

Is that generally always worked out previously so we are not dealing with any guardianship arrangements even on a temporary basis?

Mr. BARKER. Yes, Ms. Marks.

It is fully understood by the States in which these families are serving as host families. This arrangement is worked out and there is no legal guardianship. They fully understand that the Indian children are merely coming to reside in the home of the host family. They are coming there along with the other children from that home, but they belong, for example, at Navajo or they belong at Hopis or Fort Hall or someplace and they are members of the families of those reservations.

Ms. MARKS. The last quick question, you mentioned to Ms. Foster that all the children generally leave together.

Are they generally returned together at the same time? So in other words, if a child is not returned when at the end of the school year for some reason—the family wishes him to stay—what is the procedure?

Are you aware of these as the church is aware of these? Do they get special permission from church staff as well as the parents or does this become an interpersonal relationship between the two sets of parents?

Mr. BARKER. I am sure the program operates this way. We have a rule that a child must be returned and the only exception to that is if the natural parents request for some reason that they be retained—that is a very, very rare exception, about the only case I know of is where at home there was serious illness in the natural parents. One passed away and the other was very seriously ill and the father asked by letter if they could keep the child over the summer because he wanted to come back in the fall. This was taken up by the host parents with the church and they looked into it. They found it to be a genuine condition and approved it.

That would be a rare exception, but it is probably the only example I can think of where they would stay on.

Ms. MARKS. Thank you.

Mr. DUCHENEAUX. Thank you very much, Mr. Barker, we appreciate your testimony.

The Chairman has asked that the following correspondence be inserted in the record:

A letter from the late Gov. Wesley Bolin of Arizona in support of the bill with specific comments.

A mailgram from the Shoshone and Arapahoe tribes of Wind River Reservation in Wyoming.

Additional testimony by the Central Maine Indian Association.

Testimony from the Seattle Indian Center, Inc.

Also other letters from State officials commenting on the legislation.

[The additional material referred to may be found in the appendix.]

Mr. DUCHENEAUX. I think that concludes our hearing. The chairman normally indicates that the record will remain open for 10 days for any additional statements or testimony.

That will close the hearing.

Thank you very much.

[Whereupon, at 1:10 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

A P P E N D I X

Additional Material Submitted for the Hearing Record

STATEMENT OF RICK LAVIS, DEPUTY ASSISTANT SECRETARY-INDIAN AFFAIRS (PROGRAM OPERATIONS) BEFORE THE HEARING OF THE SUBCOMMITTEE ON INDIAN AFFAIRS AND PUBLIC LANDS OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, U.S. HOUSE OF REPRESENTATIVES ON S. 1214, THE "INDIAN CHILD WELFARE ACT OF 1977", FEBRUARY 9, 1978.

Mr. Chairman, I appreciate the opportunity to appear before this Subcommittee today to present the Interior Department's testimony on S. 1214, "The Indian Child Welfare Act of 1977".

We agree that too often Indian children have been removed from their parents and placed in non-Indian homes and institutions. We also agree that the separation of an Indian child from his or her family can cause that child to lose his or her identity as an Indian and to lose a sense of self-esteem which can in turn lead to the high rates among Indian children of alcoholism, drug abuse, and suicide. However we do not believe that S. 1214, in its

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present form, is the vehicle through which the Congress should seek to remedy this situation. Therefore, the Administration opposes enactment of S. 1214 as passed by the Senate and we ask the Committee to defer consideration of the bill until such time as we have completed preparation of substitute legislation. We have already given the issue considerable thought and we hope to have our substitute ready for submission by early March.

Title I of S. 1214 would establish child placement jurisdictional lines and standards. Although Title I incorporates many child placement safeguard provisions that we believe are necessary, the administrative problems that would arise were that title in its present form to be enacted do not allow us to support it. If this bill is enacted, before any state court judge can proceed with a child placement, a determination must be made as to whether the child before the court is an Indian. The bill contains no definition of the term "Indian child". We are assuming, however, that an Indian child is a person under 18 who is an Indian, rather than a child of an Indian. To determine whether the child is an Indian, the judge must determine whether the child is a member of an Indian tribe (which we concede is not overly burdensome on the court) or whether the child is eligible for membership in an Indian tribe. The standards for membership in Indian tribes vary from tribe to tribe. Even if the court familiarizes itself with all these standards, it will also be necessary to examine the blood lines of the child.

Title I also is unclear in its use of the term "Child placement". A child placement, according to the definition in section 4(h) includes any private action under which the parental rights of the parents or the custodial rights of an extended family member are impaired. Does this include the case where the mother of an Indian child freely asks a relative to take over the care of her child? Shouldn't these be private actions not subject to invasion by outside parties? The definition of the term child placement remains unclear and the difficulty it has caused in discussion of this bill would be multiplied in the enforcement of the bill.

Another serious problem we have with Title I of the bill, is that the interest of the tribe seems to be paramount, followed by the interest of the biological parents of the Indian child. Nowhere is the best interest of the child used as a standard or even a consideration. Although the tribe is allowed to intervene in placements of children off the reservation as an interested party, nowhere is the child afforded the opportunity to be represented by counsel or even to be consulted as to where he or she

wishes to be placed. Certainly an adolescent should have a right to have his or her preference seriously considered by the court, especially in the case where the child is not living on the reservation. The amount of notice that must be given before a child can be removed from the home also does not reflect the best interest of the child. Unless a determination is made that the "physical or emotional well-being of the child is immediately and seriously threatened", the parents must be given 30 days notice before a child can be removed. There are no provisions in the bill allowing this notice to be waived by the parents. Thus, even in the case where the parent consents to the placement, and perhaps even welcomes it, the proceeding can not begin until 30 days after notification of the parent.

We also recognize the potential this bill has of seriously invading the rights to privacy in the case of the parent of an off-reservation child who is the subject of a child placement. Under the provisions of section 102(c), if the state court determines that an Indian child living off the reservation has significant contacts with a tribe, that tribe must be notified of the proceeding, allowed to intervene as an interested party, and in some cases the proceeding must be transferred to the tribal court of that tribe. Thus, even in the case of an unwed Indian mother living in an urban setting far from the reservation who does not wish the members of the tribe to know she has had a child, the interests of the individual are overlooked in deference to the interests of the tribe. We are troubled by a requirement that (without regard to the consent of the parents) the child of one who has chosen a life away from the reservation must return to the reservation

for a placement proceeding. Although these are just a few of many problems we believe the enactment of this bill would create, we do not mean to imply by this testimony that the special problems of Indian child welfare should be ignored. We simply believe that the bill, as it is written, is cumbersome, confusing, and often fails to take into consideration the best interests of the Indian child.

As regards to title II of the bill, we believe that it also needs to be rewritten. The Secretary of the Interior already possesses many of the authorities contained in title II. Our principal concern with the title, however, is that the Secretary of Interior would be granted certain authorities that are now vested in the Secretary of Health, Education, and Welfare. We are unclear which department would be required to provide what services; and we would be hesitant, without an increase in manpower and money, to assume responsibilities for providing services which are now being provided by the Department of HEW.

We have no objections to titles III and IV of the bill. We would suggest, however, that title III include the requirement that the Secretary of the Interior review the records compiled when preparing per capita judgement fund distribution roles to determine whether any of the placed children are entitled to share.

As I stated earlier, the Administration proposes to offer substitute language for the bill. We recognize the urgency of addressing the problems of Indian child welfare in a timely manner. Therefore, we hope to present our substitute to the Committee by early March.

This concludes my prepared statement. I will be glad to respond to any questions the Committee has.

STATEMENT

BY

DR. BLANDINA CARDENAS
 COMMISSIONER, ADMINISTRATION FOR YOUTH AND FAMILIES
 DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

BEFORE THE

SUBCOMMITTEE ON INDIAN AFFAIRS
 AND PUBLIC LANDS

OF THE

COMMITTEE ON INTERIOR
 AND INSULAR AFFAIRS

THURSDAY, FEBRUARY 9, 1978

Chairman Roncalio and Members of the Subcommittee, my name is Blandina Cardenas, and I am responsible for the Administration for Children, Youth and Families in the Department of Health, Education, and Welfare. I am particularly pleased to participate in your hearing this morning, because it touches on a subject about which I have strong feelings: namely the ability of our varied child welfare services to meet the needs of minority children. I know that much time and careful consideration has gone into the preparation of S. 1214. I am particularly grateful for the cooperative spirit in which staff of the relevant Subcommittees have worked with individuals at HEW. It has convinced me that however we might differ on details, we share the same goals. I am also appreciative of the fact that the Department has been invited to comment, even though HEW would not have primary responsibility for administering the provisions of this bill.

The legislation that is the subject of this morning's hearing has caused us to do some hard thinking about our role in relation to the child welfare services available for Indian children. I wish I could tell you that we have definitive answer to what that role should be. What I have to say instead

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is that we find ourselves in agreement about the goals and impressed by the thoughtful deliberation that has gone into S. 1214, but we have some questions about the approach represented by S. 1214 and are taking a close look at how we could make existing HEW programs more responsive to Indians. I realize that your hearings this morning reflect the Subcommittee's willingness to hear all sides, and I would hope that we could continue to work together to sort out these very difficult issues.

During the Senate Select Committee's hearing last August 4, the Department testified that provisions of the bill which would provide funds for Indian children in need of child welfare services and establish certain procedures in Indian child welfare proceedings before state courts and tribal courts, are goals worth attaining--especially in light of the detailed findings of a recent study conducted by authority of HEW on the state of Indian child welfare.

However, we were of the opinion at the time that the Administration's child welfare initiative, embodied in S. 1928, would be a more appropriate legislative vehicle for addressing the specific needs of Indian children. While the Department feels that more needs to be done to make child welfare services more adequately address the needs of Indian children, we continue to have great concern about the provisions contained in S. 1214.

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The Department's previous testimony pointed out our commitment to determine the best way to optimize the impact of HEW programs for Indian people. That commitment continues to be firm.

The Department promised the members of the Select Committee on Indian Affairs that we would work to secure changes that would make H.R. 7200 more responsive to the special needs of Indian children. During the months after the hearings, the Department, with the assistance of the Committee's very able staff, fulfilled our promise to help secure meaningful changes to H.R. 7200. That bill which is now on the Senate calendar, contains two provisions that should have significant implications for Indian child welfare services. First, the bill provides that the decisions of Indian tribal courts on child custody matters be given full faith and credit by state courts. Secondly, the bill authorizes the Secretary of HEW, at his discretion, to make direct grants to Indian groups for the delivery of services to children and their families under Title IV-B of the Social Security Act.

While the Department continues to feel that the Administration's child welfare initiative, and specifically the two changes directly related to Indians, would improve the system of Indian child placements, we agree that more needs to be done.

We feel that the existence of legal and jurisdictional barriers to the delivery of services by state and county systems warrants a closer look at how these programs can become more responsive to Indians as well as other citizens, rather than creating programs that might duplicate existing authorities and have the potential of disrupting funds now provided to Indians under these and other HEW programs.

The National Tribal Chairman's Association and four other groups are now conducting a project to explore the desirability of amending the Social Security Act or alternative steps to more effectively provide social services for Indians. That project is being funded at more than a quarter of a million dollars, and will also draft a tentative implementation plan.

The 1974 hearings before the Senate Select Committee on Indian Affairs made us more cognizant of the special needs and problems of Indians in trying to maintain family and tribal ties for their children. The Department has responded to the need to increase the level of understanding and knowledge of Indian child welfare problems and has caused us to re-examine

how we might more effectively channel assistance to tribal governments through its existing authorities.

Recently, the Department reported on a 2-year, State-of-the-Field survey of Indian Child Welfare services needs and service delivery. The survey examined the activities and policies of 21 States, and tried as well as to review the training and employment opportunities for Indian professionals in child welfare. The survey pointed to several of the factors that remain of concern to members of this Subcommittee as well as others interested in the field:

- the need to support increased involvement by tribal governments and other Indian organizations in the planning and delivery of child welfare-related services;
- the need to encourage States to deliver services to Indians without discrimination and with respect for tribal culture;
- the need for trained Indian child welfare personnel;
- the need to resolve jurisdictional confusion on terms that will eliminate both the most serious gaps in service and the conflicts between State, Federal, and tribal governments that leave too many children without needed care;

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-- the need to assure that insensitivity to tribal customs and cultures is not permitted to result in practices where the delivery of services weaken rather than strengthen Indian family life.

At the same time, we are moving ahead with targeted efforts to assist tribes. We are providing technical assistance to aid the governing bodies of recognized Indian groups in the development and implementation of tribal codes and court procedures with relevance for child abuse and neglect. Under this 2-year project, training and technical assistance will be provided to from 10 to 20 Indian reservations.

Five projects are now being conducted to demonstrate methods by which Indian organizations could deliver social services to Indian children and families. Arrangements being tested include overcoming jurisdictional barriers to the provision of services under Title XX, such as purchase of service arrangements between State agencies and tribal groups.

Similar efforts will focus specifically on the delivery of child welfare services in P.L. 280 states, the design of day care standards appropriate to Indian children living on reservations,

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All of these activities, including those that are still being put into operation, are 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.

While the Department supports the goals of S. 1214, we have several concerns with the bill and oppose its enactment. We understand that the Department of the Interior is preparing a substitute bill, and we would like to continue to work with the Subcommittee in its development. First, the bill would seem to move in the direction of separate social services for Indians, on terms that may imply that State governments are no longer responsible for their Indian citizens. We are reluctant to tamper with the existing system in ways that run the risk of disrupting services now being provided to Indian children on and off reservations, or jeopardizing the full availability to Indian children of services intended for all children. While we do not believe it is the intent of this legislation, or of those who have worked so hard, it would be unfortunate if the adoption of this legislation should lead to a cut-back in state services to which Indian families are now entitled. The Department is committed to assuring that funds now provided to the states for a variety of child welfare services are channelled to Indians on and off reservations.

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A second concern of the Department is the need to assure that there is a match between the capability of Indian tribes and organizations to administer S. 1214, and the responsibilities they would assume. For example, the bill provides for the assumption of judicial responsibilities as well as the administration of social welfare agencies or "Indian Family Development Centers." Because of past and present practices, Indian tribes have had little opportunity to acquire expertise in the development and administration of social welfare programs. Many HEW funding sources, for example, are tied to the provision of specific services designated in legislation, and are not generally available for designing and developing new service delivery capabilities. While some of our developmental and demonstration authorities have been used for these purposes, we are not confident that there has been enough time for them to make the difference that a bill such as this would require.

A third concern of the Department is the likelihood that S. 1214 discriminate in an unconstitutional fashion against Indians living off the reservation, who are not members of a tribe, by restricting access to state courts in the adjudication of child welfare matters. Indians residing on reservations, who are members of the tribe, can come under the exclusive

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or concurrent jurisdiction of tribal authority. However, with respect to nonmembers and Indians living off the reservation, there is some question as to whether the tribal courts can exert jurisdiction over these persons. Section 102 (c) of the bill establishes procedures that courts must follow in considering cases involving Indian children who reside off the reservation. Indian tribes must be provided notice of the right to intervene in the proceeding, and are granted authority on a case-by-case basis to request the transfer of jurisdiction if they maintain tribal courts. Our concern is that parents, particularly those of mixed backgrounds who may have few tribal contacts, will be compelled to fight for the custody of their children in perhaps distant and unfamiliar surroundings. This could represent a heavy emotional burden on the parent or parents, and an economic one as well. And it would be detrimental to the child to require that he or she be placed in a tribal setting if his or her only home has been in an off-reservation setting.

In this as in any other program for which the federal government shares responsibility there will be a need for some mechanism to provide on-going evaluation. Such evaluation data should help us better judge how changes like those being proposed are working, and how, or whether, they might be modified in the future.

One final issue is of concern of the Department. We are concerned that the adoption process could be seriously effected by section 101(c), which permits final adoption decrees to be set aside at any time if it can be shown that the adoption did not comply with the requirements of the bill. The uncertainty that such a provision could create in the minds of persons wishing to adopt children might make them reluctant to become adoptive parents.

Mr. Chairman, we do wish to point out that the Department is supportive of Section 102(a) of the bill, which gives tribal courts jurisdiction over child placement matters affecting Indian children who reside on a reservation. However, we do not support Section 102(c), which extends this coverage to children who do not reside on a reservation. The Department is also generally supportive of the provisions that require that notice of a child placement proceeding in state courts be provided to the family and tribe of the child.

The Department feels that the goals of S. 1214 are laudable. but we continue to believe that we have an obligation to see them achieved within the framework of existing programs.

We realize that such a posture places major responsibility with us, to see that we are more effective in the administration of existing programs, and that services in fact serve Indian children and their families. We have been grateful for the cooperative spirit shown by the staffs of both the House and Senate Subcommittees in working with us as they developed this legislation. We hope that spirit of cooperation will continue--whether in the context of this legislation or existing programs--to ensure that the needs of Indian children and their families will indeed be met.

STATEMENT OF
THE NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION
BEFORE THE
HOUSE OF REPRESENTATIVES SUBCOMMITTEE
ON INDIAN AFFAIRS AND PUBLIC LANDS
S. 1214, THE INDIAN CHILD WELFARE ACT

February 9, 1978

Mr. Chairman, I am Calvin Isaac, Tribal Chief of the Mississippi Band of Choctaw Indians and a member of the National Tribal Chairmen's Association. Thank you for asking NTCA to appear before you today.

I testified before the Senate Select Committee on Indian Affairs last year on the importance to the Indian tribal future of federal support for tribally-controlled educational programs and institutions. I do not wish to amend anything I said then, but I do want to say that the issue we address today is even more basic than education in many ways. If Indian communities continue to lose their children to the general society through adoptive and foster care placements 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 future. This is why NTCA supports S. 1214, the Indian Child Welfare Act.

Our concern is the threat to traditional Indian culture which lies in the incredibly insensitive and oftentimes hostile removal of Indian children from their homes and their placement in non-Indian settings under color of state and federal authority.

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Individual child and parental rights are ignored, and tribal governments, which are legitimately interested in the welfare of their people, have little or no part in this shocking outflow of children.

The problem exists both among reservation Indians and Indians living off the reservation in urban communities: an inordinately high percentage of our Indian children are separated from their natural parents and placed in foster homes, adoptive homes, or various kinds of institutions, including boarding schools. The rate of separation is much higher among Indians than in non-Indian communities.

In 1976 Task Force Four of the Policy Review Commission reported Indian adoption and foster care placement statistics for 19 states. Of some 333,650 Indians in those states under the age of 21, 11,157, or at least one in every 30, were in adoptive homes. Another 6,700 were in foster care situations. Comparison of Indian adoption and foster placement rates with those of the non-Indian population for the same state invariably showed the Indian rate was higher, usually at least two to four times as high and sometimes 20 times higher. Where the statistics were available they showed that most of the adoptions and placements, sometimes 95 percent of them, were with non-Indian families.

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. Many of the individuals who decide the fate of our children are at best ignorant of our cultural values, and at worst contemptful of the Indian way and convinced that removal, usually to a non-Indian household or institution, can only benefit an Indian child. Removal is generally accomplished without notice to or consultation with responsible tribal authorities.

Often the situation which ultimately leads to the separation of the child from his family is either not harmful to the child, except from the ethnocentric viewpoint of one unfamiliar with the Indian community, or is one which could be remedied without breaking up the family. Unfortunately, removal from parental custody is seen as a simple solution. Typically the parents do not understand the nature of the proceeding, and neither parents nor child are represented by counsel.

Not only is removal of an Indian child from parental custody not a simple solution, under present policies it is no solution at all. The effect of these practices can be devastating -- both for the child and his family, and in a broader sense, for the tribe. The child, taken from his native surroundings and placed in a foreign environment is in a very poor position to develop a healthy sense of identity either as an individual or as a member of a cultural group. The resultant loss of self-esteem only leads to a greater incidence of some of the most visible problems afflicting

Indian communities: drug abuse, alcoholism, crime, suicide. The experience often results, too, in a destruction of any feeling of self-worth of the parents, who are deemed unfit even to raise their own children. There is a feeling among professionals who have dealt with the problem that this sort of psychological damage may contribute to the incidence of alcohol abuse.

Culturally, the chances of Indian survival are significantly reduced if our children, the only real means for the transmission of the 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 tribes' ability to continue as self-governing communities. Probably in no area is it more important that tribal sovereignty be respected than in an area as socially and culturally determinative as family relationships.

The ultimate responsibility for child welfare rests with the parents and we would not support legislation which interfered with that basic relationship. What we are talking about here is the situation where government, primarily the state government has moved to intervene in family relationships. S. 1214 will put governmental responsibility for the welfare of our children where it belongs and where it can most effectively be exercised, that is, with the Indian tribes. NTCA believes that the emphasis of any federal child welfare program should be on the development of tribal alternatives to present practices of severing family and cultural relationships. The jurisdictional problems addressed by this bill are

difficult and we think it wise to encourage the development of good working relationships in this area between the tribes and nontribal governments whether through legislation, regulation, or tribal action. We would not want to create a situation in which the anguish of children and parents are prolonged by jurisdictional fights. This is an area in which the child's welfare must be primary.

The proposed legislation provides for the determination of child placements by tribal courts where they exist and have jurisdiction. We would suggest, however, that section 101 of the bill be amended to provide specifically for retrocession at tribal option of any pre-existing tribal jurisdiction over child welfare and domestic relations which may have been granted the states under the authority of Public Law 280.

The bill would accord tribes certain rights to receive notice and to intervene in placement proceedings where the tribal court does not have jurisdiction or where there is no tribal court. We believe the tribe should receive notice in all such cases but where the child is neither a resident nor domiciliary of the reservation intervention should require the consent of the natural parents or the blood relative in whose custody the child has been left by the natural parents. It seems there is a great potential in the provisions of section 101(c) for infringing parental wishes and rights.

There will also be difficulty in determining the jurisdiction where the only ground is the child's eligibility for tribal membership. If this criterion is to be employed there should be a further required showing of close family ties to the reservation. We do not want to introduce needless uncertainty into legal proceedings in matters of domestic relations.

There are several points with regard to placement proceedings on which we would like to comment. Tribal law, custom, and values should be allowed to preempt state or federal standards where possible. Thus we underscore our support for the provision in section 104(d) that the section is not to apply where the tribe has enacted its own law governing private placements. Similarly, the provision in section 102(b) stating that the standards to be applied in any proceeding under the Act shall be the standards of the Indian community is important and should be clarified and strengthened. The determination of prevailing community standards can be made by a tribal court where the court has jurisdiction. Where the tribal court is not directly involved the bill should make clear that the tribe has the right as an intervenor to present evidence of community standards. For cases in which the tribe does not intervene reasonable provisions could be devised requiring a nontribal court to certify questions of community standards to tribal courts or other institutions for their determination.

The presumption that parental consent to adoption is involuntary if given within 90 days of the birth of the child should be modified to provide an exception in the case of rape, incest, or illegitimacy. There appears to be no good reason to prolong the mother's trauma in such situations.

Section 103 establishes child placement preferences for nontribal agencies. Most importantly, the bill permits the tribe to modify the order of preference or add or delete categories. We

believe the tribes should also be able to amend the language of the existing preferences as written. The bill should state more clearly that nontribal agencies are obliged to apply the tribally-determined preferences.

The references in section 103 to "extended Indian family" should be amended to delete the word "Indian." The scope of the extended family should be determined in accord with tribal custom but placement should not be limited only to Indian relatives.

S. 1214 provides that upon reaching the age of eighteen an Indian adoptive child shall have the right to know the names and last known address of his parents and siblings who have reached the age of eighteen and their tribal affiliation. The bill also gives the child the right to learn the grounds for severance of his or her family relations. This provision should be deleted. There is no good cause to be served by revealing to an adoptive child the grounds for the severance of the family relationship and it is bad social practice. This revelation could lead to possible violence, legal action, and traumatic experiences for both the adoptive child and his adoptive and natural family. Further we do not believe it is good practice to give the adoptive child the right to learn the identity of siblings. This could result in unwarranted intrusion upon their rights and disruption of established social situations. In general, we recommend that the rights provided in section 104 not be granted absolutely, but rather that individual tribes be permitted to legislate on this question in accord with their custom.

Procedurally, the bill should be amended to make clear that children and parents appearing in tribal court shall have the right to representation by professional counsel as well as lay advocates, if the tribal court permits the appearance of professional as opposed to lay counsel in other proceedings. Finally, we strongly support the full faith and credit provisions of section 105 as a much needed step in the development of orderly tribal judicial process.

Title II of S. 1214 contains a welcome positive approach to child welfare problems. Resolution of jurisdictional questions as provided in Title I is a small part of the problem compared to the challenge of combatting poverty, substandard, overcrowded housing, child abuse, alcoholism, and mental illness on the reservation. These are the forces which destroy our families. With regard to the creation of family development programs and centers, however, we believe the bill is unduly restrictive. Tribes need not be authorized to create these programs. They should be regarded as eligible recipients or contractors for these programs. Section 202, authorizing these family programs should be more flexible, specifying that tribes are not limited by the terms of the statute but that other family development proposals may be funded at the discretion of the Secretary. The bill should expressly provide for planning of these family programs. Off-reservation programs (Sec. 203(d)) should specifically include counseling for adoptive or foster parents as well as the children and families facing disintegration.

We would delete paragraph 8 of section 202(a) providing for subsidization of adoptive children. We feel this would tend to undercut the parental responsibility necessary to the adoptive relationship and would provide an ill-advised incentive to adoption. We

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suggest that if the provision is to be retained it should apply to exceptional cases involving difficult placement such as unusual medical care or educational requirements.

We are opposed to the provisions of Section 204 of the bill mandating a Secretarial study of all Indian child placements for the last sixteen years with the potential for initiation, with parental consent, of legal proceedings to restore custody of the child to the natural parent. We are sure that many placements in the past have been technically defective or even morally wrong but the illegality of a placement ten, twelve, or fourteen years ago does not necessarily mean present family relationships must be dismantled. As sad as past practices may have been a Secretarial probe of the kind described is not wise. We should look to the future. At the very least, a study of this kind should be limited to the very recent past. The record-keeping requirements imposed upon the Secretary also give us some cause for concern for the same reasons. The stated purposes for which the information could be released to adoptive children or parents are reasonable, but we see the potential for abuse in wrongful application of the information. We think it best to release to parties only the identification of the court having jurisdiction. It would then be up to the court to make the information available under the provisions of section 104, as modified in accord with our earlier suggestions.

Mr. Chairman, this concludes our testimony. We support S. 1214 as being responsive to a critical problem and we look forward to progress in protecting and strengthening Indian families.

Thank you for inviting us to present our views.

EDWARD DRIVING HAWK
President

NARCISSE BRAVE
Vice President

Rosebud Sioux Tribe

Rosebud Indian Reservation
South Dakota

Incorporated Under Act of June 18, 1934, 48 Stat.—084

PHONE: 605-747-2381

JOHN KING, Jr.
Secretary

PHILLIP D. AMIOTTE
Treasurer

February 9, 1978

Teno Roncalio, Chairman
Sen. Select Sub-Comm. on Indian Affairs
Room 1324 Longworth
Washington, DC

Dear Chairman and Members:

Attached is a summary of the Rosebud Sioux Tribe's reaction to Senate Bill S. 1214, The Indian Child Welfare Act of 1977.

The following pages will constitute our testimony to be delivered to the Senate Select Sub-Committee on Indian Affairs. In essence, our testimony conveys the Rosebud Sioux Tribe's endorsement of Senate Bill S. 1214.

Sincerely,

Mona Shepherd

Mona Shepherd, Coordinator
RST Social Services
Rosebud Sioux Tribe
Box 148
Mission, South Dakota 57555

MS:fb
enc.

TESTIMONY BEFORE THE SENATE SELECT SUB-COMMITTEE ON INDIAN AFFAIRS
February 9, 1978
MONA SHEPHERD, COORDINATOR, RST SOCIAL SERVICES PROGRAM, ROSEBUD SIOUX
TRIBE, ROSEBUD, SOUTH DAKOTA

Teno Roncalio, Chairman
 Senate Select Sub-Committee on Indian Affairs
 Room 1324 Longworth
 Washington, DC

Dear Chairman and Members:

The Administrative body of the Rosebud Sioux Tribe, Rosebud, South Dakota has reviewed Senate Bill S. 1214, The Indian Child Welfare Act of 1977, and as designated representatives of our Tribe, we are here to state that the Rosebud Sioux Tribe gives its full support and approval of the contents of S. 1214.

The provisions of the Act pertaining to the transfer of cases from State to Tribal Courts is of special interest to our Tribe at this particular time. We are currently involved in a battle with the State of South Dakota which refuses financial assistance for the provision of services to "adjudicated" Indian Welfare youth. State and Tribal Courts in South Dakota differ in their legal interpretations of the term "adjudicated" youths and the conflict that has arisen has resulted in the lack of much needed services being provided to a number of our young Indian Welfare recipients. Should Senate Bill S. 1214 become law, conflicts in State and Tribal legal interpretations would be less evident because Tribal legal interpretations would be the only interpretations the Tribes need concern themselves with. The time wasted in battling with State Courts only creates additional hardships

TESTIMONY (by Mona Shepherd cont.)

Page 2

for our young people. In addition, the fact that Tribal Courts (through Senate Bill S. 1214) would have jurisdiction over the placement of Indian children would mean that parents and extended families of the children involved would have their rights more clearly recognized and enforced. Often parents or extended family members are not fully aware of their rights or the court procedures and their meaning and this often results in Indian children being placed in foster or non-Indian adoptive homes which is not the Tribe's ultimate goal.

In addressing Title II of Senate Bill S. 1214, the fact that grants could be directly awarded to Tribal entities would alleviate unnecessary paperwork and bureaucratic delays in providing much needed services to Indian children and their families. We are extremely apprehensive about the "State" or the Bureau of Indian Affairs having any control over family development programs for it has been our experience that such funding can be "frozen" by these agencies which leaves the Rosebud Sioux Tribe with no alternative course for funding. When this occurs, we find ourselves once again, entangled in financial battles with the "State" or the BIA Area Offices which only clouds the real issue of provision of services. Direct funding to the Tribes would also give those Tribal offices in charge of family development programs a clear view of the funds available to work with and would enable them to make more accurate projections for future financial projects.

TESTIMONY (by Mona Shepherd cont.)

Page 3

Title III which provides alternative measures to ensure that Indian children placed in non-Indian foster or adoptive homes are informed of their Tribal rights is a vital concern of the Rosebud Sioux Tribe. Not only can enrollment become a problem for these individuals but when probating Indian estates, heirs who are children adopted by non-Indian families cannot be traced due to the fact that State agencies will not release information as to their whereabouts nor will they release name changes resulting from such adoptions. The fact that the Secretary of Interior can intervene in such matters gives added assurance to these individuals that their full Tribal rights and benefits will be granted to them.

Title IV which pertains to the study of day school facilities such as Bureau of Indian Affairs Boarding Schools is a long-awaited action. Many of our Indian people have experienced living in these educational institutions and although many needed changes have occurred, there must be alternative education measures created. The study of current problems and situations in boarding schools will enable Tribal administrative bodies to seek out alternative educational programs and to make adequate financial projections for funding such alternative measures.

In summary, we of the Rosebud Sioux Tribe, fully endorse proposed Senate Bill S. 1214 and feel that its structure and purpose will enable the Indian tribes to overcome many stumbling blocks which have for too long hindered the provision of necessary services to our Indian children. The Rosebud Sioux Tribe sincerely hopes that this proposed legislation will soon become en-acted into law.

Puyallup Tribe of Indians

MEDICINE CREEK TREATY NATION

TESTIMONY S - 1214

By Faye La Pointe

Puyallup Tribe

March 9, 1978

Mr. Chairman, members of the committee, my name is Faye La Pointe. I am Social Service Director for the Puyallup Tribe, Washington State. I appreciate this opportunity to testify on S. 1214.

Tribal Council

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The Puyallup Tribe has been extremely active in the provision of social service to the Indian population on and adjacent to the reservation for many years. In our testimony last month we provided this committee with information about the existing social service programs and spoke of the desperate need for additional services.

Indian child welfare is a priority. We have been shocked and dismayed by paternalistic attitudes of non-Indian agencies i.e. state department of social and health services, various religious denominations and publicly elected officials when issues relating to Indian children are discussed.

The Puyallup Tribe along with Indian tribes are aware of the damaging effects such attitudes have had on Indian people all over the United States.

-1-

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Catholic Social Services questions Indian Tribes ability to handle confidential matters related to adoption of Indian children. They further question tribes ability to develop, recruit and license Indian foster/adoptive homes.

The Mormon church has deemed it necessary to develop the LDS program which is disguised as an educational program. The program has been responsible for removing Indian children from their homes and families for months or years at a time.

We know that most of our people have been baptized into Christianity and have been exposed to some type of Christian training. Christianity strictly prohibits childbirth out of wedlock; however, it has been unable to prevent it. An Indian person who has been trained in Christianity will still feel the stigmatism of SIN. This is the reason unwed mothers feel they must seek outside help and the need to relinquish their rights to the child. The young mother who successfully gives up her child and returns to the Indian community will face the cultural values of her people. More often than not this person suffers shame and humiliation and is well on her way to self destruction, lost forever to all people.

The extended family still exists in Indian country, it means living together, loving together, crying together, sharing all things and never having to worry about being alone.

It is not a religion, not a law, not a mandate. "It is a way of life."
A child is a gift from the Creator. It is to be loved by all and will

bring the joy that only a child can provide to the whole family.

Community based educational facilities are desperately need on reservations. The Puyallup Tribe has established a model school system. We invite LDS representatives to tour our facility so that they may learn how to assist Indian people in acquiring a formal education. The answer is not in the removal of children. It is in supporting us in helping ourselves.

Many of us have managed to remain Christians in spite of human errors of lay people. Traditional religion combined with Christianity. There is only one Creator.

S-1214 will appropriate \$26,000,000.00 nationally. With all due respect, this figure is unrealistic. Puyallup Tribe's portion would be about \$80,000.00. This would not even cover necessary staffing, equipment, supplies, and travel for a Child Placement Agency. Additional funds must be sought.

In 1977, we suggested that Indian Health Service be the conduit for the Indian Child Welfare funds. I would like to reinforce that idea today. Indian Health Service has been the most active Federal Agency involved in Indian Child Welfare in our area. They have been providing mental health services to children and families who have been separated through various court systems. They recognize that these actions are extremely detrimental to the mental well being of the total Indian Community.

Indian children represent our future. We urge this committee again to protect the rights of our future. We have a history that goes back long

before the coming of the white man. We have traditions that still live today. Our children will again walk with pride. At some point in time we (all people) will be able to communicate. Then we will be able to share the beautiful part of us that so many of you have been trying to understand..

S 1214 has come a long way. The Puyallup Tribe has actively participated in its growth. We support the bill and urge this committee's support.

Thank you.

STATEMENT OF BOBBY GEORGE
 Director, Division of Social Welfare
 The Navajo Nation
 on S. 1214, Indian Child Welfare Act
 before the
 Subcommittee on Indian Affairs and Public Lands

February 9, 1978

Distinguished Congressmen, staff, and visitors:

Thank you very much for this opportunity to express the concerns of the Navajo Nation on the proposed Indian Child Welfare Act.

We firmly support the intentions of the bill. The attempt of Congress to take steps to correct past and current abuses of Indian family's rights in child welfare matters is needed and admirable. Indeed, our history is filled with overzealous acts by states and other non-tribal agencies who unjustly take many Navajo children away from their homes and place them in foreign and hostile environments somewhere off-reservation. However, another principle is involved here.

This is the principle of Indian sovereignty. It is our contention and the contention of the American Indian Policy Review Commission that Indian tribes are sovereign and our relationship to the United States government is one of equals. Thus, we must be concerned about the scope of federal intervention into our domestic affairs.

We request that a provision be added which makes it unquestionably clear that we retain our sovereign rights to adopt our own laws and handle child custody matters in our ways. This will insure that our traditional values, customs, and practices are honored. For over twenty years now our Tribal Council has had the policy of requiring any placement of Navajo children

Statement of Bobby George
February 9, 1978
Page Two

be done only with the consent of our tribal courts. At a minimum, we suggest that tribal participation in the Act be made optional.

It is easy to see that the bill will prove a tremendous help to those tribes bound to Public Law 83-280 provisions. However, for our Tribe, we believe we presently possess the capability to exercise responsible authority in Navajo child custody proceedings. We have a tribal code with a juvenile section and a large social services agency.

We welcome the Congress's attempt, however, to regulate the Indian child placement activities of states and non-tribal agencies. A clear definition of the role and range of state and other agency's involvement in this is drastically needed. Perhaps the bill could more directly address this area.

We also welcome the Title II section of the bill. Our foremost concern, however, is that the amount of funds being authorized is simply far short of the real need. We ask the Committee to seriously address this area and authorize full funding.

Also, concerning the declaration of policy section, we again request the Committee to recognize the tribe's rights to self-determination. In this policy section language should be added to make this perfectly clear.

Again, thank you for this opportunity to present our views. We plan to submit a detailed and comprehensive statement on the bill in a matter of days.



TACOMA INDIAN CENTER, INC.

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TESTIMONY - CONGRESSIONAL COMMITTEE
S. 1214

Statement of Vera Harris - Director of the Tsapah (Grandfather)
Child placement/protection agency of
the Tacoma Indian Center

and Elizabeth Cagey Administrative Assistant Caseworker/
Legal Coordinator

CONGRESSPERSONS - We respectfully submit the following recommendations for rewording or change of areas of this much needed legislation, as the current wording will cause great hardship and misunderstanding when implementation becomes a reality.

DEFINITIONS

(1) Parent (must be revised to include only Indian Adoptive parents)

In one particularly horrible case, the adopted Indian girl was raised to believe all Indians are ugly and worthless. At the age of 14 she mothered a new son. This young Flathead woman is now in a Washington State Institution attempting suicide and classified as chronically alcoholic. The non-Indian adoptive parents under Washington State law have been allowed to throw her away and keep her child. They have all of the rights of natural grandparents and no efforts of tribal or urban Indian agencies have had an effect on his continuing placement in this destructive family unit.

The young woman has "legal" custody, but believes she is bad, and if the child remains in the home, they may love her again.....

SEC. 101. (C) Temporary Placements can/should be allowed if certified by a authorized agent of a tribal court. Voluntary consent is often an emergency for medical treatment, or a mental health crisis.

Case A

A young woman appears in a hospital emergency ward with her tiny 2 year old and 4 year old children. She has brought her children's clothing with them. She is in labor and has no help at home. There are no responsible adults available. She has no time to go to a tribal court, the attendance at the hospital take care of her children until a Tsapah (or Tribal) caseworker arrives and the consent form is later signed authorizing emergency placement.

Case B

A singleton parent (a young woman) goes into the Indian Community Clinic for a routine medical appointment. She has left her 4 children

S. 1214 ---2---

with a neighbor "for a couple of hours". An hour and a half later she is in a local hospital awaiting surgery. Her children range from 15 months to 4 years of age. Before she left the clinic, she requested a voluntary consent form for placement of her children and left emergency instructions on how to find her children and a few of their belongings. Without the mechanism for immediate assistance she would have had one more set of problems to deal with, and our foster licensed homes would have both been in violation of the law, and denied payment.

SEC. 102. (h)

This series of exceptions must only apply to juveniles 16 and older, or not to remain off reservation for over 90 days. The Tribes must receive notice 15 days prior to transport of child, the nearest reservation/urban child welfare program must be contacted in advance for the purpose of coordinating support services.

Example:
Jesus Christ Church of Latter Day Saints has included in it's program children in the 5-7 age grouping and many of these children spend several years off reservation. Some children are so acclimated into these placements that they are in effect "adopted". Community alternatives could/would be adopted or developed to these out of community placements if adequate dollars were available for Tribal (community) services.

Bureau and denominational (primarily Catholic) boarding schools are able to recruit children (separating family units) because of the racism of local school districts, and a lack of reservation (community) supports.

SEC. 102. (i)

Except cases where temporary wardships have been filed with State courts and tribes wish to assume those wardships.

On some reservations all families who have been on public assistance have been forced to agree to state wardships for their children before securing basic life support. The new wording could be interpreted to mean a previous wardship, however secured would constitute authority to continue with placements, or adoptive plans.

and.....cases where Tribes have Tribal registers of adoptive parents and the State Courts (agencies) are anticipating adoption without regard or respect for these Tribal resources.

Foster home recruitment by Indian agencies has been successful, but most of these families will not register with State agencies. We believe the same is/and will be true of adoption registers. The State agencies are being allowed to say they have searched the State registers and their non-Indian placements are legal because our families haven't placed their names on these registers.

Washington State has passed recent legislation but the effect is simply new boards forming, and the State hiding behind confidentiality laws withholding information from those boards, and using their registers to withhold custody.

S. 1214 ---3---

Sec. 202. (B) (6)

funding must be included to meet the needs of.....

Transportation, emergency custody, and communication assistance for both Urban and Reservation programs to provide emergency and scheduled supervision and care of children "going home" to (another) Tribal jurisdiction.

This bill calls for extensive referrals of Indian children to their primary governmental jurisdiction, but does not cover the costs of phone calls, office and casework support, crisis or scheduled care, transportation and supervision, etc..

THERE IS NO MECHANISM PROVIDED FOR URBAN PROGRAMS OR TRIBAL PROGRAMS TO "SIT IN" ON STATE COURT PROCEEDINGS FOR THE PURPOSE OF MONITORING OR FORCING THE IMPLEMENTATION OF THESE NEW LAWS. WITH ANY CHILD IN A CURRENT WARDSHIP STATUS THE DOORS WILL BE CLOSED IN THE NAME OF CONFIDENTIALITY AND WE WILL FIND OURSELVES TOTALLY HELPLESS TO PROVIDE PROTECTION TO OUR CHILDREN, OR SERVICES FOR RETURNING THEM TO THEIR RESERVATIONS IF CUSTODY IS SECURED.

SEC. 203. (A) The Office of child development and the Social Rehabilitative Services agencies of H.E.W. Region 10 have been indifferent and unhelpful. The only helpful agency has been H.E.W. Indian Health - mental health services - specifically John Bopp M.S.W.. Serious consideration should be given to keeping these funds within the Indian Health agency under 638 with the headquarters (Rockville) Administrative management working with both Tribes and Urban Centers.

SEC. 301. (a) Confidentiality; CAN NOT AND MUST NOT apply to Tribal Governments, Courts, or Social Work Agencies. The Bureau as the rights protection trustee should have prevented the alienation of Indian children all along and should not now be controlling files needed by these tribal agencies. There is no possibility of Urban Indian social work agencies doing their work in conjunction with the Bureau of Indian Affairs. Many of these lost children are second generation Bureau of Indian Affairs relocation program victims and the Bureau is very defensive of this program.



Department of Justice

STATEMENT

OF

LARRY L. SIMMS
ATTORNEY/ADVISOR
OFFICE OF LEGAL COUNSEL

BEFORE

THE

SUBCOMMITTEE ON INDIAN AFFAIRS AND PUBLIC LANDS OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

S. 1214 -- PLACEMENT OF INDIAN CHILDREN IN ADOPTIVE HOMES

ON

MARCH 9, 1978

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you this morning to present the views of the Department of Justice on the constitutionality of this bill, which deals generally with the placement of Indian children in foster and adoptive homes.

The Department of Justice has expressed its views on this bill in a letter prepared by the Office of Legal Counsel and transmitted to Chairman Udall on February 9, 1978, which is attached to this statement. I would request that this letter be accepted as part of my statement today.

For our purposes this morning, I would like briefly to summarize the analysis and conclusions in the February 9 letter. The feature of this bill which raises constitutional doubts is its provision which would permit Indian tribal courts to adjudicate child custody and other family relations matters even though the parents or guardians of the child involved might desire to have such matters adjudicated in a state court which otherwise would have at least concurrent jurisdiction over such matters.

The constitutional question presented involves the potential for invidious discrimination created by S. 1214 which may be prohibited by the Fifth Amendment. In analytical terms, the bill would appear to create certain classes of parents and guardians who would lose an existing right to have certain family relations matters adjudicated in state court solely on the basis of a certain percentage of Indian blood in their child. As the February 9 letter points out, for two of these classes -- parents living on and off reservations who are not members of the tribe asserting jurisdiction -- the denial of a right of access to state court could be based solely on the amount of Indian blood in the child involved. In other words, two sets of parents might be similarly situated in all respects except that the child of one set might have the amount of Indian blood required under this bill to be "eligible" for tribal membership and to trigger tribal jurisdiction and the other child would have less than that required for "eligibility." The result of S. 1214 would be that the former parents would be denied access to state courts whereas the latter would have access to state court.

As the February 9 letter also points out, the Supreme Court has never decided whether the kind of classifications drawn by this

aspt parent, not child
 bill -- based solely on racial characteristics -- would constitute invidious discrimination. Indeed, the analogous cases recently decided by the Court -- Morton v. Mancari, Fisher v. District Court and United States v. Antelope -- all involved situations in which the persons claiming to have been discriminated against were members of Indian tribes.

Mancari, Fisher and Antelope clearly establish that Congress may constitutionally classify and treat differently than non-members persons who are members of Indian tribes. Thus, this bill as applied to family relations matters of voluntary tribal members is, in our opinion, constitutional. Those same cases, however, do not support the different treatment which would be accorded to parents or guardians by this bill whose children are "eligible" for tribal membership but whose parents or guardians have, for whatever reasons, declined tribal membership or who themselves may not even be eligible for tribal membership.

I would emphasize here that we are not talking about discrimination against the child involved; rather, we are talking about discrimination against the parents or guardians, living on or off a reservation, who themselves may not even be eligible for tribal membership.

Our reading of these recent cases indicates to us that the courts would apply a stricter standard of review to the classifications drawn in this bill than has been applied to classifications based on tribal membership. To survive constitutional scrutiny, it is our view that a compelling governmental interest would have to be shown to justify denying parents and guardians who are not tribal members access to the state courts. It is also our view that no such compelling interest has been demonstrated with regard to this bill.

- 4 -

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

FEB 9 1978

Honorable Morris K. Udall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is to bring to your attention several areas where the Department of Justice perceives potential problems with S. 1214, a bill "To establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes". In our view, certain provisions of the bill raise serious constitutional problems because they provide for differing treatment of certain classes of persons based solely on race. S. 1214 was passed by the Senate on November 4, 1977 and is now pending in the Interior and Insular Affairs Subcommittee on Indian Affairs and Public Lands.

This Department has not been involved in the hearings relating to the bill. Our comments therefore are based on a reading of the text of the bill rather than on a review of the testimony and legislative history which necessarily would be considered by a court which had to interpret its provisions and determine its constitutional validity.

As you may be aware, the courts have consistently recognized that tribal governments have exclusive jurisdiction over the domestic relationships of tribal members located on reservations, unless a state has assumed concurrent jurisdiction pursuant to federal legislation such as P.L. 83-280. It is our understanding that this legal principle is often ignored by local welfare organizations and foster homes in cases where they believe Indian children have been neglected, and that S. 1214 is designed to remedy this, and to define the Indian rights in such cases.

The bill would appear to subject family relations matters of certain classes of persons to the jurisdiction of tribal courts which are presently adjudicated in state courts. The bill would accomplish this result with regard to three distinct

categories of persons, all possessing the common trait of having enough Indian blood to qualify for membership in a tribe. One class would be members of a tribe. Another class would be non-tribal members living on reservations, and a third would be non-members living off reservations. These three classes would be denied access to state courts for the adjudication of certain family relations matters unless "good cause" is shown under §102(c) of the bill.

The general constitutional question raised by S. 1214 is whether the denial of access to state courts constitutes invidious racial discrimination violative of the Fifth Amendment. See Bowling v. Sharp, 347 U.S. 497 (1954). This question is most properly addressed by focusing on each of the three classes described above and contrasting each class with a similarly situated class of persons whose access to state courts is not affected by the bill.

The class of persons whose rights under the bill may, in our opinion, constitutionally be circumscribed by this legislation are the members of a tribe, whether living on or near a reservation. In Fisher v. District Court, 424 U.S. 382 (1976), the Supreme Court addressed an argument made by members of the Northern Cheyenne Tribe that denial to them of access to the Montana state courts to pursue an adoption did not involve impermissible racial discrimination. In that case, both the persons seeking to pursue adoption of the child in question and the natural mother of the child who contested the right of the Montana courts to entertain the adoption proceeding were residents of the reservation and members of the Tribe. The Court stated that:

"The exclusive jurisdiction of the Tribal Court does not derive from the race of the plaintiff but rather from the quasi-sovereign status of the Northern Cheyenne Tribe under federal law. Moreover, even if a jurisdictional holding occasionally results in denying an Indian plaintiff a forum to which a non-Indian has access, such disparate treatment of the Indian is justified because it is intended to benefit the class of which he is a member by furthering the congressional policy of Indian self-government. Morton v. Mancari, 417 U.S. 535, 551-555 (1974)." 424 U.S., at 390-91.

In Fisher, the class to which the Court was apparently referring consisted of members of the Northern Cheyenne Tribe. This is so because of the Court's citation to Morton v. Mancari, in which the Court had upheld preferential treatment of Indians in certain employment situations by reasoning that the "preference, as applied, is granted to Indians not as a discrete racial group, but rather, as members of quasi-sovereign tribal entities . . ." 417 U.S., at 554.

More recently, the Court has reentered this thicket in United States v. Antelope, 45 U.S.L.W. 4361 (U. S. April 19, 1977). In that case, enrolled Coeur d'Alene Indians contended that their federal convictions for murder of a non-Indian on the Coeur d'Alene Reservations were products of invidious racial discrimination because a non-Indian participating in the same crime would have been tried in state court and would have had certain substantial advantages regarding the elements required to be proved for conviction.^{1/} The Court, in rejecting this claim, held that the Coeur d'Alene Indians "were not subjected to federal criminal jurisdiction [under 18 U.S.C. §1153] because they are of the Indian race but because they were enrolled members of the Coeur d'Alene Tribe." Id., at 4363.

We believe that Mancari, Fisher and Antelope directly support the constitutionality of this bill as it affects the access of tribal members to state courts. At the same time, these cases do not resolve the constitutionality of S. 1214 as it would affect the rights of non-tribal members living either on or off reservations. Indeed, they can be read to suggest that, absent tribal membership, Congress' freedom to treat differently persons having Indian blood is diminished.

With regard to non-members living on a reservation, a footnote in the Antelope case would appear indirectly to address, but not resolve, the question presented by this bill:

"It should be noted, however, that enrollment in an official Tribe has

^{1/} Specifically, the State of Idaho, in which the crime occurred, did not have a felony murder rule so that, in order to be convicted of first degree murder, the State would have had to prove certain elements that were not required to be proven in the federal trial because a felony-murder rule was in effect in the latter court.

not been held to be an absolute requirement for federal jurisdiction, at least where the Indian defendant lived on the reservation and 'maintained tribal relations with the Indians thereon.' Ex Parte Pero, 99 F. 2d 28, 30 (CA 7 1938). See also United States v. Ives, 504 F. 2d 935, 953 (CA 9 1974) (dicta). Since respondents are enrolled tribal members, we are not called on to decide whether nonenrolled Indians are subject to [federal criminal jurisdiction] and we therefore intimate no views on the matter." 2/

In Ex parte Pero, supra, the Seventh Circuit affirmed the grant of a writ of habeas corpus to a non-enrolled Indian, who had been convicted of murder in a state court, holding that the Indian could only be tried in federal court by virtue of what was then 18 U.S.C. §548, the predecessor of 18 U.S.C. §1153. The court appeared to base its holding on the fact that the Indian was the "child of one Indian mother and half-blood father, where both parents are recognized as Indians and maintain tribal relations, who himself lives on the reservation and maintains tribal relations and is recognized as an Indian" Id., at 31.

With regard to non-members who are otherwise eligible for tribal membership who live on reservations, Pero at least stands for the proposition that the federal interest in the "guardian-ward relationship" is sufficient to secure to a non-enrolled Indian the protection of a federal criminal proceeding as opposed to trial by a state court. Pero is, however, predicated on a federal interest which would appear to us to differ in kind from the federal interest identified in Mancari, Fisher and Antelope. In those latter cases, the federal interest in promoting Indian self-government was specifically identified as a touchstone of the Court's opinions. In our view, this weighty interest is present in S. 1214 in a more attenuated form with regard to non-tribal members, even those living on reservations. An eligible

2/ 45 U.S.L.W., at 4363 n.7.

Indian who has chosen, for whatever reasons, not to enroll in a tribe would be in a position to argue that depriving him of access to the state courts on matters related to family life would be invidious. Such an Indian presumably has, under the First Amendment, the same right of association as do all citizens, and indeed would appear to be in no different situation from a non-Indian living on a reservation who, under S. 1214, would have access to state courts. The only difference between them would in fact be the racial characteristics of the former.

We also think that even Pero only marginally supports the constitutionality of this Bill as applied to non-members living on reservations. In Pero, the focus of the court's inquiry was on the contacts between the convicted Indian and the Indian tribe and reservation. In S. 1214, the inquiry would appear to be solely directed to contacts between the Indian child and the Indian tribe, whereas the persons whose rights are most directly affected by the bill are the parents or guardians of the child. 3/ Thus, there

3/ As we understand the bill, this denial of access to state courts would be predicated on the existence of "significant contacts" between the Indian child and an Indian tribe and that this issue would be

"an issue of fact to be determined by the court on the basis of such considerations as: Membership in a tribe, family ties within the tribe, prior residency on the reservation for appreciable periods of time, reservation domicile, the statements of the child demonstrating a strong sense of self-identity as an Indian, or any other elements which reflect a continuing tribal relationship."

The bill is unclear as to whether this determination would be made by a tribal court or state court.

is little support for the constitutionality of this bill as applied to non-tribal members living on reservations and the rationale applied by the Court in Mancari, Fisher and Antelope would not save the bill. The simple fact is that the parents of an Indian child may find their substantive rights altered by virtue of their Indian blood and the simple fact of residence on a reservation. The Court has never sanctioned such a racial classification which denied substantive rights, and we are unable to find any persuasive reason to suggest that it would do so.

Our conclusion with regard to non-members living on reservations is even more certain in the context of non-members living off reservations. In such a situation, we are firmly convinced that the Indian or possible non-Indian parent may not be invidiously discriminated against under the Fifth Amendment and that the provisions of this bill would do so. Assuming a compelling governmental interest would otherwise justify this discrimination, we are unable to suggest what such an interest might be.

For reasons stated above, we consider that part of S. 1214 restricting access to state courts to be constitutional as applied to tribal members. However, we think that S. 1214 is of doubtful constitutionality as applied to non-tribal members living on reservations and would almost certainly be held to be unconstitutional as applied to non-members living off reservations. ^{4/}

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

(Signed) Patricia M. Wald

Patricia M. Wald
Assistant Attorney General

^{4/} We also note our concern with the language used in sections 2 and 3 of the bill regarding "the Federal responsibility for the care of the Indian people" and the "special responsibilities and legal obligations to American Indian people." The use of such language has been used by at least one court to hold the federal government responsible for the financial support of Indians even though Congress had not appropriated any

(footnote 4 continued)

money for such purposes. White v. Califano, et al., Civ. No. 76-5031, USDC, S. Dak. (September 12, 1977). We fear the language in this bill could be used by a court to hold the United States liable for the financial support of Indian families far in excess of the provisions of Title II of the bill and the intent of Congress.

ARTHUR CAHLOW, PRESIDENT
DARRELL MADENA, VICE PRESIDENT

FRED MCDUGALL, EXECUTIVE DIRECTOR
KENT P. TUPPER, LEGAL COUNSEL

DANIEL MORRISON, SECRETARY
HARTLEY WHITE, TREASURER



The Minnesota Chippewa Tribe

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CONSTRUCTION CO. 035-2711 EDUCATION DIVISION - 035-2252

March 8, 1978

Honorable Teno Roncalio
House Interior Committee
House of Representatives
Washington, D.C.

RE: Indian Child Welfare Act, 1977 S.1214

The Minnesota Chippewa Tribe fully supports Bill S.1214. The two (2) greatest social service problems facing our Tribe is finding a permanent funding and the jurisdictional issues. The jurisdictional issues are addressed in the bill and so is funding but not permanent funding. Our current funding will expire and we will lose our current Social Service Division. A solution to addressing the permanent funding problem should be considered. Our need is to expand our Social Services capabilities so we can deliver all aspects of a welfare department. We can handle them and we want to. In this letter of testimony we have included:

1. Resolution #239-77
2. A breakdown fo our current Social Service Division.
3. Letters of support for Minnesota Chippewa Tribe Social Service Division.
 - a. Itasca County
 - b. Beltrami County
 - c. Cass County
 - d. State of Minnesota DPW

MINNESOTA CHIPPEWA TRIBE SOCIAL SERVICE DIVISION

The Minnesota Chippewa Tribe has been delivering social services to the Indian people on the six (6) Reservations since February 1975. What started as a part time job for a College student has grown into a major Division of the Minnesota Chippewa Tribe.

The present Minnesota Chippewa Tribe Social Service Division consists of three (3) parts: the BIA contracted staff, the American Indian Foster Care Project, and the Division of American Indian Youth Services.

With the monies contracted from the BIA, a Director, and two (2) Social Services Representatives have been hired. They work with all aspects of soc-

ial services and on all six (6) Reservations. The American Indian Foster Care Project is funded by HEW and comprises of a Project Supervisor, two (2) Foster Care Workers and a Foster Home and Adoption Worker. They have been working on permanent planning for Indian children. The third branch to Social Services is Supportive Services to American Indian Youth. The personnel is headed by a Project Manager and there are four (4) co-ordinators. Their area of responsibility is developing programs for Indian youth through Big Brother/Big Sister, Volunteers in Probation and a Mini-Bike Program.

The following is a list of our objectives and goals:

BIA CONTRACTED STAFF

1. To develop and plan for Indian self-determination in the area of Social Welfare.
2. To prepare Indian and non-Indian organizations and agencies to work cooperatively in development of human resources.
3. To maximize Indian utilization of Social Services through diagnosis and referral action, as well as serving as an advocate on call.
4. To sensitize local, state, public and private social services agencies to the human factors and cultural values, especially attitudes, motivation and psychological readiness of Indians to participate in human service programs.
5. To consult with and secure active participation of Tribal Councils and other Indian groups in the various programs and projects aimed at improvement of social conditions.

AMERICAN INDIAN FOSTER CARE PROJECT

1. Develop better child welfare services - ie; to reduce the # of children separated from their families and to place Indian children in Indian foster or adoptive homes if removal is necessary, to develop a permanent plan for the those Indian children unable to return home.
2. Recruit American Indian foster home and American Indian adoptive homes.
3. Develop tribal social services staff capacity for child welfare services delivery and increase county welfare staff awareness in working with Indian families.
4. Develop child welfare resources within the Indian communities.

SUPPORTIVE SERVICES TO AMERICAN INDIAN YOUTH

1. To provide Indian youth with positive personal relationships with people of Indian descent with whom the youth can relate.
2. To gain the Indian community's participation in the community corrections approach as well as in developing an interest in assisting Indian youths.
3. To reduce juvenile delinquency, adult crime and recidivism through Volunteers in Probation, Bin Brother/Big Sisters, Foster Care and the National Youth Project Using Mini-Bikers.
4. To reduce alienation between American Indian youth and the welfare and criminal justice systems.
5. To provide Indian alternatives to social services involved in foster care placement that will strengthen positive identification.
6. To accomplish self-determination for the American Indian through Supportive Services Programs.

Here are the results after three (3) years of operation:

1. Native American professionals and county professionals can work in union to provide quality services for Native American children.
2. When Native American caseworkers are involved in caseloads of Native American children;
 - a. The incidence of placement in Indian environments is greatly increased.
 - b. The number of voluntary placements of children in alternate home environments is increased.
 - c. The incidence of a permanent placement plan is greatly increased.
 - d. The number of children moving to an improved placement situation is increased.
 - e. The frequency of moves is reduced.
 - f. The length of time in foster care is greatly reduced.
 - g. The number of licensed Indian foster homes increases.

The supportive Services to American Indian Youth has only been in existence since August 1977 and here are a list of their recent developments:

AREA	TOTAL ENROLLEES	VOLUNTEERS IN PROBATION ONLY	BIG SISTER/ BIG BROTHER ONLY	VOLUNTEERS ENROLLED IN BOTH PROGRAMS
Duluth	21	10	11	0
International Falls	19	4	15	0
Fond du Lac	11	1	8	2
Mille Lacs	7	5	0	2
TOTAL	58	20	34	4

CLIENTS ENROLLED IN:

AREA	TOTAL CLIENTS	VOLUNTEERS IN PROBATION	BIG BROTHER/ BIG SISTER
Duluth	10	10	0
International Falls	11	2	9
Fond du Lac	14	0	14
Mille Lacs	2	0	2
TOTAL	37	12	25

Referrals for probationers are made to Supportive Services through the Probation Office Departments and court systems. Referrals for Big Brother/Big Sister are made to Supportive Services Program by schools, counselors, judicial systems, welfare departments and parents.

(ATTACHMENT I)

RESOLUTION 239-77

WHEREAS, the bill S.1214 recognizes Tribal authority, and

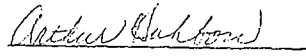
WHEREAS, the bill S.1214 is in apposition to agencies removing Indian children from their homes without tribal knowledge, and

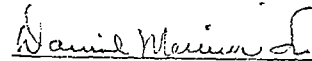
WHEREAS, the bill S.1214 designates tribal government to place their own children into situations the Tribe feels is best for that child, and

WHEREAS, the bill S.1214 authorizes the secretary to make grants or enter into contracts with Tribe for these services for Indian children.

NOW, THEREFORE BE IT RESOLVED, that the Tribal Executive Committee of the Minnesota Chippewa Tribe, whole heartedly support this legislation.

We do hereby certify that the foregoing resolution was duly presented and enacted upon by a vote of 9 for, 0 against at a special meeting of the Minnesota Chippewa Tribal Executive Committee, a quorum being present, held on September 7-8, 1977, at Duluth, Minnesota.


 Arthur Gahbow, President
 THE MINNESOTA CHIPPEWA TRIBE


 Daniel Morrison, Sr., Secretary
 THE MINNESOTA CHIPPEWA TRIBE

(ATTACHMENT II)

The following is a biographical sketch, in narrative form, of key positions within the Social Service Division.

PROJECT DIRECTOR - Robert Aitken.

Robert is a member of the Minnesota Chippewa Tribe from the Leech Lake Indian Reservation. He is 29 years old, married, and had two children. He is a graduate from Bemidji State University - 1975. He has a B.S. degree in business administration and a minor in Native American Indian Studies.

His work experience includes two years as a home - school co-ordinator for the Bemidji School district. His current position is Director of Social Services for the Minnesota Chippewa Tribe.

Roberts educational and work experience highlight his awareness of and ability to interpret strenghts, needs and shortcomings of the Indian family and community; administrative experience in social service programs e.g., ability to work with professional social workers, psychologists, etc. both public and private; ability to interpret social welfare policy as affecting or not affecting Native Americans; ability to interpret, lecture and write on Indian values, culture, life style as it fits into the framework of social work theory and practice; and also has been able to prepare training and research proposals, progress and evaluation reports, models and funding proposals.

PROJECT SUPERVISOR - Lila George

Lila is also a member of the Minnesota Chippewa Tribe from the Leech Lake Indian Reservation. She is 31 years old, married and has two children and one foster child. Lila lived in foster homes through out her adolescent years. Also, she and her husband have been a licensed foster home since 1972.

Lila is a graduate of the University of Northern Iowa - 1975. She has a B.A. degree in social work, with a double emphasis in sociology and social psychology.

Her most recent work experience includes director of a youth project, funded by the Governors Crime Commission for prevention and control of youth crime on the reservation. She as been a counselor for the Minnesota Chippewa Tribal Adult Vocational Education department and has been Project Supervisor for the past year.

These job experiences highlight her experience in casework ability to conduct interviews, collect and analyze relevant facts, providing necessary information for referral and preparing case file histories; knowledge of program policies and operations to facilitate coordination of the work within a projects total objectives; ability to deal with and relate to Indian people, which requires knowledge of unique Indian values and sensativity to the needs of Indian people; and has the ability to analyze, evaluate, interpret and coordinate program objectives to insure understanding of the work of the project by the Indian community.

FOSTER CARE WORKER - Patricia Morgan

Patricia is a member of the Minnesota Chippewa Tribe, and life time resident of the Leech Lake Indian Reservation. She is 25 years old, married and has one child. Patricia was a foster child in her youth.

Patricia is a high school graduate of Remer, Minnesota.

She has been a foster care worker for the Leech Lake Reservation Business Committee since July 1975 to the present time.

This work experience highlights her ability to deal with and relate to Indian people on the reservation; knowledge of Indian values, lifestyle, culture, and awareness of the social problems and needs of Indian people; ability to interpret this knowledge within the framework of social work theory and practice; and the ability to work closely with social workers in public welfare agencies. Throughout this experience as a foster care worker, Patricia had demonstrated a high aptitude and willingness to learn and a high concern for Indian people.

FOSTER HOME AND ADOPTION WORKER - Marlene Hardy

Marlene is a member of the Minnesota Chippewa Tribe and a Leech Lake Reservation enrollee. She is 28 years old, married, and has five children.

Marlene is a high school graduate and has accumulated 60 credits at Bemidji State University toward a degree in Early Childhood Education.

For three years, she was a lead teacher for the Leech Lake Reservation Headstart. She then moved on to be director of the Cass Lake Day Care Center. From October 1976 to the present, she has been with the Minnesota Chippewa Tribe Social Services.

These job experiences have served to highlight her ability to work with local Indian families and organizations; ability to conduct interviews and collect relevant data, referral counseling as well as preparing case file histories on clients; ability to work with social workers in public welfare agencies; and demonstrates a commitment to Indian people through action and application of these skills.

Marlene's foster life - 3 years as a foster child and currently a foster parent.

SOCIAL SERVICE REPRESENTATIVE - Cy Howard Jr.

Cy is a member of the Minnesota Chippewa Tribe from the White Earth Indian Reservation. He is 39 years old and a graduate from University of Minnesota in 1975. He received a B.S. degree with a major in social work and a minor in psychology. His work experience includes 1 year as the Education Director for Forest Lake Public Schools. During the past 9 months he has worked in the Minnesota Chippewa Tribe Social Service Division.

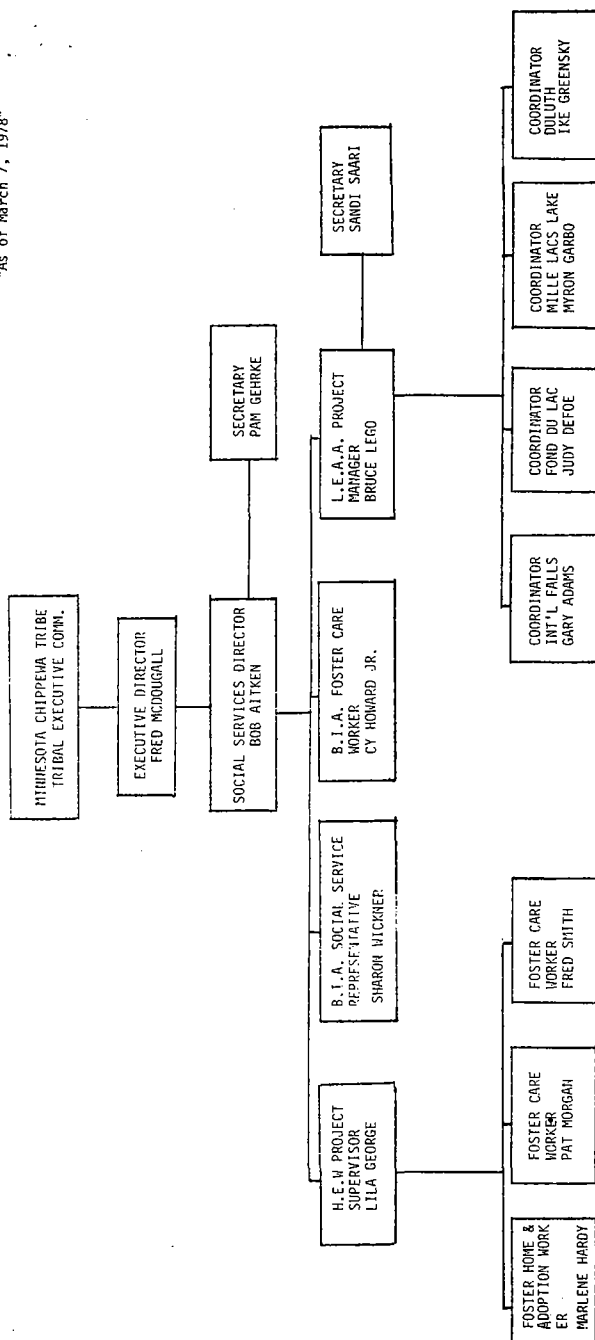
SOCIAL SERVICE REPRESENTATIVE - Sharon Wickner

Sharon is a member of the Sault St. Marie Tribe in Michigan and graduated in 1977 from Bemidji State University. She is degreed in social work with a minor in psychology. She has worked with the Cass Lake Public Schools and has just recently started with us.

FOSTER CARE WORKER - Fred Smith

Fred is a member of the Lac Court O' Reilas band of Chippewa's. He graduated from Macalaster College with a major degree in History and a minor in Sociology in 1977. He has worked as a Child Protection Services Field Worker and has been with Social Services since August 1977.

"As of March 7, 1978"



(ATTACHMENT III)

ITASCA COUNTY SOCIAL SERVICE

P. O. Box 570, Grand Rapids, Minn. 55744

Director/Edwin N. Yattaw -- Telephone 218/326-9441

Mr. Robert Aitken, Director
Social Services
Minnesota Chippewa Tribe
P. O. Box 217
Cass Lake, Minnesota 56633



May 5, 1977

Re: American Indian Foster
Care Project

Dear Mr. Aitken:

This agency has had interest and awareness of the Foster Care Project entered into by the Minnesota Chippewa Tribe with Health, Education, and Welfare, and Cass County Social Service. I have been at several gatherings where earlier the Project Staff was describing the project and the intent of the grant from H.E.W.

This agency provides social and financial services to the residents of Itasca County. Within the general population of Itasca County, there are a number of American Indians. On an overall margin we estimate that 8% of our total caseload is Indian. This figure is inclusive of both our financial and social service programs. Most of the persons of American Indian heritage reside on the portion of the Leach Lake Reservation that extends into Itasca County.

The matter of concern in your project is foster care services for the American Indian. Our agency in the past has been able to recruit into our foster care program a number of Indian families. As much as possible we have always attempted to provide Indian homes for Indian children. We were not always successful.

It is felt that the project such as established some few months ago was one that may develop the needed resource of added foster care services for the American Indian of the Leach Lake Reservation area.

This agency is supportive of your efforts in this particular area of foster care development, and the agency's assurance given is that we would mutually and cooperatively extend our hand in any development of this particular area of service as is able to be demonstrated and/or achieved.

Very truly yours,

George B. DeGuiseppe
George B. DeGuiseppe
Social Work Supervisor

BELTRAMI COUNTY WELFARE DEPARTMENT

C. E. MELBERG, DIRECTOR

PHONE 751-4310

BOX 608

BEMIDJI, MINNESOTA 56601

May 5, 1977

Mr. Bob Aitken
 Director of Social Services
 Minnesota Chippewa Tribe
 Box 217
 Cass Lake, MN 56633

Dear Mr. Aitken:

This letter is written in support of the extension or renewal of the Leech Lake Indian Foster Care Project.

It has been an interesting experience for me to have had some association with the project since it began. I firmly believe that it is a necessary project and one that certainly ought to be continued if we are to meet the goals that both you and we are striving to achieve. As I am the Director of Social Services in the Beltrami County Welfare Department, my relationship to the project is one of being on the fringes rather than the center of the project's focus and concern.

During the months that the project has been in existence, several significant changes have occurred for us. We have attempted for many years to recruit Indian foster homes for Indian children and we have met with very little or no success. As a secondary bi-product of the project, we now have several Indian foster homes that are presently actively involved in caring for children. Another significant bi-product of the project is the closer working relationship which now exists between the entire Social Service Division of both the Minnesota Chippewa Tribe at Cass Lake and the Beltrami County Welfare Department at Bemidji. And, of course, a most significant change is occurring in the provision of protective services for all children, but especially the Native Americans.

It is certainly our hope that the project will be continued and adequately funded for further pursuit of the goals that I have mentioned. I can certainly pledge the continued support and cooperation of this agency in preserving a quality of care for children, including the protection of their heritage.

Yours truly,

Lloyd W. Johnson
 Lloyd W. Johnson
 Director of Social Service



LWJ:ja

*Cass
 County*

DEPARTMENT OF SOCIAL SERVICES

P.O. BOX 517, WALKER, MINNESOTA - 56484

May 9, 1977

(218) 547-1540

JOHN FJELSTUL
 Director

Robert Aitken, Director
 Social Services
 Minnesota Chippewa Tribe
 P.O. Box 217
 Cass Lake, MN 56633

Dear Bob:

We wish to share with you our agency's positive feelings toward your efforts to seek continued funding for the American Indian Foster Care Project.

It has been our pleasure to work with the Minnesota Chippewa Tribe, Leech Lake Reservation Business Committee and the American Indian project staff persons for the past several months through the current Foster Care Project. We feel the project has demonstrated a workable relationship between Indian and county governing bodies is possible.

We support the concept of self determination as vital to the future of the American Indian. You can be assured of our continued interest and willingness to cooperate in the development of social service programming in the American Indian community.

Cordially

John Fjelstul
 John Fjelstul
 Director





STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE
CENTENNIAL OFFICE BUILDING
ST. PAUL, MINNESOTA 55155

OFFICE OF THE
COMMISSIONER
612/256-2751

GENERAL
INFORMATION
612/296-6117

May 6, 1977

Mr. Robert Aitken
Director of Social Services
Minnesota Chippewa Tribe
P.O. Box 217
Cass Lake, MN 56633

Dear Mr. Aitken:

I understand that the Minnesota Chippewa Tribe plans to apply for a research and demonstration grant from the Department of Health, Education, and Welfare in order to provide improved child welfare services to Indian families.

On behalf of the Department of Public Welfare, I want to express our encouragement and support of what the Minnesota Chippewa Tribe hopes to accomplish and I think that Minnesota would be a good testing ground for such a demonstration project.

I am aware of the fact that the Leech Lake Project has had some problems in its organization, but have been fully assured that this is in the process of being ironed out and will be plunging "full speed ahead".

Good luck in this new endeavor.

Sincerely yours,

Zelta Fuder
Foster Care Specialist
Service Development Section
Division of Social Services

ITH/cif



AN EQUAL OPPORTUNITY EMPLOYER

House Subcommittee on Indian Affairs and Public Lands

My name is Bill Cady, and I am a supervisor working for the Cass County Department of Social Services. My purpose here today is to describe a mutual effort by the Minnesota Chippewa Tribe and Cass County to provide better child welfare services for Indian families on the Leech Lake Reservation.

Cass County is located in the North central part of Minnesota and includes the bulk of the Leech Lake Reservation. In Minnesota the legal responsibility for the provision of social services to Indian families on the reservations of the Minnesota Chippewa Tribe rests with the county of residence. In Cass County, American Indians constitute approximately 10% of the total county population, but Indian children constitute 80% of the children Cass County has placed in foster care. Thus, historically, an Indian child in Cass County was about 8 times more likely to be separated from his family and cultural heritage than a non-Indian child. The children were usually placed in non-Indian foster homes. These appalling statistics are a legacy of the past. The Minnesota Chippewa Tribe and the Cass County Department of Social Services are now working together to remedy what can only be described as a social catastrophe.

In July of 1975, the Cass County Welfare Board agreed to fund a full time Indian child welfare service worker under the supervision of the Minnesota Chippewa Tribe to work specifically with Indian children on the Leech Lake Reservation. As mutual respect and trust developed between the agencies, we jointly prepared an application through the Minnesota Department of Public Welfare for a project demonstration grant