

*STATE COURT  
ADMINISTRATIVE OFFICE  
PRESENTS*

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## The Evolution of ICWA

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Presented By:  
The Honorable Allie Greenleaf Maldonado  
Little Traverse Bay Bands of Odawa Indians  
Chief Judge

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### Introduction

- The purpose of this presentation is to show what prompted Congress to pass the Indian Child Welfare Act.
- I'll present statistical evidence.
- I'll present testimony given before Congress under oath.
- I'll conclude with accounts of pre-ICWA practices.

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### Why did Congress pass ICWA?

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- April 8, 1974 Congress began a series of hearings regarding Indian child welfare in the United States. Numerous experts and witnesses from across the country gave testimony under oath.
- The disturbing facts revealed in those hearings showed that U.S. Federal and state government's had a well-known policy of removing Indian children from their families and tribes in an attempt to assimilate them into white culture by placing them in white families or institutions.
- It became clear that the United States had a crisis of massive proportions on their hands.
- Official government policy was destroying the fabric of Indian families and endangering the very existence of tribal governments.

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## The National Statistics Shocked Congressional Leaders

"In Montana, the ratio of Indian foster care placement is at least 13 times greater [than for non-Indian children]. In South Dakota, 40 percent of all adoptions made by the State...are of Indian children, yet Indians make up only 7 percent of the juvenile population. The number of South Dakota Indian children living in foster homes is per capita nearly 16 times greater than the non-Indian rate. In the State of Washington, the Indian adoption rate is 19 times greater and the foster care rate is 10 times greater." 95<sup>th</sup> Congressional Record, Report No. 1386, \*8-9.

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Indian Child Welfare Statistical Survey Data  
Combined Foster and Adoptive Care, Reported July 1976

STATES	Total Non-Indian Children (Under 21)	Total Indian Children (Under 21)	Indian Children In-Care	Ratio of Indian Children In-Care	Non-Indian Children (Under 21) In-Care	Ratio of Non-Indian Children In-Care	Percent of Indian Children More Often Removed and Placed In-Care
MICHIGAN	3,720,834	7,404	994	1 out of Every 7.4	128,661	1 out of Every 28.9	3.9 (200%)
MINNESOTA	1,572,514	12,672	2,331	1 out of Every 5.4	56,084	1 out of Every 28	5.2 (200%)
WISCONSIN	1,814,537	10,176	1,278	1 out of Every 8	14,554	1 out of Every 124.7	15.6 (1,500%)

This data represents the results of a nation-wide Indian Child Welfare statistical survey done by the Association on American Indian Affairs (AAIA) at the request of the American Indian Policy Review Commission, an agency of the United States Congress, in July 1976.

The report indicates that Indian children are being removed from their families and placed in-Care (foster or adoptive) at rates far out of proportion to their percentage of the population.

The disparity in placement ratios for Indian and non-Indian children is shocking and cries out for sweeping reform at all levels of government.

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## Testimony Brought Statistics to Life

1. Testimony of Mr. William Byler, Executive Director, Association on American Indian Affairs
2. Testimony of Mrs. Cheryl Spider DeCoteau, citizen of the Sisseton-Wahpeton Tribe from Sisseton, South Dakota and her attorney, Mr. Hersh
3. Testimony of Victoria Gokee, Director, American Indian Child Placement and Development Program
4. Mrs. Fournier, citizen of the Mandan tribe in Devils Lake, Fort Totten, North Dakota.

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Testimony of Mr. William Byler, Executive Director,  
Association on American Indian Affairs

- His testimony is one of many that caused Congress to create ICWA's notice requirements.
- His testimony is one of many that gave rise to ICWA's protections for Indian custodians.
- His testimony is an example of why ICWA includes heightened removal standards, the requirement of testimony from a qualified expert witness for removal and termination of parental rights, and the beyond a reasonable doubt standard for termination of parental rights.

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Testimony of Mrs. Cheryl Spider DeCoteau, citizen of  
the Sisseton-Wahpeton Tribe from Sisseton, South  
Dakota and her attorney, Mr. Hersh

- This testimony is an example of why ICWA includes notice requirements, heightened removal standards, the requirement of testimony from a qualified expert witness for removal and termination of parental rights, the beyond a reasonable doubt standard for termination of parental rights, and the consent requirements regarding foster care and adoption.

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Testimony of Victoria Gokee, Director, American  
Indian Child Placement and Development Program

- Her testimony is an example of why ICWA requires that any parent or Indian custodian voluntarily consenting to a foster care placement or to termination of parental rights, must execute the consent in writing before a judge along with other protections.

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Mrs. Fournier, Citizen of the Mandan Tribe in Devils Lake, Fort Totten, North Dakota.

- Her testimony is one of many that gave rise to ICWA's protection for Indian custodians.

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Removing Indian Children from their Families was a Government Policy

"Separating Indian children from their parents and tribes has been one of the major aims of governmental Indian services for generations. The assumption is that children and particularly those in any kind of difficulty would be better off being raised by someone other than their own parents. The purpose of the first boarding school on the Navajo reservation as stated in its charter in the 1890's was "to remove the Navajo child from the influence of his savage parents.'" STATEMENT OF DR. ROBERT BERGMAN, INDIAN HEALTH SERVICE, GALLUP, N. MEX., Hearings before the Subcommittee on Indian Affairs, April 8 and 9, 1974, P128.

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Evidence of the Policy Was Overwhelming

In 1886, the Commissioner of Indian Affairs stated, "It is admitted by most people that the adult savage is not susceptible to the influence of civilization, and we must therefore turn to his children, that they might be taught to abandon the pathway of barbarism and walk with a sure step along the pleasant highway of Christian civilization.... They must be withdrawn, in tender years, entirely from the camp and taught to eat, to sleep, to dress, to play, to work, to think after the manner of the white man."

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## What was the Result of the Government's Destructive Policy?

**Testimony of Mr. William Byler, Executive Director, Association on American Indian Affairs**

"Statistical and anecdotal information show that Indian children who grow up in non-Indian settings become spiritual and cultural orphans. They do not entirely fit into the culture in which they are raised and yearn throughout their life for the family and tribal culture denied them as children. Many native children raised in non-Native homes experience identity problems, drug addiction, alcoholism, incarceration and, most disturbing, suicide."

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## Official Government Policy Broke the Fabric of Indian Families

Dr. Joseph Westermeyer, Department of Psychiatry, University of Minnesota testified regarding the results of his five-year study.

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## The Government Policy of Removal Threatened the Very Existence of Tribes

"Culturally, the chances of Indian survival are significantly reduced if our children, the only real means for the transmission of the tribal heritage, are to be raised in non-Indian homes and denied exposure to the ways of their People." Hearing on S. 1214 before the Subcommittee on Indian Affairs and Public Lands of the House Committee on Interior and Insular Affairs, 95th Cong., 2d sess. (1978).

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ICWA attempts to fix what official government policy broke by promoting the following goals:

1. **Protect the best interests of Indian children and families *as determined by tribes.***
2. **Promote the stability and security of Indian families.**
3. **Recognize and strengthen the role of tribal governments in determining child custody issues.**

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### Minimum Federal Standards

ICWA establishes ***minimum Federal standards*** for the removal of Indian children from their families, and the placement of Indian children in foster or adoptive homes or institutions that reflect the values of Indian culture.

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In other words, compared to pre-ICWA practices, ICWA purposefully makes it more difficult for state governments to remove Indian children from their homes.

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## Conclusion

- This presentation has shown what prompted Congress to pass the Indian Child Welfare Act.
- Congress received statistical evidence proving that the removal of Indian children was a crisis of massive proportions.
- Congress heard testimony given under oath documenting how pre-ICWA abuses tore apart Indian families with little recourse.
- Congress took responsibility for removal practices that were born from the government's official, well-documented assimilation policy.
- In response to the overwhelming evidence, Congress passed the Indian Child Welfare Act.

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If you have any questions please feel free to contact me. I can be reached by e-mail at [amaldonado@ltbbodawa-nsn.gov](mailto:amaldonado@ltbbodawa-nsn.gov)

**Chi Miigwech!!**

For additional information refer to "A Practical Guide To The Indian Child Welfare Act" Published by the Native American Rights Fund or visit their site at [www.narf.org](http://www.narf.org)

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