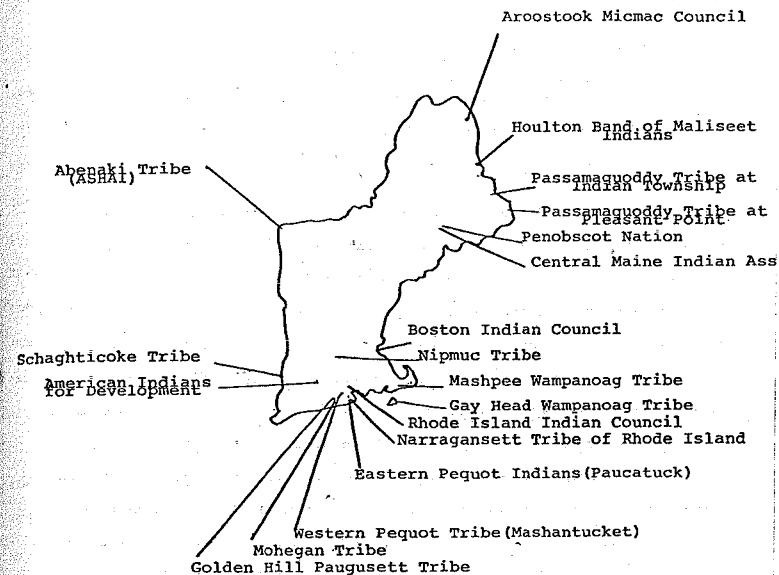
no sound basis for dealing with families whose problems have been a long time developing, and who need at least moderately long-term guidance and support to overcome them.

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 Ghent 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

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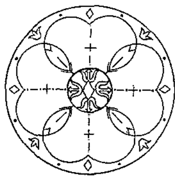


Sharing Resources and Ideas

Central Maine Indian Association Inc.

Central Office — 95 Main Street, Orono, Maine 04473 (207) 866-5587/88

May 22, 1984

To: Senate Select Committee on Indian Affairs

Fr: Maine Indian Family Support Consortium
(Penobscot Indian Nation & Central Maine Indian Assoication, Inc.)

Re: Indian Child Welfare Act Testimony

Following is an addendum to the testimony of the Maine Indian Family Support Cornortium presented on April 25, 1984 by James Sappier, Jeanne Almenas, and John Silvernail. A copy of that testimony is included for reference.

Testimony previously presented to the Senate Select Committee on Indian Affairs emphasized the predominantly successful relationship that has been developed between member agencies of the Maine Indian Family Support Consortium and the State of Maine in the implementation of the Indian Child Welfare Act. At the time of the Act's passage the State of Maine had the second highest percentage per thousand population of Indian children in state custody. Concern for the stability of the Indian family or the preservation of Indian culture appeared to be non-existant. That we have progressed so rapidly to our present level of co-operation is truly a compliment, both to the state and to Maine's Indian people. Together we have struggled to set aside centuries of prejudice and distrust. Together we have recognized the validity of the law and worked for it's enforcement. In concluding its testimony, the consortium highlighted present areas of concer. It is the purpose of this addendum to expand on these areas.

Clearly, the present funding system, in which all regional agencies compete on an annual basis for allocated, discretionary funds, is inadequate to fulfill the

intent and purpose of the Indian Child Welfare Act. The stabilization of the Indian family unit and the preservation of its unique cultural heritage are not goals that can be attained and/or maintained in a single twelve month period. The damage done in two hundred years of deprevation and discrimination cannot be undone in the short time it takes for the earth to circle once around the sun.

The Maine Department of Human Services estimates that an average of one year elapses between the time a child is taken into protective custody and the time that same child is re-unified on a permanent basis with his or her family. Following this initial period of re-unification an additional six (6) to twelve (12) months may be required during which the child and family, though physically re-unified, remain under the observation (and often supervision) of the department. At the present time both member agencies of the Maine Indian Family Support Consortium have a significant number of re-unification cases in progress. Please keep in mind that a case initiated in January of 1984 may well remain open and active until June or July of 1985. The denial of the Consortium's FY '84 I.C.W.A. grant application, which appears based on an administrative decision to withdraw funding for all off-reservation services, will necessitate abandoning these families mid-process.

What good we have done, what small strides we have made towards the goals of stability and the renaissance of a previous heritage, are quickly undone and lost. We have broken the faith and broken trust. Where the law has required a service, in truth we may have provided a dis-service.

To effectively provide services to an Indian family or an Indian child the I.C.W.A. funded agency must be able to guarantee the consistant presence of it's case worker through the entire duration of the family or child's inter-action with the Department of Human Services. This consistent presence is not only necessary for the provisions of direct support to the Indian client but is critical to the development of trust on the part of the Department of Human Services and other re-

lated, service providing agencies. If these agencies cannot depend on the consistant presence and participation, how can we expect them to accept (and welcome) our involvement in the child welfare process? At a recent presentation given before a Department of Human Service's Regional meeting a consortium worker was asked by a Department supervisor, "But will you be around tomorrow?" That the worker was forced to respond with, "I can only hope so!" clearly demonstrates the concerns of both parties and the failure of the present funding system. What is now offered on an annual, competitive basis must, if we are to realize our goals, be provided by entitlement in three (3) to five (5) year grant periods.

Our original testimony stated that the present level of funding is 'woefully inadequate'. 4,360 Indians live within the State of Maine. Of these 3,521 are potentially eligible for Consortium services. In addition to those permanent state residents eligible for services we must consider both the seasonal Indian migrant population and those "Canadian" Indians who cross the border and whose right to service should be clearly established by the Jay Treaty and the Treaty of Ghent. The trust responsibility which exists, exists between the Federal government and all Indians. I.C.W.A. services, therfore, must be made available to all Indians. This potential client population, whether permanent resident, migrant, or "Canadian" is spread over a 33,215 square mile area.

In FY '83 the Maine Indian Family Support Consortium received $80,000 in I.C.W.A. funding. $80,000 with which to implement both the letter and the spirit of the Indian Child Welfare Act for 3,500 plus Indian people in a 33,215 square mile area. The task is obviously nearly impossible. What we are left with is the establishment of a system of priorities. On a day to day, case by case, basis we must decide which clients and which services are most important.

The establishment of priorities has required that a number of key areas be seriously, if not totally, neglected.

1) Education: Awareness Training:

Continued improvement in the State - Consortium - client

relationship and continued improvement in the family stability and quality of life of Maine's Indian peoples is to a great extent dependent on the Consortium's ability to provide education and awareness training.

A. Maine's Indian people need to acquire the employment, living, and parenting skills necessary to create a stable home environment. In addition, they need to understand their rights under the law. The development of appropriate instructional programs and materials is critical.

B. The Department of Human Services, on both an administrative and direct service level, has expressed a strong interest in the consortium's offering a one to two day seminar presentation which would provide both protective and substitute care workers with a clear understanding of the legal responsibilities imposed on them by the Indian Child Welfare Act and an awareness of Indian culture issues. This seminar would be provided three (3) to five (5) times per year in various regions of the state. The development of appropriate material is, again, critical.

C. A similar seminar, which would be briefer and geared specifically at the legal aspects needs to be prepared for presentation to judges throughout the state. In addition, printed material needs to be made available to attorneys working with Indian children.

D. Consortium staff should have access to training opportunities. The present level of funding does not allow for the development of educational material or the participation of consortium staff in available educational programming.

2) Indian Foster Homes and Temporary Shelters:

At the present time there are only two (2) state licensed Indian foster homes off-reservation in the State of Maine. Though interest

exists on the part of Indian people in assuming the role of foster parents most are unable to financially afford the cost of bringing their residences up to state standards. The development of a separate licensing procedure which would apply to off-reservation Indians coupled with a low cost home improvement program has the potential for reversing the present placement procedure.

Many Indian families within the state are separated on a temporary (and occassionally permanent) basis when for one reason or another they are forced to move and are unable to acquire adequate housing on short notice. The existance of temporary (30 day) housing facilities would significanly reduce the number of Indian families experiencing forced separation and the number of Indian children being taken into temporary state custody.

The present level of funding does not allow for the development of such foster care and shelter programs.

3) Services to Youth in State Correctional Facilities:

Approximately 10% of the youths presently incarcerated in Maine correctional facilities meet the blood quantum requirements for membership in an Indian tribe. This figure indicates that twenty times as many Indian adolescents, as opposed to non-Indian adolescents, are experiencing criminal prosecution and imprisonment. The present level of funding does not allow for the employment of a specialized youth service worker for the development of youth programming. Forced to establish priorities and forced to make choices we must set aside the needs of these deeply troubled teenagers.

The areas listed, though viewed as the most critical, represent only a portion of the need. We believe that working co-operatively the Maine Indian Family Support Consortium and the State of Maine have made great strides towards bringing both the

letter and the spirit of the Indian Child Welfare Act to reality. But there is much, much further left to go.

We suggest strongly that, as discussed in the January 19, 1984 letter from Lucy C. Briggs, BIA be required to set aside funds to match those in A.N.A. Discretionary grants and the Administration on Children, Youth, and Families (ACYF) and ear mark those for consortium projects that include programs like this one who are working jointly with the state authorities whenever possible. Because we feel that contrary to the discussions of Casey Wichlacz, Sandra Spaulding, and Louise delos Reyrs that the appropriate linkages and knowledge does exist here at the local level to combine such program funds to the benefit of Indian children and families. We would request that Maine be given the opportunity by having I.C.W.A. funds ear marked for the Penobscot Nation and Central Maine Indian Association, Inc. to be matched with A.N.A. Discretionary grant funds, and use those to lever ACYF dollars through the state. This project should be funded for a minimum of three (3) years.

Respectfully submitted,

John W. Silvernail
Family Services Specialist
Central Maine Indian Association, Inc.

Mr. ALEXANDER. Our next scheduled witness is Terry Brown, who is a consultant with the Coastal Consortium of California. Is he or she here?

I do see the representatives of the Puyallup Indian Tribe in the audience. We will have Connie McCloud and Larry Lamebull as our final witnesses. Welcome.

STATEMENT OF CONNIE McCLOUD, MEMBER, TRIBAL COUNCIL, PUYALLUP INDIAN TRIBE, TACOMA, WA, ACCOMPANIED BY LARRY LAMEBULL, DIRECTOR OF CHILDREN'S SERVICES, PUYALLUP INDIAN TRIBE

Ms. McCLOUD. My name is Connie McCloud, and I am a tribal council member for the Puyallup Tribe. We are a tribe located in the State of Washington. The city of Tacoma exists within our reservation boundaries, and we have just over 1,000 tribal members, but we also have within our reservation jurisdiction in Pierce County 7,000 to 8,000 Indian people who live in our community. We have various tribal operations that serve the needs of the Indian community in the city of Tacoma and Pierce County and adjoining communities in our vicinity.

Mr. Lamebull is the director of our Children's Services Program, and he will be giving you a brief review of our children's services operation there and our concerns related to the Indian Child Welfare Act.

Mr. ALEXANDER. Fine.

Mr. LAMEBULL. Thank you, Connie. Due to the time constraints, I will just very briefly summarize our program and hit three topics that concern the Puyallup Tribe.

We are entering into our third quarter of 5 years of consecutive child welfare services. Some of those years have been up and some of them have been down, due to the funding process that currently is in place. We currently are the only tribe serving Pierce County that has a contract with the State of Washington to provide child protective services, family reconciliation services, child welfare services, and certification of foster homes within the tribal reservation in Pierce County. We additionally serve pregnant teenagers and certify homes for pregnant services and connect them into services through Pierce County.

As Connie stated, our service population does target between 7,000 and 8,000 within Pierce County. We operate primarily on a staff of 6½ individuals. We have one child protective services caseworker who covers the incoming caseload from the State of Washington. In our agreement, we have it set up that all incoming Indian children who go into child protective services, after they are processed in intake, are transferred into our agency. Should our agency become overloaded, which it often does because of the amount of referrals we get, we have built into our agreement that the State stop the referrals and hold them until the time that we have cleared our caseload and then process them through.

We have had a few major problems, after resuming the transfer of those cases, in actually getting the cases transferred through from the State. But through work, we hope we can iron that out at the level of the State CPS supervisor.

There are three topics I would like to cover as our major concerns: jurisdiction, funding, and education. I believe that jurisdiction and education kind of run hand in hand. Our jurisdiction problems lie mainly within relying on local area judges' personal opinions about the ability of tribal courts to handle Indian cases. We believe that in the act the tribe should have the absolute right to intervene and to transfer, should they request, from a State court. We do not always get that from our local judges. They will question the stability of the tribal court and question the services that the court will order for the child that goes into tribal court.

We would like to see that education is planted into the Indian Child Welfare Act, to mandate local judges to take some type of inservice training built into expanding their knowledge on the Indian Child Welfare Act. Many times, we have run across situations where judges have based their decisions on having to read the act right there and then and base a decision. The decisions were not thought through carefully.

The next topic would be funding. Currently, the funding process is basically ridiculous. We waste approximately 3 months out of each program year in tribes and urban organizations competing against one another for the endless count of heads and statistics. So you have 3 months of this grant writing process where almost all communications that you have worked with in urban and tribal organizations is completely broken down because no one wants to give out the information that might be helpful in their next program year's grant.

We would like to see the funding cycle be expanded to a 3-year cycle, with an evaluation on the merit system and an evaluation process at the end of that year. We would also like to see, in the area of education, that State caseworkers who handle Indian child welfare cases also be mandated to some academic training on Indian child welfare. Many times over, the notification on intake of Indian children is not done, and you go from a shelter care hearing into a dispositional hearing, and none of the processes have been followed, so you have to go back to square one. By that time, the child has sat in a non-Indian foster home or an out-of-home placement up to a couple of months. If the State caseworkers are educated to the processes of the Indian Child Welfare Act, some of this might be eliminated.

Mr. ALEXANDER. It is our understanding that the State of Washington has issued comprehensive guidelines on the issue that you have just addressed. Is it a situation of its not getting down to the field and to the individual workers?

Mr. LAMEBULL. It is just not being implemented because there are no teeth behind it.

Mr. ALEXANDER. I will ask you the question I asked the lady from Pittsburgh. In the educational institutions in your area—and there are several which, I believe, give master of social work degrees—is there any effort to coordinate with programs such as yours to provide any background to the people who, in effect, will be occupying the positions of the State social service agencies and county agencies?

Mr. LAMEBULL. I am acquainted with the associate dean of the School of Social Work at the University of Washington, and many

graduates from the School of Social Work of the University of Washington. There is a general consensus that when their academic training comes to Indian child welfare, they spend exactly one lecture on it and basically it covers that there is this act, and you do have to follow it.

Mr. ALEXANDER. That is probably better than some other places. We thank you for your time and condensing your testimony. We appreciate that. We have to be out of here in a minute, so we will adjourn this hearing. Thank you.

[Whereupon, at 2:28 p.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL RECEIVED FOR THE RECORD

Absentee Shawnee Tribe of Oklahoma
Post Office Box 1747
Shawnee, Oklahoma 74801
Phone 275-4030

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
U. S. Senate
Washington, D. C. 20510

RE: Written Testimony - Indian Child Welfare Act (PL 95-608)

Dear Senator Andrews:

The Absentee Shawnee Tribe of Oklahoma has been in full support of the Indian Child Welfare Act (PL 95-608) since its inception. This program allows Absentee Shawnee tribal members to meet child welfare problems very close to home. With our Indian Child Welfare Program, virtually all child welfare problems are cared for by the immediate family or the extended family. This philosophy and practice produces a high rate of success.

We have strong local and state support for Indian child welfare cases. The state legislature, Department of Human Services, and local agencies have all given excellent support to Indian child welfare. Also, we have helped develop a strong state network of caring people on behalf of Indian children.

In our opinion, the care of Indian children is much improved because of PL 95-608. We know of no family, agency, or tribe in our state which has negative feelings about the Indian Child Welfare Act. It has had a most positive influence in our state.

Locally, our Indian Child Welfare Program provides many provisions, some of which are as follows:

- Counseling Indian parents regarding child welfare laws.
- Interpreting federal, tribal, and state child welfare laws.
- Helping obtain legal representation for children and/or parents in court proceedings.
- Providing support for children and/or parents in state and tribal courts.
- Assisting parents in carrying out court ordered obligations.
- Clarifying cultural values which impact on child welfare cases.
- Helping prevent the breakup of Indian families.
- Linking families with resources in order to maintain children in their homes.
- Working with tribes and/or Indian organizations regarding child welfare matters.

Senator Mark Andrews

Page 2

- Providing for Indian foster and/or adoption homes.
- Monitoring state courts in child custody proceedings.
- Counseling abusive and/or negligent parents.
- Monitoring foster care placements.

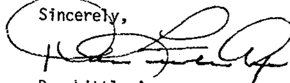
The above provisions are highly appreciated and much needed by our tribal members. They know they can receive good guidance and help from our office.

One major problem of our program has been funding. Most of our funding has been through the Bureau of Indian Affairs. The Indian Child Welfare Act appropriations have not been fully funded to meet tribal needs. During this past year, two of our staff members volunteered approximately two months of their time to our program. The Bureau of Indian Affairs endeavored to help, but they simply did not have adequate appropriations.

Public Law 95-608 has created a much needed and most helpful program. This act provides services which were virtually non-existent prior to its passage, and would most likely cease to exist without continued appropriations.

Your continued support of adequate appropriations for this program will be appreciated.

Sincerely,



Dan Little Axe
Governor

DLA:jb

AGUA CALIENTE
BAND OF CAHUILLA INDIANS
441 SO. CALLE ENCILIA
SUITE 1
PALM SPRINGS, CA 92262

RECEIVED MAY 2 1 1984

May 15, 1984

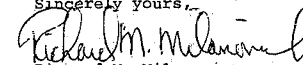
Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
U.S. Senate
Washington. D.C. 20510

Dear Senator Andrews:

Recently the California Legislature passed Senate Joint Resolution No. 27 which requests the California Congressional Delegation to increase the appropriation for Title II of the Indian Child Welfare Act of November 8, 1978 to the $12,000,000 level recommended by the Senate Select Committee on Indian Affairs.

On behalf of the Tribal Council and members of the Agua Caliente Band of Cahuilla Indians, I urge you to support this appropration. Congress passed this measure in 1978 to protect the integrity of Indian families by providing social services and procedures designed to keep Indian children in Indian families. More Indians live in California than in any other state, many in your district. The Act will be meaningless to these Indian families unless adequate funding is available to implement the Act. The Agua Caliente Band joins the California Legislature in urging you to support adequate funding for Indian families. Our children are our future and the $12,000,000 funding level recommended by the Senate Select Committee is absolutely essential for implementing the Act in California. Please follow the State Legislature's resolution and support this minimal level of funding.

Sincerely yours,



Richard M. Milanovich
Chairman, Tribal Council
AGUA CALIENTE BAND OF
CAHUILLA INDIANS

RMM/dlc

American Indian Center

225 Valencia Street • San Francisco, CA 94103-2398

TESTIMONY ON THE OVERSITE

on the

INDIAN CHILD WELFARE ACT of 1978

o

By Phil Tingley, MSW, Manager

Human Development Division of the

Corporation for American Indian Development

o

for the Senate Select Committee on Indian Affairs

Sen. Mark Andrews, Chair

April 25, 1984

Senator Andrews, honorable members of the committee and its staff, I thank you for the counsel of the San Francisco American Indian Center on the Oversite Hearing on the Indian Child Welfare Act of 1978.

Passage of the Act Has meant that, for the first time in U.S. history, Indian families with children on a nationwide basis are receiving a level of culturally relevant Social Welfare Services and protection that prevents them from "falling thru the net" and from being separated.

This has been achieved in part thru the funding of Indian Child Welfare programs under Title II of the Act. These programs, operated by Tribal governments and multi-purpose Urban Indian Centers, have been the key to preventing the breakup of the American Indian Family.

operated by
CORPORATION FOR AMERICAN INDIAN DEVELOPMENT
(415) 552-1070

The San Francisco community of 8000 Native Americans strongly endorses supplemental funding for Title II programs in the amount of 15 million dollars.

During the past three years tribal governments and urban Indian agencies have seen a continued cut in funds for Title II Indian Child Welfare programs.

Many tribal and urban programs have had to close or have had to severly cut services. Many, many more have never been funded due to lack of Congressional appropriations. This has been especially difficult for tribal governments, who have the legal jurisdictional responsibility to deal with all child welfare matters within their respective jurisdictions. Urban Indian multi-purpose centers have also had major difficulties since they must serve the local Indian community and provide additional services to state and tribal courts, juvenile agencies, and welfare offices.

In the past three years, the San Francisco Indian Center has seen a Title II reduction in funds of twenty three percent (23%), while at the same time, have experienced a three hundred percent (300%) increase in the number of clients serviced.

Now let me comment on a few issues specific to changes that are needed within the Act and its funding:

1) Title II program funding should be moved from the Interior to the Health and Human Services Department and it should be made into a permanently funded Title.

2) The one year funding cycle should be abolished and moving to a more realistic three to five year funding cycle.

3) A monitored funding process should be established and funding criteria should be adhered to on a national basis in order to allow for consistent screening and funding practices.

4) The Act should be amended to conform to more realistic tribal/urban needs, ie: urban programs having sufficient funds and jurisdiction to force local State agencies to return Indian children to their Tribe's reservation; insuring that every tribal government has sufficient funds to take care of the needs of their local families as well as those children being returned from urban areas; extending support services to those children who are the subject or custody proceedings; providing special funds to train state court judges, court workers and local county welfare workers, etc.

5) The federal regulations written for the Act should be rewritten since, according to Russel L. Barsch (The Indian Child Welfare Act of 1978: a critical analysis. Hastings Law Journal, 1980, 31, 1287-1366), the present regulations are empty of content.

Chairman Andrews, members of the committee staff, once again let me express my appreciation for the opportunity to counsel you on the Oversite of the Indian Child Welfare Act of 1978, a law that is perhaps the single most important piece of legislation for Indian children, families, Tribes, and off-Reservation urban Indian agencies striving for community self-sufficiency. Thank You, and do not hesitate to call us for futher information.

PREPARED TESTIMONY OF THE BOSTON INDIAN COUNCIL, INC., SUBMITTED BY CLIFFORD SAUNDERS, EXECUTIVE DIRECTOR

We wish to express our appreciation to the Committee for granting the Boston Indian Council, Inc. (BIC) the opportunity to testify regarding the Indian Child Welfare Act and particularly our concerns with the inclusion of urban programs, allocation of sufficient funding and state court implementation of the Act. Since the Bill was enacted in 1978, the issues of level of funding; questions of whether urban Indian programs would be included; and disputes concerning state court implementation remain basically unresolved. Every year these three fundamental issues, which are critical to the full realization of the Act's intent, continue to be problematic because of the lack of clear and long term public policies to guarantee the rights of Indian tribes and their members recognized in the Act. Without a firm commitment on the part of this Committee to pledge adequate funding, support off-reservation Indian constituencies and ensure safeguards for state court implementation, the Act will not fully realize its goal to strengthen Indian families and reduce the numbers of Indian children placed in non-Indian homes.

Funding under the TITLE II of the Indian Child Welfare Act is best understood as an investment in society in general and in Indian tribes and their children in particular. In 1975 the Association of American Indian Affairs' study revealed that between 25-35% of all Indian children resided in non-Indian foster homes and institutions. From a purely monetary perspective, each incident of an Indian child placed outside the family represents thousands of human service dollars each year. Even more troublesome than the expense of maintaining an out-of-home placement is that very few resources are targetted to prevent Indian family

break-ups. The Indian Child Welfare Act is the only source of funding that attempts to address intervention in Indian family crisis situations before they evolve into an actual family breakdown. Yet, the Bureau of Indian Affairs in its five years of administering TITLE II grants has never had sufficient funding for needed programs. The BIA on the one hand is given the responsibility for administering a key element of the Act and on the other hand is given too few resources with which to fulfill its mandate.

The Boston Indian Council understands this issue of very limited funding from yet another perspective: that of the Indian child's and his community's ability to reunite him with his family. The BIC began operating an Indian Family Support Program in 1977 through a research and demonstration grant from the Department of Health, Education and Welfare. Along with the grant came the responsibility to help Indian families remain intact and assist in the reunification of families, who were broken-up through foster care situations. Inspite of the fact that the Indian community in Boston has grown since 1977 from 3,500 to 5,000, and the Indian child welfare cases are just as numerous and severe as they were when the program began, the BIC receives less funding in 1984 than it did in 1977. Furthermore, there are too many other reservation and off-reservation programs, which are simply not funded because the allocation for Indian child welfare services is insufficient to meet the need.

One year funding cycle as opposed to two or three year grants also pose problems for tribal and community-based programs. One year grants does not allow for long term planning, staff development and training and the development of an on-going relationship with state courts and social service agencies. In addition, year-to-year grants force

program administrators to spend a substantial amount of time on refunding activities as opposed to deliverying services to the community. State social service agencies come to rely on programs that have experience and expertise in Indian child welfare cases. When programs such as the BIC's Indian Family Support Program lose funding for a year, cooperative arrangements with the State and continuity of services in the community are seriously undermined.

While the mission of the ICWA is clear 'to reduce the incidence of Indian family disintegration', the funding determination on the part of this Administration is not. We understand that it is this Administration's policy to reduce the federal deficit through the reduction of human service spending. This policy, however, especially as it relates to Indian child welfare funding is short-sighted and fails to realize the full cost of neglecting the emotional as well as socio-economic potential of Indian children and the future economic stability of tribes. Today, thousands of Indian children spend years in costly foster care and institutional settings. An investment, which reduces the number of out-of-home placements, not only constitutes a great saving in future human service spending, but more importantly ensures the well-being and emotional stabililty of the Indian child. The tradeoff between appropriating funds, which strengthen Indian families and maintaining a costly foster care system is one which compromises long range human potential in the Indian community for short range political objectives.

Basic to the Indian Child Welfare Act is its implementation through the state court and social service system. However, even in instances where court and social service personnel agree with the mandates of the Act regarding the transfer of jurisdiction or priority placement of an Indian child with extended family members, there are many areas of the

law that remain unclear. For instance, the BIC Indian Family Support Program has been involved with Indian child welfare cases, which necessitated the return of children to South Dakota and in one instance a small infant was returned to Alaska. Debates on "who picks up the travel costs" unfortuantely can delay the resolution of these cases for weeks and sometimes months. These unnecessary delays can be resolved in at least two ways. One method is to properly finance Indian Child Welfare Programs to assume the cost of this activity. The second possibility is to establish a set-aside, which programs and state courts nationwide could tap into when dollars are needed to transport Indian children across state borders. If the Social Service department of the BIA developed a mechanism for the prompt dispersement of these travel funds, unnecessary delays in reuniting families would be eliminated. Yet basic to both of these options is the need for sufficient dollars allocated for the cost of transferring jurisdiction from state to tribal court.

Another issue, that arises perhaps more frequently in urban areas as opposed to reservation programs, is the case where a child's mother and father belong to two different federally recognized tribes. What happens when both tribes petition for transfer of jurisdiction? Do both of these petitions cancel out because of each parent's unwillingness to recognize his/her spouse's tribal court? If this is so, is this tug-of-war procedure in fact in the "best interest of the child"?

Futhermore, inspite of the fact the Act has been in existence for nearly six years, the majority of judges, attorneys and social workers in Massachusetts are unfamiliar with the Act. This is due in part to the fact that American Indians in this State are dispersed throughout many communities and that court or social serivce personnel may only work on one Indian child welfare case in their entire career. Lack

of familiarity and working knowledge of the Act pose problems for the prompt and proper resolution of Indian child welfare cases.and further demonstrates the need and importance of urban programs as advocates of Indian children and consultants to state courts in implementing ICWA mandates.

The off-reservation experience for a majority of American Indians is characterized by poverty, unemployment, crowded and/or sub-standard housing and poor health. The following data is from the 1980 Census and is included to provide a picture of what life is like for Indians in Massachusetts and to demonstrate the need for urban programs.

1. The 1980 Census reports that in 1979 there were 7,483 American Indians, 129 Eskimos and 131 Aleuts in the State.

2. 32% of Indian families have no husband present and in central cities 45% of Indian families do not have a husband present.

3. For persons 16 years and over, 36% were not in the labor force. 46% of females of the same age group were not in the labor force. 60% of females 16 to 19 were not in the labor force.

4. Income of Indian households in 1979:

Less than $5,000	21%
$5,000 to $7,499	12%
$7,500 to $9,999	13%
$10,000 to $14,999	15%
$15,000 to $19,999	13%
$20,000 to $24,999	9%
$25,000 to $34,999	12%
$35,000 to 49,999	4%
$50,00 or more	1%

The median income is $11,734 as compared to $21,754 for the population at large.

5. For females 15 years and over with income, the median income was $4,904 with only 27.4% working year-round full-time.

6. 25% of Indian families receive income from public assistance.

7. Of the 482 Indian families below poverty level, 58% do not receive any type of public assistance income. Over 90% of these families have children under 18 years of age.

8. Approximately 216 Indian children reside in non-Indian homes and institutions.

The transition from reservation to urban life has been accompanied

by serious social problems, which make families vulnerable to break-ups. Although there exists a close extended family network within the community that allows for cultural reinforcement, Indian people have not been prepared educationally, economically or psychologically for the change. The complexity of the urban world is heightened by direct and subtle discrimination, the realities of the urban labor market and the lack of knowledge and sensitivity on the part of human service agencies. Urban Indian programs have a unique role in helping families remain intact while making the adjustment from reservation to urban life.

In conclusion, issues of implemention, funding and viability of urban programs are critical to the ICWA. Only with adequate funding and reservation-off reservation cooperation and linkages can the Act hope to benefit the greatest number of Indian families.

PREPARED TESTIMONY OF THE BURNS PAIUTE TRIBE SUBMITTED BY

VERNON SHAKE SPEAR, CHAIRMAN

The Burns Paiute Tribe has had sporatic funding from Title XX, Indian Child Welfare Act grants since initial funding year in 1979. For the three years that the Burns Paiute Tribe received funding, the goal of the project was to maintain the family unit and return displaced children to their families, if possible. The Burns Paiute Tribe is a very small Tribe with 240 members, the project estimated that 50% of the population would benefit from the project. At the end of each year of funding the project demonstrated that 75% of the population benefitted from the project. All children who were placed by the State agency within the proximity of the Burns Paiute Reservation were returned to their families. Prior to the funding there were no (0) Indian foster homes, there are now 2 Indian foster homes and 2 emergency shelter homes. The Burns Paiute Tribe is a non-280 Tribe which gives the Tribe jurisdiction over Indian Child Welfare matters. Because of this status, the State of Oregon will not pay for foster care on the reservation. The Burns Paiute Tribe does not have the resources of it's own to purchase foster/shelter care and this is a hardship on the families who are providing this service. Attached is testimony that was submitted to the State of OREGON, Children's Services Division in May, 1981, regarding the Proposed Indian Child Welfare Act rules for the State of Oregon. Since submission of testimony at the State level, no action has transpired from that time. The Burns Paiute Tribe has had no Indian Child Welfare Program for the past two fiscal years with no other services being provided by the B.I.A., the State or the Tribe. The need is escalating and will be described in the problem statement. Based on the allocation received from these awards, the cost per client has been $103.00,

this is far below the standard cost of services provided at the State agencies.

Listed are the specific problems that the Burns Paiute Tribe has experienced with the implementation of the Indian Child Welfare Act and the State of Oregon.

1. Since the Indian Child Welfare Act grant money, Title 20, began in 1979, the Burns Paiute Tribe has received the grant in 1979, 1980 amd 1982. The inconsistent manner the awards are made has resulted in the Burns Paiute Tribe's inability to make realistic planning regarding the Indian Child Welfare. The Burns Paiute Tribe is placed under the jurisdiction of the Warm Springs Agency which is located 200 miles away. Traditionally, the agency BIA is responsible for providing Indian Child Welfare needs and Social Services, at some point in time the Warm Springs Agency decided they did not need the BIA services of Child Welfare and Social Services, so those services were no longer provided by the BIA. Therefore, the Burns Paiutes were left without these services provided to them. When the Burns Paiute Tribe is not selected for an award of the Title 20, Indian Child Welfare Grant, the Tribe is unable to deliver any type of child welfare service. The inconsistent funding is a major problem to the Burns Paiute Tribe. The competitive process often eliminates the smaller Tribe. All factors are not taken into consideration when the awards are being made.

2. 50% of the people of the Burns Paiute Tribe who are now of parenting age were raised in non-Indian homes, located away from the reservation. This has proved a great hardship in providing services as well as addressing the cultural needs. Most of these people have returned to the area with the hope of reuniting with their families upon reaching adulthood. This has proven to be a very difficult task for the returning persons as well as the community members, due to the difference in communication, values and culture.

3. The Burns Paiute Tribe has submitted a State-Tribal agreement with no success. The State did not respond to the Agreement, after the Tribal Attorney made several attempts to request a response from the State, the Agreement went ignored. The Indian Child Welfare Act provides for Tribes to make such agreements but, it appears from the experience that the Burns Paiute Tribe has had with the State, that unless the State has full control of the decision making it will ignore any action that is not fully initiated by itself. This leaves the Tribe with no alternative, which leads to another concern. The concern of how a Tribe can deal with a State that fails to comply with Federal law.

4. Funding (with #1) Another problem with funding is the fact that if a Tribe who received an award had a specific task ie: Tribal Children's Code, they would be denied an award if they put that task in an an activity in a later proposal. Some clarity needs to be established in such cases. A Tribe can develop a Tribal Children's Code and four years later find that revisions are needed or further amendments are necessary. This is an area that the Portland Area has not funded or made provisions for.

5. In the Portland Area which is the Area that the Burns Paiute is under has not provided the Burns Paiute Tribe with updating or implementing of the Indian Child Welfare Act with the Tribal Council and the Burns Paiute Tribal organization. This is the responsibility of the B.I.A.

6. Definitions that need redefining are: "expert witness", Child-custody proceedings. The interpretation of these definitions on the part of the State agencies are judgmental and irrelevent to the needs of the Indian culture and social structure. Child custody proceedings are unclear, notification to the Tribe is after the initial proceeding has begun, which delays the time for the Tribe to intervene. All notification should begin immediately when a child is initially entering any type of placement.

The Indian Child Welfare Act was passed without an appropriation which makes the legislation little of non effect in the delivery of services. The service delivery varies greatly from tribe to tribe. There was a recommendation to appropriate $15,000,000.00 with the passage of the Act. $15,000,000.00 is the recommended appropriation to carry out the intent of the Act. Other recommendations are:

To establish the funding cycle for three years to allow continuity of services.

The emphasis of the funding should be towards development of programs.

Suggestion to evaluate BIA and other Indian monies to determine where the money is spent and if it is equitable.

A priority is the establishment of Tribal Children's Court.

That some mechanism for enforcing the Indian Child Welfare Act's implementation and it's intent, be developed, for the States to follow.

This concludes our testimony. Thank you for the opportunity to provide this testimony. We would be willing to answer any questions that you may have regarding this written testimony.

Your Honor:

My name is Wanda Johnson. I wish to address your court regarding a centralized record keeping system.

The Federal Act requires that all records be kept by the State. We feel that there will be difficulties in locating particular records if records are to be kept in a branch office where proceedings were initiated.

This would be near impossible for an out-of-State Tribe if the branch office is not known. We feel very strongly that a centralized location be kept and that records be available to a childs tribe at any time, thus relieving any child of any unnecessary stay in a shelter until they can be reunited with family.

The Burns Paiute Reservation has experienced a large number of our children that have been placed by the C.S.D. into non-Indian homes out of our area, some have since moved out of State. Having this experience with the C.S.D., there is a strong need that the State have a centralized record location. Thus, enabling any child that has a need to retrieve his or her familiy ties which will assist them or their children to enroll in our Tribe if they choose to do so.

Wanda Johnson
Parent Committee

Your Honor:

My name is Cheryle Ann Kennedy, Mental Health Specialist and Consultant for the Burns Paiute Tribe regarding Indian Child Welfare.

I am going to address two issues regarding the C.S.D.'s proposed rules on the implementation of the Indian Child Welfare Act.

The first issue is the definition of expert witness. Due to past experiences with having a "qualified expert witness", which was usually a non-Indian caseworker, the Burns Paiute tribe has suffered the effects by having their children placed out of their home and community. The impact that a qualified expert witness carries in the court room is paramount therefore, the need to adopt the definition for expert witness as stated in the draft rules that we are presenting is mandatory.

FOSTER CARE PAYMENTS

The status of the Burns Paiute Reservation is non-280, which allows for the Tribe to govern, manage and plan for their own children and any problem that may arise around child welfare. The difficulty that surrounds this area is the fact that the State of Oregon C.S.D. feels there is no need to assist the Burns Paiute Reservation in making payment for any substitute care that may occur due to the fact the C.S.D. would have no control over the situation.

According to the Attorney Generals' opinion on Indian Child placements, he stated that C.S.D. could indeed make payments for foster care for Indian children placed in foster homes on the reservation although the child was not in the custody of C.S.D.

The question of payment would then hinge upon the availability of C.S.D.'s foster care payment funding. If the question is in actuality the "availability of foster care payment monies", then there should be no problem, for the Indian population is only four percent of the total population of Oregon. We are not asking for a large proportion of the funding, only what is entitled to all the residents of Oregon who are in need of those services.

Cheryle Kennedy, CHR/MHD
Burns Paiute Reservation

Statement of Sande Schmidt
Tribal Attorney for Burns Paiutes

May 8, 1981
Bend, Oregon

Hearings on Proposed State ICWA Rules

I am Sande Schmidt, tribal attorney for the Burns Paiutes. Others from the tribe have told you the concerns of the tribe, and of the need for these rules. The tribe has spent much time reviewing these rules; you should give considerable thought to their comments.

I draw your attention to some technical omissions in CSD's proposed rules. CSD caseworkers may have only these rules to use in making decisions affecting Indian children. These rules should be as complete as possible and provide as much direction to caseworkers as possible. For these reasons, the alternate rules we have proposed cover some areas not mentioned in CSD's proposed rules.

The first is the area of tribal-state agreements. The ICWA authorizes States and tribes to enter into agreements concerning the care and custody of Indian children and jurisdiction. 25 USC §1919. The proposed CSD rules refer to these agreements a couple of times but do not make it clear that these agreements may override the rules. Caseworkers need to be alerted that procedures, jurisdiction, placement preferences, and other matters may be different for a particular tribe because of such an agreement. Our proposed Rule 412-26-040 alerts caseworkers that these agreements exist, that they may override the rules, and that caseworkers can learn the existence and terms of such agreements at the central records office.

The second area involves cooperation between CSD and tribal courts. Last year the Oregon Attorney General, in Opinion #7899, determined that CSD has the power to accept custody of children and to provide services to children through tribal courts. The proposed CSD rules do not refer to this power. Caseworkers may not have access to the AG's opinion, so this power should be spelled out in the rules. We drafted Rule 412-26-045 to fill this gap. Under this proposed rule CSD caseworkers know they can work with tribal courts in providing services and in accepting custody of children.

The third area concerns the making of payments by CSD to Indian foster homes. Indian foster parents should receive foster payments whether or not CSD has legal custody of the children involved. Indians should not be forced to choose between state financial aid and the protections of the ICWA. In the same Attorney General's Opinion (#7899), it was determined that CSD may make payments to Indian foster homes even though CSD does not have custody. But again, caseworkers may not have access to this Opinion, so this information should be in the rules. We proposed amending the existing payment rules to conform to the AG's Opinion and to let caseworkers know that payments are permitted in such cases.

Centralized recordkeeping?

Your Honor:

My name is Truman Teeman. I am an enrolled member of the Burns Paiute Tribe. I am also Chairman of the Parent Committee for the Tribe. I am going on record to relate how the State Agencys have handled Indian Child Welfare and the need to adopt the proposed rules that have been written along with the other tribes. Historically, the State Agencys have dealt with the Indian Child Welfare in the following manner.

The Burns Paiute Tribe is a small band of Paiutes that live in and around Burns, Oregon. The population has always been very small, children making up the most part. During the mid-forties and thru the early sixties, 50% of our children had been placed in foster homes away from the natural environment of the reservation and were adopted by non-Indians.

Many of the Indian families were told that they could not support their children or they came from broken homes and the Welfare Department therefore gained custody of these children and placed them in "suitable" homes. Most of these homes were in the Willamette Valley miles from their homeland and generally were non-Indian homes. In most of these cases families were not allowed to see the adopted children or to know where and with whom they had been placed. In one instance a grandfather to one boy wanted to keep his grandson but was told by the Welfare Department he didn't have the funds to support him.

Due to most of the children being placed in non-Indian homes they lost their language and their Indian values. Consequently today many of these adults do not know their Indian heritage and have lost their Indian identity and are trying to find themselves.

CHILD AND FAMILY CONSORTIUM

OMAHA UNIT
Jessaline Anderson, Director
P.O. Box 368
Macy, NE 68039
402-837-5391

WINNEBAGO UNIT
Norma Stealer, Director
P.O. Box 626
Winnebago, NE 68071
402-878-2570

April 25, 1984

Senator Mark Andrews, Chairman
Select Committee/Indian Affairs
United States Senate
Washington, D.C. 20510

Re P.L. 95-608 THE INDIAN CHILD WELFARE ACT

Dear Senator Andrews:

The Omaha and Winnebago Tribes of Nebraska occupy two reservations adjacent to one another, in the northeast corner of Nebraska. After serious deliberation, the Omaha and Winnebago Tribal Councils resolved to form the CHILD AND FAMILY CONSORTIUM to adapt their child welfare services to effect a greater impact upon its direct services to tribal members and upon the state judicial system and the public welfare agencies.

The Consortium proposes to serve 575 individuals in various service areas. The starting date is June 1, 1984, and will conclude on May 31, 1985. Due to our combined service area population of 3,331 we requested funding at the minimum funding level for consortiums in the amount of $150,000.00.

The Consortium's broader goals and objectives address Consortium - State Agreements regarding foster care licensing and the addition of Indian Child Welfare Regulations to the state welfare manual. The tribal units have goals and objectives which directly meet the needs of their respective tribal members, which are within the guidelines of the Indian Child Welfare Act.

A JOINT PROJECT OF THE OMAHA AND WINNEBAGO TRIBES OF NEBRASKA

We believe that the track record of the two tribal child welfare programs for the past three years is a sound base upon which the two tribes may continue to build cooperative ventures in providing improved and more sophisticated services to their tribal members.

OMAHA CHILD & FAMILY SERVICES

Under Public Law 280, the Omaha Tribe retroceeded in October 1978, and maintains exclusive jurisdiction in all child custody proceedings. The Omaha Child & Family Services, funded by Title II of the Indian Child Welfare Act, has been in operation since May 1979.

The Omaha Child & Family Services is a service-oriented project and provides supportive and direct social services to children and families involved in child custody proceedings both locally and out-of-state. Two of the most successful services our program provides are 1) Recreational services and activities for the youth, as a preventative factor; The orientation is cultural activities, emphasizing the Omaha Clan Structure and the tribal value system. The development of a volunteer program utilizing tribal elders and extended family members meets the cultural needs and support needs of the youth. 2) Child Protective Services and Committee, organized to provide protective services to reservation children. The primary concern is to evaluate child welfare cases using a team review approach, to design an individual treatment plan and a letter of agreement by the parents, to monitor foster care placements and to assign service responsibilities among the Committee members.

The FY 83 funding is $50,000.00. Program staff includes three full-time positions: Project Director, Social Service Worker, Youth Resource Worker and a part-time Secretary. Salaries constitute more than two-thirds of the budget. The proposed Consortium budget would have allowed the maintenance of this staff level, with an increase in supportive services, such as transportation and training.

Services to children and families:

FY 81: 126 children & 29 adults accomplished
FY 82: 155 children & 40 adults accomplished
FY 83: 200 children & 50 adults accomplished
FY 84: 265 children & 60 adults projected

WINNEBAGO CHILD & FAMILY SERVICES

Pursuant to the Indian Child Welfare Act, the Winnebago Tribe of Nebraska petitioned the Secretary of the Interior to Resume Exclusive Jurisdiction over child custody cases involving Winnebago children in any state court in the United States. This "Reassumption of Jurisdiction" was approved, including a proposed Juvenile Code. Given this legal mandate, the Children's Court began operation on June 21, 1982, expressly for the welfare of any Indian child on the Winnebago Reservation and for any Winnebago child involved in state court for reasons of neglect or dependency.

The Winnebago Child & Family Services grant program's overall purpose is to promote the stability of Indian families through early intervention prior to formal court action and to prevent the breakup of Indian families which come before the Winnebago Tribal Children's Court and who may come before any juvenile or family court in the United States for reasons of neglect or dependency.

For program year beginning September 1, 1983 and ending May 31, 1948, Child & Family Services was awarded $50,000.00 to fund a Secretary, a Counselor and a Project Director, to provide services to 200 individuals (150 children and 50 adult/parents).

In the first six months of this year, we have provided services to families involving 78 children.

The two most successful services our program provides are

1.) Protection for the reservation child. The seven year old Child Welfare Committee comprised of school, tribal health, PHS community health and BIA social services meets weekly to coordinate all child welfare services on the reservation. The Committee screens for resources required before any off-reservation case is returned to Winnebago.

2.) Advocacy for the urban Winnebago family. State courts are beginning to develop a respect for Tribes and to acknowledge their right to be a party to the proceeding involving tribal members. State social services must be reminded that they are equally responsible to the parent for rehabilitation as they are to the children in protection. Once we apprise both the parent(s) and the social worker of this obligation, services finally begin to assist the family at reunification.

The two least successful service activities are

1.) Transfer of Jurisdiction of healthy infants from other states. If the children are older, if they have behavior or psychological problems, the state is more willing to allow the transfer back to the reservation.

2.) Cooperative investigations of physical and sexual abuse reports regarding reservation children. Because Nebraska is governed by P.L. 280, civil and criminal jurisdiction is vested with the State of Nebraska when it concerns Winnebago Indians. The local county sheriff does not believe that the Winnebago Tribe has jurisdiction in child welfare cases.

EFFECT OF BUDGET CUTS

Financially, the Omaha Unit will be able to maintain only the Director and supportive expenses. Their caseload capability will decrease by 75%. The Winnebago Unit will be able to maintain one direct service staff. The caseload capability will be cut by 60%.

Administratively, the Tribes will become less effective in their ability to maintain and develop further their relationships to the state judicial system and to the public welfare system. Case work, direct services will become so demanding that in-depth development of an equitable partnership between tribes and state social services will be discontinued. The intent of the Indian Child Welfare Act which speaks to "full faith and credit" cannot be completed.

Progress in promoting the states' cooperation and compliance with the Indian Child Welfare Act is sure to slide backwards and Tribes will become ignored once again by states' juvenile justice systems.

Therefore, we urgently request your advocacy and leadership in assuring us that funding levels will not be reduced as is presently being proposed. Thank you for your consideration in this crucial concern to the American Indian Tribes and their children.

Very truly yours,

Norma Stealer

Norma Stealer, Director
Winnebago Unit

Concur:

Jessiline Anderson

Jessiline Anderson, Director
Omaha Unit

THE SAULT STE. MARIE TRIBE OF

CHIPPEWA INDIANS

206 GREENOUGH ST.
SAULT SAINTE MARIE,
MICHIGAN 49783

April 12, 1984

RECEIVED APR 1 C 1984

Senator Mark Andrews
Select Committee on Indian Affairs
724 Senate Hart Building
Washington, D. C. 20510

Dear Senator Andrews,

This letter shall address the oversight hearings on the Indian Child Welfare appropriations for FY 85. Looking back to the 1982 and 1983 budgets of 9.7 million dollars and the proposed 7.7 million dollars for FY 85, it will not be possible to provide the same quality service to Indian people that has been provided in the past.

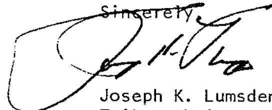
The intent of the Indian Child Welfare Act is to give proper care of Indian children needing adoptive or foster home care. It's main objective is to restrict the placement of Indian children by non-Indian social agencies in non-Indian homes and environments.

The 12 million dollars recommended by the Senate Select Committee will insure protection of the best interests of Indian children and their families by providing assistance and funding to Indian tribes and organizations in the operation of child and family service programs which reflect the unique values of Indian culture and promote the stability and security of Indian families.

I would, however, recommend that the competitive nature of the program be eliminated and the child welfare appropriations be allocated to Tribes on a case or population basis or a combination of the two. Indian organizations should continue to be competitive with a specific set-aside which they would compete for.

We have sent this same letter to Senator James McClure, Chairman, Appropriations Sub-Committee on Interior and Related Agencies and we respectfully requested that this letter be entered as part of the record of the hearings to be held on April 25, 1984. Due to cutbacks and deficits in federal funding and given the economic conditions of the nation's reservations, we want to thank you for your support in the past and ask for your continued support for FY 85.

Sincerely,



Joseph K. Lumsden
Tribal Chairman

JKL/kf

TESTIMONY OF ROSS O. SWIMMER, PRINCIPAL CHIEF, CHEROKEE NATION OF OKLAHOMA, TO THE INDIAN CHILD WELFARE ACT OVERSIGHT HEARINGS CONDUCTED BY THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE. SUBMITTED MAY 22, 1984.

When the Cherokee Nation of Oklahoma began planning its response to the Indian Child Welfare Act following passage of that Act by Congress in 1978, priority was given to the following considerations:

(1) A tribal child welfare program should address the root causes for the high rates of placement of our children (400% of the rate for non-Indian children in Oklahoma).

(2) The program should be constituted in such a manner that there would be little or no duplication of the services offered by other agencies, in particular the Child Welfare Unit of the Oklahoma Department of Human Services.

In attempting to research the causes for the high placement rate of Cherokee children, we looked first at the systems already in place to deal with child abuse and neglect and with placement of children: the Oklahoma juvenile justice system and the Department of Human Services. In examining the court system, we found no evidence of any overt efforts to remove Cherokee children from their families on a wholesale basis, as the placement rates might indicate. On the contrary, we found several judges and district attorneys who were themselves Cherokee and a number of others who seemed to make a true effort to be understanding and considerate of Cherokee culture and values. In examining the staff of the Department of Human Services, we found a similar situation. Instances in which Department of Human Services staff have shown open bias against Cherokee people have been very rare. If discrimination existed, it was isolated, well hidden, and thus extremely difficult to confront openly.

Continuing our attempts to identify the causes for the high placement rates, we looked introspectively at our own Cherokee people and our culture. We know that Cherokee people tend to value their children highly. Physical abuse is extremely rare. Sexual abuse is present but not in numbers sufficient to justify the placement rates. Child neglect occurs more frequently but, again, not at so great a rate as to explain the high incidence of placement.

We therefore came to the conclusion that the most significant root cause for the high placement rate of our children lay not with the existing child welfare and

court systems nor with the Indian people and their culture, but with the absolute incompatibility of these two entities. The point at which the state child welfare/court system and Indian culture meet is characterized by a gigantic gap in understanding, communications, and trust. These two disparate entities share almost no commonalities, either in historical development, ways of viewing the world, or responses to problem situations. When the two systems, state child welfare and Indian culture, were forced by circumstances to deal with each other, the results were almost always disastrous, with Indian people and their culture usually being defeated by the stronger, more powerful state system.

The Cherokee Nation saw as its clear mission, therefore, the development of a program to act as a buffer between Indian culture and the state child welfare system in order to enable Cherokee families to obtain more positive outcomes and to prevent unnecessary separation of Cherokee families and their children while providing for the protection of those children. Our program was created to address specific situations which were occurring all too frequently and were hurting Cherokee people. Such a program, by definition, accomplishes our second stated goal of avoiding duplication of existing child welfare services. Among the specific situations which the Cherokee Nation's Indian Child Welfare Program addresses are the following:

(1) The Language Barrier

It is estimated that 20-25% of the Cherokee Nation's 60,000 tribal members speak the Cherokee language. In many of our traditional homes, Cherokee is the only language used for daily communication among families. While most of those persons who speak Cherokee also speak some English, many of them prefer to speak Cherokee and are able to communicate much more expressively in the Cherokee language. To our knowledge, none of the state child welfare workers, judges, or district attorneys in our service area are fluent in Cherokee, nor do they ask for an interpreter if the client appears able to speak any English at all. This situation results in very poor communication between Cherokee families and public authorities regarding child welfare matters. One of the more tragic illustrations of this problem is the parent who comes to the tribal office to request tribal child welfare staff to find out why his or her child has been removed from the home by the police. Usually, police officials and state child welfare staff have explained the removal to the parent at the time, but due to the parent's fear and panic coupled with his or her minimal grasp of English, the parent was unable to understand the explanation given.

Bilingual tribal child welfare staff have been able to provide assistance to families in such situations, and we have done forceful advocacy with law enforcement and state child welfare and court officials to sensitize them to the special attention that must be given to communication with Cherokee-speaking families. By doing so, we have reached the point where state child welfare workers often call on our bilingual child welfare staff to accompany them on investigations of complaints of child abuse or neglect involving Cherokee-speaking families. In this way, the parents and children receive full explanations of the alleged problem and the process in their own language and are enabled to more fully and expressively explain their situation to another Cherokee-speaker. Often, removal of the children from the home is avoided simply by improved communications between the family and the state child welfare worker.

Bilingual tribal staff are also skilled at explaining court procedures and processes to Cherokee-speaking families, thus allaying the fear of the unknown which had often led to panic on the part of families who did not understand the court system. We also insist that all Cherokee-speaking clients and witnesses be provided with interpreters during court proceedings. By simply addressing the obvious problem of language barriers, our program has greatly improved communications and understanding between Cherokee people and the state child welfare and court systems.

(2) Lack of Trust in Formal Systems

Indian people have good reasons to traditionally distrust the white man's system of justice and agencies such as the Department of Human Services. They have seen Indian children removed from their families, for no reason apparent to the Indian community, and placed in institutions, foster homes, and adoptive placements, never to be seen or heard from again.

Therefore, when an Indian child is removed from the home by the court, even if on a temporary, emergency basis, Indian families tend to see the situation as hopeless and often believe that there is no chance of their child being returned to them, even if the court and the state child welfare staff tell them that return is possible or even probable. The reaction of many Indian parents upon removal of their child is to simply give up. They feel powerless to fight the system. Almost always, they become depressed, often severely so. Some turn to alcohol or drugs, and others simply move away and disappear.

The role of tribal child welfare staff is to develop trusting relationships with the parents whose children have been removed and to help them see and deal with the situation in a more hopeful, realistic manner. Often this requires persistent casework efforts on behalf of tribal staff, as well as negotiations with the courts and state child welfare workers to set realistic and attainable goals for the parents to accomplish in order to secure the return of the child. Tribal staff expend as much time and effort as is necessary in order to develop trusting, caring relationships with parents, to enhance their self-confidence and sense of competence, and to provide services to enable them to solve the problems which led to placement of their children. Such intensive services are not limited to traditional casework tasks, such as counseling and referral, but almost always involve strong advocacy efforts; supportive services such as transportation, assistance with finances and housing, coordination with medical resources, help with educational or employment problems, and parent aide services; and the utilization of existing community grassroots helping systems within the traditional context of Cherokee culture.

The success of such services is borne out by the fact that during the first three years of the Cherokee Nation's Indian Child Welfare Program, these intensive services and advocacy efforts have resulted in 87% of Cherokee children for whom the state has recommended removal from the home being able to remain safely with the family.

In order to insure that these children remain safe in the homes of their parents or extended family members, our Indian Child Welfare Program has a policy of never closing a case on a family. Even after the court case has been dismissed and the state child welfare case has been closed, we retain each family on open status and check with them periodically to see that the children are safe, that the family is continuing to function well, and to let them know that we care about the welfare of their family and their children. If problems arise, families feel free to call upon us for help, and we again utilize all the resources available to enable the families to deal with and find solutions to the problems confronting them.

(3) Cultural Differences

Often situations which look like abuse or neglect to state child welfare staff investigating an Indian family are simply cultural differences. One example is the Indian concept of the extended family, in which a child is not

merely the responsibility of his parents but also of a wide circle of family members related by blood or by tradition. It is common for a child to reside with family members other than parents for varying periods of time and, sometimes, throughout his or her entire childhood. State child welfare workers often perceive such situations as parental abandonment and want to take action to correct the situation. Tribal staff intervene in these instances to interpret the cultural values to the state workers and the court to avoid the child being removed from what is, to the family, a desirable and natural situation. Tribal staff have also done a great deal of work to educate state child welfare workers and judges to this particular cultural characteristic in order to prevent unnecessary investigations of reported abandonment, which only serve to frighten and alarm families.

Another cultural difference which if often misinterpreted is the degree of supervision which Indian parents feel is appropriate for children. Indian people tend to believe that children require a certain amount of freedom in order to explore the world and learn from their experiences. Children are judged not by their chronological age but by the degree of maturity and responsibility which they have acquired. An Indian parent may feel perfectly comfortable with leaving and eight year old child at home alone for limited periods of time or with leaving a ten year old child to look after younger siblings. Often, family members or neighbors are close by and available to the child should he or she need assistance. On the other hand, most police departments will pick up any child under the age of twelve who is without direct adult supervision, and often state child welfare workers will request the court to order emergency removal in such situations. By educating police and state child welfare workers to look more closely at such situations and to try to see the circumstances from the Indian parent's point of view, many such emergency removals are being avoided. In cases where removal occurs under such circumstances, tribal staff are usually able to facilitate the prompt return of the child and the avoidance of court action.

A number of other such situations arising out of the disparity between the values of our Indian culture and those of white society occur. Tribal staff are usually able to help resolve such situations through negotiation with and education of the state systems.

(4) Poverty and Neglect

A great many of our Indian people in Oklahoma live in abject poverty. Unemployment is high among Cherokees, and 27.4% of the families receiving Aid

to Families with Dependent Children in the nine counties totally within the boundaries of the Cherokee Nation are Indian, compared with a statewide percentage of 11% Indian recipients. These figures are particularly striking when it is noted that only 5.6% of the population of Oklahoma is Indian, according to the 1980 U. S. Census.

Poverty is often confused with child neglect, particularly by state child welfare workers who tend to be white and have middle-class values. To avoid needless removal of Cherokee children from their homes due to poverty which looks like neglect, our tribal child welfare staff have been trained to become specialists in discriminating between the two and are often called upon by state child welfare workers to assist in initial investigations of complaints of child neglect. In this way, we are able to prevent removal of children for alleged neglect where the real problem is poverty. We are also able to offer services to these families to help them locate resources for employment, training, and financial assistance to enable them to raise their economic standard of living, not just for the children but for the family as a whole.

In cases where neglect is identified but is not severe enough to warrant removal of the children, many state child welfare staff refer the families to our tribal child welfare program for services. We also receive neglect referrals from other agencies, from family members, and from individuals in the community. We provide intensive services to such families, based on trusting relationships, to help them to understand the effects on the children and to build their self-confidence to enable them to make positive changes and remediate the neglectful situation.

The Cherokee Nation Indian Child Welfare Program considers working with neglectful families to be our specialty. Other agencies are reluctant to deal with neglect due to the fact that change usually comes very slowly, if at all, and a great deal of patience and genuine concern is required to really be able to assist a neglectful family. We feel that the problem of child neglect has long been overlooked, ignored, and put aside by state child welfare agencies, and we are committed to filling this service gap by making child neglect services a priority of our program. In general, tribal staff have usually been able to obtain positive results with neglectful families. Although gains are often slow and difficult to measure, we feel we have had a positive impact on reducing child neglect among the families with whom we have worked.

(5) Alcohol-Related Problems

There is often a great disparity between the way Indian people and white people view the alcohol problem among Indians. While a white person, such as a state child welfare worker, may view a person as an abusing or neglecting parent who also drinks, Indian people may look at that same person and see a basically good parent who loves his or her children but may be abusing or neglecting them due to severe problems with alcohol abuse. State courts and child welfare workers may view the alcohol problem as a contributing factor and request that the parent receive alcohol treatment in conjunction with a multi-faceted service plan. Tribal child welfare workers, on the other hand, realize that, until the alcohol abuse is stopped, the parent is incapable of carrying out any of the other provisions of a court-ordered service plan and is being set up for failure. Our staff's first priority is to help the client obtain treatment for the alcohol problem, including inpatient treatment if needed, utilizing all the resources available through Indian organizations and other agencies for alcohol treatment. Once the parent stops drinking, the concomitant problems usually abate as well, and often the children can be safely returned home at that point. We also realize that alcoholism is a lifelong problem, that relapses may occur, and that consistent follow-up and services may be needed for years in order to insure that the children remain safe and protected.

(6) Extended Family and Intra-Tribal Placement of Children

It has been a long, difficult battle to insure that state courts and state child welfare staff comply with the Indian Child Welfare Act requirements for extended family placement. It is much easier for a state worker to place a child into a readily available white foster home than to seek out extended family placements. Our tribal child welfare staff have been very insistent that extended family placements be made where possible, and we have backed up our insistence with concrete assistance in locating and evaluating extended family placements. By doing so, we have reached a point where extended family placements are the norm rather than the exception for children who must be separated from their parents to insure their safety.

We have also worked very diligently to insure that Cherokee children are placed in Cherokee foster and adoptive homes when there are no relative placements available. We feel that our role is to serve as a link between the foster and adoptive home programs of the Department of Human Services and the people of our Cherokee communities. We have taken an active responsibility in

recruiting, screening, and assisting in the certification process of Cherokee families for foster and adoptive care. Through our intensive efforts in this area over the past year, the number of state-certified Cherokee foster homes in northeastern Oklahoma has increased from 17 in February, 1983, to 40 in January, 1984. We have also recruited and referred a sufficient number of Cherokee adoptive parents that no Cherokee child has had to be adopted to a non-Cherokee family since the inception of our tribal child welfare program.

The number of Cherokee families needing services from our Indian Child Welfare Program is far more that our program has been able to serve on the funds allotted by the Bureau of Indian Affairs. Program staff estimate that they could easily identify 4,000 - 5,000 persons per year among our tribe who are involved in abusing or neglecting situations or are at high risk for abuse or neglect. Our services are limited, then, not by the lack of need, but by the amount of funds and staff we have been able to obtain. During each year that our budget and staff have increased, so also have the numbers of our referrals. Yet we are still unable to reach all of the potential child welfare clients among our population due to lack of sufficient staff and resources. The following table will serve to further emphasize this point:

PROGRAM YEAR	FUNDS REQUESTED	FUNDS GRANTED	PERSONS SERVED	NOTICES/ REFERRALS RECEIVED	NEW COURT CASES (INTERVENTIONS)	COURT APPEARANCES	CLIENT CONTACTS	AGENCY CONTACTS	FOSTER/ ADOPTIVE CONTACTS	INFORMATION/ REFERRAL
1979-80	$68,116*	-0-								
1980-81	$252,188	$40,604	510	118	17	14	188	502	28	42
1981-82	$249,508	$70,487	557	129	27	48	783	670	24	81
1982-83	$276,959	$138,109	1,042	146	30	61	2,056	2,458	156	373
1983-84 (Partial: 75% of current program year)	$271,707	$166,030	1,100**	335	27	80	3,155	3,546	154	187
1984-85 (Begins 7/1/84)	$289,621	$157,047***								

*Planning Funds Requested

**Estimated

***Verbal notification only. Have not yet received official Notice of Grant Award for FY 1984-85.

The decreased amount of funding available to Indian Child Welfare Programs comes at a time when child abuse and neglect is increasing nationwide and such programs are more crucial than ever. In the nine counties of northeastern Oklahoma which are wholly within the boundaries of the Cherokee Nation, the number of confirmed incidents of child abuse and neglect has increased by 400% over the past four years. This drastic increase is due partly to economic stress in our area but may also partially be due to increased reporting as a result of more publicity and visibility of such programs as our Indian Child Welfare Program. Nationwide, 45 states reported increases in 1983, according to the American Humane Association.

Tribal Indian Child Welfare Programs are working well and are providing direct services to prevent children from being harmed while preventing family separation. Tribal programs are filling a gap in services which has been catastrophically damaging to Indian people over the years and has resulted in untold numbers of Indian children being uprooted from their families and their culture.

Tribal Indian Child Welfare Programs are able to provide services economically and without the waste so often present in state and federally operated programs. In our current Indian Child Welfare budget, for example, 72% of our total grant is utilized for direct personnel costs, including salaries, fringe benefits, and contractual attorney services. Our average cost per client per year, based on our total budget, is only $112.00. Few programs can manage the intensive, quality services we provide on that amount of money.

Almost all the problems experienced by our tribe in conjunction with the Indian Child Welfare Act result from the funding procedures utilized by the Bureau of Indian Affairs. Indian Child Welfare funds are awarded on the basis of competitive annual grants. Each tribe competes against all other tribes and urban programs within its Bureau Service Area. The disadvantages and problems of this system include the following:

(1) The competitive nature of the grants inhibits cooperation among tribes. Full and complete cooperation among tribes and urban programs located in the same geographic region is absolutely essential to the fulfillment of the provisions and the intent of the Indian Child Welfare Act. While most tribes and urban organizations have made an effort to rise above the competitive aspects of funding in order to coordinate to provide more and better services to our Indian people, the underlying awareness of the competitive grant process permeates all our dealings with each other and inhibits trust and cooperation.

(2) Preparation of a full and complete proposal each year takes a great deal of staff time away from direct services. The proposal preparation is time-consuming and repetitive, as is the Bureau's annual proposal review process.

(3) Due to the competitive annual grant process, it is impossible for tribes to adequately plan programs for more than one year at a time. The one-year nature of the grants inhibits tribes from expanding program scope to include components which cannot be completed within one year. For example, our tribe has considered implementing our own foster home program, but the prospect of initiating such a program one year, placing children in foster care, then possibly receiving no grant the following year and leaving children in limbo in foster homes prevents us from instituting such a program.

(4) The grant approval process places too little emphasis on a program's previous performance. More weight should be given to program performance reports and evaluations which indicate the level and quality of services provided.

(5) No training or technical assistance has been made available to our program by the Bureau for the past two years, other than a pre-submission review of our proposal each year by the Agency Superintendent.

In view of the above-listed difficulties, we would respectfully make the following recommendations:

(1) That overall funding for tribal Indian Child Welfare Programs be increased substantially in order to allow current services to be expanded to meet the critical unmet needs of abusive and neglectful Indian families and to prevent the breakup of the Indian family unit.

(2) That grants be awarded for at least a three year period, contingent upon satisfactory performance.

(3) That grant funds be distributed nationwide rather than on an Area-by-Area formula.

(4) That the primary considerations in awarding of grants be:

(A) Tribal population

(B) Demonstrated program performance.

(5) That the provision of training and technical assistance to Indian Child Welfare Programs should be a mandated function of each Area Social Worker of the Bureau of Indian Affairs.

In summary, the Indian Child Welfare Act is, as far as our tribe is concerned, effective in carrying out the intent of Congress to prevent the unnecessary breakup of Indian families and to give Indian people the opportunity to solve our own problems with child abuse and neglect. With the recommendations we have made, especially in regard to increased funding for tribal child welfare programs, we are confident that tribes will be able to completely fulfill the purpose of the Indian Child Welfare Act and find solutions to the problems which led to its passage by Congress.

On behalf of the Cherokee Nation of Oklahoma, I want to express my appreciation for the opportunity to present our views to your Committee.

Ross O. Swimmer, Principal Chief
Cherokee Nation of Oklahoma

Attachment: Joint Resolution of the Councils of the Cherokee Nation of Oklahoma and the Eastern Band of the Cherokees

Joint Council Meeting
of
Eastern Band of Cherokee Indians
and the
Cherokee Nation of Oklahoma
April 6-7, 1984
Red Clay Historical Area
Cleveland, Tennessee

RESOLUTION NO. ________(1984)

WHEREAS: The Indian Child Welfare Act was passed to encourage Indian Tribes to provide much needed social services to the children of their membership, and

WHEREAS: the Act has been successfully implemented by the Cherokee Nation and the Eastern Band of Cherokee Indians, and

WHEREAS: There have been reductions in funding to the tribes although the ratings of the grants have been high, evaluations of the programs superior, and the Bureau of Indian Affairs held its annual training program in Cherokee to "show-off" the program.

NOW, THEREFORE BE IT RESOLVED by the Tribal Council of the Eastern Band of Cherokee Indians and the Cherokee Nation, meeting jointly at the Red Clay Historical Area, that both tribes will exert their influence through their congressional delegations to encourage full funding of the Indian Child Welfare Act.

BE IT FURTHER RESOLVED that both tribes will meet with representatives of the Bureau of Indian Affairs to discuss the continuing need for funding of their programs and the necessity to reward program excellence with genuine support for their goals in funds as well as praise.

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

We, the officials of the Eastern Band of Cherokee Indians and the Cherokee Nation of Oklahoma do hereby certify that the Council members in attendance at this legally called joint meeting in which there was a quorum present on April 7th, 1984 adopted the foregoing resolution.

Ross O. Swimmer, Principal Chief
Cherokee Nation of Oklahoma

Robert Youngdeer, Principal Chief
Eastern Band of Cherokee Indians

Wilma Mankiller, Deputy Chief
Cherokee Nation of oklahoma

Robin Toineeta, Vice Chief
Eastern Band of Cherokee Indians

Colville Confederated Tribes

P.O. Box 150 - Nespelem, Washington 99155 (509) 634-4711

May 30, 1984

RECEIVED JUN 0 4 1984

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
U.S. Senate
Washington D.C. 20510
Attention: Pete Taylor

Honorable Mark Andrews:

The purpose of this letter is to submit the enclosed signed resolutions from the Colville Confederated Tribes regarding the Indian Child Welfare Act (P.L. 95 - 608).

Please include the resolutions as part of the written testimony for the record.

Your consideration and assistance is greatly appreciated.

Sincerely,

COLVILLE CONFEDERATED TRIBES

Al Aubertin, Chairman
Colville Business Council

Enclosures:

EK:AA:np

cc: H.E.W. Committee, C.C.T.
Steven Unger
Don Milligan
Larry Jordan, HRD Director

1984-365

R E S O L U T I O N

WHEREAS, the Colville Business Council is the governing body of the Confederated Tribes of the Colville Indian Reservation, Washington, by authority of the Constitution and By-laws of the Tribes as approved on February 26, 1938, by the Commissioner of Indian Affairs; and

WHEREAS, "the Indian Child Welfare Act of 1978 (PL 95-608) was enacted by the U.S. Congress to establish standards for the placement of Indian children in foster or adoptive homes and to prevent the breakup of Indian families;"

WHEREAS, "the U.S. Congress has declared that it is the policy of the Nation to protect the best interests of Indian children and to promote the stabability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture;"

WHEREAS, the states, exercising Jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families;"

WHEREAS, in order to accomplish the above goals Indian tribal governments, Indian organizations, and the Bureau of Indian Affairs must develop and implement a system for monitoring and technical assistance to state courts, state agencies, and private agencies;"

WHEREAS, the Colville Confederated Tribes obtained Exclusive Jurisdiction of Child Welfare matters on February 14, 1980.

THEREFORE, BE IT RESOLVED, that we, the Colville Business Council, meeting in SPECIAL Session, this 21st day of MAY, 1984, at the Colville Indian Agency, Nespelem, Washington, acting for and in behalf of the Colville Confederated Tribes, do hereby authorize a committee to develop methods of monitoring State Courts on Child Welfare proceedings on a State by State basis.

The foregoing was duly enacted by the Colville Business Council by a vote of 11 FOR 0 AGAINST, under authority contained in Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

ATTEST:

Al Aubertin, Chairman
Colville Business Council

1984-364

RESOLUTION

WHEREAS, the Colville Business Council is the governing body of the Confederated Tribes of the Colville Indian Reservation, Washington, by authority of the Constitution and By-Laws of the Tribes as approved on February 26, 1938, by the Commissioner of Indian Affairs; and

WHEREAS, "The Indian Child Welfare Act of 1978 (PL 95-608) was enacted by the U. S. Congress to establish standards for the placement of Indian children in foster or adoptive homes and to prevent the breakup of Indian families;" and

WHEREAS, "the U. S. Congress has declared that it is the policy of the Nation to protect the best interests of Indian children and to promote the stablity and security of Indian tribes and families by the establishment of minimum FEderal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture;" and

WHEREAS, "the states, exercising Jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families;" and

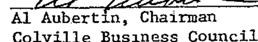
WHEREAS, in order to accomplish the above goals Indian tribal governments, Indian organizations, and the Bureau of Indian Affairs must develop and implement a system for monitoring and technical assistance to State courts, state agencies, and private agencies; and

WHEREAS, the Colville Confederated Tribes obtained Exclusive Jurisdiction of Child Welfare matters on February 14, 1980.

THEREFORE, BE IT RESOLVED, that we, the Colville Business Council, meeting in SPECIAL Session, this 21st day of MAY, 1984, at the Colville Indian Agency, Nespelem, Washington, acting for and in behalf of the Colville Confederated Tribes, do hereby recommend that the Indian Child Welfare Act include voluntary placements and reqlinquishments.

The foregoing was duly enacted by the Colville Business Council by a vote of 10 FOR 0 AGAINST, under authority contained in Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

ATTEST:



Al Aubertin, Chairman
Colville Business Council

1984-363

RESOLUTION

WHEREAS, the Colville Business Council is the governing body of the Confederated Tribes of the Colville Indian Reservation, Washington, by authority of the Constitution and By-laws of the Tribes as approved on February 26, 1938, by the Commissioner of Indian Affairs; and

WHEREAS, "The Indian Child Welfare Act of 1978 (PL 95-608) was enacted by the U. S. Congress to establish standards for the placement of Indian children in foster or adoptive homes and to prevent the breakup of Indian families;" and

WHEREAS, "the U. S. Congress has declared that it is the policy of the Nation to protect the best interests of Indian children and to promote the stablity and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture;" and

WHEREAS, "the states, exercising Jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families; and

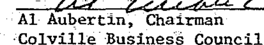
WHEREAS, in order to accomplish the above goals Indian tribal governments Indian organizations, and the Bureau of Indian Affairs must develop and implement a system for monitoring and technical assistance to state courts, state agencies, and private agencies; and

WHEREAS, the Colville Confederated Tribes obtained Exclusive Jurisdiction of Child Welfare matters on February 14, 1980.

THEREFORE, BE IT RESOLVED, that we, the Colville Business Council, meeting in SPECIAL Session, this 21st day of MARCH,1984, at the Colville Indian Agency, Nespelem, Washington, acting for and in behalf of the Colville Confederated Tribes, do hereby recommend an appropriated amount of $15 M for purpose of implementing the Indian Child Welfare Act.

The foregoing was duly enacted by the Colville Business Council by a vote of 11 FOR 0 AGAINST, under authority contained in Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

ATTEST:



Al Aubertin, Chairman
Colville Business Council

37-608 O - 84 - 20

May 16, 1984

WRITTEN TESTIMONY

COMMENTS AND RECOMENDATIONS

Submitted by

THE OREGON LEGISLATIVE COMMISSION ON INDIAN SERVICES

To

THE CONGRESSIONAL OVERSIGHT COMMITTEE

On the Indian Child Welfare Act of 1978

Honorable Senator Mark Andrews and Members of the Oversight Committee:

The Commission on Indian Services was created in 1975 by Oregon statute to advise the State of Oregon and others on the needs and concerns of American Indians in the State of Oregon. As part of this obligation, the Commission wishes to urge you to review these comments and recommendations relating to the Indian Child Welfare Act of 1978.

GENERAL COMMENTS

The Indian Child Welfare Act is a powerful law for Indian children, families and tribes. In many instances it has reunited Indian families and has spared much of the trauma of unwarranted separation. Among some of the positive effects of the ICWA are that it has insured Indian tribes a role in determining custody proceedings and has improved and enhanced state/tribal relations in working with Indian children and families.

RECOMMENDATIONS:

1. THE COMMISSION ON INDIAN SERVICES RECOMMENDS AN INCREASE IN THE LEVEL OF FUNDING FOR ICWA PROGRAMS. Though the Act has had positive impact, it hasn't been enough. The potential impact is lessened because of the lack of resources available to tribes. Most Oregon tribes do not have the resources to fund their own tribal child welfare programs and therefore are dependent upon federal funding. When such funding is not forthcoming, then tribes are unable to provide needed family services.

Also because of a lack of resources, tribes are often not able to exert the full rights they have under the Act. If a tribe feels it cannot provide the needed social services, it will not request that cases be transferred to tribal courts or that the child be placed on the reservation. Congress can and should fulfill its trust responsibility to Indian people and the hope it created in passing the ICWA by providing adequate levels of funding. This Commission recommends a funding level of at least 10 million dollars.

2. THE COMMISSION ON INDIAN SERVICES RECOMMENDS A CHANGE IN THE PRESENT METHOD OF FUNDING FOR ICWA PROGRAMS. The annual competitive process reduces the impact of even the minimal funding that has been available. Under the present funding method, programs are funded only for 1 year and then must reapply and compete with other applicants for funding. This may result in a newly funded grantee setting up a program, establishing contacts in the community, and being looked to as a service provider, only to close after one year because it did not receive a grant the next year. To avoid this, a different method of funding ICWA programs should be developed, such as entitlements or multi-year funding.

3. THE COMMISSION ON INDIAN SERVICES RECOMMENDS THE ESTABLISHMENT OF A MECHANISM TO MONITOR STATE, FEDERAL, AND TRIBAL COMPLIANCE OF THE ACT. None exists. Neither the Bureau of Indian Affairs nor any other agency is charged with monitoring compliance. Non-Compliance does exist be it due to ignorance, misunderstanding, or flagrant violation.

4. THE COMMISSION ON INDIAN SERVICES RECOMMENDS THAT A NOTICE TO TRIBES BE REQUIRED UNDER THE ACT FOR VOLUNTARY PLACEMENTS. Though the Act requires notice to tribes, authorizes tribal intervention, and provides for invalidation of proceedings for involuntary placements; there is no such clarity regarding voluntary placements. The Act does provide that tribes may alter the voluntary palcement preferences by resolution, but there is no requirement that tribes be contacted to ascertain this preference. Because of this absence of a clear invalidation provision, those handling voluntary adoptins may conclude that they can ignore the placement preferences of the Act with impunity.

5. THE COMMISSION ON INDIAN SERVICES RECOMMENDS DEVELOPING CLARITY IN THE DEFINITION OF CHILD CUSTODY PROCEEDINGS. At present it is unclear if such proceedings include cases when the state intervenes in an Indian home and places a child under state supervision but does not remove the child from the home. In such cases, the tribe should be notified and the provisions of the Act should apply.

6. THE COMMISSION ON INDIAN SERVICES RECOMMENDS FURTHER DEVELOPMENT OF EMERGENCY REMOVAL PROVISIONS WHICH CLEARLY APPLY AND ARE FAVORABLE TO EMERGENCY REMOVAL OF INDIAN CHILDREN DOMICILED IN OFF-RESERVATION HOMES. At present, the only reference in the Act to emergency removal is to children domiciled on a reservation.

7. THE COMMISSION ON INDIAN SERVICES RECOMMENDS CLEAR INCLUSION OF TERMINATED TRIBES IN THE PROVISIONS OF THE ICWA. Oregon tribes were the most seriously affected by Congress's Termination Policy in the 1950's and early 60's. Of the 109 tribes and bands terminated nationally, 62 of them were in Oregon. Nevertheless, many of these tribes and bands continue to exist as distinct communitys of Indian people and some have been able to have their federal recognition restored. ICWA policy specifically allows for the funding of Child Welfare programs of terminated tribes but does not extend as specifically, the