The History and Spirit of ICWA

Honorable William Thorne
Utah Court of Appeals & NCJFCJ Board of Trustee

Honorable Raquel Montoya-Lewis
Upper Skagit Indian Tribal Court
Introduction - Background

- 560+ Indian Tribes
  - Differences among tribes
  - Differences within tribes
- 300+ Tribal Courts
  - Sophisticated (Navajo)
  - Developing
  - Rudimentary
Everyone wants what is best for the child!

Why are Indian children and families treated differently?
The historical context ...

for child welfare efforts and Indians
Why trust is not automatic when confronted with:

“I am from the government – I am here to help.”
or

“Trust us, we know what is best for your children”
Indian Child Welfare Efforts

130 years ago

BIA Boarding Schools
BIA started as part of the War Department

The soldier and barbed wire were there to keep the kids in
Education as a part of the “civilizing” function
Education was supposed to be the Solution to the “Indian Problem”
1878 the Hampton Institute, a school for freed slaves in Virginia, accepted Indian prisoners in an assimilation experiment.
In 1879 the Carlisle Indian School, the first boarding school patterned after the military model, opened.
The intent of boarding schools was to acculturate Native Americans into mainstream society.
By 1890 attendance was enforced through threats of cessation of rations and supplies.
Early “approved” curricula prohibited teaching of reading & writing.
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Many died of disease and broken hearts.
Succeeded in breaking intergenerational teaching in Indian communities. Language, religious practices, cultural knowledge were targeted.
Generations learned to parent from BIA dorms
What’s the hallmark of a good employee when they have a family crisis?

--They stay home and fix it.

What does that do for these kids?

--They never grow up seeing an adult struggle with a problem and overcome it.
View from another continent

Same impact...

“Rabbit Proof Fence”

–Movie about the Australian Aborigine experience with education
Indian Child Welfare Efforts

1958 Indian Adoption Project

Joint project of the BIA &

the Child Welfare League of America [CWLA]
1958 Indian Adoption Project

**GOAL:** to provide adoptive placement for American Indian children whose parents were deemed unable to provide a ‘suitable’ home

- States were paid by the BIA to remove Indian children from their homes alleging “neglect”
- Transracial placements were encouraged and most were separated from their communities
- 25-35% of all Indian children were removed from their homes
Federal policies of the 1900s impacting child welfare

Federal and private agency policies and practices

--Public Law 83-280 in 1953

--”Relocation Program” 1950s

--1960s: Tribes began challenging the placement rate of their children into non-Indian homes
Indian Child Welfare Efforts

30 years ago

American Indian Policy Review
Commission of the United States
Congress
May 17, 1977
Comparative Rates for Indian Children

Arizona

St 100%
Adoption
Foster Care
Comparative Rates for Indian Children

- Adoption: 840
- Foster Care: 270

California

Legend:
- St 100%
- Adoption
- Foster Care
Comparative Rates for Indian Children

Michigan

- St 100%
- Adoption
- Foster Care

Comparative Rates:
- Adoption: 370
- Foster Care: 710

Legend:
- 100
- 370
- 710
Comparative Rates for Indian Children

Minnesota

- St 100%
- Adoption
- Foster Care

1650
390
100

Graph shows comparative rates for Indian children in Minnesota.
Comparative Rates for Indian Children

- Adoption
- Foster Care

Montana
Comparative Rates for Indian Children

Utah

- St 100%
- Adoption
- Foster Care

ADOPTION

FOSTER CARE

100
340
1500

0
100
200
300
400
500
600
700
800
900
1000
1100
1200
1300
1400
1500
1600
Comparative Rates for Indian Children

Washington

- St 100%
- Adoption
- Foster Care
INDIAN CHILD WELFARE ACT
P.L. 95-608 (11/8/78)
Indian Child Welfare Act
(Public Law 95-608)

• Congressional Findings:
• (3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe
Indian Child Welfare Act
(Public Law 95-608)

- Congressional findings:
  - (4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and
Indian Child Welfare Act
(Public Law 95-608)

• Congressional Findings:

• (5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.
What does ICWA do?

- Notice to Tribes: Opportunity to participate
- Active Efforts
- Increased Burden of Proof
- Placement Preferences
How have we done?

Indian Child Welfare Efforts

2007
2007 GAO Report  [St.=1.0]

- Colorado – 1.94  [.78]
- North Dakota – 3.09  [.69]
- Utah – 3.97  [.82]
- Washington – 4.99  [.80]
- Iowa – 5.41  [.86]
- Nebraska – 6.54  [.80]
- Minnesota – 7.31  [.63]
- Oregon – 8.68  [.75]
<table>
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<tr>
<th>State</th>
<th>National Ranking</th>
<th>% of NA children in State population</th>
<th>% of NA children in State foster care</th>
<th>Disproportionality Index</th>
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<td>15.7</td>
<td>11.6</td>
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<td>1.5</td>
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<td>Nebraska</td>
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<td>1.1</td>
<td>7.6</td>
<td>6.8</td>
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<tr>
<td>Idaho</td>
<td>4</td>
<td>1.2</td>
<td>7.7</td>
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<td>0.4</td>
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Impact of removal

--Is it safety or are we judging what will give these kids a better home?

Samuel Roll, Ph.D.

• Identification with the aggressor

--I have more in common with the bad guys than with the good guys.
### Thematic Apperception Test

<table>
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<tr>
<th>Good</th>
<th>Bad</th>
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<tbody>
<tr>
<td>Beautiful</td>
<td>Ugly</td>
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<tr>
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<td>Dumb</td>
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<tr>
<td>Honest</td>
<td>Dishonest</td>
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</table>
Identification with the Aggressor

- Baseline:
  - Suicide rate of teenagers in U.S.
- Inner City
  - twice as high
- Reservations
  - higher
- Indian kids in non-Indian homes
  - highest
Identification with the Aggressor

• Dr. Roll concluded, “If you take people away from their families and out of their communities where are Indian kids going to have a positive image of what it means to be Indian today?”
Identification with the Aggressor

• According to Dr. Roll, suicide rates are higher for Indian kids in non-Indian homes.

*Indian kids are more fragile when we move them from their homes and out of their communities.