APPENDIX A—PREPARED STATEMENTS FROM TRIBAL AND INDIAN ORGANIZATIONS

Absentee Shawnee Tribe of Oklahoma

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

July 20, 1977

Senator James Abounezk
United States Senate
Select Committee on Indian Affairs
Washington, D.C. 20510

Dear Senator:

We the representatives, duly elected by the membership of the Absentee Shawnee Tribe, wish to submit the following comments on S. 1214 (Indian Child Welfare Act of 1977) for the record.

But first let us say, thank you for your interest in the American Indian. Throughout Indian Country your name and interests have reached the ears of our people. We cannot fully express our gratitude utilizing this type of communication. But thanks again for your efforts.

Comments:

1. Page 4, line 18, after the word reservation, add; "or Tribal lands in Oklahoma."
   We the Oklahoma Indian, have been considered ineligible too many times because of the wording of Congressional Bills which leave out wording that would include Oklahoma Tribes. As you may recall, our Tribal lands in Oklahoma are not considered reservations.

2. Page 4, line 22, after the word state, add; "Tribe" to prevent misunderstanding of jurisdiction of any non-tribal agency, both enities must understand the authorities of each. We would argue that the tribe should license a non-tribal agency to perform functions and exercise responsibilities in the areas of social services, welfare, and domestic relations, including child placement when such non-tribal agency deals with members of a tribe.

3. Page 5, line 20, after the word "reservation," add "or tribal and/or trust lands in Oklahoma" again the Oklahoma tribes are being left out...

4. Page 6, line 1, same as above. "Must word to include Oklahoma Tribes."

5. Page 6, line 4, after the word reservation insert wording to include tribal lands in Oklahoma or recognize the tribal lands in Oklahoma as reservations.

6. Page 6, line 5, after the word reservation, "include wording for Oklahoma Tribes." (same as items 3, 4, & 5)

7. Page 6, line 10, after the word reservation, include wording for Oklahoma Tribes as in No.'s 3, 4, & 5.

8. Page 6, line 18, comments same as No.'s 3, 4, 5, & 6.

9. Page 7, line 8, comments same as No.'s 3, 4, 5, 6, 7, & 8.

10. Page 12, line 1. Same as above.

11. Page 13, line 4, after the word reservation. Same as above.

These Senator, are our comments and recommendations. We would urge you to give our comments every consideration because a bill as important as this, must be concise enough to include the Indian Tribes of Oklahoma.

In closing, we appreciate the opportunity to comment and would like to state for the record, that we support this bill (S-1214) fully with our recommended changes.

If we can be of any further assistance, please advise.

Sincerely,

Danny Little Axe
Tribal Administrator

John Sloat
Governor

Kenneth Blanchard
Lt. Governor

Darlene Perryman
Secretary

Ruth Musick
Treasurer

Bertha Johnson
Representative

cc: Senator Bellmon
Senator Bartlett
Congressman Jones
Congress Risenhoover
Congressman Watkins
Congressman Steed
Congressman Edwards
Congressman English

AL-IND-ESK-A
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Seattle, Washington 98109
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August 3, 1977

Senator James Abourezk
Senate Committee On Indian Affairs
c/o Tony Strong
Room 5331
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Abourezk:

Attached you will find prepared testimony which I would at this time like to submit for hearings on Senate Bill 1214.

Sincerely,

Gregory W. Frazier
Executive Director

GWF/mp
Enc.

Presentation For:

SENATE SELECT COMMITTEE

ON

INDIAN AFFAIRS

SENATE BILL 1214

Presented By: Gregory W. Frazier
Executive Director
AL-IND-ESK-A

Senator Abourezk, Members of the Committee, and Staff Members, my name is Gregory Frazier and I am the Executive Director of the AL-IND-ESK-A Corporation. The AL-IND-ESK-A Corporation is the non-profit arm of the 13th Regional Corporation, one of thirteen such corporations formed under the Alaska Native Claims Settlement Act. I sincerely appreciate this opportunity to address the Senate Select Committee on Indian Affairs regarding Senate Bill 1214.

We would strongly encourage the Senate to pass this much needed piece of legislation and make available to the Indian tribes and organizations throughout the United States and Alaska monies so that they may carry out the intents of the Act. I believe the hearings of April 8th & 9th, 1974, chaired by Senator Abourezk, pointed out the necessity of such a piece of legislation and the problems confronting the Native American and Alaska Native families in the absence of such. The States are not addressing this problem in a realistic manner and the federal responsibility should not be placed upon the States.

I personally administered a Research and Demonstration project carried out under a grant from the Office of Child Development. This project was to research and demonstrate an alternative to foster care for Indian children within the Seattle area. That project was highly successful in that we were able to maintain the family units of nearly one hundred families under the alternatives program. I feel fairly confident in saying that had such a program or project not been available to these

families, better than eighty per cent of them would have been broken up on a permanent basis. As the project neared an end, like all research and demonstration projects do, we turned to the State of Washington under Title XX and asked that the Indian organization, in this case the Seattle Indian Center, be allowed to contract with the State of Washington under Title XX funds to carry out a similar activity on an on-going basis. In our proposal to the State of Washington, we were able to show that the State would be able to save money by having a family maintenance program and that Indian families would be able to find the needed services in order to maintain their family units. Over an eighteen month period the Indian Center was given the bureaucratic shuffle between the local Administrative Offices of the Dept. of Social and Health Services and the State Offices in the State capitol. We were told to re-write the proposal seven times and the State directed us to submit the proposal to the local office and the local office in turn suggested that we should deal with the State office.

While the Indian Center jumped through the hoops being presented by the State, and dealt in good faith, it is not my opinion that the State ever intended to re-direct funds that it was currently utilizing to maintain staff in their foster care offices for the purposes of contracting with an urban Indian organization, regardless of the merits of the project or its projected outcome. We were given verbally some of the reasons for this, such as state employees' unions would not allow the State to lay off staff therefore freeing up the funds to contract with

an outside organization to provide much the same services. We were also given the argument that the State was at ceiling with respect to its Title XX fund. Therefore, to contract with the Indian Center to provide this particular service would mean the State would have to cut bakc some of its services to free up the available dollars. No new Title XX dollars could be expected from HEW because of the limitations placed upon the State.

The Indian Center. recognizing the paper exercise we were going through with the State of Washington, started to pursue private areas for funding of our project for foster care placement, foster care home licensing, and counseling activities. We were successful in eventually securing funding from a private foundation to develop such a capacity within the Seattle Indian Center, and thereby became one of the first Indian child placing agencies that was licensed by the State office to recruit and license Indian foster homes and place children in such within the Northwest. The Indian Center currently has such a license and is actively recruiting and licensing foster homes that meet or exceed State standards. After the project was developing the State started to hire some Indians to work within the State offices to go out and recruit Indian foster homes which I believe is still on-going.

How the State can justify these activities is difficult to comprehend when they originally said they had no funds by which they could contract, but they then in turn hired additional staff within their offices for the same such service. I often got the feeling that the State was

embarrassed by the fact that an Indian organization was able to seek out funds to develop and activity that the State should justifiably be doing itself and we thereby necessitated the State's actions. The long range question is whether or not the State would maintain such an activity if the Indian Center did not continue in its function as competition down the street. Of course, such is reality if the funding were to be reduced or disappear for the Indian Center's project.

As pointed out in the hearings held by Senator Abourezk, Indian children are faced with an incidence of placement rating anywhere from five to twenty-five times higher than non-Indian children in the United States. Approximately 250 Alaska Native children within the 13th Regional Corporation's membership are now not residing with their natural parents. These children are spread throughout the United States and are currently subject to the varying policies and activities of a wide variety of State agencies throughout the country. Without funding, as would be provided by Senate Bill 1214, there is little if anything that we as an organization can hope to do to prevent the break up pf these non-resident Alaska Native families or to re-unite the families. By allowing these things to happen the federal government has ignored its responsibility as a trust agent for Natives and assumed that the States would assume that responsibility. Such has not been the case; just the opposite has happened, and in many cases the States have become over-zealous in an effort to break up the families and assimilate the Natives into the non-Native culture. I believe Senate Bill 1214, if passed and

amply funded, would facilitate the return of that trustee-ward relationship and take the opportunities away from the States to impose their value judgments and policy. Again, I would strongly recommend the passage of Senate Bill 1214.

LAW OFFICES OF
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8/10/77

Senator James Abourezk
Chairmen
United States Senate
Select Committee on Indian Affairs
Washington,D.C. 20510

Dear Senator,

I have just returned to my office after a month long absence to find a copy of Senate Bill 1214 and your letter requesting information on the removal of indian children from the custody of their family or relatives. I prepared some comments about the bill as it applies to the area of Alaska served by our law office. I hope you will consider them when pondering alterations of the Bill even though they are submitted late. The comments are enclosed with this letter.

Sincerely,
Alaska Legal Services Corporation
Daniel N. Branch
Daniel N. Branch
Attorney at Law

General Comments

The Bethel Office of Alaska Legal Services Corporation provides free legal services to all people coming within our economic guidelines in Bethel and the surrounding Yukon-Kuskokwim delta area. Almost all of our clients are Yupik Eskimos or Athabaskin Indians; people directly effected by Senate Bill 1214. A good deal of our cases concern child custody disputes, adoptions, and attempts by agencies to terminate parential rights. Senate Bill 1214 will therefore have a tremendous effect on our practice, our clients, and the rest of the people of the Yukon-Kuskokwim delta.

Overall, the bill should have a favorable effect upon the people of the area, especially the provisions of title two. However, much of title one assumes the existance of an effective tribal structure in the native villages that simply does not exist in the Yukon-Kuskokwim delta. In general the Yupik people rely upon cooperation among extended families for decision making. Today, the village council is usually the focus of this cooperation. But the village councils and the villages themselves are creatures of the American settlement of Alaska, and are of relatively recent origin. They were formed when the territorial government built schools and forced native children to attend them. The conflicts created by forcing together several extended families still exist in many villages today. Even when these conflicts are overcome or resolved, the village council would not have the resources to protest the illegal or improper placement of an indian child even if notice of the placement were served on it by the placement agency as required by sections101(c) and 101 (d) of the bill. Therefore it is very important that Section 202(a) of the bill be enacted. Without it, the goals of the bill cannot be accomplished in the Yukon-Kuskokwim delta.

In addition, the bill should also provide funds for legal counsel for each village. At present these villages lack legal counsel and can not afford to pay a private lawyer. Alaska Legal Services Corporation does not represent villages because of the possible conflicts of interest such representation would create.Without legal representation, the village council would not be able to intervene on behalf of the parents in a placement.

Specific Comments on Sections of the Bill

Section 101(c): This is an important provision that should be enacted. However, for reasons mentioned above, it will not be effective unless section 202(a) is enacted.

Section 101(d):Positive section.

Section 101(e):Positive section

Section 102(a): The Yupik eskimo people have traditionally recognized informal native adoptions, in which the natural parent of a child will give the child to another family to

raise. Sometimes the expressed intention of the natural parent is that the arrangement should only be considered temporary. In other cases the natural parent intends the arrangement to be permanent. In almost all cases, the child knows it's natural parents as well as his adoptive parents. In most cases both sets of parents remain interested in the child and contribute to its upbringing. Both the natural parents and the adoptive parents would be adversely effected by the placement of the subject child. Section 102(e) of the bill would only protect the adoptive parents of the child if he/she is a blood relative, and not the natural parents. Conversely, if the adoptive parent were not a blood relative, only the natural parent of the child would receive the protections of the section. The wording of the bill should be corrected to prevent this discrimination.

Section 102(b): This is an excellent provision.

Section 102(c): Excellent provision.

Section 103(a): This is an excellent provision. In Alaska, where there is a great difference between urban and rural native life-styles, placement agencies tend to favor placements in urban settings where they feel the child will receive more opportunities. This reflects a cultural bias on the part of the social workers staffing the placement agencies who, for the post part are non-natives. The legal requirement of Section 103(a) will help nullify this bias.

I was involved in one particular case where my client's daughter went from a native village on the Bering Sea coast to a institutional home in Anchorage.

The reason why the daughter was placed in the home was because she was mentally retarded. While there, she became pregnant. She told her mother that she would bring the baby back to the village after it's birth. The mother waited patiently for the baby's arrival. In the meantime, the institution's counselor apparently talked her into giving the baby up for adoption to a state adoption agency for placement with a non-native home. The daughter agreed with the counselor and gave the baby up. By the time the mother contacted our office the adoption had been entered and it was too late to do anything. Section 101 and 103(a) would have help avoid this result. My client, who was prepared to offer the child a good home, was very disappointed.

Section 103(b): Excellent provision.

Section 202(a): Overall this is an excellent idea. It is necessary if the goals of the bill are to be obtained.

Section 202(c)(2): I think that a provision should be added to this to provide for a shelter for battered wives and children.

In Alaska and the Yukon-Kuskokwim delta, alchoholism is a major cause of family problems. Often, native parents are only binge drinkers. When one or both of the parents go on a drinking binge the children need a place to stay. This is especially important during the cold winter months. The wife of a binge drinker also needs a shelter to escape her husband when he is on a binge. When sober the parents are usually not a threat to their children or each other, and indeed show the children great affection and love. The establishment of such centers will help preserve the intergrity of the native family.

Section 204(b): This is a necessary provision if the goals of the Bill are to be satisfied. Our office has only five lawyers to service the city of Bethel and 57 outlying villages. Often we represent one of the sides in a custody dispute. Due to the ethical rules concerning conflicts of interest we cannot represent any other party to an action. Since the other parties to a custody dispute often cannot afford a lawyer, or have no way to find a private lawyer, they lose by default. In a child placement situation the child and parents may have different opinions about what should be done. Therefore conflicts are sure to arise.

Inuich Ikayuqtaat Siitigulliqaa Pitqurakun

LAW OFFICES OF
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August 3, 1977

Senator James Abourezk, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Re: S. 1214, Indian Child Welfare Act of 1977

Dear Senator Abourezk:

Greetings from the Top of the World. You and your staff are to be commended for making the effort to make so many people acquainted with this legislation and to try and get comments from them. You have even reached this office, which is the most northerly that exists. We serve the North Slope of Alaska. Our clients are almost all Inupiaq Eskimo people. Barrow itself has a population of over 2000, and there are also six villages I serve, which I get to by bush airplane. The nearest law office is over 500 miles south in Fairbanks. In Barrow, the Midnight Sun is shining still.

The Brooks Range forms a great boundary for both geography and the culture of the people. Beyond the Brooks Range are communities of Athabascan Indians and the large, white, towns like Fairbanks. The Arctic conditions on the North Slope make it difficult to provide social services up here. As a result the foster homes, group homes and special schools for children facing personal or family problems are located, for the most part, south of the Brooks Range.

The result is frequently severe problems of cultural adaptation for the kids, and for the foster parents or counsellors. A white professional may see a child as overly shy, when actually the child is displaying the traditional behavior of his culture. The child of one of my clients has been in the Fairbanks area for three years now. We are trying to carry out the wishes of both the parents and the child to bring him back to Barrow for school this year. The father has told me often of his concern about his son: he wants him to be an ESKIMO and not be trained into something else by the well-meaning foster care in Fairbanks. Another boy from Barrow was detained in the Fairbanks jail pending a psychiactric examination. I have been told that it was the first time he had ever been in that kind of facility. And, last week, that boy hung himself in that jail cell. Can't we prevent this kind of tragedy?

Senator James Abourezk
August 3, 1977
Page Two

I was particularly impressed by the language of Sec. 102(b). It is so good to make the standards of parental fitness be those of the native community in which they reside, and not what the white professional books might require. The social expectations in Barrow are vastly different from those in Fairbanks. And the judges and the administration of the social workers involved in these cases are based in Fairbanks.

The Bill as drafted is oriented heavily toward the tribal government and tribal reservation system of the Lower 48. Your staff will need to take some time to include language that will make the Bill more applicable to the situation in Alaska. Perhaps the Regional Corporations or Village Corporations set up under the Alaska Native Claims Settlement Act could be used in place of the Tribal Governments mentioned in the bill. Or, perhaps the Councils set up under the Indian Reorganization Act could be used for this purpose. The Bureau of Indian Affairs uses these IRA Councils in Alaska as the recipients of funds from the federal programs it administers.

I am glad to have been given a chance to make some contribution to the consideration of this legislation by your Committee. I hope it is only the beginning of a dialogue between us!

Sincerely yours,
ALASKA LEGAL SERVICES

Michael I. Jeffery
Supervising Attorney

Boston Indian Council, Inc.
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September 1, 1977

Senator James Abourezk
Select Committee on Indian Affairs
Room #1105
Dirkson Senate Office Building
Washington, D.C. 20510

Dear Senator Abourezk:

The Boston Indian Council expresses its qualified support for S. 1214, the "Indian Child Welfare Act of 1977" and its vigorous opposition to S. 1928, the "Child Welfare Amendments of 1977."

The qualification affixed to our support of S. 1214 is directed towards the administration and eligibility components of the legislation rather than towards the substantive portions. We are most enthusiastic concerning those sections which insure tribal court, tribal council and family participation at all levels of decision making, since the present system in most instances excludes family members and Indian governing bodies from exerting any influence concerning the future of our children when foster care and adoption determinations are made.

Also, we specifically approve of those sections that provide for the involvement of Indian organizations in the areas of family development and child protection. In a geographic location such as Boston where most of the Indian people come from reservations hundreds of miles away, the local Indian organization is frequently the only place to which an Indian family can turn in time of need.

Although we agree with the program provisions outlined in S. 1214, we must object to S 4 (a), (b) and (c) and S 201(c) which, if enacted, would constructively deny benefits of the bill to those Indian people currently living in Boston. Of the approximately 4,000 Indian people presently residing in the Greater Boston area, 75% are Mic Mac people who have come from reservations in Eastern Canada. These people are highly cultural with most being able to speak the Mic Mac language, yet because their original homes are in Canada, they are not eligible for services provided by the U.S. Bureau of Indian Affairs. Were the

(2)

Secretary of the Interior to administer this program, a group of Indian people who are particularly vulnerable to the state welfare system because of their citizenship status would be ignored. To deny the protection which this legislation affords to Mic Mac people who have suffered greatly is unconscionable, therefore, we recommend that the legislation be altered giving the Secretary of Health, Education and Welfare the authority to implement the act through the Administration for Native Americans. Such a change would abrogate the jurisdictional barriers which the bill in its present form creates and permit access to all Indian people who suffer from discriminatory child welfare practices.

Noting that the Administration gave assurances in its testimony before your Committee that its bill would be amended to "Formally recognize the role of tribal courts and tribal governments" in the child welfare processess, we still find S.1928 to be inadequate to meet the severe and very unique difficulties that Indians encounter with the current system. As badly as the present system needs a general overhaul to better meet the needs of all children, any legislation which fails to recognize that Indian children are taken away from their families at a higher rate than non-Indian children, and neglects to emphasize the development of a comprehensive program to insure that Indian people have the capacity and the authority to provide better care for our children, will have little impact upon the crisis which now exists.

Sincerely,

Clifford Saunders,
Executive Director

Central Maine Indian Association Inc.

95 Main Street

Orono, Maine 04473

(207) 866-5587 — 866-5588

18 July 1977

Senator James Abourezk, Chairman
Senate Select Committee on Indian Affairs
Senate Office Building
Washington, D. C. 20510

Dear Senator Abourezk:

The Central Maine Indian Association and Boston Indian Council have jointly developed a Research and Demonstration proposal dealing with child welfare practices, particularly aimed at foster care in Maine and Massachusetts. A copy of the program proposal in attached for your review and dissemination.

The data and facts outlined in the program narrative bear out the seriousness of the problems Indian people have encountered in foster care here in Maine and Massachusetts.

Also, C.M.I.A. has enclosed comments on your bill (Senate Bill 1214) titled "The Indian Child Welfare Act of 1977," which I understand is going to a committee for public hearing on 28 July.

C. M. I. A. would ask that you consider these comments and any data we present in the program proposal as part of your presentation and documentation.

Yours in Brotherhood,

Mike Ranco

Mike Ranco
C.M.I.A. Program Coordinator

MR/dlr

MEMO: INDIAN CHILD WELFARE ACT OF 1977 - S 1214
Legislation sponsored by Senators:
Abourezk, Humphrey, and McGovern

TO: Senator Abourezk

FROM: Mike Ranco, Program Director
Central Maine Indian Association
95 Main Street, Orono, Me. 04473

David L. Rudolph, Planner & Reviewer

DATE: 20 July 1977

The Indian people of Maine greet with much appreciation this proposed legislation. Pages 9 and 11 contain extremely important materials in that non-Indian standards are the standards applied in the determination of abuse, foster housing, etc. Also, it is now a very important factor that the child will be represented, as well as the parent, but especially by an Indian counsellor.

It is also appreciated that off-reservation Indians (organizations) receive considerable emphasis. This is especially true when 62% approximately of the Indian population lives off-reservation. There are some reservations regarding this matter which are clarified below. Several other pluses are reviewed with considerable interest:

1. Indian family development program.
2. Indian family defense program.
3. Enrollment of adopted child into own tribe; etc.

However, the members of this off-reservation group have significant concerns regarding several major provisions. These occur specifically in Section 4 (a), (b), and (c) definitions.

(a) "Secretary", unless otherwise designated, means the Secretary of the Interior.

The community would appreciate this to read Secretary of Health, Education and Welfare. This would then require an appropriate transfer of all child welfare programming from Bureau of Indian Affairs (B.I.A.) to H.E.W. The suggestion is that these programs should then be handled through the Office of Native American Programs (O.N.A.P.) for the following reasons:

Rationale:

1. Program legislated through H.E.W.-O.N.A.P. because:

   a. O.N.A.P. allows flexibility of funding, for instance:
      1) O.N.A.P. research funds through S.R.S. (formerly)
      2) O.N.A.P. program funds distrubuted through O.E.O. (formerly), O.C.D., Intra-Departmental Agreements (Cf. F.R.C. #1);

   b. O.N.A.P. Maintains closer contacts with the human needs of a majority of the Indian communities (on- and off-reservations) which serves more Indians (62%) than live on reservations.

2. Bureau of Indian Affairs in the Department of Interior, is "pledged" to serve only those Indians who live, on-, or who maintain "close" ties with, their reservation "land based" offices.

   a. This department excludes virtually all Indians who live "near" the reservations - due to budget controls; and definitely "discriminates" against the funding of urban/rural Indian program centers.

   b. Again, it therefore violates its "special responsibilities and legal obligations" to a vast "majority" of the "American Indian people."

(b) "Indian" definition herein included is too limited, i.e. "federally recognized." It is suggested that this section and (c) "Indian tribe" be changed to comply with the O.N.A.P. regulations published Wednesday, 19 January 1977 in the Federal Register: p. 3785 - 1336.1 (q) & (e):

(q) "Indian tribe" means a distinct political community of Indians which exercises powers of self-government.

(e) "American Indian or Indian" means any individual who is a member of a descendent of a member of a North American tribe, band, or other organized group of native people who are indigenous to the continental United States or who otherwise have a special relationship with the United States or a State through treaty, agreement, or some other form of recognition. This includes any individual who claims to be an Indian and who is regarded as such by the Indian community in which he or she lives or by the Indian community of which he or she claims to be a part. . . .

Rationale:

Any definition falling short of that included in the O.N.A.P. regulations is discriminatory and therefore in violation of the U. S. trust relationship established for all Indians. (Cf. Jay Treaty, 1790 Non-Intercourse Act, etc.), especially due to the inclusion of such language as "federally recognized."

(d) "Indian organization" as defined may be interpreted to include off-reservation groups as well, but is too vague. There needs to be clarification of this section similar to that in the O.N.A.P. Regulations.

Rationale:

Given the current management policies of the B.I.A. (especially re "federally recognized:), it probably would be unthinkable that the Secretary of the Department of the Interior would interpret this section to include services to this population.

Now, to some minor considerations which need to be discussed.

1. Page 2: Line 2: "living within both urban communities . . ." This line should add in the word "rural" as a vast majority of the Indian populations living off reservation usually live in rural areas. This is especially true in Maine where roughly three times as many Indians live off the reservations in this very rural state.

2. Page 6: Following item (c) there should be a section relating to children of Indians who are members of Canadian land-based tribes. Evidence gleaned by C.M.I.A. while drafting a family/child welfare - foster

care application, indicates that in Maine the vast majority of placements occur among members of this population.

3. Page 6: Lines 12 & 25, etc.: "child placement proceedings" statements, here and in any other place, should be expanded, or clarified, to include the word "all" or some reference to both foster and adoptive placements.

4. Page 8: Sec. 102 (a) (2) regarding nontribal government actions: That in "seeking to effect the child placement affirmatively shows that alternative remedial services and rehabilitative programs designed to prevent the break-up of the Indian family have been made available and proved unsuccessful." This seems too easy a task and permits the Department of Human Services too much leeway. Already this is evident in Maine as the Department has hired an "Indian" from one of the "reserves" to work with the Washington County reserves regarding family/child welfare. What has, in fact, happened is that they have hired a non-Indian who once worked on one of those reservations but he was fired. The present attitude toward this person has been negative for some time and will be one of non-cooperation on the part of the Indians. Once again another negative inter-action base has been established by action of the D.H.S.. More restraints should be added to this guideline.

5. Page 12: Sec. 103: (line 9) "Every nontribal government agency shall maintain a record evidencing its efforts to comply with the order of preference provided under this subsection in each case of an Indian child placement." This is incomplete in that no provision is made for accountability to the Indian tribe(s). Add the following subordinate clause: "which shall be open, appropriately, for examination by the Tribe."

6. Page 12, Sec. 104 needs expansion or clarification. This is especially needed as in Maine some legal aid moneys should be set aside for clients wishing to pursue this process. In Maine an order to the Probate Court, or from that Court, has to be secured in order to open the "closed records".

7. Page 15, Sec. 202 - Indian Family Development Program: is incomplete in that no provision has been made to implement preventive educational activities such as family education: child development, interpersonal relations (Cf. Parent Effectiveness Training), etc. This section ought also to be prioritized, maybe in the following order:

(1) Family education.
(2) (1) to become (2)
(3) (3) to remain (3)
(4) (4) to remain (4)
(5) (5) to remain (5)
(6) (6) to remain (6)
(7) (7) to remain (7)
(8) (1) to become (8)
(9) (8) to become (9)

One other thought: missing is any mention of family reunification. This is rapidly becoming a major emphasis of all family/child welfare and this language should be included.

8. Page 18, Sec. 204 (a) The 16 year study of adoptive proceedings is an important first step toward identifying children lost to the Tribes. One additional step needs to be added, and is known to have already been recommended, and that is an accounting of all placements, foster and adoptive, on the parts of the States. This should cause to be identified all Indian children still placed, under the age of 18 on such date and should include names and last (current) address. It should be kept confidential and be available only to appropriate Indian community personnel for purposes of Tribal census, foster care research, family reunification, or other such reasons.

MEMO: S 1214 - Page 6

9. Page 20, Sec. 204 c (1) (2) & (3) - This relates solely to the adoptive child and speaks about the option of enrollment of the child in his or her tribe. This same regulation should be applicable to all foster placements as well as this is the time when ties and cultural supports need most to be maintained. Also, the matter of enrollment is, or ought to be, a political right of every child - to belong to his or her own "people," and thus the matter should be converted from a <u>may</u> to a <u>must</u> situation.

10. One last note which was overlooked earlier. Page 3, line 18 and following regarding placement of children in boarding schools. The idea included is that social placement, rather than educational placement ought to be discouraged. It is our contention based on the recent Indian Child Welfare State-of-the-Art study that this type of placement must also be suspect. We specifically relate to the findings regarding the Latter Day Saints program for educational placement of Indian children. What may appear to be strictly for educational placement may also carry with it the cultural and social inferences of the non-Indian sosicety and therefore ought to be suspect. Please consider your wording carefully in this matter.

EDMUND S. MUSKIE
MAINE

United States Senate
WASHINGTON, D.C. 20510

August 2, 1977

Mr. Mike Ranco
Program Director
Central Maine Indian Association, Inc.
95 Main Street
Orono, Maine 04473

Dear Mr. Ranco:

Thank you for your letter of July 22, 1977 regarding the Indian Child Welfare Act of 1977, S. 1214.

The Select Committee on Indian Affairs has scheduled a hearing on the Act for Thursday August 4th. I have asked Senator Abourezk to include your comments in the hearing record.

I appreciate your bringing this legislation to my attention and will give your comments very careful consideration.

Sincerely,

Edmund S. Muskie
United States Senator

cc: Senator James S. Abourezk

MEMO: INDIAN CHILD WELFARE ACT OF 1977 - S 1214
Legislation sponsored by Senators:
Abourezk, Humphrey, and McGovern

TO: Senator Abourezk

FROM: Mike Ranco, Program Director
Central Maine Indian Association
95 Main Street, Orono, Me. 04473

David L. Rudolph, Planner & Reviewer

DATE: 20 July 1977

The Indian people of Maine greet with much appreciation this proposed legislation. Pages 9 and 11 contain extremely important materials in that non-Indian standards are the standards applied in the determination of abuse, foster housing, etc. Also, it is now a very important factor that the child will be represented, as well as the parent, but especially by an Indian counsellor.

It is also appreciated that off-reservation Indians (organizations) receive considerable emphasis. This is especially true when 62% approximately of the Indian population lives off-reservation. There are some reservations regarding this matter which are clarified below. Several other pluses are reviewed with considerable interest:

1. Indian family development program.
2. Indian family defense program.
3. Enrollment of adopted child into own tribe; etc.

However, the members of this off-reservation group have significant concerns regarding several major provisions. These occur specifically in Section 4 (a), (b), and (c) definitions.

MEMO: S 1214 - Page 2

(a) "Secretary", unless otherwise designated, means the Secretary of the Interior.

The community would appreciate this to read Secretary of Health, Education and Welfare. This would then require an appropriate transfer of all child welfare programming from Bureau of Indian Affairs (B.I.A.) to H.E.W. The suggestion is that these programs should then be handled through the Office of Native American Programs (O.N.A.P.) for the following reasons:

Rationale:

1. Program legislated through H.E.W.-O.N.A.P. because:
   a. O.N.A.P. allows flexibility of funding, for instance:
      1) O.N.A.P. research funds through S.R.S. (formerly)
      2) O.N.A.P. program funds distrubuted through O.E.O. (formerly), O.C.D., Intra-Departmental Agreements (Cf. F.R.C. #1);
   b. O.N.A.P. Maintains closer contacts with the human needs of a majority of the Indian communities (on- and off-reservations) which serves more Indians (62%) than live on reservations.
2. Bureau of Indian Affairs in the Department of Interior, is "pledged" to serve only those Indians who live, on-, or who maintain "close" ties with, their reservation "land based" offices.
   a. This department excludes virtually all Indians who live "near" the reservations - due to budget controls; and definitely "discriminates" against the funding of urban/rural Indian program centers.
   b. Again, it therefore violates its "special responsibilities and legal obligations" to a vast "majority" of the "American Indian people."

(b) "Indian" definition herein included is too limited, i.e. "federally recognized." It is suggested that this section and (c) "Indian tribe" be changed to comply with the O.N.A.P. regulations published Wednesday, 19 January 1977 in the Federal Register: p. 3785 - 1336.1 (q) & (e):

(q) "Indian tribe" means a distinct political community of Indians which exercises powers of self-government.

(e) "American Indian or Indian" means any individual who is a member of a descendent of a member of a North American tribe, band, or other organized group of native people who are indigenous to the continental United States or who otherwise have a special relationship with the United States or a State through treaty, agreement, or some other form of recognition. This includes any individual who claims to be an Indian and who is regarded as such by the Indian community in which he or she lives or by the Indian community of which he or she claims to be a part. . . .

Rationale:

Any definition falling short of that included in the O.N.A.P. regulations is discriminatory and therefore in violation of the U. S. trust relationship established for all Indians. (Cf. Jay Treaty, 1790 Non-Intercourse Act, etc.), especially due to the inclusion of such language as "federally recognized."

(d) "Indian organization" as defined may be interpreted to include off-reservation groups as well, but is too vague. There needs to be clarification of this section similar to that in the O.N.A.P. Regulations.

Rationale:

Given the current management policies of the B.I.A. (especially re "federally recognized:), it probably would be unthinkable that the Secretary of the Department of the Interior would interpret this section to include services to this population.

Now, to some minor considerations which need to be discussed.

1. Page 2: Line 2: "living within both urban communities . . ." This line should add in the word "rural" as a vast majority of the Indian populations living off reservation usually live in rural areas. This is especially true in Maine where roughly three times as many Indians live off the reservations in this very rural state.

2. Page 6: Following item (c) there should be a section relating to children of Indians who are members of Canadian land-based tribes. Evidence gleaned by C.M.I.A. while drafting a family/child welfare - foster

care application, indicates that in Maine the vast majority of placements occur among members of this population.

3. Page 6: Lines 12 & 25, etc.: "child placement proceedings" statements, here and in any other place, should be expanded, or clarified, to include the word "all" or some reference to both foster and adoptive placements.

4. Page 8: Sec. 102 (a) (2) regarding nontribal government actions: That in "seeking to effect the child placement affirmatively shows that alternative remedial services and rehabilitative programs designed to prevent the break-up of the Indian family have been made available and proved unsuccessful." This seems too easy a task and permits the Department of Human Services too much leeway. Already this is evident in Maine as the Department has hired an "Indian" from one of the "reserves" to work with the Washington County reserves regarding family/child welfare. What has, in fact, happened is that they have hired a non-Indian who once worked on one of those reservations but he was fired. The present attitude toward this person has been negative for some time and will be one of non-cooperation on the part of the Indians. Once again another negative inter-action base has been established by action of the D.H.S.. More restraints should be added to this guideline.

5. Page 12: Sec. 103: (line 9) "Every nontribal government agency shall maintain a record evidencing its efforts to comply with the order of preference provided under this subsection in each case of an Indian child placement." This is incomplete in that no provision is made for accountability to the Indian tribe(s). Add the following subordinate clause: "which shall be open, appropriately, for examination by the Tribe."

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6. Page 12, Sec. 104 needs expansion or clarification. This is especially needed as in Maine some legal aid moneys should be set aside for clients wishing to pursue this process. In Maine an order to the Probate Court, or from that Court, has to be secured in order to open the "closed records".

7. Page 15, Sec. 202 - Indian Family Development Program: is incomplete in that no provision has been made to implement preventive educational activities such as family education: child development, interpersonal relations (Cf. Parent Effectiveness Training), etc. This section ought also to be prioritized, maybe in the following order:

(1) Family education.
(2) (1) to become (2)
(3) (3) to remain (3)
(4) (4) to remain (4)
(5) (5) to remain (5)
(6) (6) to remain (6)
(7) (7) to remain (7)
(8) (1) to become (8)
(9) (8) to become (9)

One other thought: missing is any mention of family reunification. This is rapidly becoming a major emphasis of all family/child welfare and this language should be included.

8. Page 18, Sec. 204 (a) The 16 year study of adoptive proceedings is an important first step toward identifying children lost to the Tribes. One additional step needs to be added, and is known to have already been recommended, and that is an accounting of all placements, foster and adoptive, on the parts of the States. This should cause to be identified all Indian children still placed, under the age of 18 on such date and should include names and last (current) address. It should be kept confidential and be available only to appropriate Indian community personnel for purposes of Tribal census, foster care research, family reunification, or other such reasons.

MEMO: S 1214 - Page 6

9. Page 20, Sec. 204 c (1) (2) & (3) - This relates solely to the adoptive child and speaks about the option of enrollment of the child in his or her tribe. This same regulation should be applicable to all foster placements as well as this is the time when ties and cultural supports need most to be maintained. Also, the matter of enrollment is, or ought to be, a political right of every child - to belong to his or her own "people," and thus the matter should be converted from a may to a must situation.

10. One last note which was overlooked earlier. Page 3, line 18 and following regarding placement of children in boarding schools. The idea included is that social placement, rather than educational placement ought to be discouraged. It is our contention based on the recent Indian Child Welfare State-of-the-Art study that this type of placement must also be suspect. We specifically relate to the findings regarding the Latter Day Saints program for educational placement of Indian children. What may appear to be strictly for educational placement may also carry with it the cultural and social inferences of the non-Indian sosicety and therefore ought to be suspect. Please consider your wording carefully in this matter.

SENATE BILL 1214
HEARING: August 4, 1977, Washington, D. C.

As I have been called upon by the Cheyenne River Sioux Tribe of South Dakota to testify in these proceedings regarding Senate Bill 1214 known as the Indian Child Welfare Act of 1977, the Cheyenne River Sioux Tribe then presents the following:

When a law is made encompassing Indian people and Indian Tribes on a national level it appears to be an enfringement and erosion of Tribal sovereignty. Also when a national law is passed the Congress of the United States then in effect is saying that all Indian people and Tribes are the same. This has gone on for generations. All Indian people and all Indian Tribes are not the same and this should be taken into consideration in every law that effect Indian people and Indian Tribes. The Cheyenne River Sioux Tribe reaffirms and believes in the concepts set forth in Senate Bill 1214, but not until reaffirmation that Tribal sovereignty will not be infringed upon. It is then the recommendation of the Cheyenne River Sioux Tribe that the Bill should state that Tribal sovereignty will not be infringed upon and that Tribal standards and Tribal laws will take precedence over Senate Bill 1214. If the above can be accomplished the Tribe will therefore accept with the following revisions the passage of this bill:

Within the section, Declaration of Policy, Section 3: it states "to discourage unnecessary placement of Indian children in boarding schools for social rather than educational reasons". We feel that children should remain with their natural parents but in some cases this cannot be accomplished. However, the attendance in boarding schools for the Indian people has been a long standing tradition for many Indian families. This sentence in the Bill must be clarified

as to whether all attendance at boarding schools should be disapproved. Finally, it may be an enfringement upon the rights of the parents to send their children to schools they choose and it may also be an enfringement upong the rights of the student to attend a school that they want to attend. We believe too many times Agencies and parents utilize boarding schools as institutional placements, as emergency child care centers, etc., and for one reason or another want their child to attend a boarding school. These reasons can be from too many children in the home, not enough subsistence to go around.

On another level it would not be necessary to send children to boarding school if proper schools were available on a local level. As a result students will not want to attend boarding school or have the necessity to attend boarding school.

Under Title I Child Placement Standards Section 101: (d) the bill should make very strong statements regarding the Tribes ability and capability of self-determination. Line 16, 17, 18 & 19, "This section should not apply if the Tribe has enacted or will enact its own law governing private placements. Section 102: (b) Line 3, 4, 5 the bill addresses itself to testimony in court, it states in part that evidence including testimony by qualified professional witness is required. We have experienced instances when the Indian Health Service personnel has refused to testify in cases involving child abuse, citing an antiquatedIHS policy. We recommend that the names of these agencies involved with Child Protection be specified including the BIA, Indian Health Service, State, local, and Tribal agencies.

Under the same Section 102: (b) Lines 13 through 17 we disagree with the statement relative to evidence presented to the Tribal Court regarding misconduct and alcohol abuse of the natural parents. Furthermore, it states that it shall not be deemed primary evidence that serious, emotional damage to the child has

occured or will occur. We disagree with the section alcohol abuse or misconduct caused by alcohol abuse should not be utilized as evidence in child protection cases. It is not the consumption of alcohol but the abuse of such substances and the subsequent effects of the abuse. An illustration would be when a family on a fixed income utilizes substantial portion of that income on the purchase of alcohol. The result of such purchases being the deprivation of subsistence of the children in the home.

Under Title 1 Child Placements Standards Section 101: this section implies that all Indian Child Welfare activities must go through the Tribal court. We feel that if all matters pertaining to Indian welfare must go through the Tribal court then our Tribal court system must be shored up in terms of more funds to hire juvenile staff, more juvenile judges and probation officers, etc.

Under Title II Indian Family Development, Section 201: it is postulated that children in long term foster care placements will be returned to their natural families if legal system was not properly utilized.

We would object to this because of the possible tramua that would be experienced by the foster child. If it can be proven that the child wants to return to the natural home and that no irreparable emotional or physical damage would occur, then it is acceptable.

Lastly, we firmly believe and support the concept of Indian family development and concur wholeheartedly with the funds that will be appropriated for such activities.

Testimony of Mr. Virgil Gunn, Chairman of the Health, Education, and Welfare Committee of the Colville Business Council, before the Senate Select Committee on Indian Affairs, on S. 1214, a bill "To establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes".

Mr. Chairman, and members of this Committee, we appreciate the opportunity to offer our comments on the "Indian Child Welfare Act of 1977". My name is Virgil Gunn, and I'm presently the Chairman of the HEW Committee for the Colville Reservation. Within the framework of our Tribal Council form of government, the HEW Committee has responsibility for matters such as those outlined in S. 1214.

If enacted into law, the Bill would accomplish the following:

(1) Procedures would be established and standards would be set which would govern the placement of Indian children in foster or adoptive homes to allow the children to grow up in settings that uniquely reflect the cultural values of a Tribal or Indian heritage, AND

(2) Tribes would be assisted in the establishment, operation, and management of programs aimed toward the promotion and <u>maintenance</u> of viable Indian family structures.

History bears testimony to the situations found within Indian Country which S. 1214 attempts to remedy: The removal of Indian children from their natural homes and cultural settings which is a crisis of national proportions that adversely affects Tribal long-term survival and produces damaging social/psychological effects on many Indian children;

with few, if any, exceptions, the non-Indian public and private agencies and state courts have no sympathy for, nor any understanding of, the Indian culture and it's unique role in Indian family relationships; and the full magnitude of the problem cannot be appreciated given the present idadequate record keeping system.

SECTION BY SECTION ANALYSIS:

(1) The removal of Indian children from their cultural setting has severe and long-lasting impacts not only on a tribe's ability to survive, but, too, it adversely affects the child's social and psychological well-being; and

(2) Non-Indian public and private agencies lack the werewithal in most instances to deal with the various "intangibles" which embrace the Indian family and tribal relationships.

S. 1214 attempts to rectify that situation in the following manner:

Title I, entitled "Child Placement Standards." requires, among other things:

(a) placement of a child pursuant to an order of a tribal court where such courts do exist:

(b) in cases where no tribal courts exist, placement can take effect only if the affected tribe is given written notice and has been provided the right to intervene in any proceedings;

(c) where the child is a non-resident or is not domiciled on a particular reservation, the placement cannot take effect unless the Indian tribe of which the child is a member or

is eligible for membership, has written notice and has the right to intervene in any proceedings;

(d) removal of a child from parental custody or from the custody of adoptive Indian parents or blood relatives cannot take place absent written notice to the tribe of which the child is a member or is eligible for membership;

(e) a party seeking to change the custody of an Indian child must provide written notice to the appropriate tribal official.

Section 102 requires that no placement of an Indian child can take effect unless 30 days written notice as well as a right to intervene and to be represented by counsel or a lay advocate is granted to the natural parents or blood relatives.

The burden is on non-tribal agencies to show that alternative remedial and rehabilitative programs and services designed to prevent the break-up of the Indian family have been made available and have proved unsuccessful.

Additionally, it must be shown beyond a shadow of a doubt, supported by clear and convincing evidence, that continued custody of a child in his parents, adoptive parents or blood relatives will result in emotional or physical damage--the standards to be applied in making that determination shall be those of the Indian community in which the affected parties reside.

Where consent has been given for the loss of custody either permanent or temporary, placement cannot take effect absent a judicial determination that consent was freely and knowingly given.

In adoption of non-adoptive placement, consent can be withdrawn and render that placement ineffective.

Adoption decrees cannot take effect until after ninety days have lapsed following the initial grant of consent.

Placement of an Indian child cannot take effect unless the child has been represented either by counsel or a lay advocate.

Section 103 establishes the order of preference non-tribal agencies must follow in placing an Indian child up for adoption.

Section 104 grants an adoptive Indian child, upon reaching the age of majority, the right to know the name and last know address of his natural parents and siblings as well as the tribal affiliation.

Section 105 states that full faith and credit must be extended to the laws of any Indian tribe involved in a proceeding under this Act and to any tribal court orders issured in such proceedings.

Title II, entitled "Indian Family Development," authorizes the Secretary of the Interior to make grants or to enter into contracts with Indian tribes to assist them in establishing and operating Indian family development programs and in the preparation and implementation of child welfare codes.

The Secretary of HEW is authorized to cooperate in the establishment, operation, and funding of off-reservation family

development programs.

Section 204 authorizes the Secretary of the Interior to undertake a study of the circumstances surrounding Indian child placements which have occurred during the sixteen years preceding the effective date of this Act where such children affected are under 18 years of age.

Where placement is determined to have been done invalidly, habeas corpus proceedings may be instituted on behalf of the natural or adoptive Indian parents or blood relatives.

Indian family defense programs are authorized.

The Secretary is authorized and directed to collect and maintain records in a single central location of all Indian child placements are affected after the date of this Act or are the subject of the study required under subsection (a) of this section.

The Secretary of the Interior is authorized and directed, after consultation with the tribes, to promulgate such rules and regulations as are necessary to implement the provisions of this Act.

In its present form the bill attempts to vest the authority in the concerned tribal governments to decide whether the Indian child needs to be removed from his or her home and the manner in which that child should be raised.

Presently, these decisions are being made by a combination of public and private social service agencies and court systems which are inherently biased to reflect the cultural setting of the decision maker.

Federal courts, and to a certain extent, some State courts, have tended to recognize the crucial place which the issue of child custody hold in the framework of tribal self-determination:

"If tribal sovereignty is to have any meaning at all this juncture of history, it must necessarily include the right within its own boundaries and membership to provide for its young, a sine qua non to the preservation of its identity." Wisconsin Potowatomies of Hannaville Indiana Community v. Houston, 396 F. Supp. 719, 730 (W.D. Mich., 1973).

That issue of maintaining tribal identity is the controlling one.

In a recent New Mexico case concerning a Navajo child situated off the reservation in Gallup, N. Mex., it was argued that the Navajo tribal court is the appropriate forum to determine custody:

"Child rearing and maintenance of tribal identity are 'essential tribal relations.' By paralyzing the ability of the tribe to perpetuate itself, the intrusion of the State in family relationships * * * and interference with a child ethnic identity with the tribe of his birth are ultimately the most severe methods of undermining retained tribal sovereignty and autonomy." (In re the Adoption of Randall Nathan Swanson, Amicus Curae Brief No. 2407).

In Fisher v. District Court -US.-, 47 L.Ed 2d 106 (1976), the United States Supreme Court affirmed the jurisdiction of the N Northern Chyenne Tribal Court to make custody determinations in the face of a challenge to have such jurisdiction taken by Montana State courts. Since Montana had not acquired jurisdiction over Indian country pursuant to Pub. L. 83-280, and the action arose on the reservation, the Supreme Court characterized the tribal court's jurisdiction as exclusive.

This extension of jurisdiction over the reservation to a State is by no means fatal to a tribe who wished to undertake the child placement and family development programs on its own.

In Bryon v. Itasca County, -U.S.-, 48 L. Ed 2d, at 712, n.14, the court noted that Federal policy focused upon strengthening tribal self-government, citing in its support the Indian Financing Act of 1974, 18 Stat. 77, 25 U.S.C. § 450, et seq.

Nowhere is there a more clearer expression of Federal policy regarding Indian self-government where Congress found that:

"* * * the prolonged Federal domination of Indian service programs has served to retard, rather than enhance, the progress of Indian people in their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities." (25 U.S.C. § 450 (a)(1)).

*Additionally, Congress noted that " * * * the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations and persons." (25 U.S.C. § 450 (a)(2)).*

In that same section Congress made a declaration of policy to "respond to the strong expression of the Indian people for self-determination" and declared its commitment "to the maintenance of the Federal Government's unique and continuing relationship with a responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy."

In consideration of the foregoing we think it reasonable to assume that the implication lies strongly in favor of a tribe to establish, operate, and maintain its own child placement program, if it so desires, notwithstanding the existence of state jurisdiction over domestic affairs and family relations within an Indian reservation.

If not overtly clear on its face, we feel that controls of some sort are needed to insure that state courts and private groups and agencies comply with the provisions of the bill regarding child placement and adoption proceedings. The tribe stands ready, as I am sure other tribe and Indian organizations are, to work with the Committee to draft language to strenghen the provisions to insure compliance with S. 1214 so that the intent of this bill is fully implemented.

The following are some of my personal comments on S. 1214 in relation to Indian children that would be under the Bill should it be passed and made into law.

I am a Social Work Assistant for the Colville Indian Agency, Bureau of Indian Affairs, at Nespelem, Washington. I have worked in the Branch of Social Services, BIA, since mid-1969. Due to my employment with the social service area, I have become quite aware of the situation which our Indian children have been through and are still going through under the implementation of PL 280 status.

There needs to be some standards set by which States would have to abide by in their work with Indian children. With PL 280 status being a reality here on the Colville Reservation, we seem to be caught in a conflict where the end result is that our children are the ones getting the dirty end of the stick. Specifically, the agency responsible for seeing to the well-being of our Indian children, do so with the general criteria of what works best with their concept. Until recently, our children were treated like all other children and placed in foster homes or adoption, without the consideration of their cultural backgrounds and the need for the propagation of their culture. With the passing into State law of the WAC (Washington Administrative Code) inclusion for Indians section, we are just beginning to realize what this really means to us. That the State of Washington, and specifically the Department of Social & Health Service is big enough in their hearts to acknowledge that there is something in this cultural thing the Indians are talking about, is certainly

a giant, if not tremulous, step for anyone to take. As the State goes along through the coming years, the implementation of this new WAC section, will indicate to other states whether this will be a success toward betterment of Indian children; or a big fluke, with our children being the pawns.

S. 1214 passage into law would strengthen Indian tribes as to the responsibilities toward their children's futures. This S. 1214 would put the burden on the states to work hand-in-hand with Indian tribes in placements for foster care or adoption. Too long have various states been ignoring the fact that Indian children do have a culture, do have the right to Indian parents (whether natural or adoptive), and do have the inherent right to grow in their cultural atmospheres without interference from outside forces. Going by past experience, when are the forces-that-be going to realize that we, Indian people, do have a right to be considered as unique, human entities, vested with qualities, psychologically and physiologically, that set us apart from the usual references for other people? Do we have to go for another 200 years struggling to make the peoples of the United States aware that we cultural-based Indians cannot possibly be blended into the "melting pot" of America without losing forever that which makes us unique?

S. 1214 is a positive step toward assurance that there is something in the tribal stance for protection and/or preservation of culture. It is agreed by many tribal leaders and people that our children are our future and our hope that cultural values and aspirations

go on to future generations. Without the acceptance and assurance of cultural continuity, then we will surely see a faltering within this generation of Indian cultural values, this last to the detriment of all, especially our children who are now in foster care and adoptive circumstances, and those in the future, if this isn't looked at closely by everyone.

I don't think I have to go into statistics of Indian children here on the Colville Reservation who are in foster care and adoptive circumstances, to make a clear point as to the urgency of S. 1214 to be implemented. Out of 136 Colville enrolled children placed within the last ten years, 20 known placements went to Indian (enrolled) parents for adoption. There were of the 136 count, 31 KNOWN out-of-State adoptive placements. One of the out-of-State adoption placements has been rescinded. The non-Indian parents (adoptive) could not cope with the Indian children, and so thereby cancelled the adoption! The above numbers are of just the cases our branch is aware of. Through various ways, the State of Washington public assistance and private placing agencies can completely go around the issue and place without contact to that child's tribe, until the action is completed and irreversible. Only on stressing tribal rights and benefits to that tribal enrolled child, have we been able to get cooperation on whether the child is adopted or not. Only within the last few years, have I seen a gradual change to seeing that a child is adopted by their respective tribal people, to where the number of children going to Indian homes is increasing, but still

not as fast as it should be, if the various states were indeed abiding by their new awareness. Right now, here in the State of Washington even with the passage of the addition to the WAC's, we still have a long way to go in resting assured that the State and everyone connected to it and private agencies are honestly and generously giving us back our children by letting the Indian people make the decisions on placements and final decisions.

There are some kinks in S. 1214, but the overall concept is a good one. This could be worked out among the many tribes concerned and with the law-making body as to what could and could not be done. To resist and haggle over various language in S. 1214, would surely cause it not to be passed and we would be trying again within a year or more to get legislation into effect for the protection of our Indian children. There needs to be some legislation come down from Washington, D. C. to impart once and for all the importance of involvement from tribes as to the decisions on the futures of their Indian children, be it foster care, adoption, court wardship, or whatever. The involvement from tribes should be the first thing a state should be required to have before passing a decision on any Indian child.

The assurance to the tribes that they will be assisted in setting up programs toward the protection the tribal familial structures is another positive aspect to S. 1214. Perhaps if this could be done for the tribes, the high rate of Indian children going into foster care or adoption would surely drop considerably. Thank you.

ESTABLISHED BY THE
TREATY OF JUNE 9, 1855
CENTENNIAL JUNE 9, 1955

CONFEDERATED TRIBES AND BANDS
Yakima Indian Nation
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August 12, 1977

Senator James Abourezk, Chairman
Senate Select Committee on Indian Affairs
1105 Dirkson Senate Office Building
Washington, D. C. 20510

Dear Senator Abourezk,

Enclosed, please find the Yakima Indian Nation's statement on S. 1214 which is submitted for the record.

Your consideration of this Statement is appreciated.

Sincerely,

Watson Totus, Chairman
Yakima Tribal Council

Enclosure

STATEMENT OF THE YAKIMA
INDIAN NATION REGARDING THE
INDIAN CHILD WELFARE ACT OF
1977, S. 1214

We would like to take this opportunity to present our views on S. 1214.

Initially we appreciate the efforts of all those involved that have made possible the introduction of this Legislation.

We cannot agree with the classification of Indian Children into three catagories as provided in Section 101. (resides within an Indian reservation; domiciled within an Indian Reservation, or who resides within as Indian Reservation which does not have a Tribal Court; and not a resident or domiciary of an Indain Reservation). The plenary power of Congress is an undisputed axiom and we urge that Congress vest exclusive and original Jurisdiction of Child Placements involving Indian Children with a Tribal Court or the Tribal Governing Body.

This Jurisdiction is the only way a child placement proceeding can accomplish the following:

1. Maintenance of the internal integrity of an Indian Tribe; and
2. Recognition of the Extended Indian Family; and
3. Rendering a determination regarding the rights of a child based upon the records that are maintained at the local level, (realty, IIM, Enrollment and others).

Therefore, we recommend and urge consideration of amendments of the Act.

Title I of the Act should be as follows:

TITLE I CHILD PLACEMENT AUTHORITY.

(a) Original and exclusive jurisdiction of Child Placement Proceeding involving an Indian Child shall be vested with the Tribal Court on the reservation where the Child is member or is eligible for membership.

(b) Original and exclusive jurisdiction of a Child Placement Proceeding involving an Indian Child whose reservation does not have a Tribal Court shall be vested with the Tribal Governing Body where the Indian Child is a member or is eligible for membership.

(c) In recognition of the Sovereign Authority of an Indian Tribe, full faith and credit shall be given to the laws of an Indian Tribe or to the appropriate action of a Tribal Governing Body.

Title II would remain essentially unchanged.

We thank the Senate Select Committee on Indian Affairs for any consideration given to the proposed amendments contained herein.