programs unaffected; State licensing or approval for qualification for assistance under federally assisted program. Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act ( ) or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for us under this Act ( ). The provision or possiblity of assistance under this Act ( ) shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act ( ) or any other federally-assisted program. For purposes of qualifying for assistance under a federally-assisted program, licensing or approval of foster or adoptive homes or insitutions by a Native Hawaiian OHANA shall be deemed equivalent to licensing or approval by a State.

Interpretive Notes and Decisions

1932. GRANTS FOR OFF-RESERVATION PROGRAMS FOR ADDITION SERVICES

The Secretary is also authorized to make grants to Native Hawaiian organizations to establish and operate off-reservation Native Hawaiian child and family service programs which may include, but are not limited to

(1) a system for regulating, maintaining, and supporting Native Hawaiian foster and adoptive homes, including a subsidy program under which Native Hawaiian adoptive children may be provided support comparable to that for which they would be eligible as

Native Hawaiian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Native Hawaiian families and Native Hawaiian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Native Hawaiian families involved in child custody proceedings.

1933. FUNDS FOR ON AND OFF HAWAIIAN HOMESTEAD LANDS

(a) Appropriated funds for similar programs of Department of Health and Human Services; appropriation in advance for payments. In the establishment, operation, and funding of Native Hawaiian child and family service programs, both on and off Hawaiian Homestead lands the Secretary may enter into agreements with the Secretary of Health, Education, and Welfare, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare: Provided, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Appropriation authorization under (?)

History; Ancillary Laws and Directives

1934.

1951. INFORMATION AVAILABILITY TO AND DISCLOSURE BY SECRETARY

(a) Copy of final decree or order; other information; anonymity affidavit; exemption from (5 USCS 552). The State court entering a final decree or order in any Native Hawaiian child adoptive placement after the date of enactment of this Act (5 U.S.C. 552), shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show

(1) the name and OHANA family affiliation of the child;

(2) the names and addresses of the biological parents;

(3) the names and addresses of the adoptive parents; and

(4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Informaiton Act (5 U.S.C. 552), as amended (5 USCS 552).

(b) Disclosure of information for enrollment of Native Hawaiian child in OHANA or for determination of member rights or benefits; certification of entitlement to enrollment. Upon the request of the adoptive Native Hawaiian child over the age of eighteen, the adoptive or foster parents of a Native Hawaiian child, or a Native Hawaiian OHANA, the Secretary shall disclose such information as may be necessary for the enrollment of a Native Hawaiian child in the OHANA in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to

such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Native Hawaiian child's OHANA, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such OHANA family.

1952. RULES AND REGULATIONS

Within one hundred and eighty days after the enactment of the Act, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act ( ).

Miscellaneous Provisions

1961. EDUCATION; DAY SCHOOLS; REPORT TO CONGRESSIONAL COMMITTEES; PARTICULAR CONSIDERATION OF ELEMENTARY GRADE FACILITIES

(a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Native Hawaiian families.

(b) The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health, Education, and Welfare, a report on the feasibility of providing Native Hawaiian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from the date of this Act (Nov. 8, 1978). In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

OVERSIGHT HEARING ON THE INDIAN CHILD WELFARE ACT BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

STATEMENT OF WILLIE KASAYULIE - CHAIRMAN OF THE ALASKA NATIVE COALITION

November 10, 1987

The Alaska Native Coalition is the only state-wide Native organization dedicated solely to representation of the views of tribal governments from throughout Alaska. I have been the Chairman of the Coalition since its inception in 1985. The Coalition includes over one hundred tribal governments or village-based organizations composed of tribal governments. We came together because existing state-wide organizations primarily represent the views of Regional corporations formed under the Alaska Native Claims Settlement Act (ANCSA). Our members include the Tanana Chiefs Conference (forty-six villages from interior Alaska), the Western Alaska Tribal Council (sixteen villages from the Bering Straits region) and scores of local tribal governments. These tribes are the intended beneficiaries of the Indian Child Welfare Act and it is our membership which deals with the matters governed by the Act on a day to day basis.1

The approximately 200 Native villages in Alaska have Traditional or Indian Reorganization Act councils which govern their communities. We count as tribal members all Native residents of the community - not just those who hold stock in Native corporations by virtue of being alive in 1971. These tribal governments receive BIA services and are

1 My remarks set out general problems with the implementation of ICWA in Alaska. The more specific suggestions offered to this Committee by the Aleutian/ Pribilof Islands Association, et al. are supported by the Coalition.

recognized as tribes by the United States government. It is the tribe which holds us together and which must retain the children who are our members and our future. Our ability to implement ICWA has been hindered by the unique terms of the ANCSA and arguments that it somehow removed tribal powers, or is proof that Congress thinks tribes don't exist in Alaska. Until it is made clear that ANCSA had no effect on tribal powers and that Native village tribal governments have the same status as lower forty-eight tribes, the promise held out by the ICWA can not be achieved. State government is extremely hostile to tribal authority. It intervenes in litigation on behalf of private parties who are opponents of tribal sovereignty. The state court system has joined in opposing tribal authority through hostile decisions - containing little credible legal analysis - undermining tribal government.

As a result of these hostile decisions, the state courts in Alaska refuse to transfer Indian Child Welfare Act cases to tribal courts - even when the events leading to the state court action arise in the Native village itself. The state supreme court interprets Public law 280 as having eliminated tribal authority over domestic relations matters and presumably all other matters as well. They buttress this claim by reading section 108 of the ICWA as an indication that Congress intended such a result when it enacted P.L. 280. Thus, state courts are precluded from

transferring cases involving tribal members to tribal courts. This erroneous state court decision cripples tribal efforts to make ICWA work in Alaska. It must be corrected, as must notions that ANCSA affected tribal powers.

ANCSA extinguished tribal claims of aboriginal title. It made no mention of tribal powers. The assets received in exchange for the extinguishment of title were not vested in the tribes, but in (theoretically) profit making corporations governed by state law. The tribes were given no direct role in implementing the settlement, yet ANCSA is frequently used by opponents of tribal governments as a sword to deny tribal rights and powers. The Coalition is concerned that Congress has neglected the critical role played by tribes in Alaska. We have always been a tribal people and the establishment of corporations has not changed us. The "1991 amendments" passed by this Congress reflect an intent to protect the resources gained in the settlement of our tribal claims. At the same time, however, our efforts to amend ANCSA to provide corporations with the authority to transfer corporate assets to tribal governments were unsuccessful. Our opponents insisted that any grant of such authority be accompanied by language diminishing tribal powers. Such treatment is unfair to tribes and is inconsistent with other legislation, such as ICWA, intended to strengthen or preserve tribal powers and governments.

The state and other opponents of the tribes also claim there is no Indian country within which to exercise tribal powers. The population of our villages is overwhelmingly Native and the land in and around the villages is predominately owned by Native corporations established under ANCSA. The Department of Interior administers the federal Indian liquor laws in Alaska just as it does in the rest of Indian country. Indeed, the only written legal opinion of the Department on the matter concludes that Native villages are dependent Indian communities and thus Indian country under 18 U.S.C. 1151(b). Yet ever since statehood, Alaska has denied the existence of Indian country and battled all tribal efforts at self-determination and the exercise of tribal authority.

It is no exaggeration to say that the state's view of Native rights is well behind that of the lower forty-eight states. The state's hostility to tribal government and ICWA has been given comfort by the Alaska Supreme Court. We urge the Committee to consider amendments which recognize and confirm the existence of Indian country and tribal authority over our children. We would be pleased to assist the Committee in developing such amendments.

SENATE SELECT COMMITTEE

ON INDIAN AFFAIRS

HEARING ON

THE INDIAN CHILD WELFARE ACT

OF 1978

TUESDAY, NOVEMBER 10, 1987

WASHINGTON, D.C.

Statement by

John R. Lewis

Executive Director

Inter Tribal Council of Arizona, Inc.

Statement by John R. Lewis
Executive Director
Inter Tribal Council of Arizona

The Indian Child Welfare Act of 1978 was enacted to protect Indian children by establishing minimum standards for the removal of Indian children from their families and tribes. This law has resulted in the reduction of out-of-home placements of Indian children into non-Indian foster and adoptive homes. We strongly appreciate the act of Congress in establishing this major legislation which provides for assistance to Indian tribes in implementing child and family service programs.

System Development Resulting from the Act

In Arizona a number of major accomplishments have resulted in the implementation of the Act. The state has reduced the number of Indian children in foster homes under state jurisdiction from 220 in 1980 to 53 in 1986. A permanently funded Indian Child Welfare specialist position has been established through state appropriations. With discretionary funding, the state has entered into a number of joint projects to improve Indian Child Welfare service delivery with the Inter Tribal Council of Arizona and individual tribes. These have included an Indian child protective service training program, a study of child abuse and neglect on reservations in Arizona, a project to establish competencies for Indian child welfare practice, and four statewide intergovernmental conferences of service providers who directly deliver health and human services to Indian families. The state has also entered into 13 intergovernmental agreements with various tribes to prevent child

abuse and neglect.

Child Custody Proceedings

Through our accomplishments we have identified a number of areas where the Act needs to be clarified. The first of these regards voluntary placement of Indian children in non-Indian homes. It has been our experience that private child welfare agencies and legal services are frequently unaware of the Act and accept voluntary placements without regard to the placement preference mandated by the Act. Young Indian mothers experiencing economic hardship in Phoenix are signing guardianship papers regarding their children which are heard in brief probate court hearings on a voluntary basis without notice being given to the affected tribes or to the State Administration of Children, Youth and Families. Young mothers are also signing powers of attorney without benefit of a court hearing. In regard to voluntary relinquishments, it has been the experience of tribes that parents do not always understand the papers that they signed.

There have also been periodic difficulties with the procedures of the notification process. In one case, notices of hearings were sent to the tribal cigarette store. Juvenile court personnel and social service personnel need to coordinate better at both the tribal and state levels to improve the timeliness of the notification procedure and tribal response process.

Another concern is the liberal interpretation among the States of parental objection to transfer of proceedings under section 1911 of the Act. Our understanding of Congressional intent is that parental objection to transfer of proceedings to

tribal courts does not outweigh the rights of an Indian child to be raised with the benefits of tribal affiliation. However, child placement agencies appear to assume that parental objection to placement with on-reservation tribal members, automatically grants authority to place the child with off-reservation non-Indian families.

Consistent with the intent of the Act, the language in Section 1911 should be amended to take into consideration the continuance of tribal ties when looking at the best interests of the child. This should occur regradless of parental objection to the transfer of proceeding to the tribal court.

Indian Child and Family Programs

While the Act has directed state policy in regard to Indian Children, there remain many areas of unmet need. Indian children suffer from a lack of financial, human and tribal resources. For example, the state has currently only two Indian families certified for adoptive placement, and neither of these are affiliated with Arizona tribes. Eighty percent of the 53 children in State foster care in 1986 were in non-Indian homes. When a private agency inquires about placement of an Indian youngster into foster or adoptive care, resources have not been recruited nor made available.

Further, rehabilitative programs to support and strengthen families such as child day care services are non-existent in most Arizona Indian communities. This can be directly attributed to a lack of available monies to implement such services. There is also still an absence of day schools on many reservations in

Arizona. Additionally, the only boarding school available to meet the needs of older Indian children, the Phoenix Indian High School is in constant threat of being permanently closed.

Children with severe behavior or mental health problems are not being served at all. State courts in Arizona will not give full faith and credit to tribal court orders of commitment of seriously disturbed Indian youths. These children oftentimes sit in understaffed, non-therapeutic tribal jails without the benefitof medical services.

Another concern is that funding for programs established by the Act is inadequate, is based on the arbitrary scoring of competitive proposals, and provides no assurance of continuation of services from year to year. For example, the Navajo Nation, the largest tribe in the country whose child population comprises nearly one-half of the tribal membership, had Indian child welfare grant funds withheld for two consecutive years, simply because the tribe's written proposal to serve children did not score 85 points according to a panel of readers. Additionally, many small tribes are excluded from funding for services because they cannot afford to employ professional writers to develop proposals for funding. The award process for Indian Child Welfare grants hinders a rational approach to the development of services for children.

Finally, we are also concerned that many of the tribes in the Phoenix Area have not developed children's codes. Once again this is due to limited funds available.

Conclusion

The Congress in enacting the Indian Child Welfare Act of 1978 has acknowledged the importance of tribal decision making in determining the best interests of Indian children. This legislation has resulted in improved social welfare service delivery and a reduction of Indian children placed in non-Indian homes in Arizona.

Issues of voluntary placement continue to require Congressional attention. The Act needs clarification with regard to transfer of voluntary cases to tribal courts. Also a method must be developed to enforce placement preferences in voluntary proceedings.

Programs to promote the security of Indian families rely on a stable source of funding. There needs to be developed a noncompetitive, improved formula with adequate appropriations for funding all tribes to operate programs to meet the needs of their children, especially those children with special needs.

We, the tribes in the Phoenix Area wish to again commend Congress and especially the Senate Select Committee on Indian Affairs for their continued interest in the welfare of our children. We urge the committee to support continued efforts to fully implement the Act.

Hoopa Valley Business Council
P.O. Box 1348 • Hoopa, California 95546 • (916) 625-4211
Wilfred K. Colegrove
Chairman

HOOPA VALLEY TRIBE
Regular meetings on 1st & 3rd Thursdays of each Month

November 24, 1987

Stephen H. Suagee
Staff Attorney

ICWA Oversight Hearing
Senate Select Committee on Indian Affairs
Room 838, Hart Senate Office Building
Washington, D.C. 20510-6450

Re: Testimony of the Hoopa Valley Tribe

To the Senate Select Committee:

I am a Staff Attorney for the Hoopa Valley Business Council, the federally recognized governing body of the Hoopa Valley Tribe. The Council has directed me to submit this written testimony on behalf of the Tribe and its Indian Child Welfare Program.

A. Background

The Hoopa Valley Tribe occupies and exercises governmental jurisdiction over that portion of its aboriginal territory known as the Hoopa Valley Reservation Square, in Humboldt County, California. At 90,000 acres, the Hoopa Square is the largest Indian reservation in California. The Tribe comprises approximately 1800 members, 958 of whom live on the Hoopa Square. Total population of the Hoopa Square is roughly 4300 persons, of whom 2200 are Indians.

The Hoopa ICW Program has been in existence in some form since 1981. The Bureau of Indian Affairs denied funding to the Program for FY 86, and as a result the Program was operated on a bare-bones basis from June, 1986, until this past summer, at which time renewed funding was available. Since that time, the Hoopa ICW Program has been pursuing the level of services that it provided prior to its loss of funding. Standard services include family remedial services, foster home recruitment, counseling with Mental Health staff, and monitoring of state court ICW cases involving tribal members. In addition, because I came here to establish the first on-reservation Legal Department in October 1986, the Tribe has begun to intervene as a formal party in ICW cases in state court. The Legal Department is also assisting the ICW Program in the development of a comprehensive Child Welfare Code for the Hoopa Square, which is currently in draft form.

The Tribe is also developing a Tribal Court system, the first tribal court in California. Currently the Court adjudicates cases arising under the Tribe's Fishing Ordinance, and we are in the process of extending its jurisdiction over a variety of natural resources and other civil matters. In addition, it is one of our paramount goals to develop our Tribal Court to the point where it can reassume jurisdiction over cases arising under the ICWA, pursuant to 25 U.S.C. § 1911(a) and (b).

B. **Concerns of the Hoopa Valley Tribe**

(1) Inconsistencies in Grant Review: The Tribe believes that its FY 86 application was denied due to inconsistencies in application of standards during the grant review process. Insufficient consideration was given to the unique socio-cultural attributes of our situation, and the need to coordinate ICW services with the development of our Tribal Court was ignored.

(2) Reservation v. Urban Programs: California has the largest Indian population of any State in the nation. Much of this population consists of off-reservation Indians, particularly in the Los Angeles area. Many of these urban Indians are from Tribes whose reservations are located in other states. Some Hoopa tribal members live off-reservation, many of them in California's northern coastal counties. Indeed, between the combined Reservation and urban population, Humboldt County has one of the highest Indian population densities of any county in the state. Although the Tribe agrees in principle that California's large population of urban Indians needs ICW program services, such services should not be implemented in any manner that results in lowered funding for reservations.

(3) State Implementation: Humboldt County social service agencies have not yet adequately implemented the ICWA. Most of their efforts have been directed at eligibility determinations; to a limited extent this is understandable because many individual Indians living in the Eureka-Arcata urban corridor are affiliated with unrecognized, terminated, or unorganized Tribes. The Hoopa Square is located in remote, rugged, mountainous terrain some fifty miles from the coast, and hence the Hoopa Valley Tribe is much less visible to state social service providers based in coastal urban areas.

Nevertheless, the Hoopa Valley Tribe knows who its members are, and can readily assist state and county agencies in making the rather perfunctory eligibility determinations regarding Indians of Hoopa descent. Our primary concern is that due to their preoccupation with eligibility, state and county agencies have given little consideration to the substance of the ICWA, and to the important tribal rights that it recognizes.

For instance, neither the Humboldt County Superior Court, nor the county and state agencies, have seriously examined the ICWA's frequent requirement that judicial decisions be based on testimony of qualified expert witnesses. The Tribe is currently involved in a case where the court relied on the opinions of experts who the Tribe believes lack the necessary expertise in and sensitivity to Indian cultural values. Of the many social worker/psychologist reports prepared for the court in this case, none of them say anything about cultural issues, development of an Indian identity, or the rights of a Tribe to see that its children grow up in the tribal community.

Moreover, in general the court and agencies do not realize that Congress has defined some of the elements of "the best interests of an Indian child," and that these elements restrict the court's ability to apply the generic state law standard of "best interests of the child."

Funding must be made available to train and certify judges and state and county social workers and other agency personnel. Tribal Courts should be involved in what should be an ongoing training process to facilitate exchange of information, and to educate judges and agency staff regarding the role and competence of Tribal Courts. In addition, agency personnel need to be educated regarding the importance of the Indian extended family, so that confidentiality cannot be raised as a barrier to the involvement of extended family members who may have a legitimate interest (such as providing foster care) in an ICW case.

(4) ICWA Amendments: The Hoopa Valley Tribe supports enactment of the amendments drafted by the Association on American Indian Affairs. Some of these amendments address problems and concerns identified herein. Some of the proposed amendments would provide added proce-

dural safeguards, close loopholes in the original Act, and effectively reverse certain anti-tribal results obtained in various state courts that clearly undermine the policy of the Act.

C. **Conclusion**

The ICWA is a strong Congressional statement of national policy regarding the rights of Indian children, families, and Tribes. As long as significant implementation responsibilities rest with the State, there will be need for refinement and diligent oversight. We thank you for the opportunity to provide this written testimony.

Sincerely,

Stephen H. Suagee

Stephen H. Suagee
Staff Attorney

SHS/ib
112487ICWA.sen

MURROW INDIAN CHILDRENS HOME
Box 68, Bacone College Campus
MUSKOGEE, OKLAHOMA 74403

November 23, 1987

To: U.S. Senate Committee on Indian Affairs

From: Oklahoma Indian Child Welfare Association

Re: Oversight Hearings on the Indian Child Welfare Act, PL 95-608

RECOMMENDATIONS AND COMMENTS ON PROPOSED AMENDMENTS

The Legislative/Funding Committee of the Oklahoma Indian Child Welfare Association has researched proposed amendments to the Indian Child Welfare Act and the OICWA at its most recent quarterly session has approved the following report to you.

We respectfully request your consideration of our recommendations. Our recommendations are based on reports previously presented to your committee and reviewed by the OICWA from Three Feathers Associates Inc. and the Association on American Indian Affairs, Inc. (copies of each are both attached). We support the additions/changes/delitions proposed by both attached reports.

However we would suggest several additional changes be made. We have listed these changes in relation to those suggested by the Association on American Indian Affairs Inc. They are referenced by Section number and page number in correspondence with their report.

We also wish to take this opportunity to strongly advocate for field hearings by your committe and that Oklahoma be designated as a site for such hearings. The Oklahoma Indian Child Welfare Association has functioned effectively for over five years as an advocacy and networking organization for all tribes and organizations in Oklahoma related to Indian Child Welfare issues. Our member tribes and organizations could provide valuable testimony from the "front lines" of Indian Child Welfare Act implementation. Your time in Oklahoma would be well spent.

Thank you very much for your consideration in this very important matter.

Sincerely,

Anita L. Phillips, MSW
President
Oklahoma Indian Child Welfare Assoc.

November 23, 1987

SUGGESTED AMENDMENTS TO THE INDIAN CHILD WELFARE ACT OF 1978

AS PRESENTED BY THE OKLAHOMA INDIAN CHILD WELFARE ASSOCIATION

In addition to and correlated with the attached amendments from the Association on American Indian Affairs, Inc. (unless a specific change is noted below, each section/subsection of the AAIA report has the endorsement of the OICWA.)

Definitions #9 (page5)

9. Indian "Tribe" means any Indian Tribe, band, nation or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary because of their status as Indians, including any Alaska Natives villiages as defined in Section 3(c) of the Alaska Native Claims Act (85 Stat.688, 689), as amended, those tribes, bands, nations or groups terminated since 1940, and for the purposes of Sections 101(c), 102, 103, 104, 105, 106, 107, 110, 111, and 112 of this act. Keep those tribes, bands, nations or other organized groups that are recognized now or in the future by the government of Canada or any province or territory thereof, and add Mexico "border-tribes".

Section 103(b) (page 13)

B. The Secretary shall appropriate additional funding which shall be sufficient to pay for qualified witnesses retained on behalf of the indigent parent or custodian.(or other such language.)

Section 103(g) (page 15)

G. Evidence that shows the existence of community or family poverty, crowded or inadequate housing, alcohol abuse or non-conforming social behavior shall constitute clear and convincing evidence, or evidence of a reasonable doubt, that custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. To meet the burden of proof, the evidence must show the direct casual relationship between particular conditions and the serious emotional damage to the child that is likely to result.

Section 108 (page 25-26)

Section 108. We feel that where possible the biological parents request for anonymity be protected. However, the adopted child must have access to a menimal amount of information which ensures his rights which flow from tribal membership.

Section 112(a) (page 31)

A. Suggest naming the OICW Association from Muskogee and Anadarko areas make up the three member Indian Child Welfare Committees - three from each area office.

Section 112(b) (page 31-32)

B. Change paragraph (2) to leave out the 10,000 Indian population requirement. Some states may not have 10,000 Indians.

Section 113 (a) (8) (page 33)

8. Guidance, legal representation, and advice in Indian families and Tribes involved in tribal, state or federal child custody proceedings, provide that Congress shall appropriate additional funding to provide for said legal representation.

Section 115(b)

B. A minimal acceptable funding level shall be set at 40 million.

BLACKFEET NATION

P.O. BOX 850
BROWNING, MONTANA 59417
(406)338-7179

November 5, 1987

Daniel K. Inouye
Chairman
Senate Select Committee
on Indian Affairs
Washington, D.C. 20510-6450

Dear Senator Inouye:

The Blackfeet Tribe has been actively negotiating an Indian Child Welfare Act Agreement with the State of Montana for the last year. Although we have now informally established a working relationship, we have been disappointed in the State's refusal to negotiate in a number of areas.

We have found that all of these areas are addressed and clarified in the Indian Child Welfare Act Amendments and Indian Social Services Assistance Act of 1987 proposed by the Association on American Indian Affairs.

The Blackfeet Tribal Business Council therefore decided that the Blackfeet Tribe supports the two sets of drafts legislation prepared by the Association, and we urge your committee to prepare an appropriate Bill.

We anticipate that the introduction of such a Bill would enable us to bring up items in our discussion with the State, where discussion was previously cut off because of the State's refusal to change their established positions.

Please submit this letter into the record of the oversight hearing on the Indian Child Welfare Act to be held November 10, 1987.

We very much look forward to testifying on an Indian Child Welfare Act Amendment Bill, and we plan at that time to submit detailed testimony.

Sincerely,

Earl Old Person, Chairman
Blackfeet Tribal Business Council
Browning, Montana 59417

BOYS TOWN
"He ain't heavy, Father ... he's m' brother"

October 28,1987

The Honorable Daniel K. Inouye
United States Senator
722 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Inouye:

As you probably know, Father Flanagan's Boys' Home (more popularly known as Boys Town) has been in the business of offering shelter, education spiritual incentive and rehabilitative services to troubled, abused and neglected children for over seventy years.

In recent times, we have begun to extend our services beyond our Nebraska site to mini satellite campuses in other parts of the nation; we have introduced a training and technical assistance program for other child care institutions throughout the country which wish to reorganize their operations along the lines of the Boys Town model; and we have established a specialized hospital (the Boys Town National Institute For Communication Disorders in Children) which treats over 8,500 youngsters annually.

Since 1979, we have expanded our residential care services to include girls. Ten new homes (cottages) for girls will be completed by the end of this year, allowing us to look after approximately 150 girls at a time.

Father Val J. Peter, who has served as our executive director for a little over two years now, feels that this impressive expansion and Boys Town's long established worldwide renown in the field of child care give him both a unique opportunity and a special obligation to serve as a national spokesman for handicapped, homeless and abused kids wherever they may be.

It is in the spirit of this obligation that we turn to you for assistance.

In order to allow Father Peter to have a clear understanding of the national picture (viewed from the distinct perspectives of fifty individual states), we would like you to list (and briefly describe) the two or three most pressing youth and family related issues currently under discussion in the state of Hawaii.

Father Val J. Peter, JCD, STD, Executive Director (402) 498-1111

FATHER FLANAGAN'S BOYS' HOME BOYS TOWN, NEBRASKA 68010

The Honorable Daniel K. Inouye
October 27, 1987
Page 2

What, if anything, is the United States Congress currently doing to solve these problems?

Do you anticipate legislative action in those areas in the course of next year's Congressional session?

The information we gather in this way will greatly assist Father Peter in setting the proper course for a myriad of Boys Town programs and in lending meaningful and timely assistance to children and child care providers wherever such assistance is called for.

Your prompt response would be of immense value to us.

Thank you in advance for your kind cooperation, I am

Very truly yours,

Stephen Szmrecsanyi, PhD

Stephen Szmrecsanyi, PhD
Legislative Assistant to
the Executive Director

SS/kb

SOUTHERN CALIFORNIA INDIAN CENTER, INC.

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San Fernando Valley
American Indian Training
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4640 N. Lankershim Blvd. #515
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(818) 508-5378

20 November 1987

The Honorable Daniel K. Inouye
United States Senate
Select Committee on Indian Affairs
Washington, D.C. 20510-6450

Dear Senator Inouye:

It was a great honor to have the opportunity to share with you, the Southern California Indian communities concerns about the Indian Child Welfare Act (ICWA). It is our hope that this testimony will shed light to the ICWA needs of the largest urban Indian community in the United States.

As you are aware American Indian people suffer the worst socio-economic conditions of any ethnic group in our country. Among which are the lowest education levels and highest drop out rates. In fact, High school drop out rates are twice the national average.

Characteristics gathered in 1986, in regards to Southern California Indian Center client services indicate, over 30% of the clients served did not have a high school diploma or GED. Over 50% of the clients were in need of basic adult education or learning skills upgrading. Over 70% of the clients served were economically disadvantaged.

Based on the SCIC survey on clients served, there is significant need demonstrated for basic adult education, basic skills up-grading, GED preparation classes, as well as instructional and counseling services which provide encouragement for continued education.

We recognize that education is a key ingredient to achieving self-sufficiency therefore, we have applied for funds under the Indian Education Act, Title IV-Part B (CFDA No. 84.061A) and Title IV-Part C (CFDA No. 84.062).

20 November 1987
Page 2

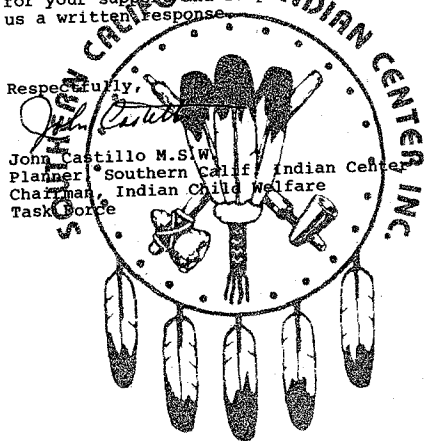
Because we are the largest urban Indian community, our problems with illiteracy are severe and warrant immediate attention.

We would like to request your support in our efforts to assist American Indian people become self-sufficient. We respectfully request that you contact the office of Indian Education (Washington, D.C.) and support our need for educational funds.

We would like to express our appreciation in advance for your support and respectfully ask that you send us a written response.

Respectfully,

John Castillo M.S.W.
Planner, Southern Calif. Indian Center
Chairman, Indian Child Welfare
Task Force



THE NAVAJO DIVISION OF SOCIAL WELFARE

P.L.93-638 SOCIAL SERVICES CONTRACTS

BACKGROUND

The Navajo Division of Social Welfare has several concerns about the manner in which social services contracts under Public Law 93-638 are facilitated by the Bureau of Indian Affairs (BIA).

Chief among these concerns is the tendency toward excessively restrictive regulations promulgated by BIA governing the designation of funds permitted for administration vis-a-vis funds allowed for direct services.

The Navajo Division of Social Welfare is capable and willing to administer programs with greater efficiency than is now possible under BIA regulations. **The Tribe advocates the development of regulations which designate 10 percent of program funds as the maximum share to be spent on administration.** Within that 10 percent, the Tribe should be permitted to allocate funds internally as it determines best for the purpose of meeting the Navajo Nation's heavy caseload demands on P.L.93-638 programs.

Basically, the Tribe's experience has shown that greater flexibility in the administration of these programs in likely to improve the actual delivery of services. The Tribe recognizes the need for BIA to maintain overview of the expenditure of these funds each fiscal year, and the Tribe accepts as reasonable the authority of BIA to establish general parameters on the use of funds. The present situation, however, is too restrictive. **The real ability of the Tribe to deliver services and maintain minimum standards for the caseload-caseworker ratio has been seriously impeded by insufficient administrative funding and confusing BIA procedures.**

Similarly, a clearer explanation of "monitoring" vis-a-vis "technical assistance" is needed.

The Tribe has asked BIA to provide clear, written definitions of these categories so that the Tribe may most efficiently plan its programs and comply with regulations. This request has not been adequately addressed by the BIA.

In Fiscal Year 1987, the BIA allocated $2,632,000 to the Navajo Nation for administration of P.L.93-638 social services; the total amount allocated for these services was nearly $32.8 million.

The Tribe now maintains 110 administrative and direct services positions for the operation of P.L.93-638 social services. Two years ago, an analysis undertaken by the Tribe estimated that 138 positions were needed simply to meet the caseload demands at that time (101 for direct services, 20 supervisors, 5 other administrators, and 12 for clerical support).

Using the present 110 positions, however, the Division of Social Welfare serves an average of 25,000 individuals each month. This is an extremely high caseload given the number of personnel permitted under the BIA funding categories.

The state of New Mexico, for similar social service programs, maintains an average of 20 to 30 cases per social worker; the Navajo Division of Social Welfare is forced to maintain an average of 50 to 70 cases per social worker.

RECOMMENDATIONS

The Navajo Division of Social Welfare urges that new regulations on the designation of funds for the delivery of social services under P.L.93-638 contracts be developed.

* A broader discretion for the Tribe in the use of administrative funds;

* Clearer and fuller descriptions of categories of funding and the activities permissible under such funding, determined and published in advance of the applicable fiscal year;

* Direct involvement by representatives of Tribal governments in the adoption of these descriptions, with provision for appropriate public comment and for continuing consultation with the Tribe in the implementation of these determinations;

* The establishment of a 10 to 15 percent administrative cost ceiling for social services under P.L.93-638 contracts, with the automatic conversion of any unused administrative funds for the purposes of direct services.

The above recommendations are entirely consistent with the scope and intent of P.L.93-638, as well as with the President's February 1983 policy statement on Indian self-determination and the need to develop government-to-government relations.

The Navajo Nation particularly has embarked on a course of greater self-determination and decreased dependency on the Federal government. The Tribe has amply demonstrated its ability and its desire to administer these programs at the local level with more efficiency than possible with the present level of Federal administrative restrictions.

THE NAVAJO DIVISION OF SOCIAL WELFARE

The Indian Child Welfare Act (P.L.95-608)

The Navajo Nation does not receive its fair share of Indian Child Welfare grants (ICWA) because of the funding formula used by the Bureau of Indian Affairs (BIA).

The BIA method completely disregards the size of the Navajo population. Even though the Tribe has a Reservation population of nearly 200,000, it cannot receive any more ICWA funds than a tribe having a population of slightly over 15,000. The regulation establishes a maximum grant of $300,000 for the Tribe -- the same as for a tribe with a population of 16,000, for example.

This $300,000 ceiling is merely twice that allowed to a tribe with a population of only 7,500 -- a fraction of the size of the Navajo Nation.

Over 50 percent of the Tribe's population is age 19 or under. This high percentage of young people, combined with the total size of the population, underscores the inadequacy of the ICWA formula employed by the BIA. Basically, the method denies the reality of the Tribe's demographics and impedes the Tribe's availibility to implement ICWA as Congress intended.

The Navajo Division of Social Welfare urgently recommends that this formula be changed to provide the necessary level of funding to the Tribe. The Division has been successful in bringing together families and attending to the immediate needs of ICWA recipients in well over 80 percent of its caseload, and is committed to improving even further the delivery of this important service.

The Tribe also strongly supports the $8.8 million appropriated for ICWA by the House Appropriations Committee for Fiscal Year 1988. This critical program must not be reduced below this level.

NAVAJO DIVISION OF SOCIAL WELFARE

SOCIAL SERVICES BLOCK GRANTS -- TITLE XX

The Navajo Division of Social Welfare believes that present statutory language limiting the social services block grant program to states should be amended to allow Indian tribes to be treated as states for the purposes of receiving and administering these grants.

Tribes presently are able to receive portions of the grants indirectly, at the discretion of state governments and after the state has removed a portion of the funding for administration. Since it is the tribal government, and not to state, that actually delivers the services the block grant, and as the Tribe administers funding for other programs (by grant and by contract), it is the position of the Tribe that there is no valid reason for continuing the practice of denying social services block grants to Indian tribes.

The Navajo Division of Social Welfare is aware that the U.S. Department of Health and Human Services (HHS) supports amending Title XX of the Social Security Act (42 U.S.C. 1397 et seq.), and the Tribe supports HHS's efforts to change this particular provision of the law.

The Navajo Division of Social Welfare also favors the consolidation of this grant process with the Low-Income Home Energy Assistance Program (LIHEAP) as described in the June 1985 HHS proposal to amend the Act. This proposal would allow broad latitude to the administering agency (the Tribe) to allocate funds from these two programs in the most effective manner as determined at the local level. Such a consolidation would tend to reduce administrative costs and increase the efficiency of actual service delivery.

August 6, 1987

Indian Child and Family Services

The Indian Child Welfare Consortium

November 6, 1987

Senator Daniel Inouye
Chairman
Senate Select Committee on Indian Affairs
Room 838, Hart Senate Office Building
Washington, D.C. 20510-6450

RE: Indian Child Welfare Act Oversight Hearings

Dear Senator Inouye,

I understand that there will be no public testimony during the Indian Child Welfare Act Oversight Hearings. Therefore, our testimony is written and submitted on behalf of the Indian Child and Family Services program to the Senate Select Committee on Indian Affairs.

The Indian Child and Family Services program began in 1980, funded by the initial appropriation of Title II funds. Two small California Mission Indian tribes formed a consortium in an effort to implement a Title II ICW program in San Diego County, California.

Since that first small grant, the ICFS consortium has received continuous Title II funding and has increased by 12 additional tribes in San Diego and Riverside counties. In addition, three Indian organizations are also members of the consortium. We are also providing a limited amount of ICW casework in Orange and Los Angeles counties through a one-year grant with the California State Department of Social Services.

Our agency has grown tremendously in expertise and credibility over the past seven years. We have become licensed as one of the only state-licensed Indian foster family agencies in this state and we are becoming licensed as an adoption agency. All of our direct services staff is made up of Indian persons who have graduate and post-graduate degrees. We have been responsible for providing ICWA training to several hundred social workers as well as providing ICW advocacy for the small tribes and urban Indians in our area. We have worked to provide ICW services for Indian families and children involved in foster care and adoption and are currently managing casework involving approximately 100 Indian children.

San Diego County
(Administrative Office)
2091 E. Valley Parkway, Suite 1F
Escondido, CA 92027
(619) 747-5100

Riverside County
736 State Street, Suite 101
Hemet, CA 92343
(714) 929-3319

Orange County
12755 Brookhurst Street
Garden Grove, CA 92640
(714) 530-0221

Los Angeles County
1125 W. 6th Street, Suite 101
Los Angeles, CA 90017
(213) 977-1366

Our achievements have been numerous and we are proud to relate them. However, in spite of the good intentions of the Indian Child Welfare Act, the road to our achievements has been a seven-year uphill struggle. We have been hindered each step of the way through a variety of forces as I will explain.

1. The Title II funding process is arbitrary at best. Because of the competitition for funds, our program, as with all ICWA programs, works with the knowledge that each year may be the last, depending on the funds appropriated by Congress for Title II programs; depending on the committee who reviews the ICW proposals at the BIA Area Office. Then, once funded, our security becomes hinged on the reliability of the Bureau Area Office. In every year of our program's existence our Requests for Reimbursement have been lost, delayed or simply overlooked at least one time per year. This has caused the near closure of our program on three occasions when we did not receive a timely reimbursement from the BIA. We are expected to maintain current records and reports for the Bureau, yet they in turn can cause senseless delays of the funds which are needed to maintain our program.

Another problem with the funding process involves the committees which review and make recommendations to fund ICW projects. A program may receive excellent reviews one year, then receive negative reviews the following year for proposing to continue a similar program, simply because the reviewers are different, inexperienced or biased.

The funding process almost appears to be a lottery with the luck of the draw. There is no system for assuring that all Indian people will have access to the benefits of Public Law 95-608. For example, in the state of California, the state with the largest population of Indian people (200,000), there are four ICW programs: Indian Child and Family Services, the San Francisco Indian Center, Toiyabe, Hoopa and the Consortium of Coastal Rancherias at Trinidad.

In other words, there is one ICW program covering two counties in southern California (ICFS); there is no Indian child welfare program in the Los Angeles area which has over 50,000 Indian people; there is one small program in central California serving the Shoshone, Washo and Paiute tribes (Toiyabe); there is one program in the San Francisco Bay area where over 100,000 Indian people reside (S.F. Indian Center); there is one program serving the Hoopa tribe in northern California and there is one program in the far northwest corner of California serving three tribes there (Consortium of Coastal Rancherias).

Thus, out of 122 tribes in the state of California, only 21 are receiving direct ICW services. Our program--Indian Child and Family

Services --serves 14 of those tribes. What about the remaining 101 tribes? Who assures that their children will not be permanently removed from them through culturally insensitive social work practices?

2. The issue of state compliance with the Indian Child Welfare Act is a major stumbling block in the Act's implementation. Ignorance of the law by social workers, particularly in an area such as California where there is a large population of American Indians, creates an impossible situation for assuring that the law is followed and benefits Indian people. A mechanism needs to be established whereby states can be monitored and sanctioned for not implementing the Act.

3. Statewide ICWA training is one method to assure compliance with the law. A 1983 statewide survey conducted by the California State Department of Social Services showed that this state was (is) 85-95% out-of-compliance with the Indian Child Welfare Act! Our agency has spent a great deal of money in the training of county social workers about the Indian Child Welfare Act and their responsibilities in following it. It does not make sense that small programs such as ours must use precious funding for the training of county social workers about a federal law. Yet, because there is no statewide ICWA training by the Department of Social Services and because of the constant turnover of county social workers, if we don't persist with our training efforts, our local social workers become even more ignorant of the law.

The ICWA amendments drafted by the Association on American Indian Affairs addresses these and other concerns. We fully support these amendments and urge the Senate Select Committee on Indian Affairs to also support the amendments.

The Indian Child Welfare Act, although it doesn't address land, water, or other tribal economic issues, is one of the most important pieces of legislation to impact the future of all Indian tribes.

In our work we are able to witness the positive results of the ICWA to keep Indian families together, but we also witness continuing violations of the law. It is imperative that this law continue to be supported by Congress. Your support should include the amendments as drafted by AAIA, as well as the financial support to assure continuation of Indian Child Welfare Projects.

Thank you for considering this testimony during the Indian Child Welfare Act Oversight hearings.

Sincerely,

Rose-Margaret Orrantia
Director

Corporation for American Indian Development

American Indian Center • 225 Valencia Street • San Francisco, CA 94103-2398

STATEMENT OF THE CORPORATION FOR AMERICAN INDIAN DEVELOPMENT, INC., PRESENTED BY PHIL TINGLEY, MSW, MANAGER, HUMAN DEVELOPMENT DIVISION

BEFORE

THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

IN

THE NOVEMBER 10, 1987 OVERSIGHT HEARING

ON

THE INDIAN CHILD WELFARE ACT OF 1978

Mr. Chairman and Committee Members:

We thank you for the privilege of addressing the Committee regarding Title I and Title II of the Indian Child Welfare Act of 1978. Following are comments concerning what we feel are important issues that should be addressed as part of this Congressional oversight process:

The current formula used by the Bureau of Indian Affairs (BIA) to distribute Title II, Indian Child Welfare Act (ICWA) funds nationally is not consistent on a nationwide basis. This impacts California rather severely in that although California has the largest Indian population of any state, the national funding allocation plan does not reflect this fact.

Therefore, of the over 200,000 American Indians residing in California, only about one-fourth, or 57,000 (Indian Health Services estimate), live within an area where they have access to Title II ICWA program services.

(415) 391-5800 (415) 552-1070 (415) 552-1475

The Area Grant Review process of the BIA also is not consistent on a nationwide basis, nor does it take into account specific demographic differences.

Looking at this issue with a more localized perspective, one must then note that one result of this inconsistency has been that of the 122 federally-recognized tribes in California, only 18 receive Title II services; and of the 57 counties within the State of California, only 12 are within the service jurisdiction of an existing Title II program.

By not taking into account demographic differences, additional inconsistencies occur. Since the land-base of most California Tribes is so small, many of their citizens must live in "near-reservation" areas, which creates a multitude of jurisdictional problems, especially when no Title II program exists to help mediate these problems.

Also unique to California, the majority of the state's Indian population (85-95%) reside in off-reservation urban centers. In most of the state's major urban centers (as an example, the Los Angeles area), there are no Title II programs or services.

Title II programs usually are the only local means for the provision of preventative services to Indian children and their families. They are also usually the only means of monitoring for state compliance to the provisions of Title I of the ICWA.

Specific to the matter of compliance, state and county welfare agencies nationally are not providing outreach services to insure that there are sufficient Indian foster homes available for temporary or long-term placement of Indian children when no

extended family or tribally licensed foster home placement exists. States are thereby failing to comply with the foster care placement criteria of Title I of the ICWA.

In light of this and other problems, a national enforcement mechanism needs to be established whereby states can be monitored and penalized for not implementing the provisions of Title I of the ICWA. A system could be established based upon the current model that exists nationally for child abuse.

An additional significant contribution to the implementation of Title I provisions could be the allocation of funds for training state and county juvenile and family court judges, court workers and county welfare workers. If this effort were to be undertaken, it must be understood that, due to the high staff turnover at the county court and welfare agency level, this effort must be on-going. A more cost effective approach (for the federal government), however, might be to require that juvenile level court judges attend an ICWA certification course at the National Judicial College.

State court and county welfare workers could also be required to obtain ICWA certification as part of their licensure requirement. Most often, a single social work individual at the county welfare level will have the duty of being the ICWA "expert" fall upon them. An across-the-board national ICWA certification process would alleviate this problem, and also help assure that the provisions of Title I are implemented nation-wide.

In reviewing and evaluating the operation of Title II programs specifically, a number of problems also require discussion.

Title II program staff are required to provide state court evaluations and assessments, provide services to victims of child abuse, neglect, domestic violence and also provide preventative services. Yet the BIA has set an administrative policy stating that no funds may be used for mental health services. Their justification for this policy is that the Indian Health Services (IHS) provides these services.

In reality, off-reservation populations are not eligible for these services due to IHS policy. Existing state mental health programs, especially those in urban areas, have six week to six month (the latter being most common) waiting lists for services. In reservation areas where IHS services do exist, there is no reciprocity from IHS and state mental health workers to tribal ICWA workers, in terms of the sharing of information (with client consent) for treatment purposes and for the coordination of services.

In both reservation and off-reservation populations, there are second and third generation dysfunctional individuals and families who have never received mental health services. A provision to allow Title II ICWA programs to provide mental health services is sorely needed.

Specific to both Title I and Title II provisions, it must be noted that there are also a number of Indian children that the ICWA fails to protect.

Children who are members of state-recognized tribes or of tribes whose federal status is pending are excluded under current provisions of the ICWA. Congress should consider an extention of the basic human rights contained within the ICWA to these children.

There are also many Canadian Indian children who are removed from their homes while their families reside within the United States. The Jay Treaty defines Canadian Indian citizens (treaty or status) as having the same rights as United States Indian (treaty) citizens while they reside within the United States. It has been the BIA's policy, however, that no Title II funds may be used to protect the rights of these children and that Title I provisions do not apply to them. Since the United States has extended the political definition of the term "Indian" to Canadian Indians through this international agreement known as the Jay Treaty, and since the United States Constitution refers to treaties as being "the highest law of the land," it would seem that Congress must provide the means to allow for the ICWA to conform to constitutional and international law in this matter.

The Indian Child Welfare Act will have been passed for ten years in 1988 and the application of the law has been tested. Some states have still taken no action to implement this federal law. It is clearly time for the provisions of this law to be reviewed, analyzed and strengthened.

We thank you for your consideration in this matter of such vital importance to the children and families of our indigenous nation-states.

82-115 (448)