

assessment or diagnosis and thus form the basis for the treatment method or approach. It appears that the programs have a good hold on this phase of the process. Importantly these responses indicate that the workers have been able to establish the requisite relationship to develop a good working environment. Without this characteristic base it is impossible to encourage and accomplishment correction of behaviors that contribute to the breakup of Indian families.

In line with this experience we further propose that beginning in FY 85 that the grant period be extended to three years and that a number of programs be targeted for special study. We are experiencing great difficulty in our attempts to describe successful efforts and are faced with powerful reports that assess accomplishment and compliance by the Office of the Inspector General. In our opinion the unfavorable tone of reports like these result from the failure of the Bureau of Indian Affairs to meet its mandate to assist the tribes and Indian organizations in the implementation of the Act. In this connection we are confused that there has not been a national effort under Bureau leadership to develop adequate reporting systems. Reporting systems are primal ingredients in our budget process. A national reporting system to measure the capability of Title II programs does not exist. The problems created for Congress and the Administration can be seen immediately.

The Bureau's Branch of social services performs two periodic surveys. One is the unduplicated case count that reflects separation in state and federal responsibility for various categories of assistance and service. The other is concerned with jurisdictional status of Indian Children. These reports give the Bureau a gauge of the direct federal financing needed. The Bureau has not brought these reports forward to the tribes and Indian organizations for examination as to how universal information needs can be met. It is impossible to understand how the Bureau is able to translate the operations of the Title II programs to the Administration and Congress when basic reporting mechanisms have not been developed. Upon entry into office the Administration determined to eliminate the Title II programs because they were inadequately funded to perform. In view of the responsibility that was thrust upon tribal governments we agree with the Administration's position that funding is inadequate. However we contest its position that the programs are not adequately performing. In FY 82 the Cheyenne-Arapahoe programs returned 71 children to their families and people. In the same period the Burns-Paiute and Metlakatla communities did not place any children outside their families. What are the specific ingredients of effort that have made this possible? Unfortunately, focus to determine the characteristic knowledge and technique of these success is absent in the Bureau's activities.

The lack of adequate reporting systems together with on again, off again funding patterns directly undermine the developmental efforts of tribal and Indian organization programs and severely curtail our opportunity to develop a stable knowledge base of Indian social services practice and theory. Unless we are given the opportunity to develop a truly disciplined approach the Congress and every Administration will always be faced with emergency situations that are costly to fund and inadequate means to address and understand the causes of family breakup in these communities. The difficulties that we face in funding and programming contribute directly to the cycles of inefficiency and inappropriate use of resources that are of concern to all of us.

We further recommend that during the first year of the proposed three year funding period that the Bureau of Indian Affairs and the Department of Health and Human Services identify and coordinate the funding resources available to garner by the second year a funding level of \$29.5m. Attention should be given to resources from Title II, Title IVB, Title IVE, Title XX and P.L. 93-638 social services contracts. In addition to the implementation of these resources and identification of all discretionary monies available for understanding and resolution of problems should also be presented. These efforts are necessary to clearly identify the national resources to meet our needs and at the same time set up a process to distinguish continuing need from discretionary efforts. Presently funding for these programs is being approached on a project basis and there is inadequate recognition of the real problems involved.

For example, information regarding Bureau of Indian Affairs placements for the period of August 1983 reveal the following levels.

State	Foster Homes	Special Homes	Institutional Needs	Total # in care
Arizona	300	3	210	513
Montana	264	16	24	304
South Dakota	171	38	26	235
North Dakota	187	7	9	203
New Mexico	82	1	62	145
Mississippi	102	4	2	108
Colorado	73	0	23	96
Wyoming	37	0	4	41
Minnesota	8	1	5	14
North Carolina	2	0	9	11
Wisconsin	1	0	9	10
Nevada	9	0	1	10
Oklahoma	8	1	1	10
California	8	0	0	8
TOTAL	1252	71	385	1708

The information presented to you has not been made available to the tribal and Indian organization programs in spite of the continuing high rates of out of home placements being supported by the Bureau. Unless there is a direct move on the part of the Bureau to share information like this with the programs it will be impossible for the overall Title II effort to set targets and measure accomplishments. Failure to share information and develop integrated targets can result in a situation similar to that in which the Community Health Representative program finds itself. These matters are clearly tied to accountability and we are only asking for trouble if these serious problems in reporting are not addressed immediately.

Little analysis, if any, of the characteristics of Indian children in care is being done by the Bureau. It is a well accepted fact that problems experienced in childhood are likely to continue into adulthood if appropriate attention is not given. We have recently had access to analysis of a 1977 Children's Bureau survey entitled National Study of Social Services to Children and Their Families.

The study found that only about 1% of the children receiving services were Indian or Alaska Native. The analysis included 5,600 Indian children in out of home care. They had an average age of 12 years. Those aged under 5 had been in care an average of 14.1 months; those 6 to 11, 50 months; and those 12 to 18, 72.8 months. This length of time in foster care was much longer than for white children of the same ages. Older Indian children were twice as likely to be in care because of neglect than any other racial group, and nearly half of the adolescents were in care for that reason. About 10% had no formal service agreement on file and this was somewhat better than was true of other minority children. Service goals for all minority groups tended to emphasize clinical aspects of service: mental health, family functioning and modification of child behaviors. Less than 10% had goals relating to financial or household management or reduced social isolation. Overall, only half of the families of minority children had any services recommended, but Indian children had the fewest. This study came on the heels of the survey of the Association on American Indian Affairs which revealed that one out of every four Indian children was not living with his or her own family and 85% of these children were in non-Indian placements. The Children's Bureau highlighted the critical need to improve service planning for Indian children. This information has not been presented to the tribes and Indian organizations by the Bureau and they are therefore unprepared to address the very complex problems that will be faced for years to come and which impact directly on the funds that will be needed to fund Indian Child Welfare Act efforts. The project attitude maintained by the Bureau sets up immensely complicated barriers to good planning.

Since the passage of the Act and with the funding made available the Indian programs have moved to fill the void in service planning. Our survey revealed that 66% of the programs are conducting child protective investigations. This is highly significant because it means that the county and state workers recognize the developing resources in the Indian communities and are making use of them. In addition to these 610 protective service investigations the Indian programs have taken over 523 cases from counties and states and these Indian programs are providing full services to the extent they are able. This shift of responsibility is further supported by the fact that 78% of the programs reporting provide residual services to Indian clients on a continuing basis. The services most frequently provided are:

1. counseling and therapy for families, parents and children
2. outreach, investigations, consultation, home visits and follow up
3. foster care and adoption work which includes studies, placement and recruitment
4. client advocacy involving identification of resources, education and legal assistance.

Very few Indian programs are operating under contracts or agreements with states and counties where reimbursement for the services being provided is received. We are not aware that these services being provided are being captured in reports to the Bureau from tribes and Indian organizations. There is serious concern that Congress and the Administration are being given insufficient information on which to base their decisions. It must be recognized that Indian Child Welfare Act programs have become in a very short time the primary social service program available to Indians. Voids in service from primary programs of counties and states are being filled by Title II programs and it is difficult to see how this trend can be reversed. It is imperative that a realistic look be taken at what is occurring and that appropriate resources be brought to bear on the problem.

Another area of implementation which is being neglected concerns training. It is well recognized in the field of social work that different peoples bring variable interpretations and resources to therapy. In spite of this there has not been a national effort to examine the theoretical base of Indian social work practice. This is especially crucial because many tribes and organizations are required to hire workers at the master's level for program directorships. Many tribes do not have local personnel with these credentials and are forced to hire non-Indian personnel for these positions. This presents problems because the non-Indian personnel do not know the community and its people and are therefore handicapped in their ability to make full use of the resources available. The pattern that has developed is that these workers become frustrated and overwhelmed with their responsibilities and usually leave after a year of employment which frequently coincides with the absence of continued funding. While these individuals have been in charge they have retained broad activity to themselves. It is the unusual case when these non-Indian workers have brought their staff into important decision making roles. These practices have consistently limited the ability of these programs to develop. As a consequence many Title II programs must begin development at each new funding period. This is inexcusable and encourages ineffective use of resources that are badly needed. Lack of leadership in this area inhibits the right of self-determination. It is impossible to be self-determining when the manner in which one can best proceed is confused and obscured. These are serious developmental concerns that will not go away. The limited training that has been available has been funded through the Administration for Native Americans and has been concentrated on the development of tribal-state agreements and compliance with the Adoption Assistance Act. Through the years Bureau funds have been made available for training of tribal court judges but again it has not been comprehensive in scope and social services staff have not had the opportunity to participate in the design and have had very limited participation as students. It must be called to your attention that we are dealing with some of the most intimate aspects of life and the approach must be knowledgeable and judicious.

There is general neglect regarding the resources needed by tribes and Indian organizations and efforts to develop these resources. Thirty two percent of the funded programs reporting indicated that they are buying services needed by their clients. At the top of the list of these services are psychological therapy and legal services. Lack of resources in these areas are reflected in state courts' decision not to transfer cases to tribal courts. The four most frequently cited reasons for a decision not to transfer are:

1. the state court lacked confidence that the tribe would be able to handle the matter
2. improper notice procedures
3. the state court's refusal to recognize an Indian child's eligibility for enrollment
4. lack of legal assistance.

In the main, many Indian workers lack the sophistication to deal with these complex legal matters. There is no evidence that the Bureau is addressing these very serious problems. Improper procedure in these matters can result in an Indian child being separated from his or her family and tribe forever. In this instance the Bureau is failing in its responsibility to implement the Act.

The programs were asked to respond to the question: What one service would you add or which existing service would you expand if you had more money? The three most frequently cited services were training, expansion of services and legal services. These are not hidden needs.

We strongly urge that attention be given to the establishment and support of tribal children's courts. Tribes are encouraged to develop children's codes but the judicial systems to handle complicated matters of children's law are not being given sufficient attention. In many of the efforts related to implementation of the Act there is a facade quality. Tribes are being encouraged to establish the mechanism but the assistance to develop the essential underpinning is absent.

The soft approach of the Bureau related to guidelines to state courts is causing serious problems in the notification process. Our survey revealed that the programs had learned about 243 cases involving Indian children through other means than notices from state courts. Several recommendations were put forward by the programs to correct this problem of which the most prominent were:

1. education of social service agency staff and court staff
2. enforcement of compliance by amending the Act to impose a penalty for non-compliance
3. expansion and improvement of state-county-tribal agreements
4. improved procedures to identify Indian children upon initial contact.

Independent adoptive placements and placements by private agencies continue to present serious problems. There is considerable variation among states regarding the time at which an adoption is filed. Indian children may have been in the custody of the adoption petitioners for a considerable length of time before a petition is filed. State courts in general are reluctant to remove a child from a family with whom he or she has been living for any length of time. It is common practice that the courts decide that it is not in the best interest of the child to be removed from the prospective parents. The problems created from these experiences are difficult ones and often result in lack of confidence and hard feelings on the part of all involved. It is recommended that the Act be amended to place specific requirements in all matters involving the placement of Indian children to assure that the tribes have immediate knowledge of these situations. At the present time the Oregon State Attorney General is attempting to include a provision in its adoption petition form that the parents of an Indian child can waive all their rights under the Indian Child Welfare Act with specific attention to disregarding the placement preference requirement. We propose that this an undermining of the Act and that these parents do not have the right to deny their child the means necessary for a strong identity and the resources of the tribe. Tribes and Indian organizations have considerable experience with the consequences of these practices. They know that the children who are denied these rights are among the most confused and troubled and the most difficult to treat. These are the children who require the most expensive care available and all too often that care is provided in state and federal prisons and correctional institutions.

Our survey revealed that the tribes and off reservation programs are working well together by supporting each other's efforts. The services provided by urban programs to the tribes include two general categories:

1. Direct service which includes counseling, foster care, supervision, home visits and foster home recruitment
2. Advocacy which includes legal assistance, identification of children in care and expert testimony.

The services most frequently provided by the tribes to urban programs are

1. Identification of tribal resources
2. Casework services: advocacy and support
3. Foster home and group care
4. Legal assistance
5. Enrollment services.

We request that you give serious consideration to the requests and recommendations that we have made. Our funding level request can be supported by data collected directly from tribal and Indian organization programs.

Thank you for the opportunity to present this information to you.

Mr. ALEXANDER [presiding]. In the previous testimony by the Bureau and ANA, reference was made to this 1-year coordination period in working out their joint programs, and perhaps some of the concerns you raise about the comparability of data and training should be addressed in that period. Has your organization been contacted by either one of these agencies for your input?

Ms. BLANCHARD. Directly in that effort, no, sir.

Mr. ALEXANDER. Have you been contacted by either one of these agencies formally for any purpose in the last year pertaining to this act?

Ms. BLANCHARD. No; neither the Bureau nor the administration on Native Americans has ever directly requested assistance from our association.

Mr. ALEXANDER. This is the Association of Social Workers?

Ms. BLANCHARD. Yes; American Indian and Alaska Natives.

Mr. ALEXANDER. And you are the primary field workers, basically, in the Hope Program?

Ms. BLANCHARD. Yes.

Mr. ALEXANDER. In addition to the judicial personnel?

Ms. BLANCHARD. Yes.

Mr. ALEXANDER. Would you like to proceed, Ethel?

STATEMENT OF ETHEL C. KREPPS, PRESIDENT, OKLAHOMA INDIAN CHILD WELFARE ASSOCIATION, AND ATTORNEY, NATIVE AMERICAN COALITION OF TULSA, INC., TULSA, OK

Ms. KREPPS. Thank you. I am going to be addressing the legal aspects of the national survey that was taken that Evelyn Blanchard has already informed you about.

The cart was put before the horse in this instance, and we are trying to move the cart without the horse. There was no prior evaluation taken of the legal resources that were available to accept Indian Child Welfare Act cases in the legal arena by the tribes or by the Congress. In many instances, tribes has exclusive jurisdiction when they had no facilities and/or no procedure in place to implement that authority. Therefore, there are a lot of instances where these Indian children are in a no-man's land, as far as the legal procedure goes.

In the survey, 32 percent of the funded programs reported that they were having to buy the services that were needed for their clients in the legal area. The legal assistance that they were buying could only go so far, so they had to limit it to a certain aspect of legal services. Primarily what they were doing was asking an attorney to intervene in some State court and transfer the matter back to the tribal court where they would not need legal representation.

We have one case in Oklahoma where a tribal case was dismissed in court because the judge ruled they were practicing law without being admitted to the State bar. There is a lack of resources and an inability to function in the legal arena by a majority of the tribes.

The lack of resources is reflected in the decisions of the State courts not to transfer ICWA cases back to the tribe. The four most cited reasons in the study not to transfer were that the State court lacked confidence in the tribe to handle the matter. It was my un-

derstanding, in reading the law, that the Congress had already made the decision that the tribal courts were competent to handle the matter and that this would not be good cause not to transfer the matter. However, it is being used.

The second most cited reason was improper notice procedures. The notice procedures are very explicit in involuntary proceedings. However, in voluntary proceedings they are not as explicit. But that does not say that the placement preference is not to be followed. In so many cases in voluntary proceedings, the States are attempting to find ways to circumvent the placement preference by not sending out any kind of notice at all. The survey has indicated that in probably around 70 percent of voluntary proceedings, the tribes and organizations had to find out about these proceedings by indirect means.

Mr. ALEXANDER. Are these mostly in protective services type of situations, these involuntary proceedings?

Ms. KREPPS. It arises in all areas. A termination of parental rights can occur in an area where the father is not even aware that he is the father. It ranges all the way from that to a behavior or a lifestyle on the part of the parent, which really has no direct bearing on harm to the child, being used as a reason to terminate parental rights. So there is just a whole realm of reasons and excuses being used to not provide notice.

There was an instance reported where the State court refused to recognize an Indian child's eligibility for enrollment. So the State courts are very innovative in their reasons not to transfer. According to my interpretation, a good cause to transfer is outlined in BIA regulations under State guidelines. Everybody that I hear talk about the State guidelines says that it is not binding. However, it is my understanding that this was the strong legal position of the BIA, the guidelines were the legal position. They were in the Federal Register, but the only reason that they were not called regulations is that the BIA could not interpret or make rules for State courts. But they are the legal position, and nobody seems to recognize what the guidelines are.

The tribes are not able to deal with these loopholes because they are not sophisticated enough to see them for what they are. For instance, we had a case in Oklahoma where the Otoe-Missouri tried to intervene in an action in a State court. They were dismissed in State court because they were told that they were in a nontrust status. However, in Oklahoma, the Otoe-Missouri has the biggest tribal bingo operation in the State. So there is a lot of confusion on the part of the tribes in trying to deal with legal matters in the State court. While the law addresses the legal aspects of reuniting the family there it does not place a heavy emphasis in the funding patterns on enforcing legal rights and getting legal representation and legal guidance, which is kind of ironic because the law was written to address the legal system of removing the children. That is not to take away in any way from the rehabilitative part and the social services part, but I think there needs to be emphasis also on the heavy burden that is placed on a tribe that has exclusive jurisdiction and wants to transfer or reassume, and there is no mechanism in place to assist them.

There are many instances when the ICWA has triggered in the State court system, and in the CFR court system, too, when the tribe is not even notified until after the proceedings are over. By then, the battle lines have been drawn, and they are battle lines; it is one side against the other. There is no ability at that point to work together and use tribal resources, or work with the State in developing resources.

The questionnaire had the question: "What one service would you add or which existing service would you expand if you had more money?" One of the most frequently cited services was a legal service.

There needs to be attention given to the establishment, implementation, and strong support for either the administrative governing bodies sitting as the tribal court, which they have every authority to do without establishing the whole judicial system, in child-custody matters. Or, in the alternative, there needs to be strong emphasis placed on just establishing a children's court. The ideal picture, of course, is to establish a full tribal court. But it is ridiculous that the attention is not being given in every State to have the tribal governing body sitting as the court in child-custody matters because the mechanism is in place, and the authority is there, and yet tribes are not aware that they have this legal right.

The questionnaire revealed that approximately 50 percent of their staff were not legally trained. There are social workers that have to function as paralegals, and there is a desperate need for legal training if we are going to give the tribe the authority to hear legal matters. We need to give the social workers the training they need, and they need to know when they are functioning as a social workers, and they need to know when they are having to function as a paralegal. Under this act, that is intertwined, and there is not going to be proper implementation until the worker knows the role difference and knows how to function in each role. It is too heavy a burden without proper training. You certainly would not go out and try and repair your automobile with a screwdriver, and that is what we are trying to ask these social workers to do. We are asking them to have knowledge that is far beyond anything they have been trained or educated to do, and we are not going to have proper implementation until that training is a reality.

The independent adoptive placements and placements by private agencies is a real serious national problem, as indicated by this survey. The States—and Oklahoma is one of them—are attempting to use the affidavit process to get around the placement preference. This affidavit in my hand states on No. 4, "I do not want my baby . . ." whatever the name is, ". . ." placed for adoption with any member of my extended family"; No. 5 "I do not want my baby placed for adoption with any member of the Indian tribe"; No. 6 "I do not want my baby placed for adoption with any member of the father's extended family."

This affidavit is filed in State court. It is signed by a judge of the district court, and therefore the court/placement agency is allowed to get around the ICWA placement preference. It was my understanding that you could take the confidentiality issue into consideration for a different placement. It was only a factor to be considered by the court. Just because man has bitter feelings against an

Indian tribe or bitter feelings against an Indian father, that is not justification for getting around a placement preference that Congress had decided will be in the best interest of the Indian child. If it is going to be your last act of parenthood, I do not think you should be able to totally determine the destiny of your child when you are not going to have the duty and when you are not going to have the responsibility. But in the legal system, we are dealing with State judges who are using this affidavit to do that.

Mr. ALEXANDER. Do you have a copy of that affidavit for the record?

Ms. KREPPS. I will be glad to furnish it.

Mr. ALEXANDER. Is this widely used in your State?

Ms. KREPPS. It has been widely used.

Mr. ALEXANDER. Has it been challenged in any court proceedings of which you are aware?

Ms. KREPPS. Not that I am aware of.

Mr. ALEXANDER. It sounds as if it is boilerplate, does it not?

Ms. KREPPS. It definitely is. I have another affidavit here that the mother can sign.

Mr. ALEXANDER. Are these produced by the State or the county welfare departments?

Ms. KREPPS. Yes. This has been filed in the State court.

Ms. BLANCHARD. I might also add that at the present time, the State's attorney general office in Oregon is attempting to implement, within adoption petition forms, a waiver of the Indian Child Welfare Act. This would not even require that there be an affidavit produced.

Ms. KREPPS. The other affidavit, in essence, made the mother a single parent without any husband, and the baby without a father, and the father a nonfather by saying that he was alleged, and she did not know his whereabouts, and that he has not contributed to the support of the child.

It is my understanding that the standard to terminate parental rights under the Indian Child Welfare Act was beyond a reasonable doubt. I did not know that if you did not know where the parent was, or that he had not contributed to the support of his child, that was enough to get rid of him. I thought that he would at least have a hearing and have some evidence presented, and it might be reflected in the court's finding that the evidence against him was beyond a reasonable doubt, which I think is the proper standard.

Mr. ALEXANDER. Thank you.

[The prepared statements follow. Testimony resumes on p. 122.]

STATEMENT OF ETHEL C. KREPPS, ATTORNEY/PROJECT
MANAGER, NATIVE AMERICAN COALITION OF TULSA, INC.
TULSA, OKLAHOMA: PRESIDENT, OKLAHOMA INDIAN CHILD
WELFARE ASSOCIATION.

Mr. Chairman and members of the Committee. I am pleased to have the opportunity to present testimony regarding the current Indian Child Welfare Act Conditions in the State of Oklahoma.

There are 169,434 American Indians in Oklahoma. This represents a growing population with the state. The figure reflects a 70% increase in the State Indian population from the 1970 census. There are 43 Indian Tribes represented in Oklahoma, all removed under tribal treaty terms and all with varying tracts and location of Indian Country jurisdiction and all tribes have varying requirements for tribal membership. Approximately 55% of the State Indian population is under 18 years of age or 89,500 youth. Oklahoma has the second largest Indian population in the nation.

In Oklahoma the Indian Child Welfare Act programs have in the past two years taken several actions which support the implementation of the Indian Child Welfare Act. The following are the more positive aspects of the Oklahoma implementation of the ICWA:

1. The Oklahoma Indian Child Welfare Association was organized. This Association is composed of all Indian Tribes and Indian Organizations located in Oklahoma which are recipient of ICWA funds. (Many tribes are not refunded from year to year and retain their membership status within the Association at the tribal expense). Also numerous individuals join the Association. RE: Department of Human Service employees and Attorneys.

2. The Oklahoma Indian Child Welfare Act was passed by the State in 1982. The State law supports and clarifies the provisions in the Federal ICWA. The Oklahoma Act provides for Tribal/State Agreements whereby DHS will make foster care payments for tribal children placed by the Tribe, and has allocated \$400,000 of the State budget for this purpose, however, to date only two Tribes have been successful in negotiating an Agreement with the State.

3. The Oklahoma Supreme Court enacted a Rule for State District Courts to follow which was effective March 6, 1984 which mandates that all decrees of adoption, divorce or separate maintenance; all orders of adjudication of juvenile proceedings, termination of parental rights and all final orders in Habeas Corpus and Guardianship of the person proceedings resulting in the adjudication of status, custody or wardship of minor children, shall contain a finding of compliance with the Indian Child Welfare Act and the Oklahoma Indian Child Welfare Act. The Trial Courts Orders and Journal Entries shall reflect findings as required by these two Acts.

4. In March 1984 the Oklahoma Indian Child Welfare Association presented two workshops to the Legal Community. State Judges, State District Attorneys, State Legal Aid Attorneys, Attorneys in private practice and employees of the Department of Human Services and other interested individuals were in attendance. These workshops were sponsored by a small grant of \$2,500.00 from the American Bar Association.

5. The Comanche Tribe of Oklahoma has implemented a Children's Court and a Tribal Foster Care Review Board to work in cooperation with the State of Oklahoma Foster Care Review Board in the placement and tracking of tribal children.

6. The State Judicial system and State placement agencies are in the majority of cases knowledgeable of the ICWA and in most instances are willing to work with Oklahoma Tribes and Organizations in the placement of Indian children.

Now for the negative side of the Oklahoma picture:

1. In April 1984 a survey was completed and a sampling is being reported here which is representative of the Oklahoma Tribes. The Cherokee Tribe will represent the larger Eastern Oklahoma Tribes known as the 5 civilized Tribes. The Cherokee Tribe has 62,000 members. They have no tribal court and the tribe is unclear as to their status for re-assumption of jurisdiction over ICWA cases as they are under the Curtis Act. The Caddo Tribe represents the smaller tribes in Western Oklahoma. The Caddoes did not receive ICWA funds the FY '85 year but have access to the CFR Courts to handle their Indian Child Welfare Act child custody cases. The Native American Coalition of Tulsa will represent the urban Indian Organization which offers legal representation to urban tribal members and also represents the Oklahoma Tribes and their members in state courts. NACT will also represent the other National urban ICWA programs which every year since the funding of these projects began has been under a cloud of not being re-funded. There was strong reaction against the intent of the BIA to not re-fund urban programs. The question was asked: How can the BIA say that urban tribal members are non-Indian and not entitled to services based only on geographical location.

2. The survey in general revealed a confusion and discouragement with ICWA programs regarding their inability to provide necessary services to tribal children and families. It appears that the ICWA programs have become the legal social service programs of the tribes and organizations. They have expanded the duties of the programs but the dollars have decreased; confusion regarding the direction the programs should be taking due to decreased funds. For example: Direction A-toward more preventative services; direction B-toward more rehabilitation of the family; direction C-toward more legal services; direction D-toward more strong support services.

3. There are eight tribes in Oklahoma that did not receive ICWA funds for the current year. These tribes were the Creek Tribe; Seminole Tribe; Iowa Tribe; Caddo Tribe; Seneca-Cayuga Tribe and the Delaware Tribe. These tribe members were denied services and legal representation due to the tribe not being re-funded.

4. The survey indicated that the most successful service provided by ICWA programs was in the category of Social Services:

- A. Counseling
- B. Education teaching
- C. Foster recruitment

5. The second most successful service provided was Legal Services

- A. Court Intervention
- B. Transfer of Cases to the Tribal Court
- C. Legal Representation for children/families
- D. Legal Guidance for children/families

50% of the Oklahoma Tribes depended on the Oklahoma urban programs to provide the necessary legal services for the tribe. The other 50% indicated they don't intervene in state court matters because they do not have the legal resources to do so.

6. The least successful services provided was in the area of Supportive Services:

- A. Foster care training and placement
- B. Adoptive Services

7. The 2nd least successful service provided was in the area of Preventative Services:

- A. Prevention of child abuse and neglect
- B. Prevention of health and other education.

8. The 3rd least successful services provided was in the area of Rehabilitative Services:

- A. Parenting Classes
- B. Transportation needs
- C. Alcohol Abuse Counseling
- D. Personal Financial Management
- E. Employment Assistance
- F. Out of Home Placement Tracking Systems

The survey revealed the current amount per program funding was \$74,725.00. The programs indicated the minimum amount needed for each program was \$219,000.00. This amount would provide for all necessary services. The amount would allow for programs to expand current services to include Foster care and Adoption components and allow Preventative Services, Rehabilitative Services and Supportative Services to be implemented.

The Oklahoma client caseload (as reported by all programs to the BIA as individual case units) has doubled every year since 1981.

1981...	1,498	units	served
1982...	2,243	"	"
1983...	4,343	"	"

The current 1984 projected individual case unit load up to April 1984 was

1984...3,455 units served.

This 1984 figures for 1/5 of the year would indicate that 19,275 individual units will be served this year. This figure still indicates that over 3/4 of the State's Indian child population will not be served during the 1984 year. But the dramatic increase reflects the current policy and practice in Oklahoma now taken by the State judicial system and the state placement agencies of turning most ICWA cases back to the Indian Tribes and Organization for disposition.

The survey indicated that if the current funding level is reduced to the proposed \$8.7 million the Oklahoma ICWA Programs would have to cut back or totally cut out the following services now being provided:

- A. Foster Care Recruitment and Adoptive Placement -50% of the programs would take this action.

This cut back by the Indian programs would coincide with the current Oklahoma State policy of turning ICWA cases back to the Indian Tribes and Organization for disposition. This is a catch 22 situation for the ICWA PROGRAMS. The survey indicated that 50% of the ICWA programs are not seeking transfers of ICWA cases from State Courts due to lack of available services; lack of money for foster care; lack of attorney fees for legal representation in the courtroom; lack of any legal personnel or knowledge to handle the disposition and lack of a tribal court.

B. Rehabilitative Services would be the next service to be cut if reduced funding occurs, these included services of:

Counseling; training and home studies.

C. Third to take a cut would be strong Support Services: these would include: transportation and employment assistance.

D. Legal Services would be the next area to be cut back, which included both legal representation of the Tribe and legal representation of the Indian parent and/or child. 15% of the programs indicated they would reduce the number of referrals for social services they could accept from the State if a cut back happened. The survey indicated that approximately 638 cases would be denied services under current case load counts if funding levels were reduced. This fact coupled with the fact that Indian unemployment in Oklahoma is at 45% with 35% of the State Indian population employed full time still under the poverty income level. Puts the Indian family in a high risk category for child removal without resources.

Some Oklahoma Courts are still unwilling to transfer cases to the tribal courts after the tribe intervenes and requests a transfer. The non-Indian parent is allowed to block the transfer as the law reads "ANY PARENT" can object the transfer. However, other provisions of the law read that ANY PARENT cannot sign papers to relinquish rights within 10 days of the birth of the baby. The Oklahoma courts are contending that this provision does not apply to non-Indian parents/but both provisions read ANY PARENT. Apparently, the provisions stating ANY PARENT do not mean any more or any less than what the judge wants them to mean.

Three of the cases in which Oklahoma courts was unwilling to transfer cases were based on the following reasons:

A. Tribe had non-trust status. The Tribe was a federally recognized Tribe and has one of the largest Bingo operations in existence.

B. Practicing law without being admitted to the State Bar Association. (Tribal Social worker had attempted to represent the Tribe in State Court.)

C. Refusal by the State Court to recognize the child was eligible to be enrolled as a tribal member.

These examples point out the need for training within the state judicial system and within the tribal programs, so that each can know the legal responsibilities and legal rights they were afforded under the provisions of the ICWA.

9. The survey indicated that 75% of the Oklahoma Tribes had chosen not to intervene in State Court proceedings based on the following reasons:

- A. Inability to provide the necessary services
- B. No money for travel
- C. No available children's shelter
- D. No money for food or clothing for the child
- E. Sheer number of cases

When a tribe did intervene in 70% of the cases the Tribe was denied access to the records and files. When the ICWA program took over the case they were allowed to see the files and records in 40% of the cases. 30% were denied access to the records and files even after they took over a case. However, 10% of the programs were allowed the files depending upon the judge or Social Worker involved on the part of the State.

In 80% of the cases of intervention in State Court ICWA programs took over the services being provided by the county or state. In 60% of the cases they provided current services with the county or state. These services included:

- A. Court ordered counseling/parenting courses
- B. Home Studies-Investigations-Monitoring-Visits
- C. Therapy for individuals
- D. Advocacy

10. Notice continues to be a problem in Oklahoma. 30% of the ICWA programs indicated they received notice in voluntary adoption matters. 50% indicated they do not receive notice from private agency. They are unaware in these cases if the placement preference is being followed. In involuntary child custody proceedings in State Courts 100% of the responses indicated they have not been notified by the Court of a case heard in state court but learned of it through other means. The survey did not reveal how often this occurred in all instances. However, the highest rate of such incidents to one respondent occurred 40 times. The next highest was 36 unreported cases where the ICWA program did not receive notice of involuntary proceedings in the state court.

11. Oklahoma courts are still terminating parental rights based on the lifestyle of the parent without expert testimony to show any harm to the child.

12. Oklahoma Courts are still continuing to hear ICWA matters in which either the child or the unwed mother resides or is domiciled on Indian Country.

13. Oklahoma ICWA Programs survey responses indicated that the majority of programs still continue to need training in various areas especially in the area of family counseling, sexual abuse/treatment; stress management; court reporting and writing; client counseling; working with foster parents; adoption procedures; proposal writing; knowledge of State/Tribal Agreements; para-legal training; court room techniques; case investigation; foster care supervision; adoptive licensing procedure; adoptive placement procedure; data collection training; tracking system information and training; dealing with hostile clients and other Indian Specific training.

_____ }
 an alleged deprived child.

NO. 00

FILED IN DISTRICT COURT
 OKLAHOMA
 DISTRICT DIVISION

NOV 10 1982

COURT CLERK
 By _____ Deputy

AFFIDAVIT

STATE OF OKLAHOMA }
) ss.
 COUNTY OF _____ }

I, _____, being first duly sworn, depose and say as follows:

- 1) That I am the natural mother of _____, a female child born out of wedlock on the 5th day of October, 1982.
- 2) That I do not want my name or address or any other identifying information revealed to this child or to any other person and that I desire that my identity remain confidential.
- 3) That this affidavit is executed in compliance with Section 1951 of the Indian Child Welfare Act, 25 U.S.C. 1901 et seq. (1978).
- 4) That I do not want _____ placed for adoption with any members of my "extended family."
- 5) That I do not want _____ placed for adoption with any members of the _____ Indian Tribes.
- 6) That I do not want _____ placed for adoption with any members of the father's extended family."

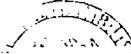
 Father

Subscribed and sworn to before me this 9th day of November, 1982.

 JUDGE OF THE DISTRICT COURT

STATE OF OKLAHOMA, _____ COUNTY:

The undersigned hereby certifies this instrument to be a full, true and correct copy of the original, as the same appears on record in this office.



FILED IN DISTRICT COURT

NOV 10 1982

AFFIDAVIT

STATE OF OKLAHOMA }
) ss.
 COUNTY OF _____ }

COURT CLERK
 By _____ Deputy

_____, of lawful age, being first duly sworn, deposes and says as follows:

1. That she is the natural mother of _____, a female child born out of wedlock on the 5th day of October, 1982.
2. That _____ has been named as the alleged father of said child.
3. That the address or whereabouts of said _____ is not known to me and cannot, with due diligence, be ascertained.
4. That said _____ has not contributed to the support of said child and has not exercised parental rights and duties as to said child.

Subscribed and sworn to before me this 8th day of November, 1982.

 JUDGE OF THE DISTRICT COURT

The undersigned hereby certifies this instrument to be a full, true and correct copy of the original, as the same appears on record in this office.
 Witness this 10 day of November, 1982.
 WANDA JOHNS, Court Clerk
 By _____ Deputy

BUREAU OF INDIAN AFFAIRS

INDIAN CHILD WELFARE ACT

APPROPRIATIONS TITLE II - TRIBES/INDIANS ORGANIZATIONS

Recommendation

We urge your support of an additional appropriation level of at least \$2 million for FY-1985 for Title II of the Indian Child Welfare Act, ~~over~~ that requested by the Administration.

Background

The Indian Child Welfare Act was passed by Congress to prevent the removal of Indian children from their families and cultural environment. In the past, one in five Indian children were removed from their families were placed in a non-Indian environment. This piece of legislation allows for the tribal entities to establish a welfare system for the minors (children) of their tribe. The Act further provides funds to establish court systems, develop children's codes, provide social services such as counseling, parenting skills, foster care standards, adoption and recruitment of foster care families, and payment for these services. It also interpretes cooperative arrangements between state welfare systems and the tribes authority to intervene and transfer Indian Child Custody cases to tribal control.

Comments:

1. The Bureau of Indian Affairs is proposing to eliminate the funding of off-reservation Indian organization programs for FY-1985 appropriations in Title II of the Indian Child Welfare Act.
2. \$7.7 million is budgeted for FY-1985. This is a reduction of \$1 million from FY-1984. The \$1 million reduction assumes termination of Urban Indian/off-reservation programs.
3. This law does not limit authority or funding to reservation status Indians.
4. These Indian organizations act on behalf of the tribe on child custody cases of their respective members. In addition, they act as a liaison for the tribe providing court appointed counseling and other preventative family break up services.
5. A funding formula for needs demand be developed by the Bureau of Indian Affairs to insure adequate funding of Title II.

CONTACT ORGANIZATION: Oklahoma Indian Child Welfare Association
CONTACT PERSON: Ethel Krepps, 1740 West 41st Street
(918) 446-8432

VISITORS NAME _____
TELEPHONE _____
ADDRESS _____

ALAN J. COUCH
JUDGE

DISTRICT COURT OF OKLAHOMA
CLEVELAND COUNTY
COUNTY COURTHOUSE
NORMAN, OKLAHOMA 73069
TELEPHONE 405-321-8521

April 19, 1984

The Honorable Bernard Kanrahran, Chairman
Comanche Indian Tribe
P. O. Box 908
Lawton, Oklahoma 73502

Dear Chairman Kanrahran:

The Oklahoma Supreme Court Juvenile Justice Oversight Committee congratulates you and the Comanche Indian Tribe on the work you are doing in the area of foster care review.

The Comanche Indian Tribe in Oklahoma leads the way in providing training and linkage with State foster care review boards. We appreciate the effort of the tribal review boards in developing expertise to replicate the review process with other Indian Tribes. The expertise you provide will assure children, families and the tribal courts of the support they need to achieve solutions that are in the best interest of the children and families they serve.

The Oversight Committee commends and supports your project and the interest and concern you have for children and families.

Sincerely,

Alan J. Couch
Alan J. Couch, Chairman
Supreme Court Juvenile
Justice Oversight Committee

P.S. I am pleased to be advised as to the great work you are doing in foster care review and hope that the Comanche Tribe will continue to keep this effort very high on it's agenda.

Don Barnes
The Honorable Don Barnes
Chief Justice of the Supreme Court
State of Oklahoma

THIS RULE BECAME EFFECTIVE ON MARCH 6, 1984.

**RULE 8.2, RULES FOR DISTRICT COURTS,
12 O.S. Supp. _____ Ch. 2, App.
SUPREME COURT RULE FOR DISTRICT COURTS**

All decrees of adoption, divorce or separate maintenance, all orders of adjudication in juvenile proceedings, termination of parental rights and all final orders in Habeas Corpus and guardianship of the person proceedings resulting in the adjudication of status, custody or wardship of minor children, shall contain a finding of compliance with 25 U.S.C.A. 1901 et seq. (Indian Child Welfare Act of 1978), 10 O.S. 40 et seq. (Oklahoma Indian Child Welfare Act), and 10 O.S. 1601 et seq. (Uniform Child Custody Jurisdiction Act).

The trial Court shall in all such proceedings make findings of fact as to the child's correct, full legal name and date of birth and all instruments memorializing such decrees, orders and judgments as required by 12 O.S. 32.2 shall recite the findings required hereby.

This rule should be effective the date hereof.

DONE BY ORDER OF THE SUPREME COURT this 6th day of March, 1984.

/s/ DON BARNES
CHIEF JUSTICE

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Vol. 55—No. 11

PREPARED TESTIMONY OF THE ASSOCIATION OF AMERICAN INDIAN AND ALASKA NATIVE SOCIAL WORKERS, INC., SUBMITTED BY ETHEL C. KREPPES, PRESIDENT, OKLAHOMA INDIAN CHILD WELFARE ASSOCIATION

The Indian Child Welfare Act Title II programs were initially funded at \$5.5m in 1980 when 122 tribes and 43 off-reservation programs received grants. A pattern of three-fourths of the money to tribes and one-fourth to off-reservation programs was established. In recent years the programs have been funded at a level of \$9.7m. However, in Conference Committee before Congress' Christmas break, funding for Title II programs reduced to \$8.7m. We impress upon you the importance of restoration of the \$1m for these programs recognizing this form is not timely for the request.

Over the last three years the Association joined by tribes and off-reservation programs has requested an increase in funding of these programs to \$15m. This figure has been used because it was first advanced by the Bureau of Indian Affairs, the agency responsible for the gathering and analysis of data to establish budget requests. We have not had access to those calculations and are therefore unable to describe the requirements identified. We have learned that the Senate Select Committee on Indian Affairs has requested an increase in funding to \$12m.

In our opinion a credible position with regard to data collection and analysis of Title II programs has never been established. This problem has been called to the attention of Congress in successive testimony of the Association. Most recently this problem was presented to Congressman Pat Williams at hearings held in Spokane, Washington in August, 1983. We have a number of concerns regarding the Bureau's response to its mandate to implement the Act. In this connection we are confused that there has not been a national effort under Bureau leadership to develop adequate reporting systems. Reporting systems are primal ingredients in our budget process. A national reporting system to measure the capability of Title II programs does not exist. The problems created for Congress and the Administration can be seen immediately.

The Bureau's Branch of Social Services performs two periodic surveys. One is an unduplicated case count that reflects separation in state and federal responsibility for various categories of assistance and service. The other is concerned with jurisdictional status of Indian children. These reports give the Bureau a gauge of the direct federal financing needed. The Bureau has not brought these reports forward to the tribes and Indian organizations for an examination as to how universal information needs can be met. It is impossible to understand how the Bureau is able to translate the operations of the Title II programs to the Administration and Congress when basic reporting mechanisms have not been developed. Upon entry into office the Administration determined to eliminate the Title II programs because they were inadequately funded to perform. In view of the responsibility that was thrust upon tribal governments we agree with the Administration's position that funding is inadequate performing. In the last year the Cheyenne-Arapahoe program has returned 71 children to their families and people. The Burns-Paiute and Metlakatla communities did not place any children outside their families in FY83. What are the specific ingredients of effort that have made this possible? Unfortunately, focus to determine the characteristic knowledge and technique of these successes is absent in the Bureau's activities.

Another area of implementation which is being neglected concerns training. It is well recognized in the field of social work that different peoples bring variable interpretations and resources to therapy. In spite of this there has not been a national effort to examine the theoretical base of Indian social work practice. This is especially crucial because many tribes and organizations are required to hire workers at the master's level for program directorships. Many tribes do not have local personnel with these credentials and are forced to hire non-Indian personnel for these positions. This presents problems because the non-Indian personnel do not know the community and its people and are therefore handicapped in their ability to make full use of the resources available.

The pattern that has developed is that these workers become frustrated and overwhelmed with their individuals have been in charge they have retained broad activity to themselves. It is the unusual case when these non-Indian workers have brought their staff into important decision making roles. These practices have consistently limited the ability of these programs to develop. As a consequence many Title II programs must begin development at each new funding period. This is inexcusable and encourages ineffective use of resources that are badly needed. Lack of leadership in this area inhibits the right of self-determination. It is impossible to be self-determining when the manner in which one can best proceed is confused and obscured. These are serious developmental concerns that will not go away. The limited training that has been available has been funded through the Administration for Native Americans and has been concentrated on the development of tribal-state agreements and compliance with the Adoption Assistance Act. Through the years Bureau funds have been made available for training of tribal court judges but again it has not been comprehensive in scope and social services staff have not had the opportunity to participate in the design and have had very limited participation as students. It must be called to your attention that we are dealing with some of the most intimate aspects of life and the approach must be knowledgeable and judicious.

These situations highlight the difficulties involved in data gathering efforts. A uniform reporting mechanism that reflects services provided by these programs does not exist and this problem is complicated by the frequent changes in principal personnel and these complications are further compounded by the erratic funding patterns established by the Bureau. There is no guarantee that a program which is providing essential and well grounded services will receive funding in the following year.

We see an urgent need to establish a reliable data base regarding these programs and implementation progress. In preparation for oversight hearings on the Act which will be held later this spring the Association is presently surveying all tribes and urban organizations to gather information regarding adequate levels of funding in addition to needs for amendments and regulations changes. We will be prepared to present our data and analysis at the oversight hearings.

Through the years the Title II programs have taken on greater and greater responsibilities in the area of family and children's services. For example, it is not unusual that program staff are performing child protective investigations which have previously been the guarded responsibility of states. In spite of the fact that this situation has resulted principally from the States' moves to absolve themselves of responsibility for Indian children after passage of the Act, we are encouraged by the moves and welcome the opportunity to work more closely with states and county governments to meet local co-existing needs. The extensiveness of these practices will become known through our survey. But immediately you can begin to see the complicated problem involved to make truly reliable projections regarding funding levels. We do know that the resources of Title II monies are strained. The FY 84 request for Title II funding by the Seattle Indian Center reveals that the average annual cost per client will be \$180.00. The Spokane Tribes's request includes an average annual cost per client of \$333.00.

In our testimony before you last year, the following information was provided:
 "The services provided through Title II grants cover the amount of protective and traditional child welfare services offered by state and county agencies throughout the country. These include ongoing outreach, diagnosis and treatment, recruitment and licensing of foster care and adoptive homes. Because of the economic stress in these communities the programs provide extensive crisis intervention and support services...In FY 81 the Portland area maintained an average caseload per program of 217 cases with an expenditure of \$775.00 per family. Comparable statistics for Sacramento and Billings area are 368 average caseload and \$184.00 average cost for services to families, and 214 cases and \$280.00 per family respectively.

Information from Oklahoma graphically speaks to the actual fiscal benefit to the Indian person.

ICNA appropriations to the BIA resulted in these actual figures for Oklahoma:

FUNDS REQUESTED	FUNDS AWARDED	INDIAN POPULATION	PER CAPITA
\$ 842,833.00/1980	\$ 499,403.00/1980	169,459	Less than \$3.00
\$1,568,877.00/1981	\$ 918,483.00/1981	169,459+	Less than \$6.00
\$2,366,749.00/1982	\$1,204,235.00/1982	169,459+	Less than \$8.00

It cannot be avoided that social services programs in any community provide essential ingredients of the safety net that is necessary to meet basic and common human needs.

A comparison with expenditures for like services provided by the State of Connecticut reveals an average cost of services provided to families of \$6,178.00. The costs for family focused services throughout the country range from \$1,500.00 to \$9,000.00 per year per family. The disparity between the resources available to the general public and to Indians is staggering. Although Indians are eligible to receive services provided to all other citizens, our experience since the passage of the Act has been that the courts and social services departments choose to absolve themselves of Indian programs", funded through the Indian Child Welfare Act.

You are again being asked to reduce the level of funding for Title II programs to \$7.7m in FY 85. We submit that this request is being made to you in the absence of reliable data and are alarmed at the callous inattention of the Bureau to establish a reliable data base. In FY 85 it is proposed that funding for off-reservation programs will be reduced to \$1.7m. Tribal programs will receive \$6m in funding. In our opinion this is excessively inequitable. We call your attention to the fact that at any given time, 50% of the Indian population is in constant movement on and off reservation to seek employment and improved living conditions. Unemployment rates are standard 60% across Indian country. The stable urban Indian populations are small while the transient Indian population is great. No attention has been given to these phenomena by the Bureau and the Department of Health and Human Services which shares responsibility to assist tribes and Indian organizations to implement the Act. The current budgetary constraints on state and county governments magnifies the stress placed on Indian programs to provide services to their people that are the right of all citizens. We ask that you carefully examine our position and reject the Administration's proposal to reduce funding to \$7.7m in light of the fact that the Bureau has not presented reliable information on which to base its projections. We are mindful that the Administration's proposal to eliminate entirely funding for Title II programs has not been withdrawn. In our opinion, this is a flagrant disregard of the needs of Indian people and urge your sober and probing examination of the problems we have presented to you.

Mr. ALEXANDER. Our next witness is Linda Amelia of the Comanche Tribe of Oklahoma.

STATEMENT OF LINDA AMELIA, DIRECTOR, COMANCHE FOSTER CARE REVIEW BOARD, LAWTON, OK

Ms. AMELIA. I am Linda Amelia. Presently, I am a consultant with the Comanche Tribe in Oklahoma. In the past, I have worked with the small tribes in California. I would like to give some examples of the inconsistencies in the funding formula.

Robinson Rancheria has a membership of approximately 800 members. They are located in Lake County, CA. They have approximately 200 members of trust land. They have been, on and off, funded throughout the past few years at the most recent funding allocation of \$50,000. In California, of course, there is no jurisdiction; they do not have a court. In comparison to a large Comanche Tribe, which has exclusive jurisdiction, one of the few children's courts in the State of Oklahoma, having approximately 8,500 members, with 4,500 living on trust land, it has received \$46,000. That is the highest level of funding they have received since they have been funded.

As a supplement to that, they receive title IV-B funds. That amount is only \$5,000. If they were to certify to be IV-E eligible, which they are working on doing, not just to receive the additional \$600 but because the assurances are good in their efforts to provide permanency planning, the tracking of children, and judicial review. That is a help. However, it is a real piecemeal approach to providing comprehensive, effective, court-related child welfare support services.

Another problem, which was brought out earlier, is the court funds provided by the bureau. The Comanche children's court operated last year with an approximately \$55,000 budget. This year, just the other day, I was informed that the Advice of Allotment for this fiscal year for the children's court is only going to be \$29,000.

I would like to present as an addendum to our testimony a copy of Chairman Kahrahr's testimony before the House Subcommittee on Appropriations, in which he cites the problems of the Anadarko Area Office and the funding available. He supports increased funding to the bureau for tribal courts and requests increased funding for child welfare, that of 638 grant mechanism, and that a 3-year funding cycle be supported also.

Mr. ALEXANDER. That will be printed in the record in full.

The funding that you mentioned for the child welfare court, is that court funding directly, or is that Indian child welfare funding? Do you know what category it is?

Ms. AMELIA. It is not from the Anadarko Area Office's allocation. It is from another source the bureau has, and I do not quite have the exact title. It is not an ongoing funding mechanism.

The other thing I have experienced in working in Oklahoma recently was that the bureau there discourages the tribes from applying for adequate funding under the formula. This only justifies the bureau's request for decrease in funding overall. Even though we realize the funding is not there, if we do not document our needs, you in Congress are not going to know about what that need is.

The Anadarko Area simply divides up the funds so that programs can barely function. They just try to give all the tribes as much as they can. Also, there are some inconsistent policies implemented throughout the area offices throughout the Nation, some of which are very restrictive and not in line with the intent of the law itself.

In regard to the Sacramento agencies' decrease in funding, that was about a 40-percent decrease a few years ago, the California State Legislature just recently chaptered a Senate joint resolution supporting an increase in funding, and I would like to present that for the record also.

Mr. ALEXANDER. It will appear in the record.

Ms. AMELIA. One of the unique projects that I have been working on for the Comanche Tribe is the establishment of a Foster Care Review Board. That is the judicial review system that will address the assurances under 272, in terms of judicial review. Just recently, I met with Judge Alan Couch, who is an associate district judge in Norman, OK, and he also chairs the State Oversight Committee on Foster Care. Also present was the Department of Human Services. This was the offer made just last Friday.

With our project, if we were to enter into a State/Federal/tribal agreement, the State then would recognize our judicial review as the review system under 272. We are hoping to replicate this model throughout the State of Oklahoma and make it available to other States and tribes as well. We have applied for some coordinated discretionary funds just this fiscal year that are being considered.

The State has offered to the Oklahoma Indian Child Welfare Association that the State is interested in licensing the association to be the child placement agency for the State of Oklahoma. It was not sure how Judge Couch might agree with that, but that was perfectly acceptable. We are really experiencing a cooperative relationship. But when it comes down to contracting for funds to administer this child placement agency, that is another question. When you look to title 20 or the State's dollars or even title IV-B, we do not get that much of the State's allocation, but the State does not like it. They do not have title XX funds to contract out a lot of times, and it is really difficult to get access to this money.

Earlier, the bureau mentioned the alternative resource, looking possibly to title XX. It is not there. The other thing is, the social service block grants are not that accessible and are not used for child welfare purposes.

I believe that is all I have to say today. If you have any questions, I will be glad to answer them.

Mr. ALEXANDER. We thank you. You have made an excellent witness, and thank you for traveling to Washington.

[Material submitted by Ms. Amelia follows. Testimony resumes on p. 133.]

TESTIMONY

Testimony of Bernard Kahrahrah, Chairman, Comanche Indian Tribe before the House Appropriations Committee on Interior and Related Agencies and Senate Appropriations Committee, February 22, 1984.

My name is Bernard Kahrahrah and I am Chairman of the Comanche Indian Tribe located in southwestern, Oklahoma. I thank you for the opportunity to present testimony on behalf of the Comanche Tribe to request supplemental funding in FY '85 for our Tribal Court and Child Welfare Programs.

The Comanche Indian Tribe has aggressively sought to fully exercise all aspects of its sovereignty. The Tribe has undertaken these efforts in a spirit of becoming a truly self-determinative government that manages its own affairs. Self-determination poses a difficult challenge but reachable goal that is the touchstone of this administration's policy of encouraging tribes to develop the broad range of their sovereign powers. One of the eight (8) policy points of President Reagan's Indian Policy Statement of January, 1983 was to encourage tribes to assume responsibilities for services such as the enforcement of tribal laws, developing and managing tribal resources, providing health and social services, and education to their constituents.

To achieve the objectives of this Presidential policy, a tribe must establish its own financial base. Only in this way will the tribe be able to assume a greater financial role in the management of those programs now mostly funded by the federal government. The Comanche Tribe has aggressively instituted several economic initiatives to generate revenues which some day will be the sole tribal source in providing basic governmental services to our members. The development of our natural resources, specifically, oil and gas, was the most obvious for a western Oklahoma Tribe to first look to. Historically, our Comanche People have left it up to outside interest to develop their mineral resources, only receiving a small percentage of the profits in return. The Comanche Tribe created the Comanche Energy and Resource Company, Inc., (CERCO), an endeavour incorporated under tribal laws and 100% tribally owned and controlled, to address this problem. More importantly, its creation was a response to the need to generate revenues to provide basic governmental services to the Comanche People.

This Administration, through the BIA, has encouraged us to this end and has helped in the planned growth of our oil company. To make an effective entry into the free enterprise system, there are several issues which must be confronted. First, our tribal members must be educated about the purpose, goals and other issues of this corporate undertaking. Secondly, the Tribe must deal with the unquestioned need for a highly qualified professional and technical cadre to successfully execute the goals and objectives of CERCO. Tribal members are being trained to fill this role. Lastly, tribal government must provide a stable foundation upon which to build economic initiatives. This calls for providing a sound tribal legal system to protect the tribal shareholders, the company, as well as the financial interest of persons investing in the Comanche Tribe.

Federal assistance was imperative in the start-up stages of our Company. The Department of Health and Human Services, Administration for Native Americans (ANA), played a crucial role in providing grant monies which CERCO was able to leverage into increasing the value of company-owned properties into a ratio of 7 to 1 over the initial ANA investment. Similarly, the BIA provided grant funds to increase our tribal corporate assets over the initial ANA investment plus the

BIA investment to a phenomenal ratio to 14 to 1. As you can see, the investment by the federal government in the Comanche Tribe has proven to be a sound one.

Since its incorporation in July, 1983, CERCO has been consolidating its mineral acquisitions and developing efficient resource management programs to maximize the benefits to the Comanche People. But, like any corporation, CERCO is faced with liquidating the initial front end indebtedness before there are sizeable return to investors, the Comanche Tribe and its members. When these debts are paid off, then the federal government, as an investor, will begin to reap its benefits. The return of federal dollars to other need areas that were previously spent on the Comanche Tribe. Continued federal financial assistance is still needed. However, this federal help need not come in the form of grants, but in the form of guaranteed loans. Steps toward securing the success of CERCO will be taken once these federal guaranteed loans are made available to the Comanche Tribe. Loans of this type need to be available to other tribal business initiatives so that the Comanche Tribe will eventually hold its own in its partnership with the federal government and rely mainly on its own revenue generating sources to carry out its sovereign duties and obligations.

I respectfully submit the following recommendation: Continue to make available federal dollars in the form of grants to economic initiatives which the Comanche Tribe is undertaking, such as those from BIA. Next, the federal government must make available guaranteed long-term capital loans. I will lead into two other very essential tribal programs which are interlocked to CERCO and other tribal economic initiatives.

The growing sophistication of the Comanche tribal government demands a court system to handle all criminal, civil and juvenile matters within tribal jurisdiction. On the basis of such a need, the Tribe established the Comanche Tribal Children's Court and reassumed juvenile jurisdiction from the CFR Court, Anadarko Agency on November 29, 1983. The Tribe plans very soon to reassume criminal and civil jurisdiction as well.

A comprehensive tribal court of this magnitude does not exist in Oklahoma. The Comanche Tribe will be the first to address the establishment of an effective court system to administer justice where the land base and people are scattered over a wide area. This Court will play a crucial in fulfilling our Constitutional mandate to define, establish and safeguard the rights, powers and privileges of the tribe and its members. At this time, however, the Tribe is not able to be the sole source of funding such an important undertaking. It must, for the moment, look elsewhere.

Federal funding for tribal courts has always been in short supply. The lack of both tribal and federal funding for tribal courts is made more serious in light of state and federal case law defining "Indian Country" in Oklahoma over which the state has no jurisdiction. Ineffectual delivery of law enforcement and judicial services to "Indian Country" supports the argument that the state should have jurisdiction over such Indian trust lands. It is imperative that more federal funds be made available to the CFR Court, Anadarko Agency and to Oklahoma tribes setting up courts to thwart this possible erosion of tribal sovereign rights.

The Anadarko Area Office is responsible for providing court services through its CFR Court of Indian Offenses system to eighteen (18) tribes in its service area, all with an inadequate budget of \$163,600 for FY'84. The Comanche Tribe is presently under the criminal and civil jurisdiction of the Court of Indian Offenses, Anadarko Agency along with seven (7) other tribes. Three of these tribes, the Kiowa, Comanche and Apache, possess over 200,000 acres of tribal lands and indivi-

dual allotments. Total tribal membership of three tribes is estimated to be 18,000. The Comanche Tribe alone comprises 8,267 of this estimated figure: some 5,000 of its members residing in the local area. With this great number of acres and tribal population, the share of the BIA budget to administer court services to the seven (7) tribes under the Anadarko Agency is a mere \$40,600.

It should be obvious that this level of funding is entirely inadequate to support even a minimal operation much less to provide funds to individual tribes who have the sovereign right and immediate need to handle their own judicial affairs. Originally, the CFR Court system in Oklahoma was intended to fill the interim need for judicial services as tribes developed their own courts or judicial consortiums. However, the CFR Court system needs to be adequately funded until tribes have made commitments, as the Comanche Tribe has, to gradually assume full responsibility for judicial and law and order services. Anadarko Area Office personnel have been extremely helpful to us in the preparation of this testimony and have stated that it needs a sum of \$500,000 to properly administer justice to those eighteen (18) tribes under its jurisdiction. I respectfully request this amount to be provided as supplemental funds to the Anadarko Area Office to permit them to fulfill the federal trust responsibility to our Oklahoma Indians. I have attached a budget in the amount of \$197,323.28 to this testimony and again request that these supplemental funds be awarded for Comanche Tribal Court operations. Our Court will serve as a unique model to other tribes desiring to initiate similar efforts.

This requested FY'85 tribal supplement will be used to fulfill the Tribe's constitutional obligation to its people while advancing the President's Indian Policy into a reality.

An essential court supportive service is the Comanche Tribal Child Welfare Program. This tribal program is also faced with limited Title II funds to meet the needs of our tribal youth as well as provide essential services to the Tribal Children's Court. The Indian Child Welfare Act, P.L. 95-608, as presently administered by the BIA Central Office and Anadarko Area Office, does not provide enough funding nor an appropriate grant application process to even approach an adequate funding level for effective tribal programs. Unfortunately, it is the philosophy of the BIA Anadarko Area Office to divide the area allocation among as many tribes as possible, thereby spreading the funds so thin that programs are limited in effectiveness. There have never been enough funds available to distribute according to Indian Child Welfare Act regulations basing tribal child welfare program funding levels on population and demonstrated need.

Confronted with inadequate funding to meet Title II needs in the Anadarko Area, the Area Office has discouraged tribes from requesting the maximum amount allowable under the funding formula, thus justifying proposed BIA reductions in Title II funds which only creates more unmet needs. Citing specific examples of limited funding for tribes in the Anadarko Area for Title II needs, nineteen (19) programs were funded by the BIA from an allocation of \$634,805 in FY'81. In FY'82, eighteen (18) programs were funded with an increased amount of \$672,000. Even with the increase, nine (9) programs were decreased and six (6) programs received a small increase resulting in an average grant of approximately \$27,000.

Specific FY'83 funding allocations to the Anadarko Area Office were not made available to the Tribe after a proper written request. It is known, however, that the Comanche Tribe was awarded only \$40,000 to provide Title II child welfare services to a geographical service population of almost 5,000 tribal adequate funding for a host of program areas; develop children's codes; provide social services

such as counseling, parenting skills, foster care standards, recruitment of foster and adoptive families and payment for these services, and a system for intervention and transfer of Indian child custody cases to the tribal jurisdiction.

The need for increased funding for FY'85 to meet the Title II needs of our most valuable resource - Our Youth is evident: The Tribal Child Welfare Program handled over 200 cases in FY'83, 167 of which were alleged child neglect cases. If adequate federal funding were available and the funding formula was implemented in a proper and consistent manner, the Comanche Tribe would be eligible for up to \$159,000 maximum to meet documented tribal needs.

In summary and as supported by this testimony in the name of the Comanche people, we request that Congress support these activities by providing the following:

1. Increase the economic initiative funds to be administered by the BIA and department of Health and Human Services to provide sufficient funds allow optimum development of a project.
 - A. Increase guaranteed loan funds
 - B. Increase direct loan funds
 - C. Increase economic development grant funds
2. Increase funding for BIA to establish technical assistance sources for the building of Tribal Corporations with Corporate arrangement and Corporate financing expertise.
3. Provide adequate funding to the Anadarko Area Office to assist tribes in developing and maintaining tribal courts. Appropriate \$200,259.28 to the Comanche Tribe so that it may set-up a comprehensive tribal court system for those reasons stated above.
4. Increase overall funding to fully implement the Congressional intent and spirit of P.L. 95-608, The Indian Child Welfare Act, and administer the distribution of program funds to tribes without relying on the competitive process which serves only to spread such funding too thin for program effectiveness. Specially, provide supplemental funding of \$142,061 to fund a much-needed Tribal Child Welfare Program which has been heretofore been inadequately funded despite the Tribe's demonstrated need. Budgets and justifications for the Comanche Children's Court and Supportive Services are attached. Thank you for your consideration of this request.

-COMANCHE TRIBAL COURT & SUPPORTIVE SERVICES
PROJECTED BUDGET 1984-85

<u>Costs</u>	<u>Tribal Court</u>	<u>Child Welfare</u>	<u>Sub-Total</u>
Personnel	\$69,100.00	\$50,916.00	\$120,016.00
Fringe	10,620.00	10,183.00	41,803.00
Contractual	27,000.00	21,000.00	48,000.00
Travel	10,000.00	6,000.00	16,000.00
Equipment	5,700.00	4,500.00	10,200.00
Other	40,600.00	26,600.00	67,200.00
Total Direct Cost	163,020.00	119,199.00	282,219.00
Total Indirect Cost	37,239.28	22,862.00	60,101.28
Total Costs	\$200,259.28	\$142,061.00	\$342,320.28

COMANCHE CHILDRENS COURT
FY 84-85
BUDGET JUSTIFICATION

PERSONNEL:

The Comanche Tribal Court will require, at the minimum, three full-time staff members and two part-time staff members. The Court Clerk, Prosecutor and Administrator will require full-time positions. The Court Investigator and the Probation Officer positions will probably require only part-time positions at least in the beginning. The salary rates are based on competitive norms for comparative positions in the area and also based on the salary wage scale developed by the tribe's Personnel Department as follows:

<u>Salaries:</u>	
1 - Court Clerk	\$16,500.00
1 - Prosecutor	17,000.00
1 - Court Administrator/Planner	19,600.00
1 - Court Investigator (Part-time)	8,000.00
1 - Probation Officer (Part-time)	8,000.00

FRINGE BENEFITS:

The rate set by the Tribe is computed at 20% of salaries. Fringe Benefits are itemized as follows:

<u>Benefits:</u>	
Employer's share of FICA	6.70%
State Unemployment	3.10%
Federal Unemployment	.70%
Health, Life, Income Protection	6.78%
Workman's Compensation	2.22%
Pension	.50%

Fringe Benefits only apply to full-time employees.

CONTRACTUAL:

The contractual budget encompasses four (4) separate services for the Court. The Judges are compensated for their services at \$50 per hour plus mileage at 20¢ per mile. The amount budgeted will allow payment for approximately 110 hours. Judges are required to meet once a month for Judicial Review meetings to discuss the month's caseload, discuss other court activities, and to develop court rules and identify necessary revisions in the tribal codes. Because the Tribe does not have its own jailing facility, this service will have to be contracted with local county and city jails. We estimate this expense at \$15.00 per day

times 200 days with the average sentence at 4 days times 50 offenders. Two consultants will be hired to assist the Court Administrator/Planner in the drafting of the civil and criminal codes.

TRAVEL/TRAINING:

The Comanche Tribal Court will hire the best qualified personnel to fill the staff positions. However, most people do not fully understand the complex and unique challenges that the tribal courts must undertake. Therefore, the Court will provide training the staff to keep abreast of any new developments in Indian Law. It will be necessary to participate in these types of training program which address specific Indian Law principles through the National American Indian Court Judges Association, National Indian Justice Center and the American Indian Lawyer Training Program. These organizations provide training for tribal court personnel and suggest different methods and techniques to upgrade the court services in order to efficiently serve tribal members. It is estimated that each staff member will require two training programs specifically addressing the duties and responsibilities of their respective positions. This expense is estimated at 5 staff persons times \$800.00 (roundtrip airfare, per diem and registration fees). Local travel will compensate all on duty trips required by the staff, especially the Probation Officer/Counselor and the Court Investigator. Local travel will also pay mileage for staff to participate in meetings with state, county, local and other tribal agencies to coordinate services provided by each one. Further, there are many seminars and workshops which are locally available and which can provide information for the delivery of court services and the needs of children, families, etc. which are not being met. This expense is estimated at 20¢ per mile times 4 staff persons times 2,500 miles.

EQUIPMENT:

Because there are three new positions created it will be necessary to purchase desks and chairs to accommodate them. We will also need another typewriter to accommodate the extra work load. Two calculators will be purchased and two filing cabinets will be purchased to hold each employee's respective case files which are pertinent to their job functions.

OTHER:

This cost category includes the cost of renting an office for staff (1,300 sq. ft. @ \$8.00 per sq. ft.). The telephone line item is budgeted at an estimated cost of \$500.00 per month which attempts to include the new hike in telephone service. Postage was estimated at \$125.00 per month. The utilities line item will include rent on office space and the Court's share of electric, gas, etc. bills. Supplies are estimated at 4 persons times \$50.00 per month. Printing and duplications costs include the printing

of court forms, stationary, codes and court rules manual. Duplication will pay to the Tribe the court's share of the use of the duplication machine. Law books, periodical publications will provide a library for the Court and others to utilize. A complete set of the United States Code Annotated will provide the Court with a comprehensive reference tool. Other periodicals such as the American Indian Law Review and the American Indian Law Reporter will provide the Court with information on Indian case law which is currently being litigated.

This proposed budget reflects only the first year's start up costs for the criminal and civil courts. The Comanche Indian Tribe projects that within four years, the Tribe can sufficiently fund the operation of the court system entirely on tribal funds.

**COMANCHE COURT SUPPORTIVE SERVICES
CHILD WELFARE PROGRAM
FY 84-85
BUDGET JUSTIFICATION**

PERSONNEL:

The employees of the Comanche Child Welfare Program will follow the Tribe's personnel department hiring and employment regulated practices and personnel policies and procedures of the Comanche Indian Tribe which incorporates a grade/step system of merit pay increases and a salary range for various levels of employment. Salaries are established based upon requirements of the individual position and are comparable to other similar types of positions within organization and are as follows:

Salaries:

1 - Human Services Manager/ICWA Director	\$3,916
(20% time @ \$19,580 per year)	
1 - Child Protection Worker	16,500
1 - Human Service/Child Welfare Program Analyst	18,500
1 - Intake Clerk/Statistician	12,000

FRINGE:

The fringe benefit rate for the Comanche Indian Tribe is 20%. This rate is calculated as follows:

Employers Share of FICA	6.70%
Group Health, & Life Insurance	5.30%
State Unemployment	3.25%
Workmen's Compensation	2.25%
Pension	2.50%
	20.00%

Health and life insurance are carried through Pueblo's Insurance Company.

CONTRACTUAL:

This item will be utilized to contract professional services to instruct staff and volunteers as to relevant legislation or other areas in which employees lack skills such as identification and investigation of alleged child abuse and neglect, report writing, data collection for information/tracking system, etc. Further, necessary professional services for children/families in need of special treatment on case-by-case basis. This line includes items such as consultant travel.

TRAVEL/TRAINING:

Expenses for travel include in/out state trips for staff personnel, and volunteer staff to attend national and regional child welfare conferences and training seminars. Local travel will include the Oklahoma Indian Child Welfare Association quarterly meetings; Southern Plains Child Welfare Protection Team monthly meetings; and other related child welfare meetings. Local travel also will pay mileage for the purpose of home visits and travel necessary to provide direct services to child welfare clientele. Per diem expenses shall be consistent with tribal travel policies, plus toll fees, parking fees, and 20¢ per mile travel reimbursement. Also, included in the travel line item is mileage payments to Foster Care Review Board (FCRB) members, who will meet as often as appropriate to conduct judicial care reviews of children placed in foster care and other related purposes. (The FCRB are considered volunteer staff, however, mileage is reimbursable).

EQUIPMENT:

Because of the additional staff, it will be necessary to purchase an extra typewriter for the Child Welfare program. The program will also have access to data programming computer and software must be purchased to operate and utilize the machine. Equipment such as tape recorders, overhead projectors, file cabinets, etc., will be rented when necessary or purchased by the program as they are needed for program growth in terms of training.

OTHER:

This cost category includes the cost of renting an office for staff (1,300 sq. ft. @ \$8.00 per sq. ft.). The cost for telephone is computed at \$200 per month times 12 months equals \$2,400. Printing and reproduction costs are needed to print training materials and public information on the program; also, staff copy machine costs are included here. Postage was computed at \$100 per month because the program will be mailing letters to clients and other material for educational purposes. Equipment maintenance will be for servicing the copy machine, typewriter and other office equipment as needed. Utilities were computed at \$50 per month. Monthly newspaper and television public awareness spots will be utilized in encouraging participation in the program, especially the foster care networking program. Training costs are for training staff both on site training, as well as, training of the FCRB. The expenses for supplies for the program year will be \$1,200. This cost represents the month-by-month office expenses for materials.

Senate Joint Resolution No. 27

RESOLUTION CHAPTER 17

Senate Joint Resolution No. 27—Relative to federal funds for American Indian child welfare service programs.

(Filed with Secretary of State March 20, 1984)

LEGISLATIVE COUNSEL'S DIGEST

SJR 27, Keene. American Indian child welfare service programs. This measure would memorialize the President and the Congress of the United States to increase the appropriation for Title II of the Indian Child Welfare Act of 1978 to \$12 million, to continue funding of all Title II programs both on and off the reservation, and to restore to this state an equitable share of Title II funds based upon population and need.

WHEREAS, Title II of the federal Indian Child Welfare Act of 1978 (Public Law 95-608) authorized the United States Secretary of the Interior to make grants to Indian tribes and organizations for the establishment and operation of Indian child and family service programs; and

WHEREAS, More than 201,000 American Indians, a larger number than in any other state, are residents of California, and the state includes approximately 82 federally recognized Indian tribes; and

WHEREAS, California's share of funds made available under Title II of the Indian Child Welfare Act has substantially decreased over the past three fiscal years; and in fiscal year 1982 the allocation of these funds to Indian people in California was decreased by 40 percent when the total appropriation for the act was only decreased by 4 percent; and

WHEREAS, In fiscal year 1984 California's appropriation was again decreased, and in fiscal year 1985 the United States Bureau of Indian Affairs is proposing to further reduce funding despite the documented need for the program services provided by the federal act; and

WHEREAS, This decrease is based on the decision to discontinue the provisions of grants to off-reservation programs, although these programs are important to urban as well as to rural residents because other services are not tailored to the special needs of Indians; and

WHEREAS, The United States Senate Select Committee on Indian Affairs, pursuant to the Congressional Budget Act of 1974, has recommended that the Indian Child Welfare Program be continued both on and off the reservation with an increase in funding from the present \$8.7 million to \$12 million; and

WHEREAS, To again reduce California's allocations of funds under Title II would result in the loss of important child welfare and social services and inflict a serious injustice on the Indian population of this state; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to increase the appropriation for Title II of the Indian Child Welfare Act of 1978 to \$12 million as recommended by the Senate Select Committee on Indian Affairs, in order to more adequately meet the needs of American Indians in California and throughout the nation, and to continue funding of all Title II programs both on and off the reservation; and be it further

Resolved, That the President and the Congress of the United States direct the Bureau of Indian Affairs to restore to the Indian people in California an equitable share of funding under Title II based upon population and need and that supplemental hearings be held to increase California's allocation of Title II funds for fiscal year 1985; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

Mr. ALEXANDER. Our next witness is Melvin Sampson, chairman of the Legislative Committee and Tribal Council member of the Yakima Indian Nation.

STATEMENT OF MELVIN SAMPSON, CHAIRMAN, LEGISLATIVE COMMITTEE, AND MEMBER OF THE TRIBAL COUNCIL, YAKIMA INDIAN NATION, TOPPENISH, WA

Mr. SAMPSON. Good afternoon. My name is Mel Sampson and, as stated, I am a member of the Yakima Indian Nation and chairman of the legislative committee of the Yakima Tribal Council. We appreciate the opportunity, on behalf of the tribe, to present our concerns in reference to the Indian Child Welfare Act. I will proceed to try to summarize our concerns.

Since the enactment of the legislation, we feel that its most important and positive aspect has been productive interactions brought about between the tribal and State governments, which have been historically uncommon. The act has provided a framework for advancing cooperation between States and tribes in the delivery of Indian child welfare services by assigning definite roles to the tribes, the States and Federal agencies.

To complement that, Washington State now has a special administrative code with requirements concerning Indian child welfare which State agencies must follow in dealing with Indian child welfare cases. The State of Washington has legislatively recognized that the purpose of the Indian Child Welfare Act is to prevent the unwarranted breakup of Indian families and to give tribal governments substantial authority in determining Indian child custody matters.

I would like to quote from one of the regional agencies. They stated:

The single most important aspect of the current Indian Child Welfare Act has been the creation of local Indian child welfare advisory committees. Officers with the active committees find that communications and planning for Indian children has been greatly enhanced through the committee activity.

A portion of another quote is:

The Indian Child Welfare Act is, in and of itself, viewed as a positive move to protect the best interest of the Indian child and his or her unique culture and heritage.

The development of these attitudes on the part of the State agencies would never have occurred without the enactment of the Indian Child Welfare Act. Despite this important breakthrough in tribal and State cooperation, the intent of the law is far from achieving its purpose. Since the enactment of Public Law 95-708, its most negative aspect has been a lack of adequate congressional appropriations.

Indian child welfare needs were startlingly illustrated and overwhelmingly evidenced when the presentations were made in Congress 6 years ago. The needs have not changed. Currently, our tribe operates a children's and families' services unit that has been in operation since 1973 and part of this unit's function is to act as a licensing and foster care placement agency. Our staff has an active caseload that fluctuates between 45 and 50 children per month. In addition, the tribe has a children's court. The tribe has had to piece

together the services by combining limited tribal, Federal, and State funds. We have had to prioritize our children's and families' services because of the lack of resources.

To illustrate the problems that we are experiencing due to a lack of resources, our staff participates in weekly case reviews conducted by the local department of social and health services, which is a State agency. On the average, two to four child welfare cases are reviewed. Of these cases, the tribe is able to assume custody of only one to two cases per month. The tribe does not have the resources to assume custody of all of its children, and conservatively, from just our local area alone, the Yakima Tribe has to turn down custody for a minimum of 156 dependent children per year.

Our tribe is put in the precarious position of deciding which child welfare case it will accept or reject. In addition, the process for receiving what limited Indian child welfare funds that are available, a competitive process is utilized. Therefore, tribes cannot depend on a continuity of programming.

The concern for adequate resources is shared by the State of Washington. They state:

One of the most difficult barriers we find to full implementation of the intent of the Act is the shortage of funding for the Indian Child Family and Service program as described in section 201.

A member of the State attorney general's office also states that the intent and spirit of the Indian Child Welfare Act is to have Indian children remain with Indian people. A basic concern I have, as do others in my office who work with the Indian Child Welfare Act, is that the lack of funding to tribes serves to undercut the tribes' and the State's ability to carry out the purpose of the act. These shared concerns on the part of the State officers are significant and representative.

The Yakima Indian Nation strongly recommends that funding sufficient for program development and maintenance be appropriated.

There are other issues that concern the tribe, and I would like to address briefly, if I may, two more. No. 1, the notification and compliance. Whether or not notice on foster care placement and termination of parental rights was provided in a proper and timely fashion, the tribes should be monitored by the Bureau of Indian Affairs or another identified agency or group. Again, I refer to a quote that I will not read here, but it is attached to our testimony.

Our tribe is aware that the public and private agencies are not complying with the Indian Child Welfare Act. There needs to be controls for compliance on these agencies, and again I refer to the State's concern as well. They state, "There are still too many Indian children being placed in non-Indian homes, and perhaps it would improve if the law had a stronger way to compel that the law be followed."

Indian cases serviced by private agencies is another area of concern. There have been a number of instances of noncompliance by private agencies. Presently, there is not a system to monitor private agencies. A legally mandated system of monitoring needs to be considered. So we, therefore, recommend that a method for monitoring compliance be established.

No. 2, we address expert witnesses. A definition for "expert witness" should be included in the act. An expert witness should be required to be knowledgeable about the Indian Child Welfare Act and possess a cultural awareness of the tribe that is involved. It is recommended that the definition included in the BIA guidelines for State courts be adopted, and we have a copy of that attached to our testimony.

The Yakima Indian Nation further realizes that there are other important concerns with the act which have to do with juvenile justice, inheritance, voluntary adoptions, and adoption penalties. However, the focus of our testimony has been on the critical funding issue. This issue overrides all other concerns. Without an adequate and reliable funding base, other changes and/or amendments to the act will not help our tribe to assume total and exclusive jurisdiction over all Indian children welfare matters for our tribal members.

That concludes my statement.

Mr. ALEXANDER. Could you tell me what it costs to maintain the program that you are currently operating?

Mr. SAMPSON. Let me cover that in two phases. First of all, the amount that we received this fiscal year, via competition for the Indian child welfare funds, was \$30,000. Our original request was \$242,000 to operate it. This year, we submitted a request for \$50,000, which does not represent our total needs because there is no need to ask for something that is not there, but then we did not consider this year for even \$50,000. So we are utilizing from IPA some people assigned, and we are utilizing some tribal resources, plus some reimbursements from the State. I do not have the exact figure of the reduced program that we have, but I can provide that with a break out of each resource that we are currently utilizing.

Mr. ALEXANDER. The \$242,000 that you mentioned, which was last year's request, if that were the level of your funding, would that enable you to pick up the children that were referred each month?

Mr. SAMPSON. No, it would not, because we do not have a receiving home. We currently have 15 foster homes, but we do not have a permanent facility for receiving-home purposes. Consequently, we have to refer all of those referrals to the State system because we do not have a physical facility that we operate.

Mr. ALEXANDER. So, in addition to the operating funds, you need capital funds?

Mr. SAMPSON. Right.

Mr. ALEXANDER. Do you get any money from ANA,

Mr. SAMPSON. Not for this purpose.

Mr. ALEXANDER. You mentioned that you meet on a monthly basis, at least some tribal personnel do, with the county system to review children. Do you have any other workings with the county that are either positive or problems with respect to getting referrals?

Mr. SAMPSON. We have an agreement with the State that we executed a little over a year ago. We are currently in the process of reviewing that and updating it with some proposed changes that are going to be recommended. That would be considered a plus factor.

As we state in our testimony, we are having problems getting concurrences from some of the judges, referring known Indian cases that might be to our tribal program. We recommend that State court judges receive training in reference to updating themselves with the act. We feel that it is not adequate.

Mr. ALEXANDER. You mentioned some State reimbursements for the program you are operating. What is the level of funding, if any, that you receive from the States?

Mr. SAMPSON. I cannot answer that, but I can provide you that information.

Mr. ALEXANDER. With respect to foster care, does the BIA provide funding for the foster-care operation that you maintain?

Mr. SAMPSON. No.

Mr. ALEXANDER. Does the State provide any funding for the foster-care operation?

Mr. SAMPSON. Through our licensed foster care, yes. They will not do it unless you are foster care. Our home is licensed by the State. We did make some inroads in reference to that. They certify and license our homes after we do the review and inquiry on them, as far as what we feel is adequate. So they are not as stringent in our situations. What is good for an Indian is not always the necessary—you do not necessarily have to comply with the State rules and regulations.

Mr. ALEXANDER. These are foster-care situations, where the State provides fundings. Are these placements by the State court system or by the Yakima court system?

Mr. SAMPSON. Both.

Mr. ALEXANDER. Thank you. We have a question from Senator Gorton. Are you aware of any problems at Yakima with respect to mixed-blood marriages and exclusive jurisdiction of the tribal court over custody?

Mr. SAMPSON. When you say "mixed-blood," you are talking about our tribal members—

Mr. ALEXANDER. Tribal versus non-tribal, non-Indian.

Mr. SAMPSON. When you say "problem," that does exist, without doubt. That almost becomes a perpetual question. In some cases, the mixed marriage depends upon our enrollment procedure. If they meet the maximum blood quantum of one quota of Yakima blood, they are eligible for enrollment. But probably the situation becomes compounded if they conceivably may be more than a quota Indian, but they may not be a quota Yakima but they may be a half or more, then that is where we come into some problems. That is a concern that is shared universally. How does the State court system know how to identify these, and I think some of the previous testimony and some you will hear today will referencé that universal definition of what constitutes and Indian. That is an age-old issue. If you can answer it here, I will have to congratulate you. It varies between tribes as far as the eligibility criteria for enrollment. In our situation, it is a quota. So then you get into the decendancy issue.

Mr. ALEXANDER. Thank you. We appreciate your testimony.
[The prepared statement follows:]

PREPARED STATEMENT OF MELVIN SAMPSON, CHAIRMAN, LEGISLATIVE COMMITTEE,
YAKIMA TRIBAL COUNCIL

Good morning, Mr. Chairman and members of the Senate Select Committee on Indian Affairs. My name is Melvin Sampson. I am an enrolled member of the Yakima Indian Tribe and an elected member of the Yakima Tribal Council. I am, also the Chairman of the Tribe's Legislative Committee. Our Tribe is a federally recognized tribe established by treaty in 1855. Our reservation is located in South-Central Washington. On behalf of the Tribe, I would like to thank the Committee for the opportunity to present testimony on the Indian Child Welfare Act of 1978, [I.C.W.A.] P.L. 95-608.

Let me begin by stating that the Yakima Indian Nation was very active in pursuing the passage of this legislation which has had a major impact on State policy in regard to how Indian child welfare cases are handled. Our Tribe joined with other tribes and Indian organizations to convince Congress that this legislation was needed to prevent abusive practices in the removal of Indian children from their parents. Congress heard testimony from several hundred witnesses in hearings conducted from 1974 to 1977 and reviewed reports of the American Indian Policy Review Commission. The enactment of the I.C.W.A. was a direct result of our outcry that Indian children were being lost to non-Indian foster and adoptive homes at an alarmingly disproportionate rate.

Since enactment of this legislation its most important, positive aspect has been productive interactions brought about between tribal and state governments which have been historically uncommon. The Act has provided a framework for advancing cooperation between states and tribes in the delivery of Indian child welfare services by assigning definite roles to tribes, states and federal agencies.

Washington State now has a special Washington Administrative Code, requirements concerning Indian Child Welfare, which state agencies must follow when dealing with Indian child welfare cases. The State of Washington has legislatively recognized that the purpose of the I.C.W.A. is to prevent the unwarranted breakup of Indian families and to give tribal governments substantial authority in determining Indian child custody matters. To illustrate the extensive impact of the Act and the Washington Administrative Code, the following are quotes from letters prepared from four regional district Department of Social and Health Services Offices in regard to the I.C.W.A. These responses were solicited by the State Office of Indian Affairs who requested input on recommendations related to amendments to the Act:

"The single most important aspect of the current Indian Child Welfare Act has been the creation of Local Indian Child Welfare Advisory Committees. Offices with active committees find that communications and planning for Indian children has been greatly enhanced through committee activity."

"Placement and custodial requirements set forth in the act have brought about greater awareness on the part of non-Indian DSHS staff of the special needs of Indian children entering the social service system. Through information and committee activity the department is better equipped to address those needs."

"The Indian Child Welfare Act is, in and of itself, viewed as a positive move to protect the best interests of the Indian child and his/her unique culture and heritage. Certainly it has heightened awareness in our communities for both Indian and non-Indian people and has improved Department child welfare services to children and their families."

"The Indian Child Welfare Act is vital to the preservation of Indian families and we look forward to continued coordinated efforts in assuring its implementation."

The full text of their responses and recommendations in regard to the Act is included in the appendices section of this testimony.¹ We strongly suggest review of their recommendations which parallel tribal concerns in many respects.

The development of these attitudes on the part of the State agencies would never have occurred without the Indian Child Welfare Act. Again, this is the Act's most important, positive aspect to date.

Despite this important breakthrough in tribal/state cooperation, the intent of the law is far from achieving its purpose. Since enactment of P.L. 95-708, its most negative aspect has been a lack of adequate congressional appropriations. No matter how well-intentioned the purpose of this law, it is an empty gesture without adequate funding to implement and carryout its purpose. Six years after the passage of this Act, securing adequate funding is the next serious obstacle tribes must overcome. Indian Child welfare needs were startlingly illustrated and overwhelming evidence

¹ See Appendix, material submitted by Don Milligan, MSW, Indian Affairs Section, Department of Social and Health Services, State of Washington, attachment No. 5, p. 406.

was presented to Congress six years ago. The needs haven't changed. However, without tribal program development and maintenance funds expansion of existing systems or development of new systems isn't feasible.

Currently our Tribe operates a Children's and Family Services Unit. It has been in operation since 1973. Part of this unit's function is to act as a licensing and foster care placement agency. Our staff has an active case load that fluctuates between 45-50 children per month. In addition, the Tribe has a Children's Court. The services the Yakima Tribe provides through these two systems are by no means comprehensive or sufficient to meet our needs. The Tribe has had to piece together the services by combining limited tribal, Federal and State funds. We have had to prioritize our children's and family services.

To illustrate the problems the tribe is experiencing due to a lack of resources, our staff participates in weekly case reviews conducted by the local Department of Social and Health Services Office. On the average two to four Indian child welfare cases are reviewed. Of these cases, the Tribe is able to assume custody of only one to two cases per month. The Tribe does not have the resources to assume custody for all of its children. Conservatively, from just our local area alone, the Yakima Tribe is having to turn down custody for a minimum of one hundred-fifty-six dependent children per year. This estimate does not include those children who are turned away from other regions in the state and-or by our court system. This example illustrates the severity of the dilemma caused by inadequate funding. Even though the Yakima Tribe has exclusive jurisdiction, it has no means to fully respond to the over-all Indian Child Welfare needs. Our Tribe is put in the precarious position of deciding which child welfare cases it will accept or reject.

In addition, the process for receiving what limited I.C.W.A. funds that are available, a competitive process is utilized, therefore, tribes can't depend on a continuity of programming. To compound the issues, the B.I.A.'s programs have received repeated funding reductions leaving only token programming funds for the added responsibility that this Act represents.

The concern for adequate resources is shared by the State of Washington as is evidenced in their letters included as part of this testimony. I quote from the letter from the Regional Administrator in our area whose response is representative of other regional state officials:

"One of the most difficult barriers we find to full implementation of the intent of the Act is the shortage of funding for the Indian Child and Family Service Program as described in Section 201. As you know, although the Yakima Tribe has exclusive jurisdiction, the child and family program is not fully funded. This situation leads to frustrated expectations for both tribal members and other community agencies, as well as leaving the department to provide services to a number of Indian children and families, who, given adequate funding, could be served by their tribal program instead."

A member of the State Office of the Attorney General's staff expressed similar concerns in her letter of January 17, 1984. (See Appendices)

"The intent and spirit of the Indian Child Welfare Act is to have Indian Children remain with Indian people. A basic concern that I have as do others in my office who work with the I.C.W.A., is that the lack of funding to tribes serves to undercut the tribes; (and the State's) ability to carry out the purpose of the Act."

These shared concerns on the part of State Offices are significant and representative. The problem for not carrying out the purpose of the law is recognized by the State as one of a lack of funds. Our State recognizes that with adequate funding tribes will be able to provide child welfare services competently. We need desperately to develop our social service programs for children and families and expand our judicial system.

The Yakima Indian Nation strongly recommends that funding sufficient for program development and maintenance be appropriated. Funding to the tribes should be on an entitlement basis and not competitive.

There are other issues of concern that the Yakima Indian Nation shares in common with other tribes. Since these tribes will be speaking to those issues in their presentations the balance of our testimony will briefly address two other areas of concerns:

1. Notification/Compliance—Whether or not notice on foster care placement and termination of parental rights was provided in a proper and timely fashion to tribes should be monitored by the Bureau of Indian Affairs or another identified agency or group. This issue of compliance regarding notification is corroborated by State agencies. One quote from a State office (see appendix) illustrates the severity of concern:

"Several obstacles have been encountered in following the mandates of the Act, and in enforcing the policies set forth in WAC. Specifically, Judges in King County

appear to lack understanding of the Act. There is general lack of recognition for the unique political and cultural status of Indian people. Court decisions have been rendered which have gone against the intent of the Act. Bad precedents have been set for future cases (e.g. maintaining Indian children in non-Indian placements when family or Indian resources were available). It's recommended training be made mandatory for Judges who preside over Indian Child Welfare cases."

Our Tribe is aware that public and private agencies are not complying with the Indian Child Welfare Act. There needs to be controls for compliance on these agencies. Again, our State has expressed these same concerns:

"There are still too many Indian children being placed in non-Indian homes and perhaps it would improve if the law had a stronger way to compel that the law be followed."

"Indian cases serviced by private agencies is another area of concern. There have been a number of instances of non-compliance by private agencies. Presently, there is not a system to monitor private agencies. Region 4 DDHS and the LICWAC have sought to establish informal agreements with the various private agencies to staff their Indian cases. Unfortunately there has been a number of problems. A legally mandated system of monitoring needs to be considered."

The Yakima Tribe recommends that a method for monitoring and compliance be established.

2. Expert Witness—A definition for expert witnesses should be included in the Act. An expert witness should be required to be knowledgeable about the I.C.W.A. and possess a cultural awareness about the tribe involved. It is recommended that the definition included in the B.I.A.'s guidelines for State Courts be adopted, see Appendices for excerpt of the guideline.

The Yakima Indian Nation realizes that there are other important concerns with the Act which have to do with juvenile justice, inheritance, voluntary adoptions, and adoption penalties. However, the focus of our testimony has been on the critical funding issue. This issue overrides all other concerns. Without an adequate and reliable funding base, other changes and/or amendments to the Act will not help our Tribe to assume total and exclusive jurisdiction over all Indian child welfare matters for our tribal members.

As Indian people, united on this issue of Indian child welfare, we present our case on a National tragedy. The Yakima Indian Nation maintains that our cause was presented with overwhelming evidence and justification six years ago. This Act, without proper appropriations, is now adding to the problems evidenced six years ago, by causing manifold complications resulting from Tribes trying to handle cases when there are not adequate social services and judicial systems to ensure proper care and due process for Indian children.

Our most valuable resource is our human resource . . . our children. The tradition of the Yakima Indian Nation considers its children its primary resources for providing the link between generations, the carriers of tradition and culture and for ensuring that the Tribal Family continues to exist.

Mr. ALEXANDER. We are going to take a 5-minute break, and we will be right back, starting with the chief judge from the Sisseton-Wahpeton Tribal Court, Lorraine Rousseau.

[Recess taken.]

Is Judge Rousseau here?

Is Marie Starr, from the Muckleshoot Tribe here?

STATEMENT OF MARIE STARR, GROUP HOME DIRECTOR, AND MEMBER OF THE TRIBAL COUNCIL, MUCKLESHOOT INDIAN TRIBE, AUBURN, WA

Ms. STARR. Good morning. My name is Marie Starr, and I am the director for the Muckleshoot Tribal Group Home. We are the only certified Indian youth home in the State of Washington, and I am also a member of the Muckleshoot Tribal Council. I am here to address the Indian Child Welfare Act, Public Law 95-608, and I am requesting that my written testimony submitted to the Senate Select Committee on Indian Affairs be incorporated as part of the record.

Mr. ALEXANDER. It will be. We will take your whole statement for the record, and we would appreciate your summarizing it, hitting the high points in your oral testimony.

Ms. STARR. In meeting our obligations as the only federally-recognized Indian tribe in King County, the Muckleshoot Indian Tribe has used the Indian child welfare and other resources to operate the Muckleshoot Youth Home since 1979. Currently, the home is the sole State-certified Indian group home facility in the State of Washington. The youth home provides temporary shelter and care for Indian children, ages 0 to 17, as well as counseling and treatment services to their family. The home is maintained to preserve the integrity of the Indian family as a cohesive unit.

As the only State-certified Indian facility, the Muckleshoot Youth Home serves a vital linkage in the overall Indian child welfare efforts in Puget Sound and for the entire region. Through the home, Muckleshoot has satisfied many and varied requirements to effectively provide culturally relevant group care to Indian children and families. These requirements include re-assumption of exclusive jurisdiction in Indian child welfare matters; the adoption of the tribal juvenile code, State-approved, foster-care placement and licensing procedures, access to tribal legal system; coordination with private, State, and intertribal service providers; and certification of the group-care facility itself.

The home's 5-year operational record clearly established that it is a unique and primary vehicle for addressing the social service problems impacting the Indian populations to be served.

The Indian tribes throughout the United States worked diligently for years for the protection of our children, the most valuable human resource of our tribe. The U.S. Congress recognized this Indian child protection issue in 1978, when the Indian Child Welfare Act, Public Law 95-608, was enacted. However, there are many critical issues causing major Indian child custody conflicts. I am just going to go through some of the recommendations that the tribe has.

Provisions need to be incorporated that authorize that the definition of "Indian" shall be consistent with the respective reservation's definition of "Indian" and shall include a provision authorizing Canadian Indians as qualified participants, consistent with the legal language contained in the Jay Treaty between the United States and Canada on Indians.

Inclusion of provisions that encourage tribe and State agreements for effective intervention for tribal court jurisdiction for all Indian children, including juvenile justice issues, and mandate that the State child welfare agencies provide resources to Indian children, particularly in Public Law 280 State. Tribal 280 States have assumed jurisdiction over many criminal issues which occur on reservations. The only means to access juvenile justice facilities for juvenile offenders is through the State court system. The tribe would like to have the opportunity to work with the State of Washington, whereby the tribe could retain jurisdiction over juveniles in both civil and criminal areas and be able to utilize the State facility for treatment.

This process would give the tribes jurisdiction over their youths without having to duplicate the costly treatment facilities already in operation through the State system.

Provisions need to be incorporated that specifically provide for the Indian child service population, preventative programs, married-on successive programs, prioritized budget for federally recognized tribes, providing technical assistance to projects, and guarantee a 3-year funding cycle for demonstrated successful programs for Public Law 95-608.

Include provisions that mandate Federal, State, private, and tribal agencies to immediately notify tribes where Indian children are involved in voluntary and involuntary child placement cases. Upon this immediate notification, the child's tribes need provision to obtain legal access to the child's full name, birth date, tribal affiliation, social history, case plan, domestic relations, and ensure that the child's tribe will abide by all of the confidentiality standards as required by the law to ensure that the child's best welfare protection and placement is implemented in each respective case.

Include provisions in title II, section 20.1(a)(3) to exercise the Indian right of biracial children who choose to be Indian, regardless of whether the child is enrolled in a tribe or not, when one of the parents is legally recognized as an Indian and provide a legal mandate in this provision that all child placement agencies ensure the Indian child's Federal trust inheritance and rights are guaranteed as an Indian, consistent with 25 CFR regulations.

Include provisions that guarantee the qualified expert witness utilized within the Indian child-placement cases obtain not only the professional expertise but is also the expert in Indian custom, tradition, laws, and is legally authorized to represent the Indian child by the child's tribe.

One of the other things that we do not have within our testimony is the review process of the Indian child welfare grant applications. I will have that in writing and sent to you to be included as part of the testimony.

The Muckleshoot Tribal Youth Home has served 162 Indian youth and 850 family members between 1979 and 1983 from the Northwest States of Washington, Oregon, Idaho, Alaska, and other States upon request to the tribal group home. The tribe has the only certified Indian group home in the State of Washington and has gained credibility from both reservation tribal youth service agencies, as well as State child placement agencies as a valuable child resource.

An area of concern which the tribe noted that has not been adequately addressed in Public law 95-608 is the issue of Federal trust obligations, including medical education and Federal obligations for Indian children. Tribal child welfare workers have found that many children have lost and continue to lose benefits due to them as tribal members or as Indians because of uninformed workers for private and State agencies, due to tribal enrollment procedures, a lack of expertise in BIA and tribal regulations concerning birth and placement.

By covering these trust responsibilities in the act, the Federal Government will be responsible for guaranteeing that the treaty obligations are met. The Indian children and extended Indian fami-

lies have been grossly violated by law and child placement agencies that are not expert or professionally trained in Indian customs, traditions, and law. This has caused the Indian child to experience confusion and often suffer irreparable damage, mental stability, and property loss. Effective Indian child placement agencies serve as professional and expert resources for our children. The U.S. Congress needs to guarantee the same child protective services and rights to Indian children that are guaranteed to other children in this Nation. But more importantly, the Government, as our tribal fiduciary trust agency, needs to protect these children's special legal trust obligations.

Thank you for taking the time to allow me to testify for the Indian Child Welfare Act, Public Law 95-608.

Mr. ALEXANDER. Thank you for your testimony.

I might mention at this point that we are going to keep the record open on this hearing for what, for us, is a long period of time, which will be 30 days, because we have requested a number of tribes and States for written comments. So if you have addenda, as you mentioned in your testimony, that you would like to submit, we will be keeping the record open for 30 days. Thank you for coming, and we appreciate your testimony.

[The prepared statement and accompanying material follow. Testimony resumes on p. 153.]

MUCKLESHOOT TRIBAL COUNCIL

33015 172ND AVENUE S.E. - AUBURN, WASHINGTON 98002 - (206) 839-3311

TESTIMONY
INDIAN CHILD WELFARE ACT, PUBLIC LAW 608

INTRODUCTION

My name is Marie Starr, I am the Director for the Muckleshoot Tribal Group Home, the only certified Indian Youth Home in the State of Washington and I am a Muckleshoot Tribal Council Member. I am here to address the Indian Child Welfare Act, P.L. 608 and requesting that my written testimony submitted to the Senate Select Committee be incorporated as a part of the Congressional records.

PROBLEM

Indian Tribes throughout the U.S. have worked diligently for years for the protection of our children, the most valuable human resource for the Tribes. The U.S. Congress recognized this Indian Child Protection issue in 1978 when the Indian Child Welfare Act, P.L. 608 was enacted. However, there are many critical issues causing major national Indian Child custodial conflicts.

RECOMMENDATIONS

1. Provisions need to be incorporated that authorize the definition of Indian shall be consistent with respective reservations definition of Indian and shall include a provision authorizing Canadian Indian children as qualified participants consistent with the legal language contained in the Jay Treaty between the U.S. and Canada on Indians.
2. Inclusion of provisions that encourage State-Tribal agreements for effective intervention for Tribal Court jurisdiction for all Indian children including Juvenile Justice issues and mandate that State Child Welfare Agencies provide resources to Indian children, particularly in P.L. 280 States.

Tribal 280 States has assumed jurisdiction over many criminal issues which occur on Reservations. The only means to access juvenile justice facilities for juvenile offenders is through the state court system.

- The Tribe would like to have the opportunity to work with the State of Washington whereby the Tribe could retain jurisdiction over juveniles both in civil and criminal areas and be able to utilize the State facilities for treatment, etc. This process would give Tribe's jurisdiction over their youth without having to duplicate the costly treatment facilities all ready in operation through the State system.
3. The U.S. Congress needs to restore the 1.0 million dollars cut for the FY-84 budget and continually appropriate a minimum of 15.0 million effective for FY-85 budget year for the implementation for the legal mandates contained in P.L. 600 and increase this budget as inflationary costs demand each year thereafter.
 4. Provisions need to be incorporated that specifically provide for Indian child service population, preventative programs, merit on success of program, prioritize budget for Federally recognized Tribes, provide technical assistance to projects, and guarantee a three year funding cycle for demonstrated successful programs for P.L. 608.
 5. Include provisions that mandate Federal, State, Private, and Tribal Agencies to immediately notify tribe where Indian child is enrolled in voluntary and involuntary Indian child placement cases. Upon this immediate notification, the child's tribe needs provisions to obtain legal access to the child's full name, birthday, tribal affiliation, social history, case plan, domestic relations, and insurance that the child's tribe will abide by the all confidentiality standards as required by the law to insure the child's best welfare, protection, and placement is implemented in each respective case.
 6. Include provisions in Title II, Section 201(a)(3) to exercise the Indian rights of bi-racial children who choose to be Indian, regardless of whether child is enrolled in the tribe or not, when

- one of the parents is legally recognized as an Indian and provide a legal mandate in this provision to all child placement agencies to insure the Indian child's Federal Trust inheritance and rights are guaranteed as an Indian consistent with 25 CFR regulations.
7. Provision to guarantee that the child's tribe is notified in cases of voluntary placement, with parents permission, by Federal, State, Private, and Tribal agencies to guarantee the Indian child's Federal Trust Rights to their cultural inheritance is exercised for the highest potential benefit for the child.
 8. Include provisions that guarantee that the "qualified expert witness" utilized within Indian child placement cases obtains not only the professional expertise, but is also an expert in Indian customs, tradition, laws, and is legally authorized to represent the Indian child by the child's tribe or the intercepting Indian organization to insure the child's inherent Federal Trust Rights are fully exercised.
 9. Include provision to guarantee that Federal, State, Private and Tribal child placement agencies notify the Indian child's tribe and jurisdiction be transferred to the tribe regardless of whether the parent(s) object.
 10. Provision to resolve the conflict contained within the spelled out language of P.L. 608, the Indian Child Welfare Act and P.L. 272, Adoption Assistance and Child Welfare Act of 1980, involving custody of Indian children in group and foster care.
 11. Provision that mandate each respective state to comply with the legal protectional trust rights of Indian children consistent with the Indian Child Welfare Act to guarantee Federal compliance is implemented.

Effective participation and consultation between Indian Child Welfare Workers, Tribe, States, BIA, and Human and Health Service needs to be considered to finalize a cooperative agreement that guarantees that all agencies will comply with the mandates contained within the 608 Public Law for the Indian Child.

12. Provisions need to be incorporated that guarantee that an appointed guardian for the Indian child insures expert knowledge in Indian customs, tradition, laws, and exercises the legal protection for the child's inherent federal trust rights as a tribal enrolled Indian consistent with 25 CFR.

SUMMARY

The Muckleshoot Tribal Youth Home has directly served 162 Indian Youth an 851 family members between 1979-1983 from the Northwest States of Washington, Oregon, Idaho, Alaska, and other States upon request to the Tribal Group Home. The Tribe has the only certified Indian group home in the State of Washington and has gained credibility from both Reservation Tribal Youth Service Agencies as well as State Child Placement Agencies as a valuable child resource, please make reference to the attached letters of reference.

An area of concern which the Tribe noted that has not been adequately addressed in the 608 act is the issue of Federal trust obligations including medical, education, and financial obligations for Indian children. Tribal Child Welfare Workers have found that many children have lost, and continue to lose benefits due to them as tribal members or Indians because uninformed workers for Private and State Agencies are uneducated as to tribal enrollment procedures and lack expertise in BIA or tribal regulations concerning birth and/or place-

ment. By covering these trust responsibilities in the act, the Federal Government will be responsible for guaranteeing that treaty obligations are met.

Indian children and extended Indian families have been grossly violated by laws and child placement agencies that are not expert or professionally trained in Indian customs, traditions, and laws. This has caused the Indian child to experience confusion and often suffer irreparable damage in mental stability, property loss, social adjustments, self identity and self-worth. Effective Indian Child Placement Agencies serve as the professional and expert resources for our children. The U.S. Congress needs to guarantee the same Child Protective Services and rights to Indian children that are guaranteed to other children in this nation; but even more importantly, the government as our Tribal Fiduciary Trust Agency needs to protect these children's special legal trust obligations.

Thank you for taking the time to allow me to testify for the Indian Child Welfare Act, P.L. 608.

Sincerely,

Marie Starr
Marie Starr,
Muckleshoot Group Home Director
and Muckleshoot Tribal Council Member

MS/ds
ATTEST:

Sonny D. Bargala, Chairman
Muckleshoot Tribal Council

TRIBAL COUNCIL RESOLUTION NO. 84-19

WHEREAS, the Muckleshoot Tribe is directly participating as a resource for effective implementation of P.L. 608, the INDIAN CHILD WELFARE ACT and is the only Indian Youth Home licensed by the State of Washington; and

WHEREAS, the Tribe has been experiencing major deficiencies within the implementation of programs under this Congressional enacted law for the 608 welfare, protection, and custody of Indian children within our Northwest region; and

WHEREAS, because the Indian children are not receiving adequate protection as mandated within the intent of this Indian Child Welfare Act (P.L. 608), it is imperative that the United States Congress, Private Agencies, State Welfare Agencies, U.S. Health & Human Service Agencies, and the U.S. Department of Interior exercise mandates contained within this act to guarantee Indian child protection.

THEREFORE BE IT RESOLVED, that Muckleshoot Tribe hereby recommend that the following provisions be included by the United States Congress incorporating changes within the appropriate federal regulations and authorizing adequate funds to effectively implement mandates as contained within this law:

1. Definition of Indian shall be consistent with respective reservations definitions of Indians and shall include Canadian Indian children as qualified participants as per the legal language contained within the U.S. and Canadian government negotiated "Jay Treaty" for Indian people.
2. Inclusion of provisions that authorize State-Tribal Agreements for effective intervention for Tribal Court jurisdiction including Juvenile Justice issues of Indian children and State Child Welfare Agencies to serve as viable resources for the same, especially in P.L. 280 States.
3. The U.S. Congress needs to restore the 1.0 million dollar cut for the FY-84 budget and consistently appropriate 15.0 million minimum effective for FY-85 budget year for the effective implementation of the mandates contained in P.L. 608 and increase this budget as inflationary costs demand each year thereafter.
4. Provisions need to be incorporated that specifically provide for Indian child service population, preventative programs, merit on success of program, prioritize budget for Federally recognized Tribes, provide technical assistance to projects, and guarantee a three year funding cycle for demonstrated successful programs for P.L. 608.
5. Include provisions that mandate Federal, State, Private, and Tribal Agencies to immediately notify tribe where Indian child is enrolled in voluntary and involuntary Indian child placement cases. Upon this immediate notification, the child's tribe needs provision to obtain legal access to the child's full name, birthday, tribal affiliation, social

Continuation Resolution # 84-19

history, case plan, domestic relations, and insurance that the child's tribe will abide by the all confidentiality standards as required by the law to insure the child's best welfare, protection, and placement is implemented in each respective case.

6. Include provisions in Title II, Section 201(a)(3) to exercise the Indian rights of bi-racial children who choose to be Indian, regardless of whether child is enrolled in the tribe or not, when one of the parents is legally recognized as an Indian and provide a legal mandate in this provision to all child placement agencies to insure the Indian child's Federal trust inheritance and rights are guaranteed as an Indian consistent with 25 CFR regulations.
7. Provision to guarantee that the child's tribe is notified in cases of voluntary placement, with parents permission, by Federal, State, Private, and Tribal Agencies to guarantee the Indian child's Federal Trust Rights to their cultural inheritance is exercised for the highest potential benefit for the child.
8. Include provisions that guarantee that the "qualified expert witness" utilized within Indian child placement cases obtains not only the professional expertise, but is also an expert in Indian customs, tradition, laws, and is legally authorized to represent the Indian child by the child's tribe or the intercepting Indian organization to insure the child's inherent federal trust rights are fully exercised.
9. Include provision to guarantee that Federal, State, Private, and Tribal child placement agencies notify the Indian child's tribe and jurisdiction is transferred to the tribe regardless of whether the parent(s) object.
10. Provision to resolve the conflict contained within the spelled out language of P.L. 608, the Indian Child Welfare Act and P.L. 272, Adoption Assistance and Child Welfare Act of 1980, involving custody of Indian children in group and foster care.
11. Provision that mandate each respective state will comply with the legal intent for protectional trust rights of Indian children consistent with the Indian Child Welfare Act to guarantee Federal compliance is implemented. Effective participation and consultation between Indian Child Welfare Workers, Tribe, States, BIA, and Health and Human Services needs to be considered to finalize a cooperative agreement that guarantees that all agencies will comply with the mandates contained within the 608 Public Law for the Indian Children.
12. Provisions need to be incorporated that guarantee that an appointed guardian for the Indian child insures expert knowledge in Indian customs, tradition, laws, and exercises the legal protection for the child's inherent federal trust rights as a tribal enrolled Indian consistent with 25 CFR.

AND BE IT FURTHER RESOLVED, that this Resolution shall be routed to BIA, H.H.S., DSHS, NCAI, and such other U.S. Congressional committees who act on Indian Child Welfare matters, and

BE IT FINALLY RESOLVED, that the Tribe is requesting full support from the United States Congress to guarantee Federal Indian Child Protection Rights be practiced by all federal, State, private, and Tribal Child Protective Agencies and that Indian Child jurisdiction be immediately turned over to the respective tribes within this nation consistent with the 608 law.

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

As Secretary of the Muckleshoot Indian Tribal Council, I hereby certify that the above resolution was duly adopted at a regular meeting of the Tribal Council on the 16th day of April, 1984, held on Muckleshoot Indian Reservation, Auburn, WA, at which a quorum was present by a vote of 4 for, 0 against and 0 abstentions.

Marie Starr acting
Elaine J. Perez, Secretary

Sonny W. Bargala
Sonny W. Bargala, Chairman



Leo J. La Clair
Executive Director

STATE OF WASHINGTON

GOVERNOR'S OFFICE OF INDIAN AFFAIRS

1057 Capitol Way • Olympia, Washington 98504 • (206) 753-2411 • (SCAN) 753-6780

May 9, 1983

To whom it may concern:

I recommend and support the Muckleshoot Indian Tribe's grant application entitled Muckleshoot Child Abuse and Neglect Prevention Program.

It is reassuring and long overdue to finally have an Indian organization with such high quality and experience address this most critical need from not just a treatment approach, but from one of prevention.

The Muckleshoot Indian Tribe and the State DSHS and other State agencies have enjoyed a mutually productive relationship for a number of years. Perhaps one of our best and most productive efforts has been through the Muckleshoot Youth Home which is a proven, effective means by which the Tribe has addressed Indian child and family concerns, especially as they relate to child neglect and abuse, throughout the State of Washington and the entire Northwest. Should the Muckleshoot proposed project become a reality, the vast networking of State agencies and personnel would be readily available and accessible to fulfill our responsibilities and commitments.

It is therefore without hesitation that I fully endorse and support the proposed Muckleshoot Child Abuse and Neglect Prevention Program.

Sincerely,

Leo J. La Clair

Leo J. La Clair