United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
ANADARKO AREA OFFICE
P.O. BOX 368
ANADARKO, OKLAHOMA 73005

IN REPLY REFER TO:
Social Services

CERTIFIED - RETURN RECEIPT REQUESTED

MAR - 2 1984

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

Dear Ms. Giago:

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

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

1. Indirect Cost must not exceed 10% of allowed funding.

2. No out-of-state travel allowed unless directly related to a child welfare case.

3. Per sq. ft. cost for office rental space must be specified in budget narrative.

4. Purchase of office furniture or equipment will not be allowed.

5. No stipends or reimbursement for travel of child welfare board members to attend board meetings will be approved.

6. Funding for consultants and training must be justified and will be closely monitored. Budget narrative should clearly justify proposed expenditures in these areas.

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

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

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

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

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

PROPOSED AMENDMENTS

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

Arizona Court of Appeals in The Appeal of Maricopa County, but confusion still exist surrounding this language. Applying the word "removal" to the Indian Child Welfare Act excludes all independent adoptions where the child is placed in an adoptive home without ever having been given a chance to be placed with the Indian natural parent or the Indian extended family, and violates Congress' responsibility to protect the potential tribal population of eligible tribal members. While independent adoptions and step-parent adoptions in the context of divorce proceedings were clearly meant to be included within the Act's protections, state courts seeking to ratify an already existing adoptive placement or who are disenchanted with the Indian Child Welfare Act to begin with have in several cases applied this language to exclude such children from the protections of the Act. Therefore, we propose an amendment that the declaration of policy be amended to state: "the establishment of minimum federal standards for the removal of Indian children from their families, the placement of all Indian children who must be placed in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs."

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

the parent of an Indian child;" Section 1903(1)(ii) termination of parental rights, should read "which shall mean any action resulting in the termination of the parent-child relationship, including termination which occurs as part of a voluntary adoption;" Section 1903(1)(iv), adoptive placement, shall read "which shall mean the permanent placement of an Indian child for adoption by an agency or by private individuals, including any action resulting in a final decree of adoption."

Under 1903, subsection 6, the definition of Indian custodian must be changed to state "means any Indian person who has lawful custody of an Indian child under tribal law or custom or under state law." This change from the word "legal" to "lawful" is necessary. Since most states have definitions which place legal custody in the state agency, the word "legal" should be changed to that the purpose of the Act is fulfilled, namely that the person who has physical custody under state law and stands in the shoes of the parent is protected from the inappropriate cultural removal of the Indian child from their custody. In one case a state court decided that because tribal custom did not specifically define custody in a relative as "legal custody," the grandparent in that case could not have legal custody under tribal custom and was not an Indian custodian. This opportunity for technical obstruction of the Indian Child Welfare Act must be removed.

Section 1903, subsection 9, addresses the definition of parent, and must be expanded to specifically recognize the rights of biological parents under the United States Constitution. Even though 25 U.S.C. §1921 states that federal law which provides higher protections to the rights of parents shall apply in the Indian Child Welfare Act, several courts have apparently been mystified by the absence of the word parent in the right to intervene under 25 U.S.C. §1911, and have held that since a parent is not the first listed preference under the placement section for the Act, 25 U.S.C. §1915, that parents were obviously not meant to be included within the Act's protection. This distinction is critical in those cases where a non-Indian mother is trying to place her child with non-Indian adoptive parents and states that she does not want her child raised as an Indian, even

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though she does not wish to raise the child herself. While it seems clear to those of us who practice Indian law that section 1921 protects the rights of unwed Indian parents in the proceeding, a short statement in the definition of parent that says "parents shall have all those rights to which they are entitled under the United States Constitution" will help clarify this confused area for state courts, and will give them less opportunity to avoid the application of the Act's requirements.

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

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

Notice does not mean intervention and obstruction by the tribe in all instances and if the placement preferences of the Act are followed, there will be no reason to fear tribal intervention in voluntary proceedings.

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

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

federal court claims in state court, then reversion to the federal forum would be lost. Since under the Indian Child Welfare Act, the Indian party and tribe have no rights under federal law except those which are given by the Indian Child Welfare Act, it would be useless to intervene in a state court proceeding under that principle because the protections of the Indian Child Welfare Act could not be raised in the state court without losing access to the federal forum later on. Since in most cases violation of the Indian Child Welfare Act takes place by ignoring the Act and following state law, tribes will gain nothing by intervening in state court proceedings under such a principle. Therefore, federal court jurisdiction must be clarified under this section.

Mr. ALEXANDER. We will have to vacate this hearing room at 2:30, which gives us about 40 minutes, and we have 6 more witnesses. So I am going to have to hold everybody to a strict 5 minutes.

Michelle Aguilar, from Portland, OR, of the Suquamish Tribe.

STATEMENT OF MICHELLE AGUILAR, INDIAN CHILD WELFARE COORDINATOR, SUQUAMISH TRIBE, STATE OF WASHINGTON, AND CONSULTANT TO THE NATIVE AMERICAN REHABILITATION ASSOCIATION, IN PORTLAND, OR

Ms. AGUILAR. I am Michelle Aguilar, and I am employed as an Indian child welfare coordinator for the Suquamish Tribe in Washington, and I am a consultant to the Native American Rehabilitation Association in Portland, OR. So I am representing both a small tribe and an urban program. Thank you for allowing me to be here today.

Many of the concerns that I was going to speak to have been spoken to already, so I will not take up time reiterating those points. Some are very important, and I do not want to gloss over them. You will receive the information in my written testimony.

Our major concern is funding. We are a small tribe, and I am basically a one-person social service agency. One of the problems I see in the BIA's way of giving grants and allocating funds on the population basis is that there are certain costs that are across the board. One individual costs a certain amount of money in salary, fringe, and indirect. Each program has a basic cost just to set up. That is not going to change whether you have 5,000 people you are serving or 500. One individual still costs a given amount of money.

Another point I want to make in terms of funding is, when you have those basic costs, many of your programs go out the door. One person cannot do it all. There are eight different programs under title II that are eligible for funding. We try and do a little bit of all, but we are basically doing band-aid work and barely keeping the programs together.

I was going to talk about some examples that we have happening, in terms of cases, but I will just go over those briefly. We have a case right now in California. I do not have the funds to go down

there. We were not notified that the permanency planning issue was coming up in court until 4 days ahead of the court date, and then notification was not by the State. The State was not even aware that this child had a tribe that he was eligible to be enrolled in. I have contacted the urban program down there, and they have been extremely helpful. Without the urban programs, I personally would not have been able to get to our children in many States where they have come up in court.

This does not include any kind of legal services. This is basically saying: "Hey, this is an Indian child. They are eligible for enrollment. Please notify the tribe." Those kinds of things are really important.

The other thing I wanted to talk about, too, is that we are here to serve the children. The funding issue comes back down to: If a child is from a small tribe or a large tribe, does it make any difference? Is that child any less important? Should they receive any less services because they are from a small tribe? That, again, comes down to the allocation of funds. The issue is the same in regards to the valuable urban programs.

Some of the things that we are not able to do is to make a concentrated effort in recruitment and licensing of foster homes. We are deputized through an urban center to do this because we do not have funds to set up our own program/agency. I do not have adequate money to travel to make all of the home visits, much less the time. As a one-person staff, I do all the administrative work, all the grant writing, all the counseling, all the CPS, all the paralegal preparation and counseling that has to do with our youth code that we have in place at tribal court. I do intervention in the State courts, and I also act as a referral source for the county juvenile courts due to mutual cooperation.

Even being here today is very difficult. It takes time away. It comes down to being a one-person social service agency. The problems are the same whether you are a small tribe, a large tribe, or an urban program. I will give some specifics in the written testimony.

There is one case that I think I would like to have go on record, because it is a tragedy, and we have not heard those here today. I had a 16-year-old client who, for various reasons, was released from tribal court. She had hidden a pregnancy from everybody concerned, and when it was found that she was pregnant, she was asked to leave her mother's home, for a lot of different problems. We were not able to provide this girl with any kind of prenatal care, any kind of parenting education, any kind of support services at a time when she needed them, and she was desperately asking for some Native American culturally relevant types of services. We could only refer to State programs and urban Indian programs. She did give birth to her child in an urban center. I saw the child 2 weeks after birth, perfectly healthy, a wonderful child; 2 weeks later, that child ended up in the emergency room in a hospital, later in intensive care with a virus that had spread into her lungs, causing high fevers and convulsion. I do not right now know if that child is still alive. If that child lives, that child will probably have permanent brain damage from the fever and convulsions.

We have lost one of our children, due to lack of funds and due to the lack of being able to provide the kind of complete services that they needed. Thank you.

[Subsequent to the hearing the following correspondence was received for the record:]

Area Code (206)
598-3311

THE SUQUAMISH TRIBE
P.O. Box 498 Suquamish, Washington 98392

RECEIVED

May 21, 1984

Senator Mark Andrew, Chairman
Select Committee on Indian Affiars
U.S. Senate
Washington, D.C. 20510
Attn: Pete Taylor

This written document is respectfully submitted by Michelle Aguilar, Saboba/California Mission, Indian Child Welfare Coordinator for the Suquamish Tribe, Port Madison Indian Reservation, Suquamish, Washington. I am representing the concerns of the Suquamish Tribe and would like to thank you for the opportunity to present testimony on the Indian Child Welfare Act of 1978, (ICWA) P.L. 95-608. We are asking for recognition of and solutions to the problems of implementation of the ICWA and for appropriate levels of funding for operation of such programs under the Act.

The Suquamish Tribe recognizes that there are many important issues concerning the implementation of the Act, most of which have been expressed during the oral testimony and in writing by others. Our testimony is primarily concerned with the critical issue of funding and how it affects the implementation by small tribes. Without an adequate and reliable funding source, other changes and/or amendments to the Act will not help tribes and urban organizations provide the services that are necessary to meet the intent of the Act.

We are asking that Congress:

...Establish a funding authorization separate from the Snyder Act

...Establish an authorization level of 29.5 million as recommended by the Association of American Indians and Alaskan Native Social Workers

...Provide funding for tribes and urban programs on an entitlement basis rather than a competitive basis

...Mandate funding to be consistent and on a three year cycle

...Establish a method for monitoring and compliance of state and private agencies including enforcement by penalty for non-compliance

...Establish a consistent reporting system for research, information, and entitlement purposes

As Indian people, united on this issue of Indian Child Welfare, we present our case. We maintain that our cause was presented with overwhelming evidence and justification six years ago. This Act, without proper appropriations, is now adding to the problems evidenced six years ago, by causing many complications resulting from tribes and urban programs trying to handle cases without the personnel and available services to do so.

95-608 states that there "is no resource that is more vital to the continued existence and integrity of Indian tribes than their children." The tradition of our people consider our children the link between generations, the carriers of tradition and culture and our assurance that The People will continue to exist. Without adequate appropriations we will continue to lose our children.

The Suquamish Tribe is a small Pacific Northwest Federally recognized Tribe with approximately 530 Indians residing in our defined service area. In the last fiscal year The Suquamish Indian Child and Family Assistance Program has been able to assist approximately 139 clients. The numbers are growing with calls for assistance coming from as far away as Alaska and California. Yet with inadequate funding we are unable to meet the needs of even our small tribe. In terms of establishing programs to meet the intent of the Act it should be recognized that a basic funding level is needed to operate every component of a social service program, and that this is true whether it be a small tribe or a very large tribe. Under Subchapter 11, Section 1931, a minimum of eight types of child and family service programs are listed as eligible for funding; all of these components are important to a successful holistic approach to treatment and prevention of family breakup. In trying to meet the needs of the clients and the intent of the Act, I find I am faced with the task of operating on an approximately 4,000 dollar budget after salary, indirect, and fringe are extracted. In essence this means I am a one person social service agency.

In reality a one person social service agency requires that I am on call 24 hours a day for crisis intervention, provide counseling to youth and families, conduct all administrative duties including grant application and reports to the BIA,

provide CPS and investigations, provide services to the Tribal youth court as well as state and county court involvement, act as a para-legal, and sit on a Local Indian Child Welfare Advisory Committee for the State. I also act as a recruiter and licensing agent for foster homes. These are just a few of the roles of a one person social service agency. These different duties can be a source of conflict within themselves and yet there is not enough money to set up separate units to meet the demands of the ICWA.

Another major need that is absent due to funding restraints, is in prevention through family and youth oriented recreational and cultural activities. Most successful preventative counseling with teens occur in a group environment that is loosely structured, where trust and rapport can be developed. Many clients are resistive to court ordered counseling. Recreational and cultural programs provide the setting that leads to information that can alert the counselor to potential problems and provide a vehicle where intervention strategies and treatment can be developed. In this manner many cases that might not come to attention until a crisis develops and court intervention is appropriate can be resolved in the early stages.

An important and major isssue is the need for the continued support of urban programs. I have called on urban programs many times for services in and out of state on behalf of a child of our tribe. Without them many of our children would fall through the cracks. Currently an out-of-state urban program is helping me with a case that has come before the state court. We were not notified and compliance with 95-608 was non existent until the client was advised to notify the tribe by the urban center and we were able to intervene. This case is still in the state court but with P.L. 95-608 proceedures being followed. Without this urban center, intervention would have been near impossible due to restricted funds and geographical location. This is a case where the intent of the Act is in operation due to cooperation of a tribe, an urban program, and a state.

Other problems that are directly tied in with funding issues include:

-the limiting of foster home recruitment, licensing, and foster parent training and support services
-restrictions in networking with other tribes and organizations
-the availability of community education in parenting and sexual and physical abuse and neglect, including sexual/physical abuse counseling services
-lack of funds for professional training and education
-unnecessary competition in the grant process
-lack of monitoring for compliance and enforcement

We need cooperation in order to function. We cannot constantly be pitted against one another for funds. We need consistency and the means to take care of ourselves. What of all the children whose tribes or urban programs are not funded? Who protects them? Comparatively speaking we are asking for very little. Yet, due to a lack of funding or a separate appropriation, and in spite of a well intentioned law, we are still losing our children.

Mr. ALEXANDER. Our next witness is from the Minneapolis Urban Center, Jake Mendoza.

STATEMENT OF JAKE MENDOZA, DIRECTOR, CHILD OUTREACH PROGRAM, MINNEAPOLIS URBAN CENTER, MINNEAPOLIS, MN

Mr. MENDOZA. Mr. Alexander, you have my testimony in writing, so I will summarize even more than I had planned to summarize.

My name is Jake Mendoza, and I represent the Minneapolis American Indian Center. My title is director of the Indian Child Welfare Act Monitoring Program. I am also considered the Indian Child Welfare Act monitor. What we do is, we monitor Indian Child Welfare Act court hearings. We attend court hearings and ensure that the Indian Child Welfare Act is being complied with. I want to stress that we do not represent anybody. We do not act as an advocate. We are neutral. We are not a party. We only monitor court hearings, and the presiding judge of the Hennepin County Juvenile Court is allowing us to make comments. We do not make recommendations on the merits of cases.

In 1982 to 1983, we were funded by the Bureau of Indian Affairs in the amount of a little over $40,000. We are now being funded by the Minneapolis Community Action Agency which is an agency that helps poor people.

In my written testimony, I have given examples of obstacles, problems that we have had in securing funding from the Bureau of Indian Affairs. I have also given examples of noncompliance and also other examples of other concerns that we have related to the Indian Child Welfare Act.

I know that we are pressed for time, but I want to share something with you. Our program began in October 1982, and from October 1982 to December 17, 1982, we had set up an effective monitoring program. On December 17, we received a letter from Mr. Earl Barlow, who is the area director of the Minneapolis area for the BIA. I would like to read you that letter. It is real short. This is just to show you an example of some of the game-playing and some of the obstacles that are thrown not only to Indian organizations but also Indian tribes that make it difficult to help Indian people and Indian child welfare cases. He addresses it to my supervisor, the director of the Indian center, Mrs. Hallmark:

Dear Mrs. Hallmark: Thank you for the information which you submitted with your letter dated December 1, 1982. As you know, questions have been raised about the selection of Mr. Mendoza as monitor for the Indian Child Welfare Act grant. Since receiving this resume with your December 1, 1982, letter, we have determined that he does not qualify for the position. We are directing you to expend no further grant funds for this position, since the incumbent does not meet the qualifications of the job description in the approved grant.

The Bureau of Indian Affairs and others interested in the implementation of the Indian Child Welfare Act in Minnesota have been very concerned about the State court's compliance with the Act. There is concern that the tribes are not always notified when children come before the courts. There is also concern that the children who must be placed outside their homes are not always placed in compliance with the Federally-mandated placement criteria. For these and other reasons, we were pleased when the Minneapolis American Indian Center revised its proposal and decided to monitor Indian cases going through the courts. Because of the nature of the job to be done, we approved the revised proposal. We believe that requiring a master's degree, plus experience, is appropriate and request that you comply with this plan. Sincerely, Earl Barlow.

In our proposal, in our job description, we had left out an "or" which would have allowed a nondegreed person to have that job if he was an appropriate person. We did that by mistake. The BIA was technically correct. So the monitor was terminated on December 20. The Bureau had asked us to revise the job description. We, in good faith, revised the job description, submitted it, and on January 7, we received a letter from Mr. Barlow again. This shows the paternalistic attitude of the BIA in trying to run Indian programs, programs that should be run by Indian people.

DEAR MRS. HALLMARK: This is a confirmation of the January 3, 1983, telephone conversation between you and Mr. Smith concerning the need to meet and discuss the contents of the job description for the Indian Child Welfare Act monitor to be employed by the Minneapolis American Indian Center. We have received the revised job description which was submitted with your letter of December 20, 1982. As written, it does not provide enough assurance that the employee would be qualified to carry out the duties and responsibilities of the job. Our personnel staff read the MAIC Indian Child Welfare Act proposal and drafted a job description which we believe is commensurate with the proposal. After you have reviewed this proposed job description, we would be glad to discuss it, if you wish. Due to the great amount of community interest in filling this job, we would like to be involved in evaluating the applications which are submitted or participate in a review of the most qualified applicants. Our involvement would in an advisory capacity, with no intent to assert any authority or responsibility for the Minneapolis American Indian Center. . . .

Then he goes on:

Sincerely, Earl Barlow.

Now, we wanted to get this program going. So in good faith, we accepted their job description. We said, "Fine. You can be part of this process." At the last minute, the day of the interviews, they told us, "It is inappropriate for us to participate," and on February 7, we were allowed to continue our program.

One thing that is interesting is that when we applied for 1983–84 money, we submitted that same job description that they had given us, and when they denied us, one of the reasons was that the job description was too general. They had, in fact, criticized their own job description.

There are a lot of concerns that I have in regard to noncompliance with the act. I will not go into those because many of those concerns have been expressed already. But I do want to say a few words about the statements that were made by the people from the Bureau of Indian Affairs when they are recommending zero funding for urban areas.

There are about 40,000 Indian people in the State of Minnesota; 56.6 percent of them live in the Twin Cities. We only received, for the 1983–84 year period, $64,000. How are we going to provide services for those people; and if we do not, who is going to do it? The tribes cannot come down here. I received a letter from Mr. Bob Aiken from the Minnesota Chippewa Tribe, in response to another issue about section 106. But this is what he says:

There is another point here you must deal with, and that is reality. You know the Act is terribly underfunded and misdirected by the Bureau of Indian Affairs. Most of the off-reservation notices we receive are not physically responded to by our tribe. We do not have the people to do it. This causes an attitude problem, with the agency sending us notices in that we do not attend the court proceedings anyhow. If we were able to respond more efficiently, then I would feel more comfortable in insisting on more formal notice.

I am not only asking for more money for the urban areas, and for that money not to be cut, but I am also asking for more money for the tribes. When I left the Twin Cities, I spoke with Judge Aleski, and I asked him what he wanted me to say in his behalf. He said, "More money for the tribes." I have a lot more to say, but I know that we are really short on time, so if you have any questions I will be more than happy to answer them.

Mr. ALEXANDER. We will make sure that your full statement is printed in the record. We should make clear that it has been the committee's position for the last several years to steadfastly oppose the Bureau of Indian Affairs' attempts to terminate funding for urban programs, both in this area and also in its sister agency at the IHS to terminate funding for urban health centers. It has been our effort, along with that of others, that has kept some of the funding in existence.

Mr. MENDOZA. I sincerely believe it would be disastrous if it were to be cut for Indian people in the cities. Who would they go to? Thank you.

[The prepared statement follows. Testimony resumes on p. 239.]

MINNEAPOLIS AMERICAN INDIAN CENTER

1530 East Franklin Avenue • Minneapolis, Minnesota 55404
612-871-4555

MAIC INDIAN CHILD WELFARE ACT MONITORING PROGRAM

TESTIMONY

BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

APRIL 25, 1984

Distinguished members of the Senate Select Committee on Indian Affairs, thank you for having me here today to give testimony on the status of the Indian Child Welfare Act in the Minneapolis area. Specifically, I will address the problems we have encountered in receiving BIA funds, examples of non-compliance of the Act and related concerns.

The purpose of our Monitoring program is to promote the stability and security of Indian tribes and families by ensuring that the Federal standards for the disposition of child foster care and adoptive cases, as provided by the Indian Child Welfare Act of 1978, are met.

The Honorable Judge Allen Oleisky, the Presiding Judge of the Hennepin County District Court - Juvenile Court Division has cooperated fully with our program and because of his fairness and effort we are allowed to observe all Indian Child Welfare Act hearings in Hennepin County. We do not advocate for anyone. Our only purpose is to ensure compliance of the Act and we do this in a neutral and objective manner.

Our program began operations on October 11, 1982. The first month was spent in training the newly hired Monitor as was provided in our BIA grant. The second month was spent in establishing an effective monitoring system. We were able to get the support of the major Indian organizations in the Twin Cities as well as the support of those local non-Indian groups working on the implementation of the Act. We were monitoring 13 Indian child welfare cases when on December 17, 1982 we received a letter from Mr. Earl Barlow, BIA Area Director which stated, "We are directing you to expend no further grant funds for this position (Monitor) since the incumbent does not meet the qualifications of the job description in the approved grant." We were forced to shut down our operation which meant not being able to help our thirteen clients because technically the BIA was correct. We had accidentally sent the Bureau a job description that was missing an "or". The ICWA Monitor was terminated on December 20, 1982.

The Minneapolis American Indian Center was extremely concerned about this incident because on one hand an outside agency, specifically the BIA, was taking a paternalistic attitude towards MAIC, directing it what to do. On the other hand the Indian Center realized that it had an obligation to the Indian Community to provide a badly needed service. MAIC swallowed its pride, revised the Monitor's job description and immediately resubmitted the description in good faith.

On January 7, 1983 the Minneapolis American Indian Center received a letter from Mr. Earl Barlow of the BIA which stated, "We have reviewed the revised job description which was submitted with your letter on December 20, 1982. As written it does not provide enough assurance that the employee would be qualified to carry out the duties and responsibilities of the job. Our personnel staff read the MAIC Indian Child Welfare Act proposal and drafted a job description which we believe is commensurate with the Proposal. After you have reviewed this proposed job description we would be glad to discuss it if you wish." It is interesting to know that the MAIC and BIA job descriptions were very similar. The Indian Center was anxious to get started on this Monitoring program which meant rehiring a Monitor and accepted the BIA job description.

In the January 7, 1983 letter to MAIC the Bureau also stated, "Due to the great amount of community interest in filling this job we would like to be involved in evaluating the applications which are submitted or participate in a review of the most qualified applicants." MAIC had nothing to hide since the hiring process would involve a point system. The Center Board members would score the applicants and the person with the highest score would be hired. Again, because the Indian Center was anxious to get on with providing a critical service to the community, invited the BIA to participate in reviewing the hiring of the ICWA Monitor. On the day of the interviews the BIA refused to participate in the process stating that it was "inappropriate" that the Bureau be involved. The Indian Center hired its new Monitor.

In early February 1983 the Bureau of Indian Affairs authorized the Minneapolis American Indian Center to proceed with the Monitoring program. On March 23, 1983 MAIC was notified that the Monitoring program would not be refunded for the 1983-84 year period. The Center appealed this decision at the highest departmental level in Washington and lost. One of the reasons for our losing the appeal was as follows. "The position descriptions, namely the Indian Child Welfare Act Monitor and the Monitoring Assistant, are very general." This Committee might be interested to know that the same job description for the Monitoring position submitted to the BIA in our 1983-84 proposal was the same one that the BIA drafted. They in fact critized their own job description.

In a letter dated June 27, 1983 that we received from the Department of Interior regarding our appeal, MAIC was informed that "This is not a direct service activity." Why did the Department of Interior feel that it was appropriate to fund our Monitoring program one year and not the next? We understand that the issue of the Monitoring program being a direct service is arguable. Although we stress to everyone that walks through our door that we do not advocate or take sides in ICWA cases, parents and many times children, with that knowledge, still request our presence in court in efforts to have their rights protected under the Indian Child Welfare Act. In my opinion, we are providing a direct service.

I am here today to inform this Committee that the minimum Federal standards that are suppposed to be followed whenever an Indian child is removed involuntarily from his or her family for placement in foster or adoptive homes are not fully being complied with, at least not in Hennepin County. I am also here to share a few examples of non-compliance with the Act and also to express concerns of issues related to the Indian Child Welfare Act or Public Law 95-608 as it is sometimes referred to.

On the last page of the information submitted to this Committee you will note that our monitoring concept has the full support of the Honorable Judge Allen Oleisky, the Presiding Judge of the Hennepin County District Court Juvenile Court Division.

We firmly believe that the attitude of the court, at least in Hennepin County, is that of commitment towards the Act. Our belief in the commitment of Hennepin County is somewhat different. While there have been expressions, both verbal and written, from higher level Hennepin County staff of their desire to comply with the Act, we have discovered that the expressed desire is not always shared at lower levels.

For example, we are aware of an assistant Hennepin County attorney who has expressed a dislike for our Monitoring program but most important has expressed an unwillingness to cooperate with us to ensure compliance of the Indian Child Welfare Act. This same attorney has not only been uncooperative to us but also to at least four Hennepin County Public Defenders and to two private attorneys who handle ICWA cases. I have been informed by a Hennepin County Public Defender of this attorney's most recent verbally expressed resentment that Indian children are treated differently in Indian Child Welfare Act cases. I often wonder if this type of person should be allowed to handle ICWA cases.

Another problem that our Monitoriing program has discovered, which many times creates unnecessary problems, is the lack of knowledge of the Indian Child Welfare Act by some professionals in positions who should know this Federal law. Included in this distinguished company are judges, referees, assistant county attorneys and most alarmingly public defenders. I would like to add that at least seven Hennepin County Public Defenders are currently meeting on a monthly basis to improve their ICWA knowledge. I commend their efforts and would also like to add that they are meeting on their own without outside pressure.

Let me share with this Committee an experience I had last year. In July of 1983, I received a phone call from a mother who was being investigated by Hennepin County for child abuse. At the time of the phone call an Intake worker from the County was at the mother's home asking questions. The child, an 8-month old little Indian girl, had been taken to the hospital by a babysitter who accused the mother of inflicting cigarette burns all over the child's body. A hold had been placed on the child. The child had no cigarette burns on her body but did have Impetigo. The mother, in tears and frightened that the County was going to take her child away, desparately requested that I monitor the meeting. I normally only monitor court proceedings but under the circumstances I decided to monitor this particular meeting.

The Intake worker was very nice. I explained to the mother and grandmother, who were both in tears, that the Intake worker was only doing her job. I also explained that the County was obligated to investigate every charge of child abuse and that this was to our childrens' benefit. After talking with the mother, the Intake worker found no evidence to substantiate the charge and informed the mother that the child would be released that same day. We all agreed that a nurse would visit the child periodically until the Impetigo went away. I left the meeting with the understanding that the case was going to be closed. Approximately a month later I received a call from an associate of mine and a friend of the above family asking for a meeting between the associate, the family and myself.

The meeting took place and I was alarmed at what I heard. The County had assigned the case to a child protection worker. According to the mother and grandmother the social worker was insensitive and intimidated the family, making statements like "Why would it be on the report if it wasn't true? in reference to charges and problems contained in the family's Hennepin County file. When the mother asked if there had been a second complaint, according to the mother, the social worker replied, "I can't tell you if there's been another complaint.". The mother also said that the social worker told her that because she was unwed, the child was not legally hers or anyones. There was another Hennepin County staff person present and there is no question that the statement was made. The County acknowledges that the statement was made. There is a question as to which Hennepin County employee made the statement. After informing higher level Hennepin County supervisors about this incident and after their own investigation, the County decided to close the case. I applaud Hennepin County for dealing with this problem in a very professional way.

On April 19, 1983 I attended a child custody proceeding involving the foster care placement of a 17-month-old Indian child. The mother of the child had requested that I monitor the case to ensure compliance with the Act.

Prior to the court hearing, outside the court room, I asked the mother of the child if the child's tribe had been notified. The attorney for the mother informed me that she was not aware of any notification. It appeared that the attorney for the mother had minimal knowledge of the Indian Child Welfare Act. I gave her a copy of the Act and showed her the important sections that she should look at.

I walked over to the Assistant County Attorney and asked if the child's tribe had been notified. I was informed that the Minnesota Chippewa Tribe (where the mother is enrolled) had been notified but that they were refusing any involvement in this particular case because the child was not eligible for enrollment.

Realizing that this case would not be covered under the Indian Child Welfare Act, if the child was not eligible for enrollment with a federally recognized tribe, I questioned the mother further. An Indian Advocate from Hennepin County who was also present decided to call the tribe. It was confirmed that the child was not eligible for enrollment.

In questioning the mother we learned that her father was full-blooded Winnebago from Wisconsin. If this was true then the child would be one-quarter Winnebago and eligible for enrollment there. The child would then be covered under the Act.

In the court hearing the attorney for the mother questioned the compliance of the County concerning proper notification of the child's tribe. The Assistant County Attorney informed the court that the county had complied with the Act because "the Act says that a tribe must be notified". I spoke up and read the definition of Indian child's tribe contained within the Act.

> "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe. The Indian tribe with which the Indian child has the more significant contacts."

I also read Section 102 (A) of the Act which states:

> "In any involuntary proceeding in a State court where the court knows or has reasons to know that an Indian child is involved. The party seeking the foster care placement of or termination of parental rights to an Indian child shall notify the parent or Indian custodian and the Indian child's tribe by registered mail with return receipt requested of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined such notice shall be given to the Secretary in like manner who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding."

After carefully going over the Act, the referee ordered that the proceeding be continued for another day and that the Winnebago Tribe be notified. The court had determined that the County was not in compliance. The Indian child's tribe has a right to be notified. If a monitor had not been present in this particular hearing, non-compliance would not have been questioned.

It is my opinion that in this particular case the fault lied with the social worker. It is up to the social worker of the placing agency to investigate and make every effort to determine if a child is eligible for enrollment in any tribe.

Recently I attended a hearing regarding the continuation of this case. According to the Assistant County Attorney an attempt to locate the grandfather proved fruitless. The County sent a notice of the child custody proceeding to the Winnebago Tribe in Wisconsin. According to the Assistant County Attorney, the Tribe had no one enrolled by the grandfather's name.

We argued that the grandfather's name could be different than what was given to the Winnebago Tribe and that the BIA should now make an effort to locate the grandfather's tribe.

The court determined that the County had made a full faith effort to locate the grandfather's tribe. A court hearing was set. This case would not fall under the ICWA. A few days later, with the limited information that we had, we found the grandfather's enrollment. According to the Tribe, the grandfather was full-blooded Winnebago. He was on the 1934 rolls in Nebraska by the name given to the court. We shared the information with the court and the Assistant County Attorney. A notice was then sent to the Tribe.

On December 9, 1982 we attended a Termination of Parental Rights Hearing. The parents were not present because, according to the Assistant County Attorney, they could not be found. According to the County, a notice had been sent to the Tribe and a notice had been published of the hearing in a newspaper. As far as the County was concerned they were in full compliance of the Act. We knew that Hennepin County was clearly out of compliance and at another hearing questioned the County's compliance of the Indian Child Welfare Act. The County informed the court that they had sent certified letters to the child's tribe and both parents, who were separated. A returned acknowledgement of the notice was received from the child's tribe and father. They informed the court that they were not going to intervene in the proceeding.

The notice sent to the mother at her last known address was received by the County unsigned. Through an attorney we argued that the Act instructs that these types of notices must be sent by registered mail with return receipt requested and that if the location of the parent is unknown, the placing agency must follow other steps before a hearing can take place. The court informed the County that there is a big difference between certified mail and registered mail with return receipt requested and ordered the County to comply fully with the Act. The County is now sending notices required under Section 102 (A) by registered mail with return receipt requested.

There are other problems that we have experienced under Section 102 (A). Personal service is considered superior to registered mail with return receipt requested in Minnesota. This kind of service is not always superior. We have no problem with personal service as long as the person whom that notice was intended for signs off on it.

Section 105 (A) & (B) of the Act deals with an order of preference in adoptive and foster care placements. Hennepin County is doing very little to ensure that this Section is being followed. Time and time again our Indian children are being placed in White foster homes because according to the County "there are no Indian foster parents available".

We are involved in one case where a normal health Indian child has been in a White foster home for approximately 2 years. In January of this year a Hennepin County Court Judge ordered that the County place the child in an Indian foster home. The child is still in the White home. The County says that the child has been number one on the Indian foster home list since January. In our opinion, the County is not making the effort that it should to place our children in Indian homes and yet it feels comfortable in using our Indian Relief money for their foster care purposes.

Another Section in the Act that has clearly not been complied with in not only Hennepin County but in the entire State of Minnesota as well, is Section 301 (A) or 25USC 1951.

> "Sec. 301 (a) Any State court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this Act shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show -
> (1) the name and tribal affiliation of the child;
> (2) the names and addresses of the biological parents;
> (3) the names and addresses of the adoptive parents; and
> (4) the identity of any agency having files or information relating to such adoptive placement."
>
> "Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended."

I would like to inform this Committee that since the Indian Child Welfare Act became law there have been only two records submitted to the Secretary or his agent from the State of Minnesota.

Judge Allen Oleisky, after investigating his responsibilities under this Section has recently informed us of his intention to comply fully with Section 301 (A).

We are aware of a case where an assistant county attorney used a tribal social worker as an expert witness in an effort to terminate parental rights, with the full knowledge that the expert witness had no knowledge of the particular case. The tribal social worker recommended termination of parental rights and the rights were terminated. The expert witness is no longer a social worker with the tribe. We are concerned that the tribes do not have enough money to do their jobs properly.

On August 8, 1983 Mr. Bob Aitken, Director of the Human Services Division for the Minnesota Chippewa Tribe wrote to me in response to concerns I was having over Section 106 (B) of the Indian Child Welfare Act. He said, "There is another point here you must deal with, and that is reality. You know the Act is terribly under-funded and misdirected by the Bureau of Indian Affairs. Most of the off-reservation notices we receive are not physically responded to by our tribe. We do not have the people to do it. This causes an attitude problem with the agencies sending us notices in that we do not attend the court proceedings anyhow! If we were able to respond more efficiently, then I would feel comfortable in insisting on a more formal notice."

We are concerned that the Minneapolis and St. Paul Indian communities, which according to the State Planning Agency have a total Indian population of 22,657, or 56.6% of the total Indian population of Minnesota, only received $64,000 in Indian Child Welfare Act funds for the 1983-84 year period. How are we to implement the Act when there are so few funds available to serve such a large population?

We are grateful to the Minneapolis Community Action Agency, an agency dedicated to helping poor people, for having enough faith in us in the form of a grant which has allowed us to continue our Monitoring program.

In closing, may I add that through the leadership of the Family Health Program of Minneapolis the Indian community in Minneapolis and St. Paul has established an effective network to deal with Indian Child Welfare Act cases. We support each other. Through the leadership of the State of Minnesota Indian Affairs Council, a state-wide network of ICWA professionals has recently been established to deal with Indian Child Welfare Act problems within this State. Together we will improve the conditions of Indian people within the State of Minnesota.

In my testimony I have given you examples of problems we have experienced in securing funding for our Indian Child Welfare Act Program. Today, I have given you a few examples of non-compliance with the Act and have shared other related concerns. I thank you for this opportunity and feel confident that you will do whatever is humanly possible to help us.

Sincerely,

Jake Mendoza
Monitor
Indian Child Welfare Act Program
Minneapolis American Indian Center

MINNEAPOLIS AMERICAN INDIAN CENTER

1530 East Franklin Avenue • Minneapolis, Minnesota 55404
612-871-4555

MAIC INDIAN CHILD WELFARE ACT

MONITORING PROGRAM

I. NARRATIVE OF PROGRAM AND OBJECTIVES:

The Monitoring Program began operations on October 11, 1982. The Program has been extremely successful in identifying areas of concern related to the Indian Child Welfare Act in Hennepin County. The purpose is to promote the stability of the Indian Community in Hennepin County by ensuring that the federal standards for the dispositions of Indian Child Welfare cases, as provided in the ICWA/ Public Law 95-608, are followed. Major accomplishments include:

1. Our insistence that the Act be followed has lead to Hennepin County changing its procedure of sending notice required under 25 USC 1912 by registered mail with return receipt requested as opposed to certified mail.

2. Our insistence that the Act be followed promoted the Hennepin County Juvenile Court to investigate its responsibilities under 25 USC 1951(a). The Court is now complying with 25 USC 1951(a).

3. Working cooperatively with a legal organization, we developed a standarized Internal Reporting System which is now being used by all Judges and Referees in the State of Minnesota to ensure that they are in compliance with the Indian Child Welfare Act.

4. Our insistence that Hennepin County was failing in its responsibility to recruit more Licensed Indian Foster Homes, helped lead to the creation of a County Indian Foster Home Recruiter position.

5. Currently, we are working cooperatively with every Indian organization/tribe dealing with the ICWA, in an effort to pass a State of Minnesota Indian Child Welfare Act.

II. SERVICES PROVIDED:

1. Monitor ICWA cases by attending Court Hearings.
2. Referral
3. Educate the community on the Indian Child Welfare Act.

III. TOTAL NUMBER OF CLIENTS SERVED FROM JANUARY 1, 1983 TO JANUARY 31, 1984:

1. 69 ICWA cases monitored.

IV. LEVEL OF FUNDING AND ITS SOURCE:

1. Department of Interior - $40,836; 10/1/82 - 9/30/83.

2. Minneapolis Community Action Agency - $20,000; 11/1/83 - 6/30/84.

V. FUTURE GOALS:

1. To secure additional funding to continue the Program past 6/30/84.

2. To reach a point where compliance of the Indian Child Welfare Act will become routine by the County and monitoring will not be necessary.

3. To secure funding to enable MAIC to hire a full-time ICWA Counselor and also a full-time Indian Guardian Ad Litem recruiter.

Respectfully Submitted,

Jake Mendoza

Jake Mendoza,
MAIC/ICWA Recruiter

FOSTER CARE PLACEMENT

OF AMERICAN INDIAN CHILDREN

IN HENNEPIN COUNTY

APRIL 25, 1984

American Indian children are being placed in foster care at an alarming rate in this country. The Association on American Indian Affairs estimates that on a national basis 25% to 35% of American Indian children are placed in foster care for a period of time during childhood or adolescence.

The situation is similar in Hennepin County. The rate of foster placement of Indian children in the County is eleven times greater than for non-Indian children. Hennepin County Community Services staff estimated in 1980 that one in four Indian children in the County was in foster care for all or part of the year.

In 1981, Hennepin County Community Services received 357 requests from the Hennepin County Foster Care Unit and other sources for the foster placement of Indian children; 219 Indian children were actually placed. These 219 children were distributed relatively evenly across age groupings with the exception of fairly heavy placement in the 0 - 5 age category. The following table indicates the distribution:

Age Group	Foster Home	Other Types of Placement	Total
0 - 5	71	4	75
6 - 12	36	11	47
13 - 14	18	30	48
15 - 17	20	28	48
18+	1		1
	146	73	219

Source: Hennepin County Community Services

The vast majority of Indian children who are removed from their families are placed in non-Indian homes or institutions. As of December 15, 1983, 136 American Indian children from families resident in Hennepin County were in foster care or pre-adoptive placement. Only 30, or 23%, of these children were in Indian foster families. Of the 30 children placed with Indian families, 15 were in homes outside Hennepin County.

The placement of Indian children in Hennepin County is broken down by type of placement in the following table:

Indian foster homes in Hennepin County	15
Indian foster homes outside Hennepin County	15
Non-Indian foster homes	61
Pre-adoptive White homes	5
Residential group facilities*	40
	136

*There are no Indian-operated group facilities for the care of Indian children in the Twin Cities Metropolitan area.
Source: Hennepin County Community Services

COPY

NOV 17 1983

HENNEPIN

OFFICE OF THE PUBLIC DEFENDER
C2200 Government Center
Minneapolis, Minnesota 55487
(612) 348-7530

William R. Kennedy, Chief Public Defender

November 15, 1983

Mr. Russell V. Ewald
Executive Vice President
McKnight Foundation
410 Peavey Building
Minneapolis, MN 55402

Re: Application of Jake Mendoza for Indian Child Welfare Act Monitoring Program

Dear Mr. Ewald:

I understand that Mr. Mendoza has applied to your foundation for a grant to be used to continue his work at the Minneapolis American Indian Center monitoring Minnesota's compliance with the United States Indian Child Welfare Act of 1978. He has informed me that his application has been denied, in large part because McKnight feels that the services he provides are already the province of other private and public agencies.

In May of this year, this office began a special group of people who concern themselves with Hennepin County Child Protection cases which fall under the Indian Child Welfare Act. In my activity with this group, I have found that there is a wide gulf between what the United States Congress directed the states to do five years ago, and what they are actually doing. I have concluded that the situation here is so bad that it appears possible that offensive litigation to seek compliance may be necessary because of what can, at best, be called negligence on the part of the welfare authorities in this state.

Mr. Mendoza's program was originally funded by the Bureau of Indian Affairs. That agency has decided not to renew his program. I firmly believe that the Bureau's action is retaliatory, and further, that this vital function will not be performed by anyone else in the Bureau or elsewhere. In performing his duties, Mr. Mendoza very early found that the Bureau has totally neglected its responsibilities for record keeping and compliance monitoring. Without initiating unhelpful polemical discussion on the issue, I think it is worth noting that the Interior Department, of which the Bureau of Indian Affairs is a part, rather

family
& childrens
service

November 15, 1983

Russell V. Ewald
Executive Vice President
McKnight Foundation
Suite 140 Peavey Building
Minneapolis, MN 55402

NOV 21 1983

Dear Mr. Ewald:

I am writing to request your reconsideration of the funding request by the Minneapolis American Indian Center for its Indian Child Welfare Act (ICWA) monitoring program. As director, of the Family Advocacy Program at Family and Children's Service, I have had the opportunity to work closely with the ICWA monitor and others in the Indian community in efforts to identify and resolve some of the systemic problems in child welfare proceedings involving Indian children. In addition, our program has been involved on an individual case basis in representing Indian children through our participation in Hennepin County's guardian ad litem program. In both of these efforts we have found the court monitor to be an invaluable and unique resource.

The great concern of the Indian community for the future of their children and the extent of problems they have faced in child welfare proceedings have led to the establishment of several programs to protect Indian children. The court monitoring program is distinct from these in several respects. For example:

1) It monitors all child welfare proceedings involving Indian children. In some of these cases there are no Indian community workers or guardian ad litems. Tribes are able to be involved only if the child is an enrolled member or eligible for enrollment. Many Indian children are not. In addition, even when the child is enrolled or eligible, tribes, especially non-Minnesota based tribes are not always physically and financially able to be involved. In some cases the court monitor may be the only Indian representative in the case. In other cases the monitor is the first Indian representative to be involved. He then brings in other appropriate parties.

414 South Eighth Street • Minneapolis, Minn. 55404 • Telephone 340-7444

November 15, 1983

Russell V. Ewald
Executive Vice President Page II

2) Even when other members of the Indian community are involved, the court monitor plays a unique role. In addition to intervening when the ICWA is not followed, he is a resource person for almost all of the other participants because of his expert knowledge of the act.

3) The court monitoring program provides the kind of thorough and consistent documentation of failures to follow the ICWA which is a necessary first step toward future efforts to improve the way Indian children and families are served. This monitoring has helped to establish to what extent problems encountered by the Indian community and failures to follow the ICWA are occasional aberrations and to what extent they are systemic and in need of additional remedies. This kind of documentation is much more effective in producing changes in policy and proceedures than scattered anecdotal evidence.

The primary thrust of the 1983-84 program objectives of the court monitoring program is toward achieving these kinds of policy and procedural changes. This is the logical progression and significant contribution of the monitoring program.

In conclusion, the monitoring program is unique, invaluable and highly effective. I hope you will be able to support it for the forthcoming year.

Please feel free to call with any questions.

Sincerely,

Louise Brown
Family Advocacy Director

LB/cjd

Karen Clark
District 60A
Hennepin County
Committees:
Governmental Operations, Vice-Chair.
Job Creation and Unemployment Subcommittee, Chair.
Health and Welfare
Local and Urban Affairs

NOV 21 1983

Minnesota House of Representatives

Harry A. Sieben, Jr., Speaker

November 17, 1983

Mr. Russell V. Ewald
Executive Vice President
The McKnight Foundation
410 Peavey Building
Minneapolis, MN 55402

Dear Mr. Ewald:

I would like to strongly urge that you reconsider your decision to deny the Minneapolis American Indian Center's request for a $20,000 grant to continue its Indian Child Welfare Monitoring Program.

I understand there are three major concerns you have with granting funding.

1. The MAIC monitoring program has another source for funding.

My understanding is that the $20,000 publicly funded grant from Minneapolis Community Action Agency will cover only 50 percent of the costs and was granted with the expectation that matching funds would be forthcoming from the private sector. The MAIC program simply must have full funding in order to continue its unique and excellent record of service. The MCAA grant alone will not cover the salary or fringe benefits, let alone other program costs.

2. Other agencies employ American Indian advocates to assist social service clients and monitor court cases.

I can certainly understand that there could be some confusion about the unique role that the MAIC monitoring program provides. It's true there are several other excellent agencies and programs serving American Indian child welfare clients in Minneapolis. However, as I have become familiar with the various Indian services in the area, I've learned that there are important distinctions to be made in the type and scope of services offered by each. I hope I can help to clarify that for you very briefly here.

The Hennepin County Indian Advocates specifically fill the role of advocating for particular parties in Indian Child Welfare cases, plus have many other Hennepin County responsibilities for the full range of American Indian client's needs. The same is true of other community organizations involved in Indian child welfare work - e.g. Lutheran Deaconess Family Health, Upper Midwest Indian Center. The unique role that the MAIC program fulfills is to objectively monitor the county's compliance with the Act. They do not take an advocacy role on behalf of any particular party as a

Reply to: ☐ 255 State Office Building, St. Paul, Minnesota 55155 Office: (612) 296-0294
☐ 2918 Columbus Ave. S., Minneapolis, Minnesota 55407 Home: (612) 822-3526

matter of course. This is of particular importance in ensuring that the child's best interest is served. Additionally the MAIC monitoring program is the only program solely and comprehensively devoted to its monitoring mission. It does a comprehensive service of monitoring - a scope to which other agencies simply aren't able to devote similar time and resources.

As you may be aware, I and Senator Linda Berglin have been working with a coalition of American Indian groups throughout the state who are very concerned about lack of proper enforcement of the Indian Child Welfare Act. We will be considering state legislation to improve enforcement measures. Much of the information and assistance we've needed has been forthcoming from the extensive monitoring, testifying, and record-keeping activities of Mr. Mendoza at the MAIC program. His is a unique and important role not specifically filled by other agencies.

3. The Minnesota Chippewa Tribe will be overseeing the Indian Child Welfare Act in a new office at the Minneapolis Indian Health Board.

It is my understanding that the Minnesota Chippewa Tribe is not duplicating the unique role of the MAIC monitoring program. Their specific function is to advocate for and represent the Minnesota Chippewa Tribe's interest in Indian Child Welfare Act cases. Again, this is a particular advocacy - a very crucial one, but also very specifically focused on one tribe's interest in such cases. As you might guess we have many Indian children from various tribes needing advocacy in Minnesota.

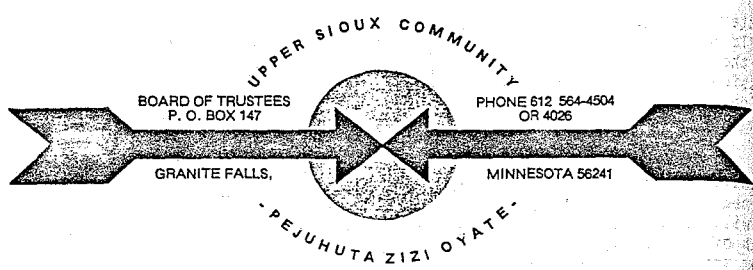
I hope this elaboration of program distinctions is helpful to you and will cause you to reconsider funding the MAIC monitoring program. It is my strong feeling that until such time as we may have an independent Indian Child Welfare program in Minnesota, we need to assure that all Indian families and their children who are involved in child welfare act cases are served with the most comprehensive resources we can muster. The severity of recently documented statistics showing failure of the system to monitor itself causes me to stress the urgency your decision prompts.

Please feel free to contact me personally for further discussion in this matter.

Yours very truly,

Karen Clark
State Representative

cc: Jake Mendoza
Minneapolis American Indian Center



Donald Robertson
American Indian Child Welfare Counselor
Upper Sioux Community
Box 147
Granite Falls, Minnesota 56241

McNight Foundation
Russel V. Ewald
Executive Vice-President
410 Peavey Building
Minneapolis, Minnesota 55402

Dear Mr. Ewald:

I have been in contact with Mr. Jake Mendoza from the American Indian in Minneapolis. He informed me of your concern about the duplication of services his program might be doing in conjuction with other Indian organizations in the Minneapolis area. The program at the Minneapolis American Indian Center does not compete or duplicate counseling, advocate, or other services performed by Upper Midwest, Department of Indian Works, or others. What the program does is monitor various agencies in the metro area to insure that The Act is being followed.

When confronted by the unfortunate break-up of families from Upper Sioux who are residing in the Minneapolis area, it is comforting to know that the program at the Indian Center is closely monitoring agencies involved so that we become aware of the situation. I feel that they are providing a unique service and any assistance to help them maintain would be appreciated.

Thank you for your attention.

Sincerely,
Don Robertson
Don Robertson

St. Paul American Indian Center
506 KENNY ROAD
ST. PAUL, MINNESOTA 55101
612/776-8592

NOV 2 3 1983

November 17, 1983

Mr. Russell V. Ewald
Executive Vice President
The McKnight Foundation
410 Peavey Building
Minneapolis, MN 55402

Dear Mr. Ewald,

I am writing this letter in support of the Minneapolis American Indian Center's Indian Child Welfare Act Program. I understand that the McKnight Foundation recently denied a request from the Indian Center for that program.

There is a strong need for a program such as the Indian Child Welfare Act Monitoring Program in Hennepin County. The Program has been very effective in bringing attention to the many instances of non-compliance with the Indian Child Welfare Act occuring in the county. It has also resulted in the several important changes in county practices regarding the Act. More programs of its type are needed in many other States and Counties across the nation.

I fully endorse the Minneapolis Indian Center's Indian Child Welfare Act Monitoring Program and would recommend that it be funded.

Sincerely,

Tom B.K. Goldtooth
Executive Director
St. Paul Indian Center

fe:TBKG

cc: Jake Mendoza

LAW OFFICES NOV 1983
of the
LEGAL AID SOCIETY OF MINNEAPOLIS, INC.

SOUTHSIDE OFFICE
2929 FOURTH AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55408
(612) 827-3774

November 21, 1983

Russell V. Ewald
Executive Vice President
The McKnight Foundation
410 Peavey Building
Minneapolis, MN. 55402

Dear Mr. Ewald:

The Minneapolis American Indian Center has requested that I comment on your letter of November 7, 1983, to Ms. Elizabeth Hallmark, Executive Director at the Center. Specifically, while there are other agencies with American Indian advocates who work with Indian clients on Indian Child Welfare Act cases, those agencies are not able to effectively work with all such clients because of the large numbers and intensity of most of these cases. In addition, the client-oriented approach does not always allow such advocates to push strongly for the fullest implementation of the Indian Child Welfare Act. The work of oversight and particular emphasis on implementation of the Act is one which is solely being worked on by the Minneapolis American Center program.

Thank you for your consideration. Please do not hesitate to contact me if you have further questions.

Sincerely,

JUVENILE PROJECT OF THE
LEGAL AID SOCIETY

James E. Wilkinson
Attorney at Law

JEW:feb

LINDA BERGLIN
Senator 60th District
123 State Capitol Building
St. Paul, Minnesota 55155
Phone: 296-4261
and
2309 Clinton Avenue South
Minneapolis, Minnesota 55404

Senate
State of Minnesota

November 18, 1983

Russell V. Ewald, Exec. V.P.
McKnight Foundation
410 Peavey Building
Minneapolis, Minn. 55402

Dear Mr. Ewald:

I am writing to express my support for your re-consideration of the grant application for the Indian Child Welfare Act Monitoring Program.

I would ask that you consider the arguments that the program's operator is proposing in the grant proposal. Mr. Mendoza does not feel that the reasons given for denying the grant request were factual and applicable to his program's objectives and past successes.

Thank you for considering my request to review the recent grant application of the Indian Child Welfare Act Monitoring Program. Please feel free to contact me if you want me to elaborate on any point.

Sincerely,

Linda Berglin

Linda Berglin
State Senator

LB:ll
cc: Jake Mendoza

COMMITTEES • Chairman, Health and Human Services • Taxes • Government Operations • Council on the Economic Status of Women • Council on Black Minnesotans

NOV 30 1983

Legal Rights Center, Inc.

808 E. Franklin Avenue Minneapolis, Minnesota 55404
(612) 871-4886

November 29, 1983

Mr. Russell V. Ewald
Executive Vice President
The McKnight Foundation
410 Peavey Building
Minneapolis, Minnesota 55402

Dear Mr. Ewald:

The Minneapolis American Indian Center has forwarded to me a copy of your letter dated November 7, 1983, to Elizabeth Hallmark, in which the McKnight Foundation declined a request to help fund the Center's Indian Child Welfare Act Monitor program, File Number 83-351.

I have been legal advisor for the Minneapolis American Indian Center's program this past year and I am also familiar with the services currently being provided by other Indian family programs by virtue of my work with all of the Indian Child Welfare Act advocates in the state.

I believe from your letter that the information you have concerning existing programs is incorrect insofar as it has led you to determine that the work proposed by the Indian Center has already been undertaken by these programs. The work being done by programs other than that of the Indian Center has been all client-specific. The work of Jake Mendoza, the Center's current monitor, has been to make certain that the Act is followed in all applicable cases. In a very real sense, his only client is the Act. This difference in job description has a profound effect on what work gets done.

First, the advocates who are doing client-specific work, like all persons who deliver services to the poor, are so busy doing their individual cases that they are unable to take the time that Jake Mendoza has taken to attempt to effect system-wide changes in the manner in which Indian children are treated in Hennepin County. Until Jake began his work, the meetings I attended of Indian Child Welfare Act advocates were characterized by a repetitious description of the problems the advocates were facing. The solutions to these problems often appeared to be simple but out of reach organizationally by people whose time was already consumed by clients' individual cases. Jake has been able to have the effect he has had in Hennepin County

largely because of the fact that his job description enabled him to spend time with county attorneys, public defenders, social service providers and judges that the client-specific advocates could not afford.

Second, the advocates who are doing client-specific work often learn that the interests of their particular clients do not coincide with application of the Indian Child Welfare Act. In such situations, the advocates have an ethical obligation not to remind the court of the existence of the Act, since use of the Act would weaken their clients' positions. The problem with this ethical obligation is that it has the systemic effect of reinforcing ignorance of the Act in the minds of court personnel. The presence of Jake Mendoza as a neutral proponent of use of the Act is precisely what is needed to ensure not only that the Act be used in a specific case but that it also become a part of the court system's consciousness.

When I spoke to McKnight's representative, Ms. Latimer, about my assessment of the Indian Center's program, the issue of duplication of services did not come up. If you think it would be helpful, I would be happy to talk to her once again about the importance of the Center's program in the context of existing programs.

Yours very truly,

Jerod H. Peterson

cc: Jake Mendoza
Courts Monitor

STATE OF MINNESOTA
DISTRICT COURT OF MINNESOTA
FOURTH JUDICIAL DISTRICT

CHAMBERS OF
JUDGE ALLEN OLEISKY
326 COURT HOUSE
MINNEAPOLIS, MINN. 55415

April 23, 1984

TO WHOM IT MAY CONCERN:

The writer is the presiding Judge of the Hennepin County District-Juvenile Division in Minneapolis. The population of our jurisdiction is approximately one million people. Our Court hears cases where the Indian Child Welfare Act is applicable.

Approximately twenty-five percent of our dependency/neglect cases involve Indian families. Jake Mendoza of the Minneapolis American Indian Community Center is a monitor of the Indian Child Welfare Act.

I found Mr. Mendoza to be extremely knowledgeable of the technicalities of the Act. He attends hearings on a regular basis and has offered suggestions to the Court when he feels the Act is not being complied with.

As a result of his diligence, I believe our Court has improved its compliance with the requirements of the Act.

Very truly yours,

Allen Oleisky

Allen Oleisky
Judge of District Court
Juvenile Court Division

AO:jks

Mr. ALEXANDER. Our next witness is Elmira McClure.

STATEMENT OF ELMIRA McCLURE, DIRECTOR, POTAWATOMI INDIAN CHILD WELFARE PROGRAM, SAINT AUGUSTINE'S CENTER, CHICAGO, IL

Ms. MCCLURE. I would like to begin by thanking the Members of Congress for being at odds with the Bureau of Indian Affairs and restoring the funds for our reservation programs. You have our written statement, and I am terrified——

Mr. ALEXANDER. We have not bitten anybody yet, other than Federal officials.

Ms. MCCLURE. Outside of my comments, you can read about all the good work. Your money has been well-spent, in Chicago at least, and I would like to see us able to continue that work. Just keep our programs going. And I would like to be excused, because I do not even think I could answer any questions at this point.

Mr. ALEXANDER. Thank you for coming. If you do this 20 or 30 times, it gets easier. It really does.

Ms. MCCLURE. Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF ELMIRA MCCLURE, DIRECTOR, POTAWATOMI INDIAN CHILD WELFARE PROGRAM, ST. AUGUSTINE'S CENTER, CHICAGO, IL

For over two decades, St. Augustine's Center for American Indians has provided a wide array of social services to the American Indian population of Chicago. The multi-service agency is not only Indian owned but maintained by a predominantly Indian staff as well. From the early years of origin to the current moment in time, the Center has implemented an intensive casework program culturally relevant to the needs of the client population.

Illinois is one of the few states that has no reservations, yet some estimated 18,000 Indians live in or nearby Chicago. We have several Indian communities scattered throughout Illinois. We represent some 70 different tribes across the United States.

Current census reports indicate the population count for Native Americans to be approximately 8,700 within the city of Chicago. Census accuracy has been hindered by poor statistical reporting techniques and the migrating pattern of Indian people. Families frequently migrate to and from reservations. Data from local Indian organizations depicts a larger count than that of the census bureau.

Indian migration to Chicago became evident in the early 1950's. Migration occurred primarily as a result of the Federal Relocation Act. Since then, there has been a steady rise in the number count for Indian people residing in Chicago. Chicago is the home base for second and third generations of Indian people. Unlike the reservations, we have no tribal government for leadership and services but must rely on Indian organizations.

Over the years, St. Augustine's has accumulated a vast amount of knowledge about the cultural and socio-economic needs of the Indian people. Efforts were always taken to utilize this knowledge in a most productive manner. Work experience indicated that Indian people did not utilize other available social service agencies. Because of the client population's need for multi-culturally relevant services, St. Augustine's became a vital social resource. Servicing the Indian people of Chicago has always been a foremost goal for the agency. The delivery of quality effective social services continues to be a guiding theme.

Few, if any agencies, are equipped to handle the wide range of problems experienced by the urban American Indian families. High unemployment, high costs of medical care, inadequate housing, inappropriate educational facilities, and unavailable legal aid resources, further add to the survival plight of the family. Because of the nature and vast array of needs and because of a lack of agencies specifically designed to service such needs, St. Augustine's has developed a multi-purpose, comprehensive, social service program in order to provide an ongoing support system for American Indians in Chicago. Supportive services have been specifically designed to

accommodate the needs of the service population. Treatment and service planning are at all times culturally relevant to Indian families.

Through our ability to deal with the family in a holistic manner, we hope to alleviate some of the stress and strain under which urban American Indians live. It is our contention that the culturally relevant method of service delivery will lead to a self-help program which will promote self-sufficiency among the American Indian population in Chicago. The key to the success of such an effort is the ability to preserve, strengthen, and shore up in every possible way the structure of the American Indian family. The preservation of the family is vital and crucial to traditional values and expressions of the American Indian culture.

While there are several agencies which offer partial children and family services in the target area (i.e. American Indian Center, Native American Committee, Edgewater-Uptown Mental Health, Salvation Army, North Area Office of the Illinois Department of Children & Family Services), the only other agency which provides a full and comprehensive range of services is St. Augustine's Center for American Indians.

The accessibility of American Indian families to service provided by agencies other than St. Augustine's is severely limited by several factors. (1) The geographical location of some agencies. (2) Social Service agencies within the Uptown area have an extreme case overload. Client waiting lists are long and deterring. (3) The highly structured atmosphere of non-Indian agencies tends to have a negative effect upon Indian people. (4) Last, is reference to the Indian Child Welfare Act, our accumulated agency knowledge indicates that Chicago agencies are not thoroughly informed about the technicalities of the Act. Currently, St. Augustine's is the only agency that has, so far, provided services to Indian families and other agencies that directly aid in the implementation of the Act.

Our agency is recognized and referred to as a primary Indian Child Welfare Agency by the Indian community of Chicago, the Department of Children and Family Services, and the Cook County Juvenile Court. The Cook County Juvenile Court has assigned a special liaison person for all Indian Child Welfare cases. The state of Illinois is currently processing a written statement of recognition for St. Augustine's Indian Child Welfare Program. The Chicago American Indian Community Organization (CAICIC) Conference of 1981, 1982 and 1983 gave recognition to St. Augustine's and proclaimed Indian Child Welfare a community need. In the process of serving Indian children, St. Augustine's has developed working networks with 13 different tribes.

The Chicago Indian Child Welfare Program is supported by two tribal resolutions, from the Wisconsin Winnebago and Oneida tribes, which designates our program to officiate as advocates for their tribes. Evidence clearly indicates a need for a supportive children and family services program for the American Indian population of Chicago, Cultural, social and economic barriers impact upon the Chicago Indian family's ability to utilize existing social service programs. The nature and extent of the Indian population's needs further limit accessibility to other agencies. To date, there is no other agency that specializes in: (1) the delivery of direct services to Indian people, (2) the diagnosis and treatment of Indian Children and family members, (3) the implementation of the Indian Child Welfare Act. Our knowledge of the community and the needs of our clients illustrates that the proposed Indian Children and Family Services need will in no way duplicate existing services. Our intent is to make readily available those services necessary to maintain family structure.

Our staff has both the technical knowledge and experience necessary to work with Indian people. The application of psychodynamic principles and our knowledge of child development as well as our knowledge of tribal and urban cultures enables us to diagnose and treat dysfunctional children and their families.

In keeping with the intent of the Child Welfare Act, our goals are: (1) to strengthen relationships between Indian children and their nuclear or foster families, so that all family members can understand, survive, and absorb the impact of inflicting values. All efforts will be taken to prevent the unwarranted breakup of Indian families and to promote the stability of the home unit. (2) Indian parents will be fully informed of their rights as provided under the Indian Child Welfare Act. (3) to educate the public about the importance of the extended family, in particular how the extended family influences child rearing practice in Chicago Indian homes. Our knowledge of the importance of the extended family to Indian people is consistently assimilated in our service policy and treatment approach. (4) to identify and recruit extended family members as secondary caretakers for Indian children, (5) We will recruit, identify and monitor all secondary homes found for our Chicago Indian youth in accordance with;

1. The directives of PL 95-608 (Indian Child Welfare Act of 1978).

2. The provisions of the Children & Family Services Regulations. No. 5.12 of the Illinois Department of Children & Family Services.

The state of Illinois has honored St. Augustine's recommendations for resource homes for Indian children with the following provisions:

1. that the child's tribe approve, specify, or recommend the resource home.
2. that home comply with standards set by the Department of Children & Family Services and that no state license be required for these homes.

(6) Home visits will be made on a monthly basis as a follow-up method for monitoring placements. The provisions of a stable, supportive, nurturing, environment is a foremost goal. (7) To develop a strong communication network with all state, county, and city child welfare agencies. It is our contention that fair and effective Indian Child Welfare Policy will result as a consequence of strong communication networks and guarantees the full implementation of the Indian Child Welfare Act. (8) Group therapy is made available to specific population of our clients. Group therapy is predominant in many of our service plans. Two support groups are in existence. A women's rehabilitative group is available to women who have children in placement. Group dynamics focuses on the improvement of child care and homemaker practices. The process of this group is based on a self-help model is geared for parents who have had children removed from their homes. The second group is a support group for foster or emergency parents. The emotional strain of being a surrogate parent is often an overwhelming experience. The need for support is crucial for these parents. Group dynamics focuses on the ventilation of emotions and the sharing of similar experiences with others. (9) for a small group of children experiencing dsyfunctional behavior and lacking adequate family support system, we offer an after school program. Children are selected from families already active with our social service program. The after school component operates five days a week from 2:30-4:00 PM. A summer day care program is also instituted as a continuing effort to service children. This program is held five days a week from 10:30-4:00 PM. The overall goal of the after school/summer day care program is to improve the child's current social functioning and environment adaptation, and promote cultural awareness. (10) Court monitoring is assurance that the intent of the act is followed. At the present, none of these specialized service programs is being offered by other agencies.

Mr. ALEXANDER. Do we have a representative from the Penobscot Indian Nation, from Indian Island, ME?

STATEMENT OF JAMES SAPPIER, REPRESENTING THE GOVERNOR AND TRIBAL COUNCIL, PENOBSCOT INDIAN NATION, INDIAN ISLAND—OLD TOWN, ME; ACCOMPANIED BY JEANNE ALMENAS, DEPUTY DIRECTOR OF HUMAN SERVICES, PENOBSCOT INDIAN NATION; AND JOHN SILVERNAIL, FAMILY SERVICE SPECIALIST, CENTRAL MAINE INDIAN ASSOCIATION

Mr. SAPPIER. I am Jim Sappier, representing the Penobscot Nation here today, as well as the New England Indian Task Force for the six States of New England.

We have 40 Indian tribes and organizations in New England. There are 21,000 Indians in New England; 8,000 families; and 3,200 people under 19 years old. In Maine, 1.4 percent of the population is Indian. Ironically, of the total 207 juveniles incarcerated, 73 are Penobscots or Passamaquoddies. That is, 36.2 percent of the total juvenile population incarcerated are members of our tribes. Something has to be done, and the way to do it is with the Indian Child Welfare Act.

With me today is Jeanne Almenas, deputy director of human services for the Penobscot Nation, and John Silvernail, family service specialist for the Central Maine Indian Association. We would like to share with you what the Indian Child Welfare Act has enabled us to do in the legal setting which exists in Maine. So I believe we have, in many respects, a success story to tell. On the other hand, we need to specify problems we have encountered in

implementing the act which should be remedied by administrative and/or legislative action.

In the spring of 1980, before the Maine Indian Settlement Act took final form and was ratified, the Penobscot Nation became the first Maine tribe to establish a fully-functional tribal court and to charge that court to take jurisdiction in child custody cases as authorized by the Indian Child Welfare Act. Within a month, a meeting was held between personnel of the tribal government and representatives of the Maine Department of Human Services to deal with immediate practical issues, since at that time relationships with the State have progressed from ad hoc case-by-case arrangements to formal written agreements. At the present time, there is an agreement, considered a draft but followed in practice, governing responsibility for the receipt of referrals, investigations, and the determination of tribal affiliation, and the delivery of services to children and families who may fall under the jurisdiction of the ICWA.

Whenever a child may be at risk of abuse and neglect, and jurisdiction is uncertain, the agreement authorizes either party to take prompt action, if necessary, and notify the other. The issue of jurisdiction is to be resolved as soon as possible, but it is not to take precedence over the well-being of a child.

I would like to pass this on to Jeanne Almenas.

Ms. ALMENAS. The Central Maine Indian Association, which is an off-reservation Indian agency, dealing with off-reservation Indians regardless of their tribal affiliation, has been a full-time partner with us in the Maine Indian Family Support Consortium since the first time of our successful grant application under the Indian Child Welfare Act in 1981.

We believe that the intent of the act is to protect the tribal and family identity of every Native American, and we strive together to extend the effect of that act to any within the State of Maine who seek to get its protection. The Central Maine Indian Association, although it does not have legal jurisdiction, is able to call on a decade of experience in advocacy on behalf of those Indians who have no choice but to cope with the State system.

The Maine Department of Human Services has signed an agreement establishing procedural guidelines and mutual consultation with the Central Maine Indian Association.

At this time, I would also like to say that there are a lot of written agreements between Penobscot Nation and the Maine Department of Human Services. In fiscal year 1984, our grant application for the Indian Child Welfare Act grant was disapproved, and one of the things we were cited for was that a lot of our time seemed to be spent in agreements with the State. We feel that because of the recent unique land claims settlement with Penobscot Nation, it requires a continuing and carefully-constructed set of agreements with public and private agencies and the State of Maine in order to create a properly-functioning system of Indian child welfare, controlled by the Indians.

Mr. ALEXANDER. Is that in writing?

Ms. ALMENAS. Yes. Right now, some of them are draft agreements. They have not been finalized.

Mr. ALEXANDER. No, the rejection of your application on the basis of cooperating with the State of Maine?

Ms. ALMENAS. Yes, it is. It is in our appeal.

Mr. ALEXANDER. May we have that for the record, please?

Ms. ALMENAS. Yes, we will give you a copy.

Although there are some outstanding issues, right now we have a real good and positive, stable relationship with the State of Maine.

The main goal of the Penobscot Child and Family Services Program is to prevent the disruption and/or separation of Indian families. The program has a variety of direct support services available to these families in need, and some of these are day care, parent discussion groups, individual counseling, family counseling, voluntary care, advocacy information referral, and a fingerprinting identification program. The fingerprinting identification program we also had in our appeal because we felt that it was unique to the tribes to have this fingerprinting identification, in that an annual fingerprinting identifications session reflects increasing concern in our society over the incidents of abduction and the disappearance of Indian children, and it is widely endorsed to aid in helping to solve these crimes.

During the past fiscal year, a total of 282 individuals have received services through our program. One of the most frequently requested services is voluntary care. Voluntary care is utilized when a parent is absent from the home for a short period of time. This year alone, there have been a total of 16 children in voluntary care. Out of the 16, 6 of these children have been placed in care on more than one occasion. These include a mother who underwent two triple-bypass heart operations within a 3-month period. Also, another mother was completing an alcohol rehab program but was unable to emotionally fill the needs and demands of her young children.

Mr. ALEXANDER. Thank you very much. I am going to have to cut you off, although it is not my preference, because of our time constraints. If there are any supplements to your written statement that you would like to have included in the record, the record will be kept open for 30 days.

Mr. SAPPIER. I would like to add one more thing. Our tribal court has full faith and credit under Public Law 96-420, and we have been involved with the States of California, Pennsylvania, Massachusetts, Virginia, Connecticut, and New Mexico.

Mr. ALEXANDER. Fine. We appreciate that. It is important to know.

[The prepared statement and pertinent material follow. Testimony resumes on p. 258.]

PREPARED STATEMENT OF JAMES SAPPIER, DIRECTOR, DEPARTMENT OF TRUST SERVICES, PENOBSCOT NATION OF MAINE

Mr. Chairman and Members of the Committee:

My name is James Sappier. I am Director of the Department of Trust Services Penobscot Nation, of Maine, and also serve as the elected Tribal Representative to the Maine Legislature. With me today are Jeanne Almenas, Deputy Director for Human Services of the Penboscot Department of Health and Human Services, and John Silvernail, Family Service Specialist with the Central Maine Indian Association.

We would like to share with you what the Indian Child Welfare Act has enabled us to do in the unique legal setting which exists in Maine: for I believe we have in major respects a success story to tell. And on the other hand, we need to specify problems we have encountered in implementing the Act, which should be remedied by administrative and/or legislative action.

In the Spring of 1980, before the Maine Indian Settlement Act took final form and was ratified, the Penobscot Nation became the first Maine tribe to establish a fully functional tribal court, and to charge that court to take jurisdiction in child custody cases as authorized by the Indian Child Welfare Act. Within a month, a meeting was held between personnel of the tribal government and representatives of the Maine Department of Human Services to deal with immediate practical issues. Since that time relationships with the State have progressed from ad hoc case-by-case arrangements to formal written agreements.

At the present time there is an agreement, considered a draft but followed in practice, governing responsibility for the receipt of referrals, investigation and determination of tribal affiliation, and delivery of services to children and families who may fall under the jurisdiction of the Indian Child Welfare Act. Whenver a child may be at risk of abuse or neglect, and jurisdiction is uncertain, the agreement authorizes either party to take prompt action if necessary and notify the other. The issue of jurisdiction is to be resolved as soon as possible, but is not to take precedence over the well-being of a child.

The Central Maine Indian Association has been our full-time partner in the Maine Indian Family support consortium since the time of our first successful application for a grant under the Indian Child Welfare Act, in 1981. We believe that the intent of the Act was to protect the tribal and family identity of every Native American, and we strive together to extend the effect of the Act to any within the state of Maine who seek its protection. The Central Maine Indian Association, although it does not have legal jurisdiction, is able to call on a decade of experience in advocacy on behalf of those Indians who must cope with the state system and have no choice. The Maine Department of Human Services has signed an agreement establishing procedural guidelines and mutual consultation with the Central Maine Indian Association.

Thus despite a history of more than two hundred years of neglect as wards of the state, and of heightened tensions generated by the almost decade-long land claims controversy, we have since 1980 achieved a generally stable, positive relationship with the state, on behalf of Indian children and families. In large measure our success in achieving a working relationship with the state is attributable directly to the legal authority and the service development resources provided by the Indian Child Welfare Act. In part, too, I believe the long-term relationship with the state of Maine, however unhappy its history, became a positive factor once the parties became legal equals within their respective jurisdictions.

A large measure of credit must also go to administrative and direct service staff of the Maine Department of Human Services. I will not pretend that there are no outstanding issues, or that every client has been well served, but there has been a consistent policy to consider first the needs of Indian children and families, and so far as possible to minimize procedural and bureaucratic obstacles. A special word of recognition is due to Nancy Goddard, Substitute Care Program Specialist, who in the early days was appointed liaison between

the Department of Human Services and the tribal programs; and who has greatly facilitated the process, both at the policy level, and in specific cases.

I should like to share with you brief summaries of activities as prepared by the staff of the Penobscot Child and Family Services Program and by CMIA staff.

The main goal of the Penobscot Nation Child/Family Services Program is to prevent the disruption and/or separation of families. The program has a variety of direct support services available to families in need. These include: Day Care, Parent Discussion Group, individual counseling, family counseling, fingerprint identification, voluntary care, advocacy, and information and referral.

During the past fiscal year, a total of 282 individuals have received services. One of the most frequently requested services is Voluntary Care. Voluntary Care is utilized when a parent is absent from the home for a short period of time. The most frequent reason for utilization of this short term foster care program is when parents attend a residential alcohol rehabilitation program. This year alone, there have been a total of 16 children in voluntary care. Out of 16, a total of 6 children have been placed in care on more than one occasion. These include a mother who underwent two triple-bypass heart operations within a three month period; and another mother who had completed the alcohol rehab program, but was unable to emotionally fulfill the needs and demands of her young child. These children were again placed in voluntary care while the mothers worked with the caseworker on goals and problem solving, with unification and stabilization of the situations being a success. To date, all but one of the 16 children have been returned to the parent's care.

The Nation has, since the start of the program, taken custody of three children. One child was returned to the parent, one child was placed for adoption with the approval and voluntary termination of parental rights by the biological mother, and one child continues to remain in the legal custody of the Nation, with physical custody of the child granted to the mother. Also, within the last two years, the Nation has taken jurisdiction of two cases from state courts. One case involves three children in the state of Maine's custody. The other case involves one child in the state of California's custody.

The Nation now has legal custody of these children and the Child/Family Services Program is currently working with the parents towards unification.

And here is a brief description of the services provided by the Central Maine Indian Association:

Off-reservation Indian families continually experience geographical, social, and cultural isolation. This situation is uniquely intensified for the significant percentage of Maine's off-reservation Indian population who are of Canadian Indian descent.

At present approximately 60% of CMIA's active case load is composed of Indian families belonging to non-federally recognized tribes. Though these peoples are afforded certain consideration under existing state policies, and stand to gain additional protection under agreements presently being negotiated, their status under the Indian Child Welfare Act remains in question. The 40% population balance is composed of members of federally recognized tribes whose home reserves range in geographic locations from Maine to Alaska.

Based on a long and undeniable history of isolation, misunderstanding and discrimination, the off-reservation Indian population frequently manifests an attitude of mistrust towards state and private non-Indian social welfare

agencies. The ICWA worker, representing an Indian agency and operating with the authority of the Indian Child Welfare Act, is the critical link between the client population and the non-Indian service providers.

The present CMIA-ICWA case load divides into three primary categories:

1. Children (and the families of children) presently in state custody. Though permanent foster placement and adoption are considered and occasionally selected as the most viable alternative, the major emphasis in these cases lies in intense efforts at family reunification.
2. Children (and the families of children) at risk of being taken into state custody, requiring intervention in the form of education and supportive services.
3. Children (and the families of children) not at risk but in need of extensive supportive services.

During the past year, the majority of referrals for child and family services have come directly from the state, and hae resulted in cooperative case management. Among requests for services have been the following:

- o Assistance in verification of Indian status and tribal affiliation;
- o Assistance in developing culturally oriented program for non-Maine Indian children in state custody;
- o Attendance at Department of Human Services case reviews.

The state has recently established a pilot program of preventive services offered to all single mothers under age 20, identified from the computer file of AFDC recipeints, and has established a policy of involving CMIA in the case of each Indian is this population.

These summaries indicate something about the scope of services offered to Indian children and families provided by the Penobscot Nation and the Central Maine Indian Association. They are intended to suggest, rather than document quantitatively the services provided

we have stressed in this presentation the good working relationship established with the state of Maine, and that this may be in part due to the historical relationship and unique legal situation. I do not believe, however, that such factors are necessary. What is essential is good will, competent staff and firm administrative leadership on both sides. It does take time to overcome old stereotypes on both sides, but we have found that a basic commitment to the best interests of children and families at risk makes for firm common ground.

Despite the success we believe we have achieved in making the Indian Child Welfare Act effective on behalf of the Indians of Maine, there are some serious problems to be addressed.

First, the level of funding available to implement the services provided for in the Act has been woefully inadequate. A minimum increase of 50 percent in funds coming to Maine for ICWA grant projects would provide a basis for effective programming.

Second, to ensure that all who are eligible for the protections afforded by ICWA have access to them. Funding should be by entitlement. As the program operates now on a discretionary basis, program focus changes yearly and funding is never secure. Our program has been funded only every other year. How can anybody say to a child, "we can help you this year, but not next year; but the year after next we may be back in operation"? Yet this is what we have had to do because of erratic discretionary funding patterns. Further, these entitlement grants should be based on five (5) year periods. The average case involving a custody dispute or temporary placement of a child or family reunification runs a minimum of twelve (12) months. Working on a one year grant basis and compounding this with erratic funding is simply

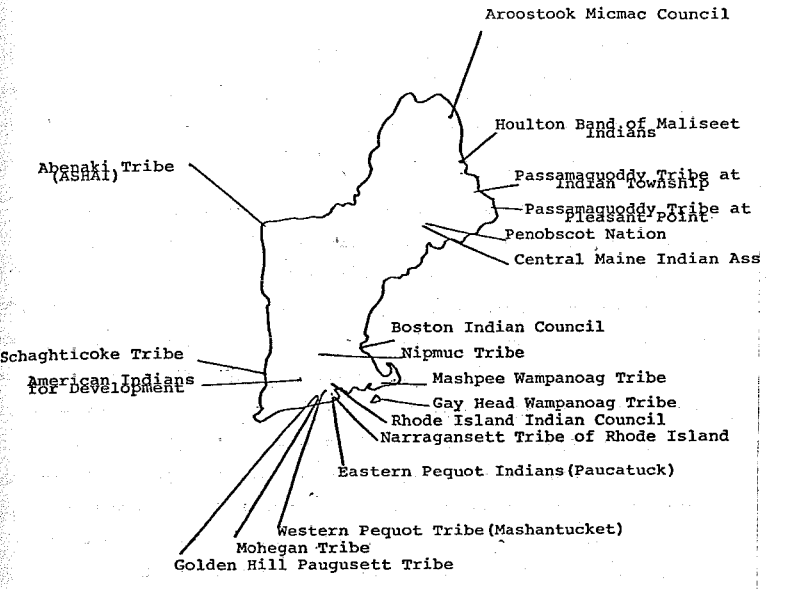
no sound basis for dealing with families whose problems have been a long time developing, and who need at least moderately long-term guidance and support to overcome them.

Since the Penobscot Department of Health and Human Services deals with both BIA and IHS for program support funds, we are able to make some comparisons. We believe that policies adopted by IHS for long-term planning and funding of services under P.L. 93-638 contracts is more conducive to coherant planning and effective program development. This process has required an initial needs assessment and multi-year plan, and has provided annual contract funding based on population, level of unmet need, and performance.

Finally, we believe that the goal of the Indian Child Welfare Act, which is to protect the tribal heritage and cultures of Indian peoples, will be achieved only if all Native Americans are within effective reach of this law, and the services it authorizes. Less than half of all Indians nationally live on reservations, as is also the case in Maine. If we are genuinely committed to preserving Indian communities and cultures, then some relatively universal standard, such as 25 percent blood quantum, or tribal enrollment, should be the sole criterion for service. The tortuous Federal Acknowledgement Process is simply too cumbersome. Likewise in other parts of the country, as in Maine, there are Indian tribes whose tribal patterns of living have never acknowledged national boundaries. The Jay Treaty and the Treaty of Chent were intended to address this reality, and so-called "Canadian" Indians, for instance who need family services while living on our side of the border should be eligible.

In the final analysis we as a nation, Indian and non-Indian alike, have to decide what is really the "bottom line." For a long time now we have generally agreed that dollars are the bottom line, and services to mend at-risk families and communities are too expensive. As spublic concern moves from high divorce rate to family violence to sexual assault within the home, and the life-long cost of such experiences, we are gradually learning that we simply have not counted the right dollars, the real dollar costs. If sound families and real communities are truly the essential basis of a healthy economy, then for Indian people and communities a fully effective Indian Child Welfare Act is every bit as important as stated in the language of the law itself.

NEW ENGLAND INDIAN NATIONS
AND
MAJOR ORGANIZATIONS



1980 U.S. CENSUS	TOTAL	-	FAMILIES	-	19 & Under
MASSACHUSETTS	7,483	-	1,122	-	2,789
CONNECTICUT	4,431	-	688	-	1,555
MAINE	4,057	-	602	-	1,922
RHODE ISLAND	2,872	-	451	-	1,175
VERMONT	968	-	167	-	383
NEW HAMPSHIRE	1,297	-	221	-	456
	21,108		8,280		3,251