on and across these boundaries, drawing on and exposing their contingency to gain the fullest possible expression of political identity, agency, and autonomy. (Bruyneel 2007, 6)

He explains that the influence of binary vision, such as inside or outside, is great in determinations about how we see the political world and particularly our understanding of the terms and dynamics of U.S.-indigenous relations. Acknowledgement and comprehension of binary visions lets us see more clearly “the American effort to impose and maintain the spatial and temporal boundaries of colonial rule in a modern liberal democratic settler-state” (Bruyneel 2007, 6). The Indian Citizenship Act (1924) is an example of the influence of the binary view that revealed an American political compatible-contradictory dilemma.

*Be it enacted. . . .* That all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States; *Provided*, That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property. (Prucha 2000, 218)

Legal scholars, Russel Barsh and James Henderson contend in The Road: Indian Tribes and Political Liberty that “Indians had to be made citizens so that the great experiment in coercive civilization could continue without possible legal impediments. Citizenship was conferred to benefit the government, not the tribes” (Barsh and Henderson 1980, 96). Vine Deloria and Clifford Lytle explain that the Act gave Indians born in the United States full citizenship and clarified that citizenship would “not infringe upon their rights to tribal and other property that Indians enjoy as members of their tribes” (Deloria and Lytle 1984, 3). The dual citizenship of Indians was recognized as was their right to protection in either realm: “Indians are not to lose civil rights because of their status as members of a tribe, and

members of tribes are not to be denied their tribal rights because of their American citizenship” (Deloria and Lytle 1984, 3-4). But as Deloria and Lytle point out, America confronted a contradictory-compatible dilemma grounded in the contest between liberal democracy, as it was viewed, and colonial rule.

At the same time that Indians were being made citizens and the government pledged to protect tribal rights, Senator Holm Bursum (R., N.M.) in response to a request from U.S. Secretary of Interior Albert Hall, introduced a bill on May 31, 1921 to resolve the question of Pueblo lands. America’s 1846 victory in the Mexican-American War and the nation’s westward expansion opened the Southwest to widespread Anglo settlement and encroachment on Pueblo lands. The bill proposed that “all non-Indian claims to lands held for more than ten years before 1912” be confirmed (Deloria and Lytle 1984, 40). Indian rights’ advocates led by the General Federation of Women’s Clubs and the Indian Rights Association came to the aid of the Pueblos and enlisted John Collier, who would later become Commissioner of Indian Affairs in the Roosevelt administration, to direct the effort. The contest over appropriation of Pueblo lands was finally resolved in the era of the New Deal when existing assimilation policy was replaced with a program of preservation of tribal cultures and promotion of federally recognized governments on reservations (Deloria and Lytle 1984, 41).

The 1950s brought change to U.S.-Indian policy that called for termination of the trust relationship between the federal government and Indian tribes. In 1953 the Bureau of Indian Affairs (the Bureau, BIA) established a program to relocate Indians to urban areas in response to widespread unemployment on reservations and its continuing effort to assimilate them into society’s mainstream. The new urban residents were poorly equipped for city life

and had little, if any, knowledge about the laws that governed them, few advocates to assist them, and they soon learned that tribal government authority was not recognized. During the early days of the program, most Indians who relocated kept to themselves because there was greater comfort among one's own people and as protection against a living style and legal system not understood. In the following decade, Indian country would see the largest ever exodus from the reservations when 63,000 people moved to urban and off-reservation areas either through Bureau programs or on their own. Most of the people moved to destination sites established by the government's relocation program, such as, Los Angeles county, where the Indian population increased from 5,000 following World War II to 50,000 in 1980. Despite the ten-fold population increase, Indians represented "only a tiny fraction (0.006 percent) of the total county population and [were] numerically insignificant when compared to the other major ethnic and racial groups that [made] up Los Angeles's cultural mosaic: blacks (944,009), Asians (434,914), and Hispanics (2,065,727). Even the more recently arrived Koreans were present in greater numbers (60,618) in 1980" (Weibel-Orlando, 1991, 1). The small numbers of Indian people in urban areas limited broad interaction with the larger society and few outside their communities were acquainted with the social networks the people had developed to help each other. Limited association prompted many non-Indian people to rely on images of Indians from film and literature that situated the Indian in an outside space within an anachronistic time frame generally seen as either romantically attractive or disdainful. Likewise, Indians constructed images of non-Indians based on contemporary and historical associations. Shared ignorance of the lives of the "other" cemented stereotypical and typological representations of each other, solidified boundaries of

historical contest and extended them into the disciplinary arena of family and children's services.

Access to family and children's services for most Indian people came through their status as recipients of financial assistance from the Bureau's General Assistance program or from state welfare agencies. Although the Bureau's Branch of Social Services maintained a budget line item for child welfare assistance, the funds were used to pay for substitute care provided by states and private agencies and none was used to support employees whose primary function would provide supportive services for families and children. Through its years of operation the Branch of Social Services had not developed the expertise to help families work through difficulties and did not see its responsibility to develop information that would assist tribal officials to care for their people and to educate outside agency personnel who worked in Indian communities. These unfavorable conditions injected unnecessary jeopardy into the lives of single Indian mothers and their children. For well over two decades the national social welfare community had been influenced by the idea that unwed mothers were immature individuals who would encounter problems rearing their children. The idea was broadly applied to "welfare mothers" and its applicability was seldom questioned even among Indian families where it was obvious that there were many people available to help care for children. The bias was played out in aggressive and intrusive oversight of unwed mothers to check on the well-being of the children and to uncover misuse of welfare benefits and illicit relationships, either of which could call into question the parent's fitness and bring the threat of child removal. The historic absence of support services from either the Bureau or state agencies to help Indian families resolve difficulties they might have in rearing their children produced little knowledge about

successful diagnostic and treatment methodologies with Indian families on or off reservations. Information about developments in theory and practice and trends in social services in populations who shared characteristics of family life with Indian people was not available to tribal officials and community workers primarily because the Bureau's Branch of Social Services, itself, did not access the information. It must be noted that during the early 1960s there were likely less than twenty professionally trained Indian social workers in the entire country and it was not possible for a small cadre of workers to stimulate needed national discussion about the problems encountered by Indian families and customary resources commonly used to resolve them. The problem was further complicated because most of these social workers were employed by either the Bureau of Indian Affairs or the Indian Health Service where advocacy is constrained.

A consequence of these circumstances was that few, if any, Indian workers or those who worked in Indian communities participated in professional disciplinary discussions concerned with family and children's services and their ability to bring information about developments in the field to tribal communities was handicapped. These workers were isolated from the mainstream social welfare community and often worked alone in the communities to which they were assigned. Lack of professional contact became especially problematic when new approaches in the field were incorporated into federal government programs. A case in point was the introduction by pediatric microbiologist C. Henry Kempe of the concept of the battered child syndrome<sup>3</sup> at an interdisciplinary presentation to the American Academy of Pediatrics at its annual meeting in 1961 which is seen as the place of inception of the national effort to end child abuse and neglect. The syndrome refers to injuries sustained by a child usually at the hands of an adult caretaker resulting in internal



injuries, cuts, burns, bruises and broken or fractured bones. The following year a comprehensive description of the syndrome was published in the *Journal of the American Medical Association* containing pediatric, psychiatric, radiological, and legal concepts supporting the theory. In their 1978 publication, Child Abuse, co-authors C. Henry Kempe and Ruth S. Kempe described child abuse as an expression of family disturbance not just the action of a single needy individual and expressed their belief that it is “disastrous to return an abused child repeatedly to a family that exists in name only, that is not and never will be capable of providing a nurturing environment, and that may well destroy the child unless he is promptly and permanently removed” (Kempe and Kempe, 1978 103).

The authors identified groups of parents whose behavioral profiles presented sufficient pathology, in their view, to warrant termination of parental rights. The first group included “parents so addicted to alcohol or drugs that they cannot provide even minimal care for their babies,” another group included “cruel abusers who might torture their children slowly and repetitively,” psychotics and aggressive sociopaths. A third group was made up of “parents [who] are too retarded or the mothers simply too young to raise children” and suggested boundaries of IQs under sixty and mothers under the age of fifteen which should signal a judicial review of the advisability of termination of parental rights (Kempe and Kempe 1978, 104). The fourth group was comprised of families where more than one child had been seriously injured and there were one or more incidents of unexplained child death. Termination was also seen as appropriate for those parents who after six to nine months of treatment showed little or no improvement and who maintained chaotic lifestyles with little to offer their children. Also included in this group were parents who had abandoned their children where earnest efforts to locate them had been unsuccessful and who had failed to

communicate with the child or substitute caretaker for a period of six months or more.

Designation of family dysfunction as the source of abusive behavior influenced caseworkers to place children outside the family with non-relatives and in some jurisdictions extra-family placement was an administrative requirement. Characteristics from these profiles were cited in the 1974 testimony by parents whose children had been removed as reasons used by government and private agency workers to petition for termination of their rights. Witnesses' accounts of the treatment their families received from local government officials evinced inadequate professional skill and little knowledge of Indian family life, a critical element to an adequate diagnosis of any of the groups.

Knowledge about child abuse and neglect in Indian communities is filtered through many sieves of interpretation from federal and state laws, regulations and directives, through schools of social work, state welfare officials and finally to workers at local and tribal levels. Another sieve not often appreciated is the frequent turnover of welfare agency staff and the failure of agencies to provide adequate casework supervision. Many workers in small agencies, Indian and non-Indian, have no direct disciplinary supervision and often rely on an individual personal and professional view to interpret a circumstance of abuse or neglect. The physical, educational and intellectual isolation of many workers encourages self-protection of practice approach; they are, after all, the lone individual who will respond to calls for help. A consequence of these circumstances and processes is that knowledge development in Indian country is restricted; the flow of information is controlled by its scarcity and by government-funded programs that call for replication of efforts deemed successful by national experts, agency officials and advisors. When knowledge reaches the local program level it is generally in the form of codes or directives and regulations, it is left

to the worker to explore and interpret the underlying theory, if done at all. The structure established for the transmission of knowledge constrains development of family and children's programs and imposes a cacophony of often confusing spatial and temporal boundaries and, at the same time, leaves important borders of contest unattended. In her testimony, Goldie Denney, Quinault Nation Social Services Director, addressed the seriously damaging effect of this scenario and its reinforcement of the long-standing stereotype that Indians cannot care for themselves.

Bruyneel shares Said's position that life in a post-colonial world does not mean that the colonizer's cultural, economic or structural impositions are totally exhumed; it would not be possible based on centuries of colonial domination. Nor have indigenous societal structures been entirely exhumed by colonization, and "the so-called colonized" were never fully without agency or independent identity. Indian witnesses at both the 1974 and 1977 hearings informed committee members of the tribal and community efforts to provide services to families and children, initiated and operated by them in response to calls for help from their communities. These programs were outside the federal-state structure of service delivery and funding for their operations was limited, more often not available. Other constraints involved antiquated law, such as the state of Mississippi's refusal to recognize Choctaw tribal adoptions; the state contended it retained the authority to grant adoptions within its jurisdictional boundaries. This practice not only suppressed customary mores but also created roadblocks when a family needed assistance, financial and otherwise. Because tribal adoptions were not recognized by the state, children adopted by custom did not have state legal standing as a member of the adoptive family and might not be included in the applicant family group. Bureau witness, Jere Brennan, testified to identical situations among

the Northern Plains tribes that resulted in denial of basic assistance such as commodity foods. Off-reservation leaders described stalwart actions to establish indigenous organizations to help return children to their families or the Indian community without financial support from either the states or the Bureau of Indian Affairs. Volunteer community members advocated in their state and across state lines for children and families in the courts and with government and private agencies, provided repatriation support and, in some locations, established networks of foster families who assumed full responsibility to care for children placed with them.

During what is known as the termination era of the 1950s, Congress enacted P.L. 83-280 which empowered states to assume jurisdiction over civil matters on Indian reservations without the consent of the tribes. The State of Washington was among the states to take authority over domestic matters from tribal governments. The tribes lost authority over family matters and the state's Department of Social and Health Services (DSHS) made no efforts to engage the tribes in the design and development of services that would be helpful to their families. Instead, the state chose to remove children as its primary response to family difficulty. Over the years inordinate numbers of children were removed from their families and placed in non-Indian adoptive, foster homes and institutions where many were abused and exploited. In her written statement, Yakima Tribal Probation and Parole Officer Lila Whalawitsa, who had been employed in her capacity over twenty years, informed the congressional panel that she first began to respond to reports of physical and sexual abuse of Yakima children in state foster homes in the mid-fifties. In the years to come the tribal officials would learn that their children's trust accounts were being accessed by adoptive and foster parents who made assessments from withdrawals to cover costs to care for the

children, despite receiving state funds to provide care. It was also observed that child removal and placement in substitute care increased during those times when tribes distributed dividends to their members. In the early seventies, tribal leadership negotiated with the state to establish DSHS Indian Desk positions to provide oversight of family and children's services and to begin the process of greater tribal involvement. In the course of efforts to correct practice, the leadership demanded that the state provide lists with the names of every Indian child in substitute care and under the state's jurisdiction. The information received impressed tribal leadership that Indian Desk oversight, by itself, was not sufficient to correct long-standing systemic problems. An agreement was entered into with the state to develop administrative codes that would govern Indian family and children's practice in the Department of Social and Health Services. A series of meetings attended by tribal officials, program personnel, parents and Department officials were held over many months to discuss the problems and construct the new codes. The codes were adopted as official regulatory functions of the Department in 1976. This was not a facile accomplishment. Opposition was strong within the Department, reinforced by hostile relations between the tribes and the general public over tribal assertion of fishing rights. A popular bumper sticker of the day read, "Save a Fish, Can a Indian."

Bruyneel describes the arena in which this effort took place as the third space of sovereignty, "a conflict over boundaries in which imposition of American colonial rule and indigenous struggle against it contend" (Bruyneel 2007, xix). When the tribes asserted authority over their children, the existing boundaries between them and state officials were emphasized and expanded. The participation of many people during deliberations regarding practice and development of the administrative codes established a strong foundation of

support for leadership in what Bruyneel depicts as “a supplemental space, inassimilable to the institutions and discourse of the modern liberal democratic-settler-state and nation” (Bruyneel 2007, xix). In this space, community people were able to address the problems and offer resolutions that encased community mores and norms. The dynamics of the effort created an extended space distant from the principal site of inter-governmental contention where community people took advantage of the opportunity to construct a collective vision of services needed to help their people and to consolidate advocacy efforts across tribal lines. The enactment of the administrative codes was one thing; implementation was quite another, and did not guarantee that abusive practices would be ended. Opposition to the codes was resolute among many state workers and strongly contested in towns bordering reservations. Antagonisms founded in enduring stereotypes were maintained and the bias that Indian children were really better off reared away from their people and communities was reinforced. The depth of the insult, that Indian people could not care for themselves, was not comprehended and there is little evidence, even today, that in the general society’s view there is a connection between the removal of Indian children from their families and the destruction of a society.

The development of the Indian Child Welfare Act drew native people’s attention to the destruction of their life ways and they seized the moment to control and expand the third space of sovereignty by insisting that customary life ways guide family and children practice in their communities. The law would eventually require that customary and community child care practices would form the basis of acceptable Indian child welfare services’ guidelines, and that continued separation of children from their families or termination of their parental rights could not occur without documented evidence that efforts to employ these guidelines

were unsuccessful. Indian people took the opportunity to write their own history in codes, ordinances and in publications.

In 1988, the Minnesota Indian Women's Resource Center published Cherish the Children: Parenting Skills for Indian Mothers with Young Children, authored by Priscilla Buffalohead. The introduction explains the purpose and recommended methodology of the training materials.

. . . Parents and kids want something solid to hold on to. They need something to value. They yearn to have something that stays the same. . . the lessons in this manual are about the old ways of parenting. There are many new ideas here too. But we think the new ideas fit well with the old ways. Indian people say the circle is sacred. We want to give you a chance to complete the circle. We invite you to learn some of the old ways of parenting. We think they were good ways. We think some of these old ideas can be used today. (Buffalohead 1988, 1)

The two-volume text (trainer and participant) pulls together a myriad of subject matter built around the people's life ways as opposed to behaviors, beginning with identification of their space in tribal history, descriptions of their homes and surroundings and continuing on with customary ways when picking corn, gathering rice and tapping trees to make maple syrup. In a discussion of the growth and development of American and Alaska Native children in The Psychosocial Development of Minority Group Children, Okanogan<sup>4</sup> Andrew Joseph describes early training he received that captures the intent of associative learning encouraged in the Cherish the Children curriculum. Andy's mother died at birth and he was given to an octogenarian aunt and uncle. He described a childhood education characterized by completeness in which he was encouraged to become as fully aware as possible of the environment around him and in the activities which took place.

The first part of this education was concentrated on identification of physical characteristics of beings and things in the world around him. . . . From infancy, Indian children were deliberately introduced to their environment. Infants were often

placed on the ground so they could learn to hear, feel, and recognize the rumblings of the earth. (Blanchard in Powell, Yamamoto, Romero, Morales 1983, 125)

Joseph served numerous times on the council of the Colville Confederated Tribes where he recognized the great benefit of his early education that taught him to listen and consider well. Throughout his life he has used the precise exercise of listening to the earth in the deer hunt to feed his family.

The vibrations of the earth could be felt from the deer's first jump. In a deer's first jump, the ground is always hit hard as the deer comes down on all fours. After that, the impact of the deer's gait is light. (Blanchard in Powell, Yamamoto, Romero, Morales 1983, 125)

Recognition of knowledge bases, like these, by native and non-native practitioners opened up boundaries of family and children practice not previously perceived and convinced many that the preservation of Indian family life was not only possible but necessary.

This dissertation examines events in U.S. Indigenous political relations to better understand the development of attitudes that accompanied the conquest of America and their eventual influence on the view of Indian family life in late twentieth-century America. The predominant view of the destruction of the Indian family has its genesis in the blossom of the "boarding school era" that remained in bloom for well over a century. But, as the journey through history reveals the binary views of good-evil/noble-savage that would establish definitional boundaries in both the Indian and non-Indian world had their beginnings in the earliest days of conquest.



## Chapter II:

**“. . . and it may be said of him, that his faults were those of an Indian,  
and his virtues were those of man.”**

(Stedman 1982, 237)

From the earliest years of the Young Republic to the rise of America as an industrial power during the Gilded Age, the U.S. government conducted an Indian policy that involved a military solution to contain hostilities and a program to regulate commerce and trade with the Indians. America was focused on its task of building a nation. It needed to conduct an Indian policy that made that goal possible; in the process, the fate of the Indian would be determined. Independence from the British in the Revolutionary War meant that the new republic had to establish an Indian policy to regulate interactions between Indians and white settlers and to maintain the peace. Leading up to the war, Indian tribes were allied with both the Americans and the British, but tribal diversity, which had played such an important role in their conquests, was no longer needed as leverage between these powers; tribal people were reduced to a single role in American history. Historian Colin G. Calloway notes in The American Revolution in Indian Country: Crisis and Diversity in Native American Communities that the Revolutionary War is sometimes called the United States' creation story.

For many Americans, the story of who they are winds back to the Revolution. It is equally true that for many Americans the story of who Indians are winds back to that time. (Calloway 1995, 292-293)

Strong anti-Indian sentiment was carried into the nineteenth century, reinforcing America's ambivalence about the Indians' future place in the new society. This sentiment strengthened the opposition, set forth in the Proclamation of 1763 which depicted indigenous people as

“mercilous Indian savages . . . whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions” (Calloway 1995, 293). The image of Indians as vicious enemies of liberty embodied in the Declaration of Independence “became entrenched in the minds of generations of white Americans” (Calloway 1995, 293). Calloway describes the period following the American Revolution as a cultural cacophony. Indians had long allied themselves with the Europeans or the Americans and had become economically dependent on their allies for basic goods and their leaders commonly talked about the abject poverty of their people. The consumer revolution created a pan-Indian trade culture and established client chiefs rather than traditional chiefs as the agents of the redistribution of goods and in so doing disabled traditional functions of leadership.

The Proclamation of 1763, under the auspices of King George III, had set forth the concrete formalization of the concept of Indian land title but it was overthrown in the Peace of Paris Treaty in 1783, which recognized the independence of the thirteen colonies and transferred vast land holdings from Great Britain to America, but it did not mention the Indians who had fought alongside the British and who lived in the areas relinquished by them (Calloway 1995, 160). The middle ground of co-existence was gone. Indian resistance to American conquest was determined and widespread and produced legendary warriors who fed America’s view of Indians as savages, but had no place in its anticipation of the republic’s promise. The fervor feeding these attitudes illustrated stories of capture and torture that portrayed Indian warriors stripping, scalping, leaving white women and children suffering in their gore. Whole families were destroyed without regard to age or sex and “[i]nfants were torn from their mothers Arms & their Brains dashed out against Trees” (Calloway 1995, 294). Calloway recounts that Andrew Jackson, the arch exponent of Indian

removal in the 1830s, recalled the Revolutionary tales of “the scalping knife and Tomahawk (raised) against our defenseless women and children” as partial justification for dispossessing Indians of their land (Calloway 1995, 297). Calloway reasons that these powerful images of Indian violence primed the view of coming conflicts as America pushed farther west and a final fixed psychology of conflict and dispossession came into play. The new nation did not need dependent Indians; it needed absent ones.

Indian policies following the American Revolution were focused on controlling the Indians and increasing access to lands for settlement. The new government needed to devise ways to control the Indians and to prevent the British from inciting them against the colonists. In July 1787, the Continental Convention inaugurated federal Indian policy to secure and preserve the friendship of the Indian nations and to dissuade attacks on the colonies. The policy strengthened the concept of Indian country and settlers and unlicensed traders were forbidden access. The Congress gave itself sole and exclusive right and power to regulate trade and manage all Indian affairs and pledged that its authority would not infringe on or violate state limits. But, as history shows, the Articles of Confederation and Congress were unable to control continued encroachment in Indian territory and state interference in the congressional handling of Indian affairs. The weakness of the Confederation’s structure made peacekeeping arduous and it became necessary to institute “a policy of justice toward the Indians and protection of their rights and property against unscrupulous traders, avaricious settlers, and ubiquitous speculators” (Prucha 1986, 18). These conditions prompted Congress to pass the Ordinance for the Regulation of Indian Affairs in 1786, which established northern and southern Indian departments with superintendents empowered to grant commercial licenses in Indian territory. The

superintendents were not allowed to participate in trade themselves and swore an oath to faithfully discharge their duties.

On July 13, 1787, the Confederation Congress again affirmed its policy of justice toward the Indians in the Northwest Ordinance, which declared that “the utmost good faith shall always be observed towards the Indians, . . . but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them” (Prucha 1986, 18). Historian Francis Paul Prucha notes that ideas of justice toward the Indians had a hollow sound amidst continued white encroachment. Frequent and widespread encroachment that produced hostility between whites and Indians brought the realization that agreements with Indians based on the right of conquest would not work and would only serve to endanger peace on the frontier. Treaties with the Six Nations and other Indians in the Old Northwest Territory signed on January 9, 1789 provided payment for lands granted to the United States and “marked the abandonment of the policy that the lands from the Indians had been acquired by conquest” (Prucha 1986, 19).

Prucha observes that the Constitutional Convention of 1787 gave little attention to Indian affairs and that provisions for conduct of relations with them were almost an afterthought. He surmises that there was widespread agreement among the delegates that Indian affairs were best left in the hands of the federal government. Relations with Indians were addressed in the Commerce clause of the U.S. Constitution when it was ratified in 1789 by the addition of five simple words to the clause.

The Congress shall have the power . . . To Regulate Commerce with Foreign Nations and among the several States, and with the Indian Tribes. (U.S. Constitution, Article 1, Section 8, Clause 3)

In addition to authority granted to Congress contained in the commerce clause, Congress also retained authority to enter into treaties with Indian tribes as set out in the Supremacy Clause which read:

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. (U.S. Constitution, Article VI, Clause 2)

These governmental actions gave Congress broad powers over Indian affairs and introduced the concept of plenary power, which has been described by Connell Szasz as basically a post-Civil War unilateral expansion of power by Congress which is not contained in the U. S. Constitution. Prucha remarks that the treaties themselves acknowledged that Indians incurred a degree of dependence on the United States and a diminishment of their sovereignty. Treaties restricted tribes from intercourse with European nations, individual states or private individuals. The loss of full sovereignty by the tribes and the continuation of the principle of preemption of Indian lands used by European nations in the settlement of America eventually led to the agreement that, while aboriginal title involved an exclusive right of occupancy, it did not mean ultimate ownership.

Although peace remained the young Republic's goal, it became clear that just and humane treatment of the Indians in itself would not accomplish the goal. America's leaders came to realize that military might had to be part of the equation when the governing structure of treaties, laws, proclamations and trade agreements failed to keep the peace. The military would enforce treaty stipulations and laws and decisions of agents under the War Department until 1849. The military was also called upon to crush hostile tribes, forcing

them to cede to the demands of white settlers that included submission to land cessions. The suppression of hostilities in the Old Northwest territory during the 1790s was the impetus for the change in policy. As George Washington came into office thousands of white settler flatboats and barges were floating down the Ohio River, which the Indians declared a permanent and irrevocable boundary between white settlers and themselves. When the Miami, Shawnee and other Northwest Indians refused to let them invade their territory, the U. S. government attacked them in successive years with two military expeditions, both of which were soundly routed. The defeats led to acknowledgement that a makeshift U. S. military was not able to withstand Indian military might. After the second defeat, the military spent a winter building a post called Fort Greenville from which Gen. Anthony Wayne and his forces launched attacks in the spring and summer of 1794. Under General Wayne's leadership, the Indians were routed at the Battle of Fallen Timbers, and when the Miami and Shawnee sought protection from the British who had encouraged their defiance of the Americans, they found the gates at Fort Miami closed to them. In the Treaty of Greenville of 1795 that followed their defeat, the Indians gave up two-thirds of the Ohio valley and a sliver of Indiana.

Following the War of 1812 the Americans brought areas in the Old Northwest under their control, and to assure that the gains made would not be lost, the military established posts at strategic spots to protect settlers and extend the federal system of factories in the region. Through the years, the War Department would erect military forts from coast to coast, that would become important gathering places for Indians to secure rations, be quarantined, and to seek succor. The purpose of the factory system, which by then had been in operation since 1795, was to remove trade abuses and to maintain friendship with the

Indians. The trading houses did not make much profit beyond handling expenses, but provided plentiful commodities at fair and stated prices to draw in the Indians and to encourage them to have better relations with the Americans. Eventually factory locations would be influenced by precursor efforts of missionaries who concentrated their proselytizing work in areas where Indians were friendly to the United States. The proximity of forts to factories gave them protection and met intermittent manpower needs to operate the trading houses. In April 1796, Congress authorized the establishment of trading houses on the southern and western frontiers and in other places to carry on “a liberal trade” with the Indians. The factories received yearly congressional reauthorizations and by 1806 the system was of sufficient size that Congress authorized the position of superintendent of Indian trade who would run the factories under direction of the president. Prucha calls the creation of the superintendent position “a milestone in developing the federal machinery for dealing with Indian problems . . . and which gradually became the focus for nonmilitary Indian matters” (Prucha 1986, 36). The position of superintendent of Indian trade was the first governmental official whose full-time duties concerned the Indians.

In 1816 Congress acted to prohibit foreigners from the fur trade and powerful American entrepreneurs like John Jacob Astor, head of the American Fur Co., filled the vacuum to take complete control of the trade. Conflicts between those who advocated for American private enterprise and supporters of the factory system prompted a reassessment of the concept. In 1822, Congress abolished the factory system, opening the field to Astor and others; American private enterprise had prevailed. Three years earlier Congress had passed the Civilization Fund Act with an annual appropriation of \$10,000 to provide for the civilization of the Indian tribes adjoining the frontier settlements. The three-year combined

effort of the factory system and the implementation of the law created the first, stable, government-sanctioned civilization outposts that would enjoin Indian children as culture brokers and influence changes in roles within the family.

Parallel to Indian policy to regulate trade and commerce and suppress hostilities, federal officials influenced by the principles of the Enlightenment and Christian philanthropy sought to bring civilization to the Indians. The government-led civilization endeavor was influenced by two strains of thought that would provide mutual reinforcement and a strong foundation for the entrance of the Indian reform movement of the late 1800s and early 1900s. In 1785 Thomas Jefferson wrote that “I believe the Indian then to be in body and mind equal to the whiteman” (Jefferson quoted in Prucha 1986, 49). His thinking was guided by two principles, his belief in an essential, fixed human nature, unchangeable by time or place, and his refusal to accept that Indians were basically an ignoble breed. He believed that if the circumstances of Indian lives were appropriately changed, the Indian would be transformed. Jefferson adhered to the “stages of life” theory which proposed that history had shown that human societies go through set stages of savagery, barbarism and civilization. If white people had traveled this route over centuries, he saw no reason to believe that Indians would not do so as well. The other and more enduring influence in civilizing the Indians was evangelical religion which had undergone a surge at the beginning of the nineteenth century with the Second Great Awakening, a Protestant revival focusing on individual re-birth and evangelicalism. The new nation’s two-pronged approach of military and ideological dominance established the structure described by Said that enabled European culture “to manage-and even produce-the Orient politically, sociologically, militarily, ideologically, scientifically, and imaginatively during the post-Enlightenment period” (Said 1978, 3). But,



the young republic's citizens were not sure just where Indians would fit in the development of the nation amidst concerns for their safety and, not everyone was convinced that saving the Indian was in their best interest. Bruyneel cites the presence of these enduring anxieties and ambivalences as the impetus for the creation of ambiguous spaces that exist on established, yet changing boundaries that contest political meanings and practices articulated by the parties. Settlers were not sure about the place of the Indians in the new society and their relationship to them, and had questions about the relevance of treaty-secured rights of tribes in the building of the nation. Indian people shared these ambiguities but were also guided by the knowledge that they were the original inhabitants of the land. Bruyneel proposes that these conflicts created America's political ambivalence toward the nation's indigenous people, which then and now, are driven by its measurement of its sense of belonging in its own political space. Deloria speaks to the underpinning of America's colonial ambivalence.

Underneath all the conflicting images of the Indian one fundamental truth emerges—that the white man knows that he is alien and he knows that North America is Indian—and he will never let go of the Indian image because he thinks that by some clever manipulation he can achieve an authenticity which can never be his. (Deloria in Carnoy 1980, xv)

Images of Indians in the nineteenth century and even today have long been chronicled in literature and cinema and some of it is still required reading in schools. In The White Man's Indian, historian Robert Berkhofer opines that “the basic images of good and bad Indian persist from the era of Columbus up to the present without substantial modification or variation” (Berkhofer, Jr. 1978,71). This enduring binary contributed to what Deloria described as the foremost plight of the Indian, his transparency. The inability to view the Indian in a clear and substantive way encouraged development of stereotypic notions, such

as, all Indians looked alike, spoke a common language called “Indian” and received monthly government checks.

The removal of Indians to new territories became federal policy during the Jackson administration, which brought about the passage of the Indian Removal Act of 1830. The law was enacted to protect states’ rights against members of southern tribes who had “mingled much with the whites and made some progress in the arts of civilized life [and who], have lately attempted to erect an independent government within the limits of Georgia and Alabama” (Prucha 2000, 47). These states claimed sovereignty over their entire territory and would not permit independent governments in their midst. The Cherokees petitioned the federal government for relief but were confronted by strong opposition grown out of the Treaty of Hopewell of 1785, which they thought had preserved the peace and provided protection of their hunting grounds from encroachment. In an address to a delegation of Cherokees on April 28, 1829, Secretary of War John H. Eaton informed them that the Declaration of Independence and the 1763 proclamation of King George III conferred all sovereignty maintained by Britain to the United States. He apprised them that their treaty rights to the land were “save a possessory one” and that the compact said nothing about sovereignty, which all parties knew lay with the state. His resolution to the problem was to urge the Cherokees to move west of the Mississippi. Removal also had strong support from Jackson’s attorney general, John M. Berrian, who insisted that the peace granted to the Cherokees in 1785 was a “mere grace of the conqueror” (Prucha 1984, 68-69). The fate of America had changed from the days of the Continental Congress when peace compacts were a necessity for a new weak republic with insufficient resources to suppress continuing and widespread hostilities.

Strong opposition to removal came from missionary groups who had invested many years in civilizing the Five Civilized Tribes and who were reprimanded by the secretary of war in 1828 for working in opposition to the government. The missionary groups influential in the reform movement gained the support of prominent church groups in the North and East who spoke out against the federal government's policy. To counteract charges of unchristian treatment of the Indians, the Jackson administration enlisted the help of a group of New York clergymen who had organized the Board for the Emigration, Preservation, and Improvement of the Aborigines. Thomas McKenney, head of the Office of Indian Affairs and former Superintendent of Indian Trade, presented his argument for removal to them in humanitarian and religious terms, the "concern was to preserve the Indians from complete degradation and to enable them to improve and civilize themselves outside of contact with the whites" (Prucha 1970, 236-237). Jackson effectively merged liberal-democracy and American colonial power and the goal of assimilation in the Removal Act of 1830. He decreed that "the emigration would be voluntary" but the Indians should be "informed that if they remain within the limits of the States they must be subject to their laws," (Prucha 1970, 237) as individuals, and improvements to the land made by their industry would be protected. However, the Indians could not expect that lands seen from the mountain or viewed in the chase could be claimed by them. Jackson assured the Indians that if they would subject themselves to the laws of the states, they would receive protection of their persons and property, and eventually "become merged into the mass of our population" (Prucha 2000, 48).<sup>5</sup> In a statement following passage of the Act, Georgia Governor George R. Gilmore envisioned the utter and entire extinction as a people would be the consequence of Cherokee people remaining in their homes and expressed hope that their removal and relocation would

work out well in the end. He expressed confidence that the federal government would provide protection from encroachment in their homelands and that “a state of things more propitious to our red friends will be produced, than has been witnessed at any former period of their history” (Prucha 1970, 245).

In their essay, “The Demography of Native North America: A Question of American Indian Survival.” Lenore A. Stiffarm and Phil Lane, Jr. point out the role federal policy played in the disease-plagued epic tragedies like those of the Trail of Tears. About 17,000 Cherokees were rounded up and forced to march 1,500 miles to their “new world for all” west of the Mississippi. The authors cite anthropologist James Mooney’s usual low estimation of, “at least 25 percent of those compelled to walk the ‘Trail of Tears’ died of disease, exposure, and malnutrition along the way” (Stiffarm and Lane in Jaimes, ed. 1992, 33). Other more thorough computations reveal that about “8,000—or nearly 50 percent of the entire Cherokee population remaining after earlier epidemics had caused severe attrition—failed to survive the Trail” (Stiffarm and Lane in Jaimes, ed. 1992, 33). The costs of dislocation and dispossession were high and were especially destructive to the Indian families who lost members and were saddled with ignorance of subsistence resources in the new territory. Those who held essential knowledge of medicine and healing, and the tribe’s history and mores, were lost along the way. Deaths created vacuums in the customary relational network, the basis of the tribe’s safety net, and fewer families were left to care for the children and elderly.

The Civil War brought defections by slave-holding tribes from the Union to the Confederacy, and in treaties signed with the Confederate states, tribes were permitted greater control over trade, guaranteed property rights to slaves and a promise of financial benefits.

But, the alliances formally pulled them into the war. The war led to increased dislocation for families and serious divisions within tribes as in the case of the Cherokees, who under John Ross' leadership tried to remain neutral. Within the tribe, there were factions sympathetic to the South, most of whom were slave owners, and Ross feared that his dream of Cherokee Nation unity would be lost if the tribe were split between the North and the South. In an effort to preserve his leadership and his dream of unity, he eventually allied with the Confederacy. Other tribes who resisted pressure to join the South fled to Kansas where they joined similarly discontented tribes who had also fled the conflict. The last years of the Civil War proved disastrous for the Indian Territory, riddled by guerilla warfare and widespread destruction. The economic and social gains made by the Five Civilized Tribes between removal and the war were lost, and they were demoralized by the factionalism and political upheaval that ensued. Alliance with the South placed the Indians in the position of conquered foes at the end of the war. Prucha explains that "northern sentiment in the post-Civil War years, even among notable friends of the Indians, never quite shook off the conviction that the treaty rights of the Indians had been destroyed by the tribes' defection" (Prucha 1984, 143).

In the west, the Pike's Peak gold rush of 1859 and similar discoveries in Nevada were followed by the establishment of Colorado and Nevada territories in 1861. The expansion of the mining frontier to the north and south brought the creation of new territories in Montana, Arizona and Idaho, and throngs of white settlers moved into new areas in search of precious metals and agricultural riches. At the same time increasing white populations in the central plains cut deep into Indian lands and new pressures were put on the tribes in the area, e.g., Kansas population grew in population from 107,206 in 1860 to 364,399 in 1870 and

Nebraska's population increased from 28,841 to 122, 993 during the same period (Prucha 1984,136). Legendary atrocities such as the removal of two-thirds of the Navajo people, some eight thousand, from Canyon de Chelly to internment at Bosque Redondo, and the barbarous massacre of more than one hundred and fifty men, women and children at Sand Creek sickened those who hoped for Christian treatment of the Indians and illuminated incompatibilities between liberal democracy and colonial rule.

Although a military solution to the Indian problem would continue to the end of the nineteenth century, by mid-century the reform movement would come to take the lead in the government's program to civilize the Indian. Under the leadership of reformers such as Henry Benjamin Whipple who, as the first Episcopalian bishop of Minnesota, had contact with the Chippewas and Sioux on what was yet a primitive frontier, widespread concern about government injustices in the Indian system was generated within the reform movement. The reformers were especially concerned about the many Indian agents who they saw as unfit and who held their positions based on patronage, often neglecting the needs of the Indian people, and even worse, using their positions for personal gain. With the formation of the Board of Indian Commissioners in 1869, the reform movement gained considerable authority and applied pressure to insure that Indian agents would be reliable men, free of political bias and pecuniary interest.

The themes of peace and justice were energetically pushed forward by women's religious groups throughout the country such as the Central Indian Committee of the Women's Home Mission Society of the First Baptist Church of Philadelphia, which began its informal work in 1879. This women's group, which was particularly concerned with the welfare of mothers and children became very influential in bringing attention to disastrous

conditions of Indian life. Despite the perception that the organization was overly sentimental about the Indian, it was able to arouse considerable public concern. In 1880 the group submitted a petition of 13,000 signatures condemning invasion of Indian territory by white settlers, and two years later it submitted another petition containing 100,000 signatures. The petition asked for four things: the faithful treatment of treaties until such time as they were abrogated by the Indians, common and industrial schools on the reservations, the allotment of lands in severalty to Indians who desired such, and full rights for the Indians under the law, which would make them amenable to laws of the United States. In 1881, the organization took the name, The Indian Treaty-Keeping and Protective Association, and in October of 1883 again adopted a new name, The Women's National Indian Association. In 1883, the group withdrew its focus on Indian reform and turned its attention to direct missionary activity. The establishment of the Indian Rights Association, which was to become the most important of reform organizations in the nation, allowed the women's organization to end its propagandizing effort for reform. The Indian Rights Association was a men's organization and when they organized, the women agreed to take the back seat, as it were, letting the men take over the lobbying, and other high profile assignments.

The Indian Rights Association (IRA) was founded as an outgrowth of a visit to Sioux country by Philadelphians Henry S. Pancost and Herbert Welsh, who were convinced the Indian was capable of civilization, and it was largely due to the injustices and inefficiencies of government actions that Indians had not become civilized. Over time the IRA gained considerable authority as "the voice for the Indian" through the effectiveness of its publications and speeches which presented matter-of-fact rather than spectacular images of Indian life. The IRA was among a number of reform groups that came together for the first

time in 1883 at Lake Mohonk near New Paltz, New York to meet as “Friends of the Indian” to discuss reform and to formulate resolutions that would be used to educate the public and to lobby Congress and government officials for improved conditions. The gathering was the inspiration of Albert K. Smiley, a prominent Quaker philanthropist and member of the Board of Indian Commissioners. Its first meetings were attended by a small group, but, by the late 1880s the attendance had grown to 150 participants who represented broad involvement in Indian affairs. The work of the Mohonk group “was the deliberate focusing of public opinion behind specific measures of Indian policy and aggressive propagandizing of these measures in the press and in the halls of government” (Prucha 1976, 144). The Lake Mohonk Conference, as it came to be called became a dominant force in formulation of Indian policy in the late 1800s and would continue as an influential forum for those interested in the Indian question for thirty more years. Its success relied on its ability to maintain a closely knit core group of members who contoured the organization’s work.

The reformers believed that the greatest obstacle to the civilization of the Indian was the reservation system because it perpetuated attachment to the tribal outlook and institutions, such as highly regarded gift-giving, which they viewed as an anathema to the cultivation of self-reliant individualism. They also believed that the rationing system conducted on reservations created dependency and that the Indians had come to look to their Great Father to meet their earthly needs. Acknowledging that the reservations were not really permanent, and that the Indians might be required to move to provide for westward expansion, the reformers saw little hope that an Indian would gain a sense of productiveness in a questionable state of permanence.



The solution for these problems emerged as the allotment of Indian lands in severalty, a measure that would destroy tribal institutions, force the Indians to work the land for individual benefit and bring an end to the rationing system. In 1887 Congress passed the General Allotment Act that mandated the individualization of tribal lands. Individual properties of 160 acres were allotted to tribal members and remaining acreage within reservation boundaries was opened up for white settlement. The reformers, who strongly supported allotment originally, thought that the reservations might serve as “half-way houses,” where Indian people could make the transition from traditional ways to full acculturation. But support for the reservations was eventually withdrawn because they appeared to be “mammoth poorhouses rather than nurseries of civilization” and where starvation and near-starvation conditions prevailed. However, the movement was not successful in bringing an end to the reservations, which continued to be administered by missionaries and political appointees.

When the General Allotment Act was reversed in 1934, the Indian estate had dwindled from 138 to fifty-two million acres and 118 of the 213 reservations had been allotted, bringing three-fourths of all Indians under provision of the Act. The Dawes Act, named after Senator Henry Dawes of Massachusetts, was especially destructive to the Indian family because it disrupted customary communal living arrangements that served as the learning grounds for roles and responsibilities.

Eight years before passage of the Dawes Act, the government had established its first federal Indian boarding school prototype at an abandoned army base in Carlisle, Pennsylvania. The school’s founder, Lt. Col. Richard Henry Pratt was an active member of the Lake Mohonk group and a strong advocate for the complete integration of the Indian into

white society. Pratt based his belief in the Indian's ability to integrate on his experience as head of the Southern Plains warriors imprisoned at Fort Marion, Florida after the Red River War during the mid-1870s. The Southern Cheyenne, Kiowa and Comanche were allowed to work away from the prison in St. Augustine, where they gained a reputation for being good workers and sociable people. In Pratt's view, environment and the opportunity to be educated produced the man.

There is no 'heart language.' . . . There is no resistless clog placed upon us by birth. We are not born with language, nor are we born with ideas of either civilization or savagery. Language, savagery and civilization are forced upon us entirely by our environment after birth. (Pratt qtd. in Prucha 1976, 274-275)

Pratt was convinced that if the Indians remained in tribal surroundings on reservations that the nation would "not lack material for Wild West shows which the gaping throngs of great cities may scoff at and the crowned heads of Europe patronize, for centuries to come" (Pratt qtd. in Prucha 1976, 275). But there was strong resistance from tribal people to send their children to distant schools. Pratt made forays into Indian country to convince tribal leaders to send their children to the industrial school. In October of 1879, he returned to Carlisle with eighty-two children still clad in their tribal clothing; one month later fifty-five more students arrived and on November 1, 1879, Carlisle Industrial Indian School was officially opened. The school would eventually attract an enrollment of one-thousand students. At Carlisle, Pratt established the "outing system," a program based on his experience with his warrior-students at Hampton Institute in 1878 and 1879. Students were placed with rural families from whom they could learn the benefits of white family and economic life. The program was tightly controlled with rules rigidly enforced; students were required to sign an agreement before placement to obey the rules of the school, to refrain from behaviors such as

smoking, drinking and playing cards, and to attend Sunday school and church regularly (Prucha 1976, 272-278). Based on what was seen as success at Carlisle, more people became convinced that off-reservation boarding schools could effectively educate Indians, prompting Congress to fund twenty-three more schools in the next twenty years and locating them nearer reservations from which they could draw students. By 1930 there were over twenty-eight thousand Indian students enrolled in federal Indian boarding schools.

Pratt was an outspoken critic of the Indian office which he charged with having a vested interest in keeping the Indian uncivilized. He also objected to the involvement of anthropologists from the new Bureau of Ethnology, who he saw as offering encouragement to Indians to retain their traditional ways. He disputed the work of missionary schools, which did not “advocate the disintegration of the tribes and the giving to individual Indians rights and opportunities among civilized people,” and he “opposed Buffalo Bill Cody’s Wild West shows because they glorified Indian culture” (Pratt in Reyhner and Eder 2004, 143). Pratt’s vocal opposition to government and missionary efforts to civilize the Indian drew increased criticism, and he began to feel “extraneous to about all that is being done for the Indians” (Reyhner and Eder 2004, 144). In a 1903 article published in *Out West* magazine written by Southwestern writer Charles Lummis, an unofficial advisor to President Theodore Roosevelt, Lummis charged that “Pratt broke up more Indian homes and broke more Indian hearts of fathers and mothers. . . . He tried to Make his Indians White People. . . . His pupils learned to despise their parents and their native industries—the blanket-making and the basketry and the pottery, which are the admiration of scholars the world over” (Reyhner and Eder 2004, 144). Recognition that boarding school attendance had an adverse effect on family stability went unseen and unheeded, and the government and non-government Indian

boarding schools supported through federal contracts became the primary placement resource for Indian children. Pratt's demise was assisted by "many government officials, including leaders of the Office of Indian Affairs [who maintained] a racial and racist position that Indians were too inferior to benefit greatly from formal education. Government officials established a new goal for Indian education: to force Indian students into domestic sciences, trades, and agriculture, fields that whites believed would make Indian students 'useful' " (Trafzer, Keller and Sisquoc 2006, 16).

Some of the students came to love the boarding schools and referred to them as their homes. On visits home, some students were met with anger, disgust and disdain and ridiculed because they lacked facility in their language. These responses, which brought a sense of shattered security, were jolting to students like Viola Martinez who attended Sherman Indian School.

. . . when she arrived at Sherman Institute she noticed that the sun did not Enter her room the way it had back in her Paiute home. This small distinction spoke volumes to the girl; she recognized that her life would be changed forever, even in the most basic of ways. (Trafzer, Keller and Sisquoc 2006, 16)

The legacy of attending boarding schools in the lives of many generations of children is a central question in the welfare of Indian children and families. For many, the destruction of the Indian family is a direct result of the practice of removing children from their home environments where they were intended to learn how to be members of their societies. The confusion engendered in children's minds regarding their self-worth and their place in native and non-native society has reverberated over many generations. The personal pain suffered by boarding school students is captured in Oglala Sioux journalist Tim Giago, Jr.'s, The Aboriginal Sin, which was written for "those Indian people who endured, and somehow

survived this assault upon their sense of value and their culture. It is written as a testament, for those who did not survive, who were destroyed mentally and morally by this forced change that wrought confusion and eventual disaster” (Giago, Jr. 1978, viii). Giago is a third-generation student of Holy Rosary Indian Mission School.

The original sin brought punishment to those who had violated the precepts of a Godly power. . . . and man has suffered through the ages because of that original sin. (Giago, Jr. 1978, viii)

But at Holy Rosary the punishment was meted out to “the innocent children by those who professed their love of God, but had no respect whatever for the traditions, cultures and religious beliefs of others. That is called bigotry, and in the case of the American Indian experience with early Christianity, An Aboriginal Sin” (Giago, Jr. 1978, 4).

A period of active reform of Indian affairs begun in the early 1890s concentrated on demands that the Indian Bureau be given Civil Service status “to protect the good agents who worked for the bureau and to ensure that bad agents were not given political appointments in the Indian Service. Vine Deloria explains that the Bureau was wholly a patronage institution at the time, controlled by political parties and territorial politicians who had to be satisfied that the status of the Bureau was in consonance with the best interests of the local whites (Deloria and Lytle 1984, 31-32). The Indian Rights Association held that if the Indian Office were subject to Civil Service regulations the problems with political interference would be resolved, and in 1894 the Indian Rights Association convinced President Cleveland to place the Office under Civil Service authority. Some improvement resulted but it was not as substantial as the IRA had hoped. In 1910 Congress passed the Omnibus Act, which sought to bring consistency to amendments and revisions of the General Allotment Act. Changes to the Act had been patched together over the previous twenty-three years based upon the

personal belief and philosophy of government administrators and legislative officials. The Omnibus Act consolidated government control over Indian affairs.

Satisfied that the Dawes Act had established the policy of private property and administration of the Indian Service had been improved by placing it under Civil Service authority, the reform movement turned its attention to conditions of Indian life and pushed for major efforts to improve conditions. The first of a series of reports about the conditions of the Indians was *The Red Man in the United States*. Commissioned by the Inter-church Movement in 1919, it “exposed the conditions of poverty on the reservations, documented the existence of tuberculosis and trachoma on the reservations, and pointed out that over twenty thousand Indian children were without schooling because there were no facilities for them” (Deloria and Lytle 1984, 41). The report had little impact, largely because “it was written in the old-style missionary language and spoke optimistically about those Indians who walked the “Jesus Road.” In 1922 the American Red Cross was asked to study Indian health care needs. The ensuing report, entitled *A Study of the Need for Public Health Nursing on Indian Reservations*, described poor health conditions throughout the reservations and in the government boarding schools and found that little was being done to correct these conditions.

In 1926 the Bureau of Indian Affairs introduced a measure to formalize reservation courts by extending their jurisdiction over specific offenses and civil matters. Contained in the measure was a prohibition of customary marriage and divorce. Under this measure the agency superintendent would be given the authority to issue marriage licenses to Indians. Strenuous opposition came from the tribes who testified to a litany of abuses in hearings that lasted from February until May demonstrating against the inadequacy of the Indian Office’s

administration of Indian affairs. The government was humiliated by what Congress had learned during the hearings and approached the Brookings Institution to undertake a study of the Indian situation. Two studies were produced: the first, authored by Laurence F. Schmeckebier, entitled *The Office of Indian Affairs: Its History, Activities and Organization* (1927), was an analysis of the Indian Office's work. In the following year when the second report appeared, *The Problem of Indian Administration* (1928) written by Lewis B. Meriam, it made no apologies for the conditions described.

The poverty of the Indians and their lack of adjustment to the dominant economic and social systems produce the vicious circle ordinarily found among any people under such circumstances. Because of interrelationships, causes cannot be differentiated from effects. (Meriam in Deloria and Lytle 1984, 44)

Meriam's report decried the allotment policy and government efforts to assimilate the Indians through the use of private property. It was found that although the government insisted that Indians become agriculturists little instructional and material support was provided to make this happen. The report contended that "[i]t almost seems as if the government assumed that some magic in individual ownership of property would in itself prove an educational civilizing factor, but unfortunately this policy has for the most part operated in the opposite direction" (Meriam qtd. In Deloria and Lytle 1984, 44). It asserted that the fundamental requirement

is that the task of the Indian Service be recognized as primarily educational in the broadest sense of the word, and that it be made an efficient educational agency, devoting its main energies to the social and economic advancement of the Indians, so that they may be absorbed into the prevailing civilization or be fitted to live in the presence of that civilization at least in accordance with a minimum standard of health and decency. (Meriam qtd. in Deloria and Lytle 1984, 44)

Over the years the Meriam Report, as it came to be called, has been credited by numerous commentators on Indian affairs with providing the motivation and framework for

subsequent reforms contained in the Indian Reorganization Act (IRA) of 1934. Deloria and Lytle dispute the credit and assert there is little evidence, conceptually or otherwise, to support the idea. While the major emphasis of the report was the upgrading of the Indian Office, “the tone and recommendations continued to assume that Indians had to be led benignly, if not driven, to certain preconceived goals, which were assimilation or a mutually imposed isolation within small Indian enclaves” (Deloria and Lytle 1984, 44-45). The IRA reversed the policy of wardship and provided the means for greater tribal self-governance. The primary aim of the IRA was the reversal of the pattern of Indian economic destruction that had resulted from the passage of the Dawes Act but it did not remove the government’s continuing effort to assimilate the Indian through education. Implementation of the law became the responsibility of BIA Commissioner John Collier who had long been an advocate for Indian rights. Collier, a social worker, who had worked with immigrant populations in New York’s Lower East Side believed that man could achieve a better world, and from his work in Indian rights led him to develop a faith in the Indian way of life. He was disillusioned with the American way of life which he saw as based on “shallow and unsophisticated individualism, which had allowed itself to become subservient to the goals and means of a technological society” (Connell Szasz 1999, 44-45). He was convinced that Indian education had to be rooted in the community and his leadership gave impetus to construction and change “to a curriculum more suited to the needs of the child, to community day schools and a decreased emphasis on boarding schools, and to a better qualified faculty and staff” (Connell Szasz 1999, 48). The introduction of progressive education principles, among them the idea that education must adapt to the environment was one of the earliest programs of cross-cultural education to which Collier added “recognition of anthropology as



an aid in understanding Indian cultures” (Connell Szasz 1999, 55). Indian education programs were designed to “be sure that the experience won’t unfit him for return to life among his own people, while failing to fit him for making a living anywhere else” (Connell Szasz 1999, 55).

Collier’s successes in the implementation of cross-cultural education were partially due to inclusion of anthropologists who brought an understanding of Indian culture and encouragement to involve traditional cultural patterns in the development of community. Despite the many projects generated by these visions, “the experiment of cooperation between the Indian Bureau and the Bureau of American Ethnology and other organizations fell heir to the tensions and misunderstandings that often plague the relationship between administrators and scholars. There was no lengthy tradition of cooperation to fall back on, and there seemed to be an innate distrust on both sides” (Connell Szasz 1999, 58). There were gains, the view of the Indian was changed for many, and while Collier’s efforts did not develop in the ways he had hoped, they made a lasting contribution, not only to the struggle for self-determination and education, but also to the development of a focus on the family and community. Positive aspects of custom and tradition became part of the lexicon of Indian identity. But for many, the effort had been a failure and it would be followed by federal return to an assimilation policy focusing on the individualization of the Indian and his property and the withdrawal of government responsibility.

In 1947, William Brophy, the Indian commissioner who succeeded Collier, wrote in his *Annual Report* that “he looked forward to the day when Federal administration can be terminated and federal services [for the tribes] withdrawn” (Brophy qtd. in Bernstein 1991, 164-165). In the same year, the Brophy administration submitted a memo to a Senate

subcommittee holding hearings to streamline government expenditures that outlined termination procedures for nearly one hundred tribes. The memo identified those tribes who could be immediately released from federal supervision, those who could be released in ten years and a number of tribes who would require an indefinite period before supervision could be withdrawn. In 1953 Congress unanimously passed House Concurrent Resolution 108, which was designed to “free Indians from federal control, end their wardship status and subject them to the same laws and privileges the citizens enjoyed as rapidly as possible” (Bernstein 1991, 165).

Just weeks after the passage of House Concurrent Resolution 108, Congress enacted P.L. 83-280 which gave the states of Oregon, Washington, Wisconsin, Minnesota and Nebraska authorization to extend certain criminal and civil laws to Indian reservations. President Dwight D. Eisenhower interpreted the act as a major step to full equality for the Indians, despite the fact that few tribes were consulted about the legislation. In the general public’s view, the law “brought the reservation into conformity with state legal procedures, thus making Indians more a part of the American system of jurisprudence” and it received praise because it gave Indians “further protection under the law since many crimes had gone untried under tribal courts. That this civil right undermined tribal autonomy seemed to many whites a small price for Indians to pay to enjoy the benefits of full citizenship” (Bernstein 1991, 169).

A year earlier, President Harry Truman signed a bill that authorized reorganization of the BIA. This measure “eliminated forty reservation-based offices and gave more power to regional BIA headquarters located in five cities—Minneapolis, Billings, Portland, Phoenix, and Oklahoma City” (Bernstein 1991, 168). Although the reorganization did streamline the

Bureau's management of Indian affairs, many Indians and their supporters viewed it as an acceleration of the movement of Indians from tribal lands to urban areas that had begun during World War II. In 1950 the Bureau pushed the concept of integration initiated during the war by creating a voluntary relocation program for Indians. The program was the brainchild of Indian Commissioner Dillon Myer who, during World War II directed the War Relocation Authority, the federal agency charged with moving Japanese-Americans into relocation camps. Placement centers to assist in relocation of the Indians were opened in major metropolitan areas and provided one-way bus tickets, temporary low-cost housing, and new clothes, if necessary, to Indians who relocated. In 1952, 868 Indians were placed at a cost of \$567,480. Four years later, more than 5,000 Indians participated in the program at an annual government expenditure of over \$3 million. In 1957, an editorial predicted that "Indian reservations may someday run out of Indians" (Bernstein 1991, 168).

In 1954 the program's name was changed to the Employment Assistance Program, but admittedly, there were already problems with the program. Government reports indicated a rate of 30 percent return of relocatees to the reservations, while other estimates reported return rates as high as sixty percent. Despite these poor statistics, the Bureau strongly defended the program because the reservations offered few means for the economic improvement for Indians. Most Indians who migrated to the urban areas under the relocation program were ill-prepared for twentieth-century city life and their placement in entry-level jobs did not provide the hoped-for avenue to assimilation. In 1956 the Bureau reorganized the relocation program and placed Indians in urban vocational training programs to better prepare them to find jobs that would pay a wage sufficient to encourage them to remain in the urban areas.

The expansion of the relocation program to include training persuaded the Bureau's Branch of Social Services to propose training in off-reservation locations for clients who remained on financial assistance for long periods of time and had not been able to find work in the local area. The Bureau offered this opportunity to heads of households, among them single parents who left their children with family members because childcare would not be available to them in the new location. As a general rule, there were no discussions with the client, child or family members to help with issues of attachment and separation. The Branch of Social Services' primary function was to operate the General Assistance program for needy Indians. The Branch's budget did have a line item for Child Welfare Assistance but it was used to reimburse states, religious and private agencies for institutional and foster care services for Indian children and did not support positions for staff whose work would concern child and family welfare matters. In the 1974 hearings, the Director of Social Services for the Bureau informed the panel that the agency had three Child Welfare Specialists positions nation-wide, one in the headquarters' office and the others in the Aberdeen and Oklahoma City regional offices. Today the Bureau has four positions designated Child Welfare Specialists nation-wide.

The 1960s saw the greatest exodus of Indian people from the reservations to the urban areas when 63,000 people relocated. The volatile era of Civil Rights unrest in the late sixties also brought into focus the injustices in the lives of Indian people with the emergence of the Red Power movement that spawned the fish-ins, the founding of the American Indian Movement in 1968, the Broken Treaties March in 1972, the takeover of the BIA headquarters' building in Washington, D.C. in 1972, and the occupation of Wounded Knee in 1973. In her 1996 publication, American Indian Ethnic Renewal: Red Power and the

Resurgence of Identity and Culture, Joane Nagel describes the Red Power movement as “the catalyst that sparked American Indian ethnic renewal. By their own hand, Indian leaders captured the moment and galvanized native and non-native public attention. The resulting Red Power movement prompted a surge in Indian self-identification, promoted a native cultural renaissance, and ultimately prompted a reversal of federal Indian policy” (Nagel 1996, 13). The surge in Indian self-identification and the rise of a native cultural renaissance brought the realization to Indians on and off-reservation that the people had to stand together to protect and preserve their resources and life ways. Eddie Benton, an Ojibwe medicine leader, was among many other Indian leaders who understood the importance of unity in these efforts. He urged Indian unity in the following words. “There is a prophecy in our tribe’s religion that one day we would all stand together. All tribes would hook arms in brotherhood and unite” (Fixico 2000, 135). In the 1970s, the Ojibwe prophecy would unfold in the passage of the Indian Education Act (1972), the Indian Financing Act (1974), the Indian Self-Determination and Education Assistance Act (1975), the Indian Health Care Improvement Act (1976), the Tribally Controlled Community College Assistance Act (1978), the American Indian Religious Freedom Act (1978), and finally the Indian Child Welfare Act in the same year.

Despite the many years of dislocation and deprivation in Indian family life, the Branch of Social Services had not focused on child welfare matters except in its partnership and sponsorship of the Indian Adoption Project (IAP). The effort was a cooperative undertaking of the Bureau, the Child Welfare League of America (CWLA) and the Department of the Interior between the years 1958 to 1967 during which 395 Indian children were placed for adoption in non-Indian homes. The project was prompted by the need for

Indian child welfare services and the “use of the vehicle of adoption as a possible solution to the lifelong dilemma faced by minority group children whose parents have been defeated by life’s circumstances” (Fanshel 1972, iii). During its decade-long operation, the IAP arranged adoptions of Indian children from the states of Alaska, Arizona, California, Colorado, Minnesota, Mississippi, Montana, Nevada, New Mexico, North Carolina, Oregon, South Carolina, South Dakota, Washington, Wisconsin and Wyoming. The project’s efforts were targeted in those areas “where Indian populations increased after the federally supported Voluntary Relocation Program went into effect in the late 1940s (Holt 2001, 9).

The project also responded to the increasing willingness of white families to accept children from backgrounds other than their own. The CWLA’s five year study of the project, directed by David Fanshel and published in Far From the Reservation, concerned ninety-seven families in fifteen states who had adopted Indian children. The mean age of the children involved in the study was 6.2 years. The research had two purposes: the first goal was to “develop systematic knowledge about the characteristics of the couples who adopted the children” and secondly, “to develop a picture of the experiences encountered by the families and children for a five-year period after the children were placed” (Fanshel 1972, iii). The study found that generally the adoptive parents held a stronger civil libertarian view than did those parents who adopted white children. They were described as independent-minded, not easily led and not guided by what others might think of them. The children were reported as doing remarkably well. Fifty percent of children were making good adjustment, the outlook for future adjustment of 25 percent of them was viewed as hopeful, and ten percent of the children showed problems that predicted a guarded outlook. Eleven percent of the children were unable to make satisfactory adjustments to placement and the outlook for

this group was poor. It was reported that children placed with higher income families exhibited more symptoms of poor adjustment.

Why were Indian children attractive to these adoptive parents? Fanshel observes that Indian children are not always viewed in the same way as other minority group children. It was important to some of the adoptive parents that their child was a “first American” or a “real American.” The study concluded that placing Indian children with Caucasian families presented a low risk of adoption disruption. By the end of the study period, the CWLA had integrated the placement of native children into their regular program operations and throughout the country its agencies were involved in adoption of Indian children.

The project was a particularly sore point among tribal officials and native child welfare advocates who were familiar with the difficulties the children encountered regarding their sense of security and identity. These critics viewed the practices as government-sponsored termination of parental rights. The study presented little information in the study regarding the birth parents and it ignored the children’s fathers. It described the mothers as having the “most pernicious problems” and portrayed the children as doomed to live lives of stark deprivation in foster homes and boarding schools. It concluded that the project offered an alternative to the utter ruination that would otherwise befall the child.

In The New Indians, author Stan Steiner offers his assessment. Steiner argued that the project was exploitative of the struggle of “Indians to build family life in the face of the terrible social conditions with which they were afflicted” and labeled the efforts to promote the adoption of Indian children as insidious (Steiner 1968, 149). The removal of children and placement for adoption was the Bureau’s response to weakened kinship families. “Those

who could no longer care for the children of their kin were helped by having their children offered to non-Indians to adopt” (Fanshel 1972, 341).

Many of these children found their way to urban Indian agencies such as the Indian Community House in New York City where they went to learn about themselves as Indians and to establish contact with their kin and homeland. Among them were children whose adoptions had failed and those who had reached the age of emancipation. In conventional closed adoptions a child’s history is kept in a “conspiracy of silence.” In Children of the Dragonfly: Native American Voices on Child Custody and Education, editor Robert Bensen posits that “[s]uch silence is deeper for Native children in non-Native homes, where the facts of origin are often subject to the same devaluation as that imposed on Native America” (Bensen 2001, 174). He cites Gerald Vizenor’s observation that “[t]he metaphor of adoption serves the literature of dominance,” (Vizenor qtd. in Benson 1994, 174) which bares the political fact that adoption serves dominance as an instrument of colonial control (Bensen 1994, 174).

The passage of P.L. 83-280, the numbers of parents who sought help from programs administered by the states, and the failure of the Bureau to provide family and children’s services, converged to make many Indian children vulnerable to adoptions by non-Indian families. Especially vulnerable were the children of young unmarried mothers and off-reservation families who came into contact with the social services’ system because they needed help to obtain food, clothing, and/or housing. Families who received assistance were monitored by caseworkers both on and off reservations to verify that state resources were not being abused and to assess the family’s living standards. Among the factors influencing adoptive placement was the long-standing bias against unwed mothers who were seen as



generally incapable of properly rearing their children. These ideas were influenced by sociological studies conducted in the 1950s of residents of homes for unwed mothers who were given a battery of tests. The study reported that the women scored well only on the test that calculated femininity, but the researchers judged the score misleading because they assessed that “the women really had no traditional feminine interests, warmth or concern for others” (Holt 2001, 5). The study concluded that women who kept children were emotionally and mentally immature. Holt describes the conclusion as “a white, middle-class “interpretative impression” that permeated the social worker mind-set. When social pressures combined with poverty and limited economic prospects, a young woman was primed for placing her child up for adoption” (Holt 2001, 5).

This mind-set was exaggerated in Indian country where it was complemented by the attitude that Indian children were really better off if reared by non-Indian parents. In the twentieth century, America’s attention to Indian children would be experienced as assaultive and destructive to the Indian family, despite the good intentions of those people concerned about the plight of the Indian. But they could not see that the Indians’ “plight was their transparency. In opening remarks in Custer Died For Your Sins: An Indian Manifesto, Deloria explains that

[o]ur foremost plight is our transparency. People can tell just by looking at us what we want, what should be done to help us, how we feel, and what a “real” Indian is really like. Indian life, as it relates to the real world, is a continuous attempt not to disappoint people who know us. Unfulfilled expectations cause grief and we have already had our share. (Deloria, Jr. 1969, 1)

The testimony of witnesses that follows would contextualize the nation’s approach to Indian children and family services and demonstrate the persistence of American colonial power in their lives.



### **Chapter III:**

#### **“It has been called cultural genocide.”**

Senator James Abourezk (D. S.D.)

On April 8, 1974 Senator James Abourezk (D. S.D.) opened hearings before the Senate Sub-Committee on Indian Affairs “to begin to define the specific problems that American Indian families face in raising their children and how these problems are affected by Federal action or inaction” (U.S. Senate 1975, 1) (See Appendix A). He proclaimed that

[i]t appears that for decades Indian parents and their children have been at the mercy of arbitrary or abusive action of local, State, Federal, and private agency officials. Unwarranted removal of Indian children from their homes is common in Indian communities. . . . The Federal Government for its part has been conspicuous by its lack of action. It has chosen to allow these agencies to strike at the heart of Indian communities by literally stealing Indian children, a course which can only weaken rather than strengthen the Indian child, the family and the community. This, at a time when the Federal Government purports to be working to help strengthen Indian communities. It has been called cultural genocide. (U.S. Senate 1975, 1-2)

Senator Abourezk explained that it was understood that Indian communities, like other communities in the country will continue to experience problems among their families but suggested there was evidence of a pattern of discrimination in the area of child welfare services. He cited recent statistics which revealed that twenty-five percent of all Indian children were either in foster homes, adoptive homes and/or boarding schools against the best interests of their families, tribes and communities.

Because of poverty and discrimination Indian families face many difficulties, but there is no reason or justification for believing that these problems make Indian parents unfit to raise their children; nor is there any reason to believe that the Indian community itself cannot, within its own confines, deal with problems of child neglect when they do arise. Up to now, however, public and private welfare agencies seem to have operated on the premise that most Indian children would really be better off growing up non-Indian. (U.S. Senate 1975, 1-2)

Abourezk further stated that

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 are committed to a course in Indian child welfare which will eliminate present abuses and injustices and which will begin the long, overdue process of helping, rather than handicapping Indian children and their families. (U.S. Senate 1975, 2)

Opening testimony was given by Association on American Indian Affairs, Inc.<sup>6</sup> staff and parents whose children had been taken from them by government officials and religiously-affiliated personnel. The staff of the AAIA uncovered the serious abuses in Indian child welfare services during the 1960s while working on other Indian rights issues. Prior to their involvement there had not been a national coordinated effort nor the means for tribal governments and Indian community organizations to bring these matters into public view. Through its long history of defense of Indian rights, the organization had forged close and confident associations with members of Congress through a broad base of tribal and non-tribal supporters of Indian rights, which was decisive in the decision to open hearings in these matters.

The first person to testify was William Byler,<sup>7</sup> Executive Director of the Association on American Indian Affairs (AAIA, the Association). Byler began his testimony by expressing his appreciation to Senator Abourezk for initiating the hearings, which the AAIA, together with the tribes and Indian communities, had been hoping would occur for the past six or seven years. Based on information from tribal leaders, Indian parents and children, attorneys and legal advocates, and a national survey of out-of-home placement of Indian children, he stated that the Association had concluded that “the wholesale removal of Indian children from their homes is perhaps the most tragic aspect of Indian life today,” and he

explained that his testimony would “examine the extent of that tragedy, look at some of its causes and the impact that it has on Indian family and community life and make some recommendations for remedial action” (U.S. Senate 1975, 3). Citing data from the survey of states with Indian populations, he reported on the extremely high numbers of Indian children in substitute care. He stated that the situation in some states was getting worse, as in Minnesota, where approximately one of every eight Indian children had been adopted, but as recently as 1971 and 1972, one in every four children born during those years had been adopted. He described the disparity in rates of adoption of Indian and non-Indian children as truly shocking, and again referenced the state of Minnesota, where placements of Indian children in foster care and adoptive homes was 500 percent greater than for non-Indian children. In South Dakota, where Indian children made up only seven percent of the state’s total population, forty percent of all adoptions since 1968 were of Indian children. The foster care placement rates for Indian children in South Dakota and Wisconsin were nearly sixteen hundred percent greater than for non-Indian children, and in the State of Washington the Indian adoption rate was nineteen hundred percent greater and the foster care rate was one-thousand percent greater than for non-Indian children.

Byler cited the enormous numbers of Indian children living in boarding schools and that in 1971 the Department of the Interior’s Bureau of Indian Affairs (BIA, the Bureau)<sup>8</sup> reported an enrollment of approximately 35,000 children in kindergarten through grade twelve. He pointed out that the enrollment figures for BIA boarding schools represented more than seventeen percent of the school-age population of federally recognized tribes and sixty percent of children enrolled in all BIA schools. Between eighty and ninety percent, or 20,000, Navajo children in grades kindergarten through twelve were enrolled in boarding

schools. According to government officials, the exorbitant enrollment rates of Navajo children resulted from poor roads and inadequate food and clothing. Byler proposed that improvement of roads and the distribution of food and clothing was a more appropriate response, especially when boarding school placement weakened the family and made it difficult for children to be educated in their tribal custom and tradition. A survey of a North Dakota tribe revealed that only one percent of the child removals resulted from physical abuse and the remaining ninety-nine percent of the children were removed on vague standards of deprivation, neglect, or the misconception that the family was too poor to be able to care for their children. These data pointed up a serious and pervasive problem.

The people who apply the standards very often lack the training, professional training, to judge accurately whether or not the children are, in fact, suffering emotional damage at home. They are not equipped sufficiently in knowledge of Indian cultural values or social values, or norms, to know whether or not the behavior an Indian child or an Indian parent is exhibiting is, in fact, abnormal behavior in his own society. (U.S. Senate 1975, 4)

Byler suggested that agency personnel may view the freedom afforded Indian children as an indication of parental failure to provide adequate oversight and assume the children are being neglected. These misperceptions are compounded by stereotypic views regarding use of alcohol by Indian people, frequently advanced as a basis for the removal of children. In some Indian communities, fifty to sixty percent of the people may have drinking problems, which is acknowledged by the tribes and is of great concern to them. He called attention to cultural factors that impact the parents' ability to care for their children and explained that interpretations of drinking behaviors by non-Indian social workers are often based on the assumption "that the pattern of drinking of an Indian person reveals the same kind of personality disorders that it does in a non-Indian person." He related that "there is good

evidence that the drinking patterns, and what that says about the behavioral patterns and the abilities of Indian parents to raise their children are quite different than they are for non-Indians” (U.S. Senate 1975, 4,5).

The licensing standards employed by state and private agencies reflected white, middle-class norms and values related to such factors as available floor space, plumbing and income levels. The survey also revealed that about eighty-five percent of Indian children in substitute care were in non-Indian homes and institutions. He asserted that other factors, such as the ability to grow up within one’s family group and culture, were much more important than indoor plumbing. From its work as legal advocate and attorney for families whose children had been removed, the AAIA uncovered serious patterns of abuse by federal and state agencies in the removal of children, such as failure to provide legal counsel or to inform the family of the need for counsel, which meant more often than not, parents did not have any idea that they had legal or administrative recourse to agency action. The use of voluntary waivers for placement of children was found to be a common practice. The use of a voluntary waiver, which was most often used to convince parents that their children would be better off with a family who could more adequately meet their needs, meant that the removal was not subject to judicial review, and set up a situation wherein the caseworker exercised undue authority regarding decisions to return children. It was not unusual for parents to be denied visitation with their children, even through voluntary arrangements, and eventually the lack of contact was used against them by welfare officials as the basis for a petition to the court to terminate their parental rights and to gain permanent custody of the child, alleging that he or she had been abandoned. This scenario was played out over and over again, primarily among those families who received Aid to Families with Dependent

Children (AFDC), through intrusive investigatory actions of caseworkers. Further findings suggested were economic incentives involved in the placement of the children in non-Indian homes. State caseworkers collaborated in the placement of the children with private agencies that were under contract with the state to provide substitute care. Many private agencies are dependent upon state contracts to remain in business. In many cases the rates of child placement, especially adoptions, increased dramatically following an Indian claims settlement, and some tribal leaders alleged that children were placed with farm families who were having a hard time making ends meet. The placement of children not only provided extra farm hands, the families often used the foster care payments for the general support of the family, rather than meeting the needs of the child as federal and state regulations required. The economic incentives were also important on a broader scale. With approval of the local congressional delegation, the Bureau proposed a reduction in enrollment at a Great Plains boarding school, but its plan was thwarted by the local business community. In the eyes of local merchants and businesses, the enrollment reduction threatened the community's economic base, and the merchants and civic leaders were able to convince the congressional delegation to reverse the decision and restore full enrollment.

Byler referenced a study of placement of Alaska Native students in urban boarding homes and dormitories to demonstrate the psychological and social damage experienced by the children and their families. The children were placed in metropolitan area homes and dormitories because there were no high schools in the children's home areas that met their particular educational needs. A study by Judith Kleinfeld, described in her book, [A Long Way From Home: Effects of Public High Schools on Village Children Away From Home](#), concluded that the boarding home program and regional high school program for these



students were helping to destroy a generation of village children. She designed the study to explore ways of placing village students with different educational needs in the most appropriate and beneficial type of secondary school environment, where they would live either in dormitory settings or family homes.

The students in the study came from small, remote villages that did not have high schools. The Alaska state government had determined that it was not fiscally feasible to construct high schools and/or to develop high school curricula at the village level. Kleinfeld was impressed with the pervasive influences of town behavior that encouraged negative attitudes, wherein the student learned that heavy drinking, violence and suicide are “just the way things are.” Neither the dormitories nor the boarding homes provided operational guidance “to help students develop a set of unified standards and strong identities” (Kleinfeld 1973, 111). The boarding home placements presented particular problems. Children who demonstrated individual problems were placed in boarding homes because past experience had shown that these children did not make a good adjustment to a dormitory environment.

Kleinfeld considered the boarding home placement program a failure. It placed troubled children in homes where they essentially lived in “rented space” and relied on caretakers unprepared to meet their needs. The program removed most of the children from their villages to urban areas at age thirteen, and they remained in the program until age eighteen. A common understanding that the destructive consequences of urban boarding placement would be abated if those participating in the program were exclusively older children was disputed in the study. Students age fifteen to sixteen developed school-related social problems as frequently as did the younger age group of thirteen and fourteen year-olds, which did not support immaturity as a prime causative factor in negative attitudes and

behaviors. The age group, seventeen to eighteen, exhibited the highest incidence of school-related behavioral and social problems. Each summer, the students took home their unresolved problems and the destructive experiences encountered in boarding placement. Kleinfeld observed that learned negative attitudes adversely impacted family and kinship relations. She recommended the establishment of regional high schools in native villages where all the students would be able to go home on the weekends, and she also stressed the importance of a sense of belonging in the formation of identity (Kleinfeld 1973, 108-117).

Kleinfeld's findings regarding the conflicts confronted by Indian children in the complex tasks of identity formation were reinforced in the testimony of Robert Bergman, who, in 1969, became the first Director of Indian Health Services' Mental Health Branch. He described damaging adoptive and foster care practices that were often the result of removal for the "least excuse" and the placement of the child with a white family. As an example of destructive placement practice, he related the story of a sixteen year-old girl who had been adopted when she was six months old and who had not been able to carve out a satisfactory life with her non-Indian adoptive parents. The situation was so disruptive that her adoptive parents gave up on her and bought her a one-way ticket to the Navajo reservation. Bergman explained that her placement, like that of many others, produced "an imitation Anglo never quite good enough to achieve in the white world and removed far enough so that a meaningful return to the Indian world [was] impossible" (U.S. Senate 1975, 129). His testimony affirmed that given by tribal leaders who related the tragedy of many children whose adoptions were not successful and who returned to the reservations as troubled adolescents. These children encountered extreme difficulty with identity formation and integration into their homelands because they had not grown up learning the ways of

their families and the history of their people. Their development in a faraway environment with its own rules of conduct inculcated a world view very different from that of their tribal people. For many of them, the adjustment to the Indian world was so difficult they abandoned their efforts and left the reservation to live lives in a marginal existence with few, if any, viable connections with anyone anywhere.

Byler cited a National Institute of Mental Health<sup>9</sup> publication, “Suicide, Homicide, and Alcoholism Among American Indians,” which reported that

[t]he American Indian population has a suicide rate about twice the national average. Some Indian reservations have suicide rates at least five or six times that of the Nation, especially among younger age groups. While the national rate has changed but little over the last three decades, there has been a notable increase in suicide among Indians, especially in the younger age groups. (U.S. Senate 1975, 6)

The report cited nine social characteristics of an Indian prone to commit suicide, two of which Byler believed most pertinent to the problems being addressed. He specifically referred to those children who had lived with a number of ineffective or inappropriate parental substitutes because of family disruption, and those who spent time in boarding schools and had been moved from one school to another. Byler concluded his discussion of the damage resulting from out-of-home placement by explaining that “[w]hen we remove children from the home or disrupt family life—with families as the basic economic, health care, and educational unit in human life—when you break that up, you impede the ability of the child to grow, to learn, for himself, or herself, to become a good and responsible parent later” (U.S. Senate 1975, 7).

He provided the Sub-Committee with summary recommendations and proposed that Congress enact laws, appropriate money and declare policies that would:

- 1) Revise the standards governing Indian child welfare issues, to provide for a more rational and humane approach to questions of custody; and to encourage more adequate training of welfare officials;
- 2) Strengthen due process by extending to Indian children and their parents the right to counsel in custody cases and the services of expert witnesses, subjecting voluntary waivers to judicial review, and encouraging officers of the court who consider Indian child-welfare cases to acquaint themselves with Indian cultural values and social norms;
- 3) Eliminate the economic incentives to perpetuating the crisis;
- 4) End coercive detribalization and assimilation of Indian families and communities and restore to Public Law 280 tribes their civil and criminal jurisdiction;
- 5) Provide Indian communities with the means to regulate child-welfare matters themselves;
- 6) Provide Indian communities with adequate means to overcome their economic, educational, and health handicaps;
- 7) Provide Indian families and foster or adoptive parents with adequate means to meet the needs of Indian children in their care;
- 8) Provide for oversight hearings with respect to child-welfare issues on a regular basis and for investigation of the extent of the problem by the General Accounting Office;
- 9) End the child-welfare crisis, both rural and urban, and the unwarranted intrusion of Government into Indian family life. (U.S. Senate 1975, 7)

Byler acknowledged that it was the responsibility of the Indian people themselves to correct destructive patterns of child and family practice and assured the Subcommittee that the tribes and Indian communities had the capacity to do so. He told the panel that in the last three or four years the Warm Springs Reservation in Oregon, the Lake Traverse Reservation in Minnesota and the Blackfeet Reservation in Montana had virtually ended off-reservation placements. He called attention to the need for training of Indian lawyers, teachers, judges, boarding school professionals, social workers, pediatricians, medical health professionals, and professional foster parents. He was confident that the Indian people would support whatever actions were needed. As an example of the peoples' resolve, he related that "in one community in New York, 20,000 citizens signed petitions asking for child welfare oversight hearings for American Indian people, and volunteers there raised the money and made it

possible for a number of the witnesses that are appearing today to come at all.” (U.S. Senate 1975, 8)

Byler was accompanied by Bertram Hirsch,<sup>10</sup> AAIA staff attorney, who, beginning in 1969, had worked tirelessly in the difficult task of assisting families and tribes to regain custody of their children. Hirsch began his testimony by presenting seven specific recommendations developed from discussions with Indian communities throughout the country which set out the conditions necessary to promote “maximum Indian self-determination in solving these problems, and from the standpoint that these problems go to the very heart of the tribal relation and the very survival of Indian tribes” (U.S. Senate 1975, 35). The first recommendation proposed that Congress

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. (U.S. Senate 1975, 35)

He relayed that in his experience working with Indian people regarding child welfare matters, state courts were usurping tribal jurisdiction to decide domestic relations problems, a jurisdiction that the tribes actually possessed under Federal law. Petitions for dependency, neglect and termination of parental rights, which should rightly and under prescriptions of Federal law be heard in tribal courts, were being handled in state courts. These actions occurred in state courts because tribes did not have the political power necessary to overcome the strength of local and state governments. It was imperative that the federal government through congressional action support the tribes’ right to handle their own domestic relations’ affairs.

The second recommendation requested that Congress

enact a law that authorizes Indian tribes to license foster homes and to accept State placements of Indian children and State funds in support of Indian children, and also require 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. (U.S. Senate 1975, 35)

In Hirsch's view, tribes already possessed the sovereign right to license their own foster homes, excepting those tribes in P. L. 83-280 states. Under Public Law 83-280,<sup>11</sup> which authorized the federal government could relinquish its responsibility for direct financial assistance and social services to tribes in a number of states and give these states jurisdiction over matters of dependency and status violations on reservations. The ability of the tribes to license their own foster homes would enable them to reverse the destructive practice of the placement of their children in non-Indian substitute care where they were denied the opportunity to gain the knowledge necessary to construct their identity as an Indian person.

Hirsch further proposed that the U. S. Department of Health, Education and Welfare (DHEW)<sup>12</sup> be authorized to change its regulations to provide direct grants and foster care monies to the tribes. Failing this, he proposed that DHEW regulations be changed to require States to give priority to the placement of Indian children in Indian foster homes. In the regulatory arrangement, monies administered by DHEW flowed through the States which, in many instances, had violated DHEW regulations designed to protect Indian families and children. The situation was further complicated by the fact that DHEW did not possess the capability to enforce its own regulations when the States were in violation, and in his experience and to the best of his knowledge DHEW had not withheld funds when such violations occurred.

Hirsch's third recommendation involved enactment of a law that would

appropriate a certain amount of money 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 foster children, when such improvement would enable them to qualify under tribal law or licensing standards; and (3) the housing conditions of families facing dis-integration, where such improvements would contribute significantly to the family stability. (U.S. Senate 1975, 36)

This action would bring considerable assistance to Indian families and tribes who could not satisfy state and local licensing requirements because many homes did not have hot and cold running water or separate beds for each child and used outhouses because there was no indoor plumbing. From his experience in working with Indian families, Hirsch did not find that lack of any of these material resources detracted from the Indian family's ability to provide a good and loving home for their children.

The fourth recommendation requested that Congress enact

a law that requests 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. (U.S. Senate 1975, 36)

This provision would strike at the heart of the discriminatory practices of federal, state and local agencies, and it would open the way for tribes and Indian communities to participate in the design of protective and prevention services and standards of practices that assured adequate protection of the family.

The AAIA encountered great difficulty in collecting statistics from the states regarding the numbers of children in out-of-home placement, and it found that the states used multiple methods of collecting data that were often inconsistent with each other. The AAIA was also found that the BIA did not regularly compile statistics on Indian placements, and

lack of oversight made it extremely difficult to develop an accurate picture of the numbers of children in substitute care. To correct this situation, the AAIA recommended that Congress

enact a law requesting 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 placement of Indian children. (U.S. Senate 1975, 37)

A sixth recommendation called for a law that would authorize the Bureau of Indian Affairs to subsidize the adoptions of children by Indian parents at a rate comparable to foster care payments. This would address the seriously damaging practice of adoption by non-Indian parents. The Association's final recommendation requested that Congress

enact a law authorizing the availability of funds for the position of Chief of the Division of Child Welfare and Family Protection Services within the Bureau of Indian Affairs. (U.S. Senate 1975, 37)

The Association saw the problems with the out-of-home placement of Indian children as so serious that correction of practices would require an office separate from the BIA's Branch of Social Services. Regrettably, the Branch had been party to the destruction of the family through its contractual arrangements with states to provide substitute care for Indian children.

Sub-Committee member Senator Dewey F. Bartlett of Oklahoma (Rep.) was interested in the recommendation regarding direct appropriations to the tribes because of illegal operation of programs by the states, and he wondered if Indian parents and tribes had not sought relief through the courts to correct improper practices. Hirsch assured the Senator that he had already represented parents and tribes quite a few times in court and unfortunately would have to do so many more times in the future. He explained that the recommendation that monies for child welfare services go directly to tribes was based on the belief that tribal officials and local community workers would know best how to respond to



the needs of their children and would give further credence and support to the policy of self-determination. He described efforts with several State welfare agencies in which agreements were concluded that would assure nondiscriminatory treatment of Indian clients in the distribution of welfare services. He recounted a meeting between several tribal leaders from every tribe in South Dakota and the State welfare department in which it was agreed that the department would review its foster care standards and other policies to which the tribes objected. The State agreed it “would consider Indian input in revising the standards and would make an effort to review those standards to make them more realistic in light of the present conditions.” Despite this written agreement, “the State never followed through on any of that” (U.S. Senate 1975, 38). Byler interjected that while not all States administer funds in a discriminatory manner, there are State practices that have been severely damaging to the Indian people. He cited actions of the Devil’s Lake Sioux Tribe taken during the late 1960s in response to the large numbers of their children removed from the reservation.

The tribal council acted to halt that. This angered Benson County welfare and they terminated all child welfare payments, Federal moneys [sic], until the tribe stopped its resistance to the placement of Indian children. We provided legal assistance to some of the parents.

There was no food in that community. A number of the Indian parents who were at risk of having their children taken away went to the Bureau of Indian Affairs in Washington, talked to people who at that time were in charge of the branch of social services, and said it’s your money, why don’t you have the BIA make these payments directly so the families can eat. The answer we got, “That would embarrass Benson County welfare. We cannot do it.”

It was only when we appealed to the man who, that day, was acting as Commissioner of Indian Affairs, that the order was sent down to let the children eat. (U.S. Senate 1975, 38)

Senator Bartlett also wanted to know about variations in adoption placement rates in reservation and non-reservation states. Byler responded that in those states where tribes are

strong and there is an awareness of the problem, there have been substantial and affirmative actions to end the abusive practices. In other areas where tribal governments are not as well-organized, it has been more difficult and complicated by the fact that the isolated living patterns of families make it hard for tribal officials to learn of abusive agency practices. In off-reservation areas the distinctions were between rural and urban communities. The survey of placement rates indicated that urban placement rates were very high.

Among the witnesses whose presence was made possible through the donations cited earlier was Mrs. Margaret Townsend of Fallon, Nevada, who was accompanied by her children, Kim, age 14, Anna, age 9 and Ira, age 7. Townsend testified that her children had been taken from her home as a consequence of harassment by the police department.

The chief of police told me that he was going to make it hard for me to get my children and that I was going to lose my driver's license and that it was going to be hard for me to keep out of jail.

So, he turned my children over to the juvenile probation officer and they went into my home and took my children and placed them in a foster home. And, I think they were abused in the foster home.

I was beat up. (U.S. Senate 1975, 41)

Mrs. Townsend was arrested on a charge of "drunken driving." She was taken to the station where an argument ensued and an additional charge of resisting arrest was lodged against her. The police used the argument as an excuse to beat her up, despite the fact that she was handcuffed. Her children were placed in temporary foster care. She was not allowed to make a phone call, but eventually was able to convince a jail trustee to get word to a friend who called the Intertribal Council lawyer who arranged to bond her out of jail. The Intertribal Council attorney contacted Hirsch for assistance and he was able to help retrieve her children.

Upon her release from jail, the welfare department insisted that Mrs. Townsend enter an alcoholism rehabilitation center in Tucson, Arizona and remain there for six months before they would return her children. They told that she would be financially responsible for her children's foster care placements while she was in the rehabilitation center. She did not see that alcoholism was her problem but believed that for some reason the police had singled her out for abuse and harassment. She explained that she did not often drink in bars and had been in downtown Fallon only six or eight times in the past two years but on three different occasions the police had said some terrible things to her. The officers ridiculed her children, told her that they would assault her oldest daughter, and that her younger girl was fat just like she was. She found it very difficult to communicate with either the police or the welfare workers because she believed, based on her past experience with them, that they looked down on Indians. When they finally returned her children, she learned that they had been abused in foster care. Her nine year-old daughter, Anna, told her mother that her 20-month old brother was mistreated. The foster father slapped him and forced him to eat a whole plate of food, kept him penned up all day, and blew smoke in his face, and his diaper went unchanged all day until she got home from school.

Mrs. Townsend related similar experiences with the police in Elton, Nevada, where she lived previously. She did not understand why stories followed her around and said that

the police used to follow me around and aggravate me and say dirty things to me. I got in an argument with them and my baby, when he was a month old, he was in a cradle board, he was hit, and three policemen just laughed because they had a great time.

I pleaded guilty because I worried about my baby. These stories followed me around and they had threatened me about my daughter, and I was worried about her all the time. I was trying to be over-protective and they just think it's great fun just

because I'm Indian, they can beat me up with handcuffs and chip my elbows where I couldn't pick my baby up. (U. S. Senate 1975, 43)

Mrs. Townsend was very concerned 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" (U.S. Senate 1975, 44).

Senator Bartlett queried Townsend regarding the reasons the police would want to take her children. She responded that it's

[b]ecause he wanted to get even with some of the Indian boys that I know and they are just being hateful because I'm Indian. There's no other reason, because I don't resent white people. They don't bother me at all, except the people in authority. Sometimes they get a little too overwhelming. (U.S. Senate 1975, 44)

Mrs. Alex Fournier was the second Indian parent to testify regarding the welfare department's effort to take her child. She identified herself as a Mandan Indian and said that she lived on the Devil's Lake Sioux Reservation in Ft. Totten, North Dakota, which is located in Benson County. She told the Subcommittee that she had been Ivan Brown's babysitter when he was an infant. On the day that his mother was to pick him up she was burned to death in a fire. He had a maternal grandmother but she did not want him, so Mrs. Fournier decided to keep him. She was contacted by the welfare department and told that a worker would come to take the child. She said that she agreed to let the department have the child but no one showed up. A month later she was contacted again and told that a welfare worker would come for him because the department was going to place him for adoption but no one ever came. When he was over a year old the welfare worker returned and took her and the child to a clinic in Devil's Lake where he was checked over. By this time the child was closely attached to her and "he took me just like his own mother." The worker told her that

they were trying to find a place where they could adopt him out, and it went on further and they never came around again for so many months. Finally, one day they came. . . . They tried to take him, and when they came after him I said no. He started crying and hanging on to me. He was 2 years old then. (U.S. Senate 1975, 52)

She and the child were taken to the tribal court where she did not have help from an attorney. She told the court that she would not give up the child. While the court was in session, a man who was from the welfare department jumped up and grabbed her little boy, who was playing in the hall. He was trying to walk out with him but the child fought back. The judge alerted Mrs. Fournier that the child was being taken.

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. (U.S. Senate 1975, 53)

The court determined that custody of the child would remain with Mrs. Fournier and the welfare department did not bother her again. Senator Abourezk asked about contacts from the department before the attempt to remove the child and learned that the welfare worker never tried to find out if Ivan was happy living with her or if she might be a suitable adoptive parent. He also wanted to know if she were receiving payments to keep Ivan in her home. She said that she did receive a monthly check from the BIA, not from Benson County. Byler explained to the Senator that this was the case that prompted the visit to Washington, D. C. in 1968; Benson County officials refused to provide foster care payments to her because she had resisted their actions. As noted earlier, the BIA agreed to make direct payments to Mrs. Fournier for Ivan’s care. The county never assumed financial responsibility for his care and the tribe was satisfied with the arrangement. Mrs. Fournier was no longer bothered by the county welfare department. Eventually, a very constructive relationship was established with the Benson County department after a staff shakeup.

The third parent who testified, twenty-three year old Cheryl Spider DeCoteau, was living in Sisseton, North Dakota in December 1970, when the welfare department took her son, John, from her. She explained that when she went to pick him up, the babysitter would not let her take him. She sought help from her social worker, who agreed to meet her at the local store. When he did not show up, she called and learned that John had already been taken and placed in a foster home. She went to the department offices to try to get him but was told she could not have him back. She did not receive any papers informing her why the he had been taken. Without her knowledge, welfare officials filed a petition for John's temporary custody, which was granted. Although she was not present when the petition was granted, she was assigned an attorney by the judge. She feared she might never get her children back and needed legal assistance.

I went to see him, and he didn't try to help me or anything. All he did was just ask me my age, name and address, and the name of my first boy and my other one. Then he asked me how old they were, and that was all. Then he said he was going to go talk to the judge and the welfare workers. He didn't do anything because I didn't know anything that happened until July of 1971. (U.S. Senate 1975, 66)

Senator Abourezk asked if John had been kept from her all that time and whether the welfare department ever proved that she was not being the best mother for her child. She responded that

[t]he man said that I wasn't a very good mother and everything, and that my children were better off being in a white home where they were adopted out, or in this home, wherever they were. They could buy all this stuff that I couldn't give them, and give them all the love that I couldn't give them. (U.S. Senate 1975, 66)

The Senator then asked DeCoteau if she had been proven unfit by the court and if she was given examples of her inability to care for her child. At this point Hirsch, who came to her defense in the matter after she had two or three other attorneys who were not able to help

her, explained it was never proven in court that she was unfit. A two-day hearing in District Court was never completed, and he filed an appeal based on the court's lack of jurisdiction to adjudicate the matter. The appeal was lost in the South Dakota Supreme Court. A petition for certiorari<sup>13</sup> was then filed with the U. S. Supreme Court. He was successful in retrieving custody of John during the pendency of the petition to the Supreme Court, and John was returned to his mother. During the course of his representation of DeCoteau, Hirsch learned she had never received notice of the hearing to determine John's temporary custody and that it was only by accident that she learned it would take place. He stated that "[t]he original hearing was one of the grossest violations of due process that I have ever encountered. Unfortunately, I find it is quite commonplace when you're dealing with Indian parents and Indian children" (U.S. Senate 1975, 67). Hirsch related that

[s]he did not get notice of either the first hearing or the second hearing. . . . The first hearing was a hearing on the petition of the social worker stating that there was a need for emergency custody in the department of welfare over Mrs. DeCoteau's children.

The judge issued an order placing that child in the custody of the department of public welfare without informing Mrs. DeCoteau that such a hearing was taking place, and without allowing her an opportunity to come before the court and submit testimony that such an order should not be issued.

So, the child was placed in a foster home and the judge appointed an attorney for Mrs. DeCoteau and set a hearing date on the issue of dependency and neglect. Pending the hearing the child was to remain in a foster home.

In other words, you were talking before about burden of proof. They already took the child away from her prior to having any hearing on unfitness and the burden of proof was very clearly shifted on Mrs. DeCoteau to prove that she was fit, rather than the State proving that she was unfit. (U.S. Senate 1975, 67)

John had been in placement a full seven months before the hearing was set. The Court notified DeCoteau by publication in the local paper, despite the fact that her social

worker knew where she lived. DeCoteau did not read the newspaper and it was by accident that a tribal member saw the notice in the paper and informed her. Hirsch learned that it was a common practice of the welfare department to place notices of hearings in the paper when “they know very clearly where the person can be found and how to serve that person directly” (U.S. Senate 1975, 68).

DeCoteau was first confronted by the welfare department when she was asked to give up her unborn child, Bobby. She was repeatedly asked to give up her child for adoption because “it would be better for him.” The worker even went to the hospital after the child’s birth and again pressured her to release her child to the department. The requests continued after she returned home with the child. The visits from the worker stopped for awhile but resumed when she moved into Sisseton. One early morning the worker pounded on her door and asked her to come to the welfare office because he had something he wanted to discuss with her.

So, I went up to the office and there were a whole bunch of papers there. I was kind of sick then too and I didn’t know what I was signing. He just asked me if I would sign my name on this top paper, and I signed it and he sealed it or something. I signed it and he signed it, and sealed it or something.

I didn’t know what the paper was. But, then they took the baby and I asked him what he was doing, and he said it was too late now, that I gave him up for adoption. I signed the papers.

Then, they took him. They told me to wait a week. Before all this happened, when I did sign the paper, he told me to come back and see him in a week and he would tell me if I could have him back or not.

When I did go back in 1 week, that’s when he told me it was too late, that I had signed the papers for adoption and I couldn’t get him back. (U.S. Senate 1975, 68)



The child was four months old when he was taken. Senator Abourezk asked DeCoteau to describe how the child had been taken. She explained that when the worker came to her home only infant Bobby was with her. John had gone home with his grandmother the previous day. When she went to the office with her baby, a social worker took the child into another room where he would be watched while she met with her case worker. “When he got through talking with me, when they took the baby and I signed the papers, they just took him right out the doors and they took him right to the foster home the same day” (U.S.. Senate 1975, 69).

In March 1970, DeCoteau sought legal assistance to get Bobby back. She filled out papers and answered all the questions asked and was told that she would be notified about the next step. Finally, she was called to a hearing in September 1970. She appeared at the hearing but lost custody of her child. Later her grandfather informed her that she had to go to a court hearing for both her children because the department was going to place them for adoption. It was at this time that she was able to get help from Hirsch, who was working in the area on child welfare matters for AAIA. With his help, she was finally able to get her children back. After he entered the case, it took ten months for Bobby and seven months for John. DeCoteau received little help from previous counsel and had been trying for many months on her own to get her children back. Since then she had a third child, Joseph, who was ten months old at the time of the Subcommittee hearings. She now has custody of all her children.

The circumstances under which DeCoteau lost custody of her children led Senator Bartlett to ask Hirsch if there was any indication of a black market in adoptions. The closest to an affirmative answer he could give reflected the attitude of the county officials. The tribe

felt very strongly about the case and wanted to assert its right to maintain custody of the children within the tribe. When he served the intervention notice, the county officials asked why the tribe was so interested in the case. He informed them the tribe was concerned “that if many more of their children were taken, because there’s been quite a history of taking these kids from this reservation, that they were afraid that their very survival would be at stake. The co-director of the county office responded by shrugging his shoulders and saying, “So, what?” (U.S. Senate 1975, 70). Senator Bartlett persisted, pressing Hirsch regarding any indication by the large number of adoptions that a black market existed. Hirsch replied.

I would say you could describe it as a gray market, rather than a black market. Although, there have been in the past, I suppose, quite a few cases that might be more accurately described as black market cases. Recently, they’ve only had a few of those types of cases that I know of.

I think it is more accurately described as a gray market. I think there’s tremendous pressure to adopt Indian children, or have Indian children adopted out. I think that local welfare workers in Indian communities feel this pressure intensely. They have long lists of non-Indian applicants for Indian children, and they feel obliged for a whole variety of social reasons to comply with the orders that they receive for children. (U.S. Senate 1975, 70)

Senator Bartlett wondered if “long lists” was a relative term or if, in fact, there was more interest in adopting Indian children as opposed to others. Hirsch responded.

I think so. I think there’s more interest in adopting Indian children primarily because non-Indian potential adoptive parents are white. They do not want to have a black child, as a generalization. White children are unavailable, there are just a few; and they are generally now settling on either Indians or orientals. (U. S. Senate 1975, 70)

The Senator was curious to know why the tribe had taken an interest in Mrs. DeCoteau’s case. Hirsch explained that he was asked to represent the tribe’s interest. At the time, the tribe did not know her whereabouts and did not know that she would attend the hearing. She did appear, and because there was no conflict of interest between her and the tribe, he

proceeded to represent both parties. “Had either DeCoteau or the tribe contacted the BIA for assistance?” Bartlett queried. Hirsch responded that she had not, but he contacted the Bureau to get information from their files about her and her family situation that would be helpful to him at trial. He was denied access to the files by the Bureau’s Area Social Worker, who informed him that the files were confidential. He did not pursue access to the files because of their success at trial.

At the completion of testimony, Hirsch submitted articles for the record from the AAIA newsletter, Indian Affairs, entitled “AAIA and Devil’s Lake Sioux Protest Child Welfare Abuses” and “Indian Child Welfare and the Schools.” A third article was submitted from the Association’s publication, Indian Family Defense, which was specifically created to aid in the passage of legislation to protect Indian families. Entitled “Tribes Act to Halt Abuse,” it described efforts by the Sisseton-Wahpeton Sioux, the Coalition of Indian-Controlled School Boards, Inc., the Three Affiliated Tribes and the Oglala Sioux to stop destructive child removal practices. Also submitted were adoption and foster care statistics for the states of Oklahoma, Arizona, Minnesota, South Dakota, Washington and Wisconsin (see U.S. Senate 1975, 77-100).

Mary Ann Lawrence from Pine Ridge, South Dakota, who was director of an Indian Family Defense project conducted by the Association, also provided testimony. The project brought assistance to families who were threatened with loss of their children or who had already lost their children. Lawrence surveyed the Rosebud Indian Reservation and visited with the families to find out about their interest in child welfare matters. Through these contacts she found “that there was quite a few of the people, through the children of the health welfare, not only in South Dakota but across in Nebraska, the Nebraska State welfare

has taken a lot of children from the people” (U.S. Senate 1975, 150). She found “most of the people are concerned about the Indian children, but it seemsto me once an Indian family loses a child, they give up. They don’t try anymore. Their minds are already made up.” (U.S. Senate 1975, 151). The people believed there was nothing they could do to get their children back and did not know that legal help was available through tribal poverty lawyers and other sources. She stated most of the families she interviewed wanted their children back and after learning help was available they initiated efforts to secure their children. Lawrence believed that both the parents and the children should have legal representation appointed by the court.

In the forty-three placements surveyed, Lawrence recalled that at least nineteen were non-Indian homes and the rest were Indian homes. Many more Indian people would like to become adoptive and foster parents but strict state requirements made it impossible. She cited the tragedy of sibling groups broken up because no more than six children can live in the home, yet large Indian families are willing to take in all of the children together. She felt strongly that separation of sibling groups was very damaging and compounded the pain they experienced through separation from their families and communities. She told the story of fifteen year-old Sammy who had been sent off to boarding school in the Northwest and whom she met during the survey while he was home on vacation. Sammy lived with his mother and two younger brothers about whom he was gravely concerned. His mother was an alcoholic and he worried that there was no one responsible to take care of his brothers when he was away. He asked Lawrence for help so that he would not have to return to boarding school. He told her that

he wanted to stay and take care of his little brothers, and he was afraid if he went back to school, his little brothers would be taken away and that he didn't think that his brothers should leave their mother. He told me then that if I told anyone that his mother was drunk or anybody came over there to take the children, that he would take his little brothers and go up in the hills. He said that he knew a cave somewhere where no one would ever find them. (U.S. Senate 1975, 153)

Lawrence assured Sammy she would not report his situation to the authorities and offered to help his family. Through a series of visits and assistance to the family, she was able to help Sammy's mother become a more responsible parent. Lawrence convinced the probation and parole office to allow Sammy to remain at home rather than return to boarding school.

Although his mother continued to drink, she was able to stay sober for increasing periods of time and every month turned over her Aid to Families with Dependent Children (AFDC) check to Sammy. Lawrence was confident that if families were supported in their efforts to care for their children the numbers of children removed to substitute care would be reduced. She described the progress that had been made in Sammy's home.

[Sammy]'s been able to take his family to the movies a time or two since he's gotten a part-time job. I believe given a chance, he's working with his mother, and a lot more people did care about their people that are having problems; regardless of what kind of problem it is, I think these families could stay together and they wouldn't have to be separated. (U. S. Senate 1975, 153)

The assistance that Lawrence provided to Sammy and his family had not been forthcoming from local child welfare services and her intervention was crucial to prevent the breakup of the family. The family situations uncovered in her work for the project revealed complex legal and child welfare issues for which few saw an easy remedy, as in the case of six children who were taken in by their paternal aunt following their parents' death. The tribal court granted custody to the aunt with the condition that the children would remain together. The aunt took the children to Tennessee where she placed them in separate

adoptive homes. The Rosebud Tribe has entered its objection to the adoptions and is awaiting the appointment of attorneys for the children before proceeding.

Lawrence observed that the people had a “morale problem” as a result of the perceived threat that their children could be removed without justification and little hope that they could regain custody of them. She cited the case of a woman who lost her four children thirteen years ago and who recently requested her help. The mother was arrested on a misdemeanor charge when her youngest child was four months old. She was permitted to keep her infant with her in jail for seventeen days, after which time the Nebraska State Welfare took the child from her and also took custody of her other three children who were living with their father. At the time she was not married to the children’s Japanese father because Nebraska state law did not recognize inter-racial marriage. They later married. Through the years the parents made every effort to get the children back and were finally awarded custody by the state Supreme Court. The parents bought clothes and bunk beds and readied the home for them, but the children were never returned. The judge told her that he had changed his mind because the children were in the process of being adopted. Two of the children were in the custody of the Children’s Home Society in Omaha and the whereabouts of the other two were unknown; they had been lost.

She recounted the situation of a young mother who had been kicked out of her family home when she became pregnant. She was pressured by local welfare workers to relinquish her child for adoption while she was still in the hospital after giving birth to her child. She requested help from Lawrence because she feared her child would be taken from her. The child was discharged to her custody but the welfare workers continued to pressure her to give up her child. The power of local welfare officials is daunting in spite of the very good care

given children. Mothers who receive AFDC feel especially vulnerable because of what is understood to be the legal authority of welfare officials to enter their homes at will and to remove their children if living conditions are deemed unacceptable. The threat to these mothers is real. The community's atmosphere is shrouded with fear and a sense of hopelessness that drains the strength of both the families and the tribe as a whole. In Lawrence's experience, families who lived on the reservation were no less vulnerable to state welfare interventions than those families who lived off-reservation. She proposed that "the tribe itself should have exclusive jurisdiction over all their members, whether they are on a reservation or off the reservation" (U.S. Senate 1975, 155).

Tribal member, Richard Lone Dog, provided additional information concerning the Rosebud Sioux reservation and its members. Lone Dog directed three different tribal programs: the detention center which provided children's foster care services, the day care center and the Good Hope Shelter. He lamented that the comments he would make had been made over and over again. He presented the Sub-Committee information regarding adoption of Indian children in the state of South Dakota for the years 1967 through 1973, during which period 908 children had been adopted. In each of the years, the majority of children were placed in non-Indian homes. He related that there were insufficient numbers of Indian foster homes to care for the children and he believed that "the state, or the BIA's failure to establish Indian foster care homes on the reservation is just the lack of concern for the Indian people" (U.S. Senate 1975, 156).

The BIA welfare office is basically a place where they write checks out. There is no communication between the home and the BIA as far as child guidance, home care, counseling, medical and dental. . . . I've asked them time and time again why is this so and their comment is that we don't have the staff, we don't have the money. But, why don't you have the staff and why don't you have the money since this is one of

your trust responsibilities and again they're unable to answer the question. They say it's because it's not appropriated. But, why wasn't it appropriated, or if it was, why wasn't it funded. (U.S. Senate 1975, 156)

The tribe was left to fend for itself for needed resources for their people. The absence of government resources to help the people resulted in assigning a low priority assigned to family and children's services. Lack of resources for these services contributed to avoidable crises because the tribes did not have the funds to hire home coordinators to help families resolve their problems. He explained that much of his time was taken up trying to raise funds to operate the tribe's programs. He discovered there was an unequal disbursement of child care funds by the state and BIA. The tribe received \$8.36 per day for children residing in the tribal detention center, while the Lutheran Social Services received \$30.00 per day to provide the same level of care. He cited the case of grandparents who received \$35.00 per month per child to care for their five grandchildren while at the same time Lutheran Social Services received \$900.00 per month to care for one child in their care from the state and BIA. The state of South Dakota recently increased old-age benefits received by the grandparents but decreased benefits for their grandchildren by the same amount. These inequities existed even in those instances when the tribe had been able to provide Indian placement resources that met state requirements, as in the case of the detention center, which received the disparate payment of \$8.36 for daily care of a child. The tribe had not been able to force either the state or the BIA to provide equitable funding

Lone Dog described the problems that the tribe confronted to adequately staff its facilities. The state and the BIA required that childcare personnel have professional degrees but he questioned where these individuals could be found on the reservation, especially when tribal childcare workers were paid \$2.50 per hour. While he supported educated childcare



staff, he explained that there are problems with professionals who have been employed from time to time. These employees encountered difficulty developing working relationships with the children and their parents largely because of their ignorance of Indian life ways and an inability to communicate with them. He shared that these conditions are a daily reminder of his own upbringing. He came from a broken home, was placed in foster care and eventually sent to boarding school. He considered himself fortunate that he was never adopted. While he believed that the situation has improved in the last several years, he was saddened by the scores of children who were adopted or whose whereabouts could not be determined, and what he described as complicity of the tribal court in destructive placement practices. He opined that the BIA, which provided funding for tribal courts, exerted excessive influence regarding placement decisions. He contended that because the BIA controlled the funding for the courts, agency personnel were able to influence court staff and control decisions made by the courts.

In his opening remarks Senator Abourezk laid out the problems confronted by Indian families, tribes and communities that had resulted from arbitrary and abusive child welfare practices conducted by federal, state and local governments and private agency officials. In his view these practices were based on the government-sponsored premise that most Indian children would be better off growing up as non-Indians, which had resulted in the breakup of families and the weakening of family structure. He asserted that federal government inaction had allowed state and private agencies to literally steal Indian children, and he labeled conspicuous inaction on the government's part cultural genocide. He was convinced that given the opportunity Indian communities had the capacity to deal with the problems of their children and families. He declared that Congress bore the responsibility of Congress of

eliminating abusive practices destroying Indian families and assuring Indian people they would receive equal justice and federal government support.

William Byler, Executive Director of the AAIA, informed the panel that the organization had been working with tribes, Indian organizations and non-Indian supporters over the past six or seven years to cause hearings to be held. He described the removal of children from their homes as the most tragic aspect of Indian life and provided data regarding the extraordinary removal rates of Indian children in a number of states. He cited the work of Judith Kleinfeld, who examined the placement of Alaska native children in non-Indian homes and dormitories for educational purposes, and the adverse impact the program had on kinship relations. The students received little, if any, help with unresolved problems and destructive experiences encountered in boarding placement and took these difficulties home with them during summer breaks. The same destructive consequences were experienced by individual families in the lower forty-eight and the families of children who were placed in government-run boarding schools. He proposed that if long-standing impediments to children remaining at home, such as improvement of roads and access to sufficient food and clothing, were removed, it would not be necessary for the children to leave their families; poverty was an insufficient basis to remove children. In the organization's work, the staff detected that a sound professional basis on which to assess family disturbance or dysfunction was lacking, and the officials and agency personnel involved had little or no knowledge of tribal culture, social values and norms. Families were subject to intrusive investigations and coercive voluntary relinquishments and were denied their due process rights in actions brought against them. He also cited the insidious economic incentives involved in child removal that provided state and private agencies compensation for substitute care of children.

The testimony of Townsend, Fournier and DeCoteau tell the story in real life terms of the conditions Indian people faced to keep their families together. In each of their experiences, arbitrary, destructive and ignorant actions by state and federal officials resulted in harmful, traumatic events for both parents and children at the hands of the courts, law enforcement and child welfare practitioners. Not only were their legally-guaranteed due process rights violated, they were also subjected to unethical and inhumane practices by child welfare officials. In each instance the burden of proof to establish parental fitness was shifted to the parents, who had little recourse to legal counsel, except for court-appointed attorneys who made no real attempt to protect the rights of parent and child and who were either ignorant of tribal rights or chose to disregard them. These women lived in communities where they experienced blatant discrimination and racism. Townsend's testimony depicts life in a community with a disdainful view of Indian people as drunks, incapable of taking care of themselves, vulnerably accessible to the whims of authority and savagely disrespected. She cited a despairingly pervasive sentiment among women she knew, "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."

In addition to the direct assistance Lawrence and Lone Dog provided, they served as important and much needed culture brokers who had gained the trust of the people. They were able to help build confidence that things would get better, and insist that the people, themselves, act in their own best interest. Both clearly understood the assistance that would come from customary community behaviors to support those who helped themselves. These dynamics were clearly present when Sammy's mother decided to entrust the monthly benefits

check to her son. Their credibility was established because it was based in success. Their work illustrated the need for persistent challenge to an authority that evidences little interest in the lives of families, and at the same time, presented the opportunity to more broadly infiltrate political boundaries not well attended because of lack of interest and a willingness to abrogate responsibility.

AAIA staff attorney, Bertram Hirsch, proposed specific recommendations calling for enactment of a law that would withhold recognition of the legality of any placement unless made pursuant to an order of the tribal court, would authorize Indian tribes to license foster homes and accept state placement of Indian children, and the state funds to support them. He also recommended that federal funds flowing through the states to support placement of Indian children would only be available on the condition that placement priority be given to tribally-licensed foster homes. To make it possible for Indian families to provide adoption and foster care services, he called for monies to upgrade housing conditions, not only for those seeking to be substitute parents, but also for those families where improvements in their living conditions would significantly contribute to their stability. He proposed that the Department of the Interior and the Department of Health, Education and Welfare be requested to submit a program plan and budget to provide comprehensive child welfare and family protection services to sharply reduce child removals. He recommended that the law request that the departments submit regular statistics on the placement of Indian children and an evaluation of the application of existing federal law and regulations in reducing unwarranted and unnecessary placement. Finally, he called for authorization to make funds available for the establishment of a Division of Child Welfare and Family Protection Services within the Bureau of Indian Affairs.

One is struck by the tenacious presence of colonial rule in Indian country in the early 1970s where temporal boundaries framed “settler-state sovereignty as legitimate and indigenous people’s sovereignty as illegitimate, because the former is progressive and civil and the latter is archaic and savage” (Bruyneel 2007, 8). Intervention by the AAIA, Indian people and their supporters altered the balance of power and opened the battle between public and private agencies’ intent to “solidify inherently contingent boundaries and an indigenous effort to work on and across these boundaries . . . to gain the fullest possible expression of political identity, agency, and autonomy” (Bruyneel 2007, 6).

### **Chapter III:**

**When I look at our children, our Indian children, they are too few,  
but when one is taken away, that is too many.**

Melvin Tonasket

The Northwest leaders who testified before the Sub-Committee had already spent more than ten years defending and securing their peoples' rights in opposition to Washington state and federal government actions to gain greater control over tribal lands and resources. They were well aware of the struggle that would ensue to bring an end to abusive child welfare practices. In the same year these hearings were held, the treaty rights of Washington tribes were upheld in *United States v. Washington*, known as the "Boldt Decision,"<sup>14</sup> to fish in their usual and accustomed fishing places. The tribes' victory outraged and shocked the non-treaty fishermen and in the decision's wake a generalized hostility toward Indians took hold among many non-Indian people throughout the state.

Melvin Tonasket,<sup>15</sup> then Councilmember of the Colville Confederated Tribes and President of the National Congress of American Indians,<sup>16</sup> opened his testimony with a quote by an Apache in 1870, twenty years before the massacre at Wounded Knee and the end of the Indian wars.

In the budding and blooming days of Indian history, public sentiment was against the Indian, that they could not be civilized, they could not be educated, they were somewhat like human beings, but not quite within the line of human rights. The only hope was to let the bullets do the work, cover up the bloody deeds and say no more. God and humanity were forgotten. (U.S. Senate 1975, 223)

One hundred years later, the Apache's despairing statement was heard again in Tonasket's words.

Patient and silent and distant the Indian race has been these many years. There comes a time in human events when abandonment of racial responsibilities become very oppressive, unbearable, intolerable, and there seems to be no hope. A man must exert himself, speak and act. And, that is exactly what is happening today and has been happening ever since the 1700s. And yet, it seems there are always Indian leaders repeating and repeating. (U.S. Senate 1975, 223)

It was important to Tonasket that the Sub-Committee members understood that what he would tell them was from his personal experience as a Tribal Council member and as a member of his tribe.

There's no such thing on my reservation as an abandoned child because even if you are a one-eighth cousin, if that child is left alone, that's like your brother or your sister, or your son or your daughter. It's been that way since our old people can remember. (U.S. Senate 1975, 225)

Tonasket first learned of the problems faced by tribal children and their parents when, as a Councilman, he was asked for help. He began with the story of an Indian woman whose child was removed abruptly when a county caseworker came to her home and directed her to get her child ready to leave because she was being taken away. No explanation was given for the action, no court order, nothing. The mother requested help from Tonasket and he took her case to the full Council. It took the Tribal Council three weeks, in which they battled fiercely with the local social and health services agency, to return the child to her mother. In another case he learned that a ten-year old girl had been incarcerated in the Okanogan County jail for four days. A call to the sheriff confirmed that the child was in jail because she had run away from the white foster home where she lived. He was told that the child had previously run away from the foster home three times. Rather than determining her reasons for running away, the authorities chose to punish her by putting her in jail. He contacted St. Mary's Mission, an Indian boarding school on the reservation, to learn if there was room for her there. She would not be with relatives but she would be with other Indians and have

access to her relatives. But when he called the juvenile officer to inform him that a more appropriate placement had been arranged for her, the child was gone and never heard from again.

Three children were taken from a divorced mother whose former husband had moved away from the reservation and whose whereabouts were unknown. The juvenile officer secured approval from the tribal council to enforce a state court order that made them temporary wards of the court. Tonasket saw the action as a crime, because “if you think of all the children that would be taken away from the mother because of a divorce, our country would be overloaded with wards of the court” (U.S. Senate 1975, 224). He cited another case involving six children whose mother had died. The county moved in and made all six children wards of the court. The tribe has been fighting unsuccessfully for over two years to return the children to their father. When the children were taken away their father was employed at a local sawmill, supported his children well and involved them in all sorts of athletics. The tribe has never been able to determine why these children were removed. But his first encounter with the problems that tribal children faced in substitute care involved a teenage girl who had been taken from her parents. She was placed in a white group foster home off the reservation from which she ran away three times. With assistance from the BIA, he was able to locate an Indian foster home on the reservation where she could be placed. The state refused to let her be placed in the tribal home and instead sent her 130 miles away to another Catholic group home in Spokane; she ran away again. This time the state addressed the problem by sending her to a placement in Seattle, 250 miles away. The last case he presented to the Sub-Committee involved three children who had been made wards of the court and placed in foster care. Without approval from the court or the state, the



foster parents relocated to Lame Deer, Montana and took the children with them. The tribe informed the state that arrangements had been made for placement in an Indian foster home on the reservation. Tribal officials were told there was nothing the state could do because the children were no longer within its jurisdiction despite the fact that the adjudication of dependency had taken place in the state's court. The tribe enlisted the help of the Crow Tribe in Montana, the Federal Bureau of Investigation and the Bureau of Indian Affairs. Although the tribe fought for well over a year, neither the FBI, the BIA nor the State of Washington was able to get the children back. As a last resort, Tonasket took the case to Washington, D.C., where he was able to negotiate the children's release. In the meantime, a suitable home in Montana was found for them. This case pointed up the complicated jurisdictional issues involved in child placement.

Our concern is that after the kids left the State of Washington, they were completely out of everybody's jurisdiction, it seemed to us, and if that's the sort of care that an Indian child is going to get as a ward of the court, then I think that Indian tribes can provide a whole lot better. (U.S. Senate 1975, 225)

While it appeared to the state that it was a simple thing to take a child away, it was not clear that state welfare workers had any understanding of the complex conflicts the child experienced in removal and placement. As Tonasket saw it, "as soon as they find out who they are, they come back when they get old enough to hitchhike."

We've had that happen in the last couple of years. We've had a young gentleman who just turned 18 years old, who found out he was an Indian. He was adopted to a non-Indian family and lived in Florida all his life. He left that family to come home. Didn't know who he was. Didn't know who his family was, but he was home. (U.S. Senate 1975, 225)

Tonasket stated that the Colville people shared concern with the Yakima people regarding the institutional abuse related to the depredation of minors' funds.

I strongly feel and our council strongly feels that if a family wants to adopt or take an Indian child into its home, and there's no other place to go, then that family should be able to support that child and that child should not have to support itself. (U.S. Senate 1975, 226)

He described a BIA social services department that was disabled financially and otherwise:

I think the Bureau of Indian Affairs must take a more active role to take over the responsibility and jurisdiction of Indian children on welfare, for welfare purposes, and more appropriations must be given to the Bureau of Indian Affairs to a total social services program.

Right now, the social services branch of the Bureau of Indian Affairs is just a token office as far as we're concerned in Colville. We have no money to operate anything. They can't even assist us in getting Indian group foster homes developed. (U.S. Senate 1975, 226)

Tonasket pointed out that it was necessary to have a fully-functioning Branch of Social Services to provide immediate assistance to families and to serve as a buffer between the state and the tribe. It is imperative that the BIA step up to its responsibility to protect the tribe's resources. He was concerned that the Sub-Committee have a clear picture of the problems the tribe experienced in its effort to care for their children but he also acknowledged that it was essential that all concerned work together to resolve the problems. "We must correct the whole system on the reservation to properly eliminate our social problems, and I think that that really attacks Public Law 83-280" (U.S. Senate 1975, 226).

The consequences of the law have been devastating.

The Colville Tribes and the tribes that are under Public Law 83-280, have almost lost their handhold and the responsibility and the ability to take care of their own people. (U.S. Senate 1975, 226)

The devastation caused by the tribe's loss of jurisdiction over their own people has been magnified by the lack of preventive or rehabilitative services available to their families. State caseworkers, for the most part, have been unable to relate to the families and remain

incapable or refuse to explain the consequences of child removal or the procedures to regain custody of the children. He found it difficult to understand why the first recourse to family difficulty or hardship was to uproot the children from their culture, relatives, and their homelands. Tonasket called for “special training and sensitivity training to potential case workers that come to Indian country, or near Indian country where they’re going to be servicing Indian people” (U.S. Senate 1975, 227).

There are not group homes in the State of Washington, not one, or no Indian group homes in the State of Washington. There is a tremendous need of Indian foster homes and for people on reservations, or Indian families who can be taught, or shown, or assisted on how to become a foster home or a receiving home. (U.S. Senate 1975, 227)

Ending his statement, Tonasket told the Sub-Committee that he could spend the rest of the day describing the problems of Indian children, the social and welfare problems that the families confront and the heartbreak and despair they experience.

Senator Bartlett queried Tonasket about the tribe’s general overall effort to address the problems with proper authorities to evaluate their approaches, efforts to get to the root of the problems, or what had been done to eliminate the problems. Tonasket explained

the very first thing that we had done that we thought in the long run would help alleviate any future problems, we got the local department of social and health services to send some of their case workers and administrators to the reservation and we conducted an Indian awareness workshop that lasted many a week or even up to a month.

We went back to our State capitol, Olympia, a number of times to try to educate the top level people in social services. We set up, or were instrumental in getting Indian desks set up in the department of social and health services to make sure that policies and procedures and directions of the department that affected Indians in any way, that their trust rights, their lands and their relationship with their tribe would be protected.

The other portion of this was kind of a police function, going out to the local office to make sure that these policies and bylines developed by the Indian desks were followed through.

It's like the educational structure, I guess. It's really hard to break it down. It's easy to get somebody into your workshop and preach to them and give them samples, but 2 or 3 days later, they seem to forget it. (U.S. Senate 1975, 227)

Bartlett wanted to know what the tribe had done to resist removal of the children or to deal with the problems that might lead to removal. While he could not speak for other tribes, Tonasket replied that over the last four years the Colville tribe had made considerable effort to stop the practice of removal of their children to non-Indian adoptive and foster homes.

One of the first things that we've done, and it might seem strange and then again it might not seem strange, the first thing that we've done is we stopped allowing dividend payments, per capita payments, claims money payment to be issued to the foster home or to the adopted home. We kept that money and the individual Indian moneys [sic] accounts in our office there until the child reaches the age of majority.

Immediately, we've seen a slowdown of non-Indians taking Indians into their homes as foster children. (U.S. Senate 1975, 228)

The Senator asked him to repeat what he had said because he didn't quite understand it.

It happened in the past, where the Bureau of Indian Affairs would issue checks from the IIM, individual Indian money accounts to the individual, to a foster parent or the adoptive parent. And, there are many instances where those moneys [sic] of the child were used for their own maintenance, besides the State paying foster parents for having the child.

When we cut off the child's money to the foster or adoptive parent, her own money from the tribe, there was a decrease of non-Indians who wanted to adopt or take any children into their foster homes.

It seems bad, a sin, that the only reason that a person wanted the children in their homes is to get paid for it and not because of love, or not because of the need for sharing. I think if everyone would do that, you would see a decline and I would highly recommend that. (U.S. Senate 1975, 228)

Tonasket described other efforts being made. The tribes in the state of Washington were working together with the Department of Social and Health Services (DSHS) to

develop an understanding of the problems. At that time there was a study underway to identify every Indian child in substitute care, his or her whereabouts and to evaluate the benefit or detriment of the placement. Bartlett asked about the tribe's effort to develop Indian foster homes. Tonasket responded that the tribe was making strong efforts to recruit foster parents and he guessed that the numbers of foster parents on the reservation has increased approximately 300 percent.

One of the reasons we were able to is because when I first got on the tribal council 4 years ago, our unemployment was about 64 percent of the available work force. Our family average income was about \$2,050 a year for an average family of six. Over half of our people who lived on the reservation needed a home to live in, either they didn't have a home or they were with somebody else. There was as high as three or four families living in one dwelling. That was one reason that we didn't have enough Indians that were qualified for foster parents.

Today, we have reduced our unemployment to approximately 22 to 24 percent and that houses are being built all over the reservation and we just have a new housing program approved by HUD<sup>17</sup> last year that will be starting this year, that will also assist us in having Indian parents as qualified foster parents by just the combination of things having happened. (U.S. Senate 1975, 229)

Tonasket explained to the Sub-Committee that, while increased housing is essential to the development of Indian foster homes, it is only part of the solution. He believed that jobs were more important.

I think it's more important to have a family to be able to support itself and housing will come automatically if a person can make enough money to feed themselves first and then find a home and build a home second.

What we've found is that at home. It's just made it a lot easier for us to sit down and try to show the courts, the juvenile departments, an Indian home, even though it might not be up to par according to white standards, as long as parents can support themselves financially and give the child love, that's what is important, and we're finally starting to get people to listen to that philosophy. (U.S. Senate 1975, 229)

Robert E. Lewis, Zuni Pueblo Governor and Chairman of the National Tribal Chairmen's Association (NTCA),<sup>18</sup> read a prepared statement and responded to Sub-Committee questions. In the early part of his remarks, Lewis conveyed that Indian country is deeply concerned about child removal and has an understanding of the complex conditions that underlie the problems that families face. He submitted the first copy of a report entitled, Development of a Prototype for Indian Children with Special Needs, a BIA funded project, contracted to the North American Indian Women's Association (NAIWA).<sup>19</sup> In the latter part of his testimony Lewis responded to Sub-Committee questions addressing particular problems, both positive and negative, wherein the Pueblo of Zuni grapples with its responsibility to bring the greatest benefit to the people. He first described the complexly-tensive situations faced by tribes everywhere.

There is a growing concern and anguish in Indian country over the increasing numbers of Indian children being removed from their natural homes. Removal of the children by BIA social workers and county welfare workers is regarded as the most frequently related to problems generated by abuse of alcohol, which is prevalent in Indian country.

Poor living conditions, unemployment on reservations, and other factors create breakdown of the concept of the extended family. No longer is there a willing grandmother, aunt, or sister who will assume child care for a relative. Often a sick or distraught Indian mother seeks to place her children off the reservation in a non-Indian home because of alienation with her own relatives. (U.S. Senate 1975, 253)

Life becomes very complicated and difficult for parents and children when the parents are living on the reservation and the child resides in an off-reservation home. Eligibility for health care and education benefits come into question as state and county officials explore funding sources, such as Indian Health Service (IHS)<sup>20</sup> and the BIA, to reduce the state government's financial liability. Parents face a daunting effort to get their children back from a welfare department that often neglects or refuses to provide them with

necessary information. Lewis expressed deep concern that the message given to parents who encounter hardship and trouble caring for their child is that they are “bad parents.”

I want to emphasize the tremendous psychological impact on the Indian parents who are in effect told they are “bad parents.” The loss they suffer when their children are removed has an impact on them the rest of their lives. (U.S. Senate 1975, 253)

Information that twenty-five percent of native children were in substitute care caused him considerable distress and he informed the Sub-Committee that the children incur severe psychological damage for the rest of their lives as explained to him by an Indian Health Services (IHS) physician.

An IHS consulting psychiatrist describes this as “lack of parenting” and the results of this loss leave an adult with a sense of incompleteness. There is some indication that this loss leads to alcoholism and other psychological damage. (U.S. Senate 1975, 253)

Lewis cited complex developmental tasks made more difficult when a child has to adjust to a new way of life in a different culture, confronting language barriers, accommodating to a new religion and learning about new foods, and where all too often they are faced with overt and covert racism.

Some families, hopefully rare, assume care for Indian children for reasons of religious zeal, or even more appalling, to show off their liberal ways. This is called “rent an Indian program” by an Indian professional who is aware of such liberal practices. (U.S. Senate 1975, 254)

Lewis strongly emphasized to the Sub-Committee that removal of Indian children from their reservation homelands contributes directly to the destruction of the Indian family and there is broad recognition that the destruction of the family is one of the most serious problems in Indian country. He called attention to underlying conditions that facilitate child removal and cited a lack of resources and capability at the reservation level similar to those described by Tonasket. He was deeply concerned that “[e]mphasis 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” (U.S. Senate 1975, 254). He encouraged the Sub-Committee members to acquaint themselves with the NAIWA report and suggested that they would find helpful guidance from its view and recommendations.

Senator Bartlett asked if NTCA had made efforts to study the area, and if so, what areas of concentration or what areas of concern have been discussed, and are there efforts underway to have an overall effort by all the tribes in being aware of the problem of taking action to reduce the number of young people who are placed in foster homes, to increase the number of Indian families available for foster parents and so on? (U.S. Senate 1975, 255)

Governor Lewis explained that destructive practices of Indian child removal are recognized nation-wide and that he could not speak for individual tribal reservations but would respond from the vantage point of his Zuni homeland. All tribes share basic problems in the provision of social services in their communities, and each tribe brings its customary resources to service provision. As an example, he explained that “he has no record, as far as my people are concerned, of having orphans . . .” because of the structure of the society.

We are close in family relationships and kinships, blood kinship through the Kiva groups and Medicine Lodge groups, so we are relatives to one another on down the line.

Even though affine relationships are not blood kinships they are this close in caring for one another. Our family, before we got into the housing program, were also extended families. Sometimes even as many as four families living in one dwelling. This progress that any tribe can make, or have concern themselves with, in social problems is always an aftermath and we are already, as a tribe, concerned about what may happen and we are trying to prepare ourselves to take care of these situations as they come.

We are concerned also with the old people. So, we are making plans now to set up care centers and foster home type of facilities, even maybe on a temporary basis for neglected children that may come on as we go along. And, also take care of



our older people who need to have supervised feedings on many occasions, where the families are not able to do this.

We are hoping that in this way we can keep them close to home, or at home instead of sending them out because they cannot speak the English language and they have no interpreters away from home to interpret their needs and wants. (U.S. Senate 1975, 256)

Governor Lewis informed the Sub-Committee that Zuni Pueblo, which numbered 6,000 people, did not have any children in foster care. Bartlett asked for Lewis' observations about the problems of boarding schools, cited in earlier testimony, that many believe provide a poor educational experience and are psychologically damaging. He replied that the pueblo people had been observing the boarding schools near their home area and see that "there is a lack of assistance to invite student interest to continue to keep up their studies" and "a laxity in areas of discipline and the waste of time that we observe that is going on as far as our young people are concerned concerns us very deeply" (U.S. Senate 1975, 256). Lewis attended boarding school from age six to eighteen and remembered the rigid discipline and harsh treatment. But these are different times, and he knows that instructional methods have improved to create a better learning environment for children, and stressed the need for the application of improved methods in schools attended by Indian children. He supported more freedom for teachers in these schools to use innovative methods that stimulate student interest. He addressed the problem of family erosion relative to boarding schools and described a program at Albuquerque Indian School, a school attended by many Zuni students, which buses the children home each weekend. This program is especially helpful to those families who are financially-strapped, and his people see it as

. . . looking forward to keeping the family relationship in a closer well. Certainly my people have a year-round religious cycle of activities going on, and the students participate in observances, the boys take part.

This trip home furnished by the Government is something that really has made many of my people thankful for. (U.S. Senate 1975, 257)

He told Senator Bartlett that currently there were sixty-eight Zuni students in boarding schools in Albuquerque, Phoenix and Santa Fe. He concluded his testimony by explaining that at Zuni a decision to enroll in boarding school requires the participation of the tribal officials, the parents and the student. While parental concurrence with the student's request is not required, it is more common than not. The decision-making structure and process communicate to the students that all the people have an interest in them and are behind them by reinforcing the customary kinship life ways of the society.

Melvin Sampson, Councilman from the Yakima Indian Nation, was accompanied by Louie Cloud, Vice-Chairman of the Yakima Tribal Council, who over the past ten years had had considerable experience with the impact of P.L. 83-280 on the families of the Yakima Indian Nation. Sampson testified that during the past three years as a Councilman he had been confronted by several cases of Yakima children who had been placed in non-Indian foster and adoptive homes. In his view, the children had been damaged by the placements because they had not been understood, and the difference in their appearance from that of their adoptive parents had caused them much suffering. He understood that the original intent of the placement may have been meritorious but he believed

the true factual thrust of the procedure is wrong. It is just as wrong for me to go out into white status quo and pick up a white child, taking him back to my Indian village and telling my Indian brothers, this child is going to be an Indian. There isn't enough sun in the world to brown him, just as there isn't enough bleach in the world to make us white. (U.S. Senate 1975, 116)

He believed that the birth control pill and abortion created a great demand for children and Indian children were the targets of this demand. He expressed concern that the standards for

placement established by public and private agencies prevented many Indian people from qualifying to provide homes to Indian children in need. It was clear to him that the primary consideration of these agencies was the financial status of the applicant families, which meant that Indian families would be left out, despite the fact that history has proven cultural identity to be of major importance to the Indian person.

Sampson was particularly concerned about the damaging effects of P. L. 83-280 and he stated that it was the position of his people that the law was contrary to the best interests of Indians and the concept of self-determination. He asserted that the Yakima Indian Nation did not need the services of state and county governments and informed the panel that the Yakimas had their own police force, jail, and court system, and a corrective facility and treatment center were under construction. The operations of all these resources were funded by the tribe. He posited that if the sincere intent is for the best overall welfare of Indian children, the tribe feels that it possesses the capability to carry out the responsibility with total sincerity. To demonstrate the tribe's concern and knowledge of the circumstances of children placed in non-Indian homes, he presented the story of Don James Morrison, who had been adopted when he was a young child.

When Don was about six or seven he noticed that his skin was brown and darker than his parents. When he inquired about the difference, his parents told him that he had been adopted and his natural parents had died in an automobile accident. His second grade teacher told him that he was an Indian, which was confirmed by his parents when he was nine or ten but they did not identify his tribal affiliation or where he was from. He described a life filled with abuse from an adoptive father who rejected him. When he was quite young he was locked in his room as punishment and in the darkness imagined that the washing machine in the closet was a monster. He cried to be let out, his father came to the room and he ran to him wanting to be picked up but his father only locked the door again. He was rescued by his mother. He remembers a fifty gallon drum filled with water and rocks being dumped over his head as punishment for having put the rocks in the barrel. He recalled a beating with three regular garden hoses tied together because he had climbed a crab apple tree and

another beating when he used some oil on a chain he shouldn't have. His father told him to take off his belt so he could whip him with it but he was too slow so his father retrieved a big belt with a buckle on it which he used on him a long time. He remembers rolling around on the ground to get away and when his father was finished beating him there was blood on his back. On another occasion when he did not respond quickly to an order, his father picked him up from the chair and threw him against the wall dislodging his shoulder blade which has remained that way since the incident. At eight years old, he was required to do manual labor, such as digging ditches, digging up tree stumps and cutting brush. When he was a junior in high school he asked if he could go to an Indian school, where he thought he would be better off and could get away from the feeling of rejection from his father and kids at school. He was not allowed to go.

I recall those incidents as part of those that were not so bad. There are a lot of abuses that I took mentally and physically which I just want to forget ever happened. It is of my opinion that he tried to break me down mentally and physically. He was forever putting me down in front of his friends and anybody that was around at the time. It was not until just before he died that he realized that he had treated me very badly. He had never wanted me from the very beginning. There was no explanation of Indian language, culture, history, or religion after finding out that I was of Indian descent. My adoptive mother, was like a real mother should be; she protected and guided me through my years and life. Her protection of me from my adoptive father was what kept me going. It is of my opinion that it is too tough for an Indian child to live in a non-Indian home. After they find out they are an Indian, there should be an Indian around that they can talk to. (U.S. Senate 1975, 117-118)

Sampson believed that this young man's experience is one that is shared by many Indian children who have been adopted by non-Indian families.

Sampson cited another problem of great concern to the Yakima Tribal Council involving the appropriation by foster and adoptive parents of the child's income derived from dividends, leases and settlements. These monies are deposited in the child's Individual Indian Money (IIM) account, which is administered by the BIA under regulations contained in the Code of Federal Regulations (CFR) 25:104.4 which gives the local BIA agency superintendent disbursement authority. The tribe had concern that monies were being disbursed inappropriately, and in some instances the child's account was being depleted by these requests. The Tribal Council held that it was the responsible body for the accounts of

minors who were in foster or adoptive placement. Sampson stated the Council's position in the matter.

It is the consensus of the Yakima Tribal Council that we are responsible for the minor enrolled members' IIM accounts, who are adopted or under foster care. Initially, when adoptive parents adopt an Indian child, they stipulate that they are well able and anxious to care for, maintain, and educate the said minor and to treat her or him in all respects as if they were their lawful child. We maintain that the money should be kept in their account until they are the age of majority and until released by the tribe. The child should have the choice of determining what they want to do with their money when they reach the age of majority. (U.S. Senate 1975, 118)

It was the tribe's experience that when adoptive parents learn that the child has monies in an IIM account, they begin to devise means to get access to the money. Sampson ended his testimony with the experience of a young Yakima girl who had been adopted as an infant by non-Indian parents.

Through inheritance, from her grandmother on her mother's side, she receives a notable amount in lease income besides the regular tribal dividend and what settlement payments that have been disbursed. Her adopted parents took out a guardianship of her estate. The Bureau releases her money to the parents, or the estate, from which she paid \$60 a month for her maintenance, plus school, medical, and lawyer fees were also taken from her estate. This is really a sickening and saddening affair. These types of mistakes would not happen if the tribal council had total control of their minor adopted children's accounts, as it should be. (U.S. Senate 1975, 118)

Sampson brought with him the written testimony of Roger Jim, Sr. who was not able to attend the hearings. Jim was a member of the Yakima Tribal Council, Chairman of the tribe's Health, Education and Welfare Committee, and President of the Affiliated Tribes of Northwest Indians, an organization of the tribes in Washington, Oregon, Idaho and north-western Montana. He wrote that his first encounter as HEW Chairman with what he described as a bad situation was in 1969, when he learned about two Yakima children who had been adopted by non-Indian people from the states of Maine and North Carolina. He

understood the law required that a search be made for relatives who could care for them before placement with non-Indian families, but this was not done and their family members did not have the opportunity to claim them. These children, like others who had been adopted or were in foster care, had IIM accounts that were under the control of the BIA. The Yakima Nation became concerned about the endless stream of requests for children's monies from foster and adoptive parents and decided to stop the depredation of the children's funds. A meeting was held with the Social Services Branch of the Yakima Indian Agency (BIA) and it was learned that the Bureau's rules perpetuated the bad situation. The CFR 25:104.4 allowed that the monies could be disbursed to foster or adoptive parents and guardians at the discretion of the agency superintendent or designee. The tribe held that the superintendent had too much power over the children's monies and it was believed the manner in which disbursements of these funds were made caused the child to pay the guardians for foster care or adoption. This was contrary to the tribe's understanding that adoptive parents had to establish, before an adoption could be granted, they were able to take care of the child financially, and that the children did not have to pay for their maintenance. In the tribe's opinion, Indian children were sought after by non-Indians for their dividends and many times were taken in for that reason only. He described the tribe's efforts to end depredation of the children's IIM accounts.

The Tribe passed a resolution to require that all monies of adoptive and foster children be put in their IIM accounts and be available only when the child becomes of age, 18 years; although, at age 14, the BIA recognizes them to be able to draw from their own accounts.

This move created quite a stir in BIA offices, clear up to Washington, D.C.

It is felt in Indian country and the Yakima Nation that the BIA has assisted in this practice of displacing Indian children from their culture and their homeland and

relatives. This must stop and the authority under CFR 104.4 should be that the superintendent of an Indian agency respect the wishes of an Indian Tribal Council Resolution, which is only in protection of their Indian children.

The Congress must recognize that a tribe acting for the benefit of their future people must be honored and supported. And efforts made in future laws that will affect the welfare of Indian children be in the best interest as expressed by Tribal leaders. The special unique status of Indian children are [sic] that they are born with a heritage that they can be proud of and must know of it while they are growing and that growing must be in the Indian environment and culture, religion, life style must be evident and within their grasp. (U.S. Senate 1975, 119-120)

Tribal officials strongly pressed their concerns regarding the agency superintendent's authority to disburse the children's funds but were told that the rules were the rules and he was entirely within his discretionary authority. A memorandum to Jim received from T. W. Taylor, Office of the Secretary, U.S. Department of the Interior informed the HEW Committee that the Yakima Tribal Council resolution T-48-73, which the government took most seriously, was not legally binding on the agency superintendent and stated further

that the Yakima Agency Superintendent is acting properly in his capacity as the designated representative of the Secretary of the Interior with regard to disbursements of IIM minors' funds.

Please be assured that we have no desire to affront the Yakima Tribal Council. We share with you your concern about the possibility that minors' IIM funds may not always be used in the minors' best interests. Accordingly, we are suggesting to the Yakima Agency Superintendent that he review existing plans for disbursement of monies from the IIM accounts of minors who are in foster care and that he take such steps as may be necessary to insure that these plans and subsequent disbursement of monies are in fact in the best interests of the minors concerned. However, any action taken by him in this regard must necessarily be in accordance with his delegated sole responsibilities as indicated above. (U.S. Senate 1975, 121)

It was business as usual and the tribe did not have confidence that the Agency Superintendent's actions would be guided by the children's best interests. P.L. 83-280 made it easy for the Agency Superintendent not to take action regarding the children's IIM

accounts or their treatment in substitute care because the law had transferred that responsibility from the Department of the Interior to the State of Washington.

The Tribal Council decided that it would take action on its own and began by asking the Yakima Indian Agency Social Worker to provide them with the names of all Yakima children in adoptive and foster care placements together with the names and addresses of all natural, adoptive and foster parents of the children. A response from the Agency Superintendent apprised them of the restrictions that did not permit disclosure of the information requested.

The identity of both the natural and adoptive parents must remain confidential. Both sets of parents as well as the adoptive child are guaranteed that confidentiality by the court which seals records of adoptive actions and normally does not make them available except through a court order. Consequently, we do not release such information except to the court or under its direction. (U.S. Senate 1975, 120)

However, he did provide the Council with some information about the children. The data revealed that eighty-eight Yakima children had been adopted, twenty-two of them by Indian parents and sixty-six by non-Indian families and that eleven of the families had adopted two or more children. Twenty-six of the children were eighteen or older, forty-four were under eighteen but it was not possible to determine the ages of eighteen of the children. Most of the children had been placed in homes in the Pacific Northwest, mainly Oregon and Washington, but the rest were scattered throughout the country in states such as Mississippi, North Carolina and Nebraska. A total of eighty-one children were in foster care but their whereabouts were not disclosed. This less than skeletal information raised many questions and heightened the Yakima tribe's concern about the welfare of their children.

The tribal council decided that it would take action on its own rather than rely on the Bureau, and focused its efforts on the State of Washington to obtain information about the



numbers and status of Yakima children who had been taken into state custody and placed for adoption or in foster care. Concomitant actions by other tribes led to state-wide meetings in which all the tribes sought similar information about their children. The Department could not provide information on many children who the tribes knew had been taken into custody. To resolve the problem, the tribes demanded changes in the state's child welfare administrative codes and regulations to assure that the status and whereabouts of all their children could be determined. The changes in the codes and regulations became effective in 1976 and contained directives that would later be mirrored in the Indian Child Welfare Act of 1978.

To demonstrate to the Sub-Committee that the problems the tribe faced were long-standing, Jim included a statement from Lila G. Whalawitsa, Yakima Tribal Probation and Parole Officer, who, over the years, had come into contact with many Yakima children who had been removed from their families. She stated that physical and sexual abuse and mismanagement of the children's monies had been known to the tribal court since 1956, and she provided examples from several cases to illustrate the seriousness of the problems the children faced. She cited the case of two boys, ages 8 and 9, who were sexually abused by their elderly non-Indian foster parents. When the abuse was substantiated the children were immediately removed. As part of the investigation it was learned that the foster parents were receiving the children's per capita payments in addition to payments made to them by the state for their care. In another case, a 15 year old girl was impregnated by her non-Indian foster father. It was not until her pregnancy was apparent that the abuse came to light. She had not disclosed the abuse to anyone out of fear of what her foster father would do. The

abuse was devastating to the young girl and she had not been able to overcome the trauma she experienced. Whalawitsa wrote that

[t]here are so many cases where removal from non-Indian foster homes were [sic] done quietly without any notification either from the welfare office or foster parents that the child was placed in another foster home. So funds were continuously mailed upon request to the foster parents who first had the children.

With deep frustration, she asked.

Why are these funds being released to the foster and adoptive parents? Is it because they are Indian children and there is an Indian Agency, and they think all Indians receive per capita and money through the Agency that they take children to get at the money? There should be a follow-up on all of our Indian children in foster or adoptive homes once a year, or a report should be sent in by a caseworker as to where the children are. Even every six (6) months wouldn't hurt.

Just what is [sic] the Agency Social Workers doing? Are they helping our people and minor children or not? (U.S. Senate 1975, 122)

Jim's statement was submitted for the record.

The testimony provided by the Northwest leadership demonstrated the problems that issued from the enactment of P.L. 83-280 that not only eroded tribal authority and sovereignty but brought terrible tragedy into the lives of their people. The state held civil authority over domestic relations and the federal government held authority over criminal matters. During these times, many of the tribal judges were hired by the Bureau of Indian Affairs, not the tribes, although they held the title of tribal judge. Tonasket described the very difficult environment confronting the tribes.

The Colville Tribes and the tribes that are under Public Law 83-280, have almost lost their handhold and the responsibility and the ability to take care of their own people. (U.S. Senate 1975, 226)

These were tribal leaders whose efforts to help families care for their children were continually thwarted by divestiture of their authority by actions of federal and state courts

and agencies. Over and again, they found it impossible to safeguard families and prevent removal of their children. In the years that led up to the hearings, few tribes in the country had social services or family and children's programs; most of these programs came into operation after the passage of the Indian Self-Determination and Education Assistance Act in 1975, when tribes and Indian organizations could contract with the federal government to administer these programs. Because the state had jurisdiction over child welfare matters, the Bureau of Indian Affairs' Branch of Social Services was able to reduce its responsibility to the tribal community and confine its activity to the General Assistance program, burials and incidental assistance to families and children. Compounding the disconnectedness between the peoples' needs and Bureau resources was the fact that the majority of social services' personnel were untrained in the field of social welfare and had little comprehension of the lasting damage being done to the children and their families. As is clear from the accounts of children's experiences, the situation was further complicated by state personnel who had little or no understanding of tribal norms and social mores and were unable to see and make use of the underlying traditions and practices that had sustained the people for millennia. Regrettably, blindness to tribal resources was shared by Bureau personnel and encouraged complicity in harmful child welfare practices.

The inability of Indian parents to be licensed by the state as foster and adoptive parents crippled the tribal community's capacity to address the problems their people were experiencing because the solution to problems was determined by outside authority. The assistance and knowledge they could bring to understanding family dynamics in the tribal community was lost. Denial of the opportunity and responsibility to help a fellow tribal member was an insult in the eyes of many who viewed it as continued disembowelment of

tribal society. Tribal leadership found particularly distressing the depredation of the funds of children in state custody or who had been adopted. Through the years the tribes had been assured that the people who adopted their children could care for them and that those in foster care would be supported by the state. Yet, funds from the children's Individual Indian Money accounts were disbursed on a regular basis by the BIA agency superintendent to both adoptive and foster parents, and in some instances to substitute parents who no longer had the children in their care. Tribal leaders testified their children were no longer as attractive to outsiders when a tribe gained control of IIM disbursements. It was difficult for the people to accept that the view of their children's value was, in large part, determined by how much extra money the child could bring to the caretaker's household.

The different responses that Colville and Yakima received regarding their concerns about children's IIM accounts revealed a historical feature in Indian affairs administration. Colville successfully gained control of these accounts, while Yakima did not. The Bureau agencies on these reservations are within one-hundred miles of each other, yet there was no indication from the testimony that any inter-agency discussions about the depredation of the children's funds or abusive child welfare practices were held. In the culture of the Bureau's organization a strong territorial delineation among agencies encourages a view of Indian affairs defined by physical boundaries. The problems with the IIM funds were obviously systemic, yet agency Bureau officials apparently did not consult with each other or call for review of practices by the Bureau's Area Office staff. Tonasket described the BIA Social Services Branch on Colville as a "token office" without money to operate and unable to offer any assistance to the tribe to develop group foster homes that could provide the transitional space necessary for children being repatriated into the tribal community. The confluence of

organizational territoriality and absence of professional capacity created conditions that limited the flow of information into the community and reinforced governmental control, a paradigm extensively illustrated in the Meriam Report. Governmental advocacy required to protect the children as the tribes' greatest natural resource did not occur. The tribes' concerns about the children and their resources were part of the larger issue of the trust relationship between the tribes and the United States government which assured protection of the tribes' resources. The chipping away of tribal resources, in this case the children's IIM funds, was seen by many as a continuing effort by outside public and private interests to diminish tribal sovereignty and to divest the people of their lands and means for a livelihood.

It was a sobering acknowledgment in Indian Country to be confronted with the reality that one out of every four Indian children had been removed from family and homeland and that eighty-five percent of those children lived in non-Indian homes and institutions. The threat posed to Indian country was pervasive and was broadly recognized as a danger to the integrity of tribal life itself. Both Tonasket and Governor Lewis spoke to aspects of tribal life that were threatened and violated. The importance of the tribal ethos that the people will care for and help each other was not understood by a general public whose nuclear view of the family did not comprehend the power of reciprocity in extended family relationships. But Indians understood clearly the damage inflicted by abusive child welfare practices that separated families and drove many Indians to lives of despair and hopelessness, and rendered them incapable of meeting their responsibilities to assure the continuation of the people. Colville's view of relationship meant that "even if you are a one-eighth cousin, if that child is left alone, that's like your brother or your sister, or your son or your daughter. It's been that way since our old people can remember" (U.S. Senate 1975, 225). Zuni Governor Lewis

explained that Zuni society is composed of both blood and affine relationships that are closely held, “so that we are relatives to one another on down the line” (U.S. Senate 1975, 256). The charge that tribes were only interested in the children to increase tribal enrollments was completely blind to the structure of tribal society and its inherent resources.

## Chapter IV:

**“ . . . what it amounts to is that in lieu of subsidy for what used to be guns and soldiers we’re losing our kids by law, legislation and policy . . . ”**

Leon Cook, Red Lake Band of Ojibwe

Contrary to popular perception, there is not a clear-cut distinction between Indian people who live on or off the reservations. Tribal people living in off-reservation areas rely on the sovereign status of their tribes to assert their rights, maintain participation in religious-ceremonial functions and turn to their tribal governments for political and, on occasion, financial support to provide needed services. The families and children who were the focus of the off-reservation leadership were the progeny of native people who had come to the cities over several decades yet lived a marginal existence that meant they were vulnerable socially and economically. In his book, The New Indians (1968), Stan Steiner remarks on the particular problems these families encountered, in large part because they are invisible. Many Indians who could “pass” as whites found it economically or socially desirable to do so. Those who could not “pass” were counted as “non-white,” a nearly invisible shade. The BIA offered little help because of its focus on the reservation Indian who was being hard-pressed to leave the reservation. When the individual left the reservation, eligibility for direct services from the Bureau ended. Cherokee Mary Lou Payne explained that it’s not that the people wanted to leave the reservation but that they needed jobs and an income. “Everyone was *encouraged* to go away. To leave. To join the ‘rat race,’ really. What they call the ‘mainstream’” (Steiner 1968, 177-179). But as the testimony reveals, these individuals were denied the mainstream resources needed to stabilize their families and prevent removal of their children.

The tensions between the Indian and non-Indian communities intensified during the 1960s were high as the upper-Midwest tribes responded to attacks on their sovereignty and natural resources, and the off-reservation people fought to establish a footing in urban areas. Battle lines were drawn and the consequent animosity played itself out in prejudicial and racist behaviors. Off-reservation people in the upper-Midwest had for many years struggled mightily to maintain their rights as tribal people and were disheartened by the ineffectiveness of their tribal governments to protect them. In 1968, the American Indian Movement (AIM) was founded in Minneapolis in response to conditions in which Indian people felt under siege. AIM chapters were quickly established in cities throughout the country, including Cleveland, Denver and Milwaukee (Nagel 1997, 166). The organization's founding was prefaced by the creation of a Minneapolis AIM Patrol to address issues of extensive policy brutality. In its early days, AIM used social protest as opposed to established political procedures in its representation of urban Indian concerns and interests. Among its adherents were disenfranchised reservation Indians, many of whom "were unfriendly to the established tribal governments and their leaders" (Johnson, Nagel and Champagne 1997, 13).

The tribal governments did not have jurisdictional authority or the resources to assist their people with domestic relations matters, and the state governments chose to sluff off responsibility to help Indian families and their children. These conditions contributed to tensions between reservation and off-reservation people because many believed that the tribes were falling prey to the long-standing federal government effort to separate the people from their homelands and the basis of their identity. As a result, many people felt they had nowhere to turn in time of need, and they were threatened by the possibility that their essential connection to their people and homeland would be dissolved. In Termination and



Relocation: Federal Indian Policy, 1945-1960, historian Donald Fixico notes that “one of the chief objectives of the relocation program was the desegregation of the reservation Indian population” (Fixico 1986, 155). But Indian people moving to the cities did not assimilate into urban neighborhoods and instead established “Indian ghettos” that provided a sense of community but at the same time “fostered feelings of isolation, loneliness and estrangement for Native Americans” (Fixico 1986, 155). Some turned to alcohol to escape the competitiveness and social isolation of their new home, exacerbating family problems and increasing their vulnerability to state intervention. These difficulties, combined with substandard living environments, reinforced society’s view of lazy, drunken Indians whose children would be better off reared by those who could hasten their entrance into the mainstream society.

The leaders who presented testimony were individuals who themselves had lost children or experienced non-Indian substitute care and were determined to end damaging child welfare practices. In true Anglo-American style, these individuals pulled themselves up by their bootstraps within the context of the age-old tribal ethos “that the people help each other.” The success of their efforts to forge officially-recognized Indian agencies relied heavily on the tribal ethos as the message in community organizing efforts to develop volunteers and substitute care resources. The militant strains that ran through the testimony were a demonstration of the stands off-reservation people had to take to defend themselves and gave assurance that the leadership would not back down.

Leon Cook,<sup>21</sup> a social worker, who directed the Minnesota Department of Indian Work provided the Sub-Committee with an overview of the difficult circumstances of Indian people both on and off-reservation in his state. He introduced his statement with the lament

that Indians have over many years raised their voices in protest of what is believed to be systematic forms of genocide. He explained that what is being experienced now is “what we call in Indian country, an infant crisis . . . another form of that systematic form of genocide of our Indian children” (U.S. Senate 1975, 146). He amplified his comment.

. . . what it amounts to is that in lieu of subsidy for what used to be guns and soldiers we’re losing our kids by law, legislation and policy that alluded to the impact of Public Law 280. We’re talking about BIA, Federal, State, county policy as it relates to adoption and foster home placement of Indian children and we’re looking at the laws within each respective State that has Indians and has to do with relinquishing of Indian rights and Indian children.

One suggestion that I might make and has been alluded to in your bill S.J. Res. 133, I’m sure they intend to review the question of sovereignty of Indian tribes. In that respect, I think both the Congress, on the one hand, and the executive branch of Government on the other, as well as the Indian community have been somewhat remiss if the Indian community is to subscribe to and frivolize their sovereignty. One of the difficulties is that the parties are not really utilizing their sovereignty when it comes to the adoption of Indian children or their placement. (U.S. Senate 1975, 146)

For the slightest reason whatever Indian children are systematically stolen from the parents under one guise or another, mostly by denial of due process of law, by prejudice and its removal of any children from their homes, by prejudiced standards for recipient homes, particularly on our reservations, but nevertheless a systematic theft of Indian children by all these agencies, and in addition to that, private agencies in placing Indian children in adoptive home placement in non-Indian homes. (U.S. Senate 1975, 147)

Cook decried the unfair application of non-Indian child welfare standards in Indian country and the disregard of the sovereign status of Indian tribes and their responsibility to care for their own. In his view, the hogan, which is the traditional one-room home for many Navajo families, is a completely acceptable environment in which to rear a child, but totally unacceptable when non-Indian child placement standards are applied. He offered his own upbringing as an example of what is considered an unacceptable environment.

I am personally an Indian orphan. My mother left when she had me. My father died when I was seven. I was raised by my larger family, that being my grandfather until

he died, and then one of my aunts—my dad’s sister. I was raised on a reservation until such time that I left of my own discretion. (U.S. Senate 1975, 147)

I was raised in a two-room house and there was [sic] 14 people in it, 12 other children besides myself. It didn’t have any adverse effect on me, I don’t think, emotionally, or socially, in recognizing that we were in a poverty situation. I hope to think that I came out right after that kind of experience. (U.S. Senate 1975, 148)

He stated that in Minnesota 1,143 Indian children under 18 years of age were in adoptive homes. He projected that

we’re looking at a situation that in 10 years, one out of every four Indian children under age of 18 will be in adoptive homes in the State of Minnesota. That’s 25 percent of all Indians in a generation would have been brought up by adoptive parents who are non-Indian. (U.S. Senate 1975, 146)

Cook cited a recent survey of 100 Indian children who were state wards of whom only one child had been placed in an Indian home. The examination further revealed that one out of every six Indian children had been adopted compared with only 611 non-Indian children. Indian children were adopted at eight times the rate for non-Indian children. Additional information from the survey indicated that

[i]nfants under 1 year old are adopted there at the rate of 8.3 or 139 percent greater than the rate of non-Indians in the State of Minnesota. Indian children are in adoptive homes at the rate of 5 times that for non-Indian children.

At current rates, one out of four Indian children will be in adoptive homes in 10 years. At the present rate, the comparative rate difference between Indian children and non-Indian children if the present trends continue will be 1,000 percent, or greater, within 10 years.

At the current rate, one out of four Indian children will be, pardon me; there are a minimum of 252 Indian children in foster care in 1971 and 1972 in the State of Minnesota. This again represents, 1 out of every 48 children.

The result being that the minimum 262 Indian children under 21 are in foster care in Minnesota, or again, 1 out of every 48 children.

Indian children are placed in foster homes minimally four to five times as often as the non-Indian children in Minnesota. There is an average of 259 Indian children in foster care in Minnesota in any given year. (U.S. Senate 1975, 146-147)

In Cook's view the Federal government had abrogated its responsibility to protect the tribes' natural resources; children "are, in fact, one of our communities' natural resources" (U.S. Senate 1975, 147). He said that it was only recently that the Minnesota Indian community had assumed an active role to question and inquire into policies of federal, state, county governments and church and private agencies regarding adoptive and foster placements of their children. He expressed concern about the adequacy of resources for the placement of Indian children, and stated that there were only two Indian group homes in Minneapolis, one for boys and the other for girls which at the time of its establishment was the first Indian girls' group home in the country. Cook asserted that state child welfare officials did not make adequate effort to assure that the needs of Indian children in substitute care were met. Indian tribes and organizations had repeatedly asked the state and local officials to increase the numbers of Indian foster homes for their children.

He informed the Sub-Committee about recent professional psychiatric publications that addressed the seriously damaging consequences to identity formation among Indian children reared in non-Indian adoptive and foster homes. Cook cited the testimony of Dr. Joseph Westermeyer regarding Indian people he treated over the past five years. Over half of the Indian patients Westermeyer saw had been removed from their homes as children and placed in non-Indian homes. The complications inherent in non-Indian home placement were compounded by the fact that these children experienced multiple placements during their time in state custody. Westermeyer found that none of the people in the group ever returned permanently to their home of origin. He described the individuals he had treated.

In general, they have some of the general characteristics that one can attribute to children passing through a series of foster homes. Difficulties such as chronic insecurity, free floating anxieties, panic reactions, difficulty adapting to family life and adulthood, were characteristics present among them, as they are among non-Indian people raised in this manner.

Oftentimes, these people did reasonably well in childhood and one could see where the social worker working with these people during childhood was impressed that things seemed to be going well. In other words, in grade school, and most of them were placed even through grade school, the children make a pretty good adjustment and they don't have psychological or social problems in the majority of cases.

However, once they get into adolescence, runaway problems, suicide attempts, drug usage, and truancy are extremely common among them, even though they are raised away from the reservation and away from Indian society.

My findings among this group of people, mostly men but about one-fourth of them women, were that the Indian person was so raised that they assumed the majority of white identity when raised in a foster home. (U.S. Senate 1975, 45,46)

Cook proposed that resolution of these problems confronted by Indian families required standardization of rules and regulations regarding the removal and placement of Indian children and the requirement of Indian participation in the development of the standards. He highlighted the problem of desirability of Indian children by non-Indian adoptive parents which raised the question of whose needs were being met. In his view these practices rebuffed national child welfare standards of child-centered practice which recognized the central place of relationship and ethnic integrity in child development.

Cook expressed his deep concern about the numbers of Indian children who were placed in institutions for delinquent youth and the deep feelings of alienation and isolation that these placements create. He told of an experience after he had given a speech about Indian life ways to governmental officials at a gathering also attended by a number of "State home school" Indian kids. Following the speech a number of the children approached him in

tears. The children told him that they “really didn’t know all these things about [their] communities” (U.S. Senate 1975, 148).

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. (U.S. Senate 1975, 148)

He asserted that the form of systematic genocide of Indian people that continually removes excessively high numbers of Indian children from their families and communities usurps the tribes’ rights to care for their own and to protect their natural resources. He echoed the call for repeal of P.L. 83-280 and contended that governmental officials have extended jurisdiction of the law to the point where

in their own minds include their right, as they see it, to do what they feel like with Indian State wards or in the adoption or foster placement of Indian children. (U.S. Senate 1975, 148)

Cook concluded his remarks by observing that a dangerous and serious mind-set had developed and only the repeal of P.L. 83-280 would bring a remedy; continued application of the law prohibited tribes and Indian communities from establishing standards of care. He explained that in this instance his comments related to sovereignty were specifically concerned with the rights of tribes, Indian communities and people to have a determinant role in the placement of Indian children in adoptive and foster care placements.

Senator Abourezk questioned him regarding earlier testimony of the AAIA involving the theft of Indian children.

What about those children who have been adopted under these procedures? Can we and should we go back and examine these cases where this has all happened and try to restore some kind of rights to the parents and the children? (U.S. Senate 1975, 149)

Cook replied that “we really have a moral and legal responsibility to do that” (U.S. Senate 1975, 149). He acknowledged that there was growing sensitivity to the needs of Indian children and cited experiences with non-Indian substitute parents who ask him for help to familiarize the children with their communities. But the outcomes of existing and historical practices have been catastrophic and disastrous. In their teen years the children were often confronted with the experience of no longer being accepted by their peers, especially in relationship to dating. They were no longer who they thought they were in the non-Indian world in which they had been reared and were confronted by the problem of lack of information with which to construct an identity as an Indian person.

All that leads to traumatic kinds of situations where we’re finding ourselves in situations where they are committing suicide, dealing in drugs and alcohol, those kind of things, school dropouts, juvenile behavior and all kinds of non-normal kinds of behavior as resulting from their finding out just who they are and what they are, and prior to that point in time, the teenage point in their lives and all of a sudden we’re finding ourselves with all of those children now before our juvenile judges, criminal courts in the State institutions. (U. S. Senate 1975, 149)

Citing the testimony of a BIA official, Abourezk asked Cook if he thought it was possible, as asserted by the official, that the Bureau and the States could implement child welfare reforms to correct the problems and negate the need for legislation. Cook replied,

I think BIA and the State welfare workers have been carrying on like at Auschwitz and I don’t think they’re going to change overnight. I think that the only way you’re going to change is to establish law and legislation to forbid and prohibit that kind of mass adoption and theft and placement of Indian children. I don’t think anybody in the county government, or BIA is going to do that voluntarily. If they were going to do that they would have done that a long time ago. (U.S. Senate 1975, 150)

Abourezk expressed his appreciation for the information Cook had brought to the Sub-Committee.

The next person to testify was Esther Mays, board member of the Native American Child Protection Council in Detroit, Michigan, a non-profit organization with a membership of approximately fifty families from throughout the state. The organization was founded in response to needs of Indian families to maintain their families with particular concern for the children. Membership is composed of families who are willing to assist other families on a volunteer basis. The organization is unfunded. The members understand that it is “the nature of the Indian community to seek help from within its own community where this form of help is available” (U.S. Senate 1975, 160). Many families have not been able to get help from local government agencies because agency staff were unable to understand their situation or relate to them. Despite lack of funding, the Council provided a full-range of services including family counseling services to help members resolve their problems. Mays explained that

[w]hatever the problems have been, in any area, we have provided the needed help to keep many family units together, whenever and where.

We have provided food, clothing, transportation, furniture, whatever our resources have, to help to keep that family together. We have provided information, legal assistance to Indian parents who have need for this service. We have also attended court, given testimony in behalf of natural parents who are trying to find a way of keeping their children with them. We have also received many requests from parents who have lost their children through the courts and who want to regain them. (U.S. Senate 1975, 160)

Mays acknowledged that the problems Indian families in Michigan confronted were like those endured by Indian families throughout the country and a further similarity involved the inability of governmental agencies to provide effective assistance to these families.

The organization’s established policy regarding child placement calls for the placement of Indian children in Indian homes. Based on work with families throughout the



state, the membership has concluded that an Indian home is better equipped to provide the care and services needed by Indian children. Mays outlined four problem areas that are repeatedly confronted by the volunteer staff. Leading their concerns are the policies and practices of governmental and private agencies which give preference to the placement of Indian children in non-Indian homes without regard or respect for the children's racial and cultural heritage. Second, it has been found that non-Indian substitute parents have difficulty relating to the child because they lack knowledge of the child's background and the sad consequence is that the child often encounters problems in adjustment to the home. Third, the child experiences considerable conflict and confusion in attempts to relate to the custom, tradition, values and ways of the non-Indian world. Members have found that many children have left their adoptive homes to return to the Indian community in an effort to find their families and learn about themselves. Fourth, in the main, non-Indian adoptive and foster homes are unfamiliar with Indian life, its family structure or the values, traditions and customs of the child's tribal community. The members have reached out to non-Indian parents to educate them to Indian life ways and to help them provide better care for the children. It is clear that the agencies need to do a better job to prepare these parents to understand the needs of the children for whom they provide care.

Mays offered the following recommendations to alleviate the problems that Indian children experience in substitute care. First, it is essential that restrictions, such as size of home and age of caretakers, be lifted to permit more Indian families to become adoptive or foster parents. Second, although the particular laws were not identified, Mays called for changes in "laws that require us to be a party in the enslavement of our children and the erasers of our culture, thereby making our people become a co-partner of destroying our

rights as Indian parents” (U.S. Senate 1975, 161). Third, there is a need for in-service training of social workers to provide them with a better understanding of Indian customs and life ways. It was also recommended that the agencies make greater use of Indian paraprofessionals who can help professional staff bridge the gap of misunderstanding and ignorance. Lastly, Mays called for an investigation of agencies transporting Indian children across state lines and the Canadian border to be placed for adoption. In the view of the organization’s members, these actions are akin to kidnapping. Mays ended her testimony with these recommendations.

Statements of the American Indian Child Development and Placement Program (AIDPP) headquartered in Milwaukee, Wisconsin were delivered by executive director, Victoria Gokee, board chairperson Betty Jack and administrative assistant Mike Chosa. Gokee, who hailed from the Red Cliff reservation, gave the opening remarks that reflected on the history of her people and the demoralizing situation in which they lived for many years. She explained that when the Indian people recognized that the U. S. Constitution was not written only for non-Indian people but Indian people as well they began to demand equal opportunities, equal employment and equal justice. Prior to this realization many Indian people, like her, found life easier if they remained outside mainstream American society. A personal tragedy led to her involvement in efforts to improve Indian life and to assure that Indian people received equitable treatment. She related the story of her daughter who at age fourteen became psychiatrically ill. Gokee sought help for her daughter from psychiatrists, psychologists and social workers who assured her that the child did not have a mental illness but rather her problems were the consequence of delinquent behavior. She was convinced that the profile offered by the professionals did not fit her daughter but she found that she had

lost control of the situation. Instead of receiving the professional help she needed, her daughter was incarcerated. After spending time in jail, the daughter's behavior became increasingly unstable and she eventually died on the streets of Bayfield, Wisconsin. She was not offered help because the officials thought that she was drunk and would eventually sober up enough to move on.

They did absolutely nothing to help her. They thought she was just another drunken Indian and she died after I went there to get an ambulance to take her to the hospital.

I think from that time on, I decided that never again, if I could do anything about it, would I allow these kind of people to just do this thing.

Since then, I've been chairman of our tribe in Red Cliff. I've been M.C.I. area vice president. I've been fighting, in my own way, in my own style, to prevent tragedies like this from happening again. (U.S. Senate 1975, 163)

In her position as Indian Affairs Coordinator for the state of Wisconsin, Gokee conducted hearings to gather information about the condition of Indian children in the state and the services they received. As she listened to statements from Indian parents and children she found it difficult to believe that they had been treated so badly. She recounted the story of Ronnie Winters who testified at hearings on the La Courte Oreilles reservation in August. At age eleven he was taken from his home, adjudged delinquent and placed in a foster home in Sawyer County. He was apprehended because he refused to attend school where he was called "dirty little Indian" and was bullied by the other students. He was not able to adjust to the foster home and within a year was placed in three different homes, in one of which he was forced to do farm labor. At school, he was the only Indian student where he was again confronted with the racist behavior of fellow students. Welfare officials determined that his disruptive behavior was the problem and at age twelve he was again brought before the judge in Sawyer County who sentenced him to the boys' reformatory in

Waukesha, Wisconsin. He remained at the reformatory until he was fifteen, when he was accused of an infraction involving a guard. As a result of the charges brought against him, he was sentenced to the adult prison in Green Bay where he remained for thirty-eight months. Upon his release he moved to Chicago, got a job and took over the care of his younger brother to make sure that he would not go through the same things he did. He eventually earned a college degree. The tragedy in his life came about because he was truant to avoid the bad treatment he received at school and instead spent his time fishing, hunting and picking wild flowers. Many other children shared similar stories with the hearing panel which prompted the Indians to organize a state-wide Indian foster care program to assure better treatment of their children in foster care. The effort was supported by Indian people throughout Wisconsin and the organization's board was composed of representatives from every tribe in the state. Gokee estimated there were about 600 to 1000 Indian children in state custody, all of them placed in non-Indian homes. She believed that the children's problems were compounded because agency practice did not allow contact with their families or communities where it was thought they would be subject to undesirable influences.

The AIDPP was founded in 1973 in response to a crisis situation involving two Wisconsin women who, when vacationing in South Dakota, took custody of a three-year old girl. The child's mother had given written permission to the women to take her child for a short visit to Wisconsin. It was later determined, that in fact, the mother had signed papers in which she surrendered all parental rights and consented to the adoption of her child. The women took the child to Wisconsin and refused to return her to her mother. Rather than return the child, they offered compensation to the mother stating that "God has ordained that the child have opportunities which the parents could not offer" (U.S. Senate 1975, 164).

Indian advocates were able to get assistance from a national Indian organization which arranged for legal assistance for the parents to help them regain custody of their child. The efforts of the parents proved too bothersome for the women who eventually relinquished the child because they didn't "want to keep her with Indians pounding at our door" (U.S. Senate 1975, 164). The case was an eye-opener as news of the abduction spread throughout the Wisconsin Indian community and the people came to the realization that unwarranted removal of children was a fact of life for many Indian families. With the help from VISTA<sup>22</sup> volunteers working out of the Wisconsin Judicare office who encountered stiff resistance from state officials to release information, it was learned that 730 Indian children were incarcerated in state correctional institutions where the average yearly cost of care per child was \$19,000. Additionally 680 children were in state foster homes and 473 children had been placed for adoption. When these numbers were combined with an estimated number of children in the custody of Catholic and Lutheran social services, who refused to release any information about the children, it was concluded that approximately 40% of all Indian children in the state were in substitute care. The Indian people realized they were not receiving fair treatment from the courts and saw that court-appointed counsel did not protect the rights of parents and children but rather were in lock-step with the decisions of court and agency officials. They insisted that guardians-ad-litem<sup>23</sup> work with tribal governments to assure that custody decisions were sound and that no statements could be taken from children unless their attorneys were present and they were fully informed of their rights. From meetings with state officials it was learned that the state welfare agencies had never made a concerted effort to recruit Indian foster homes.

The organization was able to receive start-up assistance from the Bush Foundation in St. Paul, Minnesota which made it possible for Gokee to be hired as director of the program and to employ Mike Chosa as her administrative assistant. In order for the program to be licensed by the state as a child-placing agency it was necessary to hire a casework supervisor with a masters' degree in social work. Finding an Indian person with a social work degree and child welfare experience had been a difficult task, even with help from the regional health, education and welfare office. Gokee hoped that the program will be able to hire an Indian person who would receive a social work degree in June from the University of Minnesota at Duluth, but this individual did not have child welfare practice experience. A faculty member from the school with ten years of child welfare experience had offered to provide casework supervision and she was optimistic that the state would permit this arrangement as substantial compliance with licensing regulations. The school and the organization were developing a contract which would provide training in child welfare services for the staff. Gokee told the Sub-Committee that she was pursuing a degree from the University Without Walls at the University of Wisconsin at Green Bay. The AIDPP was recruiting family counselors through the Work Incentive Program (WIN)<sup>24</sup> which would cover their salaries. A contract with the Bureau of Indian Affairs to cover the salaries of non-WIN employees was being pursued. She recognized that the road ahead would be difficult but the organization was determined to establish an agency that would help every Indian child and family in the state have a better chance to lead a productive and meaningful life.

Testimony was taken up by AIDPP Board Member, Betty Jack from Lac du Flambeau, Wisconsin. As others had done, she began her testimony with her own story. In 1956 Jack left the reservation and moved to the city with three of her children where she

lived for about two years but found adjustment to the city very difficult. Because of the difficulties her family experienced she decided that her children would be better off if they returned to the reservation, but the family on the reservation could not care for them and they were returned to her in the city. In 1962 Chicago child welfare authorities removed two of Jack's children and placed them with the Evangelical Child and Welfare Society. She learned that they were taken from the State of Wisconsin and has never seen them again. She had been adjudged unfit despite the fact that she had never been called into court nor had she been assigned an attorney. It was only a year ago that she discovered that her children had been adopted.

In 1963 Jack sent her remaining three children back to the reservation to live with their father but they were soon removed from his care by welfare authorities and placed in foster care. During their time in placement the children were transferred from home-to-home many times.

When I tried to go and see them, my one daughter had eight placements in 6 years because every time I'd go to visit her, they would transfer her to somewhere else so I couldn't find her.

Then my son, he's 20 now, but he had six placements in 4 years and my other daughter, she had six placements in 4 years. They kept transferring them around the State of Wisconsin so I couldn't see them. Now I don't know where my other two children are. (U.S. Senate 1975, 166)

In the spring of 1973, Jack visited the Wisconsin state adoption office to try to find out what had happened to her children. It was during this contact that Jack learned that the two children taken from her years ago had been placed for adoption within twelve months of their removal. The state adoption worker told her that the children had been legally adopted

and there was nothing she could do about it. She inquired about tribal enrollment for the children but the worker said

no, if they weren't done before they were adopted that there's no way.

She said that these children belong to these people that they are adopted by. So, she said that I couldn't put them on a tribal role, but these kids are Indians and they should, at least, be on a role. (U.S. Senate 1975, 166)

In June 1963 Jack regained custody of her sixteen year-old daughter. After a month, her daughter informed her that she did not want to stay with her because Indians were nothing but lazy, dirty, and drunks. She had bleached her hair blonde and wanted to return to her placement but Jack would not let her go back, but

[f]inally, in February of this year, I had to give up and let her go back to the white home she was in because she was killing herself on the street with drugs and drinking.

My other daughter, Valerie, she's 18 now, she's just drinking. I would say she is an alcoholic at 18. My son is heavy into drugs. He's 20 years old now and he had to drop out of the University of Wisconsin and he couldn't make it. He couldn't fit in. And, he said the Indian group there, the Native American Indian group said he couldn't belong to the Indians and that he didn't belong to the whites anymore either. So, he just didn't want to go to school. Now, he's down in New Mexico some place. I don't know what he's doing. (U.S. Senate 1975, 166)

She thought she would try to get her remaining children back but has decided against it. She could not go through the agony of "seeing how the minds of my kids have been damaged so terribly" (U.S. Senate 1975, 166).

In her work with the State Indian foster care program she has met and assisted many other Indian people who have endured experiences much like hers. A mother whose child had been taken from her was told that she would be able to keep her four other children if she went through an operation, so that she couldn't have any more babies.

So, the welfare department in Eagle River, Wis., the director there, Mr. Lovell, he drove this woman over to the State of Michigan and there she had the



operation, in Michigan. And, they brought her back home and then when she got home, they took her four children away and she has never seen them again, either. (U.S. Senate 1975, 167)

Another woman who had five children and was expecting another was sent to Keshena Women's Prison by the welfare department where she was forced to undergo a tubal ligation and relinquish her child for adoption. She assured the Sub-Committee that these women's experiences had been documented by attorneys working with the program. Through her journey to recovery Jack entered a 90 day in-house rehabilitation program to deal with her drinking problem; she described the experience as terrible. The counselors had no understanding of Indian people and she and the other eight Indian patients in the rehabilitation hospital had no one with whom to discuss their problems except among themselves. During the 90-day stay her eight fellow patients left the program and returned to drinking on the streets.

During that 90 days, almost all of them left and drank; I stayed because I wanted to do something for myself. When I went to the counseling service, it was with my daughter before I let her go back to the white foster home, I went to about seven or eight different white counselors there. They just couldn't understand what we were going through, so we just quit. (U.S. Senate 1975, 167)

The turmoil that resurfaces from her own experiences as she works to help others is at times more than she can bear and she insisted that something be done to stop these practices.

Mike Chosa, AIDPP administrative assistant, picked up the testimony to provide the panel with background on the organization and its recommendations which he described as "radical changes to the present system or laws that you have enacted" (U.S. Senate 1975, 167). The organization's board includes 18 women and 2 men, all of whom have suffered similar injustices as those described. Chosa described the board as strong and knowledgeable.

They know what is happening and they know what they have to do. They will go to any means in order to get it done.

I think if we don't have some radical legislation, we're going to have some radical movements in order to solve the problems. Now is the time that Congress can move in changing this picture. (U.S. Senate 1975, 167)

The organization's research in the past two years revealed that the State of Wisconsin expends sixteen million dollars annually for the support of Indian children in non-Indian homes. It was learned that 780 Indian children were incarcerated in correctional institutions, 680 children were in foster care and 473 children were in adoptive placement. These data came from the state's Department of Social Services and did not include information about church-affiliated agencies' involvement in voluntary placements, substitute care and adoptions. Chosa estimated that these data represented about 40% of the Indian child population in the state and do not include children who have been sent away to boarding schools. AIDPP works closely with the state social services department and hopes that it will be awarded a child placement agency license.

However, they told us this, that once we become a private agency and we've accepted custody of a child neither the State nor the Federal Government or the local governments have no [sic] financial responsibility.

I think that is a wrong kind of way to approach the problem because the Federal Government has apparent responsibility with our tribes through our treaties.

I think that if a State doesn't have or does have a responsibility and uses those means of doing away with this responsibility, it is utilizing Federal legislation for violating our treaties. (U.S. Senate 1975, 168)

Chosa informed the Sub-Committee of the complex problems involved to assure due process rights for the children and their families. The court-appointed attorneys are almost always subservient to the court and families have little chance for justice if they are unable to hire a private attorney. Guardians-ad-litem, whose charge is to represent the best interest of

the child, do not consult with the tribal people or make an effort to determine if the child's or tribes' rights are being violated. He strongly recommended that legislation require that guardians-ad-litem concur with the decisions of tribal councils or tribal leaders in decisions involving their children. Chosa commented on the BIA proposal to increase the efficiency of non-Indian social workers through cultural sensitivity training and suggested that the BIA staff might avail themselves of such training, and, should the proposal be accepted, that it be administered by tribes

He cited the need for half-way home centers that would focus on the severe readjustment problems experienced by children who have been reared in long-term foster care or in non-Indian homes. He reminded the Sub-Committee that existing programs are dealing with hundreds of children in Wisconsin and the work to help get the children back to their people is complex and difficult. He cited previous psychiatric testimony that reported a 65-75% percent rehabilitation failure rate for native individuals who had experienced out-of-home placements. Chosa re-emphasized the need to support tribes and Indian organizations who conduct this work because the entities have particular expertise to assist children concerning identity formation, and are committed to correcting systemic problems in family and children's services. The AIDPP is conducting this work.

It's a family program that involves the hard-core, you might say, of children that come up through two or three generations of oppression, both on the reservation and in urban areas; and we, virtually stopped all placements in the Milwaukee County area at this point, because of this program and because of the advocacy with the parents and with the courts. (U.S. Senate 1975, 169)

Chosa submitted the following recommendations to the SubCommittee:

The specific legislation that I would request or recommend is One, that Congress introduce and pass legislation that would amend the AFDC law to permit the separate tribes to receive reimbursement for foster care services as units of governments. The

AFDC-FC,<sup>25</sup> the AFDC law under social security in exchange for foster care, there are reimbursable payments to States and counties. At the present time in the 280 States, the tribes are ineligible to receive these reimbursements.

No. 2, that the Congress introduce and pass legislation which would prevent the States and counties or private agencies from receiving reimbursements from Federal funds unless children are placed in Indian homes.

No. 3, that the Congress introduce and pass legislation which would prevent reimbursement to States, counties and private agencies for foster care services unless plans are developed and implemented by them to begin rehabilitative work with children and natural parents, with the objective of eventual return to their natural homes.

No. 4, that the Congress introduce and pass legislation which would prevent the 280 States and counties from incarcerating juveniles without concurrence of tribal governments.

No. 5, that the Congress introduce and pass legislation preventing the placement of any Indian child in a non-Indian home or a non-Indian controlled institution, without concurrence from tribal governments.

And the last one is very important, and I think they should do very quickly. That the Congress introduce and pass legislation preventing the Bureau of Indian Affairs from making any payments to any group for the foster care or adoption of Indian children unless such care or adoption is in an Indian home. (U.S. Senate 1975, 169)

Chosa held a copy of a negotiated contract between the Bureau of Indian Affairs and the State of Minnesota which provided the state approximately one million dollars per year for the placement of Indian children in non-Indian homes.

The Bureau of Indian Affairs is supposed to be the appointed agency which is looking to the interest of our people, and when it can be allowed by law to use Federal money to take and destroy our people, I don't think that's answering the question at all. (U.S. Senate 1975, 170)

In response to a question from Senator Abourezk, Chosa stated that he did not have confidence that the states could provide Indian families and children the services they need and suggested two directions that Congress could explore.

One is the establishment of a sub-agency, if necessary, under the present social services, or the main welfare department of the State, there would be an Indian division who will work directly with the tribes.

The other would take a lot longer and that would be going into the court and suing the State or local government because in each of our constitutions and bylaws for Indian people, and I'm sure they are a part of our treaties, it states that Indian people have jurisdiction over minors, Indian tribes do.

I think that Public Law 280 is unconstitutional when it comes to tampering with the jurisdiction of our children without our consent. (U.S. Senate 1975, 170)

Chosa concluded his testimony and submitted a prepared statement with supporting documents to the Sub-Committee (see U.S. Senate 1975, 171-212).

In earlier testimony Victoria Gokee, Director of the American Indian Child Placement and Development Program, explained the impetus for the program's establishment. The program came about in response to a crisis situation involving a three year-old girl who had been taken from her mother in Pine Ridge, South Dakota to Wisconsin by two women for what the mother understood was a vacation. The child, Benita Rowland, who was the cause celebre that galvanized state and regional Indian effort to confront long-standing abusive child welfare practices, was brought to the hearings by her father, Ben Rowland. Mr. Rowland explained that he is from Pine Ridge, South Dakota but that he lives in Montana now and at the time Benita was taken from Pine Ridge. He had hoped that Benita's mother from whom he is divorced and who has remarried could also have accompanied them but she recently gave birth to a child and could not make it. Rowland said that his daughter, Benita, was staying with her mother at Pine Ridge when she was taken to Wisconsin in January of 1972 by two women with connections to a local gospel mission. It was not clear how Benita got from her father's home in Montana to Pine Ridge. Senator Abourezk asked, "Was she taken by somebody back to Pine Ridge"? Mr. Rowland answered "yes" and said that he later

received a letter from a “reverend,” “a gospel minister,” who asked his permission “for my little girl to go with his people back to Wisconsin” (U.S. Senate 1975, 222).

He did not want his child to go to Wisconsin, so he contacted his brother in Pine Ridge and asked him to go to the mother’s home and take custody of Benita. But when his brother arrived at the home he learned that Benita had been taken away three days earlier. Rowland traveled to Pine Ridge to get his child back, but was informed by the tribal court that he would have to initiate action regarding Benita’s custody in Montana where the divorce had taken place. He returned to Montana and with an attorney’s help wrote the people who had custody of Benita who

wrote back to him that she was doing fine and they wanted to keep her.

I told him to write back again and he wrote to them again and they told him the same thing again. I went back to Pine Ridge and went to the legal service down there. (U. S. Senate 1975, 222)

Rowland confirmed that Benita’s mother believed that the papers she signed gave permission for the two women to take the child to Wisconsin for a vacation, but that she really did not know what she had signed. Abourezk inserted for the record that his staff had informed him that the papers signed were consent to adoption. Rowland took the matter to court where he was successful and Benita was returned to him. Senator Abourezk thanked Mr. Rowland and Benita for coming to the hearings.

Among the last Indian representatives to testify were Billy Blackwell, a twenty-three year-old man from the Grand Portage Ojibwa Band and Thomas Peacock, a fellow Ojibwa and President of the Fond du Lac Indian Reservation. Blackwell began his remarks.

For hundreds of years the Ojibwa journeyed to Washington. The rivers, hills, and halls of our Nation’s Capitol have heard the sound of many American tribes. In

keeping with that tradition, I would like to state, briefly, in my language, the reason why I'm here.

The only reason that I would like to do that today, when I told some of our old people that I was coming here, this is one of the things that they asked me to do, in our language, that we tell our problems first that we are here for.

I'd like to start by saying that a long time ago there was a person who became president of one of the eastern colleges, either Yale or Harvard, and he told an Indian chief, give me 10 of your men and I will make them lawyers, scholars, and scientists.

And the Indian chief looked at him and said, give me 10 of your lawyers, scholars, and scientists and I'll make men out of them.

I can't help but think how things have gotten away from that. (U.S. Senate 1975, 367)

Blackwell stated that both he and Mr. Peacock are involved in an Indian youth program headquartered in Duluth, Minnesota which provides services in the urban area and four surrounding reservations. The program is funded by the Office of Health, Education, and Welfare through a grant to the Duluth Indian Action Council and is in its third year of operation. The program

is designed to alleviate the atrociously disproportionate number of Native American youth in juvenile institutions. The Indian youth program has made it a priority to exhaust all means to stop the mass theft of Indian children, from their tribe and homes. (U.S. Senate 1975, 367)

He reported that the BIA funnels \$1,040,000 to the State of Wisconsin for what he described as child robbery. He informed the Sub-Committee that thirty-four percent of all Indian children in Minnesota are in foster home placements and described the placement of Indian children in white homes as "big business" where countless Indian children are required to sweat and toil for a weekly 50 cents allowance. He also related that "one out of every three Indian children under 1 year old is adopted" and insisted that discriminatory child placement practices be stopped (U.S. Senate 1975, 367).

We, the Ojibwa people, are a proud people; we will not permit our children being stolen from us and placed in white homes where our tribal culture and values are completely disregarded. (U.S. Senate 1975, 367)

There was serious consternation that the BIA was spending over one million dollars in the State of Minnesota to pay board and room costs for Indian children overwhelmingly placed in non-Indian homes and institutions. There was question in the Indian communities about the source of these moneys and it was circulated that they were derived from the closure of Pipestone Boarding School which was funded by Johnson O'Malley (JOM)<sup>26</sup> appropriations. And, that use of JOM funds to pay the costs of foster care and incarceration of Indian youth was illegal. Blackwell conveyed the Indian communities' call for an investigation and audit of the funds to determine their source. He noted that the BIA/State of Minnesota contract at issue is the same one discussed in the testimony of Mike Chosa of the American Indian Placement and Development Program in Milwaukee. He called the Sub-Committee's attention to the fact that additional monies from the Department of Health, Education and Welfare that support the out-of-home placement of Indian children also flow to the state.

The Indian Youth Program has a staff of twelve employees who provide services on four reservations, the Grand Portage, Nett Lake, Mille Lacs, Fond Du Lac and the city of Duluth, it operates a school, Bisedon, which in Ojibwe means listener. Blackwell brought information from interviews with an Indian foster family who ten years ago was the only Indian foster home in the state. In collaboration with the Duluth Indian Action Council, the youth program has developed eighteen licensed foster homes with little help from state and local government and none of the other agencies in the area. The families believed that their understanding of Indian customs and life ways was an essential element in the care they were able to provide the children. The families maintained native cultural practices and upheld the



values of native life. The children were encouraged to have contact with their natural families and open communication with the foster parents. The children in their care were not angry and did not get into trouble. However, the families encountered many problems with welfare officials who saw the Indian peoples' standards of care and ways of life as inferior.

Blackwell pointed out that while the State of Minnesota's foster care program is designed to ensure the best possible substitute care for children, it is lacking in important elements in its work with the Indian community. First, local welfare agencies have not demonstrated the capacity to work effectively with native children as exemplified in the lack of communication between social work staff, natural parents and foster parents. This is taking place in an environment in which states' and local governments' inability to work with local Indian communities has been well-documented over a long period of time. This situation is especially problematic when 31.3 percent of Indian children under twenty years of age in Minnesota are in foster care. The second area of concern is the failure of state and local government agencies to develop and license Indian homes for Indian children. Blackwell indicated there are many reasons for these failures but two stand out. The first is what he describes as the natural outgrowth of native culture in which tribes have always looked after their children and did not find it necessary to use outside resources. Another impediment is the state licensing requirement. Families do not understand the need for a state license and believe that membership in the tribe and community-wide expectation that the child will be well-cared for are sufficient guidance and oversight. The third element of the overall problems concerns the complicated bureaucracy associated with foster care that involves the welfare departments, the courts and private welfare agencies. The problems

encountered to maneuver these complicated structures have caused many Indian families to turn away from resources that might otherwise prove helpful.

Blackwell related information provided to him by Mr. Ed Howes, an employee of the youth program, that at first he found difficult to believe. Mr. Howes documented that of all the children involved in the juvenile justice system with whom he has contact, 80.5 percent of them are or have been placed in foster or group care homes. In these cases it has been found that

the large majority of them have been forced or very subtly pushed into forgetting their people and their culture. The cultural shock of being removed from their families has a devastating effect on these young Indian people. The forcing of alien values, belief, and culture has produced another group of very confused and unfortunately, partially assimilated or totally assimilated young Indians. (U.S. Senate 1975, 369)

He described the removal of Indian children as “big business for white families and a copout for the welfare system” wherein “the saving of Indian youth from their own people has become the answer to the so-called Indian problem” (U.S. Senate 1975, 369).

Welfare sits by and gives white foster parents the job of raising Indian children as good Christian Americans with a sense of value and worth, instead of allowing that child to remain in his home and retain a culture of beauty, rationale and spiritualness. (U. S. Senate 1975, 369)

Time and time again Indian children find great difficulty in relating to white foster parents and their values that manifests itself in anger and resentment. Unfortunately too often the youth respond to the conflict by breaking the law and thus are drawn into the juvenile justice system. Involvement in illegal behaviors further convinces the courts and welfare officials that continuing in foster care will eventually correct the problems the child experiences. He condemned what he called “the sale of Indian flesh by welfare to white foster parents,” describing it as “a poor excuse for a solution to the Indian problem” (U.S. Senate 1975, 370).

In his work he has found that Indian parents are not consulted about removal of their children and while the child's residence may be only a two or three-room house, it's also a place of love.

Blackwell also offered the testimony of Vincent Martineau, a twenty-three year-old member of the Fond Du Lac Reservation who, at age thirteen, was removed from his home and placed in a white foster home. His father had died and the welfare officials determined that his mother could not take care of him. He was taken off the reservation and for the first seventeen days was lodged in the local jail while welfare officials found a foster home for him. There are eight children in his family but none of his brothers or sisters was placed with him. During their time in substitute care Martineau and his siblings lived in fourteen different foster homes. In response to the question, what effect did moving you off the reservation, away from your natural parents and family, have on you? Martineau replied.

They took me away from my people, from my family, all my friends, brothers and sisters, everyone. I lost all my Indianess, language, religion, beliefs, my entire sense of belonging. (U.S. Senate 1975, 370)

He explained that his experience was hurtful and knows that stated that he knows his brothers and sisters endured the same pain, and like him, lost everything. While they were in foster care all of them were instructed to forget their Indian people and their beliefs. He disclosed that he and his siblings have engaged in criminal juvenile behavior and explained that being in white foster homes

. . . built in me a resentment, a feeling of anger, they had stolen everything from me. I was mad at the world. I didn't care. (U.S. Senate 1975, 370)

Upon return to his people he learned that eighty percent of the children from Sawyer, the village in which he grew up, had been removed and placed in foster care. Sawyer's

population was 280 people. He was not sure that he could recover from the hurt and pain he experienced as a consequence of his removal, time in foster care and juvenile institutions, but hoped that he would be able to do so.

Blackwell added other aspects of Martineau's experience in substitute care. In one of his many placements, Martineau was moved in with a farm family for whom he worked earning twenty-five and fifty cents a week. Blackwell surmised that the cost of Martineau's labor was equal to the foster home care payments received by the farm family for his care. He cited the reality that Martineau was but one of many Indian children being exploited in these ways.

Thomas Peacock, Director of the Indian Youth Program continued the testimony from the organization and explained that before coming to the hearings a community meeting was held in Duluth to gather information and recommendations from the people that would be brought to the Sub-Committee. He identified himself as

a half-breed Iroquois. I'm a licensed Indian foster parent and have adopted an Indian child. I've been through the whole system, I guess.

Two of my sisters and one of my brothers have been in foster care and have been in institutions as well, and that is from the Fond Du Lac Indian Reservation. (U.S. Senate 1975, 371)

He told the Sub-Committee that the Carlton County government recently was found to have violated the human rights of Indian people in the provision of children and family services. The upshot of the decision resulted in the firing of the Carlton County director and the dismissal of a number of caseworkers. The county office and staff were "undergoing a very drastic course in human relations, which they attempt to adapt to" (U.S. Senate 1975, 371). He explained that a few years ago a visit from a county caseworker was met with

dread and fear. He recalled an incident he experienced while visiting a family when the mother noticed that her caseworker had pulled up in front of her house. She immediately announced to the children that the caseworker had arrived whereupon the children rushed from the room to hide under beds in fear that they would be taken away.

He informed the panel that the Fond Du Lac Tribe, together with the Taconite and the city of Cloquet, are parties in a Federal district court proceeding involving procedures of retrocession of provisions of P.L. 83-280. He offered the reasoning for their action.

This is because we like to make decisions concerning the Indian people concerned; that is, make decisions concerning Indian people by ourselves. (U.S. Senate 1975, 371)

He then read the recommendations that came forth from the meeting in Duluth.

1. That an Indian child care agency, possibly the Minnesota Chippewa Tribe, Sioux communities, and urban populations, be established and contract directly with the Federal Government for all HEW and BIA funds for child caring services, that is, set up their own field offices and caseworkers.
2. To begin the return of Indian children to their natural homes or Indian foster or group homes, and a drastic lowering of the adoption rate of Indian children by non-Indian families.

Furthermore, that this Indian child care agency be given thorough supervision of all Indian children in foster and group care.

3. That Indian parents facing termination of parental rights hearings be given thorough knowledge of their right to a court-appointed attorney.
4. That Congress authorize and make funds available for the position of the Division of Child Welfare and Family Protection Services within the Department of Health, Education and Welfare.
5. That new laws be enacted regarding the makeup, operation, and philosophy of all juvenile treatment facilities and institutions to better insure treatment and not punishment.
6. Recommendation on Public Law 280, 67 stat. 588, as enacted by the 83<sup>rd</sup> Congress, 1<sup>st</sup> Session, August 15, 1953.

He called the Sub-Committee's attention to the Northwest Ordinance which was enacted by the "Congress of the Constitution in 1789" which states that

the utmost good faith shall always be observed toward the Indians. Their lands shall never be taken from them without their consent; and in their property, rights and liberty, they shall never be invaded or disturbed, unless in justified and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them. (U. S. Senate 1975, 372)

But in 1953 Congress' approval of House Concurrent Resolution 108 contradicted the pledge of "utmost good faith" and further was contrary "to the principles of the Indian Reorganization Act of 1934."

Thus, House Concurrent Resolution 108 was the first formal enunciation of the termination policy of the 1950's. Public Law 280 enacted 14 days after House Concurrent Resolution 108, was part of this termination policy. (U.S. Senate 1975, 372)

Senator Abourezk reminded Peacock that the current hearings were not concerned with Public Law 83-280 but recognized that something had to be done about the law and urged him to confine his remarks to the child welfare area. Peacock highlighted the contradictions in Indian policy by pointing out that in the Kennedy, Johnson and Nixon administrations a policy of self-determination was stressed. Abourezk assured Peacock that when hearings on P.L. 83-280 are held his opinions will be invited. Peacock made clear that the recommendations called for the abolishment of P.L. 83-280 and called attention to the pervasive impact of the law even in the lives of children. Abourezk announced that he had

instructed the committee staff to set up a meeting to be held just as soon as possible, today or tomorrow, whenever we can get it done, between myself, BIA, and the Department of Health, Education and Welfare to try and put a stop to these crises as quickly as possible. (U.S. Senate 1975, 373)

Blackwell stepped up to remind Abourezk that an investigation of the source of over one million dollars in BIA funds that were funneled through the state of Minnesota to pay for the substitute care of Indian children was needed. Abourezk assured Blackwell that inquiries would be made to determine the source of the funds. Blackwell reiterated that if the funds were not coming from BIA social services but rather, as rumored, from the closing of Pipestone Boarding School then the use of those monies for the children's board and room was illegal. Abourezk thanked Blackwell and Peacock for both the oral and written testimony they brought to the panel (see written testimony: U.S. Senate 1975, 373-379).

In his testimony Cook argued that the Indian people in Minnesota were being subjected to a systematic form of genocide no longer implemented through the use of guns and soldiers but through law, legislation and policy. He was especially critical of P.L. 83-280 which transferred jurisdiction over domestic relations from the tribal governments to the state of Minnesota and contended that tribal sovereignty was being frivolized partly because the tribes did not assert their sovereignty over the removal and placement of Indian children in off-reservation areas. The effect of the law was that tribes did not believe they had the authority to intervene in domestic matters off reservations but this position was juxtaposed against the peoples' view that the tribes maintained the responsibility to care for their own, despite laws that had been enacted. The problems were compounded by what was seen as the BIA's abrogation of its responsibility to the Indian people. Cook maintained that the situation in which off-reservation people found themselves would mean that in ten years twenty-five percent of all Indians in a generation would have been reared by non-Indian adoptive parents.

Testimony revealed that parents and children were being denied due process. Despite the fact that guardians ad litem were appointed for the children, practice demonstrated that both court-appointed attorneys and guardians ad litem were not protecting the rights of children and parents, and that in case after case they were in lock-step with agencies and courts whose decisions resulted in the breakup of the Indian family. It was especially troubling that the guardians ad litem who were charged with the protection of the children's best interest did not consult with tribal people or make an effort to determine if the rights of children and their tribes were being violated or what resources were available within the Indian community.

The testimony was highly critical of child welfare services in both Minnesota and Wisconsin where neither state made adequate efforts to meet the needs of Indian children nor to make use of Indian resources. Both states were charged with the unfair application of child welfare standards that were seen as prejudiced against Indian families and communities, and it was common practice that children in substitute care were not allowed to have access to their family homes and relatives. It was also reported that children were regularly moved from foster home to foster home to make it difficult for parents and relatives to locate them. One example provided to support this claim involved a child who had been placed in eight different homes over a period of six years. In an effort to identify Wisconsin Indian children in care, it was learned that forty-percent of the children were in state substitute care, but it was not possible to learn the numbers of children in substitute care operated by Catholic and Lutheran agencies because the agencies refused to divulge the information. In addition to these placements, many children had been placed in boarding schools but this information was also not available. Wisconsin witnesses testified that the



state had never made a concerted effort to recruit Indian foster homes. The impact of these practices was especially troubling because of the consequential interference with the child's ability to construct an identity as an Indian person. Children were often denied information about their parents, home reservations and even whether or not they were enrolled in an Indian tribe. Children who had been in non-Indian placement for many years assumed a white identity but upon reaching adolescence many found that they were no longer accepted as who they thought they were in the non-Indian world. These contradictions brought serious adjustment problems into the children's lives which frequently led to incarceration in juvenile penal institutions.

The witnesses highlighted specific problem areas that included government and private agencies' practices which gave preference to placement of Indian children in non-Indian homes where there was little familiarity with Indian life, family structure, values, traditions and customs. These problems were aggravated by local welfare agency workers who had not demonstrated the capacity to work effectively with the children due in large part to the lack of communication between social work staff, natural parents and foster parents. It was found that non-Indian substitute parents had considerable difficulty relating to the children in their care because they knew little about the child's background, and information that would be helpful was not forthcoming from child welfare agency staff. Efforts by parents and relatives to regain custody of their children were thwarted by the complicated bureaucracy associated with foster care that all too often caused Indian families to turn away from resources that might otherwise prove helpful. It was especially troubling to Minnesota witnesses that the BIA provided one million dollars to the state to support the placement of Indian children in non-Indian homes, and that Johnson O'Malley funds, appropriated for the

education of Indian children, were being used to cover costs of foster care and the incarceration of children. In response to these problems, Indian people had taken it upon themselves to establish state-wide foster care programs which were operated without funding from either the state or federal governments. In an effort to address the problems of transition from the non-Indian world, Indians in Minnesota established the first Indian girls' group home in the country.

Witnesses offered recommendations to correct the problems confronted by children, families and tribes that included legislation to prevent the placement of children in non-Indian homes and institutions without the concurrence of tribal governments. To assure that the children would be placed in Indian homes, it was recommended that the states lift restrictions regarding the size of homes and the age of caretakers. Additionally, witnesses called for congressional legislation that would amend the AFDC-FC regulations to permit the tribes to receive reimbursement for foster care services as units of government. It was further recommended that funds be withheld from states, counties and private agencies unless plans were developed and implemented to conduct rehabilitation work with children and parents with the objective of eventual return of the children to their natural homes. Witnesses cited the need for in-service training of agency workers to enable them to understand Indian customs and life ways and the establishment of state Indian divisions to work directly with the tribes. There was also a call for investigation of state agency practices that transported children across state lines and into Canada for adoption. Witnesses testified that they had no confidence that the BIA would meet its responsibility to Indian children and their families and asked that Congress authorize and make funds available for the establishment of a

Division of Child Welfare and Family Protection Services within the Department of Health,  
Education and Welfare.

## Chapter V:

**“The human experiment of tampering with Indian children’s welfare and education for over 100 years has been for the most part a failure.”**

Robert Bergman

The psychological witnesses who testified at the hearings were among only a handful of mental health care professionals who provided psychological services in Indian country in the 1970s. Even today the numbers of psychiatrists and psychologists employed by Indian Health Service are small. Bergman and Hammerschlag were among the very few who devoted careers to working with Indian people.

Psychiatrist Robert Bergman<sup>27</sup> opened up the psychological testimony and was accompanied by his co-worker, psychologist George Goldstein, both of whom were employed at Indian Health Services’ Mental Health Branch located in Gallup, New Mexico. Bergman explained to the panel that his testimony was a generalization of his experience from his eight years employment as a psychiatrist for IHS. He began.

Separating Indian children from their parents and tribes has been one of the major aims of governmental Indian services for generations. The assumption is that children and particularly those in any kind of difficulty would be better off being raised by someone other than their own parents. The purpose of the first boarding school on the Navajo Reservation as stated in its charter in the 1890's was “to remove the Navajo child from the influence of his savage parents.” Few governmental agencies who are supposed to provide care for Indian children are able to help Indian communities and families solve child welfare problems except by one or another means of placement. This procedure usually solves problems only in the sense of removing them from the immediate scene while in the long run destroying families and communities. This process is unfortunately far advanced in some places. The human experiment of tampering with Indian children’s welfare and education for over 100 years has been for the most part a failure. The number of children who are underachievers in both the Indian and Anglo world, the number of school dropouts, the increasing rate of juvenile drug and alcohol abuse will give testimony to this failure. (U.S. Senate 1975, 128-129)

He addressed the persistent bias that Indian parents cannot rear their children properly and do not have the capacity to assist their children when problems develop, and the role the bias plays in yearly governmental decisions to place thousands of children in boarding schools. Many children enter the schools with serious difficulties “and the rest have the special needs of any children who have been separated from their families” (U.S. Senate 1975, 129). The schools are not equipped to respond to the students’ needs.

Thousands of Indian adolescents are shifted from school to school in a disastrous game of musical chairs as one school after another attaches yet another pejorative label and passes the student along. (U.S. Senate 1975, 129)

While there have been efforts to gain greater community control through the establishment of parent advisory committees, community liaisons and school boards, these entities are assigned an advisory capacity only and have no real authority.

They are serving a system whose philosophy and rules were not made with their consultation and which were not established with sensitivity to their needs. (U.S. Senate 1975, 129)

Bergman cited the practice of child removal based on the least excuse, substantiated or rumored, followed by the child’s placement with an Anglo family. He described foster care practices for Indian children as damaging.

In many cases the product of this placement is an imitation Anglo never quite good enough to achieve in the white world and removed far enough so that a meaningful return to the Indian world is impossible. (U.S. Senate, 1975, 129)

He recounted his work with a sixteen year-old girl who had been returned to the Navajo reservation by her adoptive family who took her into their home when she was six months old. The family was unable to deal with the problems she confronted, gave up on her and bought her a one-way ticket back to the reservation.

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 BIA and other agencies. (U.S. Senate 1975, 129)

As an example of these policies, he cited one small community where the Mental Health Branch maintains a clinic in which one-quarter of the children are in foster care and this did not include those children who had been placed in boarding schools.

Bergman commented on the tragic phenomenon that has developed out of centuries-old policies and practices wherein child removal is seen as acceptable by both welfare workers and parents who conclude

that the best thing to do for any troublesome child is to send him away to a boarding school or a foster home in the first instance of trouble or to reform school, or the State hospital after there are repeated offenses. (U.S. Senate 1975, 129)

He explained that once the family has been determined unfit most often the State takes jurisdiction over the child and placement in a state-licensed foster home ensues. The home of any family member or relative who might want to take the child in must conform to state-licensing standards.

The assumption is that the personal development and growth opportunity take place within the physical space of the home, and these increase the probability of the child becoming a meaningful adult. While this assumption is true in a sense, the values are well rooted within the Anglo culture. With most Indian families the growth potential is outside the home as well, the desert, the mountains, the forests and the village and community. (U.S. Senate 1975, 129)

He lamented that loving and caring seemed irrelevant in the determination of foster homes.

In his practice, he sees many families who are threatened with child removal and in his opinion most often the children would be better off were they left with their families where they could receive therapeutic and counseling services. The efforts of the families to care for

their members are further thwarted by state laws which provide higher foster care subsistence rates to a stranger than are paid to a member of the child's family.

Bergman was encouraged by demonstration efforts affirming that a boarding school can be run well if there is sufficient investment in energy, staff and money. He cited the Toyei Boarding School's model dormitory program which has demonstrated that a school can operate as a benefit to the children and their families as opposed to a menace. He expressed confidence that the tribes had the capacities to develop and operate their own child welfare programs which would provide services to the family in their home to help them restore family unity, harmony and cohesion. He explained that the problem with special programs is that they are special and are often not funded by the agency with direct responsibility for the children's education and welfare which means that the source of funding is not stable and there is little encouragement to integrate demonstrated benefits into overall agency operation.

In a way, these programs are self-destructive. While they exist they allow the rest of the system to remain ossified, comfortable in the knowledge that someone, somewhere is doing something. If we're finally going to get out of the business of legislating morals for Indian people we have to assume that native Americans know best what is right for their children. The Federal as well as State governments must allow tribes, in their own counsel, to develop their own licensing standards for foster care placement as well as their own curriculum and policy for schools. We should provide consultation at their request and within their guidelines. (U.S. Senate 1975, 130)

Abourezk thanked Bergman for his testimony and asked him to expand his remarks regarding Toyei Boarding School.

Goldstein responded to Abourezk's request and explained that the model dormitory program was housed at Toyei Boarding School about twenty miles from Ganado, Arizona and centrally located within the Navajo reservation. The program was funded for three years

to test a simple premise “to increase the number of parents’ service to the number of children” (U.S. Senate 1975, 130). Traditionally, the boarding school ratio of parents to children is approximately 200 to 1, the model program provided a ratio of 12 to 1.

Dormitory aides received extensive training in child growth and development and child psychology. Teachers and school board members encouraged opportunities for the children in the dormitory to be with parents and elders. Teachers banded together to build storytelling programs for students across campus. Evaluation of the program revealed that

in all levels of development, intellectual, emotional, as well as even physical, the model dorm children did far better than those in the control school and on no measure did they do worse. (U.S. Senate 1975, 131)

He informed the panel that the program no longer operated because funding was not available despite conclusive results that the children benefitted. Bergman pointed out that the majority of the program staff who did not have professional training were Navajo from the community. The assumption that the students’ profiles called for services from “outsiders with fancy degrees” was not supported by the program’s experience. The people who were hired spoke Navajo, knew the children and their families and the difficulties they had encountered. The staff’s knowledge of community mores and the life ways of the people provided a meaningful context in which to address problems and they were much more important to the therapeutic milieu than professionally-trained outsiders.

Citing the long history of boarding school placement of Navajo children, Senator Abourezk was curious about the effect that the practices have had on parental responsibility. Bergman believed that these practices have served to undermine the parents’ sense of self as parents and that it is not uncommon for parents to request removal of their children to



boarding school when difficulties arise. He described this response as a “commonly accepted custom.”

Child rearing practices have suffered a great deal as well as the confidence that people feel because they, themselves were raised in bleak institutions and were away from Navajo traditions in which they should have been taking care of younger brothers and sisters, and become part of a chain of family responsibility. (U.S. Senate 1975, 131)

Abourezk asked Bergman about the persistence of boarding school practices that prohibit speaking one’s native language, “doing beadwork or anything with their hands, as they had seen their parents do” or practicing their native religion and other aspects of their culture. Bergman explained that generally those practices are no longer enforced but the spirit of the practices may linger. However, changes in the letter of the law now mean that Navajo children have Navajo language classes and are encouraged to engage in customary practices.

Abourezk invited comment from Bergman and Goldstein regarding the work of Dr. John Bryde at the University of South Dakota whose doctoral thesis examined the problem of Indian children dropping-out of school in the sixth grade. Bryde concluded that

it is primarily because the method of teaching in boarding schools or in other schools for that matter whether it was an Indian teacher or an Anglo teacher, generally white, middle class values were taught as something good and Indian values were taught as something bad alongside the white middle class values. Therefore, ordinarily bright and outgoing children eventually developed conflicts because when he returned home at night, or returned home at any point, he would get an opposite point of view from his parents and his grandparents. (U.S. Senate 1975, 132)

Goldstein pointed out that many children entered boarding schools when they were five and six years-old with a child’s language facility in their own language. Advancement in their native language ability was impeded because the child was not permitted to speak the native language. He emphasized the broad definition of language.

So, in those languages, the child had a very difficult time expressing himself. He wasn't allowed to speak the language he was learning and developed up to 5 years and had to start a brand new language after that time, coming from a home where no English was spoken, or wasn't often and also being punished for things that were praised at home, responsibilities that were praised at home.

Senator Abourezk. Such as?

Necessary things, such as going outside, just taking a walk, as the child would do in herding sheep, something like that. (U.S. Senate 1975, 132)

Bergman explained that Navajo notions of the capability of a 6-year-old child are far greater than are common in the majority of American homes. There is contrast and tension between Navajo concepts of independence and responsibility and operating procedures in boarding schools. He described the boarding schools as oppressive and said that “[t]hose in schools assume that children are less competent than what we assume our children to be.” Goldstein added that “[t]he Navajo regard their children, and they treat their children as, adults (U.S. Senate 1975, 132).

These differing views produce much confusion for the child. Bergman described his work with a man in his forties who told him about the bad experiences he endured during his schooling. His father, a well-known Navajo minister, strongly encouraged his son to attend boarding school because times were changing and he needed what he could learn in school to do well in life. He told him to believe what the teachers said and assured his son that the teachers were good people who had his best interest at heart. In his first encounter with a teacher he was told that his father was an agent of the devil. While admittedly an old example, Bergman testified that he witnessed similar degrading encounters between school personnel and students. At the beginning of the model dorm program a school official launched a major attack on the Native American Church (NAC)<sup>28</sup> to which all the parents

and children in the program belonged. The official did not know about the group's affiliation. Nonetheless, the degradation of the peoples' beliefs evoked the same response of shame and doubt experienced by his patient many years ago. Abourezk was interested to know if the BIA education division or other schools administered by the agency had sought input from Bergman about the beneficial practices identified. Bergman explained that the model dorm program was a joint project of IHS and the BIA. Abourezk pressed him further to ask if he had been approached for consultation from officials responsible for the education of Indian children country-wide; Bergman had not. Abourezk asked the Bergman and Goldstein if they generally ascribed to "the recommendations provided by the other experts who testified today that the tribe should have control over adoption and foster parents and education programs as far as children are concerned." Bergman responded "absolutely" and Goldstein answered "no question." (U.S. Senate 1975, 133)

The Senator questioned if the rights of the children who attend boarding schools were being protected. Bergman responded that he thought not and Goldstein agreed.

Dr. Bergman: I don't think so. By and large, the boarding schools are not of a piece, but I think in the usual situation, no.

Dr. Goldstein: I would agree. I was just trying to think of rights that children have when they get there, and I can't think of any. (U.S. Senate 1975.133)

Abourezk regretted that failure to recognize and protect students' rights was a pervasive problem throughout the country and cited his own children who "suffered some pretty disastrous learning experiences" (U.S. Senate 1975, 133). He observed that these techniques dampen the student's enthusiasm for learning and cause loss of interest in studies. He then moved to a question regarding the presence of a requirement that the boarding school students attend Christian Church services.

Dr. Bergman: Almost always.

Senator Abourezk: Even though they might have some other religion?

Dr. Bergman: That's right. The question is usually asked if a child, or when the children come to school, what is their religious affiliation and most places there are three possibilities, Protestant, Catholic, and Mormon, and no other possibilities are listed. (U.S. Senate 1975, 133)

On a Thursday visit to Toyei Boarding School Goldstein learned that Thursday was mission day at the school and he witnessed someone asking a child "well you are such and such a religion aren't you, your friend Jim is" (U.S. Senate 1975, 133).

Senator Abourezk: In other words, for a child it's almost coercion it seems like.

Dr. Bergman: There's nothing else that a child is allowed to do at that period of the day or in the week and in most boarding schools, so he's got to be in one of the other kinds of religious instruction. (U.S. Senate 1975, 133)

Abourezk reflected on his reading about required school prayers and that "everyone agreed at the time, that even a suggestion to a child that he was doing something outside of his normal activities than the other children, it is more like coercion" (U.S. Senate 1975, 134).

If the entire class was required to pray at a certain hour, and if some of the children didn't want to pray, they were told to go outside. This effect on a small child was very bad. He felt like he was doing something wrong if he didn't stay in there.

Dr. Bergman: It's not so subtle in this instance. (U.S. Senate 1975, 134)

The Senator expressed his gratitude to Bergman and Goldstein for their testimony.

Joseph Westermeyer was on the faculty of the University of Minnesota's Department of Psychiatry where he taught psychiatric residents, psychologists and psychiatric workers. He described his experience working primarily with Chippewa Indian patients as limited although it spanned a period of twelve years. Five years hence he began to collect his

experiences in “a formal and a thoughtful way.” During this five year period, he saw 120 Indian patients and 16 families

most of whom were either trying to get their children back, some of their children back, or were in the process of losing their children.

During this time period, also, as I became increasingly aware that transactions, and interactions between Indian families and social agencies tend to be extremely important in the problems. Often times they maintain their problems.

I took off 3 months and spent them visiting hospitals, welfare agencies, police departments, sheriff’s offices, and community mental health clinics and five counties in Minnesota where Indian people are most populous. (U.S. Senate 1975, 45)

During his three-month journey, which he explained was the basis of his testimony, he was able to identify only two Indian foster homes in the state. He gave the Sub-Committee a profile of the Indian patients he had treated. One-half of them had been removed from their homes and had multiple foster home placements and only a few of them had been adopted. Some of his older patients had been placed in both boarding schools and foster care. He found that after foster care placement none of the people returned permanently to their home of origin although many made infrequent trips home to visit relatives.

In general, they have some of the general characteristics that one can attribute to children passing through a series of foster homes. Difficulties such as chronic insecurity, free floating anxieties, panic reactions, difficulty adapting to family life and adulthood, were characteristics present among them, as they are among non-Indian people raised in this manner. (U.S. Senate 1975, 45)

Westermeyer explained that during their childhood they seemed to do reasonably well and it was understandable that there might be little social work intervention. Even those children who were placed as late as grade-school years seemed to make a good adjustment and did not present social or psychological problems in the majority of cases. But, when they reached adolescence, runaway problems, suicide attempts, drug usage and truancy became

“extremely common among them, even though they are raised away from the reservation and away from Indian society” (U.S. Senate 1975, 46). He elaborated on the particular problems they confronted during adolescence.

During the adolescence of these people, they were raised with a white cultural and social identity. They are raised in a white home. They attended, predominantly white schools, and in almost all cases, attended a church that was predominantly white, and really came to understand very little about Indian culture, Indian behavior, and had virtually no viable Indian identity. They can recall such things as seeing cowboys and Indians on TV and feeling that Indians were a historical figure but were not a viable contemporary social group.

Then during adolescence, they found that society was not to grant them the white identity that they had. They began to find this out in a number of ways. For example, a universal experience was that when they began to date white children, the parents of the white youngsters were against this, and there were pressures among white children from the parents not to date these Indian children. By the way, all of them were three-eighths Indian or greater. The majority of them were three-fourths or full-blooded Indians. (U.S. Senate 1975, 46)

His patients who were commonly subjected to derogatory name-calling such as “buck, squaw, Sitting Bull,” found difficulty establishing a peer-group, getting a job in the local area, purchasing a motorcycle or getting a loan to buy a car.

At the same time, they were finding that society was putting on them an identity which they didn’t possess and taking from them an identity they did possess. They had no peer group or no identity with any group that they might share this identity. (U.S. Senate 1975, 46)

He pointed out differences between the experiences of his patients and children attending boarding schools. Although both groups experienced some of the same stressors, the boarding school students were benefitted by a peer group with whom they shared an identity. These students also had the benefit of contact with immediate and extended family members. He urged the panel to recognize that the problems in the institutions do not only reflect difficult conditions of Indian life but also the ways in which they are operated.

With other patients who exhibited a “high identity with Chippewa culture” particular characteristics emerged. They had been reared in their own homes, made recent visits to the reservation, spoke their language and had good coping skills within the context of the larger society. They were more apt to be employed, have honorable discharges, married and caring for their children. There was “low incidence of history of social problems such as imprisonment, commitment to a State mental health institute, and such as this” (U.S. Senate 1975, 47). He found the reverse to be true for patients with low cultural identity who exhibited poor coping skills and had significant social problems.

I thought that this only undermines the common thought that people only had so much cultural, or so much inside culture within their personality that if you fill up these with Indian culture, there may not be any left over for coping with the majority of society. (U.S. Senate 1975, 47)

Statistics indicate the Indian families in Minnesota are in difficulty. Infant mortality is high from infectious disorders and nutritional deficiencies. Child battering, although extremely infrequent, has become more commonly known among Indian people. It has been difficult for the state child welfare system to respond well to the needs of Indian people, despite its national reputation for excellence. The social workers perform excellently when they are called upon to work with the elderly, physically handicapped, those with learning problems and those with family problems as long as the clients are from the majority population. It has been his experience that social workers called to help Indian families in crisis or distress do a poor job.

They do not work to keep the family intact. They will not use the extended family resources. They won't use homemaker or mental health facilities or collaborate with Indian community resources.

There seems to be an early recourse to foster placement; foster placement is often used as sort of a peace power against the family. There's the stress to sort of

whip the family into shape when they experience difficulties in living, rather than to foster family strength and help the family through a crisis. (U.S. Senate 1975, 47)

He held no blueprint to solve these very complex phenomena. He thought that Indian leadership was doing the best job to address these problems and help improve peoples' lives. Indian organizations have worked to reverse unhealthy trends and assume greater responsibility for the welfare of the people in the community. Senator Abourezk asked if Westermeyer would agree that intervention by a non-Indian social workers or other non-Indian authority that imposes majority standards on the Indian people is doomed to failure. Westermeyer assented and extended the list to include white physicians and psychologists, all of whom have cultural blinders that impede their work. He has observed increasing success in the alleviation of family difficulties when the service-providers are Indians. There is one Indian-controlled health clinic in the area which has demonstrated the same success as has been seen in other ethnic clinics in the community. Abourezk commented on the dearth of Indian professionals and sought Westermeyer's recommendations regarding training or cultural awareness sessions for non-Indian professionals. Westermeyer had none.

I don't have very much faith in that institutional means of correction, because it puts the responsibility of change on the professional who is at the top of the hierarchy. In other words, he has to want to change himself or he won't change. And, if he would have been open to change, he would have already accomplished that without any outside interference. (U. S. Senate 1975, 48)

Senator Bartlett took up the questioning and wanted to know if Westermeyer had treated or had contact with children in school situations. Westermeyer clarified that his contacts with children were with those in Twin City schools not boarding schools. Bartlett asked him to identify the main problems involved in the children's environments: "Is it the fact that the Indian children are in a white foster home, or is it the fact that the Indian



children are not associating with other Indian children, or is it some other reason, a matter of poverty, which Mr. Byler said it was not” (U.S. Senate 1975, 49)? He then explained that he wanted to know about the children’s psychiatric difficulties. Westermeyer replied that there were few psychiatric difficulties among the children living in white foster homes during their grade-school years. Most of the children make pretty good adjustments.

The difficulty arises, primarily, during adolescence as they try to assume a cultural identity and, because of their racial characteristics, the majority of society refuses to let them express that majority cultural identity and they’re forced into an identity which they really don’t know how to behave in. They really don’t know how to act as Indians should. Many of them have lost contact with the extended family back on the reservation.

The difficulties occur at this time, I think their problems grow out of two things. One, having an identity that they can’t express, the majority identity, and being forced, because of their race, into an identity that they do not understand.

The second, not having around them other Indians, extended family, who can support them through this difficult state, where they’re being expected to change their social and cultural identities. (U.S. Senate 1975, 49)

He emphasized that these factors operated in adolescence not in childhood and the younger children were seen infrequently. Bartlett pressed further, “[t]hen, you wouldn’t see very clearly the solution to the problem of having Indian foster parents if such adoption was, or having adoptive parents that were Indian” (U.S. Senate 1975, 49)? Westermeyer thought that if the Indian family received services to keep the family intact there would be less need to use foster and adoptive homes. He said that he did not have sufficient contact with adoptive families to comment further. The Senator asked if there was lack of interest among Indian parents to adopt or was it that the resource was not pursued. In response to Bartlett’s complicated question, Westermeyer explained that once a child is adopted the payments to support care end. Many Indian families are large and provide care and support to their own

children, and often those of kin. It is difficult for these families to afford another child. Housing standards, which grew out of historic public health concerns regarding infectious diseases, mandate spatial requirements that not many Indian families can meet. He expressed regret that these concerns receive greater emphasis than a home with caring parents. The complex nexus of these phenomena works against adoption by Indian parents and gives preference to white adoptive parents.

Bartlett asked Westermeyer about his “experience with the readjustment problems of children who have been in non-Indian homes and who return to Indian homes in Indian communities” (U.S. Senate 1975, 50). Westermeyer replied that it was not often that these children return to their homes of origin, more often they drift back to an area like Minneapolis where they know they have relatives but they don’t go back to the reservation. Many do not make contact with their extended family group until their late teens.

They do it when they’re running away at age 16, or they do it when they finally get out of school at the age of 18 or out of the service at age 20. That’s when I see these people are having suicide attempts or difficulty with alcoholism, using drugs. That’s when they are surfacing the psychiatric recognizance and that’s when they end up on my ward. (U.S. Senate 1975, 50)

Barlett pushed the question further to include “the adults that you see that have had this background, is that a continuing matter, where you have had good success and readjustments? What has been your experience” (U. S. Senate 1975, 49)? Westermeyer explained that once the pattern is established in the late teens and early twenties it is very difficult to treat. If a person in their thirties or forties decides that he or she wants to extinguish these behaviors, the rehabilitative work that will be required is very expensive, limited in its goals and chances for success are low. He could point to a few dozen people who have done well but at great expense to themselves, their children and family members.

The family is all busted up. It is such a long rehabilitation that probably 60 to 70 percent of them are not going to be rehabilitated. They are going to end up in the morgue or in prison, or in an institution of some kind.

All efforts in that area are good, they certainly aren't, from my perspective, a solution. I guess that is why I was willing and anxious to come here today because I see what I'm doing in my own little place, sitting in a psychiatric unit, while it may be of interest to me, certainly it isn't going to solve the problem of the Indian people. (U.S. Senate 1975, 50)

Bartlett pointed up the inadequacy of either white or black social workers to understand the needs of Indians and to develop viable solutions. Westermeyer agreed that was true but pointed out the economic concerns involved. His salary is paid by the citizens and he can see people regardless of their ability to pay for services. That is not the case with mental health workers who must be paid by someone to provide the care. Senators Abourezk and Bartlett thanked him for his testimony. Westermeyer submitted three publications for the record that addressed his work in Minnesota. (U.S. Senate 1975, 506-523).

Alan Gurwitt, associate clinical professor in child psychiatry, and Carl Mindell, a faculty member in the Department of Psychiatry, Albany Medical School, introduced themselves as unofficial representatives of the American Academy of Child Psychiatry (AACP)<sup>29</sup> which maintained an American Indian affairs task force. It was explained that their statement was not the official position of the Academy but rather the result of their own work and particularly Mindell's work on the Pine Ridge reservation in South Dakota. They stated that their main concerns involved child placement issues.

As child psychiatrists, we are concerned about the source of conditions that have to do with the proper and necessary ingredients that go into child rearing. We've been very concerned as a professional group, the American Academy, the American Psychiatric Association as well, has been very concerned about the problems that we've heard about today among the American Indian families.

We wanted to particularly focus on issues having to deal with issues of dependency and neglect. We're not going to address ourselves to the problems raised by Indian boarding schools. . . . (U.S. Senate 1975, 55)

Gurwitt cited the alarming statistics from previous testimony about the placement of Indian children away from their homes and reservations and offered their view of factors related to these events that reflect two particular trends.

One is that American Indian children are being placed outside the home at rates that are alarming, and secondly, that American Indian children are being placed in non-Indian homes at a rate that is equally alarming.

We think this reflects several things. One, the Bureau of Indian Affairs policy and State welfare policy of getting Indians into the mainstream of America, while this policy has changed at higher levels of the Bureau, its impact at lower levels continues to be present, and we think this has a devastating effect over many generations and continues to have a devastating effect on children.

Second, the options available for placement are either not available or are inaccessible for varied reasons, families are disorganized, or are having difficulty in providing for needs of the children; and usually do know well in advance the placement decision.

Decisions to place the child often assume that other options have failed, whereas, too often little effort has been made to intervene early with support for the child and his family by the State and Federal agencies and, occasionally by the tribe. Too often, the only clear option appears to be placement.

Third, the decision to remove the child from his parents is often made by poorly trained Federal and State agency personnel and without the parents understanding their rights. For example, where they have voluntarily waived their parental rights without understanding the implications. In effect, it operates as a lack of informed consent.

Fourth, the child has had no advocate in court to represent his interests, nor in most cases, his parents.

Fifth, when the decision to place the child is made in court, it is often made by the State court which does not utilize the available and often rich information in the child's extended family and neighboring community related to potential support and care. (U.S. Senate 1975, 56)

Gurwitt gave an example of failure to use family and community resources by a white judge in a North Dakota tribal court who chose not to mine the wealth of information from family and community members present in the courtroom. Information vital to the proper disposition of the matter was not sought from the child's family and neighbors resulting in poorly informed decision-making.

Sixth, the standards used in making the placement reflect the majority culture's criteria for suitable placement and do not take into sufficient account what may be appropriate within the child's social welfare. (U. S. Senate 1975, 56).

It was noted that others had addressed this issue to point up the impediments of existing state standards, e.g., housing arrangements and square-footage requirements, imposed on the Indian family's ability to care for its own. These criteria fail to consider what constitutes "a warm, giving, adequate home, a psychological home" (U.S. Senate 1975, 56).

Seventh, the tribes generally have been given little or no responsibility for controlling or monitoring the flow of moneys [sic] available for child care.

There seems to be no systematic review of placement judgements to be sure that the child's placement offers her, or him, the least detrimental alternative.

And ninth, there is no person or agency charged with focusing on the needs of Indian children with, for example, compiling information and developing comprehensive planning models adaptable to different regions, different tribes, different settings. (U.S. Senate 1975, 56)

Gurwitt commented on Westermeyer's observation about the psychological impact of placement on adolescents and noted that his and Mindell's work leads them to believe that the impact is felt much earlier in younger children but may not be openly manifested.

To be torn away from a setting where they might feel at home, to be placed in one home after another, to never have any sense of permanence, never know where they're going to be next, to never be able to be sure of anything, doesn't exactly provide trust and security; trust in people and security in their lives. We feel that there is evidence, but maybe it is less overt in children as well as in adolescents. There is a pervasive sense of abandonment, a sense of depression, and a sense of

having been neglected and anger in regard to that, but not one that someone can normally see. (U.S. Senate 1975, 56)

Both Gurwitt and Mindell had visited Indian communities where they were able to observe efforts being made to help families. There was a great deal of work on-going in Indian country being done by tribal councils, tribal welfare committees, and tribal courts to improve housing and establish early education, residential and arrest facilities. On one reservation the tribe operated a family development center that focused on the whole family. It was their belief that tribal councils were the best equipped to carry out the needed change and development. Much more needed to be done and Gurwitt and Mindell offered suggestions that they believed would facilitate development of needed resources.

First, the Bureau of Indian Affairs and State welfare agencies which are the recipients of Federal funds, should make an explicit and overall goal of supporting the integrity of Indian families and communities. This sounds like something very simple and already well known, but it's really like a very important statement in the sense that there isn't, as far as we can tell, and from what you've heard today, a real sense of protecting at all costs the integrity of the family and supporting the family before destruction.

Second, increasing the options available to Indian communities, besides placement, and mandating the integration of these options into a continuum of services under the general direction of the tribal government. The options would be flexible to respond to the needs of the individual family. Such options might include such things as mentioned today, the in-home help, homemaker care, home counselors, child care to both the family and the children, various kinds of out-of-home help such as preschool facilities and after-school care, respite service to homes.

The third one, when placement is considered the child and his parents each should be represented by an advocate. This would help to insure that the interests of each, which are not necessarily the same, and which also may be different than the State's interests, are represented. (U.S. Senate 1975, 57)

The questions addressed in child custody hearings are complex, not just in Indian country, but throughout the nation wherein the child's interests and the parents' interests may not be the same, and the State may have different interests from either party. Gurwitt and Mindell

emphasized that the complexity of the issues involved, no matter the ethnic group, calls for advocate or legal representation for the families and their children.

Senator Abourezk intervened to ask,

[i]sn't it true though, that that particular criteria "what's in the best interest of the child," is also used by welfare people as a cover without basis for doing what they want to do? (U.S. Senate 1975, 57)

Gurwitt concurred with Abourezk's question and explained that decisions about best interests are made of what the different parties "think in their own particular appropriate background, may be appropriate." Abourezk pressed for clarity, "[h]ow do you make a separation . . . a distinction, if there is a distinction"(U.S. Senate 1975, 57)? Mindell explained that as part of their recommendations is the consideration of not always using the principle, "in the best interest of the child," because it is so vague and nebulous.

Gurwitt cited another principle that was gaining attention which addressed the question, "what would be the least detrimental to the child?" By the time the child custody matter reaches the point of out-of-home placement "there's nothing really magical that welfare agencies are going to be able to do" (U.S. Senate 1975, 58).

So, which alternative is going to be the least detrimental to the child and there, keeping in mind, several things. One is that the decision is to be made quickly, because for a child, or what for us is a short time, for a child is a long time and that a child has the right to be wanted and that the issue of who is the child's psychological parent, is also important.

In other words, who is meeting the needs of the child becomes very important. (U.S. Senate 1975, 58)

Using the "least detrimental" criteria a judge faced with the hard decision to separate a three-year old child from a mother with whom he or she has lived since birth and concerned about the sufficiency of the state's evidence might determine that the "least detrimental" alternative

for the child at that point in the deliberations would be to maintain the child in the mother's custody. This decision would stave off the damaging practice of multiple placements that was the experience of many Indian children even before final adjudication of their custody.

Abourezk asked Gurwitt and Mindell to recall the testimony of Anna Townsend whose time in foster care had been extremely traumatic for her despite the fact that she had not been in care very long. He wondered if even a short-time placement might have a long-term effect on a child. Gurwitt responded that short-term placements can have lasting damaging effects and there are number of factors that need to be taken into consideration, all of which impact the child's response to placement.

It all depends so much on the circumstances under which the child is placed, the nature of the home in which the placement took place and I think it would be very important to consider the degree of understanding of the child about why it takes place and to what degree of permanence or impermanence or whatever it would be.

One of the common phenomena of foster children of any ethnic group is the constant sense of not knowing where they will be or how long they'll be there. It's too painful and too upsetting to try to establish any roots. If they establish roots they just get hurt again and again. To be torn away from the roots that they've begun to establish, leads them to decide that they're not going to get very close to anyone and certainly it has an impact on their whole life including their ability later on to be parents. (U.S. Senate 1975, 58)

Gurwitt remarked that the rest of their recommendations emphasized the need for the tribal governments, the tribal courts and tribal welfare committees to determine standards for placement and to receive the funding that can be channeled in ways that best serve the interests of children and families in their communities rather than these resources being funneled through welfare agencies. He looked forward to the day when there will be many more Indian professionals involved in the work but hoped in the meantime tribal courts which he saw as in the best position to make the essential and complex decisions regarding



placement would proceed and not rely on or wait for scarce child psychiatric and other outside professional resources to help them in decision-making. Mindell offered another recommendation that called for the establishment of an office that would focus on the needs of Indian children located in the IHS or the DHEW, either of which was seen as having greater capacity to address the complex problems identified at the hearings than did the BIA. The recommendation also proposed regional offices which could respond more directly to individualized needs in different areas. Abourezk asked Gurwitt and Mindell if they would make themselves available to consult with Sub-Committee staff regarding particular information related to proposals for Indian child welfare legislation and the pending Indian health bill where the recommendation for a children's needs-focused office might be included. Abourezk reviewed two main recommendations submitted by Gurwitt and Mindell.

If I may summarize, by way of a question, do you believe, as well, that the tribe ought to have pretty much full control over the welfare of Indian children? And, you believe that there ought to be a central office somewhere, perhaps in the Indian Health Service, that is there to look after the interests of the Indian children as far as adoption, foster home care and other interests? Have I left anything out?

Dr. Gurwitt: That's the gist of it. (U.S. Senate 1975, 59)

He thanked the Gurwitt and Mindell for their testimony and passed questioning on to Senator Bartlett.

Senator Bartlett sought clarification regarding the issue of communications with the tribes and thought the link with the tribe through the BIA would provide the vital link the doctors had suggested. He was also interested to know if the doctors thought that the problem of child-placement had been sufficiently studied. Mindell replied that the day's

testimony and their experience demonstrated adequate study of the problem and that the placement statistics developed by the AAIA support the conclusion

that Indian children are, to an appalling rate, being removed from their homes. And, that seems to be the solid important issue. (U.S. Senate 1975, 60)

He explained that the Association's figures were concentrated in sixteen states where the removal of Indian children was very high and the numbers of these children who had been placed in non-Indian homes was also very high. The consequence of these practices meant that ninety-percent of the adoptions of Indian children were by non-Indian parents and eighty-five percent of the children in foster care were in non-Indian homes. Gurwitt stated that the issue of non-Indian placement was important throughout the country. He cited a recent major-city study by the Child Welfare League of America that sought answers to the questions: "what decisions were made in terms of child placement over a long period of time, how were they made and were they good decisions as best could be determined" (U.S. Senate 1975, 60). Senator Abourezk injected a question.

In your experience, either of you, in these court proceedings or even in the lack of court proceedings, is generally the burden of showing need for removal of the child, or movement of the child to one place or another on the parents or is it on the welfare agency? Who has to show that the child has to move somewhere. (U.S. Senate 1975, 60)

Mindell explained that in their experience they have observed that the courts more often take the words of the welfare agency as opposed to the words of the parents who usually do not have benefit of legal advocate or counsel. While the decision is announced in the courtroom, the actual decision is made in backroom conversations between the judge and the welfare worker. The decision is based on the information given by the worker. Abourezk pressed further.

Generally, in any kind of a legal action the burden of proof is upon the moving party, and in criminal action, it's upon the prosecutor of the State; in civil action, generally, it's the plaintiff or the person who brings the lawsuit. He is then given the burden of either the preponderance of the evidence or beyond a shadow of a doubt, as the terms are used, to prove his case.

I take it, from what you're saying, what happens then in relation to Indian family situations, is that the welfare department, in a lot of cases, will come in, take the child without benefit of any kind of due process. Then, in order to get the child back, the burden of proof shifts from the moving party, which should be the welfare, over to the family themselves.

Is that an accurate statement? (U.S. Senate 1975, 60)

Gurwitt agreed the statement was accurate and pointed up the difficulty parents have in retrieving their children because of the struggle to get their voice heard in the courtroom.

Abourezk asked if the doctors would recommend that a legal procedure be established to make clear that the welfare department carried the burden of proof. Mindell added that their recommendation implied "that placement of an Indian child should take place under the auspices of the Indian tribal court and the placement decisions, generally be under the auspices of the tribe" (U.S. Senate 1975, 60). Abourezk returned to the burden of proof, itself, and asked where it should lie. Mindell replied that the person bringing the allegation would have the burden of proof. Gurwitt offered that it was possible to shift the proceedings and administrative processes to the tribal court or the tribal welfare committee who then would hold the burden of proof. This was important because it would provide a tribal view of the matter rather than only that of outside social groups.

Questioning returned to Bartlett who asked, "[a]s a general rule, do you feel that children should not be placed up for adoption with non-Indian parents" (U.S. Senate 1975, 61)? Mindell replied.

I think, as a general rule, that the resources of the Indian community are not being used by people that are even thinking or talking about adoption. I think there are several issues here. One is that welfare agencies tend to think of adoption too quickly without having other options available, such as—well, there are a number of things that can be done to help support a family of origin before you have to get to the point of thinking about adoption.

Once you're at the point of thinking about adoption, it seems to us that welfare agencies are not making adequate use of the Indian communities themselves. They tend to look elsewhere for adoption type of homes. (U.S. Senate 1975, 61)

Bartlett said he understood that but wanted to know if, as a general rule, they thought it not advisable to place Indian children in non-Indian homes and where adoption is concerned that the Indian community should have advance input, including tribal approval, of adoption of their children. And, further that the tribe should have oversight of consummated adoptions to assess their progress and that the BIA or other governmental agencies should support the decision-making efforts of the tribal communities. Gurwitt and Mindell agreed with his conclusions. Gurwitt and Mindell were thanked for their testimony again and they left a written statement for the Sub-Committee (U.S. Senate 1975, 61-64).

James Shore introduced himself as director of the community psychiatry training program for psychiatric residents and associate professor on the University of Oregon Medical School faculty. He was a former chief of IHS Mental Health Programs in the Pacific Northwest which included the states of Washington, Oregon and Idaho from 1969 through 1973. He was also a member of the Indian Affairs task force of the American Psychiatric Association. He told the Sub-Committee that the statement he makes at the hearings will also be discussed at the association's annual meeting in Detroit at the end of the year. He introduced William Nicholls, director of the tribal health program of the Warm

Springs Reservation in Oregon who, together with his program staff, had helped Shore prepare the statement.

Shore began his statement by citing “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 the impact of the community’s sponsorship on the effectiveness of Indian child care. (U.S. Senate 1975, 101)

After several years of intensive planning, the Warm Springs Tribal Council sponsored the opening of a group home. During the developmental period the Council consulted with IHS mental health programs and other area agencies. Some years earlier a child neglect committee made up of community participants had been formed and had established “a precedent for community initiative in making decisions for the placement of Indian children” (U.S. Senate 1975, 101).

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 percent of the total youth population. Of this number 74, 34 percent, were in foster care placement with the State children’s services agency, 47, 21 percent were in boarding schools, and the remainder in tribal foster homes or other off-reservation homes. (U.S. Senate 1975, 101)

Warm Springs mirrored the situation in Indian communities all over the country where large numbers of children were removed from their homes based on allegations of neglect or

abandonment but child abuse or battered child syndrome was very rare. Despite the problems community members were experiencing there were no licensed foster homes and few family support services were available to the people. In 1971, 40 children were placed in foster care for the first time and in 1972 an additional 30 children were placed for the first time. In ninety-five percent of these cases, alcohol misuse by the parents was a determining factor for removal.

The group home served as the focal point for the development of needed child care services and while it was a haven for children who had been removed from their homes, it also provided long-term placement services, counseling and minor medical care. The establishment of tribal child care services made it possible to provide intensive outreach to families in difficulty and the support needed to stabilize their family situations. In its first year of operation the group home provided shelter for 246 children from 135 families who represented twenty-percent of the local population. Parental misuse of alcohol accounted for ninety-percent of the placements and child behavior problems such as juvenile delinquency, runaway reactions and serious medical problems made up the remainder of the group home residents. Parents received help for their children's major medical problems, one with a cleft palate and three who were failing to thrive; upon completion of treatment all the children were returned home. Prior to the establishment of the group home, many children involved in delinquent behavior were detained in the local jail. In 1967, 77 children were placed in jail for delinquent acts, in 1968 ninety-eight were incarcerated followed by 121 in 1969, 118 in 1970 and 120 in 1971. One child was incarcerated for thirty-two days. At least twenty-five percent of the arrests involved drinking violations and for many others the delinquent behavior was linked to parental alcohol abuse. Even though jail referrals continued after the

group home opened, the average length of stay was reduced to a day and more children were being referred directly to the group home by the tribal court. The group home staff has had to refer only one child back to the jail because of an uncontrollable runaway reaction. Shore observed that

[t]hrough 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. (U.S. Senate 1975, 102)

The establishment of the group home was an essential step in the development of effective family and children's services. Children who were removed from their homes remained in their community and were not far from their family homes, which made it possible to provide intensive outreach to help the family remain involved as they worked to resolve their problems. Decisions to place children out of their homes were now made by community members, and parents were accorded their due process rights throughout including tribal court proceedings. The tribe established a policy that required the return of the children to their families within a short time period, thus minimizing the impact of separation. There was a dramatic reduction in the numbers of children placed off-reservation, although those who might need individualized treatment would continue to be placed in areas where the services they needed could be obtained. Since January 1973, when the group home opened, only one child has been placed off-reservation in a non-Indian foster home. Most of the children referred to the group home have been returned to their parents and the families received outpatient follow-up. Some of the children have been placed in reservation-

sponsored foster care. The outreach services provided by the group home have prevented child removal.

Shore encouraged mental health efforts in preschool and during the child's elementary age, "[f]amily stability is the essential aim concerning the construction of a chain of preventive adjustments" (U.S. Senate 1975, 103). Tribal sponsorship of the group home and family outreach programs provided essential links within the context of the tribe's cultural values and political sanctions. He described the efforts of the Warm Springs people to deal with the loss of their children as successful. He observed that most other tribes in the Northwest and throughout the country "have not been able to reverse the process that destroys Indian families" (U.S. Senate 1975, 103). He listed three areas which bore consideration in efforts to reverse the process of child removal and destruction of Indian families.

A change in the chronic and legal entanglements that Indian families often encounter and a return of this due process to the tribal court. Sufficient concern for funding for Indian child care with programs to sponsorship by the tribal councils, and an increased emphasis over the resources available through Federal and State agencies, with clearly stated guidelines that those resources must be for the care of Indian children. (U.S. Senate 1975, 103)

Shore ended his testimony.

Abourezk thanked Shore for his testimony and stated that he understood that the doctor had helped develop "one of a very few ongoing tribally-run child welfare programs in United States" and it has been successful (U.S. Senate 1975, 103). He thought that what the Sub-Committee had learned from him together with further examination of the effort would serve "as a useful model for Congress to develop legislation of this type and for the Federal bureaucracy to use as a model as well" (U.S. Senate 1975, 103). He then turned to Shore's



written statement which indicated that battered child syndrome was virtually unknown in his experience and the observation had also been shared by other experts. Abourezk remarked that the syndrome had received considerable attention in non-Indian communities and he wondered what accounted for the difference in treatment between Indians and non-Indians. Shore explained that there cultural differences that may account for the differences although they may not provide the full answer.

One is the relationship between the Indian child and the Indian parent and the particular kind of respect that the Indian parent has for his child. It is seen much earlier as someone capable of independence, making his own decisions, and assuming responsibility.

. . . someone who at a very early age, is capable and deserves the kind of respect that in the non-Indian culture we often reserve only for our peers in adult years. (U.S. Senate 1975, 103)

In general, there are traditional sanctions against physical abuse of children and parents are more non-aggressive in rearing children. These practices are at odds with perceptions of non-Indian outsiders who often equate lack of physical punishment with parental incompetency. Abourezk observed that Shore's comments reflected what had been heard repeatedly throughout the day, "that welfare agencies that deal with Indian families really don't understand what is happening with the Indian families themselves, and they might judge their behavior by the behavior of white families or non-Indian families" (U.S. Senate 1975, 103). Shore agreed that is one element in the process discussed in the testimony. Abourezk asked if Shore would agree that the Department of Health, Education and Welfare might use its jurisdiction over distribution of monies to state welfare agencies to require that criteria and guidelines be developed to prevent welfare agencies from being so insensitive. Shore stated that he would definitely agree with the proposition and pointed out that while

the Warm Springs project secured funding, there were many other tribes who had developed similar programs but were not able to get funding for them. He observed that neither HEW through its direct funding for child welfare programs nor the State which receives federal monies for child welfare programs had made any effort to support these programs. Abourezk again expressed his gratitude for the excellent testimony which he viewed as congruent with that of other experts and his hope that the problems confronted by Indian children and their families could be corrected as soon as possible.

Additional testimony was offered by Carl Hammerschlag,<sup>30</sup> an IHS psychiatrist who not only provided services at the Phoenix Indian Medical Center but also served as mental health care consultant for the tribes of Arizona, Nevada, California, and Utah. He explained that he would not provide more horror stories of boarding school placements, off-reservation adoptions and other institutional care providers but found it difficult to know where to begin.

I think that if we pay attention only to legislative procedures that will change laws, for example, for Indian parents to keep their children, we're dealing only with the surface areas.

I think that what we see on the Indian reservation is the result of, at least, 100 years of Federal neocolonialism which functions under the policy whereby giving the individual something, there is the assumption that an individual really gets.

I think we're going to have to move away from that as a philosophical trend. I think that those policies and the policies for the last 100 years has [sic] been counterfeit in that by giving something we are really taking something away.

I think the problems with Indian children is, by and large, a problem [sic] that Indians are rendered essentially powerless and institutionally impotent.

I think that one of the other things that we've discovered in the last 100 years is that in giving somebody something, we really take something away and you're taking away the individual self-respect, a sense of dignity and a sense of worth.

I think that one of the things that has happened in the last century has been that our children on the reservation today have precious little to identify with in terms

of dignity of their forebearers and the pride and power that once was their people.  
(U.S. Senate 1975, 217)

As an example of the outcomes he outlined, Hammerschlag described children's response to a request for a picture of their community or homeland in which they drew "hometowns with bars where Indians were lying drunk in the street" (U.S. Senate 1975, 217). He saw the sadness of the perception and experience not in the fact that the landscape was in daily view of very young children, but that by age 6 and pre-school level the children had incorporated a negative image of the self. He offered that if something was to be done about the children's problems, the effort had to include attention to the problems of parents and the reservation community. In his view, the way to deal with the historically-implanted phenomena "is by allowing people to develop some sense of their own power and fullness.

By power, I don't mean a rise in machine gun militancy; I mean in the sense that one is the captain of one's own ship and that one has the power in the sense of dignity to be able to follow through. (U.S. Senate 1975, 217)

He noted the long-standing pattern that providers of services to Indian people have become "passive recipients of their dictates" and insists that "when Indian people speak, we have to respond" (U.S. Senate 1975, 217). Indian people are told what they ought to do and laws are enacted directing them what to do, but in the end it is the Indian people who must follow through. He believes that these behaviors and circumstances perpetuate a counterfeit nurturing center.

Argument for perpetuation of these behavior patterns frequently relies on the view that Indian people have not developed the resources to do things for themselves and there are few Indian people with the requisite professional qualifications. While he acknowledged the

paucity of Indian professionals, he believed that an increase in their numbers would only be symptomatic and would not assure the community people

the opportunity and right to deal with the problems they faced.

I don't think, for example, an increase in the number of counselors in school is going to make any difference in terms of the problems that our children have, or are having in off-reservation boarding schools or in public schools. No increase in the number of counselors is going to change those issues.

I think in order to deal with any of the problems that our children have in educational institutions, I think we have to deal with the institutions themselves. We're going to have to deal with the curriculum. We're going to have to deal with what turns our kids off after they're 6 or 7 years old. After they reach 9 or in the third grade, their performance begins to drop. (U.S. Senate 1975, 218)

Hammerschlag recounted that by and large Indian students scored in the lowest tier on competitive examinations for national college entrance and that boarding school graduates were at least two years academically retarded when compared with public school graduates. He pressed for understanding "what is happening in schools that turn our children off. I think one of the things that we have to deal with is curriculum and parental input into the school system" (U.S. Senate 1975, 218). Senator Abourezk asked if that was not also true for non-Indian schools. Hammerschlag agreed fully but saw the situation in boarding schools as more complex due to the fact that for many students English is a second language and enrollment in these schools often results from problems confronted by them in local white schools. While some students enroll in boarding schools on their own to avoid school-related problems, others are referred for enrollment under the aegis of social reasons.

At least 60 and up to 90 percent of our students could go to school elsewhere, but were referred for some kind of social reason, and because we deal with a high range of studentry, we frequently justify their inability to perform on the basis of their very special problems.

I think that in some ways the program blames the victim. We make the students responsible for their own failure instead of recognizing that we, in society, are responsible for it as well. (U.S. Senate 1975, 218)

He concurred that curriculum and parental involvement are problems everywhere but did not see that an increase in the numbers of physicians, psychiatrists or social workers would make any difference in the real problems that Indian people faced and again cited the proposal as a symptomatic expression. He analogized an increase in the numbers of professionals to the giving of an aspirin to a patient with fever or leukemia, “where one doesn’t feel the underlying disease, and the underlying disease is the disenfranchisement and the powerlessness that has been reinforced for 100 years. I think if we’re going to make a real difference, then the tables are going to have to be changed. One has to give back to the community their own sense of powerfulness” (U.S. Senate 1975, 218). He remarked that advances in medicine are not brought about by increases in numbers of physicians but by developments such as vaccines which change the face of medicine. He observed that things are changing and that Indian people are increasingly making their voices and demands heard, and that an obligation pertains to Congress and its committees to sustain a public exchange of ideas put forth and to be responsive to Indian peoples’ needs.

I think that the problems of our children are, by and large, the problems of our parents and the problem of our reservations as well. It is foolish for us to suggest that only by legislatively changing, for example, the availability of homes and increasing money, are we going to make a real dent in the problem, the problem is one that suggests at least a century’s history, and that precious few of our people have any personal recollection as to the dignity of their forebearers.

I think that is going to have to change and I think that one way of changing this is for us to be perceptive to ideas. (U.S. Senate 1975, 218)

Abourezk replied to Hammerschlag that he had “hit right to the heart of the problem” and focused on the central point. Abourezk stated that “[t]he issue is really this, that when there

is real political and economic power given back to the Indian people, that is the beginning of the end of the problem, as we see it.” (U.S. Senate 1975, 219)

Senator Barlett asked for information about adoptions and wanted to know Hammerschlag’s observations regarding adoptions, whether or not he had seen high percentages of adoptions and his opinion about reasons and motivations involved. Hammerschlag replied that all who work in Indian communities are familiar with off-reservation placements of children in non-Indian homes and institutions. It was his impression that the numbers of these placements were decreasing in intensity, but still occurred as previous testimony indicated.

I think that what happens is that it’s so hard to describe, and one has to be on the reservation in September when the buses come to take our children away, for example to placement homes, missionary placement homes, to see children leaving their parents, leaving for 9 to 10 months of the year.

The children who are most attractive, for example, and go away to school, are not legally adopted but are essentially presented with such a compromising situation to have to adapt to a new way of life. They quickly go to homes where the expectation is that they will become part and parcel of that family. Part of that means that when they leave and come back to the reservation, they’ve been inculcated with a new set of values. Their sense of importance is critically related to what life experience they have had when they go to school, and our children are presented with two feet in two different grounds. One in the nature and soil of their heritage and the other in an adopted kind of new value. It’s devastating for many of our kids.

I think that the best children are asked to leave reservations, the kind of children that other people want to keep in their homes during the school year. The kind who can reform; the kids who are intellectually achieving. They are bright children who have had no problems, the elite from many of our families and homes. They are the ones that are most likely to leave reservations. (U.S. Senate 1975, 219)

The children who can compete most successfully are in public schools and those with the greatest difficulties are in boarding schools which fail to meet their needs, thus reinforcing the negative image that the children have of themselves. These are the children who do

poorly on competitive exams, score poorly on college aptitude tests and know that they will have greater difficulty in college. The adoptions that occur on reservations seldom come to the attention of social service agencies because of the long-standing custom of Indian families to take in their own and keep them in the community. Consequently, there are few Indian families who hold themselves up for legal adoption.

Bartlett remarked that he understood that adoptions and school-year placements not only interfered with the child's education but also seemed upsetting to the children.

Hammerschlag noted that when one is presented with conflicting values, a price is exacted.

Some of the children do extremely well in off-reservation placements and others not. He said that he was trying to be circumspect and did not feel that he could be entirely straight-

forward in the microphoned hearing. Problematic for the children is the substitute family's expectation that goes beyond success in school but often includes religious-affiliated

expectations as well. While many of these families may be altruistically motivated one

cannot overlook the conflicts presented to the child who strives for educational success and at the same time feels pressure to adhere to a rigorously confined way of life not in accordance

with that previously known. When the children return home, the difficulties engendered by these conflicts are expressed. Bartlett asked if a price was also exacted from the parents.

Hammerschlag stated that "[t]he price is one of self-image." The children have been away in homes with flush toilets, hot baths and showers and may return to a home without running

water or electricity and "they begin to wonder" (U.S. Senate 1975, 220).

One gets used to having hot showers and there's nothing particularly Indian about enjoying taking a hot bath, and if you've been taking a hot bath for 8 months and you come home and you can't, you say to your folks, how come you don't take baths. One of the prices it exacts is that the parents feel bad and the children feel confused and conflicted. (U.S. Senate 1975, 221)

Bartlett returned to Hammerschlag's impressions regarding decreases in off-reservation adoptions and wanted to know if the decreases were driven by the families' and tribes' desire to reduce these placements or were they "the result of an obvious effort on the part of the Indian" (U.S. Senate 1975, 221). Hammerschlag cited the influence of the black movements of the 1960's and saw an increasing awareness among Indians of legislation enacted to help them. He noted that Indians are coming together to expect and demand their legal treaty rights which have existed since the creation of this country. He forecast that in the ensuing decade Indian people will begin to have greater expectations of the general society and will begin to increase their participation in it.

I think the things that happen in the first several years of this decade, in terms of occupations, growing signs of militancy, is [sic] hardly a universal Indian phenomenon. It is, at least, I think a beginning of a reflection of what has been called the Sleeping Red Giant, and if that will continue, it will effect, also the children, the adoptions and the placements. (U.S. Senate 1975, 221)

Bartlett asked if he was seeing greater participation in tribal affairs and increased activity within the tribe itself. Hammerschlag replied.

I see only the reflection of the white man, who is sometimes invited and sometimes not.

I think that there's greater participation, greater awareness, there's a greater seeking for an increasing voice. I think that there are some excesses that still exist. I think that Indian tribes and Indian governments suffer from the same difficulties, and I say that with some kindness, that the rest of the Government is involved with and there's frequently political intrigues and backbiting, and not so subtle guarding of territories. I think those things will continue to occur for reasons that there is no reason to expect that it will be any different than it is any place else.

I think the fact that it is occurring is a sign of increased, growing participation. (U.S. Senate 1975, 221)

Senators Abourezk and Bartlett thanked him for his testimony.



Statements of psychological witnesses elaborated on and supported the problems identified by Indian leadership. There was clear recognition that the excessive rates of removal to boarding schools and foster care had their beginnings in centuries-old policies to assimilate the native population. There was the shared view that what evolved as a human experiment of tampering with Indian children's welfare and education had, for the most part, been a failure. At its core, the policy rejected the resources of native custom and life ways. Bergman conveyed the continuing prevalence of "the assumption that personal development and growth opportunity take place within the physical space of the home" but native custom was much more expansive and the child's potential for growth opportunity included the fullness of the physical environment from which the people derived their identity. The child welfare practice standards imposed on children and families reflected the majority culture's criteria which did not take into account the essential relationships that established the individual's place within the society and the relational network that sustained it.

Hammerschlag asserted that the policy of giving the native child the opportunity to become a member of mainstream society took away individual self-respect and a sense of dignity and worth. He opined that the children "had precious little to identify with in terms of dignity of their fore-bearers and the pride and power that once was their people" (U.S. Senate 1975, 217). Pre-school age children had already incorporated a negative image of the self. Underlying these practices was the argument that native people did not possess the resources to do things for themselves.

Focus on rescuing the child did not give attention to the problems of families and communities needed to develop effective responses to help strengthen families in distress. Bergman informed the panel that "few governmental agencies who are supposed to provide

care for Indian children are able to help Indian communities and families solve child welfare problems except by one or another means of placement” either in boarding schools or foster care (U.S. Senate 1975, 128). Especially troubling to the psychological experts was the failure of governmental agencies to understand that children in native society are viewed differently than children in the majority culture. Goldstein noted that children in Navajo society are regarded and treated as adults and notions of the capability of a six year-old child are far greater than are common in the majority of American homes. It is not unusual that latency-age children are charged with the care of their younger siblings in the absence of adult caretakers, but in the eyes of outsiders these arrangements are seen as indications of abandonment and neglect, and often become the basis for removal of the child to a non-Indian home. Shore also expressed concern about the failure of welfare agency staff to understand cultural differences including the particular kind of respect that the Indian parent has for the child. He explained that the child is seen much earlier as someone capable of independence, making his own decisions, and assuming responsibility. Failure to understand the characteristics of native family life meant that outside workers were prone to judge its behavior by that of white or non-Indian families. Bergman explained that native child-rearing practices had suffered a great deal as well as the confidence people had in themselves because so many were reared in bleak institutions away from their traditions. Legions of children were denied the responsibility to care for younger brothers and sisters through which they learned to become part of a chain of family responsibility. Centuries-old practices of child removal introduced a sense of fatalism among many Indian parents who became convinced that questions regarding their ability to properly care for their children would automatically result in the children being taken away.

Westermeyer fleshed out the serious problems in identity formation and tribal connectedness cited by Indian leadership. In his work with people in the Twin Cities area he found that those who exhibited a high identity with Chippewa culture had strong family relationships, stable work histories and were comfortable with their ethnicity. But the picture was different for those who had been removed from their families. Most of them were removed at such an early age that they had little or no opportunity to learn about themselves as tribal people. When they were eventually discharged from foster placement few returned to their homes of origin and made only infrequent trips to their home reservations to visit relatives. More often they drifted back to an area like Minneapolis where they knew they had relatives and where the requirements of tribal society were not strongly felt. Adolescents who had been in placement exhibited a common set of problems that included running away, suicide attempts, drug usage and truancy. Their efforts to assume the cultural identity of their foster parents were rejected because of their racial characteristics. In his study of ethnic identity problems among Indian psychiatric patients, discussed one of his patients who explained that as a young child he felt like he belonged to the middle-class Protestant majority and even believed that he was racially white. However, during adolescence, he found that he was assigned an Indian identity. White parents did not want him to date their daughters and he was excluded from mixed male-female parties. He was forced into an Indian identity but did not know how to act as Indians should. Westermeyer explained that once destructive patterns were established in late teens and early twenties, treatment became very difficult and rehabilitation required such a long process that few were able to complete it. The absence of extended family members who could support them during these very difficult times was a crucial element of treatment failure.

Hammerschlag cited the destructive consequences of placement for another group of Indian children who were the subjects of the long-held practice of removal by religious institutions concentrated on the recruitment of high-performing students. These were children that many church members would like to keep in their homes during the school year, those who were intellectual achievers and who did not exhibit behavioral problems. Parents of these children were, for the most part, influenced to allow them to enter placement because they were convinced that the education opportunities were greater than those that would be available in on-reservation government schools. The placement of Indian children in Christian homes presents a complex picture that was not always driven by concern for the child's welfare but was strongly influenced by the mission to bring the child into the religious fold. For example, the Indian Student Placement program of the Church of Jesus Christ of Latter Day Saints or Mormon Church responded in part to church doctrine that identified Indians as the lost tribe of Israel who must be baptized in the church to assure their ever-lasting salvation. Medical anthropologist, Martin Topper, who was employed by IHS during the period of ICWA development, focused much of his clinical work and ethnographic research on the problems of separation-individuation in young people who had been in these education placements. In his article, "The Etiology and Treatment of Psychological Problems Caused by Delayed Adolescent Separation-Individuation among the Navajo," Topper described students who had been sent on education placements as having an "inability to form consistent, well-integrated parental introjects which are a necessary precondition for the process of separation-individuation" (Topper n.d., 1).

Instead of forming consistent introjects that are primarily composed of the biological parents and secondarily composed of other significant adults of the patient's life, these young people often have confused and confusing introjects that are formed from

a variety of parental surrogates. The cores of the introjects may still be formed around the biological parents, however the introjects contain so much material from significant parental surrogates that they are often very confused and poorly integrated. This confusion is in large part generated by the fact that the parental surrogates are frequently Anglo-Americans or other non-Navajos who have very different values and attitudes toward life than those of the Navajo parents. In fact, some patients have stated that the parental surrogates have directly competed with the biological parents in cases where the children were placed in foster homes for educational purposes. In other cases, the surrogates have denied their parental responsibilities toward the children in boarding schools and have been emotionally remote from the children because of large class size, limited job definitions, and high staff turnover (Topper n.d., 5).

These children came to see adults as emotionally distant who used children for their own exploitative purposes often meeting the child's needs only if the child met the adult's needs.

These images were reinforced with the pain of many separations from both parents and surrogates that left the child with an overwhelming fear of rejection. Topper observed that these children exhibited serious problems with impulse control and developed "a form of episodic sociopathy in which they alternate between considerable 'acting out' such as drinking, drug abuse and sexuality and periods of relative remission in which they seek to become closer to parents or parental surrogates and seek aid. Psychologically, these young people can be characterized as being conflicted" (Topper n.d., 5).

They simultaneously seek to achieve the adolescent developmental goal of independence while attempting to make emotional contact with a stable, empathetic adult from whom they can construct a more integrated parental introject from which they can achieve their goal of separation. Their periodic "acting out" and their alternation between being a "good" child and a "bad" child can be seen to be an unsophisticated expression of this conflict and an expression of their problems with separation-individuation, in general. (Topper n.d., 4-5).

Children in boarding school placement were also subjected to conflicting loyalties related to religious beliefs and customary life ways. It was especially troubling that boarding school personnel seemed oblivious to the problems created for students that required identification

with a particular Christian church affiliation and their forced participation in non-Native religious practices. The outcomes for children, whether they were the subjects of governmental removal or church-affiliated removal, presented serious impediments to their healthy development. In the case of removals where children were purposely alienated and physically separated from their homes of origin, the opportunities for resolution of identity conflicts and values confusion were seldom available, if at all.

Child psychiatrists, Gurwitt and Mindell, observed that federal and state assimilation policies meant that there was little effort to intervene early with support for the children and their families, which often meant that the only clear option was the removal to placement. They noted that the decision to remove the child from parents who did not understand their rights by poorly trained federal and state personnel, in effect operated as a lack of informed consent. It was not uncommon that the children were placed in one home after another, never gaining a sense of permanence, never knowing where they were going next, never being sure of anything. While these characteristics were most frequently seen in adolescents, they saw that much younger children also experienced a pervasive sense of abandonment, a sense of depression, and a sense of having been neglected and anger about being placed in substitute care. It was deeply concerning to them that there was no systematic review of placement judgments to assure that the child's placement offered the least detrimental alternative. The problems were further complicated because there was no person or agency charged with focusing on the needs of the children, and no compilation of information or comprehensive planning models adaptable to different regions, tribes and settings. They proposed the establishment of an office that would focus on the children's needs in either

IHS or DHEW where there was greater capacity to address complex problems than existed in the BIA.

Children and parents did not have advocates to represent their interests and state courts did not utilize the available and often rich information in the child's extended family and community related to potential support and care. Courts more often than not took the word of welfare agency workers over that of parents, and shifted the burden of proof from the state as the moving party to the family itself. Gurwitt and Mindell proposed a shift in the child welfare proceedings and administrative processes to the tribal court or a tribal welfare committee who would then hold the burden of proof in keeping with community child care standards. They were joined by Shore in the observation that in spite of the on-going work in Indian country being done by tribal councils, tribal welfare committees and tribal courts to improve child care and education services, tribal governments were denied responsibility for controlling or monitoring the flow of monies available for child care and state agencies made no efforts to support tribal programs. In their opinion it should be the purview of tribal courts and welfare committees to determine the standards for placement, and funds should be channeled through them to assure that the best interests of children and families were served rather than funneling these resources through state welfare agencies.

At the time of the hearings it was estimated that of the 152,000 Indian school students, approximately 36,000 of them were in boarding schools both on and off-reservations, which included about 20,000 Navajo students. Of special concern was the ratio of dormitory attendants to student which Bergman discussed in an unpublished paper entitled, "Boarding Schools and the Psychological Problems of Indian Children," that gave a general estimate of between sixty and eighty students per dormitory attendant at any given

time. Absence from work by dormitory attendants often meant that the ratio of attendant to student rose to one worker per 210 students which implied that little more was expected in child care responsibilities beyond controlling the children. He conjectured that when the schools were being planned, the lives of the children outside the classroom were not considered important and observed that the system had ossified as originally developed. The lack of concern for the basic needs of the children expressed in the ratio of attendant to student meant that there was little or no encouragement for the students to confide in school personnel. The situation was further complicated because the attendants were told they were not qualified to counsel the children and that students' problems should be referred to their superiors. The rigid operation of the schools made it difficult for an attendant to comfort a child because of fear that the worker would get into trouble. Indian people were hired as dormitory attendants in what were regarded as "Indian positions" to assure compliance with Indian preference regulations of the Bureau; they were accorded low status and not much respected by school personnel in higher status. Their circumstance was obvious to the student which meant that there was little opportunity to identify with someone who was like them except in a negative way.

The problems attendant to the low status of dormitory aides in boarding schools was examined by Joseph D. Blanchard and Richard L. Warren<sup>31</sup> in their article, "Role Stress of Dormitory Aides at an Off-Reservation Boarding School." The authors explain that

historically the dormitory aide is the one role assigned almost exclusively to Indians- for dubious reasons to be sure-but under any circumstances it is important to understand the dynamics of the experience Indians have in this role. We use role stress as a referent for the felt difficulties dormitory aides experience in responding to the expectations, obligations, and characteristics of their position. (Blanchard and Warren 1975, 42)



The study looked at the specific tasks of dormitory aides and provided data on their attitudes about the importance of their work and the organizational support they received. The dormitory aides' responsibilities included cleaning, counseling, disciplining, keeping records, performing errands and supervising the daily activities of the students. The boarding school studied had a population of about 750 students, 600 of them lived in high school dormitories and the remaining 150 lived in an elementary school dormitory. The elementary school students and about half of those in high school attended school on campus; the remaining students, all from one major tribe, attended public schools in the city. This circumstance expanded the duties of the aides who served as the primary contact for public school students. Some of the aides were charged by the guidance department with the handling of situations in which students came to the attention of local law enforcement agencies that involved picking up students who had been detained and accompanying them to hearings. Generally parents were not notified of infractions and were not always informed about what had transpired unless the student would be expelled or was sentenced to extended incarceration. Legal assistance was not available to students and the aides not only represented the school but often both the parents and students. These responsibilities did not include official advocacy for the student but were limited to accompanying students to hearings and providing information to the court regarding the student's background and school performance. Limited expectations regarding their assistance to students played into the powerless position in which dormitory aides found themselves. In the survey of aides' attitudes toward their work and the level of satisfaction derived, counseling of students was ranked as the most difficult and important of the tasks they performed, yet they were frequently admonished that they did not have the qualifications to assist the students. The

“stand by” status they were accorded in law enforcement related matters further confirmed the low status in which they were viewed and reinforced the demoralization they experienced.

As part of the study, aides were administered the Myers-Briggs Type Indicator<sup>32</sup> which produces information on personality from a self-report inventory. Ninety percent of the aides were characterized as a combination of sensing, thinking and judging types. The authors explain that

[i]f these types were counterbalanced with large percentages of other types the situation would not be so bad. However, with the overwhelming percentage being sensing-thinking-judging types, and being heavily involved in child-contact work, the results must be catastrophic to staff member and student alike. That is, no one is likely to get his needs satisfied. Stress appears inevitable. (Blanchard and Warren 1975, 45)

Another source of data utilized on personality characteristics was the open-ended instrument, “This I believe,” devised by O. J. Harvey, et al which ascertains the conceptual system orientation of respondents.

The most striking finding from these data is the overwhelming preponderance (93%) among the staff of what Harvey designates as System One and which he characterizes as *concreteness, authoritarianism, dogmatism, rigidity, and a conservative attitude with regard to change*. (Blanchard and Warren 1975, 46)

In the assessment of their findings regarding the dormitory aide dilemma, the authors propose a contributing factor to the personality profile produced which includes the fact that

most dorm aides-at this school-are products of the boarding schools themselves. As such they have internalized boarding school models of childrearing; models which, being more archaic, are possibly more punitive than current practices of the educational system. Thus, they expect the student to behave as they were forced to behave, and consider methods of social control practiced on them appropriate to the present situation. (Blanchard and Warren 1975, 48)

In conclusion, Blanchard and Warren observe that

[r]emediation of this situation requires, among other things, the diminishment of the role stress imposed on the dormitory aide. Such relief is not simply obtained and may require a redefinition of the job requirements for dorm aides as child contact workers, as well as a rearrangement of pertinent environmental contingencies and transactions. (Blanchard and Warren 1975, 48)

The authors recognize the very complex milieu of the study area and raise questions regarding the aides' view of counseling as a major task, and whether the instruments used produce a reliable picture of what is really taking place. They understood that tribal/familial tradition values the role of advisor/counselor and suggested that the aides "may be caught up in a severe value conflict between tribal and institutional loyalties and values. He may be unaware of this as the genesis of his stress" (Blanchard and Warren 1975, 48).

The information developed by Blanchard and Warren was one aspect of the boarding school environment faced by Bergman and Goldstein in the development of a special child care project conducted at Toyey Boarding School<sup>33</sup> on the Navajo reservation where a ratio of one child care worker to twelve children had proved successful in maintaining strong connections with families and communities. Family and community members were directly involved in the care and education of the children and school personnel were motivated to develop supportive and stimulating activities for the children. The children involved in the project exhibited a greater sense of well-being and were more successful in their studies. They attributed the children's successes to meaningful involvement of those important to them in contrast to other institutions where parent advisory committees were assigned an advisory capacity without any real authority.

A central feature of the effort was regular and intensive consultation with the entire staff of the guidance department. Bergman and Goldstein were aided by consultants from the

BIA and IHS who were divided into six pairs with each pair holding weekly meetings with eight to ten dormitory aides and teacher-counselors for a duration of sixteen weeks.

The members of the group were told that we were meeting in order to help them find ways of solving psychological problems presented by their children, and that we would try to do this by having free discussions of any cases, specific problems or other topics the group wanted to bring up. (Bergman 1968, 8)

Initial concern that the aides would not participate in the discussions was unfounded.

Individual cases were presented and followed week to week, general problems were examined and possible solutions were discussed before and after they were tried. While it was not possible to know precisely what caused what, the students' whose cases were followed found that they were helped, and importantly, the effort created enthusiasm to seek innovative practice among the guidance staff. Perhaps what evolved as the most important feature of the effort was that "the very existence of the program reinforced the aides' belief that counseling is their most important job and that they should work on their own initiative" (Bergman 1968, 8). The effort was complemented by the direct involvement of family and community members in the care and education of the children, and school personnel were motivated to develop supportive and stimulating activities for the children. Despite the success of the effort, it was discontinued when the funding ran out, and the sponsoring agencies, Indian Health Service and the Bureau of Indian Affairs, made no efforts to disseminate its accomplishments.

## Chapter VI:

### **“What has the Bureau done to protect the rights of mothers and children who suffer at these predatory practices?”**

Senator James Abourezk

Raymond Butler, Acting Director of the Office of Indian Services and Chief of the Division of Social Services, represented the Bureau of Indian Affairs in place of Morris Thompson, Commissioner of Indian Affairs. Abourezk entered a letter from Commissioner Thompson into the record authorizing Butler to testify on his behalf and informing the panel that Bureau employees, Jere Brennan and Evelyn Blanchard, were authorized to travel to Washington to serve as resource persons in response to the Sub-Committee’s request. Butler was accompanied by William Benham, Acting Director of the Office of Education, and Bob Bruce from the legislative branch of the Bureau. Butler began his testimony.

Mr. Chairman, we appreciate the interest of the Senate Sub-Committee on Indian Affairs in behalf of some of the most needy of Indian children, those whose parents may not provide for their care for many reasons, and for whom the Bureau of Indian Affairs arranges for their care in boarding schools, foster homes or specialized institutions. (U.S. Senate 1975, 446-447)

He explained to the panel that the BIA provides supplemental child care programs to those Indian people who are not eligible to receive these services from other Federal, State or private programs, and education services to those children who do not attend public or mission schools. The Bureau’s financial assistance program, General Assistance, is also supplemental to Aid to Families with Dependent Children (AFDC), the supplementary social security program, but is not available to Indian people in states “where the Indian citizen is eligible for such service programs on an equal basis with other citizens of the State” (U.S. Senate 1977, 447). Likewise, the Bureau’s law enforcement services are supplemental to

“programs under tribal auspices, Federal law enforcement, the U.S. district courts and to those reservations under P. L. 280 where State jurisdiction prevails” (U.S. Senate 1975, 447). He stated that the complexity of the service provision paradigm made it difficult, if not impossible sometimes, to obtain a comprehensive picture of Indian child welfare services. He described the boarding school program as the Bureau’s largest child care program with 33,672 enrolled students in 1973. He cited a recent noticeable decline in boarding school attendance from that in 1969 when 36,263 children were enrolled.

He described the General Assistance program as the major entre to provision of preventive child welfare services because financial oversight affords access to homes where family support services may be needed. He cited a dramatic increase in the numbers of families receiving financial support from the General Assistance program for which funding increased from ten million dollars in 1969 to forty-seven million dollars in fiscal year 1974. Admitting that a welfare economy is not the best way to live, but until there was improvement in reservation economies that fully supported families, the Bureau made no apologies for growth in the program. In 1968, the Bureau, in collaboration with some tribal governments, initiated the Tribal Work Experience Program (TWEP)<sup>34</sup> to offset what some viewed as an inappropriate welfare economy. The TWEP authorized the 30 participating tribes to make work or training assignments for employable heads of households whose families were supported by General Assistance.

Butler returned to comments about child welfare programs, where since 1968 the numbers of children in foster care, home care or specialized institutional care have maintained at a relative level of 3,300 children in care per month. He cited shifts in child welfare services with a decrease in the numbers of children in foster care from 1969, when

there were 1,768 children in care, compared with 1,525 children in 1974. Conversely, there was an increase in the institutional care average caseload from 750 children in 1969 to 1,050 children in the current fiscal year. There was also a decline in mission school enrollment for the same period from 668 to 498 students. During this period the special needs caseload held level at 200 children. He understood the increase in institutional care as the result of the development of on-reservation child care facilities such as “St. Michael’s School for the Retarded on the Navajo [Reservation], the Youth Home Facilities of the Indian Development District in Arizona, the Delta Marie Home on the Rosebud, Eastern Cherokee Children’s Home” and the many other tribal youth facilities (U.S. Senate 1975, 448). In the past, children who needed specialized institutional care often were placed hundreds of miles from their homes and parents were reluctant to let their children go so far away, despite the need for care. When these specialized services became available on-reservation, more families availed themselves of the services which brought about the increase in the numbers of children in specialized institutional care. He emphasized the BIA’s belief “that direct tribal involvement and local Indian community involvement is the essential ingredient for improved services for Indian people and their children” (U.S. Senate 1975, 448). He related that in response to a request from the North American Indian Women’s Association (NAIWA) the Division of Social Services cooperated in a bureau-wide study of children with special needs. He presented a copy of the study report, A National Action for Special Needs of Indian Children Program<sup>35</sup> to the Sub-Committee (U.S. Senate 1975, 260-367). As an example of growing community involvement he cited the Cherokee Action for Foster Children Committee which promotes recruitment of foster homes and the development of the Cherokee Children’s Home facility. The Committee recently produced a film to illustrate

committee functions and the development of their foster care program which they will make available to other tribes to provide insight and understanding about the methodology the Committee chose to employ. Butler thanked the Sub-Committee for its concern for Indian children and stated that he and Benham were open for questions. Abourezk thanked him and asked, "What does--when you say in your statement "tribal involvement," --what does that mean to your division or to you" (U.S. Senate 1975,448)? Butler replied.

The local Indian community level, it means to us an interchange, a communication between the people of that community and their concerns and their interests on behalf of the children, and playing an advocacy role and working with them to try and carry out the goals that they wish to achieve. (U.S. Senate 1975, 448-449)

Abourezk asked if that meant "Indian control" and Butler responded, "Not always, no" (U.S. Senate 1975, 449). The Senator wanted to know if Butler had heard the previous day's testimony and learned that he had not. He told Butler that he wished he had heard the testimony of witness after witness who said

non-Indian social workers have been totally ignorant of exactly what an Indian family is and what it ought to be; that their standards, referring to non-Indian social workers, the standards they develop on whether or not a mother was a good mother, or a parent was a good parent, were based on their own standards, not on Indian standards, which are quite often different, and that as a result judging the fitness of the parent or the closeness of the family unit on their standards, that they then took all kinds of illegal, deceptive actions to try to get Indian children away from their mothers. (U.S. Senate 1975, 449)

In repeated testimony, witnesses asserted that the only way around these practices was to allow the tribes, themselves, to determine who is fit or not fit because they are informed about the family's situation. He hoped that the BIA's definition of Indian involvement would be changed "to mean something more than stroking the Indians to allow them to say that you are now the toothless advisory committee and you're involved" and asked if there was anything wrong with Indians running their own foster care and adoption programs (U.S.



Senate 1975, 449). Butler thought certainly not and offered that more and more tribes are taking on these efforts giving as examples programs at Zuni Pueblo and the Cherokee Children's Home for which the Bureau is providing various means and vehicles to support program operations. Abourezk wondered if this program of support could not be implemented on reservations nation-wide. Butler agreed there was nothing wrong with nation-wide implementation but questioned whether or not the Indian people desired to undertake these operations. He noted that about forty percent of the child welfare services program was tribally-administered in varying contractual arrangements in which tribes have taken on certain aspects of the program. Abourezk asked Butler to tell him which tribes had been offered control of child welfare programs and which tribes had turned down the offer and did not want to control the program. Butler described the list of tribes that have taken on control in one form or another as extensive and agreed to provide the information for the record. Abourezk requested precise information, "that is the names of the tribes that you have offered complete control over their foster and adoptive child programs and the names of the tribes that told you they don't want to take control" (U.S. Senate 1975, 450). Butler stated that few tribes have moved in the direction of "complete control" but rather have moved in the direction of providing facilities and developing foster homes. Abourezk returned to the recommendation made by many Indians in previous testimony that the only way to get around the deception of the family was to allow the tribes to take control. The implication of their statements was that "the BIA is not, or should not be allowed to take control, and I'd like to either have that charge refuted by the BIA or I would like to see where the charge is at. I just want to make it clear what it is that we're looking for" (U.S. Senate 1975, 450).

Abourezk raised a second charge developed from previous testimony that welfare workers and social workers who are handling child welfare caseloads use any means available, whether legal or illegal, coercive or conjoling [sic] or whatever, to get the children away from mothers that they think are not fit. In many cases they were lied to, they were given documents to sign and they were deceived about the contents of the documents.

What has the Bureau of Indian Affairs done to protect the rights of mothers and of children who suffer at these predatory welfare practices? (U.S. Senate 1975, 463)

Butler responded that the Bureau encouraged the development of tribal ordinances and codes and ninety tribes had courts on their reservations. Approximately twenty-five tribes had adopted protection ordinances in juvenile fields. Regarding the legal responsibility of the Bureau in the removal of children, he stated

it is illegal for any Bureau social worker to take custody of a child unless he is provided with a judicial determination by the appropriate court or is provided with the voluntary written consent request of the parent or the legal guardian. (U.S. Senate 1975, 463)

Abourezk told Butler that the Sub-Committee's inquiry revealed that Bureau social workers were much less predatory than state and county workers, but essentially what happened

is that Federal money which is being funded to these county agencies are being used for them to take children away from Indian families.

My question, therefore, is what is the Bureau of Indian Affairs doing to protect the rights of those families, both mothers and children? (U.S. Senate 1975, 463)

Butler explained that at any time such a situation came to the attention of the Bureau it is the responsibility of the staff to protect the family and child and to bring the matter to the attention of the proper enforcement officials. Abourezk again pressed his question, "is the BIA doing anything to protect the breaking up of the Indian family unit through these practices, as I described" (U.S. Senate 1975, 463)? Butler replied that the Bureau attempts to

strengthen the family so that these situations do not occur. Abourezk asked if the Bureau's efforts were confined to these activities. Referring to the removal of children, Butler explained that most often the Bureau learns about "these kinds of things" through the back door and moves in after the fact. Asking for specifics, Abourezk wanted to know if the Bureau provided attorneys or legal counsel to insure that the rights of Indian families were protected. He was told that legal assistance is not provided by the Bureau in terms of any ongoing practice.

Abourezk pressed on.

Second, is the BIA doing anything to have Health, Education and Welfare withhold funds from State and local welfare agencies that undertake these practices that we talked about? (U.S. Senate 1975, 463,464)

Butler recalled two instances when the Bureau participated in this approach, one in North Dakota and another in Arizona where withholding of funds was considered.

Were funds withheld? Abourezk asked.

In North Dakota, where HEW came closest to withholding funds, the state was given a thirty-day notice that funds would be withheld if the agency did not change its practices, Butler replied (U.S. Senate 1974, 464).

Abourezk inquired if the Bureau has a central office that looks out for the welfare of children and families and their rights. Butler stated that the Bureau has three operating levels, the agency, the area office and the central office which has a child welfare specialist. Abourezk again asked if the BIA had an office that looked after the rights of children and families in those instances described in earlier testimony. He was told that the field workers respond to these situations. "But do they go out to try to find out about these practices," Abourezk wanted to know (U.S. Senate 1974, 464). Butler replied that the workers go out on cases brought to their attention and recalled a recent case in Pennsylvania. The Senator

asked for the numbers of staff looking into these abusive practices. He was told that the staff carries a diversified caseload and there is not sufficient staff to designate an exclusive child welfare position. At the time the Bureau's Division of Social Services employed 273 social workers, none classified as child welfare specialists except in the Aberdeen and Muskogee area and in Butler's office in Washington, D.C. Abourezk asked pointedly

what you're saying is you don't really have anybody who inquires into whether or not the rights of Indian families are being protected in these kinds of adoptions and foster home cases? (U.S. Senate 1975, 465)

Butler responded that the Bureau does not have designated child welfare worker positions and that all the staff assume some portion of child welfare services on the reservations.

Abourezk inquired if Butler was comfortable with the statistics presented to the Sub-Committee that one of every four Indian children in Minnesota had been put up for adoption in 1971. Butler said he was not at all comfortable with the information. But, "how do you feel about it," Abourezk urged (U.S. Senate 1974, 465). Butler thought the figures were way too high and while he did not dispute the statistics, agreed that, if they were accurate it indicated that something is very definitely wrong. Abourezk asked if the Bureau would strengthen an office within the Division to look into whether or not the rights of Indian families are being violated and that staff be maintained at a sufficient level to provide continued oversight. Butler reiterated that the Bureau was short-staffed, not only in child and family protective services, but also in staff who could provide casework services to prevent family breakup. "What did the Bureau intend to do about it?" Abourezk pressed (U.S. Senate 1974, 465). Butler replied that on several occasions the Bureau attempted to secure more staff but the efforts were thwarted by the agency's authorized positions structure and employment ceiling policies that are established by the Office of Management and Budget

(OMB) based on the government's budget process. Butler stated that in 1971 the Social Services Division employed 253 social workers and since then has been able to increase the staff by only twenty workers.

Abourezk asked if there were cases where the Bureau gave money directly to the counties and what auditing practices were in place to assure that the counties did not violate the rights of Indian families. Butler replied that there are internal audits, department surveys and reviews in addition to some GAO (Government Accountability Office) audits. "Is there an audit that assures the BIA that the counties do not violate the individual rights of the Indian families?" Abourezk wanted to know (U.S. Senate 1974, 465). Butler answered that for those children who have been certified for foster care, the Bureau has the responsibility to assure that they are legally and properly placed before payments can be made. But, "[w]hat auditing procedures exist to insure that's the case?" Abourezk asked (U.S. Senate 1974, 465). Butler responded that the auditing procedures were part of the certification process "from each agency who certifies as to the eligibility of that child for the reimbursement" (U.S. Senate 1975, 466). Abourezk wanted to know if there was verification of the certification. Butler explained that the certification is verified at the area office level through a case review of the particular case. "Does the verification include a field trip to gather further information in each of the cases?" Abourezk asked (U.S. Senate 1974, 466). Butler replied that initial certifications received 100-percent review but follow-up was conducted on a sampling basis because of staff limitations. He stated that there were several counties in South Dakota reimbursed for Indian children admitted to the Redfield State Hospital or the Custer facilities.

Abourezk: But so far as adopting and putting out children, Indian children, in foster care, the area office—and I want to get this so that we understand it—the area office

goes out into the field and looks into each case, where the BIA has furnished money for the county agency?

Butler: Or to the State, Senator.

Abourezk: Or to the state and verifies each case, that the rights of those people were not violated?

Butler: That's correct. (U.S. Senate 1974, 466)

Butler advanced to add a point regarding adoption and foster care, stating that the Bureau is not an adoption agency and has no statutory authority related to adoption. The basic role of the staff in adoptions involved their work with the tribal court when adoption of a child is being considered. Abourezk inquired about Bureau training for tribal judges in child welfare matters. He was told that the Bureau did not offer any on-going training for judges although there have been some training programs conducted here and there, and Butler was aware that the National Tribal Court Judges Association had received a grant from LEAA (Law Enforcement Assistance Administration)<sup>36</sup> for an on-going training program.

Abourezk told Butler that over the past two days the Subcommittee had learned about children who had literally been stolen from their parents and asked him if was aware of any of these cases and, if so, what had he done about them. Butler said that some of the cases had been brought to his attention and recalled that in one instance arrangements were made for the mother to pick up her child and take him home. Abourezk asked if these steps were taken in some or all of the cases that were known to him. Butler replied that this occurred in only some cases because the Bureau did not have the jurisdictional authority to move in each case. Abourezk asked for clarification. Butler referenced earlier testimony regarding problems related to P. L. 280 which were extremely frustrating because of the legal involvements and entanglements that had taken place. "But, in those cases where the Bureau

had jurisdiction, had he gone back to resolve the problems?" asked Abourezk (U.S. Senate 1974, 467). Butler assured the panel that a very serious attempt is made in every case. The latest case brought to his attention involved a child from the Rosebud reservation who had been taken to a southern state by a relative who then placed the child with another family because she could not continue to provide care. The case was now in the state courts and the last he had heard the child had not been returned to the Rosebud reservation. Abourezk wanted to know if Butler had tried to provide legal assistance to families in P.L. 280 states and learned that these efforts had been made in some cases, but not all. The Bureau sought help with some cases from the Indian Legal Aid,<sup>37</sup> other legal aid offices and the OEO (Office of Equal Opportunity).<sup>38</sup> At other times, the agency had persuaded private attorneys to handle the matter and on occasion had paid for legal services.

Abourezk asked Butler if he was concerned about the rights of Indian children in boarding schools; Butler assured him that he was but thought that Benham was better qualified to advise the Sub-Committee in these matters. Benham stated that the agency was very concerned. Abourezk said that he, too, was concerned and wanted to know why no action had been taken on publication of the rights of Indian children in boarding schools. Benham informed him that the statement of rights was ready for publication in the Federal Register to solicit comment. He informed the panel that the proposed manual regulations were completed in the last two or three weeks and it was anticipated that publication would occur in about three weeks. Abourezk asked if the Bureau had developed cost estimates to establish a comprehensive day school system on the Navajo Reservation. Benham replied that he had been director of schools on the Navajo reservation for six years and that an all out attempt had been made to make use of day school opportunities since 1953. He illustrated

the effort at the boarding school in Lukachukai, Arizona where at one time 440 students were residentially enrolled but enrollment had been cut in about half because the children were allowed to attend the school on a day basis. Abourezk wanted to know if cost estimates had been developed for arrangements like these. Benham stated that they had not been developed but the Bureau had tried to develop a basis of opportunity. Abourezk wanted to know if the Bureau had developed cost estimates for local secondary high education for the 6,000 Alaska Native teenagers who are required to leave their homes to attend school. Benham replied that the Bureau had been working with the State of Alaska and the Native people to develop cost estimates of what was needed. While the number one task was to fix up the Federal schools so that they could be turned over to the State as the Native people wanted, there was also work being done to develop other opportunities. Abourezk asked if these estimates and efforts included local secondary high school education because the process to estimate cost for these proposed schools was not clear to him. Benham said that they were included.

The Senator asked Butler if the Bureau had 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” (U.S. Senate 1975, 468). Butler replied that he was not aware that the Bureau had developed comprehensive budget proposals in that area. “How about any kind of budget proposals?” Abourezk asked (U.S. Senate 1974, 469). He was told that budget proposals currently in development concern the costs of financial assistance for needy families, payments for children in foster care and specialized institutions and the educational program. Abourezk emphasized the currency of the effort and asked if the Bureau had submitted any kind of plan to Congress to halt the unjust removal of Indian children from their families.



Butler replied that the Bureau had not, and in light of the supplementary aspects of the program such efforts were beyond the agency's program planning authority and could well include HEW and the Justice Department.

Abourezk said he understood that in 1971 a needs assessment for boarding schools, on a school-by-school basis, had been implemented to develop objectives, and he wanted to know why the program had been delayed. Benham replied that the needs assessment approach had been utilized in individual instances and was exemplified in work being done in Alaska.

Part of the work that has been done, has been this last year working with the State of Alaska and working with the Native people of Alaska, and working with the Bureau of Indian Affairs in Alaska, and I'm talking from the Washington Office standpoint, in terms of an Alaskan needs assessment.

There have been many evaluations of individual schools, secondary schools, and this always starts with a needs assessment as a way of determining how the program is being carried out and what remains to be done and so on. I certainly agree that the needs assessment is vital, and hopefully it's just a part of the program. If there's any kind of plan that's being carried on, or any kind of evaluation that's being done, you have to start with a needs assessment. (U.S. Senate 1975, 469)

But, "[w]hy has it been delayed?" asked Abourezk (U.S. Senate 1974, 469). Benham thought it had not been delayed but was rather part and parcel of the Bureau's overall work being done by schools in the curriculum development and planning the schools do themselves.

Abourezk: Has it been completed?

Benham: No, sir.

Abourezk: But, it's been going since 1971. (U.S. Senate 1975, 469)

Benham offered that he did not think that it would ever be completed because of changing needs and the need for "a constant assessment of the needs of youngsters in order to stay

abreast of how we can offer relevant curricular items” (U.S. Senate 1975, 469). Abourezk wondered, “[i]f it’s never going to be completed, why start it?” (U.S. Senate 1974, 469). Benham clarified his response to the previous question by noting that the evaluation of an educational program “becomes the basis for the offerings and the assessment of the needs of the situation and the needs of the youngsters and the needs of the community in which the school is located” (U.S. Senate 1975, 471). He gave an illustration from Wingate High School located in west-central New Mexico where, in 1964, parents, students and school staff undertook a needs assessment which became the basis for program planning for the new Wingate High School that would enroll 1,000 students. Five years later it was determined that another assessment was needed and the process began again. He stated that needs assessments are not static but on-going and are used to revitalize programming.

Abourezk returned to questions about Federal financial payments to states and counties for Indian children in foster care, and referenced Mr. Blackwell’s testimony that the Bureau spends over one million dollars per year in Minnesota to pay for the care of Indian children in non-Indian homes. Abourezk wondered if Butler agreed with the figure. Butler replied in the negative, stating that not all of that money came from the BIA. Abourezk asked for the amounts of monies the BIA did pay to states and counties for these purposes. Butler stated that the budget for the Minneapolis Area for 1974 was \$939.300 which was for the total social services program in the area. And, what part of that is for foster care? Abourezk asked. Butler did not have the details but guessed it was in the neighborhood of \$200,000 to \$250,000. Abourezk told Butler that he was holding a contract between BIA and the State of Minnesota for \$200,000 from Johnson O’Malley (JOM) monies and perhaps that was the figure he tried to recall. Butler acknowledged that it would be a JOM authorized

contract but not for educational purposes but could well be for foster care and the amount seemed accurate. Abourezk wanted to know if there were other funds besides the JOM contract being paid out for foster care. Butler identified the document as the previous year's foster care contract, and Abourezk asked if there more contracts, in other words, "Would there be any more money in addition to that to be used for foster care?" in Minnesota, Abourezk asked (U.S. Senate 1974, 470). Butler added that a little money went to the Red Lake Reservation where the Bureau provides direct services. Abourezk asked Butler to identify other states where the BIA supports Indian foster care, and was told that the BIA has similar contracts in North Dakota, South Dakota, Iowa, Arizona, New Mexico and Nevada.

Abourezk recounted testimony from Indian parents and psychiatrists and psychologists who work with Indian families and their children who maintain that

there really is nothing more destructive of an Indian family than to remove an Indian children from the warmth of its mother, whether or not the mother might be an alcoholic or use alcohol to excess or whatever, and to place that child in a non-Indian foster home where alcohol may not be used, there's absolutely no parental warmth and that this virtually destroys the character of the Indian child.

I assume that you're aware of a lot of these cases because you've testified that you were aware of some cases where children were taken out of their homes.

I'm curious to know why BIA continues to provide funds for these purposes and why the BIA doesn't provide those funds to Indian parents if there is a real need to take a child out of the home. Why not put it in an Indian home where he can grow up as an Indian instead of as a white? (U.S. Senate 1975, 471)

Butler assured the Senator that the BIA's objective was to find and recruit Indian foster homes for Indian children, and that a recent study reported that in 1972 the Bureau had available 471 foster homes of which 367 were Indian homes and 104 were non-Indian homes. Of the Indian homes, 344 were on-reservation and 23 were off-reservation and among the non-Indian homes 36 homes were on-reservation and 18 were off-reservation.

Abourezk asked about funds available from HEW for foster care of Indian children and was told that funds come from two sources within HEW, the child welfare foster placement program and the Aid to Families with Dependent Children foster care program. He asked if Butler thought that the BIA should continue to finance foster care when there were other resources available for that purpose. Butler explained that there is a need for the supplementary child welfare social services program to respond to the needs of children on the reservation who are not eligible for state and county services. Referring back to the Minnesota contract, Abourezk cited subsection C which read,

that the determination of need for foster care is going to be based on the same criteria as those applied to any other citizen in the State of Minnesota.

Which means that apparently when the BIA puts out a contract like this, they are willing to go along with the practices carried on, in spite of the fact that the BIA is aware of these practices carried on by the State and local welfare agencies, which totally disregard that Indians are Indians and they are not whites and they are not to be made into whites. (U.S. Senate 1975, 472)

Butler asserted that the rates of placement in Minnesota were influenced by the fact that with the exception of the Red Lake Reservation, all other tribes in the state were under the jurisdiction of P.L. 83-280. If the Bureau contract made additional requirements beyond those established by the State welfare department, it is unlikely that the State would provide additional services beyond those established in a community under its jurisdiction. He stated that there are Indian groups in the state who have approached the BIA to contract to provide foster care services and their requests are being given full consideration. Senator Abourezk pushed on.

If BIA is concerned about whether or not it has jurisdiction over Indians in Minnesota, I would suggest that it doesn't really have anything to do with the fact that when the BIA is furnishing money to a State, it has every right, whether or not it's a 280 State, to insist upon the conditions on which that money will be given in the

State, and if the State didn't want to live up to that condition, it wouldn't receive the money.

That goes on all the time, as you know in Federal funding practices. It has nothing to do with whether or not the Federal Government has jurisdiction over Indians or Indian lands.

Isn't it really the case of whether the contractor States are receiving preferential treatment with BIA in the area of foster care, over and above what Indian tribes might get from the BIA?

In other words, aren't you preferring the State of Minnesota over Indians in Minnesota? (U.S. Senate 1975, 472)

Butler again cited the Indian groups in Minnesota who had expressed interest to contract for the foster care program and said the BIA is working with them on the request. He countered that had the Bureau required services above and beyond those established by the State it was unlikely that any services would be provided, and the agency would have to turn to Congress to appropriate additional funding to provide the services. Abourezk asked if the Bureau intended to actively recruit Indian people to administer the foster care program in Minnesota. Butler answered that the only service area in the state was the Red Lake Reservation and that expansion of the service area would require additional staff. Again, Abourezk asked about contracting with the Indians, and Butler replied that was a possibility. Abourezk wondered if the Bureau would need additional staff to accomplish this? Butler responded that the Indian people would need staff. To clarify the Bureau's response, Abourezk pressed on.

Abourezk: But, if you contracted with them, couldn't they take care of that?

Butler: They could.

Abourezk: Do you intend to contract with the Indian people rather than the State of Minnesota?

Butler: Any of those who have demonstrated an interest, we certainly would, sir.

Abourezk: If they contact you, you would then certainly show them preferential treatment over the State, wouldn't you?

Butler: Sure. (U.S. Senate 1974, 473)

Butler referenced earlier testimony by the people from Wisconsin who were in the process of establishing a child placement agency, and said that he had met with them on several occasions and there had also been meetings with the Bureau's Wisconsin staff. He thought that the Wisconsin proposal was something that the Indian people wanted and the Bureau was advising and advocating on their behalf. He stated that an Indian program, like others, would have difficulty finding qualified Indian staff because there were insufficient numbers of trained Indian social workers. He informed the panel that the Bureau had established a community services associate degree training program at Haskell Indian Junior College in an effort to respond to staffing needs. He told the senator that there were sixteen students in the program and twenty-five students had expressed interest to enroll the following year. The program was designed to grant a two-year terminal degree but also provided the basis for the student to enter a bachelor's program and eventually a master's program. Abourezk responded.

We've had testimony here that in Indian communities throughout the Nation there is no such thing as an abandoned child because when a child does have a need for parents for one reason or another, a relative or a friend will take that child in. It's the extended family concept.

I'm not certain, Mr. Butler, that degrees in social work are going to do any more for the Indian people than they did for the white people. I'm not certain it would not be far preferable to allow the Indian community itself, rather than to try and break up that community, to allow that community to contract with the BIA for foster care, for adoption, because I really and seriously believe that they know much better what is in their best interest than we do, and they continually say that. I don't know why BIA and everybody else continues to ignore that request. (U.S. Senate 1975, 473)

Abourezk told Butler that his staff would contact him to arrange a meeting with HEW, Butler's office and Sub-Committee that day or the one following.

I don't think we can let some of the practices heard about today to continue any longer. We have to do something together to try and stop them. (U.S. Senate 1975, 474)

Abourezk thanked the BIA officials for their testimony and appearance. Butler left a document entitled Child Welfare Contract Programs which provided a list of all BIA contracts and contract awards for Fiscal Year 1974, the vast majority of which paid for care in group homes or institutions (U.S. Senate 1975, 451-462). Of the eighty-three contracts, twenty-four were with tribes, Indian organizations and Indian-organization or tribally-affiliated enterprises.

Jere Brennan,<sup>39</sup> a social worker and Superintendent for the BIA's Fort Totten Agency in Fort Totten, North Dakota, submitted a written statement (U.S. Senate 1975, 139-145) and cited two issues in his written statement on which he wanted to focus. The first concerned the administration of the programs for children's services and the funds made available to states to provide services to the children. He was familiar with the ways in which program administration and funding procedures played out in the field, and noted, in contrast to staff program responsibilities described by Butler, the last ten years of his employment with the Bureau had been spent strictly in child welfare services. He saw area-wide need for children and family services and had asked that he be assigned as a child welfare consultant for the Aberdeen Area Office. He explained that AFDC-Foster Care was created by an amendment to the Social Security Act to provide a channel for Federal funds to states unable to generate sufficient monies to provide adequate services to children and families. The law required that the program be implemented in all subdivisions of the state and made available to all

children and families in the state. But on reservations the requirements of the law are not always implemented as exemplified in Mrs. Fournier's testimony about her experience with the State of North Dakota. Specific eligibility requirements were established for the child to receive AFDC-Foster Care benefits including an order for the child's removal from the family from a court of competent jurisdiction. Tribes were concerned that custody of these children would be lost and they would be placed by State departments and welfare agencies, but Brennan did not think this was necessarily so. HEW's guidelines to the law do not mean that custody of the child would be lost but that States could, with the court order accept "mere responsibility of placement, and planning and supervision of the child without having custody and this would be enough for them to make payment" (U.S. Senate 1975, 135). This arrangement made it possible for agencies and departments to work jointly with Indian tribes who want to develop their own resources on their reservations. Another issue involved home licensing requirements in North Dakota where in 1970, the State Attorney General rendered an opinion that the State had no "jurisdiction or ability to license foster homes on the reservation nor to implement the protective services on behalf of Indian children since they had no jurisdiction or authority to act" (U.S. Senate 1975, 135). In effect, North Dakota had placed itself out of conformity with the amended Social Security Act and set in motion an effort to administratively resolve the matter but resolution has not been reached. The effort began

with a series of meetings from the regional people of HEW, the Bureau of Indian Affairs, the tribal peoples in the State of North Dakota, a whole series of meetings, and it finally got to the point with North Dakota where there was the threat of withdrawal of Federal funds at that point. They did agree to make payment to Indian foster families on the reservation even though the State would not license those homes. They did this using another mechanism in the regulations which said that rather than licensing these homes, they could be approved foster homes. Now what



they will say, as far as approved foster homes, is that they have to meet the same standards as the licensed home, but it's another way of getting around a regulation which would cover homes such as those that are sponsored by church-related work, or church organizations where they need not be licensed. In fact, they're exempt from licensing, but they have to meet this approved status. (U.S. Senate 1975, 135)

Brennan explained that North Dakota's position was based on an understanding that the Bureau was the authority on the reservation and consequently, had the authority to license or approve foster homes. Foster homes on the reservations were being licensed by the tribes and the Bureau did not have licensing authority. The State has repeatedly been encouraged to work directly with tribes to develop standards for approval of foster homes and to provide the tribe with "the list of foster families on the reservation who are asking to be approved for the payments of foster care" (U.S. Senate 1975, 136). He continued.

To date, although there have been some improvements in relationships in the State of North Dakota, this program has still not been fully implemented, and to my knowledge, the people within the State department, public welfare in North Dakota has [sic] really made no effort at all to get their input into the administration of this program. (U.S. Senate 1975, 136)

Brennan brought forth the second issue which concerned development and implementation of policies and programs which seem to benefit all the people, but result in a negative impact on the Indian people. He cited AFDC-FC as an example; there was nothing in the law that anticipated the jurisdictional problems confronted by the tribes, Indian families and the State of North Dakota. There was no indication in the establishment of the program that Federal or State authorities had consulted with tribal governments. This implementation pattern was also reflected in the Food Stamp program and the Supplemental Security Income program where the State imposed its operational structure without consulting the Indian people. The consequence of the state's powerful administrative stance was that many children were ineligible to receive food stamps despite need, and the

Supplemental Security Income program adhered to an old categorical system that deemed many Indian applicants as ineligible. A program that pledged to improve the lifestyles of people challenged with many different conditions was, in effect, not available to reservation Indian people in North Dakota. Abourezk asked Brennan if he had suggestions about ways to assure Indian children the benefits of the general child welfare program. Brennan echoed earlier recommendations that direct funding of the program to Indian tribes would allow implementation of programs that better reflect the needs of their people. The impact of the State's position was being felt among other tribes who were forced to look elsewhere for funding to establish local child welfare programs. He explained that the Devil's Lake Sioux Tribe had recently sought funding from LEAA to employ juvenile counselors to work with the Court and endangered or at-risk children. These are services considered part and parcel of a general child welfare program. The tribe learned that its request had received a favorable review by the North Dakota Combined Law Enforcement Council, a necessary step to a recommendation for funding from LEAA. Sometime later at a meeting in Florida, the State Attorney General, who was also Chairman of the North Dakota Combined Law Enforcement Council, indicated that

the tribe's project could be approved; however, there would be no money for this program since the money from LEAA comes through the State, the State has no jurisdiction to go forward on the North Dakota reservation, so they can't give them any money, because they can't enforce any kind of conditions that provide the funds when it came to accountability or the misuse of funds, which to me is a rather negative kind of approach to take in terms of funding or accountability programs. (U.S. Senate 1975, 136-137)

Abourezk asked Brennan if he thought the social security laws were sufficiently broad to permit direct funding to the tribes or would changes in the law be required. Brennan replied that he had attended meetings with regional HEW staff, and sometimes joined by the

State, when the Federal staff pointed out ways in which the State could purchase service from the tribes or develop mechanisms without changes in the law to implement the program. He regretted that the State's obstinate stance had denied other North Dakota tribes the resources they needed for their people, and that it had lost an opportunity to provide leadership for other states with significant Indian populations that would provide an example of a state's ability to work in partnership with tribes to assure that the resources provided by law were made available to the people.

Brennan noted that a separate AFDC-FC issue had arisen in South Dakota where the State had no problem with implementation of the program but their concern was with the tribal court. He clarified that orders to remove children from their families come from both outside courts and tribal courts in North and South Dakota. If the order is issued by the tribal court it contains instructions regarding placement for the agency with physical custody of the child. Tribes throughout the Bureau's Aberdeen Area have passed resolutions prohibiting the removal and placement of children off the reservation. Abourezk inquired if the tribal courts, like outside courts, follow the advice of the welfare worker. Brennan thought this was so and the matter is of vital concern. Tribal judges often lack knowledge of child welfare practice, do not have the resources on the reservation that are needed nor do they have command of necessary resources available off the reservation. Tribal courts have an awesome responsibility to act as a juvenile court with the very limited resources to provide services for the children. The judge is dependent on recommendations presented to the Court regarding the best interest of the child. In cases of removal and placement, the Senator wanted to know if the recommending social worker followed the Bureau's guidelines. Brennan indicated that this was done to the extent possible and clarified the policy.

In our manual it clearly spells out that as far as the Bureau of Indian Affairs is concerned they will always follow the rulings of the tribal court in the terms of placement. And, if the tribe has passed a resolution and said that this child should be placed within the confines of a reservation, then they try to do their very best to find a home on the reservation. (U.S. Senate 1975, 138)

He said that these child welfare practices take place in a complex environment involving issues of control and the tribe's level of confidence that they will really have full participation in the matters. Placement of a child off the reservation raises issues of who is in control when the court's order instructed placement on the reservation. The court's authority must be recognized but can be undermined by the fact that particular resources are not available on the reservation. However, the tribal court maintains legal custody of the child and can order return of a child to the reservation.

Abourezk thanked Brennan for his testimony; Brennan responded that he would like to make some comments "about things that we're raising today" (U.S. Senate 1974, 138). In response to the AAIA proposal that the Bureau subsidize adoptions, he informed the panel that the agency has focused on children in long-term foster care with Indian families on the reservation and, where the children have become part of the family, to explore family interest to adopt these children. As far as Indian families are concerned, the establishment of legal status is not of great consequence, but it is recognized that the child must be legally protected and adoption through the tribal court would provide that protection. Families are being informed that the child's adoption can take place in the tribal court and that the Bureau will provide foster care payments to the family. He described the arrangement as an "internal adoption program" currently in operation. He cited the progress that he saw regarding Indian involvement in child placement, foster care and adoption and saw nothing but good coming from the effort. He referenced the American Indian Child Placement and Development

Program in Wisconsin where the program is using state standards governing placement and looked forward to future developments. It had been suggested that there be specifically written standards to apply to Indian people on reservations and he knew that a proposal to do so had been submitted. He did not view the standards in North and South Dakota as “so stringent” but thought what was being sought was unfortunately lost because of emphasis on material aspects of the home as opposed to attention given to the families who could provide the emotional warmth to help the child grow. He was encouraged by less attention being paid to physical standards of the home. He believed that with the Bureau’s current effort to move children who have been in long-term foster care into adoption with continued financial support, a subsidized adoption program had, in effect, been established internally, and there may not be a need for legislation of such a policy. Abourezk thanked him again.

Witness Ramona Osborne told the panel that she was testifying in her personal capacity and not as an official for the Bureau of Indian Affairs, Indian Education Programs, where she was employed in the agency’s central office located in Washington, D.C. as an Education Specialist primarily concerned with students’ activities. Abourezk confirmed that she was not representing the Bureau and inquired if she had been warned or advised not to testify and if she felt that her job was in danger. She replied that she did not think her job was in jeopardy and had not been warned or advised not to testify. Because of the technical nature of some of her testimony, she assured the panel that she had sufficient education and experience upon which to base the views that she had developed. Osborne held education degrees from Oklahoma Baptist University and North Eastern State College of Oklahoma; she had been a classroom teacher and had served as State Coordinator for a leadership development program for Indian youth. Over the past two years she had done extensive

research in two critical areas: educational administration and students rights. She acknowledged that the hearings were principally concerned with abuses of child removal practices but her concerns centered on the children and youth whose out-of-home placement was the boarding school. In light of the many Indian children in boarding schools she explained that her focus would be on Bureau practices, policies and procedures that in her view

do not permit the maximum development of the student and secondly, do not cultivate the Bureau's legal obligation to accord and protect the constitutional rights of students enrolled in a school. (U.S. Senate 1975 380)

She testified that the Bureau currently operated some seventy-five boarding schools with a combined enrollment in excess of 30,000 students. Students are eligible for admission under two criteria, educational which applies to students two-to-three years scholastically retarded in grade or social which includes children who are rejected, neglected or whose behavioral problems are deemed too difficult for their family and local community resources to resolve. These criteria under which the majority of students are enrolled result in a concentration of students with special problems and needs. The deprivations experienced by these students emphasize the schools' moral and professional responsibility to provide the fullest opportunity for maximum development, socially, emotionally, intellectually, physically and spiritually.

At present, in my estimation, this is not possible where there are fundamental problems of educational administration which are not considered in the organization and administration of the Bureau's educational system, of which the 75 boarding schools are a part. (U.S. Senate 1975, 380)

She cited the incompatibility that exists between the schools' admission criteria and the boarding school program. The programs and staffing patterns of the schools do not reflect

the special needs the students bring, and if the schools are ever to be of a qualitative nature, major reforms in the way the Bureau administers its total educational system would be necessary. She described the situation as tragic and stated that “some of the most basic principles of sound administration are not considered in the least” (U.S. Senate 1974, 381). As an example, she cited the failure to scientifically assess student needs with the consequence that “it is totally impossible to establish sound program objectives” or to develop objectives that respond to individual student need (U.S. Senate, 1974, 381). She referenced Benham’s testimony regarding assessment activities and hastened to add that “it is very important that any assessment of needs be done in a most scientific manner” (U.S. Senate 1974, 381) through the use of testing instruments and information from the parents of students enrolled in the schools. She stressed the importance of obtaining information from the students, school administrators and staff, and that any assessment be conducted on a school-by-school basis.

Osborne turned her remarks to student rights and responsibilities and said that the Bureau’s Education Programs had been attempting to develop a code of student rights and responsibilities for the past three years, and also “to identify the extent to which students enrolled in Bureau of Indian Affairs schools may exercise their constitutional rights” (U.S. Senate 1974, 381). She explained to the panel that

[i]n December of 1971, I was given the responsibility of developing such a code. After extensive discussions with my supervisor, my division chief, and the then director of education, we came up with a very comprehensive project which would have enabled us to develop a code of student rights and responsibilities. In addition to performing a needs assessment identifying goals and objectives and beginning the process of establishing personnel standards for employees who are working in the Bureau of Indian Affairs. (U.S. Senate 1975, 381)

The project had three phases of which Phase I had been completed but efforts to continue the project were thwarted because neither approval nor funding of phases II and III could be secured. As long ago as August 1963, the Bureau established a five-member committee to address student rights and responsibilities which was charged with the development of a set of policy guidelines that would apply to all who enrolled in Bureau schools. There was considerable confusion regarding the committee's responsibility in the development of such guidelines. It seemed clear to her that the guidelines should identify the student's constitutional rights, reflect court decisions regarding interpretation of these rights and cultivate attention to the diverse conditions that existed throughout the Bureau's school system. Some members of the committee thought the approach was too specific, and that specificity needed to be left to individual schools and to neighborhoods who would develop their own policies regarding student rights and responsibilities. Abourezk asked if the guidelines set out procedural rights and was told that only due process rights were included but in a very general way. He wanted to know if the due process procedures set out ways in which a student could bring a grievance, and was informed that grievance procedures were not included in the guidelines. The guidelines included procedures for notification of charges against the student at hearings and information regarding right of appeal, and basically nothing else.

Abourezk returned to Osborne's concerns regarding the incompatibility of boarding school programs and students' needs and asked if these concerns had been made known to education administrative personnel and the Bureau. Osborne replied that they "very definitely" had. Abourezk asked her to explain what the result was. Osborne stated that the response received most often was



[w]ell, yes, this is true, however, we don't think that it would be wise to address ourselves to that particular point at this time. (U.S. Senate 1975, 382)

She explained that the essence of the three phase project initiated in 1971 was specifically concerned with problems of incompatibility of school program and student need and that it was necessary to conduct a needs assessment to be able to develop educational objectives to address the problems identified. On July 6, 1973 Osborne sent a memorandum to the Acting Director of Indian Education Programs through the Chief, Division of School Operations, expressing her concern that the work to develop student rights and responsibilities policy guidelines was not going forward. She was disappointed that no consideration was being given to these very important areas of program development. Abourezk asked if she would like to offer the memorandum for the record. It was accepted and following the hearings additional materials were submitted (U.S. Senate 1975, 383-445).

Also testifying in a personal capacity was Evelyn Blanchard,<sup>40</sup> Assistant Area Social Worker for the Bureau's Albuquerque Area Office, Branch of Social Services, who like Brennan, had carved out an unofficial position with primary concentration in child welfare services. She expressed appreciation for the opportunity to testify and explained that her remarks reflected a broad perspective of having received protective services as a child, and as a social worker whose career had been focused on family and children's services. She stated that the contemporary situation of services to Indian children had to be looked at within the context of centuries-old Indian-Federal government relations.

It cannot be denied that the thrust of governmental programs has in many instances created conditions which have led to the destruction of Indian family life as opposed to the strengthening of it. (U.S. Senate 1975, 213)

She asserted that program development efforts and access to services have been designed to compensate for deficiencies and perceived need which has resulted in a narrow range of resources available to Indian people. Programs were problem-focused, developed by people outside the communities who often did not see the services response that the communities deemed necessary for healthy, productive development. Blanchard cited a national historical attitude that has limited the opportunity of certain groups to develop fully and explained that

[o]ut of this background comes [sic] 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. (U.S. Senate 1975, 213)

She told the panel that the quality of services to Indian children and their families varied greatly throughout the country and the continued presence of profound prejudice and discrimination made it difficult not only for families and children to receive the services they needed but also to be treated with dignity in situations where long-standing and well-preserved stereotypes influenced practice. In the view of many, all Indians are the responsibility of the Bureau of Indian Affairs and do not have equal standing with other citizens to access services. She insisted that these attitudes must be confronted and dealt with to assure that legislation or the provision of additional funds can cause positive change in services to Indian children and their families.

Blanchard described the services picture in the Albuquerque Area which encompassed twenty-four tribes with a total population of 30,000 persons served by a Bureau staff of eighteen agency workers and two Area personnel, only six of whom were Indians. The most recent caseload count showed 1,475 persons receiving services of various kinds which included financial assistance and child and family services. The average caseload per worker was eighty-two cases, many of which involved a number of needs for financial

assistance, alcoholism rehabilitation, employment, treatment for emotional disorders of various types, in addition to a wide-range of child welfare services. She stated that these data were not provided as an excuse for failure to provide adequate services, but rather to impress upon the panel that it was impossible for the staff to provide quality services when their efforts were spread so thinly. In addition to the direct services provided, workers were also called upon to assist in program development and to consult with tribal officials and courts. She also called attention to the long distances that must be traveled to different tribal locations and the fact that the time required to travel reduced the hours that might otherwise be devoted to work with families and children.

Compounding the problems of insufficiency of Bureau services were the practices of State and local governments to slough off their responsibility to Indian people often through bureaucratic technicalities with the consequence that services provided to the non-Indian population were not always provided to Indian people. She told the Subcommittee that nationally there were approximately 100 professionally trained Indian social workers but that many of them did not work with their own people either out of choice or because tribal and Indian organization social work positions were not available due to lack of funding. She expressed the need for more professionally trained Indian personnel to focus on preservation of the strengths of the Indian communities. She emphasized the importance for young Indian people to see people like themselves in positions of power and influence if they are to aspire to professional status in the field of social work.

Blanchard then turned to a description of the child welfare situation in the Albuquerque Area by emphasizing the need for local development of community resources. At the time of the hearings, there were 117 children in foster care, more than half of whom

were living in Indian foster homes on the reservation. She informed the panel that several years ago efforts were begun to reverse the pattern of off-reservation placements by placing emphasis on the development of Indian foster homes. The effort was not constrained by state licensing standards but was concerned with providing an atmosphere which was familiar and nurturing. Emphasis was placed on Indian foster home development to help children in outside homes move back to their local communities. The stress was on working within communities with existing conditions, and resources had been made available for home repairs and the purchase of needed household equipment to make return of children possible. She called for resources to develop group homes in the communities.

Having the resources in the local community allows many people to become involved in the social welfare needs of that community. The investment for them as individuals is enhanced and recognized perhaps for the first time. (U.S. Senate 1975, 215)

For the month of February 1974 there were 197 children in boarding schools because there were no other resources to offer.

Child welfare services in Indian communities are characterized by restrictions as opposed to an approach of individual self-determination. This is directly related to our lack of resources. The tribal court in all its awesome external character is frequently the primary recourse to family difficulties. Use of the court as a primary resource is in direct contradiction to accepted child welfare practice. (U.S. Senate 1975, 215)

Tribal courts were caught in a dilemma between the needs of the people and the reality of having few resources to deal with the many problems confronting families. Traditionally, children have been taken in by relatives and the extended family has worked together to find the best solutions, however there are times when the children's problems and family conflicts thwart these efforts and where professional assistance is indicated. But acceptable off-reservation facilities are seldom available and when used have often created conflicts which

compound the problems rather than improve them. The situation is further complicated by an instinctive hostility from some families to non-family involvement in the resolution of difficulties. This hostility was borne out of the bitter experience of “children being stolen” from their homelands and deprived of their heritage. The tribal judge cast in this milieu deals with a fearful, frustrated family and an overloaded social worker who often has no positive solutions in mind, and the child is placed in an institution not equipped to deal with the problems at hand. Often the child is placed wherever there is an opening and not where there are services to meet the child’s needs. Blanchard considered it essential that funds to employ Indian social workers to work within the communities be appropriated which would provide the means for help to the communities to develop local resources. The development of local resources would allow the child who otherwise might be moved out of the community to remain in an environment in which to grow according to prevailing norms, mores and precepts of her or his own tribe. There were no permanently stationed social workers at any of the pueblos and tribal judges relied heavily on outside placement resources. She called for real action that is meaningful, individually enhancing and just. Abourezk thanked her for the testimony and confirmed that she was a BIA employee. There were no questions asked.

Tonasket’s statement captured an overall view of the Bureau’s ability and willingness to provide the real assistance needed by tribes and Indian communities nation-wide. The testimony of government witnesses presented a picture of a disjointed agency without strong central leadership to guide its response to destructive family and children practices. What emerged was a complicated picture of compromise and complicity between federal and state government agencies that failed to recognize basic service needs while at the same time maintaining a system of financial support to states that encouraged removal of Indian

children. The Bureau's headquarters' office employed one child welfare specialist who served as a consultant to twelve area Branches of Social Services. One wonders why the specialist whose primary responsibility was family and children's services did not accompany Butler. Only two areas, Aberdeen and Muskogee, had officially-designated child welfare specialist positions.<sup>41</sup> It was left to individual Bureau employees to establish quasi-official child welfare specialist positions at other area offices. The panel was informed that the Bureau did not have designated child welfare positions, and that all the staff provided some portion of child welfare services on the reservations. No information was provided about specific training or qualifications required for staff to conduct the complex work involved.

On the subject of tribal control, Butler seemed reluctant to acknowledge its importance and appeared satisfied with what he described as "tribal involvement." Abourezk said that he hoped the BIA's definition of Indian involvement meant "something more than stroking the Indians to allow them to say that you are now the toothless advisory committee and you're involved" (U.S. Senate 1974, 449). Butler countered that many tribes had declined control of child welfare services when offered, but he could not provide the names of declining tribes when asked. The Senator challenged his statement and cited the sentiment expressed by Indian witnesses that BIA should not be allowed to take control. He also wanted to know what the BIA had done to protect the rights of children and parents who suffer from predatory child welfare practices. Butler stated that the Bureau had concentrated its efforts to assist about ninety tribal courts to develop codes and ordinances related to family and child welfare services, and at the same time, acknowledged that the agency did not provide the tribal judges with any training in these matters. Further, the Bureau

maintained continuing audits of child placements conducted by area office personnel to ensure that the best interests and rights of the children were protected.<sup>42</sup> He admitted that the Bureau had not submitted a comprehensive plan to Congress to halt unjust removal of children or to develop prevention or rehabilitation services as these efforts were beyond the agency's planning authority because they would necessarily involve both the DHEW and the Department of Justice. While the Bureau was concerned about destructive state practices, Butler asserted that it was unlikely that states would contract to provide additional services beyond those established for communities under their jurisdictions. He then baselessly threatened that if the Bureau could not contract with states it would be forced to ask Congress for additional monies to provide the services itself. Abourezk refuted his claim stating that the federal government had the authority to insist upon specific conditions in state contracts, and if the states could not live up to the conditions, they simply would not receive the money. Butler defended the Bureau's inaction regarding state and private agency adoptions stating the agency could not involve itself in adoptions except in those instances when specific activity was ordered by a tribal court.

Brennan informed the Sub-Committee about problems that tribes in North Dakota faced in accessing monies from AFDC-FC to support children who were being cared for by relatives. The state refused to disburse these funds for children on reservations who could be cared for by relatives unless the child had been the subject of a state court order for removal and placement. The state held that it did not have the authority to provide services for any child for whom it did not have actual custody and who was not a ward of a state court. The tribes were concerned that if children were forced to become wards of state courts to receive support for their care, the tribes would lose control over them and the children would be lost.

The state contended that it did not have the ability to license foster homes on the reservations or to provide protective services. Brennan worked with federal and state officials to resolve the problem without success. Federal guidelines for the program permitted limited state responsibility for placement, planning and supervision of the child without actual custody, but the state would not accept the interpretation. The state took a similar position regarding food stamps and SSI payments. When the AFDC-FC, food stamps and SSI programs were established the many jurisdictional problems that arose were not foreseen because there had been no consultation with the tribes. The refusal of the state to work out arrangements with tribes for the transfer of monies resulted in Indian people being denied federally-mandated resources.

In her testimony, Blanchard brought attention to similar underlying biases that made it difficult, and at times impossible, for Indian people to receive services that were provided to other residents of the state. These problems were compounded because of insufficiencies in Bureau programs, including personnel. She asserted that the continued presence of profound prejudice and discrimination made it difficult, not only for families and children to receive the services they needed, but also to be treated with dignity in situations where long-standing and well-preserved stereotypes influenced practice. It was generally held that all Indians were the responsibility of the Bureau, and she insisted that until these attitudes were confronted and dealt with little positive change would occur.

Questions raised with Benham were focused on boarding school students' rights and a school-by-school needs assessment begun in 1971. Abourezk asked about program objectives that issued from the assessment as he had information that implementation of the objectives had been delayed. Benham informed the panel that the needs assessments had not



been completed and he did not think they would ever be completed because of changing needs and the need for “a constant assessment of the needs of youngsters in order to stay abreast of how we can offer relevant curricular items” (U.S. Senate 1974, 469). Frustrated by Benham’s response, Abourezk wondered, “if it’s never going to be completed, why start it?” (U.S. Senate 1974, 469). Osborne, who was also employed in the Bureau’s Office of Education responded more fully regarding the needs assessment. She explained that it was difficult to provide for the maximum development of the students if examination of need was not broadly focused to include not only the students, but also parents, staff and administration on a school-by-school basis. She cited the incompatibility between admission criteria and school programming, which in her view did not reflect the special needs of students. Concern regarding specific areas of incompatibility was shared with program administrators but they declined to address them. She was critical of the inconclusiveness of the needs assessment effort and its design. She was frustrated by the Bureau’s failure to support a students’ rights project established five years earlier. The students’ rights committee had worked diligently over a three year period but found that the administration would not support its efforts, and eventually did not budget sufficient monies to complete the work. She reported to the Sub-Committee that existing Bureau guidelines related to students’ rights were only concerned with due process rights in a general way, and they did not contain any references to procedural rights. For example, grievance procedures were not included in the guidelines, but only information related to notice of hearing the right of appeal.

The hearings laid out the problems that needed to be corrected to reverse destructive family and children’s welfare practices that had evolved over decades in the case of federal-state-tribal relations and many generations regarding boarding school operations. The

imposition of state jurisdiction in P.L. 83-280 states had, for the most part, eviscerated the authority of tribal governments to safeguard the integrity of family life. In non-280 states the laxity of the Bureau of Indian Affairs to meet its responsibility to assure that Indian families received adequate services from its agencies and equitable treatment in contractual relations developed with the states also meant that tribal efforts to protect families and children were undermined. The testimony made it clear that correction of widespread abuse required that control in these matters be vested in tribal governments and Indian communities.

## Chapter VII:

**“We’ve got to take care of these Indians because they don’t have enough education;  
they don’t have the skills.”**

Goldie Denney, Social Services Director  
Quinault Nation

Following the 1974 hearings, Senator Abourezk committed to use his chairmanship of the Sub-Committee to address the abuses of Indian families and children and asked the AAIA to draft a bill, S. 1214, the Indian Child Welfare Act of 1977, that would eliminate child welfare abuses revealed in the testimony.<sup>43</sup> (See Appendix A). The bill addressed violations of due process rights of Indian children and their families and abusive child welfare practices that frequently occurred in situations where one or more of the following circumstances existed:

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 Government 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;
5. responsible tribal authorities are not consulted about or even informed of the nontribal government actions. (U.S. Senate 1977, 24, 25)

These conditions were buffeted by the report of a nation-wide Indian child welfare statistical survey requested from the AAIA which disclosed that American Indian and Alaska Native children were removed from their families and placed in adoptive and foster care, special institutions and federal boarding schools in rates far out of proportion to their percentage of the population.

Senator Abourezk opened the hearing to take testimony on S. 1214 (U.S. Senate 1977, 24-49), “a bill to establish standards for the placement of Indian children in foster or adoptive homes, and to prevent the breakup of the Indian families” (U.S. Senate 1977, 1) in response to needs identified in the 1974 Indian Affairs Subcommittee hearings.

The purpose of this hearing is to take testimony on a bill which would set minimum placement standards for the placement of Indian children in foster or adoptive homes and to authorize expenditures for the setting up of family development programs in Indian communities. (U.S. Senate 1977, 1)

In its opening statement, the bill described the particular problems that resulted from the separation of Indian children from their families.

The separation of Indian children from their natural parents, including 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 government 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. (U.S. Senate 1977, 4, 5)

The bill was constructed in four titles. Title I established standards that must be met to assure that children, families and tribes were accorded their due process rights. Removal and placement of children were governed by specific procedures that included thirty days written notice to parents, extended family members and tribes prior to a placement proceeding and an explanation of the proceedings. The notice also required a statement of facts that supported the need for placement, the right of parents and tribes to intervene in the proceedings, the right to submit evidence and present witnesses on their behalf, and the right to examine documents and files related to the placement of the child. There was also the

requirement that a showing be made that available remedial and rehabilitative efforts had been made to prevent the breakup of the family and that these efforts had been unsuccessful. If any of the parties opposed placement of the child, the placement would not be given legal force and effect 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 his parent or parents, or the extended family member in whose care the child has been left, or otherwise had custody in accordance with tribal law or custom, will result in serious emotional or physical damage” (U.S. Senate 1977, 30). The bill provided that poverty, crowded or inadequate housing, alcohol abuse or other nonconforming social behaviors could not be used as prima facie evidence that serious physical or emotional damage had or would occur. The standards to be used to determine the presence of serious physical or emotional damage would 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” (U.S. Senate 1977, 30).

To address the problem of abuse of voluntary consent to placement, temporary or permanent, the bill required that consent to placement be in writing, executed before a judge with jurisdiction over child placement, certified by the judge that the consent was explained in detail, translated into the parent’s native language and fully understood by the parent. In the case of non-adoptive placement, the consent could be withdrawn at any time for any reason. Consent for adoptive placement could be withdrawn for any reason at any time before the final decree of adoption was entered. A final decree of adoption could not be entered into within ninety days of the birth of a child or within ninety days after the parent or

parents had given consent to the adoption. Consent to adoption during pregnancy or within ten days after birth would be conclusively presumed to be involuntary. Should an adoption fail, the adoption decree could be set aside, upon a showing that the child was again placed for adoption, that the adoption was not in compliance with the Act or otherwise unlawful, or that consent to the adoption had not been voluntary. In the case of a failed adoption, parents or extended family members would have the opportunity to reopen the proceedings and petition for the child's return. It was required that parents or custodians be given thirty days written notice of proceedings to set aside or vacate an adoption unless they had executed a written waiver to such notice. No placements could take place unless the parents or other authorized custodians were given the opportunity to be represented by counsel or a lay advocate as required by the court having jurisdiction over the matter.

Testimony revealed that public and private agencies had transferred placements of children to keep them away from parents or authorized caretakers to prevent visitation or to thwart efforts to seek their return. The Act required that notice be given 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" should the need for a subsequent placement be determined. The provision covered foster care or temporary placement by any nontribal public or private agency, voluntary or involuntary, and also included placements in correctional facilities, institutions for juvenile delinquents, mental health hospitals or halfway houses. The notice must include the present placement's exact location and the reasons for the change in placement. When possible, it was required that the parties be given thirty days notice before the legal transfer of the child, but in any event no later than ten days after the transfer had occurred.

The Act set conditions that would curtail removal of children from reservations, except in the event that a duly constituted federal or state representative had good cause to believe that the child was in immediate physical or emotional danger. Except for this circumstance, the removal and placement of the child would not have legal force and effect unless it was pursuant to an order of a tribal court that exercised jurisdiction over child welfare matters. In the event of emergency placement, an immediate notice of removal must be given to tribal authorities, parents or extended family members who cared for the child. The notice must contain information about the exact whereabouts of the child and precise reasons for removal. Placement of the child off the reservation would not affect the exclusive jurisdiction of the tribal court over the placement of the child. Where a tribe did not exercise jurisdiction over child welfare matters, no placement by any nontribal public or private agency would be valid unless jurisdiction had been transferred to the state in a mutual agreement. The Act authorized mutual agreements or compacts between tribes and states “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” (U.S. Senate 1977, 38). Agreements could be revoked upon sixty days written notice but the revocation would not affect any action or proceeding over which a court had already assumed jurisdiction. A revocation would not waive the tribe’s right to notice, intervention or the order of placement established by the Act. The Secretary of Interior had sixty days to review agreements, compacts or revocations, and in the absence of good cause for disapproval, they would become effective.

For those children living off the reservation and under state jurisdiction but who had significant contacts with an Indian tribe, that tribe must receive thirty days prior written notice of its right to intervene in child welfare proceedings. If the tribe maintained a court with jurisdiction over child welfare matters, the Act required that jurisdiction be transferred to the tribe unless good cause to the contrary could be shown. Definition of significant contacts with a tribe would be an issue of fact determined by a court based on considerations, such 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” (U.S. Senate 1977, 36). Should significant contacts not be determined, the state or local authorities would still be bound by the placement preference standards established in the Act. In the event significant contacts were determined, the party seeking a change of legal custody was required to provide prior written notice by registered mail to the parents, extended family members from whom custody was to be taken, and to the tribe’s executive officer or designee. In the event of temporary placement or removal, immediate notice must be given to the parents, custodian from whom the child had been taken, and the tribe’s executive officer or designee. The notice would contain the child’s exact whereabouts, precise reasons for removal, proposed placement plan and the time and place of hearings if a temporary custody order was sought. If there was an available tribally operated or licensed facility, it must be used. A temporary placement order must be sought at the next regular session of the court having jurisdiction and no temporary or emergency placement could exceed seventy-two hours without an order from the court of competent jurisdiction. For purposes of the Act, the child’s reservation residence would be determined



by the reservation residence of his parents or other extended family members in whose care the child may have been left.

The Act provided direction regarding the removal and placement of Indian children by public or private agencies for purposes of off-reservation school attendance and which were not deemed educational exemptions as defined in the Interstate Compact on the Placement of Children.<sup>44</sup> This provision was primarily concerned with placements by religiously affiliated institutions, such as the Mormon Church. Such arrangements would not be deemed child placements for the purposes of the Act, but the operators of these programs were required to provide the tribal chief executive officer with the same information required had the child been the subject of the interstate compact. It was required that a written notice by registered mail be sent to the executive officer or other designee.

The Act provided for the re-assumption of jurisdiction over child welfare matters by any tribe in a P.L. 83-280 state. The process required that the tribe give the state sixty days written notice of its intent after first establishing and providing “mechanisms for implementation of such matters which shall be subject to the review and approval of the Secretary of the Interior” (U.S. Senate 1977, 38). In the event of disapproval, the Secretary was required to provide the tribe technical assistance to correct any deficiencies. If approved, the re-assumption would not take effect until sixty days after the Secretary had given notice to the state. The state and tribes were authorized to enter into mutual agreements or compacts “respecting the care, custody, and jurisdictional authority of each 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” (U.S. Senate 1977, 38). Agreements or

compacts could be revoked upon sixty days written notice by either party. The establishment of an agreement or compact would not waive the rights of any tribe to notice and intervention nor would it alter the order of preference in child placement.

In the absence of good cause to the contrary a child offered for adoption would be placed 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. (U.S. Senate 1977, 40)

In the non-adoptive placement of an Indian child, in the absence of good cause to the contrary, every nontribal public or private agency would grant placement preference 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 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. (U.S. Senate 1977, 40)

A tribe could modify or amend the order of preference by resolution of its governing body.

Every nontribal public or private agency was required to maintain a record that evidenced compliance with the order of preference of each Indian child in placement which must be available, at any time upon request of the appropriate tribal authorities. If a child were placed pursuant to a tribal court order in foster care or adoption, or in an institution, outside

the reservation of which the child was a member or with which there were significant contacts, the tribal court would maintain jurisdiction over the child until the age of eighteen. To protect the rights associated with tribal membership, upon the age of eighteen, an adopted child could petition the court which had entered the final decree of adoption, and in the absence of good cause to the contrary, the child would 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” (U.S. Senate 1977, 41). Title I was ended with the stipulation that

[i]n 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. (U.S. Senate 1977, 42)

Title II authorized the Secretary of Interior to make grants to Indian tribes and Indian organizations to establish and operate family development programs on or near reservations and to prepare and implement child welfare codes. The objective of the family development program was to prevent the breakup of the Indian family, and to insure that permanent removal of the child from the custody of his parents, extended family members or other persons who held custody of the child according to tribal law or custom would be the last resort. Family development programs could include, but were not limited to the following services:

1. a system for licensing or otherwise regulating Indian foster and adoptive homes;
2. the construction, operation, and maintenance of family development centers;
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. (U.S. Senate 1977, 43)

The Act specified that any Indian foster or adoptive home licensed or designated by the tribe could accept the placement of an Indian child from a nontribal public or private agency and State funds to support the care of the child. It was further stipulated that a tribally licensed foster or adoptive home would be given preference in the placement of an Indian child. To meet qualifying requirements for any federally assisted program, licensing by a tribe would be equivalent to licensing by a state. Every tribe was authorized to construct, operate and maintain facilities for counseling Indian families facing disintegration and for the treatment of individual family members. Facilities were also authorized for the temporary custody of Indian children whose caretakers were temporarily unable or unwilling to care for them or who had been left temporarily without adult supervision by an extended family member.

The Secretary of Interior was also authorized to make grants to Indian organizations to operate off-reservation family development programs which could include 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. (U.S. Senate 1977, 45)

The Secretary was authorized to enter into agreements or other cooperative arrangements with the Secretary of Health, Education and Welfare to establish, operate and fund family development programs using funds appropriated for similar programs of the Department of Health, Education and Welfare. The Act authorized the appropriation of \$26,000,000 for fiscal year 1979 and such funds as would be needed in subsequent years in order to carry out the purposes of Title I.

Title III authorized and directed the Secretary to maintain files in a single location of all Indian child placements which took place after the Act was passed. The files would include name and tribal affiliation of each child, names and addresses of natural parents and extended family member in whose care the child may have been left, names and addresses of adoptive parents, names and addresses of natural siblings and the names and locations of tribal or nontribal public and private agencies which possessed files or information related to the placement. While the records would not be open for inspection or copying pursuant to the Freedom of Information Act, the adopted child, having reached the age of eighteen, could examine the files to identify the court which entered the final decree of adoption. The information could also be made available to adoptive or foster parents of an Indian child and an Indian tribe for the purposes of assisting the child to seek tribal enrollment and to determine any rights or benefits associated with membership. The files would be privileged and confidential and could be used only for the specific purposes set forth in the Act. The Act also required that a certified copy of any order of any nontribal, public or private agency which affected the placement of an Indian child covered by the Act must be mailed to the

Secretary within ten days of issuance, and also any additional information the Secretary may require by regulation in order to fulfill recordkeeping functions under the Act. The Secretary was directed to consult with Indian tribes, Indian organizations, and Indian interest agencies to form rules and regulations to implement provisions of the Act. A time table was established to present the proposed rules and regulations to the Select Committee on Indian Affairs and the Committee on Interior and Insular Affairs of the House of Representatives, to publish the rules and regulations in the Federal Register, and to implement provisions of the Act. While the Secretary was authorized to revise or amend the rules and regulations, prior to actual revision or amendment they must be presented to the above committees. Further, any proposed revisions must be published in the Federal Register sixty days prior to implementation to receive comments from interested parties.

Title IV responded to Congress' sense that the absence of locally convenient day schools contributed to the breakup of the Indian family and denied Indian children equal protection under the law. Within one year of the date of enactment of the law, the Secretary was authorized and directed to prepare and submit to the Select Committee on Indian Affairs and the Committee on Interior and Insular Affairs a plan, including cost analysis, for the provision of schools located near the students' homes. In the development of the plan, priority would be given to the need for elementary schools.

Raymond Butler was the first opposition witness to the proposed legislation. He stated that, while the BIA endorsed the general concepts of S. 1214, that the placement of "Indian children in foster and adoptive homes should be done within the context of their cultural environment and heritage and should insure the preservation of their identity and unique cultural values; and the stability and security of Indian family life should be promoted

and fostered” (U.S. Senate 1977, 50). He regretted that the agency could not support the Act. He cited the BIA’s lack of quantity and quality of services necessary to support services for vulnerable families as the basis for the agency’s inability to support the legislation, but that was not the basis for opposing the Act. Instead, he stated that the Administration had recently proposed amendments to the Social Security Act, The Child Welfare Amendments of 1977 (S. 1928),<sup>45</sup> which would establish nation-wide standards for foster and adoptive placements and was designed to improve and strengthen child welfare practices throughout the country. It was his position that with appropriate amendments S. 1928 would accomplish many of the goals and objectives of S. 1214. He also informed the panel that DHEW had recently established the Administration on Children, Youth and Families (ACYF) which would administer a range of services for child and family welfare and expand its authority. Admittedly, the Bureau had few programs to address the problems identified in S. 1214, and its passage would place new requirements on the Secretary of Interior that might conflict or duplicate current DHEW authorities and/or those proposed in S. 1928. He also objected to standards outlined in Title I because they did not reflect the cultural diversity and values of Indians throughout the country, and suggested that one set of uniform Federal standards would present a federal intrusion into the regulation of tribal domestic matters and sovereignty.

In an accompanying written statement Butler defended the Bureau’s foster care practices, stating that, in most cases, Indian children were placed with Indian families citing a 1972 study which indicated that about two-thirds of monies expended for foster care were disbursed to Indian foster homes. While the Bureau was not an adoption agency, it worked closely with the Adoption Resources Exchange of North America (ARENA)<sup>46</sup> to locate

adoptive homes not available locally. He reported that between June 1976 and July 1977 about ninety percent of the children referred to ARENA had been placed with Indian adoptive homes both on and off-reservation. He stated that it was difficult to find homes for older children or those with handicaps regardless of race, and because of this, some Indian children had been placed in non-Indian adoptive homes. He described the conundrum the agency faced regarding continued use of boarding schools as parents often chose to place their children in the schools, and for many children they were the best available resource. He shared the desire of the Committee that there would be less need for the placement of children away from their parents but for the foreseeable future the boarding schools would continue to be needed for the placement of children. He discounted the findings in S. 1214 that Government officials involved with Indian children and their families are unfamiliar with and disdainful of Indian culture by pointing out the majority of BIA employees who work with families involved in placement are themselves Indian. He also refuted the finding that child placement subverted tribal jurisdiction over domestic relations if a tribe had an established Indian court. The BIA honored the jurisdiction of Indian courts, as had the U.S. Supreme Court, and many tribes had welfare committees that participated with and advised Bureau social services staff regarding matters of child and family development and foster care activities. He summarized the Bureau's opposition to S. 1214.

[W]e feel that enactment of S. 1214 would be duplicative in that it would purport to confer upon tribes and tribal courts authority that they already have; that other Federal agencies already provide (or have the authority to provide) many of the family development services authorized in S. 1214; that efforts are already underway in the BIA to improve Indian child welfare placement standards; that the BIA can already assist tribes in many of the activities authorized by Title II of S. 1214 under the broad general authority of the Snyder Act (25 U.S.C. 13) and through P. L. 93-638; and that enactment of the administration's major new child care legislation (S.



1928) will be of assistance to Indians as well as the general population. (U.S. Senate 1977, 52)

Nancy Amidei, Deputy Assistant Secretary for Legislation/Welfare testified on behalf of the DHEW and was accompanied by Frank Ferro of the Office of Child Development. While she understood that S. 1214 would create a new child welfare program in Interior, she informed the panel that in the previous week DHEW had proposed a massive bill introduced by Senator Alan Cranston (D. Calif.) to review foster care, adoptions and other child welfare services. She stated that the 1974 hearings had prompted the DHEW to review its efforts related to services for Indian children, and reported the findings of a state-of-the-field study that included a survey of Indian child welfare needs and service delivery. The survey examined activities and policies of twenty-one states and reviewed training and employment opportunities for Indian child welfare professionals. She listed several factors of concern that had emerged from the survey:

1. the need for increased tribal and Indian organization involvement in the planning and delivery of child welfare services;
2. the need to deliver services to Indian people without discrimination and with respect for tribal culture;
3. the need for trained Indian child welfare personnel;
4. the need to resolve jurisdictional confusion to eliminate serious gaps in service and conflicts between state, federal and tribal governments that leave too many children without needed care;
5. the need to increase funding for services; and
6. the need to assure that insensitivity to tribal customs and culture is not permitted to result in practices where the delivery of services weakens rather than strengthens Indian family life. (U.S. Senate 1977, 53)

Amidei stated that negotiations were underway with the National Tribal Chairmen's Association for a project to amend Title XX of the Social Security Act<sup>47</sup> to more effectively operate social services programs for Indians. A quarter of a million dollars was being spent to develop programmatic alternatives. The agency was reviewing proposals for technical

assistance to aid recognized Indian groups to develop and implement tribal codes and court procedures relative to child abuse and neglect. Research and demonstration projects to test alternative methods to improve ways in which state agencies could deliver services to Indians were underway. Other efforts focused on the delivery of child welfare services in P.L. 83-280 states regarding the design of on-reservation day care standards and the designation of reservations as State planning areas for purposes of the Title XX program. Amidei asserted that all the efforts were “intended to reflect the Department’s belief that Indian child welfare services must be based not only on the best interests of the child and support for the family unit—however that may be defined—but also on a recognition of the need to involve Indians themselves in the provision of services” (U.S. Senate 1977, 54). But, it was not only Indian children who did not receive adequate services; the problems were nation-wide for all children, and too many children had been removed from their homes when supportive and preventive services might have allowed them to remain with their families.

Overall too little work had been done with natural parents of children in temporary foster care with the result that they may never be able to return home, while others had been placed too far away to make regular contacts possible. Many children languished in substitute care because plans to return them to parents or place them for adoption had not been developed. Often foster parents who might adopt children in their care were unable to do so because they could not afford to lose the financial support that ended when the child was adopted. The survey unveiled the suffering of parents and children due to lack of protection against inappropriate removal, uninformed decisions about placement outside the home, and the nature of judicial proceedings in juvenile courts. There were too few trained workers available, little guidance for overworked staff and perverse incentives for children to

remain in foster care over more permanent child-focused arrangements. The study confirmed that these problems were compounded for Indian children. She urged the Committee to consider joining the administration's effort to improve services for all children, and believed that it was possible to accomplish some of the objectives and goals of S. 1214 within the context of S. 1928. As examples, Amidei cited

1. a clearer test for involuntary removal of children and greater protections for families during the course of proceedings;
2. financial incentives to provide due process protections for children, birth parents and foster parents including legal counsel and payment of legal fees;
3. provision of services to enable children to remain in their homes or to return home;
4. review of all children in foster care for six months;
5. creation of a state information system to aid case management and oversight of children placed outside their homes that would be available to the public; and
6. the creation of a new program of federally supported adoption subsidies to enable the adoption of children with special needs and financial disincentives for the inappropriate use of foster care as a holding action for children. (U.S. Senate 1977, 55-56)

While Amidei did not have legislative language to propose accommodations in S. 1928, she expressed the desire to work with Committee staff and the BIA on some of the most serious problems the Committee had with the Administration's proposal, such as conforming language related to the role of tribal courts and tribal governments in the procedures that surround the placement of children outside their homes. She cited the historic uncertainty of monies for child welfare services and the resultant problems in the mix of Federal, state and county systems, but she was confident that the matters could be resolved in ways that would also make new monies available for Indian children. It was the Department's intent to work closely with BIA staff to make changes to S. 1928 that would assure the full participation of, and safeguards for, Indian children under the administration's

proposal. She submitted a section-by-section analysis of the administration's bill to help the Committee identify parallels in both bills (U.S. Senate 1977, 57-68).

Abourezk confirmed that the administration's position was set out in both statements of the BIA and DHEW. He asked for an explanation of the different positions taken by the BIA and the DHEW in which "the Federal Government is becoming concerned that Indian child welfare is an intrusion when BIA says it, and it is not an intrusion when HEW says it" and asked that both respond (U.S. Senate 1977, 60). Butler cited the standards set out in Title I that would be uniformly imposed among all the tribes as Federal intrusion. He offered that in the era of self-determination the standards should be established, legislatively and judicially, by the respective Indian tribes themselves; they would be more meaningful to the Indian people if such standards were established by their own tribal councils or judicial processes. He did not see the need for legislating full faith and credit of tribal courts since this was already a settled issue having been taken as far as the U.S. Supreme Court, however, he could foresee that they might still be challenged. Butler noted that in P.L. 83-280 states any tribally established standards would have to be legislated by the state similar to the full faith and credit provision states afforded their sister states. Abourezk pressed on regarding Butler's conceptualization of intrusion and reminded him that Section 1 of Title I states that, "except for temporary placements and emergency situations, no child placement shall be valid or given any legal force and effect unless made pursuant to an order of the tribal court" (U.S. Senate 1977, 69). He asked Butler if he was "prepared to say that someone besides the tribe or its legal institutions knows better what to do with Indian children than that particular institution or tribe" (U.S. Senate 1977, 69)? Butler agreed that the tribal court operates in response to the tribe's legislative process and he had no question that was the best approach.

“Then how is that a Federal intrusion?” Abourezk asked (U.S. Senate 1977, 70). Butler responded that some tribes might see it as a Federal intrusion but was unable to identify a particular tribe that had taken that position. Abourezk expressed frustration with Butler’s comments and asked him to get to the point. Butler explained that the view of Federal intrusion concerned sections 101(b) and 101(c) related to intervention by the tribe in a child custody proceeding. Abourezk asked for clarification. “Are you saying that the requirement that the tribe have 30 days’ notice of any kind of placement of an Indian child and that the tribe be given that notice is a Federal intrusion” (U.S. Senate 1977, 70)? Again, Butler stated that some in the Indian community viewed it as a Federal intrusion as some tribes might want to set a standard of ten, twenty or even sixty days, but acquiesced that it was “a conceptual thing rather than a factual thing” (U.S. Senate 1977, 70). Abourezk wanted to know where Butler saw an intrusion in Section 101(c). Butler cited the circumstance of an unwed mother who might not want to seek tribal enrollment for reasons of confidentiality. The only conclusion Abourezk could draw from Butler’s statements was the alternative that the tribes would have no voice whatsoever in how Indian children are placed. Butler responded that was not what was meant; he only wanted to call the Committee’s attention to the possibility that the standard might be legally challenged, but acquiesced that a challenge was not sufficient reason not to pass legislation.

Abourezk turned to funding of the legislation and asked Butler his estimate of the cost of S. 1214. Butler cited the authorization for Title II which set costs of \$21.8 million for fiscal year 1978, \$23.7 million in 1979 and \$25.1 million for 1980 together with the defense section which listed \$18 million in 1979, \$20 million in 1980 and \$22 million in 1981. He thought the costs for Title I would be negligible. Amidei did not have estimates regarding

the cost of the Indian portion of S. 1928 as there had been no attempt to break out costs for individual groups.

Abourezk inquired about S. 1928 provisions regarding placement and adoption of Indian children. Amidei answered that S. 1928 did not refer specifically to any particular ethnic group but assured him that it would provide a number of protections for concerns raised in S. 1214. She stated that the survey revealed that some public monies were used to intrude on family life as a consequence of not providing protections for families and children, and concerns regarding these intrusive practices led the Department to propose S. 1928. Protections that would be put in place relative to voluntary placements would require a binding, written, clearly expressed, and mutually understood agreement. Within 180 days, a judicial or administrative review would determine if the placement should continue. It would be required that children be placed in the least restrictive setting, most family-like and in close proximity to their natural parents' home. Funds would be available to support the foster care of children in relatives' homes. The Federal match for adoption and foster care would be increased to seventy-five percent to help States expand their programs. Eligibility for the program would require States to conduct an inventory of all children in foster care under State responsibility within six months. A determination would have to be made about the appropriateness of the placement, whether it should be ended or changed. Demographic information as to background of the children, their age, race, ethnicity and religion would be made public. A statewide information system that included information about all children in placement would be established, and the State would be required to review the status of each child in placement every six months. A service plan would be developed to prevent the removal of children from their families or to reunite families where appropriate. Children

who could not be returned home would not be permitted to linger in foster care indefinitely. States would be required to establish due process procedures which would include the right to a hearing within eighteen months of placement, to give notice of proceedings, including nature of proceedings, to parents and other interested parties, and if necessary, with payment for legal counsel. Legal services would be covered if an adoption was involved. Finally, there would be a provision to pay legal fees for families to prevent loss of adoptive or foster care rights simply because they could not afford them. This would remove the automatic preference of those families who could afford the fees.

Abourezk cited the 1974 hearings in which the major abuse regarding Indian children involved social welfare agencies, non-Indian agencies, that failed to understand “what it was like to grow up in an Indian home” (U.S. Senate 1977, 73) and who consistently thought it was better for the child to be out of an Indian home. He asked Amidei if she thought the abuse needed to be ended. She replied that the Department could not require the placement of white children only with white families or black children only with black families, but she had sought legal advice to be sure that problems would not be created in relation to civil rights law. The attorneys would examine the question and she would provide the information for the record when it became available. Abourezk asked if her concerns were related to S. 1214. She replied that she had “simply raised the question of whether or not we would support the notion of requiring in law—for example, in our proposal, the requirement that children of particular ethnic groups or racial groups be placed in similar families” (U.S. Senate 1977, 73). Abourezk asked her to answer the question, “Do you agree or disagree that that abuse ought to be ended so far as Indian families are concerned” (U.S. Senate 1977, 73)? She could not answer the question because of what she understood to be requirements of the

Department under the Civil Rights Act. Butler cited past discussions held regarding certain Indian provisions of Title XX in which the question was raised if provisions were made specifically for Indians, the same arrangements would also have to be made for blacks, for the Spanish, for Mexican-Americans. He thought that, once and for all, full recognition of the unique Federal relationship to Indian people had to be given, and that special programs for Indian people must be removed from the concept that they are provided on an ethnic or racial basis. Abourezk stated that he did not think the civil rights laws would apply because of the modified sovereignty concept that Indian tribes possess.

Abourezk did not know how provisions of S. 1214 could be adopted into S. 1928 because the Administration's bill would go through the Finance Committee but the Indian Affairs Committee has sole jurisdiction over Indian matters in the Senate. He raised the question of how the Finance Committee, which has neither experience dealing with Indian affairs nor jurisdiction over them, would operate on a bill dealing with the Indian tribes and Indian families? He was told that it was not intended to take over any of the responsibilities of the BIA or anything that the Committee wanted the BIA to handle. Amidei thought it was possible to make the administration's proposal more responsive to the needs of Indian children through involvement of tribal governments and courts in legal proceedings and the protective elements of placing children outside the home. There could be an effort to develop creative ways to assure that monies available generally would also be available to Indian children in ways that currently did not exist. Abourezk recalled that at the 1974 hearings, the DHEW testified that it did not have any real plans or programs designed to address the special needs of Indian communities and he had specifically asked that the Department develop such policies and programming. He wanted to know what had been



done in the intervening three years. Amidei could not provide any detail but cited the efforts to establish monies for training professional Indian child welfare people and demonstration projects for capacity building and involvement of Indian groups in the planning and design of social welfare services. Abourezk conveyed the request from Indian witnesses that all Administration people remain to hear their testimony and he thanked them for their appearance.

Congressman Gunn McKay (R. Utah) appeared to express concern that S. 1214 might pose problems for the Indian Placement Program of the Church of Jesus Christ of Latter Day Saints (LDS/Mormon), which he stated had nothing to do with adoptions but was rather an educational program. He told the panel that the children in the program come at their own behest or that of their parents and that from his own knowledge knew that very good relationships developed between students and their foster parents. He gave assurance that children in the program are encouraged in the culture of their fore-bearers and pride in their tribal heritage. McKay introduced the panel to George Lee, member of the First Council of Seventy<sup>48</sup> of the Mormon Church, and Harold C. Brown, Commissioner of LDS Social Services/Director of Personal Welfare Services who was accompanied by Robert Barker, Counsel. Lee described himself as a full-blooded Navajo who entered the placement program at age ten and remained in the program for nine years. He described the program as the most progressive and successful program of any child placement program known to him because of what it is doing for his people and other tribes in the country. He presented statements from tribal officials, parents and participants that lauded the program and attested to its benefits. He also offered for the record petitions signed by several hundred individuals and letters asking the Committee to protect the placement program from requirements of the

Act (U.S. Senate 1977, 488-496). He admitted that S. 1214 would not prevent parents from placing their children in the program, but he was concerned that it would cause the applicants to go through considerable red tape, policies, courts and procedures that would delay placements. He also expressed concern that Indian families' rights of self-determination would be violated and proposed that the following amendment be included:

Provided that temporary residence for a period of less than one year at a time by a child in the home of another family without charge for educational, spiritual, cultural or social opportunities for the child, and with terminable written consent of its parents or guardian, shall not be considered a placement and shall not be restricted by the Act. (U.S. Senate 1977, 195)

Lee assured Abourezk that the Church was not opposed to S. 1214 but did want to protect the placement program. His written statement was submitted for the record (U.S. Senate 1977, 197-203).

Harold Brown reinforced Lee's statement that the Church did not oppose S. 1214 but wanted assurance that the placement program would be protected. He emphasized that the program is for LDS members only and not available to non-members. The parents give written consent which can be withdrawn upon request. A child can also request that the placement be terminated. While in placement the students receive professional casework services with monthly visits to their foster homes by professionally-trained caseworkers, and caseworkers on the reservations make regular visits to the parents to report on their children's progress and status. Caseworkers communicate parents' comments and concerns to program administrators to assure that the placement continues in a professional and acceptable way to the parents. He read the statement of Nora Begay, Miss Indian America of 1972, who had been in the program for eight years. She wrote that placement in the program had fulfilled her dreams for a good education, culminating with a degree from Brigham Young University

in communications. She described her foster parents as patient, kind and willing to help her learn new concepts and a different way of life. She asked the Committee's help to keep the program alive for Indian children who need a place to turn to for opportunities not available on the reservation. Brown told the panel that at the time there were approximately 2,700 Indian children in the program, all of whom were members of the Church. Children must be eight years old for participation in the program and can remain until age eighteen.

Brown informed the panel that the program is licensed in the individual states and complies with the interstate compact together with any other state, federal or local laws required. Information about the child's whereabouts is provided to parents but is only provided to tribal governments with a bona fide request. He resisted providing information to tribes that is routinely provided to states. He explained that it would be feasible to provide the information to larger tribes but said that it would be difficult to provide the information to smaller tribes which he described as scattered. He further stated that some tribes do not have effective councils and they would not know what to do with the information if it was received. These concerns could be allayed if it was assured that the information would be in the hands of professional people or that the tribe would understand its use. His statement was disconcerting to members of the audience who voiced their objections. Abourezk asked for order and that they refrain from demonstrating their disagreement to allow the panel to explore the questions more fully. Brown related that there are numerous urban Indians in the program and he did not know with whom the program would communicate. He expressed concern that sending lists of program participants to tribes might violate parents' rights to privacy and confidentiality and he would be willing to do so only upon a bona fide tribal request. Abourezk inquired if the program would comply with a requirement to furnish

information provided to the states to the child's tribe on a routine basis. Brown stated there was no objection but they would want to discuss the procedures with the tribal entity to be assured that the confidentiality and privacy of the child was protected. Brown, prompted by counsel, cited the difficulty the program would encounter if the child had multiple tribal heritages. At Abourezk's suggestion he agreed that it would be logical to provide the information to the tribe of the child's residence but some thought would have to be given to that procedure.

Lee offered ending comments in which he praised the program which he described as providing him the opportunity to leave his poverty environment and live in a loving home with people whom he considered his second family. This family helped him complete high school, sent him to college, paying his college expenses, which was a typical experience of many children in the program. He refuted the charge that the program took away the Indian child's Indianness or culture, and on the contrary, the program had enhanced his identity and responsibility to himself, his family, tribe and country. He explained that during his eight years in placement he remained with the same family. Brown's written statement was entered into the record (U.S. Senate 1977, 209-216).

A number of tribes sent representatives to respond to S. 1214 and other tribes and Indian organizations submitted written statements (U.S. Senate 1977, 227-291). The first tribal representative to testify was Goldie Denney, Social Services Director, Quinault Tribe, who also presented testimony for NCAI. She opened her comments with a challenge to the BIA's testimony which she stated did not reflect the thinking of people in Indian country, those who live on reservations and those who deal with child welfare problems on a day-to-day basis. She stated that in 1976 at the thirty-third annual convention of NCAI, a

unanimous resolution was passed by 130 tribes in support of the previously drafted S. 3777, the basic concepts of which were included in S. 1214. Their action was in direct contradiction to the testimony presented by the BIA. At the same convention, policy resolution No. 5 entitled the International Intertribal Child Welfare Compact was adopted by the Congress which was an attempt to establish a system to identify lost children and the means to get them back to their families and tribes. Policy resolution No. 10 which addressed the interstate placement of Indian children for whatever reasons, whether educational or cultural, was also passed. This resolution asserted the entitlement of Indian people to complete control of their children and their right to know where they were and what would happen to them. At Abourezk's urging she shared her own experience at age four of abusive state practice. Her mother was deceased and she lived with her father whose mother helped care for them. On an occasion when she and her sister were found wading in mud puddles, a state caseworker determined they were neglected and took them into custody. She and her sister were returned to their father, but she could find no reasonable excuse for their treatment. She stated that children continue to be removed for like reasons. She refuted the BIA's position regarding S. 1928 and that S. 1214 would impose standards on Indian people; the intent of S. 1214 was to impose standards on the state. The required notice to tribes does not require tribes to respond and does not detract from tribal or individual rights. She believed that the proposed standards were long overdue.

The Quinault Tribe, located in a P.L. 83-280 state, had suffered the same injustices as other tribes in similar circumstances. A great number of children had been lost through foster care and adoption by non-Indians having been removed by caseworkers without substantive cause. Indian people had successfully reared their children for many years before

the imposition of middle-class American standards that dictated ways in which children should be raised. It was difficult for her to understand the lack of support of the BIA for the bill. Indian people were beginning to speak out, learning and trying to take care of their own problems. In her view the federal, state and county governments had messed up Indian child welfare matters “since they started meddling around with them. 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” (U.S. Senate 1977, 78). Indian people understood their problems and were better equipped to help themselves. It is often said, “we’ve got to take care of these Indians because they don’t have enough education; they don’t have the skills” (U.S. Senate 1977, 79). She observed that she heard the testimony of a very skilled lady earlier who could not make a commitment whether abuse of Indian children should be halted or not. She maintained that an Indian person, even without an eighth grade education, can provide better social services than a non-Indian person with a Ph.D. because they have a better understanding of the problems, have lived in their communities and can better relate to their people. She cited the Quinault Tribe as an example of how Indian people could develop successful programs on their own. Without help from the state, county or BIA, the tribe had developed a human services delivery system that provided thirty-four different services on the reservation. To operate the program, Denney had personally trained five paraprofessionals. The program had operated for five years and was able to assume all the child welfare responsibilities formerly administered by state and county officials. The services addressed foster care, adoption, protective services and juvenile delinquency services. While it took time to establish credibility with the state court system, the Quinault Social Services Department was recognized as a legitimate organization, and was the first tribal organization to acquire this

status in the State of Washington, setting a precedent which has benefitted other tribes. The tribe's social services department was given joint supervision in all child custody matters by the courts in Grays Harbor and Jefferson counties, and by the state's Department of Social and Health Services which maintained jurisdiction. These accomplishments established that tribal operation permitted innovation and rid restrictions imposed from the outside.

She declared the foster care program in the entire United States a disgrace and cited the average length of foster care in Washington State of four and a half years as unacceptable. Quinault limited the length of stay in foster care to less than a year. The tribe's operation was not restricted by agency rules and regulations and meaningless forms. All children were placed in Quinault foster homes and the numbers of tribal foster homes on the reservation had been increased from seven to thirty-one. Fifty-two Quinault children have been returned to their parents, and all juvenile cases were referred to the tribe's social services department by Grays Harbor Juvenile Department. On October 27, 1976, the Washington Administrative Code was amended to address child welfare placement standards, some of which are mirrored in S. 1214. She urged the panel to use changes that have taken place in the State of Washington as a model for implementation of S.1214, and offered her strong support for the passage of S. 1214. She submitted NCAI's statement which contained recommendations to strengthen the bill (U.S. Senate 1977, 81-93).

The NCAI statement highlighted concerns regarding the Interstate Compact and its vulnerability to abuse in the placement of Indian children, and the Adoption Resource Exchange of North America (ARENA) which the BIA continued to use and support for the adoption of Indian children. There were questions regarding the information provided by ARENA related to the numbers of American Indian children placed for adoption and the

criteria used to identify Indian adoptive homes. Statistical reports submitted by ARENA for 1974 indicated that 120 Indian children were placed for adoption, fourteen of whom were placed with Indian families and 106 of the children placed were Canadian Indians. In 1975 reports showed that sixty-three Indian children were placed for adoption, seventy percent of whom were placed in Indian homes, but there was no information regarding the definition of Indian home. NCAI strongly recommended that the BIA end its contract with ARENA and instead contract with an Indian adoption exchange to ensure practices complementary to the Indian Self-Determination and Education Assistance Act. As regards the notice provisions, a separate section was proposed that would require “prior notice be given to the tribe when an Indian child residing or domiciled on the reservation will be absent from the reservation for more than 60 days for social service or educational purposes” (U.S. Senate 1977, 83). It further recommended that guardians ad litem “who have received approval of an Indian tribe or tribes must be appointed to represent Indian children” (U.S. Senate 1977, 83). The statement called for the establishment of a data bank that would contain the adoption records of Indian adoptees, and that county courts, state archives, and state, county and private agencies be required to submit copies of adoption files of all Indian children to the Secretary. It was proposed that a separate section be added to S. 1214 that would

1. direct the Secretary to establish an Indian Policy Committee of representatives of Indian tribes and organizations which will assist the Secretary in the implementation and monitoring of the Act and provide a vehicle for accountability;
2. direct the Secretary to establish a special monitoring team with the authority and responsibility to monitor the implementation of this Act by the Department of Interior, county courts, state archives, and state, county, and private agencies. The team will make direct reports to the Secretary and Indian Policy Committee and have direct access to the Secretary and Indian Policy Committee; and
3. [that] diversity of tribes warrants the establishment of a national child protection team composed of American Indian professionals, outside of the governmental



agencies, to monitor and give direction to tribal child development programs. This team will also assist and advise the Secretary in such sensitive areas as described in Sec. 204. (U.S. Senate 1977, 84)

NCAI called on the Committee to review three attached drafts developed by the BIA and the Office of Management and Budget (OMB) which were considered offensive and not in keeping with the Federal government's trust responsibility to Indian tribes (U.S. Senate 1977, 85-102).

Puyallup Tribe Chairwoman Ramona Bennett described the very difficult conditions the tribe encountered in efforts to protect their children. She cited intolerable conditions in which their children were subjected to racism in the state courts resulting in incarceration in state institutions based on the judgments of state social workers despite the fact that no criminal acts had occurred. Like other tribes, the Puyallup Tribe has had to use funds allocated for education and alcoholism programs to provide services for their children. A common practice is the use of Comprehensive Employment Training Act (CETA)<sup>49</sup> monies to bring on trainees to prepare them to provide needed services for families and children, but the training opportunity did not exceed eighteen months. There were no other funds available to maintain employment of these individuals. Appeals to the BIA to support continued employment were turned away because Washington is a P.L. 83-280 state, and the BIA reminded the tribe that it did not have jurisdiction over its own children. Lack of resources meant that tribe was not able to hire social work professionals, which was a requirement to obtain a state license to operate a family and children's agency. She explained that there were no Federal standards for licensing. An arrangement had been made with the Tacoma Indian Center which was licensed by the state to cover the work done by the tribe, but there was concern that the Center's legal position was compromised.

The tribe established a group home with room for fourteen children between the ages of twelve and eighteen, but even before opening there was a waiting list of thirty children. This resource was made possible through a \$150,000 state grant; its use was originally planned for a community center or classrooms. Differential use of the money was a very difficult choice for the community to make. The group home staff has received help from the Indian mental health division which saw the alienation of Indian children and its impact on the family as a very serious problem. The need for services provided through the group home was extensive, and there were numerous Indian children in the urban areas of Tacoma and Seattle for whom no services were available. Many of the children were very troubled as a consequence of inadequate and abusive child welfare services. She urged the Committee to continue its efforts on behalf of families and children to provide the assistance that was urgently needed. A written statement was submitted (U.S. Senate 1977, 166-168).

Testifying for the Navajo Tribe, Bobby George, Acting Director of the Navajo Office of Resource Security, stated that the tribe was totally supportive of the bill. For over twenty years, the policy of the Navajo Nation required that any placement of their children be done with the consent of the Nation's courts. The court was the body permitted to make the critical determination of the appropriate placement of their children. Some seventeen years ago, the tribal council took the position to disfavor the adoption of Navajo children by non-Navajos if the parents were living, in good health and had not abandoned or neglected their children. The tribe supported the Committee's efforts to establish institutional safeguards, such as the tribal court and laws, to protect both the tribal interest and that of the child whose future residence was being determined. The ultimate preservation and continuation of Navajo culture depended on the children and their proper growth and development. George

highlighted particular items contained in the written statement submitted to the Committee (U.S. Senate 1977, 171-174). The tribe recommended that Section 102, which provides for the use of lay advocates in child custody proceedings be expanded to add the phrase “or attorneys licensed to appear before tribal courts” (U.S. Senate 1977, 169). The tribe licensed both attorneys and advocates to practice in tribal courts. The tribe could not support the use of Title XX to fund the purposes of the bill because of the difficulties encountered and experienced with the several states’ administration of these funds. It was also proposed that additional language be included to make it clear that tribal sovereignty was not diminished. Another recommendation concerned the appropriation of funds for Title II and it was proposed that wording similar to that contained in the Indian Health Care Improvement Act be inserted.

Prior to the expenditure of, or the making of any firm commitment to expend any funds authorized, the Secretary shall consult with any Indian tribe to be significantly affected by any such expenditure for the purpose of determining and honoring tribal preferences concerning the size of activity, location of activity, type of activity, and any other characteristics of any proposed projects on which expenditure is to be made; and, be assured that such projects shall meet the standards of applicable tribal law. (U.S. Senate 1977, 170)

In regard to the standards proposed in Title I, the tribe requested that more emphasis be given to “dealing with the tribal governing bodies of tribes and their laws where this particular title may affect the Indian tribes and their citizenry” (U.S. Senate 1977, 170). The tribe also requested more involvement of tribes in the rulemaking and planning for Family Development Programs and the use of grants as the funding mechanism as opposed to contracts. George offered the tribe’s assistance to develop the legislation including any revisions or the provision of any data relative to the finalization of the very important Act for their people.

Also appearing on behalf of NCAI was Marlene Echohawk, clinical psychologist and a member of the Otoe-Missouri Tribe, who submitted a written summary of the bill (U.S. Senate 1977, 121-149). She expressed concern regarding what she described as a social action model used in construction of the bill which presupposed an adequate knowledge of the culture under consideration. She explained that, through time, Indian programs have failed because the personnel did not have a well-grounded knowledge of Indian cultures, strongly emphasizing the plurality of culture among the tribes. She called attention to the high echelon government witnesses, noting that there were no Indians among them. Their absence called attention to the need to respect the ability of Indian people to care for their own children who could endow them with an identity necessary to function and enjoy life. To her offer to answer questions, she was informed that the staff had prepared a number of questions which would be submitted to her for response. Response to questions did not become part of the record.

Calvin Isaac, Tribal Chief of the Mississippi Band of Choctaw Indians represented the National Tribal Chairmen's Association. He commented that only two days earlier he had testified before this very Committee regarding educational programs, but that the child welfare issue was of more concern to NTCA than education.

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 S. 1214, the Indian Child Welfare Act of 1977. (U.S. Senate 1977, 152)

He submitted written testimony (U.S. Senate 1977, 154-162) but wanted to summarize three points from his statement.

The first point: One of the most serious failings of the present system is that Indian children are removed from the custody of their natural parents by nontribal government authorities who have no basis for intelligently evaluating the cultural and social premises underlying Indian home life and childrearing.

Another point is that, culturally, the chances of Indian survival are significantly reduced if our children, the only real means for the transmission of tribal heritage, are to be raised in non-Indian homes and denied exposure to the ways of their people. Furthermore, these practices seriously undercut the tribe's ability to continue as self-governing communities.

No. 3: The ultimate responsibility for child welfare rests with the parents. We would not support legislation which interfered with that basic relationship. (U. S. Senate 1977, 152)

The Chairmen believed that the legislation would appropriately place the responsibility for the welfare of tribal children with the tribes where it could most effectively be exercised, and that Federal child welfare programs should focus on the development of alternatives to current practices of severing family and cultural relationships. The organization considered the proposed legislation responsive to a critical need and looked forward to progress to protect and strengthen Indian families.

Gloria York, Chairman of the Choctaw Adoption Committee, presented testimony on behalf of the Mississippi Band of Choctaw Indians. She stated that the tribe was in basic agreement with the premises set forth in the bill, but proposed two changes. The first concerned the provision prohibiting the relinquishment of a child within ninety days of birth. The provision would result in the child's placement in foster care if the parents were not willing to care for the child during the ninety day period. The tribe preferred a time period of five days after birth which would allow the child to be placed directly in a potential Indian adoptive home. The second concern was related to proceedings initiated to return a child to his natural parents and that a decision to return the child should carefully weigh the child's

own wishes. There was concern that the child's mental well-being could be seriously damaged if this aspect of the act was not entered into carefully.

The tribe was in the process of establishing a policy on adoption and foster placement of Choctaw children but certain barriers arose because the tribe did not have codes to deal with juveniles or adoption and foster care matters. It would be necessary that a tribal juvenile code be enacted to provide for the termination of parental rights and procedures for adoption of Choctaw children by Choctaw people. Another barrier involved the state's adoption policy which did not allow Choctaw families to adopt Choctaw children because of problems involving confidentiality. There was question of the effectiveness of S. 1214 in light of the fact that the state did not recognize the tribe's authority. Despite these problems, the tribe established a child advocacy program funded by the National Center on Child Abuse and Neglect which sought to accomplish many of the goals set forth in the bill. The program had identified 120 Choctaw children who were in foster care placement either through the state welfare department or the BIA. The goal of the program was to return as many of these children as possible to their parents or extended families. Where this was not possible, the program attempted to place the children with Choctaw families. These efforts made enactment of a tribal code necessary because it was not feasible to work through the state. The least desirable alternative for these children would be to remain in long-term foster care which would require the establishment of tribal foster care standards. York believed that S. 1214 would be of assistance to the tribe's efforts to provide adequate services for the children and looked forward to help with funding to continue its work. She submitted a written statement for the record (U.S. Senate 1977, 177-181).

Mona Shepard and Janice Edwards appeared on behalf of the Rosebud Sioux Tribe. Edwards informed the Committee that she was the Health Services Director at Ft. Thompson, South Dakota and one of a delegation of six people representing the tribes of North and South Dakota. She said that some of the language of the bill was unclear and misleading, and specifically referred to the declaration of policy which stated:

The Congress hereby declares that it is the policy of the 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, et cetera. (U.S. Senate 1977, 183)

Their concern with the statement was their opinion that the statement indicated that Congress would establish standards for the tribes. However, in conversation with Senator Abourezk's staff it was learned that the intent of the Act was to set standards for the way in which states dealt with Indian tribes. It was important for them to clarify the intent for the record so that accurate information could be communicated to tribal officials and members. A second concern related to the impact on the tribal court system of processing every child welfare case through their court systems which could be overtaxed with the anticipated volume of work. She explained that these concerns would be fully spelled out in a written statement which would be submitted to the Committee.

Faye LaPointe, Coordinator of the Tacoma Indian Center, provided information about the six-month old agency which was incorporated in the State of Washington to provide human services to Indian people in the Tacoma urban area and surroundings. The agency was located on the Puyallup Reservation, but maintained a board of governance separate from the Puyallup Tribe. Six members of its board of directors were foster parents who were especially helpful in the design and operation of the Center's child placing agency. All of the

board members had first-hand experience with abusive child welfare practices and the consequent damage to families and communities. The organization had reached out to federal agencies for assistance to develop standards and policies for the operation of its child welfare program, and believed that the proposed legislation would provide needed assistance. The center worked closely with the Puyallup Tribe and held discussions with the tribe regarding S. 1214 to develop amendments that would be responsive to its mission and their shared efforts.

Testimony for the American Academy of Child Psychiatry was presented by Executive Director Virginia Baush. The Academy applauded the overall thrust of the child placement standards set out in Title I that would establish clear guidelines to safeguard the interests of children and their families and the great respect they gave to cultural ties. The organization was pleased to see the encouragement provided by Title II that would allow tribal groups to establish programs of their own design. She recalled the Academy's involvement in the conference held in Bottle Hollow, Utah, which addressed the unique developmental needs of Indian children, and commended the competence, wisdom and creative innovativeness of programs established by tribes throughout the country. But, she also shared concern about the need for fiscal encouragement and technical assistance by tribal groups unable to make similar advancements. She stated that the Academy's major concern with the bill related to its implementation. The Committee on the American Indian Child was concerned about the BIA's track record in matters of child welfare and child mental health and was disheartened by its earlier testimony, which evidenced lack of concern. The Committee had mixed feelings about the Bureau's recent awakening of interest and questioned its ability to accept and carry out the Congress' mandate. While it was



understood that the reasons behind the alarming placement rates of Indian children were complex, the fact that the situation existed said something very significant. Seemingly, there had been a lack of leadership and sensitivity within the Bureau to matters of child development and children's welfare, and the Committee wondered if there might be more viable alternatives for the implementation of the spirit of the bill. Notwithstanding, the Academy stood ready to assist Congress and the Bureau to promote the welfare of Indian children. She submitted the Academy's statement together with a paper written by Mindell and Gurwitt for inclusion in the record (U.S. Senate 1977, 106-121).

Presenting testimony on behalf of the American Civil Liberties Union was Rena Uviller, Director of the Juvenile Rights Project. She informed the Committee that her participation in the hearing was prompted by major concerns of her work, to resist governmental tyranny into the lives of families and state intrusion into the privacy and liberty interests that the Constitution bestowed on the family unit. She saw Indian tribes as special victims of states' push to place children in foster care, and raised questions about the constitutionality of the imposition of non-tribal child rearing standards on Indian families. She cited the literature which documented the extensive failure rates of adoption of Indian children by non-Indian families with the result that many children end up in juvenile correctional institutions or mental hospitals. She urged that a provision be inserted into the bill that would require automatic notification to the tribe and/or biological parents should an Indian child's adoption fail, and the child is subsequently placed in any kind of hospital, institution or foster care. She cited the bill's failure to define what is meant by "temporary placement" in an emergency situation. In her litigation experience, she found that temporary placements in emergency situations have been used as a ruse to get initial hold of the child.

It is not uncommon that a plethora of unnecessary studies of the child together with numerous delays to litigate the matter result in the separation of the child from the family. There was not adequate provision to control temporary emergency placements, many of which turn out not to be an emergency at all. In her view, even in exigent circumstances, emergency placements should not last more than forty-eight hours without immediate notice to both the parents and tribal authorities, and provision for an immediate hearing as soon after the placement as possible.

It was of concern to Uviller that the bill seemed to authorize private persons, groups or institutions “to seize an Indian child for up to 30 days without even giving notice to the parent or to the tribal authorities” (U.S. Senate 1977, 184). She had difficulty understanding how a state would justify the action, but “to allow private groups and institutions to take a child for 30 days without any notice at all seems to me to be quite an egregious circumstance” (U.S. Senate 1977, 184). She had been informed that the section related to this circumstance would be redrafted to make it more consistent with the purpose of the bill. She was reminded that the bill was a working draft and was invited to offer amendments or redrafts of any sections. She stated that there was confusion about whether intra-tribal placements would be regulated, which she was sure was not the intent of the bill. She recommended that in the definitional section of the bill “placement should be defined as placement of a child by nontribal authorities so that this bill is not viewed in any way as interfering with the tribe’s desire to effect its own placement” (U.S. Senate 1977, 185). She cited the resistance of child welfare agencies to the opening of adoption records based on concerns regarding the privacy of biologic parents. Uviller did not see the privacy concern as great in a situation where a child had been taken from a tribe and saw nothing wrong with the

child having access to information about his or her tribe. It would be up to the tribal authorities to make informal inquiry as to whether biologic parents should or should not be contacted. She was sure there would be situations where a decision not to make contact would be made, but the decision should not be made based on the resistance of the social work community, which too often was ill-founded. Her written statement was submitted for the record (U.S. Senate 1977, 186-190).

Don and Barbara Reeves introduced themselves as Quaker parents from Nebraska and the adoptive parents of three Indian children. Mr. Reeves was clerk of the Nebraska Yearly Meeting of Friends and a staff member in the Friends Committee on National Legislation (FCNL) in Washington, D.C. They were accompanied by Phil Shenk who was an FCNL associate. Reeves spoke to the extreme importance of an early, stable, loving relationship in the child's development, irrespective of culture. Disturbance of the child's relationship to his or her family can be traumatic, and he was especially pleased about the strong emphasis in S. 1214 for services that might help families with short-term problems that would help the family remain intact. He also supported the use of the extended family or other close tribal relations in those circumstances when the parents were unable to care for their children. The sense of family and community should outweigh criteria used by outside non-Indian resources in decisions regarding protective care of children. In his observation Federal Indian policies had been focused on the assimilation of Indians into the larger community explicitly directed at breaking down Indian traditions and values. Based on what he and his wife knew about the families of their adopted children, it might not be said that the policies were a direct cause of their inability to care for their children, but in their view, the links were easily traceable. They welcomed the enactment of S. 1214 on two points. First

was the “renewed sense of capability and desire of Indian communities to strengthen the family and to deal with the child placement problems within their own traditions and value systems,” (U.S. Senate 1977, 218) and the initiative of Congress to consider these measures was encouraging. Admitting that they did not have knowledge regarding appropriate funding levels, they encouraged the Committee to make adequate funds available to accomplish the intent of the Act. They voiced concern about the testimony offered by the BIA which sounded suspiciously to them as a continuation of what has proved not to work, particularly in regard to boarding school placements. In his final comment, Reeves asked permission to read into the record part of the NCAI resolution which had been referenced in earlier testimony, and added that the request was made at the urging of the organization, itself.

Upon being given permission, Mr. Sherk read the resolution.

Whereas the interstate placement of Indian children out of their own homes and into the homes of others, especially non-Indians, whether for foster care, adoptive, educational, and other purposes is of grave concern to tribal governments in particular, and Indian people in general, because of the effects of such placements on the family life of the Indian people and the unique legal, social status and rights of Indian people derived from tribal sovereignty, treaties, the U.S. Constitution, and Federal law; and

Whereas the Church of the Latter-Day Saints Social Services program operates an Indian education program which caused approximately 2,300 Indian children from reservations to be sent across State lines in September, 1976; and other church-affiliated programs and public agencies are also causing an indeterminate number of Indian children to be sent across State lines for any number of reasons; and

Whereas the Church of Latter-Day Saints Social Services program has requested the Interstate Compact Organization to be exempt from the existing compact regulations or that simplified procedures be adopted with respect to the handling of Indian children sent from one State to another, and to the knowledge of this convention, there are no compact regulations requiring documentation to the sending or receiving State or the signed consent of the Indian parents of children to be moved from their homes; nor is there any documentation that such placements are done with the knowledge and support of tribal governments;

Therefore, be it resolved that the 1976 NCAI convention authorize the executive Director of NCAI to immediately organize a method to protect the rights of Indian children, families, and tribes by offering evaluation by Indian people designated by the child's tribe to assert the child's well-being.

Be it further resolved that the Commissioner of the BIA, Secretary of Interior, the Secretary of the Department of Health, Education, and Welfare, President Ford, and Governor Carter, and Senator Mondale receive telegrams from the Executive Director requesting their direct intervention and support. (U.S. Senate 1977, 218-219)

Abourezk said that he had read the resolution but was not sure of its meaning, but it sounded like a swipe at the Latter Day Saints Church. Sherk replied that he could not speak for NCAI but complimented them on their efforts. He thought that the resolution might be a response to LDS testimony regarding whether or not tribes would be notified. Abourezk understood that the Church had agreed to notification providing that an organization existed. He thought the response was reasonable, but that tribes should certainly be notified. Barker, LDS counsel, asked if it was the Friends' position that Indian parents should not be allowed to give consent to their children going to the school of their choice; should the parents be deprived of that right. Reeves responded that a related question was, what were the real choices available, and stated that in the short range off-reservation, non-Indian circumstances may be all that is available. He said that fifteen years ago when he and his wife adopted their three children there were no other options available, but cautioned against hanging on to existing programs that were not viable options for Indian people. He remarked that the Society of Friends had been working with and on behalf of Indians since before the country became a nation, and that one of the first Quakers to become a permanent resident of Nebraska was the superintendent of an Indian reservation. Looking back over Indian-Quaker relations it has become clear within the religious Society of Friends that there

was arrogance in assumptions made, and when the Friends believed that the Indian ought to adopt our insights and values without regard for their traditional values. The character of some of the Society's programs has changed and with this has come a certain degree of humility about the kinds of judgments made in the past. It was out of that milieu, he believed that a reevaluation of the kinds of efforts extended to Indian communities needed to be made. Abourezk remarked that he thought the LDS program was extremely well-intentioned and cited the benefits George Lee derived from the placement program.

Senator Abourezk had grown up on an Indian reservation and for a long time thought that the Indians would be better off if they acted like white people, but he said that his views had changed a great deal over the years. He now thought that perhaps the Indians ought to be emulated because the non-Indian society has not had great success in what has been done. Abourezk thought that what has been labeled progress and success is only so because it is called such, and admitted to an arrogant attitude that he did not hold today. But, he also thought that many people living near reservations and in cities across the country continue to hold such attitudes. Lee interjected a defense of the LDS program stating that because of his placement opportunity he had been able to acquire a Ph.D. and worked in Washington D.C. for DHEW for two years. He acquired a fellowship to work with state education departments to help Indian tribes and other minority groups to secure Federal funding for their special needs. Presently he presided over an LDS mission in the Four Corners area that included both Indians and non-Indians, and directed the missionary work of 250 Indians and non-Indians. The placement program had produced full-blooded Indian lawyers, doctors, dentists and other professionals who returned to their reservations to help their people. He had also been president of the College of Ganado in Arizona. His success came as the result of having

been in LDS placement. Abourezk inserted Reeves' statement into the record and recessed the hearing (U.S. Senate 1977, 222-224).

Testimony provided by tribes gave overall support to the draft legislation and a number of them provided the panel with recommendations for improvements. It was important to them that the Sub-Committee was made aware of the efforts being made by them in anticipation of passage of the law. Tribes in the State of Washington had made significant strides to reorganize the relationships between them and the state based on the administrative code changes instituted a year earlier. Government witnesses, Indian Services Division Chief, Raymond Butler, and Nancy Amidei of DHEW's Office of Legislation/Welfare maintained that the proposed ICWA was not needed and problems identified in the 1974 hearings would be remediated through passage of S. 1968 which would later become the Adoption Assistance and Child Welfare Act of 1980. The LDS Church requested that the student placement program be protected from certain provisions of the Act and witnesses attested to the many benefits received from the student placement program. The Adoption Exchange of North America (ARENA) communicated its opposition to the Act based on its failure to "acknowledge the importance of a secure, parental relationship and the identification with a 'psychological' parent" (U.S. Senate 1977, 393). While ARENA agreed there was a need to protect Indian children, it viewed the provisions that gave the Secretary of the Interior authority to overturn final decrees of adoption and the parents ninety days to withdraw their consent to adoption as not acceptable because of the damage it was believed would be inflicted on the child.

After the hearings, considerable work was yet to be completed on S. 1214. The House of Representatives passed the legislation in a voice vote on October 14, 1978, and

later that night, the Senate agreed to pass the House's version of the bill. The bill was finally presented to President Jimmy Carter on October 27, 1978 at the beginning of the ten-day period when he could sign or veto the bill. His administration maintained opposition to the Act to the end, but the help that Carter needed from Congressman Morris Udall (D. Az.) would in the end make its passage possible. In March of 1978, Carter transmitted a bill to the House of Representatives that sought to reform the civil service system which he considered "the centerpiece of government reorganization during [his] tenure in office" (Unger 2004, 328). The reformation would make "it easier to fire incompetent employees and bring in qualified minorities and women via affirmative action, create a new Senior Executive Service of top federal managers and policy makers who, in return for less tenure, would be eligible for substantial cash bonuses, and replace the existing Civil Service Commission with a new Office of Personnel Management and Merit Systems Protection Board" (Unger 2004, 328). The President's proposal was strongly opposed by powerful labor unions representing federal workers and veterans' groups who opposed his elimination of veterans' preference in federal hiring.

Morris Udall opposed Carter in the 1976 Democratic primaries and was considered a *persona non grata* at the White House. Carter was forced to appeal to Udall for help as ranking Democrat on the Committee on Post Office and Civil Service which had jurisdiction over employment matters. When Carter asked Udall, who was deeply devoted to public service, to become the legislation's champion "as an act of patriotism, for the good of the country and the government," Udall could not refuse (Unger 2004, 329). Udall strongly supported passage of S. 1214 and would use this leverage to convince the President to sign the bill into law by tying it together with civil service reform legislation in discussions with



Carter's chief domestic policy advisor and strategist, Stuart Eizenstat. Unger quotes Eizenstat who recalled Udall's stance.

Mo expressed a great priority for the ICWA. It was an equal priority to the Civil Service Reform Act. He raised them in the same breath.

It is fair to say that the way it was raised created in my mind the idea that if we did not support the Indian Child Welfare Act, we would not have Mo's help on the Civil Service Reform Act, which was very much a priority for us. (Unger 2004, 332)

Unger describes Udall's critical role in the enactment of the two bills as impossible to ignore.

Udall delivered on his pledge to help enact the civil service reform, and together with unanimous support of tribes and the strong bipartisan support of Congress, was able to influence the President to sign the Indian Child Welfare Act into law on November 5, 1978. But, no funds were appropriated for its implementation.

## Chapter VIII:

### **“To me, that is a ridiculous law.”**

Cameron Brown, CNN Anchor, *No Bias, No Bull*  
(Indian Country Today, December 19, 2008)

Brown aired the story of a family whose plans to adopt a six-month old child from the Leech Lake Band of Ojibwe were halted when the tribe intervened in the process and won the right to take custody of the child under provisions of the ICWA. The story was focused on the adoptive family whom she described as “loving parents who have cared for him for the last six months” who “lost their son because the birth mother is part Native American” (ICT Dec. 19, 2008). Brown told her audience that the infant would be placed in foster care, perhaps with his other siblings who were already in foster care because the mother had been declared unfit. She offered no information about the foster parents who would care for the child. Had the tribe adopted the placement provisions of the Act into its tribal codes? Who were the foster parents? Were they grandparents, maternal aunts or other close relatives? The message conveyed in the story was shrouded in the perception that Native families did not provide adequate care for their children, and the child was removed from a home where he would receive the loving care he needed. Brown admonished Indian people, “[i]f there is concern in the Native American community that children are being lost to the tribe through adoption because of unfit parents, then focus on strengthening your families so that your children won’t be parentless” (ICT Dec. 19, 2008).

“Ridiculous” was definitely not the view of a Shoalwater Bay Tribe grandmother who learned that three of her grandchildren had been taken into custody in three different states as her troubled daughter trekked across country from Washington to Florida. Immediately upon

enactment of the law, she called upon Tribal Planner, Bernice DeLorme, to coordinate the return of her grandchildren with the state's Family and Children's Division. The children were brought home to their family and people. There was no question in the grandmother's mind, that without the ICWA, she might not ever see her grandchildren again. This was a story repeated throughout Indian country as tribes and individual families determinedly exercised their rights under the new law, but in most states, Indian people did not have the benefit of protections established in the Washington State Administrative Codes. The failure of Congress to appropriate funds to carry out the provisions of the law would ensure these early efforts were severely handicapped for many Indian people who had neither the funds nor the political clout of a tribal chairperson to bring their children home.

Despite Congress' failure to appropriate monies to implement the law in its first year, the Bureau had the responsibility to support family development programs authorized in Title II of the Act. In FY 1980, the Bureau pulled together \$5,500,000 to fund Title II programs, \$2,900,000 came from the existing Child Welfare Assistance budget and \$2,600,000 was withdrawn from unexpended monies in tribal contracts for other on-going programs. No monies were budgeted for implementation of Title I of the Act because the Bureau envisioned that the costs would be negligible. The agency determined that it was unlikely that many more than one hundred and fifty tribes would request funding, but in the first year over two hundred and fifty of the nation's five hundred tribes submitted proposals to establish family development programs. One hundred sixty-five tribes and organizations whose proposals were approved for funding received a base allocation of \$15,000 together with some additional monies calculated on the basis of tribal or community population. In FY 1981, one hundred and eighty programs received \$9,300,000 in funding, and in FY 1982

funding was increased to \$9,600,000. For FY 1983, the Reagan administration proposed a funding level of \$7,700,000 and announced its intent to phase out funding for off-reservation programs in the same year and tribal family development programs in FY 1984. Five years after enactment, tribes and Indian organizations were confronted with the administration's proposal to disembowel the Act.

In its 1983 testimony presented before House and Senate appropriations' committees, the Association of American Indian and Alaska Native Social Workers (AAIANSW) provided information about actual per family expenditures from ICWA funds. In the Portland area, the average program caseload was 217 with an expenditure of \$775.00 per family, in the Sacramento area, 368 families received services at an average cost of \$184.00, and in the Billings area, 214 cases received services at a cost of \$280.00 per family. A closer look at program funding levels on a state basis was provided in information about Oklahoma, which had the nation's largest Indian population. In FY 1980, the state's tribes and off-reservation agencies applied for \$842,833 in program funding and were awarded \$499,403 based on a population of 169,459, an average per person expenditure of less than \$3.00. In FY 1981, tribes and agencies requested \$1,568,877 and were awarded \$918,483 to provide services at an average cost of \$6.00 person, and in FY 1982, \$2,386,749 was requested and \$1,204,235 was received raising the annual average per person expenditure to \$8.00. In the same years, the state of Connecticut provided services at an average cost of \$6,178.00 per family, and in other states annual family services program funding ranged from \$1,500.00 to \$9,000.00 per family. The disparity between the resources available to the general public and to Indian communities was staggering. Although Indians were eligible to receive social services provided to all other citizens, the Association reported that consequent to the

passage of the Act, state courts and social service departments throughout the country chose to absolve themselves of responsibility for services to Indians.

The problem of inadequate funding was compounded by the application process. In its first year, the application process did not allow sufficient time to develop fundable Title II grant proposals. Technical assistance for program design and development required by the law was not provided by the Bureau in a timely manner, and applicants found that most BIA social workers had no experience in the development of child and family programs and little knowledge of the complicated issues involved in the return of children. The competitive grant structure established by the Bureau rewarded tribes who could afford to hire grant writers, and tribes and Indian organizations who could not afford assistance to prepare proposals were disadvantaged. Standards for the selection of proposal review committees were not established, and it was not uncommon that members of these committees had no training or knowledge about child welfare matters. The funding formula was based on specific tribal service populations and did not take into account members of other tribes who resided within their reservations. The Bureau had not developed program evaluation criteria which introduced arbitrariness into the process and many applicants were faced with loss of funding after only one year of operation. The Association proposed that tribes and Indian organizations be allowed a six to twelve month start-up period to give them time to set up their programs, and that programs be guaranteed funding for a period of three years to allow sufficient time for program development. In the first year of operation, applicants were required to establish program offices, recruit and train staff, develop in-take and record keeping systems, and at the same time, respond to requests from families for assistance to regain custody of their children. By 1983, the Bureau had not yet established mechanisms to

monitor state court compliance with the law, and the failure of courts to notify tribes of pending child custody proceedings was widespread. There were no procedures to monitor the activities of private agencies and the independent placements of children by attorneys and physicians. Adoption policies were needed to assure that records of the child's heritage were maintained. It was also reported that there were no demonstrated efforts by the Bureau or the Department of Health and Human Services, formerly DHEW, to respond to the mandate that ways be developed to insure that the resources of both agencies were made available to tribes and Indian organizations to prevent the breakup of Indian families. Of particular concern were programs for families residing in urban areas whose children were more frequently removed, and who were subjected to repeated attempts by the Bureau to divest itself of its responsibility for off-reservation American Indian and Alaska Natives. The AAIANSW was joined by the National Urban Indian Council in its request for \$15,000,000 to fund family development programs.

In oversight hearings conducted by the Select Committee on Indian Affairs in 1984, Melvin Sampson, Yakima Nation council member and chairperson of the tribe's legislative committee, informed the committee that since the enactment of the law, the "most important and positive aspect has been productive interactions brought about between the tribal and State governments, which have historically been uncommon" (U.S. Senate 1984, 133). The act provided a framework to advance cooperation between tribes and states by delineating the roles of tribes, states and federal agencies, and gave support to the changes in Washington state's administrative codes enacted some years earlier. In Sampson's view, the positive changes in attitudes by state agency workers would not have occurred without passage of the ICWA. But he informed the panel that "[d]espite this important breakthrough in tribal and

State cooperation, the intent of the law is far from achieving its purpose,” and the law’s “most negative aspect has been a lack of adequate congressional appropriations” (U.S. Senate 1984, 133).

Sampson explained that the situation described in the 1974 hearings had not changed measurably. The Yakima Indian Nation established a family and children’s unit in 1973 that maintained an active caseload of between forty and fifty children per month. The tribe pieced together limited tribal, Federal and state funds which did not provide sufficient resources to help all their members who needed assistance, and forced the tribe to prioritize services to families and children. Yakima staff participated in weekly case reviews with local departments to plan for Colville children in state custody in which on average two to four cases were discussed, but because of lack of resources the tribe was able to assume responsibility for only one or two children at a time. He estimated that because resources were not available, the tribe had to turn away one hundred fifty-six dependent children in the last year. The tribe was placed in the difficult situation of having to choose which children would be able to return to their homes and families. The Yakima Nation strongly recommended that sufficient funding for program development and maintenance be appropriated.

Sampson informed the panel that the tribe continued to have problems with timely notification and compliance. Tribal staff were aware that public and private agencies were not complying with the law, and that controls were needed to assure agency compliance. The tribe recommended that a method for compliance be established. The tribe was also experiencing difficulty with expert witnesses called to testify on behalf of the state. Too often, the state’s experts knew little about the ICWA and even less about the culture and life

ways of the tribes involved. The transfer of cases from state to tribal courts posed many problems, and Sampson recommended that state court judges receive training to update them regarding ICWA procedures. The tribe had other important concerns, such as, juvenile justice, inheritance, voluntary adoptions and adoption penalties that needed to be addressed, but the funding issue overrode all other concerns.

Sampson explained that the competitive process used to determine allocation of limited ICWA funds meant that the tribes could not count on year-to-year funding, and their efforts to develop adequate family and children's services were handicapped. He related that the tribe received only \$30,000.00 to fund their efforts in its first year of operation of their family development program, despite the fact that the tribe's funding proposal sought funds in the amount of \$242,000. Sampson informed the committee that in the current fiscal year, the tribe requested \$50,000 which did not represent its total need. There was no need to ask for something that was not there, and later tribal officials learned that even the \$50,000 request would not be funded. In testimony at the same hearing the AAIANSW proposed a funding level of \$29.5 million based on a survey of tribal and Indian organization programs conducted by the organization. The survey reported an average minimum program need of \$53,000. The panel was informed that the Bureau routinely received requests for funding amounting to \$25 million annually, and was reminded that in 1978 the Congressional Budget Office proposed a funding level of \$125 million over a five-year period.

In FY 1984, Congress reduced funding for ICWA programs from \$9.7 million to \$8.7 million, despite a recommendation from the Select Committee on Indian Affairs that the programs receive \$12 million in funding. Committee members questioned Bureau officials about the impact of funding reductions on program operations. The Bureau responded by



decreasing the numbers of programs funded and the amount of monies awarded to tribes, which in its view, had resulted in a deleterious effect on organizations serving Indian children. The Committee learned that the Bureau had not requested increases in funding for programs because of competing budget interests within the Bureau. Agency officials saw Congress' mandate to reduce program funding by \$1 million as an effort to reach a compromise with the Administration's proposal to drop funding for off-reservation programs and to maintain current levels of funding for reservation programs. The consequence was a cutback in both numbers and sizes of grants funded. The Bureau was asked for clarification regarding the grant process and the factors considered in making an award. Raymond Butler informed the panel that awards were made on the basis of merit and need. The Bureau funding guidelines established a maximum grant of \$50,000 for a service population of 3,000 or less, \$150,000 for a population greater than 3,000 but less than 15,000, and \$300,000 for service populations of 15,000 or more. But, should an applicant have a population of less than 3,000 or 15,000, the actual award would be reduced from the maximum amount for each category based on merit and need determined by Bureau officials.

At the same hearings, the Indian social workers' organization pointed out the need for knowledge development regarding social work practice and theory in both on and off-reservation programs. The lack of knowledge of social work practice by ICWA program personnel had become a reason to deny transfer of child custody proceedings to tribal courts, because government and private agency staff were able to convince state court judges that the Indian programs could not provide children and families with needed services. The problem created competition between the meaningfulness of cultural knowledge and knowledge of the practice. In many instances, the argument, although persuasive with the courts, was a hollow

one because many local agency workers had little education in social work practice, and many Indian children who remained in state custody did not receive the help they needed.

In 1980, the Bureau published a request for proposals to provide training for reservation and off-reservation ICWA program personnel to which the AAIANSW responded. The organization believed it was especially qualified to provide training for ICWA program personnel because its membership was composed of Indian workers with social work training and graduate degrees. Many were employed by Indian agencies and directly involved in program development and child custody matters. The organization's membership was acutely aware and knowledgeable of the theoretical and practice conflicts between Indian and non-Indian personnel. There was special concern about the definition of "active efforts" mandated by the law. The law required state officials to demonstrate that "active efforts" had been made to help the family resolve its difficulties before a child could be removed. The ability to provide "active efforts" required knowledge of the particular tribe's life ways and customary resources. The organization's proposal was rejected, and the Bureau withdrew its request for proposals.

In the same year, Congress passed the Adoption Assistance and Child Welfare Act (P.L. 96-272) which had been presented at the 1977 hearings as S. 1928 by DHEW official, Nancy Amidei. The law was concerned with establishing a sense of permanency for children who had languished in state custody for many years, and for whom there were no plans to place them for adoption or return them to their families. In her article, "Making Reasonable Efforts in Child Abuse and Neglect Cases: Ten Years Later," Alice C. Shotton explains that

[a] key provision of the law, but perhaps the least understood, require[d] child welfare agencies to make "reasonable efforts" to maintain children with their families, or, if this [was] not possible, to make reasonable efforts to reunify the child with the

family. The law also mandate[d] that a juvenile court scrutinize the agency's "efforts" in every case to determine whether they were "reasonable." The statute, however, and accompanying regulations, did not define reasonable efforts. (Shotton 1990, 223)

Congress' objective required these efforts to "prevent the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal [was] desirable and possible" (Shotton 1990, 223). But, neither Congress nor the Department of Health and Human Services defined the term. The failure to develop a definition of reasonable efforts caused considerable misunderstanding regarding compliance with the law. The only consequence for failure to provide reasonable efforts was to deny matching funds for the child's foster care placement for the period that a court found the efforts lacking. Judges were confused by the law, and many simply ignored the reasonable efforts requirement and did little more than check a box on a court form with no discussion of efforts made or not made. The Act also contained provisions to provide financial assistance to adoptive families who could not otherwise afford to provide a permanent home for a child living in the impermanent world of foster care. This provision encouraged a practice called "fos-adopt" which established the practice of placing children in foster homes with families who would likely adopt them. The failure of the Bureau to take an advocate and leadership role on behalf of Indian families and children to promulgate a definition of "active efforts" contributed further confusion among child welfare workers throughout the country because they could not distinguish between the requirements of reasonable efforts in P.L. 96-272 and the active efforts of the ICWA.

The theoretical foundation for the practice of permanency planning was located in the psychological parent theory espoused by Joseph Goldstein, Anna Freud and Albert J. Solnit in their 1973 book, Beyond the Best Interests of the Child. The authors theorized that “children have their own built-in time sense, based on the urgency of their instinctual and emotional needs. This results in their marked intolerance for postponement of gratification or frustration, and an intense sensitivity to the length of separations” (Goldstein, Freud and Solnit 1973, 11). Thus, children may experience a move from one parental caretaker to another as a grievous loss. The authors proposed that children, unlike adults, did not have a psychological conception of blood-tie relationship and what “registers in their minds are the day-to-day interchanges with the adults who take care of them and who, on the strength of these, become the parent figures to whom they are attached” (Goldstein, Freud and Solnit 1973, 13).

Whether any adult becomes the psychological parent of a child is based thus on day-to-day interaction, companionship, and shared experiences. The role can be fulfilled either by a biological parent or by an adoptive parent or by any other caring adult—but never by an absent, inactive adult, whatever his biological or legal relationship to the child may be. (Goldstein, Freud and Solnit 1973, 19)

In their essay, “Psychological Parenting vs. Attachment Theory: The Child’s Best Interests and the Risks in Doing the Right Things for the Wrong Reasons,” authors Everett Waters and Donna M. Noyes argue that psychological parenting is not a theory but rather a distillation of psychoanalytic thought and clinical experience. They explain that the ‘theory’ is “an attempt to specify what a child’s psychological needs are during early development, an effort to define the concept of a child’s “psychological parent” and the role he or she plays in meeting the child’s early needs, and a set of criteria that can expedite final placement as an alternative to ongoing regulation of family life by the courts” (Waters and Noyes 1983-1984,

505). The consequence of emphasis “on separation as a singular cause of psychological damage discourages intervention in families from which children have already been removed or voluntarily placed in foster care, if the child’s best interests lie in avoiding further separation experiences, then efforts to improve circumstances in the original family naturally give way over time to the goal of keeping the child with the custodial family” (Waters and Noyes 1983-1984, 505-506). The convergence of the desire to provide permanency for children and the damage to children that resulted from separation from psychological parents became guiding principles of child welfare agencies everywhere, and thwarted the efforts of families and tribes to regain custody of their children. Even in cases where children had been illegally taken from their families, the courts were convinced that separation of Indian children from substitute parents would inflict irreparable harm and damage. In case after case, the destructive practice of moving children from one foster home to another to prevent contact with their parents was disregarded, and relationships with substitute parents with whom the children were purportedly attached were given greater value. In his essay, “Parent and Child Relationships in Law and in Navajo Custom,” Navajo legal specialist Leonard B. Jimson addresses the universalizing and ethnocentric interpretation of the principle of “in the best interests of the child.”

A judge who thinks in terms of the comfort and stability of a middle-class Anglo home may unconsciously think about this when he looks at a Navajo hogan where people do not have the same comforts. He may not see the importance of raising children to speak Navajo or to know their own culture and religion, because he assumes that all Navajos want to speak and think like Anglos, and this is best for them. In short, the way that the caseworker and judge look at family life may be so different that Navajo people cannot satisfy them, even though they also want to do what is in “the best interests” of the children. (qtd. in Unger 1977, 69)

In her essay, “What is an Indian Family? The Indian Child Welfare Act and the Renaissance of Tribal Sovereignty,” Pauline Turner Strong notes that “the ICWA interprets the guiding principle of adoption in the U.S.—“the best interest of the child”—in ways that reflect Native American values and practices” (Strong 2005, 213). She cites the prohibition of involuntary placement or involuntary termination of parental rights, without clear and convincing evidence, including expert testimony, that the child will experience serious emotional harm or physical damage. She describes the provision as a presumption against outplacement, and in contrast to typical legal presumptions regarding custody, treats the Indian custodian as a parent. The ICWA postulates that it is better for the Indian child to grow up within his/her own culture, preferably within the child’s own tribe, rather than reared by non-Indians and establishes placement preferences for placement decisions. The Act “forces courts to acknowledge the importance of cultural affiliation and contact for an Indian child when determining the child’s best interest” (Strong 2005, 214). She explains that the provision does not place the interest of the tribe above that of the child, but rather places the emphasis on the child’s right to a cultural identity. The provision “recognizes the harm that can be done to a child by denying knowledge of and access to that identity” (Strong 2005, 214). Finally, the Act guarantees an adopted Indian child the right to information about his/her heritage. This is contrary to most state statutes which protect the rights of birth parents to anonymity and the adoptive parents’ interest in secrecy.

Representative of opposition to the law were positions contained in letters to newspaper editors and in editorials of national newspapers. In a May 5, 1988 letter to the editor of the local newspaper, John Badger, National Director of Aid to Adoption of Special Kids (AASK) described the ICWA as a “law written to prevent the wholesale adoption of

reservation babies by whites,” and “an embarrassment to the freedom of America, all America.” (See Appendix B). Badger was responding to a recent story in the paper regarding a ten-month old Navajo child who had been removed from foster parents and returned to the custody of the Navajo Nation by order of the court. He called for a revamping of the ICWA because he believed that the court’s action placed the child’s interest aside in deference to tribal rights, which he asserted as “contrary to liberty under the law, and . . . seriously out of alignment with the traditions of the United States.” In a May 22, 1988 editorial in The Washington Post titled “Adoption by Race?” the newspaper voiced its strong objection to recently introduced amendments to the law that would strengthen the rights of tribes in child custody cases. According to the editorial, “the measure would extend the 1978 law to all children of Indians no matter where they live in the United States, would cover even the children of Canadian Indians, would override decisions made by the children’s natural parents and would require adoptive families to maintain contacts with and allow continuing visits by members of the children’s family’s tribe” (The Washington Post, May 22, 1988). In the view of the paper’s editors, racial considerations would be made paramount in adoption cases and called the proposed policy an anathema. The writer argued that what mattered was “the best interests of the child as an individual, and that may not always coincide with the interests of authority figures who share his racial or cultural ancestry” (The Washington Post, May 22, 1988). The paper urged that the legislation not be passed.

In a number of states tribal rights over members have been curtailed through application of the Existing Indian Family Exception, a court-created exception, in which the courts determine what constitutes an “Indian family.” Courts have held that if the custodial parents were not active members of a tribe or did not maintain significant social, cultural or

political contact with the tribe, the parents did not constitute an Indian family, as in the case of Indian families who have not resided on tribal reservations for decades. The courts argue that if it is determined that an Indian family does not exist according to the exception, then adhering to procedures established by the ICWA would not serve the purposes of the law: 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 the families” (Strong 2005, 215). In other words, “the ICWA’s aim of preventing the destruction of Indian families would not be furthered if the statute was applied in a case in which the family from which the child is taken is not what the court recognizes as an “Indian family” (Strong 2005, 215). These determinations are premised on dominant society’s view of the nuclear family as the proper unit in opposition to the extended family in Indian society in which the tribal kinship system is valued and respected and in which the tribe is a close equivalent of a parent.

In an analysis of data compiled from a variety of sources for the period 1976 through 1985, which required considerable extrapolation and background knowledge, Children’s Bureau Specialist, Cecelia Sudia concluded that “[t]he number of Indian children in foster care has returned to –or has increased slightly above—the numbers which were cited prior to passage of the Indian Child Welfare Act” (Linkages, 1986, 1). The analysis indicated that placements of Indian children in foster care had shown a reduction in the early 1980s, but they had not been maintained. Between 1982 and 1984, Sudia estimated that numbers of Indian children in state care rose from 4,801 to 5,384, an increase of twelve percent. During the same time period, the numbers of Indian children in BIA out-of-home care had risen from 1,714 in 1983 to 2,217 in 1985, an increase of twenty-four percent. Her analysis did not



provide information about reasons for placement nor data about the ethnic composition of foster families in which the children were placed. Despite the lack of information regarding ethnic composition of foster families, Sudia stated that “[w]e believe that the problem of placing Indian children in non-families has been alleviated” (Linkages, 1986, 1).

The analysis did not reveal the kinds of services Indian children in foster placement received, and from her discussions with Indian child welfare workers around the country there was the pervasive feeling that “Indian children in foster care have not, and are not, receiving adequate services” (Linkages 1986, 2). It was her impression that since the passage of the Adoption Assistance and Child Welfare Act in 1980, services to Indian children had shown some improvement as part of the overall efforts of better case management. She cited efforts by the Department of Health and Human Services to encourage states to enter into tribal/state agreements or contracts which allowed tribes to provide their own foster homes and other services. Sudia admitted that the analysis raised more questions than it answered, but there appeared to be “as many Indian children in foster care today as there were prior to the ICWA, but hopefully these children are in better care situations” (Linkages 1986, 4). She concluded, for the time being, that large numbers of Indian children will remain in foster care, but hopefully the services they receive have been improved. The analysis did not provide needed information about the “kinds of homes [in which] these kids are being placed; what kinds of services they need; what kinds of services they are getting, and finally, we need to know whether by placing these children in foster homes we are actually improving their situations” (Linkages 1986, 4).

In a May 11, 1988 AAIA statement submitted to the Select Committee on Indian Affairs concerning amendments to the ICWA (S. 1976), Staff Attorney, Jack Trope related

that “an examination of applicable case law and recent studies have revealed that the Act has not fully succeeded in meeting its goals” (1988, 3). Indian children were still being removed from their families and placed in non-Indian homes without prior efforts to seek Indian foster homes. He cited a California study which showed that half of the placements were made outside the placement preferences of the law without a showing of good cause as to why the children could not be placed with Indian families. Many violations resulted from circumvention of the law by private agencies and independent placements by attorneys and physicians. Trope proposed the deletion of the “good cause” exception and its replacement with specific and exclusive exceptions to the placement preferences which he saw as “essential if the goal of increasing the possibility of Indian children being placed in Indian homes is to be achieved” (Trope 1988, 7). Other problems described in the California study indicated that procedures to verify the child’s Indian ancestry had not been fully implemented, there was inadequate or incomplete notice of pending court proceedings, and little use of qualified expert witnesses.

Based on demands from tribes and Indian organizations, ARENA had been forced to end its involvement in the adoption of Indian children and had turned its efforts to the placement of Canadian Indian children in American adoptive homes. Many problems emerged from the practice and there was special concern that the Canadian children placed in these homes receive the protections of the ICWA provided American Indian children.

The AAIA opposed the Bureau’s position that deference be given to biological parents’ wishes regarding placement and confidentiality in adoptions, and explained that “[b]lanket adherence to a parent’s contrary preference or a parent’s request for confidentiality exalts the interests of a person relinquishing a child to the interests of the child itself” (AAIA

1986, 10). Trope pointed out that a requirement like this did not exist in the non-Indian context and was contrary to state laws and contemporary social work and mental health theory and practice. He explained that matters of confidentiality took on a different character when the child was placed with relatives or other tribal members in accordance with the Act's placement preference. It had been learned that notice to tribes was being withheld in cases where the biological parents requested confidentiality, which ignored the fact that tribes were governments, and similarly with states, were entitled to notice as the appropriate governmental authority with paramount interest in receipt of the information. The practice continued the bias that tribes were "incapable of preserving confidentiality and, by excluding tribes, rejects the principle that involvement of tribes in child welfare cases in general will advance the best interests of the maximum number of Indian children" (AAIA 1986, 11).

The AAIA suggested an amendment to the definition of Indian child that would include children of Indian descent who are considered part of the tribal community but do not live on the reservation. Opposition to the recommendation was contained in controversial allegations that children with only a remote connection to Indian heritage were being made subjects of the law and returned to reservations. If that, indeed, were occurring, it was not the intent of the law. Trope explained that "the amendment was designed to protect children who are clearly Indian and live in Indian communities but who may not technically meet criteria for membership because of, for example, patrilineal or matrilineal tribal membership systems of insufficient blood quantum for membership in any one tribe because of connections with more than one tribe" (AAIA 1986, 13). This constituted an amendment to the definition because Indian children were falling through the cracks and not being afforded the protections to which they were entitled. The AAIA was opposed to any narrowing of the

current scope of the Act as the law was designed to cover all Indian children, both on and off-reservation who are members or eligible for tribal membership.

The current law provided parents an absolute right to object to transfer of an off-reservation case to tribal court. It was the position of AAIA that the statute's current form "denigrates the sovereign rights of tribes and has great potential to lead to results contrary to the best interests of Indian children" (AAIA 1986, 14). Trope contended that tribal social services' departments were best equipped to weigh the necessary factors which determined the best interests of an Indian child. The Committee was encouraged to give courts the leeway to decide if an objection to transfer was in the best interest of the child as an Indian. Objections to transfer child welfare proceedings to tribal courts "based solely upon a desire to break the child's bonds with the tribe and Indian family should be rejected" (AAIA 1986, 14). He addressed criticisms that tribal courts were inadequate and reminded the Committee that information provided to the Congress in 1978 demonstrated that state courts were replete with culturally insensitive decisions which had deprived Indian families, children and tribes of their basic rights. He added that there was no evidence that state courts did a better job than tribal courts to protect the interests of Indian children.

Problems had arisen regarding acknowledgement of paternity by putative fathers. Some courts would not accept the father's acknowledgement and, in many places, fathers were being forced to take certain formalistic legal actions to confirm paternity. These actions have resulted in the denial of protections to fathers who have made clear their intent to accept paternity status, and it had been found that these actions were commonly used when the child's definition as an Indian was based on the father's lineage. In the course of implementation, controversy had arisen related to considerations of alcohol and drug abuse in

the removal of the child. The Act did not intend that substance abuse would not be a factor considered in a decision to remove a child, but rather the law required that a nexus between the abuse and harm to the child be established.

It had been revealed that some courts were withholding the rights of parents to withdraw consent to adoption until the time of entry of the final adoption decree, and instead, limited the right until parental rights had been terminated. The provision was intended to provide birth parents sufficient time to consider whether or not they truly wished to relinquish their rights. Trope reminded the Committee that many “voluntary” adoptions were, in fact, not always voluntary but rather a consequence of outside pressure on a young, indigent mother to release her child. The provision allowed the mother time to rethink her decision for a reasonable period of time. The termination of parental rights immediately after consent was given effectively rendered the revocation provision meaningless. Trope pushed for better coverage of the actions of private agencies, many of whom admittedly were failing to comply with the Act by making little or no effort to find Indian homes for Indian children. He insisted on the need for explicit coverage and monitoring of private agencies by the Act. He cited continuing and troubling themes by those who opposed the Act, that tribes were not capable of making decisions to protect the best interests of their children and that Indian children are best served by not placing them with Indian families. He stated that Congress had “rejected these misguided notions and prejudices in 1978 when it passed the Indian Child Welfare Act,” and urged the Committee to continue to reject these ideas (AAIA 1986, 18). Those who objected opined that children were being deprived of good homes because of the requirement to place Indian children with Indian families. Trope wondered “whether the real concern of the opponents of S. 1976 [was] good homes for Indian children or if they simply

want[ed] to find available children for eager non-Indian adoptive parents” (AAIA 1986, 19). Congress had an obligation to assure that Indian children were placed in good homes, but it was not obliged “to ensure that all persons wanting to adopt ‘get a child’ at the expense of that child’s future connection with his or her heritage and natural family” (AAIA 1986, 19). He addressed the problem of erratic and inadequate funding of Indian child welfare programs and the fact, admitted by the Bureau, that there was little relationship between awards and the quality of program performance.

Many view the passage of the Indian Child Welfare Act as part of “the American Indian renaissance” of the 1970s that created what Bruyneel describes as a third space of sovereignty wherein there is “a heightened desire for Indian identity coupled with vocalized insistence on recognition of the right of Indian groups to persist as distinctive social entities” (Lurie 1965, 35). Despite the overwhelming domination of Indian life by federal and states governments that played itself out in cumbersome manipulation and neglect, the Indian people insisted upon the right to see their history as whole, coherent and integral, and that their families would be protected and preserved.

#### Continuance

We must insure that life continues,  
With that humanity and the strength  
Which comes from our shared concern for this life,  
The People shall continue.

Simon Ortiz, Acoma Pueblo poet

## Appendix A

### Committees on Indian Affairs

1974

#### Sub-Committee on Indian Affairs

James Abourezk, South Dakota, Chairman

Henry M. Jackson, Washington

Dewey F. Bartlett, Oklahoma

Lee Metcalf, Montana

James A. McClure, Idaho

Floyd K. Haskell, Colorado

Paul J. Fannin, Arizona

Forrest J. Gerard, Professional Staff Member

1977

#### Select Committee on Indian Affairs

James Abourezk, South Dakota, Chairman

Howard Metzenbaum, Ohio

Dewey F. Bartlett, Oklahoma

John Melcher, Montana

Mark O. Hatfield, Oregon

Ernest L. Stevens, Staff Director

Alan R. Parker, Chief Counsel

Michael D. Cox, Minority Counsel

## Appendix B

### Letter to the Editor of Aid to Adoption of Special Kids (AASK)



May 5, 1988

Dear Editor:

➤ ~~Your paper recently carried the story of the 10 month old Keetso baby removed by court order from her San Jose foster parents in order to have her fate decided by the Navajo Nation.~~

Through your newspaper, we learned that the Navajo Tribal Council has jurisdiction over these adoption proceedings. As citizens we accept the law. In this case however, it is the Indian Child Welfare Act of 1978 - a law written to prevent the wholesale adoption of reservation babies by whites. We respect the cherished institutions which the Act intended to protect. In 1978 action was necessary to encourage Indians to adopt their own and preserve their heritage. The purpose of the law seemed noble then, but is it now?

Why do we have such a law and what purpose does it serve if it isn't to protect the child's welfare? Clearly, the Indian Welfare Act is in need of revamping. In the Keetso case, the interests of the child are set aside and secondary to the interests of the tribe. Such a notion is contrary to the philosophy and principles of juvenile law, which are presumed to unfailingly decide on the basis of 'the best interests of the child.'

This Act is contrary to liberty under the law, and it is seriously out of alignment with the traditions of the United States. As important as nations, tribes, families, and churches are to us, they can never become more important than our right to free association and our right to move about our nation as we please. That is how many Americans pursue life, liberty and happiness.

The Indian Child Welfare Act is an embarrassment to the freedom of America, all America, and must be challenged and changed.

We call for the creation of a new law: The Adoption and Foster Care Civil Rights Act. Such a law would guarantee that the civil rights of every birthmother, every child in the foster care and adoption system, and every person wishing and qualified to adopt, are honored. Tens of thousands of our nation's minority children are denied a permanent home through adoption because their civil rights are violated by the very caretakers charged to protect them.



(2)

The operative principle in this case is that all action taken must be proven to be in the best interest of the child. This principle is of equal weight whether it is tribal or state jurisdiction. We would expect the Tribal Court to publicly state that it is operating in the best interest of the child, not the Navajo Tribe, and make its decisions accordingly. We are not privy to the specifics of the case and have no specific comment on it.

In general, we support a review and investigation of the Indian Child Welfare Act, and believe that the Act is unreliable as a legislative model for trans-racial and trans-cultural placements.

John Badger, National Director  
Aid to Adoption of Special Kids (AASK)

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## Endnotes

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### Chapter I:

<sup>1</sup> Senator James G. Abourezk served in the U.S. House of Representatives in 1971 through 1973 and in the U.S. Senate from 1973 to 1979. When his family emigrated from Lebanon to Mellette County, South Dakota in 1898, the area where they settled was still part of the Rosebud Sioux Indian Reservation. He writes in his autobiography, Advise and Dissent: Memoirs of South Dakota and the U.S. Senate, that he “grew up believing it was permissible, even heroic, to ridicule the Indians . . .” (Abourezk 1989, 10). In his first year in the Senate he was appointed chairperson of the Sub-Committee on Indian Affairs and with a completely opposite view of the Indian from that of his youth, brought attention to abusive child welfare practices in Indian country. He continues his involvement in Indian child welfare matters in South Dakota and serves as a consultant to the Lakota Child Rescue Project.

<sup>2</sup> Kevin Bruyneel is associate professor of Politics at Babson College where he teaches and writes about American politics and political theory, including advanced courses on Native American Politics, the American Presidency, and Justice, Revenge and Defeat. His next publication is titled Refiguring Rebellion, Resistance and State Violence: The Contemporary Production of Nationhood in Canada, the United States, and Australia, a section of which analyzes how American colonialism shapes race, ethnicity and class relations generally in the United States.

<sup>3</sup> The battered child syndrome was first described in 1860 by Ambroise Tardieu, a Parisian professor of legal medicine who relied on autopsy data for his findings which reported thirty-two children battered to death by whipping and burning. During the same time, Athol Johnson, a physician at the Hospital for Sick Children in London called attention to repeated fractures in children and attributed the injuries to rickets which “at that time was almost universal among London children” (Kempe and Kempe 1978, 5). In 1946 original observations “regarding unexplained association of subdural hematoma and abnormal x-ray changes in long bones” were reported and in 1955 a paper was published “in the *Journal of the American Medical Association* entitled “Significance of Skeletal Lesions in Infants Resembling Those of Traumatic Origin” (Kempe and Kempe 1978, 5).

<sup>4</sup> Okanagon is one of the fourteen bands that comprise the Colville Confederated Tribes.

### Chapter II:

<sup>5</sup> Prucha claims it unfair to charge the Jackson administration of “cynical expediency and complete disregard for Indian rights and feelings, despite the later miseries of the “Trail of Tears”” (Prucha 1970, 245).

### Chapter III:

<sup>6</sup> The Association on American Indian Affairs had its beginnings as the Eastern Association on Indian Affairs (EAIA) in 1922 to assist the Pueblo people to resist efforts to dismantle their pueblos. The EAIA was a non-Indian Indian advocacy organization led by individuals who while spending time among the Pueblo people had learned of their struggle to maintain their way of life. In 1937, the EAIA changed its name to the National Association on Indian Affairs and merged with the American Indian Defense Association founded by John Collier



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to form the American Association on Indian Affairs. Collier, a social worker, was BIA Commissioner of Indian Affairs in the Roosevelt administration and carried forward recommendations made in the Meriam Report. In 1946, the organization changed its name to the Association on American Indian Affairs (AAIA) and was later granted non-profit status. Anthropologist and Pulitzer Prize-winning novelist, Oliver La Farge, served as the first president. In 1973, San Juan Pueblo anthropologist, Alfonso Ortiz, became president and served until 1988 during the development, passage and early implementation of the ICWA. Today the organization's Board of Directors is all Native and the presidency has been held by an Indian for over thirty-five years. For further information about the Association's historical participation in defense of Indian rights see Cowger, Thomas W. (2001) and Hertzberg, Hazel W. (1971).

In 1963 a letter requesting help from Lewis Goodhouse, tribal chairman of the Devil's Lake Sioux of North Dakota ignited AAIA's interest in child welfare matters and prompted a visit by William Byler, Executive Director to meet with the people of Devil's Lake to better understand what help was needed. Along with work to improve living conditions, such as, decent water supply, improved housing, improved health services, the Association became involved in the seemingly arbitrary removal of Devil's Lake children from their parents and relatives by state social workers.

In 1967 in response to calls for help from tribal leaders, parents and grandparents who had lost their children, the AAIA expanded its active involvement in child welfare issues, and for many years was the only national organization, Indian or otherwise, to confront destructive family and children's practice in Indian country. The AAIA helped tribes and Indian communities to mobilize community and legal action against abusive child welfare practices, advocating for Indian control of programs, it helped tribes and off-reservation communities document and publicize examples of unwarranted practices by non-Indian agencies, as well as the statistical documentation necessary to convince Congress of the need to protect Indian families. The Association was directly responsible for bringing together a broad supportive network of political interests, professional organizations, attorneys and legal advocates, tribal governments, off-reservation communities and an established network of Native grass-roots workers. Indian child welfare issues continue as a central organizational concern and through the years the Association's work has not only included legislative advocacy, but also the negotiation of agreements, litigation, training and interaction with tribes and child welfare organizations on various aspects of child welfare.

<sup>7</sup> AAIA Executive Director William Byler, empathized deeply with Indian families who lost their children, or who were threatened with losing them. Byler, the lead-off witness at the first Senate hearings, was the first to call attention to the child welfare crisis, and perhaps the first to put child welfare issues, and the unjust and unwarranted taking of Indian children, into the broad perspective of destructive federal Indian policy. His legislative genius and ability to bring the issue into sharp, targeted focus to favorably influence majority sentiment, were key factors. Byler, more than any other single person "translated an emotional outrage—the destruction of American Indian families—into a political strategy capable of creating reform. Empathy with the tragedy and heroism of Indian families was disciplined into a political force that made change possible" (Unger 2004, 346).

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Byler's leadership in the effort to enact a law to protect Indian families and children was borne of his personal experience. As a young boy, his family was broken by divorce leaving his mother as sole support of her four young boys during the Depression years. She struggled to keep her family together but opportunities for working women were few during those times. The family's circumstance forced her to place her children in substitute care where she could be assured they would have the nourishment and stability of day-to-day care necessary for their growth and development. The options available to her meant that Bill and his brothers could not be kept together as a sibling group. For Bill, the experience was searing and he learned early the pain of separation and the problems confronted by children who could not be close to those they loved and who loved them. Within his own family, he saw the damage inflicted by separation and placement and the long-lasting impact it would have in the troubled lives of his two younger brothers. During the 1960s as Executive Director of the Association on American Indian Affairs (AAIA), he became aware of Indian children illegally taken from their mothers in the Southwest and on the Pine Ridge Reservation. Driven by the memories of deprivation in his early years, he determined to explore the problem of child removal more broadly. He learned about the Mormon placement program and the extraordinary placement rates of very young children in government and religiously affiliated boarding schools. His decision to do something about destructive child placement practices was strongly reinforced by personal accounts of the serious emotional and psychological disruption that came to characterize the lives of Indian children and their families. He used the influence of the Association to oppose adoptions of Indian children by national organizations and pushed for tribal control over child welfare services. He served as Executive Director of the AAIA from 1962 to 1980.

<sup>8</sup> The Bureau of Indian Affairs is an agency of the U.S. Department of the Interior charged with administration and management of lands held in trust for Native Americans in the United States. The BIA and the Bureau of Indian Education are under the supervision of the Assistant Secretary of Interior, Indian Affairs, and provide core services to 562 federally recognized tribes. The BIA comprises four offices which include the Office of Field Operations which oversees the operations in 12 regional offices and 83 agencies to carry out the agency's mission at the tribal level. The Office of Indian Services provides services that include General Assistance, disaster relief, child welfare, tribal government, Indian Self-Determination and roads. The office's Branch of Social Services determines the distribution of ICWA funds which are available to programs on and off-reservation. The Office of Justice Services operates or funds law enforcement, tribal courts and on-reservation detention facilities. The Office of Trust Services works with tribes in the management of trust lands, assets and resources.

<sup>9</sup> The National Institute of Mental Health (NIMH) was established in 1949 as a component of the National Institutes of Health (NIH) which is under the auspices of the U.S. Department of Health and Human Services (DHHS). Its mission is to reduce the burden of mental illness and behavioral disorders through (biomedical) research on mind, brain and behavior. Mental Health care had been a state responsibility until after World War II when there was a push to include mental health care policy as an integral part of the agency's mission. Since its establishment NIMH has had an influential role in shaping policy, research, communication with the public and the legitimization of new advances in biomedical science, psychiatric and

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psychological services and community-based mental health policies. The American Psychological Association and others have criticized NIMH's agenda because it focuses too much attention on research of the brain and genetics involved with animal cognition and adolescent relationships as opposed to developments in the behavioral and social sciences that concern the most serious mental illnesses. In the mid-sixties the Institute established a number of centers which included a center to address minority group mental health problems that developed numerous initiatives for efforts in Indian country.

<sup>10</sup> In 1967 Hirsch began work with tribes and Indian families whose children had been taken from them by local welfare officials. In 1967-1968 he conducted the first statistical survey of out-of-home placement of Indian children. As a legal intern at the AAIA, he was sent to the Northern Plains to help Indian people receive justice in the courts in a hostile legal and social services environment. He developed a reputation as a fearless advocate. His pioneering work in child and family services as an attorney and legal consultant was a major contribution to Native grass-roots organizing efforts.

<sup>11</sup> Public Law 83-280 was enacted in 1953 at the height of what is called the "Termination Era" despite overwhelming tribal opposition. The law was a transfer of legal authority (jurisdiction) for a scope of Indian affairs from the federal government to the states. Congress gave six states, California, Minnesota, Nebraska, Oregon, excluding the Warm Springs Reservation, and Wisconsin, excepting the Red Lake Chippewa Reservation, and Alaska (upon statehood) extensive criminal and civil jurisdiction over tribal lands in those states. Congress also identified optional states, Arizona, Florida, Idaho, Iowa, Montana, Nevada, Utah and Washington, that were likely to accept the transfer of jurisdiction. All of these states accepted partial or complete transfer in the years following the law's enactment. A 1968 amendment to the law required the consent of tribes to transfer of jurisdiction, but consent was not sought from those tribes where federal jurisdiction had already been transferred.

The law was enacted during a period in Indian history when the federal government aggressively sought to terminate its trust relationship with tribes. In 1953 Congress adopted House Concurrent Resolution 108 which established termination as the federal government's official policy and singled out specific tribes for termination. At the same time, the BIA implemented the "relocation program" which encouraged Indians to leave the reservation to find employment in metropolitan areas. While Congress determined the future it saw for Indian people, the landscape brought by these changes was seen by Indians as a clear attempt by the federal and state governments and private interests to gain greater control of the Indian estate and to usurp the customary and traditional social norms and mores of the people.

Two sections of the law directly impacted the ability of the tribes to provide care and support to their own people and to resist unwarranted removal of children. The section related to civil jurisdiction (28 U.S.C. Section 1360) provided that Indian families would be subject to civil laws of the State as were all other citizens. This meant that the affected tribes became subject to the laws, rules, and procedures of state welfare agencies that defined suitability of homes and child-rearing practices. P.L. 83-280 did not transfer federal civil jurisdiction to the states but rather authorized states to intervene in civil matters previously under exclusive tribal jurisdiction which in effect expanded non-Indian control over reservation life.

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It is not unusual that criminal charges are associated with allegations of child abuse and neglect. Provision for states to assume criminal jurisdiction on reservations is contained in 25 U.S.C. Section 1321. Historically jurisdiction over criminal offenses in Indian country has not followed a clear pathway and the enactment of P.L. 83-280 complicated the situation further clouding jurisdictional authority. Actions against Indians for criminal acts often fell through the cracks when the different jurisdictions could not determine the legally responsible party. The failure to prosecute criminal acts associated with alleged child abuse and neglect undermined the authority of the court and did not provide the parties with resolution to complex matters from either the judicial or child welfare services systems. While the law did not completely eliminate tribal jurisdiction, the fact that federal resources formerly appropriated for the development and operation of tribal judicial systems were no longer available meant that poor, small tribes could not operate court systems. For full discussion of the impact of P.L. 83-280 in Indian country, see Planting Tail Feathers: Tribal Survival and Public Law 280 by Carole Goldberg-Ambrose.

<sup>12</sup> The Department of Health, Education and Welfare (DHEW) was created in 1953 during the Eisenhower administration. In 1979 education was removed from the Department and established as the Department of Education. In 1980 DHEW became the Department of Health and Human Services (DHHS). Over the years Indian country had considerable interaction with DHEW which held the national purse strings for child care and other necessary services. In the 1970s, in response to advancements brought on by the Civil Rights Movement, the Department established “minority” set-asides which helped Indians build the structures of what are present-day behavioral health, child welfare and social services programs.

<sup>13</sup> A petition for certiorari is a request to the U.S. Supreme Court to re-examine actions of a trial court or lesser appeals court. A writ of certiorari which might be issued is not a matter of right and is granted only for compelling reasons. Before a writ can be issued four justices must agree to hear the case.

#### Chapter IV:

<sup>14</sup> The “Boldt Decision” (U.S. v. Washington, 1974) affirmed the fishing rights of most of the tribes in the state of Washington to harvest salmon at their “usual and accustomed” fishing places that had been guaranteed through a series of treaties signed in 1854 and 1855. In these treaties, the tribes relinquished millions of acres in Washington but reserved their right to continue fishing. An example of the treaty language is found in the Medicine Creek Treaty which states that “the right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians in common with all citizens of the Territory.” Most of the treaties negotiated by Territorial Governor Isaac Stevens contained similar language. Judge Boldt reviewed the minutes of treaty negotiations to ascertain the meaning of “in common with” as it was described to the tribes, and determined that the language meant that there would be an equal sharing of fish resources between the tribes and the settlers. Specifically Boldt wrote, “by dictionary definition and as intended and used in the Indian treaties and in this decision, “in common with” means sharing equally the opportunity to take fish . . . therefore, non-treaty fishermen shall have the opportunity to take up to 50% of the harvestable number of fish . . . and treaty right fishermen shall have the opportunity to take

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up to the same percentage.” The U.S. government as trustee sued the State of Washington to restore the tribes’ fishing rights. The decision was extremely controversial and spilled over into all other areas of tribal and non-tribal interactions. A popular and wide-spread bumper sticker used by many non-Indian state residents read, “Save a fish, can an Indian.”

<sup>15</sup> Melvin Tonasket who later became Chairman of the Colville Confederated Tribes was a protégé of legendary Colville councilwoman, Lucy Covington who was the granddaughter of Chief Moses, the last recognized chief of his people. In 1956 Congress enacted P.L. 772 which restored 1.1 million acres to the Colville reservation but also required that the tribe submit a plan for its termination in five years. There was disagreement among tribal members about termination, some not closely tied to the land welcomed the opportunity to enter mainstream society, and for others “termination seemed a possible solution to the resentment against the paternalism of the BIA, the label “government ward,” and the image of “blanket Indian” (Wilkinson 2005, 180). But for many others termination was unthinkable. Covington launched a campaign against termination and mobilized young leaders to work on the effort. Tonasket was among her first recruits. The effort successfully overturned an earlier Tribal Council resolution in support of termination and rendered a death blow to termination for the Colville people.

<sup>16</sup> The National Congress of American Indians, Inc., (NCAI) was founded to counteract the Federal government’s policies of termination and assimilation in contradiction of tribal treaty rights and their status as sovereign nations. Its first convention, held in Denver in 1944, was attended by delegates from twenty-seven states representing over fifty tribes and associations. The organization’s efforts were successful in turning back termination policies that persisted through the 1950s but found itself fractured by factionalism in the early 1960s. The appointment of Vine Deloria, Jr. as Executive Director in 1964 returned the organization’s financial and organizational stability, and he was able to steer NCAI through contentious conflicts between reservation and off-reservation Indians. Today, the organization’s membership includes over 250 tribes and hundreds of individual members. Its mission is concerned with protection of rights and benefits to which Indian people are entitled, education of the public toward a better understanding of Indian people, preservation of rights secured under treaties and agreements, and promotion of the general welfare of American Indians and Alaska Natives. Throughout its history NCAI has stressed the importance of unity among tribes and protection of treaty rights and sovereign status. As a major national tribal organization it monitors federal policy and coordinates efforts to inform federal decisions affecting tribal government interests. Its offices are located in Washington, D.C. and annual and mid-year conferences are held at sites chosen by its membership.

<sup>17</sup> The Department of Housing and Urban Development, Office of Native American Programs, was established to provide safe, decent and affordable housing for Native American families.

<sup>18</sup> The National Tribal Chairman’s Association was established during the Nixon administration to counterbalance the influence of other national Indian organizations and traditional governance. Vine Deloria, Jr. explains that “[c]onsensus and the ability to work out problems in council gave way, at federal insistence, to majority rule. The government, the Bureau of Indian Affairs, and all other federal agencies focused on the very small group of elected officials and especially on the tribal chairmen. So great was this focus that with

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government support these elected officials formed the National Tribal Chairman's Association" (Deloria, Jr., Vine 1985, 143). The organization was disbanded in the late 1970s.

<sup>19</sup> The North American Indian Women's Association was created in the 1970s by Marie Cox (Comanche) with the help of the Oklahoma Home Extension Services to foster fellowship among Indian women. Membership was previously restricted to members of federally recognized tribes in the United States, however membership has been opened to Canadian tribal members. The aims of the organization are the betterment of the individual, home and community.

<sup>20</sup> The mission of the Indian Health Service is to raise the level of American Indian and Alaska Native health status to the highest status possible. The provision of health services to members of federally recognized tribes grew out of the special relationship between the federal government and Indian tribes and is spelled out in numerous treaties, laws, Supreme Court decisions and Executive Orders. The Service is the principal health care provider and health care advocate for Indian people. It provides services to approximately 2 million American Indians and Alaska Natives who are members of 592 federally recognized tribes in thirty-five states.

#### Chapter V:

<sup>21</sup> Leon Cook is a member of the Red Lake Ojibwe Nation in Minnesota. His mother died of a congenital heart condition shortly after his birth and his father perished in an automobile accident seven years later. His grandfather took over his care and he was later given over to care by a paternal aunt. He left the reservation at 14 to attend preparatory school and in 1966 was the first Minnesota Ojibwe to graduate from the University of Minnesota, School of Social Work. He worked in anti-poverty programs in Minnesota and later as a Senior Field Coordinator for the Department of Commerce and finally as Director of Economic Development for the Bureau of Indian Affairs. In 1971, he was elected president of the National Congress of American Indians.

<sup>22</sup> VISTA or Volunteers in Service to America, a domestic version of the Peace Corps, is an anti-poverty program established during the Johnson administration as part of the Economic Opportunity Act (OEO) of 1964. Its legislative purpose is to supplement efforts to fight poverty in low-income communities by engaging citizens in a full year of service. The primary objectives of the program are: 1) to encourage volunteer service at the local level, 2) to generate the commitment of private sector services, and 3) to strengthen local agencies and organizations that service low-income communities. During the Clinton administration it was brought under the AmeriCorps program and was renamed AmeriCorp VISTA.

<sup>23</sup> A guardian-ad-litem has the legal authority to care for the personal and property interests of another person. Guardians-ad-litem are appointed in cases of allegations of child abuse and neglect, for persons in need of supervision, juvenile delinquency and dependency. The guardian is responsible to protect the interest of the minor child in these cases which may differ from the interests of the government agency and the parents or other guardians.

<sup>24</sup> The Work Incentive Program (WIN) was established in amendments to the Social Security Act in 1967 to make AFDC recipients, primarily women, less dependent on welfare. Eligibility of "appropriate AFDC recipients" was determined by each state. Recipients

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received regular counseling, referral and assistance to obtain basic education and job skills. In addition, participants might also receive a small incentive payment. The program was supposed to develop employability but by 1971 it became apparent that most were not finding jobs. The program was phased out by the Job Opportunities and Basic Skills (JOBS) training program.

<sup>25</sup> AFDC-FC (Aid to Families with Dependent Children-Foster Care) provides cash and medical benefits for providers of out-of-home care for children placed in foster care. To qualify for the program the child in placement must be 1) declared a dependent child of the court, 2) declared a ward of the court, 3) the subject of a Voluntary Placement Agreement between the parent and Child Protective Services, and 4) be living with a non-related legal guardian. Of particular interest to tribal families is the provision for relative caretakers. In order for relatives to receive program benefits it is required that 1) the child must be eligible for federal AFDC-FC payments, and 2) the relative must prove that he/she is related within the 5<sup>th</sup> degree of kinship.

<sup>26</sup> The Johnson-O'Malley Act was enacted in 1934 to subsidize education, medical and other services provided by states and territories to Indians living within their borders and was intended to offset costs of tax-exempt Indians who made use of state operated schools, hospitals and other services. The Act was promoted by Indian reformers who wanted to reduce the grip of the BIA on Indian lives. Education is the main purpose and beneficiary of the Act because it was believed advisable to have Indian students in public schools rather than providing separate schools for them. The Act is one of the principal means for subsidizing education for Indian students.

#### Chapter VI:

<sup>27</sup> Robert Bergman was the First Director of Indian Health Service, Mental Health Branch, which was first located on the Navajo Reservation in Window Rock, Arizona. He was instrumental in bringing the indigenous knowledge and practices of native people into the mental health care delivery system when he instituted the Mental Health Technician Program which employed non-professional service providers in health care programs throughout the country. He became a student of Navajo medicine men and other tribal healers, and shared his knowledge at meetings and through publications about Native American religion. He became a member of the Native American Church which produced conflict for him between “the believer and the observer and, worse yet, between the member and the person whose professional career was being advanced. Had I been Indian myself, it wouldn't have mattered, but there have been too many people who have learned from the Navajo and not helped them. There was another problem; as I went around giving my talks, I drew fairly good crowds. (This was the '70s.) They took me seriously and believed what I told them. I was pleased until I realized that these people would believe anything as long as it wasn't conventional, corporate, American popular culture. I quit. . . . I vowed, to paraphrase Chief Joseph, to write no more forever (Bergman 2008, 228). Dr. Bergman shares his experiences and insights into his time with native people in the chapter entitled “Faith and Gullibility” in his recent book, Mindless Psychoanalysis, Selfless Self Psychology and Further Explorations.

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<sup>28</sup> The Native American Church belief system blends fundamental Christian teachings with pan-Native American moral principles. The movement which began among the Kiowa led by John Wilson (Big Moon) in the late 1800s soon spread among many other tribes. The church's sacramental food is peyote, a hallucinogenic cactus, and its members were called peyotists. In 1918 the movement was incorporated as the Native American Church. In 1940 the Church was declared illegal by the Navajo Tribal Council which deemed it a threat to traditional Navajo religion and Christianized Navajos. The Church flourished underground and in 1967 the Navajo Tribal Council reversed its decision. By 1996 there were 250,000 members in the United States and Canada.

<sup>29</sup> Alan Gurwitt and Carl Mindell served as co-chairpersons of the Committee on the American Indian Child of the American Academy of Child Psychiatry. Their long-standing work with Indian populations through which they became aware of the alarming rates of adoption of Indian children was the impetus for the establishment of the Committee. At the time, a popular and well-respected book, Beyond the Best Interests of the Child (1973) advocated for immediate adoptions arguing that lengthy court delays were not in the best interest of a child. The book also argued that "blood relatives" had no real meaning to children, and that the important issue for children was permanency. While these tenets were true for most populations, they did not recognize that for Native Americans, the tribe had status for children. Differences between tribes and other populations were reflected in the fact that tribes did not have words in their vocabularies that reflected contemporary understanding of "adoption" and "orphan." Gurwitt and Mindell authored a paper regarding the destructive practices they had observed which formed the basis for the Academy's authorization of the Committee. In 1975, the Academy issued a policy statement entitled, Placement of American Indian Children, outlining the problems confronted by Indian families, children and tribes which supported the recommendations submitted to the Senate Sub-Committee made by the AAIA. Committee leadership passed to Drs. Thomas A. Halverson and Stephen Proskauer in 1977. During their term as chairpersons, the Committee produced the first national conference on native child welfare issues. The proceedings were published in an Academy booklet entitled, Supportive Care, Custody, Placement and Adoption of American Indian Children: Special Questions and New Answers. The conference brought together native child welfare workers from across the country and enabled practitioners to develop a network of effort to work for passage of ICWA and to share efforts to correct abusive practices. During the tenure of Halverson and Proskauer, the Committee produced a second national conference on the Warm Springs Reservation in Oregon entitled, Warm Springs: A Case Study Approach to Recognizing the Strengths of American Indian and Alaska Native Families, the proceedings from which were also published by the Academy. After passage of the Act, members of the Committee frequently served as expert witnesses on behalf of children, families and tribes. Other members of the Committee were Drs. Jerome Chadwick, Ben Ezra Green, Edward Greenwood, Elinor Harvey, Michael Koch, Osamu Matsutani, Carol Rutt and Ross Snyder.

<sup>30</sup> Carl Hammerschlag came to work at the Santa Fe Indian Hospital with the Pueblo people as a general practice physician in 1965 to fulfill his military obligation rather than going to Vietnam. It was during his time as a general practitioner that he was first awakened to the "connections of spirit on the part of both patient and doctor that are involved in the total



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healing process” (Hammerschlag 1988, 6). He knew nothing about Indians other than what he had seen in the movies but thought that “cheering for them would give me an inside track to acceptance. It didn’t. I was a “white man” and, therefore, held responsible for centuries of depredations of the Indian people even though I myself wasn’t culpable. It served as a reminder of my own judgments, particularly my attitude toward Germans, an inner poison that I’d never acknowledge needed to be drained” (Hammerschlag 1992, 14).

<sup>31</sup> At the time of his death, Blanchard was a psychologist at the Bureau of Indian Affairs, Indian Education Resources Center in Albuquerque and a member of the students’ rights task force discussed by government witness, Ramona Osborne. Warren was Associate Professor and Chairman of the Department of Social and Philosophical Studies in Education at the University of Kentucky. During the course of the study, Warren lived in the boarding school dormitory for a month and shadowed a dormitory attendant.

<sup>32</sup> Data analysis is based on the following code which may be viewed as polarities on continua:

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|--------------------------|----------------------|
| 1. I-Introvert tendency  | E-Extrovert tendency |
| 2. N-Intuitive tendency  | S-Sensing tendency   |
| 3. F-Feeling tendency    | T-Thinking tendency  |
| 4. P-Perceiving tendency | J-Judging tendency   |

These polarities yield in combination 16 basic personality types.

<sup>33</sup> The Toyei Boarding School project was described in an unpublished paper entitled, *A Second Report on the Problems of Boarding Schools*, presented at the annual meeting of the American Academy of Pediatrics, Committee on Indian Health, Albuquerque, New Mexico in 1968.

#### Chapter VII:

<sup>34</sup> The Tribal Work Experience Program (TWEP) was established as a Bureau program during the mid-1960s as part of the national effort to move recipients off welfare and into employment. The program was managed by the tribes who developed community work assignments for the participants. In addition to monthly BIA General Assistance grants to meet basic family needs, the participants received small incentive payments to help them find stable employment.

<sup>35</sup> The study was initiated by Raymond Butler who approached NAIWA to conduct the work. It received a critical reception from the Indian work force because it was seen as cover for the criticism the Bureau received for its complicity in the out-of-home placement of Indian children. Recommendations from the study, however valuable, were never officially implemented in the Bureau’s social services programs.

<sup>36</sup> The Law Enforcement Assistance Administration, a federal agency within the U.S. Department of Justice was established by the Omnibus Crime Control and Safe Streets Act of 1968 to administer federal funding to state and local law enforcement agencies. It also funded educational programs, research, state planning agencies, and local crime initiatives. It was absorbed by the National Institute of Justice in 1979 with the passage of the Justice Systems Improvement Act. The agency’s flexibility in funding made it possible for tribes and Indian organizations to access monies for projects that might not receive support in a time when other federal and state agencies refused to finance their efforts.

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<sup>37</sup> Indian Legal Aid was a component of the national Legal Aid Services that provided legal assistance to low-income clients in civil matters.

<sup>38</sup> The Office of Equal Opportunity administered most of the War on Poverty programs established as part of President Johnson's Great Society legislative agenda. VISTA, Job Corps, Community Action Program (CAP) and Head Start were administered by OEO. The Community Action Program was the Office's key institution conducted under an unusually energetic Congressional mission statement to mobilize and utilize resources in an attack on poverty. OEO was instrumental in the development of Indian leadership throughout the country because it provided funding for programs designed and operated by Indians, themselves, that included many different efforts to help the people become employable and lift them out of poverty. The benefits to leadership and tribal control were enduring and provided the opportunity for thousands of Indian people to assume major responsibilities in the conduct of their own affairs, many of whom moved into leadership positions on tribal councils, national and regional Indian organizations and federal and state offices. The CAP played a significant role in the development of family and children's programs on reservations and in Indian communities. Among the greatest accomplishments of the Indian OEO effort was the establishment of the Rough Rock Demonstration School on the Navajo reservation which provided children an education that respected and integrated Navajo culture into the curriculum and prepared them to deal with the majority society. It was the first fully Indian-controlled school since the federal government takeover of the schools of the Five Civilized Tribes of Oklahoma in the 19<sup>th</sup> century. Rough Rock's success led to the creation of the Navajo Community College, later named Dine' College, which was the first modern tribal college. Following upon this success, there are now tribal colleges throughout the country and tribes have banded together to take over higher education institutions formerly operated by the federal government, such as Haskell Indian Nations University formerly Haskell Indian Junior College which evolved from Haskell Institute, one of the early off-reservation boarding schools.

<sup>39</sup> Jere Brennan (deceased) was the first president and among the group of Indian social workers with Master of Social Work degrees who founded the Association of American Indian Social Workers in 1970. The founding was made possible when the group was called together to work on a bibliography project funded by the Council on Social Work Education. The organization's name was changed to the Association of American Indian and Alaska Native Social Workers, and in the 1980s again changed its name to the National Indian Social Workers Association. It was disbanded in the late 1980s in response to increased regional focus and reductions in program funding that did not support travel to national conferences. Brennan served as Acting Superintendent of the Bureau's Pine Ridge Agency during the time of the occupation of Wounded Knee, South Dakota by the American Indian Movement in 1974.

<sup>40</sup> Evelyn Blanchard was also among the founders of the Association of American Indian Social Workers and through the years served as secretary, vice-president and president of the organization. She contributed major effort to the development, passage and implementation of the ICWA and for decades served as an expert witness for families and tribes in their efforts to regain custody of their children. She served as consultant to the AACCP, Committee on the American Indian Children, from 1975 to 1985.

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<sup>41</sup> Currently the Bureau lists four child welfare specialists positions, one each for the Central Office, the Southwest Region, the Rocky Mountain Region, and the Portland Region. The Central Office position is currently vacant and has been for some time.

<sup>42</sup> Butler's description of the audits was different from what actually took place. In the author's five year tenure as Assistant Area Social Worker in the Albuquerque Area Office, certifications of the adequacy of individual child placements were not conducted. Paper certification that the child met the blood quantum level to receive financial support from Bureau funds for substitute care was the only requirement.

<sup>43</sup> The bill was drafted by AAIA's general counsel, Arthur Lazarus, Jr., a partner in the Washington, D.C. based law firm of Fried, Frank, Harris, Shriver & Kampelman. In his dissertation, The Indian Child Welfare Act of 1978: A Case Study, Steven Unger explains that "Mr. Lazarus did not have experience litigating Indian child welfare issues, but he was a knowledgeable legislative draftsman, well versed in federal Indian law. He sought to cover the major points in a "bare bones" draft he submitted to AAIA early in July 1975. The AAIA quickly sent the draft out for comment by Indian tribes and organizations, and other interested Indian and non-Indian parties (Unger 2004, 253-254).

<sup>44</sup> The Interstate Compact on the Placement of Children is a statutory law in all 50 states, the District of Columbia and the Virgin Islands. Developed in 1974, the compact was designed to ensure protection and services to children placed across state lines. The compact is a binding contract between member jurisdictions and establishes uniform legal and administrative procedures governing the interstate placement of children. Interstate Compact law applies when private adoptions occur across state lines. It also applies to private parent placements of children in residential treatment facilities, group homes, and other licensed facilities. State agencies and courts must also comply with Compact law when placing their wards in treatment facilities, in foster homes or with the child's relatives who live in another state.

Definition of "educational exemptions" is found in Regulation No. 4, Residential Placement of the Compact: (a) "Primarily educational institution" means an institution which operates one or more programs that can be offered in satisfaction of compulsory school attendance laws, in which the primary purpose of accepting children is to meet their educational needs; and which does not do one or more of the following: (1) accept responsibility for children during the entire year; (2) provide or hold itself out as providing child care constituting nurture sufficient to substitute for parental supervision and control or foster care; (3) provide any other services to children, except for those customarily regarded as extracurricular or co-curricular school activities, pupil support services, and those services necessary to make it possible for the children to be maintained on a residential basis in the aforementioned school program or programs. The Compact is authored by the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC). The AAICPC has authority under the Interstate Compact law to "promulgate rules and regulations to carry out more effectively the terms and provisions of [the Compact]", and obtains its Secretariat services, as an affiliate of the American Public Human Services Association (APHSA).

<sup>45</sup> S. 1928 was enacted into law on June 17, 1980 and became the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272). The purpose of the Act was to establish a program

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of adoption assistance, to strengthen the program of foster care assistance for needy and dependent children, to improve the child welfare, social services, and aid to families with dependent children programs, and for other purposes.

<sup>46</sup> The Adoption Resource Exchange of North America (ARENA), founded in 1966, was the immediate successor to the Indian Adoption Project. ARENA was the first national adoption resource exchange devoted to finding homes for hard-to-place children. It continued the practice of placing Native American children with white adoptive parents into the early 1970s.

<sup>47</sup> Title XX of the Social Security Act consolidated Federal assistance to States for social services into a single grant to increase State's flexibility to use social services grants, and to encourage States to furnish services directed at the goals of : 1) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency; 2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency; 3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families; 4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and 5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

<sup>48</sup> The Council of Seventy aka Seventies is a priesthood office. An individual holding this office is a "traveling minister" and an "especial witness" of the Church with the mission to preach the gospel to the entire world under the direction of the Twelve Apostles. Mr. Lee was a member of the Seventies from 1975 through 1989 when he was excommunicated after denouncing his adherence to the Church.

<sup>49</sup> The Comprehensive Employment and Training Act (CETA, P.L. 93-203) is a federal law enacted in 1973 to train workers and provide them with jobs in the public service. The program offered work to those with low incomes, the long-term unemployed, and summer jobs to low-income high school students. Full time jobs were provided for a period of twelve to twenty-four months in public agencies or private not-for-profit organizations. The intent was to impart a marketable skills that would allow participants to move into unsubsidized employment. CETA was an extension of the Works Progress Administration (WPA) of the 1930s. It was intended to decentralize control of federally controlled job training programs and gave more control to individual state governments. In 1982 it was replaced by the Job Training Partnership Act.