testimony from several hundred witnesses in hearings from 1974 to 1977, and as they reviewed the reports of the American Indian Policy Review Commission, as well as placement statistics prepared by the Association on American Indian Affairs.

Congress included its findings from the hearings, reports and surveys in Section 2 of the Act and stated that pursuant to such findings ***"that there is no resource more vital to the continued existence and integrity of Indian tribes than their children,"*** and that an ***"alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children"*** in proceedings which fail ***"to recognize the essential tribal relations of Indian people and prevailing cultural and social standards,"*** Congress declared it a national policy to:

> ***. . . .protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs. (Section 3.)***

The proposed amendments to the Act will definitely have an adverse impact in that they will erode and not promote the stability and security of Indian tribes and families to their children. By adding certain preferred language in defining who is an Indian child and who a member can or cannot be is going directly against the purpose and intent of the ICWA. The Act is very clear that neither the states or

Congress can determine who is a member of a tribe: Only a tribe can make that critical determination. This exclusive, protected and unquestioned tenet of tribal government has been upheld by U.S. Supreme Court cases.

By changing the definition of an Indian Child to read " any unmarried person who is under the age of eighteen and is either (a) a member of an Indian tribe ***at the time of the child's birth***, will effectively take away that basic and constitutional right of a tribe to initially determine whether a particular child is eligible to be a member of that tribe. Only a tribe can make a determination as to whether a child will or will not become a member of that tribe, but this cannot always be done at the "time of the child's birth." In this day and age when work is harder and harder to find, many tribal members or potential tribal members move off the reservation to look for jobs. Some of these individuals may have children, but never report this information to the tribe. This, however, does not immediately or necessarily mean that that child is automatically disqualified from becoming a tribal member, or that he or she will automatically become a tribal member upon his or her birth. At the Pueblo of Laguna, certain procedures are in place to make a determination on a child's status as being eligible for enrollment or not. Several cases have been submitted to the Pueblo for determination on this issue and the Pueblo was able to make a quick determination and make appropriate responses to state agencies without any undue delays.

One area that the Committee members need to be made aware of is that all tribes depend heavily upon the extended family mechanism, and even though a particular person may not want his or her child at birth, this does not, nor should

it, preclude the extended family or the tribe's interests in obtaining the care and custody of that child. This is exactly what the Act was intended to do.

In addition, the proposed amendments by Congresswoman Pryce would, in effect, establish new considerations in the determination of tribal membership for purposes of the ICWA, and would prohibit retroactive membership. These proposed amendments would limit the protections of the ICWA to only those Indian children who are living on the reservation. The Pueblo does not believe that Congress intended the Act to only apply to a limited number of eligible or potentially eligible Indian children, or to the parents of those children who may have not kept close or significant contacts with their particular tribes. Many of the reasons why Indian children may not be enrolled members or living on or near the reservation comes from the devastating affect of previous federal policies, such as forced assimilation, relocation and removal to boarding schools. And, even though a person who meets the blood quantum requirement for enrollment in a tribe does not want to be considered a member of that tribe, this should not automatically preclude his or her child from being considered a member. Too often, these parents, who are generally of a very young age, are confused and pressured into making determinations that go against their interests and those of their children. And, it is usually the tribe that loses out on this ***vital resource, which it views as essential to its continued existence and integrity.***

In closing, I would like to make clear that the Pueblo of Laguna is against any changes to the Indian Child Welfare Act, especially those changes that are currently being proposed. I must remind you as well as the other members of the

Committee that the United States, through Congress, has a direct interest in this matter, as trustee, in protecting the interests of all tribes, and to take a stand against any type of legislation that would be contrary to those interests. Congress has a fiduciary responsibility to all tribes to act in their best interests and the Indian Child Welfare Act mandates that such interests remain at the forefront.

I appreciate your time and attention to this matter and sincerely hope that you will give due consideration and weight to the interests and concerns expressed herein.

PUEBLO OF LAGUNA
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Office of:
The Governor
The Secretary
The Treasurer

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May 3, 1996

The Honorable Jeff Bingaman
United States Senate
110 Hart Senate Office Building
Washington, D. C. 20510-3102

RE: ***Pueblo of Laguna's Position on the Proposed Amendments to the Indian Child Welfare Act***

Dear Senator Bingaman:

On or about May 8th or 9th, the House of Representatives will consider the Bill, H.R. 3286, an omnibus adoption bill. Title III of that bill, based upon the language of H.R. 3275 by Congresswoman Pryce, would adversely amend the Indian Child Welfare Act (ICWA). Congressman Don Young, Chairman of the House Resources Committee which has jurisdiction over Indian Affairs, was forced by the House leadership to consider and report this bill in only one (1) week. On or about April 25, 1996, his Committee marked up the bill and voted to strike Title III, the provision amending the ICWA. Despite this clear action by the Committee with jurisdiction over the bill, the Rules Committee intends to report a rule which will add the anti-tribe language to the bill.

Chairman Young has made clear his intention of offering an amendment on the floor to strike out Title III of the bill. Mr. Young represents the State of Alaska which has a large population of Indians, Eskimos and Aleuts and is very familiar with their problems. He was also a member of the old House Committee on Interior and Insular Affairs when the Indian Child Welfare Act legislation was considered and passed into law. As a consequence, he is very familiar with the severe erosions of Indian families which were ongoing and which the provisions of ICWA were designed to cure. It is very unfortunate that the House leadership has ignored the Committee structure and ignored the wealth of experience that Chairman Young and the other members of the Resource Committee bring to this issue.

Despite the horror stories being told by the proponents of the Pryce language, the Indian Child Welfare Act has stopped the raids on Indian children; is bringing stability to Indian families; and is strengthening the future of Indian tribes. The Pryce language, if enacted into law, would turn back the clock those efforts and result in more prolonged litigation to the detriment of Indian children. As you are a member of the Congressional delegation from the State of New Mexico, which as you know has a large Indian population, the Pueblo of Laguna strongly urges you to support Chairman Young's floor amendment to strike Title III from H.R. 3268. For further information, you can call David Dye, Chief Counsel of the Resource Committee (202) 225-7800, or Tim Glidden, Majority Counsel to the Subcommittee on Native American and Indian Affairs (202) 226-7393. We would also urge you to contact the other members of the New Mexico delegation and express these concerns to them and urge them to vote against the proposed amendments.

You will also find a copy of a Position Paper that the Pueblo drafted and sets out the position and concerns that the Pueblo has in reference to the proposed amendments to the Indian Child Welfare Act.

Thank you for your immediate attention to this matter. Any help that you are able to provide is greatly appreciated.

Sincerely,

PUEBLO OF LAGUNA

by Roland E. Johnson
Governor

MORONGO BAND OF MISSION INDIANS
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BANNING, CALIFORNIA 92220-2965
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TESTIMONY OF MARY ANN ANDREAS
CHAIRWOMAN OF THE MORONGO BAND OF MISSION INDIANS
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
JUNE 26, 1996

Good morning Mr. Chairman and members of the Committee. Thank you for the opportunity to discuss proposed changes to the Indian Child Welfare Act. The Indian Child Welfare Act (ICWA) is a very complicated statute and any changes should be done with great deliberation to protect the best interests of Indian children.

The Morongo Band of Mission Indians are located at the foot of the San Gorgonio and San Jacinto Mountains in Southern California. Our reservation spans more than 32,000 acres and we have approximately 1000 enrolled members.

Although our participation in ICWA cases has been somewhat limited, we have successfully intervened in several cases, and have given input on the placement of Indian children in those cases. We have tried to work with local social services agencies to ensure they have a better understanding of ICWA and its requirements. Despite the fact that ICWA was enacted in 1978, it has only been recently that states and adoption agencies have made efforts to comply with it. We do not want to hinder this effort by drastically changing the law, when all that is needed is minor adjustments and better compliance.

THE INDIAN CHILD WELFARE ACT

Throughout the course of the debate on this issue, there has been a lot of misinformation about ICWA. ICWA works when it is understood and followed. It was designed to allow tribes to participate in child custody proceedings to prevent the wide scale separation of Indian children from their communities.

When the law was enacted in 1978, it was bi-partisan, long overdue and widely needed to protect the integrity of Indian families. This fact is lost on Members of Congress trying to change ICWA because of the very narrow interests of a few constituents. Many of the opponents of ICWA do not acknowledge the continuing need for ICWA, and do not acknowledge its current flexibility.

The highly publicized case that prompted the legislation in the House of Representatives started because of overt non-compliance with the Act. The

situation that resulted from this attempt at circumventing ICWA was tragic for all parties, especially since it could have been avoided. But the answer to this problem is not to drastically change ICWA without adequately considering the impact such changes will have. Instead, we should strengthen the Act to ensure compliance and take measures to avoid "problem" cases.

THE NCAI ALTERNATIVE AMENDMENTS

With these ideas in mind, I and a number of members of our Tribal Council, attended meetings about ICWA at a recent session of the National Congress of American Indians. At this session many tribes came together to discuss and offer ideas about how to enhance ICWA for everyone.

The alternative amendments developed at this meeting directly address some of the concerns about ICWA without having an overreaching effect. They work toward the goal of providing more certainty for adoptive parents and still protecting tribal sovereignty.

For example, the NCAI amendments provide better notice to tribes of adoption proceedings. Currently, notice is only required for involuntary cases, and expanding the notice to include voluntary adoptions will allow the tribe to participate in the initial adoptive placement decision. This change will help avoid future problems because all necessary parties, including the tribe, will take part in the choice of an adoptive home. The amendments also include deadlines for intervention which place a responsibility on the tribe to act in a timely fashion. This change demonstrates tribal acknowledgment of the importance of swift, certain and appropriate decision making in placing Indian children.

The NCAI alternative amendments also impose criminal sanctions against parties who knowingly violate the act. This provision will help deter parties from participating in attempts to circumvent ICWA. Finally, the NCAI alternative amendments allow courts to enforce "open adoption" agreements. "Open adoption" agreements allow the biological family to maintain contact with a child after an adoption has been finalized. Some states acknowledge these agreements and some states do not. This change will simply leave this option open in states which currently do not allow it. This amendment will help resolve current contested cases, including the one that prompted this legislation.

CONCERNS RAISED AT THE HEARING

Several witnesses testified about "retroactive application of ICWA." However, I believe this characterization is a misnomer. The need to retroactively apply the law exists only when the law is not followed in the first place. The way to address this problem is to avoid having it occur. Again, the NCAI alternative amendments

address this problem through better notice, intervention deadlines, criminal sanctions and allowing the use of "open adoption" agreements.

Finally, there was some discussion of the best interests of Indian children. When ICWA is followed it works to provide Indian children with families that are sensitive to all of their needs, including the need to remain connected to their tribe. The Act does not allow the tribe to dominate an entire case to the exclusion of the best interests of Indian children. The tribe is only one party in a case. The state court also considers the position of the biological parents, the adoptive parents and the child.

When state courts make decisions on placement of Indian children, they often do so in the context of best interests of the child. Therefore, it is important to examine how the best interests of Indian children and Indian tribes and families relate to each other. At the beginning of a case, the best interests of Indian children and tribes are closely aligned with each other. The Indian child is in need of a home and the tribe has an interest in locating a family within the community to provide that home. But if an Indian child is placed for adoption without notice to the tribe, then the best interests of the child and the tribe can become conflicting. Once the child is placed in a non-Indian home, then the bonding between the child and that family can work against the tribe's interest in keeping the child within the community. Therefore, it is crucial have the tribe involved in the decision making process as soon as possible, in order to protect the best interests of all parties. The NCAI alternative amendments accomplish this goal and I hope you endorse them.

Thank you for the opportunity of presenting this testimony.

Testimony before the Senate Sub-Committee on Indian Affairs John McCain, Chairman

Mr. Chairman, Members of the Sub-Committee:

My name is Gregg Cordova. I am the Chairman of the Dry Cre Rancheria which is located in Sonoma County, Californi approximately two hours north of San Francisco. The Dry Cre Rancheria is presently a party to the ICWA case In re BRIDGET R a case which involves the issue of the "existing Indian famil doctrine. I am here today to testify on behalf of my Tribe. are adamantly opposed to any changes in or amendments to the Indi Child Welfare Act.

If this Congress adopts the proposed amendments to the IC which would permit the application of an existing Indian fami doctrine analysis, Tribes across the country will be faced wi situations like the one my Tribe is now facing in the case of In BRIDGET R. We know the consequences of this kind of analysis.

One does not have to go beyond the Congressional findings th were the basis for the enactment of the ICWA to understand why t proposed amendments would defeat the purpose of the Act. Tho findings included the recognition of the plenary power of th Congress over Indian affairs, of Congress's responsibility for t protection and preservation of Indian Tribes and their resource that "there is no resource that is more vital to the continu existence and integrity of Indian Tribes than their children", th

an "alarmingly high percentage of Indian families are broken up by the removal" of their children, and that State courts and agencies "have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities".

These finding make it clear that Congress intended to take the power to decide such fundamental issues as the definition of a Tribal member, the definition of an "Indian child", and the appropriate placement of Indian children out of the hands of the state courts. The ICWA provides strict definitions and mandatory provisions so that questions like what constitutes an Indian family will not be subject to the varying interpretations of state courts. By giving state courts the power to evaluate the nature and quality of an existing Indian family, this legislation will return Indian Tribes and Indian families to the precisely situation that the ICWA was intended to prevent.

This is clear from the words of the California Court of Appeals in In re BRIDGET R. There the court wrote:

> In considering whether the biological parents maintained significant ties to the Tribe, the court should also consider whether the parents privately identified themselves as Indians and privately observed tribal customs and, among other things, whether, despite their distance from the reservation, they

> participated in tribal community affairs, voted in tribal elections, or otherwise took an interest in tribal politics, contributed to tribal or Indian charities, subscribed to tribal newsletters or other periodicals of special interest to Indians, participated in Indian religious, social, cultural or political events which are held in their own locality, or maintained social contacts with other members of their Tribe.

At the time of the enactment of the ICWA, Congress did not intend that this type of intrusive examination be carried out in order for the ICWA to apply. Nor could it have been the intention of Congress to encourage the varying interpretations of these factors by state courts that the adoption of the "existing Indian family" analysis would inevitably lead to. The fate of the child, the child's family, and the child's Tribe would be dependant on what non-Indian outsiders determined to be the necessary quotient of Indian-ness or involvement in an Indian community. I do not believe that any member of this committee would submit to the determination of a judge the question of whether they are Protestant Catholic, Jewish, Moslem, Black, or Asian, according to standards set by people outside those communities, and based on an examination of how often they voted, whether they regularly went to church or synagogue or mosque, what organizations they gave their money to, what they read, and who they chose to socialize with.

This committee must recognize that the purpose of the ICWA

was, along with the preservation of the child's connections to his immediate family, the protection the interests of the child's Tribe. The Dry Creek Rancheria has a population of 484 members. Every member is significant to the survival of our Tribe. The fact that members choose to live outside the rancheria or are forced by economic circumstance to live outside the rancheria does not mean that they are not important members of our community or not, as the Congressional findings to the ICWA express it, "vital to the continued existence and integrity" of our Tribe.

A Tribe ceases to exist when it no longer has members. I hope that it is unnecessary to remind this committee that at the time that the ICWA was drafted, the Senate hearings were presented with evidence that between 1969 and 1974 25% to 35% of all Indian children had been separated from their families and placed in adoptive families, foster care, or institutions, that in 1971-1972 almost one in four children under the age of one year was placed for adoption, and that approximately 90% of those Indian placements were in non-Indian homes.

Rather than clearing up what some people apparently regard as problems stemming from an unfair exception working to the benefit of Indian people and their Tribes, the incorporation of the "existing Indian family" analysis would lead to far greater complications than are presently faced by courts in cases involving the ICWA. Every time a Tribe attempted to intervene, courts would

be confronted with the question of the extent of a Tribal member's involvement with his Tribe. Unscrupulous attorneys and adoption agencies, like those involved in our case, would use the exception to hopelessly confuse and delay proceedings so that, instead of returning the child to his Tribe quickly and without undue complication as the ICWA now requires, legal battles would stretch out long enough to allow for the kind of dishonest proclamations that the Dry Creek Rancheria has faced: that it is too late to return the children, and it is for the good of the children that they not be returned to their family and Tribe.

Is it for the "good" of the child that they be placed outside of an Indian family? Evidence presented at the ICWA hearings in 1974 revealed that Indian children raised in white communities faced severe problems of identity and adjustment in a society that did not accept them.

Members of Federally recognized Indian tribes have a unique legal relationship with the Federal government, and some laws have been designed to give special consideration to some Indians under certain circumstances. I doubt, however, that there is anyone in the United States who would give up their circumstances in exchange for the discrimination, poverty, and disease still common in Indian communities that accompanies the befits of laws like the ICWA. I find it both ironic and outrageous that the moment Indians appear to derive any benefit from their status there arises a chorus that

echoes across the country: How unfair! Indians have so many advantages! Indian have a special legal and political status, but that status has rarely worked to our advantage. Laws like the ICWA were designed to help us preserve what is left of our cultures after centuries of destruction. Don't take what little we have away from us.

Iggy Cordova
Chairperson
Sky Creek Ranchería

AMERICAN
PSYCHOLOGICAL
ASSOCIATION

ADVOCATES FOR ETHNIC MINORITY CHILDREN AND FAMILIES NEEDED TO RESPOND

Recent Amendments to the Indian Child Welfare Act of 1978 Interfere with Native American Traditions

ISSUE: The House recently passed the Adoption Promotion and Stability Act of 1996 (H.R. 3286) which reverses current law with respect to the adoption of American Indian and Alaska Native children. Title III of the legislation states that any child custody proceeding involving a child who does not reside or is not domiciled within a reservation would no longer be covered by the Indian Child Welfare Act (ICWA). In effect, the amendment would remove jurisdiction over Indian child custody proceedings from tribal courts and grant jurisdiction to state courts.

In addition to its impact on Native American child custody proceedings, Title III would also affect tribal determinations of membership. Title III further amends ICWA by stating that "a person who attains the age of 18 years before becoming a member of an Indian tribe may become a member of an Indian tribe only upon the person's written consent". Also, "for the purposes of any child custody proceeding involving an Indian child, membership in an Indian tribe shall be effective from the actual date of admission to membership in the Indian tribe and shall not be given retroactive effect".

PROBLEM: Title III of the Adoption Promotion and Stability Act of 1996 jeopardizes the integrity of Native American culture. If enacted into law, the Act will limit the ability of Native American tribes to retain and embrace their traditional practices and culture. Below are some of the Society of Indian Psychologists (SIP) and APA's objections to the Adoption Promotion and Stability Act.

* Title III of the Adoption Act interferes with tribal sovereignty by allowing state courts to negate tribal membership determinations. This provision fails to consider the role of culture, heritage, and tribal relationships in determinations of tribal membership.

* Title III of the Adoption Act focuses on the residential status of a child on the tribe's reservation or the affiliation of the biological parent as

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primary evidence of tribal membership in determining whether a child is Indian under the ICWA. This provision fails to consider the fact that some tribes have no reservation, and that many tribal members do not live on reservations, but nevertheless maintain social and cultural ties with their tribal community.

* Title III of the Adoption Act only permits Indian children who are tribal members prior to a child custody proceeding to receive protections under the ICWA. However, it is not always possible to have tribal membership determinations made prior to a custody proceeding. In addition, many providers of child welfare services do not correctly identify the ancestry of Native American children in custody proceedings, and may not be familiar with the requirements of ICWA.

* Title III of the Adoption Act could potentially deprive tribes of jurisdiction over some resident member Indian children on the reservation because they would be classified as non-Indian for the purposes of the ICWA under Title III of the Adoption Act. For example, one non-reservation tribal ICWA program reviewed their ICWA cases to discover that 70% of the children from their program would not be eligible under the ICWA as amended. This would affect both reservation and non-reservation children that are currently under tribal jurisdiction as the ICWA was passed originally.

The Indian Child Welfare Act was enacted because the historic and contemporary removal of Indian children from Indian families through foster care, adoption and boarding schools has devastated tribal communities. Current legislation will further undermine the integrity of Indian families and tribal communities.

ACTION NEEDED: Please write or call Senators who sit on the Indian Affairs Committee. Using the list provided below, contact your state's Senator as a constituent and a professional concerned with these issues. If your Senator is not on the list, address your correspondence to the Committee's chair, Senator McCain. The Committee needs to hear from you how the Adoption Promotion and Stability Act would be harmful to Native American children and families. You should try to contact them within the next two weeks, before the Senate considers the amendments to ICWA. Feel free to use the sample letter below in drafting your correspondence or talking points.

SAMPLE LETTER TO SENATORS

Republicans	Democrats
John McCain, AZ, Chair	Daniel Inouye, HI
Frank Murkowski, AK	Kent Conrad, ND
Slade Gorton, WA	Harry Reid, NV
Pete Domenici, NM	Paul Simon, IL
Nancy Kassebaum, KS	Daniel Akaka, HI

Comments On the Indian Child Welfare Act and Adoption Promotion and Stability Act of 1996 For Consideration by the Committee on Indian Affairs in the U.S. Senate

Mr. Chairman, esteemed members of the Committee on Indian Affairs:

I am writing to express my concern regarding the Adoption Promotion and Stability Act of 1996 and amendments to the Indian Child Welfare Act that will make it easier for non-Indians to adopt Indian children. The following are my comments which I hope you will enter on the record as testimony.

How often in our history have we taken an action or passed a law to help resolve a problem only to find out some years later that the action or law was the worst possible reaction? Despite all good intentions, it happens all too frequently. I am afraid the Senate is about to take one of those steps that they, or our children, will come to regret in the future.

For the record, I represent no organization; I am a U.S. citizen; and I am *technically* white, which really means somewhere deep in my family history I have a Native American ancestor. I suppose that really makes me slightly off-white to pink in terms of my race. I am unable to have children unless I adopt. I also am married to a full-blood Dakota Indian, who was born and raised in Canada, . . . a country in which adoption of First Nations (or, to us, Native American) children was greatly encouraged during the decades of the fifties and sixties. As such, I believe I am somewhat more knowledgeable than most other white people about the subject of this bill and I hope you will seriously consider my thoughts.

To provide you with an example of an Indian raised by whites let me first tell you about my husband.

My husband was one of the thousands of Canadian First Nations children taken from his home reserve (the Canadian equivalent to our reservations) in the middle sixties and placed in a white foster home. He was four years old at the time. Unfortunately for my husband, the couple essentially used him and his half-brother as a kind of "slave" labor on their farm. Often he was fed garbage and beaten with such implements as an extension cord. He was placed in an all-white school where white children taunted and bullied him because of the color of his skin. Although his home reserve was only a few miles away, no one ever attempted to teach my husband about his culture or his heritage. Instead they force-fed him white beliefs and values in an effort to "assimilate" him into the white Canadian society.

My husband always knew he was different than the people surrounding him. He knew he wasn't white no matter how hard he tried to think and act like a white person, because all he "had to do was look in a mirror" (his words, not mine). And, he certainly was not treated like other white people. By the age of 10, he was rebelling against his white foster family in large part because he was different. He had learned to lie, because he was lied to. Whatever his motives for stealing, he started at 10 with the theft of a school bus that he took for a joy ride. He also started

stealing farm equipment. In group homes, he learned how to survive on the streets of a city. Except for the color of his skin, he did not know how or why he was different and no one he met for many years could explain it to him. Today, he drinks alcohol to excess . . . so much so that twice he has been hospitalized for alcohol poisoning. He takes drugs to escape his reality . . . to find a place where he can "chill" and just be . . . a place he doesn't have to fight or be angry. He has no self-identity, so he looks to anything or anybody else to find what he can only find among his own people. A long-time friend of his told me recently that my husband used to claim he was Asian and, for many years, would fight anyone that dared to call him an Indian. To this day, he frequents all-white establishments, particularly where the actions of whites against Indians are reminiscent of the struggles between whites and blacks in the southern United States during the early part of this century. Essentially, he goes looking for fights to release some of the anger he feels, although he doesn't see it that way. He will tell you he just wants to enjoy the same things other whites enjoy and that he was supposedly taught to enjoy. But, he purposely dares people to say something to him, because he has become "what the white people made me." Most whites consider him a menace to society since he has been convicted of robbery, attempted murder, and any number of incidents in which he has beaten up people, . . . primarily white people.

It was not until the Mohawk revolt at Oka that my husband first discovered that he could take some pride in being Indian. While he has spoken to a few Indian elders to try to learn more about his own heritage and culture . . . none of those Indians have been of the Dakota people. He rarely socializes with his own people because they make him uncomfortable. Why? Because my husband is also angry with his own people for allowing him to be taken away in the first place.

Once you get to know him (he tends to intimidate just about everyone with one look), you find out that he is an intelligent, warm, good-hearted man, but one who also is angry to the very core of his being. He is trapped in a no-man's land, caught between two worlds and so angry about it that he takes it out on anyone who happens to get in the way. But his anger and frustration are slowly eating him alive . . . from the inside out. He has bleeding ulcers and his anger has already destroyed his relationships with so many people. For example, I know my husband loves me despite my white skin and I love him more than he'll probably ever know. However, I had to leave him because he beat me once too often, something he learned how to do from his white foster family.

While I was living with him in Regina, Saskatchewan, Canada, however, I learned that my husband was not alone in his feelings, nor in the way he was raised. We lived in a place known as the "hood," which was largely populated by urban Indians. Many of their stories were similar. Some of them had been adopted, others fostered out, and some were raised on their home reserves but had come to the city to find work. . . (of which there is very little for people with dark colored skin, and what jobs that are available are usually minimum wage jobs for unskilled labor). Of the thousands upon thousands of Canadian Indians fostered out or adopted during the fifties and sixties most would tell both whites and Indians to go jump in a lake today. They, too, are caught between two cultures . . . taught white values, but treated by whites to be who they are . . .Indians . . . yet they don't know what an Indian is suppose to be other than what *whites tell them*, by their actions, that they are supposed to be.

Some of the Indians raised on their home reserves told me a different story, however. They talked of their extended family . . . if parents for some reason had been unable or unwilling to take care of their children, the extended family took care of raising the children for them, even if they were not blood relatives. In traditional Indian societies, even today, non-blood relatives are often referred to as uncles and aunts, brothers and sisters. These people to whom I spoke knew who they were and they were proud of their heritage. Using traditional Indian beliefs and values, many of the Canadian reserves are beginning to successfully tackle problems of alcoholism, domestic violence, drug abuse and crime. It has been more difficult, however, to reach the urban and "assimilated" Indians. Sure, they still have problems on some reserves in Canada, but that is changing as First Nations people are allowed to return to their traditional way of life and to govern themselves.

Canada's policy since 1857 has been to "encourage the gradual civilization of the Indians." To do that, education was necessary and as time went on the government found that the Indian child's home life counteracted whatever was learned in school. So the government decided it would be better to remove the child entirely from the Indian environment, first by sending children to residential schools. Most Indians objected and for a time tried to prevent their children from being sent to these schools where the children "learned to be ashamed of their parents' way of life" and also because so many children "died of diseases contracted at the schools." By 1920, the government had decided that policy had failed. However, the public wanted the Indians removed from valuable lands, so the government tried again to "assimilate" the Indians, "even if they did not want to be." Beginning with the Indian Act of 1951, the government actively encouraged the adoption of Indian children by white families. This was done by force when necessary and without the permission of the children's biological parents. Also, agreements were reached with the various provinces to have Indian children educated in all-white provincial schools in return for the Federal government paying part of the capital costs for school buildings as well as tuition fees, etc. Foster parents and adoptive parents received welfare benefits to care for the Indian children. "By the mid-1960s, Indians were given the vote and allowed intoxicants. All these things, it was hoped, would promote assimilation."

Upon reviewing the success of these measures in 1969, the Canadian government saw their error. The programs had not been successful at all. More Indians than ever were on welfare. They now also had problems with the abuse of the "intoxicants." Whites resented and still resent the "special status" given Indians, which further promotes racial hatred and acts of violence against Indians. For example, I heard daily stories of Indians walking alone down streets in Regina who were jumped by a carload of whites and then beaten. My brother-in-law was one of them, and it has happened to him several times, once badly enough to hospitalize him. Efforts now are underway in Canada to allow First Nations people to govern themselves in hopes that will fix the problems caused by the government's assimilation policy. (Quotes on government policy were taken from: J.L. Tobias, "Indian Reserves in Western Canada: Indian Homelands or Devices for Assimilation?" in *Native People, Native Lands: Canadian Indians, Inuit and Metis*. Ottawa, Canada: Carleton University Press, 1987. The publication also contains an extensive list of other references on this issue.)

Specific Comments

When I started writing these comments, the Adoption Promotion and Stability Act of 1996 was still under consideration by your committee. I understand that it has been reported out, but that your hearing to amend the Indian Child Welfare Act will be tomorrow. My comments originally were directed at the first proposed bill, but my comments also apply equally well to the amendment of the Indian Child Welfare Act. Since several of your members also are members of the Senate Finance Committee, which will be reviewing the Adoption Promotion and Stability Act of 1996, and because some of my original comments also apply to the amendment of the Indian Child Welfare Act, I have not substantially changed my comments to reflect the reporting out of the Adoption Promotion and Stability Act.

The proposed bill under your consideration is an effort to try to change the problem we face in the States with foster care, and I'm sure is well-intentioned, if not well researched or well-thought out. First, the bill offers a financial incentive to adopt children, particularly minority children. While I recognize that lawyers have helped to raise the cost of adoption to outrageously high levels, should not adoption have its basis in love for the child rather than love for money? Providing a financial incentive in Canada failed. Are we doomed to make the same mistake here?

It is the lack of love and attention for the child that is at the root of the problem in foster care? A part of the problem with foster care also is tied to money now . . . if you take in a foster child, the state pays you for the child's care (and, often the money goes to pay for things that the child never sees or benefits from). How will offering a tax incentive encourage more adoptions of minority children, anyway? As it is, there are long waiting lists of anxious potential parents just waiting for a child to adopt? (Just check the number of "looking for that special child" ads in USA TODAY.) Most people want infants, not 3, 4, 5 or even 10 year olds, especially not of their own race. The only thing offering money will do is cause greedy people with no love in their hearts for children to adopt children they will never love! I really would like someone to explain to me how a monetary incentive will cause a person to love a child, particularly one from another race? How will a monetary incentive cause a person to love a 4 or 5 year old child when what they really want is an infant to mold into their own image? And, if that child does not conform to the parent's image, then what happens? The child is scolded and told he/she is bad.

I have been involved in the Native American Community for several years now. As hard as I try, I can only understand and appreciate so much of the traditional Indian values. The way I was raised . . . white, with white values . . . often has caused a great deal of conflict in my own mind about what is right and wrong where Indian people are concerned. The one thing I do realize is that because I was not raised as Indian, I may never fully appreciate or understand Native American culture and values. My husband believes that is the way it should be because white people already have stolen so much from his people. I know that if I were in a position to adopt an Indian child, I think I would find some way to move next to or onto a reservation where the child could be exposed to and learn the ways of his/her people. I do not believe most other white people would even consider doing the same. It is time we, as a nation, tried harder to give something back to Native Americans. Giving them back their children is a good place to start.

The problem in foster care and with adoption is not a matter of money. . . it is a matter of not having enough "qualified" parents. Wouldn't the money be better spent in developing training programs for new and prospective parents that would teach them how to be good parents? The only thing a tax incentive will do is help the rich get richer.

Next, the Adoption Promotion and Stability Act of 1996 would prevent states or other entities from limiting an adoption because of race, color or national origin. Also, the amendment to the Indian Child Welfare Act would make it easier for non-whites to adopt Indian children.

I know that the U.S. is the world's "melting pot." It is *suppose* to be a place where such things as race and skin color make no difference. But, that is not reality . . . that is a theory! Reality is race, color and nationality do make a difference in every day living. Why do you think there are so many hate crimes today. . . . why do you think someone is going around burning black churches? ***You CAN NOT legislate what people feel in their hearts!***

Color and race must be considered in all adoption proceedings and all efforts to find parents of the same color, race, etc. must be made before giving consideration to allowing a child to go to adoptive parents of another race. Where Native Americans are concerned, their traditional cultural system already has a structure for dealing with adoptable children. It worked for centuries before the white man came to this country and continues to work in some places today. If no Indian parents or Indian nation can be found to take care of an orphaned Indian child, then and only then should adoptive parents from another race, color, etc. be considered. If the latter does occur, it also should be a mandatory part of the adoption agreement that the child be exposed to and even educated in the cultural traditions and values of his/her birth parents while in the care of the adoptive parents.

Under Title III of the Adoption Promotion and Stability Act of 1996, there is a reference to the act being inapplicable to any child in custody proceedings unless "at least one of the child's parents maintains a significant social, cultural or political affiliation with the tribe of which either parent is a member." I am not sure I completely understand what you are trying to do here, but my first reaction is . . . ."Do you also require that of whites? Does a white parent have to be socially involved in the community in which they were born, their ancestral culture or their political party in order to qualify as a custodial parent?" That portion of this bill, if I read it correctly, is racist and only perpetuates racist attitudes towards Indians and other minorities, and, basically is telling them how they must act to be "good" Indians. First of all, that is not the Senate's responsibility. That is a matter that should be left to the individual Indian nations.

I understand that the Committee on Indian Affairs has eliminated that section of the proposed bill. I really hope so. We spent years trying to assimilate Indians into white society in this country. We actually made it illegal for them to practice their own religious beliefs until just last year. We basically told them for the last 400 years or so that to be an Indian was a bad thing and that they should become more like white people . . . . or, if they could not become like us, at least have the courtesy to die. Title III of the proposed bill would be like telling these same people that they are going to lose their children in a divorce proceeding because they did what we've forced them to do all these years! Not all Indians live on reservations today. We, in the United States, (just as they have in Canada) have actually encouraged Native Americans to get off

the reservations and come into our cities to get jobs since there are few jobs on reservations. Title III would have penalized these same people in any divorce proceedings for doing what we, as a nation, have forced them to do for years.

I really hope Title III of the Adoption Promotion and Stability Act of 1996 has been eliminated and that no last minute effort will be made by any Senator to restore it before a final vote on the bill.

Summary

The Republican and Democratic Parties, along with President Clinton, have been screaming about the loss of family values in this country, yet with this bill the U.S. Senate is proposing to destroy the traditional family values of Native American people. One of the problems as I see it is that most white people in the U.S., for the most part, lack any sense of cultural heritage or self-identity other than the culture of money. So many of the Indian nations in the eastern U.S. have lost much if not all of their traditional culture because of the white man's idea of what is good (i.e., being rich) and bad (e.g. being poor). The Plains and Western Indian nations struggle against enormous odds (particularly reinforced by television and advertising that promote greed) to retain some sense of their heritage, some sense of self-identity. I beg you not to destroy what is left by encouraging the adoption of Native American children by those of another race. It is wrong.

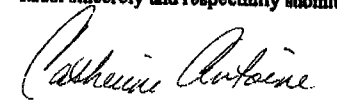
When this great country was formed in the 1700s, we fought against being told by a King what we should and should not believe, yet we keep trying to tell other people what they should and should not believe and practice. When are we going to learn?

I know that in the hearts and minds of those that proposed the amendment to the Indian Child Welfare Act and the proposed Adoption Promotion and Stability Act of 1996, they truly believe they are going to help solve a problem. But you must understand that, despite all good intentions, first the Native American community will view the actions as just another attempt to assimilate them and to destroy them as a people. They have their past experience in this country and the experience of their brothers and sisters in Canada to prove it. And, in effect, destruction . . . the final death blow to the aboriginal people . . . is just what this proposed bill will accomplish, because it will cause Native Americans to lose their self-identity and their self-esteem. Ask any psychiatrist what losing those two important elements will do to a person. I know from first hand experience just what living in a no-man's land . . . trapped between two cultures . . . can do to a person.

With all due respect, Senators, I urge you to seriously reconsider your present course. You cannot keep allowing and even encouraging Native Americans to become lost between two worlds not knowing where or how they fit into either one. You will be the cause of their final destruction, if you amend the Indian Child Welfare Act to make it easier for non-Indians to adopt Indian

children. Further, I hope that those Senators that also serve on the Senate Finance Committee will rethink their position on the Adoption Promotion and Stability Act of 1996.

Most sincerely and respectfully submitted,



Catherine A. Antoine

cc: The Honorable Bill Clinton, President
The Honorable Bob Graham, D-FL, U.S. Senate
The Honorable Connie Mack, R-FL, U.S. Senate
The National Congress of American Indians
The National Indian Child Welfare Association

THE JICARILLA APACHE TRIBE
P.O. BOX 507 • DULCE, NEW MEXICO 87528
(505) 759-3242

June 21, 1996

VIA TELEFAX NO. (202) 224-5429

The Honorable John McCain
Chairman, Senate Committee on Indian Affairs
SH-838 Hart Senate Office Building
Washington, DC 20510-6450

Re: Amendments to the Indian Child Welfare Act

Dear Senator McCain:

I am writing to express my concerns and strong opposition to the amendments to the Indian Child Welfare Act ("ICWA") recently passed by the House of Representatives (H.R. 3286, Title III). I understand that the Senate Committee on Indian Affairs will conduct a hearing on this matter on June 26, 1996. I strongly urge you to oppose the amendments passed by the House. The amendments threaten to substantially weaken the efforts of the nation's Indian tribes to determine and preserve their membership; an issue that is crucial to our survival. In addition to the serious adverse impacts that these amendments would impose on tribes, the amendments were passed by the House of Representatives without consultation with the tribes. Given the far-reaching effect of these amendments, it is incumbent upon Congress to respect the government-to-government relationship with the tribes and provide a meaningful opportunity to the tribes to have input on this matter. The Senate should not consider these amendments until such consultation is conducted.

I believe that the ICWA amendments in H.R. 3286 would severely undermine the purposes for which the Act was initially passed by codifying the existing Indian family exception, a judicially created doctrine that some state courts, hostile to the preservation of Indian tribes, have used to undercut the Act. Essentially, the amendments would in many instances leave it to state court judges to determine which families have maintained sufficient social, cultural, religious and political ties to their tribe to qualify for the protections afforded by the Act; contrary to the very spirit and purpose of the Act. These amendments fail to consider the tragic circumstances that led to the passage of the act in 1978, described in the legislative history and

Congressional findings of the ICWA. See 25 U.S.C. § 1901. The amendments would also undermine a tribe's inherent sovereign right to determine its own members, a power that is central to our survival and self-determination. Rather than undermine the ICWA as H.R. 3286 threatens to do, Congress could eliminate many, if not all, of the problems encountered in the application of the ICWA by proposing stronger measures to enforce the present Act.

The ICWA amendments in H.R. 3286 would have a serious detrimental impact on Indian tribes. I hope that we can count on your efforts to prevent their passage in the Senate and to conduct meaningful consultation with Indian tribes before these or any other amendments to the ICWA are proposed. Please don't hesitate to contact me if you have any questions on this matter.

Very truly yours,

Leonard Atole, President
Jicarilla Apache Tribe

Margo Boesch, BSW
Kathryn M. Buder Center
for American Indian Studies
George Warren Brown
School of Social Work
Washington University
Campus Box 1196
One Brookings Drive
St. Louis, Missouri 63130

July 11, 1996

Senate Committee
On Indian Affairs
U. S. Senate
Room 538, Hart Building
Washington, D. C. 20510

Re: H. R. 3286 - Title III Amendments
Indian Child Welfare Act

Dear Senators:

I am a non-reservation American Indian adoptee. I was adopted by a non-Indian family through a private adoption, and searched for over twenty years to reunite with my tribe: White Earth Band of the Minnesota Chippewas. I am personally able to attest to the importance of maintaining the integrity of the Indian Child Welfare Act of 1978.

I ask that you please consider the fact that for many American Indian adoptees the ethnic-bond is more often than not as strong as the mother-infant bond described in John Bowlby's and Mary Ainsworth's cross-cultural work on Attachment Theory. For many children and adults, knowing "where one comes from" is an important piece of the identity pie. Research has shown that self-identity provides the foundation for self-esteem, allowing one to be empowered to make decisions that maximize his/her individual potential.

My life has been a struggle to connect the fragments of my heritage, which would have been avoided had I been adopted under ICWA (Sec. 104 & 105 (e)). Like the current ICWA headline-making proceedings, my adoption involved a series of errors, omissions, and lies. My biological father (non-Indian) refused to surrender his parental rights. My biological-mother withheld information regarding her family and heritage. In addition, my adoptive family would not have met the existing criteria for prospective parents. Finally, the adoption was never registered with the state; a situation which required fifteen years and another adoption to rectify.

Finding my biological family was not as I had imagined. Since there were numerous unanswered questions regarding my adoption, true acceptance and family intimacy proved to be an unrealistic expectation. I was the only one of my mother's four children given up for adoption. On my meeting my siblings, I learned that they believed me to be "a child of privilege." In reality, my adopted family was very poor. Although my adopted parents were very caring, their respective families were not. I was singled out as the "adopted kid." On numerous occasions, I was informed "that I could be given back to the pigs I came from." In retrospect, I see how this remark influenced my desire to learn about my people. In the end, my only comfort and constant was knowing that I had descended from a proud culture of which I could one day become a member. This knowledge enabled me to continue.

Last August, I came to Washington University, in St. Louis, as a Kathryn M. Buder American Indian Scholar. I am currently enrolled in the George Warren Brown School of Social Work. Last November, I was enrolled by my tribe. This coming December, I will receive my Masters in Social Work (MSW) in my area of specialization: American Indian Studies.

Today, I am a woman who beat the odds and survived the system. Under the current language of the proposed Title III Amendments of H. R. 3286, the state might have ruled that I not be placed on my tribal rolls, and this letter would tell a much different story. To that end, I respectfully request the Committee to recommend that the Tulsa Amendments replace the current language in Title III of H. R. 3286.

I hope when the time comes to vote on H. R. 3286 that you remember my story (one of many), and know that your vote has the power to change the direction of our lives.

Respectfully submitted by,

Margo Boesch

Margo Boesch, BSW
Kathryn M. Buder Scholar
Masters of Social Work Candidate

NORTHWEST INTERTRIBAL COURT SYSTEM

121 FIFTH AVE. NORTH
SUITE #305
EDMONDS, WASHINGTON 98020

Phone: (206) 774-5808
FAX: (206) 778-7704

ELBRIDGE COOCHISE
Administrator & Chief Judge

July 23, 1996

The Honorable John McCain
Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510
ATTN: Phil Baker-Shenk, General Counsel

Dear Chairman McCain:

On behalf of the Northwest Intertribal Court System, I thank the Committee on Indian Affairs for redefining the Congressional intentions of 1978, in your mark-up of the proposed amendments to the Indian Child Welfare of Act. It is appropriate that such an undertaking would occur given the attacks on the Indian child, Indian family and Tribal government by the 104th Congress.

In S. 1962, the Indian Child Welfare Act Amendments of 1996, you have attempted to address the weaknesses that have been revealed with the implementation of ICWA over the last twenty years. However, Title III of H.R. 3682, Adoption Promotion and Stability Act of 1996, although deleted by the SCIA during mark-up, has been and still is ever so prominent in the discretionary decisions of state judges in Indian child adoption proceedings with the use of the *"Existing Indian Family Doctrine"* This Doctrine, as well as Title III, attempts to impose state judicial authority over the rights of Tribal governments to be a part of any adoption proceeding involving an Indian child. Both of these non-Indian authorities seek to:

1) *To permanently deprive an 'Indian child' of his/her cultural heritage;*
2) *To permit state courts and private agencies to remove children from their cultures with impunity;*
3) *To provide state courts the discretion to ascertain who is and who is not an 'Indian' enough to satisfy those discretions of the non-Indian judicial officer; and,*
4) *To increase litigation surrounding the issues of who is and who is not an 'Indian child' for the purposes of ICWA.*

It is also my understanding that according to your staff, Tribal requests to insert, *"The Provisions of this Title shall apply to all custody proceedings involving an Indian child as defined herein"*, could possibly jeopardize the passage of this bill. To that I say we must give it a shot. For unless we strive to adequately protect the rights of Indian families and the Indian culture from certain extinction, our heritage will continue to become prey to such vicious attacks as this Doctrine and the Pryce Amendment. Help us to protect our family structure, the rights of our youths and the culture that is precious to our future generations.

Gratefully,

Judge Elbridge Coochise
Executive Director

cc: The Honorable Daniel Inouye, Ranking Minority, SCIA
EJMS1962.NWC

MEMBER TRIBES 2/1/96
Chehalis, Hoh, Muckleshoot, Nooksack, Port Gamble, Suak-Suiattle, Shoalwater Bay, Skokomish, Swinomish, Tulalip. Affiliate: Stillaguamish

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JUL 23 1996

The Honorable John McCain
Chairman
Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-6450

Dear Mr. Chairman:

Thank you for the opportunity to provide the Department of Justice's views on S. 1962, The Indian Child Welfare Act Amendments of 1996.

The Department of Justice has only a limited role in the litigation of Indian Child Welfare Act, 25 U.S.C. §§ 1901 et seq. ("ICWA") cases, so our knowledge of how, and how well, ICWA works is premised largely on the reports of the Departments of Health and Human Services and the Interior. They report that the ICWA has generally worked well, especially when parties are informed about ICWA and it is applied in a timely manner. Consistent with our institutional role, we have reviewed S. 1962 based on our experience with civil and criminal enforcement, the United States' commitment to supporting tribal sovereignty, and basic principles of statutory construction. We hope the following comments will assist the Committee in considering the bill.

The Department supports S. 1962 and the important goals of ICWA to promote the best interests of Indian children and the stability and security of Indian tribes and families. We support the bill because it would clarify ICWA, establish some deadlines to provide certainty and reduce delay in adoption proceedings, and strengthen federal enforcement tools to ensure compliance with ICWA. We understand that S. 1962 is, to a large extent, based on the carefully crafted compromise agreement between Indian tribes and adoption attorneys.

Regarding the provision in Section 4, "Voluntary Termination of Parental Rights," which would require courts to certify that attorneys who facilitate adoptive placements have advised the natural parents of an Indian child concerning the scope of ICWA, see Sec. 4(B), the Department has reservations about this provision to the extent that it might be construed to limit an attorney's ability to discuss the feasibility of various options with his or her client.

Otherwise, the Department believes S. 1962 represents a sound approach to amending ICWA to address the concerns of its critics without compromising tribal self-government or the best interests of Indian children.

If we may be of additional assistance, please do not hesitate to call upon us. The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

Andrew Fois
Assistant Attorney General

MODOC TRIBE OF OKLAHOMA
515 G Southeast
Miami, Oklahoma 74354
918-542-1190 • FAX 918-542-5415

September 11, 1996

The Honorable John McCain
United States Senate
Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510-6450

Dear Senator McCain:

I have received your letter dated September 10, 1996, regarding NRLC opposition of S. 1962, and would like to express my gratitude to you for your efforts to insure the Tribes receive this valued information and the opportunity to push this bill forward.

I would like to assure you that the Modoc Tribe is currently contacting the Senate leadership on this issue and will stress that the intervention was unwarranted and based upon misinterpretation. Our opinion is that by holding up S., 1962, Senator Lott and Senator Nickles are unnecessarily putting at jeopardy a bill that if not promptly enacted could effect the protection of tribal sovereignty and Indian Child Welfare, in a way that retards the very efforts the tribes have given to streamline this issue.

Once again, I would like t thank you for your concerns and time given to this subject, and assure you that the Modoc Tribe is on hand to address these issues.

Please feel free to contact me if you should have further questions or information to share.

Sincerely,

Bill Follis, Chief

BF/tmg

Fond du Lac
Human Services Division

Director, Phil Norrgard, MSW
Associate Director, Chuck Walt, MPH

AMENDMENTS TO THE INDIAN CHILD WELFARE ACT

We, the members of the Minnesota Indian Child Welfare Advisory Council, representing the Minnesota Tribes and urban Indian communities, entrusted with the responsibility to care for Indian children through the preservation of cultural values and beliefs which have been taught to us by our relatives and our elders; believing that by protecting and teaching our children we assure the continuation of our Native sacredness of values and traditions, and that the United State's Constitution has guaranteed the inherent rights of Native American people to continue an existence congruent to Native sovereignty, culture and philosophy, do hereby establish and submit the following resolution; and

WHEREAS, The Minnesota Indian Child Welfare Advisory Council was established in 1986 through the Minnesota Indian Family Preservation Act; and

WHEREAS, on May 10, 1996, the House of Representatives passed the "Adoption Promotion and Stability Act of 1996," and Title III of the bill contains provisions to amend the Indian Child Welfare Act (ICWA) that will undermine the ability of Indian tribes to intervene in adoptions and child protection proceedings involving Indian children living off reservation; and

WHEREAS, Title III was developed without consultation with Indian tribes, passed without hearing and over the objection of the House Resources Committee, and is not supported by a single tribe; and

WHEREAS, the bill was passed by the House in response to perceived problems with ICWA and in the absence of constructive alternatives stands a good chance of passage in the Senate; now

THEREFORE BE IT RESOLVED, that the Minnesota Indian Child Welfare Advisory Council hereby forwards the NCAI workshop draft (June 3, 1996 version) Amendments to the Indian Child Welfare Act for favorable consideration by the Senate Indian Affairs Committee, which constructively responds to the issues raised by Title III of HR 3286 by providing;

1) notice to Indian tribes for voluntary adoptions, termination of parental rights and foster care proceedings;

2) time lines for tribal intervention in voluntary cases;

3) criminal sanctions to discourage fraudulent practices in Indian adoptions;

4) clarification of the limits on withdrawal of parental consent to adoptions;

5) application of ICWA in Alaska;

6) open adoptions in states where state law prohibits them;

7) clarification of tribal court's authority to declare children wards of tribal court;

8) a duty that attorneys and public and private agencies must inform Indian parents of their rights under ICWA;

9) Tribal determination of membership is beyond compromise. Any method of addressing membership must be done with full protection of tribal sovereignty.

CERTIFICATION

The foregoing resolution was adopted at a special meeting Monday, June 24, 1996 held at the Fond du Lac Human Services Division, Cloquet, Minnesota.

Julia Jaakola

Julia Jaakola, Chairperson

MICHAEL O. FREEMAN
COUNTY ATTORNEY

PHONE
(612) 348-3000

OFFICE OF THE HENNEPIN COUNTY ATTORNEY

2000 GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487

June 25, 1996

The Honorable Paul D. Wellstone
U.S. Senator
717 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Wellstone:

I am writing, as one public representative to another, to urge you to work against any weakening amendments to the Indian Child Welfare Act, 25 USC 1911 et seq. The amendments added in the House of Representatives to H.R. 3286, The Adoption Tax Credit legislation and removed in the Senate Indian Affairs Committee on June 19, would seriously undermine the spirit and intent of the Indian Child Welfare Act.

Hennepin County has the largest urban Indian population in the country outside of the County of Los Angeles. We have a large number of cases that involve the Minnesota Chippewa Tribe, Red Lake Band of Chippewa Indians, and other various Tribes both within and outside of the state of Minnesota. We strive to work closely with the Tribal Representatives to ensure that the Act and its mandates are closely followed. We have found that the procedures that are set out in the Act are not a burden but an added protection to a sovereign nation.

Hennepin County meets regularly with Tribal Representatives to work closely together in resolving cases involving Indian children. The Tribes act as an appropriate third parent willing and able to make decisions regarding their children's welfare. Clear and consistent communication between the County and the Tribes has resulted in better protection and services for Indian children.

The proposed amendments would greatly damage Indian children as it would remove decision-making from a third appropriate parent. The Tribes have consistently demonstrated that their only concern is for the future of their culture and their children. To take away that ability would truly not be in the best interests of Indian children.

I strongly urge you to work against any weakening of the Indian Child Welfare Act. It does not serve the interests of the people of Minnesota or America – Indian or non-Indian – to allow the proposed amendments to move forward.

Sincerely yours,

MICHAEL O. FREEMAN
Hennepin County Attorney

Area Code (206)
598-3311
Fax 598-6295

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

July 23, 1996

The Honorable John McCain
Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510
Attn: Phil Baker-Shenk, General Counsel

Dear Chairman McCain:

As Chairman of the Suquamish Indian Tribe, I am appealing to the Senate Committee on Indian Affairs to consider additional amendments to the Indian Child Welfare Act Amendments of 1996. There are states with Indian populations of significant number, e.g., Washington, California, Oklahoma,as well as other states, whose courts are invoking an exception to ICWA that avoids application in all Indian child custody proceedings.

Such instances occur when state court judges invoke the "existing Indian family" doctrine to avoid application of the ICWA in cases involving Indian children. We seek your leadership to add language to S.1962 to protect the intent of the bill you have introduced to correct these deficiencies in adoption proceedings. We recommend that you include **"The provisions of this Title shall apply to all custody proceedings involving an Indian Child as defined herein."**

We thank you for you continued support and leadership on behalf of Indian people.

Sincerely,

Lyle Emerson George
Chairperson

cc: Daniel K. Inouye, Vice-Chairman

L:\DOCUMENTS\20\LJMS1962.ICW

American Indian Services, Inc.
1110 Southfield Road
Lincoln Park, Mi 48146
Ph 313 388-4100
Fx 313 388-6566

June 18, 1996

Senate Committee on Indian Affairs
838 Hart Building
Washington, DC 20510-6451

Attn: The Honorable John McCain
Chairman

Dear Senator McCain and Committee Members,

American Indian Services is concerned about the changes proposed regarding the Indian Child Welfare Act, under H.R. 3275. We ask that our written testimony be included as part of the hearing record of June 26, 1996.

American Indian Services, Inc. is located in the Detroit Metropolitan area. We have provided services to Native American families in Wayne County, Michigan since 1972.

The legislators proposing the changes in the I.C.W.A. apparently know very little of Native American history. The legislation requiring significant social, cultural or political affiliation with your tribe fails to consider the following issues:

(A) Many Native Americans live a great distance from their reservations.

(B) Native people were forced into the cities by the policies of the federal government during the termination, relocation period of the 1950s and the 1960s.

(C) 90% of the Native people, both on and off the reservations lack reliable transportation, making it difficult to go short distances, much less long distances to maintain close contact.

(D) Few, if any, state judges would be qualified to determine if significant "social, cultural or political affiliation" were being maintained. They lack the knowledge to make this kind of determination.

(E) Under the proposed changes, state courts rather than Indian Nations could decide who is an Indian.

(F) The legislation fails to consider the rights of Indians as sovereign nations.

(G) H.R. 3275 seeks to make who is an Indian an issue of geography rather than culture. Those who have decent transportation and money that can afford to go home periodically, would be considered to have "close ties."

An Indian family that lives far removed from their reservation is not any less Indian-just further away. The staff at American Indian Services is made up of members of many Indian nations. We live far from our reservations, but come together as a family of Indian people and maintain our cultural ways within the context of a big city. Most of us are not able to go home too often, but we band together as a community of Indian people, as we have historically done. To tie membership to a geographical location, reveals how little these legislators know about Indian customs.

Our professional experience in Wayne County indicates that the I.C.W.A. has not and is not being followed today in many cases in the Juvenile Division of the Probate Court in Wayne County. If the Act is followed from the inception in a child custody proceeding, the problems such as those of the Rost twins would not be an issue today. If private attorneys were disbarred for placing Indian children in non-Indian homes, which violates the I.C.W.A., perhaps it would be followed.

If non-Indian families were made aware that Indian children are covered by a unique set of federal statutes, perhaps they would defer to the tribe at the earliest moment if the possible outcome was known.

The question that concerns us is what gives Congresswoman Pryce the right to even contemplate changes in the I.C.W.A. without in-put from the people most affected? Her behavior is typical of the arrogance we have faced in the past. Decisions have been made for us-and about us, without any consultations with us! There is no democracy in this.

Legislators Pryce and Tiahrt are attempting to make this a simple issue, which it is not. State courts do not and should not have jurisdiction over sovereign Indian nations within their boundaries. What right do these legislators have to limit appeals, or restrict-when an Indian child is determined to be a member? The determination regarding who and when a person is eligible should rest solely with the tribe.

The stories of denial of due process, duress and sale of Indian children is well documented. This legislation if passed would deny Indian families the right to appeal such injustice.

Legislator Pryce's vision is only through the eyes of the Rost family that she is involved with. The private attorney that arranged for the placement of the Rost twins had no respect for the I.C.W.A., no regard for Indian people, the adoptive family or the children themselves. Where is he now? There has been no price that he has had to pay for his deceit, while everyone else has suffered.

When Congress passed the I.C.W.A. in 1978, its purpose was clear-to preserve Indian families. Indian people who were adopted out as children come into our agency everyday. The prisons and institutions house many of them. They have been robbed of their identity and they are angry. To view this matter as a simple one is to deny what we know is true.

The Rost twins will come looking for us whey they grow up. (They all do.) They are Indian in the white world and white in the Indian world. They will be depressed and will have twenty times more likelihood of committing suicide than any group in America. They will have little if any understanding of who they are. They will be in crisis when they find us. We will provide mental health services, they will need it at a rate of 200%, more than any other group. Some come to us in their teens with serious emotional problems, substance abuse, teen pregnancy, and all the problems related to low self-esteem. Regardless of their problems they will receive fewer services that they need because they are "Indian". Early "Chief Wahoo" experiences will contribute to their low self esteem when they see Native American culture ridiculed.

The sacred "Sundance" for them will be a car. The proud Cherokee people will be a four wheel drive recreational vehicle. Television programming will fill in the cultural gaps with various segments on savage scalping, wagon burnings and drunken Indian displays. They will have no elders to combat the stereotypes. Will this produce Indians with positive self-esteem and pride?

Society will continue to pay the price for the injustice to Native people. Efforts to rob us of our children is the worst in a long stream of injustice. We urge you to oppose any changes in the I.C.W.A. until after consultation and in-put from Indian Nations, agencies and concerned parties. Our children are our future.

Respectfully,

Fay Givens

Fay Givens
Executive Director

DANIELLE GLENN-RIVERA
8205 WAKEFIELD AVE
PANORAMA CITY, CA 91402
(818) 904-9764

August 29, 1996

The Honorable John McCain
United States Senate
Senate Office building
Washington, D.C. 20510

Dear Senator McCain:

I am writing to thank you for your efforts to help us and to support S.1962.

I am aware of your letter to Ms. Karen Millett, Chair of our Indian Child Welfare Task Force. I am grateful for your help. I am pleased to know of your support and efforts to help American Indian people. This has been a difficult and shocking issue. It has threatened our existence as a people because it threatened our children.

Please remember and remind your colleagues, that many of our children are and have been lost to us. There are adults and children, (American Indians brought up buy non-Indians) who know nothing about their people, tribe/s, heritage or culture. The Indian Child Welfare Act is to protect us and our children from vanishing.

The Indian Child Welfare Act is especially critical in an urban area like Los Angeles because to non-Indians we seem to blend in with every other ethnic group, we become invisible. This is dangerous because our children easily slip through the red tape as social workers tend to avoid "extra paper work" and disregard the Federal law.

Please continue your good work and efforts for our people with S. 1962.

Respectfully:

Danielle Glenn-Rivera
Osage/Cherokee

sent/1962/ltr

State of Minnesota
Department of Human Services
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155

June 25, 1996

The Honorable John McCain
Chair, Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-6450

Dear Senator McCain:

The Minnesota Department of Human Services (MDHS) submits this letter in support of the underlying principles of the Indian Child Welfare Act 25 U.S.C. § 1901 - 1963 (ICWA). In section 1902 of ICWA, Congress declared the policy underlying the Act and stated that "it is the policy of the Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs."

The MDHS believes that Indian tribes should play the primary role in determining the best interests of Indian children and that the principles underlying ICWA assist the tribal governments in carrying out this role. In Minnesota, this agency has worked cooperatively with the tribal governments to increase the enforcement and application of the requirements of ICWA to assure that Indian children are raised in a permanent, loving environment that fosters and supports their unique identity as Indian children. Therefore, MDHS submits this letter of support for the underlying principles of ICWA.

Sincerely,

MARIA R. GOMEZ
Commissioner

AN EQUAL OPPORTUNITY EMPLOYER

Pyramid Lake Paiute Tribal Council

Post Office Box 256
Nixon, Nevada 89424
Telephone: (702) 574-1000 / 574-1001 / 574-1002
FAX (702) 574-1008

June 25, 1996

The Honorable John McCain
Attn: Phil Baker-Schenk
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510

RE: Indian Child Welfare Act Amendments

Dear Senator McCain:

On behalf of the Pyramid Lake Tribe, I am writing to commend you for your leadership and efforts to provide stand alone legislation on amendments to the Indian Child Welfare Act. Please accept our thanks for holding a hearing tomorrow which will provide a forum for tribal involvement. We understand that you received over one hundred requests from tribal leaders and others to testify at this hearing. Pyramid Lake also requested to testify but was informed that the witness list was full. We will submit written comments for the record within the next two week time frame.

Senator, the Indian Child Welfare Act is a law that is very precious to tribal governments, because it helps insure that our children have a right and ability to be raised as members of our tribal communities. If any amendments are to be adopted during this Congress it should be with consultation of those who will be most affected - Indian people.

It has been our experience that ICWA works. If it becomes necessary to make changes, we fully support the Alternative ICWA Amendments as developed and approved by NCAI tribal membership at it's June meeting, which we attended. With these amendments as a guideline, we are sure that a stand alone bill can be developed that will enhance and strengthen the Act to the agreement of Indian county and the non-Indian family adoption attorneys, and hopefully, Congressswoman Deborah Pryce.

We look forward to the results of the hearing on ICWA amendments.

Sincerely,

Norman Harry
Tribal Chairman

NH/gw

SOUTHERN INDIAN HEALTH COUNCIL, INC.
4058 Willows Road • Alpine, CA 91901-1620
Mailing: P.O. Box 2128 • Alpine, CA 91903-2128
(619) 445-1188 • FAX (619) 445-4131

6-27-96

The Honorable John McCain
United States Senate
Washington D.C. 20510

RE: ICWA TESTIMONY

Dear Senator McCain,

Many Tribes met to discuss various issues that concerned Indian country, at the National Congress of American Indians, in Tulsa Oklahoma, June 2 to June 5 1996.

The most urgent topic was the issue of the proposed amendments, to the Indian Child Welfare Act (ICWA). Tribes responded to the request by Congress to develop Tribal amendments that reflected the needs of Tribes. Resolution TLS-96-007 (a) Titled: Amendments to the Indian Child Welfare Act and (b) Titled: Protection of Public Law 280 Tribes regarding Amendments to the Indian Child Welfare Act, were passed by the Tribes.

The California State-wide ICWA Conference was held in San Diego the week of June 19th. Many Tribal leaders, Tribal social worker, Tribal attorneys, California Indian Legal Services staff attorneys, and U.C.L.A. Professor Carol Goldberg/Ambrose (an expert on P.L. 280) met to discuss and develop alternative amendments to ICWA.

The following proposed alternative language (see attached) is the result of that meeting. We are requesting your support of the proposed 280 changes and other language which combats the "Existing Indian Family Doctrine" created by the Bridgit R. decision. This case is a threat to all Indian families not domicile on the reservation. Also, requesting you to take into consideration changes to NCAI's proposed amendments, Section 1913 (e) and Section 1913 (H) (see attached).

Please do not hesitate to call me if you have questions or need clarification.

Sincerely,

Virginia Hill, MSW
SIHC Director Social Services

Proposed 280 language for
ICWA Amendments

To address the confusion caused by P.L. 280

Amend Section 1911(a) after 1st sentence.

(a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, ~~except where such jurisdiction is otherwise vested in the State by existing Federal law.~~ Where an Indian child who resides or is domiciled within the reservation of an Indian tribe is made a ward of a tribal court or where an Indian child becomes a ward of a tribal court following a transfer of jurisdiction pursuant to subsection (b) of this section, the Indian tribe shall retain exclusive jurisdiction over any child custody proceeding involving such ward, notwithstanding any subsequent change in the residence or domicile of the child.

Delete in its entirety, Section 1918, re Resumption of jurisdiction.

To address the issue of the "EXISTING INDIAN FAMILY DOCTRINE."

In Section 1903, Definitions:

Add in Sections 1903(2)(4). "Indian Child" ...." Add "The provisions of this Title shall apply to all custody proceedings involving and Indian child as defined herein. There shall be no exception to the applicability of this Title based upon the family structure or cultural practices of the Indian child's biological parents, current or past caretakers, or extended family members.

Regarding NCAI's Proposed Amendments

In Section 1913(e)(i) and (ii):

Change "30 days" to "60 days." In the area of Juvenile dependency litigation, 30 days is impracticable for many tribes to respond. The state court system itself usually manages the notice and response provisions because of continuances and extensions that are liberally given to the other parties. The Tribes may not be so fortunate in being granted necessary extensions of time to respond.

Additionally, NCAI's "Alternative #9" - requires that the Tribe must provide certification of enrollment or eligibility for enrollment within this short frame of time. The

Re Section 1913(h):

This section lacks any enforcement provision. If an adoptive parent denies visitation, the biological parents or relatives have no recourse. Therefore, this provision should:

1. Not be added to the ICWA;
2. Strike ~~not~~ from the last sentence of this provision; or
3. NCAI construct enforcement language or consequence provisions when there is a denial of visitation by the adoptive parents..

Lynne Jacobs, Executive Director
A Non-Profit Agency
Licensed by the States of California and Hawaii

September 26, 1996

Senator John McCain, Chair
Senate Committee on Indian Affairs
U.S. Senate Hart Building Room 838
Washington, D.C. 20510

Dear Senator McCain:

As your Committee considers S. 1962, amendments to the Indian Child Welfare Act, we are sure you are aware of the wide range of views in the adoption community regarding this bill.

I am the Executive Director of Adopt International, an agency licensed for domestic and international placements. I am also the Vice President of the Northern California Association of Adoption Agencies, and am the President of the Board of Directors of the Joint Council on International Children's Services from North America which is the oldest and largest affiliation of licensed, non-profit international adoption agencies in the world. Many of our nearly 100 member agencies have domestic adoption programs as well.

There is no single, official organization that can speak on behalf of adoption or adoption agencies in the United States.

Although our agency supports the amendments, those agencies which I represent have not taken an official position on S. 1962. The amendments have not yet been presented to either organization in order to establish their position.

Thank you very much, Senator McCain.

Sincerely,

Lynne Jacobs
Executive Director

LJ:rp

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96 MAY 16 PM 2:

May 13, 1996

Senator John McCain
Senate Russell Building, Room 241
Washington, D.C. 20510-0303

RE: House Bill 3286 - Interracial Adoption Act

Dear Senator McCain:

I am requesting your support of House Bill H.R. 3286. It is vital to families across the coun that it be passed with Title III intact, amending the Indian Child Welfare Act. Because of law's tremendous ambiguity, it is being used inappropriately at an alarming frequency. Famil are being torn apart simply to suit special interest.

I have been embroiled in a custody case for over three years trying to adopt children who my own relatives! The children are one-half Yavapai Apache. They are native Texans w have never had any relationship with the Tribe. Despite the fact that we are related on paternal side, and have been involved with the children all their lives, this vague law is bei used to tear the children from the only home they have ever known.

Perhaps it would make some sense if the maternal relatives were seeking custody, but they ha shown no interest. The Tribe would place the children in foster homes on the reservation w total strangers, rather than allow our custody and adoption. According to them, "no family" better than a non-Indian family.

I understand the reasons for the initial passage of the I.C.W.A. However, it is now being us in cases that have nothing to do with the removal of Indian children from reservations. T blatant abuse must be corrected.

With tribal legal expenses being provided by the government, families that are not weal cannot possibly hope to protect their adopted children when such a suit is filed. The only reas we have been able to continue is that we were finally able to obtain pro bono couns Unfortunately, this was after two years of legal battles had depleted our savings and even retirement plans. It is not right for legislation to put such an unfair burden on taxpayers.

Our case has involved four ad litem attorneys, our attorney, the Tribe's attorney and the County, Appellate and State Supreme courts during three years of legal battles, at countless expense to the county and state. After all of this expenditure of time and money, we are at the same point as when it all began. We anticipate at least another year in court.

During all this time, three little boys named Michael, Mark and Matthew have learned to love and trust, and call two loving parents Mommy and Daddy. How can anyone justify ripping them from their home and family for the sake of special interest! We must take a serious look at the I.C.W.A. It does not just deal with Indian rights -- it affects the lives of children! Their well-being must be given equal consideration under the law.

I hope you will work to assist in the passage of H.R. 3286, keeping Title III intact. Countless families across the country are being destroyed emotionally and financially by the abuse of the I.C.W.A. Thank you for your support of adoptive families and your work in righting this situation.

Sincerely,

Michelle L. Jenkins

mlj
Enclosure

The Houston Post
Houston owned, Texas proud

SUNDAY, January 8, 1995

Special Report

Cultural Tug-of-War

Michael, Mark and Matthew are half-Apache Indian. The Houston couple who want to adopt them are white. The Yavapai Apaches of Arizona say the boys belong with them.

In a typical morning family scene, Michelle Jenkins gets, from left, Michael Johnson, 5; Matthew White, 2; and Mark White, 4, ready for their day.

King Chou Wong/The Houston Post

BY TERRI WILLIAMS
OF THE HOUSTON POST STAFF

Weekday mornings at Charles and Michelle Jenkins' house begin chaotically.

At 6:30 a.m., the Jenkinses' three boys — Michael, 5; Mark, 4; and Matthew, 2 — are awakened from their bunk beds and the arduous task of preparing for school starts.

That means tripping over the dog Mooch, moving Legos and other toys out of the way and bathing each sleepy, cranky boy.

It's not an easy task, but it's an everyday one for most Houston parents who have young children.

But the Jenkinses' situation is unlike those of most other families.

Nearly 800 miles away from the Jenkinses' Bellaire-area home is the Yavapai Apache Tribe in Camp Verde, Ariz. Living on picturesque mountain terrain between Flagstaff and Phoenix, the nearly 2,000-member tribe says the boys should live where they belong — with it.

The three boys' mother is Apache. However, Matthew and Mark's father is Michelle Jenkins' nephew, who is white. Michael's dad is unknown.

Later this month, a Harris County appellate court will decide whether the Yavapai tribe has the right to decide who should have custody rights to the boys.

Last September, a Harris County district court judge found that state courts had jurisdiction because it would be in "the best interests of the child" to remain in a stable environment — meaning the Jenkins home, court documents show.

But the tribe, invoking the 1978 federal Indian Child Welfare Act, asserts the American Indian population already has been historically decimated and the children belong with it.

The Indian Child Welfare Act allows Indian tribes exclusive jurisdiction over Indian children in adoption proceedings.

The act also is currently being tested in Chicago and in Pikeville, Ky.

A 26-year-old Sioux woman recently petitioned to get her son returned from an Illinois private adoption agency using the act. The woman, known as Jane Doe, had consented to turn her son over to the agency but changed her mind.

In Kentucky, Kayla American Horse, an 11-year-old Sioux girl, is the subject of a bitter custody battle between a woman who raised her since she was 8 and the tribe, which says she belongs with it.

The Indian Child Welfare Act came about after studies showed that more than 35 percent of Indian children up for adoption were being placed in non-Indian homes.

Toby Grossman, a senior staff attorney

Please see BOYS, A-25